

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE: : Chapter 7
:
ITT EDUCATIONAL SERVICES, INC., : Case No. 16-07207-JMC-7A
et al., :
Debtors. : Jointly Administered

**DECLARATION OF JULIAN SCHMOKE IN SUPPORT OF THE UNITED STATES’
OBJECTION TO MOTION FOR AN ORDER PURSUANT TO FED. R. BANKR. P. 2004
FOR AN EXAMINATION OF THE DEPARTMENT OF EDUCATION**

I, Julian Schmoke, declare as follows:

1. My name is Dr. Julian Schmoke. I serve as Chief Enforcement Officer of the United States Department of Education (“ED”). I have been in this role since 2017. I have personal knowledge of the matters set forth herein and if called as a witness, I could and would testify competently thereto.
2. As Chief Enforcement Officer, I am familiar with the framework for borrower-defense discharges of student loans, pertinent documentation, and the claim review and decision-making process.
3. I have reviewed and am familiar with the Subpoena for Rule 2004 Examination and the attached Production Requests submitted as part of the Motion of Student Claimants for an Order Pursuant to Fed. R. Bankr. P. 2004 for an Examination of the United States Department of Education (“Subpoena”).
4. I certify that I am duly authorized, am qualified, and have been given authority by ED to make the statements contained in this Declaration regarding the burden that the Subpoena would impose on ED’s Borrower Defense Unit.
5. The Borrower Defense Unit is a group within ED that reviews, evaluates, and processes individual borrower-defense discharge applications. Although the Subpoena would also impact other divisions of ED, including Business Operations and Program Compliance, this Declaration only addresses the Subpoena’s impact on the Borrower Defense Unit.

6. As of July 9, 2018, over 165,000 borrower-defense claims have been filed with ED, of which over 14,000 are from students who attended one of the schools for which ITT Technical Institute is the parent company. The volume of pending borrower-defense claims puts a great strain on the personnel available to review such claims.
7. Such personnel resources cannot be readily expanded through either direct hiring or contractor procurement to accommodate compliance with the Subpoena. Instead, the tasks necessary to comply with the Subpoena would likely have to be performed by the personnel currently assigned to the evaluation and adjudication of borrower-defense claims.
8. The Subpoena would have a significant detrimental effect on ED's ability to process borrower-defense claims. The same staff who are working on the various processes for adjudicating borrower-defense claims would have to be diverted to the task of complying with the Subpoena for an extended period of time. New approvals of borrower-defense claims would be significantly delayed as a result of this Subpoena.
9. For example, Production Request No. 8 seeks, among other things, "[a]ll documents . . . pertaining to any alleged wrongdoing . . . by ITT." Many of the tens of thousands of documents and files that are potentially responsive to this request have not been reviewed yet. Therefore, the Borrower Defense staff would have to stop their work related to borrower-defense claims to review the records, determine whether the documents are responsive, and further assess whether the records are covered by a privilege or confidentiality agreement as well as redact or otherwise protect large amounts of personally-identifiable information. Should the Borrower Defense Unit be required to respond to this request, the claim-related work of the Borrower Defense Unit staff would have to stop for at least several weeks, delaying the processing of the borrower-defense claims by the corresponding amount of time.
10. Production Request No. 14 requests "[a]ll documents in the Department's possession . . . which address eligibility ... for Borrower Defense Discharge." This request apparently seeks to obtain the vast majority of records generated by the Borrower Defense Unit. This request is extremely burdensome for the same reasons as those referenced with respect to Request No. 8. Should the Borrower Defense Unit be required to respond to this request, the claim-related work of the Borrower Defense Unit staff would have to stop for at least several weeks.
11. Production Request No. 22 seeks all documents "evidencing" or "supporting" the "granting [of] Borrower Defense Applications" of ITT students. Because the Borrower Defense Unit has not yet completed the review of the tens of thousands of records and

files that potentially fit that description, the Borrower Defense Unit would need to review of ITT students' claims first to respond to the Request. This, in turn, would require that all of the Borrower Defense Unit's resources be dedicated to the review of ITT-related claims, to the detriment of the tens of thousands of applications filed by borrowers from schools other than ITT, many of which applications were filed long before most ITT-related applications. Further, the request has all the same burdens as those noted with respect to Request No. 8.

12. Given the volume of claims before ED and the diversion of personnel resources that would be required to respond to the Subpoena, it is likely that compliance with the Subpoena would impede ED's processing of Borrower Defense claims for a substantial period of time and would significantly increase the amount of time required to review and process such claims.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of July, 2018 in Washington, DC.


Dr. Julian Schmoke

CERTIFICATE OF SERVICE

I certify that on July 9, 2018 a true and correct copy of the foregoing Declaration of Julian Schmoke in Support of the United States' Objection to Motion for an Order Pursuant to Fed. R. Bankr. P. 2004 for an Examination of the Department of Education was served on all entities who receive notice via the Court's Electronic Filing System. In addition, a true and correct copy of the objection was sent to the counsel listed below by electronic mail.

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