



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

June 6, 2018

The Honorable Richard Durbin
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Durbin:

Thank you for your letter of May 23, 2018, requesting information from the U.S. Department of Education Office of Inspector General on our December 2017 report titled, "Federal Student Aid's Borrower Defense to Repayment Discharge Process." Attached you will find our responses to your questions.

If you have any additional questions or need more information, please do not hesitate to contact me directly at (202) 245-600, or have a member of your staff contact our Congressional Liaison, Catherine Grant, at (202) 245-7023.

Sincerely,

Kathleen. S. Tighe
Inspector General

Attachment

cc: The Honorable Betsy DeVos, Secretary, U.S. Department of Education

U.S. Department of Education Office of Inspector General
Response to Senator Richard Durbin Regarding OIG Report Titled,
“Federal Student Aid’s Borrower Defense to Repayment Discharge Process”
June 6, 2018

1. What additional outcome data for the processing of borrower defense claims did Federal Student Aid (FSA) provide to your office on October 26, 2017, as noted in footnote 5?

The footnote refers to an updated “Review Ready Spreadsheet” that FSA provided to us on October 26, 2017. The Spreadsheet specified the general status of each claim as approved, pending, or ready for review as of October 10, 2017.

2. The report indicates that FSA's Borrower Defense Unit (BDU) reduced contractor staffing by more than two-thirds from November 2016 to September 2017. Did FSA provide a rationale for this decrease in staff, even as the number of claims mounted?

FSA’s BDU did not provide a specific rationale for the decrease in staff.

3. With regard to the category of borrower defense claims related to ITT Tech guaranteed employment misrepresentation noted on page 10, did FSA maintain legal memoranda or other documentation for these findings that indicate to how many potential borrowers and states such claims would apply?

FSA’s BDU maintained one legal memorandum related to misrepresentations of ITT guaranteed employment. The memorandum applied to only the California locations, but did not indicate the number of potential borrowers. FSA’s BDU did not provide documentation for ITT guaranteed employment misrepresentation claims that indicated the number of potential borrowers or the states where they were located.

4. According to your analysis of unique claims that did not fall within one of BDU's seven established categories, "[a]s of January 20, 2017, BDU had identified additional categories of claims warranting further research." According to FSA, how many additional categories of claims had BDU identified?

FSA’s BDU stated that with respect to Corinthian schools, it had started research and analysis for five additional categories. With respect to schools other than Corinthian, FSA was in the processes of gathering and reviewing evidence.

5. The report notes on page 16 that the further research into additional categories of claims was "placed on hold." According to FSA, who initiated the halt to this research?

FSA's BDU stated that in early 2017 the Enforcement Unit was instructed not to continue developing new memoranda on additional categories of claims at the direction of the Acting Under Secretary and the Review Panel.

6. What explanation was provided by FSA in its decision to halt the BDU research into additional categories of claims, if any?

FSA's BDU stated that it had been instructed not to continue developing memoranda on whether additional categories of claims qualify for discharge because the borrower defense policies were being reviewed with the change in administration.

7. On November 14, 2017 at the opening session of the current borrower defense rulemaking, then Acting Under Secretary Jim Manning stated: "The Department is also working to adjudicate pending claims related to other schools and we are making progress on that front. However, I will admit that we're not as close as we are with the Corinthian claims...Once Corinthians adjudications begin our work on other claims will gather momentum." Based on OIG's assessment that additional research into claims was placed on hold, was Mr. Manning's statement of November 14 accurate?

We do not know which "other schools" Mr. Manning was referring to in his statement. We did not analyze data outside of our review's scope of June 2016 through July 2017.

8. On page 21, the report notes that as of September 2017, FSA was testing a claims management tool. Did FSA indicate when development of this tool commenced and when it is expected to be operational?

FSA's BDU did not provide definitive information on when the development of the claims management tool commenced or when it is expected to be fully operational. The tool was in development when we began our review.

9. Does the development of the claims management tool indicate to OIG that FSA was responsive to the need to further refine BDU processes for handling claims?

Per our response above, the claims management tool was in development during the time period of our review, so we did not analyze it. But, with that said, the development of the tool would appear to reflect a recognition by FSA that it needed a better capacity to manage claims.

10. Which political appointees from the Obama Administration that were involved in writing, or received, the legal memorandums referenced in the report did you interview, respectively?

We did not interview political appointees from the previous administration because it was not necessary to achieve the objectives of our review. The objectives were to (1) determine FSA's policies and procedures over its Federal student loan borrower defense loan discharge process, (2) determine the documentation FSA maintains to support its borrower defense loan discharge decisions, and (3) determine the outcomes of FSA's borrower defense loan discharge proceedings. The objectives of our review did not include reviewing the development of the legal memoranda or the decisions made in the memoranda.

11. The current appointees of this Administration have repeatedly framed its borrower defense policies in reference to supposed shortcomings of the prior Administration. For example, again on November 14, 2017, at the opening session of the borrower defense rulemaking, then Acting Under Secretary Jim Manning stated "the Secretary also remains focused on working through pending claims. Unfortunately, she inherited a difficult situation, one where there was inadequate infrastructure in place to properly adjudicate claims." Did OIG consider the intent of Secretary DeVos' request for this review when deciding on the scope and objectives for the review?

No. In keeping with our mission, we independently established the review's objectives and scope, and we conducted the review in accordance with the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency. These standards require us to exercise reasonable care and diligence and to observe the principles of serving the public interest and maintaining the highest degree of integrity, objectivity, and independence in applying professional judgment to all aspects of our work.