To: Under Secretary Ted Mitchell
From: Borrower Defense Unit
Date: October 24, 2016
Re: Recommendation for Everest/WyoTech Borrowers Alleging Transfer of Credit Claims

The Borrower Defense team recommends borrower defense (BD) relief for students who:
(1) enrolled at any Corinthian-operated, nationally accredited Everest campus or at WyoTech's Laramie campus 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. By contrast, regional accreditors accredit public and private, mainly non-profit and degree-granting, two- and four-year institutions. Broadly speaking, credits earned at nationally accredited colleges "are rarely accepted at regionally accredited schools" and have never been generally transferable. 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. 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."

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

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1 Everest schools include Florida Metropolitan University campuses, which Corinthian acquired in 1996 and later rebranded as Everest University.
2 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.
4 Id. p. 2.
6 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.
8 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. \(^9\)

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."\(^{10}\)
- "I was assured when I started that I could transfer my credits to any other school if I chose to do
so."\(^{11}\)
- "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."\(^{12}\)
- "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."\(^{13}\)
- "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."\(^{14}\)
- "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."\(^{15}\)
- "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."\(^{16}\)

\(^{9}\) As discussed below, in Section III(B)(1), footnote 102, the implied representations also constitute actionable material
omissions.

\(^{10}\) BD\#151795

\(^{11}\) BD\#150990

\(^{12}\) BD\#151323

\(^{13}\) BD\#150355

\(^{14}\) BD\#151723

\(^{15}\) BD\#150789

\(^{16}\) BD\#153129

2
• "I asked if I decided to transfer after rec associate's degree would all credits transfer to any college? I was told, an associate's is an associate's no matter where it comes from." 17
• "Brian Walker admissions representative had stated that if I wanted to get a Master's degree from another college that my credits will transfer with no problem as FMU (now Everest) is accredited university." 18
• "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." 19

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 CLASSES I HAD TAKEN THERE, TO BE TRANSFERABLE." 20
• "Before I applied for the loan I was told my credit can be transfer if need when I was attending class I found out that's not true they [sic] are not a accredited school." 21
• "I DID NOT KNOW THAT THE SCHOOL WAS NOT PROPERLY ACCREDITED. CREDIT WERE NOT TRANSFERABLE." 22
• "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." 23
• "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." 24
• "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." 25
• "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." 26

17 BD153757
18 BD150139
19 BD150545
20 BD154282
21 BD153723
22 BD152794
23 BD152222
24 BD150941
25 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." 27

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, 28 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). 29 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. 30 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." 31
- 2000: "I was also told that my credits could transfer to any local college or university that was regionally accredited." 32
- 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." 33
- 2010: "...Also, was told that credits would transfer to any University (not true)." 34

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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26 BD150315  
27 BD152848  
28 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."  
29 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.  
30 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.  
31 BD1617575  
32 BD1600530  
33 BD151723  
34 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.\(^{35}\)

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

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\(^{37}\) 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

\(^{35}\) 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.

\(^{36}\) 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.

\(^{37}\) 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. 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." Similarly, a training manual for admissions representatives attached to the Harkin Report contains call scripts for admissions representatives. One section of the script suggests that representatives tell students who ask that credits "will probably not be transferable," 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."

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, 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. 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..."

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. 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." Another representative, after confirming the school was accredited, refused to answer a prospective student's question about transferability.

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38 Harkin report, Appendix 25, CoCo Document 3.
39 Id. at p. 7
40 Harkin report, Appendix 25, CoCo Document 4
41 Harkin report, Appendix 25, CoCo Document 4, pp. 7-8
42 Harkin report, Appendix 25, CoCo Document 4, p. 14
43 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.
44 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
45 Id.
46 IL AG "Hot Call" table
47 IL AG; 3333182367_3333182298_0eb9a0853f15387993e156
48 "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_13469370afa1b3e210e997bc8
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), 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). 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. Similarly, major systems in Florida, Georgia, Texas, Minnesota, and Massachusetts only generally accept credits from regionally accredited schools.

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; less than one percent of post-secondary institutions specified that accreditation was not a factor in their transfer decisions. 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.” Nationally accredited institutions reported that they “advised students to assume that credits would not transfer to regionally accredited institutions.”

50 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.
51 Transfer Credit Practices, 2015 Edition
52 See “Survey of Two- and Four-Year Schools in Selected States”, Section II(C).
53 GAO-06-22, p. 9
54 GAO-06-22, p. 9
55 Id., p. 10
56 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.\textsuperscript{57} 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.\textsuperscript{58} 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.\textsuperscript{59} 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.”\textsuperscript{60} 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.”\textsuperscript{61}

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,\textsuperscript{62} 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”.\textsuperscript{63} All other reporting institutions either had no official policy or did not normally accept credits from Everest.\textsuperscript{64}

\textsuperscript{58} See “Council for Higher Education Accreditation: Transfer and the Public Interest” (Nov. 2000) available at http://www.cheaa.org/pdf/transfer_state_02.pdf, where, without addressing for-profits specifically, the report 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
\textsuperscript{59} 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).
\textsuperscript{60} https://www.insidehighered.com/news/2005/10/19/transfer
\textsuperscript{61} https://www.insidehighered.com/news/2007/02/26/transfer
\textsuperscript{63} 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”.
\textsuperscript{64} 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. 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. 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.”

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.”
- “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.”
- “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.”
- “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.”

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
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."\(^{73}\)

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.\(^{74}\) 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”\(^{75}\) has standing to bring a claim under the UCL.\(^{75}\) 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.”\(^{76}\) 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”\(^{77}\) 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,\(^{78}\) produced and coordinated marketing and advertising in California,\(^{80}\) and developed and promulgated the policies and training materials for their personnel in California.\(^{81}\) Further, the single

\(^{72}\) BD1603868
\(^{73}\) BD155063
\(^{74}\) 34 C.F.R. § 685.206(c).
\(^{75}\) CAL. BUS. & PROF. CODE § 17204.
\(^{77}\) 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)).
\(^{78}\) CCI Answer CA Amended Complaint ¶9-27
\(^{79}\) 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).
\(^{80}\) Tim Evans Interview, WI AG Suthern Affidavit Ex. 12 (“Evans said that all advertising was done by corporate.”); Mark Sullivan interview, WI AG Sutherline 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 Sutherline Ex. 15 (“Every bit of marketing came out of corporate. Every marketing decision came from corporate.”)
\(^{81}\) WI Educational Approval Board letters to Everest Milwaukee, WI AG Suthelne Affidavit, Ex. 10
incoming call facility for prospective Everest students from throughout the nation was located in California.\(^{82}\)

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.”\(^{83}\)
- Call center representatives “were trained to lie.”\(^{84}\)
- “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.”\(^{85}\)

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].”\(^{86}\) Here, Everest’s misrepresentations regarding the transfer of credits constitute “unlawful” and “fraudulent” business practices under the UCL.\(^{87}\)

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.”\(^{88}\) Thus, if a business practice violates any law, this is per se a UCL violation.\(^{89}\)

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

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\(^{82}\) Interview Report, Ivan Limpin, Former Employee, Corinthian Schools Call Center (Feb. 28, 2013); taken by CA AG Office.

\(^{83}\) Deposition of Scott Lester, Everest Milwaukee Director of Admissions, later President, WI AG, Ex. 15

\(^{84}\) Interview Report, Ivan Limpin, Former Employee, Corinthian Schools Call Center (Feb. 28, 2013); taken by CA AG Office.

\(^{85}\) Letter from Anonymous former Everest employee to ACCSC Commissioner, Ex. 54 of CA AG Motion for Default at CCICA179681

\(^{86}\) 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).

\(^{87}\) 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 § 17200 Practice at 3:212 (2016).

\(^{88}\) Bank of the West v. Superior Court, 2 Cal. 4th 1254, 1265 (1992) (citations omitted).

credits violates the prohibition against deceptive advertising in the Federal Trade Commission Act ("FTC Act").

90 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.91

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.92 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,93 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.94 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.95 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.96

90 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.").


92 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.").

93 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.

94 "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

95 "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

96 "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 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.” The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code. 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. 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. However, for a consumer who was deceived into purchasing a product—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” 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.”

As discussed above, the evidence shows that students relied on Everest’s misrepresentations when they enrolled. Indeed, express or implied claims like those made by Everest about
the transferability of credits are presumptively material.\textsuperscript{107} Moreover, under the UCL, a showing of materiality gives rise to "a presumption, or at least an inference, of reliance."\textsuperscript{108} 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."\textsuperscript{109} 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.\textsuperscript{110} 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.\textsuperscript{111}

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.\textsuperscript{112} 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.\textsuperscript{113}

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.

\textsuperscript{107} 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).

\textsuperscript{108} In re Tobacco II Cases, 46 Cal. 4th at 298.

\textsuperscript{109} See, e.g., Everest Institute Brighton/Chelsea Enrollment Agreement.

\textsuperscript{110} 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.

\textsuperscript{111} 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.

\textsuperscript{112} 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).

\textsuperscript{113} 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.”\textsuperscript{116} 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.”\textsuperscript{115} Corinthian advertised on daytime TV,\textsuperscript{116} 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.\textsuperscript{117} 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.\textsuperscript{118} 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.”\textsuperscript{119} 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.”\textsuperscript{120} At Corinthian, internal documents make clear that recruiters were not trained or expected to advise students,\textsuperscript{121} but to sell the program— to “enroll your brains out.”\textsuperscript{122}

Many Everest students state that they did not choose their own classes\textsuperscript{123} or sometimes even their own program of study, making it even less likely they would see disclosures in course catalogs.\textsuperscript{124} 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

\begin{enumerate}
\item CA AG Quach Decl. Ex 113.
\item Letter from Jack D. Massimino, CEO, Corinthian, to James W. Runcie, Chief Operating Officer, U.S. Office of Federal Student Aid (Nov. 12, 2014).
\item CA AG Quach Decl. Ex 113.
\item CA AG Decl. of Holly Harsh.
\item "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
\item Harkin Report, p. 387.
\item Id.
\item Harkin Report, p. 387.
\item Deposition of Scott Lester, Former Admissions Director of Everest Milwaukee, WI AG, Sutherlin Affidavit Exhibit 15, p. 49
\item "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." BD 150455; “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.” BD 150813
\item "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 the 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
\end{enumerate}
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. 125

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

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

125 "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
127 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.128

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.129

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].130

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."131

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."132 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 Makaefl, 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 program accreditation, and even engaged in an elaborate job placement fraud to maintain its

130 34 C.F.R. § 685.206(c)(2).
132 Fallbrook Hosp. Corp. v. N.L.R.B., 783 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 union's 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. F.C.C., 454 F.3d 329, 334 (D.C. Cir. 2006) (approving the FCC's decision to apply an administrative order retroactively).
accreditation.\textsuperscript{133} 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."\textsuperscript{134} 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.'"\textsuperscript{135} 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."\textsuperscript{136}

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.

\textsuperscript{133} 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 EverestDecatur paid employers to hire its graduates" for short time periods in order to inflate placement rates).

\textsuperscript{134} BD1614100
\textsuperscript{135} BD1602593
\textsuperscript{136} BD151191