



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDERSECRETARY

November 24, 2020

From: Diane Auer Jones, Principal Deputy Under Secretary
To: Office of Management and Budget, Office of Information and Regulatory Affairs
Through: Office of General Counsel, U.S. Department of Education
RE: Borrower Defense Application Portal

Thank you for meeting with us today to resolve the remaining concerns related to the Borrower Defense (BD) application, including the BD PDF application form and the BD Application Portal. As we discussed during our call, FSA will amend the language in both the BD PDF application and the BD Application Portal to make it clear that “urgency to enroll” does not, alone, meet the definition of misrepresentation, but instead may be considered by the Department as evidence supporting the reasonableness of a borrower’s reliance on a misrepresentation in making an enrollment decision. FSA will update the PDF form and the Application Portal by close of business today; however, there could be a brief time lag between the time in which the Application Portal goes “live” and the revised language appears. In the event that a borrower uses either the BD PDF application or BD Application Portal to complete a BD application prior to the appearance of the revised language and the borrower’s application alleges that “urgency to enroll” was the only offense committed by the institution, the BD unit will contact the borrower directly to explain that the borrower needs to complete the application by explaining: 1) the type of misrepresentation that took place, and 2) that the borrower relied upon the alleged high pressure sales tactics in determining whether to enroll. FSA will also review the Standard Operating Procedures of the BD unit attorneys to be sure that “urgency to enroll” allegations have not in the past and will not in the future serve, alone, as the basis for findings of misrepresentation.

In addition, FSA will review the final 2016 and 2019 BD regulations to ensure that the BD unit’s treatment of consolidation loans complies with the applicable regulation(s).

Thank you, again, for the collaborative dialogue today and for your partnership in making sure that borrowers have access to both the BD PDF application and BD Application Portal in a timely manner.

Sincerely,

A handwritten signature in black ink that reads "Diane Auer Jones".

Diane Auer Jones
Principal Deputy Under Secretary
Delegated the Duties of Under Secretary