

United States Department of Education
Third Report of the Special Master for Borrower Defense to the Under Secretary
March 25, 2016

This is my third report as Special Master to the United States Department of Education (the Department or ED) with regard to borrower defense to repayment (BD) issues. My first and second reports outlined the legal and regulatory bases for the granting of BD relief and the actual grants of relief made for BD and closed school claims through September 30, 2015.

This report shows continued progress on a number of BD goals. My colleagues and I have recently recommended to Under Secretary Ted Mitchell the granting of \$10,346,414 of additional relief with respect to 546 borrowers making BD claims related to Heald College, one of the subsidiaries of Corinthian Colleges, Inc. (CCI) and \$4,139,799 of relief with regard to 190 borrowers making claims related to two other CCI schools: Everest and WyoTech. Those recommendations were accepted by the Under Secretary and, pursuant to his order, the Department has begun the process of making the discharges. These actions bring BD relief to date to a total of \$42,318,574 relating to 2,048 borrowers. In addition, as of March 1, 2016, the Department has processed 6,838 closed school claims, many of whom were also eligible for BD relief, but chose to apply under the closed school discharge provision, comprising \$90,066,132 in loan relief. As described further herein, there is more work to be done. The Department is renewing efforts to reach borrowers who attended CCI schools who may be eligible for debt relief resulting from the Department's findings.

Since my last report, significant improvements have been made to the Department's infrastructure for dealing with BD claims. Robert Kaye, an experienced and respected enforcement lawyer, has been appointed to the newly created position of Chief Enforcement Officer, in which capacity he will head up the BD process, among other duties. Kaye will also spearhead the agency's efforts to enhance its investigative capabilities of institutions to enforce the Department's laws and regulations, as well as working with me to establish and implement processes for adjudicating related borrower defense claims. This action, which establishes full-time and permanent leadership for the program, has been further strengthened by the hiring of three additional lawyers to work on BD claims.

This report also discusses areas where work remains to be done, including 8,952 open BD claims that require additional work to resolve. The Borrower Defense Team and I are working diligently on these matters. I believe that we are proceeding in a way that will serve the interests of distressed borrowers and taxpayers and that will promote public trust and confidence in this process and in the federal student loan program.

My colleagues and I look forward to continuing our very important work on borrower defense, to continued engagement with stakeholders in the BD process, and to reporting to the public on our further progress.

Joseph A. Smith, Jr.
Special Master for Borrower Defense
U.S. Department of Education

I. Borrower Defense Claims

As discussed in prior reports, ED established the Borrower Defense process (BD) to provide a clearer path for borrowers to seek and obtain relief available under the law resulting from unlawful practices by institutional participants in its student loan programs. As of March 1, 2016, ED had received 11,000 Borrower Defense (BD) claims. The claims break down as follows:

School	Number	Percent of total
Heald (Corinthian) ¹	5,835	53.0%
Everest (Corinthian)	2,235	20.3%
WyoTech (Corinthian)	431	3.9%
The Art Institute (EDMC)	1,109	10.1%
ITT	344	3.1%
University of Phoenix	172	1.6%
DeVry	78	<1%
Kaplan	64	<1%
Westwood College	40	<1%
International Academy of Design & Technology	32	<1%
Other (no more than 20 claims from one school)	660	6.0%
Total	11,000	

My last report discussed in detail the granting of relief with respect to 1,312 BD claims, with aggregate balances of \$27,832,370 by former students of Heald College, one of the schools owned by Corinthian Colleges, Inc. (CCI). This report will discuss the granting of additional relief, aggregating \$14,486,204 to 736 former students of Heald and its CCI affiliates, Everest and WyoTech, for claims made through December 31, 2015.

II. ED Investigation of Everest and WyoTech Campuses

As described in my last report, ED's first Borrower Defense effort concerned loans to former students of Heald College (Heald), a subsidiary of Corinthian Colleges, Inc. (CCI). The

¹ The total number of claimants who attended CCI schools includes both borrowers who attended campuses and programs that are covered by the Department's findings about misleading placement rates during the relevant date ranges, as well as those who did not.

Department, in consultation with the Office of the California Attorney General, investigated and made findings regarding Heald that include specific determinations of misstatements of placement rates for specified programs at specified Heald campuses.

Following this work, the Department and the Office of the California Attorney General, continued investigating CCI campuses operating under the following names: Everest University, Everest College, and Everest Institute (collectively, “Everest”) and WyoTech. As a result of this investigation, on November 17, 2015, the Department and the California Attorney General released a letter (November 2015 Everest/WyoTech letter) reporting findings regarding 20 Everest and WyoTech campuses that include specific determinations of misstatements of placement rates for specified programs offered at Everest and WyoTech campuses located in California and for online programs. As more fully discussed below, BD relief has been authorized by Under Secretary Mitchell on the basis of the Everest/WyoTech findings and steps are being taken to facilitate the submission of additional BD claims by former Everest and WyoTech students in these programs.

The Department’s work investigating the rest of the Corinthian campuses continued after the California Everest and WyoTech findings were announced. More recently, as a result of its multi-year investigation, the Department made further findings regarding misrepresented job placement rates at an additional 71 Everest and WyoTech campuses, such that the Department’s findings now cover Everest and WyoTech campuses located in 23 states. The Department has made me aware of those findings, and the BD Team has prepared an attestation form for Everest and WyoTech students to facilitate BD claims that mirrors the Heald Attestation Form. The Everest and WyoTech programs that are covered by the Department’s additional findings with regard to misrepresented job placement rates and the Everest/WyoTech Attestation Form are available online at <https://studentaid.ed.gov/corinthian>. In addition to enhanced outreach to eligible former Heald students, the Department will soon conduct outreach to this group of students to inform them of their eligibility for BD relief.

III. Borrower Defense Claims Review and Approval

My prior reports have discussed that relief for BD claims under current ED regulations must be based on the showing of an act or omission by a school that would support a state law cause of action. To that end, the Department has worked with its law enforcement partners to gather evidence relevant to a determination of these claims.

As described above, ED’s first priority was to expedite relief of eligible loans to former students of Heald who were enrolled in programs that are covered by ED’s findings and relied on misleading placement rates. To further that process, the Department created and made available an attestation form for former Heald students to facilitate the filing of BD claims (Heald

Attestation Form) while accepting Heald claims from other sources as well. As a result of these efforts, relief with respect to 1,312 claims, having aggregate balances of \$27,832,370, was granted to claimants who submitted a claim on or before September 30, 2015.

A. CCI Claims

All of the BD relief granted for the period covered by this report relates to claims by former students of CCI schools. The details with regard to this relief are set forth below.

a. Heald Claims

In order to continue to expedite claims where relief could be granted on the basis of ED's findings, the BD Team first reviewed all pending claims as of December 31, 2015, with regard to Heald student loans where the initial advance had occurred after July 1, 2010 (the Heald Initial Review Population). As a result, it was determined that there were 844 claims in the Heald Initial Review Population, including (i) claims in hand at on September 30, 2015, as to which relief had not been granted and (ii) claims received after September 30, 2015.

The BD Team reviewed information from the Heald Attestation Forms and Departmental records to determine eligibility of loans in such population for BD relief. **From this review, 546 borrower claims, representing \$10,346,414 of loans, qualified for BD relief. I informed Under Secretary Mitchell of this determination and recommended that he authorize full relief (including restitution of all amounts paid) for such loans. The Under Secretary has authorized such relief and those discharges are in process.** The BD Team will continue reviewing and approving similar claims—including Heald claims received after December 31, 2015, on a rolling basis going forward.

An additional 298 Heald claims remain under consideration. I did not yet recommend relief for those claims because: (i) claimants were not enrolled in programs or time periods that were covered by the ED Fine Letter; or (ii) claimants did not have Federal Direct Loans (different rules govern BD relief in those cases).

b. Everest and WyoTech Claims

As of December 31, 2015, there were 2,114 BD claims from former students of Everest and WyoTech. As a result of the issuance by the Department of the November 2015 Everest/WyoTech letter, the BD Team has begun a review of claims relating to these schools comparable to the work that has been done (and is ongoing) with regard to Heald claims. Similar to Heald claims, these claims had been received through a number of channels in a variety of formats, including Everest and WyoTech borrowers who used the Department's Heald

Attestation Form to file their claims, forms from the “Debt Collective” website, and claims that were submitted in narrative form.

As it had done with Heald loans, the BD Team first reviewed all claims from all sources as of December 31, 2015 for Everest and WyoTech student loans issued to students who attended the California or online schools that were covered by the findings detailed in the November 2015 Everest/WyoTech letter, where the initial loan advance had occurred on or after July 1, 2010 – the earliest date covered by the Everest/WyoTech letter. There were 475 borrower claims that passed this screen (the Everest/WyoTech Initial Review Population). The BD Team then reviewed each of the claims in the Everest/WyoTech Initial Review Population to determine whether it met the elements for relief, namely whether the borrower was enrolled in a covered program or programs during the time period for which the Department found that Everest or WyoTech had misrepresented job placement rates and where the relevant misrepresentations was material. **From this review, 190 borrower claims, representing \$4,139,799 of loans, qualified for BD relief. I informed Under Secretary Mitchell of this determination and recommended that he authorize full relief (including restitution of all amounts paid) for such loans. The Under Secretary has authorized such relief and those discharges are in process.** The BD Team will continue reviewing and approving similar claims on a rolling basis.

As a result of the process just mentioned, 285 Everest and WyoTech claims remain under consideration. As is the case with the Heald claims discussed above, relief was not granted because (i) claimants were not enrolled in programs or time periods that were covered by the Everest/WyoTech letter; (ii) misstatements by the school were immaterial; or (iii) claimants did not have Federal Direct Loans.

B. Other Borrower Defense Claims

It should be noted that the CCI claims mentioned above as to which relief has not been granted have not been denied; rather, additional consideration of such claims will be required to determine whether and to what extent BD relief may be granted. In addition, BD claims have been received and are likely to be received from former students at schools other than the CCI schools.

These claims from former students—both from CCI schools and other schools— often relate to loans that are not covered by specific ED findings with regard to misstatement of placement rates. This does not mean that material misstatements or other wrongdoing that could be the basis for BD relief did not occur with regard to these claims; in fact, claims the BD Team has received often include allegations of misrepresentation, including false or misleading statements by school staff regarding employment prospects, the cost of attendance, amount of debt to be incurred, curriculum (including externships), career placement support, qualifications for job

licensure, and transferability of course credits. These claims will be reviewed. To address them, the BD Team and the Department’s Office of General Counsel have done and are doing extensive research as to whether, under applicable federal and state law, (i) these allegations can provide bases for establishing school liability and (ii) the evidentiary support necessary to establish BD claims is present with regard to such allegations. In addition, based on what we have learned from reviewing many of these claims, the BD Team is developing a “universal” BD attestation form to facilitate claims from students around the country.

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 March 1, 2016, FSA had received 11,470 applications for closed school relief and had approved 6,838 of these applications, resulting in \$90,066,132, 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 March 1, 2016	Grants of relief Received as of March 1, 2016	Loan Amounts
Heald	6,954	4,381	\$63,803,375
Everest	3,455	1,994	\$22,561,742
WyoTech	1,331	463	\$3,701,015
Total	11,740	6,838	\$90,066,132

IV. Outreach Activities

The Department has made numerous efforts to reach borrowers who may be eligible for loan discharges, by virtue of the Department’s findings regarding misleading placement rates, in order to inform them of their options. Thus far, this outreach has consisted of multiple rounds of emails and postal mail to the over 54,000 Heald borrowers who had their first loan disbursement as early as January 1, 2010. The average open rate for these email campaigns is approximately 40%, which is higher than the average open rate for previous FSA email campaigns, as well as for government email campaigns generally. Nevertheless, the Department will continue its efforts to reach Heald borrowers. In order to improve the response rate, the Department has conducted email subject line testing, the results of which we anticipate will improve open rates in future email campaigns. The Department is also in the process of starting similar outreach campaigns for Everest and WyoTech borrowers who may have attended programs during time

periods that are covered by more recent Department findings that those schools published misleading placement rates based on the Department's lessons learned regarding how best to communicate with borrowers from prior outreach. In addition, the Department is exploring alternative methods of outreach—including, but not limited to, social media outreach and enhanced coordination with servicers—to reach potentially eligible borrowers that may not regularly check email and/or postal mail.

Further, the BD Team has received additional evidence from the Offices of the Attorneys General of Massachusetts, Illinois and Wisconsin regarding BD claims of former students of Everest in those states and with respect to other schools that are alleged to have engaged in similar misconduct. The team is working with these agencies to develop further findings and other bases for granting relief with respect to these matters, as appropriate.

V. Buildout of BD Infrastructure

Since my last report, the Department has made significant progress in the establishment of an infrastructure to address BD issues both now and in the future.

On February 8, 2016, Secretary John King announced the establishment of a Student Aid Enforcement Unit to respond more quickly and efficiently to allegations of illegal actions by higher education institutions. The Enforcement Unit will be led by Robert Kaye, one of the nation's top enforcement attorneys – most recently as a leader in the Federal Trade Commission's work protecting consumers. Through his work as the Bureau of Consumer Protection's Chief Litigation Counsel and as a manager in the Bureau's Division of Enforcement, Kaye has considerable experience supervising and advising managers and attorneys engaged in consumer protection investigations, as well as federal court and administrative litigation.

Kaye reports to Jim Runcie, the Chief Operating Officer of the [Office of Federal Student Aid \(FSA\)](#), under the oversight of the Under Secretary Ted Mitchell. The Chief Enforcement Officer is working closely with James Cole, Jr., General Counsel, Delegated the Duties of Deputy Secretary, to establish policies and practices for the Office. Borrower Defense will be one of four areas for which Rob Kaye and the Enforcement Unit will be responsible.

This important advance by the Department is augmented by the addition to the BD Team of three additional lawyers, all of whom began working at the Department this month.

VI. Conclusion

The Department has made significant progress in addressing the BD claims that it has received. It has granted significant additional relief to borrowers, through both BD and closed school

channels. More importantly, it has made significant investments in infrastructure to address claims of aggrieved students for years to come. I look forward to continuing to report on both aspects of this important work.

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 regarding what to include in your borrower defense submission is provided at: StudentAid.gov/borrower-defense.