OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

Via Email

June 5, 2017

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

Re: Borrower Defense to Repayment Discharge

Dear Secretary DeVos:

We, the undersigned Attorneys General of Illinois, Washington, Massachusetts, California, Connecticut, Delaware, Hawaii, Iowa, Kentucky, Maryland, Maine, Minnesota, Mississippi, New Mexico, New York, Oregon, Pennsylvania, Virginia, and the District of Columbia, as well as the Executive Director of the Office of Consumer Protection of Hawaii, write to express our concern with extended delays in processing borrower defense to repayment applications and attestations. In addition, we write to inquire about the Department's past actions, future plans and timeframe for alleviating those delays. We are particularly concerned with delays where the U.S. Department of Education (the "Department") has already (1) made findings of fraud by Corinthian Colleges, Inc. ("Corinthian") but has not yet processed attestations submitted by affected borrowers, or (2) notified borrowers that their claim for discharge under the borrower defense to repayment rule has been approved, but has not yet actually discharged the loan. In both cases, discharge of the loans is now ministerial, and we are concerned about the consequences to borrowers of extended delays. Given the inordinate holdups in processing individual borrower defense attestations from former Corinthian students who were in cohorts where the Department has already found fraud ("Designated Fraud Cohorts"), [1] we ask the Department to consider an alternative process to grant swift automatic group discharge to these students. At a minimum, we urge expeditious processing of the attestation forms from former Corinthian students in the Designated Fraud Cohorts. Further, the Department should immediately discharge the loans of borrowers who received emails stating that a discharge had

[1] https://www.ed.gov/news/press-releases/us-department-education-announces-path-debt-relief-students-91-additional-corinthian-campuses

been approved, [2] consistent with your statement before a House appropriations subcommittee on May 24, 2017.

Federal law provides that "the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law." 34 C.F.R. § 685.206(c)(1). This rule, which is also contained in federal loan promissory notes, reflects the common-sense conclusion that defrauded students should not be required to pay the federal government when their schools engaged in unfair or deceptive acts or practices to induce them to enroll.

Corinthian declared bankruptcy and shut down in 2015 amidst multiple federal and state investigations into widespread fraud at its campuses. In November 2015, the Department announced findings from its own multi-year investigation, which was conducted jointly with the California Attorney General, including that Corinthian systematically misrepresented its job placement rates at Heald, Everest, and Wyotech campuses in California,[3] taking advantage of students seeking to better themselves and provide for their families as a matter of course. On March 25, 2016, the Department announced additional findings, including that Corinthian misrepresented its job placement numbers for 71 additional Everest and Wyotech campuses in 23 states, and that these misrepresentations were made systematically to students who enrolled during specific time periods.[4] The Department later made findings for even more Corinthian programs, bringing the number of affected campuses to at least 100. These findings implicated numerous online programs, and students in all 50 states were defrauded. For too many of Corinthian's former students, the promised jobs never materialized, but the student debt remains.

Given that the Department has made findings of pervasive fraud for certain Corinthian programs, we urge the Department to consider abandoning review of individual discharge applications in favor of swift automatic group discharges for all Corinthian borrowers in the Designated Fraud Cohorts. Such a move is not without precedent. In January 2017, acting on a group discharge application submitted by the Massachusetts Attorney General's office, the Department announced automatic group discharge for all students who attended the American Career Institute in Massachusetts.[5] Much like Corinthian, the American Career Institute was charged with misrepresenting its job placement rates.

If the Department is unwilling to provide group discharge, it should rapidly process loan discharges through the regime already in place – a streamlined federal student loan discharge process where students within the Designated Fraud Cohorts have loans discharged and payments refunded after submitting an attestation form. The Department has already approved

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[2] "[The Department] has already informed the vast majority of borrowers who have submitted claims that have been approved, but not yet discharged, of their approval status. Over 23,000 have already received an email notification. These borrowers can expect to receive full discharge relief within the coming weeks." https://www.ed.gov/news/press-releases/american-career-institute-borrowers-receive-automatic-group-relief-federal-student-loans

[3] https://www.ed.gov/news/press-releases/department-education-and-attorney-general-kamala-harris-announce-findings-investigation-wyotech-and-everest-programs

[4] https://www2.ed.gov/documents/press-releases/report-special-master-borrower-defense-3.pdf

[5] https://www.ed.gov/news/press-releases/american-career-institute-borrowers-receive-automatic-group-relief-federal-student-loans

discharges for over 27,000 borrowers who applied through this streamlined process.[6] Additional applications await review, and we expect that queue to grow.

This spring, a bipartisan group of 47 state attorneys general across the country is collaborating to inform more than 100,000 former Corinthian students in the Designated Fraud Cohorts that they are eligible for streamlined discharge based on the Department's findings. That notification effort is ongoing and was purposefully staggered so as not to inundate the Department with an unmanageable number of discharge requests at one time. As a result, some states have not yet commenced an effort to notify eligible students but expect to do so within the next few weeks. Nevertheless, Corinthian misled each of these students. They have been either making payments on federal student loans that were originated based on Corinthian's fraud, or have suffered the credit-crushing consequences of delinquency and default, including garnishment of wages, tax refunds, and social security or veteran benefits. They deserve relief, and we urge the Department to stop certifying these borrowers' debts as enforceable for purposes of the Treasury Offset Program or otherwise engage in involuntary collection against these borrowers while continuing to process these students' attestations as rapidly as practicable.

Unfortunately, we have received reports indicating that review and approval of attestations has slowed or halted. Students have reported extensive delays to our offices, with some students nearing or past the end of the 12-month forbearance/collection stoppage that the Department offers upon receipt of a borrower defense application.[7] We believe that the Department needs to do everything it can to eliminate these long delays moving forward and to extend forbearance and collection stoppage beyond 12 months for any student nearing that deadline.

Like the Department, our offices continue to receive calls from borrowers who are seeking to determine when their discharges will be processed. We are requesting that the Department provide us with information on what has been done to review these attestations, what the plan is to alleviate the backlog of attestations moving forward, and a timeframe for providing students with relief. Ultimately, as with the 27,000 former Corinthian students in these cohorts already granted relief, the Department must grant discharges where warranted by its findings. Relieving these hard-working Americans of their fraud-induced student debt will free them to participate more fully in their local economies, or even continue their educations with reputable schools.

On January 13, 2017, the Department made the most recent of its periodic announcements regarding the progress it had made on borrower defense applications, as it has done since September 2015. In the January announcement, the Department stated that it had notified 23,000 student borrowers via email that their loan forgiveness applications had been approved and that "forgiveness should be completed within the next 60-120 days."[8] It has been more than 120 days since the Department's announcement, and many of these loans have not been discharged. We urge the Department to discharge these loans, consistent with your statements before a House appropriations subcommittee in May, and to do so swiftly. There are already findings that these

[6] https://www.ed.gov/news/press-releases/american-career-institute-borrowers-receive-automatic-group-relief-federal-student-loans; https://www2.ed.gov/documents/press-releases/borrower-defense-report.pdf
[7] https://studentaid.ed.gov/sa/about/announcements/corinthian#forbearance-stopped-collections.
[8] https://www2.ed.gov/documents/press-releases/approved-borrower-defense.pdf

student borrowers have been defrauded, and every day that passes causes them further harm. The Department should act immediately to finalize the discharge of these loans.

We urge you to move forward as expeditiously as practicable to (1) process attestation forms for former Corinthian students in Designated Fraud Cohorts, and (2) finalize the discharge of loans where forgiveness has already been approved. Please provide our offices with information on what the Department has done to rectify these loan discharge issues, what the Department will do to rectify them moving forward, and a timeframe for discharge of the loans and refund of payments.

Sincerely,

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