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August 18, 2015

The Honorable Arne Duncan
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Mr. Joseph A. Smith
Special Master
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: Relief to Student Borrowers

Dear Secretary Duncan and Special Master Smith:

We, the undersigned Attorneys General of Massachusetts, California, Connecticut, Illinois, Kentucky, Maryland, New Mexico, New York, Oregon, Pennsylvania, and Washington, are pleased that the discharge process for federal student loans to Corinthian students is now getting under way. The appointment of a Special Master to review the debts of students who attended Corinthian schools and establish state law discharge procedures is an important first step, and we agree with the Department's aim "to make the process of forgiving loans efficient, transparent, and fair—and to ensure students receive every penny of relief they are entitled to under law."[1] As the Department and the Special Master work towards creating a structure for handling discharge applications, we ask that the state Attorneys General be included in the planning process.

We believe our experience puts us in a unique position to provide the Department with insight on these matters. The state Attorneys General are experts in the state trade practices laws[2] that must be applied in considering state law based defenses to repayment, and many of

[1] http://www.ed.gov/news/press-releases/education-department-appoints-special-master-inform-debt-relief-process (June 25, 2015 public statement by Under Secretary Ted Mitchell).

[2] These statutes generally make unlawful any unfair or deceptive trade practices as defined by state law. *See, e.g.*, Mass. Gen. Law c. 93A, § 2 (". . . unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."); 815 Ill. Comp. Stat. 505/2 (". . .unfair or deceptive acts or practices . . . in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby."). Indeed, many trade practices statutes look to the Attorneys General not only as the primary enforcers of their terms, but also as the regulators who clarify the meaning of their statutory provisions. *See, e.g.*, Mass. Gen. Law c. 93A, §§ 2, 4.

our offices have investigated and developed evidence of unlawful acts perpetrated by schools against students in our states. We have also already handled numerous consumer complaints regarding Corinthian and other for-profit schools, and have assisted students in attempting to reduce their student loan debt stemming from their attendance at these institutions. More generally, we have significant experience overseeing complex claims processes as a result of the numerous consumer protection settlements we implement every year. Many of these settlements, which extend into banking, insurance, and securities arenas, require audits or claims verification as part of a consumer relief process. Based on this extensive experience, we know what works. Therefore, the Department should seriously consider the concerns we raise as it plans how to carry out state law based loan discharge reviews.

State Law Discharge Process for Corinthian Borrowers

We raise four main concerns about the state law discharge process: (i) easing the burden on students to achieve relief; (ii) allowing for state Attorneys General or other governmental entities to make showings in support of student claims of state law violations; (iii) creating efficient mechanisms for loan discharges of student cohorts (rather than simply on an individual basis); and (iv) ensuring complete relief to students, irrespective of the status of their loans. We are hopeful that the Department and Special Master will incorporate these requests into the discharge process for Corinthian borrowers and other programs set up for students harmed by other for-profit schools in the future.

1. ***Proof Required of Students***: In demonstrating state law violations, the student borrowers should not be subjected to an onerous or unduly burdensome process. Instead, consumers should be able to apply for a discharge of their loans based on school violations of state law by submitting a signed declaration that sets forth how the school deceptively or unfairly induced them to enroll or other unlawful acts by the school. As a general matter, this will likely focus on violations of state trade practices statutes, which make the perpetration of unfair or deceptive marketing techniques in trade or commerce illegal under state law. It may, however, also involve other state law violations including state licensing and certification requirements.[3] Any of these violations, if related to the student's decision to incur Title IV debt or the utility of the education obtained using Title IV loans, should be sufficient to trigger the state law defense against repayment.

Students need a simple process, so that those unfamiliar with the specifics of contract, tort, or unfair practices statutes will still be able to submit their claims. It should be sufficient for students to recount the circumstances of the state law violations, such as school misstatements regarding placement rates, transferability of credits, the nature of the educational programs

[3] Violations of these other statutes may also be deemed violations of the trade practices statutes. *See, e.g.*, 940 C.M.R. 3.16(3) (an act violates the unfair trade practices law if "it fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection"); Mass. Gen. Law c. 255, § 13K (violation of state occupational school refund statute deemed to be a violation of state unfair trade practices act).

offered, or other matters that were material to their decisions to enroll. The Department should not demand additional materials from the students, aside from factual information regarding when they enrolled and whether they incurred Title IV loans while attending their schools. It would of course be appropriate to invite students to provide additional supportive materials, if they have them, but this should not be a requirement. Moreover, those few borrowers who have legal representation of their own need a process where their own legal representatives can have access to their submissions and advocate directly on behalf of the borrowers with the Department.

2. ***Participation of State Attorneys General***: The Department should, as part of the review process, invite interested Attorneys General to provide additional supporting materials regarding the school's unfair or deceptive practices.[4] While many consumers have been victimized by Corinthian and other for-profit schools, the students are often in a poor position to prove that the schools committed unfair or deceptive practices. For instance, students may not have a way to contest false placement rates proffered by the institution. Attorneys General, based on their investigations, may have findings or evidence that provide such additional support. As such, they should be an integral part of this process.

3. ***Discharge of Student Cohorts***: The Department should also provide a process by which the loans of entire cohorts of students may be discharged as a group. These applications could be made by, among others, the law enforcement agencies of the federal government or the states, including the state Attorneys General or the state licensing authorities. In such proceedings, the Department would accept findings or evidence from the government entities and consider those in determining whether the school's practices taint the entire cohort of loans. Under these circumstances, we believe the Department should rely on conclusions and investigative results reached by state Attorneys General regarding state law violations and provide discharges without requiring any individual student to make a submission. To require an individual student to replicate the work of state law enforcement officials would be inefficient, unduly burdensome, and unfair to the students involved.

4. ***Scope of Relief to Students***: We urge the Department to issue clear guidance indicating that: (i) state law discharges are available for the Federal Family Education Loan Program ("FFELP") and the PLUS program; (ii) students may recover any amounts already paid on Title IV loans; and (iii) students who consolidate their debts retain their discharge eligibility. Borrowers, whether students or their parents, who have been unlawfully mistreated by their school and lured into incurring federal loan debt should not be abandoned by the Department of Education. Whether their loans are FFELP loans, Direct loans, PLUS loans, or loans that have been consolidated into new debt, the students' situations are very similar. Under state law, they have been the victims of unfair and illegal practices and they should not be left with debt stemming from these practices.

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[4] Some state Attorneys General may be limited in their ability to disclose materials obtained via Civil Investigative Demand or other compulsory pre-litigation process because of state law restrictions. *See, e.g.*, Wash. Rev. Code section 19.86.110(7) (placing limitations on disclosure of CID materials absent a court order and requiring confidential treatment of materials if turned over to certain other enforcement agencies). We can help design the discharge process so it does not unnecessarily cabin the flow of information because of state law requirements.

Immediate Relief to Corinthian Borrowers

In addition to improving the process for state law discharges, we ask that the Department ensure immediate relief to Corinthian borrowers, beginning by clarifying the extent of collection and other debt relief available to Corinthian borrowers while the Special Master moves forward. Although the Department has previously noted that forbearance is available to all Corinthian students who make a request, the continual accrual of interest makes this an inadequate interim remedy even for the students who know to seek it. Similarly, the federal government's recent position in the Corinthian bankruptcy case that "the United States will cease judicial collection activities arising from a default" appears to apply only in the context of collections on Direct loans that were delegated to a U.S. Attorney, and does not stop the accrual of interest. Given the potential harm facing all former Corinthian borrowers, a different approach is needed. The Department should provide the following relief to Corinthian borrowers immediately: (i) cease all collection activity; (ii) stop charging fees and accrual of interest on the loans; and (iii) end any tax refund intercepts, wage garnishments, and federal benefit offsets until the Special Master has completed his task.

Further, the Department must address problems concerning the implementation of the closed school discharge program as it relates to Corinthian loans. Under the Department's regulations, students will retain eligibility for a closed school discharge so long as they "did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school." 34 C.F.R. 685.214 (emphasis added). However, the Department's School Closure Discharge Application suggests that students lose eligibility if they "are in the process of completing the same or a comparable program of study."[5] The difference in the language is critical—students considering completing the application are left with the impression that they are ineligible unless they have already abandoned their studies. Moreover, some students may believe that if they transfer credits or attend even a single teach-out class, they are barred from obtaining a closed school discharge. To add further confusion, the Department's application and its related website materials provide little guidance about what constitutes a "comparable program," and thus what other types of education a student may pursue without putting their discharge rights in jeopardy. The Department needs to provide clarity on these issues, adjust its application form to be consistent with the regulations, and improve other informational materials so that students are empowered to make informed choices.

We stand ready to assist the Department and the Special Master in working through these challenging issues. Federal loan programs exist for students and the scale of our investment must be matched by an equal commitment to oversight, accountability, and fairness. After years of continued predatory and unlawful conduct by participants in the for-profit education industry, it is important that the Department provide a clear and straightforward way for students to invoke defenses to repayment based on school violations of state law. We are eager to begin discussions

[5] http://www.ifap.ed.gov/dpcletters/attachments/GEN1418AttachLoanDischargeAppSchoolClosure.pdf (emphasis added).

with the Special Master on the structure of the discharge program and look forward to forming a new partnership on behalf of our students.

Sincerely,

Maura Healey
Massachusetts Attorney General

Hector Balderas
New Mexico Attorney General

Kamala D. Harris
California Attorney General

Eric T. Schneiderman
New York Attorney General

George Jepsen
Connecticut Attorney General

Ellen Rosenblum
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