

## Supplemental Complaint

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#### 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.

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2.	DOE00000584-DOE0000603	Borrower Defense to Repayment Claims Evaluation
3.	DOE00002144-DOE00002147	"Manning Memo"
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**DOE00000196-DOE00000213**



To: Under Secretary Ted Mitchell

From: Borrower Defense Unit

Date: October 24, 2016

Re: Recommendation for Everest/WyoTech Borrowers Alleging Transfer of Credit Claims

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The Borrower Defense team recommends borrower defense (BD) relief for students who: (1) enrolled at any Corinthian-operated, nationally accredited Everest<sup>1</sup> campus or at WyoTech's Laramie campus<sup>2</sup> between the time Corinthian opened or acquired the campus and April 2015; and (2) alleges that Corinthian misrepresented the transferability of credits earned at that campus. Corinthian represented that credits earned at these Everest campuses were generally transferable. These representations were false and misleading. Accordingly, for the reasons explained below, full BD relief is appropriate for all Everest and WyoTech Laramie borrowers alleging misrepresentations regarding the transferability of credits, subject to reduced relief for those borrowers impacted by the statute of limitations.

### BACKGROUND

Everest consistently misled prospective students about the transferability of credits earned at their campuses in two ways. First, school staff made explicit representations regarding transferability. Second, staff strongly implied transferability by emphasizing the school's accreditation status.

The misleading nature of these statements hinges on the key differences between national career-related and regional institutional accreditation. Traditionally, national accreditors accredit mainly for-profit, career-based, single-purpose institutions, both degree and non-degree.<sup>3</sup> By contrast, regional accreditors accredit public and private, mainly non-profit and degree-granting, two- and four-year institutions.<sup>4</sup> Broadly speaking, credits earned at nationally accredited colleges "are rarely accepted at regionally accredited schools;"<sup>5</sup> and have never been generally transferable.<sup>6</sup> Almost every Everest campus was nationally accredited since its inception, and Corinthian personnel were fully aware of the negative impact of their accreditation on transferability.<sup>7</sup> Nevertheless, as Senator Tom Harkin notes in his 2012 report on the for-profit college sector (the "Harkin Report"), recruiters at for-profits "sometimes play on prospective students' ignorance about accreditation in order to use their schools' accreditation as a selling point."<sup>8</sup>

As discussed below, Everest personnel regularly led prospective students to believe, either through express or strongly implied representations, that credits earned at Everest would generally be

<sup>1</sup> Everest schools include Florida Metropolitan University campuses, which Corinthian acquired in 1996 and later rebranded as Everest University.

<sup>2</sup> To date, the BD Team has only reviewed WyoTech claims from the Laramie campus. While we have no reason to believe the facts and recommendations in this memorandum do not apply to other WyoTech campuses, at this time we are not extending our analysis to those campuses. For the purposes of this memorandum, references to "Everest" include WyoTech Laramie.

<sup>3</sup> See *Council for Higher Education Accreditation: An Overview of US Accreditation*, <http://www.chea.org/pdf/Overview%20of%20US%20Accreditation%202015.pdf>. For this memorandum, "national" refers to national career-related accreditors or accreditation.

<sup>4</sup> *Id.* p. 2.

<sup>5</sup> Harkin Report, p. 56, citing Council for Higher Education Accreditation, *The Fundamentals of Accreditation: What Do You Need to Know*, Council for Higher Education Accreditation, p. 7, September 2002, [http://www.chea.org/pdf/fund\\_accred\\_20ques\\_02.pdf](http://www.chea.org/pdf/fund_accred_20ques_02.pdf) (accessed May 24, 2012).

<sup>6</sup> Herman Bounds, Ed.D., Director of the Accreditation Group at the Department of Education, confirmed to the BD team via email that it is a standard practice in higher education for regionally accredited schools to not accept nationally accredited school credits. He also confirmed that those policies are a historical norm.

<sup>7</sup> See Mark Pelesh's statement at <https://www.insidehighered.com/news/2007/02/26/transfer>.

<sup>8</sup> Harkin Report at 55.



accepted at regionally accredited post-secondary institutions. In actuality, those credits generally did not transfer to or were not accepted at regionally accredited schools.

## **I. Summary of Evidence of Representations of Transferability**

Everest staff orally represented to potential students that they could generally transfer their Everest credits to any other school. These oral representations occurred both in person and during telephone calls with prospective students. Specifically, the school personnel: (a) stated credits were generally transferable; and/or (b) “play[ed] on prospective students’ ignorance about accreditation” to make claims about national accreditation that strongly implied general transferability.<sup>9</sup>

### **A. Student Accounts of In-Person Oral Representations of Transferability**

Hundreds of student applications reviewed to date provide corroborative evidence that Everest admissions personnel regularly made misleading oral representations about transferability. Indeed, our review of claims spanning from 1998 through 2010 shows that personnel made consistent transferability claims throughout the entire time that Corinthian operated the schools.

A sample of claims from the Everest Brandon campus demonstrates the consistency and specificity of false transferability claims made by school representatives:

- “In my entrance interview, I was told that I should enroll in the paralegal program if I planned on being a lawyer. I was told guarantee that my credits would be good to transfer to USF or UT and then Stetson Law.”<sup>10</sup>
- “I was assured when I started that I could transfer my credits to any other school if I chose to do so.”<sup>11</sup>
- “I was told my credits would transfer to University of South Florida for my BA in Finance and they did not so I was stuck with all these loans and no school will take them I was told that employers will recognize the degree from them and they laugh at me.”<sup>12</sup>
- “Not a single credit was transferable. I specifically remember asking the rep before enrolling if credits were transferable and she said “absolutely,” never once telling me that accreditation of the school was not the same as a traditional.”<sup>13</sup>
- “The school told me that I would not have any problem transferring credits if I decided to further my education elsewhere or go to law school.”<sup>14</sup>
- “The representative for FMU, asked what my goals were for my education. I stated that I wanted to attend USF for a bachelors degree. He said my credits would absolutely transfer and that he worked hand in hand with the academic advisers over at USF, to help students transition smoothly. He said that my credits would transfer even mid-way through the program.”<sup>15</sup>
- “The admissions department also ensured me that earned credits would be accepted by other educational institutions... later discovered that credits from Everest University were not honored at state and local universities.”<sup>16</sup>

<sup>9</sup> As discussed below, in Section III(B)(1), footnote 102, the implied representations also constitute actionable material omissions.

<sup>10</sup> BD151795

<sup>11</sup> BD150990

<sup>12</sup> BD151323

<sup>13</sup> BD150355

<sup>14</sup> BD151723

<sup>15</sup> BD150789

<sup>16</sup> BD153129



- "I asked if I decided to transfer after rec associates degree would all credits transfer to any college? I was told, an associates is an associates no matter where it comes from."<sup>17</sup>
- "Brian Walker admissions representative had stated that if I wanted to get a Masters degree from another college that my credits will transfer with no problem as FMU (now Everest) is accredited university."<sup>18</sup>
- "I asked if I could transfer my credits to get my Bachelor's degree after earning my Associate's and i was told they would transfer but I would receive a discount if i was to get my Bachelor's with them. They told me i could get my Master's anywhere because my credits would transfer. I asked for specific schools which would take the credits and I was told they don't see why anyone wouldn't take them . . . I was going to pursue my Master's but found out my credits do not transfer."<sup>19</sup>

In all of the above examples, the school explicitly misrepresented the transferability of its credits to the student.

Applicants also state that the school represented general transferability via statements that Everest was "accredited" or "fully accredited." Such implied representations of transferability are supported by the Harkin Report, as well as the Corinthian telephone audits and recordings discussed below. That this "accreditation" tactic, in context, created a strongly implied representation of transferability is illustrated by the fact that students who were unable to transfer their credits believe that Everest lied about being accredited at all (*italics added*):

- "FLORIDA METROPOLITAN UNIVERSITY-ONLINE (FMU-ONLINE) *LIED BY STATING THAT THEY WERE AN ACCREDITED UNIVERSITY WHEN IN FACT THEY KNOW THEY WERE NOT . . . THE MISCONDUCT FROM FMU-ONLINE PREVENTED ME TO TRANSFER ANY OF THE CLASSESS I HAD TAKEN THERE, TO BE TRANSFERABLE.*"<sup>20</sup>
- "Before i applied for the loan i was told my credit can be tranfer if need when i was attending class *i found out thats not true they [sic] are not a accredited school.*"<sup>21</sup>
- "I DID NOT KNOW THAT THE SCHOOL WAS NOT PROPERLY ACCREDITED. CREDIT WERE NOT TRANSFERABLE"<sup>22</sup>
- "Everest University misrepresented their accreditation I was told during my school interview that the school was accredited, *and later found out once I applied to other colleges that the school was not accredited.*"<sup>23</sup>
- "I actually went to Valencia once and they told me that they [Everest] are not accredited, thus I'd have to start all over again."<sup>24</sup>
- "Throughout the course, there was speculation that the school was not accredited, but they continuously posted fake documents around the school claiming that they were accredited and that any credits we received would transfer over without any problem."<sup>25</sup>
- "I was told that credits would transfer to other schools offering the same classes but when i tried to transfer after having ear problems i was told that *NONE of my credits could transfer because FMU [later Everest] was not an accredited school.*"<sup>26</sup>

<sup>17</sup> BD153757

<sup>18</sup> BD150139

<sup>19</sup> BD150545

<sup>20</sup> BD154282

<sup>21</sup> BD153723

<sup>22</sup> BD152794

<sup>23</sup> BD152222

<sup>24</sup> BD150941

<sup>25</sup> BD150786



- “I am struggling to have my credits transfer to Southern New Hampshire University. They told me that since Everest is closing that it may be difficult to get any credits to transfer *because Everest is not an accredited institution. Everest told me that they were accredited.*”<sup>27</sup>

Whether students allege an explicit misrepresentation about transferability (“I was told all my credits would transfer”) or a strongly implied misrepresentation (“I was told the school was accredited, but then I found out my credits wouldn’t transfer”), the student statements are unprompted,<sup>28</sup> specific, and consistent across a span of years.

For example, of the 303 claims reviewed to date at the Everest-Brandon campus, 52 include the allegation that admissions personnel made express representations regarding transferability (examples of which were quoted above) and an additional 6 allege an implied misrepresentation (tying accreditation to transferability).<sup>29</sup> The student statements are consistent regarding the representations made, including details such as specific schools that would accept Everest credits, or the suggestion that credits earned in Everest’s paralegal program would enable students to continue on to law school.

The 58 Everest-Brandon transferability claims come from students who attended between 1998 and 2010.<sup>30</sup> Corinthian owned and controlled the Everest-Brandon location beginning in 1996, and the first claim alleging a transferability misrepresentation comes from a student who enrolled in 1998. We have transferability claims from this campus for each year from 1998 through 2010, with a spike in the late-2000s. We have fewer claims from earlier years, but those earlier claims bear the same indicia of reliability as the later claims. Significantly, the student statements about the admissions representatives’ misrepresentations exhibit consistency across the span of years:

- 1998: “I attended the school due to the flexible hours and the fact that I was told by the [the school] that my credits in fact would transfer over to other schools.”<sup>31</sup>
- 2000: “I was also told that my credits could transfer to any local college or university that was regionally accredited.”<sup>32</sup>
- 2006: “The school told me that I would not have any problem transferring credits if I decided to further my education elsewhere or go to law school.”<sup>33</sup>
- 2010: “...Also, was told that credits would transfer to any University (not true).”<sup>34</sup>

The pervasiveness and consistency of the misrepresentation over time at Everest-Brandon corroborate students’ allegations about transferability claims throughout the entirety of Corinthian’s control of the school.

<sup>26</sup> BD150315

<sup>27</sup> BD152848

<sup>28</sup> All of the above student statements came from a variety of different types of applications including the Everest/WyoTech attestation form ED created for JPR 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 specifically ask about transfer of credits, but others do not, and ED’s attestation form only instructs borrowers to provide “any other information... that you think is relevant.”

<sup>29</sup> These figures do not include applications on the Debt Collective form where the applicant only checked the box indicating they were misled about “[t]he fact that my program lacked the required accreditation to allow me to work in my field and/or transfer my credits to another college” without providing any narrative.

<sup>30</sup> Review Group 15, from which these sample claims are taken, includes any Everest or WyoTech claim from students who enrolled before 2010. A few claims from students enrolled in 2010 can also be found in the review group.

<sup>31</sup> BD1617575

<sup>32</sup> BD1600530

<sup>33</sup> BD151723

<sup>34</sup> BD1613824



Significantly, just as the 58 Everest-Brandon claims corroborate each other, the number of similar allegations at and across multiple other campuses further corroborates students' allegations of transferability representations made by Everest personnel. Across campuses and across years, the similarity of student statements indicates that the misrepresentations were system-wide and, indeed, part of the Corinthian culture, discussed below, of enticing students to enroll at any cost.<sup>35</sup>

Campus	Applications reviewed	Applications alleging an express or implied transferability representation	%
Everest Brandon	303	58	19
Everest Grand Rapids	46	11	24
Everest Orange Park	36	9	25
Everest Orlando North	45	11	24
Everest Orlando South	157	56	36
Everest Phoenix <sup>36</sup>	81	22	27
Everest Pompano Beach	28	10	36
Everest Rochester	53	15	28
Everest Tampa	26	10	38
WyoTech Laramie	18	6	33
<b>TOTAL</b>	<b>793</b>	<b>198</b>	<b>25</b>

The campuses shown above represent the nine Everest campuses, and one WyoTech campus, for which we have the most claims. The campuses are located in five separate states (AZ, FL, MI, NY, and WY) and the total applications reviewed are from the period of time when Corinthian gained control of the campus<sup>37</sup> through 2010. Every campus from which we have reviewed a significant number of applications has revealed that between one-fifth and one-third of total applicants allege a misrepresentation about transferability of credits. Just like the Everest-Brandon campus discussed above, the transferability claims from these campuses are 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 are making extremely similar allegations about what the schools said about transferability – whether that student enrolled at Brandon in 1998 or Rochester in 2008.

Accordingly, we recommend no further year-by-year or campus-by-campus breakdown for every one of the over ninety Everest campuses as unnecessary. The hundreds of claims reviewed corroborate that Everest personnel made representations that credits were generally transferable beginning shortly after Corinthian opened or gained control of a campus.

## **B. Telephone Scripts, Audits, and Recordings**

Not surprisingly, Corinthian's training documents do not contain express misrepresentations about transferability. However, they lay the foundation for abuses by failing to emphasize the non-transferability of credits or other potentially important information and in some cases tacitly encouraging misinformation. For example, in a Corinthian presentation entitled "Overcoming Phone Obstacles" attached to the Harkin Report, Corinthian instructs its admissions representatives to provide limited

<sup>35</sup> See discussion below, Section III(C), detailing Corinthian's high-pressure sales techniques and internal emphasis on enrolling as many students as possible whether or not it is in the students' interest.

<sup>36</sup> Although Everest Phoenix was a regionally accredited campus, these figures are included for their corroborative value in establishing that Everest personnel regularly made representations regarding transferability.

<sup>37</sup> The oldest Everest campuses were opened in California in 1995. Others opened anywhere between 1996 and 2012. The nine campuses contained in the chart opened or came under Corinthian control between 1996 and 2004.



information.<sup>38</sup> By encouraging its admissions representatives to listen more and talk less, Corinthian believed it could give the student “limited information that will bring the student into the school.”<sup>39</sup> Similarly, a training manual for admissions representatives attached to the Harkin Report contains call scripts for admissions representatives.<sup>40</sup> One section of the script suggests that representatives tell students who ask that credits “will probably not be transferable,”<sup>41</sup> but a later sample conversation instructs the representatives to tell students: “... you’ll need to ask the receiving institution that question. I can’t tell you what their policy might be because every institution sets their own policy regarding credit transfer.”<sup>42</sup>

However, an internal Corinthian audit shows that even to the extent the scripts accurately described the transferability of Corinthian credits, admissions representatives under pressure to enroll students frequently did not follow them. A 2012 audit of Everest’s Online Learning Division – Colorado Springs, Tempe,<sup>43</sup> and Tampa (which includes Brandon, South Orlando, and Pompano Beach) – identified substantial failures to provide accurate information regarding the transferability of credits during calls with prospective students. Specifically, representatives for the Colorado Springs campus “failed to or incorrectly mentioned” credit transferability 31% of the time when students asked; at Tempe and Tampa, these errors occurred in 40% of audited calls.<sup>44</sup> Karen Fleming, a quality assurance and compliance auditor for Corinthian, summed up the inaccurate information on transferability in an April 13, 2012 email to colleagues, stating: “Admissions representative[s] did not inform the student that if they wish to transfer their credits from Everest to another institution, that the acceptance of those credits would be at the judgment of the receiving institution...”<sup>45</sup>

Recordings of phone calls supplied by the Illinois Attorney General further illustrate that Corinthian employees misled potential students to believe that credits would be accepted at other schools. In summaries of 9 out of 29 recorded calls between Everest call center employees and prospective students provided to us by the Illinois Attorney General’s office, Everest representatives gave prospective students information about transferability that was either false or technically accurate but misleading.<sup>46</sup> In one phone call, the representative directly links accreditation to transferability stating: “We are a nationally accredited school. So you can use that almost anywhere you go.”<sup>47</sup> Another representative, after confirming the school was accredited, refused to answer a prospective student’s question about transferability.<sup>48</sup>

<sup>38</sup> Harkin report, Appendix 25, CoCo Document 3.

<sup>39</sup> *Id.* at p. 7.

<sup>40</sup> Harkin report, Appendix 25, CoCo Document 4.

<sup>41</sup> Harkin report, Appendix 25, CoCo Document 4, pp. 7-8.

<sup>42</sup> Harkin report, Appendix 25, CoCo Document 4, p. 14.

<sup>43</sup> Everest Tempe was one of the regionally accredited campuses in Arizona. While the effect of accreditation on transferability for the AZ campus is not the same as for nationally accredited schools, the fact that representatives for that campus either failed to provide accurate information, or affirmatively provided inaccurate information, regarding transferability between 20% and 40% of the time when observed serves to corroborate allegations that such representations were regularly made regarding other campuses nationwide.

<sup>44</sup> Quach Decl. Ex. 40, at CCICA156477. After a “corrective action plan” was initiated, those numbers dropped to 18% at Colorado Springs, 20% at Tempe, and 26% at Tampa. *See* Quach Decl. Ex. 40, at CCICA156454.

<sup>45</sup> *Id.*

<sup>46</sup> IL AG “Hot Call” table.

<sup>47</sup> IL AG; 3333182367\_3333182298\_efb49c0853f315387993e156.

<sup>48</sup> ““The school will obviously give you the education and credentials with regard to certification” 24:00 “Are you guys accredited.” A: “Absolutely.” Student then asked about transfer of credits. She wouldn’t answer. IL AG; Second Leg, 3333592713\_3333592639\_13469370fa1b53e21c997bc8.



## II. Summary of Evidence of Falsity of Representation

Three main sources of evidence demonstrate that credits from Everest were not generally transferable to most other schools. The first is the nature of the schools' accreditation. The second is the *Transfer Credit Practices* guide, which admissions officers use to determine how other schools treat a school's credits. The third is a survey we conducted of transfer policies in a few states that had large populations of Everest students. Additionally, public statements by Corinthian executives show that Corinthian was aware that credits from their schools were not generally transferable.

### A. Accreditation

Regionally accredited schools generally do not accept transfer credit from nationally accredited schools. Most of the nation's two- and four-year degree-granting post-secondary schools are regionally accredited, while national accrediting agencies accredit career, vocational, and trade schools. Generally, schools that are regionally accredited will not accept credits from nationally accredited schools.

A 2014 study by the National Center for Education Statistics found that 81.4% - 84.3% of students who transfer to, from, or between nationally accredited schools have none of their earned credits transfer (compared to 37% of students transferring between regionally accredited schools),<sup>49</sup> and that the average student transferring to, from, or between nationally accredited schools lost 83% - 90% of their credits upon transfer (compared to an average loss of 39% for regional to regional transfers).<sup>50</sup> The California State University system, the largest four-year public university system in the US, does not generally accept credits from *any* institution without regional accreditation.<sup>51</sup> Similarly, major systems in Florida, Georgia, Texas, Minnesota, and Massachusetts only generally accept credits from regionally accredited schools.<sup>52</sup>

Similarly, a GAO report found that among regionally accredited schools, 63% specified that they accepted credits from *any* regionally accredited school, whereas only 14% specified that they accepted transfer credits from nationally accredited schools;<sup>53</sup> less than one percent of post-secondary institutions specified that accreditation was not a factor in their transfer decisions.<sup>54</sup> Nationally accredited institutions told the GAO that their students "often have difficulty transferring credits and that . . . regionally accredited institutions did not always accept courses taken at the nationally accredited institution."<sup>55</sup> Nationally accredited institutions reported that they "advised students to assume that credits would not transfer to regionally accredited institutions."<sup>56</sup>

<sup>49</sup> Simone, S.A. (2014). *Transferability of Postsecondary Credit Following Student Transfer or Coenrollment* (NCES 2014-163). U.S. Department of Education. Washington, DC: National Center for Education Statistics. p. 36

<sup>50</sup> *Id.* at 37. While the study did not conclude there was a direct link between accreditation status and credit transfer, it did find that accreditation status was a factor in credit transfer. The importance of that "factor" is highlighted in the percentage of transfer credits lost when nationally accredited students attempts to transfer those credits. Moreover, experts in the field consider accreditation to be a major factor in credit transferability. According to Christine Kerlin, Ed.D., the "type of accreditation is one of the first considerations, and often the primary consideration, by a receiving institution in reviewing transfer credit." See Expert Rebuttal Report to Expert Report by Dennis M. Cariello in the Matter of *State of Minnesota by its Attorney General, Lori Swanson v. Minnesota School of Business, Inc. et al.* at 4 (July 2015). See also statements of Herman Bounds, Ed.D., Director of Accreditation Group at the Department of Education, referenced in FN 6.

<sup>51</sup> *Transfer Credit Practices*, 2015 Edition

<sup>52</sup> See "Survey of Two- and Four-Year Schools in Selected States", Section II(C).

<sup>53</sup> GAO-06-22, p. 9

<sup>54</sup> GAO-06-22, p. 9

<sup>55</sup> *Id.* p. 10

<sup>56</sup> *Id.*



The fact that regionally accredited schools generally do not accept nationally accredited credits has always been true. The 2005 GAO report treats the issue as the status quo, and not a recent development.<sup>57</sup> Until the last couple decades, credit transfer between nationals and regionals was a non-issue since, historically, nationally accredited schools offered technical certificates, not degree programs.<sup>58</sup> However, in the last 15-20 years, more nationally accredited schools have started offering degree programs, and the inability of those credits to transfer has become a larger issue.<sup>59</sup>

Corinthian itself was sufficiently aware of the impact of national accreditation on transferability that it supported various regulatory and/or legislative efforts to require schools to “state that they will not automatically reject credit from nationally accredited institutions.”<sup>60</sup> In 2007, Corinthian’s VP for legislative and regulatory affairs, Mark Pelesh, stated: “Students are required too often to repeat coursework, pay for something twice, use the public’s resources in terms of federal and state financial aid, and have impediments put in the way to advancing their career objectives... it’s high time we do something that has some regulatory teeth and impact.”<sup>61</sup>

## **B. Transfer Credit Practices of Designated Educational Institutions**

The *Transfer Credit Practices of Designated Educational Institutions*, a reference guide published by the American Association of Collegiate Registrars and Admissions Officers, also demonstrates that these credits were not generally transferable as Corinthian frequently told borrowers. It reports the transfer acceptance practices of one major institution in each state, usually the flagship campus of the state university system, regarding credit from institutions in that state. Other schools are not required to follow the reporting school’s policies, but the guide is useful for determining how institutions’ credits are treated generally.

In a review of *Transfer Credit Practices* from the last twenty years,<sup>62</sup> none of the reporting institutions, outside of Arizona, had a policy of generally accepting credits from Everest. Outside of Arizona, the most favorable policy regarding credits from Everest was one university system that accepted them “on a provisional basis subject to validation as prescribed by the reporting institution.”<sup>63</sup> All other reporting institutions either had no official policy or did not normally accept credits from Everest.<sup>64</sup>

<sup>57</sup> See also <https://www.americanprogress.org/issues/higher-education/report/2015/12/14/127200/linked-on-accreditation-a-historical-perspective/>; [https://en.wikipedia.org/wiki/Regional\\_accreditation](https://en.wikipedia.org/wiki/Regional_accreditation); El-Kwahas, Elaine (2001) *Accreditation in the USA: Origins, Developments, and Future Prospects* <http://unesdoc.unesco.org/images/0012/001292/129295e.pdf>; Brittingham, Barbara (2009) *Accreditation in the United States: How Did We Get to Where We Are?* <http://onlinelibrary.wiley.com/doi/10.1002/he.331/pdf>; <http://www.acics.org/accreditation/content.aspx?id=2258>

<sup>58</sup> See “Council for Higher Education Accreditation: Transfer and the Public Interest” (Nov. 2000) available at [http://www.chea.org/pdf/transfer\\_state\\_02.pdf](http://www.chea.org/pdf/transfer_state_02.pdf), where, without addressing for-profits specifically, the reports states that “higher education is experiencing a significant change in how students attend college and who provides higher education”; see also “History of Accreditation” available on a major national accreditor’s website at <http://www.acics.org/accreditation/content.aspx?id=2258>.

<sup>59</sup> Herman Bounds, Ed.D., Director of the Accreditation Group at the Department of Education, confirmed to the BD team via email that it is a standard practice in higher education for regionally accredited schools to not accept nationally accredited school credits. He also confirmed that those policies are a historical norm. See also 2006 Spellings Report (ED report arguing that something needs to be done about credit transfer practices).

<sup>60</sup> <https://www.insidehighered.com/news/2005/10/19/transfer>

<sup>61</sup> <https://www.insidehighered.com/news/2007/02/26/transfer>

<sup>62</sup> The 1994-1996, 1996-1998, 1998-2000, 2006, 2009, 2012, and 2015 editions.

<sup>63</sup> California State University, Northridge, for certain Everest campuses, but only in 2006 and 2012. Of the 6 Everest campuses from which CSU would accept credits on a provisional basis, credits from 5 of those were limited to “graduate, professional, or technical programs only”. By 2015, CSU Northridge policy for all Everest/WyoTech campuses was “credit not normally accepted”.

<sup>64</sup> Florida statute allows nationally accredited schools to participate in the Statewide Course Numbering System, which may allow credits taken at those schools to transfer, but for the Everest campuses that participated in the System, “the credentials of



### C. Survey of Two- and Four-Year Schools in Selected States

In May 2016, the BD Team also surveyed the transfer policies of two- and four-year schools in three of the states with high numbers of Everest students (FL, GA, and TX), regarding credits earned at Everest. We reviewed the schools' credit transfer acceptance policies available online, emailed admissions officers, and/or spoke directly with admissions officers. None of the state four-year school systems had a policy of generally accepting credits from nationally accredited schools, including Everest.<sup>65</sup> Most of the two-year community colleges would only accept credits from regionally accredited schools on a general basis (one two-year school in FL and one in TX regularly accepted credits from ACICS schools, including Everest).

Similarly, as part of their investigation into Everest campuses in Massachusetts, MA AGO contacted several two- and four-year schools within commuting distance of the Everest schools. None of the schools normally accepted credits from Everest, with all of the four-year and one of the two-year schools specifying that they only had acceptance policies for regionally accredited schools.<sup>66</sup> The UMass flagship campus either was not contacted or did not reply, but according to its website, "the following courses generally will not transfer to UMass: Taught by a school which does not have regional academic accreditation at the post-secondary level."<sup>67</sup>

### D. Student Accounts

Unsurprisingly, student accounts also show that other institutions of higher learning did not accept credits earned at Everest:

- "I am currently a student at Daytona State College and have been forced to repeat many of the courses I took and paid for at Florida Metropolitan University [Everest Orlando North]. Daytona State does not recognize any of credits earned at FMU, forcing me to repeat them and continue to pay a student loan on worthless education."<sup>68</sup>
- "I tried to enroll at University of Central Florida, Seminole State College and Valencia College. UCF did not even respond to me. SSC and Valencia informed me that they could not accept my credits."<sup>69</sup>
- "I was Told all college credits would transfer, it didn't matter that this college was private, I spoke with a community college advisor and none of these credits transfer."<sup>70</sup>
- "Credits were not transferable. I checked with Western Dakota Tech in Rapid City SD at the time as I felt I was not getting the education I was promised."<sup>71</sup>

In some instances, students even lost the majority of credits earned at one Everest campus when they transferred or re-enrolled at another Everest campus. One student writes: "The fact is none of them [credits earned at Tampa] were accepted by Tempe Everest even though it was from their OWN sister

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faculty teaching each course are considered in determining the number assigned to the course and the transferability of the course", those Everest campuses are still listed as "credits not normally accepted".

<sup>65</sup> University of Florida (Gainesville), University of West Florida, the Georgia State University system, University of Georgia (Athens), University of Texas (Austin), University of Texas (San Antonio), Baylor University, and Rice University. Florida State University (Tallahassee) would accept, and has accepted, Everest credits on a provisional basis, upon review, as noted above.

<sup>66</sup> MA AGO, Ex. 34

<sup>67</sup> <https://www.umass.edu/registrar/students/transfer-information/transfer-credit>

<sup>68</sup> BD151803

<sup>69</sup> BD1604707

<sup>70</sup> BD150366

<sup>71</sup> BD155798



school.”<sup>72</sup> Another student reports: “They told me that I will be able to use my previous credit... but [Everest Orlando South] made me take the class again.”<sup>73</sup>

This inability to transfer credits to other institutions is consistent both at individual campuses and between campuses during the time they were operated by Corinthian.

### **III. Application of the Borrower Defense Regulation Supports Eligibility and Full Relief for These Borrowers, Subject to Reduction for Borrowers Affected by the Statute of Limitations**

Under the current borrower defense regulation, students must allege an “act or omission” of their school “that would give rise to a cause of action against the school under applicable State law” to be eligible for relief.<sup>74</sup> The applicable state law here is California’s UCL, which prohibits a wide range of business practices that constitute unfair competition, including corporate misrepresentations. For the following reasons, the cohort of Everest students identified below applying for borrower defense relief predicated on Everest’s transferability misrepresentations: 1) have standing under the California UCL; and 2) are eligible for relief under the “unlawful” and “fraudulent” prongs of the UCL. Moreover, given the lack of value conferred by Everest 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. Everest Students Have Standing Under California’s UCL**

Both students who attended Everest programs in California and those who attended campuses in other states have standing under the California UCL. First, students attending Everest programs in California can demonstrate standing under the UCL by alleging that they relied on misrepresentations made by Everest regarding the transferability of Everest course credits. Any person “who has suffered injury in fact and has lost money or property as a result of the unfair competition” has standing to bring a claim under the UCL.<sup>75</sup> Second, while California statutes do not generally have effect outside of California, “[California] statutory remedies may be invoked by out-of-state parties when they are harmed by wrongful conduct occurring in California.”<sup>76</sup> Courts look to “where the defendant does business, whether the defendant’s principal offices are located in California, where class members are located, and the location from which advertising and other promotional literature decisions were made”<sup>77</sup> when determining whether non-California residents may avail themselves of California’s consumer protection statutes. Corinthian and its subsidiaries, through which it operated Everest schools, had their primary places of business and headquarters in California,<sup>78</sup> had more campuses in California than any other state,<sup>79</sup> produced and coordinated marketing and advertising in California,<sup>80</sup> and developed and promulgated the policies and training materials for their personnel in California.<sup>81</sup> Further, the single

<sup>72</sup> BD1603868

<sup>73</sup> BD155063

<sup>74</sup> 34 C.F.R. § 685.206(c).

<sup>75</sup> CAL. BUS. & PROF. CODE §17204.

<sup>76</sup> *Norwest Mortgage, Inc. v. Super. Ct.*, 72 Cal.App.4th 214, 224-25, 85 Cal.Rptr.2d 18(Cal.Ct.App. 1999)

<sup>77</sup> *In re Clorox Consumer Litigation*, 894 F.Supp.2d 1224, 1237 -1238 (N.D.Cal., 2012) (citing *In re Toyota Motor Corp.*, 785 F.Supp.2d 883, 917 (C.D.Cal.2011)).

<sup>78</sup> CCI Answer CA Amended Complaint ¶¶9-27

<sup>79</sup> There were 27 Corinthian campuses in California (14 Everest, 3 WyoTech, and 10 Heald). The other states with large numbers of Corinthian campuses were Florida (15 Everest and 1 WyoTech campuses) and Texas (9 Everest campuses).

<sup>80</sup> Tim Evans Interview, WI AG Sutherlin Affidavit Ex. 12 (“Evans said that all advertising was done by corporate.”); Mark Sullivan interview, WI AG Sutherlin Affidavit Ex. 13 (“He [Sullivan] didn’t do any of the marketing. That wasn’t done by the local campuses.”); Deposition of Scott Lester, WI AG Sutherlin Ex. 15 (“Every bit of marketing came out of corporate. Every marketing decision came from corporate.”)

<sup>81</sup> WI Educational Approval Board letters to Everest Milwaukee, WI AG Sutherline Affidavit, Ex. 10



incoming call facility for prospective Everest students from the throughout the nation was located in California.<sup>82</sup>

Additionally, 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:

- “Q: And when the Admissions Reps were making representations to the students about the externships, about the career possibilities, about what life could be, were those accurate representations given the state of the school?  
A: *They were the representations that they were given by corporate as part of their -- the way they were told to do the job. Were they accurate? No.*”<sup>83</sup>
- Call center representatives “were trained to lie.”<sup>84</sup>
- “There is a huge cultural issue at Corinthian Colleges that quietly promotes dishonesty & fraud at all the Everest campuses. *This culture of dishonesty & intimidation is generated by the corporate office that has spread all over the company like cancer.*”<sup>85</sup>

Based on these factors – that Corinthian was headquartered and had its principal place of business in California, and that decisions and policies made by its California based corporate leadership harmed Everest students across the nation – Everest students from campuses nationwide have standing under the California UCL.

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

California’s UCL prohibits, and provides civil remedies for, unfair competition, which it broadly defines to include “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law].”<sup>86</sup> Here, Everest’s misrepresentations regarding the transfer of credits constitute “unlawful” and “fraudulent” business practices under the UCL.<sup>87</sup>

##### **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.”<sup>88</sup> Thus, if a business practice violates any law, this is *per se* a UCL violation.<sup>89</sup>

Corporate misrepresentations like those Everest made regarding transferability are prohibited by a number of state and federal laws. In particular, Everest’s misrepresentation of the transferability of its

<sup>82</sup> Interview Report, Ivan Limpin, Former Employee, Corinthian Schools Call Center (Feb. 28, 2013); taken by CA AG Office.

<sup>83</sup> Deposition of Scott Lester, Everest Milwaukee Director of Admissions, later President. WI AG, Ex. 15

<sup>84</sup> Interview Report, Ivan Limpin, Former Employee, Corinthian Schools Call Center (Feb. 28, 2013); taken by CA AG Office.

<sup>85</sup> Letter from Anonymous former Everest employee to ACCSC Commissioner, Ex. 54 of CA AG Motion for Default at CCICA179681

<sup>86</sup> *Id.*; *Kwikset Corp. v. Superior Court*, 51 Cal. App. 4th 310, 320 (2011); *see also Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999).

<sup>87</sup> Although not discussed here, Everest’s transferability misrepresentations may also be unfair competition under two other prongs of Section 17200: “unfair, deceptive or untrue advertising” and “unfair...business act or practice.” Courts typically fail to distinguish the false advertising prong from the fraudulent business practices prong; this memorandum focuses on the fraudulent business practices prong. *See* Stern, *Business and Professional Code* § 172000 Practice at 3:212 (2016).

<sup>88</sup> *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1266 (1992) (citations omitted).

<sup>89</sup> *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).



credits violates the prohibition against deceptive advertising in the Federal Trade Commission Act (“FTC Act”).<sup>90</sup> Determining whether an advertisement violates the FTC Act involves a three-step inquiry considering: “(i) what claims are conveyed in the ad, (ii) whether those claims are false, misleading, or unsubstantiated, and (iii) whether the claims are material to prospective purchasers.”<sup>91</sup>

As described above, Everest’s representations about the transferability of its credits were false, erroneous and misleading. Everest’s transfer of credits representations misled students about the value of the credits they would be earning at Everest. Based on the school’s misrepresentations, individuals considering enrolling at Everest would have the false belief that Everest credits would not only allow them to obtain an Everest degree, but would also provide them with credits generally transferable to any other institution.

A false or misleading misrepresentation violates the FTC Act if it is material. To be material, “a claim does not have to be the *only* factor or the *most* important factor likely to affect a consumer’s purchase decision, it simply has to be an important factor”; furthermore, express claims are presumptively material.<sup>92</sup> Everest’s transferability representations meet the FTC Act’s materiality threshold, because borrowers relied on the promise of transferable credits when making their enrollment decision. In applications submitted to the Department,<sup>93</sup> these borrowers have specifically identified false representations regarding transferability as some of the misconduct giving rise to their claim. Many students’ applications specifically state that they intended to continue their educations at four-year schools.<sup>94</sup> For other students intent on beginning a career as soon as possible, the transferability of credits and ability to continue academically offered an alternative if they were unable to find a job immediately.<sup>95</sup> Finally, students considered the transferability of credits earned at an institution to be an indicator of the quality and value of that institution’s instruction.<sup>96</sup>

<sup>90</sup> 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.”).

<sup>91</sup> *POM Wonderful, LLC v. F.T.C.*, 777 F.3d 478, 490 (D.C. Cir. 2015), *cert. denied*, 136 S. Ct. 1839 (2016) (citing cases).

<sup>92</sup> *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.”).

<sup>93</sup> Although many of these applicants submitted statements signed under penalty of perjury, some applicants submitted their materials prior to the publication of the Department’s form and therefore made unsworn statements.

<sup>94</sup> “They claimed that all credits earned would be accepted by any other colleges... I wanted to continue my education and perhaps attend law school but was told that a majority, if not all of my credits from Everest, would not be accepted.” BD150202; “I was told that after completing my AA in Forensics I would be able to take the credits and pursue a Bachelors degree in Forensic Psychology which would double/triple my future earnings...” BD150303

<sup>95</sup> “After graduating and not being able to get into the career I had studied for, I tried transferring credits and could not find schools that wanted to accept them.” BD151251; “One of my first questions once I enrolled in Everest University was regarding the credibility and accreditation of the school. I wanted to make sure that upon graduation, I would be able to find a job and/or be able to further my education using Everest as a foundation.” BD1602822

<sup>96</sup> “‘Students who may not even be interested in transferring credits nonetheless will ask us whether other institutions will accept their credits.’ [Corinthian Executive Vice President for Legislative and Regulatory Affairs Mark] Pelesh said. ‘What they’re really asking is, is this a legitimate institution? Is it part of the legitimate postsecondary higher education world?’ And policies



These students' reliance on such claims is reasonable given the importance of transferability to students, as evidenced by the plight of many Everest students after the institution closed. Thus, Everest's transferability misrepresentations constitute unlawful business practices under the UCL.

## 2. The Fraudulent Prong

Everest's misrepresentations regarding the transferability of its credits also are a fraudulent business practice under the UCL, and are therefore another form of unfair competition providing an independent basis for borrower defense relief for Everest 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."<sup>97</sup> The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.<sup>98</sup> 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.<sup>99</sup> As noted, the transferability representations that Everest made to students were false and likely to deceive, for the reasons discussed above and in Section II.

In order to bring a cause of action under the UCL, an individual must have "suffered injury in fact and... lost money or property" as a result of the deceptive practice alleged.<sup>100</sup> However, for a consumer who was deceived into purchasing a product<sup>101</sup>—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<sup>102</sup> of the entity.<sup>103</sup>

Reliance on the misrepresentation does not have to be "the sole or even the predominant or decisive factor influencing"<sup>104</sup> 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."<sup>105</sup>

As discussed above, the evidence shows that students relied on Everest's transferability representations when they enrolled.<sup>106</sup> Indeed, express or implied claims like those made by Everest about

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that openly distinguish between credits earned at for-profit and nonprofit colleges -- turning down their nose at the former -- send a signal that answers that question No, he said." <https://www.insidehighered.com/news/2007/02/26/transfer>

<sup>97</sup> See *Bank of the West*, 2 Cal. 4th at 1254.

<sup>98</sup> CAL CIV. C. § 1709.

<sup>99</sup> *Boschma v. Home Loan Center*, 198 Cal. App. 4th 230, 253 (2011).

<sup>100</sup> *Smith v. Wells Fargo Bank, N.A.*, 135 Cal.App.4th 1463, 1480 n. 13 (2005).

<sup>101</sup> See *Kwikset Corp. v. Superior Court*, 51 Cal. 4th at 316 (Cal. 2011).

<sup>102</sup> Everest's implied representations of transferability are also actionable as deceptive half-truth omissions. A half-truth omission occurs when an affirmative representation is misleading in the absence of material qualifying information. See Deception Policy Statement, 103 F.T.C. at 176; *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 532 (S.D.N.Y. 2000) ("Failure to disclose pertinent information is deceptive if it has a tendency or capacity to deceive."). An advertisement can be deceptive because it failed to disclose material information even if it does not contain any false statements. *FTC v. Medical Billers Network, Inc.*, 543 F. Supp. 2d 283, 304 (S.D.N.Y. 2008). Here, Everest's affirmative statements about being "accredited" were deceptive absent further information distinguishing between regional and national accreditation and explaining the impact of national accreditation on transferability.

<sup>103</sup> See, e.g., *Daghlian v. DeVry University, Inc.*, 461 F.Supp.2d 1121, 1156 (C.D. Cal. 2006) ("Although Daghlion does not allege that he attempted to transfer the credits to another educational institution, or that he was forced to begin his education anew at another institution, he does assert that he enrolled at DeVry and incurred \$40,000 in debt '[i]n reliance on' defendants' misrepresentations and omissions about the transferability of credits. This sufficiently alleges that Daghlion personally suffered injury as a result of defendants' allegedly false and/or misleading advertising and unfair business practices.").

<sup>104</sup> *In re Tobacco II Cases*, 46 Cal. 4th 298, 327 (2009) (internal quotation marks omitted).

<sup>105</sup> *Id.* (internal quotation marks omitted).

<sup>106</sup> 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 transferability misrepresentation, regardless of subsequent efforts to transfer.



the transferability of credits are presumptively material.<sup>107</sup> Moreover, under the UCL, a showing of materiality gives rise to “a presumption, or at least an inference, of reliance.”<sup>108</sup> Here, statements by borrowers support the presumption that promises of transferable credits were a substantial factor in their decision to enroll.

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

Everest’s representations regarding its students’ ability to transfer were false and misleading, despite the school’s limited disclaimers in some written materials. In many instances enrollment agreements and course catalogs contained technically accurate information about transferability, but such written information did not change the overall impression created by the oral representations.

If a student examined the enrollment agreement, the student would have to read through four pages of fine print to find a box entitled “Enrollment Agreement” and subtitled “The Student Understands.”<sup>109</sup> Midway through that box of fine print, item number 5 provides some information on transferability. That item is not highlighted or bolded in any way. The text cautioned students that Corinthian could not *guarantee* the transferability of credits to another school, but did not go so far as to cast doubt on the general transferability of Corinthian credits.<sup>110</sup> The agreement then continues on with two additional pages of fine print disclaimers. Everest’s course catalogs generally contained limiting language similar to the enrollment agreements, and that language was similarly buried.<sup>111</sup>

These disclaimers do not cure the falsity of Everest’s oral promises regarding transferability. First, courts interpreting the FTC Act and the UCL have made clear that written disclaimers do not cure the falsity of oral misrepresentations.<sup>112</sup> 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.<sup>113</sup>

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

<sup>107</sup> 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).

<sup>108</sup> *In re Tobacco II Cases*, 46 Cal. 4th at 298.

<sup>109</sup> See, e.g., Everest Institute Brighton/Chelsea Enrollment Agreement.

<sup>110</sup> See, e.g., Everest Institute Brighton/Chelsea Enrollment Agreement: “The School does not guarantee the transferability of credits to any school, university or institution. The student should contact a receiving institution regarding transfer of credit from The School prior to enrollment.” MA AGO Ex. 9 at AGO-MA02062

<sup>111</sup> Most course catalogs stated that the acceptance of credits was at the discretion of the receiving institution. We found one outlier example, the Everest Miami course catalog, which declared Everest credits were not generally transferable.

<sup>112</sup> See, e.g., *FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 262-63 (E.D.N.Y. 1998) (finding that oral misrepresentations were not cured by written disclaimers); see also *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 228 (Cal. App. Ct. 2013) (finding under the UCL that Skype’s representation that a calling plan was “unlimited” was misleading despite the fact that it provided limits on the plan in a separate policy provided to customers).

<sup>113</sup> *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.”).



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 quick solutions.”<sup>114</sup> Corinthian’s CEO, in a letter to Federal Student Aid, wrote that the school enrolled “a predominantly high risk student body that is underserved by traditional higher education institutions. Many of our campuses are located in or near difficult inner-city areas and provide access to students who have not previously achieved educational success.”<sup>115</sup> Corinthian advertised on daytime TV,<sup>116</sup> 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.<sup>117</sup> In sum, the net impression of the oral misrepresentations on the typical Corinthian student likely would not have been altered by buried written disclosures.

Moreover, the nature of the enrollment process made it unlikely that students ever read such disclosures prior to admission. Students were rushed through the enrollment process at Corinthian and were not provided an opportunity to read and digest the enrollment agreement.<sup>118</sup> As the Harkin Report found, this practice stemmed from the emphasis on growth: “Enrollment growth is critical to the business success of for-profit education companies... In order to meet revenue and profit expectations, for-profit colleges recruit as many students as possible to sign up for their programs.”<sup>119</sup> The report quotes a 2005 Corinthian hiring manual as stating: “remember that this is a sales position and the new hire must understand that from the very beginning.”<sup>120</sup> At Corinthian, internal documents make clear that recruiters were not trained or expected to advise students,<sup>121</sup> but to sell the program – to “enroll your brains out.”<sup>122</sup>

Many Everest students state that they did not choose their own classes<sup>123</sup> or sometimes even their own program of study, making it even less likely they would see disclosures in course catalogs.<sup>124</sup> These student reports back up the Harkin report’s conclusion that Corinthian recruiters were effectively salespersons, with the goal to enroll the student in whichever classes or programs made the most sense for

<sup>114</sup> CA AG Quach Decl. Ex 113.

<sup>115</sup> Letter from Jack D. Massimino, CEO, Corinthian, to James W. Runcie, Chief Operating Officer, U.S. Office of Federal Student Aid (Nov. 12, 2014).

<sup>116</sup> CA AG Quach Decl. Ex 113.

<sup>117</sup> CA AG Decl. of Holly Harsh.

<sup>118</sup> “After meeting with an Everest representative in October 2011, I wished to discuss my options with family but I felt pressure to enroll on the spot. I wanted a career in the medical field and the representative told me to act now since I was already there. They rushed the whole enrollment process.” Affidavit of D’Anne Coffie MA Ex. 08 at AGO-MA01891; “The tour of the school felt very rushed, as if the school did not want to give the people on the tour time to make a decision.” Affidavit of Courtney Petrie, MA Ex. 08 at AGO-MA01914; “They were like used car salesmen. They made sure I signed up before I walked out the door during my first visit, even though I only went there for a tour.” Affidavit of Matisha Chao MA Ex. 08 at AGO-MA01887

<sup>119</sup> Harkin Report, p. 387.

<sup>120</sup> *Id.*

<sup>121</sup> Harkin Report, p. 387.

<sup>122</sup> Deposition of Scott Lester, Former Admissions Director of Everest Milwaukee, WI AG, Sutherlin Affidavit Exhibit 15, p. 49

<sup>123</sup> “I ended up taking courses that were not even applicable to my degree or not necessary for me to complete my degree. In other words, I paid additional for classes I didn’t really need to take.” BD150455; “My student advisor when I first got started was explaining how classes were available for a few hundred dollars for the courses. While there may have been some for that price, not many were the classes they said I had to take.” BD150813

<sup>124</sup> “I went to school from Jan 2011 to March 2014 and was enrolled in the Associates Billing and Coding and then they convinced me to move to a BS in Health Care Administration... As I approached my end of my degree I ran out of money and realized they had made me take classes I did not need in my program and had 4 classes to finish and I was stuck...” BD151750; “They totally mislead me when I was requesting to sign up for their Crime Scene Investigator program. My student adviser had actually put me into their Criminal Justice Program instead and the mistake wasn’t figured out until it was past their drop/add time frame of classes so I was stuck taking classes that had NOTHING to do with my actual program I wanted to study. They told me there was nothing they could do and I had to just wait til the time frame of starting their next term.” BD153136



the school, not the student. Students were not provided the time to read any written materials because the students' interests were not at the heart of the transaction.<sup>125</sup>

Finally, the fact that 198 of the 793 (25%) Everest/WyoTech claims reviewed to date allege that Corinthian represented that credits would generally be accepted at other schools, with no mention of any written disclaimer, strongly 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 we know Corinthian personnel to have employed, these disclaimers do not offset the net impression of the school's misrepresentations.

#### **D. Eligible Borrowers**

Based on the above analysis, the following Everest and WyoTech Laramie students alleging transfer of credits claims should be eligible for relief:

1. Any claimant who attended a nationally accredited Everest campus or WyoTech's Laramie campus and who:
  - a. alleges that Everest expressly represented that credits earned there would be generally transferable; or
  - b. alleges that Everest misrepresented the nature and/or value of their accreditation, in a manner that implied that their credits were generally transferable.
2. Borrowers who allege that their credits did not transfer, but do not allege a corresponding misrepresentation, will not be eligible for relief on this basis.
3. Eligible borrowers will be limited to students first enrolling after Corinthian acquired the campus in question.

#### **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.<sup>126</sup> In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers.<sup>127</sup>

In a recent California federal court decision analyzing the appropriate remedy for consumers alleging educational misrepresentations under the UCL, the court explicitly analogized to the *Figgie* and *Ivy Capital* approach and found that a restitution model that aims to "restore the status quo by returning to

<sup>125</sup> "I was also provided with a course catalog/program disclosure statement stating in writing that the placement rate was 72%. These written materials were provided only after I had signed up." MA AGO Ex. 03 at AGO-MA00180

<sup>126</sup> See, e.g., *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015).

<sup>127</sup> 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).



the plaintiff funds in which he or she has an ownership interest” was a justifiable basis for a class action theory of relief.<sup>128</sup>

However, nothing in the borrower defense statute or regulation requires the Department to apply state law remedies when reviewing a borrower’s claim. The only statutory limit on the Secretary’s ability to grant relief is that no student may recover in excess of the amount the borrower has repaid on the loan.<sup>129</sup>

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

If the borrower’s defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such further relief *as the Secretary determines is appropriate under the circumstances* [including reimbursement to the borrower of amounts paid towards the loan].<sup>130</sup>

Moreover, the Supreme Court has recognized that, when an agency is fashioning “discretionary relief,” such decisions “frequently rest upon a complex and hard-to-review mix of considerations,” and therefore, “for the sake of uniformity, it is usually better to minimize the opportunity for reviewing courts to substitute their discretion for that of the agency.”<sup>131</sup>

The D.C. Circuit has also consistently recognized the “long-standing principle” that federal agencies must be afforded particularly wide latitude in fashioning remedies consistent with the statutes they are charged with administering. An agency’s discretion is, “if anything, at zenith when the action assailed relates primarily not to the issue of ascertaining whether conduct violates the statute, or regulations, but rather to the fashioning of ... remedies.”<sup>132</sup> Thus, while California and FTC Act case law is instructive as to the quantum of relief to be provided, the Department is not constrained by that authority.

Here, there is ample reason not to “offset” the award of full relief to these borrowers in light of the lack of value attendant to their Everest education. *See Makaeff*, 309 F.R.D. at 642 (allowing defendants to offer evidence warranting an offset from a baseline of full recovery). First, if a student cannot generally transfer credits, a chief value conferred by such credits is greatly diminished.

Second, and perhaps more importantly, the Department has found that Everest and its parent company Corinthian repeatedly misled students, regulators and accreditors regarding its ability to place students in jobs, systematically inflated its job placement rates, misrepresented job placement rates to a programmatic accreditor, and even engaged in an elaborate job placement fraud to maintain its

<sup>128</sup> *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015) (internal quotations removed).

<sup>129</sup> Section 455 of Title IV of the Higher Education Act, 20 U.S.C. § 1087e(h).

<sup>130</sup> 34 C.F.R. § 685.206(c)(2).

<sup>131</sup> *Consolo v. Fed. Mar. Comm’n*, 383 U.S. 607, 621 (1966).

<sup>132</sup> *Fallbrook Hosp. Corp. v. N.L.R.B.*, 785 F.3d 729, 735 (D.C. Cir. 2015) (internal quotations and citations removed) (rejecting a challenge to the National Labor Relations Board’s decision to require a hospital to pay for a nurse’s unions full costs for negotiating a labor agreement); *see also U.S. Postal Serv. v. Postal Regulatory Comm’n*, 747 F.3d 906, 910 (D.C. Cir. 2014) (approving a remedy order by the Postal Regulatory Commission requiring the U.S. Postal Service to reduce its rates for certain mailers); *Exxon Mobil Corp. v. FERC*, 571 F.3d 1208, 1216 (D.C. Cir. 2009) (“When FERC is fashioning remedies, we are particularly deferential.”); *Am. Tel. & Tel. Co. v. FCC*, 454 F.3d 329, 334 (D.C. Cir. 2006) (approving the FCC’s decision to apply an administrative order retroactively).



accreditation.<sup>133</sup> Given this well-documented, pervasive, and highly publicized misconduct at Corinthian, the value of an Everest education has been severely limited.

Borrower defense applications confirm the lack of value of an Everest education as many Everest students report that their coursework from Everest has been an impediment rather than an asset as they seek employment. For example, one 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."<sup>134</sup> 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.'"<sup>135</sup> Yet another student states: "Employers will not touch me. After graduating I posted a resume online. I did not receive any responses until I removed Everest Online from my resume."<sup>136</sup>

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

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

<sup>133</sup> See Letter from Robin S. Minor, Acting Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Apr. 14, 2014); see also Letter from Mary E. Gust, Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Aug. 22, 2014) (finding that "Everest Institute submitted false placement data to ACCSC to maintain the accreditation of Everest Decatur" and that the school's job placement rates were based on "CCI-designed programs through which Everest Decatur paid employers to hire its graduates" for short time periods in order to inflate placement rates).

<sup>134</sup> BD1614100

<sup>135</sup> BD1602593

<sup>136</sup> BD1511191

**DOE00000584-DOE00000603**



# **BORROWER DEFENSE TO REPAYMENT CLAIMS EVALUATION**

DECEMBER 2019

## GROUND RULES

- This is a BACKGROUND briefing
- Nothing said or shown is for attribution, unless explicitly stated
- Information is EMBARGOED until 1 p.m. Eastern Time Wednesday, December 20





## HISTORICAL CONTEXT

- Pre-2015
  - Only a handful of BD claims filed over two decades
- June 8, 2015
  - ED announces it will work to approve claims by group in instances where ED has evidence of widespread misrepresentations
  - These claims must be adjudicated under the 1995 regulations based on state law standards
  - Appoints Special Master
- February 8, 2016
  - BD team formed
- October 28, 2016
  - Then-Secretary King issues final 2016 BD regulations that apply to claims filed after July 1, 2017



## HISTORICAL CONTEXT

- January 2017
  - Approval of ACI Claims
  - Finalization of Corinthian Guaranteed Employment Claim Category
  - Finalization of ITT Guaranteed Job Category
  - Dispatch of 16,000+ approval letters with assurances that loans would be discharged within an unworkable time period
- February 2017
  - Began internal review of Enforcement Office policies, processes, and protocols
  - Inspector General review initiated



## HISTORICAL CONTEXT

- May 2017
  - CAPPS lawsuit delayed implementation of 2016 BD Rule
- June 2017
  - Department announced regulatory reset to start negotiated rulemaking
- November 2017
  - Inspector General review concludes; no change to review process standard
- December 2017
  - Department announced tiered relief methodology
  - Class action lawsuit—*Manriquez v. DeVos*—was filed against the Department over borrower defense applications associated with Corinthian schools





## HISTORICAL CONTEXT

- May 2018
  - *Manriquez* court rules that the Department's collection of novel Social Security Administration data for claimants in the tiered relief methodology is a violation of the *Privacy Act*
- September 2018
  - Court ordered the Department to implement the 2016 Borrower Defense Rules
- December 2018
  - Department began issuing automatic closed school loan discharges as part of its implementation of the 2016 Borrower Defense Rule



## HISTORICAL CONTEXT

- September 2019
  - The Department finalized new rules and regulations to replace the 2016 rule
  - The new, 2019 BD regulation will take effect in July 2020
- November 2019
  - The Department finalized a new tiered relief methodology using publicly available Gainful Employment data
- December 2019
  - The Department begins determining levels of relief and notifying schools and borrowers for adjudicated applications not covered by the *Manriquez* lawsuit



# OIG REPORT

- The Secretary requested the OIG Report, which found:
  - “(W)e identified weaknesses with FSA’s procedures for:
    1. documenting the review and approval of legal memoranda establishing categories of borrower defense claims that qualified for discharge
    2. reviewing borrower defense claims
    3. processing claims approved for loan discharge and flagged for denial
    4. establishing timeframes for claims intake, claims review, loan discharge, and claims denial processes and controls to ensure timeframes are met.”



## **PREVIOUS ADJUDICATION CRITERIA FOR CORINTHIAN BORROWERS**

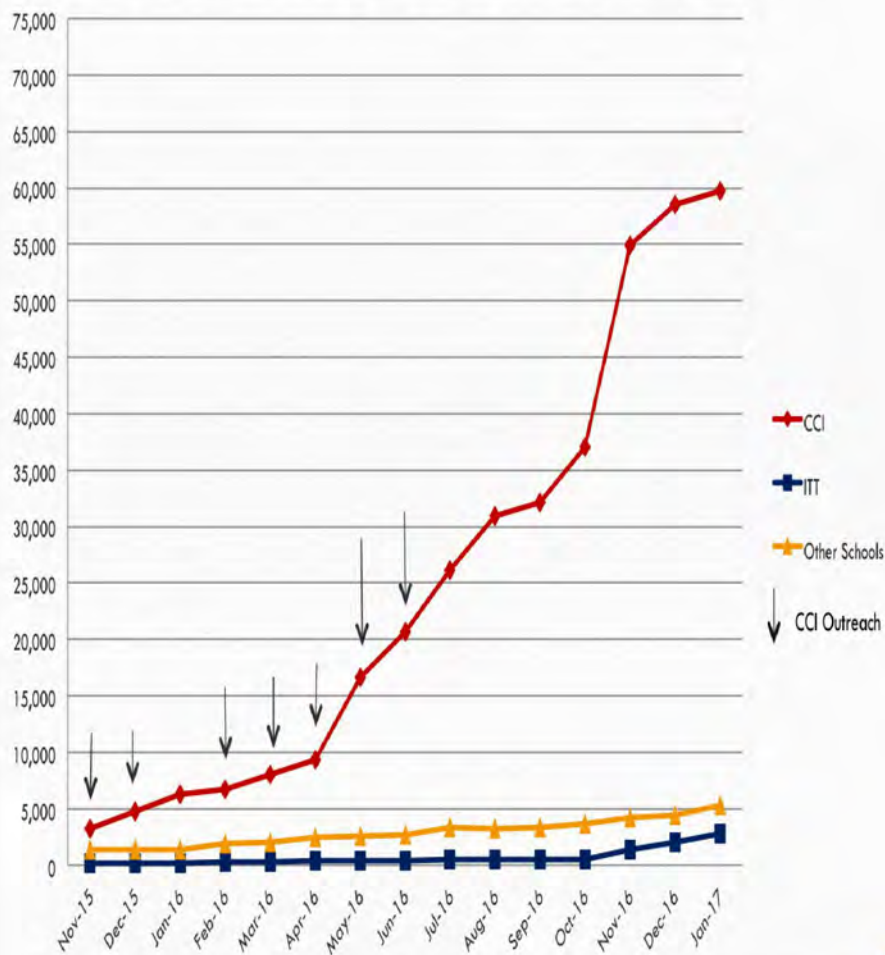
- Student submits attestation form
  - time enrolled
  - program enrolled
  - school/campus enrolled
- Selects basis for the claim (for borrowers in one of the classes for which the Department had “findings”)
  - job placement rates
  - credit transfer
  - employment guarantee
- “All or nothing”



# CLAIMS OVER TIME

WITH DEPARTMENT OUTREACH TO STUDENTS

Effect of Outreach on Number of Borrower Defense Claims



10





## STATUS ON INAGURATION DAY

- Claims already adjudicated and discharged
  - 15,452
- Claims already adjudicated but not discharged
  - 16,315
- Denials
  - Denials were “processed” but no borrowers were notified of their denial
  - Thousands (~9000) were identified for denial but not discharged
- Claims not yet adjudicated
  - ~48,000



## POST-JANUARY 20, 2017

- CAPPS lawsuit required delay of the implementation of the 2016 BD regulation
- Announced regulatory reset to start negotiated rulemaking
- Promises made, promises kept
  - 16,000+ approvals carried over
  - all dispersed but <400 of the most complex cases, which are near resolution or require additional borrower action to complete.
- Began internal review of enforcement unit policies, processes and protocols



## CHALLENGES WE'VE ADDRESSED

Creating discharge mechanism for 16,000+ claims (non-direct loan) approved in January 2017

- No standardized process
  - No submission form pre-December 2016
- Limited information from borrowers
  - Student reported information doesn't match school data
  - Variation on program and credentials (identifying the fit)
- No database or system for claim management
- Need to secure and normalize reference data
- No denial process
- Need to improve documentation and review process
- Need to consider consolidations loans, which may need to be adjudicated under the

13

2016 regulations and a Federal standard.





# IMPROVED DISCHARGE CRITERIA

## PROTECTING STUDENTS AND TAXPAYERS

- Guiding principles:
  1. Need to treat borrowers fairly, equitably and as individuals
  2. Need to evaluate and provide commensurate relief for harm suffered by borrowers
  3. Need to distinguish between borrowers who were genuinely harmed and those who submitted false claims or claims that do not meet BD requirements
  4. Need to acknowledge value of education received – many programs resulted in earnings similar to other programs
  5. Need to protect taxpayers from runaway costs
  6. Need for replicable and scalable system



## IMPROVED DISCHARGE CRITERIA

LEGAL AUTHORITY

- Clinton-era Regulation [34 CFR 685.206 (C)(2)]
  - If the borrower's defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation to **repay all or part** of the loan and associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such **further relief as the Secretary determines is appropriate** under the circumstances.
- 2016 Borrower Defense Regulation
  - "The final regulations make clear that the Department will determine in a reasonable and practicable way the **appropriate relief** for a borrower defense claim, **taking into account any educational benefit received.**"



Claire McCann Quote: <https://www.insidehighered.com/news/2017/10/26/education-dept-officials-debate-partial-debt-relief-student-borrowers>

"Many who applied for borrower defense likely do deserve full relief," McCann said. "It's also reasonable to say some of the people got value out of their education and, therefore, the amount of relief [the department is] going to provide is not going to be the same as for someone who got a totally valueless education."

# IMPROVED DISCHARGE CRITERIA

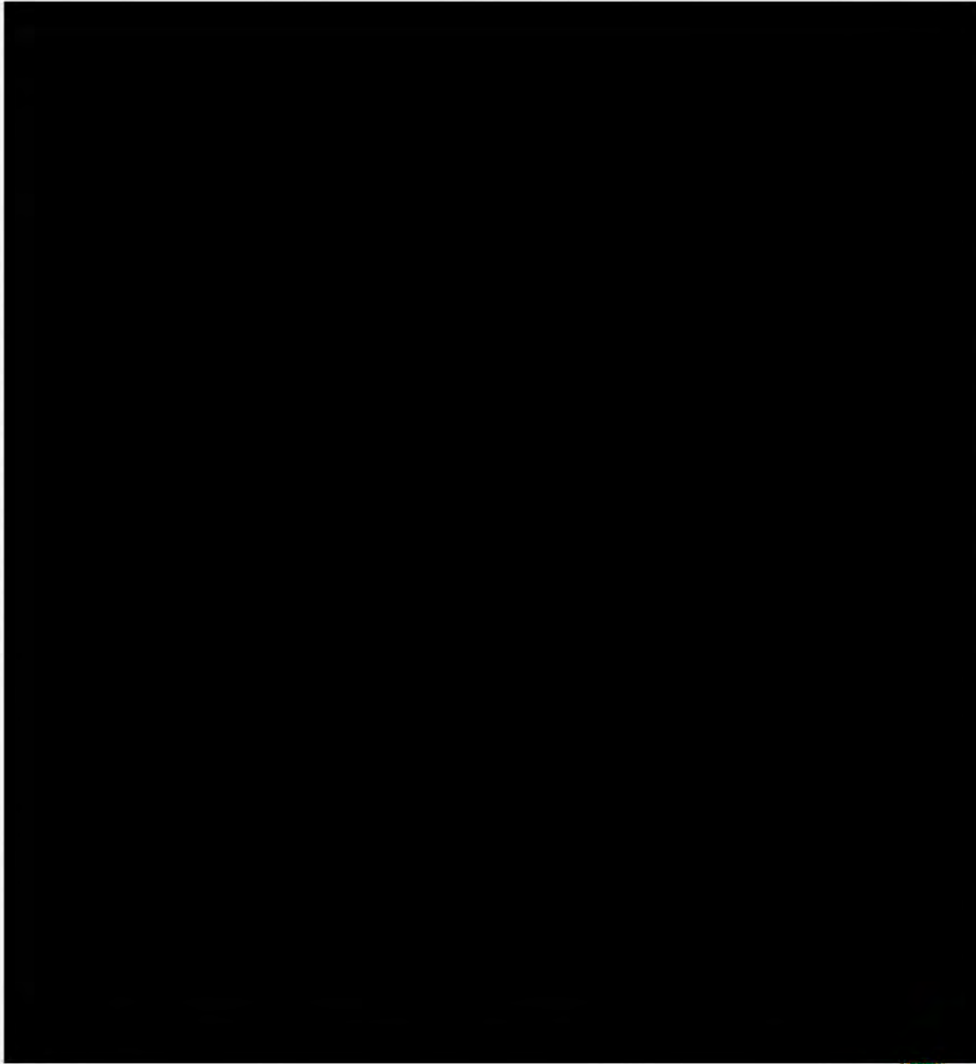
## PROTECTING STUDENTS AND TAXPAYERS

- Adjudication criteria for previously established groups of claims remains the same
- No *Privacy Act* violation
  - Calculations based on publicly available Gainful Employment data
- Relief methodology considers the median earnings of graduates of the borrower's program as compared to the median earnings of graduates of comparable programs
  - Lower median earnings monetize "harm"
  - Earnings lower than two standard deviations from the median result in full relief
  - Successful BD applicants whose imputed program earnings are lower than the median but higher than two standard deviations from the median received tiered relief of 25%, 50%, or 70%



# IMPROVED DISCHARGE CRITERIA

VERSION 1.0





## IMPROVED DISCHARGE CRITERIA

### BENEFITING THE BORROWER

- All successful BD applicants whose imputed program earnings are below the comparison group median get at least 25% relief
- Used better of mean or median earnings as compared to GE
- If enrolled in multiple programs, program with the highest level of relief is used to award relief
- Interest credit applied to all **currently-pending** Corinthian and ITT claims, regardless of whether they are approved or denied
- **No change in adjudication criteria from previous administration.**



## ACTION TODAY

- 780 approvals
  - Letters will go to mostly Corinthian and a small number of ITT borrowers
  - Servicers will discharge the loans
  - Interest waived from date of claim submission to notice date
- 16,000 ineligible
  - Letters will go to Corinthian and non-Corinthian students
  - Put back into the same repayment status as the borrower was in before filing application
  - Interest waived from date of claim submission to notice date
- 32,000 approvals await Department Office of General Counsel and Department of Justice
  - Court approval required to apply new relief methodology to *Manriquez*-covered applications
- Remaining claims being adjudicated systematically





**DOE00002144-DOE00002147**



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**PURPOSE: ACTION**

**DATE:** May 4, 2017  
**TO:** The Secretary  
**FROM:** James Manning, Acting Undersecretary  
**SUBJECT:** Action Items on Borrower Defense

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**SUMMARY:**

The previous administration approved approximately 16,000 borrower defense to repayment claims that have not yet been processed, and the Department has received an additional approximately 58,600 claims it has not yet approved. This memo provides some background information and recommendations on how to proceed with the review and processing of these claims.

We established a Review Panel consisting of Joe Conaty, Lynn Mahaffie, Phil Rosenfelt, Justin Riemer, and myself to examine the claims and background information and make recommendations on how to resolve the pending claims and proceed in the future. The Review Panel met on a number of occasions over the past several weeks and reviewed a large volume of information related to the program. While the Review Panel uncovered several flaws in various parts of the processing of the claims, there was a legally defensive basis for the approvals and the review has revealed nothing that provides the Department with justification to rescind the approvals. The only justification to not proceed would be if the approval was truly without legal authority (a very high bar). Notwithstanding these weaknesses, both Department of Justice (DOJ) and Office of the General Counsel (OGC) attorneys agree the challenges in the process do not meet that bar.

**REASON FOR NEEDED ACTION:**

In January of 2017, the Department sent approval emails to approximately 16,000 borrower defense claimants informing them their loans should be discharged within either 60 or 90 to 120 days (with 120 days from receipt being approximately mid-May). No further action has been taken to discharge those loans, and I understand that it will take 30 to 45 days to execute the discharge after sign off. Borrowers are expecting discharges soon, and the Department needs to resolve these claims as soon as possible. The risk for litigation by borrowers will increase each day we exceed the mid-May window.

There are also over 330 claims approved for non-direct Federal loans (Federal Family Education Loans (FFEL) and Perkins Loans) that have not been put into forbearance which means the borrowers must continue to make payments until the Department decides how to proceed. Finally, there is continuous and increasing interest from members of Congress and others on the status of these claims and borrower defense generally.

**SUMMARY OF CONCERNS:**

The Panel's review of borrower defense revealed several weaknesses, a few of which are highlighted here.

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- **Improve Business Practices:** Current business practices such as standard operating procedures (SOPs) to process claims are inadequate and should be strengthened. For example, written review instructions or SOPs are in place to process only two of the several categories of claims. As a result the review process is at risk for inconsistent and nonreplicable results.
- **Improve Legal Justifications for Awarding Claims:** There are also significant concerns regarding the legal justifications used for awarding claims. Under the borrower defense regulation, claims are analyzed under applicable state law which appears to have been often liberally applied in the light most favorable to the borrower to award full relief to as many as possible. In the American Career Institute (ACI) matter, Massachusetts state law was used as a justification to award relief to borrowers who did not submit claims notwithstanding the fact the existing regulation contemplates a borrower asserting a claim him or herself. Flexible interpretations of state law most favorable to student borrowers also appear to have been used to circumvent any requirement that the claimant directly prove damages. The result is that to date all borrowers approved have been awarded full loan relief even though the regulation allows for a partial offset. Going forward, we should establish a balanced process with clear and objective standards that require strong evidence of harm or damages to the student.
- **Improve Internal Controls:** It appears that stronger internal controls in the review process are warranted. For example, there are concerns that, particularly in the early stages of approving claims, senior Department leadership likely directed staff to complete or modify already signed and submitted applications that were incomplete or insufficient. Strong checks and balances would help ensure that a vibrant, objective process is in place.

**RECOMMENDATIONS:**

In summary, after consulting with legal counsel, including the DOJ and the Borrower Defense Review Panel, I make the following four recommendations:

First, despite the Review Panel's significant concerns regarding the review and approval process for these 16,000 borrower defense claims, it does not believe there is an appropriate basis for taking any actions other than to approve discharge of all the claims approved.

Second, I recommend you approve the consolidation and discharge of approved claims for non-direct loans.

Third, I recommend that you direct me, the Internal Control Unit of the Department's Chief Financial Officer (CFO), and the Review Panel (as needed) to work with Federal Student Aid (FSA) to develop interim procedures to handle pending claims until permanent borrower defense regulations are implemented.

And finally, as a matter of due diligence and because the borrower defense issues are complex and involve significant Federal funds, I recommend you request that the Office of Inspector General



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(OIG) conduct an independent and comprehensive review of the program, with a focus on lessons learned to improve the process going forward.

**Proceed with Discharge:** After extensive and repeated consultation with counsel at the DOJ, they strongly advised against taking any action but discharge of all approved loans. Based on this, we believe that the only supportable choice is to sign off on discharging the approximately 16,315 loans for the borrower defense claims approved and not yet discharged. The estimated loan relief amounts to approximately \$206,000,000.

The Review Panel hoped to be able to set up a process to require the 2,800 ACI borrowers, particularly the vast majority of whom did not submit claims, to return an attestation or official claim application before receiving discharge. However, after a thorough analysis, including consultation with DOJ counsel, the Review Panel has concluded that doing so would likely result in a lawsuit from the Massachusetts Attorney General's office and/or impacted borrowers that would be difficult to defend, given the fact the previous Undersecretary's approval of the claims constituted a "final agency action" which can only be rescinded in limited circumstances not present here.

**Proceed with Consolidation:** A part of the new (and soon-to-be delayed) borrower defense regulations authorizes the Department to approve claims for private FFEL and Perkins Loan holders prior to their consolidation into direct loans. This part of the regulation was flagged for early implementation, announced in a Dear Colleague Letter, and is technically now in effect.

While this is a technical issue there are two main items worth noting. First, the impact to Treasury for consolidating these loans is different than for direct loans because Treasury must reimburse the private lender upon consolidation versus merely writing off losses on direct loans. Second, most borrowers prefer waiting to consolidate until after receiving approval because they would be better off not consolidating if their claims are denied. In short, the pre-determination leaves them with options. While only a small number of the approved claims are non-direct loans (~347), there are currently over 10,000 FFEL borrowers with pending claims. I recommend proceeding with consolidation for the approved claims for largely the same reasons discussed above for discharging the direct loans. I also recommend that you direct FSA to set up the necessary processes to handle consolidation for pending claims. I do not believe there are any other good options.

**Develop Interim Procedures:** The work done by the Review Panel should be furthered by the Office of the Undersecretary (OUS) and the CFO's Internal Control Unit who will collaborate with FSA to stand up a robust procedure to review claims in the interim period before the Department can finalize new borrower defense regulations, a process that will take at least a year. I ask that you direct no additional claims be approved until these interim procedures are finalized. Moving forward, while the Review Panel may be consulted as needed, the work will be primarily administered by the OUS and the CFO's Internal Control Unit. Enclosed are a memo from the Review Panel and additional supporting information compiled during its findings.

**OIG Review:** I strongly recommend that the OIG review the borrower defense program given the challenges to the existing processes and procedures required for a program of its scale. The program was developed and expanded under a number of challenges and at times seemed skewed towards student relief even in light of potential legal or budgetary considerations. Accordingly, as part of its review, the OIG should assess the due diligence of the process under which, in my view, the

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Department so aggressively solicited claims before there was a lack of formally defined processes and procedures or infrastructure in place to process them.

**DECISION:**

**Recommendation:** Proceed with discharge for direct and non-direct loans for all impacted borrowers. Direct OUS and the CFO's Internal Control Unit to set up interim procedures to process claims until new borrower defense regulations are adopted and take effect. Proceed with requesting OIG launch a review of the borrower defense program.

Approve ✓ Signature Ref Dew

Disapprove \_\_\_\_\_ Signature \_\_\_\_\_

Needs more discussion \_\_\_\_\_ Signature \_\_\_\_\_

Modify \_\_\_\_\_ Signature \_\_\_\_\_

Other/Comments:

with extreme displeasure

CONTACT: James Manning, Acting Undersecretary, HQ-LBJ-7E303, (202) 453-6236



**DOE00002342-DOE00002342**

Name: 2021 FSA Senate QFRs With Notes\_BD  
Questions for  
SMEs.docx^Microsoft\_Excel\_Worksheet.x  
lsx

Comments: Document Provided in Native only



					Durbin Question 6.4				
					Submissions by Attorneys General Seeking Relief for Constituents - Updated August 6, 2019				
					SCHOOL/SCHOOL GROUP	DIPLOMA PROGRAM(S) IF APPLICABLE	ATTORNEY GENERAL	STATE	SUBMISSION DATE
					American Career Institute		Maura Healy	Massachusetts	• 7/20/2016 • 7/26/2016 • 8/3/2016 • 8/12/2016 • 11/16/2016 • 11/23/2016 • 1/3/2017
					Anthem University		Lori Swanson	Minnesota	• 5/3/2016 • 7/22/2016 • 10/19/2016 • 2/13/2017 • 3/9/2017 • 4/4/2017
					Corinthian Colleges, Inc.		Maura Healy	Massachusetts	• 11/30/2015
					Corinthian Colleges, Inc.		Brad Schimel	Wisconsin	• 2/4/2016
					Corinthian Colleges, Inc.	• Dental Assistant • Electrician • Massage Therapy • Medical Administrative Assistant • Medical Assistant • Medical Insurance Billing and Coding • Pharmacy Technician	Lisa Madigan Kwame Raoul	Illinois	• 12/16/2016 • 6/3/2019
					Corinthian Colleges, Inc.		Bob Ferguson	Washington	• 12/20/2016
					Corinthian Colleges, Inc.	Submission for discharge for students enrolled at programs covered by the Department’s job placement rate misrepresentation findings.	Lisa Madigan Bob Ferguson Maura Healy Xavier Becerra George Jepsen Matthew Dean Douglas Chin Tom Miller Andy Beshear Brian E. Frosh Janet T. Mills Lori Swanson Jim Hodd Hector Balderas Eric T. Schneiderman Ellen F. Rosenblum Josh Shapiro Mark R. Herring Karl A. Racine	Illinois Washington Massachusetts California Connecticut Delaware Hawaii Iowa Kentucky Maryland Maine Minnesota Mississippi New Mexico New York Oregon Pennsylvania Virginia District of Columbia	• 6/5/2017
					Court Reporting Institute	Submission for discharge for students enrolled at CRI's Seattle and Tacoma campuses.	Bob Ferguson	Washington	• 11/21/16
					Globe University & Minnesota School of Business		Lori Swanson	Minnesota	• 6/7/2016
					Illinois Institute of Art and Art Institute of Colorado	Submission requests students have any federal student loan used to pay for schooling at the affected campuses from January 1, 2018 onward discharged and any amounts paid on those loans refunded.	Kwame Raoul Phil Weiser	Illinois Colorado	• 6/3/2019
					Kaplan University	• Medical Assistant • Medical Billing and Coding	Maura Healy	Massachusetts	• 5/6/2016 • 5/31/2016
					Lincoln Technical Institute	• Criminal Justice	Maura Healy	Massachusetts	• 1/14/2016
					Westwood College	• Criminal Justice	Lisa Madigan Kwame Raoul	Illinois	• 12/13/2016 • 6/3/2019

**DOE00002528-DOE00002529**



**MEMORANDUM**

TO: Colleen Nevin

FROM: Erin Conroy

DATE: May 12, 2020

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

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Charlotte School of Law (CSL) was founded in 2004 as part of the Infilaw System, a group of for-profit law schools that also includes Arizona Summit Law School and Florida Coastal School of Law.<sup>1</sup> CSL was granted a license to operate by the state of North Carolina in 2005, and the school was actively enrolling students at its sole campus in Charlotte, North Carolina from 2006 until its closure in 2017.<sup>2</sup>

As of May 18, 2020, the Borrower Defense Unit (BDU) has received approximately 1,000 applications from borrowers who attended CSL. These cases span the entire history of CSL's existence, with the bulk of the cases coming from borrowers who first enrolled from 2011 to 2015.<sup>3</sup>

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

Based on its review of the above evidence, the BDU recommends individual adjudication of all claims where the borrower separated from CSL prior to February 24, 2015. While the ABA's investigation officially began in 2014 and its report from its March 2014 site visit represents the BDU's earliest evidence against CSL, the ABA did not issue its first decision letter to CSL until February 24, 2015<sup>4</sup> and did not find CSL to be out of compliance with the Standards that led to it being put on probation until February 3, 2016.<sup>5</sup> Further, there is no indication that the ABA's findings were intended to be retroactive. Similarly, the Department's decision to deny CSL's application for recertification was based on the ABA's findings, as well as statements made by CSL in 2016.<sup>6</sup> Finally, while both the University of North Carolina Board of Governors and the North Carolina Department of Justice requested documents from CSL

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

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

<sup>3</sup> Salesforce reports generated by BDU personnel (on file with the Department).

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

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

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

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

February 24, 2015 represents the earliest date that CSL was on clear notice of the gravity of the ABA's ongoing investigation into its compliance, and therefore it is appropriate to adjudicate borrowers who separated from the school prior to that date individually. February 2015 also serves as an appropriate cutoff date because the evidence suggests that CSL began administering its Path Program in 2015, which paid students to postpone sitting for the bar exam and therefore would only apply to their bar data reported past 2015. The BDU is not in possession of, nor aware of, any evidence to corroborate borrowers' claims of misconduct prior to this cut-off date. As of May 11, 2020, BDU is in possession of 406 cases where the borrower alleges a date of separation prior to February 24, 2015.<sup>8</sup>

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

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

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



**DOE00002653-DOE00002653**

**School Notice Letters and Other Open Items**

1. New guidance on Heroes Act: OGC advises that the Secretary will be filing a federal register notice announcing use of authority under HEROES Act to adjudicate certain cases with consolidated loans under the 2016 regulation. This will include non-direct loan borrowers who filed applications prior to July 1, 2020 as well as direct loan borrowers who consolidate after July 1, 2020 but prior to the adjudication of their cases. OGC agreed to send us an email so that we can be working the cases while they finalize the federal register notice.
2. Revised templates: OGC will be providing revised templates of the school notice letters. They will include the template for borrowers whose cases will be adjudicated under both 95 and 2016 regs.
3. Policy Decision on Schools that Previously received notice letters: For schools that have already responded to the previous version of the school notice letters, how do we handle notice letters for new applications that came in since then?
  - Option 1: Send the new templates for new applications and resend with new template for all notice letters previously sent.
  - Option 2: Send the new templates for new applications and do not re-do the notice letters previously sent.
  - Option 3: Send the previous version of the template for the new applications so that we can move forward with adjudication on cases where the school already has substantially responded.
4. Confirm process re: school response on state law: Confirm that schools can provide evidence to dispute the state law identified on the school notice letter. The school's response and evidence will be considered in adjudicating the application and may result in a change of state law applied. However, we do not have to re-send the notice letter (and re-set the clock) if we agree with the school on the state law that should be applied.
5. Policy Decision on whether state law needs to be included in adjudication notices for ineligible: Does the state law have to be added to the borrower decision notices? It is not currently included on the letters for ineligible.
6. Confirm process on type of claim under 2016: Confirm that the type of claim identified in the school notice letter for 2016 applications (substantial misrepresentation, judgment, breach of contract) is for informational purposes, but an incorrect or incomplete identification of the type(s) does not require re-sending to the school.
7. Confirm no additional procedural changes: Confirm that there are no changes in any procedures for 95 v. 2016 regulation other than the different school notice letter templates.
8. Need Guidance on cases under 2020: (Not as urgent) – OGC will work on letters for borrowers whose cases have loans under 95 or 2016 *and* 2020.



**DOE00003427**

# DOCUMENT INFO

Name: Next Gen FSA Key Actions 08.14.1  
(1).pptx

Comments: An installation of eDrawings 2013 was  
not found. (ErrCode=9603, Line=480)



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# Next Gen FSA Key Actions

August 14, 2019

Federal Student Aid an office of the U.S. Department of Education – INTERNAL CONFIDENTIAL – DELIBERATIVE – PRE-DECISIONAL

Bates Number DOE00003427, produced in Native and converted to PDF

Bates Number DOE00003437, produced in Native and converted to PDF

## Next Gen FSA

# Highlights

August 14, 2019

### Next Gen FSA Acting Program Manager

- James Davis arrived in FSA on August 12. He serves as the Next Gen FSA Acting Program Manager. James comes to FSA after serving in the Air Force for 33 years.

### Solicitation Updates

- Enhanced Processing Solution:
  - Objective: As part of Next Gen, FSA will be moving roughly 40 million existing borrowers from multiple servicing systems onto a single system. This transition process, which is expected to begin by January 2021, requires us to award a new contract to manage the single processing system.
  - Status: We have reviewed proposals and recently began discussions with multiple vendors with the hope of making an award in first quarter FY 2020.
- Business Process Operations:
  - Objective: Next Gen will also include multiple contracts to operate contact and manual processing centers for all student aid customer and partner interactions.
  - Status: Proposals were received and are being evaluated by the Contracting Officer. Review teams are in clearance with OGC and kick-off meetings are expected this week.
- Optimal Processing Solution:
  - Objective: We are seeking new processing systems for the full suite of student aid activities from aid application through loan servicing and debt collection; these new systems will leverage the latest technology to increase efficiency, reduce cost, and enhance cybersecurity.
  - Status: We expect to finalize an amendment in mid to late August to include the proposal due date; this timing will support a December 2019 award.

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# Borrower Defense

Federal Student Aid an office of the U.S. Department of Education – INTERNAL CONFIDENTIAL – DELIBERATIVE – PRE-DECISIONAL

Bates Number DOE00003427, produced in Native and converted to PDF

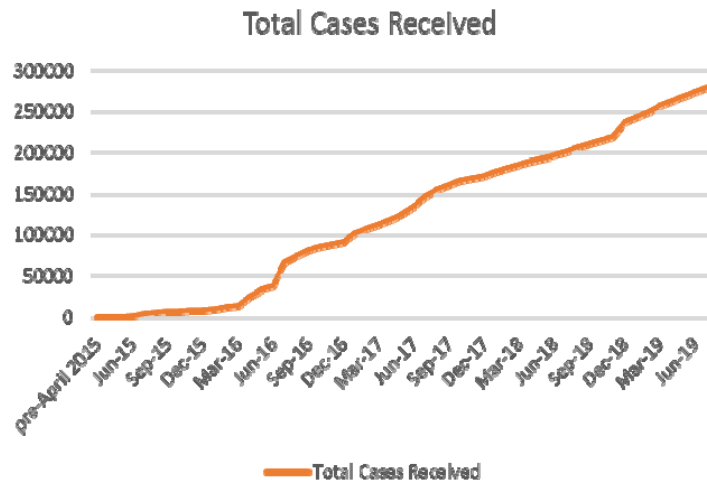


## Next Gen FSA

# Borrower Defense to Repayment

A type of loan discharge based on a determination that the borrower's school engaged in certain acts or omissions, generally *misrepresentations*, *fraud*, or *breach of contract* that unlawfully caused the borrower to enroll or continue enrollment at the school.

- Borrower Defense (BD) loan discharges were very rarely requested prior to 2015
- Total borrower defense applications went from a few dozen to 24,000 in one year
- Borrower Defense Group in FSA created in 2016
- Applications received to date now total nearly 280,000
- We are currently receiving an average of 1,600 new applications per week



School Ownership Groups	Total Cases	Percentage
Corinthian Colleges, Inc.	130,556	48.93%
ITT Educational Services Inc.	26,553	9.95%
DeVry	16,225	6.08%
University of Phoenix	12,771	4.79%
EDMC	10,334	3.87%
CEC	9,237	3.46%
Westwood	3,577	1.34%
Dream Center Education Holdings (DCEH)	3,392	1.27%
All Other Schools	54,182	20.31%

# Borrower Defense Legal Framework

## ***Statute***

Section 455(h) of the Higher Education Act of 1965, as amended (HEA), specifies that the Secretary must, through regulation, specify the acts or omissions of a school that could give rise to a borrower defense discharge.

## ***Regulations***

### **“1995 Rule”:**

- Generally applies to loans issued before July 1, 2017
- Discharge based on act or omission of the school that would give rise to a cause of action against the school under applicable state law

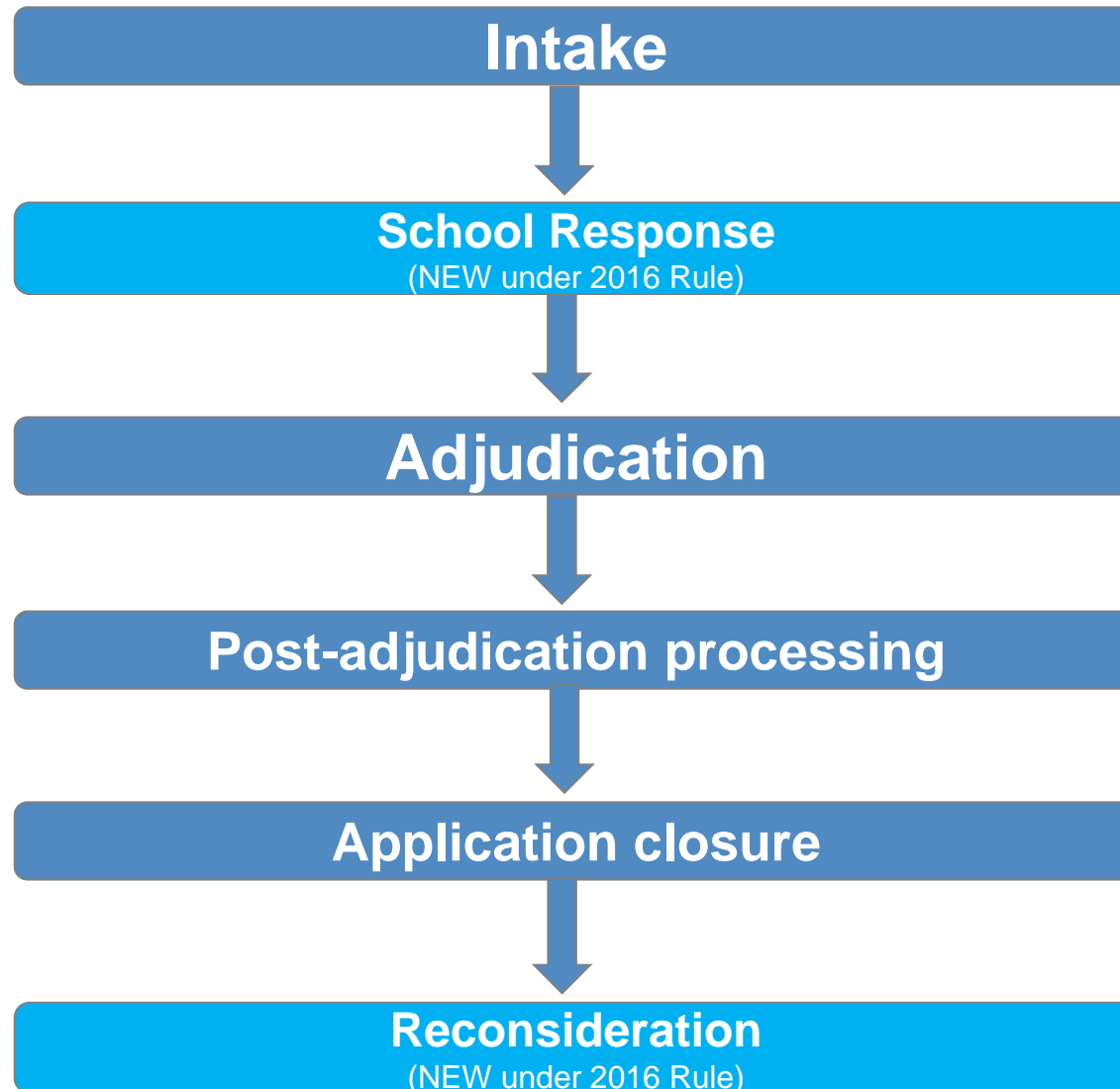
### **“2016 Rule”:**

- Generally applies to loans issued on or after July 1, 2017
- Establishes a federal standard
- Loan discharge must be as a result of a substantial misrepresentation by a school, a breach of contract by the school, or a judgment against a school
- Adds procedural requirements, including an opportunity for the school to respond and provide evidence to refute the borrower’s claims

The Department also is in the process of finalizing a new borrower defense regulation (the “2020 Rule”)

Next Gen FSA

# Six Stages of a Borrower Defense Application



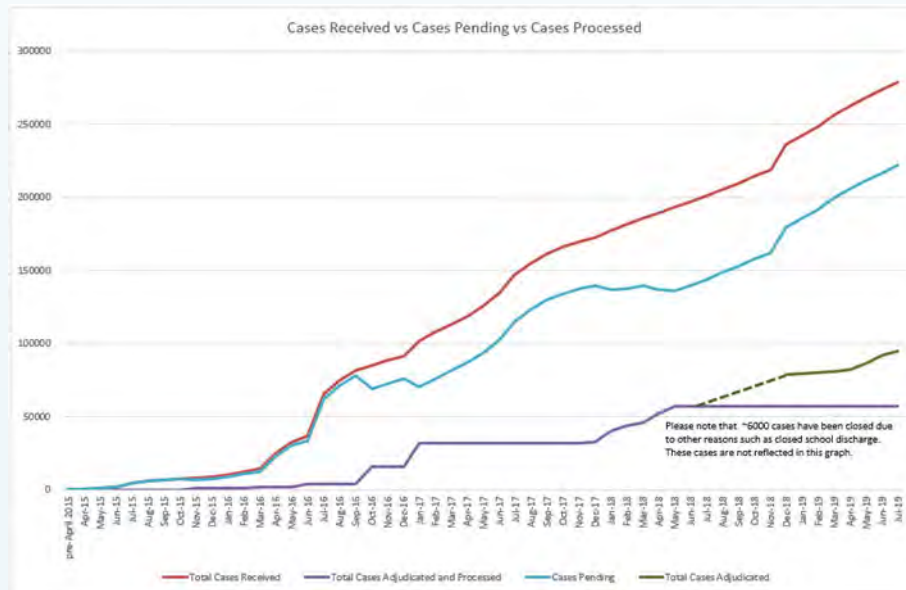


## Next Gen FSA

# Status of Borrower Defense Applications Received

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

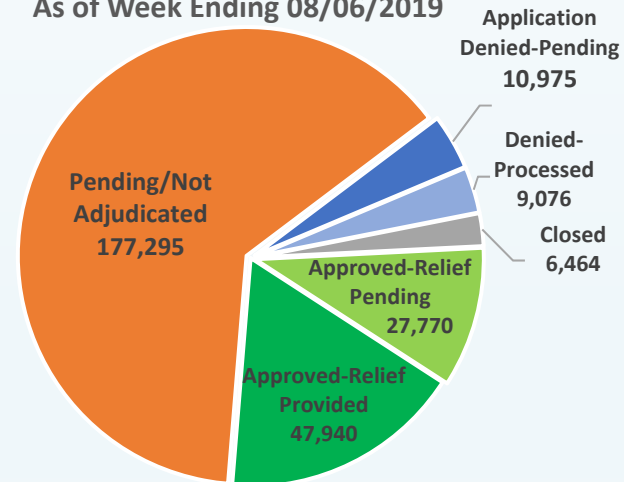
- 57,000 have been adjudicated, processed, and closed
- 38,700 have been adjudicated but have not yet been processed
  - Over 27,700 approved applications will be finalized when appropriate relief is determined
  - Nearly 11,000 applications have been adjudicated as denied applications but have not yet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



## Total Borrower Defense Applications:

279,520

As of Week Ending 08/06/2019



# Challenges and Solutions

## Three Significant Challenges and Corresponding Projects to Facilitate Elimination of the Backlog of Pending Applications:

- Platform
- Staffing Increase
- Relief Approach for Approvals

### Challenge #1: Implementation of the 2016 Regulation (following court order):

The 2016 regulation added new procedural requirements to the application review process, including notice to the school of the borrower's allegations and the opportunity for the school to provide a response and evidence to refute the borrower's allegations.

### Solution: Updates to Borrower Defense (Salesforce) Platform

- Enhancements to the Salesforce platform to comply with the 2016 regulation are currently in the build phase
- Completion date in late August

### Borrower Defense "Systems" Over Time

2015/2016 – 1000s of Excel Spreadsheets

2017 – Access platform (short-term solution)

2018 – CEMS Salesforce platform

2019 – Updated CEMS Salesforce platform to implement 2016 Borrower Defense Rule

2020 (projected) – Moving to Next Gen CEMS Salesforce platform will become part of the technological backbone to the Next Gen DCC

# Challenges and Solutions

## **Challenge #2: Additional Staffing Resources are needed to Adjudicate the Growing Backlog of Pending Borrower Defense Applications:**

- New borrower defense applications are being filed at a quicker pace than the existing staff can adjudicate, resulting in a growing backlog
- Borrower Defense Unit previously had well over 30 staff and contractors adjudicating borrower defense applications when the number of pending applications was under 70,000
- Due to attrition and other factors, there currently are only five (5) full-time and one (1) part-time Borrower Defense staff and seven (7) contractors.

## **Solution – Increased Staffing**

FSA is in the process of hiring and onboarding over 25 additional staff and contractors. Onboarding is expected to begin in late August.



# Challenges and Solutions

## Challenge #3: Approvals on Hold Pending Relief Determinations

An approved application cannot be processed until a determination is made regarding the appropriate relief for the borrower. Currently, there are over 27,700 approved applications that are on hold pending a relief determination.

- The vast majority of the “approved but pending relief” applications are from borrowers who attended Corinthian Colleges, Inc.
  - Corinthian tiered relief methodology subject to injunctive order (entered in Manriquez case)
- For non-Corinthian approvals, there currently is no existing relief approach, and the Corinthian methodology is inapplicable, so a new tiered relief methodology is required

## Solution – New Relief Approach(es)

- FSA has been working with OUS and OGC on alternative methodologies
- A new tiered relief approach is currently under consideration by senior leadership
- FSA hopes to have a final decision in the next 30 days so that we can begin processing the approved applications.

# Other Challenges

## Lawsuits:

- Manriquez – injunctive order entered regarding Corinthian tiered relief methodology
- Bauer – court held that ED delay of 2016 regulation was impermissible and ordered immediate implementation
- Sweet – alleges unreasonable delay and bad faith regarding pending borrower defense applications
- Nearly 20 lawsuits involving borrower defense filed since 2017

## Congressional and public scrutiny:

- Quarterly reporting to Congress required
- Frequent communications from borrowers

Borrower Defense attorneys work with the Office of General Counsel (OGC) and the Department of Justice (DOJ) on the specific borrower allegations, gather documents for the administrative record, and provide information, documents, and input requested by OGC and DOJ in connection with the lawsuit.

**DOE00004316-DOE00004320**



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

**1. Overview of Status of Implementation of the 2016 Regulation**

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

**2. How do we determine who qualifies for ACSD?**

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

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

- Closing Date

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

- Subsequent Enrollment

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

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

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

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

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

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

### **4. ACSD Overlap with Borrower Defense Claims**

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

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

## 5. ITT Tech Claims Eligible for ACSD

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

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

## 6. Closed School History re: Corinthian and ITT

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

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

## 7. Group Claims from AGs

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

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

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



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

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

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

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

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

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

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

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

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

#### **11. School Closures Since 2013**

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

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

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

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

#### **13. Closed School Discharge Applications from Mount Ida**

FSA will request this data from the servicers.

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

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

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

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

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

**DOE00004321-DOE00004322**



**Borrower Defense – Summary of Notice to Schools Process**

1. BD does a preliminary overview of the applications from borrowers who attended ABC to get a sense of the nature of the allegations commonly asserted against the school and generally, a sampling of the evidence that the borrowers are providing, if any, in support of their claims. Additionally, we determine whether there are findings against the school by the Department and whether there is potentially relevant evidence in the Department's possession that must be considered. We also determine whether the school is open or closed and, if closed, whether there is a letter of credit that may be used to collect against the school for any approved BD applications.
  
2. After that preliminary overview, we make a determination as to whether to send a notice to the school. Since notice to the school creates additional burdens on the school and also delays the adjudication process, the preliminary review is intended to eliminate unnecessary notices to schools where there is no evidence for the school to refute (and, therefore, no benefit to the school in receiving the notice). However, notice will be sent to any school where there is evidence and, therefore, at least a possibility of approval, so that the school can respond and provide evidence to refute the borrowers' allegations:
  - a. **No Notice:**
    - i. If the preliminary overview leads to the conclusion that the school is closed and does not have a letter of credit or other assets available (*e.g.*, an open affiliated school with common ownership), there would be nobody to put on notice.
    - ii. If the preliminary overview leads to the conclusion that there is no evidence in the Department's possession relating to the school, there is no evidence to refute.
      1. Exception: If an individual borrower provides evidence that supports his or her application, we would then send notice to the school and the application would be set aside so that the school's response and evidence, if any, can be considered with the borrower's evidence in adjudicating the application.
    - iii. If there are 2,000 applications from borrowers who attended ABC, and the preliminary overview leads to the conclusion that there is no evidence in the Department's possession relating to ABC borrowers other than, for example, 300 borrowers who attended the medical assisting program between 2010 and 2014, there is no evidence to refute for the 1,700 borrowers who did not attend the medical assisting program between 2010 and 2014. Therefore, we would proceed as follows:
      1. Notices would be sent to the school regarding the 300 borrowers who attended the medical assisting program between 2010 and 2014 (see section (b) below);
      2. Notices would not be sent to the school regarding the applications of the other 1,700 borrowers.
        - a. Exception: If an individual borrower provides evidence that supports his or her application, we would then send notice to the school and the application would be set aside so that the school's response and evidence, if any, can be considered with the borrower's evidence in adjudicating the application.

- b. Notice required:**
    - i. If there are ED findings against the school, we would send notices to the school for any applications of borrowers potentially covered by the findings;
    - ii. If the Department is in possession of evidence potentially relevant to multiple borrowers (by campus, program, attendance dates, etc.). we would send notice to the school for any applications for which the evidence is potentially probative of the borrower allegations.
    - iii. If an individual borrower provides evidence that supports his or her own application, we would then send notice to the school.
3. Regular School Notice Process: Where notice is required regarding the application(s) of an individual borrower or small group of borrowers, the attached "School Notice Template" would be sent to the school. The email is sent through the BD platform so that it can be tracked and associated to the borrower's application.
4. Advance Notice: Additionally, if we have many applications relating to a school and for which notice is required, we also will send an "Advance Notice Letter," a draft of which also is attached. This letter would be sent first so that the school is aware that they are about to receive numerous applications. It also advises the school of the nature of any common allegations so that the school can begin to consider a response.
5. School Response: Schools have two different options for responding to the borrower defense applications.
  - a. Borrower-Specific: If the school wishes to respond to an individual borrower's allegations, the school can respond by replying to the School Notice email. Any response or evidence attached to the email will be attached to the borrower's case.
  - b. General Response: Additionally or alternatively, if the school wishes to respond generally and/or provide evidence that would be applicable to many or all borrowers who filed applications relating to the school, we have a SharePoint site set up for the school to access and load its responsive documents. The response and evidence would be considered with respect to all applications to which the response and evidence is relevant, regardless of whether an individual borrower is specifically identified.
6. Finally, if borrower requests reconsideration of a denied claim because his or her school was not notified, we will send a notice to the school and reconsider the claim in light of the school's response. (This is per OGC to avoid litigation on the off chance that a borrower takes the position that the school would have provided evidence that corroborates a claim that otherwise would be denied).

**DOE00004939-DOE00004940**





July 14, 2020

Mr. Richard Senese, President  
Mr. Mike Wickard, Chief Financial Officer  
Ms. Jillian Klein, Vice President, Government and Regulatory Affairs  
Mr. Jarod Paulson, Financial Aid Administrator

Capella University  
225 South 6th Street  
Minneapolis, MN 55402

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 approximately 250 borrower defense applications that make allegations regarding Capella 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 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 [ [HYPERLINK "mailto:borrowerdefense@ed.gov" \h](mailto: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 time it would take to complete their doctoral programs, doctoral program costs, employment prospects, career services assistance, graduation rates, 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.

- Copies of any and all types of enrollment agreements utilized by Capella for the doctoral program and/or signed by doctoral students for the years 2010 to 2019; and
- Copies of any and all advertisements or promotional materials:

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DOE00004939

Page  
(PAGE 1)

- Used to solicit prospective doctoral students;
- That were placed in any advertising medium or shared with doctoral students prior to enrollment at Capella; and
- Specifically related to the time to complete doctoral programs or doctoral program costs.
- The actual cost of each doctoral program per year, per program for the years 2010 to 2019.
- The actual number of terms for each doctoral program per year, per program for the years 2010 to 2019.

We are also aware of the pending *Wright et al v. Capella University* lawsuit filed in the U.S. District Court for the District of Minnesota, in which the plaintiffs allege that Capella marketing materials and recruiters misled prospective and current students about the time to completion and cost of their doctoral degrees.

**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 [ HYPERLINK "mailto:BDSchoolEvidence@ed.gov" \h ] 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 [ HYPERLINK "https://studentaid.gov/borrower-defense" ].

If you have questions about this communication, email us at [ HYPERLINK "mailto:BDSchoolEvidence@ed.gov" ].

Sincerely,

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

## 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
11.	DOE00006016-6022	Borrower Defense Unit Claims Review Protocol
12.	DOE00006206-DOE00006508	Training Binder – Borrower Defense To Repayment
13.	DOE00006893-DOE00006895	Bd Work Plan For November 2019
14.	DOE00006974	FSA FY 2020 A-123A Assessment
15.	DOE00007209-DOE00007214	Detailed Briefing: Borrower Defense and 2016 Rule – Corinthian Colleges and ITT Technical Institute
16.	DOE00007269-DOE00007271	Talking Points – Institutional Accountability Regulations
17.	DOE00007289-DOE00007291	Talking points – Borrower Defense to Repayment
18.	DOE00007866-DOE00007879	CCI guaranteed employment memo
19.	DOE00008693-DOE00008694	Borrower Defense Claim Review Productivity Requirements, Incentives and Support Plan
20.	DOE00008841-DOE00008843	Borrower Defense Quality Control Procedures



**DOE00006016-DOE00006022**

# **BORROWER DEFENSE UNIT CLAIMS REVIEW PROTOCOL**

DOE00006016

DOE00006016

# GUIDING PRINCIPLES FOR PROTOCOL

- 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

[ PAGE \\* MERGEFORMAT ]



## LEGAL FRAMEWORK FOR ELIGIBILITY

- BD application must state a claim under state law:
  - “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).
  - 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

[ PAGE \\* MERGEFORMAT ]

## 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

[ PAGE \\* MERGEFORMAT ]

# PROTOCOL FOR DETERMINING ELIGIBILITY

- 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.

[ PAGE \\* MERGEFORMAT ]



# EXAMPLE OF ELIGIBILITY DETERMINATION

**BD Claims Regarding Transferability of Credits:** Corinthian misrepresented to students at nationally accredited Everest and WyoTech campuses that the credits they earned would be generally transferable to other institutions

- “I was assured when I started that I could transfer my credits to any other school if I chose to do so.”
- “I was told my credits would transfer to University of South Florida for my BA in Finance and they did not so I was stuck with all these loans and no school will take them.”
- “Not a single credit was transferable. I specifically remember asking the rep before enrolling if credits were transferable and she said “absolutely,” never once telling me that accreditation of the school was not the same as a traditional.”
- “The school told me that I would not have any problem transferring credits if I decided to further my education elsewhere.”

**Evidence that representation was made:**

- Claims are consistent regarding the representation made, include specific details, and are consistent between campuses and over time
- Claims are corroborated by the school’s own internal audits finding substantial failures to provide accurate information regarding the transferability of credits during calls with prospective students, as well as by calls provided by state investigators.

**Evidence of falsity:**

- Regionally accredited schools, including the in-state institutions where students often sought to transfer, overwhelmingly do not accept credits from nationally accredited schools such as Everest and WyoTech.
- Evidenced by National Center for Education Statistics study; GAO report; the American Association of Collegiate Registrars and Admissions Officers transfer practices guide; a survey of schools conducted by the Borrower Defense unit; as well as numerous student accounts.

**Misrepresentation gives “rise to a cause of action against the school under applicable State law.” 34 C.F.R. § 685.206(c):**

- Applicable California law prohibits deceptive or misleading representations, including material misrepresentations reasonably relied on by students.
- Misrepresentations about the general transferability of credits earned are highly material to students deciding whether to enroll (and take on debt to do so) and it was reasonable for students to rely on such representations made by school personnel.

[ PAGE \\* MERGEFORMAT ]

## 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.
  - 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).
- **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.
  - An offset may be appropriate where there is substantial value provided by school and the amount of that value can be readily calculated for all eligible students.
  - Note: individualized determinations of value are likely to be administratively burdensome (*e.g.*, determining post-attendance employment outcomes for every student in a large group)

**DOE00006016**

**Metadata**

<b>Custodian</b>	Nevin, Colleen	SEMANTIC
<b>Date</b>	2018/09/05	SEMANTIC



**DOE00006206-DOE00006508**

TRAINING BINDER  
BORROWER DEFENSE TO REPAYMENT  
JULY 2019

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## Introduction

### Background

#### **Statute and Regulations Pertaining to Borrower Defense**

The Student Loan Reform Act of 1993 (Public Law 103-66) amended the Higher Education Act of 1965 to establish the William D. Ford Federal Direct Loan Program (Direct Loan). Section 455(h) of the Higher Education Act, as amended, required the Secretary to specify in regulation the acts or omissions of a borrower's school that a borrower may assert as a defense to repayment of a Direct Loan, commonly called "borrower defense."

The Department established regulations covering such borrower defenses at 34 CFR § 685.206(c), effective July 1, 1995. The regulations specified that a borrower may assert as a defense against repayment, any act or omission of the borrower's school that would give rise to a cause of action against the school under applicable State law.

In response to the collapse of Corinthian Colleges, Inc., the Department issued revised regulations on borrower defense, which were scheduled to be effective July 1, 2017. These revised regulations established a Federal standard for borrower defense claims. On June 16, 2017, the Department announced a delay in the implementation, until further notice, of the revised borrower defense regulations due to pending litigation. The Department established a rulemaking committee to review and revise the borrower defense regulations. The Department announced that the rulemaking committee would meet from November 2017 through February 2018 to develop proposed borrower defense regulations. On October 24, 2017, the Department announced that it would continue to preserve the regulatory status quo until July 1, 2018, and proposed further delay until July 1, 2019. Until the delay in implementing the 2017 regulations is lifted or new regulations are issued, all claims are subject to the regulations that became effective July 1, 1995.

#### **Increase in Borrower Defense Claims and Appointment of Special Master**

Before 2015, borrowers had made only a handful of borrower defense claims. Claims significantly increased when Corinthian Colleges closed in April 2015 and ITT Technical Institutes closed in September 2016, and thousands of borrowers submitted borrower defense claims to FSA to have their Federal student loans discharged. Because the Department did not have an established infrastructure for accepting, processing, and reviewing large numbers of loan defense claims, in June 2015, the Under Secretary appointed a Special Master to advise the Department on the creation of a borrower defense process. The Department also announced on June 8, 2015, that it would use

existing evidence, where appropriate, to ease borrowers' burden in establishing their eligibility for borrower defense relief: "Wherever possible, the Department will rely on evidence established by appropriate authorities in considering whether whole groups of students (for example, an entire academic program at a specific campus during a certain time frame) are eligible for borrower defense relief. This will simplify and expedite the relief process, reducing the burden on borrowers." The Special Master served as an advisor in the borrower defense claim process from June 24, 2015, through June 23, 2016, after which the FSA Enforcement Unit's BDU took over the process.

Table 2 shows the increase in borrower defense claims over time.

**Table 2. Increase in Borrower Defense Claims**

Time Period	Number of Claims Received
July 1, 1995, through June 24, 2015 <i>(Implementation of Borrower Defense Regulations to Appointment of the Special Master)</i>	5
June 25, 2015, through June 29, 2016 <sup>a</sup> <i>(Appointment of Special Master through last Special Master Report)</i>	26,603
June 30, 2016, through January 20, 2017 <i>(Formation of BDU through end of the prior administration)</i>	46,274
January 21, 2017, to July 24, 2017 <sup>b</sup> <i>(Beginning of current administration through the end of our review period)</i>	25,991

<sup>a</sup> Source: Special Master Report, June 29, 2016.

<sup>b</sup> The end of our review period was July 31, 2017; however, FSA issued a periodic report of claims received on July 24, 2017. Source: Data from FSA's list of claims.

Of the 26,603 claims FSA received while the Special Master was authorized, 3,787 claims, associated with about \$73 million in loans, were approved for full loan discharges during the Special Master period.<sup>7</sup>

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<sup>7</sup> Source: Special Master Report, June 29, 2016.



### **Duties of the Special Master and Team of Attorneys**

The Special Master was appointed to advise the Office of the Under Secretary in the creation of a process to evaluate borrower defense claims and interpret State laws. He was to provide advice on legal and administrative procedures for borrower defense claims and train staff to implement the borrower defense loan discharge process. The Special Master provided advisory services as a consultant and did not perform or supervise operating functions.

The Special Master worked with a team of four attorneys within FSA to analyze laws and regulations, review claims, and develop templates for the claims intake and review process; three additional attorneys were added in the spring of 2016. The team of attorneys operated without the support of contractors for the review of claims. The team of attorneys focused its efforts on job placement rate misrepresentation claims related to borrowers who attended the Heald College, Everest, and WyoTech campuses of Corinthian Colleges.

FSA's Business Operations managed the claims intake process, maintained borrower defense claim applications, attestations, and other supporting documentation, such as school transcripts. The team of attorneys used this information to make borrower defense claim determinations. The Special Master recommended claims that the Under Secretary should approve for a borrower defense loan discharge. For approved claims, FSA's Business Operations worked with its loan servicers to discharge the associated loans.

### **Creation of FSA's Borrower Defense Unit**

In late June 2016, the Department completed the transition of borrower defense oversight from the Special Master and the team of attorneys working with him to the Enforcement Unit's BDU. In late June, when the transition from the Special Master to the Enforcement Unit was complete, there were seven full-time BDU attorneys and no contractors. By early November 2016, BDU was staffed with 10 attorneys, a director, and 19 contracted staff from 2 contractors.<sup>8</sup> As of September 2017, BDU had only six contracted staff from the two contractors.

In addition to continuing to process discharges under the memorandum developed prior to the creation of BDU, BDU also developed additional memoranda to justify loan discharges. In addition to job placement rate discharges, BDU focused its efforts on determining whether categories of claims sharing common facts qualified for discharge

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<sup>8</sup> BDU contracted with Midtown Personnel, Inc. and GCC Technologies, LLC. to review claims.



and then determining whether individual claims qualified for discharge under approved categories. BDU concentrated on processing job placement rate, transfer of credit, and guaranteed employment claims related to borrowers who attended Heald, Everest, and WyoTech campuses of Corinthian Colleges, California campuses of ITT, and American Career Institute—Massachusetts. BDU sent memoranda to the Under Secretary to recommend claims that the Under Secretary should approve for a borrower defense loan discharge; these approval memoranda were signed by the Under Secretary. For approved claims, FSA's Business Operations worked with its loan servicers to discharge the associated loans.

According to its functional statement, BDU issues written decisions on borrower defense claims that constitute the final decision of the Secretary, in collaboration with OGC. In practice, BDU reviewed the claims and then made a recommendation to the Under Secretary on whether the Department should approve claims for loan discharge. The Under Secretary made the decision on whether to accept BDU's recommendation.

### **Borrower Defense Loan Discharge Process**

Borrowers submitted borrower defense claims for loan discharge to FSA either online, through email, or by mail. Business Operations and its contractor received the borrower defense claims and, as part of the intake process, entered claim data into the borrower defense database and into a spreadsheet that it used to track the status of claims. Then, Business Operations notified loan servicers to place borrowers' loans into forbearance; when a loan is in forbearance, the borrower is not required to make payments but interest continues to accumulate against the outstanding loan balance.<sup>9</sup> BDU and its contractors reviewed claims for eligibility using criteria established in legal memoranda as the basis for approval. BDU and its contractors made claim determinations and performed quality control reviews on the claims. Then BDU recommended claims for approval and the associated loans for discharge to the Under Secretary. The Under Secretary approved the list of claims, and Business Operations notified loan servicers to discharge the borrowers' loans associated with the approved claims. Business Operations also updated the approval status in the database and spreadsheet used to track claims. Servicers updated the National Student Loan Database System (NSLDS) and Business Operations later verified that the loans statuses were discharged in NSLDS.

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<sup>9</sup> Borrowers can choose not to have their loans placed in forbearance by selecting that option on the borrower defense application.

## **LEGAL FOUNDATION**

## 1995 BORROWER DEFENSE REGULATION

ARCHIVED

IFAP HOME

CLOSE WINDOW

SFA Information for Financial Aid Professionals

U.S. Department of Education



**Citations: (R)685.206**

**AsOfDate: 12/1/94**

Sec. 685.206 Borrower responsibilities and defenses.

(a) The borrower shall give the school the following information as part of the origination process for a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan:

- (1) A statement, as described in 34 CFR Part 668, that the loan will be used for the cost of the student's attendance.
- (2) Information demonstrating that the borrower is eligible for the loan.
- (3) Information concerning the outstanding FFEL Program and Direct Loan Program loans of the borrower and, for a parent borrower, of the student, including any Federal Consolidation Loan or Direct Consolidation Loan.
- (4) A statement authorizing the school to release to the Secretary information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records).
- (b)(1) The borrower shall promptly notify the Secretary of any change of name, address, student status to less than half-time, employer, or employer's address; and
- (2) The borrower shall promptly notify the school of any change in address during enrollment.

(c) Borrower defenses. (1) In any proceeding to collect on a Direct Loan, 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. These proceedings include, but are not limited to, the following:

- (i) Tax refund offset proceedings under 34 CFR 30.33.
- (ii) Wage garnishment proceedings under section 488A of the Act.
- (iii) Salary offset proceedings for Federal employees under 34 CFR Part 31.
- (iv) Credit bureau reporting proceedings under 31 U.S.C. 3711(f).

(2) If the borrower's defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances. Further relief may include, but is not limited to, the following:

- (i) Reimbursing the borrower for amounts paid toward the loan voluntarily or through enforced collection.
- (ii) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.
- (iii) Updating reports to credit bureaus to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan.

(3) The Secretary may initiate an appropriate proceeding to require the school whose act or omission resulted in the borrower's successful defense against repayment of a Direct Loan to pay to the Secretary the amount of the loan to which the defense applies. However, the Secretary does not initiate such a proceeding after the period for the retention of records described in Sec. 685.309(c) unless the school received actual notice of the claim during that period.

(Authority: 20 U.S.C. 1087a et seq.)

## 2016 BORROWER DEFENSE REGULATION

requirements and procedures for obtaining a discharge.

(iii) The lender shall file a closed school claim with the guaranty agency in accordance with § 682.402(g) no later than 60 days after the lender receives a completed application described in paragraph (d)(3) of this section from the borrower, or notification from the agency that the Secretary approved the borrower's appeal in accordance with paragraph (d)(6)(ii)(K)(3) of this section.

\* \* \* \* \*

(8) *Discharge without an application.*

(i) A borrower's obligation to repay a FFEL Program loan may be discharged without an application from the borrower if the—

(A) Borrower received a discharge on a loan pursuant to 34 CFR 674.33(g) under the Federal Perkins Loan Program, or 34 CFR 685.214 under the William D. Ford Federal Direct Loan Program; or

(B) Secretary or the guaranty agency, with the Secretary's permission, determines that the borrower qualifies for a discharge based on information in the Secretary or guaranty agency's possession.

(ii) With respect to schools that closed on or after November 1, 2013, a borrower's obligation to repay a FFEL Program loan will be discharged without an application from the borrower if the Secretary or guaranty agency determines that the borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years after the school closed.

\* \* \* \* \*

■ 20. Section 682.405 is amended by redesignating paragraph (b)(4) as paragraph (b)(4)(i) and adding paragraph (b)(4)(ii).

The addition reads as follows:

**§ 682.405 Loan rehabilitation agreement.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) The lender must not consider the purchase of a rehabilitated loan as entry into repayment or resumption of repayment for the purposes of interest capitalization under § 682.202(b).

\* \* \* \* \*

■ 21. Section 682.410 is amended:

■ A. In paragraph (b)(4) by adding, after the words "to the lender", the words and punctuation " , but shall not capitalize any unpaid interest thereafter".

■ B. By adding paragraph (b)(6)(viii).

The addition reads as follows:

**§ 682.410 Fiscal, administrative, and enforcement requirements.**

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(viii) Upon notification by the

Secretary that the borrower has made a borrower defense claim related to a loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief in accordance with § 685.212(k), the guaranty agency must suspend all collection activities on the affected loan for the period designated by the Secretary.

\* \* \* \* \*

**PART 685—WILLIAM D. FORD  
FEDERAL DIRECT LOAN PROGRAM**

■ 22. The authority citation for part 685 continues to read as follows:

*Authority:* 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

■ 23. Section 685.200 is amended by adding paragraphs (f)(3)(v) and (f)(4)(iii) to read as follows:

**§ 685.200 Borrower eligibility.**

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(v) A borrower who receives a closed school, false certification, unpaid refund, or defense to repayment discharge that results in a remaining eligibility period greater than zero is no longer responsible for the interest that accrues on a Direct Subsidized Loan or on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan unless the borrower once again becomes responsible for the interest that accrues on a previously received Direct Subsidized Loan or on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan, for the life of the loan, as described in paragraph (f)(3)(i) of this section.

(4) \* \* \*

(iii) For a first-time borrower who receives a closed school, false certification, unpaid refund, or defense to repayment discharge on a Direct Subsidized Loan or a portion of a Direct Consolidation Loan that is attributable to a Direct Subsidized Loan, the Subsidized Usage Period is reduced. If the Direct Subsidized Loan or a portion of a Direct Consolidation Loan that is attributable to a Direct Subsidized Loan is discharged in full, the Subsidized Usage Period of those loans is zero years. If the Direct Subsidized Loan or a portion of a Direct Consolidation Loan that is attributable to a Direct Subsidized Loan is discharged in part, the Subsidized Usage Period may be reduced if the discharge results in the inapplicability of paragraph (f)(4)(i) of this section.

\* \* \* \* \*

■ 24. Section 685.205 is amended by revising paragraph (b)(6) to read as follows:

**§ 685.205 Forbearance.**

\* \* \* \* \*

(b) \* \* \*

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge—

(i) Under § 685.206(c);

(ii) Under § 685.214;

(iii) Under § 685.215;

(iv) Under § 685.216;

(v) Under § 685.217;

(vi) Under § 685.222; or

(vii) Due to the borrower's or endorser's (if applicable) bankruptcy;

\* \* \* \* \*

■ 25. Section 685.206 is amended by revising paragraph (c) to read as follows:

**§ 685.206 Borrower responsibilities and defenses.**

\* \* \* \* \*

(c) *Borrower defenses.* (1) For loans first disbursed prior to July 1, 2017, the borrower may assert a borrower defense under this paragraph. A "borrower defense" refers to any act or omission of the school attended by the student that relates to the making of the loan for enrollment at the school or the provision of educational services for which the loan was provided that would give rise to a cause of action against the school under applicable State law, and includes one or both of the following:

(i) A defense to repayment of amounts owed to the Secretary on a Direct Loan, in whole or in part.

(ii) A claim to recover amounts previously collected by the Secretary on the Direct Loan, in whole or in part.

(2) The order of objections for defaulted Direct Loans are as described in § 685.222(a)(6). A borrower defense claim under this section must be asserted, and will be resolved, under the procedures in § 685.222(e) to (k).

(3) For an approved borrower defense under this section, except as provided in paragraph (c)(4) of this section, the Secretary may initiate an appropriate proceeding to collect from the school whose act or omission resulted in the borrower defense the amount of relief arising from the borrower defense, within the later of—

(i) Three years from the end of the last award year in which the student attended the institution; or

(ii) The limitation period that State law would apply to an action by the borrower to recover on the cause of action on which the borrower defense is based.

(4) The Secretary may initiate a proceeding to collect at any time if the

institution received notice of the claim before the end of the later of the periods described in paragraph (c)(3) of this section. For purposes of this paragraph, notice includes receipt of—

(i) Actual notice from the borrower, from a representative of the borrower, or from the Department;

(ii) A class action complaint asserting relief for a class that may include the borrower; and

(iii) Written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower.

\* \* \* \* \*

#### § 685.209 [Amended]

■ 26. Section 685.209 is amended:

■ A. In paragraph (a)(1)(ii), by adding “, for purposes of determining whether a borrower has a partial financial hardship in accordance with paragraph (a)(1)(v) of this section or adjusting a borrower’s monthly payment amount in accordance with paragraph (a)(2)(ii) of this section,” after the words “*Eligible loan*”.

■ B. In paragraph (c)(1)(ii), by adding “, for purposes of adjusting a borrower’s monthly payment amount in accordance with paragraph (c)(2)(ii) of this section,” after the words “*Eligible loan*”.

■ C. In paragraph (c)(2)(ii)(B) introductory text, by removing the word “Both” and adding in its place the words “Except in the case of a married borrower filing separately whose spouse’s income is excluded in accordance with paragraph (c)(1)(i)(A) or (B) of this section, both”.

■ D. In paragraph (c)(2)(v), by removing the words “or the Secretary determines the borrower does not have a partial financial hardship”.

■ E. In paragraph (c)(4)(iii)(B), by removing the citations “(c)(2)(iv), (c)(4)(v), and (c)(4)(vi)” and adding, in their place, the citations “(c)(2)(iv) and (c)(4)(v)”.

■ 27. Section 685.212 is amended by revising paragraphs (a)(1) and (2) and adding paragraph (k) to read as follows:

#### § 685.212 Discharge of a loan obligation.

(a) *Death*. (1) If a borrower (or a student on whose behalf a parent borrowed a Direct PLUS Loan) dies, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan based on—

(i) An original or certified copy of the death certificate;

(ii) An accurate and complete photocopy of the original or certified copy of the death certificate;

(iii) An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(iv) Verification of the borrower’s or student’s death through an authoritative Federal or State electronic database approved for use by the Secretary.

(2) Under exceptional circumstances and on a case-by-case basis, the Secretary discharges a loan based upon other reliable documentation of the borrower’s or student’s death that is acceptable to the Secretary.

\* \* \* \* \*

(k) *Borrower defenses*. (1) If a borrower defense is approved under § 685.206(c) or § 685.222—

(i) The Secretary discharges the obligation of the borrower in whole or in part in accordance with the procedures in §§ 685.206(c) and 685.222, respectively; and

(ii) The Secretary returns to the borrower payments made by the borrower or otherwise recovered on the loan that exceed the amount owed on that portion of the loan not discharged, if the borrower asserted the claim not later than—

(A) For a claim subject to § 685.206(c), the limitation period under applicable law to the claim on which relief was granted; or

(B) For a claim subject to § 685.222, the limitation period in § 685.222(b), (c), or (d), as applicable.

(2) In the case of a Direct Consolidation Loan, a borrower may assert a borrower defense under § 685.206(c) or § 685.222 with respect to a Direct Loan, FFEL Program Loan, Federal Perkins Loan, Health Professions Student Loan, Loan for Disadvantaged Students under subpart II of part A of title VII of the Public Health Service Act, Health Education Assistance Loan, or Nursing Loan made under part E of the Public Health Service Act that was repaid by the Direct Consolidation Loan.

(i) The Secretary considers a borrower defense claim asserted on a Direct Consolidation Loan by determining—

(A) Whether the act or omission of the school with regard to the loan described in paragraph (k)(2) of this section, other than a Direct Subsidized, Unsubsidized, or PLUS Loan, constitutes a borrower defense under § 685.206(c), for a Direct Consolidation Loan made before July 1, 2017, or under § 685.222, for a Direct Consolidation Loan made on or after July 1, 2017; or

(B) Whether the act or omission of the school with regard to a Direct Subsidized, Unsubsidized, or PLUS Loan made on after July 1, 2017 that was paid off by the Direct Consolidation Loan, constitutes a borrower defense under § 685.222.

(ii) If the borrower defense is approved, the Secretary discharges the appropriate portion of the Direct Consolidation Loan.

(iii) The Secretary returns to the borrower payments made by the borrower or otherwise recovered on the Direct Consolidation Loan that exceed the amount owed on that portion of the Direct Consolidation Loan not discharged, if the borrower asserted the claim not later than—

(A) For a claim asserted under § 685.206(c), the limitation period under the law applicable to the claim on which relief was granted; or

(B) For a claim asserted under § 685.222, the limitation period in § 685.222(b), (c), or (d), as applicable.

(iv) The Secretary returns to the borrower a payment made by the borrower or otherwise recovered on the loan described in paragraph (k)(2) of this section only if—

(A) The payment was made directly to the Secretary on the loan; and

(B) The borrower proves that the loan to which the payment was credited was not legally enforceable under applicable law in the amount for which that payment was applied.

\* \* \* \* \*

■ 28. Section 685.214 is amended by:

■ A. Revising paragraphs (c)(2) and (f)(4).

■ B. Redesignating paragraphs (f)(5) and (6) as paragraphs (f)(6) and (7), respectively.

■ C. Adding a new paragraph (f)(5).

The revisions and addition read as follows:

#### § 685.214 Closed school discharge.

\* \* \* \* \*

(c) \* \* \*

(2) If the Secretary determines, based on information in the Secretary’s possession, that the borrower qualifies for the discharge of a loan under this section, the Secretary—

(i) May discharge the loan without an application from the borrower; and

(ii) With respect to schools that closed on or after November 1, 2013, will discharge the loan without an application from the borrower if the borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years from the date the school closed.

\* \* \* \* \*



(f) \* \* \*

(4) If a borrower fails to submit the application described in paragraph (c) of this section within 60 days of the Secretary's providing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(5) Upon resuming collection on any affected loan, the Secretary provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

\* \* \* \* \*

■ 29. Section 685.215 is amended by:

- A. Revising paragraph (a)(1).
- B. Revising paragraph (c) introductory text.
- C. Revising paragraph (c)(1).
- D. Redesignating paragraphs (c)(2) through (7) as paragraphs (c)(3) through (8), respectively.
- E. Adding a new paragraph (c)(2).
- F. Revising redesignated paragraph (c)(8).
- G. Revising paragraph (d).

The revisions and addition read as follows:

**§ 685.215 Discharge for false certification of student eligibility or unauthorized payment.**

(a) *Basis for discharge*—(1) *False certification.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the proceeds of a Direct Loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school—

(i) Certified the eligibility of a student who—

(A) Reported not having a high school diploma or its equivalent; and

(B) Did not satisfy the alternative to graduation from high school requirements under section 484(d) of the Act that were in effect at the time of certification;

(ii) Certified the eligibility of a student who is not a high school graduate based on—

(A) A high school graduation status falsified by the school; or

(B) A high school diploma falsified by the school or a third party to which the school referred the borrower;

(iii) Signed the borrower's name on the loan application or promissory note without the borrower's authorization;

(iv) Certified the eligibility of the student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet State requirements for employment (in the student's State of residence when the loan was originated) in the occupation for which the training program supported by the loan was intended; or

(v) Certified the eligibility of a student for a Direct Loan as a result of the crime of identity theft committed against the individual, as that crime is defined in paragraph (c)(5)(ii) of this section.

\* \* \* \* \*

(c) *Borrower qualification for discharge.* To qualify for discharge under this section, the borrower must submit to the Secretary an application for discharge on a form approved by the Secretary. The application need not be notarized but must be made by the borrower under penalty of perjury; and in the application, the borrower's responses must demonstrate to the satisfaction of the Secretary that the requirements in paragraph (c)(1) through (7) of this section have been met. If the Secretary determines the application does not meet the requirements, the Secretary notifies the applicant and explains why the application does not meet the requirements.

(1) *High school diploma or equivalent.* In the case of a borrower requesting a discharge based on not having had a high school diploma and not having met the alternative to graduation from high school eligibility requirements under section 484(d) of the Act applicable at the time the loan was originated, and the school or a third party to which the school referred the borrower falsified the student's high school diploma, the borrower must state in the application that the borrower (or the student on whose behalf a parent received a PLUS loan)—

(i) Reported not having a valid high school diploma or its equivalent at the time the loan was certified; and

(ii) Did not satisfy the alternative to graduation from high school statutory or regulatory eligibility requirements identified on the application form and applicable at the time the institution certified the loan.

(2) *Disqualifying condition.* In the case of a borrower requesting a discharge based on a condition that would disqualify the borrower from employment in the occupation that the training program for which the borrower received the loan was intended, the borrower must state in the application that the borrower (or student for whom a parent received a PLUS loan)—

(i) Did not meet State requirements for employment (in the student's State of residence) in the occupation that the training program for which the borrower received the loan was intended because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary.

(ii) [Reserved]

\* \* \* \* \*

(8) *Discharge without an application.* The Secretary discharges all or part of a loan as appropriate under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge. Such information includes, but is not limited to, evidence that the school has falsified the Satisfactory Academic Progress of its students, as described in § 668.34.

(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary provides the borrower an application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit the application described in paragraph (c) of this section within 60 days of the Secretary's providing the application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If the borrower submits the application described in paragraph (c) of this section, the Secretary determines whether the available evidence supports the claim for discharge. Available evidence includes evidence provided by the borrower and any other relevant information from the Secretary's records and gathered by the Secretary from other sources, including guaranty agencies, other Federal agencies, State authorities, test publishers, independent test administrators, school records, and cognizant accrediting associations. The Secretary issues a decision that explains the reasons for any adverse determination on the application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The Secretary considers any response from the borrower and any additional information from the borrower, and notifies the borrower whether the determination is changed.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination.

\* \* \* \* \*

#### § 685.220 [Amended]

■ 30. Section 685.220 is amended by:

■ A. Removing the words “subpart II of part B” from paragraph (b)(21) and adding in their place the words “part E”.

■ B. Removing paragraph (d)(1)(i).

■ C. Redesignating paragraph (d)(1)(ii) and (iii) as paragraphs (d)(1)(i) and (ii).

■ 31. Section 685.222 is added to subpart B to read as follows:

#### § 685.222 Borrower defenses.

(a) *General.* (1) For loans first disbursed prior to July 1, 2017, a borrower asserts and the Secretary considers a borrower defense in accordance with the provisions of § 685.206(c), unless otherwise noted in § 685.206(c).

(2) For loans first disbursed on or after July 1, 2017, a borrower asserts and the Secretary considers a borrower defense in accordance with this section. To establish a borrower defense under this section, a preponderance of the evidence must show that the borrower has a borrower defense that meets the requirements of this section.

(3) A violation by the school of an eligibility or compliance requirement in the Act or its implementing regulations is not a basis for a borrower defense under either this section or § 685.206(c) unless the violation would otherwise constitute a basis for a borrower defense under this section or § 685.206(c), as applicable.

(4) For the purposes of this section and § 685.206(c), “borrower” means—

(i) The borrower; and

(ii) In the case of a Direct PLUS Loan, any endorsers, and for a Direct PLUS Loan made to a parent, the student on whose behalf the parent borrowed.

(5) For the purposes of this section and § 685.206(c), a “borrower defense” refers to an act or omission of the school attended by the student that relates to the making of a Direct Loan for enrollment at the school or the provision of educational services for which the loan was provided, and includes one or both of the following:

(i) A defense to repayment of amounts owed to the Secretary on a Direct Loan, in whole or in part; and

(ii) A right to recover amounts previously collected by the Secretary on the Direct Loan, in whole or in part.

(6) If the borrower asserts both a borrower defense and any other objection to an action of the Secretary with regard to that Direct Loan, the order in which the Secretary will consider objections, including a borrower defense, will be determined as appropriate under the circumstances.

(b) *Judgment against the school.* The borrower has a borrower defense if the borrower, whether as an individual or as a member of a class, or a governmental agency, has obtained against the school a nondefault, favorable contested judgment based on State or Federal law in a court or administrative tribunal of competent jurisdiction. A borrower may assert a borrower defense under this paragraph at any time.

(c) *Breach of contract by the school.* The borrower has a borrower defense if the school the borrower received the Direct Loan to attend failed to perform its obligations under the terms of a contract with the student. A borrower may assert a defense to repayment of amounts owed to the Secretary under this paragraph at any time after the breach by the school of its contract with the student. A borrower may assert a right to recover amounts previously collected by the Secretary under this paragraph not later than six years after the breach by the school of its contract with the student.

(d) *Substantial misrepresentation by the school.* (1) A borrower has a borrower defense if the school or any of its representatives, or any institution, organization, or person with whom the school has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services, made a substantial misrepresentation in accordance with 34 CFR part 668, subpart F, that the borrower reasonably relied on to the borrower's detriment when the borrower decided to attend, or to continue attending, the school or decided to take out a Direct Loan. A borrower may assert, at any time, a defense to repayment under this paragraph (d) of amounts owed to the Secretary. A borrower may assert a claim under this paragraph (d) to recover funds previously collected by the Secretary not later than six years after the borrower discovers, or reasonably could have discovered, the information constituting the substantial misrepresentation.

(2) For the purposes of this section, a designated Department official pursuant to paragraph (e) of this section or a hearing official pursuant to paragraph (f), (g), or (h) of this section may consider, as evidence supporting the reasonableness of a borrower's reliance on a misrepresentation, whether the school or any of the other parties described in paragraph (d)(1) engaged in conduct such as, but not limited to:

(i) Demanding that the borrower make enrollment or loan-related decisions immediately;

(ii) Placing an unreasonable emphasis on unfavorable consequences of delay;

(iii) Discouraging the borrower from consulting an adviser, a family member, or other resource;

(iv) Failing to respond to the borrower's requests for more information including about the cost of the program and the nature of any financial aid; or

(v) Otherwise unreasonably pressuring the borrower or taking advantage of the borrower's distress or lack of knowledge or sophistication.

(e) *Procedure for an individual borrower.* (1) To assert a borrower defense under this section, an individual borrower must—

(i) Submit an application to the Secretary, on a form approved by the Secretary—

(A) Certifying that the borrower received the proceeds of a loan, in whole or in part, to attend the named school;

(B) Providing evidence that supports the borrower defense; and

(C) Indicating whether the borrower has made a claim with respect to the information underlying the borrower defense with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation; and

(ii) Provide any other information or supporting documentation reasonably requested by the Secretary.

(2) Upon receipt of a borrower's application, the Secretary—

(i) If the borrower is not in default on the loan for which a borrower defense has been asserted, grants forbearance and—

(A) Notifies the borrower of the option to decline the forbearance and to continue making payments on the loan; and

(B) Provides the borrower with information about the availability of the income-contingent repayment plans under § 685.209 and the income-based repayment plan under § 685.221; or

(ii) If the borrower is in default on the loan for which a borrower defense has been asserted—

(A) Suspends collection activity on the loan until the Secretary issues a decision on the borrower's claim;

(B) Notifies the borrower of the suspension of collection activity and explains that collection activity will resume if the Secretary determines that the borrower does not qualify for a full discharge; and

(C) Notifies the borrower of the option to continue making payments under a rehabilitation agreement or other repayment agreement on the defaulted loan.

(3) The Secretary designates a Department official to review the borrower's application to determine whether the application states a basis for a borrower defense, and resolves the claim through a fact-finding process conducted by the Department official.

(i) As part of the fact-finding process, the Department official notifies the school of the borrower defense application and considers any evidence or argument presented by the borrower and also any additional information, including—

(A) Department records;

(B) Any response or submissions from the school; and

(C) Any additional information or argument that may be obtained by the Department official.

(ii) Upon the borrower's request, the Department official identifies to the borrower the records the Department official considers relevant to the borrower defense. The Secretary provides to the borrower any of the identified records upon reasonable request of the borrower.

(4) At the conclusion of the fact-finding process, the Department official issues a written decision as follows:

(i) If the Department official approves the borrower defense in full or in part, the Department official notifies the borrower in writing of that determination and of the relief provided as described in paragraph (i) of this section.

(ii) If the Department official denies the borrower defense in full or in part, the Department official notifies the borrower of the reasons for the denial, the evidence that was relied upon, any portion of the loan that is due and payable to the Secretary, and whether the Secretary will reimburse any amounts previously collected, and informs the borrower that if any balance remains on the loan, the loan will return to its status prior to the borrower's submission of the application. The Department official also informs the

borrower of the opportunity to request reconsideration of the claim based on new evidence pursuant to paragraph (e)(5)(i) of this section.

(5) The decision of the Department official is final as to the merits of the claim and any relief that may be granted on the claim. Notwithstanding the foregoing—

(i) If the borrower defense is denied in full or in part, the borrower may request that the Secretary reconsider the borrower defense upon the identification of new evidence in support of the borrower's claim. "New evidence" is relevant evidence that the borrower did not previously provide and that was not identified in the final decision as evidence that was relied upon for the final decision. If accepted for reconsideration by the Secretary, the Secretary follows the procedure in paragraph (e)(2) of this section for granting forbearance and for defaulted loans; and

(ii) The Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision. If a borrower defense application is reopened by the Secretary, the Secretary follows the procedure paragraph (e)(2) of this section for granting forbearance and for defaulted loans.

(6) The Secretary may consolidate applications filed under this paragraph (e) that have common facts and claims, and resolve the borrowers' borrower defense claims as provided in paragraphs (f), (g), and (h) of this section.

(7) The Secretary may initiate a proceeding to collect from the school the amount of relief resulting from a borrower defense under this section—

(i) Within the six-year period applicable to the borrower defense under paragraph (c) or (d) of this section;

(ii) At any time, for a borrower defense under paragraph (b) of this section; or

(iii) At any time if during the period described in paragraph (e)(7)(i) of this section, the institution received notice of the claim. For purposes of this paragraph, notice includes receipt of—

(A) Actual notice from the borrower, a representative of the borrower, or the Department of a claim, including notice of an application filed pursuant to this section or § 685.206(c);

(B) A class action complaint asserting relief for a class that may include the borrower for underlying facts that may form the basis of a claim under this section or § 685.206(c);

(C) Written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower, for underlying facts that may form the basis of a claim under this section or § 685.206(c).

(f) *Group process for borrower defense, generally.* (1) Upon consideration of factors including, but not limited to, common facts and claims, fiscal impact, and the promotion of compliance by the school or other title IV, HEA program participant, the Secretary may initiate a process to determine whether a group of borrowers, identified by the Secretary, has a borrower defense.

(i) The members of the group may be identified by the Secretary from individually filed applications pursuant to paragraph (e)(6) of this section or from any other source.

(ii) If the Secretary determines that there are common facts and claims that apply to borrowers who have not filed an application under paragraph (e) of this section, the Secretary may identify such borrowers as members of a group.

(2) Upon the identification of a group of borrowers under paragraph (f)(1) of this section, the Secretary—

(i) Designates a Department official to present the group's claim in the fact-finding process described in paragraph (g) or (h) of this section, as applicable;

(ii) Provides each identified member of the group with notice that allows the borrower to opt out of the proceeding;

(iii) If identified members of the group are borrowers who have not filed an application under paragraph (f)(1)(ii) of this section, follows the procedures in paragraph (e)(2) of this section for granting forbearance and for defaulted loans for such identified members of the group, unless an opt-out by such a member of the group is received; and

(iv) Notifies the school of the basis of the group's borrower defense, the initiation of the fact-finding process described in paragraph (g) or (h) of this section, and of any procedure by which the school may request records and respond. No notice will be provided if notice is impossible or irrelevant due to a school's closure.

(3) For a group of borrowers identified by the Secretary, for which the Secretary determines that there may be a borrower defense under paragraph (d) of this section based upon a substantial misrepresentation that has been widely disseminated, there is a rebuttable presumption that each member



reasonably relied on the misrepresentation.

(g) *Procedures for group process for borrower defenses with respect to loans made to attend a closed school.* For groups identified by the Secretary under paragraph (f) of this section, for which the borrower defense is asserted with respect to a Direct Loan to attend a school that has closed and has provided no financial protection currently available to the Secretary from which to recover any losses arising from borrower defenses, and for which there is no appropriate entity from which the Secretary can otherwise practicably recover such losses—

(1) A hearing official resolves the borrower defense through a fact-finding process. As part of the fact-finding process, the hearing official considers any evidence and argument presented by the Department official on behalf of the group and, as necessary to determine any claims at issue, on behalf of individual members of the group. The hearing official also considers any additional information the Department official considers necessary, including any Department records or response from the school or a person affiliated with the school as described in § 668.174(b), if practicable. The hearing official issues a written decision as follows:

(i) If the hearing official approves the borrower defense in full or in part, the written decision states that determination and the relief provided on the basis of that claim as determined under paragraph (i) of this section.

(ii) If the hearing official denies the borrower defense in full or in part, the written decision states the reasons for the denial, the evidence that was relied upon, the portion of the loans that are due and payable to the Secretary, and whether reimbursement of amounts previously collected is granted, and informs the borrowers that if any balance remains on the loan, the loan will return to its status prior to the group claim process.

(iii) The Secretary provides copies of the written decision to the members of the group and, as practicable, to the school.

(2) The decision of the hearing official is final as to the merits of the group borrower defense and any relief that may be granted on the group claim.

(3) After a final decision has been issued, if relief for the group has been denied in full or in part pursuant to paragraph (g)(1)(ii) of this section, an individual borrower may file a claim for relief pursuant to paragraph (e)(5)(i) of this section.

(4) The Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision. If a borrower defense application is reopened by the Secretary, the Secretary follows the procedure in paragraph (e)(2) of this section for granting forbearance and for defaulted loans.

(h) *Procedures for group process for borrower defenses with respect to loans made to attend an open school.* For groups identified by the Secretary under paragraph (f) of this section, for which the borrower defense is asserted with respect to Direct Loans to attend a school that is not covered by paragraph (g) of this section, the claim is resolved in accordance with the procedures in this paragraph (h).

(1) A hearing official resolves the borrower defense and determines any liability of the school through a fact-finding process. As part of the fact-finding process, the hearing official considers any evidence and argument presented by the school and the Department official on behalf of the group and, as necessary to determine any claims at issue, on behalf of individual members of the group. The hearing official issues a written decision as follows:

(i) If the hearing official approves the borrower defense in full or in part, the written decision establishes the basis for the determination, notifies the members of the group of the relief as described in paragraph (i) of this section, and notifies the school of any liability to the Secretary for the amounts discharged and reimbursed.

(ii) If the hearing official denies the borrower defense for the group in full or in part, the written decision states the reasons for the denial, the evidence that was relied upon, the portion of the loans that are due and payable to the Secretary, and whether reimbursement of amounts previously collected is granted, and informs the borrowers that their loans will return to their statuses prior to the group borrower defense process. The decision notifies the school of any liability to the Secretary for any amounts discharged or reimbursed.

(iii) The Secretary provides copies of the written decision to the members of the group, the Department official, and the school.

(2) The decision of the hearing official becomes final as to the merits of the group borrower defense and any relief that may be granted on the group borrower defense within 30 days after the decision is issued and received by the Department official and the school unless, within that 30-day period, the

school or the Department official appeals the decision to the Secretary. In the case of an appeal—

(i) The decision of the hearing official does not take effect pending the appeal; and

(ii) The Secretary renders a final decision.

(3) After a final decision has been issued, if relief for the group has been denied in full or in part pursuant to paragraph (h)(1)(ii) of this section, an individual borrower may file a claim for relief pursuant to paragraph (e)(5)(i) of this section.

(4) The Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision. If a borrower defense application is reopened by the Secretary, the Secretary follows the procedure in paragraph (e)(2) of this section for granting forbearance and for defaulted loans.

(5)(i) The Secretary collects from the school any liability to the Secretary for any amounts discharged or reimbursed to borrowers under this paragraph (h).

(ii) For a borrower defense under paragraph (b) of this section, the Secretary may initiate a proceeding to collect at any time.

(iii) For a borrower defense under paragraph (c) or (d) of this section, the Secretary may initiate a proceeding to collect within the limitation period that would apply to the borrower defense, provided that the Secretary may bring an action to collect at any time if, within the limitation period, the school received notice of the borrower's borrower defense claim. For purposes of this paragraph, the school receives notice of the borrower's claim by receipt of—

(A) Actual notice of the claim from the borrower, a representative of the borrower, or the Department, including notice of an application filed pursuant to this section or § 685.206(c);

(B) A class action complaint asserting relief for a class that may include the borrower for underlying facts that may form the basis of a claim under this section or § 685.206(c); or

(C) Written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower, of underlying facts that may form the basis of a claim under this section or § 685.206(c).

(i) *Relief.* If a borrower defense is approved under the procedures in



paragraph (e), (g), or (h) of this section, the following procedures apply:

(1) The Department official or the hearing official deciding the claim determines the appropriate amount of relief to award the borrower, which may be a discharge of all amounts owed to the Secretary on the loan at issue and may include the recovery of amounts previously collected by the Secretary on the loan, or some lesser amount.

(2) For a borrower defense brought on the basis of—

(i) A substantial misrepresentation, the Department official or the hearing official will factor the borrower's cost of attendance to attend the school, as well as the value of the education the borrower received, the value of the education that a reasonable borrower in the borrower's circumstances would have received, and/or the value of the education the borrower should have expected given the information provided by the institution, into the determination of appropriate relief. A borrower may be granted full, partial, or no relief. Value will be assessed in a manner that is reasonable and practicable. In addition, the Department official or the hearing official deciding the claim may consider any other relevant factors;

(ii) A judgment against the school—

(A) Where the judgment awards specific financial relief, relief will be the amount of the judgment that remains unsatisfied, subject to the limitation provided for in § 685.222(i)(8) and any other reasonable considerations; and

(B) Where the judgment does not award specific financial relief, the Department will rely on the holding of the case and applicable law to monetize the judgment; and

(iii) A breach of contract, relief will be determined according to the common law of contracts, subject to the limitation provided for in § 685.222(i)(8) and any other reasonable considerations.

(3) In a fact-finding process brought against an open school under paragraph (h) of this section on the basis of a substantial misrepresentation, the school has the burden of proof as to any value of the education.

(4) In determining the relief, the Department official or the hearing official deciding the claim may consider—

(i) Information derived from a sample of borrowers from the group when calculating relief for a group of borrowers; and

(ii) The examples in Appendix A to this subpart.

(5) In the written decision described in paragraphs (e), (g), and (h) of this

section, the designated Department official or hearing official deciding the claim notifies the borrower of the relief provided and—

(i) Specifies the relief determination;

(ii) Advises that there may be tax implications; and

(iii) Advises the borrower of the requirements to file a request for reconsideration upon the identification of new evidence.

(6) Consistent with the determination of relief under paragraph (i)(1) of this section, the Secretary discharges the borrower's obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay and, if applicable, reimburses the borrower for amounts paid toward the loan voluntarily or through enforced collection.

(7) The Department official or the hearing official deciding the case, or the Secretary as applicable, affords the borrower such further relief as appropriate under the circumstances. Such further relief includes, but is not limited to, one or both of the following:

(i) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.

(ii) Updating reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan.

(8) The total amount of relief granted with respect to a borrower defense cannot exceed the amount of the loan and any associated costs and fees and will be reduced by the amount of any refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, compromise, or any other financial benefit received by, or on behalf of, the borrower that was related to the borrower defense. The relief to the borrower may not include non-pecuniary damages such as inconvenience, aggravation, emotional distress, or punitive damages.

(j) *Cooperation by the borrower.* To obtain relief under this section, a borrower must reasonably cooperate with the Secretary in any proceeding under paragraph (e), (g), or (h) of this section. The Secretary may revoke any relief granted to a borrower who fails to satisfy his or her obligations under this paragraph (j).

(k) *Transfer to the Secretary of the borrower's right of recovery against third parties.* (1) Upon the granting of any relief under this section, the borrower is deemed to have assigned to, and relinquished in favor of, the Secretary

any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the contract for educational services for which the loan was received, against the school, its principals, its affiliates, and their successors, its sureties, and any private fund. If the borrower asserts a claim to, and recovers from, a public fund, the Secretary may reinstate the borrower's obligation to repay on the loan an amount based on the amount recovered from the public fund, if the Secretary determines that the borrower's recovery from the public fund was based on the same borrower defense and for the same loan for which the discharge was granted under this section.

(2) The provisions of this paragraph (k) apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(3) Nothing in this paragraph (k) limits or forecloses the borrower's right to pursue legal and equitable relief against a party described in this paragraph (k) for recovery of any portion of a claim exceeding that assigned to the Secretary or any other claims arising from matters unrelated to the claim on which the loan is discharged.

(Authority: 20 U.S.C. 1087a *et seq.*; 28 U.S.C. 2401; 31 U.S.C. 3702)

■ 32. Section 685.223 is added to subpart B to read as follows:

#### **§ 685.223 Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1087a *et seq.*)

■ 33. Appendix A to subpart B of part 685 is added to read as follows:

#### **Appendix A to Subpart B of Part 685—Examples of Borrower Relief**

The Department official or the hearing official deciding a borrower defense claim determines the amount of relief to award the borrower, which may be a discharge of all amounts owed to the Secretary on the loan at issue and may include the recovery of amounts previously collected by the Secretary on the loan, or some lesser amount. The following are some conceptual examples demonstrating relief. The actual relief awarded will be determined by the Department official or the hearing official deciding the claim, who shall not be bound by these examples.

1. A school represents to prospective students, in widely disseminated materials, that its educational program will lead to employment in an occupation that requires State licensure. The program does not in fact meet minimum education requirements to enable its graduates to sit for the exam necessary for them to obtain licensure. The claims are adjudicated in a group process.

Appropriate relief: Borrowers who enrolled in this program during the time that the misrepresentation was made should receive full relief. As a result of the schools' misrepresentation, the borrowers cannot work in the occupation in which they reasonably expected to work when they enrolled. Accordingly, borrowers received limited or no value from this educational program because they did not receive the value that they reasonably expected.

2. A school states to a prospective student that its medical assisting program has a faculty composed of skilled nurses and physicians and offers internships at a local hospital. The borrower enrolls in the school in reliance on that statement. In fact, none of the teachers at the school other than the Director is a nurse or physician. The school has no internship program. The teachers at the school are not qualified to teach medical assisting and the student is not qualified for medical assistant jobs based on the education received at the school.

Appropriate relief: This borrower should receive full relief. None of the teachers at the school are qualified to teach medical assisting, and there was no internship. In contrast to reasonable students' expectations, based on information provided by the school, the typical borrower received no value from the program.

3. An individual interested in becoming a registered nurse meets with a school's admissions counselor who explains that the school does not have a nursing program but that completion of a medical assisting program is a prerequisite for any nursing program. Based on this information, the borrower enrolls in the school's medical assisting program rather than searching for another nursing program, believing that completing a medical assisting program is a necessary step towards becoming a nurse. After one year in the program, the borrower realizes that it is not necessary to become a medical assistant before entering a nursing program. The borrower's credits are not transferrable to a nursing program.

Appropriate relief: This borrower should receive full relief. Because it is not necessary to become a medical assistant prior to entering a nursing program, she has made no progress towards the career she sought, and in fact has received an education that cannot be used for its intended purpose.

4. A school tells a prospective student, who is actively seeking an education, that the cost of the program will be \$20,000. Relying on that statement, the borrower enrolls. The student later learns the cost for that year was \$25,000. There is no evidence of any other misrepresentations in the enrollment process or of any deficiency in value in the school's education.

Appropriate relief: This borrower should receive partial relief of \$5,000. The borrower

received precisely the value that she expected. The school provides the education that the student was seeking but misrepresented the price.

5. A school represents in its marketing materials that three of its undergraduate faculty members in a particular program have received the highest award in their field. A borrower choosing among two comparable, selective programs enrolls in that program in reliance on the representation about its faculty. However, although the program otherwise remains the same, the school had failed to update the marketing materials to reflect the fact that the award-winning faculty had left the school.

Appropriate relief: Although the borrower reasonably relied on a misrepresentation about the faculty in deciding to enroll at this school, she still received the value that she expected. Therefore, no relief is appropriate.

6. An individual wishes to enroll in a selective, regionally accredited liberal arts school. The school gives inflated data to a well-regarded school ranking organization regarding the median grade point average of recent entrants and also includes that inflated data in its own marketing materials. This inflated data raises the place of the school in the organization's rankings in independent publications. The individual enrolls in the school and graduates. Soon after graduating, the individual learns from the news that the school falsified admissions data. Notwithstanding this issue, degrees from the school continue to serve as effective, well-regarded liberal arts credentials.

The Department also determines that the school violated the title IV requirement that it not make substantial misrepresentations pursuant to 34 CFR 668.71, which constitutes an enforceable violation separate and apart from any borrower defense relief.

Appropriate Relief: The borrower relied on the misrepresentation about the admissions data to his detriment, because the misrepresentation factored into the borrower's decision to choose the school over others. However, the borrower received a selective liberal arts education which represents the value that he could reasonably expect, and gets no relief.

■ 34. Section 685.300 is amended by:

■ A. Redesignating paragraph (b)(11) as paragraph (b)(12).

■ B. Adding a new paragraph (b)(11).

■ C. Adding paragraphs (d) through (i).

The additions read as follows:

**§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.**

\* \* \* \* \*

(b) \* \* \*

(11) Comply with the provisions of paragraphs (d) through (i) of this section regarding student claims and disputes.

\* \* \* \* \*

(d) *Borrower defense claims in an internal dispute process.* The school will not compel any student to pursue a complaint based on a borrower defense claim through an internal dispute process before the student

presents the complaint to an accrediting agency or government agency authorized to hear the complaint.

(e) *Class action bans.* (1) The school will not seek to rely in any way on a predispute arbitration agreement or on any other predispute agreement with a student who has obtained or benefited from a Direct Loan, with respect to any aspect of a class action that is related to a borrower defense claim, including to seek a stay or dismissal of particular claims or the entire action, unless and until the presiding court has ruled that the case may not proceed as a class action and, if that ruling may be subject to appellate review on an interlocutory basis, the time to seek such review has elapsed or the review has been resolved.

(2) Reliance on a predispute arbitration agreement, or on any other predispute agreement, with a student, with respect to any aspect of a class action includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a class action.

(ii) Seeking to exclude a person or persons from a class in a class action.

(iii) Objecting to or seeking a protective order intended to avoid responding to discovery in a class action.

(iv) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action.

(v) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action after the trial court has denied a motion to certify the class but before an appellate court has ruled on an interlocutory appeal of that motion, if the time to seek such an appeal has not elapsed or the appeal has not been resolved.

(vi) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action after the trial court in that class action has granted a motion to dismiss the claim and, in doing so, the court noted that the consumer has leave to refile the claim on a class basis, if the time to refile the claim has not elapsed.

(3) *Required provisions and notices.*

(i) The school must include the following provision in any agreements with a student recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for whom the PLUS loan was obtained, that include any agreement regarding predispute arbitration or any other predispute agreement addressing class actions and that are entered into after the effective date of this regulation: "We agree that neither we nor anyone else will use this agreement to stop you from being part of a class action lawsuit in

court. You may file a class action lawsuit in court or you may be a member of a class action lawsuit even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Direct Loan or the provision by us of educational services for which the Direct Loan was obtained. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.”

(ii) When a predispute arbitration agreement or any other predispute agreement addressing class actions has been entered into before the effective date of this regulation and does not contain a provision described in paragraph (e)(3)(i) of this section, the school must either ensure the agreement is amended to contain the provision specified in paragraph (e)(3)(iii)(A) of this section or provide the student to whom the agreement applies with the written notice specified in paragraph (e)(3)(iii)(B) of this section.

(iii) The school must ensure the agreement described in paragraph (e)(3)(ii) of this section is amended to contain the provision specified in paragraph (e)(3)(iii)(A) or must provide the notice specified in paragraph (e)(3)(iii)(B) to students no later than the exit counseling required under § 685.304(b), or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment.

(A) *Agreement provision.* “We agree that neither we nor anyone else who later becomes a party to this agreement will use it to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court or you may be a member of a class action lawsuit in court even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.”

(B) *Notice provision.* “We agree not to use any predispute agreement to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court or you may be a member of a class action lawsuit even

if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.”

(f) *Predispute arbitration agreements.* (1)(i) The school will not enter into a predispute agreement to arbitrate a borrower defense claim, or rely in any way on a predispute arbitration agreement with respect to any aspect of a borrower defense claim.

(ii) A student may enter into a voluntary post-dispute arbitration agreement with a school to arbitrate a borrower defense claim.

(2) Reliance on a predispute arbitration agreement with a student with respect to any aspect of a borrower defense claim includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a judicial action filed by the student, including joinder with others in an action;

(ii) Objecting to or seeking a protective order intended to avoid responding to discovery in a judicial action filed by the student; and

(iii) Filing a claim in arbitration against a student who has filed a suit on the same claim.

(3) *Required provisions and notices.*

(i) The school must include the following provision in any predispute arbitration agreements with a student recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for whom the PLUS loan was obtained, that include any agreement regarding arbitration and that are entered into after the effective date of this regulation: “We agree that neither we nor anyone else will use this agreement to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit for such a claim or you may be a member of a class action lawsuit for such a claim even if you do not file it. This provision does not apply to lawsuits concerning other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of

educational services for which the loan was obtained.”

(ii) When a predispute arbitration agreement has been entered into before the effective date of this regulation that did not contain the provision specified in paragraph (f)(3)(i) of this section, the school must either ensure the agreement is amended to contain the provision specified in paragraph (f)(3)(iii)(A) of this section or provide the student to whom the agreement applies with the written notice specified in paragraph (f)(3)(iii)(B) of this section.

(iii) The school must ensure the agreement described in paragraph (f)(3)(ii) of this section is amended to contain the provision specified in paragraph (f)(3)(iii)(A) of this section or must provide the notice specified in paragraph (f)(3)(iii)(B) of this section to students no later than the exit counseling required under § 685.304(b), or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment.

(A) *Agreement provision.* “We agree that neither we nor anyone else who later becomes a party to this predispute arbitration agreement will use it to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit for such a claim or you may be a member of a class action lawsuit for such a claim even if you do not file it. This provision does not apply to other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.”

(B) *Notice provision.* “We agree not to use any predispute arbitration agreement to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit regarding such a claim or you may be a member of a class action lawsuit regarding such a claim even if you do not file it. This provision does not apply to any other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Direct Loan or the provision of educational services for which the loan was obtained.”

(g) *Submission of arbitral records.* (1) A school must submit a copy of the



following records to the Secretary, in the form and manner specified by the Secretary, in connection with any claim filed in arbitration by or against the school concerning a borrower defense claim:

(i) The initial claim and any counterclaim.

(ii) The arbitration agreement filed with the arbitrator or arbitration administrator.

(iii) The judgment or award, if any, issued by the arbitrator or arbitration administrator.

(iv) If an arbitrator or arbitration administrator refuses to administer or dismisses a claim due to the school's failure to pay required filing or administrative fees, any communication the school receives from the arbitrator or arbitration administrator related to such a refusal.

(v) Any communication the school receives from an arbitrator or an arbitration administrator related to a determination that a predispute arbitration agreement regarding educational services provided by the school does not comply with the administrator's fairness principles, rules, or similar requirements, if such a determination occurs.

(2) A school must submit any record required pursuant to paragraph (g)(1) of this section within 60 days of filing by the school of any such record with the arbitrator or arbitration administrator and within 60 days of receipt by the school of any such record filed or sent by someone other than the school, such as the arbitrator, the arbitration administrator, or the student.

(h) *Submission of judicial records.* (1) A school must submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any claim concerning a borrower defense claim filed in a lawsuit by the school against the student or by any party, including a government agency, against the school:

(i) The complaint and any counterclaim.

(ii) Any dispositive motion filed by a party to the suit; and

(iii) The ruling on any dispositive motion and the judgment issued by the court.

(2) A school must submit any record required pursuant to paragraph (h)(1) of this section within 30 days of filing or receipt, as applicable, of the complaint, answer, or dispositive motion, and within 30 days of receipt of any ruling on a dispositive motion or a final judgment.

(i) *Definitions.* For the purposes of paragraphs (d) through (h) of this section, the term—

(1) “Borrower defense claim” means a claim that is or could be asserted as a borrower defense as defined in § 685.222(a)(5), including a claim other than one based on § 685.222(c) or (d) that may be asserted under § 685.222(b) if reduced to judgment;

(2) “Class action” means a lawsuit in which one or more parties seek class treatment pursuant to Federal Rule of Civil Procedure 23 or any State process analogous to Federal Rule of Civil Procedure 23;

(3) “Dispositive motion” means a motion asking for a court order that entirely disposes of one or more claims in favor of the party who files the motion without need for further court proceedings;

(4) “Predispute arbitration agreement” means any agreement, regardless of its form or structure, between a school or a party acting on behalf of a school and a student providing for arbitration of any future dispute between the parties.

\* \* \* \* \*

■ 35. Section 685.308 is amended by revising paragraph (a) to read as follows:

**§ 685.308 Remedial actions.**

(a) The Secretary collects from the school the amount of the losses the Secretary incurs and determines that the institution is liable to repay under § 685.206, § 685.214, § 685.215(a)(1)(i), (ii), (iii), (iv) or (v), § 685.216, or § 685.222 or that were disbursed—

(1) To an individual, because of an act or omission of the school, in amounts that the individual was not eligible to receive; or

(2) Because of the school's violation of a Federal statute or regulation.

\* \* \* \* \*

■ 36. Section 685.310 is added to subpart C to read as follows:

**§ 685.310 Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1087a *et seq.*)

**PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM**

■ 37. The authority citation for part 686 continues to read as follows:

**Authority:** 20 U.S.C. 1070g, *et seq.*, unless otherwise noted.

■ 38. Section 686.42 is amended by revising paragraph (a) to read as follows:

**§ 686.42 Discharge of an agreement to serve.**

(a) *Death.* (1) If a grant recipient dies, the Secretary discharges the obligation to complete the agreement to serve based on—

(i) An original or certified copy of the death certificate;

(ii) An accurate and complete photocopy of the original or certified copy of the death certificate;

(iii) An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(iv) Verification of the grant recipient's death through an authoritative Federal or State electronic database approved for use by the Secretary.

(2) Under exceptional circumstances and on a case-by-case basis, the Secretary discharges the obligation to complete the agreement to serve based on other reliable documentation of the grant recipient's death that is acceptable to the Secretary.

\* \* \* \* \*

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## HEALD JPR MEMO

Privileged/Deliberative/Confidential

Draft of May 14, 2015

**I. Elements of the UCL applied to Heald Borrowers****A. The misrepresentation of placement rates identified in ED's Heald fine letter constitutes unfair competition under the Unfair Competition Law.**

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

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

In the Heald fine letter, ED found as follows:

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

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

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

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

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

<sup>5</sup> CAL CIV. C. § 1709.

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

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

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

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

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

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

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

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

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

<sup>8</sup> *Id.* at 709.

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

<sup>10</sup> *Kwikset Corp.*, 246 P.3d at 885-86.

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

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

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

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

No harm  
need be shown  
just that you  
didn't get  
what you  
bargained  
for.

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

<sup>11</sup> *Id.* at 329-30.

<sup>12</sup> 275 F.R.D. 282, 286 (C.D. Cal. 2011).

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

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1155.

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



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

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

#### **E. Statute of Limitations**

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

<sup>17</sup> 55 Cal.4th 1185, 1195-96 (Cal. 2013).

EVEREST/WYOTECH TRANSFERABILITY MEMO  
OCTOBER 2016

To: Under Secretary Ted Mitchell

From: Borrower Defense Unit

Date: October 24, 2016

Re: Recommendation for Everest/WyoTech Borrowers Alleging Transfer of Credit Claims

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The Borrower Defense team recommends borrower defense (BD) relief for students who: (1) enrolled at any Corinthian-operated, nationally accredited Everest<sup>1</sup> campus or at WyoTech's Laramie campus<sup>2</sup> between the time Corinthian opened or acquired the campus and April 2015; and (2) alleges that Corinthian misrepresented the transferability of credits earned at that campus. Corinthian represented that credits earned at these Everest campuses were generally transferable. These representations were false and misleading. Accordingly, for the reasons explained below, full BD relief is appropriate for all Everest and WyoTech Laramie borrowers alleging misrepresentations regarding the transferability of credits, subject to reduced relief for those borrowers impacted by the statute of limitations.

### BACKGROUND

Everest consistently misled prospective students about the transferability of credits earned at their campuses in two ways. First, school staff made explicit representations regarding transferability. Second, staff strongly implied transferability by emphasizing the school's accreditation status.

The misleading nature of these statements hinges on the key differences between national career-related and regional institutional accreditation. Traditionally, national accreditors accredit mainly for-profit, career-based, single-purpose institutions, both degree and non-degree.<sup>3</sup> By contrast, regional accreditors accredit public and private, mainly non-profit and degree-granting, two- and four-year institutions.<sup>4</sup> Broadly speaking, credits earned at nationally accredited colleges "are rarely accepted at regionally accredited schools;"<sup>5</sup> and have never been generally transferable.<sup>6</sup> Almost every Everest campus was nationally accredited since its inception, and Corinthian personnel were fully aware of the negative impact of their accreditation on transferability.<sup>7</sup> Nevertheless, as Senator Tom Harkin notes in his 2012 report on the for-profit college sector (the "Harkin Report"), recruiters at for-profits "sometimes play on prospective students' ignorance about accreditation in order to use their schools' accreditation as a selling point."<sup>8</sup>

As discussed below, Everest personnel regularly led prospective students to believe, either through express or strongly implied representations, that credits earned at Everest would generally be

<sup>1</sup> Everest schools include Florida Metropolitan University campuses, which Corinthian acquired in 1996 and later rebranded as Everest University.

<sup>2</sup> To date, the BD Team has only reviewed WyoTech claims from the Laramie campus. While we have no reason to believe the facts and recommendations in this memorandum do not apply to other WyoTech campuses, at this time we are not extending our analysis to those campuses. For the purposes of this memorandum, references to "Everest" include WyoTech Laramie.

<sup>3</sup> See Council for Higher Education Accreditation, *An Overview of US Accreditation*, <http://www.chea.org/pdf/Overview%20of%20US%20Accreditation%202015.pdf>. For this memorandum, "national" refers to national career-related accreditors or accreditation.

<sup>4</sup> *Id.* p. 2.

<sup>5</sup> Harkin Report, p. 56, citing Council for Higher Education Accreditation, *The Fundamentals of Accreditation: What Do You Need to Know*, Council for Higher Education Accreditation, p. 7, September 2002, [http://www.chea.org/pdf/fund\\_accred\\_20ques\\_02.pdf](http://www.chea.org/pdf/fund_accred_20ques_02.pdf) (accessed May 24, 2012).

<sup>6</sup> Herman Bounds, Ed.D., Director of the Accreditation Group at the Department of Education, confirmed to the BD team via email that it is a standard practice in higher education for regionally accredited schools to not accept nationally accredited school credits. He also confirmed that those policies are a historical norm.

<sup>7</sup> See Mark Pelesh's statement at <https://www.insidehighered.com/news/2007/02/26/transfer>.

<sup>8</sup> Harkin Report at 55.

accepted at regionally accredited post-secondary institutions. In actuality, those credits generally did not transfer to or were not accepted at regionally accredited schools.

## **I. Summary of Evidence of Representations of Transferability**

Everest staff orally represented to potential students that they could generally transfer their Everest credits to any other school. These oral representations occurred both in person and during telephone calls with prospective students. Specifically, the school personnel: (a) stated credits were generally transferable; and/or (b) “play[ed] on prospective students’ ignorance about accreditation” to make claims about national accreditation that strongly implied general transferability.<sup>9</sup>

### **A. Student Accounts of In-Person Oral Representations of Transferability**

Hundreds of student applications reviewed to date provide corroborative evidence that Everest admissions personnel regularly made misleading oral representations about transferability. Indeed, our review of claims spanning from 1998 through 2010 shows that personnel made consistent transferability claims throughout the entire time that Corinthian operated the schools.

A sample of claims from the Everest Brandon campus demonstrates the consistency and specificity of false transferability claims made by school representatives:

- “In my entrance interview, I was told that I should enroll in the paralegal program if I planned on being a lawyer. I was told guarantee that my credits would be good to transfer to USF or UT and then Stetson Law.”<sup>10</sup>
- “I was assured when I started that I could transfer my credits to any other school if I chose to do so.”<sup>11</sup>
- “I was told my credits would transfer to University of South Florida for my BA in Finance and they did not so I was stuck with all these loans and no school will take them I was told that employers will recognize the degree from them and they laugh at me.”<sup>12</sup>
- “Not a single credit was transferable. I specifically remember asking the rep before enrolling if credits were transferable and she said “absolutely,” never once telling me that accreditation of the school was not the same as a traditional.”<sup>13</sup>
- “The school told me that I would not have any problem transferring credits if I decided to further my education elsewhere or go to law school.”<sup>14</sup>
- “The representative for FMU, asked what my goals were for my education. I stated that I wanted to attend USF for a bachelors degree. He said my credits would absolutely transfer and that he worked hand in hand with the academic advisers over at USF, to help students transition smoothly. He said that my credits would transfer even mid-way through the program.”<sup>15</sup>
- “The admissions department also ensured me that earned credits would be accepted by other educational institutions... later discovered that credits from Everest University were not honored at state and local universities.”<sup>16</sup>

<sup>9</sup> As discussed below, in Section III(B)(1), footnote 102, the implied representations also constitute actionable material omissions.

<sup>10</sup> BD151795

<sup>11</sup> BD150990

<sup>12</sup> BD151323

<sup>13</sup> BD150355

<sup>14</sup> BD151723

<sup>15</sup> BD150789

<sup>16</sup> BD153129



- “I asked if I decided to transfer after rec associates degree would all credits transfer to any college? I was told, an associates is an associates no matter where it comes from.”<sup>17</sup>
- “Brian Walker admissions representative had stated that if I wanted to get a Masters degree from another college that my credits will transfer with no problem as FMU (now Everest) is accredited university”<sup>18</sup>
- “I asked if I could transfer my credits to get my Bachelor's degree after earning my Associate's and i was told they would transfer but I would receive a discount if i was to get my Bachelor's with them. They told me i could get my Master's anywhere because my credits would transfer. I asked for specific schools which would take the credits and I was told they don't see why anyone wouldn't take them . . . I was going to pursue my Master's but found out my credits do not transfer.”<sup>19</sup>

In all of the above examples, the school explicitly misrepresented the transferability of its credits to the student.

Applicants also state that the school represented general transferability via statements that Everest was “accredited” or “fully accredited.” Such implied representations of transferability are supported by the Harkin Report, as well as the Corinthian telephone audits and recordings discussed below. That this “accreditation” tactic, in context, created a strongly implied representation of transferability is illustrated by the fact that students who were unable to transfer their credits believe that Everest lied about being accredited at all (*italics added*):

- “FLORIDA METROPOLITAN UNIVERSITY-ONLINE (FMU-ONLINE) *LIED BY STATING THAT THEY WERE AN ACCREDITED UNIVERSITY WHEN IN FACT THEY KNOW THEY WERE NOT . . . THE MISCONDUCT FROM FMU-ONLINE PREVENTED ME TO TRANSFER ANY OF THE CLASSESS I HAD TAKEN THERE, TO BE TRANSFERABLE.*”<sup>20</sup>
- “Before i applied for the loan i was told my credit can be tranfer if need when i was attending class *i found out thats not true they [sic] are not a accredited school.*”<sup>21</sup>
- “I DID NOT KNOW THAT THE SCHOOL WAS NOT PROPERLY ACCREDITED. CREDIT WERE NOT TRANSFERABLE”<sup>22</sup>
- “Everest University misrepresented their accreditation I was told during my school interview that the school was accredited, *and later found out once I applied to other colleges that the school was not accredited.*”<sup>23</sup>
- “I actually went to Valencia once and they told me that they [Everest] are not accredited, thus I'd have to start all over again.”<sup>24</sup>
- “Throughout the course, there was speculation that the school was not accredited, but they continuously posted fake documents around the school claiming that they were accredited and that any credits we received would transfer over without any problem.”<sup>25</sup>
- “I was told that credits would transfer to other schools offering the same classes but when i tried to transfer after having ear problems i was told that *NONE of my credits could transfer because FMU [later Everest] was not an accredited school.*”<sup>26</sup>

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<sup>17</sup> BD153757

<sup>18</sup> BD150139

<sup>19</sup> BD150545

<sup>20</sup> BD154282

<sup>21</sup> BD153723

<sup>22</sup> BD152794

<sup>23</sup> BD152222

<sup>24</sup> BD150941

<sup>25</sup> BD150786

- “I am struggling to have my credits transfer to Southern New Hampshire University. They told me that since Everest is closing that it may be difficult to get any credits to transfer *because Everest is not an accredited institution. Everest told me that they were accredited.*”<sup>27</sup>

Whether students allege an explicit misrepresentation about transferability (“I was told all my credits would transfer”) or a strongly implied misrepresentation (“I was told the school was accredited, but then I found out my credits wouldn’t transfer”), the student statements are unprompted,<sup>28</sup> specific, and consistent across a span of years.

For example, of the 303 claims reviewed to date at the Everest-Brandon campus, 52 include the allegation that admissions personnel made express representations regarding transferability (examples of which were quoted above) and an additional 6 allege an implied misrepresentation (tying accreditation to transferability).<sup>29</sup> The student statements are consistent regarding the representations made, including details such as specific schools that would accept Everest credits, or the suggestion that credits earned in Everest’s paralegal program would enable students to continue on to law school.

The 58 Everest-Brandon transferability claims come from students who attended between 1998 and 2010.<sup>30</sup> Corinthian owned and controlled the Everest-Brandon location beginning in 1996, and the first claim alleging a transferability misrepresentation comes from a student who enrolled in 1998. We have transferability claims from this campus for each year from 1998 through 2010, with a spike in the late-2000s. We have fewer claims from earlier years, but those earlier claims bear the same indicia of reliability as the later claims. Significantly, the student statements about the admissions representatives’ misrepresentations exhibit consistency across the span of years:

- 1998: “I attended the school due to the flexible hours and the fact that I was told by the [the school] that my credits in fact would transfer over to other schools.”<sup>31</sup>
- 2000: “I was also told that my credits could transfer to any local college or university that was regionally accredited.”<sup>32</sup>
- 2006: “The school told me that I would not have any problem transferring credits if I decided to further my education elsewhere or go to law school.”<sup>33</sup>
- 2010: “...Also, was told that credits would transfer to any University (not true).”<sup>34</sup>

The pervasiveness and consistency of the misrepresentation over time at Everest-Brandon corroborate students’ allegations about transferability claims throughout the entirety of Corinthian’s control of the school.

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<sup>26</sup> BD150315

<sup>27</sup> BD152848

<sup>28</sup> All of the above student statements came from a variety of different types of applications including the Everest/WyoTech attestation form ED created for JPR 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 specifically ask about transfer of credits, but others do not, and ED’s attestation form only instructs borrowers to provide “any other information... that you think is relevant.”

<sup>29</sup> These figures do not include applications on the Debt Collective form where the applicant only checked the box indicating they were misled about “[t]he fact that my program lacked the required accreditation to allow me to work in my field and/or transfer my credits to another college” without providing any narrative.

<sup>30</sup> Review Group 15, from which these sample claims are taken, includes any Everest or WyoTech claim from students who enrolled before 2010. A few claims from students enrolled in 2010 can also be found in the review group.

<sup>31</sup> BD1617575

<sup>32</sup> BD1600530

<sup>33</sup> BD151723

<sup>34</sup> BD1613824

Significantly, just as the 58 Everest-Brandon claims corroborate each other, the number of similar allegations at and across multiple other campuses further corroborates students' allegations of transferability representations made by Everest personnel. Across campuses and across years, the similarity of student statements indicates that the misrepresentations were system-wide and, indeed, part of the Corinthian culture, discussed below, of enticing students to enroll at any cost.<sup>35</sup>

Campus	Applications reviewed	Applications alleging an express or implied transferability representation	%
Everest Brandon	303	58	19
Everest Grand Rapids	46	11	24
Everest Orange Park	36	9	25
Everest Orlando North	45	11	24
Everest Orlando South	157	56	36
Everest Phoenix <sup>36</sup>	81	22	27
Everest Pompano Beach	28	10	36
Everest Rochester	53	15	28
Everest Tampa	26	10	38
WyoTech Laramie	18	6	33
<b>TOTAL</b>	<b>793</b>	<b>198</b>	<b>25</b>

The campuses shown above represent the nine Everest campuses, and one WyoTech campus, for which we have the most claims. The campuses are located in five separate states (AZ, FL, MI, NY, and WY) and the total applications reviewed are from the period of time when Corinthian gained control of the campus<sup>37</sup> through 2010. Every campus from which we have reviewed a significant number of applications has revealed that between one-fifth and one-third of total applicants allege a misrepresentation about transferability of credits. Just like the Everest-Brandon campus discussed above, the transferability claims from these campuses are 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 are making extremely similar allegations about what the schools said about transferability – whether that student enrolled at Brandon in 1998 or Rochester in 2008.

Accordingly, we recommend no further year-by-year or campus-by-campus breakdown for every one of the over ninety Everest campuses as unnecessary. The hundreds of claims reviewed corroborate that Everest personnel made representations that credits were generally transferable beginning shortly after Corinthian opened or gained control of a campus.

## **B. Telephone Scripts, Audits, and Recordings**

Not surprisingly, Corinthian's training documents do not contain express misrepresentations about transferability. However, they lay the foundation for abuses by failing to emphasize the non-transferability of credits or other potentially important information and in some cases tacitly encouraging misinformation. For example, in a Corinthian presentation entitled "Overcoming Phone Obstacles" attached to the Harkin Report, Corinthian instructs its admissions representatives to provide limited

<sup>35</sup> See discussion below, Section III(C), detailing Corinthian's high-pressure sales techniques and internal emphasis on enrolling as many students as possible whether or not it is in the students' interest.

<sup>36</sup> Although Everest Phoenix was a regionally accredited campus, these figures are included for their corroborative value in establishing that Everest personnel regularly made representations regarding transferability.

<sup>37</sup> The oldest Everest campuses were opened in California in 1995. Others opened anywhere between 1996 and 2012. The nine campuses contained in the chart opened or came under Corinthian control between 1996 and 2004.

information.<sup>38</sup> By encouraging its admissions representatives to listen more and talk less, Corinthian believed it could give the student “limited information that will bring the student into the school.”<sup>39</sup> Similarly, a training manual for admissions representatives attached to the Harkin Report contains call scripts for admissions representatives.<sup>40</sup> One section of the script suggests that representatives tell students who ask that credits “will probably not be transferable,”<sup>41</sup> but a later sample conversation instructs the representatives to tell students: “... you’ll need to ask the receiving institution that question. I can’t tell you what their policy might be because every institution sets their own policy regarding credit transfer.”<sup>42</sup>

However, an internal Corinthian audit shows that even to the extent the scripts accurately described the transferability of Corinthian credits, admissions representatives under pressure to enroll students frequently did not follow them. A 2012 audit of Everest’s Online Learning Division – Colorado Springs, Tempe,<sup>43</sup> and Tampa (which includes Brandon, South Orlando, and Pompano Beach) – identified substantial failures to provide accurate information regarding the transferability of credits during calls with prospective students. Specifically, representatives for the Colorado Springs campus “failed to or incorrectly mentioned” credit transferability 31% of the time when students asked; at Tempe and Tampa, these errors occurred in 40% of audited calls.<sup>44</sup> Karen Fleming, a quality assurance and compliance auditor for Corinthian, summed up the inaccurate information on transferability in an April 13, 2012 email to colleagues, stating: “Admissions representative[s] did not inform the student that if they wish to transfer their credits from Everest to another institution, that the acceptance of those credits would be at the judgment of the receiving institution...”<sup>45</sup>

Recordings of phone calls supplied by the Illinois Attorney General further illustrate that Corinthian employees misled potential students to believe that credits would be accepted at other schools. In summaries of 9 out of 29 recorded calls between Everest call center employees and prospective students provided to us by the Illinois Attorney General’s office, Everest representatives gave prospective students information about transferability that was either false or technically accurate but misleading.<sup>46</sup> In one phone call, the representative directly links accreditation to transferability stating: “We are a nationally accredited school. So you can use that almost anywhere you go.”<sup>47</sup> Another representative, after confirming the school was accredited, refused to answer a prospective student’s question about transferability.<sup>48</sup>

<sup>38</sup> Harkin report, Appendix 25, CoCo Document 3.

<sup>39</sup> *Id.* at p. 7

<sup>40</sup> Harkin report, Appendix 25, CoCo Document 4

<sup>41</sup> Harkin report, Appendix 25, CoCo Document 4, pp. 7-8

<sup>42</sup> Harkin report, Appendix 25, CoCo Document 4, p. 14

<sup>43</sup> Everest Tempe was one of the regionally accredited campuses in Arizona. While the effect of accreditation on transferability for the AZ campus is not the same as for nationally accredited schools, the fact that representatives for that campus either failed to provide accurate information, or affirmatively provided inaccurate information, regarding transferability between 20% and 40% of the time when observed serves to corroborate allegations that such representations were regularly made regarding other campuses nationwide.

<sup>44</sup> Quach Decl. Ex. 40, at CCICA156477. After a “corrective action plan” was initiated, those numbers dropped to 18% at Colorado Springs, 20% at Tempe, and 26% at Tampa. *See* Quach Decl. Ex. 40, at CCICA156454

<sup>45</sup> *Id.*

<sup>46</sup> IL AG “Hot Call” table

<sup>47</sup> IL AG; 3333182367\_3333182298\_efb49c0853f315387993e156

<sup>48</sup> ““The school will obviously give you the education and credentials with regard to certification” 24:00 “Are you guys accredited.” A: “Absolutely.” Student then asked about transfer of credits. She wouldn’t answer. IL AG; Second Leg, 3333592713\_3333592639\_13469370falb53e21c997bc8



## II. Summary of Evidence of Falsity of Representation

Three main sources of evidence demonstrate that credits from Everest were not generally transferable to most other schools. The first is the nature of the schools' accreditation. The second is the *Transfer Credit Practices* guide, which admissions officers use to determine how other schools treat a school's credits. The third is a survey we conducted of transfer policies in a few states that had large populations of Everest students. Additionally, public statements by Corinthian executives show that Corinthian was aware that credits from their schools were not generally transferable.

### A. Accreditation

Regionally accredited schools generally do not accept transfer credit from nationally accredited schools. Most of the nation's two- and four-year degree-granting post-secondary schools are regionally accredited, while national accrediting agencies accredit career, vocational, and trade schools. Generally, schools that are regionally accredited will not accept credits from nationally accredited schools.

A 2014 study by the National Center for Education Statistics found that 81.4% - 84.3% of students who transfer to, from, or between nationally accredited schools have none of their earned credits transfer (compared to 37% of students transferring between regionally accredited schools),<sup>49</sup> and that the average student transferring to, from, or between nationally accredited schools lost 83% - 90% of their credits upon transfer (compared to an average loss of 39% for regional to regional transfers).<sup>50</sup> The California State University system, the largest four-year public university system in the US, does not generally accept credits from *any* institution without regional accreditation.<sup>51</sup> Similarly, major systems in Florida, Georgia, Texas, Minnesota, and Massachusetts only generally accept credits from regionally accredited schools.<sup>52</sup>

Similarly, a GAO report found that among regionally accredited schools, 63% specified that they accepted credits from *any* regionally accredited school, whereas only 14% specified that they accepted transfer credits from nationally accredited schools;<sup>53</sup> less than one percent of post-secondary institutions specified that accreditation was not a factor in their transfer decisions.<sup>54</sup> Nationally accredited institutions told the GAO that their students "often have difficulty transferring credits and that . . . regionally accredited institutions did not always accept courses taken at the nationally accredited institution."<sup>55</sup> Nationally accredited institutions reported that they "advised students to assume that credits would not transfer to regionally accredited institutions."<sup>56</sup>

<sup>49</sup> Simone, S.A. (2014). *Transferability of Postsecondary Credit Following Student Transfer or Coenrollment* (NCES 2014-163). U.S. Department of Education. Washington, DC: National Center for Education Statistics. p. 36

<sup>50</sup> *Id.* at 37. While the study did not conclude there was a direct link between accreditation status and credit transfer, it did find that accreditation status was a factor in credit transfer. The importance of that "factor" is highlighted in the percentage of transfer credits lost when nationally accredited students attempts to transfer those credits. Moreover, experts in the field consider accreditation to be a major factor in credit transferability. According to Christine Kerlin, Ed.D., the "type of accreditation is one of the first considerations, and often the primary consideration, by a receiving institution in reviewing transfer credit." See Expert Rebuttal Report to Expert Report by Dennis M. Cariello in the Matter of *State of Minnesota by its Attorney General, Lori Swanson v. Minnesota School of Business, Inc. et al.* at 4 (July 2015). See also statements of Herman Bounds, Ed.D, Director of Accreditation Group at the Department of Education, referenced in FN 6.

<sup>51</sup> *Transfer Credit Practices*, 2015 Edition

<sup>52</sup> See "Survey of Two- and Four-Year Schools in Selected States", Section II(C).

<sup>53</sup> GAO-06-22, p. 9

<sup>54</sup> GAO-06-22, p. 9

<sup>55</sup> *Id.*, p. 10

<sup>56</sup> *Id.*

The fact that regionally accredited schools generally do not accept nationally accredited credits has always been true. The 2005 GAO report treats the issue as the status quo, and not a recent development.<sup>57</sup> Until the last couple decades, credit transfer between nationals and regionals was a non-issue since, historically, nationally accredited schools offered technical certificates, not degree programs.<sup>58</sup> However, in the last 15-20 years, more nationally accredited schools have started offering degree programs, and the inability of those credits to transfer has become a larger issue.<sup>59</sup>

Corinthian itself was sufficiently aware of the impact of national accreditation on transferability that it supported various regulatory and/or legislative efforts to require schools to “state that they will not automatically reject credit from nationally accredited institutions.”<sup>60</sup> In 2007, Corinthian’s VP for legislative and regulatory affairs, Mark Pelesh, stated: “Students are required too often to repeat coursework, pay for something twice, use the public’s resources in terms of federal and state financial aid, and have impediments put in the way to advancing their career objectives... it’s high time we do something that has some regulatory teeth and impact.”<sup>61</sup>

## B. Transfer Credit Practices of Designated Educational Institutions

The *Transfer Credit Practices of Designated Educational Institutions*, a reference guide published by the American Association of Collegiate Registrars and Admissions Officers, also demonstrates that these credits were not generally transferable as Corinthian frequently told borrowers. It reports the transfer acceptance practices of one major institution in each state, usually the flagship campus of the state university system, regarding credit from institutions in that state. Other schools are not required to follow the reporting school’s policies, but the guide is useful for determining how institutions’ credits are treated generally.

In a review of *Transfer Credit Practices* from the last twenty years,<sup>62</sup> none of the reporting institutions, outside of Arizona, had a policy of generally accepting credits from Everest. Outside of Arizona, the most favorable policy regarding credits from Everest was one university system that accepted them “on a provisional basis subject to validation as prescribed by the reporting institution.”<sup>63</sup> All other reporting institutions either had no official policy or did not normally accept credits from Everest.<sup>64</sup>

<sup>57</sup> See also <https://www.americanprogress.org/issues/higher-education/report/2015/12/14/127200/linked-on-accreditation-a-historical-perspective/>; [https://en.wikipedia.org/wiki/Regional\\_accreditation](https://en.wikipedia.org/wiki/Regional_accreditation); El-Kwahas, Elaine (2001) *Accreditation in the USA: Origins, Developments, and Future Prospects* <http://unesdoc.unesco.org/images/0012/001292/129295e.pdf>; Brittingham, Barbara (2009) *Accreditation in the United States: How Did We Get to Where We Are?* <http://onlinelibrary.wiley.com/doi/10.1002/he.331/pdf>; <http://www.acics.org/accreditation/content.aspx?id=2258>

<sup>58</sup> See “Council for Higher Education Accreditation: Transfer and the Public Interest” (Nov. 2000) available at [http://www.chea.org/pdf/transfer\\_state\\_02.pdf](http://www.chea.org/pdf/transfer_state_02.pdf), where, without addressing for-profits specifically, the reports states that “higher education is experiencing a significant change in how students attend college and who provides higher education”; see also “History of Accreditation” available on a major national accreditor’s website at <http://www.acics.org/accreditation/content.aspx?id=2258>.

<sup>59</sup> Herman Bounds, Ed.D., Director of the Accreditation Group at the Department of Education, confirmed to the BD team via email that it is a standard practice in higher education for regionally accredited schools to not accept nationally accredited school credits. He also confirmed that those policies are a historical norm. See also 2006 Spellings Report (ED report arguing that something needs to be done about credit transfer practices).

<sup>60</sup> <https://www.insidehighered.com/news/2005/10/19/transfer>

<sup>61</sup> <https://www.insidehighered.com/news/2007/02/26/transfer>

<sup>62</sup> The 1994-1996, 1996-1998, 1998-2000, 2006, 2009, 2012, and 2015 editions.

<sup>63</sup> California State University, Northridge, for certain Everest campuses, but only in 2006 and 2012. Of the 6 Everest campuses from which CSU would accept credits on a provisional basis, credits from 5 of those were limited to “graduate, professional, or technical programs only”. By 2015, CSU Northridge policy for all Everest/WyoTech campuses was “credit not normally accepted”.

<sup>64</sup> Florida statute allows nationally accredited schools to participate in the Statewide Course Numbering System, which may allow credits taken at those schools to transfer, but for the Everest campuses that participated in the System, “the credentials of

### C. Survey of Two- and Four-Year Schools in Selected States

In May 2016, the BD Team also surveyed the transfer policies of two- and four-year schools in three of the states with high numbers of Everest students (FL, GA, and TX), regarding credits earned at Everest. We reviewed the schools' credit transfer acceptance policies available online, emailed admissions officers, and/or spoke directly with admissions officers. None of the state four-year school systems had a policy of generally accepting credits from nationally accredited schools, including Everest.<sup>65</sup> Most of the two-year community colleges would only accept credits from regionally accredited schools on a general basis (one two-year school in FL and one in TX regularly accepted credits from ACICS schools, including Everest).

Similarly, as part of their investigation into Everest campuses in Massachusetts, MA AGO contacted several two- and four-year schools within commuting distance of the Everest schools. None of the schools normally accepted credits from Everest, with all of the four-year and one of the two-year schools specifying that they only had acceptance policies for regionally accredited schools.<sup>66</sup> The UMass flagship campus either was not contacted or did not reply, but according to its website, "the following courses generally will not transfer to UMass: Taught by a school which does not have regional academic accreditation at the post-secondary level."<sup>67</sup>

### D. Student Accounts

Unsurprisingly, student accounts also show that other institutions of higher learning did not accept credits earned at Everest:

- "I am currently a student at Daytona State College and have been forced to repeat many of the courses I took and paid for at Florida Metropolitan University [Everest Orlando North]. Daytona State does not recognize any of credits earned at FMU, forcing me to repeat them and continue to pay a student loan on worthless education."<sup>68</sup>
- "I tried to enroll at University of Central Florida, Seminole State College and Valencia College. UCF did not even respond to me. SSC and Valencia informed me that they could not accept my credits."<sup>69</sup>
- "I was Told all college credits would transfer, it didn't matter that this college was private, I spoke with a community college advisor and none of these credits transfer."<sup>70</sup>
- "Credits were not transferable. I checked with Western Dakota Tech in Rapid City SD at the time as I felt I was not getting the education I was promised."<sup>71</sup>

In some instances, students even lost the majority of credits earned at one Everest campus when they transferred or re-enrolled at another Everest campus. One student writes: "The fact is none of them [credits earned at Tampa] were accepted by Tempe Everest even though it was from their OWN sister

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faculty teaching each course are considered in determining the number assigned to the course and the transferability of the course", those Everest campuses are still listed as "credits not normally accepted".

<sup>65</sup> University of Florida (Gainesville), University of West Florida, the Georgia State University system, University of Georgia (Athens), University of Texas (Austin), University of Texas (San Antonio), Baylor University, and Rice University. Florida State University (Tallahassee) would accept, and has accepted, Everest credits on a provisional basis, upon review, as noted above.

<sup>66</sup> MA AGO, Ex. 34

<sup>67</sup> <https://www.umass.edu/registrar/students/transfer-information/transfer-credit>

<sup>68</sup> BD151803

<sup>69</sup> BD1604707

<sup>70</sup> BD150366

<sup>71</sup> BD155798



school.”<sup>72</sup> Another student reports: “They told me that I will be able to use my previous credit... but [Everest Orlando South] made me take the class again.”<sup>73</sup>

This inability to transfer credits to other institutions is consistent both at individual campuses and between campuses during the time they were operated by Corinthian.

### **III. Application of the Borrower Defense Regulation Supports Eligibility and Full Relief for These Borrowers, Subject to Reduction for Borrowers Affected by the Statute of Limitations**

Under the current borrower defense regulation, students must allege an “act or omission” of their school “that would give rise to a cause of action against the school under applicable State law” to be eligible for relief.<sup>74</sup> The applicable state law here is California’s UCL, which prohibits a wide range of business practices that constitute unfair competition, including corporate misrepresentations. For the following reasons, the cohort of Everest students identified below applying for borrower defense relief predicated on Everest’s transferability misrepresentations: 1) have standing under the California UCL; and 2) are eligible for relief under the “unlawful” and “fraudulent” prongs of the UCL. Moreover, given the lack of value conferred by Everest 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. Everest Students Have Standing Under California’s UCL**

Both students who attended Everest programs in California and those who attended campuses in other states have standing under the California UCL. First, students attending Everest programs in California can demonstrate standing under the UCL by alleging that they relied on misrepresentations made by Everest regarding the transferability of Everest course credits. Any person “who has suffered injury in fact and has lost money or property as a result of the unfair competition” has standing to bring a claim under the UCL.<sup>75</sup> Second, while California statutes do not generally have effect outside of California, “[California] statutory remedies may be invoked by out-of-state parties when they are harmed by wrongful conduct occurring in California.”<sup>76</sup> Courts look to “where the defendant does business, whether the defendant’s principal offices are located in California, where class members are located, and the location from which advertising and other promotional literature decisions were made”<sup>77</sup> when determining whether non-California residents may avail themselves of California’s consumer protection statutes. Corinthian and its subsidiaries, through which it operated Everest schools, had their primary places of business and headquarters in California,<sup>78</sup> had more campuses in California than any other state,<sup>79</sup> produced and coordinated marketing and advertising in California,<sup>80</sup> and developed and promulgated the policies and training materials for their personnel in California.<sup>81</sup> Further, the single

<sup>72</sup> BD1603868

<sup>73</sup> BD155063

<sup>74</sup> 34 C.F.R. § 685.206(c).

<sup>75</sup> CAL. BUS. & PROF. CODE §17204.

<sup>76</sup> *Norwest Mortgage, Inc. v. Super. Ct.*, 72 Cal.App.4th 214, 224-25, 85 Cal.Rptr.2d 18(Cal.Ct.App. 1999)

<sup>77</sup> *In re Clorox Consumer Litigation*, 894 F.Supp.2d 1224, 1237 -1238 (N.D.Cal., 2012) (citing *In re Toyota Motor Corp.*, 785 F.Supp.2d 883, 917 (C.D.Cal.2011)).

<sup>78</sup> CCI Answer CA Amended Complaint ¶¶9-27

<sup>79</sup> There were 27 Corinthian campuses in California (14 Everest, 3 WyoTech, and 10 Heald). The other states with large numbers of Corinthian campuses were Florida (15 Everest and 1 WyoTech campuses) and Texas (9 Everest campuses).

<sup>80</sup> Tim Evans Interview, WI AG Sutherlin Affidavit Ex. 12 (“Evans said that all advertising was done by corporate.”); Mark Sullivan interview, WI AG Sutherlin Affidavit Ex. 13 (“He [Sullivan] didn’t do any of the marketing. That wasn’t done by the local campuses.”); Deposition of Scott Lester, WI AG Sutherlin Ex. 15 (“Every bit of marketing came out of corporate. Every marketing decision came from corporate.”)

<sup>81</sup> WI Educational Approval Board letters to Everest Milwaukee, WI AG Sutherline Affidavit, Ex. 10



incoming call facility for prospective Everest students from the throughout the nation was located in California.<sup>82</sup>

Additionally, 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:

- “Q: And when the Admissions Reps were making representations to the students about the externships, about the career possibilities, about what life could be, were those accurate representations given the state of the school?  
A: *They were the representations that they were given by corporate as part of their -- the way they were told to do the job. Were they accurate? No.*”<sup>83</sup>
- Call center representatives “were trained to lie.”<sup>84</sup>
- “There is a huge cultural issue at Corinthian Colleges that quietly promotes dishonesty & fraud at all the Everest campuses. *This culture of dishonesty & intimidation is generated by the corporate office that has spread all over the company like cancer.*”<sup>85</sup>

Based on these factors – that Corinthian was headquartered and had its principal place of business in California, and that decisions and policies made by its California based corporate leadership harmed Everest students across the nation – Everest students from campuses nationwide have standing under the California UCL.

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

California’s UCL prohibits, and provides civil remedies for, unfair competition, which it broadly defines to include “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law].”<sup>86</sup> Here, Everest’s misrepresentations regarding the transfer of credits constitute “unlawful” and “fraudulent” business practices under the UCL.<sup>87</sup>

### **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.”<sup>88</sup> Thus, if a business practice violates any law, this is *per se* a UCL violation.<sup>89</sup>

Corporate misrepresentations like those Everest made regarding transferability are prohibited by a number of state and federal laws. In particular, Everest’s misrepresentation of the transferability of its

<sup>82</sup> Interview Report, Ivan Limpin, Former Employee, Corinthian Schools Call Center (Feb. 28, 2013); taken by CA AG Office.

<sup>83</sup> Deposition of Scott Lester, Everest Milwaukee Director of Admissions, later President. WI AG, Ex. 15

<sup>84</sup> Interview Report, Ivan Limpin, Former Employee, Corinthian Schools Call Center (Feb. 28, 2013); taken by CA AG Office.

<sup>85</sup> Letter from Anonymous former Everest employee to ACCSC Commissioner, Ex. 54 of CA AG Motion for Default at CCICA179681

<sup>86</sup> *Id.*; *Kwikset Corp. v. Superior Court*, 51 Cal. App. 4th 310, 320 (2011); *see also Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999).

<sup>87</sup> Although not discussed here, Everest’s transferability misrepresentations may also be unfair competition under two other prongs of Section 17200: “unfair, deceptive or untrue advertising” and “unfair...business act or practice.” Courts typically fail to distinguish the false advertising prong from the fraudulent business practices prong; this memorandum focuses on the fraudulent business practices prong. *See* Stern, Business and Professional Code § 172000 Practice at 3:212 (2016).

<sup>88</sup> *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1266 (1992) (citations omitted).

<sup>89</sup> *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).

credits violates the prohibition against deceptive advertising in the Federal Trade Commission Act (“FTC Act”).<sup>90</sup> Determining whether an advertisement violates the FTC Act involves a three-step inquiry considering: “(i) what claims are conveyed in the ad, (ii) whether those claims are false, misleading, or unsubstantiated, and (iii) whether the claims are material to prospective purchasers.”<sup>91</sup>

As described above, Everest’s representations about the transferability of its credits were false, erroneous and misleading. Everest’s transfer of credits representations misled students about the value of the credits they would be earning at Everest. Based on the school’s misrepresentations, individuals considering enrolling at Everest would have the false belief that Everest credits would not only allow them to obtain an Everest degree, but would also provide them with credits generally transferable to any other institution.

A false or misleading misrepresentation violates the FTC Act if it is material. To be material, “a claim does not have to be the *only* factor or the *most* important factor likely to affect a consumer’s purchase decision, it simply has to be an important factor”; furthermore, express claims are presumptively material.<sup>92</sup> Everest’s transferability representations meet the FTC Act’s materiality threshold, because borrowers relied on the promise of transferable credits when making their enrollment decision. In applications submitted to the Department,<sup>93</sup> these borrowers have specifically identified false representations regarding transferability as some of the misconduct giving rise to their claim. Many students’ applications specifically state that they intended to continue their educations at four-year schools.<sup>94</sup> For other students intent on beginning a career as soon as possible, the transferability of credits and ability to continue academically offered an alternative if they were unable to find a job immediately.<sup>95</sup> Finally, students considered the transferability of credits earned at an institution to be an indicator of the quality and value of that institution’s instruction.<sup>96</sup>

<sup>90</sup> 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.”).

<sup>91</sup> *POM Wonderful, LLC v. F.T.C.*, 777 F.3d 478, 490 (D.C. Cir. 2015), cert. denied, 136 S. Ct. 1839 (2016) (citing cases).

<sup>92</sup> *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.”).

<sup>93</sup> Although many of these applicants submitted statements signed under penalty of perjury, some applicants submitted their materials prior to the publication of the Department’s form and therefore made unsworn statements.

<sup>94</sup> “They claimed that all credits earned would be accepted by any other colleges... I wanted to continue my education and perhaps attend law school but was told that a majority, if not all of my credits from Everest, would not be accepted.” BD150202; “I was told that after completing my AA in Forensics I would be able to take the credits and pursue a Bachelors degree in Forensic Psychology which would double/triple my future earnings...” BD150303

<sup>95</sup> “After graduating and not being able to get into the career I had studied for. I tried transferring credits and could not find schools that wanted to accept them.” BD151251; “One of my first questions once I enrolled in Everest University was regarding the credibility and accreditation of the school. I wanted to make sure that upon graduation, I would be able to find a job and/or be able to further my education using Everest as a foundation.” BD1602822

<sup>96</sup> “‘Students who may not even be interested in transferring credits nonetheless will ask us whether other institutions will accept their credits.’ [Corinthian Executive Vice President for Legislative and Regulatory Affairs Mark] Pelesh said. ‘What they’re really asking is, is this a legitimate institution? Is it part of the legitimate postsecondary higher education world?’ And policies

These students' reliance on such claims is reasonable given the importance of transferability to students, as evidenced by the plight of many Everest students after the institution closed. Thus, Everest's transferability misrepresentations constitute unlawful business practices under the UCL.

## 2. The Fraudulent Prong

Everest's misrepresentations regarding the transferability of its credits also are a fraudulent business practice under the UCL, and are therefore another form of unfair competition providing an independent basis for borrower defense relief for Everest 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."<sup>97</sup> The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.<sup>98</sup> 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.<sup>99</sup> As noted, the transferability representations that Everest made to students were false and likely to deceive, for the reasons discussed above and in Section II.

In order to bring a cause of action under the UCL, an individual must have "suffered injury in fact and... lost money or property" as a result of the deceptive practice alleged.<sup>100</sup> However, for a consumer who was deceived into purchasing a product<sup>101</sup>—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<sup>102</sup> of the entity.<sup>103</sup>

Reliance on the misrepresentation does not have to be "the sole or even the predominant or decisive factor influencing"<sup>104</sup> 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."<sup>105</sup>

As discussed above, the evidence shows that students relied on Everest's transferability representations when they enrolled.<sup>106</sup> Indeed, express or implied claims like those made by Everest about

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that openly distinguish between credits earned at for-profit and nonprofit colleges -- turning down their nose at the former -- send a signal that answers that question No, he said." <https://www.insidehighered.com/news/2007/02/26/transfer>

<sup>97</sup> See *Bank of the West*, 2 Cal. 4th at 1254.

<sup>98</sup> CAL CIV. C. § 1709.

<sup>99</sup> *Boschma v. Home Loan Center*, 198 Cal. App. 4th 230, 253 (2011).

<sup>100</sup> *Smith v. Wells Fargo Bank, N.A.*, 135 Cal.App.4th 1463, 1480 n. 13 (2005).

<sup>101</sup> See *Kwikset Corp. v. Superior Court*, 51 Cal. 4th at 316 (Cal. 2011).

<sup>102</sup> Everest's implied representations of transferability are also actionable as deceptive half-truth omissions. A half-truth omission occurs when an affirmative representation is misleading in the absence of material qualifying information. See Deception Policy Statement, 103 F.T.C. at 176; *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 532 (S.D.N.Y. 2000) ("Failure to disclose pertinent information is deceptive if it has a tendency or capacity to deceive."). An advertisement can be deceptive because it failed to disclose material information even if it does not contain any false statements. *FTC v. Medical Billers Network, Inc.*, 543 F. Supp. 2d 283, 304 (S.D.N.Y. 2008). Here, Everest's affirmative statements about being "accredited" were deceptive absent further information distinguishing between regional and national accreditation and explaining the impact of national accreditation on transferability.

<sup>103</sup> See, e.g., *Daghlian v. DeVry University, Inc.*, 461 F.Supp.2d 1121, 1156 (C.D. Cal. 2006) ("Although Daghlion does not allege that he attempted to transfer the credits to another educational institution, or that he was forced to begin his education anew at another institution, he does assert that he enrolled at DeVry and incurred \$40,000 in debt '[i]n reliance on' defendants' misrepresentations and omissions about the transferability of credits. This sufficiently alleges that Daghlion personally suffered injury as a result of defendants' allegedly false and/or misleading advertising and unfair business practices.").

<sup>104</sup> *In re Tobacco II Cases*, 46 Cal. 4th 298, 327 (2009) (internal quotation marks omitted).

<sup>105</sup> *Id.* (internal quotation marks omitted).

<sup>106</sup> 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 transferability misrepresentation, regardless of subsequent efforts to transfer.



the transferability of credits are presumptively material.<sup>107</sup> Moreover, under the UCL, a showing of materiality gives rise to “a presumption, or at least an inference, of reliance.”<sup>108</sup> Here, statements by borrowers support the presumption that promises of transferable credits were a substantial factor in their decision to enroll.

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

Everest’s representations regarding its students’ ability to transfer were false and misleading, despite the school’s limited disclaimers in some written materials. In many instances enrollment agreements and course catalogs contained technically accurate information about transferability, but such written information did not change the overall impression created by the oral representations.

If a student examined the enrollment agreement, the student would have to read through four pages of fine print to find a box entitled “Enrollment Agreement” and subtitled “The Student Understands.”<sup>109</sup> Midway through that box of fine print, item number 5 provides some information on transferability. That item is not highlighted or bolded in any way. The text cautioned students that Corinthian could not *guarantee* the transferability of credits to another school, but did not go so far as to cast doubt on the general transferability of Corinthian credits.<sup>110</sup> The agreement then continues on with two additional pages of fine print disclaimers. Everest’s course catalogs generally contained limiting language similar to the enrollment agreements, and that language was similarly buried.<sup>111</sup>

These disclaimers do not cure the falsity of Everest’s oral promises regarding transferability. First, courts interpreting the FTC Act and the UCL have made clear that written disclaimers do not cure the falsity of oral misrepresentations.<sup>112</sup> 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.<sup>113</sup>

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

<sup>107</sup> 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).

<sup>108</sup> *In re Tobacco II Cases*, 46 Cal. 4th at 298.

<sup>109</sup> See, e.g., Everest Institute Brighton/Chelsea Enrollment Agreement.

<sup>110</sup> See, e.g., Everest Institute Brighton/Chelsea Enrollment Agreement: “The School does not guarantee the transferability of credits to any school, university or institution. The student should contact a receiving institution regarding transfer of credit from The School prior to enrollment.” MA AGO Ex. 9 at AGO-MA02062

<sup>111</sup> Most course catalogs stated that the acceptance of credits was at the discretion of the receiving institution. We found one outlier example, the Everest Miami course catalog, which declared Everest credits were not generally transferable.

<sup>112</sup> See, e.g., *FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 262-63 (E.D.N.Y. 1998) (finding that oral misrepresentations were not cured by written disclaimers); see also *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 228 (Cal. App. Ct. 2013) (finding under the UCL that Skype’s representation that a calling plan was “unlimited” was misleading despite the fact that it provided limits on the plan in a separate policy provided to customers).

<sup>113</sup> *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.”).



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 quick solutions.”<sup>114</sup> Corinthian’s CEO, in a letter to Federal Student Aid, wrote that the school enrolled “a predominantly high risk student body that is underserved by traditional higher education institutions. Many of our campuses are located in or near difficult inner-city areas and provide access to students who have not previously achieved educational success.”<sup>115</sup> Corinthian advertised on daytime TV,<sup>116</sup> 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.<sup>117</sup> In sum, the net impression of the oral misrepresentations on the typical Corinthian student likely would not have been altered by buried written disclosures.

Moreover, the nature of the enrollment process made it unlikely that students ever read such disclosures prior to admission. Students were rushed through the enrollment process at Corinthian and were not provided an opportunity to read and digest the enrollment agreement.<sup>118</sup> As the Harkin Report found, this practice stemmed from the emphasis on growth: “Enrollment growth is critical to the business success of for-profit education companies... In order to meet revenue and profit expectations, for-profit colleges recruit as many students as possible to sign up for their programs.”<sup>119</sup> The report quotes a 2005 Corinthian hiring manual as stating: “remember that this is a sales position and the new hire must understand that from the very beginning.”<sup>120</sup> At Corinthian, internal documents make clear that recruiters were not trained or expected to advise students,<sup>121</sup> but to sell the program – to “enroll your brains out.”<sup>122</sup>

Many Everest students state that they did not choose their own classes<sup>123</sup> or sometimes even their own program of study, making it even less likely they would see disclosures in course catalogs.<sup>124</sup> These student reports back up the Harkin report’s conclusion that Corinthian recruiters were effectively salespersons, with the goal to enroll the student in whichever classes or programs made the most sense for

<sup>114</sup> CA AG Quach Decl. Ex 113.

<sup>115</sup> Letter from Jack D. Massimino, CEO, Corinthian, to James W. Runcie, Chief Operating Officer, U.S. Office of Federal Student Aid (Nov. 12, 2014).

<sup>116</sup> CA AG Quach Decl. Ex 113.

<sup>117</sup> CA AG Decl. of Holly Harsh.

<sup>118</sup> “After meeting with an Everest representative in October 2011, I wished to discuss my options with family but I felt pressure to enroll on the spot. I wanted a career in the medical field and the representative told me to act now since I was already there. They rushed the whole enrollment process.” Affidavit of D’Anne Coffie MA Ex. 08 at AGO-MA01891; “The tour of the school felt very rushed, as if the school did not want to give the people on the tour time to make a decision.” Affidavit of Courtney Petrie, MA Ex. 08 at AGO-MA01914; “They were like used car salesmen. They made sure I signed up before I walked out the door during my first visit, even though I only went there for a tour.” Affidavit of Matisha Chao MA Ex. 08 at AGO-MA01887

<sup>119</sup> Harkin Report, p. 387.

<sup>120</sup> *Id.*

<sup>121</sup> Harkin Report, p. 387.

<sup>122</sup> Deposition of Scott Lester, Former Admissions Director of Everest Milwaukee, WI AG, Sutherlin Affidavit Exhibit 15, p. 49

<sup>123</sup> “I ended up taking courses that were not even applicable to my degree or not necessary for me to complete my degree. In other words, *I paid additional for classes I didn’t really need to take.*” BD150455; “My student advisor when I first got started was explaining how classes were available for a few hundred dollars for the courses. While there may have been some for that price, not many were *the classes they said I had to take.*” BD150813

<sup>124</sup> “I went to school from Jan 2011 to March 2014 and was enrolled in the Associates Billing and Coding and then they convinced me to move to a BS in Health Care Administration... As I approached my end of my degree I ran out of money and realized they had made me take classes I did not need in my program and had 4 classes to finish and I was stuck...” BD151750; “They totally mislead me when I was requesting to sign up for their Crime Scene Investigator program. My student adviser had actually put me into their Criminal Justice Program instead and the mistake wasn’t figured out until it was past their drop/add time frame of classes so I was stuck taking classes that had NOTHING to do with my actual program I wanted to study. They told me there was nothing they could do and I had to just wait til the time frame of starting their next term.” BD153136

the school, not the student. Students were not provided the time to read any written materials because the students' interests were not at the heart of the transaction.<sup>125</sup>

Finally, the fact that 198 of the 793 (25%) Everest/WyoTech claims reviewed to date allege that Corinthian represented that credits would generally be accepted at other schools, with no mention of any written disclaimer, strongly 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 we know Corinthian personnel to have employed, these disclaimers do not offset the net impression of the school's misrepresentations.

#### **D. Eligible Borrowers**

Based on the above analysis, the following Everest and WyoTech Laramie students alleging transfer of credits claims should be eligible for relief:

1. Any claimant who attended a nationally accredited Everest campus or WyoTech's Laramie campus and who:
  - a. alleges that Everest expressly represented that credits earned there would be generally transferable; or
  - b. alleges that Everest misrepresented the nature and/or value of their accreditation, in a manner that implied that their credits were generally transferable.
2. Borrowers who allege that their credits did not transfer, but do not allege a corresponding misrepresentation, will not be eligible for relief on this basis.
3. Eligible borrowers will be limited to students first enrolling after Corinthian acquired the campus in question.

#### **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.<sup>126</sup> In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers.<sup>127</sup>

In a recent California federal court decision analyzing the appropriate remedy for consumers alleging educational misrepresentations under the UCL, the court explicitly analogized to the *Figgie* and *Ivy Capital* approach and found that a restitution model that aims to "restore the status quo by returning to

<sup>125</sup> "I was also provided with a course catalog/program disclosure statement stating in writing that the placement rate was 72%. These written materials were provided only after I had signed up." MA AGO Ex. 03 at AGO-MA00180

<sup>126</sup> See, e.g., *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015).

<sup>127</sup> 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).

the plaintiff funds in which he or she has an ownership interest” was a justifiable basis for a class action theory of relief.<sup>128</sup>

However, nothing in the borrower defense statute or regulation requires the Department to apply state law remedies when reviewing a borrower’s claim. The only statutory limit on the Secretary’s ability to grant relief is that no student may recover in excess of the amount the borrower has repaid on the loan.<sup>129</sup>

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

If the borrower’s defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such further relief *as the Secretary determines is appropriate under the circumstances* [including reimbursement to the borrower of amounts paid towards the loan].<sup>130</sup>

Moreover, the Supreme Court has recognized that, when an agency is fashioning “discretionary relief,” such decisions “frequently rest upon a complex and hard-to-review mix of considerations,” and therefore, “for the sake of uniformity, it is usually better to minimize the opportunity for reviewing courts to substitute their discretion for that of the agency.”<sup>131</sup>

The D.C. Circuit has also consistently recognized the “long-standing principle” that federal agencies must be afforded particularly wide latitude in fashioning remedies consistent with the statutes they are charged with administering. An agency’s discretion is, “if anything, at zenith when the action assailed relates primarily not to the issue of ascertaining whether conduct violates the statute, or regulations, but rather to the fashioning of ... remedies.”<sup>132</sup> Thus, while California and FTC Act case law is instructive as to the quantum of relief to be provided, the Department is not constrained by that authority.

Here, there is ample reason not to “offset” the award of full relief to these borrowers in light of the lack of value attendant to their Everest education. *See Makaeff*, 309 F.R.D. at 642 (allowing defendants to offer evidence warranting an offset from a baseline of full recovery). First, if a student cannot generally transfer credits, a chief value conferred by such credits is greatly diminished.

Second, and perhaps more importantly, the Department has found that Everest and its parent company Corinthian repeatedly misled students, regulators and accreditors regarding its ability to place students in jobs, systematically inflated its job placement rates, misrepresented job placement rates to a programmatic accreditor, and even engaged in an elaborate job placement fraud to maintain its

<sup>128</sup> *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015) (internal quotations removed).

<sup>129</sup> Section 455 of Title IV of the Higher Education Act, 20 U.S.C. § 1087e(h).

<sup>130</sup> 34 C.F.R. § 685.206(c)(2).

<sup>131</sup> *Consolo v. Fed. Mar. Comm’n*, 383 U.S. 607, 621 (1966).

<sup>132</sup> *Fallbrook Hosp. Corp. v. N.L.R.B.*, 785 F.3d 729, 735 (D.C. Cir. 2015) (internal quotations and citations removed) (rejecting a challenge to the National Labor Relations Board’s decision to require a hospital to pay for a nurse’s unions full costs for negotiating a labor agreement); *see also U.S. Postal Serv. v. Postal Regulatory Comm’n*, 747 F.3d 906, 910 (D.C. Cir. 2014) (approving a remedy order by the Postal Regulatory Commission requiring the U.S. Postal Service to reduce its rates for certain mailers); *Exxon Mobil Corp. v. FERC*, 571 F.3d 1208, 1216 (D.C. Cir. 2009) (“When FERC is fashioning remedies, we are particularly deferential.”); *Am. Tel. & Tel. Co. v. FCC*, 454 F.3d 329, 334 (D.C. Cir. 2006) (approving the FCC’s decision to apply an administrative order retroactively).

accreditation.<sup>133</sup> Given this well-documented, pervasive, and highly publicized misconduct at Corinthian, the value of an Everest education has been severely limited.

Borrower defense applications confirm the lack of value of an Everest education as many Everest students report that their coursework from Everest has been an impediment rather than an asset as they seek employment. For example, one 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.”<sup>134</sup> 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.’”<sup>135</sup> Yet another student states: “Employers will not touch me. After graduating I posted a resume online. I did not receive any responses until I removed Everest Online from my resume.”<sup>136</sup>

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

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

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<sup>133</sup> See Letter from Robin S. Minor, Acting Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Apr. 14, 2014); *see also* Letter from Mary E. Gust, Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Aug. 22, 2014) (finding that “Everest Institute submitted false placement data to ACCSC to maintain the accreditation of Everest Decatur” and that the school’s job placement rates were based on “CCI-designed programs through which Everest Decatur paid employers to hire its graduates” for short time periods in order to inflate placement rates).

<sup>134</sup> BD1614100

<sup>135</sup> BD1602593

<sup>136</sup> BD1511191



HEALD TRANSFERABILITY MEMO  
OCTOBER 2016

PRIVILEGED & CONFIDENTIAL  
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To: Under Secretary Ted Mitchell

From: Borrower Defense Unit

Date: October 20, 2016

Re: Recommendation for Borrower Defense Relief for Heald College Borrowers Alleging Transfer of Credit Claims

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

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

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

##### **A. Oral Representations of Transferability**

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

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

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

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

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

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

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<sup>4</sup> Claim No. BD1614388.

<sup>5</sup> Claim No. BD154156.

<sup>6</sup> Claim No. BD152391.

<sup>7</sup> Claim No. BD1604229.

<sup>8</sup> Claim No. BD151373.

<sup>9</sup> Claim No. BD156458.

<sup>10</sup> Claim No. BD150682.

<sup>11</sup> Claim No. BD1619101.

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## B. Corroborating Written Representations of Transferability

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

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

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

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

<sup>13</sup> Quach Decl. Ex. 90.

<sup>14</sup> *Id.*

<sup>15</sup> Quach Decl. Ex. 91-92.

<sup>16</sup> Quach Decl. Ex. 94.



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

<sup>25</sup> “Transfer Student Admission,” California State University: East Bay (May 31, 2016), <http://www.csueastbay.edu/prospective/how-to-apply/transfer-student-admission/>; see also Quach Decl. Ex. 98.

<sup>26</sup> “Student Affairs and Enrollment Management,” Fresno State (May 31, 2016), <http://www.fresnostate.edu/studentaffairs/outreach/transfers/requirements.html>; see also Quach Decl. Ex. 99.

<sup>27</sup> “Upper Division Transfers,” California State University Fullerton (May 31, 2016), <http://admissions.fullerton.edu/prospectivestudent/transferlocaladmissionarea.php>.



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

<sup>28</sup> "Lower Division Transfer Requirements," Humboldt State University (May 31, 2016),

<http://www2.humboldt.edu/admissions/apply/transfers/lowerdivision.html>.

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

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

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

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

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

<sup>34</sup> "Admissions and Student Recruitment," CSU San Bernardino (May 31, 2016), [http://admissions.csusb.edu/transfer/h\\_transferstatus.shtml](http://admissions.csusb.edu/transfer/h_transferstatus.shtml).

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

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

<sup>35</sup> “Fall 2016 Transfer Admission Criteria,” San Diego State University (May 31, 2016),

<http://arweb.sdsu.edu/cs/admissions/transfers/index.html>.

<sup>36</sup> “How to Apply – Transfer,” San Francisco State University (May 31, 2016),

<http://www.sfsu.edu/future/apply/transfer.html>.

<sup>37</sup> Quach Decl. Ex. 102; see also “Lower Division Transfers,” San Jose State University (May 31, 2016),

<http://info.sjsu.edu/web-dbggen/narr/admission/rec-7327.10793.html>.

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

<sup>39</sup> “Transfer Student,” California State University San Marcos (May 31, 2016),

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

<sup>40</sup> “Filing Information, Dates, and Deadlines,” Sonoma State University (May 31, 2016),

<http://www.sonoma.edu/admissions/filing.html>; see also Quach Decl. Ex. 104, “Office of Admissions: Admission Requirements for Transfers,” Sonoma State University (Jan. 28, 2014),

<http://www.sonoma.edu/admissions/ts/requirements>.



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

The only CSU schools that do appear to accept lower-division transfer students are CSU Bakersfield<sup>42</sup>, the Maritime Academy, and CSU Long Beach. The Maritime Academy is a specialized school with a student body of less than 1,000 students offering six majors relating to the maritime industry.<sup>43</sup> CSU Long Beach only accepts lower-division transfers for a few majors.<sup>44</sup> CSU Bakersfield seems to be the only CSU institution that offers a standard undergraduate curriculum and accepts lower-division transfer students.

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

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

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

<sup>42</sup> “Admission Requirements for Transfer Students,” CSU Bakersfield (May 31, 2016), [http://www.csub.edu/admissions/apply/transfer/admission\\_requirements/](http://www.csub.edu/admissions/apply/transfer/admission_requirements/).

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

<sup>44</sup> “Lower Division Transfer Requirements,” California State University Long Beach (May 31, 2016), [http://web.csulb.edu/divisions/aa/catalog/current/admissions/ld\\_transfer\\_requirements.html](http://web.csulb.edu/divisions/aa/catalog/current/admissions/ld_transfer_requirements.html).

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

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



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

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

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

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

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

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

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

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

<sup>50</sup> Claim No. BD153784 (Heald San Francisco student).

<sup>51</sup> Claim No. BD152473 (Heald Heyward student).

<sup>52</sup> Claim No. BD150563 (Heald Stockton student).

<sup>53</sup> Claim No. BD154681 (Heald Concord student).

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

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

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

#### **A. Heald Students Have Standing Under California's UCL**

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

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

<sup>55</sup> 34 C.F.R. § 685.206(c).

<sup>56</sup> CAL. BUS. & PROF. CODE §17208.

<sup>57</sup> CAL. BUS. & PROF. CODE §17204.

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

<sup>59</sup> *Id.*

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

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

### **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.”<sup>62</sup> Thus, if a business practice violates any law, this is *per se* a UCL violation.<sup>63</sup>

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

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

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

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

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

<sup>63</sup> *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).

<sup>64</sup> *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.”).

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



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

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

## 2. The Fraudulent Prong

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

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

<sup>66</sup> *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.").

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

<sup>68</sup> *See Bank of the West*, 2 Cal. 4th at 1254.

<sup>69</sup> CAL CIV. C. § 1709.

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

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

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deceived into enrolling at a school<sup>72</sup>—it is sufficient for the individual to allege that they made their decision in reliance on the misrepresentations or omissions of the entity.<sup>73</sup> Reliance on the misrepresentation does not have to be “the sole or even the predominant or decisive factor influencing”<sup>74</sup> 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.”<sup>75</sup>

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

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

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

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

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

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

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

<sup>75</sup> *Id.* (internal quotation marks omitted).

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

<sup>77</sup> *In re Tobacco II Cases*, 46 Cal. 4th at 298.

<sup>78</sup> Quach Decl. Ex. 90-92.

<sup>79</sup> Quach Decl. Ex. 93.

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

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

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

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

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

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

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

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had “low self-esteem,” were “stuck, unable to see and plan well for the future” and “isolated,” had “few people in their lives who care about them,” and were “impatient, want quick solutions.”<sup>83</sup> Corinthian’s CEO, in a letter to Federal Student Aid, wrote that the school enrolled “a predominantly high risk student body that is underserved by traditional higher education institutions. Many of our campuses are located in or near difficult inner-city areas and provide access to students who have not previously achieved educational success.”<sup>84</sup> Corinthian advertised on daytime TV,<sup>85</sup> 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.<sup>86</sup>

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

#### **D. Eligible Borrowers**

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

1. Any claimant who attended a Heald California campus and who:
  - a. enrolled in any diploma, certificate, or AAS degree program (i.e., programs for which fewer than 90 quarter units were transferable to CSU schools) on or after January 4, 2010<sup>88</sup>, and

<sup>83</sup> CA AG Quach Decl. Ex 113.

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

<sup>85</sup> CA AG Quach Decl. Ex 113.

<sup>86</sup> CA AG Decl. of Holly Harsh.

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

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



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

#### IV. Full BD Relief Should Be Provided to Eligible Borrowers

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

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

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

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

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

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

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

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

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

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

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

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

<sup>90</sup> 34 C.F.R. § 685.206(c)(2).

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

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

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

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

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

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<sup>92</sup> Claim No. BD154195.

<sup>93</sup> Claim No. BD151006.

<sup>94</sup> Claim No. BD150260.



CORINTHIAN GUARANTEED EMPLOYMENT MEMO  
JANUARY 2017

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

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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,<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup>** 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

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<sup>1</sup> 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.”

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

<sup>3</sup> 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).<sup>4</sup> 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."<sup>5</sup>
- "I was told that when I finished my program I would automatically have job placement and never received that placement."<sup>6</sup>
- "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."<sup>7</sup>
- "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."<sup>8</sup>

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."<sup>9</sup>
- 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."<sup>10</sup>
- 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."<sup>11</sup>
- Heald Salinas: "When I first enrolled, they said I had a job at the end of my education."<sup>12</sup>
- 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."<sup>13</sup>
- Heald San Francisco: "Heald College's promises of guaranteed job placement after graduation sold me on becoming a student."<sup>14</sup>

<sup>4</sup> 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.

<sup>5</sup> BD155524.

<sup>6</sup> BD155784.

<sup>7</sup> BD155698.

<sup>8</sup> BD154018.

<sup>9</sup> BD151426.

<sup>10</sup> BD1600328.

<sup>11</sup> BD157436.

<sup>12</sup> BD151163.

<sup>13</sup> BD153799.

<sup>14</sup> 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%
<b>TOTAL</b>	<b>1015</b>	<b>141</b>	<b>13.9%</b>

#### 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.”<sup>15</sup>
- “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.”<sup>16</sup>
- “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.”<sup>17</sup>
- “I was told that I would be placed into a career field of my studies, but I was not.”<sup>18</sup>

The Department sampled claims at 22 Everest campuses<sup>19</sup> 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.

<sup>15</sup> BD151311.

<sup>16</sup> BD150332

<sup>17</sup> BD1612793.

<sup>18</sup> BD1614055.

<sup>19</sup> 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."<sup>20</sup>
- "The education was sold as a way to guarantee future employment, with access to a nationwide network of job placement experts."<sup>21</sup>
- "The school was promising a career in the field after schooling."<sup>22</sup>
- "[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."<sup>23</sup>
- "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."<sup>24</sup>

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%
<b>TOTAL</b>	<b>1277</b>	<b>231</b>	<b>18.1%</b>

<sup>20</sup> BD150863.

<sup>21</sup> BD152602.

<sup>22</sup> BD155621.

<sup>23</sup> BD151128.

<sup>24</sup> 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%
<b>TOTAL</b>	<b>455</b>	<b>64</b>	<b>14.1%</b>

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,<sup>25</sup> 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."<sup>26</sup>
- [2001]: "They . . . told me I would be guaranteed a job once I graduated."<sup>27</sup>
- [2002]: "I was told I would get a job right away..."<sup>28</sup>
- [2003]: "I was lured into this organization with false promises of 100% job placement..."<sup>29</sup>
- [2005]: "They said I was guaranteed job placement after I graduated."<sup>30</sup>
- [2006]: "Everest guaranteed me career placement upon graduation."<sup>31</sup>
- [2007]: "They told me that I will be guaranteed a job placement after I graduate."<sup>32</sup>
- [2008]: "They told me I was guaranteed a job."<sup>33</sup>
- [2009]: "I was promised job placement, high salaries and success."<sup>34</sup>
- [2010]: "I was guaranteed a job from my Academic advisor and Career Counselor."<sup>35</sup>
- [2011]: "...told me I was guaranteed a job in my profession after I graduated making twice as much as minimum wage at least."<sup>36</sup>
- [2012]: "I was promised employment after graduation."<sup>37</sup>

<sup>25</sup> 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.

<sup>26</sup> BD155177.

<sup>27</sup> BD156179.

<sup>28</sup> BD1600004.

<sup>29</sup> BD151816.

<sup>30</sup> BD150148.

<sup>31</sup> BD157758.

<sup>32</sup> BD153166.

<sup>33</sup> BD153136.

<sup>34</sup> BD156038.

<sup>35</sup> BD1605002.

<sup>36</sup> BD155731.

<sup>37</sup> BD1615288.



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

#### 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.”<sup>39</sup> 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.”<sup>40</sup>

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.<sup>41</sup> 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%.<sup>42</sup> 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.”<sup>43</sup> 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

<sup>38</sup> BD1617088.

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

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

<sup>41</sup> Exhibit 40 - CA AG Default Motion at 278.

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

<sup>43</sup> 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.”<sup>44</sup>

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”),<sup>45</sup> 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.”<sup>46</sup> 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.<sup>47</sup> 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

<sup>44</sup> Exhibit 36 - CA AG Default Motion.

<sup>45</sup> CAL. BUS. & PROF. CODE § 17200, et seq.

<sup>46</sup> 34 C.F.R. § 685.206(e) (emphasis added).

<sup>47</sup> 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.<sup>48</sup> Another key factor in the choice-of-law analysis under California law is the location "where the wrong occurred."<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup>

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]."<sup>52</sup> 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."<sup>53</sup> Thus, if a business practice violates any law, this is *per se* a UCL violation.<sup>54</sup> Corporate

<sup>48</sup> 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...").

<sup>49</sup> *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)).

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

<sup>51</sup> 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).

<sup>52</sup> 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).

<sup>53</sup> *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.<sup>55</sup> 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").<sup>56</sup> 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."<sup>57</sup>

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.<sup>58</sup> 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."<sup>59</sup> Corinthian's own marketing materials emphasized that the school was a pathway to employment, often noting "solid industry employment contacts"<sup>60</sup> and the availability of "lifetime career services." For many students, the principal purpose of attending a career college like

<sup>54</sup> See *Kasky v. Nike*, 27 Cal. 4<sup>th</sup> 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).

<sup>55</sup> 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.

<sup>56</sup> 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.").

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

<sup>58</sup> *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.").

<sup>59</sup> Exhibit 36 - CA AG Default Motion.

<sup>60</sup> 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.<sup>61</sup> 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."<sup>62</sup> The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.<sup>63</sup> 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.<sup>64</sup> 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.<sup>65</sup> However, for a consumer who was deceived into purchasing a product<sup>66</sup>—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"<sup>67</sup> the individual's decision. Rather, "[i]t is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing [their] decision."<sup>68</sup>

Express or implied claims like those made by Corinthian about employment prospects are presumptively material,<sup>69</sup> and, under the UCL, a showing of materiality gives rise to "a presumption, or at least an inference, of reliance."<sup>70</sup> 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

<sup>61</sup> 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.

<sup>62</sup> See *Bank of the West*, 2 Cal. 4th at 1254.

<sup>63</sup> CAL CIV. C. § 1709.

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

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

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

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

<sup>68</sup> *Id.* (internal quotation marks omitted).

<sup>69</sup> 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).

<sup>70</sup> *In re Tobacco II Cases*, 46 Cal. 4th at 298.



enroll.<sup>71</sup> 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."<sup>72</sup> 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."<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup>

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.<sup>76</sup>

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."<sup>77</sup> Corinthian's CEO, in a letter to

<sup>71</sup> 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.

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

<sup>73</sup> BD150633, Attachment #3, page 7.

<sup>74</sup> 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).

<sup>75</sup> *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.").

<sup>76</sup> 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.

<sup>77</sup> 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.”<sup>78</sup> Corinthian advertised on daytime TV,<sup>79</sup> 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.<sup>80</sup> 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.<sup>81</sup> In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers.<sup>82</sup>

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*

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

<sup>79</sup> CA AG Quach Decl. Ex 113.

<sup>80</sup> CA AG Decl. of Holly Harsh.

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

<sup>82</sup> 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.<sup>83</sup>

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.<sup>84</sup> 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.”<sup>85</sup> 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.’”<sup>86</sup> 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...”<sup>87</sup> 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.”<sup>88</sup>

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.

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

<sup>84</sup> 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).

<sup>85</sup> BD1614100.

<sup>86</sup> BD1602593.

<sup>87</sup> BD151191.

<sup>88</sup> BD157356.



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

CONCUR:

John C. DiPawlo

Office of the General Counsel

1/12/17  
Date

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<sup>89</sup> 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.



ITT TECH GUARANTEED EMPLOYMENT MEMO  
JANUARY 2017

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

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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.<sup>1</sup> As set forth below, the Borrower Defense Unit recommends full relief (subject to the statute of limitations) for borrowers<sup>2</sup> who (1) enrolled at any ITT California campus between January 1, 2005<sup>3</sup> 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,<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup>

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<sup>1</sup> 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.

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

<sup>3</sup> 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.

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

<sup>5</sup> 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."

<sup>6</sup> 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.<sup>7</sup> 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.”<sup>8</sup>
- “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.”<sup>9</sup>
- “The promises were that it would be easy to find a high paying job right away.”<sup>10</sup>
- “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.”<sup>11</sup>
- “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.”<sup>12</sup>
- “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.”<sup>13</sup>
- “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.”<sup>14</sup>

### 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:

<sup>7</sup> 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.

<sup>8</sup> BD1655184.

<sup>9</sup> BD1639392.

<sup>10</sup> BD1655377.

<sup>11</sup> BD1605233.

<sup>12</sup> BD1655410.

<sup>13</sup> BD1655354.

<sup>14</sup> BD1638087.

- ITT-Orange (CA): "I was told that ITT had a 100% job placement upon graduating students."<sup>15</sup>
- ITT-Anaheim (CA): "I was promised that immediately after graduating, I would be placed in a job within my field of study."<sup>16</sup>
- ITT-Sylmar (CA): "I was told that my degree would guarantee me employment."<sup>17</sup>
- 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."<sup>18</sup>
- 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."<sup>19</sup>
- ITT-Swartz Creek (MI): "They guarantee jobs right after graduating."<sup>20</sup>
- ITT-Harrisburg (PA): "I was told on several occasions by ITT Admissions Representatives that the school has 100% job placement upon completion for students."<sup>21</sup>
- ITT-Seattle (WA): "They said that 100% job placement and that I should have no problem finding a job in my field."<sup>22</sup>
- ITT-Little Rock (AK): "They promised that they had companies 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."<sup>23</sup>
- ITT-Springfield (VA): "I WAS LED BY THE RECRUITER TO BELIEVE THAT THE JOB OPPORTUNITIES WOULD BE POURING IN."<sup>24</sup>
- ITT-Arnold (MO): "I was told that I would get a job in my field."<sup>25</sup>
- ITT-Albuquerque (NM): "ITT lied about job prospects and guaranteed a job after graduation."<sup>26</sup>
- 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."<sup>27</sup>
- ITT-Portland (OR): "Told me they would have me in a career by the end of my first year in school."<sup>28</sup>
- 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."<sup>29</sup>
- 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."<sup>30</sup>
- 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."<sup>31</sup>
- ITT-Tulsa (OK): "They said they would have me working in the gaming industry....they told me to look in the classifieds."<sup>32</sup>

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<sup>15</sup> BD156693.

<sup>16</sup> BD1651614.

<sup>17</sup> BD1639208.

<sup>18</sup> BD1601288.

<sup>19</sup> BD156627.

<sup>20</sup> BD153161.

<sup>21</sup> BD156697.

<sup>22</sup> BD1600120.

<sup>23</sup> BD153747.

<sup>24</sup> BD155274.

<sup>25</sup> BD1659434.

<sup>26</sup> BD1604365.

<sup>27</sup> BD1659402.

<sup>28</sup> BD1607247.

<sup>29</sup> BD1619298.

<sup>30</sup> BD1655120.

<sup>31</sup> 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 <sup>33</sup>	84	39	46.43%
<b>TOTAL</b>	<b>320</b>	<b>102</b>	<b>31.90%</b>

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.<sup>34</sup>

### 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 . . .”<sup>35</sup>

<sup>32</sup> BD153174.

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

<sup>34</sup> 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](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”).

<sup>35</sup> 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.”<sup>36</sup>
- [2007]: “I was also led to believe that what I was going to school for would be a sure job after graduation.”<sup>37</sup>
- [2009]: “I was told that I would definitely have a job if I enrolled.”<sup>38</sup>
- [2011]: “We were told that there would be no problem getting a job and they would help.”<sup>39</sup>
- [2013]: “I was told I would obtain a job in the field upon graduation, easily with a high salary.”<sup>40</sup>

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.<sup>41</sup> 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.”<sup>42</sup> 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.”<sup>43</sup>

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.”<sup>44</sup> Another stated, “I heard recruiters assure students that they would get a great job that would enable them to pay back

<sup>36</sup> BD156228 (ITT-Sylmar).

<sup>37</sup> BD1659496 (ITT-Rancho Cordova).

<sup>38</sup> BD157549 (ITT-Indianapolis).

<sup>39</sup> BD156506 (ITT-Swartz Creek).

<sup>40</sup> BD154555 (ITT-Murray).

<sup>41</sup> *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”).

<sup>42</sup> *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.”).

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

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

their loans.”<sup>45</sup> 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.”<sup>46</sup>

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.”<sup>47</sup>

Guaranteed employment claims are further corroborated by recent ACICS findings against ITT<sup>48</sup> as well as by numerous former employee statements regarding falsification of student documents and manipulation of job placement statistics.<sup>49</sup> 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.<sup>50</sup> Another former

<sup>45</sup> 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).

<sup>46</sup> *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.

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

<sup>48</sup> 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>.

<sup>49</sup> 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 Torrance, California Campus stated that ITT fabricated and stretched its student statistics and that ITT’s graduate placement figures were inaccurate by at least 20%).

<sup>50</sup> 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."<sup>51</sup> Instead, most of those students became security guards – "positions that didn't require a degree at all."<sup>52</sup>

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.<sup>53</sup> These narratives are consistent with student accounts provided to law enforcement agencies<sup>54</sup> and non-profit organizations regarding their inability to find employment related to their fields of study.<sup>55</sup> 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"),<sup>56</sup> which prohibits a wide range of business practices that constitute unfair competition, including corporate misrepresentations.<sup>57</sup>

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

<sup>51</sup> *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).

<sup>52</sup> *Id.*

<sup>53</sup> See *supra*, Section I and *infra* Section III(E).

<sup>54</sup> *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 or 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").

<sup>55</sup> 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).

<sup>56</sup> CAL. BUS. & PROF. CODE § 17200.

<sup>57</sup> 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.”<sup>58</sup> 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.”<sup>59</sup>

At the time of its closing, there were more ITT students *and* campuses in California than in any other state.<sup>60</sup> 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,<sup>61</sup> Indiana law,<sup>62</sup> and the Restatement (2nd) of Conflict of Laws is the location “where the wrong occurred.”<sup>63</sup> 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].”<sup>64</sup> 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.”<sup>65</sup> Thus, if a business practice violates any law, this is *per se* a UCL violation.<sup>66</sup> Corporate

<sup>58</sup> 20 USC § 1087e(h).

<sup>59</sup> 34 C.F.R. § 685.206(c)(1).

<sup>60</sup> 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.

<sup>61</sup> *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.”)

<sup>62</sup> 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).

<sup>63</sup> 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.”).

<sup>64</sup> 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).

<sup>65</sup> *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.<sup>67</sup> 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").<sup>68</sup> 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."<sup>69</sup>

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.<sup>70</sup> 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.<sup>71</sup> 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.

<sup>66</sup> See *Kasky v. Nike*, 27 Cal. 4<sup>th</sup> 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).

<sup>67</sup> 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.

<sup>68</sup> 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.").

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

<sup>70</sup> *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.").

<sup>71</sup> 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."<sup>72</sup> The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup> However, for a consumer who was deceived into purchasing a product<sup>76</sup>—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"<sup>77</sup> 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."<sup>78</sup>

Express or implied claims like those made by ITT about employment prospects are presumptively material,<sup>79</sup> and, under the UCL, a showing of materiality gives rise to "a presumption, or at least an inference, of reliance."<sup>80</sup> 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.<sup>81</sup> 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

<sup>72</sup> See *Bank of the West*, 2 Cal. 4th at 1254.

<sup>73</sup> CAL CIV. C. §1709.

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

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

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

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

<sup>78</sup> *Id.* (internal quotation marks omitted).

<sup>79</sup> 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).

<sup>80</sup> *In re Tobacco II Cases*, 46 Cal.4th at 298.

<sup>81</sup> 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.”<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

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.<sup>85</sup> 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.<sup>86</sup> 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

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

<sup>83</sup> 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).

<sup>84</sup> *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.”).

<sup>85</sup> 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 . . .”).

<sup>86</sup> *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.<sup>87</sup> 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.<sup>88</sup> In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers.<sup>89</sup>

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*

<sup>87</sup> *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).

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

<sup>89</sup> 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.<sup>90</sup>

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.<sup>91</sup> 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,<sup>92</sup> statements to VES,<sup>93</sup> and over 500 statements attached to the *Villalba* Class Action Complaint.<sup>94</sup>

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.<sup>95</sup> This

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

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

<sup>92</sup> 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”).

<sup>93</sup> 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”).

<sup>94</sup> 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).

<sup>95</sup> 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).

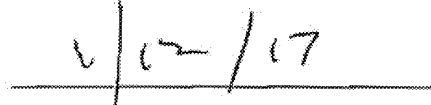
conduct has also led to actions against ITT by the Department<sup>96</sup> and ACICS,<sup>97</sup> as well as to numerous negative national news stories.<sup>98</sup>

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

<sup>96</sup> 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.

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

<sup>98</sup> 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).

STATUTE OF LIMITATIONS MEMO  
JANUARY 2017



To: Office of General Counsel  
 From: Borrower Defense Unit  
 Date: January 12, 2017  
 Re: Statute of Limitations Analysis Under the California UCL for Corinthian and ITT Borrower Defense Claims re: Guaranteed Jobs and Transfer of Credits

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This memorandum addresses application of the statute of limitations for Corinthian transfer of credits and guaranteed jobs claims as well as for ITT guaranteed jobs claims by borrowers attending a California ITT campus (collectively “Eligible Borrowers”). As set forth in four separate memoranda from the Enforcement Unit to the Under Secretary, California’s Unfair Competition Law (“UCL”) provides the bases for relief for each of these claim-types.<sup>1</sup>

The UCL has a four-year statute of limitations for actions brought by individual plaintiffs.<sup>2</sup> The California Supreme Court has held that common law defenses to the application of the UCL’s statute of limitations apply, including the “discovery rule.”<sup>3</sup> As set forth below, we recommend that the Department apply a one year extension to the UCL’s four year SOL under the discovery rule. Accordingly, Eligible Borrowers who submit claims within five years of their graduation or withdrawal from Corinthian or ITT should not be affected by the statute of limitations.

#### A. Discovery Rule

Under the discovery rule, a UCL claim generally accrues “only when a reasonable person would have discovered the factual basis for a claim.”<sup>4</sup> Here, it is reasonable to assume that Eligible Borrowers, upon withdrawal or graduation, would not have discovered the falsity of the guaranteed employment or transfer of credits representation for one year.

With respect to guaranteed jobs, it is reasonable to conclude that borrowers only discovered the falsity of the employment guarantee after exercising “reasonable diligence”<sup>5</sup> in seeking employment. Based on our review of claims to date, it was the experience of many CCI and ITT graduates that they had prolonged, fruitless communications with their school’s career services departments before ultimately concluding that the school would not be delivering on the promise of employment. As one ITT borrower explained, “I attempted to reach [the Career Services Office] many times after my graduation for further assistance with resumes and more agencies hiring but they would only take my information and never call me back. I was not able to get a job in the field of study.”<sup>6</sup> There is ample evidence with respect to the students at both schools that they sent numerous resumes over an extended period before determining that the school guarantee of employment was false. In short, reasonable CCI and ITT borrowers may not have discovered the falsity of the guaranteed employment promise until they exercised reasonable diligence

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<sup>1</sup> See Recommendation for Borrower Defense Relief for Heald College Borrowers Alleging Transfer of Credit Claims (October 20, 2016); Recommendation for Borrower Defense Relief for Everest/WyoTech Borrowers Alleging Transfer of Credit Claims (October 24, 2016); Recommendation for Corinthian Borrowers Alleging That They Were Guaranteed Employment (January 2017); and Recommendation for ITT Borrowers Alleging That They Were Guaranteed Employment -- California Students (January 2017).

<sup>2</sup> Cal. Bus. & Prof. Code § 17208.

<sup>3</sup> *Aryeh v. Canon Bus. Sols., Inc.*, 55 Cal. 4th 1185, 1192 (Cal. 2013).

<sup>4</sup> *Id.* at 1195; *E-Fab, Inc. v. Accountants, Inc. Servs.*, 153 Cal. App. 4th 1308, 1318 (Cal. 2007).

<sup>5</sup> *Yumul v. Smart Balance, Inc.*, 733 F. Supp. 2d 1117, 1120 (C.D. Cal. 2010).

<sup>6</sup> BD1658942. The claims from both schools are replete with similar statements.

through a prolonged period of job-seeking. We, therefore, propose a presumptive one-year discovery period for both Corinthian and ITT.<sup>7</sup>

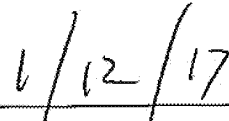
With respect to the transfer of credits, external factors, corroborated by student's claims, suggest that students often did not discover that Corinthian credits could not be transferred until well after they left Corinthian. Many students attempted to enter the job market immediately after leaving Corinthian, a "career school," and therefore would not immediately be in position to determine that their credits would not be accepted at other schools. Other students delayed returning to school for a variety of reasons. As explained by one Corinthian borrower: "First, [E]verest stated to me that the credits would be able to be transferred if I ever wanted to go back to school. A couple years after I graduated . . . I wanted to attend another school and go for my Bachelors. . . . After researching some schools I was told that none of my credits were transferable, I could not find any school that would take my credits."<sup>8</sup> Accordingly, we propose a one-year discovery period for Corinthian transferability claims.

#### B. Recommendation

For the reasons set forth above, the Department should consider BD claims by Eligible Borrowers to accrue five years after graduation or withdrawal from the school. As such, Eligible Borrowers who submit claims within five years of their graduation or withdrawal should not be affected by the statute of limitations.

CONCUR:

  
Office of the General Counsel

  
Date

<sup>7</sup> The Borrower Defense team intends to apply the proposed discovery period as a rebuttable presumption. Students whose claims for refunds are deemed barred by the statute of limitations (after applying a one-year discovery period) will have the opportunity to challenge that determination if they can produce evidence or otherwise show why a longer discovery period should be applied to their claims.

<sup>8</sup> BD1628616.

AMERICAN CAREER INSTITUTE GROUP RELIEF MEMO  
JANUARY 2017



To: Under Secretary Ted Mitchell  
From: Borrower Defense Unit  
Date: January 4, 2017  
Re: Recommendation for Full Borrower Defense Relief for Borrowers Who Attended American Career Institute's Massachusetts Campuses

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## **I. Introduction**

The American Career Institute, Inc. (ACI) was a for-profit school that operated five campuses in Massachusetts beginning in late 2009 and ending with the school's closure on January 9, 2013.<sup>1</sup> During this time, ACI enrolled almost 4,500 students in Massachusetts.<sup>2</sup>

On November 21, 2013, the Massachusetts Attorney General's Office (MA AGO) filed a complaint against ACI and its principals alleging that the school engaged in "a range of deceptive schemes to meet accreditation requirements."<sup>3</sup> Over the course of the investigation and discovery that followed, the MA AGO obtained hundreds of thousands of pages of records, issued over 100 subpoenas, and interviewed and/or deposed more than 350 witnesses. On June 1, 2016, the MA AGO entered into a Consent Judgment<sup>4</sup> with ACI and its corporate and individual owners. The Consent Judgment included numerous admissions that ACI made a series of false and misleading representations to prospective students and engaged in other misconduct. The admissions cover a variety of misconduct actionable under Massachusetts state law, including misrepresenting job placement rates, wrongfully representing that certain employers had previously hired ACI graduates, and failing to inform students that a substantial number of ACI instructors were not authorized to teach by the Massachusetts Division of Professional Licensure. As described in more detail below, the evidence provided by the MA AGO confirms these admissions.

On July 26, the MA AGO sent an application to the Department requesting that all Massachusetts borrowers who attended ACI receive a full discharge of their federal loans under the borrower defense regulation without individual application. Because of the far-reaching scope of ACI's admitted misconduct, and the substantial evidence supporting these admissions, the Borrower Defense Unit recommends providing full borrower defense relief to all borrowers who attended ACI's Massachusetts campuses.

## **II. ACI's Misconduct**

### **A. Falsification of Job Placement Rates**

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<sup>1</sup> ACI also had three campuses in Maryland. Because the evidence provided to the Department does not pertain to these campuses, the recommendation in this memo concerns only ACI's campuses in Massachusetts.

<sup>2</sup> See Commonwealth's Cover Letter for ACI Group Discharge Application at 2 (July 26, 2016) (asking the Department to discharge loans for "all 4,458 students who attended ACI").

<sup>3</sup> Press Release, Massachusetts Attorney General's Office, American Career Institute Sued for Falsifying Student Documents, Failing to Provide Service (Nov. 21, 2013), available at <http://www.mass.gov/ago/news-and-updates/press-releases/2013/2013-11-21-aci-complaint-regs.html>.

<sup>4</sup> We recognize that admissions in consent judgments may have limited probative value. Notwithstanding, the Borrower Defense Unit has independently reviewed Consent Judgment admissions where relied upon, along with any accompanying analysis performed by the MA AGO, and verified any factual findings detailed throughout this memo.

Both the corporate and the individual defendants admitted in the Consent Judgment that ACI “made false or misleading representations to students and prospective students regarding the School’s completion and placement percentages.”<sup>5</sup> As described below, the defendants specifically admitted to misrepresenting placement rates that ACI provided to fifteen cohorts of students who enrolled between June 2011 and December 2012,<sup>6</sup> and admitted to specific methods of falsifying those rates.<sup>7</sup> The MA AGO conducted an extensive investigation through which it recalculated the placement rates for the fifteen cohorts and nine additional cohorts. The Borrower Defense Unit reviewed these investigative materials, including deposition testimony, interview notes, and subpoenaed records, and confirmed the MA AGO’s conclusions.

ACI inflated its job placement rates in two ways. First, ACI staff under-reported the number of students who graduated by removing students who did not receive job placements. The MA AGO found many instances where ACI had reported more graduates to the Massachusetts Division of Professional Licensure than it reported to its accreditor. Indeed, ACI admitted in the Consent Judgment that “[t]he School improperly and inaccurately increased numerous Cohort placement percentages by excluding from the data some of the Students who were graduates but who had not obtained employment.”<sup>8</sup> By under-reporting graduates who did not find relevant employment, ACI was able to inflate its placement rates.

Second, ACI falsely claimed that graduates found work in their field of study by falsifying graduates’ employer, position, or employment status on Employment Verification Forms (EVFs) that ACI submitted to its accreditor. For example, many EVFs indicated that graduates were self-employed freelancers working in their field of study, when in fact those graduates were working part-time or unemployed. At other times, ACI fabricated job titles to make it appear that graduates were working in positions relevant to their field of study when they were not. ACI also claimed graduates were working with purely fictitious employers, or with companies where the graduates did not work, and improperly hired ACI’s own recent graduates, reporting them as being employed in-field.<sup>9</sup>

Depositions of ACI employees confirm that ACI purposefully manipulated documents to publish higher rates and maintain ACI’s accreditation. For example, the Manager of Career Services and Externships at ACI’s Cambridge campus, Marcea Taylor-Nicholson, admitted that she fabricated student completion records and EVFs, and understood that she would be fired if the records did not satisfy the school’s accreditor (ACCET).<sup>10</sup> In fact, Taylor-Nicholson testified that she and ACI employees even falsified documents during the accreditor’s site visits to the school:

<sup>5</sup> *Massachusetts v. The Career Institute, LLC*, No. 2013-CV-4128H at ¶ 20 (Mass. Supp. July 1, 2016) (“Consent Judgment”) Consent Judgment.

<sup>6</sup> “Cohort” refers to the group of students that enrolled during a particular time period for a particular campus and program, (for example, the 2011 Medical Assisting Program at the Braintree campus). Each cohort corresponds to a particular published rate (e.g., the rate that would students who enrolled in Medical Assisting in 2011 at the Braintree campus would have seen).

<sup>7</sup> Consent Judgment at ¶ 26-29, 31.

<sup>8</sup> Consent Judgment at ¶ 31(e).

<sup>9</sup> “ACI was the single largest employer of its own graduates, having reportedly hired more than 50 of them.” Aprahamian Aff., No. 2013-CV-4128H at ¶ 9 (Mass. Supp. July 24, 2015).

<sup>10</sup> Taylor-Nicholson Dep. 48:6-8, 49:10-12, March 31, 2015.

A. When the site visit was actually happening, the forms were being altered and stuff still. They were in a back room secretly.

Q. While ACCET was there?

A. While ACCET was there. That's what we would do. We'd get up, we'd leave the office, run to the back room, "This is what they said, this is what I need," because they would give us a few minutes to get together what they asked for and I'd go in. It was almost like a stock market, "All right. Get this together. Look at this file."<sup>11</sup>

Significantly, ACI used this manipulated and fabricated data to calculate job placement rates that ACI published in program disclosures it provided to every prospective student.<sup>12</sup> Each incoming student had to sign one of these disclosures certifying that they had received that information. In addition to the disclosure forms that each enrolling student signed, ACI also published the falsified placement rates on its website, for prospective students; ACI continued publishing these rates until its final day of operation.<sup>13</sup>

In fact, ACI specifically admitted to misrepresenting placement rates that it provided to fifteen cohorts of incoming students.<sup>14</sup> The MA AGO recalculated ACI's job placement rates and found that the actual rates were at least 25% lower than the rates ACI disseminated to the fifteen cohorts. Specifically, the MA AGO used ACI's accreditor submissions and internal documents to determine which students were counted as placed, and which students appear to have graduated but were omitted from the job placement calculations. MA AGO then reviewed the EVFs of those students who had been listed as placed, and contacted students and employers to confirm what ACI had claimed on the EVFs. It also obtained employment records and/or affidavits to verify reported placements. Finally, working from a more accurate number of students who graduated and/or found employment, the MA AGO was able to re-calculate placement rates.

Using documents provided by the MA AGO, the Borrower Defense Unit validated these recalculations. The MA AGO provided information detailing their recalculation for each of the cohorts, and we used this information to recalculate the rates. Additionally, for two of the larger cohorts that ACI admitted had falsified placement rates, we reviewed all of the underlying data, including 28.1 forms, tracking spreadsheets, EVFs, interview notes, affidavits, and employer records. For all cohorts, our recalculations of placement rates showed substantial discrepancies between the actual and the published rates, consistent with the findings of the MA AGO.

<sup>11</sup> *Id.* at 167:19-168:5.

<sup>12</sup> ACI's disclosure form for the 2010 Digital Media Program at its Framingham campus falsely stated that "there were no completers in the period January – December 2010", and therefore did not provide a placement rate; the MA AGO discovered that there were two students who graduated in that time, and that neither of them had ever worked in their field of study. Therefore, the actual placement rate was 0%.

<sup>13</sup> <https://web.archive.org/web/20130108043123/http://www.aci.edu/disclosures/>.

<sup>14</sup> "Cohort" refers to the group of students that enrolled during a particular time period for a particular campus and program, (for example, the 2011 Medical Assisting Program at the Braintree campus). Each cohort corresponds to a particular published rate (e.g., the rate that students who enrolled in Medical Assisting in 2011 at the Braintree campus would have seen).



Following the Consent Judgment, the MA AGO continued its work, and identified an additional nine cohorts of students that ACI induced to enroll based on falsified job placement rates;<sup>15</sup> all nine additional cohorts had discrepancies of at least 17% between the published and recalculated rates, with six of them being inaccurate by 20% or more.<sup>16</sup> Although these cohorts are not specifically covered by ACI's admissions in the Consent Judgment, the MA AGO identified them using the same method of recalculating placement rates used to identify the cohorts included in the admissions. The Borrower Defense Unit also validated these recalculations.

### **B. Misrepresentations That Specified Employers Had Hired ACI Graduates**

ACI and its owners also admitted that they provided prospective students with lists of employers who had hired previous graduates from the school, when, in fact, "many of the businesses listed on the flyers had not hired any of the School's graduates."<sup>17</sup> Flyers published for the various programs offered at ACI each prominently featured the school's name and logo, followed by the heading "EMPLOYERS THAT HAVE HIRED OUR [program name] GRADUATES," and then a list of employers. There were a total of 425 employers included on these lists. The MA AGO issued a number of civil investigative demands as part of its investigation, including a request for "documents sufficient to identify the employer and title for each ACI graduate who obtained employment."<sup>18</sup> According to a sworn affidavit, MA AGO staff searched all of the over 527,000 pages of records produced by ACI for any record of a student being employed by one of these 425 purported employers.<sup>19</sup> None of the employers appeared to have employed any ACI graduates.<sup>20</sup> There were, however, 69 graduates whom ACI listed as "employed" but did not have any record specifying an employer. Even assuming that each of these graduates worked at a different one of the listed employers, that leaves over 350 (82%) that had never hired an ACI graduate.<sup>21</sup>

Based on documents provided by the MA AGO, ACI widely disseminated these flyers to prospective ACI students. They were considered "Admissions documents" and saved in ACI's "Admissions folder."<sup>22</sup> Prospective students enrolling as early as February of 2010 reported being given one of these lists during the admissions process.<sup>23</sup> A number of other students, across campuses and programs, reported having received the flyer during the admissions process and factoring it into

<sup>15</sup> The Consent Judgment acknowledged that the list of cohorts contained in the admissions was not intended to be a complete list of cohorts which were misrepresented. Consent Judgment at ¶ 32 ("Exhibit #1 reflects only the Cohorts for which the Commonwealth has made specific findings to date that the completion and/or placement data reported was significantly overstated. Nothing contained in the Consent Judgment should be construed as stating or implying that the School's completion and placement data for Cohorts that are not contained in Exhibit #1 was accurately represented to Students and prospective students.")

<sup>16</sup> If all evidence was viewed in the light most favorable to ACI, eight of these nine additional cohorts had discrepancies of at least 10% between the published and recalculated rates.

<sup>17</sup> Consent Judgment at ¶ 28.

<sup>18</sup> See Aprahamian Aff., No. 2013-CV-4128H at ¶ 5 (Mass. Supp. July 24, 2015).

<sup>19</sup> See *Id.* at ¶ 12.

<sup>20</sup> *Id.* at ¶ 13. Four of the employers were referenced in some way in an email, completion tracker, or employment verification form. *Id.* at ¶ 13(a)-(d). However, for each of these four, other information in the EVF indicated that the student was employed elsewhere, or no EVF verifying the employment could be located. *Id.*

<sup>21</sup> See Aprahamian Aff., No. 2013-CV-4128H at ¶ 15 (Mass. Supp. July 24, 2015); Commonwealth's Opp. To Motion for Protective Order, No. 2013-CV-4128H at 3 n.4 (Mass. Supp. July 24, 2015).

<sup>22</sup> *Id.*

<sup>23</sup> See, e.g., Memorandum of Interview with Patrick Laflamme.

their decision to enroll.<sup>24</sup> Several students even provided MA AGO with copies of their enrollment materials, which included copies of the flyers for their program.<sup>25</sup> Furthermore, an email from ACI's Marketing Director on January 16<sup>th</sup>, 2012, stated that they were printing copies of the flyers "to hang outside every classroom in MA."<sup>26</sup> In short, evidence shows that ACI provided the deceptive flyers to prospective students throughout its campuses and programs, and used them broadly to market the school.

### C. Employment of Instructors Not Authorized to Teach Under Massachusetts State Law

Under Massachusetts law, instructors at schools such as ACI must be approved by the Division of Professional Licensure (DPL).<sup>27</sup> Nevertheless, ACI admitted allowing "individuals who were not approved to teach by the DPL to be instructors, including recent School graduates, current Students with little or no experience in the field of study, and individuals who had no teaching experience."<sup>28</sup> DPL's predecessor investigated one student's complaints about ACI and found that, of the six instructors that student identified as teaching her classes, four were "not approved by OPS to provide instruction", and a fifth was approved by OPS, but not to teach the courses she was teaching.<sup>29</sup> A comparison of ACI's list of employees with DPL's list of approved instructors shows that 19% of ACI's roster of teachers was never approved to teach.

However, that 19% figure is not the full measure of ACI's use of unapproved instructors because not everyone who taught classes at ACI appeared on payroll records as an instructor. ACI also used temporary employment agencies to provide instructors for their courses.<sup>30</sup> With the exception of a handful who were later hired permanently, these temporary workers never appeared in ACI's employment records. As an example, RDH Temps, Inc., which specialized in providing dental assistants for short term assignments, placed more than twenty dental assistants in assignments *as instructors* with ACI, for periods ranging from one day to seventeen weeks. None of these instructors were approved by DPL to provide instruction when they began their assignments.<sup>31</sup>

Additionally, ACI utilized former students to provide classroom instruction, both as occasional substitutes and on an ongoing basis. Multiple former students stated that they were taught by recent

<sup>24</sup> See Memorandum of Interview with Angela Salmon-Collins (enrolled in Medical Assisting at the Braintree campus); Memorandum of Interview with Lynda Stockwell (enrolled in Medical Assisting Billing and Coding at Braintree); Memorandum of Interview with David Kee (enrolled in Digital Gaming Design at the Woburn campus).

<sup>25</sup> See AGO0000891, AGO0000718.

<sup>26</sup> See TCI00583457.

<sup>27</sup> Massachusetts law requires that, "Prior to employment a school... obtain the [DPL's] approval of all candidates for teaching positions," and that schools "submit to [DPL] an application for approval of each teacher." 603 CMR 3.15.

<sup>28</sup> Consent Judgment at ¶ 46.

<sup>29</sup> Office of Proprietary Schools, Preliminary Findings Student Complaint #081011 (ACIHUD001583-001587).

<sup>30</sup> ACI's December 11, 2012 letter to ACCET, Escobales Deposition Exhibit 1, ACCET0004034-0004036.

<sup>31</sup> RDH's Employment Agreement states that "the Employee is desirous of seeking temporary placement as a dentist, dental hygienist, dental assistant or dental receptionist and the Employer can provide such placement"; no provision is made for employment as an instructor in either the Employee Agreement, the Staffing Services Agreement between RDH and its clients, or the Facility Questionnaire RDH has clients fill out to determine what skills are necessary for temporary placements.

ACI graduates, or that they themselves taught at ACI subsequent to their graduation.<sup>32</sup> One student testified that during the course of a program that lasted less than eleven months, three of his instructors were recent ACI graduates.<sup>33</sup> Another former student testified that between April and September of 2012, she was the primary teacher for one of the Dental Assisting program sections, despite no actual experience in the field.

The MA AGO has provided a list of more than a dozen former or current ACI students who were identified as teaching classes, without DPL approval or the experience required for such approval.<sup>34</sup> This list of former or current ACI students is separate from the list of instructors that ACI admits were hired as teachers without proper approval.

#### **D. Other Misrepresentations by ACI**

ACI, as well as its owners and employees, also admitted to making numerous other misrepresentations. The most egregious, widely-disseminated misrepresentations include:

- Routinely falsifying the number of students that *completed* ACI programs within a reasonable period after enrollment and widely disseminating these falsified completion rates to prospective students in the same disclosures that contained misleading job placement rates.
- Promising students lifetime career services, “but provid[ing] no more than links to listings on Craigslist or other employment hiring websites.”<sup>35</sup>
- Creating “a false and misleading sense of urgency in prospective students, pressuring them to enroll immediately to ensure their place in the class even though the School had open and rolling enrollment.”<sup>36</sup>

MA AGO has provided copies of marketing materials, deposition testimony and other evidence that confirms that ACI made these misrepresentations.

### **III. The Borrower Defense Regulation Supports Eligibility and Full Relief for ACI Borrowers Under Massachusetts State Law**

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 the Secretary, in any action arising from or relating to a [Direct] loan...,”

<sup>32</sup> See Deposition of John Burrows at 23:8-23, 75:8-15; Deposition of Mary Ann Escobales at 20:11-21:16, 22:8-24:7, 67:17-68:19; Deposition of Kevin Ronald Haverty at 9:21-10:8, 12:1-13:5; Memorandum of Interview with Patrick LaFlamme; Memorandum of Interview with Melissa Jimenez; Memorandum of Interview with Benny Arce; Memorandum of Interview with April Leshore.

<sup>33</sup> Deposition of John Burrows at 23:8-23, 75:8-15.

<sup>34</sup> ACI Unapproved Instructors MASTER CHART updated 2015 08 13.

<sup>35</sup> Consent Judgment at ¶ 36. Also, the MA AGO conducted dozens of interviews in which students commented on the lack or complete absence of career services assistance. See, e.g., Interview Memoranda of Benny Arce, Julie Rifai, and Richard Burgess.

<sup>36</sup> Consent Judgment at ¶ 35.



an amount in excess of the amount such borrower has repaid on such loan.”<sup>37</sup> 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.”<sup>38</sup>

For the reasons set forth below, borrowers who attended ACI campuses in Massachusetts have a valid claim under the Massachusetts Consumer Protection Act (MCPA),<sup>39</sup> and are therefore eligible for borrower defense. It is appropriate to grant relief without individual applications in this case because the MA AGO has identified all eligible borrowers and the Department has all necessary evidence to show that these borrowers were subject to ACI’s substantial and pervasive misrepresentations. Given the widespread dissemination of ACI’s extensive misrepresentations and the lack of value conferred by ACI, these borrowers should be granted full loan discharges and refunds of amounts already paid. The number of eligible borrowers is approximately 3,850.<sup>40</sup>

Although claims under the MCPA are subject to a four-year statute of limitations,<sup>41</sup> “this limitations period is subject to tolling until the plaintiff knew or should have known of the alleged injury.”<sup>42</sup> The earliest that any ACI borrowers reasonably could have discovered ACI’s misrepresentations and omissions would have been in November of 2013, when the MA AGO announced its complaint against ACI.<sup>43</sup> Since the four-year period would not run until November of 2017, all ACI borrowers fall within the statute of limitations.

#### A. The Misrepresentations and Omissions Described Above State a Claim Under the MCPA

The MCPA, as interpreted by Massachusetts state courts, contains an expansive definition of “unfair or deceptive acts or practices.”<sup>44</sup> No proof of intent or knowledge is required to find a violation of the MCPA.<sup>45</sup> In fact, a “practice is ‘deceptive’ if it could reasonably be found to have caused a person to act differently from the way he otherwise would have acted.”<sup>46</sup> The Department has already determined that misleading or false job placement rates reasonably influence the enrollment decision of prospective students. Similarly, substantially false lists of employers that have previously employed ACI graduates would reasonably influence a prospective student to attend ACI when they would not

<sup>37</sup> 20 USC § 1087e(h).

<sup>38</sup> 34 C.F.R. § 685.206(c)(1).

<sup>39</sup> M.G.L. c. 93A.

<sup>40</sup> The total number of ACI borrowers who attended Massachusetts campuses is approximately 4,500. Approximately 650 have already received closed school discharges, which reduces the number of borrowers eligible for BD relief to about 3,850.

<sup>41</sup> M.G.L. c. 260, § 5A.

<sup>42</sup> *Lambert v. Fleet Nat. Bank*, 865 N.E.2d 1091, 1097 (Mass. 2007).

<sup>43</sup> Press Release, Massachusetts Attorney General’s Office, American Career Institute Sued for Falsifying Student Documents, Failing to Provide Service (Nov. 21, 2013), available at <http://www.mass.gov/ago/news-and-updates/press-releases/2013/2013-11-21-aci-complaint-regs.html>.

<sup>44</sup> M.G.L. c. 93A, § 2(a).

<sup>45</sup> See, e.g., *Drakopoulos v. U.S. Bank Nat’l Ass’n*, 465 Mass. 775, 786 n.15 (2013) (“A successful G.L. c. 93A action based on deceptive acts or practices does not require proof . . . that the defendant intended to deceive . . . or even knowledge on the part of the defendant that the representation was false.” (internal citation omitted)).

<sup>46</sup> *Lowell Gas Co. v. Attorney Gen.*, 377 Mass. 37, 51 (1979).

otherwise. The same is true of substantially misrepresented completion rates, false promises that lifetime career services would be provided, and statements that led prospective students to believe that they had to enroll immediately or miss the opportunity to do so. Therefore, all such representations constitute actionable claims under the MCPA.

In addition, the MCPA covers any failure to provide information “the disclosure of which may have influenced a person not to enter into a transaction.”<sup>47</sup> Accordingly, the omission of material information – such as the fact that a substantial number of ACI’s teachers were not authorized to teach – also violates the MCPA.<sup>48</sup> The fact that 19% of the instructors on ACI’s payroll were teaching in violation of Massachusetts law, and that a significant number of classes were taught by temporary employees with no teaching experience and/or recent graduates with no relevant work experience, certainly would reasonably influence ACI students not to enroll.

#### **B. Granting Relief to ACI Borrowers Without Individual Applications is Appropriate and Consistent with the MCPA**

The circumstances here warrant granting borrower defense relief, without an application, to every borrower who attended ACI’s Massachusetts campuses. There is no need for an application from each of these borrowers because the evidence provided by the MA AGO has already established that those borrowers have a cause of action against the school under state law, and because ACI’s misrepresentations were both substantial and pervasive. This approach is consistent with Massachusetts law, which does not require proof of individual reliance and provides for relief for groups of consumers harmed by violations of the MCPA.

Massachusetts courts have explicitly stated that a showing of individual reliance on a representation is not required under the MCPA: “the plaintiffs need not prove individual physical harm in order to recover for the defendants’ deception. Nor need the plaintiffs show that each individual consumer relied on the defendants’ false promise.”<sup>49</sup> There need only be a “causal connection between the seller’s deception and the buyer’s loss.”<sup>50</sup>

Here, the loss to ACI borrowers was clearly connected to ACI’s misrepresentations and omissions, which were both substantial and widespread. Prior to enrollment, each ACI student was required to sign a program disclosure provided by ACI. As detailed above, many of these disclosures contain misrepresentations as to completion rates and job placement rates across a wide range of programs. Additionally, borrowers across ACI’s campuses and programs received flyers containing falsified lists of employers who purportedly hired ACI graduates. ACI distributed these with other admissions documents starting immediately after the school opened, and later posted these deceptive

<sup>47</sup> *Grossman v. Waltham Chem. Co.*, 14 Mass. App. Ct. 932, 933 (1982) (“[F]ailure to disclose any fact, the disclosure of which may have influenced a person not to enter into a transaction, is a violation of c. 93A.”). See also *Staney v. Westwood Auto, Inc.*, 366 Mass. 688, 700-04 (1975) (failure to disclose that engine was defective at time of sale constituted a violation of the MCPA).

<sup>48</sup> *Schwartz v. Rose*, 418 Mass. 41, 46 (1994). See also *Commonwealth v. AmCan Enter., Inc.*, 5 Mass. L. Rptr. 53, \*3 (1996) (“[A] solicitation package is deceptive if it contains material . . . omissions which are likely to mislead the recipients.”), *aff’d*, 47 Mass. App. Ct. 330 (1999).

<sup>49</sup> *Aspinall v. Philip Morris Companies, Inc.*, 442 Mass. 381, 397 (2004), citing *Nei v. Burley*, 388 Mass. 307, 313, 446 N.E.2d 674 (1983).

<sup>50</sup> M.G.L. c. 93A, § 9(b).

lists outside of *every* classroom. Similarly, ACI's failure to inform students about its severe lack of state-qualified teachers extended to *every* prospective student.

Under the MCPA, individuals who have been harmed are not required to bring suit on their own behalf to obtain relief. The MCPA allows individual consumers to bring class action cases and to obtain relief for any other "similarly injured and situated persons."<sup>51</sup> The MCPA also authorizes the Attorney General to seek relief on behalf of Massachusetts citizens.<sup>52</sup> The MA AGO is authorized to obtain "such orders or judgments as may be necessary to restore any person who has suffered any ascertainable loss of any moneys or property, real or personal..."<sup>53</sup> Therefore, providing relief to students without individual applications is consistent with state law.<sup>54</sup>

### C. Full Relief Should Be Provided to ACI Borrowers

Under the MCPA, plaintiffs are entitled to recovery "in the amount of actual damages... [i]n addition, the court shall award such other equitable relief... as it deems to be necessary and proper."<sup>55</sup> Actual damages include "all losses which were the foreseeable consequences of the defendant's unfair or deceptive act or practice."<sup>56</sup> It may also include out of pocket damages.<sup>57</sup> A court may treble the damages if the act or practice was a knowing or willful violation of the law.<sup>58</sup>

In calculating actual damages under the MCPA, Massachusetts courts have used a benefit of the bargain approach, comparing the amount paid against how something would have been valued absent the misrepresentation.<sup>59</sup> Where valuing the actual product delivered may be impracticable, however, the courts have recognized that the benefit of the bargain rule should not "operat[e] to defeat a just recovery where misrepresentation has caused real damage but where values cannot easily be proved."<sup>60</sup> To address this, the benefit of the bargain rule may be modified, so that "[w]here the proof is so vague as to cast virtually no light upon the value of the property had it conformed to the representations, damages will be awarded equal to the loss sustained."<sup>61</sup>

<sup>51</sup> M.G.L. c. 93A, § 9(b).

<sup>52</sup> M.G.L. c. 93A, § 2. In fact, the MCPA originally did not permit any private causes of action, allowing only the AGO to enforce the law. *See, e.g., Feeney v. Dell, Inc.*, 454 Mass. 192, 201 (2009) ("When originally enacted in 1967, G.L. c. 93A contained no provision for private remedies; only the Attorney General was empowered to bring enforcement proceedings.").

<sup>53</sup> M.G.L. c. 93A, § 2.

<sup>54</sup> M.G.L. c. 93A, § 2.

<sup>55</sup> Moreover, although not required, in this instance, the MA AGO has submitted an application on behalf of all borrowers that attended ACI's campuses in Massachusetts.

<sup>56</sup> M.G.L. c. 93A § 9(3). *See also Schwartz v. Rose*, 418 Mass. 41, 47-48 (1994); *Drakopoulos v. U.S. Bank Nat'l Ass'n*, 465 Mass. 775, 787 n.16 (2013).

<sup>57</sup> *Rivera v. Commerce Ins. Co.*, 84 Mass. App. Ct. 146, 149, 993 N.E.2d 1208, 1210 (2013); *see also DiMarzo v. Amer. Mut. Ins. Co.*, 389 Mass. 85, 101 (1983) (successful Chapter 93A plaintiff is "entitled to recover for all losses which were the foreseeable consequences of the defendant's unfair or deceptive act or practice").

<sup>58</sup> *See Blue Hill Chiropractic Grp., Inc. v. Encompass Ins. Co.*, No. SUCV200502075, 2011 WL 3672049, at \*11 (Mass. Super. May 5, 2011) ("Out of pocket damages compensate the party for the actual loss it suffered as a result of the fraud.")

<sup>59</sup> M.G.L. c. 93A § 9(3).

<sup>60</sup> *Aspinall*, 442 Mass. at 399.

<sup>61</sup> *Rice v. Price*, 340 Mass. 502, 510, 164 N.E.2d 891, 896 (1960).

<sup>62</sup> *Id.* (citing Prosser, Torts (2d ed.) (ellipses and brackets omitted)).

In the case of students deceived into enrolling at ACI, actual damages under Massachusetts law would include, at a minimum, the amount paid by the student to attend the school.<sup>62</sup> The proof of the value of ACI's product, if any, is "vague" at best – indeed, what evidence the Department possesses indicates the programs had minimal or no value – so that full relief is appropriate. The facts described above with respect to ACI's practices and product resemble those for Corinthian Colleges, where the Department determined that borrowers should receive full relief. This determination was based in substantial part on the lack of value attendant to a Corinthian education, as evidenced by factors mirrored at ACI:

- Repeated misleading statements to students, regulators and accreditors;
- Misrepresentations regarding completion rates;
- Elaborate job placement fraud;
- Many student accounts testifying as to the lack of value provided by ACI; and
- Many student accounts stating that their affiliation with the school was an impediment rather than an asset as they sought employment.

Moreover, like Corinthian Colleges, the ACI programs at issue were career training programs. The inherent value of such programs lies in their ability to place students, so that placement rate advertising plays a significant role in establishing their value. An understanding that the value of the programs was not what it was purported to be can also be inferred from ACI employees' efforts to manipulate job placement rates.

ACI's misconduct was as flagrant as, if not worse than, Corinthian's. Documents provided by the MA AGO, including depositions with former ACI employees, portray a culture where falsifying information was routine. ACI employees, as well as top company executives, admitted that many students never attended class, and that unsuccessful students were simply erased from records documenting completion and job placement rates. Moreover, the school had a track record of providing demonstrably sub-standard educational services, including by hiring dozens of teachers who were not authorized to teach.

Given ACI's record of misconduct and poor results, the Department has determined that there is extremely limited proof of any value that ACI provided to its students, and what evidence there is indicates that the value provided by ACI was minimal.<sup>63</sup> In light of the above, it is appropriate to award eligible borrowers full relief.<sup>64</sup>

<sup>62</sup> As discussed above, damages under the MCPA may also include other expenses incurred as a result of the contract and, where a violation is knowing or willful, punitive damages in an amount two to the three times the actual damages. However, 455(h) of the HEA limits borrower defense relief to the amount of the loan.

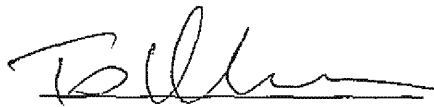
<sup>63</sup> We also note that in the Consent Judgment, ACI admitted to a failure to provide lifetime placement services as promised. While we have not independently verified this admission, such a failure would constitute a breach of ACI's contractual promises with its students and would establish a borrower defense under 34 C.F.R. § 685.206(c).

<sup>64</sup> Under the MCPA, a court may also award such equitable relief "as it deems to be necessary and proper," M.G.L. 93A §9(3), and courts sometimes apply the equitable approach of rescission of contract in these cases. It appears the result of such an approach in this case would also yield full relief for affected borrowers. Rescission seeks to put both parties in the position they would have been absent the contract. *See, e.g., Ann & Hope, Inc.*, 42 Mass. App. Ct. at 230 (upholding an award of damages in part because "it returned to each party the consideration it provided under the contract to the greatest extent possible"). Sometimes it may be impossible for a product to be returned by a plaintiff, but "the value of the property not restored may be considered in determining the plaintiffs' damages." *Id.* In this case, given the evidence indicating a




I accept the above recommendation. For all borrowers that attended an ACI campus in Massachusetts, I direct the granting of borrower defense relief as set out in this memorandum.

1/13/17  
Date

  
Ted Mitchell  
Under Secretary  
U.S. Department of Education

CONCUR:

1/13/17  
Date

  
Office of General Counsel

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lack of value of ACI's educational program, as described above, rescission would also properly yield recovery by ACI students of all they had paid the school.

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Publication Date: January 18, 2017

DCL ID: GEN-17-01

Subject: Treatment of Federal Family Education Loan (FFEL) Program Loans When a Borrower Asserts a Defense to Repayment

Summary: This letter provides lenders and guaranty agencies participating in the FFEL Program (collectively referred to herein as "FFEL loan holders") with additional details about two provisions of the recently finalized borrower defense regulations - 34 CFR 682.211(l)(7) and 34 CFR 682.410(b)(6)(viii). This letter also outlines the process FFEL loan holders will follow to implement these regulations, whether they do so on the effective date of July 1, 2017, or if they choose to implement them early, per the Secretary's designation.

Dear Colleague:

The Department of Education (the Department) has received a number of inquiries from borrowers and their representatives seeking clarification on the treatment of FFEL Program Loans on which borrowers may wish to assert a defense to repayment of the loan, known as a "borrower defense." The purpose of this letter is to clarify this process for FFEL loan holders.

On November 1, 2016, the Department issued final regulations related to borrower defense (81 FR 75926). One provision of those regulations (34 CFR 682.211(i)(7)) states that "[t]he lender must grant a mandatory administrative forbearance to a borrower upon being notified by the Secretary that the borrower has made a borrower defense claim related to a loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief..." The lender will grant this forbearance in yearly increments or for a period designated by the Secretary until the loan is consolidated or until the lender is notified by the Secretary to discontinue the forbearance. Another provision of these regulations (34 CFR 682.410(b)(6)(viii)) states, "Upon notification by the Secretary that the borrower has made a borrower defense claim related to a loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief... the guaranty agency must suspend all collection activities on the affected loan for the period designated by the Secretary."

The Secretary designated 34 CFR 682.211(i)(7) and 682.410(b)(6)(viii) for early implementation. Therefore, FFEL loan holders may implement these provisions before they become mandatory on July 1, 2017, and we encourage them to do so.

### Preliminary Determination of Potential Eligibility for Borrower Defense Claims

The Department is reviewing FFEL borrower defense claims that it has already received and will provide FFEL borrowers with a preliminary determination as to whether the borrowers are eligible for borrower defense loan discharge under Direct Loan regulations.

In contrast to what would be required for a borrower to qualify for a borrower defense loan discharge on a FFEL Program Loan under 34 CFR 682.209(g), a borrower may qualify for a borrower defense loan discharge on a Direct Consolidation Loan that repays a FFEL Program Loan without having to establish the provision of an improper inducement, or a referral or affiliate relationship, between the lender of the underlying FFEL Program Loan and the school.

### Consolidation

For borrowers who are preliminarily determined to have a valid borrower defense claim, the Department will provide the borrower with information on how to consolidate their loans into a Direct Consolidation Loan to be eligible for relief under a borrower defense.

Borrowers whose claims are determined to be ineligible for relief under a borrower defense even if they were to consolidate will be notified that their claim would not be successful.

### Forbearance or Suspension of Collection Activity

When a borrower submits a borrower defense claim to the Department in connection with a FFEL Program Loan, and after the Department has determined that the borrower has provided all required information, the Department will notify the FFEL loan holder in writing to place the borrower's loan(s) into administrative forbearance (if the borrower is not in default on the loan(s)) or to suspend collection activity on the borrower's loan(s) (if the borrower is in default on the loan(s)).

When a request is made by the Department that a FFEL loan holder grant forbearance or suspend collection activity on a FFEL Program Loan, lenders and guaranty agencies who have implemented section 682.211(i)(7) or 682.410(b)(6)(viii) early will be required to place the borrower's loan(s) into forbearance or to suspend collection, whichever is applicable. For a defaulted borrower, the suspension of collection activity would include suspending any Treasury offset and/or wage garnishment processes.


FFEL Program lenders may also, for a non-defaulted FFEL loan, apply an administrative



forbearance to cover any period of delinquency that exists at the time the prospective period of forbearance is granted (34 CFR 682.211(f)(2)). The administrative forbearance should be applied to the borrower's account as soon as practicable after the Department makes the request.

If a borrower contacts a FFEL loan holder requesting to shorten or remove the administrative forbearance or suspension of collection activity, or to restrict it to certain loans, the FFEL loan holder must honor the borrower's request. The Department will advise borrowers to contact their FFEL loan holder with those specific requests.


Existing regulations require the lender to notify the borrower whenever an administrative forbearance is granted and about specific items, including giving the borrower the opportunity to decline the forbearance (34 CFR 682.211(e)(1) and (e)(2)(vi)). These have not changed, and nothing in this letter affects those requirements.

If a borrower inquires about forbearance related to a borrower defense claim, FFEL loan holders should direct the borrower to the borrower defense hotline (855-279-6207 ) for assistance with that claim or to the borrower defense webpage, available at [StudentAid.gov/borrower-defense](https://StudentAid.gov/borrower-defense).

#### Other Borrower Repayment Options

If a FFEL loan holder has applied an administrative forbearance due to a borrower defense claim, the FFEL loan holder is not precluded from discussing other available options to aid the borrower in managing his or her loan payments. For example, a borrower who is eligible for administrative forbearance who might be eligible for a zero dollar payment under the Income-Based Repayment (IBR) plan could be counseled about the benefits of the IBR plan.

Similarly, nothing in this letter prevents a FFEL borrower from entering into a voluntary agreement to repay the loan through a rehabilitation agreement, loan consolidation, other satisfactory repayment arrangements, or any other voluntary payment, as provided under current regulations. A payment on a loan for which the borrower has asserted a defense to repayment claim will not prevent the borrower's claim from being granted.

We believe that these procedures will streamline the process for borrowers and FFEL loan holders. If you have any questions about this guidance, please contact the borrower defense hotline at (855) 279-6207 .

Sincerely,

Gail McLarnon,

Acting Deputy Assistant Secretary  
for Policy, Planning, and Innovation

Attachments/Enclosures:

[GEN-17-01: Treatment of Federal Family Education Loan \(FFEL\) Program Loans When a Borrower Asserts a Defense to Repayment in PDF Format, 928KB, 3 Pages](#)

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## **PROCESS DOCUMENTS**

## GLOSSARY OF BD TERMS



### Borrower Defense Terminology

#### **GENERAL TERMS:**

**Accreditation:** Institutions must be accredited to be eligible for Title IV aid. The Department recognizes many accreditors, which in turn accredit schools and/or programs.

- **Institutional Accreditation:** The accreditation of the school itself, so that student borrowers may receive Title IV aid to attend. There are two types of institutional accreditation.
  - **Regional:** There are seven regional accreditation agencies which foster articulation between secondary schools and higher education institutions, particularly evaluation of prospective students by colleges and universities. The overwhelming majority of public schools and non-profit private schools are regionally accredited.
  - **National:** National accreditors generally accredit schools that are career oriented and/or vocational in nature, generally operating on a for-profit basis. Credits from nationally accredited schools are not generally transferable to regionally accredited schools.
- **Programmatic Accreditation:** Accreditation that is specific to a program of study, overseen by organizations such as the American Bar Association for law schools, or the Commission on Accreditation of Allied Health Education Programs for allied health programs (such as medical assistants). Graduation from an appropriately accredited program is frequently necessary to be eligible for licensing or certification purposes.

**Allegation:** A borrower's explanation or narrative that their school engaged in improper conduct. Not all allegations borrowers make will state an actionable BD claim, but allegations that do state a BD claim typically fall into the following categories: job placement rate, employment prospects, program cost/nature of loans, transferability of credits, career services, educational services, or other.

**Case:** A borrower's application and any supporting documentation.

**Forbearance:** Forbearance allows borrowers to temporarily stop making payments on their student loans. Loans in forbearance continue to accrue interest. Borrowers who submit a BD application are entitled have their loans in placed in forbearance, however they may opt out.

**NSLDS:** National Student Loan Data System - the central database that records student loan information.

**OPEID:** Office of Postsecondary Education Identification number, used to identify schools and/or campuses whose students are eligible to participate in Federal Student Financial Assistance programs under Title IV regulations.

**Tier 1:** The team of intake workers assigned to borrower defense. Prior to Tier 1 taking over intake the Department had a team in San Francisco conducting intake for borrower defense.

#### **CASE REVIEW SPECIFIC TERMS:**

**Controlling Date:** In approved borrower defense cases, the date after which a borrower's loans will be discharged or reduced.

**Dual Program:** A situation in which a borrower applies for JPR relief, however the first program is not covered by the Department's findings, but the subsequent programs are.

**Major Error:** An error that changes the outcome of the case.

Examples: marking a claim as an approval when it should be a denial; using an improper controlling date that leaves out approvable loans; incorrect global fields.

**Minor Error:** An error that does not change the outcome of the particular case but is the result of not following the proper protocol.

Examples: marking a claim as in due to QC when it should be an approval; using an improper controlling date but the borrower's loans are not affected; marking an allegation as failing to state a claim when it should be insufficient evidence.

**One Off:** A school that has one claim against it and the Department has no evidence of wrongdoing by the school.

#### **LOAN TYPES**

**Direct Loans:** Loans made directly to the borrower by the Department. While the Department made the loans, private loan servicers administer and manage those loans.

**FFEL Loans:** Federal Family Education Loans are loans that are backed by the federal government but may not be owned by the government. FFEL Loans were discontinued in 2010. Before a borrower may be eligible to have these loans forgiven, the borrower may have to consolidate their loans into a Direct Loan.

**Perkins Loans:** Low-interest federal student loans for undergraduate and graduate students with exceptional financial need, with the school acting as the lender. The authority for schools to make new Perkins Loans ended on Sept. 30, 2017, no Perkins loan disbursements have been made since June 30, 2018. Before a borrower may be eligible to have these loans forgiven, the borrower may have to consolidate their loans into a Direct Loan.

**Parent PLUS loans:** Federal loans that parents may take out to help their child attend college. PLUS loans may be either Direct or FFEL loans. Parent PLUS borrowers may submit an application for borrower defense to repayment even though they did not attend the school they are alleging committed wrongdoing.

#### **DISCHARGE TYPES:**

**Borrower Defense (BD):** Discharge or reduction of a borrower's loans based on misconduct by the school that is related to the loan or the education the loan was meant to finance.

**Closed School (CSD):** Discharge of a borrower's loans based on their inability to finish the program they enrolled in due to their school's closure. This discharge is not handled by the BD Unit, but many borrowers apply for BD relief based on their school's closure.

**False Certification:** Discharge of a borrower's loans based on the school falsely certifying the borrower's eligibility for those loans. This discharge is not handled by the BD Unit, but many borrowers make non-BD allegations that would be more appropriate for False Certification discharge.

**Job Placement Rate Allegation:** An allegation that the school the borrower attended misrepresented their job placement rates. Typically, but not always, JPR allegations refer to allegations from borrowers

that attended Corinthian Colleges. The Department did an investigation into Corinthian Colleges and published findings with the dates, campuses, and programs that Corinthian Colleges misrepresented their job placement rates. JPR claims account for a substantial percentage of the borrower defense cases.

**Non-Job Placement Rate Allegation:** An alleging anything other than a job placement rate allegation. These allegations typically fall into on of the following categories: job placement rate, employment prospects, program cost/nature of loans, transferability of credits, career services, educational services, other. The term typically, but not always, will refer to an allegation from a Corinthian Colleges borrower.

## CASE REVIEW METRICS



### Case Review Metrics

Contractor claim review rates and proficiency will be reviewed on a weekly basis, or at reasonable intervals at the discretion of the Director of Borrower Defense. In addition to a weekly review of proficiency and claim review rates contractors will be subject to spot checking at the discretion of the Director of Borrower Defense. Based on past performance, FSA requires contractors to exceed the following metrics on a weekly basis:

#### **Job Placement Rate Claims:**

**Review Rate:** five cases per hour.

**Maximum Error Rate:** one major error and one minor error.

Failure to meet the above review rate and error rate will result in remedial action including, but not limited to, probation, re-training, moving back to 100% QC, hoteling at FSA or Sullivan Cove during work hours, or termination from the project at the discretion of the Director of Borrower defense.

#### **Standard Protocol Claim Review:**

**Review Rate:** five cases per hour.

**Maximum Error Rate:** one major error and one minor error.

Failure to meet the above metrics/error rate will result in remedial action including, but not limited to, probation, re-training, moving back to 100% QC, hoteling at FSA or Sullivan Cove during work hours, or termination from the project at the discretion of the Director of Borrower defense.

#### **Standard Protocol Memo Writing:**

**Rate:** a memo should take, on average, no more than two hours to complete. The memos should be a final work product free to typographical and/or grammatical errors.

Failure to meet the above metrics will result in remedial action including, but not limited to, probation, re-training, moving back to 100% QC, hoteling at FSA or Sullivan Cove during work hours, or termination from the project at the discretion of the Director of Borrower defense.

#### **Evidence Review**

Due to the nature of evidence review, FSA does not have set metrics. However, contractors are expected to review evidence at a reasonable rate. FSA will conduct weekly spot checks of the contractor's reported hours reviewing evidence. If a contractor is found to be over reporting hours spent on evidence review, they will be subject to remedial action, including termination from the project, at the discretion of the Director of Borrower Defense.

#### **100% QC**

Contractors will remain on 100% QC until the below metrics are met:

**JPR:** A contractor reviews 20 JPR allegations with a maximum of one error.

**Standard Protocol:** A contractor reviews at least 100 allegations with a maximum 10% minor error rate and no major errors.

## JPR PROTOCOL

### **JPR Instructions**

**Steps:**

1. Check the school that the borrower says he/she attended against the Primary School listed in Salesforce.
2. Check for Official School document and any Related Cases.
3. Determine if the borrower made a job placement rate allegation.
4. Determine if one or more programs fall within the coverage dates found in the findings lists.
5. Adjudicate the JPR claim and add one of the following reviews into Salesforce:
  - a. Approve
  - b. In due to QC
  - c. Dual program first out
  - d. Dual program due to QC
  - e. Outside Coverage dates
  - f. Out due to QC
  - g. Incomplete Application
  - h. Non-Reliance
6. Determine if the borrower is potentially eligible for greater relief under a non-JPR allegation
  - a. If yes then transcribe (or add an allegation and put "See Application at X) all non-JPR allegations

**STEP ONE: CHECK THE OPEID AND “SCHOOL 1 NAME” INFORMATION AND CHECK FOR RELATED CASES**

Check the school that the borrower says he/she attended against the Primary School listed in Salesforce. The “Customer-Provided School” is the school the borrower wrote on their application, while the “Primary School” field is automatically pulled into Salesforce from the assigned OPEID.

**If the application is against a completely different school than the school listed as the “Primary School”** (e.g. application is against CCI and “Primary School” is DeVry), create a task to the Tier 1 reviewer stating “Application is against CCI, but the Primary School is listed as DeVry” and change the status to 1.4.<sup>1</sup>

**Move on to your next case.**

**If the school/campus named by the borrower is the same as the school/campus reflected by the Primary School in Salesforce you may continue.**

**Look for Related Cases:** If a case has a “related case” you must assign the case to the individual designated by FSA and move on to the next claim until you are instructed the claim is able to be adjudicated. To look for a related case review the “Related Cases” field on the case page. Additionally, click into “Contacts” by clicking the borrower’s name and selecting “Details” in the “Primary Cases” tab. If there are no related cases the claim may be adjudicated:

**MOVE ONTO STEP TWO**

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<sup>1</sup> If Salesforce or NSLDS indicates a claim is against Bryman or Alterius treat the case as against Corinthian.



**STEP TWO: CHECK FOR OFFICIAL SCHOOL DOCUMENT**

Check to see whether the borrower has attached a transcript, enrollment agreement, or some other official school document that records campus/program/date information.

**If there is an official school document:**

Click on “New Program & Credential”

- You will fill in the school document type, the first program from the school document, and the start date for the first program from the school document. If there are second (and third, fourth, etc.) programs/dates also reflected in the school document, add an additional program and credential. An
- If there is more than one official school document in the file, the order of preference for which document to use is: transcript, enrollment agreement, and other. Loan documents are not “official school documents.” Loan documents rarely contain information required to complete these steps.

**NOTE: The school name, campus, program information, and enrollment start date contained on the official school document will serve as the definitive data points for the adjudication of the programs contained on the school document.** This means that the official school document overrides what the borrower wrote in their application as well as the school provided data. However, it is important to remember that the borrower data and/or the school provided data may contain information on additional programs not contained within the official school document.

MOVE ON TO STEP THREE

**If there is NOT an official school document:**

MOVE ON TO STEP THREE

**STEP THREE: RECORD THE JPR ALLEGATION**

Add a JPR allegation into the tool.

- If there is a JPR allegation you can simply write “yes” for the text of the allegation
- If there NOT a JPR allegation you can simply write “no” for the text of the allegation

How to determine if a JPR allegation was made:

If the borrower’s application is on an attestation form:

- Check if the form is signed. Any indication that the student intended to sign in the signature box, including a typed name, is acceptable. The file may also contain a separate piece of paper signed by the student which is fine. Unless there is a signature on a separate page, an empty signature box does not count. Attached photos\* of the borrower will be accepted as a signature. \*Must be a photo of a real person (no cartoons, etc.).

For all other application types

- Check if the form has an eligible checkbox for job placement rates that states: “Citing false and/or misleading job placement statistics and salary information to convince me to enroll.” If the form has *exactly* that language, and the box is checked, then the borrower made a JPR allegation.<sup>2</sup> For the universal form, if the borrower checks “yes” under the Employment Prospects box, we will accept this as constituting reliance on JPR.
- If there is no such checkbox, or if the checkbox is not checked, does borrower allege in the text of their application that they were presented with job placement rates?

Examples of what kind of statements indicate the borrower made a placement rate allegation:

- Would count:
  - “...told me their job placement in your field of study was 90%...”
  - “Heald College drew me in by their promising rates of employment after graduation.”
  - “...they also had shown me brochure/papers that showed high job numbers for their past students and promising careers.”
- Would NOT count:<sup>3</sup>
  - “told me that they had lifetime career assistance...”
  - “...enrolled because of the job placement program they had.”
  - “The school told me they would help me find a job.”
  - “They said they would also assist in finding me employment”
  - “They promised/guaranteed me a job”

Whether or not the borrower made a JPR allegation, move onto STEP FOUR.

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<sup>2</sup> Note: Keep an eye out for forms with *similar* language. There is one form in particular that has a checkbox followed by: “Misleading me about how this program would prepare me for a job...” and then language about both job placement statistics and other possible misrepresentations. That is not an eligible checkbox.

<sup>3</sup> In these examples, it’s unclear whether the borrower is alleging a false rate or making a claim about career services/employment.

#### **STEP FOUR: DETERMINE WHICH PROGRAMS FALL WITHIN THE FINDINGS**

##### **Determine the appropriate campus, date, and program to use:**

**Campus:** If the CAMPUS named by the borrower is a completely different campus than the OPEID found in the NSLDS data:

Check to see if the CCI data confirms one of the data points, if so use the confirmed campus.

If the CCI data does NOT confirm one of the data points, review the findings at both campuses.

##### **If the borrower leaves the CAMPUS field blank:**

If the CCI data and NSLDS data match, use the confirmed campus.

If the CCI data and NSLDS data do NOT match, change the status to 1.4 and task the Tier 1 reviewer with reaching out to the borrower to confirm their campus.

**Program & Credential:** If the program and credential listed by the borrower in their application matches the CCI data (or there is no CCI data available) treat the program and credential as being confirmed.

If the program and credential listed by the borrower in their application DO NOT match the CCI data treat them as separate programs.<sup>4</sup>

If the borrower leaves his program and/or credential blank and there is no CCI data, set to 1.4 with a task to ask the borrower about the programs/credential.

**Enrollment Start Date:** Check to see if the enrollment start date on the borrower's application, the CCI data, and NSLDS data match. If two of the three data points match, the date is confirmed and the date will be your Enrollment Start Date.

If the data points do not match:

- And all three data points are within the findings period, the earliest date within the findings will be your Enrollment Start Date.
- And one data point is outside the findings period, but the dates from the other two data points are within **30 days** of each other AND both data points fall within the findings, use the earliest date within the findings as the Enrollment Start Date.
- And there is **no CCI data**, use the borrower's date as the Enrollment Start Date.
- IF all you have is an NSLDS date (no CCI data and borrower's date is blank), set it to 1.4 with a task to ask the borrower about the enrollment date.

**Repeat the above steps for each distinct program found on the application/CCI data.**

##### **Review the Findings:**

1. Using the Everest/WyoTech Findings list or the Heald Findings list, locate the first campus attended by the borrower as alleged on the borrower's application and then the corresponding program.

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<sup>4</sup> If the borrower does not have a program/credential/date listed you may still be able to adjudicate the case if there is CCI data.

- i. **NOTE:** if the borrower's application does not contain the enrollment begin date or the program (on either the application itself or an attached official school document) but we have CCI data, you may use the CCI data to adjudicate the claim. If there is no CCI data available and you are unable to adjudicate the claim, set the status to 1.4 and task the Tier 1 reviewer with reaching out to the borrower.
  - b. If the campus is not on the findings lists, then there are no eligible programs at this campus.
  - c. If the program is not on the findings list for a given campus then that program has no eligible coverage dates.
    - i. **NOTE:** this is not necessarily the case for California campuses. If the program is not listed under a given California campus on the findings lists, please consult the California Exception Instructions at the end of this packet to determine whether there are eligible coverage dates for that program at the campus.
2. Using the findings lists determine whether the enrollment start date for this program is within the listed coverage dates for the program.
  - a. **NOTE:** on the early attestation forms the earliest date a borrower could enter was July 2010, however some borrowers wrote their actual date in the comment section of the form.
3. Repeat steps 1 and 2 for all other programs.
4. Determine how many programs fall within the findings and go to the appropriate next step:
  - a. **Go to STEP FIVE Approval Instructions if:**
    - i. The earliest program (either from borrower application or school provided data) falls within the findings
    - ii. The earliest program alleged on the borrower's application falls within the findings (even if an earlier program from the school provided data falls outside the findings)
  - b. **Go to STEP FIVE Dual Program instructions if:**
    - i. The earliest program alleged on the borrower's application falls outside the findings, but a later program falls within the findings
  - c. **Go to STEP FIVE Denial instructions if:**
    - i. All programs fall outside the findings.



**STEP FIVE: ADJUDICATING THE JPR CLAIM****Approval Instructions**

You should only be here if the earliest program (either from borrower application or school provided data) falls within the findings or the earliest program alleged on the borrower's application falls within the findings (even if an earlier program from the school provided data falls outside the findings).

**If the earliest approvable program** is found on the borrower's application or official school document, add a review with the Recommendation as "**Approved**" and the Recommendation Reason as "**Approve**."

However, if the borrower has an approvable program and date on their application, but the CCI data **AND** NSLDS loan information indicate the borrower attended that program at a time NOT covered by the findings add a review stating "**Out due to QC**" as opposed to "Approve."

If the earliest approvable program is found only in the CCI data, add a review stating "**In due to QC**."

**Add the Controlling Date & Source to Your Review:**

The controlling date will be the earliest Enrollment Start Date (from Step 4) within the findings period. Enter the source that corresponds to your controlling date.<sup>5</sup>

Remember: Check if the enrollment start date on the borrower's application, the CCI data, and NSLDS data match. If two of the three data points match, the date is confirmed and the date will be your Enrollment Start Date.

If the data points do not match:

- And all three data points are within the findings period, the earliest date within the findings will be your Enrollment Start Date.
- And one data point is outside the findings period, but the dates from the other two data points are within **30 days** of each other AND both data points fall within the findings, use the earliest date within the findings as the Enrollment Start Date.
- And there is no CCI data, use the borrower's date as the Enrollment Start Date.

**Add the Applicable Program & Source to Your Review:**

Enter the program the borrower attended and the credential. For consistency, enter the program and credential as it appears on the findings sheet. Select the source for the program.<sup>6</sup> If the borrower attended multiple programs that fall within the findings write "Update at Relief" as the Applicable Program.

**NOTE:** Often if there is no school provided data it is because the application is from a parent for a parent plus loan. If there is no school provided data, double check the "Student SSN" in Salesforce. You will often be able to find the CCI data by searching the "Student SSN."

If the borrower has NOT made a JPR allegation (see STEP THREE):

- If the application is an attestation form and the borrower has an approvable JPR allegation add a review stating **Incomplete Application**. Change global status to **1.4** and leave a comment saying that the attestation is not signed.

<sup>5</sup> Currently in Salesforce there is no dropdown for CCI data. If your controlling date comes from CCI data, select NSLDS as the drop down.

<sup>6</sup> Remember an official school document will override any other data source.

- If the application is not an attestation form and the borrower does not make a JPR allegation (see STEP THREE), add a review with the Recommendation as **“Denied”** and the Recommendation Reason as **“Lack of Reliance”**

Save your review. Propagate the review up to the allegation. Propagate the allegation up to the case. Change the case status to **2.21 (Ready for QC)** if you are off 100% QC and change the case owner to the “BD Quality Control Queue.” Change the case status to **2.22 (Currently being QCd)** and change the case owner to your QCer if you are on 100% QC.

**STEP FIVE: ADJUDICATING THE JPR CLAIM****Dual Program Instructions**

You should only be in this section if the earliest program alleged on the borrower's application falls outside the findings, but a later program falls within the findings. If the date on the borrower's application is outside the findings, but the date from the CCI data, and the date from the NSLDS data are within 30 days of each other AND both the CCI date and NSLDS date falls within the findings, use the earliest date within the findings and move to **STEP FIVE: Approval Instructions**.

If the later program, that falls within the findings, is only found in the CCI data add a review with the Recommendation at "Partial" and the Recommendation Reason as **"Dual Program Due to QC."**

If the later program, that falls within the findings, is listed on the borrower's application add a review Recommendation at "Partial" and the Recommendation Reason as **"Dual Program, First Out."**

**Add the Controlling Date & Source to Your Review:**

The controlling date will be the earliest Enrollment Start Date (from Step 4) within the findings period. Enter the source that corresponds to your controlling date.

**Add the Applicable Program & Source to Your Review:**

Enter the program the borrower attended and the credential. For consistency, enter the program and credential as it appears on the findings sheet. Select the source for the program.<sup>7</sup>

**Determine if Borrower May be Eligible for Non-JPR Relief:**

If the borrower made substantive non-JPR allegations against the earlier program that is outside the findings period there is an opportunity for greater relief. If necessary, transcribe any additional allegations into Salesforce<sup>8</sup>

If the borrower has NOT made a JPR allegation (see STEP FIVE):

- If the application is an attestation form and the above instructions lead you to put **Dual Program first out, or Dual program due to QC**, as the JPR recommendation; instead put **Incomplete Application**. Change global status to **1.4** and leave a comment saying that the attestation is not signed.
- If the application is **NOT** an attestation form and the below instructions lead you to put **Dual Program first out, or Dual program due to QC** as the JPR recommendation; instead put **Non-Reliance**.

Save your review. Propagate the review up to the allegation. Propagate the allegation up to the case. If the borrower made substantive non-JPR allegations, change the case status to **2.2 (EU Review in Progress)**. If the borrower made no substantive non-JPR allegations, change the case status to **2.21 (Ready for QC)** if you are off 100% QC and change the case owner to the "BD Quality Control Queue." Change the case status to **2.22 (Currently being QCd)** and change the case owner to your QCer if you are on 100% QC.

<sup>7</sup> Remember an official school document will override any other data source.

<sup>8</sup> If the allegations are more than a few sentences you may just add the allegation and type "See Application."

**STEP FIVE: ADJUDICATING THE JPR CLAIM**

**Denial Instructions**

Double check that all programs fall outside the coverage dates

Add JPR review with a Recommendation of “**Deny**” and the Recommendation Reason as “**Outside Coverage Dates.**”

**Determine if Borrower May be Eligible for Non-JPR Relief:**

If the borrower made substantive non-JPR allegations there is an opportunity for greater relief. If necessary, transcribe any additional allegations into Salesforce<sup>9</sup>

Save your review. Propagate the review up to the allegation. Propagate the allegation up to the case. If the borrower made substantive non-JPR allegations, change the case status to **2.2 (EU Review in Progress)**. If the borrower made no substantive non-JPR allegations, change the case status to **2.21 (Ready for QC)** if you are off 100% QC and change the case owner to “BD Quality Control Queue.” Change the case status to **2.22 (Currently being QCd)** and change the case owner to your QCer if you are on 100% QC.

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<sup>9</sup> If the allegations are more than a few sentences you may just add the allegation and type “See Application.”



### California Exception Instructions

If a program is not listed under a given California campus on the findings lists you will have to consult the master list for California campuses.

If a particular program appears on the master list but not on the findings list, it is because that program published correct rates. Thus, that program is ineligible for relief. However, if the borrower enrolled in a program that does not appear on either list see if the program the borrower applied for is eligible at any campus (to find the correct relief percentage). If so, enter the program as the controlling program and the appropriate relief percentage. This will generally apply only to WyoTech programs **for California campuses only!**

#### EXAMPLES:

EXAMPLE 1: The borrower enrolled in Motorsports Chassis Fabrication with Automotive Technology at Wyotech West Sacramento. This program is ineligible because it is on the master list but not on the findings list.

EXAMPLE 2: The borrower enrolled in Automotive Technology with Light Duty Diesel at Wyotech West Sacramento. This program is eligible because it is not on either list, but the findings list does show a similarly-sounding eligible Auto Tech program.

EXAMPLE 3: The borrower enrolled in medical assisting at Wyotech West Sacramento. This program is ineligible because, even though it is not on either the findings or master lists, there is no similarly sounding program on the findings list.

If you come across a situation like Example 2 at a non-California campus, please email John Stephenson with the BD# and move onto the next claim. This should be a rare situation.

**\*\*If you have any questions about program eligibility, especially regarding Wyotech programs, please email John\*\***

## EVEREST/WYOTECH JOB PLACEMENT RATE FINDINGS

**List of Everest/WyoTech Programs and Enrollment Dates Covered by Department of Education Findings  
Updated June 15, 2016**

STATE	CAMPUS/PROGRAM	FIRST DATE OF ENROLLMENT
CA	Everest Alhambra-Business Operations (Diploma)	7/1/2010 – 9/30/2013
CA	Everest Alhambra-Dental Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Alhambra-Massage Therapy (Diploma)	7/1/2011 – 9/30/2014
CA	Everest Alhambra-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Alhambra-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Alhambra-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Alhambra-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2013
CA	Everest Anaheim-Criminal Justice (Associate)	7/1/2013 – 9/30/2014
CA	Everest Anaheim-Dental Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Anaheim-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Anaheim-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2013
CA	Everest City of Industry-Business Management/Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest City of Industry-Criminal Justice (Associate)	7/1/2012 – 9/30/2014
CA	Everest City of Industry-Dental Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest City of Industry-Massage Therapy (Diploma)	7/1/2010 – 9/30/2014
CA	Everest City of Industry-Medical Assistant (Diploma)	7/1/2010 – 9/30/2013
CA	Everest City of Industry-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
CA	Everest City of Industry-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Gardena-Dental Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Gardena-Massage Therapy (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Gardena-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Gardena-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2014
CA	Everest Gardena-Pharmacy Technician (Diploma)	7/1/2011 – 9/30/2014
CA	Everest Hayward-Massage Therapy (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Hayward-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Hayward-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Hayward-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2014
CA	Everest Los Angeles Wilshire-Dental Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Los Angeles Wilshire-Massage Therapy (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Los Angeles Wilshire-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Los Angeles Wilshire-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Los Angeles Wilshire-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014

CA	Everest Los Angeles Wilshire-Pharmacy Technician (all credential levels)	7/1/2010 – 9/30/2014
CA	Everest Ontario-Dental Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Ontario-Massage Therapy (Diploma)	7/1/2011 – 9/30/2014
CA	Everest Ontario-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Ontario-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Ontario-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Ontario-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Ontario Metro-Accounting (Associate)	7/1/2010 – 9/30/2014
CA	Everest Ontario Metro-Applied Management (Bachelor)	7/1/2011 – 9/30/2014
CA	Everest Ontario Metro-Business (Associate)	7/1/2010 – 9/30/2014
CA	Everest Ontario Metro-Business (Bachelor)	7/1/2010 – 9/30/2014
CA	Everest Ontario Metro-Business Administration (AAS)	7/1/2010 – 9/30/2014
CA	Everest Ontario Metro-Criminal Justice (Associate)	7/1/2010 – 9/30/2014
CA	Everest Ontario Metro-Criminal Justice (Bachelor)	7/1/2010 – 9/30/2014
CA	Everest Ontario Metro-Nursing (Associate)	7/1/2012 – 9/30/2014
CA	Everest Ontario Metro-Paralegal (Associate)	7/1/2010 – 9/30/2014
CA	Everest Reseda-Dental Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Reseda-Massage Therapy (Diploma)	7/1/2011 – 9/30/2014
CA	Everest Reseda-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Reseda-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Reseda-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Reseda-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2014
CA	Everest Reseda-Surgical Technologist (Diploma)	7/1/2010 – 9/30/2014
CA	Everest San Bernardino-Business (Associate)	7/1/2012 – 9/30/2014
CA	Everest San Bernardino-Criminal Justice (Associate)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
CA	Everest San Bernardino-Dental Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest San Bernardino-Electrician (Diploma)	7/1/2010 – 9/30/2014
CA	Everest San Bernardino-Massage Therapy (Diploma)	7/1/2010 – 9/30/2014
CA	Everest San Bernardino-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest San Bernardino-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest San Francisco-Dental Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest San Francisco-Massage Therapy (Diploma)	7/1/2010 – 9/30/2014
CA	Everest San Francisco-Medical Assistant (Diploma)	7/1/2011 – 9/30/2014
CA	Everest San Francisco-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2014
CA	Everest San Jose-Dental Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest San Jose-Massage Therapy (Diploma)	7/1/2010 – 9/30/2014
CA	Everest San Jose-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest San Jose-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest San Jose-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2014



CA	Everest Torrance-Medical Assistant (Diploma)	7/1/2012 – 9/30/2014
CA	Everest Torrance-Pharmacy Technician (Diploma)	7/1/2012 – 9/30/2014
CA	Everest West Los Angeles-Criminal Justice (Associate)	7/1/2013 – 9/30/2014
CA	Everest West Los Angeles-Dental Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest West Los Angeles-Massage Therapy (Diploma)	7/1/2011 – 9/30/2014
CA	Everest West Los Angeles-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest West Los Angeles-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	Everest West Los Angeles-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
CA	Everest West Los Angeles-Paralegal (Associate)	7/1/2013 – 9/30/2014
CA	Everest West Los Angeles-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2014
CA	WyoTech Fremont-Applied Automotive Technology - Advanced Diagnostics Concentration (Diploma)	7/1/2010 – 9/30/2013
CA	WyoTech Fremont-Applied Automotive Technology (Diploma)	7/1/2010 – 9/30/2013
CA	WyoTech Fremont-Automotive Technology/ Concentration in Automotive Diagnostics (Associate)	7/1/2010 – 9/30/2014
CA	WyoTech Fremont-Automotive Technology/ Concentration in Service Management (Associate)	7/1/2010 – 9/30/2014
CA	WyoTech Fremont-Commercial Heating Ventilation and Air Conditioning (CHVAC) (Diploma)	7/1/2011 – 9/30/2014
CA	WyoTech Fremont-Electrician (Diploma)	7/1/2011 – 9/30/2012
CA	WyoTech Fremont-Heating Ventilation and Air Conditioning (HVAC) (Diploma)	7/1/2011 – 9/30/2013
CA	WyoTech Fremont-Motorcycle Technician (Diploma)	7/1/2011 – 9/30/2014
CA	WyoTech Fremont-Plumbing Technology (Diploma)	7/1/2011 – 9/30/2012
CA	WyoTech Fremont-Residential Heating Ventilation and Air Conditioning (HVAC) (Diploma)	7/1/2011 – 9/30/2014
CA	WyoTech Long Beach-Automotive Technician (Diploma)	7/1/2010 – 9/30/2014
CA	WyoTech Long Beach-Automotive Technology (Diploma)	7/1/2010 – 9/30/2014
CA	WyoTech Long Beach-Electrician (Diploma)	7/1/2010 – 9/30/2014
CA	WyoTech Long Beach-Heating Ventilation and Air Conditioning (HVAC) (Diploma)	7/1/2010 – 9/30/2013
CA	WyoTech Long Beach-Industrial Electrical Technology (Diploma)	7/1/2010 – 9/30/2014
CA	WyoTech Long Beach-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
CA	WyoTech Long Beach-Plumbing Technology (Diploma)	7/1/2010 – 9/30/2014
CA	WyoTech West Sacramento-Automotive Technology (all credential levels)	7/1/2010 – 9/30/2014
CA	WyoTech West Sacramento-Automotive Technology and Management (Associate)	7/1/2010 – 9/30/2014
CA	WyoTech West Sacramento-Automotive Technology with Advanced Automotive Diagnostics (all credential levels)	7/1/2010 – 9/30/2014
CA	WyoTech West Sacramento-Collision/Refinishing and Upholstery Technology (Diploma)	7/1/2010 – 9/30/2014
CA	WyoTech West Sacramento-Street Rod and Custom Fabrication with Automotive Technology (Diploma)	7/1/2010 – 9/30/2014

CO	Everest Aurora (CO)-Accounting (Associate)	7/1/2010 – 9/30/2014
CO	Everest Aurora (CO)-Business (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
CO	Everest Aurora (CO)-Criminal Justice (Associate)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
CO	Everest Aurora (CO)-Dental Assistant (Diploma)	7/1/2011 – 9/30/2012
CO	Everest Aurora (CO)-Medical Administrative Assistant (Diploma)	7/1/2011 – 9/30/2012
CO	Everest Aurora (CO)-Medical Assistant (Diploma)	7/1/2011 – 9/30/2012
CO	Everest Aurora (CO)-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
CO	Everest Aurora (CO)-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2012
CO	Everest Colorado Springs-Accounting (Associate)	7/1/2011 – 9/30/2014
CO	Everest Colorado Springs-Business (Associate)	7/1/2011 – 9/30/2014
CO	Everest Colorado Springs-Business Accounting (Diploma)	7/1/2011 – 9/30/2014
CO	Everest Colorado Springs-Computer Information Science (Associate)	7/1/2011 – 9/30/2014
CO	Everest Colorado Springs-Criminal Justice (Associate)	7/1/2011 – 9/30/2013
CO	Everest Colorado Springs-Dental Assistant (Diploma)	7/1/2011 – 9/30/2012
CO	Everest Colorado Springs-Legal Assistant/Paralegal (Associate)	7/1/2011 – 9/30/2014
CO	Everest Colorado Springs-Massage Therapy (Diploma)	7/1/2011 – 9/30/2014
CO	Everest Colorado Springs-Medical Administrative Assistant (Diploma)	7/1/2011 – 9/30/2013
CO	Everest Colorado Springs-Medical Assistant (Diploma)	7/1/2011 – 9/30/2013
CO	Everest Thornton-Accounting (Associate)	7/1/2010 – 9/30/2014
CO	Everest Thornton-Business (Associate)	7/1/2011 – 9/30/2014
CO	Everest Thornton-Business Accounting (Diploma)	7/1/2010 – 9/30/2014
CO	Everest Thornton-Criminal Justice (Associate)	7/1/2010 – 9/30/2014
CO	Everest Thornton-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
CO	Everest Thornton-Medical Assistant (Associate)	7/1/2010 – 9/30/2014
CO	Everest Thornton-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
CO	Everest Thornton-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2013
CO	Everest Thornton-Paralegal (Associate)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2013
CO	Everest Thornton-Pharmacy Technician (Diploma)	7/1/2011 – 9/30/2013
CO	Everest Thornton-Surgical Technologist (Associate)	7/1/2010 – 9/30/2014
FL	Everest Brandon-Accounting (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Brandon-Accounting (Bachelor)	7/1/2010 – 9/30/2014
FL	Everest Brandon-Applied Management (Associate)	7/1/2012 – 9/30/2014
FL	Everest Brandon-Business (Associate)	7/1/2010 – 9/30/2014
FL	Everest Brandon-Business (Bachelor)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Brandon-Business Administration (Associate)	7/1/2010 – 9/30/2014
FL	Everest Brandon-Business Administration (Bachelor)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014

FL	Everest Brandon-Business Administration (Masters)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Brandon-Computer Information Science (Associate)	7/1/2010 – 9/30/2014
FL	Everest Brandon-Computer Information Science (Bachelor)	7/1/2010 – 9/30/2014
FL	Everest Brandon-Computer Office Technology and Applications (all credential levels)	7/1/2010 – 9/30/2014
FL	Everest Brandon-Criminal Justice (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Brandon-Criminal Justice (Bachelor)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Brandon-Criminal Justice (Masters)	7/1/2010 – 9/30/2012
FL	Everest Brandon-Massage Therapy (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Brandon-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Brandon-Medical Assistant (Associate)	7/1/2010 – 9/30/2014
FL	Everest Brandon-Medical Assistant (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Brandon-Medical Insurance Billing and Coding (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Brandon-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Brandon-Nursing (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Brandon-Paralegal (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Brandon-Paralegal (Bachelor)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Brandon-Pharmacy Technician (Associate)	7/1/2010 – 9/30/2014
FL	Everest Brandon-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Brandon-Radiologic Technician (Associate)	7/1/2013 – 9/30/2014
FL	Everest Brandon-Surgical Technologist (Associate)	7/1/2010 – 9/30/2014
FL	Everest Fort Lauderdale-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Fort Lauderdale-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Fort Lauderdale-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Fort Lauderdale-Patient Care Technician (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Fort Lauderdale-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Hialeah-Business (Associate)	7/1/2012 – 9/30/2014
FL	Everest Hialeah-Criminal Investigations (Associate)	7/1/2010 – 9/30/2014
FL	Everest Hialeah-Criminal Justice (Associate)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Hialeah-Criminal Justice Private and Homeland Security (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Hialeah-Criminal Justice Social and Youth Services (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Hialeah-Diagnostic Card Sonogram (Associate)	7/1/2010 – 9/30/2014
FL	Everest Hialeah-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Hialeah-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Hialeah-Medical Insurance Billing and Coding (Associate)	7/1/2010 – 9/30/2014

FL	Everest Hialeah-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Hialeah-Patient Care Technician (Diploma)	7/1/2012 – 9/30/2014
FL	Everest Hialeah-Pharmacy Technician (Diploma)	7/1/2011 – 9/30/2014
FL	Everest Hialeah-Surgical Technologist (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Jacksonville-Accounting (Associate)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Jacksonville-Applied Management (Associate)	7/1/2011 – 9/30/2013
FL	Everest Jacksonville-Applied Management (Bachelor)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Jacksonville-Business (Associate)	7/1/2010 – 9/30/2014
FL	Everest Jacksonville-Business (Bachelor)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Jacksonville-Business Administration (Associate)	7/1/2010 – 9/30/2014
FL	Everest Jacksonville-Business Administration (Bachelor)	7/1/2010 – 9/30/2014
FL	Everest Jacksonville-Business Administration (Master)	7/1/2010 – 9/30/2014
FL	Everest Jacksonville-Criminal Justice (Associate)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Jacksonville-Criminal Justice (Bachelor)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Jacksonville-Criminal Justice (Master)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Jacksonville-Criminal Justice Private and Homeland Security (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Jacksonville-Massage Therapy (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2013
FL	Everest Jacksonville-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011
FL	Everest Jacksonville-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011
FL	Everest Jacksonville-Medical Assistant (Associate)	7/1/2010 – 9/30/2014
FL	Everest Jacksonville-Medical Insurance Billing and Coding (Diploma)	7/1/2013 – 9/30/2014
FL	Everest Jacksonville-Paralegal (Associate)	7/1/2010 – 9/30/2011
FL	Everest Jacksonville-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2011
FL	Everest Kendall (Miami)-Applied Management (Associate)	7/1/2012 – 9/30/2014
FL	Everest Kendall (Miami)-Business (Associate)	7/1/2012 – 9/30/2014
FL	Everest Kendall (Miami)-Business Sales and Customer Design (Diploma)	7/1/2012 – 9/30/2014
FL	Everest Kendall (Miami)-Criminal Investigations (Associate)	7/1/2012 – 9/30/2014
FL	Everest Kendall (Miami)-Criminal Justice (Associate)	7/1/2012 – 9/30/2014
FL	Everest Kendall (Miami)-Criminal Justice Private and Homeland Security (Diploma)	7/1/2012 – 9/30/2014
FL	Everest Kendall (Miami)-Medical Insurance Billing and Coding (Associate)	7/1/2010 – 9/30/2014
FL	Everest Kendall (Miami)-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Kendall (Miami)-Patient Care Technician (Diploma)	7/1/2013 – 9/30/2014
FL	Everest Lakeland-Accounting (Associate)	7/1/2011 – 9/30/2012
FL	Everest Lakeland-Applied Management (Associate)	7/1/2013 – 9/30/2014



FL	Everest Lakeland-Applied Management (Bachelor)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Lakeland-Business (Associate)	7/1/2010 – 9/30/2014
FL	Everest Lakeland-Business (Bachelor)	7/1/2011 – 9/30/2014
FL	Everest Lakeland-Business Administration (Associate)	7/1/2010 – 9/30/2014
FL	Everest Lakeland-Criminal Justice (Associate)	7/1/2011 – 9/30/2014
FL	Everest Lakeland-Criminal Justice (Bachelor)	7/1/2013 – 9/30/2014
FL	Everest Lakeland-Massage Therapy (Diploma)	7/1/2012 – 9/30/2013
FL	Everest Lakeland-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Lakeland-Medical Assistant (Associate)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2013
FL	Everest Lakeland-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2013
FL	Everest Lakeland-Paralegal (Associate)	7/1/2013 – 9/30/2014
FL	Everest Lakeland-Pharmacy Technician (Diploma)	7/1/2012 – 9/30/2014
FL	Everest Largo-Accounting (Associate)	7/1/2010 – 9/30/2014
FL	Everest Largo-Accounting (Bachelor)	7/1/2011 – 9/30/2014
FL	Everest Largo-Business (Associate)	7/1/2011 – 9/30/2014
FL	Everest Largo-Business (Bachelor)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Largo-Business Administration (Associate)	7/1/2011 – 9/30/2014
FL	Everest Largo-Business Administration (Bachelor)	7/1/2010 – 9/30/2014
FL	Everest Largo-Business Administration (Master)	7/1/2010 – 9/30/2011
FL	Everest Largo-Business Office Administration (Diploma)	7/1/2011 – 9/30/2014
FL	Everest Largo-Business Sales and Customer Service (Diploma)	7/1/2011 – 9/30/2014
FL	Everest Largo-Computer Information Science (Associate)	7/1/2010 – 9/30/2014
FL	Everest Largo-Computer Information Science (Bachelor)	7/1/2012 – 9/30/2014
FL	Everest Largo-Criminal Justice (Associate)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Largo-Dental Assistant (Diploma)	7/1/2011 – 9/30/2014
FL	Everest Largo-Massage Therapy (Diploma)	7/1/2012 – 9/30/2014
FL	Everest Largo-Medical Administrative Assistant (Diploma)	7/1/2011 – 9/30/2014
FL	Everest Largo-Medical Assistant (Associate)	7/1/2011 – 9/30/2014
FL	Everest Largo-Medical Assistant (Diploma)	7/1/2011 – 9/30/2014
FL	Everest Largo-Medical Insurance Billing and Coding (Associate)	7/1/2012 – 9/30/2014
FL	Everest Largo-Medical Insurance Billing and Coding (Diploma)	7/1/2012 – 9/30/2014
FL	Everest Largo-Paralegal (Associate)	7/1/2010 – 9/30/2014
FL	Everest Largo-Paralegal (Bachelor)	7/1/2011 – 9/30/2014
FL	Everest Largo-Pharmacy Technician (Diploma)	7/1/2011 – 9/30/2014
FL	Everest Melbourne-Accounting (Bachelor)	7/1/2011 – 9/30/2014
FL	Everest Melbourne-Business (Associate)	7/1/2012 – 9/30/2013
FL	Everest Melbourne-Business (Bachelor)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Melbourne-Business Administration (Associate)	7/1/2012 – 9/30/2013
FL	Everest Melbourne-Business Administration (Bachelor)	7/1/2010 – 9/30/2014
FL	Everest Melbourne-Business Administration (Master)	7/1/2011 – 9/30/2014

FL	Everest Melbourne-Business Office Administration (Diploma)	7/1/2012 – 9/30/2013
FL	Everest Melbourne-Computer Information Science (Associate)	7/1/2010– 9/30/2011
FL	Everest Melbourne-Criminal Justice (Associate)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Melbourne-Criminal Justice (Bachelor)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Melbourne-Film and Video (Associate)	7/1/2010 – 9/30/2014
FL	Everest Melbourne-Health Care Administration (Bachelor)	7/1/2012 – 9/30/2013
FL	Everest Melbourne-Paralegal (Associate)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Melbourne-Paralegal (Bachelor)	7/1/2013 – 9/30/2014
FL	Everest Melbourne-Pharmacy Technician (Associates)	7/1/2013 – 9/30/2014
FL	Everest Melbourne-Pharmacy Technician (Diploma)	7/1/2013 – 9/30/2014
FL	Everest Miami-Applied Management (Associate)	7/1/2013 – 9/30/2014
FL	Everest Miami-Business (Associate)	7/1/2011 – 9/30/2013
FL	Everest Miami-Business Office Administration (Diploma)	7/1/2011 – 9/30/2013
FL	Everest Miami-Criminal Investigations (Associate)	7/1/2010 – 9/30/2014
FL	Everest Miami-Criminal Justice (Associate)	7/1/2010 – 9/30/2014
FL	Everest Miami-Criminal Justice Private and Homeland Security (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Miami-Heating, Ventilation and Air Conditioning (Diploma)	7/1/2013 – 9/30/2014
FL	Everest Miami-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Miami-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Miami-Medical Insurance Billing and Coding (Associates)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Miami-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Miami-Patient Care Technician (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Miami-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2013
FL	Everest Orange Park-Applied Management (Associate)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2013
FL	Everest Orange Park-Applied Management (Bachelor)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Orange Park-Business (Associate)	7/1/2010 – 9/30/2014
FL	Everest Orange Park-Business (Bachelor)	7/1/2011 – 9/30/2014
FL	Everest Orange Park-Business Office Administration	7/1/2010 – 9/30/2014
FL	Everest Orange Park-Criminal Investigations (Associate)	7/1/2010 – 9/30/2014
FL	Everest Orange Park-Criminal Justice (Associate)	7/1/2010 – 9/30/2014
FL	Everest Orange Park-Criminal Justice (Bachelor)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Orange Park-Electrician (Diploma)	7/1/2010 – 9/30/2013
FL	Everest Orange Park-Heating, Ventilation and Air Conditioning (Diploma)	7/1/2010 – 9/30/2013
FL	Everest Orange Park-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2013
FL	Everest Orange Park-Medical Assistant (Associate)	7/1/2010 – 9/30/2014

FL	Everest Orange Park-Medical Assistant (Diploma)	7/1/2010 – 9/30/2013
FL	Everest Orange Park-Medical Insurance Billing and Coding (Associate)	7/1/2011 – 9/30/2014
FL	Everest Orange Park-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2014
FL	Everest Orange Park-Pharmacy Technician (Diploma)	7/1/2012 – 9/30/2014
FL	Everest Orlando North – Business (Bachelor)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Orlando North-Accounting (Associate)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Orlando North-Accounting (Bachelor)	7/1/2012 – 9/30/2013
FL	Everest Orlando North-Business (Associate)	7/1/2011 – 9/30/2014
FL	Everest Orlando North-Business Accounting (Diploma)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Orlando North-Business Administration (Associate)	7/1/2011 – 9/30/2014
FL	Everest Orlando North-Business Administration (Bachelor)	7/1/2010 – 9/30/2014
FL	Everest Orlando North-Business Administration (Master)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Orlando North-Business Sales and Customer Service (Diploma)	7/1/2011 – 9/30/2014
FL	Everest Orlando North-Computer Information Science (Associate)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Orlando North-Computer Information Science (Bachelor)	7/1/2011 – 9/30/2013
FL	Everest Orlando North-Criminal Justice (Associate)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Orlando North-Criminal Justice (Bachelor)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Orlando North-Film and Video (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Orlando North-Health Care Administration (Bachelor)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Orlando North-Massage Therapy (Diploma)	7/1/2010 – 9/30/2011
FL	Everest Orlando North-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2013
FL	Everest Orlando North-Medical Assistant (Associate)	7/1/2010 – 9/30/2013
FL	Everest Orlando North-Medical Assistant (Diploma)	7/1/2010 – 9/30/2013
FL	Everest Orlando North-Medical Insurance Billing and Coding (Associate)	7/1/2010 – 9/30/2011
FL	Everest Orlando North-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2011
FL	Everest Orlando North-Paralegal (Bachelor)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Orlando North-Pharmacy Technician (Associate)	7/1/2012 – 9/30/2013
FL	Everest Orlando North-Pharmacy Technician (Diploma)	7/1/2012 – 9/30/2013
FL	Everest Orlando South-Accounting (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Orlando South-Accounting (Bachelor)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Orlando South-Applied Management (Associate)	7/1/2012 – 9/30/2014

FL	Everest Orlando South-Applied Management (Bachelor)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Orlando South-Business (Associate)	7/1/2010 – 9/30/2014
FL	Everest Orlando South-Business (Bachelor)	7/1/2010 – 9/30/2014
FL	Everest Orlando South-Business Administration (Associate)	7/1/2010 – 9/30/2014
FL	Everest Orlando South-Business Administration (Bachelor)	7/1/2010 – 9/30/2014
FL	Everest Orlando South-Business Administration (Masters)	7/1/2010 – 9/30/2012
FL	Everest Orlando South-Business Sales and Customer Service (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Orlando South-Computer Information Science (Associate)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Orlando South-Computer Information Science (Bachelor)	7/1/2011 – 9/30/2012
FL	Everest Orlando South-Criminal Investigations (Associate)	7/1/2010 – 9/30/2014
FL	Everest Orlando South-Criminal Justice (Associate)	7/1/2010 – 9/30/2014
FL	Everest Orlando South-Criminal Justice (Bachelor)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Orlando South-Criminal Justice Private and Homeland Security (Diploma)	7/1/2010 – 9/30/2014
FL	Everest Orlando South-Healthcare Administration (Bachelor)	7/1/2012 – 9/30/2014
FL	Everest Orlando South-Homeland Security (Bachelor)	7/1/2011 – 9/30/2014
FL	Everest Orlando South-Massage Therapy (Diploma)	7/1/2010 – 9/30/2013
FL	Everest Orlando South-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Orlando South-Medical Assistant (Associate)	7/1/2010 – 9/30/2014
FL	Everest Orlando South-Medical Assistant (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Orlando South-Paralegal (Associate)	7/1/2010 – 9/30/2011
FL	Everest Orlando South-Paralegal (Bachelor)	7/1/2011 – 9/30/2014
FL	Everest Orlando South-Pharmacy Technician (Associate)	7/1/2010 – 9/30/2014
FL	Everest Orlando South-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Pompano Beach-Accounting (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Pompano Beach-Accounting (Bachelor)	7/1/2010 – 9/30/2011
FL	Everest Pompano Beach-Applied Management (Associate)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Pompano Beach-Applied Management (Bachelor)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Pompano Beach-Business (Associate)	7/1/2010 – 9/30/2014
FL	Everest Pompano Beach-Business (Bachelor)	7/1/2011 – 9/30/2014
FL	Everest Pompano Beach-Business Administration (Associate)	7/1/2010 – 9/30/2014
FL	Everest Pompano Beach-Business Administration (Bachelor)	7/1/2011 – 9/30/2014
FL	Everest Pompano Beach-Business Administration (Masters)	7/1/2010 – 9/30/2014
FL	Everest Pompano Beach-Computer Information Science (Associate)	7/1/2011 – 9/30/2014
FL	Everest Pompano Beach-Computer Information Science (Bachelor)	7/1/2010 – 9/30/2014
FL	Everest Pompano Beach-Criminal Investigations (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014



FL	Everest Pompano Beach-Criminal Justice (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Pompano Beach-Criminal Justice (Bachelor)	7/1/2010 – 9/30/2014
FL	Everest Pompano Beach-Criminal Justice (Master)	7/1/2011 – 9/30/2014
FL	Everest Pompano Beach-Criminal Justice Private and Homeland Security (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Pompano Beach-Homeland Security (Associate)	7/1/2010 – 9/30/2011
FL	Everest Pompano Beach-Hospitality Management (Associate)	7/1/2010 – 9/30/2012
FL	Everest Pompano Beach-Hospitality Management (Bachelor)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Pompano Beach-Massage Therapy (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Pompano Beach-Medical Assistant (Associate)	7/1/2010 – 9/30/2014
FL	Everest Pompano Beach-Medical Assistant (Diploma)	7/1/2010 – 9/30/2012
FL	Everest Pompano Beach-Medical Insurance Billing and Coding (Associate)	7/1/2010 – 9/30/2014
FL	Everest Pompano Beach-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2012
FL	Everest Pompano Beach-Paralegal (Associate)	7/1/2010 – 9/30/2013
FL	Everest Pompano Beach-Patient Care Technician (Diploma)	7/1/2010 – 9/30/2013
FL	Everest Pompano Beach-Pharmacy Technician (Diploma)	7/1/2011 – 9/30/2013
FL	Everest Tampa-Accounting (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Tampa-Accounting (Bachelor)	7/1/2011 – 9/30/2014
FL	Everest Tampa-Applied Management (Associate)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Tampa-Applied Management (Bachelor)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
FL	Everest Tampa-Business (Associate)	7/1/2010 – 9/30/2014
FL	Everest Tampa-Business (Bachelor)	7/1/2010 – 9/30/2014
FL	Everest Tampa-Business Administration (Master)	7/1/2010 – 9/30/2014
FL	Everest Tampa-Computer Information Science (Associate)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Tampa-Computer Information Science (Bachelor)	7/1/2011 – 9/30/2013
FL	Everest Tampa-Criminal Investigations (Associate)	7/1/2010 – 9/30/2014
FL	Everest Tampa-Criminal Justice (Associate)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Tampa-Criminal Justice (Bachelor)	7/1/2012 – 9/30/2014
FL	Everest Tampa-Criminal Justice Private and Homeland Security (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
FL	Everest Tampa-Electrician (Diploma)	7/1/2012 – 9/30/2014
FL	Everest Tampa-Heating, Ventilation and Air Conditioning (Diploma)	7/1/2013 – 9/30/2014
FL	Everest Tampa-Massage Therapy (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Tampa-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Tampa-Medical Assistant (Associate)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Tampa-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014

FL	Everest Tampa-Medical Insurance Billing and Coding (Associates)	7/1/2012 – 9/30/2013
FL	Everest Tampa-Medical Insurance Billing and Coding (Diploma)	7/1/2012 – 9/30/2013
FL	Everest Tampa-Paralegal (Associate)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
FL	Everest Tampa-Paralegal (Bachelor)	7/1/2013 – 9/30/2014
FL	Everest Tampa-Pharmacy Technician (Associate)	7/1/2010 – 9/30/2011
FL	Everest Tampa-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2011
GA	Everest Atlanta (Greenbriar)-Dental Assistant (Diploma)	7/1/2013 – 9/30/2014
GA	Everest Atlanta (Greenbriar)-Medical Administrative Assistant (Diploma)	7/1/2013 – 9/30/2014
GA	Everest Atlanta (Greenbriar)-Medical Assistant (Diploma)	7/1/2013 – 9/30/2014
GA	Everest Atlanta (Greenbriar)-Medical Insurance Billing and Coding (Diploma)	7/1/2013 – 9/30/2014
GA	Everest Atlanta (Greenbriar)-Pharmacy Technician (Diploma)	7/1/2013 – 9/30/2014
GA	Everest Decatur-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
GA	Everest Decatur-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
GA	Everest Decatur-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
GA	Everest Decatur-Respiratory Care	7/1/2010 – 9/30/2014
GA	Everest Jonesboro-Massage Therapy (Diploma)	7/1/2010 – 9/30/2011
GA	Everest Jonesboro-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011
GA	Everest Jonesboro-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011
GA	Everest Jonesboro-Medical Insurance Billing and Coding (Diploma)	7/1/2012 – 9/30/2013
GA	Everest Jonesboro-Patient Care Technician (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
GA	Everest Jonesboro-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2011
GA	Everest Marietta-Massage Therapy (all credential levels)	7/1/2010 – 9/30/2014
GA	Everest Marietta-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011
GA	Everest Marietta-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011
GA	Everest Marietta-Medical Insurance Billing and Coding (Diploma)	7/1/2012 – 9/30/2014
GA	Everest Marietta-Surgical Technologist (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2013
GA	Everest Norcross-Dental Assistant (Diploma)	7/1/2010 – 9/30/2011
GA	Everest Norcross-Massage Therapy (Diploma)	7/1/2011 – 9/30/2012
GA	Everest Norcross-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
GA	Everest Norcross-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
GA	Everest Norcross-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2013
IL	Everest Burr Ridge-Dental Assistant (Diploma)	7/1/2013 – 9/30/2014

IL	Everest Burr Ridge-Medical Administrative Assistant (Diploma)	7/1/2013 – 9/30/2014
IL	Everest Burr Ridge-Medical Assistant (Diploma)	7/1/2013 – 9/30/2014
IL	Everest Burr Ridge-Medical Insurance Billing and Coding (Diploma)	7/1/2012 – 9/30/2013
IL	Everest Chicago-Dental Assistant (Diploma)	7/1/2011 – 9/30/2014
IL	Everest Chicago-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011
IL	Everest Chicago-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011
IL	Everest Chicago-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2014
IL	Everest Melrose Park-Dental Assistant (Diploma)	7/1/2013 – 9/30/2014
IL	Everest Melrose Park-Medical Administrative Assistant (Diploma)	7/1/2013 – 9/30/2014
IL	Everest Melrose Park-Medical Assistant (Diploma)	7/1/2013 – 9/30/2014
IL	Everest Melrose Park-Medical Insurance Billing and Coding (Diploma)	7/1/2013 – 9/30/2014
IL	Everest Melrose Park-Pharmacy Technician (Associate)	7/1/2013 – 9/30/2014
IL	Everest Merrionette Park-Dental Assistant (Diploma)	7/1/2013 – 9/30/2014
IL	Everest Merrionette Park-Massage Therapy (Diploma)	7/1/2013 – 9/30/2014
IL	Everest Merrionette Park-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
IL	Everest Merrionette Park-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
IL	Everest Merrionette Park-Medical Insurance Billing and Coding (Diploma)	7/1/2013 – 9/30/2014
IL	Everest Merrionette Park-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
IL	Everest North Aurora (IL)-Electrician (Diploma)	7/1/2012 – 9/30/2014
IL	Everest North Aurora (IL)-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
IL	Everest North Aurora (IL)-Medical Assistant (all credential levels)	7/1/2010 – 9/30/2014
IL	Everest North Aurora (IL)-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2014
IL	Everest Skokie-Dental Assistant (Diploma)	7/1/2012 – 9/30/2013
IL	Everest Skokie-Medical Administrative Assistant (Diploma)	7/1/2013 – 9/30/2014
IL	Everest Skokie-Medical Assistant (Diploma)	7/1/2013 – 9/30/2014
IL	Everest Skokie-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2012
IL	Everest Skokie-Pharmacy Technician (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
IL	Everest Skokie-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
IN	Everest Merrillville-Business Accounting (all credential levels)	7/1/2010 – 9/30/2014
IN	Everest Merrillville-Dental Assistant (Diploma)	7/1/2010 – 9/30/2011
IN	Everest Merrillville-Massage Therapy (Diploma)	7/1/2012 – 9/30/2014

IN	Everest Merrillville-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2013
IN	Everest Merrillville-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2013
IN	Everest Merrillville-Practical Nursing (Diploma)	7/1/2013 – 9/30/2014
MA	Everest Brighton-Dental Assistant (Diploma)	7/1/2010 – 9/30/2011
MA	Everest Brighton-Massage Therapy (all credential levels)	7/1/2010 – 9/30/2014
MA	Everest Brighton-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
MA	Everest Brighton-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
MA	Everest Chelsea-Dental Assistant (Diploma)	7/1/2012 – 9/30/2013
MA	Everest Chelsea-Massage Therapy (Diploma)	7/1/2011 – 9/30/2014
MA	Everest Chelsea-Medical Administrative Assistant (Diploma)	7/1/2011 – 9/30/2014
MA	Everest Chelsea-Medical Assistant (Diploma)	7/1/2011 – 9/30/2014
MA	Everest Chelsea-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2014
MI	Everest Dearborn-Dental Assistant (Diploma)	7/1/2010 – 9/30/2013
MI	Everest Dearborn-Massage Therapy (Associates)	7/1/2013 – 9/30/2014
MI	Everest Dearborn-Massage Therapy (Diploma)	7/1/2013 – 9/30/2014
MI	Everest Dearborn-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2013
MI	Everest Dearborn-Medical Assistant (Diploma)	7/1/2010 – 9/30/2013
MI	Everest Dearborn-Medical Insurance Billing and Coding (Diploma)	7/1/2012 – 9/30/2014
MI	Everest Dearborn-Patient Care Technician (Diploma)	7/1/2013 – 9/30/2014
MI	Everest Dearborn-Pharmacy Technician (all credential levels)	7/1/2010 – 9/30/2014
MI	Everest Detroit-Massage Therapy (Diploma)	7/1/2011 – 9/30/2014
MI	Everest Detroit-Medical Administrative Assistant (Diploma)	7/1/2011 – 9/30/2014
MI	Everest Detroit-Medical Assistant (Diploma)	7/1/2011 – 9/30/2014
MI	Everest Detroit-Pharmacy Technician (Diploma)	7/1/2011 – 9/30/2014
MI	Everest Grand Rapids-Dental Assistant (Diploma)	7/1/2011 – 9/30/2014
MI	Everest Grand Rapids-Massage Therapy (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
MI	Everest Grand Rapids-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
MI	Everest Grand Rapids-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
MI	Everest Grand Rapids-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
MI	Everest Grand Rapids-Practical Nursing (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
MI	Everest Kalamazoo-Business Accounting (Diploma)	7/1/2011 – 9/30/2014
MI	Everest Kalamazoo-Dental Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
MI	Everest Kalamazoo-Massage Therapy (Diploma)	7/1/2013 – 9/30/2014
MI	Everest Kalamazoo-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014



MI	Everest Kalamazoo-Medical Assistant (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
MI	Everest Kalamazoo-Medical Assistant (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
MI	Everest Kalamazoo-Pharmacy Technician (Associate)	7/1/2010 – 9/30/2014
MI	Everest Southfield-Computer Technology (Diploma)	7/1/2010 – 9/30/2014
MI	Everest Southfield-Electronics Computer Technology (Diploma)	7/1/2010 – 9/30/2014
MI	Everest Southfield-Massage Therapy (Diploma)	7/1/2013 – 9/30/2014
MI	Everest Southfield-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
MI	Everest Southfield-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
MI	Everest Southfield-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
MN	Everest Eagan-Massage Therapy (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
MN	Everest Eagan-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
MN	Everest Eagan-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
MN	Everest Eagan-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2013
MN	Everest Eagan-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2014
MO	Everest Springfield-Accounting (AAS)	7/1/2010 – 9/30/2013
MO	Everest Springfield-Accounting (Associate)	7/1/2010 – 9/30/2013
MO	Everest Springfield-Accounting (Bachelor)	7/1/2010 – 9/30/2011
MO	Everest Springfield-Applied Management (Bachelor)	7/1/2010 – 9/30/2011
MO	Everest Springfield-Business Accounting (Diploma)	7/1/2010 – 9/30/2011
MO	Everest Springfield-Business Administration (AAS)	7/1/2010 – 9/30/2014
MO	Everest Springfield-Business Administration (Associate)	7/1/2010 – 9/30/2014
MO	Everest Springfield-Computer Information Science (AAS)	7/1/2011 – 9/30/2014
MO	Everest Springfield-Computer Information Science (Associate)	7/1/2011 – 9/30/2014
MO	Everest Springfield-Dental Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
MO	Everest Springfield-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
MO	Everest Springfield-Medical Assistant (Associate)	7/1/2010 – 9/30/2014
MO	Everest Springfield-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
MO	Everest Springfield-Paralegal (Associate)	7/1/2010 – 9/30/2014
MO	Everest Springfield-Paralegal (Bachelor)	7/1/2010 – 9/30/2014
MO	Everest St. Louis (Earth City)-Business Accounting (Diploma)	7/1/2010 – 9/30/2014
MO	Everest St. Louis (Earth City)-Dental Assistant (Diploma)	7/1/2013 – 9/30/2014
MO	Everest St. Louis (Earth City)-Massage Therapy (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
MO	Everest St. Louis (Earth City)-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014

MO	Everest St. Louis (Earth City)-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
MO	Everest St. Louis (Earth City)-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2011
MO	Everest St. Louis (Earth City)-Pharmacy Technician (Diploma)	7/1/2012 – 9/30/2013
NJ	Everest South Plainfield-Electrician (Diploma)	7/1/2012 – 9/30/2014
NJ	Everest South Plainfield-Massage Therapy (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
NJ	Everest South Plainfield-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
NJ	Everest South Plainfield-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
NJ	Everest South Plainfield-Medical Insurance Billing and Coding (Diploma)	7/1/2012 – 9/30/2013
NJ	Everest South Plainfield-Pharmacy Technician (Diploma)	7/1/2012 – 9/30/2013
NV	Everest Henderson-Accounting (Associate)	7/1/2010 – 9/30/2011 7/1/2012 – 9/30/2014
NV	Everest Henderson-Business (Associate)	7/1/2012 – 9/30/2014
NV	Everest Henderson-Criminal Justice – SAS	7/1/2010 – 9/30/2014
NV	Everest Henderson-Criminal Justice (Associate)	7/1/2010 – 9/30/2014
NV	Everest Henderson-Massage Therapy	7/1/2010 – 9/30/2014
NV	Everest Henderson-Nursing (Associate)	7/1/2013 – 9/30/2014
NV	Everest Henderson-Paralegal – SAS	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2013
NV	Everest Henderson-Paralegal (Associate)	7/1/2010 – 9/30/2011 7/1/2012 – 9/30/2013
NY	Everest Rochester-Accounting (Associate)	7/1/2010 – 9/30/2014
NY	Everest Rochester-Administrative Office Technology (Associate)	7/1/2011 – 9/30/2013
NY	Everest Rochester-Business (Associate)	7/1/2011 – 9/30/2014
NY	Everest Rochester-Business Accounting and Applications (Diploma)	7/1/2010 – 9/30/2014
NY	Everest Rochester-Business Management (Diploma)	7/1/2010 – 9/30/2014
NY	Everest Rochester-Criminal Justice (Associate)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
NY	Everest Rochester-Medical Assistant (AAS)	7/1/2010 – 9/30/2013
NY	Everest Rochester-Medical Assistant (Associate)	7/1/2010 – 9/30/2013
NY	Everest Rochester-Medical Assistant (Diploma)	7/1/2010 – 9/30/2013
OH	Everest Columbus (Gahanna)-Dental Assistant (Diploma)	7/1/2012 – 9/30/2014
OH	Everest Columbus (Gahanna)-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
OH	Everest Columbus (Gahanna)-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
OH	Everest Columbus (Gahanna)-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
OH	Everest Columbus (Gahanna)-Pharmacy Technician (Diploma)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
OR	Everest Portland-Accounting (Associate)	7/1/2011 – 9/30/2014

OR	Everest Portland-Accounting (Diploma)	7/1/2011 – 9/30/2014
OR	Everest Portland-Administrative Medical Assistant (Diploma)	7/1/2011 – 9/30/2014
OR	Everest Portland-Business Accounting (Diploma)	7/1/2011 – 9/30/2014
OR	Everest Portland-Computer Information Science (Associate)	7/1/2011 – 9/30/2014
OR	Everest Portland-Criminal Justice (Associate)	7/1/2011 – 9/30/2014
OR	Everest Portland-Medical Assistant (Associate)	7/1/2011 – 9/30/2014
OR	Everest Portland-Medical Assistant (Diploma)	7/1/2011 – 9/30/2014
OR	Everest Portland-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2013
OR	Everest Portland-Network and Internet Security Specialist (Diploma)	7/1/2011 – 9/30/2014
OR	Everest Portland-Paralegal (Associate)	7/1/2011 – 9/30/2014
OR	Everest Portland-Pharmacy Technician (Associate)	7/1/2011 – 9/30/2013
OR	Everest Portland-Pharmacy Technician (Diploma)	7/1/2011 – 9/30/2014
OR	Everest Tigard- Massage Therapy (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
OR	Everest Tigard-Massage Therapy Spa Specialist (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
OR	Everest Tigard-Massage Therapy Sports Specialist (Diploma)	7/1/2010 – 9/30/2014
OR	Everest Tigard-Medical Assistant (Diploma)	7/1/2011 – 9/30/2012
OR	Everest Tigard-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2012
OR	Everest Tigard-Pharmacy Technician (Diploma)	7/1/2013 – 9/30/2014
PA	Everest Bensalem-Dental Assistant (Diploma)	7/1/2013 – 9/30/2014
PA	Everest Bensalem-Medical Assistant (Diploma)	7/1/2013 – 9/30/2014
PA	Everest Bensalem-Medical Insurance Billing and Coding (Diploma)	7/1/2013 – 9/30/2014
PA	Everest Pittsburgh-Accounting (Associate)	7/1/2010 – 9/30/2014
PA	Everest Pittsburgh-Business (Associate)	7/1/2010 – 9/30/2014
PA	Everest Pittsburgh-Business Administration (Associate)	7/1/2010 – 9/30/2014
PA	Everest Pittsburgh-Career Access Program	7/1/2010 – 9/30/2014
PA	Everest Pittsburgh-Criminal Justice (Associate)	7/1/2012 – 9/30/2014
PA	Everest Pittsburgh-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
PA	Everest Pittsburgh-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
PA	Everest Pittsburgh-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
PA	Everest Pittsburgh-Paralegal (Associate)	7/1/2010 – 9/30/2011
PA	Everest Pittsburgh-Patient Care Technician (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
PA	Everest Pittsburgh-Pharmacy Technician (Associate)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
PA	Everest Pittsburgh-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
PA	WyoTech Blairsville-Auto/Diesel Vehicle Technology (Diploma)	7/1/2010 – 9/30/2014

PA	WyoTech Blairsville-Automotive Technology and Management (Associate)	7/1/2010 – 9/30/2014
PA	WyoTech Blairsville-Automotive Technology with High Performance Power Transmission (Diploma)	7/1/2010 – 9/30/2014
PA	WyoTech Blairsville-Automotive Technology with Light Duty Diesel (Diploma)	7/1/2010 – 9/30/2014
PA	WyoTech Blairsville-Automotive Technology with Trim and Upholstery Technology (Diploma)	7/1/2010 – 9/30/2014
PA	WyoTech Blairsville-Collision/Refinishing and Upholstery Technology (Diploma)	7/1/2011 – 9/30/2013
PA	WyoTech Blairsville-Collision/Refinishing Technology and Management (Associate)	7/1/2011 – 9/30/2014
PA	WyoTech Blairsville-Diesel Technology and Management (Associate)	7/1/2012 – 9/30/2014
PA	WyoTech Blairsville-Diesel Technology with High Performance Power Transmission (Diploma)	7/1/2012 – 9/30/2014
PA	WyoTech Blairsville-Diesel/Auto Vehicle Technology (Diploma)	7/1/2012 – 9/30/2014
PA	WyoTech Blairsville-Motorsports Chassis Fabrication with Automotive Technology (Diploma)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
PA	WyoTech Blairsville-Motorsports Chassis Fabrication with Collision/Refinishing Technology (Diploma)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
PA	WyoTech Blairsville-Motorsports Chassis Fabrication with Diesel Technology (Diploma)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
PA	WyoTech Blairsville-Street Rod and Custom Fabrication with Automotive Technology (Diploma)	7/1/2011 – 9/30/2014
PA	WyoTech Blairsville-Street Rod and Custom Fabrication with Collision/Refinishing Technology (Diploma)	7/1/2011 – 9/30/2014
PA	WyoTech Blairsville-Street Rod and Custom Fabrication with Diesel Technology (Diploma)	7/1/2011 – 9/30/2014
TX	Everest Arlington (Mid Cities)-Business (Associate)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
TX	Everest Arlington (Mid Cities)-Business Administration (Associate)	7/1/2010 – 9/30/2014
TX	Everest Arlington (Mid Cities)-Criminal Justice (Associate)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
TX	Everest Arlington (Mid Cities)-Electrical Technician (Diploma)	7/1/2012 – 9/30/2014
TX	Everest Arlington (Mid Cities)-Electrician (Diploma)	7/1/2012 – 9/30/2014
TX	Everest Arlington (Mid Cities)-Heating, Ventilation and Air Conditioning (Diploma)	7/1/2013 – 9/30/2014
TX	Everest Arlington (Mid Cities)-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
TX	Everest Arlington (Mid Cities)-Medical Assistant (Associate)	7/1/2010 9/30/2014
TX	Everest Arlington (Mid Cities)-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
TX	Everest Arlington (Mid Cities)-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
TX	Everest Arlington (Mid Cities)-Pharmacy Technician (Associate)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
TX	Everest Arlington (Mid Cities)-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014



TX	Everest Austin-Dental Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
TX	Everest Austin-Electrical Technician (Diploma)	7/1/2012 – 9/30/2014
TX	Everest Austin-Electrician (Diploma)	7/1/2012 – 9/30/2014
TX	Everest Austin-Heating, Ventilation and Air Conditioning (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
TX	Everest Austin-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
TX	Everest Austin-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
TX	Everest Austin-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2011
TX	Everest Dallas-Business Administration (Associate)	7/1/2011 – 9/30/2014
TX	Everest Dallas-Criminal Justice (Associate)	7/1/2012 – 9/30/2014
TX	Everest Dallas-Medical Administrative Assistant (Diploma)	7/1/2013 – 9/30/2014
TX	Everest Dallas-Medical Assistant (Associate)	7/1/2013 – 9/30/2014
TX	Everest Dallas-Medical Assistant (Diploma)	7/1/2013 – 9/30/2014
TX	Everest Dallas-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2014
TX	Everest Dallas-Paralegal (Associate)	7/1/2012 – 9/30/2014
TX	Everest Fort Worth North-Business (Associate)	7/1/2010 – 9/30/2014
TX	Everest Fort Worth North-Business Administration (AAS)	7/1/2010 – 9/30/2014
TX	Everest Fort Worth North-Business Administration (AS)	7/1/2010 – 9/30/2014
TX	Everest Fort Worth North-Business Administration (Associate)	7/1/2010 – 9/30/2014
TX	Everest Fort Worth North-Criminal Justice (Associate)	7/1/2012 – 9/30/2014
TX	Everest Fort Worth North-Dental Assisting (Diploma)	7/1/2011 – 9/30/2014
TX	Everest Fort Worth North-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
TX	Everest Fort Worth North-Medical Assistant (Associate)	7/1/2010 – 9/30/2014
TX	Everest Fort Worth North-Medical Assisting (Diploma)	7/1/2010 – 9/30/2014
TX	Everest Fort Worth North-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2012
TX	Everest Fort Worth North-Paralegal (AAS)	7/1/2010 – 9/30/2014
TX	Everest Fort Worth North-Paralegal (Associate)	7/1/2010 – 9/30/2014
TX	Everest Fort Worth North-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2014
TX	Everest Fort Worth South-Dental Assistant (Diploma)	7/1/2013 – 9/30/2014
TX	Everest Fort Worth South-Medical Administrative Assistant (Diploma)	7/1/2012 – 9/30/2013
TX	Everest Fort Worth South-Medical Assistant (Diploma)	7/1/2012 – 9/30/2013
TX	Everest Fort Worth South-Medical Insurance Billing and Coding (Diploma)	7/1/2012 – 9/30/2013
TX	Everest Houston (Bissonnet)-Carpentry (Diploma)	7/1/2011 – 9/30/2014
TX	Everest Houston (Bissonnet)-Electrical Technician (Diploma)	7/1/2011 – 9/30/2014
TX	Everest Houston (Bissonnet)-Heating, Ventilation and Air Conditioning (Diploma)	7/1/2012 – 9/30/2014
TX	Everest Houston (Bissonnet)-Medical Administrative Assistant (Diploma)	7/1/2011 – 9/30/2014
TX	Everest Houston (Bissonnet)-Medical Assistant (Diploma)	7/1/2011 – 9/30/2014

TX	Everest Houston (Bissonnet)-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2014
TX	Everest Houston (Bissonnet)-Plumbing Technology (Diploma)	7/1/2011 – 9/30/2014
TX	Everest Houston (Greenspoint)-Dental Assistant (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
TX	Everest Houston (Greenspoint)-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2012.
TX	Everest Houston (Greenspoint)-Medical Assistant (Diploma)	7/1/2010 – 9/30/2012
TX	Everest Houston (Hobby)-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014
TX	Everest Houston (Hobby)-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
TX	Everest Houston (Hobby)-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2012
TX	Everest San Antonio-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
TX	Everest San Antonio-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
TX	Everest San Antonio-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2011
TX	Everest San Antonio-Pharmacy Technology (all credential levels)	7/1/2010 – 9/30/2014
UT	Everest Salt Lake City-Applied Management (Bachelor)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
UT	Everest Salt Lake City-Computer Information Science (Bachelor)	7/1/2013 – 9/30/2014
UT	Everest Salt Lake City-Criminal Justice (Associate)	7/1/2013 – 9/30/2014
UT	Everest Salt Lake City-Criminal Justice (Bachelor)	7/1/2011 – 9/30/2014
UT	Everest Salt Lake City-Criminal Justice Private and Homeland Security (Diploma)	7/1/2013 – 9/30/2014
UT	Everest Salt Lake City-Criminal Justice Social and Youth Services (Diploma)	7/1/2013 – 9/30/2014
UT	Everest Salt Lake City-Medical Administrative Assistant (Diploma)	7/1/2011 – 9/30/2014
UT	Everest Salt Lake City-Medical Assistant (Associate)	7/1/2011 – 9/30/2014
UT	Everest Salt Lake City-Medical Assistant (Diploma)	7/1/2011 – 9/30/2014
UT	Everest Salt Lake City-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2013
UT	Everest Salt Lake City-Paralegal (Associate)	7/1/2011 – 9/30/2011; 7/1/2013 – 9/30/2014
UT	Everest Salt Lake City-Pharmacy Technician (Associate)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
UT	Everest Salt Lake City-Pharmacy Technician (Diploma)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
VA	Everest Arlington-Business (Associate)	7/1/2010 – 9/30/2014
VA	Everest Arlington-Business Administration (Associate)	7/1/2010 – 9/30/2014
VA	Everest Arlington-Criminal Justice (Associate)	7/1/2010 – 9/30/2014

VA	Everest Arlington-Homeland Security Specialist (Diploma)	7/1/2010 – 9/30/2014
VA	Everest Arlington-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
VA	Everest Arlington-Paralegal (Associate)	7/1/2011 – 9/30/2014
VA	Everest Chesapeake-Accounting (Associate)	7/1/2010 – 9/30/2013
VA	Everest Chesapeake-Business (Associate)	7/1/2010 – 9/30/2014
VA	Everest Chesapeake-Business Accounting (Associate)	7/1/2010 – 9/30/2014
VA	Everest Chesapeake-Criminal Justice (Associate)	7/1/2011 – 9/30/2013
VA	Everest Chesapeake-Dental Assistant (Diploma)	7/1/2010 – 9/30/2013
VA	Everest Chesapeake-Electrician (Diploma)	7/1/2012 – 9/30/2013
VA	Everest Chesapeake-Heating, Ventilation and Air Conditioning (Diploma)	7/1/2012 – 9/30/2013
VA	Everest Chesapeake-Massage Therapy (Diploma)	7/1/2010 – 9/30/2014
VA	Everest Chesapeake-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2013
VA	Everest Chesapeake-Medical Assistant (Diploma)	7/1/2010 – 9/30/2013
VA	Everest Chesapeake-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
VA	Everest Chesapeake-Pharmacy Technician (Diploma)	7/1/2012 – 9/30/2013
VA	Everest Newport News-Business (Associate)	7/1/2010 – 9/30/2013
VA	Everest Newport News-Business Accounting (Associate)	7/1/2010 – 9/30/2014
VA	Everest Newport News-Criminal Justice (Associate)	7/1/2013 – 9/30/2014
VA	Everest Newport News-Massage Therapy (Diploma)	7/1/2010 – 9/30/2014
VA	Everest Newport News-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2012
VA	Everest Newport News-Medical Assistant (Diploma)	7/1/2010 – 9/30/2012
VA	Everest Newport News-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2012
VA	Everest Tyson's Corner (McLean/Vienna)-Business Administration (Associate)	7/1/2012 – 9/30/2014
VA	Everest Tyson's Corner (McLean/Vienna)-Criminal Justice (Associate)	7/1/2010 – 9/30/2014
VA	Everest Tyson's Corner (McLean/Vienna)-Massage Therapy (Diploma)	7/1/2012 – 9/30/2014
VA	Everest Tyson's Corner (McLean/Vienna)-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2013
VA	Everest Tyson's Corner (McLean/Vienna)-Medical Assistant (Diploma)	7/1/2010 – 9/30/2013
VA	Everest Tyson's Corner (McLean/Vienna)-Medical Insurance Billing and Coding (Diploma)	7/1/2012 – 9/30/2014
WA	Everest Bremerton-Criminal Justice (Associate)	7/1/2013 – 9/30/2014
WA	Everest Bremerton-Dental Assistant (Diploma)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
WA	Everest Bremerton-Massage Therapy (Diploma)	7/1/2011 – 9/30/2014
WA	Everest Bremerton-Medical Administrative Assistant (Diploma)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
WA	Everest Bremerton-Medical Assistant (Diploma)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014

WA	Everest Bremerton-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2014
WA	Everest Bremerton-Pharmacy Technician (Diploma)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
WA	Everest Everett-Dental Assistant (Diploma)	7/1/2011 – 9/30/2012
WA	Everest Everett-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2012
WA	Everest Everett-Medical Assistant (Diploma)	7/1/2010 – 9/30/2012
WA	Everest Everett-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2013
WA	Everest Everett-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2014
WA	Everest Renton-Dental Assistant (Diploma)	7/1/2010 – 9/30/2014
WA	Everest Renton-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
WA	Everest Renton-Medical Assistant (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
WA	Everest Renton-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
WA	Everest Renton-Pharmacy Technician (Diploma)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
WA	Everest Seattle-Massage Therapy (Diploma)	7/1/2010 – 9/30/2013
WA	Everest Seattle-Massage Therapy Spa Specialist (Diploma)	7/1/2010 – 9/30/2014
WA	Everest Seattle-Medical Administrative Assistant (Diploma)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
WA	Everest Seattle-Medical Assistant (Diploma)	7/1/2011 – 9/30/2012; 7/1/2013 – 9/30/2014
WA	Everest Seattle-Medical Insurance Billing and Coding (Diploma)	7/1/2011 – 9/30/2013
WA	Everest Tacoma-Dental Assistant (Diploma)	7/1/2012 – 9/30/2014
WA	Everest Tacoma-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2011
WA	Everest Tacoma-Medical Assistant (Diploma)	7/1/2010 – 9/30/2011
WA	Everest Tacoma-Medical Insurance Billing and Coding (Diploma)	7/1/2013 – 9/30/2014
WA	Everest Tacoma-Pharmacy Technician (Diploma)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
WA	Everest Vancouver-Accounting (Associate)	7/1/2010 – 9/30/2014
WA	Everest Vancouver-Accounting/Business Administration (Diploma)	7/1/2010 – 9/30/2014
WA	Everest Vancouver-Administrative Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
WA	Everest Vancouver-Executive Assistant (Associate)	7/1/2010 – 9/30/2012
WA	Everest Vancouver-Massage Therapy (Diploma)	7/1/2011 – 9/30/2014
WA	Everest Vancouver-Massage Therapy Spa Specialist (Diploma)	7/1/2011 – 9/30/2014
WA	Everest Vancouver-Massage Therapy Sports Specialist (Diploma)	7/1/2011 – 9/30/2014
WA	Everest Vancouver-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2014



WA	Everest Vancouver-Medical Assistant (Associate)	7/1/2010 – 9/30/2012
WA	Everest Vancouver-Medical Assistant (Diploma)	7/1/2010 – 9/30/2014
WA	Everest Vancouver-Medical Insurance Billing and Coding (Diploma)	7/1/2010 – 9/30/2014
WA	Everest Vancouver-Paralegal/Legal Assistant (Associate)	7/1/2010 – 9/30/2011
WI	Everest Milwaukee-Dental Assistant (Diploma)	7/1/2012 – 9/30/2014
WV	Everest Cross Lanes-Electronics, Computer and Communication Technology (Associate)	7/1/2010 – 9/30/2014
WV	Everest Cross Lanes-Massage Therapy (Diploma)	7/1/2013 – 9/30/2014
WV	Everest Cross Lanes-Medical Administrative Assistant (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
WV	Everest Cross Lanes-Medical Assistant (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
WY	WyoTech Laramie-Auto/Diesel Vehicle Technology (Diploma)	7/1/2010 – 9/30/2014
WY	WyoTech Laramie-Automotive Technology (all credential levels)	7/1/2010 – 9/30/2014
WY	WyoTech Laramie-Automotive Technology and Management (Associate)	7/1/2010 – 9/30/2014
WY	WyoTech Laramie-Automotive Technology with Trim and Upholstery Technology (Diploma)	7/1/2010 – 9/30/2014
WY	WyoTech Laramie-Collision Technology (all credential levels)	7/1/2010 – 9/30/2014
WY	WyoTech Laramie-Collision/Refinishing (all credential levels)	7/1/2010 – 9/30/2012
WY	WyoTech Laramie-Collision/Refinishing and Upholstery Technology (Diploma)	7/1/2010 – 9/30/2012
WY	WyoTech Laramie-Collision/Refinishing Technology and Management (Associate)	7/1/2010 – 9/30/2012
WY	WyoTech Laramie-Collision/Refinishing w/ St Rod & Mgmt (Diploma)	7/1/2010 – 9/30/2012
WY	WyoTech Laramie-Collision/Refinishing with Specialization in Automotive Fabrication (Diploma)	7/1/2010 – 9/30/2012
WY	WyoTech Laramie-Diesel Technician (all credential levels)	7/1/2010 – 9/30/2014
WY	WyoTech Laramie-Diesel Technology (all credential levels)	7/1/2010 – 9/30/2014
WY	WyoTech Laramie-Diesel Technology Advanced (Diploma)	7/1/2010 – 9/30/2014
WY	WyoTech Laramie-Diesel Technology and Management (Associate)	7/1/2010 – 9/30/2014
WY	WyoTech Laramie-Diesel Technology with Trim and Upholstery Technology (Diploma)	7/1/2010 – 9/30/2014
WY	WyoTech Laramie-Diesel/Automotive Technology (all credential levels)	7/1/2010 – 9/30/2014
WY	WyoTech Laramie-Diesel/Automotive Vehicle Technology (Diploma)	7/1/2010 – 9/30/2014
WY	WyoTech Laramie-Motorsports Chassis Fabrication with Automotive Technology (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
WY	WyoTech Laramie-Motorsports Chassis Fabrication with Collision/Refinishing Technology (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014
WY	WyoTech Laramie-Motorsports Chassis Fabrication with Diesel Technology (Diploma)	7/1/2010 – 9/30/2012; 7/1/2013 – 9/30/2014

WY	WyoTech Laramie-Street Rod and Custom Fabrication with Automotive Technology (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
WY	WyoTech Laramie-Street Rod and Custom Fabrication with Collision/Refinishing Technology (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014
WY	WyoTech Laramie-Street Rod and Custom Fabrication with Diesel Technology (Diploma)	7/1/2010 – 9/30/2011; 7/1/2012 – 9/30/2014

## HEALD JOB PLACEMENT RATE FINDINGS

## List of HEALD COLLEGE Programs and Enrollment Dates Covered by Department of Education Findings

CAMPUS NAME	CAMPUS PROGRAM	ENROLLMENT ON OR AFTER
CONCORD	Accounting	7/1/2010
	Business Accounting	7/1/2010
	Business Administration	7/1/2010
	Business Administration – Accounting Emphasis	7/1/2010
	Business Administration – Criminal Justice	7/1/2010
	Business Administration - Software Technologies Emphasis	7/1/2010
	Entrepreneurship	7/1/2010
	Construction Management	7/1/2012
	Criminal Justice	7/1/2010
	Dental Assisting	7/1/2010
	IT – Network Security	7/1/2010
	IT – Network Systems Administration	7/1/2010
	Medical Administrative Asst	7/1/2010
	Medical Assisting	7/1/2010
	Medical Insurance Billing & Coding	7/1/2010
	Medical Office Administration	7/1/2010
	Office Skills	7/1/2011
	Paralegal	7/1/2011
	Pharmacy Technology	7/1/2012
FRESNO	Accounting	7/1/2010
	Business Administration	7/1/2010
	Business Administration – Accounting Emphasis	7/1/2010
	Business Administration – Criminal Justice	7/1/2010
	Business Administration - Software Technologies Emphasis	7/1/2010
	Entrepreneurship	7/1/2010
	Criminal Justice	7/1/2010
	IT Network Systems Administration	7/1/2010
	Medical Assisting	7/1/2010
	Medical Insurance Billing & Coding	7/1/2010
	Medical Office Administration	7/1/2010
	Office Skills	7/1/2010
	Paralegal	7/1/2011
	Pharmacy Technology	7/1/2012
HAYWARD	Accounting	7/1/2010



	Business Accounting	7/1/2010
	Business Administration	7/1/2010
	Business Administration – Accounting Emphasis	7/1/2010
	Business Administration – Sales/Marketing Emphasis	7/1/2010
	Business Administration - Software Technologies Emphasis	7/1/2010
	Entrepreneurship	7/1/2010
	Construction Management	7/1/2012
	Criminal Justice	7/1/2010
	Dental Assisting	7/1/2010
	IT – Network Security	7/1/2010
	IT – Network Systems Administration	7/1/2010
	Medical Assisting	7/1/2010
	Medical Insurance Billing & Coding	7/1/2010
	Medical Office Administration	7/1/2010
	Office Skills	7/1/2011
	Paralegal	7/1/2011
	Pharmacy Technology	7/1/2012
HONOLULU	Accounting	7/1/2010
	Business Accounting	7/1/2010
	Business Administration	7/1/2010
	Business Administration – Accounting	7/1/2010
	Business Administration – Hospitality and Tourism	7/1/2010
	Business Administration – Sales and Marketing	7/1/2010
	Business Administration – Software Technologies	7/1/2010
	Business Administration – Accounting Emphasis	7/1/2010
	Business Administration – Hospitality/Tourism Emphasis	7/1/2010
	Business Administration – Sales/Marketing Emphasis	7/1/2010
	Business Administration - Software Technologies Emphasis	7/1/2010
	Entrepreneurship	7/1/2010
	Construction Management	7/1/2012
	Criminal Justice	7/1/2012
	Dental Assisting	7/1/2010

	Electronics Technology	7/1/2010
	Health Information Technology	7/1/2010
	IT – Network Systems Administration	7/1/2010
	Medical Assisting	7/1/2010
	Medical Office Administration	7/1/2010
	Networking Technology (all emphases)	7/1/2010
	Office Skills	7/1/2010
	Paralegal	2/13/2014
	Pharmacy Technology	7/1/2012
	Web Design	7/1/2010
MILIPITAS / SAN JOSE	Accounting	7/1/2010
	Business Accounting	7/1/2010
	Business Administration	7/1/2010
	Business Administration – Accounting	7/1/2010
	Business Administration – Criminal Justice	7/1/2010
	Business Administration – Accounting Emphasis	7/1/2010
	Entrepreneurship	7/1/2010
	Construction Management	7/1/2012
	Criminal Justice	7/1/2010
	Electronics Technology	7/1/2010
	IT – Network Security (all emphases)	7/1/2010
	Medical Assisting	7/1/2010
	Medical Insurance Billing & Coding	7/1/2010
	Medical Office Administration	7/1/2010
	Office Skills	7/1/2010
	Paralegal	7/1/2011
	Pharmacy Technology	7/1/2012
PORTLAND	Accounting	7/1/2010
	Business Administration	7/1/2010
	Business Administration – Accounting	7/1/2010
	Business Administration – Criminal Justice	7/1/2010
	Business Administration – Accounting Emphasis	7/1/2010
	Entrepreneurship	7/1/2010
	Construction Management	7/1/2012
	Criminal Justice	7/1/2010
	Dental Assisting	2/3/2014
	IT – Network Systems Administration	7/1/2010
	Medical Assisting	7/1/2010

	Medical Insurance Billing & Coding	7/1/2010
	Medical Office Administration	7/1/2010
	Office Skills	7/1/2011
	Paralegal	7/1/2011
	Pharmacy Technology	7/1/2012
RANCHO CORDOVA	Accounting	7/1/2010
	Business Administration	7/1/2010
	Business Administration – Accounting	7/1/2010
	Business Administration – Criminal Justice	7/1/2010
	Business Administration – Accounting Emphasis	7/1/2010
	Entrepreneurship	7/1/2010
	Construction Management	7/1/2012
	Criminal Justice	7/1/2010
	IT – Network Security	7/1/2010
	Medical Assisting	7/1/2010
	Medical Insurance Billing & Coding	7/1/2010
	Medical Office Administration	7/1/2010
	Office Skills	7/1/2010
	Paralegal	7/1/2011
	Pharmacy Technology	7/1/2012
ROSEVILLE	Accounting	7/1/2010
	Business Accounting	7/1/2010
	Business Administration	7/1/2010
	Business Administration – Accounting	7/1/2010
	Business Administration – Criminal Justice	7/1/2010
	Business Administration – Accounting Emphasis	7/1/2010
	Entrepreneurship	7/1/2010
	Construction Management	7/1/2012
	Criminal Justice	7/1/2010
	IT – Network Security	7/1/2010
	Medical Assisting	7/1/2010
	Medical Insurance Billing & Coding	7/1/2010
	Medical Office Administration	7/1/2010
	Office Skills	7/1/2012
	Paralegal	7/1/2011
	Pharmacy Technology	7/1/2012
SALIDA / MODESTO	Accounting	2/13/2014

	Business Administration	2/13/2014
	Criminal Justice	7/1/2012
	Dental Assisting	7/1/2011
	Medical Assisting	7/1/2011
	Medical Insurance Billing & Coding	7/1/2012
	Medical Office Administration	2/13/2014
	Paralegal	2/13/2014
SALINAS	Accounting	7/1/2010
	Business Accounting	7/1/2010
	Business Administration	7/1/2010
	Business Administration – Accounting	7/1/2010
	Business Administration – Criminal Justice	7/1/2010
	Business Administration – Accounting Emphasis	7/1/2010
	Entrepreneurship	7/1/2010
	Criminal Justice	7/1/2010
	Medical Assisting	7/1/2010
	Medical Insurance Billing & Coding	7/1/2010
	Medical Office Administration	7/1/2010
	Office Skills	7/1/2010
	Paralegal	7/1/2011
	Pharmacy Technology	7/1/2012
SAN FRANCISCO	Accounting	7/1/2010
	Business Accounting	7/1/2010
	Business Administration	7/1/2010
	Business Administration – Accounting	7/1/2010
	Business Administration – Criminal Justice	7/1/2010
	Business Administration – Software Technologies	7/1/2010
	Business Administration – Accounting Emphasis	7/1/2010
	Business Administration – Software Technology Emphasis	7/1/2010
	Entrepreneurship	7/1/2010
	Construction Management	7/1/2012
	Criminal Justice	7/1/2010
	Electronics Technology	7/1/2010
	IT – Network Security (all emphases)	7/1/2010
	IT – Network Systems Administration	7/1/2010
	Medical Assisting	7/1/2010
	Medical Insurance Billing & Coding	7/1/2010



	Medical Office Administration	7/1/2010
	Office Skills	7/1/2010
	Paralegal	7/1/2011
	Pharmacy Technology	7/1/2012
STOCKTON	Accounting	7/1/2010
	Business Administration	7/1/2010
	Business Administration – Accounting	7/1/2010
	Business Administration – Criminal Justice	7/1/2010
	Business Administration – Accounting Emphasis	7/1/2010
	Entrepreneurship	7/1/2010
	Construction Management	7/1/2012
	Criminal Justice	7/1/2010
	Dental Assisting	7/1/2010
	IT – Network Systems Administration	7/1/2010
	Networking Technology – all emphases	7/1/2010
	Medical Assisting	7/1/2010
	Medical Insurance Billing & Coding	7/1/2010
	Medical Office Administration	7/1/2010
	Office Skills	7/1/2010
	Paralegal	7/1/2011
	Pharmacy Technology	2/3/2014

## CORINTHIAN OPEID CHART

**Heald/Everest/WyoTech Campuses – By State\***

Source: Corinthian Colleges, Inc. FY 2011 10-K, available at

<https://www.sec.gov/Archives/edgar/data/1066134/000104746911007635/a2205217z10-k.htm>

STATE	CAMPUS	DATE OF ACQUISITION/ OPENING	DATE OF DIVESTMENT/ CLOSING	OPEID(s)
AZ	Everest Mesa (no JPR findings) 5416 E. Baseline Road, Suite 200, Mesa, AZ 85206	11/15/2005	04/27/2015, closed (not bought by Zenith)	02295000; 02295001; 02295002; 02295003 “A branch of the Phoenix Campus”
AZ	Everest Phoenix (no JPR findings) 10400 N. 25th Ave, Suite 190 Phoenix, AZ 85021	6/1/2000	04/27/2015, closed (not bought by Zenith)	02295000/01/02/03
CA	Everest Alhambra 2215 W Mission Rd, Alhambra, CA 91803	1/1/1996	04/27/2015, closed (not bought by Zenith)	00809000
CA	Everest Anaheim 511 N Brookhurst St #300, Anaheim, CA 92801	7/1/1995	04/27/2015, closed (not bought by Zenith)	01110700
CA	Everest City of Industry 12801 Crossroads Pkwy, South City of Industry, CA 91746 (Identified as a WyoTech campus on the closure list)	10/1/2000	04/27/2015, closed (not bought by Zenith)	01287302 “A Branch of WyoTech, Long Beach, CA”
CA	Everest Gardena 1045 W. Redondo Beach Blvd., Suite 275, Gardena, CA 90247	1/1/1996	04/27/2015, closed (not bought by Zenith)	01112300
CA	Everest Hayward 22336 Main Street, Hayward, CA 94541	9/1/2001	Closed 07/24/2014	00853200; 00853201
CA	Everest Los Angeles Wilshire 3460 Wilshire Boulevard, Suite 500, Los Angeles, CA 90010	1/1/1996	Closed 07/24/2014	00760600
CA	Everest Ontario 1460 S. Milliken Ave., Ontario, CA 91761	10/1/2000	04/27/2015, closed (not bought by Zenith)	03072300
CA	Everest Ontario Metro 1819 South Excise Avenue, Ontario, CA 91761-8525	1/1/2001	04/27/2015, closed (not bought by Zenith)	02250602 (“An Additional Location of Everest College, Springfield, MO”)
CA	Everest Reseda 18040 Sherman Way, Suite 400, Reseda, CA 91335	7/1/1995	04/27/2015, closed (not bought by Zenith)	01110900
CA	Everest San Bernardino 217 E. Club Center Drive, Suite A San Bernardino, CA 92408-3752	7/1/1995	04/27/2015, closed (not bought by Zenith)	00449400
CA	Everest San Francisco 814 Mission St. San Francisco, CA 94103	10/1/1995	Closed 07/24/2014	01102400
CA	Everest San Jose 1245 S Winchester Blvd #102, San Jose, CA 95128	10/1/1995	Closed 07/24/2014	01206100

\* Campuses that did not have Job Placement Rate (JPR findings) are noted within this document.

CA	Everest Santa Ana (no JPR findings) 500 West Santa Ana Blvd. Santa Ana, CA92701-4559	9/20/2010	04/27/2015, closed (not bought by Zenith)	00450302
CA	Everest Torrance 1231 Cabrillo Ave., Torrance, CA 90501-2867	1/1/2000	04/27/2015, closed (not bought by Zenith)	03195400
CA	Everest West Los Angeles 3000 Robertson Blvd Ste. 300, Los Angeles, CA 90034 (Identified as a WyoTech campus on the closure list)	10/1/2000	04/27/2015, closed (not bought by Zenith)	01287301
CA	Heald Concord 5130 Commercial Circle, Concord CA 94520	01/04/2010	04/27/2015, closed (not bought by Zenith)	00723404
CA	Heald Fresno 255 West Bullard, Fresno, CA 93704-1706	01/04/2010	04/27/2015, closed (not bought by Zenith)	00723412
CA	Heald Hayward 25500 Industrial Blvd., Hayward, CA 94545-2352	01/04/2010	04/27/2015, closed (not bought by Zenith)	00723406
CA	Heald Milpitas (San Jose) 341 Great Mall Parkway, Milpitas, CA95035-8008	01/04/2010	04/27/2015, closed (not bought by Zenith)	00723405
CA	Heald Modesto (Salida) 5260 Pirrone Court, Salida, CA 39568-9095	01/04/2010	04/27/2015, closed (not bought by Zenith)	00723407
CA	Heald Rancho Cordova 2910 Prospect Park Drive, Rancho Cordova, CA 95670-6005	01/04/2010	04/27/2015, closed (not bought by Zenith)	00723411; 00747700
CA	Heald Roseville Seven Sierra Gate Plaza, Roseville, CA 95678-5303	01/04/2010	04/27/2015, closed (not bought by Zenith)	00723408
CA	Heald Salinas 1450 North Main Street, Salinas, CA 93906-5100	01/04/2010	04/27/2015, closed (not bought by Zenith)	00723409
CA	Heald San Francisco 875 Howard St., San Francisco, CA 94103-3032	01/04/2010	04/27/2015, closed (not bought by Zenith)	00723400
CA	Heald Stockton 1605 East March Lane, Stockton, CA 95210-5667	01/04/2010	04/27/2015, closed (not bought by Zenith)	00723410
CA	WyoTech Fremont 200 Whitney Place, Fremont, CA 94539-7663	8/7/2003	04/27/2015, closed (not bought by Zenith)	00719000
CA	WyoTech Long Beach 2161 Technology Place, Long Beach, CA 90810-3800	10/1/2000	04/27/2015, closed (not bought by Zenith)	01287300
CA	WyoTech West Sacramento 980 Riverside Pkwy, West Sacramento, CA 95605	1/27/2004	Closed 11/06/2013 (not bought by Zenith)	00915707; 00915706
CO	Everest Aurora 14280 East Jewell Ave., Aurora CO 80012-5692	10/1/1996	02/02/2015, acquired by Zenith	00450701
CO	Everest Colorado Springs 1815 Jet Wing Drive, Colorado Springs, CO 80916	10/1/1996	02/02/2015, acquired by Zenith	00450300



CO	Everest Thornton 9065 Grant St., Thornton, CO 80229-4339	10/1/1996	02/02/2015, acquired by Zenith	00450700
FL	Everest Brandon 3924 Coconut Palm Dr., Tampa FL 33619-1354	10/1/1996	02/02/2015, acquired by Zenith	00149905; 00153408
FL	Everest Fort Lauderdale 1040 Bayview Dr., Fort Lauderdale, FL 33304	9/30/2003	Closed 03/20/2012	3003201
FL	Everest Hialeah 530 W 49th St, Hialeah, FL 33012	4/1/2002	Closed 07/13/2013 (not bought by Zenith)	02121801
FL	Everest Jacksonville 8226 Phillips Highway Jacksonville, FL 32256	7/1/2000	02/02/2015, acquired by Zenith	00149909; 02599805
FL	Everest Kendall (Miami) 9020 SW 137th Avenue, Miami, FL 33186	4/1/2002	Closed 10/30/2014 (not bought by Zenith)	00149914; 03003200
FL	Everest Lakeland 995 East Memorial Blvd., Lakeland FL 33801-3801	10/1/1996	02/02/2015, acquired by Zenith	00149908; 02599801
FL	Everest Largo 1199 East Bay Dr., Largo, FL 33770-2556	10/1/1996	02/02/2015, acquired by Zenith	00149907; 02599800
FL	Everest Melbourne 2401 North Harbor City Blvd, Melbourne, FL 32935	10/1/1996	02/02/2015, acquired by Zenith	00149902 ("Additional Location of Everest University, N. Orlando, FL")
FL	Everest Miami 111 Northwest 183 <sup>rd</sup> Street, Miami, FL 33169-4759	4/1/2002	Closed 11/14/2014 (not bought by Zenith)	00149913; 02121800
FL	Everest Orange Park 805 Wells Rd, Orange park, FL 32073-1111	3/3/2004	02/02/2015, acquired by Zenith	00149906; 00153409
FL	Everest Orlando North 541 Diplomat Circle, Orlando FL 32810-5601	10/1/1996	02/02/2015, acquired by Zenith	00149900; 00149915
FL	Everest Orlando South 9200 South Park Center Loop, Orlando, FL 32819	10/1/1996	02/02/2015, acquired by Zenith	00149901
FL	Everest Pompano Beach 225 North Federal Highway Pompano Beach, FL 33062-2522	10/1/1996	02/02/2015, acquired by Zenith	00814600; 00149910
FL	Everest Tampa 5701 E. Hillsborough Avenue, Suite 2300, Tampa, FL 33610	10/1/1996	02/02/2015, acquired by Zenith	00149904; 00153400
FL	WyoTech Ormond Beach (Daytona Beach) (no JPR findings) 470 Destination Daytona Lane, Ormand Beach, FL 32174-1010	8/4/2004	02/02/2015, acquired by Zenith	02346200
GA	Everest Atlanta (Greenbriar) 2841 Greenbriar Parkway SW, Atlanta, GA 30331-2620	11/15/2010	02/02/2015, acquired by Zenith	01110902; 00982808
GA	Everest Atlanta (West) (no JPR findings) 101 Marietta Street NW Suite 600, Atlanta, GA 30303-8340	10/17/1996	Closed 07/25/2008	02318600
GA	Everest Decatur 2460 Wesley Chapel Rd, Ste 25A Decatur, GA 30035	5/1/2000	Closed or 12/31/2012	1035601
GA	Everest Jonesboro 6431 Tara Blvd., Jonesboro, GA 30236	4/1/2000	02/02/2015, acquired by Zenith	03372304
GA	Everest Marietta 1600 Terrell Mill Road, Suite G, Marietta, GA 30067-4163	4/1/2000	02/02/2015, acquired by Zenith	01110901

GA	Everest Norcross 1750 Beaver Ruin Rd., Suite 500, Norcross, GA 30093	3/31/2003	02/02/2015, acquired by Zenith	01112301 ("A Branch of Everest Institute, Southfield, MI"); 00982811
HI	Heald Honolulu 1500 Kapliolani Blvd., Honolulu, HI 96814-3704	01/04/2010	04/27/2015, closed (not bought by Zenith)	00723401
IL	Everest Bedford Park (no JPR findings) 7414 South Cicero Ave., Bedford Park, IL 60629-5819	1/26/2011	02/02/2015, acquired by Zenith	00809003
IL	Everest Burr Ridge 6880 North Frontage Road, Suite 400, Burr Ridge, IL 60527-7826	7/2/2002	02/02/2015, acquired by Zenith	01185802
IL	Everest Chicago 247 South State Street #400; Chicago, IL 60604 (needs to be verified)	6/26/2003	06/20/2012	1102401
IL	Everest Melrose Park 1101 West North Avenue, Suite 1, Melrose park, IL 60160-1516	2/24/2011	02/02/2015, acquired by Zenith	01185803
IL	Everest Merrionette Park 11560 South Kedzie Ave., Merrionette Park, IL 60803-4517	10/19/2005	02/02/2015, acquired by Zenith	0014991; 00814604
IL	Everest North Aurora 150 South Lincoln Way, Suite 100, North Aurora, IL 60542-1610	2/1/2005	Closed 10/27/2014 (not bought by Zenith)	01151002
IL	Everest Skokie 9811 Woods Drive, Suite 200, Skokie, IL 60077-1074	5/1/2001	02/02/2015, acquired by Zenith	01185800
IN	Everest Merrillville 8585 Broadway, Suite 200, Merrillville, IN 46410	2/1/2001	02/02/2015, acquired by Zenith, teach-out	02100402 ("A Branch of Everest Institute, Grand Rapids, MI 49525")
MA	Everest Brighton 1505 Commonwealth Avenue, Brighton, Massachusetts 02135	1/1/1996	Closed 10/27/2014 (not bought by Zenith)	01151000
MA	Everest Chelsea 70 Everett Avenue, Chelsea, Massachusetts 02150	3/30/2004	02/02/2015, acquired by Zenith, teach-out	00809002; 00982809
MD	Everest Silver Spring (no JPR findings) 8757 Georgia Ave, Silver Spring, MD 20910	2/8/2005	02/02/2015, acquired by Zenith, teach-out	00907906
MI	Everest Dearborn 23400 Michigan Ave., Dearborn, MI 48124-1927	3/1/2001	02/02/2015, acquired by Zenith	00982801
MI	Everest Detroit 300 River Place Drive, Suite 1000, Detroit 48207-4297	12/23/2003	02/02/2015, acquired by Zenith	00982803
MI	Everest Grand Rapids 1750 Woodworth St NE, Grand Rapids, MI 49525	2/2/2001	02/02/2015, acquired by Zenith, teach-out	02100400
MI	Everest Kalamazoo 5177 W Main St, Kalamazoo, MI 49009	2/1/2001	02/02/2015, acquired by Zenith, teach-out	02100401

MI	Everest Southfield 21107 Lahser Road, Southfield, Michigan 48033-4400	1/1/1996	02/02/2015, acquired by Zenith	00982800
MN	Everest Eagan 1000 Blue Gentian Rd #250, Eagan, MN 55121	6/17/2004	02/02/2015, acquired by Zenith, teach-out	01035602
MO	Everest Kansas City (no JPR findings) 1740 West 92 <sup>nd</sup> St., Kansas City, MO 64114-3246	01/27/2012	02/02/2015, acquired by Zenith	00149912
MO	Everest Springfield 1010 West Sunshine, Springfield, MO 65807-2446	10/1/1996	02/02/2015, acquired by Zenith	02250600
MO	Everest St. Louis (Earth City) 3420 Rider Trail S, Earth City, MO 63045	3/31/2005	02/02/2015, acquired by Zenith, teach-out	02300105
NJ	Everest South Plainfield 5000 Hadley Road, Suite 100, South Plainfield, NJ 07080-1125	12/13/2005	02/02/2015, acquired by Zenith	00982804
NV	Everest Henderson 170 North Stephanie Street, Henderson, NV 89014-8810	10/1/1996	02/02/2015, acquired by Zenith	02237501; 02237500
NY	Everest Rochester 1630 Portland Ave., Rochester, NY 14621-3007	10/1/1996	04/27/2015, closed (not bought by Zenith)	00481100
OH	Everest Columbus (Gahanna) 825 Tech Center Drive, Gahanna, OH 43230	9/7/2004	02/02/2015, acquired by Zenith	03072303 ("A Branch of Everest Institute, Southfield, MI"); 00982805
OR	Everest Portland 425 SW Washington Ave., Portland OR 97204-2296	10/1/1996	02/02/2015, acquired by Zenith	00907900
OR	Everest Tigard 9600 Southwest Oak Street, 4th Floor, Tigard, OR 97223	8/4/2003	02/02/2015, acquired by Zenith	02617506
OR	Heald Portland 6035 Northeast 78 <sup>th</sup> Court, Portland, OR 97218-9852	01/04/2010	04/27/2015, closed (not bought by Zenith)	00723402
PA	Everest Bensalem 3050 Tillman Drive Bensalem PA 19020	08/23/2011	02/02/2015, acquired by Zenith, teach-out	02617507
PA	Everest Pittsburgh Town Place, Suite 1200, 100 Forbes Avenue Pittsburgh, Pennsylvania 15222	10/1/1996	02/02/2015, acquired by Zenith	00709100
PA	WyoTech Blairsville 500 Innovation Drive, Blairsville, PA 15717-8060	7/1/2002	02/02/2015, acquired by Zenith	00915705
TX	Everest Arlington (Mid Cities) 300 Six Flags Dr., Suite 100, Arlington, TX 76011-6630	6/9/2003	02/02/2015, acquired by Zenith	00481102; 02250603
TX	Everest Austin 9100 US Highway 290 East, Suite 100, Austin, TX 78754	10/2/2002	02/02/2015, acquired by Zenith	00982802

TX	Everest Dallas 6080 North Central Expressway, Dallas, TX 75206-5209	2/3/2003	02/02/2015, acquired by Zenith	00907905
TX	Everest Fort Worth 5237 North Riverside Drive, Suite 100, Fort Worth, TX 76137	8/24/2004	02/02/2015, acquired by Zenith, teach-out	02298501
TX	Everest Fort Worth South 4200 South Freeway, Suite 1940, Fort Worth, TX 76115-1407	3/22/2010	02/02/2015, acquired by Zenith	00450303
TX	Everest Houston (Bissonnet) 9700 Bissonnet Street, Houston, TX 77036-8014	6/30/2004	02/02/2015, acquired by Zenith	02606202; 00982812
TX	Everest Houston (Greenspoint) 255 Northpoint Dr., Houston, TX 77060-3249	1/1/2000	02/02/2015, acquired by Zenith	02261302
TX	Everest Houston (Hobby) 7151 Office City Dr., Houston, TX 77087-2737	12/1/2001	02/02/2015, acquired by Zenith	02261303
TX	Everest San Antonio 6550 First Park Ten Blvd., San Antonio, TX 78213-3841	7/1/1995	02/02/2015, acquired by Zenith	02261300
UT	Everest Salt Lake City 3280 3500 S, Salt Lake City, UT 84119	10/1/1996	02/02/2015, acquired by Zenith, teach-out	02298500
VA	Everest Arlington 801 N Quincy St-Ste 500, Arlington, VA 22203	1/2/2002	Closed 04/7/2013	00450702
VA	Everest Chesapeake 825 Greenbrier Circle, Chesapeake VA 23320-2637	3/1/1999	02/02/2015, acquired by Zenith	00926701
VA	Everest Newport News 803 Diligence Dr., Newport News, VA 23606-4203	10/1/1995	02/02/2015, acquired by Zenith	00926700
VA	Everest Tyson's Corner (McLean/Vienna) 8620 Westwood Center Dr, Vienna, VA 22182	6/2/2004	02/02/2015, acquired by Zenith, teach-out	00450301
VA	Everest Woodbridge (no JPR findings) 14555 Potomac Mills Road, Woodbridge, VA 22192-6808	07/01/2011*	02/02/2015, acquired by Zenith	02617508
WA	Everest Bremerton 155 Washington Ave., Suite 200, Bremerton, WA 98367-1835	8/4/2003	02/02/2015, acquired by Zenith	02300100
WA	Everest Everett 906 SE Everett Mall Parkway, Everett, WA 9808-2610	8/4/2003	02/02/2015, acquired by Zenith	02300103
WA	Everest Renton 981 Powell Avenue SW, Renton WA 98055-2990	7/1/1996	02/02/2015, acquired by Zenith	02606200
WA	Everest Seattle 2111 N Northgate Way, Suite 218, Seattle, WA 98133-9018	8/4/2003	02/02/2015, acquired by Zenith	02617500
WA	Everest Tacoma 2156 Pacific Avenue, Tacoma, WA 98402-3004	8/4/2003	02/02/2015, acquired by Zenith	02300104
WA	Everest Vancouver 120 Northeast 136 <sup>th</sup> Ave., Vancouver, WA 98684-6950	10/1/1996 8/4/2003	02/02/2015, acquired by Zenith	00907901
WI	Everest Milwaukee 1311 N 6th St, Milwaukee, WI 53212	10/18/2010	Closed 07/15/2013	00153410
WV	Everest Cross Lanes 5514 Big Tyler Rd, Cross Lanes, WV 25313	7/1/1995	02/02/2015, acquired by Zenith, teach-out	01035600



WY	WyoTech Laramie 4373 North 3 <sup>rd</sup> Street, Laramie, WY 82072-9519	7/1/2002	02/02/2015, acquired by Zenith	00915700

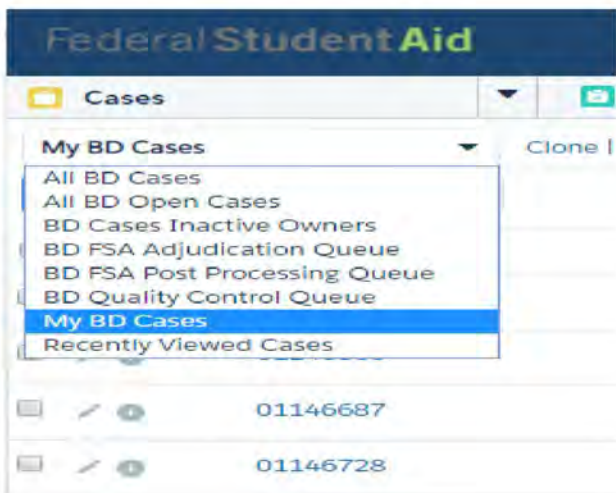
109 Campuses total

- 28 campuses closed 04/27/2015, not purchased by Zenith  
<https://studentaid.ed.gov/sites/default/files/corinthian-accreditors-state-agencies.pdf>
- 53 Campuses acquired by Zenith, 02/02/2015, for continued operation  
<https://studentaid.ed.gov/sites/default/files/corinthian-sale-list.xlsx>
- 12 campuses acquired by Zenith, 02/02/2015, for teach out  
<https://studentaid.ed.gov/sites/default/files/corinthian-teach-out-list-zenith.xlsx>
- 16 closed prior to 2015  
<https://www2.ed.gov/offices/OSFAP/PEPS/docs/closedschoolsearch.xlsx>

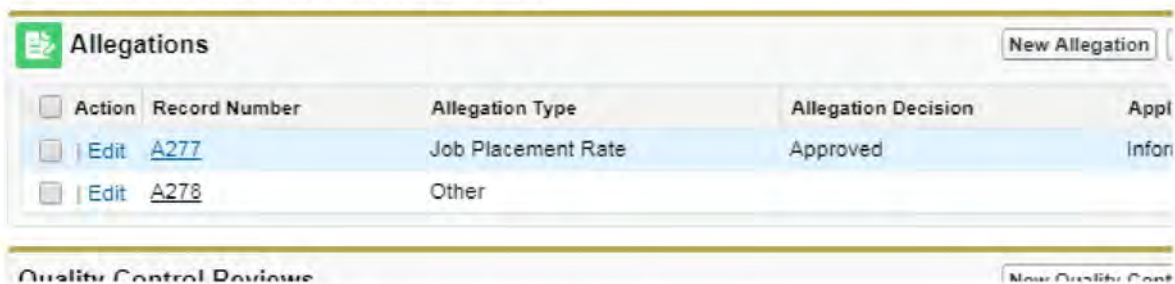
## JOB PLACEMENT RATE QC PROCESS

Contractor QC Process100% QC:

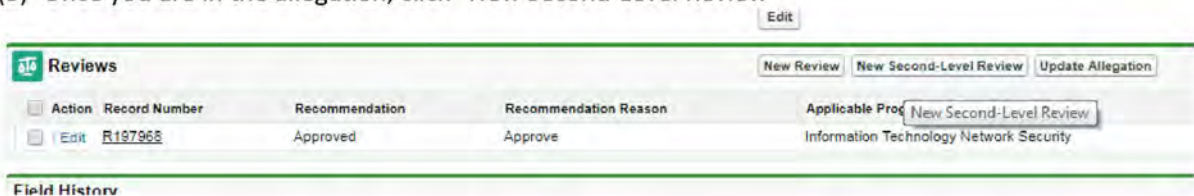
- (1) During 100% QC contractors will be tasking completed cases to you for a QC review. To access these claims click on “Cases” and select “My BD Cases” from the drop down.



- (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 Information

Initial Reviewer User [ ] 

Outcome --None--

Resolution Details [ ]

---

**Review**

Recommendation --None--

Recommendation Reason --None--

Suggested Relief --None--

Controlling Begin Date [ ] [ 4/10/2018 ]

Controlling End Date [ ] [ 4/10/2018 ]

Controlling Date Source --None--

Applicable Program [ ]

Applicable Program Source --None--


Relevant State Law --None--

Statute of Limitations Date [ ] [ 4/10/2018 ]

Review Notes [ ]

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**System Information**

Allegation A277 

Save Cancel



(5) Note the case number/reviewer name/error in your QC report. \*\*You do not need to make a note of every case you review; only those with major errors.\*\* Major errors would be anything that changes the relief:

- Wrong controlling date *that changes the relief*. If the reviewer incorrectly used the CCI date instead of the borrower date, or vice versa, but either date is before the corresponding NSLDS date, then no harm no foul. We only care about a wrong controlling date when there are earlier loans that should be forgiven that would not be with the wrong date. (Or the opposite situation, where the controlling date is too early, thus forgiving loans that shouldn't be forgiven.)
- Wrong controlling program or wrong relief percentage
- Wrong recommendation *that changes the relief*. So yes, we absolutely want to know if a reviewer approved a claim that should be a denial, or vice versa. We want to know if a claim was marked approved that should be non-reliance or incomplete, or vice versa. We also want to know if a claim was marked dual program but should be full approval, or vice versa. But we do not care if a claim was marked "approve" but should be "in due to QC" as those recommendations lead to the same result.
- Wrong person is associated with the claim. (Eg: the claim was submitted for Mary Smith but the Tool information is for Joe Schmoe.)
- Adjudicated as a JPR claim but makes a non-JPR allegation that would potentially change the relief percentage or controlling date.
- Any missing information – eg: there is a correct review controlling date but the reviewer forgot to add it into the global controlling date.

(6) Please use the template below for your QC report. Please send all reports you've completed for the week to John Stephenson at the end of each week. In the feedback column, please briefly describe the error. If you have discovered no major errors, then the spreadsheet portion of the report can remain blank.

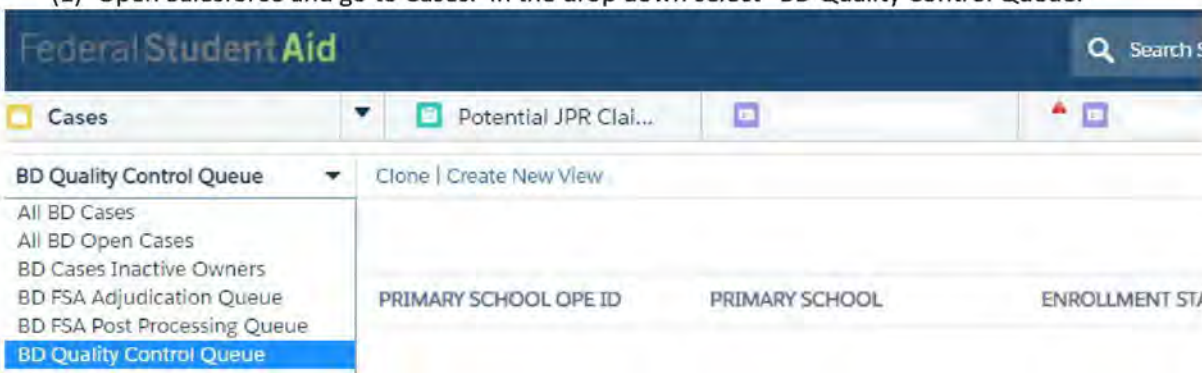
MAJOR ERRORS:

BD#	Reviewer Name	Feedback

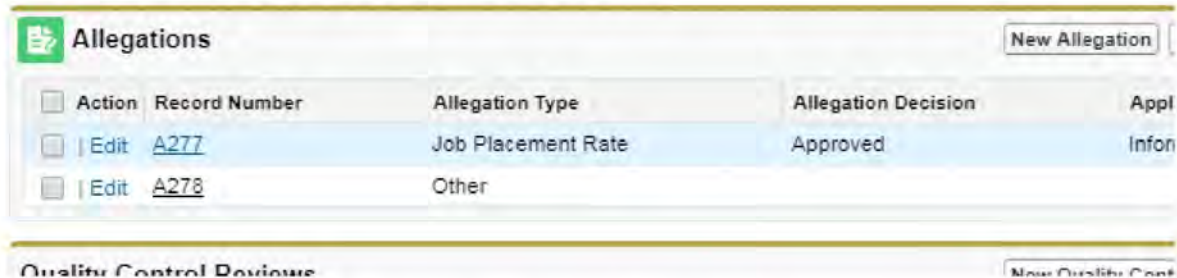
(7) Move the case to status 2.3 and change the owner to "BD Adjudication Queue"

**Non-100% QC Process**

- (1) Open Salesforce and go to Cases. In the drop down select "BD Quality Control Queue."



- (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 Field

Initial Reviewer User

Outcome --None--

Resolution Details

**Review**

Recommendation --None--

Recommendation Reason --None--

Suggested Relief --None--

Controlling Begin Date  [ 4/10/2019 ]

Controlling End Date  [ 4/10/2019 ]

Controlling Date Source --None--

Applicable Program

Applicable Program Source --None--

Relevant State Law --None--

Statute of Limitations Date  [ 4/10/2019 ]

Review Notes

**System Information**

Allegation A277

Save Cancel

(5) Click back to the case back and scroll down to “New Quality Control Review”

**Allegations** New Allegation Update Case

Action	Record Number	Allegation Type	Allegation Decision	Applicable Program
<a href="#">Edit</a>	<a href="#">A277</a>	Job Placement Rate	Approved	Information Technol
<a href="#">Edit</a>	<a href="#">A278</a>	Other		

**Quality Control Reviews** New Quality Control Review

No records to display

Select the initial reviewer as the user, change the outcome to “Pass” or “Fail” depending on your review of the allegations (Note – if even one allegation is incorrect you should mark the outcome here as “Fail”). If there is an error, add a note to the “Resolution Details” section for the initial reviewer regarding what was incorrect with the claim.

Quality Control Review Edit

Save Save & New Cancel

Quality Control

Outcome

Resolution Details

Pass

Fail

System Information

Save Save & New Cancel

- (6) If the case fails the QC review, select the allegation that should drive the case. The update the case select the appropriate allegation by checking the box next two the allegation and selecting "Update Case."

Allegations

New Allegation Update Case

<input type="checkbox"/>	Action	Record Number	Allegation Type	Allegation Decision	Applicable Program	Sugg
<input checked="" type="checkbox"/>	Edit	A772	Employment Prospects			
<input type="checkbox"/>	Edit	A773	Program Cost and Nature of Loans			
<input type="checkbox"/>	Edit	A774	Transferring Credits			
<input type="checkbox"/>	Edit	A775	Admissions and Urgency to Enroll			
<input type="checkbox"/>	Edit	A776	Other			

- (7) Note the case number/reviewer name/error in your QC report. \*\*You do not need to make a note of every case you review; only those with major errors.\*\* Major errors would be anything that changes the relief:

MAJOR ERRORS:

BD#	Reviewer Name	Feedback

- (8) Move the case to status 2.3. and change the case owner to "BD Adjudication Queue"

- (9) E-mail John Stephenson the QC Batch ID for every 5<sup>th</sup> batch you complete.



## TYPES OF BD CLAIMS

## How to Review a Borrower Allegation in a One-off or Small Batch Application

### Step One: Did the borrower allege an act or omission by their school

- In order to make a borrower defense claim the borrower must allege an act or omission by the school listed on their application.
  - If a borrower alleges an act or omission by someone or something other than the school on their application (for example another school, their loan servicer, or another student) then use the “borrower makes no allegations regarding the school” stock language from the protocol. Otherwise move to step two.

### Step Two: Does the act or omission by their school violate state law

- The most common type of allegation we see allegations of misrepresentations. In order to allege a misrepresentation that states a claim under state law the borrower must allege both a representation and the falsity of that representation in their application. Further, the falsity alleged must match the representation.<sup>1</sup>
  - If the borrower has not alleged an act or omission by their school that violates state law use the “Allegation does not state a claim” stock language. Otherwise move to step three.
    - **NOTE:** The representation and the falsity may appear in different parts of the application
    - **NOTE:** Checking the box on the universal form does not meet either the representation or falsity requirements, with the exception of Transfer claims. If a the borrower checks the transfer claim box this checked box can be used to either meet the representation element or the falsity element for a transfer claim, but not both.

### Step Three: Is the act or omission by the school covered by the borrower defense regulation

- A borrower is not eligible for borrower defense relief based on claims that are not directly related to their loans or the educational services provided by the school. For example personal injury claims or claims based on allegations of harassment are not bases for a borrower defense claim.
  - If the borrower alleges one of these violations of state law then we use the “not a BD type claim” stock language or, if there is the potential that the borrower can receive a different type of discharge, the appropriate stock language for that type of discharge. Otherwise move to Step four.

### Step Four: Does the borrower provide evidence to support his/her claim

- In order to be approved for a borrower defense claim the department must have evidence that proves all elements of the borrower’s allegation.
  - If you think the borrower’s allegation is proved by attached evidence or that the attached evidence would allow the department to discover additional material evidence through a limited targeted investigation then this allegation cannot be denied and you must contact your QCer for further direction.
  - If the borrower’s allegation is not supported by sufficient evidence then the claim should be denied using the “insufficient evidence” stock language.

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<sup>1</sup> Example: “I was told that 85% of students have a job upon graduation, but in reality the percentage is much lower” states a claim. However, “I was told that 85% of students have a job upon graduation, but I don’t have a job” does not state a claim because the fact that the borrower doesn’t have a job does not mean that the statement that 85% of students have a job upon graduation is false.

**Treatment of Common Allegations - DRAFT****Employment Prospects**

Regardless of which narrative box someone uses, Employment Prospects claims are about representations regarding someone's employment outcomes as a result of going to that school/program – a guarantee of employment, the % of graduates working/working in the field, the salary they can expect to earn, the kinds of jobs for which they would be eligible with that degree, eligibility to sit for licensing examinations, etc.

**Employment Prospects allegations that potentially state a claim and therefore should be denied only if there is insufficient evidence to support the allegation:**

- Misrepresentations of guaranteed jobs
  - Ex. "My school promised me a job after I graduated, but I never got a job"
- Misrepresentations regarding salary/wages
  - Ex. "My school told me I would make \$60K a year upon graduation, but I only made minimum wage"
  - Ex. "My school told me dental assistants earn \$30 per hour; but actually they only earn \$12 per hour."
- Misrepresentations of Job Placement Rates
  - Ex. "My school told me 85% of graduates have jobs within 6 months of graduation, but that isn't true."
- Misrepresentations regarding a graduate's ability to work in field or sit for licensing exam
  - Ex. "My school said they were fully accredited, but when I graduated I was not eligible to get a job in my field of study."
  - "Ex. "My school told me that once I got this degree I could immediately get hired as a nurse; that's not true. I need to have one year of clinical work before I can be hired."
  - Ex. "My school told me that after I graduated I could sit for the licensing exam, however when I went to take the exam I was told that my school was not properly accredited so I can't sit for the exam."
- Misrepresentations regarding an externship resulting in job placement
  - Ex. "My school promised me they would place me in an externship that would hire me after it ended. My externship did not hire me."

**Employment Prospects Allegations that Do Not State a Claim and therefore should be denied for failure to state a claim:**

- Allegations that include only one element of a misrepresentation
  - Ex. "The school promised me a job"
  - Ex. "I never got a job"
  - Ex. "There were no jobs available in my program when I graduated"
  - Ex. "I thought that I would get a job, but I'm working fast food instead"
- Allegations of misrepresentations where the falsity doesn't match the representation
  - Ex. "My school told me 85% of graduates have a job upon graduation, but I didn't have a job upon graduation."
- Pure omissions without the student alleging that the school had a duty to inform the student of the pertinent information
  - Ex. "My school never told me it would be hard to get a job as an underwater basket weaver"
  - Ex. "My school never told me that underwater basket weavers don't get paid well"

- General Claims regarding the value of education in getting a job, even if framed as misrepresentations
  - Ex. “My school told me that it is easier to get hired with a bachelors degree than with just a high school diploma”
  - Ex. “My school told me that people with masters degrees often have higher salaries than people with bachelors degrees”



**Program Cost and Nature of Loan**

Regardless of which narrative box someone uses, Program Cost and Nature of Loan claims are about how much the program cost, how it was to be paid for, loans, repayment terms, etc.

**Program Cost and Nature of Loan allegations that potentially state a claim and therefore should be denied only if there is insufficient evidence to support the allegation:**

- Misrepresentations of program cost
  - Ex. “My school told me one price but then I was charged a higher price”
- Misrepresentation of the nature of the financial aid (grants vs. loans)
  - Ex. “My school made me think I was getting all grants, but instead it turned out to be loans”
- Misrepresentation of loan repayment terms
  - Ex. “My school told me that I wouldn’t have to start paying back my loans until six months after graduation, but after I graduated my loans became due immediately.”
- Misrepresentations regarding what equipment was provided with tuition/fees
  - Ex. “My school promised that haircutting supplies were part of the tuition, but I never got the supplies and instead had to pay for them separately.”

**Program Cost and Nature of Loan Allegations that Do Not State a Claim and therefore should be denied for failure to state a claim:**

- Omissions
  - Ex. “My school didn’t let me know that there were additional fees in addition to tuition”
- Misrep claims that leave out an element
  - Ex. “My school promised me that tuition would only be \$10K a year”
- Misrep claims where falsity doesn’t match the rep
  - “My school promised me that tuition would only be \$10K a year, but when I got to school my dorm room was in bad condition”
- Complaints about school cost
  - Ex “the school cost too much”
- Complaints regarding value of school, even if framed as misrepresentations
  - Ex. “the school shouldn’t have cost so much, I could have gotten the same education at as state school for half the tuition.
- Failure to inform borrower of other available forms of financial aid
  - Ex. “Nobody told me I could have gotten a grant from a private charity or from the state.”
- Complaints about having to take out loans
  - “I couldn’t afford this school so I had to take out massive loans”
- Failure to inform borrower of basic loan information
  - Ex. “The school never told me that my loans would accrue interest”
- Misrep re: loan counseling or failure to provide loan counseling
  - Ex. “The school did not provide me loan counseling.”
  - Ex. “The school promised me loan counseling, but it wasn’t useful”
  - Ex. “The school promised me loan counseling, but I never got it”

**Transferring Credits**

Regardless of which narrative box someone uses, Transferring Credits claims are typically about whether a borrower is able to transfer credits from, or into, that school.

**Transfer of Credits allegations that potentially state a claim and therefore should be denied only if there is insufficient evidence to support the allegation:**

- Misrepresentations of whether credits earned would be accepted by other schools
  - Ex. “[checked box] my credits didn’t transfer”
  - Ex. “[checked box] my school told me my credits would transfer”
  - Ex. “[NO checked box] my school told me my credits would transfer to any other school, but when I tried to transfer nobody would accept my credits”
- Misrepresentations of whether degrees earned at that school would allow continuation into grad school
  - Ex. “My school told me that this degree would let me go on to any law school in the country”
- Misrepresentations that previously earned credits would transfer into this school
  - Ex. “My school told me that that they would accept all my community college credits, but when I enrolled only some credits were accepted.”
  - Ex. “My school told me that they would accept all my community college credits, but when I enrolled I had to retake classes.”
- Misrepresentations regarding institutional accreditation
  - Ex. “My school said they were fully accredited, but when I tried to transfer my credits not school would accept them.”

**Transfer of Credits Allegations that Do Not State a Claim and therefore should be denied for failure to state a claim:**

- Pure omission regarding transfer of credits
  - Ex. “My school never told me my credits wouldn’t be accepted by other schools”
- Withholding transcripts
  - Ex. “I couldn’t transfer because my school won’t release my transcript until I pay them the balance of the tuition cost.
- Misrepresentation missing an element about transferring into a school
  - Ex. “[checked box] my former credits did not transfer into this school”
- School failed to assisted with the transfer process
  - Ex. “I was confused about how to transfer credits, when I asked the school to help me with the process nobody would help me.”
- Transferability of some credits
  - Ex. “I tried to transfer my credits to [community college/state college], but they would only take 6 out of my 72 credits.”

**Career Services**

Regardless of which narrative box someone uses, Career Services claims are about what the school promised to do to *help* the borrower find a job – not through the education itself, but through Career Services representatives, job fair, resume workshops, industry connections, etc.

**Career Services allegations that potentially state a claim and therefore should be denied only if there is insufficient evidence to support the allegation:**

- Misrepresentations of the nature/type or availability of career services
  - Ex. “My school told me they would help me find a job, but when I went to the career services office nobody was ever there. When I called nobody ever picked up the phone.”
  - Ex. “My school told me they would provide resume help and have job fairs, but they never did either of those things. All they did was send me links to job postings”
- Misrepresentations of the relationships the school has with employers
  - Ex. “My school promised me that they had strong relationships with local business, but when I contacted them they said they never heard of my school.”

**Career Services Allegations that Do Not State a Claim and therefore should be denied for failure to state a claim:**

- Omission
  - Ex. “My school never told me that they did not have a career services office”
- Misrepresentation allegation with missing element
  - Ex. “My school promised me that career services would help me find a job”
- Misrepresentation allegation where falsity doesn’t match the representation
  - Ex. “My school promised to help me find a job, but I don’t have a job”
- Complaints about quality of career services, even if framed as misrepresentations
  - Ex. “My school promised me that they had great career services, but it wasn’t useful”

### Educational Services

Regardless of which narrative box someone uses, Educational Services claims are about curriculum, methods, instruction and instructors, etc.

#### **Educational Services allegations that potentially state a claim and therefore should be denied only if there is insufficient evidence to support the allegation:**

- Specific misrepresentations regarding what will be taught/how classes will be taught
  - Ex. “the school promised to teach me programming language X, but instead they taught me programming language Y”
  - Ex. “the school promised hands on training, but we were never allowed to use any of the equipment. We only learned by reading a book.”
- Misrepresentations regarding to qualifications/certifications of the instructors
  - Ex. “My school told me that all of the instructors in the paralegal program were attorneys; that wasn’t true”
- Misrepresentations of the availability of services such as tutoring
  - Ex. “I was told there would be tutoring opportunities if I needed extra help with classes, but when I tried to get a tutor there weren’t any.”
- Allegations that teachers were not licensed to teach in state or otherwise does not meet state’s statutory or regulatory standards
  - “I found out that my teachers were not licensed to teach in the state of Massachusetts.”
- Allegations that a given class did not have a teacher
  - Ex. “Our class had no teacher, meaning there was no instruction. We would just show up to a class room and nobody was there. We just read our textbooks to ourselves. ”
  - Ex. “Our teacher was absent the second half of the semester and there was no substitute”
- Misrepresentations about program length/time to complete, number of credits necessary to complete, or number of hours of instruction that would be provided
  - Ex. “I told the school that I was being deployed in 9 months, and was told that the program only lasted 6 months. I enrolled, but a few months in learned that the program was actually 12 months long, which meant I couldn’t complete the course.
- Misrepresentations regarding internship/externship availability or nature
  - Ex. “My school promised to place me in an externship, but they never did
  - Ex. “My school promised to place me in a nursing externship, but they placed in a record keeping position”
- Misrepresentation regarding which program a student is enrolling in
  - Ex. “I signed up for a medical billing and coding program, but I later found out that they enrolled me in a Pharmacy tech program”
- Misrepresentations regarding medical or other accommodations
  - Ex. “My school told me that because of my medical condition I would get extra time on tests. However, once I enrolled nobody gave me extra time on tests.”
  - Ex. “My school told me I would be able to take a leave of absence for my pregnancy but instead they failed me and made me pay for the classes again”
  - Ex. “I was told that the school had flexible schedules and that it was not a problem that I worked during the day. After I enrolled I learned that most of their classes are only taught during the day making it impossible to take the classes I need to take.”

#### **Educational Services Allegations that Do Not State a Claim and therefore should be denied for failure to state a claim:**

- Omission
  - Ex. “The school didn’t tell me how redundant the classes would be”
  - Ex. “The school didn’t tell me that the teachers had little experience in the field”



- Misrep that is missing an element
  - Ex. “The school promised that the my teachers would be ivy league educated”
- Misrep where falsity doesn’t match the representation
  - Ex. “My school promised that my teachers would be ivy league educated, but they didn’t seem to know anything”
- Complaints about how a class is taught
  - Ex. “The school taught me programing language X, but after graduation I realized it would have been more helpful if they taught me programing language Y”
  - Ex. “I would have learned more if I got more hands on experience”
  - Ex. “They promised me that this was the best program. That was a lie”
- Complaints about quality of instructors, even if framed as misrepresentations
  - Ex. “My teachers didn’t seem to know very much and couldn’t answer my questions”
  - Ex. “My school said they had the best teachers, but that is a lie”
- Complaints about instructors not being helpful or playing favorites, even if framed as misrepresentations
  - Ex. “The professor in my econ 101 course did not seem interested in teaching the class. All he did was read off a power point”
  - Ex. “My teacher didn’t answer my questions and just told me to look up the answer in the book”
  - Ex. “My teacher liked certain students more than others and always gave them more attention”
- Complaints about normal instructor absences
  - Ex. “Our teacher was sick and had to cancel a day of class”
  - Ex. “Our teacher went on maternity leave and the sub wasn’t as good”
  - Ex. “The school had high teacher turnover”
- Complaints that a specific instructor wasn’t available, even if framed as misrepresentations
  - Ex. “I enrolled at the school to take classes with a certain professor but she retired before I could take a class with her”
- Deviations from the syllabus or student handbook, even if framed as misrepresentations
  - Ex. “we were supposed to learn about X in the third week, but we fell behind and didn’t get to it until week 4. That meant the last week of class was rushed”
  - Ex. “According to the student handbook you are allowed three make up tests, but I never got one”
- Complaints about internship quality
  - Ex. “I didn’t learn anything in my internship”
- Grading unfairness
  - Ex. “I think my work was great and I should have gotten an A. the only reason I didn’t was because the teacher didn’t like me.”
- Difficulty or ease of the program
  - Ex. “The class was too easy, I already knew everything”
  - Ex. “The class was too hard for an intro class”

**Other****Other Allegations that Do Not State a Claim and therefore should be denied for failure to state a claim**

- Loss of accreditation
  - Ex. “My school lost its accreditation while I was there”
- Mere existence of lawsuits against the school
  - Ex. “My school is being sued by its former dining services provider”
- Borrower was expelled
  - Ex. “My school wrongfully expelled me for not following safety procedures in the lab”
- School didn’t mail diploma
  - Ex. “I never received my paper diploma”
- School or program closure
  - Ex. “My school had to cancel the program I was in due to lack of interest”
  - Ex. “My school closed”
- Urgency to enroll
  - Ex. “I was told that I should enroll in class today so that I could begin schooling as soon as possible.”

**Other Allegations that are not covered by the Borrower Defense Regulation:**

- Discrimination claims
  - Ex. “My teacher failed me because of my [race, gender, sexual orientation, etc]”
- False Certification claims
  - Ex. “I never signed up for loans, but later found out that my school took loans out in my name”
- Teacher harassment
  - Ex. “My teacher was verbally abusive to me”
  - Ex. “My teacher sexually harassed me”
- Violence by teachers or Students
  - Ex. “I got into a fist fight with my teacher”
- Drug use
  - Ex. “My teacher was high during class”
- School sanctioned cheating on tests
  - Ex. “The school had a policy of letting students cheat on tests so that we could graduate with good grades”

## TYPES OF BD CLAIMS WORKSHEETS

## **Transferring Credits**

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:



## Transferring Credits

Borrower Narrative	They told me that the community college or state university would accept credits from this school and they do not... no one does.
Denial Reason	Insufficient evidence
Reason	Borrower explicitly alleges both the representation (general transferability) and the falsity of that representation, but provides no evidence
Letter	You allege that LMU misrepresented the transferability of credits to other schools. You wrote that “they told me that the community college or state university would accept credits from this school and they do not... no one does.” This claim fails because you have provided insufficient evidence to support this allegation. Your claim for relief on this basis, therefore, is denied.

DOE000006399

DOE000006399

## Transferring Credits

Borrower Narrative	When I went to the school to visit it, the admissions lady asked me what I was interested in, I told her what I really wanted to do was get a nursing masters someday. She told me that the AS in medical assisting was the best bet for that, that the medical assisting degree would give me a head start into nursing school. That's not true at all.
Denial Reason	Insufficient evidence
Reason	Borrower explicitly alleges both the representation (general transferability) and the falsity of that representation, but provides no evidence
Letter	You allege that LMU misrepresented the ability to use a degree earned there to continue your education at other schools. Specifically, you wrote that you were told that "the AS in medical assisting was the best bet" to continue into a masters program in nursing, and that "the medical assisting degree would give [you] a head start into nursing school." This claim fails because you have provided insufficient evidence to support this allegation. Your claim for relief on this basis, therefore, is denied.

DOE000006400

DOE000006400



## Transferring Credits

Borrower Narrative	And now after all of that and all my hard work I'm left with nothing and I can't even transfer my credits because I can't get my transcripts because I owe the school money and I wish I never made this mistake.
Denial Reason	Doesn't state a claim
Reason	Withholding of transcript and/or school closure do not constitute a violation of state law.
Letter	You allege that LMU is withholding your transcripts, due to an unpaid balance. You wrote that you "can't even transfer [your] credits because [you] can't get [your] transcripts because [you] owe the school 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.

DOE000006401

DOE000006401

## 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

Borrower Narrative	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
Denial Reason	Insufficient evidence
Reason	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.
Letter	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.

DOE000006403

DOE000006403

- **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.

DOE000006406

DOE000006406



## Program Cost and Nature of Loan

Borrower Narrative	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.
Denial Reason	Doesn't state a claim
Reason	Basis of allegation is that the school did not inform the borrower of other financial aid options.
Letter	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.

DOE000006407

DOE000006407

## 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.

DOE000006408

DOE000006408



## Program Cost and Nature of Loan

Borrower Narrative	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.
Denial Reason	Doesn't state a claim
Reason	Basis of allegation is the price and/or comparative lack of value of program.
Letter	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

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.

Insufficient evidence

Misrepresented employment statistics and future earnings

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.

## Employment Prospects

Borrower Narrative	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.
Denial Reason	Doesn't state a claim
Reason	Potential misrepresentation where the falsity doesn't match the representation
Letter	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.

DOE000006413

DOE000006413

## Employment Prospects

Borrower Narrative	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.
Denial Reason	Insufficient evidence
Reason	Guaranteed Job
Letter	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.

DOE000006414

DOE000006414



## 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.

DOE000006415

DOE000006415

- **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.

Doesn't State a claim

No allegation of falsity

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.



## Career Services

Borrower Narrative	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.
Denial Reason	Insufficient evidence
Reason	Misrep of the relationships the school has with employers
Letter	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.

DOE000006419

DOE000006419

## 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.

DOE000006420

DOE000006420



## 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**

- 
- 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.
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Denial Reason	Insufficient evidence
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Reason	Misrepresentation regarding the availability of services such as tutoring
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Letter	<p>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.</p>
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## 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.

DOE000006424

DOE000006424



## 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.

DOE000006425

DOE000006425



## 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.

DOE000006426

DOE000006426



## 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.

DOE000006427

DOE000006427

- **Other Allegations**

- 

- 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: <a href="https://www2.ed.gov/about/offices/list/ocr/complaintintro.html">https://www2.ed.gov/about/offices/list/ocr/complaintintro.html</a></p>

DOE000006430

DOE000006430



## 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

Borrower Narrative	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.
Denial Reason	Not a BD type Claim
Reason	Sexual harassment
Letter	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.

DOE000006432

DOE000006432



## 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.

DOE000006433

DOE000006433

## 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.

## STANDARD CLAIM REVIEW PROTOCOL TEMPLATE

## **Initial Review of Medium Batch Applications**

### **BACKGROUND**

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

### **SUMMARY APPLICATION OVERVIEW**

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

### **RECOMMENDATION:**

**APPROVED BY:**

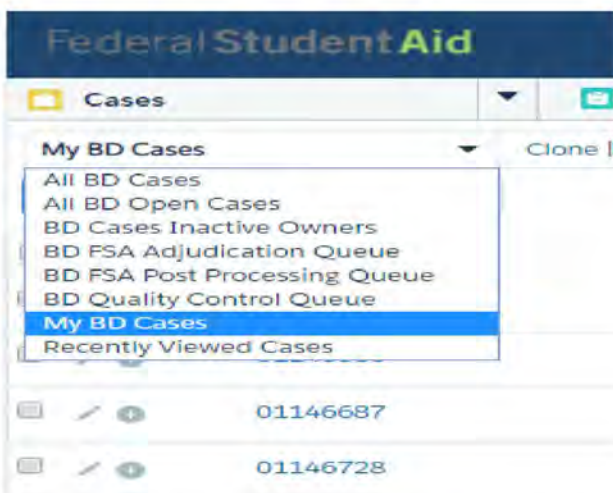
**DATE:**



## STANDARD CLAIM REVIEW QC PROTOCOL

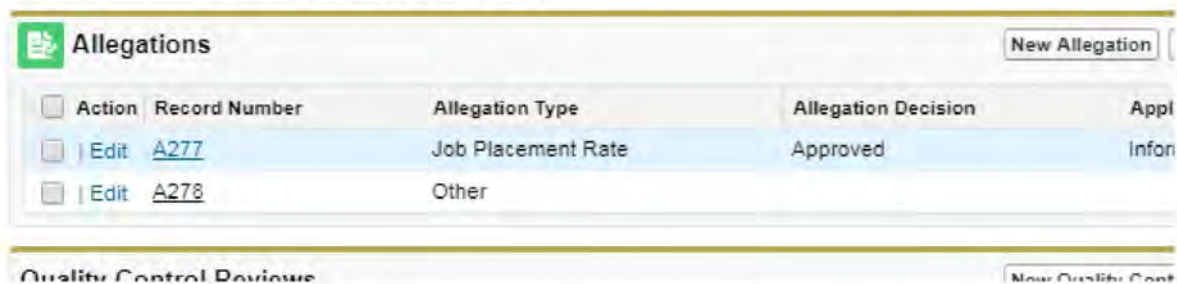
**Standard Protocol QC Process**

- (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 User

Outcome --None--

Resolution Details

---

**Review**

Recommendation --None--

Recommendation Reason --None--

Suggested Relief --None--

Controlling Begin Date  [ 4/10/2019 ]

Controlling End Date  [ 4/10/2019 ]

Controlling Date Source --None--

Applicable Program

Applicable Program Source --None--

Relevant State Law --None--

Statute of Limitations Date  [ 4/10/2019 ]

Review Notes

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**System Information**

Allegation A277

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](https://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](https://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.<sup>1</sup> 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.

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<sup>1</sup> 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 5<sup>th</sup> 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 "1<sup>st</sup> 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](mailto: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.

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## 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

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## 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



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### 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

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### 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

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## 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

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## 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

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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

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**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](mailto: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



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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.

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#### 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](mailto:BorrowerDefense@ed.gov) directly.

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## 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 [FSASOperations@ed.gov](mailto:FSASOperations@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](https://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](mailto: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](mailto: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](mailto:FSASOperations@ed.gov) or mail to Department of Education, PO Box 429060, San Francisco, CA 94142.

## SECTION I: BORROWER INFORMATION

<b>First Name</b>	<b>Middle Name</b>	<b>Last Name</b>	<b>Date of Birth</b>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Social Security Number (last 4 digits)</b>	<b>Telephone Number</b>	<b>Email Address</b>	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>Home Address</b>	<b>City</b>	<b>State</b>	<b>Zipcode</b>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input 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)
<input type="text"/>	<input type="text"/>	<input type="text"/>
Program Name	<input type="text"/>	Credential <input type="text"/>

- 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 documents(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

**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](mailto: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](https://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 [FSASOperations@ed.gov](mailto:FSASOperations@ed.gov) or mail to Department of Education, PO Box 429060, San Francisco, CA 94142.

## SECTION I: BORROWER INFORMATION

<b>First Name</b>	<b>Middle Name</b>	<b>Last Name</b>	<b>Date of Birth</b>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Social Security Number (last 4 digits)</b>	<b>Telephone Number</b>	<b>Email Address</b>	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>Home Address</b>	<b>City</b>	<b>State</b>	<b>Zipcode</b>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input 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](mailto: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](mailto: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&O 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, correcting 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](mailto:victoria.malone@ed.gov); [lisa.s.washington@ed.gov](mailto:lisa.s.washington@ed.gov); [krystle.wright@ed.gov](mailto:krystle.wright@ed.gov) and [shavon.holland@ed.gov](mailto: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](mailto: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](mailto: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](mailto: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](mailto:FDMS.Support@accenturefederal.com).
- If you do not have an AIMS ID, look out for an email from their email address, [aimssupport@ed.gov](mailto: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](mailto: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](mailto:victoria.malone@ed.gov); [lisa.d.washington@ed.gov](mailto:lisa.d.washington@ed.gov); [krystle.wright@ed.gov](mailto:krystle.wright@ed.gov) and [shavon.holland@ed.gov](mailto: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](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](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](mailto: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](mailto: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			

ED PIV ENROLLMENT APPLICATION

February 2016  
Previous Editions Obsolete

DOE00006505



**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](mailto: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.

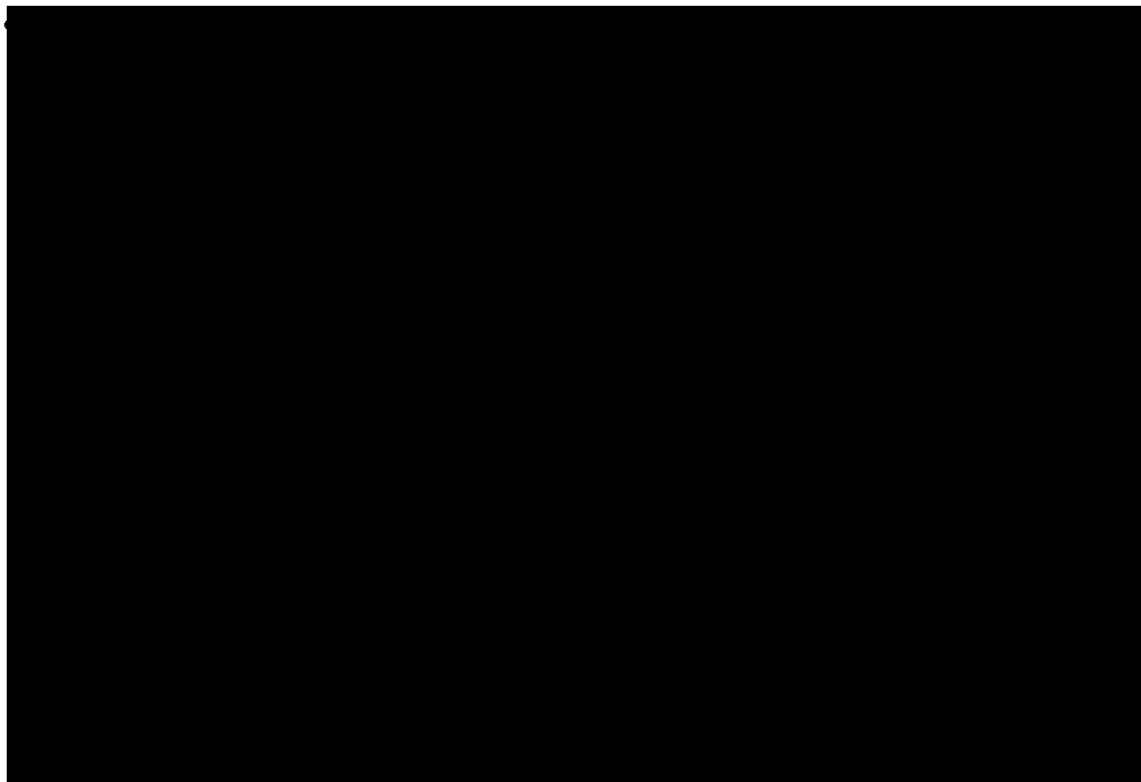
### **BD Team Work Streams for the Senior BD Attorneys in November:**

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:**

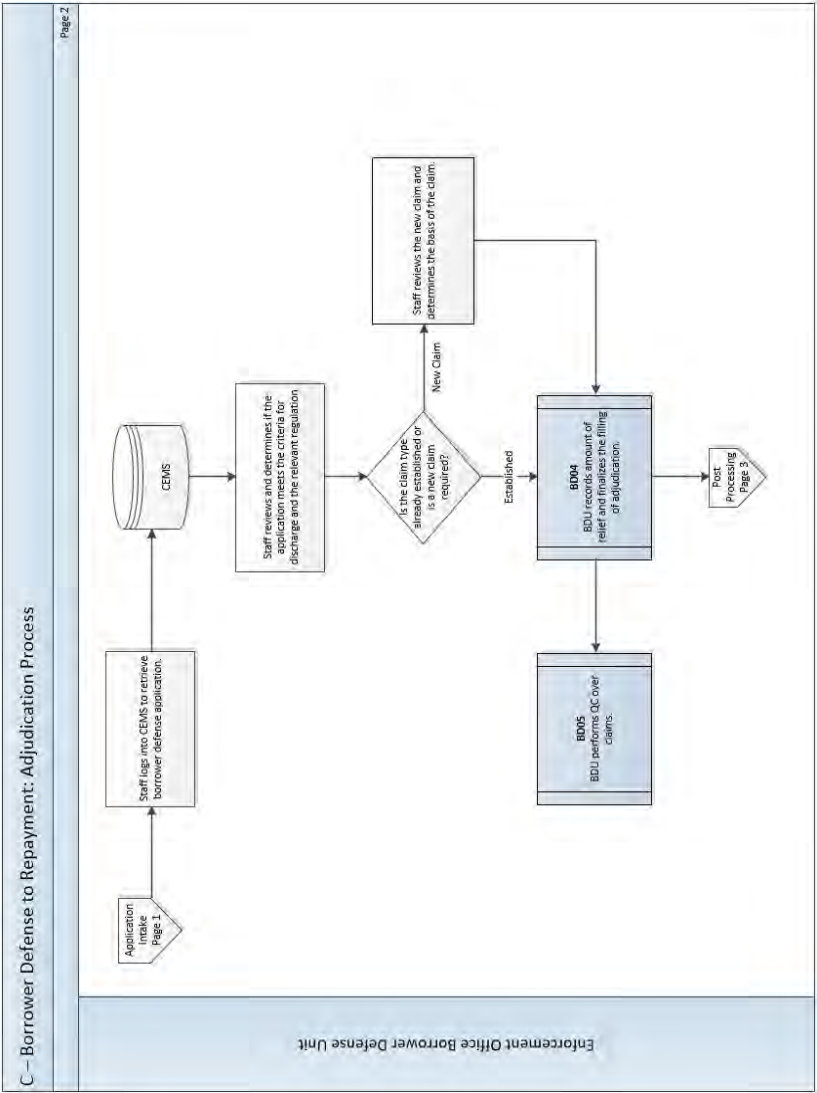
- User Testing for the November BD platform updates is scheduled for next week.
- DCC and 2020 BD Regulation implementation design meetings begin the week of the 18<sup>th</sup> and will require 10 to 20 hours per week for the two senior attorneys assigned to platform design/development.
  - This work 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. DOE00006974, 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)

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 updates 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**

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## 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

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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

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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).

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- 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

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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,<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup> 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

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<sup>1</sup> 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.”

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

<sup>3</sup> 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).<sup>4</sup> 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."<sup>5</sup>
- "I was told that when I finished my program I would automatically have job placement and never received that placement."<sup>6</sup>
- "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."<sup>7</sup>
- "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."<sup>8</sup>

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."<sup>9</sup>
- 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."<sup>10</sup>
- 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."<sup>11</sup>
- Heald Salinas: "When I first enrolled, they said I had a job at the end of my education."<sup>12</sup>
- 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."<sup>13</sup>
- Heald San Francisco: "Heald College's promises of guaranteed job placement after graduation sold me on becoming a student."<sup>14</sup>

<sup>4</sup> 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.

<sup>5</sup> BD155524.

<sup>6</sup> BD155784.

<sup>7</sup> BD155698.

<sup>8</sup> BD154018.

<sup>9</sup> BD151426.

<sup>10</sup> BD1600328.

<sup>11</sup> BD157436.

<sup>12</sup> BD151163.

<sup>13</sup> BD153799.

<sup>14</sup> 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%
<b>TOTAL</b>	<b>1015</b>	<b>141</b>	<b>13.9%</b>

#### 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.”<sup>15</sup>
- “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.”<sup>16</sup>
- “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.”<sup>17</sup>
- “I was told that I would be placed into a career field of my studies, but I was not.”<sup>18</sup>

The Department sampled claims at 22 Everest campuses<sup>19</sup> 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.

<sup>15</sup> BD151311.

<sup>16</sup> BD150332

<sup>17</sup> BD1612793.

<sup>18</sup> BD1614055.

<sup>19</sup> 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."<sup>20</sup>
- "The education was sold as a way to guarantee future employment, with access to a nationwide network of job placement experts."<sup>21</sup>
- "The school was promising a career in the field after schooling."<sup>22</sup>
- "[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."<sup>23</sup>
- "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."<sup>24</sup>

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%
<b>TOTAL</b>	<b>1277</b>	<b>231</b>	<b>18.1%</b>

<sup>20</sup> BD150863.

<sup>21</sup> BD152602.

<sup>22</sup> BD155621.

<sup>23</sup> BD151128.

<sup>24</sup> 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%
<b>TOTAL</b>	<b>455</b>	<b>64</b>	<b>14.1%</b>

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,<sup>25</sup> 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."<sup>26</sup>
- [2001]: "They . . . told me I would be guaranteed a job once I graduated."<sup>27</sup>
- [2002]: "I was told I would get a job right away..."<sup>28</sup>
- [2003]: "I was lured into this organization with false promises of 100% job placement..."<sup>29</sup>
- [2005]: "They said I was guaranteed job placement after I graduated."<sup>30</sup>
- [2006]: "Everest guaranteed me career placement upon graduation."<sup>31</sup>
- [2007]: "They told me that I will be guaranteed a job placement after I graduate."<sup>32</sup>
- [2008]: "They told me I was guaranteed a job."<sup>33</sup>
- [2009]: "I was promised job placement, high salaries and success."<sup>34</sup>
- [2010]: "I was guaranteed a job from my Academic advisor and Career Counselor."<sup>35</sup>
- [2011]: "...told me I was guaranteed a job in my profession after I graduated making twice as much as minimum wage at least."<sup>36</sup>
- [2012]: "I was promised employment after graduation."<sup>37</sup>

<sup>25</sup> 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.

<sup>26</sup> BD155177.

<sup>27</sup> BD156179.

<sup>28</sup> BD1600004.

<sup>29</sup> BD151816.

<sup>30</sup> BD150148.

<sup>31</sup> BD157758.

<sup>32</sup> BD153166.

<sup>33</sup> BD153136.

<sup>34</sup> BD156038.

<sup>35</sup> BD1605002.

<sup>36</sup> BD155731.

<sup>37</sup> BD1615288.



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

#### 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.”<sup>39</sup> 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.”<sup>40</sup>

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.<sup>41</sup> 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%.<sup>42</sup> 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.”<sup>43</sup> 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

<sup>38</sup> BD1617088.

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

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

<sup>41</sup> Exhibit 40 - CA AG Default Motion at 278.

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

<sup>43</sup> 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.”<sup>44</sup>

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”),<sup>45</sup> 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.”<sup>46</sup> 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.<sup>47</sup> 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

<sup>44</sup> Exhibit 36 - CA AG Default Motion.

<sup>45</sup> CAL. BUS. & PROF. CODE § 17200, et seq.

<sup>46</sup> 34 C.F.R. § 685.206(e) (emphasis added).

<sup>47</sup> 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.<sup>48</sup> Another key factor in the choice-of-law analysis under California law is the location "where the wrong occurred."<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup>

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]."<sup>52</sup> 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."<sup>53</sup> Thus, if a business practice violates any law, this is *per se* a UCL violation.<sup>54</sup> Corporate

<sup>48</sup> 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...").

<sup>49</sup> *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)).

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

<sup>51</sup> 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).

<sup>52</sup> 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).

<sup>53</sup> *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.<sup>55</sup> 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").<sup>56</sup> 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."<sup>57</sup>

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.<sup>58</sup> 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."<sup>59</sup> Corinthian's own marketing materials emphasized that the school was a pathway to employment, often noting "solid industry employment contacts"<sup>60</sup> and the availability of "lifetime career services." For many students, the principal purpose of attending a career college like

<sup>54</sup> See *Kasky v. Nike*, 27 Cal. 4<sup>th</sup> 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).

<sup>55</sup> 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.

<sup>56</sup> 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.").

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

<sup>58</sup> *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.").

<sup>59</sup> Exhibit 36 - CA AG Default Motion.

<sup>60</sup> 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.<sup>61</sup> 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."<sup>62</sup> The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.<sup>63</sup> 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.<sup>64</sup> 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.<sup>65</sup> However, for a consumer who was deceived into purchasing a product<sup>66</sup>—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"<sup>67</sup> the individual's decision. Rather, "[i]t is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing [their] decision."<sup>68</sup>

Express or implied claims like those made by Corinthian about employment prospects are presumptively material,<sup>69</sup> and, under the UCL, a showing of materiality gives rise to "a presumption, or at least an inference, of reliance."<sup>70</sup> 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

<sup>61</sup> 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.

<sup>62</sup> See *Bank of the West*, 2 Cal. 4th at 1254.

<sup>63</sup> CAL CIV. C. § 1709.

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

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

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

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

<sup>68</sup> *Id.* (internal quotation marks omitted).

<sup>69</sup> 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).

<sup>70</sup> *In re Tobacco II Cases*, 46 Cal. 4th at 298.



enroll.<sup>71</sup> 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."<sup>72</sup> 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."<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup>

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.<sup>76</sup>

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."<sup>77</sup> Corinthian's CEO, in a letter to

<sup>71</sup> 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.

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

<sup>73</sup> BD150633, Attachment #3, page 7.

<sup>74</sup> 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).

<sup>75</sup> *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.").

<sup>76</sup> 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.

<sup>77</sup> 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.”<sup>78</sup> Corinthian advertised on daytime TV,<sup>79</sup> 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.<sup>80</sup> 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.<sup>81</sup> In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers.<sup>82</sup>

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*

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

<sup>79</sup> CA AG Quach Decl. Ex 113.

<sup>80</sup> CA AG Decl. of Holly Harsh.

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

<sup>82</sup> 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.<sup>83</sup>

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.<sup>84</sup> 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.”<sup>85</sup> 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.’”<sup>86</sup> 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...”<sup>87</sup> 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.”<sup>88</sup>

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.

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

<sup>84</sup> 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).

<sup>85</sup> BD1614100.

<sup>86</sup> BD1602593.

<sup>87</sup> BD151191.

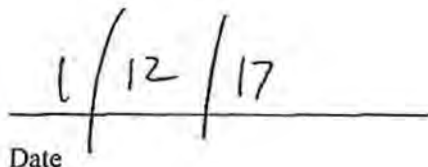
<sup>88</sup> BD157356.

In sum, in these circumstances, and consistent with the Department's prior actions related to Corinthian,<sup>89</sup> 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

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<sup>89</sup> 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”).<sup>1</sup>

#### **Required Metrics**

- **Case Review:** Trained Reviewers must review, on average, a minimum of 5 cases per hour.<sup>2</sup>
  - Claim review rate averages shall be determined on a weekly basis.
  - Assigning any case to a new status constitutes “reviewing a case.”<sup>3</sup>
  - 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.<sup>4</sup>
  - 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.

<sup>1</sup> 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%).

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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 period<sup>5</sup> 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.

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<sup>5</sup> 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

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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 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](mailto: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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**DOE00009378**  
DOE00009378



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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](mailto: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](https://StudentAid.gov/borrower-defense).

If you have questions about this communication, email us at [BDSchoolEvidence@ed.gov](mailto: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](mailto: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](mailto: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](https://StudentAid.gov/borrower-defense).

If you have questions about this communication, email us at [BDSchoolEvidence@ed.gov](mailto: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](mailto: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](mailto: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 rigor 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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**DOE00009383**

Page 2

- 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](mailto: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](https://StudentAid.gov/borrower-defense).

If you have questions about this communication, email us at [BDSchoolEvidence@ed.gov](mailto: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](mailto: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](mailto: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](mailto: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](https://StudentAid.gov/borrower-defense).

If you have questions about this communication, email us at [BDSchoolEvidence@ed.gov](mailto: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

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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.<sup>1</sup> As set forth below, the Borrower Defense Unit recommends full relief (subject to the statute of limitations) for borrowers<sup>2</sup> who (1) enrolled at any ITT California campus between January 1, 2005<sup>3</sup> 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,<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup>

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<sup>1</sup> 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.

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

<sup>3</sup> 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.

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

<sup>5</sup> 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."

<sup>6</sup> 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.<sup>7</sup> 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.”<sup>8</sup>
- “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.”<sup>9</sup>
- “The promises were that it would be easy to find a high paying job right away.”<sup>10</sup>
- “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.”<sup>11</sup>
- “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.”<sup>12</sup>
- “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.”<sup>13</sup>
- “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.”<sup>14</sup>

### 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:

<sup>7</sup> 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.

<sup>8</sup> BD1655184.

<sup>9</sup> BD1639392.

<sup>10</sup> BD1655377.

<sup>11</sup> BD1605233.

<sup>12</sup> BD1655410.

<sup>13</sup> BD1655354.

<sup>14</sup> BD1638087.



- ITT-Orange (CA): "I was told that ITT had a 100% job placement upon graduating students."<sup>15</sup>
- ITT-Anaheim (CA): "I was promised that immediately after graduating, I would be placed in a job within my field of study."<sup>16</sup>
- ITT-Sylmar (CA): "I was told that my degree would guarantee me employment."<sup>17</sup>
- 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."<sup>18</sup>
- 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."<sup>19</sup>
- ITT-Swartz Creek (MI): "They guarantee jobs right after graduating."<sup>20</sup>
- ITT-Harrisburg (PA): "I was told on several occasions by ITT Admissions Representatives that the school has 100% job placement upon completion for students."<sup>21</sup>
- ITT-Seattle (WA): "They said that 100% job placement and that I should have no problem finding a job in my field."<sup>22</sup>
- 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."<sup>23</sup>
- ITT-Springfield (VA): "I WAS LED BY THE RECRUITER TO BELIEVE THAT THE JOB OPPORTUNITIES WOULD BE POURING IN."<sup>24</sup>
- ITT-Arnold (MO): "I was told that I would get a job in my field"<sup>25</sup>
- ITT-Albuquerque (NM): "ITT lied about job prospects and guaranteed a job after graduation."<sup>26</sup>
- 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."<sup>27</sup>
- ITT-Portland (OR): "Told me they would have me in a career by the end of my first year in school."<sup>28</sup>
- 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"<sup>29</sup>
- 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."<sup>30</sup>
- 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."<sup>31</sup>
- ITT-Tulsa (OK): "They said they would have me working in the gaming industry....they told me to look in the classifieds."<sup>32</sup>

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<sup>15</sup> BD156693.

<sup>16</sup> BD1651614.

<sup>17</sup> BD1639208.

<sup>18</sup> BD1601288.

<sup>19</sup> BD156627.

<sup>20</sup> BD153161.

<sup>21</sup> BD156697.

<sup>22</sup> BD1600120.

<sup>23</sup> BD153747.

<sup>24</sup> BD155274.

<sup>25</sup> BD1659434.

<sup>26</sup> BD1604365.

<sup>27</sup> BD1659402.

<sup>28</sup> BD1607247.

<sup>29</sup> BD1619298.

<sup>30</sup> BD1655120.

<sup>31</sup> 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 <sup>33</sup>	84	39	46.43%
<b>TOTAL</b>	<b>320</b>	<b>102</b>	<b>31.90%</b>

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.<sup>34</sup>

### 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 . . .”<sup>35</sup>

<sup>32</sup> BD153174.

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

<sup>34</sup> 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](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”).

<sup>35</sup> 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.”<sup>36</sup>
- [2007]: “I was also led to believe that what I was going to school for would be a sure job after graduation.”<sup>37</sup>
- [2009]: “I was told that I would definitely have a job if I enrolled.”<sup>38</sup>
- [2011]: “We were told that there would be no problem getting a job and they would help.”<sup>39</sup>
- [2013]: “I was told I would obtain a job in the field upon graduation, easily with a high salary.”<sup>40</sup>

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.<sup>41</sup> 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.”<sup>42</sup> 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.”<sup>43</sup>

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.”<sup>44</sup> Another stated, “I heard recruiters assure students that they would get a great job that would enable them to pay back

<sup>36</sup> BD156228 (ITT-Sylmar).

<sup>37</sup> BD1659496 (ITT-Rancho Cordova).

<sup>38</sup> BD157549 (ITT-Indianapolis).

<sup>39</sup> BD156506 (ITT-Swartz Creek).

<sup>40</sup> BD154555 (ITT-Murray).

<sup>41</sup> *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”).

<sup>42</sup> *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.”).

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

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

their loans.”<sup>45</sup> 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.”<sup>46</sup>

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.”<sup>47</sup>

Guaranteed employment claims are further corroborated by recent ACICS findings against ITT<sup>48</sup> as well as by numerous former employee statements regarding falsification of student documents and manipulation of job placement statistics.<sup>49</sup> 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.<sup>50</sup> Another former

<sup>45</sup> 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).

<sup>46</sup> *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.

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

<sup>48</sup> 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>.

<sup>49</sup> 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%).

<sup>50</sup> 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.”<sup>51</sup> Instead, most of those students became security guards – “positions that didn’t require a degree at all.”<sup>52</sup>

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.<sup>53</sup> These narratives are consistent with student accounts provided to law enforcement agencies<sup>54</sup> and non-profit organizations regarding their inability to find employment related to their fields of study.<sup>55</sup> 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”),<sup>56</sup> which prohibits a wide range of business practices that constitute unfair competition, including corporate misrepresentations.<sup>57</sup>

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

<sup>51</sup> *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).

<sup>52</sup> *Id.*

<sup>53</sup> See *supra*, Section I and *infra* Section III(E).

<sup>54</sup> *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”).

<sup>55</sup> 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).

<sup>56</sup> CAL. BUS. & PROF. CODE § 17200.

<sup>57</sup> 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.”<sup>58</sup> 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.”<sup>59</sup>

At the time of its closing, there were more ITT students *and* campuses in California than in any other state.<sup>60</sup> 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,<sup>61</sup> Indiana law,<sup>62</sup> and the Restatement (2nd) of Conflict of Laws is the location “where the wrong occurred.”<sup>63</sup> 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].”<sup>64</sup> 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.”<sup>65</sup> Thus, if a business practice violates any law, this is *per se* a UCL violation.<sup>66</sup> Corporate

<sup>58</sup> 20 USC § 1087e(h).

<sup>59</sup> 34 C.F.R. § 685.206(c)(1).

<sup>60</sup> 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.

<sup>61</sup> *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.”)

<sup>62</sup> 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).

<sup>63</sup> 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.”).

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

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

misrepresentations like ITT's promises of employment are prohibited by a number of state and federal laws.<sup>67</sup> 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").<sup>68</sup> 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."<sup>69</sup>

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.<sup>70</sup> 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.<sup>71</sup> 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.

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<sup>66</sup> See *Kasky v. Nike*, 27 Cal. 4<sup>th</sup> 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).

<sup>67</sup> 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.

<sup>68</sup> 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.").

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

<sup>70</sup> *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.").

<sup>71</sup> 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."<sup>72</sup> The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup> However, for a consumer who was deceived into purchasing a product<sup>76</sup>—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"<sup>77</sup> 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."<sup>78</sup>

Express or implied claims like those made by ITT about employment prospects are presumptively material,<sup>79</sup> and, under the UCL, a showing of materiality gives rise to "a presumption, or at least an inference, of reliance."<sup>80</sup> 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.<sup>81</sup> 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

<sup>72</sup> See *Bank of the West*, 2 Cal. 4th at 1254.

<sup>73</sup> CAL CIV. C. §1709.

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

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

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

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

<sup>78</sup> *Id.* (internal quotation marks omitted).

<sup>79</sup> 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).

<sup>80</sup> *In re Tobacco II Cases*, 46 Cal.4th at 298.

<sup>81</sup> 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.”<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

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.<sup>85</sup> 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.<sup>86</sup> 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

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

<sup>83</sup> 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).

<sup>84</sup> *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.”).

<sup>85</sup> 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 . . .”)

<sup>86</sup> *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.<sup>87</sup> 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.<sup>88</sup> In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers.<sup>89</sup>

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*

<sup>87</sup> *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).

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

<sup>89</sup> 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.<sup>90</sup>

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.<sup>91</sup> 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,<sup>92</sup> statements to VES,<sup>93</sup> and over 500 statements attached to the *Villalba* Class Action Complaint.<sup>94</sup>

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.<sup>95</sup> This

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

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

<sup>92</sup> *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”).

<sup>93</sup> *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”).

<sup>94</sup> 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).

<sup>95</sup> *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).

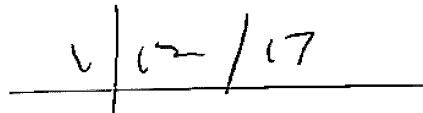
conduct has also led to actions against ITT by the Department<sup>96</sup> and ACICS,<sup>97</sup> as well as to numerous negative national news stories.<sup>98</sup>

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

<sup>96</sup> 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.

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

<sup>98</sup> 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).



**DOE00009509-DOE00009518**



# Borrower Defense to Repayment

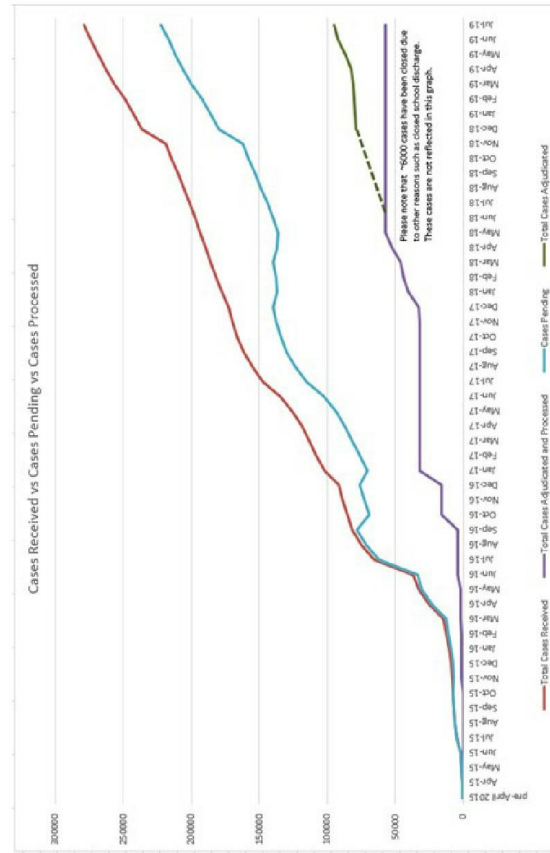
August 21, 2019

Federal Student Aid an office of the U.S. Department of Education – INTERNAL CONFIDENTIAL – DELIBERATIVE – PRE-DECISIONAL  
AR-A-0223

## Status of Borrower Defense Applications Received

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

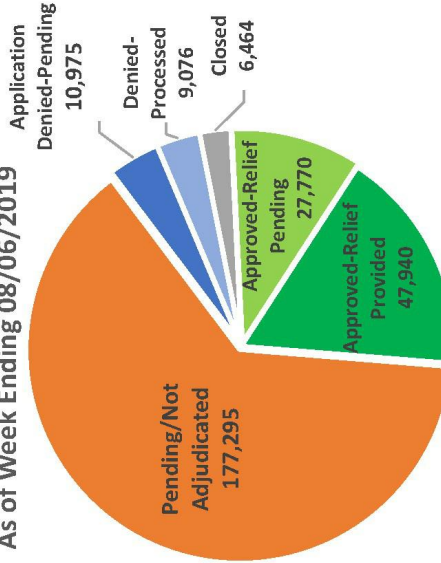
- 57,000 have been adjudicated, processed, and closed
- 38,700 have been adjudicated but have not yet been processed
  - Over 27,700 approved applications will be finalized when appropriate relief is determined
  - Nearly 11,000 applications have been adjudicated as denied applications but have not yet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



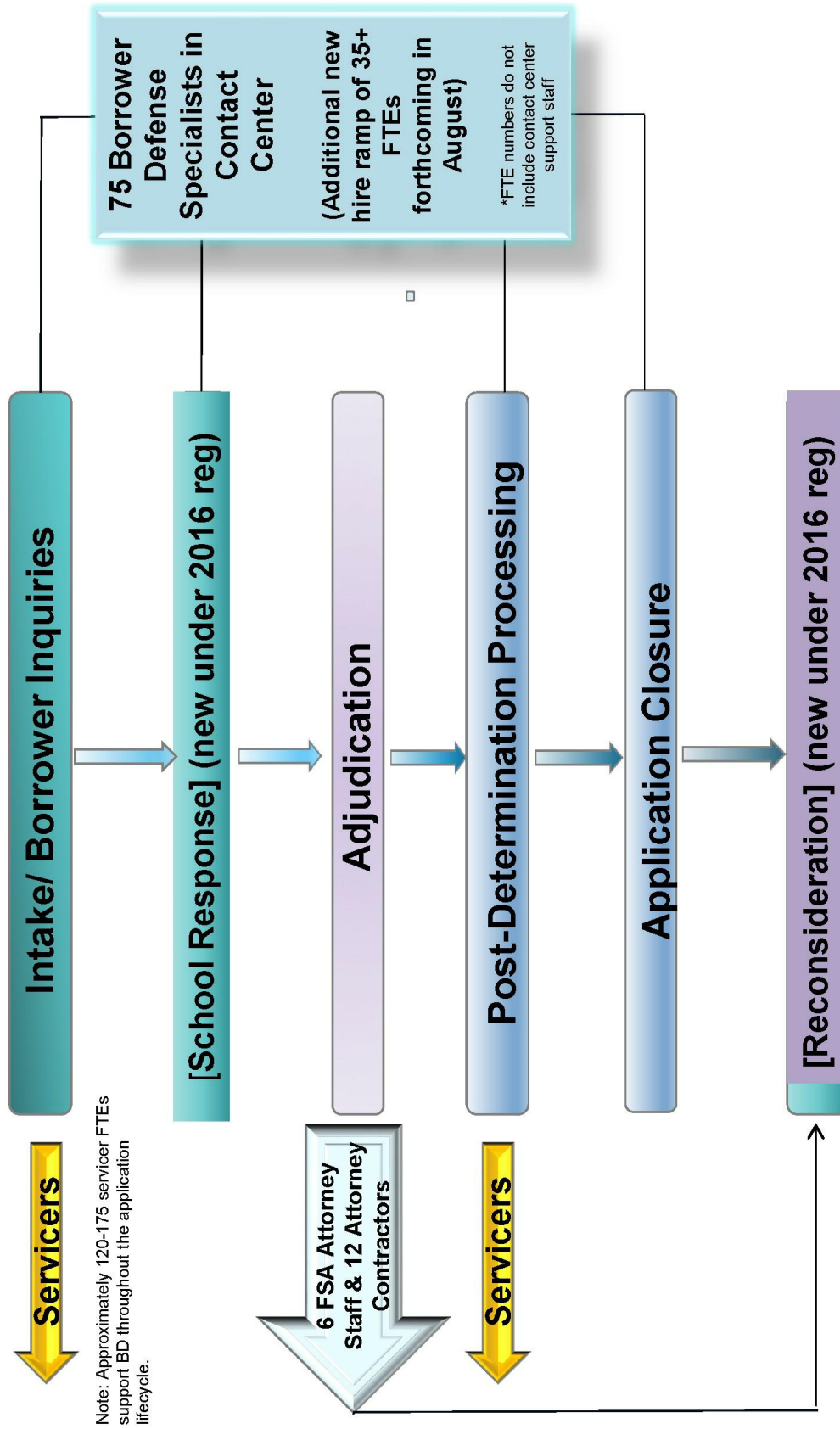
### Total Borrower Defense Applications:

279,520

As of Week Ending 08/06/2019



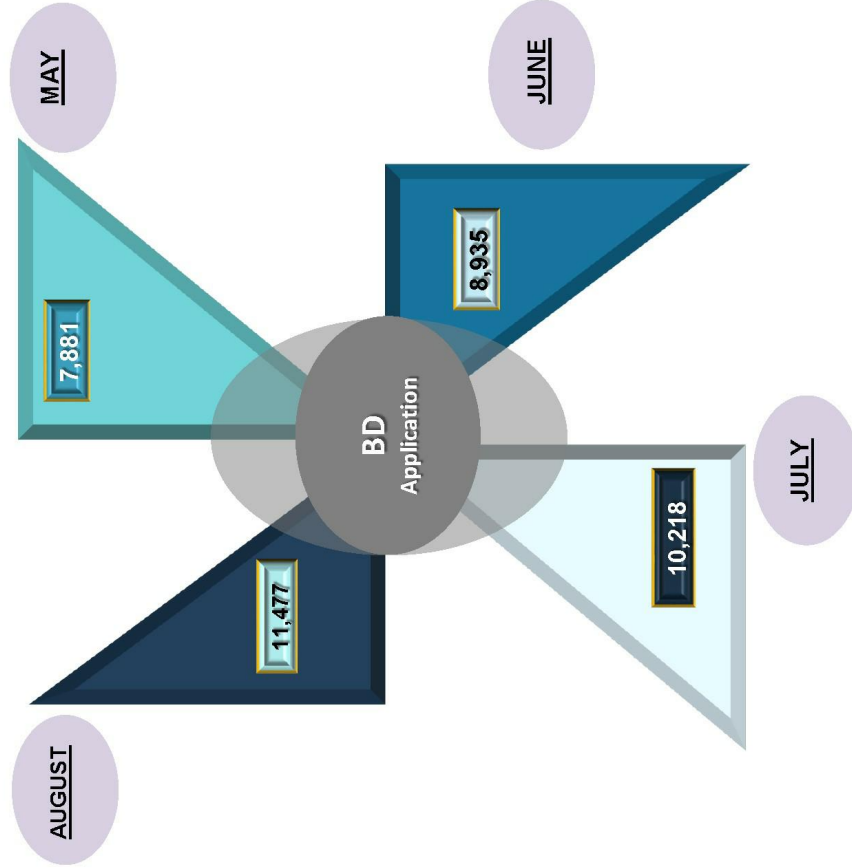
# Six Stages of a BD Application



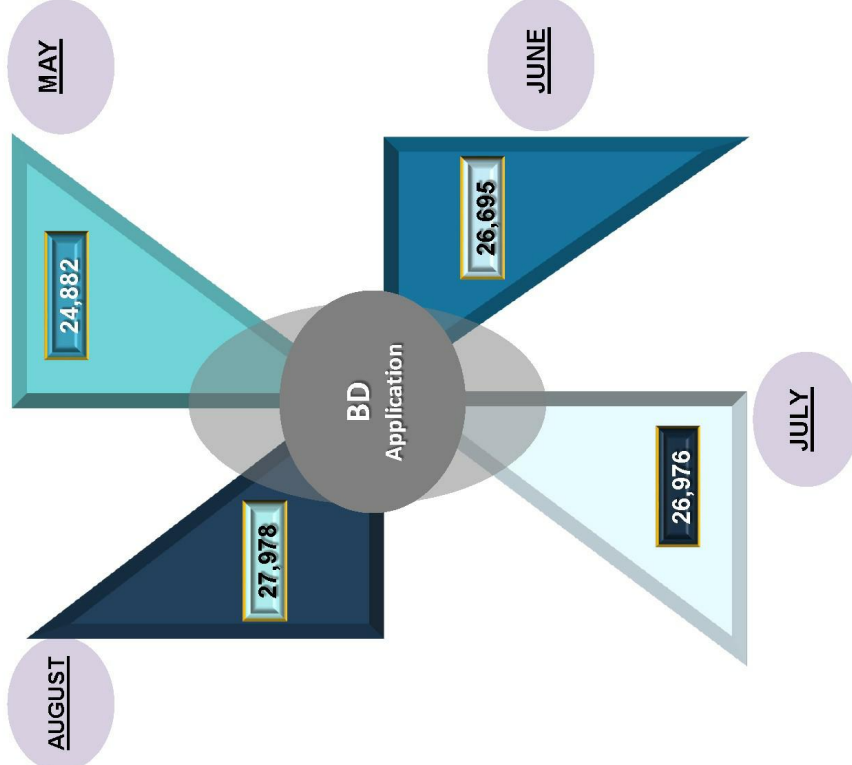


# Growth Progression for BD Applications

## Application Denied-Pending



## Applications Approved Pending



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

## Borrower Defense Applications Adjudicated But Not Processed

- **Two (2) Schools with Approved Applications that are Pending Relief Determinations and Processing**
  - Corinthian Colleges, Inc. (CCI): 27,000+
  - 26,000+ Job Placement Rate (JPR) Approvals
  - 700+ Employment Prospects Approvals
  - 300+ Transferability of Credits Approvals
  - ITT: 70 approvals (all Employment Prospects)
- **Over 1,400 Schools with Denied Applications that are Pending Processing**
  - CCI: 4,800+
  - ITT: 450+
  - Wright Career College: 300+
  - Marinello School of Beauty: 250+
  - Remainder of 1,400 Schools with Adjudicated Denials: 4,900
    - Each school currently has fewer than 100 denied applications

### CCI Job Placement Rate Claims

- Unique type of claim for several reasons:
  - Very high approval percentage (historically over 66%)
  - Department findings, special JPR form, and expedited process
  - Department estimated approximately 300,000 CCI borrowers eligible based on JPR findings and did widespread outreach to potentially eligible borrowers
- Other types of CCI claims have much lower approval percentages
  - Historically 5-7%

# Why are BD Applications on Hold?

## Approvals:

- “Manriquez” tiered relief methodology for CCI subject to injunction (as of May 2018) and no alternative methodology available
- No relief methodology developed for non-CCI claims

## Denials:

- Policy decision (spring 2018) to not issue denials until approvals also could be issued
- No processing systems available from summer 2018 to present due to platform development and migration
  - Updates to platform to be completed by August 30
- Issuance of denial decisions scheduled to resume by mid-September

## Notice to Schools and Other Platform Updates Needed to Comply with the 2016 Regulation's New Requirements:

- BD platform designed to comply with 1995 Regulation and completed in fall 2018
  - FSA was advised that 2016 Regulation would not go into effect and should not be considered in platform design
- Key provisions of the 2016 Regulation that were not required under the 1995 Regulation require significant platform updates, including:
  - Notice to Schools
  - Collection of Evidence that schools provide to refute borrower claims
  - Reconsideration process for denied claims

# The Way Ahead

## Updates to Borrower Defense (Salesforce) Platform

- Enhancements to the Salesforce platform to comply with the 2016 regulation are currently in the build phase
- Completion date in late August

## Additional Staffing Resources are being added to Adjudicate the Growing Backlog of Pending Borrower Defense Applications

- FSA is in the process of hiring over 60 term appointments. This includes twenty term-appointment offers recently issued.
- Additionally, FSA is backfilling previous positions and recently onboarded 12 contractors.
- Includes additional litigation support for OGC given the number, complexity, sensitivity and high profile cases involving the Department and the processing of BD applications.



# The Way Ahead (cont.)

## New Relief Approach(es)

- Like Manriquez approach, proposed approach assesses injury based on program-level earnings and provides “tiered-relief,” which the court did not object to.
- Unlike Manriquez, program earnings associated with approved BD applicants compared to earnings of same/similar programs at all other institutions (rather than, “passing” GE programs).
- Earnings comparison provides a measure of the difference in value between a program at an institution that is found to have engaged in misconduct versus the typical earnings of programs in the same field at other institutions and, thereby, what the student could have reasonably expected.
- An applicant whose program earnings at/above median of all others (**ceiling earnings**) deemed to have suffered no injury & no relief warranted, despite institutional misconduct.
  - For CCI BD applicants, however, relief of 10% will be provided even if no injury is assessed under the new methodology in light of the prior OGC memorandum establishing the Manriquez methodology that found “...[CCI] borrowers suffered some basic harm by virtue of the misrepresentations such that the Department cannot conclude that denying relief is appropriate.”

# The Way Ahead (cont.)

## New Relief Approach(es) (cont.)

- An applicant whose program had atypically low earnings compared to all other programs is deemed to have received no value from the program and full (100%) relief is warranted. Statistically, those programs with earnings among the lowest 2.5% of all programs (i.e., 2 standard deviations from the average) will be used to establish **floor earnings**, below which 100% relief will be warranted.
- An applicant whose program earnings was above the floor and below the ceiling (median earnings of programs) would warrant tiered relief of 75%, 50%, or 25%, proportional to the gap between the floor and ceiling earnings amounts.
  - *For illustrative purposes, assume median wages for a comparison group for an associate degree program in medical assisting is \$22,000, with a standard deviation of \$2000, such that earnings two standard deviations below the median would be \$18,000. For wages between \$18,000 and \$22,000 dollars, the following percentage relief would be provided: 75% relief for wages between 18,000 and \$19,333; 50% relief for wages above \$19,333 and up to \$20,666; and 25% relief for wages above \$20,666 but below \$22,000.*

# The Way Ahead (cont.)

## New Relief Approach(es) (cont.)

- Data to administer relief will be drawn from publicly available GE data. In the future, College Scorecard data can be used.
- In a smaller number of cases where there are no earnings data available for those programs attended by BD applicants, an individual BD applicant's income information may need to be collected.
- Prior to the availability of College Scorecard data, there may be isolated instances where there are a lack of program earnings data to use for comparison programs. The team has identified a publicly available data set of program-level earnings data for programs offered by public institutions in Texas. The team is assessing the potential use of these data.
- Team currently finalizing additional details of alternative relief methodology and calculating impact.

**DOE00009519-DOE00009520**



**MEMORANDUM**

TO: Colleen Nevin

FROM: Alana Smith

DATE: June 1, 2020

RE: Borrower Defense Unit Investigation of Anthem Education Group

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

As of June 1, 2020, the Borrower Defense Unit (BDU) has received approximately 1,508 applications from borrowers who attended a school under the Anthem Education Group, LLC umbrella. These cases span the entire history of Anthem's existence with the bulk of the cases from borrowers who first enrolled from 2007 to 2010.<sup>4</sup>

As of the date of this memorandum, the BDU has obtained limited evidence relevant to the borrower defense allegations filed against Anthem Education Group. BDU has reviewed evidence in connection with the following: (1) information from the Minnesota Attorney General's Office, (2) letters to the Department of Education from the Minnesota Attorney General requesting that the Department provide federal loan forgiveness to the borrowers, and (3) final program review determination reports generated by the Department. BDU also reviewed Anthem Education Group's website from 2008 on for representations that the school was registered with Minnesota Office of Higher Education<sup>5</sup>. The only relevant evidence BDU has obtained pertains to the campus in Minnesota. BDU has been unable to locate evidence to support the allegations of students who attended campuses in other states.

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

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

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

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

<sup>4</sup> Salesforce reports generated by BDU personnel (on file with the Department)

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

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

**DOE00009550-DOE00009551**

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

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

### **Introduction**

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

- American Intercontinental University
- Briarcliffe College
- Brooks College
- Brooks Institute (a/k/a/ Brooks Institute of Photography)
- Brown College
- Brown Institute
- Collins College (a/k/a Al Collins Graphic Design School)
- Colorado Technical University
- Harrington College of Design (a/k/a Harrington Institute of Interior Design)
- International Academy of Design & Technology (a/k/a School of Computer Technology; a/k/a International Academy of Merchandising & Design)
- Le Cordon Bleu College of Culinary Arts (a/k/a Le Cordon Bleu Institute of Culinary Arts; a/k/a Kitchen Academy; a/k/a Southern California School of Culinary Arts; a/k/a California School of Culinary Arts; a/k/a Pennsylvania Culinary Institute; a/k/a Orlando Culinary Academy; a/k/a Cooking and Hospitality Institute of Chicago; a/k/a Scottsdale Culinary Institute; a/k/a/ Western Culinary Institute; a/k/a California Culinary Academy)
- Lehigh Valley College (a/k/a Allentown Business School)
- Katharine Gibbs School (a/k/a Gibbs College; a/k/a Washington Business School)
- McIntosh College
- Missouri College
- Sanford-Brown College (a/k/a Ultrasound Diagnostic Schools)
- Sanford-Brown Institute (a/k/a Western School of Health and Business Careers; n/k/a Pittsburgh Career Institute<sup>1</sup>)
- SBI Campus—An Affiliate of Sanford-Brown Institute

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



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

#### **RECOMMENDATION**

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

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

**DOE00009552-DOE00009553**

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

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

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

- American Intercontinental University
- Briarcliffe College
- Brooks College
- Brooks Institute (a/k/a/ Brooks Institute of Photography)
- Brown College
- Brown Institute
- Collins College
- Al Collins Graphic Design School
- Colorado Technical University
- Harrington College of Design (a/k/a Harrington Institute of Interior Design)
- International Academy of Design & Technology (a/k/a School of Computer Technology; a/k/a International Academy of Merchandising & Design)
- Le Cordon Bleu College of Culinary Arts (a/k/a Le Cordon Bleu Institute of Culinary Arts; a/k/a Kitchen Academy; a/k/a Southern California School of Culinary Arts; a/k/a California School of Culinary Arts; a/k/a Pennsylvania Culinary Institute; a/k/a Orlando Culinary Academy; a/k/a Cooking and Hospitality Institute of Chicago; a/k/a Scottsdale Culinary Institute; a/k/a/ Western Culinary Institute; a/k/a California Culinary Academy)
- Lehigh Valley College (a/k/a Allentown Business School)
- Katharine Gibbs School (a/k/a Gibbs College; a/k/a Washington Business School)
- McIntosh College
- Missouri College
- Sanford-Brown College (a/k/a Ultrasound Diagnostic Schools)
- Sanford-Brown Institute (a/k/a Western School of Health and Business Careers; n/k/a Pittsburgh Career Institute<sup>1</sup>)
- SBI Campus—An Affiliate of Sanford-Brown Institute

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

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

BDU recommends adjudication of applications from borrowers who attended any CEC school and had an enrollment start date prior to January 1, 2008.

Based on a review of public information and filings on Westlaw, none of the schools above – during the specified time period – are the subject of a known investigation or lawsuit that would likely reveal supporting evidence relevant to BD claims. In light of the absence of any such evidence in the Department's possession regarding CEC schools before 2008, BDU will apply a standard protocol and open each claim, review all allegations and any evidence appended by individual borrowers, and conduct an individual adjudication of each case. If evidence attached by the borrower proves any of his/her allegations, then the case will be set aside for consideration for approval. However, where the borrower provides no evidence or evidence provided fails to satisfactorily prove any allegations, will be denial of the application is appropriate.



**DOE00009583-DOE00009583**

Memorandum

To: Colleen Nevin

From: Sarah Angilello, Michael Page, Conor Kruger

Date: June 15, 2020

Re: DeVry University – Borrowers Without Employment Prospects or Job Placement Rates Allegations Enrolled Between January 1, 2008 and September 30, 2015

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DeVry University (“DeVry”) is a proprietary higher education institution, originally founded in 1931.<sup>1</sup> From 1988 until 2018, DeVry was owned and operated by DeVry, Inc. DeVry Inc. (which had changed its name to Adtalem Global Education in 2017<sup>2</sup>) sold DeVry University to Cogswell Education, LLC, its current owner, in 2018.<sup>3</sup>

The Borrower Defense Unit (“BDU”) has received thousands of applications from borrowers that attended DeVry. These applications contain allegations of misconduct occurring at DeVry campuses nationwide. Of all DeVry applications received, the earliest enrollment periods are as early as 1980, and the latest are as recent as 2020.<sup>4</sup>

As of the date of this memorandum, the BDU has received a substantial volume of evidence relevant to the borrower defense allegations at DeVry campuses nationwide and continues to review this evidence. This evidence in BDU’s possession relates to potential misrepresentations made by DeVry University regarding employment prospects, specifically job placement rates, for the period between January 1, 2008, and September 30, 2015. The BDU’s investigation of DeVry University’s representations regarding employment prospects alleging job placement for the period between January 1, 2008, and September 30, 2015, is ongoing.

The BDU has not received records regarding any state or federal investigations alleging misconduct, outside of representations regarding employment prospects alleging job placement, by DeVry, between January 1, 2008, and September 30, 2015 that would be relevant to the borrower defense applications of borrowers who enrolled during the stated time frame. Further, BDU is not in possession of evidence, from within the Department or through other sources, that would establish a pattern or practice, outside of potential employment prospects alleging job placement representations, by DeVry between January 1, 2008, and September 30, 2015.

Accordingly, because the BDU is not currently in possession of evidence that could substantiate allegations of misconduct, outside of employment prospects alleging job placement rate allegations, occurring between January 1, 2008, and September 30, 2015, we recommend that all DeVry University applications that do not make an employment prospects alleging job placement rate allegation with an enrollment date between January 1, 2008, and September 30, 2015, enrollment date be adjudicated in accordance with the standard review protocol.

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<sup>1</sup> <https://www.devry.edu/about.html>

<sup>2</sup> <https://www.chicagobusiness.com/article/20170524/NEWS13/170529959/devry-education-group-changes-name-to-adtalem-global-education>

<sup>3</sup> Adtalem Global Education, Inc., Annual Report (Form 10-K), at 3 (June 30, 2018).

<sup>4</sup> See CEMS Reports generated by BDU personnel on 05/29/20 (on file with department).

**DOE00009585-DOE00009585**

**Keller Graduate School of Management – Evidence Considered Protocol**

Applicable to:

Keller Graduate School of Management

Entering Evidence Considered Manually:

1. Open a case with a suggested closing correspondence value of Standard Denial with Evidence Considered in status 3.10
2. In the “Evidence Considered” field on the case select the following:
  - a. Evidence obtained by the Department in conjunction with its regular oversight activities
3. The case is now ready to process following the normal borrower notification letter creation process.

Bulk Update Options:

1. Bulk update (by work ticket to Accenture) all Keller Graduate School of Management cases in 3.10 with the following:
  - a. In the “Evidence Considered” dropdown, select “Evidence obtained by the Department in conjunction with its regular oversight activities.”
2. Process following the normal borrower notification letter creation process.



**DOE00009622-DOE00009625**

To: Colleen Nevin

From: Daniel Davis and Kristen Yarows

Date: August 13, 2020

Re: Borrower Defense Unit Investigation of Argosy University, South University, and Western State University College of Law<sup>1</sup>

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## **I. Introduction**

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

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

This memorandum solely addresses borrower defense applications alleging misconduct at Argosy University, South University, and Western State College of Law (the “Other Brands”) and specifically excludes borrowers who (i) make professional licensure allegations for psychology masters and doctorate programs at Argosy University; (ii) make professional licensure allegations for the South University nursing program in 2009; and (iii) make any allegation while Dream Center Educational Holdings owned EDMC Schools (“Excluded Allegations”).

## **II. Evidence Regarding Other Brand Allegations**

Although BDU’s investigation into EDMC Schools is ongoing, the BDU does not have sufficient evidence in its possession to substantiate claims of borrowers who attended the Other Brand, potentially excepting the Excluded Allegations.

As of the date of this memorandum, the BDU has obtained the following evidence relating to borrowers’ Other Brand Allegations: (i) exhibits and congressional testimony referenced in the 2012 U.S. Senate Committee on Health, Education, Labor & Pensions on for profit higher education;<sup>6</sup> (ii) marketing materials, contractual agreements, and similar documents

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<sup>1</sup> This memorandum should be read in conjunction with the previously submitted “Borrower Defense Unit Investigation of EDMC Schools Prior to July 1, 2003,” “Borrower Defense Unit Investigation of EDMC Schools from January 1, 2016 to September 30, 2017,” and “Borrower Defense Unit Investigation of EDMC Schools (July 1, 2003 – December 31, 2008).” Further, the BDU’s investigation of EDMC Schools is ongoing and the BDU will draft a memorandum to provide a more comprehensive view of the EDMC Schools’ conduct.

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

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

<sup>4</sup> Educ. Mgmt. Corp., Annual Report (Form 10-K), at 3 (June 30, 2012); S. REP. NO. 112-37, pt. 2, at 451 (2012).

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

<sup>6</sup> See S. REP. NO. 112-37, pt. 2, at 449 (2012).

distributed to students by EDMC Schools;<sup>7</sup> (iii) EDMC's SEC financial filings;<sup>8</sup> and (iv) borrower applications with attachments.

The BDU has also obtained evidence from the Pennsylvania attorney general's office and the Iowa attorney general's office. Most of this evidence relates to allegations against the Art Institutes and Brown Mackie College.

BDU has received some materials relate to the Other Brands, but the evidence relates only to the existence of representations and not to whether they were false or misleading. These materials include a selection of South University's representations of employment prospects and job placement rates to prospective students, as well as professional licensure exam passage rates for various programs at EDMC Schools. Absent evidence that these representations were, in fact, misrepresentations, the materials do not substantiate borrowers' claims regarding these Other Brands. Additionally, no external body has found that EDMC engaged in any misconduct during this period.

Finally, while the BDU has also identified lawsuits that potentially relate to borrowers' claims regarding the Other Brands, the BDU has not obtained<sup>9</sup> any evidence from those cases.<sup>10</sup> The relevant lawsuits include the following:

#### **A. *Sobek v. EDMC***

Jason Sobek, a former employee for South University, brought a *qui tam* action against EDMC pursuant to the False Claims Act alleging that EDMC failed to adequately track student progress and misrepresented (1) programmatic accreditation, (2) job placement rates and (3) cost of attendance in 2009.<sup>11</sup> The parties settled the dispute without EDMC admitting liability pursuant to the joint settlement agreement in *Washington and Mahoney ex rel. US v. EDMC*.<sup>12</sup> The BDU was unable to obtain any evidence from the *Sobek* action.

#### **B. *Washington and Mahoney ex rel. US v. EDMC***

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

<sup>7</sup> See, e.g., Argosy University Forensic Psychology (Online) Associates Degree: Facts you should know about the program (on file with the department).

<sup>8</sup> See, e.g., Educ. Mgmt. Corp., Annual Report (Form 10-K) (June 30, 2003).

<sup>9</sup> See Section II.B. *infra* for a discussion of boxes of materials currently in BDU's possession.

<sup>10</sup> For a more extensive discussion of *Washington and Mahoney ex rel. US v. EDMC*, *Gaer v. Education Management Corporation*, *Robb v. Education Management Corporation*, and *Laukaitis v. Education Management Corporation*, see "Re: Borrower Defense Unit Investigation of EDMC Schools (July 1, 2003 – December 31, 2007)" dated July 21, 2020.

<sup>11</sup> Second Amended Complaint at ¶ 42-72, United States ex rel. Sobek v. Educ. Mgmt. Corp., No. 2:10-cv-00131 (W.D. Pa. Feb. 10, 2012).

<sup>12</sup> Settlement Agreement, United States and Educ. Mgmt. Corp. (Nov. 12, 2015).

back as 2003.<sup>13</sup> The Department of Justice (“DOJ”), along with certain states intervened in the case in 2011.<sup>14</sup> The case ultimately settled without EDMC admitting to any wrongdoing.<sup>15</sup>

While the case was pending, and under the supervision of a special master, EDMC Schools and DOJ engaged in extensive written discovery.<sup>16</sup> Based on a review of public records, EDMC produced millions of pages of discovery in this litigation.<sup>17</sup> However, BDU was unable to obtain any of these documents as they were destroyed, or returned to EDMC in light of the confidentiality agreement in the case.<sup>18</sup> As EDMC ceased operating its schools in 2017<sup>19</sup> and subsequently closed, BDU was unable to request the records from the school, and BDU, therefore, is not able to ascertain whether the documents would have provided corroborating evidence for any borrower defense claims.

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

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<sup>13</sup> Second Amended Complaint, *Washington v. Educ. Mgmt. Corp.*, No. 07-cv-461 (W.D. Pa. May 2, 2011) (Michael Mahoney was EDMC’s Director of Training for the Online Higher Education Division from 2006 – 2007 and joined the litigation in the Second Amended Complaint).

<sup>14</sup> See Joint Complaint in Intervention by the United States of America, and the States of California, Florida, Illinois, and Indiana. *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 07-CV-461 (W.D. Pa. Aug. 8, 2011).

<sup>15</sup> See Settlement Agreement, *United States and Educ. Mgmt. Corp.* (Nov. 12, 2015). This settlement agreement also resolved other pending *qui tam* lawsuits against EDMC including the settlement referenced above in *Sobek. Id.* at 9.

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

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

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

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



### III. Conclusion and Recommendations

Although BDU's investigation of EDMC Schools is ongoing, BDU currently does not have evidence<sup>20</sup> in its possession that substantiates the borrower defense allegations of students who attended EDMC's Other Brands, potentially excepting the Excluded Allegations.

As a result, the BDU recommends that all applications from borrowers who attended the Other Brands – Argosy University, South University, and Western State University College of Law – be adjudicated unless they fall into the following categories that allege the Excluded Allegations:

- Professional licensure allegations for psychology masters and doctorate programs at Argosy University;
- Professional licensure allegations for the South University nursing program in 2009; and
- Allegations while Dream Center Educational Holdings owned EDMC Schools.

All other applications from borrowers who attended Other Brands should be adjudicated in accordance with the following standard review protocol: BDU attorneys will individually adjudicate each application by opening each claim and reviewing all allegations made by the borrower and any supporting evidence provided by the borrower. If the borrower has provided evidence sufficient to support their allegations, then the application will be set aside for further review. However, where the borrower provides no evidence, or the evidence provided is insufficient to prove any allegations, denial of the application is appropriate. If additional evidence is obtained in the future, these claims may be subject to redetermination as warranted.

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<sup>20</sup> As noted with respect to the *Washington* case, while it is BDU's understanding that the returned Department records are not likely to contain corroborative evidence, BDU will confirm the contents and revise this memorandum as needed to the extent there is any corroborating evidence in the materials. In the unlikely event that the document would change the outcome of any borrower cases, BDU would consider this as new evidence and reopen any such case(s).



Memorandum

To: Colleen Nevin

From: Daniel Davis

Date: August 7, 2020

Re: Borrower Defense Unit Investigation of EDMC Schools (July 1, 2003 – December 31, 2008)<sup>1</sup>**I. Introduction**

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

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

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

**II. Evidence Regarding Alleged Misconduct at EDMC Schools**

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

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

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

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

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

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

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

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

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

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

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

Finally, while the BDU has identified a number of lawsuits that included allegations potentially related to some of the allegations asserted by EDMC borrowers, the BDU has not received<sup>12</sup> any evidence to substantiate the BD-related allegations from those cases. The cases include the following:

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

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

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

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

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

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

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



far back as 2003.<sup>13</sup> The Department of Justice (“DOJ”), along with certain states intervened in the case in 2011.<sup>14</sup> The case ultimately settled without EDMC admitting to any wrongdoing.<sup>15</sup>

While the case was pending, and under the supervision of a special master, EDMC Schools and DOJ engaged in extensive written discovery.<sup>16</sup> Based on a review of public records, EDMC produced millions of pages of discovery in this litigation.<sup>17</sup> However, BDU was unable to obtain any of these documents as they were destroyed, or returned to EDMC in light of the confidentiality agreement in the case.<sup>18</sup> As EDMC ceased operating its schools in 2017<sup>19</sup> and subsequently closed, BDU was unable to request the records from the school, and BDU, therefore, is not able to ascertain whether the documents would have provided corroborating evidence for any borrower defense claims.

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

### **B. Gaer**

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

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

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

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

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

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

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

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

### C. *Laukaitis*

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

### D. *Robb*

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

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

<sup>21</sup> *Id.* at 19-37.

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

<sup>23</sup> *Id.* at 45.

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

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

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

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

Although the allegations in *Washington*, *Gaer*, *Laukaitis*, and *Robb* may be relevant to borrowers' allegations, the BDU does not currently have any documents or evidence<sup>28</sup> to substantiate the claims made in these lawsuits for the period July 1, 2003 through December 31, 2008. The existence of these lawsuits, absent corroborating evidence, does not constitute evidence to substantiate the borrower allegations against EDMC schools during the July 1, 2003 through December 31, 2008 timeframe.

### **III. Conclusion and Recommendations**

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

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

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

**DOE00010045-DOE00010049**





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### Initial Review of Mid-Size Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Beckfield College 02491100
<b>Open or Closed</b>	Open
<b>Date Advanced Letter Sent</b>	N/A No Approvals
<b>Additional Locations</b> • Add closure date if applicable	02491101- Beckfield College - Louisville <sup>1</sup> 02491102- Beckfield College - Springdale
<b>Corporate Owner(s)</b>	Quad Partners III-A LP
<b>Total Number of Applications</b>	As of 7/22/2020, there are 32 applications.
<b>Patterns of Alleged Misconduct</b>	Beckfield College does not have any current litigation pending. Based on a review of the applications, the borrowers do not present evidence that indicate Beckfield College committed overt or repetitive misconduct, fraud, or misrepresentations. The application narratives provide individual experiences, frustrations, or issues encountered as a customer of Beckfield College. Additionally, although some of the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p><b><u>Program Compliance</u></b> After review, Borrower Defense found no past or pending Final Program Review Determinations (FRPD).</p> <p><b><u>AAASG and OIG Investigations</u></b> After review, Borrower Defense found no past or pending AAASG or OIG investigations.</p> <p><b><u>OGC/DOJ</u></b> After review, Borrower Defense found no past or pending OGC/DOJ investigations.</p>

<sup>1</sup> The ownership timeline of the Louisville Campus is as follows:

1995-1998 Kentucky Career Institute

1998-2001 Beckfield

2001- Daymar

The OPEID on the NSLDS data will accurately reflect the ownership of the school at the time of borrower's attendance. For all applications with a customer provided school of Beckfield-Louisville after 2001, the NSLDS data will reflect that the borrower was enrolled in Daymar.

<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to Borrower Defense</b>	<p>Beckfield College was formerly Kentucky Career Institute, one branch of Kentucky Career Institute was purchased by Daymar College.<sup>2</sup> In 2015 there was a <a href="#">settlement</a> by Daymar College, paid out 1.2 million dollars to former students.<sup>3</sup> Daymar denied the violations as part of the settlement. Beckfield is not a named party in the complaint or the settlement.</p> <p>An earlier Borrower Defense <a href="#">memo</a> notes that there were various suits against Beckfield College for various claims of deception and misrepresentation.<sup>4</sup> However, the Kentucky Courts website no longer shows any pending cases against Beckfield.</p>
<b>External Contact(s) for Further Investigation</b>	N/A
<b>External Investigations, Evidence or Litigation NOT related to Borrower Defense</b>	N/A
<b>News Articles/Media</b>	<p>According to this <a href="#">article</a>, two Plaintiffs brought against Beckfield for violations of the Kentucky Consumer Protection Act, negligent misrepresentation, fraud and breach of contract. The plaintiffs allege that they were excessively charged for classes and misled as the transferability of credits. There is no information on the resolution of this case. There is no evidence of this suit elsewhere on the internet.</p> <p>This <a href="#">news clip</a> from WKRC CBS 12 Cincinnati purportedly shows an interview with a student suing Beckfield College over "worthless" credits but the video does not play.</p> <p>Beckfield failed to meet Department's standard for "<a href="#">gainful employment</a>" in a recognized occupation in 2017.</p>
<b>Name of Reviewer</b>	Conor Kruger
<b>Date Review Completed</b>	7/22/2020

## SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<sup>2</sup> <https://www.in.gov/iara/3146.htm>

<sup>3</sup> The Attorney General of Kentucky charged the school with denying students access to financial aid to buy their textbooks from vendors other than Daymar's bookstore, which allegedly charged significantly higher prices than other vendors; misrepresenting students' ability to transfer credits earned at Daymar to other institutions; admitting students who failed Daymar's admissions assessment in violation of the school's own admissions policy, and hiring unqualified faculty who lacked the required credentials.

<sup>4</sup> Schmidt, Jacqueline M. vs. Beckfield College – 15-S-00038

Jones, Sonia L, Et al vs. Beckfield College, LLC – 12-CI-01908

Becker, Alicia, Et al vs. Beckfield College, LLC – 11-CI-00654

<p><b>Summary of Allegations Reviewed</b></p>	<p style="text-align: center;"><b><u>Summary of Allegations</u></b></p> <p>Borrower Defense reviewed a sample of 20 applications to identify potential trends and/or salient information provided by the applicant pool. The enrollment dates for the applicant pool range from May 1, 1992 through September 20, 2019, with the majority of applicants having enrollment dates between 2006 and 2011. The narrative allegations include complaints relating to: (i) the inability to transfer credits; (ii) misrepresentations regarding cost; and (iii) the perceived failures of the career services department.</p> <p style="text-align: center;"><b><u>Admissions and Urgency to Enroll</u></b></p> <p>Of the 32 total applications, 15 raise an admissions allegation. Of the 15 allegations, two are of the type that might warrant Borrower Defense relief, if supported by evidence. In the allegations that might warrant Borrower Defense relief, borrowers allege that they were deceived as to the transferability of credits and loan costs. Although the allegations asserted are of the type that might warrant Borrower Defense relief, borrowers failed to provide relevant supporting evidence with their claims and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct occurring at Beckfield. The most common allegations deal with the borrowers' dissatisfaction with the speed of the enrollment, many felt that the process was too quick. These claims are not of the type that would warrant Borrower Defense relief absent a misrepresentation.</p> <p style="text-align: center;"><b><u>Career Services</u></b></p> <p>Of the 32 total applications, 17 raise a career services allegation. Of the 17 allegations, zero are of the type that might warrant Borrower Defense relief, if supported by evidence. The borrowers in the sampled cases express general frustrations with employment and job placement assistance. These claims are not of the type that would warrant Borrower Defense relief absent a misrepresentation.</p> <p style="text-align: center;"><b><u>Educational Services</u></b></p> <p>Of the 32 total applications, 14 raise an educational services allegation. Of the 14 allegations, three are of the type that might warrant Borrower Defense relief, if supported by evidence. In the allegations that might warrant Borrower Defense relief, borrowers allege that they were deceived as to the transferability of credits. The borrowers' allegations discuss their issues with the misrepresentation of the accreditation of the school. Although the allegations asserted are of the type that might warrant Borrower Defense relief, borrowers failed to provide relevant supporting evidence with their claims and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct occurring at Beckfield.</p> <p style="text-align: center;"><b><u>Employment Prospects</u></b></p>
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Of the 32 total applications, 20 raise an employment allegation. Of the 20 allegations, one is of the type that might warrant Borrower Defense relief, if supported by evidence. In the allegation that might warrant Borrower Defense relief, the borrower alleges that they misled as to their eligibility to receive a certain job. The borrowers in the sampled cases express general frustrations with employment and job placement assistance. These claims are not of the type that would warrant Borrower Defense relief absent a misrepresentation.

#### **Other**

Of the 32 total applications, 20 raise an “other” allegation. Of the 20 allegations, two are of the type that might warrant Borrower Defense relief, if supported by evidence. In the allegations that might warrant Borrower Defense relief, borrowers allege that they were deceived as to the accreditation of the school or the wage they would earn upon graduation. Although the allegations asserted are of the type that might warrant Borrower Defense relief, borrowers failed to provide relevant supporting evidence with their claims and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct occurring at Beckfield. In most of the allegations, borrowers provided general explanatory narratives relevant to their experiences with accreditation, certification, and fees associated with the school. These claims are not of the type that would warrant Borrower Defense relief absent a misrepresentation.

#### **Program Cost and Nature of Loans**

Of the 32 total applications, 18 raise a program cost allegation. Of the 18 allegations, three are of the type that might warrant Borrower Defense relief, if supported by evidence. In the allegations that might warrant Borrower Defense relief, borrowers allege that Beckfield lied about the cost of attendance, did not properly explain the cost of attendance, or lied about the amount of financial assistance a borrower would receive. Although the allegations asserted are of the type that might warrant Borrower Defense relief, borrowers failed to provide relevant supporting evidence with their claims and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct occurring at Beckfield.

#### **Transferring Credits**

Of the 32 total applications, 21 raise a transfer of credits allegation. Of the 21 allegations; 15 allegations assert that Beckfield that might warrant Borrower Defense relief, if supported by evidence. Most of the claims allege that Beckfield representatives told Borrowers that credits were generally transferable to any college or university, Beckfield credits did not transfer to other institutions but make no allegation as to any representations by the school, and that Borrowers were unable or had difficulty transferring credits from other institutions into Beckfield including some cases where Beckfield made representations to the contrary. Although the allegations asserted are



	of the type that might warrant Borrower Defense relief, borrowers failed to provide relevant supporting evidence with their claims and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct occurring at Beckfield.
<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, there is insufficient evidence of widespread misconduct Beckfield to warrant further investigation. As such, it is recommended the cases be adjudicated.  Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Sarah Angilello
<b>DATE:</b>	08/28/2020

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input checked="" type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
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<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: <ul style="list-style-type: none"> <li>•</li> </ul>
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**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- [Salesforce Allegation Report](#)

**DOE00010089-DOE00010093**



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### Initial Review of Mid-Size Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Berkeley College 00739400 (New York); 00750200 (New Jersey)
<b>Open or Closed</b>	Open
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	<u>New York:</u> 00739402  <u>New Jersey:</u> 00750201; 00750202; 00750204
<b>Corporate Owner(s)</b>	<u>Level I:</u> Berkeley Educational Services of New Jersey, Inc. (NJ) Berkeley Educational Services of New York, Inc. (NY)  <u>Level II:</u> Randy B. Luing (25%) Kevin L. Luing (25%) Timothy D. Luing (25%) Brian D. Luing (25%)
<b>Total Number of Applications</b>	As of September 3, 2020, there are 11 applications already adjudicated and 80 applications awaiting adjudication.
<b>Patterns of Alleged Misconduct</b>	<p>In 2018, after engaging in a nearly two-year investigation, the New York City Department of Consumer Affairs (the “DCA”) filed suit against the school for alleged violations of New York consumer protection laws. The DCA’s complaint alleged that Berkeley College engaged in deceptive trade practices, including but not limited to (1) misrepresenting the total cost of attending the school, including the availability of grants and repayment plans; (2) misleading students as to the transferability of credits; (3) misrepresenting employment prospects; (4) misrepresenting graduation rates; and (5) violating local debt collecting rules.</p> <p>Of the allegations sampled, borrowers discuss some issues that are raised in the New York City DCA’s lawsuit, including misrepresentations related to the availability and award of academic grants, the transferability of credits, and the likelihood of obtaining employment (see below). However, this lawsuit is currently pending in New York State court and Borrower Defense is not in possession of evidence related to this case.</p> <p>An additional lawsuit filed by former employees, alleges that recruitment staff were evaluated solely on the number of</p>

	students they enrolled. This lawsuit is currently pending in Federal court.
<b>Internal ED Investigation(s)</b> <ul style="list-style-type: none"> <li>PC, AAASG, OIG</li> </ul>	<p><b><u>Program Compliance</u></b>  Program reviews were conducted in 1996, 1999, 2005, 2009, and 2010, however, none of the findings were relevant to borrower defense.</p> <p><b><u>AAASG and OIG Investigations</u></b>  Borrower Defense found no past or pending AAASG or OIG investigations.</p> <p><b><u>OGC/DOJ</u></b>  Borrower Defense found no past or pending OGC/DOJ investigations.</p>
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BORROWER DEFENSE</b>	<p><i>City of N.Y., et al. v. Berkeley Educ. Servs. Of N.Y., Inc.</i>, No. 452025/2018 (N.Y. Sup. Ct. Oct. 10, 2018) (for a relevant published opinion, see <a href="#"><i>City of N.Y., et al. v. Berkeley Educ. Servs. Of N.Y., Inc.</i>, 118 N.Y.S. 3d 556 (Sup. Ct. 2020)</a>).</p> <p>The New York City Department of Consumer Affairs (the “DCA”) filed suit against the school in 2018 for alleged violations of New York consumer protection laws. The DCA’s <a href="#">complaint</a> alleged that Berkeley College engaged in deceptive trade practices, including but not limited to (1) misrepresenting the total cost of attending the school, including the availability of grants and repayment plans; (2) misleading students as to the transferability of credits; (3) misrepresenting the employment prospects; (4) misrepresenting graduation rates; and (5) violating local debt collecting rules. This lawsuit is currently pending in New York State court.</p> <p><a href="#"><i>Estevez et al. v. Berkeley College, et al.</i>, No. 7:18-cv-10350, at ¶ 40–42 (S.D.N.Y. Nov. 7, 2018)</a>.</p> <p>This is a lawsuit filed by former employees alleging hostile work environment and other gender discrimination claims. While the central allegations are not relevant to borrower defense, the complaint further alleges that recruitment staff were evaluated solely on the number of students they enrolled. If true, this type of misconduct may also be relevant to borrower defense. This lawsuit is currently pending in Federal court.</p>
<b>External Contact(s) for Further Investigation</b>	<p>For <i>DCA</i> Action:  Media Contacts: Gloria Chin / Christine Gianakis  Department of Consumer Affairs  (212) 436-0042  <a href="mailto:press@dca.nyc.gov">press@dca.nyc.gov</a></p> <p>For <i>Estevez</i> Action:</p>



	LAW OFFICE OF DANIELA NANAU P.C. 89-03 Rutledge Avenue Glendale, New York 11385 Telephone: (888) 404-4975 Email: dn@danielananau.com
<b>External Investigations, Evidence or Litigation NOT related to BORROWER DEFENSE</b>	N/A
<b>News Articles/Media</b>	This <a href="#">press release</a> by the New York City DCA outlines its investigation and subsequent lawsuit against Berkeley College.  Several news outlets report about the lawsuit, including <a href="#">Inside Higher Ed</a> , and <a href="#">The Century Foundation</a> . The Century Foundation article reports that the New York City DCA received 169 complaints against for-profit schools, with 112 coming from Berkeley College students. Of those 112, 71 concerned misrepresentations made by the school to prospective students.
<b>Name of Reviewer</b>	Brian Gibbons
<b>Date Review Completed</b>	September 3, 2020

## SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p style="text-align: center;"><b><u>Summary of Allegations</u></b></p> <p>Borrower Defense reviewed a sample of 10 allegations of each category outlined below to identify potential trends and/or salient information provided by the applicant pool. The enrollment dates for the applicant pool range from November 6, 1990 through April 23, 2018, with the majority of applicants having enrollment dates between 2006 and 2012. The narrative allegations include complaints relating to: (i) misrepresenting the availability of job placement or career services assistance; (ii) misrepresenting the transferability of credits; and (iii) a lack of student loan counseling.</p> <p style="text-align: center;"><b><u>Employment Prospects</u></b></p> <p>Of the 10 allegations sampled, most of them allege that the school promised students job placement and/or career services assistance, but the students did not receive these services. Although that allegation asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p style="text-align: center;"><b><u>Program Costs</u></b></p>
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Of the 10 allegations sampled, most of them relate to complaints about a lack of counseling when taking out student loans (e.g. repayment and the repercussions of not paying off loans). These claims are not of the type that would warrant Borrower Defense relief absent a misrepresentation. Some borrowers note that the school promised them grants, but they did not receive those grants. Although that allegation asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

#### **Career Services**

Of the 10 allegations sampled, most allege that the school promised the availability of career services for graduating students, but that they did not receive such services. Some borrowers also allege that the school promised job placement services. Although that allegation asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

#### **Transferring Credits**

Of the 10 allegations sampled, most state that the school misrepresented the transferability of credits or mislead students as to the impact of the school's accreditation on transferability. Although that allegation asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

#### **Educational Services**

Of the 10 allegations sampled, most were complaints about the quality of the educational services, including their instructors. These claims are not of the type that would warrant Borrower Defense relief absent a misrepresentation. Some allegations provided that the school promised the availability for paid internships, which were not actually given. Although that allegation asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

#### **Admissions and Urgency to Enroll**

Of the 10 allegations sampled, most of them were complaints about the high-pressure recruitment tactics engaged in by the school. These claims are not

	the type that would warrant Borrower Defense relief absent a misrepresentation.
<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, it appears that there may be sufficient evidence of widespread misconduct by Berkeley College to warrant further investigation. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the school be provided notice of these allegations.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Sarah Angilello
<b>DATE:</b>	09/08/2020 (updated 11/20/2020)

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input checked="" type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input checked="" type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
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<b>Advanced Letter Requests</b>	<input checked="" type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: <ul style="list-style-type: none"> <li>•</li> </ul>
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Links:

- [Salesforce Allegation Report](#)

**DOE00010201-DOE00010205**





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## Initial Review of Mid-Size Batch Applications

### BACKGROUND

<b>Name of Institution and OPEID</b>	Brookline College 02218800
<b>Open or Closed</b>	Open
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • <b>Add closure date if applicable</b>	022188-00: Phoenix 022188-01: Mesa (Closed: 06/15/2001) 022188-02: Phoenix (Closed: 11/24/2006) 022188-04: Tempe 022188-05: Tucson 022188-06: Mesa 022188-07: Mesa 022188-08: Albuquerque 022188-09: Albuquerque (Closed: 04/15/2013) 022188-10: Albuquerque 022188-11: Albuquerque 040623-00: Oklahoma City, OK (Closed: 10/27/2013)
<b>Corporate Owner(s)</b>	Brookline College, LLC
<b>Total Number of Applications</b>	As of August 14, 2020, there are 98 applications.
<b>Internal ED Investigation(s)</b> • <b>PC, AAASG, OIG</b>	<p><b><u>Program Compliance</u></b> Program Reviews were conducted in 2005<sup>1</sup> and 2017.<sup>2</sup> The reviews found that Brookline College misrepresented its job placement rates to the auditor, however there was no evidence to suggest that Brookline made the same misrepresentations to students. Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.</p> <p><b><u>AAASG and OIG Investigations</u></b> Borrower Defense found a past AAASG finding, however it is unrelated to borrower defense. Borrower Defense found no past or present OIG investigations.</p> <p><b><u>OGC/DOJ</u></b> Borrower Defense found no past or pending OGC/DOJ investigations.</p>

<sup>1</sup> PRCN:2005-3-09-24114

<sup>2</sup> PRCN:2012-1-09-27729



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<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BORROWER DEFENSE</b>	Borrower Defense found no past or pending external investigations, evidence, or litigation related to borrower defense.
<b>External Contact(s) for Further Investigation</b>	N/A
<b>External Investigations, Evidence or Litigation NOT related to BD</b>	After review, Borrower Defense found no past or pending external investigations or litigation not related to Borrower Defense.
<b>News Articles/Media</b>	After review, Borrower Defense found no news articles related to Borrower Defense.
<b>Name of Reviewer</b>	Nastashia Matos
<b>Date Review Completed</b>	08/10/2020

### SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p style="text-align: center;"><b><u>Summary of Allegations</u></b></p> <p>Borrower Defense reviewed all ninety-eight applications to identify potential trends and/or salient information provided by the applicant pool. The enrollment dates for the applicant pool range from September 1, 1994 through May 22, 2019 with the majority of applicants having enrollment dates between 2006 and 2014. The narrative allegations include complaints relating to: (i) the promise of job placement; (ii) being told that the credits were able to transfer to other schools; and (iii) being told that they were getting grants.</p> <p style="text-align: center;"><b><u>Employment Prospects</u></b></p> <p>Of the ninety-eight applications, seventy-six applications made an employment prospects allegation. The narrative of the allegations include: (i) the promise to help student find a job; (ii) being told that they were guaranteed a job after completing the program; and (iii) being told that they would complete their GED while completing the program at Brookline College. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p style="text-align: center;"><b><u>Program Cost and Nature of Loans</u></b></p>
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Of the ninety-eight applications, sixty-one applications made a program cost and nature of loans allegation. The narrative of the allegations include: (i) the promise of grants; (ii) the promise that the tuition included all books, scrubs and everything needed to complete the program; and (iii) that Brookline College representatives never explained the actual cost of the program to the borrower. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

#### **Transferring Credits**

Of the ninety-eight applications, thirty-nine applications made a transferring of credits allegation. The narrative of the allegations include: (i) the promise that any credits obtain at Brookline will be able to transfer to any school; and (ii) Brookline College representatives told the borrower that the school was accredited. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

#### **Career Services**

Of the ninety-eight applications, sixty-five applications made a career services allegation. The narrative of the allegations include: (i) the promise of job placement; (ii) that Brookline would find the borrower a job; and (iii) that job placement was guaranteed. Although the allegation asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

#### **Education Services**

Of the ninety-eight applications, sixty applications made an education services allegation. The narrative of the allegations include: (i) the promise of externships; (ii) that the program would prepare them for them to become certified and sit for the state exam; and (iii) that Brookline College representatives told the borrower that they were affiliated with hospitals and would get them an externship there. Although the allegation asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

#### **Admissions and Urgency to Enroll**



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	<p>Of the ninety-eight applications, fifty-eight applications made an admissions and urgency to enroll allegation. The narrative of the allegations include: (i) the promise of grants; (ii) the promise that the tuition included all books, scrubs and everything needed to complete the program; and (iii) that Brookline College representatives never explained the actual cost of the program to the borrower. Although the allegation asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p style="text-align: center;"><b><u>Other</u></b></p> <p>Of the ninety-eight applications, fifty-eight applications made an other allegation. The narrative of the allegations include: (i) statements about the school closing; (ii) complaints about the lectures and curriculum taught at Brookline College; and (iii) statements about violating customer protection laws. These claims are not the type that would warrant Borrower Defense relief absent a misrepresentation.</p>
<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, there is insufficient evidence of widespread misconduct by Brookline College are to warrant further investigation. As such, it is recommended the cases be adjudicated.
<b>Recommended Focus Area(s)</b>	
<b>APPROVED BY:</b>	Linda Reid
<b>DATE:</b>	8/18/2020

<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings) and Department of Education internal resources (FRPDs, AASG, and OIG investigations), there is insufficient evidence of widespread misconduct Brookline College to warrant further investigation. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated. Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.
<b>Recommended Focus Area(s)</b>	
<b>APPROVED BY:</b>	Linda Reid





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**DATE:** 8/18/2020 (Updated 11/22/2020/0)

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input checked="" type="checkbox"/> No Other Evidence Considered
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<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus:
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**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- Advanced Letter (if applicable)
- Salesforce Allegation Report
- Program Review Report

**DOE00010297-DOE00010298**



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### Initial Review of Mid-Size Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Business Industrial Resources 03448300
<b>Open or Closed</b>	Closed (7/31/2018)
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	N/A
<b>Corporate Owner(s)</b>	Irene Zakron; Business Industrial Resources
<b>Total Number of Applications</b>	As of August 5, 2020, there are 25 applications already adjudicated and 12 applications awaiting adjudication.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p><b><u>Program Compliance</u></b> Program reviews were conducted in April 2008, February 2013 and February 2015. None of the findings were relevant to borrower defense.</p> <p><b><u>AAASG and OIG Investigations</u></b> Borrower Defense found no past or pending AAASG or OIG investigations.</p> <p><b><u>OGC/DOJ</u></b> Borrower Defense found no past or pending OGC/DOJ investigations.</p>
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BORROWER DEFENSE</b>	A review of publicly available information found no evidence related to Borrower Defense.
<b>External Contact(s) for Further Investigation</b>	N/A
<b>Name of Reviewer</b>	Serena Anand
<b>Date Review Completed</b>	8/5/2020

<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings) and Department of Education internal resources (FRPDs, AASG, and OIG investigations), there is insufficient evidence of widespread misconduct by Business Industrial Resources to warrant further investigation. If additional evidence is discovered or received
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	in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated.
<b>Recommended Focus Area(s)</b>	
<b>APPROVED BY:</b>	Linda Reid
<b>DATE:</b>	8/5/2020

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input checked="" type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input checked="" type="checkbox"/> No Other Evidence Considered
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<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: •
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**DOE00010339-DOE00010340**

**Initial Review of Medium Batch Applications****BACKGROUND**

<b>Name of Institution</b>	Career Institute of Health and Technology
<b>Corporate Owner(s)</b>	Computer Career Center, Inc.
<b>Open or Closed</b>	Closed
<b>Total Number of Applications</b>	51
<b>Patterns of Alleged Misconduct</b>	Inability to find employment, school closure.
<b>Evidence/Litigation</b>	None found.
<b>Name of Reviewer</b>	Kathy Ludunge
<b>Date Review Completed</b>	8/8/19

**SUMMARY APPLICATION OVERVIEW**

<b>BD Case Number</b>	<b>School/Campus listed on App</b>	<b>Program(s)</b>	<b>Year of Enrollment</b>	<b>Nature of Allegation(s)</b>	<b>Evidence</b>
01603554	Career Institute Of Health And Technology - (Brooklyn, NY)	Medical Assistant (Certificate)	2007	Employment Prospects, Program Cost, Educational Services, Career Services, Admissions	None
01262984	Career Institute Of Health And Technology - NY	Automotive Repair (Certificate)	2011	Employment Prospects, Program Cost, Educational Services, Career Services, Admissions, Other	None
01280698	Career Institute Of Health And Technology - (Brooklyn, NY)	Medical Assistant (Certificate)	2011	Employment Prospects, Program Cost, Educational Services, Career Services, Admissions,	None
01368438	Career Institute Of Health And Technology - (Brooklyn, NY)	Medical Assistant (Diploma)	2012	Employment Prospects	None
01378873	Career Institute Of Health And Technology - (Brooklyn, NY)	Medical Assistant (Certificate)	2009	Employment Prospects, Program Cost, Educational Services, Career Services, Admissions, Transferring Credits, Other	None
01416194	Career Institute Of Health And Technology - (Brooklyn, NY)	Medical Assistant (Certificate)	2010	Employment Prospects	None
01422971	Career Institute Of Health And Technology - (Brooklyn, NY)	Medical Assistant (Certificate)	2012	Other	None
01432599	Career Institute	Microsoft	2010	Employment Prospects,	None

	Of Health And Technology - (Brooklyn, NY)	Certified Systems Engineer Nt (Certificate)		Career Services, Admissions, Other	
01498552	Career Institute Of Health And Technology - (Brooklyn, NY)	Medical Assistant (Diploma)	2008	Employment Prospects, Educational Services, Career Services, Admissions, Transferring Credits	None
01582925	Career Institute Of Health And Technology - (Brooklyn, NY)	Medical Assistant (Certificate)	2013	Other	None

**RECOMMENDATION:**

Majority of claims are substantially similar to those seen in other JPR reviews and do not contain evidentiary support, so do not appear to be "self-approving". Generally, the claims do not reveal any specific pattern within the 10 claims sampled, except to the extent that most had multiple allegations.

Recommend review of all claims since there is no evidence of borrower litigation associated with this school and no evidence indicating the need for further investigation.

**APPROVED BY:** John Stephenson

**DATE:** 8/9/2019

**DOE00010341-DOE00010345**





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### Initial Review of Mid-Size Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Career Point College 02591100
<b>Open or Closed</b>	Closed October 16, 2016
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	02591101 Career Point College- Tulsa, OK 02591102 Career Point College- San Antonio, TX 02591103 Career Point College- Austin, TX
<b>Corporate Owner(s)</b>	Dickinson College of San Antonio, Incorporated dba Career Point, A Closely Held Corporation
<b>Total Number of Applications</b>	As of August 25, 2020, there are 437 applications.
<b>Patterns of Alleged Misconduct</b>	Career Point College does not have any current litigation pending. Based on a sample of 30 applications, the borrowers do not present evidence that indicate Career Point College committed overt or repetitive misconduct, fraud, or misrepresentations. The application narratives provide individual experiences, frustrations, or issues encountered as a customer of Career Point College. Additionally, although some of the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p><b><u>Program Compliance</u></b> Program reviews were conducted on March 24, 2014 and November 16, 1992, however, none of the findings were relevant to borrower defense.</p> <p><b><u>AAASG and OIG Investigations</u></b> Borrower Defense found no past or pending AAASG or OIG investigations.</p> <p><b><u>OGC/DOJ</u></b> Borrower Defense found no past or pending OGC/DOJ investigations.</p>
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BORROWER DEFENSE</b>	<p><a href="#"><u>Kinna, et al. v Dickinson of San Antonio, Inc et al.</u></a> Students filed a complaint against Career Point College alleging that the school engaged in false, misleading, and deceptive acts by representing to Plaintiffs that they would be eligible to obtain education service. The case is noted as</p>

	disposed in the Bexar County Court records. <sup>1</sup> There is no publicly available information regarding the disposition of the action.
<b>External Contact(s) for Further Investigation</b>	N/A
<b>External Investigations, Evidence or Litigation NOT related to BORROWER DEFENSE</b>	<a href="#">In re Dickinson of San Antonio, Inc., No. 16-52492-RBK, 2020 WL 3443920, at *1 (Bankr. W.D. Tex. June 23, 2020)</a> Suit by Career Point College alleging that a loan servicer engaged in a scheme to bypass federal student aid rules and defraud the college and the government. The College won the case and trustee for the college was awarded \$8 million.
<b>News Articles/Media</b>	<a href="#">52 Students Sue Career Point College for More than \$1 million</a> Students filed a complaint against the school after its closure. There were no further actions in that litigation after the filing of the complaint.  <a href="#">Former Career Point College Owner Settled Fraud Allegations</a> Plaintiffs alleged that they were able to identify at least \$3.5 million in “improper dividends” paid to the school’s owners over the four years prior to the college’s bankruptcy filing. The owners settled the case and denied all of the allegations raised in the lawsuit.  <a href="#">Career Point College filed for Bankruptcy</a> The school filed for bankruptcy in October 2016 reported assets of less than \$50,000 and liabilities ranging from \$1 million to \$10 million in the emergency Chapter 11 petition filed in U.S. Bankruptcy Court in San Antonio.
<b>Name of Reviewer</b>	Conor Kruger
<b>Date Review Completed</b>	8/25/2020

## SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p style="text-align: center;"><b><u>Summary of Allegations</u></b></p> <p>Borrower Defense reviewed a sample of 30 applications to identify potential trends and/or salient information provided by the applicant pool. The enrollment dates for the applicant pool range from June 1, 1989 through November 3, 2019, with the majority of applicants having enrollment dates between 2006 and 2012. The narrative allegations include complaints relating to: (i) the length of the course; (ii) the quality of the instructors; and (iii) the ability to obtain certification.</p>
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<sup>1</sup> [https://search.bexar.org/Case/CaseDetail?r=b834437f-9b4b-4119-a5d9-e26d9a685941&st=I&l=kinna&fn=christopher&m=&&p=2\\_2016CI18306++++DC0000100000](https://search.bexar.org/Case/CaseDetail?r=b834437f-9b4b-4119-a5d9-e26d9a685941&st=I&l=kinna&fn=christopher&m=&&p=2_2016CI18306++++DC0000100000)

**Admissions and Urgency to Enroll**

Of the 437 applications, 195 made allegations regarding Admissions and Urgency to Enroll. Of the 30 allegations in sampled applications, two are of the type that might warrant Borrower Defense relief, if supported by evidence. The borrowers allege that representatives misled them regarding scholarships and job placement during admissions interviews. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Career Services**

Of the 437 applications, 240 raise a career services allegation. Of the 30 allegations in sampled applications, ten are of the type that might warrant Borrower Defense relief, if supported by evidence. The borrowers in the sampled applications allege that they were guaranteed job placement, assistance with job placement, or that they would receive a certain job. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Educational Services**

Of the 437 applications, 180 raise an educational services allegation. Of the 30 allegations in sampled applications, ten are of the type that might warrant Borrower Defense relief, if supported by evidence. The borrowers' allegations discuss their issues with the misrepresentation of program length and instructor qualifications. Although the allegations asserted are of the type that might warrant Borrower Defense relief, borrowers failed to provide relevant supporting evidence with their claims and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct occurring at Career Point College.

**Employment Prospects**

Of the 437 applications, 298 raise an employment allegation. Of the 30 allegations in sampled applications, 13 are of the type that might warrant Borrower Defense relief, if supported by evidence. The borrowers allege that representatives lied about job placement assistance, employment outcomes, and guaranteed salaries. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Other**

Of the 437 applications, 337 raise an "other" allegation. Of the 30 allegations in sampled applications, one is of the type that might warrant

	<p>Borrower Defense relief, if supported by evidence. Most of the borrowers provided explanatory narratives relevant to the closure of the school and litigation involving the school. Borrowers have used this “other” section to echo allegations made in other sections regarding accreditation, certification, and fees associated with the school. In the sole allegation of the type that might warrant relief, the borrower alleges that they were misled about job placement assistance. Although the allegation asserted is of the type that might warrant Borrower Defense relief, the borrower failed to provide relevant supporting evidence with their claim and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct occurring at Career Point College.</p> <p style="text-align: center;"><b><u>Program Cost and Nature of Loans</u></b></p> <p>Of the 437 applications, 277 raise a program cost allegation. Of the 30 allegations in sampled applications, two are of the type that might warrant Borrower Defense relief, if supported by evidence. Most of the claims allege the school lied about the cost of attendance, did not properly explain the cost of attendance, or misled them regarding the amount of financial assistance a borrower would receive. Although the allegations asserted are of the type that might warrant Borrower Defense relief, borrowers failed to provide relevant supporting evidence with their claims and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct occurring at Career Point College.</p> <p style="text-align: center;"><b><u>Transferring Credits</u></b></p> <p>Of the 437 applications, 201 raise a transfer of credits allegation. Of the 30 allegations in sampled applications; 15 are of the type that might warrant Borrower Defense relief, if supported by evidence. In the allegations that might warrant Borrower Defense relief, borrowers allege that they were misled as to the transferability of credits, and the accreditation of the school. Although the allegations asserted are of the type that might warrant Borrower Defense relief, borrowers failed to provide relevant supporting evidence.</p>
<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, there is insufficient evidence of widespread misconduct Career Point College to warrant further investigation. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Sarah Angilello
<b>DATE:</b>	08/31/2020



<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input checked="" type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: •

**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- [Salesforce Allegation Report](#)

**DOE00010364-DOE00010367**

## Initial Review of Mid-Size Batch Applications

### BACKGROUND

<b>Name of Institution and OPEID</b>	Carrington College 00974800; 02100600; 02218000; 03042500
<b>Open or Closed</b>	Open
<b>Date Advanced Letter Sent</b>	N/A No approvals
<b>Additional Locations</b> • Add closure date if applicable	<a href="#">See Carrington College – Additional Locations</a>
<b>Corporate Owner(s)</b>	San Joaquin Valley College, Inc.
<b>Total Number of Applications</b>	As of March 31, 2020, there are 375 applications.
<b>Patterns of Alleged Misconduct</b>	The most common allegations concern promises of job placement or job placement assistance upon graduation.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p>A <a href="#">program review</a> was conducted at Carrington College Phoenix during the 2012-2013 and 2013-2014 award years, and found job placement misrepresentations involving 7 borrowers out of a sample of 30. The job placement representations were made in violation since graduates were either not employed in the field, not employed in the location listed in the graduate's file, or the placement was an externship and not a paid job. Carrington College addressed and resolved the discrepancies in their records and no additional action was taken against the school.</p> <p>Another <a href="#">program review</a> was conducted at Carrington College California during the 2012-2013 and 2013-2014 award years, however, none of the findings were relevant to borrower defense.</p>
<b>Internal Contact(s) for Further Investigation</b>	None.
<b>External Investigations (AG), Evidence or Litigation Related to BD</b>	None.
<b>External Contact(s) for Further Investigation</b>	None.
<b>External Investigations, Evidence or Litigation NOT related to BD</b>	None.
<b>News Articles/Media</b>	In 2018, an <a href="#">article</a> highlighted an alleged situation where Carrington College submitted paperwork for a federal Parent Plus loan on behalf of a student despite the student and parent claiming they never signed for it.

<b>Name of Reviewer</b>	Ashley Bykerk
<b>Date Review Completed</b>	3/31/2020

**SUMMARY OF ALLEGATIONS AND RECOMMENDATION**

<b>Summary of Allegations Reviewed</b>	<p><b><u>Allegation Type: Employment Prospects:</u></b> 315 out of 375 applications make allegations regarding employment prospects. Of the allegations sampled, the most common allegations concern promises of job placement or job placement assistance at the end of the program. A few allege they were promised to have jobs within 6 months of graduating from their programs with other borrowers allege representations made by the school regarding a job placement rate ranging from 90% to 98%. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p><b><u>Allegation Type: Program Costs and Nature of Loans:</u></b> 221 out of 375 applications make allegations regarding program costs and nature of loans. Of the allegations sampled, the most common allege that the school represented a specific price for the program but charged more than was initially discussed. Borrowers also make general allegations about the school's failure to explain how loans work and loan payments being too high. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p><b><u>Allegation Type: Transferring Credits:</u></b> 176 out of 375 applications make allegations regarding transfer of credits. Of the allegations sampled, the most common allege that the school represented that credits earned would be transferable to other colleges and universities even though borrowers later found out that credits would not transfer. Other borrowers allege that the school made omissions when it came to the transferability of credits or their accreditation type. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p><b><u>Allegation Type: Career Services:</u></b> 275 out of 375 applications make allegations regarding career services. Of the allegations sampled, the most common allegations allege that borrowers were promised job placement or job placement assistance but never received any help from the school. A borrower also alleged that he was told</p>
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	<p>their felony conviction would not be an issue in obtaining a job in his field even though this found to be untrue. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p><b><u>Allegation Type: Educational Services:</u></b>  218 out of 375 applications make allegations regarding educational services. Of the allegations sampled, the most common concern promises by the school about externship opportunities at the end of the program that ended up not being provided by the school. A few borrowers alleged that they were promised externships with Kaiser but were then told that the school had no connections with the medical provider. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p><b><u>Allegation Type: Admissions and Urgency to Enroll:</u></b>  192 out of 375 applications make allegations regarding the admissions process. Of the allegations sampled, the most common allege a rush to enroll based on representations that classes were starting soon and there was limited space availability. These claims are not of the type that would warrant BD relief absent a misrepresentation.</p> <p><b><u>Allegation Type: Other:</u></b>  238 out of 375 applications make allegations in the other category. The allegations sampled revealed that most concerned general dissatisfaction with the services provided by the school and general mentions of litigation against the school. These claims are not of the type that would warrant BD relief absent a misrepresentation.</p>
<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, there is insufficient evidence of widespread misconduct by Carrington College to warrant further investigation. As such, it is recommended the cases be adjudicated. Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Michael Page
<b>DATE:</b>	3/31/2020

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission
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	<input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input type="checkbox"/> <b>Evidence Obtained by the Department in conjunction with its regular oversight activities</b> <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: •

**Links:**

- [Salesforce Allegation Report](#)
- **Program Review Reports**
  - PRCN: [201440928688](#)
  - PRCN: [201430928576](#)
- [Carrington College – Additional Locations](#)

## 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
41.	DOE00010368-DOE00010371	Carrington College Memo
42.	DOE00010571-DOE00010572	Concorde Career Institute Memo
43.	DOE00010573-DOE00010575	Concorde Career Institute Memo
44.	DOE00010647-DOE00010649	Davenport Memo
45.	DOE00010738-DOE00010740	Eagle Gate College Memo
46.	DOE00010783-DOE00010791	Empire Beauty School Memo
47.	DOE00010792-DOE00010794	Empire Beauty School Memo
48.	DOE00010795-DOE00010796	Empire Beauty School Memo
49.	DOE00010818-DOE00010825	Everglades University Memo
50.	DOE00010834	Everglades University Memo
51.	DOE00010870	Florida Career College Memo
52.	DOE00010871-DOE00010874	Florida Career College Memo
53.	DOE00010957	Galiano Career Academy Memo
54.	DOE00010963-DOE00010966	Galiano Career Academy Memo
55.	DOE00011006-DOE00011008	Grantham Memo
56.	DOE00011207-DOE00011209	Institute for Business & Technology Memo

57.	DOE00011254	Iverson Institute Memo
58.	DOE00011259-DOE00011263	Iverson Institute Memo
59.	DOE00011330	Keller Memo
60.	DOE00011331-DOE00011340	Keller Memo



**DOE00010368-DOE00010371**



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**Initial Review of Mid-Size Batch Applications**

**BACKGROUND**

<b>Name of Institution and OPEID</b>	Carrington College 00974800 02100600 02218000 03042500
<b>Open or Closed</b>	Open
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	<a href="#">See Carrington College – Additional Locations</a>
<b>Corporate Owner(s)</b>	San Joaquin Valley College, Inc.
<b>Total Number of Applications</b>	As of March 31, 2020, there are 375 applications.
<b>Patterns of Alleged Misconduct</b>	The most common allegations concern promises of job placement or job placement assistance upon graduation.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p>A <a href="#">program review</a> was conducted at Carrington College Phoenix during the 2012-2013 and 2013-2014 award years, and found job placement misrepresentations involving 7 borrowers out of a sample of 30. The job placement representations were made in violation since graduates were either not employed in the field, not employed in the location listed in the graduate's file, or the placement was an externship and not a paid job. Carrington College addressed and resolved the discrepancies in their records and no additional action was taken against the school.</p> <p>Another <a href="#">program review</a> was conducted at Carrington College California during the 2012-2013 and 2013-2014 award years, however, none of the findings were relevant to borrower defense.</p>
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BD</b>	N/A
<b>External Contact(s) for Further Investigation</b>	N/A
<b>External Investigations, Evidence or Litigation NOT related to BD</b>	N/A
<b>News Articles/Media</b>	In 2018, an <a href="#">article</a> highlighted an alleged situation where Carrington College submitted paperwork for a federal Parent

	Plus loan on behalf of a student despite the student and parent claiming they never signed for it.
<b>Name of Reviewer</b>	Ashley Bykerk
<b>Date Review Completed</b>	3/31/2020

## SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p style="text-align: center;"><b><u>Employment Prospects:</u></b></p> <p>Of 375 applications, 315 make allegations regarding employment prospects. Of the allegations sampled, the most common allegations concern promises of job placement or job placement assistance at the end of the program. A few allege they were promised to have jobs within 6 months of graduating from their programs and other borrowers allege representations made by the school regarding a job placement rate ranging from 90% to 98%. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p style="text-align: center;"><b><u>Program Costs and Nature of Loans:</u></b></p> <p>Of 375 applications, 221 make allegations regarding program costs and nature of loans. Of the allegations sampled, the most common allege that the school represented a specific price for the program but charged more than was initially discussed. Borrowers also make general allegations about the school's failure to explain how loans work and loan payments being too high. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p style="text-align: center;"><b><u>Transferring Credits:</u></b></p> <p>Of 375 applications, 176 make allegations regarding transfer of credits. Of the allegations sampled, the most common allege that the school represented that credits earned would be transferable to other colleges and universities even though borrowers later found out that credits would not transfer. Other borrowers allege that the school made omissions when it came to the transferability of credits or their accreditation type. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p style="text-align: center;"><b><u>Career Services:</u></b></p> <p>Of 375 applications, 275 make allegations regarding career services. Of the allegations sampled, the most common allegations allege that borrowers were promised job placement or job placement assistance but never received any help from the school. A borrower also alleged that he was told</p>
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	<p>their felony conviction would not be an issue in obtaining a job in his field even though this was found to be untrue. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p style="text-align: center;"><b><u>Educational Services:</u></b></p> <p>Of 375 applications, 218 make allegations regarding educational services. Of the allegations sampled, the most common concern alleged promises by the school about externship opportunities at the end of the program that ended up not being provided by the school. A few borrowers alleged that they were promised externships with Kaiser but were then told that the school had no connections with the medical provider. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p style="text-align: center;"><b><u>Admissions and Urgency to Enroll:</u></b></p> <p>Of 375 applications, 192 make allegations regarding the admissions process. Of the allegations sampled, the most common allege a rush to enroll based on representations that classes were starting soon and there was limited space availability. These claims are not of the type that would warrant BD relief absent a misrepresentation.</p> <p style="text-align: center;"><b><u>Other:</u></b></p> <p>Of 375 applications, 238 make allegations in the other category. The allegations sampled revealed that most concerned general dissatisfaction with the services provided by the school and general mentions of litigation against the school. These claims are not of the type that would warrant BD relief absent a misrepresentation.</p>
<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, there is insufficient evidence of widespread misconduct by Carrington College to warrant further investigation. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated. Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Michael Page
<b>DATE:</b>	3/31/2020 (updated November 20, 2020)



<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: •

**Links:**

- [Salesforce Allegation Report](#)
- Program Review Reports
  - PRCN: [201440928688](#)
  - PRCN: [201430928576](#)
- [Carrington College – Additional Locations](#)

**DOE00010571-DOE00010572**

## **Initial Review of Medium Batch Applications**

### **BACKGROUND**

<b>Name of Institution</b>	Concorde Career Institute
<b>Corporate Owner(s)</b>	Concorde Careers-Florida, Inc.
<b>Open or Closed</b>	Open
<b>Total Number of Applications</b>	46
<b>Patterns of Alleged Misconduct</b>	School not accredited
<b>Evidence/Litigation</b>	N/A
<b>Name of Reviewer</b>	Maureen Taylor
<b>Date Review Completed</b>	08/14/2019

### **SUMMARY APPLICATION OVERVIEW**

<b>BD Case Number</b>	<b>School/Campus listed on App</b>	<b>Program(s)</b>	<b>Year of Enrollment</b>	<b>Nature of Allegation(s)</b>	<b>Evidence</b>
01147117	Concorde Career Institute (Fort Lauderdale, FL)	Medical Insurance Billing and Coding	05/01/2003	Other, Program Cost, Guaranteed Externship, Career Services	Emailed Statement
01241874	Concord Career Institute (Lauderdale Lakes)	Not listed	03/01/2004	Transferability, Other	Emailed Statement
01257385	Concord Career Institute (Tampa, FL)	Surgical Technology	01/02/2007	Guaranteed Job, Career Services, Teaching/Educational Services, Pressure to Enroll	Emailed Statement
01260144	Concord Career Institute (Orlando, FL)	Medical Assistant	01/01/2011	Career Services, Program Cost, Financial Aid, Transferability, Other, Pressure to Enroll	Emailed Statement
01265705	Concord Career Institute (Tampa, FL)	Surgical Technology	08/10/2010	Guaranteed Job, Program Cost, Financial Aid, Career Services, Pressure to Enroll, Other	Emailed Statement

01284736	Concorde Career Institute (Lauderlakes, FL)	Medical Assistant	04/02/2003	Career Services, Program Cost, Transferability, Other	Emailed Statement
01287241	Concorde Career Institute (Orlando, FL)	Medical Office Administration	10/01/2012	Career Services, Educational Services, Guaranteed Externship, Pressure to Enroll, Other	Emailed Statement
01355028	Concorde Career Institute (Tampa, FL)	Nursing	04/01/2010	Guaranteed Job, Other, Teaching/Educational Services,	Emailed Statement
01364729	Concorde Career Institute (Miramar, FL)	Medical Assistant	06/01/2008	Other, Program Cost, Financial Aid	Emailed Statement
01366973	Concorde Career Institute (Jacksonville, GA)	Medical Assistant	01/01/2002	Transferability, Other	Emailed Statement

### **RECOMMENDATION:**

Some applicants have made allegations about not being able to obtain employment because the school that they attended was not accredited. The applications reviewed however do not indicate that the school told them they were accredited and that it turned out to be false. No lawsuits against this school were discovered. Further investigation is not recommended at this time.

**APPROVED BY:** John Stephenson

**DATE:** 8/15/2019



**DOE00010573-DOE00010575**

## **Initial Review of Medium Batch Applications**

### **BACKGROUND**

<b>Name of Institution</b>	Concorde Career Institute/ Concorde Career College
<b>Corporate Owner(s)</b>	Concorde Careers-Florida, Inc.
<b>Open or Closed</b>	Closed
<b>Total Number of Applications</b>	36
<b>Patterns of Alleged Misconduct</b>	Guaranteed Job, Career Services
<b>Evidence/Litigation</b>	<p>The former president of Concorde Career Colleges Inc. alleged that “concerns he raised regarding the recruitment policies of the for profit school resulted in his termination in violation of the federal False Claims Act.” The school allegedly required “its recruiters to get a set number of students to enroll every week in addition to developing a program that tries to steer potential nursing students into less popular careers in order to increase enrollment in its other programs.”</p> <p><a href="https://www.whistleblowerattorneys-blog.com/concorde-career-colleges-inc-terminates-ceo-uncovers-fraud/">https://www.whistleblowerattorneys-blog.com/concorde-career-colleges-inc-terminates-ceo-uncovers-fraud/</a></p> <p>Two complaints were filed against the school however I am unable to access the court documents from the links below without creating a login</p> <p><a href="https://unicourt.com/case/ca-la23-zhoie-perez-vs-concorde-career-colleges-inc-189084">https://unicourt.com/case/ca-la23-zhoie-perez-vs-concorde-career-colleges-inc-189084</a></p> <p><a href="https://unicourt.com/case/ca-ora-mccoy-vs-concorde-career-colleges-805738">https://unicourt.com/case/ca-ora-mccoy-vs-concorde-career-colleges-805738</a></p>
<b>Name of Reviewer</b>	Maureen Taylor
<b>Date Review Completed</b>	1/28/2020

**SUMMARY APPLICATION OVERVIEW**

<b>BD Case Number</b>	<b>School/Campus listed on App</b>	<b>Program(s)</b>	<b>Year of Enrollment</b>	<b>Nature of Allegation(s)</b>	<b>Evidence</b>
01147117	Concorde Career Institute (Fort Lauderdale, FL)	Medical Insurance Billing and Coding	05/01/2003	Other, Program Cost, Guaranteed Externship, Career Services	Emailed Statement
01241874	Concord Career Institute (Lauderdale Lakes)	Not listed	03/01/2004	Transferability, Other	Emailed Statement
01257385	Concord Career Institute (Tampa, FL)	Surgical Technology	01/02/2007	Guaranteed Job, Career Services, Teaching/Educational Services, Pressure to Enroll	Emailed Statement
01260144	Concord Career Institute (Orlando, FL)	Medical Assistant	01/01/2011	Career Services, Program Cost, Financial Aid, Transferability, Other, Pressure to Enroll	Emailed Statement
01265705	Concord Career Institute (Tampa, FL)	Surgical Technology	08/10/2010	Guaranteed Job, Program Cost, Financial Aid, Career Services, Pressure to Enroll, Other	Emailed Statement
01284736	Concorde Career Institute (Lauderdale lakes, FL)	Medical Assistant	04/02/2003	Career Services, Program Cost, Transferability, Other	Emailed Statement
01287241	Concorde Career Institute (Orlando, FL)	Medical Office Administration	10/01/2012	Career Services, Educational Services, Guaranteed Externship, Pressure to Enroll, Other	Emailed Statement
01409902	Concorde Career Institute (Jacksonville, FL)	Dental Assistant	08/01/2015	Guaranteed Job, Program Cost, Other, Career Services	Emailed Statement
01364729	Concorde Career Institute (Miramar, FL)	Medical Assistant	06/01/2008	Other, Program Cost, Financial Aid	Emailed Statement
01366973	Concorde Career Institute (Jacksonville, GA)	Medical Assistant	01/01/2002	Transferability, Other	Emailed Statement

**RECOMMENDATION:**

The allegations made by the applicants vary but several related to Guaranteed Jobs and Career Services. However, none of the applicants provided any sufficient evidence related to the allegations. Some applicants also alleged that the school gave them false information regarding accreditation but no evidence was provided and research did not uncover any information. As stated above, the former president of Concorde Career Colleges Inc. alleged that “concerns he raised regarding the recruitment policies of the for profit school resulted in his termination in violation of the federal False Claims Act.” The school allegedly required “its recruiters to get a set number of students to enroll every week in addition to developing a program that tries to steer potential nursing students into less popular careers in order to increase enrollment in its other programs.” Research did not reveal any complaints related to these allegations. There were some complaints filed against the school but I was unable to access the documents listed above to determine the cause of action other than being related to labor law. Further investigation is not recommended.

**APPROVED BY: Alana Smith**

**DATE: 1/28/2020**



**DOE00010647-DOE00010649**

## Initial Review of Medium Batch Applications

### BACKGROUND

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

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

### SUMMARY APPLICATION OVERVIEW

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

				Pressure to Enroll	
01523524	Online	Medical Coding	2007	Other	Signed Statement

### RECOMMENDATION

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

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

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



**DOE00010738-DOE00010740**

## **Initial Review of Medium Batch Applications**

### **BACKGROUND**

<b>Name of Institution</b>	Eagle Gate College
<b>Corporate Owner(s)</b>	Bullen & Wilson, LLC
<b>Open or Closed</b>	Open
<b>Total Number of Applications</b>	18
<b>Patterns of Alleged Misconduct</b>	Bloated Job Placement Rates in Multiple Programs
<b>Evidence/Litigation</b>	None (Applications)
<b>Name of Reviewer</b>	Kendrick D. Holley
<b>Date Review Completed</b>	8/21/19

### **SUMMARY APPLICATION OVERVIEW**

<b>BD Case Number</b>	<b>School/Campus listed on App</b>	<b>Program(s)</b>	<b>Year of Enrollment</b>	<b>Nature of Allegation(s)</b>	<b>Evidence</b>
01266955	Eagle Gate College – Salt Lake City	Nursing (AAS)	2011	Employment Prospects Transferring Credits Admissions and Urgency to Enroll	Application
01400640	Eagle Gate College – Salt Lake City	Graphic Design (AAS)	2009	Employment Prospects Program Cost and Nature of Loans Transferring Credits Career Services Educational Services Admissions and Urgency to Enroll Other	Application
01498383	Eagle Gate College – Salt	Graphic Design (AAS)	2011	Employment Prospects	Application

	Lake City			Program Cost and Nature of Loans Career Services Educational Services Other	
01518497	Eagle Gate College – Salt Lake City	Paralegal Studies (AAS)	2009	Employment Prospects Program Cost and Nature of Loans Transferring Credits Career Services Admissions and Urgency to Enroll	Application
01599985	Eagle Gate College – Salt Lake City	Paralegal Studies (AAS)	2008	Employment Prospects Transferring Credits Career Services Educational Services Admissions and Urgency to Enroll	Application
01595808	Eagle Gate College – Salt Lake City	Personal Fitness Training (Diploma)	2013	Employment Prospects Educational Services Other	Application
01146518	Eagle Gate College – Layton	Medical Billing and Coding (Cert.)	2012	Employment Prospects Program Cost and Nature of Loans Career Services Educational Services	Application
01278270	Eagle Gate College – Layton	Medical Assistant (Cert.)	2016	Program Cost and Nature of Loans Educational Services	Application

				Admissions and Urgency to Enroll	
01284633	Eagle Gate College – Layton	Paralegal and Web and Animation (AAS)	2011	Employment Prospects Transferring Credits Career Services Educational Services	Application
01466295	Eagle Gate College – Layton	Personal Fitness Training (Cert.)	2011	Employment Prospects Program Cost and Nature of Loans Educational Services Transferring Credits Career Services Admissions and Urgency to Enroll Other	Application

**RECOMMENDATION:**

After reviewing the sample of students above from Eagle Gate College, there seemed to be a recurring theme in some of the applications alleging bloated job placement numbers from the admission counselors at the school. The claim was not limited to any particular program (in this sample there were the same claims in the Paralegal program as well as the Graphic Design program) or admission class (2009 & 2011 in this sample). In addition, the claims all specifically claimed they were guaranteed jobs and that the programs they were interested in had a 100% placement rate. This trend seemed peculiar, and was also reflected online at various complaint sites referencing Eagle Gate's admission practices. Unfortunately, most of the claims were stated to have been given verbally and a precursory search of the allegations did not turn up any files that may potentially be used to bolster the students' claim. Also, the number of claims about a 100% job placement rate is still a small minority of the claims reviewed. Currently, I do not recommend that further investigation is necessary and suggest that the claims be adjudicated as they are.

**APPROVED BY:** John Stephenson**DATE:** 8/22/2019



**DOE00010783-DOE00010791**



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## Initial Review of Mid-Size Batch Applications

### BACKGROUND

<b>Name of Institution and OPEID</b>	Empire Beauty School (49 listed Franchises. See attached document for individual OPEIDs.) <sup>1</sup>
<b>Open or Closed</b>	See Attached OPEID Document
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	<ul style="list-style-type: none"> <li>- Empire Beauty School – Flagstaff (OPEID- 01180800)</li> <li>- Empire Beauty School – Arvada (OPEID- 02072200)</li> <li>- Empire Beauty School – Thornton (OPEID-02160600)</li> <li>- Empire Beauty School – Lakewood (OPEID-01070900)</li> <li>- Empire Beauty School – Littleton (OPEID-02141100)</li> <li>- Empire Beauty Schools – (OPEID-02179600)</li> </ul>
<b>Corporate Owner(s)</b>	Each individual location, while under the franchise umbrella of Empire Beauty School, is independently owned and operated. Many locations have, or have had, multiple owners at any given time. While the individual schools (based on their OPEID numbers) are unique, many of them are owned, at least in part, by either EEG, Inc. or Empire Beauty School, Inc.
<b>Total Number of Applications</b>	There were 205 applications as of August 13, 2020 193 at Empire Beauty School Locations; 3 at Flagstaff; 1 at Arvada; 1 at Thornton; 1 at Lakewood; 3 at Littleton; 3 at Empire Beauty Schools.
<b>Patterns of Alleged Misconduct</b>	As detailed below, former students at the Empire Beauty School locations have made consistent allegations against the school. However, based on the applications, the borrowers do not present evidence that indicates that the Empire Beauty School locations listed above have committed overt or repetitive misconduct, fraud, or misrepresentations. The application narratives provide individual experiences, frustrations, or issues encountered as a customer of Empire Beauty School. Additionally, although some of the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence to establish a pattern or practice of this type of misconduct.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<b>AAASG/Debarment</b> In 2007, <a href="#">Ms. Janet Ferguson</a> was sent notice proposing to debar her from participation in all covered transactions under procurement and non-procurement programs and activities of any federal agency. As an Admissions Representative at Empire Beauty School in Harrisburg, PA, Ms. Ferguson plead guilty to Making False Statements in Federal Student Loan Applications and False Use of a Social Security Number. Under the first count, Ms. Ferguson admitted to knowingly and willfully making materially false statements in federal student loan and grant applications for the purpose of obtaining federal education benefits and with the intent to deceive. As a result of her guilty plea, Ms. Ferguson was sentenced to 14 months of imprisonment

<sup>1</sup> [Empire Beauty School OPEIDs](#)





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and was ordered to restitution to Empire Beauty School in the amount of \$9,191.36 and to the PA Department of Labor, \$9,204.00.

In 2011, Tara Wright, former Admissions Representative at Empire's Manhattan Campus enrolled ineligible students at Empire by creating and/or accepting fraudulent High School Diplomas and New York State General Equivalency Diplomas (GED), as well as falsifying registration and financial aid documents. She was debarred for her actions. On July 20, 2009, Wright was sentenced on felony charges of federal financial aid fraud in the United States District Court in the Southern District of NY.

On June 26, 2013, AAASG sent notice proposing to debar [Mr. David Benton](#) from receiving financial and non-financial assistance or benefits from any federal agency, under procurement and non-procurement programs and activities. As a former Admissions Representative for Empire Education Group-Bordentown, from about April 2, 2007 through March 9, 2009, Mr. Benton created false documents, made false statements on documents, accepted false documents, and forged documents necessary for students to obtain federal financial aid. As a result of his conviction for falsifying documents for students to obtain federal student aid, Mr. Benton was sentenced to, among other things, five years of probation, six months home confinement, and 300 hours of community service. Mr. Benton was also ordered to pay a \$15,000 fine and an assessment of \$100.00.

December 17, 2013, AAASG sent notice proposing to debar [Ms. Katie Champion](#) from receiving financial and non-financial assistance or benefits from any federal agency, under procurement and non-procurement programs and activities. Between December 21, 2007 and June 21, 2010, while employed as an admissions representative at Empire Beauty School, Ms. Champion created false documents, made false statements on documents, accepted false documents and forged documents necessary for students to obtain federal financial aid.<sup>2</sup>

#### **OIG Investigation**

Ineligible disbursements – one employee falsifying docs. 2015 (02149800)

PRCN: 201330228269

#### **Finding 1. Ineligible Disbursements**

The citation, 34 C.F.R. § 668.32(e), states that in order to receive Federal Student Aid funds, a student must be qualified to study at the Post-Secondary level. Empire had self-reported to the Office of Inspector General (OIG) that it believed an Admission Representative had admitted and enrolled students who did not have valid high school diplomas or valid GEDs. The OIG

<sup>2</sup> [AAASG Monthly Report June 2014](#), [AAASG Monthly Report September 2015](#)



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conducted an investigation into this individual and confirmed the fraudulent activity. Empire was required to provide documented evidence that the funds obtained from these falsified reports, totaling \$231,407.88, had been returned to the appropriate program for the students in question. The final determination stated that based on the documentation provided by Empire, the school must refund the Department \$33,687 in interest.

#### **OIG Investigation**

A 2011 OIG investigation revealed that Tara Wright, former Admissions Representative at Empire's Manhattan Campus enrolled ineligible students at Empire by creating and/or accepting fraudulent High School Diplomas and New York State General Equivalency Diplomas (GED), as well as falsifying registration and financial aid documents. Approximately \$200,000 in Federal Student Aid was disbursed on behalf of the ineligible students based on representations that they were high school graduates or had earned their GEDs. On July 20, 2009, Wright was sentenced on felony charges of federal financial aid fraud in the United States District Court in the Southern District of NY. OIG agents reviewed enrollment records for additional Admissions Representatives but did not find substantial evidence to warrant further investigation. However, the program review did find Empire to be in noncompliance with its campus security policies and distribution of an annual security report.

#### **PRCN: 201330228268 (02344200) (2015)**

##### **Finding 1: Ineligible Disbursements**

The citation, 34 C.F.R. § 668.32(e), states that in order to receive Federal Student Aid funds, a student must be qualified to study at the Post-Secondary level. Empire had self-reported to the Office of Inspector General (OIG) that it believed an Admission Representative had admitted and enrolled students who did not have valid high school diplomas or valid GEDs. The OIG conducted an investigation into this individual and confirmed the fraudulent activity. The investigation confirmed the employee assisted students in obtaining fraudulent GEDs and high school diplomas in order to register for classes at Empire. Empire provided documented evidence that \$385,297.08 from the list entitled "Confirmed Ineligible" has been returned to the appropriate program. The Department was able to confirm \$259,318.50 from the list entitled "Fake Camden High School Diplomas" was returned to the appropriate program. Empire provided further documentation confirming the funds have been returned to the Department. Based on the documentation submitted by Empire, Empire must refund \$80,405.39 in interest to the Department.

The 2013 OIG investigation revealed that a former Empire Admissions Representative at the Bordentown, New Jersey campus, David Benton,





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enrolled ineligible students at Empire by knowingly accepting fraudulent high school diplomas and New Jersey State General Equivalency Diplomas (GED). Based on a review of Empire's records and interviews conducted by EDOIG, EDOIG determined that Benton was responsible for at least 20 fraudulent enrollments. The total Title IV aid disbursed for these enrollments was \$247,694.84. On April 7, 2001, Benton plead guilty to an information for felony charges of Federal Student Aid fraud in the United States District Court in the District of New Jersey. In addition, a subsequent EDOIGs investigation lead to the arrest of Katie Champion, an Admissions Representative at the Cherry Hill campus. Champion also plead guilty to Federal Student Aid fraud in the United States District Court in the District of New Jersey. Based on Empire's review of enrollment records, EDOIG determined that Empire was responsible for a total of \$385,297.08 in Title IV disbursed for students who were ineligible based on fake proof of secondary education or whose eligibility was unable to be confirmed.

#### **Program Compliance**

##### **PRCN: 201020227160 (OPEID-02173200) (2011)**

This 2011 program review had two findings. The first was Crime Awareness Requirements Not Met and the second was Ineligible Student -High School Student. The nature of these findings do not indicate that this review is related to borrower defense.

##### **PRCN: 201220227827 (OPEID- 02079410 - formerly 01260500) (2017)**

#### **Finding 1. Inaccurate/Unsupported Attendance Records**

Empire Beauty School uses a system known as Time Star to record time and attendance for all of its students. The review of the institution and the Time Star program determined that the Time Star system is impacting the school's ability to properly monitor whether a student is making satisfactory academic process. In addition, it also affects Empire's ability to properly determine when a student has completed the required number of hours in a payment period and started another payment period.

In response to the findings, Empire agreed that the Time Star system had been erroneously set up in a manner that could result in a students receiving credit for "excess hours" if they clocked in before the scheduled time of their classes and that the "excess hours" could be credited to the students as "makeup" hours even when they had not missed classes. Empire ultimately modified the system to prevent this type of error from occurring again. They also reviewed their files to determine if there had been improper disbursements of Title IV funds to Empire due to the system error. The final determination was the Empire is liable for \$62,214.02 in returns due back to the Title IV programs. Although Empire failed to properly account for student attendance, this finding is outside the scope of borrower defense.



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	<p><b><u>PRCN: 201410228466 (OPEID-00966400) (2018)</u></b></p> <p>Finding 1. Incentive Compensation Violation</p> <p>Empire violated incentive compensation regulations when it provided employees directly involved in the enrollment and recruitment of students with yearly increases based in part on factors that consider the employee's success in recruiting and securing enrollments. The incentive compensation violation identified in this finding is a corporate-wide issue for all schools owned and operated by EEG, Inc. Although Empire violated the incentive compensation regulation, this finding is outside the scope of borrower defense.</p>
<b>Internal Contact(s) for Further Investigation</b>	Jacqueline Watford and Jane Eldred
<b>External Investigations (AG), Evidence or Litigation Related to BD</b>	A review of publicly available information found no evidence related to Borrower Defense.
<b>External Contact(s) for Further Investigation</b>	N/A
<b>External Investigations, Evidence or Litigation NOT related to BD</b>	<p><b><u>Jones v. EEG, INC., 2016 WL 1572901</u></b></p> <p>The plaintiffs in this lawsuit allege that Empire Beauty Schools systemically charge more for student-provided cosmetology services than the cost of the materials used in providing those treatments in violation of Pennsylvania and New Jersey state law. A settlement in the case was reached in the amount of \$6,750,000.</p>
<b>News Articles/Media</b>	<p><b>REGIS TO MERGE BEAUTY SCHOOLS INTO EMPIRE EDUCATION GROUP – 2007</b></p> <p>The Regis Corporation entered into an agreement to merge its 51 accredited cosmetology schools into Empire Education Group. Upon completion of the transaction, Regis Corporation will own a 49 percent minority interest in Empire Education Group.</p> <p><a href="https://www.sec.gov/Archives/edgar/data/716643/000110465907030693/a07-11872_1ex99.htm">https://www.sec.gov/Archives/edgar/data/716643/000110465907030693/a07-11872_1ex99.htm</a></p> <p>Empire Beauty School, Inc. Profile</p> <p><a href="https://www.bloomberg.com/profile/company/0835269D:US">https://www.bloomberg.com/profile/company/0835269D:US</a></p> <p><b>AG Secures \$900,000 to Help Students of Online Education Company</b></p> <p>An April 2018, press release put out by the Massachusetts Office of Attorney General Maura Healey mentioned that the MA AG's office "reached a settlement with Empire Beauty, a for-profit cosmetology school with locations in Boston, Framingham, and Malden, over allegations of failing to provide job placement rates to prospective students and engaging in excessive recruitment calls."<sup>3</sup></p>

<sup>3</sup> I was unable to find any evidence relating to this settlement.





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	<a href="https://www.mass.gov/news/ag-secures-900000-to-help-students-of-online-education-company">https://www.mass.gov/news/ag-secures-900000-to-help-students-of-online-education-company</a>
<b>Name of Reviewer</b>	Shana Metzger
<b>Date Review Completed</b>	08/24/2020

## SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p>As of August 13, 2020, there were 205 Borrower Defense applications filed against the Empire Beauty School franchises, with enrollment dates ranging from 1987 to 2020. The bulk of the applicants have enrollment start dates between 2003 and 2019. While the franchises are separate entities, the allegations across the locations were similar in nature.</p> <p><u>Admissions and Urgency to Enroll:</u> Of the 205 applications, 68 borrowers raised admissions and urgency to enroll allegations. Borrowers allege that various Empire Beauty School franchises used similar sales tactics that included pressuring potential students into enrolling quickly and offering incentive programs such as a discount on tuition if the borrower enrolled right then. These claims are not the type that would warrant Borrower Defense relief absent a misrepresentation.</p> <p><u>Career Services:</u> Of the 205 applications, 99 borrowers raised career services allegations. Borrowers allege that Empire Beauty School(s) failed to assist them with job placement, placed them in externships that they believed would lead to permanent positions but did not, made false promises regarding the types of connections that Empire Beauty School had with potential employers in the community, promised to assist them with interview skills and failed to prepare them for their board certification tests. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p><u>Educational Services:</u> Of the 205 applications, 94 of the borrowers' allegations discuss the quality of the education received, including misrepresentations as to the quality and qualifications of the instructors, the high turn-over rate of instructors, the student-teacher ratio being higher than promised, and the fact that the school stated that they offered state prep classes but did not. Although the allegation asserted may be relative to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p>
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Finally, several borrowers stated additional claims including bullying, inadequate accommodations for a borrower with a learning disability, and fraudulently signing documents on behalf of the borrower. While the potential for issues of harassment, discrimination and fraud need not be ruled out, these allegations are outside a Borrower Defense determination.

Employment Prospects:

Of the 205 applications, 134 borrowers raised employment prospect allegations. Borrowers allege that Empire lied about job placement rates, employment outcomes, job placement assistance, their network of potential employers in each city, and compensation rates upon completion of their course work. In addition, some borrowers claim that the school lied to them about their ability to be gainfully employed upon graduation due to their felony convictions. Borrowers have failed to provide any supporting evidence that exhibits a pattern of practice consistent with misconduct and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

Program Costs and Nature of Loans:

Of the 205 applications, 124 borrowers raised employment program costs and nature of loans allegations. Borrowers allege that the amount of tuition was one amount and later found out that it was considerably more, that they were not informed about the nature of the loans or how much the program would cost, that the school did not properly explain to them the nature of the loans when they asked, and that the school told them that all equipment would be covered in the tuition but were later made to pay for them separately. These claims are not the type that would warrant Borrower Defense relief absent a misrepresentation.

Finally, several borrowers have alleged that Empire signed for, and took out, loans in their name without the borrowers' knowledge or understanding and/or lied to them about nature and amounts of the loans. In addition, parent borrowers allege that they were unaware that they were taking out loans in their own names but believed that they were co-signing for loans in their child's name. These types of allegations are consistent with possible fraudulent activity associated various Empire franchisees' loan application and management practices. However, and while the potential for fraud need not be ruled out, these allegations pertain to a false certification of loans review and therefore, are outside a Borrower Defense determination.

Transferring Credits:

Of the 205 applications, 150 borrowers raised transferring credits allegations. Borrowers allege that Empire told them that their credits earned at other institutions would transfer over or that their credits were



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	<p>transferrable. However, they do not provide any evidence of the credits' purported transferability and therefore have not provided enough evidence that exhibits a pattern of practice consistent with misconduct and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct..</p> <p><u>Other:</u> Of the 205 applications, 112 borrowers raised "other" allegations. Borrowers provided explanatory narratives relevant to their personal experiences, addressing the implications of acquiring educational debt without secure employment, commenting on the quality of their educational experience, or detailing interpersonal relationship issues. The allegations do not suggest widespread misrepresentations or violations. These claims are not the type that would warrant Borrower Defense relief absent a misrepresentation.</p>
<b>Recommended Next Steps</b>	<p>In reviewing the allegations as a whole, a number of the types of allegations asserted by the borrowers are those that are consistent with possible harassment, discriminatory, or fraudulent activity associated various Empire franchisees' loan application and management practices. However, and while the potential for harassment, discrimination and fraud need not be ruled out, these allegations are outside a Borrower Defense determination.</p> <p>With that said, most of the allegations asserted may be relevant to Borrower Defense. However, based on public information (including public records, news articles, court documents, and filings), Department of Education internal resources (FPRDs, AAASG, and OIG investigations), and the review of the claims, there is insufficient evidence to suggest that the named Empire Beauty School franchises engaged in widespread conduct of a type that would warrant borrower defense relief. In addition, the borrowers fail to provide any supporting evidence to support the allegations. Without further evidence, it is recommended that the cases be adjudicated individually. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. Additionally, as there is no evidence of widespread misconduct, notice to the schools on these claims is not required.</p>
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Sarah Angilello
<b>DATE:</b>	08/24/2020 (Updated 11/22/2020)
<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission



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	<input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: •

**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- Advanced Letter (if applicable)
- Salesforce Allegation Report
  - [Cases with Allegations Report](#)
- Program Review Report

**DOE00010792-DOE00010794**

Empire Beauty School Locations – Evidence Considered Protocol

Applicable to:

Empire Beauty School- See Appendix A Below  
Empire Beauty School – Flagstaff (OPEID- 01180800)  
Empire Beauty School – Arvada (OPEID- 02072200)  
Empire Beauty School – Thornton (OPEID-02160600)  
Empire Beauty School – Lakewood (OPEID-01070900)  
Empire Beauty School – Littleton (OPEID-0214110)  
Empire Beauty Schools – (OPEID-02179600)

Entering Evidence Considered Manually:

1. Open a case with a suggested closing correspondence value of Standard Denial with Evidence Considered in status 3.10
2. In the “Evidence Considered” field on the case select the following:
  - a. Evidence obtained by the Department in conjunction with its regular oversight activities
3. The case is now ready to process following the normal borrower notification letter creation process.

Bulk Update Options:

1. Bulk update (by work ticket to Accenture) all Empire Beauty School cases in 3.10 with the following:
  - a. In the “Evidence Considered” dropdown, select “Evidence obtained by the Department in conjunction with its regular oversight activities.”
2. Process following the normal borrower notification letter creation process.

**APPENDIX A**



## EMPIRE BEAUTY SCHOOL - OPEIDs

	OPEID – Primary School	OPEID – Associated School
1	00757300 (14)	00757311 (1)
2	00817800 (11)	
3	00886500 (1)	
4	00902501 (1)	
5	00945900 (8)	
6	00966400 (9)	00966412(1)
7	00966500 (3)	
8	00966601 (1)	
9	00972200 (4)	00972201 (1)
10	00978300 (4)	
11	00987000 (3)	
12	01054100 (1)	
13	01054200(18)	01054208 (1) 01054210 (1)
14	01054300 (4)	01054301 (1)
15	01070900 (1)	
16	01102100 (3)	01102101 (1)
17	01102101 (1)	
18	01180800 (2)	01180802 (1)
19	01241400 (1)	
20	01260500 (1)	
21	01260600 (9)	01260601 (1) 01260602 (1) 01260610 (1) 01260613 (1)
22	01291400 (2)	
23	01291500 (1)	
24	01291600 (3)	
25	01291700 (1)	
26	01229100 (4)	
27	01301500 (2)	
28	02071900 (1)	
29	02076700 (3)	
30	02072200 (1)	
31	02079400 (11)	
32	02092200 (4)	
33	02141100 (3)	
34	02149000 (2)	
35	02149800 (2)	
36	02160600 (1)	01260613 (1)

37	02173200 (22)	
38	02176900 (1)	
39	02179600 (3)	
40	02220300 (4)	
41	02314200 (1)	
42	02324700 (4)	
43	02332100 (3)	
44	02334300 (2)	
45	02344200 (3)	
46	02345200 (1)	
47	02523100 (1)	
48	02607600 (6)	
49	03077600 (2)	

**DOE00010795-DOE00010796**

## **Initial Review of Small Batch Applications**

### **BACKGROUND**

<b>Name of Institution</b>	Empire Beauty School
<b>Corporate Owner(s)</b>	Empire Education Group
<b>Open or Closed</b>	Some campuses are closed
<b>Total Number of Applications</b>	6
<b>Evidence/Litigation</b>	<p>Plaintiff filed suit against the school alleging that the school “conducted wide scale telemarketing campaigns and repeatedly made unsolicited calls to consumers’ telephones- whose numbers appear on the National Do Not Call Registry- without consent, all in violation of the Telephone Consumer Protection Act.”</p> <p><a href="http://www.classactionsreporter.com/sites/default/files/empire_education_tcpa_complaint.pdf">http://www.classactionsreporter.com/sites/default/files/empire_education_tcpa_complaint.pdf</a>.</p>
<b>Name of Reviewer</b>	Maureen Taylor
<b>Date Review Completed</b>	1/7/2020

### **SUMMARY APPLICATION OVERVIEW**

<b>BD Case Number</b>	<b>Evidence</b>
01243067	Emailed Statement
01278300	Emailed Statement
01434276	Emailed Statement
01438340	Emailed Statement
01582948	Emailed Statement



**RECOMMENDATION:**

☒ I recommend the claims be adjudicated because I have been unable to locate any relevant evidence in support of the borrower's allegations.

☐ I recommend the Borrower Defense Unit investigate this school further because of the following evidence found:

[List evidence found and write a short recommendation]

As stated above, a Plaintiff filed suit against the school alleging that the school "conducted wide scale telemarketing campaigns and repeatedly made unsolicited calls to consumers' telephones- whose numbers appear on the National Do Not Call Registry- without consent, all in violation of the Telephone Consumer Protection Act." The allegations in this suit do not relate to any concerns that would suggest the school violated stated law as it pertains to enrolled students.

[http://www.classactionsreporter.com/sites/default/files/empire\\_education\\_tcpa\\_complaint.pdf](http://www.classactionsreporter.com/sites/default/files/empire_education_tcpa_complaint.pdf).

**APPROVED BY: Alana Smith**

**DATE:**

**DOE00010818-DOE00010825**



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### Initial Review of Medium Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Everglades University and Everglades College, d/b/a Keiser University <sup>1</sup> 02151900
<b>Open or Closed</b>	Open
<b>Date Advanced Letter Sent</b>	
<b>Additional Locations</b> • Add closure date if applicable	See Attachment A -Everglades University and Everglades College Additional Locations
<b>Corporate Owner(s)</b>	Everglades College, Inc.
<b>Total Number of Applications</b>	525 (as of 7/1/2020)
<b>Patterns of Alleged Misconduct</b>	Everglades College currently does not have any pending litigation and BD has not identified evidence that suggests that the Everglades is participating in fraudulent or illegal activity that would support borrower defense discharges. Based on a sample of 50 applications below, the borrowers do not present evidence that indicate Everglades committed misconduct, fraud, or misrepresentations. The application narratives provide individual experiences, frustrations, or misunderstandings encountered as a customer of Everglades.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<u>Program Compliance</u>  <u>AAASG and OIG Investigations</u>
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence</b>	<a href="#">Assurance of Voluntary Compliance, In the Investigation of Keiser University, et al, Case No. L10-3-1201</a> 10/25/2012 Settlement without an admission of guilt between the State of Florida and Everglades College over Florida's Deceptive and Unfair Trade Practices Act allegations.

<sup>1</sup> Everglades, Inc., owns both Everglades University and Keiser University. Everglades, Inc. purchased Keiser in 2011. The 2012 Florida Attorney General Assurance of Voluntary investigated practices at both Everglades University and Keiser University from before and after the sale. Our investigation did not reveal any evidence to establish a pattern or practice of misconduct occurring at Keiser prior to the purchase, outside of the Assurance of Voluntary Compliance noted above.



<b>or Litigation Related to BD</b>	<p>Everglades entered into the Assurance of Voluntary Compliance (AVC) without an admission that they violated Florida's Deceptive and Unfair Trade Practices Act, or any other law, and solely for the purpose of resolution of the matter with the Attorney General. The AVC established that Everglades would implement disclosure policies in several areas, including the transfer of credits, to the extent that they were not already in place.</p> <p>Pursuant to the AVC, Everglades offered a retraining program for students who attended Everglades during the "relevant period" of 1/1/2008-10/25/2012. The AVC states that Everglades "offered this definition in a show of good faith to their former students and in recognition of the current economic climate of the United States." (AVC Section 10(a)(ii), Page 7). The Department is not in possession of any evidence from the investigation at this time and the conclusions made in this memo were reached without access to such evidence.</p>
<b>External Contact(s) for Further Investigation</b>	N/A
<b>External Investigations, Evidence or Litigation NOT related to BD</b>	<p><a href="#">United States v. Everglades Coll., Inc., 855 F.3d 1279 (11th Cir. 2017)</a> Settlement without an admission of guilt between DOJ and Everglades College over False Claims Act allegations of incentive payments to admission counselors</p> <p><a href="#">Telephone Consumer Protection Act Class Action</a> On July 28, 2016 the Broward Palm Beach New Times wrote an article about a class action suit which contended that Keiser University was using recruiters (also known as admissions counselors) to make phone calls to prospective students. The article claims that the school violated the Telephone Consumer Protection Act by doing so because the recruiters pay was incentivized based on the number of student's they were able to enroll. In a statement from the university concerning this matter, the school denied all wrongdoing.</p>
<b>News Articles/Media</b>	<p><a href="https://www.prnewswire.com/news-releases/keiser-university-to-become-private-not-for-profit-university-114160804.html">https://www.prnewswire.com/news-releases/keiser-university-to-become-private-not-for-profit-university-114160804.html</a> 1/18/2011 Everglades College, Inc., the non-profit owner of Everglades University, acquired Keiser University.</p> <p><a href="#">Florida Attorney General Settlement</a> On October 31, 2012 the Southern Florida Sun Sentinel reported a settlement between Keiser and the Florida attorney general's office. The article discusses that the settlement was the result of an investigation into the admissions practice of Keiser University regarding inaccurate enrollment information. Students made allegations that Keiser was providing misleading information about it costs, accreditation, and the transferability of its credits. The settlement agreement provides that Keiser will not admit any fault for its actions but will provide former students with free retraining, and Keiser promises that its admission counselors will not make any misrepresentations concerning the programs that the school offers.</p>



	<p><u><a href="#">For-Profit to Non-Profit Transition</a></u></p> <p>On April 23, 2015 Michael Vasquez of the Miami Herald published an online article discussing the change of Keiser University' status from a for -profit institution to a non-profit institution. This article avers that Keiser's change in status was largely due to the Obama Administration's proposal to significantly limited federal funding for career training programs that schools like Keiser University featured. The article further notes how other similarly situated schools like Keiser felt that it was appropriate to switch their status for regulatory reasons and for the public perception reasons.</p>
<b>Name of Reviewer</b>	Conor Kruger
<b>Date Review Completed</b>	07/06/20

## SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p><u><b>Application Sample:</b></u></p> <p>Borrower Defense reviewed a sample of 50 allegations of each allegation type to identify potential trends in the applicant pool. The enrollment dates for Everglades College range from 1990 to 2019. The narratives in the reviewed applications provide commentary on the quality of education, the transferability of credits, and frustrations arising from the attendance at the school.</p> <p><u><b>Allegation Break Down</b></u></p> <p><u>Transferring Credits</u></p> <p>Of the 525 total applications, 272 raise a transfer of credits allegation. Of the 50 allegations in sampled applications; 26 allegations assert that Everglades specifically told Borrowers that credits were generally transferable, 10 allegations assert that Borrowers' Everglades credits did not transfer to other institutions but make no allegation as to any representations by the school, and 7 allegations assert that Borrowers were unable or had difficulty transferring credits from other institutions into Everglades including some cases where Everglades made representations to the contrary.</p> <p>Most of the claims are from borrowers who were enrolled in Everglades before the Assurance of Voluntary Compliance (AVC) was reached on 10/25/2012. Of the 272 transfer of credits allegations, 137 are from Borrowers who attended Everglades during the "relevant period" defined in the AVC. The Everglades applications are from borrowers who attended the school over a 29-year period yet over half of the transfer of credits allegations are from the four-year period defined as the "relevant period" in the AVC. In contrast, only 45 allegations are from Borrowers who attended Everglades after the "relevant period" and the AVC was reached between Everglades and the Attorney General for the State of Florida. Although the allegations asserted are of the type that might warrant BD relief, borrowers failed to provide relevant supporting evidence with their claims and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct occurring at Everglades.</p>
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Career Services

Of the 525 total applications, 314 raise a career services allegation. Of the 50 allegations in sampled applications, 14 are of the type that might warrant BD relief, if supported by evidence. The borrowers in the sampled cases allege that they were guaranteed job placement, assistance with job placement, or that they would receive a certain wage or job. Although the allegations asserted are of the type that might warrant BD relief, borrowers failed to provide relevant supporting evidence with their claims and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct occurring at Everglades.

Employment Prospects

Of the 525 total applications, 357 raise an employment allegation. Of the 50 allegations in sampled applications, 20 are of the type that might warrant BD relief, if supported by evidence. The borrowers allege that Everglades representatives lied about job placement assistance, employment outcomes, and the school's relationship with employers. The allegations made in the Employment Prospects claims are quite similar to and/or overlap with those made in the Career Services allegations and many of the allegations in both sections are made by the same borrowers. Borrowers in the sampled cases allege that they were guaranteed job placement, assistance with job placement, or that they would receive a certain wage or job. There are a similar number of Employment Prospect and Career Services throughout the total number of cases and the two have similar rates of relevant cases. Although the allegations asserted are of the type that might warrant BD relief, borrowers failed to provide relevant supporting evidence with their claims and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct occurring at Everglades.

Program Cost and Nature of Loans

Of the 525 total applications, 370 raise a program cost allegation. Of the 50 allegations in sampled cases, 14 are of the type that might warrant BD relief, if supported by evidence. Most of the claims allege that Everglades lied about the cost of attendance, did not properly explain the cost of attendance, or lied about the amount of financial assistance a borrower would receive. A few borrowers allege that they were not informed of payments they would have to make while still enrolled at Everglades. Although the allegations asserted are of the type that might warrant BD relief, borrowers failed to provide relevant supporting evidence with their claims and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct occurring at Everglades.

Educational Services

Of the 525 total applications, 250 raise an educational services allegation. Of the 50 allegations in sampled cases, 16 are of the type that might warrant BD relief, if supported by evidence. The allegations that are of the type that might warrant BD relief are those that allege that they were misled as to the school's accreditation or certification. The borrowers' allegations discuss the quality of the education received, including opinions on the qualifications of instructors, the availability of externships, and the quality of the curriculum. These claims are not the type that would warrant relief absent a misrepresentation.

	<p><u>Admissions and Urgency to Enroll Admissions</u> Of the 525 total applications, 305 raise an admissions allegation. Several borrowers allege that recruiters stated that there were a limited number of spaces filling up quickly and if the borrower failed to sign up that they would have to wait an extended period before enrolling. These claims are not the type that would warrant relief absent a misrepresentation.</p> <p><u>Other</u> Of the 525 total applications, 278 raise an “other” allegation. Of the 50 allegations in sampled cases, 2 are of the type that might warrant BD relief, if supported by evidence. These borrowers provided explanatory narratives relevant to their experiences with accreditation, litigation involving the schools, fees associated with the school. Although the allegations asserted are of the type that might warrant BD relief, borrowers failed to provide relevant supporting evidence with their claims and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct occurring at Everglades.</p> <p><u>Job Placement Rate</u> Of the 525 total applications, 2 raise a “job placement rate” allegation, both of which are of the type that might warrant BD relief, but are not supported by evidence.</p>
<b>Recommended Next Steps</b>	<p>The transfer of credits allegations suggest a pattern of misconduct relating to representations of the transferability of credits to and from Everglades; however, the borrowers do not provide any evidence of a pattern and FSA is not in possession of evidence from external investigations to corroborate the allegations.</p> <p>Accordingly, it is recommended that the cases be adjudicated using the standard protocol.</p>
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Sarah Angilello
<b>DATE:</b>	07/27/20

<b>Evidence Considered</b>	<p><input type="checkbox"/> Attorney Submission</p> <p><input type="checkbox"/> Borrower Submission</p> <p><input type="checkbox"/> Consumer Protection Financial Bureau (CPFB)</p> <p><input type="checkbox"/> Department of Education-Office of Investigator General (OIG)</p> <p><input type="checkbox"/> Documents Submitted by the school in response to your application</p> <p><input type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities</p> <p><input type="checkbox"/> Federal Trade Commission (FTC)</p> <p><input type="checkbox"/> Department of Justice (DOJ)</p> <p><input type="checkbox"/> U.S. Securities and Exchange (SEC)</p> <p><input type="checkbox"/> Attorney General _____ (state)</p>
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	<input type="checkbox"/> Other: Assurance of Voluntary Compliance, In the Investigation of Keiser University, et al, Case No. L10-3-1201 <input type="checkbox"/> No Other Evidence Considered
<b>Advanced Letter Requests</b>	Standard Letter: <input type="checkbox"/> N/A

**Links:** (In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.)

- [Salesforce Allegation Report](#)
- [Assurance of Voluntary Compliance, In the Investigation of Keiser University, et al, Case No. L10-3-1201](#)



**Attachment A- Everglades University and Everglades College Additional Locations**

3108500 Everglades University

3108502 Everglades University - Maitland

3108504 Everglades University - Miami

3108503 Everglades University - Tampa

3108501 Everglades University - Sarasota

02151900 Keiser University

02151901 Keiser University - Melbourne Campus

02151902 Keiser University - Tallahassee Campus

02151903 Keiser University - Sarasota Campus

02151904 Keiser University - Daytona Beach

02151905 Keiser College - Daytona Beach Campus

02151906 Keiser University – Lakeland

02151907 Keiser University - Sarasota SCTI Fire Academy

02151908 Keiser University - Miami Campus

02151909 Keiser University - Orlando

02151910 Keiser University – Jacksonville

02151911 Keiser University - Pt St Lucie

02151912 Keiser University - West Palm Beach

02151913 Keiser University - Pembroke Pine

02151914 Keiser University – Tampa

02151915 Keiser University – Miami

02151916 Keiser University - PSL – COG

02151917 Keiser University - Ft Myers

02151918 Keiser University - Tallahassee Additional Classrooms

02151919 Keiser University - San Marcos Nicaragua

02151920 Keiser University – Clearwater

02151921 Keiser University – NPR

02151922 Keiser University - Flagship (Residential)

02151923 Keiser University - Patrick Air Force Base

02151924 Keiser University – Naples

**DOE00010834-DOE00010834**

**Everglades College, Inc. – Evidence Considered Protocol**

Applicable to:

Everglades College  
Everglades University  
Keiser University

Entering Evidence Considered Manually:

1. Open a case with a suggested closing correspondence value of Standard Denial with Evidence Considered in status 3.10
2. In the “Evidence Considered” field on the case select the following:
  - a. Evidence obtained by the Department in conjunction with its regular oversight activities
3. In the “Other Evidence” field on the case input the following:
  - a. [nothing is needed to be entered into this field for Everglades College, Inc.]
4. The case is now ready to process following the normal borrower notification letter creation process.

Bulk Update Options:

Bulk update (by work ticket to Accenture) all Everglades College, Inc. cases in 3.10 with the following:

- a. In the “Evidence Considered” dropdown, select “Evidence obtained by the Department in conjunction with its regular oversight activities.”
2. Process following the normal borrower notification letter creation process.



**DOE00010870-DOE00010870**

### Florida Career College – Evidence Considered Protocol

#### Applicable to:

Florida Career College

#### Entering Evidence Considered Manually:

1. Open a case with a suggested closing correspondence value of Standard Denial with Evidence Considered in status 3.10
2. In the “Evidence Considered” field on the case select the following:
  - a. Evidence obtained by the Department in conjunction with its regular oversight activities
3. In the “Other Evidence” field on the case input the following:
  - a. Britt v. IEC d.b.a. Florida Career College (S.D. Fla, April 20, 2020)
  - b. Ortiz v. IEC Corporation (S.D.Fla-Miami, May 15, 2019)
4. The case is now ready to process following the normal borrower notification letter creation process.

#### Bulk Update Options:

Bulk update (by work ticket to Accenture) all Florida Career College cases in 3.10 with the following:

- a. In the “Evidence Considered” dropdown, select “Evidence obtained by the Department in conjunction with its regular oversight activities.”
  - b. In the “Other Evidence” field on input the following:
    - i. Britt v. IEC d.b.a. Florida Career College (S.D. Fla, April 20, 2020)
    - ii. Ortiz v. IEC Corporation (S.D.Fla-Miami, May 15, 2019)
2. Process following the normal borrower notification letter creation process.

**DOE00010871-DOE00010874**

## Initial Review of Medium Batch Applications

### BACKGROUND

<b>Name of Institution and OPEID</b>	Florida Career College 02305800
<b>Open or Closed</b>	Open
<b>Additional Locations</b> • Add closure date if applicable	<a href="#">Florida Career College Campus Locations</a>
<b>Corporate Owner(s)</b>	International Education Corporation -2014 to present Anthem Education Group-2012-2014
<b>Total Number of Applications</b>	As of May 1, 2020, there are 374 applications.
<b>Patterns of Alleged Misconduct</b>	Based on a sample of 30 applications, the borrowers do not present evidence that indicate Florida Career Colleges (FCC) committed overt or repetitive misconduct, fraud, or misrepresentation. The application narratives provide individual experiences, frustrations, or misunderstandings encountered as a student of FCC. Additionally, although some of the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p><b><u>Program Compliance</u></b> After review, Borrower Defense found no past or pending Final Program Review Determinations (FRPD).</p> <p><b><u>AAASG and OIG Investigations</u></b> On March 14, 2013, OIG published a ROI against two campuses of Florida Career College as part of a larger operation investigating fraudulent production of high school diplomas and misrepresentation of high school graduate status amongst for-profit universities. The report indicated that both the Lauderdale Lakes and Pembroke Pines campuses of FCC were involved in these practices.</p> <p><b><u>OGC/DOJ</u></b> After review, Borrower Defense found no past or pending OGC/DOJ investigations.</p>
<b>Internal Contact(s) for Further Investigation</b>	None.
<b>External Investigations (AG), Evidence or Litigation Related to BD</b>	Former students filed a <a href="#">lawsuit</a> alleging that the school promised job placement, high salaries, and career services assistance, but failed to deliver on the promises. <sup>1</sup> The complaint also alleges the school engaged in predatory admissions practices and targeted minorities for enrollment. The case remains pending.

<sup>1</sup> Britt v. IEC d.b.a. Florida Career College (S.D. Fla. April 20, 2020).



	Former Campus Program Manager at FCC – Miami filed a <a href="#">qui tam</a> alleging FCC knowingly falsified: attendance and retention records, student grades, class schedules, delayed student withdrawals all to receive Title IV funding. Additionally, she claims that FCC induced students to enroll through misrepresentation by telling non-English speaking students that proficiency in English was not an obstacle, knowingly enrolled students without high school diplomas or the equivalent, and awarded incentive pay to admissions officials. The lawsuit was dismissed. <sup>2</sup>
<b>External Contact(s) for Further Investigation</b>	None.
<b>External Investigations, Evidence or Litigation NOT related to BD</b>	Former employees file <a href="#">class action</a> lawsuit alleging discrimination by the school based on race and national origin, failure to pay lawful overtime compensation, and wrongful terminated of employment. <sup>3</sup>  Legal <a href="#">complaint</a> filed by former students alleged that FCC failed to provide students with a safe environment and failed to properly control and discipline allegedly dangerous students as well as warning students of these allegedly dangerous students after a student was injured by another student at the school.
<b>News Articles/Media</b>	<a href="#">Articles discussing</a> a raid conducted by the FBI against two campuses of Florida Career College in 2012. Undercover agents <a href="#">found</a> that FCC employees were forging high school diplomas and telling prospective students to lie about their high school diploma statuses.  NPR published an <a href="#">article</a> on May 8, 2020 summarizing the Britt v. IEC Corporation complaint regarding misrepresentations related to employment prospects.
<b>Name of Reviewer</b>	Ashley Bykerk
<b>Date Review Completed</b>	5/8/2020

## SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p>Borrower Defense reviewed a sample of 30 allegations for each of the seven allegation types to identify potential trends and/or salient information provided by the applicant pool.</p> <p><b><u>Allegation Type: Employment Prospects</u></b></p> <p>295 out of 374 applications make allegations regarding employment prospects. Of the allegations sampled, the most common concern promises of job upon program completion. Others allege challenges with obtaining employment after completion of their programs. A couple allegations claim that the school advertised the availability of licensing programs, yet the students failed to obtain necessary licenses after completing the program. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p>
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<sup>2</sup> Ortiz v. IEC Corporation (S.D. Fla. May 15, 2019).

<sup>3</sup> Metayer v. IEC US Holdings, Inc. et al., 0:18-CV-60545 (S.D. Fla. March 13, 2018).

**Allegation Type: Program Cost and Nature of Loans**

261 out of 374 applications make allegations regarding program cost and nature of loans. Of the allegations sampled, the most common concern the school's failure to explain the price of education and the types of loan/grant/scholarship options available. Some of the borrowers also allege that they were told that they could pay off their loans interest free within a certain period after graduation. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Allegation Type: Transferring Credits**

213 out of 374 applications make allegations regarding transfer of credits. These allegations generally allege misrepresentations regarding the transferability of credits earned at the school. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Allegation Type: Career Services**

232 out of 374 applications make allegations regarding career services. Of the allegations sampled, the most common allege that the school promised jobs or assistance with finding employment even though borrowers were later unable to find employment. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Allegation Type: Educational Services**

203 out of 374 applications make allegations regarding educational services. Of the allegations sampled, the most common concern overall dissatisfaction with the quality of education. Many borrowers alleged misrepresentations regarding the availability and nature of externships, and others claim that the education provided did not adequately prepare them to work in their intended fields. Although some of the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Allegation Type: Admissions and Urgency to Enroll**

225 out of 374 applications make allegations regarding the admissions process. Of the allegations sampled, borrowers primarily alleged that they were rushed during the enrollment process and were generally made to feel that spots were limited. These claims are not of the type that would warrant BD relief absent a misrepresentation.

**Allegation Type: Other**

248 out of 374 applications make allegations in the other category. Of the allegations sampled, the most common allegations elaborate on frustrations with the school. Many of these allegations mention FBI activity related to the school and the closures of specific campuses. These claims are not of the type that would warrant BD relief absent a misrepresentation.

<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, there is insufficient evidence of widespread misconduct by Florida Career College to warrant further investigation. As such, it is recommended the cases be adjudicated. <sup>4</sup> Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.
<b>Recommended Focus Area(s)</b>	None.
<b>APPROVED BY:</b>	Alana Smith
<b>DATE:</b>	5/8/2020

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input checked="" type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered

<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: <ul style="list-style-type: none"> <li>•</li> </ul>
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**Links:**

- [Salesforce Allegations Report](#)
- [Florida Career College Campus Locations](#)

<sup>4</sup> The Borrower Defense Unit will monitor the progress of Britt vs. IEC Corporation. Should evidence arise that would change the final recommendation, the Borrower Defense Unit will revisit these claims.

**DOE00010957-DOE00010957**



### **Galiano Career Academy – Evidence Considered Protocol**

Applicable to:

**Galiano Career Academy**

Entering Evidence Considered Manually:

1. Open a case with a suggested closing correspondence value of Standard Denial with Evidence Considered in status 3.10
2. In the “Evidence Considered” field on the case select the following:
  - a. Evidence obtained by the Department in conjunction with its regular oversight activities
3. In the “Other Evidence” field on the case input the following:
  - a. [nothing is needed to be entered into this field]
4. The case is now ready to process following the normal borrower notification letter creation process.

Bulk Update Options:

1. Bulk update (by work ticket to Accenture) all **Galiano Career Academy** cases in 3.10 with the following:
  - a. In the “Evidence Considered” dropdown, select “Evidence obtained by the Department in conjunction with its regular oversight activities.”
2. Process following the normal borrower notification letter creation process.

**DOE00010963-DOE00010966**

**Initial Review of Mid-Size Batch Applications****BACKGROUND**

<b>Name of Institution and OPEID</b>	Galiano Career Academy 03866300
<b>Open or Closed</b>	Closed (7/9/2010)
<b>Date Advanced Letter Sent</b>	N/A (Closed)
<b>Additional Locations</b> • Add closure date if applicable	N/A
<b>Corporate Owner(s)</b>	Anthony Galiano
<b>Total Number of Applications</b>	As of September 3, 2020, there are 0 applications already adjudicated and 42 applications awaiting adjudication.
<b>Patterns of Alleged Misconduct</b>	Galiano Career Academy does not have any current litigation pending. Based on a sample of 10 allegations of each category, the borrowers do not present evidence that indicates Galiano Career Academy committed overt or repetitive misconduct, fraud, or misrepresentations. The application narratives provide individual experiences, frustrations, or issues encountered as a customer of Galiano Career Academy. Additionally, although some of the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p><b><u>Program Compliance</u></b> A program review was conducted in 2009, however, none of the findings were relevant to borrower defense.</p> <p><b><u>AAASG and OIG Investigations</u></b> Borrower Defense found no past or pending AAASG or OIG investigations.</p> <p><b><u>OGC/DOJ</u></b> Borrower Defense found no past or pending OGC/DOJ investigations.</p>
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BORROWER DEFENSE</b>	A review of publicly available information found no evidence related to Borrower Defense.
<b>External Contact(s) for Further Investigation</b>	N/A
<b>External Investigations, Evidence or Litigation</b>	N/A

<b>NOT related to BORROWER DEFENSE</b>	
<b>News Articles/Media</b>	<p>Galiano Career Academy enrolled numerous students in Federal Student Aid through false certification violations.</p> <ul style="list-style-type: none"> <li>• <a href="#"><u>Former President Of Galiano Career Academy Agrees To Plead Guilty To Theft Of Federal Funds, Obstruction, And Aggravated Identity Theft.</u></a></li> <li>• <a href="#"><u>Former President Of Galiano Career Academy Sentenced For Theft Of Federal Funds, Obstruction Of A Federal Audit, And Aggravated Identity Theft</u></a></li> </ul> <p>Former Director of the Galiano Career Academy, Michael Gagliano, used Columbus academy, a high school “diploma mill” owned and operated by his wife to make students eligible for federal student aid when they otherwise would not have been qualified. Investigations found Gagliano used the name and social security number of students to collect student aid even after the students left the institution. Gagliano was ultimately sentenced to four years in prison in addition to court ordered restitution and a money judgment of the proceeds of the charged criminal conduct.</p>
<b>Name of Reviewer</b>	Robert Martin
<b>Date Review Completed</b>	9/4/2020

## SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p style="text-align: center;"><b><u>Summary of Allegations</u></b></p> <p>Borrower Defense reviewed a sample of 10 allegations of each category outlined below to identify potential trends and/or salient information provided by the applicant pool. The enrollment dates for the applicant pool range from August 1, 2004 through February 1, 2012, with most applicants having enrollment dates between 2007 and 2009. The narrative allegations include complaints relating to: (i) false certification claims; (ii) being told credits could be used to further education; and (iii) job placement promises.</p> <p style="text-align: center;"><b><u>Employment Prospects:</u></b></p> <p>Based on 10 allegations reviewed, borrowers allege that the institution would provide job placement and the borrower would be able to find a job within their field. The borrowers additionally provide allegations of false certification and allude to law suits unrelated to Borrower Defense. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct. Additionally, while the potential for fraud need not be ruled</p>
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out, these allegations pertain to a false certification of loans and therefore, are outside a Borrower Defense determination.

**Program Costs and Nature of Loans:**

Based on the 10 allegations reviewed, borrowers most commonly allege that that the institution provided misleading information on the cost of education and reference the president's illegal activity mentioned above in News Articles/Media. These claims are not of the type that would warrant Borrower Defense relief absent a misrepresentation. Additionally, while the potential for fraud need not be ruled out, these allegations pertain to a false certification of loans and therefore, are outside a Borrower Defense determination.

**Transferring Credits:**

Based on the 10 allegations reviewed, borrowers most commonly allege that the institution misrepresented that its credits would transfer, and borrowers could further their education. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Career Services:**

Based on the 10 allegations reviewed, borrowers most commonly allege that the institution misrepresented its relationship with employers in the field and the guarantee of employment. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Educational Services:**

Based on the 10 allegations reviewed, borrowers most commonly allege that the institution promised externship opportunities and failed to provide them. Additionally, borrowers report that school pushed students through without high school diplomas. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Admissions and Urgency to Enroll:**

Based on the 10 allegations reviewed, borrowers most commonly allege that the institution rushed through the process and used pressure sales tactics to induce enrollment. These claims are not of the type that would warrant Borrower Defense relief absent a misrepresentation.

**Other:**

Based on the 10 allegations reviewed, borrowers most commonly reference the fraud and illegal schemes undertaken by the institution's owner and

	president. While the potential for fraud need not be ruled out, these allegations pertain to a false certification of loans and therefore, are outside a Borrower Defense determination.
<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, there is insufficient evidence of widespread misconduct Galiano Career Academy to warrant further investigation. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated.
<b>Recommended Focus Area(s)</b>	
<b>APPROVED BY:</b>	Kathryn Johnson
<b>DATE:</b>	September 6, 2020 (updated November 23, 2020)

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
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<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: <ul style="list-style-type: none"> <li>•</li> </ul>
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**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- [Salesforce Allegation Report](#)

**DOE00011006-DOE00011008**

## Initial Review of Medium Batch Applications

### BACKGROUND

<b>Name of Institution</b>	Grantham University
<b>Corporate Owner(s)</b>	Grantham Education Corporation
<b>Open or Closed</b>	Open
<b>Total Number of Applications</b>	19
<b>Patterns of Alleged Misconduct</b>	Unmet Promises for Transferring Credits including Transferring In
<b>Evidence/Litigation</b>	None relevant to potential BD claims (Some claims about deceptive practices in recruiting. Article here:  <a href="https://www.republicreport.org/2018/ftc-shuts-down-for-profit-college-recruiters-posing-as-u-s-military/">https://www.republicreport.org/2018/ftc-shuts-down-for-profit-college-recruiters-posing-as-u-s-military/</a> )
<b>Name of Reviewer</b>	Kendrick D. Holley
<b>Date Review Completed</b>	8/29/19

### SUMMARY APPLICATION OVERVIEW

<b>BD Case Number</b>	<b>School/Campus listed on App</b>	<b>Program(s)</b>	<b>Year of Enrollment</b>	<b>Nature of Allegation(s)</b>	<b>Evidence</b>
01254560	Grantham University – Lenexa, KS	Business Administration IT (Bachelor)	2017	Program Cost and Nature of Loans	Application
01294729	Grantham University – Lenexa, KS	Undecided	2013	Employment Prospects Program Cost and Nature of Loans Transferring Credits Career Services Educational Services Admissions and Urgency to Enroll	Application
01294744	Grantham	Criminal Justice	2016	Employment	Application



	University – Lenexa, KS	(Bachelor)(From Program & Credentials. No CCI Data or Program on Application)		Prospects Program Cost and Nature of Loans Transferring Credits Career Services Educational Services Admissions and Urgency to Enroll	
01385404	Grantham University – Lenexa, KS	Medical Billing and Coding (AS)	2013	Employment Prospects Other	Application
01413045	Grantham University – Lenexa, KS	Business Administration (Master)	2004	Employment Prospects Program Cost and Nature of Loans Transferring Credits Admissions and Urgency to Enroll	Application
01424356	Grantham University – Lenexa, KS	Business	2016	Other	Application
01428730	Grantham University – Lenexa, KS	Multidisciplinary Studies Engineering Management Technology (Bachelor)	2009	Employment Prospects Transferring Credits Career Services Educational Services Admissions and Urgency to Enroll Other	Application
01432443	Grantham University – Lenexa, KS	Medical Billing (AS)	2012	Employment Prospects Transferring Credits Admissions and Urgency to Enroll Other	Application
01437194	Grantham	Business	2014	Transferring	Application

	University – Lenexa, KS	Administration (AS)		Credits	
01478151	Grantham University – Lenexa, KS	Medical Billing and Coding (AAS)	2015	Employment Prospects Program Cost and Nature of Loans Transferring Credits Career Services Admissions and Urgency to Enroll Other	Application

### **RECOMMENDATION:**

After reviewing the sample of students above from Grantham University there were not many recurring themes present. The one that showed up several times in the sample was the challenge students were facing transferring their credits elsewhere. Several claim that the transferability of their credits was guaranteed by the school prior to, or, during their enrollment and when they attempted to exercise this benefit, they were outwardly denied. In one case, a student claims Grantham University promised them that they would be able to transfer their credits in after attending a different school prior to Grantham University, only to have their credits rejected after they enrolled. There were also several other individual claims that were notable, but too infrequent to claim they are a trend. For example, one applicant claimed they were guaranteed a job at graduation, while another claims that the school excessively garnished loan payments without consent from the student, and yet another claims that their credentials to attend the school were accepted and then rejected midway through the academic year after already taking classes and paying the full tuition. The claims about credit transferability seem to be frequent enough to evaluate further, but with no lawsuits, commonality among the programs or enrollment year, or evidence or supporting documents supporting this claim, it is difficult to see a way forward with those claims. Due to the lack of prevalent theme for these individual claims and lack of evidence for the transferability claims, I recommend that further investigation is not necessary.

**APPROVED BY: John Stephenson**

**DATE: 9/3/2019**

**DOE00011207-DOE00011209**

**Initial Review of Mid-Size Batch Applications****BACKGROUND**

<b>Name of Institution and OPEID</b>	Institute for Business & Technology 02128300
<b>Open or Closed</b>	Open
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	02128301 – National Career Education 02129302 – Lamson Institute
<b>Corporate Owner(s)</b>	<p>Institute for Business and Technology, Inc.</p> <ul style="list-style-type: none"> <li>- Mikhail Education Corporation <ul style="list-style-type: none"> <li>o Mikhail Family Partnership <ul style="list-style-type: none"> <li>▪ Peter Mikhail</li> <li>▪ Sally M. Bemis</li> </ul> </li> </ul> </li> </ul> <p>Note: Between June 1985 and December 2004, National Career Education (a subsidiary of Delta Career Education Corporation) owned Institute for Business and Technology. Institute of Business and Technology falls outside of the scope for Borrower Defense's investigation into Delta Career Education Corporation and therefore is subject to this independent investigation.</p>
<b>Total Number of Applications</b>	As of September 9, 2020, there are applications 28 already adjudicated and five applications awaiting adjudication.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p><b><u>Program Compliance</u></b></p> <p>Program reviews were conducted in 1994, 2002, and 2010, however, none of the findings were relevant to borrower defense.</p> <p><b><u>AAASG and OIG Investigations</u></b></p> <p>Borrower Defense found no past or pending AAASG or OIG investigations.</p> <p><b><u>OGC/DOJ</u></b></p> <p>Borrower Defense found no past or pending OGC/DOJ investigations.</p>



<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BORROWER DEFENSE</b>	A review of publicly available information found no evidence related to Borrower Defense. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated.
<b>External Contact(s) for Further Investigation</b>	N/A
<b>Name of Reviewer</b>	Robert Martin
<b>Date Review Completed</b>	9/10/2020

<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings) and Department of Education internal resources (FRPDs, AASG, and OIG investigations), there is insufficient evidence of widespread misconduct by Institute for Business & Technology to warrant further investigation. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated. Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Ashley Ogbonna
<b>DATE:</b>	09/10/2020 (updated November 20, 2020)

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input checked="" type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state)
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	<input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
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<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: <ul style="list-style-type: none"> <li>•</li> </ul>
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**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- Salesforce Allegation Report
- Program Review Report

**DOE00011254-DOE00011254**

### **Iverson Institute – Evidence Considered Protocol**

#### Applicable to:

Iverson Institute

#### Entering Evidence Considered Manually:

1. Open a case with a suggested closing correspondence value of Standard Denial with Evidence Considered in status 3.10
2. In the “Evidence Considered” field on the case select the following:
  - a. Evidence obtained by the Department in conjunction with its regular oversight activities
3. In the “Other Evidence” field on the case input the following:
  - a. [nothing is needed to be entered into this field for Iverson Institute]
4. The case is now ready to process following the normal borrower notification letter creation process.

#### Bulk Update Options:

Bulk update (by work ticket to Accenture) all Iverson Institute cases in 3.10 with the following:

- a. In the “Evidence Considered” dropdown, select “Evidence obtained by the Department in conjunction with its regular oversight activities.”
2. Process following the normal borrower notification letter creation process.



**DOE00011259-DOE00011263**



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### **Initial Review of Mid-Size Batch Applications**

#### **BACKGROUND**

<b>Name of Institution and OPEID</b>	Iverson Institute a.k.a Iverson Business School and Court Reporting 02580100
<b>Open or Closed</b>	Open
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	02580101 - Iverson Institute – Chamblee, GA; Open  02580102 - Iverson Business School and Court Reporting – Arlington, TX; Closed (9/27/2013)
<b>Corporate Owner(s)</b>	Level 1 – Silicon Valley, Inc. (100%) Level 2 – Akber Mithani (100%)
<b>Total Number of Applications</b>	As of May 5, 2020, there are 19 applications.
<b>Patterns of Alleged Misconduct</b>	
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p><b><u>Program Compliance</u></b></p> <p>The Department of Education conducted a program review and published its Final Program Review Determination of the Iverson Institute on November 23, 2016. The Final Program Review Determination included the following findings with final determinations:</p> <ul style="list-style-type: none"> <li>- Students enrolled in unapproved programs received Title IV funds in violation of 34 C.F.R. § 600.20 (c)(3) and 34 C.F.R. § 600.20 (f).</li> <li>- Iverson Institute failed to keep current records of its administration of the Title IV program, including its disbursements and delivery of funds, in violation of 34 C.F.R. § 668.16 and 668.24.</li> <li>-Iverson Institute failed to pay credit balances to students in violation of 34 C.F.R. § 668.164(e)(1)&amp;(2).</li> <li>-Iverson Institute enrolled students without a high school diploma or its recognized equivalent in violation of 34 C.F.R. § 668.32(a)(2)(e)(1).</li> </ul> <p>Additionally, the program review notes Iverson’s provision certificate was revoked on October 15, 2014 and that the institution is no longer eligible to participate in the Title IV program.</p>

	<p>The above findings do not relate to BD and do not warrant further investigation.</p> <p><b>AAASG:</b> N/A</p> <p><b>OIG:</b> N/A</p>
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BD</b>	<p>Azlin, et al. v. Silicon Valley, Inc., Civil Action No. 4:08-cv-000284-Y (April 30, 2008).</p> <p>Twenty-three named plaintiffs alleged claims against the defendant, Silicon Valley, Inc., d/b/a Iverson Business School, for violations of the Texas Deceptive Trade Practices Act and breach of contract. Plaintiffs alleged that Iverson Business School made misrepresentations regarding employment prospects, career services, transferring credits, and educational services that induced them to enroll in the school. The parties settled out of court and the defendant was required to pay the plaintiffs pursuant to the settlement agreement.</p> <p>- Given that the parties settled out of court and the allegations in the complaint are too vague to evidence any misconduct by the school, <i>see Plaintiff's Original Petition</i> at 3-4, this complaint does not provide sufficient evidence to substantiate the BD applicants' allegations nor does it warrant further investigation since there is no additional information.</p>
<b>External Contact(s) for Further Investigation</b>	N/A
<b>External Investigations, Evidence or Litigation NOT related to BD</b>	<p>Lowery v. Iverson Institute, 13M31539 (Ga. Magistrate Court, filed July 29, 2013).</p> <p>This was a small civil suit decided in favor of the defendant, Iverson Institute. There is nothing about this case that suggests it is related to Borrower Defense.</p>
<b>News Articles/Media</b>	N/A
<b>Name of Reviewer</b>	Jacob Jarred
<b>Date Review Completed</b>	5/5/2020

## SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p style="text-align: center;"><b><u>Summary of Allegations</u></b></p> <p>There are 19 applications as of May 5, 2020 against Iverson Institute. The borrowers asserting these claims were enrolled from as early as 1992 to as late as 2015. Ten claims, or the number of claims submitted for each type of allegation if less than ten, were reviewed for each type of allegation. Allegations included:</p> <p style="text-align: center;"><b><u>Career Services</u></b></p>
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Of the 19 applications submitted, 11 applicants made allegations regarding career services. The borrowers claims relating to career services are unsubstantiated, inconsistent with one another, and/or do not demonstrate a pattern of misconduct by the school. For example, two borrowers in a sample of ten claimed that the school offered career services that it did not follow through with. One of these borrowers describes an admissions person telling him that the school conducted annual job fairs though it did not,<sup>1</sup> while the other borrower describes reaching out for promised career services and not receiving any.<sup>2</sup> Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

#### **Transferring Credits**

Of the 19 applications submitted, nine applicants made allegations regarding transferring credits. Five borrowers in a sample of nine claimed that they were promised their credits could transfer to another university despite that they could not.<sup>3</sup> Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

#### **Admissions and Urgency to Enroll**

Of the 19 applications submitted, 13 applicants made allegations regarding admissions and urgency to enroll. The claims include allegations that the school offered discounted rates on admission for immediate enrollment,<sup>4</sup> that there were limited spots to enroll,<sup>5</sup> that Iverson Institute offered a unique program,<sup>6</sup> and that Iverson Institute was the cheapest option for its programs.<sup>7</sup> None of the borrowers sampled provided relevant supporting evidence. The borrowers allegations alone do not provide support for misconduct relevant to borrower defense.

#### **Other**

There is a group of claims brought by borrowers against Iverson Institute that is not actionable under the BD regulation. Three borrowers claimed that they spoke to an admissions person regarding whether or not it would be an issue that they did not have a high school diploma or its equivalent. They were promised that they would earn their diploma through Iverson Institute. After enrolling, the school did nothing to assist these borrowers in getting their

<sup>1</sup> Salesforce Allegations Report, Case Number 01998533.

<sup>2</sup> Salesforce Allegations Report, Case Number 01245392.

<sup>3</sup> Salesforce Allegations Report, Case Numbers 01402997, 01533519, 01998533, 01583044, 02134170.

<sup>4</sup> Salesforce Allegations Report, Case Number 01402997.

<sup>5</sup> Salesforce Allegations Report, Case Number 01379110.

<sup>6</sup> Salesforce Allegations Report, Case Number 01432499.

<sup>7</sup> Salesforce Allegations Report, Case Number 01533519.



	diplomas. <sup>8</sup> However, while the potential for fraud need not be ruled out, these allegations are outside a Borrower Defense determination.
<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, there is insufficient evidence of widespread misconduct Iverson Institute to warrant further investigation. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated using the standard protocol. The claims generally do not demonstrate a pattern of misconduct by the school. Furthermore, there is no evidence to support the claims. Though <i>Azlin, et al. v. Silicon Valley, Inc.</i> seems like it might support some of the borrowers' claims, it was settled out of court and provides no evidence to that end. It is also worth noting that none of the plaintiffs in that lawsuit are BD applicants.  Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Sarah Angilello
<b>DATE:</b>	05/12/20 (updated November 21, 2020)

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Federal Trade Commission <input type="checkbox"/> Department of Justice <input type="checkbox"/> Securities and Exchange Commission <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Consumer Financial Protection Bureau <input checked="" type="checkbox"/> ED - FSA/OIG <input type="checkbox"/> Other
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<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: •
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**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- [Salesforce Allegation Report](#)
- [Program Review Report](#)

<sup>8</sup> Salesforce Allegations Report, Claim Numbers 01404124, 01604926, 02136104.



**DOE00011330-DOE00011330**

**Keller Graduate School of Management – Evidence Considered Protocol**

Applicable to:

Keller Graduate School of Management

Entering Evidence Considered Manually:

1. Open a case with a suggested closing correspondence value of Standard Denial with Evidence Considered in status 3.10
2. In the “Evidence Considered” field on the case select the following:
  - a. Evidence obtained by the Department in conjunction with its regular oversight activities
3. The case is now ready to process following the normal borrower notification letter creation process.

Bulk Update Options:

1. Bulk update (by work ticket to Accenture) all Keller Graduate School of Management cases in 3.10 with the following:
  - a. In the “Evidence Considered” dropdown, select “Evidence obtained by the Department in conjunction with its regular oversight activities.”
2. Process following the normal borrower notification letter creation process.



**DOE0001131-00011340**



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### Initial Review of Medium Batch Applications

#### BACKGROUND

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

<sup>1</sup> See Attachment A: Keller Graduate School of Management Locations.

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

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

#### SUMMARY OF ALLEGATIONS AND RECOMMENDATION

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

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

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

<sup>6</sup> See Attachment C: Keller Graduate School of Management Summary of Application Overview

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

Program Cost and Nature of Loans: 426 allegations

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

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



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

<b>Evidence Considered</b>	<p><input type="checkbox"/> Attorney Submission</p> <p><input type="checkbox"/> <b>Borrower Submission</b></p> <p><input type="checkbox"/> <b>Evidence Obtained by the Department in conjunction with its regular oversight activities</b></p> <p><input type="checkbox"/> Federal Trade Commission</p> <p><input type="checkbox"/> Department of Justice</p> <p><input type="checkbox"/> Securities and Exchange Commission</p> <p><input type="checkbox"/> Attorney General _____ (state)</p> <p><input type="checkbox"/> Consumer Financial Protection Bureau</p> <p><input type="checkbox"/> ED - FSA/OIG</p> <p><input type="checkbox"/> Other</p>
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Attachment A:

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

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

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01497289	Martin Oloyede	Open
01536610	Nathalie A. Yeka	Open
01357947	Tristen Keith Wilson	Open
01395834	Emmanuel T. Makari	Open
01373933	Victor P. Sekgantso	Open
01325018	Candance D. Smith	Open
02028380	Alan Ta	Open
01483392	Sharonda Monique' Ford	Open
01464123	Jayson R. Fox	Open
01376523	Courtney Frazier	Open
02105111	Nathaniel Jones	Open
01467302	Derrick Milan Keith	Open
01404956	Andres Orlando Salazar	Open
01372594	Scott Anthony Sullivan	Open
01379962	Sean Monyese Williams	Open
01478559	Richard A Shaw	Open
01411595	Heather M. Emmons	Open
01240869	Ruben A. Espinoza	Open
01376578	Barrie Bergans	Open
01375978	David Michael Corvin	Open
01607080	Bobby Garza	Closed
01383764	Kevin Michael Guest	Open
01367463	Teneika L. Tillis	Open
01376566	Billy Jerome Morris	Open
01306556	Eddie Silas	Open
01403434	Tuwandra L. Harris	Open
01904328	Joshua A Palczynsky	Open
01527803	Ebony R. Ijeh	Open

Attachment C:

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

## 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
61.	DOE00011396-DOE00011403	Lacy Cosmetology School Memo
62.	DOE00011421	Lawton School Memo
63.	DOE00011426-DOE00011429	Lawton School Memo
64.	DOE00011569-DOE00011570	Masters of Cosmetology Memo
65.	DOE00011572-DOE00011574	Mattia College Memo
66.	DOE00011608-DOE00011609	Meridian University Memo
67.	DOE00011644-DOE00011647	Micropower Career Institute Memo
68.	DOE00011707-DOE00011711	Missouri Technical School Memo
69.	DOE00011746-DOE00011752	Morris Brown College Memo
70.	DOE00011761-DOE00011765	Mountain State Univ. Memo
71.	DOE00011953-DOE00011956	Ohio Media School Memo
72.	DOE00012087-DOE00012088	Pinnacle Career Institute Memo
73.	DOE00012245-DOE00012248	Remington College Memo
74.	DOE00012388-DOE00012389	San Diego College Memo
75.	DOE00012560-DOE00012561	Southwest Memo
76.	DOE00012629-DOE00012633	Stenotype Institute of Jacksonville Memo



77.	DOE00012658	Strayer Memo
78.	DOE00012664-DOE00012668	Strayer Memo
79.	DOE00012673-DOE000012675	Suburban Technical School Memo
80.	DOE00012822-DOE00012824	Touro College memo

**DOE00011331-DOE00011340**



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### Initial Review of Medium Batch Applications

#### BACKGROUND

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

<sup>1</sup> See Attachment A: Keller Graduate School of Management Locations.

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

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

#### SUMMARY OF ALLEGATIONS AND RECOMMENDATION

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

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

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

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Attachment C:

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



**DOE00011396-DOE00011403**



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**Initial Review of Mid-Size Batch Applications**

**BACKGROUND**

<b>Name of Institution and OPEID</b>	Lacy Cosmetology School 03513300
<b>Open or Closed</b>	Closed – 3/11/2014
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	03513301 – Lacy Cosmetology School – Lexington, SC (closed 3/11/2014)  03513302 – Lacy Cosmetology School – Goose Creek, SC (closed 3/11/2014)  03513303 – Lacy Cosmetology School – Charleston, SC (closed 3/11/2014)
<b>Corporate Owner(s)</b>	Lacy School of Cosmetology LLC (100%) • Ernest J Lacy (100% owner of Lacy School of Cosmetology LLC)
<b>Total Number of Applications</b>	As of October 20, 2020, there is one application already adjudicated and 48 applications awaiting adjudication.
<b>Patterns of Alleged Misconduct</b>	Lacy Cosmetology School does not have any current litigation pending. Based on a sample of ten allegations of each category, the borrowers do not present evidence that indicates Lacy Cosmetology School committed overt or repetitive misconduct, fraud, or misrepresentations. The application narratives provide individual experiences, frustrations, or issues encountered as a customer of Lacy Cosmetology School.  Although some of the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct. Additionally, while the potential for fraud need not be ruled out, some allegations pertain to a false certification of loans and therefore, are outside a Borrower Defense determination.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<b><u>Program Compliance</u></b> In 2011, the Department conducted a Program Review at Lacy Cosmetology School, the <a href="#">Final Program Review Determination</a> (“FPRD”) was issued January 6, 2015. The FPRD consisted of 18 findings, one of which is relevant to Borrower Defense - finding 8: Ineligible Program. The FPRD identified that LCS

	<p>disbursed Pell grant funds to a student in an Advanced Cosmetology Program, which was an ineligible program.<sup>1</sup></p> <p>Lacy Cosmetology School disputed the finding arguing the Advanced Cosmetology program was within the scope of its training and that it has both state and accrediting agency approval. Additionally, LCS stated that it did not have to update the Eligibility Certification Approval Report (“ECAR”)<sup>2</sup> until its next normal recertification process.</p> <p>Lacy Cosmetology School’s provisional program participation agreement (“PPA”)<sup>3</sup> at the time of program review was provisionally certified and because of the provisional status the school is required to obtain approval from the Department before disbursing Title IV funds to students enrolled in a new education program. Lacy Cosmetology School failed to submit a report of all students that were disbursed Title IV funds while enrolled in the Advanced Cosmetology program beginning with the 2009-2010 award year through the current award year. The Department determined that all funds disbursed to the students in question for the 2009-2010 and 2010-2011 award years are a liability. The Department determined that all funds distributed to students during the award years 2009-2010 and 2010-2011 were unlawfully distributed for students enrolled in the advanced cosmetology program and the funds should be returned to the Department.</p> <p><b><u>AAASG and OIG Investigations</u></b></p> <p>As a result of the 2011 program review determinations, a <a href="#">letter</a> was sent from the Department to Lacy Cosmetology School revoking Lacy Cosmetology School’s provisional program participation agreement (PPA effective March 7, 2014). The revocation occurred due to the discovery of Lacy Cosmetology School’s non-compliance with Department regulations. Specifically, the letter identified that the revocation of Lacy Cosmetology School PPA was due to the findings of the</p>
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<sup>1</sup> A file review of all students enrolled in the advanced cosmetology program was requested by the department and was never completed by LCS.

<sup>2</sup> An Eligibility Certification Approval Report or ECAR is a Department report that indicates what programs are authorized to receive Title IV funds. The ECAR contains the most critical of the data elements that form the basis of the school’s approval and also a list of the highest level of offering, any nondegree program or short-term programs, and any additional location that have been approved for SFA programs.

<sup>3</sup> Institutions must enter into a program participation agreement with the department to obtain Title IV funds. Each PPA executed by an institution includes an agreement by the Institution to comply with the terms and conditions that the institution must meet to participate in the Title IV program. Compliance with a PPA and the incorporated regulations and statutes is a condition of participation and payment for Title IV funds. An Institution that makes a request to draw Title IV funds certifies that it will disburse the funds in compliance with the PPA.



	<p>program review conducted in 2011 that included Finding 8 of the PRR. Finding 8 stated that Lacy Cosmetology School was offering and disbursing Title IV funds to students enrolled in an unapproved program, Advanced Cosmetology.</p> <p><b><u>OGC/DOJ</u></b> Borrower Defense found no past or pending OGC/DOJ investigations.</p>
<b>Internal Contact(s) for Further Investigation</b>	Lauren Pope
<b>External Investigations (AG), Evidence or Litigation Related to BORROWER DEFENSE</b>	<p><a href="#">United States ex rel. Mayers v. Lacy Sch. of Cosmetology, LLC</a>, No. 1:13-CV-00218-JMC, 2015 WL 8665345 (D.S.C. Dec. 14, 2015)</p> <p>United States District Court, D. South Carolina, Aiken Division granted Plaintiff's Motion for Default Judgment against Lacy School of Cosmetology and Earnest Lacy for violation of the False Claims Act. Plaintiffs' claims included defendant's misappropriation of FSA funds, making unauthorized disbursements of FSA funds, failing to refund student credit balances, and concealing the fraud by falsifying records and submitting false statements of compliance to the Department. The lawsuit and included claims are not relevant to Borrower Defense or are claims or allegations of false certification of loans and are outside the scope of a Borrower Defense determination.</p> <p><a href="#">Complaint &amp; Demand for Jury Trial, United States ex rel. Mayers v. Lacy Sch. of Cosmetology, (2013) (CA No. 1:13-cv-00218-JMC).</a></p> <p>The <a href="#">complaint</a>, filed by the plaintiff Shawn Mayers on behalf of himself and the United States of America, includes counts for discrimination based on race, creating false documents and records, stealing unearned Title IV funds, receiving payment of federal funds in exchange for pirated textbooks, and retaliation. The lawsuit and included claims are not relevant to Borrower Defense or are claims or allegations of false certification of loans and are outside the scope of a Borrower Defense determination.</p> <p><a href="#">Intervenor Complaint, United States ex rel. Mayers v. Lacy Sch. Of Cosmetology, (2015) (CA NO: 1:13-cv-00218-JMC).</a></p>



	<p>The <a href="#">intervenor complaint</a>, filed by the United States of America, includes counts for presenting false claims, making false statements and records, reverse false claims, payment by mistake of fact, unjust enrichment, and conversion. The intervenor complaint included examples of the defendants' false statements and claims including the following: (1) Defendants engaged in a scheme to defraud the government by receiving federal program funding they would not otherwise have been entitled to; (2) Each time the Defendants obtained federal funds from the G5 system<sup>4</sup>, they certified compliance with program requirements.; (3) Defendants' Falsely represented that they were complying with the program participation agreements<sup>5</sup> when in fact they were not; (4) Defendants' false statements in signing the program participation agreements induced the government to allow LSC to participate and be eligible to apply for Title IV funds. Additionally, the complaint alleged that LSC failed to properly disburse Student Credit Balances and converted funds, made false documents, records, and statements in connection with the Departments' program review, LSC wrongly spent Title IV funds on ineligible programs<sup>6</sup>, LSC used Title IV funds to purchase pirated digital textbooks, LSC disbursed unearned Title IV funds, LSC failed to verify students' eligibility for Title IV funds, LSC failed to preform return of Title IV calculations, LSC made Pell overpayments, and LSC failed to follow its attendance policy.</p> <p>An <a href="#">Order and Opinion</a> was entered on December 14, 2015. The order and opinion found that Lacy violated the False Claims Act and that <a href="#">default judgment</a> was granted.</p>
<b>External Contact(s) for Further Investigation</b>	Rob Sneed, Assistant United States Attorney, Civil Division
<b>External Investigations, Evidence or Litigation</b>	N/A

<sup>4</sup> The G5 system is the Department of Education's financial management system. The G5 system is used for Grant Administration and Payments. G5 authorized money is accounted for in a school's G5 account in the aggregate by award year and specific program. The G5 system gives a school a list of its awards and a snapshot of the award number, available balance, last date to draw, and award status.

<sup>5</sup> Institutions must enter into a program participation agreement with the department to obtain Title IV funds. Each PPA executed by an institution includes an agreement by the Institution to comply with the terms and conditions that the institution must meet to participate in the Title IV program. Compliance with a PPA and the incorporated regulations and statutes is a condition of participation and payment for Title IV funds. An Institution that makes a request to draw Title IV funds certifies that it will disburse the funds in compliance with the PPA.

<sup>6</sup> The complaint includes an accusation that LSC wrongly spent Title IV funds on ineligible programs. It includes the example of the Advanced Cosmetology program that was not approved until September 5, 2012. The default judgment includes all funds disbursed to borrowers in the 2009-2010 and 2010-2011 award period, including those enrolled in Advanced Cosmetology.

<b>NOT related to BORROWER DEFENSE</b>	
<b>News Articles/Media</b>	<p><a href="#">Press release</a> by the Department of Justice explaining the entry of default judgment against Lacy School of Cosmetology and Earnest Lacy for false claims.</p> <p><a href="#">Article</a> identifying that Lacy School and its president were “hit” with a \$9.3 million court judgment.</p> <p>News <a href="#">article</a> stating that Lacy Schools of Cosmetology closed three schools across South Carolina.</p> <p>News <a href="#">article</a> identifying that the U.S. Attorney’s office wants to advise students of options that may be available to them. The article states that borrowers may wish to file a borrower defense to repayment claim and can find the information on the Department of Education website.</p>
<b>Name of Reviewer</b>	Larry Michael Walker
<b>Date Review Completed</b>	10/26/2020

### SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p style="text-align: center;"><b><u>Summary of Allegations</u></b></p> <p>Borrower Defense reviewed a sample of 10 allegations of each category outlined below to identify potential trends and/or salient information provided by the applicant pool. The enrollment dates for the applicant pool range from December 1, 2007 through March 1, 2014. The narrative allegations include complaints relating to: (i) misrepresentations regarding salary; (ii) misrepresentations about the qualifications of instructors; and (iii) falsifying loan information.</p> <p style="text-align: center;"><b><u>Employment Prospects</u></b></p> <p>Based on the 10 allegations reviewed, borrowers most commonly allege that they were unable to sit for licensing exams, that the school promised job placement, and that the school promised certain salary/wages after graduation. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p style="text-align: center;"><b><u>Admissions and Urgency to Enroll</u></b></p> <p>Based on the 10 allegations reviewed, borrowers commonly allege that they were told there was an urgency to sign up immediately and, if they did not sign up immediately, they would lose a seat in the class. These claims are</p>
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not of the type that would warrant Borrower Defense relief absent a misrepresentation.

#### **Program Cost and Nature of Loans**

Based on the 10 allegations reviewed, borrowers most commonly allege that they were charged for room and board when room and board was not provided by the school, that the owner was charged with fraud regarding student loans, and that the school promised certain salary/wages after graduation. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct. Additionally, while the potential for fraud need not be ruled out, these allegations pertain to a false certification of loans and therefore, are outside a Borrower Defense determination.

#### **Transferring Credits**

Based on the eight allegations reviewed, borrowers most commonly allege that they were told credits would transfer and the school did not explain if credits would transfer. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

#### **Career Services**

Based on the 10 allegations reviewed, borrowers most commonly allege that the school promised internships and that the school promised employment after graduation. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

#### **Educational Services**

Based on the 10 allegations reviewed, borrowers most commonly allege that the school misled borrowers about the qualifications of instructors, that no instructor was available for certain classes, and that the school had unlicensed instructors. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

#### **Other**

Based on the 10 allegations reviewed, borrowers most commonly allege that the owner of the school misappropriated some or all of the student loan funds, that there is a judgment against the owner of the school, and that the school owner was under investigation. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a

	pattern or practice of this type of misconduct. Additionally, while the potential for fraud need not be ruled out, these allegations pertain to a false certification of loans and therefore, are outside a Borrower Defense determination.
<b>Recommended Next Steps</b>	<p>Based on our search for public information (including public records, news articles, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, there is possible sufficient evidence of misconduct regarding programmatic accreditation at LCS to warrant further investigation. However, none of the current cases in Borrower Defense identify borrowers enrolled in the specific program, Advanced Cosmetology, during the specific timeframe that is related to the misrepresentation.</p> <p><b>The timeframe for possible approvals is approximately between July 1, 2009 and June 30, 2011.</b> Currently, the Department does not have any applications from this timeframe. If the Department receives applications that reflect a borrower's enrollment in the specific program during the estimated timeframe, the Department will investigate and determine if the claims will be approved.</p> <p>Additionally, allegations and claims of false certification of loans are outside a Borrower Defense determination. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated.</p>
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Kathryn Johnson
<b>DATE:</b>	October 28, 2020 (Updated 11/20/2020)

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input checked="" type="checkbox"/> No Other Evidence Considered
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<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus:
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**Links:**

- [Salesforce Allegation Report](#)
- [PEPS Report](#)
- [FPRD](#)
- [United States ex rel. Mayers v. Lacy Sch. of Cosmetology, LLC](#)
- [Complaint & Demand for Jury Trial, United States ex rel. Mayers v. Lacy Sch. of Cosmetology, \(2013\) \(CA No. 1:13-cv-00218-JMC\).](#)
- [Intervenor Complaint, United States ex rel. Mayers v. Lacy Sch. Of Cosmetology, \(2015\) \(CA NO: 1:13-cv-00218-JMC\).](#)
- [Order and Opinion](#)
- [Default judgment](#)

**DOE00011421-DOE00011421**

Lawton School – Evidence Considered Protocol

Applicable to:

Lawton School (OPEID 03028300)

Entering Evidence Considered Manually:

1. Open a case with a suggested closing correspondence value of Standard Denial with Evidence Considered in status 3.10
2. In the “Evidence Considered” field on the case select the following:
  - a. Department of Education-Office of Investigator General (OIG)
  - b. Evidence obtained by the Department in conjunction with its regular oversight activities
3. The case is now ready to process following the normal borrower notification letter creation process.

Bulk Update Options:

1. Bulk update (by work ticket to Accenture) all Lawton School cases in 3.10 with the following:
  - a. In the “Evidence Considered” dropdown, select “Evidence obtained by the Department in conjunction with its regular oversight activities.”
2. Process following the normal borrower notification letter creation process.

**DOE00011426-DOE00011429**





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### Initial Review of Mid-Size Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Lawton School 03028300
<b>Open or Closed</b>	Closed (03/29/91)
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	03028400- New Orleans, LA Oakland, California
<b>Corporate Owner(s)</b>	Allied Education Corporation; Glenn Rodano
<b>Total Number of Applications</b>	As of September 3, 2020 there are four applications already adjudicated and 15 applications awaiting adjudication. These applications are mixed with The Lawton School for Medical and Dental Assistants.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p><b><u>Program Compliance</u></b></p> <p>Borrower Defense found no past or pending Final Program Review Determinations (FRPD) related to Borrower Defense.</p> <p><b><u>AAASG and OIG Investigations</u></b></p> <p>Borrower Defense found no past or pending AAASG or OIG investigations.</p> <p><b><u>OGC/DOJ</u></b></p> <p>Borrower Defense found no past or pending OGC/DOJ investigations.</p>
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BORROWER DEFENSE</b>	Borrower Defense found a <a href="#">settlement</a> from 1995 in which Glenn and Nancy Rodano, owners of Allied Education Corporation and Lawton School, denied all wrongdoing regarding allegations of fraud, deceit, and negligence in the handling of Allied Education Corporation schools including

	<p>the Lawton School in Oakland California. Rodano agreed to pay 75 students a sum of \$130,000.</p> <p>Borrower Defense also found an <a href="#">article</a> related to the suit and settlement which detailed allegations of The Lawton School offering students misleading representations of job placement and educational services.</p> <p>Although the allegations in the litigation and news article may be relevant to Borrower Defense, the borrowers do not attach any evidence to support these allegations and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct. Additionally, Rodano did not admit any fault in the Settlement Agreement. As such, there is insufficient evidence to warrant further investigation by Borrower Defense.</p>
<b>External Contact(s) for Further Investigation</b>	N/A
<b>Name of Reviewer</b>	Shimeng Zhang
<b>Date Review Completed</b>	September 3, 2020

## SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p><b><u>Summary of Allegations</u></b></p> <p>Borrower Defense (BD) reviewed all 19 of the applications against The Lawton School to identify potential trends and/or salient information provided by the applicant pool.<sup>1</sup> The narrative allegations include complaints relating to: (i) the lack of job placement and career opportunities; (ii) the poor quality of the instruction and education received; and (iii) issues regarding the schools' closure.</p> <p><b><u>Employment Prospects</u></b></p> <p>BD sampled all employment prospect claims. Borrowers generally allege that Lawton failed to provide borrowers with jobs upon graduation, and they were subsequently unable to find employment in their respected fields of study. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide relevant supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p>
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<sup>1</sup> [Allegations Sampled](#)

Program Cost and Nature of Loans

BD sampled all program cost allegations. These statements mostly raise issue with the school's failure to explain the total cost in addition to the high cost of attending the school. These claims are not of the type that would warrant Borrower Defense relief absent a misrepresentation.

Career Services

BD sampled all career services allegations. Many of the borrowers allege they were promised job placement and job placement assistance but failed to receive those services. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

Educational Services

BD read all the educational services allegations against The Lawton School. Borrowers mention overall dissatisfaction with the quality of education received, the school's lack of proper accreditation, and the low quality of the schools' instructors. These claims are not of the type that would warrant Borrower Defense relief absent a misrepresentation.

Transferring Credits

BD sampled all transferring credits allegations. These allegations generally communicate a lack of understanding about the inability to transfer credits from the Lawton School. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

Admissions and Urgency to Enroll

BD read all admissions and urgency to enroll allegations. Out of the sampled allegations, borrowers felt that they were rushed during the enrollment process and were generally made to feel that spots were limited. These claims are not of the type that would warrant Borrower Defense relief absent a misrepresentation.

Other

BD sampled all other allegations related to the Lawton School. Borrowers under this section tend to elaborate on the personal individual harms suffered as result of attending Lawton. Several of the borrowers mention the scandal surrounding the school's closure and the litigation against Rodano. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.



<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings) and Department of Education internal resources (FRPDs, AASG, and OIG investigations), there is insufficient evidence of widespread misconduct by the Lawton School to warrant further investigation. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Kathryn Johnson
<b>DATE:</b>	September 30, 2020 (Updated 11/22/2020)

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input checked="" type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input checked="" type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
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**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- [Salesforce Allegation Report](#)
- [List of Lawton School Cases](#)



**DOE00011569-DOE00011570**



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### Initial Review of Mid-Size Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Masters of Cosmetology College 02308900
<b>Open or Closed</b>	Closed (4/14/2016)
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	N/A
<b>Corporate Owner(s)</b>	Masters of Cosmetology College, Inc. • Kaydean Geist
<b>Total Number of Applications</b>	As of September 2, 2020, there are 32 applications already adjudicated and four applications awaiting adjudication.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<b><u>Program Compliance</u></b> Borrower Defense found no past or pending Final Program Review Determinations (FRPD) related to Borrower Defense.  <b><u>AAASG and OIG Investigations</u></b> Borrower Defense found no past or pending AAASG or OIG investigations.  <b><u>OGC/DOJ</u></b> Borrower Defense found no past or pending OGC/DOJ investigations.
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BORROWER DEFENSE</b>	A review of publicly available information found no evidence related to Borrower Defense.
<b>External Contact(s) for Further Investigation</b>	N/A
<b>Name of Reviewer</b>	Wendy Bonilla
<b>Date Review Completed</b>	9/2/2020

<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings) and Department of Education internal resources (FRPDs, AASG, and OIG investigations), there is insufficient evidence of widespread misconduct by Masters of Cosmetology College to
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	warrant further investigation. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Shana Metzger
<b>DATE:</b>	09/02/2020 (Updated 11/24/2020)

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input checked="" type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
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<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: •
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**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- Advanced Letter (if applicable)
- Salesforce Allegation Report – [Masters of Cosmetology College](#)
- Program Review Report

**DOE00011572-DOE00011574**



## Initial Review of Medium Batch Applications

### BACKGROUND

<b>Name of Institution</b>	Mattia College
<b>Corporate Owner(s)</b>	Professional Training Centers
<b>Open or Closed</b>	Closed on 2.22.2016
<b>Total Number of Applications</b>	41
<b>Patterns of Alleged Misconduct</b>	The majority of allegations are specific to the applicant but there are several allegations that career services would assist the applicant in finding a job after graduation, which did not occur, that the school was accredited and credits would transfer, and that the school closed either during the applicant's time there or after they graduated.
<b>Evidence/Litigation</b>	<ul style="list-style-type: none"> <li>• Mattia College was cited as one of the programs which failed a debt to earnings for gainful employment rate by the Department of Education: <a href="https://www.ed.gov/news/press-releases/education-department-releases-final-debt-earnings-rates-gainful-employment-programs">https://www.ed.gov/news/press-releases/education-department-releases-final-debt-earnings-rates-gainful-employment-programs</a></li> <li>• Mattia College closed for financial reasons: <a href="https://www.miamiherald.com/news/local/education/article63240997.html">https://www.miamiherald.com/news/local/education/article63240997.html</a></li> </ul>
<b>Name of Reviewer</b>	Alana Smith
<b>Date Review Completed</b>	7/8/19

**SUMMARY APPLICATION OVERVIEW**

<b>BD Case Number</b>	<b>School/Campus listed on App</b>	<b>Program(s)</b>	<b>Year of Enrollment</b>	<b>Nature of Allegation(s)</b>	<b>Evidence</b>
01242702	Mattia Miami	Radiologic Technologies	2010	Educational services	Emailed statement
01262491	Mattia Miami	Nursing, Bachelor	2014	Transferability, Other	Emailed Statement
01315976	Professional Training Center	Diagnostic Medical Sonography	2011	Career Services, Other	Emailed Statement
01350803	Mattia Miami	Nursing Bachelor	2013	Program Costs, Transferability, Pressure to Enroll, Other	Signed Statement
01367859	Mattia Miami	Diagnostic Medical Sonography	2010	Other, Transferability,	Signed Statement
01396580	Professional Training Center	Diagnostic Medical Sonography	2011	Eligibility for Professional Exam/Licensure, Transferability, Other	Signed Statement
01411172	Professional Training Center	Ultrasounds	2008	Guaranteed Job, Program Cost, Transferability	Signed Statement
01448582	Professional Training Center	Medical Coding, Certificate	2009	Career Services, Program Costs, Teaching/Educational Services, Other	Signed Statement
01469920	Professional Training Center	Pharmacy Technician	2010	Career Services, Program Cost, Transferability, Other	Signed Statement
01588036	Mattia Miami	Nursing, Associate	2013	Transferability, Educational Service, Other	Signed Statement

**RECOMMENDATION**

Mattia College, previously called Professional Training Center, closed in 2016 due to financial difficulties. The school closing is one of the most prevalent allegations against it in the above cases. Other allegations include: the school promised career service assistance to find a job, but the applicant was unable to locate a job; the school was unclear or mistaken about the cost of the program, and the school misrepresented the transferability of credits.

Even though there are several of the same claims (especially in regards to transferability) there is no evidence to support this allegation. While there are a few allegations from applicants in the same program, they started in different years. In addition, the other most prevalent claim is that the school

closed either while the applicant was in attendance or after they graduate which is not an allegation that states a valid claim.

Given the lack of evidence to support the allegations and the lack of corroboration amount the cases, I recommend adjudicating the cases.

**DOE00011608-DOE00011609**



## Initial Review of Medium Batch Applications

### BACKGROUND

<b>Name of Institution</b>	Meridian University
<b>Corporate Owner(s)</b>	Jean Houston, Chancellor
<b>Open or Closed</b>	Open
<b>Total Number of Applications</b>	5
<b>Patterns of Alleged Misconduct</b>	Numerous complaints regarding employment prospects, transferring credits, career services, and educational services
<b>Evidence/Litigation</b>	no evidence or litigation present
<b>Name of Reviewer</b>	Tyquila Atuyotan
<b>Date Review Completed</b>	10/15/2019

### SUMMARY APPLICATION OVERVIEW

<b>BD Case Number</b>	<b>School/Campus listed on App</b>	<b>Program(s)</b>	<b>Year of Enrollment</b>	<b>Nature of Allegation(s)</b>	<b>Evidence</b>
01548967	Meridian University/Hybrid online, Petaluma, CA	Ed. D in transformative Leadership	2018	<ol style="list-style-type: none"> <li>1. Employment prospects</li> <li>2. Transferring credits</li> <li>3. Career services</li> <li>4. Educational services</li> <li>5. Admissions and urgency to enroll</li> <li>6. Other</li> </ol>	Web Form; Attachment, see letter of withdrawal, submitted 2/13/2019 with enclosures
01550740	Meridian University/ Petaluma, CA	Clinical psychology and yoga PsyD	2018	<ol style="list-style-type: none"> <li>1. Employment prospects</li> <li>2. Career services</li> <li>3. Educational services</li> </ol>	Web Form; see attachment regarding fieldwork and internships
01552387	Meridian University/ Petaluma, CA	Psychology in transformative Leadership	2018	<ol style="list-style-type: none"> <li>1. Employment prospects</li> <li>2. Program cost and nature of</li> </ol>	Web Form

				loans 3. Transferring credits 4. Career services 5. Educational services 6. Other	
01566846	Meridian University/ online, Petaluma, CA	PsyD in Clinical Psychology	2018	1. Transferring credits 2. Educational services 3. Other	Web Form; See attachment emails regarding coursework
01596292	Meridian University/ Petaluma, CA	Masters in Counseling	2017	1. Employment prospects 2. Program cost and nature of loans 3. Transferring credits 4. Educational services 5. Other	Web Form

**RECOMMENDATION:**

A review of the borrowers' complaints indicate that there is a lack of support for their allegations. Based on a review of the claims, the borrowers allege the inability to transfer credits, instability in quality of educational services, and failure to provide job placement, among others. However, despite submissions from two of the borrowers concerning internships and school withdrawal reasons, there does not exist evidence to substantiate the borrowers' claims.

Further, there is an absence of commonality in nature of program and time period. Additionally, there are no class action lawsuits or other investigations. For these reasons, I recommend adjudicating the borrowers' cases.

**APPROVED BY: John Stephenson**

**DATE: 10/16/2019**

**DOE00011644-DOE00011647**

## Initial Review of Medium Batch Applications

### BACKGROUND

<b>Name of Institution</b>	Micropower Career Institute
<b>Locations</b>	Manhattan, Long Island, Hauppauge, Queens, New Jersey
<b>Corporate Owner(s)</b>	Micropower USA Corporation
<b>Open or Closed</b>	Closed
<b>Total Number of Applications</b>	44
<b>Patterns of Alleged Misconduct</b>	Many of the claims relate to employment prospects, program cost and nature of loans, and educational services.
<b>Evidence/Litigation</b>	<p><b>SENIOR EXECUTIVES OF MCI FOUND GUILTY OF FINANCIAL AID FRAUD SCHEME</b>  <i>USA v. Hiranandaney et al</i> 1:14-cr-00409</p> <p>Three senior executives of Micropower Career Institute were investigated in 2014 by US Immigration and Custom's Enforcement, the US Department of State's Diplomatic Security Service and the US Department of Education's Office of the Inspector General.</p> <p>The U.S. attorney's office said in a news release, "they falsified and manipulated documents to hide MCI's failure to timely return financial aid money received by MCI for domestic students who had dropped out of MCI."<sup>1</sup> The executives were found guilty in 2016 in the United States District Court Southern District of New York, of a student financial aid fraud scheme in which they defrauded the US of \$1,000,000 in education grant funds and in a student visa fraud scheme that generated \$7,440,000 in illegal revenues.<sup>2</sup></p> <p><b>MICROPOWER CAREER INSTITUTE CLOSED</b><sup>3</sup>.  DHS shut the school down as part of the federal investigation<sup>4</sup>.</p>
<b>Name of Reviewer</b>	Nichelle Stephens

<sup>1</sup> <https://www.searchindia.net/images/sib/Hiranandaney-Suresh-et-al-complaint.pdf>

<sup>2</sup> <https://www2.ed.gov/about/offices/list/oig/invtrreports/ny012016.html>

<sup>3</sup> <http://www.raminenilaw.com/dhs-orders-shut-down-of-micropower-career-institute-for-f-1-regulation-violations/>

<sup>4</sup> <https://newyork.cbslocal.com/2014/05/29/cbs-2-federal-agents-raid-chelsea-school-looking-for-evidence-of-visa-fraud/>



<b>Date Review Completed</b>	11/01/2019
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### SUMMARY APPLICATION OVERVIEW

<b>BD Case Number</b>	<b>School/Campus listed on App</b>	<b>Program(s)</b>	<b>Year of Enrollment</b>	<b>Nature of Allegation(s)</b>	<b>Evidence</b>
01148051	Micropower Career Institute (Manhattan, NY)	Medical Assistant	2013	Educational Services, Other	None
01240243	Micropower Career Institute (New York, NY)	Certified Dental Assistant	2012	Educational Services, Employment Prospects, Career Services, Other	None
01245630	Micropower Career Institute (Manhattan, NY)	Dental Assistant	2014	Employment Prospects, Program Cost and Nature of Loans, Transferring Credits, Career Services, Educational Services, Other	None
01249773	Micropower Career Institute (Mineola, NY)	Medical Assistance Program	2012	Program Cost and Nature of Loans, Admissions and Urgency to Enroll	IPE Services letter with contribution towards educational expenses
01250812	Micropower Career Institute (New York, NY)	CCMA	2010	Employment Prospects, Program Cost and Nature of Student Loans, Career Services, Other	None
01261996	Micropower Career Institute (Manhattan, NY)	Dental Assistant	2013	Employment Prospects, Transferring Credits, Other	None

01271804	Micropower Career Institute (Mineola, NY)	Dental Assistant	2013	Employment Prospects, Program Cost and Nature of Loans, Career Services, Educational Services	None
01371742	Micropower Career Institute (Mineola, NY)	Medical Assistant	2013	Employment Prospects, Program Cost and Nature of Loans, Transferring Credits, Career Services, Educational Services, Other.	None
01290789	Micropower Career Institute (Hauppauge, NY)	Medical Assistant	2012	Employment Prospects, Transferring Credits, Career Services, Educational Services, Other	None
01381056	Micropower Career Institute (New York, NY)	Dental Assistant	2012	Employment Prospects, Program Cost and Nature of Loans, Transferring Credits, Career Services, Educational Services, Admissions and Urgency to Enroll, Other.	None

### RECOMMENDATION:

My recommendation is that all cases are ready to be adjudicated. Most of the borrowers noted employment prospects, program cost and nature of loans, and educational services as issues. While all the borrowers allege common allegations, these allegations are

unsupported by evidence attached to the borrower's applications. A few borrowers noted that the school closed and there was a lawsuit regarding financial fraud.

Research revealed an investigation took place by US Immigration and Custom's Enforcement, the US Department of State's Diplomatic Security Service and the US Department of Education's Office of the Inspector General between June 2011 and May 2014 regarding the President and two Vice Presidents of MCI defrauding the United States of \$1,000,000 in education grant funds. As a result, the school was closed in 2014. The executives pled guilty to continuing to collect Pell Grants after students had withdrawn from the school. Additionally, the executives pled guilty to student visa fraud. The executives directed employees to transfer F-1 student visa holders to different schools instead of reporting them for not making the 80% attendance mark required to maintain their visas. The school kept the F-1 student status active at LTI if the students paid tuition to the school resulting in \$7,440,000 in illegal revenues. More information about the case can be found in PACER and the United States Department of Education's Office of the Inspector General was involved in the investigation and created a report which could provide further insight if needed. While financial fraud is egregious, Pell Grants do not fall under the purview of Borrower Defense. Additionally, the closure of the school could hinder a further investigation due to lack of access to financial and other documents. There do not appear to be any other relevant lawsuits.

APPROVED BY: Brian Bayne

DATE: 11/4/2019

**DOE00011707-DOE00011711**



**Initial Review of Medium Batch Applications****BACKGROUND**

<b>Name of Institution</b>	Missouri Technical School
<b>Corporate Owner(s)</b>	Missouri Technical School
<b>Open or Closed</b>	Closed
<b>Total Number of Applications</b>	11
<b>Patterns of Alleged Misconduct</b>	*similar allegations related to Employment Prospects, Program Cost and Nature of Loans, Transferring Credits, and the school's closure that are vague and unsupported by either specifics or evidence
<b>Evidence/Litigation</b>	<p>* no outside lawsuits or investigations based on borrowers' allegations/insufficient evidence in borrowers' applications</p> <p><a href="https://www.stltoday.com/news/local/education/missouri-tech-closes-suddenly-students-left-in-limbo/article_d0b72e31-cb00-56d5-8a14-b8ad447c5eca.html">https://www.stltoday.com/news/local/education/missouri-tech-closes-suddenly-students-left-in-limbo/article_d0b72e31-cb00-56d5-8a14-b8ad447c5eca.html</a></p> <p>This article, which was released on August 5, 2015, announces the abrupt closure of Missouri Tech (St. Charles). The article notes that the school closed down for financial reasons. The article indicates that the school offered programs in networking, software engineering, and electronic engineering before it closed.</p> <p><a href="https://dhewd.mo.gov/psc/documents/WebPage-MissouriTechInformation.pdf">https://dhewd.mo.gov/psc/documents/WebPage-MissouriTechInformation.pdf</a></p> <p>The PDF at the link above provides information for former Missouri Tech students. The information regarding transfer of credits, transcripts, federal loans was provided by the Missouri Department of Higher Education (MDHE) on August 13, 2015. On July 31, 2015 Missouri Tech notified (MDHE) that it was closing the St. Charles campus effective immediately and stated that the reason for the closure was financial. The PDF indicates that Missouri Tech did not make prior arrangements for a teach out, and that MDHE would work with students, area schools, and accrediting agencies to assist students in transferring their credits and completing their programs. The PDF also includes a list of potential teach out/transfer partners provided by the MDHE staff. The PDF indicates that MDHE was able to retrieve some Missouri Tech student records/transcripts from the school and advises students to contact MDHE and to submit a student record verification form. The information in the PDF also advises students who had federal loans to contact their loan servicer and to review the FSA website for options for students whose schools have closed without a teach-out agreement.</p>

<b>Name of Reviewer</b>	Vesselina Kotzeva
<b>Date Review Completed</b>	09/25/19

**SUMMARY APPLICATION OVERVIEW**

<b>BD Case Number</b>	<b>School/Campus listed on App</b>	<b>Program(s)</b>	<b>Year of Enrollment</b>	<b>Nature of Allegation(s)</b>	<b>Evidence</b>
01562369	Missouri Tech - (St. Charles, MO)	Network Administration	2010	Employment Prospects; Program Cost and Nature of Loans; Transferring Credits; Career Services; Educational Services	None
01417931	Missouri Tech - (St. Charles, MO)	Electronics Engineering	2009	Program Cost and Nature of Loans; Transferring Credits; Other	None
01488958	Missouri Tech - (St. Charles, MO)	Network Administration	2009	Program Cost and Nature of Loans; Other	Notice of Eligibility for Loan Discharge; Student Transcript; Letter from borrower expressing concerns
01558179	Missouri Tech - (St. Charles, MO)	Network Security Administration	2009	Employment Prospects; Career Services; Educational Services; Other	None
01289358	Missouri Technical School - (St. Charles, MO)	Engineering Management	2008	Transferring Credits; Admissions and Urgency to Enroll; Other	Letter confirming approval for administrative forbearance

01517418	Missouri Tech - (St. Charles, MO)	Electronics Engineering Management	2005	Employment Prospects; Program Cost and Nature of Loans; Transferring Credits; Career Services; Educational Services; Admissions and Urgency to Enroll; Other	
01306269	Missouri Technical College - (St. Charles, MO)	Associate Network Administration	2004	Employment Prospects; Program Cost and Nature of Loans; Transferring Credits	Borrower's complaint to Missouri AG/Consumer Complaint; Master Promissory Note; E-Mail correspondences regarding borrower's registration
01393761	Missouri Technical - (St. Charles, MO)	Engineering	1994	Program Cost and Nature of Loans	None
01488961	Missouri Technical School (St. Louis)	Bachelor of Science Electronic Engineering	1993	Employment Prospects; Career Services; Educational Services	None
01352236	Al Med Academy (St. Charles Rock Road, St. Ann, Missouri)  Missouri Tech (St. Louis, MO)	Application 1: Medical Assistant  Application 2: Software Engineering	1992  2001	Application 1: Employment Prospects; Program Costs and Nature of Loans; Transferring Credits; Career Services;  Application 2: Program Costs and Nature of	Borrower has 2 applications for 2 different schools*  Medical Assistant Certificate;  Paid in Full Receipt from Student Accounts



				Loans; Admissions and Urgency to Enroll	
01597381	Missouri Technical Institute - (St. Louis, MO)	Electronic Tech	1989	Employment Prospects; Program Costs and Nature of Loans; Career Services;	None

### RECOMMENDATION:

The Missouri Technical School cases are ready to adjudicate. The borrowers' allegations are vague and unsupported by either specifics or evidence and should therefore be adjudicated individually. The general allegations made by the borrowers are related to Employment Prospects, Program Cost and Nature of Loans, Transferring Credits, and the school's closure. The borrowers allege misrepresentations regarding internships that would result in job placements, misrepresentations related to job placement rates, misrepresentations regarding connections with employers, misrepresentations related to program costs, and misrepresentations regarding whether earned credits would be accepted at other schools. Borrowers also referenced the school's abrupt closure, and the school's failure to provide a warning to students regarding this closure. While several of the borrowers in this sample make similar allegations across each of the categories, borrowers have not provided enough evidence in their applications to prove these allegations. The borrower in Case # 01306269 filed a financial complaint requesting a refund with the Missouri AG. The borrower attached a letter from the AG, which confirmed the receipt of the complaint along with a document titled 'Consumer Complaint Details'. I searched for the complaint number using the database on the Attorney General's website, but could not locate the complaint. The date listed on the letter from the AG to the borrower is September 4, 2015, but the database only dates back to September 25, 2016.

Additionally, there do not appear to be any outside lawsuits or investigations related to the borrowers' allegations. The only evidence related to the borrowers' claims that I found through the internet research was an article announcing the abrupt closure of Missouri Tech from August 5, 2015 and a PDF with information for former Missouri Tech students provided by MHED (Missouri Department of Higher Education). The article indicates that Missouri Tech is the first for-profit school in Missouri that shut down without warning and without offering a teach-out or a chance for current students to complete their training. The PDF also indicates that Missouri Tech did not make prior arrangements for a teach-out. The PDF then advises students that the MDHE will work with students, area schools, and accrediting agencies to assist students in transferring their credits and completing the programs. The PDF also includes a list of potential teach-out/transfer partners provided by the MDHE staff. The limited external evidence from the article and the PDF is primarily related to the school's closure as opposed to the borrowers' remaining allegations, and is not enough to warrant further investigation. Therefore, the cases are ready to be adjudicated individually.



APPROVED BY: Brian Bayne

DATE: 9/30/2019

**DOE00011746-DOE00011752**



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### Initial Review of Mid-Size Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Morris Brown College (OPEID 00158300)
<b>Open or Closed</b>	Open
<b>Date Advanced Letter Sent</b>	N/A – No approvals
<b>Additional Locations Add closure date if applicable</b>	N/A
<b>Corporate Owner(s)</b>	Private, Nonprofit (It is affiliated with the African Methodist Episcopal Church) <sup>1</sup>
<b>Total Number of Applications</b>	As of July 30, 2020, there are 119 applications.
<b>Patterns of Alleged Misconduct</b>	As detailed below, former students of Morris Brown College have made very consistent allegations against the school. The types of allegations made by borrowers are of pressuring sales techniques to get them to enroll, job placement promises (placement assistance, externships), misrepresentations about the cost of attendance or the nature of the loans they were taking out, misrepresentations about the transferability of credits, misrepresentations about the quality of the instructors or classes provided, and issues surrounding the loss of the school's accreditation. Although many of the allegation asserted may be relevant to Borrower Defense, the borrowers failed to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct. In addition, there are also allegations pertaining to false certifications of loans. These types of allegations are consistent with fraud but are outside a Borrower Defense determination.
<b>Internal ED Investigation(s)</b> • <b>PC, AAASG, OIG</b>	<p><b><u>AAASG Investigations</u></b> After review, Borrower Defense found no past or pending AAASG investigations.</p> <p><b><u>OIG Investigations</u></b> (The case below was investigated by Special Agents of the Department of Education, Office of Inspector General, the U.S. Attorney's Office of the Northern District of Georgia, and the FBI)</p> <p><u><i>Former Morris Brown President, Financial Aid Director Indicted by Federal Grand Jury in \$5 Million Fraud Scheme</i></u> (December 9, 2004) Parvesh Singh, former Financial Aid Director and Director of Enrollment Services, and Dolores Evelyn Cross, former President of the College, have been charged in a 34-count federal indictment related to a \$5 million fraud scheme at Morris Brown College. Cross and Singh are charged with 22 counts of wire fraud, five counts of stealing Title IV Financial Aid Funds, and six counts of stealing Title III Financial Aid</p>

<sup>1</sup> [https://en.wikipedia.org/wiki/Morris\\_Brown\\_College](https://en.wikipedia.org/wiki/Morris_Brown_College)



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Funds. In addition, Cross is charged with one count of honest services mail fraud.

[Former Morris Brown President, Financial Aid Director Plead Guilty to Fraud Charges Just Before Trial](#) (May 1, 2006)

Dolores Evelyn Cross and Parvesh Singh plead guilty to charges relating to a financial aid fraud scheme at Morris Brown College. According to information presented in court: With respect to financial aid, in 1999 Dr. Cross decided to have Morris Brown College participate in the Federal Family Education Loan Program, known as the FFEL program. These funds were essential revenue for the college's budget. In 1999, the enrollment goals of Dr. Cross were not met, and she directed Mr. Singh to enroll enough students to ensure she would achieve this goal and have revenue for the budget. That fall, Singh began a practice of enrolling a large number of students who had registered for classes (or merely pre-registered the preceding semester) but had not completed the enrollment process by physically going to the Student Accounts and satisfying their bill. Singh engaged in this practice of causing lists of "registered not enrolled" students to be officially enrolled at Morris Brown, so that the College could take and use their student loan funds, every semester he was there.

[Former Morris Brown College President, Financial Aid Director Sentenced in Federal Court on Fraud Charges](#) (January 3, 2007)

Dolores Evelyn Cross and Parvesh Singh were sentenced on charges relating to a financial aid fraud scheme at Morris Brown College after pleading guilty before United States District Judge Julie Carnes on May 1, 2006. Cross received a sentence of 5 years probation with a special condition of 12 months home confinement with six months of electronic monitoring, and 500 hours of community services. In addition, Cross was ordered to pay restitution in the amount of \$13,942 and a fine of \$3,000. Singh received a sentence of 5 years probation with a special condition of 18 months home confinement with six months of electronic monitoring. In addition, Singh was ordered to pay restitution in the amount of \$5,939 and a fine of \$3,000.

**Investigations**

Two Final Program Review Determination (FPRD) were completed for Morris Brown College, however, none were related to Borrower Defense. One was completed in 2001 (PRCN: 200130418416) and the other was completed in 2002 (PRCN: 200220420177).<sup>2</sup>

**Internal Contact(s) for  
Further Investigation**

N/A

**External  
Investigations (AG), Evidence  
or Litigation Related to BD**

See above

<sup>2</sup> Information attained via a PEPS search



External Contact(s) for Further Investigation	N/A
External Investigations, Evidence or Litigation NOT related to BD	<p><b>External Investigations not related to BD</b></p> <p><b>Litigation</b></p> <p><u><a href="#">Thompkins v. Morris Brown College, 752 F.2d 558 (1985)</a></u> The Plaintiff brought an employment discrimination suit pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e <i>et seq.</i> Plaintiff claims that Morris Brown College discriminated against her by refusing to grant her part-time employment on the same basis as male employees and by discharging her for maintaining full-time employment outside of the College while allowing males to maintain such outside employment. The nature of this suit is not related to borrower defense.</p> <p><u><a href="#">Eberhart v. Morris Brown College, 181 Ga.App. 516 (1987)</a></u> Former student who was injured while playing football for Morris Brown College filed suit against the college to recover certain medical expenses, he alleged were incurred in connection with treatment for his football injury. The nature of this suit is not related to borrower defense.</p> <p><u><a href="#">Cornelius v. Morris Brown College, 299 Ga.App. 83 (2009)</a></u> Parents of a college student killed in a physical altercation at Morris Brown College brought an action against the college and others for wrongful death based on the college's alleged failure to implement adequate security measures despite high potential for danger in the area of the attack. The nature of this suit is not related to borrower defense.</p> <p><u><a href="#">Blair v. Morris Brown College, 2004 WL 2563280 (N.D.Ga.)</a></u> The Plaintiff sued Morris Brown College on the following grounds: Race Discrimination (Title VII and 42 U.S.C. § 1981); Retaliation (Title VII and § 1981); and Defamation. The details of his termination, retaliation and defamation do not indicate that this case involved whistleblowing or that it is otherwise related to borrower defense.</p> <p><u><a href="#">In Re: College Morris Brown, U.S. Bankruptcy Court, Northern District of Georgia (Atlanta)</a></u> Morris Brown College filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court, Northern District of Georgia (Atlanta) on August 25, 2012.</p>
News Articles/Media	<p><u><a href="#">Statement regarding Morris Brown's current accreditation status.</a></u></p> <p><u><a href="#">Morris Brown's Financial Aid Practices</a></u> This October 2002, article discusses the investigation by federal authorities into the possible misuse of millions of dollars in student financial aid at Morris Brown College. The article goes on to discuss the fact that Morris Brown must repay \$5.4 million to the federal government because it failed to prove that the aid went to the correct students between 1995 and 2002. The article discusses reactions from the board.</p>



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	<p>the school's history with the Georgia Student Finance Commission, and accreditation issues surrounding the institution.</p> <p><u><i>After Years of Financial Crises, an Atlanta College Is on a Death Watch</i></u> An April 19, 2003 article in the New York Times states that, "Morris Brown may soon be history." The article lays out the troubles that Morris Brown College has been having of late, including the loss of their accreditation and crippling debt.</p> <p><u><i>Former president's guilty plea closes Morris Brown case</i></u> A May 2, 2006 article in the Atlanta Journal-Constitution discusses the guilty plea of Dolores Cross and the details of the crimes as well as potential sentence she could receive.</p> <p><u><i>Former Morris Brown College President, Financial Aid Director Indicted for Fraud</i></u> This December 2004, article discusses the indictments against Cross and Singh and the specific allegations against them. The article goes on to discuss the issues that the school has experienced since losing its accreditation by the Southern Association of Colleges and Schools (SACS) in 2003 as well as state why the school ultimately lost their accreditation. In addition, a former direct employee under Dr. Cross compared the indictment of his former boss to a "modern-day lynching."</p> <p><u><i>Morris Brown: Can This College Be Saved? Leader Says It Can.</i></u> A June 2019 article discussing the current challenges facing Morris Brown college and how they believe the federal Opportunity Zone can help save the institution.</p>
<b>Name of Reviewer</b>	Shana Metzger
<b>Date Review Completed</b>	7/30/2020

#### SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p>Borrower Defense reviewed a sample of 20 allegations of each type to identify potential trends in the applicant pool. Borrowers have submitted applications that allege enrollment start days from 1983 to 2002. The school became Title IV ineligible, after losing its accreditation, in April 2003.</p> <p><u>Admissions and Urgency to Enroll:</u> Based on the 20 allegations reviewed, borrowers allege that Morris Brown College used sales tactics that included pressuring potential students into enrolling quickly and paying for the potential student and their family to come visit the school while forbidding them to visit any other surrounding school. One borrower alleges that they were encouraged to enroll on a deferred status and another borrower alleges that he was informed that if he signed up and enrolled immediately it would make it easier for him to join the basketball team and receive a full scholarship. Although some of the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p>
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	<p><u>Career Services:</u> Based on the 20 allegations reviewed, borrowers allege that Morris Brown College did not aid in the securing of employment after graduation as initially promised and did not secure certain externships promised to the borrowers. Most of the borrowers allege that the loss of accreditation either caused the career services office at the school to close or lead to potential employers not accepting the borrowers' degree or credits as valid and therefore most likely costing them their chance at employment. Although some of the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p><u>Educational Services:</u> The borrowers' allegations discuss the quality of equipment provided to them for instruction, the quality of the education received, and the lack of qualifications of several instructors. In addition, borrowers allege that the education and credits that they earned at Morris Brown College were not accepted by Teach for America due to the accreditation and fraud investigations against Morris Brown College. Although some of the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p><u>Employment Prospects:</u> Based on the 20 allegations reviewed, borrowers allege that Morris Brown College had promised them job placement and assistance with securing such placement. However, once the school lost its accreditation, the jobs were no longer available, and neither was the assistance from the school. Although some of the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p><u>Job Placement Rate:</u> Only one borrower clicked the box to raise an allegation under Job Placement Rate. However, there was no allegation made by the borrower. The application only said, "No." Therefore, the allegation alone does not provide any support for misconduct relevant to Borrower Defense.</p> <p><u>Program Cost and Nature of Loans:</u> Based on the 20 allegations reviewed, borrowers allege that they were told by Morris Brown College that the tuition was one amount and later found out it was considerably more, and that they were not informed about the nature of the loans that they were taking out or how much the program would cost. A number of the borrowers allege that Morris Brown College made them believe, or specifically told them, that they were going to be receiving scholarships which would cover their tuition and expenses but were later forced to take out more loans to cover the costs. Borrowers have failed to provide any supporting evidence that exhibits a pattern of practice consistent with misconduct.</p>
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	<p>Finally, several borrowers have alleged that Morris Brown signed for, and took out, loans in their name without the borrowers' knowledge or understanding and/or lied to them about the nature and amount of the loans. These types of allegations are consistent with the fraud detailed in the OIG Investigations above. However, these allegations pertain to a false certification of loans review and therefore, are outside a Borrower Defense determination.</p> <p><u>Transferring Credits:</u> Based on the 20 allegations reviewed, borrowers allege that they were told that their credits were transferable, either to all or specific schools, and the borrowers found out that they were not. However, they do not provide any evidence of the credits' purported transferability. Although some of the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p><u>Other:</u> Of the 20 allegations reviewed, most of the borrowers provided explanatory narratives relevant to their personal experiences, addressing the implications that the school's loss of accreditation and financial fraud perpetrated by the school's President and Financial Aid Director had on them directly. Most spoke to potential job opportunities lost due to the lack of accreditation of their credits earned at the school or the personal financial toll that the falsification of loan documents took on them. These claims are not the type that would warrant Borrower Defense relief absent a misrepresentation.</p>
<b>Recommended Next Steps</b>	<p>Based on public information (including public records, news articles, court documents, and filings) and Department of Education internal resources (FPRDs, AAASG and OIG investigations), there is insufficient evidence to suggest that Morris Brown College engaged in wide spread conduct that would warrant borrower defense relief.</p> <p>In addition to the research conducted, the 20-allegation samples contained insufficient evidence to identify a pattern of practice consistent with general misconduct. Without further evidence, it is recommended that the cases be adjudicated individually. Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.</p>
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Sarah Angilello
<b>DATE:</b>	08/06/20 (Updated 11/22/2020)
<b>Evidence Considered</b>	<p><input type="checkbox"/> Attorney Submission</p> <p><input type="checkbox"/> Borrower Submission</p> <p><input type="checkbox"/> Consumer Protection Financial Bureau (CPFB)</p> <p><input type="checkbox"/> Department of Education-Office of Investigator General (OIG)</p> <p><input type="checkbox"/> Documents Submitted by the school in response to your application</p> <p><input checked="" type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities</p>



# Federal Student Aid

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	<input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
Advanced Letter Requests	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: •

**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed.  
Example of items to provide links for below.

- Advanced Letter (if applicable)
- Salesforce Allegation Report  
[Cases with Allegations 7.31.20](#)  
[Cases with Allegations Sample](#)
- Program Review Report

**DOE00011761-DOE00011765**



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### Initial Review of Mid-Size Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Mountain State University 00380700
<b>Open or Closed</b>	Closed
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	See <a href="#">Attachment A-Mountain State University Locations</a>
<b>Corporate Owner(s)</b>	Not for Profit
<b>Total Number of Applications</b>	225 as of May 12, 2020
<b>Patterns of Alleged Misconduct</b>	As detailed below, there are allegations against the school regarding clinical externship placements and job placements, as well as misrepresentations regarding the transferability of credits, but these allegations do not include independent evidence to corroborate their allegations.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p><b><u>Program Compliance</u></b> The US Department of Education Philadelphia School Participation Division issued a Final Program Review Determination on April 9, 2015. The FPRD focused on Clery Act violations, and was not related to Borrower Defense issues.</p> <p><b><u>AAASG and OIG Investigations</u></b> After review, Borrower Defense found no past or pending AAASG or OIG investigations.</p>
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BD</b>	In <a href="#">Mullis v. Mountain State University</a> , Plaintiff alleged that the University "assured her that it had a clinical externship location in her area," but that this was false. Plaintiff alleges that the University never placed her in a clinical externship. There was no disposition for this case as a limited fund settlement agreement was approved by the Court.
<b>External Contact(s) for Further Investigation</b>	N/A
<b>External Investigations, Evidence or Litigation NOT related to BD</b>	The <a href="#">Higher Learning Commission</a> withdrew the accreditation for Mountain State University on December 31, 2012, stating that the school "has not conducted itself with the integrity expected of an accredited institution with regard to ensuring that its students have accurate and timely information about the status of their academic programs and consistent quality across all Higher Learning Commission Public Disclosure

	<p>Notice Mountain State University Page 2 of 10 academic programs (Criterion One); does not have the human and financial resources expected of an accredited institution (Criterion Two); has not demonstrated that it can plan realistically for the future to anticipate and overcome institutional challenges (Criterion Two); lacks effective governance and administration to provide appropriate oversight over all levels of the institution and to take appropriate action to ensure quality in all its academic programs (Criterion One); and lacks adequate learning support and faculty oversight to assure an effective teaching and learning environment (Criterion Three).”</p> <p>Mountain State University <u>nursing program</u> also lost NLNAC accreditation for 2011 and WVBRN accreditation in 2012.</p> <p>According to the <u>West Virginia MetroNews</u>, the loss of accreditation led to “more than 400 individual suits...along with at least two class action suits in state court and two in federal court.” These lawsuits alleged the loss of accreditation cause financial and career-related harms as well as claims of breach of contract and breach of the covenant of good faith and fair dealing. A <u>settlement</u> of \$11.3 million was approved by the Circuit Court of Kanawha County, West Virginia.</p>
<b>News Articles/Media</b>	<p>An article in the <u>West Virginia MetroNews</u> announced that a settlement had been reached in the litigation against Mountain State University.</p> <p><u>CBSNews</u> published a story about the ten highest paid presidents of private universities, including Mountain State University President Charles H. Polk. Polk’s salary accounted for 3.5% of the University’s budget, a higher percentage than any other school in the nation.</p> <p>The <u>Chronicle of Higher Education</u> published an article discussing the firing of the University’s president, Charles H. Polk. This article notes that the graduation rate of students seeking a bachelor’s degree was 2.5 percent.</p> <p>The <u>Charleston Gazette-Mail</u> reported that officials in Houston, Texas believed that the University “inappropriately awarded police officers college credit the officers needed to apply for career advancement.”</p>
<b>Name of Reviewer</b>	Lauren Hutchinson
<b>Date Review Completed</b>	



**SUMMARY OF ALLEGATIONS AND RECOMMENDATION**

<b>Summary of Allegations Reviewed</b>	<p>Borrower Defense reviewed a sample of 20 of each type of allegation to identify potential trends in the applicant pool. These samplings provide commentary on the quality of education, the availability of employment prospects, and other perceived failures of this school. All allegation numbers are as of May 12, 2020.</p> <p style="text-align: center;"><b><u>Allegation Break Down:</u></b></p> <p><u>Employment Prospects</u> 110 of the total applications raise an employment prospects allegation. Of the 20 allegations sampled in applications, three were of the type that might warrant BD relief, if supported by evidence. The borrowers allege that Mountain State University lied about job placement assistance and clinical placement assistance. However, the borrowers failed to provide relevant supporting evidence to establish these allegations.</p> <p><u>Program Cost and Nature of Loans</u> 85 of the total applications raise a program cost allegation. Of the 20 allegations in sampled cases, three were of the type that might warrant BD relief, if supported by evidence. In two of these allegations they were told they would receive grants and/or scholarships to pay for the tuition, but they did not receive the grants and/or scholarships. The third was told their monthly loan payment would be \$50 but “it was a lot more than \$50 a month.” Borrowers failed to provide relevant supporting evidence.</p> <p><u>Transferring Credits</u> 107 of the total applications raise a transfer of credits allegation. Of the 20 allegations sampled, eleven might warrant BD relief, if supported by evidence. The borrowers allege that they were told the credits would transfer to other schools, but that the credits would not transfer. However, the borrowers failed to provide relevant supporting evidence to establish these allegations.</p> <p><u>Career Services</u> 62 of the total applications raise a career service allegation. Of the 20 allegations sampled, three might support BD relief. These allegations mainly regard job placement promises, assistance with job placement, and externship placement. The borrowers failed to provide relevant supporting evidence to establish these allegations.</p> <p><u>Educational Services</u> 93 of the total applications raise an educational services allegation. Of the 20 allegations sampled, two might warrant BD relief, if supported by evidence. These allegations mainly regard internship and clinical placement promises.</p>
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	<p>While these allegations are relevant to Borrower Defense, the borrowers failed to provide relevant supporting evidence to establish these allegations.</p> <p><u>Admissions and Urgency to Enroll</u> 65 of the total applications raise an admissions and urgency to enroll allegation. Of the 20 allegations sampled, none contained an allegation that might warrant BD relief.</p> <p><u>Other</u> 153 of the total applications raise an “other” allegation. Of the 20 allegations sampled, none contained an allegation that might warrant BD relief.</p>
<b>Recommended Next Steps</b>	<p>Based on our search for public information (including public records, news articles, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, there is insufficient evidence of widespread misconduct by Mountain State University to warrant further investigation. Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.</p> <p>We recommend that these cases be adjudicated using the standard protocol.</p>
<b>Recommended Focus Area(s)</b>	
<b>APPROVED BY:</b>	Michael Page
<b>DATE:</b>	5/14/2020

<b>Evidence Considered</b>	<p> <input type="checkbox"/> Attorney Submission  <input checked="" type="checkbox"/> Borrower Submission  <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB)  <input type="checkbox"/> Department of Education-Office of Investigator General (OIG)  <input type="checkbox"/> Documents Submitted by the school in response to your application  <input checked="" type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities  <input type="checkbox"/> Federal Trade Commission (FTC)  <input type="checkbox"/> Department of Justice (DOJ)  <input type="checkbox"/> U.S. Securities and Exchange (SEC)  <input type="checkbox"/> Attorney General _____ (state)  <input type="checkbox"/> Other  <input type="checkbox"/> No Other Evidence Considered         </p>
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<b>Advanced Letter Requests</b>	<p> <input type="checkbox"/> Standard Letter  <input type="checkbox"/> Standard Letter Plus:            •         </p>
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**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- Advanced Letter (if applicable)
- Salesforce Allegation Report
- Program Review Report

**DOE00011953-DOE00011955**



## Initial Review of Medium Batch Applications

### BACKGROUND

<b>Name of Institution</b>	Ohio Media School
<b>Corporate Owner(s)</b>	Ohio Center for Broadcasting
<b>Open or Closed</b>	Open
<b>Total Number of Applications</b>	14
<b>Patterns of Alleged Misconduct</b>	The majority of the borrower defense claims against Ohio Media School are regarding their inability to find a job after graduation, program cost and their overall dissatisfaction with the academic experience they received while enrolled.
<b>Evidence/Litigation</b>	No Litigation on record. The Ohio Media School is based in Columbus, Ohio. However, the school has 6 other campuses across the country.  The school was once called the "The Ohio School for Broadcasting" but was later renamed "Ohio Media School". However, no credible evidence of misconduct was found.
<b>Name of Reviewer</b>	Joshua DuBoise
<b>Date Review Completed</b>	9/24/19

### SUMMARY APPLICATION OVERVIEW

<b>BD Case Number</b>	<b>School/Campus listed on App</b>	<b>Program(s)</b>	<b>Year of Enrollment</b>	<b>Nature of Allegation(s)</b>	<b>Evidence</b>
01256100	Ohio Center For Broadcasting - Whitehall (Whitehall, OH)	Broadcasting	2012	Employment Prospects, Transferring Credits, Career Services	None
01284715	OHIO MEDIA SCHOOL - (Cleveland, OH)	N/A	2013	Employment Prospects, Program Cost and Nature of Loans, Transferring Credits, Career Services, Educational Services, Other	None
01364565	Ohio Media School	Radio Broadcasting	2007	Employment Prospects, Admissions and Urgency to Enroll,	None

				Program Cost and Nature of Loans	
01430509	Ohio Center of Broadcasting	Broadcasting	2013	Educational Services, Employment Prospects, Program Cost and Nature of Loans	None
01438038	Ohio Center of Broadcasting	Television broadcasting	2011	Employment Prospects, Career Services	None
01478994	Colorado Media School	Media Specialist	2014	Career Services, Program Cost and Nature of Loans	None
01520094	The ohio center for broadcasting - independence (valley view, OH)	Broadcasting	2012	Employment Prospects, Program Cost and Nature of Loans, Transferring Credits, Career Services, Educational Services, Admissions and Urgency to Enroll, Other	None
01564292	Columbus Ohio center for broadcasting - Columbus (Columbus, OH)	Radio broadcasting	2009	Employment Prospects, Program Cost and Nature of Loans, Career Services, Educational Services, Admissions and Urgency to Enroll	None
01566414	Ohio Media School (Valley View, OH)	Media Studies	2012	Employment Prospects, Career Services, Educational Services, Other	None
01569709	Ohio Center Of Broadcasting - (Valley View, OH)	Multimedia School	2010	Employment Prospects, Career Services, Other	None
01588203	Colorado Media School (affiliate of the Ohio Center for Broadcasting) - Lakewood Colorado (Lakewood, CO)	Broadcasting and Media	2017	Employment Prospects, Program Cost and Nature of Loans, Career Services, Admissions and Urgency to Enroll	None

**RECOMMENDATION:** My recommendation is that the cases against Ohio Media School be adjudicated. Most of the borrower defense claims against Ohio Media School address the student's dissatisfaction with job prospects, excessive program cost and do not state an actual claim.

The few borrowers that do state a adequate claim for misrepresentation, allege that the misrepresentations took place in the form of verbal communication with school administrators and were not supported by any additional evidence. Therefore, I do not believe that any further investigation is needed.

**APPROVED BY: John Stephenson**

**DATE: 9/24/2019**

**DOE00012087-DOE00012088**





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### Initial Review of Mid-Size Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Pinnacle Career Institute 01040500
<b>Open or Closed</b>	Closed (05/12/95)
<b>Date Advanced Letter Sent</b>	
<b>Additional Locations</b> • Add closure date if applicable	02613000 (Closed 08/15/2017)
<b>Corporate Owner(s)</b>	Manufacturer's Technical Institute, Inc.
<b>Total Number of Applications</b>	As of August 25, 2020, there are 9 applications already adjudicated and 25 applications awaiting adjudication.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p><b><u>Program Compliance</u></b> A Program review was conducted, and a Final Program Review Determination was issued in September 2019, however, none of the findings were relevant to borrower defense.</p> <p><b><u>AAASG and OIG Investigations</u></b> Borrower Defense found no past or pending AAASG or OIG investigations.</p> <p><b><u>OGC/DOJ</u></b> Borrower Defense found no past or pending OGC/DOJ investigations.</p>
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BORROWER DEFENSE</b>	A review of publicly available information found no evidence related to Borrower Defense. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated
<b>External Contact(s) for Further Investigation</b>	N/A
<b>Name of Reviewer</b>	Kristen Yarows
<b>Date Review Completed</b>	August 25, 2020

<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings) and Department of Education internal resources (FRPDs, AASG, and OIG investigations), there is insufficient evidence of widespread misconduct by Pinnacle Career Institute to warrant
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	further investigation. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated. Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Shana Metzger
<b>DATE:</b>	8/25/2020

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input checked="" type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
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<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: <ul style="list-style-type: none"> <li>•</li> </ul>
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**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- [Salesforce Allegation Report](#)
- [Program Review Report](#)

**DOE00012245-DOE00012258**





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### Initial Review of Medium Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Remington College – 02599100; 03012107; 03026500; 00777700; 00520300; 02605500; 03394300; 00758600 Education America – 01046100
<b>Open or Closed</b>	Open
<b>Additional Locations</b> • Add closure date if applicable	See Attachment A – Remington College Additional Locations
<b>Corporate Owner(s)</b>	<u>Prior to 2011:</u> <ul style="list-style-type: none"> <li>• Education America</li> <li>• Jerald M. Barnett</li> <li>• Jack W. Forrest</li> </ul> <u>After 2011:</u> <ul style="list-style-type: none"> <li>• Jerald M. Barnett</li> <li>• Remington College - BCL, Inc.</li> </ul>
<b>Total Number of Applications</b>	Remington College – 492, as of April 3, 2020 Education America – 1, as of April 3, 2020
<b>Patterns of Alleged Misconduct</b>	Patterns of allegations include misrepresentations of employment prospects, career services, and transferability of credits.
<b>Class Issue or Singular</b>	Class issue
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<b>Program Compliance:</b> There are four Final Program Review Determination (FPRD) reports. The first two FPRDs were completed in 2012 (PRCN: 2012-3-04-27949 <sup>1</sup> and 2012-4-06-27975 <sup>2</sup> ), the third was completed in 2013 (PRCN: 2013-1-04-28131 <sup>3</sup> ) and the fourth was completed in 2017 (PRCN: 2012-2-05-27971) <sup>4</sup> .  FRPD PRCN 2012-3-04-27949: The program review report was completed for a Remington College Campus located in Tampa, Florida. The review listed four findings. The findings reported issues with Remington's financial aid administration. It was determined that Remington College's resolved all findings and no further action was required. None of the findings concerned borrower defense issues.  FRPD PRCN 2012-4-06-27975: The program review reported was completed for a Remington College Campus located in Houston, Texas. The findings reported issues with Remington's financial aid

<sup>1</sup> See Attachment B – Remington College FRPD No. 2012-3-04-27949, 10/15/2012.

<sup>2</sup> See Attachment C – Remington College FRPD No. 2012-4-06-27975, 11/21/2012.

<sup>3</sup> See Attachment D – Remington College FRPD No. 2013-1-04-28131, 08/13/2013.

<sup>4</sup> See Attachment E – Remington College FRPD No. 2013-1-04-28131, 04/11/2017.



	<p>administration. The Dallas School Participation Division determined that the finding should not have been included in the review. The program reviewed noted this and closed the report. None of the findings concerned borrower defense issues.</p> <p><u>FRPD PRCN 201310428131</u>: The program review report was completed for a Remington College Campus located in Mobile, Alabama. It had seven findings. The findings reported issues with Remington's financial aid administration and failure to meet the minimum academic year definition for the Medical Assisting program. It was determined that Remington College resolved all findings and no further action was required. None of the findings concerned borrower defense issues.</p> <p><u>FRPD PRCN 2012-2-05-27971</u>: The program review report was completed for a Remington College Campus located in Cleveland, Ohio. The report had ten findings. The findings noted issues with Remington's financial administration, failure to meet campus safety regulations, and failure to meet the Drug-Free Schools and Communities Act reporting requirements. It was determined that Remington College failed to correct the first, second, and eighth findings; as a result Remington College was fined \$1,560.00. None of the findings concerned borrower defense issues.</p> <p><b><u>AAASG and OIG Investigations</u></b> After review, Borrower Defense found no past or pending internal AAASG or OIG investigations.</p>
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BD</b>	In 2012, the Harkin Report <sup>5</sup> recognized a pattern of complaints for transferring of credits, program cost and nature of loans, and admissions and urgency to enroll against Remington College. However, the Report cited only student complaints, and did not identify any extrinsic evidence which BD could use to establish similar allegations.
<b>External Contact(s) for Further Investigation</b>	The Department of Veterans Affairs, Office of Inspector General
<b>External Investigations, Evidence or Litigation NOT related to BD</b>	<p><u>Outside Agency Investigations</u></p> <ul style="list-style-type: none"> <li>In 2016, a settlement agreement was reached between Remington College and the United States Attorney's Office,</li> </ul>

<sup>5</sup> For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success. Volume 4 of 4. One Hundred and Twelfth Congress, Second Session (July, 30, 2012). S. PRT. 112-37; [https://www.help.senate.gov/imo/media/for\\_profit\\_report/PartI-PartIII-SelectedAppendixes.pdf](https://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf), [https://www.help.senate.gov/imo/media/for\\_profit\\_report/PartII/EducationAmerica.pdf](https://www.help.senate.gov/imo/media/for_profit_report/PartII/EducationAmerica.pdf)

	<p>District of Hawaii, after the college agreed to pay \$295,000 to resolve alleged False Claims Act violations.<sup>6</sup> The agreement was the result of the Department of Veterans Affairs, Office of Inspector General's investigation alleging that Remington College submitted false statements and false claims to the Department of Veterans Affairs to receive educational benefit payments for beneficiaries who were not enrolled in a VA approved program.</p> <p><u>Lawsuits Under Education America's Ownership:</u></p> <ul style="list-style-type: none"> <li>• In <i>Bates v. United States</i>,<sup>7</sup> the U.S. Attorney for the Northern District of Indiana charged Mr. Bates with "knowingly and willfully" misapplying funds from the federal guaranteed-student-loan program. Mr. Bates was an employee of Education America. In 1989, court documents show, that Education America instructed Mr. Bates to misapply funds. Mr. Bates was indicted.</li> <li>• The <i>Bowan v. Education America, Inc.</i><sup>8</sup> suit was brought forth alleging false certifications of compliance with regulations and statutes governing the participation in federal student aid programs. The Court of Appeals dismissed the case.</li> </ul>
<b>News Articles/Media</b>	<p>Challenge Student Debt published an article titled <a href="#">Remington College Fraud Complaints</a>.<sup>9</sup> According to the Challenge Student Debt website, students and former students of the school have complained about their inability to get jobs after taking programs at Remington College and the inability to transfer Remington College credits to other schools, even though Remington College claimed they are accredited, and credits would transfer.</p> <p>On November 11, 2010, ABC News published an article titled <a href="#">ABC News Investigates For-Profit Education Again: Recruiters Caught Offering Bad Advice</a>.<sup>10</sup> According to ABC News, prospective and enrolled students of Remington College with criminal records were told by Remington College recruiters that they would be able to work in law enforcement as Sheriffs' deputies, corrections officers, jailers and border patrol. Many found their criminal record to be a barrier when applying for jobs with law enforcement. An ABC reporter conducted an undercover investigation that caught a</p>

<sup>6</sup> <https://www.justice.gov/usao-hi/pr/college-agrees-pay-295442-resolve-allegations-improper-claims-educational-benefit>; <https://www.va.gov/oig/pubs/highlights/VAOIG-highlights-201608.pdf>; <https://www.va.gov/oig/pubs/sars/vaoig-sar-2016-2.pdf>.

<sup>7</sup> *Bates v. United States*, 96 F.3d 964 (7th Cir. 1996), *aff'd*, 522 U.S. 23, 118 S. Ct. 285, 139 L. Ed. 2d 215 (1997).

<sup>8</sup> *U.S. ex rel. Bowan v. Education America, Inc.*, 116 F. App'x 531 (5th Cir. 2004).

<sup>9</sup> <https://www.challengestudentdebt.com/remington-college-fraud-complaints/>

<sup>10</sup> <https://abcnews.go.com/TheLaw/abc-news-investigates-profit-education-recruiters-caught-offering/story?id=12122004>

	Remington College recruiter providing false information about a convicted felon's ability to work for Texas Department of Public Safety. The reporter found that in Texas a convicted felon does not have the ability to work in law enforcement.
<b>Name of Reviewer</b>	Nastashia Matos
<b>Date Review Completed</b>	4/28/2020

**SUMMARY OF ALLEGATIONS AND RECOMMENDATION**

<b>Summary of Allegations Reviewed</b>	<p style="text-align: center;"><b><u>Application Summary:</u></b><sup>11</sup></p> <p>Borrower defense reviewed a sample of 30 allegations for each allegation category to identify potential trends in the applicant pool. As of April 3, 2020, there are 465 borrower applications under Remington College and one claim under Education America. The borrower application enrollment dates range from 1977 to 2020. The most common allegations are employment prospects, career services and transferring credits. Many of the allegations regard misrepresentations or omissions made by the school, but borrowers have not provided relevant supporting evidence to support their allegations.</p> <p style="text-align: center;"><b><u>Allegation Break Down</u></b></p> <p><b><u>Employment Prospects: 363 allegations</u></b>  After sampling 30 allegations from various Remington campuses, programs and enrollment periods, 22 of the 30 made an employment prospects allegation that might warrant BD relief. The borrowers allege that: Remington guaranteed them jobs; they were told that career services would place them in a job after graduation; and the school misrepresented job placement rates. There was insufficient commonality of campus and/or time period to suggest a pattern that warrants further investigation, and the borrowers failed to provide relevant supporting evidence.</p> <p><b><u>Program Cost and Nature of Loans: 285 allegations</u></b>  After sampling 30 allegations from various Remington campuses, programs and enrollment periods, the borrowers alleged that Remington College failed to educate them about the detail of the loans (for example, the interest rate on the loan, the type of loan that was taken out, or how the loan would affect them in the future). There was insufficient commonality of campus and/or time period to suggest a pattern that warrants further investigation, and the borrowers failed to provide relevant supporting evidence.</p> <p><b><u>Career Services: 333 allegations</u></b>  After sampling 30 allegations from various Remington campuses, programs and enrollment periods, 21 of the 30 made a career services allegation that might warrant BD relief. The borrowers allege that Remington stated that they would place students into a job, that they had connections with employers for their field of</p>
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<sup>11</sup> See Attachment F: Remington College Summary of Application Overview



	<p>study, and that Remington College would provide resume writing services, help students find a job and assist with other career service needs. There was insufficient commonality of campus and/or time period to suggest a pattern that warrants further investigation, and the borrowers failed to provide relevant supporting evidence.</p> <p><u>Transferring Credits: 271 allegations</u> After sampling 30 allegations from various Remington campuses, programs and enrollment periods, 21 of the 30 made a transfer of credit allegation that might warrant BD relief. The borrowers allege that Remington misrepresented the accreditation of the school,<sup>12</sup> and the ability to transfer credits both into the school and to other educational institutions. There was insufficient commonality of campus and/or time period to suggest a pattern that warrants further investigation, and the borrowers failed to provide relevant supporting evidence.</p> <p><u>Educational Services: 217 allegations</u> After sampling 30 allegations from various Remington campuses, programs and enrollment periods, 11 of the 30 made an educational services allegation. The borrowers' allegations discuss the quality of the education received, including personal opinions on the instructors, curriculum, and program resources.</p> <p><u>Admissions and Urgency to Enroll: 238 allegations</u> After sampling 30 allegations from various Remington campuses, programs and enrollment periods, 20 of 30 made an admissions and urgency to enroll allegation. The borrowers' allegations state the Remington's sales tactics were inappropriate because they pressured potential students into enrolling quickly, routinely called, sent many emails, and in some cases promised incentive programs that never occurred.</p> <p><u>Job Placement Rate: 2 allegations</u> There are only 2 job placement rate allegations in total; one of which alleges that Remington College stated they had a 99% job placement rate. The borrowers failed to provide relevant supporting evidence.</p> <p><u>Other: 261 allegations</u> After sampling 30 allegations from various Remington campuses, programs and enrollment periods, none of the 30 made an allegation that might warrant borrower defense relief.</p>
<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, there is insufficient evidence of widespread misconduct by Remington College to warrant further

<sup>12</sup> Remington College is regionally accredited by the Middle States Commission on Higher Education.



	<p>investigation. Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.</p> <p>BD recommends that the cases be adjudicated using the standard protocol.</p>
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Michael Page
<b>DATE:</b>	5/1/2020

<b>Evidence Considered</b>	<p><input type="checkbox"/> Attorney Submission</p> <p><input checked="" type="checkbox"/> Borrower Submission</p> <p><input type="checkbox"/> Federal Trade Commission</p> <p><input type="checkbox"/> Department of Justice</p> <p><input type="checkbox"/> Securities and Exchange Commission</p> <p><input type="checkbox"/> Attorney General _____ (state)</p> <p><input type="checkbox"/> Consumer Financial Protection Bureau</p> <p><input type="checkbox"/> ED - FSA/OIG</p> <p><input type="checkbox"/> Other</p>
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Attachment A

Remington College Locations

OPE ID	Location	Status
02599100	Little Rock AR	Closed: 3/31/1998
02599101	Oklahoma City, OK	Open
02599102	Fayetteville, AR	Closed: 3/31/1998
02612900	Wichita, KS	Closed: 03/25/1998
03012100	Colorado Springs, CO	Open
03012101	Colorado Springs, CO	Open
03012102	Garland, TX	Open
03012103	Aurora, CO	Open
03012104	Honolulu, HI	Open
03012105	Billings, MT	Closed: 12/22/2000
03012106	Tempe, AZ	Closed: 09/22/2008
03012107	Lakewood, CO	Closed: 12/31/2006
03026500	Garland, TX	Open
03026501	Houston, TX	Open
03026502	Houston, TX	Open
03026503	Houston, TX	Open
03026504	Webster, TX	Open
03026505	Garland, TX	Open
03026506	Ft. Worth, TX	Open
03026507	Houston, TX	Closed: 01/14/2016
03026508	Tampa, FL	Closed: 04/07/2016
03026509	Lake Mary, FL	Closed: 01/21/2016
03026510	Lake Mary, FL	Open
03026511	Cleveland, OH	Open
03026512	North Olmsted, OH	Closed: 01/17/2014
03026513	Shreveport, LA	Open
03026514	Lafayette, LA	Open
03026515	Baton Rouge, LA	Open
03026516	Mobile, AL	Open
03026517	Memphis, TN	Open
03026518	Little Rock, AR	Open
03026519	Nashville, TN	Open
03026520	Columbia, SC	Open
03026521	Honolulu, HI	Closed: 01/08/2020
03026522	Cleveland, OH	Closed: 10/10/2018
03026523	Knoxville, TN	Closed: 07/01/2004
00777700	Cleveland, OH	Open
00777701	Cleveland, OH	Open
00777702	Blairsville, PA	Open
00777703	Blairsville, PA	Closed: 01/18/2000
00777704	N. Olmsted, OH	Open
00777705	Cleveland, OH	Open
00777706	Shreveport, LA	Open
00777707	Lafayette, LA	Open
00777708	Baton Rouge, LA	Open

00520300	Lafayette, LA	Open
00520301	Montgomery, AL	Open
00520302	Hot Springs, AR	Open
00520303	Shreveport, LA	Open
00520304	Little Rock, AR	Closed: 03/31/1998
00520305	Monroe, LA	Open
00520306	Baton Rouge, LA	Open
00520307	Garland, TX	Open
00520308	Garland, TX	Open
00520309	Garland, TX	Open
02605500	Mobile, AL	Open
02605501	Memphis, TN	Open
02605502	Memphis, TN	Open
02605503	Little Rock, AR	Open
02605504	Nashville, TN	Open
02605505	Columbia, SC	Open
02605506	Memphis, TN	Open
02605507	Honolulu, HI	Open
02065100	Metairie, LA	Closed: 08/25/2005
02065101	Metairie, LA	Closed: 08/25/2005
03394300	San Diego, CA	Closed: 04/15/2010
03394301	Honolulu, HI	Open
03394302	Tempe, AZ	Open
03394303	San Diego, CA	Open
00758600	Tampa, FL	Open
00758601	Tampa, FL	Open
00758602	Fort Worth, TX	Open
00758603	Fort Worth, TX	Open
00758604	Largo, FL	Closed: 09/30/2009
00758605	Jacksonville, FL	Closed: 07/10/2008
00758606	Tampa, FL	Closed: 07/21/2008
00758607	Jacksonville, FL	Closed: 07/12/2007
00758608	Lake Mary, FL	Open
00758609	Heathrow, FL	Open
01046100	Topeka, KS	Closed: 10/11/2002
01046101	Mobile, AL	Closed: 10/11/2002
01046102	Memphis, TN	Closed: 10/11/2002
01046103	North Little Rock, AR	Closed: 10/11/2002



Attachment B

Remington College Final Program Determination No. 2012-3-04-27949 10/15/2012

Attachment C

Remington College Final Program Determination No. 2012-3-04-27949 10/15/2012

Attachment D

Remington College Final Program Determination No. 2013-1-04-28131 08/13/2013

Attachment E

Remington College Final Program Determination No. 2013-1-04-28131 04/11/2017



Attachment F

[Remington College Summary Application Overview](#)

**DOE00012388-DOE00012389**

## Initial Review of Medium Batch Applications

### BACKGROUND

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

### SUMMARY APPLICATION OVERVIEW

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

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

**RECOMMENDATION:**

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

**APPROVED BY: John Stephenson**

**DATE: 10/11/2019**



**DOE00012560-DOE00012561**

**Initial Review of Medium Batch Applications****BACKGROUND**

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

**SUMMARY APPLICATION OVERVIEW**

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

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

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

**APPROVED BY: John Stephenson**

**DATE: 10/11/2019**

**DOE00012629-DOE00012633**





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### Initial Review of Mid-Size Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Stenotype Institute of Jacksonville 00841700
<b>Open or Closed</b>	Closed 03/15/2016
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	N/A
<b>Corporate Owner(s)</b>	Gloria Wiley - Stenotype Institute of Jacksonville of Jacksonville, Inc.
<b>Total Number of Applications</b>	As of August 31, 2020, there are 66 applications awaiting adjudication.
<b>Patterns of Alleged Misconduct</b>	Stenotype Institute of Jacksonville does not have any current litigation pending. Based on a sample of 10 allegations of each category, the borrowers do not present evidence that indicates Stenotype Institute of Jacksonville committed overt or repetitive misconduct, fraud, or misrepresentations. The application narratives provide individual experiences, frustrations, or issues encountered as a customer of Stenotype Institute of Jacksonville. Additionally, although some of the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p><b><u>Program Compliance</u></b> Program reviews conducted in 2017 and 2004, however, none of the findings were relevant to borrower defense. (<a href="#">PRCN: 2016-2-04-29225</a>; PRCN: 2003-2-04-20987).</p> <p><b><u>AAASG and OIG Investigations</u></b> Borrower Defense found no past or pending AAASG or OIG investigations.</p> <p><b><u>OIG/DOJ</u></b> In 2019, Gloria Wiley, former owner of Stenotype Institute of Jacksonville, was sentenced to prison and ordered to pay over \$288,000 in restitution to former students, the Department of Education, and the U.S. Department of Veterans Affairs. Wiley improperly kept \$290,000 in financial aid refunds due to the Department of Education and to former students, and \$9,000 to the Department of Veteran Affairs. (<a href="#">DOJ Press Release</a>)</p>

<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BORROWER DEFENSE</b>	<u><i>Handforth v. Stenotype Institute of Jacksonville, Inc.</i>, No. 309-CV-361-J-32MCR, 2010 WL 55578, (M.D. Fla. Jan. 4, 2010)</u> Plaintiff bought a class action against Stenotype Institute of Jacksonville, alleging the promise of a two year program was virtually impossible to complete and was therefore a bait and switch. The Court found it lacked subject matter jurisdiction and the case was dismissed without prejudice.
<b>External Contact(s) for Further Investigation</b>	N/A
<b>External Investigations, Evidence or Litigation NOT related to BORROWER DEFENSE</b>	N/A
<b>News Articles/Media</b>	N/A
<b>Name of Reviewer</b>	Phuong Tran Giang
<b>Date Review Completed</b>	9/1/2020

## SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p style="text-align: center;"><b><u>Summary of Allegations</u></b></p> <p>Borrower Defense reviewed a sample of 10 allegations of each category outlined below to identify potential trends and/or salient information provided by the applicant pool. The enrollment dates for the applicant pool range from 2003 through 2016 with the majority of applicants having enrollment dates between 2007-2013. The narrative allegations include complaints relating to: (i) the length of time to finish the program; (ii) the transferability of their credits; and (iii) the ability to get a job after graduation.</p> <p style="text-align: center;"><b><u>Employment Prospects:</u></b></p> <p>Based on the 10 allegations reviewed, borrowers most commonly allege that they were unable to sit for licensing exams and that the school promised to place borrowers in externships that would lead to job placements. One borrower attached a program curriculum description that read “Normal Program Length is 24 months” but no other borrowers provided any additional supporting evidence.<sup>1</sup> Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide sufficient supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.</p> <p style="text-align: center;"><b><u>Program Cost and Nature of Loans:</u></b></p>
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<sup>1</sup> [Program Curriculum Attachment - 24 months](#)

Based on the 10 allegations reviewed, many borrowers made allegations regarding the high cost of their program or claimed they were not given enough explanation regarding their loans. A few borrowers alleged the institute misrepresented the nature of their financial aid or the cost of the program. Several borrowers alleged they were told the program would take on average 2 years to complete but it took them longer to complete the program. One borrower attached a program curriculum description that read "Normal Program Length is 24 months" but no other borrowers provided any additional supporting evidence. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide sufficient supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Transferring Credit:**

Based on the 10 allegations reviewed, most borrowers alleged that the institute promised them their credits would transfer to other schools, but the credits did not transfer. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Career Services:**

Based on the 10 allegations reviewed, many borrowers alleged they were unable to find a job upon graduation or the institute told them it would be easy to find a job. One borrower alleged they were promised career services assistance but was not provided any assistance. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Educational Services:**

Based on the 10 allegations reviewed, a few borrowers alleged the Institute misrepresented the length of time to complete the program. Other borrowers alleged they were promised an associate's degree but received a certification instead. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.

**Admissions and Urgency to Enroll:**

Based on the 10 allegations reviewed, borrowers commonly allege that they were told there was an urgency to sign up immediately and, if they did not sign up immediately, they would lose a seat in the class. These claims are not of the type that would warrant Borrower Defense relief absent a misrepresentation

**Other:**



	Based on the 10 allegations reviewed, a few borrowers alleged the program's instructors were not as experienced as advertised or they did not have a teacher in the class at all. Other borrowers described how the school was in the news for financial aid fraud. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession of evidence to establish a pattern or practice of this type of misconduct.
<b>Recommended Next Steps</b>	Based on our search for public information (including public records, court documents and filings), Department of Education internal resources (FRPDs, AASG, and OIG investigations), and the sampling of claims, there is insufficient evidence of widespread misconduct Stenotype Institute of Jacksonville to warrant further investigation. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Shana Metzger
<b>DATE:</b>	9/3/2020

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input checked="" type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input checked="" type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
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<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus:
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**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- [Salesforce Allegation Report](#)
- [PRCN: 2016-2-04-29225](#)



- [DOJ Press Release](#)
- [\*Handforth v. Stenotype Institute of Jacksonville, Inc.\*, No. 309-CV-361-J-32MCR, 2010 WL 55578, \(M.D. Fla. Jan. 4, 2010\)](#)
- [Program Curriculum Attachment - 24 months](#)

**DOE00012658-DOE00012658**

**Strayer University – Evidence Considered Protocol**

Applicable to:

Strayer University

Strayer Business College

Entering Evidence Considered Manually:

1. Open a case with a suggested closing correspondence value of Standard Denial with Evidence Considered in status 3.10
2. In the “Evidence Considered” field on the case select the following:
  - a. Evidence obtained by the Department in conjunction with its regular oversight activities
3. In the “Other Evidence” field on the case input the following:
  - a. [nothing is needed to be entered into this field for Strayer]
4. The case is now ready to process following the normal borrower notification letter creation process.

Bulk Update Options:

1. Bulk update (by work ticket to Accenture) all Strayer cases in 3.10 with the following:
  - a. In the “Evidence Considered” dropdown, select “Evidence obtained by the Department in conjunction with its regular oversight activities.”
2. Process following the normal borrower notification letter creation process.

**DOE00012664-DOE00012668**





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### Initial Review of Medium Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Strayer University - 00145900 Strayer Business College - 00465400 (closed 12/20/1991)
<b>Open or Closed</b>	Open
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	See <a href="#">Attachment A -Strayer University Additional Locations</a>
<b>Corporate Owner(s)</b>	Strategic Education, Inc.
<b>Total Number of Applications</b>	As of February 21, 2020, there were 549 applications for Strayer University and one application for Strayer Business College awaiting adjudication.
<b>Patterns of Alleged Misconduct</b>	Strayer University currently does not have any pending litigation and no evidence suggests that the University is participating in fraudulent activity. Based on a sample of 50 applications below, the borrowers do not present evidence that indicate Strayer committed overt or repetitive misconduct, fraud, or misrepresentations. The application narratives provide individual experiences, frustrations, or misunderstandings encountered as a customer of Strayer University.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p><b><u>Program Compliance</u></b></p> <p>Two Final Program Review Determination (FPRD) were completed in 2014 (PRCN: 201340328425<sup>1</sup> and 2014406288027<sup>2</sup>).</p> <p>The first 2014 program review focuses on Strayer's self-reported noncompliance with a Title IV program at its Palm Beach Gardens campus. The program review finds that Strayer University improperly disbursed funds to one of seven students enrolled in its Master of Business Administration program. Strayer did not receive punishment from the Department for this error.</p> <p>The second 2014 program review relates to Strayer University's failure to resolve conflicting information provided by a student. The review determination closed the findings with no further action because Strayer took adequate corrective actions.</p> <p>Two additional FPRDs were completed in 2015. (PRCN: 201440428745<sup>3</sup> and 201440328800<sup>4</sup>).</p>

<sup>1</sup> See [Attachment B – Strayer University FRPD 2/24/2014](#)

<sup>2</sup> See [Attachment C – Strayer University FRPD 10/21/2014](#)

<sup>3</sup> See [Attachment D – Strayer University FRPD 1/7/2015](#)

<sup>4</sup> See [Attachment E – Strayer University FRPD 4/29/2015](#)

	<p>A complete copy of the first 2015 program review could not be located by the Compliance Manager, however, a copy of the letter issued to Strayer University is attached. The letter specifically focuses on the Douglasville, GA location and shows that Strayer has resolved all findings related to a Title IV violation and no further action is required.</p> <p>The second 2015 program review relates to Title IV funds, and the miscalculation of a student refund. The program review instructs the University to return a specified amount to the student's outstanding Federal Direct Loans.</p> <p><b><u>AAASG and OIG Investigations</u></b> After review, Borrower Defense found no past or pending AAASG or OIG investigations.</p> <p><b><u>OGC/DOJ</u></b> DOJ <u>declined to intervene</u> in a qui tam action against Strayer University and the case was ultimately dismissed.<sup>5</sup></p>
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BD</b>	N/A
<b>External Contact(s) for Further Investigation</b>	N/A
<b>External Investigations, Evidence or Litigation NOT related to BD</b>	In 2014, an admissions official was found to have fraudulently created 58 official Strayer University transcripts to commit immigration fraud by falsifying student visas. <sup>6</sup>
<b>News Articles/Media</b>	<p><u><a href="#">For-Profit Schools Target The Black Community. Here's How You Can Avoid The Scam.</a></u> This <u>article</u> uses Strayer University as an example on how for-profit universities cater advertising to certain markets, enlisting well known celebrities and pointed advertising narratives. The article highlights the motives of universities like Strayer but does not direct the reader to any specific misrepresentations, misconduct, or malfeasance. Vice published a similar <u>article</u> titled: <u><a href="#">How For-Profit Colleges Have Targeted and Taken Advantage of Black Students.</a></u></p>

<sup>5</sup> See *U.S. ex rel Hardy v. Strayer University*, 1:14-cv-00154 (U.S. District Court for the Eastern District of Virginia, Alexandria Division) (Feb. 12, 2014) (on file with BDG).

<sup>6</sup> See McLean business managers, *Strayer University officials convicted of immigration fraud*, INSIDE NOVA (Aug. 30, 2014), [https://www.insidenova.com/headlines/mclean-business-managers-strayer-university-officials-convicted-of-immigration-fraud/article\\_4d1ab724-2edf-11e4-8c22-001a4bcf887a.html](https://www.insidenova.com/headlines/mclean-business-managers-strayer-university-officials-convicted-of-immigration-fraud/article_4d1ab724-2edf-11e4-8c22-001a4bcf887a.html) (on file with BDG).



	<p><a href="#"><u>University Admits Mistake: Student Won't Graduate On-Time.</u></a> A 2019 <a href="#"><u>article</u></a> found that a Strayer University counselor failed to enroll the student in a required course, delaying graduation. The University has since provided the student with resources and benefits as an apology.</p> <p><a href="#"><u>For-profit Strayer University opens its ninth campus in Florida Thursday in College Town.</u></a> This 2020 <a href="#"><u>article</u></a> discusses how Strayer University continues to expand and has opened several new locations including its most recent location in Tallahassee, Florida location.</p>
<b>Name of Reviewer</b>	Robert Martin
<b>Date Review Completed</b>	2/21/2010

### SUMMARY OF ALLEGATIONS AND RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<b><u>Summary of Allegations</u></b>
	<p>Borrower Defense reviewed a sample<sup>7</sup> of 50 applications to identify potential trends in the applicant pool. Approximately half the sampled applications participated in a Business or Business Administration program at varying credential levels. The remainder of the application programs include Criminal Justice, Information Technology, Computer Science, Accounting, and Human Resource Management, among others. The enrollment dates for Strayer University range from 1997 to 2019. One application is against Strayer Business College with a 1988 enrollment date. The narratives in the reviewed applications provide commentary on the quality of education, the cost of attendance, and frustrations arising from unemployment. Only two borrowers attached additional information. One borrower attached correspondence related to a dispute regarding academic probation and the second related to a dispute regarding the program printed on their certificate. Both disputes are unrelated to a Borrower Defense claim.</p> <p style="text-align: center;"><b><u>Employment Prospects</u></b></p> <p>Of the sampled applications, 37 raise an employment prospects allegation, with only 18 allegations asserting a relevant claim. The borrowers allege that Strayer University lied about job placement assistance, employment outcomes, and Strayer's relationship with employers. Although the allegations asserted may be relevant to Borrower Defense, the borrowers fail to provide any supporting evidence that exhibits a pattern of practice consistent with misconduct.</p> <p style="text-align: center;"><b><u>Program Cost and Nature of Loans</u></b></p> <p>Of the sampled applications, 43 raise a program cost allegation. Of these 43 allegations, 25 borrowers allege that Strayer University lied about the cost of</p>

<sup>7</sup> See [Attachment F: Strayer University Summary Application Overview](#)

attendance, how the tuition would be paid, and the nature of their loans. A few borrowers allege that the cost of attendance increased routinely without prior notice throughout the program. Generally, the borrower's complaints focus on a lack of clarity in the cost of attendance. Without evidence of material falsities or proof of misleading information, there is no reason for further investigation.

#### **Career Services**

Of the sampled applications, 31 raise a career services allegation. Of those 31 allegations, 17 allegations relate to assistance with securing employment following graduation. The applications express frustrations with services that Strayer University both provided and failed to provide to its students. The allegations alone do not provide any support for misconduct relevant to Borrower Defense.

#### **Transferring Credits**

Of the sampled applications, 26 raise a transfer of credits allegation. Most transfer allegations express credit related issues encountered throughout the borrower's individual experience. Several borrowers state an inability to transfer credits in and out of Strayer University, however, do not provide any evidence of the credits' purported transferability. Additionally, Strayer is regionally accredited by the Middle States Commission on Higher Education. Based on these allegations, there is no evidence to support misconduct regarding transfer of credits.

#### **Educational Services**

Of the sampled applications, 10 raise an allegation relevant to Educational Services. The borrowers' allegations discuss the quality of the education received, including personal opinions on the instructors, curriculum, and program resources. Based on these allegations, there is no evidence to support misconduct regarding educational services.

#### **Admissions and Urgency to Enroll**

Based on 41 allegations, only 26 of those allegations are relevant to Admissions and Urgency to Enroll. The borrowers' allegations illustrate sales tactics that include pressuring potential students into enrolling quickly, routinely calling and sending emails, and in some cases incentive programs, such as Strayer providing the borrower with a laptop. The borrower statements do not show a pattern of practice consistent with general misconduct.

#### **Other**

Of the 50 applications reviewed, 31 borrowers provided an "other" allegation. These borrowers provided explanatory narratives relevant to their personal experiences, addressing the implications of acquiring educational debt without secure employment, or commenting on the quality of their educational experience. The borrowers do not appear to reveal a pattern of misconduct.



<b>Recommended Next Steps</b>	Based on public information (including public records, news articles, court documents and filings) and Department of Education internal resources (FRPDs, AASG, and OIG investigations), there is no evidence to suggest that Strayer University engaged in fraudulent activity. In addition to research conducted, the 50-case sample did not identify a pattern of practice consistent with general misconduct. The allegations sampled focus on individual experiences and do not suggest widespread misrepresentations or violations. Without further evidence, it is recommended that the cases be denied. If additional evidence is discovered or received in the future, these claims may be revisited as warranted.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	John Stephenson (updated by Mike Garry on 4/22/20)
<b>DATE:</b>	2/24/2020 (updated 11/20/2020)

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Federal Trade Commission <input type="checkbox"/> Department of Justice <input type="checkbox"/> Securities and Exchange Commission <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Consumer Financial Protection Bureau <input checked="" type="checkbox"/> ED - FSA/OIG (Final Program Reviews) <input type="checkbox"/> Other
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<b>Advanced Letter Requests</b>	<input checked="" type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus:
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**Links:**

- Salesforce Allegation Report
  - [Attachment A -Strayer University Additional Locations](#)
- Program Review Report:
  - [Attachment B – Strayer University FRPD 2/24/2014](#)
  - [Attachment C – Strayer University FPRD 10/21/2014](#)
  - [Attachment D – Strayer University FRPD 1/7/2015](#)
  - [Attachment E – Strayer University FRPD 4/29/2015](#)

**DOE00012673-DOE00012675**



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### Initial Review of Mid-Size Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Suburban Technical School (01093000)
<b>Open or Closed</b>	Closed (11/21/2011)
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	There are no additional locations for this school, however Suburban Technical School (01093000) merged/consolidated with the Harris School of Business (02104003).
<b>Corporate Owner(s)</b>	Premier Education Group, L.P. <ul style="list-style-type: none"> <li>Robert B. Bast</li> <li>Elizabeth Brennan Trust</li> </ul> Private
<b>Total Number of Applications</b>	As of August 26, 2020, there are 23 applications already adjudicated and one application awaiting adjudication.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<b><u>Program Compliance</u></b> Program reviews were conducted on 12/16/2004 and 3/26/2008, however, none of the findings were relevant to borrower defense.  <b><u>AAASG and OIG Investigations</u></b> Borrower Defense found no past or pending AAASG or OIG investigations.  <b><u>OGC/DOJ</u></b> Borrower Defense found no past or pending OGC/DOJ investigations.
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BORROWER DEFENSE</b>	<a href="#"><u>United States, ex rel. LaPorte v. Premier Educ. Grp., L.P., Civ. No. 11-3523, 2014 WL 5449745 (D.N.J. Oct.27, 2014)</u></a>  Plaintiffs allege that Premier Education Group (“PEG”) made or caused to be made false claims and statements in order to participate in the Federal student financial aid programs. Specifically, PEG violated provisions of the contractual agreements between PEG and the Department of Education (“DOE”), called Program Participation Agreements (“PPAs”), in which

	<p>PEG agreed to abide by Federal regulations and not engage in material misrepresentations as a condition of PEG's eligibility to receive said funding.</p> <p><u><a href="#">United States v. Premier Educ. Grp., L.P., Civ. No. 113523, 2016 WL 274 7195 (D.N.J. May 11, 2016)</a></u></p> <p>Plaintiff's alleged that PEG violated provisions of the contractual agreements between PEG and the DOE, PPA's, in which PEG agreed to abide by federal regulations and not engage in material misrepresentations as a condition of PEG's eligibility to receive said funding.</p>
<b>External Contact(s) for Further Investigation</b>	N/A
<b>Name of Reviewer</b>	Carrington Jackson
<b>Date Review Completed</b>	8/27/2020

<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings) and Department of Education internal resources (FRPDs, AASG, and OIG investigations), there is insufficient evidence of widespread misconduct by Suburban Technical School to warrant further investigation. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Shana Metzger
<b>DATE:</b>	08/27/2020

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input checked="" type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application
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	<input type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input checked="" type="checkbox"/> Department of Justice (DOJ) <input checked="" type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
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<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: •
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**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- Working Documents
  - <https://usdedeop.sharepoint.com/:f:/r/teams/FSA/zdo%20not%20use/Borrower%20Defense%20Team/Investigations/MidSize/In%20Progress/Carrington/Suburban%20Technical%20School?csf=1&web=1&e=fmMZdu>
- Program Review Report
  - <https://usdedeop.sharepoint.com/teams/FSA/zdo%20not%20use/Borrower%20Defense%20Team/Investigations/Mid-Size/PEPS%20School%20Reports/Suburban%20Technical%20School%20OPEID%20001093000.PDF>

**DOE00012822-DOE00012824**



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### Initial Review of Mid-Size Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Touro College 01014200
<b>Open or Closed</b>	Open
<b>Date Advanced Letter Sent</b>	N/A
<b>Additional Locations</b> • Add closure date if applicable	See Exhibit A – Additional Locations
<b>Corporate Owner(s)</b>	N/A - Private, Not for Profit
<b>Total Number of Applications</b>	As of August 13, 2020, there are 34 cases already adjudicated and one application awaiting adjudication.
<b>Internal ED Investigation(s)</b> • PC, AAASG, OIG	<p><b><u>Program Compliance</u></b> Borrower Defense found no past or pending Final Program Review Determinations related to Borrower Defense.</p> <p><b><u>AAASG and OIG Investigations</u></b> Touro College underwent an OIG audit in 2008, however, none of the findings were relevant to borrower defense.</p> <p><b><u>OGC/DOJ</u></b> Borrower Defense found no past or pending OGC/DOJ investigations.</p>
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BORROWER DEFENSE</b>	A review of publicly available information found no evidence related to Borrower Defense.
<b>External Contact(s) for Further Investigation</b>	N/A
<b>Name of Reviewer</b>	Wendy Bonilla
<b>Date Review Completed</b>	8/13/2020

<b>Recommended Next Steps</b>	Based on our search for public information (including public records, news articles, court documents and filings) and Department of Education internal resources (FRPDs, AASG, and OIG investigations), there is insufficient evidence of widespread misconduct by Touro College to warrant further investigation. If additional evidence is discovered or received in the future, these claims may be revisited as warranted. As such, it is recommended the cases be adjudicated.
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	Additionally, as there is no evidence of widespread misconduct, notice to the school on these claims is not required.
<b>Recommended Focus Area(s)</b>	
<b>APPROVED BY:</b>	Shana Metzger
<b>DATE:</b>	08/13/2020

<b>Evidence Considered</b>	<input type="checkbox"/> Attorney Submission <input type="checkbox"/> Borrower Submission <input type="checkbox"/> Consumer Protection Financial Bureau (CPFB) <input type="checkbox"/> Department of Education-Office of Investigator General (OIG) <input type="checkbox"/> Documents Submitted by the school in response to your application <input checked="" type="checkbox"/> Evidence Obtained by the Department in conjunction with its regular oversight activities <input type="checkbox"/> Federal Trade Commission (FTC) <input type="checkbox"/> Department of Justice (DOJ) <input type="checkbox"/> U.S. Securities and Exchange (SEC) <input type="checkbox"/> Attorney General _____ (state) <input type="checkbox"/> Other <input type="checkbox"/> No Other Evidence Considered
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<b>Advanced Letter Requests</b>	<input type="checkbox"/> Standard Letter <input type="checkbox"/> Standard Letter Plus: <ul style="list-style-type: none"> <li>•</li> </ul>
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**Links:** In this section please provide the Sharepoint links to working documents and evidence reviewed. Example of items to provide links for below.

- Advanced Letter (if applicable)
- Salesforce Allegation Report – Touro College Allegation Report
- Program Review Report

Exhibit A – Additional Locations

01014204 – Forest Hills, NY



01014205 – Central Islip, NY  
01014206 – Brooklyn, NY  
01014207 – Brooklyn, NY  
01014208 – Brooklyn, NY  
01014217 – New York, NY  
01014219 – Kew Garden Hills, NY  
01014220 – Bay Shore, NY  
01014221 – Brooklyn, NY  
01014222 – Brooklyn, NY  
01014223 – Brooklyn, NY  
01014227 – Givat Shaul, Jerusalem, Israel  
01014230 – Brooklyn, NY  
01014231 – Kew Garden Hills, NY  
01014233 – Brooklyn, NY  
01014236 – Brooklyn, NY  
01014237 – Brooklyn, NY  
01014238 – Brooklyn, NY  
01014240 – Berlin, Germany  
01014245 – New York, NY  
01014246 – New York, NY  
01014247 – Middletown, NY  
01014248 – New York, NY  
01014249 – Hawthorne, NY  
01014250 – Brooklyn, NY  
01014251 – East Meadow, NY  
01014252 – New York, NY  
01014253 – Skokie, IL  
04142600 – Vallejo, CA  
04127900 – Cypress, CA  
04142500 – West Hollywood, CA  
04142601 – Henderson, NV

**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
81.	DOE00012862-DOE00012863	Unitech Training Academy Memo
82.	DOE00012873-DOE00012877	Universal Technical Institute Memo
83.	DOE00013647-DOE00013656	Decision Memo: Tiered Relief Methodology
84.	DOE00013704-DOE00013707	Heald UCL Memo
85.	DOE00013708-DOE00013725	Heald Transfer of Credits Memo

**DOE00012862-DOE00012863**

## Initial Review of Medium Batch Applications

### BACKGROUND

<b>Name of Institution</b>	Unitech Training Academy
<b>Corporate Owner(s)</b>	Unitech Training Academy
<b>Open or Closed</b>	OPEN
<b>Total Number of Applications</b>	55
<b>Patterns of Alleged Misconduct</b>	There are several allegations that the school failed to assist students with career services as promised. There are also some allegations that the school failed to fully explain the nature of student loans.
<b>Evidence/Litigation</b>	<ul style="list-style-type: none"> <li>2014 Article about a lawsuit filed by a student who was expelled allegedly for making faces at her teachers. (<a href="https://louisianarecord.com/stories/510585213-unitech-training-academy-sued-for-300k-over-expulsion-of-student-for-allegedly-making-faces-at-school-employees">https://louisianarecord.com/stories/510585213-unitech-training-academy-sued-for-300k-over-expulsion-of-student-for-allegedly-making-faces-at-school-employees</a>)</li> <li>2014 Wrongful Termination case by former employee (<a href="https://law.justia.com/cases/federal/district-courts/louisiana/laedce/2:2015cv07133/172919/126/">https://law.justia.com/cases/federal/district-courts/louisiana/laedce/2:2015cv07133/172919/126/</a>)</li> <li>2013 lawsuit by employee who thought they were enrolled in healthcare plan (<a href="https://www.leagle.com/decision/infeco20130531913">https://www.leagle.com/decision/infeco20130531913</a>)</li> <li>2016 article about financial aid employee who schemed to steal money from students between 2009 to 2011. She told students they needed to pay additional funds above their loans but pocketed the money. Also included is the Department of Ed report which mentions this. (<a href="https://www.justice.gov/usao-wdla/pr/alexandria-woman-sentenced-12-months-prison-stealing-over-22000-college-students">https://www.justice.gov/usao-wdla/pr/alexandria-woman-sentenced-12-months-prison-stealing-over-22000-college-students</a>) (<a href="https://www2.ed.gov/about/offices/list/oig/semiann/sar73.pdf">https://www2.ed.gov/about/offices/list/oig/semiann/sar73.pdf</a>)</li> </ul>
<b>Name of Reviewer</b>	Alana Smith
<b>Date Review Completed</b>	8/23/2019

### SUMMARY APPLICATION OVERVIEW

BD Case Number	School/Campus listed on App	Program(s)	Year of Enrollment	Nature of Allegation(s)	Evidence
01261430	West Monroe, LA	Dental Assistant	2016	Guaranteed Job, Educational Services, Other	Web Form
01377122	Houma	Physical Therapy Tech	2006	Career Services	Web Form
01384387	Monroe, LA	Dental Assistant	2016	Career Services,	Signed Statement



				Transferability, Educational Services, Other	
01390499	Houma	Medical Assistant	2009	Career Services, Program Costs, Transferability, Educational Services, Other	Signed Statement
01401901	West Monroe, LA	Administrative Medical Assistant	2017	Educational Services	Signed Statement
01789863	Metairie, LA	Medical Assistant	2013	Guaranteed Employment, Transferability,	Web Form
01718030	Alexandria, LA	Dental Assistant	2018	Career Services, Program Costs	Web Form
01435141	Houma	Physical Therapy Technician	2013	Career Services, Urgency to Enroll	Signed Statement
01417761	Alexandria, LA	Physical Therapy Technician	2010	Career Services	Signed Statement
01285638		Medical Assistant	2017	Program Costs	Signed Statement

**RECOMMENDATION:**

Almost every case alleges that the school misrepresented career services and job placement services. There are also several allegations that the school misrepresented the nature of loans.

There are several lawsuits against the school by former employers and one lawsuit by a former student who alleges she was wrongfully expelled. None of these are relevant to the borrower's defense program. Despite the commonality of allegations and some corroboration between programs and enrollment dates, there is no evidence to support the allegations. Therefore, I recommend adjudicating these cases.

**APPROVED BY:** John Stephenson

**DATE:** 8/23/2019

**DOE00012873-DOE00012877**

### Initial Review of Medium Batch Applications

#### BACKGROUND

<b>Name of Institution and OPEID</b>	Universal Technical Institute (UTI) <ul style="list-style-type: none"> <li>• 00822100: Avondale, AZ</li> <li>• 02100500: Phoenix, AZ</li> <li>• 02362000: Houston, TX</li> </ul>
<b>Open or Closed</b>	Open
<b>Additional Locations</b> <ul style="list-style-type: none"> <li>• Add closure date if applicable</li> </ul>	<ul style="list-style-type: none"> <li>• 00822101: Lisle, IL</li> <li>• 00822102: Phoenix, AZ (closed 06/11/04)</li> <li>• 00822103: Rancho Cucamonga, CA</li> <li>• 00822104: Mooresville, NC</li> <li>• 00822105: Norwood, MA</li> <li>• 00822106: Long Beach, CA</li> <li>• 00822107: Mooresville, NC (closed 05/22/17)</li> <li>• 02100501: Phoenix, AZ (closed 08/16/90)</li> <li>• 02100502: Orlando, FL</li> <li>• 02100503: Phoenix, AZ (closed 10/10/16)</li> <li>• 02100504: Phoenix, AZ (closed 10/10/16)</li> <li>• 02100505: Sacramento, CA (02/23/06)</li> <li>• 02362001: Houston, TX (closed 05/07/03)</li> <li>• 02362002: Exton, PA</li> <li>• 02362003: Irving, TX</li> <li>• 02362004: Bloomfield, NJ</li> </ul>
<b>Corporate Owner(s)</b>	<ul style="list-style-type: none"> <li>• UTI Holdings, Inc.             <ul style="list-style-type: none"> <li>○ Universal Technical Institute, Inc</li> </ul> </li> </ul>
<b>Total Number of Applications</b>	601 (as of 5/5/2020)
<b>Patterns of Alleged Misconduct</b>	UTI currently does not have any pending litigation and no evidence suggests that UTI is participating in misrepresentation or fraudulent activity. Based on a sample of 50 applications, the borrowers do not present evidence that indicate UTI committed overt or repetitive misconduct, fraud, or misrepresentations. The application narratives provide individual experiences, frustrations, or misunderstandings encountered as a customer of UTI.
<b>Internal ED Investigation(s)</b> <ul style="list-style-type: none"> <li>• PC, AAASG, OIG</li> </ul>	Eric Miles: FPRD 07/30/18 The Department of Education's Multi-Region & Foreign Schools Participation Division completed a Final Program Review Determination of UTI on July 30, 2018. The review team made nine findings of noncompliance at the school. The most relevant finding to Borrower Defense being "Finding 7: Consumer Information." The team found that UTI did not provide its students with the required disclosure regarding the cost of attendance. This finding is



	considered resolved with no further action required on the part of UTI.
<b>Internal Contact(s) for Further Investigation</b>	N/A
<b>External Investigations (AG), Evidence or Litigation Related to BD</b>	<ul style="list-style-type: none"> <li>• <a href="#">The United States Department of Justice notified UTI that the DOJ has declined to intervene in Federal False Claims Act lawsuit and that it has closed its investigation</a> <ul style="list-style-type: none"> <li>○ In July 2012, UTI received notice from the Department of Justice (DOJ) that it was the subject of a preliminary investigation into claims brought by a former employee who alleged UTI's compensation of its admissions representatives violated the "incentive compensation ban," amongst other potential violations allegedly occurring over a number of years. The same former employee had filed a complaint with the Department of Labor (DOL) alleging retaliatory employment practices in violation of the whistleblower provisions of the Sarbanes-Oxley Act of 2002. UTI entered into a settlement agreement with the former employee resolving all pending claims.</li> <li>○ Under the terms of the settlement agreement, UTI and the former employee, sought dismissal of the False Claims Act Suit and a final agency disposition of the DOL complaint, which were obtained on October 29, 2013 and November 7, 2013, respectively.</li> <li>○ As of 5/5/2020, the DOJ has not released any findings in relation to this investigation and has not provided to the Department any evidence.</li> </ul> </li> <li>• In 2012, UTI was the subject of a <a href="#">Civil Investigative Demand (CID) from the Attorney General of the Commonwealth of Massachusetts</a> related to a pending investigation in connection with allegations relating to student loans, guarantees and grants provided to students at Norwood campus <ul style="list-style-type: none"> <li>○ The investigation is not listed on UTI's most recent 10-Q filing with the SEC, indicating that UTI no longer believes the investigation will have an impact on the company's future financial position.</li> <li>○ As of 5/5/2020, the Office of the Attorney General for the Commonwealth of Massachusetts has not released any findings in relation to this investigation and has not provided to the Department any evidence.</li> </ul> </li> </ul>
<b>External Contact(s) for Further Investigation</b>	N/A
<b>External Investigations, Evidence or Litigation NOT related to BD</b>	<ul style="list-style-type: none"> <li>• <i>Fletcher v. Universal Technical Inst., Inc.</i>, 2006 WL 2297041. unpaid overtime wages and unpaid wages, alleging violations of the Fair Labor Standards Act and Chapter 448 of the Florida Statutes, and Florida common law.</li> </ul>



	<ul style="list-style-type: none"> <li>• <i>Henry v. Universal Technical Institute</i>, 559 Fed.Appx.648 (2014). Student brought action against school, instructors, and administrators, alleging race and national origin discrimination in violation of Title VI. The United States District Court for the District of Arizona.</li> <li>• <i>Brady v. University Technical Institute of Arizona, Inc.</i> No. CV-09-1044-PHX-FJM (2009). An employment arbitration agreement was valid and enforceable, as both the employee and employer were equally bound by the terms of the arbitration agreement.</li> <li>• <i>Porter v. Universal Technical Institution of North Carolina, Inc.</i> 2004 WL 2236080 (W.D.N.C.) (2004). Statutory and common-law cause of action for violations of Title VII of the Civil Rights Act of 1964, as amended and wrongful termination in violation of North Carolina Equal Employment Practices Act.</li> </ul>
<b>News Articles/Media</b>	<ul style="list-style-type: none"> <li>• <a href="#">Law Offices of Todd M. Garber Announces Investigation into Possible Suit Against of Universal Technical Institute, Inc.</a> <ul style="list-style-type: none"> <li>○ In a press release, the Law Offices of Todd M Garber, a plaintiff's class action firm, announced that it was investigating potential claims related to the Department of Justice preliminary investigation into Federal False Claims Act claims (see above). The law office has not made any public filings or statements in relation to investigation since the press release.</li> </ul> </li> <li>• <a href="#">10-K Filing</a></li> <li>• <a href="#">Universal Technical Institute Teacher Files Suit Claiming He Was Assaulted in Classroom</a></li> <li>• Student Complaint Chat "<a href="#">Pissed Consumers</a>"</li> <li>• Thread regarding layoffs <a href="#">theLayoff.com</a></li> </ul>
<b>Name of Reviewer</b>	Conor Kruger
<b>Date Review Completed</b>	05/05/20

## RECOMMENDATION

<b>Summary of Allegations Reviewed</b>	<p><b><u>Application Sample:</u></b></p> <p>Borrower Defense reviewed allegations of each allegation type to identify potential trends in the applicant pool. The enrollment dates for UTI range from 1986 to 2019. The narratives in the reviewed applications provide commentary on the admissions process, the quality of the career services department, the cost of attendance, and frustrations arising from unemployment.</p> <p><b><u>Allegation Break Down:</u></b></p> <p><u>Employment Prospects</u></p> <p>Five hundred twenty-two of the total applications raise an employment prospects allegation. Of the fifty sampled allegations, twenty-three allegations are of the type that might warrant BD relief, if supported by evidence. The borrowers allege</p>
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that UTI misrepresented job placement assistance, employment outcomes, and UTI's relationship with employers. The most common allegations are that UTI guaranteed a job or a wage after graduation. Although the allegations asserted are of the type that might warrant BD relief, the borrowers failed to provide relevant supporting evidence to establish these allegations of misrepresentation.

#### Program Cost and Nature of Loans

Four hundred fifty of the total applications raise a program cost allegation. Of the fifty sampled allegations, nineteen allegations are of the type that might warrant BD relief, if supported by evidence. The borrowers allege that they were told one price but were ultimately charged another and that they were misled as to whether the aid they received was in the form of grants or loans. Several of the sampled applications allege that they either were not informed about the total cost of attendance or that borrowers were confused as to the total cost. Several borrowers state that UTI made a representation to the effects that they would not have to worry about their loans because they would be making enough to pay them back. Although the allegations asserted are of the type that might warrant BD relief, the borrowers failed to provide relevant supporting evidence to establish these allegations of misrepresentation.

#### Career Services

Four hundred ninety-one of the total applications raise a career services allegation. Of the fifty sampled allegations, seventeen allegations are of the type that might warrant BD relief, if supported by evidence. The most common allegations are that UTI promised job placement services or job placement assistance. Several claims asserted that UTI guaranteed a wage or employment for the borrower. The rest of the claims asserted that the school promised to help the borrower find a job, but the school failed to deliver. Although the allegations asserted are of the type that might warrant BD relief, the borrowers failed to provide relevant supporting evidence to establish these allegations of misrepresentation.

#### Admission and Urgency to Enroll

Three hundred eighty-nine of the total applications raise an admissions allegation. Of the fifty sampled allegations, six allegations are of the type that might warrant BD relief, if supported by evidence. The allegations of the type that might warrant BD relief are allegations of misrepresentations related to employment prospects and program cost made during the admissions process or used as the basis for the urgency to enroll. Although the allegations asserted are of the type that might warrant BD relief, the borrowers failed to provide relevant supporting evidence to establish these allegations of misrepresentation.

#### Educational Services

Three hundred sixty-five of the total applications raise an educational services allegation. Of the fifty sampled allegations, six allegations are of the type that might warrant BD relief, if supported by evidence. The borrowers' allegations discuss the quality of the education received, including the lack of hands-on training and relevance of the curriculum to the profession. Borrowers failed to

	<p>provide relevant supporting evidence to establish misconduct regarding educational services.</p> <p><u>Transfer of Credits</u></p> <p>Two hundred ninety-seven of the total applications raise a transfer of credits allegation. Of the fifty sampled allegations, twenty-nine allegations are of the type that might warrant BD relief, if supported by evidence. Most allegations express credit-related issues encountered throughout the borrower's individual experience. Some borrowers assert that UTI specifically told Borrowers that their UTI credits were generally transferable and their UTI credits did not transfer. Although the allegations asserted are of the type that might warrant BD relief, the borrowers failed to provide relevant supporting evidence to establish these allegations of misrepresentation.</p> <p><u>Other</u></p> <p>Two hundred eighty-five of the total applications raise an "other" allegation. Of the fifty sampled allegations, three allegations are of the type that might warrant BD relief, if supported by evidence. Most of the "other" allegations list the potential violations of Federal law allegedly committed by the school. The rest of the allegations detail issues with the quality of education and the ability to obtain employment afterward. The borrowers failed to provide relevant supporting evidence to establish an allegation of misrepresentation.</p>
<b>Recommended Next Steps</b>	Based on public information (including public records, news articles, court documents, and filings) and the Department of Education's internal resources (FRPDs, AASG, and OIG investigations), there is no evidence to suggest that Universal Technical Institute engaged in widespread conduct of a type that would warrant borrower defense relief. In addition to research conducted, the 50-case sample did not identify a pattern of practice consistent with general misconduct. The allegations sampled focus on individual experiences and do not suggest widespread misrepresentations or violations. Accordingly, it is recommended that the cases be adjudicated using a standard protocol.
<b>Recommended Focus Area(s)</b>	N/A
<b>APPROVED BY:</b>	Sarah Angilello
<b>DATE:</b>	05/08/20

<b>Evidence Considered</b>	<p><input type="checkbox"/> Attorney Submission</p> <p><input type="checkbox"/> Borrower Submission</p> <p><input type="checkbox"/> Federal Trade Commission</p> <p><input type="checkbox"/> Department of Justice</p> <p><input type="checkbox"/> Securities and Exchange Commission</p> <p><input type="checkbox"/> Attorney General _____ (state)</p> <p><input type="checkbox"/> Consumer Financial Protection Bureau</p> <p><input checked="" type="checkbox"/> ED - FSA/OIG</p> <p><input checked="" type="checkbox"/> Other - Publicly available SEC filings</p>
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**DOE00013647-DOE00013656**



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**DECISION MEMO**

**DATE:** November 12, 2019

**TO:** Betsy DeVos, Secretary

**FROM:** Diane Auer Jones, Principal Deputy Under Secretary  
Mark Brown, Chief Operating Officer, Federal Student Aid

**SUBJECT:** Request to implement a new, tiered-relief methodology to adjudicate current and future BD claims

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**BACKGROUND**

In December 2017, the Department announced that it would use a tiered methodology to adjudicate borrower defense to repayment (BD) claims submitted by students who had attended Corinthian Colleges, Inc. (CCI or Corinthian), and whose claims were based upon findings regarding job placement rate (JPR) misrepresentations by CCI during specified time periods. That methodology ("the 2017 methodology") assessed the relief owed to borrowers based on the extent to which BD applicants had earnings similar to those of graduates of similar programs that had a passing debt-to-earnings ratio under the Gainful Employment (GE) regulations (34 CFR part 668, subpart Q). The level of student loan relief calculated and provided under this methodology ranged from a discharge of 10% to 100% of the amount borrowed. Any borrower who was eligible for more than 50 percent relief was given full loan relief.

To obtain earnings data for use in calculating relief, FSA grouped CCI BD applicants into cohorts (based on program and credential level, using 6-digit Classification of Instructional Program (CIP) codes) and submitted those cohorts to the Social Security Administration (SSA). SSA provided the Department with the mean and median calendar year 2014 earnings for each cohort. The Department then compared the lower of the mean and median earnings of the applicants to the median earnings of similar programs at other institutions that achieved a passing GE score.

The Department was sued by several CCI borrowers with JPR BD claims in a class action, in the lawsuit *Manriquez et al. v. DeVos*, Case No. 17-cv-07210-SK (N.D. Cal.). The borrowers sought a preliminary injunction against the Department to enjoin its use of the methodology. In granting the plaintiffs' request in May 2018<sup>1</sup>, the court enjoined the Department from using the methodology based on its conclusion that the plaintiffs were likely to succeed on their argument that obtaining earnings data for a group of BD applicants from SSA violated the

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<sup>1</sup> The Department appealed the court's preliminary injunction order to the United States Court of Appeals for the Ninth Circuit, where it is pending. *Manriquez v. DeVos*, No. 18-16375 (9th Cir.).

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Privacy Act. The Department remains under a preliminary injunction on the use of that methodology or any of the data that we obtained from SSA for cohorts of Corinthian BD applicants who filed a claim based on allegations of Job Placement Rate misrepresentations.

The court, however, did find that the Department had a likelihood of ultimately prevailing on its argument that it has the authority to award partial relief to BD claimants, based upon a methodology developed by the Department. Therefore, the Department has developed a new methodology for determining the level of harm to BD applicants and the corresponding amount of relief it should provide to successful BD applicants. Under the terms of the preliminary injunction, the Department may not use this methodology to provide partial relief to CCI JPR BD applicants (who are the majority of Corinthian borrower defense applicants). However, the injunction does not prevent the Department from utilizing the new methodology to process borrower defense applications for borrowers that are not part of the class that has been certified in *Manriquez*, including non-JPR Corinthian claims and claims filed by borrowers who attended other institutions. Aside from a handful of previously approved categories of borrower defense claims (the largest among them being the JPR claims at issue in *Manriquez*), the Department does not yet have a practice or precedent regarding the amount of relief to offer borrowers in other categories of borrower defense claims, so this methodology represents the Department's first such policy with regard to those categories.

**METHODOLOGY**

The Department was hopeful that we would ultimately prevail in court and be able to move forward in adjudicating BD claims using the 2017 methodology. However, SSA did not renew the memorandum of agreement between SSA and the Department that allowed the Department to obtain borrower earnings data, decreasing the utility of the SSA data exchange aspect of the 2017 methodology for purposes of broader application. Thus, while awaiting the court's decision on appeal, we sought a new methodology that avoided the areas of concern raised in the *Manriquez* case but would allow us to award partial or full relief in a fair and equitable manner. We believe that the key principles of any new methodology should continue to be that:

1. Relief is based on the financial harm suffered by a successful BD applicant, as determined by comparing earnings imputed to the BD applicant against earnings of a representative comparison group. Financial harm is quantifiable and generally forms the basis for the kinds of claims underlying borrower defense applications; calculation of financial harm based on comparative earnings makes use of generally available data while focusing on the harm attributable to the school and program attended in contrast to a similar comparable school and program that the applicant might have otherwise attended.
2. Earnings determinations will be imputed to a BD applicant using the median earnings of graduates of the program in which the borrower was enrolled, rather than the individual's earnings. Although in the 2017 methodology we used the lower of the median or mean of the applicant's program's earnings and the higher of the median or mean of the comparison group earnings, since the College Scorecard provides only



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median earnings, we will use median earnings in this methodology regardless of whether GE disclosure earnings data or College Scorecard data is used, in order to be consistent. Also, mean values can be heavily influenced by outliers who have exceptionally high earnings or exceptionally low earnings, which is why we believe that median earnings is the more appropriate data point to use for this analysis. While an individual's earnings could be influenced by a multitude of factors other than the education they received at a college or university, taking the median of earnings across the program provides a summary statistic based primarily on the common experience of program participants, giving more weight to factors shared among participants because of their shared participation in the program than to factors that vary across the different participants and therefore are less likely to represent the shared experience attributable to participation in that specific program.

The Department has considered a number of potential methodologies to calculate partial relief to successful BD applicants. Below are summaries of each methodology considered, including the methodology the Department recommends for adjudicating BD claims.

**Potential Methodology: Income-Driven Repayment Comparison Approach**

One methodology we considered focused on a comparison between the required monthly payment under an income driven repayment (IDR) plan as compared to the required monthly payment under a standard, 10-year repayment plan for federal student loan borrowers. Under this methodology, program level median debt and earnings would be used to calculate the standard payment amount associated with that earnings and debt level as well as the corresponding IDR payment amount (based on a family size of one). The inverse of the quotient of these two payments, as a percentage, would determine the level of relief that would be provided to the borrower on loans associated with the enrollment for which the BD claim was awarded. Under this methodology, the Department would use publicly available program-level median debt and median earnings data (such as those calculated by SSA and reported to the public via the income data disclosures pursuant to the Gainful Employment regulations,<sup>2</sup> or those calculated by the Internal Revenue Service (IRS) and made publicly available through the College Scorecard<sup>3</sup>) to impute earnings to the BD applicant as well as to a comparison group consisting of graduates of similar programs at other schools. For the purpose of the IDR calculation, the Department would use a family size of one because decisions borrowers make regarding their family size are not the responsibility of the institution.

This methodology has serious shortcomings, including that student borrowing is not limited to costs imposed by institutions. Since borrowing limits, as well as eligible repayment programs, are authorized by Congress, not created by institutions, it is not obvious that a borrower's decision to maximize his or utilization of the Federal loan program or to take full advantage of

<sup>2</sup> Presently, the Department only has Gainful Employment earnings data from 2014. The Department no longer has an agreement in place with SSA to obtain such data. Moreover, the GE regulations will be rescinded as of July 2020. As a result, the Department will not have such data for any other years.

<sup>3</sup> The IRS began providing income data for College Scorecard disclosure purposes under a memorandum of agreement with the Department beginning in 2019.



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his or her opportunity to minimize his monthly student loan payment is a sign that the institution did something wrong. For example, it may be that an astute borrower takes full advantage of low-interest Federal loans as well as IDR plans in order to prioritize payment of debts that are at higher interest rates or securitized by personal property.

It is difficult to fault institutions for the fact that statute enables students to take loans that generate cash payments, which can be used for non-educational expenses.<sup>4</sup> In addition, to the extent that IDR plans are designed to enable low-income students to select a job based on their interests and passions rather than the wages a job pays, it would be inappropriate to then suggest that students who take advantage of this policy were somehow harmed by the school they attended. Therefore, a student's choice to rely on IDR repayment should not be viewed as a sign of harm, especially since the presence of IDR repayment programs may have encourage students to borrow more than they would have otherwise borrowed had such repayment options not been available.

Finally, since Congress has established higher borrowing limits for students over the age of 25, it is unreasonable to attribute financial harm to an institution simply because it serves adult learners who are permitted by Congress to borrow more. Doing so would discourage institutions from serving adult learners. The Department has already determined that debt-to-earnings ratios are not an accurate or legitimate proxy for institutional quality since many factors other than program quality influence both earnings and debt.<sup>5</sup> Therefore, such a proxy would also not serve as a reasonable basis for attributing financial harm to a borrower in the case of a successful BD application. As a result, we do not recommend the use of this methodology.

**Proposed Methodology: Standard Deviation-Based Approach**

The second methodology we have considered relies on a standard deviation model that would award full relief to an otherwise successful BD applicant if the borrower's imputed median earnings were less than or equal to wages that are two standard deviations below the median wages of the comparison group. Similar to the method described above, earnings would be imputed to a borrower and to a comparison group based on the median earnings of graduates of the program in which the applicant was enrolled or median earnings of graduates of similar programs. The median wage for the comparison group would be the median of the medians of the program level earnings calculated for graduates based on a 4-digit CIP code and the credential level. Although the 2017 methodology was based on 6-digit CIP code data available from SSA, that data is no longer available to the Department and that aspect of the

<sup>4</sup> See 20 U.S.C. § 1087II ("Cost of attendance").

<sup>5</sup> See Program Integrity: Gainful Employment, 84 Fed. Reg. 31392 (Jul 1, 2019) ("the Department has determined that the GE regulations rely on a debt-to earnings (D/E) rates formula that is fundamentally flawed and inconsistent with the requirements of currently available student loan repayment programs, fails to properly account for factors other than institutional or program quality that directly influence student earnings and other outcomes, fails to provide transparency regarding program-level debt and earnings outcomes for all academic programs, and wrongfully targets some academic programs and institutions while ignoring other programs that may result in lesser outcomes and higher student debt.").



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methodology has been specifically enjoined. As a result, available data based on 4-digit CIP codes

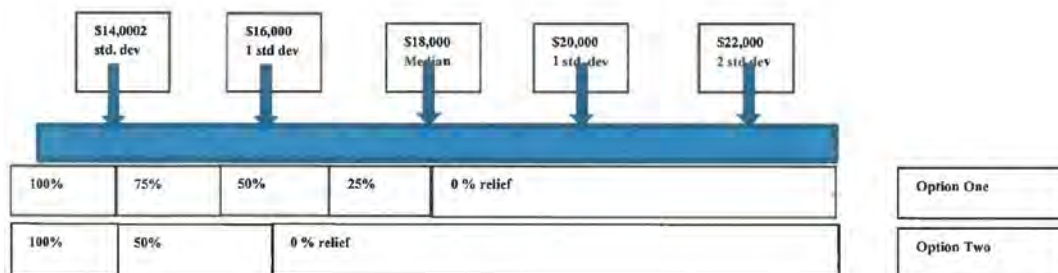
There is merit to using standard deviations to identify earnings outliers since even among programs of equal quality, median earnings could differ based on the part of the country in which graduates are employed, the socioeconomic level of students prior to enrollment, the age and gender of the students (which could influence the likelihood that graduates would choose part-time work over full-time work) or the selectivity of the institution, among other things. Standard deviations can be used to quantify the amount of variation within a set of data. In other words, the standard deviation demonstrates the distributions of earnings within a data set of all programs that share the same CIP code and credential level. A low standard deviation indicates that the values in the data set tend to be close to the mean (which is also called the average), while a high standard deviation indicates that the values are spread over a wider range. When comparison group earnings have a low standard deviation, this means that there may not be much variability in earnings across the country, so even a small deviation below the median may trigger an outlier. On the other hand, if the comparison group has a larger standard deviation, this suggests that earnings vary considerably from one program to another, and only when the earnings imputed to the borrower are significantly different from the median wages should we make the determination that financial harm has occurred. In determining how the median wages of a successful BD applicant's wages compare to the comparison group, we need to consider this data point in relation to the general level of variability in earnings among graduates of other similar programs.

In a normal distribution, around 68 percent of the data points in the sample will fall within one standard deviation and one standard deviation below the median. Around 95 percent of all data points in the sample will fall within two standard deviations from the median. Therefore, we suggest that median earnings at or below the earnings that are two standard deviations from the median result in full relief to successful BD applicants. This does not mean that programs with earnings lower than two standard deviations from the median are necessarily bad programs, but in attempting to identify a methodology to determine the financial harm suffered by a borrower, we believe that wages at or lower than the lowest 2.5% of earnings in a sample would be outliers and should qualify a successful BD applicant for full relief.

Successful BD applicants whose earnings are higher than the threshold that is two standard deviations from the median, but lower than the median would receive partial relief. To determine the level of partial relief such a borrower would receive, the Department could simply divide the difference between median wages and wages two standard deviations below the median by three to establish three tiers of relief between 0% and 100%. In other words, successful BD applicants whose program earnings were less than the median could be awarded 25, 50, 75 or 100 percent relief, depending upon where their program median earnings fall in the range. This option will be considered Option One. Conversely, the Department could simply have three categories of relief, which would include 0 percent if a successful BD applicant's program level median earnings were above the comparison group earnings that are one standard deviation from the mean, 50 percent if the successful BD applicant's program level median earnings were above two standard deviations from the median but at or lower than

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one standard deviation from the median, and 100 percent if the successful BD applicant's program level median earnings were at or below the earnings two standard deviations from the median among the comparison group. This option will be considered Option Two.



We believe that Option One provides more gradual differentiation between differently situated borrowers, and is the most favorable to borrowers overall, so we recommend that you select that option for awarding partial relief.

#### **Potential Methodology: Percentage Earnings-Based Approach**

The final methodology, which is the one that most closely parallels the 2017 methodology, uses publicly available GE earnings disclosure data or IRS data to calculate the quotient of the median earnings of the BD applicant's program and the median earnings of the graduates of other similar programs (the comparison group). The inverse of that quotient, expressed as a percentage, would be the percentage of loan relief provided to successful BD applicants for eligible loans. Relief would be provided in increments of 10%, with the Department rounding up to the next higher percentage. The Department could then follow the practice used in the 2017 methodology in which borrowers who would qualify for more than 50 percent relief would be given 100 percent relief.

This percentage methodology does not take into account that there is normal variation in median earnings among programs even when misrepresentation does not occur, so this methodology does not take into account the variability in earnings among all of the programs in the comparison group to assign relief to the borrower based on the median earnings of his or her program graduates.

#### **Avoiding Areas of Concern Regarding the 2017 Methodology**

Each of the methods described above avoids the areas of concern raised by the court regarding the 2017 methodology since each relies on publicly available earnings data to impute earnings to the BD applicant. Unlike under the 2017 methodology, the Department will not be submitting a cohort of BD applicants to SSA or IRS to determine their income; instead, we will



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use publicly available earnings data to impute earnings to both the applicant and the comparison group.

A more detailed description of the methodology for imputing earnings is described below.

1. **Imputing earnings to the BD Applicant:** Using 4-digit CIP codes and credential levels, the Department will impute earnings to the borrower by determining the median earnings of the graduates of the BD applicant's program. While the Department could use 4-digit or 6-digit CIP codes to impute earnings, the use of the 4-digit CIP code provides greater coverage and enables us to adjudicate a larger number of claims using the borrower's program and credential level. For borrowers with claims made against institutions that are no longer in operation and for which gainful employment data have been published, earnings data will be sourced from publicly available GE earnings disclosures based on data provided by SSA. For other institutions and for determining relief for future BD claims in the future, the Department will use another publicly available data source, such as the College Scorecard, to impute earnings to the applicant.
2. **Comparison group earnings:** Using 4-digit CIP Codes and credential levels the Department will calculate the median earnings of the graduates of like programs offered by other institutions. For complaints adjudicated using publicly available 2014 GE earnings data, generated by SSA, comparison group data will also come from publicly available GE earnings disclosure data. For non-GE programs, and in the future, data will be sourced from the College Scorecard or other publicly available data source using data produced by a Federal agency, such as the IRS.

**Relief when imputed earnings data are not available**

In some instances, a successful BD applicant may have been enrolled in or graduated from a program so small that the Department cannot obtain median earnings of the program's graduates as a result of privacy protocols. It is also possible, but less likely, that a successful BD applicant's program is offered only by the institution he or she attended, or by other institutions only at a different credential level. In such a case, the Department recommends that we use earnings from graduates of similar programs based on the 4-digit CIP code, but at the next highest credential level, to impute borrower and comparison group earnings. If sufficient data are not available to make that determination, then the Department would review program level outcomes for other programs offered by the institution (and the relevant comparison group) using the 2-digit CIP code and credential level (or the next higher credential level if available, and if not, the next lower credential level) and award to borrowers the highest level of relief that would be awarded to borrowers in any of those programs. In the event that there are no other programs with the same 2-digit CIP code, the Department will award to those successful BD applicants the highest level of relief awarded to any successful BD applicant who received relief calculated under the 2017 methodology or the future methodology.

**ADJUDICATING CLAIMS**

**CONFIDENTIAL AND DELIBERATIVE; NOT FOR DISTRIBUTION OUTSIDE THE DEPARTMENT***Corinthian Claims*

We have consulted with OGC, and OGC has advised that under the preliminary injunction entered in *Manriquez*, the Department is permitted at this time to use the new methodology to grant 100 percent relief to Corinthian borrowers who are part of the *Manriquez* class, and to adjudicate approximately 30,000 pending BD applications from Corinthian borrowers who allege that the misrepresentation was something other than a job placement rate misrepresentation (meaning that they are not part of the *Manriquez* class). In addition, there are approximately 6,500 claims from Corinthian borrowers who are ineligible for defense to repayment relief, such as instances when the borrower was not enrolled at Corinthian or was not enrolled in a program deemed by the Department to make the borrower eligible for relief. Borrowers who have submitted claims resulting in partial relief can be notified that their claim is being held as a result of the court injunction.

We recommend adjudicating the non-*Manriquez* BD applications using the new partial relief methodology. In addition, we recommend that we provide at least 10 percent relief to any eligible Corinthian borrower who has a successful claim, even if there is no evidence of financial harm, in following with approach taken in the 2017 methodology establishing a ten percent relief floor for all eligible Corinthian borrowers. We also recommend notifying the 6,500 Corinthian applicants deemed ineligible, either because they do not meet existing criteria for approved claims or because they do not state a cause of action under state law, of that determination.

*ITT Tech*

Borrowers who submitted defense to repayment claims related to their enrollment at ITT Tech are not subject to the court's injunction on awarding partial relief. Therefore, the Department will use the new methodology to award relief to ITT Tech borrowers who submitted successful defense to repayment claims. The Department has already awarded automatic closed school loan discharge (ACSLD) to all eligible ITT borrowers who had not enrolled in a new program three years following the closure of ITT campuses.

Unlike in the case of Corinthian Colleges, where the Department asserted that it had evidence of misrepresentation for several programs offered by CCI campuses, the Department made no such determination for ITT schools or programs. In fact, the Department instructed students to file closed school loan discharge applications when ITT closed and did not recommend that students file BD claims since the Department had no evidence of widespread misrepresentation that would have qualified a class of borrowers for BD relief. Therefore, it will be up to borrowers to provide evidence of the alleged misrepresentation, and the Department will be required to review those claims based on applicable State consumer protection laws.<sup>6</sup>

<sup>6</sup> Under the borrower defense regulations, a borrower may assert a borrower defense claim for Direct Loans first disbursed before July 1, 2017, if there is a cause of action under state law. 34 C.F.R. § 685.206(c). Since ITT shut down in the fall of 2016, all ITT borrower defense claims must be reviewed under this standard.



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This means that in the case of ITT claims, the Department must review each application and make a determination, based on the information provided, of whether the borrower is eligible for BD relief. There are currently 28,000 outstanding ITT applications, of which only 71 have been adjudicated on the merits of the application. Of these 71 applications, approximately 50 were determined to be successful. Adjudicating these claims will be a manual process that will take months to complete.

We recommend that the Department first adjudicate the non-*Manriquez* BD claims, and then move to ITT claims as well as those filed by borrowers at other institutions.

*Other claims*

We recommend that the Department adjudicate the remaining claims, and any additional claims we receive, using the new methodology selected using this Decision Memo. The Department will continue to monitor eligibility for automatic closed school loan discharges until such time as the 2019 Borrower Defense regulations go into effect, thus eliminating automatic closed school loan discharges for loans taken out subsequent to July 1, 2020. Those borrowers who are eligible for ACSLD will receive it, including those borrowers who may have already received partial relief through a successful BD claim.

**Potential Concerns from Outside Constituencies**

Some organizations and entities will continue to argue that a borrower subjected to any level of misrepresentation should receive 100 percent loan relief. However, were we to follow that model, students who received education that is serving them well could still have their loans forgiven based on, for example (under the 2016 regulations) something as minimal as a student worker in the admissions office making an exaggerated claim about the opportunities provided by the campus or the success of its graduates. As a further example, depending upon the results of the respective investigations at the different institutions involved, the recent admissions scandals could result in total loan forgiveness for every student enrolled during the time period when inappropriate practices were in place at each of the institutions involved. Similarly, depending upon the results of the respective investigations students who enrolled at Temple University or University of California, Berkeley during the years when those institutions provided inaccurate information to *U.S. News* could be eligible for full relief, even though it is likely that those students still had good educational outcomes. Taxpayers who did not have the privilege of attending Temple or Berkeley or the many other elite institutions that engaged in substantial misrepresentation about their admissions practices and selectivity should not be required to repay the loans for those who did.

Therefore, in order to ensure that taxpayers are not left with the cost burden of paying for an education that is serving a borrower well, it is imperative that we consider the level of harm a student experienced in providing loan relief.

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There will be some who argue with the specifics of our methodology; however, at least one court has found as a preliminary matter that the Department likely has the authority to award partial relief on the basis of a methodology that provides broad guidelines for relief.

**RECOMMENDATIONS**

1. We recommend that you approve the Standard Deviation alternative methodology described above to enable FSA to adjudicate and provide appropriate loan relief to successful BD applicants in an efficient, fair, and predictable manner. We recommend that you select Option One as the method for determining the level of relief a successful BD applicant is entitled to.

Approve <u>X</u>	Signature <u>[Signature]</u>
Disapprove _____	Signature _____
Needs more discussion _____	Signature _____
Modify _____	Signature _____

2. We recommend that you permit FSA to notify ineligible Corinthian borrowers and those who will receive 100 percent relief of the outcome of their claim.

Approve <u>X</u>	Signature <u>[Signature]</u>
Disapprove _____	Signature _____
Needs more discussion _____	Signature _____
Modify _____	Signature _____

3. We recommend that you permit the Department to use the Standard Deviation methodology to complete the adjudication of the non-Manriquez BD applications, as well any other claims pending from borrowers.

Approve <u>X</u>	Signature <u>[Signature]</u>
Disapprove _____	Signature _____
Needs more discussion _____	Signature _____
Modify _____	Signature _____

**DOE00013704-DOE00013707**

Privileged/Deliberative/Confidential

Draft of May 14, 2015

**I. Elements of the UCL applied to Heald Borrowers****A. The misrepresentation of placement rates identified in ED's Heald fine letter constitutes unfair competition under the Unfair Competition Law.**

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

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

In the Heald fine letter, ED found as follows:

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

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

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

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

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

<sup>5</sup> CAL CIV. C. § 1709.

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



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

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

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

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

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

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

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

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

<sup>8</sup> *Id.* at 709.

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

<sup>10</sup> *Kwikset Corp.*, 246 P.3d at 885-86.

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

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

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

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

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

<sup>11</sup> *Id.* at 329-30.

<sup>12</sup> 275 F.R.D. 282, 286 (C.D. Cal. 2011).

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

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1155.

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

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

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

#### **E. Statute of Limitations**

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

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<sup>17</sup> 55 Cal.4th 1185, 1195-96 (Cal. 2013).

**DOE00013708-DOE00013725**



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To: Under Secretary Ted Mitchell

From: Borrower Defense Unit

Date: October 20, 2016

Re: Recommendation for Borrower Defense Relief for Heald College Borrowers Alleging  
Transfer of Credit Claims

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

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

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

**A. Oral Representations of Transferability**

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

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

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

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

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

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

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<sup>4</sup> Claim No. BD1614388.

<sup>5</sup> Claim No. BD154156.

<sup>6</sup> Claim No. BD152391.

<sup>7</sup> Claim No. BD1604229.

<sup>8</sup> Claim No. BD151373.

<sup>9</sup> Claim No. BD156458.

<sup>10</sup> Claim No. BD150682.

<sup>11</sup> Claim No. BD1619101.

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## B. Corroborating Written Representations of Transferability

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

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

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

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

<sup>13</sup> Quach Decl. Ex. 90.

<sup>14</sup> *Id.*

<sup>15</sup> Quach Decl. Ex. 91-92.

<sup>16</sup> Quach Decl. Ex. 94.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

<sup>25</sup> “Transfer Student Admission,” California State University: East Bay (May 31, 2016), <http://www.csueastbay.edu/prospective/how-to-apply/transfer-student-admission/>; see also Quach Decl. Ex. 98.

<sup>26</sup> “Student Affairs and Enrollment Management,” Fresno State (May 31, 2016), <http://www.fresnostate.edu/studentaffairs/outreach/transfers/requirements.html>; see also Quach Decl. Ex. 99.

<sup>27</sup> “Upper Division Transfers,” California State University Fullerton (May 31, 2016), <http://admissions.fullerton.edu/prospectivestudent/transferlocaladmissionarea.php>.

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

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

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

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

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

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

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

<sup>34</sup> "Admissions and Student Recruitment," CSU San Bernardino (May 31, 2016), [http://admissions.csusb.edu/transfer/h\\_transferstatus.shtml](http://admissions.csusb.edu/transfer/h_transferstatus.shtml).

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

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

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

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

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

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

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

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

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

The only CSU schools that do appear to accept lower-division transfer students are CSU Bakersfield<sup>42</sup>, the Maritime Academy, and CSU Long Beach. The Maritime Academy is a specialized school with a student body of less than 1,000 students offering six majors relating to the maritime industry.<sup>43</sup> CSU Long Beach only accepts lower-division transfers for a few majors.<sup>44</sup> CSU Bakersfield seems to be the only CSU institution that offers a standard undergraduate curriculum and accepts lower-division transfer students.

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

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

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

<sup>42</sup> “Admission Requirements for Transfer Students,” CSU Bakersfield (May 31, 2016), [http://www.csusb.edu/admissions/apply/transfer/admission\\_requirements/](http://www.csusb.edu/admissions/apply/transfer/admission_requirements/).

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

<sup>44</sup> “Lower Division Transfer Requirements,” California State University Long Beach (May 31, 2016), [http://web.csulb.edu/divisions/aa/catalog/current/admissions/ld\\_transfer\\_requirements.html](http://web.csulb.edu/divisions/aa/catalog/current/admissions/ld_transfer_requirements.html).

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

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



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

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

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

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

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

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

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

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

<sup>50</sup> Claim No. BD153784 (Heald San Francisco student).

<sup>51</sup> Claim No. BD152473 (Heald Heyward student).

<sup>52</sup> Claim No. BD150563 (Heald Stockton student).

<sup>53</sup> Claim No. BD154681 (Heald Concord student).

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

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

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

#### **A. Heald Students Have Standing Under California's UCL**

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

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

<sup>55</sup> 34 C.F.R. § 685.206(c).

<sup>56</sup> CAL. BUS. & PROF. CODE §17208.

<sup>57</sup> CAL. BUS. & PROF. CODE §17204.

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

<sup>59</sup> *Id.*

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

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

**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.”<sup>62</sup> Thus, if a business practice violates any law, this is *per se* a UCL violation.<sup>63</sup>

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

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

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

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

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

<sup>63</sup> *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).

<sup>64</sup> *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.”).

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

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

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

## 2. The Fraudulent Prong

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

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

<sup>66</sup> *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.").

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

<sup>68</sup> See *Bank of the West*, 2 Cal. 4th at 1254.

<sup>69</sup> CAL CIV. C. § 1709.

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

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



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deceived into enrolling at a school<sup>72</sup>—it is sufficient for the individual to allege that they made their decision in reliance on the misrepresentations or omissions of the entity.<sup>73</sup> Reliance on the misrepresentation does not have to be “the sole or even the predominant or decisive factor influencing”<sup>74</sup> the individual’s decision. Rather, “[i]t is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing [their] decision.”<sup>75</sup>

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

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

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

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

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

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

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

<sup>75</sup> *Id.* (internal quotation marks omitted).

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

<sup>77</sup> *In re Tobacco II Cases*, 46 Cal. 4th at 298.

<sup>78</sup> Quach Decl. Ex. 90-92.

<sup>79</sup> Quach Decl. Ex. 93.

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

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

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

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

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

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

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

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had “low self-esteem,” were “stuck, unable to see and plan well for the future” and “isolated,” had “few people in their lives who care about them,” and were “impatient, want quick solutions.”<sup>83</sup> Corinthian’s CEO, in a letter to Federal Student Aid, wrote that the school enrolled “a predominantly high risk student body that is underserved by traditional higher education institutions. Many of our campuses are located in or near difficult inner-city areas and provide access to students who have not previously achieved educational success.”<sup>84</sup> Corinthian advertised on daytime TV,<sup>85</sup> 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.<sup>86</sup>

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

#### **D. Eligible Borrowers**

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

1. Any claimant who attended a Heald California campus and who:
  - a. enrolled in any diploma, certificate, or AAS degree program (i.e., programs for which fewer than 90 quarter units were transferable to CSU schools) on or after January 4, 2010<sup>88</sup>, and

<sup>83</sup> CA AG Quach Decl. Ex 113.

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

<sup>85</sup> CA AG Quach Decl. Ex 113.

<sup>86</sup> CA AG Decl. of Holly Harsh.

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

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

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

#### IV. Full BD Relief Should Be Provided to Eligible Borrowers

When determining the amount of relief due to plaintiffs under the UCL, courts rely on cases interpreting the Federal Trade Commission Act. *See, e.g., Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015). In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers. *See, e.g., FTC v. 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).

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

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

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

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

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

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



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

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

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

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

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

<sup>90</sup> 34 C.F.R. § 685.206(c)(2).

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

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

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

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

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

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<sup>92</sup> Claim No. BD154195.

<sup>93</sup> Claim No. BD151006.

<sup>94</sup> Claim No. BD150260.

## Supplemental Complaint

## Exhibit Index

## “Other” Document Types Cited

Document Order	Document Name	Link (if applicable)
1	Transcript from October 1, 2020 Hearing in <i>Sweet v. Cardona</i> (related to ECF No. 141, the zoom chat transcript).	n/a
2	Order re: Preliminary Injunction, <i>Calvillo Manriquez v. DeVos</i> , Case No. 3:17-cv-07210 (ND. Cal., May 25, 2018, ECF No. 60).	n/a
3	<b>Premier Education group Litigation:</b> Complaint, <i>United States v. Premier Education Group</i> (2016 WL 2747195)	n/a
4	<b>Premier Education group Litigation:</b> ECF No. 222	n/a
5	<b>Premier Education group Litigation:</b> ECF No. 224	n/a
6	<b>Premier Education group Litigation:</b> ECF No. 229	n/a
7	<b>Premier Education group Litigation:</b> Jeanette DeForge, Agreement with AG Forces Premier Education Group Out of Massachusetts; Salter College, Others, to Forgive \$1.6M in Student Debt	<a href="https://www.masslive.com/news/2019/07/attorney-general-agreement-to-shut-down-5-colleges-statewide-cancel-students-debt.html">https://www.masslive.com/news/2019/07/attorney-general-agreement-to-shut-down-5-colleges-statewide-cancel-students-debt.html</a>
8	Borrower Defense to Repayment Application – OMB No. 1845-0163	<a href="https://studentaid.gov/sites/default/files/BD-General-Application-Form.pdf">https://studentaid.gov/sites/default/files/BD-General-Application-Form.pdf</a>
9	Borrower Defense to Repayment Application – OMB No. 1845-0146	<a href="https://studentaid.gov/sites/default/files/borrower-defense-application.pdf">https://studentaid.gov/sites/default/files/borrower-defense-application.pdf</a>
10	Career Education Corporation, FTC Complaint, Case No. 1.19-cv-05739, N.D. Ill., ECF No. 1.	<a href="https://www.ftc.gov/system/files/document/s/cases/career_education_corporation_complaint_8-27-19.pdf">https://www.ftc.gov/system/files/document/s/cases/career_education_corporation_complaint_8-27-19.pdf</a>
11	Career Education Corporation, FTC Settlement, Case No.	<a href="https://www.ftc.gov/system/files/document/s/cases/de_11_-">https://www.ftc.gov/system/files/document/s/cases/de_11_-</a>

<b>Document Order</b>	<b>Document Name</b>	<b>Link (if applicable)</b>
	1.19-cv-05739, N.D. Ill., ECF No. 11.	_stipulated_order_for_permanent_injunction.pdf
<b>12</b>	Career Education Corporation, Assurance of Voluntary Compliance, Case No. D-1-GN-19-000017	<a href="https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/FINAL%20CEC%20AVC%20attached%20to%20Petition%20wCauseNo.pdf">https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/FINAL%20CEC%20AVC%20attached%20to%20Petition%20wCauseNo.pdf</a>
<b>13</b>	Kevin Carey, "Corinthian College Is Closing. Its Students May Be Better Off as a Result"	<a href="https://www.nytimes.com/2014/07/03/upshot/corinthian-colleges-is-closing-its-students-may-be-better-off-as-a-result.html?_r=0">https://www.nytimes.com/2014/07/03/upshot/corinthian-colleges-is-closing-its-students-may-be-better-off-as-a-result.html?_r=0</a>
<b>14</b>	Federal Student Aid, Fiscal Year 2020 Annual Report	<a href="https://www2.ed.gov/about/reports/annual/2020report/fsa-report.pdf?source=email">https://www2.ed.gov/about/reports/annual/2020report/fsa-report.pdf?source=email</a>
<b>Not Attached. Use Live Link.</b>	Borrower Defense to Repayment Loan Forgiveness Data	<a href="https://studentaid.gov/data-center/student/loan-forgiveness/borrower-defense-data">https://studentaid.gov/data-center/student/loan-forgiveness/borrower-defense-data</a>



**Supplemental Complaint**

**Exhibit Index**

**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 1**

Pages 1 - 58

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

THERESA SWEET, et al.,	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	NO. C 19-03674 WHA
	)	
ELISABETH DEVOS, in her	)	
official capacity as Secretary	)	
of the United States Department	)	
of Education and the UNITED	)	
STATES DEPARTMENT OF EDUCATION,	)	
	)	
Defendants.	)	
_____	)	

San Francisco, California  
Thursday, October 1, 2020

**TRANSCRIPT OF ZOOM WEBINAR PROCEEDINGS**

**APPEARANCES:** (via Zoom)

For Plaintiffs:

LEGAL SERVICES CENTER OF  
HARVARD LAW SCHOOL  
122 Boylston Street  
Boston, MA 02310

**BY: MARGARET E. O'GRADY, ATTORNEY AT LAW**

For Defendants:

UNITED STATES DEPARTMENT OF JUSTICE  
Civil Division, Federal Programs Branch  
919 East Main Street - Suite 1900  
Richmond, Virginia 23219

**BY: R. CHARLIE MERRITT, ATTORNEY AT LAW**

Reported By: Marla F. Knox, RPR, CRR, RMR  
United States Official Court Reporter

**APPEARANCES:** (CONT'D)

**SPEAKERS:**

Rachel Greenbaum

Laura Dadich

Treiva Johnson

Jana Bergevin

Danielle Adorno

Rebekah Sanchez Norton

Victoria Linssen

Maureen Simmons

Tarah Gramza

Evelyn Segovia

Cassandra Nordman

Hugh McGinley

Ashley Hardin

Kishan Redding

Thursday - October 1, 2020

8:00 a.m.

P R O C E E D I N G S

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**THE CLERK:** This court is now in session. The Honorable William Alsup presiding.

Calling civil matter 19-3674, Sweet, et al. versus DeVos, et al.

Starting with Plaintiff, will Counsel please make your appearances.

**MS. O'GRADY:** Good morning, Your Honor, this is Margaret O'Grady, Counsel for Plaintiffs from the Project On Predatory Student Lending.

**THE COURT:** Is anyone representing the Defendants?

**MR. MERRITT:** Yes. Good morning, Your Honor, this is Charlie Merritt from the Department of Justice on behalf of the Defendants.

**THE COURT:** Thank you. Welcome. Any other Counsel wish to appear?

(No response.)

**THE COURT:** Okay. Thank you all for appearing. And I want to welcome several hundred class members to this hearing. Thank you for attending.

My name is William Alsup, A-L-S-U-P. I'm the Judge. And this is a case -- this is a case brought on behalf of persons who borrowed student loans and applied to the Department of



1 Education for relief from having to pay back those loans.

2 And there is quite -- I think there is 160,000 in this  
3 class. And the problem is that the Agency has been slow in  
4 ruling on the applications. And so this lawsuit was brought to  
5 require the Agency to make a ruling, either yes or no.

6 Now, I want to be very clear. The lawsuit is not designed  
7 to require a ruling in favor of class members or against them  
8 but simply to get a ruling, one way or another.

9 So then if a class member were to lose, they would have to  
10 then, if they wanted to, pursue it further, go to the District  
11 Court when -- they would have a statutory venue and litigate on  
12 their own.

13 It would not be up to me to decide whether any of 160,000  
14 applications should or should not have been granted. But the  
15 issue before us is the timing of the -- of just getting a  
16 ruling, one way or the other.

17 So that's the background. Now, why are we here today?  
18 Well, the parties we thought had reached a settlement that  
19 would allow the Department of Education to begin saying --  
20 giving rulings on their -- on the 160,000 applications.

21 And under the law, I have to give class members an  
22 opportunity to be heard. So we set today's hearing to give you  
23 that opportunity.

24 Now, the problem is, unlike most class actions where there  
25 is either zero or one or two people who might want to be heard,

1 over 200 people wanted to be heard today. It is impossible to  
2 do that.

3 So we went through all the comments and picked out,  
4 I believe, 15 individuals that we would like to hear from and  
5 we think those 15 comments are representative of the hundreds  
6 and hundreds of comments that came in.

7 So you will just have to bear with us. If you were picked  
8 to comment, great. If you weren't, well, just go with your  
9 written comments. I'm sorry.

10 Anyway, that's why we are here today. I need to give you  
11 a heads-up that the lawyers have a different problem, which is  
12 they -- the settlement may fall apart for other reasons; but  
13 that is not the purpose of today's hearing.

14 The purpose of today's hearing is to get your input on the  
15 proposed settlement which has been previously summarized to  
16 you.

17 I won't make a decision today. I want to take into  
18 account what you say, but I don't want to make any decision  
19 today. I want to hear from the class members.

20 Now, before we hear from any of the class members -- I  
21 don't want any speeches -- but do any of the lawyers have  
22 any -- anything that you wish to add or subtract from the  
23 preliminary remarks that I made? First, Plaintiffs' Counsel.

24 **MS. O'GRADY:** Thank you, Your Honor. I would just say  
25 that we are happy that the opportunity is being given to the

1 class members to speak today and look forward to hearing what  
2 they have to say. Thank you.

3 **THE COURT:** Thank you for those comments. And by the  
4 Government?

5 **MR. MERRITT:** Nothing more, Your Honor, other than we  
6 are thanking everyone for choosing to submit comments and  
7 appearing today. And we look forward to hearing from everyone  
8 as well.

9 **THE COURT:** Thank you for that brief comment.

10 So at this time, I will ask the Clerk -- by the way, we  
11 are in the courtroom. I don't know if you can tell, but we are  
12 actually in the courtroom because it's the only one set up for  
13 this kind of telephone plus Zoom proceeding. So I'm on the  
14 bench wearing a robe just like it would be a regular hearing,  
15 and my Clerk is here. And she will now call out the name of  
16 the first person. And I think each person will get up to 90  
17 seconds; is that correct?

18 **THE CLERK:** That's correct, Your Honor.

19 **THE COURT:** Okay. So you have been previously  
20 notified that you were selected. And are there any other  
21 ground rules, Angela?

22 **THE CLERK:** No. They have 90 seconds to speak; and I  
23 have let them know when their 90 seconds are up, I would let  
24 them know if they can wrap up promptly. Then I will mute them  
25 and we will move on to the next person.

1           **THE COURT:** Very good. I'm going to be listening  
2 carefully. So, please, Angela, go ahead.

3           **THE CLERK:** All right. Rachel Greenbaum, you are up  
4 first.

5           **RACHEL GREENBAUM:** Thank you. Hi, Your Honor. My  
6 name is Rachel Greenbaum, and I graduated from Brooks Institute  
7 of Photography in 2006.

8           I told my own personal student loan horror story at a  
9 California State hearing last year that was the first of its  
10 kind.

11          My story is as bad as most and worse than some. Certainly  
12 terrible enough to be picked as one of only five to speak on  
13 that panel. The other stories brought me to tears. Telling my  
14 own story broke me down too.

15          We have all collectively been waiting now for years to  
16 find out if we get some relief in our lives that have been put  
17 on hold.

18          Our futures that have been stolen; our hesitations to  
19 marry or dare start families; our immediate family members that  
20 have become estranged or just inconsolably angry due to  
21 cosigning on monumentous predatory loans that have affected  
22 their credit, their lives and relationships.

23          When I discovered there was a settlement to get our loan  
24 dismissed, I felt hopeful for justice to finally be served.  
25 And when I realized that all that came from it was mass



1 denials, I felt infuriated, deflated and hopeless, which has  
2 certainly deepened throughout 2020.

3 My hope now is that the Honorable Judge Alsup will enforce  
4 the settlement under the true spirit of the agreement; that our  
5 applications should be given real and legitimate consideration.  
6 And if then denied -- not just as a smothering blanket  
7 denial -- we should be given all the reasons why so that we can  
8 launch a factual appeal.

9 Thank you for your consideration and allowing me to speak  
10 for all the struggling, hardworking students that were lied to  
11 and robbed blind with our Secretary of Education stamp of  
12 approval.

13 **THE COURT:** Thank you. What is your -- Rachel, but I  
14 didn't get the last name.

15 **RACHEL GREENBAUM:** Greenbaum.

16 **THE COURT:** Where do you live?

17 **RACHEL GREENBAUM:** Currently, I'm in Los Angeles  
18 California.

19 **THE COURT:** All right. Thank you for that.

20 **RACHEL GREENBAUM:** Thank you.

21 **THE COURT:** How much money did you borrow?

22 **RACHEL GREENBAUM:** I'm well over a hundred thousand  
23 dollars in debt.

24 **THE COURT:** Okay. Thank you. All right. Next.

25 **THE CLERK:** Thank you, Ms. Greenbaum.

1 Laura Dadich.

2 **LAURA DADICH:** Good morning, Your Honor. I went to  
3 Katharine Gibbs School for my Associate's in Healthcare  
4 Management for long-term care in 2006. Upon admissions to  
5 Gibbs, I was told my credits would transfer anywhere nationwide  
6 to pursue my nursing degree.

7 Not long after, I relocated out of state for more  
8 educational opportunities and found out from these schools that  
9 I had applied to that, unbeknownst to me, my credits were not  
10 accepted because they were from a regionally accredited school;  
11 not a nationally accredited school.

12 I was then forced to re-take these classes and soon maxed  
13 out of undergrad financial aid and was unable to complete my  
14 degree, which I am just short by two semesters.

15 I applied for borrower's defense around September 2015,  
16 and all of the sudden I get a denial letter just weeks before  
17 today's hearing. The reasons were incredibly vague and gave no  
18 reason for the denial other than -- and I quote -- "other."

19 Years spent at Katharine Gibbs obtaining a 3.8 GPA have  
20 got me a worthless degree, mounds of debt and loss faith in the  
21 education system. The financial strain has been extremely  
22 challenging.

23 If my loans are discharged, I would be able to complete  
24 all of these years my degree. The employment opportunities  
25 that I have missed because of this have cost me both

1 financially and emotionally.

2 I feel that the Department of Education has duped us and  
3 issued mass denials just a few weeks ago knowing this.

4 I feel that we are being swept under the rug, and I feel  
5 that Ms. DeVos and the Department of Education have been trying  
6 to end this Borrower Defense program since she took her  
7 position.

8 I feel that it is only fair that those of us who are  
9 manipulated, tricked and lied to by these deceitful diploma  
10 mills be given the chance to have our loans forgiven or  
11 discharged so we can finally have the opportunity to finish our  
12 education the legal and fair way and move forward with our  
13 lives. Thank you, Your Honor.

14 **THE COURT:** Thank you. How much money did you borrow?

15 **LAURA DADICH:** Oh, federally about \$75,000.

16 **THE COURT:** And where do you live now?

17 **LAURA DADICH:** Currently I'm in St. Paul, Minnesota.  
18 Originally from Long Island, New York.

19 **THE COURT:** Your last name again?

20 **LAURA DADICH:** D-A-D-I-C-H, Dadich.

21 **THE COURT:** Okay. All right. Thank you very much for  
22 those comments. Next.

23 **THE CLERK:** Thank you, Ms. Dadich. Next is Treiva  
24 Johnson.

25 **THE COURT:** Say the name more loudly.

1           **THE CLERK:** Treiva Johnson.

2           **THE COURT:** Okay.

3           **TREIVA JOHNSON:** Hello. Hi. Good morning, everyone.

4           Thank you for this opportunity to speak today. I have  
5           received a denial pertaining to the loan reimbursement or the  
6           forgiveness of the loan. The reason that I am here today is  
7           because I would like to speak for those who are still awaiting.

8           The promotion of higher education and it leading to a  
9           better way of life or a way out of what is considered an  
10          unfavorable lifestyle is not the case.

11          Meaning that -- I'm sorry -- many believe that the actions  
12          taken by the powers that be and in the areas that matter the  
13          most, such as our education, are actions that cripple the most  
14          vulnerable, who are at risk and who are already living in  
15          poverty and looking for a way out.

16          This is an unjust, and it starts as early as junior high  
17          and rolling over into high school where students are taught by  
18          the very individuals who are seeking loan forgiveness  
19          themselves and teaching in red zone communities that obtaining  
20          a higher education is the best way to go.

21          A large portion of these individuals are a part of an  
22          at-risk community or their backgrounds stem from at-risk  
23          communities. But the -- more importantly, these individuals --  
24          because they are struggling and they are poor -- these  
25          universities are able to present to them financial aid and



1 loan. Financial aid and loan may automatically help them  
2 because they provide money.

3 At this time I just wanted to speak for those individuals  
4 and hope that you take them into consideration. Thank you.

5 **THE COURT:** Thank you. And how much did you borrow?

6 **TREIVA JOHNSON:** Well, I was actually told I had to  
7 borrow more money because I didn't have enough to cover. So I  
8 went to University of Phoenix online, and I think my debt  
9 totaled about 86,000.

10 **THE COURT:** Okay. Where do you live now?

11 **TREIVA JOHNSON:** I relocated from Denver, Colorado and  
12 I moved to Houston, Texas.

13 **THE COURT:** Okay. And this is Treiva Johnson?

14 **TREIVA JOHNSON:** Yes, sir.

15 **THE COURT:** All right. Thank you for your comments,  
16 Ms. Johnson.

17 **TREIVA JOHNSON:** You are very welcome.

18 **THE COURT:** Next.

19 **THE CLERK:** Thank you, Ms. Johnson.

20 Next is Jana Bergevin.

21 **JANA BERGEVIN:** Hello. Can you guys hear me?

22 **THE COURT:** Yes, your name, please.

23 **JANA BERGEVIN:** Jana Bergevin.

24 **THE COURT:** Richmond?

25 **JANA BERGEVIN:** Bergevin.

1           **THE COURT:** Okay.

2           **JANA BERGEVIN:** Hello, Your Honor. I'm a defrauded  
3 borrower from California. I have been waiting for a decision  
4 to be made on my borrower defense for over five years. And I  
5 am --

6           **THE COURT:** Please go slower. It is too fast and I  
7 can't hear it.

8           **JANA BERGEVIN:** Okay, sure.

9           And I'm against the settlement as it stands with the DOE.  
10 I'm infuriated by the DOE's complete disregard for the student  
11 borrowers. The DOE has assured me it is not interested in  
12 upholding its side of the settlement in good faith. And this  
13 is not the first time that it has done so in a California  
14 court.

15           DeVos was held in contempt of court for the *Cavillo*  
16 *Manriquez versus DeVos* case for violating the preliminary  
17 injunction issued continuing to illegally collect on students.

18           Following DeVos being held in contempt, it was then  
19 discovered that the impact was far greater than previously  
20 reported. She has still not returned all the money owed to  
21 students.

22           Not only does the DOE not operate in good faith, it  
23 continues -- it also seeks to undermine its own mission  
24 statement.

25           I direct your attention to an investigation by the House

1 Education and Labor Committee revealing that Diane Jones had  
2 worked to paper over the Dream Center's deceptions. She  
3 maliciously covered up the loss of accreditation of art  
4 institutes owned by the Dream Center in multiple statements.  
5 This debacle can be found in the Congressional record.

6 Finally, I will draw attention back to our current mass  
7 denial reality, which is in direct violation of the law and  
8 spirit of this very settlement.

9 Given the overwhelming evidence, DOE cannot be trusted to  
10 uphold its fight of the settlement, I ask that the Judge remove  
11 the decision from the DOE and place it in the hands of an  
12 impartial and an independent body.

13 The shroud of civility has gone on too long. The DOE has  
14 had five years of time in which to act promptly and with due  
15 process. They have lost any shred of credibility and decency  
16 that they ever had.

17 I thank you for your time.

18 **THE COURT:** And thank you. Where do you live now?

19 **JANA BERGEVIN:** I currently live in Pleasanton,  
20 California.

21 **THE COURT:** And how much did you borrow?

22 **JANA BERGEVIN:** I borrowed -- initially it was  
23 115,000. I have since paid it down to about 87,000.

24 **THE COURT:** Okay. Thank you. Next.

25 **THE CLERK:** Thanks, Ms. Bergevin.

1 Next is Danielle Adorno. Ms. Adorno, you may need to dial  
2 star 6 on your phone to unmute.

3 **DANIELLE ADORNO:** Good morning, Your Honor. My name  
4 is Danielle Adorno. I am a former student of the Art Institute  
5 of New York who filed a borrower's defense repayment in 2015  
6 and I was recently denied. I and countless others have waited  
7 for a decision for years.

8 I'm speaking today against the proposed settlement. I do  
9 not believe the Department of Education's decision to due  
10 process and the results were reached in a fair manner. The  
11 outcome reached negatively impacts the lives of all the  
12 students who were fraudulently misled by the respective  
13 institutions.

14 The DOE were and still are aware of these fraudulent  
15 practices and continue to allow these organizations to operate  
16 in dire of financial deed at the expense of vulnerable  
17 students.

18 The students who have been affected by this have been  
19 burdened with federal and private loans for degrees that are  
20 worthless and not recognized. Some students are saddled with  
21 tremendous debt and have no degree to show it.

22 I ask that these institutions be held accountable and that  
23 the debt incurred be discharged for all current and former  
24 students who have an (inaudible) of these so-called  
25 institutions of learning.



1 Countless lives have been upended due to these debts and  
2 (inaudible) restitution. These institutions are actively  
3 taking advantage of people who are making the effort to work  
4 towards a better future and be accomplished productive members  
5 of our society.

6 Rather than being protected by the regulations in place by  
7 the Department of Education -- the entity that is charged with  
8 ensuring our school systems remain effective and equitable --  
9 these are left to the wolf that is predatory education who has  
10 been flagrantly exposing people with impunity by sending them  
11 an education that did not live up to the code name.

12 Thank you, and I appreciate your time.

13 **THE COURT:** Thank you. Where do you live now?

14 **DANIELLE ADORNO:** I live in New York.

15 **THE COURT:** And what was the amount that you borrowed?

16 **DANIELLE ADORNO:** Federally I borrowed 21,000, and  
17 privately I borrowed 5,000 for a 9-month program.

18 **THE COURT:** Thank you. Thank you. We will go to the  
19 next person, but I need to -- I need to ask everyone who is  
20 speaking -- especially if you are on cell phone -- to speak  
21 slowly kind of like the way I am because it is hard -- it is  
22 sometimes hard to hear perfectly.

23 Some of you come through clearly, and some of you come  
24 through a little muffled. So if you are on a cell phone,  
25 please -- even if you are reading it, speak slowly. It will

1 also help the court reporter. It will also help me. I want to  
2 get everything that you have to say. Okay, Angela, next.

3 **THE CLERK:** Next is Rebekah Sanchez Norton.

4 **REBEKAH SANCHEZ NORTON:** Thank you, Your Honor, for  
5 this opportunity to share the importance and potential impact  
6 of the proposed settlement to me, my family and my fellow  
7 defrauded borrowers.

8 As a working mother of four children, two of whom are  
9 special needs, and a community-based mental health worker, I  
10 was hopeful for justice and submitted my claim and was received  
11 by the Department of Education On November 3rd of 2016.

12 When I received notification about the proposed  
13 settlement, I was hopeful that the extended delay of a decision  
14 on my claim was nearing an end and that our federal courts  
15 would enforce a timely review of claims that like mine were in  
16 status for years.

17 Enforcing the terms of what proposed was a fair and  
18 appropriate resolution would acknowledge the significance of my  
19 continued financial devastation and validate the callous and  
20 seemingly mass volume of denials by the Department of Education  
21 three months following the settlement agreement.

22 Among this group I am certainly not the only person who  
23 submitted claims but because of loans are unable to provide for  
24 their families due to fraudulent schools.

25 Not the only one in their 40s unable to contribute to

1 retirement funds and have been ineligible for employment  
2 opportunities limited only due to my debt to income ratio with  
3 momentous student loans making me considered incompatible for  
4 County and State jobs due to the set ratio and providing an  
5 appearance of irresponsible disregard of finances to  
6 organizations; organizations that defrauded me and other  
7 borrowers.

8 I am sure most others in the courtroom today have also  
9 been denied loans for vehicles and are unable to invest in a  
10 home themselves or a family like I am.

11 As one of the thousands of borrowers denied relief only  
12 after April's agreement, I understand that the debilitating  
13 financial devastation that my family and I have faced is not  
14 what is under review today.

15 When my claim was denied in July after years of waiting  
16 for review, adequate notice that was agreed on in the  
17 settlement was not provided me. I was dismissed with a vague,  
18 confusing and incomplete explanation of decision.

19 Your Honor, I believe our country, its public servants and  
20 general population fundamentally strive for justice, equality  
21 and genuinely values honesty and integrity. And I hope you can  
22 help the borrowers obtain that justice. Thank you, Your Honor.

23 **THE COURT:** Okay. You said that you received a denial  
24 in July?

25 **REBEKAH SANCHEZ NORTON:** Yes, sir.

1           **THE COURT:** How long was that -- how long a statement  
2 was it?

3           **REBEKAH SANCHEZ NORTON:** Oh, it was very brief and  
4 vague. I didn't understand. It was very confusing and without  
5 complete sentences. There was no explanation of this denial  
6 after three and a half years and literally pounds, I mailed, of  
7 supporting information.

8           **THE COURT:** What -- do you have it right there with  
9 you?

10          **REBEKAH SANCHEZ NORTON:** My documents? Or the  
11 application?

12          **THE COURT:** The denial.

13          **REBEKAH SANCHEZ NORTON:** The denial, I can -- it's on  
14 the same phone in my e-mail box, Your Honor.

15          **THE COURT:** Well, can you -- if you had it handy, I  
16 would like you to read the denial out loud so I can hear what  
17 it said.

18          **REBEKAH SANCHEZ NORTON:** Yes, Your Honor. Let me grab  
19 that. I apologize.

20                               (Pause in proceedings.)

21          **THE COURT:** Let's do this: While you look for it, we  
22 will go to the next person and I will come back to you.

23          **REBEKAH SANCHEZ NORTON:** I appreciate it, Your Honor.  
24 Thank you.

25          **THE COURT:** Okay. Next.



1           **THE CLERK:** Next is Victoria Linssen. Ms. Linssen,  
2 you may need to dial star 6 to unmute your phone.

3                               (Pause in proceedings.)

4           **MS. LINSSEN:** Can you hear me?

5           **THE COURT:** Yes, now we can.

6           **MS. LINSSEN:** Okay. So sorry. It took me a few  
7 seconds to unmute.

8           Good morning, Your Honor. I applied for my Brooks  
9 borrower's defense to -- application in October of 2016. I'm  
10 still waiting to be -- I'm still waiting for my application to  
11 be reviewed. I have received neither a denial or an approval,  
12 and I just have a very short statement today.

13           What I'm witnessing amongst my fellow classmates is that  
14 it feels to me like the borrower's defense to repayment  
15 application that are now being reviewed are being blanket  
16 denied whether or not a student has a legitimate claim.

17           And I would really like to be provided with transparency  
18 on the exact criteria and data points that the applications are  
19 being approved or denied for.

20           And that is it, short and sweet. Thank you, Your Honor.

21           **THE COURT:** And where do you live now?

22           **MS. LINSSEN:** I live in Muncie, Indiana. I lost my  
23 job, my livelihood. Lost my home. My car. Was out of work  
24 for four years and forced to move seven states and 1,800 miles  
25 away from my family to get work.

1           **THE COURT:** How much did you borrow?

2           **MS. LINSSEN:** I initially borrowed I think around -- I  
3 want to say around 80 or 90,000. And I have been paying  
4 consistently on my private student loans for eight years. And  
5 that balance for my private student loans have -- I have paid  
6 \$30,000 on my private student loans, and the balance has gone  
7 down by \$2,000.

8           I owe \$77,000 on my private student loans. And my federal  
9 student loans started at around \$45,000. And with interest,  
10 they have ballooned to over 65,000. So I'm over \$125,000 in  
11 debt and in student loans right now.

12           **THE COURT:** What was the name of the institution or  
13 the school?

14           **MS. LINSSEN:** I went to The Brooks Institute of  
15 Photography, which in its height was a private institution and  
16 then was bought by Career Education Core. They had a class  
17 action lawsuit filed against The Brooks Institute and -- in  
18 around 2003 to 2005.

19           When I attended, I asked some very hard questions to the  
20 administrators about that lawsuit and I was -- I was told that  
21 my concerns were valid items; that the previous lawsuit items  
22 and issues had been cleaned up. And, in fact, they had  
23 actually not been cleaned up.

24           And I believe that when Brooks went downhill is when they  
25 were purchased by Career Education Corporation, and that's when

1 the fraud against the students began. Brooks was accepting  
2 loans for students all the way up until the day they filed  
3 bankruptcy, and they were expanding leases on properties in  
4 Southern California also all the way up until the day they  
5 filed bankruptcy.

6 **THE COURT:** All right. I wish I had more time to hear  
7 it all, but I appreciate very much your coming in.

8 Now, let's go back to Ms. Rebekah Sanchez Norton, I  
9 believe it was.

10 **REBEKAH SANCHEZ NORTON:** Yes, Your Honor. I have it  
11 right here. Thank you for that time.

12 Would you like me to read the Department of Education -- I  
13 will just start. I apologize.

14 It is dated July 10 of 2020. It has my application number  
15 and my name (reading):

16 Dear Rebekah Norton: The U.S. Department of Education  
17 (ED) has completed its review of your application under the  
18 applicable borrower defense to repayment regulations for  
19 discharge of your William D. Ford federal direct loans (direct  
20 loans) made in connection with your or your child's enrollment  
21 to Brooks Institute.

22 You, in quotation marks, as used here should be read to  
23 include your child if you are a direct plus loan borrower who  
24 requested a discharge for loans taken out to pay for a child's  
25 enrollment at Brooks Institute.

1 ED has determined that your application is ineligible for  
2 relief based on review of the facts of your claim and the  
3 regulatory criteria for relief. This decision means that your  
4 direct loans will not be discharged. ED explains the reasons  
5 below.

6 Applicable law. For direct loans first disbursed prior to  
7 July 1st, 2017, a borrower may be eligible for a discharge  
8 (forgiveness) or part or all of one or more direct loans if the  
9 borrower's school engaged in acts or omissions that would give  
10 rise to cause of action against the school under applicable  
11 State law.

12 Would you like me to quote the law? It then says: See  
13 with squiggles 455(H) of the Higher Education Act of 1965 as  
14 amended 20 U.S.C., squiggles, 1087E(H) and 34CFR, more  
15 squiggles, 685.26C and 685.222, the borrower defense  
16 regulations.

17 ED recognizes a borrower's defense to repayment of a  
18 direct loan only in the cause of action if the cause of action  
19 directly relates to the direct loan or to the school's  
20 provision of educational services for which the direct loan was  
21 provided.

22 34CFR, two more squiggles, 685.206(c)(1) and 6851.222(a)  
23 (5), U.S. Department of Education notice of interpretation, 60  
24 Fed Reg. 37,769 (July 21, 1995).

25 Then in bold it says: Why was my application determined



1 to be ineligible?

2 ED reviewed your borrower defense claims based on any  
3 evidence submitted by you in support of your application. Your  
4 loan data from National Student Loan Data System (NSLDS) and  
5 evidence provided by other borrowers.

6 Allegation 1, other. You allege that Brooks Institute  
7 engaged in misconduct related to other.

8 This allegation fails for the following reasons: Failure  
9 to state a legal claim. Your claim for relief on this basis  
10 therefore is denied.

11 Allegation 2, educational services. You allege that  
12 Brooks Institute engaged in misconduct related to educational  
13 services.

14 This allegation fails for the following reasons: Failure  
15 to state a legal claim. Your claim for relief on the basis,  
16 therefore, is denied.

17 Allegation 3, transferring credits. You allege that  
18 Brooks Institute engaged in misconduct related to transferring  
19 credits.

20 This allegation fails for the following reasons: Failure  
21 to state a legal claim. Your claim for relief on this basis,  
22 therefore, is denied.

23 Allegation 4, career services. You allege that Brooks  
24 Institute engaged in misconduct related to career services.

25 This allegation fails for the following reasons:

1 Insufficient evidence. Your claim for relief on this basis,  
2 therefore, is denied.

3 Allegation 5, program costs and nature of loans. You  
4 allege that Brooks Institute engaged in misconduct related to  
5 program costs and nature of loans.

6 This allegation fails for the following reasons:  
7 Insufficient evidence. Your claim for relief on this basis,  
8 therefore, is denied.

9 Allegation 6, employment prospects. You allege that  
10 Brooks Institute engaged in misconduct related to employment  
11 prospects.

12 This allegation fails for the following reasons:  
13 Insufficient evidence. Your claim for relief on this basis,  
14 therefore, is denied.

15 What evidence was considered in determining my  
16 application's ineligibility? We reviewed evidence provided by  
17 you and other borrowers who attended your school.

18 Additionally, we considered evidence gathered by the --  
19 from the following four sources: New York Attorney General's  
20 Office, Pennsylvania Attorney General's Office, evidence  
21 obtained by the Department in conjunction with its regular  
22 oversight activities, publicly available security filings made  
23 by Career Education Corporation, now known as Perdoceo  
24 Education Corporation; multi-state Attorney General assurance  
25 of voluntary compliance effective January 2nd, 2019.

1           What do I -- what if I do not agree with this decision?  
2           If you disagree with this decision, you may ask ED to  
3           reconsider your application.

4           To submit a request for reconsideration, please send an  
5           e-mail with the subject line "request for reconsideration,  
6           reference 00Dt0GYIQ.\_500t0DPQQS:ref to borrowerdefense@ed.gov  
7           or mail your request to U.S. Department of Education, P.O. Box  
8           1854, Monticello, Kentucky, 42633.

9           In your request for reconsideration please provide the  
10          following information: Which allegations you believe that the  
11          ED incorrectly decided; why you believe that ED incorrectly  
12          decided your borrower defense to repayment application; and,  
13          three, identify and provide any evidence that demonstrates why  
14          ED should approve your borrower defense to repayment claim  
15          under the applicable law set forth above.

16          ED will not accept any requests for reconsideration that  
17          includes new allegations. If you wish to assert allegations  
18          that were not included in your application, please see the  
19          following section.

20          Additionally, your loans will not be placed into  
21          forbearance unless your request for reconsideration is accepted  
22          and your case is reopened.

23          Failure to begin or resume repayment will result in  
24          collection activity including administrative wage garnishment,  
25          off-set of state and federal payments you may be owed and

1 litigation.

2 For more information about the reconsideration process,  
3 please contact our borrower defense hotline at 1-855-279-6207  
4 from 8:00 a.m. to 8:00 p.m. Eastern Time, ET, on Monday through  
5 Friday.

6 Can I apply for borrower defense if I have additional  
7 claims? If you wish to file a new application regarding acts  
8 or omissions by the school other than those described in the  
9 borrower defense application -- and then it has case number in  
10 paren, but like the words case number, not actual numbers --  
11 please submit an application at  
12 [studentaid.gov\borrower-defense](https://studentaid.gov/borrower-defense).

13 In the new application you should explain in the relevant  
14 sections the basis for any new borrower defense claims and  
15 submit all supporting evidence.

16 What should I do now? Besides cry. Because your borrower  
17 defense to repayment application was found to be ineligible,  
18 you are responsible for repayment of your loans.

19 ED will notify your servicers of the decision on your  
20 borrower defense to repayment application within the next 15  
21 calendar days, and your servicer will contact you within the  
22 next 30 to 60 calendar days to inform you of your loan balance.

23 Further, if any loan balance remains, the loans are  
24 returned to their status prior to the submission of your  
25 application.



1 If your loans were in forbearance as a result of your  
2 borrower defense application, the servicer will remove these  
3 loans from forbearance. \*See COVID-19 note below.

4 If your loans are in default and are currently in stopped  
5 collections, your loans will be removed from stopped  
6 collections.

7 Failure to begin or resume repayment could result in  
8 collection activity such as administrative wage garnishment,  
9 off-set of state and government payments that you may be owed  
10 and litigation. \*See COVID-19 note below.

11 While normally interest would not be waived for  
12 unsuccessful borrower defense applications, given the extended  
13 period of time it took ED to complete the review of the  
14 application, the Secretary is waiving any interest that accrued  
15 on your direct loans from the date of the filing of your  
16 borrower defense application to the date of this notification.

17 Your servicer will provide additional information in the  
18 coming months regarding the specific amount of interest  
19 adjusted. \*See COVID-19 below.

20 \*COVID-19 note: On March 27, 2020, the President signed  
21 the CARES Act, which among other things provides broad relief  
22 and response to coronavirus disease, 2019 (COVID-19) for  
23 federal student loan borrowers whose loans are owned by ED.

24 For the period of March 2020 through September 30th, 2020,  
25 the interest rate on the loans will be zero percent and no

1 payments will be required.

2 During the same period for defaulted borrowers all  
3 proactive collection activities, wage garnishments and treasury  
4 off-sets will be stopped.

5 Your federal loan servicer will answer any questions you  
6 have about your specific situation. In addition, federal  
7 student aid's COVID-19 information page for students borrowers  
8 and parents are located at [studentaid.gov\coronavirus](https://studentaid.gov/coronavirus). Please  
9 visit the page regularly for updates.

10 What if I have another pending borrower defense  
11 application? If you have an additional pending defense --  
12 borrower defense to repayment application, this information  
13 applies to you: If your loans associated with an additional  
14 borrower defense to repayment application that is still  
15 pending, are in forbearance or another status that does not  
16 require you to make payments, your loans will remain in  
17 forbearance or that other status.

18 Similarly, if your loans associated with that borrower  
19 defense application are in default and you are currently in  
20 stopped collections, those loans will remain in stopped  
21 collections.

22 If you are unsure if you have additional pending  
23 applications or if you would like to check the status of your  
24 loans associated with an additional application, contact our  
25 borrower defense hotline at 855-279-6207 from 8:00 a.m. to

1 8:00 p.m. ET on Monday through Friday.

2 ED offers a variety of loan repayment options including  
3 the standard 10-year repayment plan as well as extended  
4 repayment, graduated repayment and income-driven repayment  
5 plans.

6 For more information about student loan repayment options,  
7 visit [studentaid.gov/plans](https://studentaid.gov/plans). If you have questions about the  
8 status of your loans or questions about repayment options,  
9 please contact your servicers.

10 If you do not know the name of your federal loan servicer,  
11 you may go to [studentaid.gov](https://studentaid.gov) to find your servicer and get your  
12 federal loan information.

13 Sincerely, U.S. Department of Education, Federal Student  
14 Aid.

15 **THE COURT:** All right. Thank you.

16 **REBEKAH SANCHEZ NORTON:** Thank you, Your Honor.

17 **THE COURT:** I noticed in the discussion about what I  
18 can do now -- or what you can do now, there was no mention that  
19 everyone has the right to go to court.

20 **REBEKAH SANCHEZ NORTON:** No, Your Honor.

21 **THE COURT:** It doesn't mention that. But you do have  
22 that right. And that's not what is involved in this lawsuit.

23 What is involved in this lawsuit is trying to get a  
24 decision. But once a decision is made -- those notices maybe  
25 should have said: By the way you have the right to sue us in

1 your District Court if you feel that the decision is not a  
2 correct decision.

3 So I'm concerned over that lack of notice to that effect.  
4 And all class members should be aware of that procedural  
5 option. Ms. Norton, where do you live?

6 **REBEKAH SANCHEZ NORTON:** I'm a military brat who  
7 landed in Ventura County, California.

8 **THE COURT:** All right. Well, you did a very good job  
9 reading that.

10 **REBEKAH SANCHEZ NORTON:** Thank you, Your Honor. Sorry  
11 there was a delay.

12 **THE COURT:** What do you do for a living?

13 **REBEKAH SANCHEZ NORTON:** Currently I serve the  
14 Medi-Cal community in connecting them to services that are  
15 appropriate mental health providers or pointing them to the  
16 county for more intensive care.

17 **THE COURT:** And how much did you borrow?

18 **REBEKAH SANCHEZ NORTON:** Originally I borrowed, I want  
19 to say, about 72,000. But I was unable to transfer credits, so  
20 I attended -- to be eligible for the job I have now, only  
21 another private institution would accept a degree, after much  
22 begging and pleading. And so I now currently owe over 170,000.  
23 And I only borrowed 20,000 on the additional private before  
24 stopping.

25 **THE COURT:** What was the name of the institution you



1     went to? Was it called Brooks?

2               **REBEKAH SANCHEZ NORTON:** I went to Brooks, yes,  
3     Your Honor.

4               **THE COURT:** All right. All right.

5               **REBEKAH SANCHEZ NORTON:** Thank you for your time.

6               **THE COURT:** Thank you. All right. Let's go to the  
7     next person.

8               **THE CLERK:** All right. Thank you, Ms. Norton. Next  
9     is Maureen Simmons.

10              **MAUREEN SIMMONS:** Good morning, Your Honor. My name  
11     is Maureen Simmons.

12              I filed borrower's defense for \$10,000 in loans for Med  
13     Help Training School who fraudulently received the loans on my  
14     behalf.

15              When I received the e-mail notifying me of the settlement  
16     agreement in this matter, I was thrilled at the prospect of  
17     finally getting closure for an issue that has been in limbo for  
18     years.

19              Unfortunately, several days later I received an e-mail  
20     from the Department of Education dismissing my borrower defense  
21     application.

22              The Department's vague e-mail claimed there were flaws in  
23     my application; though, my application addressed every issue  
24     they outlined in great detail.

25              I contacted the class attorneys, but soon learned the

1 Department was issuing blanket decisions for thousands of  
2 applications just days after the settlement agreement.

3 Secretary DeVos continues to practice widespread abuse of  
4 power that has harmed thousands of class members and her  
5 actions circumvent the intentions of the settlement agreement.

6 Like so many others, my application was dismissed without  
7 so much of a review of the materials I presented. This smacks  
8 in the face of fairness. So I beg the Court to not allow this  
9 settlement agreement to proceed.

10 Your Honor, I deserve better. And the members of this  
11 class deserve better. Thank you.

12 **THE COURT:** Thank you, Ms. Simmons. Where do you  
13 live?

14 **OTHER ATTORNEY:** I currently live in Northern  
15 California in Fairfield.

16 **THE COURT:** All right. Thank you. Next.

17 **THE CLERK:** Thank you, Ms. Simmons. Next is Tarah  
18 Gramza. You may need to unmute your phone by dialing star 6.

19 (Pause in the proceedings.)

20 **THE CLERK:** It looks like you are unmuted, but we  
21 still can't hear you.

22 **TARAH GRAMZA:** Sorry. Can you hear me now?

23 **THE CLERK:** Yes, we can.

24 **TARAH GRAMZA:** Sorry about that. Good morning. Thank  
25 you, Your Honor, for letting me speak this morning.

1 I applied in September 2016 for borrower defense program  
2 prior to there being a formalized application.

3 After my school, American Intercontinental University  
4 online owned by Career Education Corporation or CEC, which we  
5 have heard commonly this morning, had multiple sanctions for  
6 misbehavior for lying about education, quality, quality of  
7 teachers, pressure to enroll, cost of education and others --  
8 all of which I personally experienced while attending -- I  
9 submitted five separate, carefully written and thought-out  
10 complaints with numbered allegations and links to citations and  
11 even added additional evidence when CEC had its DOJ settlement  
12 for the exact same allegations in 2019.

13 After the *Sweet versus DeVos* proposed settlement, my case  
14 was denied in July 2020 with the decision "lack of evidence"  
15 for one of the five complaints.

16 The other four complaints were completely ignored and no  
17 other explanation was provided.

18 When I called the defense care center, they said to  
19 reapply for a new application and file an appeal as well as  
20 that they could not see the original complaint due to their  
21 system issues of which I did complete.

22 I recently received another e-mail asking for a copy of my  
23 original complaint -- yes, from 2016 -- by the Department of  
24 Education because they could not see my complaint of which I  
25 sent again.

1       If the Department is going to use this settlement to mass  
2 deny cases and not even review them thoroughly and give them  
3 any formal look at, this settlement is completely pointless and  
4 doesn't resolve the lawsuit in a fair manner for us at all.  
5 Thank you.

6           **THE COURT:** Okay. Tell me your name. I didn't get  
7 it.

8           **TARAH GRAMZA:** Sure. My first name is Tarah, and my  
9 last name is Gramza.

10          **THE COURT:** Spell the last name.

11          **TARAH GRAMZA:** Sure. It is G-R-A-M-Z-A.

12          **THE COURT:** What was the first T or P?

13          **TARAH GRAMZA:** G, as in George. And my first name is  
14 Tarah with a T.

15          **THE COURT:** Okay. Where do you live?

16          **TARAH GRAMZA:** I live in Arizona.

17          **THE COURT:** And how much did you borrow?

18          **TARAH GRAMZA:** About \$85,000. I'm now just under  
19 \$100,000 with the interest.

20          **THE COURT:** Okay. Thank you very much. Next.

21          **THE CLERK:** Thank you, Ms. Gramza. Next is Evelyn  
22 Segovia.

23          **EVELYN SEGOVIA:** Hello. My name is Evelyn Segovia.  
24 Let me walk away. I think I'm getting some feedback.

25          **THE CLERK:** If you have another device logged in, you



1 should hang up there.

2 **EVELYN SEGOVIA:** I'm -- so I started attending  
3 University of Phoenix in 2007. I graduated in 2011 and with  
4 approximately \$69,000 in debt. And it has since ballooned to  
5 around \$82,000 in debt due to interest.

6 I received almost the same exact denial letter that one of  
7 the previous speakers mentioned. And they specifically stated  
8 that they also reviewed information from the FTC in regards to  
9 deciding my application just like they did in hers.

10 I find that especially interesting considering that in  
11 2009 the Department of Education produced a report claiming the  
12 untimely return of title funds for more than 10 percent of  
13 sampled students.

14 The University of Phoenix has settled a false claims suit  
15 for \$78 and half a million in 2009. In 2014 the U.S.  
16 Department of Education's Office of the Inspector General  
17 demanded records from University of Phoenix and the Apollo  
18 Group going back to 2007, which was when I was attending,  
19 related to marketing recruitment, enrollment, financial aid,  
20 fraud prevention and student retention.

21 In October of 2015, the U.S. Department of Defense  
22 suspended the school's ability to recruit on U.S. military  
23 bases and receive federal funding for educating members of the  
24 U.S. Military.

25 The Federal Trade Commission began investigating the

1 University in 2015 in regards to an advertising campaign that  
2 ran in 2012 through 2014. There was also a settlement in  
3 relation to that.

4 So to cite in my denial letter that you considered  
5 evidence that both other borrowers submitted along with  
6 evidence that the FTC already had seems fraudulent because they  
7 very clearly did not review their own records considering that  
8 I attended at the same time that they also allege that my  
9 school participated in predatory practices. So with that,  
10 I'm -- I just believe that they are also issuing blanket  
11 denials.

12 If you, yourself, accuse a school of predatory lending  
13 practices and fraudulent activity, then it -- you know, it is  
14 reasonable to assume that the students who are alleging the  
15 same misconduct would receive that same consideration. That's  
16 all I have to say.

17 **THE CLERK:** Your time is up.

18 **THE COURT:** Okay. Next.

19 **THE CLERK:** Are you ready to hear the next person?

20 **THE COURT:** Yes, I am. Next.

21 **THE CLERK:** Next is Cassandra Nordman.

22 **CASSANDRA NORDMAN:** Thank you, Angela. And thank you,  
23 Judge Alsup for your time.

24 My name is Cassandra Nordman. I attended McNally Smith  
25 College of Music in St. Paul, Minnesota. I borrowed around

1 75,000.

2 My college targeted minorities and lower income  
3 households; lied about their accreditation; convinced us to  
4 take hundreds of thousands of dollars in loans; fraudulently  
5 altered our graduation requirements; and led us into additional  
6 semesters and additional loans; and washed their hands of us in  
7 a bankruptcy filing that left absolutely nothing for former  
8 students and no personal local recourse.

9 Now we sit with our futures wrecked by debt and  
10 meaningless degrees. The borrower's defense is the only chance  
11 we supposedly have.

12 We are not millennials looking for an easy way out. We  
13 are hardworking individuals who trusted our federal government  
14 to provide us with the ability to seek higher education. We  
15 are not lazy. We are the young adults who are committed to  
16 hundreds of thousands of dollars of debt as teenagers. Many of  
17 us without the support of family.

18 We are the people who grew up here, and you have to go to  
19 college to defy the odds to get ourselves there. Now, after we  
20 have been maliciously taken advantage of, we have fought  
21 through the only (inaudible) available to us, the borrowers  
22 defense.

23 (Inaudible) education holding our future captive, in best  
24 case scenarios or dismissed in mass for people speaking today.  
25 I hear the fight and pain in other people speaking that I have

1 known constantly for the last five years.

2 The settlement alone include 160,000 Americans currently  
3 being crippled by not only a pandemic but to the  
4 administrations' desperate account to look away from the  
5 devastating effect of predatory institutions.

6 There is no question that these types of establishments do  
7 not align with our American values as evident in the admissions  
8 of this process.

9 The Department of Education continues to do everything in  
10 their power to keep from rectifying the wrongdoing of these  
11 institutions. Holding up this process and dismissing cases  
12 without real consideration is actively causing harm.

13 I'm sure you can imagine the crossover in currently  
14 unemployed people who were taken advantage of by these  
15 for-profit institutions. If anything, the settlement does not  
16 begin to come close to doing anything to assure us.

17 I ask the Court to remove the decision of the borrower's  
18 defense application from the Department of Education and place  
19 the investigation in the hands of an independent organization.  
20 Thank you for your time.

21 **THE COURT:** All right. Thank you. Next.

22 **THE CLERK:** Next is Hugh McGinley but I'm not seeing  
23 him anymore.

24 So if you are here, Mr. McGinley, please raise your hand  
25 and I will call you after the next person.



1 Ashley Hardin, you may need to dial star 6 to unmute your  
2 phone.

3 **ASHLEY HARDIN:** Good morning, Honorable Alsup. Can  
4 you hear me?

5 **THE COURT:** Yes, I can. Thank you.

6 **ASHLEY HARDIN:** Fantastic. My name is Ashley Hardin  
7 and I graduated from Brooks Institute, a CEC owned school, in  
8 2009.

9 And I have spent the last 11 years of my life thwarting  
10 through and dealing with what feels very much like a  
11 bamboozlement.

12 I feel I, along with my colleagues, have -- were taken  
13 advantage of and preyed upon by not only our college but by the  
14 federal government and their servicers.

15 I am not alone when I say that I have spent a great deal  
16 of time and pain in recalling and preparing my application for  
17 the review process only to be part of what feels like a blanket  
18 denial in which I don't think my application or my colleagues  
19 were properly reviewed nor judged.

20 At this time I have questions which is -- which are: Did  
21 lawyers review our applications? Also, without further  
22 information and direction from the Department of Education on  
23 the denial reasonings or any further explanations regarding the  
24 denial letters, how do you recommend we proceed to appeal?

25 Thank you for your time.

1           **THE COURT:** I wish I could answer that. I don't have  
2 any answers of that problem.

3           **ASHLEY HARDIN:** Okay.

4           **THE COURT:** You should talk to the class action  
5 lawyers here, Ms. O'Grady. She is on the line and she  
6 represents the class, and she could give you some advice about  
7 that but --

8           **ASHLEY HARDIN:** Perfect. Thank you.

9           **THE COURT:** But as the Judge, I -- I can't really get  
10 into giving you advice on how to proceed but she can.

11          **ASHLEY HARDIN:** Sure. Okay.

12          **THE COURT:** I could hear your comments. Where do you  
13 live?

14          **ASHLEY HARDIN:** I currently reside in Seattle,  
15 Washington.

16          **THE COURT:** And how much did you say you borrowed?

17          **ASHLEY HARDIN:** I borrowed over 150,000. And I  
18 currently over 133,000.

19          **THE COURT:** All right.

20          **ASHLEY HARDIN:** I was current from about 2013 up until  
21 March of 2020.

22          **THE COURT:** Did you also get a denial letter?

23          **ASHLEY HARDIN:** I did. I applied for borrower defense  
24 November 2nd, 2016, and received my denial letter on July 10th,  
25 2020.

1           **THE COURT:** Okay. I appreciate your -- tell me  
2 this -- I couldn't understand one part -- do you --

3           **ASHLEY HARDIN:** Sure.

4           **THE COURT:** Do you support -- do you want me to  
5 approve this final settlement or do you want me not to approve  
6 it?

7           **ASHLEY HARDIN:** I'm for the settlement. I just don't  
8 feel like the Department of Ed held up their end of the stick.

9           **THE COURT:** Okay. Let's go to the next --

10          **ASHLEY HARDIN:** Thank you.

11          **THE CLERK:** Thank you, Ms. Hardin. It looks like  
12 Mr. McGinley is back. Mr. McGinley, you can -- sorry. I think  
13 I just muted you after you unmuted yourself.

14          **HUGH MCGINLEY:** No problem. Thank you, Judge Alsup  
15 for listening to us. The time you have already given us is way  
16 more than DOE and Betsy DeVos have given us.

17          I disagree with the proposed settlement agreement in this  
18 case because I think it is unfair to students. Under the  
19 settlement motion Section A settlement class, this should  
20 expand indefinitely. Not everyone is aware that they can  
21 submit a defense to repayment against their fraudulent school.  
22 So it excludes those who did not.

23          This should also include those who have already received a  
24 decision and those who submit DTIs after the executed  
25 settlement.

1 Under Section B relief, the 18 to 21-month time limit  
2 given to the DOE to address submitted DTIs is too long and  
3 lenient. The DOE has had plenty of time to address submissions  
4 already; some like mine that have taken over four years to  
5 address with still no response provided. Instead, the DOE has  
6 used that time to ignore students and to rewrite the rules more  
7 favorably towards schools.

8 They are also showing they are not taking this lawsuit  
9 seriously and just blanket denying almost every DTI submission  
10 since April of this year.

11 The 90-day time period the DOE has been given to report  
12 their decision to Plaintiffs is also too long. This  
13 information is easily shareable and should be provided once  
14 every one to two weeks, if not on a daily basis.

15 In closing, I do not feel that Betsy DeVos and the DOE are  
16 acting in good faith in regards to this lawsuit. The blanket  
17 denials the DOE are giving out are a joke, and they are just  
18 laughing in both our faces and the courts. They are just  
19 giving out decisions to meet their requirement.

20 In my opinion all submitted DTIs should be approved and  
21 the debt of these students should be forgiven, both federal and  
22 private. The DOE should also be both penalized and  
23 investigated for their mishandling and blatant ignorance  
24 towards all DTI submissions for many years now.

25 Finally, Betsy DeVos and the DOE should apologize to the



1 Plaintiffs, the Court and to you, Judge Alsup, for treating  
2 this lawsuit as a joke. Thank you.

3 **THE COURT:** What was your name again?

4 **HUGH MCGINLEY:** My name is Hugh McGinley. I currently  
5 live in Los Angeles, California.

6 **THE COURT:** All right. And the amount of your loans?

7 **HUGH MCGINLEY:** I borrowed 90,000 for this particular  
8 defense to repayment. It's over \$100,000 now.

9 **THE COURT:** Thank you.

10 **HUGH MCGINLEY:** You are welcome. Thank you.

11 **THE COURT:** I didn't understand. You oppose the  
12 settlement; is that correct?

13 **HUGH MCGINLEY:** Yes. A lot of the terms in the  
14 settlement I don't agree with. It gives the DOE -- it is too  
15 lenient to the Department of Education.

16 **THE COURT:** And you would -- and did you get a denial  
17 letter or not?

18 **HUGH MCGINLEY:** I did not, sir. It has been over four  
19 years.

20 **THE COURT:** Okay. You are still waiting. All right.  
21 Let's go to the next class member.

22 **THE CLERK:** Thank you, Mr. McGinley. Next is Kishan  
23 Redding.

24 **THE COURT:** We cannot hear you. Please push the right  
25 buttons.

1           **KISHAN REDDING:** Good morning, Your Honor.

2           **THE COURT:** We hear you now.

3           **KISHAN REDDING:** Great. Good morning.

4           I am saddened but also comforted by my fellow class  
5 members' stories. I truly felt alone until this morning.

6           While I am in support of the proposed settlement, I would  
7 like to express my concerns regarding oversight and the process  
8 of reviewing applications.

9           I feel that applications are not reviewed as thoroughly  
10 and appropriately as they should be. For example, after  
11 waiting for four years, I received a response denying my  
12 application with a total of less than 30 words. I find wholly  
13 suspect that my decision just so happened to be received around  
14 the time this case was being settled.

15           If the Department of Education was taking years to respond  
16 to applications, logically I feel there is reason for me to  
17 question how they would manage and respond to class members'  
18 applications within 18 months without rushing through the  
19 process.

20           We all know that we have had some major changes in the  
21 world, in this country. And now there is another concern. How  
22 are these investigations going to be completed thoroughly when  
23 a lot of schools are having alternate class arrangements?

24           How will they investigate fairly; converse with other  
25 students and get information from enough sources related to the

1 schools when people are still in transition trying to figure  
2 out how to make school work? These are questions that class  
3 members need to know.

4 Lastly, the Department claims they are provided with  
5 information from other borrowers. And I question the  
6 demographics of these borrowers.

7 As a person of color, I am well aware of disparities and  
8 clear differences between borrowers of different identities and  
9 insist the demographics are taken into account.

10 People of color, low income individuals and aspiring  
11 artists, amongst many others, are preyed upon as it may be  
12 difficult to get into different schools for a variety of  
13 reasons.

14 The predators -- and I stand by that word -- of these  
15 schools have taken advantage of thousands of students, and  
16 those students are entitled to a fair and thorough -- I repeat,  
17 fair and thorough -- review of their cases. Thank you very  
18 much.

19 **THE COURT:** All right. Is it Redding, R-E-D-D-I-N-G?

20 **KISHAN REDDING:** Yes, Your Honor.

21 **THE COURT:** Where do you live, Mr. Redding?

22 **KISHAN REDDING:** I'm in Los Angeles, California.

23 **THE COURT:** What do you do for a living?

24 **KISHAN REDDING:** I'm actually unemployed right now,  
25 but I worked pre-pandemic as a teaching artist in the school

1 districts.

2 **THE COURT:** All right. Well, I could -- I could hear  
3 you very clearly. Are you on a landline or a cell phone?

4 **KISHAN REDDING:** I'm on the computer actually.

5 **THE COURT:** Really. Amazing, very clear. How much  
6 did you borrow?

7 **KISHAN REDDING:** About 80,000.

8 **THE COURT:** Okay. And did you say you did get one of  
9 those denial letters or did not?

10 **KISHAN REDDING:** Yes, I did receive a denial letter.

11 **THE COURT:** Okay. And do you support the settlement  
12 as written or not?

13 **KISHAN REDDING:** I support the settlement if there is  
14 oversight and people who are not related to the DOE overseeing  
15 the process. I do not support the settlement if the DOE is  
16 going to be able to do this alone.

17 **THE COURT:** Okay. All right. Thank you. Good luck,  
18 Mr. Redding. Next.

19 **THE CLERK:** Those are all of the people that were  
20 selected to speak that confirmed that they were able to speak.

21 **THE COURT:** I didn't hear you.

22 **THE CLERK:** Those are all of the people who were  
23 selected to speak who showed up at the hearing.

24 **THE COURT:** Oh, I see. We have now heard everyone?

25 **THE CLERK:** That's correct.

1           **THE COURT:** It is hard for me to hear you too, Angela.  
2 I don't know what, the acoustics are. We are done with the  
3 list?

4           **THE CLERK:** We are done with the list.

5           **THE COURT:** I see. Okay.

6           **JANA BERGEVIN:** Your Honor, may I request to be able  
7 to speak following up to something you have mentioned? I don't  
8 know if I'm allowed that, but I thought I would ask.

9           **THE COURT:** I will let one more person speak, but I  
10 can't let -- we have 511 people. And I just can't hear  
11 everyone, you know. I have got other cases. And we selected a  
12 representative group, but we will let you speak. One more. Go  
13 ahead.

14           **JANA BERGEVIN:** Okay. Thank you. I had spoken before  
15 but something, Your Honor, had said struck me very much, which  
16 was that we could seek legal aid to combat these denials.

17           And I wanted to say that that is very far from the truth.  
18 I have tried to sue, you know, on by borrower defense before to  
19 push for this kind of decision making or just to get a  
20 decision.

21           I contacted my local bar association. I contacted Air Reg  
22 (phonetic). There are no lawyers that will represent a  
23 borrower individually. They don't exist. So I just wanted to  
24 reach out through this that experience.

25           **THE COURT:** That's good to know. Ms. O'Grady is on



1 the line. You should talk to her separately, not in front of  
2 everybody. Maybe she can give you some advice on how to get a  
3 lawyer to take an appeal to District Court in your case.

4 **JANA BERGEVIN:** I would be lucky because I live in  
5 California, but I don't see this happening for other members  
6 that are in other states. I just --

7 **MS. O'GRADY:** Your Honor, this is Margaret O'Grady.  
8 If you wouldn't mind, can I address this question briefly?

9 **THE COURT:** Please, go ahead.

10 **MS. O'GRADY:** I would just like to reiterate there are  
11 170,000 borrowers that are members of this class. I would love  
12 to have the ability to represent every single one of them to  
13 challenge the denials on the merits. I think, for many  
14 reasons, that is plainly impractical.

15 And that is why we are here today; to hear from this class  
16 of borrowers on the class-wide issue on the Department of  
17 Education refusing to decide these borrower defense  
18 applications on the merits.

19 And so I think that, as you identified, there is a problem  
20 with the notices because they don't -- for many reasons -- but  
21 one reason is they don't even state the borrower can seek  
22 redress in their district court. And they don't provide enough  
23 information for them to do so.

24 And, as Ms. Bergevin is noting, on an individual basis,  
25 there is an impracticability here because there are, in this

1 case alone, 170,000 borrowers affected.

2 **THE COURT:** Thank you. That's good information for  
3 everyone to have.

4 Well, I need to bring this to a close -- I mean the  
5 hearing to a close. I don't know what to do about whether to  
6 approve the settlement or not. I have to study this.

7 Okay. We will now sign off and we will bring -- I'm  
8 bringing the hearing to a close unless -- I will let the  
9 lawyers -- do the lawyers have anything further to say?

10 **MS. O'GRADY:** Your Honor, I would like to make two  
11 more brief points if you will allow me.

12 **THE COURT:** Say it again.

13 **MS. O'GRADY:** I would like to make two more brief  
14 points if you will allow me to.

15 **THE COURT:** Sure. Go ahead.

16 **MS. O'GRADY:** Thank you. The first is I just want to  
17 express my gratitude and gratitude on behalf of the Plaintiffs'  
18 counsel for everyone attending today and those class members  
19 who spoke and everyone who asked to speak.

20 It is not often that we get together altogether and that  
21 they get to communicate together. They are their best  
22 advocates, and we are honored to represent you. So I wanted to  
23 just give that message to all the class members.

24 I would also like to note that there has been a very  
25 active chat during this hearing. Of course, I have been paying

1 attention to the speakers and haven't been able to go through.

2 But individuals who are on the line and in the chat have  
3 been posting full texts of their denial letters. And other  
4 borrowers are weighing in and saying: I received the exact  
5 same denial letter, the exact same text, or I got the same  
6 letter. Just the school name was different. People are  
7 discussing this openly in the chat.

8 And I'm hoping, perhaps, there is a way to make the chat  
9 part of the record because I think it is a really, really,  
10 important validation of what the speakers have talked about  
11 today, really applying to many hundreds more people than we  
12 were able to hear from especially with regard to the actual  
13 text being posted and people writing in that they received the  
14 same words, word-for-word.

15 So I don't know if there is a way for that to become part  
16 of the record, but I would like to just make sure that we note  
17 that and preserve that in some way.

18 **THE COURT:** Angela, I don't know the answer to that.  
19 That is a good question. Angela, is there a way to keep a  
20 permanent record of all the chat boxes that showed up on the  
21 screen? Quite a number of them. I saw some of them myself.  
22 Is there a way to do that?

23 **THE CLERK:** Yes, there is, Your Honor. I was planning  
24 on downloading the chat and providing it to the Court after the  
25 hearing. And I will do so.

1           **THE COURT:** All right.

2           **MS. O'GRADY:** Wonderful.

3           **THE COURT:** So, yes, Angela is going to go do that.

4       We will make it part of the record. And, now, I didn't -- the  
5       little things that I saw were just three or four sentence --  
6       three or four words. I didn't see any full pictures of the  
7       denial letters on my screen. But whatever we got here, I think  
8       Angela is able to make a record of it. So we will do that.  
9       Thank you for that.

10          **MS. O'GRADY:** Fantastic. Thank you so much. And  
11       thank you so much, Angela, for organizing this today. Again,  
12       it was galvanizing to hear from all the borrowers; and I'm glad  
13       they were able to connect in the harm the delay has caused each  
14       and every one of them.

15          **THE COURT:** Yes. I have been a Judge 21 years now,  
16       and I have done a lot of class action hearings. And this is  
17       the most interesting one of all because five -- over 500 people  
18       tuned in -- way more than you would ever get in a normal class  
19       action -- and we have done it so that people can show up from  
20       all over the country. It is quite amazing.

21       I have a question that I would like the lawyers to address  
22       for me and each of you -- don't address it now, but I want you  
23       to submit a statement within one week, each of you.

24       In listening to the comments, it occurred to me that it  
25       would be useful for me to know which educational institutions,

1 like University of Phoenix or Brooks, or whoever -- I don't  
2 know the details of this myself -- but which of those  
3 institutions have already been found by the Department of  
4 Education or the FTC or a State Attorney General or some other  
5 official to have been a fraudulent institution or engaged in  
6 fraudulent solicitation of students.

7 You probably think that I know the answer to this off the  
8 top of my head, but actually I don't. I don't know that. It  
9 has never come up in this case before. But it would be useful  
10 to me to have a list of those.

11 Now, down the road it might also be useful as to which  
12 class members attended which of those schools. Now, I'm not  
13 interested yet in the ones that haven't been adjudicated. Let  
14 me just ask you, Ms. O'Grady, are there institutions that the  
15 FTC has already said are fraudulent?

16 **MS. O'GRADY:** Yes, Your Honor. I don't have that list  
17 off the top of my head either but that is certainly true.

18 **THE COURT:** What?

19 **MS. O'GRADY:** There are institutions that the FTC has  
20 deemed fraudulent; and there is a number of institutions that  
21 specific findings have been made by agencies about misconduct,  
22 yes.

23 **THE COURT:** All right. So it may be that down the  
24 road those institutions that have already been adjudicated to  
25 be frauds, we might want to ask the Department of Education to



1 explain why they are denying, if they are, applications that  
2 are associated with the fraudulent institutions.

3 **MS. O'GRADY:** Your Honor, we would be quite interested  
4 in those explanations as well. And I can confirm that there  
5 have been denials issued for such institutions already by the  
6 Department.

7 **THE COURT:** Is that true, Mr. Merritt? That somebody  
8 has already adjudicated the institution to be a fraud and yet  
9 you are not -- you are not granting the loan application  
10 relief?

11 **MR. MERRITT:** Your Honor, this is addressed a little  
12 bit in one of the letters that the Defendant sent to the  
13 Plaintiffs back in August. It is a part of the record attached  
14 to one of Plaintiffs' motions. I also note that we have a  
15 filing today potentially to address some of these issues as  
16 well in response to the Plaintiffs' motion to enforce the  
17 settlement agreement.

18 I would just note at this point that there are  
19 institutions such as -- you mentioned federal and state  
20 enforcement authorities -- have conducted investigations in  
21 schools and determined they engaged in certain kind of  
22 wrongdoings during certain periods of time.

23 It doesn't mean that, you know, individuals that were  
24 subject to that wrongdoing would have a basis for borrower  
25 defense.

1           It is not a matter of, you know, adjudicating a school  
2     fraudulent across the board. It would be based on certain  
3     actions at certain period of times. (Inaudible) school would  
4     not necessarily prevent claims being denied from individuals  
5     who attended the schools and were not affected by that  
6     wrongdoing.

7           **THE COURT:** I don't know. Maybe. But maybe there is  
8     a presumption that it's saying that the University of Jonestown  
9     was found by the Attorney General of New York to be fraudulent  
10    in the year 2010. That we could presume that it was still  
11    fraudulent in the year 2011. I don't know the answer to that  
12    but I want to see the list.

13          **MS. O'GRADY:** Your Honor, if I may, I think it would  
14    be interesting to know the timeline and to discover what is a  
15    floor and what is the ceiling. But there are instances where  
16    students have actually received restitution for fraudulent  
17    schools directly from a New York Attorney General finding and  
18    then were denied by the Department.

19          We have an affidavit attached to our filing by Yvette  
20    Collon when we filed for the additional case management  
21    conference. And she is a person who received restitution but  
22    then had her borrower defense denied.

23          So that is not an issue of timing or windows or anything  
24    like that. That is a direct contradiction to a previous  
25    finding. There are other examples. That is just one for now.

1 They are in our papers, previous papers.

2 I will note too those denials are unexplained. They say  
3 they considered evidence from other adjudications and other  
4 investigations. They may list the evidence, but then they deny  
5 them without explanation of why that evidence wasn't found to  
6 be relevant in this case; and they also do not mention any of  
7 the evidence that the individual provided.

8 **MR. MERRITT:** Your Honor, I think a lot of that  
9 points -- a lot of these claims, you know, at least pointed out  
10 these cases brought based on the Department's delay in issuing  
11 decisions. And that is kind of the class issue that has been  
12 certified.

13 Obviously we are not here today to resolve any of the  
14 disputes or issues, but it does point out that, you know,  
15 borrowers submit different kinds of applications and the legal  
16 sufficiency of the Department's response to any given case  
17 would be a case specific determination and is not appropriate  
18 for determination in these proceedings and in this class action  
19 based on the claims that were brought.

20 **THE COURT:** All right. I'm going to end the hearing,  
21 but I want to end with one statement and that is: If it turns  
22 out that we undo the class settlement, we would have wasted a  
23 lot of time that could have been used -- Ms. O'Grady, you could  
24 have been taking depositions in the Department of Education of,  
25 Ms. DeVos.

1        You could have been taking depositions of every one of  
2        those people writing up the letters, the denial letters. And  
3        none of that has been done on account of this "settlement."

4        So I -- if we do deny it, we are going to get huckle-buck.  
5        I don't know if you know that word but that means fast. We are  
6        going to get back into this case fast. We are going to  
7        litigate it like a real lawsuit with depositions; people under  
8        oath.

9        I don't know the answer. But I want to end by saying to  
10       all of you who tuned in: Thank you. It is a tough problem. I  
11       don't have a good answer. I wish I did. But thank you. I  
12       appreciate all of your comments.

13       I'm going to step off the bench now. And Angela is going  
14       to end the -- terminate all of the phone call stuff. Okay.  
15       Bye-bye.

16       **THE CLERK:** I would like to say to everyone listening  
17       that I'm already getting e-mails asking about transcripts and  
18       how to access recordings of the hearings.

19       Please, please, please, don't e-mail me. As much as I  
20       would love to respond to each and every one of you, I'm only  
21       one person.

22       I will put information in the chat box right now about how  
23       you can obtain a transcript of the hearing and access public  
24       records in this case.

25       Again, please, please don't e-mail me. It is not because

1 I don't want to hear from you. It is just because I can't  
2 physically respond to 700 e-mails.

3 You are welcome to log off, Counsel. It was nice meeting  
4 both of you.

5 **MS. O'GRADY:** Thank you very much.

6 **MR. MERRITT:** Thank you.

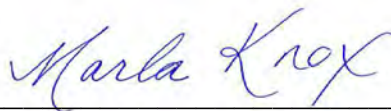
7 (Proceedings adjourned at 9:22 a.m.)

8 ---oOo---

9  
10 **CERTIFICATE OF REPORTER**

11 We certify that the foregoing is a correct transcript  
12 from the record of proceedings in the above-entitled matter.

13  
14 DATE: Sunday, October 18, 2020

15  
16  
17   
18

19 Marla F. Knox, RPR, CRR  
20 U.S. Court Reporter  
21  
22  
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**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 2**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARTIN CALVILLO MANRIQUEZ, et al.,

Plaintiffs,

v.

ELISABETH DEVOS, et al.,

Defendants.

Case No. 17-cv-07210-SK

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION**

Regarding Docket No. 35

Plaintiffs move the Court for a preliminary injunction returning to the *status quo ante* by requiring the Department of Education to process certain non-discharged federal student loan debt in accordance with the “Corinthian Job Placement Rate Rule.” Defendant Elisabeth Devos, Secretary of the Department of Education (hereinafter “Secretary”) opposes the motion. Having considered the parties papers, relevant legal authority, and having heard oral argument, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiffs’ motion.

**FACTUAL BACKGROUND**

**A. Regulatory Background.**

The Department of Education (the “Department”) is responsible for overseeing and implementing Title IV of the Higher Education Act of 1965 (“Higher Education Act”) 20 U.S.C. § 1001 *et seq.*, including the William D. Ford Direct Loan Program (“Direct Loan Program”), 20 U.S.C. § 1087a *et seq.*, which provides loans (“Direct Loans”) to borrowers for use at “participating institutions of higher education.” (Dkt. 35, at page 4.) The Higher Education Act allows borrowers to seek cancellation of their Direct Loans based on a school’s misconduct and directs that “the Secretary shall specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this

part[.]” 20 U.S.C. § 1087e(h).

In 1995, the Secretary promulgated a regulation that permits a borrower to assert as a defense to 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)(1). The regulation, also known as the “borrower defense rule,” relieves the borrower of the obligation to repay all or part of the loan and associated costs and fees. The regulation further provides:

If the borrower’s defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances. Further relief may include, but is not limited to, the following:

- (i) Reimbursing the borrower for amounts paid toward the loan voluntarily or through enforced collection;
- (ii) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.
- (iii) Updating reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower’s Direct Loan.

34 C.F.R. § 685.206(c)(2).

The loans that are the subject of this litigation were issued pursuant to a Master Promissory Note, which states that the borrower may assert a defense against collection of the loan, if “the school did something wrong or failed to do something that it should have done,” provided that “the school’s act or omission directly relates to [the] loan or the educational services that the loan was intended to pay for, and if what the school did or did not do what would give rise to a legal cause of action against the school under applicable state law.” (Dkt. 35-5, at ¶ 3, Ex. 1, at page 7.)

A memorandum from James Runcie, the Chief Operating Officer of the Federal Student Aid office of the Department, dated June 4, 2015, states: “Prior to 2015, the borrower defense identified above was rarely asserted by any borrowers and no specific methods of collecting information regarding borrower defense claims had been defined or found necessary.” (Dkt. 35-7, Ex. 12, at page 1.) According to the Department’s Office of Inspector General’s report dated December 8, 2017, from July 1, 1995 through June 24, 2015, the Department received only five

1 borrower defense claims. (Dkt. 35-6, Ex. 10, at page 6.)

2 **B. Corinthian Colleges.**

3 Corinthian Colleges, Inc. (“Corinthian”) was a for-profit college chain, operating under the  
4 brands Everest, Heald, and WyoTech. (Dkt. 35-5, Ex. 2, at page 1.) At its peak in 2009 and 2010,  
5 Corinthian operated over 100 campuses in 25 states, enrolled over 110,000 students and collected  
6 over \$1.7 billion in revenue, over 80% of which was in the form of student loans provided under  
7 the Direct Loan Program. (*Id.*, at page 2.) The Corinthian schools included different campuses for  
8 a wide variety of subjects. For example, Corinthian schools included Heald Concord –  
9 Accounting, Heald Fresno – IT Network Systems, Everest Los Angeles Wilshire – Dental  
10 Assistant (Diploma), and WyoTech Long Beach – Plumbing Technology (Diploma). (Dkt. 35-6,  
11 Exs. 6-7.)

12 In January 2014, the Department sought data supporting Corinthian’s advertised job  
13 placement rates. (Dkt. 35-7, Ex. 11, at page 4.) Corinthian refused to provide the data, and in  
14 June 2014, the Secretary placed Corinthian on a heightened cash monitoring status. (*Id.*) In July  
15 2014, the Secretary and Corinthian entered into an operating agreement, pursuant to which  
16 Corinthian would cease operations “by teaching out at least a dozen of its campuses and by selling  
17 as many of the rest of the schools as possible.” (*Id.*) The Secretary also appointed a monitor to  
18 oversee Corinthian’s operations and its wind-down activities, “including federal student aid draws,  
19 expenditures (including refunds required under the operating agreement), and [Corinthian’s]  
20 compliance with its obligations to the Department.” (*Id.*)

21 In March 2015, after Corinthian failed to file audited financial statements, the Secretary  
22 requested a letter of credit from Corinthian. (*Id.*, at page 5.) In April 2015, the Secretary  
23 determined that Corinthian made false statements about its placement rates and issued a fine  
24 against Corinthian in the sum of \$30 million for “substantial misrepresentation” under 34 C.F.R. §  
25 668.71-75. (Dkt. 35-5, Exs. 3-4; Dkt. 35-7, Ex. 11.) Specifically, the Secretary found that  
26 Corinthian published falsely inflated job placement rates for 947 programs at its Heald College  
27 locations. (Dkt. 35-5, Ex. 3.)

28 Corinthian closed its colleges in April 2015, and students who had borrowed federal

1 student loans to attend a Corinthian program asserted their rights to cancellation of their loans  
2 under the borrower defense rule and terms of the Master Promissory Notes. (Dkt. 35-5, Ex. 5, at  
3 pages 2-3.)

4 **C. The Secretary's Response to the Collapse of Corinthian.**

5 Faced with the collapse of Corinthian and over 100,000 borrowers with potential borrower  
6 defenses, Under Secretary Ted Mitchell ("Under Secretary") of the Department appointed a  
7 special master ("Special Master") to help the Department develop the processes and systems  
8 needed to provide relief to borrowers who had relied upon false and misleading statements from  
9 certain career colleges, including Corinthian. (Dkt. 35-7, Ex. 11, at page 1.) The goal of the  
10 Special Master was to develop a system for providing debt relief that was "fair, transparent, and  
11 efficient, with a minimal burden on borrowers." (*Id.*)

12 In June 2015, the Secretary requested that the Office of Management and Budget grant  
13 emergency approval of an attestation form, waiving the requirement for public notice in the  
14 Federal Register. (Dkt. 35-7, Ex. 12, at page 3.) It appears that the Office of Management and  
15 Budget granted approval, as the Secretary disseminated the attestation forms and set up a process  
16 to review claims and to provide expedited relief for certain Corinthian borrowers. (Dkt. 35-5, Ex.  
17 5.) The attestation forms advise borrowers of Corinthian's publication of misleading job  
18 placement rates and the location of a website containing two lists of covered programs and dates  
19 of enrollment covered by the attestation (the "Lists"). (Dkt. 35-6, Exs. 6, 7, 8, 9.) The Lists  
20 include names of schools and dates of enrollment from 2010 to 2014. (Dkt. 35-6, Exs. 6, 7.) For  
21 example, borrowers listed in the examples above were eligible for relief under the Corinthian Rule  
22 only if their first dates of enrollment were as follows: (1) Heald Concord – Accounting after  
23 February 13, 2014; (2) Heald Fresno – IT Network Security after July 1, 2010; (3) Everest Los  
24 Angeles Wilshire – Dental Assistant (Diploma), between July 1, 2010 and September 30, 2014;  
25 and (4) WyoTech Long Beach – Plumbing Technology (Diploma) between July 1, 2010 and  
26 September 30, 2014. (*Id.*) The attestation forms state that borrowers should submit the forms  
27 only if their programs and dates of enrollment are included on the Lists. (Dkt. 35-6, Exs. 8, 9.)

28 In the case of a borrower who attended a Heald program on the Lists, the attestation form



states as follows:

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).

....

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.

(Dkt. 35-6, Ex. 8.) The combined attestation form for the Everest and WyoTech programs is identical to the attestation form for the Heald program attestation form but substitutes the names of Everest and WyoTech for Heald. (Dkt. 35-6, Ex. 9.)

On March 26, 2016, the Special Master reported that he had reviewed 546 claims from borrowers and recommended to the Under Secretary that “full relief (including restitution of all amounts paid) be provided for [certain] loans.” (Dkt. 35-7, Ex. 13, at page 5.) Such loans included programs at Heald, Everest, and WyoTech. (*Id.*)

#### **D. The Department’s Actions in Relieving Debt before January 20, 2017.**

The Department reached out to borrowers who were potentially eligible for discharge of their loans under the borrower defense rule by electronic mail and postal mail. (Dkt. 35-7, Ex. 15, at pages 5-6.) The outreach was to 280,000 Everest and WyoTech students and over 55,000 Heald students. (*Id.*) The Department received 72,877 claims between June 25, 2015 and January 20, 2017 and reviewed and discharged 26,964 claims. (Dkt. 35-6, Ex. 10, at page 6.)

In October 2016, in response to the claims resulting from the collapse of the Corinthian colleges, the Secretary announced the final regulations, which were scheduled to take effect on July 1, 2017.<sup>1</sup> The regulations established a new federal standard for borrower defenses and limitations periods for loans disbursed on or after July 1, 2017, but also included a separate provision for those loans disbursed prior to July 1, 2017. 81 Fed. Reg. 75926-76089 (November 1, 2016). According to the revised, proposed regulation, 34 C.F.R. § 685.206(c), the borrower

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<sup>1</sup> U.S. Department of Education:  
<http://www2.ed.gov/policy/highered/reg/hearulemaking/2016/index.html> (last visited May 25, 2018.)

defense rule for loans made before July 1, 2017, provides a borrower defense for:

any act or omission of the school . . . that would give rise to a cause of action against the school under applicable State law, and includes one or both of the following:

- (i) A defense to repayment of amounts owed to the Secretary on a Direct Loan, in whole or in part.
- (ii) A claim to recover amounts previously collected by the Secretary on the Direct Loan in whole or in part.

81 Fed. Reg. 76080.

Plaintiffs claim that, before January 20, 2017, there was a “Corinthian Job Placement Rate Rule” (the “Corinthian Rule”).<sup>2</sup> According to Plaintiffs, the Secretary based the Corinthian Rule on the following determinations:

(1) California is the applicable state law for purposes of determining whether there is a cause of action against the specific Corinthian school under 34 C.F.R. § 685.206(c)(1);

(2) Corinthian misrepresented its job placement rates at specified campuses, regarding certain programs, during enumerated periods of time;

(3) Any Corinthian borrower who submits a simple attestation form provided by the Department or otherwise submits sufficient information to establish a membership in a certain group establishes a borrower defense; and

(4) The Department will provide relief under California law by cancelling all outstanding amounts on related loans and returning any money collected by the Department. (Dkt. 35, at pages 12-13.) According to Plaintiffs, the Corinthian Rule covers 800 Heald programs between 2010-2015, for the benefit of at least 50,000 borrowers, and 800 Everest and WyoTech programs in over twenty states, with 85,000 borrowers who are eligible for cancellation under the borrower defense rule. (*Id.*, at page 14.)

Plaintiffs contend that the Corinthian Rule was “codified” in three documents: (1) a memorandum prepared by the Department’s Office of General Counsel, (2) a fine action letter prepared by Federal Student Aid’s Administrative Actions & Appeals Service Group, and (3) an

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<sup>2</sup> The Court understands that the Secretary challenges the very existence of the Corinthian Rule, but for purposes of this Order, the Court will refer to the Corinthian Rule as a shorthand for describing the process that was, for practical purposes, in place before January 20, 2017.

1 April 2015 document prepared by the Federal Student Aid’s Administrative Actions & Appeals  
2 Services Group. (Dkt. 35, at pages 13-14 (citing Dkt. 35-6, Ex. 10); Dkt. 58 (First Amended  
3 Complaint), at ¶ 80.) In addition, Plaintiffs claim that the Department issued consistent public  
4 statements about the existence of the Corinthian Rule. (Dkt. 35, at pages 13-14 (citing Dkt. 35-7,  
5 Ex. 11).)

6 Plaintiffs do not provide the three source documents cited above for this motion because  
7 they do not possess them. (Dkt. 58, at ¶ 80; Dkt. 48, at page 10, n. 13.) Instead, Plaintiffs cite to  
8 secondary sources to bolster the existence of the Corinthian Rule and to show that the above-cited  
9 documents exist. None of the secondary sources refer to the Corinthian Rule by any name, and  
10 none of the secondary sources lists the entire set of standards that Plaintiffs claim constitute the  
11 Corinthian Rule. (Dkt. 35-5, Ex. 5; Dkt. 35-7, Exs. 11 - 15.) For example, Plaintiffs cite to the  
12 report of the Special Master for the existence of the legal memorandum. (Dkt. 35-7, Ex. 11, at  
13 page 5.) That report states: “Because Heald was headquartered in and managed from California,  
14 the Department looked to California law and determined that Heald’s misrepresentation of  
15 placement rates constituted prohibited unfair competition under California Unfair Competition  
16 Law (UCL).” (Dkt. 35-7, Ex. 11, at page 5.) The Special Master further stated: “Accordingly,  
17 students that relied on such misleading placement rates when they enrolled at Heald would have a  
18 cause of action under state law.” (*Id.*)

19 There is one area of agreement. Plaintiffs and the Secretary agree that, if borrowers signed  
20 the attestation forms to show that they had attended the schools on the Lists and that they had  
21 relied upon the false statements, the Department did not require them to prove on an individual  
22 basis that they were defrauded. (Dkt. 35-5, Ex. 5, at pages 2-3; Dkt. 42, at pages 6-7.) Instead of  
23 proving their claims individually, those borrowers could assert their right to relief as part of an  
24 expedited system. (*Id.*)

25 However, the Secretary challenges the existence of the Corinthian Rule. The Secretary  
26 states that there was no rule that guaranteed full relief to any borrower who completed the  
27 attestation form. The Secretary claims that the Department “maintained its discretion to . . .  
28 discharge ‘all or part’ of a loan subject to a successful borrower claim.” (Dkt. 42, at page 1.) The

Secretary argues that the Department never represented to borrowers that they would be entitled to full relief if they completed the attestation forms.

“Loan forgiveness” on the attestation forms does not specify the amount of forgiveness of the debt. (Dkt. 35-6, Exs. 8, 9; Dkt. 42, at page 7.) None of the documents that Plaintiffs cite state that borrowers are entitled to full relief even if they attended a program on the Lists and completed the attestation form. As a practical matter, though, it appears that, before January 20, 2017, the Department did provide full relief or total discharges for borrowers who completed the attestation forms. The Secretary does not challenge or refute that factual statement.

### **E. The Department’s Actions as of January 20, 2017.**

Starting on January 20, 2017, the Secretary stopped processing claims under the Corinthian Rule. (Dkt. 35-6, Ex. 10, at pages 3, 13-14.)

#### **1. Delay of Previous Regulations.**

In June 2017, the Secretary announced that she was undertaking further rulemaking on the issue of the borrower defense rule and delayed the regulations that were set to become effective July 1, 2017, discussed above. (Dkt. 35-7, Ex. 18.) One news article reported that the Secretary remarked: “Under the previous rules, all one had to do was raise his or her hands [sic] to be entitled to so-called free money.” (Dkt. 35-8, Ex. 32.)

#### **2. The “Average Earnings Rule.”**

##### **a. Preliminary Assessment Using “Gainful Employment” Metric.**

The Secretary first reviewed a metric of “gainful employment” for Corinthian schools and determined that some students who attended Corinthian schools obtained some educational benefit. The metric of “gainful employment” assesses whether a program “has indeed prepared students to earn enough to repay their loans, or was sufficiently low cost, such that students are not unduly burdened with debt, and to safeguard the Federal investment in” Title IV. 79 Fed. Reg. 64891. A program passes the gainful employment requirement if students’ median annual loan payments are less than or equal to 20% of discretionary income or 8% of their annual earnings. 34 C.F.R. § 668.403(c). The Secretary examined data already within the Department for Corinthian programs and learned that many Corinthian programs had passing scores under the gainful

1 employment metric. (Dkt. 42-1, Ex. 2, at ¶¶ 12- 16.) For example, the Department analyzed the  
 2 data for 106 Corinthian programs from 2015 and found that 51 of them had passing scores under  
 3 the gainful employment metric. (Dkt. 42-2, ¶ 11.) This preliminary analysis suggested to the  
 4 Secretary that a “more rigorous analysis of earnings” was appropriate as a test to provide relief for  
 5 borrowers who asserted the borrower defense rule. (*Id.*, at ¶ 13.)

6 **b. December 15, 2017 Memorandum and December 20, 2017 Press Release.**

7 The Secretary claims that the Department quantified the lack of value actually received  
 8 from the educational program attended “by comparing the average earnings of students who  
 9 attended a given academic program with the average earnings of similar programs at schools the  
 10 Department determined adequately prepared students for gainful employment.” (Dkt. 42, at page  
 11 2.) The Secretary issued a memorandum, dated December 15, 2017, authored by the Senior  
 12 Advisor to the Office of the Chief Financial Officer of the Department “in collaboration with FSA  
 13 [Federal Student Aid office] and the Department’s Office of the General Counsel” (the “December  
 14 15, 2017 Memorandum”). (Dkt. 42-2, at ¶¶ 2, 6 and Ex. 1.) The December 15, 2017  
 15 Memorandum details the steps that the Department took in determining the new methodology for  
 16 relief. (*Id.*, at ¶ 6.) The Secretary also issued a press release on December 20, 2017 explaining the  
 17 new methodology for evaluating borrowers’ claims (the “December 20, 2017 Press Release”).  
 18 The Secretary stated: “This improved process will allow claims to be adjudicated quickly and  
 19 harmed students to be treated fairly. It also protects taxpayers from being forced to shoulder  
 20 massive costs that may be unjustified.” (Dkt. 42-1, Ex. 1, at page 1.)

21 Instead of developing a “new rule” as Plaintiffs claim, the Secretary maintains that the  
 22 Department came to the “common sense conclusion” that the relief for the successful borrower  
 23 defense claims should be based on a measure of the actual harm that borrowers suffered as a result  
 24 of Corinthian’s misconduct. (Dkt. 42, at page 2.) Plaintiffs refer to the Secretary’s new process as  
 25 the “Average Earnings Rule.” (Dkt. 42-1, Ex. 1.)<sup>3</sup> The Secretary maintains that the weakness of  
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27 <sup>3</sup> For purposes of this Order, the Court will refer to the Secretary’s methodology as  
 28 explained in the December 15, 2017 Memorandum and the December 20, 2017 Press Release as  
 the “Average Earnings Rule.”



the previous administration's process for assessing claims of borrower defense is that that process assumed that all Corinthian students received nothing of value, when in many cases graduates received "substantial value from their education." (Dkt. 42-1, Ex. 2, at page 11.)

**c. Method for Determining Relief under Average Earning Rule.**

The Average Earning Rule, instead of granting full relief to borrowers who submitted attestation forms for attending schools on the Lists, is a system which provides a percentage of relief based on a comparison of earnings from a specific Corinthian program and a comparable (non-Corinthian) school with a passing gainful employment score. (Dkt. 42-2, at ¶ 14, Ex. 1, at pages 3-4.) To compare the earnings from Corinthian schools and comparable schools with a passing gainful employment score, the Department identified 79 Corinthian programs and submitted information identifying the names of 61,717 former Corinthian students to the Social Security Administration ("Social Security Administration") to obtain the data regarding the earning capacities of those students. (Dkt. 42-2, Ex. 1, at page 3.) Specifically, the Department sent information with dates of birth and Social Security numbers of the applicants who submitted attestation forms for Corinthian programs to claim the borrower defense. (*Id.*) In return, the Social Security Administration provided the Department with aggregate data regarding the "mean and median incomes" for each group of students in the Corinthian programs, based on data from 2014. (*Id.*) The Social Security Administration then provided that data "in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular individual." (Dkt. 35-8, Ex. 27, at page 41.) The Department refers to the information that the Social Security Administration sends as "aggregate earnings information." (*Id.*) The Secretary claims that the Department exchanged this information under the terms of an agreement between the two agencies: *Amended Information Exchange Agreement between the Department of Education & the Social Security Administration for Aggregate Earnings Data* (the "Gainful Employment Agreement"). (Dkt. 35-8, Ex. 27.)

Using the data from the Social Security Administration, the Department compared the earnings under four different formulas, using the mean and median earnings for Corinthian students with the mean and median earnings of students at comparable programs with passing

gainful employment scores. (Dkt. 42-2, Ex. 1, at pages 3-4.) Although the process is more complicated than this general description, the general, relevant parameters are that the Department analyzed the difference between the earnings of Corinthian borrowers and the earnings of students from schools with passing gainful employment scores. If the earning from the passing school was higher than the earning of the Corinthian students, this difference represented the educational value or lack of educational value of the Corinthian program. (*Id.*)

Based on the methodology above, those borrowers in a Corinthian group who earned less than 50% of the earnings of comparable programs with passing gainful employment scores received 100% relief from their loans. (Dkt. 42-2, Ex. 1, at pages 4-5.) Borrowers in a Corinthian group who earned between 50% and 90% of the earnings of comparable programs with passing gainful employment scores received relief in amounts inverse to their earnings. (*Id.*, at page 4.) For example, if the average Corinthian borrower earned 60% of the average received in the comparable program, the Corinthian borrower received 40% relief. (*Id.*, at page 4.) All approved borrowers receive a minimum of 10% in relief. (*Id.*, at page 5.) The Secretary issued a table in the December 20, 2017 Press Release that shows in graphic form the amount of relief:

<b>CCI Earnings as a Percentage of GE [Gainful Employment] Earnings</b>	<b>Amount of Relief</b>
1% to 49%	100%
50% to 59%	50%
60% to 69%	40%
70% to 79%	30%
80% to 89%	20%
90% and above	10%

(Dkt. 42-1, Ex. 1.)

The December 20, 2017 Press Release reported that the Department approved 12,900 pending claims for discharge and denied 8,600 claims. (*Id.*) Many of the denials were ones that the previous administration had identified but for which the previous administration had not yet

acted. (*Id.*) The Secretary advised borrowers that the Department would notify them on a rolling basis as the Department finalized their discharges. (*Id.*)

**d. Current Status.**

As of April 1, 2018, borrowers filed over 147,000 claims under the borrower defense rule, and 99,000 claims remained pending. (Dkt. 42-3, at ¶ 4.)

**3. Claimants' Discharges under the Average Earnings Rule.**

Plaintiffs submit several declarations from borrowers who attended Corinthian programs, borrowed Direct Loans, and asserted a borrower defense to obtain relief from repayment.

**a. Plaintiff Jennifer Craig.**

Named Plaintiff Jennifer Craig submitted a claim for relief from her student loan under the borrower defense. (Dkt. 35-1.) She attended Everest College in California and relied upon statistics that Corinthian's representatives showed her about the success of graduates in getting jobs in medical insurance and billing. (*Id.*, at ¶¶ 7-10.) She enrolled in the Everest program in April 2014 and borrowed \$9,019 to pay for her education. (*Id.*, at ¶¶ 10-11.) Although she completed her course of study, she did not receive a diploma because Corinthian closed in 2015 before she could get her diploma. (*Id.*, at ¶¶ 14-17.) Craig was not able to find work in the area of study – medical insurance billing – and later learned that, in order to get a job, she needed at least one year of experience that she had not obtained in her practical training at Corinthian. (*Id.*, at ¶¶ 18 - 19.) Craig submitted an attestation form to the Department for relief from repayment of her Direct Loan, and she received notice that the Department had discharged only 20% of her Direct Loan. (*Id.*, at ¶¶ 21, 23, Ex. 1.) The letter from the Department does not provide a detailed explanation for the determination of relief of only 20%, but it states:

The amount of loan relief that you will receive is based on the Department's assessment of the value of the education that you received. The Department has determined the value of your education by comparing the average aggregate earnings of students who attended yours program(s) of study to the average aggregate earnings of students who graduated from similar programs at other schools that have adequately prepared students for gainful employment, under the standard set forth by the Department's regulations at 34 C.F.R. Part 668, Subpart Q.

(*Id.*, Ex. 1.) There is no more information about the way in which the relief was calculated and no

1 information about a process of appealing or challenging the decision. The letter states:  
2 “If you have questions about this notice, please contact the Department of Education at  
3 FSAOperations@ed.gov or at 1-855-279-6027.” (*Id.*) Craig and her husband have a very limited  
4 income or no income, and their expenses for their family exceed their income. (*Id.*, at ¶¶ 26 - 30.)  
5 They appear to live, by any definition, in poverty. The existence of loans with the obligation to  
6 repay 80% of her Direct Loan causes Craig stress on a daily basis. (*Id.*, at ¶¶ 31-32.)

7 **b. Plaintiff Jamal Cornelius.**

8 Plaintiff Jamal Cornelius attended a Heald College program in information technology  
9 because recruiters told him that he could obtain a high-paying job. (Dkt. 35-2, at ¶ 6.) He began  
10 his program in July 2013 and borrowed a total of \$25,555 in federal student loans and \$2,000.26  
11 in private loans. (*Id.*, at ¶ 13.) In 2015, Cornelius began making repayments of \$273.64 per  
12 month. (*Id.*, at ¶ 14.) Cornelius submitted his attestation form in the summer of 2016 and  
13 resubmitted it in August 2016. (*Id.*, at ¶¶ 16-18.) Cornelius initially paid the loans but then  
14 requested loan forbearance because he was not able to make the payments. (*Id.*, at ¶¶ 22-23.) He  
15 learned that the only forbearance program he could seek would capitalize the interest on his loan.  
16 (*Id.*, at ¶ 24.) Cornelius is still waiting for a decision on his request for discharge and repayment  
17 of his federal loans. (*Id.*, at ¶ 25.) Cornelius has not been able to obtain a job in information  
18 technology and is working at Taco Bell in Hercules, California. (*Id.*, at ¶¶ 11-12.)

19 **c. Plaintiff Rthwan Dobashi.**

20 Plaintiff Rthwan Dobashi attended a WyoTech program in automotive technology in  
21 Fremont, California, after seeing advertisements about high-paying jobs. (Dkt. 35-3, at ¶ 5.)  
22 Dobashi borrowed \$22,184 in federal student loans and \$3,183.73 in private loans. (*Id.*, at ¶ 11.)  
23 He made monthly repayments, even though he was not able to find a job in the area where he  
24 trained. (*Id.*, at ¶¶ 10, 12.) Dobashi wants to return to school but cannot do so because of the  
25 loans he has to repay. (*Id.*, at ¶ 13.) He submitted an attestation form for discharge of his loans  
26 and also asked for forbearance of his loans in April 2016. (*Id.*, at ¶¶ 16, 17.) The Department  
27 notified him that his loans were in forbearance but accruing interest at the rate of \$76.27 per  
28 month. (*Id.*, at ¶ 18.) He has not received a response from the Department, even though he

submitted his attestation form over two years ago. (*Id.*, at ¶¶ 16, 19-21.)

**d. Plaintiff Alina Farajian.**

Plaintiff Alina Farajian attended Everest College to become a medical assistant. (Dkt. 35-4, ¶ 23.) Everest's recruiters assured Farajian that she could attend even though she had a learning disability and assured Farajian that Everest had a job placement program that could assist her in getting a job. (*Id.*, at ¶¶ 9, 10, 12-13.) Farajian also reviewed brochures that listed very high job placement rates. (*Id.*, at ¶ 18.) Farajian finally enrolled in the summer of 2013 and borrowed \$5,000 in federal Direct Loans. (*Id.*, at ¶ 24.) Her mother borrowed \$10,000 in PLUS loans. (*Id.*, at ¶ 24.) Farajian completed her program and received a diploma, but the only job she was able to obtain in her field of study was a one-month, temporary job. (*Id.*, at ¶¶ 26-27.) Farajian began repaying her loans in 2015 but then submitted an attestation form and asked for forbearance of her loans. (*Id.*, at ¶¶ 30, 32.) Farajian's mother also submitted an attestation form, and her entire PLUS loan was discharged. (*Id.*, at ¶ 33.) On March 1, 2018, Farajian received a letter from the Department indicating that only 30% of her loan would be discharged. (*Id.*, at ¶ 37.) Farajian is working as a driver for Lyft but makes only \$250 per month over her expenses. (*Id.*, at ¶¶ 39-40.) Farajian is suffering from stress as a result of the loans. (*Id.*, at ¶¶ 41.)

**PLAINTIFFS' PROPOSED INJUNCTION**

Plaintiffs seek class-wide preliminary injunctive and declaratory relief to return to the *status quo ante*. The proposed class of Plaintiffs is defined as:

all individuals who borrowed a Direct Loan to finance the cost of enrollment in a program who are covered by the Department's Corinthian Job Placement Rule, who have applied or will apply for a borrower defense, and who have not been granted the full relief provided for by the Rule.

(Dkt. 58, at ¶ 257.) Plaintiffs identify the class of borrowers who attended programs in the Lists for the time periods in the Lists. (Dkt. 35-6, Exs. 6-7) Plaintiffs seek an injunction ordering the Department:

to cease all efforts to collect outstanding federal student loan debt from Plaintiffs, to ensure the removal of negative credit reporting on Plaintiffs' outstanding federal student loan debt, to restore federal student loan eligibility to Plaintiffs in the amount of their non-discharged Corinthian federal student loan debt, to stop applying the "Average Earnings Rule" to members of the proposed class, and to



process Plaintiffs' claims under the "Corinthian Job Placement Rate Rule[.]"

(Dkt. 35, at page 1.)

### ANALYSIS

A preliminary injunction requires that Plaintiffs establish: "(1) likely success on the merits; (2) likely irreparable harm absent preliminary relief; (3) [that] the balance of equities tips in [Plaintiffs'] favor; and (4) that an injunction is in the public's interest." *Doe v. Kelly*, 878 F.3d 710, 719 (9th Cir. 2017) (citations omitted). A "possibility" of irreparable harm is insufficient; rather it must be "likely" absent an injunction. *Am. Trucking Ass'n, Inc. v. City of L.A.*, 559 F.3d 1046, 1052 (9th Cir. 2009). Alternatively, "'serious questions going to the merits' and a balance of hardships that tip sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Plaintiffs bear the burden to show that these factors are met. *DISH Network Corp. v. FCC*, 653 F.3d 771, 776-77 (9th Cir. 2011).

#### A. Likelihood of Success on the Merits.

Plaintiffs attack the actions of the Secretary under the Administrative Procedures Act (the "APA"). The APA allows a court to set aside an "agency action" only under limited circumstances:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall --

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be --

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or]

(B) contrary to constitutional right, power, privilege, or immunity[.]

5 U.S.C. § 706. Section 704 of the APA states that agency action is "subject to judicial review" if the action is a "final agency action for which there is no other adequate remedy in a court." 5

U.S.C. § 704. Plaintiffs allege that the Average Earnings Rule is a “final agency action” that violates §§ 706(2)(A) and (B). Specifically, Plaintiffs allege that the Average Earnings Rule is unlawful under the APA for three reasons: (1) the Average Earnings Rule violates (A) because it is “arbitrary and capricious,” (2) the Average Earnings Rule is unlawful under (A) because it violates the Privacy Act, and (3) the Average Earnings Rule violates (B) by violating Plaintiffs’ Constitutional rights to due process.

### 1. Is the Average Earnings Rule a Final Agency Action?

The threshold question for any action under the APA is whether the challenged action is the type of action – a “final agency action” – which the Court can review. Plaintiffs argue that the Department’s abandonment of the Corinthian Rule and adoption of the Average Earning Rule constitute a final agency action that is subject to judicial review. (Dkt. 35, at pages 26-27). A “final agency action” is one that “mark[s] the consummation of the agency’s decision-making process” and “one by which rights or obligations have been determined or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177-78 (1977) (citations omitted). The question of whether an action is final is “pragmatic and flexible” with the focus on “practical and legal effects of agency action.” *Or. Nat’l Desert Ass’n v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th Cir. 2006) (citation omitted).

The Secretary argues that the adoption of the Average Earnings Rule is not a “final agency action” and thus not subject to review. The Secretary’s argument fails under *Bennett*. First, the adoption of the Average Earnings Rule marks the consummation of the Secretary’s decision-making – that the Secretary will review and analyze applications from borrowers under a specific plan. Second, legal consequences will follow based on these calculations for those borrowers. *See Salazar v. King*, 822 F.3d 61, 83-84 (2d Cir. 2016) (“The APA does not require that the challenged agency action be the agency’s final word on the matter for it to be ‘final’ for the purposes of judicial review.”).

As noted above, the Secretary documented the Average Earnings Rule in the December 15, 2017 Memorandum and in the December 20, 2017 Press Release. (Dkt. 42-1, Ex. 1; Dkt. 42-2, Ex. 1.) These two documents show that the Secretary made a final decision about how to evaluate

claims for borrowers who attended Corinthian schools on the Lists and show that the Secretary adopted specific methodology for that evaluation. Thus, the first part of the test is satisfied because the Secretary consummated decision-making. Second, there is no dispute that legal consequences flow from the Department’s adoption of the Average Earnings Rule, as the Department has applied and is applying the Average Earnings Rule to determine the amount of relief each borrower obtains. (Dkt. 42-2, at ¶¶ 23-34.) *See Salazar*, 822 F.3d at 82 (2d Cir. 2016) (“The second requirement of the *Bennett* test is also met, because legal consequences flow from the [Department’s] decision not to suspend the collection of the loans of the putative class members.”).

Because the Average Earnings Rule is a “final agency action” subject to review, the Court must then analyze the three arguments that Plaintiffs make to attack the Average Earnings Rule.

## **2. Does the Average Earnings Rule Violate the Privacy Act?**

Plaintiffs argue that the Average Earnings Rule is “otherwise not in accordance with law” pursuant to 5 U.S.C. § 706 and specifically that the Average Earnings Rule violates the Privacy Act. The Privacy Act of 1974, 5 U.S.C. § 552a, “regulate[s] the collection, maintenance, use, and dissemination of information by [governmental] agencies.” *Doe v. Chao*, 540 U.S. 614, 618 (2004). The purpose is to avoid “substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.” 5 U.S.C. § 552a(e)(10).

### **a. Does the Privacy Act Allow this Type of Injunctive Relief?**

Before even addressing the merits of the Privacy Act, the Secretary argues that Plaintiffs cannot seek injunctive relief here because the Privacy Act provides a “comprehensive remedial scheme” that limits injunctive relief to two narrow areas not sought here. In *Doe v. Chao*, the Court held that the Privacy Act authorizes injunctive relief only in the following circumstances: (1) to order an agency to amend inaccurate, incomplete, irrelevant or untimely records, or (2) to order an agency to allow an individual access to his or her records. 540 U.S. at 635. *See also See Cell Assoc., Inc. v. Nat’l Inst. of Health*, 579 F.2d 1155, 1160 (9th Cir. 1978) (“the detailed remedial scheme adopted by Congress [in the Privacy Act] would make little sense” if a party could seek general injunctive relief.) Neither situation applies here, as Plaintiffs seek to enjoin the

1 Department from using data compiled as a result of disclosing information to the Social Security  
2 Administration and receiving information from the Social Security Administration to make  
3 decisions about Plaintiffs' claims under the borrower defense rule.

4 Despite this restriction under the Privacy Act, the Supreme Court indicated in two later  
5 cases that a party can seek injunctive relief *under the APA* – and not under the Privacy Act – to  
6 attack a rule that violates the Privacy Act. *FAA v. Cooper*, 566 U.S. 284, 303 n. 12 (2012); *Doe v.*  
7 *Chao*, 540 U.S. at 619, n.1. In *Doe v. Chao*, the plaintiff sued under the Privacy Act because the  
8 Department of Labor used the plaintiff's Social Security number in "multicaptioned" notices sent  
9 to people other than the plaintiff. *Id.* at 617. The Supreme Court noted in a footnote that the  
10 Privacy Act contains no specific standards for equitable relief because the APA provides those  
11 standards. *Id.* In *FAA v. Cooper*, the Supreme Court again addressed the issue of the APA's  
12 relation to the Privacy Act and stated in a footnote: "The [Privacy] Act deters violations of its  
13 substantive provisions in other ways – for instance, by permitting recovery for economic injury;  
14 by imposing criminal sanctions for some violations . . . and possibly by allowing for injunctive  
15 relief under the Administrative Procedures Act (APA)[.]" 566 U.S. at 303, n. 12. The Supreme  
16 Court interpreted *Doe v. Chao* as "noting the absence of equitable relief in suits under §  
17 552a(g)(1)(C) or (D) may be explained by the availability of such relief under the APA." *Id.* at  
18 619, n.1.

19 Thus, a plaintiff cannot seek injunctive relief *under the Privacy Act* if that injunctive relief  
20 exceeds the scope of the remedies allowed under the Privacy Act, but a plaintiff may seek  
21 injunctive relief *under the APA* if an agency has taken an action in violation of the Privacy Act.  
22 The Court therefore finds that Plaintiffs can seek injunctive relief under the APA for a final  
23 agency action that violates the Privacy Act.

24 **b. Does the Privacy Act Allow Disclosure?**

25 The Privacy Act provides: "No agency shall disclose any record which is contained in a  
26 system of records . . . to another agency." 5 U.S.C. § 552a(b). As noted above, the Department  
27 sent to the Social Security Administration the following: names, dates of birth, and Social Security  
28 numbers of the claimants who submitted attestation forms to obtain relief under the borrower

1 defense rule. (Dkt. 42-2, Ex. 1, at page 3.) The Social Security Administration then provided the  
2 Department with the mean and median annual earnings of the students in aggregate form, without  
3 any personal identifying information. (Dkt. 35-8, Ex. 27, at page 1.) Plaintiffs challenge this  
4 exchange of information as a violation of the Privacy Act. There are two acts of disclosure: (1)  
5 the Department's sending of names, Social Security numbers, and dates of birth of claimants to the  
6 Social Security Administration, and (2) the Social Security Administration's sending of aggregate  
7 statistical data about earnings to the Department.

8       There is no question that the Department and the Social Security Administration are both  
9 agencies for purposes of the Privacy Act. There is no question that, with regard to the first act of  
10 disclosure, the Department disclosed to the Social Security Administration a "record" contained in  
11 its "systems of records." The Department disclosed to the Social Security Administration the  
12 names of applicants with dates of birth and Social Security numbers. Section 552a(a)(4) defines a  
13 "record" as "any item . . . of information about an individual that is maintained by an agency . . .  
14 that contains . . . [an] identifying number . . . or other identifying particular assigned to the  
15 individual." Section 552a(a)(5) defines a "system of records" as "a group of any records under the  
16 control of any agency from which information is retrieved by the name of the individual or by  
17 some identifying number, symbol, or other identifying particular assigned to the individual."  
18 When the Department disclosed to the Social Security Administration information about the  
19 applicants' Social Security numbers and dates of birth from the Department's files, that disclosure  
20 violated the Privacy Act unless the Privacy Act exempts the disclosures.

21       The Privacy Act lists several specific exceptions to the prohibition of disclosure of  
22 information, none of which apply here. 5 U.S.C. § 552a(b)(1) – (12). The exception the Secretary  
23 asserts here is the alleged ability to share "aggregate statistical data." That term arises only in the  
24 Privacy Act in a discussion of a process in which federal agencies may share data in "matching  
25 programs." 5 U.S.C. § 552a(o). The Privacy Act defines "matching programs" as "any  
26 computerized comparison of . . . two or more automated systems of records . . . for the purpose of,  
27 . . . or continuing compliance with statutory and regulatory requirements by, applications for,  
28 recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-



1 kind assistance or payments under Federal benefit programs, or recouping payments or delinquent  
2 debts.” 5 U.S.C. § 552a(a)(8)(A). “Federal benefit programs” include “payments, grants, loans,  
3 or loan guarantees to individuals.” 5 U.S.C. § 552a(12). On the face of the description, the  
4 Department’s sharing of information is a matching program under the Privacy Act. The  
5 Department shared information with the Social Security Administration for the purpose of  
6 recouping payments or delinquent debts – collection of student loans.

7 Matching programs must satisfy several procedural requirements: (1) the agencies must  
8 have entered into a written agreement specifying the purpose, legal authority and cost savings of  
9 the matching program, 5 U.S.C. § 552a(o); (2) the executive department must inform applicants  
10 for a federal benefit that matching programs may be used to verify their applications, 5 U.S.C. §  
11 552a(o)(1)(D); (3) the agency must notify individuals that they have the right to contest the  
12 agency’s findings from the matching program before the agency take any adverse action, 5 U.S.C.  
13 § 552a(p); and (4) the agency must report any new or revised matching program to the House  
14 Committee on Government Operations, the Senate Committee on Governmental Affairs, and the  
15 Office of Management and Budget. 5 U.S.C. § 552a(o)(2)(A); 5 U.S.C. § 552a(r).

16 Thus, if the sharing of data between the Social Security Administration and the  
17 Department is a matching program as defined by the Privacy Act, the agencies must comply with  
18 the requirements listed above. It is undisputed that the Department and Social Security  
19 Administration did not comply with the requirements above and thus violated the Privacy Act.

20 Probably because the Department did not adhere to the requirements of a matching  
21 program, the Secretary argues that the sharing of information by the Department with the Social  
22 Security Administration does *not* constitute a matching program, and the Gainful Employment  
23 Agreement specifically disclaims that it is a matching program. (Dkt. 35-8, Ex. 27, at page 1.)  
24 Instead, the Secretary argues that agencies generally may share aggregate statistical data, which is  
25 what the agencies did here. Even if the Secretary is correct that the Department’s sharing of  
26 information with the Social Security Administration was not a matching program and even if the  
27 Secretary is correct that agencies may share aggregate statistical data, the Privacy Act nonetheless  
28 bars the disclosure.

1 First, there is no simply no portion of the Privacy Act that states that agencies may share  
2 aggregate statistical data. The Secretary has a convoluted reading of the Privacy Act, which relies  
3 upon an exception to an exception that creates the alleged ability to share data. But the clear terms  
4 of the Privacy Act lay out exceptions and do not include an exception for sharing of aggregate  
5 statistical data.

6 But even assuming for the sake of argument that sharing of aggregate statistical data is  
7 allowed, the Department did not share aggregate statistical data with the Social Security  
8 Administration. The Department sent names, dates of births, and Social Security numbers to the  
9 Social Security Administration. The Privacy Act defines a “statistical record” as information  
10 “maintained for statistical research or reporting purposes only and not used in whole or in part in  
11 making any determination about an identifiable individual.” 5 U.S.C. § 552a(a)(6). In addition,  
12 the express terms of section 552a(a)(8)(B)(ii) forbid use of data to make decisions concerning the  
13 “rights, benefits or privileges of specific individuals.” Here, the information the Department  
14 disclosed to the Social Security Administration was used to make a determination about a specific  
15 individual – how much of the borrower’s loan that the Department would forgive.

16 And with respect to the Social Security Administration’s sending of information to the  
17 Department, which did not contain personal identifiers, the disclosure again violated the Privacy  
18 Act because the disclosure was made to make a determination about an individual.

19 Thus, even if the Privacy Act allows agencies to share aggregate statistical data, the  
20 Privacy Act prohibits the disclosures the Secretary made here to the Social Security  
21 Administration because the Department then uses that information to make determinations about  
22 the benefits of specific individuals. For the same reason, the Privacy Act also prohibits the Social  
23 Security Administration’s disclosure of aggregate statistical data to the Department because again,  
24 the Department used that information to determine benefits.

25 In conclusion, Plaintiffs have met their burden to show that they are likely to succeed on  
26 the merits of their argument that the Privacy Act bars the Department’s disclosure of information  
27 about applicants to the Social Security Administration and the receipt and use of information from  
28 the Social Security Administration. First, the plain language of the statute bars the disclosure.

Second, even if the sharing of information between the Department and the Social Security Administration falls under the exception of the matching program, the Department and the Social Security Administration did not comply with the requirements of a matching program. Finally, even if there is an exception that allows agencies to share aggregate statistical data, the Privacy Act expressly forbids the use of that aggregate statistical data to make determinations about individuals, as here the Secretary did under the Average Earnings Rule. The Secretary simply fails to point to an exception to the Privacy Act that allows disclosure of the specific information about the applicants to the Social Security Administration and that allows the disclosure of the aggregate data from the Social Security Administration to the Department for the Department's use in determining relief for borrowers.

### 3. Does the Average Earnings Rule Violate Plaintiff's Due Process Rights?

Separate and independent from their arguments under the APA, Plaintiffs contend that the Secretary violated their due process rights by failing to provide them with "adequate procedural protections" in evaluating their claims for relief under the borrower defense rule. (Dkt. 35, at page 35.) Plaintiffs allege that they have a "property interest" in the "outcome of their borrower defense application[s]." (*Id.*) Plaintiffs have a slightly shifting definition of their property rights, as they also contend that they have a right to the relief under the Corinthian Rule, which Plaintiffs claims is full relief or total discharge: "Plaintiffs simply request that the [Department of Education] continue to review applications [for relief under the borrower defense rule] under its prior (streamlined and easier to administer) rule[.]" (Dkt. 48, at page 9.) The "prior . . . rule" is the Corinthian Rule.

#### a. Do Plaintiffs Have a Property Right?

In order to proceed with a due process claim, Plaintiffs must show that they have a protected interest in property or liberty and that the Secretary denied them adequate procedural protections in depriving them of that right. *Bd. of Regents v. Roth*, 408 U.S. 564, 569-71 (1972). A party does not have a property interest if the party has a "unilateral expectation" or an "abstract desire or need for it." *Foss v. Nat'l Marine Fisheries Serv.*, 161 F.3d 584, 588 (9th Cir. 1998). Where a regulation creates the alleged entitlement, the question is whether the benefit is

1 “mandatory in nature.” *Foss*, 161 F.3d at 588. An individual asserting a loss of due process must  
2 show that “an existing law, rule, or understanding makes the conferral of benefit mandatory.” *U.S.*  
3 *v. Guillen-Cervantes*, 748 F.3d 870, 872 (9th Cir. 2014) (citation omitted).

4 Here, by definition, there can be no “right to an outcome” that is mandatory in nature.  
5 Thus, by the way that Plaintiffs frame their purported property interest as a “right to an outcome,”  
6 they cannot show that it is mandatory in nature. To the extent that Plaintiffs claim that they are  
7 entitled to relief, they cannot show that they are entitled to full relief or total discharge. Plaintiffs  
8 do not have a property interest in total discharge of their loans. Although they do have a property  
9 interest in “some” relief once they establish their borrower defense, there is no property right to  
10 the amount of relief because the Higher Education Act provides discretion to the Secretary to  
11 determine the amount of relief. The Higher Education Act states that the “Secretary shall specify  
12 in regulations which acts or omissions of an institution of higher education a borrower may assert  
13 as a defense to repayment of a loan made under this part[.]” 20 U.S.C. § 1087e(h). The  
14 regulations do not require complete discharge but instead provide discretion to the Secretary. The  
15 regulation states that a borrower may assert, as a defense to repayment of a student loan, “any act  
16 or omission of the school attended by the student that would give rise to a cause of action against  
17 the school under applicable state law.” 34 C.F.R. § 685.206(c)(1). The regulation further  
18 provides:

19 If the borrower’s defense against repayment is successful, the Secretary notifies the  
20 borrower that the borrower is relieved of the obligation to repay *all or part of the*  
21 *loan* and associated costs and fees that the borrower would otherwise be obligated  
22 to pay.

23 34 C.F.R. § 685.206(c)(1) (emphasis added). The Secretary is allowed - but not required - to  
24 reimburse the borrower for amounts already paid, determine that the borrower is not in default,  
25 and update reports to consumer reporting agencies to remove any negative reporting. 34 C.F.R. §  
26 685.206(c)(2).

27 Plaintiffs, once they establish their claims for relief under the borrower defense rule by  
28 completing the attestation forms, have a mandatory right to *some* relief. Based on the language of  
the regulations, they also have a mandatory right to be notified about the amount of the relief they

1 are receiving. However, the regulations do not provide a mandatory right to a full discharge.  
2 The Secretary has made clear in the Average Earnings Rule that borrowers who successfully  
3 complete the attestation forms will be afforded relief in the form of 10% reduction at a minimum.  
4 (Dkt. 42-2, Ex. 1, at page 5.) Even if the Secretary gives a borrower the minimum amount of  
5 relief under the Average Earnings Rule, that borrower still receives some relief from that partial  
6 discharge. Plaintiffs do not allege that the Secretary refused to provide at least *some* relief to  
7 borrowers who successfully completed the attestation form. Because borrowers do not have a  
8 mandatory right or entitlement to a specific amount of relief, as long as they are provided *some*  
9 relief, they do not have a right to procedural safeguards to regarding the relief amount, including  
10 the decision to provide less than a full discharge.

11 Plaintiffs cite to a case in which the Court held that the plaintiffs, who sought discharge of  
12 their loans under the Higher Education Act, had a “protected property interest” in their right to  
13 discharge. *Higgins v. Spellings*, 663 F. Supp. 2d 788, 795 (W.D. Mo. 2009). *Higgins* addressed a  
14 different section of the Higher Education Act that provided no discretion to the Secretary in  
15 discharging a student loan in full. In *Higgins*, the Higher Education Act mandated that the  
16 Secretary provide full relief to a borrower who is disabled. The Higher Education Act provides  
17 that, if a borrower dies or becomes permanently disabled or unable to work under certain  
18 circumstances, “then the Secretary *shall* discharge the borrower’s liability on the loan by repaying  
19 the amount owed on the loan.” 20 U.S.C. 1087(a)(1) (emphasis added). Where a borrower can  
20 prove that she or he falls under those circumstances, a borrower has a property interest in the  
21 complete discharge of the debt because the Secretary has no discretion to refuse to discharge the  
22 debt in full. *Higgins*, 663 F. Supp. 2d at 794.

23 The right in *Higgins*, based on the section of the Higher Education Act which required a  
24 full discharge, is different from the right here, which is the mandatory right to some relief but not a  
25 full discharge, under the separate section of the Higher Education Act and its regulations.

26 Therefore, because Plaintiffs have not met their burden to show that they have a “property  
27 right” in the “outcome” of the adjudication of their claims for relief under the borrower defense  
28 rule, Plaintiffs cannot show likelihood of success on the merits of their argument that the



Secretary's adoption and implementation of the Average Earnings Rule violates their due process rights.

**b. Did the Corinthian Rule Create a Property Interest?**

Plaintiffs then argue that the Corinthian Rule created their "right." However, there is much uncertainty about the contours of the Corinthian Rule. As noted above, Plaintiffs allege that the Corinthian Rule was based on documents that they do not have, and Plaintiffs infer the existence of the Corinthian Rule from secondary sources that do not discuss the Corinthian Rule in detail. As a practical matter, it appears that the Secretary did provide full relief or total discharge for borrowers who completed attestation forms before 2017. The documentation that even the Secretary submits shows that the Secretary considered the implementation of the Average Earnings Rule to be a change in policy from previous policy. (Dkt. 41-1, at ¶¶ 9-10.) In reviewing the previous approvals of borrower's applications for relief, the Secretary found that "previous approvals had been based on the assumption that CCI borrowers received a worthless education and therefore that the discharge of the total amount of borrowers' loans and reimbursement of all payments was appropriate for all CCI borrowers with valid claims." (*Id.*, at ¶ 9.) The Secretary then evaluated that assumption as incorrect and created a new methodology to determine the value that students gained. (*Id.*, at ¶¶ 16-17.) The Secretary essentially admits that there was a previous policy, even if informal, for full discharge of debt of borrowers who completed the attestation forms.

For purposes of this motion, though, the Court is troubled by the fact that there is no document in the record that lists or describes the Department's previous policy. The missing element that matters most for this motion is whether the Secretary in the previous policy reserved to the Secretary the ability to change the analysis at a later time. The Secretary has the power under the regulations to determine the amount appropriate for discharge, and it is possible that the Secretary could devise a policy that relinquished the Secretary's right to determine whether borrowers who completed the attestation forms could have partial or full relief. It is also possible that the Secretary could impose a policy that provides full relief but specifically reserves the Secretary's power under the statute and regulations to override the relief for individual borrowers

at any time.<sup>4</sup> Without any clear indication that the Secretary specifically gave up discretion to determine the amount appropriate for relief, the Court cannot find that the Corinthian Rule existed in such a way that bound the Secretary. An “agency process without binding effect” is not reviewable under 5 U.S.C. § 551 even if it leads to “significant practical consequences.” *Indus. Safety Equip. Ass’n, Inc. v. EPA*, 837 F.2d 1115, 1120 (D.C. Cir. 1988) (citation omitted).

Therefore, Plaintiffs do not meet their burden to show likelihood of success on the merits of their argument that they have a “property right” based on the Corinthian Rule. Because Plaintiffs have not met that burden, the Court will not address their argument that the Secretary in implementing the Average Earnings Rule violated their procedural rights.

#### 4. Is the Average Earnings Rule Arbitrary and Capricious?

Because the Court finds that Plaintiffs demonstrated a likelihood of the merits that the Secretary violated the Privacy Act in her implementation of the Average Earnings Rule, it may appear that the Court need not discuss the issue of whether the Secretary’s adoption of the Average Earning Rule is arbitrary and capricious. However, as discussed below, the Court will need to determine the remedy to the Privacy Act violation. The Court finds that a discussion of the arbitrary and capricious standard is helpful to understand the scope of the Secretary’s permissible remedial actions.

The scope of review under the “arbitrary and capricious” standard is “narrow and deferential.” *Arrington v. Daniels*, 516 F.3d 1106, 1112 (9th Cir. 2008). The court in reviewing an agency’s action “is not empowered to substitute its judgment for that of the agency.” *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971), overruled on other grounds by *Califano v. Sanders*, 430 U.S. 99, 105 (1977). The reviewing court should “uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned.” *Arrington*, 516 F.3d at

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<sup>4</sup> That the Department made no public statement of any kind indicating that borrowers would receive full discharge of loans or full refund of loans is telling. For example, the attestation forms do not state what relief the borrowers will receive. (Dkt. 35-6, Exs. 8-9.) In addition, Arne Duncan, the previous Secretary, stated: “[If] you’ve been defrauded by a school, we’ll make sure that you get every penny of the relief you are entitled to through a streamlined process – as streamlined as possible.” (Dkt. 35-5, Ex. 5, at page 2.) There was no explanation about what that relief was.

1112 (internal citation and quotation omitted). A rule is arbitrary and capricious if the agency: (1) “has relied on factors which Congress has not intended it to consider,” (2) “entirely failed to consider an important aspect of the problem,” (3) “offered an explanation for its decision that runs counter to the evidence before the agency,” or (4) offers an explanation that is “so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Plaintiffs argue that the Secretary fails to meet the standard to show that the new policy, the Average Earnings Rule, is better than the old policy, the Corinthian Rule. When an agency changes policy, it “need not demonstrate to a court’s satisfaction that the reasons for the new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better[.]” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (italics in original). As noted above, there is not sufficient evidence to determine that a Corinthian Rule existed as Plaintiffs describe it.

However, even assuming that the Secretary had previously adopted a Corinthian Rule, the Secretary met the burden necessary to change the policy. In reviewing the previous approvals of borrower’s applications for relief, the Secretary found that “previous approvals had been based on the assumption that CCI borrowers received a worthless education and therefore that the discharge of the total amount of borrowers’ loans and reimbursement of all payments was appropriate for all CCI borrowers with valid claims.” (Dkt. 41-1, at ¶ 9.) The Secretary then evaluated that assumption and determined that the assumption was false and made a new methodology for determining the value gained. (*Id.*, at ¶¶ 16-17.) The Secretary provided a justification for the Average Earnings Rule: the assumption that students who attended the Corinthian schools obtained no value is not factually accurate for all students and thus basing relief from loans on that assumption is a bad policy. (*Id.*, ¶¶ 15-17 and Ex. 1.) The Secretary’s concern is genuine, and the attempt to create a policy to determine whether students obtained value and if so, how much, is also a legitimate exercise of the Secretary’s discretion under the Higher Education Act. As noted above, the regulations promulgated under the Higher Education Act provide that the Secretary can

1 relieve “all or part” of the loan of a borrower who successfully asserts a borrower defense and  
 2 provides that the Secretary has discretion to provide relief “as the Secretary determines is  
 3 appropriate under the circumstances.” 34 C.F.R. § 685.206(2). Here, there is no question that the  
 4 Secretary has the power to determine the amount of relief a borrower can obtain.

5 Nonetheless, Plaintiffs challenge the actions in implementing that discretion as arbitrary  
 6 and capricious. First, Plaintiffs challenge the Average Earnings Rule on a legal basis, since  
 7 Plaintiffs claim that the Department had previously issued a legal memorandum concluding that  
 8 California’s Unfair Competition law is the applicable law for determining borrower’s relief, and  
 9 specifically that borrowers who were defrauded were entitled to a full discharge of their debt. As  
 10 discussed above, Plaintiffs do not provide the legal memorandum, so the Court cannot determine  
 11 if that legal memorandum was the basis for the Secretary’s decision for the Corinthian Rule. The  
 12 Court also cannot determine what the legal memorandum concluded or whether it was the basis  
 13 for the Secretary’s decision for the Corinthian Rule. The specific regulation addressing the  
 14 amount or type of relief does not reference state law. *See* 34 C.F.R. § 685.206(c)(2).<sup>5</sup> Moreover,  
 15 even if the Secretary were bound to apply California law, either by the legal memorandum or  
 16 regulation, California’s Unfair Competition law does not require full discharge in cases of fraud.  
 17 California’s Unfair Competition law, Cal. Bus. & Prof. Code § 17200 *et seq.*, provides either  
 18 equitable relief or restitution as a remedy. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.  
 19 4th 1134, 1144 (2003). Restitution is defined as “the excess of what the plaintiff gave the  
 20 defendant over the value of what the plaintiff received” in order to “restore the defrauded party to  
 21 the position he would have absent the fraud.” *Pulaski & Middleman LLC v. Google, Inc.*, 802  
 22 F.3d 979, 988 (9th Cir. 2015) (citations omitted). Here, the Average Earnings Rule, in attempting  
 23 to determine the value of what plaintiff received, is not arbitrarily inconsistent with a restitution  
 24 calculation under California’s Unfair Competition law. Even if the percentage awarded under the  
 25 Average Earnings Rule is somewhat less than the Plaintiffs’ calculation of restitution under  
 26

27  
 28 <sup>5</sup>In contrast, the specific regulation addressing the right to relief does reference state law.  
 34 C.F.R. § 685.206(c)(1). In addition, the Master Promissory Note references state law but does  
 not specify that the state law governs the amount of discharge. (Dkt. 35-5, Ex. 1, at page 7.)

1 California's Unfair Competition law, this differential does not render the Secretary's  
2 determination arbitrary and capricious. Even if the Court disagrees with the relief amount, the  
3 Court "is not empowered to substitute its judgment for that of the agency." *Citizens to Preserve*  
4 *Overton Park*, 401 U.S. at 416.

5 Plaintiffs also argue that the Average Earnings Rule is arbitrary and capricious because:  
6 (1) the Average Earnings Rule is "irrational" in the manner in which the Average Earnings Rule  
7 applies the gainful employment standard, (2) the Average Earnings Rule ignores previous findings  
8 and leads to inconsistent results for borrower who submitted claims before the Average Earnings  
9 Rule and after the Average Earnings Rule, (3) the Average Earnings Rule relies upon data from  
10 third parties that is not relevant or specific to the borrowers, and (4) the Average Earnings Rule  
11 fails to take into account whether the borrower is working in the field she or he studied in  
12 determining the amount of forgiveness. (Dkt. 35, at pages 40-42.) All of these attacks are  
13 attempts to second-guess the Secretary's decision-making and substitute the Court's judgment for  
14 the judgment of the Secretary. The Secretary, in adopting the Average Earnings Rule, provided a  
15 rational reason for the Average Earnings Rule and a method – imperfect in many ways and illegal  
16 under the Privacy Act – to assess the value of what the borrower actually received as compared to  
17 the loans. However, aside from the illegal disclosure of information to the Social Security  
18 Administration and use of that data from the Social Security Administration, the Secretary's  
19 attempts to devise a more narrowly tailored system for determining the amount of relief is not  
20 arbitrary and capricious.

21 Therefore, Plaintiffs do not meet their burden to show likelihood of success on the merits  
22 of their argument that the Secretary's adoption and implementation of the Average Earnings Rule  
23 is arbitrary and capricious.

#### 24 **5. Does the Average Earnings Rule Constitute Retroactive Rule Making?**

25 Plaintiffs argue also that, separate from the alleged violations of the APA, the Secretary's  
26 use of the Average Earnings Rule constitutes impermissible, retroactive rulemaking. Plaintiffs  
27 argue that an agency cannot create a new rule and apply it retroactively. *Cort v. Crabtree*, 113  
28 F.3d 1081 (9th Cir. 1997). The issue before the Court is whether the Secretary is applying the



1 Average Earnings Rule retroactively. It is undisputed that the Secretary is not clawing back any  
2 funds or changing any decisions made and communicated before the Average Earnings Rule was  
3 put in place with regard to borrowers who submitted their attestation forms before the Average  
4 Earnings Rule was put in place. Plaintiffs argue that the Average Earnings Rule is retroactive  
5 because the Secretary is applying the Average Earnings Rule to all borrowers in the proposed class  
6 of plaintiffs – whether they have submitted an attestation form or not. Plaintiffs’ argument turns  
7 on whether they have a vested right in a full discharge of their loans and that the adoption of the  
8 Average Earnings Rule took away that right. *See, e.g., Landgraf v. USI Film Prods.*, 511 U.S.  
9 244, 269-70 (1994) (a rule is “retrospective” if it “takes away or impairs vested rights acquired  
10 under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability,  
11 in respect to transactions or considerations already past”) (citation omitted). This analysis is  
12 similar to the analysis of due process rights discussed above, as a vested right is similar to a  
13 mandatory right. Because Plaintiffs cannot show, with the evidence before the Court now, that all  
14 borrowers in the proposed class were entitled to full relief as a matter of stated policy, Plaintiffs  
15 cannot show that the Average Earnings Rule is retroactive in nature.

16 The main case Plaintiffs cite, *Cort*, is distinguishable because in *Cort*, the plaintiffs<sup>6</sup> had  
17 already received letters notifying them that they were eligible for relief, but the governmental  
18 agency (Bureau of Prisons) then changed its interpretation of a statute and determined that the  
19 plaintiffs were no longer eligible. *Cort*, 113 F.3d at 1082. The plaintiffs had a right that the  
20 Bureau of Prisons then took away. Here, because Plaintiffs cannot show – based on the record  
21 before the Court now – that they had a vested right or a mandatory right to full relief, they cannot  
22 show the Secretary engaged in retroactive rule making by taking away that right. Therefore,  
23 Plaintiffs do not meet their burden to show likelihood of success on the merits of their argument  
24 that the Secretary’s adoption and implementation of the Average Earnings Rule constitutes  
25 retroactive rule-making.

26 ///

27  
28 <sup>6</sup> The plaintiffs in *Cort* were three individuals who did not assert a class action. *Cort*, 113 F.3d at 1081-82.

**B. A Preliminary Injunction Is Necessary to Stop Irreparable Harm.**

Because the Court finds that Plaintiffs have shown a likelihood of success on the merits of the APA claim, the Court must determine whether they can show irreparable harm to justify a preliminary injunction. A plaintiff seeking a preliminary injunction must demonstrate that irreparable injury is likely in the absence of preliminary relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 21 (2008). A mere possibility of irreparable injury is insufficient. *Id.* “Irreparable harm is traditionally defined as harm for which there is no adequate legal remedy, such as an award of damages.” *Ariz. Dream Act v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (citation omitted). Further, the irreparable nature of a plaintiff’s injury is heightened when it involves the plaintiff’s “young age and fragile socioeconomic position.” *Ariz. Dream Act*, 757 F.3d at 1068. Plaintiffs claim irreparable injury because Plaintiffs are suffering extreme financial hardship, emotional distress, loss of opportunity, and invasion of Plaintiffs’ privacy rights.<sup>7</sup> Because the Court finds that the Average Earnings Rule violates the Privacy Act, the Court will examine the harm largely in that context.

**1. Do Privacy Act Violations and Emotional Distress Constitute Irreparable Harm?**

Plaintiff Mercado states that, when she learned that her own Social Security information was used against her to forgive only 30% of her loan, she was “sad, distressed and betrayed.” (Dkt. 48-1, ¶ 17.) She felt that the use of her own information against her in determining the amount of her loan forgiveness was a “slap in the face.” (*Id.*)

As noted above, the Court finds that the Secretary’s disclosure to the Social Security Administration and receipt and use of data from the Social Security Administration violates the Privacy Act because the results are used in determining borrowers’ benefits – relief from loans. In this situation, borrowers can feel emotional distress, similar to Mercado’s sentiments. Here, Plaintiffs Craig, Farajian, and Dobashi discuss in general terms the emotional stress that the repayment system is causing them. (Dkt. 35-1 at ¶¶ 17, 32; Dkt. 35-3 at ¶¶ 22-23; Dkt. 35-4 at ¶¶

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<sup>7</sup> Plaintiffs contend that they are suffering irreparable harm of violation of their due process rights. Because the Court finds that Plaintiffs do not have a property interest in the outcome of their applications for borrower defenses, the Court will not analyze that harm.

36, 41.)<sup>8</sup> Plaintiffs cannot recover for emotional distress under the Privacy Act, even if there is a final determination that the Secretary violated the Privacy Act, because the government had provided only limited avenues for relief in waiving sovereign immunity. *FAA v. Cooper*, 566 U.S. at 303-304 (no mental or emotional distress allowed under the Privacy Act). Where sovereign immunity bars certain types of damages, those damages can constitute irreparable harm. *See, e.g., Caspar v. Snyder*, 77 F. Supp. 3d 616, 641 (E.D. Mich. 2015) (if sovereign immunity bars damages, damages can be irreparable). *See also Krebs v. Rutgers*, 797 F. Supp. 1246, 1259 (D. N.J. 1992) (Privacy Act harms are irreparable). Thus, the emotional distress that Plaintiffs are suffering from the violation of the Privacy Act is irreparable, and an injunction is warranted.

## 2. Does Economic Harm Constitute Irreparable Harm?

Both parties discuss the economic harm from denial of full relief from debt. Because the Court finds that the Secretary has discretion to determine the amount of relief a borrower can receive – as long as the rule does not violate laws – the issue of economic harm is not necessarily relevant here. The Secretary’s action in adopting the Average Earnings Rule is unlawful and therefore invalid under the APA, but the harm – loss of privacy – does not necessarily cause economic injury. The Secretary could devise a lawful rule to evaluate and determine relief for borrowers that does not provide full relief. Even if the Secretary were to devise a lawful rule for Plaintiffs, they might still suffer some economic harm.

However, the Court notes that, because the Court finds that the Average Earnings Rule is invalid, Plaintiffs whose claims are evaluated under the Average Earnings Rule might be forced to repay higher amounts than they would under a validly constructed rule. If that is the case, then economic harm is relevant. The Court finds that Plaintiffs have shown that they are suffering

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<sup>8</sup> With their Reply, Plaintiffs also submit the declarations of two mental health professionals, both of whom discuss the psychological effects of student loans on individuals in general. (Dkt. 48-2; Dkt. 48-3.) Neither mental health professional examined the Plaintiffs but rather only reviewed their declarations. (Dkt. 48-2, 5; Dkt. 48-3, at ¶ 23.) Given that the Court has found that Plaintiffs have submitted evidence of emotional distress, there is no need for the Court to review the declarations of mental health professionals. Moreover, the Court is not inclined to accept these additional declarations on reply without giving the Secretary a chance to address them, because they contain more than factual allegations and provide expert opinions that are subject to attack.

irreparable harm in the form of economic harm. Although economic harm generally does not constitute irreparable injury, economic injury may be the basis for an injunction where a plaintiff lives on a fixed income and where minimal increases in the cost of living creates a “potential [for] financial disaster” and the possible deprivation of “life’s necessities.” *United Steelworkers of Am., AFL-CIO v. Textron, Inc.*, 836 F.2d 6, 8 (1st Cir. 1987); *see also Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 657 (6th Cir. 1996) (economic harm satisfied factor of irreparable injury because plaintiffs were “unable to absorb even relatively small increases in their expenses without extreme hardship”). Here, Plaintiffs Craig and Farajian provide detailed information to show that they are living in dire circumstances. (Dkt. 35-1; Dkt. 35-4.) In addition, Plaintiff Cornelius, who is working at a Taco Bell in Hercules, California, faces payments of at least \$273.64 per month. (Dkt. 35-2, at ¶¶ 2, 14.) It is difficult for workers at fast food restaurants to make ends meet in the San Francisco bay area, one of the most expensive areas in the country, even without a monthly loan payment of \$273.64 per month. These detailed declarations from Craig, Farajian, and Cornelius, show that repayment of loans threatens these borrowers’ ability to pay for basic life expenses like food and rent.<sup>9</sup>

The Secretary argues that Plaintiffs have not shown that the repayment of loans is causing the harm that they are suffering because they have other financial problems that caused the harm. This argument seems meaningless given the dire financial circumstances that Plaintiffs describe. Given their financial situations, any additional dollar they are required to repay takes away from basic need for food and shelter. In economic terms, the marginal utility of each dollar is extremely high to the Plaintiffs.

Under these circumstances, the Court finds that Plaintiffs have shown irreparable harm because the economic harm they are suffering affects their ability to pay for life’s most basic necessities.

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<sup>9</sup> The briefs of *amici curiae* - the Debt Collective and Public Law Center - also provide examples of individual borrowers who are suffering economic hardships. (Dkt. 43; Dkt. 45.) These individual borrowers did not submit declarations under penalty of perjury, and therefore Court will not consider that information.

### 3. Does Loss of Opportunity Constitute Irreparable Harm?

Plaintiffs also claim that they are suffering a loss of opportunity and that loss constitutes irreparable injury. Again, the harm that Plaintiffs assert in this area is linked to the failure to obtain a full discharge and not linked to the violation of their privacy rights. But for the same reasons as discussed with regard to the economic harm, the loss of opportunity for Plaintiffs who are forced to repay more for their loans under the invalid Average Earnings Rule, compared with the amount that they would repay under a valid rule, is relevant harm. Lost opportunities can constitute irreparable injury. *Brewer*, 757 F.3d at 1068 (holding that loss of professional opportunity constitutes irreparable harm); *see also Enyart v. Nat'l Conf. of Bar Examiners, Inc.*, 630 F.3d 1153, 1163 (9th Cir. 2011) (loss of opportunity to pursue one's chosen profession constitutes irreparable harm). The Secretary argues that Plaintiffs fail to meet their burden of proof to assert this area of damage as irreparable injury. However, Plaintiffs submitted, with their Reply, an additional declaration of Plaintiff Mercado in which she explains that she has not been able to obtain a mortgage for a home because of the existence of her loans. (Dkt. 48-1, at ¶ 23.) Although the Mercado Declaration was submitted in such a way that the Secretary did not have a chance to rebut it, the Court will accept the factual allegations of the Mercado Declaration. The Mercado Declaration shows that Plaintiffs can suffer loss of opportunities similar to the type the Court in *Brewer* found to constitute irreparable injury.

Under these circumstances, the Court finds that Plaintiffs have shown irreparable harm because they cannot recover their lost opportunities.

### C. Public Interest and Balance of Equities Weigh in Favor of Preliminary Injunction.

The Court finds that the balance of equities weighs in favor of a preliminary injunction and that the public interest weighs in favor of a preliminary injunction. Although normally courts consider the third and fourth factors of the test for a preliminary injunction separately, where the federal government is a party, the last two factors of the balance of equities and public interest merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). There is a strong public interest in ensuring that agencies comply with the law in enacting rules and regulations, and here, preventing the use of data in violation of the Privacy Act is a compelling interest. The



Secretary argues that forcing the Secretary to forgive all loans to Plaintiffs costs the government money that the government should not pay, given that some Plaintiffs received some benefit from their education through the Corinthian schools. The Secretary argues that the relief Plaintiffs seek will divert resources from other educational programs, and that there is a strong public interest in saving funds. Saving money does not justify a violation of the law – the Privacy Act. The Court here, as discussed more fully below, is not ordering the Secretary at this time to return to the Corinthian Rule. The Court recognizes that the Secretary has discretion to enact rules regarding the amount of relief as long as the rules are lawful and not arbitrary and capricious. Given that the injunction below is narrowly tailored to the violation of the Privacy Act and temporary in nature, the Court finds that the balance tips in favor of Plaintiffs for an injunction.

#### **D. The Appropriate Remedy.**

Plaintiffs seek an injunction ordering the Secretary to take cease two actions and to take three other affirmative actions. As described above, Plaintiffs seek an injunction in five main areas: (1) to stop “all efforts to collect outstanding federal student loan debt from Plaintiffs,” (2) to remove negative credit reporting of “Plaintiffs’ outstanding federal student loan debt”, (3) “to restore federal student loan eligibility to Plaintiffs in the amount of their non-discharged Corinthian federal student loan debt,” and (4) to stop using the “Average Earnings Rule,” and (5) to apply the Corinthian Rule to Plaintiffs’ claims.

##### **1. Is Removal of Negative Credit Reporting and Restoring Eligibility for Student Loans the Correct Relief?**

The Court will not order the Secretary to take the actions Plaintiffs seek with regard to the requests for removal of negative credit reporting and restoring eligibility for further student loans. Even if the Court were to assume that the Corinthian Rule existed, Plaintiffs’ definition of the Corinthian Rule does not include this relief. (Dkt. 35, at pages 12-13.) There is no other evidence in the record to show that the Corinthian Rule included these provisions.

Furthermore, the regulation provides that the Secretary has discretion to provide that relief. Section 685.206(c)(2) states that “[f]urther relief may include, but is not limited to, the following . . . Determining that the borrower is not in default on the loan and is eligible to receive assistance

under Title IV of the Act,” and “Updating reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower’s Direct Loan.” Under the clear terms of the regulation, the Secretary can, but is not required, to provide this relief. The Court cannot, in the absence of any evidence, force the Secretary to take action that the Secretary is not required to do. The Court therefore **DENIES** Plaintiffs’ request for preliminary injunction to the extent that Plaintiffs seek an order requiring the Secretary to remove negative reports from Plaintiffs’ reports with credit reporting agencies and to restore Plaintiffs’ eligibility for further student loans.

**2. Is Enjoining Use of Average Earnings Rule, Return to the Corinthian Rule and Immediate Cessation of Collection of Plaintiffs’ Debts Appropriate?**

Because Plaintiffs have met their burden to show likelihood of success on the merits of the argument that Secretary violated the APA by implementing a rule, the Average Earnings Rule, that violates the Privacy Act, that implementation of the Average Earning Rule is causing irreparable harm, and that the balance of equities tips in favor of Plaintiffs on this serious issue, the Court **ENJOINS** the Secretary from using the Average Earnings Rule as it currently exists. Normally, when a court issues an injunction, the injunction orders a return to the *status quo*. In this case, it is unclear what the *status quo* is, since there is no clear documentation outlining the parameters of the Corinthian Rule.

At this time, the Court cannot compel the Secretary to return to the Corinthian Rule, since the parameters of the Corinthian Rule are not clearly defined. *See Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004) (court can compel agency action “only where a plaintiff asserts that an agency failed to take a discrete agency action that it required to take.”) The action that the plaintiff seeks to compel must be so clear that it is subject to the traditional test of mandamus. *Vietnam Veterans of Am. v. CIA*, 811 F.3d 1068, 1075-76 (9th Cir. 2015). A writ of mandamus is appropriate only when “(1) the plaintiff’s claim is clear and certain, (2) the defendant official’s duty to act is ministerial, and so plainly prescribed as to be free from doubt, and (3) no other adequate remedy is available.” *Barron v. Reich*, 13 F.3d 1370, 1374 (9th Cir. 1994) (internal quotations and citations omitted). Here, the Court cannot compel the Secretary to take specific actions allegedly under the Corinthian Rule when there is no evidence to show that

1 the Corinthian Rule included those specific actions. The Court therefore **DENIES** Plaintiffs'  
2 request for preliminary injunction to the extent that Plaintiffs seek an order requiring the Secretary  
3 to implement the Corinthian Rule in assessing claims under the borrower defense rule, filed by  
4 borrowers who attended schools on the Lists.

5 Thus, the Court **GRANTS** Plaintiffs' motion for preliminary injunction to prevent the  
6 Secretary from using the Average Earnings Rule but **DENIES WITHOUT PREJUDICE**  
7 Plaintiffs' motion for preliminary injunction to return to the Corinthian Rule. With regard to the  
8 injunction for the Secretary to stop all efforts to collect Plaintiffs' loans, the Court temporarily  
9 **GRANTS** this request. The Secretary is **ORDERED** to cease all efforts to collect debts from  
10 Plaintiffs until the Court can determine the proper course of action.

11 The Secretary has the right to assess claims for relief from borrowers who attended  
12 Corinthian schools on the Lists who seek relief under the borrower defense rule as long as the  
13 Secretary does not violate the Privacy Act or other laws in doing so. At this time, though, because  
14 the Court is not sure how to define the *status quo* in the absence of key documentation, the Court  
15 requests additional briefing on this issue and will hear oral argument on this issue on June 4, 2018,  
16 the date currently scheduled for a case management conference. The hearing will be specially set  
17 for 2:30 p.m. Parties may submit supplemental briefing on this subject, to be exchanged  
18 simultaneously, on May 31, 2018. At the hearing on June 4, parties should be prepared to address  
19 the following questions:

- 20 (1) Does the Court have the authority to order the Secretary to produce the three  
21 documents that Plaintiffs allege constitute the Corinthian Rule: (1) a memorandum  
22 prepared by the Department's Office of General Counsel, (2) a fine action letter  
23 prepared by Federal Student Aid's Administrative Actions & Appeals Service Group,  
24 and (3) an April 2015 document prepared by the Federal Student Aid's Administrative  
25 Actions & Appeals Services Groups?
- 26 (2) What is the *status quo*? What is the date by which the Court measures the *status quo*?

27 The Court directs the parties to a recent case on this subject: *Animal Legal Defense*  
28 *Fund v. U.S. Dept. of Agriculture*, 2017 WL 2352009, \*3 (N.D. Cal. May 31, 2017).

- 1 (3) If the Court enjoins the Secretary from using the Average Earnings Rule and the  
2 Secretary does not return to the Corinthian Rule, what steps will the Secretary take to  
3 assess claims from Plaintiffs?
- 4 (4) Do Plaintiffs contend that the Secretary has a mandatory duty to provide forbearance  
5 pending a determination of the discharge amount? If so, what is the authority for that  
6 position? Does the Secretary dispute that she has a mandatory duty to provide  
7 forbearance pending a determination of the discharge amount? If so, what is the  
8 authority for that position?
- 9 (5) Should the Secretary treat in a different manner the borrowers who were not able to  
10 complete a program or receive a diploma or certification on the Lists because the  
11 school or program closed? If the students who were not able to complete their program  
12 did receive some value, would it be arbitrary to treat them the same (provide the same  
13 discharge amount) as those students who were able to complete their programs?

14 **IT IS SO ORDERED.**

15 Dated: May 25, 2018

16 

17 SALLIE KIM  
18 United States Magistrate Judge

**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 3**



Pagination

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Majority Opinion >

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA, ex rel. LAPORTE, et al., Relators, v. PREMIER EDUCATION GROUP, L.P.  
et al., Defendants.

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Civil No. 11-3523 (RBK/AMD)

May 11, 2016, Filed

May 10, 2016, Decided

NOT FOR PUBLICATION

For UNITED STATES OF AMERICA, ex. rel., LAURA LAPORTE, ANGELA DAVENPORT, PAMELA HONE, ROBERT BIASELLI (LDHWB), Plaintiff: DAVID C. KISTLER, LEAD ATTORNEY, BLANK ROME, LLP, PRINCETON, NJ; DAVID I. SINDERBRAND, LEAD ATTORNEY, Law Office of David I. Sinderbrand, LLC, Northfield, NJ.

For PREMIER EDUCATION GROUP, L.P., doing business as HARRIS SCHOOL OF BUSINESS OF LINWOOD N.J., PREMIER EDUCATION GROUP, G.P., INC., Defendants: RICHARD M. HOWARD, LEAD ATTORNEY, MELTZER, LIPPE, GOLDSTEIN & BREITSTONE, LLP, MINEOLA, NY; KEVIN C. DONOVAN, WILSON ELSEER MOSKOWITZ EDELMAN & DICKER, NEWARK, NJ; RYAN PATRICK O'CONNOR, WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP, FLORHAM PARK, NJ.

For BRANFORD HALL CAREER INSTITUTE, SALTER COLLEGE, THE SALTER SCHOOL, SEACOAST CAREER SCHOOLS, SUBURBAN TECHNICAL SCHOOL, SALTER SCHOOL OF NURSING & ALLIED HEALTH, JOHN DOES NOS. 1-50, FICTITIOUS NAMES, Defendants: RICHARD M. HOWARD, LEAD ATTORNEY, MELTZER, LIPPE, GOLDSTEIN & BREITSTONE, LLP, MINEOLA, NY.

For STATE OF NEW JERSEY, Interested Party: EDWARD JAMES MULLINS, III, LEAD ATTORNEY, Office of

the Attorney General, Division of Law, Newark, NJ.

ROBERT B. KUGLER, United States District Judge.

ROBERT B. KUGLER

**KUGLER**, United States District Judge:

This matter is a qui tam action, which Relators bring under the False Claims Act, arising out of alleged fraudulent claims made by Premier Education Group, and its affiliated schools, to the federal government. Presently before the Court is Defendants' motion to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) . (Doc. No. 52.) For the reasons expressed herein, Defendant's motion is granted-in-part and denied-in-part.

## I. FACTUAL BACKGROUND

Relators Laura LaPorte, Angela Davenport, Pamela Hone, Robert Biaselli, Kelli J. Amaya, Amanda Kenny, and Doris Moody ("Relators") brought this qui tam action on behalf of the United States of America against Defendants Premier Education Group, L.P. and Premier Education Group, G.P., Inc. d/b/a Branford Hall Career Institute, Harris School of Business, Salter College, The Salter School, Seacoast Career Schools, and Suburban Technical School (collectively, "PEG"), and John Does # 1-50, Fictitious Names (together with PEG, the "Defendants"), pursuant to the Federal Civil False Claims Act, 31 U.S.C. §§ 3729 , et seq. ("FCA"). Relators originally brought this action on June 20, 2011 (Doc. No. 1), and they subsequently amended the complaint four times. Relators filed the Fourth Amended Complaint ("FAC") on February 27, 2014 (Doc. No. 46).

In their FAC, Relators explain that their lawsuit is based on the actions of PEG, which allegedly made or caused to be made false claims and statements in order to participate in the Federal student financial aid programs ("Federal Programs"), from 2006 onward. (FAC ¶ 2; id. ¶ 97.) They claim PEG violated federal regulations it was required to comply with in order to be eligible to receive Federal Program funding. Specifically, PEG violated provisions of the contractual [**\*2**] agreements between PEG and the Department of Education ("DOE"), called Program Participation Agreements ("PPAs"), in which PEG agreed to abide by federal regulations and not engage in material misrepresentations as a condition of PEG's eligibility to receive said funding. As required by the PPAs, PEG certified, each time it drew down student aid monies, that the funds were being expended in accordance with the conditions of those PPAs. (Id. ¶ 3.)

Congress established various student loan and grant programs under Title IV of the Higher Education Act of 1965, 20 U.S.C. §§ 1070 et seq. ("HEA"), including the Federal Pell Grant Program, the Federal Family Education Loan Program and the Federal Direct Loan Program. In 2008 Congress reauthorized the HEA, as amended, through its passage of the Higher Education Opportunity Act. (FAC ¶ 60.) In order to participate in the Title IV Federal Programs for financial aid, an institution such as PEG must (1) establish institutional and

program eligibility, and then (2) ensure student eligibility prior to disbursing the Federal Program funds. (*Id.* ¶ 61.) There are federal requirements for institutions that wish to participate in Title IV Federal Programs, including the requirement that a school be accredited and licensed to operate in each state in which it is doing business. (*Id.* ¶ 64; 20 U.S.C. § 1001 ; 34 C.F.R. § 600.5(a)(4) , (6) .) Institutions that wish to participate also may not make substantial misrepresentations to prospective applicants about the nature of the institution's educational programs or the employability of its graduates. (FAC ¶ 65; 34 C.F.R. § 668.71 ; *id.* § 668.74 ; *id.* § 668.72 .) To qualify as eligible, a student must be enrolled or accepted for enrollment in an eligible program at an eligible institution, must have a high school diploma or recognized equivalent or satisfy some other means of obtaining eligibility (such as, during the relevant time period, having "obtained a passing score specified by the Secretary on an independently administered test"), and must be maintaining "Satisfactory Academic Progress" in his or her course of study according to the school's published standards, and in accordance with Federal guidelines. (FAC ¶ 62; 34 C.F.R. § 668.32 ; *id.* § 668.34 .)

All post-secondary schools must enter into PPAs with the DOE in order to be eligible to receive Title IV Federal Program funds, or have their students receive Title IV funding. (FAC ¶ 67; 20 U.S.C. § 1094 ; 34 C.F.R. § 668.14 .) PPAs condition the initial and continued participation of an eligible institution in a Title IV Federal Program upon compliance with the regulations specified above. (FAC ¶ 67; 34 C.F.R. § 668.14(a)(1) .) PEG has, since at least 2006, annually signed and submitted PPAs to the DOE on behalf of all of its educational institutions throughout the United States. (FAC ¶ 88.) These PPAs signed by PEG contain the same certifications that PEG was in compliance with all the applicable regulations described *supra*. (*Id.* ¶¶ 89-96.) Relators aver that PEG has "claimed and received substantial sums in Title IV funding from the [DOE] as a result of its fraudulent conduct." (*Id.* ¶ 97.)

The first of the specific allegations is that PEG made false statements and concealed material information from state agencies [\*3] and the DOE in order to ensure that it would maintain its state licenses and accreditation status for each of its campuses in order to continue to receive Federal Program funding. (*Id.* ¶¶ 4, 6.) This included actions such as fabricating job placement statistics for graduates at its campuses, in order to remain licensed and accredited. (*Id.* ¶ 6; *id.* ¶ 257-58; *id.* ¶ 308.) Second, Relators allege that PEG engaged in false advertising in an attempt to induce students to enroll at its campuses, in violation of Federal Program regulations and its PPAs. (*Id.* ¶ 7.) This involved misrepresenting the accreditation status of certain programs, enrolling students into programs of study without disclosing that they would be effectively disqualified from employment in their chosen fields upon graduation, and misrepresenting the nature and success of PEG's career placement services. (*Id.*; *id.* at 78-91.) Third, Relators aver that PEG engaged in fraudulent conduct in order to secure financial aid for students who, but for PEG's conduct, would not have been eligible for assistance from the Federal Programs. (*Id.* ¶ 8.) For example, PEG allegedly falsified records to make it appear that students had either graduated from a recognized high school or received a GED in order to permit unqualified students to enroll, and PEG improperly received and retained Federal Program assistance and monies for those ineligible students. (*Id.*; *id.* at 41-55.) Fourth, PEG purportedly continued to falsify student records once they were enrolled and receiving Federal Program financial aid, in order to receive more Federal Program funding for which the students were in fact ineligible. (*Id.* ¶ 9.) To achieve this, PEG falsely certified students' "Satisfactory Academic Progress" on the Federal Program financial aid recipient list by falsifying attendance records for students who were no longer in attendance and changing student grades from failing to

passing, and PEG falsified financial aid records in order to secure more Federal Program funding than students should have been eligible to receive. (Id.; id. at 55-72.) Finally, Relators allege PEG's employee compensation system, as designed and implemented, did not comply with the Incentive Compensation Ban in Title IV of the HEA. (Id. ¶ 10; id. at 72-75.)

The named relators are all reportedly original sources of the allegations in the FAC. (Id. ¶ 17.) Relator Laura LaPorte (LaPorte) worked as the Registrar at the Harris School of Business ("HSB") in Linwood, New Jersey ("HSB-Linwood"), in 2006 and 2007, and she was responsible for administering admissions tests, tracking student attendance, and inputting student grades into the computer system. (Id. ¶ 19.) She resigned her employment with PEG voluntarily. (Id.) Relator Robert Biaselli ("Biaselli") worked as an instructor at HSB-Linwood in 2006 and 2007. (Id. ¶ 22.) Relator Pamela Hone ("Hone") was an admissions representative at HSB-Linwood in 2006 and 2007. (Id. ¶ 25.) Relator Angela Davenport ("Davenport") was the Director of Education for HSB during 2009. (Id. ¶ 28.) In her role, Davenport worked directly with the registrar at the HSB campus [\*4] in Cherry Hill, New Jersey ("HSB-Cherry Hill"), and was responsible for preparation of the HSB-Linwood personnel files. (Id.) She resigned her employment with PEG voluntarily. (Id. ¶ 29.) Relator Kelli J. Amaya ("Amaya") worked as the Externship Coordinator at HSB-Linwood from September, 2009, through June, 2010, and in July, 2010 she was promoted to Director of Education/Externship at HSB in Wilmington, Delaware ("HSB-Wilmington"). (Id. ¶ 32.) She claims that, after she reported problems at the HSB-Wilmington campus, she was first demoted and then fired in January, 2011, as a result of "whistleblowing activities." (Id.) Relator Amanda Kenny ("Kenny") was hired as a Financial Aid Administrator for HSB-Wilmington in 2009, and was promoted to Director of Financial Aid at HSB-Wilmington in January, 2011. (Id. ¶ 35.) As Director of Financial Aid she was responsible for the submission of FAFSA forms to the DOE, for scheduling financial aid disbursements, for drawing down Federal Program funds for HSB-Wilmington students, for preparing and processing all internal and external paperwork and reports and correspondence to the DOE relating to student financial aid, for monitoring each student's eligibility for financial aid on an ongoing basis, for attending weekly manager meetings and financial aid conference calls with other PEG schools, and for weekly meetings with the Director of Admissions and other PEG managers to monitor the financial aid process on a student-by-student basis, as well as to manage re-enrollments. (Id.) Relator Kenny voluntarily resigned her position with PEG in October, 2011. (Id.) Relator Doris Moody ("Moody") was the Registrar at HSB-Wilmington from October, 2010, until August, 2012, at which point she alleges she was constructively terminated due to her "whistleblowing activities." (Id. ¶¶ 38-39.) As Registrar, her responsibilities included grade and attendance records input and generating reports of the same. (Id. ¶ 38.)

In their FAC, Relators allege that Defendants violated the FCA by (1) knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval (FAC Count I (citing 31 U.S.C. § 3729(a)(1)(A) );  
 2 (2) knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim (FAC Count II (citing § 3729(a)(1)(B) );  
 3 (3) conspiring to commit a violation of subparagraph (A) , (B) , (D) , (E) , (F) , or (G) of § 3729(a)(1) (FAC Count III (citing § 3729(a)(1)(C) );  
 4 and (4) knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the Government (FAC Count IV (citing § 3729(a)(1)(G) ).  
 5 Additionally, Relators allege Defendants violated § 3730(h) by taking retaliatory action against

relators Amaya and Moody in the terms and conditions of their employment because of lawful acts done by them in furtherance of this action under the FCA (FAC Counts V, VII). Finally, Relators also allege that Defendants violated the rights of relators Amaya and Moody [\*5] to be free from intentional infliction of emotional distress (FAC Counts VI, VIII).

As indicated above, the original Complaint was filed on June 20, 2011, under seal, the Third Amended Complaint was unsealed on July 2, 2013 (Doc. No. 18), and the FAC was filed on February 27, 2014. On March 26, 2014, Defendants filed the present motion to dismiss the FAC. The United States filed its Notice of Election to Decline Intervention on July 2, 2013, (Doc No. 17), and a Statement of Interest in Response to Defendants' Motion to Dismiss on May 21, 2014 (Doc. No. 60).

In their motion, Defendants argue that Relators' action must be dismissed for lack of jurisdiction under 31 U.S.C. § 3730(b)(5) and § 3730(e)(4). (Defs.' Br. at 7-15.) Additionally, they argue the claims are barred by the applicable statute of limitations. (Id. at 15-16). In the alternative, if the Court were to reach the merits of Relators' claims, Defendants move to dismiss Counts I-IV for failure to properly plead pursuant to Rule 8 and to plead fraud with particularity pursuant to Rule 9(b), (id. at 16-28), and/or to dismiss all Counts for failure to state a claim pursuant to Rule 12(b)(6). (Id. at 28-55.)

The Court initially ruled on Defendants' motion on October 27, 2014. (See Doc. Nos. 76-77.) The Court dismissed Counts I-IV for lack of jurisdiction on account of 21 U.S.C. § 3730(b)(5), which prohibits persons from bringing an action based on facts that formed the basis of a prior action under the FCA. The Court reasoned that Relators' suit and Bumgarner et al. v. Premier Education Group et al., No. 10-787 (D.N.J. filed Feb. 17, 2010), concerned the same underlying facts and were therefore related cases. (See Op. 11-18, Doc. No. 76.) Siding with the D.C. Circuit's interpretation of § 3730(b)(5) and the "first-to-file" rule, this Court held that Bumgarner barred Relators' related suit under the first-to-file rule notwithstanding the fact that Bumgarner was dismissed prior to Relators' filing suit. (Id. 19-22.) The Court also dismissed Counts V and VII, finding Relators had failed to state a prima facie retaliation claim under § 3730(h), and declined supplemental jurisdiction over the state law claims in Counts VI and VIII in the absence of any remaining federal causes of action. (Id. 19-26.) Relators appealed.

While their appeal was pending, the Supreme Court decided Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter, 135 S. Ct. 1970, 191 L. Ed. 2d 899 (2015), which both parties agree affects the Court's holding on the "first-to-file" rule. Without deciding Relators' appeal, the Third Circuit remanded the case for this Court to reconsider in light of recent developments in the law. Having been extensively briefed by the parties, the issues are now ripe for the Court's review.

## II. LEGAL STANDARD

Defendants move to dismiss the FAC for lack of subject-matter jurisdiction under Rule 12(b)(1), for failure to state a claim under Rule 12(b)(6), and for failure to satisfy the heightened pleading standard of Rule 9(b). "When a motion under Rule 12 is based on more than one ground, the court should consider the 12(b)(1) challenge first because if it must dismiss the complaint for lack of subject matter jurisdiction, all other defenses and objections become moot." In re Corestates [\*6] Trust Fee Litig., 837 F. Supp. 104, 105 (E.D. Pa. 1993).



Where a defendant moves to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction, plaintiffs bear the burden of proving by a preponderance of the evidence that the Court has subject matter jurisdiction. See Gould Elecs. Inc. v. U.S., 220 F.3d 169 , 178 (3d Cir. 2000). A district court may treat a party's motion to dismiss for lack of subject-matter jurisdiction under Rule 12(b)(1) as either a facial or factual challenge to the court's jurisdiction. *Id.* at 176 . A facial challenge is one in which a defendant argues "that the allegations on the face of the complaint, taken as true, are insufficient to invoke the court's jurisdiction." Turicentro, S.A. v. Am. Airlines, Inc., 303 F.3d 293 , 300 & n.4 (3d Cir. 2002). "In reviewing a facial attack, the court must only consider the allegations of the complaint and documents referenced therein and attached thereto, in the light most favorable to the Relator." Gould, 220 F.3d at 176 (citing PBGC v. White, 998 F.2d 1192 , 1196 (3d Cir. 1993)). On the other hand, the court may consider evidence outside the pleadings, in reviewing a factual attack. *Id.* A district court has "substantial authority" to "weigh the evidence and satisfy itself as to the existence of its power to hear the case." Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884 , 891 (3d Cir. 1997). "No presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of the jurisdictional claims." *Id.*

Federal Rule of Civil Procedure 12(b)(6) allows a court to dismiss an action for failure to state a claim upon which relief can be granted. When evaluating a motion to dismiss, "courts accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." Fowler v. UPMC Shadyside, 578 F.3d 203 , 210 (3d Cir. 2009) (quoting Phillips v. Cnty. of Allegheny, 515 F.3d 224 , 233 (3d Cir. 2008)). In other words, a complaint survives a motion to dismiss if it contains sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662 , 678 , 129 S. Ct. 1937 , 173 L. Ed. 2d 868 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544 , 570 , 127 S. Ct. 1955 , 167 L. Ed. 2d 929 (2007).

To make this determination, a court conducts a three-part analysis. Santiago v. Warminster Twp., 629 F.3d 121 , 130 (3d Cir. 2010). First, the court must "tak[e] note of the elements a plaintiff must plead to state a claim." *Id.* (quoting Iqbal, 556 U.S. at 675 ). Second, the court should identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth." *Id.* at 131 (quoting Iqbal, 556 U.S. at 680 ). Finally, "where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief." *Id.* (quoting Iqbal, 556 U.S. at 680 ). This plausibility determination is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Iqbal, 556 U.S. at 679 . A complaint cannot survive where a court can infer only that a claim is merely possible rather than plausible. *Id.*

The more exacting standard in Federal Rule of Civil Procedure 9(b) applies to claims raised under the False Claims Act because the claims allege fraud. U.S. ex rel. Wilkins [\*7] v. United Health Group, 659 F.3d 295 , 301 n.9 (3d Cir. 2011). Rule 9(b) provides that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other circumstances of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b) . Pursuant to Rule 9(b) , a plaintiff must plead the circumstances of the alleged fraud with particularity sufficient to put the defendant on notice of the "precise misconduct with which [it is] charged." Lum v. Bank of Am., 361 F.3d 217 , 223-24 (3d Cir. 2004). A plaintiff may satisfy that requirement in two ways. *Id.* at 224. First, a plaintiff can meet the requirement "by pleading the date, place or time of the fraud." *Id.* Second, the plaintiff may use an "alternative

means of injecting precision and some measure of substantiation into their allegations of fraud." Id. (citing Seville Indus. Mach. v. Southmost Mach., 742 F.2d 786 , 791 (3d Cir. 1984)). Rule 9(b)'s heightened pleading standard is meant "to place the defendants on notice of the precise misconduct with which they are charged, and to safeguard defendants against spurious charges of immoral and fraudulent behavior." Seville, 742 F.2d at 791 , abrogated in part on other grounds by Twombly, 550 U.S. at 557 . At a minimum, Rule 9(b) requires "that the plaintiff identify the speaker of allegedly fraudulent statements." Klein v. Gen. Nutrition Co., Inc., 186 F.3d 338 , 345 (3d Cir. 1999).

### III. DISCUSSION

"The FCA empowers a person, or 'relator,' to sue on behalf of the United States those who defraud the government," in what is referred to as a qui tam suit. U.S. ex rel. Moore & Co., P.A. v. Majestic Blue Fisheries, LLC, 812 F.3d 294 , 297 (3d Cir. 2016). If a relator's suit is successful, he or she shares in any ultimate recovery. Relators allege a violation of 31 U.S.C. § 3729(a)(1)(A) , which imposes liability on any person who "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval." A prima facie claim under the FCA requires the plaintiff to show that "(1) the defendant presented or caused to be presented to an agent of the United States a claim for payment; (2) the claim was false or fraudulent; and (3) the defendant knew the claim was false or fraudulent." U.S. ex rel. Wilkins v. United Health Group, Inc., 659 F.3d 295 , 311 (3d Cir. 2011). The elements of a claim under § 3729(a)(1)(B), which Relators also bring, are that "(1) the defendant made, or caused someone else to make, a false or fraudulent record or statement; (2) the defendant knew the statement to be false or fraudulent; and (3) the statement was material to a claim." U.S. ex rel. Portilla v. Riverview Post Acute Care Ctr., 2014 U.S. Dist. LEXIS 44002 , [2014 BL 87182], 2014 WL 1293882 , at \*9 (D.N.J. Mar. 31, 2014). Defendants seek dismissal of Relators' suit on multiple grounds, which the Court will address in turn.

#### A. Jurisdiction

##### 1. First-to-file Rule

As noted supra, the Court previously ruled that Bumgarner barred Relators' claims under § 3729 (Counts I-IV), a holding that hinged on the Court's interpretation of § 3730(b)(5) 's first-to-file bar. That bar provides that "[w]hen a person brings an action . . . no person other than the Government may intervene or bring a related action based on the facts underlying the pending action." § 3730(b)(5) (emphasis added). This Court, siding with the D.C. Circuit, interpreted "pending" to include cases that had been brought but **["8]** dismissed prior to the filing of the related suit. Thus, the Court held that the first-to-file rule barred Relators' claims even though Bumgarner had been dismissed prior to Relators filing suit. The parties now contend, and the Court agrees, that the Supreme Court's holding in Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter, 135 S. Ct. 1970 , 191 L. Ed. 2d 899 (2015), renders that holding incorrect. In Kellogg, the Supreme Court held that "a qui tam suit under the FCA ceases to be 'pending' once it is dismissed." 135 S. Ct. at 1979 . Here, Bumgarner was dismissed prior to the filing of Relators' initial complaint and therefore imposes no jurisdictional bar to Relators' claims. As such, the Court's previous holding that it lacked jurisdiction pursuant to § 3730(b)(5) is vacated. The Court now denies Defendants' 12(b)(1) motion on grounds that Bumgarner divests this Court of jurisdiction.

## 2. Public Disclosure Bar

Defendant argues that Relators' claims are barred by 31 U.S.C. § 3730(e)(4), the FCA's public disclosure bar. Between 1986 and 2010, the FCA's public disclosure bar precluded a relator from bringing a suit based on allegations of fraud that had already been publicly disclosed, subject to an exception if the relator was the "original source" of the information:

No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in (i) a criminal, civil, or administrative hearing, (ii) in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or (iii) from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

§ 3730(e)(4)(A) (2006). This version of the statute defines "original source" as "an individual who has direct and independent knowledge of the information on which the allegations are based." § 3730(e)(4)(B).

In 2010, Congress passed the Patient Protection and Affordable Care Act (ACA),<sup>6</sup> which, among other things, amended § 3730(e)(4). See Pub. L. 111-148, § 10104(j)(2), 124 Stat. 119, 901-02. As amended, § 3730(e)(4) states that,

[t]he court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—

- (i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;
- (ii) in a congressional, Governmental Accountability Office, or other Federal report, hearing, audit, or investigation; or
- (iii) from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

§ 3730(e)(4)(A) (2010). The statute as amended defines "original source" as an individual who has voluntarily disclosed information to the Government or one "who has knowledge that is independent of and materially adds to" information already publicly disclosed. § 3730(e)(4)(B).

Thus, the amended version of § 3730(e)(4)(A) provides more limited bases for dismissal than does the pre-ACA version. The amended provision bars allegations raised in prior federal proceedings to which **[\*9]** the government was a party, while the pre-amendment provision precludes allegations raised in either state or federal proceedings. Compare § 3730(e)(4)(A)(i) (2010) (requiring courts to dismiss claims the basis of which have been publicly disclosed "in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party" (emphasis added)) with § 3730(e)(4)(A)(i) (2006) (divesting a court's jurisdiction over allegations publicly disclosed in "a criminal, civil, or administrative hearing"). The amended public disclosure bar is also no longer a jurisdictional limitation, see U.S. ex rel. Moore & Co., P.A. v. Majestic Blue Fisheries,

LLC, 812 F.3d 294 , 297 (3d Cir. 2007) ("We agree that the public disclosure bar is no longer jurisdictional. . . ."), while the pre-amendment disclosure bar is a jurisdictional threshold. See § 3730(e)(4)(A) ("No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions . . . ." (emphasis added)). Thus, the pre-amendment disclosure bar is analyzed under a 12(b)(1) standard while the post-amendment version is analyzed under a 12(b)(6) standard.

The parties disagree on which version of § 3730(e)(4) applies. Defendants argue that the pre-amendment provision applies, while Relators argue that the post-amendment version applies. The Third Circuit has clarified that courts are to apply the version of the § 3730(e)(4) that was the law "at the time the alleged conduct in the Complaint took place." U.S. ex rel. Judd v. Quest Diagnostics, 638 Fed. Appx. 162 , 2015 U.S. App. LEXIS 15084 , [2015 BL 275201], 2015 WL 4025447 , at \*2 (3d Cir. 2015) (quoting U.S. ex rel. Judd v. Quest Diagnostics, Inc., No. 10-4914, 2014 U.S. Dist. LEXIS 73760 , [2014 BL 153131], 2014 WL 2435659 , at \*6 (D.N.J. May 30, 2014)); see also U.S. ex rel. Zizic v. Q2Admins., LLC, 728 F.3d 228 , 232 n.3 (3d Cir. 2013). Citing the Supreme Court's decision in Hughes Aircraft Co. v. United States ex rel. Schumer, 520 U.S. 939 , 945-46 , 117 S. Ct. 1871 , 138 L. Ed. 2d 135 (1997), the Third Circuit recognized the "presumption against retroactive legislation," particularly where, as here, "an amendment eliminates a defense to a qui tam suit." Judd, 2015 U.S. App. LEXIS 15084 , [2015 BL 275201], 2015 WL 4025447 , at \*2. The Third Circuit also found "no indication . . . that Congress intended to make the amendments to the public disclosure bar retroactive." 2015 U.S. App. LEXIS 15084 , [WL] at \*2 (citing Graham Cnty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson, 559 U.S. 280 , 283 n.1, 130 S. Ct. 1396 , 176 L. Ed. 2d 225 (2010)). In Graham, the Supreme Court declined to give an amendment retroactive effect where the amendment eliminated a defense to a qui tam suit. 559 U.S. at 283 ("The legislation makes no mention of retroactivity, which would be necessary for its application to pending cases given that it eliminates petitioners' claimed defense to a qui tam suit."). If Judd, Hughes Aircraft, and Graham did not make it sufficiently clear, multiple circuit courts have also held that courts are to apply the public disclosure bar in effect at the time the conduct took place. See, e.g., Cause of Action v. Chicago Transit Auth., 815 F.3d 267 , 2016 WL 767345 , at \*5 n.6 (7th Cir. 2016) ("Our cases hold that the 2010 changes to § 3730(e)(4)(A) are not retroactive and therefore the applicable version of subsection (A) is the one that was 'in force when the events underlying the suit took place.'"); U.S. ex rel. Antoon v. Cleveland Clinic Found., 788 F.3d 605 , 614-15 (6th Cir. 2015) (applying the pre-2010 version of section 3730(e)(4) to events that took place in 2007 and 2008); [\*10] U.S. ex rel. May v. Purdue Pharma L.P., 737 F.3d 908 , 915 (4th Cir. 2013) (declining to give retroactive effect to the post-amendment public disclosure bar because "the significant revisions to the statute 'change[] the substance of the existing cause of action'" (quoting Hughes Aircraft, 520 U.S. at 948 ))).

Where, as here, the complaint includes a continuing course of fraud that occurred both before and after Congress amended the public disclosure bar, the court applies the pre-amendment version of § 3730(e)(4) to conduct occurring prior to the amendment's enactment and the post-amendment version to conduct occurring after the amendment took effect.<sup>7</sup> As such, the pre-amendment version of the public disclosure bar governs conduct occurring before March 23, 2010 and the post-amendment version governs conduct occurring after.

Despite the substantive differences between the two versions of the public disclosure bar, the fundamental analysis remains the same. "To determine whether a Relator is barred by the FCA's public disclosure provisions, we must first assess whether the relator's claim is based on publicly disclosed allegations or



transactions." U.S. ex rel. Atkinson v. PA. Shipbuilding Co., 473 F.3d 506 , 519 (3d Cir. 2007). This is a two-step analysis: first, the Court must "determine whether the information was disclosed via one of the sources listed in § 3730(e)(4)(A) , and second, the court must "decide whether the relator's complaint is based upon those disclosures." Id. To be properly considered "based upon" the publicly disclosed allegations, "the complaint need only be 'supported by' or 'substantially similar to' the disclosed allegations and transactions." Id. (citing U.S. ex rel. Mistick v. Housing Auth. of the City of Pittsburgh, 186 F.3d 376 (3d Cir. 1999)).

Defendants argue that the allegations in the FAC are based upon allegations that appeared in four previous lawsuits and/or media coverage of those suits, namely (1) United States ex rel. Bumgarner v. Premier Education Group, No. 10-0787 (D.N.J. 2010), filed on February 17, 2010; (2) Gomez et al. v. Premier Education Group, L.P., No. L-4412-08 (N.J. Super Ct. 2008), filed on December 8, 2008; (3) Eagen et al. v. Premier Education Group, L.P., No. 2128-11 (N.J. Super. Ct. 2011), filed March 4, 2011; and (4) Harrigan et al. v. Premier Education Group, L.P., No. L-2924-07 (N.J. Super. Ct. 2007), filed on September 6, 2007. The Court will address each of the alleged public disclosures as they apply in the context of both the pre-and post-amendment versions of the ACA.

#### (a) Bumgarner

The parties do not dispute that the Bumgarner complaint constitutes a "civil hearing" as included in both the amended and unamended version § 3730(e)(4)(A). See U.S. ex rel. Stinson, Lyons, Gerlin & Bustamonte, P.A. v. Prudential Ins. Co., 944 F.2d 1149 , 1155-56 (3d Cir. 1991) (rejecting a narrow reading of "hearing" and finding it includes "[i]nformation gleaned in litigation and on file in the clerk's office"). The parties dispute whether the complaint was a public disclosure. To be "publically available," the disclosure must be "information that would have been equally available to strangers to the fraud transaction had they chosen to look for it." Stinson, 944 F.3d at 1155-56 ; see also Paranich, 396 F.3d at 333-34 (holding that a complaint constitutes a [\*11] public disclosure if it is both filed with the court and publicly available).

Defendants argue that because Bumgarner was filed a year and a half prior to Relators' suit, it is properly considered a "public disclosure." (Defs.' Br. 12.) At the time Relators filed the instant suit, however, the Bumgarner complaint was sealed and was not available to the general public. (See Doc. Nos. 6-10.) It seems uncontroversial to the Court that "a sealed qui tam complaint, of which a relator has no knowledge, is not a public disclosure for purposes of" § 3730(e)(4) ." U.S. ex rel. Hockett v. Columbia/HCA Healthcare Corp., 498 F. Supp.2d 25 , 46-47 (D.D.C. 2007) (reasoning that a sealed complaint is a "poor candidate" for public disclosure because it does not serve the purposes of § 3730 , namely to encourage relators to come forward but to disallow parasitic lawsuits). Thus, the Bumgarner complaint is not a public disclosure because it was not "equally available" to the general public—or Relators—at the time they filed their original Complaint in 2011. See Stinson, 944 F.3d at 1155-56 .

Even when considering Bumgarner from the date at which the seal was partially lifted to certain authorized parties in October, 2012, the Court finds that it is not a public disclosure. Relators assert that the allegations in the Bumgarner complaint were not revealed to them, and Defendants have not alleged otherwise. Rather, they argue that "regardless of Relators' knowledge of the admitted unsealing," the partial unsealing renders the Bumgarner complaint a public disclosure because any stranger to the fraud could potentially have discovered



the allegations contained therein. (Defs.' Supp. Br. 3 (emphasis added).) The Court disagrees. The complaint was only partially unsealed and was unavailable to the public at large. See U.S. ex rel Rush v. Agape Senior Servs., Inc., No. 13-0666, 2014 U.S. Dist. LEXIS 174206 , [2014 BL 355366], 2014 WL 6910480 , at \*9 (D.S.C. Aug. 18, 2014) ("[A] qui tam action whose existence is kept under seal, except for certain enumerated disclosures authorized by the court, is not a public disclosure within the meaning of the pre-amendment or post-amendment version of 31 U.S.C. § 3730(e)(4)(A) ."). The Court is satisfied that Bumgarner does not divest the Court over jurisdiction of Relators' claims.

### **(b) Harrigan, Gomez, and Eagen Complaints and Related News Media**

The Harrigan, Gomez, and Eagen state suits ("the State Suits") allege a fraudulent scheme at HSB, a PEG-affiliated school. The plaintiffs in those cases were students or former students of HSB's Professional Medical Assistants ("PMA") program. They alleged that HSB misrepresented that upon completion of the PMA program, students would be eligible to take the American Association of Medical Assistants certification exam—a credential that substantially increases earning potential—when in fact they were ineligible because HSB was unaccredited. (Harrigan Compl. ¶¶ 30-46; Gomez Compl. ¶¶ 23-26; Eagen Compl. ¶¶ 27-44.) The plaintiffs also allege that PEG d/b/a HSB altered students' grades, permitted students to re-enroll in classes multiples times after failing, and changed students' attendance records in order to continue receiving funds from New Jersey programs, Federal Pell Grants, [\*12] and subsidized and unsubsidized Federal Stafford loans. (Harrigan Compl. ¶¶ 56-59; Gomez Compl. ¶¶ 69-74; Eagen Compl. ¶¶ 58-61.) The Press of Atlantic City and the Local Fox News, both online sources, also reported on the State Suits prior to Relators filing suit. ( See Howard Cert. Exs. L-O.) Those news reports focus almost entirely on the allegations concerning the lack of proper accreditation, id. Exs. L-N, save for one story reporting on students being taught a CPR course by teachers who were not qualified to do so, id. Ex. O.

As indicated supra, information revealed through civil litigation, including civil complaints, constitutes a public disclosure under § 3730(e)(4)(A) . Paranich, 396 F.3d at 333-34 . The Harrigan, Gomez, and Eagen complaints were filed in 2007, 2008, and 2011, respectively, well before the Relators filed the instant suit. They therefore constitute the type of disclosure enumerated in the pre-ACA version of § 3730(e)(4)(A). They do not qualify as public disclosures under the post-ACA version, however, because, as state suits, they do not constitute a "Federal, criminal, civil, or administrative hearing in which the Government or its agent is a party." § 3730(e)(4)(A)(i) (2010). Therefore, the pleadings in the State Suits qualify as public disclosures under the pre-ACA version of the statute only.

On the other hand, the news articles about the State Suits qualify as public disclosures under both versions of the statute. Each version specifically enumerates allegations publicly disclosed by the "news media." Plaintiffs do not dispute that the news articles covering the allegations in the State Suits constitute "news media." See Freedom Unlimited, Inc., 2016 U.S. Dist. LEXIS 43701 , [2016 BL 102237], 2016 WL 1255294 , at \*16 ("Courts in this jurisdiction have held that information obtained through a publicly accessible website can qualify as 'news media' under the public disclosure bar.").

Therefore, the remaining inquiry is whether the allegations in the FAC are "based upon" these disclosures. Atkinson, 473 F.3d at 519 . This analysis requires the Court to address each of Relators claims separately.

See U.S. ex rel. Merena v. SmithKline Beecham Corp., 205 F.3d 97, 102 (3d Cir. 2000) ("[I]n applying section (e)(4), it seems clear that each claim in a multi-claim complaint must be treated as if it stood alone."); see also U.S. ex rel. Boise v. Cephalon, Inc., Doc. No. 08-287, 2014 U.S. Dist. LEXIS 143742, [X1GOQKJBG000N], 2014 WL 5089717, \*7 (E.D. Pa. Oct. 9, 2014) (reviewing the ways in which a district court may examine each claim independently, such as "by looking at each count of the complaint" or at "each theory of recovery"). In this instance, it makes little sense to review Relators' claims by looking to the separate counts in the FAC. Indeed, nearly all of the FAC's factual allegations underlying the specific Counts are organized as a detailed 107-page preamble to the mere seven pages of specifically enumerated counts. (See generally FAC.) Instead, it makes more sense to compare the allegations made in the State Suits—and related news media—to the FAC's many theories of liability.

When comparing the complaints, it is clear that the allegations in the FAC far exceed those in the State Suits. The former contains allegations not even mentioned in the State Suits, including the following:<sup>[\*13]</sup>

- PEG knowingly admitted students who did not possess a valid high school diploma or GED, in violation of the schools' published admissions criteria. (See FAC ¶¶ 127, 132-155.)<sup>8</sup>
- PEG admitted known felons who were either ineligible for federal financial aid or could not obtain licensure in their chosen fields. (See FAC ¶¶ 146-156.)
- PEG admitted individuals with learning disabilities, non-english speaking individuals, and illiterate individuals. (See id. ¶¶ 157-70.)
- PEG completed FAFSA applications for prospective students who could not read or write English, or who were not capable of understanding the financial obligations they were undertaking. (See id. ¶¶ 171-75.)
- PEG imposed rigid sales quotas on admissions representatives such that they would be fired if they failed to enroll at least five new students per week. PEG tied admissions' representatives' performance and salaries to their ability to meet PEG's sales quotas. (See id. ¶¶ 227-37.)
- PEG misrepresented to students that the credits earned at PEG schools were transferable to other institutions. (See id. ¶¶ 278-286.)
- PEG used prohibited incentive compensation to induce employees to participate in fraudulent enrollment and graduation schemes. (See id. ¶¶ 289-305.)

These allegations could not have been publicly disclosed by the State Suits or news media because the complaints in those cases—and the media coverage thereof—make no mention of these allegations. Therefore, the Court properly has jurisdiction over these allegations in the FAC.

The Court also finds that it has proper jurisdiction over the FAC's allegations regarding accreditation, despite Defendants' arguments otherwise. The State Suits consist almost entirely of allegations that HSB misrepresented to students in the PMA Program that they would be able to take the relevant certification exam when in reality they could not because HSB was not accredited by either the Commission on Accreditation of

Allied Health Education Professionals (CAAEP) or the Accrediting Bureau of Health Education Schools (ABHES). (See generally, Harrigan, Gomez, and Eagen Compls.) The media coverage covers only these allegations. The FAC, on the other hand, does not contain allegations concerning HSB's lack of CAAEP or ABHES accreditation.<sup>9</sup> As such, the Court finds it properly has jurisdiction over these claims as well.

Multiple allegations in the FAC, however, resemble allegations in the State Suits. First, the FAC and the State Suits contain similar allegations concerning the altering of students' grades, during similar time periods. The complaints in the State Suits allege that HSB "changed grades of students to pass them in order to continue" receiving government funds. (Harrigan Compl. ¶ 57; see also Gomez Compl. 70, Eagen Compl. ¶ 58.) The FAC also alleges that PEG changed students grades "from failing to passing, in order to mislead accrediting agencies and Federal Programs" so that it could preserve the students eligibility for government funds. (FAC ¶ 179). However, the complaints in the State Suits contain no allegations regarding the specific [\*14] scheme or the manner in which HSB altered students' grades, while the FAC goes into much detail about the alleged scheme:

PEG implemented a top down scheme to falsify student grades . . . . PEG routinely pressured its administrators and instructors to ensure that students received passing grades regardless of the students' actual performance . . . . Through its well-known pattern of blaming and harassing instructors when students failed courses, PEG preempted the submission of failing grades . . . . [Director of Education Kathy Bertolini] was required to challenge any instructor who submitted a failing grade for a student, and to dispute the failing grade . . . . Similarly, at PEG's BHCI-Southington Campus, Computer Information Technology instructor Jay Baker, who was employed by the school between 1999-2003 and 2004-2011, and his fellow instructors routinely were asked to change student grades from failing to passing . . . . PEG retaliates against instructors who fail to comply with its demand that they change grades from failing to passing . . . . For those instructors who refused to acquiesce in PEG's pressure to "pass" unqualified students in order to permit certification of their satisfactory academic progress, PEG administrators routinely changed those students grades from failing to passing without the instructor's consent, ordering Registrars to falsely certify students' [satisfactory academic progress].

(FAC ¶¶ 179-86; see also ¶¶ 179-89; 190-211.) None of these allegations, nor the specifics of this scheme, were contained in the State Suits. The FAC is also not limited to conduct occurring at HSB.

Second, both the State Suits and the FAC make allegations concerning the falsification of students' attendance records. The former alleges that "Defendants counted students for attendance by marking them present when they were not present so as to continue to receive government funds." (Gomez Compl. ¶ 73; see also Harrigan Compl. ¶ 59, Eagen Compl. ¶ 61.) The FAC makes a similar allegation, but expands on it substantially:

Pursuant to 34 C.F.R. 668.22(b) , PEG was obligated to track its students' attendance, and thus their continued eligibility to receive Federal student aid. In this regard, PEG based a student's withdrawal date on that student's "last date of attendance" ("LDA") at an academically-related activity . . . . Under PEG's LDA tracking system, if a student had not been in a PEG building for fourteen (14) days, the student would have to be dropped/failed, and any unused Federal student

aid returned. PEG engaged in various fraudulent conduct to manipulate its LDA reports, including altering students' attendance records, in order to ensure that students not benefiting from instruction at PEG would maintain their enrollment and, accordingly, their eligibility for Federal Program financial aid, notwithstanding the fact that they were not attending class . . . . During the course of auditing HSB-Wilmington student attendance records, Relator Amaya discovered that the attendance records of numerous students had been falsified to make it appear they were attending class when [\*15] that was not actually the case . . . . During her tenure as Registrar at PEG's HSB-Linwood campus, Relator LaPorte was responsible for keeping the school's student attendance records on the CampusVue computer application. She regularly was instructed by Campus Director Steven Strong and Director of Education Craig Hennequant to alter student attendance records in order to avoid "failing" a student for lack of attendance in class. When Relator LaPorte voiced her concerns about this practice, Hennequant responded: "Just do as I tell you."

(FAC ¶¶ 212-19.) This additional information concerning the scheme at HSB and PEG's other campuses was not included in the State Suits.

The question therefore becomes whether the additional information provided in the FAC prevents the otherwise similar allegations from being "based on" the complaints in the State Suits and the media coverage thereof. The Third Circuit has emphasized that the public disclosure bar is not limited to actions "solely based upon" public disclosures but rather, it includes actions "even partly based upon" such allegations. Zizic, 728 F.3d at 238 (citing U.S. ex rel. Precision Co. v. Koch Indus., 971 F.2d 548, 553 (10th Cir. 1992)). To analyze whether an allegation is "based upon" a public disclosure, the Third Circuit uses "an algebraic representation of the nature and extent of disclosure required to raise the jurisdictional bar." Atkinson, 473 F.3d at 519. The equation provides that "[i]f  $X + Y = Z$ , Z represents the allegation of fraud and X & Y represent its essential elements." Id. The public disclosure bar precludes a relator from bringing suit "[i]f either Z (fraud) or both X (misrepresented facts) and Y (true facts) are disclosed by way of a listed source." Id.

Here, the Court finds that the allegations in the FAC concerning the changing of grades and attendance records are "based upon" the similar allegations in the State Suits. The State Suits allege that PEG d/b/a HSB routinely changed students' grades from failing to passing and altered attendance records to receive federal financial aid to which they were not entitled. Here, although Relators have revealed details and facts absent from the complaints in the School Suits, the underlying allegation of fraud—"Z"—was previously disclosed by the State Suits. As such, the Court finds the pre-ACA version of §3730(e)(4)(A) divests it of jurisdiction over Relators' allegations concerning the pre-2010 altering of grades and attendance records, unless Relators can demonstrate they are the original sources of that information. § 3730(e)(4)(A).

### 3. Original Source Exception

To be an "original source" under the pre-2010 version of the statute, "a relator's knowledge must be both direct and independent," meaning that the knowledge must "not depend on public disclosures" and be "obtained without any intervening agency, instrumentality or influence." Atkinson, 473 F.3d at 520 (internal quotation marks and citations omitted). Relators allege that they engaged in their own independent investigation of the conduct described in the FAC and are therefore original sources. (Pls.' Opp. Br. 20, Doc. No. 53.) As indicated

supra, however, Relators [\*16] have argued that the post-amendment version of § 3730 applies and therefore have not engaged in a pre-amendment original source analysis. (See Opp. Br. 17-21.) As such, Relators have submitted no Record and instead rely on the allegations in the FAC and their brief to satisfy this Court of its jurisdiction over their claims.

On a 12(b)(1) factual attack on jurisdiction, however, the Court is not obligated to accept Relators' claims as true. Here, the Court is left without any Record on which to examine the Relators' alleged investigation into the alteration of students' grades and attendance records. Without any evidence that the Relators undertook an investigation into the alleged frauds occurring at PEG's campuses, the Court cannot find that their investigation renders them the original sources of the information. Indeed, Relators suggest that their investigation included public sources, see Pl.'s Br. 20, and "the extent of reliance on information already in the public domain should be a consideration during the original source inquiry, even if that information is not a public disclosure within the meaning of § 3730(e)(4)(A)." Atkinson, 473 F.3d at 522 . Here, the Court does not know on what, if any, public disclosures Relators' investigation relied. If it relies even in part on the public disclosures identified above, then Relators are not original sources of the information. If it does not, even then, Relators may still fail to qualify as original sources. As the Third Circuit explained in Zizic,

reliance on public information that does not qualify as a public disclosure under § 3730(e)(4)(A) may also preclude original source status, depending on the extent of that reliance, and the nature of the information in the public domain, as well as the availability of information, and the amount of labor and deduction required to construct the claim.

Zizic, 728 F.3d at 240 (internal citations and quotations omitted). In sum, the Court has no information whatsoever about the alleged investigation, whether from the Record or from the FAC. The Court therefore finds that Relators have failed to meet their burden and demonstrate that the Court has jurisdiction over the allegations that PEG falsified students' grades and attendance records for the purpose of receiving federal funds. As such, the Court has jurisdiction over the allegations that PEG falsified students' grades and attendance records only to the extent that conduct occurred after March 23, 2010 because the post-ACA public disclosure bar does not mandate dismissal of allegations that were disclosed in state proceedings.

## **B. Implied Certification Theory**

The Third Circuit has recognized an "implied false certification theory," which "attaches when a claimant seeks and makes a claim for payment from the Government without disclosing that it violated regulations that affected its eligibility for payment." Wilkins, 659 F.3d at 305 . The rationale is that "the act of submitting a claim for reimbursement itself implies compliance with governing federal rules that are a precondition to payment." Id. (citing Mikes v. Straus, 274 F.3d 687 , 696 (2d [\*17] Cir. 2001)); see also United States v. Science Applications Int'l Corp., 626 F. 3d 1257 , 1266 , 393 U.S. App. D.C. 223 (D.C. Cir. 2010) ("Courts infer implied certifications from silence where certification was a prerequisite to the government action sought."). "Thus, in contrast to reviewing the expressed representations made to the government, an analysis of an implied false certification claim focuses on 'the underlying contracts, statutes, or regulations themselves to ascertain whether they make compliance a prerequisite to the government's payment.'" Freedom Unlimited, Inc., 2016 U.S. Dist. LEXIS 43701 , [2016 BL 102237], 2016 WL 1255295 , at \* 26 (citing Wilkins, 659 F.3d at 313 ).



The Third Circuit has also qualified the doctrine, stating that "the implied certification theory of liability should not be applied expansively." *Id.* at 307. In order to state a claim under this theory, a claimant must show more than a simple regulatory violation; a party must show that compliance with those regulations was required to receive federal funds. *Id.* "In other words, a plaintiff must set forth a plausible showing with sufficient particularity 'that if the Government had been aware of the defendant's violations of the . . . laws and regulations that are the bases of [the] plaintiff's FCA claims, it would not have paid the defendant's claims.'" *Freedom Unlimited*, 2016 U.S. Dist. LEXIS 43701 , [2016 BL 102237], 2016 WL 1255294 , at \*26 (quoting *Wilkins*, 659 F.3d at 307 ). The Third Circuit intended this requirement to avoid turning the FCA "into a 'blunt instrument to enforce compliance with all . . . regulations rather than 'only those regulations that are a precondition to payment.'" *Id.* (citing *Rodriguez v. Our Lady of Lourdes Med. Ctr.*, 552 F.3d 297 , 304 (3d Cir. 2008)). Defendants move to dismiss Relators' claims to the extent they are premised on the implied certification theory because (1) relators have not identified any regulatory violations, and (2) to the extent they do, those regulations are conditions of participation and not of payment.

## 1. Lack of Regulatory Violation

Defendants allege that Relators cannot state a claim under the implied false certification theory because they have not alleged conduct that actually violates any Title IV, HEA regulation.

### (a) Misleading Career Placement Performance

Relators allege that PEG misled prospective students about its schools' career placement performance. Specifically, Relators allege that PEG's promoted materially misleading employment statistics that were based on disingenuous—and often falsified—employment data. (See generally FAC ¶¶ 259-77.) Defendants allege that Relators' have not pled any regulatory violation. (Defs.' Br. 32-33.) The Court disagrees. In their opposition brief and in their FAC, Relators cite to 34 C.F.R. § 668.74 , which prohibits "misrepresentations regarding the employability of an eligible institution's graduates." (See Pls.' Br. 39; FAC ¶¶ 66, 259.) Although the then-current version mentions only three specific prohibited misrepresentations, the statute specifically says the list is non-exhaustive. See § 668.74 ("Misrepresentation by an institution regarding the employability of its graduates includes, but is not limited to . . ."). The then-current version of § 668.71 , also cited by Relators, also prohibits substantial misrepresentations, [\*18] which it defines as "[a]ny misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment." Taking Relators' allegations as true, as the Court is required to do at this stage, the Court finds that Relators have sufficiently alleged that Defendants' alleged practices in reporting job placements violated § 668.74 . The fact that the regulatory structure is such that Defendants have freedom in determining how to calculate their statistics does not defeat Plaintiffs' allegations that the calculations they used were materially misleading or in fact false.

### (b) High Pressure Tactics to Enroll Students

Next, Defendants argue that Relators state no regulatory infraction with their allegations concerning Defendants' use of high-pressure tactics to enroll students. (Defs.' Br. 44.) The Court agrees. Relators allege that PEG imposed rigid sales quotas on admissions representatives, threatened termination if the quota was not met, and trained its admissions representatives to use excessive pressure to enroll students. However,

Relators cite no regulation that Defendants have allegedly violated. Although the HEA prohibits the payment of "any commission, bonus, or other incentive payment," 20 U.S.C. § 1094(a), the Act does not concern personnel decisions, such as the hiring and the firing of employees. See U.S. ex rel. Bott v. Silicon Valley Colls., 262 Fed. App'x 810, 812 (9th Cir. 2008) ("The decision to fire an employee is not covered by the Act because termination is not a prohibited 'commission, bonus, or other incentive payment.'"); U.S. ex rel. Whatley v. Eastwick College, No. 13-1226, 2015 U.S. Dist. LEXIS 95862, [2015 BL 235629], 2015 WL 4487747, at \*7 ("[T]he incentive compensation ban does not prohibit institutions from terminating employees based on their recruitment numbers."). As such, the Court finds Relators' allegations concerning "high-pressure tactics," FAC ¶¶ 227-48, fail to state a regulatory violation.

### (c) Incentive Compensation Ban

Relators allege that PEG violated the Incentive Compensation Ban by (1) paying bonuses based on students' successful graduation, and (2) paying bonuses based on the number of students enrolled. The Ban prohibits an institution from providing,

any commission, bonus, or other incentive payment based directly or indirectly upon success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the awarding of title IV, HEA program funds, except that this limitation does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive title IV, HEA program funds.

34 C.F.R. § 668.14(b)(22)(i). Defendants take issue with Plaintiffs' allegations concerning PEG's "Admissions Representative Compensation Plan" ("the Plan"), which provides bonuses based on students successfully graduating as opposed to enrolling. (FAC ¶ 297.) Defendants contend that the Plan falls within a Safe Harbor of the Incentive Compensation Ban that exempts from prohibition "[c]ompensation that is based upon students successfully completing [\*19] their educational programs, or one academic year of their educational programs, whichever is shorter." See 34 C.F.R. § 668.14(b)(22)(ii)(E) (in effect until June 30, 2011).

Relators disagree, arguing that providing bonus compensation based on graduation rates, when those graduation rates themselves have been altered to allow students to reenroll, violates the Ban.<sup>10</sup> (See FAC ¶ 291.) As written, however, the Plan does not appear to violate the Incentive Compensation Ban. It awards admissions representatives \$40 and \$60 bonuses, depending on their level of seniority, for each graduate, and is "structured and introduced formally to do our utmost to motivate and assist our students in the pursuit of success." (Id. ¶ 297.) Thus, as written, bonuses are tied to students' success rather than admissions representatives' success in securing enrollments, and the provision of bonuses based on student success is expressly contemplated in the Ban's Safe Harbor.

Relators also do not sufficiently allege that the Plan, as implemented, violates the Incentive Compensation Ban under this theory. First, many of Relators' allegations do not assert that Defendants actually compensated employees for successful graduates. (See FAC ¶¶ 292, 294-95.) They have alleged only that Defendants promised bonus compensation for successful graduates. The Incentive Compensation Ban prohibits providing not promising any commission, bonus, or other incentive payment. Even if promising bonuses was actionable, Relators do not allege that these employees were promised bonuses in exchange for changing grades and

thereby reenrolling students. (See FAC ¶¶ 292, 94.) The Ban prohibits incentive payments based directly or indirectly upon success in securing enrollments. 34 C.F.R. § 668.14(b)(22)(i). Regardless of whether PEG's conduct qualifies for a safe harbor, alleging that PEG promised bonus payments based on graduation rates is insufficient to state a violation of the Ban because it does not connect the bonuses to the alteration of grades and resulting continued enrollment. In other words, Relators have not sufficiently alleged that the admissions representatives were incentivized by the provision of graduation bonuses to alter grades so that they could reenroll students and see them forward to graduation.

Relators have alleged that Tammy Denesha received a \$7,000.00 bonus for changing students' grades and attendance records. Although concerning if true, this allegation is not enough on its own to state a violation of the Incentive Compensation Ban because Relators have not connected this allegation to the "success in securing enrollments." § 668.14(b)(22)(i). Relators have not alleged that Tammy Denesha, as Director of Education of Branford Hall, was in any way responsible for recruiting or admitting students. See id. (prohibiting payments on the basis of enrollments to "any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the awarding of title IV, HEA program funds." (emphasis added)). Without such an allegation, Relators have not stated that the Plan [\*20] violates the Incentive Compensation Ban.

Relators also allege that PEG provided bonuses based on enrollments. Specifically, they allege that Marlena Berghammer and Susan Kershaw received a \$2,000 admissions bonus for enrolling a high number of students, FAC ¶ 293, and that Relator Hone received a two-day vacation trip to Connecticut as a reward for her weekly enrollments, Id. 292.<sup>11</sup> These allegations, when combined with the more general allegations regarding PEG's provision of bonuses based on enrollments are sufficient to state a violation of the Incentive Compensation Ban under Rule 12(b)(6).

#### **(d) Admitting Unqualified Students**

Defendants move to dismiss Relators' allegations that PEG admitted students who did not pass a Wonderlic test because such allegations do not state a regulatory violation. The Court agrees. Relators have not identified what regulation was violated by admitting students who failed the Wonderlic test, nor how doing so would have resulted in any false claim. To the extent Relators attempt to state a claim based on these allegations, such claim is dismissed.

Defendants also move to dismiss Relators' claims that Defendants admitted unqualified students, namely convicted felons who were either ineligible to receive financial aid or to practice the careers for which they were receiving training, see FAC ¶¶ 146-56; and students who had learning disabilities or could not read or speak English, see FAC ¶¶ 157-70.<sup>12</sup> The Court agrees that Relators' allegations concerning the admission of felons fail to state a regulatory violation. (See FAC ¶¶ 146-70.) Relators point to no regulation prohibiting the admission of students with a felony conviction, and do not contest Defendants' motion for dismissal on this ground. Moreover, 34 C.F.R. § 668.40 states that a student is ineligible for title IV funds if he or she has been convicted for possession or sale of illegal drugs at a time when a student was enrolled and receiving Title IV funds. 34 C.F.R. § 668.40. Relators do not allege a violation of this regulation.

Likewise, Relators' allegations concerning the admission of students with learning disabilities and limited

English language skills fail to identify a cognizable regulatory violation. Relators cite 34 C.F.R. § 668.32 and § 668.34 , but neither of those regulations prohibits admitting students with learning disabilities or limited English language skills. In fact, Defendants are prohibited from denying admission to students on the basis of their disability. See 34 C.F.R. § 104.42 ("Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies."). Moreover, § 668.34 does not regulate student admissions—it governs the tracking of a student's progress after the student is admitted and enrolled. See 34 C.F.R. § 668.34 . As such, these allegations, FAC ¶¶ 157-70, are dismissed.

#### **(e) Altering Students' Grades and Attendance Records**

Relators allege that PEG falsified students' grades in order to keep students eligible for federal financial aid, in violation of 34 C.F.R. § 668.34 . (FAC ¶¶ 176-224[\*21] .) The version of § 668.34 in effect until June 30, 2011 required students enrolled in academic programs of more than two years to maintain "satisfactory progress"—defined as a "C" average or equivalent—in order to maintain eligibility for Title IV funds. See 34 C.F.R. § 668.34(a) (effective until June 30, 2011). Defendants allege that Relators cannot maintain a cause of action under § 668.34 because the students in this case were not enrolled in academic programs that were two years or longer. (Defs.' Br. 38.) Although Relators do not dispute Defendants' factual representation, the Court cannot—at the motion to dismiss stage—dismiss Relators' claims on facts alleged by the Defendants. The Court is obligated to accept all facts alleged in the FAC as true. Defendants' may file a motion for summary judgment on Relators' allegations at any time they feel the record is sufficient.

Even then, however, 34 C.F.R. § 668.32 , which governs students' eligibility to receive federal financial aid, requires a student to "maintain[] satisfactory progress in his or her course of study according to the institution's published standards of satisfactory progress that satisfy the provisions of § 668.16(e) , and, if applicable, the provisions of § 668.34 ." § 668.32(f) . Even if Relators' conduct does not violate § 668.34 because the students are enrolled in longer-than-two-year programs, § 668.16(e) requires a school to apply reasonable standards to evaluate a students' progress. Here, Relators have alleged that PEG falsified students' grades and was therefore not applying the required reasonable standards. Defendants are free to argue that their maintenance of grades in fact was reasonable but that is to be resolved at the motion for summary judgment stage.

Relators also allege that PEG falsified students' attendance records, in violation of 34 C.F.R. § 668.22(b) , which Defendants argue is inapplicable on its face. Although Defendants are correct that this regulation governs the treatment of Title IV funds when a student withdraws, the Court finds that Relators have sufficiently pled a violation of the regulation. Subsection (b)(3) in effect during the relevant period required an institution "to take attendance if an outside entity (such as the institution's accrediting agency or a State agency) has a requirement, as determined by the entity, that the institution take attendance." § 668.22(b)(3)(i) (effective until July 1, 2011). In the event that an institution is required to take an attendance, § 668.22(b)(1) establishes that a student's withdrawal date is the "last date of academic attendance as determined by the institution from its attendance records." Here, Relators allege that PEG violated the attendance policy imposed by their accreditor by manipulating attendance records to maintain students' eligibility for federal funds. By doing so, Relators allege PEG improperly retained financial aid funds. Relators' allegations sufficiently state a violation of § 668.22(b) . They allege that PEG did not comply with the attendance policy set by its accreditors

and as a result, improperly retained funds to which it was not entitled. To [\*22] the extent Defendants allege that the accrediting body did not actually impose attendance parameters on PEG, that, too, may be an issue best resolved at the motion for summary judgment stage.

## ii. Remaining Regulations Are Conditions of Payment

As mentioned supra, the crux of the implied certification theory is whether compliance with a regulation is a condition of payment versus a condition of participation. The Third Circuit distinguishes between the two based on the consequences of noncompliance, with conditions of payment resulting in nonpayment and conditions of participation resulting in administrative sanctions. Wilkins, 659 F.3d at 309 (citing U.S. ex rel. Conner v. Salina Reg'l Health Ctr., Inc., 543 F.3d 1211, 1219-20 (10th Cir. 2008)). "[A] plaintiff must set forth a plausible showing with sufficient particularity 'that if the Government had been aware of the defendant's violations of the . . . laws and regulations that are the bases of [the] plaintiff's FCA claims, it would not have paid the defendant's claims.'" Freedom Unlimited, 2016 U.S. Dist. LEXIS 43701, [2016 BL 102237], 2016 WL 1255294, at \*26 (quoting Wilkins, 659 F.3d at 307). Defendant argues that Relators allege non-compliance with regulations that are conditions of participation, not of payment, while Relators and the Government as amicus curiae argue that the PPAs and Title IV regulations are conditions of payment. The Court agrees with Relators and the Government.

Defendants are correct that PPA stands for Program Participation Agreement, not Program Payment Agreement, but the difference is not as distinct in the Title IV, HEA context. In United States ex rel. Hendow v. University of Phoenix, 461 F.3d 1166, 1176 (9th Cir. 2006), the Ninth Circuit described the difference between conditions of payment and those of participation in the context of the HEA as a "distinction without a difference," adding that, "[i]n the context of Title IV and the Higher Education Act, if we held that conditions of participation were not conditions of payment, there would be no conditions of payment at all—and thus, an educational institution could flout the law at will." Hendow, 461 F.3d at 1176.

In Sobek v. Education Management, LLC, No. 10-131, 2012 U.S. Dist. LEXIS 188243, [2013 BL 142300], 2013 WL 2404082 (W.D. Pa. 2013), the court likened the student education funding context to the AKS regulations found to be conditions of payment in Wilkins. 2012 U.S. Dist. LEXIS 188243, [2013 BL 142300], 2013 WL 2404082, at \*3. The Sobek court found that alleged violations of the Incentive Compensation Ban and misrepresentations of accreditation and job placements statistics were "material" enough to satisfy the condition of payment requirement at the pleading stage. 2013 U.S. Dist. LEXIS 76354, [WL] at \*2. The Court similarly finds here. Federal regulations and the PPA condition initial and continued participation in title IV programs, and by extension, the receipt of title IV HEA funding, on compliance with the PPA and the regulations therein. See 20 U.S.C. § 1094; 34 C.F.R. § 668.14. The United States is expressly authorized to withhold funds from a non-compliant school. See 20 U.S.C. § 1094(c)(1)(G) (providing for the promulgation of rules concerning an "emergency action" to withhold funds from a non-compliant institution). The Court is also not convinced that Relators allege only "minor" misrepresentations that would not warrant withholding [\*23] of funds under the then-current version of 34 C.F.R. § 668.75. (See Defs.' Br. 44.) Relators have plead with sufficient particularity that the United States would have refused payment had it known of PEG's regulatory violations. Defendants are welcome to defeat liability at the motion for summary judgment stage, if it can be shown that the United States would not have refused payment. See Sobek, 2012 U.S. Dist. LEXIS 188243, [



2013 BL 142300], 2013 WL 2404082 , at \*3.

Defendants urge the Court to follow a ruling out of the U.S. Court of Appeals for the Seventh Circuit in United States v. Sandford-Brown, Limited et al., 788 F.3d 696 (7th Cir. 2015). There, the Seventh Circuit held that "FCA liability is not triggered by an institution's failure to comply with Title IV Restrictions subsequent to its entry into a PPA, unless the relator proves that the institution's application to establish initial Title IV eligibility was fraudulent." 788 F.3d at 711 . However, in Sandford-Brown, the Seventh Circuit completely rejected the doctrine of implied false certification, *id.* at 711-712 , which the Third Circuit recognized in Wilkins and which has been consistently applied within this Circuit. As such, the Court declines to follow Sandford-Brown.<sup>13</sup>

### C. Reverse False Claims Under 31 U.S.C. §§ 3729 (a)(7) (1994) and 3729(a)(1)(G) (2009)

Relators also allege a reverse false claim. A reverse false claim essentially requires a plaintiff to show that a defendant failed to refund money or property that it was obligated to return to the government. The obligation to return such money to the government must be clear. See U.S. ex rel. Quinn v. Omnicare, Inc., 382 F.3d 432 , 444 (3d Cir. 2004).

Prior to 2009, the reverse false claims provision of the FCA imposed liability on anyone who "knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government . . . ." § 3729(a)(7) . On May 20, 2009, Congress enacted the Fraud Enforcement and Recovery Act of 2009 (FERA), Pub. L. No. 111-21, 123 Stat. 1617 (2009), which amended the FCA and designated § 3729(a)(7) as § 3729(a)(1)(G) and applied it to conduct that occurred after the amendment took effect.<sup>14</sup> The amended version imposes liability on anyone who "knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government." § 3729(a)(1)(G).

Here, Relators appear to alternatively plead their § 3729(a)(1)(A)-(B) claims under the reverse false claims provision. They essentially allege that PEG received payment by implicitly falsely certifying that it was in compliance with its PPAs and the regulations cited therein. Consequently, payments it received were undue, prompting a duty to refund those payments.<sup>15</sup> (See FAC ¶¶ 344-45.) In other words, the same funds that Defendants received through fraudulently certifying compliance with the PPAs is the same money that they allegedly did not refund to the Government. Defendants allege that Relators' reverse false claim cause of action must be dismissed because it is duplicative and [\*24] redundant of Relators § 3729(a)(1)(A)-(B) claims. The Court agrees.

Courts within this circuit have consistently held that the reverse false claims provision is not a vehicle to simply recast an identical claim under a traditional false claim provisions. See U.S. ex rel. Petratos v. Genentech, Inc., 141 F. Supp. 3d 311 , 2015 U.S. Dist. LEXIS 146525 , 2015 WL 6561240 , at \*9 (D.N.J. Oct. 29, 2015); Sobek, 2012 U.S. Dist. LEXIS 188243 , [2013 BL 194709], 2013 WL 2404082 , at \*29; U.S. ex rel. Thomas v. Siemens AG, 708 F. Supp. 2d 505 , 514 (E.D. Pa. 2010). Relators allege that two of these cases, Thomas and Sobek, analyzed the pre-FERA reverse false claims provision, and that the amended version does in fact permit a claim under § 3729(a)(1)(G) that is the inverse of conduct violating §§ 3729(a)(1)(A) and 3729(a)(1)(B). The Court, however, sees no such clarification in the text of the statute, and declines to rely on a Senate Report

alone.<sup>16</sup> Moreover, Petratos, too, declined to recognize such a reverse false claim under the amended version of the statute. The Court therefore finds that Relators have not stated a claim under § 3729(a)(7) or § 3729(a)(1)(G). Relators have not alleged a concealment or avoidance of an obligation that arose independent from the allegedly false certifications of compliance with the PPA and the regulations therein. To the extent, Relators allege that Defendants falsified or concealed the students' ineligibility, such fraud forms the basis of their § 3729 (a)(1)(A)-(B) claims, further demonstrating the duplicative nature of the claims. As such, Defendants' motion to dismiss Count IV of the Complaint is granted.

#### **D. Conspiracy Under 31 U.S.C. §§ 3729(a)(3) and 3729(a)(1)(C)**

Relators allege a violation of § 3729(a)(1)(C).<sup>17</sup> Specifically, they allege Defendants "conspired, and may still be conspiring, with the various entities and/or persons described herein (as well as other unnamed co-conspirators) to commit acts in violation of 31 U.S.C. §§ 3729(a)(1) & (a)(2) ." <sup>18</sup> To state a conspiracy under the FCA, a plaintiff must show "(1) a conspiracy to get a false or fraudulent claim allowed or paid and (2) an act in furtherance of the conspiracy." Atkinson, 473 F.3d at 514 . Importantly, an agreement between two or more persons is the "essence" of a conspiracy under the FCA. U.S. ex rel. Cestra v. Cephalon, Inc., No. 14-1842, 2015 U.S. Dist. LEXIS 71505 , [2015 BL 174720], 2015 WL 3498761 , at \*12 (E.D. Pa. June 3, 2015). Defendants allege that Relators have failed to state a conspiracy claim because they have not sufficiently pled either element of a conspiracy claim and because the intracorporate conspiracy doctrine mandates dismissal.

Here, the Court finds that Relators have not identified an agreement to defraud the Government. The Complaint alleges only that Defendants conspired with "various entities and/or persons described herein (as well as other unnamed co-conspirators)," which is vague and insufficient to state a plausible entitlement to relief. It does not specify which specific entities or persons were party to the alleged conspiracy. In their Opposition Brief, Relators assert that the agreement was between Defendants PEG GP and PEG LP, but the Court reviews the sufficiency of Relators' allegations as they are alleged in the complaint, not in their brief. The Court sees no such allegation in the FAC. Rather, the FAC continually refers to PEG GP and PEG LP as if they were one entity, rather than two conspiring [\*25] entities. (FAC ¶ 46 ("PEG LP and PEG GP are collectively referred to herein as "PEG" and each has been operated in all material respects as alter ego for the other.").) Indeed, Relators have pled that PEG GP assumed management control of PEG LP and is responsible for the actions alleged in the Complaint. (Id. ¶ 44.) These facts do not allow the Court to infer an agreement between the two because Relators have effectively pled that PEG GP and PEG LP are the same entity for all intents and purposes. As such, Count III is dismissed.

#### **E. Heightened Pleading Standard**

"Rule 9(b) requires, at a minimum, that plaintiffs support their allegations of . . . fraud with all of the essential factual background that would accompany 'the first paragraph of any newspapers story'—that is, the 'who, what, when, where, and how' of the events at issue." U.S. ex rel. Pilecki-Simko v. Chubb Inst., No. 06-3562, 2010 U.S. Dist. LEXIS 27187 , [2010 BL 62256], 2010 WL 1076228 , at \*7 (D.N.J. Mar. 22, 2010) (quoting In re Rockefeller Ctr. Props., Inc. Sec. Litig., 311 F.3d 198 , 217 (3d Cir. 2002)). Relators may also "use an alternative means of injecting precision and some measure of substantiation into their allegations of fraud." U.S. ex rel. Underwood v. Genentech, Inc., 720 F. Supp. 2d 671 , 676 (E.D. Pa. 2010) (quoting Rolo v. City

Investing Co. Liquidating Trust, 155 F.3d 644, 658 (3d Cir. 1988)). Defendants move to dismiss a number of Relators' claims on grounds that Relators have not pleaded the PPA violations with the requisite particularity. (See Defs.' Br. 17-28.) The Court has already dismissed a number of these allegations on 12(b)(6) grounds and therefore addresses only those that remain.

As an initial matter, the Court declines to limit Relators' allegations to only those campuses where the alleged conduct took place. (See Defs.' Br. 25.) Relators sufficiently allege throughout the FAC that PEG dominates the management of all its schools and that it is responsible for establishing the schools' goals and policies. (See, e.g., FAC ¶ 103 ("The corporate team is responsible for setting overall corporate goals and strategies, and overseeing the daily operations at each of PEG's campuses."); id. ¶ 104 ("Across all the PEG Schools, PEG management employed a unified corporate strategy that was managed out of the corporate office in Connecticut, and that focused on increased admission and profits above all else."). Courts within this circuit have declined to limit relators' allegations where they have made a similar showing. In Sobek, the Court rejected Defendants' argument that a relator could not allege a company-wide fraud perpetrated by all of Defendants' universities over an eight-year period when he worked only at one of Defendant's universities and for a limited time. 2012 U.S. Dist. LEXIS 188243, [2013 BL 142300], 2013 WL 2404082, at \*24. The court explained that as an associate director of admissions, it was plausible that the relator "acquired knowledge of EDMC system-wide corporate policies designed and utilized in service of the overarching, system-wide false certification financial aid scheme alleged, and spanning a longer period of time than his actual employment period of almost two and one-half years." 2012 U.S. Dist. LEXIS 188243, [WL] at \*25. The Sobek court relied on the reasoning of Judge McVerry in a related case:

Plaintiffs allege that EDMC corporate [\*26] headquarters signed and submitted the PPA's on behalf of all of its related educational institutions . . . . In addition, Plaintiffs aver that the compensation plan was developed by an EDMC-wide task force . . . . Because government funding represented such a significant source of EDMC's revenues, it is plausible that any conduct which would have imperiled those revenues, such as the alleged violations of the Incentive Compensation Ban, would have required approval from the highest levels of EDMC management. In sum, Plaintiffs have pled the involvement and knowledge of senior EDMC executives. Because Plaintiffs' theory is that there was one, EDMC-wide scheme controlled by top-level executives, it is not necessary to allege separate conduct by each of the affiliated schools named as Defendant s.

Id. (quoting United States v. Educ. Mgmt. Corp., 871 F. Supp. 2d 433, 453 (W.D. Pa. 2012)).

The Court finds the reasoning and Sobek and Education Management Corp. persuasive and declines to limit Relators' claims to only those schools where they allege specific instances of misconduct. Just as the plaintiffs did in Education Management Corp., Relators here allege that PEG's CEO or his designee signed all of PPAs executed by the schools. (FAC ¶ 94.) Relators also worked at various HSB locations for a time period spanning from 2006 to 2012, and held positions such as Director of Education of HSB (Relator Davenport), Registrar of HSB-Wilmington (Relator Moody), and Director of Financial Aid at HSB-Wilmington (Relator Kenny). Just as the court in Sobek reasoned, it is entirely plausible that Relators obtained knowledge of PEG's corporate-wide policies while working in these various positions at multiple HSB campuses for a cumulative six years. For these reasons, the Court declines to limit Relators' allegations to only those campuses where they have

specifically alleged misconduct took place. The Court will evaluate Relators' allegations under Rule 9(b) as they pertain to a company-wide scheme.

## 1. Causing Financial Aid To Be Awarded to Ineligible Students

Relators allege that Defendants caused financial aid to be awarded to students to who had no high school diploma and were therefore ineligible to receive financial aid. Defendants allege that Relators' allegations are insufficient because Relators do not specify why the individuals were ineligible for financial aid, identify students who actually submitted claims for Title IV funding, or sufficiently plead that Defendants acted with the requisite scienter. (Defs.' Br. 17-20.) Relators dispute each of Defendants' grounds for dismissal and argue that a relaxed Rule 9(b) standard is appropriate because the FAC alleges a broad scheme of corporate fraud and the facts lie "peculiarly within the defendant's knowledge or control." (See Pls.' Br. 28 (quoting In re Craftmatic Sec. Litig. v. Krastow, 890 F.2d 628, 645 (3d Cir. 1989)).)

The Court need not determine whether a relaxed Rule 9(b) standard is more appropriate because Relators have failed to state a claim at all. Relators allege that students were ineligible to receive financial aid because [\*27] they did not have a high school diploma or equivalent, and that Title IV funding is available to the student "only if he has a high school diploma or its recognized equivalent." (FAC ¶ 132 (citing 34 C.F.R. § 668.32(e)(1)).) Relators are incorrect—§ 668.32(e) provides multiple ways that a student may qualify for Title IV funding apart from obtaining a high school diploma or its equivalent.<sup>19</sup> For instance, a student may be eligible if he or she was home-schooled and received credentials provided for under state law. § 668.32(e)(4). Here, Relators have alleged only that students had no high school diploma, but have failed to allege that the students were wholly ineligible from receiving aid because they did not qualify under any of the alternative means provided for in § 668.32(e). Without doing so, Relators have not alleged a regulatory violation. As such, Relators' claims alleged in paragraphs 132-45 of the FAC are dismissed.

## 2. Material Misrepresentations to Induce Prospective Students to Enroll

Relators allege that Defendants misrepresented to students that it lost its institutional accreditation status in 2011. Relators allege that HSB-Voorhees lost its institutional accreditation in 2011 after an audit, but nevertheless continued to operate without institutional accreditation while falsely certifying otherwise. (FAC ¶ 257.) Relators allege that the school's Director Rosemary Parker instructed the Director of Admissions Nicole Gentles to lie to other within the school and students about the school's accreditation. (Id.) They also allege that this was done at the direction of PEG's Regional Vice President Nick Hastain, and was done with the intention of retaining eligibility and, consequently, Title IV funding. In sum, Relators' allegations sufficient to establish the "who, what, when, where, and why." Pilecki-Simko, 2010 U.S. Dist. LEXIS 27187, [2010 BL 62256], 2010 WL 1076228, at \*7.

The Court also finds that Relators have satisfied Rule 9(b) with respect to allegations concerning career placement performance, FAC ¶¶ 259-77, and those concerning the transferability of course credits, *id.* 278-86. Relators identify the various tactics employed to carry out each violation, such as miscounting successful job placements, falsifying employment records, and instructing students that their credits would be transferrable to any other college or university or to any other school offering a similar career program. (See id. ¶¶ 266, 271, 291.) Relators identify specific individuals at various PEG schools responsible for committing such violations at



each school, as well as the senior PEG representatives from whom they received instructions to do so. (See id. ¶¶ 266-75, 278-85.) The Court finds Relators' allegations satisfy the heightened standard of Rule 9(b) .

### 3. Incentive Compensation

Lastly, the Court finds that Relators have sufficiently pled that Defendants' schools falsely certified compliance with the Incentive Compensation Ban by paying bonuses based on enrollments. As indicated supra, Relators specifically allege that Defendants paid bonuses to two individuals based on their successful enrollments. (See FAC ¶¶ 293, [\*28] 295.) Relators identify the amount of the bonuses, where and when the bonuses are provided, and the reasoning for such bonuses. As such, Relators have satisfied Rule 9(b) 's requirements.

### F. Statute of Limitations <sup>20</sup>

Defendants argue that the FCA's six-year statute of limitations bars Relators § 3729 claims.<sup>21</sup> (See Defs.' Br. 15.) Citing United States v. The Baylor University Medical Center, 469 F.3d 263 (2d Cir. 2006), Defendants contend that the statute of limitation runs from August 9, 2013, the date on which the Third Amended Complaint was unsealed. ( Id. at 15.) The Court disagrees. Baylor's specific holding that does not apply in the instant case. There, the Second Circuit held that the Government's complaint-in-intervention does not relate back to the original qui tam complaint filed under seal and therefore commences, for statute of limitations purposes, on the date on which it files its complaint-in-intervention.<sup>22</sup> Id. Baylor has no bearing on the commencement date of Relators' FCA claims. See U.S. ex rel. Grupp v. DHL Exp. (USA), Inc., 47 F. Supp. 3d 171 , 179 (W.D.N.Y. 2014) (distinguishing Baylor on the grounds that it addressed the commencement date of the Government's complaint-in-intervention, not the original qui tam complaint); Hayes v. Dept of Educ. of the City of New York, 20 F. Supp. 3d 438 , 444 (S.D.N.Y.) (finding Baylor inapposite on the issue of "when a relator herself tolls the statute of limitations for her own claims").

Defendants alternatively argue that the allegations in the FAC should relate back only to the filing of the Third Amended Complaint, which Relators filed on May 9, 2013, because it superseded the prior complaints rendering them of no legal effect. (Defs.' Br. 16.) Defendants' position is simply incorrect. Rule 15(c)(1)(B) provides that an amendment to a pleading relates back to the date of the original pleading when "the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading."<sup>23</sup> Here, Relators commenced this action on June 20, 2011, with the filing of the sealed original complaint, within the statute of limitations. Therefore, so long as the allegations in the subsequent complaints relate back to the original complaint, Relators claims are not time-barred. See Fed. R. Civ. P. 15(c)(1)(B) . The Court finds that a number of Relators' allegations in the FAC relate back to the original complaint, including allegations that PEG falsified grades, falsified attendance records, and violated the incentive compensation ban. (See Compl. at 11-15, 19-20.) A number of allegations that remain, however, relate back only to the second amended complaint, which the Court notes is substantially similar to the FAC, and which Relators filed on November 27, 2012. Specifically, the second amended complaint put Defendants on notice of Relators allegations concerning PEG's misrepresentation regarding of schools' accreditation status, graduate career placement performance, and the transferability of course credits. (See Second Am. Compl. ¶¶ 223, 258-59, 260-76.) Thus, these allegations are actionable to the extent it occurred on or after November 27, 2006.



## G. Intentional [\*29] Infliction of Emotional Distress

Relators Amaya and Moody each bring a claim of intentional infliction of emotion distress under Delaware law, where they reside and were employed with PEG, for PEG's retaliatory conduct. Relator Amaya alleges that, in retaliation for her "whistleblowing activities," PEG created a hostile work environment, including demoting her and then using her demotion to embarrass her at a campus staff meeting, and eventually terminating her. (*Id.* ¶¶ 321-23.) Relator Moody alleges that PEG created a hostile work environment in retaliation for disclosing PEG's improprieties and constructively terminated her. (*Id.* ¶¶ 327-28.)

Defendants move to dismiss Relators Amaya and Moody's claims on grounds that the Delaware Workers' Compensation Act precludes claims for intentional infliction of emotional distress. (Defs.' Br. 53-54.) The Delaware Workers' Compensation Act provides as follows:

Every employer and employee, adult and minor, except as expressly excluded in this chapter, shall be bound by this chapter respectively to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies.

Del. Code. Ann. Tit. 19, § 2304 (2016). "This statute precludes any tort claims for personal injury arising out of and in the course of employment, including for emotional distress." *Parker v. Comcast Corp.*, No. 04-344, 2005 U.S. Dist. LEXIS 22612, [2005 BL 39591], 2005 WL 2456221, at \*2 (D. Del. October 5, 2005). However, the Workers' Compensation Act does not preclude claims "that involve a true intent by the employer to injure the employee." *Id.* (quoting *Rafferty v. Hartman Walsh Painting Co.*, 760 A. 2d 157, 159 (Del. 2000)). "To show such an intent and to survive a motion to dismiss, there must be more than a mere allegation that there was an intentional injury; there must be facts alleged which, if true, show a deliberate intent to bring about an injury." *Id.* (internal quotation marks and citations omitted).

In *Parker*, cited by Relators, and in *EEOC v. Avecia, Inc.*, No. 03-320, 2003 U.S. Dist. LEXIS 19325, 2003 WL 22432911, (D. Del. Oct. 23, 2003), *reconsideration denied* in 2004 U.S. Dist. LEXIS 7995, 2004 WL 1077915 (Apr. 28, 2004), cited by Defendants, the court held that the employers' actions were insufficient to show a deliberate intent to injure the plaintiffs because the actions taken "were not unusual in the employment environment." *Parker*, 2005 U.S. Dist. LEXIS 22612, [2005 BL 39591], 2005 WL 2456221, at \*3; *see also Avecia*, 2004 U.S. Dist. LEXIS 7995, 2004 WL 1077915, at \*2. In *Parker*, the plaintiff alleged that in retaliation "(1) her work was criticized; (2) she was told to resign or face an increased workload, being 'written up,' other discipline, and eventually being fired for cause; (3) a file was developed that documented poor work performance; and (4) she was terminated." 2005 U.S. Dist. LEXIS 22612, [2005 BL 39591], 2005 WL 2456221, at \*3. In *Avecia*, the plaintiff alleged that her employer "scrutinized her vacation requests, work assignments, and progress more than any other employees," "required her to remain at her work station during work breaks," and prohibited her from displaying personal items around her work area. 2003 U.S. Dist. LEXIS 19325, 2003 WL 22432911, at \*1. The Court found none of this conduct, when accepted as true, sufficiently alleged that the employers deliberately set out to harm the plaintiffs.

Here, [\*30] Relator Moody alleges that "PEG began systematically to retaliate against Relator Moody for her whistleblowing activity, creating a hostile work environment." (FAC ¶ 328.) However, Relator Moody does not

allege any specific actions PEG took against her, other than stating PEG created a hostile work environment and constructively terminated her.<sup>24</sup> Such bare allegations are insufficient to withstand a motion to dismiss and do not demonstrate a "deliberate intent" on the part of PEG to cause Relator Moody emotional distress. As such, Relator Moody's claim for intentional infliction of emotional distress is dismissed.

Relator Amaya makes similar allegations as Relator Moody, albeit her factual allegations are a bit more detailed. She similarly alleges that PEG created a hostile work environment in retaliation for her whistleblowing activity and demoted her from her position as Director of Education. The former allegation is conclusory with little to no factual support, and the latter is the type of conduct that typically occurs in the workplace. Parker, 2005 U.S. Dist. LEXIS 22612, [2005 BL 39591], 2005 WL 2456221, at \*3; see also AVECIA, 2003 U.S. Dist. LEXIS 19325, 2004 WL 1077915, at \*2. Despite Relator Amaya's allegation that "PEG possessed a deliberate intent to bring about an injury to Relator Amaya," FAC ¶ 354, these allegations do not demonstrate a deliberate intent to inflict intentional harm on Relator Amaya.

She further alleges that PEG singled her out and "professionally embarrassed [her] during a campus staff meeting as having been demoted." (Id. ¶ 328.) Even if the Court were to find that using Relator Amaya's demotion to embarrass her demonstrates "deliberate intent" on PEG's part, she still has not sufficiently pled that PEG exhibited "extreme and outrageous behavior" when they used her demotion to embarrass her. Jordan v. Delaware, 433 F. Supp. 2d 433, 444 (D. Del. 2006). "Extreme and outrageous conduct has been defined as behavior, so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Id. at 444 (internal quotation marks omitted) (quoting Mattern v. Hudson, 532 A.2d 85 (Del. Super. 1987)). As distasteful as such behavior is, the Court cannot find that embarrassing Relator Amaya on account of her demotion was "beyond all possible bounds of decency." As such, Relator Amaya's claim for intentional infliction of emotional distress is dismissed.

#### IV. LEAVE TO AMEND

"[I]f a complaint is subject to a Rule 12(b)(6) dismissal, a district court must permit a curative amendment unless such an amendment would be inequitable or futile." Phillips, 515 F.3d at 245 (citing Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004)). Indeed, even when "a plaintiff does not seek leave to amend a deficient complaint after a defendant moves to dismiss it, the court must inform the plaintiff that he has leave to amend within a set period of time, unless amendment would be inequitable or futile." Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

Here, the Court finds that allowing the Relators to amend their complaint would be futile. The Court dismissed Relators' claims not because the Complaint lacked sufficient detail to state a claim but because the facts [\*31] alleged do not state a claim as a matter of law. Relators could remedy these deficiencies only by alleging new facts entirely. As such, the Court declines to grant Relators' leave to amend those claims that the Court has dismissed.

#### V. CONCLUSION

For the reasons expressed herein, Defendants' motion to dismiss is granted-in-part and denied-in-part.

Dated: 05/10/2016

/s/ Robert B. Kugler

ROBERT B. KUGLER

United States District Judge

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For purposes of clarity, each time the Court cites to a paragraph or range of paragraphs in one of the documents in the record it will use the "¶" symbol, and when it cites to a page or range of pages numbers it will use the notation "[document] at [page number]."

fn

2

To the extent the conduct occurred prior to May 20, 2009, Relators allege a violation of 31 U.S.C. § 3729(a)(1) , the equivalent provision prior the FCA's 2009 amendments. For purposes of this motion, any minor differences between the two provisions, are insignificant.

fn

3

To the extent the conduct occurred prior to May 20, 2009, Relators allege a violation of 31 U.S.C. § 3729(a)(2) , the equivalent provision prior the FCA's 2009 amendments. Any minor differences between the two provisions are insignificant for purposes of this motion.

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Relators also alleged violation of § 3729(a)(3) to the extent that the conduct complained of preceded the FCA's May 20, 2009 amendments. Any minor differences between the two provisions are insignificant for purposes of this motion.

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Here, too, Relators allege a violation of § 3729(a)(7) under the prior version, though as noted supra at note 3, is not relevant for purposes of the Court's analysis.

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The ACA became effective March 23, 2010.

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District courts within the Third Circuit have consistently done so. See U.S. ex rel. Freedom Unlimited, Inc. et al. v. City of Pittsburgh et al., No. 12-1600, 2016 U.S. Dist. LEXIS 43701 , [2016 BL 102237], 2016 WL 1255294 , at \*12 (D.N.J. Mar. 31, 2016) ("[A]llegations of pre-2010 conduct will be assessed under the pre-ACA FCA and allegations of post-2010 conduct will be assessed under the post-ACA FCA."); U.S. ex rel. Moore & Co., P.A. v. Magestic Blue Fisheries, LLC, 69 F. Supp. 3d 416 , 423 (D. Del. 2014), rev'd on other grounds, 812 F.3d 294 (3d Cir. 2015) ("The case at bar was filed after the PPACA amendment took effect and involves continuing conduct, both before and after the PPACA amendment . . . [T]he court applies the pre-PPACA FCA to pre-amendment conduct and the amended FCA to later conduct" (footnote omitted)); Judd, 2014 U.S. Dist. LEXIS 73760 , [2014 BL 153131], 2014 WL 2435659 , at \*6 ("Here, however, the initial Complaint was filed after the ACA-amended provision took effect, while the pre-2010 conduct alleged in the Complaint occurred while the pre-ACA provision was still in place. Therefore, because the ACA-amended provision is not retroactive, the pre-ACA provision applies to all pre-2010 conduct alleged in the case.").

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Defendants argue that this allegation is also contained in the second amended complaint in Eagen and is therefore a public disclosure on which Relators' suit is based. However, this allegation was contained in Relators original complaint, filed on June 20, 2011, months before the filing of the second amended complaint in Eagen. The original complaint in Eagen did not contain this allegation.

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Relators' original Complaint contains allegations substantially similar to those in the State Suits. (See Doc. No. 1.) In that pleading, Relators put forth allegations concerning HSB's misrepresentations on its accreditation and the effects on those students wishing to apply for the medical assistant certification. (See id. ¶ 41.) However, these claims are no longer part of the case—they are not contained in the FAC, which is the operative Complaint for Defendants' motion to dismiss.

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Specifically, Relators allege that "PEG used the promise of bonuses to incentivize its personnel to first enroll as many students as possible (regardless of the prospective students' qualifications), and then to keep them enrolled (regardless of actual performance or attendance, often based on falsified grade and attendance records) for as long as possible in order to milk as much Federal Program funding as possible." (FAC ¶ 291.)

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Relators' also allege that PEG promised bonuses to Russell McKee, id. ¶ 295, but this allegation fails to state an actionable claim. Without allegations that Defendants actually paid McKee a bonus for enrollment, there has been no regulatory violation.

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Defendants do not move to dismiss on 12(b)(6) grounds Relators' allegations concerning the impropriety of admitting students without a high school diploma or equivalent degree. (See Mot. to Dismiss 35-37.)

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Even under the reasoning of Sandford-Brown, however, Relators' allegations could still survive. In the FAC, Relators allege that PEG signed and submitted annual PPAs to the Department of Education, (see FAC ¶ 88), and that their fraud was ongoing from 2006 to 2011. Under Sandford-Brown's reasoning, PEG violated the FCA by entering into the yearly PPAs when it knew that it was already in noncompliance with the regulations contained therein and that it had no intention of complying with them.

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Relators contend that § 3729(a)(1)(G) as amended applies to all of the conduct in the FAC because Relators filed suit after the amendment took effect. However, as it has with every other non-retroactive provision of the FCA, the Court finds it most appropriate to apply the law that was in place at the time the conduct took place.

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Specifically, Relators allege that,

[w]hen PEG learned through its own investigation and the whistleblowing activity of Relators Amaya and Moody that its agents and employees had submitted or caused to be submitted knowingly false or fraudulent claims for Federal financial aid dollars, it was required to disclose those facts to the Government and to refund the amount of the overpayments to the Government.

FAC ¶ 144. However, Relators' traditional false claims causes of action allege that PEG was actively engaged in the fraud—that it was a fraud carried out from the top down. (See generally FAC.) Thus, by saying that PEG had a duty "when it learned" of the fraud, Relators are actually alleging that PEG had a duty "when it learned" of the fraud, Relators are actually alleging that PEG had a duty when it "carried out" the fraud. Based on the pleadings, PEG knew of the fraud at its inception.

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Relators cite to the Senate Report, which discusses the definition of "obligation" as meant in the intended version. The Report mentions that the definition will be helpful to Government contractors who receive



money incrementally from the Government based on cost estimates but who are overpaid on account of an overestimation of the ultimate cost. See S. Rep. 111-10 , at 14 (2009), available at 2009 WL 787872 . That paragraph states that,

any action or scheme created to intentionally defraud the Government by receiving overpayments, even if within the statutory or regulatory window for reconciliation, is not intended to be protected by this provision. Accordingly, any knowing any improper retention of an overpayment beyond or following final submission of payment as required by statute or regulation—including relevant statutory or regulatory periods designated to reconcile cost reports, but excluding administrative and judicial appeals—would be actionable under this provision.

Id.

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Relators allege violations of 31 U.S.C. § 3729(a)(3) to the extent wrongdoing occurred prior to May 20, 2009. (See FAC at Count III.)

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18

Relators also allege that Defendants conspired to violate the equivalent sections of the previous version of the FCA, namely §§ 3729(a)(1) -(2) . (See FAC ¶¶ 341.)

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This section of Title IV was amended multiple times over the relevant period. Each version, however, provides multiple ways a student may qualify for federal financial aid other than obtaining a high school diploma or its equivalent. See § 668.32(e) (2006); id. (2008); id. (2009); id. (2010); id. (2011).

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The Court reviews Defendants' argument with respect to only those claims that have not been dismissed infra.

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21

Defendants also argue in their motion that Relators Amaya and Moody's retaliation claims are barred by the applicable statute of limitations. Those claims, however, are not at issue. The Court's previous Opinion and accompanying Order dismissed Relator Amaya and Moody's retaliation claims for failure to state a claim under Rule 12(b)(6) . That holding is not before this Court on remand.

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22

Subsequent to the decision in Baylor, the FCA was amended to allow the Government's complaint-in-intervention to relate back to the filing of the qui tam complaint "to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint." 31 U.S.C. § 3731(c) .

fn

23

The full text of Federal Rule of Civil Procedure 15(c)(1) provides as follows:

(1) When an Amendment Relates Back. An Amendment to a pleading relates back to the date of the original pleading when:

(A) The law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period of Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

fn

24

Relator Moody even asserts that prior to being constructively terminated, "PEG never informed Moody that she had any performance issues." *Id.* at 329.

**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 4**



**U.S. Department of Justice**

United States Attorney  
District of New Jersey  
*Civil Division*

CRAIG CARPENITO  
UNITED STATES ATTORNEY

*David E. Dauenheimer*  
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direct: (973) 645-2925  
fax: (973) 297-2010

June 4, 2019

**VIA ECF ONLY**

Honorable Ann Marie Donio  
United States Magistrate Judge  
Mitchell H. Cohen Bldg. & U.S. Cthse.  
4<sup>th</sup> and Cooper Streets  
Camden, New Jersey 08101

Re: *U.S. ex rel. LaPorte et al. v. Premier Education Group, G.P., Inc., et al.*  
Civil Action No.: 11-3523 (RBK – AMD)

Dear Judge Donio:

The United States has been apprised by counsel for Relators and for defendants that they have reached agreement on the revised settlement agreement language. The Department of Education (“DOE”), however, is still reviewing the proposed language including the draft release language concerning administrative consequences. Counsel for the DOE has informed the undersigned that it expects to have its review and redline of the proposed language completed by June 5, 2019. Additional time will be required to ensure agreement among the parties to any changed required.

The United States thus requests, with the parties concurrence, that the Court adjourn the current June 7, 2019 deadline for Relators’ motion to enforce the settlement until June 21, 2019.

Respectfully submitted,

CRAIG CARPENITO  
United States Attorney

By: s/ David E. Dauenheimer  
DAVID E. DAUENHEIMER  
Assistant United States Attorney

**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 5**





U.S. Department of Justice

United States Attorney  
District of New Jersey  
*Civil Division*

CRAIG CARPENITO  
UNITED STATES ATTORNEY

*David E. Dauenhimer*  
Assistant United States Attorney  
Deputy Chief, Civil Division

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main: (973) 645-2700  
direct: (973) 645-2925  
fax: (973) 297-2010

June 18, 2019

**VIA ECF ONLY**

Honorable Ann Marie Donio  
United States Magistrate Judge  
Mitchell H. Cohen Bldg. & U.S. Cthse.  
4<sup>th</sup> and Cooper Streets  
Camden, New Jersey 08101

Re: *U.S. ex rel. LaPorte et al. v. Premier Education Group, G.P., Inc., et al.*  
Civil Action No.: 11-3523 (RBK – AMD)

Dear Judge Donio:

I write to request a one-week adjournment of the current June 21, 2019 deadline for Relators' motion to enforce the settlement until June 28, 2019. During our last two-week adjournment the parties have been provided a new draft of the government's proposed settlement agreement incorporating changes required based, in part, on input from the Department of Education. Additional time will be required to ensure agreement among the parties to these changes.

The United States thus requests, with the parties concurrence, that the Court adjourn the deadline for Relators' motion to enforce until June 28, 2019.

Respectfully submitted,

CRAIG CARPENITO  
United States Attorney

By: s/ David E. Dauenhimer  
DAVID E. DAUENHEIMER  
Assistant United States Attorney

PageID: 4634 U.S. Department of Justice United States Attorney District of New Jersey Civil Division

---

CRAIG CARPENITO  
970 Broad Street, Suite 700 main: (973) 645-2700 UNITED STATES ATTORNEY  
Newark, NJ 07102 direct: (973) 645-2925 david.dauenheimer2@usdoj.gov fax: (973)  
297-2010 David E. Dauenheimer Assistant United States Attorney Deputy Chief,  
Civil Division June 18, 2019 VIA ECF ONLY Honorable Ann Marie Donio United  
States Magistrate Judge Mitchell H. Cohen Bldg. & U.S. Cthse. 4th and Cooper  
Streets Camden, New Jersey 08101 Re: U.S. ex rel. LaPorte et al. v. Premier  
Education Group, G.P., Inc., et al. Civil Action No.: 11-3523 (RBK â AMD) Dear  
Judge Donio: I write to request a one-week adjournment of the current June 21,  
2019 deadline for Relators' motion to enforce the settlement until June 28, 2019.  
During our last two-week adjournment the parties have been provided a new draft of  
the government's proposed settlement agreement incorporating changes required  
based, in part, on input from the Department of Education. Additional time will be  
required to ensure agreement among the parties to these changes. The United  
States thus requests, with the parties concurrence, that the Court adjourn the  
deadline for Relators' motion to enforce until June 28, 2019. Respectfully submitted,  
CRAIG CARPENITO United States Attorney By: s/ David E. Dauenheimer DAVID E.  
DAUENHEIMER Assistant United States Attorney

**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 6**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA *ex rel.*  
LAURA LAPORTE, ANGELA DAVENPORT,  
PAMELA HONE, ROBERT BIASELLI,  
KELLI J. AMAYA, AMANDA KENNY, and  
DORIS MOODY,

***Plaintiffs,***

**V.**

PREMIER EDUCATION GROUP, L.P. and  
PREMIER EDUCATION GROUP, G.P., INC.  
d/b/a HARRIS SCHOOL OF BUSINESS,  
BRANFORD HALL CAREER INSTITUTE,  
SALTER COLLEGE, THE SALTER SCHOOL,  
SEACOAST CAREER SCHOOLS, SUBURBAN  
TECHNICAL SCHOOL; and JOHN DOES  
NOS. 1-50, FICTITIOUS NAMES,

***Defendants.***

) Civil Action No.:  
 ) 1:11-CV-03523(RBK)(AMD)

**[Filed Electronically]**

## ORDER

WHEREAS, the Court issued decisions in this action, *inter alia*, *U.S. ex rel. LaPorte v. Premier Educ. Grp., L.P.*, 2014 WL 5449745 (D.N.J. Oct. 27, 2014) and *U.S. ex rel. LaPorte v. Premier Educ. Grp., L.P.*, 2016 WL 2747195 (D.N.J. May 11, 2016), granting Defendants' motion to dismiss individual claims of certain Relator Plaintiffs and granting in part and denying in part Defendants' Motion to Dismiss the *qui tam* False Claims Act claims set forth in a Fourth Amended Complaint;

**WHEREAS, the surviving claims in the Fourth Amended Complaint (the “Complaint”) concerning certain specified conduct by Defendants at the Harris School of Business, Branford**

Hall Career Institute, Salter College, The Salter School, Seacoast Career Schools and Suburban Technical School campuses shall constitute the "Covered Conduct".;

IT IS HEREBY ORDERED that the Complaint filed in the United States District Court for the District of New Jersey captioned *U.S. ex rel. LaPorte et al. v. Premier Educ. Grp., L.P. et al.*, Case No. 11-cv-3523 (D.N.J.) and this action shall be dismissed against all Defendants with prejudice as to Relators, and with prejudice as to the United States as to the "Covered Conduct".

SO ORDERED.

  
HON. ROBERT B. KUGLER

Dated this 6<sup>th</sup> day of Aug, 2019.



**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 7**

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A sign announces the coming of Salter College at 645 Shawinigan Drive in Chicopee, before it opened in 2011. The school is now closed. (Republican file)

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By [Jeanette DeForge](#) | [jdeforge@repub.com](mailto:jdeforge@repub.com)

A for-profit two-year career training school has agreed to waive \$1.6 million in student debt and stop enrolling all Massachusetts students by the end of the year.

The Premier Education Group, of Pennsylvania, entered into a settlement agreement with Attorney General Maura Healey after being accused of failing to provide students with information on job placement, loan repayment and graduation rates, as required by state law, according the attorney general's office.

Advertisement

The agreement was voluntary and as part of it the company does not admit wrongdoing, documents said.

The settlement specifically relates to students who attended one of the company's five schools — Branford Hall Career Institute in Springfield, Salter College in Chicopee and West Boylston, and Salter School in Fall River and Malden — between April 2016 and March 31, 2018, according to the attorney general's office.

The company agreed to discharge \$1.6 million in debts that those students owe to Premier's schools and will seek to have student credit reports wiped clean from negative reporting regarding the debts, the agreement said.

"Salter College misled students and deprived them of the information they needed to make informed choices about their education," Healey said in a statement. "This settlement will provide students the relief they deserve and stop this predatory for-profit school from doing business in our state."

As part of the agreement, the company, which offered associate degrees, will no longer enroll Massachusetts students, including through its internet and

other remote programs, and must wind down all Massachusetts operations by Dec. 31, the agreement said.

Many of the schools have already closed. Branford Hall announced in May 2018 it had stopped taking new student registrations. The company previously merged it with Chicopee's Salter College.



### Brandford Hall School in Springfield to close

---

The agreement also calls for Premier Education Group to pay the state \$100,000. The money is not considered a fine but is to pay for things such as monitoring, investigating and other actions conducted by the attorney general.

The AG's office previously secured a consent judgement against Salter College in 2014 that resolved allegations of similar deceptive enrollment tactics.

Those who have student loans or have any other questions about the settlement can contact the Attorney General's Student Loan Assistance Unit at 1-888-830-6277 or visit the [attorney general's student loan assistance website](#) for free help.

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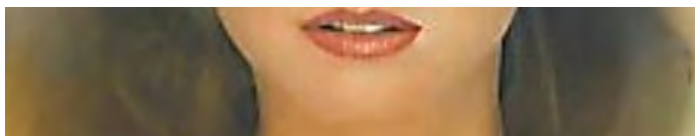
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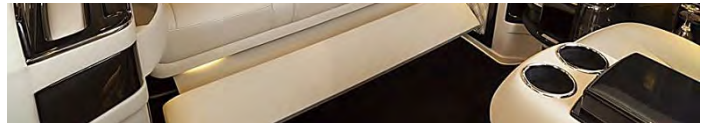




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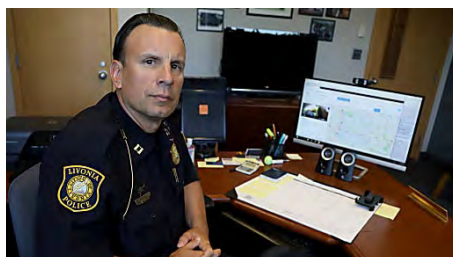
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### Amherst police arrest homeless man accused of trying to abduct baby from home

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### Westcomm regional police, fire dispatch will move to Chicopee building that housed strip club, disgraced college

Masslive




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**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 8**





## U.S. DEPARTMENT OF EDUCATION

### BORROWER DEFENSE TO REPAYMENT APPLICATION

OMB Number: 1845-0163  
Form Approved  
Expiration Date: 11/30/2023

#### INSTRUCTIONS

Under the Borrower Defense to Repayment provision of law, certain conduct by a school you attended might make you eligible to receive a discharge of some or all of your federal student loans. The type of conduct that might make you eligible for student loan relief and the process by which the Department of Education will review your claim may differ based upon when you took out your loan. In general, loans taken out or consolidated prior to June 30, 2017 will be evaluated under one set of regulations, while those taken or consolidated between July 1, 2017 and June 30, 2020 will be evaluated under a second set of regulations, and those taken or consolidated after July 1, 2020 will be evaluated under a third set of regulations. For that reason, in completing this application you may be asked different questions about different loans or may receive a different determination regarding your eligibility for loans taken or consolidated at different points in time.

The most common types of conduct that might make a borrower eligible for loan relief through borrower defense to repayment discharge are misrepresentations of the truth made by the school or its representatives during their efforts to recruit you to enroll at the school or to continue your enrollment at the school. These misrepresentations typically take the form of untruthful representations of the school's selectivity in admitting students, its rankings as compared to other schools, the job placement and earnings outcomes of its prior graduates, or the likelihood that its credits will be accepted by another school or that it will accept credits from other schools.

There are other kinds of experiences that may leave a student dissatisfied with their educational choices; however, these experiences do not make a borrower eligible for federal student loan relief under the borrower defense to repayment provision. Examples of such experiences that would likely not make a borrower eligible for relief include, but are not limited to:

- Dissatisfaction with the school's program or classes, the grades a student received, or the perceived teaching skills of otherwise qualified instructors;
- Disappointment with the school's housing or facilities, availability of on-campus housing, parking availability, the performance of a school's athletic teams, the availability of or access to student activities on campus, or campus eating facilities, food quality or meal plans;
- A student's inability to live in their dormitory of choice, enroll in the program of their choice \*unless otherwise guaranteed admission to the program), or the departure of a distinguished faculty member under whom the student wished to study;
- Informal comments made by other students who are or in the past were enrolled at the school, but who are not spokespeople for the school and are not participating in school-sponsored student recruitment activities;
- General findings of a school's non-compliance with certain U.S. Department of Education's rules for administering Federal Aid;
- Violations of local, state, or federal laws unrelated to the making of a Federal student loan, such as those that govern truth in advertising or misrepresentation;
- Personal injury, loss of property, sexual harassment or other violations of law or civil rights; or
- Academic disputes and disciplinary matters.

It is also important to understand that to be eligible for full or partial federal student loan relief through borrower defense to repayment, you must also have suffered monetary harm. The act of taking a loan or holding student debt is not, by itself, considered to be monetary harm. Instead, the Department compares earnings of prior graduates of your program to graduates of other similar programs and makes a determination of monetary harm, if the earnings of graduates of your program are below the range of normal variation of earnings among graduates of other similar programs. The data used to calculate earnings for purposes of determining monetary harm are based on data provided by a Federal agency, such as the Internal Revenue Service or in some instances, the Social Security Administration.

If you believe you are eligible for borrower defense to repayment relief, please complete this application.

**When answering questions on this application, please be as detailed as possible. While you are not required to submit documentation with your application to be considered for discharge, we recommend that you do so.**

**SECTION 1: BORROWER INFORMATION**

Please provide contact information for the borrower:

First Name

Middle Name

Last Name

Date of Birth (*mm/dd/yyyy*)

Social Security Number

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

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

**SECTION 2: SCHOOL INFORMATION**

School Name:

Campus Name (if you attended a multi-campus system or school):

Campus Location (*City, State*):

In what state(s) did you live during the enrollment period that is the subject of this claim, and when did you live in each state listed (month, year to month, year)?

Enrollment Dates at this school (month, year to month, year). (If you have multiple enrollments at the school, please list all that are the subject of this claim):

Are you still enrolled at this school? ☐ Yes ☐ No

Did you enroll at the school subsequent to the enrollment which is the subject of this claim? If so, when?

Are the enrollment dates listed above approximate or exact? ☐ Approximate ☐ Exact

---

Program Name or Major (e.g. *Engineering, Law, Nursing*).

---

---

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

---

If you are seeking relief for multiple programs, please submit a separate application for each program.

---

Current Enrollment Status at school listed above:

☐ Graduated    ☐ Transferred Out    ☐ Withdrew    ☐ Attending

Note: if you are enrolled at this school, indicate that you are “attending” even if at the time you complete this application you are on a scheduled break, an approved leave of absence, or have decided to not attend classes during the current term, but plan to resume attendance in the near future.

---

### **SECTION 3: OTHER REFUNDS, REMEDIES, LOAN REDUCTION OR TUITION RECOVERY REQUESTS OR ACTIONS:**

---

Have you made any attempt, other than submitting this application, to recover tuition or fees that you paid to your school or to have your student loans forgiven (for example, submitting a closed school loan discharge application to the U.S. Department of Education or seeking relief as part of a class action lawsuit or other settlement)?

☐ Yes    ☐ No

---

If yes, please describe these other request(s), and attach any documentation about the requests, if available.

---

---

Have you received financial relief as a result of any of these attempts?    ☐ Yes    ☐ No

If so, how much relief did you receive?

---

Have you been denied financial relief for any of the attempts you have made or that were made by others on your behalf?

☐ Yes    ☐ No

---

If so, which ones and why?

---

---

Have you been, or are you currently in, arbitration with the school that is the subject of this application?

---

☐ Yes    ☐ No

If yes, what was the date that a written request for arbitration was filled, by either yourself or the school?

---

---

Documentation: Please attach any relevant documents related to the arbitration:

- Transcripts
- Enrollment agreements
- Promotional materials from your school
- Communications with school officials or employees
- Student Manual
- Course Catalog
- Legal documents
- Findings or determinations made by government entities
- Any other documentation that you believe is related to the arbitration.

---

## **SECTION 4 - CONDUCT THAT RESULTS IN ELIGIBILITY FOR BORROWER DEFENSE TO REPAYMENT RELIEF**

---

### **ADMISSIONS SELECTIVITY**

Did your school misrepresent or fail to tell you important information about their admissions practices or admissions selectivity?

Examples of such behavior include, but are not limited to misrepresenting: the average grade point average or entrance exam scores of current students; the percentage of applicants who were accepted by the school; the percentage of applicants who submitted standardized test scores or met other admissions criteria; or the ranking of the school or program relative to other schools or programs. Please select all that apply:

- ☐ My school misrepresented the selectivity of the school, meaning the percentage of applicants who are admitted or denied admission to the school or their qualifications (such as test scores, GPAs, or prior experience).
- ☐ My school claimed to be an open-enrollment school, but failed to disclose that some programs are not open enrollment and instead have entrance requirements, such as minimum GPA, test scores, or volunteer experience in the field that limit admissions to the program.
- ☐ My school made a misrepresentation concerning its criteria for admission, meaning the basis upon which a school determines who it will admit.
- ☐ My school made a misrepresentation concerning the ranking of the school or a program offered by the school.
- ☐ Other, please identify:

---

Per item selected above:

Please describe your communication with the school. Please describe in detail what the school told you, or failed to tell you, and why you believe it was a misrepresentation.

---

How did the school communicate with you about its admission process? Please select all that apply:

- ☐ In person
- ☐ Online
- ☐ Over the phone
- ☐ Over email
- ☐ TV advertisements
- ☐ Written brochures
- ☐ Other, please identify:

---

Per the item above selected:

Please describe how the school communicated with you.

Who at the school provided you with the allegedly misrepresented information? If known, please provide the names and titles of these individuals.

---

When did you discover that the information that the school provided was inaccurate?

---

Was the alleged misrepresentation the basis of or pivotal to your decision to attend the school?

☐ Yes ☐ No

Please explain.

Documentation: Please attach any relevant documents that support these allegations including:

- Transcripts
- Enrollment agreements
- Promotional materials from your school
- Communications with school officials or employees
- Student Manual
- Course Catalog
- Legal documents
- Findings or determinations made by government entities
- Any other documentation you believe supports your application.



---

## REPRESENTATIONS TO THIRD PARTIES

Did your school provide misleading or incorrect data about the school's admissions requirements, selectivity, or student outcomes to an accreditor or an organization that ranks or rates schools of higher education?

Please select all that apply:

- ☐ My school misrepresented information about itself or enrolled students to a ranking organization, such as *U.S. News and World Report* or *Barron's Profile of American Colleges*.
- ☐ My school misrepresented information about itself or enrolled students to an accrediting agency.
- ☐ My school misrepresented information about itself or enrolled students to a state higher education authorizing agency such as the New York State Department of Education, Office of College and University Evaluation or the Illinois Board of Higher Education.
- ☐ My school misrepresented information about itself or enrolled students to a Federal agency, such as the U.S. Department of Veterans Affairs or the the U.S. Department of Education.
- ☐ Other, please identify:

---

When did you discover that the information that the school provided was inaccurate?

Please explain:

---

Was the alleged misrepresentation the basis of or pivotal to your decision to attend the school?

☐ Yes ☐ No

Please explain.

---

Documentation: Please attach any relevant documents that support these allegations including:

- Transcripts
- Enrollment agreements
- Promotional materials from your school
- Communications with school officials or employees, or third party to which the information was reported
- Student Manual
- Course Catalog
- Legal documents
- Findings or determinations made by government entities
- Copies of the information that was reported to a third party and that you saw
- Any other documentation you believe supports your application.

---

## URGENCY TO ENROLL

**Urgency to enroll is not itself a grounds for Borrower Defense to Repayment discharge, but can be considered as evidence supporting the reasonableness of a borrower's reliance on a misrepresentation. Thus applicants completing this section must also make a separate allegation of school misconduct to be considered for Borrower Defense to Repayment discharge.**

Did your school tell you that you had to enroll right away (such as the same day you contacted or visited the school) or you would miss out on an enrollment spot or scholarship opportunity?

☐ Yes ☐ No

If so, was that false information?

☐ Yes ☐ No

If yes, please explain.

---

Who at the school told you that you had to enroll on the spot or on the same day as your visit or inquiry? If known, please provide their names and titles of these individuals.

---

How did the school communicate with you about its admission process? Please select all that apply:

- ☐ In person
- ☐ Online
- ☐ Over the phone
- ☐ Over email
- ☐ TV advertisements
- ☐ Written brochures
- ☐ Other, please identify:

Per item above selected:

Please describe how the school communicated with you.

---

When did you discover that the information that the school provided was inaccurate?

Please explain.

Was the alleged misrepresentation the basis of or pivotal to your decision to attend the school?

☐ Yes ☐ No

Please explain.

---

Documentation: Please attach any relevant documents that support these allegations including:

- Transcripts
- Enrollment agreements
- Promotional materials from your school
- Communications with school officials or employees
- Student Manual
- Course Catalog
- Legal documents
- Findings or determinations made by government entities

---

## EDUCATIONAL SERVICES

Did the school misrepresent or fail to tell you important information about the availability of educational opportunities or support services provided by the school? Please select all that apply:

- ☐ My school misrepresented the availability of internships or externships.
- ☐ My school misrepresented the qualifications of its faculty.
- ☐ My school misrepresented the services that would be provided by its career services staff or department.
- ☐ My school misrepresented how my course of study would be taught (for example, ground-based versus online).
- ☐ My school misrepresented the prerequisites required for my course of study.
- ☐ My school misrepresented how often required courses would be available or when those courses would be scheduled (i.e. you were promised you could complete the program by enrolling on weekends, and then you learned that a required course was available only on weekdays during regular business hours when you are working)
- ☐ My school misrepresented the number of credits required to graduate.
- ☐ My school told me I would be able to graduate in a certain amount of time, but then did not offer enough sections of required classes so that I could complete the program on time.
- ☐ Other, please identify:

---

Per item selected, above:

Please describe how the school communicated with the school. Please describe in detail what the school told you, or failed to tell you, and why you believe it was a misrepresentation.

---

How did the school communicate with you about its educational services? Please select all that apply:

- ☐ In person
- ☐ Online
- ☐ Over the phone
- ☐ Over email
- ☐ TV advertisements
- ☐ Written brochures
- ☐ Other, please identify:

Per item above selected:

Please describe how the school communicated with you.

---

Who at the school provided you with the allegedly misrepresented information? If known, please provide the names and titles of these individuals.

---

When did you discover that the information that the school provided was inaccurate?

Please explain.

---

Was the alleged misrepresentation the basis of or pivotal to your decision to attend the school?

☐ Yes ☐ No

Please explain.

---

Documentation: Please attach any relevant documents that support these allegations including:

- Transcripts
- Enrollment agreements
- Promotional materials from your school
- Communications with school officials or employees
- Student Manual
- Course Catalog
- Legal documents
- Findings or determinations made by government entities
- Any other documentation you believe supports your application.

---

## EMPLOYMENT PROSPECTS

Did your school misrepresent employment outcomes that would be available to you or the employment outcomes of prior graduates? Please select all that apply:

- ☐ My school did not fulfill its promise that I would find future employment.
- ☐ My school misrepresented its job placement rates.
- ☐ My school misrepresented the demand for graduates in my field.
- ☐ My school misrepresented its partnerships with employers.
- ☐ My school misrepresented my eligibility for a certification or a licensure in my field of study.
- ☐ My school exaggerated the earnings of prior graduates or my likely earnings after graduation.
- ☐ My school misrepresented that it was accredited when it was not.
- ☐ My school misrepresented that my program had the accreditation necessary to qualify graduates for licensure or certification when it did not.
- ☐ My school failed to tell me that my programs did not have the accreditation necessary to qualify graduates for certification or licensure.
- ☐ Other, please identify:

---

Per item selected, above:

Please describe how the school communicated with the school. Please describe in detail what the school told you, or failed to tell you, and why you believe it was a misrepresentation.



---

How did the school communicate with you about your employment prospects? Please select all that apply:

- ☐ In person
- ☐ Online
- ☐ Over the phone
- ☐ Over email
- ☐ TV advertisements
- ☐ Written brochures
- ☐ Other, please identify:

---

Per item above selected:

Please describe how the school communicated with you.

---

Who at the school provided you with the allegedly misrepresented information? If known, please provide the names and titles of these individuals.

---

Please provide information about the difficulties you have had getting a job in your field of study that lead you to believe that the school misrepresented the employment outcomes or earnings of past graduates or your likely employment outcomes or earnings.

---

When did you discover that the information that the school provided was inaccurate?

Please explain.

---

Was the alleged misrepresentation the basis of or pivotal to your decision to attend the school?

☐ Yes    ☐ No

Please explain.

---

Documentation: Please attach any relevant documents that support these allegations including:

- Transcripts
- Enrollment agreements
- Promotional materials from your school
- Communications with school officials or employees
- Student Manual
- Course Catalog
- Legal documents
- Findings or determinations made by government entities
- Any other documentation you believe supports your application.

---

## PROGRAM COST AND NATURE OF LOAN

Did the school mislead you, or fail to tell you, important information about your program cost or the nature of your loan? Please select all that apply:

- ☐ My school told me I was receiving only grants and scholarships, but I found out later that some or all of those funds were loans.
- ☐ My school offered me a payment plan without telling me that the plan would convert to a loan without accurately disclosing the terms of the payment plan or resulting loan.
- ☐ My school misrepresented the repayment terms or total cost of loans it provided to me or that were provided to me by a lender recommended by the school.
- ☐ My school misrepresented the overall cost of my program.
- ☐ My school misrepresented what costs were or were not included in the published tuition and fees.
- ☐ My school misrepresented the cost of living in campus-owned or campus-operated housing.
- ☐ My school offered me a full scholarship when admitting me to the school, but then reduced the scholarship amount or failed to renew the scholarship even though I met the requirements of the scholarship, such as by maintaining a certain GPA, enrolling in a particular program, performing required community or volunteer service, or some other criteria that I satisfied.
- ☐ Other, please identify:

---

Per item selected, above:

Please describe your communication with the school. Please describe in detail what the school told you, or failed to tell you, and why you believe it was a misrepresentation.

---

How did the school communicate with you about your program cost and the nature of your loan? Please select all that apply:

- ☐ In person
- ☐ Online
- ☐ Over the phone
- ☐ Over email
- ☐ TV advertisements
- ☐ Written brochures
- ☐ Other, please identify:

Per item above selected:

Please describe how the school communicated with you.

---

Who at the school provided you with the allegedly misrepresented information? If known, please provide the names and titles of these individuals.

---

When did you discover that the information that the school provided was inaccurate?

Please explain.

---

Was the alleged misrepresentation the basis of or pivotal to your decision to attend the school?

☐ Yes ☐ No

Please explain.

---

Documentation: Please attach any relevant documents that support these allegations including:

- Transcripts
- Enrollment agreements
- Promotional materials from your school
- Communications with school officials or employees
- Student Manual
- Course Catalog
- Legal documents
- Findings or determinations made by government entities
- Any other documentation you believe supports your application.

---

## TRANSFERRING CREDITS

Did your school make a misrepresentation to you about the likelihood of credits earned at the school being accepted by other schools as transfer credits or about its likelihood to give you transfer credit for courses or work experiences completed elsewhere? Please select all that apply:

- ☐ My school told me that my credits were transferrable to a specific school, but they were not.
- ☐ My school told me credits earned at the school were generally transferrable to other schools, but they were not.
- ☐ My school told me it would accept credits earned elsewhere if I enrolled, but then, after I enrolled, it told me that it would not accept some or all of my transfer credits.
- ☐ My school told me they would accept my credits, but did not inform me until after I enrolled that those credits would not be counted toward my major.
- ☐ Other, please identify:

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Per item selected, above:

Please describe your communication with the school. Please describe in detail what the school told you, or failed to tell you, and why you believe it was a misrepresentation.

---

How did the school communicate with you about your program cost and the nature of your loan? Please select all that apply:

- ☐ In person
- ☐ Online
- ☐ Over the phone
- ☐ Over email
- ☐ TV advertisements
- ☐ Written brochures
- ☐ Other, please identify:

Per item above selected:

Please describe how the school communicated with you:

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Who at the school provided you with the allegedly misleading information? If known, please provide the names and titles of these individuals.

---

When did you discover that the information that the school provided was inaccurate?

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Please explain:

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Documentation: Please attach any relevant documents that support these allegations including:

- Transcripts
- Enrollment agreements
- Promotional materials from your school
- Communications with school officials or employees
- Student Manual
- Course Catalog
- Legal documents
- Findings or determinations made by government entities
- Any other documentation you believe supports your application.



---

## CAREER SERVICES

Did your school make a misrepresentation to you about the scope and availability of career services support it would provide? Please select all that apply:

- ☐ My school failed to provide the career services assistance it promised (including, but not limited to: resume writing help, mock interviews, and responding to job listings)
- ☐ My school promised that it would find me a job when I graduated but it did not.
- ☐ Other, please identify:

Per item selected, above:

Please describe your communication with the school. Please describe in detail what the school told you, or failed to tell you, and why you believe it was a misrepresentation.

---

How did the school communicate with you about your program cost and the nature of your loan? Please select all that apply:

- ☐ In person
- ☐ Online
- ☐ Over the phone
- ☐ Over email
- ☐ TV advertisements
- ☐ Written brochures
- ☐ Other, please identify:

Per item selected, above:

Please describe how the school communicated with you:

---

Who at the school provided you with the allegedly misrepresented information? If known, please provide the names and titles of these individuals.

---

How were you financially affected by the misrepresentation?

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When did you discover that the information that the school provided was inaccurate?

Please explain:

---

Was the alleged misrepresentation the basis of or pivotal to your decision to attend the school?

☐ Yes ☐ No

Please explain:

---

Documentation: Please attach any relevant documents that support these allegations including:

- Transcripts
- Enrollment agreements
- Promotional materials from your school
- Communications with school officials or employees
- Student Manual
- Course Catalog
- Legal documents
- Findings or determinations made by government entities
- Any other documentation you believe supports your application.

---

## JUDGMENT

*Note: This section only applies to borrowers who receive a Direct Loan, including a Direct Consolidation Loan, on or after July 1, 2017 and prior to July 1, 2020.*

Did you successfully file suit and obtain one or more nondefault, contested judgments against your school in a Federal or State court or from a Federal or State administrative tribunal or did you benefit from a government enforcement action or from a nondefault, contested judgment that arose from your participation in class action litigation?

☐ Yes ☐ No

Have you received the full amount awarded in the judgment or judgments?

☐ Yes ☐ No

If not, what is the outstanding balance of the judgment or judgments owed to you?

Please attach the judgment or judgments and all relevant documents relating to your judgment or judgments.

---

## BREACH OF CONTRACT

*Note: This section only applies to borrowers who receive a Direct Loan, including a Direct Consolidation Loan, on or after July 1, 2017 and prior to July 1, 2020.*

Did you ever enter into a contract with your school (e.g. enrollment agreement or other agreement)?

Yes No

---

Did your school fail to perform any obligations under the contract? For example, your school may have breached a contract with you if they denied you the right to defend yourself against an accusation of a Title IX violation (sexual advancement/misconduct) based on your school's disciplinary policy.)

Yes No

If so, please provide a copy of the contract.

State when the school failed to perform any obligation(s) of that contract.

Please explain:

Provide a detailed description why you believe the school breached the contract.

---

**OTHER**

Did your school make a misrepresentation to you, or fail to tell you, important information other than what you have already alleged in this application?

Yes      No

---

Please describe your communication with the school. Please describe in detail what the school told you, or failed to tell you, and why you believe it was a misrepresentation.

How did the school communicate with you? Please select all that apply:

- ☐ In person
- ☐ Online
- ☐ Over the phone
- ☐ Over email
- ☐ TV advertisements
- ☐ Written brochures
- ☐ Other, please identify:

Per item selected, above:

Please describe how the school communicated with you:

---

Who at the school provided you with the allegedly misrepresented information? If known, please provide the names and titles of these individuals.

---

When did you discover that the information that the school provided was inaccurate?

Please explain:

---

Was the alleged misrepresentation the basis of or pivotal to your decision to attend the school?

☐ Yes ☐ No

Please explain:

---

Documentation: Please attach any relevant documents that support these allegations including:

- Transcripts
- Enrollment agreements
- Promotional materials from your school
- Communications with school officials or employees, or third party to which the information was reported
- Student Manual
- Course Catalog
- Legal documents
- Findings or determinations made by government entities
- Copies of the information that was reported to a third party and that you saw
- Any other documentation you believe supports your application.

---

## SECTION 5: FINANCIAL HARM

*Note: This section only applies to borrowers who receive a Direct Loan, including a Direct Consolidation Loan, on or after July 1, 2020.*

You are eligible to receive full or partial loan discharge as a result of an eligible borrower defense claim only if you have suffered financial harm as a result of your school's misrepresentation. We can only discharge federal student loans, and the amount of a discharge that you may be eligible to receive cannot be more than what you borrowed. For example, we cannot consider private student loans you may have borrowed. Financial harm does not include:

- Nonmonetary loss, such as personal injury, inconvenience, aggravation, emotional distress, pain and suffering, punitive damages, or opportunity costs.
- The act of taking out a federal student loan or merely having federal student loan debt.
- Your voluntary decision to pursue less than full-time work.
- Your decision to not work.
- Your decision to voluntarily change occupations or pursue a different line of work.
- Payments you made other than through the use of federal student loans.



What is the total monetary loss associated with your federal student loans that you have incurred due to your school's alleged misrepresentation?

Please note that you are not required to complete this field, and that the Department will not limit the amount you are owed to the amount you reported in this field. The information you provide helps us review financial harm, but the Department also considers published earnings information from prior graduates to determine whether or not you were financially harmed, and how much harm you incurred. If you complete this field, you may, but are not required, to include the amount of your federal student loans (the Department has this information already).

Please explain how you determined that amount:

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For which jobs did the program say it would prepare you, if any?

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When and how did the school provide you with this information?

---

Have you actively pursued employment in the field for which your education was intended to prepare you?

Yes      No

If yes, list jobs in your field for which you applied, and the date on which you applied for each, as well as any reason you may have been given for not being selected for that or those jobs. You may limit the list to jobs for which you have applied during the most recent year.

Job Title	Date Applied	Reason for Not Being Selected for the Position

If yes, please include documents that demonstrate this pursuit. These may include:

- Job application confirmation emails
- Correspondence with potential employers
- Registration at job fairs
- Enrolling with a job recruiter
- Attendance at a resume workshop

Have you failed to meet other requirements or qualifications for employment in your field of study for reasons unrelated to your school's misrepresentation such as, but not limited to, your ability to pass a drug test, satisfy driving record requirements, or meet health qualifications?

Yes      No

If yes, please explain:

---

## SECTION 6: FORBEARANCE AND STOPPED COLLECTIONS

If you are not currently in default on any Federal student loan, you may request **forbearance** status on the Federal student loans that are the subject of this application 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, while your application for a borrower defense discharge is pending with the U.S. Department of Education. 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 stopped collections status on the Federal student loans that are the subject of this application while your application is under review. "Stopped collections status" means that the Federal government or debt collection companies will not attempt to collect on the defaulted, including efforts to withhold money from your wages or Federal income tax refunds, while your borrower defense application is pending with the U.S. Department of Education.

If you have more questions about forbearance or stopped collections, visit [StudentAid.gov/borrower-defense](https://studentaid.gov/borrower-defense) or contact your servicer. If you do not know who your servicer is, please visit [StudentAid.gov/aid-summary](https://studentaid.gov/aid-summary) or call 1-800-4-FED-AID.

Interest will continue to accumulate on all Federal student loans regardless of their status, 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, and outstanding interest may capitalize (meaning that they will be added to your principal balance). If you wish to make interest payments while your loans are in a forbearance or stopped collections status, please contact your servicer.

You do not have to place your loans in forbearance or stopped collections to apply for borrower defense relief. Instead, you may opt to continue making payments on your loans, especially if you are in a repayment program like loan rehabilitation to remove your loans from default. If you received loans for attendance at a school for which you are not filing a claim, you still must repay those loans.

You can learn more about repayment options at [StudentAid.gov/manage-loans](https://studentaid.gov/manage-loans).

Are you in default on any Federal student loans?

If the answer is no, do you wish to request forbearance on the loan(s) for which you have filed a borrow defense application?

☐ Yes, to be placed in forbearance.      ☐ No.

If your answer is yes, do you wish to request stopped collections status?

☐ Yes      ☐ No.

If you do not select one of the options above and you are not in default on any Federal student loan, the U.S. Department of Education will automatically place the Federal student loan(s) into forbearance that is the subject of your borrower defense application pending the Department's review of the application.

If you do not select one of the options set forth above and you are in default, the Department will place into stopped collections status the Federal student loan(s) that is the subject of your borrower defense application pending the Department's review of the application.

The Department will also make these requests to commercial holders of Federal Family Education Loan (FFEL) program loans not held by the Department.

## **SECTION 7. CERTIFICATION**

By signing this attestation I certify that:

All of the information that 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 additional information that is reasonably available to me that will verify the accuracy of my completed attestation.

I also 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 2 above.

I certify that I have not received a refund, tuition recovery, settlement, or other financial retribute to repay the loans that are the subject of this borrower defense to repayment claim.

I certify that I have accurately reported other efforts I have made to receive loan relief, including by filing suit against the school, participating in a class action suit, entering into arbitration, applying to a tuition recovery fund, or similar.

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 transferring my interest 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 financial 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.

Any person who knowingly makes a false statement or misrepresentation on this form or on 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 sign this application under penalty of perjury.

I understand that in the event that I receive a 100 percent discharge of my loan balance for which the defense to repayment application has been submitted, the school may, if not prohibited by other applicable law, refuse to verify or to provide an official transcript that verifies my completion of credits or a credential associated with the discharged loan.

I understand that, should the Department receive any documentation from the school, in response to the Department's request for records and evidence, the Department will provide me with those documents as well as any evidence otherwise in the possession of the Department. If my application is based on a loan that I received on or after July 1, 2020, then I further understand that my application and supporting evidence will be sent to my school, and I will have a time-limited opportunity to review and respond to any evidence that my school submits in response to my application.

I agree to allow the school that is the subject of this defense to repayment application to provide the Department with items from my student educational record relevant to this defense to repayment application.

Signature

Date

Submit this form and any additional documents you believe will help us review your application by email to [BorrowerDefense@ed.gov](mailto:BorrowerDefense@ed.gov) or by mail to: U.S. Department of Education, PO Box 1854, Monticello, KY 42633. If you have questions while your application is pending you may contact the Department at: 1-855-279-6207.

## 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 loans, and, if it becomes necessary, to locate you and to collect and report on your loans if your loans 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 loans, to enforce the terms of the loans, 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 1845-0163. Public reporting burden for this collection of information is estimated to average .5 hours 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](mailto:BorrowerDefense@ed.gov) directly.

**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 9**





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

OMB Number: 1845-0146  
Expiration Date: 06/30/2023

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](mailto: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 ( <i>First, Middle, Last</i> )		*Date of Birth ( <i>mm/dd/yyyy</i> )	*Social Security Number ( <i>Last Digits</i> )	
*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 (*last digits*):

### 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

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## 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

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### 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

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## 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

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## 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

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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

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## 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>.

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\*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](mailto: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

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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.

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## 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 .5 hours 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](mailto:BorrowerDefense@ed.gov) directly.

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**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 10**



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CAREER EDUCATION CORPORATION, a  
corporation,

AMERICAN INTERCONTINENTAL  
UNIVERSITY, INC., a corporation,

AIU ONLINE, LLC, a limited liability company,

MARLIN ACQUISITION CORP., a corporation,

COLORADO TECH., INC., a corporation,

and

COLORADO TECHNICAL UNIVERSITY,  
INC., a corporation,

Defendants.

Case No. 19-cv-5739

**COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), pursuant to  
Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §  
56(a)(1), for its complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other relief for Defendants’ violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), as amended, 16 C.F.R. Part 310.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355. This action arises under 15 U.S.C. § 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, and 15 U.S.C. § 6105.

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2), 1391(c)(1), 1391(c)(2) and 1395(a), and 15 U.S.C. § 53(b). Defendants reside in or transact business in this District.

### **DEFENDANTS**

4. Defendant Career Education Corporation is a Delaware corporation with its principal place of business at 231 N. Martingale Road, Schaumburg, Illinois. Career Education Corporation transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Career Education Corporation has advertised, marketed, distributed, or sold

educational products and services to consumers throughout the United States. At all times material to this complaint, with respect to the acts and practices of American InterContinental University, Inc., AIU Online, LLC; Marlin Acquisition Corp., Colorado Technical University, Inc., and Colorado Tech, Inc., that are described below, Career Education Corporation dominated or controlled those acts and practices, knew or approved of those acts and practices, and/or benefitted from those acts and practices.

5. Defendant American InterContinental University, Inc. (“AIU”) is a Georgia corporation and wholly owned subsidiary of Career Education Corporation with its principal place of business at 231 N. Martingale Road, Schaumburg, Illinois. At all times material to this Complaint, acting alone or in concert with others, AIU has advertised, marketed, distributed, or sold educational products and services to consumers throughout the United States.

6. Defendant AIU Online, LLC (“AIU Online”) is a Delaware corporation and wholly owned subsidiary of AIU with its principal place of business at 231 N. Martingale Road, Schaumburg, Illinois. At times material to this Complaint, acting alone or in concert with others, AIU Online has advertised, marketed, distributed, or sold educational products and services to consumers throughout the United States.

7. Defendant Marlin Acquisition Corp. (“Marlin”) is a Florida corporation and wholly owned subsidiary of Career Education Corporation with its principal place of business at 231 N. Martingale Road, Schaumburg, Illinois. At all times material to this

Complaint, acting alone or in concert with others, Marlin, a Career Education Corporation holding company, has advertised, marketed, distributed, or sold educational products and services to consumers throughout the United States.

8. Defendant Colorado Technical University, Inc. (“CTU”) is a Colorado corporation and wholly owned subsidiary of Marlin with its principal place of business at 231 N. Martingale Road, Schaumburg, Illinois. At all times material to this Complaint, acting alone or in concert with others, CTU has advertised, marketed, distributed, or sold educational products and services to consumers throughout the United States.

9. Defendant Colorado Tech., Inc. (“CT”) is a Delaware corporation and wholly owned subsidiary of CTU with its principal place of business at 231 N. Martingale Road, Schaumburg, Illinois. At all times material to this Complaint, acting alone or in concert with others, CT has advertised, marketed, distributed, or sold educational products and services to consumers throughout the United States.

### **COMMON ENTERPRISE**

10. At all times material to this Complaint, Defendants Career Education Corporation; American InterContinental University, Inc.; AIU Online, LLC; Marlin Acquisition Corp.; Colorado Technical University, Inc.; and Colorado Tech., Inc. have operated as a common enterprise while engaging in the deceptive and abusive acts and practices alleged below. CEC has conducted the business practices described below through an interrelated network of companies that have common ownership, business

functions, employees, and office locations. Because these Defendants have operated as a common enterprise, they are jointly and severally liable for the acts and practices alleged below. Hereinafter, this complaint refers to all Defendants collectively as CEC.

### **COMMERCE**

11. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act.

### **DEFENDANTS’ BUSINESS ACTIVITIES**

12. Since at least 2012, Defendants have used an illegal and deceptive telemarketing scheme to lure consumers to their post-secondary and vocational schools. Defendants, acting through lead generators, have deceived consumers into divulging their contact information under the guise of providing services unrelated to post-secondary education. For instance, some of Defendants’ lead generators have posed online as official U.S. military recruiters or as job-finding services and then called consumers whose contact information was solicited under false pretenses. Further, on numerous calls, Defendants’ lead generators have continued the deception by misrepresenting that the U.S. military or an independent education advisor recommends the CEC school being marketed. Three such lead generators have been the subject of FTC law enforcement actions in connection with their lead generation activities on behalf of CEC.



13. CEC has purchased consumer leads from such lead generators, and its in-house telemarketers have called those consumers to pitch its schools, regardless of whether they had placed their telephone numbers on the National Do Not Call Registry. Some such consumers have expressed no interest in college or CEC schools, while others have expressed interest in CEC schools under the false impression that the military, an independent education advisor, or an employer recommended or endorsed CEC schools.

14. Such consumers then have received a sales pitch urging them to attend a CEC school from a CEC telemarketer who must meet a monthly enrollment quota or face termination. CEC telemarketers have used high-pressure sales tactics to persuade consumers to enroll.

#### **Overview of Defendants' Business**

15. Since 2012, CEC has operated the following post-secondary and vocational schools: Colorado Technical University, American InterContinental University, Briarcliff College, Brooks Institute, Brown College, Collins College, International Academy of Design & Technology, Harrington College of Design, Le Cordon Bleu College of Culinary Arts, Missouri College, Sanford-Brown College, and Sanford-Brown Institute. Currently, approximately 35,000 students are enrolled at CEC schools. Only CTU and AIU continue to enroll new students.

16. CEC has had campuses in over twenty states, including Colorado, Georgia, Illinois, and Texas. In addition to the physical campuses, CEC has operated

schools that offer online tuition programs. As of 2018, over 92% of students attend classes exclusively online.

17. CEC schools have accepted federal and military financial aid. The total tuition cost for a bachelor's degree has ranged from \$54,360 to \$60,450.

#### **CEC's Marketing and Admissions**

18. Career Education Corporation centrally controls numerous functions for its various schools, including compliance, marketing, admissions, and financial aid. CEC negotiates, purchases, and oversees advertising and marketing for all of its schools. Virtually all in-house telemarketers for CEC schools operate from CEC headquarters using a centralized computer system, call scripts, and compliance guidelines created by CEC.

19. CEC has advertised and marketed its schools using a variety of different media, including radio, television, internet, direct mail, social media, and print. Some of its direct advertisements have focused on specific program offerings or have targeted certain demographics, such as military consumers or Spanish-speaking consumers.

20. CEC has engaged in telemarketing to sell enrollments in its schools. Its in-house telemarketers have made outbound calls to consumers identified through different channels, including consumers whose contact information CEC has purchased from lead generators.

### **CEC Lead Generators Procure Consumer Information through Deception**

21. CEC has hired lead generators to induce consumers to provide their contact and other information, which CEC then has used to telemarket its schools and sell enrollments to consumers. CEC has used over 70 different lead generators, many of which have obtained the consumer leads that they have sold to CEC from yet other lead generators.

22. Numerous lead generators acting on behalf of CEC have used deceptive websites and advertisements. In fact, numerous such websites and advertisements have induced consumers to submit their contact and other personal information under the guise of providing consumers with completely unrelated services such as military recruitment, assistance with job searches and applications and government benefits. These websites have not sought consent for CEC or its lead generators to call consumers, nor disclosed that the purpose of any call would be to market post-secondary or vocational education.

23. Numerous lead generators acting on behalf of CEC have telemarketed CEC schools.

24. The United States Department of Justice, based on a referral from the FTC, sued CEC lead generators Sun Key Publishing, LLC and Fanmail.com, LLC, and

their principals and related companies (collectively, “SKFM”).<sup>1</sup> The FTC sued CEC lead generator Expand, Inc., its principal, and related companies (collectively, “Expand”),<sup>2</sup> and the FTC sued CEC lead generator Edutrek, L.L.C., its principals, and related companies (“Edutrek”).<sup>3</sup> Below are some examples of the deceptive and illegal tactics used by CEC’s lead generators in these cases.

25. CEC has marketed its schools by calling consumer leads generated by SKFM. Since at least 2010, SKFM targeted consumers interested in military service by operating numerous websites that posed as official recruiting websites, including army.com, armyreserves.com, air-force.com, armyenlist.com, airforceenlist.com, marinesenlist.com, nationalguardenlist.com, and navyenlist.com. To drive traffic to their websites, SKFM used internet search engine ads that made no mention of education and contained phrases such as, “Join the U.S. Air Force” and “The Army Wants You!”

26. SKFM’s websites appeared to be official military recruitment sites. The following was an example of an SKFM webpage:

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<sup>1</sup> *U.S. v. Sun Key*, Case 3:18-cv-01444-HNJ (N.D. Ala. Sept. 6, 2018). The telemarketers in this case were employed by Sun Key Publishing, LLC and its related companies. For ease of reference, the Complaint refers to them as “SKFM telemarketers.”

<sup>2</sup> *FTC v. Expand, Inc.*, 6:16-cv-00714-CEM-TBS (M.D. Fla. Apr. 27, 2016).

<sup>3</sup> *U.S. v. Day Pacer LLC*, 1:19-cv-01984 (N.D. Ill. Mar. 22, 2019).



27. In reality, SKFM did not have an official relationship with the military. The websites urged consumers to submit their information to “Contact a Recruiter” or “Get Information About Joining” and represented that their “personal information will not be shared with anyone else.” In fact, SKFM shared consumer information with CEC and other postsecondary schools. SKFM websites did not disclose that their purpose was to collect consumer information to be sold as leads for schools including CEC.



28. CEC also has marketed its schools by calling consumer leads generated by Expand. Expand, from at least 2012 to 2016, targeted consumers looking for jobs and lured them into submitting personal information by misrepresenting that it could assist them in applying for jobs, claiming that it pre-screened consumers on behalf of specific prospective employers. Its “job postings” made no mention of post-secondary education or specific schools.

29. The following is an example of an Expand job post:

The screenshot shows a web browser window with the URL 'gigats.com'. The page title is 'Bank Teller Job - Garden City, ID'. The main content is a job application form for a 'Bank Teller' position at Chase. The form is divided into several sections:

- PERSONAL INFORMATION:** Fields for TITLE (dropdown), FIRST NAME, LAST NAME, EMAIL ADDRESS, MOBILE PHONE, and ALTERNATE PHONE.
- STREET ADDRESS:** Fields for Street Address and Zip Code.
- UPLOAD YOUR RESUME:** A 'CHOOSE A FILE' button and an 'OPTIONAL' checkbox with a 'SELECT A FILE TO UPLOAD' link.
- HIGHEST LEVEL OF EDUCATION?:** A dropdown menu.
- CURRENT EMPLOYMENT STATUS:** A dropdown menu.
- POSITION DESCRIPTION:** Text describing the role: 'Play a vital role in the Chase customer banking experience with this Bank Teller operating in Garden City!'. It mentions that Chase Bank Tellers provide top notch customer service and that the position includes comprehensive training and advancement, along with a full benefits package.
- CONTACT PREFERENCES:** Two radio button options: 'I would like to receive status updates and alerts on my registration via email, text or cell phone number (listed above) by Gigats' highly automated system. Message and data rates may apply. Consent is not a requirement to receive alerts. To unsubscribe at any time Text STOP to 56039.' and 'I would like to receive updates by US mail only. I understand that I would need to send Gigats pre-stamped self addressed envelopes.'
- SUBMIT REGISTRATION:** An orange button at the bottom of the form.
- Footer:** Links for 'TERMS & CONDITIONS', 'PRIVACY POLICY', and 'CONTACT US'. Copyright notice: '© 2015 Gigats. All Rights Reserved.'

30. In reality, many of the jobs Expand advertised were not current job opportunities, and Expand was not authorized by the prospective employers to collect

applications, screen applicants, or interview them, and did not pass along any consumer information to the advertised prospective employers.

31. CEC also has marketed its schools by calling leads generated by Edutrek. Edutrek has generated leads originated from websites that claim to help consumers apply for jobs, health insurance, unemployment benefits, Medicaid coverage, or other forms of public assistance (collectively, “job and benefits websites”). These websites have directed consumers to complete an online form by entering their personal information, including their phone numbers. The websites have not clearly informed consumers that their personal information may be sold or used to market training or education programs.

32. The following is an example of one such job and benefits website:

Jobs in Your Area

Thousands Of Government Jobs In Your Area Are Looking To Hire Immediately! !

First Name

Last Name

Email Address

Phone Number

**SUBMIT**

This website is not affiliated with the United States Government.

You certify that you are a US resident over the age of 18, and you agree to the terms and conditions and privacy policy. By clicking the submit button above, you give these partners your consent to use automated technology to call you at the phone number above, including your wireless number; you understand that these calls will be regarding educational, career, financial, healthcare, legal, and home services, and that you're not required to provide this consent in order to receive services from us by clicking here.

© JobsInYourArea.co | Contact Us | Privacy Policy

33. In reality, the job and benefits websites' primary purpose has been to collect consumer information for marketing purposes. The websites have created the false appearance that they have obtained consumers' consent to receive telemarketing calls. For example, Edutrek obtained leads from the website depicted above, which prominently displayed the headline "Jobs In Your Area" and claimed that "Thousands of

Government Jobs In Your Area Are Looking to Hire Immediately.” Immediately below the submit button, the official seals of several federal government agencies appear, further reinforcing the impression that consumers could obtain information about “Thousands of Government Jobs” by entering their contact information. In fact, Edutrek was not helping consumers find jobs. Instead, Edutrek called consumers to market CEC schools.

34. During that time, CEC received, and had the power to review, the marketing materials that its lead generators used to lure consumers into providing personal information. CEC also had the ability to revise, reject, or opt out of the use of those marketing materials. After reviewing SKFM’s websites, CEC directed SKFM to implement certain changes. For example, CEC had SKFM change specific disclosure language on their websites. Yet CEC did not require changes to misleading military related imagery and content on those same websites, including the representation on army.com to “Be More. Join or reenlist today” next to where consumers entered their personal information. CEC also reviewed and approved SKFM’s telemarketing scripts, which directed its telemarketers to decrease the number of hang-ups by “[e]mphasiz[ing] the name of the branch and giv[ing] a brief pause during the phrase delivery, ‘Hello, this is **NAVY**... Enlist calling for John.’” The CEC-approved scripts also instructed SKFM telemarketers to identify themselves in their voicemail greeting as working at “Military Verification Services.” CEC continued its relationship with SKFM even though it

continued to pose as the military and deceive consumers interested in joining the military in order to obtain leads for CEC.

**CEC Lead Generators’ Deception Continues During Telemarketing Calls**

35. During calls with consumers who submitted contact information online, Defendants’ lead generators often continue to deceive consumers about their identities or the purpose of the call. As part of their pitch, some of Defendants’ lead generators also misleadingly introduce the topic of post-secondary education and make false claims about CEC schools to get consumers’ consent to be contacted by CEC. Below are some examples of CEC lead generators’ deceptive telemarketing claims.

36. SKFM telemarketers reinforced misrepresentations on their websites that they either were, or were affiliated with, the military. They told consumers that they were calling “in regard to information requested on the military.” Training materials also directed sales representatives, in order to “decrease the number of HANG-UPS,” to “[e]mphasize the name of the branch and give a brief pause during the phrase delivery. ‘Hello, this is **NAVY**... Enlist calling for John.’”

37. During the calls, SKFM telemarketers, posing as military representatives, verified the information that the consumer submitted, and advised that the “military supports earning a degree while serving in the military.” If the consumer expressed interest in receiving information on “military friendly colleges,” SKFM telemarketers



recommended up to two post-secondary schools that agreed to pay for Defendants' education marketing leads, including CEC schools.

38. If the consumer expressed interest in a CEC school after being told it was a military friendly college, SKFM sold the consumer's contact information to CEC as a marketing lead. CEC then contacted the consumer directly.

39. Expand telemarketers called consumers who submitted their information on its websites for an "interview." During such "interviews," consumers were transferred to "independent" education advisors helping consumers find the "best" option to continue their education. For instance, Expand's "independent" education advisors would tell consumers, "I just want to make sure you know I'm an independent education advisor and that I do not work for any schools or enroll students."

40. In reality, the independent education advisors only recommended schools, including CEC schools, that hired Expand to generate leads.

41. If the consumer expressed interest in a CEC school after an "independent" advisor recommendation, Expand sold the consumer's contact information to CEC as a marketing lead. CEC then contacted the consumer directly.

42. Edutrek telemarketers have made vocational and post-secondary education pitches during telemarketing calls over consumers' objections. Its telemarketers have made outbound calls to consumers and have also received transfer calls from other lead generators. Edutrek has provided call representatives with a script that instructs them to

continue marketing even if a consumer denies having requested information or having any interest in vocational and post-secondary education programs. Edutrek has also trained its representatives to extract further information from consumers who are not interested in post-secondary education, going as far as to award representatives prizes for completing their sales pitch over consumer objections.

43. If the consumer has expressed interest in a school, Edutrek has sold the consumer's contact information to CEC as a marketing lead. CEC then has contacted the consumer directly.

**CEC Lead Generators Call Numbers on the National Do Not Call Registry**

44. In numerous instances, CEC lead generators have called numbers listed on the National Do Not Call Registry to pitch CEC schools or to facilitate contact between CEC and the consumer who has submitted the number.

45. CEC lead generators have called consumers who have not consented to be contacted by the lead generator or to be called about post-secondary education or CEC schools, but rather, have submitted their information to be contacted about joining the military, jobs, government benefits, or for other purposes.

46. CEC lead generator SKFM initiated hundreds of thousands of calls to numbers on the National Do Not Call Registry to market CEC schools without having obtained consumers' express written agreement to receive calls made on behalf of CEC.

47. CEC lead generator Edutrek has initiated millions of outbound telemarketing calls to phone numbers on the National Do Not Call Registry to market CEC schools without having obtained consumers' express written agreement to receive calls made on behalf of CEC.

48. CEC and Edutrek have a history of calling consumers without express written consent. In 2016, both were sued for placing marketing calls to consumers who did not consent to receive such calls. *Fitzhenry v. Career Educ. Corp.*, No. 14-CV-10172, 2016 WL 792312, at \*1 (N.D. Ill. Mar. 1, 2016); *Mauer v. Am. Intercontinental Univ., Inc.*, No. 16 C 1473, 2016 WL 4651395, at \*1 (N.D. Ill. Sept. 7, 2016).

49. In numerous instances, both SKFM and Edutrek have made telemarketing calls to consumers even though consumers did not have a pre-existing business relationship with CEC.

**CEC Had Authority to Control Its Lead Generators and Was On Notice of Their Practices**

50. CEC has authority over its lead generators. Pursuant to CEC's standard lead purchase agreement, lead generators selling consumers' contact information to CEC must submit all materials that they use to generate leads to CEC, such as websites and advertisements, and allow CEC to edit, revise, reject, or opt out of the use of those materials. The agreement also prohibits use of any telephone scripts without CEC's prior written approval.

51. CEC does not review its lead generators' marketing materials, including telephone scripts and websites, before hiring them to generate leads on its behalf. It has not changed this practice even after it has been on notice that its lead generators are engaging in illegal conduct to procure leads for CEC.

52. CEC was aware that an affiliation with the military was being used by lead generators to induce consumers to consent to be contacted. CEC reviewed a SKFM telemarketing script that directed SKFM telemarketers to feign affiliation with military, yet did not require changes to the script. Consumers expressed to CEC telemarketers that they believed that the military recommended a CEC school.

53. In numerous instances, CEC has continued to accept leads from lead generators despite determining that the lead generator used marketing materials, whether directly or through another lead generator, that did not comply with prohibitions in its lead purchase agreement against deception. For example, CEC used lead generators that deceived consumers into providing their personal information.

54. In numerous instances, consumers have expressed confusion to CEC telemarketers as to why they were being contacted by CEC about college. In fact, CEC training materials anticipate that the consumers telemarketers call may not be interested in school at this time. Despite this, CEC continued to use the same lead generators to market CEC schools.

55. In addition to the FTC enforcement actions discussed above, there were several other actions against CEC lead generators, and an action against CEC itself, alleging deception in procuring consumer information or illegal calls to numbers on the National Do Not Call Registry. For example, CEC lead generator QuinStreet entered into an assurance of voluntary compliance in 2012 with 30 state attorneys general stemming from its use of deceptive military-themed websites, including GIBill.com, that misrepresented that the military recommended schools, including CEC schools. After QuinStreet entered into the assurance of voluntary compliance, CEC continued to use lead generators, such as SKFM, that engaged in similar practices.

56. As discussed above, the FTC and DOJ have brought enforcement actions against three CEC lead generators. Yet CEC has not changed its practices with respect to Edutrek and other lead generators that were not obtaining consent for calls to consumers from CEC.

#### **Illegal Telemarketing Practices by CEC's In-House Telemarketers**

57. CEC has placed over one million outbound calls to numbers on the National Do Not Call Registry derived from CEC's lead generators.

58. CEC telemarketers have placed outbound telemarketing calls to consumers to sell enrollments. CEC policy has permitted its telemarketers to call the same consumer up to six times per day and to continue calling until the consumer requests not to be



contacted anymore. In numerous instances, CEC has placed hundreds of outbound auto-dialed calls to a single number.

59. CEC telemarketers have worked in a high-pressure call center environment and must meet a monthly quota of enrollments or face termination. If the school does not offer a program of study in which the consumer is interested, CEC telemarketers have encouraged the consumer to sign up for a program that the school offers. CEC telemarketers have used rebuttal scripts to address specific concerns consumers express, including that the consumer had misgivings about whether it was an appropriate time to attend college.

60. An enrollment counts towards a CEC telemarketer's monthly enrollment quota only if the student remains enrolled past the drop/add period, during which they can cancel enrollment without penalty. CEC telemarketers have made numerous calls to consumers who have enrolled up through the drop/add period to dissuade them from cancelling, and would call them up to six times per day during the drop/add period to ensure that they did not cancel enrollment.

61. Based on Defendants' long history of continuous conduct of the type described above; Defendants' continued use of the practices challenged above after learning of the Commission's investigation; Defendants' continued use of lead generators and telemarketing; and the ease with which Defendants can engage in similar conduct,

the Federal Trade Commission has reason to believe that Defendants are violating or are about to violate laws enforced by the Commission.

### **VIOLATION OF THE FTC ACT**

62. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

63. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

### **COUNT I**

64. In numerous instances, in connection with advertising, marketing, promotion, offering for sale, or sale of post-secondary education programs, Defendants through lead generators acting on their behalf and for their benefit, have represented, expressly or by implication, that:

- a. the lead generators are, represent, or are affiliated with the United States Military;
- b. the United States Military recommends or endorses their post-secondary schools;
- c. the information the lead generators have collected from consumers will be provided to the United States Military for recruitment purposes and will not be shared with anyone else;

- d. by submitting information, or by participating in a purported interview, consumers have applied or are applying for an open job position;
- e. representatives are acting on behalf of prospective employers hiring for open job positions; and
- f. independent education advisors recommend or endorse their post-secondary schools.

65. The representations set forth in Paragraph 63 are false and misleading.

66. Therefore, Defendants' representations as set forth in Paragraph 63 of this Complaint constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **VIOLATIONS OF THE TELEMARKETING SALES RULE**

67. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The FTC adopted the TSR in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

68. Among other things, the 2003 amendments to the TSR established a do-not-call registry, maintained by the FTC (the "National Do Not Call Registry"), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the National Do Not Call Registry without charge either through a toll-free telephone call or over the Internet at donotcall.gov.

69. Consumers who receive telemarketing calls to their registered numbers can complain of National Do Not Call Registry violations the same way they registered, through a toll-free telephone call or over the Internet at donotcall.gov, or by otherwise contacting law enforcement authorities.

70. The FTC allows sellers, telemarketers, and other permitted organizations to access the National Do Not Call Registry over the Internet at telemarketing.donotcall.gov, to pay the fee(s) if required, and to download the numbers not to call.

71. Under the TSR, a “telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(ff). A “seller” means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. *Id.* § 310.2(dd).

72. Under the TSR, an “outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution. 16 C.F.R. § 310.2(x).

73. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to numbers on the National Do Not Call Registry unless the seller (1) has obtained the consumer’s express agreement, in writing, to place such calls, or (2) has an established business relationship with that consumer, and the consumer has not stated that

he or she does not wish to receive such calls. 16 C.F.R. §§ 310.2(q), 310.4(b)(1)(iii)(B). Valid written consent to receive a live telemarketing call to a number on the National Do Not Call Registry requires: (i) a writing signed by the consumer, (ii) clearly evidencing authorization to receive calls placed on behalf of a specific seller, and (iii) stating the phone number to which such calls may be placed. 16 C.F.R. § 310.4(b)(1)(iii)(B)(1).

74. The TSR prohibits sellers and telemarketers from repeatedly or continuously calling a number with the intent to annoy, harass, or abuse any person at the called number. 16 C.F.R. § 310.4(b)(1)(i).

75. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **Defendants Violated the Do Not Call Provisions of the TSR**

76. Defendants are “sellers” and “telemarketers” who, in connection with “telemarketing,” as those terms are defined in the TSR, sell post-secondary educational services.

77. Defendants are also sellers and telemarketers that initiate or cause others to initiate outbound telephone calls to consumers in the United States to induce the purchase of their post-secondary educational services.



78. Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of post-secondary educational services by the use of one or more telephones and which involves more than one interstate telephone call.

79. Defendants cause lead generators to call consumers to induce the purchase of post-secondary educational services.

80. Defendants buy leads from lead generators where the lead generators represent that the leads have given their permission to be called about post-secondary educational services. Defendants then call the leads to induce the purchase of their post-secondary educational services.

81. Defendants made no efforts to prevent their live telemarketing calls from being placed to telephone numbers on the National Do Not Call Registry.

82. Consequently, Defendants made hundreds of thousands of calls to telephone numbers on the National Do Not Call Registry.

83. Consumers whose telephone numbers were on the National Do Not Call Registry and who received Defendants' live telemarketing calls did not have a pre-existing business relationship with Defendants nor had they given express written consent to receive telemarketing calls specifically from Defendants or their lead generators.

**COUNT II**

84. In numerous instances, in connection with telemarketing, Defendants directly or through their lead generators, have initiated or caused others to initiate an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

**COUNT III**

85. In numerous instances, in connection with telemarketing, Defendants directly or through their lead generators, have misrepresented, expressly or by implication, that:

- a. the lead generators are, represent, or are affiliated with the United States Military;
- b. the United States Military recommends or endorses their post-secondary schools;
- c. the information the lead generators have collected from consumers will be provided to the United States Military for recruitment purposes and will not be shared with anyone else;
- d. by submitting information, or by participating in a purported interview, consumers have applied or are applying for an open job position;
- e. representatives are acting on behalf of prospective employers hiring for open job positions; and

f. independent education advisors recommend or endorse their post-secondary schools.

86. Defendants' practice as alleged in Paragraph 84 of this Complaint is a deceptive telemarketing practice that violates the TSR, 16 C.F.R. §§ 310.3(a)(2)(vii) & (a)(4).

#### **COUNT IV**

87. In numerous instances in connection with telemarketing, Defendants have provided substantial assistance or support to one or more lead generators even though Defendants knew or consciously avoided knowing that one or more such lead generators were engaged in violations of § 310.4 of the TSR. Defendants, therefore, have violated 16 C.F.R. § 310.3(b).

#### **COUNT V**

88. In numerous instances, in connection with telemarketing, Defendants have initiated repeated and continuous outbound telemarketing calls to telephone numbers with the intent to annoy, abuse, or harass the person at the called number. 16 C.F.R. § 310.4(b)(1)(i).

#### **CONSUMER INJURY**

89. Consumers in the United States have suffered and will suffer injury as a result of Defendants' violations of the FTC Act and the TSR. Absent injunctive relief by

this Court, Defendants are likely to continue to injure consumers and harm the public interest.

**THIS COURT'S POWER TO GRANT RELIEF**

90. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.

91. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of up to \$41,484 for each violation of the TSR, 16 C.F.R. § 1.98(d). Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

92. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendants' violations of the TSR and the FTC Act.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and pursuant to its own equitable powers:

A. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this complaint;

B. Award Plaintiff monetary civil penalties from each Defendant for every violation of the TSR;

C. Enter a permanent injunction to prevent future violations of the TSR and the FTC Act by Defendants;

D. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

E. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.



Respectfully submitted,

ALDEN F. ABBOTT  
General Counsel

Dated: August 27, 2019



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**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 11**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CAREER EDUCATION CORPORATION, a  
corporation,

AMERICAN INTERCONTINENTAL  
UNIVERSITY, INC., a corporation,

AIU ONLINE, LLC, a limited liability company,

MARLIN ACQUISITION CORP., a corporation,

COLORADO TECH., INC., a corporation, and

COLORADO TECHNICAL UNIVERSITY,  
INC., a corporation,

Defendants.

Case No. 19 cv 5739

**STIPULATED ORDER  
FOR PERMANENT  
INJUNCTION AND  
MONETARY  
JUDGMENT**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Complaint (“Complaint”) for a permanent injunction and other equitable relief, pursuant to Sections 13(b), 19, and 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b), 57b, and 56(a)(1), and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101 et seq. Defendants have waived service of the summons and the Complaint. The Commission and Defendants

stipulate to the entry of this Stipulated Final Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

### **FINDINGS**

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants violated Section 5 of the FTC Act, 15 U.S.C. § 45, and the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, in marketing their post-secondary schools.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.
5. Defendants and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

### **DEFINITIONS**

For the purpose of this Order, the following definitions apply:

A. **“Clear(ly) and Conspicuous(ly)”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.



6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

B. **“Covered Information”** means information from or about an individual consumer, including, but not limited to (a) first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver’s license or other government-issued identification number; (g) a financial institution account number; (h) credit or debit card information; (i) precise geolocation data of an individual or mobile device, including but not limited to GPS-based, WiFi-based, or cell-based location information; or (j) an authentication credential, such as a username and password.

C. **“Defendants”** means all of the Defendants, individually, collectively, or in any combination.

D. **“Established Business Relationship”** means a relationship between the Seller and a person based on: (a) the person’s purchase, rental, or lease of the Seller’s goods or services or a financial transaction between the person and Seller, within the 18 months

immediately preceding the date of the Telemarketing call; or (b) the person's inquiry or application regarding a product or service offered by the Seller, within the 3 months immediately preceding the date of a Telemarketing call.

E. **"Lead Aggregator"** means any Lead Generator from which Defendants directly purchase Covered Information.

F. **"Lead Generation"** means providing, in exchange for consideration, Covered Information to a Seller, Telemarketer, or other marketer, or assisting others in providing such information, including through Telemarketing, but excluding solely hosting or displaying advertising and marketing content created by Defendants.

G. **"Lead Generator"** means any person who provides, in exchange for consideration, Covered Information to a Seller, Telemarketer, or other marketer, or who assists others in providing such information, including through Telemarketing but excluding persons solely hosting or displaying advertising and marketing content created by Defendants.

H. **"Lead Path"** means information sufficient to identify each Lead Source with which a consumer interacted prior to the sale of that consumer's Covered Information to Defendants.

I. **"Lead Source"** means any platform operated by a Lead Generator involving Lead Generation, including a website or call center.

J. **"National Do Not Call Registry"** means the National Do Not Call Registry, which is the "do-not-call" registry maintained by the Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

K. **“Outbound Telephone Call”** means a telephone call initiated by a Telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

L. **“Seller”** means any person who, in connection with a Telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration whether or not such person is under the jurisdiction of the Commission.

M. **“Student”** means any natural person who is or was enrolled in a program of study at an institution of higher education operated by Defendants.

N. **“Telemarketer”** means any person who, in connection with Telemarketing, initiates or receives telephone calls to or from a customer or donor, whether or not such person is under the jurisdiction of the Commission.

O. **“Telemarketing”** means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.

## **ORDER**

### **I. PROHIBITION AGAINST MISREPRESENTATIONS**

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, or sale of any

educational product or service, are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

A. That Defendants or Lead Generators acting on their behalf are, represent, are affiliated with, or are endorsed by the United States Department of Defense or its Military Departments, or any other branch or agency of the United States federal government;

B. That the United States Department of Defense or its Military Departments or any other branch or agency of the United States government endorses or recommends a post-secondary school;

C. That Defendants or Lead Generators acting on their behalf are neutral and independent educational advisors that endorse or recommend a post-secondary school;

D. That consumers who submit Covered Information to Lead Generators, acting on Defendants' behalf, are applying for open job positions or government benefits;

E. That Lead Generators, acting on Defendants' behalf, represent prospective employers;

F. With respect to Defendants' products or services, any material benefits, including the likelihood of consumers finding employment, of those products or services; and

G. With respect to Defendants' products or services, the total costs, or any other material restrictions, limitations, or conditions, of those products or services.

## II. INJUNCTION CONCERNING LEAD GENERATION

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, or sale of any educational product or service, are permanently restrained and enjoined from:

A. Failing to, as a condition of doing business with any Lead Aggregator: (a) provide each such Lead Aggregator a copy of this Order within 7 days of entry of this Order; and (b) either (i) obtain from each such Lead Aggregator a signed and dated statement acknowledging receipt of this Order and expressly agreeing to comply with this Order within 30 days of entry of this Order or (ii) cease purchasing Covered Information from such Lead Aggregator until such time as the Lead Aggregator has provided a signed and dated statement acknowledging receipt of this Order and expressly agreeing to comply with this Order;

B. Failing to, within 14 days of the appearance of a Lead Source in a Lead Path, provide a copy of this Order by a trackable delivery method with return receipt to every Lead Generator associated with such Lead Source;

C. Using or purchasing Covered Information:

1. Unless Defendants have established, implemented, and thereafter maintained a system to monitor and review Lead Sources, which system shall include procedures sufficient to:



a. Obtain the Lead Path associated with such Covered Information, and information sufficient to permit Defendants to review: (i) copies of all materials created or used by a Lead Generator displayed or contained within a Lead Source in the Lead Path, including text, graphic, video, audio, and photographs; (ii) the location of any Lead Source in the Lead Path; and (iii) the URL of any hyperlink contained in a Lead Source in the Lead Path;

b. Review, directly or through a non-Lead Generator agent, all materials used to obtain such Covered Information, prior to Defendants' use or purchase of that Covered Information; and

c. Preclude payment of any amounts to the Lead Aggregator or Lead Generator for such Covered Information and to inform the Lead Aggregator that approval is denied if such material contains a misrepresentation prohibited by this Order or otherwise does not comply with this Order;

2. If Defendants know or should know that any material associated with the Lead Path of the Covered Information, including any material identified in Subsection II.C.1.a, contains a misrepresentation prohibited by this Order or otherwise does not comply with this Order.

D. Failing to promptly and completely investigate any complaints or other information that Defendants receive about whether any Lead Generator is engaging in acts or practices prohibited by this Order. If any Lead Generator is engaging in acts or practices prohibited by this Order, Defendants shall inform the Lead Aggregator that

approval is denied and shall not pay any amounts to the Lead Aggregator or Lead Generator for such Covered Information.

### **III. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES**

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with Telemarketing are permanently restrained and enjoined from engaging in, or assisting and facilitating others in engaging in, any of the following practices:

A. Initiating any Outbound Telephone Call to any person at a telephone number on the National Do Not Call Registry unless the Seller or Telemarketer proves that:

1. The Seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of that Seller may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person. Such written agreement shall fully disclose the identity of the Seller and must be obtained prior to the Seller or Telemarketer placing a call to a telephone number on the National Do Not Call Registry; or

2. The Seller has an Established Business Relationship with such person, and that person has not stated that he or she does not wish to receive Outbound Telephone Calls made by or on behalf of the Seller.

B. Initiating any Outbound Telephone Call to a person when that person has previously stated that he or she does not wish to receive an Outbound Telephone Call:

1. Made by or on behalf of the Seller whose goods or services are being offered; or
2. Made on behalf of a charitable organization for which a charitable contribution is being solicited.

C. Initiating any Outbound Telephone Call that delivers a prerecorded message, unless the Seller or Telemarketer can demonstrate that:

1. Prior to making any such call to induce the purchase of any good or service, the Seller has obtained from the recipient of the call an express agreement, in writing, that:

- a. The Seller obtained only after a Clear and Conspicuous disclosure that the purpose of the agreement is to authorize the Seller to place prerecorded calls to such person;
- b. The Seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;
- c. Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of the specific Seller; and
- d. Includes such person's telephone number and signature; and

2. In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the Seller or Telemarketer:

a. Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

b. Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly and in a Clear and Conspicuous manner discloses to the person receiving the call: (i) the identity of the Seller or the charitable organization; (ii) that the purpose of the call is to sell goods or services or solicit a charitable donation; and (iii) if the purpose of the call is to sell goods or services, the nature of the goods or services, followed immediately by a disclosure of one or both of the following:

i. In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call Request at any time during the message. The mechanism must:

(a) Automatically add the number called to the Seller's Entity-Specific Do Not Call List;

(b) Once invoked, immediately disconnect the call; and

(c) Be available for use at any time during the message; and

ii. In the case of a call that could be answered by an answering machine or voicemail service that the person called can use a toll free-number

to assert a Do Not Call Request. The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

- (a) Automatically adds the number called to the Seller's Entity-Specific Do Not Call List;
- (b) Immediately thereafter disconnects the call; and
- (c) Is accessible at any time throughout the duration of the Telemarketing campaign.

D. Initiating any Outbound Telephone Call to a telephone number within a given area code unless the Seller, either directly or through another person, has paid the annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry;

E. Initiating any Outbound Telephone Call in which the Telemarketer fails to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call:

1. the identity of the Seller whose goods or services are being offered for sale or the charitable organization on behalf of which a request for a charitable contribution is being made;
2. that the purpose of the call is to sell goods or services or solicit a charitable contribution; and
3. if the purpose of the call is to sell goods or services, the nature of the goods or services.



F. Initiating any Outbound Telephone Call in which the Seller or Telemarketer fails to transmit or cause to be transmitted to any Caller Identification Service in use by a recipient of a Telemarketing call either:

1. the Telemarketer's telephone number and, when made available by the Telemarketer's carrier, the name of the Telemarketer making the call; or
2. the name of the Seller or charitable organization on behalf of which a telemarketing call is placed, and that Seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

G. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, attached as Appendix A.

#### **IV. MONETARY JUDGMENT FOR EQUITABLE MONETARY RELIEF**

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Thirty Million Dollars (\$30,000,000) is entered in favor of the Commission against Defendants, jointly and severally, as equitable monetary relief, including for the purposes of restitution subject to Section V.

B. Defendants are ordered to pay the Commission Thirty Million Dollars (\$30,000,000), which, as Defendants stipulate, their designated agent holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.

## **V. ADDITIONAL MONETARY PROVISIONS**

IT IS FURTHER ORDERED that:

A. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

C. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

D. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers) may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

E. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to

consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

## **VI. CUSTOMER INFORMATION**

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from directly or indirectly:

A. failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress, to the extent permitted by and in compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and its implementing regulations, 34 C.F.R. Part 99 ("FERPA"). If a representative of the Commission requests in writing any information related to redress, Defendants must provide such information to the extent permitted by and in compliance with FERPA, in the form prescribed by the Commission, within 14 days; and

B. disclosing, using, or benefiting from customer information, including the name, address, telephone number, and email address, obtained from Edutrek, LLC, Day Pacer, LLC, SoftRock, Inc., Sunkey Publishing, Inc.; Sun Key Publishing, LLC; Wheredata, LLC; or Fanmail.com, LLC prior to entry of this Order in connection with the advertising, marketing, promoting, offering for sale, or sale of any educational

product or service, unless (i) the customer information is associated with a Student, or (ii) Defendants also received the same consumer information from another source.

## **VII. COOPERATION**

IT IS FURTHER ORDERED that Defendants shall cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendants shall provide truthful and complete information, evidence, and testimony. Defendants shall, upon a reasonable request from a Commission representative with a minimum of 10 days notice, cause their officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings at such reasonable places and times as a Commission representative may designate, without the service of a subpoena.

## **VIII. ORDER ACKNOWLEDGMENTS**

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 20 years after entry of this Order, each Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for advertising, marketing, promoting, offering for sale, or sale of any educational product or service, and all agents and representatives who participate in the advertising, marketing, promoting, offering for sale, or sale of any educational product or service; and (3) any business entity resulting

from any change in structure as set forth in the Section titled Compliance Reporting.

Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order pursuant to this Section VII, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

### **IX. COMPLIANCE REPORTING**

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant; (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 20 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the



following: (a) any designated point of contact; or (b) the structure of any Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Career Education Corporation.

## **X. RECORDKEEPING**

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendants in connection with Telemarketing or the advertising, marketing, promoting, offering for sale, or sale of any educational product or service, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold, including revenues attributable to consumers whose Covered Information was provided to Defendants by Lead Aggregators, and to the extent practicable, broken down by Lead Generator;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests concerning the subject matter of the Order, whether received directly or indirectly, such as through a third party, and any response;
- D. records identifying all Lead Generators that Defendants use since entry of this Order;
- E. records relating to all websites and marketing materials that have been reviewed to ensure compliance with Section II of this Order;

F. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

## **XI. COMPLIANCE MONITORING**

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order and any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use

of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

## XII. RETENTION OF JURISDICTION


IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this 9 day of October, 2019.

  
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF: FEDERAL TRADE COMMISSION

  
LEAH FRAZIER, ESQ.  
QUINN MARTIN, ESQ.  
Federal Trade Commission  
600 Pennsylvania, Ave., NW  
Washington, DC 20580  
Telephone: (202) 326-2187 (Frazier)  
Telephone: (202) 326-2080 (Martin)  
Facsimile: (202) 326-3768  
Email: lfrazier@ftc.gov, qmartin@ftc.gov

**FOR DEFENDANTS:**



Date: July 26, 2019

WILLARD K. TOM, ESQ.

DANIEL S. SAVRIN, ESQ.

DAVID I. MONTEIRO, ESQ.

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Ave., NW

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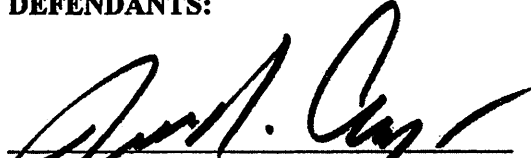
Email: willard.tom@morganlewis.com, daniel.savrin@morganlewis.com,

david.monteiro@morganlewis.com

COUNSEL for Career Education Corp.; American InterContinental University, Inc.; AIU  
Online, LLC; Marlin Acquisition Corp.; Colorado Tech., Inc.; and Colorado Technical  
University, Inc.



**DEFENDANTS:**



JEFFREY D. AYERS, ESQ., as  
Senior Vice President & General Counsel,  
Career Education Corporation;  
Vice President, American InterContinental University, Inc.;  
Manager, AIU Online, LLC;  
Vice President, Marlin Acquisition Corp.;  
Vice President, Colorado Tech., Inc.; and  
Vice President, Colorado Technical University, Inc.

Date: July 26, 2019

**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 12**

NO. D-1-GN-19-000017

IN THE MATTER OF	§	IN THE DISTRICT COURT
	§	
STATE OF TEXAS	§	
	§	
	§	
and	§	TRAVIS COUNTY, TEXAS
	§	
CAREER EDUCATION CORPORATION,	§	
AMERICAN INTERCONTINENTAL	§	
UNIVERSITY, INC., and	§	
COLORADO TECHNICAL UNIVERSITY,	§	
INC.	§	
Respondent.	§	<u>353RD</u> JUDICIAL DISTRICT

### ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (“AVC”) is entered into by the Attorneys General of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming (referred to collectively as the “Attorneys General”) and Career Education Corporation (“CEC”), American InterContinental University, Inc. (“AIU”) and Colorado Technical University, Inc. (“CTU”), including, except as otherwise provided herein, all of their respective subsidiaries, affiliates, successors, and assigns (collectively, “CEC” and, together with the Attorneys General, the “Parties”).

This AVC resolves certain claims of the Attorneys General relating to CEC’s compliance with applicable state consumer protection laws, particularly with respect to recruitment and enrollment practices relating to CEC’s institutions’ post-secondary educational programs.

CEC enters into this AVC solely for the purpose of resolving the allegations and related claims of the Attorneys General. Nothing contained herein shall constitute or may be construed as an admission by CEC of any liability or wrongdoing.

### **PARTIES**

1. The parties to this AVC are as follows:

- (a) The State of Texas through Attorney General Ken Paxton, is authorized to enforce its consumer protections laws, including Texas Deceptive Trade Practices – Consumer Protection Act. See, Tex. Bus. & Com. Code Ann §§ 17.41-17.63.
- (b) Career Education Corporation is a Delaware corporation with corporate headquarters at Schaumburg, Illinois. American InterContinental University, Inc. is a Georgia Corporation with its corporate headquarters in Schaumburg, Illinois. Colorado Technical University, Inc. is a Colorado corporation with its corporate headquarters in Colorado Springs, Colorado.

### **THE ALLEGATIONS OF THE ATTORNEYS GENERAL**

2. At times during the course of offering enrollment in educational programs, CEC placed significant pressure on its employees to enroll students and engaged in unfair and deceptive practices by making misleading statements to prospective students, failing to disclose material facts to prospective students, and otherwise engaging in Unreasonable Recruitment Methods in violation of state consumer protections laws as follows:

- (a) CEC misled students about the total costs of enrollment at CEC institutions;
- (b) CEC misled students about the transferability of credits into CEC from other institutions and out of CEC to other institutions;

- (c) CEC misrepresented their program offerings and the potential to obtain employment in the field desired by prospective students, including failing to adequately disclose the fact that certain programs lacked the necessary programmatic accreditation, which negatively affect a student's ability to obtain a license or employment; and
- (d) CEC engaged in unfair and deceptive practices in calculating job placement rates, thereby giving prospective students an inaccurate impression of CEC graduates' employment outcomes. CEC's misrepresentations related to job placement rates include but are not limited to:
  - (i) misrepresenting CEC graduates who worked only temporarily as having been "placed," based, for example, on less than two weeks of work or having continued in an internship for a week after graduation; and
  - (ii) misrepresenting CEC graduates as having been "placed" in fields in which the students trained or in related fields, when in fact, CEC graduates employment was neither in the field in which the graduate was trained nor in a field related to their field of study.

As a result of the unfair and deceptive practices described above, some students enrolled in CEC who would not have otherwise enrolled, could not obtain professional licensure, and/or incurred debts that they could not repay nor discharge.

### **CEC'S RESPONSE TO ALLEGATIONS**

3. CEC denies the allegations of the Attorneys General, including those set forth in paragraph 2, denies any wrongdoing or liability of any kind, and enters into this AVC solely for the purpose of resolving certain disputed claims of the Attorneys General relating to the



allegations including those set forth above in paragraph 2.

### **DEFINITIONS**

Whenever the terms listed below are used in this AVC, the following definitions shall apply:

4. **“Administrator”** shall have the meaning set forth in paragraphs 34 through 37 below.
5. **“Admissions Advisor”** means any natural person employed by CEC who has substantial responsibility for encouraging Prospective Students to apply or enroll in a Program of Study or recruiting Prospective Students, including but not limited to assisting Prospective Students with the application process and informing Prospective Students about Programs of Study at CEC’s institutions, but shall exclude Financial Aid Advisors.
6. **“Anticipated Total Direct Cost”** means the estimated cost of tuition, fees, books, supplies, and equipment to complete a Program of Study.
7. **“Attorneys General”** means the Attorneys General of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.
8. **“CIP Code”** means the six-digit U.S. Department of Education Classification of Instructional Program (“CIP”) code identified for a particular Program of Study.
9. **“CIP to SOC Crosswalk”** means the crosswalk developed by the National Center for

Educational Statistics and the Bureau of Labor Statistics relating CIP Codes to Standard Occupational Classification (“SOC”) codes and available at <http://nces.ed.gov/ipeds/cipcode/resources.aspx> or its successor site.

10. **“Clearly and Conspicuously”** or **“Clear and Conspicuous,”** when referring to a statement or disclosure, means that such statement or disclosure is made in such size, color, contrast, location, and duration that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner that is likely to be noticed, readable, and understandable, and it must not be obscured in any manner.
11. **“Core Skills”** means skills that are necessary to receive a diploma or degree in a Student’s field of study, such that failure to master these skills will result in no diploma or degree being awarded. “Core Skills” are specific to the Program of Study and are not taught in general education courses or generally taught across all fields of study, and are not the same as basic skills, which are skills that are necessary for success in a Student’s field of study, but which the Student should possess upon entry into a Program of Study. Core Skills do not include generic skills such as “collaboration,” “team work,” and “communication,” and for bachelor’s degree programs, Core Skills do not include skills taught in 100-level courses unless the skill is refined and specifically identified in upper-level courses.
12. **“Cost of Attendance”** means cost of attendance as defined in the Federal Higher Education Act of 1965, § 472, 20 U.S.C. § 1087ll, or as that statute may be amended.

13. **“Completer,”** only for purposes of calculating a Job Placement Rate in accordance with this AVC, means a Student who is no longer enrolled in a Program of Study and who has either completed the time allowed or attempted the maximum allowable number of credits for the Program of Study but who did not accomplish the requirements for graduation, such as:
  - (a) achieving the necessary grade point average;
  - (b) attaining required competencies or speed skills; or,
  - (c) satisfying non-academic requirements, including but not limited to paying outstanding financial obligations.
14. **“Do Not Call Registry”** means the national registry established by the Federal Communications Commission and the Federal Trade Commission and the state registry established by the Public Utility Commission of the State of Texas that prohibits the initiation of outbound telephone calls, with certain statutory exemptions, to registered consumers.
15. **“Effective Date”** means January 2, 2019.
16. **“Electronic Financial Impact Platform”** means an interactive, internet-based program that produces a personalized disclosure for a Prospective Student of the potential financial impact of pursuing a particular Program of Study and incurring a specific amount of debt. The platform shall permit Prospective Students to input and/or adjust fields to customize the resulting disclosure, including but not limited to the fields that pertain to sources of funding (*i.e.*, scholarships, grants, student contributions, federal loans, and private loans) and post-graduation expenses, and shall generate a customized disclosure for the Prospective Student that shows current estimates of (a) the Prospective Student’s

Anticipated Total Direct Costs in pursuing the Program of Study, (b) the Prospective Student's Cost of Attendance, including each component thereof, (c) the Prospective Student's estimated total debt incurred by pursuing the Program of Study at the time of repayment and the corresponding monthly loan payments over a term of years based on the loan interest rate information, (d) the Prospective Student's estimated income if he/she successfully graduates from the Program of Study, if available from the U.S. Department of the Education, and (e) the Prospective Student's estimated post-graduation expenses, including personal financial obligations such as rent or mortgage payments, other debt, car payments, child care expenses, utilities, and the like. The Electronic Financial Impact Platform shall also provide information about the Program of Study, including the following information: Program Completion Rates, Median Debt for Completers, and Program Cohort Default Rate. For the avoidance of doubt, the Parties agree that the Program Cohort Default Rate and the Median Earnings for Completers are to be calculated by the U.S. Department of Education and that this AVC does not require CEC itself to calculate these figures for use in the Electronic Financial Impact Platform if unavailable from the U.S. Department of Education.

17. **"Enrollment Agreement"** shall mean the document executed by a Prospective Student that sets forth certain terms and conditions of the Prospective Student's enrollment in a Program of Study.
18. **"Executive Committee"** shall refer to the Attorneys General of the States of Connecticut, Illinois, Iowa, Kentucky, Maryland, Oregon, and Pennsylvania.
19. **"Financial Aid Advisor"** means any natural person employed by CEC who has substantial responsibility for assisting or advising Students and Prospective Students with respect to

financial aid matters.

20. **“Former Employee”** means any person who was employed by CEC on or after the Effective Date and who is no longer employed by CEC.
21. **“Good Cause”** means: (a) a material and substantial breach of the terms of this AVC by the Administrator, including the failure to comply with the terms and limitations of this AVC, (b) any act of dishonesty, misappropriation, embezzlement, intentional fraud, or similar conduct by the Administrator, (c) any intentional act of bias or prejudice in favor or against either party or Students by the Administrator, or (d) conduct by the Administrator that demonstrates unfitness to serve in any administrative capacity. Good Cause shall not include disagreements with the decisions of the Administrator pursuant to this AVC, unless there is a clear pattern in the Administrator’s decisions that demonstrates or shows that the Administrator has not been acting as an independent third party in rendering decisions.
22. **“Graduate,”** only for purposes of calculating a Job Placement Rate in accordance with this AVC, means a Student who has accomplished all of the requirements of graduation from a Program of Study, such as, for example, achieving the necessary grade point average, successfully passing all required courses and meeting all clinical, internship, and externship requirements, and satisfying all non-academic requirements.
23. **“Job Placement Rate”** means the job placement rate calculated in accordance with this AVC and is a numeric rate calculated by dividing the total number of placed Graduate/Completers by the total number of Graduate/Completers who do not qualify for exclusion from the calculation as set out below. CEC shall count a Graduate/Completer as placed or excluded for purposes of calculating a Job Placement Rate in accordance with this AVC only where CEC is able to successfully contact a Graduate/Completer or



employer to verify employment or exclusion and possesses at the time it is calculating the Job Placement Rate the documentation required below.

- (a) In calculating Job Placement Rates in accordance with this AVC, CEC shall assess whether the Student has been placed within six (6) months of the later of (i) the end of the month in which the Student becomes a Graduate/Completer or (ii) if a license or certification is required for the relevant occupation, the date on which the results of the first licensing or certification exam for which the Graduate/Completer was eligible to sit become available; *provided, however*, that such six (6) month period shall be extended for up to sixty (60) days to permit Students who accepted employment prior to the expiration of such six (6) month period to satisfy the minimum employment threshold set forth in paragraph 68(a)(v) and (a)(vi), in which case the Graduate/Completer shall be excluded from the current reporting cohort and included in the next reporting cohort.
- (b) In calculating a Job Placement Rate in accordance with this AVC, a Graduate/Completer may be excluded from the total number of Graduates/Completers (*i.e.*, the denominator) if CEC obtains written documentation that the Graduate/Completer:
  - (i) has a medical condition or disability that results in the Graduate/Completer's inability to work or the Graduate/Completer is not available for employment because the Graduate/Completer has a parent, child, or spouse who has a medical condition that requires the care of the Graduate/Completer;
  - (ii) is engaged in full time active military duty;

- (iii) is enrolled at least half-time in an additional program of post-secondary education;
- (iv) is deceased;
- (v) is not eligible for placement in the United States because of visa restrictions;
- (vi) is a spouse or dependent of military personnel who have moved due to military transfer orders;
- (vii) is incarcerated; or
- (viii) qualifies for any other job placement rate calculation exclusion that the U.S. Department of Education adopts subsequent to the Effective Date, unless the Attorneys General determine in their reasonable judgment within thirty (30) days of being notified by CEC of the adoption of such waiver that recognizing the waiver for purposes of calculating the Job Placement Rate would be contrary to the interests of Prospective Students; *provided, however,* that CEC shall have the right to apply to the District Court for the State of Iowa, Fifth Judicial District, for a ruling as to whether any such determination by the Attorneys General was reasonable under the circumstances.

- (c) Where CEC excludes a Graduate/Completer from the total number of Graduate/Completers for the purposes of calculating the Job Placement Rate, CEC shall not count that Graduate/Completer as “placed.”

24. **“Median Earnings for Completers”** means the earnings calculated according to the definitions and method provided by the U.S. Department of Education in 34 CFR 668.413(b)(8) and as that regulation may be amended or recodified.

25. **“Median Debt for Completers”** includes Title IV loans, institutional loans, private loans, credit, or unpaid balances extended by or on behalf of the CEC institution to Students, as provided in 34 CFR 668.404(d)(1). Median Debt for Completers is the median debt for Students who completed the program during the most recent award year and is determined according to the definitions and method provided in 34 CFR 668.413(b)(4) and as that regulation may be amended or recodified.
26. **“Program Cohort Default Rate”** means the program cohort default rate determined according to 34 CFR 668.413(b) (13) and as that regulation may be amended or recodified.
27. **“Program Completion Rate”** means the program completion rate for full-time Students calculated according to the definitions and method provided by the U.S. Department of Education in 34 CFR 668.413 and as that regulation may be amended or recodified.
28. **“Program of Study”** shall mean a series of courses, seminar, or other educational program offered at a CEC institution in the United States, for which CEC charges tuition and/or fees, which is designed to lead toward a degree, certificate or diploma, and which (a) is eligible for Title IV funding, (b) involves more than 25 contact hours in a credit bearing course, or (c) is designed to make a Student eligible to sit for any state or national certification or licensing examination. Notwithstanding anything in the foregoing sentence to the contrary, non-credit courses, courses paid for entirely by employers, or programs offered for personal enrichment, *i.e.*, hobby or training courses, that are not Title-IV eligible, courses that are not taken for the purpose of ultimately obtaining a degree, certificate, diploma, or review courses that are designed to assist with a Student’s preparation for a state or national certification or licensing exam for which the Student is already eligible to sit, shall not be Programs of Study.

29. **“Prospective Student”** means any natural person who is being recruited for a Program of Study and/or pursuing enrollment at a CEC institution in a Program of Study and is a resident of a state which is a party to this AVC at the time of such recruitment or pursuit.
30. **“Student”** means any natural person who is or was enrolled at a CEC institution in a Program of Study and is or was a resident of a state which is a party to this AVC at the time of enrollment.
31. **“Third-Party Lead Vendor”** means any third-party vendor (whether a person, corporation, partnership, or other type of entity) that is directly retained and authorized by CEC to provide Prospective Student inquiries to CEC, but excludes companies that host CEC’s advertising or marketing content including but not limited to Facebook, Google, Twitter, and LinkedIn.
32. **“Transferability of Credits Disclosure”** means a disclosure with respect to the transferability of credits earned at CEC institutions. For regionally accredited institutions, each such disclosure shall state: “Course credits are not guaranteed to transfer to other schools.” For all other institutions each such disclosure shall state: “Course credits will likely not transfer to other schools. Degrees will likely not be honored by other schools.” CEC shall be permitted to make such reasonable changes to the Transferability of Credits Disclosure that are approved by the Administrator in consultation with the Attorneys General.
33. **“Unreasonable Recruitment Methods”** means the intentional exploitation of a Prospective Student’s fears, anxieties, or insecurities, or any method intentionally calculated to place unreasonable pressure on a Student to enroll in a CEC institution.

**TERMS OF AGREEMENT**

**ADMINISTRATOR PROVISIONS**

**Appointment of an Administrator**

34. Robert M. McKenna, Esq. of Orrick, Herrington & Sutcliffe LLP is appointed as the Administrator to oversee CEC's compliance with the provisions of this AVC, effective as of the Effective Date. The Administrator may act directly or through staff, agents, employees, contractors, and representatives in overseeing CEC's compliance with the terms of this AVC.
35. Contemporaneously with the execution of this AVC, the Parties shall execute a separate Work Plan that sets forth the Administrator's scope of work consistent with the Powers and Duties of the Administrator, set forth in paragraph 39. In the event of any dispute arising over the Administrator's performance or the reasonableness of the Administrator's costs and fees, either CEC or the Attorneys General may request that the issue be submitted to the Iowa Attorney General, and, if necessary, the issue may be resolved by the District Court for the State of Iowa, Fifth Judicial District.
36. The Administrator may be dismissed for any reason by agreement of the Parties. In the event the Parties do not agree to the dismissal of the Administrator, either the Attorneys General or CEC may submit the question of the Administrator's dismissal to the District Court for the State of Iowa, Fifth Judicial District, and the Administrator shall only be dismissed if that court finds that there is Good Cause for dismissal.
37. The Administrator shall be appointed for a term of three (3) years, to run from the Effective Date. If the Administrator is dismissed or leaves the position for any reason before the end of the term, another Administrator shall be appointed by agreement of CEC and the



Attorneys General to serve the remainder of the term.

**Costs of the Administrator**

38. CEC shall provide for the reasonable and necessary fees, expenses, and costs of the Administrator as set forth in the Administrator's fee agreement, but in no event shall the Administrator's fees, expenses, and costs exceed \$1,000,000 in the first year, \$600,000 in the second year, and \$400,000 in the third year.

**Powers and Duties of the Administrator**

39. The Administrator shall independently review CEC's compliance with the terms of this AVC in accordance with the Work Plan referenced in paragraph 35. In furtherance of this purpose, and without limiting the power of the Administrator to review any relevant matter within the scope of this AVC, the Administrator shall be permitted to:
- (a) observe Admissions Advisor and Financial Aid Advisor training sessions;
  - (b) review telephone calls and meetings between Admissions Advisors or Financial Aid Advisors, on the one hand, and Students or Prospective Students, on the other; the Administrator shall not be permitted to participate in such calls or attend such meetings, but it is expressly understood that the Administrator may review CEC's existing mystery shopping program and be permitted to request additional mystery shops and/or utilize independent mystery shops if the Administrator believes that such additional shops are reasonably necessary to review compliance with this AVC;
  - (c) review transcripts, recordings, and/or reports, to the extent they exist, related to any telephone call or meeting with Prospective Students;
  - (d) review materials used to train Admissions Advisors and Financial Aid Advisors;

- (e) review complaints made to CEC, its accreditors, the Attorneys General, the Better Business Bureau, or any state or federal governmental body, after the Effective Date of this AVC, which potentially concern or relate to any of CEC's recruitment, admissions, Student financial aid, or career services practices;
- (f) review CEC's advertisements, marketing materials, websites, catalogs, enrollment agreements, disclosures, and other public-facing media to verify compliance with this AVC;
- (g) review documents, data, and information related to CEC's calculation of any job placement rate;
- (h) review CEC's compliance practices with respect to the conduct of Third-Party Lead Vendors;
- (i) review documents in the possession of CEC or reasonably accessible to CEC related to the conduct of Third-Party Lead Vendors;
- (j) review communications with Students and Prospective Students in the possession of CEC or reasonably accessible to CEC related to Student recruitment, admissions, financial aid, or career services;
- (k) review CEC's compliance with its refund policy;
- (l) review CEC's compliance with data reporting requirements imposed by this AVC;
- (m) review CEC's complaint resolution practices;
- (n) review reports provided by CEC's third-party vendor related to CEC's monitoring of Third-Party Lead Vendors;
- (o) review CEC's institutional and programmatic accreditation status to verify compliance with this AVC;

- (p) review CEC's records to verify CEC's compliance with its obligation to forgo efforts to collect outstanding debt from certain Students pursuant to paragraphs 116 and 117 of this AVC;
- (q) have reasonable access to books, records, other documents, and staff sufficient to insure implementation of and compliance with this AVC; and
- (r) have reasonable access to employees and Former Employees of CEC as the Administrator deems necessary to insure implementation of and compliance with this AVC; reasonable access for purposes of this subparagraph includes disclosing the identity of any current employee or Former Employee if the identity is requested by the Administrator and can be determined by CEC; reasonable access to current employees shall include providing appropriate times and locations for staff interviews; and reasonable access to Former Employees shall include providing the most recent contact information available;

*provided, however,* that this AVC shall not effectuate a waiver of the attorney-client privilege or the attorney-work-product doctrine, and the Administrator shall not have the right to demand access to documents or information protected by the attorney-client privilege or the attorney-work-product doctrine.

- 40. The Administrator shall make a good faith effort to leverage CEC's existing compliance mechanisms when reviewing CEC's compliance with this AVC.
- 41. The Administrator shall make a good faith effort to perform his or her duties in a manner designed to cause minimal disruption to CEC's activities. In this regard, CEC shall designate senior officials within the Office of the General Counsel (or any office subsequently organized to succeed to the duties of the foregoing office) to serve as the

primary points of contact for the Administrator in order to facilitate the Administrator's access to documents, materials, or staff necessary to review CEC's compliance with this AVC. The Administrator shall communicate any request for documents, materials, or access to staff to the designated contacts, unless otherwise instructed. For the avoidance of doubt, nothing in this paragraph shall be interpreted to prohibit the Administrator from speaking with a current or Former Employee of CEC.

42. If at any time the Administrator believes that there is undue delay, resistance, interference, limitation, or denial of access to any records or to any employee or Former Employee deemed necessary by the Administrator to implement or review compliance with this AVC, the Administrator shall meet and confer with the designated CEC officials referenced in paragraph 41. If the Administrator cannot resolve such limitation or denial, it shall be immediately reported to the Attorneys General.
43. Nothing in this AVC shall limit the ability of the Administrator to communicate at any time with the Attorneys General regarding CEC's conduct or to provide documents or information to the Attorneys General as it relates to the Administrator's role of ensuring compliance with this AVC.

#### **Oversight and Compliance**

44. The Administrator and the designated CEC officials referenced in paragraph 41 shall meet on a quarterly basis, or more frequently if the Administrator or CEC deem reasonably necessary, in order to discuss any facts, matters, issues, or concerns that may arise in the administration of this AVC or that may come to the attention of the Administrator or CEC. The purpose of these meetings is to permit CEC to confer with the Administrator and address issues and concerns as they arise. In addition, the Administrator may in his

discretion and on reasonable advance notice invite the CEC officials referenced in paragraph 41 and the Attorneys General to meet and confer to the extent he deems it reasonably necessary for the administration of this AVC.

45. The Administrator shall issue a report (hereinafter “Annual Report”) to the Attorneys General and to CEC within nine (9) months after the Effective Date and every twelve (12) months thereafter for the duration of the Administrator’s term. The Administrator may make more frequent reports to the Attorneys General and to CEC as deemed reasonably necessary to ensure compliance with this AVC or upon request of the Attorneys General. The Annual Report and all written reports requested by the Attorneys General shall be provided to CEC prior to their presentation to the Attorneys General. The Administrator and CEC shall meet and confer to discuss all written reports and Annual Reports prior to their presentation to the Attorneys General. As part of this conferral process, the Administrator shall in good faith consider all reasonable modifications to the report proposed by CEC.
46. The Annual Report shall include:
  - (a) a description of the methodology and review procedures used;
  - (b) an evaluation of whether CEC is in compliance with the provisions of this AVC, together with a description of the underlying basis for that evaluation; and
  - (c) a description of any practice which the Administrator believes may constitute a deceptive or unfair practice (as those terms are commonly understood in the context of consumer protection laws).
47. Notwithstanding any other provision in this AVC, the Administrator’s reports (including the Annual Reports) shall identify only practices or patterns of CEC’s noncompliance with



this AVC, if any, and are not intended to identify isolated incidents, unless the Administrator determines that such incidents are indicative of CEC's substantial non-compliance with the AVC.

48. If, at the conclusion of the Administrator's three-year term, the Attorneys General determine in good faith and in consultation with the Administrator that justifiable cause exists, the Administrator's engagement shall be extended for an additional term of up to two (2) years, subject to the right of CEC to commence legal proceedings for the purpose of challenging the decision of the Attorneys General and to seek preliminary and permanent injunctive relief with respect thereto. For purposes of this paragraph, "justifiable cause" means a failure by CEC to achieve and maintain substantial compliance with the substantive provisions of the AVC.

**Use of the Administrator's Reports**

49. The Administrator's reports (including the Annual Reports) and testimony may be used by the Attorneys General or CEC in any action or proceeding brought by the Attorneys General or CEC relating (a) to this AVC or (b) to any CEC conduct described in the reports by the Administrator to the Attorneys General, and the reports shall be admissible into evidence in any such action or proceeding to the extent allowed by the rules of evidence of the respective tribunal in which such reports are sought to be introduced. For the avoidance of doubt, the Parties do not intend for the Administrator's reports (including the Annual Reports) or testimony to be admissible in any action or proceeding other than an action or proceeding described in the preceding sentence. No action or lack of action by the Attorneys General regarding information received from the Administrator regarding CEC's conduct shall be considered affirmation, acceptance, or ratification of that conduct

by the Attorneys General, and the Attorneys General reserve the right to act at any time regarding information provided to them by the Administrator.

**Confidentiality**

50. The Administrator shall keep confidential from any and all individuals, entities, regulators, government officials, or any other third party that is not a party to this AVC all communications with employees and information and documents obtained by or produced to the Administrator in the course of his duties. The Administrator also agrees to ensure that any third-party whom the Administrator engages shall agree to the same restriction. Nothing in the preceding sentences shall limit the Administrator's ability to make any disclosure compelled by law. In the event the Administrator receives a request for disclosure of any such communications, information, or documents, the Administrator shall notify CEC the sooner of no more than ten (10) business days following receipt of the request or five (5) business days prior to disclosure to afford CEC time to object to such disclosure. Nothing herein shall relieve the Administrator of his obligation to comply with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.
51. It is understood that any document, information, or report shared with the Attorneys General pursuant to this AVC (including reports created by the Administrator pursuant to paragraphs 45 and 112) may be subject to applicable state open records laws. Nevertheless, the Attorneys General recognize that some or all of such documents, information, or reports may be confidential pursuant to those laws or other applicable state statutes or federal laws. In the event that the Attorneys General (or any of them) receive a request or otherwise intends to disclose a document, information, or report, and the Attorneys General (or any of them) determine that the requested document, information, or report is not confidential

pursuant to applicable law and is subject to disclosure, or if the Attorneys General (or any of them) are compelled to produce the material pursuant to a court or administrative order, the relevant Attorney(s) General shall provide notice to CEC ten (10) business days prior to disclosing the document, information, or report to any third party, or any lesser period required under state law. Notwithstanding the above requirements, the Attorneys General may share any document, information, or report subject to this paragraph with any other local, state, or federal agency empowered to investigate or prosecute any laws, regulations, or rules. Subject to the foregoing, unless required under applicable state law, the Attorneys General shall not release to the public any confidential document or information provided by CEC pursuant to this AVC.

#### **Miscellaneous Administrator Provisions**

52. Non Retaliation Clause: CEC shall not intimidate, harass, threaten, or penalize any employee or Former Employee for his or her cooperation with or assistance to the Administrator relating to the Administrator's Powers and Duties to ensure implementation of and compliance with this AVC.
53. Compliance Hotline: It is understood that CEC is operating a compliance hotline, which permits employees to lodge concerns with CEC anonymously. CEC shall continue to maintain this hotline or a reasonable equivalent. CEC shall provide the Administrator access to any complaints or reports made through this hotline (whether made anonymously or not).

#### **REQUIRED DISCLOSURES**

##### **General Disclosures**

54. CEC shall comply with 34 CFR 668.412(e) and any substantially similar successor regulation requiring the direct disclosure of the U.S. Department of Education gainful employment template information to Prospective Students. The requirements of paragraphs 55-58 herein shall take effect only if the U.S. Department of Education repeals, amends, or delays 34 CFR 668.412(e) in a manner that substantially changes this direct disclosure requirement. In addition, should paragraphs 55-58 take effect, CEC may cease compliance with providing a Single-Page Disclosure Sheet as required by paragraphs 55-58 in the event the U.S. Department of Education or Congress promulgates a substantially similar direct disclosure requirement.
55. CEC shall Clearly and Conspicuously disclose to Prospective Students a “Single-Page Disclosure Sheet” that conforms as to form to the sample disclosure sheet attached as Exhibit B hereto and contains the following information:
- (a) the Anticipated Total Direct Cost for the Program of Study at the prospective campus; *provided, however*, that this provision shall not be interpreted to restrict CEC’s ability to change tuition, fees, or expenses;
  - (b) the Median Debt for Completers for the Program of Study for the most recent reporting period, if available;
  - (c) the Program Cohort Default Rate for the most recent reporting period if available;
  - (d) the Program Completion Rate for the most recent reporting period, if available;
  - (e) the Transferability of Credits Disclosure;
  - (f) the Median Earnings for Completers for the Program of Study for the most recent reporting period, if available; and
  - (g) the Job Placement Rate Disclosure for the Program of Study at the prospective

campus for the most recent reporting period, if available.

For the avoidance of doubt, the Parties agree that the Program Cohort Default Rate and the Median Earnings for Completers are to be calculated by the U.S. Department of Education and that this AVC does not require CEC itself to disclose figures that are unavailable from the Department.

56. Specifically, CEC shall Clearly and Conspicuously disclose the Single-Page Disclosure Sheet for the Program of Study in which the Prospective Student is seeking to enroll in the following ways: (1) by Clearly and Conspicuously disclosing the Single-Page Disclosure Sheet during the enrollment process, prior to the Prospective Student's execution of the Enrollment Agreement; and (2) CEC shall also email the Single-Page Disclosure Sheet as one of two attachments in an email to the Prospective Student prior to starting the first day of class. The other attachment in this email would be a Clear and Conspicuous disclosure of the refund policy as outlined in Paragraph 101.
57. Before an already-enrolled Student begins a new Program of Study, CEC shall Clearly and Conspicuously disclose to the Student the Single-Page Disclosure Sheet for that Program of Study. Additionally, CEC shall also email the Single-Page Disclosure Sheet to the Student prior to starting the first day of class in the new Program of Study.
58. CEC shall be permitted to make such reasonable changes to the Single-Page Disclosure Sheet and to the form and timing of the disclosure of the Single-Page Disclosure Sheet as are approved by the Administrator in consultation with the Attorneys General.
59. CEC may calculate and disclose to Students and Prospective Students, in materials other than the gainful employment template or the Single-Page Disclosure Sheet, information with respect to the income earned by CEC's graduates in reporting period as to which the



Median Earnings for Completers is not available, provided that such information is not false, misleading, or deceptive.

60. If a CEC institution elects to disclose that it has articulation agreements for the transfer of credits to other schools, then, in addition to the foregoing, the CEC institution shall also Clearly and Conspicuously: (a) list any school(s) with articulation agreements with that CEC institution, (b) list the classes for which the receiving school allows credits to transfer, (c) disclose any conditions upon the acceptance of transferred credits, and (d) disclose that credits are accepted by the receiving school for elective credit only, if that is the case.

**Job Placement Rate Disclosures**

61. For any Program of Study at a CEC institution that is required to calculate or provide a job placement rate by a national accreditor or any federal, state, or local law, rule, or judgment, CEC shall calculate a Job Placement Rate for such Program of Study in accordance with this AVC, and such rate shall be disclosed on the Single-Page Disclosure Sheet described in paragraph 55. The parties agree that a regionally accredited institution shall not be subject to paragraphs 61 to 69 relating to placement rates unless it shall choose to voluntarily report a placement rate. If a CEC institution voluntarily calculates a job placement rate for any Program of Study offered at a CEC campus, it must calculate the Job Placement Rate in accordance with this AVC for that Program of Study and also calculate a Job Placement Rate in accordance with this AVC for all Programs of Study that are offered at that same CEC campus, and such rates shall be disclosed on the Single-Page Disclosure Sheet described in paragraph 55. For purposes of this paragraph, all online offerings of each one of CEC's institutions shall be considered a "campus." Notwithstanding the foregoing, CEC shall not be required to calculate Job Placement Rates

- for any Program of Study that CEC is teaching out (*i.e.*, that is not accepting new Students).
62. If CEC does not calculate a job placement rate for a Program of Study, and it is not required to calculate a Job Placement Rate by this AVC, then CEC shall disclose to Prospective Students on the Single Page Disclosure Sheet that: “[CEC institution] does not calculate a job placement rate for students who completed this program.”
63. CEC shall not make any claims or representations to Prospective Students about the likelihood of such Prospective Students obtaining employment after completing a Program of Study if it does not calculate and disclose a Job Placement Rate in accordance with this AVC.
64. The Job Placement Rate calculated in accordance with this AVC shall be disclosed on the U.S. Department of Education’s Gainful Employment Program Disclosure Template, which is the disclosure form issued by the Secretary of the U.S. Department of Education for Gainful Employment Programs, as well as at the time(s) and in the manner(s) provided herein. Moreover, with respect to job placement rates that CEC calculates after the Effective Date, CEC shall not report and/or disclose any job placement rate other than the Job Placement Rate calculated in accordance with this AVC, except as may be required by a government entity or accreditor. CEC must comply with any state regulations in addition to the requirements of this AVC.
65. Notwithstanding anything to the contrary in this AVC, CEC shall not be required to disclose a Program Completion Rate, a Program Cohort Default Rate, a Median Debt for Completers, or a Job Placement Rate for any Program of Study at a location with fewer than ten (10) Students or Graduates/Completers, as applicable, in that program.
66. Notwithstanding anything to the contrary in this AVC, CEC shall not be required to

calculate a Job Placement Rate for new Programs of Study that have not had any Completers or Graduates. A Program of Study is not “new” for purposes of this paragraph if the same campus at which the Program of Study is offered previously offered a program of substantially similar subject matter, content, length, and ending credential. For the avoidance of doubt, a Program of Study will be “new” for purposes of Job Placement Rate calculations if any governmental entity or any relevant accreditor considers the Program of Study substantially different from a prior Program of Study in terms of subject matter, content, length, or ending credential.

67. If CEC relies on a third party for verifying and/or calculating Job Placement Rates, CEC shall enter into a contract with such third party pursuant to which the third party shall agree to adhere to the requirements of this AVC concerning calculation and/or verification of Job Placement Rates (to the extent applicable) and require the third party to provide any requested information regarding the calculation and/or verification of Job Placement Rates to the Administrator. CEC shall monitor such third party’s compliance with these requirements.
68. CEC shall deem an individual as “placed” only if the Graduate or Completer meets the below conditions of “employed” or “self-employed.”
  - (a) Employed. The individual shall be deemed “employed” if each of the following six (6) requirements are met:
    - (i) The position is in the field of study or a related field of study. The position shall be considered to be in the field of study or a related field of study if it meets one of the following criteria:
      - (1) the position is included on the list of job titles for the

Graduate's/Completer's Program of Study published by the institution and is included in the most recent CIP to SOC Crosswalk for the applicable CIP Code; *provided, however*, that it is understood that in an instance where a Graduate/Completer's actual job title is not listed on the CIP to SOC Crosswalk, CEC may include the job as a placement under this provision if the job title the Graduate/Completer obtained is listed as a "Lay Title" on the O\*Net Code Connector for an SOC job title that is linked to the Graduate/Completer's Program CIP per the CIP to SOC Crosswalk, regardless of any job level within the Graduate/Completer's title (*e.g.*, Registered Nurse 1, Registered Nurse 2, etc.), and the job description by the employer for the job title the Graduate/Completer obtained predominantly matches the job description, tasks, and work activities for the SOC job title that is linked to the CIP for the Graduate/Completer's program; or

- (2) the position requires the Graduate/Completer to use, during a majority of the time while at work, the Core Skills listed in the institution's published program and course descriptions expected to have been taught in the Student's program; and (a) the written job description requires education beyond a high school diploma or provides that a postsecondary credential is preferred, (b) the position is one as a supervisor or manager, or (c) the Graduate/Completer or the employer certifies in writing that the education received by the

Graduate/Completer provided a benefit or advantage to the Graduate/Completer in obtaining the position.

- (ii) The position is a permanent position (*i.e.*, there is no planned end date) or a temporary position that the Graduate/Completer expects to maintain for a minimum of one hundred and eighty (180) days;
  - (iii) The position is a paid position;
  - (iv) The position requires at least twenty (20) work hours per week;
  - (v) The Graduate/Completer has worked in the position for a minimum of thirty (30) days; and
  - (vi) CEC has verified the employment after the Graduate/Completer has worked in the position for a minimum of thirty (30) days by: (1) speaking to either the employer or an agent of the employer to confirm employment, (2) contacting the Graduate/Completer directly, (3) receiving an email from the Graduate/Completer, or (4) the Graduate/Completer's employer provides employment information about the Graduate/Completer by email or other written confirmation, or on-line.
- (b) Self-Employed. The individual shall be deemed placed as "self-employed" if each of the following four (4) requirements is met:
- (i) The position is in the field of study or a related field of study. The position shall be considered to be in the field of study or a related field of study if it meets one of the following criteria:
    - (1) the position is included on the list of job titles for the Graduate's/Completer's Program of Study published by the



institution and is included in the most recent CIP to SOC Crosswalk for the applicable CIP Code; *provided, however*, that it is understood that in an instance where a Graduate/Completer's actual job title is not listed on the CIP to SOC Crosswalk, CEC may include the job as a placement under this provision if the job title the Graduate/Completer obtained is listed as a "Lay Title" on the O\*Net Code Connector for an SOC job title that is linked to the Graduate/Completer's Program CIP per the CIP to SOC Crosswalk and the job description by the employer for the job title the Graduate/Completer obtained matches the job description, tasks, and work activities for the SOC job title that is linked to the CIP for the Graduate/Completer's program; or

(2) the position requires the Graduate/Completer to use, during a majority of the time while at work, the Core Skills listed in the institution's published program and course descriptions expected to have been taught in the Student's program; and the Graduate/Completer certifies in writing that the education received by the Graduate/Completer provided a benefit or advantage to the Graduate/Completer in performing the tasks entailed in such self-employment;

- (ii) The Graduate/Completer has received some compensation in return for services provided in connection with the self-employment;
- (iii) In the case of grant-funded or similar employment, the position is

anticipated to employ the Graduate/Completer for a period of no less than three (3) months; and

- (iv) CEC has verified the self-employment and the Graduate/Completer has either (a) completed at least 135 hours of work (including, for example, time devoted to marketing or other unpaid preparatory or developmental work) in connection with the Graduate/Completer's self-employment or (b) received no less than \$4,500.00 in compensation, over a period of no more than ninety (90) days, in return for services provided in connection with the self-employment, provided that CEC has obtained written verification directly from the Graduate/Completer that includes: (1) an attestation that s/he is self-employed with a description of the nature of the self-employment and (2) the number of hours worked and/or amount of compensation earned.
- (c) Federal Work/Study positions at CEC or any affiliated school shall not be counted as "employment" or "self-employment."
- (d) Continuing Employment.
  - (i) Graduates/Completers continuing employment in a position that was held prior to enrolling in the Program of Study shall not be deemed "placed" unless:
    - (1) the requirements of subsections (a)(i) through (a)(vi) of this paragraph are met; and
    - (2) completing the Program of Study enabled the Graduate/Completer to maintain the position, or the Graduate/Completer earned a

promotion or an increase in pay as a result of completing the Program of Study.

- (ii) If a Graduate/Completer continuing in a pre-enrollment position enrolled in the Program of Study pursuant to an “established employer educational assistance program,” and the conditions of subsection (d)(i)(2) of this paragraph are not satisfied, then the Graduate/Completer shall be excluded from the Job Placement Rate calculation. (The term “established employer educational assistance program” shall mean a program evidenced in writing in which an employer pays 50% or more of the cost of tuition for its employee to attend a Program of Study to gain skills related to the employee’s current position with the employer.)
  - (e) CEC’s first calculation of the Job Placement Rate in accordance with the provisions of this AVC will be for the cohort of Graduates and Completers from July 1 through June 30 of the year following that time period in which this paragraph becomes effective.
69. CEC shall implement a protocol for performance checks of those employees responsible for verifying, calculating, and/or disclosing job placement rates. Such performance checks shall be designed to provide a reliable assessment of the accuracy of disclosed job placement rates and compliance by CEC’s employees, agents, and/or contractors with the verification, calculation, and disclosure of job placement rates. The performance checks shall be carried out regularly by CEC’s compliance department or an independent third party, if used. If the institution obtains placement data by contacting employers and Completer/Graduates, the information should be documented in writing, including, to the

extent practicable, the name of the employer, name of the Student, address and telephone number of Student and employer, title of employment, duties of employment, length of employment, hours worked, the name and title of the person(s) providing the information to CEC, the name and title of the person(s) at CEC who received and recorded the information, and the date the information was provided. CEC shall maintain a copy of the above information for a period no less than three (3) years.

#### **Electronic Financial Impact Platform Disclosures**

70. As soon as reasonably practicable after a Prospective Student has enrolled in a program for the first time and received a financial aid award letter, CEC shall provide the Student with a link such that the Student generates a required personalized disclosure using the Electronic Financial Impact Platform; *provided, however*, that Prospective Students who are ineligible for federal student aid or who are not borrowing funds to finance their education shall be exempt from this requirement. For the avoidance of doubt, in the event that a Student chooses to revisit the Electronic Financial Impact Platform after enrolling in a Program of Study, CEC shall not have any additional obligations to that Student under this paragraph. If a Student's refund period expires without the Student having received a financial aid award letter and link to the Electronic Financial Impact Platform, CEC shall Clearly and Conspicuously disclose to that Student that he or she may withdraw from his or her Program of Study without financial responsibility for any tuition and fees associated with the Student's class attendance that term. For purposes of this paragraph, the term "refund period" is described by paragraph 101 unless that paragraph does not apply, in which case the refund period is any time frame within which the Student is eligible to withdraw without financial liability for tuition and fees associated with attending classes.

71. Within one hundred eighty (180) days of the Effective Date, CEC shall, in consultation with the Administrator and the Attorneys General, implement its Electronic Financial Impact Platform. The link required in paragraph 70 may include a disclaimer that states: “This link is provided to you for informational purposes only and is not intended to provide, suggest, or imply financial advice of any kind.”

**MISREPRESENTATIONS, PROHIBITIONS, AND REQUIRED CONDUCT**

72. In connection with the recruitment of any Prospective Students, CEC is prohibited from:
- (a) making any false, deceptive, or misleading statements;
  - (b) omitting any material fact;
  - (c) engaging in unfair practices (as that term is commonly understood in the context of consumer protection laws);
  - (d) using any Unreasonable Recruitment Methods to persuade a Student to enroll or remain enrolled at a CEC institution; and
  - (e) making any representation inconsistent with required Disclosures of the U.S. Department of Education found in Title 34 of the Code of Federal Regulations Chapter 668 as such regulations may be amended or recodified.
73. In connection with any communication with Students or Prospective Students, CEC shall not:
- (a) make a false, misleading, or deceptive statement about any governmental (federal, state, or other) approval related to a Program of Study;
  - (b) represent that a “recommendation” is required for acceptance into a Program of Study or that an Admissions Advisor must recommend the Student for acceptance prior to admission unless such recommendation is an independent requirement for



admission and is expressly stated in the catalog; or

- (c) provide inaccurate statistics regarding any statistic required to be disclosed by this AVC or by the U.S. Department of Education in Title 34 of the Code of Federal Regulation Chapter 668.

74. In connection with any communication with Students or Prospective Students, CEC shall not make any false, deceptive, or misleading statements or guarantees concerning Student outcomes by:

- (a) misrepresenting that Students will be assured program completion or graduation;
- (b) misrepresenting that Students will be assured a job or employment following graduation; or
- (c) misrepresenting how many of the Student's credits will transfer in or out of the institution, or representing to the Student that any credits obtained while attending the institution are transferable (unless CEC receives written assurance from another school or transfer of credits is assured through an articulation agreement or is required by state law).

Notwithstanding the prohibitions contained in subparagraphs (a) through (c), CEC and its representatives are permitted to provide good-faith estimates to Students and Prospective Students about how many of the Students' or Prospective Students' credits obtained while attending other schools will transfer to a CEC institution.

75. In connection with any communication with Students or Prospective Students concerning financial aid, CEC shall not:

- (a) make any false, deceptive, or misleading statements concerning whether a Student will receive financial aid or any particular amount of financial aid;

- (b) purport to guarantee a Student particular military or veteran benefit without proper documentation on file; or
- (c) imply that financial aid or military funding will cover the entire costs of tuition, the costs of books or supplies, or the costs of attending a Program of Study, including living expenses, if such is not the case.

Notwithstanding the prohibitions contained in subparagraphs (a) through (c), CEC and its representatives are permitted to provide good-faith estimates to Students and Prospective Students about the amount of financial aid they may be expected to receive.

- 76. CEC shall not make express or implied false, deceptive, or misleading claims to Prospective Students with regard to the likelihood of obtaining employment as a result of enrolling, including but not limited to misrepresenting:
  - (a) the percentage, rate, or portion of Students who obtain employment following the completion of a Program of Study;
  - (b) the annual starting salary for persons employed in a given field;
  - (c) the annual starting salary of Graduates employed in a given field; and
  - (d) the annual starting salary of Graduates.
- 77. CEC shall not make any express or implied false, deceptive, or misleading claims that Program Completion Rates, job placement rates, or annual salaries that are generally applicable to CEC are equivalent to those for a specific Program of Study or that institution-wide rates for a Program of Study are equivalent to those for a specific campus.
- 78. CEC shall not make express or implied false, deceptive, or misleading claims to Students or Prospective Students with regard to the ability to obtain a license or certification from a third party as a result of enrolling in a Program of Study, including but not limited to

misrepresenting:

- (a) whether the Program of Study will qualify a Student to sit for a licensure exam, if any;
- (b) the types of licensure exams Students are eligible to sit for;
- (c) the states where completion of the Program of Study will qualify a Student to take an exam or attain immediate authorization to work in the field of study;
- (d) the passage rates of graduates from that Program of Study;
- (e) the states where completion of the Program of Study will not qualify a Student to sit for a licensure exam or attain immediate authorization to work in the field of study; and
- (f) the states where a Student may be qualified to work within a profession if the Student must meet other requirements to be employed in such states.

79. CEC shall not make express or implied false, deceptive, or misleading claims to Prospective Students with regard to the academic standing of its programs and faculty, including but not limited to misrepresenting:

- (a) the transferability, or lack thereof, of any credits, including but not limited to any credits for which the Student wishes to receive credit from a CEC institution and for all credits from a CEC institution for which the Student may wish to receive credit from another school, provided however, that CEC and its representatives are permitted to provide good-faith estimates to Students and Prospective Students about how many of the Students' or Prospective Students' credits obtained while attending other schools will transfer to a CEC institution;
- (b) the accreditation and the name of the accrediting organization(s);

- (c) the Student/faculty ratio;
  - (d) the percentage of faculty holding advance degrees in the program;
  - (e) the names and academic qualifications of all full-time faculty members;
  - (f) the course credits and any requirements for satisfactorily completing a Program of Study, such as clinicals, internships, and externships; and
  - (g) the Program Completion Rates for each of its offered Programs of Study.
80. CEC shall not make express or implied false or misleading claims to Prospective Students regarding actual or potential financial obligations the Student will incur regarding a Program of Study, including but not limited to:
- (a) the Cost of Attendance;
  - (b) the Anticipated Total Direct Cost the Student will incur to complete the Program of Study;
  - (c) the Program Cohort Default Rate; and
  - (d) the Median Debt of Completers of each Program of Study.
81. CEC shall provide all Admissions Advisors and Student Financial Aid Advisors with the information reasonably necessary to inform Prospective Students about CEC and its Programs of Study, including but not limited to the Single-Page Disclosure Sheet, and if a representative of CEC truthfully advises a Student or Prospective Student that he or she does not have the information requested by the Student or Prospective Student at hand, then CEC shall subsequently, to the extent such information is reasonably ascertainable prior to the expiration of the applicable refund period established by paragraph 101 (or, if no such refund period applies, prior to the first day of the Student's semester, quarter, or payment term), provide such information.

82. Except as set forth in paragraph 84, CEC shall not represent in advertising, marketing, or promotional materials or otherwise that graduates of a Program of Study would be qualified for a particular occupation if that Program of Study lacks an accreditation necessary to qualify graduates for such occupation.
83. Except as set forth in paragraph 84, for Programs of Study that prepare Students for employment in fields that require Students to obtain state licensure or authorization for such employment, CEC shall not enroll Students in the Program of Study if graduation from the Program of Study would not qualify such Students for state licensure or authorization or to take the exams required for such licensure or authorization in the state in which:
  - (a) the CEC campus is located, if the Program of Study is offered at an on-ground campus;
  - (b) the Prospective Student resides, if the student resides in a different state from the on-ground campus; or
  - (c) the Prospective Student resides if the Program of Study is offered online.
84. The prohibitions established by paragraphs 82 and 83 shall not apply if:
  - (a) the Program of Study is a new program that cannot obtain a programmatic accreditation that would be necessary to qualify Students for state licensure or authorization or to take exams required for such licensure or authorization in the relevant state until the program is operational, the institution is making a good faith effort to obtain the necessary programmatic accreditation in a timely manner, the institution Clearly and Conspicuously discloses to Prospective Students on all promotional materials for the Program of Study and in a Clear and Conspicuous



written disclosure prior to the Student signing an Enrollment Agreement that such programmatic accreditation would need to be obtained before the Student would qualify for state licensure or authorization or to take exams required for such licensure or authorization, and CEC teaches-out the program if the institution's application for accreditation for a program subject to this paragraph is denied, and it is not subject to further review;

- (b) the Prospective Student has notified CEC in writing that the Student intends to seek employment in a state where the program does lead to immediate state licensure or authorization or qualification to take the exams required for such licensure or authorization;
- (c) the Prospective Student has already completed some of the coursework necessary to complete the Program of Study and is seeking re-enrollment, and CEC advises the Prospective Student Clearly and Conspicuously in writing prior to re-enrollment that completion of the Program of Study is not expected to qualify the Student for state licensure or authorization or to take exams required for such licensure or authorization; or
- (d) the reason that graduation from the Program of Study would not qualify the Prospective Student for state licensure or authorization or to take the exams required for such licensure or authorization is that the Prospective Student has a criminal record that is disqualifying, and CEC has complied with the disclosure and acknowledgement requirements of paragraph 87.

85. CEC shall take reasonable measures to arrange and facilitate sufficient placements for Students in internships, externships, practicums, or clinicals that are prerequisites for

graduation, licensure, or certification; *provided, however*, that nothing herein shall prevent a CEC institution from requiring its Students to seek to obtain an internship, externship, practicum, or clinical through their own efforts in the first instance.

86. CEC shall not knowingly enroll a Student in a Program of Study that does not possess the programmatic accreditation typically required by employers in the Student's state of residence for employment, except where a Student has indicated the intention to seek employment in a different state in which employers do not typically require programmatic accreditation for that Program of Study, or where the Program of Study does possess the programmatic accreditation typically required by employers in that state. "Typically" shall mean 75% or more of job opportunities in a particular occupation are open only to graduates of a school with certain accreditation(s) and/or an academic program with certain programmatic accreditation(s). CEC shall make reasonable efforts to assess employer requirements in states where they enroll Students.
87. If CEC knows that a criminal record may disqualify a Student from employment in the field or a related field for which the Program of Study is a prerequisite, then CEC shall (a) Clearly and Conspicuously disclose that a criminal record may disqualify the Student for the chosen field or related field of employment and (b) require the Student's acknowledgment of such disclosure in writing at or before the time of enrollment. If CEC knows that a criminal record will disqualify a Student from employment in the field or a related field for which the Program of Study is a prerequisite, then CEC shall (a) Clearly and Conspicuously disclose that a criminal record will be disqualifying and (b) require the Student's acknowledgment of such disclosure in writing at or before the time of enrollment.
88. Arbitrations between CEC and any Student shall not be protected or treated as confidential

proceedings, unless confidentiality is required by law or the Student requests confidentiality. CEC shall not ask or require any Student, participant, or witness to agree to keep the arbitration confidential, unless confidentiality is required by law. Nothing in this paragraph shall prevent CEC from asking the arbitrator to designate arbitration materials as a trade secret or proprietary information subject to nondisclosure. Except as may be prohibited by law or a Student request for confidentiality, and subject to appropriate assertions of the following:

- (a) the attorney-client privilege and/or the attorney-work-product doctrine; and
- (b) compliance with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g;

the Administrator and the Attorneys General shall not be prohibited from reviewing or inspecting the parties, proceedings, and evidence pertaining to any arbitration involving a Student that commences after the Effective Date of this AVC. The Administrator and the Attorneys General shall not, to the extent permitted by law, disclose any of CEC's properly designated trade secrets or proprietary information that appear in arbitration materials.

89. CEC shall not adopt any policy or engage in any practice that delays or prevents Students with complaints or grievances against CEC from contacting any accrediting body, state or federal regulator, or Attorney General regarding the complaint or grievance. Notwithstanding anything to the contrary in this paragraph, CEC shall be permitted to encourage Prospective Students and Students to file any complaint or grievance with CEC in the first instance, so long as CEC does not represent or imply that Students are required to file their complaints or grievances with CEC before contacting any accrediting body, state or federal regulator, or Attorney General regarding the complaint or grievance, unless

the accrediting body, state or federal regulator, or Attorney General so requires.

**CEC RECRUITING PRACTICES**

90. CEC shall not engage in any false, misleading, deceptive, abusive, or unfair acts or practices (as those terms are commonly understood in the context of consumer protection laws) when recruiting Prospective Students, including during the orientation program and refund periods referenced in paragraphs 100 and 101.
91. CEC shall not use Unreasonable Recruitment Methods when communicating with Prospective Students during the admissions and enrollment process. CEC shall train Admissions Advisors and other employees to avoid use of Unreasonable Recruitment Methods. CEC shall audit its communications with Prospective Students, including those of its Admissions Advisors, to ensure that Unreasonable Recruitment Methods are not being used. CEC shall make the results of such audits reasonably available to the Administrator and the Attorneys General upon request.
92. CEC shall record all telephone calls and online chats between Admissions Advisors or Financial Aid Advisors, on the one hand, Students and Prospective Students, on the other, subject to interruptions in the ordinary course of business; *provided, however*, that CEC shall not be required to record telephone calls between Students and Admissions Advisors when the purpose of the telephone call or online chat is not to discuss recruiting, admissions, or financial aid related to admissions, but the Admissions Advisor is instead serving an advisory role related to the Student's performance in the Program of Study. This provision shall not require CEC to record telephone calls or online chats placed or received on personal devices, such as cell phones. Admissions Advisors and Financial Aid Advisors will be trained not to engage in communications with Students on personal devices. During

the term of this AVC, CEC shall continue to retain its current third party vendor, or a vendor who employs comparative services, for call recording under this paragraph and for automated voice interaction analytics. Any decision to switch from its current vendor to another vendor shall be done in consultation with and approval by the Administrator. CEC shall make the call recordings required under this paragraph reasonably available to the Administrator and the Attorneys General upon request.

93. Notwithstanding anything to the contrary in this AVC, CEC shall not be required to record a telephone conversation if the Student or Prospective Student, after receiving the disclosure required by paragraph 95, objects to the conversation being recorded, nor shall CEC be prohibited from continuing a telephone conversation with a Student or Prospective Student on an unrecorded line once such an objection has been made; *provided, however*, that CEC shall be prohibited from encouraging Students or Prospective Students to object to recording the conversation.
94. Call recordings and online chats shall be maintained for a period not less than ninety (90) days after the date of the call. The Administrator shall have full and complete access to all recordings via the voice analytics platform.
95. CEC shall inform a Prospective Student at the outset of any telephone call after the initial greeting that the call may be being recorded. CEC shall be permitted to make this disclosure in pre-recorded form.
96. CEC shall not initiate unsolicited telephone calls to a Prospective Student's telephone number that appears on any current Do Not Call Registry. CEC shall keep an accurate record of and comply with any request to not receive further telephone calls. CEC shall not initiate any outbound telephone calls to a person who has previously stated to CEC that



he or she does not wish to receive telephone calls from CEC, or who has expressed a desire not to be contacted anymore by CEC, or who has requested that they be placed on CEC's internal do-not-call list, unless the person has made a renewed request for contact or has otherwise indicated a desire to again receive calls from CEC.

97. CEC shall not continue a telephone call after a Prospective Student has expressed a desire to conclude the call or has clearly stated that he/she does not want to apply to or enroll at a CEC institution.
98. CEC shall not prevent a Prospective Student from consulting with or obtaining advice from a parent, adult friend, or relative with respect to any issue relevant to enrollment.
99. CEC shall invite Prospective Students under the age of eighteen (18) to bring an adult with them to any interview/meeting on campus prior to enrollment.

#### **REQUIRED ORIENTATION AND REFUND PROVISIONS**

100. CEC shall require all incoming Students (other than graduate Students and Students who have already obtained twenty-four (24) or more credits at the post-secondary education level) to complete an online and/or in-person orientation program prior to the Student's first class at no cost to the Student. This orientation program shall be approved by the Administrator in consultation with the Attorneys General. This orientation program shall address such topics as study skills, organization, literacy, financial skills, and computer competency. A Student may withdraw from enrollment in a Program of Study at any time during the orientation program without any cost, and any grants or financial aid received directly from a grantor or lender on behalf of the Student shall be returned to the grantor or lender. In the alternative, and in lieu of the orientation described above, CEC may satisfy its obligation by requiring all incoming Students (other than graduate Students and

Students who have already obtained twenty-four (24) or more credits at the post-secondary education level) to complete a college readiness course components of which will address the topics referenced above and the content of which will be approved by the Administrator in consultation with the Attorneys General. If CEC elects to offer a college readiness course, CEC shall give Students enrolled in the course a Clear and Conspicuous disclosure of the refund provision contained in paragraph 101 within ten (10) days after the start of the course.

101. All Students who are newly enrolled in any fully online Program of Study at CEC institution (other than graduate Students and Students who have already obtained twenty-four (24) or more online credits at the post-secondary education level) shall be permitted to withdraw within the first twenty-one (21) days of the first day of the Student's semester, quarter, or (with respect to students enrolled in a non-term program) payment term at the CEC institution in which the Student enrolled. If a Student's credits are from a university that predominantly offers online programs, CEC can count the Student's credits towards the 24 online credit threshold. All Students who are newly enrolled in any on-ground Program of Study at a CEC institution (other than graduate Students) shall be permitted to withdraw within the first seven (7) days of the first day of the Student's first session, at the CEC institution in which the Student enrolled. CEC shall Clearly and Conspicuously disclose the availability of the refund periods described in this paragraph in the Enrollment Agreement or in a separate written disclosure prior to starting class. CEC shall not hold a qualifying Student who withdraws in accordance with this paragraph liable for any tuition and fees associated with attending classes and shall return to grantors or lenders any grants and financial aid received directly from a grantor or lender for or on behalf of the Student.

Under no circumstances shall the time of a Student's attendance in the orientation program required pursuant to paragraph 100 be included in the refund periods required pursuant to this paragraph.

102. Except for qualifying Students who withdraw during the new Student orientation program required pursuant to paragraph 100 or the applicable refund period established by paragraph 101, when a Student withdraws from a Program of Study, CEC may retain or be entitled to payment for a percentage of any tuition and fees and other educational costs earned, based on the percentage of the enrollment period attended by the Student, subject to the CEC institution's internal refund policies and applicable law; *provided, however*, that where a student has not attended sixty (60) percent of the academic term as calculated in accordance with 34 CFR 668.22, CEC shall not retain or be entitled to payment for a percentage of any tuition and fees or other educational costs for a class that was scheduled to be taken during the relevant academic term but was not attended because the student withdrew from school prior to the commencement of the class. Except as mandated by changes to federal or state laws or regulations, no CEC institution shall change its internal policy with respect to calculating the percentage of tuition and fees and other educational costs that a Student remains obligated to pay upon withdrawal in a manner that results in the policy becoming less favorable to Students unless CEC obtains the prior approval of the Administrator or, if the Administrator's term has expired, the Executive Committee. CEC shall comply with all state and federal record-keeping requirements for documenting Student attendance and determining dates of withdrawal.
103. CEC shall comply with applicable state and federal law specifying the amounts owed by or to be refunded to Students to the extent their application would result in a greater refund

or lower cost for a Student than is otherwise required herein.

**THIRD-PARTY LEAD VENDOR REQUIREMENTS**

104. CEC shall require that all contracts with Third-Party Lead Vendors who provide it with lead generation services include each of the following:

- (a) a provision requiring that the Third-Party Lead Vendor comply with:
  - (i) CEC's lead aggregator guidelines in effect at the time of contracting or as may be modified subsequently, subject to approval by the Administrator;
  - (ii) all applicable state and federal consumer protection laws;
  - (iii) if and when applicable to CEC, all provisions in the Code of Conduct referenced in paragraph 105; and
  - (iv) all provisions of the Telephone Consumer Protection Act, 47 U.S.C. § 227;
- (b) a prohibition on attracting Students or obtaining leads by misleading advertising suggesting available employment opportunities rather than educational opportunities;
- (c) a prohibition on representing that a Student or Prospective Student is guaranteed to receive "free" financing from the federal or a state government; *provided, however*, that CEC may permit its Third-Party Lead Vendors to represent that grants and scholarships may be available and would not need to be repaid;
- (d) a prohibition on representing that loans are grants that do not carry with them an obligation to be repaid;
- (e) a provision prohibiting Third-Party Lead Vendors from transferring a Prospective Student inquiry to a CEC institution unless the Prospective Student has expressly informed the Third-Party Lead Vendor that he or she is interested in educational

opportunities. Prior to transferring a Prospective Student to a CEC institution, Third-Party Lead Vendors shall be required to ask the Prospective Student if they are interested in educational opportunities. Should the Prospective Student say “no,” or otherwise provide a clear negative response as to their interest in pursuing educational opportunities, the Prospective Student cannot be directed to a CEC institution. Should the Prospective Student say “I’m not sure,” or otherwise provide an equivocal response as to their interest in pursuing educational opportunities as opposed to job opportunities, the Third-Party Lead Vendor shall be permitted to describe the advantages an education may provide in creating additional job opportunities, but in so doing, the Third-Party Lead Vendor shall be prohibited from referencing any specific salary amounts. The Third-Party Lead Vendor shall then again ask the Prospective Student if they are interested in educational opportunities. Should the Prospective Student respond by providing a clear and affirmative indication that they are interested in educational opportunities, the Third-Party Lead Vendor shall be permitted to continue transferring the Prospective Student to a CEC institution; otherwise, the Prospective Student cannot be transferred to a CEC institution. In all events, prior to transferring any Prospective Student to a representative of any CEC institution, Third-Party Lead Vendors shall be required to confirm the Prospective Student’s interest in pursuing educational opportunities; and

- (f) a requirement that all Third-Party Lead Vendors begin calls made on behalf of CEC with the following statement immediately after the Prospective Student answers the phone, “This is [insert company], this call may be recorded for quality assurance



and training purposes,” or words to that effect. Should the Prospective Student that answers the phone transfer the call to another Prospective Student, the preceding statement must be repeated for this Prospective Student and any other Prospective Student that may be later connected to the call. Additionally, the Third-Party Lead Vendor will clearly state that “this call may be recorded for quality assurance and training purposes” before transferring a call to CEC.

105. In addition, CEC shall negotiate in good faith with the Attorneys General and other post-secondary educational institutions with the goal of codifying a Code of Conduct that may be amended from time to time, for the recruitment of Students through Third-Party Lead Vendors. The Code of Conduct shall include provisions to help ensure that Third-Party Lead Vendors do not make misleading claims or use misleading solicitation strategies when generating leads for post-secondary educational institutions. CEC shall be bound to abide by the provisions of the Code of Conduct that post-secondary educational institutions agree to follow and implement as long as those provisions do not conflict with any other requirement of this AVC. CEC shall not be obligated to abide by the Code of Conduct provisions unless and until the Code of Conduct becomes effective as to industry participants representing (together with CEC) at least 50% of students enrolled in for-profit schools, with such percentage to be calculated using the most recent available data from The Integrated Postsecondary Education Data System regarding student enrollments at four-year and two-year post-secondary educational institutions that award degrees at the associate’s degree level or above. All parties shall use reasonable efforts to encourage the participation of Third-Party Lead Vendors in the Code of Conduct.
  - (a) During the term of this AVC, CEC shall continue to retain its current third-party

vendor, or a vendor who employs comparative services, to monitor the conduct of CEC's Third-Party Lead Vendors and monitor that they are complying with the contractual terms set forth in paragraph 104, including but not limited to whether the Third-Party Lead Vendors are using any unfair, false, misleading, deceptive, or abusive acts or practices (as those terms are commonly understood in the context of consumer protection laws), and the use of any incentive, discount, or inducement of any kind to encourage Student inquiries or otherwise used to recruit Students. Any decision to switch from its current vendor to another vendor shall be done in consultation with and approval by the Administrator.

106. If CEC learns that a Third-Party Lead Vendor or a sub-vendor, which for the purposes of this paragraph shall mean a third-party utilized by a Third-Party Lead Vendor to assist it in providing Prospective Student inquiries to CEC, that provides services to the Third-Party Lead Vendor has failed to materially comply with the contractual terms set forth in paragraphs 104(a)(ii) through 104(f), or has failed to materially comply with any of CEC's Lead Aggregator Guidelines that would give rise to a violation of paragraphs 104(a)(ii) through 104(a)(iv) ("a Violation"), CEC shall retain a record of such Violation (which record shall be available to the Administrator and the Attorneys General upon request) for a period of two (2) years and shall address such Violation by taking corrective action against the segment of the Third-Party Lead Vendor's business in which the Violation occurred (for example, if the Third-Party Lead Vendor commits a Violation related to a webpage, electronic solicitation, or other online advertisement, CEC shall not be required to take corrective action against that Third-Party Lead Vendor with respect to any call center, that the Third-Party Lead Vendor may be providing to CEC) or by demanding

corrective action against the sub-vendor as follows:

- (a) First Violation within any rolling 12-month period: CEC shall notify the Third-Party Lead Vendor of the Violation and the steps it must take to correct the Violation. If, within five (5) business days, the Third-Party Lead Vendor does not document that it is actively engaged in making the required changes, the Violation shall be escalated to CEC's Compliance Department, which shall inform the Third-Party Lead Vendor and pause the campaign, or if the Violation was committed by a sub-vendor, demand that the Third-Party Lead Vendor pause the sub-vendor's participation in the campaign, until the Violation is corrected;
- (b) Second Repeated Violation within any rolling 12-month period: CEC shall notify the Third-Party Lead Vendor of the Violation and the steps it must take to correct the Violation. If, within five (5) business days, the Third-Party Lead Vendor does not document that it is actively engaged in making the required changes, the Violation shall be escalated to CEC's Compliance Department, which shall inform the Third-Party Lead Vendor and pause the campaign, or if the Violation was committed by a sub-vendor, demand that the Third-Party Lead Vendor pause the sub-vendor's participation in the campaign, for thirty (30) days or until the Violation is corrected, whichever is longer; and
- (c) Third Repeated Violation within any rolling 12-month period: CEC shall notify the Third-Party Lead Vendor of the Violation and the steps it must take to correct the Violation. If, within five (5) business days, the Third-Party Lead Vendor does not document that it is actively engaged in making the required changes, the Violation shall be escalated to CEC's Compliance Department, which shall inform

the Third-Party Lead Vendor that the segment of the Third-Party Lead Vendor's business in which the Violations occurred shall be removed from CEC's vendor list for a period of at least one (1) year, or if the Violation was committed by a sub-vendor, that the Third-Party Lead Vendor must cease using the sub-vendor for CEC's account for a period of at least one (1) year;

*provided, however,* that nothing in this paragraph shall be deemed to limit or otherwise affect CEC's obligations under paragraph 107 of this AVC.

107. Termination Violations.

- (a) For purposes of this paragraph, a "Termination Violation" means any one of the following occurrences:
  - (i) a Third-Party Lead Vendor's webpage, electronic solicitation, or other online advertisement references both a post-secondary educational opportunity and an employment opportunity, and the webpage, electronic solicitation, or online advertisement (1) uses a substantially smaller font size to present the educational opportunity as compared with the employment opportunity or (2) represents the educational opportunity as a "want ad" or employment application;
  - (ii) a Third-Party Lead Vendor's webpage, electronic solicitation, or other online advertisement states that the Prospective Student (1) is eligible for a scholarship, grant, or financial aid as the result of having already won a drawing or raffle, (2) has been specially selected to receive a scholarship, grant, or financial aid, or (3) is entitled to receive compensation to fund his or her education in exchange for completing a form; or

- (iii) a Third-Party Lead Vendor's webpage, electronic solicitation, or other online advertisement states that a Prospective Student will receive compensation to fund his or her post-secondary education that will not need to be repaid, unless the statement refers to grants that are expressly stated to be subject to eligibility.
  - (b) Notwithstanding anything in paragraph 106 to the contrary, in the event that a Third-Party Lead Vendor incurs three Termination Violations within a 180-day period, CEC shall, within thirty (30) days of discovering the third such Termination Violation, terminate any outstanding insertion orders to the segment of the Third-Party Lead Vendor's business in which the Termination Violations occurred and not issue any new insertion orders to that business segment for at least ninety (90) days if the Termination Violations were attributable to the Third-Party Lead Vendor, or if the Termination Violations were attributable to a sub-vendor, demand that the Third-Party Lead Vendor must cease using the sub-vendor for CEC's account a period of at least ninety (90) days; *provided, however*, that the requirements of this subparagraph shall not apply if the CEC and/or the Third-Party Lead Vendor document to the reasonable satisfaction of the Administrator that the three Termination Violations that would otherwise have triggered the requirements of this subparagraph represented, in the aggregate, no more than 1% of the total Prospective Student leads from the Third-Party Lead Vendor during the relevant period.
108. Upon written notice from the Attorneys General or Administrator that a Third-Party Lead Vendor has failed to comply with the contractual terms set forth in paragraph 104 of this



AVC, or any provision of an applicable state consumer protection law, CEC shall conduct an investigation of the Third-Party Lead Vendor practice and report the results of that investigation to the Attorneys General and to the Administrator within thirty (30) days, unless the Attorneys General agree otherwise.

109. CEC shall maintain policies and procedures and take appropriate action, including but not limited to exercising any rights available to it under a contract, to require Third-Party Lead Vendors to comply with this AVC. Appropriate action shall be determined by the nature and circumstance of the alleged Violation, including but not limited to the pattern or severity of the alleged conduct.
110. Subject to the prior approval of the U.S. Department of Education, CEC shall work in good faith to develop and implement a system of paying Third-Party Lead Vendors based on the actual quality of leads produced by the particular vendor.
111. Nothing in this AVC limits the right of the Attorneys General to investigate or take any action against Third-Party Lead Vendors for any violation of applicable law, nor shall anything in this AVC be construed to limit the remedies available to the Attorneys General for any violation of applicable law by Third-Party Lead Vendors.

#### **ENFORCEMENT**

112. The terms of this paragraph apply only during the term of the Administrator.
  - (a) If at any time it appears that CEC is engaged in a practice or pattern of non-compliance with this AVC, or commits an egregious act of non-compliance with this AVC, either on the basis of information obtained by the Administrator pursuant to the Work Plan or from information obtained through any other source, then the Administrator shall review the relevant facts, collect whatever additional facts the

Administrator deems necessary, and seek CEC's position as to the practice, pattern, or egregious act of alleged non-compliance and related instances of individual violations. If the Administrator's review establishes either a pattern or practice of non-compliance or egregious act of non-compliance with this AVC, then the Administrator shall work in conjunction with CEC to devise a corrective action plan to remedy such practice or pattern of non-compliance, including a reasonable period for corrective action and implementation of such plan. To the extent that the Administrator and CEC are unable to agree to a corrective action plan, the Attorneys General may take whatever action they deem necessary, including but not limited to bringing an action to enforce this AVC, filing a new original action, conducting further investigation, or attempting to negotiate a corrective action plan directly with CEC. Should the Attorneys General choose to file a new original action, nothing referred to in this paragraph shall affect the release in paragraph 131.

- (b) At a reasonable time following the period for corrective action, the Administrator shall provide a report to the Executive Committee, setting forth:
  - (i) a description of the practice or pattern of non-compliance and related instances of individual violations of this AVC (including the relevant facts);
  - (ii) a description of the corrective action plan;
  - (iii) findings by the Administrator as to whether the Administrator deems it reasonably likely that CEC is in substantial compliance with the terms of this AVC, including but not limited to whether CEC has ceased to engage in a practice or pattern of non-compliance; and

- (iv) a description of CEC's views as to the foregoing matters.
  - (c) The Attorneys General agree that they will meet and confer with CEC concerning the subject of the action before filing any action related to this AVC, so long as CEC makes necessary representatives available to meet and confer in a timely manner. However, an Attorney General may take any action where the Attorney General concludes that, because of a specific practice, an imminent threat to the health, safety, or welfare of the citizens of the State exists, or the practice creates a public emergency requiring immediate action.
  - (d) The Attorneys General agree that no action may be filed to enforce the terms of this AVC unless they have proceeded as set forth in this paragraph. However, an Attorney General may take any action where the Attorney General concludes that, because of a specific practice, an imminent threat to the health, safety, or welfare of the citizens of the State exists, or the practice creates a public emergency requiring immediate action.
113. The terms of this paragraph shall apply following the term of the Administrator.
- (a) For the purposes of resolving disputes with respect to compliance with this AVC, should any of the Attorneys General have a reasonable basis to believe that CEC has engaged in a practice that violates a provision of this AVC and decide to pursue the matter, then such Attorney General shall notify CEC in writing of the specific practice in question, identify with particularity the provision of this AVC that the practice appears to violate, and give CEC thirty (30) days to respond to the notification. Within thirty (30) days of its receipt of such written notice, CEC shall provide a good-faith written response to the Attorney General notification,

containing either a statement explaining why CEC believes it is in compliance with this AVC, or a detailed explanation of how the alleged violation occurred and a statement explaining how CEC intends to remedy the alleged breach.

- (b) Should any of the Attorneys General have a reasonable basis to believe that CEC has engaged in a practice that violates a provision of this AVC and decide to pursue the matter, and following notice to CEC as provided in subparagraph (a), CEC shall provide the Attorneys General reasonable access to inspect and copy relevant, non-privileged records and documents in the possession, custody, or control of CEC that relate to CEC's compliance with the identified practice that the Attorneys General believe may violate this AVC. If the Attorneys General make or request copies of any documents during the course of that inspection, the Attorneys General will provide a list of those documents to CEC. This provision does not limit the rights of the Attorneys General to otherwise serve subpoenas or CIDs on CEC or to enforce them.
- (c) The Attorneys General may assert any claim that CEC has violated this AVC in a separate civil action to enforce compliance with this AVC, or may seek any other relief afforded by law to enforce compliance with this AVC, but only after providing CEC an opportunity to respond to the notification described in subparagraph (a); *provided, however*, that an Attorney General may take any action if the Attorney General concludes that a specific practice alleged to be in violation of this AVC requires immediate action due to an imminent threat to the health, safety, or welfare of the public, or the practice creates a public emergency requiring immediate action.

114. The Attorneys General agree to make good faith efforts to coordinate any future efforts to enforce violations of this AVC to the extent they are reasonably able to do so. To that end, each Attorney General agrees to provide notice to the Executive Committee at least ten (10) business days prior to the filing of any action to enforce this AVC against any of the parties released from liability pursuant to paragraph 131. However, nothing in this paragraph shall be construed so as to limit the right of a state to enforce any law in any action by that state not related to enforcement of compliance with this AVC. In addition, the notice requirement stated herein shall not apply to the extent that the relevant Attorney General concludes that further delay in acting constitutes a threat to public health, safety, or welfare, or that the action intended to be taken addresses a public emergency requiring immediate action. For the avoidance of doubt, nothing in this paragraph shall relieve the Attorneys General of the requirements of paragraphs 112 and 113 of this AVC, which must be satisfied before any Attorney General may provide the notices required by this paragraph.
115. Subject to the release set forth in paragraph 131, nothing in this AVC limits the right of the Attorneys General to conduct investigations or examinations or file suit for any violation of applicable law, not related to the enforcement of compliance with this AVC nor shall anything in this AVC be construed to limit the remedies available to the Attorneys General for any violation of applicable law that is not released by this AVC. For the avoidance of doubt, nothing in this paragraph shall be construed to modify the procedures to be followed prior to the filing of an action to enforce the terms of this AVC, as set forth in paragraphs 112 through 114.



**INSTITUTIONAL RECEIVABLES**

116. For purposes of this paragraph and paragraph 117, a “Qualifying Former Student” means any former student whose last known address at the time of the Effective Date is in a state that is a party to this AVC and either (a) attended a CEC institution which was closed prior to the Effective Date or is currently scheduled to close before December 31, 2018; or (b) whose final day of attendance at AIU or CTU occurred on or before December 31, 2013. As partial consideration for the release set forth in paragraph 131, without any admission of wrongdoing, CEC agrees to forgo any and all efforts to collect any amounts that are owed to CEC by such Qualifying Former Students (hereinafter “Institutional Receivables”) on the first day of the month following after the Effective Date which amounts totaled, as of December 1, 2018, approximately \$493,687,220.00. The parties agree that issuance of 1099s is not required, and that 1099s will not be issued to Qualifying Former Students. For the avoidance of doubt, Institutional Receivables shall not include any amounts that are owed to non-CEC entities, such as, for example, federal student loans owed to the United States government. In the event that any Qualifying Former Student or a co-signer for a Qualifying Former Student attempts to make a payment to CEC after the first day of the month following thirty (30) days after the Effective Date that relates to Institutional Receivables, CEC shall use all reasonable efforts to refuse such payment and return the payment. CEC shall request that any and all trade line information related to amounts covered by this paragraph be deleted from Qualifying Former Students’ credit reports, to the extent that such trade line information exists, at CEC’s own expense. For the avoidance of doubt, it is not the Parties’ intent to allow Qualifying Former Students to recover the amounts CEC is foregoing collection of pursuant to this paragraph in any other forum.

117. On or before sixty (60) days after the Effective Date, CEC shall send a letter by U.S. mail to each Qualifying Former Student at his or her last known mailing address notifying such former students that CEC are forgoing collection on their Institutional Debt, including all interest and fees. The notice shall state that due to a recent settlement with the Attorneys General the student's account balance owing to CEC is \$0 and shall encourage the student to advise any and all co-signers that the student's account balance owing to CEC has been reduced to \$0. The notice shall also inform the student that CEC will send a copy of the notice to each of the credit reporting agencies (*i.e.*, TransUnion, Equifax, and Experian). The notice shall further inform the student that if the student finds that the amounts owed to CEC by the student are still erroneously appearing on the student's credit report after one hundred and twenty (120) days and notifies CEC, then CEC, at its own expense, shall promptly and properly notify the appropriate credit reporting agency, whether directly or indirectly, of any change(s) to be made to the credit reporting resulting from the application of the terms of this AVC. The notice shall provide CEC's contact information for making a request to correct a credit report and for any additional inquiries about the student's account.

#### **PAYMENT TO THE STATES**

118. CEC shall pay \$5 million (the "Payment Amount") to the Attorneys General. CEC and the Attorneys General agree that CEC shall make this payment according to instructions communicated to CEC by the Attorneys General of the State of Connecticut and the State of Iowa, including allocated distributions to the Attorneys General as determined by the Executive Committee and a payment of \$500,000.00 to the National Association of Attorneys General Financial Services and Consumer Protection Fund and \$250,000.00 to

the State Center. The Texas Attorney General shall receive a payment of \$50,000.00. Payment by CEC shall be made no later than thirty (30) days after the Effective Date of this AVC and after CEC's receipt of such payment instructions. The Executive Committee shall, in its sole discretion, determine the amount to be allocated to each Attorney General from the Payment Amount. Each Attorney General may, at his or her sole discretion, use such allocation for any purpose or expenditure permitted by law, including but not limited to attorneys' fees and other costs, and/or for any other consumer protection purpose. However, no portion of the Payment Amount or such allocation shall be characterized as the payment by CEC of a fine, civil penalty, or forfeiture.

**TIME TO IMPLEMENT AND DURATION**

119. Except as otherwise provided in paragraphs 116 and 117 and Exhibit A hereto, CEC shall implement the terms of this AVC by no later than the Effective Date.
120. With respect to each of the paragraphs of this AVC listed in Exhibit A hereto, CEC shall implement the terms of the relevant paragraph of this AVC by no later than the date set forth in Exhibit A.
121. Except as otherwise provided in paragraphs 37 and 48, CEC shall be relieved of its obligations under this AVC on the sixth anniversary of the Effective Date; provided, however, that CEC's obligations under paragraphs 72 through 80, 82, 90, 91 (first sentence only), and 133 through 139 of this AVC shall remain in effect unless and until the AVC is terminated or modified by the Parties.
122. Beginning on the fourth anniversary of the Effective Date, CEC shall have the right to petition the Executive Committee to be relieved of its obligations under specific identified paragraphs of this AVC that CEC believes have become overly burdensome or

unnecessary. CEC shall set forth in writing the reasons why it believes it should be relieved from such obligations and any additional factors that it would like the Executive Committee to consider. Moreover, if the U.S. Department of Education adopts regulations that establish a uniform approach for the calculation and disclosure of job placement rates that is applicable to CEC institutions, then CEC may petition the Executive Committee to be relieved of its obligations under paragraph 23 and paragraphs 61 through 69 on the date when such regulations become effective. The Executive Committee shall consider any petitions made by CEC in good faith and, in each case, the Executive Committee shall be obligated to meet and confer with CEC within sixty (60) days of the request being sent and to make a recommendation about the petition to the Attorneys General within sixty (60) days thereafter.

123. In the event that CEC sells or otherwise transfers control of American InterContinental University or Colorado Technical University, to a third-party acquirer (the “Acquiring Company”), and the Acquiring Company becomes subject to the terms of this AVC as a successor to CEC, the Acquiring Company shall assume CEC’s rights to petition under this paragraph with respect to the institutions sold or transferred by CEC.

#### **MISCELLANEOUS PROVISIONS**

124. All obligations undertaken by CEC under this AVC shall apply prospectively. Nothing herein, including the powers and duties of the Administrator to review CEC’s compliance with this AVC shall apply to any of the schools owned or operated by Career Education Corporation fully taught out by December 31, 2018.
125. Nothing in this AVC shall override or prevent CEC from complying with its obligations under the August 19, 2013 Assurance of Voluntary Discontinuance with the New York

Attorney General, including its obligations regarding placement rate disclosures.

126. During the term of this AVC, if the position of the Administrator is vacant, then, to the extent that this AVC or the Work Plan referenced in paragraph 35 requires the Administrator's approval or consent for CEC to take a particular action, then CEC shall be entitled to take that action if it notifies the Attorneys General of its intent to act and the Attorneys General fail to object with particularity within thirty (30) days. If the Attorneys General object and particularize the bases for the objection within the thirty (30) day period, then the Parties shall promptly meet and confer, following which CEC shall be entitled to seek judicial review with regard to the objection if necessary.
127. Either the Attorneys General or CEC may request to meet and confer with respect to any aspect of this AVC or its implementation by notifying the other party. The notice shall state the subjects proposed to be discussed. The recipient of the notice shall in good faith make itself and/or its representatives available to meet and confer at a mutually convenient time within thirty (30) days of the notice being sent.
128. This AVC is for settlement purposes only. No part of this AVC constitutes or shall be deemed to constitute an admission by CEC that they have ever engaged in any conduct proscribed by this AVC.
129. This AVC is made without trial or adjudication of any issue of fact or law by a court at law or equity, or finding of liability or fact of any kind, and no party to this agreement shall make contrary representations. This AVC is not intended by the parties to constitute evidence against CEC in, or provide any basis for, any action brought by any person or entity for any violation of the common law, any federal or state statute or regulation, or constitute evidence in, or provide any basis for, any defenses, claims or assertions by or on



behalf of current or former Students seeking student loan forgiveness or defense to repayment claims initiated at or by the U.S. Department of Education. Further, this AVC is not intended by the parties to constitute evidence in favor of CEC in, or provide any basis for, any defense put forward by CEC against any alleged violation of the common law, or any federal or state statute or regulation, or to constitute evidence in or provide any basis for any defenses, claims or assertions by or on behalf of CEC seeking to disallow student loan forgiveness or defense to repayment claims initiated at or by the U.S. Department of Education.

130. Notwithstanding the provisions of paragraphs 128, 129, or any other provision of this AVC, this AVC may be used as evidence in an action brought by the Attorneys General to enforce the terms of this AVC for the sole purpose of establishing those terms of the AVC that any such action seeks to enforce. In addition, notwithstanding the provisions of paragraphs 128, 129, or any other provision of this AVC, this AVC may be used by CEC and may constitute evidence in favor of CEC in any proceeding (a) brought by or on behalf of Students whose institutional debt has been forgiven pursuant to the provisions of paragraphs 116 and 117 of this AVC for the sole purpose of establishing the amount of institutional debt forgiven, or (b) brought by the Attorneys General seeking relief or recovery for claims or other matters released pursuant to paragraph 131 of this AVC for the sole purpose of establishing the matters allegedly released, or (c) in any action brought by the Attorneys General to enforce the terms of this AVC for the sole purpose of establishing conditions precedent to the bringing of such action, pursuant to paragraphs 112 and 113.
131. As of the Effective Date, the Attorney Generals hereby release CEC from any and all civil

claims, actions, causes of action, damages, losses, fines, costs, and penalties, pursuant to each Attorney General's State's consumer protection and trade practice statutes, that have been or could have been brought against CEC or any of their respective current or former subsidiaries, affiliates, divisions, agents, representatives, and each of their respective officers, directors, shareholders, members, insurers, attorneys or employees on or before the Effective Date related to (1) the allegations set forth in paragraph 2 and (2) CEC's institutional lending practices that are the subject of paragraphs 116 and 117. Notwithstanding any other term of this AVC, the following do not comprise released claims: private rights of action; criminal claims; claims of environmental or tax liability; claims for property damage; claims alleging violations of State or federal securities laws; claims alleging violations of State or federal antitrust laws; claims brought by any other agency or subdivision of the State; claims alleging violations of State or federal privacy laws or State data breach laws; and claims alleging a breach of this AVC.

132. The Parties agree that this AVC does not constitute an approval by the Attorneys General of any of CEC's past or future practices, and CEC shall not make any representation to the contrary.
133. The requirements of this AVC are in addition to, and not in lieu of, any other requirements of state or federal law. Nothing in this AVC shall be construed as relieving CEC of the obligation to comply with all local, state, and federal laws, regulations, or rules, nor shall any of the provisions of this AVC be deemed as permission for CEC to engage in any acts or practices prohibited by such laws, regulations, or rules.
134. Nothing contained in this AVC shall be construed to create or waive any individual private right of action.

135. CEC shall not participate directly or indirectly in any activity to form or proceed as a separate entity or corporation for the purpose of engaging in acts prohibited in this AVC or for any other purpose which would otherwise circumvent any part of this AVC.
136. If any clause, provision or section of this AVC shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this AVC and this AVC shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.
137. The section headings and subheadings contained in this AVC are included for convenience of reference only and shall be ignored in the construction or interpretation of this AVC.
138. To the extent that any changes in CEC's business, advertisements, and/or advertising practices are made to achieve or facilitate conformance to the terms of this AVC, the fact that such changes were made shall not constitute any form of evidence or admission, explicit or implicit, by CEC of wrongdoing.
139. In the event that any statute, rule, or regulation pertaining to the subject matter of this AVC is enacted, promulgated, modified, or interpreted by any federal or state government or agency, or a court of competent jurisdiction holds that such statute, rule, or regulation is in conflict with any provision of this AVC, and compliance with this AVC and the subject statute, rule, or regulation is impossible, CEC may comply with such statute, rule, or regulation and such action in the affected jurisdiction shall not constitute a violation of this AVC. CEC shall provide written notices to the Attorneys General and the Administrator, if applicable, that it is impossible to comply with this AVC and the subject law and shall explain in detail the basis for claimed impossibility, with specific reference to any

applicable statutes, regulations, rules, and court opinions. Such notice shall be provided immediately upon CEC learning of the potential impossibility and at least thirty (30) days in advance of any act or omission which is not in compliance with this AVC. Nothing in this paragraph shall limit the right of the Attorney General to disagree with CEC as to the impossibility of compliance and to seek to enforce this AVC accordingly.

140. All notices under this AVC shall be provided to the following via email and Overnight Mail:

FOR CEC

Jeffrey D. Ayers  
Senior Vice President, General Counsel and Secretary  
Career Education Corporation  
231 N. Martingale Rd.  
Schaumburg, Illinois 60173  
[jayers@careered.com](mailto:jayers@careered.com)

Jerry W. Kilgore  
Cozen O'Connor  
Three James Plaza  
Suite 1420  
Richmond, VA 23219  
[jkilgore@cozen.com](mailto:jkilgore@cozen.com)

FOR THE STATE OF TEXAS

Office of the Texas Attorney General  
Consumer Protection Division  
Attention: D. Esther Chavez  
P.O. Box 12548  
Austin, Texas 78711-2548  
[Esther.Chavez@oag.texas.gov](mailto:Esther.Chavez@oag.texas.gov)

**ATTORNEYS FOR THE STATE OF TEXAS**

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

BRANTLEY STARR  
Deputy First Assistant Attorney General

DARREN L. MCCARTY  
Deputy Attorney General for Civil Litigation

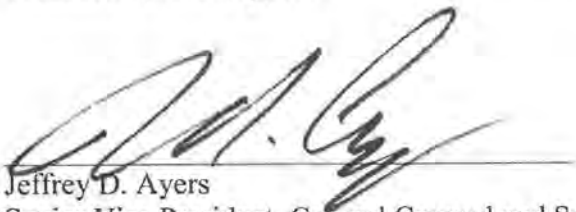
PAUL SINGER  
Chief, Consumer Protection Division



D. ESTHER CHAVEZ  
Senior Assistant Attorney General  
State Bar No. 04162200  
Office of the Texas Attorney General  
P.O. Box 12548  
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Facsimile: (512) 463-8301  
Email: [Esther.Chavez@oag.texas.gov](mailto:Esther.Chavez@oag.texas.gov)  
Dated: **JAN. 2,** 2019.

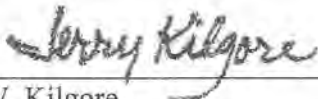


For Career Education Corporation, American InterContinental University, Inc., and Colorado Technical University, Inc.

A handwritten signature in black ink, appearing to read 'J. D. Ayers', is written over a horizontal line.

Jeffrey D. Ayers  
Senior Vice President, General Counsel and Secretary  
Career Education Corporation  
231 N. Martingale Rd.  
Schaumburg, Illinois 60173  
jayers@careered.com

Counsel for Career Education Corporation, American InterContinental University, Inc., and  
Colorado Technical University, Inc.



---

Jerry W. Kilgore  
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Three James Plaza  
Suite 1420  
Richmond, VA 23219  
Phone: (804) 762-6916  
jkilgore@cozen.com



**Exhibit A – Implementation Schedule**

AVC Paragraph(s)	Subject Matter	Deadline for Compliance
¶¶ 54-59 (and all other references)	Single-Page Disclosure Sheet <sup>1</sup>	180 days from the Effective Date, subject to the qualifications contained in the relevant paragraphs regarding what information must be contained in the Single-Page Disclosure.
¶¶ 70-71	Electronic Financial Impact Platform	CEC shall have one hundred eighty (180) days from the Effective Date to complete development, have approved by the Administrator in consultation with the Attorneys General, and implement its Electronic Financial Impact Platform

<sup>1</sup> All capitalized terms used in this Exhibit A shall have the meaning given to them in the AVC.



# PROGRAM NAME

## PROGRAM COST AND LENGTH

TUITION AND FEES\*: \$XX,XXX PROGRAM LENGTH: XX months

Tuition:	Total Credits:	Cost Per Credit Hour:	Technology Fee:	Graduation Fee:
\$XX,XXX	XXX	\$XXX	\$XXX/term	\$XX

\*The amounts shown above include costs for the entire program, assuming normal time to completion. In addition, a non-refundable \$150 Graduation Fee will be charged to the student's account during the final term. Program length and cost may vary due to multiple factors including eligible transferred credits, program pacing and proficiency credit awarded for passing knowledge assessments.

## TRANSFER CREDITS

- Course credits are not guaranteed to transfer to other schools. Transferability of credits is at the sole discretion of the receiving institution.
- Not all credits are eligible to transfer.

The Prior Learning Assessment Team can determine what credits students may be eligible to transfer into their current program. You can transfer in up to 75% of credits required for a degree. See the university's catalog regarding transfer credit policies.

## STUDENT SUCCESS & OUTCOMES

THE TYPICAL GRADUATE LEAVES WITH A LOAN DEBT OF: \$XX,XXX

The median debt of borrowers who completed this program. This debt includes federal, private, and institutional loans.

SUCCESS OF STUDENTS WHO ENROLL

XX% of Title IV students complete the program within XX months



XX out of XX complete within XX months



XX out of XX do not complete within XX months

THE TYPICAL GRADUATE EARNS \$XX,XXX PER YEAR AFTER LEAVING THIS PROGRAM.

The median earnings of program graduates who received Federal aid.

**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 13**





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UPSHOT

DEGREES OF EDUCATION

# ***Corinthian Colleges Is Closing. Its Students May Be Better Off as a Result.***



By Kevin Carey

July 2, 2014

Late last month, Corinthian Colleges, a publicly traded for-profit higher education company that enrolls 72,000 students at over 100 campuses nationwide, announced its imminent bankruptcy.

Facing declining enrollment and multiple investigations into its financial and educational practices from parties including the federal Consumer Financial Protection Bureau and a group of state attorneys general, Corinthian was also under pressure from Department of Education regulators demanding information about practices that, the department said, included “falsifying job placement data used in marketing claims to prospective students and allegations of altered grades and attendance.” The

department announced that it was temporarily withholding some of the federal student aid money that makes up the vast majority of Corinthian's \$1.6 billion in annual revenues. The company said the cash delay would render it effectively insolvent.



Tomi Um

Last week, Corinthian and the Education Department agreed to negotiate a settlement that will amount to an orderly dissolution of the company.

Some campuses will remain open long enough to finish teaching classes, and others are being readied for sale. In terms of the number of students and amount of money involved, it's one of the largest higher education collapses in American history.

Given Corinthian's track record, its students may very well be better off as a result.

The Obama administration has taken an aggressive stance toward for-profit colleges, proposing a [set of regulations](#) that would deny federal aid dollars

to for-profit programs whose graduates don't make enough money to pay back their student loans. The industry sued to block the regulations, which remain tied up in lengthy judicial and federal rule-making procedures. But that didn't prevent the administration from calculating which programs *would have* failed under the new regulations.

Not all for-profit colleges are the same. Some, such as Strayer University, which dates to the 19th century, have had no programs fall short of the proposed federal standards. Others, including the Apollo Group, parent company of the giant University of Phoenix, had a number of substandard programs. Twenty Apollo programs failed — 17 percent of the total — and another three fell in an intermediate warning “zone,” meaning they fell below the federal standards but not by enough to qualify as failed.

## For-Profit Colleges, Failing the Test

Although the Obama administration's proposed regulations governing for-profit colleges are not yet in effect, it has published the results of the test it proposes to apply to their programs — and one company, Corinthian Colleges, has gone out of business as a result.

Corinthian, by contrast, had 162 failing programs, more than any other for-profit college. It also led all for-profits in “zone” programs, with 68. Fully 50 percent of Corinthian's programs missed the standard.

To end up in these categories, programs must have terrible results. At Corinthian-owned Everest College's Newport News, Va., campus, for example, more than 500 students completed the medical assistant certificate program during the 2007-08 and 2008-09 school years. After hitting the job market, they earned an average of \$12,553 per year in 2011. Since 90 percent of full-time medical assistants are paid at least \$21,080 per year, according to the Bureau of Labor Statistics, this suggests that many of these students couldn't get jobs in their field at all. The 10-month program costs “about \$20,000,” according to a telephone representative whom I spoke to this week only after an online representative refused to tell me the price, saying, “I don't have access to that information.” It's not

surprising that a third of all the program's borrowers defaulted on their loans.

The taxpayers will be on the hook for some defaulted loans. Others were backed by Corinthian itself, which has made expensive private loans to its own students despite knowing ahead of time that most of them would default. It did this because by law, no more than 90 percent of the company's revenues may come from federal financial aid. Every dollar that Corinthian lent directly to students allowed it to receive an additional nine dollars in federal aid, making the loans profitable even with default rates of 50 percent or more. At its peak, Corinthian [received](#) more than half a billion dollars per year from the federal Pell Grant program, more than the entire University of California system.

The collapse of Corinthian suggests that increased scrutiny and regulation of the for-profit higher education sector are working as intended, even before the rules themselves are finally enacted. For-profit colleges focused on providing adult learners with valuable job skills at an affordable price remain open. Those that fail to serve students well and act as responsible stewards of taxpayer dollars are beginning to close.

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**“Other” Document Types**

**Cited in Supplemental Complaint, March 19, 2021**

**Document 14**



# Federal Student Aid

An OFFICE of the  
U.S. DEPARTMENT of EDUCATION



## ANNUAL REPORT FY 2020



PROUD SPONSOR *of*  
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**United States Department of Education**

Betsy DeVos  
*Secretary*

**Federal Student Aid**

Mark A. Brown  
*Chief Operating Officer*

**Finance Office**

Alison L. Doone  
*Chief Financial Officer*

November 16, 2020

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U.S. Department of Education, Federal Student Aid, *FY 2020 Annual Report*, Washington, D.C., 20002.

This report is also available under Performance Reports on the Federal Student Aid website at **StudentAid.gov**.

To connect to Federal Student Aid through social media, please visit the Federal Student Aid website at **StudentAid.gov** or on Twitter at **@FAFSA**.

Federal Student Aid strives to improve and enhance the content quality, report layout, and public accessibility of the *Annual Report*. Suggestions on how this report can be made more informative and useful are welcome. The public and other stakeholders are encouraged to submit all questions and comments to **AFRComments@ed.gov**.

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## About This Report



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## About This Report

Federal Student Aid (FSA), a principal office of the United States (U.S.) Department of Education (the Department), is required by legislation to produce an Annual Report, which details the organization's fiscal year financial and program performance. The *Federal Student Aid FY 2020 Annual Report (Annual Report)* is a comprehensive document that provides an analysis of FSA's financial and program performance results for Fiscal Year (FY) 2020 and exhibits the organization's effectiveness in accomplishing its mission. The *Annual Report* enables the President of the United States, the U.S. Congress (Congress), and the public to assess the organization's performance relative to its mission and determine whether FSA has demonstrated accountability for the resources entrusted to it.

This report presents information about FSA's performance as a Performance-Based Organization (PBO), its initiatives, accomplishments, and challenges, as required by the U.S. Office of Management and Budget (OMB) Circular A-11, *Preparation, Submission and Execution of the Budget, Part 6, Section 260*, and Circular A-136, *Financial Reporting Requirements*. The report also satisfies the requirements included in the following federal statutes:

- *Higher Education Act of 1965, as amended*
- *Federal Managers' Financial Integrity Act of 1982*
- *Chief Financial Officers Act of 1990*
- *Government Performance and Results Act of 1993*
- *Government Management Reform Act of 1994*
- *Federal Financial Management Improvement Act of 1996*
- *Reports Consolidation Act of 2000*
- *Improper Payments Information Act of 2002, amended*
- *Government Performance and Results Modernization Act of 2010*
- *Improper Payments Elimination and Recovery Act of 2010*
- *Improper Payments Elimination and Recovery Improvement Act of 2012*

The Department produces the ***U.S. Department of Education FY 2020 Agency Financial Report (AFR)***. That report provides a comprehensive view of the Department's stewardship over its resources and includes a summary of the information contained in the *Annual Report*.

The *Annual Report* is available at **[StudentAid.gov/Annual Report](https://studentaid.gov/Annual-Report)**.

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## Overview of the Federal Student Aid Annual Report

# Overview of the Federal Student Aid Annual Report

The *Annual Report* is organized into the following five sections:



## Management's Discussion and Analysis

Management's Discussion and Analysis provides an overview of the *Annual Report*. It includes a discussion of the FSA mission, its organizational structure, and the fiscal year financial and performance highlights. The section concludes with a discussion of FSA's systems, controls, and compliance with laws and regulations.



## Annual Performance Report

The Annual Performance Report section presents the strategic goals included in the *Federal Student Aid Strategic Plan for Fiscal Years 2015–19 (FY 2015–19 Strategic Plan)* and the draft *Federal Student Aid Five-Year Strategic Plan for Fiscal Years 2020–24 (FY 2020–24 Strategic Plan)*. This section also includes a crosswalk between both strategic plans, and a discussion of the results of the performance metrics under each strategic goal. The section concludes with FSA's fiscal year accomplishments, its legislative and regulatory recommendations to the Department, the Annual Bonus Awards, and the Report of the Federal Student Aid Ombudsman.



## Financial Section

The Financial Section provides a detailed view of FSA's stewardship and accountability for its resources. The audited financial statements begin the section, followed by the accompanying Notes to the Financial Statements, Required Supplementary Information, and the Independent Auditors' Report.



## Other Information

Other Information includes a summary of the Financial Statement Audit, links to the Summary of Management Assurances, and FSA's Management Challenges included in the *AFR*.



## Appendices

The Appendices include Appendix A, which provides the discontinued strategic goals and performance metrics; Appendix B, which lists the acronyms cited throughout the report; and Appendix C, which provides information on the availability of the *Annual Report*.

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Letter from the Chief Operating Officer of Federal Student Aid



Letter from the Chief Operating Officer of Federal Student Aid

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## Letter from the Chief Operating Officer of Federal Student Aid

## Letter from the Chief Operating Officer of Federal Student Aid

**Dear Federal Student Aid Colleagues, Partners, and Customers:**

I am pleased to present the Fiscal Year (FY) 2020 Annual Report that highlights the outstanding work and accomplishments of the entire Federal Student Aid (FSA) organization. This report tells the story of our substantial work to improve the quality of service to customers, foster collaboration among stakeholders, improve operational efficiency and flexibility, and invest in our internal and expanded workforce capability.

This report reflects the spirit of our mission—*Keeping the Promise: Funding America's Future, One Student at a Time*—which is ingrained in the *Higher Education Act of 1965*, as amended. For 55 years, the ideals framing this law have guided the United States (U.S.) Department of Education in facilitating broad access to higher education and enabled FSA's evolution to execute that critical task.



**Mark A. Brown**  
Chief Operating Officer

While broadening access to higher education remains integral to our mission, we are cognizant of, and concerned about, the size of the federal student loan portfolio, which now exceeds \$1.5 trillion. Management of such a vast portfolio requires steady leadership, active stewardship, and transparency. Through internal portfolio analytics and feedback from our customers and other stakeholders, we recognize the need for improvement and are working to improve our programs, products, services, and operations.

During FY 2020, FSA provided more than \$115 billion in federal grants, loans, and work-study funds to approximately 10.8 million students at more than 5,600 participating postsecondary schools. We fulfilled our mission even as we addressed the challenges of the global Coronavirus Disease 2019 (COVID-19) emergency.

In FY 2020, our challenges became opportunities, especially as more than 1,400 FSA employees in 11 offices across the United States deftly transitioned to a 100 percent virtual work posture. Organizational productivity remained high over the past year as employees went from packing in crowded conference rooms to gathering in virtual meetings. PowerPoint slides on big screens suddenly transitioned to screensharing and virtual whiteboards, and FSA shifted resources and assistance online to serve students, families, and partner institutions.

Working closely with our federal student loan partners, we made sure student loan servicers were compliant with the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) student loan relief provisions that suspended loan payments and temporarily set the interest rate on all Department-held loans to zero percent. FSA notified employers to stop wage

## Letter from the Chief Operating Officer of Federal Student Aid

garnishments, and when some employers continued to garnish wages, we worked with the U.S. Department of Treasury to get those wages refunded quickly, expediting more than 2 million Treasury Offset Program/Administrative Wage Garnishment refund payments. And, we developed resources, such as the **StudentAid.gov/coronavirus** webpage, that provided customers with vital information.

In FY 2020, FSA reached new heights in customer service, an improved user experience, proactive partner engagement, and streamlined organizational capabilities. This success was largely due to the innovative planning and work undertaken over the past decade by current and former FSA employees. We have long had in our sights the goals of transforming FSA's technology infrastructure and data processing environments, implementing a world-class user experience, strengthening our partnership with schools, and enhancing our oversight of vendors.

The Next Gen FSA initiative delivered intuitive, self-service tools for students, parents, and borrowers. The new **StudentAid.gov**—FSA's primary website for customers—consolidated the four most-visited websites into one and has steadily added information, tools, and resources that offer personalized guidance about federal student aid. These tools include the Annual Student Loan Acknowledgment, which is designed to help borrowers understand their debt balance—including their lifetime maximums—before borrowing more money. The tools will also help ensure borrowers understand common debt terms. Students who have received grants will also see how much they have received and how much eligibility they have left. In a little more than 5 months, more than 858,000 customers have completed the acknowledgment.

The Aid Summary dashboard gives customers personalized information about loans and grants they have received. For borrowers who have filed an Employment Certification Form to determine their eligibility for Public Service Loan Forgiveness, the Aid Summary dashboard provides them with a count of their qualifying payments. The Make a Payment pilot allows a subset of FSA customers—between five and seven million people—to make a payment on the **StudentAid.gov** website or through their mobile device. Part of the Next Gen FSA roadmap will eventually allow all federal student loan borrowers to do so.

Another tool on **StudentAid.gov**, Loan Simulator, walks students and parents through a guided, easy-to-use wizard that allows them to “test-drive” and compare personalized scenarios, using their own student debt data. This tool helps students set repayment goals and develop informed financial strategies.

Customers can now access all our contact centers through one phone number: 1-800-4-FED-AID. This number includes a new interactive voice response functionality to direct our customers to the appropriate place so they can get help fast. FSA's virtual assistant—Aidan<sup>SM</sup>—uses artificial intelligence to answer more than 3,000 variations of common questions about federal student aid. Available to a subset of FSA customers in the first year of its pilot rollout, Aidan responded to more than 1.3 million messages from nearly 546,000 customers.

Once FSA brings its online Business Process Operations (BPO) vendors, customers will benefit greatly from centralized contact center support. In FY 2020, FSA awarded Next Gen FSA contracts to five companies for services that include corresponding with customers and partners via phone, chat, social media, postal mail, and email, as well as supporting the back-office processing associated with those contacts. FSA will provide comprehensive contact center

## Letter from the Chief Operating Officer of Federal Student Aid

training and oversight, ensuring that BPO vendors have up-to-date knowledge about federal student aid programs to give customers the right answer in every interaction.

FSA strives to be the most-trusted source of information about federal student aid. That includes building trust and collaboration among stakeholders and partners by promoting transparency, accountability, and proactive assistance. FSA closed 96 percent of outstanding *Freedom of Information Act* requests in FY 2020 and adjudicated approximately 150,000 borrower defense applications.

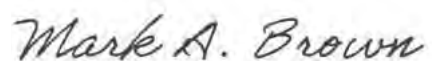
FSA recognizes that by providing proactive technical assistance to postsecondary institutions, schools can administer the federal student aid programs more effectively. In FY 2020, we fulfilled our oversight responsibilities by resolving more than 3,000 deficient audits and flagged financial statements, evaluating more than 2,000 school financial responsibility notifications, and processing 5,500 eligibility-related actions, including recertification applications. Additionally, FSA has reduced the number of outstanding Program Reviews. In FY 2020, we issued more than 240 Program Review Reports and Final Program Review Determinations to institutions and third-party servicers subjected to a program review.

Through the Project Success program, FSA collaborated with guaranty agencies to improve retention, graduation, and cohort default rates at more than 160 minority-serving institutions. At no cost to participating schools, the program provides tools, programs, and other resources for students to increase their financial literacy and help them achieve their higher education goals. Project Success has been extended through September 2022.

During FY 2020, FSA developed a draft *FY 2020–24 Strategic Plan*, our organization’s road map for improving our programs, products, services, and operations. The draft plan fully reflects our work to support customers and partners in every possible way, aggressively advance the Next Gen journey, and meet new and existing requirements.

I invite you to look back on all that our organization achieved in FY 2020, and I encourage you to look ahead to the opportunities that await us for our nation’s students and their families.

Sincerely,



Mark A. Brown  
Chief Operating Officer  
Federal Student Aid  
United States Department of Education  
November 16, 2020



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## Overview of Management's Discussion and Analysis



## Management's Discussion and Analysis (Unaudited)

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## Overview of Management's Discussion and Analysis

# Overview of Management's Discussion and Analysis

Management's Discussion and Analysis provides an overview of the *Annual Report*. It includes the following subsections:

- **Fiscal Year 2020 Organizational Highlights:** Fiscal Year 2020 Organizational Highlights presents Looking Forward at Federal Student Aid, which details the most important events and challenges that FSA faces and discusses the actions taken and progress made by FSA in addressing those challenges. This subsection also includes a presentation of FSA by the Numbers.
- **Mission and Organizational Structure:** Mission and Organizational Structure provides the history of FSA; its mission, vision, and core values; as well as its organizational structure. The section also includes a discussion of the federal student aid programs.
- **Performance Management:** Performance Management presents an overview of FSA's strategic and performance-planning framework, an overview of its draft *FY 2020–24 Strategic Plan*, the close-out details of its *FY 2015–19 Strategic Plan*, and a crosswalk between both strategic plans. This subsection concludes with a discussion of the annual priority goals and the quality of FSA's performance data.
- **Analysis of Financial Statements:** Analysis of Financial Statements provides an overview of FSA's financial data, an analysis of the financial data presented in the audited financial statements, and a discussion of FSA's financial management highlights.
- **Analysis of Systems, Controls, and Legal Compliance:** Analysis of Systems, Controls, and Legal Compliance provides FSA's management assessment in conjunction with the Department's assessment on FSA's internal controls related to the *Federal Manager's Financial Integrity Act of 1982* and its compliance with other laws and regulations related to the compliance of financial systems with federal requirements.

## Fiscal Year 2020 Organizational Highlights

### Looking Forward at Federal Student Aid

A major step forward for FSA in FY 2021 will be the publication of the *FY 2020–24 Strategic Plan*. The *FY 2020–24 Strategic Plan* will serve as the roadmap for FSA to meet existing and new requirements, operationalize the Next Generation Financial Services Environment (Next Gen FSA) initiative—the technical infrastructure designed to improve the customer and partner experience while streamlining FSA's existing operations—and support millions of customers in pursuit of their educational dreams. The goals and objectives within the plan will help FSA meet the deliverables it established to improve customer service and transform the loan servicing programs for students, parents, borrowers, institutions, and taxpayers.

FY 2020 has offered many lessons, and perhaps, the most important is that to effectively operate in the 21st century, FSA must be able to respond quickly to its customers' needs and adapt to major shifts in public policy. The Coronavirus Disease 2019 (COVID-19) global pandemic changed the landscape of higher education and heightened the need for FSA to be responsive to students, parents, borrowers, institutions, and other higher education stakeholders. In response to the pandemic, FSA increased its commitment to customer service, continued its Next Gen FSA journey to an improved digital environment, and worked to instill a stronger culture of accountability with student loan servicers.

To fulfill its commitment during the COVID-19 emergency, FSA collaborated with its student loan servicers and other vendors to quickly execute the student loan relief provisions found in the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act). These provisions suspended payments on Department-held loans and temporarily set the interest rates for loans held by the Department to 0 percent. Although the CARES Act flexibilities expired at the end of FY 2020, presidential action extended the benefits through December 31, 2020. To this end, FSA is committed to safeguarding the careful implementation of all present and future COVID-19 emergency relief efforts for students and families.

In conjunction with executing the *FY 2020–24 Strategic Plan* and managing the extended COVID-19 student loan provisions, FSA will continue to advance the momentum gained in FY 2020. The focus for FY 2021 and beyond is to further deliver on the promise of Next Gen FSA. As discussed, Next Gen FSA already is transforming the experience of learning about, applying for, receiving, and repaying federal student aid for millions of students, parents, and borrowers. In FY 2021, Next Gen FSA will improve the experience of customers and partners—including more than 5,600 postsecondary institutions—by:

- Expanding the availability of FSA's virtual assistant, Aidan<sup>SM</sup>, which uses artificial intelligence and natural language processing to answer common questions from customers about federal student aid,
- Enhancing the **StudentAid.gov** website inclusive of updates with new and existing features (Aid Summary, Loan Simulator, and Make a Payment Pilot), which provide personalized information and tools that help customers make more informed decisions and manage their loans,



## Fiscal Year 2020 Organizational Highlights

- Improving the Public Service Loan Forgiveness (PSLF) Help Tool to assist borrowers with updated information about qualifying employers,
- Modernizing infrastructure systems and every aspect of how federal student aid is delivered and monitored,
- Executing further enrichments to the myStudentAid mobile app which places financial aid information and services at the customers' fingertips,
- Implementing planning for the Next Generation Partner Participation and Oversight (Next Gen PPO) program to transform the way FSA interacts with the thousands of schools, financial institutions, and other partners by creating a single portal, FSA Partner Connect, through which institutions can access FSA systems and processes, streamlining processes for submitting and reviewing program participation and other eligibility materials, and improving FSA workflow tools to support faster decision-making, and
- Improving loan servicing throughout the student aid lifecycle by the appropriate solicitation and acquisition of contracts. Specifically, the contracts will perform the following:
  - Create a state-of-the-art, enterprise-wide core processing capability for new customers.
  - Provide a transitional core processing system to house the legacy portfolio of more than 35 million borrowers.
  - Identify multiple vendors to staff and operate call centers, and manage manual processing associated with customers transitioned to a new loan servicing platform.

As FSA works to modernize its organization through the acquisition of tools and services using contract vehicles, there are two areas on which it will not compromise. First, FSA will remain good stewards of taxpayer dollars and will not pay more than a fair price for services from any vendor. And second, because FSA will not provide customers with anything less than an exceptional experience and exceptional service, vendors' performance will be measured in an objective manner through service-level agreements. These agreements will hold vendors to high operational standards for their service to customers.

To assist in executing in all these areas, and in compliance with the *Further Consolidated Appropriations Act, 2020*, FSA also has developed a Next Gen FSA Strategic Plan. Although Next Gen FSA is embedded within the *FY 2020–24 Strategic Plan*, the Next Gen FSA Strategic Plan includes the subset of goals and objectives focused on the deliverables of this specific initiative. The Next Gen FSA Strategic Plan describes the FSA vision and introduces the Next Gen FSA Strategic Roadmap, which details how Next Gen FSA will work toward an interim servicing solution to continue to meet servicing needs at reasonable costs while also enabling Next Gen FSA capabilities.

But financial aid begins with FSA's flagship deliverable, and that is the Free Application for Federal Student Aid® (FAFSA®) form. For this reason, FSA will also continue to work toward improving not only access to the FAFSA form, but also the ease of completing the application.

## Fiscal Year 2020 Organizational Highlights

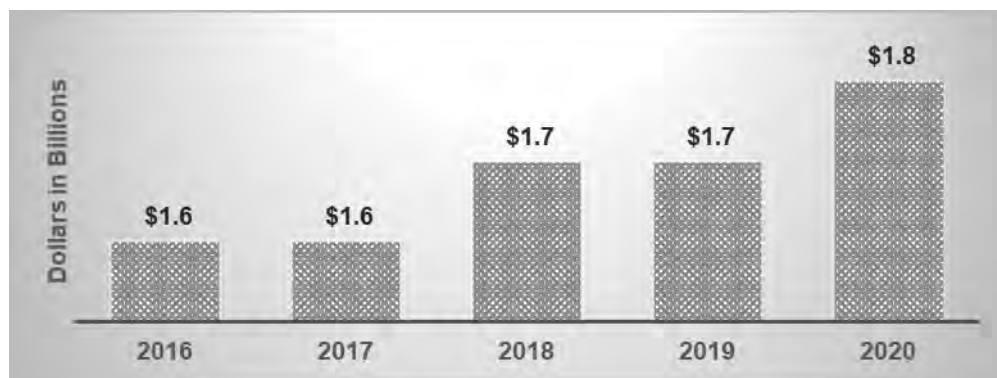
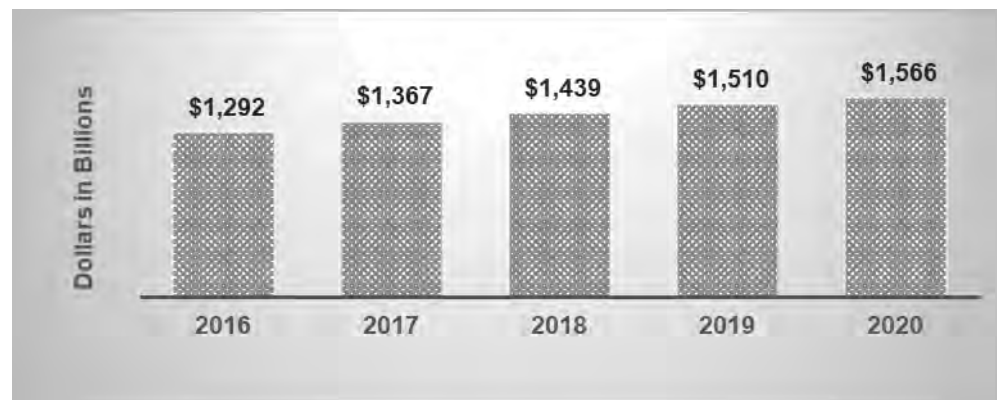
By focusing on increasing customer knowledge about the form and the associated application periods, the Department will better assist students and families with understanding and accurately filling it out. In addition, in FY 2021, FSA will support FAFSA form simplification through technological enhancements such as the Data Retrieval Tool and through flexibilities provided to FSA through the *Fostering Undergraduate Talent by Unlocking Resources for Education Act* (FUTURE Act).

The timeline for implementation of the FUTURE Act is an iterative process and an important measure of FSA performance because the potential outcome of the associated changes will be beneficial to borrowers and stakeholders, visible in both the FAFSA form and other FSA services. FSA will continue to build out and develop the base infrastructure design to ensure effective and timely implementation. High-level designs have been completed and will assist in navigating implementation decisions throughout the fiscal year.

Lastly, in the first half of 2020, FSA conducted a variety of exploratory research activities using different methods of data collection and customer-based research. As work in this area moves forward, FSA plans to use enhanced customer analytics and information learned through improved exit counseling to suggest repayment strategies based on customers' individualized goals, allowing customers to seamlessly enroll in repayment plans, easily establish recurring automatic payments, and feel confident in next steps toward successful repayment or loan forgiveness. FSA will proactively monitor borrower behavior in response to new borrower tools and resources, as well as environmental factors that may impact student loan repayment rates, then use predictive analysis to help guide students into and through loan repayment to reduce the number of delinquent or defaulted borrowers.

## Fiscal Year 2020 Organizational Highlights

## Federal Student Aid Fiscal Year 2020 by the Numbers

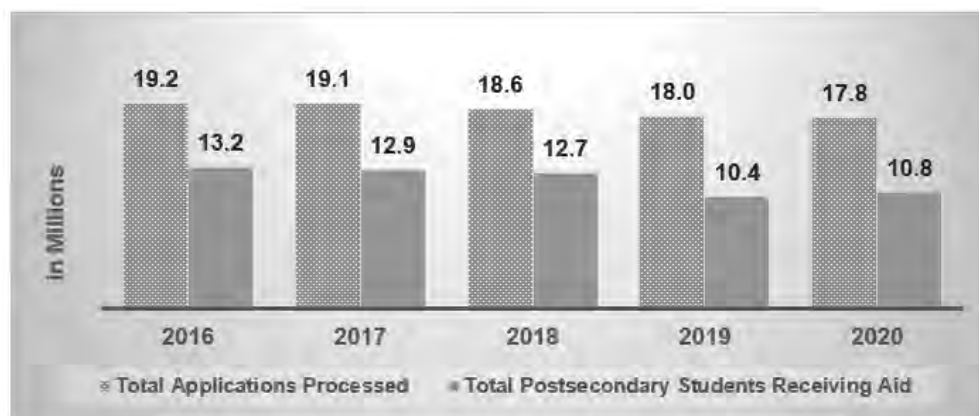
Figure 1: Federal Student Aid Net Outlays<sup>1</sup>  
Fiscal Years 2016–20Figure 2: Federal Student Aid Administrative Budget<sup>2</sup>  
Fiscal Years 2016–20Figure 3: Federal Student Aid Student Loan Portfolio<sup>3</sup>  
Fiscal Years 2016–20

<sup>1</sup> The Budgetary account is also known as the Program account; the Non-budgetary credit reform account is also known as the Financing account. For more information on these two accounts, please refer to Note 5.

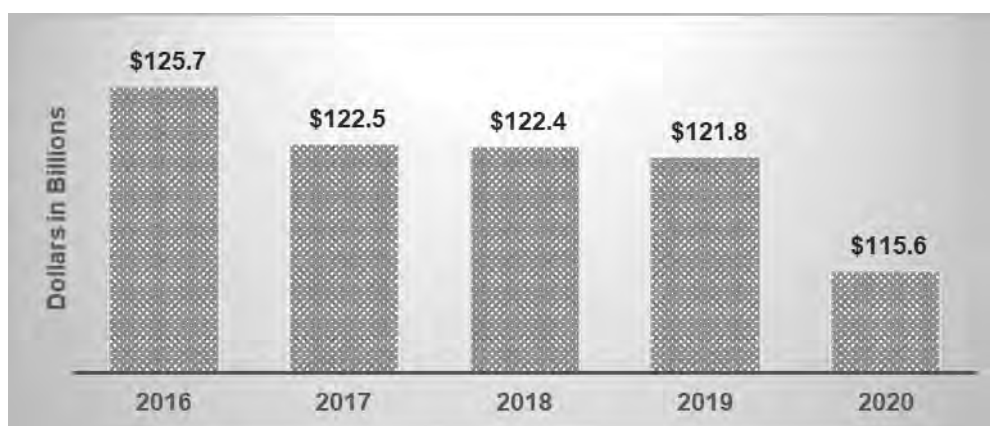
<sup>2</sup> Fiscal Year 2018 amount corrected from \$1.5 to \$1.7.

<sup>3</sup> The amounts in Figure 3 include both lender-held FFEL loans and School-held Perkins loans.

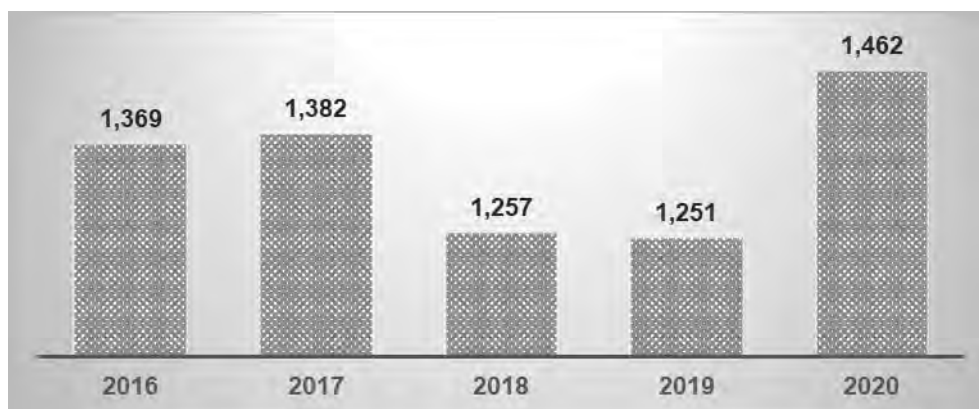
**Figure 4: Total FAFSA® Forms Processed and Total Students Receiving Aid  
Fiscal Years 2016–20**



**Figure 5: Total Federal Student Aid Delivered  
Fiscal Years 2016–20**



**Figure 6: Federal Student Aid Federal Employees<sup>4</sup>  
Fiscal Years 2016–20**



<sup>4</sup> Number of employees listed is as of September 30 of each fiscal year.

## Mission and Organizational Structure

FSA, a principal office of the Department, seeks to ensure that all eligible individuals can benefit from federal financial assistance for education beyond high school. As the nation's largest provider of federal student financial aid, FSA is responsible for implementing and managing federal student financial assistance programs authorized under the *Higher Education Act of 1965*, as amended (HEA). Specifically, Title IV of the HEA (Title IV) authorizes the federal student assistance programs for which FSA is responsible. These programs provide grants, loans, and work-study funds to students attending colleges or career and technical schools.

To execute the Title IV programs, FSA is responsible for a range of functions across the student aid lifecycle, which include:

- Informing students and families about the availability of the federal student aid programs and the process of applying for and receiving aid from those programs,
- Processing millions of FAFSA forms,
- Accurately disbursing, reconciling, and accounting for billions of dollars of federal student aid funds delivered to students annually,
- Managing the outstanding federal student loan portfolio and securing repayment from federal student loan borrowers,
- Offering free assistance to students, parents, and borrowers throughout the entire financial aid process, and
- Providing oversight and monitoring of all program participants—schools, financial entities, and students—to ensure compliance with the laws, regulations, and policies governing the federal student aid programs.

This complex, multifaceted mission calls on a range of staff skills, and demands coordination by all levels of management. Designated as a PBO by Congress in 1998, FSA emphasizes tangible results and efficient performance, as well as continuous improvement of the processes and systems that support its mission.



## Mission and Organizational Structure

### Mission, Vision, and Core Values

FSA's mission is student-focused. This mission drives the organization's vision to be a reliable provider of federal student aid and services and to be the most trusted source of postsecondary education information to students and their families. As part of its vision, FSA strives to assist students and families in making better decisions about their postsecondary education funding options. The core values reflect a culture of integrity, excellence, and collaboration—key components in building a high-performing organization.

**Table 1: FSA Mission, Vision, and Core Values**

MISSION	
<b>Mission</b>	<i>Keeping the Promise: Funding America's Future, One Student at a Time.</i>
VISION	
<b>Vision</b>	To be the most trusted and reliable source of student financial aid, information, and services in the nation.
CORE VALUES	
<b>Integrity</b>	Do the right thing above other interests and hold everyone accountable.
<b>Customer Service</b>	Know what our customers want and ensure we meet their expectations.
<b>Excellence</b>	Strive to be the very best in all we do by embracing a culture of continuous improvement.
<b>Respect</b>	Value individuals by acknowledging the diversity of their contributions, ideas, and beliefs.
<b>Stewardship</b>	Uphold the sacred trust of taxpayers as we work to support the goals of Congress and the Administration.
<b>Teamwork</b>	Work in collaboration with our colleagues and partners to produce the best possible results.

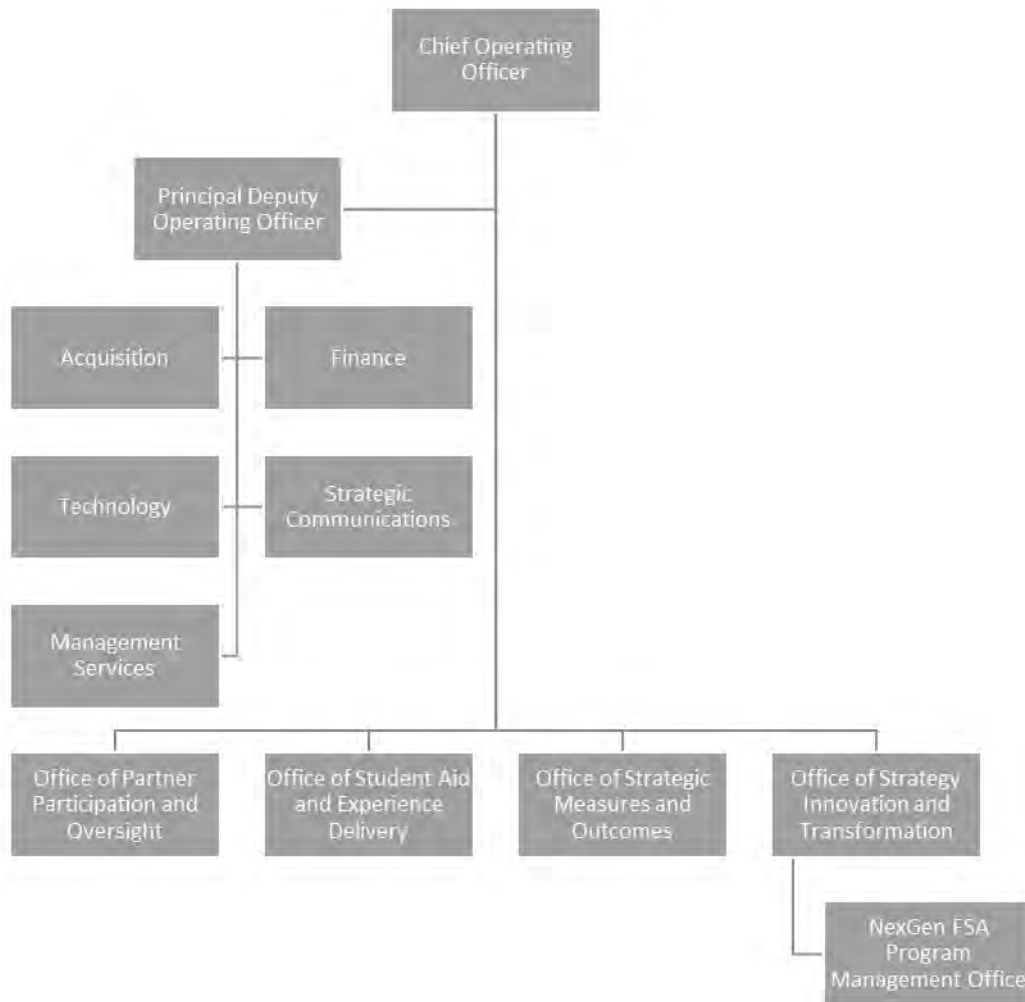
As discussed in detail in the Performance Management section and Annual Performance Report, FSA has translated this vision into a set of clearly defined strategic goals and objectives, with related measurable performance metrics. The realization of these goals will enable the organization to accomplish its mission successfully.

## Mission and Organizational Structure

### FSA Organizational Structure

In FY 2020, FSA operated under a functional organizational structure that aligned the organization with its strategic drivers, business objectives, and mission goals. A Chief Operating Officer (COO) is appointed by the Secretary of Education (Secretary) to lead FSA. In March 2019, the Secretary appointed Mark A. Brown as the FSA COO. Figure 7 illustrates the functional organizations within FSA.

**Figure 7: Federal Student Aid Organizational Chart  
Fiscal Year 2020**



## Mission and Organizational Structure

During FY 2020, FSA operated on an annual administrative budget of approximately \$1.8 billion. As of September 30, 2020, FSA was staffed by 1,462 full-time employees and augmented by contractors who provide outsourced business operations. The workforce is primarily based in FSA's headquarters located in Washington, DC, with 10 regional offices located throughout the country as reflected in the following graphic (See Figure 8). The number of full-time employees at each location is shown in parentheses immediately following the location name.

**Figure 8: Federal Student Aid Regional Map  
Fiscal Year 2020**



## Mission and Organizational Structure

## Significant Legislation that Directs the Federal Student Aid Mission

Several legislative acts guide FSA's mission. The *Higher Education Amendments of 1998* established FSA as a PBO to administer the Title IV programs. The following table, while not all-inclusive, identifies additional significant enactments of legislation that have influenced FSA's mission.

**Table 2: Overview of Legislative Authority**

Legislation	Purpose
<i>Higher Education Act of 1965, as amended</i>	Created the federal student financial assistance programs known as Title IV programs.
<i>Student Loan Reform Act of 1993</i>	Authorized a multi-year phased implementation of the William D. Ford Federal Direct Loan Program.
<i>Higher Education Reconciliation Act of 2005</i>	Allowed graduate and professional students to use the Parent Loan for Undergraduate Studies Loan Program.
<i>College Cost Reduction and Access Act of 2007</i>	Authorized the Teacher Education Assistance for College and Higher Education Grant Program, created the Public Service Loan Forgiveness Program, and established Income Based Repayment plans.
<i>Ensuring Continued Access to Student Loans Act of 2008</i>	Provided the Department with the authority to implement programs to ensure eligible students and parents were not denied access to federal student loans during the credit market disruptions of 2008.
<i>SAFRA Act of 2009</i>	Provided that, beginning July 1, 2010, no new loans would be originated under the Federal Family Education Loan Program.
<i>Bipartisan Student Loan Certainty Act of 2013</i>	Established that federal student loan interest rates will be tied to financial markets and that each loan will have a fixed interest rate for the life of the loan.
<i>Consolidated Appropriations Act, 2014</i>	Transferred all Health Education Assistance Loan Program loans as of July 1, 2014, from the U.S. Department of Health and Human Services to the Department.

## Mission and Organizational Structure

### Federal Student Aid Stakeholders

The community of stakeholders in the student aid delivery system includes students, parents, lenders, guaranty agencies, postsecondary institutions, contracted servicers, and collection agencies, as well as taxpayers and other federal entities such as Congress and OMB.

**Table 3: Role of FSA and Participants in the Federal Student Aid System**

Participants	Participants' Role	FSA's Engagement with Participants
Students	<ul style="list-style-type: none"> <li>Receive aid to finance postsecondary education and repay loans following completion or exit from school.</li> </ul>	<ul style="list-style-type: none"> <li>Explaining federal student aid opportunities and requirements,</li> <li>Providing products, services, and tools to help students pay for postsecondary education,</li> <li>Identifying students who are eligible for aid, and</li> <li>Protecting students and borrowers from unfair, deceptive, or fraudulent practices in the student aid marketplace.</li> </ul>
Guaranty Agencies	<ul style="list-style-type: none"> <li>Insure Federal Family Education Loan Program loans and service their defaulted loan portfolios.</li> </ul>	<ul style="list-style-type: none"> <li>Monitoring compliance,</li> <li>Assisting them in meeting regulatory requirements,</li> <li>Providing technical assistance, and</li> <li>Paying default claims.</li> </ul>
Loan Holders	<ul style="list-style-type: none"> <li>Hold and service outstanding Federal Family Education Loan Program loans to students.</li> </ul>	<ul style="list-style-type: none"> <li>Monitoring compliance,</li> <li>Assisting them in meeting requirements,</li> <li>Providing interest subsidies and Special Allowance Payments; and</li> <li>Educating them regarding policy.</li> </ul>
FSA-Contracted Loan Servicers	<ul style="list-style-type: none"> <li>Service William D. Ford Federal Direct Loan Program portfolio and portions of Federal Family Education Loan Program portfolio,</li> <li>Provide systems and services to support FSA's core operations (e.g., applications, disbursements), and</li> <li>Recover payments from defaulted borrowers.</li> </ul>	<ul style="list-style-type: none"> <li>Entering contractual agreements,</li> <li>Setting performance standards, and</li> <li>Overseeing operations.</li> </ul>
Postsecondary Institutions	<ul style="list-style-type: none"> <li>Determine students' aid packages and disburse funds.</li> </ul>	<ul style="list-style-type: none"> <li>Determining eligibility and disbursing aid,</li> <li>Monitoring compliance and regulatory requirements, and</li> <li>Providing technical assistance.</li> </ul>
Congress	<ul style="list-style-type: none"> <li>Sets statutory requirements for student loan programs as well as a myriad of borrower benefits and budget appropriations.</li> </ul>	<ul style="list-style-type: none"> <li>Providing data and information for decision making and</li> <li>Providing updates on operational performance.</li> </ul>
The President, the Department, and others in the Executive Branch	<ul style="list-style-type: none"> <li>Set regulatory standards and establish policy for the distribution of aid and collection of loan payments.</li> </ul>	<ul style="list-style-type: none"> <li>Providing data that informs policy decisions,</li> <li>Providing recommendations for implementation of new policies, and</li> <li>Sharing information regarding high risk compliance concerns.</li> </ul>



## Mission and Organizational Structure

FSA's responsibilities include coordinating and monitoring the activity of the large number of federal, state, nonprofit, and private entities involved in delivering federal student aid within the statutory framework established by Congress and regulatory framework established by the Department.

### Federal Student Financial Aid Programs

Each year, FSA delivers more than \$115 billion in financial aid to students through the Title IV programs of the HEA. These programs collectively represent the nation's largest source of federal financial aid for postsecondary education students. This aid covers expenses such as tuition and fees, room and board, books and supplies, and transportation. Federal financial aid is mainly distributed to students through:

- **Loans:** Student aid funds that are borrowed to help pay for eligible education programs and must be repaid with interest,
- **Grants:** Student aid funds that do not have to be repaid, unless other conditions apply, and
- **Work-Study:** Part-time employment program that allows students enrolled in college to earn money to help pay for school.

To obtain federal financial aid, prospective aid recipients must complete the FAFSA. In FY 2020, FSA processed more than 17.8 million FAFSA forms, resulting in the delivery of approximately \$115.6 billion in Title IV aid to more than 10.8 million postsecondary students and their families. These students attended more than 5,600 active institutions of postsecondary education that participate in federal student aid programs and which are accredited by agencies recognized by the Secretary.

The following table presents a comparison of the amounts of Title IV aid disbursed to students by program in FY 2020 and FY 2019. A summary discussion of each Title IV program is presented in the paragraphs after the table.

## Mission and Organizational Structure

**Table 4: Summary of Federal Aid Disbursed to Students by Program<sup>5</sup>**  
(Dollars in Millions)

Programs	2020 Aid Disbursed to Students	2019 Aid Disbursed to Students	Difference	Percentage Change
<b>Federal Loan Programs</b>				
William D. Ford Federal Direct Loan Program	\$86,129.4	\$90,156.0	\$(4,026.6)	(4.5)%
Federal Perkins Loan Program	0.0	630.5	(630.5)	(100.0)
Other Loan Programs	-	-	-	0.0
<b>Subtotal Loan Programs</b>	<b>\$86,129.4</b>	<b>\$90,786.5</b>	<b>\$(4,657.1)</b>	<b>(5.1)%</b>
<b>Federal Grant Programs</b>				
Federal Pell Grant Program	\$27,466.5	\$28,974.7	\$(1,508.2)	(5.2)%
Federal Supplemental Educational Opportunity Grant Program	820.5	853.5	(33.0)	(3.9)
The Teacher Education Assistance for College and Higher Education Grant Program	78.1	78.5	(0.4)	(0.5)
Other Grant Programs	0.5	0.4	0.1	(25.0)
<b>Subtotal Grant Programs</b>	<b>\$28,365.6</b>	<b>\$29,907.1</b>	<b>\$1,541.5</b>	<b>(5.2)%</b>
<b>Federal Work-Study Program</b>				
Federal Work-Study Program	\$1,079.3	\$1,078.5	\$0.8	0.1%
Rounding	0.1	0.1	0.0	0.0
<b>Grand Total</b>	<b>\$115,574.4</b>	<b>\$121,772.2</b>	<b>\$(6,197.8)</b>	<b>(5.1)%</b>

### Federal Loan Programs

In fulfilling its program responsibilities, FSA directly manages or oversees a loan portfolio of more than \$1.5 trillion, representing approximately 212 million student loans to more than 45 million borrowers. These loans were made primarily through the first two federal student loan programs described below.

**The William D. Ford Federal Direct Loan (Direct Loan) Program** lends funds directly to students and parents through participating schools. Created in 1993, this program is funded primarily by borrowings from Treasury, as well as an appropriation for subsidy costs. Four different types of direct loans are available for borrowers:

<sup>5</sup> Aid disbursed to students as cited in the table above, and in the following sections concerning the Federal Loan Programs, the Federal Grant Programs, and the Federal Work-Study Program in the Management's Discussion and Analysis, excluding the Federal Perkins Loan Program amounts, are derived from amounts from FSA's and the Department's financial systems. All amounts are fiscal year amounts, except for the Federal Perkins Loan Program, which is reported as the prior award year amount (e.g., Award Year 2018–19 reported in FY 2020). The number of awards or recipients reported in the Management's Discussion and Analysis is derived from a variety of sources including FSA's Common Origination and Disbursement System and data used to support the President's Budget. Recipient counts are based on award year.

## Mission and Organizational Structure

- **Direct Subsidized Loans:** Federal loans based on financial need made to undergraduate students for which the federal government generally does not charge interest while the borrower is in school, in grace, or in deferment status. If the interest is not paid during the grace period, the interest is added to the loan's principal balance.
- **Direct Unsubsidized Loans:** Federal loans made to undergraduate students and graduate students for which the borrower is fully responsible for paying the interest regardless of the loan status. Interest on unsubsidized loans accrues from the date of disbursement and continues throughout the life of the loan.
- **Direct Parent Loans for Undergraduate Students (PLUS) Loans:** Federal loans made to graduate or professional students and parents of dependent undergraduate students for which the borrower is fully responsible for paying the interest regardless of the loan status.
- **Direct Consolidation Loans:** Federal loans that allow the borrower to combine multiple existing federal student loans into one new loan. The borrower will only have to make one monthly payment on the consolidation loan, and the repayment term of the loan may be longer than the terms of the original loans, which may result in a lower monthly payment.

As of September 30, 2020, FSA's portfolio of Direct Loans included \$1,100.5 billion in credit program receivables, net. In FY 2020, the Department made \$86.1 billion<sup>6</sup> in net loans to 7.9 million recipients.

Under the **Federal Family Education Loan (FFEL) Program**, students and parents obtained federal loans through private lenders. Guaranty Agencies insure lenders against borrower default; the federal government, in turn, reinsures the guaranty agencies. Federal subsidies ensure private lenders earn a certain yield on the loans they hold.

The passage of the SAFRA Act, which was included in the *Health Care and Education Reconciliation Act of 2010* (HCERA) (Pub. L. 111-152), ended the origination of new FFEL Program loans as of July 1, 2010. Nevertheless, FSA, lenders, and guaranty agencies continue to service and collect outstanding FFEL Program loans. FSA, FFEL lenders, and guaranty agencies held a FFEL Program loan portfolio of approximately \$108.8 billion as of September 30, 2020. Of this portfolio, \$67.4 billion represented FSA's credit program receivables, net. In FY 2020, FSA made gross payments of approximately \$757.9 million to lenders for interest and special allowance subsidies and \$5.6 billion to guaranty agencies for reinsurance claims and fees paid for account maintenance, default aversion, and collection activities.

*The Ensuring Continued Access to Student Loans Act of 2008* (ECASLA) authorized the Department to implement a number of programs to ensure credit market disruptions did not deny eligible students and parents access to federal student loans for the 2008–09 and 2009–10 academic years. The authority for two ECASLA Programs, the Loan Purchase Commitment Program and the Loan Participation Interest Purchase Program, expired after

<sup>6</sup> Excludes consolidation loans of \$30.4 billion.

## Mission and Organizational Structure

September 30, 2010. The third ECASLA Program, the Asset-Backed Commercial Paper Conduit (ABCP Conduit) Program, ended in January 2014.

As of September 30, 2020, FSA-held FFEL credit program receivables net totaled \$67.4 billion, comprising \$21.1 billion acquired under the "traditional" (Non-ECASLA) guaranteed loan program, and \$46.3 billion in loans acquired under the ECASLA authorization.

The **Federal Perkins Loan Program** is one of three campus-based student aid programs. These federal loans were made by schools to undergraduate and graduate students who demonstrate financial need. Historically, participating schools received a certain amount of funds each year from FSA for distribution under this program, which supplemented funds in a school's revolving fund, from which new disbursements were made. These funds enabled eligible institutions to offer low-interest loans to students based on financial need. Once the full amount of the school's funds had been awarded to students, no additional loans were to be made under this program for the year. In FY 2020, FSA reported Award Year 2018–19 disbursements of approximately \$0 million of funds, comprising 0 awards to eligible students. The *Federal Perkins Loan Program Extension Act of 2015* eliminated the authorization for schools to make new Perkins loan disbursements as of September 30, 2017 and ended all Perkins loan disbursements by June 30, 2018.

The **Health Education Assistance Loan (HEAL) Program** was transferred to the Department from the U.S. Department of Health and Human Services in FY 2014 under the *Consolidated Appropriations Act, 2014* (Pub. L. 113-76). This program enabled graduate students in schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, public health, pharmacy, chiropractic, or programs in health administration and clinical psychology to obtain federally insured loans through participating lenders. Since September 30, 1998, no new loans have been originated through this program; however, borrowers are still obligated to repay any outstanding loans obtained through the program.

The Department assumed responsibility for the program and the authority to administer, service, collect, and enforce the loans. Credit program receivables, net of allowance for subsidy, were approximately \$386.0 million for FY 2020.

### Federal Grant Programs

In fulfilling its responsibility for administering Title IV aid, FSA oversaw the disbursement of approximately \$28.4 billion in grants to 6.7 million recipients. The following provides a summary for each grant program, including aid disbursed in FY 2020.

The **Federal Pell Grant (Pell Grant) Program** helps ensure financial access to postsecondary education by providing grant aid to low-income and middle-income undergraduate students. Considered the foundation of a student's financial aid package, Pell Grants vary according to the financial circumstances of students and their families. In FY 2020, the Department disbursed \$27.5 billion in Pell Grants averaging approximately \$4,080 to approximately 6.7 million students. The maximum Pell Grant award was \$6,195 in the 2019–20 award year and increased to \$6,345 in the 2020–21 award year.

The **Federal Supplemental Educational Opportunity Grant Program** is one of three campus-based programs through which the Department provides funds directly to eligible institutions. Funds provided through this program enable eligible institutions to offer grants to students



## Mission and Organizational Structure

based on need. Federal grants distributed under this program are administered directly by the financial aid office at each participating school. Each participating school receives a certain amount of Federal Supplemental Educational Opportunity Grant funds each year from FSA. Once the full amount of the school's grant funds has been awarded to students, no additional awards can be made under this program for the year. This form of aid does not require repayment. In FY 2020, approximately \$820.5 million were disbursed through approximately 1.8 million campus-based awards.

**The Teacher Education Assistance for College and Higher Education (TEACH) Grant Program** provides individual awards up to \$4,000 per year to students agreeing to teach mathematics, science, or other specialized subjects in a high-poverty school for at least four years within eight years of their graduation. This grant program began in the 2008–09 school year, starting July 1, 2008. For any 2019–20 or 2020–21 TEACH Grant first disbursed on or after October 1, 2019, and before October 1, 2020, the maximum award is \$3,764. For any 2020–21 TEACH Grant first disbursed on or after October 1, 2020, and before October 1, 2021, the maximum award is \$3,772. If students fail to fulfill the service requirements specific to the program, their TEACH Grants convert to Direct Unsubsidized Loans, with interest accruing from the time of the award. In FY 2020, the Department disbursed more than 25,000 grants totaling \$78.1 million under the TEACH Grant Program.

**The Iraq and Afghanistan Service Grant Program**, which became effective July 1, 2010, provides non-need-based grants to students whose parent or guardian was a member of the Armed Forces and died in Iraq or Afghanistan because of military service after September 11, 2001. These grants are awarded to students who are not eligible for a Pell Grant based on financial need, but meet the remaining Pell Grant eligibility requirements, and:

- Have a parent or guardian who was a member of the U.S. Armed Forces and died as a result of military service in Iraq or Afghanistan after the 9/11 events, and
- Were under 24 years old or enrolled in college at least part-time at the time of the parent or guardian's death.

For any 2020–21 Iraq and Afghanistan Service Grant first disbursed on or after October 1, 2019, and before October 1, 2020, the maximum award is approximately \$5,971. For any 2020–21 Iraq and Afghanistan Service Grant first disbursed on or after October 1, 2020, and before October 1, 2021, the maximum award is approximately \$5,983. The Department disbursed approximately \$525,000 to support fewer than 100 awards in FY 2020.

### Federal Work-Study Program

The **Federal Work-Study Program** is one of three campus-based programs through which the Department provides funds directly to eligible institutions. Funds provided through this program enable eligible institutions to offer part-time employment to undergraduate, graduate, and professional students based on financial need, allowing them to earn money to help pay education expenses. The program is available to full-time or part-time students and encourages community service work. The work is often related to the student's course of study. In FY 2020, approximately \$1.1 billion were disbursed through more than 731,000 campus-based awards.

## Performance Management

The Performance Management section of the *Annual Report* provides a general overview of the performance management processes at FSA. The foundation of performance management within FSA is the five-year strategic plan. The key strategic drivers relevant to the strategic planning process within FSA are listed below.

**Table 5: Key Strategic Drivers Relevant to FSA Strategic Planning**

Key Strategic Driver	Relevance to FSA's Strategic Planning Process
<i>The Higher Education Act of 1965</i> legislation	Prescribes Title IV program and PBO requirements (i.e., improve service, reduce costs, improve, and integrate support systems, develop delivery and information systems, and enhance staff development and talent).
Student and borrower needs	Students and borrowers are key customers of FSA services and products.
Key trends and conditions for the financial aid environment	Indicates student aid environment within which FSA must operate. Listed below are key trends that may affect the financial aid environment. <ul style="list-style-type: none"> <li>• The size and performance of FSA's portfolio of loans has direct implications for taxpayers.</li> <li>• Students are making high impact financial decisions without the benefit of adequate financial knowledge.</li> <li>• Digital fluency and mobile ubiquity are driving new service expectations among customers.</li> <li>• Increased volume of student data has created new opportunities, obligations, and risks.</li> </ul>
The Department's Five-Year Strategic Plan	Requires FSA's support of the Department's strategic goals related to postsecondary education.
Office of Inspector General's (OIG) Management Challenges	Requires the Department and FSA senior management's consideration for establishing priorities. OIG's Management Challenges for FY 2020 include: <ul style="list-style-type: none"> <li>• Improper Payments,</li> <li>• Information Technology Security,</li> <li>• Oversight and Monitoring, and</li> <li>• Data Quality and Reporting.</li> </ul>
OIG and GAO audits	Requires FSA senior management's consideration for establishing priorities to address findings and recommendations.
Federal financial management laws and regulations	Prescribes financial management requirements.
Federal performance reporting legislation and requirements	Prescribes performance and reporting requirements.
Federal budget deficits	Requires FSA to look for opportunities to reduce operating costs through improved efficiency.

## Performance Management

The key strategic drivers inform the strategic planning process, aligning FSA with the PBO requirements outlined in the 1998 Amendments to the HEA while ensuring future consistency and accountability. In this way, the key strategic drivers influenced the development and implementation of FSA's strategic plan, as well as the development and tracking of performance measures. The Performance Management section illustrates the outcome of this effort by discussing the following:

- FSA's transition to a new *FY 2020–24 Strategic Plan*,
- FSA's performance management processes,
- FSA's FY 2020 strategic goals,
- FSA's alignment to the Department's *FY 2018–22 Strategic Plan*, and
- FSA's efforts to validate the quality of performance data reported.

The performance management framework outlined in this section provides the foundation for the presentation of both performance achievements and challenges experienced in FY 2020. The section also highlights the organizational emphasis to create a more robust culture of performance management through collaboration internally and with Department officials.

### FSA's Transition to the FY 2020–24 Strategic Plan

In FY 2019, FSA initiated the development of an organizational five-year performance plan that aligned with its vision to create a more student-focused, agile, and transparent organization. The plan, *FY 2020–24 Strategic Plan*, establishes ambitious goals and objectives to ensure that FSA will continue to improve upon its mission while increasing accountability in all areas of organizational performance. As FSA also continues its implementation of the Next Gen FSA initiative, staged to transform nearly every aspect of the federal student aid programs, the draft *FY 2020–24 Strategic Plan* creates measurable outcomes consistent with the effort.

From an organizational performance standpoint, FSA managed the organization towards the strategic goals, objectives, and performance metrics established in the draft *FY 2020–24 Strategic Plan* throughout FY 2020. To maintain consistency with the previous *FY 2015–19 Strategic Plan*, FSA transitioned eight performance metrics into the draft *FY 2020–24 Strategic Plan*. FSA aligned the transitioned metrics under the appropriate goals and objectives to strengthen the range of measurement in key performance areas. FSA also discontinued the utilization of five performance metrics from the *FY 2015–19 Strategic Plan* and will no longer use these performance metrics to measure organizational progress.

To increase accountability, FSA introduced 36 new performance metrics in the draft *FY 2020–24 Strategic Plan*. Therefore, there are a total of 44 performance metrics within the new plan in comparison to 13 performance metrics outlined in the previous one. The significant increase in performance metrics associated with the draft *FY 2020–24 Strategic Plan* is illustrative of FSA's concerted effort to evaluate its progress across its five strategic goals through clear and measurable strategic objectives to reinforce accountability and transparency in operations. By assigning detailed performance metrics to each goal and objective throughout the plan, FSA broadened its scope to analyze organizational progress. In this way, both now and in the future, FSA can establish performance targets that are aligned with measurable outcomes of organizational success.

To review the performance metrics transitioned and discontinued from the *FY 2015–19 Strategic Plan*, please refer to the Crosswalk between FY 2015–19 and FY 2020–24 Strategic Plans (Table 6). For a more detailed discussion of the goals, objectives and performance metrics associated with the *FY 2020–24 Strategic Plan*, please refer to the *Annual Performance Report* section of this document.

**Table 6: Crosswalk between FY 2015–19 and FY 2020–24 Strategic Plans**

Performance Metrics FY 2015–19 Plan	Disposition in FY 2020–24 Plan
<b>A.1</b> Percent of First-Time FAFSA Filers Among High School Seniors	<b>2.1.B</b> Percentage of high school seniors submitting the FAFSA.
<b>A.2</b> Persistence Among First-Time Filing Aid Recipients	<b>5.1.E</b> Persistence among first-time filing aid recipients.
<b>A.3</b> Customer Visits to StudentAid.gov	<b>2.1.A</b> Number of visits (sessions) demonstrating adoption of the updated StudentAid.gov site.
<b>A.4</b> Social Media Channel Subscribership	<b>Discontinued in FY 2020</b>
<b>A.5</b> ACSI Aid Life Cycle Surveys	<b>2.2.G</b> American Customer Satisfaction Index (ACSI) Aid Lifecycle Survey score.
<b>B.1</b> Improper Payment Rate	<b>Discontinued in FY 2020</b>
<b>B.2</b> Percent of Borrowers > 90 Days Delinquent	<b>5.3.C</b> Percent of Borrowers > 90 Days Delinquent.
<b>C.1</b> Aid Delivery Costs Per Application	<b>Discontinued in FY 2020</b>
<b>C.2</b> Outstanding Direct Loan Portfolio in Current Repayment Status	<b>5.1.C</b> Outstanding Direct Loan Portfolio in Current Repayment Status.
<b>D.1</b> Ease of Doing Business with FSA	<b>3.2.D</b> Ease of doing business with FSA.
<b>D.2</b> Percentage of Contract Dollars Competed by FSA	<b>Discontinued in FY 2020</b>
<b>D.3</b> Collection Rate	<b>Discontinued in FY 2020</b>
<b>E.1</b> Employee Engagement Index	<b>1.1</b> Improve Federal Employee Viewpoint Survey score: Employee Engagement Index. FSA's scores will improve the first year and continue to increase 1–2% annually.

## Performance Management

### Performance Management Processes at Federal Student Aid

During FY 2020, FSA used a tiered performance management framework to establish goals and communicate, measure, and report performance:

- *FSA FY 2020–24 Strategic Plan*
- Weekly Performance Accountability Meetings
- *Annual Performance Report*
- Department's Quarterly and Annual Performance Reviews
- Agency Priority Goals (APGs)

#### **FSA's *FY 2020–24 Strategic Plan***

The *FY 2020–24 Strategic Plan* outlines goals, objectives, and performance metrics that provide a roadmap for how FSA will successfully operate, respond to change, and execute its mission moving forward. These strategic goals collectively provide the framework for continuous improvement at FSA, guiding the organization in managing its programs more effectively, and providing clear strategic direction to all of FSA's internal and external constituencies. To provide the framework to effectively achieve these outcomes the five-year strategic goals must be:

- Appropriate to the mission of the organization,
- Realistic and measurable,
- Achievable in the time frame established and challenging in their targets, and
- Understandable to the layperson with language that is unambiguous and terminology that is adequately defined.

As stated, each strategic goal encompasses objectives and identifies performance metrics to measure FSA's level of success in meeting the strategic goal. For each performance metric, FSA identifies a target level of performance for each fiscal year. FSA sets the target level of performance at a challenging, but realistic level that is achievable within the timeframe. Meeting or exceeding the target indicates that FSA succeeded in attaining the established performance metric, while falling short of the target indicates that FSA did not attain the performance metric. The following table summarizes the key components of the *FY 2020–24 Strategic Plan*.



**Table 7: Key Components of the FY 2020–24 Strategic Plan**

Key Component	Description
<b>Strategic Goals</b>	Statements of long-term purpose outlined in the <i>FY2020–24 Strategic Plan</i> that define how FSA will accomplish its mission. These goals are aligned to FSA's responsibilities as a PBO.
<b>Objectives</b>	Statements that describe the tactical activities FSA will perform to achieve the associated strategic goal.
<b>Performance Metrics</b>	Levels of performance over a certain timeframe used to gauge FSA's success in reaching its strategic goals. These metrics include targets and timeframes.
<b>Targets</b>	Indicators of the desired performance levels or specific desired results targeted for a given fiscal year. Targets, if available, are expressed in quantifiable terms and are compared to the actual result to determine level of performance.

**FSA's FY 2020–24 Strategic Plan – At a Glance**

The *FY 2020–24 Strategic Plan* outlines strategic goals and objectives that will be used to track and evaluate FSA's progress toward meeting its mission. The following table provides an abbreviated view of the *FY 2020–24 Strategic Plan*.

**Table 8: Strategic Goals and Strategic Objectives for Fiscal Years 2020–24**

Strategic Goal 1	Strategic Objectives
Empower a High Performing Organization	<b>1.1:</b> Improve employee engagement and workplace inclusion to develop and retain talent, improve employee satisfaction, and engage in effective succession planning.
	<b>1.2:</b> Expand employee skills and capabilities to support Next Gen FSA.
Strategic Goal 2	Strategic Objectives
Provide World-Class Customer Experience to the Students, Parents, and Borrowers We Serve	<b>2.1:</b> Ensure that all students can easily access information on federal student aid, apply for federal student aid, and have information on repayment options.
	<b>2.2:</b> Provide seamless, easy, personalized digital interactions equal with top financial institutions in the delivery of financial aid products and services.
	<b>2.3:</b> Streamline contact center and back-office operations to improve our customers' integrated experience.
	<b>2.4:</b> Simplify the communication and processes associated with borrower repayment plans.
Strategic Goal 3	Strategic Objectives
Increase Partner Engagement and Oversight Effectiveness	<b>3.1:</b> Provide effective oversight of FSA's partners utilizing a comprehensive suite of monitoring tools.
	<b>3.2:</b> Strengthen partner engagement and provide effective outreach and assistance.

## Performance Management

Strategic Goal 4	Strategic Objectives
Strengthen Data Protection and Cybersecurity Safeguards.	<b>4.1:</b> Implement business partner and vendor systems that house, manage, and provide systems supporting FSA business processes, outreach and awareness focused on oversight, enforcement, infrastructure, systems, and data.
	<b>4.2:</b> Improve student privacy data and cybersecurity controls of Institutions of Higher Education (IHEs) through outreach and communication to mitigate future cyber-incidents and breaches.
	<b>4.3:</b> Build an effective cybersecurity culture through employee awareness, training and accountability focused on protecting systems and data.
Strategic Goal 5	Strategic Objectives
Enhance the Management and Transparency of the Portfolio	<b>5.1:</b> Improve the management and transparency of FSA's student loan portfolio performance.
	<b>5.2:</b> Provide analytics and operational support for a customer-centric, data-driven, performance-based organization.
	<b>5.3:</b> Leverage portfolio analytics to drive improved outcomes for customers and taxpayers.
	<b>5.4:</b> Increase vendor performance through quality management activities centered on customer service and product delivery.

### Weekly Performance Accountability Meetings

Throughout FY 2020, FSA measured and analyzed performance based upon performance metric results outlined in the draft *FY 2020–24 Strategic Plan*, as well as various internal metrics used for operational management. The analysis of performance is a transparent process within the organization, executed through weekly performance accountability meetings with the FSA leadership and management team.

Each week, the analysis of specified performance metrics is presented through various performance dashboards to the FSA leadership and management team by program managers responsible for outcomes. In the weekly meetings, progress of the designated performance metrics, both negative and positive, is discussed in an open forum. For any performance metrics not on track, the analysis must include identification of the root cause of the unexpected result and a recommendation of the appropriate corrective actions necessary to improve performance. Performance dashboards for the draft *FY 2020–24 Strategic Plan* and the performance metrics associated with the Department's Quarterly Performance Review were also developed in FY 2020 and utilized to discuss performance metric progress on a quarterly basis.

### Annual Performance Report

To report progress on meeting the strategic goals, FSA prepares and publishes an *Annual Performance Report*, which is included in the *Annual Report*. In addition to the *Annual Performance Report*, the *Annual Report* includes FSA management's discussion and analysis of financial and performance results, its audited financial statements and notes, and the report of the independent auditors.

### Department of Education Quarterly and Annual Performance Reviews

The Quarterly and Annual Performance Review meetings and data calls are part of the Department-wide performance management system. The meetings, associated data collection, and reporting protocols operate at the principal office level and are designed to integrate and

align all of the Department's performance management elements, including the *U.S. Department of Education Strategic Plan for Fiscal Years 2018–22*, APGs, the priorities of the President and other principal offices, and legal requirements. The Quarterly Performance Review framework primarily focuses on process improvements and capacity building, providing principal offices an opportunity to establish specific milestones. FSA tracks the status of its Quarterly Performance Review metrics and reports on its progress to the Department on a quarterly and annual basis.

The Department's goals, objectives, and performance measures have been integrated seamlessly into FSA's draft *FY 2020–24 Strategic Plan*. Fourteen performance measures are shared between the plans, and others are built into the objectives. The decision to have shared performance metrics between the plans was made during the development of the strategic plan to ensure there was both consistency and alignment between the Department and FSA. This decision will improve customer service, partner collaboration, and oversight throughout FSA's ongoing efforts. Currently, FSA directly supports the following Department strategic goals:

- **Goal 2:** Expand postsecondary educational opportunities; improve outcomes to foster economic opportunity; and promote an informed, thoughtful, and productive citizenry.
- **Goal 3:** Strengthen the quality, accessibility, and use of education data through better management, increased privacy protections, and transparency.
- **Goal 4:** Reform the effectiveness, efficiency, and accountability of the Department through its focuses on vendor management, risk mitigation, and cybersecurity.

### Agency Priority Goals

APGs are a performance accountability structure of the *Government Performance and Results Modernization Act of 2010* (Pub. L. 111-352) that provide agencies a mechanism to focus on leadership priorities, set outcomes, and measure results, bringing focus to mission areas where agencies need to drive significant progress and change. APG statements are outcome-oriented, ambitious, and measurable with specific targets set that reflect a near-term result or achievement agency leadership wants to accomplish within approximately 24 months.

In FY 2020, the Department identified five proposed APGs for FY 2020–21. These APGs were focused on an increase in educational choice, enhancing multiple pathways for student success in career and job ready skills, improving the customer service the Department provides, and improving student privacy protection and cybersecurity at institutions of higher education and provide regulatory relief and burden reduction to education stakeholders. Of the five APGs, two were closely tied to FSA's mission and were supported by FSA during FY 2020. They are:

- **Related to Goal 2.4 – APG:** The Next Generation Financial Services Environment (Next Gen FSA) will personalize and improve customers' experience when they engage with Federal Student Aid (FSA); and
- **Related to Goal 3.2 – APG:** Improve Student Privacy and Data Security at Institutions of Higher Education through Outreach and Compliance Efforts.

Each quarter, the Department analyzes the progress toward accomplishing the Departmental APGs, with the objective of successfully accomplishing the current APGs by September 30, 2021.

To achieve the success of the Goal 2.4 APG, FSA is responsible for improving the customers' experience throughout the entire student aid life cycle by continuing to modernize capabilities for the FAFSA application and the servicing and repayment of student loans. As noted in the APG, Next Gen FSA is the Department's transition to the digital future of FSA and aims to shift FSA to be a more customer-centric organization. It is the Department's expectation, articulated within the APG Achievement Statement, that FSA will build products and services that meet customers' expectations. The Department notes that this strategy is predominately used in private industry, and now several government agencies, including FSA, are following this customer-centric model. The FY 2020 approved Goal 2 APG statement is:

By September 30, 2021, FSA will transform its relationship with prospective and current customers through deployment of significant components of the Next Gen FSA that result in a personalized experience:

- The number of individuals submitting a Free Application for Federal Student Aid® (FAFSA®) through a mobile device will increase to 2.6 million.

- The overall customer satisfaction level throughout the student aid life cycle, as measured by the FSA Customer Satisfaction score<sup>7</sup>, will increase.

Therefore, the APG is aligned with the progress of Next Gen FSA and is measured by the following customer-centric metrics in FY 2020:

- Number of customers submitting the FAFSA forms via a mobile platform—either through the myStudentAid mobile app or mobile-optimized **FAFSA.gov**.
- The overall customer satisfaction level throughout the student aid life cycle, as measured by the ASCI.
- Number of customers checking loan balances via the myStudentAid mobile app.
- Number of users adopting a virtual assistant that will answer questions about federal student aid.
- Number of visits (sessions) to the redesigned **StudentAid.gov** website.

For data validation purposes, mobile app and FAFSA data are collected from Apple's App Store, Google Play, and FSA's online platform analytics. For number of downloads of the app, FSA generates a monthly report directly from Apple's App Store and Google Play. The data are reported as a cumulative number for all three months within the quarter, and summarily for the entire fiscal year reporting.

For the Goal 3.2 APG, FSA works with the Department's Office of the Chief Information Officer (OCIO). The Goal 3.2 APG statement is:

By September 30, 2021, the Department will participate in 12 engagements with sector-related Non-Governmental Organizations (NGOs) to inform the development of five best practice programmatic improvements such as, by:

- 1) Issuing guidance to IHEs to provide a definition of information security breach and when and how to report a breach;
- 2) Establishing secure mechanisms for breach notification, including secure storage for such information; or
- 3) Creating a process through which IHEs can validate compliance notifications and reporting requests.

As previously stated, this is also a two-year APG covering FY 2020 and FY 2021. FSA and the Department will achieve this APG through collaborative efforts involving training, outreach, monitoring, and reporting to include:

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<sup>7</sup> The Federal Student Aid Customer Satisfaction Score is an annual composite metric that measures the overall customer satisfaction level throughout the student aid life cycle FAFSA applicants (mobile and **FAFSA.gov**), Title IV aid recipients in school, and borrowers in repayment. The score is based on the American Customer Satisfaction Index surveys.



## Performance Management

- Issuing best practice programmatic improvements documents to IHEs to provide a definition of information security breach and on when and how to report an information security breach.
- Establishing secure mechanisms for breach notification, including secure storage for such information.
- Creating a process through which IHEs can validate compliance notifications and reporting requests.
- Developing a collaborative IHE outreach strategy in compliance with the Gramm-Leach-Bliley Act (GLBA) and constructing an outreach timeline.
- Conducting ongoing outreach activities by FSA and the Privacy Technical Assistance Center within the Student Privacy Policy Office related to privacy and data security requirements.
- Tracking the timeliness of privacy and data security reports received by FSA as a result of FSA outreach activities.

For data validation purposes regarding the outreach metric, the activity records maintained by FSA and the Department's OCIO through the Department's Privacy Technical Assistance Center, are recorded on a SharePoint site. Based on actions by contractors, Department personnel, and FSA personnel, data accuracy is high, reliable, and consistent.

All APG metric results were also made available on **Performance.gov** each quarter for public view.

## Quality of Performance Data

Ensuring the integrity of the data required to determine performance results is a critical step in reporting performance. For this step, FSA developed and implemented a Validation and Verification Matrix. Specifically, FSA uses this matrix as a tool to validate the completeness and reliability of the underlying data gathered and used to calculate each performance metric for the reporting period, including the performance results reported in this *Annual Report*. For each performance metric, this matrix is used to document the following: measurement definition and owner; data source, availability, security procedures, and known limitations; whether data are subject to FSA's OMB Circular A-123 Internal Control Review process; and procedures for accessing the data, calculating the performance metric, and validating and verifying the data gathered.

In FY 2020, FSA updated its approach to create the matrix using an online information collection tool. The information collection tool automated the process of information gathering across the organization. In addition, the information received by the tool was also used to establish the process of performance reporting and generate content for this report.

For a discussion of data quality and limitations for each performance metric, please see the section Performance Results by Strategic Goal, contained in the *Annual Performance Report* section.

## Analysis of Financial Statements

### Introduction

The Analysis of Financial Statements section provides an overview of FSA's financial results for FY 2020. This section assists readers in understanding FSA's financial results, position, and condition as reflected in the financial statements and notes located in the Financial Section of this report. The financial analysis explains major changes in assets, liabilities, costs, and budgetary resources. It also includes comparisons of the current year to the four prior years and discusses the relevance of significant balances, amounts, and trends reflected in the financial statements and notes.

FSA is committed to providing sound management, financial systems, and controls to ensure students receive aid and repay loans according to applicable laws and regulations. FSA's financial statements are prepared in accordance with established federal accounting standards and reporting requirements. The financial statements are subject to an annual independent audit to determine whether FSA's financial statements present fairly FSA's financial position, net cost, changes in net position, and budgetary resources. In FY 2020, FSA achieved an unmodified audit opinion on its financial statements for the eighteenth consecutive year.

FSA presents its financial statements and notes in the format required by OMB Circular A-136, *Financial Reporting Requirements*. For FY 2020 and FY 2019, the Balance Sheet, Statement of Net Cost, and Statement of Changes in Net Position were prepared on a consolidated basis, whereas the Statement of Budgetary Resources was prepared on a combined basis. These financial statements, along with the Independent Auditors' Report on these statements, can be found in the Financial Section of this *Annual Report*.

FSA has oversight responsibilities for more than \$1.5 trillion in federal student loans, of which it directly owns and manages approximately \$1.4 trillion. The remaining balance represents non-defaulted FFEL Guaranteed loans held by lenders and Federal Perkins loans held by schools, as detailed in Note 5. As described in Note 1 and Note 5, FSA reports its portfolio of federal student loans on its Balance Sheet, on the line item Credit Program Receivables, Net. This is the gross amount of loans and interest receivable less an allowance for the present value of amounts not expected to be recovered (Allowance for Subsidy). Subsidy Expense is a factor included in the Allowance for Subsidy and represents an estimate in present value terms of the cost to the government of direct loans and loan guarantees. Subsidy Expense is recorded in the year a loan is disbursed and updated annually through a re-estimation process. It includes default costs (net of recoveries), contractual payments paid to third-party private collection agencies (PCAs), and net borrowing costs, less any origination or other fees collected. If the net cost to the government is greater than zero, then the subsidy expense is said to be positive. However, the subsidy expense may also be zero (break-even), or it may be negative if the estimated cost of providing loans to borrowers is less than the value of collections received as interest and fees. As of September 30, 2020, FSA reported \$1.2 trillion in Credit Program Receivables, Net after deducting an Allowance for Subsidy of approximately \$258.3 billion. Credit Program Receivables, Net was 0.3 percent less than the prior-year amount which resulted from a 8.9 percent decrease in FSA's underlying portfolio of credit program receivables that was offset by adjustments that decreased the FY 2020 Allowance for Subsidy by

## Analysis of Financial Statements

approximately 38 percent from the FY 2019 amount. The reasons for the adjustment to the Allowance for Subsidy estimate are explained in Note 5.

The FY 2020 FSA Financial Highlights tables presented below provide a condensed summary of the significant balances in FSA's Balance Sheets and Statements of Net Cost over a five-year period, beginning with FY 2016. The tables also show the percentage change between the prior and current fiscal years as of September 30, 2019 and 2020, respectively. The figures and tables presented in this section include rounding adjustments to ensure that the component line items sum to the corresponding total. As a result, there may be small discrepancies between the amounts shown in a particular figure or table when compared to similar items discussed in the text or presented in other areas of the Annual Report.

**Table 9: Federal Student Aid Financial Highlights  
Condensed Balance Sheets  
Fiscal Years 2016–20  
(Dollars in millions)**

Asset	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Percentage Change <sup>8</sup>
Fund Balance with Treasury	\$60,358	\$74,032	\$73,405	\$62,567	\$70,266	12.3%
Credit Program Receivables, Net	1,075,227	1,145,406	1,209,495	1,202,092	1,169,614	(2.7)
Remaining Assets	1,334	2,256	2,365	2,217	2,171	(2.1)
<b>Total Assets</b>	<b>\$1,136,919</b>	<b>\$1,221,694</b>	<b>\$1,285,265</b>	<b>\$1,266,876</b>	<b>\$1,242,051</b>	<b>(2.0)%</b>
Debt	\$1,126,345	\$1,178,473	\$1,258,481	\$1,287,494	\$1,249,807	(2.9)%
Subsidy due to Treasury General Fund	2,642	7,013	7,528	10,302	3,283	(68.1)
Remaining Liabilities	9,614	13,000	10,197	13,971	8,350	(40.2)
<b>Total Liabilities</b>	<b>\$1,138,601</b>	<b>\$1,198,486</b>	<b>\$1,276,206</b>	<b>\$1,311,767</b>	<b>\$1,261,440</b>	<b>(3.8)%</b>
Unexpended Appropriations	\$26,531	\$28,524	\$32,487	\$31,400	\$35,038	11.6%
Cumulative Results of Operations	(28,213)	(5,316)	(23,428)	(76,291)	(54,427)	(28.7)
<b>Net Position</b>	<b>\$(1,682)</b>	<b>\$23,208</b>	<b>\$9,059</b>	<b>\$(44,891)</b>	<b>\$(19,389)</b>	<b>(56.8)</b>
<b>Total Liabilities &amp; Net Position</b>	<b>\$1,136,919</b>	<b>\$1,221,694</b>	<b>\$1,285,265</b>	<b>\$1,266,876</b>	<b>\$1,242,051</b>	<b>(2.0)%</b>

**Table 10: Statements of Net Cost  
(Summarized)  
Fiscal Years 2016–20  
(Dollars in millions)**

Asset	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Percentage Change <sup>9</sup>
Gross Cost	\$93,032	\$73,771	\$71,232	\$144,865	\$171,245	18.2%
Less: Earned Revenue	(34,260)	(35,825)	(36,224)	(36,820)	(39,384)	7.0
<b>Net Cost of Operations</b>	<b>\$58,772</b>	<b>\$37,946</b>	<b>\$35,008</b>	<b>\$108,045</b>	<b>\$131,861</b>	<b>22.0%</b>

<sup>8</sup> The percentage change is calculated as the difference between FY 2019 and FY 2020, divided by the FY 2019 amount. In some instances, where the current-year amount has an opposite sign to the prior-year amount, the percentage change may be negative even though the annual change is positive (and vice versa). Similarly, if the current-year negative amount has a larger negative value than the prior-year negative amount, the difference will be negative, but the percentage change will be positive.

<sup>9</sup> Refer to Footnote 6.

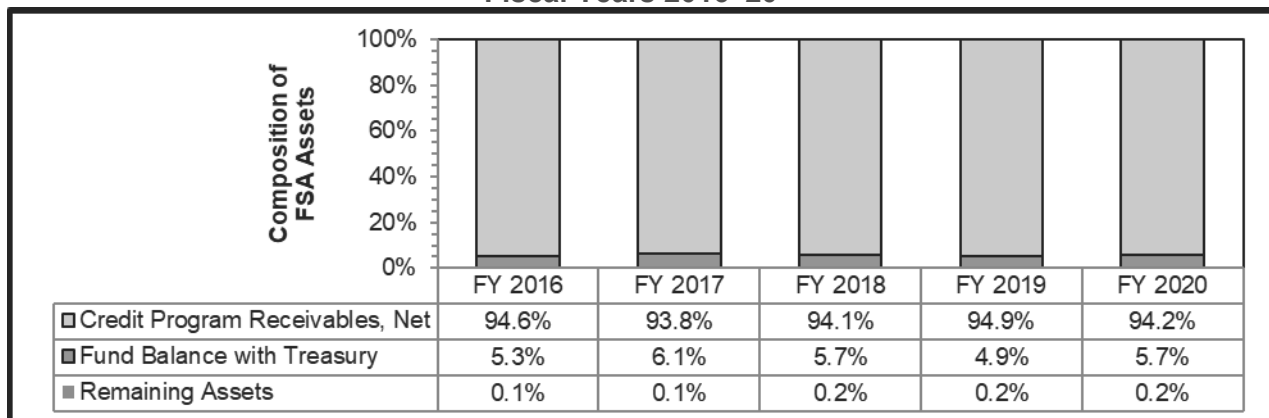
## Analysis of Financial Statements

### Balance Sheet

The Balance Sheet presents the recorded value of assets and liabilities retained or managed by FSA as of a specific point in time. The assets represent resources available for use by FSA to pay its liabilities or to satisfy its future service needs. The liabilities are amounts FSA owes, the probable and measurable future outflows of its resources arising from past transactions or events. The difference between the assets and the liabilities represents FSA's net position.

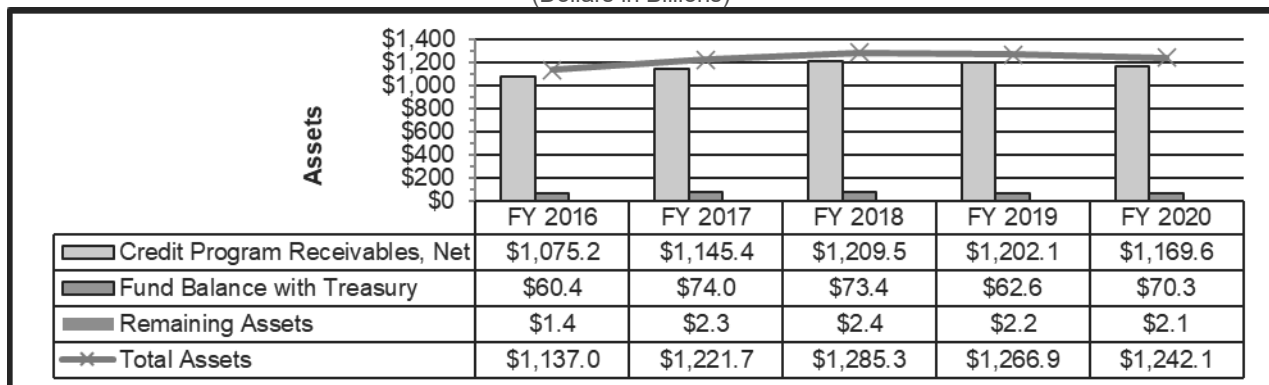
The consolidated Balance Sheet shows that FSA had total assets of \$1,242.1 billion as of September 30, 2020, a decrease of \$24.8 billion, or 2.0 percent under the September 30, 2019 total assets balance of \$1,266.9 billion. The difference resulted primarily from a 12.3 percent increase in Fund Balance with Treasury (\$7.7 billion), combined with a 2.0 percent decrease in net Credit Program Receivables (\$32.5 billion). Together, FSA's Fund Balance with Treasury and its net Credit Program Receivables accounted for approximately 99.9 percent of Total Assets as of September 30, 2020, as illustrated in the Composition of Assets chart (Figure 9). The Comparison of Assets chart (Figure 10) presents changes in these two principal Balance Sheet line items over the past five fiscal years.

**Figure 9: Composition of Federal Student Aid Assets\***  
Fiscal Years 2016–20



\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

**Figure 10: Comparison of Federal Student Aid Assets\***  
Fiscal Years 2016–20  
(Dollars in Billions)



\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

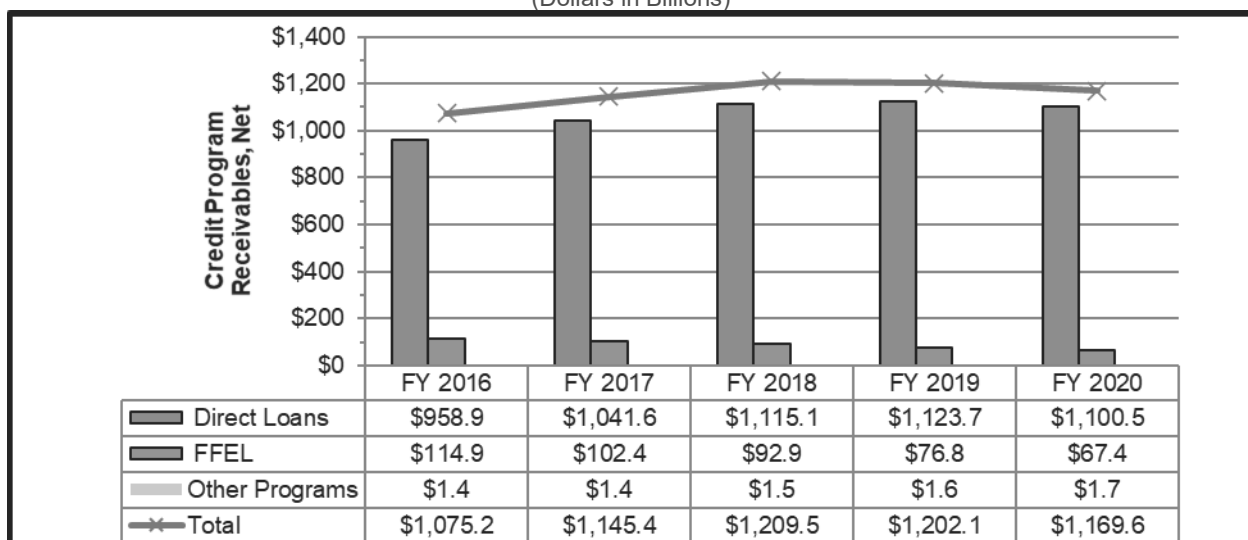


## Analysis of Financial Statements

**Credit Program Receivables, Net.** FSA's Credit Program Receivables, Net balance of \$1,169.6 billion balance as of September 30, 2020, represents FSA's most important asset category and accounted for almost 95 percent of Total Assets. This balance includes \$1,330.2 billion in principal, interest, and fees, less an allowance for subsidy cost of approximately \$160.6 billion that adjusted the loan portfolio to its estimated present value. FSA reports the total amount under the three major program categories Direct Loan, FFEL, and Other, as illustrated in Figure 11 below and discussed more fully in the following sections.

**Figure 11: Total Federal Student Aid Loan Portfolio\*  
Net of Allowance for Subsidy  
Fiscal Years 2016–20**

(Dollars in Billions)



\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

Figure 11 also shows that over the four-year period 2016–20, FSA's portfolio of FSA net credit program receivables increased by \$94.4 billion or 8.8 percent. The Direct Loan program accounted for most of this change, increasing by \$141.6 billion (14.8 percent), offset by the \$47.5 billion (41.3 percent) reduction of the FFEL Portfolio over the same period. However, the overall upward trend reversed in FY 2020 when the \$9.4 billion (12.2 percent) net reduction in FFEL net credit program receivables coincided with the \$23.2 billion (2.1 percent) decrease in Direct Loan credit program receivables. The overall reduction in FSA's net credit program receivables portfolio was \$32.5 billion or 2.7 percent.

The directional changes observed in the Direct Loan and FFEL portfolios are principally related to the impact of the SAFRA Act, which as of June 30, 2010, eliminated all new loan originations under the FFEL Program in favor of direct lending. Loan consolidation has also played a role. Consolidation is the process of combining one or more federal student loans into one loan. For more information about which federal loans may be eligible for consolidation and other requirements, please visit [StudentAid.gov/consolidation](https://studentaid.gov/consolidation). Another significant factor in FY 2020 was a decrease to the allowance for subsidy cost by \$97.7 billion (almost 38 percent). The reasons for the adjustment to the subsidy cost estimate are explained in Note 5.

## Analysis of Financial Statements

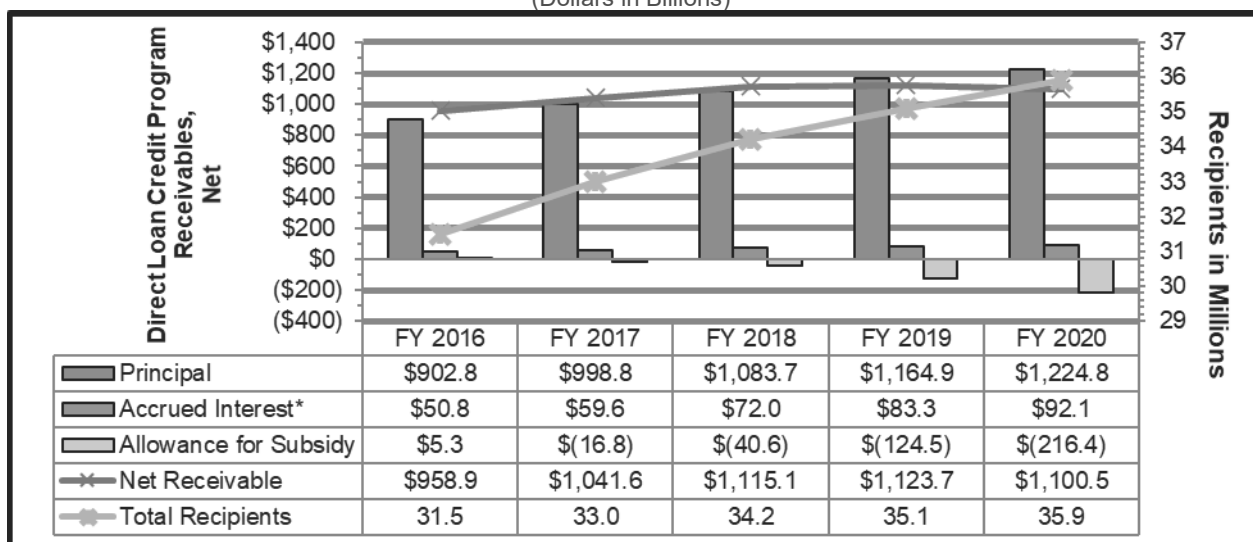
**Direct Loan Credit Program Receivables, Net.** Direct Loan Credit Program receivables continue to be the major component of FSA's credit program receivable portfolio in FY 2020. As of September 30, the \$1,100.5 billion Direct Loan portfolio ending balance comprises 94.2 percent of FSA's total credit program receivables net, compared to the prior year ending balance of \$1,123.7 that represented 94.9 percent. The FY 2020 Direct Loan ending balance total includes \$1,316.9 billion in principal, interest, and fees, with an allowance for subsidy cost to the government of \$216.4 billion. This amount contrasts to the prior year where the subsidy costs were projected at \$124.5 billion on Direct Loan principal, interest, and fees of \$1,248.2 billion. The factors that contributed to the variance in subsidy cost at a time when the underlying loan balances increased by 5.5 percent are addressed in Note 5.

The FY 2020 \$68.7 billion increase in Direct Loan Receivables (before subsidy costs) was mainly driven by the growth in the outstanding amount owed by borrowers, principally resulting from new loan originations (\$86.1 billion), consolidation disbursements (\$30.4 billion), and the net increase in accrued interest and fees (\$8.8 billion). This was offset by reductions to principal due to loan payments by borrowers (\$53.1 billion), loan discharges (\$7.7 billion), and other adjustments.

The growth in principal outstanding has accounted for virtually all growth of the Direct Loan portfolio over the past five years in dollar terms, as seen in Figure 12. Over the same period, Table 12 shows that accrued interest increased at a higher average annual rate than did principal outstanding (8.9 percent versus 20.3 percent), although, as illustrated by Table 11, accrued interest only increased from 5.3 percent to 8.4 percent of the net receivable amount, while principal outstanding increased from 94.1 percent to 111.3 percent of the net amount. See Note 5 for more details.

**Figure 12: Components of Direct Loan Receivables, Net\***  
**Fiscal Years 2016–20<sup>10</sup>**

(Dollars in Billions)



<sup>10</sup> Line items may include rounding adjustments to reconcile to the total amount being reported. Recipient numbers come from the Data Center or NSLDS. See Footnote 12

## Analysis of Financial Statements

Figure 12 also includes the number of recipients corresponding to the outstanding loan portfolio at each fiscal year end. Recipients are students that benefit from the federal student loans. In most cases, a recipient is the borrower; but in the PLUS loans, the parent is the borrower, and the student is the recipient. The chart shows that Direct Loan recipients grew from 31.5 million to 35.9 million over the five-year period, reflecting, as reported in Table 12, an average annual increase of 3.3 percent, well below the rate of increase of principal and interest described earlier. As a result, the average debt (principal and interest) balance outstanding per Direct Loan recipient increased by 21.1 percent during this time, from \$30,273 to \$36,682; the higher debt burden per student is likely an indication of increasing postsecondary education costs.

**Table 11: Components of Direct Loan Credit Program Receivables, Net by Percentage\*  
Fiscal Years 2016–20**

Direct Loan Component	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Principal*	94.1%	95.9%	97.2%	103.7%	111.3%
Accrued Interest	5.3%	5.7%	6.5%	7.4%	8.4%
Allowance for Subsidy	0.6%	(1.6)%	(3.7)%	(11.1)%	(19.7)%
Net Receivable	100.0%	100.0%	100.0%	100.0%	100.0%

\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

**Table 12: Increase in Principal, Interest and Subsidy Components of Direct Loan Credit Program Receivables, Net and Recipient Counts\***

Direct Loan Component	FY 2016–17	FY 2017–18	FY 2018–19	FY 2019–20	FY 2016–20 Average Year-to- Year Change
Principal	10.6%	8.5%	7.5%	5.1%	7.9%
Accrued Interest	17.7%	21.0%	15.7%	10.6%	16.1%
Allowance for Subsidy	(415.1)%	(143.1)%	(206.7)%	73.8%	(172.8)%
Net Receivable	8.6%	7.1%	0.8%	(2.1)%	3.6%
Total Recipients	4.8%	3.6%	2.6%	2.3%	3.3%

\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

While the Direct Loan portfolio has grown rapidly in recent years, it has also changed in character as an increasing proportion of students begin the repayment phase of their loans. Under Title IV, each loan may pass through several distinct statuses as the student progresses through the loan life cycle, from borrowing to repaying.

Repayment on most federal student loans is not required while the student recipient is “In School” unless they drop below half-time enrollment. However, PLUS loans enter repayment as soon as the loan is fully disbursed. Then, after the student graduates, leaves school, or drops below half-time enrollment, student borrowers are frequently entitled to a “Grace” period. During this period, repayment is not required to begin on the loan. Not all federal student loans have a grace period and for most loans, interest will accrue during the grace period. At the end of the grace period, the loan will enter “Repayment” status and regular monthly payments will be required according to an agreed upon payment schedule. If the borrower continues to make timely payments such that no more than 30 days elapse after the due date without payment, then the loan is classified as “Current.” If more than 30 days elapse, then the loan will be reclassified as “Delinquent.” Under Title IV, if more than 270 days pass without payment being

## Analysis of Financial Statements

received to satisfy the oldest payment due, Direct Student Loans are technically considered “In Default”.<sup>11</sup> The status continues to be tracked through the life of the loan until the loan is paid in full or otherwise closed out.

On March 20, 2020, the Secretary directed the FSA to provide the following relief on Department-held federal student loans: suspend loan payments; stop collections on defaulted loans; and set interest rates to 0 percent for a period of 60 days. This relief was provided retroactively to borrowers beginning on March 13, 2020. On March 27, 2020, Congress passed, and the President signed into law, the CARES Act, which extended the above described relief measures and provided additional relief measures through September 30, 2020. On August 8, 2020, the President directed the Secretary to continue to provide relief for Department-held loans until December 31, 2020. The Department has extended the relief provided to borrowers in the CARES Act through December 31, 2020. The relief provided to borrowers from March 13, 2020 through March 26, 2020, and from October 1, 2020 through December 31, 2020, was provided under the Secretary’s authority in the *Higher Education Relief Opportunities for Students Act of 2003*.

Figure 13<sup>12</sup> divides FSA’s portfolio of direct loans into two main categories, based on repayment status. For the purpose of this discussion,<sup>13</sup> loans are classified as “In Repayment” if, under the terms of the promissory note, the loan is current, delinquent, defaulted, in non-defaulted bankruptcy, or in a disability status. Alternatively, loans are classified as “Not in Repayment” if the borrower is “In School”, “In Grace”, or has been granted a deferment or a forbearance. The loan status “Deferment” includes loans for which payments have been postponed due to certain circumstances, such as returning to school, military service, or economic hardship. Similarly, “Forbearance” includes loans for which payments have been temporarily suspended or reduced because of certain types of financial hardships. Figure 13 reports the portfolio balance as the sum of principal and interest balances (i.e., the gross amount) owed by the borrower and excludes any subsidy cost or allowance that would adjust the outstanding balance to its net present value.

As can be seen in Figure 13, although both segments grew during the period FY2016–19, the “In Repayment” segment grew more rapidly to become the larger portfolio segment. During this period the “In Repayment” segment grew to represent 65.7 percent of the total principal and interest amount outstanding, increasing the need for FSA to facilitate the ability of Direct Loan borrowers to meet their repayment obligations timely.

The September 30, 2020 balance of loans in repayment of \$146.6 billion (11.1 percent of the total direct loan portfolio) is significantly less than the \$820.1 billion (65.7 percent) as of September 30, 2019. The dramatic decline in this segment reflects the impact of COVID-19 and

<sup>11</sup> FSA’s policy is to not transfer such loans to the defaulted debt servicer until more than 360 days pass without payment being received, in order to ensure parity of Direct Loan borrower treatment with that of FFEL borrowers.

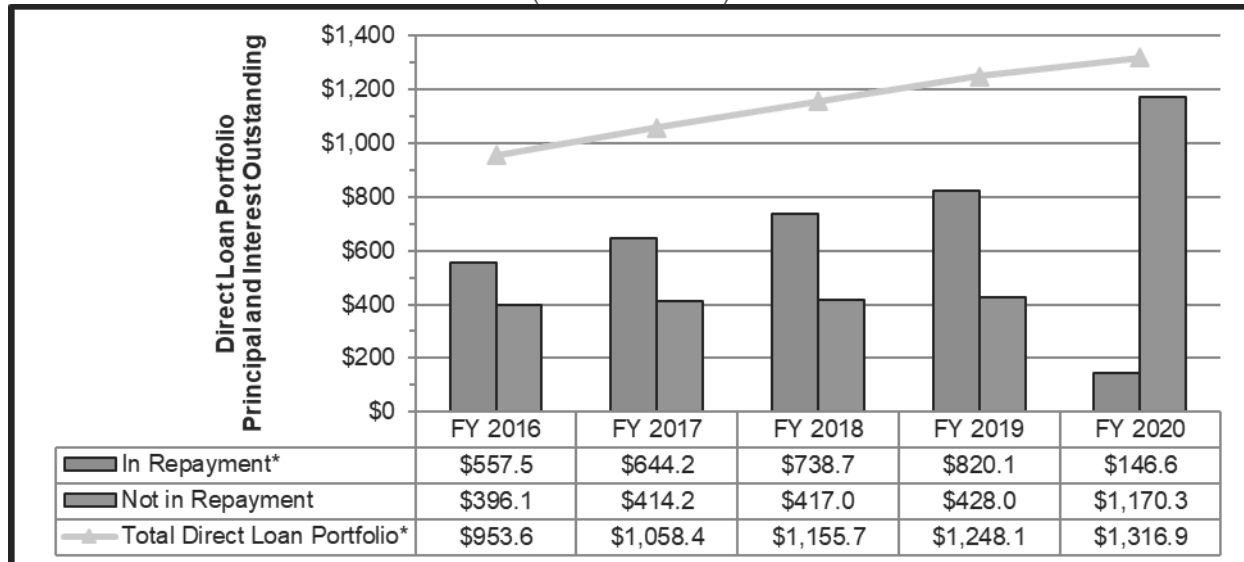
<sup>12</sup> FY 2015–18 data are based on data published by the FSA Data Center, [StudentAid.gov/portfolio](https://studentaid.gov/portfolio). FY 2019 data are taken directly from the NSLDS. Also, the FY 2018 data published in the FY 2018 Annual Report, taken directly from NSLDS, have been replaced with data subsequently published by the Data Center.

<sup>13</sup> The In Repayment/Not in Repayment classifications used for this discussion are slightly different from the definitions under 34 CFR §§ 685.207, 685.204, and 685.205 which specify that a borrower first enters repayment before receiving a deferment or forbearance. Under 34 CFR § 685.205(a), borrowers in forbearance may still make payments on their loans. In addition, under 34 CFR Part 668 Subpart N, borrowers in a deferment or forbearance are considered to be in repayment for purposes of calculating the cohort default rate for institutions.

## Analysis of Financial Statements

the CARES Act which placed most borrowers into administrative forbearance through December 31, 2020.

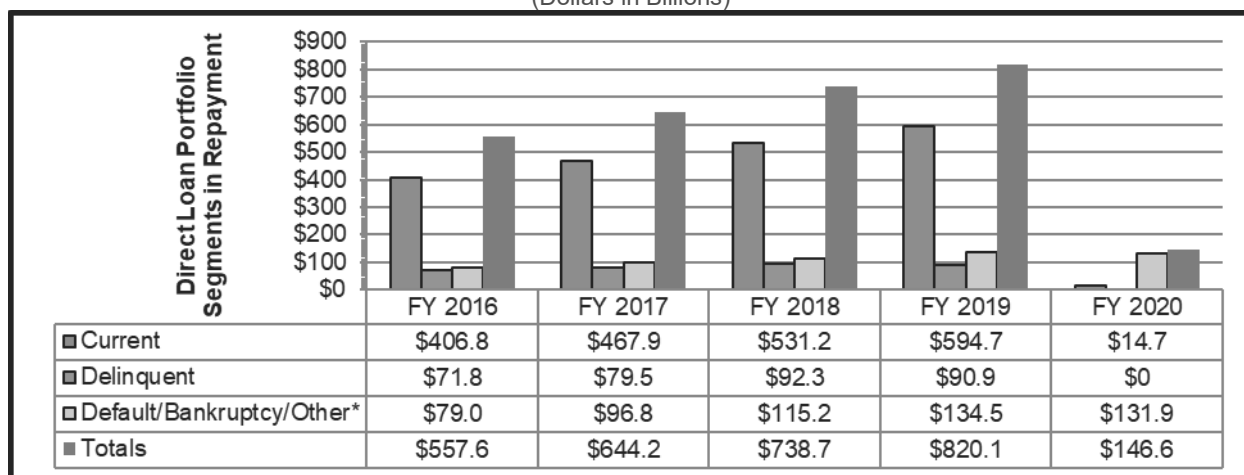
**Figure 13: Direct Loan Portfolio by Repayment Status\***  
Principal and Interest Only  
Fiscal Years 2016–20  
(Dollars in Billions)



\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported. Also, prior data may be restated, as explained in Footnote 12.

In the following Figures 14A and 14B, the Direct Loan portfolio of “In Repayment” principal and interest has been subdivided into three categories, “Current”, “Delinquent”, and “Default/Bankruptcy/Other”, as those terms are defined above.

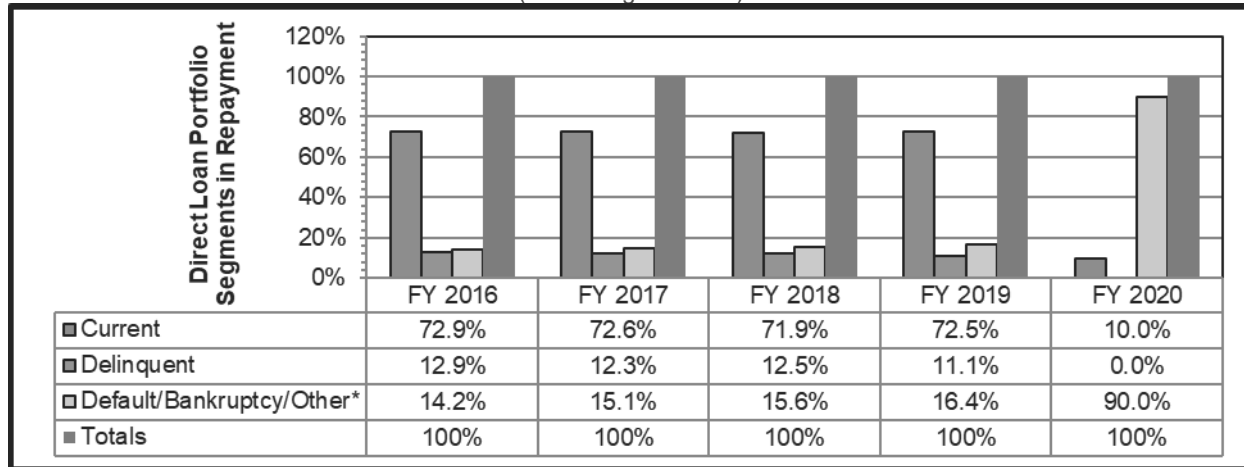
**Figure 14A: Direct Loan Portfolio Segment in Repayment by Status\***  
Principal and Interest Only  
Fiscal Years 2016–20  
(Dollars in Billions)



\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported. Also, prior data may be restated, as explained in Footnote 12.



**Figure 14B: Direct Loan Portfolio Segment in Repayment by Status\***  
**Principal and Interest Only**  
**Fiscal Years 2016–20**  
 (Percentage of Total)



\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported. Also, prior data may be restated, as explained in Footnote 12.

Regarding the “In Repayment” segment amounts as of September 30, 2020, \$0 in loan principal is in delinquent status (0 percent) as compared to \$90.9 (11.1 percent) as of September 30, 2019. Also, regarding the “In Repayment” segment amounts as of September 30, 2020, \$131.9 billion (90.0 percent) in loan principal was in default/bankruptcy/other status compared to \$134.5 billion (16.4 percent) as of September 30, 2019. The dramatic changes in these segments from 2019 to 2020 were due to the impact of the CARES Act and Presidential Directives which suspended borrower payments through December 31, 2020.

For related performance information about the percentage of borrowers more than 90 days delinquent, please see Performance Metric 5.3.C located in the *Annual Performance Report* section.

The portfolio of Direct Loan principal and interest receivables “Not in Repayment” can also be further subdivided based on the reason why the debt is not currently subject to repayment. Figures 15A and 15B<sup>14</sup> subdivide this segment into two such categories, “In School, Grace Period, and Education Deferments” and “Forbearance/Noneducation Deferments”, as defined earlier.

Figure 15A shows that the amount of Direct Loan principal and interest categorized as “In School, Grace Period, and Education Deferments” has remained relatively consistent, \$289.5 billion in FY 2016 to \$282.8 billion at the end of the current year. This slight decrease reflects a decline in new Direct Loan disbursements over the period, and the aging of the Direct Loan portfolio of principal and interest receivable, as a greater proportion of debt moved from “In School, Grace Period, and Education Deferments” category to the “In Repayment” segment.

Figure 15B indicates that during the four-year period FY 2016–19, the “Forbearance and Noneducation Deferments” segment grew from \$106.6 billion to \$133.2 billion, increasing from 26.9 percent to 31.1 percent of the “Not in Repayment” segment. However, during the

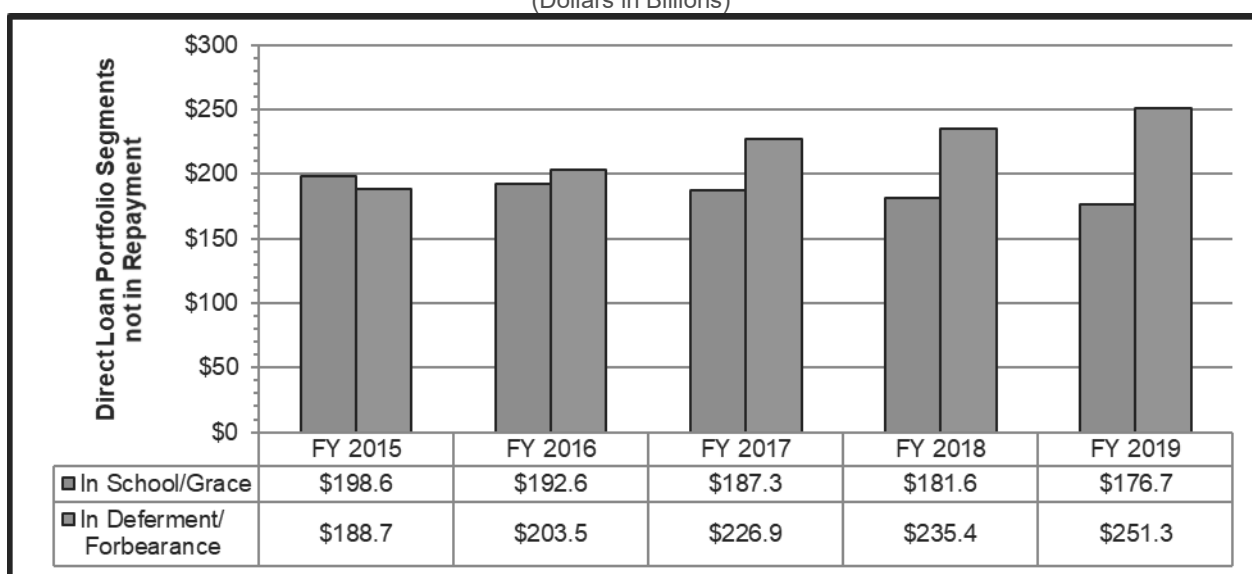
<sup>14</sup> Please refer to footnotes 11 and 12.

## Analysis of Financial Statements

FY 2016–19 period, as a percentage of the total portfolio of Direct Loan principal and interest receivables, the “In Deferment/Forbearance” portion has declined from 11.1 percent to 10.7 percent.

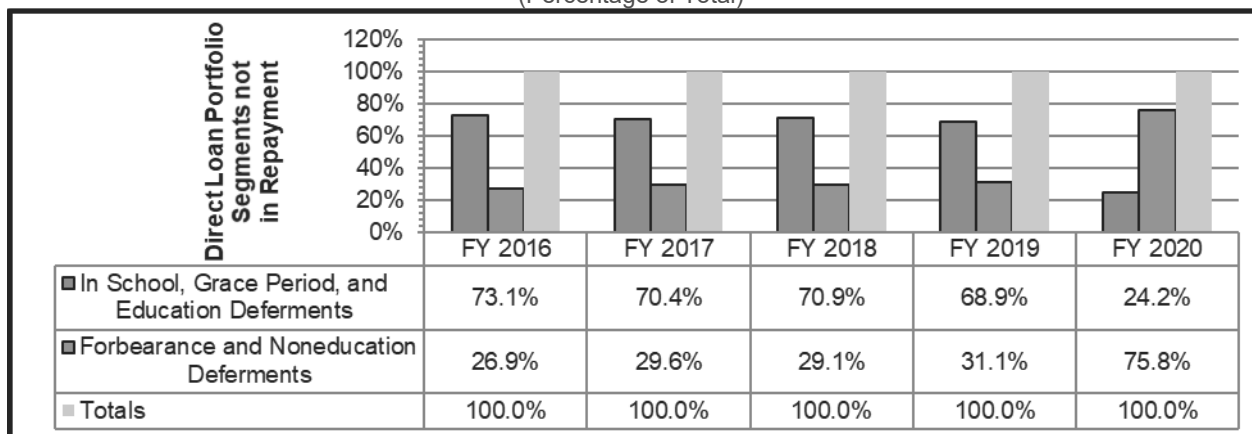
Figures 15A and 15B illustrate the dramatic impact of the CARES Act and Presidential Directives. “In School, Grace Period, and Education Deferments” amounts decreased from \$294.8 billion as of September 30, 2019 to \$282.8 billion as of September 30, 2020. However, the “Forbearance and Noneducation Deferments” amounts increased from \$133.2 billion as of September 30, 2019 to \$887.5 billion as of September 30, 2020.

**Figure 15A: Direct Loan Portfolio Segment not in Repayment by Status\***  
Principal and Interest Only  
Fiscal Years 2016–20  
(Dollars in Billions)



\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

**Figure 15B: Direct Loan Portfolio Segment not in Repayment by Status\***  
Principal and Interest Only  
Fiscal Years 2016–20  
(Percentage of Total)

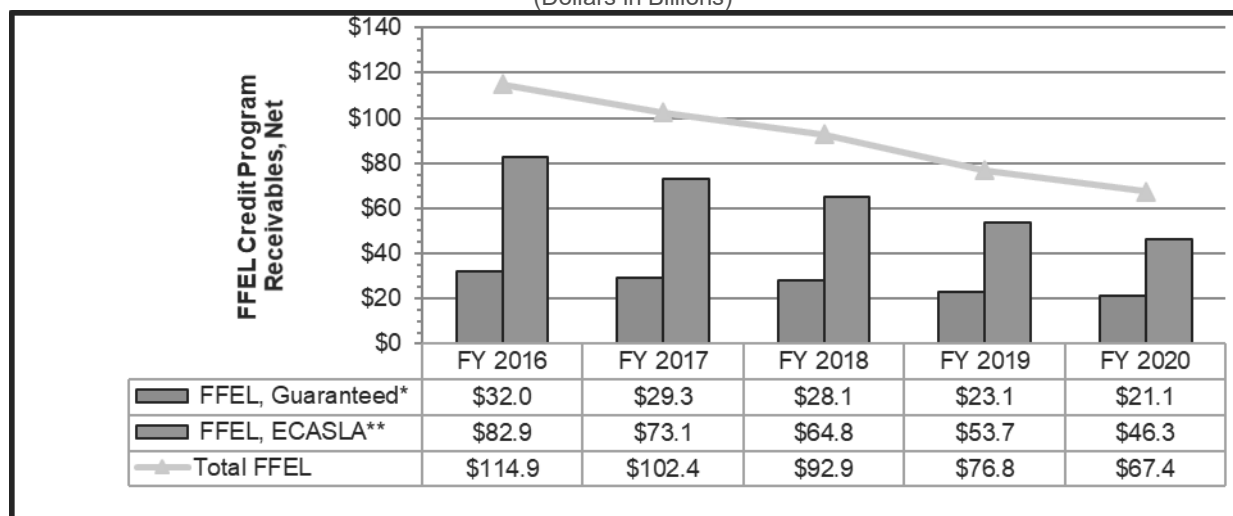


\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

## Analysis of Financial Statements

**FSA FFEL Credit Program Receivables, Net.** FSA's portfolio of FFEL loans includes debt acquired under the Conduit, Loan Participation Purchase, and Loan Purchase Commitment Programs established through the FY 2008 ECASLA law and referred to collectively as the FFEL ECASLA Loan Programs. It also includes debt acquired under the "traditional" (Non-ECASLA) defaulted guaranteed loan programs, known collectively as the "FFEL Guaranteed" portfolio segment. Changes in these FFEL loan portfolio segments over the past five fiscal years are shown in Figure 16.

**Figure 16: Total Federal Student Aid FFEL Loan Portfolio\*\*\***  
**Fiscal Years 2016–20**  
(Dollars in Billions)



\*FFEL, Guaranteed (Non-ECASLA) Program

\*\*FFEL, ECASLA Acquired Loan Program

\*\*\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

Figure 16 illustrates that with \$46.3 billion outstanding, the ECASLA FFEL portfolio segment remains the major component of the FFEL Guaranteed portfolio of net credit program receivables as of September 30, 2020 but declined by \$36.6 billion (44.1 percent) during the five-year period shown. This decrease was mainly the result of collections of principal and the impact of borrowers consolidating their loans under the Direct Loan Program, to take advantage of more favorable repayment options available in that program.

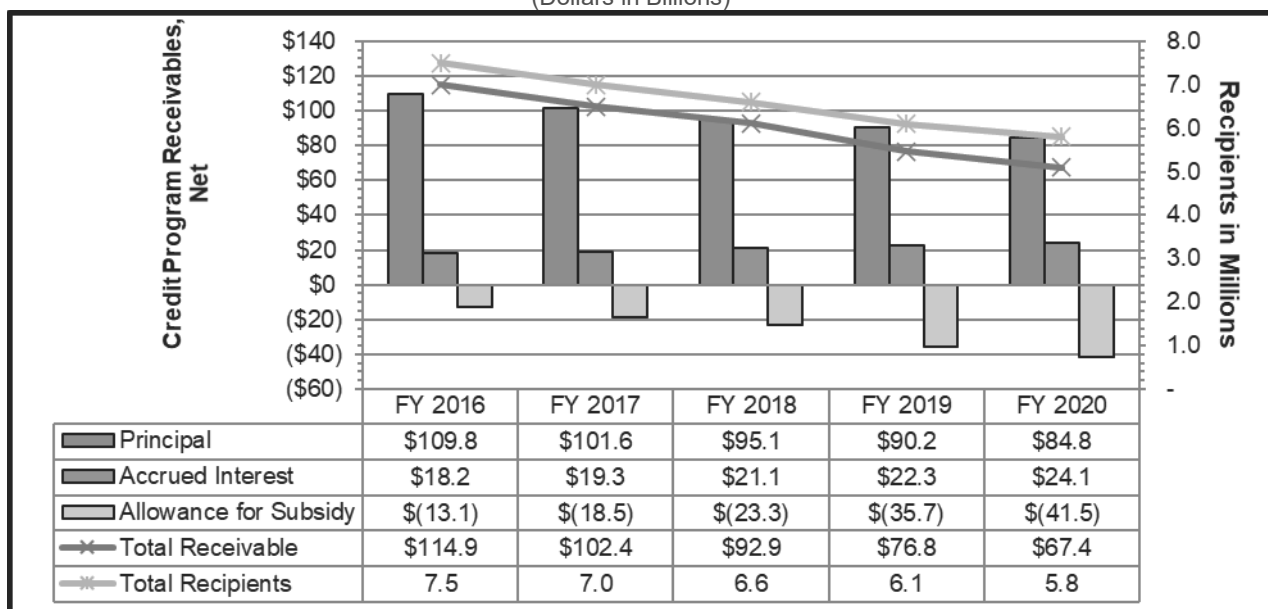
The ECASLA FFEL portfolio declined from \$53.7 billion as of September 30, 2019 to \$46.3 billion as of September 30, 2020 (\$7.4 billion). Outstanding principal declined \$4.6 billion to \$48.1 billion and the subsidy allowance increased by \$4.1 billion to \$11.0 billion. These amounts, which reduce the net receivable balance, were offset by an increase in the interest receivable of \$1.3 billion to \$9.2 billion. Despite this decrease, the proportion of ECASLA FFEL loans were approximately 70 percent of the total \$67.4 billion of FFEL loans outstanding as of the current year-end.

## Analysis of Financial Statements

Over the same five-year period, the smaller FFEL Guaranteed portfolio declined from \$32.0 billion to \$21.1 billion. The FFEL Guaranteed portfolio declined from \$23.1 billion as of September 30, 2019 to \$21.1 billion as of September 30, 2020 (\$2.0 billion). Outstanding principal declined \$0.8 billion to \$36.7 billion and the subsidy allowance increased by \$1.7 billion to \$30.5 billion. These amounts, which reduce the net receivable balance, were offset by an increase in the interest receivable of \$0.5 billion to \$14.9 billion.

The overall impact of changes in the principal, accrued interest, and subsidy components of the FFEL portfolio are shown below in Figure 17.<sup>15</sup> The reduction in FFEL recipients during the period FY 2016–20 also demonstrates the impact of debt consolidations and refinancing on the outstanding portfolio balance.

**Figure 17: Components of Federal Student Aid FFEL Receivables, Net**  
**Fiscal Years 2016–20**  
 (Dollars in Billions)



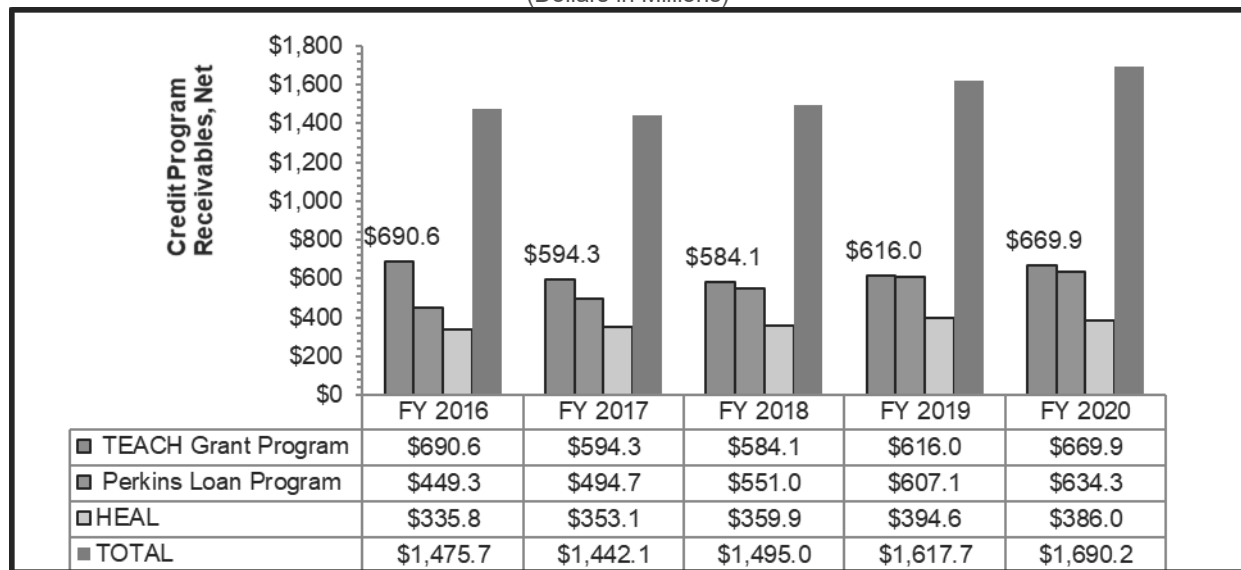
\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

**Other Credit Program Receivables, Net.** As shown in Figure 18 below, TEACH Grants, Perkins Loans, and HEAL Loans make up the third segment of Credit Programs Receivable, net that FSA reports on its balance sheet.

<sup>15</sup> Recipients in Millions for FY 2015–18 are based on data published by the FSA Data Center, at [StudentAid.gov/portfolio](https://studentaid.gov/portfolio). FY 2019 data are taken directly from NSLDS. Also, the FY 2018 data published in the *FY 2018 Annual Report*, taken directly from NSLDS, have been replaced with data subsequently published by the Data Center.

**Figure 18: Federal Student Aid Other Loan Portfolio  
Fiscal Years 2016–20**

(Dollars in Millions)



\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

This segment, known as Other Credit Program Receivables, Net, increased by 14.5 percent during the past five years, but still accounted for only 0.1 percent of FSA's total loan portfolio throughout that period. Other Credit Program Receivables, net ended FY 2020 with a balance of \$1.7 billion, a \$214.5 million increase compared to the prior year-end.

**Composition of FSA Liabilities.** FSA's liabilities represent probable and measurable future outflows of resources arising from past transactions or events. As of September 30, 2020, FSA had total liabilities of nearly \$1.3 trillion, a decrease of \$50.3 billion or 3.8 percent less than the September 30, 2019 total, in contrast to the 2.0 percent reduction in FSA's total assets.

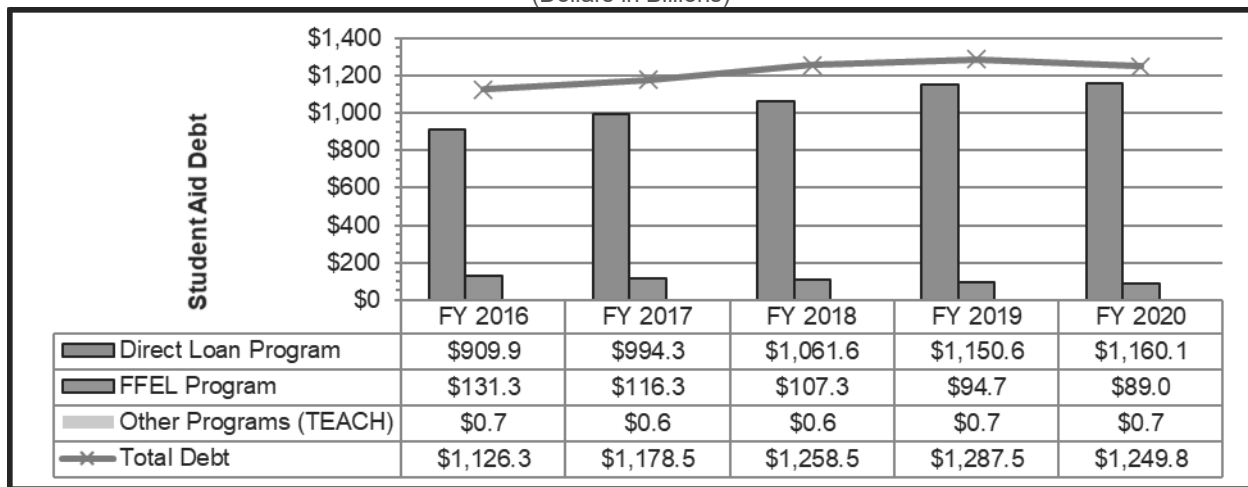
**Debt.** FSA's debt is the primary component of its liabilities, accounting for 99.1 percent of the total. FSA's debt balance of approximately \$1.3 trillion as of September 30, 2020 is 2.9 percent less than the prior-year amount. As shown in Figure 19, the Direct Loan Program was the principal debt component throughout the FY 2016–20 period and ended FY 2020 with a balance of nearly \$1.2 trillion, 0.8 percent above the prior-year amount, representing 92.8 percent of total debt.



## Analysis of Financial Statements

**Figure 19: Comparison of Federal Student Aid Debt  
Fiscal Years 2016–20**

(Dollars in Billions)

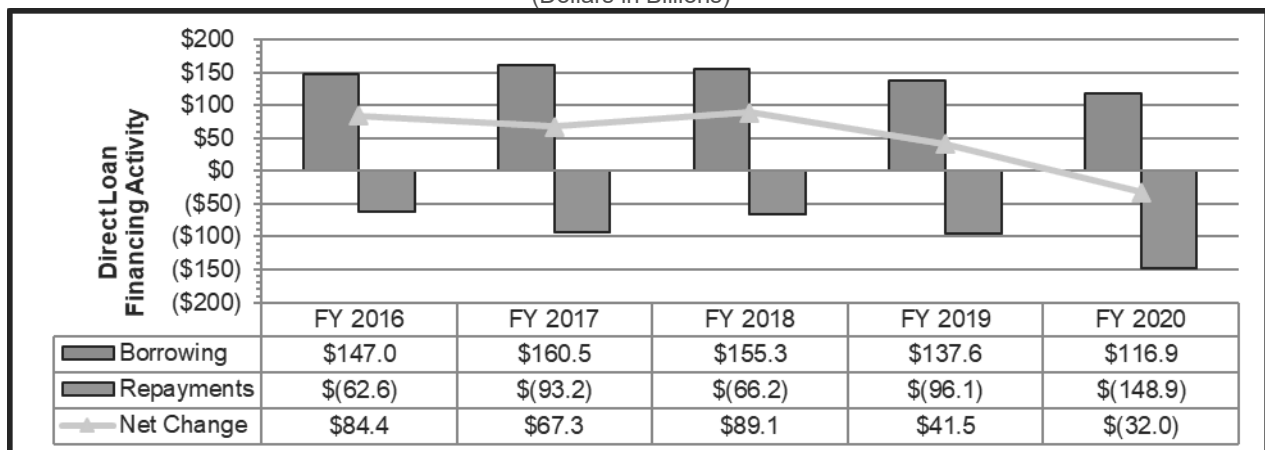


\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

FSA borrows funds from Treasury to support the disbursement of new loans, and for the payment of credit program outlays and related costs. FSA then makes repayments after considering its cash position and liability for future cash outflows, as mandated by the *Federal Credit Reform Act of 1990* (FRCA). The net impact of these activities on the outstanding debt portfolio are illustrated for the Direct Loan and FFEL Programs in Figures 20 and 21 respectively.

**Figure 20: Direct Loan Program Net Financing Activity  
Fiscal Years 2016–20**

(Dollars in Billions)

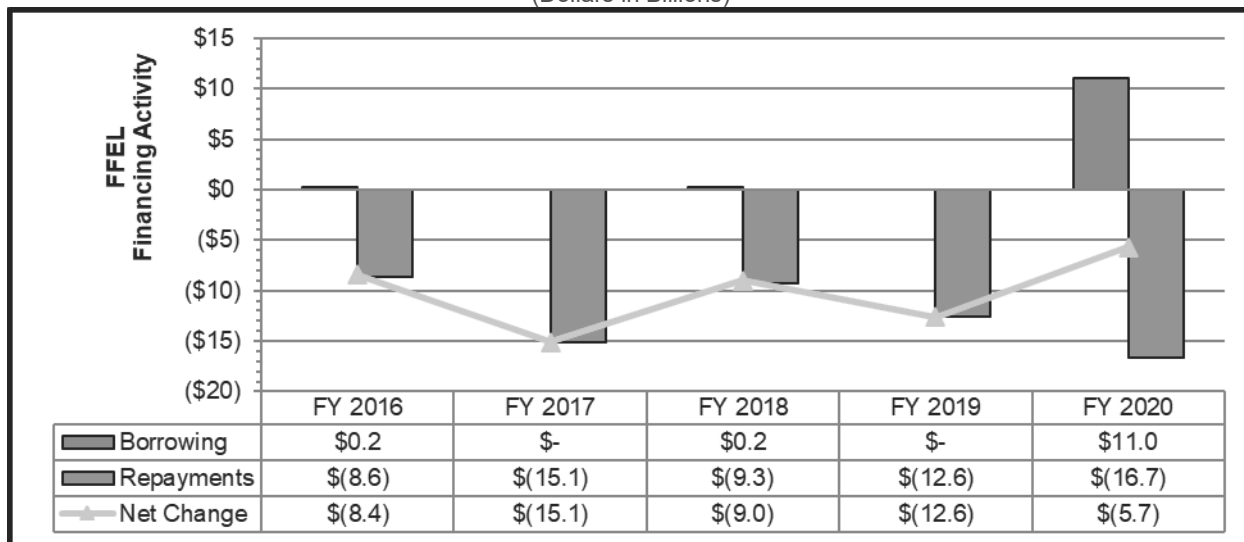


\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

Direct Loan net financing activity (Figure 20) also accounted for most of the overall increase in FSA's outstanding debt level during the same five years. By comparison, in the absence of any borrowing for new loan disbursements (Figure 21), FFEL-related debt decreased consistently from FY 2016–20. These changes in net financing activity for Direct Loan and FFEL Programs reflect the impact of the SAFRA Act on disbursements, interest rate driven loan consolidations, and related changes in estimated subsidy costs.

**Figure 21: Federal Student Aid FFEL Loan Program Net Financing Activity  
Fiscal Years 2016–20**

(Dollars in Billions)



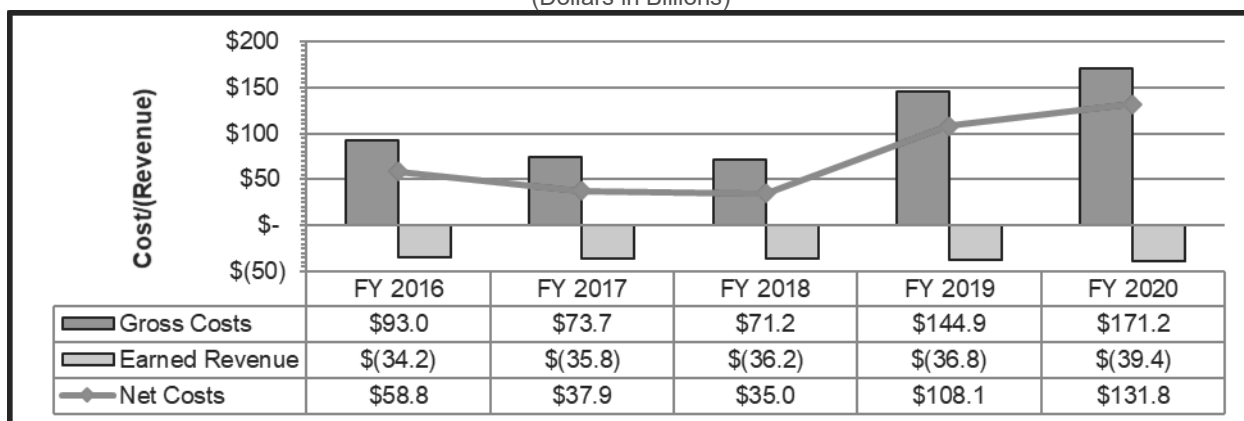
\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

## Analysis of Financial Statements

### Statement of Net Cost

The Statement of Net Cost is the federal financial statement that presents the net cost of operations for FSA programs. FSA's net cost is the gross cost incurred during its operations less any exchange (i.e., earned) revenues earned from its activities. Gross cost is composed of the cost of credit programs, grant programs, and operating costs. Exchange revenues are primarily interest earned on credit program loans.

**Figure 22: Composition of Federal Student Aid Net Cost**  
**Fiscal Years 2016–20**  
(Dollars in Billions)



\*Note: Line items may include rounding adjustments to reconcile to the total amount being reported.

As shown in Figure 22, FSA's earned revenues (mainly interest and fee accruals net of subsidy amortization) increased from \$34.2 billion in FY 2016 to \$39.4 billion in FY 2020, an overall increase of 15.2 percent or about 3.8 percent annually on average. By comparison, FSA's gross costs fluctuated much more widely over the same period, from \$93.0 billion in FY 2016 to \$171.2 billion in FY 2020, mainly as the result of subsidy-related transactions. As a result, net costs fluctuated also, most notably increasing 22.0 percent from \$108.1 billion reported in FY 2019 to \$131.8 billion in FY 2020. FSA's total costs exceeded its earned revenues in both years, but the margin was greater in FY 2020 by \$23.7 billion, of which \$39.4 billion was attributable to the Direct Loan Program, largely offset by the \$10.6 billion decrease in FFEL net costs.

For the Direct Loan Program, the \$39.4 billion increase in net costs was primarily the result of an increase in subsidy transfer modifications (\$39.6 billion). Similarly, the \$10.6 billion decrease in FFEL Program net costs was mostly the result of a \$10.3 billion increase in gross costs.

Both the FFEL and Direct Loans Programs are mandatory programs whose costs are largely driven by Federal borrowing costs, prevailing interest rates, in-school interest benefits for borrowers, the costs related to borrower defaults, and loan volume demand. The programs are funded by mandatory and indefinite budget authority and therefore do not receive annual appropriations. For more details regarding the inherent difficulty of estimating the impact of these complex factors, please refer to Note 5.

## Analysis of Financial Statements

### Statement of Changes in Net Position

The Statement of Changes in Net Position presents those amounts that caused the net position section of the Balance Sheet to change from the beginning to the end of the reporting period and is affected by changes in its two components, cumulative results of operations and unexpended appropriations.

FSA's net position as of September 30, 2020, was negative \$19.4 billion, an increase of \$25.5 billion compared to the previous September 30 net position. The difference reflects an increase in the cumulative results of operations by the amount of \$21.9 billion, from \$(76.3) billion, to \$(54.4) billion, of which \$(8.0) billion of the increase related to the Direct Loan Program and \$(14.0) billion was attributable to the FFEL Program. In addition, unexpended appropriations increased by \$3.6 billion, of which \$2.9 billion were attributable to the combined Perkins Loan and Grants Programs, with the \$0.9 billion increase in Direct Loan Program unexpended appropriations accounting for most of the remaining difference.

### Statement of Budgetary Resources

The Statement of Budgetary Resources compares the budgetary resources provided with the status or execution of those resources. It also details the composition of the resources and shows the amount of net outlays. Appropriations are available to cover the subsidy cost of each loan program and administrative expenses. Subsidy expense represents the difference between the net present value of expected future cash flows and the face value of each loan portfolio. Appropriation authority is available as needed on a permanent basis to finance costs resulting from loans guaranteed in the years before FY 1992. The Pell Grant Program receives appropriations to cover actual grant disbursements.

This statement shows that as of September 30, 2020, FSA had \$388.9 billion in combined budgetary resources, of which \$24.4 billion remained unobligated and not apportioned. This compared to \$306.1 billion in budgetary resources twelve months earlier of which \$20.1 billion were unobligated and not apportioned. Overall budgetary resources increased by only \$82.8 billion or 27.0 percent, primarily as the net result of increases in budgetary resources for the Direct Loan Program (\$60.2 billion) and the increase attributable to the FFEL Program (\$22.8 billion).

FSA's Net Outlays after Distributed Offsetting Receipts as of September 30, 2020, were \$104.4 billion, an increase of \$7.1 billion or 7.3 percent compared to the prior September 30 amount of \$97.3 billion. The Direct Loan Program accounted for a \$7.9 billion increase, with a FFEL increase of \$1.9 billion and a \$2.8 billion decrease attributable to the combined Perkins Loan and Grants Programs. FFEL Program activity was mainly due to an increase in net outlays (\$6.6 billion), together with an increase in distributed offsetting receipts (\$4.8 billion). Additional information is provided in Note 12.

## Financial Management Highlights

### Financial Impact of the Coronavirus Disease 2019 (COVID-19)

In response to the COVID-19 pandemic, Congress enacted the CARES Act on March 27, 2020. As part of the CARES Act, FSA received \$40 million to support efforts related to loan forbearance, default collection wage garnishment assistance for student loan borrowers, servicing system modifications, systems support of COVID-19 telework, and hiring of temporary employees. In FY 2020, FSA obligated \$13.9 million, committed approximately \$3.0 million, and the remaining balance will carry over into FY 2021.

The CARES Act provided emergency relief measures in the Direct Loan program that included suspending loan payments, halting collections on defaulted loans, and setting interest rates to 0 percent through September 30, 2020. In response, FSA stopped all federal wage garnishments and collection actions for borrowers with federally held loans in default, and FSA paid approximately 2.3 million refunds of Treasury Offset Program (TOP) and Administrative Wage Garnishments (AWG) totaling \$2.5 billion. On August 8, 2020, the President directed the Secretary to continue these measures until December 31, 2020.

### Limitations of Financial Statements

The principal financial statements are prepared to report the financial position, financial condition, and results of operations, pursuant to the requirements of 31 U.S.C. § 3515(b). The statements are prepared from records of Federal entities in accordance with Federal generally accepted accounting principles (GAAP) and the formats prescribed by OMB. Reports used to monitor and control budgetary resources are prepared from the same records. Users of the statements are advised that the statements are for a component of the U.S. Government.



## **Analysis of Systems, Controls, and Legal Compliance**

FSA adheres to the Government Accountability Office (GAO) published guidance on internal control and recognizes that internal control is an integral part of managing an organization. Internal control includes the plans, methods, and procedures used to meet the organization's missions, goals, and objectives. In carrying out these components of internal control, FSA supports an environment for performance-based management. Internal control also serves as the first line of defense in safeguarding assets and preventing and detecting errors and fraud. Internal control helps government program managers achieve desired results through effective stewardship of public resources.

Internal controls should provide reasonable assurance that the objectives of the agency are being achieved in the following categories:

- Effective and efficient operations,
- Reliability of reporting for internal and external use, and
- Compliance with applicable laws and regulations.<sup>16</sup>

FSA is responsible for establishing and maintaining effective internal control over reporting and financial management systems that meet the objectives of the *Federal Managers' Financial Integrity Act of 1982* (FMFIA) and annually assessing the effectiveness and efficiency of its internal controls over operations and compliance with applicable laws and regulations in accordance with OMB Circular A-123, Management's Responsibility for Enterprise Risk Management and Internal Control (OMB Circular A-123). On June 6, 2018, OMB updated OMB Circular A-123, Appendix A, Management of Reporting and Data Integrity Risk, to further align to the revised OMB Circular A-123 updated in 2016. FSA continues to coordinate with the Department and internally to execute these requirements.

Based on the results of this year's assessment, FSA reported to the Department's management that its internal control over operations, including internal controls intended to prevent, detect and recover improper payments, and compliance with applicable laws and regulations, as of September 30, 2020, was operating effectively, with one exception noted in the Legal Compliance section of the Department's AFR: *Debt Collection Improvement Act of 1996*. More details about this issue and the efforts being taken to remediate the non-compliance can be found in the Department's **AFR**.

In addition, FSA, working with the Department, conducted its current year assessment of the effectiveness of internal control in accordance with the requirements of Appendix A of OMB Circular A-123, updated on June 6, 2018. OMB Circular A-123, Appendix A provides requirements to agencies for conducting management's assessment of internal control over reporting. The Department's evaluation for FY 2020 did not identify any material weaknesses in controls as of September 30, 2020. The scope of FSA's assessment focuses on new processes and processes with high-risk profiles that are tested every year. Processes with lower-risk

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<sup>16</sup> Government Accountability Office Standards for Internal Control in the Federal Government, GAO-14-704G, September 10, 2014, p.5.

## Limitations of Financial Statements

profiles are reviewed and tested on a 3-year cycle. In FY 2020, FSA continued to rely on audits of external service providers conducted by independent public accountants in accordance with the Statement on Standards for Attestation Engagements Number 18, Reporting on Controls at a Service Organization.

FSA's participation in the Department's implementation of the requirements of OMB Circular A-123, including Appendix A, enables it to continue to build upon its internal control framework. This framework will be used in continuing efforts to monitor and improve internal control. Refer to the Analysis of Systems, Controls and Legal Compliance section of the Department's **AFR** for additional information related to management's assurances and disclosures.

Refer to the Analysis of Systems, Controls and Legal Compliance section of the Department's **AFR** for information related to the Department's compliance with the FMFIA.

FSA's financial management systems strategy is formulated and managed as part of the Department's strategy. For details on FSA's financial management systems strategy, refer to the Financial Management Systems Strategy narrative found in the Management's Discussion and Analysis section of the Department's **AFR**.

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**Annual Performance Report (Unaudited)**



**Annual Performance Report (Unaudited)**

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## Overview of the Annual Performance Report

The *Annual Performance Report* section of the *Annual Report* provides detailed performance information on FSA's progress in achieving the goals and objectives described in the *FY 2015–19 Strategic Plan* and the draft *FY 2020–24 Strategic Plan*. This section also includes reports on other areas of performance that are required by the Higher Education Amendments of 1998. The subsections of the *Annual Performance Report* are listed and briefly discussed below:

- **Introduction to the Annual Performance Report:** The Introduction to the Annual Performance Report provides an overview of the Annual Performance Report and includes a high-level summary of the *FY 2020–24 Strategic Plan*.
- **Performance Results by Strategic Goal:** This subsection details the results of each overall strategic goal by performance metric. Each performance metric includes a table that presents five years of data results, where available, its current target and results. The performance metric section also includes a discussion of the metric's target context, analysis of progress, and data quality limitations.
- **Fiscal Year 2020 Accomplishments of Federal Student Aid:** This subsection describes additional accomplishments that were not measured by the performance metrics included in the strategic plan but were the result of initiatives that FSA undertook to support the implementation of the strategic plan or legislative changes.
- **Legislative and Regulatory Recommendations:** This subsection details legislative and regulatory recommendations that FSA provided to the Department in support of the Department's regulatory activities.
- **Annual Bonus Awards:** This subsection discusses executive compensation at FSA in compliance with the legislative requirements under the PBO legislation that created FSA.
- **Report of the Federal Student Aid Ombudsman:** The report discusses the FSA Ombudsman's activities in accomplishing its statutory mission of addressing complaints about Title IV financial aid programs.

## Introduction to the Annual Performance Report

In FY 2019, FSA embarked on the journey to guide the organization towards more effectively achieving its vision “To be the most trusted and reliable source of student financial aid, information, and services in the nation.” This effort culminated into an organizational five-year performance plan that better aligned with the vision and established the framework to create a more student-focused, agile, and transparent organization. For the development of the *FY 2020–24 Strategic Plan*, FSA worked throughout the fiscal year to also coordinate the closing of FSA’s *FY 2015–19 Strategic Plan* on September 30, 2019. In compliance with the PBO legislation, FSA has offered a public comment period for external stakeholders, such as students, institutions of higher education, Congress, lenders, and other key parties. The public comment period for the draft plan ends on October 23, 2020. FSA will review and incorporate comments as appropriate and plans to publish the *FY 2020–24 Strategic Plan* by December of Calendar Year 2020.

In conjunction with this effort and to ensure a consistent transition with the previous *FY 2015–19 Strategic Plan*, FSA is utilizing eight existing performance metrics within the draft *FY 2020–24 Strategic Plan*. FSA also aligned these metrics with goals and objectives in a specific manner to reinforce the performance expectations in key areas. Due to these changes, FSA also discontinued the utilization of five performance metrics from the *FY 2015–19 Strategic Plan*. FSA will no longer use these performance metrics to measure organizational progress (refer to the Table 13: Crosswalk between *FY 2015-19* and *FY 2020-24 Strategic Plans*, for the discontinued performance metrics). Therefore, in FY 2020, FSA’s performance is measured against the strategic goals, objectives and performance metrics established in the *FY 2020–24 Strategic Plan*.

In the FY 2020 Annual Performance Report, FSA provides the results associated with both the 36 new performance metrics introduced in the draft *FY 2020–24 Strategic Plan*, as well as the 8 existing metrics discussed earlier. The performance framework established within the draft *FY 2020–24 Strategic Plan* encompasses all areas of business and offers a renewed focus on data-driven decisions that will enable positive outcomes for customers, other stakeholders, and taxpayers. By making advances in performance accountability, FSA is working to be a more transparent organization.

FSA is required, by the PBO-enabling legislation, to report annually its level of performance and the associated results. This section, the Annual Performance Report, satisfies this annual reporting requirement. For additional performance-related information—including a more complete discussion of FSA’s mission, organization, and performance management—refer to the Management’s Discussion and Analysis section of this document. To read more about FSA’s strategic plans, refer to **[StudentAid.gov/strategicplan](https://studentaid.gov/strategicplan)**.

To review the performance metrics transitioned and discontinued from the *FY 2015–19 Strategic Plan*, refer to the Crosswalk between *FY 2015–19* and *FY 2020–24 Strategic Plans*.

## Fiscal Year 2020 Organizational Performance

Table 13: Crosswalk between FY 2015–19 and FY 2020–24 Strategic Plans

Performance Metrics FY 2015–19 Plan	Disposition in FY 2020–24 Plan
<b>A.1</b> Percent of First-Time FAFSA® Filers Among High School Seniors	<b>2.1.B</b> Percentage of high school seniors submitting the FAFSA®.
<b>A.2</b> Persistence Among First-Time Filing Aid Recipients	<b>5.1.E</b> Persistence among first-time filing aid recipients.
<b>A.3</b> Customer Visits to StudentAid.gov	<b>2.1.A</b> Number of visits (sessions) demonstrating adoption of the updated StudentAid.gov site.
<b>A.4</b> Social Media Channel Subscribership	<b>Discontinued in FY 2020</b>
<b>A.5</b> ACSI Aid Life Cycle Surveys	<b>2.2.G</b> American Customer Satisfaction Index (ACSI) Aid Lifecycle Survey score.
<b>B.1</b> Improper Payment Rate	<b>Discontinued in FY 2020</b>
<b>B.2</b> Percent of Borrowers > 90 Days Delinquent	<b>5.3.C</b> Percent of Borrowers > 90 Days Delinquent.
<b>C.1</b> Aid Delivery Costs Per Application	<b>Discontinued in FY 2020</b>
<b>C.2</b> Outstanding Direct Loan Portfolio in Current Repayment Status	<b>5.1.C</b> Outstanding Direct Loan Portfolio in Current Repayment Status.
<b>D.1</b> Ease of Doing Business with FSA	<b>3.2.D</b> Ease of doing business with FSA.
<b>D.2</b> Percentage of Contract Dollars Competed by FSA	<b>Discontinued in FY 2020</b>
<b>D.3</b> Collection Rate	<b>Discontinued in FY 2020</b>
<b>E.1</b> Employee Engagement Index	<b>1.1</b> Improve Federal Employee Viewpoint Survey score: Employee Engagement Index. FSA's scores will improve the first year and continue to increase 1–2% annually.

## Federal Student Aid Strategic Goals, Performance Metrics, and Results

**Table 14: Fiscal Year 2020 Strategic Goals, Performance Metrics, and Results**

<b>Strategic Goal 1: Empower a High-Performing Organization</b>			
<b>Strategic Objective 1.1: Improve employee engagement and workplace inclusion to develop and retain talent, improve employee satisfaction, and engage in effective succession planning.</b>			
<b>Performance Metrics</b>	<b>FY 2020 Target</b>	<b>FY 2020 Actual</b>	<b>Result</b>
<b>1.1</b> Improve Federal Employee Viewpoint Survey score: Employee Engagement Index. FSA's scores will improve the first year and continue to increase 1–2% annually.	62—63%	N/A	<b>N/A</b>
<b>Strategic Objective 1.2 Expand employee skills and capabilities to support Next Gen FSA.</b>			
<b>Performance Metrics</b>	<b>FY 2020 Target</b>	<b>FY 2020 Actual</b>	<b>Result</b>
<b>1.2.A</b> Identification, validation, assessment, and prioritization of skill competencies, required grades, and strategic alignment in accordance with the workforce requirements study results.	50%	58.2%	<b>Met</b>
<b>1.2.B</b> Development of a multi-year, targeted, training and development plan.	Baseline	N/A	<b>N/A</b>
<b>1.2.C</b> Perform a training analysis at each performance review period within the fiscal period.	Baseline	27	<b>N/A</b>
<b>Strategic Goal 2: Provide World-Class Customer Experience to the Students, Parents, and Borrowers We Serve</b>			
<b>Strategic Objective 2.1: Ensure that all students can easily access information on federal student aid, apply for federal student aid, and have information on repayment options.</b>			
<b>Performance Metrics</b>	<b>FY 2020 Target</b>	<b>FY 2020 Actual</b>	<b>Result</b>
<b>2.1.A</b> Number of visits (sessions) demonstrating adoption of the updated StudentAid.gov site.	190 million	217 million	<b>Met</b>
<b>2.1.B</b> Percentage of high school seniors submitting the FAFSA.	66%	63.8%	<b>Not Met</b>
<b>2.1.C</b> Number of customers submitting the FAFSA via a mobile platform—the myStudentAid mobile app or fafsa.gov.	2.4 million submissions	2.5 million submissions	<b>Met</b>

## Fiscal Year 2020 Organizational Performance

Strategic Objective 2.2: Provide seamless, easy, personalized digital interactions equal with top financial institutions in the delivery of financial aid products and services.			
Performance Metrics	FY 2020 Target	FY 2020 Actual	Result
2.2.A Number of customers checking loan balances via the myStudentAid mobile app.	70,000	133,417	Met
2.2.B Number of borrowers who view their aid summary information on StudentAid.gov.	Baseline	7.6 million	N/A
2.2.C Number of users of "Aidan," the StudentAid.gov virtual assistant.	25,000	545,763	Met
2.2.D Number of borrowers who complete their annual certification on time for the Annual Student Loan Acknowledgement (ASLA).	Baseline	858,628	N/A
2.2.E Transactional email volume for outreach and communications to borrowers.	Baseline	92.2 million	N/A
2.2.F Recurring campaign email delivery volume for outreach and communications to borrowers.	Baseline	32.2 million	N/A
2.2.G American Customer Satisfaction Index (ACSI) Aid Lifecycle Survey score.	72–74	73.5	Met
2.2.H Customer Satisfaction Survey(s) for StudentAid.gov site and associated tools.	Survey Development	No survey developed	Not Met
Strategic Objective 2.3: Streamline contact center and back-office operations to improve our customers' integrated experience.			
Performance Metrics	FY 2020 Target	FY 2020 Actual	Result
2.3.A Quality Standard for Average Speed to Answer (ASA) at all Call Centers.	60 seconds or less	59.0 seconds	Met
2.3.B Quality Standard for Abandon Rate (AR) for Incoming Calls at all Call Centers.	2%	3.6%	Not Met
Strategic Objective 2.4: Simplify the communication and processes associated with borrower repayment plans.			
Performance Metrics	FY 2020 Target	FY 2020 Actual	Result
2.4.A Number of borrowers using Make a Payment feature to pay student loans.	Implement a pilot	Pilot implemented 12, 245 paid	Met
2.4.B Percentage of borrowers using auto-debit.	Baseline	24.8%	N/A
2.4.C Percentage of Public Service Loan Forgiveness (PSLF) applicants who had used the PSLF Help Tool and who met the requirements for PSLF.	Baseline	N/A	N/A



<b>Strategic Goal 3: Increase Partner Engagement and Oversight Effectiveness</b>			
<b>Strategic Objective 3.1: Provide effective oversight of FSA's partners utilizing a comprehensive suite of monitoring tools.</b>			
<b>Performance Metrics</b>	<b>FY 2020 Target</b>	<b>FY 2020 Actual</b>	<b>Result</b>
<b>3.1.A</b> FSA will annually conduct an Institutional Review for its participating partners including schools, third-party servicers, and financial institutions.	40%	51%	<b>Met</b>
<b>3.1.B</b> Number of Borrower Defense (BD) applications adjudicated (subject to existing BD regulations).	150,000	160,000	<b>Met</b>
<b>Strategic Objective 3.2: Strengthen partner engagement and provide effective outreach and assistance.</b>			
<b>Performance Metrics</b>	<b>FY 2020 Target</b>	<b>FY 2020 Actual</b>	<b>Result</b>
<b>3.2.A</b> FSA will provide comprehensive training and/or specialized technical assistance to its participating schools that receive <i>Title IV</i> Aid on behalf of students.	35%	70%	<b>Met</b>
<b>3.2.B</b> FSA will measure Partner Participation rates in training programs.	Baseline	70%	<b>N/A</b>
<b>3.2.C</b> FSA will enhance the self-service training resource and informational platform to improve communication with participating partners, including schools, third-party servicers, and financial institutions.	Baseline	62%	<b>N/A</b>
<b>3.2.D</b> Ease of doing business with FSA.	74–76%	71%	<b>Not Met</b>
<b>Strategic Goal 4: Strengthen Data Protection and Cybersecurity Safeguards.</b>			
<b>Strategic Objective 4.1: Implement business partner and vendor systems that house, manage, and provide systems supporting FSA business processes, outreach and awareness focused on oversight, enforcement, infrastructure, systems, and data.</b>			
<b>Performance Metrics</b>	<b>FY 2020 Target</b>	<b>FY 2020 Actual</b>	<b>Result</b>
<b>4.1</b> Increase partner/vendor cybersecurity effectiveness by reducing the total number of FSA system assessment findings by 20% per year.	1,800	3,561	<b>Not Met</b>
<b>Strategic Objective 4.2: Improve student privacy data and cybersecurity controls of Institutions of Higher Education (IHEs) through outreach and communication, to mitigate future cyber-incidents and breaches.</b>			
<b>Performance Metrics</b>	<b>FY 2020 Target</b>	<b>FY 2020 Actual</b>	<b>Result</b>
<b>4.2.A</b> Increase Institutions of Higher Education cybersecurity effectiveness by reducing GLBA cybersecurity non-compliance by 20% per year.	Baseline	177	<b>N/A</b>
<b>4.2.B</b> Reduce incident reporting time at Institutions of Higher Education.	Baseline	87.5 days	<b>N/A</b>

## Fiscal Year 2020 Organizational Performance

<b>Strategic Objective 4.3: Build an effective cybersecurity culture through employee awareness, training and accountability focused on protecting systems and data.</b>			
Performance Metrics	FY 2020 Target	FY 2020 Actual	Result
<b>4.3</b> Decrease the number of employee-related cybersecurity events associated with inappropriate use, distribution, or storage of Personally Identifiable Information (PII) and financial information by 20% a year.	1,800	1,713	<b>Met</b>
<b>Strategic Goal 5: Enhance the Management and Transparency of the Portfolio</b>			
<b>Strategic Objective 5.1: Improve the management and transparency of FSA's student loan portfolio performance.</b>			
Performance Metrics	FY 2020 Target	FY 2020 Actual	Result
<b>5.1.A</b> Initiate monthly reporting to the public through the FSA data center.	Establish specific number of public reports	56	<b>Met</b>
<b>5.1.B</b> Timeliness of FSA's ability to respond to statutorily mandated reports.	30 days or less	30 days or less	<b>Met</b>
<b>5.1.C</b> Outstanding Direct Loan Portfolio in Current Repayment Status.	Baseline	93.7%	<b>N/A</b>
<b>5.1.D</b> Percentage of borrowers who are in a positive repayment status within the first three years of student loan repayment.	Baseline	N/A	<b>N/A</b>
<b>5.1.E</b> Persistence among first-time filing aid recipients.	83–84%	81.0%	<b>Not Met</b>
<b>Strategic Objective 5.2: Provide analytics and operational support for a customer-centric, data-driven, performance-based organization.</b>			
Performance Metrics	FY 2020 Target	FY 2020 Actual	Result
<b>5.2.A</b> Using the Enterprise Risk Management (ERM) Maturity Model, move the organization towards a "Risk Intelligent" position. The model defines organizational progress in the following way: <ul style="list-style-type: none"> <li>• 1 = Initial;</li> <li>• 2 = Fragmented;</li> <li>• 3 = Integrated;</li> <li>• 4 = Risk Intelligent.</li> </ul>	1.5	1.6	<b>Met</b>
<b>5.2.B</b> Implementation timeline for FUTURE Act.	Establish a timeline	N/A	<b>N/A</b>
<b>5.2.C</b> Error rate discovered through income verification activities for borrowers on an IDR plan.	Baseline	N/A	<b>N/A</b>

<b>Strategic Objective 5.3: Leverage portfolio analytics to drive improved outcomes for customers and taxpayers.</b>			
<b>Performance Metrics</b>	<b>FY 2020 Target</b>	<b>FY 2020 Actual</b>	<b>Result</b>
<b>5.3.A</b> Identify and provide intervention actions for customers at risk of default.	Development and testing of default intervention program	Developed, tested, and deployed two projects	<b>Met</b>
<b>5.3.B</b> Default rate by borrower count.	Baseline	N/A	<b>N/A</b>
<b>5.3.C</b> Percent of borrowers > 90 days delinquent.	Baseline	4.8%	<b>N/A</b>
<b>5.3.D</b> Percentage of borrowers who did not make the first three payments.	Baseline	N/A	<b>N/A</b>
<b>5.3.E</b> Percentage of customers who borrow less than the maximum loan amount.	Baseline	N/A	<b>N/A</b>
<b>Strategic Objective 5.4: Increase vendor performance through quality management activities centered on customer service and product delivery.</b>			
<b>Performance Metrics</b>	<b>FY 2020 Target</b>	<b>FY 2020 Actual</b>	<b>Result</b>
<b>5.4</b> Percentage of quality assurance reviews for the external workforce (servicers) reviewed annually.	25%	11.1%	<b>Not Met</b>

## Performance Results by Strategic Goal

## Performance Results by Strategic Goal

This section presents detailed performance results, which include a discussion of progress made to date in achieving the strategic goal and the data used to assess performance.

**How the Remainder of this Section is Organized.** This section is organized by the five strategic goals. For each strategic goal, this section provides an overview of the goal, lists the associated objectives that support the strategic goal, and details the performance metrics used to measure performance.

- **Table:** Identifies the performance metric associated with the strategic goal and provides the historical actual results for the four previous fiscal years (if available); the target and actual result for the current fiscal year; and an indicator as to whether FSA met the performance metric for each fiscal year reported. The following is the legend for the performance result indicator included in the table.

**Table 15: Performance Result Indicator Legend**

Performance Result	Indicator
Performance result met or exceeded the target.	Met
Performance result did not meet the target.	Not Met
Performance result is not applicable because: <ul style="list-style-type: none"> <li>• A target for the performance metric was not developed (i.e., baseline year) or</li> <li>• The performance metric was not fully implemented, or</li> <li>• The required data were not available in time for inclusion, or</li> <li>• The performance metric is a new metric and prior year results are not available.</li> </ul>	N/A

The performance metric results reported are as of fiscal year-end, September 30, 2020, unless otherwise noted. If the required data are not available as of fiscal year-end in time for inclusion in this report, data as of the most recent period available are used. Data as of fiscal year-end may not be available in some instances, where the required data are obtained from external sources including state and private nonprofit guaranty agencies, lenders and loan servicers, and grant and loan recipients.

- **Target Context:** Explains the parameters or rationale for targets, especially where anomalies exist.
- **Analysis of Progress:** Provides a discussion of FSA's progress in meeting its targets and includes explanations for unmet targets and actions being taken or planned.
- **Data Quality and Limitations:** Describes the source of data required to calculate the actual result for the performance metric, any calculation required to determine the actual result, and any known data quality issues or limitations. For an overview of FSA's business process to confirm the quality of performance data, refer to the Quality of Performance Data in the Management's Discussion and Analysis section of this *Annual Report*.

## Performance Results by Strategic Goal

### Strategic Goal 1: Empower a High-Performing Organization

FSA's employees are its greatest resource, and their knowledge, skills, and abilities are essential to building and sustaining a high-performing organization. To meet the expectations outlined in the draft *FY 2020-24 Strategic Plan*, it is essential that staff are trained, aligned, and equipped to provide best-in-class customer service while fulfilling the fiduciary responsibilities of the organization.

FSA will assess progress toward preparing its workforce using four related metrics under Strategic Goal 1. The first metric is designed to improve the Federal Employee Viewpoint Survey (FEVS) score, specifically in the Employee Engagement Index. The Index provides an assessment of the engagement potential of a work environment.

The second metric focuses on an organizational workforce requirements study that will provide FSA with the ability to better forecast human capital needs and inform planning for staff training, transfers, promotions, and talent acquisition. The workforce requirements study will also inform the third metric: the degree of alignment between the competencies needed for each position (as identified in the study), and the competencies of individuals in each job.

Lastly, FSA will measure the effectiveness of employee training through detailed analysis and evaluation. Over time, the analysis will help to measure performance growth, provide extant data to support developmental resources, and assess the quality and benefits of attended training to evaluate the return on investment for the employees and the organization.

Strategic Goal 1 includes the two strategic objectives listed below:

- **Strategic Objective 1.1:**

Improve employee engagement and workplace inclusion to develop and retain talent, improve employee satisfaction, and engage in effective succession planning.

- **Strategic Objective 1.2:**

Expand employee skills and capabilities to support Next Gen FSA.

In FY 2020, FSA had two objectives under this goal. These objectives included four metrics. Of these four metrics, one metric met the target, two metrics were baselined, and one metric did not have the required data available to provide an actual result in FY 2020.



## Performance Results by Strategic Goal

**Strategic Objective 1.1:** Improve employee engagement and workplace inclusion to develop and retain talent, improve employee satisfaction, and engage in effective succession planning.

**Table 16: Performance Metric 1.1.** Improve Federal Employee Viewpoint Survey score: Employee Engagement Index. FSA's scores will improve the first year and continue to increase 1–2% annually.\*

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	67.4%	69.7%	62.0%	61.0%	62–63%	N/A
Performance Result	Met	Met	Not Met	Met	N/A	

\*Note: Formerly E.1 in FSA FY 2019 Annual Report.

### Target Context:

The U.S. Office of Personnel Management (OPM) FEVS measures employees' perceptions of whether, and to what extent, conditions characteristic of successful organizations are present in their agencies. The FEVS serves as a tool for employees to share their perceptions in many critical areas including their work experiences, their agency, and leadership. The Engagement Index assesses the critical conditions conducive for employee engagement (e.g., effective leadership, work which provides meaning to employees, etc.). It is made up of three subfactors: Leaders Lead, Supervisors, and Intrinsic Work Experience.

### Analysis of Progress:

There is no data currently available for this metric.

The FY 2020 data will be released after January 2021 due to a delay in survey administration by OPM. The FY 2020 FEVS began on September 23, 2020 and closed on November 4, 2020. FSA analyzed the results of the FY 2019 FEVS survey and focused on communication, fundamentals for success (recruiting, staffing, training, and resources), leadership, recognition and rewards, and work/life balance as key areas of focus in FY 2020. FSA conducted focus groups with 243 managers and staff to inform its Employee Engagement Action Plans developed by each organizational business unit.

### Data Quality and Limitations:

OPM has been conducting FEVS since 2002 and maintains a 100 percent accuracy rate for employee security and data integrity. One limitation is that the survey results are provided in real time, and there is at least a one quarter delay in receipt by agencies. This may limit the true interpretation of the data, in that leadership changes, employee attrition and a shift in organizational priorities may impact the relevance of the data.

In addition, FSA continues operating at a near 100 percent virtual capacity, and the lack of direct employee interaction and communication may negatively impact survey participation for FY 2020. FSA will continue using focus group data to assist with employee engagement and other organizational improvements based on feedback. The data source for this performance metric is the FY 2020 FEVS survey.

## Performance Results by Strategic Goal

**Strategic Objective 1.2:** Expand employee skills and capabilities to support Next Gen FSA.

**Table 17: Performance Metric 1.2.A.** Identification, validation, assessment, and prioritization of skill competencies, required grades, and strategic alignment in accordance with the workforce requirements study results.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	50% of organization completed	58.2% of organization completed
Performance Result	N/A*	N/A*	N/A*	N/A*	Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

FSA worked with a consultant to conduct a workforce requirements study of the process and drivers (input and output measures) that influence organizational staffing needs. Data were collected through questionnaires and follow-up interviews with managers and subject matter experts of various FSA processes.

### Analysis of Progress:

FSA met its target for this metric with 58.2 percent of FSA offices and positions being analyzed.

Staffing requirements have been validated and documented for 58.2 percent of the FSA workforce for each of 85 organizational entities included in the study population. The entire workforce requirements study is anticipated to be completed and fully validated by January 2021.

### Data Quality and Limitations:

To inform the workforce requirements study, data from FSA's internal personnel system was utilized. The data provided an organizational resource picture (i.e., the number of staff onboard by organization, occupation, grade, and/or other attributes). The required number of staff per organizational business unit, from which specific staffing needs can be computed, is generated from a staffing dashboard developed by FSA's contractor.

The needs, or staffing gap computation, utilizes current staffing onboard and the numbers derived as staffing required to produce a rationale percentage of staff needed. The study is also required to assist FSA with tools that will enable tracking of full-time equivalent staff and financial execution (i.e., average onboard staffing and aggregate salaries over the course of a fiscal year). This calculation, in conjunction with the staffing gap computation, will provide a more accurate picture of FSA's requirements and capabilities beyond the historical onboard staffing snapshots that have typically been produced.

The initial collection and analysis of workload driver data that will be utilized to determine staffing requirements is currently in progress, so full limitations have not yet been identified. The data sources for this performance metric are the U.S. Department of Interior Business Center

## Performance Results by Strategic Goal

Payroll/Personnel Data, in addition to qualitative interview and resource information from internal FSA sources.

## Performance Results by Strategic Goal

**Table 18: Performance Metric 1.2.B.** Development of a multi-year, targeted, training and development plan.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	N/A
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

FSA began defining the methodology for the targeted training and development plan by identifying the key training programs to be included based on FY 2020 employee participation. In FY 2020, 1,118 employees participated in targeted trainings provided by the Workforce Development Division (WDD), Project Management training program, FSA Leadership Institute pilot program, leadership coaching, Executive Services leadership trainings, and Acquisitions Directorate.

### Analysis of Progress:

FY 2020 is a baseline year for this performance metric.

FSA established a working group to develop the framework for a multi-year training and development plan. The working group focused on mission critical competencies essential to the performance of FSA and the Next Gen FSA initiative. The working group identified and tracked several learning initiatives under the technical skills and leadership/management competencies to better understand how FSA is developing and tracking employees needing these skill sets. FSA completed three skill gap analyses to identify enterprise-wide skill needs and offer learning solutions to address gaps based on industry best practices.

The framework and metrics used to capture FSA's baseline projections for FY 2020 will be used to complete the full multi-year training plan in FY 2021. COVID-19 had an impact on training at FSA. Many training programs were converted from classroom-based to virtual instructor-led delivery. For FY 2021, FSA plans to develop and/or identify additional courses to provide additional learning opportunities with either a virtual instructor or self-paced training. FSA has also invested in increasing the number of employees with project management certifications to enhance the capabilities of staff in managing the complex projects associated with Next Gen FSA.

### Data Quality and Limitations:

A combination of quantitative and qualitative data was collected to assess the effectiveness of the staff trainings. The Kirkpatrick Level evaluation was one of the major assessment instruments used to collect this data. There are four levels to Kirkpatrick Model: Reaction, Learning, Behavior, Results. To evaluate training effectiveness, course satisfaction evaluations (Kirkpatrick Level 1) were administered via paper or electronic format at the end of trainings.

**Performance Results by Strategic Goal**

An internal evaluation database was used to track and compare data across training courses to identify trends and areas of improvement. The data limitation at present is that only a Kirkpatrick Level 1 evaluation is performed post-training, which measures the degree to which participants find the training favorable, engaging, and relevant to their jobs. To advance effectiveness of effort in the future, a Kirkpatrick Level 2 or Level 3 will be needed.



## Performance Results by Strategic Goal

**Table 19: Performance Metric 1.2.C.** Perform a training analysis at each performance review period within the fiscal period.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline year	27
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

Sixteen trainings were provided by the WDD, aligned under the leadership/supervision and technical skills competencies and the FSA's Retirement Education learning series contract. An additional 11 trainings were provided by WDD leadership initiative pilot, and the Acquisitions Directorate.

### Analysis of Progress:

FY 2020 is a baseline year for this performance metric.

FSA used various assessment instruments and data sets such as formative and summative data collection mechanisms, Kirkpatrick Level evaluations, OPM and the Department competency models, participant anecdotal feedback, and after-action briefings/reports. Post-training evaluations were administered via paper or electronically to compare data across training initiatives to identify trends and areas of improvement to make real-time modifications within the current delivery or in future program/course iterations. For example, WDD developed an internal evaluation database to track, monitor, and identify evaluation trend data across programs. The Retirement Education learning series has been crucial for the overall improvement in the work/life balance of FSA employees' by providing more in-depth learning opportunities to understand retirement, savings, and investment options, such as the Thrift Savings Program. The goal of employee training is to not only train them for skill enhancement, but also to improve employee knowledge and welfare as it relates to their overall development.

### Data Quality and Limitations:

FSA used an internal evaluation database to track and compare data across training iterations to identify various performance trends. WDD used various assessment instruments and data sets such as formative and summative data collection mechanisms, Kirkpatrick Level evaluations, OPM and Department competency models, participant anecdotal feedback, and after-action briefings/reports.

To gauge participant knowledge within these specified trainings and allow for application of learning to address real-life situations or leadership problems/challenges Kirkpatrick Level evaluations were administered during and/or post-training. For the managerial training directed at enhancing leadership competencies, action-based learning through individual activities and/or group capstone projects was utilized. The limitations of the data are that the analysis of results was administered to a subset of trainings offered in specialized areas in FY 2020. The analysis

## Performance Results by Strategic Goal

will need to broaden, to increase the results-based approach beyond knowledge acquisition to behavioral change to support the training investment across the enterprise.

## Performance Results by Strategic Goal

### Strategic Goal 2: Provide World-Class Customer Experience to the Students, Parents, and Borrowers We Serve

FSA will modernize its systems and operations to deliver world-class customer and partner experiences. These efforts include a single point of connection to assist students and borrowers with federal student aid needs, readily available personalized customer information, and informed borrower tools for assistance. Based on enhanced customer analytics and customer feedback, FSA will continuously update these tools to make sure borrowers understand their rights and responsibilities. FSA's intention is to promote positive repayment behaviors and help borrowers understand how they can repay their loans more quickly or at lower cost. Additionally, FSA will enhance contact center operations and simplify and automate back-office operations to reduce errors and accelerate processing. By simplifying these customer-facing processes, engaging customers with innovative communication strategies, and providing self-service options through the mobile application, FSA will be able to quickly respond to the ever-changing financial aid environment and consistently be a trusted resource for students and families.

Strategic Goal 2 includes the four strategic objectives listed below:

- **Strategic Objective 2.1:**

Ensure that all students can easily access information on federal student aid, apply for federal student aid, and have information on repayment options.

- **Strategic Objective 2.2:**

Provide seamless, easy, personalized digital interactions equal with top financial institutions in the delivery of financial aid products and services.

- **Strategic Objective 2.3:**

Streamline contact center and back-office operations to improve our customers' integrated experience.

- **Strategic Objective 2.4:**

Simplify the communication and processes associated with borrower repayment plans.

In FY 2020, FSA had four objectives under this goal. These objectives included 16 metrics. Of these 16 metrics, 7 were met or exceeded and 3 metrics were not met for this goal. Additionally, six metrics are baselined in FY 2020.

## Performance Results by Strategic Goal

**Strategic Objective 2.1:** Ensure that all students can easily access information on federal student aid, apply for federal student aid, and have information on repayment options.

**Table 20: Performance Metric 2.1.A.** Number of visits (sessions) demonstrating adoption of the updated StudentAid.gov site.\*

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	47.2 million	44.3 million	44.5 million	183.7 million	190 million	217 million
Performance Result	Met	Met	Met	Met	Met	

\*Note: Formerly A.3 in FSA FY 2019 Annual Report.

### Target Context:

StudentAid.gov is FSA's primary customer-facing digital front door for students, parents, and borrowers who need be informed about, apply for, and manage their federal student aid. By focusing on total customer visits, this performance metric helps gauge the success of FSA's efforts to become the most trusted and reliable source for accurate student aid information for Americans nationwide and engage customers in completing critical tasks related to federal student aid.

### Analysis of Progress:

FSA met the target for this metric with more than 217 million visits in FY 2020.

In December 2019, a major redesign of **StudentAid.gov** was completed as part of Next Gen FSA which resulted in the integration of content and functionality from StudentLoans.gov, fsaid.gov, and NSLDS.gov. This effort significantly advanced the goal of providing customers with a single front door for information and key tasks related to federal student aid. Additional features—such as Aid Summary, Annual Student Loan Acknowledgment, Make a Payment pilot, and more—were launched on **StudentAid.gov** during FY 2020, and additional functionality and improvements are planned for FY 2021.

### Data Quality and Limitations:

FSA operational systems have procedures in place to address potential data quality issues. The process for querying system data is consistent and disciplined. A separate data analyst from a different office within FSA validates the accuracy of the query and the resulting data and validates any anomalous data. The Customer Analytics Group is responsible for the primary calculation of the metric as well as the technical validation of the metric, which is done by reviewing for accuracy the query used to pull the data. The data is an absolute number so no calculation and methodology are performed. The metric value is based on the number of visits (as opposed to unique visitors or page views).

The source of the data is FSA's online platform analytics. The metric is a direct reflection of the data platform analytics and FSA constantly monitors the analytics platform to ensure the system is secure and the query results are consistent.

## Performance Results by Strategic Goal

**Table 21: Performance Metric 2.1.B.** Percentage of high school seniors submitting the FAFSA.\*

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	67.4%	65.9%	66%	63.8%
Performance Result	N/A	N/A	Met	Not Met	Not Met	

\*Note: Formerly A.1 in FSA FY 2019 Annual Report.

### Target Context:

A primary goal of FSA is to encourage FAFSA completion among high school seniors.

### Analysis of Progress:

FSA did not meet the target for this metric with only 63.8 percent of high school seniors submitting the FAFSA.

FY 2020 presented two major challenges on that front. For the first half of the FAFSA filing year, from October 1, 2019–March 15, 2020, there was near record low unemployment in the United States. In periods of low unemployment, FAFSA filing among high school seniors normally decreases as the job market offers better opportunities, greater pay, etc. This likely accounted for some of the decrease in FAFSA filing from 65.9 percent in FY 2019 to 63.8 percent in FY 2020. In March 2020, COVID-19 resulted in most high schools across the country moving to an on-line only model, which meant that students were not in the classroom or in school buildings with guidance counselors, teachers, coaches, and other cues that reminded them to file the FAFSA. Finally, COVID-19 resulted in many low-income families having a change in financial circumstances that may have prevented filing of the FAFSA in favor of work opportunities to help support the family unit. All these factors likely had an impact on lowering FAFSA completion among high school seniors.

### Data Quality and Limitations:

FSA operational systems have procedures in place to address potential data quality issues. The process for querying system data is consistent and disciplined. A separate data analyst from a different office within FSA validates the accuracy of the query and the resulting data and validates any anomalous data. Queries and calculations are simultaneously conducted on data from previous years by FSA's Business Intelligence Team to ensure technical definitions remain consistent. The Customer Analytics Group is responsible for the primary calculation of the metric as well as the technical validation of the metric, which is done by reviewing for accuracy the query used to pull the data and all calculations made with the data. The data is pulled from the FSA's Central Processing System.

Finally, the Financial Reporting and Analysis Branch is responsible for ensuring that documentation is complete and archived. These calculations also restrict the application period to the first nine months of the application cycle (through the close of the fiscal year) rather than the entire 18 months. Since most applicants, including high school seniors, file their FAFSA prior to the start of the upcoming academic year (usually before fiscal year end), this decision



## Performance Results by Strategic Goal

better aligns the performance metric with the fiscal year where most of the performance occurred.

## Performance Results by Strategic Goal

**Table 22: Performance Metric 2.1.C.** Number of customers submitting the FAFSA via a mobile platform—the myStudentAid mobile app or FAFSA.gov.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	2.4 million submissions	2.5 million submissions
Performance Result	N/A*	N/A*	N/A*	N/A*	Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

A goal of the Next Gen FSA effort is to provide customers with the ability to access federal student aid information and to complete key tasks on the device of their choosing. As such, FSA has focused on making digital products, such as the FAFSA form, mobile-responsive. The FAFSA form is also available on the myStudentAid app. This metric measures FAFSA submissions via a mobile device either through the FAFSA website or the mobile app to help determine customer interest and engagement in using mobile technology to complete online forms.

### Analysis of Progress:

FSA met the target with more than 2.5 million FAFSA submissions completed on a mobile platform.

FY 2020 serves as a baseline year and FSA expects mobile adoption and usage to grow over time, especially as new features and personalization are added to the myStudentAid app in FY 2021.

### Data Quality and Limitations:

FSA operational systems have procedures in place to address potential data quality issues. The process for querying system data is consistent and disciplined. A separate data analyst from a different office within FSA validates the accuracy of the query and the resulting data and validates any anomalous data. The Customer Analytics Group is responsible for the primary calculation of the metric as well as the technical validation of the metric, which is done by reviewing for accuracy the query used to pull the data. The data is an absolute number so no calculation and methodology are performed.

The source of the data is FSA's online platform analytics. The metric is a direct reflection of the data platform analytics and FSA constantly monitors the analytics platform to ensure the system is secure and the query results are consistent.

## Performance Results by Strategic Goal

**Strategic Objective 2.2:** Provide seamless, easy, personalized digital interactions equal with top financial institutions in the delivery of financial aid products and services.

**Table 23: Performance Metric 2.2.A.** Number of customers checking loan balances via the myStudentAid mobile app.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	70,000	133,417
Performance Result	N/A*	N/A*	N/A*	N/A*	Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

A goal of the Next Gen FSA effort is to provide customers with the ability to access federal student aid information and to complete key tasks on the device of their choosing. Customers can view the loan information via an in-app browser on the myStudentAid app. This metric gauges customer engagement in using the myStudentAid app to view their current aid information.

### Analysis of Progress:

FSA met the target with 133,417 customers checking their loan balances through the myStudentAid app.

FY 2020 serves as a baseline year and FSA expects mobile adoption and usage to grow over time, especially as the Dashboard and Aid Summary features are added to the myStudentAid app in FY 2021.

### Data Quality and Limitations:

FSA operational systems have procedures in place to address potential data quality issues. The process for querying system data is consistent and disciplined. A separate data analyst from a different office within FSA validates the accuracy of the query and the resulting data and validates any anomalous data. The Customer Analytics Group is responsible for the primary calculation of the metric as well as the technical validation of the metric, which is done by reviewing for accuracy the query used to pull the data.

The data is an absolute number as the number of customers checking their loan balances, so no calculation and methodology are performed. The data source is FSA's online platform analytics. This metric is a direct reflection of the data platform analytics. FSA monitors to ensure the system is secure and the query results are consistent.

## Performance Results by Strategic Goal

**Table 24: Performance Metric 2.2.B.** Number of borrowers who view their aid summary information on StudentAid.gov.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	7.6 million
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

**StudentAid.gov** is FSA's primary customer-facing digital front door for students, parents, and borrowers who need be informed about, apply for, and manage their federal student aid. In February 2020, the Aid Summary feature was delivered on **StudentAid.gov** providing customers with access to summary and detailed aid information such as loan balances or Pell Grant dollars received. This metric gauges customer engagement in using **StudentAid.gov** to view their current aid information.

### Analysis of Progress:

FY 2020 serves as a baseline year with more than 7.6 million customers viewing their aid summary information on **StudentAid.gov**.

Since Aid Summary launched in February 2020, FSA expects this figure to increase in FY 2021.

### Data Quality and Limitations:

The aid summary on the **Studentaid.gov** website was launched on February 23, 2020. Website data collection began on February 23, 2019. The data for this metric covers the timeframe of February 23, 2020–September 30, 2020.

FSA operational systems have procedures in place to address potential data quality issues. The process for querying system data is consistent and disciplined. A separate data analyst from a different office within FSA validates the accuracy of the query and the resulting data and validates any anomalous data. The Customer Analytics Group is responsible for the primary calculation of the metric as well as the technical validation of the metric, which is done by reviewing for accuracy the query used to pull the data.

The data is an absolute number as the value is based on the number of users (as opposed to sessions or page views), so no calculation and methodology are performed. The data source is FSA's online platform analytics. This metric is a direct reflection of the data platform analytics. FSA monitors to ensure the system is secure and the query results are consistent.

## Performance Results by Strategic Goal

**Table 25: Performance Metric 2.2.C.** Number of users of “Aidan,” the StudentAid.gov virtual assistant.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	25,000	545,763
Performance Result	N/A*	N/A*	N/A*	N/A*	Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

**Target Context:**

To provide increase self-service options for students, families, and borrowers, this metric helps tracks Aidan’s usage. Aidan is a virtual assistant that uses advanced technology—artificial intelligence and natural language processing—to answer the most common questions on federal student aid. Whether customers want to find out about their current loan account balances, learn more about grants, make a payment (pilot), or get help contacting their loan servicer, Aidan is available to help them find an answer.

**Analysis of Progress:**

FSA exceed its target for this metric with a result of 545,763 users.

In December 2019, FSA launched a beta version of Aidan, a virtual assistant that helps users get answers to their questions without contacting a call center. Aidan was launched as part of the Next Gen FSA effort to improve the way all of its customers—including students, parents, borrowers, schools, and partners—interact with and manage the programs administered by FSA.

Aidan was available to a group of pilot users during FY 2020 to better understand customer questions to ensure FSA is providing relevant and correct answers that meet its customers’ needs. Over time, FSA will analyze customer interactions with Aidan to improve its functionality.

During FY 2020, Aidan was able to augment FSA’s CARES Act/COVID-19 communications. All questions to Aidan related CARES Act/COVID-19 were redirected to the Coronavirus and Forbearance info for Students, Borrowers, and Parents on **Studentaid.gov** ensuring customers received the most recent and accurate information.

**Data Quality and Limitations:**

Under this performance metric, the total users are defined as individuals that interact with Aidan beyond the initial greeting button prompt provided to customers. An FSA contractor performs a two-step validation of the Aidan data in the Digital Customer Care (DCC) Tableau system prior to sharing with FSA. The source of the data is FSA’s online platform analytics. This metric is a direct reflection of the data platform analytics. FSA monitors to ensure the system is secure and the query results are consistent.



## Performance Results by Strategic Goal

**Table 26: Performance Metric 2.2.D.** Number of borrowers who complete their annual certification on time for the Annual Student Loan Acknowledgement (ASLA).

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	858,628
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

**StudentAid.gov** is FSA's primary customer-facing digital front door for students, parents, and borrowers who need be informed about, apply for, and manage their federal student aid. In April 2020, the Annual Student Loan Acknowledgment feature was delivered on StudentAid.gov providing customers who are planning to accept a federal student loan with important information on borrowing and their responsibility to repay the loan. This metric gauges customer interest and engagement in the Annual Student Loan Acknowledgment (ASLA). In FY 2020, the ASLA was provided for informational/educational purposes but was not required.

### Analysis of Progress:

FY 2020 serves as a baseline year with 858,628 customers completing the ASLA more than 1 million times.

Since the ASLA launched in April 2020, FSA expects this figure to increase in FY 2021. In addition, completion of the ASLA is currently optional, but FSA is planning to make it mandatory for all loan disbursements for the 2021–22 award year.

### Data Quality and Limitations:

The performance metric result represents the number of unique users who completed the acknowledgment. Users can complete the acknowledgment multiple times and the total number of completed acknowledgments is provided in the Analysis of Progress section. A separate data analyst from a different office within FSA validates the accuracy of the query and the resulting data and validates any anomalous data.

The Customer Analytics Group is responsible for the primary calculation of the metric as well as the technical validation of the metric, which is done by reviewing for accuracy the query used to pull the data. The source of this data is the Common Origination and Disbursement (COD). There is no calculation necessary for this metric as the information is derived directly from COD.

## Performance Results by Strategic Goal

**Table 27: Performance Metric 2.2.E.** Transactional email volume for outreach and communications to borrowers.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	92.2 million
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

**Target Context:**

This metric measures the transactional emails that are delivered through our internal communications tool. These emails are vital for students, parents, borrowers to understand updates and notifications regarding their FAFSA application and other important information that needs to be acted on. This metric helps to gauge the health of our email communications and platform in terms of volume and reach.

**Analysis of Progress:**

FY 2020 serves as a baseline year with approximately 92.2 million transactional emails going to customers. As part of DCC, FSA is onboarding transactional communications into a centralized system for a more consolidated and consistent customer experience.

During FY 2020, FSA has onboarded critical transactional communications for its borrowers. This includes FAFSA, COD, and FSA ID real time communications. FSA expects volume numbers to continue to increase as it maintains an ED.GOV email domain and brand authority, as well as onboarding additional communications.

**Data Quality and Limitations:**

There is no calculation necessary for this metric. It is reported by the COD system. Several data analysts pull the data and a data analyst validates the numbers. The source of the data is the Digital Communications Tool & Marketing Communications Platform (Comms platform).

## Performance Results by Strategic Goal

**Table 28: Performance Metric 2.2.F.** Recurring campaign email delivery volume for outreach and communications to borrowers.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	32.2 million
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

This metric measures the recurring emails that are delivered through the internal communications tool. Recurring campaigns are defined as communications that FSA sends on a consistent cadence that are not tied to immediate transactional interactions, such as the Renewal campaign reminders. This metric helps to gauge the commitment to consistent and proactive communications.

**Analysis of Progress:** FY 2020 serves as a baseline year for this metric with approximately 32.2 million recurring emails going to customers. As part of DCC, FSA is onboarding these recurring communications into a centralized system for a more consolidated and consistent customer experience.

FSA has looked at Renewal campaign data, as well as Auto Closed School Discharge and Temporary Expanded Public Service Loan Forgiveness (TEPSLF) data to get these metrics. These numbers will help to establish the baselines for future FAFSA renewal campaigns. As FSA continues to create and onboard new communications that are recurring, always-on, and not tied to transactional messaging, it will be added to this metric.

### Data Quality and Limitations:

There is no calculation necessary for this metric. It is reported by the COD system. Several data analysts pull the data and a data analyst validates the numbers. The source of the data is the Comms Platform.

## Performance Results by Strategic Goal

**Table 29: Performance Metric 2.2.G.** American Customer Satisfaction Index (ACSI) Aid Lifecycle Survey score.\*

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	69.9	70.6	70.0	72–74	73.5
Performance Result	N/A	Met	Met	Met	Met	

\*Note: Formerly A.5 in FSA FY 2019 Annual Report.

**Target Context:**

This metric provides a measure of the customer experience across the student aid lifecycle, by accessing customer satisfaction scores from FAFSA filers, from financial aid administrators, and from borrowers repaying their loans.

**Analysis of Progress:**

FSA met its target range for this metric with a result of 73.5.

The FY 2020 score of 73.5 is higher than the FY 2019 score of 70.0 and the FY 2018 score of 70.6. The score consists of three groups of borrowers that span the financial aid lifecycle. The most heavily weighted of these measures is borrowers who are currently having their loans serviced—this is the largest segment of the population served by FSA (FSA has more than 32 million borrowers) and therefore accounts for almost 72 percent of the measure. Nearly 24 percent of this metric is made up of scores collected by FAFSA applicants (roughly 18 million FAFSA forms are filed each year) and the smallest component of the metric is the 5 percent of the measure that accounts for students (10 million) still in school who are receiving Title IV funds. Together, the three measures span the three major parts of the financial aid lifecycle.

**Data Quality and Limitations:**

Traditionally, the ACSI survey has been conducted annually for FSA's major programs. The index provides a national, cross-industry, cross-sector economic indicator, using widely accepted methodologies to obtain standardized customer satisfaction information. Survey scores are indexed on a 100-point scale. The ACSI scores for application, in-school experience, and servicing are weighted by the utilization of each process/service and the intensity of the service provided.

This metric is calculated by using weighted customer satisfaction scores from the Multiple Servicer Survey, **FAFSA.gov** and the In-School customer satisfaction survey. Several data analysts pull the data, and a data analyst validates the numbers. The data source for this metric is the Multiple Servicer Survey, **FAFSA.gov**, and (federal student aid recipients) In-School customer satisfaction survey. This metric is a direct reflection of the data collected through the ACSI Aid Life Cycle Survey. FSA monitors to ensure the system is secure and the query results are consistent.

## Performance Results by Strategic Goal

**Table 30: Performance Metric 2.2.H. Customer Satisfaction Survey(s) for StudentAid.gov site and associated tools.**

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Survey development and implementation	No survey developed
Performance Result	N/A*	N/A*	N/A*	N/A*	Not Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

This metric intends to measure customer satisfaction with the **StudentAid.gov** website, including the applications, tools, and processes available on the site. The measurement of customer satisfaction would encompass activities such as completing entrance and exit counseling, or the usage of the repayment calculator that assist customers in selecting a repayment plan that best fits their needs. Customer satisfaction surveys will assist FSA in developing additional tools and offering website improvements based on their feedback.

### Analysis of Progress:

FSA did not meet its target for this metric as no surveys were developed for **StudentAid.gov** in FY 2020.

FSA is evaluating Voice of the Customer technologies that would allow the utilization of survey customers on **StudentAid.gov** at a regular cadence, the ability for staff to analyze results of structured and unstructured feedback. Surveys would generally follow the guidance given by OMB as part of OMB Circular A-11, Section 280. FSA expects to have surveys implemented across **StudentAid.gov** in FY 2022.

### Data Quality and Limitations:

N/A.



## Performance Results by Strategic Goal

**Strategic Objective 2.3:** Streamline contact center and back-office operations to improve our customers' integrated experience.

**Table 31: Performance Metric 2.3.A.** Quality Standard for Average Speed to Answer (ASA) at all Call Centers.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Equal to or less than 60 seconds	59.0
Performance Result	N/A	N/A	N/A	N/A	Met	

\*Notes: New performance metric for FY 2020. Prior-year data is not available under this metric.

#### Target Context:

The goal of this metric is to ensure FSA's loan servicing vendors (Not-For-Profits (NFPs) and Title IV Additional Servicers (TIVAS)) are providing the best customer service to FSA's borrowers. One way that this is measured is through the Average Speed to Answer rate. This is the average number of seconds it takes a borrower to speak with a customer service representative from the moment a borrower calls to the time a customer service representative answers the call. A higher ASA indicates a longer wait time and may result in a higher call abandon rate or increased call frustration.

#### Analysis of Progress:

FSA met its target for this metric with an ASA of 59.0 seconds.

The ASA rate target was achieved in FY2020 for FSA's NFPs and TIVAS. This was predominately a result of the CARES Act forbearance period that began in March 2020 and remained in place until the end of the fiscal year. Before this period, the ASA averaged 102 seconds (October–March) and then became 16 seconds (April–September). Entering FY 2021, the ASA rate remains low due to the extension of the CARES Act forbearance period through December 31, 2020, and related call volumes being more than 50 percent below normal. If the benefits are not extended, FSA expects that the ASA rate will increase in January 2021 as borrowers resume making payments and servicers adjust staffing to reach the right equilibrium. If benefits are extended, then it can be expected that the ASA rate will remain low throughout FY 2021.

#### Data Quality and Limitations:

The source of data for this performance metric is the Federal servicers' quarterly reports. The verification and validation of performance by the nondefault federal student loan servicers is conducted by FSA and includes (but is not be limited to): (1) review and validation of federal servicer reports; (2) ongoing/recurring quality assurance discussion with federal servicers; (3) site visits to federal servicer call center sites; and (4) documented on-phone ("mystery caller") evaluations of services.

## Performance Results by Strategic Goal

Because the agency directive is succinct and builds on current contractor operational capabilities, FSA does not anticipate anomalous data or issues with implementation. However, in cases where verification and validation detect anomalies that suggest less-than-complete information, FSA will address any deficiencies through direct contact with federal servicers, requests for information, audits, site visits, and/or other assessment measures of performance, as applicable.

## Performance Results by Strategic Goal

**Table 32: Performance Metric 2.3.B.** Quality Standard for Abandon Rate (AR) for Incoming Calls at all Call Centers.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Equal to or less than 2%	3.6%
Performance Result	N/A*	N/A*	N/A*	N/A*	Not Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

**Target Context:**

The goal of this metric is to ensure the loan servicing vendors (NFPs and TIVAs) are providing the best customer service to our borrowers. One way that this is measured is through the Abandon Rate (AR). This is the average number of calls in which a borrower hangs up (abandons) the call before they speak with a customer service representative. The higher the rate the more borrowers are abandoning a call and likely not getting the information/answers they need.

**Analysis of Progress:**

FSA did not meet its target for this metric with an AR of 3.6 percent.

The AR target was not achieved in FY 2020 for the NFPs and TIVAs, but servicers achieved significant progress in improving their AR throughout the year. This was predominately a result of the CARES Act forbearance period that began in March 2020 and remained in place until the end of the fiscal year. Before this period, the AR averaged 6.1 percent (October–March) and then became 1.0 percent (April–September). Entering FY 2021, the AR remains low due to the extension of the CARES Act forbearance period through December 31, 2020, and related call volumes being more than 50 percent below normal. If the benefits are not extended, FSA can expect the AR to increase in January 2021 as borrowers resume making payments and servicers adjust staffing to reach the right equilibrium. If benefits are extended, then it can be expected that the AR will remain low throughout FY 2021.

**Data Quality and Limitations:**

The source of data for this performance metric is the Federal servicers' quarterly reports. The verification and validation of performance by the nondefault federal student loan servicers is conducted by FSA and includes (but is not be limited to): (1) review and validation of federal servicer reports; (2) ongoing/recurring quality assurance discussion with federal servicers; (3) site visits to federal servicer call center sites; and (4) documented on-phone ("mystery caller") evaluations of services.

Because the agency directive is succinct and builds on current contractor operational capabilities, FSA does not anticipate anomalous data or issues with implementation. However, in cases where verification and validation detect anomalies that suggest less-than-complete information, FSA will address any deficiencies through direct contact with federal servicers,

requests for information, audits, site visits, and/or other assessment measures of performance, as applicable.

## Performance Results by Strategic Goal

**Strategic Objective 2.4:** Simplify the communication and processes associated with borrower repayment plans.

**Table 33: Performance Metric 2.4.A.** Number of borrowers using Make a Payment feature to pay student loans.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Implement pilot for Make a Payment feature	12,245 payments
Performance Result	N/A*	N/A*	N/A*	N/A*	Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

#### Target Context:

**StudentAid.gov** is FSA's primary customer-facing digital front door for students, parents, and borrowers who need be informed about, apply for, and manage their federal student aid. In February 2020, the Make a Payment pilot was delivered on **StudentAid.gov** providing customers with loans serviced by Great Lakes or Nelnet (both FSA loan servicers) with the ability to make a standard loan payment on **StudentAid.gov**. This metric gauges customer interest and engagement in using **StudentAid.gov** to make a student loan payment.

#### Analysis of Progress:

FY 2020 serves as a baseline year with customers making more than 12,245 student loan payments on **StudentAid.gov**. Since the Make a Payment pilot launched in February 2020, FSA expects this figure to increase in FY 2021. The FY 2020 payments were also impacted by COVID-19 and the suspension of loan payments through December 31, 2020.

#### Data Quality and Limitations:

This figure represents the number of student loan payments made on **StudentAid.gov**. FSA is unable to provide the unique number of customers who made payments. A separate data analyst pulls the data and then a different analyst pulls the data independently to validate the accuracy of the information and any anomalous data.

The source of the data is the DCC Web Logs. No calculation is necessary as the data is an absolute number reported to FSA from the DCC Web Logs.



## Performance Results by Strategic Goal

**Table 34: Performance Metric 2.4.B.** Percentage of borrowers using auto-debit.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	24.8%
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

This metric measures the volume of borrowers that are enrolled in auto-debit. Auto-debit allows borrowers to pay their student loan payments without any effort since the payment is extracted from the borrower's financial institution each time a payment is due, allowing borrowers to make payments in full and on time with minimal effort required. Borrowers who enroll in auto-debit are given a 0.25 percent reduction on their interest rate.

### Analysis of Progress:

FY 2020 will be the baseline year for measuring the percentage of borrowers using auto-debit. Auto-debit percentage will be calculated using the number of borrowers in the National Student Loan Data System (NSLDS) that are reported as enrolled in auto-debit in comparison to the total number of borrowers in repayment (not in school or in grace status). FSA anticipates improvement to the percentage of borrowers using auto-debit as the ease of enrollment and knowledge of the benefits of auto-debit are publicized during the implementation of Next Gen FSA.

COVID-19 and other economic impacts may result in overall reductions in the ability of borrowers to make student loan payments and this may impact any improvements to the auto debit percentages until economic impacts of COVID-19 improve.

### Data Quality and Limitations:

Enrollment in auto debit is reported by federal loan servicers to NSLDS. Accuracy of that data is validated by FSA using NSLDS monitoring techniques. NSLDS queries will provide the volume of borrowers enrolled in Automatic Direct Debit (auto debit) and the total volume of borrowers in repayment. The auto debit volume will be divided by the total borrowers in repayment volume and rounded to 1/10th percent to calculate auto debit percentage. NSLDS queries and calculations are validated by FSA's Data Review Team for accuracy. The source of the data is the NSLDS.

## Performance Results by Strategic Goal

**Table 35: Performance Metric 2.4.C.** Percentage of Public Service Loan Forgiveness (PSLF) applicants who had used the PSLF Help Tool and who met the requirements for PSLF.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	N/A
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

**Target Context:**

The metric tracks the percentage of users who complete the PSLF Help Tool. Upon completing the PSLF Help Tool, it generates a PSLF form for users to fill out.

**Analysis of Progress:**

FY 2020 serves as a baseline year for this metric, but the methodology to accurately track the performance of the PSLF Help Tool is incomplete. The baseline study will continue into FY 2021.

In FY 2020, FSA updated the PSLF Help Tool to include an employer eligibility database for borrowers to learn early in the process whether their employer is an eligible employer for PSLF purposes. FSA can now compare PSLF Help Tool usage from its inception in December 2018 to present, to see the number of borrowers completing the tool and generating the correct form.

However, PSLF Help Tool usage was impacted as borrowers entered the CARES Act administrative forbearance. Initially, there was noticeable PSLF Help Tool usage decline, but usage increased with the release of the employer eligibility database. A policy determination shifted the timeframe associated with employment certification, which also impacted FSA's ability to assess customer usage of the tool in an effective way. In FY 2021, FSA is on track to delivering an improved PSLF Help Tool with a combined form, so that a borrower is considered for TEPSLF in addition to PSLF.

**Data Quality and Limitations:**

The source of the data is on the COD Portal and provided by an FSA contract resource. The contractor assists with the monitoring of PSLF Help Tool usage and which form is generated based on customer interaction with the PSLF Help Tool.

## Performance Results by Strategic Goal

### Strategic Goal 3: Increase Partner Engagement and Oversight Effectiveness

Strategic Goal 3 is focused on how FSA will assist schools, third-party servicers, and financial institutions to deliver federal student aid, collect borrower payments seamlessly, and safeguard data integrity through oversight and monitoring. FSA will also ensure schools understand and comply with Title IV requirements.

FSA will gauge its performance using six metrics. FSA will utilize a more comprehensive suite of monitoring tools to ensure IHEs appropriately administer Title IV aid. To measure the effectiveness of its oversight, FSA will annually conduct institutional reviews that will include comprehensive compliance reviews, institutional assessment reviews, and general or focused program compliance assessment reviews. These reviews will assess compliance with requirements for aid delivery, return to Title IV and student loan repayment.

Additionally, FSA is committed to continued enhancements in oversight and improving the borrower experience by reducing institutional fraud. An outcome of this effort is demonstrated by the tactical approach for application processing FSA has taken in the area of Borrower Defense (BD) which will afford significant progress in resolving the outstanding applications.

Under Goal 3, FSA is also pursuing opportunities in the Next Gen PPO platform to provide high quality training and encourage partner participation. It is necessary for the organization to provide comprehensive training and specialized technical assistance to participating schools that receive Title IV aid as well as create pathways for institutional feedback that will allow FSA to continuously improve its interactions with partners in the delivery of aid to students and borrowers.

Strategic Goal 3 includes the two strategic objectives listed below:

- **Strategic Objective 3.1:**

Provide effective oversight of FSA's partners utilizing a comprehensive suite of monitoring tools.

- **Strategic Objective 3.2:**

Strengthen partner engagement and provide effective outreach and assistance.

In FY 2020, FSA had two objectives under Goal 3 that include six metrics. Of these six metrics, three were met and one metric was not met for this goal. Additionally, two metrics were baselined in FY 2020.

## Performance Results by Strategic Goal

**Strategic Objective 3.1:** Provide effective oversight of FSA's partners utilizing a comprehensive suite of monitoring tools.

**Table 36: Performance Metric 3.1.A.** FSA will annually conduct an Institutional Review for its participating partners including schools, third-party servicers, and financial institutions.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
<b>Performance</b>	–	–	–	–	Conduct Institutional Reviews for at least 40% of partners	51% of partners reviewed
<b>Performance Result</b>	N/A*	N/A*	N/A*	N/A*	Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

This metric measures the performance of holistic comprehensive compliance reviews of institutions relating to certification actions, deficient audit resolutions, flagged financial statements, program reviews, method of payment actions, and technical assistance.

### Analysis of Progress:

FSA met its target for this metric with a result of 51 percent of partners reviewed.

In FY 2020, FSA conducted oversight reviews for 2,878 unique institutions of higher education relating to certification, deficient audit resolutions, flagged financial statements, program reviews, method of payment, and technical assistance. FSA completed 1,078 recertifications and 4,410 other institutional eligibility related applications, evaluated more than 2,000 school financial responsibility notifications, processed more than 3,000 deficient audits, and flagged financial statements, and issued 143 Final Program Review Determinations or other close-out actions with a total of approximately \$146.7 million in liabilities. FSA accomplished this work while also issuing 211 Automatic Closed School Discharge letters asserting approximately \$59.1 million in associated liabilities. FSA also conducted oversight of lenders, lender servicers, and guaranty agencies. FSA conducted 16 program reviews and identified untimely reinsurance requests for more than 38,000 loans impacting approximately \$319.2 million.

### Data Quality and Limitations:

Next Gen PPO's data for the metric measurement and sub-measurements are highly reliable and retained in the Postsecondary Education Participants System (PEPS) and in the eZ-Audit system. Metric calculations are based on data extracts from the data systems. The data extracts are subject to quality checks and validation. After data are compiled, a staff member reviews the queries and formulas to ensure proper functioning and correct counting reviews/schools. Since Next Gen PPO may perform more than one compliance review of an institution during a fiscal year, the data are de-duplicated to ensure an institution is counted only once. The count of unduplicated institutions for whom Next Gen PPO performed a compliance review is compared

with an unduplicated count of participating institutions to calculate the actual percentage for this performance metric.



## Performance Results by Strategic Goal

**Table 37: Performance Metric 3.1.B.** Number of Borrower Defense (BD) applications adjudicated (subject to existing BD regulations).

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	150,000	160,000
Performance Result	N/A*	N/A*	N/A*	N/A*	Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

**Target Context:**

BD to repayment is a type of federal student loan forgiveness where borrowers may be eligible for forgiveness of their federal student loans if the relevant school attended misled the borrower or engaged in other misconduct in violation of certain laws. During the first two months of this fiscal year, FSA adjudicated<sup>17</sup> more than 12,000 applications that remained pending further processing without an approved relief methodology. On December 10, 2019, the Secretary announced the approval of the new tiered relief methodology (2019 relief methodology) which allowed FSA to process applications for relief and progress toward elimination of the backlog of more than 175,000 claims awaiting adjudication. Following approval of the methodology, FSA targeted to build capacity to adjudicate 5,000 applications per week with an ultimate objective of less than 5,000 claims on hand by late Fall 2020.

**Analysis of Progress:**

FSA met its target for this metric with a result of 160,000 BD applications adjudicated.

While receiving an average of more than 750 new applications per week from June through September 2020, FSA continued to build production capacity by hiring more than 52 term attorneys. This capacity helped contribute to adjudicating more than 148,000 applications since December 2019, a reduction of more than 84 percent of the backlog of more than 175,000 cases awaiting adjudication at the time.

**Data Quality and Limitations:**

Weekly production data is derived from the BD case management platform which tracks progress and status of BD applications through intake, adjudication, borrower notification, and loan servicer documentation on effectuated loan relief, where applicable. Weekly data verification reviews are coordinated among the business unit and FSA's enterprise data office. This production data is reported in weekly performance metrics evaluated by FSA and Department Senior Leadership. The source of data for this performance metric is the Customer Engagement Management System.

<sup>17</sup> Adjudication refers to the Department's evaluation, and decision on the individual merits, of any given borrower defense application in accordance with applicable rules and regulations. It is an individual process that depends on the information submitted by the borrower as well as any relevant evidence in the Department's possession.

## Performance Results by Strategic Goal

**Strategic Objective 3.2:** Strengthen partner engagement and provide effective outreach and assistance.

**Table 38: Performance Metric 3.2.A.** FSA will provide comprehensive training and/or specialized technical assistance to its participating schools that receive *Title IV* Aid on behalf of students.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	At least 35% of schools will receive comprehensive training and/or specialized technical assistance	70%
Performance Result	N/A*	N/A*	N/A*	N/A*	Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

Training and technical assistance for this metric is provided and tracked at the individual learner level at participating schools. As a target, professionals (individual learners) in at least 35 percent of all participating schools will receive outreach and assistance, through such means as congressionally mandated training, the annual FSA Training Conference, state and regional professional association conferences and a large portfolio of web-delivered self-service courses, webinars, Ask-a-Fed queries for individualized technical assistance, and systems-oriented job aids. The training is delivered in person as well as via FSA's Learning Management System (LMS) and webinars. School participation in training offerings and technical assistance is almost entirely voluntary.

### Analysis of Progress:

FSA met its target for this metric by providing comprehensive training and/or specialized technical assistance to 70 percent of participating Title IV eligible schools.

FSA provided 5,471 instances of comprehensive training and/or technical support to individual professionals from 3,955 institutions (70 percent) during FY 2020. Of these total instances, 3,955 instances of support were provided and tracked via LMS; 3,300 instances were provided via Ask-a-Fed query assistance and direct outreach support to meet the unique needs of Minority Serving Institutions (MSIs); and at least 89 instances were provided via mandatory training. All in-person training events were cancelled. The Fundamentals of Title IV course was moved to an all virtual environment. A 4.5 day in-person Fundamentals training session required for participation in the Title IV programs was revamped for Live on-line delivery. Five revised sessions have been delivered. Additional new training and technical assistance/assessment products have been developed, for virtual delivery leveraging lessons learned from re-platforming Fundamentals training.

## Performance Results by Strategic Goal

Because this is a new baseline metric, FSA did not previously track schools associated with individual professionals receiving training or assistance via Ask-a-Fed query and response support. FSA has identified additional data collection requirements to associate queries and individual support to professionals with their associated institution. This more robust data tracking will allow FSA to capture the extent of training and technical assistance more fully for individuals across all participating institutions. Next Gen PPO School Portal capability is necessary to fully capture alignment of training and technical assistance saturation among professionals against associated institutions.

### **Data Quality and Limitations:**

The activity is mostly a manual count (e.g., manual inbox count of Ask-a-Fed email inquiries), but FSA does remove duplicate Office of Postsecondary Education Identifications (OPEIDs) to ensure its participation rate is non-duplicative. OPEID is self-reported by users of the training system. Reports run in the LMS ([fsatraining.gov](https://fsatraining.gov)) identify users of the site. The report is exported to Excel and manipulated to remove users without an OPEID and duplicate OPEIDs. The Federal Student Aid Training Center registrant data is also received from the conference team. Data is pulled from CVENT for registrants at state and regional association conferences where Training and Information Services Group staff presented. This data is merged with the LMS data to produce a list of OPEIDs who have received training. To minimize errors, the assessment process consists of batch loading the performance data in excel spreadsheets from the source databases into the Salesforce assessment tool.

The quality of the data is impacted because not all instances of technical assistance and support have been tracked historically by FSA. Data collection from multiple systems using differing demographic points (e.g., user reported school name variances, branch campus OPEID v Main Campus) and manual counts of user emails can affect the consistency of the information used for analysis. The sources of data for this metric are the following: FSA LMS, PEPS, eZ-Audit, PCnet, FSA Data Center, and NSLDS.

## Performance Results by Strategic Goal

**Table 39: Performance Metric 3.2.B.** FSA will measure Partner Participation rates in training programs.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline school and partner participation using all documented contacts with the training and technical assistance	70%
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

FSA measured training participation of 3,955 unduplicated schools out of a total eligible school population of more than 5,600, representing a 70 percent achievement. The participation rate includes individuals participating in person or a webinar delivered state, regional and national professional association conferences as well as the efforts of the Minority Serving and Under-resourced Schools Division (MSURSD). Training was delivered in-person, via live webinars, or via FSA's LMS. In a typical fiscal year, only certain schools (less than 200) are required to attend training, primarily the congressional mandated "Fundamentals of Title IV." Training participation by all other Title IV participating schools is voluntary.

### Analysis of Progress:

FY 2020 is a baseline year for this performance metric and the current baseline of a 70 percent partner participation rate will be further analyzed in FY 2021.

FSA transformed its outreach and assistance efforts into dynamic virtual capabilities for institutions and financial aid partners. FSA redesigned its 4-day in-person Title IV Fundamentals training session into a real-time online format for 5 successful sessions with 89 school partners; fielded a new Virtual Technical Assistance tool aimed at MSIs and a virtual Training product for newly approved Title IV schools; and identified 72 MSIs that had not previously used the FSA LMS to virtually instruct on the availability and effective use on on-line learning resources.

Additionally, FSA streamlined its outreach and on-boarding processes for Project Success, a program focused on pairing MSIs with guaranty agencies to address risk factors affecting graduation, retention, and cohort default rates. Specialized technical assistance included webinars, Ask-a-Fed queries for individualized technical assistance, MSURSD consulting to address the specific needs of their school partners for Default Management and Compliance assistance, and school staff training.

## Performance Results by Strategic Goal

Due to the voluntary nature of training, FSA will continue to expand outreach and ensure that products continue to reflect the needs of the schools. All FSA Training events, self-service modules, and annual courses (such as Fundamentals in Title IV) are communicated via Electronic Announcements to Information for Financial Aid Professionals (IFAP) and FSA utilizes a “push notification” system to announce the availability of LMS-based courses. Due to COVID-19, all live training was cancelled from March 2020 through the end of the fiscal year and beyond. Virtual solutions developed and implemented for all required training programs and additional webinar support provided to our institutional partners.

### **Data Quality and Limitations:**

The metric is calculated as a numerical count of activities, but duplicate OPEIDs are removed to ensure the participation rate is non-duplicative. OPEID is self-reported by users of the training system. Reports run in the LMS identify users of the site. The report is exported to Excel and manipulated to remove users without an OPEID and duplicate OPEIDs. FSA Training Center registrant data is also received the CVENT registration system from the conference team. Additional conference data is pulled from CVENT for registrants at state and regional association conferences where Training and Information Services Group staff presented. Additional training data is obtained from the Salesforce system used by MSURSD.

This data is merged with the LMS data to produce a list of OPEIDs who have received training. The data is collected from multiple systems using differing demographic collection points (user reported school name variances, branch campus OPEID versus Main Campus, etc.) and manual counts of user emails. The data sources are as follow: FSA LMS, Salesforce, CVENT, PEPS, eZ-Audit, PCnet, FSA DATA Center, NSLDS, and Case Management Information System.



## Performance Results by Strategic Goal

**Table 40: Performance Metric 3.2.C.** FSA will enhance the self-service training resource and informational platform to improve communication with participating partners, including schools, third-party servicers, and financial institutions.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	62%
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

This metric represents enhancements to the FSA LMS—specifically, courses created or revised in FY 2020. It is not only a percentage of self-service courses available—it includes revisions, deletions, new courses added. During FY 2020, FSA created or revised 167 LMS courses which reflects 62 percent of the available 271 courses in FY 2019. This includes revising the learning tracks for new, intermediate, and expert level financial aid administrators. The courses focus on the proper administration of Title IV programs with offerings for new financial aid office to institutional presidents and chief executive officers.

### Analysis of Progress:

FY 2020 is a baseline year for this performance metric with 62 percent of the course offered within the LMS being either newly created or revised based on customer needs.

FSA's training platform, the FSA LMS provides on-demand self-service training to registered users. The number of FSA LMS users has increased 22 percent from 44,662 registered users in FY 2018 to 57,487 users in FY 2020. This population represents 3,955 Title IV participating institutions, as well as third party servicers, auditors, and FSA Staff.

FSA continues to innovate and partner with our institutions to support their own internal staff training. LMS now has upgraded functionality that allows Title IV participating schools to create training programs for their own staff and track their progress to a particular goal. The feature been transitioned from a testing phase to full rollout to all interested users. FSA is in the process of integrating the LMS into the Phase Three roll-out of the Next Gen PPO. There are also efforts underway to implement a training referral process for offices within FSA to be able to suggest particular training for Title IV participating institutions or technical assistance resources, as needed.

### Data Quality and Limitations:

This performance metric is a numerical count of changes within a defined electronic training environment. FSA has a baseline of 260 courses deployed on the training system. The Next Gen PPO team tracks additions, modifications, and removals. The data source for this metric is the FSA LMS.

## Performance Results by Strategic Goal

**Table 41: Performance Metric 3.2.D. Ease of doing business with FSA.\***

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	72.3	73.4	74.5	74.0	74–76%	71%
Performance Result	Not Met	Met	Met	Met	Not Met	

\*Note: Formerly D.1 in FSA FY 2019 Annual Report.

**Target Context:**

FSA conducts an annual “Ease of Doing Business” survey with its Title IV eligible school partners. The survey is conducted by CFI Group, an independent third-party survey company, and results are provided to the Department and FSA. The FY 2020 Ease of Doing Business Score is an overall measure of post-secondary educational institution financial aid administrators’ assessment of their recent experience interacting with FSA (and its contractors) including telephone/email/chat/fax communication regarding FSA’s systems and products, policy group, training, and compliance staff.

**Analysis of Progress:**

FSA did not meet its target for this metric with a result of 71 percent.

Many areas remained on trend including compliance issues being resolved fairly and technical assistance requests continuing a modest upward trend. Regular bright spots, such as the training conference, knowledge by FSA trainers, and quality of assistance from FSA and training related metrics, remained high at 83 percent, 81 percent, and 80 percent, respectively. Additionally, some comments of appreciation were provided for FSA’s efforts to guide financial aid administrators through the fluid landscape of FY 2020.

The “Overall ease of doing business” score dropped 3 points this fiscal year to 71. From providing guidance for new support programs to determining how to apply old rules in a changed environment, FSA was challenged by the enormity of communicating, training, and implementing clear policies and programs during the COVID-19 national emergency. Further reinforcing these observations and related comments, scores for the “extent policy changes impacted ease of doing business” increased two points (68). One-third of financial aid administrators who responded to the survey expressed issues, changes, and uncertainty related to COVID-19, the CARES Act, and the Higher Education Emergency Relief Fund as circumstances that have made it more challenging. The Ease of Doing Business score is also likely impacted by the reduction in the “usefulness of training scores” in the FY 2020 survey. Survey participants expressed a desire for additional training and guidance related to the COVID-19 pandemic.

Many financial aid administrators commented about the ease of finding information including the ease of searching IFAP, information searches in general, or the ease of finding things in the FSA Handbook. FSA recognizes a clear opportunity for our efforts to better meet customer needs going forward with the execution of Next Gen PPO phased releases, IFAP integration improvements, and site access point integration. The one-stop digital platform will centralize communication, training, and knowledge management for our partner community of schools,

## Performance Results by Strategic Goal

third-party servicers, lenders, and guarantors in efforts to further automate functionality and improve workflows.

### Data Quality and Limitations:

This performance metric is based on calculations from CFI Group, and the FSA project officer verifies the FY 2020 School Partners survey scores for the *Ease of Doing Business* with FSA metric and coordinated validation through FSA Data Review Team. The source of the data is the FY 2020 Schools Partners Survey. The survey collects this data and calculates the results and presents findings and conclusions to FSA.

## Strategic Goal 4: Strengthen Data Protection and Cybersecurity Safeguards

FSA has a responsibility to protect student and borrower data integrity and confidentiality. Risk management and mitigation—especially regarding data protection and cybersecurity—remains a top priority within the scope of the *FY 2020-24 Strategic Plan* as it has in past years. Additionally, FSA and its third-party vendors must maintain and enforce rigorous cybersecurity standards in accordance with federal requirements to enable the organization to successfully pursue its mission. The Next Gen FSA effort makes it critical for FSA to integrate state-of-the-art cybersecurity protection across the federal student aid lifecycle. These efforts, as outlined under Goal 4, will include increased support for partner institutions and coordination with vendors to provide improved cybersecurity services.

Goal 4 also focuses on improving the protection of Title IV data through increased collaboration with all Title IV participating institutions and third-party servicers, inclusive of sharing best practices and threat information to ensure institutions take the actions needed to protect student data and student privacy. However, success in data protection begins with FSA, and therefore Goal 4 highlights the necessity to ensure that all employees and contractors understand and integrate effective cybersecurity practices and considerations in their daily work and recognize that cybersecurity risk management is everyone's responsibility. This organization-wide emphasis on cybersecurity culture will create a greater focus to gather insights, identify risks, and make well-informed decisions regarding cybersecurity, technology, and data management.

Strategic Goal 4 includes the three strategic objectives listed below:

- **Strategic Objective 4.1:**

Implement business partner and vendor systems that house, manage, and provide systems supporting FSA business processes, outreach and awareness focused on oversight, enforcement, infrastructure, systems, and data.

- **Strategic Objective 4.2:**

Improve student privacy data and cybersecurity controls of Institutions of Higher Education (IHEs) through outreach and communication, to mitigate future cyber-incidents and breaches.

- **Strategic Objective 4.3:**

Build an effective cybersecurity culture through employee awareness, training and accountability focused on protecting systems and data.

In FY 2020, FSA had three objectives under this goal. These objectives included four metrics. Of these four metrics, two metrics were not met for this goal. Additionally, two metrics were baselined in FY 2020.

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**Strategic Objective 4.1:** Implement business partner and vendor systems that house, manage, and provide systems supporting FSA business processes, outreach and awareness focused on oversight, enforcement, infrastructure, systems, and data.

**Table 42: Performance Metric 4.1.** Increase partner/vendor cybersecurity effectiveness by reducing the total number of FSA system assessment findings by 20% per year.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	1,800	3,561
Performance Result	N/A*	N/A*	N/A*	N/A*	Not Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

The FY 2020 metric is a measurement of the number of findings discovered during independent assessments or continuous diagnostics and monitoring efforts that are indicative of potential cyber security issues leading to a breach of privacy information or the potential compromise of an information system.

### Analysis of Progress:

FSA did not meet its target for this metric with a result of 3,561 FSA system assessment findings.

During FY 2020, additional systems were added to the ongoing security authorization program to allow timely assessments and identification of cyber security vulnerabilities. This increased oversight has resulted in earlier discovery of vulnerabilities allowing early correction before they have had an opportunity to be exploited.

The FY 2019 measurements, used to establish the preliminary target for FY 2020, failed to account for increased federal requirements for more frequent assessments, quarterly versus triannual. The increased assessment activity resulted in a significant increase in the number of actual findings over the target number.

The challenge was the introduction of significant modernization efforts, through the Next Gen FSA project, in the form of new and untested capabilities, features, and technologies presenting significant cyber security issues and findings. The introduction of new information systems into a quarterly ongoing security assessment program identified a significant number of findings that were previously not discovered or reported directly impacting the actual number of findings for the year. This is anticipated to continue into FY 2021. For future improvement, FSA will research the availability and applicability automation technologies to rapidly identify, discover, and resolve issues before they become findings.

### Data Quality and Limitations:

The data for this performance metric is provided by the assessments conducted and utilized by the OCIO for the Department's monthly cybersecurity scorecard. Data is verified through the



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assessment process as defined by the National Institute of Standards and Technology, the Department, and FSA guidance. The plan of action and milestone is a description of the vulnerability findings using the National Vulnerability Database. The source of the data is the following: FSA Enterprise Cybersecurity Group; Department Cybersecurity Assessment and Management Shared Service.

## Performance Results by Strategic Goal

**Strategic Objective 4.2:** Improve student privacy data and cybersecurity controls of Institutions of Higher Education (IHEs) through outreach and communication, to mitigate future cyber-incidents and breaches.

**Table 43: Performance Metric 4.2.A.** Increase Institutions of Higher Education cybersecurity effectiveness by reducing GLBA cybersecurity non-compliance by 20% per year.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	177
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

This performance metric measures FSA's effectiveness in reducing GLBA cybersecurity non-compliance at IHEs. FY 2020 was the first year that IHEs were required to comply with cybersecurity metrics as part of GLBA annual audits of institutions.

### Analysis of Progress:

FSA implemented the major processes and procedures necessary to manage the program and work with IHEs to ensure compliance with GLBA. The baseline scores are a measurement of an institution's ability to meet three cyber security requirements indicative of a basic cybersecurity program designed to protect student data. Due to COVID-19, the lack of comprehensive audit results will skew the baseline year resulting in inaccurate targets for the remaining years. A significant challenge is the lack of institutional processes that clearly identify roles, responsibilities, and requirements to maintain a comprehensive cyber security program. Additional guidance is being developed to assist the institutions in creating and maintaining an effective program. For future improvement, FSA has established a Task Force to develop a comprehensive implementation plan to assist institutions with achieving effective cyber security compliance.

Departmental COVID-19 restrictions placed the FSA response process on hold for the last six months of the fiscal year and created a challenge for FSA during FY 2020. Overall, COVID-19 significantly delayed the annual audits for IHEs resulting in fewer audits being conducted and presented to FSA for analysis.

### Data Quality and Limitations:

The performance metric is a numerical count of the cybersecurity related audit findings. The finding count is provided by the Next Gen PPO staff and verified against the findings posted in eZ-Audit by the Technology Directorate. The data source is the record of GLBA Audits managed by Next Gen PPO.

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**Table 44: Performance Metric 4.2.B.** Reduce incident reporting time at Institutions of Higher Education.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline set in FY 2021	87.5 days
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

**Target Context:**

The target is an indicator of a school's ability to discover potential privacy breaches or cybersecurity incidents, which may impact Title IV student or financial information, and report them as required per their agreements.

**Analysis of Progress:**

FY 2021 will be the baseline year for this measurement. Average incident reporting time was 87.5 days in FY 2020.

FSA integrated the institutions of higher education into the existing incident response process and automated case management system allowing accurate tracking of incidents and development of associated metrics.

Significant challenges exist with the institutions of higher education's ability to properly identify and report on privacy breaches and potential compromises of information systems. Part of the challenge is associated with a lack of authoritative reporting standards and enforcement mechanisms. As an FY 2021 deliverable, FSA is addressing this with a task force that is developing implementation guidance and requirements for the institutions.

Throughout FY 2020, it has been noticed that institutions continually fail to report on privacy breaches and information system compromises. Often the incidents are discovered through FSA proactive cyber monitoring efforts or are reported through the news media. To address this metric, FSA is developing communication plans to increase schools' awareness of the requirements and more specifically the need to report incidents as they occur. Briefings at the FSA annual conference is an example of this communication outreach effort.

In addressing COVID-19's need to rapidly transition to remote education delivery environment many cybersecurity requirements and protections were initially overlooked requiring a significant investment in resources to properly protect information systems and student data.

**Data Quality and Limitations:**

The calculation of this performance metric is from the date, hour, and minute that the school detected the event to the time that FSA receives the report. In the event the school does not provide the information, the time is calculated from the time FSA discovers the cybersecurity

## Performance Results by Strategic Goal

incident and the time that FSA is able to contact the appropriate school point of contact at the institution. The data source for cybersecurity incidents at institutions is self-reports from the schools, discovery through media reports, and information derived from internet research activities. The data is verified through a manual audit process comparing the security event report received from the school and the data discovered through incident response process with the data within Security Operations (SecOps).

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**Strategic Objective 4.3:** Build an effective cybersecurity culture through employee awareness, training, and accountability focused on protecting systems and data.

**Table 45: Performance Metric 4.3.** Decrease the number of employee-related cybersecurity events associated with inappropriate use, distribution, or storage of Personally Identifiable Information (PII) and financial information by 20% a year.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	1,800	1,713
Performance Result	N/A*	N/A*	N/A*	N/A*	Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

The target is an indicator of employees' ability to properly oversee, store and distribute sensitive privacy and financial information.

### Analysis of Progress:

FSA met its target for this metric with a result of 1,713 employee-related cybersecurity events in FY 2020.

This is a new performance metric for FY 2020 that was defined prior to the full implementation of the Department's data loss prevention email capabilities.

In FY 2020, the Department implemented an email monitoring system that automatically detects, blocks, and notifies the employee of inappropriate transmission of sensitive data reducing the potential for a breach to occur. The capability identified previously undetected behaviors that may be potential breaches.

FSA relies upon self-reporting for those third parties. As part of continuous monitoring FSA is developing automated integration with the third parties for real time data visibility. The proactive blocking of privacy information transmitted through email has reduced the number of email related breaches while increasing employee awareness of their actions through automated notifications.

To address this metric, the expansion of continuous monitoring capabilities and data aggregation using cloud technologies will enhance the ability to rapidly identify and respond to inappropriate use, distribution, or storage of PII or financial information. Additional desktop computer data loss prevention technologies will automate the protection of sensitive data and alert users to potential inappropriate handling.

### Data Quality and Limitations:

The performance metric is a numerical count of events-based exercise results and actual incident reports over time. The data source FSA SecOps, email reports, exercise results, and OCIO Data Loss Prevention metrics. The data is validated through a manual review of



automated reports from SecOps, which provide the test results for the cybersecurity exercises administer to employees.

## Strategic Goal 5: Enhance the Management and Transparency of the Portfolio

Portfolio management and organizational transparency are two of the most important activities required under FSA's PBO legislation. But equally important, as FSA works to become a more customer-centric and outcome-based organization, is the need for FSA to measure its success based on the success of its customers in making improved borrowing decisions that lessen the burden of debt associated with their education. These efforts, as captured in Goal 5 of the *FY 2020-24 Strategic Plan*, will require enhanced analytic, risk management, performance management, and quality management capabilities to provide better outcomes for students and greater value to taxpayers. Insights from this work will help FSA guide operational interventions and inform policymakers and taxpayers about the risks and opportunities in the portfolio.

FSA will also use these insights to allocate resources, guide customer-centric decisions, and inform legislative or regulatory changes that would allow for better overall portfolio performance. Goal 5 also outlines the necessity to maintain FSA's commitment to transparency through the FSA data center and better management of the loan portfolio by performing analyses to help identify risks. Beyond the work to improve service to borrowers and customers, support responsible borrowing, and encourage repayment, FSA also recognizes the need for enhanced analytical performance management and risk management capabilities.

The strategic objectives under Goal 5 focus on providing data-driven analytics to support borrower decision-making and targeted engagement when interventions become necessary. A final key to success in building a 21st Century organization, particularly with the long-term execution of the Next Gen initiative, is FSA's adoption of an outcome-based approach in its vendor acquisition strategy. The enhanced approach to vendor performance and quality management will improve transparency and collaboration and contribute to better outcomes for students and taxpayers.

Strategic Goal 5 includes the four strategic objectives listed below:

- **Strategic Objective 5.1:**

Improve the management and transparency of FSA's student loan portfolio performance.

- **Strategic Objective 5.2:**

Provide analytics and operational support for a customer-centric, data-driven, performance-based organization.

- **Strategic Objective 5.3:**

Leverage portfolio analytics to drive improved outcomes for customers and taxpayers.

- **Strategic Objective 5.4:**

Increase vendor performance through quality management activities centered on customer service and product delivery.

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In FY 2020, FSA had four objectives under this goal. These objectives included 14 metrics. Of these 14 metrics, 4 were met or exceeded, 2 metrics were not met for this goal, and 1 metric did not have sufficient data. Additionally, seven metrics are baselined in FY 2020.

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**Strategic Objective 5.1:** Improve the management and transparency of FSA's student loan portfolio performance.

**Table 46: Performance Metric 5.1.A.** Initiate monthly reporting to the public through the FSA data center.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Establish specific number of public reports	56
Performance Result	N/A*	N/A*	N/A*	N/A*	Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

FSA's FY 2020 target related to Performance Metric 5.1.A. was to establish a specific number of published FSA Data Center reports suitable for monthly reporting.

### Analysis of Progress:

FSA met its target for this metric by establishing 56 specific reports to be published monthly.

In FY 2020, FSA's Enterprise Data Directorate assessed the reports published on its FSA Data Center website to determine feasibility for monthly reporting. Published reports span the student aid lifecycle from application through repayment. In determining the reports most suitable for monthly reporting, FSA considered how likely the data was to change in each month, privacy implications if the data were to be published monthly, and potential benefit to customers.

Most published reports are tied to a specific award year data or represent a snapshot of the outstanding portfolio as of a specific point in time. Award year disbursement data is currently provided quarterly to allow customers to monitor progress throughout an award year. Further segmentation would make it difficult to track comparisons over time and increase the likelihood of a privacy disclosure. Due to the size of FSA's portfolio, most portfolio snapshots do not significantly change from month to month. As a result, FSA focused its efforts on production-based reports, particularly those related to application volume.

Through this analysis, FSA identified a total of 56 reports for monthly reporting, including the FAFSA by High School state-level reports (54), the PSLF Report, and the BD Report. These reports have been published at least monthly on the FSA Data Center website ([Studentaid.gov/data-center](https://studentaid.gov/data-center)) since January 2020.

### Data Quality and Limitations:

FSA leverages a data request process to ensure queries are written by one subject matter expert and validated separately by a second subject matter expert to help ensure consistency and accuracy. Queries used to produce FSA Data Center reports are required to go through this

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data request process. Subject matter experts also review results prior to publication to help identify any potential areas of concern.



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**Table 47: Performance Metric 5.1.B.** Timeliness of FSA's ability to respond to statutorily mandated reports.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Average of no more than 30 days	N/A
Performance Result	N/A*	N/A*	N/A*	N/A*	Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

**Target Context:**

The methodology associated with the Target Context for the performance metric has not been established. No measurable data is available at this time.

**Analysis of Progress:**

FSA is working to define the methodology associated with the specific reports to be included within the performance metric. In FY 2021, FSA will define the statutorily mandated reports, as well as the source to be utilized to manage the submission of the reports to the Department within 30 days or less. There is no measurable data to be provided for FY 2020.

**Data Quality and Limitations:**

N/A.

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**Table 48: Performance Metric 5.1.C.** Outstanding Direct Loan Portfolio in Current Repayment Status.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	85.4%	85.7%	86.5%	86.7%	Baseline	93.7%
Performance Result	Met	Met	Met	Met	Baseline	

\*Note: Formerly C.2 in FSA FY 2019 Annual Report.

### Target Context:

This metric demonstrates an increase or decrease in the percentage of FSA loan portfolio dollars in a current repayment status. Current Repayment is defined as the percentage of Direct Loan principal and interest identified as being in an “active repayment” status. For this metric, loans are defined as being in “active repayment status” if they are being serviced by a non-default servicer, payments are temporarily suspended (in school/grace or deferment/forbearance), and if they have not been identified as being in non-defaulted bankruptcy, at the default servicer or otherwise excluded (e.g., due to a TPD determination). Direct Loans are further categorized as being “Current” if no more than 30 days have passed since the next payment date.

### Analysis of Progress:

FY 2020 is a baseline year for this performance metric due to the changes in borrower repayment as a response to COVID-19 and FSA’s implementation of the CARES Act legislation.

Through FY 2020, the four-quarter average rate is 93.7 percent. This includes the 100 percent rate for Quarter 4.

Per the CARES Act, Direct Loan servicers cured existing delinquencies and generally also cured the delinquencies of borrowers who “opted out” of the CARES Act forbearance yet did not make payments. Although the CARES Act was first implemented during late March and early April, Quarter 3 (which ended on June 30, 2020) did not have a 100 percent repayment rate because changes in borrower status that occurred within the quarter, which influenced the calculation. However, FSA will not manually adjust Quarter 3 reporting.

The rates for FY 2014 through FY 2019, respectively, are 82.7 percent, 83.9 percent, 85.4 percent, 85.7 percent, 86.5 percent, and 86.7 percent. Performance has improved in recent years primarily due to lower enrollment/loan origination at higher-risk schools over the past decade.

CARES Act related accomplishments include curing loans delinquent as of March 13 and then curing delinquencies which occurred during the CARES Act, such as borrowers who “opted out” of the forbearance but then realized they were not ready to make payments. CARES Act related challenges include setting a baseline—in light of uncertainty about not only the pandemic itself but also how long the borrower benefits will continue and ramping up communications and default aversion efforts after a long period of time when most borrowers were not required to make payments.

## Performance Results by Strategic Goal

With executive action extending CARES Act benefits through December 2020, FSA and servicers will face a heavy burden in “converting” millions of borrowers to active repayment at the same time, with a certain proportion becoming delinquent, at least initially. (According to FSA operations, the first due date after December 2020 would be during February 2021 for most borrowers.) Thus, this metric will remain at 100 percent, or just below, for one or more additional quarters.

### Data Quality and Limitations:

The data source is NSLDS database. The calculation uses the rounded results appearing in the FSA Data Center’s Direct Loan Delinquency report. The fiscal year metric is a moving average of the four quarters. It is the outstanding principal and interest balance of “current” Direct Loans in the active repayment status divided by the total principal and interest balance of Direct Loans in an active repayment status at the non-default servicers. The metric result is calculated as a four-quarter moving average as of September 30 of the current fiscal year (September 30, 2020). This allows FSA to account for changes relating to seasonality and indirect factors that could be false indicators of change. FSA also continues to monitor overall performance of the federal loan servicers to identify any areas where errors have occurred and notifies servicers of results and corrective actions as needed.

The CARES Act requirement for the FSA loan servicers to cure delinquencies highlights small, anomalous data and thus facilitated better understanding, as well as targeted data quality analyses. For example, with so few loans in delinquency, an examination of those loans revealed that most of the remaining loans greater than 360 days delinquent were not actually on their way from the servicer to Debt Management and Collections System (DMCS) but rather are rehabilitations which recently transferred from DMCS to the servicer, with the “days delinquent” reflecting the loan’s condition from years ago, prior to the transfer to DMCS. A much-smaller group represents loans transferred to current servicers years ago from decommissioned servicers where reporting is manual.

Thus, while the point-in-time repayment rate for Quarter 4 rounds to 100 percent, Quarter 3 (June-end) was 97.3 percent because the 2.7 percent represented the stale late-state delinquencies discussed above. FSA does not plan to go back and adjust the data for these anomalies and instead the adjustments begin with Quarter 4.

## Performance Results by Strategic Goal

**Table 49: Performance Metric 5.1.D.** Percentage of borrowers who are in a positive repayment status within the first three years of student loan repayment.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	N/A
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

This new metric will track the percentage of Direct Loan borrowers whose loans are in a positive repayment status within the first three years after their loans entered repayment (maturity). FSA will use fiscal year maturity cohorts. Similar to College Scorecard and other repayment rate metrics, the universe will exclude military deferments, in-school deferments, and non-defaulted open bankruptcy status, as these are loan statuses wherein borrowers are not billed and not expected to pay. FSA will employ EDWA consolidation linking framework in case there are consolidations during a grace period (which are permitted) or during the early years of repayment, so that those borrowers do not “fall out” of the cohort.

### Analysis of Progress:

FY 2020 is a baseline year for this performance metric, but the methodology for the calculation has not been approved. At present, no data is currently available, and the baseline study will continue into FY 2021.

This is a new metric and FSA has developed a preliminary methodology/logic for the queries. The Enterprise Data Team will be looking at examples of results from various timeframes during October 2020. Anticipated challenges include analyzing trends on a comparable basis across fiscal year repayment cohorts and determining whether, for a typical fiscal year ending the previous September 30, the results will be representative by September 30 for annual reporting. This data exploration work will enable FSA to establish a baseline and set a target in FY 2021.

To produce comparable results across time, the methodology, similarly to the cohort default rate, will check for “success” at the end of the third fiscal year. A loan which was in a positive repayment status for 18 months but was not in a positive repayment status at the end of the third fiscal year will not be counted as in a positive repayment status.

Additional challenges to be considered related to the CARES Act include setting a baseline—in light of uncertainty about not only the pandemic itself but also how long the borrower benefits will continue and ramping up communications and due diligence (delinquency resolution) efforts after a long period of time when most borrowers were not required to make payments. With executive action extending CARES Act benefits through December 2020, FSA and servicers will face a heavy burden in “converting” millions of borrowers to active repayment at the same time, with a certain proportion forecasted to initially become delinquent.

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For the universe of this metric, the date entered for repayment occurs six months after the borrower graduates, drops out, or drops below half-time. The pandemic may impact the consistency of these lifecycle transitions.

**Data Quality and Limitations:**

The source is the EDWA servicing data. EDWA receives data from the Direct Loan servicers over the Student Aid Internet Gateway connection/interface. Each Direct Loan servicer reports weekly, and not all on the same day. The Direct Loan servicers report on different days of the week in order to manage FSA's operational burden. FSA monitors overall performance of the federal loan servicers to identify any areas where errors have occurred and notifies servicers of results and corrective actions as needed.



## Performance Results by Strategic Goal

**Table 50: Performance Metric 5.1.E.** Persistence among first-time filing aid recipients.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	79.7%	82.6%	82.5%	82.8%	83–84%	81.0%
Performance Result	Met	Met	Met	Met	Not Met	

\*Note: Formerly A.2 in FSA FY 2019 Annual Report.

### Target Context:

FAFSA application persistence among first-time filing aid recipients is likely lower this year due to the COVID-19 pandemic and the uncertainty about fall enrollment for many returning students.

### Analysis of Progress:

FSA did not meet its target for this performance metric with persistence among first-time filing aid recipients measuring 81.0 percent.

In May 2020, an email campaign specifically focused on returning FAFSA filers resulted in an increase in FAFSA filing by returning applicants this summer, which helped to prevent the decline in this metric from being worse, and witnessed FAFSA filing rebounding for this group from an all-time low for the year in March 2020, likely the result of the COVID-19 pandemic and students being sent home.

In March 2020, COVID-19 resulted in most colleges and universities across the country moving to an on-line only model, which meant that students were not in the classroom or on-campus seeing cues to remind them to file the FAFSA. During this time of national emergency, it is likely that some percentage of students hesitated or delayed filing a FAFSA for the sophomore year. In addition, a result of COVID-19 was that many low-income families had a change in financial circumstances and this may have prevented some students from returning to school because the gap between Title IV aid and the cost of attendance was too large for a student or family to fill given their compromised financial situation due to loss of employment.

Once more Americans return to work or find new employment, FSA expects this metric to increase in FY 2021 as more Americans will have the ability to pay for postsecondary education.

### Data Quality and Limitations:

Data results are ascertained through standardized system queries. These queries are used to rerun and match calculations for earlier cycles as part of the verification and validity assessment. The data source is EDWA and CPS Strategic.

## Performance Results by Strategic Goal

**Strategic Objective 5.2:** Provide analytics and operational support for a customer-centric, data-driven, performance-based organization.

**Table 51: Performance Metric 5.2.A.** Using the Enterprise Risk Management (ERM) Maturity Model, move the organization towards a “Risk Intelligent” position. The model defines organizational progress in the following way:

- 1 = Initial;
- 2 = Fragmented;
- 3 = Integrated; and
- 4 = Risk Intelligent.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	1.5	1.6
Performance Result	N/A*	N/A*	N/A*	N/A*	Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

The overall target for FY 2021 is to move the organization from Fragmented to a more Integrated organization where leadership understands the importance of risk management and considers it in decision making. In addition, the metric will move in a positive direction as risk discussions are more structured and occur at varying degrees relating to strategy setting. In an Integrated organization, most risks are aligned to strategies and risk appetite is formally defined and is discussed as part of daily decision making by senior leadership.

FSA’s goal is to eventually move the organization to be Risk Intelligent where leadership continually demonstrates a strong commitment to risk management with a strong tone at the top and a formal governance structure is in place with monthly meeting cadence. Additionally, a Risk Intelligent organization has a formal risk appetite which has been communicated and risk assessment methodologies, tools, and templates are standardized, understood, and used throughout the organization and performance is measured against strategic goals and linked to key risk indicators.

### Analysis of Progress:

FSA met its target for this performance metric by attaining a 1.6 on the Enterprise Risk Management (ERM) Maturity Model.

During FY 2020, Risk Management created risk dashboards, developed risk products for evaluation of risk earlier in the planning/decision-making process, continued promulgation of risk products and created and conducted enterprise-level training. The office continues to build out risk focus areas and work closely with project/program teams to penetrate lower altitudes. The challenge a reliance on survey results and the response rate from key stakeholders.

## Performance Results by Strategic Goal

### Data Quality and Limitations:

The Risk Maturity Matrix is directly linked to the Committee of Sponsoring Organizations of the Treadway Commission ERM Framework, *Enterprise Risk Management: Integrating with Strategy and Performance*. The data is derived from surveys to stakeholders throughout the organization and is compiled and assessed against the ERM Maturity Matrix. The evaluation and validation of data is subjective within guidelines established by the model.

## Performance Results by Strategic Goal

**Table 52: Performance Metric 5.2.B.** Implementation timeline for FUTURE Act.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Establish specific timeline and collaborative agreement with IRS	N/A
Performance Result	N/A*	N/A*	N/A*	N/A*	N/A	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

**Target Context:**

The FUTURE Act was enacted on December 19, 2019. This law allows the Internal Revenue Service (IRS) to disclose certain federal tax information to the Department for the purposes of providing recertification of income for income-contingent or income-based repayments of student loans; determining discharges of loans based on TPD; and determining the amount of student financial aid under the HEA.

The implementation of the FUTURE Act requires numerous systems changes and security upgrades in FSA to comply with both IRS security requirements and the provisions of the Act itself. FSA is working closely with more than 100 stakeholders and 15 offices from the Department, the IRS, and Treasury to implement the FUTURE Act.

**Analysis of Progress:**

FSA moved forward with specific activities to achieve the target identified within the *FY 2020–24 Strategic Plan*. However, the establishment of a timeline and collaborative agreement with the IRS is beyond FSA's independent authority to achieve and therefore the results are not currently available. The efforts made by the FSA team have laid the groundwork for meeting the target in FY 2021, barring any unforeseen changes.

Since the FUTURE Act was enacted, the Department has completed more than 210 working sessions with more than 130 stakeholders and prepared more than 28 briefings to executive stakeholders and congressional committees. FSA has also been able to accomplish milestones in implementing the law, including but not limited to:

- Submitting the mandatory 90-day joint FUTURE Act report to Congress,
- Finalizing the FY 2020 Interagency Agreement with the IRS,
- Finalizing the schedule and activities for enabling the FUTURE Act Direct Data Exchange with the IRS,
- Working with external partners such as the National College Access Network and the National Association of Financial Aid Administrators to enable the FUTURE Act, and

## Performance Results by Strategic Goal

- Implementing the FAFSA and TPD simulators, which will allow FSA to gather feedback from students and borrowers on the impacts of the FUTURE Act to the FAFSA and TPD processes. The TPD simulator has been implemented. The FAFSA simulator is not scheduled to be implemented until December 2020.

FSA has established a notional implementation schedule. The following critical dependencies need clarification to ensure that the notional implementation timeline can be finalized:

- The implementation of the FUTURE Act requires numerous systems changes and security upgrades within FSA to comply with both IRS security requirements and the provisions of the Act itself. The timeline of implementing these system changes and upgrades depend on funding available to dedicate towards these activities.
- The Department and the IRS are closely tracking potential changes to the FUTURE Act, which impacts how the FUTURE Act FAFSA solution is implemented by schools, state agencies, scholarship organizations, and their respective third-party contractors.
- The Department is closely coordinating the implementation of the FUTURE Act with several critical Next Gen FSA initiatives to ensure the mitigation of any potential duplication and redundancy in developing the solution for the TPD, Income Driven Repayment (IDR), and FAFSA programs. Any delays or risks associated with implementing the Next Gen FSA initiatives may impact the FUTURE Act development and implementation timeline.

### Data Quality and Limitations:

As mentioned above, the FUTURE Act team continues to work closely with other offices within the Department, the IRS, and Treasury to establish a FUTURE Act implementation schedule. While the team has established a notional implementation schedule, all offices continue to work on critical dependencies to finalize the implementation schedule. Variances to the schedule caused by these dependences will impact the quality of the implementation timeline. The FUTURE Act team also works closely with the ERM Office to monitor any risks and limitations.



## Performance Results by Strategic Goal

**Table 53: Performance Metric 5.2.C.** Error rate discovered through income verification activities for borrowers on an IDR plan.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	N/A
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

**Target Context:**

This metric tracks error rate discovered through income verification activities for borrowers on an IDR plan.

**Analysis of Progress:**

FY 2020 is a baseline year for this performance metric, but the pilot program initiated in FY 2020 to measure this error rate was discontinued due to the changes made by the CARES Act. When borrower payments begin again, and applications for IDR restart, FSA will resume the pilot program. At present, no data is currently available, and the baseline study period will extend into FY 2021.

**Data Quality and Limitations:**

N/A.

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**Strategic Objective 5.3:** Leverage portfolio analytics to drive improved outcomes for customers and taxpayers.

**Table 54: Performance Metric 5.3.A.** Identify and provide intervention actions for customers at risk of default.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Development and testing of default intervention program	Developed, tested, and deployed two projects
Performance Result	N/A*	N/A*	N/A*	N/A*	Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

This metric will track the development, testing, implementation, evaluation, monitoring and updates to Statistical and Machine Learning Models, methodologies, experimental designs, and interventions used in reducing customer risk of negative outcomes such as default. There will be multiple projects wherein models will be developed and deployed for assessing which customers would benefit most from receiving certain interventions such as specific emails, phone calls, skip tracing, and other actions. Benefit shall be measured on a project by project basis but will typically consider default related outcomes as well as costs of performing interventions. This metric will track how many projects exist and what phase of the development lifecycle they are in. Each project will have its own method of measuring its effectiveness once deployed with consideration to its experimental design and goals.

### Analysis of Progress:

FSA met its target for this performance metric by developing, testing, and deploying two projects in support of the default intervention program. The projects are the applicant risk model and the TPDR (third-party debt relief) company fraud model.

FSA has developed statistical models to measure individual customer and transaction-level risks at different points in the student aid lifecycle. Risk scores are then used to drive action. Development on the first of these types of projects that uses modeling to reduce negative customer outcomes started in calendar year 2018 with a fraud modeling pilot. It has expanded to be the first of FSA's projects in this area, called the TPDR model. To ensure FSA systems and taxpayer funds are protected, FSA has developed models and analysis to support identification of fraudulent activity, conducting outreach to customers at high risk of being harmed by bad actors and assisting them in resolving issues associated with their accounts.

Models are used to support customers by providing targeted, personalized communications, directing customers to self-service tools FSA has made available to support planning and decision making. During FY 2019–20, FSA sent approximately 962,000 emails to customers identified as having high default risk at time of FAFSA submission and 716,000 emails to high risk customers at time of loan disbursement. The efficacy of this second project is yet to be

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determined because it will time for borrowers to leave school, enter repayment, and move through the lifecycle, so FSA can perform statistical analyses of the results.

Communications to customers at different points in the student aid lifecycle need to be coordinated to avoid confusing customers. Limited ability to coordinate FSA communications to customers with servicer communications has caused FSA to focus on areas of the lifecycle where servicers do less outreach. With the expectation of increased customer service associated with Next Gen FSA and the COVID-19 related forbearances, FSA now expects a greater opportunity to push these projects into parts of the lifecycle where servicer communications are prevalent.

**Data Quality and Limitations:**

The projects within the default prevention definition are expected to use new interventions and actions to reduce customer risks, therefore it is necessary to first collect data on customer outcomes given they have received the new interventions and actions to support Contextual Bandits model training. Different methodologies for initially collecting data have been designed and implemented in a reusable fashion. Contextual Bandits models have been designed to further collect required model training data, incorporating experimental design into the model development process. Data collected from projects for use in creating and updating models has a high probability of bias due to impacts from COVID-19, especially when analyzing outcomes of default, based on the CARES Act forbearance.

This performance metric will leverage high-level project data as its source: the project plans FSA uses for each individual intervention project, and possibly project specific measures to be determined on a project-by-project basis. Current Information Technology infrastructure makes model development, deployment, and maintenance difficult, complex, and costly. FSA has performed market research on tools that would help with tools the organization would like to acquire in FY 2021 to advance this effort.

## Performance Results by Strategic Goal

**Table 55: Performance Metric 5.3.B.** Default Rate by borrower count.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	N/A
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

This new metric provides the rate of Direct Loan borrowers entering default. It is a quarterly metric and similar to other repayment metrics, uses a four-quarter rolling average to address seasonal variations that are common in the loan program.

### Analysis of Progress:

FY 2020 is a baseline year for this performance metric due to the changes in borrower repayment as a response to COVID-19 and FSA's implementation of the CARES Act legislation.

FSA has several years of historical results but did not highlight FY 2020 as a baseline because of the CARES Act. Due to the implementation of the CARES Act, there are close-to-zero new defaults after March 2020. For this reason, FSA did not identify the FY 2020 actual result as the appropriate target or baseline for the performance metric. Developing a baseline will require additional analysis across the Department, FSA operations, and the servicer monitoring team.

Through June 2020 (Quarter 3), the four-quarter average rate is 1.1 percent. This includes the 0 percent default rate in Quarter 3. As required by the CARES Act, Direct Loan servicers cured existing delinquencies and generally also cured the delinquencies of borrowers who "opted out" of the CARES Act forbearance yet did not make payments.

The corresponding four-quarter average for Quarter 3 of the fiscal years 2019, 2018, 2017, and 2016, respectively, are 1.6 percent, 1.6 percent, 1.7 percent, and 1.9 percent. This metric shows a long-term downward trend, interrupted briefly during mid-2019 by the impacts of the 2017 and 2018 natural disasters, particularly three historic hurricanes. Performance has improved in recent years primarily due to lower enrollment/loan origination at higher-risk schools over the past decade.

Defaults, like originations and disbursements, are a flow measure/event, in contrast to loan status, delinquency, and repayment plan, which are point-in-time data elements. For this reason, the data are not available until approximately the middle of the following month. Thus, new defaults in Quarter 4 are not available by the data collection deadline for annual reporting.

### Data Quality and Limitations:

The metric leverages a report that is used for several other purposes, including the public-facing FSA Data Center. The report methodology was validated through FSA's Data Retrieval Tool in 2015. Because the nature of this metric is to compare to same quarter of earlier years and to calculate rolling four-quarter averages, this helps facilitate spotting anomalies. FSA also

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continues to monitor overall performance of the federal loan servicers to identify any areas where errors have occurred and notifies servicers of results and corrective actions as needed. By design, the data directorate is separated from the servicers' staff and systems, so there is currently no systematic way to verify servicer reporting. For this reason, the data directorate worked with the servicer monitoring team during FY 2020 to address reporting issues identified.



## Performance Results by Strategic Goal

**Table 56: Performance Metric 5.3.C.** Percent of Borrowers > 90 days delinquent.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	11.2%	10.9%	10.1%	9.8%	Baseline	4.8%
Performance Result	Met	Not Met	Met	Met	Baseline	

\*Note: Formerly B.2 in FSA FY 2019 Annual Report.

### Target Context:

A focus on reducing the number of borrowers more than 90 days delinquent provides FSA with insight on how to communicate information about repayment options in a targeted and timely manner.

The calculation is the count of Direct Loan recipients with loans 91–360 days delinquent divided by the count of Direct Loan recipients with delinquencies 0–360 days. In other words, the denominator includes current repayment as well as delinquency. The calculation uses recipient counts, rather than borrower counts, because borrower counts would approximately double system demands. Delinquency rates by recipient count are slightly higher than by borrower count.

### Analysis of Progress:

FY 2020 is a baseline year for this performance metric due to the changes in borrower repayment as a response to COVID-19 and FSA's implementation of the CARES Act legislation.

Through FY 2020, the four-quarter average rate is 4.8 percent. This includes the 0 percent rate for Quarter 4. Per the CARES Act, Direct Loan servicers cured existing delinquencies and generally also cured the delinquencies of borrowers who “opted out” of the CARES Act forbearance yet did not make payments. Although the CARES Act was first implemented during late March and early April, Quarter 3 (June-end) didn't have a 0 percent rate because, as detailed in Data Quality and Limitations below, most of apparently the “late-stage delinquencies” in Quarter 3 turned out to be in current repayment or forbearance. However, FSA will not go back and manually adjust Quarter 3 reporting.

The rates for FY 2014 through FY 2019, respectively, are 14.0 percent, 13.0 percent, 11.2 percent, 10.9 percent, 10.1 percent, and 9.8 percent. Performance has improved in recent years primarily due to lower enrollment/loan origination at higher-risk schools over the past decade.

The challenges in calculating this performance metric as related to CARES/COVID-19 include setting a baseline—in light of uncertainty about not only the pandemic itself but also how long the borrower benefits will continue and ramping up communications and default aversion efforts after a long period of time when most borrowers were not required to make payments. With executive action extending CARES Act benefits through December 2020, FSA and servicers will face a heavy burden in “converting” millions of borrowers to active repayment at the same time, with a certain proportion becoming delinquent, at least initially. (According to FSA operations,

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the first due date after December 2020 would be during February 2021 for most borrowers.) Thus, this metric will remain at 0 percent, or just above it, for one or more additional quarters.

**Data Quality and Limitations:**

The data source is the NSLDS. The calculation uses the rounded results appearing in the FSA Data Center's Direct Loan Delinquency report. The fiscal year metric is a moving average of the four quarters. This allows FSA to account for changes relating to seasonality and indirect factors that could be false indicators of change. FSA also continues to monitor overall performance of the federal loan servicers to identify any areas where errors have occurred and notifies servicers of results and corrective actions as needed.

The CARES Act's requirement for the FSA loan servicers to cure delinquencies highlights small anomalous data and thus facilitated better understanding, as well as targeted data quality analyses. For example, with so few loans in delinquency, an examination of those loans revealed that most of the remaining loans greater than 360 days delinquent were not actually on their way from the servicer to DMCS but rather are rehabilitations which recently transferred from DMCS to the servicer, with the "days delinquent" reflecting the loan's condition from years ago, prior to the transfer to DMCS. A much-smaller group represents loans transferred to current servicers years ago from decommissioned servicers where reporting is manual.

Therefore, while the point-in-time rate for Quarter 4 rounds to 0 percent, Quarter 3 (June-end) was 3.2 percent, because the 3.2 percent represented the stale late-state delinquencies discussed above. FSA does not plan to go back and adjust for these anomalies and instead the adjustments begin with Quarter 4.

## Performance Results by Strategic Goal

**Table 57: Performance Metric 5.3.D.** Percentage of borrowers who did not make the first three payments.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	N/A
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

This new metric will track the percentage of Direct Loan borrowers who make the first three payments after entering repayment (maturity). FSA will use fiscal year maturity cohorts. Similar to College Scorecard and other repayment rate metrics, the universe will exclude military deferments, in-school deferments, and non-defaulted open bankruptcy status, as these are loan statuses where borrowers are not billed and not expected to pay. FSA will employ EDWA's consolidation linking framework in case there are consolidations during a grace period (which are permitted) or early in repayment, so that those borrowers do not "fall out" of the cohort.

### Analysis of Progress:

FY 2020 is a baseline year for this performance metric, but the methodology for the calculation has not been approved. At present, no data is currently available, and the baseline study will continue into FY 2021.

This is a new metric and FSA has developed a preliminary methodology/logic for the queries. The Enterprise Data Team will be looking at examples of results from various timeframes during October 2020. Anticipated challenges include analyzing trends on a comparable basis across fiscal year repayment cohorts and determining whether, for a typical fiscal year ending the previous September 30, the results will be representative by September 30 for annual reporting. This data exploration work will enable FSA to establish a baseline and set a target in FY 2021.

Additional challenges to be considered related to CARES Act include setting a baseline—in light of uncertainty about not only the pandemic itself but also how long the borrower benefits will continue; and ramping up communications and due diligence (delinquency resolution) efforts after a long period of time when most borrowers were not required to make payments. With executive action extending CARES Act benefits through December 2020, FSA and servicers will face a heavy burden in "converting" millions of borrowers to active repayment at the same time, with a certain proportion forecasted to initially become delinquent.

For the universe of this metric, the date entered for repayment occurs six months after the borrower graduates, drops out, or drops below half-time. The pandemic may impact the consistency of these lifecycle transitions.

### Data Quality and Limitations:

The source is the EDWA servicing data. EDWA receives data from the Direct Loan servicers over the Student Aid Internet Gateway connection/interface. Each Direct Loan servicer reports

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weekly, and not all on the same day. The Direct Loan servicers report on different days of the week in order to manage FSA's operational burden. FSA monitors overall performance of the federal loan servicers to identify any areas where errors have occurred and notifies servicers of results and corrective actions as needed.

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**Table 58: Performance Metric 5.3.E.** Percentage of customers who borrow less than the maximum loan amount.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	Baseline	N/A
Performance Result	N/A*	N/A*	N/A*	N/A*	Baseline	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

This new metric will track the percentage of borrowers who borrow less than the maximum amount during a particular academic year. This metric will focus on undergraduate student borrowers because there are no maximum borrowing amounts for graduate/professional students. Unlike National Center for Educational Statistics, which collects similar data every four years, FSA will not be able to track non-borrowers and non-Title IV recipients. FSA generally only receives data on its customers.

### Analysis of Progress:

FY 2020 is a baseline year for this performance metric, but the methodology for the calculation has not been approved. At present, no data is currently available, and the baseline study will continue into FY 2021.

This is a new metric and FSA has developed a preliminary methodology/logic for the queries. The Enterprise Data Team will be looking at examples of results from various timeframes during October 2020. Challenges will include looking at trends on a comparable basis across recent award years and determining whether, for a typical award year ending June 30, the results will be stable/representative by September 30 of each year. This data exploration work will enable FSA to establish a baseline and set a target.

Because the maximum permitted loan amount varies depending on the student's year in school and dependency status, FSA will examine trial results to select the most-consistent, representative results over time for this metric. FSA will use a weighted average of dependent and independent student borrowers. While many students are part-time, FSA will need to accept as correct the reporting of the student's academic level, which determines the maximum amount the student is permitted to borrow. Another challenge will be that a small percentage of undergraduate students have access to much-higher borrowing amounts than normal—students in certain undergraduate health professions programs, such as pharmacy. Without having the access to the actual registrar office data (as National Center for Educational Statistics does), FSA will need to study trial results and work to mitigate these outliers.

During times of regulatory change (the 2000s) or economic stress (the great recession), the pattern of loan origination and disbursement activity tends to change, due to shifts in the types of students and schools driving the disbursement activity. COVID-19 serves as the major unknown here.



**Performance Results by Strategic Goal****Data Quality and Limitations:**

The source of the data is the origination and disbursement data stored in EDWA. EDWA receives nightly feeds of these loan origination and disbursement data from COD. FSA has found this data stream to be reliable and of high quality, as the data are replicated from COD to EDWA. The EDWA vendor has been running FSA's COD system for nearly two decades and monitors nightly for errors related to production and internal processes.

Data limitations include the time it takes for an award year's results to "settle." As of the end of an award year (June 30), not all the disbursement activity has been reported to FSA. Even after all the disbursement activity has been reported, schools and other data providers continue to submit adjustments, edits, and cancellations for a substantial period. One way to mitigate having to wait too long for settled data would be to use the same approach of the Department's budget office and the agency's financial auditors—pull the data at the same time each year. This method provides comparable results over time.

## Performance Results by Strategic Goal

**Strategic Objective 5.4:** Increase vendor performance through quality management activities centered on customer service and product delivery.

**Table 59: Performance Metric 5.4.** Percentage of quality assurance reviews for the external workforce (servicers) reviewed annually.

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
	Actual	Actual	Actual	Actual	Target	Actual
Performance	–	–	–	–	25%	11.1%
Performance Result	N/A*	N/A*	N/A*	N/A*	Not Met	

\*Note: New performance metric for FY 2020. Prior-year data is not available under this metric.

### Target Context:

This metric tracks the number of quality assurance reviews conducted by Operational Improvement and Oversight (OIO) to measure the performance of loan servicers. The objective is to continuously enhance FSA's oversight and management of loan servicers by evaluating the efficiency and effectiveness of loan servicers' compliance with contractual terms and statutory requirements.

### Analysis of Progress:

FSA did not meet its target for this metric with a result of 11.1 percent.

In FY 2020, many of the personnel initially assigned to OIO were not experienced in conducting "performance-based" quality assurance reviews. Although these personnel have audit experience, the review and assessment of performance and compliance proved to be a significant challenge. Additionally, the lack of familiarity with the many programs and processes executed by the loan servicers contributed to OIO not meeting the target.

To overcome these challenges and meet the performance metric established, OIO has developed a framework and charter which outlines its purpose, authority, and responsibilities. Additionally, training has been provided to strengthen the performance-based audit capability of assigned staff. Lastly, review plans will be developed prior to all quality assurance reviews to ensure staff's quality assurance review activities focus on performance and compliance.

### Data Quality and Limitations:

The performance metric is calculated by the number of completed QA reviews for all loan servicers. The source of the data is internal OIO reports, based on number of completed QA reviews.

## Fiscal Year 2020 Accomplishments of Federal Student Aid

### Fiscal Year 2020 Accomplishments of Federal Student Aid

During FY 2020, FSA realized additional accomplishments that were not measured specifically by the performance metrics implemented to measure performance against the *FY 2020–24 Strategic Plan*. Although not measured by FSA performance metrics, these accomplishments were the result of initiatives FSA undertook to support the implementation of the strategic plan or legislative changes. This section describes its additional accomplishments.

**FSA realized the following additional accomplishments in support of Strategic Goal 1:**  
*Empower a High-Performing Organization.*

- FSA established FSA Regional Representatives (RR). Members are senior representatives for their Regional Office, responsible for collaborating with internal and external parties to ensure the health, safety, and welfare of FSA regional staff and day-to-day administrative functions of the region. The RR team meets monthly with the COO to discuss matters, both employee and business-related, that are important to Regional staff.
- The Human Resources Office within FSA launched the FSA Human Capital Working Group (HCWG) comprised of representatives from across the organization. The purpose of the HCWG was to increase the human capital capability throughout FSA, while incorporating best practices in hiring and recruitment to establish FSA as a model PBO and employer of choice. Actions taken by HCWG in FY 2020 include:
  - Developed a staffing position priority process to manage the execution of priority hiring in FY 2020, which allowed for hiring in critical areas to ease workload distribution in the organization. The process was utilized to successfully increase hiring numbers in excess of FY 2019 baseline numbers.
  - Formed three committees to address: processes and systems around preboarding/onboarding and post-boarding of new hires; strategic workforce planning; and employee engagement and morale.
  - Utilized client feedback from FY 2019 and FY 2020 to develop new onboarding framework. Successfully onboarded more than 400 new hires in FY 2020; tripling the number onboarded in FY 2019. In conjunction, the team implemented the Onboarding Contingency Plan for new hires at all FSA locations to continue progress during the COVID-19 global pandemic.
- FSA established a Working Group of key stakeholders across FSA and the Department to conduct a comprehensive study of core competencies for FSA's mission critical positions. Utilized the study to examine FSA's statutory hiring flexibilities in comparison to similar federal financial-related agencies.
- FSA executed the first virtual instructor-led Foundations of Leadership Program, an intensive competency-based development program geared to high-performing General Schedule (GS) 11–13 or equivalent non-supervisory employees.

## Fiscal Year 2020 Accomplishments of Federal Student Aid

- FSA established a multifaceted Senior Executive Service Master Class which held a 62 percent average participation rate among eligible participants. The Master Class was inclusive of the following specialized content to strengthen the FSA leadership cadre:
  - Executive Core Qualification: Consultation and Review.
  - Executive Core Qualification: Part II.
  - Next Jump Leadership Academy sessions in alignment with the established Executive Learning Plan requirement.
- FSA collaborated with OCIO through technology support and process documentation that enabled the Department to achieve an A+ on the *Federal Information Technology Acquisition Reform Act* scorecard. FSA's cost savings and cost avoidance contribution were 41 percent of the overall Department score. The systems contributing to the A+ score is Next Generation Data Center, COD investment, Financial Management System investment and Enterprise Business Collaboration investment reported. The results of FSA's effort totaled \$96.8 million across the entire Departmental Information Technology Portfolio.
- In response to COVID-19, the Facilities, Security, and Emergency Management Team established a working group and expeditiously created an FSA Business Continuity Plan to ensure that mission essential functions could proceed, either virtually or within Headquarters and Regional locations. The Business Continuity Plan was inclusive of organizational efforts for processing student aid applications and determining eligibility, as well as ensuring staff could access mechanisms to support the delivery of funds to participating postsecondary institutions and the oversight of loan servicers.

### **FSA realized the following additional accomplishments in support of Strategic Goal 2:**

*Provide World-Class Customer Experience to the Students, Parents, and Borrowers We Serve.*

- FSA ensured the timely implementation of, and compliance with, CARES Act provisions to ensure that students, parents, and borrowers received the CARES Act benefits to which they were entitled. It was also necessary for FSA to effectively manage the CARES Act funding in accordance with the statute. FSA's execution of the actions is outlined below:
  - Under the CARES Act, approximately 41 million borrowers had their interest rate adjusted to 0 percent and their payments suspended.
  - Ensured all CARES Act refunds were processed timely, within one week of receipt for manual processing. This ensured that borrowers that were still subject to AWG or TOP were promptly refunded as FSA worked to turn off these garnishments (with employers) or offsets (with Treasury).
  - Created a solution to allow pre-default borrowers the opportunity to suspend payments yet still yield the benefits associated with a variety of student loan programs or to opt out of the forbearance. To date, approximately 23.8 million borrowers are taking advantage of the payment suspension period while

## Fiscal Year 2020 Accomplishments of Federal Student Aid

approximately 4.6 million borrowers have opted to continue making regular monthly payments.

- Developed a CARES Act \$40 million spending plan to ensure execution and tracking of the \$40 million provided for requirements to implement statutory provisions, including making changes to servicer systems/operations that support more than 40 million borrowers; moving more than 31 million borrowers into forbearance/stopped collections to suspend loan payments; expediting \$2.5 billion in 2.3 million TOP/AWG refund payments; sending notifications to borrowers; and implementing a communications campaign to inform more than 40 million borrowers about the CARES Act provisions.
- FSA saw robust borrower engagement on emails, which had open rates of nearly 60 percent, two times higher than industry average for this type of communication engagement. Additionally, it provided opportunities for FSA to update email addresses on file for borrowers, thus increasing the reach of FSA to its entire portfolio. For the series of emails that were sent, FSA achieved a 96 percent delivery rate.
- Based upon the July Forbearance/0 percent interest email sent to multiple borrower audiences in July, FSA saw a correlated 88 percent increase in web traffic to **StudentAid.gov** websites, which was likely due in part to the email communication and the fact that borrowers were following the email's call to action.

### **FSA realized the following additional accomplishments in support of Strategic Goal 3:** *Increase Partner Engagement and Oversight Effectiveness.*

- FSA published a series of updated data sets, reports, and other information regarding institutional outcomes and financial oversight including quarterly Heightened Cash Monitoring reports, Financial Responsibility Standards Requiring a Letter of Credit Report, Proprietary 90/10 Revenue Percentages Report, Financial Responsibility Composite Scores, Foreign Schools Gifts and Contracts Report, School Fines Report, and the Top 10 Program Review and Audit Findings Report. Starting in FY 2020, FSA also published information regarding Proprietary Institution Conversions in a first-ever disclosure on the FSA Data Center to provide increased transparency on the Department's decisions regarding institutions' nonprofit conversion requests.
- FSA issued more than 5,600 emails to directly inform, and granted requests for regulatory, administrative, or reporting relief and flexibilities to subsequently aid in the recovery efforts of, nearly 3,000 institutions, enrolling more than 2.3 million students touched by disasters such as hurricanes, earthquakes, and wildfires.
- FSA successfully calculated and released the FY 2017 Draft and Official Cohort Default Rates (CDRs) in September 2020 for more than 5,600 schools, guaranty agencies, and lenders. CDRs serve as a valuable compliance tool for FSA to assess school participation in the Direct Loan and Federal Pell Grant Programs. Publication of the CDRs further allows schools to submit appeals for various factors and adjustments to their CDRs, for which FSA also successfully adjudicated more than 140 CDR appeals this fiscal year.



## Fiscal Year 2020 Accomplishments of Federal Student Aid

- During the COVID national emergency, FSA transformed its outreach and assistance efforts into dynamic virtual capabilities for institutions and financial aid partners. FSA redesigned a four-day in-person Title IV Fundamentals training session into a real-time online format for five successful sessions; fielded a new Virtual Technical Assistance tool aimed at MSIs and a virtual Training product for newly approved Title IV schools; and identified 72 MSIs that had not previously used the FSA LMS to virtually instruct on the availability and effective use on on-line learning resources. Additionally, FSA streamlined its outreach and on-boarding processes for Project Success, a program focused on pairing MSIs with guaranty agencies to address risk factors affecting graduation, retention, and CDRs.
- FSA managed the flood of borrower, school partner, and systems communications related the COVID-19/CARES Act legislation. Employing time-sensitive communications, often around the clock, FSA coordinated with Department-wide officials and stakeholders to execute the publication of more than 20 CARES Act Electronic Announcements to the IFAP website from March through September 2020. FSA overcame extraordinary conditions to disseminate these critical updates and guidance on emergency relief measures, system updates, and flexibilities for school and other partners while not jeopardizing the timely dissemination of more than 100 total Electronic Announcements published to IFAP during the fiscal year.
- Next Gen PPO staff managed the successful implementation of CARES Act provisions assisting students who could not complete the spring term due to the pandemic. These changes, which involved often complex system upgrades done under extreme time pressure, included systematically cancelling \$49.6 million in repayment obligations for 11,451 withdrawing students on Direct Loans disbursed during the spring term as well as adjusting student subsidized loan usage limits and Pell Grant lifetime eligibility levels to remove aid disbursed to withdrawing students. Staff also successfully implemented other CARES Act flexibilities allowing schools to adjust Return of Title IV aid calculations and certain elements of the Campus-Based programs to minimize the impact of the pandemic.
- FSA made tremendous progress reviewing and resolving numerous Title IV compliance complaints received in the FSA Feedback Center and concerning institutions that participate in the Title IV programs. FSA began FY 2020 with 3,301 open compliance complaint cases that carried over from previous years, of which 2,742 had aged past 60 days and were in a “backlog” state. Through the course of the year, FSA received an additional 3,837 cases, for a total volume of 7,138 cases. FSA experts reviewed and closed a total of 6,830 cases, leaving only 308 cases remaining open and carried into FY 2021. This represents a 91 percent decrease in the amount of cases that will need to be carried into the next fiscal year; a significant accomplishment that had not been achieved by the business unit since the creation of the FSA Feedback Center in July 2016.
- FSA successfully developed processes to identify and monitor daily BD Refunds to ensure immediate assignment and completion based on requirements to ensure that the standard for refunds is met (two days) and that BD refunds are completed in one day. There are 8,319 BD borrowers who have had 1 or more refunds completed. Of those,

## Fiscal Year 2020 Accomplishments of Federal Student Aid

20 refunds were not processed timely. This is less than 1 percent (0.2 percent) untimely refunds processed, with 99.8 percent timely.

- FSA expedited 25,538 BD refund payments totaling \$8.5 million to 3,914 borrowers. This effort ensured the Department's compliance with a judicial mandate to make refund payments within established time frames.

### **FSA realized the following additional accomplishments in support of Strategic Goal 4:** *Strengthen Data Protection and Cybersecurity Safeguards.*

- FSA's transition to the Amazon Web Service Cloud expanded the Next Generation Data Center boundary to include an Amazon Web Services Cloud component. The cloud environment provides a more efficient, available, resilient, agile, and secure posture, providing the opportunity to apply stricter configuration controls reducing the opportunities for attackers to compromise information systems.

### **FSA realized the following additional accomplishments in support of Strategic Goal 5:** *Enhance the Management and Transparency of the Portfolio.*

- In FY 2020, FSA refined its statistically valid methodology to estimate improper payments for the Pell Grant and Direct Loan Programs. These refinements included obtaining additional sample data and using sustained questioned costs.
- In collaboration with the IRS, FSA initiated changes to its programs to help ensure the accuracy of income information used for determining Pell Grant eligibility, which are now possible as a result of the FUTURE Act which was signed into law in December 2019. Implementation of the FUTURE Act will allow FSA to receive income tax data directly from the IRS, thereby simplifying and improving the accuracy of FAFSA filing by prepopulating certain fields.
- FSA increased the transparency and responsiveness of *The Freedom of Information Act* requests with customers and external stakeholders. The *Freedom of Information Act* team began the fiscal year with a backlog of 173 and 432 new requests during FY 2020. By the close of FY 2020, the team successfully closed 569 requests, resulting in a reduction of 96 percent in outstanding requests.
- The Acquisitions directorate executed 1,198 contract actions totaling \$2.2 billion in FY 2020. Their effort delivered on FSA's vision with enhancing customer experience through their actions support for Aidan and Loan Simulator updates, partner portal for schools, and new contact centers for Next Gen FSA. In addition, the contract actions also provided the necessary capability for the Department's Cybersecurity Task Force through the awarding of a \$14 million bridge contract supporting all cybersecurity requirements which averted a break in service.
  - The three areas reflecting the largest fund investments included are:
    1. Debt Collection via PCAs,
    2. Loan Servicing through the TIVAS, and
    3. NFPs and Title IV Aid Origination and Disbursement.

## Legislative and Regulatory Recommendations

### Legislative and Regulatory Recommendations

One of FSA's mission responsibilities under the law is to provide input on legislative proposals from Congress and from the administration and to support the Department's regulatory activity. FSA also may suggest legislative or regulatory changes for consideration by the Department's senior policy officials. These recommendations customarily center on improving, simplifying, and streamlining the Title IV federal student assistance programs for our customers, minimizing administrative costs, and improving program integrity. FSA's recommendations inform the Department's policymaking process, including its activities and decisions related to each year's budget process. FSA provides this input and recommendations by direct contact with colleagues in the various policy offices within the Department, including the Office of the Under Secretary, the Office of Postsecondary Education, and the Office of Planning, Evaluation and Policy Development at both the senior policy level and at the staff level. During the past year, FSA provided specific recommendations to policy officials on several issues, including:

- Developing guidance and providing regulatory flexibility and relief for the purpose of assisting students, borrowers, institutions of higher education, and others affected by natural disasters, including the COVID-19 pandemic and the CARES Act;
- Assisting in the development of regulations that clarify and simplify requirements for distance education;
- Supporting revisions of TEACH Grant requirements to minimize the number of TEACH Grants that are converted to Federal Direct Unsubsidized Loans;
- Ending the prohibition on Pell Grants for students incarcerated in Federal and State penal institutions;
- Developing proposals for further amendments to Section 6103 of the tax code to allow data sharing for more accurate and timely filing of the FAFSA, before and after the enactment of the FUTURE Act; and
- Developing legislative proposals regarding the simplification of the needs analysis formula and student loan repayment options.

## Annual Bonus Awards

As required by the 1998 amendments to the HEA, the Annual Report includes performance ratings and related awards for FSA senior managers and Senior Executive Service (SES) staff. Included in this section are the number of senior managers and SES on board as of the end of FY 2020. However, because FY 2020 performance results were not finalized at the time this report was prepared, the section discusses FY 2019 performance results.

At the end of FY 2020, there were 102 FSA senior managers and 5 SES members. The number of senior managers in FY 2020 differed from FY 2019 due to increased hiring and internal promotions. The FSA Executive Committee contained 5 of the 102 senior managers. As members of the FSA Executive Committee, these senior managers reported directly to the COO. The number of FSA Executive Committee members significantly decreased because of the reorganization. The remaining 97 senior managers and 5 SES staff served in a variety of senior positions and capacities within FSA.

The following section discusses FY 2019 performance results.

For performance year 2019, the composition of ratings for the 60 senior managers who did not serve on the FSA Executive Committee last year were as follows: 25 senior managers achieved a performance rating of Exceptional Results; 14 achieved a performance rating of High Results; and 21 achieved a performance rating of Results Achieved.

Award amounts for those senior managers achieving an Exceptional Results rating ranged from \$7,052 to \$12,000 with a median award of \$9,000. Award amounts for those achieving a High Results rating ranged from \$3,500 to \$10,000 with a median award of \$7,035.

There were also 2019 performance ratings and awards for 17 senior manager members of the FSA Executive Committee. The composition of those rated included: six senior managers achieved a performance rating of Exceptional Results; seven achieved a performance rating of High Results; and four achieved a performance rating of Results Achieved. One of the six SES members were on the FSA Executive Committee and achieved a performance rating of Results Achieved. One SES member retired and was not rated. One SES member converted to an Administratively Determined (AD) senior manager. The composition of ratings for the remaining three SES members not on the FSA Executive Committee were as follows: one SES member achieved a performance rating of Exceptional and one achieved a performance rating of High Results and one achieved a performance rating of Results Achieved.

Award amounts for the FSA Executive Committee ranged from approximately \$6,000 to \$25,000, depending on the performance rating of each individual. Only individuals with performance ratings of High Results Achieved or Exceptional Results achieved were eligible for performance-based awards.

For additional information, please refer to: **Higher Education Amendments 1998/sec101D**.

## **Report of the Federal Student Aid Ombudsman**

The FSA Ombudsman Group entered its 21st year of service to federal student aid recipients in FY 2020. Established by the 1998 amendments to the HEA, the Ombudsman began operations on September 30, 1999.

The Ombudsman Group addresses disputes regarding Title IV financial aid programs through informal dispute resolution processes. The Ombudsman Group uses a collaborative approach in working with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in the student loan programs. This allows them to conduct fact-finding, review student loan data and records, and facilitate contacts between borrowers and their loan servicers to promote mutually agreeable resolution of issues brought by individual student loan customers.

Since July 2016, the Ombudsman Group also has had the responsibility of administering and managing FSA's comprehensive informal complaint resolution process through the Feedback system. This process engages FSA business units and contracted vendors to receive, review, respond, and report on individual direct customer feedback about the programs FSA administers and the participants it oversees. The Feedback system was designed to augment established operational resources such as FSA websites, resources, contact centers, and loan servicers to give students and borrowers another way to clarify programmatic questions, file complaints, and provide feedback about federal student loan lenders, servicers, collection agencies, institutions of higher education, and the Department.

The Feedback and Dispute Management System (FDMS) is the single point of entry for all federal student financial aid recipients to provide feedback, complaints, and disputes regarding the programs FSA administers. While simplifying the feedback submission process for federal student aid recipients, the FDMS also imposed a more formal structure around FSA's complaint management and resolution process. Customers providing their feedback to FSA have access to a robust, multi-level approach to resolution that includes the primary service/program delivery partner (e.g., the loan servicer, PCA, school, or others), the FSA business unit responsible for oversight of those entities, and as an avenue of last resort, the Ombudsman Group. And because all feedback is documented within one system, it unifies the record of the efforts of multiple parties to resolve a matter.

This report provides information about the volume and nature of all feedback FSA received, reviewed, and resolved during FY 2020.

### **Summary of All Feedback Received in Fiscal Year 2020**

#### **All Feedback Classification and Categorization**

Customers may submit feedback (cases) about any type of federal student aid. All cases are assigned among two lines of business: Feedback and Dispute. Cases pertaining to federally held loans are researched and resolved through the Feedback line of business. Federally owned loans include all Direct Loan, FFEL, and Perkins Loan Program loans owned by the Department. Cases pertaining to federally insured loans held by schools (Perkins Loans),



## Report of the Federal Student Aid Ombudsman

commercial lenders, or guaranty agencies are classified as Research cases and researched by the Ombudsman Group

This section of the report summarizes all cases received through both lines of business.

All incoming feedback is classified into a case type based on the customer's perceptions and makes no judgement as to the validity of the feedback. Feedback is classified into one of five case types:

- **General Inquiry** Cases involving general federal student aid questions,
- **Complaint** A customer's dissatisfaction with the federal financial aid experience,
- **Suspicious Activity** A report or allegation of suspected fraud during the student aid process,
- **Positive Feedback** Compliment about programs, FSA staff, Department contractors, and other Title IV program participants, or
- **Research** Disputes assigned to the Ombudsman Group.

Activity in the system during FY 2020 equated to 48,638 feedback (cases) received. Those cases were comprised of:

- **General Inquiry** 1,677
- **Complaints** 44,152
- **[Allegations of] Suspicious Activity** 2,068
- **Positive Feedback** 347
- **Research** 394

## Report of the Federal Student Aid Ombudsman

Table 60: All Feedback Received by Case Type by Category in Fiscal Year 2020

Subcategory (All Cases Received)	Volume
<b>General Inquiry</b>	
Applying for Student Aid (FAFSA)	259
Credit Reporting	4
Disbursing Student Financial Aid	125
Public Service Loan Forgiveness (PSLF) Program	29
Repaying Student Financial Aid	850
Repaying Student Financial Aid – In Default	173
School	72
Student Eligibility	70
Department Customer Support	95
<b>Total General Inquiry Volume</b>	<b>1,677</b>
<b>Complaint</b>	
Applying for Student Aid (FAFSA)	7,564
Credit Reporting	1,195
Disbursing Student Financial Aid	2,004
Public Service Loan Forgiveness (PSLF) Program	1,269
Repaying Student Financial Aid	18,103
Repaying Student Financial Aid – In Default	2,072
School	7,066
Student Eligibility	1,864
Department Customer Support	3,015
<b>Total Complaint Volume</b>	<b>44,152</b>
<b>(Allegations of) Suspicious Activity</b>	
Allegation of Identity Theft	138
Allegation of Misuse of Departmental Resources	368
Allegation of Misuse of FSA ID	141
Allegation of Misuse of FSA Intellectual Property or Claim of a Department Affiliate	1,287
Allegation of a Whistleblower	134
<b>Total Suspicious Activity Volume</b>	<b>2,068</b>
<b>Positive Feedback</b>	
My Collection Agency	4
My Customer Service Experience	165
My School	51
My Servicer	14
Department Website, Application, or Service	113
<b>Total Positive Feedback Volume</b>	<b>347</b>
<b>Research</b>	
Credit Reporting	23
Public Service Loan Forgiveness (PSLF) Program	13
Repaying Student Financial Aid	292
Repaying Student Financial Aid – In Default	38
School	8
Student Eligibility	14
Department Customer Support	6
<b>Total Research Volume</b>	<b>394</b>
<b>Grand Total</b>	<b>48,638</b>

## Report of the Federal Student Aid Ombudsman

In addition to categorizing by case type, all feedback submitted is further categorized into subcategories based on the customer's description. Nearly 100 subcategories further refine the feedback submitted. The breakdown of cases received by Top 5 Category/Subcategory is discussed later in this report.

### How FSA Resolves Feedback

Feedback resolution must be executed within the boundaries established by law and regulation. These are grouped under three common Resolution Types. The Resolution Type "Resolved" designates feedback on which FSA has concluded all review and research activity. "Referred" is most commonly used with the case type of General Inquiry, but also may be used to designate situations on other case types when FSA determines another resource external to FSA should assist the customer because the nature of the feedback does not pertain to Title IV federal student aid programs or must be reported to another agency or entity. "Submission Logged" relates to feedback on which no assistance is provided. The most common use for this Resolution Type is for feedback submitted anonymously or containing specific direction to change Title IV law or regulation.

Resolution Actions indicate the specific way in which the feedback was resolved. Resolution Actions achieved on cases resolved by FSA (not Referred) in FY 2020, most commonly consisted of providing to the customer additional explanation or information about the action or circumstance that prompted the customer to submit feedback to FSA. These are identified with a Resolution Action of "Communication/Process Clarified for Customer."

**Table 61: Resolution Type and Action for All Cases Closed in Fiscal Year 2020**

Resolution Type	Resolution Action	Volume	Percentage
Resolved	Action Taken	2,298	4.2%
	Communication/Process Clarified for Customer	12,228	22.2%
Referred	Referred to Accrediting Agency	529	1.0%
	Referred to FSA Contact Center	9,585	17.4%
	Referred to FSA Website	1,437	2.6%
	Referred to Other Government Entity	1,747	3.2%
	Referred to Outside Third-Party	3,077	5.6%
	Referred to School	6,746	12.3%
	Referred within the Department of Education	9,125	16.6%
Submission Logged	Feedback Logged	6,276	11.4%
	No Response from Customer	1,979	3.6%
	Policy Suggestion Logged	33	0.1%
<b>Total</b>		<b>55,060</b>	<b>100%</b>

Table 61 highlights that 22.2 percent of all cases are resolved with another explanation and/or more information about the circumstances that prompted the customer to submit feedback to FSA. As noted above, FSA must resolve complaints within the framework of existing law and regulation. This means FSA often is constrained from offering a solution to the customer that directly and precisely resolves the matter in a way the customer most desires. For example, a

## Report of the Federal Student Aid Ombudsman

customer may not like the interest rate on their loans. While this is certainly valid feedback, legislation mandates the interest rate on federal student loans.

There are key factors explaining why so many cases are resolved with FSA providing additional or clarifying information:

- Customer understanding and awareness of how loan balances are affected by interest accrual and/or capitalization, and reduced by monthly payments.
- Customers' difficulty understanding requirements and proving eligibility for loan program benefits such as income-driven repayment plans or loan discharge, cancellation, or forgiveness.
- Customers having difficulty with requirements associated with completing and submitting the FAFSA such as electronic signatures, completing the FAFSA, required income information, and the requirements for obtaining and maintaining a valid FSA ID.
- Unclear, hard-to-understand, or inconsistent information from FSA and its service providers about repayment plan eligibility requirements.
- Customers may not access their online accounts to review servicer notifications or provide updated contact information, leaving them unaware of the loan status.
- Customers needing assistance with and clarification of provisions of the CARES Act and its impact on their federal financial aid.

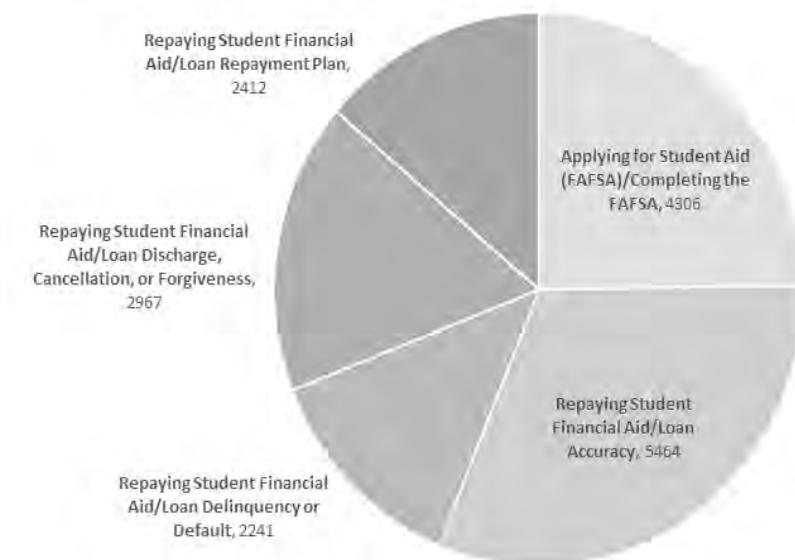
This method of recording the way individual cases are resolved helps highlight areas of customer confusion versus problems with program implementation that may require legislative, regulatory, or operational changes. It also enables FSA to show how specific categories and subcategories of cases are resolved and provides a more refined picture of the relative flexibility of FSA to meet and satisfy customer expectations as expressed within individual feedback submissions.

## Report of the Federal Student Aid Ombudsman

### Feedback Cases Assigned to FSA Business Units

The Top 5 categories of feedback received in this line of business are reflected in Figure 23.

**Figure 23: Top 5 Feedback Cases Received by Category/Subcategory in Fiscal Year 2020**



**Repaying Student Financial Aid/Loan Accuracy** pertains to customer's concerns about the accuracy of one or more of their loans. Examples of this subcategory include interest rate; loan disbursement amount; current loan balance; loan payment amount; and current loan status.

**Case Example 1:** Customer wanted to dispute loan disbursements due to the fact that she withdrew from her school within the three- day time period. She stated she was also told that she accepted loans, but she said she filled out a Master Promissory Note and completed entrance counseling, but never accepted loans.

**Applying for Student Aid (FAFSA)/Completing the FAFSA** pertains to any issue the customer experiences when applying for or receiving federal financial aid. Examples include unable to electronically sign FAFSA; completing the FAFSA takes too long; requirement on two years of tax returns; timing when the FAFSA needs to be filled out; and other challenges related to completion of the FAFSA.

**Case Example 2:** Customer is trying to complete her FAFSA utilizing her 2018 taxes. She was not married at that time. She would like to know if she needs to add her husband's tax information to the application. I asked the customer if she was completing the FAFSA for the 2019–20 school year. She stated she was filling out the 2020–21 FAFSA.

**Repaying Student Financial Aid/Loan Discharge, Cancellation, or Forgiveness** pertains to any such issue except for TPD, BD, and PSLF, as those are separate categories or subcategories. Examples include: Teacher Loan Forgiveness, Ability to Benefit discharge, False Signature, and Identity Theft.



## Report of the Federal Student Aid Ombudsman

**Case Example 3:** The customer obtained federal student loans and attended college without obtaining a high school diploma. She's requesting to have the loans discharged through the Ability to Benefit provision.

**Repaying Student Financial Aid/Loan Repayment Plan** pertains to any issue wherein a customer raises concern about their monthly payment amount.

**Case Example 4:** "I re-applied for an IDR plan on 03/05/20, in which I received a formal letter in my inbox confirming that my IDR continuation was approved. I received two emails on 08/22/20 at 5:40 a.m. stating that my IDR plan lapsed because you required additional information that I did not supply, and the deadline of 90 days had passed. These emails are errors, and in trying to remedy this situation, I have been met with convoluted automated phone systems and website links in trying to find the form I supposedly need to fill out to remove this error. I need this IDR plan as I am currently unemployed and my wife and I have absolutely no means to make payments on my loans, certainly not the standard monthly payments."

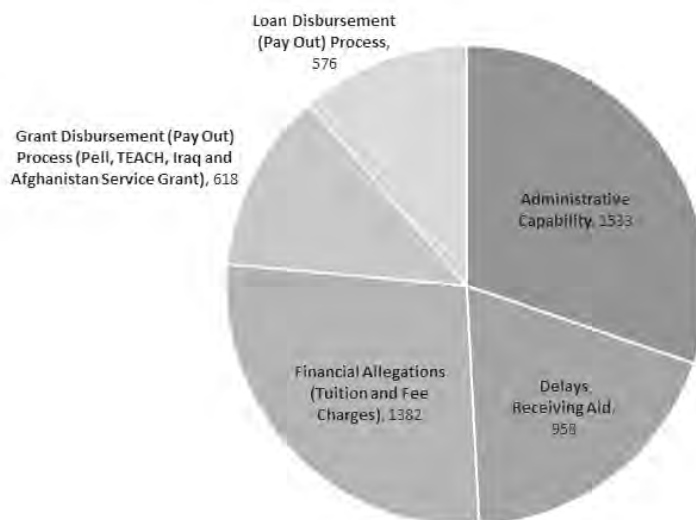
**Repaying Student Financial Aid/Loan Delinquency or Default** pertains to any issue related to a delinquent or defaulted loan.

**Case Example 5:** Customer says he has never received a bill or correspondence from anyone. Customer is desperate to get his loans out of default because he received no notice.

### School-Related Feedback

The majority of feedback about schools is assigned to the FSA Partner Participation and Oversight office (FSA PPO) for research and resolution. Customers submitted a total of 7,138 school-related feedback, or 14.7 percent of the total volume received.

**Figure 24: Top 5 School-Related Feedback in Fiscal Year 2020**



## Report of the Federal Student Aid Ombudsman

The school-related feedback identified above is defined as:

- **Administrative Capability** relates to a school's ability to administer the federal financial aid programs in accordance with law and regulation. Types of feedback would include insufficient number of financial aid staff, lack of financial aid related policies and procedures, or failure to follow school policies regarding financial aid awards.
- **Financial Allegations (Tuition and Fee Charges)** is customer feedback concerning school tuition, fee charges, or if a customer has a balance owed to the school. These are typically non-Title IV issues the customer describes in the feedback.
- **Delays Receiving Aid** relates to feedback when a customer expresses that a school is unnecessarily or improperly delaying federal aid disbursement.
- **Grant Disbursement (pay out) Process (Pell Grant, TEACH Grant, and Iraq and Afghanistan Service Grant)** is regarding the process on how a school pays out funds received in a federal grant to students.
- **Loan Disbursement (pay out) Process** is regarding the process that either the student or the school must complete to receive a federal loan fund.

FSA PPO staff review the feedback and as needed, contact the school and the customer for additional information. FSA PPO uses data from the school-related feedback to inform its program review and school performance monitoring responsibilities. For optimal application of feedback data to these activities, it is necessary to examine also how most feedback gets resolved. Table 62 examines the most common Resolution Type and Resolution Action for the Top 5 School-Related Feedback.

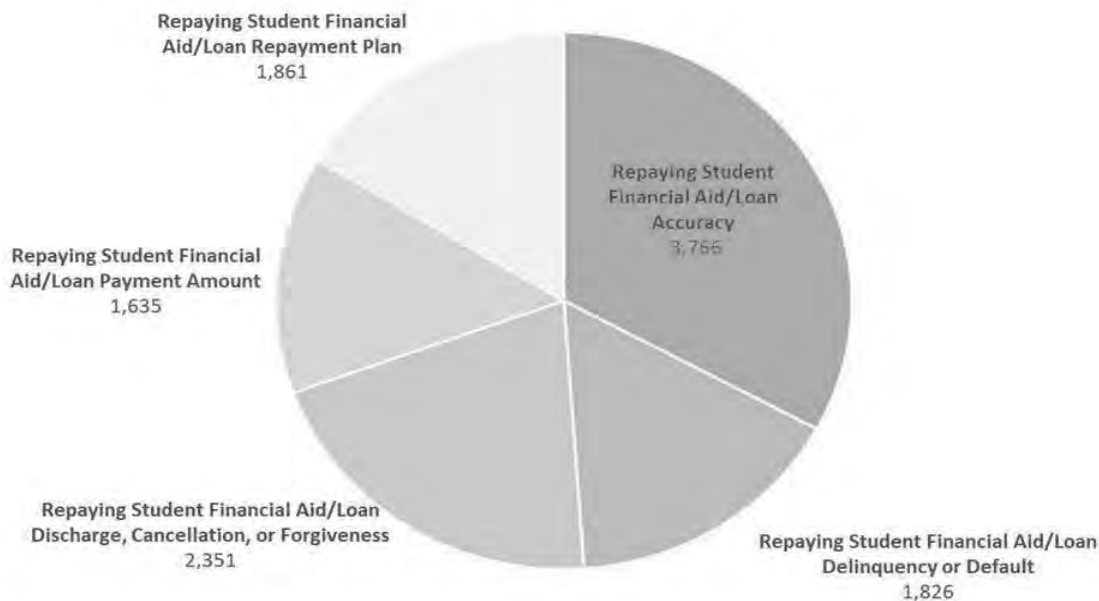
**Table 62: Top 5 School-Related Feedback by Resolution Type/Resolution Action in Fiscal Year 2020**

School-Related Feedback Subcategory	Resolution Type	Resolution Action	Volume
Financial Allegations (Tuition and Fee Charges)	Referred	Referred to School	967
	Resolved	Communication/Process Clarified for Customer	440
	Submission Logged	No Response from Customer	147
Administrative Capability	Referred	Referred to School	607
	Resolved	Communication/Process Clarified for Customer	452
	Submission Logged	Feedback Logged	182
Delays Receiving Aid	Referred	Referred to School	459
	Resolved	Communication/Process Clarified for Customer	552
	Submission Logged	Feedback Logged	90
Grant Disbursement (pay out) Process (Pell Grant, TEACH Grant, and Iraq and Afghanistan Service Grant)	Referred	Referred to School	303
	Resolved	Communication/Process Clarified for Customer	405
	Submission Logged	Feedback Logged	40
Loan Disbursement (pay out) Process	Referred	Referred to School	264
	Resolved	Communication/Process Clarified for Customer	444
	Submission Logged	No Response from Customer	32
<b>Total</b>			<b>5,384</b>

### Loan Servicing-Related Feedback

FSA contracts with 10<sup>18</sup> entities to manage the servicing of non-defaulted federal student loans. These entities are responsible for advising borrowers about resources and benefits to better manage their federal student loan obligations; respond to customer service inquiries; address billing and collecting payments<sup>19</sup> on a loan; and perform other administrative tasks associated with maintaining a loan on behalf of the Department. Collection activities on defaulted loans assigned to the Department are overseen by FSA's Default Resolution Group (DRG) as reflected on the DMCS.

**Figure 25: Top 5 Loan Servicing-Related Feedback in Fiscal Year 2020**



<sup>18</sup> One of these servicers, ECSI, services Perkins loans; it does not service loans made under the Direct Loan or FFEL programs.

<sup>19</sup> All payments on non-defaulted federal student loans the Department owns are remitted to Treasury. That agency then reports payment information to the various servicers, which are then credited to the borrower's account.

## Report of the Federal Student Aid Ombudsman

Table 63 shows the manner in which these most common cases were closed.

**Table 63: Top 5 Loan Servicing-Related Feedback by Resolution Type/Resolution Action  
Fiscal Year 2020**

Subcategory	Resolution Type	Resolution Action	Volume
Loan Accuracy	Referred	Referred within the Department	1,663
	Resolved	Communication/Process Clarified for Customer	1,364
	Referred	Referred to Outside Third-Party	712
Loan Discharge, Cancellation, or Forgiveness	Referred	Referred within the Department	792
	Resolved	Communication/Process Clarified for Customer	764
	Referred	Referred to FSA Contact Center	430
Loan Repayment Plan	Referred	Referred within the Department	1,111
	Resolved	Communication/Process Clarified for Customer	249
	Referred	Referred to FSA Contact Center	554
Loan Delinquency or Default	Referred	Referred within the Department	1,189
	Resolved	Communication/Process Clarified for Customer	305
	Referred	Referred to Outside Third-Party	364
Loan Payment Amount	Referred	Referred within the Department	1,193
	Resolved	Communication/Process Clarified for Customer	290
	Referred	Referred to Outside Third-Party	160
<b>Total</b>			<b>11,140</b>

Table 64 shows the volume of Feedback cases categorized as servicing-related, broken down for each servicer contracted to perform servicing activities on behalf of the Department. It should be noted that the volume of cases assigned to a specific servicer is often affected by the nature of the accounts assigned to the servicer. For example, DMCS services only defaulted loans and FedLoan Servicing is the designated servicer for all PSLF and TEACH grants. ED-ACS is no longer an active servicer under contract to the Department. FSA personnel resolve these cases in which the feedback received may be related to the former servicer's activities.

**Table 64: Feedback by Department Servicer Volume and Borrower Count  
Fiscal Year 2020**

Servicer	Feedback Volume	Percent of Servicer Feedback	Number of Borrowers	Percent of Portfolio
Debt Management and Collection System/(DMCS/DRG)	5,958	25.96%	7,731,817	18.86%
ED-ACS	23	0.10%	7,784	0.02%
ED-Cornerstone	386	1.68%	1,078,498	2.63%
ED-ECSI Perkins Loan Servicer	96	0.42%	67,439	0.16%
ED-FedLoan Servicing (PHEAA)	4,409	19.21%	7,271,445	17.74%
ED-Granite State (GSMR)	401	1.75%	1,144,059	2.79%
ED-Great Lakes	2,143	9.34%	7,446,803	18.17%
ED-HESC/EdFinancial	696	3.03%	1,762,235	4.30%
ED-MOHELA	776	3.38%	2,555,066	6.23%
ED-Navient	2,355	10.26%	5,618,684	13.70%
ED-Nelnet	5,389	23.48%	5,532,720	13.50%
ED-OSLA	320	1.39%	777,950	1.90%
<b>Total Volume</b>	<b>22,952</b>	<b>100%</b>	<b>40,994,500</b>	<b>100%</b>

## Report of the Federal Student Aid Ombudsman

### Feedback Submitted by Members of the Military, Veterans, or Their Dependents

FSA asks all customers to indicate if they are a member of the military, a veteran, or a dependent of a military member or veteran. FSA collects this information to ensure continued support of Executive Order 13607, signed in April 2012, which established the Principles of Excellence (POE) for Educational Institutions Servicing Service Members, Veterans, Spouses, and Other Family Members.

For all feedback received in FY 2020, POE-identified customers submitted 877 feedback cases specifically related to their military status and/or educational benefits.

### Dispute Cases Assigned to the Ombudsman Group

The Ombudsman Group researches and resolves all cases within the Dispute line of business. Customers who dispute the outcome of a case previously responded to by an FSA business unit or one of FSA's contracted servicers or PCAs may elect to have their issue reviewed by the Ombudsman Group. Cases pertaining to federal loans owned by commercial lenders or guaranty agencies—commonly referred to as commercially-held loans—are also classified as Research cases. Review by the Ombudsman Group is a customer's last opportunity for informal resolution of an issue within the Department.

During FY 2020, the Ombudsman Group received 394 cases for review and resolution. During FY 2020, the Ombudsman Group closed 598 cases.

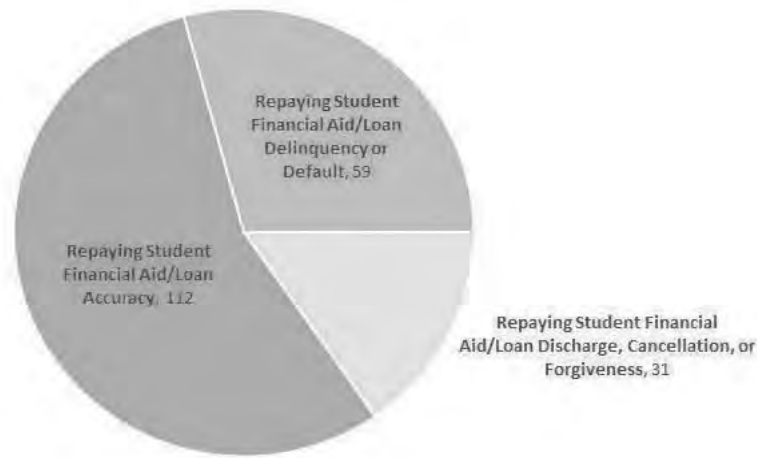
**Table 65: All Dispute Cases Received in Fiscal Year 2020**

Dispute Category	Volume
Credit Reporting	23
Public Service Loan Forgiveness (PSLF) Program	13
Repaying Student Financial Aid	292
Repaying Student Financial Aid – In Default	38
School	8
Student Eligibility	14
Department Customer Support	6
<b>Total</b>	<b>394</b>



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**Figure 26: Top 3 Dispute Cases Category/Subcategory Assigned to the Ombudsman Group in Fiscal Year 2020**



As a neutral, independent third-party separate from FSA operations, the Ombudsman Group fulfills a role as the third tier in FSA's feedback resolution process. The Ombudsman Group can reach across technical and responsibility boundaries within the federal student aid ecosystem to collect facts, review circumstances, and facilitate collaboration among differing parties associated with a dispute to reach a resolution that may not have otherwise been considered. Example cases described below illustrate this activity.

**Case Example 6: Loan Accuracy:** Customer contacted our office regarding her Chapter 7 Bankruptcy. She asserted that she had a portion of her \$200,000 FFEL Consolidation loan discharged and only has to repay \$30,000. She asserted that the guarantor had not corrected her loan balance. The customer asserted that they are not applying the 0 percent interest rate from the CARES Act and she is entitled to a 0.25 percent reduction with automatic payments.

**Outcome:** Customer has one FFEL Consolidation loan. In accordance with the customer's adversary order, the remaining amount owed on her FFEL Consolidation after the bankruptcy discharge was \$30,000 with a 3.25 percent interest rate. Guarantor corrected records to reflect the balance the court ordered and that payments were made by the borrower and posted to her account. Another payment was returned to her as the account had been repurchased by the loan servicer. A 0.25 percent interest reduction for automatic payments is not offered by the lender. The customer is not eligible for the 0 percent interest rate from the CARES Act; only Department-held loans are eligible.

**Case Example 7: Loan Delinquency or Default:** Customer is calling about her student loans from 2001 that in 2007 were consolidated. The guarantor refuses to take payments and sent her to collections and wage garnishment since 2019. The customer stated that her student loans went from \$23,900.00 up to \$249,344.00. She wants to know what she can do at this time. She stated that all the fees should be taken off the account. I explained that with defaulted loans, fees are added to the account.

## Report of the Federal Student Aid Ombudsman

**Outcome:** The borrower was advised that the account has been properly serviced, the default was valid, and collection fees are authorized. The customer has the option to pay the loan in full, re-consolidate the FFEL Consolidation or compromise a settlement on the account, in addition to making voluntary monthly payments.

**Case Example 8: Loan Discharge, Cancellation, or Forgiveness:** I have been a nurse since completing school in 2013 and I am not showing a zero balance. I was in the understanding that every year that I submit my proof of work that my tuition was being forgiven.

**Outcome:** The research showed that the customer submitted cancellation applications in prior years and a portion of the loan was forgiven. However, the customer did not submit the cancellation request for the final year of service performed. The customer was advised that she needs to submit the final paperwork to receive the remaining 30 percent of Perkins Loan Cancellation.

**Table 66: All Dispute Cases Closed in Fiscal Year 2020 by Resolution Type**

Category	Volume
Resolved	532
Referred	30
Submission Logged	36
<b>Total</b>	<b>598</b>

### Other Case Types

#### Suspicious Activity

FSA carefully reviews each customer submission to determine if there is a credible allegation of fraud or illegal activity associated with the federal financial aid programs. Table 67 identifies all Suspicious Activity cases by category.

**Table 67: All Suspicious Activity Cases by Category in Fiscal Year 2020**

Suspicious Activity Category	Volume
Allegation of Identity Theft	138
Allegation of Misuse of Departmental Resources	368
Allegation of Misuse of FSA ID	141
Allegation of Misuse of FSA Intellectual Property or Claim of a Departmental Affiliation	1,287
Allegation of Whistleblower	134
<b>Total</b>	<b>2,068</b>

#### **Allegation of Misuse of FSA Intellectual Property or Claim of a Department Affiliation.**

This is a broad category that that many resolution types fall under. This can refer to any individual who falsely claims he or she is employed by or affiliated with the Department. The most frequent issue in this category are third-party companies that falsely claim an affiliation with the Department. Their purpose is to entice borrowers to purchase offered services on which that company does not deliver.

## Report of the Federal Student Aid Ombudsman

**Allegation of Misuse of Department Resources.** This is a claim or assertion that an individual or individuals are not using student aid funds for tuition or other school-based items.

**Allegation of Misuse of FSA ID.** This is the claim or assertion that someone has fraudulently obtained a borrower's FSA ID to illegally gain access to private information and/or FSA funds.

**Allegation of Identity Theft.** This is a claim or assertion that an individual has wrongfully obtained and used another persons' personal data, in some way that involves fraud or deception, to gain access to FSA funds.

**Allegation of a Whistleblower.** This is a claim or assertion by a person who exposes any kind of information or activity that is deemed illegal, unethical, or not correct with regards to practices involving obtaining student aid, and/or any of the processes of student loan borrowing.

As with all other feedback, the way Suspicious Activity cases are resolved is tracked on cases closed by Resolution Type and Resolution Action.

**Table 68: All Suspicious Activity by Resolution Type/Resolution Action  
Fiscal Year 2020**

Category	Resolution Type	Resolution Action	Volume
Allegation of Identity Theft	Resolved	Communication/Process Clarified for Customer	92
	Referred	Referred to Outside Third-Party	10
	Resolved	Action Taken	10
	Submission Logged	Feedback Logged	22
Allegation of Misuse of Department Resources	Resolved	Communication/Process Clarified for Customer	71
	Referred	Referred to Other Government Entity	13
	Submission Logged	Feedback Logged	285
Allegation of Misuse of FSA ID	Resolved	Communication/Process Clarified for Customer	112
	Referred	Referred to Other Government Entity	18
	Submission Logged	Feedback Logged	8
Allegation of Misuse of FSA Intellectual Property or Claim of a Departmental Affiliation	Resolved	Communication/Process Clarified for Customer	15
	Referred	Referred to Other Government Entity	1,255
	Submission Logged	Feedback Logged	33
Allegation of Whistleblower	Resolved	Communication/Process Clarified for Customer	56
	Referred	Referred to Accreditation Agency	7
	Submission Logged	Feedback Logged	176
<b>Total</b>			<b>2,183</b>

FSA shares investigation and enforcement authority over schools, loan servicers, and other participants in the federal student aid programs with the Department's OIG and other agencies at the federal and state level. All allegations of Suspicious Activity are shared with OIG and the Federal Trade Commission Consumer Sentinel database. Sharing the information with the Sentinel data base renders individual, case-level information available to a broader network of federal and state law enforcement entities.

Based on increased activity of such scams, FSA has tasked the Fraud Risk Group with taking steps to review, track, and act upon allegations of fraudulent actions third party debt relief companies take. The Fraud Risk Group has also taken additional steps such as implementing a tactical plan, enhanced collaboration with federal enforcement agencies and offices, completed

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borrower awareness projects, assisted with investigations, and negotiated cease and desist letters that are sent to third party debt relief companies.

### Positive Feedback

Customers can provide positive feedback regarding their experience with FSA, schools, servicers, and other entities involved with the application, receipt, or repayment of federal student aid, including PCAs.

**Case Example 9:** “As a military spouse, my family’s income is ALWAYS fluctuating since every move means a new period of joblessness before finding work. Just before COVID-19 hit, I had to take off of work to support the kid during my husband’s deployment. COVID-19 arrived before he returned, and I was therefore unable to collect unemployment. While I tried to apply for a different repayment amount, I don’t think that I did it correctly. Luckily, one of the service members was there.

The Government Bureaucracy can seem impenetrable, and I am especially grateful to your representative for her kind hand-holding, despite all my questions and cluelessness. Thank you. Please pretend that the ‘thank you’ had an exclamation mark after it, but it is disallowed in this form. Still, I wanted to convey gratitude with an exclamation mark.”

For FY 2020, the Ombudsman Group received 347 positive feedback comments from FDMS customers.

### Using Feedback to Improve the Federal Student Aid Programs

Feedback system data is shared in FSA’s EDWA. Data concerning the Suspicious Activity case type is shared with the OIG, and information about the Complaint and Suspicious Activity case types is shared with the Federal Trade Commission’s Consumer Sentinel data base. The Ombudsman Group facilitates the sharing of information from feedback that customers submit by responding to ad hoc requests for data about feedback received. Further, the Ombudsman Group shares feedback data that is, in turn, compiled with other sources of feedback (e.g., received through social media or at community outreach events) on a monthly basis and shared with representatives across FSA.

A more specific example of how FSA is using feedback data is connected to the PSLF program. PSLF allows government and non-profit entity employees to have their loans forgiven after 120 qualifying payments, which is generally 10 years.

During FY 2020, the Ombudsman Group received 1,311 cases related to PSLF. This represents a slight decrease from the 1,500 PSLF cases received in FY 2019. The primary reason for feedback about PSLF during FY 2020 related to questions about qualifying for the program from customers who were not on the correct repayment plan.

Congress passed legislation that created the TEPSLF to assist individuals who thought they were on the correct payment plan. TEPSLF is only for those customers who have made 120 payments since 2007 and have been denied PSLF on the basis that they were not on the correct repayment plan. However, the legislation places a restriction on qualifying payments

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during the final year of qualifying for PSLF. The law requires that borrower's remit payments under a qualifying repayment plan for the final 12 monthly payments.

FSA implemented further improvements to the PSLF/TEPSLF process during FY 2020, including:

- **Employer Eligibility Database:** In June 2020, FSA delivered its first enhancement to the PSLF Help Tool by providing borrowers with information about employer eligibility in real time through an Employer Database. FSA added an Employer Search Feature where borrowers can use their employer's Federal Employer Identification Number and their dates of employment to search the Employer Database for specific eligibility information.
- **Lump Sum Payments/Prepayments:** In August 2020, FSA worked with the servicer to make an operational improvement by updating the process to qualify a monthly payment, regardless of when or by whom it was made, so long as the payment due was made in full and no later than 15 days after the payment due date.
  - Borrowers may now make prepayments or lump sum payments for up to twelve months or the next time their income-driven repayment plan is due for certification, whichever comes first.
  - Additionally, FSA worked with the PSLF servicer to update borrower communications and account information to clearly display the distinction between "eligible" vs "qualifying" payments.

**Case Example 10:** I have been in a qualifying public service job for 18 years and have been making payments on my student loans the whole time. I believe I have more than the 120 qualifying payments given the flexibility associated with this new fund, and I would like to find out if, in fact, that is true. My servicer has been difficult in dealing with to get this information.

**Outcome:** The customer had a joint consolidation loan and the challenge was determining that portion of the loan that was eligible for PSLF. Working with the servicer, the Ombudsman Group was able to determine the correct balance eligible for PSLF and the customer received additional forgiveness of \$3,908.86.

### Anonymous Cases

There are many instances where customers prefer to give feedback anonymously, without providing any name, contact, or personal information. From the beginning days of the Ombudsman Group through to the present time, FSA customers had, and continue to have, the option to submit feedback anonymously.

While feedback is welcomed from any and all customers, it should be noted that when a customer files anonymously, the Ombudsman is unable to further review and resolve their situation because the office does not have the personally identifying information. Anonymous cases can range from something as minor as a comment regarding the website to something more serious as a report of a suspicious activity. In FY 2020, 1,453 cases were submitted anonymously.



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### Policy Suggestion Logged

Policy Suggestion Logged refers to cases where the customer provides feedback regarding their opinion on improvement of specific rules and regulations. Specifically, they offer a particular suggestion regarding a policy that is in place they feel needs to be improved upon.

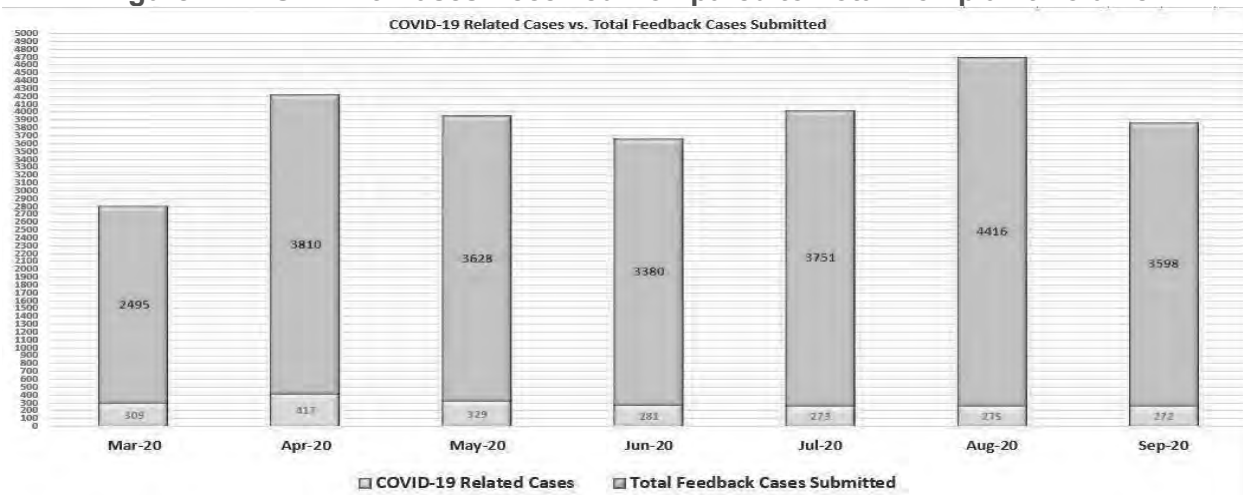
**Case Example 11:** Right now, the student is a dependent, and the parents' financial information is considered completely, except for when it comes to household size and how many students are in that household. I can claim my daughter and myself on MY Student FASFA, but I can't claim her and myself on her FASFA when it's MY financials that are being reviewed. This is illogical and unfair. If you are going to look at my financials than please look at the household and number of students from my perspective. Otherwise it is an incomplete picture.

**Case Example 12:** My issue is students not being able to be declared independent or having to meet strict requirements to be declared independent.

### COVID-19 and FSA

As one measure of the impact of the COVID-19 pandemic on federal student aid recipients, shortly after passage of the CARES Act, FSA began keyword searches to identify issues customers perceived as occurring because of the pandemic. These cases are tracked using keywords such as, COVID-19, virus, unemployed, out-of-work, laid off, furloughed, forbearance, deferment, CARES Act, closed school, and credit reporting.

**Figure 27: COVID-19 Cases Received Compared to Total Complaint Volume**



From March through September 2020, the Ombudsman received 25,078 complaints. Of this number, the Ombudsman Group received 2,156 complaints related to the pandemic, or 8.6 percent of the total received during the period.

### Third-Party Debt Relief

Businesses who offer debt relief services to loan borrowers are referred to as TPDR companies. A frequent complaint received via FSA's FDMS involves third-party companies convincing

## Report of the Federal Student Aid Ombudsman

borrowers to use and pay for their services. Such services include submitting applications for forbearance, deferment, payment plan change, or loan consolidation. Assistance with such applications may be obtained for free from FSA's federal loan servicers. While some companies do perform services as agreed, many do not. Other proposals offered by TPDR companies include lowering the borrower's monthly payments and/or arranging loan forgiveness, typically with an impossible promise of total loan forgiveness within two to three years. These cases are categorized as Suspicious Activity/Allegation of Misuse of FSA Intellectual Property or Claim of a Department Affiliation.

To be effective in inducing borrowers to pay for their services, TPDR companies often attempt to convince borrowers that they are Department/FSA employees, are affiliated with, or somehow represent the Department. Companies make use of the Department seal, FSA logo, or the Department's name in their solicitations and contracts to further persuade borrowers. They make these claims in advertising, during telephone conversations, in emails, and text messages. Believing they are working with the Department/FSA or Ombudsman agents, makes borrowers particularly vulnerable to TPDR scams. FDMS TPDR cases are categorized under Allegation of Misuse of FSA Intellectual Property or Claim of a Department Affiliation. During FY 2020, FDMS received 1,287 inquiries categorized as Allegation of Misuse of FSA Intellectual Property or Claim of a Department Affiliation.

In 2020, FSA created the Fraud Risk Division (FRD) to investigate TPDR complaints and hold these companies accountable for defrauding student loan borrowers. The Ombudsman Group has partnered with the FRD to identify FDMS cases where these companies have infringed on the Department's intellectual property, misled, or deceived borrowers, and violated the Telemarketing Sales Rule. The Ombudsman Group Feedback Operations Team has provided FRD with training, TPDR contract examples, correspondence between borrowers and representatives, conducted case searches, and responded to other FRD inquiries.

This ongoing collaboration has enabled FRD to furnish actionable information to the Department's OIG and state attorneys general in support of criminal investigations. Providing examples of TPDR infringement on FSA intellectual property, the Ombudsman Group worked with one of Department's attorneys to explore the use of cease and desist letters. With a goal of putting violators on notice as a first step toward stopping fraudulent activity, a legal opinion paper was provided to FRD for their consideration. Once cease and desist letters begin going out, the Ombudsman Group will monitor FDMS complaints for continued infractions and promptly notify FRD.

### Other Ombudsman Group Activity

#### Supporting the Resolution of School-Related Complaints

During FY 2020, the Ombudsman Group's Feedback Operations division partnered with FSA PPO to provide additional case management and resolution support to resolve school-related customer complaints.

During FY 2020 Quarter 3, the Ombudsman Group's Feedback Operations team initiated a pilot program in collaboration with FSA PPO. The pilot program engaged contractor resources to reach out to schools, customers, and other parties to obtain information and documents needed to resolve these cases. Contractor staff initiated, followed up on, and obtained needed documentation that allowed Program Compliance staff to resolve cases. At the start of the pilot,

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Program Compliance had 1,962 cases that were open for more than 60 days. With support from contractor resources, Program Compliance had a total of 493 cases that were opened for more than 60 days. The pilot program resulted in the closure of 1,469 (75 percent) of cases that were open for more than 60 days.

The outcome of the pilot resulted in the permanent implementation of the process as it significantly improves FSA's ability to provide more timely responses to customers seeking resolution of their complaints.

### Customer Satisfaction Survey Results

The Ombudsman Group contracts with a third-party vendor to conduct the customer satisfaction survey using ACSI methodology. This survey is sent to all customers, regardless of the case type. Approximately two weeks after a case is closed, the vendor sends a survey to all Feedback system customers who provided an email address. The vendor then compiles those results on a quarterly basis, which are then shared with the Ombudsman Group. No information about survey respondents is provided to FSA.

For all surveys completed in FY 2020, the ACSI score for the FDMS was 49, which shows a one-point increase from FY 2019. Analysis of the numbers continues to show the FDMS' ACSI scores are distributed in an inverted Bell curve, with the lowest and highest scores at the upper ends and fewest responses in the middle. This continues to suggest that FDMS customers evaluate the *outcome* of their inquiry and not the *quality of service* provided.

### Student Loan Ombudsman Caucus

The Ombudsman Group hosted the annual meeting of the Student Loan Ombudsman Caucus (Caucus) in September 2020. The Caucus, chartered by the National Council of Higher Education Resources, is an informal group of individuals who serve as ombudsmen, or in an informal dispute resolution capacity at lenders, loan servicers, and guaranty agencies. The Caucus meets on a bi-monthly basis via conference call, and annually in a face-to-face session. This year's caucus meeting was conducted virtually.

In the past year, the Caucus has added to its membership those who have been appointed by state governments in an ombudsman capacity. A panel discussion led by three of those state officials was featured during the annual meeting in September.

### Coordination with the Consumer Financial Protection Bureau

In January 2020, the Consumer Financial Protection Bureau (CFPB) Private Loan Ombudsman, Robert Cameron, and the FSA Ombudsman, Joyce DeMoss, signed a Memorandum of Understanding (MOU) in which the two agencies agree to share complaint data from complaints filed by student loan borrowers.

Ombudsman Group and CFPB staff collaborated to provide FSA personnel within, and external to, the Ombudsman Group, access to CFPB's data system. Each week, the Ombudsman Group uploads to CFPB's data system inquiries pertaining to private student loans. Conversely, the Ombudsman Group downloads referrals from CFPB to FSA. Referrals from CFPB are recorded in FDMS and the appropriate actions are taken. Since signing the MOU, FSA has directly

## Report of the Federal Student Aid Ombudsman

referred 46 private loan inquiries to CFPB. In turn, FSA received 45 referrals of federal student loan inquiries from CFPB.

In accordance with the MOU, CFPB and FSA personnel met two times to go over how each of the agencies intake and analyze the data collected on complaints about student loans that each agency receives. The signing of the MOU also cleared the way for more frequent, informal discussions and information-sharing between agency officials about student loan servicing activities of interest to both agencies.

### Recommendations

The statute provides that the Ombudsman, as part of this annual report, make recommendations for policy changes based on feedback received from federal financial aid recipients. Although the majority of feedback received is resolved with additional information offered or clarified for the customer, the root circumstances driving customers to provide feedback lie in the complexity of the requirements to qualify for aid and to secure benefits during loan repayment, such as IDR and loan discharge. This complexity not only frustrates customers, but it challenges FSA service providers to provide high-quality service.

In each of the two previous annual reports, the Ombudsman recommended statutory changes to allow FSA to match IRS data for borrowers in IDR plans and those completing the monitoring period following TPD discharge of federal student loans. The Ombudsman acknowledges the inclusion of these recommendations in the FUTURE Act signed into law in December 2019 and looks forward to full implementation of this law.

**Recommendation:** The Ombudsman recommends reducing the number of repayment plans offered.

Federal loans, depending on program, loan type, and disbursement date are eligible for as many as eight different repayment plans. Each of these repayment plans has different eligibility criteria, calculations that result in different payment amounts, and different repayment terms. It is difficult for borrowers to understand the differences between plans and impacts of the various plans. Many select the lowest possible payment amount that can be offered, but do not understand the long-term implications of interest accrual, leaving many to express their frustration that monthly payments are having lower-than-expected impact on their total amount owed.

**Recommendation:** Interest capitalization should occur only when a federal student loan borrower consolidates outstanding federal student loans.

The law and regulations mandate or permit interest capitalization in multiple circumstances. The result is an increased principal balance, increased future accrued interest, and increased payment amounts. Interest capitalization serves no purpose, other than to generate additional interest income.

Capitalizing interest cannot be avoided when consolidating because the borrower is taking a new loan for the purpose of paying in full existing federal student loans.

## Report of the Federal Student Aid Ombudsman

**Recommendation:** IDR plans should be opt-out rather than opt-in.

Student loan borrowers are required to renew their IDR plan annually. Inquiries from customers regularly describe challenges receiving communications about renewal or providing the necessary renewal documentation. When a borrower does not renew their IDR plan, the loan is placed in standard repayment, which is usually substantially higher than the IDR plan, and all outstanding interest is capitalized. These actions frequently result in delinquency and/or default of the loan. Moving to an opt-out strategy that includes automatic data matching with the IRS will help borrowers to effectively manage loan repayment.

**Recommendation:** Borrowers who consolidated jointly with a spouse should have the opportunity to separate the joint consolidation loan.

In instances of PSLF (for Direct Loan borrowers), TPD, and Death Discharges the dollar portion of the loan attributable to the effected party is separated out and processed accordingly. This same principle should be applied to the separation of the Joint Consolidation in cases of divorce. In the case of divorce, it is often difficult for one party to get the cooperation of the other party to complete loan servicing actions (i.e., documentation for IDR Plan, forbearances, deferments) or to even make payments on the loan. The borrowers should have the option to separate the loan into two new Direct Consolidation Loans. An uncooperative spouse should be compelled by statute to agree to the new, separate consolidation loan. There are enough outstanding joint consolidations to warrant review of this recommendation.

**Recommendation:** Use of Two-factor authentication when signing into an FSA website.

Using their FSA ID number, FSA customers can access certain private information contained in FSA's records. The data show customers can be easily duped into providing that information to third-party debt relief entities. Implementing two-factor authentication can help reduce the resulting difficulties addressed earlier in this report because the FSA customer would receive a notification when any changes are made to their FSA ID or someone attempts to access their private data.





## Financial Section

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## Overview of the Financial Section

This section provides a financial presentation of FSA's stewardship and accountability for its resources. The audited financial statements are followed by the accompanying notes to the financial statements, required supplementary information, and the Independent Auditors' Report. The subsections are listed and briefly discussed below:

- **Financial Statements:** The Financial Statements consist of the following comparative statements: Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position and Statement of Budgetary Resources.
- **Notes to the Financial Statements:** The Notes to the Financial Statements provide a description of significant accounting policies and detailed information on select financial statement line items. The Notes also include information that supports the computation of the various financial statement activities.
- **Required Supplementary Information (Unaudited):** The unaudited Required Supplementary Information presents the Combining Statements of Budgetary Resources by Program.
- **Independent Auditors' Report:** The Independent Auditors' Report presents the combined audit report issued by the Independent Auditors. Included in the combined audit report are the Report on the Financial Statements, the Report on Internal Control, and the Report on Compliance and Other Matters. The subsection also includes the Office of Inspector General Audit Transmittal Letter, Management's Response to the Audit, and the Auditors' Response to Management's Response.

## Financial Statements

### Financial Statements

FSA prepares the following statements: the Consolidated Balance Sheets, the Consolidated Statements of Net Cost, the Consolidated Statements of Changes in Net Position, and the Combining Statements of Budgetary Resources. These statements are prepared pursuant to the requirements of the Chief Financial Officers Act of 1990, the Government Management Reform Act, and OMB Circular A-136, *Financial Reporting Requirements*; and demonstrate FSA's accountability and stewardship of the resources entrusted to it.

Below is a brief description of the principal financial statements included in this section:

- **Consolidated Balance Sheets:** The Consolidated Balance Sheets present, as of a specific time, the amount of resources FSA has to use or distribute (assets), the amounts owed by FSA (liabilities) and the difference between the two (net position).
- **Consolidated Statements of Net Cost:** The Consolidated Statements of Net Cost present the annual cost of agency operations. The gross cost less any offsetting revenue is used to determine the net cost.
- **Consolidated Statements of Changes in Net Position:** The Consolidated Statements of Changes in Net Position report the accounting activities, including changes to Cumulative Results of Operations and Unexpended Appropriations that caused the change in net position during the reporting period.
- **Combining Statements of Budgetary Resources:** The Combining Statements of Budgetary Resources report the budgetary resources that were made available to FSA, the status of those resources at fiscal year-end, along with the outlays of budgetary resources.

## Consolidated Balance Sheet

**United States Department of Education**  
**Federal Student Aid**  
**Consolidated Balance Sheets**  
**As of September 30, 2020 and 2019**  
(Dollars in Millions)

	FY 2020	FY 2019
<b>Assets:</b>		
Intragovernmental:		
Fund Balance with Treasury (Note 3)	\$ 70,266	\$ 62,567
Other Intragovernmental Assets (Note 4)	1	7
Total Intragovernmental	70,267	62,574
Public:		
Credit Program Receivables, Net (Note 5)		
Direct Loan Program	1,100,544	1,123,707
FFEL Program	67,380	76,767
Other Credit Programs for Higher Education	1,690	1,618
Other Assets (Note 4)	2,170	2,210
Total Public	1,171,784	1,204,302
<b>Total Assets (Note 2)</b>	<b>\$ 1,242,051</b>	<b>\$ 1,266,876</b>
<b>Liabilities:</b>		
Intragovernmental:		
Debt (Note 7)		
Direct Loan Program	\$ 1,160,099	\$ 1,192,138
FFEL Program	88,986	94,671
Other Credit Programs for Higher Education	722	685
Subsidy Due to Treasury General Fund (Note 8)	3,283	10,302
Other Intragovernmental Liabilities (Note 9)	2,584	2,606
Total Intragovernmental	1,255,674	1,300,402
Public:		
Other Liabilities (Note 9)	5,766	11,365
<b>Total Liabilities (Note 6)</b>	<b>\$ 1,261,440</b>	<b>\$ 1,311,767</b>
Commitments and Contingencies		
<b>Net Position:</b>		
Unexpended Appropriations	\$ 35,038	\$ 31,400
Cumulative Results of Operations	(54,427)	(76,291)
<b>Total Net Position</b>	<b>\$ (19,389)</b>	<b>\$ (44,891)</b>
<b>Total Liabilities and Net Position</b>	<b>\$ 1,242,051</b>	<b>\$ 1,266,876</b>

The accompanying notes are an integral part of these statements.



## Consolidated Statements of Net Cost

United States Department of Education  
Federal Student Aid  
Consolidated Statements of Net Cost  
For the Years Ended September 30, 2020 and 2019  
(Dollars in Millions)

	FY 2020	FY 2019
<b>Program Costs</b>		
<b>EXPAND POSTSECONDARY OPPORTUNITIES, IMPROVE OUTCOMES TO FOSTER ECONOMIC OPPORTUNITY, AND PROMOTE PRODUCTIVE CITIZENRY</b>		
<b>Direct Loan Program</b>		
Gross Costs	\$ 137,303	\$ 96,696
Earned Revenue	(34,970)	(33,817)
Net Cost of Direct Loan Program	\$ 102,333	\$ 62,879
<b>FFEL Program</b>		
Gross Costs	\$ 5,419	\$ 15,759
Earned Revenue	(3,108)	(2,870)
Net Cost of FFEL Program	\$ 2,311	\$ 12,889
<b>Other Credit Programs for Higher Education</b>		
Gross Costs	\$ 53	\$ 20
Earned Revenue	(1,306)	(133)
Net Cost of Other Credit Programs for Higher Education	\$ (1,253)	\$ (113)
<b>Non-Credit Programs</b>		
Gross Costs	\$ 28,470	\$ 32,390
Earned Revenue	-	-
Net Cost of Non-Credit Programs	\$ 28,470	\$ 32,390
<b>Net Program Costs</b>	<b>\$ 131,861</b>	<b>\$ 108,045</b>
<b>Total Program Gross Costs</b>	<b>\$ 171,245</b>	<b>\$ 144,865</b>
<b>Total Program Earned Revenue</b>	<b>(39,384)</b>	<b>(36,820)</b>
<b>Net Cost of Operations (Notes 10 &amp; 13)</b>	<b>\$ 131,861</b>	<b>\$ 108,045</b>

The accompanying notes are an integral part of these statements.

## Consolidated Statements of Changes in Net Position

United States Department of Education  
Federal Student Aid  
Consolidated Statements of Changes in Net Position  
For the Years Ended September 30, 2020 and 2019  
(Dollars in Millions)

	FY 2020		FY 2019	
	Cumulative Results of Operations	Unexpended Appropriations	Cumulative Results of Operations	Unexpended Appropriations
<b>Beginning Balances:</b>				
Beginning Balances	\$ (76,291)	\$ 31,400	\$ (23,428)	\$ 32,487
<b>Budgetary Financing Sources:</b>				
Appropriations Received	\$ -	\$ 164,215	\$ -	\$ 73,109
Other Adjustments (Rescissions, etc.)	-	(576)	-	(3,393)
Appropriations Used	160,001	(160,001)	70,803	(70,803)
Nonexchange Revenue	-	-	-	-
<b>Other Financing Sources:</b>				
Imputed Financing from Costs Absorbed by Others	12	-	14	-
Negative Subsidy Transfers, Downward Subsidy Re-Estimates, and Other	(6,288)	-	(15,635)	-
<b>Total Financing Sources</b>	<b>\$ 153,725</b>	<b>\$ 3,638</b>	<b>\$ 55,182</b>	<b>\$ (1,087)</b>
<b>Net Cost of Operations:</b>	<b>\$ (131,861)</b>	<b>\$ -</b>	<b>\$ (108,045)</b>	<b>\$ -</b>
<b>Net Change:</b>	<b>\$ 21,864</b>	<b>\$ 3,638</b>	<b>\$ (52,863)</b>	<b>\$ (1,087)</b>
<b>Net Position</b>	<b>\$ (54,427)</b>	<b>\$ 35,038</b>	<b>\$ (76,291)</b>	<b>\$ 31,400</b>

The accompanying notes are an integral part of these statements.

## Financial Statements

## Combined Statements of Budgetary Resources

United States Department of Education  
Federal Student Aid  
Combined Statements of Budgetary Resources  
For the Years Ended September 30, 2020 and September 30, 2019  
(Dollars in Millions)

	FY 2020		FY 2019	
	Budgetary	Non-Budgetary Credit Reform Financing Accounts	Budgetary	Non-Budgetary Credit Reform Financing Accounts
<b>BUDGETARY RESOURCES</b>				
Unobligated Balance from Prior Year Budget Authority (Net) (Note 12)	\$ 14,938	\$ 8,939	\$ 15,378	\$ 14,858
Appropriations (Discretionary and Mandatory)	163,672	349	69,804	-
Borrowing Authority (Discretionary and Mandatory) (Note 12)	-	135,300	-	148,272
Spending Authority from Offsetting Collections (Discretionary and Mandatory)	232	65,625	409	57,418
<b>Total Budgetary Resources</b>	<b>\$ 178,842</b>	<b>\$ 210,213</b>	<b>\$ 85,591</b>	<b>\$ 220,548</b>
<b>STATUS OF BUDGETARY RESOURCES</b>				
New Obligations and Upward Adjustments (Total)	\$ 162,465	\$ 187,667	\$ 71,433	\$ 202,405
Unobligated Balance, End of Year:				
Apportioned, Unexpired Accounts	13,386	-	11,361	-
Unapportioned, Unexpired Accounts	1,819	22,546	1,935	18,143
<b>Unexpired Unobligated Balance, End of Year</b>	<b>\$ 15,205</b>	<b>\$ 22,546</b>	<b>\$ 13,296</b>	<b>\$ 18,143</b>
Expired Unobligated Balance, End of Year	1,172	-	862	-
<b>Unobligated Balance, End of Year (Total)</b>	<b>\$ 16,377</b>	<b>\$ 22,546</b>	<b>\$ 14,158</b>	<b>\$ 18,143</b>
<b>Total Status of Budgetary Resources</b>	<b>\$ 178,842</b>	<b>\$ 210,213</b>	<b>\$ 85,591</b>	<b>\$ 220,548</b>
<b>OUTLAYS, NET, AND DISBURSEMENTS, NET</b>				
Outlays, Net (Discretionary and Mandatory)	\$ 160,912		\$ 69,396	
Distributed Offsetting Receipts (-) (Note 12)	(13,606)		(12,145)	
<b>Agency Outlays, Net (Discretionary and Mandatory) (Notes 12 &amp; 13)</b>	<b>\$ 147,306</b>		<b>\$ 57,251</b>	
<b>Disbursements, Net (Total) (Mandatory)</b>		<b>\$ (42,956)</b>		<b>\$ 40,085</b>

The accompanying notes are an integral part of these statements.

## Notes to the Financial Statements

- **Note 1:** Summary of Significant Accounting Policies
- **Note 2:** Non-entity Assets
- **Note 3:** Fund Balance with Treasury
- **Note 4:** Other Assets
- **Note 5:** Credit Programs for Higher Education: Credit Program Receivables, Net and Liabilities for Loan Guarantees
- **Note 6:** Liabilities Not Covered by Budgetary Resources
- **Note 7:** Debt
- **Note 8:** Subsidy Due to Treasury General Fund
- **Note 9:** Other Liabilities
- **Note 10:** Net Cost of Operations
- **Note 11:** COVID-19 Activity (See Note 5)
- **Note 12:** Statements of Budgetary Resources
- **Note 13:** Reconciliation of Net Cost to Net Outlays
- **Note 14:** Commitments and Contingencies

## Notes to the Financial Statements for the Years Ended, September 30, 2020 and 2019

### Note 1. Summary of Significant Accounting Policies

#### Reporting Entity and Programs

Federal Student Aid (FSA) was created as a Performance Based Organization (PBO) within the U.S. Department of Education (the Department) in 1998, as a result of amendments to the *Higher Education Act of 1965* (HEA), from previously existing Department student financial assistance program offices. FSA operates under the PBO mandate to develop a management structure driven by strong incentives to manage for results. FSA's primary goal is to assist lower-income and middle-income students in overcoming the financial barriers that make it difficult to attend and complete postsecondary education.

FSA is a component of the U.S. Government. For this reason, some of the assets and liabilities reported by FSA may be eliminated for Government-wide reporting. These financial statements should be read with the realization that they are for a component of the U.S. Government, a sovereign entity.

**Federal Student Loan Programs.** FSA and the Department administer the William D. Ford Federal Direct Loan (Direct Loan) program, the Federal Family Education Loan (FFEL) program, the Health Education Assistance Loan program (HEAL), and the Federal Perkins Loan program to help students and their families finance the costs of postsecondary education. A direct loan is any debt instrument issued to the public by the federal government. A FFEL loan guarantee is a guarantee, insurance, or other pledge with respect to the payment of all or part of the principal or interest on any debt obligation of a non-federal borrower to a non-federal lender.

The Direct Loan program, added to the HEA in 1993 by the *Student Loan Reform Act of 1993*, authorizes FSA to make loans through participating schools to eligible undergraduate and graduate students and their parents. The Direct Loan program offers four types of loans: Stafford, Unsubsidized Stafford, Parent Loan for Undergraduate Students (PLUS), and Consolidation. Evidence of financial need is required for an undergraduate student to receive a subsidized Stafford loan. The other three loan programs are available to borrowers at all income levels. Loans can be used only to meet qualified educational expenses.

The FFEL program, authorized by the HEA, operates through state and private nonprofit guaranty agencies that provide loan guarantees on loans made by private lenders to eligible students. The SAFRA Act, which was included in the *Health Care and Education Reconciliation Act of 2010* (HCERA), stated that no new FFEL loans would be made effective July 1, 2010. FFEL program receivables include defaulted FFEL loans and acquired FFEL loans. Acquired FFEL loans include student loan assets acquired using temporary authority provided in the *Ensuring Continued Access to Student Loans Act of 2008* (ECASLA). ECASLA gave FSA temporary authority to purchase FFEL loans and participation interests in those loans. FSA implemented three activities under this authority: loan purchase commitments; purchases of loan participation interests; and a put, or forward purchase commitment, with an Asset-Backed Commercial Paper (ABCP) Conduit. This authority expired after September 30, 2010; as a



result, loan purchase commitments and purchases of loan participation interests concluded. However, under the terms of the Put Agreement with the conduit, ABCP Conduit activity ceased operations in January 2014. (See Notes 5 and 10)

**Grant Programs.** FSA and the Department manage numerous grant programs, which provide financial aid, that in most cases does not need to be repaid, to students with financial need. The largest of these programs is the Federal Pell Grant (Pell Grant) program, which provides need-based grants to low-income undergraduate and certain post baccalaureate students that promotes access to postsecondary education. Other grant programs include Federal Work-Study Program, Federal Supplemental Educational Opportunity Grants (FSEOG), Teacher Education Assistance for College and Higher Education (TEACH) Grants, and Iraq and Afghanistan Service Grants. (See Note 10)

**COVID-19.** Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act providing support for student loan borrowers primarily by suspending nearly all federal loan payments until September 30, interest free. FSA also extended certain provisions of the student loan deferrals not covered by the *CARES Act* to defaulted guaranteed loans held by FSA. The Administration subsequently issued a Presidential Memorandum which extended the student loan deferrals for an additional three months through December 31, 2020. FSA also stopped all federal wage garnishments and collection actions for borrowers with federally held loans in default. Funding for the student debt provisions of the CARES Act and the Presidential Memorandum are provided through indefinite appropriations. (See Notes 5 and 11).

Other regulatory flexibilities and incentives provided in the CARES Act to help students through COVID-19 include:

- Federal Supplemental Educational Opportunity Grants to provide emergency aid to students.
- Work-study payments, which will continue even if students can no longer work on-site.
- Pell Grants, financial aid, and loans originated for this term, which students who have had to leave college campuses will not have to pay back. Moreover, none of this aid will count against students' financial aid lifetime limits.
- Waiving Satisfactory Academic Progress requirements will help to ensure that students do not lose academic standing and the ability to receive federal financial student aid.
- Tax credits that incentivize employers to help pay for student loans.

## Basis of Accounting and Presentation

These financial statements were prepared to report the financial position, net cost of operations, changes in net position, and budgetary resources of FSA as required by the *Chief Financial Officers Act of 1990* and the *Government Management Reform Act of 1994*. The financial statements were prepared from the books and records of the Department and FSA, in accordance with Generally Accepted Accounting Principles (GAAP) accepted in the U.S. for federal entities, issued by the Federal Accounting Standards Advisory Board (FASAB), and the Office of Management and Budget (OMB) Circular No. A-136, *Financial Reporting*

## Notes to the Financial Statements

*Requirements*, as revised. These financial statements are different from the financial reports prepared by the Department pursuant to OMB directives that are used to monitor and control FSA's use of budgetary resources.

The accounting structure of federal agencies is designed to reflect both accrual and budgetary accounting transactions. Under the accrual method of accounting, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. Budgetary accounting facilitates compliance with legal constraints and controls over the use of federal funds.

Transactions and balances among FSA funds have been eliminated from the consolidated financial statements.

Accounting standards require all reporting entities to disclose that accounting standard practices allow certain presentations and disclosures to be modified, if needed, to prevent the disclosure of classified information.

### Accounting for Federal Credit Programs

FSA's accounting for its loan and loan guarantees is based on the requirements of the *Federal Credit Reform Act of 1990* (FCRA). The purpose of the FCRA is to record the lifetime subsidy cost of direct loans and loan guarantees, in present value terms, at the time the loan is disbursed (subsidy). Components of subsidy costs for loans and guarantees include defaults (net of recoveries); contractual payments to third-party private loan collectors who receive a set percentage of amounts collected; and, as an offset, origination and other fees collected. For direct loans, the difference between interest rates incurred by FSA on its borrowings from the Department of Treasury (Treasury) and interest rates charged to particular borrowers is also subsidized (or may provide an offset to subsidy if FSA's rate is less).

Under the FCRA, subsidy cost is estimated using the net present value of future cash flows to and from FSA. In accordance with the FCRA, credit programs either estimate a subsidy cost to the government (a "positive" subsidy), breakeven (zero subsidy cost), or estimate a negative subsidy cost. Negative subsidy occurs when the estimated cost of providing loans to borrowers from Treasury borrowing, collection costs and loan forgiveness is less than the value of collections from borrowers for interest and fees, in present value terms.

Subsidy cost is an estimate of the present value cost of providing direct loans, but excludes the administrative costs of issuing and servicing the loans. FSA estimates subsidy expense using a set of econometric and financial models, as well as cash flow models.

FSA estimates subsidy costs annually for new loans disbursed in the current year; updates to the previous cost estimates for outstanding loans disbursed in prior years (subsidy re-estimates); and updates to previous cost estimates based on new legislation or other government actions that change the terms of existing loans (loan modifications) which alter the estimated subsidy cost and the present value of outstanding loans. Loan modifications can also include modification adjustment gains and losses to account for the difference between the discount rate used to calculate the cost of the modification and the interest rate at which the cohort pays or earns interest.

## Notes to the Financial Statements

The subsidy cost of direct loan and loan guarantee programs are budgeted and tracked by the fiscal year in which the loan award is made or the funds committed. Such a grouping of loans or guarantees is referred to as a “cohort.” A cohort is a grouping of direct loans obligated or loan guarantees committed by a program in the same year even if disbursements occur in subsequent years.

In order to account for the change in the net present value of the loan portfolio over time, the subsidy cost is “amortized” each year. Amortization accounts for the differences in interest rates, accruals, and cash flows over the life of a cohort, ensuring that cost is reflected in subsidy estimates and re-estimates. Amortization of subsidy is calculated as the difference between interest received from borrowers and Treasury (on uninvested funds) and interest paid to Treasury on borrowings.

The FCRA establishes the use of financing, program, and Treasury General Fund receipt accounts for loan guarantees committed and direct loans obligated after September 30, 1991.

- Financing accounts borrow funds from Treasury, make direct loan disbursements, collect fees from lenders and borrowers, pay claims on guaranteed loans, collect principal and interest from borrowers, earn interest from Treasury on any uninvested funds, and transfer excess subsidy to Treasury General Fund receipt accounts. Financing accounts are presented separately in the combined statements of budgetary resources (SBR) as non-budgetary credit reform accounts to allow for a clear distinction from all other budgetary accounts. This facilitates reconciliation of the SBR to the Budget of the United States Government.
- Program accounts receive and obligate appropriations to cover the positive subsidy cost of a direct loan or loan guarantee when the loan is approved and disburses the subsidy cost to the financing account when the loan is issued. Program accounts also receive appropriations for administrative expenses.
- Treasury General Fund receipt accounts receive amounts paid from financing accounts when there are negative subsidies for new loan disbursements or downward re-estimates of the subsidy cost of existing loans. (See Notes 12 and 13)

FSA records an obligation each year for direct loan awards to be made in a fiscal year based on estimates of schools’ receipt of aid applications. FSA advances funds to schools based on these estimates. Promissory notes are signed when schools reach individual agreements with borrowers and the schools subsequently report each disbursement of advanced funds to FSA. A new promissory note is usually not required for students in the second or later year of study. Half of all loan awards are issued in the fourth quarter of the fiscal year. Loans awarded are typically disbursed in multiple installments over an academic period. As a result, loans may be disbursed over multiple fiscal years. Loan awards may not be fully disbursed due to students leaving or transferring to other schools. FSA’s obligation estimate may also not reflect the actual amount of awards made. Based on historical averages, FSA expects approximately 8.2 percent of the amount obligated for new loan awards will not be disbursed.

When a loan is placed in deferment or forbearance, loan repayment is temporarily suspended with the length of postponement different for each borrower. Interest accrues while a loan is in deferment or forbearance. Loans are cancelled if a person dies, meets disability requirements,

## Notes to the Financial Statements

or occasionally through the bankruptcy courts. Loans are also cancelled through the Public Service Loan Forgiveness (PSLF) Program, which forgives the remaining balance on a Direct Loan after 120 qualifying monthly payments are made. These payments must be made under a qualifying repayment plan while working full-time for a qualifying employer. In addition, FSA offers the Pay As You Earn (PAYE) program. This student loan repayment program is designed to help borrowers who struggle to make their normal student loan payments. The plan allows payments to be limited to 10 percent of discretionary income if qualifications are met. Under the PAYE program, if all requirements are met, forgiveness of the remaining balance of a student loan is possible after 20 years of consistent payments.

### Budgetary Resources

Budgetary resources are amounts available to enter into new obligations and to liquidate them. FSA's budgetary resources include unobligated balances of resources from prior years and new resources, which include appropriations, authority to borrow from Treasury, and spending authority from collections.

Borrowing authority is an indefinite budgetary resource authorized under the FCRA. This resource, when realized, finances the unsubsidized portion of the Direct Loan, FFEL, and other loan programs. In addition, borrowing authority is requested to cover the cost of the initial loan disbursement as well as any related negative subsidy to be transferred to Treasury General Fund receipt accounts. Treasury prescribes the terms and conditions of borrowing authority and lends to the financing account amounts as appropriate. Amounts borrowed, but not yet disbursed, are included in uninvested funds and earn interest. Treasury uses the same weighted average interest rates for both the interest charged on borrowed funds and the interest earned on uninvested funds. Treasury sets a different fixed interest rate to be used for each loan cohort once the loans are substantially disbursed. FSA may carry forward borrowing authority to future fiscal years provided that cohorts are disbursing loans. All borrowings from Treasury are effective on October 1st of the current fiscal year, regardless of when FSA borrowed the funds, except for amounts borrowed to make annual interest payments.

Authority to borrow from Treasury provides most of the funding for disbursements made under the Direct Loan program, FFEL, and other loan programs. Subsidy and administrative costs of the programs are funded by appropriations. Borrowings are repaid using collections from borrowers, fees, and interest on uninvested funds.

Unobligated balances represent the cumulative amount of budgetary resources that are not obligated and that remain available for obligation under law, unless otherwise restricted. Resources expiring at the end of the fiscal year remain available for five years, but only for upward adjustments of prior year obligations, after which they are cancelled and may not be used. Resources that have not expired at year-end are available for new obligations, as well as upward adjustments of prior-year obligations. Funds are appropriated on an annual, multi-year, or no-year basis. Appropriated funds expire on the last day of availability and are no longer available for new obligations. Amounts in expired funds are unavailable for new obligations, but may be used to adjust previously established obligations.

**Permanent Indefinite Budget Authority.** The Direct Loan, FFEL, and other loan programs have permanent indefinite budget authority through legislation. Parts B, Federal Family Education Loan Program, and D, Federal Direct Student Loan, of the HEA pertain to the existence, purpose, and availability of permanent indefinite budget authority for these programs.

**Reauthorization of Legislation.** Funds for most FSA programs are authorized, by statute, to be appropriated for a specified number of years, with an automatic one-year extension available under Section 422 of the General Education Provisions Act. Congress may continue to appropriate funds after the expiration of the statutory authorization period, effectively reauthorizing the program through the appropriations process. The current Budget of the United States Government presumes all programs continue per congressional budgeting rules. (See Note 12)

### **Entity and Non-Entity Assets**

Assets are classified as either entity or non-entity assets. Entity assets are those that FSA has authority to use for its operations. Non-entity assets are those held by FSA but not available for use in its operations. FSA non-entity assets are offset by liabilities to third parties and have no impact on net position. FSA combines its entity and non-entity assets on the balance sheets and discloses its non-entity assets in the notes. (See Note 2)

### **Fund Balance with Treasury**

The Fund Balance with Treasury includes amounts available to pay current liabilities and finance authorized purchases, as well as funds restricted until future appropriations are received. Treasury processes cash receipts and cash disbursements for FSA. FSA's records are reconciled with Treasury's records. (See Note 3)

### **Accounts Receivable**

Accounts receivable are amounts due to FSA from the public and other federal agencies. Receivables from the public result from overpayments to recipients of grants and other financial assistance programs, and disputed costs resulting from audits of educational assistance programs. Amounts due from federal agencies result from reimbursable agreements entered into by FSA with other agencies to provide various goods and services. Accounts receivable are reduced to net realizable value by an allowance for uncollectible amounts. The estimate of an allowance for loss on uncollectible accounts is based on FSA's experience in the collection of receivables and an analysis of the outstanding balances. (See Note 4)

### **Guaranty Agencies' Federal Funds**

Guaranty Agencies' Federal Funds are primarily comprised of the federal government's interest in the program assets held by state and nonprofit FFEL program guaranty agencies. Section 422A of the HEA required FFEL guaranty agencies to establish federal student loan reserve funds (federal funds). Federal funds include initial federal start-up funds, receipts of federal reinsurance payments, insurance premiums, guaranty agency share of collections on defaulted loans, investment income, administrative cost allowances, and other assets.

The balance in the Federal Fund represents consolidated reserve balances of the 23 guaranty agencies based on the Guaranty Agency financial reports that each agency submits annually to FSA. Although FSA and the guaranty agencies operate on different fiscal years, all guaranty agencies are subject to an annual audit. A year-end valuation adjustment is made to adjust FSA's balances in order to comply with federal accounting principles and disclose funds held outside of Treasury.



## Notes to the Financial Statements

Guaranty Agencies' Federal Funds are classified as non-entity assets with the public and are offset by a corresponding liability due to Treasury. The federal funds are held by the guaranty agencies but can only be used for certain specified purposes listed in FSA's regulations. The federal funds are the property of the U.S. and are reflected in the *Budget of the United States Government*. Payments made to the FSA from guaranty agencies' federal funds through a statutory recall or agency closures represent capital transfers and are returned to Treasury's General Fund. (See Notes 2, 4, and 9)

### Credit Program Receivables, Net and Liabilities for Loan Guarantees

The financial statements reflect FSA's estimate of the long-term subsidy cost of direct and guaranteed loans in accordance with the FCRA. Loans and interest receivable are valued at their gross amounts less an allowance for the present value of amounts not expected to be recovered and thus having to be subsidized—called an "allowance for subsidy." The difference between the gross amount and the allowance for subsidy is the present value of the cash flows to, and from, FSA that are expected from receivables over their projected lives. Similarly, liabilities for loan guarantees are valued at the present value of the cash outflows from FSA less the present value of related inflows. The estimated present value of net long-term cash outflows of FSA for subsidized costs is net of recoveries, interest supplements, and offsetting fees.

The liability for loan guarantees presents the net present value of all future cash flows from currently insured FFEL loans, including claim payments, interest assistance, allowance payments, and recoveries from assigned loans. Guaranteed loans that default are initially turned over to guaranty agencies for collection. Defaulted FFEL loans are accounted for as assets and reported at their net present value, similar to direct loans, although they are legally not direct student loans. Credit program receivables, net includes defaulted FFEL loans owned by FSA and held by FSA or guaranty agencies. In most cases, after approximately four years, defaulted guaranteed loans not in repayment are turned over by the guaranty agencies to FSA for collection.

FFEL program receivables include purchased loans and other interests acquired under an expired program. The cash flows related to these receivables include collections on purchased loans and other activities, including transfers of re-estimated subsidy. The cash flows of these authorities also include inflows and outflows associated with the underlying or purchased loans and other related activities, including any positive or negative subsidy transfers.

Capitalization of interest occurs as a result of various initiatives such as loan consolidations. As a result, interest receivable is reduced and loan principal is increased. (See Note 5)

### Property and Equipment, Net and Leases

FSA has very limited acquisition costs associated with buildings, furniture, and equipment as all federal and contractor staff are housed in leased buildings. The Department and FSA also lease information technology and telecommunications equipment, as part of a contractor-owned, contractor-operated services contract. Lease payments associated with this equipment have been determined to be operating leases and, as such, are expensed as incurred. The noncancellable lease term is one year, with the Department holding the right to extend the lease term by exercising additional one-year options. (See Note 4)

## Notes to the Financial Statements

### Liabilities

Liabilities represent actual and estimated amounts to be paid as a result of transactions or events that have already occurred.

- Liabilities are classified as covered by budgetary resources if budgetary resources are available to pay them. Credit program liabilities funded by permanent indefinite appropriations are also considered covered by budgetary resources.
- Liabilities are classified as not covered by budgetary resources when congressional action is needed before they can be paid. Although future appropriations to fund these liabilities are likely, it is not certain that appropriations will be enacted to fund these liabilities.
- Liabilities not requiring appropriated budgetary resources include those related to deposit funds, Subsidy Due to Treasury General Fund for Future Liquidating Account Collections (pre-1992 loan guarantee programs), and Federal Perkins Loan Program balances due to be repaid to the Treasury General Fund (See Note 6).

### Debt

FSA borrows from Treasury to provide funding for the Direct Loan, FFEL, and other credit programs for higher education. The liability to Treasury from borrowings represents unpaid principal at year-end. FSA repays the principal based on available fund balances. Interest rates are based on the corresponding rate for 10-year Treasury securities and are set for those borrowings supporting each cohort of loans once the loans for that cohort are substantially disbursed. Interest is paid to Treasury on September 30th. (See Note 7)

### Subsidy Due to Treasury General Fund

FSA must transfer to the Treasury General Fund all excess funding resulting from downward re-estimates of credit program loans that are subject to FCRA requirements. This excess funding is included in the liability for subsidy due to Treasury and will be transferred to Treasury in the succeeding fiscal year upon receipt of authority from OMB. Subsidy due to Treasury also includes future liquidating account collections (estimated collections in excess of estimated outlays) for FSA's pre-1992 FFEL and HEAL loans that, when collected, will also be transferred to the Treasury General Fund. (See Note 8)

### Accounts Payable

Accounts payable include amounts owed by FSA for goods and services received from other entities and scheduled payments transmitted but not yet processed. Accounts payable to the public primarily consists of in-process grant and loan disbursements, including an accrued liability for schools that have disbursed loans prior to requesting funds. (See Note 9)

## Notes to the Financial Statements

### Accrued Grant Liability

Some grant recipients incur allowable expenditures as of the end of an accounting period but have not been reimbursed by FSA. FSA accrues a liability for these allowable expenditures. The amount is estimated using statistical sampling of unliquidated balances. (See Note 9)

### Personnel Compensation and Other Employee Benefits

**Annual, Sick, and Other Leave.** The liability for annual leave, compensatory time off, and other vested leave is accrued when earned and reduced when taken. Each year, the accrued annual leave account balance is adjusted to reflect current pay rates. Sick leave and other types of nonvested leave are expensed as taken. Annual leave earned but not taken, within established limits, is funded from future financing sources.

**Retirement Plans and Other Retirement Benefits.** Employees participate in either the Civil Service Retirement System (CSRS), a defined benefit plan, or the Federal Employees Retirement System (FERS), a defined benefit and contribution plan. For CSRS employees, FSA contributes a fixed percentage of pay.

FERS consists of Social Security, a basic annuity plan, and the Thrift Savings Plan. FSA and the employee contribute to Social Security and the basic annuity plan at rates prescribed by law. In addition, FSA is required to contribute to the Thrift Savings Plan a minimum of 1 percent per year of the basic pay of employees covered by this system, match voluntary employee contributions up to 3 percent of the employee's basic pay, and match one-half of contributions between 3 percent and 5 percent of the employee's basic pay. For FERS employees, FSA also contributes the employer's share of Medicare.

Contributions for CSRS, FERS, and other retirement benefits are insufficient to fund the programs fully and are subsidized by the Office of Personnel Management (OPM). The Department imputes its share of the OPM subsidy, using cost factors provided by OPM, and reports the full cost of the programs related to its employees in FSA's Statements of Net Cost. These OPM imputed costs are offset by imputed financing sources from costs absorbed by others in FSA's Statements of Changes in Net Position.

**Federal Employees' Compensation Act.** The *Federal Employees' Compensation Act* (FECA) (Pub. L. 103-3) provides income and medical cost protection to covered federal civilian employees injured on the job, to employees who have incurred work-related occupational diseases, and to beneficiaries of employees whose deaths are attributable to job-related injuries or occupational diseases. The FECA program is administered by the U.S. Department of Labor (DOL), which pays valid claims and subsequently seeks reimbursement from FSA for these paid claims.

The FECA liability consists of two elements. The first element, accrued FECA liability, is based on claims paid by DOL but not yet reimbursed by FSA. FSA reimburses DOL for claims as funds are appropriated for this purpose. In general, there is a two- to three-year period between payment by DOL and reimbursement to DOL by FSA. As a result, FSA recognizes an intragovernmental liability, not covered by budgetary resources, for the claims paid by DOL that will be reimbursed by FSA.

The second element, actuarial FECA liability, is the estimated liability for future benefit payments and is recorded as a liability with the public, not covered by budgetary resources. The actuarial FECA liability includes the expected liability for death, disability, medical, and miscellaneous costs for approved compensation cases. DOL determines the actuarial FECA liability annually, as of September 30th, using an actuarial method that considers historical benefit payment patterns, wage inflation factors, medical inflation factors, and other variables. The projected annual benefit payments are discounted to present value. (See Notes 6 and 9)

### Imputed Costs

Services are received from other federal entities at no cost or at a cost less than the full cost to FSA. Consistent with accounting standards, certain costs of the providing entity that are not fully reimbursed by FSA are recognized as imputed cost in the Statements of Net Cost and are offset by imputed revenue in the Statements of Changes in Net Position. Such imputed costs and revenues relate to employee benefits. However, unreimbursed costs of services other than those related to employee benefits are not included in FSA's financial statements.

### Net Cost of Operations

Net cost consists of gross costs and earned revenue. Major components of FSA's net costs include credit program subsidy expense, credit program interest revenue and expense, and grant expenses. Administrative overhead costs are allocated to loan and non-credit programs based on number of applications processed, number of loans serviced, dollar amount of loan originations, cost of school compliance actions, and the cost to collect defaulted loans. (See Note 10)

**Credit Program Subsidy Expense.** Subsidy expense is an estimate of the present value cost of providing loans, excluding the administrative costs of issuing and servicing the loans. In order to estimate subsidy expense, FSA must project lifetime cash flows associated with loans disbursed in a specific fiscal year (i.e., the loan cohort). FSA projects these lifetime cash flows using a set of econometric and financial models, as well as cash flow models. FSA estimates subsidy expenses annually for new loans disbursed in the current year; updates the previous cost estimates for outstanding loans disbursed in prior years (subsidy re-estimates); and updates previous cost estimates based on changes to terms of existing loans (loan modifications). Loan modifications include actions resulting from new legislation or from the exercise of administrative discretion under existing law, which directly or indirectly alters the estimated subsidy cost of outstanding direct loans (or direct loan obligations). (See Notes 5 and 10)

**Credit Program Interest Revenue and Expense.** FSA recognizes interest revenue from the public when interest is accrued on Direct Loan program loans, defaulted and acquired FFEL loans, and outstanding principal for other loan programs. Interest due from borrowers is accrued at least monthly and is satisfied upon collection or capitalization into the loan principal. Federal interest revenue is recognized on the unused fund balances with Treasury in the financing accounts.

Federal interest expense is recognized monthly on the outstanding borrowing from Treasury (debt) used to finance direct loan and loan guarantee programs. Accrued interest to Treasury is paid on September 30th. The interest rate for federal interest expense is the same as the rate used for federal interest revenue.

## Notes to the Financial Statements

Interest expense equals interest revenue plus administrative fees accrued for all credit programs due to subsidy amortization. Subsidy amortization is required by the FCRA and accounts for the difference between interest expense and revenue cash flows. For direct loans, the allowance for subsidy is adjusted with the offset to interest revenue. For guaranteed loans, the liability for loan guarantees is adjusted with the offset to interest expense. (See Note 10)

### Net Position

Net position consists of unexpended appropriations and cumulative results of operations. Unexpended appropriations include undelivered orders and unobligated balances, except for federal credit financing and liquidating funds and trust funds. Cumulative results of operations represent the net difference since inception between (1) expenses and (2) revenues and financing sources.

### Taxes

FSA is a Federal entity and is not subject to Federal, state, or local taxes. Therefore, no provision for income taxes is recorded.

### Use of Estimates

FSA and Department management are required to make certain estimates while preparing consolidated financial statements in conformity with GAAP. These estimates are reflected in the assets, liabilities, net cost, and net position of the financial statements and may differ from actual results. FSA's estimates are based on management's best knowledge of current events, historical experiences, and other assumptions that are believed to be reasonable under the circumstances. Significant estimates reported on the financial statements include: allocation of administrative overhead costs; allowance for subsidy and subsidy expense for direct, defaulted guaranteed and acquired loans; the liability for loan guarantees; and grant liability and advance accruals. (See Notes 4, 5, 9, and 10)

FSA's estimates for credit reform programs are calculated using a series of assumption models that are updated using a statistically valid sample of National Student Loan Data System (NSLDS®) data, data from the Debt Management and Collection System (DMCS), and economic assumptions provided by the Office of Management and Budget. Actual results may differ from those assumptions and estimates. Differences between actual results and these estimates may occur in the valuation of credit program receivables and liabilities for loan guarantees under guidelines in the FCRA. FSA recognizes the sensitivity of credit reform modeling. Slight changes in modeling methodology or data used to derive assumptions can produce largely varied results. FSA therefore continually reviews its model factors and statistical modeling techniques to reflect the most accurate credit program costs possible in its annual financial statements. FSA updates its assumption models in accordance with its model update plan, which takes into consideration statutory or new program requirements, major changes to the model structure or methodology, and data updates. This level of granularity in the modeling methodology is essential to the financial reporting and budgeting processes so that FSA can forecast the costs of various program options when making policy decisions. (See Note 5)



## Notes to the Financial Statements

## Reclassifications

The following reclassifications were made to the prior year financial statements and notes to conform to the current year presentation. These changes had no effect on total assets, liabilities and net position, net cost of operations, or budgetary resources.

- The FY 2019 Outlays, Net line of Combined Statements of Budgetary Resources was reclassified to present net disbursements associated with credit financing accounts on a separate Disbursements, Net line to conform to FY 2020 changes in OMB Circular A-136.
- Note 13, Reconciliation of Net Cost to Net Outlays, was reclassified to exclude the credit financing account net disbursement amount that was reclassified on the Combined Statements of Budgetary Resources to conform to FY 2020 changes in OMB Circular A-136.

## Note 2. Non-Entity Assets

## Non-Entity Assets

(Dollars in Millions)

	2020		2019	
	Intragovernmental	With the Public	Intragovernmental	With the Public
<b>Non-Entity Assets</b>				
Credit Program Receivables, Net	\$ -	\$ 633	\$ -	\$ 607
Other Assets				
Guaranty Agencies' Federal Funds	-	1,943	-	1,956
Accounts Receivable, Net	-	-	-	41
<b>Total Non-Entity Assets</b>	-	<b>2,576</b>	-	<b>2,604</b>
Entity Assets	70,267	1,169,208	62,574	1,201,698
<b>Total Assets</b>	<b>\$ 70,267</b>	<b>\$ 1,171,784</b>	<b>\$ 62,574</b>	<b>\$ 1,204,302</b>

FSA's FY 2020 assets are predominantly entity assets (99.8 percent), leaving the small portion of assets remaining as non-entity assets. Non-entity assets with the public primarily consist of guaranty agency reserves (75.4 percent), reported as Guaranty Agencies' Federal Funds, and Federal Perkins Loan program loan receivables (24.6 percent), reported as credit program receivables, net. The corresponding liabilities for these non-entity assets are reflected in various accounts, including intragovernmental accounts payable, Guaranty Agencies' Federal Funds due to Treasury, and other liabilities (See Note 9).

### Note 3. Fund Balance with Treasury

#### Fund Balance (Dollars in Millions)

	2020	2019
<b>Status of Funds</b>		
Unobligated Balance		
Available	\$ 13,386	\$ 11,361
Unavailable	23,594	18,984
Obligated Balance, Not Disbursed	81,054	87,678
Authority Temporarily Precluded from Obligation	-	1
Borrowing Authority Not Yet Converted to Fund Balance with Treasury (Note 11)	(47,768)	(55,457)
<b>Total Fund Balance with Treasury</b>	<b>\$ 70,266</b>	<b>\$ 62,567</b>

Available unobligated balances represent amounts that are apportioned for obligation in the current fiscal year. Unavailable unobligated balances represent amounts that are not apportioned for obligation during the current fiscal year and expired appropriations no longer available to incur new obligations. Total unavailable unobligated balance (\$23.6 billion) differs from unapportioned and expired amounts on the SBR (\$25.5 billion) due to the Guaranty Agencies' Federal Funds (\$1.9 billion).

In both FY 2020 and FY 2019, \$25 million of unused funds from canceled appropriations were returned to Treasury. Such balances are excluded from the amount reported as Fund Balance with Treasury in accordance with Treasury guidelines (See Note 12).

### Note 4. Other Assets

#### Other Assets (Dollars in Millions)

	2020		2019	
	Intragovernmental	With the Public	Intragovernmental	With the Public
Guaranty Agencies' Federal Funds	\$ -	\$ 1,943	\$ -	\$ 1,956
Accounts Receivable, Net	-	191	-	209
Advances	-	30	7	33
Property and Equipment, Net	-	5	-	6
Other	1	1	-	6
<b>Total Other Assets</b>	<b>\$ 1</b>	<b>\$ 2,170</b>	<b>\$ 7</b>	<b>\$ 2,210</b>

Changes in property and equipment balances for the current year were as follows.

#### Property and Equipment (Dollars in Millions)

	2020		
	Acquisition Value	Accumulated Depreciation	Net
Balance Beginning of the Year	\$ 130	\$ (124)	\$ 6
Dispositions	(2)	1	(1)
<b>Balance At End of Year</b>	<b>\$ 128</b>	<b>\$ (123)</b>	<b>\$ 5</b>

## Notes to the Financial Statements

## Note 5. Credit Programs for Higher Education: Credit Program Receivables, Net and Liabilities for Loan Guarantees

### Credit Program Receivables, Net (Dollars in Millions)

	Principal	Accrued Interest	Allowance for Subsidy	Net
<b>2020</b>				
Direct Loan Program	\$ 1,224,816	\$ 92,132	\$ (216,404)	\$ 1,100,544
FFEL Program	84,765	24,110	(41,495)	67,380
Other Credit Programs for Higher Education	1,775	319	(404)	1,690
<b>Total Credit Program Receivables</b>	<b>\$ 1,311,356</b>	<b>\$ 116,561</b>	<b>\$ (258,303)</b>	<b>\$ 1,169,614</b>
<b>2019</b>				
Direct Loan Program	\$ 1,164,883	\$ 83,262	\$ (124,438)	\$ 1,123,707
FFEL Program	90,218	22,267	(35,718)	76,767
Other Credit Programs for Higher Education	1,692	367	(441)	1,618
<b>Total Credit Program Receivables</b>	<b>\$ 1,256,793</b>	<b>\$ 105,896</b>	<b>\$ (160,597)</b>	<b>\$ 1,202,092</b>

The federal student loan programs provide students and their families with the funds to help meet postsecondary education costs. Funding for these programs is provided through permanent indefinite budget authority. The emergency relief measures provided by Congress and the Administration in response to the coronavirus pandemic were recorded as loan modifications and are described in each of the programs below. Per OMB guidance, loan modifications were calculated using the FY 2020 President's Budget formulation discount rates. The net loans receivable or the value of assets related to direct loans is not the same as expected proceeds from selling the loans.

What follows is additional analysis of the activity, costs, and adjustments for each of the loan programs.

**Direct Loan Program.** The federal government makes loans directly to students and parents through participating institutions of higher education under the Direct Loan program. Direct Loans are originated and serviced through contracts with private vendors.

Direct Loan program loan receivables include defaulted and nondefaulted loans owned and held by FSA. Of the \$1,317.0 billion in gross loan receivables, as of September 30, 2020, \$100.3 billion (7.6 percent) in loan principal was in default and had been transferred to FSA's defaulted loan servicer, compared to \$99.7 billion (8.0 percent) as of September 30, 2019.

### Direct Loan Program Loan Disbursements by Loan Type (Dollars in Millions)

	2020	2019
Stafford	19,126	\$ 19,984
Unsubsidized Stafford	46,077	48,142
PLUS	21,735	22,709
Consolidation	30,427	39,829
<b>Total Disbursements</b>	<b>\$ 117,365</b>	<b>\$ 130,664</b>

## Notes to the Financial Statements

The allocation of disbursements for the first three loan types is estimated based on historical trend information.

Student and parent borrowers may prepay existing loans without penalty through a new consolidation loan. Under the FCRA and requirements provided by OMB regulations, the retirement of direct loans being consolidated is considered a collection of principal and interest. This receipt is offset by the disbursement related to the newly created consolidation loan. Underlying direct or guaranteed loans, performing or nonperforming, are paid off in their original cohort; new consolidation loans are originated in the cohort in which the new consolidation loan was obligated. Consolidation activity is taken into consideration in establishing subsidy rates for defaults and other cash flows. The cost of new consolidations is included in subsidy expense for the current-year cohort; the effect of prepayments on existing loans could contribute to re-estimates of prior cohort subsidy costs. The net receivables include estimates of future prepayments of existing loans through consolidations; they do not reflect subsidy costs associated with anticipated future consolidation loans.

Direct loan consolidations were \$30.4 billion during FY 2020 and \$39.8 billion during FY 2019. The effect of the early payoff of the existing loans—those being consolidated—is recognized in the future projected cash flows associated with that cohort.

### Direct Loan Program Interest Expense and Revenues (See Note 10) (Dollars in Millions)

	2020	2019
Interest Expense on Treasury Borrowing	\$ 34,705	\$ 33,817
<b>Total Interest Expense</b>	<b>\$ 34,705</b>	<b>\$ 33,817</b>
Interest Revenue from the Public	28,161	59,815
Interest Revenue on Uninvested Funds	4,786	4,082
Administrative Fees	163	210
Amortization of Subsidy	1,595	(30,290)
<b>Total Revenues</b>	<b>\$ 34,705</b>	<b>\$ 33,817</b>

## Notes to the Financial Statements

## Direct Loan Program Subsidy Expense

(Dollars in Millions)

	2020	2019
<b>Subsidy Expense for Direct Loans Disbursed in the Current Year</b>		
Interest Rate Differential	\$ 19,022	\$ 11,440
Defaults, Net of Recoveries	1,925	1,862
Fees	(1,676)	(1,720)
Other	(14,131)	(14,563)
<b>Total Subsidy Expense for Direct Loans Disbursed in the Current Year</b>	<b>5,140</b>	<b>(2,981)</b>
<b>Modifications and Re-estimates</b>		
Loan Modifications		
Modification Adjustment Transfer Gain	(265)	-
Modification Adjustment Transfer Loss	347	-
Loan Modifications	39,576	-
<b>Total Loan Modifications</b>	<b>39,658</b>	<b>-</b>
Net Upward Subsidy Re-estimates		
Interest Rate Re-estimates	(967)	(981)
Technical and Default Re-estimates	57,077	65,472
<b>Total Net Upward Subsidy Re-estimates</b>	<b>56,110</b>	<b>64,491</b>
<b>Total Modifications and Re-estimates</b>	<b>95,768</b>	<b>64,491</b>
<b>Direct Loan Subsidy Expense</b>	<b>\$ 100,908</b>	<b>\$ 61,510</b>



## Notes to the Financial Statements

**Subsidy Expense for Direct Loans Disbursed in the Current Year.** The two major components of the total subsidy expense for direct loans disbursed in the current year (subsidy transfers) are Interest Rate Differential and Other Components. Interest rate differential is attributable to the difference between the borrowers' interest payments due to FSA and the FSA's estimated cost to finance the direct loan on a present value basis. The Other Components of subsidy transfers primarily consists of contract collection costs, program review collections, fees, and loan forgiveness.

**Loan Modifications.** Loan modifications for the Direct Loan program for FY 2020 included the following:

- **CARES Act.** The CARES Act automatically suspended principal and interest payments and set interest rates to 0 percent on federally held student loans starting in March through September 30, 2020. The relief for borrowers resulted in an upward modification cost of \$24.6 billion, with an additional \$459 million for cancelled loans for students that did not complete the semester due to a qualifying emergency. There was a net positive \$82 million modification adjustment transfer associated with this modification bringing, the total to \$25.0 billion.
- **Presidential Memorandum ("Memorandum on Continued Student Loan Payment Relief During the COVID-19 Pandemic").** On August 8, 2020, the Administration issued a Presidential Memorandum that continued the temporary suspension of payments and the waiver of all interest on federally held student loans through December 31, 2020. The relief for borrowers resulted in an upward modification cost of \$13.5 billion. There was a net negative \$66 million modification adjustment transfer associated with this modification, bringing, the total to \$13.6 billion.
- **Total and Permanent Disability.** FSA recorded an upward modification for costs associated with the regulatory action to provide proactive discharge (unless the borrower elects to reject the discharge) to borrowers for whom the Department of Veterans Affairs provides information showing the borrower has a total and permanent disability. These discharges resulted in an upward modification cost of \$1.0 billion. There was a net negative \$98 million modification adjustment transfer associated with this modification, bringing, the total to \$1.1 billion.

**Net Upward Subsidy Re-estimates for All Prior Year Loan Cohorts.** The Direct Loan program subsidy re-estimate increased subsidy expense in FY 2020 by \$56.1 billion. Re-estimated costs only include cohorts that are 90 percent disbursed (i.e., cohort years 1994–2019). The re-estimate reflects the assumption updates and other changes described below.

In addition to the major assumption updates described below, the re-estimate reflects several other assumption updates, including interest rates provided by OMB, loan volume, and contract collection costs.

- **IDR Model Changes (including PSLF).** FSA completed a standard IDR data update to reflect the immediate prior cycle for defaults, prepayments and Death, Disability, & Bankruptcy (DDB). The DDB update includes adjustments for the Total Permanent Disability for Veterans regulation. In addition, an existing borrower income file was

## Notes to the Financial Statements

calibrated using an additional year of IDR application data through 2018. The additional year of borrower income data taken from IDR applications has been substantially lower than projected. As such, FSA reduced its projections of future borrower income by 35%, increasing costs associated with IDR. FSA also analyzed the actual PSLF approval rates and supplementary data. As a result of that analysis, the PSLF approval rate was adjusted downward for initial cohorts to better reflect the actual data. Trends indicate that there has been some improvement in PSLF approval rates over time as borrowers better understand the application process. PSLF estimates were revised to reflect the most recent borrower behavior and adjust the temporal element to ramp up PSLF forgiveness over time. The combined effect of these updates led to a net upward re-estimate of \$35.5 billion.

- **Repayment Plans.** FSA updated the data and made an adjustment to exclude special consolidation of FFEL loans in FY 2012 and FY 2013 from the model. These loans are modeled separately and were less likely to enroll in income dependent repayment plans than typical consolidation loans. The combined effect of these changes led to a net upward re-estimate of \$6.5 billion.
- **Default.** In addition to the adjustments for the CARES Act, FSA updated the data and incorporated actual unemployment rates from the Bureau of Labor Statistics through June 2020. The combined effect of these changes led to a net upward re-estimate of \$1.8 billion.
- **2019 Cohort Assumption Changes.** The technical re-estimate cannot reflect the impacts of certain assumption changes applicable to the current year loan cohort until the following fiscal year per OMB guidance. The current year's re-estimate includes a net upward adjustment of \$4.8 billion for these current year assumption changes attributable to the FY 2019 cohort.
- **Interest on the Re-estimate.** Interest on re-estimates is the amount of interest that would have been earned or paid by each cohort on the subsidy re-estimate, if the re-estimated subsidy had been included as part of the original subsidy estimate. The interest on the re-estimate calculated on the overall subsidy re-estimate resulted in a net upward re-estimate of \$5.9 billion.
- **Interactive Effects.** The re-estimate includes a net upward re-estimate of \$1.5 billion attributed to the interactive effects of the assumption changes described above. Each assumption described above is run independently. The interactive effect is a result of combining all assumptions together to calculate the final re-estimate.

## Direct Loan Subsidy Rates—Cohort 2020

	Interest Differential	Defaults	Fees	Other	Total
Stafford	25.47%	2.61%	-1.06%	-12.99%	14.03%
Unsubsidized Stafford	19.27%	2.28%	-1.06%	-19.74%	0.75%
PLUS	8.16%	1.46%	-4.24%	-18.63%	-13.25%
Consolidation	14.70%	1.16%	0.00%	4.88%	20.74%
<b>Weighted Average Total</b>	<b>17.01%</b>	<b>1.88%</b>	<b>-1.33%</b>	<b>-11.66%</b>	<b>5.90%</b>

\*The Other component reflects costs associated with loan cancellations and the interactive effects of payment plans on the components of subsidy.

## Notes to the Financial Statements

The subsidy rates disclosed pertain only to the current year's cohorts. These rates cannot be applied to the direct loans disbursed during the current reporting year to yield the subsidy expense. The subsidy expense for new loans reported in the current year could result from disbursements of loans from both current year cohorts and prior years cohorts. The subsidy expense reported in the current year also includes modifications and re-estimates. The subsidy costs of FSA's student loan programs, especially the Direct Loan program, are highly sensitive to changes in actual and forecasted interest rates. The formulas for determining program interest rates are established by statute; the existing loan portfolio has a mixture of borrower and lender rate formulas. Interest rate projections are based on probabilistic interest rate scenario inputs developed and provided by OMB.

### Direct Loan Program Reconciliation of Allowance for Subsidy (Dollars in Millions)

	2020	2019
<b>Beginning Balance of Allowance for Subsidy</b>	<b>\$ 124,438</b>	<b>\$ 40,663</b>
Total Subsidy Expense for Direct Loans Disbursed in the Current Year	5,140	(2,981)
<b>Adjustments</b>		
Loan Modifications	39,658	-
Fees Received	1,609	1,693
Loans Written Off	(7,833)	(9,096)
Subsidy Allowance Amortization	(1,595)	30,290
Other Activities	(1,123)	(622)
<b>Ending Balance of Allowance for Subsidy Before Re-estimates</b>	<b>160,294</b>	<b>59,947</b>
Net Upward Subsidy Re-estimates	56,110	64,491
<b>Ending Balance of Allowance for Subsidy</b>	<b>\$ 216,404</b>	<b>\$ 124,438</b>

The estimation process used to determine the amount of positive or negative subsidy expense each fiscal year, and subsequently the cumulative taxpayer cost of the program (allowance for subsidy), is subject to various external risk factors which often show strong interdependence with one another. These risks include uncertainty about changes in the general economy, changes in the legislative and regulatory environment, and changing trends in borrower performance with regard to contractual cash flows within the loan programs.

Due to the complexity of the Direct Loan program, there is inherent projection risk in the process used for estimating long-term program costs. As stated, some uncertainty stems from potential changes in student loan legislation and regulations because these changes may fundamentally alter the cost structure of the program. Operational and policy shifts may also affect program costs by causing significant changes in borrower repayment timing. Actual performance may deviate from estimated performance, which is not unexpected given the long-term nature of these loans (cash flows may be estimated up to 40 years), and the multitude of projection paths and possible outcomes. The high percentage of borrowers in Income Driven Repayment Plans has made projection of borrower incomes a key input for the estimation process. This uncertainty is directly tied to the macroeconomic climate and is another inherent program element that displays the interrelated risks facing the Direct Loan program.

Loans written off result from borrowers having died, becoming disabled, or declaring bankruptcy. The interest rate re-estimate reflects the cost of finalizing the Treasury borrowing rate to be used for borrowings received to fund the disbursed portion of the loan awards obligated.

## Notes to the Financial Statements

**Federal Family Education Loan Program.** FFEL was established in fiscal year 1965, and is a guaranteed loan program. As a result of the *SAFRA Act*, no new FFEL loans have been made since July 1, 2010. Federal guarantees on FFEL program loans and commitments remain in effect for loans made before July 1, 2010, unless they were sold to FSA through an ECASLA authority (acquired FFEL loans), consolidated into a direct loan, or otherwise satisfied, discharged, or cancelled.

**FFEL Guaranteed Loans Outstanding**  
(Dollars in Billions)

	2020
Out standing Principal of Guaranteed Loans, Face Value	\$ 128.9
Amount of Outstanding Principal Guaranteed	\$ 128.9

As of September 30, 2020, the total principal value of guaranteed loans outstanding and the amount of that principal which is guaranteed is approximately \$128.9 billion.

Additionally, the FFEL program guarantees outstanding interest balances. As of September 30, 2020, the interest balances outstanding for guaranteed loans held by lenders was approximately \$4.6 billion.

FSA's total FFEL program guarantees (principal and interest) are approximately \$133.5 billion as of September 30, 2020. Of the total guaranteed amount, FSA would expect to pay a smaller amount to the guaranty agencies. The guarantee rates range from 75 to 100 percent of the principal and interest balance depending on the type of claim, when the loan was made, and the guaranty agency's claim experience. For purposes of disclosing FSA's total risk exposure for FFEL guarantees, the highest reimbursement rate of 100 percent is assumed.

Defaulted and acquired FFEL loans are accounted for as assets as shown in the following table.

## Notes to the Financial Statements

## FFEL Program Loan Receivables

(Dollars in Millions)

	Principal	Accrued Interest	Allowance for Subsidy (Present Value)	Net
<b>2020</b>				
<b>DEFAULTED FFEL GUARANTEED LOANS</b>				
FFEL GSL Program (Pre-1992)	\$ 3,627	\$ 5,809	\$ (8,249)	\$ 1,187
FFEL GSL Program (Post-1991)	33,057	9,121	(22,286)	19,892
Total Defaulted FFEL Guaranteed Loans	36,684	14,930	(30,535)	21,079
<b>ACQUIRED FFEL LOANS</b>				
Loan Purchase Commitment	16,009	2,797	(4,102)	14,704
Loan Participation Purchase	30,683	6,005	(6,424)	30,264
ABCP Conduit	1,389	378	(434)	1,333
Total Acquired FFEL Loans	48,081	9,180	(10,960)	46,301
<b>FFEL Program Loan Receivables</b>	<b>\$ 84,765</b>	<b>\$ 24,110</b>	<b>\$ (41,495)</b>	<b>\$ 67,380</b>
<b>2019</b>				
<b>DEFAULTED FFEL GUARANTEED LOANS</b>				
FFEL GSL Program (Pre-1992)	\$ 3,729	\$ 5,858	\$ (8,776)	\$ 811
FFEL GSL Program (Post-1991)	33,780	8,561	(20,113)	22,228
Total Defaulted FFEL Guaranteed Loans	37,509	14,419	(28,889)	23,039
<b>ACQUIRED FFEL LOANS</b>				
Loan Purchase Commitment	17,536	2,519	(2,531)	17,524
Loan Participation Purchase	33,696	4,983	(3,843)	34,836
ABCP Conduit	1,477	346	(455)	1,368
Total Acquired FFEL Loans	52,709	7,848	(6,829)	53,728
<b>FFEL Program Loan Receivables</b>	<b>\$ 90,218</b>	<b>\$ 22,267</b>	<b>\$ (35,718)</b>	<b>\$ 76,767</b>



## Notes to the Financial Statements

**FFEL Program Subsidy Expense**

(Dollars in Millions)

	2020	2019
<b>Loan Modification Costs</b>		
FFEL Guaranteed Loan Program		
Net Modification Adjustment Transfer (Gain)/Loss	\$ (9)	\$ -
Loan Modifications	835	-
Total FFEL Guaranteed Loan Program Loan Modifications	<u>826</u>	-
Loan Purchase Commitment		
Net Modification Adjustment Transfer (Gain)/Loss	(7)	-
Loan Modifications	958	-
Total Loan Purchase Commitment Loan Modifications	<u>951</u>	-
Loan Participation Purchase		
Net Modification Adjustment Transfer (Gain)/Loss	(10)	-
Loan Modifications	1,658	-
Total Loan Participation Purchase Loan Modifications	<u>1,648</u>	-
<b>Total Loan Modification Costs</b>	<u>3,425</u>	-
<b>Upward/(Downward) Subsidy Re-estimates</b>		
FFEL Loan Guarantee Program	(3,451)	6,866
Loan Purchase Commitment	802	2,144
Loan Participation Purchase	1,376	3,644
<b>Total FFEL Program Subsidy Re-estimates</b>	<u>(1,273)</u>	<u>12,654</u>
<b>FFEL Program Subsidy Expense</b>	<u>\$ 2,152</u>	<u>\$ 12,654</u>

**Loan Modifications.** Loan modifications for the FFEL Loan program for FY 2020 included the following:

- **CARES Act.** The CARES Act automatically suspended principal and interest payments and set interest rates to 0 percent on federally held student loans, including loans purchased under ECASLA, starting in March through September 30, 2020. The relief for borrowers resulted in a net upward modification cost of \$1,755 million that included a positive modification transfer of \$15 million.
- **Presidential Memorandum** (“Memorandum on Continued Student Loan Payment Relief During the COVID-19 Pandemic”). On August 8, 2020, the Administration issued a Presidential Memorandum that continued the temporary suspension of payments and the waiver of all interest on federally held student loans through December 31, 2020. The relief for borrowers resulted in an upward modification cost of \$1,051 million that included a positive modification transfer of \$9 million.
- **Secretary’s Discretion.** FSA extended certain provisions of the student loan deferrals not covered by the CARES Act to defaulted guaranteed loans held by FSA, resulting in an upward modification cost of \$492 million that included a positive modification adjustment transfer of \$4 million.
- **Total and Permanent Disability.** FSA recorded an upward modification for costs associated with the regulatory action to provide proactive discharge (unless the borrower elects to reject the discharge) to borrowers for whom the Department of Veterans Affairs provides information showing the borrower has a total and permanent disability. These discharges resulted in an upward modification cost of \$127 million across the FFEL and ECASLA programs.

## Notes to the Financial Statements

**Net Downward Subsidy Re-estimates.** The FFEL subsidy re-estimate decreased subsidy expense in FY 2020 by \$1.3 billion. The net downward re-estimates in these programs were due primarily to interest rates provided by OMB used in the calculation of special allowance payments, updated disability discharges, and prepayment rates.

**FFEL Program Reconciliation of Liabilities for Loan Guarantees**  
(Dollars in Millions)

	2020	2019
<b>Beginning Balance of Post-1991 FFEL Loan Guarantee Liability</b>	<b>\$ 5,205</b>	<b>\$ 2,591</b>
<b>Adjustments</b>		
Loan Modifications	826	-
Interest Supplements Paid	(757)	(1,332)
Claim Payments to Lenders	(4,285)	(5,583)
Fees Received	1,215	1,385
Interest on Accumulation on the Liability Balance	(1,064)	(1,096)
Other Activities	3,195	2,374
Net Upward/(Downward) Subsidy Re-estimates	(3,451)	6,866
<b>Ending Balance of Post-1991 FFEL Loan Guarantee Liability</b>	<b>884</b>	<b>5,205</b>
Pre-1992 FFEL Liquidating Account Liability for Loan Guarantees	1	1
<b>FFEL Liabilities for Loan Guarantees</b>	<b>\$ 885</b>	<b>\$ 5,206</b>

Liabilities for Loan Guarantees is included as a component of other liabilities on the balance sheet (See Note 9).

Other activity includes negative special allowance collections, collections on defaulted FFEL loans, guaranty agency expenses, and loan cancellations due to death, disability, or bankruptcy.

## Notes to the Financial Statements

**Allowance for Subsidy Reconciliation for Acquired FFEL Loans**

(Dollars in Millions)

	Loan Purchase Commitment	Loan Participation Purchase	ABCP Conduit	Total
<b>2020</b>				
<b>Beginning Balance of Allowance for Subsidy</b>	<b>\$ 2,531</b>	<b>\$ 3,843</b>	<b>\$ 455</b>	<b>\$ 6,829</b>
<b>Adjustments</b>				
Loan Modifications	951	1,648	-	2,599
Subsidy Allowance Amortization	3	(89)	-	(86)
Loans Written Off	(140)	(271)	(16)	(427)
Other Activities	(45)	(83)	(5)	(133)
<b>Ending Balance of Allowance for Subsidy Before Re-estimates</b>	<b>\$ 3,300</b>	<b>\$ 5,048</b>	<b>\$ 434</b>	<b>\$ 8,782</b>
Net Upward Subsidy Re-estimates	802	1,376	-	2,178
<b>Ending Balance of Allowance for Subsidy</b>	<b>\$ 4,102</b>	<b>\$ 6,424</b>	<b>\$ 434</b>	<b>\$ 10,960</b>
<b>2019</b>				
<b>Beginning Balance of Allowance for Subsidy</b>	<b>\$ 21</b>	<b>\$ (458)</b>	<b>\$ 426</b>	<b>\$ (11)</b>
<b>Adjustments</b>				
Subsidy Allowance Amortization	571	1,027	52	1,650
Loans Written Off	(165)	(308)	(18)	(491)
Other Activities	(40)	(62)	(5)	(107)
<b>Ending Balance of Allowance for Subsidy Before Re-estimates</b>	<b>\$ 387</b>	<b>\$ 199</b>	<b>\$ 455</b>	<b>\$ 1,041</b>
Net Upward Subsidy Re-estimates	2,144	3,644	-	5,788
<b>Ending Balance of Allowance for Subsidy</b>	<b>\$ 2,531</b>	<b>\$ 3,843</b>	<b>\$ 455</b>	<b>\$ 6,829</b>

**Other Credit Programs for Higher Education**

(Dollars in Millions)

	Principal	Accrued Interest	Allowance for Subsidy	Net
<b>2020</b>				
Federal Perkins Loans	\$ 615	\$ 202	\$ (184)	\$ 633
TEACH Program Loans	764	88	(182)	670
HEAL Program Loans	396	29	(38)	387
<b>Total</b>	<b>\$ 1,775</b>	<b>\$ 319</b>	<b>\$ (404)</b>	<b>\$ 1,690</b>
<b>2019</b>				
Federal Perkins Loans	\$ 532	\$ 235	\$ (160)	\$ 607
TEACH Program Loans	764	99	(247)	616
HEAL Program Loans	396	33	(34)	395
<b>Total</b>	<b>\$ 1,692</b>	<b>\$ 367</b>	<b>\$ (441)</b>	<b>\$ 1,618</b>

**Federal Perkins Loan Program.** Loans made through the Federal Perkins Loan program were low-interest federal student loans for undergraduate and graduate students with exceptional financial needs. Schools made these Perkins loans to their students and are responsible for servicing the loans throughout the repayment term. Borrowers who undertake certain public, military, or teaching service employment are eligible to have all or part of their loans cancelled.

## Notes to the Financial Statements

The Perkins Loan program was a revolving loan program where the loan repayments collected from former students were utilized to make new loans to current students. FSA provided most of the capital used by schools to make these loans to eligible students. Participating schools provided the remaining program funding. In some statutorily defined cases, funds were provided by FSA to reimburse schools for loan cancellations. The above schedule includes only Perkins loans which were assigned to FSA when schools discontinued their participation in the program. For these assigned Perkins loans, collections of principal, interest, and fees, net of amounts paid to cover contract collection costs totaled \$38 million and \$80 million for FY 2020 and FY 2019, respectively.

The *Federal Perkins Loan Program Extension Act of 2015* (Extension Act) eliminated the authorization for schools to make new Perkins loan disbursements as of September 30, 2017, and ended all Perkins loan disbursements by June 30, 2018. Prior to the authority for new Perkins loans ending, collections made by the schools would go back into each school's Perkins fund to be utilized to make more loans. Schools are required to return to FSA the federal share of any excess beyond what is needed (excess liquid capital).

Schools are not required to liquidate and close out their programs now that no new Perkins loans are being made. Schools continue to take in collections and are required to return the federal share of the capital that is collected to FSA on an annual basis. Schools returned \$1,279 million and \$10 million to FSA in FY 2020 and FY 2019, respectively, for the federal share of collected cash.

Schools will continue to service outstanding Perkins loans to recover the money they contributed to their Perkins funds for as long as it is feasible to do so or until the eventual wind-down of their portfolios. Schools that liquidate and close out their programs must transfer any outstanding portfolio to FSA and liquidate any final cash. Most recent data from the 2018-2019 reporting year shows a \$5.2 billion outstanding principal balance on Perkins loans held by schools, and FSA's equity interest on this portfolio is \$4.3 billion.

The amounts collected by FSA annually for defaulted Perkins loans and for the return of the federal share of schools' Perkins capital contributions are returned to the Treasury General Fund (See Note 12)

**TEACH Grant Program.** FSA awards annual grants of up to \$4,000 to eligible undergraduate and graduate students who agree to serve as full-time mathematics, science, foreign language, bilingual education, special education, or reading teachers at high-need schools for four years within eight years of graduation. The maximum lifetime grant for students is \$16,000 for undergraduate programs and \$8,000 for graduate programs. For students failing to fulfill the service requirement, the grants are converted to Direct Unsubsidized Stafford Loans. The program is operated as a loan program under the FCRA for budget and accounting purposes since grants can be converted to direct loans. The relief for borrowers provided by the CARES Act and Executive Action loan deferrals resulted in upward modification costs of \$11 million and \$5 million, respectively. The regulatory action to provide Total and Permanent Disability discharges resulted in an upward modification of less than \$0.1 million.

## Notes to the Financial Statements

## TEACH Subsidy Rates—Cohort 2020

	Interest Differential	Defaults	Fees	Other	Total
Subsidy Rates	70.46%	0.35%	0.00%	-41.88%	28.93%

The Other component reflects costs associated with loan cancellations and the interactive effects of payment plans on the components of subsidy.

**HEAL Program.** FSA assumed responsibility in FY 2014 for the HEAL program and the authority to administer, service, collect, and enforce the program. The HEAL program is structured as required by the FCRA. A liquidating account is used to record all cash flows to and from the government resulting from guaranteed HEAL loans committed prior to 1992. All loan activity for 1992 and beyond is recorded in corresponding financing accounts. The relief for borrowers provided by the Executive Action and the FSA's extension of the CARES Act provisions for loan deferrals resulted in upward modification costs of \$1 million and \$2 million, respectively.

## Note 6. Liabilities Not Covered by Budgetary Resources

## Liabilities Not Covered

(Dollars in Millions)

	2020		2019	
	Intragovernmental	With the Public	Intragovernmental	With the Public
<b>Liabilities Not Covered By Budgetary Resources</b>				
Other Liabilities				
Accrued Unfunded Annual Leave	\$ -	\$ 17	\$ -	\$ 12
FECA Liabilities	-	1	-	1
<b>Total Liabilities Not Covered By Budgetary Resources</b>	-	18	-	13
<b>Liabilities Not Requiring Budgetary Resources</b>				
Subsidy Due to Treasury General Fund	1,436	-	1,239	-
Federal Perkins Loan Program	619	-	593	-
Miscellaneous Receipt, Deposit Funds and Clearing Accounts	19	-	55	-
<b>Total Liabilities Not Requiring Budgetary Resources</b>	2,074	-	1,887	-
<b>Total Liabilities Covered By Budgetary Resources</b>	1,253,600	5,748	1,298,515	11,352
<b>Total Liabilities</b>	<b>\$ 1,255,674</b>	<b>\$ 5,766</b>	<b>\$ 1,300,402</b>	<b>\$ 11,365</b>

## Note 7. Debt

## Debt

(Dollars in Millions)

	Beginning Balance	Borrowing	Repayments	Accrued Interest	Ending Balance
<b>2020</b>					
Direct Loan Program	\$ 1,192,138	\$ 116,883	\$ (148,922)	\$ -	\$ 1,160,099
FFEL Program	94,671	10,997	(16,682)	-	88,986
Other Credit Programs for Higher Education	685	105	(68)	-	722
<b>Total</b>	<b>\$ 1,287,494</b>	<b>\$ 127,985</b>	<b>\$ (165,672)</b>	<b>\$ -</b>	<b>\$ 1,249,807</b>
<b>2019</b>					
Direct Loan Program	\$ 1,150,610	\$ 137,583	\$ (96,055)	\$ -	\$ 1,192,138
FFEL Program	107,261	-	(12,590)	-	94,671
Other Credit Programs for Higher Education	610	106	(31)	-	685
<b>Total</b>	<b>\$ 1,258,481</b>	<b>\$ 137,689</b>	<b>\$ (108,676)</b>	<b>\$ -</b>	<b>\$ 1,287,494</b>



## Notes to the Financial Statements

FSA borrows from Treasury's Bureau of the Public Debt to fund the disbursement of new loans and the payment of credit program outlays and related costs. During FY 2020, debt decreased 2.9 percent from \$1,287.5 billion in the prior year to \$1,249.8 billion. FSA makes periodic principal payments, after evaluating the cash position and liability for future outflows in each program and pays interest, as mandated by the FCRA.

Approximately 92.8 percent of FSA's debt, as of September 30, 2020, is attributable to the Direct Loan program. The majority of the net borrowing activity (borrowing less repayments) for the year was designated for funding new Direct Loan disbursements.

FSA also borrows from Treasury for activity in the Other Credit Programs for Higher Education. During FY 2020, TEACH net borrowing of \$59 million was used for the advance of new grants and repayments of principal made to Treasury.

### Note 8. Subsidy Due to Treasury General Fund

#### Subsidy Due to Treasury General Fund (Dollars in Millions)

	2020	2019
<b>Credit Program Downward Subsidy Re-estimates</b>		
Direct Loan Program	\$ 1,773	\$ 2,718
FFEL Program	74	6,345
<b>Total Credit Program Downward Subsidy Re-estimates</b>	<b>1,847</b>	<b>9,063</b>
<b>Future Liquidating Account Collections</b>		
FFEL Program	1,436	1,239
<b>Total Future Liquidating Account Collections</b>	<b>1,436</b>	<b>1,239</b>
<b>Total Subsidy Due to Treasury General Fund</b>	<b>\$ 3,283</b>	<b>\$ 10,302</b>

### Note 9. Other Liabilities

#### Other Liabilities (Dollars in Millions)

	2020		2019	
	Intragovernmental	With the Public	Intragovernmental	With the Public
Accounts Payable	\$ -	\$ 3,561	\$ -	\$ 3,597
Accrued Grant Liability	-	1,054	-	2,304
Guaranty Agencies' Funds Due to Treasury	1,943	-	1,956	-
Loan Guarantee Liability	-	1,123	-	5,436
Federal Perkins Loan Program	619	-	593	-
Miscellaneous Receipt, Deposit Funds and Clearing Accounts	19	-	55	-
Advances from Others and Deferred Credits	-	-	-	8
Accrued Unfunded Annual Leave	-	17	-	12
FECA Liabilities	-	1	-	1
Accrued Payroll and Benefits	-	10	-	7
Employer Contributions and Payroll Taxes	3	-	2	-
<b>Total Other Liabilities</b>	<b>\$ 2,584</b>	<b>\$ 5,766</b>	<b>\$ 2,606</b>	<b>\$ 11,365</b>

## Notes to the Financial Statements

## Note 10. Net Cost of Operations

## Gross Costs and Exchange Revenue by Program

(Dollars in Millions)

	2020	2019
EXPAND POSTSECONDARY OPPORTUNITIES, IMPROVE OUTCOMES TO FOSTER ECONOMIC OPPORTUNITY, AND PROMOTE PRODUCTIVE CITIZENRY		
<u>Direct Loan Program</u>		
Gross Cost		
Credit Program Interest Expense	\$ 34,705	\$ 33,817
Subsidy Expense	101,173	61,510
Administrative Expenses	1,425	1,369
Earned Revenue		
Subsidy Expense	(265)	-
Interest & Administrative Fees	(33,110)	(64,107)
Subsidy Amortization	(1,595)	30,290
<b>Net Cost of Direct Loan Program</b>	<b>102,333</b>	<b>62,879</b>
<u>FFEL Program</u>		
Gross Cost		
Credit Program Interest Expense	4,021	3,838
Subsidy Expense	2,180	12,654
Subsidy Amortization (Guaranteed Loans)	(1,064)	(1,096)
Guaranty Agencies	126	212
Administrative Expenses	156	151
Earned Revenue		
Subsidy Expense	(28)	-
Interest & Administrative Fees	(2,871)	(4,392)
Subsidy Amortization (Acquired FFEL Loans)	(86)	1,650
Guaranty Agencies	(123)	(128)
<b>Net Cost of FFEL Program</b>	<b>2,311</b>	<b>12,889</b>
<u>Other Credit Programs for Higher Education</u>		
Gross Cost		
Credit Program Interest Expense	23	22
Subsidy Expense	27	(4)
Administrative Expenses	3	2
Earned Revenue		
Interest & Administrative Fees	(24)	(50)
Subsidy Amortization	1	28
Other	(1,283)	(111)
<b>Net Cost of Other Credit Programs for Higher Education</b>	<b>(1,253)</b>	<b>(113)</b>
<u>Non-Credit Programs</u>		
Gross Cost		
Grants	28,113	32,208
Other	357	182
<b>Net Cost of Non-Credit Programs</b>	<b>28,470</b>	<b>32,390</b>
<b>Net Program Costs</b>	<b>131,861</b>	<b>108,045</b>
<b>Total Program Gross Costs</b>	<b>171,245</b>	<b>144,865</b>
<b>Total Program Earned Revenue</b>	<b>(39,384)</b>	<b>(36,820)</b>
<b>Net Cost of Operations</b>	<b>\$ 131,861</b>	<b>\$ 108,045</b>

## Notes to the Financial Statements

## Credit Program Interest Expense and Revenues

(Dollars in Millions)

	Gross Interest Expense		Subsidy Amortization	Net Interest Expense	Gross Interest and Administrative Fee Revenue		Subsidy Amortization	Net Revenue
	Intragovernmental	With the Public			Intragovernmental	With the Public		
2020								
Direct Loan Program	\$ 34,705	\$ -	\$ 34,705	\$ 4,786	\$ 28,324	\$ 1,595	\$ 34,705	
FFEL Program	4,021	(1,064)	2,957	1,435	1,436	86	2,957	
Other Credit Programs for Higher Education	23	-	23	-	24	(1)	23	
Total	\$ 38,749	\$ (1,064)	\$ 37,685	\$ 6,221	\$ 29,784	\$ 1,680	\$ 37,685	
2019								
Direct Loan Program	\$ 33,817	\$ -	\$ 33,817	\$ 4,082	\$ 60,025	\$ (30,290)	\$ 33,817	
FFEL Program	3,838	(1,096)	2,742	905	3,487	(1,650)	2,742	
Other Credit Programs for Higher Education	22	-	22	7	43	(28)	22	
Total	\$ 37,677	\$ (1,096)	\$ 36,581	\$ 4,994	\$ 63,555	\$ (31,968)	\$ 36,581	

Interest expense equals interest revenue plus administrative fees accrued for all credit programs due to subsidy amortization. Subsidy amortization is required by the FCRA and accounts for the difference between interest expense and revenue cash flows. For direct loans, the allowance for subsidy is adjusted with the offset to interest revenue. For guaranteed loans, the liability for loan guarantees is adjusted with the offset to interest expense.

## Grant Expenses

(Dollars in Millions)

	2020	2019
Pell Grants	\$ 25,882	\$ 30,530
Federal Work-Study Program	1,203	1,030
Federal Supplemental Educational Opportunity Grants	1,028	648
<b>Total</b>	<b>\$ 28,113</b>	<b>\$ 32,208</b>

**Pell Grants** – provides need-based grants to students to promote access to postsecondary education. Grant amounts are dependent on: the student's expected family contribution; the cost of attendance (as determined by the institution); the student's enrollment status (full-time or part-time); and whether the student attends for a full academic year or less. Pell Grants are the single largest source of grant aid for postsecondary education.

**Federal Work-Study Program** – provides funds by formula to enable eligible institutions to offer employment to students based on financial needs. The program is available to full-time or part-time students and encourages community service work. The work is often related to the student's course of study. This program is administered by the schools that participate in the Federal Work-Study program. Hourly earnings under this program must be at least the Federal minimum wage. Federal funding, in most cases, pays 75 percent of a student's hourly wage, with the remaining 25 percent paid by the employer.

**Federal Supplemental Education Opportunity Grants** – provides funds by formula to enable eligible institutions to offer grants to students based on need. Federal grants distributed under this program are administered directly by the financial aid office at each participating school.

## Notes to the Financial Statements

## Note 11. COVID-19 Activity (See Note 5)

## COVID-19 Activity

(Dollars in Millions)

	2020					
	Appropriations	Obligated	Unobligated	Outlays	Transfers to General Fund	Net Costs (See Note 10)
<b>CARES Act</b>						
Student Aid Administration	\$ 40	\$ 17	\$ 23	\$ 9	\$ -	\$ 9
Student Loan Deferrals						
Direct Loan Program	25,246	25,246	-	25,246	236	25,010
FFEL Program	1,770	1,770	-	1,770	15	1,755
TEACH Program	11	11	-	11	-	11
<b>Total CARES Act Student Loan Deferrals</b>	<b>27,027</b>	<b>27,027</b>	<b>-</b>	<b>27,027</b>	<b>251</b>	<b>26,776</b>
<b>Total CARES Act</b>	<b>27,067</b>	<b>27,044</b>	<b>23</b>	<b>27,036</b>	<b>251</b>	<b>26,785</b>
<b>Secretary's Discretion Student Loan Deferrals</b>						
FFEL Program	496	496	-	496	4	492
HEAL Program	2	2	-	2	-	2
<b>Total Secretary's Discretion Student Loan Deferrals</b>	<b>498</b>	<b>498</b>	<b>-</b>	<b>498</b>	<b>4</b>	<b>494</b>
<b>Presidential Memorandum Student Loan Deferrals</b>						
Student Loan Deferrals						
Direct Loan Program	13,579	13,579	-	13,579	27	13,552
FFEL Program	1,059	1,059	-	1,059	9	1,050
HEAL Program	1	1	-	1	-	1
TEACH Program	5	5	-	5	-	5
<b>Total Presidential Memorandum Student Loan Deferrals</b>	<b>14,644</b>	<b>14,644</b>	<b>-</b>	<b>14,644</b>	<b>36</b>	<b>14,608</b>
<b>Total COVID-19 Activity</b>	<b>\$ 42,209</b>	<b>\$ 42,186</b>	<b>\$ 23</b>	<b>\$ 42,178</b>	<b>\$ 291</b>	<b>\$ 41,887</b>

Indirect appropriations were provided to fund loan modifications resulting from student loan deferrals authorized under the *CARES Act* and extended by the Administration's Presidential Memorandum. FSA also extended the provisions of the student loan deferrals to guaranteed loans not covered by the *CARES Act*. (See Note 5)

## Notes to the Financial Statements

## Note 12. Statements of Budgetary Resources

The SBR compares budgetary resources with the status of those resources. As of September 30, 2020, budgetary resources were \$389.1 billion and net agency outlays were \$104.4 billion. As of September 30, 2019, budgetary resources were \$306.1 billion and net agency outlays were \$97.3 billion.

## Net Adjustments to Unobligated Balances Brought Forward

(Dollars in Millions)

	2020		2019	
	Budgetary	Non-Budgetary Credit Reform Financing Accounts	Budgetary	Non-Budgetary Credit Reform Financing Accounts
<b>Prior Year Unobligated Balance, End of Year (Total)</b>	<b>\$ 14,158</b>	<b>\$ 18,143</b>	<b>\$ 15,033</b>	<b>\$ 23,457</b>
Recoveries of Prior Year Unpaid Obligations	942	18,220	738	24,840
Borrowing Authority Withdrawn	-	(15,004)	-	(17,520)
Actual Repayments of Debt, Prior-Year Balances	-	(12,720)	-	(16,261)
Actual Capital Transfers to the Treasury General Fund	(261)	-	(322)	-
Canceled Authority	(25)	-	(25)	-
Downward Adjustments of Prior-Year Paid Delivered Orders	125	301	4	342
Other Differences	(1)	(1)	(50)	-
<b>Unobligated Balance from Prior Year Budget Authority (Net)</b>	<b>\$ 14,938</b>	<b>\$ 8,939</b>	<b>\$ 15,378</b>	<b>\$ 14,858</b>

During the years ended September 30, 2020 and September 30, 2019, certain adjustments were made to the balance of unobligated budgetary resources available as of October 1, 2019 and October 1, 2018. These adjustments include, among other things, recoveries of prior year unpaid obligations that result from downward adjustments of undelivered orders that were obligated in a prior fiscal year.

## Unused Borrowing Authority

(Dollars in Millions)

	2020	2019
<b>Beginning Balance - Unused Borrowing Authority</b>	<b>\$ 55,457</b>	<b>\$ 62,394</b>
Current Year Borrowing Authority	135,300	148,272
Funds Drawn from Treasury	(127,985)	(137,689)
Borrowing Authority Withdrawn	(15,004)	(17,520)
<b>Ending Balance - Unused Borrowing Authority</b>	<b>\$ 47,768</b>	<b>\$ 55,457</b>

FSA is given authority to draw funds from Treasury to finance the Direct Loan, FFEL, and other loan programs. Unused borrowing authority is a budgetary resource and is available to support obligations for these programs. FSA periodically reviews its borrowing authority balances in relation to its obligations resulting in the withdrawal of unused amounts.



## Notes to the Financial Statements

**Undelivered Orders at the End of the Period**

(Dollars in Millions)

	2020		2019	
	Intragovern- mental	With the Public	Intragovern- mental	With the Public
Unpaid	\$ 81	\$ 77,543	\$ 76	\$ 82,607
Paid	-	502	7	561
<b>Undelivered Orders</b>	<b>\$ 81</b>	<b>\$ 78,045</b>	<b>\$ 83</b>	<b>\$ 83,168</b>

Undelivered orders represent the amount of goods and/or services ordered which have not been actually or constructively received. The paid amount includes any orders which may have been prepaid or advanced but for which delivery or performance has not yet occurred.

**Distributed Offsetting Receipts**

(Dollars in Millions)

	2020	2019
Negative Subsidies and Downward Re-estimates of Subsidies:		
Direct Loan Program	\$ 5,382	\$ 9,906
FFEL Program	6,865	2,099
HEAL Program	-	34
TEACH Program	36	1
Total Negative Subsidies and Downward Re-estimates of Subsidies	12,283	12,040
Repayment of Perkins Loans and Capital Contributions	1,317	90
Other	6	15
<b>Distributed Offsetting Receipts</b>	<b>\$ 13,606</b>	<b>\$ 12,145</b>

The majority of the distributed offsetting receipts line item on the SBR represents amounts paid from the Direct Loan program and FFEL program financing accounts to Treasury General Fund receipt accounts for downward current fiscal year executed subsidy re-estimates and negative subsidies. The collections are recorded as offsetting receipts and they offset the agency's budget authority and outlays.

**Reconciliation of SBR to Budget of the United States Government**

(Dollars in Millions)

	Budgetary Resources	New Obligations and Upward Adjustments (Total)	Distributed Offsetting Receipts	Net Outlays
<b>Combined Statements of Budgetary Resources</b>	<b>\$ 306,139</b>	<b>\$ 273,838</b>	<b>\$ 12,145</b>	<b>\$ 57,251</b>
Expired Funds	(1,209)	(348)	-	-
FFEL Guaranty Agency Amounts Included in the President's Budget	7,342	7,341	-	-
Distributed Offsetting Receipts	-	-	-	12,145
Other	1	-	-	-
<b>Budget of the United States Government<sup>1</sup></b>	<b>\$ 312,273</b>	<b>\$ 280,831</b>	<b>\$ 12,145</b>	<b>\$ 69,396</b>

<sup>1</sup> Amounts obtained from the Appendix, *Budget of the United States Government, FY 2021*.

## Notes to the Financial Statements

The FY 2022 *Budget of the United States Government* (President's Budget), which presents the actual amounts for the year ended September 30, 2020, has not been published as of the issue date of these financial statements. The FY 2022 President's Budget is scheduled for release in February 2021 and will be made available on OMB's website. The table above reconciles the FY 2019 SBR to the FY 2021 President's Budget (FY 2019 actual amounts) for budgetary resources, new obligations and upward adjustments, distributed offsetting receipts, and net outlays.

Reconciling differences exist because the President's Budget excludes expired funds. Additionally, the President's Budget includes a public enterprise fund that reflects the gross obligations by the FFEL program for the estimated activity of the consolidated federal fund of the guaranty agencies. Ownership by the federal government is independent of the actual control of the assets. Since the actual operation of the federal fund is independent from FSA's direct control, budgetary resources and new obligations and upward adjustments are estimated and disclosed in the President's Budget to approximate the gross activities of the combined federal fund. Amounts reported on the SBR for the federal fund are compiled by combining all guaranty agencies' annual reports to determine a net valuation amount for the federal fund.

## Notes to the Financial Statements

## Note 13. Reconciliation of Net Cost to Net Outlays

## Reconciliation of Net Cost

(Dollars in Millions)

	2020			2019		
	Intragovern- mental	With the Public	Total	Intragovern- mental	With the Public	Total
<b>Net Cost of Operations</b>	<b>\$ 32,668</b>	<b>\$ 99,193</b>	<b>\$ 131,861</b>	<b>\$ 32,828</b>	<b>\$ 75,217</b>	<b>\$ 108,045</b>
<b>Components of Net Operating Cost Not Part of the Net Budgetary Outlays</b>						
<b>Excess of Accrual-Basis Expenses Over Budget Outlays</b>						
Current-Year Subsidy Accrual Costs	-	(52,571)	(52,571)	-	(67,225)	(67,225)
Loan Modification Adjustment Transfer Gains/(Losses), Net	-	(56)	(56)	-	-	-
Federal Employee Retirement Benefit Costs Paid by OPM	(12)	-	(12)	(14)	-	(14)
Other Liabilities	13	1,096	1,109	(61)	(1,260)	(1,321)
<b>Excess of Accrual-Basis Revenue Over Budget Receipts</b>						
Accounts Receivable	-	(43)	(43)	-	3	3
Offset to Non-Entity Accrued Collections	-	(41)	(41)	-	6	6
<b>Total Components of Net Operating Cost Not Part of the Net Budgetary Outlays</b>	<b>1</b>	<b>(51,615)</b>	<b>(51,614)</b>	<b>(75)</b>	<b>(68,476)</b>	<b>(68,551)</b>
<b>Components of the Net Budgetary Outlays Not Part of Net Operating Costs</b>						
Current-Year Budget Subsidy Costs	-	67,227	67,227	-	17,955	17,955
Other Loan Activities, Net	-	(145)	(145)	-	36	36
Other Assets	(7)	(16)	(23)	(12)	(222)	(234)
<b>Total Components of the Net Budgetary Outlays Not Part of Net Operating Costs</b>	<b>(7)</b>	<b>67,066</b>	<b>67,059</b>	<b>(12)</b>	<b>17,769</b>	<b>17,757</b>
<b>Net Outlays (Calculated Total)</b>	<b>\$ 32,662</b>	<b>\$ 114,644</b>	<b>\$ 147,306</b>	<b>\$ 32,741</b>	<b>\$ 24,510</b>	<b>\$ 57,251</b>
<b>Related Amounts on the Statement of Budgetary Resources</b>						
Outlays, Net (Discretionary and Mandatory)			160,912			69,396
Distributed Offsetting Receipts			(13,606)			(12,145)
<b>Agency Outlays, Net (Discretionary and Mandatory)</b>			<b>\$ 147,306</b>			<b>\$ 57,251</b>

This reconciliation explains the relationship between FSA's net cost of operations and its net outlays. Reconciling items result from transactions which did not result in a current period outlay but did result in a current period cost, and current period outlays that did not result in a current period cost.

Disbursements for new FCRA loans and collections of principal and interest on existing FCRA loans are recorded in non-budgetary credit reform financing accounts. These disbursements and collections are reported on the Statement of Budgetary Resources as disbursements, net, and not as agency outlays, net. Since these disbursements and collections affect neither net cost of operations nor agency outlays, net, they are excluded from this reconciliation as are any increases or decreases in the FCRA loan receivable balances.

The two major reconciling differences, both associated with FSA's FCRA loan programs, are for current-year subsidy accrual costs and current-year budget subsidy costs.

## Notes to the Financial Statements

- Current-year subsidy accrual costs are the portion of the current-year loan subsidy re-estimates not impacting the current year outlays.
- Current-year budget subsidy costs are current year indirect appropriations provided to fund subsidy costs accrued in the prior year. This includes the portion of the current year's executed President's budget re-estimates not included in this year's net cost subsidy expense.

### Note 14. Commitments and Contingencies

FSA discloses contingencies where any of the conditions for liability recognition are not met and there is at least a reasonable possibility that a loss or an additional loss may have been incurred in accordance with FASAB Standard No. 5, Accounting for Liabilities of the Federal Government. The following commitments are amounts for contractual arrangements that may require future financial obligations.

#### Future Minimum Lease Payments

(Dollars in Millions)

2020			2019		
2021	\$	14	2020	\$	13
2022		14	2021		13
2023		14	2022		13
2024		12	2023		14
2025		12	2024		14
After 2025		12	After 2024		14
<b>Total</b>	<b>\$</b>	<b>78</b>	<b>Total</b>	<b>\$</b>	<b>81</b>

FSA leases two buildings from the General Services Administration. The table above presents the estimated future minimum lease payments for these buildings.

#### Guaranty Agencies

FSA may assist guaranty agencies experiencing financial difficulties. FSA has not done so in fiscal years 2020 or 2019 and does not expect to in future years. No provision has been made in the financial statements for potential liabilities.

#### Litigation and Other Claims

The Department is involved in various lawsuits incidental to its operations. In the opinion of management, the ultimate resolution of pending litigation will not have a material effect on FSA's financial position. As appropriate, the Department would seek recovery from Treasury's Judgment Fund for any loss in litigation that may occur. The Judgment Fund is a permanent, indefinite appropriation available to pay judgments against the government, if appropriated funds cannot be used.

The cost of loan forgiveness related to borrower defense claims reflected in the accompanying financial statements is limited to loans originated through September 30, 2020. The final disposition of claims filed and those yet to be filed from loans originated before September 30, 2020, is not expected to have a material impact on these financial statements.

**Other Matters**

Some portion of the current-year financial assistance expenses (grants) may include funded recipient expenditures that are subsequently disallowed through program review or audit processes. In the opinion of management, the ultimate disposition of these matters will not have a material effect on the FSA's financial position.



## Required Supplementary Information (Unaudited)

### United States Department of Education Federal Student Aid Combining Statements of Budgetary Resources For the Year Ended September 30, 2020

(Dollars in Millions)

	Combined		Health Education Assistance Loans	
	Budgetary	Non-Budgetary Credit Reform Financing Accounts	Budgetary	Non-Budgetary Credit Reform Financing Accounts
<b>Budgetary Resources:</b>				
Unobligated Balance from Prior Year Budget Authority, (Net) (Note 12)	\$ 14,938	\$ 8,939	\$ -	\$ 8
Appropriations (Discretionary and Mandatory)	163,672	349	10	-
Borrowing Authority (Discretionary and Mandatory) (Note 12)	-	135,300	-	-
Spending Authority from Offsetting Collections (Discretionary and Mandatory)	232	65,625	5	7
<b>Total Budgetary Resources</b>	<b>\$ 178,842</b>	<b>\$ 210,213</b>	<b>\$ 15</b>	<b>\$ 15</b>
<b>Status of Budgetary Resources:</b>				
New Obligations Incurred and Upward Adjustments (Total)	\$ 162,465	\$ 187,667	\$ 11	\$ 3
Unobligated Balance, End of Year:				
Apportioned, Unexpired Accounts	13,386	-	-	-
Unapportioned, Unexpired Accounts	1,819	22,546	4	12
<b>Unexpired Unobligated Balance, End of year</b>	<b>\$ 15,205</b>	<b>\$ 22,546</b>	<b>\$ 4</b>	<b>\$ 12</b>
Expired Unobligated Balance, End of Year	1,172	-	-	-
<b>Unobligated Balance, End of Year (Total)</b>	<b>\$ 16,377</b>	<b>\$ 22,546</b>	<b>\$ 4</b>	<b>\$ 12</b>
<b>Total Status of Budgetary Resources</b>	<b>\$ 178,842</b>	<b>\$ 210,213</b>	<b>\$ 15</b>	<b>\$ 15</b>
<b>Outlays, Net, and Disbursements, Net</b>				
Outlays, Net (Discretionary and Mandatory)	160,912		6	
Distributed Offsetting Receipts (-) (Note 12)	(13,606)		-	
<b>Agency Outlays, Net (Discretionary and Mandatory) (Notes 12 &amp; 13)</b>	<b>\$ 147,306</b>	<b>\$</b>	<b>\$ 6</b>	<b>\$</b>
<b>Disbursements, Net (Total) (Mandatory)</b>		<b>(42,956)</b>		<b>(13)</b>

## Required Supplementary Information (Unaudited)

**United States Department of Education**  
**Federal Student Aid**  
**Combining Statements of Budgetary Resources**  
**For the Year Ended September 30, 2020**  
(Dollars in Millions)

	<b>Direct Student Loan Program</b>		<b>Teach Program</b>	
	<b>Non-Budgetary</b>		<b>Non-Budgetary</b>	
	<b>Budgetary</b>	<b>Credit Reform Financing Accounts</b>	<b>Budgetary</b>	<b>Credit Reform Financing Accounts</b>
<b>Budgetary Resources:</b>				
Unobligated Balance from Prior Year Budget Authority, (Net) (Note 12)	\$ 764	\$ 691	\$ 13	\$ (1)
Appropriations (Discretionary and Mandatory)	114,194	347	56	-
Borrowing Authority (Discretionary and Mandatory) (Note 12)	-	124,736	-	110
Spending Authority from Offsetting Collections (Discretionary and Mandatory)	-	46,801	-	47
<b>Total Budgetary Resources</b>	<b>\$ 114,958</b>	<b>\$ 172,575</b>	<b>\$ 69</b>	<b>\$ 156</b>
<b>Status of Budgetary Resources:</b>				
New Obligations Incurred and Upward Adjustments (Total)	\$ 114,194	\$ 169,195	\$ 56	\$ 157
Unobligated Balance, End of Year:				
Apportioned, Unexpired Accounts	-	-	-	-
Unapportioned, Unexpired Accounts	-	3,380	-	(1)
<b>Unexpired Unobligated Balance, End of year</b>	<b>\$ -</b>	<b>\$ 3,380</b>	<b>\$ -</b>	<b>\$ (1)</b>
Expired Unobligated Balance, End of Year	764	-	13	-
<b>Unobligated Balance, End of Year (Total)</b>	<b>\$ 764</b>	<b>\$ 3,380</b>	<b>\$ 13</b>	<b>\$ (1)</b>
<b>Total Status of Budgetary Resources</b>	<b>\$ 114,958</b>	<b>\$ 172,575</b>	<b>\$ 69</b>	<b>\$ 156</b>
<b>Outlays, Net, and Disbursements, Net</b>				
Outlays, Net (Discretionary and Mandatory)	113,305		54	
Distributed Offsetting Receipts (-) (Note 12)	(5,388)		(36)	
<b>Agency Outlays, Net (Discretionary and Mandatory) (Notes 12 &amp; 13)</b>	<b>\$ (107,917)</b>	<b>\$</b>	<b>\$ 18</b>	<b>\$</b>
<b>Disbursements, Net (Total) (Mandatory)</b>		<b>(29,898)</b>		<b>54</b>

**United States Department of Education  
 Federal Student Aid  
 Combining Statements of Budgetary Resources  
 For the Year Ended September 30, 2020**  
 (Dollars in Millions)

	<b>Federal Family Education Loan Program</b>		<b>Perkins Loans and Grants</b>	<b>Administrative Funds</b>
	<b>Budgetary</b>	<b>Non-Budgetary Credit Reform Financing Accounts</b>	<b>Budgetary</b>	<b>Budgetary</b>
<b>Budgetary Resources:</b>				
Unobligated Balance from Prior Year Budget Authority, (Net) (Note 12)	\$ 1,961	\$ 8,241	\$ 12,099	\$ 101
Appropriations (Discretionary and Mandatory)	16,599	2	31,004	1,809
Borrowing Authority (Discretionary and Mandatory) (Note 12)	-	10,454	-	-
Spending Authority from Offsetting Collections (Discretionary and Mandatory)	228	18,770	(1)	-
<b>Total Budgetary Resources</b>	<b>\$ 18,788</b>	<b>\$ 37,467</b>	<b>\$ 43,102</b>	<b>\$ 1,910</b>
<b>Status of Budgetary Resources:</b>				
New Obligations Incurred and Upward Adjustments (Total)	\$ 16,760	\$ 18,312	\$ 29,571	\$ 1,873
Unobligated Balance, End of Year:				
Apportioned, Unexpired Accounts	219	-	13,139	28
Unapportioned, Unexpired Accounts	1,809	19,155	7	(1)
<b>Unexpired Unobligated Balance, End of year</b>	<b>\$ 2,028</b>	<b>\$ 19,155</b>	<b>\$ 13,146</b>	<b>\$ 27</b>
Expired Unobligated Balance, End of Year	-	-	385	10
<b>Unobligated Balance, End of Year (Total)</b>	<b>\$ 2,028</b>	<b>\$ 19,155</b>	<b>\$ 13,531</b>	<b>\$ 37</b>
<b>Total Status of Budgetary Resources</b>	<b>\$ 18,788</b>	<b>\$ 37,467</b>	<b>\$ 43,102</b>	<b>\$ 1,910</b>
<b>Outlays, Net, and Disbursements, Net</b>				
Outlays, Net (Discretionary and Mandatory)	16,416	-	29,369	-
Distributed Offsetting Receipts (-) (Note 12)	(6,865)	-	(1,317)	-
<b>Agency Outlays, Net (Discretionary and Mandatory) (Notes 12 &amp; 13)</b>	<b>\$ 9,551</b>	<b>\$ -</b>	<b>\$ 28,052</b>	<b>\$ -</b>
<b>Disbursements, Net (Total) (Mandatory)</b>	<b>\$ -</b>	<b>(13,099)</b>	<b>\$ -</b>	<b>1,762</b>

## Required Supplementary Information (Unaudited)

**United States Department of Education**  
**Federal Student Aid**  
**Combining Statements of Budgetary Resources**  
**For the Year Ended September 30, 2019**

(Dollars in Millions)

	Combined		Health Education Assistance Loans	
	Budgetary	Non-Budgetary Credit Reform Financing Accounts	Budgetary	Non-Budgetary Credit Reform Financing Accounts
<b>Budgetary Resources:</b>				
Unobligated Balance from Prior Year Budget Authority (Net) (Note 12)	\$ 15,378	\$ 14,858	\$ -	\$ 21
Appropriations (Discretionary and Mandatory)	69,804	-	-	-
Borrowing Authority (Discretionary and Mandatory) (Note 12)	-	148,272	-	34
Spending Authority from Offsetting Collections (Discretionary and Mandatory)	409	57,418	7	7
<b>Total Budgetary Resources</b>	<b>\$ 85,591</b>	<b>\$ 220,548</b>	<b>\$ 7</b>	<b>\$ 62</b>
<b>Status of Budgetary Resources:</b>				
New Obligations Incurred and Upward Adjustments (Total)	\$ 71,433	\$ 202,405	\$ 1	\$ 40
Unobligated Balance, End of Year:				
Apportioned, Unexpired Accounts	11,361	-	-	-
Unapportioned, Unexpired Accounts	1,935	18,143	6	22
<b>Unexpired Unobligated Balance, End of year</b>	<b>\$ 13,296</b>	<b>\$ 18,143</b>	<b>\$ 6</b>	<b>\$ 22</b>
Expired Unobligated Balance, End of Year	862	-	-	-
<b>Unobligated Balance, End of Year (Total)</b>	<b>\$ 14,158</b>	<b>\$ 18,143</b>	<b>\$ 6</b>	<b>\$ 22</b>
<b>Total Status of Budgetary Resources</b>	<b>\$ 85,591</b>	<b>\$ 220,548</b>	<b>\$ 7</b>	<b>\$ 62</b>
<b>Outlays, Net, and Disbursements, Net</b>				
Outlays, Net (Discretionary and Mandatory)	69,396	-	(6)	-
Distributed Offsetting Receipts (-) (Note 12)	(12,145)	-	(34)	-
<b>Agency Outlays, Net (Discretionary and Mandatory) (Notes 12 &amp; 13)</b>	<b>\$ 57,251</b>	<b>\$ -</b>	<b>\$ (40)</b>	<b>\$ -</b>
<b>Disbursements, Net (Total) (Mandatory)</b>		<b>40,085</b>		<b>33</b>

## Required Supplementary Information (Unaudited)

**United States Department of Education**  
**Federal Student Aid**  
**Combining Statements of Budgetary Resources**  
**For the Year Ended September 30, 2019**

(Dollars in Millions)

	<b>Direct Student Loan Program</b>		<b>Teach Program</b>	
	<b>Budgetary</b>	<b>Non-Budgetary Credit Reform Financing Accounts</b>	<b>Budgetary</b>	<b>Non-Budgetary Credit Reform Financing Accounts</b>
<b>Budgetary Resources:</b>				
Unobligated Balance from Prior Year Budget Authority, (Net) (Note 12)	\$ 522	\$ 375	\$ 12	\$ (1)
Appropriations (Discretionary and Mandatory)	33,812	-	34	-
Borrowing Authority (Discretionary and Mandatory) (Note 12)	-	148,159	-	79
Spending Authority from Offsetting Collections (Discretionary and Mandatory)	-	44,443	-	46
<b>Total Budgetary Resources</b>	<b>\$ 34,334</b>	<b>\$ 192,977</b>	<b>\$ 46</b>	<b>\$ 124</b>
<b>Status of Budgetary Resources:</b>				
New Obligations Incurred and Upward Adjustments (Total)	\$ 33,812	\$ 187,172	\$ 34	\$ 123
Unobligated Balance, End of Year:				
Apportioned, Unexpired Accounts	-	-	-	-
Unapportioned, Unexpired Accounts	-	5,805	-	1
<b>Unexpired Unobligated Balance, End of year</b>	<b>\$ -</b>	<b>\$ 5,805</b>	<b>\$ -</b>	<b>\$ 1</b>
Expired Unobligated Balance, End of Year	522	-	12	-
<b>Unobligated Balance, End of Year (Total)</b>	<b>\$ 522</b>	<b>\$ 5,805</b>	<b>\$ 12</b>	<b>\$ 1</b>
<b>Total Status of Budgetary Resources</b>	<b>\$ 34,334</b>	<b>\$ 192,977</b>	<b>\$ 46</b>	<b>\$ 124</b>
<b>Outlays, Net, and Disbursements, Net</b>				
Outlays, Net (Discretionary and Mandatory)	33,235	-	31	-
Distributed Offsetting Receipts (-) (Note 12)	(9,906)	-	(1)	-
<b>Agency Outlays, Net (Discretionary and Mandatory) (Notes 12 &amp; 13)</b>	<b>\$ (23,329)</b>	<b>\$ -</b>	<b>\$ 30</b>	<b>\$ -</b>
<b>Disbursements, Net (Total) (Mandatory)</b>		<b>46,829</b>		<b>32</b>



## Required Supplementary Information (Unaudited)

**United States Department of Education**  
**Federal Student Aid**  
**Combining Statement of Budgetary Resources**  
**For the Year Ended September 30, 2019**

(Dollars in Millions)

	<b>Federal Family Education Loan Program</b>		<b>Perkins Loans and Grants</b>	<b>Administrative Funds</b>
	<b>Budgetary</b>	<b>Non-Budgetary Credit Reform Financing Accounts</b>	<b>Budgetary</b>	<b>Budgetary</b>
<b>Budgetary Resources:</b>				
Unobligated Balance from Prior Year Budget Authority, (Net) (Note 12)	\$ 2,049	\$ 14,463	\$ 12,781	\$ 14
Appropriations (Discretionary and Mandatory)	3,661	-	30,618	1,679
Borrowing Authority (Discretionary and Mandatory) (Note 12)	-	-	-	-
Spending Authority from Offsetting Collections (Discretionary and Mandatory)	403	12,922	(1)	-
<b>Total Budgetary Resources</b>	<b>\$ 6,113</b>	<b>\$ 27,385</b>	<b>\$ 43,398</b>	<b>\$ 1,693</b>
<b>Status of Budgetary Resources:</b>				
New Obligations Incurred and Upward Adjustments (Total)	\$ 3,913	\$ 15,070	\$ 31,986	\$ 1,687
Unobligated Balance, End of Year:				
Apportioned, Unexpired Accounts	287	-	11,070	4
Unapportioned, Unexpired Accounts	1,913	12,315	17	(1)
<b>Unexpired Unobligated Balance, End of year</b>	<b>\$ 2,200</b>	<b>\$ 12,315</b>	<b>\$ 11,087</b>	<b>\$ 3</b>
Expired Unobligated Balance, End of Year	-	-	325	3
<b>Unobligated Balance, End of Year (Total)</b>	<b>\$ 2,200</b>	<b>\$ 12,315</b>	<b>\$ 11,412</b>	<b>\$ 6</b>
<b>Total Status of Budgetary Resources</b>	<b>\$ 6,113</b>	<b>\$ 27,385</b>	<b>\$ 43,398</b>	<b>\$ 1,693</b>
<b>Outlays, Net, and Disbursements, Net</b>				
Outlays, Net (Discretionary and Mandatory)	3,507	-	30,907	-
Distributed Offsetting Receipts (-) (Note 12)	(2,099)	-	(105)	-
<b>Agency Outlays, Net (Discretionary and Mandatory) (Notes 12 &amp; 13)</b>	<b>\$ 1,408</b>	<b>\$ -</b>	<b>\$ 30,802</b>	<b>\$ -</b>
<b>Disbursements, Net (Total) (Mandatory)</b>		<b>(6,809)</b>		<b>1,722</b>

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# Independent Auditors' Report

## Office of Inspector General Audit Transmittal



### UNITED STATES DEPARTMENT OF EDUCATION OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

November 16, 2020

Mark A. Brown  
Chief Operating Officer  
Federal Student Aid  
Washington, D.C. 20202

Dear Mr. Brown:

The enclosed Independent Auditors' Report (report) presents the results of the audit of Federal Student Aid's (FSA) financial statements for fiscal years 2020 and 2019 to comply with the Higher Education Amendments of 1998. The report should be read in conjunction with FSA's financial statements and notes to fully understand the context of the information contained therein.

We contracted with the independent certified public accounting firm KPMG LLP (KPMG) to audit the financial statements of FSA as of September 30, 2020 and 2019, and for the years then ended. The contract requires that the audit be performed in accordance with U.S. generally accepted government auditing standards and Office of Management and Budget bulletin, *Audit Requirements for Federal Financial Statements*.

#### Results of the Independent Audit

KPMG found:

- The fiscal years 2020 and 2019 financial statements are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America.
- One material weakness in internal control over financial reporting:
  - Controls over the Reliability of Underlying Data Used in Credit Reform Re-estimates Need Improvement.
- Three significant deficiencies in internal control over financial reporting:
  - Information Technology Controls Need Improvement,
  - Monitoring Controls over Service Organizations Need Improvement, and
  - Entity Level Controls Need Improvement.
- One instance of reportable noncompliance with Federal law in connection with referring delinquent student loan debts to Treasury.

400 MARYLAND AVENUE, S.W., WASHINGTON, DC 20202-1510

*Promoting the efficiency, effectiveness, and integrity of the Department's programs and operations.*

Page 2 – Mark A. Brown

In connection with the contract, we reviewed KPMG's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit of the financial statements in accordance with U.S. generally accepted government auditing standards, was not intended to enable us to express, and we do not express an opinion on FSA's financial statements, or conclusions on internal control over financial reporting, compliance, and other matters. KPMG is responsible for the report dated November 16, 2020, and the conclusions expressed therein. However, our review disclosed no instances where KPMG did not comply, in all material respects, with U.S. generally accepted government auditing standards.

We appreciate the cooperation given KPMG and my office during the audit. If you have any questions or would like to discuss the report, please contact me at (202) 245-6900, or your staff may contact Bryon S. Gordon, Assistant Inspector General for Audit, at (202) 245-6051 or through e-mail at [Bryon.Gordon@ed.gov](mailto:Bryon.Gordon@ed.gov).

Sincerely,



Sandra D. Bruce  
Acting Inspector General

Enclosure

## Independent Auditors' Report



KPMG LLP  
Suite 12000  
1801 K Street, NW  
Washington, DC 20006

### Independent Auditors' Report

Acting Inspector General  
United States Department of Education

Chief Operating Officer  
Federal Student Aid:

#### Report on the Financial Statements

We have audited the accompanying consolidated financial statements of the Federal Student Aid (FSA), a component of the United States Department of Education, which comprise the consolidated balance sheets as of September 30, 2020 and 2019, and the related consolidated statements of net cost and changes in net position, and combined statements of budgetary resources for the years then ended, and the related notes to the consolidated financial statements.

#### *Management's Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

#### *Auditors' Responsibility*

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America, in accordance with the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, and in accordance with Office of Management and Budget (OMB) Bulletin No. 19-03, *Audit Requirements for Federal Financial Statements*. Those standards and OMB Bulletin No. 19-03 require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

KPMG LLP is a Delaware limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Limited, a Swiss entity, which is a member of the KPMG network.





### *Opinion*

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Federal Student Aid as of September 30, 2020 and 2019, and its net costs, changes in net position, and budgetary resources for the years then ended in accordance with U.S. generally accepted accounting principles.

### *Other Matters*

#### *Interactive Data*

Management has elected to reference to information on websites or other forms of interactive data outside the Fiscal Year 2020 Annual Report to provide additional information for the users of its financial statements. Such information is not a required part of the basic consolidated financial statements or supplementary information required by the Federal Accounting Standards Advisory Board. The information on these websites or the other interactive data has not been subjected to any of our auditing procedures, and accordingly we do not express an opinion or provide any assurance on it.

#### *Required Supplementary Information*

U.S. generally accepted accounting principles require that the information in the Management's Discussion and Analysis and Required Supplementary Information sections be presented to supplement the basic consolidated financial statements. Such information, although not a part of the basic consolidated financial statements, is required by the Federal Accounting Standards Advisory Board who considers it to be an essential part of financial reporting for placing the basic consolidated financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic consolidated financial statements, and other knowledge we obtained during our audits of the basic consolidated financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

#### *Other Information*

Our audits were conducted for the purpose of forming an opinion on the basic consolidated financial statements as a whole. The information on pages i through xiii, Annual Performance Report section, Overview of the Financial Section, Other Information section, Appendices, and Acknowledgements is presented for purposes of additional analysis and is not a required part of the basic consolidated financial statements. Such information has not been subjected to the auditing procedures applied in the audits of the basic consolidated financial statements, and accordingly, we do not express an opinion or provide any assurance on it.

### **Other Reporting Required by Government Auditing Standards**

#### *Internal Control over Financial Reporting*

In planning and performing our audit of the consolidated financial statements as of and for the year ended September 30, 2020, we considered the FSA's internal control over financial reporting (internal control) as a basis for designing procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the consolidated financial statements, but not for the purpose of expressing an opinion on the effectiveness of the FSA's internal control. Accordingly, we do not express an opinion on the effectiveness of the FSA's internal control. We did not test all internal controls relevant to operating objectives as broadly defined by the *Federal Managers' Financial Integrity Act of 1982*.



Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that have not been identified. However, as described in the accompanying exhibits, we did identify certain deficiencies in internal control that we consider to be a material weakness and significant deficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. We consider the deficiency described in the accompanying Exhibit A, *Controls over the Reliability of Underlying Data Used in Credit Reform Re-estimates Need Improvement*, to be a material weakness.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiencies described in the accompanying Exhibit B, *Information Technology Controls Need Improvement*, *Monitoring Controls over Service Organizations Need Improvement*, and *Entity Level Controls Need Improvement*, to be significant deficiencies.

#### *Compliance and Other Matters*

As part of obtaining reasonable assurance about whether the FSA's consolidated financial statements as of and for the year ended September 30, 2020 are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed an instance of noncompliance or other matters that is required to be reported under *Government Auditing Standards* or OMB Bulletin No. 19-03, and which is described in the accompanying Exhibit C, *Requirement for Referring Delinquent Student Loan Debts to Treasury*.

#### *FSA's Responses to Findings*

The FSA's responses to the findings identified in our audit are described in Exhibit D. The FSA's responses were not subjected to the auditing procedures applied in the audit of the consolidated financial statements and, accordingly, we express no opinion on the responses.

Our response to FSA's response is included in Exhibit E.

#### *Purpose of the Other Reporting Required by Government Auditing Standards*

The purpose of the communication described in the Other Reporting Required by *Government Auditing Standards* section is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the FSA's internal control or compliance. Accordingly, this communication is not suitable for any other purpose.

**KPMG LLP**

Washington, D.C.  
November 16, 2020



Exhibit A

### Material Weakness

#### Controls over the Reliability of Underlying Data Used in Credit Reform Re-estimates Need Improvement

Under the *Federal Credit Reform Act of 1990* (FCRA), the United States Department of Education (Department) is required to perform periodic interest rate and technical re-estimates of the subsidy costs of its direct loan and guaranty programs. The re-estimates are calculated using an internally developed cash flow model. The cash flow model utilizes assumptions based on internally sourced data elements from Information Technology (IT) systems. The future cash flow outputs generated from the Department's cash flow model, the Student Loan Model (SLM), are then input into the format required by the Office of Management and Budget (OMB) Credit Subsidy Calculator (CSC), a required present value discount tool for agencies with credit reform programs. These procedures are necessary to generate subsidy re-estimates in accordance with the FCRA, as required by U.S. generally accepted accounting principles.

#### **Condition:**

The Department and FSA did not design and implement effective controls to ensure that the data used to develop the re-estimate is reliable, considering the elevated risk because of the control deficiencies related to IT systems discussed in Exhibit B of this report. Specifically, the Department and FSA rely on the IT systems to provide the data elements used in the cash flow model and do not perform sufficient procedures to ensure that such data is complete and accurate.

#### **Cause/Effect:**

The Department's and FSA's risk assessment process did not identify completeness and accuracy of the underlying data resulting from the IT system control deficiencies as a risk that required additional compensating controls.

Inadequate controls over the completeness and accuracy of the underlying data used to develop the re-estimate increases the risk that the financial statements could be materially misstated.

#### **Criteria:**

The following criteria were considered in the evaluation of the material weakness presented in this exhibit:

- The Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States (the Green Book), Principle No. 10, *Design Control Activities*; Principle No. 11, *Design Activities for the Information System*; Principle No. 13, *Use Quality Information*.
- FASAB Technical Release 6, *Preparing Estimates for Direct Loan and Loan Guarantee Subsidies under the Federal Credit Reform Act – Amendments to Technical Release No. 3 Preparing and Auditing Direct Loan and Loan Guarantee Subsidies under the Federal Credit Reforms Act*, Paragraphs 20 and 40.

#### **Recommendations:**

We recommend that the Department and FSA:

1. Strengthen the risk assessment process by considering the impact of IT control deficiencies on internal controls over the reliability of information in the Department's IT systems. Such considerations should be documented.
2. Design and implement additional controls, over the completeness and accuracy of the underlying data used to develop the re-estimate.

## Exhibit B

Significant Deficiencies**A. Information Technology Controls Need Improvement**

The following control deficiencies in the areas of IT logical access, security management, segregation of IT duties, and application change management are related to both the Department and FSA systems.

**Conditions:**

In FY 2019, we reported a significant deficiency related to Federal Student Aid's (FSA's) IT controls due to persistent unmitigated IT control deficiencies. During FY 2020, the FSA management demonstrated progress implementing corrective actions to remediate some prior-year deficiencies such as system data validation. However, management has not fully remediated prior-year deficiencies related to logical access administration, separated/transferred user access removal, user access reviews and recertification, and configuration management. We noted IT control deficiencies related to security management, segregation of IT duties, and application change control for three of FSA's financial and mixed systems. In addition, we noted deficiencies related to Department-level logical access for its core financial management system. Specifically, we noted the following:

**Department:**

1. Weakness in IT logical access controls. New and separated contractors were not consistently and accurately tracked resulting in the inconsistent reporting of start and termination dates and system access that was not always removed upon separation from the Department.

**FSA:**

1. Weakness in IT security management controls:
  - a. The System Security Plan for one system was incomplete and did not fully define and document all relevant control enhancements in accordance with National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53, Revision (Rev.) 4, security control requirements.
  - b. Plan of Action and Milestone (POA&M) closure documentation did not always address the root cause of the deficiencies, thereby not preventing future reoccurrences.
2. Weaknesses in IT controls related to the segregation of IT duties. For one FSA system, users with developer access had access to the system's production staging environment and update access to the production environment.
3. Weakness in IT application change management controls. The application change management process was not consistently followed for one FSA system. We noted the documentation for a selection of changes indicated a) approvals of testing and/or post implementation validation (PIV) approvals could not be evidenced; and b) one instance of a change that was approved to migrate to the production environment prior to approval of the change testing.

**Cause/Effect:**

There was a lack of effective monitoring controls by the Department and FSA to ensure:

1. Systems and support processes consistently adhered to documented agency-wide policies and procedures and the NIST security control requirements for the financially and mixed systems hosted and managed by FSA and the Department.

Additionally, there was a lack of effective enforcement and monitoring of IT controls by FSA to ensure:

1. Corrective actions to remediate prior-year conditions and associated causes are fully implemented, as well as verifying and validating that these corrective actions were effectively addressing the weakness with adequate documented supporting evidence.
2. Segregation of duties and least privilege principles are followed and enforced.
3. The established change process is followed, and application change tickets accurately document the key control points of the change process, such as approvals to commence with the change, approval of testing results, approval to migrate the change to the production environment, and PIV approvals.

Ineffective IT controls increases the risk of unauthorized use, disclosure, disruption, modification, or destruction of information and information systems that could impact the integrity and reliability of information processed in the associated applications which may lead to misstatements of the financial statements.

### Criteria:

The following criteria were considered in the evaluation of the significant deficiency presented in this exhibit:

- The Departmental Directive OCIO 3-112, Cybersecurity Policy.
- Department Baseline Cybersecurity Standard, OCIO-STND-01, dated April 1, 2020, Section 3.13, Personnel Access.
- The Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States (the Green Book), Section OV3.08 *Effect of Deficiencies on the Internal Control System*, Principle 3 *Establish Structure, Responsibility, and Authority, Documentation of the Internal Control System*, Principle No. 3.08 *Assignment of Responsibility and Delegation of Authority*, Principle No. 8.07 *Response to Fraud Risks*, Principle No. 10.3 *Design of Appropriate Types of Control Activities*, Principle No. 10.12 *Segregation of Duties*, Principle No. 11, *Design Activities for the Information System*, and Principle No. 13, *Use Quality Information*, Principle No. 17, *Evaluate Issues and Remediate Deficiencies*.
- National Institute of Standards and Technology Special Publication 800-53, Security and Privacy Controls for Federal Information Systems and Organizations, Revision 4, dated April 2013, specifically security control requirements PL-2 System Security Plan, PM-4 Plan of Action and Milestone, AC-2 Account Management, AC-5 Separation of Duties, AC-6 Least Privilege, CM-3 Configuration Change Control, and CM-5 Access Restrictions for Change.

### Recommendations:

We recommend that the Department:

1. Evaluate, develop, and implement a formal process to track and report all new and separated contractors.
2. Ensure separated contractors are off-boarded and system personnel are notified in a timely manner to disable or remove access to IT resources.
3. Provide training and oversight to Education personnel with on/off-boarding responsibilities to help ensure new/separated contractors are properly tracked.

We recommend that FSA:

4. Validate that financial and mixed system security plans have identified and documented the required security controls and control enhancements and the control implementation statuses in the plans as required by NIST SP 800-53. Additionally, implement a quality review process of the system security plans prior to signing the plans to ensure compliance with NIST 800-53 requirements.



## Independent Auditors' Report

5. Implement a process to evaluate the significance of a deficiency by considering the magnitude of impact, likelihood of occurrence, and nature of the deficiency and tailor the corrective actions to remediate the risk and address the root cause. Further, update guidance to ensure that quality reviews over the POA&M closure documentation are conducted to confirm the noted deficiencies are fully addressed to help prevent future reoccurrences.
6. Formally develop and implement a quality control review process to ensure that the application change control process is followed completely and accurately to validate that changes were tested and approved prior to migration and post implementation validation was performed, the relevant documentation and approvals are verified prior to closing the change ticket, as required by policy, and supporting documentation is retained.
7. Ensure segregation of duties and least privilege principles are adhered to when granting user access to prevent users with the ability to develop and/or change application code from having update access to the environment where the final tested and approved changes are staged prior to migration to the financial and mixed systems' production environment; and prevent users with access to develop code from having update access to the production environment.

### **B. Monitoring Controls over Service Organizations Need Improvement**

The Department and FSA relies on a certain IT system to store data for student loan programs. The Cost Estimation and Analysis Division (CEAD) within the Department also uses the data in the system for the development and update of the assumptions used in the re-estimation of subsidy allowance, a critical component of management's financial reporting process. The IT system is owned and controlled by FSA, who is responsible for the application-level internal controls, and is hosted by a service organization, who is responsible for internal controls at the data center.

#### **Condition:**

The Department and FSA did not have effective monitoring controls in place to ensure that the scope of the System and Organization Controls (SOC) 1, Type 2 report for the service organization and/or management's internal control processes sufficiently cover the relevant key controls to support the reliability and integrity of the data stored in the IT system. For example, we noted that there were not sufficient relevant controls identified and tested in the areas of mainframe operating system and security software, financial system production data bases, and financial system mainframe interface controls.

#### **Cause/Effect:**

FSA did not perform a comprehensive assessment of key relevant controls to appropriately assess the risks in the financial reporting process.

Ineffective monitoring controls over the service organization increases the risk of disruption, modification, or destruction of information that could impact the integrity and reliability of information processed in the associated application which may lead to misstatements of the financial statements.

#### **Criteria:**

The following criteria were considered in the evaluation of the significant deficiency presented in this exhibit:

- The Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States (the Green Book), Section OV4.01 *Additional Consideration, Service Organizations*, Principle 16.08 - *Perform Monitoring Activities*.
- National Institute of Standards and Technology Special Publication 800-53, Security and Privacy Controls for Federal Information Systems and Organizations, Revision 4, dated April 2013, specifically security control requirements SA-9 External Information System Services.

#### **Recommendations:**

We recommend that FSA:

1. Enhance their risk assessment to identify risks impacting financial reporting processes.
2. Identify the controls at the service organization for the systems that are responsive to risks and that are relevant to FSA's financial statements.
3. Regularly monitor and meet with the service organization to communicate and ensure that controls that are relevant to FSA for financial reporting are adequately tested for design, implementation, and operating effectiveness.
4. Assess the need to implement compensating controls for financial reporting in the event relevant controls at the service organization are not within the scope of the SOC 1 report.

**C. Entity Level Controls Need Improvement**

The Department and FSA are continually seeking ways to improve accountability in achieving the entity's mission. A key factor in improving accountability in achieving an entity's mission is to implement an effective internal control system. The control environment sets the tone of an organization by influencing the control consciousness of its personnel. It is also the foundation for all components of internal control, providing discipline and structure. The Department and FSA need to address weaknesses in its entity-wide control environment as we have observed two entity-wide control environment conditions through our procedures that have a pervasive influence on the effectiveness of controls. These common themes, which contributed to the deficiencies noted above, are related to the entity's risk assessment and monitoring activities.

**Conditions:**

1. Risk Assessment- The Department and FSA's entity level controls were not designed and implemented appropriately in order to define objectives to enable the identification of risks, define risk tolerances and identified processes and controls responsive to those risks.
2. Monitoring Activities- The Department and FSA's entity level controls were not designed and implemented appropriately in order to remediate identified internal control deficiencies in a timely manner.

**Cause/Effect**

1. Risk Assessment considerations address the risks facing the entity as it seeks to achieve its objectives. This assessment provides the basis for developing appropriate risk responses. Specifically, inadequate risk assessment throughout the Department and FSA, prevented the proper identification and analysis of risks facing the Department and FSA, and from designing appropriate risk responses. For example, the Department did not identify the risk objectives that should have been either addressed by the SOC1, Type 2 report or through compensating controls at the Department and FSA, to support the reliability and integrity of the data used in the financial reporting process.
2. Monitoring Activities considerations address management's processes to establish and implement operations that assess the quality of performance over time and promptly resolve the findings of audits and other reviews. Specifically, insufficient monitoring has prevented the Department and FSA from ensuring that corrective action plans are implemented, and control deficiencies are remediated timely.

**Criteria**

The following criteria were considered in the evaluation of the significant deficiency presented in this Exhibit:

- GAO Standards for Internal Control in the Federal Government (Green Book) Principle 6, *Management should define objectives clearly to enable the identification of risks and define risk tolerances.*
- GAO Standards for Internal Control in the Federal Government (Green Book) Principle 17, *Management should remediate identified internal control deficiencies on a timely basis*

**Recommendations**

We recommend that management implement the following to improve the effectiveness of entity-level controls:

1. In the area of risk assessment, improve risk assessment process at the financial statement assertion level and at the process level to ensure the department is appropriately defining objectives to enable the identification of risks and define risk tolerances.

2. In the area of monitoring activities, implement key monitoring controls to ensure that corrective action plans are implemented to timely remediate control deficiencies identified. In addition, increase oversight, review, and accountability over the process among various offices and directorates within the Department and FSA.

## Exhibit C

Compliance MatterRequirement for Referring Delinquent Student Loan Debts to Treasury

In 2014, Federal Law (31 U.S. Code Section 3716(c) (6)) was amended (Public Law 113-101 (DATA Act) Section 5) to require agencies to notify the Secretary of the Treasury of valid, delinquent nontax debts that are over 120 days delinquent – 60 days earlier than the previous 180 days requirement – for the purpose of administrative offset (i.e., collection through the reduction of future Federal payments). FSA's current business process, which requires loans to be transferred to the default loan servicer after 360 days of delinquency, is not in alignment with the reporting requirements. Further, due to the number of entities and systems involved in handling student loan debts and the decentralized nature of such processes, FSA is not yet capable of meeting this accelerated timeline. Accordingly, as of September 30, 2020, FSA is not in compliance with the requirement to refer student debt delinquent for 120 days to the Department of the Treasury.

To meet this requirement, the FSA obtained legal clarification in 2015 as to how certain specific requirements of the amended law apply to the Direct Loan Program and other FSA programs. The FSA is improving delinquent debt reporting procedures, increasing the frequency of some debt referrals, and modifying its defaulted loan management system to accommodate this change. The FSA has developed a long-term project plan to incorporate the referral requirements into various servicer contracts and guaranty agency agreements, so it can initiate the required system programming changes.

**Recommendation:**

We recommend that the FSA continue to execute the corrective actions as outlined in FSA's project plan to comply with the timing requirement for the referral of delinquent non-tax debts.



Exhibit D

Management's Response

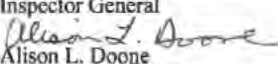


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November 13, 2020

MEMORANDUM

TO: Sandra D. Bruce  
Deputy Inspector General  
Delegated the Duties of the  
Inspector General

FROM:   
Alison L. Doone  
Chief Financial Officer

SUBJECT: DRAFT AUDIT REPORTS  
Fiscal Years 2020 and 2019 Financial Statements  
Federal Student Aid  
ED-OIG/A17U0002

With respect to the Fiscal Year 2020 Financial Statement Audit, Federal Student Aid (FSA) received the findings and recommendations as identified in the Independent Auditors' Report and provides the following responses.

***Exhibit A***  
***Material Weakness***

**Controls over the Reliability of the Underlying Data Used in Credit Reform Re-estimates  
Need Improvement**

FSA does not concur with the material weakness and believes the information technology (IT) findings in Exhibit B, individually and in aggregate, do not rise to the level of a material weakness. Further, it appears that the basis of the material weakness is duplicative of the significant deficiencies.

The FSA system that provides data to the Department's Student Loan Model is a High-Value Asset (HVA) as authorized by the Department of Education (ED) Chief Information Officer in accordance with Office of Management and Budget Memoranda M19-03, M16-04, and M-17-09. In compliance with Department of Homeland Security (DHS) requirements, an HVA assessment was performed independently by a DHS assessment team on the FSA HVA, including Risk Vulnerability Assessment (technical testing) and Security Architecture Review (assessment of the system architecture and procedures surrounding system cyber management). Following the initial assessment, FSA implemented additional independent HVA oversight processes including the Ongoing Security Assessment (OSA), Authority to Operate (ATO), and continuous monitoring programs which tests the DHS HVA Control Overlay as part of normal testing processes. FSA measures HVA compliance with these standards through use of the ED Cyber Security Framework Risk Scorecard which uses up-to-date threat information regarding federal information and systems. HVA scores reflect the continuous monitoring and remediation of threats as they are identified for each HVA.

Thus, FSA has numerous controls and mechanisms in place to protect the IT system that provides the data used to develop the subsidy re-estimate. The material weakness refers to the control findings and recommendations discussed in Exhibit B of the report. FSA's responses to the findings in Exhibit B are provided in the following section.

***Exhibit B***  
***Significant Deficiencies***

**A. Information Technology Controls Need Improvement**

FSA does not agree that Plan of Action and Milestone (POA&M) closure documentation did not address the root causes of the deficiencies and that closure evidence was insufficient. FSA has a mature program that ensures POA&Ms are developed to address root causes and document specific deficiencies, recommendations, and corrective action plans. The POA&Ms are reviewed by an independent verification and validation team to ensure all processes are followed and that actions and remediation artifacts are sufficient and appropriate to close POA&Ms. Further, the findings do not consider the compensating controls that prevent inappropriate access, support segregation of duties, and ensure the integrity of application change management.

**B. Monitoring Controls over Service Organizations Need Improvement**

FSA does not concur with the findings. In FY 2020, FSA assessed and ensured key relevant controls at the service organization that pertained to FSA's financial reporting process were included in the scope of the service organization's System and Organization Controls (SOC) 1, Type 2 report. FSA also had effective monitoring controls in place to ensure the scope of the SOC1 report for the service organization and management's internal control processes covered the relevant key controls to support the reliability and integrity of the data stored in the IT system. Those included the FISCAM components of security management, access controls, configuration management, segregation of duties, and contingency planning. In FY 2020, FSA worked with the service organization to ensure the SOC1 report provided by the independent auditor covered testing of each FISCAM-defined control technique for each of the five control activities. Relevant controls were identified and tested for design and operating effectiveness where applicable in the areas of mainframe operating system and security software.

**C. Entity Level Controls Need Improvement**

FSA does not concur with the findings. FSA entity level controls are designed and implemented to enable the identification of risks, define risk tolerances, identify processes and controls responsive to those risks, and remediate identified internal control deficiencies in a timely manner. FSA has entity-wide processes in place that follow the principles of the GAO Green Book to define objectives, identify risks, and establish control activities for all infrastructure and systems. As noted in the Monitoring Controls over Service Organizations Need Improvement section above, FSA assessed and ensured key relevant controls at the service organization and had effective monitoring controls in place to ensure the scope of the SOC1 report for the service organization and management's internal control processes covered the relevant key controls to support the reliability and integrity of the data stored in the IT system.

### Exhibit E

#### Auditors' Response to Management's Response

We appreciate FSA management's response to our report, presented in Exhibit D:

In the area of controls over the reliability of the data used in the credit reform subsidy re-estimate process, we noted that the control deficiencies identified in the area of Information Technology (IT) elevate the risk that the underlying data used in the re-estimate may not be complete and accurate. For example, we noted that FSA's processes, controls and documentation did not demonstrate management's assessment of the risks related to the reliability of the underlying data posed by the IT control deficiencies and how such risks have been properly mitigated. As such, while the deficiencies related to the IT systems continue to be reported a significant deficiency, the lack of compensating controls to support the reliability of the underlying data is considered a material weakness.

In the area of the significant deficiency over IT controls, we identified numerous control deficiencies, including certain deficiencies that continued to exist for a number of years. We noted instances where management corrective actions were not properly designed and implemented to address the root cause of the findings. We also noted that certain corrective action plans were not implemented for the majority of the fiscal year. Moreover, control deficiencies continued to exist in the area of monitoring controls over service organizations. For example, the scope of the System and Organization Controls (SOC) 1, Type 2 reports reviewed by FSA did not always include certain key control objectives for the systems that FSA relies upon. IT controls, combined with IT application-level and manual controls, are critical to ensure accurate and complete processing of transactions and integrity of data stored in the IT systems.

In the area of entity level controls, we noted that the matters presented in our audit report, and reiterated in the preceding paragraphs, are indicative of lack of sufficient entity level controls in the areas of monitoring and risk assessments activities. For example, untimely remediation of repeat control deficiencies from prior years demonstrates the need for improvement in monitoring activities. The lack of properly calibrated risk assessments to address specific risks related to the underlying data used in the financial reporting process illustrates the need for improvement in the entity risk assessment process.





## Other Information (Unaudited)

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## Other Information

### Summary of Financial Statement Audit and Management Assurances

#### Summary of Financial Statement Audit

**Audit Opinion:** Unmodified

**Restatement:** No

**Table 69: Material Weaknesses**

Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
Total Material Weaknesses	1	1	1	0	1

For details on the management assurances related to the FSA programs, please refer to the ***Analysis of Systems, Controls and Legal Compliance*** discussion in the Management's Discussion and Analysis section of this document as well as the *Summary of Financial Statement Audit and Management Assurances* section in the Other Information section of the Department's **AFR**.

### FSA Management Challenges

For details on FSA Management Challenges, please refer to the *Office of Inspector General's Management Challenges for FY 2020 Executive Summary* found in the Other Information section located within the Department's **AFR**.

## Other Information

### Payment Integrity

#### *Payment Integrity Information Act Reporting Details*

The *Payment Integrity Information Act of 2019* (Pub. L. 116-117) requires federal agencies to report information annually on improper payments to the President and Congress. For improper payments information, FSA's activities are part of an overall Departmental integrated reporting effort and reported on <https://paymentaccuracy.gov>.

In FY 2020, the Pell Grant and Direct Loan Programs are the FSA programs identified as susceptible to significant improper payments and OMB designated high priority programs. FSA continues to place additional emphasis on these important programs as required by OMB guidance to ensure payment integrity and minimize improper payments. Details on FSA's Pell Grant and Direct Loan improper payment estimation methodologies, improper payment estimates, root causes, and corrective actions can be found at [paymentaccuracy.gov](https://paymentaccuracy.gov).



## Appendices

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## Appendix A: Discontinued Strategic Goals and Performance Metrics

## Appendix A: Discontinued Strategic Goals and Performance Metrics

In FY 2019, FSA initiated the development of an organizational five-year performance plan that aligned with its vision to create a more student-focused, agile, and transparent organization. The *FY 2020–24 Strategic Plan*, establishes ambitious goals and objectives to ensure that FSA will continue to improve upon its mission while increasing accountability in all areas of organizational performance. The development of the new strategic plan was coordinated with the closing of FSA's *FY 2015–19 Strategic Plan* on September 30, 2019.

To maintain consistency with the previous strategic plan, FSA transitioned eight performance metrics into its new strategic plan, while discontinuing five performance metrics from the previous strategic plan. The discontinued metrics are presented below. For more information on the prior year results of the discontinued metrics, refer to the *FSA FY 2019 Annual Report*.

**Table 70: Discontinued Performance Metrics**

Performance Metric	Title
Performance Metric A.4	Social Media Channel Subscribership
Performance Metric B.1	Improper Payment Rate
Performance Metric C.1	Aid Delivery Costs per Application
Performance Metric D.2	Percentage of Contract Dollars Competed by FSA
Performance Metric D.3	Collection Rate



## Appendix A: Discontinued Strategic Goals and Performance Metrics

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## Appendix B: Glossary of Acronyms and Terms

## Appendix B: Glossary of Acronyms and Terms

Acronym	Description
<b>A</b>	
ABCP Conduit	Asset-Backed Commercial Paper Conduit
ACSI	American Customer Satisfaction Index
AD	Administratively Determined
AFR	<i>U.S. Department of Education FY 2020 Agency Financial Report</i>
Annual Report	<i>Federal Student Aid FY 2020 Annual Report</i>
APG	Agency Priority Goal
Appendix A	OMB Circular A-123, Appendix A, Management of Reporting and Data Integrity Risk
AR	Abandon Rate
ASA	Average Speed to Answer
ASLA	Annual Student Loan Acknowledgement
AWG	Administrative Wage Garnishments
<b>B</b>	
BD	Borrower Defense
BPO	Business Process Operations
<b>C</b>	
CARES Act	<i>Coronavirus Aid, Relief, and Economic Security Act</i>
Caucus	Student Loan Ombudsman Caucus
CDR	Cohort Default Rate
COD	Common Origination and Disbursement
COO	Chief Operating Officer
COVID-19	Coronavirus Disease 2019
CSRS	Civil Service Retirement System

## Appendix B: Glossary of Acronyms and Terms

## D

DCC	Digital Customer Care
DDB	Death, Disability, and Bankruptcy
the Department	U.S. Department of Education
Direct Loan	William D. Ford Federal Direct Loan
DMCS	Debt Management and Collection System
DOL	U.S. Department of Labor
DRG	Default Resolution Group

## E

ECASLA	<i>Ensuring Continued Access to Student Loans Act of 2008</i>
EDWA	Enterprise Data Warehouse and Analytics
ERM	Enterprise Risk Management

## F

FAFSA®	Free Application for Federal Student Aid®
FASAB	Financial Accounting Standards Advisory Board
FCRA	<i>Federal Credit Reform Act of 1990</i>
FECA	<i>Federal Employees' Compensation Act</i>
Federal Funds	Federal Student Loan Reserve Funds
FERS	Federal Employees Retirement System
FEVS	Federal Employee Viewpoint Survey
FDMS	Feedback and Dispute Management System
FFEL	Federal Family Education Loan
FMFIA	<i>Federal Managers' Financial Integrity Act of 1982</i>
FRD	Fraud Risk Division
FSA	Federal Student Aid
FSA PPO	Federal Student Aid Partner and Participation Oversight
FSATC	Federal Student Aid Training Center
FSEOG	Federal Supplemental Educational Opportunity Grant
FUTURE Act	<i>Fostering Undergraduate Talent by Unlocking Resources for Education Act</i>
FY	Fiscal Year
<i>FY 2015–19 Strategic Plan</i>	<i>Federal Student Aid for Fiscal Years 2015–19 Strategic Plan</i>

## Appendix B: Glossary of Acronyms and Terms

*FY 2020–24 Strategic Plan*      *Federal Student Aid for Fiscal Years 2020 Through 2024 Strategic Plan*

**G**

GAAP	Generally Accepted Accounting Principles
GAO	Government Accountability Office
GLBA	<i>Gramm-Leach-Bliley Act</i>
GS	General Schedule
GSMR	Granite State Management and Resources

**H**

HCERA	<i>Health Care and Education Reconciliation Act of 2010</i>
HCWG	Human Capital Working Group
HEA	<i>Higher Education Act of 1965</i> , as amended
HEAL	Health Education Assistance Loan

**I**

IDR	Income Driven Repayment
IFAP	Information for Financial Aid Professionals
IHE	Institution of Higher Education
IRS	Internal Revenue Service

**L**

LMS	Learning Management System
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**M**

Met	Performance result met or exceeded target
MOU	Memorandum of Understanding
MSI	Minority Serving Institution
MSURSD	Minority-Serving Under-Resourced Schools Division

**N**

N/A	Performance result is not applicable because the performance metric was not developed, the performance metric was not implemented, or the required data were not available in time for inclusion.
Next Gen FSA	Next Generation Financial Services Environment
Next Gen PPO	Next Generation Partner Participation and Oversight
NFP	Not-For-Profit
Not met	Performance result did not meet target

## Appendix B: Glossary of Acronyms and Terms

NSLDS	National Student Loan Data System
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## O

OCIO	Office of the Chief Information Officer
OIG	Office of Inspector General
OIO	Operational Improvement and Oversight
OMB	U.S. Office of Management and Budget
OMB Circular A-123	OMB Circular A-123, <i>Management's Responsibility for Enterprise Risk Management and Internal Control</i>
OPEID	Office of Postsecondary Education Identification
OPM	U.S. Office of Personnel Management

## P

PAYE	Pay As You Earn
PBO	Performance-Based Organization
PCA	Private Collection Agency
Pell Grant	Federal Pell Grant Program
PEPS	Postsecondary Education Participants System
PHEAA	Pennsylvania Higher Education Assistance Agency
PLUS	Parent Loan for Undergraduate Students
POE	Principles of Excellence
President's Budget	<i>Budget of the United States Government</i>
Pub. L	Public Law
PSLF	Public Service Loan Forgiveness

## S

SBR	Statement of Budgetary Resources
Secretary	Secretary of Education
SecOps	Security Operations
SES	Senior Executive Service

## T

TEACH Grant	Teacher Education Assistance for College and Higher Education Grant
TEPSLF	Temporarily Expanded Public Service Loan Forgiveness
Title IV	Title IV of <i>the Higher Education Act of 1965</i> , as amended
TIVAS	Title IV Additional Servicers



## Appendix B: Glossary of Acronyms and Terms

TOP	Treasury Offset Program
TPD	Total and Permanent Disability
TPDR	Third-Party Debt Relief
Treasury	U. S. Department of Treasury

**U**

U.S.	United States
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**W**

WDD	Workforce Development Division
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## Appendix B: Glossary of Acronyms and Terms

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## Appendix C: Availability of the Federal Student Aid Annual Report


## Appendix C: Availability of the Federal Student Aid Annual Report

The *Federal Student Aid FY 2020 Annual Report* and the *Annual Reports* from prior years are available on the following websites:

- **FSA:** [StudentAid.gov/strategic-planning-reporting](https://studentaid.gov/strategic-planning-reporting)
- **The Department:** <http://www.ed.gov/about/reports/annual/index.html>

The *Federal Student Aid Fiscal Years 2020 Through 2024 Strategic Plan* and prior years' strategic plans are also available at [StudentAid.gov/strategic-planning-reporting](https://studentaid.gov/strategic-planning-reporting).

Stay connected to Federal Student Aid through social media:

- Visit the FSA website: [StudentAid.gov](https://studentaid.gov)
- Like FSA on Facebook : [Facebook.com/FederalStudentAid](https://facebook.com/FederalStudentAid)
- Follow FSA on Twitter : [@FAFSA](https://twitter.com/FAFSA)
- Find FSA on YouTube : [YouTube.com/user/FederalStudentAid](https://youtube.com/user/FederalStudentAid)

## Appendix C: Availability of the Federal Student Aid Annual Report

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## Acknowledgements

The *FSA FY 2020 Annual Report* was prepared with the energies and talents of many Federal Student Aid employees. To these dedicated individuals, the Chief Operating Officer and Chief Financial Officer would like to offer their sincere appreciation and recognition.

In particular, we would like to recognize the following Federal Student Aid offices for their contributions:

- Finance Office.
- Strategic Planning and Reporting.
- Office of the Ombudsman.
- Office of Strategic Communications.
- COO Front Office.

We also offer our sincerest thanks and acknowledgement to the staff of the following other offices within the Department of Education for their contributions:

- Office of Finance and Operations.
- Budget Service.
- Office of the Secretary.
- Office of Legislation and Congressional Affairs.
- Office of Chief Information Officer.

We would also like to acknowledge the Office of Inspector General and KPMG LLP for the professional manner in which they conducted the audit of the FY 2020 Financial Statements.

*The Federal Student Aid FY 2020 Annual Report*

Federal Student Aid  
A Principal Office of the U.S. Department of Education  
Finance Office  
November 2020



