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May 5, 2015

SENT VIA EMAIL

The Honorable Arne Duncan
Secretary of Education
U.S. Department of Education

Re: Debt Relief for Corinthian Colleges Borrowers

Dear Secretary Duncan:

We are concerned about the lack of clear information regarding debt relief for borrowers who attended Corinthian Colleges. To help address this problem, we understand that the Department is in the process of creating a system for borrowers to raise defense to repayment (DTR) claims. While this is critical, it is also important to emphasize the other more accessible, fair and efficient relief options that should be offered to these borrowers.

These other options, including the Department's discretionary authority to forgive student loan debts in the Higher Education Act (HEA) and Federal Claims Collection Act, are most appropriate in this urgent Corinthian situation. We summarize these options in the chart and materials in Attachment A.

There will certainly be instances where borrowers who attended other unscrupulous schools do not qualify for a statutory discharge. These borrowers should have access to a fair and accessible DTR process. The Corinthian situation, however, is unique due to the breadth and consistency of state and federal government findings of wrongdoing. In these circumstances, it is not appropriate or efficient to require each individual to submit additional evidence to "prove" his or her claim.

It is short-sighted to rush to create a DTR process, especially if this leads to a process that is too burdensome for most borrowers to use and obtain relief. We urge the Department to instead use its discretionary compromise authority to provide broad relief for Corinthian borrowers who do not otherwise qualify for statutory discharges.

For non-Corinthian borrowers, the Department should also act soon to create a fair and efficient DTR process, but this should be done in an open and transparent manner. The process should be consistent with the underlying purpose of the HEA to facilitate equal access to affordable quality education, and provide broad debt relief for borrowers who were subjected to illegal or deceptive practices.

Secretary Duncan

May 5, 2015

Page 2

In the meantime, we are very concerned that in some cases servicers and FSA are denying DTR claims on the basis that no such DTR relief exists. We have included two letters as Attachment B, one from FSA and one from Navient, each denying a borrower's comprehensive application for DTR relief. These borrowers are clients of New York Legal Assistance Group.

While other debt relief options already have existing processes, such as statutory discharges, we are also concerned that servicers are providing inaccurate information to borrowers. For example, one borrower told a California legal aid office that although she had completed her program at Corinthian in early April, Navient told her that she was eligible for discharge. Navient explained that all borrowers who were enrolled within 120 days prior to closure were eligible, which is clearly incorrect.

We are also starting to receive referrals from borrowers who tell us that their servicers are advising them to contact the National Consumer Law Center with questions about possible closed school discharges or other relief. This is a huge problem given our limited resources and inability to provide individualized legal advice. It is also outrageous given that it is the servicers' duty to counsel customers on all options. We have self-help information on our web site and we also represent a limited number of low-income borrowers, but this does not in any way replace the servicers' responsibility to provide accurate information to borrowers on the full range of possible relief options.

Thank you for considering our concerns. We hope the Department will use its discretionary authority to provide badly needed debt relief to Corinthian borrowers. Please contact us if you would like to discuss these issues further.

Sincerely,



DEANNE LOONIN



ROBYN SMITH

Attachment A

OPTIONS WITH EXISTING APPLICATION AND APPROVAL PROCESS

Closed School

Full Discharge

Authority: 20 USC § 1087(c)
34 C.F.R. § 685.214

OR

False Certification

Full Discharge (Different categories)

Authority: 20 USC §
1087(c) 34 C.F.R. § 685.215

OR

Unpaid Refund

Full or Partial Discharge

Authority: 20 USC § 1087(c)
34 C.F.R. § 685.216

LIMITED ELIGIBILITY: The Department's regulations and guidance restrict these debt relief options to borrowers who meet limited eligibility criteria.

NOTICE: The Department should send notice to borrowers who are potentially eligible for these discharges, including borrowers who attended schools many years ago.

Borrowers who do not qualify must instead seek relief through the following options:

OPTIONS WITH NO EXISTING APPLICATION AND APPROVAL PROCESS

Discretionary Compromise and Settlement

Full or Partial Discharge

Authority: 20 USC § 1082(a) (6) (HEA)
and 34 CFR § 30.70(h) OR 31 USC §
3711(a)(2) (Federal Claims Collection
Act)

Limits: Rarely Used

Defense to Repayment Based on Acts or Omissions of the School

Full or Partial Discharge

Authority: 20 USC § 1087e(h);
34 C.F.R. § 685.206(c); MPN

Limits: Not clear how to get this relief

*Borrowers may be eligible for more than one of these options. There may also be state programs providing relief in some states and borrowers may litigate claims in court and seek relief.

These two options will be the only federal relief available for borrowers harmed by predatory schools and who do not qualify for other discharges:

1. COMPROMISE AND SETTLEMENT OF DEBTS: When government investigations have revealed that a school has engaged in illegal, unfair or deceptive practices in violation of state or federal laws, the Secretary can and should use his broad compromise and settlement authority to cancel loans of harmed students. There are two alternative statutes that provide the Secretary with this authority:

- The Higher Education Act grants the Secretary broad authority to “compromise, waive or release any right, claim, or demand, however acquired...” 20 U.S.C. § 1082(a)(6). The regulations further authorize the Secretary to “compromise a [student loan] debt, or suspend or terminate collection of a debt, in any amount...” 34 C.F.R. § 30.70(h); **OR**
- The Federal Claims Collection Act allows the Secretary to compromise and settle claims of up to \$100,000 (excluding interest) “or such higher amount as the Attorney General may . . . prescribe . . .” 31 U.S.C. § 3711(a)(2). The vast majority of federal loans to Corinthian students should be under \$100,000. The Secretary could also seek the Department of Justice’s permission to cancel higher value debts.

When the Department and/or other government agencies, such as state attorneys general, have determined that a school has engaged in illegal practices and harmed many students, the Department should automatically cancel the loans of all borrowers who the government agencies conclude were likely harmed.

2. DEFENSE TO REPAYMENT (DTR): Borrowers may assert, as a defense to loan repayment, claims they have against the school based on its misconduct. The Department should create a DTR process for cases that lack any government investigative findings that a school has violated state or federal law. The process should include simple forms that allow borrowers to submit evidence to prove their claims. To avoid imposing high evidentiary burdens impossible for borrowers to meet, the Department should accept a borrower’s testimony as sufficient evidence to establish a claim. These claims should be granted unless the Department has evidence that specifically contradicts the borrower’s testimony or other evidence.

RECOMMENDATIONS FOR CORINTHIAN STUDENTS

Given the extensive government findings of Corinthian’s illegal and deceptive acts over the years, it is essential that the Department create a process that uses these findings and does not require individual borrowers to “prove” individual claims. Among other problems, such a process would be unnecessary, inefficient, and complicated, likely requiring the borrower to obtain assistance of an attorney familiar with the intricacies of state law. Although many Corinthian borrowers have submitted petitions requesting “defense to repayment” relief, the Department should instead use the compromise authority (#1 above) to resolve these petitions.

Regardless of which option a borrower uses, the process must be fair, accessible, transparent and efficient. This means at a minimum creating a process that provides complete debt relief without placing impossible burdens on borrowers. The government must avoid creating a case-by-case process with burdensome evidentiary standards whenever there are government agency findings of illegal practices. This will also be less expensive for taxpayers.

Attachment B



April 10, 2015

Mr. Jason Glick
New York Legal Assistance Group
7 Hanover Square
Floor 18
New York, NY 10004-4027

Debt No.: [REDACTED]

Account No.: [REDACTED]

Dear Mr. Glick:

Thank you for your correspondence concerning Ms. [REDACTED]'s student loan account with the U.S. Department of Education, Federal Student Aid.

Mr. [REDACTED] believes that she should not be held responsible for repaying this debt. Most schools that participate in the student aid programs must be accredited by a nationally recognized accrediting agency and must be legally authorized by their state licensing agencies to provide instruction. It is the school's accrediting agency that is responsible for evaluating the school's curriculum, admissions standards, and administrative practices, not the Department. The Department uses specific legislative and regulatory criteria to evaluate only whether a school is capable of administering the Department's student aid programs. In the event of dissatisfaction with any part of the educational process, students should seek redress through the available avenues such as the accrediting association or state agency that grants licenses to schools.

We regret that the school Ms. [REDACTED] attended did not provide the job placement services promised at the time of enrollment. However, Ms. [REDACTED]'s enrollment contract with the school is distinct from and separate from the loan contracts (promissory notes). The federal government did not guarantee Ms. [REDACTED]'s enrollment contract. Misrepresentations by the school regarding the school's educational program or its financial or administrative capability, including the school's placement services or the quality of the school's facilities, faculty, or equipment do not relieve Ms. [REDACTED] of the obligation to repay funds advanced by the lender on the student loans. Because the defaulted loans in question are supported by the promissory notes Ms. [REDACTED] signed, they are legally binding. Ms. [REDACTED] is responsible for repayment of this debt.

Ms. [REDACTED] states that this debt has had an adverse effect on her credit report. Congress requires that delinquent and defaulted loans borrowed under the student loan programs administered by the Department be reported to national credit bureaus. The length of time a notation report remains on a borrower's record depends on the credit bureau's policy and applicable laws. Ms. [REDACTED] should contact the appropriate credit bureau for an explanation of its policy with regard to her credit record.

Ms. [REDACTED]'s financial situation makes it difficult for her to repay this debt. The legislation for the loan programs administered by the Department does not provide for a borrower to receive cancellation or reduction of his or her loan because of financial hardship.

Please note that although Ms. [REDACTED] has been making regular payments, she has not established a formal repayment agreement. If Ms. [REDACTED] is not making payments in accordance with an approved repayment plan, she may be subject to enforced collection actions including wage garnishment and lawsuit.

FMS Investment Corporation is currently administering Ms. [REDACTED]'s account with the Department. This agency is responsible for collecting this debt. For further information regarding her account and her repayment options, Ms. [REDACTED] should contact FMS Investment Corporation at 1-877-291-8405.

For more information, Ms. [REDACTED] may also visit our Web site at www.myeddebt.com.

We hope this information will be helpful to you.

Sincerely,

Default Resolution Group
Servicing Center

Office of the Customer Advocate
PO Box 4200
Wilkes-Barre, PA 18773-4200

April 24, 2015

New York Legal Assistance Group
Attn: Jason Glick
7 Hanover Square
New York, NY 10004

**RE: Ms. [REDACTED]
Student Loan Account # [REDACTED]**

Dear Mr. Glick:

Thank you for your recent letter on behalf of Ms. [REDACTED] with her concerns regarding her student loan account. I hope you find the following information helpful.

While Navient truly empathizes with Ms. [REDACTED]'s situation, we are unable to forgive the balance on Ms. [REDACTED]'s Federal Stafford Loans. Regulations governing the Federal Family Education Loan Program only provide for forgiveness of a student loan in the cases of death, total and permanent disability, and in some cases of school closure. The student loan payment and collection process is governed exclusively by the Higher Education Act and specifically preempts state laws that interfere with its purpose of requiring borrowers to repay their student loans in full.

Navient believes in a three-step process for securing funding needs for college. First, students should take advantage of scholarships, grants, and other sources of free money. Second, students should exhaust their options for federal student loans. Finally, students should evaluate private student loans to fill in any remaining gaps in their educational funding needs. We are not able to respond to any information or guidance provided by a customer's school, financial aid advisor, or other financial advisor. Ms. [REDACTED] will need to contact her state licensing or accrediting agencies for further assistance.

To assist customers with loan repayment, there are several alternatives available, including deferment, forbearance, and repayment options. These are listed below.

Deferment:

A deferment is a temporary suspension of payment. Customers must meet certain criteria, as defined by federal regulations, to be eligible for deferment. Available types of deferment include In School, Unemployment, and Hardship. During deferment, the federal government pays accrued interest on "subsidized" loans; if they are "unsubsidized" loans, interest is not paid by the federal government. Unpaid unsubsidized interest may be capitalized (added to the principal balance) at the end of a deferment. Depending on the year the loans were disbursed, other deferments may be available.

April 24, 2015

Page 2

Forbearance:

Forbearance allows customers to temporarily suspend payments. During this time, interest on the loans continues to accrue. If unpaid, this interest may be capitalized. Capitalized interest will result in an increase in the principal balance. Customers can apply for additional periods of forbearance, up to a maximum of five years.

Student Loan Debt Burden Forbearance:

A Student Loan Debt Burden Forbearance may be granted if a customer is currently obligated to make payments on Title IV loans and the amount of those payments each month is equal to or greater than 20 percent of the customer's gross monthly income. Proof of income is required.

Repayment Options:

Grad Choice: Graduated repayment options let customers make temporary reduced payments. This program allows for reduced payments for up to four years, after which standard payments of principal and interest are required. Ms. [REDACTED] is currently enrolled in this option.

Extended Repayment Account: Extended Repayment allows customers to extend the repayment term up to 25 years. The payment amount is recalculated and reduced based on the extended repayment term. Customers may be eligible to select Grad Choice with Extended Repayment.

Income-Sensitive Repayment (ISR): This option is based on payment of a percentage of the customer's gross monthly income. Specifically, customers may designate between 4 and 25 percent of their gross monthly income from employment and other sources. Customers can make income-sensitive payments for up to five years. Proof of income and annual recertification are required.

Income-Based Repayment (IBR): Eligibility for IBR is determined by the customer's adjusted gross income and family size. This information, along with the Poverty Guidelines, is used in a federal formula to determine the monthly payment. Proof of income is required, and customers need to recertify every year. After 25 years, if the entire loan balance is not repaid, the customer may be eligible for loan forgiveness.

I am sorry this is not the outcome you were seeking. You're welcome to call me directly at 888-545-4199, x889088, with any questions you may have concerning this issue.

Sincerely,



Jessica B. Paltanavich
Office of the Customer Advocate
Navient