

United States Department of Education
Second Report of the Special Master for Borrower Defense to the Under Secretary
December 3, 2015

This is my second report as Special Master to the United States Department of Education (the Department or ED) with regard to borrower defense (BD) issues. In my [first report](#), I discussed the legal and regulatory basis for the Department's approach to BD and the sequence of events that led to the establishment of a program to address BD claims (the Borrower Defense Program, or BDP) and my appointment as Special Master. This report will address:

- ED's progress in granting BD and closed school relief to student loan debtors.
- Details on the population of BD and closed school claims under review.
- The standards under which BD relief has been granted and the development of additional rules under which further relief may be granted.

The report that follows shows that we have made substantial progress on a number of BDP goals. My BDP colleagues and I have recommended to Under Secretary Mitchell the granting of \$27,832,370 of relief with respect to 1,312 borrowers making BD claims related to Heald College. Those recommendations were accepted by the Under Secretary and, pursuant to his order, the Department has begun the process of effecting the discharges. Beginning on December 4, 2015, the Department will notify this initial set of borrowers that their claims have been approved. As of November 18, 2015, there are 5,379 open BD claims that remain to be addressed. In addition, as of November 18, 2015, the Department has processed 5,814 closed school claims, comprising \$75,461,790 in loan relief.

This report also discusses areas where work remains to be done—namely: developing rules of decision to resolve future claims and additional engagement with state attorneys general. The BD team and I are working diligently on these matters. I am satisfied that we are developing the protocols and criteria that will allow us to efficiently address these claims. As we proceed, we are gaining the knowledge that only comes from working with claims and that will guide our development of a general purpose BD procedure that is efficient and fair.

My colleagues and I look forward to continued engagement with stakeholders in the BD process.

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Special Master for Borrower Defense
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I. Borrower Defense Claims

As discussed in my first report, ED receives BD claims from a number of sources in a variety of formats. A substantial number of BD claims by former Heald College students have been received on an attestation form created by the Department for that purpose (Heald Attestation Form), although that form has also been used by debtors from other schools. (About 3% of the Heald Attestation Forms received are for claims related to other schools). An additional substantial number of BD claims—by former Heald students, former students at other Corinthian Colleges, Inc.-owned colleges, and other students generally—have been submitted in other formats.

As of November 18, 2015, ED had received 6,691 BD claims, collectively representing up to about \$138 million in loans. The claims break down as follows:

| School | Number | Percent of total |
|--|---------------|-------------------------|
| Heald (Corinthian) | 3,356 | 50.2% |
| Everest (Corinthian) | 1,701 | 25.4% |
| WyoTech (Corinthian) | 283 | 4.2% |
| Art Institute | 931 | 13.9% |
| ITT | 159 | 2.4% |
| University of Phoenix | 22 | <0.5% |
| Other (no more than 10 claims from one school) | 239 | 3.6% |
| Total | 6,691 | 100% |

II. Borrower Defense Claims Review and Approval

Since my first report, the Department has added staff to review borrower defense claims and has approved the first wave of borrowers for discharges. This section: (i) describes the team reviewing claims; (ii) summarizes the progress made to date regarding claims from Heald College students; and (iii) discusses next steps for reviewing other borrower defense claims.

A. Borrower Defense Program Team

In my first report, I discussed the need for an infrastructure to handle both present and prospective claims. Since that report, four talented lawyers have been hired by the Department to address this work. They have hit the ground running and, in cooperation with Federal Student Aid (FSA) staff, have made a very good start at analyzing claims. The rest of this report is a testament to the hard work of these lawyers and our colleagues at ED and FSA to achieve the BDP objectives. Collectively, I refer to them as the BDP Team.

As the work of the BDP Team has ramped up, it has also become apparent that additional attorneys will be necessary to swiftly analyze claims. Accordingly, I have recommended that the Department add additional attorneys, and the Department has agreed to do so.

B. Approval of Claims from Heald College Students

My first report discussed in detail the legal basis for the Department's view, with which I concur, that relief for BD claims under the current regulations must be based on the showing of an act or omission by a school that would support a state law cause of action. It went on to describe the Department's investigation of Corinthian Colleges, Inc., including the Heald College campuses, and of and the Department's determination, after consultation with the Office of the California Attorney General, that students who relied upon false or misleading placement rate disclosures in enrolling in Heald College programs would have established a BD claim as to which relief would be granted under California law. The Heald Attestation Form provided by ED to student borrowers incorporated each of these elements of a claim as to which relief could be granted.

To focus our initial efforts on claims where relief could be granted on the basis of fully developed facts, the BDP Team first reviewed all claims received from all sources as of September 30, 2015, for Heald student loans where the initial loan advance had occurred on or after July 1, 2010 – the earliest date covered by ED's letter of findings against Heald College (ED Fine Letter).¹ There were 1,670 borrowers that fit these criteria (the Initial Review Population). The BDP Team then reviewed each of the claims in the Initial Review Population to determine whether they met the elements for relief, namely whether they were enrolled in the covered programs for the time periods for which the Department found that Heald College had misrepresented job placement rates.

From this review, 1,312 borrower claims, representing \$27,832,370 of loans, qualified for BD relief. I informed Under Secretary Mitchell of this determination and recommended that he authorize full relief (restitution of all amounts paid) for such loans. The Under Secretary has authorized such relief and directed that the necessary steps be taken to give effect to that

¹ ED issued a Notice of Intent to Fine Heald College, dated April 14, 2015.

authorization. The BDP Team will continue reviewing and approving similar claims—including Heald claims received after the September 30, 2015 cutoff date we used—on a rolling basis going forward.

While my team was reviewing these claims, the United States Department of the Treasury (Treasury) analyzed the federal income tax implications of BD relief for students that attended Corinthian schools. Treasury recently issued a revenue procedure regarding the tax implications of discharge for former Corinthian students, concluding that Corinthian students do not need to include discharged amounts in their taxable income. This revenue procedure is available [here](#).

The 1,312 BD claimants approved for relief to date are concentrated heavily in California, where most Heald College campuses were located. There are also significant populations of approved claimants in Hawaii and Oregon, where other Heald campuses were located.

The chart below lists the number of claimants who qualified for relief among the Initial Review Population, based on their state of residence at the time they submitted their claim:

| State | Borrower Count | | State | Borrower Count |
|--------------|-----------------------|--|--------------|-----------------------|
| CA | 1,062 | | ID | 2 |
| HI | 117 | | AZ | 1 |
| OR | 72 | | WI | 1 |
| WA | 20 | | OK | 1 |
| TX | 7 | | MI | 1 |
| FL | 5 | | PA | 1 |
| IL | 3 | | KY | 1 |
| CO | 3 | | MO | 1 |
| SC | 3 | | NE | 1 |
| NV | 3 | | GA | 1 |
| AK | 2 | | SD | 1 |
| LA | 2 | | VA | 1 |

From the Initial Review Population of 1,670 claims, 358 claims remain under consideration. I did not yet recommend relief for those claims because they involved one or more of the following situations: (i) the claimants already had their loans discharged through a closed school discharge; (ii) claimants were enrolled in programs or time periods that were not covered by the ED Fine Letter; or (iii) claimants did not have Federal Direct Loans. It should be noted that these and other BD claims have not been denied; rather, additional consideration, as discussed in the next section, will be required to determine whether and to what extent BD relief may be granted.

C. Next Steps for Other Borrower Defense Claims

In addition to the Heald claims discussed above, a significant number of BD claims have been received from students at schools other than Heald College. At the time I considered the Initial Review Population of Heald claims, ED had not made specific factual determinations of wrongdoing with regard to other schools.² Recently, however, the Department [announced findings](#) against Corinthian's Everest and WyoTech schools based in California and Everest online programs based in Florida as a result of a joint investigation with the office of the California Attorney General. The Everest and WyoTech findings include specific determinations of misstatements of placement rates in specified programs at specified Everest and WyoTech campuses (or online). The BD team and I have begun an in-depth review of these recent findings. I expect that they will allow the Department to provide borrower defense relief to additional students, similar to the way the ED Fine Letter issued to Heald has done. This topic will be addressed in future reports.

There are also claims from former students—both from Corinthian schools and other schools—whose loans are not covered by specific ED findings. This does not mean that material misstatements or other wrongdoing that trigger BD relief did not occur with regard to these claims; rather, it means that the BDP Team will have to review these claims to determine whether there is evidence supporting relief. We are hard at work with our colleagues in the Department to develop rules for deciding claims where no explicit findings have been made about the programs involved. This work will also inform our development of a general application form for borrower defense to be used in such cases.

Beyond this work reviewing claims, the BDP Team and I have consulted with the attorneys general of states where BD claims have been made to gain the benefit of any investigations they have made and their interpretations of applicable state law. The Everest and WyoTech findings made by the Department and the California Attorney General referred to above are one fine example of this work. The Department has also received investigative evidence regarding Corinthian from the Illinois Attorney General's office and, more recently, the Massachusetts Attorney General's office. We will analyze that evidence in the coming weeks. We continue to invite all state attorneys general to provide evidence of institutions' wrongdoing to me and the Department so that I can make determinations about the implications of the evidence on potential borrower defense claims.

In determining the availability of BD relief to additional student loan debtors that have submitted claims, my colleagues and I will especially look for evidence of patterns and practices that show

² The exception to this are the campuses operating under the Everest Institute-Cross Lanes, WV OPEID (01035600), with regard to which ED made findings, per its letter dated July 24, 2014. There are approximately 33 claims relating to this campus. They will be considered in light of ED's findings.

a concerted effort to mislead students or otherwise engage in conduct that violates applicable state law. One way of making these determinations is to determine whether the BD claims filed against a school show common patterns of misconduct with regard to a particular program, campus, or both.

Pursuing this mode of inquiry will allow the BDP Team its best opportunity to establish broad-based patterns of misconduct and to provide relief to a significant number of claimants more quickly. In this regard, it is important to note that the statements by claimants in their own words of how they were treated by the schools against which they have made a claim will be helpful to our resolution of claims. This will help increase understanding of what happened to students and whether state law was violated. In considering this evidence, however, the BDP Team will not expect or require certain words or phrases to trigger relief.

III. Closed School Claims

As discussed in my prior report, a significant number of former Corinthian students who were students at or around the time the colleges ceased operations have elected to seek a closed school discharge in lieu of making a borrower defense claim. As of November 18, 2015, FSA had approved 5,814 closed school discharge applications, resulting in \$75,461,790 of relief to borrowers. FSA continues to work through other closed school application claims at a steady clip, and anticipates that tens of millions of dollars or additional relief will be granted in the coming months.

Approved closed school applications from Corinthian students break down as follows:

| School | Applications Received as of Nov. 18, 2015 | Grants of relief Received as of Nov. 18, 2015 | Loan Amounts |
|--------------|---|---|---------------------|
| Heald | 6,213 | 3,698 | \$53,046,706 |
| Everest | 3,110 | 1,712 | \$19,196,090 |
| WyoTech | 1,204 | 404 | \$3,218,994 |
| Total | 10,527 | 5,814 | \$75,461,790 |

IV. Conclusion

The Borrower Defense Program has made a good start at addressing BD claims, but much work remains to be done. To address remaining claims, we will make any aggregate findings that are justified by available evidence, and we will also analyze school conduct by campus and program. Input from the borrowers, state attorneys general, and other sources will be crucial in making determinations that are fair and supportable.

In this process, we will continue to engage with Congress, state attorneys general, and advocates for students to obtain the benefit of their insights and experience. As we gain further knowledge and experience, including through further engagement with stakeholders, the BDP Team and I will develop a general purpose application for borrower defense and make suggestions to the Under Secretary about a permanent infrastructure in the Department to address this issue. Each of these objectives is difficult, but a high-quality team is working on them. I look forward to reporting our progress in February 2016.

In the meantime, if any individual wishes to assert a defense to repayment of his or her federal student loan(s), please submit materials via email to FSAOperations@ed.gov or by mail to: U.S. Department of Education, PO Box 194407, San Francisco, CA 94119.

Information on what to include in your borrower defense submission is provided at: <https://studentaid.ed.gov/sa/about/announcements/corinthian> under the subheading “Background about Borrower Defense to Repayment.”