From: Persis Yu
Subject: Re: [EXTERNAL] Re: ED Negotiated Rulemaking - Contact Information
To: Christina Tangalakis
Cc: Gonzalez, Noelia; Shaffner, Will - x3430; Mack Kayla; hperfetti@msche.org; mccomis@accsc.org; asicgo@fullerton.edu; (b)(6) Rajeev.darolia@uky.edu; oconnell@vsac.org; alyssa.dobson@sru.edu; dbarkowitz@valenciacollege.edu; dorimewilliamsm@missouri.edu; rachelle_feldman@unc.edu; (b)(6) stanley@prisontopro.org; lilly@thearc.org; jwhitelaw@declasi.org; jrovenger@lasclev.org; seventeen@wileyc.edu; m.sabouneh@snhu.edu; mctier@wustl.edu; ccolvin@south.edu; jessica.barry@themodern.edu; heather@askheatherjarvis.com; erica@dca.njoag.gov; joseph.sanders@ilag.gov; dtandberg@sheeo.org; suzanne.martindale@dfpi.ca.gov; (b)(6) jobryan@uupmail.org; rayala13938@swtjc.edu; edevito@vfw.org; justin.hauschild@studentveterans.org; Hong, Jennifer; Wilson, Amy; Totonchi Emil; Roberts Brady; Jeffries Cynthia J.; Gomez, Vanessa; Prince, Scott; Weisman, Annmarie
Sent: October 9, 2021 9:38 AM (UTC-04:00)

Thanks for getting this started Will. I think a google doc is a good idea. My email is pyu@nclc.org and my phone number is (b)(6)

Best,
Persis

On Sat, Oct 9, 2021 at 1:48 AM Christina Tangalakis <ctangalakis@glendale.edu> wrote:

> Good evening – My email is ctangalakis@glendale.edu and my phone is (b)(6) Get some rest…
>
> GLENDALE COMMUNITY COLLEGE
>
> **Christina Tangalakis, Ed.D., FAAC®**
>
> Associate Dean
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> Financial Aid Office
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> 2021-2022 NASFAA CFAA Commission Chair-elect
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> Phone: (818) 240-1000, Ext. 5429
>
> www.glendale.edu/FA
>
> ---
>
> **From:** Gonzalez, Noelia <ngonzalez@calstate.edu>
> **Date:** Friday, October 8, 2021 at 7:55 PM
> **To:** Shaffner, Will - x3430 <wills@MOHELA.com>, 'Mack Kayla' <kmack@fmcs.gov>, hperfetti@msche.org <hperfetti@msche.org>, mccomis@accsc.org <mccomis@accsc.org>, asicgo@fullerton.edu <asicgo@fullerton.edu>, (b)(6) <(b)(6)>, Rajeev.darolia@uky.edu <Rajeev.darolia@uky.edu>, oconnell@vsac.org <oconnell@vsac.org>, alyssa.dobson@sru.edu <alyssa.dobson@sru.edu>, dbarkowitz@valenciacollege.edu <dbarkowitz@valenciacollege.edu>,

dorimewilliamsm@missouri.edu <dorimewilliamsm@missouri.edu>, rachelle_feldman@unc.edu <rachelle_feldman@unc.edu>, [redacted] <[redacted]>, stanley@prisontopro.org <stanley@prisontopro.org>, lilly@thearc.org <lilly@thearc.org>, jwhitelaw@declasi.org <jwhitelaw@declasi.org>, jrovenger@lasclev.org <jrovenger@lasclev.org>, [redacted] <[redacted]>, seventeen@wileyc.edu <seventeen@wileyc.edu>, m.sabouneh@snhu.edu <m.sabouneh@snhu.edu>, mctier@wustl.edu <mctier@wustl.edu>, ccolvin@south.edu <ccolvin@south.edu>, jessica.barry@themodern.edu <jessica.barry@themodern.edu>, heather@askheatherjarvis.com <heather@askheatherjarvis.com>, erica@dca.njoag.gov <erica@dca.njoag.gov>, joseph.sanders@ilag.gov <joseph.sanders@ilag.gov>, dtandberg@sheeo.org <dtandberg@sheeo.org>, suzanne.martindale@dfpi.ca.gov <suzanne.martindale@dfpi.ca.gov>, [redacted] <[redacted]>, jobryan@uupmail.org <jobryan@uupmail.org>, rayala13938@swtjc.edu <rayala13938@swtjc.edu>, edevito@vfw.org <edevito@vfw.org>, justin.hauschild@studentveterans.org <justin.hauschild@studentveterans.org>, Christina Tangalakis <ctangalakis@glendale.edu>
Cc: Hong, Jennifer <Jennifer.Hong@ed.gov>, Wilson, Amy <Amy.Wilson@ed.gov>, Totonchi Emil <etotonchi@fmcs.gov>, Roberts Brady <broberts@fmcs.gov>, Jeffries Cynthia J. <cjeffries@fmcs.gov>, Gomez, Vanessa <Vanessa.Gomez@ed.gov>, Prince, Scott <Scott.Prince@ed.gov>, Weisman, Annmarie <Annmarie.Weisman@ed.gov>
Subject: [EXTERNAL] Re: ED Negotiated Rulemaking - Contact Information

Hi Everyone!

Here's is my info:

Noelia Gonzalez

ngonzalez@calstate.edu

[redacted]

Have a great weekend!!

Noelia

Noelia Gonzalez

Interim Systemwide Director, Financial Aid Programs

CSU The California State University
OFFICE OF THE CHANCELLOR

From: "Shaffner, Will - x3430" <wills@MOHELA.com>
Date: Friday, October 8, 2021 at 1:05 PM

To: 'Mack Kayla' <kmack@fmcs.gov>, "hperfetti@msche.org" <hperfetti@msche.org>, "mccomis@accsc.org" <mccomis@accsc.org>, "asicgo@fullerton.edu" <asicgo@fullerton.edu>, "[redacted]" [redacted] "Rajeev.darolia@uky.edu" <Rajeev.darolia@uky.edu>, "oconnell@vsac.org" <oconnell@vsac.org>, "alyssa.dobson@sru.edu" <alyssa.dobson@sru.edu>, "dbarkowitz@valenciacollege.edu" <dbarkowitz@valenciacollege.edu>, "dorimewilliamsm@missouri.edu" <dorimewilliamsm@missouri.edu>, "rachelle_feldman@unc.edu" <rachelle_feldman@unc.edu>, "[redacted]" <[redacted]>, "stanley@prisontopro.org" <stanley@prisontopro.org>, "lilly@thearc.org" <lilly@thearc.org>, "jwhitelaw@declasi.org" <jwhitelaw@declasi.org>, "jrovenger@lasclev.org" <jrovenger@lasclev.org>, "[redacted]" <[redacted]>, "seventeen@wileyc.edu" <seventeen@wileyc.edu>, "Gonzalez, Noelia" <ngonzalez@calstate.edu>, "m.sabouneh@snhu.edu" <m.sabouneh@snhu.edu>, "mctier@wustl.edu" <mctier@wustl.edu>, "ccolvin@south.edu" <ccolvin@south.edu>, "jessica.barry@themodern.edu" <jessica.barry@themodern.edu>, "heather@askheatherjarvis.com" <heather@askheatherjarvis.com>, "erica@dca.njoag.gov" <erica@dca.njoag.gov>, "joseph.sanders@ilag.gov" <joseph.sanders@ilag.gov>, "dtandberg@sheeo.org" <dtandberg@sheeo.org>, "suzanne.martindale@dfpi.ca.gov" <suzanne.martindale@dfpi.ca.gov>, "[redacted]" <[redacted]>, "jobryan@uupmail.org" <jobryan@uupmail.org>, "rayala13938@swtjc.edu" <rayala13938@swtjc.edu>, "edevito@vfw.org" <edevito@vfw.org>, "justin.hauschild@studentveterans.org" <justin.hauschild@studentveterans.org>, "ctangalakis@glendale.edu" <ctangalakis@glendale.edu>
Cc: "Hong, Jennifer" <Jennifer.Hong@ed.gov>, "Wilson, Amy" <Amy.Wilson@ed.gov>, Totonchi Emil <etotonchi@fmcs.gov>, Roberts Brady <broberts@fmcs.gov>, "Jeffries Cynthia J." <cjeffries@fmcs.gov>, "Shaffner, Will - x3430" <wills@MOHELA.com>, "Gomez, Vanessa" <Vanessa.Gomez@ed.gov>, "Prince, Scott" <Scott.Prince@ed.gov>, "Weisman, Annmarie" <Annmarie.Weisman@ed.gov>
Subject: RE: ED Negotiated Rulemaking - Contact Information

[Caution - External Sender]

I am sending this out to everyone in the hopes that you will return the favor.

I wanted to be sure that you have my contact information incase you want to connect about anything!!

Please feel free to reach out to this group with your contact information if you want this to be shared with all.

Also, the Zoom room is open a full hour prior to meeting start – I suggest if you would like, we join a bit early to get to know each other –

Have a great weekend and looking forward to connecting and our next dialogues.

Will.

William C. Shaffner, Director

Business Development and Government Relations

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wills@mohela.com

From: Morgan, Julie
Subject: RE: Proposal for Consenting to Undue Hardship
To: Persis Yu; Kvaal, James; Miller, Benjamin; EVMigration_Clare.Mccann; Merrill, Toby; Darcus, Joanna; Habash, Tariq; Williams, Rich; Latreille, Bonnie; Cordray, Richard; Wiggins, Hunter; Harrington, Ashley
Cc: John Rao
Sent: October 22, 2021 4:31 PM (UTC-04:00)

Thanks, Persis! Looking forward to reviewing your recommendations.

From: Persis Yu <pyu@nclc.org>
Sent: Friday, October 22, 2021 4:01 PM
To: Kvaal, James <James.Kvaal@ed.gov>; Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; EVMigration_Clare.Mccann <Clare.McCann@usdedeop.onmicrosoft.com>; Merrill, Toby <Toby.Merrill@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Habash, Tariq <Tariq.Habash@ed.gov>; Williams, Rich <Rich.Williams@ed.gov>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Cordray, Richard <Richard.Cordray@ed.gov>; Wiggins, Hunter <Hunter.Wiggins@ed.gov>; Harrington, Ashley <Ashley.Harrington@ed.gov>
Cc: John Rao <jrao@nclc.org>
Subject: Proposal for Consenting to Undue Hardship

Dear colleagues,

Thank you for the opportunity to meet with us last month to discuss on the need for bankruptcy protections for student loan borrowers.

We are writing to submit a proposal for establishing and implementing an undue hardship program for consenting to discharge of certain student loans in bankruptcy. This proposal is submitted by the National Consumer Law Center, National Association of Consumer Bankruptcy Attorneys, Student Borrower Protection Center, Public Law Center, and interested Law Professors (Professors Dalie Jimenez, Matthew A Bruckner, Chrystin Ondersma, John Patrick Hunt, and Brook Gotberg).

We look forward to answering any questions you may have.

Best,
John Rao and Persis Yu

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
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www.nclc.org

From: Persis Yu
Subject: Questions about sec 1087e(d)(1) and (e)(7)
To: Siegel, Brian
Cc: Miller, Benjamin; Hong, Jennifer
Sent: November 18, 2021 7:13 AM (UTC-05:00)
Attached: DCIA - Acceleration Memo.docx, 10_IDR session two Legal Aid redline proposal.docx

Hi Brian,

Thanks again for meeting the other day. I found our conversation to be very fruitful. I wanted to follow up by asking a question about the legal analysis for tiered cancellation.

As I am looking over the ICR statute, I am hoping that you can help pinpoint where the statute limits the ability to do cancellation on a monthly or annual basis.

The forgiveness provision of the ICR statute, provides the Secretary with wide latitude to decide how to structure cancellation. The Secretary has demonstrated this latitude with the REPAYE regulations where it not only shortened the time frame from 25 to 20 years, it did so for only some borrowers. Arguably, targeting the period for cancellation based upon the type of education a borrower received stretches the ICR statute further than providing cancellation monthly or annually.

The first place where ICR forgiveness is referenced is in sec. 1087e(d)(1)(D) stating:

> "an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS loan made on behalf of a dependent student[.]"

The relevant portion of this part is that the extended repayment period prescribed by the Secretary shall not "exceed 25 years." Certainly, giving people cancellation on a monthly or annual basis could not cause a conflict with the mandate to not "exceed 25 years." Nor would it contradict the requirement that payments be made over "an extended period of time." Payments would still be made over "an extended period of time" as payments would still be required for a number of years.

The other relevant part of section 1087e(e)(7), defining the "Maximum repayment period," states:

> "In calculating the extended period of time for which an income contingent repayment plan under this subsection may be in effect for a borrower, the Secretary

shall include all time periods
during which a borrower of loans under part B, part D, or part E-- …"

The relevant portion of
this paragraph is the requirement that there be an "extended period of time" for which the plan is in effect. Again, because payments would still be made over a number of years even with partial monthly or annual cancellation, the requirement that payments
be made for an "extended period of time" would still be met.

Finally section 1087e(e)(7)
goes on to list the types of payments that would qualify for cancellation. As I indicate, in my proposed regulatory text, I still count this time towards forgiveness. However, unlike the months where a borrower makes the IDR payment and receives partial cancellation,
that cancellation time is counted at the end. Therefore, the requirement that the extended time "shall include all time periods" where borrowers make qualifying payments is also met.

Again, I am happy to engage in a deeper analysis, but from a basic plain reading of the statute, I'm just not sure where that analysis is needed. Please let me know if there is a piece that I am missing.

Also, as we discussed, I'm attaching the memo we have finding that the acceleration clause was not mandated by the FCCS. I'm also attaching my proposed reg text for reference.

I look forward to continuing this conversation.

Best,
Persis

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Proposed Regulatory Text with Edits for Issue Paper #10: Income-driven Repayment Plans

§ 685.209 Income-driven repayment plans.

(a) ***General.*** Income-driven repayment (IDR) plans are plans that are intended to keep payments affordable to borrowers by basing payments on income and family size instead of loan debt and interest rate. There are 5 IDR plans:

(1) The Income-Contingent Repayment (ICR) Plan;
(2) The Income-Based Repayment (IBR) Plan;
(3) The Pay As You Earn (PAYE) Repayment Plan;
(4) The Revised Pay As You Earn (REPAYE) Repayment Plan; and
(5) The Expanded Income-Contingent Repayment (EICR) Plan.

(b) ***Definitions.***

(1) Other definitions TK

(2) ***Partial Financial Hardship*** means a circumstance in which the amount a borrower (and, as applicable, the borrower's spouse) would pay on the 10-year standard repayment plan on eligible loans for the purposes of proration is more than what the borrower would pay on the IBR or PAYE Plan as determined under subsection (e). To determine whether the borrower has a partial financial hardship, the Secretary uses the greater of the balances that were outstanding on the borrower's eligible loans at the time the borrower entered repayment on the loans or the balances on those loans that were outstanding at the time the borrower requested to enter the IBR or PAYE Plan and takes a spouse's income and loan debt into consideration consistent with subsection (d).

(3) ***Eligible new borrower*** means for the purpose of the PAYE Plan means an individual who -

(A) Has no outstanding balance on a Direct Loan Program loan or a FFEL Program loan as of October 1, 2007, or who has no outstanding balance on such a loan on the date he or she receives a new loan after October 1, 2007; and

(B) Receives a disbursement of a Direct Subsidized Loan, Direct Unsubsidized Loan, student Direct PLUS Loan, or a Direct Consolidation Loan on or after October 1, 2011.

(4) ***New borrower*** means for the purposes of the IBR Plan means an individual who has no outstanding balance on a Direct Loan Program or FFEL Program loan on July 1, 2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014.

(5) ***Eligible loans for the purposes of proration*** means loans under subsection (d) as well as FFEL Stafford Loans, FFEL PLUS Loans made to graduate/professional students, and FFEL Consolidation Loans that did not repay a FFEL, or Direct PLUS Loan made to a parent borrower.

(6) ***Discretionary income*** means for the ICR plan, the difference between the applicable total income determined in accordance with subsections (e) and (l) and 100 percent of the applicable poverty guideline; for the IBR, PAYE, and REPAYE~~, and EICR plans~~, it means the difference between the applicable total income and 150% of the applicable poverty guideline or $0, whichever is greater; for the EICR plan, it means the difference between the applicable total income and 400% of the applicable poverty guideline or $0 whichever is greater.

Commented [PY1]: This change maps to the Legal Aid Proposal to increase the discretionary income threshold to 400% of FPL.

(7) ***Family size*** means the number of individuals that is determined by summing:

(A) For all IDR plans, the borrower;

(B) For the ICR, IBR, and PAYE plans, the borrower's spouse

(C) For the REPAYE plan, the borrower's spouse, but only if the spouse's income is included in the calculation of the borrower's monthly payment amount under subsection (e);

(D) For all IDR plans, the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower; and

(E) For all IDR plans, other individuals if, at the time the borrower certifies family size,

the other individuals live with the borrower and receive more than half their support from the borrower and will continue to receive this support from the borrower for the year for which the borrower certifies family size.

(8) ***Support*** includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(9) ***Poverty guideline*** refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(c) ***Borrower eligibility.***

(1) Borrowers are eligible for the ICR, REPAYE, and EICR plans if they have eligible loans;

(2) Borrowers are eligible for the IBR Plan if they have eligible loans and have a partial financial hardship when they initially enter the plan; and

(3) Borrowers are eligible for the PAYE Plan if they have eligible loans, are an eligible new borrower, and have a partial financial hardship when they initially enter the plan.

(d) ***Loans eligible to be repaid under an IDR plan.***

(1) For ICR, IBR, PAYE, and REPAYE plans, eligible loans are Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans for graduate/professional borrowers, and, except for the ICR plan, Direct Consolidation Loans that did not repay a Direct or FFEL PLUS Loan for parents;

(2) For the ICR plan, eligible loans also include Direct Consolidation Loans that repaid a Direct or FFEL PLUS Loans for parents;

(3) For the EICR plan, eligible loans are TK.

(e) ***Treatment of married borrowers.*** (1) Income. Unless a married borrower certifies that the borrower is separated from the borrower's spouse or unable to reasonably access the spouse's income, a spouse's income is included in the calculation of the borrower's monthly payment amount for the tax year of the income the Secretary uses to calculate the borrower's monthly payment under the following conditions:

(A) For the ICR Plan, if the borrower and spouse file a joint Federal income tax return or the borrower and spouse elect to repay their Direct Loans jointly under the ICR plan;

(B) For the IBR, ~~or~~ PAYE, or EICR plans, if the borrower and spouse file a joint Federal income tax return; and

(C) For the REPAYE plan, regardless of whether the borrower and spouse file a joint Federal income tax return.

(2) Loan debt.

(A) For the IBR, PAYE, REPAYE, and EICR plans, the spouse's eligible loan debt for the purposes of adjusting the payment amount and to perform the calculation as described in subsection (g), is included in the calculation of the borrower's monthly payment amount if the spouse's income is included in the calculation of the borrower's monthly payment amount.

(B) For the ICR plan, the spouse's loans meeting the criteria of paragraph (d)(2) of this section are only included in the calculation of the borrower's monthly payment amount if the borrower elects to repay the borrower's eligible Federal student loans jointly under the ICR plan.

(f) ***Setting payment amounts.***

(1) For the ICR Plan, payments are the lesser of:

(A) What the borrower would have paid under a repayment plan that is based on a 12-year repayment plan and that has fixed payments, based on the amount that borrower

Commented [PY2]: As discuss at Week 2, EICR should allow borrowers a path to exclude their spouse's income.

owed when the loan entered the ICR plan multiplied by a percentage based on income established by the Secretary in a Federal Register notice updated annually to account for inflation; or

(B) 20% of discretionary income, divided by 12.

(2) For those who are not new borrowers under the IBR Plan, payments are the lesser of:

(A) 15 percent of discretionary income, divided by 12; or

(B) What the borrower would have paid on a 10-year standard repayment plan based on the loan balance and interest rate that were applicable to the loans at the time the borrower entered the IBR Plan.

(3) For new borrowers under the IBR Plan and for all borrowers on the PAYE Plan, payments are the lesser of:

(A) 10 percent of discretionary income, divided by 12; or

(B) What the borrower would have paid on a 10-year standard repayment plan based on the loan balance and interest rate that were applicable to the loans at the time the borrower entered the IBR or PAYE plans.

(4) For the REPAYE Plan, payments are 10 percent of discretionary income, divided by 12.

(5) For the EICR Plan:

(A) Payments are TK percent of discretionary income, divided by 12;

(B) A Direct Subsidized Loan or Direct Subsidized Consolidation Loan borrower who meets the requirements described in paragraphs (b), (d), (e), (f), (g), (h), (i), or (j) of § 685.204 shall have a $0 payment under this section.

(C) If the borrower is a spouse of an Active Duty service member, they will have a $0 monthly payment for 6 months after their spouse has received orders for a permanent change of duty station or active duty orders for longer than 180 days

i) the borrower will document they are a spouse of an active duty service member by submitting a copy of proof of enrollment in the Defense Enrollment Eligibility Reporting System

ii) the borrower will document their spouse has received orders for a permanent change duty station by submitting a copy of those orders.

(D) A borrower will have a $0 monthly payment for 6 months, unless otherwise specified,

(i) Because of the birth of a son or daughter of the borrower and in order to care for such son or daughter.

(ii) Because of the placement of a son or daughter with the borrower for adoption or foster care.

(iii) in order to care for the spouse, or a son, daughter, or parent, of the borrower, if such spouse, son, daughter, or parent has a serious health condition, as defined by 29 C.F.R. § 825.214, and the borrower will be entitled to a $0 monthly payment for the duration the family member cares for the individual with the serious health condition;

(iv) Because of a serious health condition, as defined by 29 U.S. Code § 2611 and 29 CFR §§ 825.113-119, and the borrower will have a $0 monthly payment for the duration of the condition.

(v) Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the borrower is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces, as defined by 29 C.F.R. §§ 825.122, 124,126-127, and the borrower will have a $0 monthly payment for the duration of the exigency.

(6) For all IDR plans, a borrower's payment will be $0 if the borrower's discretionary income is

Commented [PY3]: Goal of this section is to build the deferments into ICR in order to eliminate the capitalization of interest. This would also expand the category of borrowers who would qualify for a $0 payment based upon reasons identified in the Family Medical Leave Act and to spouses of active duty service members. Note that this would make these $0 payments and would qualify the borrower for monthly cancellation under the section above. Flagging that section (b) & (d) are in-school deferments. We could choose to carve these out of monthly cancellation.

equal to or less than the applicable poverty guidelines.

(g) ***Adjustments to monthly payment amounts.*** Payments calculated under paragraph (f) are adjusted in the following circumstances:

(1) In cases where the spouse's loan debt is included in the borrower's monthly payment amount, the borrower's payment is adjusted by taking the outstanding principal and interest balance of the borrower's eligible loans for the purposes of proration and dividing that by the couple's combined outstanding principal and interest balance on eligible loans for the purposes of proration.

(2) In cases where the borrower also has loans made under the FFEL Program, the borrower's payment is adjusted by taking the outstanding principal and interest balance of the borrower's loans eligible to be repaid under an IDR plan and dividing that by the borrower's outstanding principal and interest balance on eligible loans for the purposes of proration.

(h) ***Interest subsidies.***

(1) For the ICR Plan, there are no interest subsidies;

(2) For the PAYE and REPAYE plans, there is an interest subsidy on Direct Subsidized Loans and Direct Subsidized Consolidation Loans that a borrower is eligible to receive during first 3 years of repayment under the PAYE and REPAYE plans, but only when the amount of the payment attributable to the loans is less than the amount of interest accruing on such loans; in such cases, the Secretary credits the borrower's account with an amount equal to the amount of interest not covered by the borrower's payment;

(3) For the IBR Plan, the 3-year period described in paragraph (2) is suspended for any month during which the borrower is not obligated to make a payment because they are in an economic hardship under § 685.204(g);

(4) For the REPAYE plan, following the 3-year period described in paragraph (2) for Direct Subsidized Loans and Direct Subsidized Consolidation Loans, and during all periods of repayment under the REPAYE Plan on all other loans eligible to be repaid under REPAYE, there is an interest subsidy when the amount of the payment attributable to the loans is less than the amount of interest accruing on such loans; in such cases, the Secretary credits the borrower's account with an amount equal to half of the amount of interest not covered by the borrower's payment; and

(5) ~~For EICR, in cases where the borrower's monthly payment is scheduled to be $0, TX percent of interest is not charged to the borrower.~~ For the EICR plan, following the 3-year period described in paragraph (2) for Direct Subsidized Loans and Direct Subsidized Consolidation Loans, and during all periods of repayment under the EICR Plan on all other loans eligible to be repaid under EICR, there is an interest subsidy when the amount of the payment attributable to the loans is less than the amount of interest accruing on such loans; in such cases, the Secretary credits the borrower's account with an amount equal to the amount of interest not covered by the borrower's payment.

Commented [PY4]: As discussed at Week 2, this would eliminate negative amortization which causes low-income borrowers' balances to grow. This language also keeps the three year subsidy in order to ensure that this plan is at least as generous as all other plans for all borrowers. This will allow the other plans to sunset or become obsolete.

(i) ***Changing repayment plans.*** Borrowers may change between IDR plans for which they are eligible or leave an IDR plan for another repayment plan for which they are eligible.

(j) ***Interest capitalization.***

(1) For the ICR, REPAYE, and EICR plans, interest only capitalizes when it otherwise would under § 682.202(b).

(2) For the IBR or PAYE plans, interest capitalizes when the borrower's payment becomes the amount under paragraphs (f)(2)(B) and (f)(3)(b), except that when payments are set based on paragraph (f)(2)(A) and (f)(3)(A), interest capitalization rules under § 682.202(b) are suspended.

(3) For the IBR Plan, interest also capitalizes when the borrower's payments are set in accordance with subsection (f)(2)(b) or when the borrower leaves the IBR Plan.

(k) ***Forgiveness.***

(1) For borrowers repaying under ICR, for borrowers repaying under the IBR plan who are not new borrowers, and for borrowers repaying under the REPAYE and EICR plan who are repaying at least one loan received for graduate or professional study, including a Direct Consolidation Loan that repaid one or more loans received for graduate or professional study, the borrower receives forgiveness of the remaining balance of the borrower's loans after the borrower has satisfied 300 monthly repayment obligations under paragraph (~~3~~4);

(2) For borrowers repaying under PAYE, for borrowers repaying under the IBR plan who are new borrowers, and for borrowers repaying under the REPAYE and EICR plan who are repaying only loans received for undergraduate study, including a Direct Consolidation Loan that repaid only loans received for undergraduate study, the borrower receives forgiveness of the remaining balance of the borrower's loans after the borrower has satisfied 240 monthly repayment obligations under paragraph (~~3~~4);

(3) For borrowers repaying under EICR:

(A) For every month in which a borrower satisfies a monthly repayment obligation as described in (f), the Secretary shall forgive the difference between the amount the borrower was required to pay in (f) and what the borrower would have paid on a 10-year standard repayment plan based on the loan balance and interest rate that were applicable to the loans at the time the borrower entered the EICR Plan.

(B) Any amount paid by the borrower in excess of the amount the borrower was required to pay in (f) should be applied after the Secretary applies forgiveness in this paragraph.

(C) The borrower receives forgiveness of any remaining balance of the borrower's loans after the borrower has satisfied 120 monthly repayment obligations under paragraph (4).

[Alternative 3] For borrowers repaying under EICR:

(A) For every month in which a borrower satisfies a monthly repayment obligation as described in (f), the Secretary shall forgive the difference between the amount the borrower was required to pay in (f) and the amount the borrower would repay monthly over a shortened cancellation period using standard amortization based on the loan balance and interest rate that were applicable to the loans at the time the borrower entered the EICR Plan.

(B) The Secretary shall determine the shortened cancellation period upon determining the amount the borrower is required to repay in (f) based upon the borrower's adjusted gross income. The Secretary shall utilize a formula in which borrowers with an AGI at or less than 150% of the federal poverty level will have a cancellation period that equals 3 years and borrowers with an AGI at or greater than TK will have a cancellation period that equals 15 years.

(C) Any amount paid by the borrower in excess of the amount the borrower was required to pay in (f) should be applied after the Secretary applies forgiveness in this paragraph.

(D) The borrower receives forgiveness of any remaining balance of the borrower's loans after the borrower has satisfied 180 monthly repayment obligations under paragraph (4).

(~~3~~4) For all IDR plans, the following can lead to the borrower satisfying a monthly repayment obligation:

Commented [PY5]: This is structurally based upon Navient's Forgive-As-You-Go model utilizing a 10 years amortization period. https://www.banking.senate.gov/imo/media/doc/Remondi%20Testimony%204-13-21.pdf

Commented [PY6]: We chose 10 years based upon the remarks that the Independent Student Representative (Michaela) raised at Week 2. Ten years has a rational basis in public policy. Congress, in creating the 10 year standard repayment period, identified 10 years as the appropriate amount of time that borrowers should be encumbered by their student loan debt. Congress then reiterated this number in creating the Public Service Loan Forgiveness program. Since creating the PSLF program, the nature of employment for public service workers has changed. Many public service workers - low income workers of color in particular, work through for-profit companies, despite doing "public service" and earning relatively low wages. Moreover, the work that can be considered "public service" has also changed. As demonstrated by the pandemic, grocery store workers, restaurant workers, etc are "essential workers" but are not captured by the definition in PSLF. By utilizing a 10 year period for IDR, ED can deliver the promise that Congress made to these borrowers. Borrowers who can afford to pay off their loan in 10 years still will because payments will be based upon their income.

Commented [PY7]: The goal of this sentence is to make sure that borrowers can pay extra and not have it impact the amount of cancellation. Paying extra should go to principal and make the balance go down.

Commented [PY8]: This is designed to capture time that borrowers are in other qualifying repayment and forbearances. While they do not get cancellation at the time (thus addressing the moral hazard concerns of including such payments and incentivizing payment in EICR), this ensure that borrowers are not stuck paying extra years because the servicers steered them into a forbearance.

Commented [PY9]: This is structurally based up Navient's Forgive-As-You-Go model utilizing the targeted cancellation amortization period outlined in the Legal Aid proposal.

Commented [PY10R9]: https://www.banking.senate.gov/imo/media/doc/Remondi%20Testimony%204-13-21.pdf

Commented [PY11]: This is the mechanism to determine the amortization period.

(A) Making a payment under an IDR plan, including payments that are calculated to be $0, regardless of whether the payment was satisfied early or late;
(B) Making a payment under the 10-year standard repayment plan under § 685.208(b), regardless of whether the payment was satisfied early or late;
(C) Making a payment under a repayment plan with payments that are as least as much as they would have been under the 10-year standard repayment plan under § 685.208(b), regardless of whether the payment was satisfied early or late;
(D) Deferring ~~or forbearing~~ monthly payments for the following reasons:
(i) A cancer treatment deferment under 455(f)(3) of the Act;
(ii) A Peace Corps service deferment under §682.210(k), as applicable to Direct Loan borrowers under §685.204(j);
(iii) An economic hardship deferment under §685.204(g);
(iv) A military service deferment under §685.204(h);
(v) A rehabilitation training program deferment §685.204(e);
(vi) A unemployment deferment §685.204(f);
(vii) A post-active duty student deferment §685.204(i);
~~(v) An administrative forbearance or mandatory administrative forbearance under § 685.205(b);~~
~~(vi) A medical or dental internship or residency forbearance under § 685.205(a)(3);~~
~~(vii) A national guard duty forbearance under § 685.205(a)(7); or~~
~~(vii) A Department of Defense Student Loan Repayment forbearance under § 685.205(a)(9)~~
(E) Any period of forbearance;
(F) Any periods in which payments are collected under § 685.211(d);
(G) Making any payments pursuant to a rehabilitation agreement or other repayment agreement while in default, or making any voluntary payments while in default for which payments are at least as much as they would have been under an IDR plan;
(H) On a Direct Consolidation Loan, any periods meeting the criteria in paragraph (A)-(F) on a loan that was consolidated.

(l) ***Procedures.***
(1) To enter any IDR plan, and except as provided under TK, the borrower must complete an application on a form approved by the Secretary;
(2) As part of the process of completing a Master Promissory Note or a Loan Consolidation Promissory Note, the borrower must consent to the disclosure of applicable tax information under §§ 455(e)(8) and 493C(c)(2) of the Act~~;~~ and may opt into automatic enrolled in an income-driven repayment plan should the borrower become significantly delinquent on the borrower's loans, defined as missing 80 days' worth of payments. At this point, the borrower may choose a specific income-driven repayment plan into which to be automatically enrolled.
(3) As part of the application for an IDR plan, and if the borrower has not already done so, the borrower must consent to the disclosure of applicable tax information under §§ 455(e)(8) and 493C(c)(2) of the Act unless the borrower has opted into automatic enrollment into an income-driven repayment plan and becomes significantly delinquent on the borrower's loans, as outlined in paragraph (2);
(4) The Secretary uses the borrower's consent under paragraphs (2) or ~~and~~ (3) to obtain the borrower's income and family size from the Internal Revenue Service;
(5) If the Secretary cannot obtain the borrower's income and family size from the Internal Revenue Service, the Secretary requires the borrower and spouse, as applicable, to provide

Commented [PY12]: All deferments and forbearances are included in order to address the concerns about servicer steering. As addressed in (3), in order to address the moral hazard argument, these borrowers will not qualify for immediate monthly cancellation, nor will they be penalized with years of additional payments because they were placed into a deferment or forbearance.

Commented [PY13]: These two categories involve defaulted borrowers. These could be put in a separate part in order to address statutory authority issues.

Commented [PY14]: I am inputting the proposal by New America to auto-enroll delinquent borrowers into IDR. https://d1y8sb8igg2f8e.cloudfront.net/documents/The_Department_of_Education_can_Protect_Borrowers_at_Risk_of_Defaulting_on_the_h69ZKwa.pdf

Commented [PY15R14]: Related New America blog post can be found here: https://www.newamerica.org/education-policy/edcentral/the-department-of-education-can-protect-borrowers-at-risk-of-defaulting-on-their-student-loans

Commented [PY16]: Note: This number was chosen to help borrowers avoid the first instance of negative credit reporting, which occurs after approximately three months' worth of missed payments.

documentation of applicable income and family size information;
(6) After the Secretary obtains sufficient information from the borrower or otherwise to calculate the borrower's monthly payment amount, the Secretary calculates the borrower's payment and establishes the 12 monthly repayment obligations for which the borrower will be obligated to make a payment in that amount;
(7) The Secretary then sends to the borrower a repayment disclosure outlining the borrower's payment amount, explains in general terms how the payment is calculated, informs the borrower of the procedures that will be followed under this subsection, and requests that the borrower contact the Secretary if the payment amount disclosed to the borrower is unaffordable to the borrower;
(8) If the borrower contacts the Secretary and indicates the payment amount is not reflective of the borrower's income or family size, the Secretary allows the borrower to submit alternative documentation of income or family size not based on tax information to account for circumstances such as a decrease in income since filing a tax return, separation from a spouse following filing taxes jointly with that spouse, the birth or impending birth of a child, or other comparable circumstances;
(9) If the borrower provides alternative documentation under paragraph (8) or the Secretary must obtain documentation from the borrower or spouse under paragraph (5), the Secretary places the borrower's loans into an administrative forbearance under § 685.205(b)(9) to promptly process the borrower's application and information;
(10) On an annual basis the Secretary follows the procedures in paragraphs (4) through (9) once the borrower only has 3 monthly payments remaining under the 12-month period specified under paragraph (6).
(11) If the Secretary requires information from the borrower under paragraph (5) to recalculate the borrower's monthly repayment amount under paragraph (10), and the borrower does not provide the necessary documentation to the Secretary by the time the last payment is due under the 12-month period specified under paragraph (6), then:

(A) For the IBR and PAYE plans, the borrower's monthly payment amount is the amount under paragraph (f)(2)(B) or (f)(3)(B);
(B) For the ICR Plan, the borrower's monthly payment amount is the amount the borrower would have paid under a 10-year standard repayment plan based on the loan balance and interest rate that existed for the loan when the borrower entered ICR;
(C) For the REPAYE Plan, the borrower is removed from the REPAYE plan and placed into an alternative repayment plan under § 685.208(j) with fixed payments that are amortized over a period of time that is equal to the lesser of:

(i) 10 years; or
(ii) The remaining period of time that the borrower would have needed to repay loans under the REPAYE plan to receive forgiveness under subsection (j);

(D) For the EICR Plan TK.

(12) At any point during the 12-month period specified under paragraph (6), the borrower may request that the Secretary recalculate the borrower's payment earlier than would have otherwise been the case to account for a self-reported change in the borrower's circumstances; in such cases, the 12-month period specified under paragraph (6) is reset based on the borrower's new information.
(13) If the borrower has opted into automatic enrollment in an income-driven plan, as outlined in paragraph (2), and subsequently becomes 60 days delinquent on the borrower's loans, the Secretary provides the borrower with the following:

(A) Notification that the borrower is at least 60 days delinquent;
(B) A repayment disclosure outlining the borrower's payment amounts if the borrower were to enroll in available income-driven repayment plans, based on information

available to the Secretary;

(C) An explanation that the Secretary shall enroll the borrower into an income-driven plan, as outlined in paragraph (2), if the borrower becomes 80 days delinquent unless the borrower contacts the Secretary to opt out.

(14) If the borrower has opted into automatic enrollment in an income-driven plan, as outlined in paragraph (2), and subsequently becomes 80 days delinquent on the borrower's loans, and if the borrower has not chosen a specific income-driven repayment plan, the Secretary shall:

(A) Enroll the borrower into the income-driven repayment plan that requires the lowest monthly payment amount;

(B) If more than one income-driven repayment plan would offer the borrower the same lowest monthly payment amount, enroll the borrower into the income-driven repayment plan that has the most favorable terms for the borrower

(153) The Secretary tracks a borrower's progress towards eligibility for forgiveness under subsection (k) automatically and forgives loans that meet the criteria under subsection (k) without the need for an application or documentation from the borrower.

Last updated 10/25/2021

MEMORANDUM

Re: The Department of Education's Ability Not to Accelerate Student Loan Debt for Defaulted Borrowers Under the Debt Collection Improvement Act

Question Presented

Does the Debt Collection Improvement Act ("DCIA") obligate the Department of Education to accelerate the student loan balances of defaulted borrowers when the only mention of acceleration in either the DCIA or its implementing regulations provides that agencies "should" include provisions accelerating debts upon default?

Brief Answer

No. The DCIA and its implementing regulations do not mandate that agencies accelerate defaulted loans. The DCIA gives agencies discretion over many collection activities and never mentions debt acceleration. Regulations passed by the Department of the Treasury ("Treasury") and Department of Justice ("DOJ"), pursuant to the DCIA, provide that "[a]gencies that agree to accept payments in regular installments should obtain a legally enforceable written agreement…that contains a provision accelerating the debt in the event of default." The federal government's ordinary understanding of the word "should," the context of its use within these regulations, and the desire on the part of the Treasury and DOJ to give agencies sufficient flexibility to tailor their regulations in accordance with their unique legal and policy considerations suggest that this provision indicates a recommendation rather than a mandate. Thus, the DCIA and its implementing regulations permit the Department of Education to decide not to accelerate defaulted student loan balances.

Discussion

The DCIA does not require agencies to accelerate defaulted balances. Although the DCIA mandates that agencies "take all appropriate steps to collect" delinquent balances,[1] it gives them discretion over specific collection activities. For example, agencies are given discretion over how to apply recovered funds when multiple debts are at issue[2] and can ask the Treasury to exempt payments from administrative offset, which the Treasury is required to do for means-tested programs and can choose to do for others.[3] Besides incorporating agency input into many of the collection tools contemplated by the DCIA, the statute "extend[s] the authority of agencies

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[1] 31 U.S.C. §3720B(g)(9).

[2] 31 C.F.R. §901.3(c)(4). This provision provides that "agencies should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations[,]" but leaves this determination up to agencies.

[3] 31 U.S.C. §31001(a)(3)(B).

to compromise claims" by making permanent the increased authority of agency heads to compromise claims as provided for in the Administrative Dispute Resolution Act.[4] These features incorporate agency judgment into each step of debt collection in pursuit of the DCIA's goal of both preserving government resources and protecting the due process rights of debtors.[5] No part of the DCIA mandates that agencies accelerate defaulted loan balances, but the DCIA does require federal agencies to adopt regulations consistent with those promulgated by the Treasury, DOJ, or General Accounting Office.[6]

In 2000, the Treasury and DOJ put into effect revisions to the Federal Claims Collection Standards ("FCCS") that reflected changes under the DCIA and clarified guidance for federal debt collection procedures. These revisions include the only mention of debt acceleration made under the DCIA; the final rule, which establishes standards for the administrative collection of federal claims, provides that agencies that accept payment in regular installments "should obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and that contains a provision accelerating the debt in the event of default."[7] Since neither the DCIA nor FCCS define their use of the word "should," and neither the Treasury nor DOJ have issued guidance on their preferred interpretation, readers can infer discretion from the word's ordinary meaning, the context of its use, and the regulatory intent behind the FCCS. These principles of statutory interpretation[8] suggest that the word "should" ought to be construed

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[4] HORN, *supra* note 2.
[5] *See id.*
[6] 31 U.S.C. §31001(c)(2).
[7] 31 C.F.R. §901.8.
[8] Regulatory interpretation is generally subject to the same rules, presumptions, and canons as statutory interpretation, including consideration of a regulation's "text structure, history, and purpose[.]" Kisor v. Wilkie, 588 U.S. 1, 2 (2019). *See generally* Kevin M. Stack, *Interpreting Regulations* 111 MICH. L. REV. 355, 359-60 (2012).

as recommending, but not requiring, the Department of Education to include provisions accelerating defaulted student loan debt.

A. First, "should"'s ordinary meaning and general use by the federal government suggest that it is something less than mandatory.

When considering a word's meaning absent clear indication from the issuing authority, courts must "look first to the word's ordinary meaning[,]"[9] often looking to dictionary definitions for guidance.[10] Merriam-Webster defines "should" as the "past tense of shall," used to express "condition," "obligation, propriety, or expediency," "futurity from a point of view in the past," "what is probable or expected," or "a request in a polite matter or to soften direct statement."[11] The American Heritage Dictionary defines "should" as expressing "obligation or duty," "probability or expectation," "conditionality or contingency," or moderating "the directness or bluntness of a statement."[12] Black's Law Dictionary does not define "should," but indicates that even "shall" has some latent ambiguity as to whether it conveys a mandate.[13] With this range of definitions, dictionaries do not resolve whether the FCCS convey a prediction, obligation, or request for agencies to accelerate defaulted balances.

Federal guidelines suggest that the FCCS' drafters and its audience would interpret "should" as indicating a recommendation, not a mandate or prediction. The fact that federal agencies might share this understanding is relevant to resolving "should"'s ambiguity since it demonstrates a "shared convention" between regulators and their intended audience, i.e. federal

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[9] Schindler Elevator Corp. v. United States ex rel. Kirk, 563 U.S. 401, 407 (2011).

[10] United States v. Cox, 963 F.3d 915 (9th Cir. 2020); In re Walter Energy, Inc., 911 F.3d 1121, 1143 (11th Circ. 2018).

[11] *Should*, Merriam-Webster (last visited July 20, 2021).

[12] *Should*, The American Heritage Dictionary (5th ed. 2020).

[13] Black's Law Dictionary contemplates "shall" as "generally imperative or mandatory," qualifying that "it may be construed as merely permissive or directory, (as equivalent to 'may,') to carry out the legislative intention and [i]n cases where no right or benefit to any one depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense" and that "as against the government, 'shall' is to be construed as 'may,' unless a contrary intention is manifest." *Shall*, Black's Law Dictionary (last visited July 20, 2021).

agencies.[14] The Federal Register's Document Drafting Handbook defines "should" as "infer[ring] obligation, but not absolute necessity" and instructs agencies to use the word "must" to impose legal obligation, rather than "shall," "will," or "should."[15] (This understanding predates the revised FCCS; in the 1998 version, the Federal Register notes that the Handbook uses "must" instead of "shall" because "must imposes a legal obligation" and uses "should" to "indicate when [the Register] strongly recommend[s] that [agencies] comply with a procedure that is optional."[16]) The Federal Plain Language guidelines further instruct federal employees authoring regulations to eliminate use of the word "shall" in favor of using "must" for an obligation, "must not" for a prohibition, "may" for discretionary action, and "should" for recommended action.[17] These guidelines have been adopted by both the Treasury[18] and the DOJ[19] following the passage of the Plain Writing Act of 2010. In addition to serving as guidance for drafting regulations such as the FCCS, these materials have the same intended audience as the FCCS, suggesting that their common definition of the word "should" ought to be preferred here.

B. The FCCS' context further supports that the Treasury and DOJ used the word "should" to indicate something less than a mandate.

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[14] *See generally* John F. Manning, *Textualism and Legislative Intent*, 91 Va. L. Rev. 419, 433 (2005) (textualism seeks to discover "shared conventions" in its interpretation of statutory language); Frank H. Easterbrook, *What Does Legislative History Tell Us?*, 66 Chi.-Kent L. Rev. 441, 444 (1990) (textualism asks what "assumptions [were] shared by the speakers and the intended audience.")

[15] Federal Register, *Drafting Legal Documents, Principles of Clear Writing* (last updated March 17, 2021), available at https://www.archives.gov/federal-register/write/legal-docs/clear-writing.html.

[16] FEDERAL REGISTER, DOCUMENT DRAFTING HANDBOOK iiii (Oct. 1998), available at https://open.defense.gov/Portals/23/Documents/Regulatory/ddh.pdf.

[17] The Plain Language Action and Information Network, *Federal Plain Language Guidelines* (March 2011), available at https://www.fda.gov/media/85771/download.

[18] U.S. Department of the Treasury, *Plain Writing Act* (last visited July 20, 2021), available at https://home.treasury.gov/subfooter/site-policies-and-notices/plain-writing.

[19] U.S. Department of Justice, *Plain Writing* (last visited July 20, 2021), available at https://www.justice.gov/open/plain-writing-act.

It is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme."[20] The FCCS' use of the word "should" in this provision must be contextualized within the regulation as a whole, which conveys a variety of levels of mandate. For example, the FCCS provide that creditor agencies are "*required* to refer past due, legally enforceable debt" to the Treasury for offset,[21] and agencies that enter into contracts for locating and recovering assets of the United States "*must* establish procedures that are acceptable to the Secretary" beforehand (emphasis added).[22] The inclusion of stronger language elsewhere in the FCCS suggest that the Treasury and DOJ knew how but elected not to similarly mandate acceleration.[23]

Further, the FCCS' mention of debt acceleration can be read in conjunction with nearly identical provisions in agency-specific regulations promulgated prior to the FCCS that use predictive language. For example, the regulations concerning the National Aeronautics and Space Administration's ("NASA"'s) collection of civil claims provide that "[i]f NASA agrees to accept payment in regular installments, it *will* obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults" (emphasis added). These provisions were passed prior to the FCCS, so the Treasury and DOJ's choice to state that agencies "should" rather than "will," "must," or "are required to" accelerate defaulted debt

[20] Utility Air Regulatory Group v. EPA 134 S. Ct. 2427, 2441 (2014).
[21] 31 C.F.R. §901.3(b)(1).
[22] 31 C.F.R. §901.5.
[23] *See, e.g.*, City of Chicago v. Envtl. Def. Fund, 511 U.S. 328, 337-38 (1994) ("Our interpretation is confirmed by comparing [the disputed statute] with another statutory exemption in [the same act]. . . . [T]his [other] provision shows that Congress knew how to draft a waste stream exemption . . . when it wanted to." (internal quotation marks omitted)).

suggests that they chose to convey a recommendation by not using terms that would be more clearly predictive ("will") or obligatory ("must" or "are required to").

C. Finally, granting agencies discretion over debt acceleration is in line with the Treasury and DOJ's purposes in revising the FCCS and tracks the FCCS' regulatory history.

According to the supplementary information included with the Treasury and DOJ's publication of their final rule revising the FCCS in 2000 following the DCIA, the "revised FCCS provide agencies with greater latitude to adopt agency-specific regulations, tailored to the legal and policy requirements applicable to the various types of Federal debt[.]"[24] In their discussion of submitted comments, the Treasury and DOJ respond to "suggested changes pertinent only to specific agencies [that] were not incorporated into the final rule" by assuring commenters that "the final rule provides sufficient flexibility for agencies to adopt agency-specific regulations tailored to the legal and policy requirements of their particular programs."[25] In response to one specific comment suggesting that they "delete the requirement…that agency demand letters discuss alternative methods of payment," and another that "agencies [should] be given flexibility to include only those provisions of demand letters listed in NPRM §901.2(d) 'as appropriate to the circumstances,'" the Treasury and DOJ respond that the NPRM "did not include such a requirement" and "does not restrict an agency's discretion to tailor its use of particular debt collection tools in specific cases."[26] The discussed provision provides that:

> Agencies should include in demand letters such items as the agency's willingness to discuss alternative methods of payment; its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; the agency's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days be transferred to the Department of the Treasury for

[24] Fed. Reg. Doc. 00-29284, 65 FR 70389 (November 21, 2000), available at https://www.federalregister.gov/documents/2000/11/22/00-29284/federal-claims-collection-standards.
[25] *Id.*
[26] *Id.*

> collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.[27]

These responses suggest that the Treasury and DOJ's understanding of this provision is that it provides a strong recommendation, not a requirement that overrides agency discretion. Applying the presumption of consistent usage, the later FCCS provision concerning the inclusion of debt acceleration clauses ought to be construed as also conveying a recommendation rather than a mandate. This construction also aligns with the Treasury and DOJ's claimed purpose to provide agencies with the flexibility to accommodate their unique legal and policy considerations.

This flexibility enables the Department of Education to not accelerate defaulted balances based on agency-specific legal and policy considerations. As the Treasury and DOJ noted in their final rule, the "FCCS focus on Government-wide debt collection procedures and policy," which is why "suggested changes pertinent only to specific agencies were not incorporated into the final rule."[28] Instead, the FCCS were revised to permit agencies the flexibility to adopt regulations tailored to their own unique considerations. The Department of Education has a considerable number of unique legal and policy considerations that might run counter to debt acceleration. An estimated 42.9 borrowers currently hold $1.57 billion in federal student loan debt;[29] prior to the suspension of defaults as part of pandemic relief measures, more than one in ten borrowers were in 90 or more days delinquent or in default on their federal student loans.[30] The "typical amount" of outstanding debt among student borrowers is between $20,000 and $24,999;[31] besides mortgages, student loans are the largest debt burden carried by most

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[27] 31 C.F.R. §901.2(d).

[28] Fed. Reg. Doc. 00-29284, *supra* note 25.

[29] Melanie Hanson, *Student Loan Debt Statistics*, EDUCATIONDATA.ORG (July 10, 2021), available at https://educationdata.org/student-loan-debt-statistics#student-loan-debt-statistics.

[30] Federal Reserve Bank of New York, *Household Debt and Credit* 2019:Q3 (Nov. 2019), available at https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/hhdc_2019q3.pdf.

[31] Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2018* (May 2019), available at https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-student-loans-and-other-education-debt.htm.

Americans.[32] Unlike most forms of consumer debt, however, student loan debt is presumed non-dischargeable through bankruptcy in part because student loans are not backed by any form of collateral;[33] as the rising price of higher education outpaces its returns, this makes student loan debt particularly inescapable.[34] Without the ability to discharge debts in bankruptcy, or forfeit any underlying collateral to ameliorate their debts, defaulted borrowers could be subject to garnishment and offset in pursuit of their full loan balances with little hope of relief once pandemic measures are scaled back. The Department also has to take into consideration how this might affect the country as a whole as countless dollars are diverted from the economy by offset. These are the types of agency-specific considerations that the FCCS leave for agencies to ponder alongside their broader, general recommendations.

In fact, the Department of Education's current iteration of the master promissory note binding federal student loan borrowers provides that the Department "may" accelerate borrowers' loans under certain conditions, rather than the predictive "will" or required "must."[35] By containing the most obviously discretionary language ("may"), this clause seems to reflect that the Department already both understands itself as having discretion over acceleration and has chosen to preserve this discretion against individual borrowers through providing these notes with a discretionary rather than automatic acceleration clause. The direct language of the DCIA, its implementing regulations, and the *Department's own contracts with individual borrowers* thus all suggest that the Department has preserved discretion over debt acceleration.

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[32] Federal Reserve Bank of New York, *Center for Microeconomic Data - Data Bank*, available at https://www.newyorkfed.org/microeconomics/databank.

[33] Anna E. Huffman, *Forgive and Forget? An Analysis of Student Loan Forgiveness Plans*, 24 N.C. BANKING INST. 449 (2020). Available at: https://scholarship.law.unc.edu/ncbi/vol24/iss1/19.

[34] Abigail Johnson Hess, *The cost of college increased by more than 25% in the last 10 years—here's why*, CNBC (Dec. 13, 2019), available at https://www.cnbc.com/2019/12/13/cost-of-college-increased-by-more-than-25percent-in-the-last-10-years.html.

[35] "Master Promissory Note," FederalStudentAid, OMB. No. 1845-0007, available at https://studentaid.gov/mpn/. Cf. ("If you default on a loan, we *will* report this to nationwide consumer reporting agencies" (emphasis added)). *Id.*

Conclusion

The DCIA and its implementing regulations grant the Department of Education the discretion to not accelerate the student loan balances of defaulted borrowers in accordance with its own legal and policy considerations.

From: Ama Takyi-Laryea
Subject: Pew Student Loan Research: Thank you and update
To: Darcus, Joanna; Persis Yu
Cc: Phillip Oliff; Ilan Levine
Sent: June 9, 2021 11:30 AM (UTC-04:00)
Attached: Pew Responses to Common External Reviewer Comments_04.05.21.xlsx

Good morning, Joanna,

I hope you are receiving this message in good health. Thank you again for your thorough and thoughtful feedback on the draft of our questionnaire for the nationally representative survey of student loan borrowers. We are very optimistic that this research will uncover deep insights on the driving reasons behind why so many federal student loans go into default each year and shed light on the varied experiences that borrowers who default go through in trying to get their loans back in good standing. Your feedback has been instrumental in making sure we collect data that is policy relevant and of the highest quality on this topic.

Summary of expert feedback: In total, we had 10 external reviewers provide feedback on our draft. In carefully reviewing all of these responses we made several changes to our survey instrument. Many common themes emerged across our reviewers. We have created a Q&A Excel sheet (please find this attached) that summarizes several of these most common themes and provides Pew's response highlighting the action taken for the final version of the questionnaire.

Update: In addition to sharing our responses to common questions from our external reviewers, like yourself, we would also like to provide you with an update on our survey. We completed a pilot test of our survey mid-May and will be fielding the actual survey in about a week, June 18th. To close out the survey phase of our study, we would like to send NCLC (care of Persis Yu) an honorarium of $500 for your review of our questionnaire. Persis, please look out for a follow-up email from Ilan Levine detailing the process for receiving an honorarium.

Upcoming review: As we said in previous emails we will be drafting a series of reports and analysis pieces from both our earlier qualitative research and upcoming survey data. Persis, we will send you an email detailing the series of publications we would like you/your team to review in July and the associated honorarium. Please feel free to indicate your willingness and availability to serve as an expert reviewer once you've had the chance to preview our list of planned publications and due dates.

Again, Joanna, we deeply appreciated the time that you put into reviewing our questionnaire and we are excited to keep you updated on what our research uncovers. If you have any questions, please do not hesitate to reach out to me Ama Takyi-Laryea (atakyilaryea@pewtrusts.org), Ilan Levine (ilevine@pewtrusts.org, the point of contact for our default work), or Phil Oliff (poliff@pewtrusts.org, project director).

Regards,
Ama

From: Joanna Darcus <jdarcus@nclc.org>
Sent: Tuesday, January 19, 2021 9:23 PM
To: Phillip Oliff <poliff@pewtrusts.org>; Ama Takyi-Laryea <atakyilaryea@pewtrusts.org>
Cc: Persis Yu <pyu@nclc.org>
Subject: My Departure from NCLC - Re: Student Loan Default Study

Hi Phil and Ama,

I hope this message finds you well. I wanted to let you know that I'm wrapping up my time at NCLC as I am pivoting to take on a new role. Nonetheless, I'm excited about the research that you all are doing, and I enjoyed the chance to take a look at the survey as you all are ramping up this particular project.

While my departure from NCLC means that I will be unavailable to complete the next phases of this project, my NCLC colleagues will be happy to see it through. Please be in contact with Persis Yu (pyu@nclc.org--and cc'd here) who will ensure that she or the right person at NCLC will work with you as you move forward with the next stages of review or input.

I look forward to learning more about your findings as you publish and present them, and I'm hopeful we'll have plenty of chances for future collaborations.

Wishing you the best for now!

Joanna

Joanna K. Darcus *(she/her/hers)*
Staff Attorney*
1001 Connecticut Avenue NW, Suite 510,
Washington, DC 20036 (Map)
202/452-6252 x 109 | [redacted]
jdarcus@nclc.org | www.nclc.org

* *Not licensed in the District of Columbia;*

practice limited to federal courts.

From: Ilan Levine
Subject: RE: Pew Student Loan Research: Thank you and update
To: Persis Yu; Darcus, Joanna
Cc: Phillip Oliff; Ama Takyi-Laryea
Sent: June 11, 2021 4:35 PM (UTC-04:00)
Attached: Conflict of Interest Disclosure for Reviewers (June 2017)_blank.docx

Hello Persis and Joanna,

It is nice to e-meet you both. As Ama mentioned in her previous email, we would like to send NCLC a $500 honorarium at this time for Joanna's review of our student loans default survey instrument. In order to begin processing this payment, **Persis** please confirm the details below. **Joanna**, please complete the attached conflict of interest disclosure form. Please send me this information and form by COB Thursday, June 16th.

- Preferred email for processing honorarium (if different than this one):
- Confirm that the check should be made out to NCLC (care of Persis Yu)
- Preferred mailing address (Honorarium will be paid through direct deposit, but we still need a mailing address for processing):

Thank you again for your time and expertise. I look forward to hearing from you soon.

Have a nice weekend,
Ilan

From: Ama Takyi-Laryea <atakyilaryea@pewtrusts.org>
Sent: Wednesday, June 9, 2021 11:30 AM
To: joanna.darcus@ed.gov; Persis Yu <pyu@nclc.org>
Cc: Phillip Oliff <poliff@pewtrusts.org>; Ilan Levine <ilevine@pewtrusts.org>
Subject: Pew Student Loan Research: Thank you and update

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Regards,
Ama

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Sent: Tuesday, January 19, 2021 9:23 PM
To: Phillip Oliff <poliff@pewtrusts.org>; Ama Takyi-Laryea <atakyilaryea@pewtrusts.org>
Cc: Persis Yu <pyu@nclc.org>
Subject: My Departure from NCLC - Re: Student Loan Default Study

[EXTERNAL EMAIL]: This message is from an external sender. Verify the sender and exercise caution when clicking links or opening attachments.

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Wishing you the best for now!

Joanna

Joanna K. Darcus *(she/her/hers)*
Staff Attorney*
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jdarcus@nclc.org | www.nclc.org

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practice limited to federal courts.

Pew External Expert/Peer Reviewer Confidentiality Agreement and Conflict of Interest Policy & Disclosure

Reviewer Name: _____

Title: _____

Institution: _____

Research Product: Paper

Confidentiality

Your signature below confirms your understanding and agreement that the publication and any related information disclosed to you by Pew are confidential and non-public, and you agree (1) to maintain the confidentiality of the publication and such information, (2) not to disclose the publication or such information to any third party and (3) to use the publication and such information solely for purposes of the external expert/peer review contemplated.

Conflict of Interest Policy

Pew Charitable Trusts Policy requires that conflicts of interest for external expert/peer reviewers be minimized to ensure that each publication receives a fair and unbiased evaluation. This process protects the reviewer, as well as the integrity of Pew's reputation as a source of evidence-based research.

The following general **conflict of interest definition** is applied:

> *A conflict of interest exists between the reviewer and the product, project staff and/or Pew if the reviewer will gain direct personal or professional benefit from the release of the product; or if a past or present direct working and/or personal relationship exerts such influence that a reviewer cannot be objective.*

Recusal from peer review should be strongly considered under the following circumstances:

> *(i) The reviewer is a paid employee or otherwise contracted to work with Pew;*
> *(ii) The reviewer has begun any discussions about future job possibilities at Pew;*
> *(iii) The reviewer is a collaborator or advisor on the product's development;*
> *(iv) The reviewer or an immediate family member has a direct financial interest in the research or its results.*

Please fill in and sign disclosure on next page.

June 2017

Disclosure

To the best of my knowledge and belief (check all that apply):

__ I have no conflicts of interest as defined above.

__ None of the circumstances described above that are grounds for considering recusal apply to me.

__ The following circumstances may be relevant to a conflict of interest determination (insert text here):

Acknowledgement Preference

__ I agree to be acknowledged as an external reviewer in the published document.

__ Do not acknowledge me as an external reviewer in the published document.

I understand that the publication and related information provided to me constitute Pew's sole and exclusive property and nothing herein shall be construed to convey to me any right, title or interest, trademark, service mark, patent or copyright in the publication or any of Pew's other information, or any license to use, sell, exploit, copy or further develop the publication or derivative work.

_____ _____

Signature Date

From: Miller, Benjamin
Subject: RE: Implementation of the STOP Act
To: Persis Yu; Morgan, Julie; Darcus, Joanna; Merrill, Toby
Cc: Abby Shafroth; Alpha Taylor; Kyra Taylor
Sent: September 10, 2021 10:28 AM (UTC-04:00)

Hi Persis,
I've confirmed this with FSA and there will not be an issue for you all. My understanding is that the difference is really about having a single universal form to cover all servicers versus what you all do now where you have access forms with individual servicers. Here's more detail below. Happy to chat about it if you'd like. I'm also at [redacted]

Legal aid can continue to access the information through contacting the call center or servicer, as they do now. They will need to have an access form on file. There is a Third Party Access form that is going through clearance, but until that is cleared by OMB, each servicer has their own form that the legal aid community should be familiar with since they use it now. Once there is an universal form, it should make their lives easier since it will be one form that can be used across all systems and servicers. We will provide a short transition time once the new form is approved (so they will not need their clients to sign a new form the very next day).

From: Persis Yu <pyu@nclc.org>
Sent: Friday, September 10, 2021 9:16 AM
To: Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Merrill, Toby <Toby.Merrill@ed.gov>
Cc: Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>
Subject: Implementation of the STOP Act

Dear Colleagues,

I saw the notice on the implementation of the penalties in the STOP Act posted in the federal register: https://www.federalregister.gov/documents/2021/09/10/2021-19536/third-party-access-to-the-departments-information-technology-systems-and-notice-of-criminal

According to the notice, penalties go into effect tomorrow. As far as I am aware, the Department has not yet implemented a process by which legal services, private attorneys, and other non-profit/government individuals can set up credentials to access their clients' NSLDS information as expressly permitted under the STOP Act. I was assured that the penalties imposed by the STOP Act would not go into place until that process was implemented.

Many borrower advocates are worried about being subject to criminal penalties for helping some of the most vulnerable borrowers who cannot access their own NSLDS information without assistance. This will have a significant negative impact on the abilities of borrower advocates to work with their borrowers, especially older borrowers and borrowers with disabilities.

Can you let me know what the Department plans to do to ensure these advocates are able to continue to assist their clients?

Thank you,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
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Boston, MA 02110
www.nclc.org

Advisor Information presented at October 5, 2021 Negotiated rulemaking

1. Highlights from recent GAO report (GAO-21-105373)

2. Information on the share of public and for-profit institutions that confer degrees in certain fields, and the distribution of degrees and certificates conferred in different fields at public and for-profit institutions (from the US Digest of Education Statistics published by the US Department of Education)

3. Research evidence (limited)

GAO Findings on College Closures, 2010-2020

- About 246,000 borrowers were enrolled at 1,106 colleges that closed
  - Borrowers enrolled in closed colleges:
    - Collectively had a $4B in federal student loans
    - Median student loan debt: $9,500; Mean student loan debt: $16,400
    - 86% were enrolled at FP college; 14% nonprofit, 1% public

- Enrollment outcomes (overall among borrowers)
  - 13% completed program before college closing (ineligible for closed school discharge)
  - 44% transferred to another program (possibly eligible for closed school discharge)
    - ~30% of borrowers transferred from a for-profit college to a public college
    - ~5% transferred to a program that subsequently closed
    - ~1/2 of borrowers who transferred did not graduate within 6 years of transferring (pre-2015 cohorts)
  - 43% did not complete their program before their college closed or transfer to another college (eligible for closed school discharge)

- Circumstances surrounding closure appear to matter (e.g., abrupt versus orderly)

- Negative consequences of closure
  - Students often lose credits (from prior GAO report)
    - Students transferring among FP colleges lost 83% of credits on average
    - Borrowers who reenrolled at public colleges lost 94% of credits

Source: GAO-21-105373; GAO-17-574

GAO Findings on College Closures, 2010-2020 (continued)

- >80,000 students had loans forgiven through a closed school discharge
  - Does not include Aug 2021 announcement regarding additional ITT Technical Institute student discharges
  - Discharged ~$1.1B of loans at 682 college closures
    - Median loan debt ~$9,900
    - 96% went to students at for-profit colleges (2/3 concentrated at 21 colleges)
- Automatic discharges accounted for 42% of discharges since eligibility in 2013
- Of the group that transferred, but did not graduate within 6 years of transferring (pre-2015 cohorts), 700 applied for and received discharges
- Of those who received automatic discharges
  - 52% defaulted on their loans
    - More than half during the first 1.5 years after college closing
  - An additional 21% were past due at by ≥90 days at some point during repayment

Source: GAO-21-105373

Share of Public & FP Postsecondary Institutions Conferring Associate Degrees, 2017-2018

Field of Study	Share of Total Assoc Degrees	Public	For-Profit
Liberal arts and sciences, general studies, and humanities	39%	88%	1%
Health professions and related programs	18%	85%	70%
Business	12%	87%	44%
Homeland security, law enforcement, and firefighting	3%	70%	18%
Computer and information sciences	3%	74%	29%
Multi/interdisciplinary studies	3%	31%	1%
Engineering technologies and engineering-related fields	3%	67%	8%
Social sciences and history	2%	22%	0%
Mechanic and repair technologies/technicians	2%	51%	8%
Visual and performing arts	2%	49%	11%
Education	2%	50%	3%
Psychology	1%	19%	0%
Physical sciences and science technologies	1%	29%	0%
Family and consumer sciences/human sciences	1%	38%	1%
Agriculture and natural resources	1%	39%	0%
Communication, journalism, and related programs	1%	23%	1%
Public administration and social services	1%	25%	2%
Engineering	1%	31%	1%
Biological and biomedical sciences	1%	23%	0%
Legal professions and studies	1%	31%	16%
Precision production	1%	31%	2%
Construction trades	1%	26%	3%
Total # of institutions	*2,457*	*1,242*	*580*

Notes: Descending rank by share of total associate degrees. Does not include every field of study. Source: Digest of Education Statistics, 2019, 318.60. Data are for degree-granting postsecondary institutions, which are institutions that grant associate's or higher degrees and participate in Title IV federal financial aid programs.

Share of Public & FP Postsecondary Institutions Conferring Associate Degrees, 2017-2018

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Liberal arts and sciences, general studies, and humanities	39%	88%	1%
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Multi/interdisciplinary studies	3%	31%	1%
Engineering technologies and engineering-related fields	3%	67%	8%
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Mechanic and repair technologies/technicians	2%	51%	8%
Visual and performing arts	2%	49%	11%
Education	2%	50%	3%
Psychology	1%	19%	0%
Physical sciences and science technologies	1%	29%	0%
Family and consumer sciences/human sciences	1%	38%	1%
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Degrees & Certificates Conferred, 2017-2018

Field of study	Share of Total Assoc Degrees	Assoc Degrees		1- to <4-year certificates	
		Public	FP	Public	FP
Liberal arts and sciences, general studies, and humanities	39%	44%	2%	25%	0%
Health professions and related programs	18%	14%	48%	24%	43%
Business	12%	11%	20%	12%	35%
Homeland security, law enforcement, and firefighting	3%	3%	5%	3%	0%
Computer and information sciences	3%	3%	5%	3%	1%
Multi/interdisciplinary studies	3%	3%	1%	1%	0%
Engineering technologies and engineering-related fields	3%	3%	2%	4%	2%
Social sciences and history	2%	3%	0%	0%	0%
Mechanic and repair technologies/technicians	2%	2%	6%	9%	13%
Visual and performing arts	2%	2%	3%	3%	1%
Education	2%	2%	1%	1%	0%
Psychology	1%	1%	0%	0%	0%
Physical sciences and science technologies	1%	1%	0%	0%	0%
Family and consumer sciences/human sciences	1%	1%	0%	2%	0%
Agriculture and natural resources	1%	1%	0%	1%	0%
Communication, journalism, and related programs	1%	1%	0%	0%	0%
Public administration and social services	1%	1%	1%	0%	0%
Engineering	1%	1%	0%	0%	0%
Biological and biomedical sciences	1%	1%	0%	0%	0%
Legal professions and studies	1%	1%	2%	1%	0%
Precision production	1%	1%	0%	5%	2%
Construction trades	1%	1%	1%	4%	2%
Total # of credentials conferred	*1,011,487*	*885,870*	*69,430*	*264,974*	*154,929*

Notes: Descending rank by share of total associate degrees. Does not include every field of study. Source: Digest of Education Statistics, 2019, Tables 318.50, 320.10. Data are for degree-granting postsecondary institutions, which are institutions that grant associate's or higher degrees and participate in Title IV federal financial aid programs.

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Research Evidence

- Pell Grant students who attended schools that lost eligibility to disburse federal financial aid appear to have local options and many enroll in them
  - Enrollment losses at sanctioned FPs are partially offset (60–70%) by increased enrollment at local CCs
  - Overall, market enrollment declines by ~2 percent
  - Limitations
    - Schools threatened to lose eligibility to disburse federal aid, not closure
    - Does not track individual students – only Pell Grant students in aggregate in a county
    - Not able to observe costs of transfer (credit transferability; financial costs)
    - Pell Grant students only (not necessarily borrowers)
    - Other outcomes not observed (suggestive evidence regarding loan default)
  - Source: Cellini, Darolia, & Turner, Where Do Students Go When For-Profit Colleges Lose Federal Aid?, *American Economic Journal: Economic Policy*, 2020

From: Miller, Benjamin
Subject: RE: Implementation of the STOP Act
To: Persis Yu; Morgan, Julie; Darcus, Joanna; Merrill, Toby
Cc: Abby Shafroth; Alpha Taylor; Kyra Taylor
Sent: September 10, 2021 9:29 AM (UTC-04:00)

I had asked a question about this while the document was in clearance to confirm there would not be a disruption to legal aid work while the form that will address this is being implemented. Let me find that response and get back to you ASAP.

From: Persis Yu <pyu@nclc.org>
Sent: Friday, September 10, 2021 9:16 AM
To: Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Merrill, Toby <Toby.Merrill@ed.gov>
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Can you let me know what the Department plans to do to ensure these advocates are able to continue to assist their clients?

Thank you,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

From: Miller, Benjamin
Subject: RE: Implementation of the STOP Act
To: Persis Yu
Cc: Morgan, Julie; Merrill, Toby; Abby Shafroth; Alpha Taylor; Kyra Taylor
Sent: September 10, 2021 11:53 AM (UTC-04:00)

Got it. I had asked for confirmation that we would not be affecting legal aid until this was all done but I am checking back on an answer on this.

From: Persis Yu <pyu@nclc.org>
Sent: Friday, September 10, 2021 11:17 AM
To: Miller, Benjamin <Benjamin.Miller@ed.gov>
Cc: Morgan, Julie <Julie.Morgan@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Merrill, Toby <Toby.Merrill@ed.gov>; Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>
Subject: Re: Implementation of the STOP Act

Ben,

The third party authorization form doesn't address this issue. The problem is not about being able to contact servicers. It is about being able to get NSLDS information. You cannot provide competent legal representation to a student loan borrower without a borrower's full NSLDS report. Schools and servicers have full access through their own portal to get this information. However, borrower advocates need to get it from borrowers and it is only available through studentaid.gov using an FSA ID. Many of our borrowers are not able to access this information on their own, especially older borrowers and borrowers with disabilities. Therefore legal aid and private attorneys must utilize a borrower's FSA ID in order to assist these borrowers, and the Department has just criminalized that activity.

In order to stop debt relief scams while still allowing legitimate actors to do their jobs, the STOP Act provided that private attorneys, legal aid attorneys, and other non-profit/government entities would get a new pathway to NSLDS information so that we would not need to use our client's FSA IDs in order to get the information necessary to provide competent representation. However, that pathway has not yet been created.

Happy to chat more. I'm around any time this afternoon.

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

On Fri, Sep 10, 2021 at 10:27 AM Miller, Benjamin <Benjamin.Miller@ed.gov> wrote:

> Hi Persis,
> I've confirmed this with FSA and there will not be an issue for you all. My understanding is that the difference is really about having a single universal form to cover all servicers versus what you all do now where you have access forms with individual servicers. Here's more detail below. Happy to chat about it if you'd like. I'm also at [redacted]
>
> Legal aid can continue to access the information through contacting the call center or servicer, as they do now. They

will need to have an access form on file. There is a Third Party Access form that is going through clearance, but until that is cleared by OMB, each servicer has their own form that the legal aid community should be familiar with since they use it now. Once there is an universal form, it should make their lives easier since it will be one form that can be used across all systems and servicers. We will provide a short transition time once the new form is approved (so they will not need their clients to sign a new form the very next day).

From: Persis Yu <pyu@nclc.org>
Sent: Friday, September 10, 2021 9:16 AM
To: Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Merrill, Toby <Toby.Merrill@ed.gov>
Cc: Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>
Subject: Implementation of the STOP Act

Dear Colleagues,

I saw the notice on the implementation of the penalties in the STOP Act posted in the federal register: https://www.federalregister.gov/documents/2021/09/10/2021-19536/third-party-access-to-the-departments-information-technology-systems-and-notice-of-criminal

According to the notice, penalties go into effect tomorrow. As far as I am aware, the Department has not yet implemented a process by which legal services, private attorneys, and other non-profit/government individuals can set up credentials to access their clients' NSLDS information as expressly permitted under the STOP Act. I was assured that the penalties imposed by the STOP Act would not go into place until that process was implemented.

Many borrower advocates are worried about being subject to criminal penalties for helping some of the most vulnerable borrowers who cannot access their own NSLDS information without assistance. This will have a significant negative impact on the abilities of borrower advocates to work with their borrowers, especially older borrowers and borrowers with disabilities.

Can you let me know what the Department plans to do to ensure these advocates are able to continue to assist their clients?

Thank you,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

Using e-mail is inherently insecure. Confidential information, including account numbers, credit card numbers, etc.,

From: Johnson Tyler
Subject: suspension of credit reporting while Defense against repayment application is pending?
To: Persis Yu; Kyra Taylor; Merrill, Toby
Sent: September 10, 2021 6:45 PM (UTC-04:00)

Hello Persis and Kyra and Tovby, sorry for this question but I have been poking around for about an hour on the web and nclc treatise without luck.

I have a arts institute victim whose borrower defense application on her parent plus loans has been pending since August 2018. She was in default prior to the filing and remains so. She says the loans are still appearing on her credit report. The regs say collection activity is suspended during pendency of application. Does credit reporting constitute collection activity?

Thanks

Johnson

Johnson M. Tyler, Esq. (*he / him*)
Senior Consumer Attorney
Brooklyn Legal Services
[redacted] (cell)
646-921-0394 (fax)
718-237-5548 (office, but no during pandemic)
jtyler@lsnyc.org

From: Persis Yu
Subject: Re: Meeting Request with FSA COO Cordray and Student Loan Ombudsman Latreille
To: Richo, Stephanie
Cc: Latreille, Bonnie; Abby Shafroth; Alpha Taylor; Kyra Taylor; Robyn Smith; Eileen Connor
Sent: June 10, 2021 5:18 PM (UTC-04:00)

Thank you for checking. This is a different group of organizations.

Best,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

On Thu, Jun 10, 2021 at 4:54 PM Richo, Stephanie <Stephanie.Richo@ed.gov> wrote:

> I believe I responded to a similar request earlier today in which you were included. Is this an additional request or related to the previous request?
>
> Thank you.
>
> ---
>
> **From:** Persis Yu <pyu@nclc.org>
> **Sent:** Thursday, June 10, 2021 4:45 PM
> **To:** Richo, Stephanie <Stephanie.Richo@ed.gov>; Bonnie Latreille <bonnie@protectborrowers.org>
> **Cc:** Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Robyn Smith <rsmith@lafla.org>; Eileen Connor <econnor@law.harvard.edu>
> **Subject:** Meeting Request with FSA COO Cordray and Student Loan Ombudsman Latreille
>
>
>
> To whom it may concern,

I am the director of the National Consumer Law Center's Student Loan Borrower Assistance Project. NCLC represents low-income student loan borrowers and we coordinate a network of legal services attorneys representing low income borrowers from across the county.

I am writing to request a meeting with COO Richard Cordray and Student Loan Ombudsman Bonnie Latreille and members of the legal aid community to discuss the operational issues facing low-income student loans borrowers.

Please let me know if we can organize such a joint meeting between legal services providers, the COO, and the Ombudsman.

Thank you for your attention to this request!

Best,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

Using e-mail is inherently insecure. Confidential information, including account numbers, credit card numbers, etc., should never be transmitted via e-mail or e-mail attachment. This e-mail message is confidential and/or privileged and is for the use of the intended recipient only. All other use is prohibited.

From: Richo, Stephanie
Subject: Meeting with FSA COO Richard Cordray and Student Loan Ombudsman Bonnie Latreille
To: nhochsprung@aft.org; scohen@aft.org; lisa@ourfinancialsecurity.org; Emily Hirtle; blevin@afscme.org; bustillosl@aauw.org; manthony@americanprogress.org; lisa.stifler@responsiblelending.org; julia.barnard@responsiblelending.org; rweintraub@consumerfed.org; syed.ejaz@consumer.org; king@civilrights.org; laitinen@newamerica.org; sattelmeyer@newamerica.org; dhawkins@nacacnet.org; Abby Shafroth; Persis Yu; eharrington@nea.org; connie.myers@nelsonmullins.com; Regan Fitzgerald; Travis Plunkett; Alex Nock; Eileen Connor; mike@protectborrowers.org; seth@protectborrowers.org; dan@defendstudents.org; natalia@studentdebtcrisis.org; cody@studentdebtcrisis.org; Bob Shireman; kelliott@edtrust.org; bstein@ticas.org; ktromble@ticas.org; carrie@vetsedsuccess.org; barmak@vetsedsuccess.org; CHancock@americanprogress.org; thomas@debtcollective.org; (b)(6); (b)(6)
Cc: Latreille, Bonnie
Sent: July 16, 2021 1:33 PM (UTC-04:00)

Thank you all for your interest in meeting with FSA COO Richard Cordray and Student Loan Ombudsman Bonnie Latreille. We're reaching out to schedule a meeting for **Monday, August 2nd from 2-3:30pm eastern**. You will be receiving an invite shortly for this meeting.

We are eager to hear from you all and intend to be in listening mode. Over the next few days, Bonnie will be reaching out to you to confirm an agenda. As the organizations here have many constituencies, we expect this meeting will cover a wide range of topics, including student loan servicing, collections, and institutional accountability.

This invitation should not be forwarded, but if you would like to add any attendees, please reach out to **Stephanie Richo (stephanie.richo@ed.gov) or Bonnie Latreille (bonnie.j.latreille@ed.gov).**

Thank you.

From:
Subject: RE: Meeting with FSA COO Richard Cordray and Student Loan Ombudsman Bonnie Latreille
To: Cordray, Richard; 'nhochsprung@aft.org'; 'lisa@ourfinancialsecurity.org'; 'Emily Hirtle'; 'blevin@afscme.org'; 'bustillosl@aauw.org'; 'manthony@americanprogress.org'; 'lisa.stifler@responsiblelending.org'; 'julia.barnard@responsiblelending.org'; 'rweintraub@consumerfed.org'; 'syed.ejaz@consumer.org'; 'laitinen@newamerica.org'; 'sattelmeyer@newamerica.org'; 'dhawkins@nacacnet.org'; 'Abby Shafroth'; 'Persis Yu'; 'eharrington@nea.org'; 'connie.myers@nelsonmullins.com'; 'Regan Fitzgerald'; 'Travis Plunkett'; 'Alex Nock'; 'Eileen Connor'; 'mike@protectborrowers.org'; 'seth@protectborrowers.org'; 'dan@defendstudents.org'; 'natalia@studentdebtcrisis.org'; 'cody@studentdebtcrisis.org'; 'Bob Shireman'; 'kelliott@edtrust.org'; 'bstein@ticas.org'; 'ktromble@ticas.org'; 'carrie@vetsedsuccess.org'; 'barmak@vetsedsuccess.org'; 'CHancock@americanprogress.org'; 'thomas@debtcollective.org'; [redacted] RLau@nea.org; ksouthern@ticas.org; 'scohen@aft.org'; 'king@civilrights.org'
Cc: Clarke, Linda; Merrill, Toby; Wright, Krystle; Kyle Southern; https://usdedeop.sharepoint.com/_layouts/15/spappbar.aspx?workload=files
Sent: July 22, 2021 2:32 PM (UTC-04:00)

Bonnie Latreille
Student Loan Ombudsman
U.S. Department of Education
Office of Federal Student Aid
Federal Student Aid

-----Original Appointment-----
From: Cordray, Richard <Richard.Cordray@ed.gov>
Sent: Friday, July 9, 2021 5:06 PM
To: Cordray, Richard; Latreille, Bonnie; 'nhochsprung@aft.org'; 'lisa@ourfinancialsecurity.org'; 'Emily Hirtle'; 'blevin@afscme.org'; 'bustillosl@aauw.org'; 'manthony@americanprogress.org'; 'lisa.stifler@responsiblelending.org'; 'julia.barnard@responsiblelending.org'; 'rweintraub@consumerfed.org'; 'syed.ejaz@consumer.org'; 'laitinen@newamerica.org'; 'sattelmeyer@newamerica.org'; 'dhawkins@nacacnet.org'; 'Abby Shafroth'; 'Persis Yu'; 'eharrington@nea.org'; 'connie.myers@nelsonmullins.com'; 'Regan Fitzgerald'; 'Travis Plunkett'; 'Alex Nock'; 'Eileen Connor'; 'mike@protectborrowers.org'; 'seth@protectborrowers.org'; 'dan@defendstudents.org'; 'natalia@studentdebtcrisis.org'; 'cody@studentdebtcrisis.org'; 'Bob Shireman'; 'kelliott@edtrust.org'; 'bstein@ticas.org'; 'ktromble@ticas.org'; 'carrie@vetsedsuccess.org'; 'barmak@vetsedsuccess.org'; 'CHancock@americanprogress.org'; 'thomas@debtcollective.org'; [redacted] RLau@nea.org; ksouthern@ticas.org; 'scohen@aft.org'; 'king@civilrights.org'
Cc: Clarke, Linda; Merrill, Toby; Wright, Krystle; Kyle Southern
Subject: Meeting with FSA COO Richard Cordray and Student Loan Ombudsman Bonnie Latreille
When: Monday, August 2, 2021 2:00 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

This invitation should not be forwarded, but if you would like to add any attendees, please reach out to **Stephanie Richo (stephanie.richo@ed.gov) or Bonnie Latreille (bonnie.j.latreille@ed.gov).**

Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting

Or call in (audio only)
+1 202-991-0393, [redacted] United States, Washington DC

Phone Conference ID: [redacted]
Find a local number | Reset PIN

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From:
Subject: RE: Meeting with FSA COO Richard Cordray and Student Loan Ombudsman Bonnie Latreille
To: Cordray, Richard; Cordray, Richard; 'nhochsprung@aft.org'; 'lisa@ourfinancialsecurity.org'; 'Emily Hirtle'; 'blevin@afscme.org'; 'bustillosl@aauw.org'; 'lisa.stifler@responsiblelending.org'; 'julia.barnard@responsiblelending.org'; 'rweintraub@consumerfed.org'; 'syed.ejaz@consumer.org'; 'laitinen@newamerica.org'; 'sattelmeyer@newamerica.org'; 'dhawkins@nacacnet.org'; 'Abby Shafroth'; 'Persis Yu'; 'eharrington@nea.org'; 'connie.myers@nelsonmullins.com'; 'Regan Fitzgerald'; 'Travis Plunkett'; 'Alex Nock'; 'Eileen Connor'; 'mike@protectborrowers.org'; 'seth@protectborrowers.org'; 'dan@defendstudents.org'; 'natalia@studentdebtcrisis.org'; 'cody@studentdebtcrisis.org'; 'Bob Shireman'; 'kelliott@edtrust.org'; 'bstein@ticas.org'; 'ktromble@ticas.org'; 'carrie@vetsedsuccess.org'; 'barmak@vetsedsuccess.org'; 'CHancock@americanprogress.org'; 'thomas@debtcollective.org'; [redacted] RLau@nea.org; ksouthern@ticas.org; Bradley Custer; Yan Cao; 'scohen@aft.org'; 'king@civilrights.org'
Cc: Clarke, Linda; Merrill, Toby; Wright, Krystle; Kyle Southern
Sent: July 26, 2021 9:38 AM (UTC-04:00)

Bonnie Latreille
Student Loan Ombudsman
U.S. Department of Education
Office of Federal Student Aid
Federal Student Aid

-----Original Appointment-----
From: Cordray, Richard <Richard.Cordray@ed.gov>
Sent: Friday, July 9, 2021 5:06 PM
To: Cordray, Richard; Latreille, Bonnie; 'nhochsprung@aft.org'; 'lisa@ourfinancialsecurity.org'; 'Emily Hirtle'; 'blevin@afscme.org'; 'bustillosl@aauw.org'; 'lisa.stifler@responsiblelending.org'; 'julia.barnard@responsiblelending.org'; 'rweintraub@consumerfed.org'; 'syed.ejaz@consumer.org'; 'laitinen@newamerica.org'; 'sattelmeyer@newamerica.org'; 'dhawkins@nacacnet.org'; 'Abby Shafroth'; 'Persis Yu'; 'eharrington@nea.org'; 'connie.myers@nelsonmullins.com'; 'Regan Fitzgerald'; 'Travis Plunkett'; 'Alex Nock'; 'Eileen Connor'; 'mike@protectborrowers.org'; 'seth@protectborrowers.org'; 'dan@defendstudents.org'; 'natalia@studentdebtcrisis.org'; 'cody@studentdebtcrisis.org'; 'Bob Shireman'; 'kelliott@edtrust.org'; 'bstein@ticas.org'; 'ktromble@ticas.org'; 'carrie@vetsedsuccess.org'; 'barmak@vetsedsuccess.org'; 'CHancock@americanprogress.org'; 'thomas@debtcollective.org'; [redacted] RLau@nea.org; ksouthern@ticas.org; Bradley Custer; Yan Cao; 'scohen@aft.org'; 'king@civilrights.org'
Cc: Clarke, Linda; Merrill, Toby; Wright, Krystle; Kyle Southern
Subject: Meeting with FSA COO Richard Cordray and Student Loan Ombudsman Bonnie Latreille
When: Monday, August 2, 2021 2:00 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Could Barmak attend for us?

Thank you

---------- Forwarded message ---------
From: **Cordray, Richard** <Richard.Cordray@ed.gov>
Date: Fri, Jul 16, 2021 at 4:50 PM
Subject: Meeting with FSA COO Richard Cordray and Student Loan Ombudsman Bonnie Latreille
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>, nhochsprung@aft.org <nhochsprung@aft.org>, scohen@aft.org <scohen@aft.org>, lisa@ourfinancialsecurity.org <lisa@ourfinancialsecurity.org>, Emily Hirtle <emily@ourfinancialsecurity.org>, blevin@afscme.org <blevin@afscme.org>, bustillosl@aauw.org <bustillosl@aauw.org>, manthony@americanprogress.org <manthony@americanprogress.org>,

lisa.stifler@responsiblelending.org <lisa.stifler@responsiblelending.org>, julia.barnard@responsiblelending.org <julia.barnard@responsiblelending.org>, rweintraub@consumerfed.org <rweintraub@consumerfed.org>, syed.ejaz@consumer.org <syed.ejaz@consumer.org>, king@civilrights.org <king@civilrights.org>, laitinen@newamerica.org <laitinen@newamerica.org>, sattelmeyer@newamerica.org <sattelmeyer@newamerica.org>, dhawkins@nacacnet.org <dhawkins@nacacnet.org>, Abby Shafroth <ashafroth@nclc.org>, Persis Yu <pyu@nclc.org>, eharrington@nea.org <eharrington@nea.org>, connie.myers@nelsonmullins.com <connie.myers@nelsonmullins.com>, Regan Fitzgerald <rfitzgerald@pewtrusts.org>, Travis Plunkett <tplunkett@pewtrusts.org>, Alex Nock <ANock@pennhillgroup.com>, Eileen Connor <econnor@law.harvard.edu>, mike@protectborrowers.org <mike@protectborrowers.org>, seth@protectborrowers.org <seth@protectborrowers.org>, dan@defendstudents.org <dan@defendstudents.org>, natalia@studentdebtcrisis.org <natalia@studentdebtcrisis.org>, cody@studentdebtcrisis.org <cody@studentdebtcrisis.org>, Bob Shireman <shireman@tcf.org>, kelliott@edtrust.org <kelliott@edtrust.org>, bstein@ticas.org <bstein@ticas.org>, ktromble@ticas.org <ktromble@ticas.org>, carrie@vetsedsuccess.org <carrie@vetsedsuccess.org>, barmak@vetsedsuccess.org <barmak@vetsedsuccess.org>, CHancock@americanprogress.org <CHancock@americanprogress.org>, thomas@debtcollective.org <thomas@debtcollective.org>, [redacted] <[redacted]>, [redacted] <[redacted]>, RLau@nea.org <RLau@nea.org>, ksouthern@ticas.org <ksouthern@ticas.org>
Cc: Clarke, Linda <Linda.Clarke@ed.gov>, Merrill, Toby <Toby.Merrill@ed.gov>

This invitation should not be forwarded, but if you would like to add any attendees, please reach out to **Stephanie Richo (stephanie.richo@ed.gov) or Bonnie Latreille (bonnie.j.latreille@ed.gov).**

Microsoft Teams meeting

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Click here to join the meeting

Or call in (audio only)
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Phone Conference ID:[redacted]
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--

Carrie Wofford
President
Veterans Education Success
[redacted]

www.VetsEdSuccess.Org

Follow us on Twitter @GIBillRights and Facebook fb.me/GiBillRights

From: Latreille, Bonnie
Subject: RE: response to borrowers with error in discharge notification
To: Connor, Eileen
Cc: Nevin, Colleen
Sent: September 9, 2021 8:58 AM (UTC-04:00)

Hi Eileen,

Thanks for reaching out. Here's is messaging plan on this front:

- The BD Call Center will update their initial message borrowers hear when they call in to acknowledge the mistake and let borrowers know we're aware of the issue and will send out a correct version
- We will add a banner to the BD page on SA.gov acknowledging that some borrowers may have received a notification with the wrong school
- On Friday (by COB), a new email will go to the impacted population with the correct school information (we will notify the BD contact center of the schedule email in advance)
- On Monday, FSA will follow-up with an email to the impacted borrowers acknowledging the error and letting them know they should have received a corrected copy of the preliminary discharge letter

Here are links related to this notice:

- New text in the blue landing page banner: StudentAid.gov/borrower-defense
- Announcement for borrowers: StudentAid.gov/borrower-defense-update
- Post on FSACOO Twitter account: Twitter.com/FSACOO/status/1435746157356068872

Bonnie Latreille
Student Loan Ombudsman
U.S. Department of Education
Office of Federal Student Aid
Federal Student Aid

From: Connor, Eileen <econnor@law.harvard.edu>
Sent: Wednesday, September 8, 2021 11:05 AM
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Cc: Nevin, Colleen <Colleen.Nevin@ed.gov>
Subject: response to borrowers with error in discharge notification

Hello Bonnie and Colleen,

I wanted to check in about the batch of borrower defense notifications that went out recently with what seems to be a clerical error (listing the school as Marinello for borrowers who went to ITT, CCI, etc.). My operating assumption is that these are simply clerical errors and that the discharge information is being directed to people who will in fact get a discharge. This has been confirmed by a few borrowers who reached someone at the borrower defense hotline and reported back. Can you confirm this assumption? I would like to be able to quell people's confusion and also take pressure off your phone and email channels if possible. To that end, are you planning to put something on your website to address the issue? Let me know if we can help at least get accurate information out about what (I believe) is a positive situation.

Thanks,
Eileen

Eileen M. Connor

Director
Project on Predatory Student Lending
Legal Services Center of Harvard Law School
(617) 390-2528
[redacted] (mobile)
predatorystudentlending.org

From: Kristen.Donoghue@ed.gov
Subject: Re: connecting you on enforcement
To: Connor, Eileen
Sent: September 14, 2021 8:29 AM (UTC-04:00)

Sure let's do tomorrow at 5. My number is [redacted] Talk soon - Kristen

Sent from my iPhone

On Sep 14, 2021, at 8:04 AM, Connor, Eileen <econnor@law.harvard.edu> wrote:

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Both are good, would you like to pick most convenient for you?

From: Donoghue, Kristen <Kristen.Donoghue@ed.gov>
Sent: Tuesday, September 14, 2021 6:14:39 AM
To: Connor, Eileen <econnor@law.harvard.edu>
Subject: Re: connecting you on enforcement

Nice to meet you, Eileen. Moving Julie to bcc. I am free today or tomorrow at 5 - does either of those times work?
Looking forward to connecting - Kristen

Sent from my iPhone

On Sep 13, 2021, at 9:29 PM, Connor, Eileen <econnor@law.harvard.edu> wrote:

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thanks, Julie.
Kristen, if you have ten minutes or so to speak, I am eager to share my issue on program oversight and enforcement. Later afternoons are generally flexible for me.

Thanks very much,
Eileen

From: Morgan, Julie <Julie.Morgan@ed.gov>
Sent: Monday, September 13, 2021 9:18:50 PM
To: Donoghue, Kristen <Kristen.Donoghue@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>
Subject: connecting you on enforcement

Hi Kristen,

I wanted to connect you with Eileen Connor from the Harvard Project on Predatory Student Lending. Eileen is interested in discussing an issue on program oversight and enforcement, so I thought you'd be the right contact.

Julie

From: Donoghue, Kristen
Subject: Re: connecting you on enforcement
To: Connor, Eileen
Sent: September 14, 2021 8:29 AM (UTC-04:00)

Sure let's do tomorrow at 5. My number is [redacted] Talk soon - Kristen

Sent from my iPhone

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Both are good, would you like to pick most convenient for you?

From: Donoghue, Kristen <Kristen.Donoghue@ed.gov>
Sent: Tuesday, September 14, 2021 6:14:39 AM
To: Connor, Eileen <econnor@law.harvard.edu>
Subject: Re: connecting you on enforcement

Nice to meet you, Eileen. Moving Julie to bcc. I am free today or tomorrow at 5 - does either of those times work?
Looking forward to connecting - Kristen

Sent from my iPhone

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Thanks, Julie.
Kristen, if you have ten minutes or so to speak, I am eager to share my issue on program oversight and enforcement. Later afternoons are generally flexible for me.

Thanks very much,
Eileen

From: Morgan, Julie <Julie.Morgan@ed.gov>
Sent: Monday, September 13, 2021 9:18:50 PM
To: Donoghue, Kristen <Kristen.Donoghue@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>
Subject: connecting you on enforcement

Hi Kristen,

I wanted to connect you with Eileen Connor from the Harvard Project on Predatory Student Lending. Eileen is interested in discussing an issue on program oversight and enforcement, so I thought you'd be the right contact.

Julie

From: Connor, Eileen
Subject: RE: Strengthening FSA
To: Donoghue, Kristen
Cc: DeVaughn, Natalie
Sent: October 22, 2021 11:31 AM (UTC-04:00)

Thanks. Also, my 10 am Monday just freed up if that is more convenient for you.

From: Donoghue, Kristen [mailto:Kristen.Donoghue@ed.gov]
Sent: Friday, October 22, 2021 11:05 AM
To: Connor, Eileen <econnor@law.harvard.edu>
Cc: DeVaughn, Natalie <Natalie.DeVaughn@ed.gov>
Subject: RE: Strengthening FSA

Yes, sounds good. Copying Natalie to send an invite. Thanks!

From: Connor, Eileen <econnor@law.harvard.edu>
Sent: Friday, October 22, 2021 11:05 AM
To: Donoghue, Kristen <Kristen.Donoghue@ed.gov>
Subject: RE: Strengthening FSA

Would 2:30 Tuesday be good?

From: Donoghue, Kristen [mailto:Kristen.Donoghue@ed.gov]
Sent: Friday, October 22, 2021 10:58 AM
To: Connor, Eileen <econnor@law.harvard.edu>; Yan Cao <[redacted]>
Subject: RE: Strengthening FSA

Thanks, Eileen! Me as well – how about Monday at 10 or Tuesday between 1-3?
Kristen

From: Connor, Eileen <econnor@law.harvard.edu>
Sent: Friday, October 22, 2021 10:47 AM
To: Yan Cao <[redacted]>; Donoghue, Kristen <Kristen.Donoghue@ed.gov>
Subject: RE: Strengthening FSA

Thanks, Yan.
Kristen, I would be delighted to talk at your convenience.

Best,
Eileen

Eileen M. Connor
Director
Project on Predatory Student Lending
Legal Services Center of Harvard Law School
(617) 390-2528
(b)(6) (mobile)
predatorystudentlending.org

From: Yan Cao [mailto:(b)(6)
Sent: Wednesday, October 20, 2021 4:58 PM
To: Connor, Eileen <econnor@law.harvard.edu>; Donoghue, Kristen <Kristen.Donoghue@ed.gov>
Subject: Strengthening FSA

Kristen and Eileen - I've spoken w/ each of you separately about FSA and am convinced that great things would come from a conversation between you two. I can think of no better champions for students & hope you have a chance to connect soon.

Best, Yan

--
Yan Cao
(b)(6)

From: Schmidt, Eric A.
Subject: Report on ITT Technical Institute
To: Cordray, Richard
Cc: Connor, Eileen
Sent: February 16, 2022 1:16 PM (UTC-05:00)
Attached: Letter to Secretary Cardona with Dreams Destroyed 2.16.22.pdf, Dreams Destroyed_How ITT Technical Institute Defrauded a Generation of Students.pdf

DREAMS DESTROYED

How ITT Technical Institute Defrauded a Generation of Students

Project on Predatory Student Lending

February 2022

Acknowledgements

This report was prepared by the Project on Predatory Student Lending at the Legal Services Center of Harvard Law School. This report would not have been possible without Jorge Villalba, James Eric Brewer, Joshua Cahill, Juan Hincapie, and Cheryl House, the five named plaintiffs in Villalba et al. v ITT et al. who decided to stand up and fight on behalf of students in the ITT bankruptcy. Our deepest gratitude to the former students and employees who shared their experiences which brought to light ITT's fraud and deception. Special thanks to co-counsel Melissa Root and Cathy Steege of Jenner & Block; the many Harvard Law School students, summer interns, and document reviewers who reviewed thousands of documents and assisted in preparing this report; and the ITT Bankruptcy Trustee Deborah Caruso. Lastly, we would like to extend an additional thank you to Jorge Villalba for providing the cover photo for this report and permitting its use.

About the Project on Predatory Student Lending

Established in 2012, the Project on Predatory Student Lending represents former students of predatory for-profit colleges. Its mission is to litigate to make it legally and financially impossible for federally-funded predatory schools to cheat students and taxpayers. The Project has brought a wide variety of cases on behalf of former students of for-profit colleges. It has sued the U.S. Department of Education for its failures to meet its legal obligation to police this industry and stop the perpetration and collection of fraudulent student loan debt.

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EXECUTIVE SUMMARY

ITT Technical Institute ("ITT") operated as a large-scale, predatory for-profit institution of postsecondary education from 1969 until September 2016, when it declared bankruptcy and abruptly ceased to exist.

ITT offered dozens of programs of study, spread out across its national network of roughly 130 campuses. ITT promised prospective students that it offered flexible schedules, easy transferability of credits to other schools, and a valuable academic experience. Hundreds of thousands of students went into debt to attend ITT, believing that its programs would lead to promising careers in growing fields with high salaries.

But these promises were outright lies.

ITT's business model was both nefarious and simple: get students to enroll and stay enrolled and reap the profits from their federal student aid. ITT incentivized its recruiters to get as many people through its doors as possible. Recruiters preyed on prospective students in vulnerable situations, saying whatever was necessary to sell ITT to unsuspecting individuals who were simply trying to improve their lives through higher education in practical fields.

In the end, the vast majority of students who attended ITT either never received a degree or were left with a useless degree. All they had to show for their investment were exorbitantly high student debt and the inability to repay it—and, perhaps most devastatingly, opportunities forever lost.

This report is the result of an unprecedented intervention by former students of ITT in the company's bankruptcy proceeding. Their intervention created access to evidence from audits, former employees, ITT's own internal documents and emails, government investigations, a multitude of lawsuits, and sworn statements.

The evidence clearly shows how ITT misled a generation of students into enrolling in expensive programs that did nothing to further their careers or financial security, but instead left them trapped under the weight of debt they could not repay. ITT was not a legitimate educational institution: it was a money-making scam that systematically and brazenly lied to students in order to profit from their federal financial aid, and then saddled them with a lifetime of devastating debt. Yet the Department of Education kept ITT eligible for federal student grantsand loans—essentially bestowing a federal seal of approval—until the bitter end.

The ubiquitous culture of fraud that thrived at ITT, and the federal government's complicity in the offenses, is what makes the elimination of all remaining ITT debt the only conscionable and reasonable course of action. Cancellation of this debt is necessary to bring some measure of resolution and justice to the thousands who were harmed by this predatory institution. At the same time, the Department of Education has an urgent obligation to identify and take action against the many predatory college operations, with business models similar to ITT, that are still enrolling students and ruining their financial futures.

A. Evidence Reviewed for this Report

The Project on Predatory Student Lending authored this report after a thorough review and analysis of the available evidence relevant to ITT. The Project, along with the law firm Jenner & Block, represents hundreds of thousands of former ITT students in a class action[1] against ITT's estates in the defunct company's ongoing bankruptcy proceedings.[2]

On November 28, 2018, the student class reached a historic settlement with ITT's estates. The settlement canceled over $500 million of student debt owed directly to the school, returned approximately $3 million back to students, and gave the student class a $1.5 billion allowed proofs of claim against ITT and its related companies.

As part of ITT's bankruptcy, the Project on Predatory Student Lending obtained internal company documents that have not previously been reviewed. The evidence cited in this report[3] dates from the early 2000s to late 2016, the year that ITT closed, and can broadly be divided into the following categories: (1) internal company documents, including audits, mystery shopper reports,[4] emails, policy directives, training materials, and other documents promulgated from corporate headquarters ("HQ"); (2) sworn statements and documented complaints from former students and employees of ITT; and (3) public documents, investigative reports, court filings, and other legal documentation and publicly available findings relevant to ITT.[5]

This report also includes statements from former students and employees of ITT that independently corroborate the wrongdoing documented in other forms (*i.e.*, in audits, email communications, and other company documents). Many of these first-hand accounts are narratives submitted by former ITT students to the U.S. Department of Education in support of applications for loan cancellation. These statements were made under penalty of perjury, and were shared with permission by the students themselves and Debt Collective, the organization that submitted these applications on behalf of its members.[6]

B. Key Findings

ITT routinely, as a matter of corporate policy, used high-pressure enrollment tactics and made material misrepresentations about ITT's cost, quality, reputation, and services. Its culture of fraud and abuse caused extensive harm to students who were simply seeking better career opportunities, but instead were left with useless degrees and insurmountable debt. This report will demonstrate the systemic nature of and wide-ranging harm caused by ITT's lies, particularly as follows:

ITT Employed Unscrupulous Marketing Tactics and Targeted Vulnerable Students

(1) ITT recruiters were actually high-pressure salespeople whose sole goal was to generate profits from students' federal financial aid. They were trained to use aggressive sales tactics, including a method known as the "pain funnel,"[7] to rope in prospective students, and they were rewarded for the volume of students they signed up. Recruiters even forged names on enrollment forms to meet their quotas.[8] ITT went so far as to hire "lead generators" to pose as job boards, which then turned around to advertise the school.[9] Call center representatives were expected to make 80-100 calls per day in order to identify more victims for ITT's scheme.[10] ITT's budgets show that marketing was a priority: the company spent more on advertising and recruiting than on student services.[11]

(2) ITT targeted veterans for its predatory product in order to exploit their GI Bill benefits and increase profits.[12] ITT also preyed upon students it knew could not get jobs in their chosen fields, including those with criminal records, students with disabilities (which the school and/or the profession could not accommodate), illiterate students, and students who could not speak English.[13]

ITT Recruiters Made Material Misrepresentations to Convince Students to Enroll

(3) As a matter of policy, ITT recruiters lied about material facts. If prospective students had known the truth, they would not have enrolled at ITT.

(4) ITT recruiters lied about ITT's selectivity and value. ITT told students that "seats are limited and [the] school is selective as to whom it admits."[14] In reality, "[e]veryone who applied to ITT was admitted, so long as they had a high school diploma or GED."[15]

(5) ITT recruiters lied about the jobs students could expect to get upon graduation, when ITT knew that many graduates did not get jobs in their fields. ITT told students that "there was a 99.9% graduation rate, and when [you're] done with your two years at ITT Tech you would make anywhere from 70,000 to 80,000 a year."[16] As demonstrated in this report, ITT students were unable to find work in their chosen fields, never made or never could have made as much as ITT promised, and were saddled with debt they could not pay back.

(6) ITT recruiters lied about the transferability of ITT credits.[17] ITT told students that their credits could be accepted or denied at the discretion of the receiving school, but this "discretion" was illusory. ITT knew that other schools extremely rarely—*if ever*—accepted ITT credits. In fact, ITT credits were sometimes not

even transferable *within* ITT. This meant that students were trapped at ITT, guaranteeing ITT a steady stream of revenue.

(7) ITT recruiters lied about ITT's accreditation status.[18] ITT told prospective students that ITT was actually more desirable than other schools because it was nationally accredited, which implied a greater reciprocity as compared to a school that is "only" regionally accredited. ITT knew these representations were misleading, but it allowed recruiters to continue suggesting to students that its accreditation under a lax accrediting body, the Accrediting Council for Independent Colleges and Schools ("ACICS"),[19] was the gold standard—which it was decidedly not.[20]

ITT Misled Students About Its Cost and Financial Aid

(8) Students were regularly rushed through the financial aid process and critical details were withheld or not meaningfully disclosed.[21] Financial aid administrators were assessed based on how much revenue they generated, not how well they explained costs to students. They were incentivized to—and did—lie to students about the actual costs of an ITT education, which were objectively excessive; the nature and type of loans students were given; and their very high interest rates.[22] As one student recalled, "When I wouldn't sign some of the loan paper work, they pulled me out of class into [the] financial aid office and explain[ed] that if I don't sign the loan paper I would be drop[ped] out of school. I did not know how many loans I have 'taken' out until I applied to purchase a home and was denied a mortgage loan because of my student loans."[23] This obfuscation was by design. ITT headquarters instructed financial aid advisors on how to "ensure quick access to students," "target more difficult repacks [enrolling students in loans] at the beginning,"[24] and hit "weekly goals for (finance) reps."[25]

(9) ITT gave out "opportunity scholarships" that were really a ploy to get students to take out maximum amounts of federal student aid.[26]

(10) Financial aid administrators stole students' PIN numbers and signed financial documents without students' knowledge or consent. A director of finance explained that "if a student did not come in for an appointment with financial aid, it was common for financial aid staff to fill out the forms and e-sign on behalf of the student, without their knowledge. This would also happen for parent borrowers."[27] Internal emails refer to this practice as well: one describes a student as "the one we applied for a loan for without his permission."[28] This outrageous behavior was known to, and thus sanctioned by, ITT HQ.[29]

ITT Cheated Students Out of the Education They Sought

(11) ITT's high-pressure tactics did not stop at enrollment. Recruiters pressured students to switch majors so that they would apply again and take out even more loans.[30] ITT even went so far as to set up a "Student Support and Academic Success Center," which was actually a telemarketing operation that hounded students it feared were at risk of dropping out.[31]

(12) ITT was not on the cutting edge of technology as it consistently described in its marketing materials and sales pitches to students.[32] Instead, it offered outdated equipment and cut back on resources for faculty and textbooks.[33] ITT insisted that all new programs or equipment upgrades "need to provide a return on investment justification that outlines the benefits to the P&L of the expense[.]"[34] As a result, students were left with useless lab equipment, outdated textbooks, and non-functioning computers.[35] Their extensive complaints were ignored.[36] At every turn, ITT did everything in its power to resist spending money on education, while it continued to funnel money into advertising, recruiting, and executive compensation.[37]

(13) ITT engaged in "bait and switch" tactics by moving classes online or changing the day classes were held *after* students had already enrolled based on the course schedule or a guarantee that they were in-person.[38] Online classes were cheaper for ITT to administer, so ITT prioritized these courses even though it knew that some students did not have access to the internet connection they needed to take their classes.[39] ITT brazenly imposed online education to the consternation of instructors as well as students. For example, one instructor complained that ITT was shortchanging students by moving classes online: "If you're going to be turning this into an online school, you need to make sure the students know this!! This is NOT the type of students we have!"[40] Yet instead of engaging with the instructor's concerns, ITT turned around and began an investigation of *him*.[41]

(14) A prime example of ITT's harmfully low quality was its nursing program, known as the Breckinridge School of Nursing. ITT actively lied to students for years by claiming that it was in the process of obtaining programmatic accreditation for its nursing program, which it was not.[42] The student outcomes of this program were also concealed from prospective students, including job placement rates and nursing exam results, as was the quality of faculty and equipment offered. The Breckinridge School of Nursing was of such a low quality that nurses trained there did not even "understand what a nurse does,"[43] prompting one former faculty member to state that she "feared for the safety of the students and the safety of the public."[44]

ITT Did Not Help Students Find Jobs

(15) ITT misrepresented the help it gave to graduates with finding jobs in their fields. ITT's career services department was not designed to help ITT students find careers. Instead, it manipulated data to make ITT look better to accreditors, and worked with accreditors to defang reporting requirements.[45] ITT presented jobs that were obviously not in a graduate's "field" as being valid job placements. For example, it counted minimum wage assembly line work as a position in "Electronic Technology"[46] and claimed that a job at a bakery was in the "autoCAD field."[47] In addition to manipulating job placement data, career services also spent resources working to reenroll students to squeeze them for more profit.[48]

ITT Was Designed to Harm Students

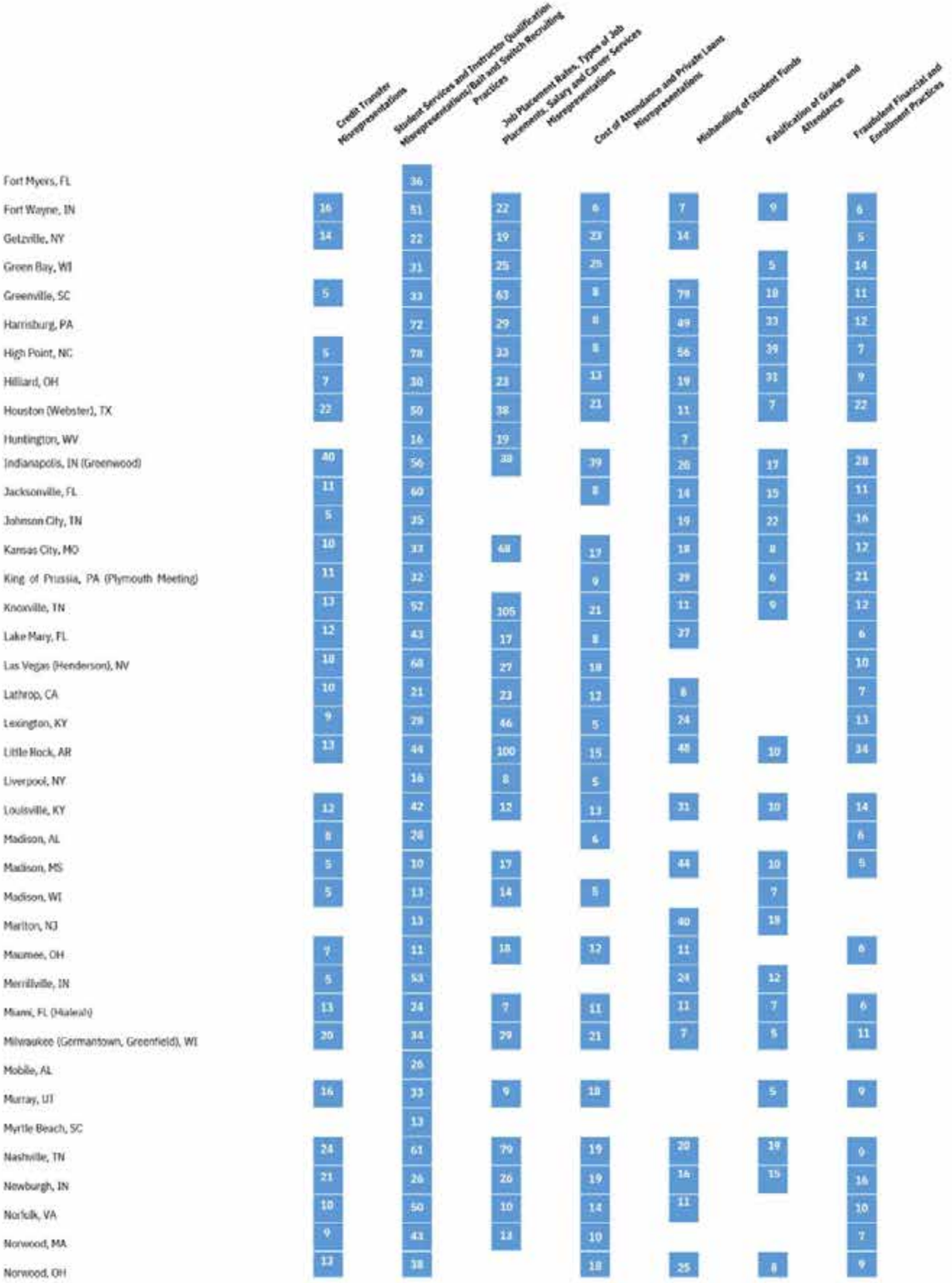
(16) ITT's malfeasance was a feature, not a bug. Every campus that ITT ran was tightly controlled by ITT's HQ. Corporate management ensured that company policies and priorities, which actively rewarded and encouraged lying and the defrauding of students, were applied uniformly across the country and were experienced by virtually every student ITT recruited.[49]

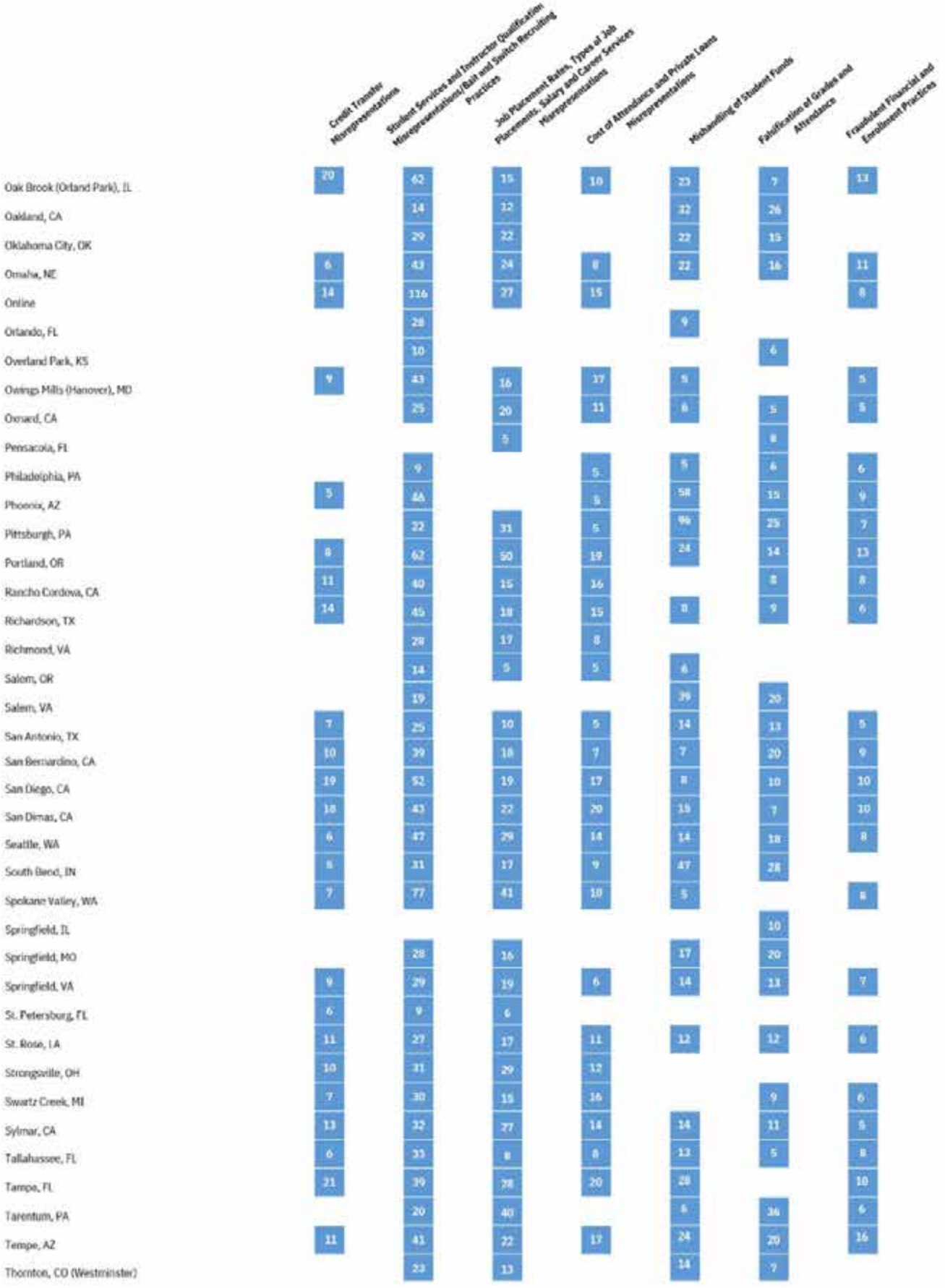
(17) When employees reported unethical behavior or wrongdoing, they were disciplined, while employees who engaged in such behavior were rewarded.[50] For example, investigating an employee's report that a director of recruitment was acting unethically, corporate Human Resources ("HR") told the employee that her her report was itself "not an appropriate comment, and could lead to corrective action if continued."[51] Likewise, a department chair who complained about being forced to pass students who had not completed their coursework satisfactorily was cited for "inappropriate behavior."[52] ITT's purported "ethics reporting hotline" was actually used to identify and punish disloyal employees.[53]

The evidence in this report demonstrates that ITT's dishonesty was baked into how ITT functioned from top to bottom. The chart below is a compilation of documented instances of misrepresentations, fraud, and harm committed against ITT students by ITT from 2002 to 2016. The Project on Predatory Student Lending reviewed a sample of thousands of documents taken from ITT's server as part of the defunct company's bankruptcy proceedings. Part of that analysis resulted in over 13,000 verified instances of ITT's wrongdoing taken from student complaints, internal company documents, audits, human resources files, and other contemporaneous records, which is the basis for the following chart. The data is a partial snapshot of all possible instances of documented wrongdoing, as the Project's review was inherently limited by practical constraints. The Project completed a thorough review of only a sample of the widespread fraud and wrongdoing, demonstrating that these instances were certainly more widespread and pervasive.

Instances of Wrongdoing at ITT Campuses

	Credit Transfer Misrepresentations	Student Services and Instructor Qualification Misrepresentations/Bait and Switch Recruiting Practices	Job Placement Rates, Types of Job Placements, Salary and Career Services Misrepresentations	Cost of Attendance and Private Loans Misrepresentations	Mishandling of Student Funds	Falsification of Grades and Attendance	Fraudulent Financial and Enrollment Practices
Akron, OH	5	22	11		5	6	
Albany, NY	6	12	14	10	25		17
Albuquerque, NM	24	40	31	25		5	11
Anaheim, CA (Orange)	12	40	14	18			11
Arlington Heights, IL	13	17	27	11			9
Arlington, TX	10	15	29	13	10		6
Arnold, MO	11	47	78	39	37		17
Atlanta, GA (Douglasville, Duluth, Kennesaw)	9	76	47	19	39	34	20
Aurora, CO	5	17	10	6		16	9
Austin, TX	8	35	9	8			
Baton Rouge, LA		24	6		5		5
Bensalem, PA (Levittown)		18	54	14	29	8	33
Bessemer, AL	14	47	29	20	58	27	15
Boise, ID	7	34	25	6	10		13
Canton, MI	11	28	24	21	38	8	8
Cary, NC		60	22		27	19	15
Cedar Rapids, IA		15	9		26	20	
Chantilly, VA	8	46	16	12	5		7
Charleston, SC		31	12			7	
Charlotte, NC	13	76	26	8	53	13	21
Chattanooga, TN		13	11	6	12		
Clive, IA		29	20		23		17
Clovis, CA	6	28	9	9			5
Columbia, SC		41	10	6	27	8	
Columbus, OH		15	8	7	26	6	
Concord, CA		31	29		13	16	
Cordova, TN	7	41	63	7	61		9
Corona, CA		15	12		5	9	
Culver City, CA		13	10				6
Dayton, OH	11	66	25	8	23		7
Dearborn, MI		15	6	5		7	10
DeSoto, TX		13	12		20	8	6
Dunmore, PA	6	7	15	7	44	26	10
Durham, NC		41	13		8		
Earth City, MO	7	60	27	20	16	13	10
Eden Prairie (Brooklyn Center, Woodbury), MN	11	29	27	8	30	19	6
Everett, WA	7	53	27	7	14		6
Fort Lauderdale, FL	17	41	28	10	10	13	12


Credit Transfer Misrepresentations
Student Services and Instructor Qualification Misrepresentations/Bait and Switch Recruiting Practices
Job Placement Rates, Types of Job Placements, Salary and Career Services Misrepresentations
Cost of Attendance and Private Loans Misrepresentations
Mishandling of Student Funds
Falsification of Grades and Attendance
Fraudulent Financial and Enrollment Practices
Fort Myers, FL 36
Fort Wayne, IN 16 51 22 6 7 9 6
Getzville, NY 14 22 19 23 14 5
Green Bay, WI 31 25 25 5 14
Greenville, SC 5 33 63 8 78 10 11
Harrisburg, PA 72 29 8 49 33 12
High Point, NC 5 78 33 8 56 39 7
Hilliard, OH 7 30 23 13 19 31 9
Houston (Webster), TX 22 50 38 21 11 7 22
Huntington, WV 16 19 7
Indianapolis, IN (Greenwood) 40 56 38 39 26 17 28
Jacksonville, FL 11 60 8 14 15 11
Johnson City, TN 5 35 19 22 16
Kansas City, MO 10 33 48 17 18 8 12
King of Prussia, PA (Plymouth Meeting) 11 32 9 39 6 21
Knoxville, TN 13 92 105 21 11 9 12
Lake Mary, FL 12 43 17 8 37 6
Las Vegas (Henderson), NV 18 68 27 18 10
Lathrop, CA 10 21 23 12 8 7
Lexington, KY 9 28 46 5 24 13
Little Rock, AR 13 44 100 15 48 10 34
Liverpool, NY 16 8 5
Louisville, KY 12 42 12 13 31 10 14
Madison, AL 8 28 6 6
Madison, MS 5 10 17 44 10 5
Madison, WI 5 13 14 8 7
Marlton, NJ 13 40 19
Maumee, OH 7 11 18 12 11 6
Merrillville, IN 5 53 24 12
Miami, FL (Hialeah) 13 24 7 11 11 7 6
Milwaukee (Germantown, Greenfield), WI 20 34 29 21 7 5 11
Mobile, AL 26
Murray, UT 16 33 9 18 5 9
Myrtle Beach, SC 13
Nashville, TN 24 61 79 19 20 19 9
Newburgh, IN 21 26 26 19 16 15 16
Norfolk, VA 10 50 10 14 11 10
Norwood, MA 9 43 13 10 7
Norwood, OH 12 38 18 25 8 9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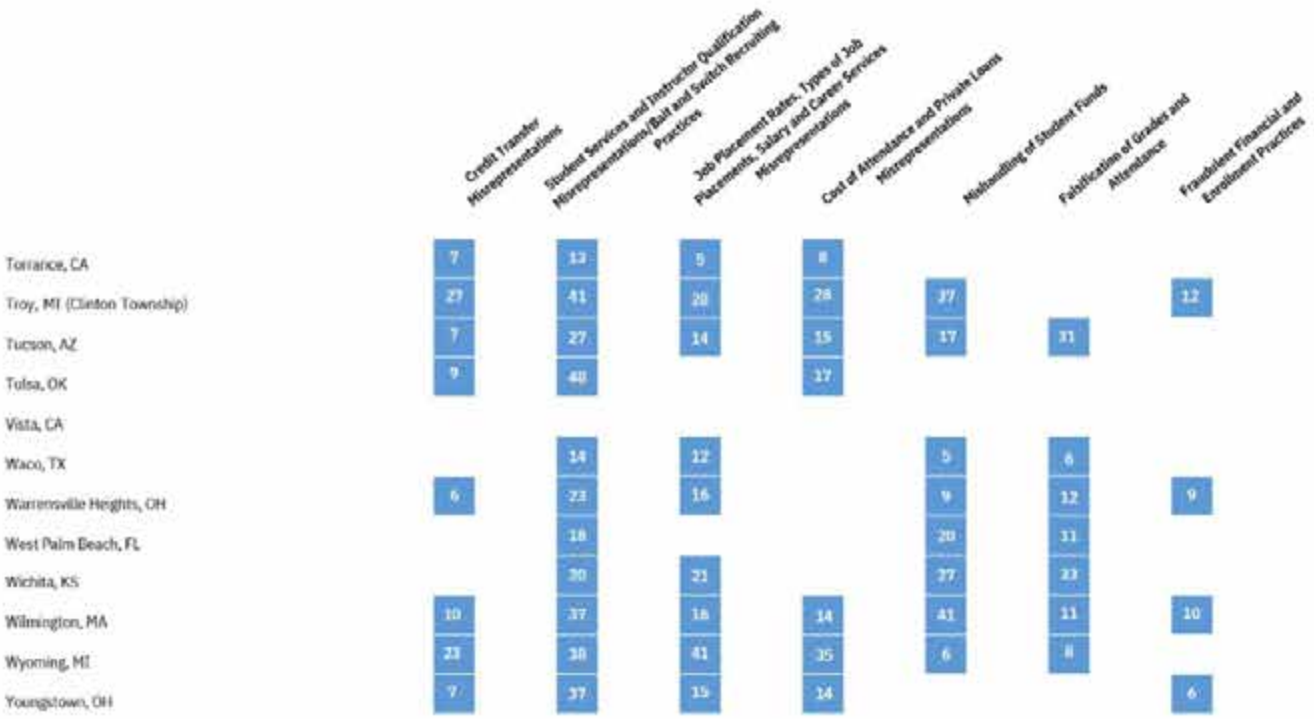
Falsification of Grades and Attendance
Fraudulent Financial and Enrollment Practices
Oak Brook (Orland Park), IL
Oakland, CA
Oklahoma City, OK
Omaha, NE
Online
Orlando, FL
Overland Park, KS
Owings Mills (Hanover), MD
Oxnard, CA
Pensacola, FL
Philadelphia, PA
Phoenix, AZ
Pittsburgh, PA
Portland, OR
Rancho Cordova, CA
Richardson, TX
Richmond, VA
Salem, OR
Salem, VA
San Antonio, TX
San Bernardino, CA
San Diego, CA
San Dimas, CA
Seattle, WA
South Bend, IN
Spokane Valley, WA
Springfield, IL
Springfield, MO
Springfield, VA
St. Petersburg, FL
St. Rose, LA
Strongsville, OH
Swartz Creek, MI
Sylmar, CA
Tallahassee, FL
Tampa, FL
Tarentum, PA
Tempe, AZ
Thornton, CO (Westminster)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Mishandling of Student Funds
Falsification of Grades and Attendance
Fraudulent Financial Aid Enrollment Practices
Torrance, CA 7 13 5 8
Troy, MI (Clinton Township) 27 41 20 28 37 12
Tucson, AZ 7 27 14 15 17 31
Tulsa, OK 9 40 17
Vista, CA
Waco, TX 14 12 5 6
Warrensville Heights, OH 6 23 16 9 12 9
West Palm Beach, FL 18 20 11
Wichita, KS 30 21 27 23
Wilmington, MA 10 37 18 14 41 11 10
Wyoming, MI 23 38 41 35 6 8
Youngstown, OH 7 37 15 14 6

C. Recommendations

(1) The Department of Education should cancel all outstanding debt attributable to ITT. As demonstrated in this report, virtually every student who attended ITT was affected by ITT's fraud and wrongdoing. This is consistent with the Department's own conclusion that ITT engaged in pervasive and clear misconduct for nearly a decade prior to its closure. These findings support the Department's recent action to cancel the loans of former ITT students who attended as early as 2008, and who did not complete their program. Those cancellations, for 115,000 individuals,[54] come under the Department's closed school discharge authority. Misrepresentations also create a borrower defense to repayment. There is no meaningful difference between a student who continued on at ITT—and received a useless degree—and one who did not. The same widespread misrepresentations and malfeasance form the basis of a borrower defense to repayment. Yet the Department of Education has not acted with consistency. Of the over 34,000 applications it has received from individuals, it has granted only 18,000.[55] It has not heeded calls from state Attorneys General to issue a group discharge. The Department must act accordingly—regardless of whether or not the former student has filed a borrower defense application, just as it has not required an application from a student in order to grant a closed school discharge.

(2) In addition to canceling all federal ITT-related debt, all private lenders should cancel any debt associated with attendance at ITT. Lenders who chose to do business with ITT are complicit in ITT's fraud and neither they, nor anyone holding the loans, has a lawful claim to collect from former ITT students. This is a step that has been taken by some lenders but not others. Notably, Navient and its predecessor, Sallie Mae, offered custom, subprime student loans to ITT students, under a risk sharing agreement with ITT, under which ITT effectively guaranteed the loans. Many former ITT students continue to have these loans on their credit reports and are hounded by debt collectors.[56]

(3) In order to prevent similar harm in the future, the Department of Education should sharply limit the ability of participating institutions to operate multiple locations and apply greater scrutiny to those that do. Institutions the scale of ITT—with locations in three dozen states—pose a particular risk to students because they are beyond the reach of critical oversight entities. Patterns of wrongdoing may be slower to emerge because instances occur in different jurisdictions not necessarily operating in coordination. ITT's scale meant that it was the largest customer of its accreditor, ACICS, which rubber stamped ITT's expansion.[57] Moreover, a large-scale, distributed school such as ITT will seek to maximize profit by centralizing functions in a manner that does not serve students. As demonstrated in this report, individual campuses had no control over their curriculum, or even whether a course was offered in person or online.

Campus leaders complained for years about policies that did not serve students and curricula that needed updating or tailoring to local conditions, to no avail.

(4) The Department of Education should treat bad-faith tactics on the part of institutions as a violation of its regulations and program participation agreements. Because new programs were not subjected to the Department's Gainful Employment rule, ITT renamed many of its existing programs and offered them as "new." As a result, 80% of ITT's student census was enrolled in a program that was not subject to the rule.[58] It may be impossible to anticipate, and thus regulate, every inventive means by which schools with poor outcomes will skirt accountability regulations. But dishonest tactics themselves should be sanctioned.

(5) Any accrediting agency responsible for approving an institution that causes large-scale harm to students and financial injury to the federal student aid programs should be derecognized by the Department of Education.

(6) Mandatory, pre-dispute arbitration agreements and class-action waivers benefit institutions, not students. Schools participating in federal student aid programs should not be able to rely on such clauses. Students must be able to enforce their rights, and the Department of Education, regulators, and the general public benefit from open court proceedings. ITT was aggressive in its use of these clauses, hidden in enrollment agreements, even going so far as to argue that the attorney general of the State of New Mexico should be forced to arbitrate its consumer protection action against the school.

(7) The Department of Education must recognize that oral misrepresentations are common, and convincing to students. ITT's written policies often contradicted what its salespeople told prospective students. With respect to borrower defense, schools should not be allowed to use boilerplate written disclaimers to defeat student claims.

I. ABOUT ITT TECHNICAL INSTITUTE

A. History and Corporate Background

ITT was founded in 1969,[59] underwent an initial public offering in 1994,[60] and filed for bankruptcy in September 2016.[61] In 2009, ITT bought Daniel Webster College in New Hampshire and operated it as a separate brand until ITT's bankruptcy declaration.[62]

ITT has been the subject of numerous lawsuits and investigations related to its high-pressure and deceptive sales tactics and other material harms it caused its students.[63] One of the earliest and most dramatic examples occurred in February 2004, when ITT's headquarters in Carmel, Indiana, and ten of its campuses were raided by federal officers from the Department of Justice, which was investigating the company's records on student grades, job placement figures, and other key outcome metrics.[64]

In 2007, the company's CEO, Rene Champagne, stepped down, cashing out more than $50 million in stock options in the process.[65] The top position at the company then went to Kevin Modany, who had been with ITT since at least 2002. Prior to his elevation to CEO, he had been the company's president, chief operating officer, and chief financial officer, and had served on its Board of Directors since July 2006.[66] Kevin Modany also began serving as chairman of the Board in February 2008.[67]

While ITT already had a long history of defrauding students by the time Kevin Modany became CEO, he played an instrumental role in continuing ITT's single-minded focus on profits and enrollment numbers at the expense of academic quality and student welfare. A former instructor at ITT, with almost 10 years of teaching experience at two different campuses, described the management shift under Modany in the following way:

> It was clear to me that under Kevin Modany's direction and leadership, ITT's sole focus was on profits at the expense of student welfare. I met Kevin Modany once . . . and all he spoke about was money – not education.[68]

B. Centralized Control by Corporate Headquarters

ITT's campuses were divided among twelve regional districts,[69] each overseen by a district, or regional, manager who was supervised by the senior vice president of operations. The director of each campus reported directly to the district manager. Each campus also had a director of recruitment, a director of career services, a director of finance, a dean, and a registrar. Each of these roles had a regional counterpart (*e.g.*, regional director of recruitment) as well as a national counterpart (*e.g.*, national director of recruitment).

Regional managers were responsible for ensuring that HQ's policies and priorities were

communicated down to individual campus-level employees. Corporate headquarters also produced promotional materials and advertising for all ITT campuses, including websites and catalogues for each location and program.[70]

Former employees of ITT have spoken about how tightly controlled the campuses were by HQ, and especially so under Kevin Modany's management:

> Corporate headquarters (HQ) exercised a great deal of control, in a fine level of detail, over multiple aspects of how individual campuses were run.[71]

An Alabama-based director of finance[72] reported that "[t]he corporate headquarters, or HQ, exerted a great degree of control over the staff at my and other ITT campuses . . . [and] HQ dictated policies and procedures for the operations of all ITT campuses."[73]

Another longtime ITT employee—who worked in financial aid roles from 2002 until 2009, was promoted from financial aid administrator to director of finance at the Murray, Utah campus, and also served as director of finance for the Phoenix, Arizona campus—confirmed the same story:

> In the context of financial aid, HQ directed everything from the order in which a Financial Aid Administrator was meant to show students the relevant forms to the language used in explaining these forms to the way to escalate punishments for students who failed to show up for student loan repackaging appointments or to pay their bills.[74]

Campuses had next to no autonomy to make independent decisions, including for issues as mundane as approving a prerequisite waiver for a student's particular program of study, which had to be approved by the national registrar at HQ.[75] Additionally, Kevin Modany had to personally approve every request to refund student tuition.[76]

II. SELLING ITT

ITT cultivated a high-pressure sales environment that caused recruiters and financial aid coordinators to say anything necessary to recruit students and rush them through the enrollment and financial aid processes. This was because the structure of ITT's business model was wholly dependent on revenue from the tuition of enrolled students, which came almost entirely from federal student aid. The company needed fresh foot traffic to sustain its insatiable need for revenue in the form of Title IV funding, which became the debt that is still crushing former ITT students to this day.[77]

A. High-Pressure Environment

The culture at the ITT recruitment operation was a classic "boiler room." ITT recruiters operated in a desperate work environment that created intense pressure, brutal competition, and a survivalist mentality:

> Cutthroat competition and overworking was actively encouraged by management . . . . ITT Baton Rouge became a sweatshop. We often worked six days a week, including holidays, in order to hit a quota assigned by HQ. I saw parents weeping because they never saw their spouses or children. Nobody in such conditions can provide quality counseling to prospective students making the most expensive decisions of their lives.[78]

One way that ITT maintained a cutthroat environment amongst its recruiters was through a "boardroom" process, where underperforming recruiters were humiliated and berated in front of their peers.[79] One recruiter's notes from a boardroom meeting describe the director of recruitment's statements: "We are here to talk about starts. We won't NEED reps soon. People will lose their health insurance because of you. People's families are affected because of you."[80]

One recruiter, who worked at the Baton Rouge, Louisiana, campus from 2010 to 2014, described the work environment at ITT in the following way:

> The Admissions Department was, for all intents and purposes, a sales department. Having worked at sales jobs in the past, it was like working in a call center, but with higher pressure than I have ever experienced at any other sales job.[81]

This employee went on to describe the demands placed on recruiters:

> I was under constant pressure to increase my campus's enrollment numbers. The pressure came from my managers, including the campus director, who kept track of my numbers . . . . There was enormous pressure on me and the other representatives and financial aid coordinators ('FACs') to make sales calls, enroll students, complete

> financial aid packages, and get students to attend an ITT class. This pressure was relentless . . . . I often had to work extra time on the weekend in order to make my numbers . . . . For example, to solicit interest in ITT programs, I would go to job fairs, workforce events, and Stand Down events for homeless veterans (events where homeless veterans are given supplies and services, such as food, clothing, shelter, health screenings, and other assistance).[82]

Despite the fact that ITT ran a massive sales operation, Kevin Modany directed that "sales" language be avoided in public-facing documents. One employee recounted these orders as: "We have to modify our language again. We can't dream of saying 'sales,' we must reference 'students' not 'starts,' and we can't say 'neutralizing objections or obstacles.' We must say, 'addressing issues.'"[83]

Recruiters were commonly threatened with termination if they did not enroll enough students.[84] "Staff that did not meet their quotas would face a series of escalating repercussions, starting with verbal warnings, then written warnings, and escalating all the way to termination."[85] Conversely, "staff that met or exceeded their quotas would receive praise, raises, and promotions."[86] They would also qualify to receive better, or "Tier 1," leads going forward, meaning that ITT rewarded its best closers with the opportunity to make even more sales, and stuck poor performers with lower-likelihood leads, ensuring their quicker exit from the company.[87] An example of these performance measures can be seen in a company document from 2012 that lays out minimum standards for recruiters in which they "must conduct an average of two face-to-face interviews (Conducts) per week. . . ."[88]

A former instructor and academic chair at the Clive, Iowa, and Murray, Utah, campuses between 2002 and 2014 described this relentless recruitment focus:

> Recruiters worked tirelessly to try to get anyone to sign up, because their jobs depended on making their required numbers. They would bombard prospective students with phone calls. The recruiters I spoke with told me that they felt a lot of pressure to get students to sign up.[89]
>
> . . .
>
> [R]ecruiters were under intense pressure to bring students through the door. The school could charge students tuition if they sat through a certain, minimum number of classes, so the main incentive was to simply bring students in and get them at least started in a classroom, regardless of their interest in the program, their ability to do the work, or their personal life situation.[90]

And even when students realized this deception and dropped out, ITT considered these dropout students a potential source of additional revenue and never stopped targeting them. A November 2011 report from HQ concerning the Vista, California, campus reflects this marketing focus, noting that "[r]e-entries [*i.e.*, students reentering

ITT after dropping out or completing their first program] are below plan" and that staff are attempting to fix this problem with "50-110 calls per week" and "5 postcard mailings to our target list of 415 former students."[91]

ITT's high pressure/high volume recruitment operation was succinctly described in an internal ITT document:

> We attract 1.4 million resident inquiries per year. Inquiries are sent to local campuses and routed to one of roughly 1200 recruitment representatives (rep). Each rep receives an inquiry and has four days to achieve a Conduct. [sic] Reps call inquiries three times per day until Contact. [sic] If the Conduct [sic] does not occur within four days, the inquiry goes to another rep that also has four days to achieve a conduct. Failure on the second rep[']s part means the inquiry go[es] to a third campus-based rep. Failure with a third rep sends the inquiry to a contact center, which places the inquiry in a dialer for two weeks.[92]

Many ITT training documents heavily emphasized the dual tactics of contacting student leads as soon as possible to "create value and excitement for the appointment" and encouraging students to come in earlier if their appointments were scheduled more than 72 hours in the future.[93]

In 2014, ITT's outside counsel tracked down former recruiters from the Lexington, Kentucky, campus who had been interviewed by the Kentucky Attorney General's office. One of them recounted that "being a rep meant 'selling' ITT, which . . . is not much different than selling a car" and that "ITT's strategy was to 'just wear people down' by "call[ing] them 3-4-5 times a day, hand them off to a new rep, then 'rinse and repeat.'"[94] He said that eventually "people would get so fed up that they . . . would give up and agree to visit a campus just to get ITT off their back."[95] If the recruiter backed off in the face of disinterest, "his boss's response would be: 'Why did you let them off the hook?'"[96]

Other examples of the constant pressure recruiters were put under can be found in company emails sent to recruiters that included "pep talk"-type language, usually following an employee meeting called a "Rep Rally." One such email contained the following directive:

> Follow the 3x3x3 rule. Call all new inquiries three times per day for the first three days and make your calls in three different time zones of the day. (Morning, afternoon and evening).[97]

Turnover in recruitment positions was such a problem that, in 2014, ITT loosened its requirement that recruiters have a postsecondary degree (changing it to just a preferred credential), and it eliminated the need for new recruiters to undergo a pre-employment assessment.[98]

1. The Mystery Shopper Program and the Entrenchment of Unethical Recruitment

Some of the most damning evidence produced in the bankruptcy process and cited in this report comes from a multiyear "mystery shopper" program that ITT implemented.[99] Under this program, ITT hired individuals to pose as prospective students and report back to ITT on what they experienced in the recruitment process. The mystery shopper program existed from at least 2007 to 2014. ITT publicly maintained that it "hired mystery shoppers to search for misconduct,"[100] and described it as "a rigorous program implemented by ITT designed to insure [sic] compliance by its recruiting employees."[101] But internal documents reveal that ITT's mystery shopper program was primarily "designed to provide feedback concerning a prospective customer's initial experience or first impression of [ITT Tech]."[102] In other words, it was a tool for assessing and refining sales efficacy.

Moreover, when ITT did use mystery shoppers to identify misconduct, it was generally done in response to the threat of an external investigation.[103] For example, in October 2010, less than two months after the Government Accountability Office revealed an undercover investigation into for-profit schools' recruiting practices,[104] ITT specifically modified[105] its mystery shopper reports to detect the particular issues and terminology identified in the Government Accountability Office report.[106]

A key takeaway with respect to the mystery shopper program is that it was essentially reactive by design and intent. There is no evidence, for example, that misrepresentations documented by mystery shoppers were retroactively corrected for the benefit of actual prospective students to whom those same misrepresentations were made. It is hard to view the mystery shopper program as a protection for students when it was primarily used as a way to critique sales pitches and react to recruiters who might put ITT into the crosshairs of federal investigators.

Accordingly, there are also no indications that ITT's modifications to the mystery shopper program addressed any of the root causes of non-compliance,[107] especially when partnered with the general absence of significant corrective actions.[108] As an HR employee stated, "I don't recall requesting an[y] terminations as a result of a Mystery Shop."[109] One ITT recruiter explained that he had been "shopped" a couple of times and "could easily tell who the mystery shoppers were based on their demeanor during the shops."[110]

An example of how the mystery shopper program was primarily used for assessing sales pitches and not for identifying wrongful recruiting practices can be seen in a 2012 corporate email thread. The thread discusses a mystery shopper at the Grand Rapids, Michigan, campus who identified a recruiter who promised the availability of certain class times and described the school as "free."[111] Of course, the recruiter's statement that the school was "free" was an obvious lie, and even under ITT's lax standards, would normally be considered a severe violation, possibly warranting termination. However, an HQ official responded to this email with, "We may want to chat about

this one as it seems like a harsh application of the point system."[112] Kevin Modany then replied, "Doesn't seem like a statement that would prompt a termination. Is this really a Tier 1 violation???"[113] Modany frequently asked for more substantiation of alleged violations caught by mystery shoppers before corrective actions were taken,[114] including when a mystery shopper reported that an employee took note of a prospective student's financial aid PIN, to which Modany replied, "[a]gain . . . is this a violation if she didn't look at it?"[115]

Consistent with HQ's recurring position of defending recruiters who lied to prospective students, ITT also used the mystery shopper program as a way of identifying employees who were not selling ITT hard enough. Kevin Modany responded to one 2015 mystery shopper report by writing:

> [T]here are so many operational errors in this presentation that I don't know where to begin. To the extent that this is representative of what this school (or any of our schools) are doing . . . it explains why we are not taking advantage of the opportunity to help prospective students that come to us expressing an interest in our programs. [ ] No mention of OS [Opportunity Scholarship] on the call. No clear presentation of the cost estimate. No use of the presentation (which hits primary points relative to the WITY ["what's important to you" sales factors]).[116]

ITT was willing to impose harsh consequences for tactics that were not aggressive *enough*. For example, Kevin Modany was unforgiving when a mystery shopper report stated that there were no financial aid representatives available at 7:30 pm to process a prospective student.[117] And when a recruiter failed to offer a tour and did not mention companies that have hired ITT grads, he declared that the recruiter "must be terminated!"[118]

B. Pressuring Students to Saddle Themselves with Debt

Once a prospect was brought into an ITT building, the focus of recruiters was to press the student to commit to attending ITT and complete the financial aid process, which was purposefully hurried and pressured. Coaching documents written after managers observed recruiting sessions promoted this high-pressure sales ethos. One example from the Philadelphia, Pennsylvania, campus in 2013 contained a handwritten comment that the recruiter was "doing well—didn't give [prospective student] a chance to say no."[119] Following a 2016 site visit to an ITT campus in Owings Mills, Maryland, the national director of career services reported that recruiters and financial aid coordinators "sound like used car salesmen trying to rush someone through to a signature."[120]

Kevin Modany also emphasized the need to not give prospective students a chance to think over their decision. After he learned that one campus was allowing students to break up appointments over two days, he directed, "Please be sure to advise [campus director] that our policies do not authorize 'be back' activity!"[121] He also asked for a test

of a program to "insert a reassuring ITT Tech story into the Facebook News Feed" of students who signed up in "an effort to overcome buyers' remorse."[122]

The fact that recruiters rushed potential students through the enrollment process is well documented in contemporaneous records.[123] Many mystery shopper reports describe hurried and pressured encounters with recruiters:

- **Albuquerque, New Mexico – 2010**: "The representative was somewhat 'pushy' to me about starting the program in June (as opposed to Sept.). This discussion occurred several times. She made it clear that they would love for me to be a student there and start in June but she also implied that I should not waste her time . . . [she said that by starting] in summer, they could look at my tax returns for 2008 and 2009 and perhaps have better lending options whereas starting in Sept. would only allow them to consider my 2009 tax return."[124]
- **Webster, Texas – 2010**: "[The ITT recruiter] didn't explain several topics thoroughly (financial aid, books, credits transferring, cost of program). He kept trying to rush me through reading and signing several forms even when I mentioned I would like to read what I was signing. . . . On the back of the credit transfer form there is a box full of questions that the schools fills out and a box for the student to sign that they accept the amount of credits that the school will accept - he [the representative] told me to sign it even though the school portion was not filled out. This made me uneasy since I was signing to accept a decision that wasn't already made."[125]

Former ITT students have also offered sworn statements on being subjected to high-pressure sales tactics designed to get them to enroll no matter what, including the following examples:

- **Ft. Lauderdale, Florida – 2004-2007**: "During enrollment at ITT Tech they would not allow me the time to read through the entire contract but instead pressured me, a 17-year-old, to sign on-the-spot. The recruiter kept asking me 'Do you want to work at Publix for the rest of your life?' He told me that if I didn't sign today I would miss the deadline and not be able to start classes until the next semester. They used predatory . . . tactics on me and I was naive enough to believe them."[126]
- **Oak Brook, Illinois – 2009-2010**: "I walked in the ITT Tech school [because] I saw a commercial. I just wanted to see how the classes compared. During that same visit, I was pressured and bullied into signing on the line. When I asked how much, their reply was, don't worry about it, we'll take care of it. When I told them I didn't have a job, so I couldn't pay for it, they told me, don't worry about it. We'll take care of it. When I advised them that I was already thinking of Robert Morris College, they lied to me and told me that they had a higher graduation rate than RMC. It was like a bad used car sales tactic. The recruiter even went into another room and grabbed another recruiter to help close me on the sale."[127]

ITT's process was regimented to the extent that when a prospective student requested specific information or asked tough questions, it sent up a red flag that the person might actually be a mystery shopper. An internal email outlined strategies for identifying "secret [mystery] shoppers . . . [whose] interests are different from those of our prospects."[128] This email provided examples of questions that might be asked by mystery shoppers, including: "What are the salaries earned by graduates of X program"; "What are your placement stats"; and "Which colleges accept ITT credits."[129] The email went on to advise that recruiters respond to these questions by claiming that they "simply don't have the information requested by shoppers" because "representatives are trained and prepared to provide information which is normally of interest only to our prospective students."[130]

Another internal ITT memorandum described purported "ruses in order to obtain non-public information" for "dishonorable intentions," and warned of "[q]uestions that MAY signal a shopper include those about . . . dropout rate, placement rate, transfer of credits, etc."[131] ITT flagged one interested individual as likely "from the AG's [Attorney General's] office" because he asked to sit in on classes and requested a "[l]ist of 6 or more of, [sic] real jobs, which the associates degree qualifies me for" and "[g]raduates, from my CAD program, that are presently employed in the above positions?"[132]

The following excerpts are contemporaneous coaching notes delivered by directors of recruitment to their subordinate recruiters across the company in late 2014 and reflect the intense and pressured sales culture that existed amongst the company's recruiting staff (bolded text added for emphasis):

- **Charlotte, North Carolina – 2014**: "Prospect every CDL and PDL **aggressively and vigorously** . . . Close hard and be a hero!"[133]
- **Cary, North Carolina – 2014**: "Must continue to **create urgency** when working with potential students by using their words to help solidify the commitment and remind them of their true motivation to make a change . . . Continue to be **assumptive** in your **closing technique** . . . Make sure to have excitement in your inflection of your voice. You may be the first person to be excited for the potential student. Be assertive with your appointment times, utilize the training provided during your 1 on 1 session to help you **overcome the appointment objection. Ask the potential student why they want to prevent themselves from bettering their situation** . . . Ask a lot of **probing questions** about the Work History, this will allow you to establish an employment trend and help **increase urgency** with the potential student."[134]
- **Webster, Texas – 2014**: "Next week I will do a phone observation to help identify ways to **stress urgency** of making the change and also **overcoming objections**."[135]
- **Houston North, Texas – 2014**: "…[rep] needs to **focus on the close** and setting the appointment with **urgency versus the other details like seeking employment**, program specific, not interested at this time, etc."[136]

- **Overland Park, Kansas – 2014**: "Continued training and observations will be done with phone script and **overcoming objection**."[137]
- **Dearborn, Michigan – 2014**: "Suggestions: build some rapport on the call. **Set deadlines/urgency**. Tell student to gather their transcripts/HS diploma, etc. When setting the appointment, take full control. Give them a specific time and make sure they understand your time is valuable . . . [F]ocus[] on going over the benefits during the conduct and **using the assumptive approach when closing** with the prospective student."[138]
- **Cary, North Carolina – 2014**: "Make sure to recap student information that has been gathered throughout the call to **increase student urgency** in changing their situation. Become more assertive in using student information gathered during interview to help increase urgency with potential students."[139]
- **San Bernardino, California – 2014**: "Again--**you have to hit a gut level** with them on the phone to find the true motivating factor and bring them in. Ask questions that will get you deeper--quicker . . . Ask and find their motives for school, **gather as much information as you possibly can** while interjecting the O.S. [Opportunity Scholarship].[140] In doing so then methodically understand where they're coming from. And mention that you have found that many of our students felt the same way, and this is what you found that helped them. Use your layered questions and reflective questions to control the conversation. **Keep pushing** and don't give up be firm on each call."[141]

The emergent themes here are clearly urgency, aggression, and overcoming reasonable doubts. These were guiding principles for ITT recruiters.

1. Unscrupulous Recruiting Tactics: The Pain Funnel

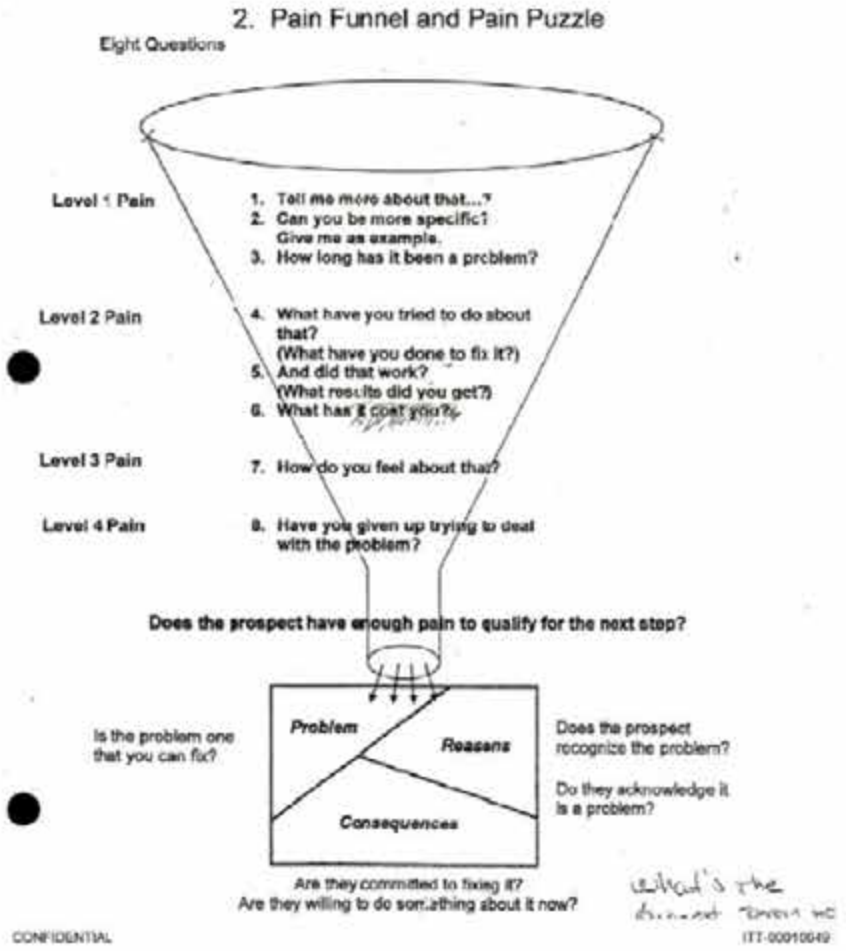
Recruiters were taught various strategies for how to urgently pitch ITT as a fleeting opportunity that would improve the prospective student's life if only they were willing to make the commitment *right now*.

One of these sales techniques that HQ promoted in its training documents was known as the "pain funnel." The recruiter would compel the prospective student to reveal things that made them feel exposed and vulnerable (*i.e.*, working a dead-end job, lacking the ability to support a family, feeling unaccomplished, etc.) before suddenly transitioning the conversation into a hard sell of ITT, suggesting that enrolling was the solution to those painful feelings. Training materials detailed the steps of this tactic as first "establishing rapport" before "transitioning into feeling the pain" and closing by connecting the prospective student's motivation in overcoming their problems to an ITT degree.[142]

The pain funnel consisted of eight specific questions that recruiters were instructed to ask, each one designed to be progressively more hurtful to the prospective student, with the final level inquiring, "Have you given up trying to deal with the problem?"[143]

This pain buildup was intended to culminate in the recruiter making "the student feel vulnerable. Then, when the prospective student felt vulnerable, the recruiter would offer the prospective student the possibility of a college degree as the opportunity to make that pain go away."[144]

An ITT training guide[145] explained the pain funnel concept using the following graphic:



A company report from 2008 titled "Best of Best," which was submitted to Kevin Modany, described how the pain funnel was used to meet recruitment quotas:

> Our goal is to improve the conversion rate on inquiries. The 4H System is based upon the assumption that a student is information seeking and generally not ready to make a decision during their initial interview. A skilled representative, however, can recognize that through effective questioning, a prospect can be guided from their pragmatic head (1H) into their emotional heart (2H) where they experience their need and pain. Once the pain is exposed, the skilled representative brings the

> prospect back to their head (3H) where the prospect understands why they are making the decision to buy and are excited about their future opportunities. Ultimately, this relationship results in a handshake to seal the deal and procure an application and commitment (4H). This system incorporates the pain funnel during the prospect interview as a method to expose student need and bring greater value to the application process.[146]

Not only was the pain funnel technique in widespread use at ITT, but ITT lied about its use. When the pain funnel technique was publicly exposed in a report by the U.S. Senate's Health, Education, Labor & Pensions (HELP) Committee in 2012 (the "Senate HELP Report"), ITT denied any company-wide use of the technique, and characterized it as a one-off idea of a rogue employee.[147] Kevin Modany issued a statement claiming that ITT "do[es] not in any way condone recruitment practices, such as the ones referenced in [the HELP Report], that involve high-pressure sales tactics."[148]

ITT claimed that any use of the pain funnel ceased in 2008. But this is false. Emails from 2012 to corporate directors discussed how management employees "conveniently forget" they knew about it.[149] In other internal emails, a recruiter in San Diego, California, complained about how the pain funnel was still being actively used in 2012.[150] An email dated August 27, 2012, from the director of HR to HQ's legal and compliance departments, describes an employee complaint from the San Diego campus, which included the following statement:

> I watch[ed] the video of DOR [director of recruitment] whom [sic] taught me the pain funnel and how to get the pain out of a student . . . and wonder why was I taught that at a quarterly meeting as a best practice???? I feel that management is providing a hostile work environment which brings out the worse in reps.[151]

Even after 2012, the theme of "poking the pain" resurfaced time and again.[152] Former employees have testified to the widespread use of this sales strategy of "poking the pain" of prospective students. For example, a former dean of academic affairs at ITT's Tallahassee, Florida campus explained how his district manager instructed the recruiters at his campus to "probe" prospective students about "what causes pain in their lives" before "dig[ging] in to that pain" in order to "find an issue and use it" to achieve enrollments.[153] According to internal company emails from as late as August 2015, the district director of recruitment for the Southwest region had trained recruiters on "finding the students' pain."[154]

Exploiting a prospective student's vulnerabilities was only part of the sales equation. After "poking the pain," recruiters "were trained to explain that a degree from ITT would help the potential student get a new car, afford better child care, or a better job which would alleviate the student's financial pressure."[155] These were, at best, hypothetical abstractions that wildly oversold ITT. As remembered by one former student: "I was told that there was a 99.9% graduation rate, and when [you're] done

with your two years at ITT Tech you would make anywhere from 70,000 to 80,000 a year."[156]

2. ITT Targeted Vulnerable People and Engaged in Enrollment Fraud

ITT targeted individuals for enrollment who were already suffering from financial hardship. According to ITT's own strategic marketing figures, based on aggregated data from 2013, the median income for ITT students was $18,000 per year, and two-thirds of ITT students had a household income of less than $25,000 per year.[157] A typical ITT student in 2014 entered the school with average annual earnings of $18,000 and a credit score of less than 600.[158] ITT's chosen market consisted of struggling people with severe financial difficulties and few opportunities. It preyed on some of the most economically disadvantaged and vulnerable people in our society.

ITT engaged in indiscriminate enrollment practices, caring only about profiting from students' federal student aid without any regard for whether the students could actually benefit from any offered program. For example, ITT enrolled students who did not speak English and/or could not read,[159] despite not offering the resources and services required to properly assist these individuals. They also admitted students who were legally prohibited from entering their intended profession because of a criminal history.[160]

ITT silenced employees who questioned whether a prospective applicant or reenrolled student could benefit from their program, with the rebuke that it "was not the recruitment representative's role to judge what would be best for the student."[161] The company cloaked these sales pressure tactics and overall disregard for the well-being of students in the guise that discerning a student's ability to enroll "would be tantamount to judging the student, something that they were not in a position to do."[162] In practice, ITT was fighting for the "right" of every student to be saddled with massive debt for a useless degree.

A former dean and instructor at the Tallahassee, Florida, campus provided this example:

> I learned from a recruitment representative that he was being pressured to enroll a blind student into ITT's Networking program. This program requires students to be able to read codes and identify various plugs and wires by color. When I confronted the Director of Recruitment [redacted] about this student, he told me that it was not my place to dissuade the student from enrolling.[163]

Despite these recruiting practices, there is no evidence that ITT provided essential assistance or support to individuals requiring special accommodations.

This same former Tallahassee dean also recounted another incident involving a recruiter targeting a vulnerable individual:

> For example, a recruitment representative once raised concerns about trying to enroll a single mother who lived two hours away from the campus. The College Director [redacted] responded that . . . the representative needed to "dig" in to the potential student's vulnerability by saying things like "if you want good childcare for your children you need to get a degree," and "two hours really isn't insurmountable."[164]

Another former instructor and dean from the Murray, Utah, campus witnessed indiscriminate and irresponsible recruiting practices, recalling:

> On one occasion, I met with a young woman who was being shown a campus tour by a recruiter. I learned that she was from Las Vegas, homeless, and came to Utah searching for work. The recruiters were unconcerned about these extenuating circumstances in her life and were only focused on getting her to enroll. I told her out of earshot of the recruiters that she should not register for ITT because of the debt she would incur, and that she should instead continue searching for a job and apartment.[165]

Recruiters not only rushed through the enrollment process, but also engaged in outright fraudulent behavior to induce prospective students to sign. One recruiter in Baton Rouge, Louisiana, attested to witnessing these practices:

> I witnessed many instances where an Admissions Representative would e-sign a student's name onto an application without a student's permission. Representatives would express to me that they felt no alternative since they had to meet their quotas . . . I never e-signed for a student without their permission. On one occasion, [redacted] (the director of admissions) instructed me to do so, but I refused.[166]

There are many instances of ITT enrolling students who lacked the ability to read or understand English, the sole language of instruction. As explained above, this shows that ITT did not concern itself with whether a student could actually benefit from enrollment. It also, of course, demonstrates that ITT routinely enrolled students who were *unable* to understand the terms of their enrollment. In an email titled "Ethics Violation," the following complaint narrative is laid out, in ITT's own words, regarding a student whose primary language was not English but who was nonetheless enrolled at the Tucson, Arizona, campus in 2013:

> [Student] requested to be dropped from his classes because he was not proficient in the English language. He could not read his textbook. I asked how he completed the entrance paperwork and he told me that the Director of Recruitment did it for him. I asked the FAC [financial aid coordinator] who conducted him, and she told me that the DOR [director of recruitment] completed that portion while she was out of the room. I spoke to the Director of Finance and the FAC, they both told me that [student] told them that the DOR completed his forms by just clicking

> through the forms for him. He told three employees on this campus that the DOR clicked through the forms that he did not have the ability to read. The student also told the FAC that the DOR told him that if he didn't like the education that there would be no charge.[167]

ITT employees would look for any excuse to complete documents for students. A former dean of academic affairs at the Tallahassee, Florida, campus explained that "[r]ecruitment representatives and financial aid coordinators were instructed to, and would, fill out a student's enrollment paperwork if the prospective student either did not know how to use a computer, or was unable to successfully complete the paperwork for some other reason such as a language barrier, or not being able to read."[168]

ITT was singularly guided by only one factor when recruiting students: can we get this person to sign? HQ's policies actively discouraged any real assessment of a prospective student's needs or personal situation and actively encouraged fraud and other illegal sales tactics to seal the deal. The company only cared about getting more recruits, no matter how that happened or who they were—the graver the person's circumstances, the riper the target.

3. ITT Misrepresented its Selectivity

Recruiters frequently lied to potential students by telling them that ITT was a selective institution that required approval for admission, and that if they failed to preserve their spot they would be barred from entering. This was patently false. In the words of a former academic dean at ITT: "Everyone who applied to ITT was admitted, so long as they had a high school diploma or GED."[169]

The following statements from mystery shoppers[170] reflect how ITT recruiters promoted the idea that there was an urgency to enroll, either because space was limited or for some other fabricated reason:

- **Norwood, Massachusetts – 2010**: "...rep claimed that ITT was selective as to whom it admitted and [that] seats were limited."[171]
- **San Dimas, California – 2010**: "[R]ep claimed seats are limited and school is selective as to whom it admits."[172]
- **Merrillville, Indiana – 2010**: "The Representative told me seats are limited . . . "[173]
- **Maumee, Ohio – 2010**: "Rep said seats were limited or that the school was selective as to whom it admits."[174]

ITT tried bolstering its façade of selectivity by requiring prospective students to take a very basic 12-minute cognitive and aptitude assessment known as the "Wonderlic test."[175] A 2006 report from ITT's accreditor, ACICS, noted that the school's official

admission policy required a relatively low score of 13 on the Wonderlic exam.[176] ITT allowed those who failed the test the opportunity to retake it twice.[177] One recruiter who raised concerns about the lack of any aptitude evaluation for students who struggled with basic math or English was told "there would be tutoring. That never happened. It was clear to me that the point of lowering requirements was to be able to enroll more students more quickly."[178]

III. LYING TO PROSPECTIVE STUDENTS

As detailed above, ITT recruiters subjected students to predatory sales pressure to satisfy their quotas set by HQ. In addition to these high-pressure tactics, recruiters also told prospective students a number of serious lies about ITT. The material misrepresentations outlined in the sections *infra* concerned highly relevant information for many prospective students and not only affected decisions to attend, but also had catastrophic effects on thousands of lives when the truth about these crucial matters eventually came to light.

As explained by a former recruiter: "The competitive atmosphere led many Representatives to engage in questionable activities to meet their numbers . . . [T]here was heavy pressure to oversell the opportunities ITT Tech provided."[179]

In the words of another former recruiter:

> I left ITT feeling then, as I feel now, that I was unwittingly part of a national scam to put young people in debt for the glorification and financial gain of management.[180]

Emails between campus officials and corporate directors show how ITT employees acknowledged that high attrition (*i.e.*, dropout) rates were clearly attributable to the numerous, widespread misrepresentations made to students, as reflected in this 2014 message from the Tallahassee, Florida, dean of academic affairs to HQ:

> I (and my team) have continually lowered attrition for students with 1 – 95 credit hours by consistently implementing policy, best practices and most importantly a strong commitment to student success. However, even with tremendous improvement, we continue to exceed the threshold for attrition. Our campus Gross Drop Attrition (as compared to budget) exceeds the threshold, mainly in part to aspects not within my control as Dean as it relates to new students. Although it is not my fault, it has caused tremendous problems for our campus.
>
> . . .
>
> I am doing everything within my power at the campus level to drive attrition down, but the harder I work, the more I receive actions which indicate poor performance. I am not disagreeing with ITT Policy and how the threshold must be managed, but I am being held accountable and penalized for behaviors and actions, which, may violate ITT ethics policy as well as federal/state regulations; in turn, these practices have not only negatively impacted campus attrition, they also place students in a situation of incurring debt with no return on investment.[181]

Reading between the lines, this Tallahassee dean was carefully suggesting that it was difficult for him to fight attrition when recruitment and financial aid were sending

him students who were both unprepared to meet even the low standards of an ITT education and the victims of active misinformation that promised far more than anything ITT could ever hope to deliver.

The following sections will detail some of the most significant lies and misrepresentations that ITT representatives actively told to prospective students or conveyed through material omissions of the truth. These include misrepresentations about: (1) the transferability of academic credits; (2) ITT's accreditation status; (3) the availability of specific courses and programs; (4) the types of jobs ITT graduates secured; (5) the salaries ITT graduates generally received; and (6) the job placement rates ITT graduates could expect.

A. ITT Lied About the Transferability of its Credits

ITT recruiters outright told prospective students that credits earned at ITT would transfer elsewhere. Additionally, they implied that transferability was simply a question of accreditation, and that these hurdles were routinely cleared as a matter of course. This was false. ITT credits were rarely transferable—even between ITT campuses.

Legal Significance of Credit Transferability

The ability to transfer credits is a common and rightfully important concern for prospective students. In a series of legal memoranda addressing transferability of credit misrepresentations at Corinthian Colleges' campuses, the Department of Education observed that, "if a student cannot generally transfer credits, a chief value conferred by such credits is greatly diminished."[182] The Department further stated that "there is diminished value in a degree conferred by an institution that issues credits generally not worthy of transfer towards admission."[183]

Transferability of credits is a marker of academic quality and an assurance that time and money spent will result in something concrete and valuable. According to the Department of Education, a school's deception regarding the transferability of its credits is a legally material[184] consideration when students "relied on the promise of transferable credits when making their enrollment decision."[185]

For some students, this was a specific and primary factor that informed their enrollment decision. But the Department has also indicated that this type of misrepresentation is also material and relevant to "students [who are] intent on beginning a career as soon as possible [because] the transferability of credits and ability to continue academically offered an alternative if they were unable to find a job immediately. Finally, students considered the transferability of credits earned at an institution to be an indicator of the quality and value of that institution's' instruction."[186] If a school consistently lies about the value of its credits, it is materially harming its student body at large.

In a 2013 compliance document, ITT directed contact center representatives who

engaged in telemarketing on behalf of ITT to not "discuss transferability of credits. This is a topic that can be addressed during the campus visit. If pressed, the language must be: The decision concerning the acceptance of credits earned in any Course taken at the school is made at the discretion of the receiving institution."[187] Even this ITT-approved language was misleading, because ITT credits were *not* accepted by any other reputable institutions.

This fact was conceded in ITT's boilerplate disclaimer in its enrollment agreements. ITT's typical small-print disclosure relating to the transferability of its credits read as follows:[188]

Transfer of Credit
Credits earned in any course taken at the school will be accepted for transfer by any other ITT Technical Institute located outside of Maryland toward the credits required in the same course, if that course is offered by the other ITT Technical Institute. Any ITT Technical Institute located in Maryland will accept for transfer toward the credits required in the same course any credits earned in any (a) 100- or 200-level course at any other ITT Technical Institute that is only authorized to award associate degrees, and (b) course at any other ITT Technical Institute that is authorized to award bachelor degrees.

DECISIONS CONCERNING THE ACCEPTANCE OF CREDITS EARNED IN ANY COURSE TAKEN AT THE SCHOOL ARE MADE AT THE DISCRETION OF THE RECEIVING INSTITUTION. THE SCHOOL MAKES NO REPRESENTATION WHATSOEVER CONCERNING THE TRANSFERABILITY OF ANY CREDITS EARNED AT THE SCHOOL TO ANY INSTITUTION OTHER THAN AN ITT TECHNICAL INSTITUTE AS SPECIFIED ABOVE. IT IS UNLIKELY THAT ANY CREDITS EARNED AT AN ITT TECHNICAL INSTITUTE WILL BE TRANSFERABLE TO OR ACCEPTED BY ANY INSTITUTION OTHER THAN AN ITT TECHNICAL INSTITUTE.

ANY STUDENT CONSIDERING CONTINUING HIS OR HER EDUCATION AT, OR TRANSFERRING TO, ANY INSTITUTION OTHER THAN AN ITT TECHNICAL INSTITUTE MUST NOT ASSUME THAT ANY CREDITS EARNED IN ANY COURSE TAKEN AT THE SCHOOL WILL BE ACCEPTED BY THE RECEIVING INSTITUTION. AN INSTITUTION'S ACCREDITATION DOES NOT GUARANTEE THAT CREDITS EARNED AT THAT INSTITUTION WILL BE ACCEPTED FOR TRANSFER BY ANY OTHER INSTITUTION. THE STUDENT MUST CONTACT THE REGISTRAR OF THE RECEIVING INSTITUTION TO DETERMINE WHAT CREDITS EARNED AT THE SCHOOL, IF ANY, THAT INSTITUTION WILL ACCEPT.

This particular disclosure was found on page 55 of a 176-page document, which included everything from course curricula to grading policies to a wide variety of other information about specific programs to general company-wide rules about ITT.

ITT used the existence of this fine print to argue that virtually all student complaints regarding transferability of credits were unsubstantiated. For example, a former student at the Bessemer, Alabama, campus explained in a 2010 complaint that he had been told during enrollment that credits would transfer to other colleges. ITT acknowledged that the student "had contacted several other colleges in the area and that none of the credits earned at ITT Tech are transferable,"[189] but determined that this complaint was "unsubstantiated" because the student had presumably received a copy of the course catalog containing disclaimer information regarding credit transfer options.

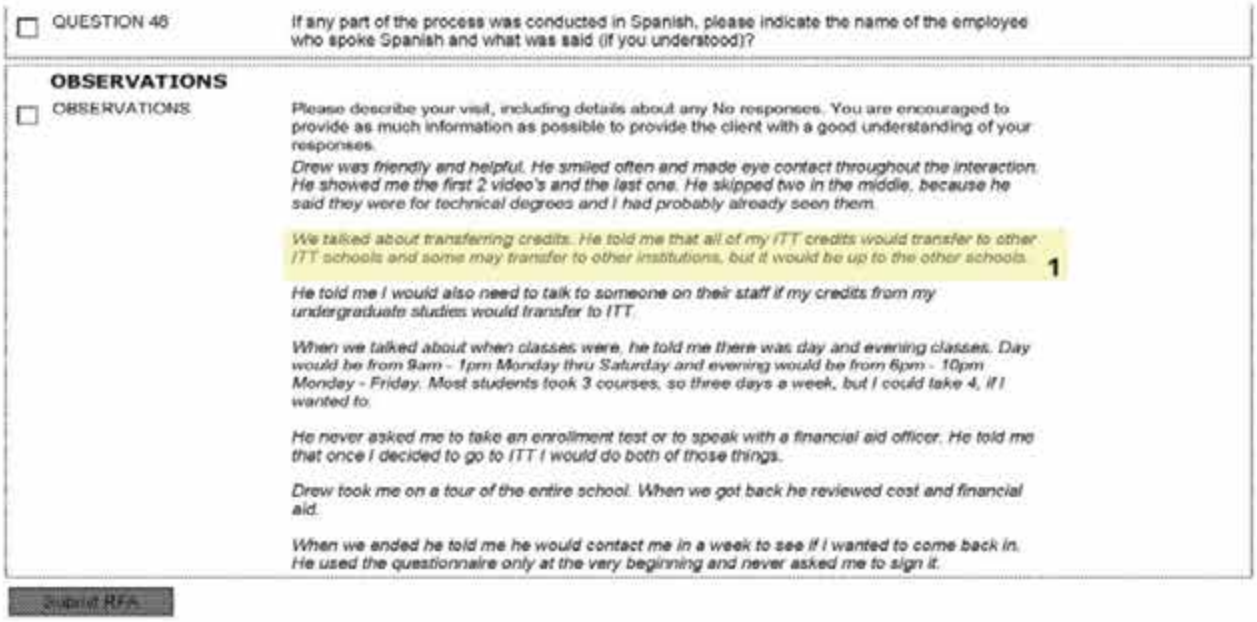
In another example from a 2008 complaint report from the Troy, Michigan, campus, a student alleged that her recruiter told her that she "would be able to transfer credits easily."[190] ITT's rebuttal to this allegation was to refer to the disclaimer in the course catalog without actually acknowledging the student's claim that she was misled at the time of her enrollment.[191] ITT's response to this complaint not only dismissed the student's claims, but went on to defend its obscure credit transfer policy by claiming that, "[u]nlike some schools, we expect our students to graduate and secure careers in their field of student [sic] rather than dabbling in credits at multiple institutions."[192]

Even when ITT's mandated enrollment presentation included a similar disclaimer, mystery shoppers reported recruiters skipping slides during presentations, including slides that covered credit transferability details. For instance, in 2011, a mystery shopper at the Chattanooga, Tennessee, campus noted that an ITT recruiter failed to use the multimedia presentation (containing the disclosure language) because he claimed it was being updated.[193] Another recruiter at the Getzville, New York, campus in 2011 "used the inside cover of the folder to write key points to his verbal presentation" instead of using the official, computer-based version.[194] In 2011, a mystery shopper in Liverpool, New York, documented a recruiter using just paper handouts with limited information,[195] and in 2011 in Indianapolis, Indiana, a mystery shopper caught a recruiter skipping through some slides, including the one on transferability of credits.[196] Even when recruiters gave some information on courses that would need to be retaken, they still often failed to highlight the handbook information on transferability of credits, as noted by one mystery shopper at the King of Prussia, Pennsylvania, campus in 2010.[197]

A former dean of academic affairs at the Tallahassee, Florida, campus stated that "[t]he Directors of Recruitment explicitly directed recruitment representatives to misrepresent that credits were transferable within ITT and outside of ITT . . . In reality, neither was true."[198]

ITT's mystery shoppers also documented a multitude of instances where recruiters misled mystery shoppers by reciting the ITT party line: that course credits were transferable to institutions other than ITT "at the discretion of the transferee institution." One sample review of 2010 mystery shopper reports included **85 mystery shoppers in 28 states and at 63 different campuses**[199] who reported that ITT recruiters told them that transfer credits would be accepted or denied at the discretion of the receiving college. In practice, ITT *knew* that few—if any—schools ever accepted ITT credits, making this statement false and misleading. An additional 15 mystery shoppers from this 2010 sample were directly (and inaccurately) told that their ITT credits would transfer to other colleges.[200] One of these 2010 mystery shoppers at the Merrillville, Indiana, campus reported without qualification that "[t]he [ITT] Representative said course credits are transferable to colleges other than ITT Tech."[201]

The image below is an example of the portion of a mystery shopper report containing supplemental commentary on credit transferability[202]:



QUESTION 46 — If any part of the process was conducted in Spanish, please indicate the name of the employee who spoke Spanish and what was said (if you understood)?

OBSERVATIONS

OBSERVATIONS — Please describe your visit, including details about any No responses. You are encouraged to provide as much information as possible to provide the client with a good understanding of your responses.

Drew was friendly and helpful. He smiled often and made eye contact throughout the interaction. He showed me the first 2 video's and the last one. He skipped two in the middle, because he said they were for technical degrees and I had probably already seen them.

We talked about transferring credits. He told me that all of my ITT credits would transfer to other ITT schools and some may transfer to other institutions, but it would be up to the other schools. **1**

He told me I would also need to talk to someone on their staff if my credits from my undergraduate studies would transfer to ITT.

When we talked about when classes were, he told me there was day and evening classes. Day would be from 9am - 1pm Monday thru Saturday and evening would be from 6pm - 10pm Monday - Friday. Most students took 3 courses, so three days a week, but I could take 4, if I wanted to.

He never asked me to take an enrollment test or to speak with a financial aid officer. He told me that once I decided to go to ITT I would do both of those things.

Drew took me on a tour of the entire school. When we got back he reviewed cost and financial aid.

When we ended he told me he would contact me in a week to see if I wanted to come back in. He used the questionnaire only at the very beginning and never asked me to sign it.

Submit RFA

The following excerpts, all from 2010 and 2011, are just a few examples of mystery shoppers recording falsehoods they were told about ITT's credit transferability. These were all flagged for being misleading according to ITT's own criteria:

- **Portland, Oregon – 2010**: "We talked about transferring credits. He told me all of my ITT credits would transfer to other ITT schools and some may transfer to other institutions, but it would be up to the other schools."[203]
- **Bessemer, Alabama – 2010**: "When I asked if co[u]rse credits transferred [the Rep] explained that other institutions do accept them but it is at their discretion. The material of both courses has to match up."[204]
- **Cordova, Tennessee – 2010**: The mystery shopper reported that the ITT representative stated, "You know there may be courses that you took at Le Moyne-Owen that may or may not transfer to ITT Tech and vice versa."[205] This statement was flagged by ITT as false, precisely because ITT knew that the credits at issue from Le Moyne-Owen would not transfer to the Cordova campus.
- **Tampa, Florida – 2010**: "Upon further inquiry, the [mystery] shopper confirmed the Representative stated 'Since the school is accredited the course credits can be transferred to any other accredited school to continue the shopper's education if ITT Tech did not offer programs the shopper preferred to pursue.'"[206]
- **Nashville, Tennessee – 2010**: "[T]he Representative stated that course credits were transferable to other colleges because ITT Tech is an accredited college.

The Representative stated that it was up to the other school as to if the credits would be accepted."[207]

- **Lathrop, California – 2010**: "[The ITT recruiter] told me some of my coursework from my previous BA might count toward my general class requirements for a degree from ITT."[208]
- **Madison, Wisconsin – 2010**: "The Representative had also discussed that many of my current credits from college may transfer so the cost may not be as significant."[209]
- **Madison, Alabama – 2010**: "The [mystery] shopper asked the representative if any of the core credits from two previous college degrees would transfer to the school's program. The Representative told the shopper that she thought many of the credits would transfer [in to ITT]."[210]

Numerous complaints from students also affirm what mystery shoppers documented regarding credit transferability misrepresentations. For example, a multimedia student at the King of Prussia, Pennsylvania, campus reported in 2008 that "she was told that her earned credits would transfer if she wanted to pursue a bachelor's degree."[211] A similar complaint from 2006 to the Florida Department of Education from a former ITT student at the Miami, Florida, campus stated that he was "told that 'ITT was accredited by state Universities and Colleges' . . . and he was told 'programs were transferable to any other school including Universities[.]'"[212]

The following excerpts from student statements further exemplify the similarity in language that ITT used when misrepresenting its credit transferability:

- **Burr Ridge, Illinois – 2003-2005**: "I was told I would be able to take my credits should I choose after getting a 2-year degree and continue my education at another school when I originally signed up to attend ITT. Turns out that wasn't the case after I had already enrolled with ITT. I did not complete my 2-year time at ITT, I would [have] liked to transfer to another school and complete the program that I had signed up for. That was not going to be the case since ITT credits would not transfer. I could not afford to restart school and take a bunch more student loans out."[213]
- **Tempe, Arizona – 2004-2007**: "They told me that I could transfer credits to a major university after I graduated and completed the course. They definitely don't tell you your degree will be useless to any other college or university. That's because they want you to enroll in their bachelor's program with another 60,000 in debt."[214]
- **Henderson, Nevada – 2007-2011**: "Before signing anything, I was told that I would be able [to] further my education and pursue a master's degree by transferring credits to other schools, but I found that to be completely false when I attempted to apply for nursing programs at College of Southern Nevada and Nevada State College; neither of them accepted credits or my degrees from

ITT."[215]

- **San Bernardino, California – 2009-2011**: "They made me believe that their credits were transferable but they were not[;] when I tried attending San Bernardino Valley College they told me that none of my credits were transferable [and] I would have to start over from scratch. I later found out the credits were only transferable to other profit schools and other owned ITT tech schools. My mother and I owe 44,000 dollars due to Federal Loans which makes it hard to go to a community college again."[216]
- **Canton, Michigan – 2010-2012**: "ITT stated that all credits were likely to transfer to other schools (University of Michigan, Wayne State, Schoolcraft College), when in reality they were not. After graduating I thought that I could use my earned ITT credits to attempt a bachelor's program at a more reputable school. I was wrong. Every credit earned at ITT was completely irrelevant to any other education facility."[217]

ITT's lies regarding credit transferability caused real harm to students who were forced to take out additional loans or halt their education altogether. Former students tell similar stories about how they were misled about credit transferability, and how these misrepresentations harmed them:

- **Murray, Utah – 2004-2008**: "I went into my recruiters [sic] office and she assured me that they were fully accredited and that I could take my degree 'anywhere.' I didn't realize this was a lie until a few months ago when a fellow student of ITT Tech with an Associates degree started attending the community college because his degree and credits wouldn't transfer. I then researched the University of Utah's Masters degree requirements and my degree is worthless. I am completely devastated. Not only have I been shackled down with $75000, I will have to start all over again because I refuse to ever attend another for profit university."[218]
- **Knoxville, Tennessee – 2005-2007**: "I was promised that if I stuck with it and went to school and got a degree that it would make my life better, in reality ITT has given me a worthless piece of paper, ruined my credit, my life and my future. Tried to transfer into a community college when I was informed that not a single credit would be transferrable, this is how I was convinced/trapped into staying and finishing out the most expensive and life ruining two year program on the face of the planet."[219]
- **Earth City, Missouri – 2008**: "I started to look at other schools to transfer out of ITT Technical Institute, but found that I would be starting over due to the fact that ITT's credits do not transfer, which was never explained when I first signed up. I was told by the Recruiter from ITT that most of the credits were transferable and if I desired to go to another school, I would be able to."[220]

B. ITT Misled Students about Credit Transferability by Emphasizing Its "National Accreditation."

As previously discussed, ITT was a nationally accredited institution through an organization called the Accrediting Council for Independent Colleges and Schools ("ACICS"). As explained in the sidebar below, national accreditation is very different from regional institutional accreditation. Historically, for-profit schools have resorted to national accreditation, whereas regional accreditors accredit mainly non-profit and public institutions, including community colleges.[221, 222] As explained by the Council for Higher Education Accreditation: "Although accreditation is but one among several factors taken into account by receiving institutions, it is viewed carefully and is considered an important indicator of quality."[223]

Accreditation

Accreditation is part of the "triad," along with federal and state regulators, that oversees higher education institutions and keeps them accountable. Any institution of higher education that seeks Title IV funding must receive accreditation.[224] As a result, accreditors "serve as de facto gatekeepers for billions of dollars of Federal education benefits each year."[225]

Each entity of the triad "is typically understood to bear chief responsibility for a distinct aspect of the higher education oversight system," with accreditors "apply[ing] and enforc[ing] standards that help ensure that the education offered by a postsecondary school is of sufficient quality to achieve the objectives for which it is offered."[226]

The Department of Education "is required to determine whether accrediting agencies have standards in certain areas before recognizing them,"[227] and in turn, accrediting agencies "develop evaluation criteria and conduct peer evaluations to assess whether or not those criteria are met."[228] Accreditation agencies receive payment from the institutions to apply for and maintain accreditation.

There are two main types of accreditation: general accreditation, which can be national or regional, and programmatic accreditation.

To a large extent, non-profit institutions have been accredited by regional accreditors and for-profit institutions accredited by national accreditors. This distinction is crucial because being nationally accredited, as most for-profit schools are, "generally means that the credits earned are rarely accepted at regionally accredited schools, which include all major non-profit and public universities and some for-profit colleges."[229] Yet many for-profit schools take advantage of the term "nationally accredited," and mislead students by allowing them to believe that this type of accreditation is more beneficial and will allow students to easily transfer their credits to other institutions, including those that are regionally accredited.[230]

Initially, "national accreditation was created as a means to ensure the quality of non-

degree programs, thus allowing those programs to access title IV student aid funds."[231] But "in reality," national accreditation "now offers some large degree-granting for-profit colleges a path to Federal dollars without having to meet the same academic quality standards as traditional public and non-profit colleges."[232] In addition, "[a]ccreditors are not equipped to properly oversee the modern-day for-profit education institution, especially those whose important decisions are made at corporate headquarters, not at the campus level."[233]

Accreditation agencies are supposed to be the watchdogs of educational institutions. However, their incentive to exercise vigorous oversight significantly decreases when the only way they get paid is if an institution gets accredited. This creates a perverse incentive for them to continue to accredit for-profit schools or risk losing business.[234] As a result, "for-profit institutions routinely obtain and retain accreditation in spite of low graduation rates, job placement rates, or student loan debt repayment rates."[235]

In contrast to general accreditation, "programmatic accreditation certifies that a specific degree or certificate program meets standards expected within a particular field or profession. Different professions and different States place a different emphasis on programmatic accreditation."[236] In many fields, employers will not hire employees if they did not attend a program with the relevant programmatic accreditation.[237] However, "[i]nstitutions that offer programs that lack programmatic accreditation are highly inconsistent in how they disclose this lack of programmatic accreditation," which leads to students being misled about the type of accreditation the school has and whether their attendance in a program will be acceptable to future employers.[238]

The Department of Education has previously stated that it is inherently misleading for a school with "national accreditation" to emphasize this status as an implicitly positive attribute, especially with respect to credit transferability.[239]

Nevertheless, ITT told prospective students that it was actually more desirable because it was *nationally accredited*, which implied a greater reciprocity as compared to a school that is "only" regionally accredited. As explained by one student who attended ITT in San Bernardino, California:

> [T]he ITT-Tech rep or sales rep/recruiter explained that the school was nationally accredited and that most if not all universities would be honored and grateful to accept all students whom possessed ITT-Tech units. I asked if they were WASC [Western Association of Schools and Colleges] accredited and he explained they were better than that because WASC was based off a west coast system accreditation whereas ITT-Tech's accreditation was based off a National Widely considered accreditation. And began showing us plaques of the accreditation at the San Bernardino campus. I began going to a community college since 2010, and they told me none of my units would transfer. So I started it all over and have been going to community college since then. It is a tough

> battle ahead and I felt like if I never went to ITT-Tech I wouldn't have been in the predicament that I am now.[240]

Student complaints also alleged that ITT misrepresented its "national" accreditation status. ITT's response to one such complaint, from the Kansas City, Missouri, campus in 2008, blithely asserts that "[the student complainant] claims that our campus is not accredited. This is not true. As disclosed in our campus's Catalog, our campus is accredited by the Accrediting Council for Independent Colleges and Schools (ACICS). ACICS is national accrediting agency recognized by the United States Department of Education and the Council for Higher Education Accreditation."[241]

In another example from the Troy, Michigan, campus, a student complained to the Michigan Better Business Bureau that he was never told how expensive ITT would be, and that the accreditation limits of the institution were never clearly explained. "Had I known that ITT is not a regionally accredited school, I would not have enrolled there . . . My 'recruiter' assured me I would be able to transfer credits easily . . . I registered for classes under false pretenses . . . ITT should not be allowed to call itself a 'school' and yet they charge more than a state university ($425 per credit hour)."[242]

The following statements from former ITT students illustrate that misinformation regarding ITT's accreditation status was a feature of many ITT recruiting sessions:

- **Greenfield, Wisconsin – 1995-1996**: "ITT told me they were accredited, and that they regularly transferred credits to other schools for people wanting to continue their education. Since the program I took at ITT was only a 2-year program, I always planned to continue my education at another school and eventually get a Bachelor's degree in engineering. I didn't find out until 5 years later, then all of my credits were worthless. When I tried to enroll at UW Stout, they basically laughed at my transcripts and told me I was welcome to enroll, but I would start as a freshman. Had I known my degree from ITT would saddle me with debt I am still paying off today, while at the same time being worthless in the real world, I would clearly have chosen another school…The end result was my ITT degree was the END of my education, not the beginning."[243]
- **Portland, Oregon – 2008-2012**: "They lied to me also about their credits transferring to local Universities. I was told they were nationally accredited so that wouldn't be an issue. I tried to go to the University of Portland, but was told I would have to start over. The ITT told me the credits would transfer, but Portland showed me how they were not accredited and couldn't [accept] the credits."[244]
- **Bessemer, Alabama – 2008-2010**: "I was told by the recruiter that ITT was fully accredited and that the credits would transfer to any other college in the state. I cannot find a school that will accept ITT [T]ech credits due to their damaged reputation and the fact that they are only nationally accredited rather than regionally accredited as they told me when I enrolled."[245]

- **Louisville, Kentucky – 2009-2010**: "The school also lied to me about how well accredited it was, and how my credits could transfer after a 2 year or 4-year degree, to another school, specifically in my case I wanted to accumulate enough credits so I could be accepted into the Air Force with my GED. After attending for 2 semesters, I come to find that the military doesn't even recognize this school's credits."[246]

- **Columbus, Ohio – 2009-2011**: "The reason I dropped out was because I discovered the school was not accredited and the credits did not transfer. I was lied to by the recruiter. I was planning on going to Columbus state community college for my degree and I went to ITT to check it out. He talked me out of going to Columbus state by telling me ITT had job placement and my credits would transfer to Columbus state if I wanted to switch at a later date. The job placement ended up being a joke. Tried to transfer to Columbus state after I dropped out and they informed me the credits didn't transfer and I would I have to restart my college education. At that point I gave up to not accumulate anymore debt. I quit while I was ahead."[247]

- **Charlotte South, North Carolina – 2009-2011**: "I was lied to and told that I could transfer to any school once I completed my ITT courses. I was lied to and never told that they were not accredited. I was never informed that the classes that I took would not be useful for getting licensed in certification exams . . . I tried to transfer my credits to Piedmont College, Gaston College and other and they would not accept them."[248]

- **Albuquerque, New Mexico – 2008-2012**: "They lied about accreditation. When I graduated with my Associates degree I tried to stop going to school because at that point I began to suspect foul play from the school but I was convinced that if I wanted any credits to transfer to any graduate program I must complete the Bachelor's degree there at ITT [T]ech. I asked many times my recruiter and my dean if I would be able to transfer my degree for a graduate plan and I was assured that the credits for the Bachelors were accredited and I could be accepted in other graduate universities. So I completed the Bachelor's and no one accepted my credits[.] I've tried several universities and they always tell me I have no credits and that the school itself is not accredited. I have to start from the beginning again if I want to get an education . . . I tried to enroll in other schools to obtain my graduate degree and I was told none of my credits would transfer because the school wasn't accredited. I even had one counselor at a community college tell me I lost 4 years of my life and still have to pay[.]"[249]

One mystery shopper at the Everett, Washington, campus recorded witnessing a similar misrepresentation regarding ITT's national accreditation in February 2008: "I was told that this accreditation was the same, just different in location. ITT Tech was nationwide as opposed to just local as in the university here, so it was accredited by a different organization and I could look them up online for more info."[250]

ITT's multimedia presentations to prospective students addressed the subject of accreditation by stating that the school was "[a]ccredited by the Accrediting Council of Independent Colleges and Schools (ACICS)" without explaining how ACICS accreditation was different than regional accreditation. The recruiters' script instructed, "[d]o not compare ACICS accreditation to any other accreditations. Avoid comments such as 'good, better, best, or same.'"[251] ITT acknowledged, tacitly, that any such comment would be misleading. Yet mystery shopper reports, between 2010 and 2011, documented that ITT recruiters did make these comments:[252]

- **Wyoming (Grand Rapids), Michigan – 2010**: Mystery shopper reported that the ITT recruiter said accreditation by ACICS was equal to the accreditation awarded to other colleges and "that the accreditation was what allows them to offer associate's and bachelor's degrees."[253]
- **Mobile, Alabama – 2010**: ITT recruiter implied ACICS accreditation was equal to accreditation awarded to other colleges—noting the representative "did not specifically say that the accreditation was the same as other colleges, but stated it is an accreditation agency similar to those for other colleges. The statement was close enough that the idea could be inferred."[254]
- **Albuquerque, New Mexico – 2010**: Recruiter "stated that the school was accredited similar to that of the other big school universities like UNM and CNM."[255]
- **Clovis, California – 2011**: Recruiter "said they [ACICS standards] were just as good or if not better because every ITT institution accepts each other's credits. Other schools pick and choose what they were going to accept."[256]
- **Dunmore, Pennsylvania – 2011**: ITT recruiter stated that ACICS accreditation was better than accreditation awarded to other colleges. The mystery shopper documented this recruiter claiming that ACICS is "backed by the Dept. of Education. Other schools do not have this accreditation . . . It also holds more weight in degrees because the quality of the programs taught is at a high standard . . . [and] perspective [sic] employers look at this for judging potential employees."[257]
- **Eden Prairie, Minnesota – 2011**: Mystery shopper reported that the ITT recruiter "made it sound[] as though [ACICS accreditation] was the same kind of accreditation that other colleges got but for independent schools."[258]
- **Fort Wayne, Indiana – 2011**: Mystery shopper documented ITT recruiter's claim that ACICS accreditation "was better than the ones awarded to other colleges."[259]
- **Getzville, New York – 2011**: Recruiter "stated that the accreditation was equal to other colleges and in his opinion better because ITT courses are degree specific while other colleges have electives."[260]

- **Lake Mary, Florida – 2011**: Mystery shopper reported that the recruiter stated that ITT's accreditation "was the same as some major universities."[261]

The following language reflects the typical HQ corporate treatment of student complaints regarding accreditation issues:

> That being said, even if someone did mention regional accreditation, no one at the school would have had the authority to have such a discussion with the student. The catalog clearly states our accreditation with ACICS, and you should be able to produce the enrollment documents the student signed acknowledging both receipt of the Catalog and accreditation with ACICS. What anyone else allegedly said is trumped by those documents.[262]

In other words, ITT hid behind disclosures it rushed past students, then took the position that accreditation misrepresentation—in the example above—could not have happened, because that would be against ITT policy. ITT adopted this vague language as a general, reflexive response, mindlessly distributed whenever confronted with evidence of misrepresentations.

Lies and half-truths about credit transferability and accreditation status were some of the most damaging that ITT recruiters told. Students were left trapped at ITT after expending their financial aid options on worthless credits, all because of the systemic lies that HQ pushed in a system that only cared about making sales.

C. ITT Lied about Program Availability

"Bait-and-switch" refers to an illegal, deceptive scheme in which a company advertises the availability of a desirable product at a low price, often in limited quantities (the "bait"), with no intention or capability of delivering on that promise. Instead, the company uses the bait to lure in an unsuspecting consumer, and then hard-sells a different, inferior product at a higher price.

ITT engaged in classic bait-and-switch marketing by relying on nationwide advertising of certain programs that were not available in many locations. It also advertised programs that were not yet available at all, backed merely by promises of future availability.

Another form of ITT's bait-and-switch tactics involved programs that were slated for closure or "teach out." When students wanted to enroll in these programs, they were steered in a different direction. A particular tactic used to effectuate the "switch" was for ITT recruiters to convince the student to enroll in another program as a "backup plan" (usually ITT's business management program), or to tell students that another program was essentially the same thing as the program they actually wanted.[263] For example, ITT stopped offering criminal justice programs at its Tallahassee, Florida, location around June 2013. ITT then steered prospective students who announced an

interest in criminal justice into the business management program by falsely telling them that this would enable them to open their own private investigation business.[264]

In another example, a student was told that although the web development program he wanted was not available, he should sign up for the multimedia program because it would be "perfect" for him. After entering the program, the student complained that "if he had told me, from the beginning, that the Multimedia program would only have one 'basic' HTML class, I would have thanked him and left. Honestly, I think that he knew that and that is why he misled me."[265]

Bait-and-switch tactics often followed once students decided they wanted to transfer. ITT knew that it would be nearly impossible for students to transfer their associate degree credits to another institution, and it used that knowledge to prey on students to continue on with their bachelor's degree at ITT. A former student from the Tallahassee, Florida, campus who graduated with an associate degree noted that while he could not get job search help from career services, "this school . . . call[ed] me from time trying to recruit me for the Bachelors program."[266]

Mystery shoppers also documented examples of students being subjected to bait-and-switch tactics with respect to credit transfers within ITT, including one instance in 2011 from the Arnold, Missouri, campus, where a mystery shopper noted, "I was told that I could transfer credits within ITT . . . ."[267] This statement was flagged as misleading by ITT itself, since it knew that the option to transfer credits within ITT (either between campuses and/or programs) was not at all guaranteed.

ITT also held out that it offered certain programs, but instead funneled students into different programs that were readily available or undersubscribed. The dean of academic affairs at ITT's Tallahassee, Florida campus explained:

> Recruitment representatives were trained to tell students that the program was just a 'backup plan,' or that the program was basically the same exact thing as the desired program, or that the credits could transfer between the programs . . . In reality, ITT did not allow most credits, with the exception of some core classes, to transfer between programs.[268]

For example, students hoping to enroll in ITT's graphic design program were redirected into the drafting and design program if the latter program had not enrolled enough students to proceed for the semester. Recruiters told students that the programs were "the same thing" and that they could "transfer their credits later."[269] In reality, these programs were not the same thing and the credits were not transferable.

Campus directors told recruiters to promote programs that ITT had not implemented.[270] For example, students were encouraged to enroll in an associate's program with assurances that their campuses would soon introduce a bachelor's program, even if ITT had no concrete plans to offer the bachelor's program. "The Chair of Drafting and Design . . . was told to promote to students that ITT was going to offer

a B.S. program in Construction Management that her students could transfer into after completing the Associate's program. Two quarters later [the chair] learned that this program was not going to be offered. Many of her students dropped out after learning this, with no degree but with debt."[271] The chair raised this programmatic issue to HQ, and was subsequently fired because she "could not be loyal" to ITT.[272]

A student who was enrolled from 2006 to 2009 at ITT's San Bernardino, California, campus signed up after being promised that there would be a bachelor's degree available:

> However, 2 semesters left before finishing my Associates, they told us that there would be no Bachelors Program for us to continue in as they were shutting down our program due to lack of interest. If we wanted to continue, that the closest location was over 4 hours away. We were then bombarded with invitations to work on other programs within ITT, starting at the Associates Level, not Bachelors.[273]

Another student at the San Bernardino, California, campus wrote in a student survey in 2013 that "The Director of Recruitment [redacted], took it upon himself to sign me up, and schedule me for Project Management Bachelors Course which was out of the scope of my field of study."[274]

One student at the Wyoming, Michigan, campus wrote in a sworn statement that he had wanted to obtain a 4-year degree in video game design but was instead convinced to enroll in an associate's program in visual communications in 2007, with the assurance that the bachelor program was "coming in a couple months."[275] The student reported that after three quarters, ITT "came to us and said that if we wanted to complete that degree we would have to move it out west where the classes were at. I was furious and wanted to drop out, but they said that if I did I would have to pay for all three quarters of classes right away. I was unable to do so, so I ended up switching to the Electronics program to avoid having to pay my loans immediately."[276]

Another student reported in January 2016 that he had enrolled at the South Bend, Indiana, campus in a criminal justice program on the promise that a paralegal program was about to be available. The student wrote that he was told he would be

> able to take ALL my credits from Criminal Justice without having to take an extra year out for my degree. Of course this did not happen and I ended up taking an extra year to graduate. . . . I had to take out in loans to continue- which caused me to use more of my money and thus the reason I couldn't go to DePaul [U]niversity. ITT HAD USED TOO MUCH![277]

Bait-and-switch tactics were just one more tool in the sales toolbox deployed by recruiters at ITT to not only get students in the door but keep them trapped at ITT with no other options but to finish their programs.

D. ITT Lied about the Types of Jobs Its Graduates Received

Lying about the types of jobs graduates could expect was another key part of ITT's sales pitch. ITT graduates frequently received low-paying or entry-level positions after leaving ITT and were often not equipped to obtain the job types they were promised.

For several years, ITT deployed a marketing device during recruitment called the "career wheel," which purported to show how its programs matched with possible careers that students would likely be interested in pursuing. As described by a former ITT recruiter:

> HQ instructed us to use 'career wheels' in our presentations to students. The inside of the wheel would have the name of the degree. The inner spoke would have some of the courses while the outer spoke listed job titles these graduates would be eligible for. So many of these were misleading. For example, the Criminal Justice Associate Degree career wheel listed such jobs as Crime Scene Investigation, Forensics Technician, etc. None of these jobs are attainable with an Associates degree. Another career wheel for Industrial Technology had as a job possibility 'Plant Manager.' It is ludicrous to think someone with a 21-month associate degree would assume such a position.[278]

The career wheel was a marketing tool that ITT used to promote all of its programs.[279] As described by the Massachusetts Attorney General:

> During the admissions process, prospective students were shown 'career wheels' to help them decide in which programs to enroll. Admissions representatives were instructed to tell prospective students, "The center of the wheel is the program itself, and radiating around it are the courses and the corresponding job titles. Take a moment to look at these and tell me what interests you.". . . Most students who graduated from a Computer Network Systems program did not obtain the types of jobs listed on the 'career wheel' or on the Graduate Employment Information disclosures.[280]

The following graphic is an example of this type of misleading career wheel, used for the Information Technology program[281]:

ITT's criminal justice programs were notoriously limited in terms of career paths for graduates, despite what recruiters told students. A former dean explained how "recruitment representatives were trained to tell prospective students that the program would allow them to get jobs doing forensic science work like they see in CSI Miami."[282] This was completely false. The program prepared students to work in the juvenile justice system and correctional environments. A student would need advanced chemistry and other sciences to work as a crime scene investigator or forensic scientist."[283] A former academic affairs dean also testified that the chair of the criminal justice program at his campus "became irate and resigned from ITT" after learning that recruiters were spreading this lie about the career prospects of criminal justice program graduates—often told through the medium of the career wheel—declaring that she could "no longer work for the devil."[284]

A July 2013 PowerPoint presentation for ITT's Associate Degree in Software Development included a slide with a typical career wheel, which explained that

"graduates may choose to pursue careers in a variety of industries in positions such as programmers, developers, and systems analysts."[285] It also cites Bureau of Labor Statistics data for projected annual openings and salaries for this industry, listing a median salary range of $47,660 for the job title of Computer Network Support Specialist to $96,600 for Software Developer, Systems Software.[286] These generalities about desired careers were misleading—the implication was that an ITT graduate could *expect* to receive these positions, when, in reality, the opposite was more likely.

A frequent tactic by recruiters involved listing the names of specific companies to prospective students, falsely implying that these employers commonly hired ITT graduates. The following statements were documented by mystery shoppers and flagged by ITT as misleading or problematic, because they created a false impression of likely employment:

- **Oakland, California – 2010**: ITT recruiter specifically mentioned that Cisco and Oracle were two companies that "might show up at upcoming career fairs, depending on if they were hiring or not."[287]
- **Lake Mary, Florida – 2011**: Mystery shopper documented that an ITT recruiter said that the CIA had hired ITT Tech graduates in the past.[288]
- **Aurora, Colorado – 2011**: "The [ITT] representative verbally told me company names including: Department of Defense, Haliburton, IBM, Gates Rubber, the CIA, and Homeland Security. Throughout the presentation and tour, she pointed out many different employers that hired ITT graduates. There are several posters on the walls throughout the tour that had the names of the employers that hired ITT graduat[es]."[289]

The real-world impact of these lies directly and actively harmed students who were misled about the types of jobs they could expect to receive after graduating from ITT.

E. ITT Lied about the Salaries its Graduates Earned

ITT misled students, orally and in writing, about the supposedly high salaries they would make upon leaving the school. Students consistently report that ITT promised that they would receive lucrative salaries upon graduation.

Many students report being told they would earn a six-figure salary when they finished an ITT program.[290] In Duluth, Georgia, an ITT representative told a mystery shopper that they could "make 6 figures easily in a Project Management Role."[291] Another mystery shopper was told that "some of their IT security graduates are earning six figures after one year of work."[292]

Over and over again, students were sold lies about high salaries:

- **Fort Lauderdale, Florida – 2011-2014**: A student was promised a salary of "$60,000 or higher" once they completed a degree in Network System Administration.[293]

- **Arlington Heights, Illinois – 2008-2012**: A student was told that they would "not have a problem getting a job starting between 80 and 100K."[294]

- **Chantilly, Virginia – 2011**: A mystery shopper reported that an ITT recruiter told her about "a wom[a]n who started at $20k and is now making $150k after 8 years" and about a "man who started at 50k and is making half a million now as vice president of a tech company."[295]

- **Douglassville, Georgia – 2015**: A mystery shopper reported: "I was told about a student that just graduated that got an $80,000/yr job."[296] The following year, another mystery shopper at the same campus was told, "It depends on how you sell yourself, I mean I've seen some as low as $40,000, as high as $110,000. I've seen that salary with just a two-year degree."[297]

ITT staff knew that the numbers ITT recruiters were telling students were misleading.[298] A former ITT department chair reported that "on one occasion, [he] heard a recruiter directly tell a prospective student that they would be making $85,000 per year after graduating with a bachelor's degree from ITT, which was completely unrealistic and false."[299] That same department chair also "frequently heard comments from many of [his] students along the lines of, 'my recruiter told me I would make $65,000 in my first job.' Student[s] did not make close to $65,000 once they graduated, let alone $85,000."[300]

All of these promises and representations about salaries were false. ITT's own SEC filings demonstrate that students made nowhere near what recruiters would tout to students. According to ITT's Form 10-Ks from 2006 to 2014, the "annualized" average salaries of employed graduates never went above $35,000.[301] Specifically, ITT reported the following:

- 2007: the "reported annualized salaries initially following graduation averaged approximately **$31,000** for the Employable Graduates of our institutes' programs who graduated in 2006."

- 2008: "the reported annualized salaries initially following graduation averaged approximately **$32,400** for the Employable Graduates . . . who graduated in 2007."

- 2009: "the reported annualized salaries initially following graduation averaged approximately **$32,800** for the Employable Graduates in 2008."

- 2010: "the reported annualized salaries initially following graduation averaged approximately **$31,600** for the Employable Graduate in 2009."

- 2011: "the reported annualized salaries initially following graduation averaged

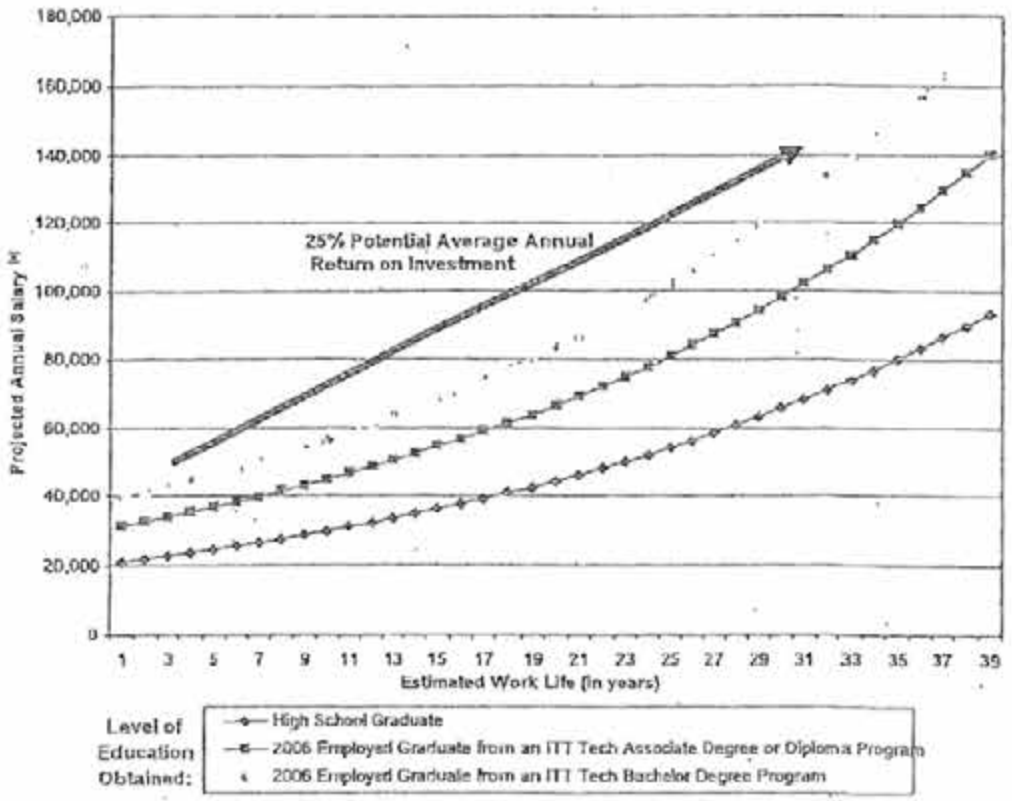
approximately **$31,300** for the Employable Graduates in 2010."

- 2012: "the reported annualized salaries initially following graduation averaged approximately **$31,300** for the Employable Graduates in 2011."
- 2013: "the reported annualized salaries initially following graduation averaged approximately **$32,061** for the Employable Graduates in 2012."
- 2014: "the reported annualized salaries initially following graduation averaged approximately **$33,398** for the Employable Graduates in 2013."
- 2015: "the reported annualized salaries initially following graduation averaged approximately **$34,553** for the Employable Graduates in 2014."

Additionally, as the Massachusetts Attorney General[302] and the Consumer Financial Protection Bureau pointed out in their respective complaints against ITT, "the numbers were 'annualized,' which suggests that they included jobs that were temporary, rather than permanent, salaried positions,"[303] so the actual take-home pay for ITT graduates was likely, in reality, much lower.

1. Value Proposition

Perhaps ITT's biggest lie to students about their earning potential was showing them a document called "Value Proposition for Employed Graduates" ("Value Proposition" or "VP").[304] Students were shown this Value Proposition document and asked to sign off on it.[305] The document contained a chart, replicated below, that—according to a former recruiter—was specifically designed to make "ITT look good and affected many students' decision[s] to enroll at ITT."[306]



A longtime ITT employee, who started with the company as a receptionist and worked her way up to being a director of finance before leaving the school, described the Value Proposition document in the following way:

> Before showing any forms or numbers to students, financial aid staff was trained to emphasize all of the benefits students would receive from their education. From 2004 to 2007 this was done with the guidance of a 'return on investment document' that Mr. Modany developed. It contained misleading information about the average salaries of graduates of different programs based on proprietary data with disclaimers in a small footnote. This form was pulled in 2007 for 'compliance reasons'. It was replaced by more generalized patter about the benefits of an education and the types of salaries one could earn in different fields.[307]

As detailed in an expert report[308] authored by Dr. Jordan Matsudaira,[309] the Value Proposition misleads students in three distinct ways:

(1) "Using the average earnings of graduates to estimate starting salaries after leaving ITT, despite the fact that the majority of ITT students never earn a credential and are therefore likely to have a much lower starting salary";

(2) "Assuming an unrealistically high and constant rate of salary growth over workers' careers, despite well-known evidence that real salary growth tends to stop

between 10 and 20 years after beginning work"; and

(3) "Ignoring published data from the same sources relied on to develop the VP that demonstrate its projected earnings for ITT graduates are implausibly high—more than $100,000 greater than the average earnings of all workers with the same level credential."[310]

The Value Proposition document was very misleading because it "shows annual earnings levels for ITT graduates near the end of their working career that are about $100,000 higher—i.e., more than 250 percent higher for associate's and more than 150 percent higher for bachelor's degree holders—than the average earnings of working graduates from all other institutions."[311] This was a bald-faced misrepresentation because "anyone with a modicum of experience using labor market statistics would immediately recognize from these data the implausibility of the earnings projections depicted in the VP: they massively over-estimate the financial gains that students could reasonably expect from enrolling in an ITT program."[312] Like all other communications from ITT, the Value Proposition left students with a completely mistaken sense of what their attendance at ITT could do for them in terms of their future earnings.

F. ITT Falsified its Job Placement Rates

In some instances, ITT did not merely lie about the types of jobs, companies, or salaries that would be available to graduates, but lied about specific job placement as well. For example, an email thread from September 2011 revealed that a recruiter at the Clovis, California, campus was repeatedly guaranteeing jobs and financial aid awards to prospective students. The internal discussion was based on a mystery shopper report that revealed this recruiter's habitual pattern of lying to students.[313]

Another email thread from February 2015 details how an internal auditor's report on the Greenville, South Carolina, campus showed that representatives, whom the auditor specifically named, were observed making unfounded job guarantees to prospective students.[314] This issue was not mentioned in the Greenville campus's annual audit report for 2015.[315]

An email thread from January and March 2015 discussed a mystery shopper interview conducted in January 2015 at the Hilliard, Ohio, campus, which revealed that a recruiter at the campus was guaranteeing job placements to prospective students. Specifically, the report from the mystery shopper interview states that the recruiter told students that ITT Hilliard has "100% placement for business graduates."[316]

HQ officials routinely were made aware of, and discussed, misrepresentations and false job guarantees made by recruiters. In an exchange between HQ directors and an internal auditor, the following observation was made about recruiters at the Greenville, South Carolina, campus:

> In my interview with one of the representatives, I asked the question "are you aware of any issues of non-compliance with company policies and procedures." She answered "yes." She went on to explain that she had heard [recruiter] [redacted] "guarantee" jobs and said he was written up a week ago and she hadn't heard him say it since then. I spoke to the Acting DIR/Dean and the DOR [director of recruitment] from Charlotte South about this. The Dean from Charlotte South has been assisting Greenville in the recruitment area. She said she wrote him up for failing the e-campus on compliance three times and for insubordination. Neither she nor the Acting DIR/Dean was aware of the allegation regarding the representative guaranteeing jobs.[317]

In both promotional materials and in-person recruiting sessions, ITT made job placement rates a central part of its pitch to prospective students. However, it promoted and reported placement rates that were untrue.

A former academic dean at ITT's Tallahassee, Florida, campus recounted how the company engaged in job placement rate manipulation: "ITT counted students as placed in their field even when the credential from ITT was unnecessary to their placement. For example, ITT counted students from criminal justice as placed when they were hired as security guards, positions that require no postsecondary education."[318] This dean went on to explain that job placement rate manipulation was a well-accepted fact among ITT campus directors and corporate managers:

> I met with a student . . . two months after she graduated from ITT's Electronic Technology program. I know . . . that ITT had marked her as 'placed' in her field of study. But I learned from [the student] that she worked on an assembly line, applying a wax coat to circuit boards. I brought this to the attention of the College Director [redacted], who maintained that [the student] was in fact working in the field because the factory made electronics.[319]

ITT put pressure on its employees to make sure they had acceptable job placement statistics. For example, in order to mitigate job placement issues in the campus and program reports sent to ACICS for certification requirements, an ITT vice president told Kevin Modany she was "pushing everyone as hard as we can through the tape."[320]

Job placement inflation was both implicitly and explicitly encouraged by ITT's corporate managers. HQ outright told career services personnel to "[i]dentify individuals currently working in pre-grad in-field and related-field capacities; document where appropriate"[321] in order to bolster its reported numbers of in-field placements, even if these were positions that students had obtained with no contribution or help from ITT. At exit interviews, career services personnel were also told to "explore potentially-related existing employments"—in other words, an instruction to reframe new graduates' pre-existing jobs as in-field placements credited to ITT.[322]

As described by the Consumer Financial Protection Bureau:

> On its website and in written materials provided to students, ITT told its students about its "placement rates" for "positions that required the direct or indirect use of skills taught in their programs of study." In addition, ITT provided this information in its Forms 10-K filed with the SEC for the years 2010 through 2012, representing that ITT placed approximately 70% of its "Employable Graduates" in such positions. . . . These figures were based on selective data and incomplete information and did not represent realistic outcomes for most ITT students. For example, the placement rates do not include former students who did not graduate (which is the most common outcome for students who begin at ITT), may include jobs that do not require the degrees students paid for (such as retail jobs), and may include positions that were merely seasonal. These job placement rates were designed to mislead consumers about the value of an ITT education.[323]

A review of company emails and audit reports provided dozens of documented instances of job placement rate fraud occurring at virtually every ITT campus. The following are just a few examples:

- **Jacksonville, Florida – 2012**: A corporate counseling form noted that a career services coordinator had purportedly verified an in-field placement with the graduate's supervisor, but when the graduate emailed to indicate he was not working in-field, the coordinator admitted that she never spoke to the supervisor ("This information prompted me to counsel [coordinator] verbally that leaving a voicemail message is not conducting proper verification.").[324]
- **Tampa, Florida – 2012**: Instances of employment falsification included an HR complaint report from June 2012 concluding that the career services director made about 20 students sign graduate employment information forms before verifying their actual employment. Additionally, the report found that the director recorded that at least one part-time student was a full-time student in order to obtain "credit for the placement."[325] Most of the specifics regarding this career services director's wrongdoing were not included in the 2012 annual audit report for Tampa, which simply noted, "Graduate Employments were not documented adequately. This is a repeat issue . . . The DOCS [director of career services] related that she is new to the position. The issues are due to errors of the prior DOCS . . . Eight of 10 employment files reviewed had a variety of issues. Some graduates had multiple issues."[326]
- **Huntington, West Virginia – 2012**: Emails from December 2012 revealed that the career services director falsely reported a job placement, as well as the employer verification, for at least one graduate, who was, in reality, never hired by the named employer because his skillset was found to be "far below the level of [the employer's] existing staff."[327]

- **Albany, New York – 2012**: A January 2012 email between career services and legal department employees at HQ described an incorrect graduate employment information form at the Albany campus. It read, in part: "Attached is a returned paper copy of an Employer Survey. As you can see, the graduate was not very happy with her experience, and was very explicit about the fact that she did not get a job in her field. I typically pass these down to [employee at] HR. However, based upon our conversations surrounding the ERM [Enterprise Risk Management], I decided to look up the student in IRIS [ITT's student records database]. She is actually recorded as an RF [related-field] employment, with GS [graduate survey] substantiation. This obviously raises concern."[328]
- **Portland, Oregon – 2012**: Internal emails from June 2012 involved a discussion of graduate employment information falsification, with at least one student confirmed to have been falsely marked down as employed full-time at a company called Crowd Management Services. This was seemingly caught due to a random review of the "file in our end of month employment review."[329] In reality, this particular student was still searching for permanent employment, a fact that the career services department knew, yet still "deliberately misrepresented" on the student's file.[330] The graduate confirmed that she had worked five hours for the company since being "hired," despite the fact that an ITT employee had listed her as having a full-time, 40-hour-per-week job.[331] And although the audit report for the Portland campus in 2012 does address issues related to career services, it included no specific mention of this instance or any other occurrences of employment falsification.[332]
- **Levittown, Pennsylvania – 2012**: A campus director was terminated after an internal audit discovered that this director had improperly approved backdated and blank graduate employment information forms submitted by the director of career services at Levittown. A review of the campus's career services office showed many problems, including: (1) claiming employment based on job interviews alone; (2) asking graduates to sign graduate employment information forms without job offers; (3) creating multiple signed graduate employment information forms for different possible outcomes; and (4) inaccurate health waivers (forms stating that the student's employment status was not counted due to a health condition preventing employment) that were signed by the director of career services and the campus director. Career services staff reported that "it was common practice for the [director of career services] to fill out [graduate employment information forms] for students and graduates who were not yet employed, based upon interviews and/or screening testing."[333]
- **Knoxville, Tennessee – 2012**: An email thread from May 2012 discussed invalid job placement reporting at this location, specifically with respect to the video game program, construction design, and visual/graphics communications programs. A review of these programs' graduates found that "over 30% of the files tested with calls (to employer/graduate) are proving to be invalid."[334]

- **Norwood, Ohio – 2012**: The director of career services was caught falsifying a graduate employment information form, which was flagged because of a disconnect between the job title (Technician/Sales/Inventory) and the company (a liquor store called Your Mama's Drive Through). The graduate was actually a sales clerk and did absolutely no work related to the graduate's field of study, contrary to what was reported.[335]

- **Knoxville, Tennessee – 2012**: A graduate of the construction drafting and design program was listed as employed in a related field, but when asked to verify that the graduate used her drafting and design skills, her supervisor responded bluntly, "She uses a shovel."[336] The same year, a director of career services at Knoxville, who was also the trainer for that district's directors of career services, was caught falsifying graduate employment information by auditors. The falsified form claimed to verify that a graduate was employed as a drafter using autoCAD (computer assisted design) at a bakery. This was flagged as false when the manager confirmed that the bakery did not hire any drafters.[337]

- **North Charleston, South Carolina – 2012**: The director of career services at this campus completed paperwork in 2012 that indicated a graduate of the electronics program was employed in-field. The graduate was actually working as an "activities director" at an elementary school, which the director of career services wrongfully counted as a position that required him to use his electronics background. A July 2014 email discussion between HQ employees confirmed "that the information provided to us by [the director of career services] regarding the employment of [the graduate] was falsified."[338]

- **Knoxville, Tennessee – 2012**: Also in 2012 at this campus, a career services employee engaged in blatant graduate employment falsification by claiming that a digital entertainment and game design student was placed in-field when she was in fact working as an assistant at a public housing authority. There were also fabricated notes in the graduate's file, which detailed extensive conversations between the graduate and her work supervisor that apparently never took place.[339]

- **Albany, New York – 2012**: An internal email from January 2012 contained a graduate employment survey from a student who expressed extreme dissatisfaction with her ITT experience, including an inability to find permanent employment in her field of study. This survey directly contradicted her ITT-created records, which indicated that she had been placed in "RF [related-field] employment with a GS [graduate survey] substantiation"—clearly implying falsification by the career services department.[340] Again, this instance was not reflected in the Albany campus audit report for 2012.[341]

- **Austin, Texas – 2013**: Internal company emails discussing ACICS findings from October 2012 reveal that ACICS was unable to verify job placement rates reported by ITT on the Austin campus's 2011 Campus Accountability Report (a report to ACICS), with several specific examples of job placement

misrepresentations from the information technology program, and with computer network systems graduates wrongfully identified by career services to be working in-field.[342] Included are details about what jobs ITT tried to pass off as "in-field"—for example: "[Graduate] is reported to be working in field by the campus and the [ACICS] team verified he is employed by a temporary placement agency which placed him in a warehouse 'picking, packing, assembling hard drive orders.'" Similarly, "[Graduate] is working for Insurance Auto Auctions and was classified [by ITT] as placed in field. The campus reports her title as customer service rep, but the [ACICS] team discovered her title to be title clerk with duties related to researching titles on vehicles using a computer—nothing to do with computer networking." This issue was not addressed in the 2013 annual audit for the Austin, Texas, campus.[343]

- **Troy, Michigan – 2013**: Documented instances of improper job placement records included an example from September 2012 involving a student who was improperly noted as having an in-field placement with Quicken Loans. According to a "placement discrepancy form," the student was never hired by that employer because he failed to pass the company's requisite background check.[344] Notably, despite this issue being discussed in internal company documents, the 2013 annual audit report for the Troy campus stated that there were "no issues" found in the career services department's operations.[345] Additionally, these issues only came to light because ACICS did a pilot placement verification program. Several other placement discrepancy forms regarding the Troy campus's falsification of job placement records were circulated via company email and, again, were left unmentioned in the campus's audit reports for their respective years.[346]

- **Getzville, New York – 2013**: Internal emails from May 2013 show that employment falsification at this campus was discussed at length, with at least 11 confirmed employment falsifications attributed to the campus's director of career services, with one instance involving a student who was unemployed after graduating and whose signature was forged on an employment verification form.[347] Notably, this only came to light after the graduate returned to campus seeking help finding employment, causing a counselor to pull the graduate's file, which then revealed other instances of job placement falsification perpetrated by this director of career services: "I received notification that [the director's] prior campus has identified at least 11 additional employments entered during [director's] tenure as DOCS [director of career services] that need to be removed from the system."[348] This pattern of fraud was not recorded in the audit reports for the Getzville, New York, campus in either 2013 or 2014.[349]

- **Arlington, Texas – 2013**: The national director of career services flagged several suspect graduate employment information forms at this campus for compliance at HQ, noting, "This is another instance where a College Director should have looked at the details (or lack thereof) and slammed on the brakes."[350]

- **Albany, New York – 2013**: An October 2013 email thread discussing employment falsification by the director of career services at the campus revealed a graduate employment information form that was never properly verified by the employer. The employer was apparently only screened by phone and never signed off on the graduate employment information form, which falsely claimed that the student in question worked there.[351]

- **Mobile, Alabama – 2014**: An August 2014 email thread showed graduate employment information falsification committed by the director of career services, who falsified students' forms by fabricating an employer called "Always Animal Clinic" and claiming this fictional entity to be the valid employer of at least one graduate. The director even went so far as to create a fake employer email address and phone number for a made-up individual.[352] Additionally, the corporate head of career services noted in this email chain that this individual had likely engaged in similar behavior before with "numerous other" employment placements at the Mobile, Alabama, campus.[353] This incident was not reported in the Mobile campus's 2015 annual audit report, with no mention of the student whose employer was invented by the head of career services.[354]

- **Houston North, Texas – 2015**: A graduate employment information form from this campus was flagged as false by HQ. The form in question involved a 2014 graduate who was listed as working at "On the Rox Bar," where he had been working since before he attended ITT, supposedly as an electronics technician, a position related to his field of study. However, the graduate refuted this, and "stated that he has never been an Electronics Technician at On the Rox, and that there is no such role in the organization . . . He did not remember ever telling anyone that he was an Electronics Technician."[355]

- **Knoxville, Tennessee – 2015**: A graduate filed a complaint with the Consumer Financial Protection Bureau about her negative experience dealing with career services and job placement assistance at the Knoxville campus. In researching her complaint, ITT found that it "could not be substantiated" and "[the student's] career services file indicates that she was working in her field upon graduation, and the school was not notified otherwise until she complained to the CFPB in July 2015."[356] This response was, however, false: ITT had discovered through its own review of Knoxville's job placements that this particular student's career services file had been falsified. ITT reported her as employed in-field (for visual communications) as a "cover artist," but in 2012 the supposed employer reported that she had only done isolated contract work, and the graduate herself confirmed to ITT that she had never been employed in her field of study.[357]

- **Pensacola, Florida – 2015**: A graduate employment information falsification was uncovered in 2016, following a review of employment records by HQ's vice president of student services. This flag elicited the following response from the national director of career services: "As you can see, the employer says in the

email below that she did not fill out the information because it was not correct. She also says that these students are still in the background check process, which means that they have not yet received an offer. I believe this email helps to support that this was a conscious misrepresentation of the nature of these employments by the Pensacola DIR [campus director] / DOCS [director of career services]."[358]

- **Houston North, Texas – 2016**: An April 2016 email between officials at HQ confirmed the termination of the director of career services for "falsification of expense reports and improperly completed GEI [graduate employment information forms]. [The director] was issued a final written warning on 4/17/15 regarding improperly completed GEIs."[359]

- **Pensacola, Florida – 2016**: Emails from April 2016 revealed that the director of career services falsified at least four graduate employment information forms, which the director of career services nevertheless defended by claiming that he "got the all good [sic] on the employments from the employer verbally." However, "this was not the same result when a quality control check was done by HQ Career Services."[360]

- **Plymouth Meeting, Pennsylvania – 2016**: An example of job placement falsification is described in a corporate email chain discussing a criminal justice graduate who self-reported that he was employed as a loss prevention specialist at Target, which contradicted the student's graduate employment information form: "This file raised several flags. It is also a pre-existing retail employment that is presented as changing in nature after graduation, but there is no graduate signature, exit interview, employer signature, email chain, or other indicator that the student is indeed making this transition related to the program of study."[361]

- **Philadelphia, Pennsylvania – 2016**: An inappropriate employment waiver was caught following a corporate review of career services records. An "employment waiver," similar to a health waiver (mentioned *supra*),[362] recorded a graduate's special status that allowed ITT to exclude their employment situation from the campus's official figures. There were waivers allowed, for example, for graduates who chose to continue their education rather than enter the job market. In this situation, a waiver was improperly applied to a graduate whom the career services department claimed was attending another school, Strayer. In fact, this graduate was working at a grocery store and had requested career services assistance.[363]

- **Philadelphia, Pennsylvania – 2016**: Another graduate in 2016 was falsely recorded as having attended DeVry instead of entering the job market. Internal emails noted that the graduate was very interested in receiving career services help but had not been contacted for this assistance.[364] "He [student] is also very vocal about a lack of Career Services support. You will need to mend fences with him and offer assistance."[365]

In a notable follow-up to these 2016 reports of falsified job waivers at the Philadelphia campus, an internal corporate email thread included a discussion about whether these, and other, career services violations needed to be reported to the ITT Board's audit committee, with an HQ compliance employee writing, "Historically, we haven't done so."[366] Kevin Modany responded in agreement, writing, "It doesn't seem to fit the criteria. That said, we can mention it verbally if we have time."[367]

Independent reviews of ITT's claimed job placement figures have also determined these numbers to be false. An investigation conducted by the Massachusetts Attorney General's Office concluded that ITT's Computer Network Systems program, in particular, advertised a job placement rate that had no factual basis:

- "ITT's purported placement rates disclosed to prospective students between June 2010 and May 2011 shows that ITT's stated placement rates were substantially and materially false and inflated."[368]
- "In representations to consumers and prospective students, ITT disclosed that it had placed 100% of the 43 students who graduated in 2009 from the Norwood campus Computer Network Systems program. The actual placement rate for graduates was approximately 50% or less."[369]
- "From 2010 through at least May 2013, ITT did not disclose to consumers and prospective students that its placement rates included as 'placements' graduates with jobs outside their field of study and graduates with internships or short-term, unsustainable jobs who never received permanent, sustainable employment."[370]

Sometimes ITT was forced to acknowledge job placement manipulation when its own graduates would apply for jobs at ITT. One example of this occurs in an August 2015 email between corporate directors discussing a potential adjunct hire at the Houston North, Texas, campus. The message notes, in part:

> Attached is a resume that was submitted as part of a GEI [graduate employment information form] for a graduate. How is this person qualified to be an instructor at the Houston North campus? . . . If this is indeed a qualified instructor, we still will not be able to count it as an employment . . . Please understand the optics this creates. In terms of the Career Services piece, we will not be allowing this to be entered into the system as a valid employment until she has done at least 30 hours a week for at least 30 days, which will be after the 9-30 cutoff. If at that point in time you want to revisit it as a documentable employment, we will run this through [redacted] and [redacted] for their feedback. A situation of this nature is sensitive, and needs to be fully vetted.[371]

This particular example also encapsulates many of the problems inherent to ITT generally—it was a school that apparently struggled to justify hiring its own graduates due to its institutional incompetence.

IV. CHEATING ENROLLED STUDENTS

A. ITT Falsified Grades and Attendance Records

ITT further diluted the value of any credential from ITT through a policy of grade and attendance falsification, in order to keep students enrolled and eligible for more loans.

Grade Falsification

Students and employees alike observed these practices occurring at virtually every ITT campus. Instructors faced penalties for giving students failing grades even when those grades were accurate indicators of the student's grasp of the material.

The Government Accountability Office conducted a probe of ITT in 2011 through undercover students. Its findings included clear examples of grade falsification, including one undercover student receiving "full credit for an assignment submitted for this class that had also been submitted for another class, and contained a clear notation that it was prepared for the other class. In another class, the student received 100 percent of the available points, despite submitting only two of three required components."[372]

HQ implemented a system that put direct pressure on instructors to ensure that their students received passing grades, by setting a target for "student success," *i.e.*, pass rates. Instructors who did not meet these goals were labeled "high risk instructors" and were presumptively terminated or not asked to teach another course. One such instructor was on the "high risk list" in Johnson City, Tennessee.[373] His campus requested a waiver (permission to keep him employed despite his not meeting the pass thresholds), because he was the campus's only instructor who met the ACICS experience and credential requirements to teach mathematics. Corporate HR said they were "ok with that," but noted internally that it seemed the instructor had falsified grades in the most recent term ("Pretty unusual for a whole [Mathematics II] class to have pretty much perfect grades . . . .").[374]

Another ITT employee, an information technology chair at the Knoxville, Tennessee, campus, was recommended for termination because it was verified that he

> would ask the students "if they knew the course material?" He would then assign them grades of 100% for their weekly grades and the final examination. . . . The Dean confirmed . . . the ITT chair [redacted] entered Final Examination scores of 100% for all students in his March 2011 SE451 class. Additionally, seven students received overall course grades of 100%. A single student received an overall course grade of 98.3%."[375]

Instructors who refused to go along with ITT's grade falsification scheme faced repercussions. In one account, a former electronics instructor stated:

> While I was at the Murray, UT campus, I was under intense pressure from my director [redacted] to pass students who had not earned the grades they needed to pass and had not learned the necessary material. My director was, in turn, under pressure from the regional manager to improve our passage rates for the accreditor. I adamantly refused to pass students who had not earned passing grades, which caused an increasing amount of friction between myself and the administration. This friction was common between the educators, like myself, and the school's corporate administration and eventually led to many of us leaving.[376]

Another instructor in Murray, Utah, told students that "corporate" was "requiring him" to pass students, even those he knew had earned a failing grade.[377]

Attendance Falsification

Many students reported that they were effectively cheated by a school that merely rubberstamped transcripts in order to ensure continued enrollment and revenue. One student's account noted the following:

> Also, the school let students pass, that had no business passing. We called it the attendance game. Show up for one class, miss the next two. Show up for a class, miss the next two. That student would just need to turn in his work that we [were] doing, and take whatever tests he was eligible for, and somehow they would pass. I know that one teacher started to put a stop to this, by assigning participation points, and not accepting any late work. A few students failed the class. The teacher was reprimanded, and told that he could not do that anymore. Needless to say a few quarters later, the teacher found work elsewhere, as he did not agree with the school encouraging students to just be pushed through classes so that the school could collect their funding.[378]

One former employee similarly stated: "The administration was very concerned with student attendance because this was a relevant accreditation factor. Instructors were expected to call absent students throughout the first hour of class to try to get them to come in. We were told to make these calls during class time while students were working on other things."[379]

ITT's only real concern with attendance was having records that they could passably send off to ACICS for accreditation approval. The motive by management was entirely financial: they needed to be able to report good enough attendance to keep the accreditors content. In fact, the instructors who felt pressure from HQ were the ones who accurately reported low attendance figures, or those who could not hide their tracks well enough.[380]

It was also obvious to students that attendance records were being blatantly fabricated:

> Many classes also allowed you to pass just for showing up once every

> three weeks. The teachers never cared, as long as their metrics looked good for the higher ups. I once forgot to inform my school I would be gone on a vacation for two weeks, and when I got back I saw that I had signed into the class each week I wasn't actually there. The teacher just scanned in previous attendance sheets, or just outright forged the digital attendance records.[381]

Once again, though, HQ remained satisfied as long as attendance figures were believably reported and were good enough to satisfy the requisite standards.

B. ITT Starved Its Programs of Resources in Order to Increase Revenue

1. ITT Instructors and Students Did Not Have the Necessary Equipment

ITT's website advertised: "Unlike many traditional colleges, where students spend most of their time listening to lectures in most programs, ITT Tech students also spend considerable time in the lab, where they are encouraged to apply what was taught in the classroom and see for themselves who, why and what makes things work."[382] Direct mailings to prospective students stated, "ITT Technical Institute offers practical, hands-on experience in fields where there are good careers. You spend your time learning the things you need to do a good job. You don't spend time on subjects that are unrelated to your career goals."[383] ITT's very name, evoking a "technical institute," presumed instruction based on current technology paired with equipment on par with industry standards. However, as students quickly learned, ITT's scant budgetary allocations to educational resources resulted in out-of-date, broken, and shoddy equipment at virtually every one of its campuses.

Some of the most frequent complaints at ITT, confirmed by sworn statements from students, related to the abysmal state of labs, equipment, facilities, and instructional materials. Given the very high cost of tuition at ITT,[384] this level of student outrage was understandable. The following statements from former students exemplify this widespread sentiment:

- **Rancho Cordova, California – 2004-2010**: "ITT-Tech claimed to offer an education that would result in IT jobs, and my goal was to become a Network Admin. . . . In reality the computers were very old and many were broken, the only lab equipment I saw was from the teachers' personal collections or workplaces, and I spent less than 30 minutes with a real router the entire time I attended the school. The education had nearly nothing to do with being ready for certification, and none of the coursework prepared me for testing. When I compared my Capstone projects to real-world examples, my work was very inadequate."[385]

- **Tampa, Florida – 2007-2010**: "I was in the DEGD program, Digital Entertainment & Game Design. I was told they had labs and all the software needed to learn and attain the education needed for the game design field and that they had instructors who worked in the industry. All statements where [sic] false. The labs did not have the needed software or equipment; what software they did have had been obsolete for years plus the hardware wasn't powerful enough to run. They could not provide the software that was needed to finish our assignments forcing us to attain our programs through shady methods. . . . Our assignments came straight from tutorials found on [G]oogle & YouTube which didn't correspond to the software versions that we did have."[386]

In 2005, the entire information systems security class in Indianapolis, Indiana, requested a 100% refund of the costs of their course. They complained that (i) their textbooks (which were created in-house by ITT) contained mistakes and inaccuracies, (ii) their instructors were poorly trained, and (iii) their labs were ill-equipped and not functioning. The internal email reporting the complaint to HQ added: "According to [the campus director], their claims are 99.9% true, and he feels that they deserve some monetary compensation."[387]

Student complaints concerning the ever-present issue of shoddy equipment and poor classroom resources were often emailed directly to HQ. One example, from the Tucson, Arizona, campus, dated June 30, 2012, notes the following:

> I have been attending the Tucson campus for over four years and the computer lab equipment has always been less than desired. It can be extremely frustrating to be assigned lab work to be completed in the LRC [learning resource center] and there are not enough computers for the students because 1) the network/computer won't allow students to sign on, 2) what working computers are left are being used by other students from other classes, or 3) you're lucky enough to find an available working computer and the internet is very very very slow and the time spent is unproductive. I understand that ITT-Tech scheduling caters to the working student, which makes it all the more important to make the most of our time on campus.[388]

Another example comes from a student survey dated January 12, 2012, forwarded by email to HQ, which noted, in part, the following problems at the Dayton, Ohio, campus:

> Lab maintenance is sorely lacking. At one time, five computers in one room [were] in disrepair. Since it is the only room where I work on my assignments, I cannot speak for the others. Three computers sat this way for more than six months and were completely inoperable. I had taken this issue to the staff and was told that only 'corporate' could resolve it. Since I am graduating soon, I find little worth in dealing with it further. It wasn't until I mentioned this during a survey conducted by ACICS [ITT's

> accreditor] that all the computers were repaired and working. Now more have broken down, but have still not been repaired. Based on these details, I can only assume that the lab environment is being neglected. Whether or not this is true, five inoperable computers down for such a time is unacceptable. When multiple courses are held on the same day, this room is completely occupied save for five machines and students are leaving saying they will do later since they cannot work now.[389]

Company emails revealed that in September 2012, students at the Little Rock, Arkansas, campus encountered issues when trying to use the virtual servers for lab exercises. The servers had only 4 gigabytes of RAM, which made them virtually useless.[390] Additionally, faculty computers were not being properly upgraded to the required operating system, and labs provided to faculty for classroom instruction at the Little Rock campus often did not work.[391]

A 2012 review by ACICS also identified several issues related to equipment at the Little Rock, Arkansas, campus:

- Faculty stated that students in some of these courses have to reboot servers occasionally, sometimes three to five times over a class period. Depending on the computers and the size of class the process can take as long as 10-20 minutes. Under these conditions in a worst case scenario a student could spend 100 minutes of class time rebooting computers. Another faculty member stated that in some cases when students give a command to a virtual server, they have to wait as long as four minutes before the system is able to respond. As a consequence, students become frustrated with the process and learning is limited.

  . . .

- Computer labs used by students in these programs have been upgraded to Microsoft Windows 7 operating system, while faculty computers have not been upgraded and are currently utilizing Microsoft Windows XP operating system. As a consequence, instructors are not able to adequately prepare for classes.

  . . .

- Labs provided to instructors for classroom instruction frequently do not work. All faculty members interviewed described examples of non-functioning labs. One instructor estimated that as much as 60% of some labs do not function, requiring faculty to figure out time consuming ways to work around this issue. This results in student frustration and significant amounts of time spent trying to make curriculum work[.][392]

HQ was well aware of these deficiencies outlined by ACICS, but there is no evidence that any meaningful steps were taken to address them.

2. Deficient Faculty Resources and Curriculum Underinvestment

The most cursory review of ITT's educational model shows that its concern for faculty, quality textbooks, and up-to-date curricula was virtually nonexistent. Its focus in these areas was entirely fixed on cutting costs. This can be plainly seen in its attitude toward faculty. ITT rarely supported its instructors with the resources they needed and often resorted to hiring unqualified individuals for the sake of saving money.

Company communications revealed many examples of HQ's indifference to faculty credentials. For example, a 2012 accreditor's report showed that faculty at the Austin, Texas, campus including the chair of the school of information technology, held deficient credentials—facts that were noticeably absent from the 2013 annual audit report for the Austin campus.[393] One example from the accreditor's report states, "[Instructor name] is an adjunct faculty member at the school of Electronic Technology teaching ET315, Electronic Communications System II for the September 2012 term. [Instructor] holds a bachelor's degree in Occupational Education from Texas State University and a master's degree in Education with a major in Adult Education and a minor in Business from the University of the Incarnate Word. No evidence of professor experience or any professional certification was available that could qualify this faculty member to teach for the School of Electronics Technology (based on the accrediting council's requirements)."[394]

Sworn statements from students also align with this reputation of shoddy instruction:

> ITT Tech claimed that it hired quality instructors with experience in the field to teach their classes. However this wasn't always the case. Case in point I had one instructor who was hired to teach video editing. He was a friend of the program chair and was only a camera man for the local news station . . . My instructor did not know anything about editing. So we instead spent 3 months talking about the camera he used at the news station and different camera angles. We never actually used a camera and only used the editing software on a few occasions. We had to use videos pulled off the internet to edit and I actually ended up having to show the instructor how to use the software because I, along with a couple of others, actually had some experience with video editing. Our complaints fell on deaf ears. . . . Overall I feel like ITT did nothing to prepare me for the job market. As is reflected by my job prospects as I left school.[395]

ITT advertised its teaching staff as experienced and independent, but this was not always true. In order to save money, ITT heavily relied on adjuncts and other part-time teaching staff who generally lacked the independent voice and professional standing usually present in academic departments at more traditional and reputable schools. For example, at a district managers' meeting in May 2012, a mandate was issued to all campus directors to "ensure that adjuncts are covering at least 65% of all sections being taught and that full time instructors are teaching no more than 35% of all sections being taught. You should also ensure that all chairs are teaching two sections"

and "full time instructors must teach six sections[.]"[396] By December 2012, Kevin Modany dictated that the ratio of adjunct to faculty sections must be 75% to 25%, writing:

> We MUST emphasize to the schools that they need to do this AND they need other FT at 6.0 sections AND adjunct/FT ratio at 75/25%! All three work hand in hand . . . along with maximizing section sizes . . . We have to have this for Dec! No other way around it!!!! Can't emphasize it enough.[397]

But even as ITT increasingly turned to a model that relied primarily on adjunct instructors, ITT did not seriously audit or monitor the qualifications of the adjunct instructors. Even though HQ set a policy that adjuncts must have a bachelor's degree and at least 3 years of relevant experience, it appears there was no actual verification of the qualifications of adjuncts. The national director of career services witnessed this firsthand in 2015, when she audited a graduate employment information form for the Houston North, Texas, campus and discovered that a graduate from an ITT associate's degree program had been hired to teach an electronics course, after having "been a tutor providing assistance in the absence of an electronics chair."[398] The national director wrote in response, "How is this person qualified to be an instructor? How did she get hired as an instructor without having to update her resume? Is she still driving a bus?"[399]

Unqualified classroom instruction was an accepted reality, even by ITT's own staff. As noted by one former employee, "[o]n many occasions instructors have taught classes whereby they were not qualified. Even when this issue was brought to the attention of those in charge, nothing was done to rectify the situation."[400]

ITT's short-sighted policies often drove away talented faculty. For example, in 2013 ITT started requiring department chairs to teach at least four courses per quarter to save on hiring costs.[401] This policy inevitably whittled down the teaching staff to the point that, by the end of ITT's operation in late 2016, students were apparently enrolled in programs with no chairs, no faculty, and no adjunct instructors at all.[402]

In 2012, ITT also declared that section size "needs major attention from the college management," because HQ determined "that students in sections of nearly 40 do not drop at a higher rate than those in a lower section size," and therefore campuses must "manage to the higher section size where possible."[403] This lack of increase in dropouts was apparently enough for HQ to justify increasing class size for the sole benefit of saving money.

Turnover among instructors because of these, and other, harmful faculty policies was obviously very high. In response to one student's complaint that for a single course he had 11 instructors in 11 weeks, an ITT manager acknowledged: "My first reading of the letter lead me to believe that his having eleven different instructors in eleven weeks was not possible but . . . I do believe that he had 7 different teachers for the class."[404]

ITT also refused to expend any corporate resources on updating its curriculum. When

it considered adding new programs, it assessed whether the program would "require significant cap[ital] ex[pense] for equipment, improvements, significant lab space" and "programmatic accreditation."[405] Instead, ITT chose to offer programs that offered training for jobs where there is "no credential required" but "the training *may* help" in finding employment.[406]

Kevin Modany illustrated this attitude perfectly in his response to a necessary "curriculum revision" for the nursing program.[407] After being told that the update would cost $120 per student, he incredulously spat back: "I hope I'm reading this incorrectly! Otherwise they are too high . . . by about 10X!"[408]

ITT also relied on external vendors to produce the content for its courses. Around 2012, it got into a dispute with its supplier, Pearson. Student complaints were already mounting about out-of-date textbooks:

- **Spokane Valley, Oregon – 2012**: In April 2012, a student complained that textbooks were out of date and did not comport with the actual software being used in class.[409]
- **Hanover, Maryland – 2013**: In August 2013, students complained about "books, lab equipment, and internet speed." Additionally at issue was the lack of "proper instructions for labs." There was apparently no resolution, as the campus IT Chair had "taken this issue with the books to HQ last quarter and we are still waiting to hear back."[410]
- **Kennesaw, Georgia – 2014**: An April 2014 complaint about a textbook not matching course material was confirmed by ITT as valid: "The complaint from the Student Survey Response was valid. The Course required a new book, but HQ never changed the curriculum to reflect the content of the new book."[411]

In July 2012, it was clear that ITT's course offerings called for textbooks that ITT's supplier, Pearson, could not deliver: "These are mainly courses for which Pearson could not produce material. In most cases they were given months to identify material and they told us they did not have material. The minimum development time is 9 months from the date they produce satisfactory materials."[412]

In September 2012, ITT rolled out its "Intellicourse" project, which was an attempt to save money on textbooks by teaching on tablets.[413] Concurrently, Kevin Modany directed that there would be no limits for section size in Intellicourse classes.[414]

This Intellicourse initiative was plagued by complaints regarding substandard quality and bad technology from the very beginning. The senior vice president of learning technologies reported to Kevin Modany that "we had issues rolling out the tablets (wrong versions of the app installed was one issue) but the main issue appears to be network drops and about 40% of the class had the tablet lock on them and/or drop connection at some point."[415]

In response, ITT hosted a town hall with students participating in the Intellicourse pilot

in October 2012, and learned that there was "frustration over the WiFi issues and the spinning issues we had over the last four weeks" and that students "typically" go to a library or a McDonalds to "find a hot spot."[416]

In December 2012, ITT was still scrambling to fix problems with Intellicourse. For example, a support technician at Canton, Michigan, reported that "starting around 7 pm EST the Intellicourse system slowed down to basically a standstill so the instructor sent them all on break . . . I am guessing that this would've been 6 pm Central when those schools started to try to log in?"[417] It was reported to Kevin Modany that "the reason we don't have the offshore team working on this" is that there was no "support $" in the budget, and that there was "some sort of performance issue consuming too much server capacity. [A]dditional resources need to be added . . . It should not be stressed at this level of usage."[418]

In late 2012, Kevin Modany was asked about wireless plans and whether ITT could "load local servers with the Intellicourse content and then have the tablets access that content/server while students are in schools (materially reducing the reliance on the bandwidth of the network)?"[419] He responded in the affirmative and said that ITT was "moving forward w/ providing a wireless plan for the student" since "the #1 complaint from our Indy pilot was having to find Wi-Fi sites outside of the school."[420] Always keenly fixated on the bottom line and offsetting costs, Modany answered, "The plan is to provide a plan (yes) but we haven't figured out how to charge the student for it." [421]

By January 2013, Modany had had enough and planned to "shut down the Learning Technologies team on or before February 15" to "stop this hemorrhaging" on Intellicourse.[422] Modany announced on January 30, 2013, "I'm going to advise [the vice president of learning technologies] that we are shutting down this group as soon as is practical but in no case later than Feb 15. We will endeavor to outsource the development of digital courses to Pearson as a component of an overall curriculum procurement contract."[423]

In September 2013, ITT rolled out "ebooks," which was the Pearson version of "Intellicourse." At this point, however, ITT still had not fixed its bandwidth issues, and it included three campuses (West Chester, Pennsylvania; Overland Park, Maryland; and Southfield, Michigan) in the rollout even though these locations had nowhere near the bandwidth necessary.[424] ITT eventually, and begrudgingly, had to accept spending some money to upgrade the bandwidth at these campuses, with Modany writing, "While I don't like paying $8k at a school that's already losing money I don't see that we have much of a choice."[425]

C. Student Schedule Bait-and-Switch

Another way that ITT trapped its students was by consolidating its schedules in order to spend the least amount of money on instructors. This meant that ITT made promises upfront to prospective students about a flexible schedule that could accommodate jobs or children, but did not take students' needs into account once they were

enrolled. As explained by students:

- **Charlotte North, North Carolina – 2015**: "When I first enrolled in ITT-Tech I already had an uneasy feeling about the timing because I was basically TALKED into going ahead because the new quarter was only a week in[.] I specifically said that I work 3rd shift and that it will be hard for me to take evening classes. Well it turns out that these past couple of quarters all I've been offered is evening classes. I really feel like once ITT-Tech was sure to get my money then [i]t was like 'see ya when we see ya."[426]
- **Desoto, Texas – 2012**: "When I first enrolled at ITT Desoto, Texas, location, I made it very clear that I would be an evening student due to my work schedule. Now it seems as though I, along with many others have been switched to daytime classes. When I inquired about the change, I was told that the classes for next term are only offered during the day. This is absolutely unacceptable. I should have been notified long before now (2 weeks prior to next term) about this change. At this moment, the only options that have been made available are to switch to another location, or take the daytime classes. Both options are not viable options for me as I cannot go to another location that's out of my way; and I am unable to take daytime classes."[427]

A letter of resignation from an instructor at the Louisville, Kentucky, campus, emailed to corporate officials, gives a clear look at how student welfare was consistently deprioritized as a matter of principle at ITT:

> The majority of our student population is working individuals and desire to acquire a degree to move up or better themselves financially. When classes are cut back and those same students are forced to either quit their job or find other employment in order to take a class to complete their degree and that class is offered one time a quarter and may not be offered for several more quarters, it places an undue hardship on them.[428]

In early 2012, Modany launched a "curriculum redesign" that would cut costs by moving all general education courses online. Even students enrolled at a brick-and-mortar school would be required to take these courses online, although ITT provided a physical space for the courses. Students would essentially gather in classrooms to watch online lectures. ITT began rolling out this program by identifying all courses at physical locations that had an enrollment of less than 10 students, and moving them online.[429] An email from the national registrar to campus directors stated that the new "resident minimum census per course" rule "is NOT an optional exercise; each identified course/section must be offered in blended format."[430]

The chief academic officer warned Modany that "we have no guarantee these students have any access to online outside the school," but the change went ahead anyway.[431]

A primary issue with this change was that online courses were both of lesser quality and often lacked the benefit of convenience, because many students were not able

to watch them from home and therefore still had to come in for "class." Nevertheless, students were still forced to take them, despite not having agreed to take online classes.

As one 2013 complaint from a student at the Rancho Cordova, California, campus explained:

> This is in regards to the forced online courses myself and the other students in my program have had to take in the last couple quarters. My problem is that I NEVER signed up for online classes. I specifically came to ITT because of the on campus Electrical Engineering classes. I do not learn well in an online class, and this attitude around the campus of I just need to suck it up and take the class, doesn't help me. I have a 4.0 at the moment and this online class is threatening GPA. I'm not paying to go to online school! I'm paying to have a teacher in the class room that can teach me, I fail to see how it is my problem that ITT decided to switch programs so there are less people to take the class.[432]

Contemporaneous statements from instructors also voiced many of these same concerns about the forced move to online learning, particularly with respect to the lack of educational quality. As shown in another 2013 example from Rancho Cordova, California:

> I have several students who are being forced to take online classes when that is **NOT** what they came here to do. Often, the online instructors are not getting back to students or have the ability to correct incorrect questions. I have been working with students who were thrown into an online class at the last minute (they are to graduate this quarter) because of the change to the 'Advanced Strategies' class.[433]

In February 2016, a person who had been an instructor at ITT's Kansas City, Missouri, campus for almost a decade sent an email to Kevin Modany and others, writing: "Many Bachelor students are having to take their CAPSTONE class online in 6 WEEKS!! A CAPSTONE CLASS!! This is supposed to show what they have learned the entire time they've been here. If you're going to be turning this into an online school, you need to make sure the students know this!! This is NOT the type of students we have!"[434] This complaint was forwarded to HR and an investigation *of the instructor* soon commenced.[435]

In March 2013, a group of students submitted a complaint describing a similar situation regarding their program capstone being moved online: "This should be a student's choice, not Corporate's. Corporate makes the rules up as they go. This is what I consider poor decision-making. How many people are going to fail CAPSTONE because of these poor decisions. We listen to complaints about saying there is not enough money for things that the students ask for but I see ITT Tech on T.V. spending hundreds of thousands of dollars on commercials. You cut our teachers hours but I see you offering free scholarship services."[436]

The following are additional examples of statements and complaints by former ITT students explaining how they were harmed by this sudden move to online learning:

- **Youngstown, Ohio – 2012**: "When I signed on to go to ITT, I inquired about the online classes and whether or not I would have to take any and I was informed that I would not unless I chose to take them. That is one of the reasons I did sign on to ITT[.] I DO NOT do well at online schooling!!!!! I require the structured setting in a classroom. I am also paying a great deal of money to your school for my education for you to be doing this to the students. According to your commercials you work around schedules and you can attend day or evening classes. You have already shafted me with my animation class in the middle of the afternoon, therefore making it a day I am unable to work at my job. I work in a hospital and work several different shifts and you are not making it easy on anyone with these new schedules and adjustments, and now you make this online class with lab time in the middle of the afternoon . . . serioulsy [sic] you need to get real."[437]
- **Kansas City, Missouri – 2012**: A student complained about "being forced to take online courses" and stated that he was "failing one as a result of struggling with the online learning environment. He complains that he is a disabled Vet and has an elevated stress level, so he cannot handle being in an online course because of the technical issues he faces. He claims that when he enrolled, he told his program chair and his recruiter that he cannot take online classes."[438]
- **Green Bay, Wisconsin – 2012**: A student complained that "he was misled while enrolling at the campus." He "was adament [sic] when talking to his enrollment representative, voicing that he did not want to take any classes online" because "he does not work well with computers," and "he chose to attend the Green Bay campus so that he could physically attend classes . . . [H]is enrollment rep told him he would not have to take any classes online."[439]
- **Louisville, Kentucky – 2012**: Student "lives 50 miles away [from campus] and where he lives his internet provider does [not] have the technology he needs to complete his online course."[440]

The dean at Oak Brook, Illinois also expressed similar concerns, writing to HQ in 2013:

> [T]he problem begins when [students] see their schedule and the course is offered on campus and then we get notification from HQ that we have to move the courses they designate to the hybrid/core 6 week format. We call the students to inform them of the schedule and this is when the fun begins. What adds fuel to the fire that this is the bachelor capstone project which involves one or more groups of students working together on setting up a network for a company over the course of 12 weeks and making a presentation to an audience[.][441]

ITT blithely ignored these complaints: "[T]he Catalog states that most of the Gen Ed classes can be taught online at the discretion of the school, so even if no one wants to take the class in the blended format, there won't be anything they can do."[442] Notes from a meeting at HQ described "[p]ush back on online courses" as a "natural effect due to operational change. Nothing to fix—simply let the change go through its course."[443] When a student from South Bend, Indiana, complained in 2012 about being forced online, ITT's internal response was, "I think she needs a therapist?"[444]

ITT fielded so many complaints from students about this "blended" model that it developed standard response language for such complaints.[445] ITT eventually landed on a rationale for explaining this cost-saving move when responding to students, telling them that "taking online learning prior to graduation [will] enhance skill sets that one will need for training/retraining in the work world."[446] Modany himself reiterated this theme in "town hall" meetings with employees, stating "that employers want employees that know how to learn online."[447]

When the Ohio Board of Colleges and Schools contacted ITT in July 2013 about the hybrid/blended course model it was implementing at its campuses, ITT's official response was to "confirm that we provide a clear and conspicuous disclosure of the likelihood that students may have to take online courses."[448] At best, this response was disingenuous, given the number of complaints ITT had already received about the bait-and-switch involved in this initiative.

The "blended" curriculum also posed serious operational challenges, because ITT's systems were not set up to take attendance for resident courses delivered online.[449] There was an optional in-person session, for which attendance was not monitored. Consequently, ITT could not know who had dropped out of the course.[450] Only half of the students attended the onsite "lab" session of the hybrid courses, and nobody had been assigned to review or give feedback on the exercises in this orientation lab: "The attached report shows that there were literally thousands of HSP assignments in the March quarter that were not graded, so essentially the students got no feedback in the LMS on these critical orientation exercises designed to contribute to their success in an online environment."[451]

Kevin Modany observed in April 2013, "We need to think about a way to get section synergies but do it via regular delivery because for whatever reasons people are not doing well in these blended courses. If we actually forced attendance at the local level, that might do the trick."[452] He chastised employees for "not managing it at the local level," and deemed complaints about the model "outrageous."[453]

In June 2013, the national registrar requested permission to cease creating additional hybrid sections because it was "a manual process prone to error" and was "much more complicated this quarter" because ITT was "trying to keep all students at a campus who are taking hybrid courses in the same sections if possible," whereas "in the past they were just assigned to a section the same way as online students," and the "faculty allocation process/optimization process is a hot little mess since it relies on a very

complicated series of spreadsheet with lots of formulas that is prone to human error in the best of scenarios and is worse with the blended section concept."[454]

But ultimately, the only change ITT made to this "blended" model was to remove its application to courses in the first two quarters of a program of study.[455] Modany also directed that ITT create a student acknowledgment form that was "automated" "as part of the packaging process that is electronically signed."[456]

V. SADDLING STUDENTS WITH DEBT

ITT did not have a financial aid system that helped make higher education more accessible for low-income students. Rather, it had a financial aid *scheme* intended to maximize the amount of profit the company could squeeze out of each enrollee that it managed to get through its doors.

A. ITT Profited from Private Loans It Knew Students Could Not Repay

The majority of ITT's revenue came from Title IV federal aid, mostly in the form of student loans.

This heavy financial reliance on Title IV federal funding did have some limits, and ITT continually tested those limits.

The 90/10 Rule

Under a requirement of the 1992 Higher Education Act, known as the "90/10" rule, for-profit schools, like ITT, must show that at least 10% of their revenue comes from sources other than Title IV federal aid. The intent of this rule is to prevent proprietary schools from relying too heavily on federal aid. But one of its unintended effects was to cause ITT to actively seek out alternative or creative financing strategies, such as elaborate "scholarship" program ploys.[457]

ITT's "Champagne Scholarship" was a program that the Senate HELP Report identified as a "front"[458] meant to improve the company's ability to maintain its compliance with the 90/10 rule. As explained by the Senate HELP Report:

> Department of Education regulations dictate that scholarships awarded to a student do not count as Federal financial aid and instead count on the '10' side of the 90/10 calculation, only if the scholarships are awarded by an organization independent of the school. The independence requirement prevents schools from subverting the 90/10 rule by simply recycling Federal student aid money to award scholarships that count on the '10' side. However, several companies that operate for-profit colleges have designed scholarship programs that appear to be awarded by outside non-profit organizations, but in reality the design and control of the programs appears to come from within the for-profit school. In these cases, the money used to fund the scholarship comes from sources connected to the school and the awards are only given to students at that particular school.[459]

This rule also led to unintended and adverse consequences for student borrowers. For example, ITT specifically targeted members and veterans of the military because of the "90/10 loophole," which classified G.I. Bill funds as counting toward the 10% rather than the 90% of allowed Title IV funding.[460,461] ITT also compelled students to take out private loans that it knew they were unlikely to ever be able to repay.[462]

Prior to 2009, ITT partnered with Sallie Mae to create the private loans that ITT would force on its students to ensure its own compliance with the 90/10 rule. ITT's risk-sharing agreement with Sallie Mae required ITT to guarantee full repayment of the remaining loan balance for all the originated student loans if the default rate exceeded a 24% threshold.[463] In Sallie Mae's own words, the risk sharing agreement's guarantor provision was intended "[t]o induce [Sallie Mae] to extend credit to ITT's students."[464] Sallie Mae eventually sued ITT for reneging on this agreement, and ITT settled the lawsuit by paying Sallie Mae $46 million.[465]

Next, ITT began offering "zero-interest, short-term loans payable in a single payment nominally due nine months later, at the end of the academic year[, which] ITT referred to . . . as 'Temporary Credit.'"[466] ITT presented this offer as an affordable way for students to cover their tuition balance, as one mystery shopper described being told that any costs above those covered by federal aid "would be covered under a new temporary credit and that I would owe no money out of pocket."[467] Another mystery shopper reported that ITT's financial aid staff told her that any costs beyond those covered by grants and federal loans "would be picked up by ITT."[468]

However, the company failed to disclose the fact that if students were unable to repay the full Temporary Credit amount at the end of the year—which the vast majority could not do—then they would be forced, under threat of expulsion, into multi-year repayment plans in the form of private, high-interest, high-fee loans.[469] When ITT converted Temporary Credit into private student loan debt, it removed an uncollectible account receivable from the company's books and thereby gained non-federal revenue.[470] ITT knew that many students would be unable to repay these loans, as the company was aware of its inability to collect on its own Temporary Credits.[471]

After the money from Sallie Mae dried up, ITT resorted to other creative solutions to its financing problems, including the PEAKS and CUSO programs. The "PEAKS" student loan program, created in 2010, was structured as a trust that sold securities to investors and used the funds to make over $300 million in loans to ITT students. The CUSO student loan program, created in 2009, was funded by a group of credit unions organized by ITT and made approximately $141 million in loans to ITT students, lasting until December 2011. In its risk-sharing agreement for the CUSO program, ITT guaranteed the repayment of any delinquent student loans after a 35% default threshold was met.[472]

Although these programs ostensibly existed through third-party lenders, they were, in reality, entirely under ITT's control and direction. ITT was intimately involved in every step of the loan origination process for these programs, from their creation and

underwriting to guaranteeing repayment of the loans. The only underwriting criteria for PEAKS, for example, were a student's prior receipt of ITT Temporary Credit and no bankruptcy declarations within the last two years.[473]

ITT's private loan programs were devastating to students' financial well-being. The PEAKS program, for example, had variable interest rates that could go as high as 25% and origination fees ranging up to 10%.[474] And the costs to students under the CUSO program were no less onerous, with origination fees that also went as high as 10% and variable interest rates topping off at 18%.[475]

When ITT created the PEAKS trust—which, again, was never a true private loan arrangement, since the company itself retained a significant portion of the credit risk—it "kicked the can down the road by pushing the recognition of credit losses on private loans [for] a few years out."[476] This scheme reduced bad debt in the short term but had no effect on the long-term credit exposure of the loans, for which ITT was ultimately, wholly or partially, responsible under the risk-sharing agreements.[477]

By the end of 2012, ITT's management estimated that the company's recorded liabilities associated with risk-sharing agreement (RSA) programs were approximately $123.4 million.[478] By Q3 2012, the average 6-month default rate for PEAKS borrowers had hit 62.3%.[479] ITT tried to conceal these awful default rates by having the company cover delinquent "payments on behalf of borrowers" (a program it referred to by the acronym "PBOB"). The company's sole motivation for implementing the PBOB program was to assure the PEAKS lenders of the program's stability and to avoid its risk-share liabilities.[480] In fact, ITT had so formalized these extraordinary payments that it even set up a system to send its students Form 1099 tax forms, which required the students to recognize ITT's payments as income:

Form 1099-MISC ☐ CORRECTED (if checked) (keep for your records)

PAYER'S name, street address, city or town, province or state, country, ZIP or foreign postal code, and telephone no.
ITT EDUCATIONAL SERVICES INC.
13000 N. MERIDIAN ST.
CARMEL IN 46032
(317)706-9200

1 Rents $
2 Royalties $
3 Other income $ [redacted]
4 Fed. inc. tax withheld $
5 Fishing boat proceeds $
6 Medical and health care payments $
7 Nonemployee compensation $
8 Substitute payments in lieu of dividends or interest $
9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐
10 Crop insurance proceeds $
11 Foreign tax paid $
12 Foreign country or U.S. possession
13 Excess golden parachute payments $
14 Gross proceeds paid to an attorney $
15a Section 409A deferrals $
15b Section 409A income $
16 State tax withheld $
17 State/Payer's state no.
18 State income $

OMB No. 1545-0115
2013
Form 1099-MISC
Department of the Treasury - IRS

Miscellaneous Income

Copy B For Recipient

PAYER'S federal identification number [redacted]
RECIPIENT'S identification number [redacted]
RECIPIENT'S name, address, country, and ZIP or foreign postal code [redacted]
Account number (see instructions) [redacted]

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

3 9MISCBI NTF 26773748 Copyright 2013 Greenland/Nelco Forms Software Only

The inherently deceptive structure and precarious financial position of the PEAKS trust and CUSO program resulted in a 2015 action by the SEC, which alleged that ITT had fraudulently concealed the loan program's abysmal performance and extremely high default rates.[481]

The high default rates associated with PEAKS were well known to ITT's CEO, who said, "PEAKS is structured differently so as to absorb higher levels of defaults than either SLM [Sallie Mae] or CUSO . . . With CUSO and PEAKS we are reserving now where we are not expecting any improvement in repayment rates (and that's a pretty ugly scenario)."[482]

These private loan liabilities became inescapable and unmanageable. As Kevin Modany acknowledged in July 2015, the performance of loans in ITT's RSA portfolios had "continued to deteriorate," with their related obligations continuing to "skyrocket[,] placing further pressures on cash flows."[483]

ITT had a very large incentive to enroll as many students as possible in these private loan schemes. It not only needed these private loan schemes in order to comply with 90/10, but it also needed students to take out these loans to fill the gap between what students could take out in federal loans and ITT's high tuition. Otherwise, students would not be able to attend at all and ITT would not have access to lucrative federal loans that accounted for most of its revenue. This intense, profit-driven pressure is what drove the "boiler room" sales culture that existed at every one of ITT's hundreds of campus-level financial aid offices, where students were pitched a terrible product and squeezed for profit.

B. Selling Loans

Campus-level financial aid departments were essentially sales offices designed to get students to "agree" to whatever financial aid terms and conditions the company presented to them. Financial aid coordinators were tasked with getting student signatures on financial aid forms. There was little pretense at ITT about what the first priority of every financial aid coordinator should be. They were not there to advise students on their best financing options. They were there to do the following:

(1) Ensure that new students were approved for loans and financial aid as an integral part of their enrollment process.[484]

(2) Ensure that current students had their loans repackaged (known as "packs" or "repacks") for subsequent semesters and/or graduate repayment plans. "Repacks" referred to the process of coercing students into continuing financial aid arrangements. Financial aid coordinators were trained to hound students, pulling them out of class, and also "attend[ing] the graduation practice or ceremony" and "catch[ing] the student before it starts to obtain the signature" (in this example, on a Temporary Credit Payment Plan Letter).[485]

Financial aid coordinators were subject to intense "metrics" scrutiny. A former financial aid coordinator described how this sales pressure worked in her department:

> FACs [financial aid coordinators] also had to meet quotas set by management, such as a minimum number of students packaged or repackaged with financial aid by a certain deadline.[486]

ITT financial aid offices followed the same "boiler room" model as ITT recruitment offices. Financial aid coordinators were told that "finance must be sold in appointment[s] just like the school is sold in the initial meeting with [the] rep."[487] ITT's national finance director at HQ impressed upon the campus-level directors of finance the importance of financial aid coordinators having sales acumen, writing: "I would recommend that if the student reads the disclosures and is 'afraid', then the rep needs to **reclose** the student with the return on investment information."[488]

ITT's enrollment and financial aid processes worked hand-in-glove, by design. First, a recruiter would make an aggressive and targeted sales pitch, followed quickly by a meeting with financial aid. Recruiters and financial aid coordinators worked closely together to ensure that potential students signed their enrollment agreements as quickly as possible, which was always a prerequisite to meeting with the financial aid staff, a tactic that made it harder to back out by the time they were discussing financing with a financial aid coordinator.[489]

The description of a former ITT recruiter captures the closeness of these two departments:

> When recruiting students, it was common for representatives to stay in the room with students for their financial aid appointments. In the course of my work at ITT, I witnessed many financial aid appointments. I regularly sat in on students' financial aid appointments when they were in the process of enrolling or re-enrolling at ITT.[490]

This former ITT recruiter went on to describe the effect of the quota system and how it made the enrollment process, including enrollment in financial aid, a rushed, uninformed blur for the student:

> In large part because of the quotas and deadlines set by ITT management, representatives and FACs [financial aid coordinators] faced tremendous pressure to move students through the enrollment and financial aid processes quickly and ensure that documents were electronically signed even if the students did not understand what they were signing or did not agree to sign.[491]

The sales methods and priorities of financial aid coordinators were the direct result of HQ's control and directives. The former director of finance of the Phoenix, Arizona, campus confirmed this connection, explaining:

> [A]ll of these methods of control were focused on making sure financial aid staff was able to alleviate any and all student worries about cost and break down any financially related opposition to enrolling. The main technique for doing so was to present everything as manageable – emphasizing the financial benefits of schooling when all else failed – and rushing students through the process so that they did not have enough time to develop concerns.[492]

Meetings between financial aid coordinators and prospective students were intentionally rushed. Financial aid coordinators were not paid to provide students with correct information—their job was to make quotas and numbers, and this was only possible if meetings with prospective students were concluded as swiftly as possible.[493] A former director of finance stated that "ITT's policy was that students should sign all forms within one hour of first meeting with a financial aid representative."[494] As explained by another former director of finance: "Financial aid staff knew that the longer it spent with each student, the less time it would have to sign other students up for loans. So sessions were as short as possible. I was trained —and trained others—to keep sessions under one hour."[495]

Another former ITT employee described this hurried process in the following way:

> It was common practice for FACs [financial aid coordinators] to scroll through financial aid documents very quickly, telling the student "click here, click here," without explaining what document the student was signing and without explaining the terms, conditions, or significance of e-signing the document. For example, I often watched FACs open

> a private loan agreement, quickly scroll down to the bottom of the document without giving the student a chance to read or review the document, and instruct the student to "click here" to e-sign the document.[496]

The following statement, given under oath by a director of finance for two of ITT's campuses, illustrates some of the methods the company used to keep students purposefully uninformed about their financial aid:

> ITT Tech also had an ongoing practice of creating new forms that students would sign to make it look like students consented to any number of fishy practices . . . HQ would develop forms that students had to sign to consent to the program and would train Directors in how to describe the form and when during the pitch the form should be presented. I believe that at least half of students had no idea what they were signing when such a new form was presented. In fact, I was always trained to tell students not to worry about the details of the form because everything would be fine.[497]

Training documents provided sales scripts for financial aid coordinators to convey a sense of urgency to the student: "It is important that we schedule [your financial aid appointment] as soon as possible so that you can learn what financial aid options you may qualify for," and "[w]e strongly recommend that you return within three days to learn what financial aid options you may qualify for."[498] Sometimes ITT's financial aid coordinators took this urgency to an extreme level. A 2005 email to HQ reported a complaint from a potential student that a financial aid coordinator "was rude to him and called him a liar when he told him that he was still investigating other school [sic] . . . [and] tried to pressure him into coming in to fill out the financial aid paperwork, and yelled at him for not calling him back quickly enough."[499]

ITT trained financial aid coordinators to downplay students' valid financial concerns and instead insistently sell ITT's (fictional) value. A broadly disseminated ITT training document, for example, addressed what to do if a student expressed the concern that "I really don't think I can afford college" or "I don't have very good credit."[500] This training document instructed financial aid coordinators to simply continue asking open-ended questions and assure the student that "we've worked with students before who have felt the same way, until they found out more information about what is available to them."[501] The document goes on to characterize affordability as an apprehensive "feeling" of the student's rather than a factual reality, which the financial aid coordinator is directed to overcome with deflective segues and broad assurances.[502]

One former director of finance stated that representatives were "trained" to make loans sound like a favor to students, and that they should continue to frame them as something "great" that ITT was arranging for them to reduce their short-term, out-of-pocket expenses.[503]

A former academic dean at ITT explained:

> ITT had a policy that financial aid counselors could not give students, or prospective students, their loan obligation information printed out, and instead required students to read and e-sign documents only after looking at them on the counselor's computer screen.[504]

Mystery shoppers reported being rushed through e-signing documents, such as credit check approvals and authorizations to request transcripts, without understanding what they were signing. The most common theme in these descriptions was the absurd speed with which financial aid coordinators would rush students through financial aid appointments, as documented by the Consumer Financial Protection Bureau:

> The whole meeting went so fast (the [financial aid coordinator] talked very quickly) that it was hard to understand what was going on . . . It was a challenge to keep up with [the financial aid coordinator's] pace, as she was very quick explaining things, and very fast on the computer. There were a few times where I just stopped her and asked her to please explain what she had just said.[505]

Additional sworn statements from students confirm the widespread occurrence of these rushed signing practices:

- **Nashville, Tennessee – 2008-2012**: "The loan paperwork was force-fed to me without the opportunity to read through it. There were a few times that I was told that what I was signing was grant paperwork, yet I now see that the 'grants' they some of were private loans that are set at an 18% interest rate."[506]
- **Durham, North Carolina – 2013-2015**: "I was originally told that my loans would be processed once a year, I was not told that they were processing multiple loans per semester during the once a year occurrence. I thought I was signing for 'x' number of loans for the entire year, not 'x' number per semester."[507]
- **Arlington, Texas – 2009-2014**: "They understated the number of loans and the amount of each loan necessary. I had reached a maximum capacity for a certain amount of loans, so I had to have a parent co-sign for a 'Parent-Plus Loan', and my parent is now having to pay over $500 a MONTH for MY STUDENT LOAN. If payments cease it will jeopardize their government job which is supporting our entire family. They also referred to federal and private loans [as] one in the same."[508]

For ITT, the most crucial part of enrollment was ensuring that financial aid got processed: there was no company revenue without it. To that end, ITT encouraged its employees to do whatever it took to sell financial aid as hard as possible, which meant keeping things very brief and keeping students uninformed.

C. ITT Actively Misrepresented its Cost of Attendance

ITT's rule was to never actually tell a prospective student the true, full cost of attendance. Instead, the company directed enrollment recruiters and financial aid coordinators to give this information piecemeal, answer evasively, and avoid stating the actual, total cost.

The Cost Summary Payment Addendum was a key financial disclosure form that had to be completed by all prospective students. The Cost Summary Payment Addendum explained the student's costs, expected types of financial aid, and expected disbursement dates and amounts of aid for that academic year.[509] However, ITT strove to make this document unreadable and even unfindable, often burying key figures and facts in dense legalese. ITT financial aid coordinators never sat students down and walked them through this document. Usually, they would simply refer them to the website where it was hosted.

The following sworn statements from former students explain what it was like to be pushed through this system without full knowledge of the cost of attendance:

- **Murray, Utah – 2004-2009**: "I was told it would cost me $40,000 and my payments would be about $400 a month for 10 years to get paid off. When I graduated I found their stacks of dozens of loans added up to almost $100,000 and they even tacked on extra stuff after I graduated."[510]
- **Tempe, Arizona – 2006-2008**: "I was repeatedly told that the cost was 100% comparable to other universities such as ASU. That my total cost would be about 17k. Come to find out that it was over 20k per year which was conveniently left out of the enrollment conversations."[511]
- **Duluth, Georgia – 2012-2015**: "They did not give you the total cost for the program. They would pull you from your class at the time for the semester re-registration for the loans and just told you to sign here, here, initial here. They said I qualified for grants because of my grade average. But I am not sure how that worked. I was not shown the complete cost of my student debt to the school until my final semester when they told me I had to pay out of pocket because I had exceeded the amount of the school. I was so upset and of course this was my last semester, I signed whatever they told me to finish. They said that you would be taking a private loan and just pay it back after I graduate. I was at no time advised I had reached or was about to reach my student loan cap. Due to the various grants and programs that were offered and because of my GPA being above the 3.5 they said I qualified for so many grants which would have then reduce my loans. This was very difficult to understand and not explained. My grants seemed to continue on like my loans."[512]

Internal emails also reveal that it was policy not to walk students through the Cost Summary Payment Addendum during the enrollment period, with one campus-level employee in 2011 asking HQ: "I was going over this verbiage and I just had a quick

questions [sic]. I was not aware that we were supposed to walk the student through the CSPA [Cost Summary Payment Addendum]? This is a FA [financial aid] document that is populated after the EA [enrollment agreement] is signed by the student as well as rep. I did not think the FAC [financial aid coordinator] could go over CSPA with student prior to the e-sign of the EA."[513]

A former director of finance instructed financial aid coordinators to avoid showing students the expected charges over the entire program and instead "break it into bite-size pieces," only showing the costs of nine-month increments, or quoting the cost in terms of credit hours rather than the overall cost of the program: "When it came time to present the cost of attendance, we were trained to break it into 'bite-sized pieces,' only showing the cost per 9 months . . . [W]e [also] never showed the cost without including information about eligibility for loans and grants."[514] And this was clearly long-standing corporate policy: in an October 2004 internal email to HQ discussing a complaint that a student's family had not been informed about the total cost of the program, the manager noted that "back then the student was actually given a better picture of the whole program than they are today, since now we only do 9 months at a time."[515]

A former Arizona-based director of finance explained: "I was trained and I trained others to focus on how ITT was helping students 'reduce out-of-pocket costs'. As such, each loan we introduced was meant to sound like a favor to students: we were helping them cover the cost of their education. . . . Temporary Credits, in particular were meant to be treated as if they were not even loans."[516]

Mystery shoppers frequently reported that financial aid coordinators would misleadingly state that any costs above those covered by federal aid "would be covered under a new temporary credit and that [the student] would owe no money out of pocket," and that any costs beyond those covered by grants and loans "would be picked up by ITT."[517] A common line used by financial aid coordinators on students who were apprehensive about how much debt they would be taking on by enrolling at ITT was: "nobody pays back the loans anyways."[518]

ITT representatives, however, were quick to disclose the true cost of attendance after a student expressed an interest in *leaving* ITT. HQ instructed staff to scare these students into staying by revealing the true extent of their repayment obligations and emphasizing that only by staying enrolled would they prevent this debt from becoming immediately due. A former ITT dean described this strategy as "keep[ing] the student's financial aid ramifications in front of their face" and said that this scare tactic was also frequently used to pressure students to stay enrolled after completing their associate's program and continue onto a bachelor's program at ITT in order to delay their repayment obligations, as discussed in the next section.[519]

D. ITT Misrepresented Its Temporary Credit Program and Private Loans

ITT never fully explained the nature of its Temporary Credits system, how those "credits" became private loans, and what the terms of those loans were.

In a 2009 training presentation, financial aid coordinators were directed to "create a sense of urgency without scaring the student" and "present all options. Yes, this means (pushing) Temp Credit!"[520]

ITT had minimal qualifying criteria for Temporary Credit eligibility. Usually all that was required was a financing fee of $500 and a lack of bankruptcy during the previous two years. As described by a national director of finance at HQ: "The object of the $500 payment is that the DOF [director of finance] can check a box that says they are eligible for the TC [Temporary Credit]. So when the student applies for a private loan, the private lenders will give the student a private loan based on the TC flag attached to the student's name."[521] This same finance director at HQ directed staff to use the word "funding" to describe Temporary Credit to students, in order to hide the fact that it was a loan that would eventually have to be repaid.[522]

Despite these minimal eligibility requirements, there is evidence that financial aid coordinators were regularly, and improperly, enrolling students in the Temporary Credit program who did not technically qualify, since these enrollment quotas were key numbers that HQ used to measure the performance of financial aid coordinators. In an email exchange[523] with the director of finance at the Clovis, California, campus, an HQ-level finance director informed the campus's director of finance that a report of these improper enrollments had been compiled, but assured the director of finance that no action would be taken to correct the enrollments or discipline the financial aid coordinators involved, stating: "I was told to share the information. I wouldn't worry about the past; I would just make sure going forward that this doesn't happen."[524]

A former director of finance from another campus also attested to the prevalence of students being enrolled in private loans despite lacking the necessary financial credentials and credit qualifications, recalling: "I also raised concerns about particular students who were enrolled despite . . . being in deep financial difficulty. I was told that in no uncertain terms that I was 'overthinking things' and that I was stepping outside the boundaries of my position."[525] Financial aid coordinators were essentially rewarded for ignoring the already bare-boned Temporary Credit enrollment standards.

ITT was barraged with student complaints about this issue, as well as queries from campus-level financial personnel on how to handle these complaints. The following examples illustrate their similarity and frequency:

- **Phoenix, Arizona – 2009**: An undated letter from the campus director of finance to HQ requested direction on how to handle a student who enrolled in March of 2009 and "feels that we misrepresented his Financial Aid options," because "the

> FAC [financial aid coordinator] told him that no private loans would be over 7 to 9 percent . . . [and he] felt that he was basically lied to in order for ITT Tech to get him to start the program."[526]

- **Nashville, Tennessee – 2010**: The director of finance at the campus requested guidance by email on how to handle a student who was "not happy with the interest rate with Peaks." The director of finance then followed up to say that the "student refused to speak with me" and "hung up" on the financial aid coordinator who advised him to contact HQ. It is telling that the director of finance described HQ's (unsatisfactory) response as "an explanation previously used to explain the options," indicating that problems with students' expectations of the Temporary Credit program were common enough to merit a canned answer from HQ.[527]

- **Fort Wayne, Indiana – 2010**: In another 2010 email, the campus's director of finance asked HQ what to do about a student refusing to take a PEAKS loan, writing that the student and his mother "claim to have had issues in the past, having been misinformed about the TC [Temporary Credit] program." The student "claims that he was told that when he graduates,[528] his TC balance would be set up with payments."[529] The director of finance even admitted that "since we don't have students sign anything indicating they must apply for a private loan, it's basically his word against ours."[530]

In response to a student at the Austin, Texas, campus refusing a PEAKS loan due to the high interest rate, an HQ director rhetorically asked, "What was the student expecting? A free loan now that we have a loan program for which he qualifies?"[531]

1. Keeping Students in a Cycle of Debt: Associate's-to-Bachelor's Pipeline

ITT had concerted marketing and recruiting efforts dedicated to compelling students to remain enrolled at ITT after completing their associate's degrees. They would pressure students to reenroll for more expensive programs of little value in order to squeeze every last bit of profit from them.

Internal company documents reflect this priority, with one example from 2009 listing an initiative for career services to "Market Bachelor [degrees] to unemployed AS [Associate] grads"[532] as both a solution to low employment among graduates and a way to sustain retention rates and ultimately increase profits for the company.

A 2012 complaint from a computer and electronics student in Lathrop, California, shows how ITT applied this pressure to students:

> [C]areer services . . . dangl[ed] the great new jobs available for people if they enter the bachelor's degree program. With finger pointed towards the students who could not attend the bachelors program for one reason

> or another. I heard statements like ("None of the electronics companies are hiring A.S. Grads, Sorry".) That isn't what you said last month; you said they wouldn't hire us until we finished the A.S. program! Career services themselves also make very little effort making jobs available to anyone until they have finished the A.S. as a prerequisite. Then they follow through with a grand slam of how the companies only want B.S. students. Having talked to a few of my classmates I can say that for the most part, we feel ripped off. I remember being sold on the idea that job availability and higher wages were something you could almost guarantee after two years at ITT. I heard nothing even remotely sounding like the benefits only apply if you finish a B.S. degree program.[533]

This student went on to explain how this pushy sales attitude of forcing students to stay on after completing their associate's degrees helped him see just how much of an overall fraud ITT was:

> I don't feel lied to by any one person either; it's the attitude of the whole administrative staff, or at least the ones receiving recruitment incentives. My opinion is that no matter what the statistics say about unemployment, or potential income . . . it gets hard to see through the smokescreen of gorilla sales tactics. It's more likely to make us wonder just how bad we screwed ourselves investing our educational dollars at ITT-Tech as well as how naive we are to have put our trust in believing that as educator's you are dedicated to protecting what is in the best interest of your students, and not the almighty incentive dollar.[534]

Meanwhile, official feedback to recruiters included comments and directives applauding their focus on targeting associate's students for reentry in bachelor's programs, with one example from the Torrance, California, campus in 2014 stating: "He is also working on enrolling his students from AA to BA programs."[535]

E. "Repackaging" Students Already on the Hook

Similar to the rushed, pressured tactics used on new students, financial aid coordinators forcefully pressured already-enrolled and graduating students into repackaging their loans (also called "repacking" or "repacks"), including their Temporary Credit issued by ITT.

ITT's Cost Summary Payment Addendum included a section[536] that referred to a 0% annual rate for its Temporary Credit program, which was deceptive. Although Temporary Credit balances themselves did not accrue interest, the private loans into which Temporary Credits were eventually rolled through repackaging absolutely did. And, critically, students were never told that this would happen. This was the undisclosed reality of Temporary Credits: they were no-interest loans only until the date they came due, nine months after enrollment, payable in a single lump sum. ITT knew that virtually no student would be able to pay back the Temporary Credit on those

terms. It was at this point that ITT would inform the student of these key details and then force them into a repayment plan through high-interest private loans. This was a primary way "repackaging" worked.

If students objected to the private loans that resulted from the repacks, financial aid coordinators would simply tell them that if they refused to comply they would have to pay any outstanding Temporary Credit, as well as the next year's tuition gap, out-of-pocket—which, again, virtually no student could afford. Or the student would have to leave the school in the middle of their program and forfeit the time and money they had already invested.[537]

ITT made it abundantly clear to its financial aid coordinators that they were salespeople who had to meet their quotas—both initial loans and repacks—in order to keep their jobs. The company valued financial aid coordinators who could get students signed up for financial aid quickly, efficiently, and without protest or delay from the student[538]:

> There was enormous pressure on me and the other representatives and financial aid coordinators . . . to make sales calls, enroll students, complete financial aid packages, and get students to attend an ITT class. This pressure was relentless.[539]

HQ provided financial aid coordinators with strategies for how to best mollify students who became understandably upset after learning that they were effectively being forced into private loans, like PEAKS. One such directive recommended that financial aid coordinators "just explain that you have a new private lender to use" as a way to finance the rest of the student's education.[540] In an August 2010 email directive to the director of finance at the Corona, California, campus, ITT's national finance director at HQ offered the following platitude as a response to predictable student concerns over being forced into high-interest private loans: "If the student complains about the private loan, remind them that their education is not 'free' and that temporary credit is just that . . . 'temporary.'"[541] HQ also directed financial aid coordinators to remember the list of "comments to avoid," including any discussion about student default rates.[542]

A former ITT student, who attended the criminal justice program from 2006 to 2010, gave a sworn account of the high-pressure repackaging sessions that students were constantly subjected to, writing the following:

> I was never explained any of the loans and many times I was pulled out of class to rush through more paperwork, even being told just sign it or you can't go back to class. . . . They pulled me out of class 3 weeks before graduation and told me if I did not sign some documents I would not be able to graduate. I asked what was it, they replied unpaid debt to ITT, I asked for what and wanted the information. They refused and continued on that if I did not sign that I would not be able to return to class and would not graduate. I signed the paper to find out it was a Peaks loan with an interest of 18%. Never once would anyone explain anything to me about the loans.[543]

HQ directives stated clearly that a "student may be admitted to class only with a Finance Department signature."[544] And if there were outstanding issues, financial aid coordinators were to "call students at home [and] follow-up with [a] letter."[545]

One training document issued by HQ in 2011 suggested that a good "opportunity to collect from the self-pay student is to request payment when students pick up their textbooks each quarter."[546] HQ instructions to financial aid coordinators also included directives to "partner with Acad[emic] Affairs to ensure quick access to students" and "target more difficult repacks at the beginning."[547] These directives also cited the importance of hitting "weekly goals for [finance] reps."[548]

A former vice president of finance described these tactics as "leverage."[549] One financial aid coordinator emailed an instructor to "make sure that [the student] will come to see me or anyone in Financial Aid tonight if he shows up for your class."[550] The financial aid coordinator also mentioned that "for the past several weeks, I've left messages for [the student] at home and also sent call slips to his classes."[551]

Excerpts from contemporaneously recorded student complaints contextualize the confusion and harm of ITT's repackaging machine:

> When the representative for the school gets you to sign for the loan every quarter, the total cost was never disclosed. No copies were given. I didn't find out how much I owed until after graduation. Then I had to fight with my employer to get a raise because they do not accept ITT degrees because it's not properly accredited. I have co-workers that were recruited to ITT and can't get their pay increase for the same reason.[552]

One director of finance described the repacking process in the following way: "As for repackaging students for loans after enrolled, it was meant to take as little time as possible—fifteen minutes at the absolute most. At the Murray [Utah] and Phoenix [Arizona] campuses, we pulled students out of class to sign their forms."[553]

The following sworn statements from students typify the prevalence of these pulled-out-of-class tactics:

- **Oxnard, California – 2003-2007**: "Usually to sign up for more loans they'd pull me out of class, and we'd go into a small room. There they'd set out a folder with a bunch of paperwork and tell me to sign it or I can't go back to class. It was always a very high pressure situation. Questions would be easily dismissed or they'd change the topic and never actually answer my questions. The difference between grants and loans was never explained to me either. From the info I did manage to get out of them I was under the impression that they were the same thing just one was issued from the government and the other was issued from a government lender. While signing documents they were usually in a folder with little post it notes telling me where to sign, they would rush me through the entire thing never really giving me a chance to read through it or even understand what I was signing."[554]

- **Ft. Lauderdale, Florida – 2004-2007**: "Halfway through my studies, they pulled me from class and told me that I had to fill out some forms to continue my education, otherwise I would be dropped from the program. They didn't tell me that I was signing up for high interest private loans. . . . If I knew I would be signing up for private loans with a 9.25% interest rate on them, I never would have done it. . . . Administration would not disclose my current loan balances during my enrollment at ITT Tech."[555]

- **Omaha, Nebraska – 2005-2008**: "The student loan process during my time at ITT was terrible. During no time was I made aware that I had other options for a student loan servicer. My only option for borrowing was through Sallie Mae (now Navient) and the rates were dictated by Sallie Mae as well. Similarly, on one occasion what I thought was a Federal student loan was in fact a private student loan. That loan came with a 10% interest rate that was non-negotiable if I wanted to continue with my program. When I mentioned that the rate seemed inappropriate I was told my other option was to come up with the ~ $6,000 for the next semesters tuition or risk not finishing my program. Another piece of the process that was bothersome was the fact that the individuals in the finance department would pull you out of class to have you sign student loan documents thereby guaranteeing you would quickly scan through and sign the documents in an effort to get back to class without missing much."[556]

- **Norwood, Ohio – 2006-2009**: "When I first started signing papers I was told the total amount for my degree would be 24k to 26k. I thought it was pricey but from all of the misleading nonsense they kept feeding me about we would get more attention than someone who attended a different college I was okay with it. A couple semesters before graduation they started pulling us out of class, usually during a test or exam and told us that we could not return to class or graduate until we signed this paper. I was not told what the paper was that we signed. Just that we had to sign it. I was more concerned with going back to class and finishing my test. Little did I know I was signing papers to give them permissions to take out high interest private loans. If I would have known what I know now I would have never gone to that school. I was young and just out of high school listening to their crap about how I was getting a quality education."[557]

- **Henderson, Nevada – 2007-2012**: "When I wouldn't sign some of the loan paper work, they pulled me out of class into financial aid office and explain that if I don't sign the loan paper I would be drop out of school. I did not know how many loans I have 'taken' out until I applied to purchase a home and was denied a mortgage loan because of my student loans. They did not explain the difference between a Pell grant, subsidize, unsubsidized, federal, private, or any other types of loan was."[558]

- **Green Bay, Wisconsin – 2005-2012**: "Throughout my entire enrollment at ITT Tech, I would randomly be pulled from class by some in the finance department

> to come in and 'update my student aid,' which typically involved them pushing me quickly through a few signatures, assuring me that it was just a quick protocol to make sure I wasn't kicked out of school for not having financial aid. They would push approximately 4-5 students through this in about an hour. I never received anything in regards to overall accumulated debt, but rather a form showing the cost per credit hour, and showing that I had enough loans available to cover my costs."[559]

- **Louisville, Kentucky – 2010-2012**: "The entire payment process was a blur. They would randomly pull you out of class and say that [your]loan wasn't going to cover what you still needed and that you would need to take out another loan. At one point the loan adviser told me my payment to them personally would be around $230 per month and if I wanted the payment lowered I could bring in a few thousand in and she would place it in her desk drawer. I declined on that generous offer."[560]

The repackaging machine at ITT was just one more example of how students there were treated as targets to be exploited for corporate profit. Repackaged loans meant more revenue for the company, which is why employees were pressured to get students to "agree" to them at all costs.

F. Forging Financial Aid Documents

ITT's systems not only allowed for, but tacitly encouraged, financial aid employees to falsify loan documents. An Alabama-based director of finance confirmed that the constant pressure on financial aid coordinators directly translated into undue pressure on students as well as "rampant corner-cutting and outright fraud."[561] For example, some financial aid coordinators inappropriately retained student PINs that were required for accessing and approving their federal financial aid forms, and used these confidential identifiers to sign student forms without their consent or knowledge.

Internal emails reveal how ITT officials would discuss and "troubleshoot" specific instances of flagrant wrongdoing in loan paperwork. The following is an example from a 2005 email between company officials at HQ:

> Per our earlier conversation, I told the Indy student (the one we applied for a loan for without his permission) that we would not compensate him monetarily for the mistake, and he told me that there is a law prohibiting businesses from doing this and that the fines attached to such an activity are more than what he is asking for as compensation (he wants at least $1000). I've spoken with [HQ Finance], and he says that he isn't aware of the law the student is referring to, but feels that if there is such a law, perhaps we shouldn't dismiss his refund request so quickly. Is this something I should run by [HQ employee], or should I prepare the close letter denying his request for monetary compensation as we discussed?[562]

A director of finance at the Bessemer, Alabama, campus attested to this practice of e-signing on behalf of students, stating that "if a student did not come in for an appointment with financial aid, it was common for financial aid staff to fill out the forms and e-sign on behalf of the student, without their knowledge. This would also happen for parent borrowers."[563] In another example, this director of finance recalled:

> In one instance, I brought a stack of papers to [redacted], who was Campus Director at the time. The papers showed that the financial aid office was making mistakes and even committing fraud with respect to student accounts. His response was unconcerned, and he advised me that so long as we didn't get caught, everything was fine . . . [This campus director] was subsequently promoted to District Manager.[564]

This practice is substantiated by the documented observations of mystery shoppers, including in the following 2010 account from a mystery shopper at the Greenville, South Carolina, campus:

> [The financial aid coordinator] asked for my social security number and if I knew what my US Dept. of Education pin was. Although he did not directly ask me to tell him what the pin was, this question made me uncomfortable as it was a roundabout way of asking for it. I lied and said I did not. He asked me what my favorite color was (the security question to reset the pin) As I was uncomfortable, I stated that I would pay for it. [He] said that if I changed my mind to call him.[565]

Kevin Modany was personally aware of mystery shopper findings of PIN misuse and other improper practices by financial aid departments. For example, a 2013 email forwarding such findings to Modany from the Green Bay, Wisconsin, campus reported the following: "I was rushed through the process, and she had me enter my pin and quickly put her school code into my FAFSA [Free Applications for Federal Student Aid], which I now have to correct. She did not ask permission or give explanation. Once I entered my pin she took over and updated my FAFSA with her school code. I found it very unprofessional and disconcerting as this is my FAFSA that I am legally accountable for."[566]

Another mystery shopper report, dated September 2, 2011, and related to ITT's campus in Mobile, Alabama, detailed exactly how recruiters would rush through enrollment and sign documents without students' knowledge or consent:

> I saw briefly on the computer screen and asked her to wait because I wanted to see what it said. I said again let me see. She reluctantly slid the mouse to me. I asked her why it said I (unknowingly) signed forms electronically, because I stated multiple times that I had not decided however if and when I had I preferred to take care of transcripts and financial aid myself. She said she was trying to help and it was the only way she could give me the test to help push me through. I found the page she skipped over and it stated that I electronically signed High

> School/GED certification, Transcript Authorization, School Catalog & Handbook, Graduation Information Agreement, all dated and timed to the second between 2:33pm and 3:04pm. This time is exactly an hour ahead of our time. She ended up getting her supervisor because I told her I wasn't leaving without copies of the forged forms. Her boss told me they couldn't print them because they send people to spy on us, however she could remove my signature. Then she stated ITT needs a wet signature for it to be valid. I told her feel like they are being deceptive. I left with copies of the forms she initially told me she could not print that my electronic signature was fraudulently placed. Financial aid forms were dated for June 2011, however record request & registration documents were time stamped an hour ahead. I am absolutely astonished how they are attempting to cheat, lie, and fraudulently mislead individuals.[567]

ITT's own audits also showed students' Cost Summary Payment Addendums not being signed, with one example from the 2011 audit of the Salem, Virginia, campus noting, in part, that two out of 14 "CSPAs [Cost Summary Payment Addendums] included manual changes which students had not initialed."[568] Another audit, from Atlanta, Georgia, in 2010, found that of 22 files reviewed, there were 16 FAFSAs that were signed by a financial aid coordinator or a director of finance as the "preparer," with student signatures entirely lacking.[569]

Financial aid coordinators also misused ITT's student portal, known as SmartForms. This portal system contained students' enrollment documents and financial aid paperwork, including FAFSAs, Cost Summary and Payment Addendums, and ITT's private loan documents, among other documentation.[570] ITT employees misused SmartForms to approve financial documents without students' consent or knowledge.[571] As described by a former ITT recruiter:

> ITT employees could log into their SmartForms account through the administrative side of SmartForms and, through that employee account, change the email address on file for the student. If the ITT employee substituted his or her own email address, and then clicked on the "Forgot ID/Password" link, Smart Forms would send an email containing the student's user ID and password to the ITT employee's email address . . . After obtaining a student's user ID and password, the ITT employee could then use that information to log into the student's Smart Forms account and electronically sign the student's documents.
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> . . .
>
> Between 2008 and 2014, I personally witnessed ITT employees logging into students' Smart Forms accounts using students' user IDs and passwords, and e-signing enrollment and financial aid documents for students when the students were not present. I believe the employees did this without the students' knowledge or permission.[572]

Another example from 2010, documented through internal emails, showed how a financial aid coordinator from the Columbia, South Carolina, campus was terminated because another financial aid coordinator "personally observed [redacted] provide a student password and e-signed a student loan document for a student. Ms. [redacted] indicated there have been several other instances where Ms. [redacted] had the student's private password ([financial aid coordinators] should not have student financial aid PIN or password information)."[573] In reference to the same terminated financial aid coordinator, a student reported that "she does not remember applying for the loan" and she "has not e-signed the loan."[574]

In fact, ITT had evidence of financial aid coordinators forging loans documents as far back as 2002. In 2016, a former student who first enrolled in September 2002 at the Wilmington, Massachusetts, campus reached out to ITT, stating that they "should not be responsible for [their] loans because [their] private loan documents were forged by the FAC [financial aid coordinator], and [they] had to withdraw because after [the] FAC was terminated for forging documents, [they] needed to get another co-signer or pay out of pocket for balance and [they] could not find another co-signer or afford monthly payments."[575] ITT confirmed that the financial aid coordinator that was working with the student had been terminated for forgery.[576]

One director of finance explained how outright fraud was made far easier with the introduction of e-documents and the SmartForms system. She explained that, "once enrollment agreements were signed electronically, Administrators could easily scroll past the total cost along with all of the other fine print, verbally explaining the form to students in a way that reduced worrie[s] and discouraged them from reading it."[577]

This particular design element of the SmartForms system was documented and known by HQ as a viable path for recruiters and others to falsify student records. An internal memo from the compliance director to other HQ officials indicates that ITT had knowledge as early as 2008 that "representatives have access to SMART Forms and regularly manipulate email addresses in the form in order to have passwords sent"—although the memo claimed that representative did this "in order to assist students who cannot locate their passwords."[578]

A corporate email, dated May 2011, describes how employees at the Tallahassee, Florida, campus would outright defraud students through a misuse of SmartForms:

> Student . . . [redacted] attended a meeting with [recruiter] . . . and [financial aid coordinator] for the purpose of completing financial aid paperwork. When the students [*sic*] refused to electronically sign the paperwork, the Representative [*i.e.*, recruiter] escorted the student out of the building. When the Representative immediately returned to the interview room, the [financial aid coordinator] was still in the room and the student's Smart Form account was still logged in. The Representative then logged the student out of the account and left the room. The Representative shortly thereafter checked the student's form and found the enrollment agreement was signed."[579]

An analysis of a limited sample of 7,500 SmartForms account records, spanning a range of campuses between 2009 and 2012, confirmed **1,497** separate instances of financial aid coordinators suspiciously requesting access to students' SmartForms accounts.[580]

Even within this sample, the number of confirmed instances of unauthorized access likely understates the frequency of the practice. For example, if an ITT employee was savvy enough to use a personal email address, rather than their employee email from ITT, it would be impossible to confirm that employee's wrongful access without a complete manifest of all the email addresses that every ITT student used to legitimately log on to their SmartForms accounts.

ITT had the capability to investigate misuse of this system, because SmartForms automatically documented when an account was accessed. Employees occasionally had legitimate reasons for accessing the administrative side of SmartForms—for example, to check if a student's paperwork had been signed. But there was no legitimate reason for a PIN request to be made by, and sent to, an ITT employee email (*i.e.*, an address with the domain "@ITT," which was different than the student emails issued by ITT). Such PIN requests were supposed to only be made from the student side of the portal, by the student, for obvious security reasons.

Additional evidence from ITT's audit reports also confirms that SmartForms accounts were being improperly accessed by financial aid coordinators:

- **Arnold, Missouri – 2008**: "Representative established passwords for applicants to use Smart Forms…One of two Representatives interviewed indicated they create a temporary password for the applicant. The Representatives, by knowing the password, could electronically sign loan applications and the FAFSA."[581]
- **Omaha, Nebraska – 2010**: "Two of two Representatives interviewed indicated that they were aware of applicants' passwords in Smart Forms and would write the password down on the back of their business cards as a courtesy to assist the students in remembering the password. The Representatives, by knowing the passwords, could electronically sign financial aid documents on a student's behalf."[582]

It was an open secret among ITT employees that unapproved e-signatures were routinely entered for students without their consent or knowledge. As described by a former ITT recruiter in Atlanta, Georgia, "I would often sit at a desk where I could see the FAC's [financial aid coordinator's] computer screen. From that seat I could watch as FACs e-signed financial aid documents for students."[583] One former director of finance stated simply, "I endeavored to ensure that employees did not sign the names of students or parents [but] I did witness such fraud . . . I saw other behavior that I did not think was above board. ITT Tech had an effective policy of shutting down concerns about this behavior."[584] This same director of finance went on to also state, under oath, "I witnessed recruitment staff forging student signatures on documents in my time there but [I] was too scared to report it to HQ for fear of being fired."[585]

ITT students also reported discovering loans that they never agreed to or signed for. Numerous complaint records confirm that these deceptions were perpetrated on ITT students:

- **Atlanta, Georgia – 2008-2012**: "The only financial aid that I applied for was the FAFSA. They forged my signature on private loans that I'm just learning about with Peaks Private loans. I never received any documentation about the loans that was taken out, nor anything explained to me about the loans. I have so many private loans with peaks and Navient that I am just learning about also."[586]
- **Kansas City, Missouri – 2006-2009**: "There are MANY instances that I have found on all the enrollment paperwork (that I have since gotten copies of) where my signature/initials were forged, and not in my handwriting. There were many things that weren't explained to me AT ALL, where I was told to 'sign' electronically."[587]
- **Richardson, Texas – 2004-2006**: "At times it appears ITT failed to have me sign, therefore they completed paperwork and submitted without my consent. Reference attachment of forged signature on financial aid document. This document appears to be signed and dated by the same ITT representative who filed the paperwork. Forging signatures on government documents is against both state and federal law. The loan carried a 12.35% variable interest rate with a 7.5% origination fee."[588]

The reality that outright fraud and forgery occurred year after year at ITT financial aid offices across the country is a shameful but unsurprising legacy, given ITT's incentive structure: job survival relied on getting loans approved quickly and efficiently—no matter what.

G. ITT Misrepresented its "Scholarship" Programs

An important and consistent aspect of ITT's various "scholarship" programs is that they were all created primarily for the company's benefit. Nonetheless, they were touted as legitimate aid programs for students, who were misled about their true nature and purpose, resulting in widespread deception and misrepresentation about the true cost of ITT and the nature and sourcing of its financial aid.

ITT was constantly looking for ways to increase revenue from diverse sources in order to maintain compliance with the 90/10 rule.[589] The concept of lowering or freezing tuition levels was generally unthinkable, unless it served an important company interest.

For example, in September 2012, Modany consented to lower the price of online tuition for undergraduates at Daniel Webster College "to be competitive with Ashford and Grand Canyon," but left the MBA tuition rate at Daniel Webster, and all other tuition at ITT, unchanged.[590] Upon learning that Apollo (the owner of University of

Phoenix) had frozen tuition, Modany stated, "No one knows the defined elasticity in pricing (including the [Apollo] folks). They are making pricing decisions based on emotion (not data). They may be right about the need to freeze and/or lower their price however if they are its just blind luck! To your main point . . . this wouldn't seem to be enough to impact demand but . . . who knows!"[591]

In July 2013, Modany expressed a desire for ITT to offer a "Tuition Subsidy (Cash Discount)"[592] such that new students who paid a down payment of $250 at the time of enrollment would receive a discount of that same amount in their second and third quarters. Most ITT students did not make it to their second or third quarter and thus would receive no benefit from this "discount," but the plan was to generate cash receipts for the federally mandated 90/10 revenue calculation without cutting the sticker price of ITT programs. This program constituted an illegal incentive under state laws for about a third of ITT campuses, and Modany observed that they could run it as a pilot and "[i]f it turns out to be something we want to do longer term we would then engage G[overnment] R[elations] to attempt to lobby for a change in the regulations."[593]

The bottom line was that ITT could not cut its tuition because it needed its students to qualify for the maximum amount of federal student aid, and in order to do that and continue to operate, it needed to charge more than that maximum federal amount. Kevin Modany made this perfectly clear when he wrote, in 2013, "I hope APSCU [Association of Private Schools Colleges & Universities[594]] is planning to scream to the mountains that one sure fire way to lower tuition at proprietary schools is to eliminate 90/10[.] Not sure anything can be more obvious and to preach for lower costs while supporting 90/10 is disingenuous at the very best!!!!"[595]

These financial realities were the real reason why ITT instituted a variety of creative "scholarship" programs—in order to benefit the company's bottom line, and certainly not its students. ITT's misdirection with respect to the source of student funding extended to its mischaracterization of tuition gap-funding measures as "scholarships."

1. ITT's "Opportunity Scholarship"

One example of this type of program was ITT's "Opportunity Scholarship," which was an alternative gap-funding measure implemented in 2013 that ITT devised in order to move away from private lending programs and the credit exposure of its RSAs that resulted from extraordinarily high student default rates.[596]

The choice to call this gap-funding measure a "scholarship" was deceptive, but strategic. Critically, the Opportunity Scholarship in no way resulted in students taking out less federal loan debt. In an investor presentation, ITT clarified the true purpose of the Opportunity Scholarship, defining it as an "[e]ffective response to increasingly price-sensitive prospective students" that was "[d]esigned to improve enrollment trends by offering a lower price point" and "[e]liminate[] the need for private student loans" as a long-term gap funding solution; this would have the effect of reducing ITT's

internal financing, which had "spiked in 2012."[597]

In other words, ITT refused to cut its overall tuition, because it wanted to keep the maximum amount of Title IV revenue flowing, but it also wanted to be able to sell students on a lower-cost option via a "scholarship" that it could finely tune, by retroactive award, only to those students who persisted and met criteria.

One market research group that analyzed ITT's Opportunity Scholarship program provided the following assessment:

> Rather than adopt a wholesale tuition price reduction, which almost certainly would have helped the company's lead flow and student start trends, the company chose to offer scholarships to students on a retroactive basis. Keeping list price tuition at $493/credit hour (take a moment to digest that), enabled the company to maximize revenues from students that drop out in the first term . . . In many cases, the Opportunity Scholarship was used to simply eliminate a receivable that the student owed to [ITT].[598]

Pennsylvania officials also raised questions about the Opportunity Scholarship, flagging ITT's explanation of it as being based on "demonstrated need" as insufficient, and suggesting it presented a "potential misuse of scholarships" as "a premium, special endorsement or discount" for prospective students, as "scholarships are usually awarded by a committee that evaluates more than just the 'qualifications' of a certain number of credit hours taken and grade point averages."[599]

There are also numerous company emails and internal documents detailing the true purpose of the Opportunity Scholarship.

For example, an internal ITT memo stated clearly that the Opportunity Scholarship was meant to address Temporary Credits, explaining: "If you think about it . . . in essence what we are doing here is retroactively applying OS [the Opportunity Scholarship] to students that re-enter by forgiving part of the TC [Temporary Credit] that they owe the institution."[600]

In response to a problematic rollout of the Opportunity Scholarship, which apparently had not been factored into the Cost Summary Payment Addendum, CEO Kevin Modany (transparently) wrote: "The key is that this scholarship is not and cannot be just a plug for the difference between the cost of tuition and Title IV availability! As long as we put in a solution that ensures that the field doesn't implement OC [sic] as the 'plug' . . . we will be okay and I think your suggestion should do that. Agree?"[601]

A December 2013 email from HQ's director of financial services to Kevin Modany makes clear that the Opportunity Scholarship was contingent on the amount of Title IV aid someone gets, including Pell and PLUS loans, because they planned to simply plug in numbers and adjust down "if PLUS is approved."[602]

The following excerpt is from a December 2013 corrective action form that

reprimanded an employee at the Owings Mills, Maryland, campus for giving students the option to finance a class through the Opportunity Scholarship, and reveals HQ's attitude that the "spirit" of the Opportunity Scholarship should *not* be to mitigate tuition costs (*i.e.*, company revenue) for students' benefit:

> 99% of the students' tuition was packaged with Opportunity Scholarship which provided them with what equates to a free class and ultimately a second degree. While HQ Finance provided guidance on how to package these students the result was that the campus was credited with starts that generated no revenue.
>
> . . .
>
> [T]he policy as applied was not in accordance of the "spirit" and intent of the policy . . . [I]t's clear that offering what amounts to a free class to earn a second degree artificially bolstered the campus start totals . . . [This] attempt to maximize the situation at the benefit of the campus numbers but not in the best interest of the company. This was a significant lapse of judgment.[603]

Kevin Modany's response to this corrective action form is also revealing of the program's true intent and purpose: "It sounds as if they misappropriated institutional assets. . . We need to put in some constraints on the OS [Opportunity Scholarship] to ensure it is utilized by legitimate students that are pursuing a full program of study with the institution."[604]

A little over a year after announcing the Opportunity Scholarship, HQ changed its parameters by requiring students "to borrow the maximum available in federal student loans before qualifying for any amount of Opportunity Scholarship funding. Students learned after they were already enrolled in the program and after the quarter had started that they would have to borrow more money."[605] In other words, Opportunity Scholarships reflected the difference between ITT's extraordinarily expensive tuition and the amount of federal loans that it could squeeze out of Title IV and impose on students. ITT maxed out each student's federal aid eligibility before applying the Opportunity Scholarship to cover their outstanding tuition balances.

ITT also invested heavily in its marketing of the Opportunity Scholarship, misrepresenting it as primarily a cost-saving measure for students, while simultaneously discussing it internally as a financial booster for the company. An email from 2012 between HQ and outside media consultants discussed it in the following way: "Attached you will find an update on how the opportunity scholarship markets finished last week. Comparing leads week to week, it appears that airing these spots has increased lead flow in all but one market. I'll keep tracking how leads come in this week but looking at initial results, I'd say airing these spots are helping, not hurting."[606]

In an update to the Board, Kevin Modany described a "new advertising campaign focused on affordability to support [ITT's] recruitment efforts," which would

"reemphasize the existence of the Opportunity Scholarship" in order to address "a continued sensitivity to the price and value proposition of an investment in a postsecondary education."[607] And these efforts apparently did improve enrollment: In an investor call in April 2013, the company claimed that the Opportunity Scholarship led to a significant reenrollment improvement in the first quarter of 2013, and also stated that it had trained "admissions representatives across the country on how to effectively communicate the benefits of the Opportunity Scholarship" in order to "improve the effectiveness of those communications to prospective students."[608] Later that same year, Kevin Modany described the Opportunity Scholarship as the "most important driver of increased student starts" that has "significantly increased show rates over the past two quarters."[609]

Despite being successfully marketed as making higher education more affordable, the Opportunity Scholarship, in reality, eliminated the need for ITT to either provide gap funding—which exposed the company to financial risk—or reduce the nominal tuition amount, all while leaving the revenue that ITT received from Title IV sources—that is, the debt for which students were responsible—intact.[610]

ITT's success in selling the Opportunity Scholarship to students is also confirmed by the students themselves, who frequently reported being misled about the nature of the Opportunity Scholarship program. Students recount that the program was falsely advertised as being "need-based"[611] and designed to increase affordability. One prospective student in 2014 complained that "the Opportunity Scholarship is falsely advertised and misleads students to believe they will be entitled to more funding than they are actually eligible for."[612] This individual also noted that the program should not be "advertised as being based on income if it's actually tied to the amount of government funds a student is eligible for."[613]

Additional sworn statements from former students also confirm that the company succeeded in creating a false impression about what the Opportunity Scholarship actually was. As expressed in the statements below, most students were misled to believe that they were actually receiving a legitimate scholarship, as opposed to temporary tuition coverage for amounts that exceeded the maximum amounts of Title IV loans:

- **Culver, California – 2014-2015**: "I was told I got an 'Opportunity Scholarship' and it would cover half the cost of school, but when I pull up the loan information, I am told it was never covered and I'm on the hook for the $23,463. I never electronically signed paperwork nor did I see all of the paperwork I was supposed to sign. I had to write a letter to change from one program to the next. I inquired about when my student loan check would be in the mail, I was told it would go directly to the school and not to worry. Just leave it alone and get your education."[614]

- **Springfield, Illinois – 2013-2016**: "When I met with the financial advisor to go over the paper work she stated to me that the program would cost about 35,000 dollars total. [She] also told me that since I was not 18 that my dad would have to take out half the loans in his name, known as the Parent Plus Loan. So I would have 17,000 dollars of loans in my name and he would have 17,000 dollars of loans in his name. [The financial adviser] also told me I would be in the PIE program that I would receive two quarters free, in turn she said that would drop off about 8,000 dollars. Now the total was down to around 27,000 dollars. She then informed me that there was a scholarship called The Opportunity Scholarship which would award upwards of 5,000 dollars if I kept a C average, which was no problem for me. Now we're down to $22,000. Now that I am graduated I have received loan documents from [two] lenders… [One is] saying that I owe $19,990.80. The Parent Plus Loan says that my dad owes $18,980.69. Adding those two together would give me a grand total of $38,971.49. That total is well above the $22,000 I thought I was going to pay since I held honors and high honors throughout my school career there and there was going to be scholarships."[615]
- **Carmel, Indiana – 2013-2015**: "I was told I would get almost $15k to finish and get my bachelors using the all new 'opportunity scholarship' for returning students. The finance person I was dealing with named [redacted] called me up and said good news rather than you getting $5k worth of scholarship [money] we got you more federal loans to cover [] most of the cost and you'll still get $1700 in scholarship. I said 'how is that a good thing . . . you can't just take away my scholarship awarded money. That has to be illegal to do that. Why would I want to owe more money?' [Redacted] told me it's pretty standard there. It was really just to have the feds pay ITT more money and ITT pay less out of pocket. In 2008 when I was half way done with my associates degree I had got an email saying that I would need a $5000 loan from Chase because at the time Sallie Mae couldn't procure my federal loans and Chase was the only lender according to ITT. Keep in mind they told me this like two days before classes started so if I didn't [accept] then I would have had to drop out and figure something else out."[616]

2. Other ITT "Scholarship" Programs

The Opportunity Scholarship was just one example of several "scholarships" that ITT operated for its own fiscal benefit.

The company's "Presidential Scholarship," for example, offered a retroactive 20% tuition reduction for certain graduating bachelor's degree students, for the purpose of improving debt profiles of ITT graduates for reporting purposes. Internal documents show that ITT management concluded this was more "economically efficient" than reducing tuition generally, since ITT was concerned with improving reporting statistics without sacrificing income from students who did not graduate.[617] And ITT employed

its classic bait-and-switch with these scholarships. In a 2004 response to a mother complaining that her son was promised a Presidential Scholarship to enter a bachelor's program, which ITT then revoked, the ITT manager baldly stated,

> [Y]ou . . . mentioned that you felt your son was being 'cheated' out of the 20% discount because the program he was interested [in] was discontinued . . . [T]his program discontinuation is not why your son cannot receive the Presidential Scholarship. As stated above, the Presidential Scholarship was discontinued and was no longer available to students following the start of the September 2004 quarter.[618]

So this was effectively a double bait-and-switch—for both the promised program and the scholarship.

ITT's "Champagne Scholarship" was another program that the Senate HELP Report identified as a textbook example of a typical 90/10 "front,"[619] created with the primary intention of improving the company's ability to maintain its compliance with the 90/10 rule. It was named after the company's former CEO, Rene Champagne, and was given to nearly every student who applied for it. Its relatively small amount of $3,000 for full-time students, with $0 of expected family contribution, was nevertheless enough to improve the company's 90/10 position.[620] "Over the course of a year, the company planned to award a total of $21 million in scholarships. That amount [was] enough to move ITT's overall 90/10 ratio by more than 1 percent, a significant amount if a school were to be in danger of exceeding 90 percent."[621]

H. Targeting and Cheating Veterans

ITT profited from targeting veterans for its predatory product.[622,623] Because money from the GI Bill and Defense Department Tuition Assistance was not counted as federal education dollars for the purposes of the 90/10 rule while ITT was in operation,[624] ITT and other for-profit schools specifically recruited veterans to exploit this loophole. A 2012 letter to Congress signed by nearly two dozen state Attorneys General described this discrepancy as a violation of the "intent of the statute."[625] The Senate HELP Report also identified the then-growing problem of for-profits exploiting technicalities to comply with the 90/10 rule, including through their targeted focus on recruiting veterans.[626] Nonetheless, ITT and other for-profits have made extensive profits by exploiting this self-serving "accounting gimmick."[627]

Between 2009 and 2011, ITT recruited 11,856 veterans, which allowed the company to receive $178 million in post-9/11 GI Bill benefits, averaging $15,042 per veteran.[628] In contrast, public colleges collected an average of $4,642 per veteran in the same period.[629] About 12,500 veterans attended ITT in 2015, and 6,842 GI Bill recipients were slated to attend classes at ITT during the next academic term, which was scheduled to begin on September 12, 2016,[630] but never actually occurred due the school's sudden closure and bankruptcy.

ITT recruiters were frequently directed to specifically target veterans, even veterans suffering homelessness, as described by a former employee: "[T]o solicit interest in ITT programs, I would go to job fairs, workforce events, and Stand Down events for homeless veterans (events where homeless veterans are given supplies and services, such as food, clothing, shelter, health screenings, and other assistance)."[631]

A good example of how veterans were lied to, particularly with respect to ITT's actual costs to them, is recorded in a 2011 mystery shopper report from the Clovis, California, campus, which was emailed directly to CEO Kevin Modany. This report read: "[The ITT recruiter] stated that the school was [a] yellow ribbon supporter and VA would cover 50% and financial aid would cover 50% making it a $0.00 cost to me."[632] This was obviously misleading, as it implied the student would not owe any money—which was certainly untrue.[633]

Despite the availability of GI Bill financing, which should have covered the full cost of veterans' educational services, ITT also signed veterans up for federal and private loans without their knowledge or consent to maximize the amount of money the company could extract from each veteran it enrolled. Veterans who attended ITT reported that they only learned after graduating that ITT lied about using grants to cover their tuition. For example, ITT told one veteran who attended the Sylmar, California campus from 2003 to 2007 for Electronics and Communications Engineering Technology that his education credits would cover most of his tuition. This was false, as this veteran later attested:

> I was specifically targeted as a military veteran and recruited with continuous phone calls because they wanted my GI BILL. . . . They never gave me my money for my grants, they lied and distributed elsewhere without my consent. . . . I thought that my student loan grants were paying my federal student loans, but that was a lie, I don't know how my grants were distributed.[634]

Another veteran who attended ITT in Pittsburgh, Pennsylvania, reported:

> They never told me that my GI bill with yellow ribbon program was going to be exhausted when I signed up for the Bachelor program along with all of the grants I qualified for. Towards the end of my program about 9 months out I found out. Now I have no way of continuing my education. . . . I am currently having to pay $240 monthly due to this which has given me a hardship since I have 4 children[.] I am a disabled Veteran and I have loans totaling $20,262.94 and as much as I have paid over the past it has not went down.[635]

Additionally, ITT's internal audit reports demonstrate that the company routinely failed to report the correct student status to the Veterans' Administration (VA) and routinely failed to properly record student attendance (including last day of attendance, daily attendance, and dropping students after missing 22 consecutive days). Such "errors" would affect who was responsible for refunding overpayments. ITT's management was

aware of these audit figures, especially in relation to the company's mishandling of VA credits. Internal documents from 2010 revealed that the "#1 audit finding" was issues with the handling of credit balances and over-awards, including over-awards of "VA adjustments," which involved the school's failure to timely report a status change to the Veterans' Administration when a student changed to part-time status or dropped out of their program entirely.[636]

ITT also kept money that was earmarked for veterans' living expenses. In an email from ITT's HQ to all campus directors of finance, ITT directed finance personnel to discourage veterans who wanted to use "their VA monthly check" for living expenses rather than tuition, writing that directors of finance should "strongly counsel [veterans] on the evils of doing this [by] explaining what happens if they drop out with a balance then going to collections and possibly adversely affecting their credit and their ability to reenter later."[637]

According to a former ITT professor interviewed by the veterans' group Veterans Education Success, ITT "significantly delay[ed] the disbursement of veterans' housing allowance and book $ long after VA had sent it."[638] This professor also witnessed students who were "pulled out of class to visit the financial aid office and were told to take out an extra $5,000 in loans immediately," including a student who should have been fully covered by the GI Bill, stating, "It was always a mystery where the money went."[639]

The harm ITT inflicted on veterans was significant. They were unfairly saddled with loans they never needed, and were not told about, to pay for their degrees. This debt burden further disadvantaged veterans who wanted to continue their education at other schools, only to discover that they were unable to do so because ITT had exhausted their education benefits.[640]

VI. ITT GRADUATES WERE LEFT WITH NOTHING BUT DEBT

A. ITT Graduates Could Not Find Jobs to Repay Their Substantial Debts, and Career Services Did Not Help Them

Despite the lies ITT told prospective students, ITT was well known in the for-profit industry, and even among its own employees, as an institution of poor quality, best described as a "degree mill." One ITT employee described ITT's credibility as follows:

> ITT earned a poor reputation with many of the companies that had previously hired its graduates on a regular basis. As department chair, I occasionally met with industry representatives to discuss what they were looking for in terms of the education we were providing. It became clear from these meetings that these companies were growing less and less impressed with the quality of graduates coming out of ITT and that our appeal as a school for them was declining.[641]

All too often, students learned about ITT's sub-standard reputation only after graduating and entering the job market:

- **Plymouth Meeting, Pennsylvania – 2011-2013**: "I was denied a promotion at my previous employer because a ITT degree doesn't have any accreditation. My degree is more of a hindrance to my career goals. I have my current job based only on my work history . . . I have removed ITT [T]ech from my resume completely, and have a better chance of moving up. ITT [T]ech is known as [a] push center around here. The education that is received is below work experience. I am paying for an embarrassment on my resume for a worthless degree."[642]
- **Portland, Oregon – 2000-2002**: "I had ITT on my resume for years, I eventually was told by one of the interviewers that I need to take it off, and most people were probably discarding my resume specifically because it has ITT on it. I didn't believe it for years, but eventually it became clear. In fact, one of the job placement officers helped me build my resume, and made ITT the highlight of it. I liked that of course, I had just paid all that money! But it took years of embarrassing myself before people let me in on the in-joke."[643]
- **Arnold, Missouri – 2005**: "In the companies that I have interviewed with they were extremely hesitant and have told me so straight out about hiring a graduate from ITT. Many have stated that they felt that the graduates from the school were not nearly prepared enough for the job at hand. I was not a typical student at the school, I graduated 2nd in my class as salu[t]atorian . . . ."[644]

HQ was well aware that most ITT graduates were under-employed, if they were being placed at all in jobs related their fields of study. In one 2011 training document for career services on handling "Employer Relations," the following response is recommended for the "common issue" of employers noting that "[w]e only need high school graduates for minimum wage jobs":

> I can appreciate that you only have openings for entry-level minimum wage jobs, but we have a number of graduates who are in transition and are looking for a place to apply the new skills they've learned. They would consider minimum wage jobs because, over time, their skills can add value and enhance the operations of your company and thus, increase their value.[645]

And this was not an isolated event: as far back as 2004, an internal ITT memo to HQ had reported a complaint from an Earth City, Missouri, graduate who had been "sent on a job to a temp agency . . . I [the career services employee] tried to explain that a temp job was better than no job at all."[646] In another training presentation from December 2013,[647] ITT suggests that career services officers simply direct graduates to Monster.com or LinkedIn for job leads.

ITT managers often expressed a cynical and keen awareness of the high number of unemployed graduates. In an April 2012 email, the national director of career services noted that there were 20,000 "unemployed cohort grads" who had recently been emailed by ITT to see if they wanted assistance; the director proceeded to joke, "I am still waiting to get picked off in the parking lot someday by a disgruntled grad."[648]

ITT's poor career services was well summarized by one student who received no assistance from that department when looking for a job:

> I'm a former student of ITT Tallahassee campus. I'm currently in an employment search. Without going thru my entire history with ITT, I'd like to point out it seems Career Services on this campus has lowered or eliminated me as a priority for assisting in that search since sometime in late October, prior to this time [the career services employee] had been very helpful. Lately nothing out of this Office, no return of calls, emails and etc..... I find this highly disturbing: 1. as this is a service, I've paid for 2. This school can call me from time to trying to recruit me for the Bachelors program. 3. I'm also contacted by ITT regularly in relation to a student loan I owe to ITT, a loan, I can't repay without a job.[649]

Sometimes the fact that ITT's degrees were valueless could not be ignored by HQ. For example, an October 2012 email between Kevin Modany and the national director of career services reflected this inescapable reality, as Modany responded to the fact that the company was unable to hire one of its own graduates for an entry-level network administrator position:

> I have to note that this is more than just about filling one job order. You

> have to realize that our entire IT department gets the wrong impression about the quality of our academic output when we can't fill a simple job order for a solid Network Administrator (at the entry level). I believe they all start to question the quality of what it is we do as a company and that impression could not be further from the truth. As such, I would love to knock their socks off with a few quality candidates so that they get a better understanding of what we do as a company and the quality of our graduates.[650]

ITT's harm—excessive tuition, pressured sales tactics, material lies—truly manifested when students finally graduated and realized that their ITT degrees were a hindrance to securing career opportunities, which inevitably made repayment of their exorbitant loans nearly impossible for many former ITT students.

As previously discussed, ITT is remembered today as one of the most expensive proprietary schools with one of the industry's highest rates of default within two years of attendance.[651]

The real suffering caused by these loans is best explained through the sworn statements of former students:

- **Murray, Utah – 2004-2009**: "I consider suicide daily because of this mistake I made and because of the predatory nature of the loans there is no legal way possible for me to address them. I cannot do IBR [income-based repayment] because of the vast number of private loans they did, I cannot restructure because my credit is destroyed. I cannot pay the loans because the degree is widely considered trash from a diploma mill. Going to ITT Technical Institute was by far the worst mistake I have ever made."[652]
- **Swartz Creek, Michigan – 2009-2011**: "I can't get approved for a mortgage, now I can't buy a home for my family. I can't get any loans. I can't afford to pay my loans. They tricked me into private loans through peaks loans. They won't consolidate those. ITT told me all my loans would be consolidated after graduating."[653]
- **Rancho Cordova, California – 2004-2010**: "I have to live check-to-check, and still get calls from the predatory private lender that they pushed me towards. I have worked hard to stay current on all payments, but haven't even made a dent in the balance owed. I can't buy a house, and I can't get married because I don't want my future wife to be saddled with my debts."[654]

ITT's business model was to enroll as many students as possible, load them up with federal debt to drive up ITT's revenues, coerce them into Temporary Credits to cover any shortfall, repackage those credits into expensive private loans to squeeze out some more dollars, and, finally, send those students out into the world undereducated and drowning in debt. The real marvel is that ITT did this for so long and so successfully without being shut down by regulators or cut off by the federal Title IV loan program.

VII. THE STRATEGIES AND DETAILS OF ITT'S PERVERSE BUSINESS MODEL

A. ITT's Priorities: Executive Compensation & High Tuition

In the words of the Senate HELP Report: "Perhaps most troubling is that the pay of executives at for-profit schools is based primarily on enrollment and profit goals, not student success."[655]

According to the Senate HELP Report, ITT paid Kevin Modany a total compensation package of $7,629,172 in 2009,[656] including bonuses and stock, during a year marked by dramatic downward macroeconomic trends. ITT's 10-K filing for 2014 indicates that the top four corporate executives all made well over $300,000 as their annualized base salary that year (excluding any bonuses or additional forms of compensation), with Kevin Modany earning a baseline salary of $824,074.[657]

ITT's business model depended entirely on expansion through increasing enrollment, year after year. In its 2009 Annual Report (SEC Form 10-K), ITT explained that it was "implementing a growth strategy designed to increase revenue and operating efficiencies by increasing the number and types of program offerings and student enrollment at existing institutes."[658] ITT enrolled approximately 40,000 students in 2004,[659] increased its student enrollment to 47,000 students in 2006,[660] then reached its peak of about 73,000 students in 2011,[661] before declining to about 35,000 to 40,000 at the time of ITT's closure.[662] ITT emphasized this "growth strategy" in every successive year it operated, including in its 2015 Annual Report,[663] which was published just six months before the company filed for bankruptcy.

Student enrollment was key because tuition—primarily in the form of federal student aid—was ITT's sole source of revenue.[664] For this reason, tuition at ITT was very high, and could not be reduced without affecting the company's operating revenue and bottom line. In August 2012, a potential buyer asked Kevin Modany whether ITT "had modeled and/or thought about cutting our sticker price," and a corporate employee responded that "the impact would obviously be very significant and there wasn't a business reason to do that."[665] Instead, ITT chose to promote institutional scholarship programs[666] as cutting "actual costs" to students.[667] Even if scholarships did lower the "actual cost" to students, ITT knew that it could not truthfully advertise its programs as "affordable."[668] (Despite this, two years later, ITT issued a corporate press release touting "an increase in the [a]ffordability of its [d]egree [p]rograms".[669])

B. ITT's Priorities: Cutting Student Benefits While Pursuing Unbridled Growth

An internal report to the company's Board of Directors from October 2009[670] provides a snapshot of ITT's systemic problems and disjointed priorities. The report highlights that student enrollment increased 26.2% as compared to the same period in the prior year and student retention continued to improve, with the company's operating margin also improving "primarily due to greater leveraging of . . . fixed costs across a larger population of students."[671] The report went on to note that ITT was continuing to identify new locations for expansion. However, notably, the report also found that student employment rates continued to be low (and indeed, were 21% below the prior year's rates).[672]

By 2012, ITT was in a bind. It needed to cut costs and "reduce [its] cash outflow,"[673] and Modany identified $73 million from the operating budget as "opportunities for cost reductions."[674] In March 2013, Modany stated that ITT was "right in line with goals for cost reduction as we've been eliminating costs throughout the organization."[675] He noted that "student complaints are much higher than prior year[s]," but he attributed this to the fact that ITT made cost cuts that affected faculty, and "we see faculty gripes show up as student complaints."[676]

Kevin Modany also made it clear that because ITT "need[ed] to watch expenses very closely," especially "capital expenditures," if a campus was going to add a new program or upgrade equipment, it would "need to provide a return on investment justification that outlines the benefits to the P&L of the expense[.]"[677] Modany reiterated that "everything has to be 'zero sum,'" and expenditures—including on laptops or tablets for students when ITT was experimenting with an "Intellicourse" or "ebook" curriculum delivery model—"need to be offset by charges/deposit program for students."[678]

When ITT tried to save money by moving away from paper textbooks and instead delivering content electronically, students experienced massive problems because ITT did not have sufficient bandwidth or a wireless network capable of allowing students to access the course content during class. When pressed on whether the company would offer wifi within its schools at a sufficient capacity, Modany's response was: "The plan is to provide a plan (yes) but we haven't figured out how to charge the student for it."[679]

In one incident, in September 2014, ITT realized that it needed to procure laptops for students because it was the only way to deliver content for curriculum that it had designed. ITT had already abandoned the version of the ebook model for which the content was designed, but was still offering the courses to enrolled students nonetheless. Modany was furious at the expenditure and resentful of the need to spend money on students:

> THIS MUST BE ADDRESSED AS WE CANNOT CONTINUE TO THROW AWAY SHAREHOLDER RESOURCES DUE TO OUR INCOMPETENCE!

> Hopefully you all understand how strongly I feel about this! While you may not be…..I'm embarrassed with how we are managing this and it is my own personal failure that we've gotten to this point (that we simply cannot manage our resources and are allowing our students to steal our assets while we sit idly by and all we want to do is…….ORDER MORE ASSETS with our shareholders resources)! Absolutely unacceptable….no other way to describe this![680]

This attitude—that paying for legitimate student needs was an attempt to "steal" assets that rightfully belonged to shareholders—prevailed throughout the company. In September 2013, when a student in Owings Mills, Maryland, requested to take a course as a directed independent study rather than as an online 6-week course "because he feels it's too much workload for his schedule," the national registrar denied the request, stating, "We are not making an exception here; we will not increase our incremental costs."[681]

The major cost containment efforts of 2012 and beyond failed to ultimately right the ship. The company had significant risk-sharing obligations and legal fees. That year, ITT agreed to pay Sallie Mae $46 million to resolve its guaranty obligations on a pool of private student loans made to ITT students. It also anticipated that it would pay $78 million that year on its PEAKS and CUSO risk-sharing agreements.[682]

In late 2014, Kevin Modany also entered into an agreement with Cerberus Capital, a known lender of last resort, explaining to the Board of the Directors that the terms included a "$150 mil 3 yr Term loan" and a repayment "rate [of] approximately 10-11%." He conceded that it was "an expensive financing arrangement [but] given current debt markets it is commensurate with the market rate for a transaction of this type and most importantly does not include any equity component."[683] ITT's 2014 10-K estimated a debt service obligation for 2015 of over $19 million.[684]

The company also reported the following in its 2014 10-K filing: "Legal and professional fees related to certain lawsuits, investigations and accounting matters increased $25.1 million, or 362.3%, to $32.0 million in the year ended December 31, 2014 compared to $6.9 million in the year ended December 31, 2013."[685]

So, in 2014, Modany undertook another round of cost containment efforts, this time aimed at headquarters. He directed budget cuts to bring spending for legal and compliance (which included human resources) down to 2009 levels.[686] When the national registrar's office requested a new position be funded, Modany responded by comparing ITT to the Titanic:

> I will be clear in noting that [we] won't be adding a new person to HQ and in fact need to materially reduce our expenses (I'll be on that effort shortly) so unless this is a reduction in staff (and I don't see it as one . . . just rearranging the chairs on the deck of a boat that has a load that is already too heavy). . . . I'm not sure it makes sense. I will be more clear in the next O[perations]R[eview] (thought I was already) that we are cutting

> costs and that no one should be asking for any new people and in fact should/will be required to offer up cost reduction opportunities.[687]

Kevin Modany also targeted campuses that were not profitable—and in 2014, 58 locations were operating at a loss[688]—and converted them to a "Small Market Model" or SMM, which basically gutted the administrative and teaching staff at the campus and required them to receive those services from headquarters or another nearby campus. As explained to the Board of Directors, the plan called for "a reduction in campus staff at the location commensurate with a decline in total campus enrollment."[689] Kevin Modany estimated that these "operational changes" would bring in an annual operating cost reduction of approximately $275,000 per campus.[690] By the end of 2014, the SMM had been implemented in 24 locations, with another 25-30 scheduled for implementation in into 2015.[691] Modany noted, "While it is early in the implementation of the Small Market Model cost reduction initiative we have not yet observed any material differences in the operating performance of the Small Market locations in comparison to those that have not been converted to the new operating model."[692]

This was not true. The director of the Boise, Idaho, campus noted in December 2014 that students were experiencing problems with their schedules:

> This issue with the schedule traces back to being reduced to a small campus census and letting our Registrar go. We had to combine the DOF [director of finance] and Registrar position which took time to hire somone [sic]. They trained for the DOF position and started transitioning to the Registrar position, became frustrated and resigned. Another campus has been managing our schedules and the Dean has been trying to assist with schedule changes, Transfer Credits, etc. after the Registrar left . . . .[693]

ITT also shortchanged students by cutting support services out of its budget. As Kevin Modany explained to a board member in 2012, "We are looking at our current teaching model and believe that we have an opportunity to increase effectiveness and efficiencies" through "the creation of a centralized academic support group that would be responsible for providing various levels of academic and administrative support to our resident students," including by identifying "low-touch-type activities that are conducted at the school level that we think we could improve on with the use of a consolidated support center." [694]

But the Student Support and Academic Success Center[695] was actually a call center. ITT used this call center to solicit students who had not reenrolled in ITT and threaten them with collections if they did not either pay their alleged outstanding balances to ITT or re-enroll.[696] The company claimed that this call center was there to serve current and former students, but the only way current and former students were "served" was by being relentlessly hounded by ITT telemarketers when it seemed likely they were going to drop out or not agree to a repackaging of their financial aid.[697]

ITT's attitude toward its business and its students was slash-and-burn. Cutting costs at the expense of any educational benefit was the company mantra. It squeezed profits in the short run, and in the long run caused the company to collapse into bankruptcy.

1. ITT's Fraud Scheme Depended on a Continual Influx of New Victims

Marketing and advertising were critical to ITT's recruitment-driven business model. Because ITT's sole source of revenue was tuition—mostly in the form of federal student aid—it needed continual sources of that tuition, in the form of hundreds of thousands of students poised to be taken in by the fraudulent scheme. To reel in those students, ITT hired third parties to generate leads. ITT's reliance on marketing and advertising was no secret: its 10-K frankly admitted, "If we were unable to successfully market or advertise our programs, our ability to attract and enroll prospective students in our programs would be adversely affected and, consequently, our ability to increase revenue or maintain profitability would be impaired."[698]

For fiscal year 2009 alone, ITT budgeted a total of $741 million for marketing, recruiting expenses, and profit,[699] leaving just 43.9% of its revenue for everything else, including educational services.[700]

As described by the Senate HELP Report:

> ITT spent $2,839 per student on instruction in 2009, compared to $3,156 per student on marketing and $6,127 per student on profit. The amount that publicly traded for-profit companies spend on instruction ranges from $892 to $3,969 per student per year. In contrast, public and non-profit 4-year colleges and universities, generally spend a higher amount per student on instruction while community colleges spend a comparable amount but charge far lower tuition than for-profit colleges. Other Indiana-based colleges spent, on a per student basis, $11,856 at Indiana University Bloomington, $4,193 at Indiana Wesleyan University, and $2,827 at Ivy Tech Community College."[701]

The Senate HELP Report additionally cited ITT as a prime example of a for-profit institution committed to this principle of heavily prioritizing new enrollments:

> While for-profit education companies employed large numbers of recruiters to enroll new students, the same companies employ far less staff to provide tutoring, remedial services or career counseling and placement. In 2010, with 88,004 students, ITT employed 2,550 recruiters, 431 career services employees, and 109 student services employees. That means each career counselor was responsible for 204 students and each student services staffer was responsible for 807 students, but the company employed one recruiter for every 34 students.[702]

In ITT's 2015 strategic marketing plan, $50 million was allotted for cable TV advertising, $1,747,980 for radio advertising, and $48,826,000 for local TV advertising.[703] According to company documents, 31% of total revenue was allocated for marketing in 2014.[704]

Crucially, even as ITT was desperately cutting costs and watching every penny in most areas, it increased its spending on marketing.

Kevin Modany was very involved in this area, and would "review the landscape and dig into the leads data and the claritas [sic] profiling and related conversion rates."[705] He emphasized, "I do not have anything more important on my agenda at this point! I cannot emphasize the importance of these efforts!!! . . . [W]e spend close to $200 million on this and I'm sure you can now understand that this is my personal top priority for 2014."[706]

In May 2014, Kevin Modany approved spending an additional $1 million on lead generation services, going to vendors like Data Champs, PMA Group, Cactus Media, Quinn Street, and University Mission. The projection was that these vendors would produce 241,738 affiliate leads, resulting in 5,223 applications for a projected conversion rate of 2.2%.[707]

In late March 2015, Modany updated the Board of Directors on "the operational challenges we are facing" and the "material cost reduction effort at the company (over the past 12-24 months) that has positioned us very well to generate positive cash flow for 2015 despite the downturn in the enrollment metrics."[708] In this update, Modany projected an EBITDA (earnings before interest, taxes, depreciation, and amortization) for 2015 of approximately $100 million.[709]

a. ITT Relied on Affiliate Marketing and Lead Generation to Identify Potential Targets for Its Fraudulent Scheme

An affiliate marketer earns a commission by generating traffic, leads, or inquiries to its client. In 2014, 87% of ITT's leads came from affiliate vendors.[710] ITT hired these entities, which used misleading tactics to generate leads. For example, one pretended to be a resource for identifying retail job openings and asked visitors, "While we generate your Retail Jobs Search please complete your profile for a more targeted search."[711] Instead of learning about retail jobs, the user would be served an ITT advertisement. Similarly, the lead vendor Percipio gathered leads for ITT by hosting websites aimed at individuals looking for work at McDonald's.[712] Another ITT lead generation vendor used a landing page that advertised "Free Money for College."[713]

Kevin Modany bristled at the suggestion that affiliate marketing was an unsavory and abusive practice. He claimed that "our approach has always been that we would correct anyone's misperceptions about our offerings once they got into our funnel (if someone along the way . . . a lead generator or anyone else . . . uncle, aunt, brother, etc. . . . gave you a wrong impression). To me that's an incredibly effective risk mitigation strategy[.]"[714] On another occasion, Modany elaborated:

> I continue to preach the reality of the fact that no student ever commits to anything financially before they receive all of the required disclosures! If anyone was confused by this . . . and honestly, it is hard to see how someone could say they truly were 'duped' into pursuing a postsecondary education in this manner . . . they would have had the facts set straight for them . . . long before they ever even came to our school and most certainly long before they ever began classes and began to incur charges (after attending for 30 days)! While we in no way promote or condone such egregious behavior of some of these affiliates . . . the argument that this suggests that students are being duped into college via these communications makes absolutely no logical sense to me. None whatsoever. It is completely illogical! We can only mitigate the risks that we control![715]

A primary objection that Kevin Modany had to lead generation sites that did not provide accurate information about ITT was not the fact that these sites were misleading, but that they were not always as effective as he would have liked in generating new students.[716]

2. Focusing on Recruitment, not Education

Because ITT's business model was solely based on profiting from tuition, mostly in the form of federal student aid, its highest priority was recruiting students it would then saddle with debt. To do so, it baked recruiting incentives into the compensation of employees at every level of operation, guaranteeing a focus on enrollment over outcomes. Every role within ITT, from the Board of Directors and corporate executives down to front-line recruiters and financial aid coordinators, had performance objectives related to sales, which were directly tied to their compensation and, in many cases, their ability to retain their jobs.

This management methodology was explained by Kevin Modany in an August 2011 video message to the company detailing the performance management system. Per Modany, "[S]tudent success begins at the point when we make an offer to help someone improve their life through the pursuit of high quality, career-based postsecondary education."[717] This offer is made "in our advertising and media efforts," and although ITT

> sometimes refer[s] to the individuals that accept our offer of assistance as a 'lead' or an 'inquiry' . . . to be more accurate, these are people that accepted our offer to help them improve their life through education. Since we made this offer and the prospective student accepted our offer by responding and giving us a call or sending us information through the website, we are obligated to do all that we can to make good on the offer that we made to this individual . . . [I]t is our obligation to maximize the number of people that accepted our offer of assistance that ultimately

> progress through the recruitment part of the student success cycle. We then continue our focus on maximizing student success by assisting the transition of prospective students from the recruitment process into the financial aid process.[718]

A critical tool in ITT's Performance Management process was "Plan vs. Actual" reports. ITT set benchmarks for every position ("the Plan") and consistently tracked an employee's performance ("the Actual").[719] Across the board, satisfactory performance meant "achievement of an employee's specific goals at rates no lower than 'average' for the company and/or school. Think about it . . . When we hired each of you, we did not do so because we thought you were BELOW AVERAGE."[720] The performance plan year ran from April 1 to March 31.[721]

The incentives established by these metrics were clear, as was their tendency to encourage unethical conduct. As one high-level employee in a headquarters meeting stated, "I'm not going to lie to you, I'm graded on [student] retention."[722] A campus director who was assessed based on his ability to re-enroll students who had previously dropped out was found to have "terminated 19 students and then had them re-enter in order to improve his reentry performance results. Some students were dropped and re-entered on the same day."[723] A former recruiter explained how the director of admissions at his campus encouraged recruiters "to approach students and talk them into switching majors. By getting a student to switch majors, they had to apply again and [re]do financial aid, which gives Reps points . . . plus they counted as a new start on the next start date."[724] A call center representative who was under a mandate to make 80-100 lead calls per day to prospective students was disciplined for "repeatedly calling the same number to increase the call volume" he was reporting.[725]

ITT management tracked every call that recruiters made and the number of appointments they scheduled with prospective students. They also tracked "conversion rates," which was the number of leads that the recruiter was able to convert into an enrollment, as well as "sits," a term that referred to a student staying enrolled for a certain number of classes.[726] Depending on the recruiter's position (from entry level to "Master Representative"), ITT required anywhere from 10 to 30 "starts" (*i.e.*, new students signing up for classes) per quarter.[727]

One former recruiter recalled how "HQ designed and implemented an incentive system that was obsessively focused on metrics, from student enrollment [and] re-enrollment."[728]

Until July 1, 2011, federal law permitted schools to offer recruiters incentive-based compensation. On that date, a change to Section 487(a)(20) of the Higher Education Act (HEA) went into effect, which prohibited schools from providing incentive compensation to employees or third-party entities for their success in securing student enrollments or the awarding of Title IV HEA program funds. This strict ban was part of a larger set of Program Integrity Rules issued by the Department of Education starting in 2010. Following this change, ITT carefully re-characterized its numbers-driven

sales culture to avoid the appearance of violating the new ban on incentive-based compensation, but this was really just a cosmetic change focused on nomenclature. It simply adopted other methods to reward its most aggressive recruiters.

A 2011 training document[729] outlined a system for awarding points to recruiters based on the number of interviews (1 point), accepted students (3 points), and pre-packaged[730] students (4 points) that a representative attained in a week. Representatives with the highest points in a week were assigned "Tier I" status, which entitled them to receive the best leads the following week.[731] A former recruiter explained how, due to the rule change, ITT could not use the term "quota" anymore, but that performance "metrics" were nonetheless quotas that recruiters had to meet.[732]

According to another former ITT employee who worked as a financial aid administrator (the campus-level managerial position above the financial aid coordinators):

> The incentive point system created a high pressure environment that was extremely unpleasant to work in. Managers penalized and publicly embarrassed staff members who were not meeting their numbers . . . Firings were frequent. There was more turnover at ITT than at any place I have ever worked.[733]

Yet another former director of finance reported, "HQ ensured that its staff did as much as it could to bring in money from students by encouraging competition among employees and among campuses."[734] This director of finance went on to explain how the company's fixation on profits created a company-wide culture obsessed with performance metrics, explaining how performance "was measured according to the amount of money a department was bringing in, regardless of which department it was. Admissions departments had to keep recruitment and enrollment numbers up; financial aid had to maintain high percentages of loan paperwork completion and low accounts receivable."[735]

Financial aid coordinators were all "evaluated by their packaging numbers."[736] A former director of finance at the Bessemer, Alabama, campus confirmed that financial aid staff were assessed with a "point system" that focused largely on the financial aid coordinators' "success in getting students 'processed' or 'packaged' for financial aid."[737]

C. "Enterprise Risk Management" and ITT's Intentionally Lax Internal Controls

Much like the performance management system, ITT had an elaborate "enterprise risk management" system. This included a system of internal controls designed, nominally, to ensure regulatory compliance and ethical behaviors. Kevin Modany boasted of ITT's enterprise risk management system as "best in class" and held it out as an example to other large, publicly traded for-profit colleges.[738] In reality, ITT's internal controls were easily circumvented and consistently undermined by the corporate culture of fealty to

the bottom line, as the following examples demonstrate:

- Kevin Modany and other executives kept information from the Board's audit committee and generally treated it as an annoyance. When a campus director of finance was found to be stealing student payments, the CFO rejected the suggestion that the incident be reported to the audit committee: "What would be the case that the DOF [director of finance] plays a significant role in internal controls? If asked, I could not make that case."[739]

- Modany appears to have personally cajoled and bullied members of the audit committee against asking too many questions: "Talked to [head of audit committee] before the meeting and he is all set on his request (he basically backed off on all of it)."[740]

- Poor audit findings and ethical complaints were also withheld from the Board. In a 2016 email, Modany pushed back on the idea that the Board or audit committee should be involved in ethics alert line ("EAL") reports that involved the CEO or other top executives, writing, in part: "Again, folks here have no issue reporting this stuff because we set the culture that NO ONE is above our compliance program . . . I'm happy to discuss further but I honestly don't think we need a change here (based on history). But again, I'm open to what makes sense and what the Board would like us to do here . . ."[741]

- Modany advised his business development employees to go around the legal department when certain issues—including possible payment of incentives to recruiters—were "a little too 'outside the box'" for legal.[742] He gave the same advice regarding ITT's internal regulatory affairs department: "[S]ometimes you have to just call out and question the feedback we get from regulatory as it relates to development opportunities as it is just in their DNA to 'choke the baby' (often times unnecessarily so)! They are paid to avoid risks at times at the expense of our growth!"[743]

- When the national director of career services assumed her role at HQ, she spent time auditing campus-level job placement rates and checking files to verify placements. This was apparently something that ITT's internal audit department did not do.[744] Modany told her to do "less policing & more producing."[745]

ITT dictated the parameters of its own internal audits. In one example, the company announced a principle that students who earned a part of their high school diploma in a language other than English should be administered a basic test prior to admitting them. The national registrar at HQ asked several times for a question to be added to the enrollment questionnaire to identify ESL students, but the requests were "denied at the highest level."[746] As a result, there was no way for Internal Audit ("IA") to "test for this objective."[747] In another example, the national director of career services noted that Internal Audit did not assess whether a graduate employment was properly deemed as "In Field" or "Related Field," a distinction that was required to be reported to ITT's accreditor. Falsification in that area "was not caught" because "we (IA) don't

look at these."[748] The result was that the national director of career services felt there were many "Stretch" designations for graduate employment reported by various campus-level directors of career services— including one, named corporate's "DOCS [director of career services] of the Year," who counted an exotic dancer as an "In-Field" placement.[749]

Thus, many serious issues, such as falsification of job placement rates,[750] somehow never appeared in ITT's internal audits. No system of internal controls can displace a corporate culture that places enrollment and financial aid packaging above all else.

D. ITT's Culture of Silence and Institutional Fear of Reprisal

Through sustained and targeted efforts, ITT systematically silenced critics, whistleblowers, and complainants in order to conceal its fraud and deceptive practices. It aggressively responded to criticism, brushed aside student complaints, and came down hard on employees who voiced valid concerns.

ITT maintained an ethics alert hotline, ostensibly intended as a means for employees to report wrongdoing. However, former employees describe this hotline as a tool for identifying discontented employees in need of discipline or termination. A longtime employee of ITT's financial aid departments explained that the true purpose of ITT's ethics hotline was well known:

> ITT Tech had a hotline that employees could call to report fraud to HQ. In my experience, employees who called this hotline were disciplined while those against whom fraud was reported were not. I recall a particular instance in my time at Murray [Utah] when a new recruitment representative called the hotline to report wrongful behavior by a long-term veterans recruitment representative. The new representative was fired within weeks, and nothing happened to the long-term representative. Everybody . . . understood this to mean that calling the hotline meant effectively forfeiting one's job at ITT.[751]

A former academic dean at ITT who called the ethics hotline to express concern over the company's unethical business practices attests that "[n]one of my complaints was investigated or taken seriously by anyone inside or outside of the campus."[752] This employee was "advised that I was not an attorney and was not qualified to claim that any laws or policies had been violated," and was also told to "abandon my complaints," which he did not, resulting in his termination.[753]

Another employee who worked as a recruiter for four years at the Baton Rouge, Louisiana, campus said that under ITT's culture of silence:

> ITT Tech actively attempted to prevent discovery of misleading and fraudulent behavior going on at its campuses. . . . HQ maintained a hotline through which one could report wrongdoing, supposedly

> anonymously. However, I never witnessed or heard of any reported wrongdoing being disciplined. In fact, I witnessed [an employee] face retaliation for calling the hotline. Somehow [campus directors] found out (or guessed) that she had reported wrongdoing via the hotline. She was then assigned only the worst leads and her performance suffered . . . and [she was] fired a month later.[754]

This employee then described how he finally availed himself of the ethics hotline and knew after doing so that his "fate was sealed . . . Within two weeks I began to be assigned worse leads. Then I started being accused of things that simply had not happened. Anticipating being fired, I found another job and resigned in February of 2014."[755]

Another employee, who worked as a financial aid director at ITT's Birmingham, Alabama, campus, recounted that she was "let go from my position in November 2011. The formal explanation was 'corporate restructuring,' but I believe that I was fired for speaking up" about her concerns with ITT's endemic noncompliance with basic financial aid rules and regulations.[756]

HQ knew that whistleblowers were retaliated against at the campus level. One example of this is seen in an email, dated July 2010, from an employee[757] at the Tampa, Florida, campus to HQ:

> The primary event that led to my reporting to HR/Compliance was the unjustified threat of corrective action my DOR [director of recruitment] made against me when (in my view) she became irritated by my bringing ethics concerns to her attention. Clearly, I was being threatened so that I would cease my reporting. That event led to me approaching the Ethics Hotline for other resources to consult; this in turn led to my interaction with you (Compliance) and [redacted] (Human Resources). Subsequently, our teleconference took place, during which I believe you were quite thorough in taking notes on each of the ethics situations I had previously reported to my DOR. . . . At the end of the teleconference, I voiced a concern that there was a considerable need at the Tampa campus for the Admissions/Marketing Department to receive training concerning what is permissible when dealing with students.[758]

Another example of employee whistleblowers receiving blowback from the company was documented in a corporate email chain from July 2012, which included the following statement from an admissions representative at the Tulsa, Oklahoma, campus:

> This is clearly retaliation for speaking with the District Manager about the numerous company policy violations and legal violations committed by Campus Director [redacted]. Since the initial complaint three of the Representatives who spoke out against the Campus Director have been submitted to HR for Corrective Action, two of these employees have

> received Final Written Warnings, something unprecedented at the Tulsa campus.[759]

In another example of ITT's retaliatory culture, corporate HR investigated a 2012 charge that the director of recruitment at the Columbus, Ohio, campus "would sit late start students in their first quarter classes to make his number, which was confirmed by two faculty members."[760] However, in HR's response, the charging party was advised that her comment highlighting this wrongdoing was itself "not an appropriate comment, and could lead to corrective action if continued."[761]

Likewise, after an ITT employee raised concerns about whether a drafting degree ought to be offered online, she was chastised to her superior:

> She does not appear to be in favor of an online Drafting degree. I recommend you have a discussion with her regarding using data and research instead of her opinion to draw conclusions (she has not included any data or research with her conclusions). She has stated that she feels an online drafting graduate would not be employable. This is contrary to how I would expect an online faculty manager to feel. I am not sure we want her contacting employers to discuss employing an online drafting graduate since she is already negative to the concept. She will project her feelings to the employers.[762]

The list goes on. A program chair who complained about being forced to pass students who had not completed their coursework satisfactorily was cited for "inappropriate behavior."[763] An instructor from Youngstown, Ohio, was given a corrective action citation for making "multiple statements towards active students regarding the future of the school and program for which he teaches. The statements were misleading and damaging to the success of the students and undermines the efforts of ITT Tech."[764] A representative who complained about abusive enrollment tactics was described by her superior as a "cancer [who] needs to be removed."[765]

This attitude extended to student complaints as well. In a 2013 email to corporate directors, a student at the Chantilly, Virginia, campus complained that course surveys were not confidential, and that the student "fear[ed] retaliation from the school's higher ups. I have seen what they have done to the other students I know and I will not be interrogated for an hour about how I express myself. I thought these surveys were supposed to be confidential?"[766]

E. ITT's Relationship of Convenience with its Accreditor, ACICS

As previously mentioned, ITT was accredited by the Accrediting Council for Independent Colleges and Schools, or ACICS, which has been known for years as an enabler of wrongdoing committed by for-profits.[767] "The council [ACICS] gained notoriety for allowing for-profit school chains Corinthian Colleges and ITT Technical Institute to remain accredited despite widespread findings of fraud."[768]

The relationship between ITT and ACICS was one of comfortable, mutual benefit. ACICS would rubber-stamp ITT's accreditation status, despite serious instances of wrongdoing and substandard practices, because it financially benefited from remaining ITT's accreditor. In 2012, for example, ITT underwent a cycle of accreditation at all of its campuses that uncovered adverse findings. In response, ACICS made the decision to "defer" ITT's accreditation status.[769] Despite this decision, ITT confidently advised investors that the accreditor's findings were "minor and we are not concerned that our responses will not sufficiently resolve all of them."[770] To reach this "resolution," ITT paid ACICS a total of $1,989,349.99 in 2012, at the same time as ITT's approval status was deferred.[771] Almost half of this amount—49.1%—was earmarked for "annual sustaining fee assessment," and the rest was for "new program applications, reaccreditation visits, non-substantive change notifications, etc."[772] This scenario exemplifies the conflict of interest that existed between ITT and ACICS, and the mutual interest both parties had in ignoring ITT's many systemic problems.

ACICS worked with ITT whenever possible to satisfy the company's demands. For example, in 2011, ACICS lifted requirements that would have limited ITT's ability to expand and offer new programs despite its poor student outcomes.[773] In 2012, ACICS assured ITT that it would give it extra time to satisfy the Department of Education's heightened benchmark standards for retention and placement and would continue to allow failing campuses to begin new programs.[774]

ITT HQ felt comfortable knowing that ACICS was always willing to work with them. In response to questions about why ITT was seeking approval for "new" programs that appeared to be exactly the same as existing programs (a strategy for evading the consequences of the gainful employment regulation, discussed below), a regulatory affairs manager in 2013 wrote: "I have had many, many conversations about this and we always end in the same place—they [ACICS] process our apps and we get approvals."[775]

ACICS also looked the other way on ITT's terrible retention rates. According to the Senate HELP Report, ITT reported that of the 64,921 students who enrolled at ITT in 2008-2009, 52% of them (or 33,733 students) had withdrawn by mid-2010, with the median enrollment period for these withdrawn students lasting 3 months.[776] This dropout problem continuously plagued ITT, particularly in its online program, in which 1 in every 4 students dropped out within the first 4 weeks.[777] Emails from 2015 reflect strategies the company developed to address this issue. One strategy was to distribute online students across resident campuses,[778] a tactic that ACICS expressly endorsed.[779] (This tactic then created a placement rate problem for the resident campuses that ITT had to figure out how to game.[780]) Additionally, corporate directors moved to a conditional enrollment model for online students so that they would not count in the retention rate calculation if they dropped out.[781] Notably, Kevin Modany resisted advertising this new model as a "trial enrollment" period[782] and did not want students to know that they had the option to discontinue their enrollment.[783] He even expressed a desire to keep information about this initiative on a need-to-know-basis within the company.[784]

As a visual representation of how lenient ACICS was with ITT's objectively poor metrics, the following map represents campuses that could not satisfy the required 50% threshold for job placement and student retention in 2012, which should have prevented their re-accreditation. ACICS, however, was willing to grant contingency approval for all of the following campuses, despite their woeful outcome figures:

When ACICS initiated a pilot program to verify placement rates, ITT lobbied to modify the program to make it toothless. ITT wanted "an alternate proposal using something akin to the SFA Audit process whereby, for example, accountants at Pricewaterhouse Coopers, or PWC, would make the selections and Internal Unit would verify subject to PWC's review/oversight." Noting that "EDMC [another for-profit education company] is equally concerned," Modany said, "We should definitely gather the schools noted and get [ACICS] on the phone . . . and explain that [they] should not just bend over and take what the ED is requesting without proposing a viable alternative."[785]

Subsequently, the national director of career services at HQ was assured that ITT had "a call into our friends at ACICS" to discuss the requirement that placements be verified in writing (as opposed to orally).[786] ITT's feedback to ACICS was that the verification program should be scrapped, or that ITT should be able to select or train its own vendor to "level the playing field."[787]

When ACICS pushed back on one of ITT's business development ideas—offering short-term courses internationally—Modany's reaction was: "The idea that ACICS says we can't operate in foreign countries doesn't make sense, if the reason they give is 'we don't want you to' or even 'we don't have the resources to accredit the programs.' That's a problem that they need to solve—the solution can't be 'you can't do it.'"[788]

Modany asked to speak with "Dr. Grey," the head of ACICS, personally, so that he could "hear it from the horse's mouth."[789]

In another instance, Modany stated he would "call Dr. Grey for a personal interpretation" of an ACICS standard that was hindering ITT's business strategy.[790] He also pushed back on the frequency of accreditation visits ("We need to talk to them about the accreditation period for the other schools! We aren't going through this crap every two years!!!!").[791]

When ACICS asked Modany in July 2016 about an influx of calls it was receiving about ITT potentially going out of business, he responded:

> My how far off reality's tracks we have traveled if this is a topic of legitimate conversation between an accreditor and its largest member institution. That said, I hope and trust we are not being asked to comment on unsubstantiated (and ridiculous) internet rumors! I'm confident we've not succumbed to validating this type of outlandish internet slander with a request for a response![792]

ITT, of course, declared bankruptcy two months later.

F. Corporate Bullying

At every turn, ITT tried to discredit anyone who criticized the company, from investment analysts to elected officials, regulators to reporters, and even its own students.

For example, after reading a letter submitted by a nonprofit advocacy group to the Department of Education calling for tougher accountability measures against schools like ITT, Modany asked his lawyers, "Can we sue Pauline Abernathy and TICAS [the Institute for College Access and Success] for these slanderous comments about preparing for our closure. This is outrageous commentary solely intended to harm our business. I'm tired of these assholes from TICAS taking unresponded shots at us and the sector at will!"[793] Another letter from the same advocates elicited the following reaction:

> It's time to take these socialists head on instead of hiding in the sand when they come storming down the beach with their ideological populist mantras masked by an insincere interest in protecting tax-payer money! If we want to protect tax-payer money we'll stop subsidizing community colleges that take in billions of state and federal dollars and produce graduation rates in the high single to low double digit rates with unknown employment rates and starting salaries (as they don't even collect this data)! While we are at it. . . let's hold the HBCU's [historically black colleges and universities] accountable for their absolutely dismal performances . . .[794]

When Holly Petraeus of the Consumer Financial Protection Bureau (CFPB) made statements about ITT and other for-profit schools, Kevin Modany wrote:

> It's amazing to me that someone is permitted to step up to the table and provide so much unsupported, anecdotal slander as part of official testimony! Someone should have raised their hand and asked her . . . 'um . . . excuse me . . . but can you support any of these slanderous claims with any statistically valid data or are they just nice stories that you wanted to tell today that support your prejudiced views against the free markets?' The fact that someone would place any credibility on any of these claims per her 'observations' as 'she traveled around the country' is mind blowing and embarrassing to me as a citizen of the country governed by the people listening to her! Wow!! What a circus!!![795]

Regarding another CFPB and Department of Education official, Rohit Chopra, Kevin Modany stated, "This guy should be sent to Guantanamo Bay for about a decade of R&R; which should include an aggressive regimen of 'water sports'! His purposeful manipulation of the facts, abuse of power and attempt to defraud the Treasury out of taxpayer funds should be viewed as economic terrorist activity and he should be treated accordingly!"[796]

When responding to an inquiry from a reporter about a student's allegations that his loans were forged by an ITT employee, Kevin Modany directed, "Take off the gloves with the student and slug back! Do not hold back in any way and anything that we can put out there to question the legitimacy of his complaint we should most definitely do so. . . . [W]e need to call him out publicly."[797] With respect to the reporter, Modany fumed, "This guy is a little scumbag and we need to call him out!"[798]

When a former student sent a message to current students warning them not to continue at ITT, Kevin Modany opined that he was part of a "union/liberal front group" and asked that a "cease and desist letter" be sent to "bring him to his senses."[799] If that failed, Modany asked, "what possible legal action we could take. We need to snuff this kind of nonsense out. Right now, their precious little millennial egos are getting attention by their telling lies (and probably getting paid by the union). It is not costing them anything. That needs to change."[800]

Kevin Modany was not used to students voicing complaints against ITT in public, because ITT forced students into closed-door, confidential arbitration procedures through a clause in their enrollment agreements. When the Department of Education proposed to limit the use of such clauses, Modany expressed outrage: "Am I reading this incorrectly??!?!?!? How can that be enforceable? This is outrageous!"[801] He was also quite candid about the possible outcome: "We would be subject to class action lawsuits! That's why we didn't want to lose them [arbitration provisions]. The Obama administration is pushing so hard to get rid of them as a favor to the Plaintiffs bar."[802] Modany went on: "assuming this doesn't get derailed, there's not more sunrises on the other side of July 1, 2017. Absent a legal challenge on this . . . the die has been

cast!"[803] When he learned that DeVry had voluntarily abandoned the use of arbitration, Modany stated, "I don't know how they could have concluded the expense is manageable."[804]

Kevin Modany's views on the students that his company was meant to serve and educate were derisive and dismissive. His comments on a fundraising request by a student debt project were classic Modany:

> Why is it someone else's fault that people borrowed money and enjoyed the benefits of the use of that money and now have to pay it back???? Why is it in this country that very thing bad [sic] that happens to someone is the fault of someone else? When is it our own fault for the bad things that happen to us? When are we going to start saying that it is okay to hold people accountable for their own actions?? How has society become so enamored with the idea that rich people make bad things happen to people who have zero responsibility? How far away are we from refusing to put people in jail for committing crimes and instead starting to prosecute (civilly and criminally) responsible, law abiding citizens (parents, teachers, coaches, bosses, etc.) who had contact with these criminals at some point in the degenerates [sic] life such that we can blame the responsible citizen for the criminal behavior of the lawless few?!?[805]

On the other hand, ITT did not hesitate to use its students as props to protect its reputation, although its efforts in this regard were often laughable. For example, in 2012, ITT was desperate to counteract its negative portrayal in the Senate HELP Report, particularly the "insinuation" "that a veteran is so gullible as to be duped into a career college."[806] They identified a former student as a potential spokesperson for the school, to be featured in an "Alumni Magazine." The student was a veteran, and had already been featured in an ITT Tech TV commercial and on its website. (ITT spent $319,973 airing a 30-second spot featuring this graduate, which, according to company metrics, led to 93 leads, and $1,052,675 airing a 60-second spot featuring the graduate, leading to 286 leads, for a total cost-per-inquiry of $3,441.)[807] But when ITT looked into this strategy further, it realized it could not use this student to create a narrative of ITT serving veterans, because he had "never made a payment on his federal loans."[808] The company then identified a second student veteran, who had also already been featured in an ITT Tech commercial, but ITT discovered that this student had defaulted on his PEAKS loan. Kevin Modany did not see this as an obstacle and requested that marketing "follow up on this with [the CFO] and he can have [the servicer] check his name to see if his loan has been recently rehabilitated (I suspect that it has or soon will be)."[809] (Modany was in a position to know because ITT was making payments on PEAKS loans at the time). But, ITT learned, the same student had also had his federal student loans placed in an economic hardship deferral, which the vice president of marketing noted as curious, "as the commercial represents him being in a supervisory position."[810]

Kevin Modany was equally contemptuous of his company's instructors. When a nursing chair raised concerns about the program and asked for more resources and compensation, and was supported in this request by other nursing instructors, Modany responded irately: "Typical terrorist tactics of an irrational faculty. They attempt to get students to rally against the school. We've seen this before. We let her grab the gun and take the hostages so now this likely gets a little messier than it otherwise would have been."[811] He proclaimed, "We will not give this woman a DIME. Not one red cent! Litigate it to the end before we give her one nickel. And when the smoke clears if we can sue her for recovery of all associated legal costs I want to do that (and anything else we can think of.)"[812]

Modany did not hesitate to threaten legal action against anyone who stood in his way, including entities with lawful authority to regulate ITT's conduct. In one example, following the company finally receiving approval from Kentucky to offer a nursing program, Modany groused: "They were giving us the runaround so we had to hire an attorney and magically they subsequently gave us the preliminary approval." [813]

G. Exerting Political Influence and Evading Gainful Employment Requirements

At the same time as ITT aggressively attacked its critics, it invested in and cultivated relationships with elected officials who could protect its interests. As Modany wrote to former ITT CEO Rene Champagne in early 2012, "I hope the sector is prepared to contribute lots of dollars to Republicans across the board to send idiots like [Senator] Durbin packing."[814] As the head of the trade association, APSCU, stated, "[i]n today's Washington world," influencing legislation and policy "requires a minimum of over $10 million just to have a seat at the table."[815]

In response to an article highlighting the excessive spending on marketing by the for-profit education sector, Kevin Modany noted, "[W]e've been very successful in pushing back on the 'marketing prohibition' initiative in the past (and suspect we will continue to do so)."[816] ITT also vigorously lobbied against gainful employment regulations, including by asking all ITT campus directors to contact their respective members of the U.S. House of Representatives and Senate to "communicate our concerns regarding the ill-advised and poorly conceived gainful employment regulation."[817] Modany sought a personal audience with then-Governor Mike Pence to discuss gainful employment (a "fiasco" from an administration "hell bent on pre-empting the role of Congress in making laws") and the "ridiculous" incentive compensation ban.[818]

ITT went to great lengths to evade regulations from the Department of Education designed to limit participation in federal student aid to only those institutions and programs that delivered on their promises to students. In particular, ITT executed a complicated and intricate strategy to "comply" with the gainful employment regulation. This regulation, promulgated in 2010, required career education programs such as those offered by ITT to stay below certain debt-to-earnings ratio thresholds

for its graduates. Modany described the regulation as "an absolute nightmare of epic proportions. . . . Well done by the Socialists on Pennsylvania Avenue . . . but a very sad day for our economy and global competitiveness."[819] This sentiment was echoed by Diane Auer Jones, who would later become Undersecretary at the Department of Education under Betsy DeVos, who described gainful employment as "one of the most horrific examples of social engineering that I have ever seen," and claimed that "the classism imposed by GE is nothing short of astonishing."[820]

In 2010, Kevin Modany advised the company's Board of Directors that "[t]he overwhelming majority of our programs do NOT comply with the proposed [regulation] and require remediation initiatives."[821] ITT estimated that it would have to reduce its tuition by approximately 11% to pass the debt-to-earnings metric, but rejected this course of conduct as not "economically efficient," because the gainful employment regulation "is based on median debt for graduates, not all students, but the tuition cut would be for all students, not just graduates."[822] A second option for remediation was to give "debt reduction awards" to graduates, but to be lawful it would have to be need-based, and the result would be that the award would go to those "who likely received the most grant aid and thus have the least amount of debt."[823] The third option for remediation was "curriculum revision," which would "be operationally challenging."[824]

ITT went with the "operationally challenging" option because it did not involve providing students with money—that is, it would allow the company to continue its profit-making scheme unimpeded. The plan was to nominally repackage existing programs into "new" programs so that the new programs would not yet have graduates to report for gainful employment purposes.[825] ITT made only minimal changes to existing curriculum and textbooks, but enough to evade the gainful employment regulations.[826] Several internal documents record these meaningless programmatic name changes, including the following examples from the spring of 2011:

(1) The ITT School of Business renamed several of its programs and gave them new acronyms. The presentation notifying employees of these changes gave no explanation for why these changes were made.[827]

(2) The School of Business also notified staff of name changes being instituted for the Project Management Program including a renaming of the "Bachelor Degree Program in Project Management" to "Bachelor Degree in Project Management and Administration."[828]

(3) Another April 2011 Academic Affairs presentation from the School of Information Technology stated that in September 2011 the Associate Degree Program in Computer Network Systems would be arbitrarily changed to "Associate Degree Program in Network Systems Administration."[829]

(4) In the same April 2011 document from the Information Technology School, the "Bachelor Degree Program in Information Systems" was renamed "Bachelor Degree Program in Information Systems and Cybersecurity."[830]

In order to execute this name-change strategy, Modany enlisted NIIT, a company in India, to update ITT's curriculum so that it appeared as if the programs had been updated, even though in substance they had not.[831]

The effect of this strategy was that, by the time the first gainful employment numbers came out, 80% of ITT's student census was enrolled in programs that were not subject to that cycle of gainful employment enforcement.[832] This delighted gleeful corporate managers, one of whom responded, "It's nice when our plans work out."[833]

1. Corporate Leadership's Views on Borrower Defense

In 2015, Corinthian Colleges, Inc., declared bankruptcy, prompting a flood of activity around loan cancellation for students of the chain. Kevin Modany described this reaction as "grandstanding . . . by the socialist liberal left and their political 'think tank' groups that masquerade as 'student advocates.'"[834] Modany forwarded a press release announcing federal student loan cancellation for Corinthian students to ITT's Board of Directors, commenting, "This is without question one of the most frightening pieces that I have seen from ED in my 13 years in the postsecondary education sector!"[835] He was particularly scornful of then-Attorney General of California Kamala Harris, whom he saw as

> closing down the CA schools because she held out for federal loan relief for CA students. As such, she is now spending taxpayer resources to justify her botched negotiation that led to 1,000s of CA residents losing their jobs and 10s of thousands of students getting tossed out into the streets in the middle of their studies. Dumb ass! The ED has already said that the Heald College students get relief! Clearly now she is going after the Everest schools to try to get the same for those CA graduates! We'll see if the ED tosses her a bone on our watch/expense![836]

Kevin Modany described the 2016 borrower defense regulation as "a constitutional rape"[837] that "makes a mockery of due process."[838] He also observed that ITT would "need to be very careful about the language in any settlement" of their various enforcement actions with respect to borrower defense, noting that the leaders of EDMC were "idiots"[839] and "morons"[840] for not getting a release on borrower defense liability from the Department of Education when it settled a large lawsuit (EDMC's general counsel had explained that the company "didn't push on the issue based on several conversations with ED where they confirmed that they do not plan to seek student loan forgiveness based on either the FCA [False Claims Act] or AG investigation settlements").[841]

VIII. CASE STUDY: ITT'S BRECKINRIDGE SCHOOL OF NURSING

The nursing program at ITT—known as the Breckinridge School of Nursing—stood out as an especially egregious example of ITT's deceitful behavior toward students to get them to enroll and stay enrolled at all costs. The program was notorious for its poor academics and career outcomes, and for concealing its lack of programmatic accreditation specific to nursing programs. ITT's general accreditor, ACICS, did little to either improve these educational standards or ensure that ITT disclosed to prospective students that the Breckinridge School of Nursing lacked specialized, programmatic accreditation for nursing.

A. Nursing as a Profession

The nursing profession has been one of the fastest-growing fields in the United States for the past several years, with the Bureau of Labor Statistics estimating a 9% growth average expected over the next ten years.[842] As far back as 2010, a nationwide shortage of nursing professionals was well documented, with industry analysts recommending an increase of working nurses by 80%.[843]

Registered Nurses (RNs) and Licensed Practical Nurses (LPNs) are two of the most common types of nursing professionals in the United States, and both carry licensure and graduation requirements. An RN is an individual who has graduated from a state-approved school of nursing, passed the National Council Licensure Examination (NCLEX) Examination, and been licensed by a state board of nursing to provide patient care in that state.[844] An LPN is an individual who has completed a state-approved practical or vocational nursing program, passed the NCLEX-LPN Examination, and been licensed by a state board of nursing to provide patient care.[845]

The key term with respect to nursing schools in these definitions for RNs and LPNs is "state-approved." This means that, at minimum, a nursing school must be compliant with the regulations and standards of the state where it is located. Generally, these rules are enforced by state agencies, commonly referred to as "boards of nursing" or "nursing boards." The requirements for state approval of nursing programs vary by jurisdiction, but many states require nursing programs to hold specialized programmatic accreditation in order for their graduates to qualify to work as nurses.

B. National Nursing Accreditation and Why It Is Important

The Accreditation Commission for Education in Nursing (ACEN) —which before 2013 was known as the National League for Nursing Accrediting Commission (NLNAC)[846]—is recognized by both the Department of Education and the Council for Higher Education Accreditation as the leading national authority in nursing accreditation.[847] NLNAC

status is often referred to as "specialized" accreditation, because it is a national authority with respect to the particular profession of nursing and assesses all levels of nursing education, from associate to clinical doctorate.[848] The NLNAC is the only accrediting agency recognized by the Department of Education for accrediting all nursing programs that educate students for every type of practice role.[849]

There is a crucial difference between general accreditation by organizations such as ACICS and specialized nursing accreditation under NLNAC. ACICS is an institutional accreditor. ITT was required by the Department of Education to maintain institutional accreditation through ACICS in order to operate as a post-secondary institution capable of receiving Title IV funds. NLNAC, on the other hand, is a programmatic, or specialized, accrediting body. It pertains only to nursing programs and imposes additional standards for schools to meet in order to fully accredit their nursing programs.[850]

In many states, formal NLNAC approval is voluntary, but states have adopted their own standards in such a way that schools should be able to gain approval.[851] In other states, NLNAC approval is required. In some instances, if the state does not require programmatic nursing accreditation, it instead requires regional accreditation, which ITT did not have.[852] But more importantly, participating in NLNAC accreditation allows a nursing program to validate its commitment to quality and high standards in the nursing profession.

Many employers and clinical sites view nursing-specific accreditation as a crucial element when assessing the worth of any nursing program, regardless of the state where it is located. For example, St. Mary's hospital in Evansville, Indiana, told ITT that "they refuse to hire [ITT's] graduates because [its] campus does not hold voluntary NLNAC accreditation."[853] At the Fort Myers, Florida, campus, the ITT campus staff told HQ the following about why NLNAC accreditation was so important:

> The most important reason we desire programmatic accreditation is to align with the strategic vision of our local hospital systems in order to secure clinical placements for our students . . . [T]hey were not willing to sign an affiliation agreement with us unless and until our nursing program obtains candidacy for accreditation . . . They refuse to pay tuition for their employees that attend ITT Technical Institute based on the premise that other area nursing programs will not accept ITT transfer credits and this creates barriers for students that have a desire to further their education and career goals. For example, students would have to take GE [general education] and possibly core classes again if they decide to attend a local university to pursue a higher degree in nursing . . . They [local hospitals] also refuse to enter into affiliation agreements with a nursing school lacking programmatic accreditation. We were able to temporarily secure a clinical affiliation agreement with [local hospital] in December with much effort for mother-baby clinical when a competitor closed its doors suddenly, but even that will be fleeting without our program being accredited.[854]

In short, being programmatically accredited means that the program has been independently affirmed to be of high quality and allows graduates to qualify for all nursing jobs,[855] whereas a lack of programmatic accreditation prevents certain types of nursing employment (*e.g.*, positions with the Department of Veterans Affairs or other federal-employer nursing jobs), disallows the transfer of nursing credits to other institutions, and may prevent a student from being licensed in the state of their choosing or prevent licensure reciprocity.[856] Because of these conditions, students seeking nursing degrees would specifically favor this type of accreditation, regardless of whether a nursing school is technically *required* to be programmatically accredited or not—a fact that ITT knew very well.[857] For example, the Lexington, Kentucky, campus very clearly explained to HQ "the large magnitude of resistance" their students faced because "[w]ithin a fifty mile radius there are eleven schools which offer a nursing program. Every single one of those schools is accredited except for us. . . . We have been turned down for clinical opportunities at three large facilities because we are not accredited, but two of them informed us they have opportunities for us once we become accredited."[858]

C. ITT's Nursing Program

ITT first became involved in nursing education in 2007, when it opened its first nursing program at its Indianapolis, Indiana, campus.[859] ITT's mantra when starting its nursing program was "[w]e just need to get the pole in the water and wait."[860] In 2011, ITT began what it called the Breckinridge School of Nursing, which it operated out of many of its campuses in over a dozen states.[861] As mentioned above, ITT as a larger institution was nationally accredited by ACICS, but its Breckinridge School of Nursing was never accredited by NLNAC.[862]

States where ITT operated its nursing program included Alabama, Arizona, California, Florida, Idaho, Indiana,[863] Kansas, Kentucky, Missouri, Michigan, Nevada, Ohio, New Mexico, North Carolina, Nebraska, Oklahoma, Oregon, South Carolina, Tennessee, Texas, and West Virginia. In many of these states, programmatic nursing accreditation was not required—at least not initially.[864]

However, ITT knew that programmatic nursing accreditation was highly sought after by students,[865] employers,[866] and clinical sites,[867] and as result, it endeavored to obtain that accreditation. ITT's motivations to gain NLNAC accreditation are evident in a 2013 accreditation proposal, which stated the following:

> Early pursuit of this Accreditation through NLNAC resulted in the denial of the final approval for the Indianapolis Campus at the final committee level. As the healthcare landscape changes so too have some of the hiring practices at the very institutions our students are seeking employment from. One such change has been put into practice at the Veterans Administration and Department of Defense. These institutions have now mandated that eligibility criteria for future hires of registered

> nurses must be from a school that possesses Programmatic Accreditation from ACEN or CCNE. While this government sector of healthcare remains in a small portion of the overall job market opportunity for our graduates, we have additional anecdotes on a campus by campus basis that several larger tertiary hospital systems have placed similar criteria for hiring in place.[868]

In the same accreditation proposal, ITT stated what they viewed as the benefits of getting NLNAC accreditation:

- "Graduates from accredited nursing school programs potentially qualify to attend other accredited schools to pursue advanced studies."
- "Accreditation can potentially make [an applicant] more competitive in the job market; some employers may prefer to hire accredited practitioners because they are trained under nationally established standards for nursing education."
- "Once accredited, the School can promote this status potentially offering it an advantage over other non-accredited institutions recruiting students in the same vicinity."
- "Allows the state boards of nursing to potentially view the school in a different light."[869]

However, ITT never achieved specialized accreditation through NLNAC for its nursing programs, which was a deficiency that came to define the Breckinridge School of Nursing until its cessation with ITT's ultimate closure in 2016. Its lack of NLNAC accreditation is largely attributable to shortcomings in its educational standards and graduate outcomes, which were quite poor as compared to the standards required for accreditation. Yet ITT still continued to mislead students about its accreditation status.

D. ITT's Top-down Model and Failure to Invest Resources Doomed Its Attempts at Programmatic Accreditation

As with many of its other programs, the systemic shortcomings of ITT's nursing program were the result of stringent, top-down corporate control, which emphasized short-term profit maximization above all else.

ITT simply did not put in the work and resources necessary to meet the standards of NLNAC. In the words of a consultant hired to assess the Indianapolis campus's readiness for NLNAC accreditation in 2011, ITT "started with an application and modified it for purposes of the Self-Study—wrong methodology."[870] In 2013, a different consultant concluded, after a mock NLNAC visit conducted in February 2012, that the campus was far from being able to meet accreditation requirements. Crucially, low NCLEX passage rates "indicate[d] a need for a change in curriculum."[871]

This was not the first time ITT had been warned that its nursing curriculum was a

problem. In September 2011, "the consultant identified that the program originated in 2005-06 and is already outdated."[872] In October 2012, ITT received a proposal to rewrite the nursing courses that, at $300,000, was deemed "too high" a cost, and prompted Kevin Modany to state, "We don't necessarily need to push the envelope here."[873]

The 2012 consultant also identified the lack of nursing autonomy as another issue[874]:

> Meeting the individual needs of the Indianapolis campus may require a change in the corporate approach to the type of changes I have addressed. Requiring all changes to be approved at the national level, may not be the most advantageous approach to quickly solving problems of a local campus. A local approach to change may better meet your needs at this time. ← NO

The handwritten "no" in the above message was added by CEO Kevin Modany.

The experts on the ground warned ITT HQ that their tight control and refusal to grant autonomy to the subject matter experts at the campus level would be an obstacle to attaining programmatic nursing accreditation. In one example, the nursing chair at the Indianapolis, Indiana, campus advised against replacing the campus program handbook with a standard corporate handbook:

> My only concern about merging the handbooks is that what we wrote then becomes corporate and we do not have the easy autonomy to make changes at the campus level. The more that becomes controlled primarily by HQ, the less we can make changes as needed so it then appears to NLNAC that we do not have input except to send suggestions. The changes may not occur nor happen in as timely a manner as we would like.[875]

The response from Regulatory Affairs was that the decision "is entirely a matter for . . . HQ. I appreciate your position and wish I could offer a compromise but the message is not mine, I am a messenger and not a policy maker in this case."[876]

Another obstacle related to the fact that Kevin Modany insisted on personally approving and signing off on all student and employer surveys. These surveys were an essential component of the accreditation process: ITT was supposed to measure and adapt its program delivery according to this feedback. But even as schools were submitting materials for accreditation, they lacked such surveys, and could not provide them without getting "Kevin's comments," which would take several months.[877] It is likely that Modany's stonewalling was based on the fact that surveys tended to yield negative feedback, such as one survey response declaring that an ITT clinical site was "a complete disgrace to the nursing profession."[878]

In fact, several state boards of nursing determined that this level of corporate control, with little or no input from local directors or nursing professionals, directly contributed to major shortcomings at campuses they oversaw:

- **Arizona Board of Nursing – 2015**: "Control of Respondent's program, including day to day classroom activities, such as testing requirements, daily schedule, calculation of grades and curriculum, rests with ITT Educational Services, Inc. (corporate) and not that local faculty and program administrator, as required . . . "[879]

- **Indiana Board of Nursing – 2015**: Regarding the South Bend campus, the board "would like to see a larger oversight from nursing [staff] over the nursing programs."[880]

- **Texas Board of Nursing – 2015** The board was "concerned about a 'history' of hiring unqualified people to serve as nursing chair and want[ed] to make sure that [ITT] understand[s] how critical that role is to the success of a nursing program." It also "expressed concern about the lack of nursing leadership, the lack of understanding of the role of nursing by campus administration and HQ, and the lack of training and mentoring for Nursing Chairs."[881]

- **Arkansas Board of Nursing – 2012**: Following a site visit to the Little Rock campus in November 2012, the board raised the following questions: "1. To what extent, and by what process, does the Little Rock Arkansas chair and faculty have input into the curriculum development?; 2. What controls, related to quality assurance for the program, are delegated to the Little Rock Chair and faculty?" [882]

Autonomy for the nursing program was never going to happen, even if that meant programmatic accreditation would never happen. ITT's failure to treat local experts with respect, and its refusal to invest in educational resources, doomed its attempts at accreditation. In 2012, Kevin Modany expanded upon his view of nurses and the desirability of their input on ITT's curriculum:

> The Nurses have a very tight 'union' . . . if you are proactive and collaborative with them (this is to inform them . . . not to let them make any decisions) . . . they are fine. If you leave them out of the process, they fight like mad! Just insecurity of the profession from years of being seen as the doctor's personal shit pan (excuse the crudeness . . . but it seemed the best way to get the point across). Net/net it is all very manageable if we do it right.[883]

In keeping with this attitude, ITT, and Kevin Modany in particular, resisted evidence that ITT's pay scale was too low to attract and retain qualified instructors and chairs. When the chair of the West Palm Beach, Florida, nursing program resigned in August 2012 because "the salary is too low,"[884] she was described by HQ as "not a cultural fit."[885,886]

A nursing consultant serving as interim chair of the nursing program in Rancho Cordova, California, in late 2012 described the program as a "near disaster" because "getting competent people onboard at the price we are paying is extremely difficult - and when we do we need to probably fire 3 of the 4 existing faculty as well as the administrative assistant."[887] This consultant stepped down shortly thereafter, leaving Rancho Cordova without adequate faculty or a chair. The president of Breckinridge reported to Kevin Modany in June 2013 on these issues, noting, "We had a great deal of difficulty recruiting for this chair and turnover has been a significant issue,"[888] and "it's the same story about how we underpay."[889] When Modany finally relented and raised the compensation for nursing faculty, it yielded positive developments in program delivery. Upon hearing this, Modany sarcastically stated, "Impressive faculty . . . great . . . we're losing our ass due to what we are paying them . . . but they are impressive . . . ."[890]

One such "impressive" faculty hire was the new chair at Rancho Cordova. Upon taking the job, she learned that she was "not fully informed about the state of the program," which—along with three other program locations that also became her responsibility—was under warning status from the California Board of Registered Nurses. She notified HQ that she would need to "work sixteen hours a day seven days per week doing the job of four persons in order to meet" the board's deadline. She had also been unaware of "the new pay scale that will make it practically impossible to hire competent and experienced faculty members," and she warned that she was unable to remove faculty who demonstrated "ongoing inappropriate behavior" "because we need these faculty members."[891] She asked for a longer contract and to revisit her compensation. ITT's response was to fire her—an action that caused significant uproar amongst the faculty, which Modany described as "[t]ypical terrorist tactics of an irrational faculty. They attempt to get students to rally against the school. We've seen this before. . . . We let [the chair] grab the gun and take the hostages so now this likely gets a little messier than it otherwise would have been. Bottom line we'll shut it down and give everyone their money back before we give her a dime!"[892]

ITT's playbook of relying heavily on adjunct instructors also caused problems with state nursing boards and NLNAC. In August 2013, the nursing chair in Albuquerque reported that the New Mexico Board of Nursing was concerned that ITT paid adjunct instructors a lump sum per course, because this payment model disincentivized their participation in training and other activities. Upon hearing the suggestion that adjunct nursing instructors be paid hourly for training, Modany responded: "We've heard this many times previously and it just keeps coming back up because we have weak managers . . . that fuel this fire and don't know how to put it out at a local level (without 'blaming it on HQ')."[893] Modany went on to complain, "[W]e have another employee asking for more money and again a weak manager who doesn't know how to handle the matter so he 'tosses it up the ladder'!"[894] He ended the email with, "p.s. The BON [board of nursing] has absolutely NO AUTHORITY to tell us what we should be paying our employees! The mere suggestion of such is OUTRAGEOUS!!! [Employee] should be disciplined for using this as a 'reason' to increase our costs! Unbelievable!!!"[895] Not done, Modany later wrote:

> BTW…..show me where in any state regulations where the BON has the authority to dictate pay to instructors! [Employee] is 'off the reservation' with suggesting that pay is a BON concern! Do they want the union membership to get paid more….sure they do….do they have any authority to dictate pay……not that I'm aware and I would be beyond shocked if the regs provided them with this authority. I know the country is moving closer and closer to a socialistic state with this administration but to suggest that a regulatory body can dictate compensation is overboard even for today's liberal socialistic environment![896]

When reminded that "if we are unsuccessful with obtaining accreditation in Albuquerque in the specified time then we lose BON [board of nursing] approval," Kevin Modany responded, "That's absolute HORSE SHIT."[897]

Kevin Modany fundamentally did not accept that any entity external to ITT had a right to dictate how ITT's nursing programs were organized and delivered. For example, when signs pointed toward ITT's failing to attain accreditation from NLNAC at any location, he switched his talking points to a defiant tone: "We are not going to make changes to our program strictly from recommendations from outside entities/ accreditors—we are focused on student success and our NCLEX results speak to the success of our program."[898]

If his position were not already perfectly clear, Modany made sure that everyone knew that "approving us to move forward" with programmatic accreditation at a given campus "in no way is an approval to increase expenses in any form or fashion."[899]

To the contrary, Modany ordered a review of nursing program faculty staffing with the goal of *reducing* expenses. He asked for campuses to be assessed on three metrics: (i) whether every nursing faculty member was having at least 240 "contact hours" of teaching—and Modany specifically directed that student-facing and beneficial activities such as "sim lab/open skills lab; one-on-one tutoring; HESI testing administration; [and] various committees" "have not been approved for inclusion in the 240 hour requirement"; (ii) being at or above a faculty-to-student ratio of 1:25; and (iii) not exceeding a specified full-time-to-adjunct ratio.[900] Modany also wrote, "If I'm reading this correctly we have 60 FT faculty more than we should have," resulting in "excessive cost that we will be removing from the operating model for Breckinridge."[901] "We need to make this a priority!"[902]

At the same time, Modany was keenly aware that nursing programs were a strong draw for unwitting prospective ITT students, and thus he pushed to open nursing programs in as many locations as possible. In 2014, even after the abysmal performance of these programs, Modany pushed for an "Accelerated BSN" (Bachelor of Science in Nursing, intended for individuals with a bachelor's degree in another field), asking top managers, "How quickly can we get [programmatic accreditation] at all RN [registered nursing] markets," "Do we need any additional capital over and above what we already have," "Can we fit this into our current clinical inventory," and "Do we need any

additional staff (hopefully not)," and directing that the team "begin executing on it as soon as possible."[903] This plan was formulated between Modany and the Senior VP of Business Development, without the participation of the person nominally in charge of the Breckinridge school.[904] Interestingly, the "black book" business plan for the BSN program noted that the overwhelming majority of hospitals and other employers *required* a bachelor's degree for new hires, a fact that ITT did not otherwise disclose to the students already in its nursing associate's degree programs.[905]

E. "Nursing-Chair Roulette" and Other Shell Games: Keeping a Sham Afloat

ITT knew that its nursing programs were not sustainable and would never attain programmatic accreditation. This was fatal to their state approvals as well, as "the BONs are requiring the same level of delivery that NLNAC requires."[906] Nevertheless, ITT needed to keep up the pretense of perpetual "candidacy" status, to keep enrollments and loans flowing for as long as possible. To do so, the company engaged in a dishonest shell game without regard to the consequences for its students.

ITT's failure to attain accreditation for its Indianapolis, Indiana, program was the ultimate proof that *none* of its programs would ever pass NLNAC standards. ITT took an all-hands-on-deck approach with Indianapolis, putting all other campuses on hold, and still came up short. The issue was that they could not fake a sustained commitment to programmatic standards. Indianapolis did not maintain the requisite full-time faculty-to-student ratios, and its faculty did not actively participate, as required, in an ongoing assessment of the nursing curriculum and outcomes. In response, ITT undertook to "revise/edit, create and update documentation" and manufacture (*i.e.*, backdate) faculty participation by requiring faculty to sign an acknowledgment that they had been participating all along ("A minimum of two documented faculty meetings on the creation of the Follow-Up Report will be held before 10/29; however, each participant will be requested to sign the attached as an acknowledgment of their involvement in the response process.").[907]

But these efforts were patently insufficient. A nursing chair at a different campus, who shared her views on the "self study," acknowledged this fact. The chair expressed that her experience writing self-study documents and attending workshops and seminars provided by NLNAC led her to "feel extremely comfortable saying, if we sent this document to NLNAC that would be our 3rd denial."[908] "If the team has been working with this document, there is no way they could be successful. It is the equivalent of trying to build a house with instructions on how to build a table."[909]

Even in the face of this inadequacy, ITT drove forward with the expansion of its nursing program into new states, as well as in states where its existing programs had already drawn the ire and scrutiny of state boards. In July 2013, the head of HQ business development asked Regulatory Affairs to look into whether Wisconsin and Minnesota still required regional accreditation to open a nursing program, and also to check for

NLNAC language in requirements for Utah, Colorado, Louisiana, Wisconsin, Georgia, and Pennsylvania.[910] When advised that "Georgia and Pennsylvania will not turnaround quickly even if the Nursing Board is favorable. These two states take FOREVER," the head of business development responded, "We just need to get the pole in the water and wait."[911] In other words, while they waited to get accreditation, why not just make money in the meantime by continuing to run the programs and enroll more students?

Breckinridge was a shoot-first-and-aim-later operation. The head of business development went ahead with plans to open an extension site in Richardson, Texas, even after being told by Regulatory Affairs and ITT's nursing consultant that ITT needed board of nursing approval and a graduating class at its first Texas site before doing so. The nursing consultant also warned the head of business development to "avoid the Richardson area because it is already saturated and clinical sites are not available," but he ignored this advice.[912]

In Illinois, the board of nursing wrote that it was "very frustrated and puzzled" that ITT was apparently opening new programs in Oak Brook and Mt. Prospect without "any communication" with the state board, without nursing chairs, and "when there has not been any NCLEX pass rates from the existing school" at Orland Park.[913] The board of nursing questioned "if ITT understands the process."[914] A senior vice president of business development responded internally that the two new programs were not an extension site of Orland Park, and therefore should be able to open their doors regardless of Orland Park's lack of outcomes.[915] He suggested that ITT simply name two chairs from other programs as interim chairs (there should be "no problem," he opined, since one of the chairs was from out of state and therefore not known to the Illinois board of nursing).[916] Upon reading these suggestions, one regulatory affairs manager stated to another, "Looks like we're trying to play nursing chair roulette again. Not sure we should keep playing this game...."[917]

The same issue arose in Alabama, where ITT opened a nursing program in Bessemer without taking the appropriate steps first. The board of nursing responded with an exasperated email[918]:

Subject: RE: Nursing Board Letter of Deficiency: Bessemer ITT Technical Institute

Here we go again....who is actually serving as an Interim Nursing Program Administrator? Telling me you are getting assistance from other programs clearly does not address the deficiency notice and the regulation that requires you to have a nursing program administrator. Tell me the person who is acting in that role until you hire someone for the position? And Mr. Hamm is not a registered nurse in Alabama so his knowledge may be useful to you but he would not be able to serve as the interim and we never approved for program administrators for new programs in Mobile and Madison to provide you with services as the interim. They have their own issues to contend with and they are provisionally approved as well. Telling me it will be 90 days before you hire someone is of great concern. When does your first class graduate? And for provisional programs the Board did not change the NCLEX® rules. You have the first time graduates who will determine your NCLEX scores and whether you move from provisional to fully approved.

The efforts of Regulatory Affairs to coax compliance and sound alarms went unheeded, to their frustration. They were charged with generating documents that should have been handled by subject matter experts, which ITT refused to hire. The situation was deemed by HQ "beyond outrageous," with employees commenting that "the math doesn't even add up," and "only the[] full approval" of the nursing programs "rides on this."[919] In other instances, Regulatory Affairs believed that internal audits of nursing programs were being "checked off" without assessment of quality and implementation, and board of nursing site visit reports revealed "shameful" noncompliance despite purportedly clean internal audits.[920]

Campus Spotlight: Henderson, Nevada

The Henderson, Nevada, nursing program needed to secure NLNAC accreditation by the end of 2014 in order to remain in good standing with the state board of nursing. In October 2012, a visit report from the board noted that Henderson "has not had a qualified fulltime administrator" for almost a year, and only for four months of the prior year.[921] Regulatory Affairs warned that "[p]eople need to understand how serious this is getting. . . . The program is in shambles and it's no wonder and I don't know how they would possibly get NLNAC approval."[922] The search for a chair had at that point "resumed," but without "urgency."[923] The deadline for submitting for NLNAC candidacy was November 1, 2012, but ITT's nursing consultant "seem[ed] certain she does not have a nod to move forward," even though "if they don't go now . . . their program would be over" because Henderson would never become accredited by the end of 2014.[924] A senior vice president of business development directed Regulatory Affairs to submit for candidacy nonetheless, because "I don't think we have a choice."[925]

But in January 2013, ITT learned it "ha[d] a major issue" in Henderson: per the board of nursing, Henderson was not allowed to enroll new students, a prohibition unlikely to be lifted until a program chair was hired and remained in place for a period of time.[926] Meanwhile, current students would have graduated by the time a NLNAC team would do its site visit. A senior vice president and chief academic officer wrote, "I don't see how we can obtain NLNAC without students. . . . Even if we have a start this year the students will not be in any Nursing Courses as the first 3 quarters are Gen-Ed which also may be an NLNAC issue."[927]

The board of nursing's informal recommendation was that ITT "teach out" the nursing program with the currently enrolled students and then reapply for a new program. HQ was uncertain how to proceed, and would not approve expenses (such as a mock NLNAC visit) for the campus, because the likelihood of success was so low. The alternative was "to just let this version of the program run off and reapply"; however, "approval of a new program is unlikely[.]"[928]

Regulatory Affairs asked higher-ups whether to proceed on the recommendation of the Nevada board of nursing and "initiate a teach out through ACICS and the state?" They were advised: "Let's be careful here . . . We can effectively manage to wind down

an approved program without necessarily calling it a 'teach out.'"[929] Another executive asked for other options to be considered, including pursuing NLNAC approval despite not having any students: "Deciding to teach out the program is a serious step and one that would not be received well. Before we bring that up to Kevin [Modany] we need to be certain we have no other options."[930]

While all this was happening, there was no point of contact at the campus for Regulatory Affairs. One Regulatory Affairs manager remarked to another, "I honestly don't know who I should be asking these questions of at this point. Who do you suggest? This is so crazy."[931]

ITT decided to name its interim national chair of nursing, who was also a contract employee serving as ITT's nursing consultant, as interim chair of the Henderson program. Regulatory Affairs questioned "the appropriateness" of this decision, given that the individual "still seems to have Nat'l Chair responsibiliites,"[932] and further was not licensed as a nurse in Nevada, meaning she would be committing a misdemeanor.[933] HQ went ahead anyway.

The interim chair was informed just days before a May 2013 meeting to advise the board of nursing that Henderson would submit for NLNAC accreditation by May 20th. The response from Regulatory Affairs: "What?????????????"[934] Regulatory Affairs had been under the impression that the campus was surrendering the program. The interim chair asked higher-ups at HQ, "Could someone update me on what the future for this campus is? There are regulations surrounding teach out of a program in Nevada and the Board and students would need to be notified if this is the case along with an extensive plan of action to carry the current students through."[935] She was admonished to "[h]old off on any further emails and call me to discuss."[936]

Despite all of these warning signs, HQ maintained that the meeting of the Nevada board of nursing "went completely contrary to our expectations. . . . We have had the approval revoked and the program closed, which was not even a consideration previously."[937]

F. ITT Misrepresented the Accreditation Status of Its Nursing Program

ITT knew how critical the accreditation status of its nursing program was, especially in the eyes of prospective students. But rather than committing itself to achieving this accreditation, the company was evasive, vague, and misleading on the issue of accreditation of its nursing program. This concealment caused great harm to many students who unwittingly enrolled in the Breckinridge Nursing School without being fully aware of their program's accreditation status.

When it came to discussing NLNAC accreditation, a 2011 HQ PowerPoint instructed: "You may neither state nor imply that we are seeking such accreditation, you must answer any student questions as follows: 'We have no plans to seek such

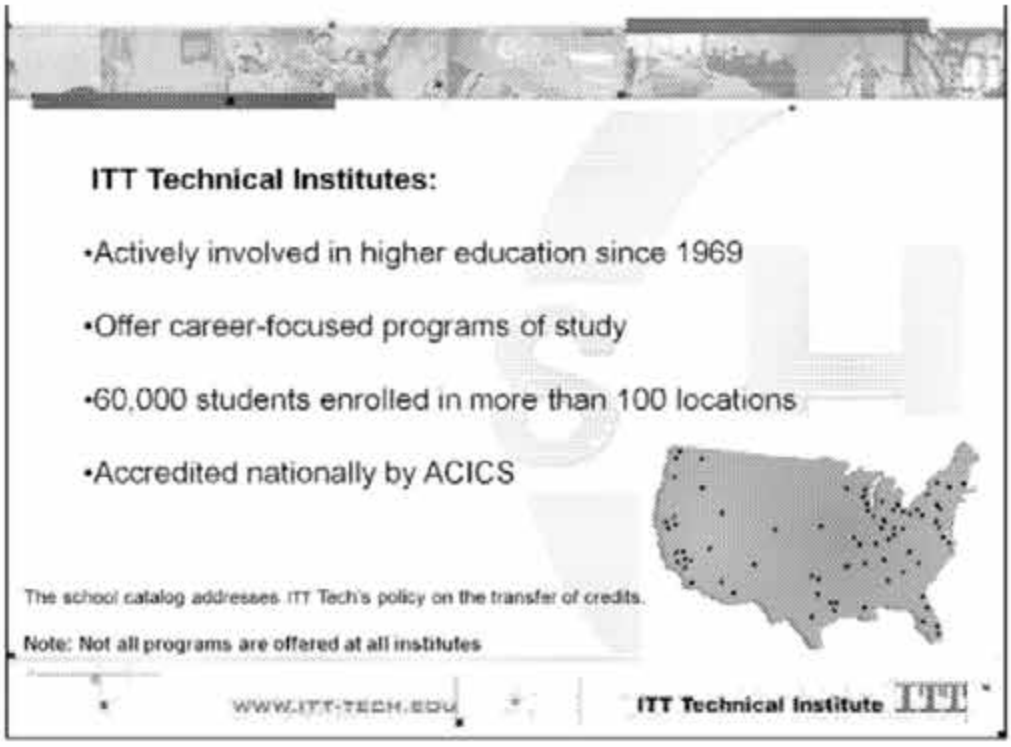
accreditation'[.]"[938] Further, it instructed that employees "[c]annot discuss 'plans' to seek NLNAC with prospective or with current students."[939]

Adding to the confusion at the campus level, ITT HQ kept its accreditation machinations shrouded in secrecy. After receiving a terrible evaluation from NLNAC in Indianapolis in early 2011, HQ advised staff to keep information close: "Keeping you in the loop . . . (Please do NOT forward to schools, however . . . .)"[940] HQ then shared some "pointers" with other campuses, without disclosing that Indianapolis would no doubt be denied accreditation, and that HQ did not currently intend to progress the candidacy of other campuses.[941] And even though years would go by before ITT reactivated candidacy for its Indianapolis campus, its website continued to discuss NLNAC candidacy status. Regulatory Affairs requested permission to take the information down, but the chief compliance and risk officer "want[ed] to leave all of it up for now."[942]

Even when HQ decided to pivot and "put IND on the backburner until NCLEX gets higher," and instead "move forward with Portland [Oregon] seeking NLNAC," the directive was clear: the information was not "for public comment" and "needs to be kept confidential and not shared yet with Portland."[943] Eventually, it was HQ, and *not* the Portland campus, that wrote up a feeble self-study for NLNAC submission.[944]

In addition to glossing over the fact that it lacked NLNAC accreditation and was unable to actively pursue it, ITT also conflated its Department of Education–required accreditation under ACICS with nursing accreditation by obscuring the difference between the two. If potential nursing students asked about accreditation, which impliedly referred to NLNAC accreditation, ITT recruiters would often respond by saying that the school was "nationally accredited," which, as explained above,[945] referred to ACICS and not NLNAC, and would therefore constitute an inherently misleading answer.

The following image with this deceptive messaging was taken from a September 2009 presentation,[946] developed and used specifically to recruit prospective nursing students:



The same presentation goes on to offer the following line for recruiters to use in response to questions about accreditation[947]:

> The school has Board of Nursing approval and when we graduate our first graduates eligible for accreditation [sic] In process for NLN-AC accreditation [. . .] Questions?

ITT's headquarters was aware of the use of these deceptive recruiting materials, and sent emails asking when the presentation was used and who saw it.[948] Campus directors were aware even before 2009 that staff was continuously misrepresenting the school's accreditation status.[949]

This problem continued for years, despite HQ's knowledge of it. In early June 2010, ITT knew that it was placing all of its applications with NLNAC on hold until further notice. HQ held a meeting to develop "talking points" internally and externally, which explained:

> [N]o written statements to the schools will be made . . . [W]e will not submit anything more to NLNAC until IND has completed the NLNAC review process; no timeline is available for that; 2) we will apply for additional accreditation following the IND review; 3) we are accredited by ACICS; therefore, we are an accredited program; 4) We will not discuss the details of IND's review at this point; 5) We are not going to make changes to our program strictly from recommendations from outside entities/accreditors--we are focused on student succcess [sic] and our NCLEX results speak to the success of our program.[950]

The next day, the director of Regulatory Affairs alerted campus leaders that there was a hold "TEMPORARILY" on NLNAC submissions, and then defensively postured: "Please remember that we are already an accredited program by ACICS (a recognized accreditor by the DOE and NLNAC), and our initial NCLEX results reflect our strong program. We will continue to deliver a strong program as we work with NLNAC."[951] When a nursing chair asked, in response, for guidance from HQ as to how to handle a prospective student's objection that "[t]he hospital where I work said I should not attend a non-NLNAC accredited nursing program," she was directed to respond, "I can't comment on other people's opinions."[952]

These carefully worded statements, crafted by HQ, misled students and regulators alike. For example, the Arkansas board of nursing interpreted the statement above about ACICS accreditation, which was included on the Little Rock campus's application for recognition, to indicate accreditation by NLNAC.[953] Regulatory Affairs disputed that it had made any such statement and simply claimed that the "statement is accurate and . . . should be included."[954]

Campus Spotlight: Albuquerque

ITT's obfuscation blew up in the case of its Albuquerque, New Mexico, campus. A New Mexico board of nursing site visit report recorded that, as late as January 2012, "corporate or school has not begun process of NLNAC [accreditation]," and noted that "many students [were] upset as they were told the school would be nationally accredited by September 2011."[955] An October 1, 2012 email chain with HQ confirmed that the Albuquerque campus would be losing its last clinical site partner because it was not accredited, and mentioned that Albuquerque would not be receiving NLNAC accreditation "anytime soon."[956]

A series of successful arbitration actions[957] filed by former nursing students at ITT's Albuquerque campus present a telling narrative of the school misleading students about its NLNAC accreditation status and the importance of that accreditation to their careers as nurses. While the school assured prospective and enrolled students that it was either accredited or would be soon, internal communications reveal that little or no progress was made toward accreditation. One former student's complaint noted, "When asked by [redacted] whether ITT's School of Nursing was accredited by the National League for Nursing Commission, the ITT recruiter stated to [redacted] that the school was in the process of obtaining the accreditation and that it would be accredited by the NLNAC by the time [redacted] graduated from the school in 2012."[958]

In reality, ITT's Albuquerque campus received its initial "candidate" status from the NLNAC in September 2009, but did not take any further formal steps toward accreditation until it reapplied for candidacy in 2014. During this period, ITT's Albuquerque employees were told *not* to formally advance their application.[959] Rather, they were told that their accreditation effort would not continue until the ITT Indianapolis campus received NLNAC accreditation. According to the arbitration documents, ITT learned in March 2010 that the Indianapolis campus (Breckinridge's

headquarters) had been denied NLNAC accreditation.[960]

And yet, despite the fact that the Albuquerque nursing program did not even attempt to progress toward achieving NLNAC accreditation, the school continued to tell prospective and enrolled students that it would be accredited soon, or actively misrepresented its accreditation status.[961]

Only during the fall 2011 term did ITT finally begin telling students, if pressed, that it "ha[d] not pursued" NLNAC accreditation and could not guarantee that "it will seek such accreditation now or in the future."[962] Nevertheless, ITT pivoted its messaging at Albuquerque and stated that its lack of NLNAC accreditation would not impede students' and graduates' ability to continue their studies elsewhere or work in the field.[963]

This was patently false. The nursing program staff at Albuquerque was aware that an increasing number of schools and employers would not accept ITT credits or hire ITT graduates due to its lack of NLNAC accreditation. Emails show that the program was rapidly losing clinical placement sites as those organizations began to require NLNAC accreditation.[964]

In the arbitrator's findings for one of the plaintiffs, the arbitrator recounted how the student claimant had been categorically lied to with respect to the accreditation status of the nursing program:

> [The] Program Coordinator['s] . . . statement to prospective program enrollees, which was not denied by ITT's witnesses, constitutes an unfair or deceptive trade practice. . . . ITT would be required to correct those statements at the point where it was aware of their falsity. ITT did this in 2011 in order to clear up its students' 'confusion' about NLNAC accreditation. 'Confusion' is a substantial euphemism; ITT students were shocked and alarmed. They felt deceived by the . . . promise. Students at that time faced the dilemma of staying with or withdrawing from the program.[965]

The rampant misrepresentations regarding accreditation status at the Albuquerque campus were also addressed in a lawsuit filed by the New Mexico Attorney General against ITT for violation of consumer protection laws, among other state law violations.[966] Compounding the accreditation misrepresentations was ITT's misrepresentation of credit transferability, which was impossible given ITT's lack of NLNAC accreditation, as highlighted in the New Mexico complaint[967] as well as in the Albuquerque arbitration actions.[968]

The New Mexico Attorney General's complaint alleged that ITT's Albuquerque nursing program was never accredited by NLNAC, and because the program was never accredited, other schools were unlikely to accept ITT transfer credits.[969] The Attorney General asserted that, despite this fact, ITT told prospective nursing students that the nursing program held programmatic accreditation or was in the process of

acquiring it. ITT told other students that the program would receive programmatic accreditation when the first class graduated.[970] ITT recruiters also distributed documents at information sessions and program orientations that misled students about the accreditation status of the nursing program, repeatedly using false claims of programmatic accreditation as a recruiting tool.[971]

The complaint specifically alleged: "Despite never holding a programmatic accreditation status, ITT representatives represented to prospective and enrolled nursing students . . . that the nursing program held programmatic accreditation,"[972] and ITT "used the false claims of programmatic accreditation of the nursing program as a recruiting tool."[973] Ultimately, the New Mexico Attorney General's case exposed how ITT credits and associate's degrees from ITT could not be used as a basis for a bachelor's degree in nursing from any other advanced nursing program in New Mexico. Nonetheless, ITT represented to students that credits or an associate's degree could be used to obtain a B.S. in nursing from other programs.[974]

A student at the Albuquerque campus explained how she was misled about ITT's accreditation status and how that lie irreparably harmed her:

> Starting at the orientation we had with [recruiter], before we even started attending ITT, she told us they were accredited and wouldn't be a problem to get a job as an RN [registered nurse] anywhere. Everything sounded good to me from that point and I was interested in going for my RN Degree. During my first few months of school, myself and others started hearing rumors that ITT wasn't accredited but they were in the process of becoming accredited but they had to wait for the first graduating class to graduate. Which at that point I was already into it and I was determined to be an RN, so of course I thought as long as they get accredited before I graduate everything will be fine. So it had become a known issue to everyone and a teacher [redacted] let us know that we should confront [recruiters] to get all the rumors straight about accreditation and that as paying students we had the right to know the truth. . . . I dedicated myself to school, went through emotional and physical stress, my kids and my husband had to deal with me while I was in school and stressed out, and then everything I worked hard for the last 15 months was gone like nothing. I was so disappointed and I finally realized that this whole time ITT doesn't care about [anyone] and the only mistake I made was not leaving ITT since the first red flag I got. I guess I was being positive about the whole situation and just kept telling myself "This too will pass and soon I'll be an RN."[975]

Even after all of this, ITT refused to affirmatively clarify its lack of plans to gain NLNAC accreditation at its Albuquerque campus. After a visit from the board of nursing in January 2013, the board suggested that ITT needed to have prospective students sign a disclosure during their visit with the recruiter that stated that ITT did NOT have NLNAC accreditation. HQ rejected this request:

> We do not want to create a document for students to sign unless there is an explicit board requirement. In my opinion we are compliant with the Regulations. Our catalogs contain the current standing with respect to regional or national institutional accreditation status and national nursing accreditation status and board approval status. We cannot list affiliations we do not have. Since we have no status with NLN there is not anything to list. In my opinion if the board wants schools to indicate they have no status with NLNAC they need to rewrite the regulations.[976]

Many other campuses besides Albuquerque also saw numerous, documented instances of ITT misleading students about the true status of its nursing program's accreditation.[977] These accounts appear in the words of the students who were harmed by these lies, including the following 2016 complaint narrative from a student who attended the nursing program at Newburgh, Indiana:

> When I started the nursing program at ITT, I was told that by the time I graduated, their program would be accredited by the state and nationally and that we would not have any problem finding a job because there are such a shortage of nurses. The entire two years into our program, we were still being reassured that they were having no problem in the accreditation process. When I graduated in 2012, the school still wasn't accredited nationally. All the major hospital in our region would not hire ITT grads because of our lack of national accreditation. All of us had to settle for lower paying jobs in nursing homes because of it. I worked at a major hospital for 4 years as a patient care tech leading up to my graduation. My director wasn't even allowed to hire me as an RN because of graduating from ITT.[978]

Many student accounts tell similar narratives about being misled about accreditation. The following excerpt from a 2016 Lake Mary, Florida, student complaint addresses the impacts of these institutional misrepresentations:

> I am a 44-year-old woman who tried achieving my dreams by going back to college to become an RN. I was recruited by ITT Technical Institute and their accelerated nursing program to achieve that dream . . . The course consisted of 8 twelve week semesters, 3 days a week, I made it work. This past August, the end of my 5th semester, the day before finals, the nursing director came into class and informed us the program was changing to 4 days a week, I was crushed, I could no longer continue due to family, work, and financial obligations. The director explained that they had to do this to obtain accreditation. I was so upset because I ask[ed] when I looked in the program if they were accredited and they said yes. The catch, I found out later, was the school is nationally accredited and the program was basically a prep course. Which means I would not be able to transfer anything I worked so hard for to another school so I could finish. I did not receive financial aid for this, I had to take out student

> loans and am now having to pay back and have nothing to show for it. I'm still just a waitress and paying even more out because I was scammed by this school.[979]

Other former students gave similar accounts of the nature of the lie they were told regarding nursing accreditation, explaining how this lie caused years of career hardship:

- **2011 – 2013**: "They told us that they only needed one more class to pass the state boards to be accredited through the national accreditation boards turns out none of [their] classes had even come close to passing which they needed 80% of the students to pass, we were told everyone that graduated and passed were getting jobs with their nursing license not true most people had to take lower jobs at nursing homes or were told by the bigger hospitals that they weren't hiring ITT grads due to the bad reputation the school had for graduating unprepared nurses. And their career center never even helped anyone."[980]
- **2011 – 2013**: "They told us that we would be guaranteed a job once we passed our boards and graduated the Nursing program and that no employer could turn us down. We later found out that several of the local hospitals would not hire students from the program due to the lack of accreditation[.]"[981]
- **2014**: "I went to ITT as a student in March of 2009 to enroll into the nursing program. I chose the program because I believed, as promised, that the program would be accredited by the time of graduation. We were later told, that we could be 'grandfathered-in' if we happened to graduate before the accreditation happened. Well, that never happened."[982]

When an Indianapolis nursing student did confront ITT in 2013 about misleading students about NLNAC accreditation, and requested a tuition reimbursement, ITT employees just saw this as a ploy "to get some money," and ITT provided a stock, non-responsive answer:

> You also claim that your Enrollment Representative assured you that the school would get NLNAC accreditation before you graduated. We are unable to substantiate this allegation, and this is inconsistent with the approved enrollment presentation that prospective students receive. In addition, Representatives are trained specifically not to make promises or guarantees. Our Representatives understand that the consequence for misleading students is termination."[983]

ITT was so aware of misrepresentations around NLNAC accreditation that they even had "Standard NLNAC letter language" to include in responses to student complaints.[984] In one such complaint, a man stated that his wife was promised that the Indianapolis campus would have NLNAC accreditation by the time she graduated, but she was now "an R.N. who can't be hired at any hospital, all she can settle for is to hopefully get hired at a few nursing homes."[985] HQ's response was that "he just wants to get some money. And he's not going to get any."[986]

G. ITT's Consistently Poor Nursing Exam Results

As mentioned previously, the NCLEX exam is a crucial benchmark in nursing licensure. ITT's failure to produce high licensure exam passage rates for its students is not unusual for for-profit institutions. According to a 2011 report by the U.S. Government Accountability Office, "[t]he nine licensing exams for which graduates of for-profit schools generally had lower pass rates were for Registered Nurses (RN), Licensed Practical Nurses (LPN), Radiographers, Emergency Medical Technicians (EMT), Paramedics, Surgical Technologists, Massage Therapists, Lawyers, and Cosmetologists."[987]

As discussed below, ITT's Breckinridge School of Nursing did not prepare its students for the exam they needed to pass in order to become registered nurses or licensed practical nurses. And this was one of many factors that led accreditors at NLNAC to repeatedly deny the nursing program's accreditation application.

A nursing consultant paid by ITT highlighted this fact in a 2013 internal report. After conducting a mock visit to Indianapolis's campus, the consultant concluded that ITT would never attain the required NCLEX pass rates because their curriculum was outdated:

> I believe that one way to raise pass rates is for faculty to develop a new curriculum that represents current practice. . . . This new curriculum should include a focus on critical thinking/clinical reasoning in order to meet the higher level expectations of the NCLEX, which is being raised again in April, 2013. Low pass rates for first-time test takers may indicate a weak curriculum. Students must then supplement the curriculum materials with additional study of materials and review that are outside of the curriculum. This is not a desirable consequence of completion of your courses and program. Students should have learned the content and be able to think at the levels they need to pass those standardized examination the first time they take them. The fact that many do not and require outside study of additional noncurricular materials, indicates a need for a change in curriculum.[988]

For about 20 of the 40 ITT nursing programs (by campus), the passing rate average was under 60%, which is significant because that was the standard required by ITT's accreditor, ACICS.[989]

The Attorney General of New Mexico similarly alleged that ITT's admissions policies "did not adequately screen or exclude those students that were unlikely to benefit from the program," including those enrolled in the nursing program, where ultimate passage of the NCLEX exam is a virtual prerequisite to employment as a nurse.[990]

The Indiana board of nursing also expressed concern over the low pass rates for all ITT programs, noting NCLEX pass rates of only 46% at Merrillville and 66% at Indianapolis. At a meeting with the nursing board, an ITT nursing dean addressed the

board's concern over low NCLEX scores by stating on the record that the "results are embarrassing and they are trying to make changes to their campuses."[991] In response to these low figures, the board suspended all new admissions for all ITT nursing campuses in Indiana.[992] Additionally, the Indiana board of nursing flagged the South Bend campus in 2015 as another low passage rate location, reporting 49.9% for that year.[993]

In a consent agreement with ITT, the Arizona board of nursing also noted a severely deficient NCLEX passage rate of 43% of graduates for 2014.[994] The Texas board of nursing likewise found ITT's NCLEX passage rates to be woefully inadequate. Based on NCLEX rates, the Texas board adopted a change from its initial approval of ITT's Richardson, Texas, nursing program, to initial approval with a warning.[995] As a basis for this decision, the board cited NCLEX data indicated a pass rate of 48.65% for 2015 and 45.83% for 2014.[996] These trends strongly suggest that ITT both failed to prepare its graduates for the nursing profession and admitted unqualified students to its program.

In fact, ITT considered and rejected a plan to stiffen its admission requirements as a way to raise NCLEX passage rates. The specific proposal was to change the admission process to "add science back in," adjust the minimum overall score, and adjust the minimum subject scores.[997] Instead, ITT decided to develop an online remediation course that students could take after they were already admitted. As explained by HQ: "For now let's table the entrance exam and focus on the exit portion and the 'Supplemental Instruction' (remediation) [sic] we can construct to address the situation and provide a better student experience without losing any of the benefit of what we are attempting to accomplish."[998] Specifically, ITT was "attempting to accomplish" maximum student enrollment, not maximum student success.

H. ITT "Improved" Pass Rates with Arbitrary Program Changes that Forced Students to Drop Out

The Health Education Systems Incorporated ("HESI") exam is often used by nursing schools to help predict students' likelihood of success in tests such as the NCLEX. In a calculated and cynical manner, ITT used the HESI exam to cut students it did not think would perform well on the NCLEX to artificially improve its own image. In response to abysmal NCLEX passage rates, ITT began mandating that students score sufficiently high on the HESI exam as a prerequisite to graduating, and therefore sitting for the NCLEX. However, ITT did not tell prospective or enrolled students in advance that they were now required to pass the HESI exam. Many were left unable to graduate, sit for the NCLEX, or advance their careers as nurses. ITT was then able to report better NCLEX results while students were unfairly saddled with debt and credits that would not transfer, because ITT was not a fully accredited nursing program.

ITT also continuously, and without warning, changed requirements for nursing students. This was very likely because the company wanted to thin out the program's ranks to ensure high passage rates for the NCLEX exam. An example of this tactic can be seen

in an April 2013 email that ITT sent to nursing students at its Ohio campuses, informing them without prior notice that they would now be required to complete additional work to meet the new credit requirements, including an additional 30 clinical hours for students who had taken "Clinical Nursing Concepts and Techniques II" and ten extra "theory hours" for students in a pharmacology course.[999]

This tactic of making arbitrary changes to the required academic criteria with the intention of weeding out students who had paid large amounts in tuition and were actively working toward their exams is also reflected in the allegations of the New Mexico arbitration cases. In September 2011, ITT's nursing program at Albuquerque abruptly changed its passing grade standard from 70% to 80%.[1000] The policy was meant to be—and ultimately was—applied to all students, pre-existing and recently enrolled. Already-earned grades, however, were "grandfathered" under the old policy.[1001]

Complaint records often attest to how students were directly and unfairly harmed by ITT's frequent, unannounced, and unfair changes to its academic standards. The shifting requirements regarding HESI exam scores were particularly harmful and unfair to nursing students, as illustrated by the following excerpts:

> I started the nursing program at ITT in September, 2010 as the first class and anticipated graduating in November, 2012. Throughout the program at the ITT Orland Park [Illinois] campus there were near constant issues. Some of these issues include: not having teachers to teach classes, teachers leaving before term completion, changes in curriculum, changes in graduation date, and changes in graduation requirements . . . After starting at ITT the HESI examination became an exit requirement to complete the program. This contingency was added after the program began. Not passing the HESI exit exam precluded my ability to graduate, take the NCLEX, obtain my license, work as a nurse, and repay $53,000 in loans for an associates program . . . ITT began requiring [the HESI Exam to] prevent students from failing the NCLEX, data that is collected and public to potential students. . . . Because of the above factors, I am now in the exact same position I was in before starting at ITT except over $53,000 in debt. I have no transferable credits, diplomas, or ability to work in a position that pays enough to repay my loans.[1002]

Another Orland Park, Illinois, student expressed a similar sentiment in her own 2015 complaint to the company:

> I'm very disappointed with ITT-Tech and their misleading information. Changing the score for the exit HESI without notification to the students (I was told by another student). There are other things that I wasn't informed about when I started this program, the turnaround time for new instructors is unbelievable and there's a total lack of communication unless there's something that needs to be signed in financial aid. The

> nursing head at the Orland Park campus is horrible at communicating with students. There's been several times that I've been in her office to discuss issues and while talking to her, she texts, doesn't show eye contact, or will answer a phone call. I've noted these issues every time student surveys were due. Not to mention the clinical sites that has been lost. My clinical experience was horrible. I had clinicals for critical care at a clinic so I have no critical care clinical experience . . . I am not a nurse and I do not have an associate's degree or any transferable credit hours despite a 3.46 GPA and completion of the program.[1003]

ITT also attempted to artificially bolster its NCLEX passage rate by manipulating which students counted as "completers," relying on ACICS regulations as justification for designating those who failed to pass the HESI exit exam as non-completers.[1004] As Kevin Modany stated: "This interpretation and confirmation by ACICS should keep the number of 'completers' in the Nursing program relatively low for our colleges."[1005]

I. ITT's Deficient Nursing Program Equipment and Instructor Quality

One of the most common complaints at ITT, and at the nursing program in particular, related to the objectively poor quality of both equipment and faculty, which included issues with or lack of clinical sites. The following excerpt from a former student of the Merrillville, Indiana, nursing program illustrates the lack of investment in faculty and the poor quality of educational resources:

> We had teachers walk out in the middle of class and after the semester started and then we were taught by teachers that did not know that specific class. All information given to us as a Xerox copy. We bought books for classes that were never taken out of the plastic. We had 2 semesters of clinicals at the hospital where we spent 90 percent of the time in the cafeteria instead of on the floor learning. Then after the school was not allowed back at the hospitals we did our clinicals on you tube videos. There was also a class I had that we had the dean only show up to give us a test. Never had a teacher.[1006]

A student from the Hilliard, Ohio, campus reported that they were four weeks into classes when a clinical site "fell through again."[1007] Another student at the Fort Wayne, Indiana, campus described the truly shoddy state of ITT's nursing labs and how the lack of proper equipment inhibited the ability to learn:

> I felt and feel that the nursing lab is not at or above standard because many of the things in it do not work. My biggest concern is the virtual/ interactive mannequin. It is very frustrating to have a lab and hear the instructor say over and over, 'just pretend this works', or 'just pretend this is how it is supposed to be'. I am not getting the full lab experience

> which is supposed to give me clinical experience. When learning to insert a trach tube, listen for placement, and assess the patient, we had to pretend we had the right pieces to bag him--when we didn't, we had to pretend we heard breath sounds because he didn't work, and we had to pretend we heard airflow in his abdomen for placement because he didn't work. We pay so much money to go here and the lab is a vital part of learning. I have gotten very little benefit from it because it either does not have the needed materials or they don't work and subsequently we are given handouts to read or watch u tube videos. WE need hands on experience![1008]

Students frequently complained about the lackluster academic standards and teaching quality. One student complaint from 2015 explained just how alone students were, particularly with respect to the new obligation to pass the HESI exam:

> I would like to point out . . . the failure of the instructor to deliver the lectures and the materials to the students. In the last nine weeks, the instructor showed up only once for our course, quickly reading through the PowerPoint slides. For the lecture[s] mentioned, she was only present 15 minutes, reading through PowerPoint slides. For most of the other sessions we were left on our own in the library with no purpose or goal, after we signed-in on the provided sign-in sheet. . . . When I and other classmates asked the instructor why we are not given lectures, the instructor kept saying: '. . . you study for the HESI, and I will worry about you for this class'. She then continued: 'I will make sure I pass you, if you pass the HESI.'
>
> . . .
>
> Finally, all of the exams do not correspond with the material that is given in the book. I cannot refer to the lectures as none were given to us. Even after those complaints, the Director and the Dean (and the instructor of the course) keep saying just study and try to pass. No reviews and no lectures were delivered. Also, when we went for a review to the instructor and asked to explain the terminology to us using a scenario, she admitted that she did not know how to apply such situation in a real world scenario.[1009]

One faculty member, who worked at the Rancho Cordova, California, campus, wrote a distressed letter to upper management that included the following:

> Furthermore, given . . . the lack of experienced faculty-staff members that needs constant training; the new pay scale that will make it practically impossible to hire competent and experience faculty members; the ongoing inappropriate behavior and disrespect by faculty, which nobody is willing to address because we need these faculty members . . . I had to take some time Sunday to write this letter.[1010]

ITT was consistently unable to keep faculty in its nursing program, let alone capable faculty.[1011] For example, at the Rancho Cordova, California, campus, three faculty members resigned in the span of two weeks in 2013 and the campus had great difficulty filling the nursing chair position, with chronic turnover being a significant issue.[1012]

At the Richardson, Texas, campus, ITT was so desperate to have a nursing chair in order to not violate the board of nursing rules that they conspired to pluck an instructor from another campus for a two-week interim period while they tried to permanently fill the role.[1013] The Texas board of nursing was also very concerned about the Richardson campus because of the campus's history of hiring unqualified chairs and because of "the lack of nursing leadership, the lack of understanding of the role of nursing by campus administration and HQ, and the lack of training and mentoring for Nursing Chairs."[1014] The board's concerns were expansive, including that ITT had provided "deceptive information" to the board. The board also questioned "if anyone at the Richardson campus has actually read the Texas rules pertaining to nursing programs."[1015] The board went on to note that "the students already in the nursing program [are not] receiv[ing] the education they have paid for," and that "the campus is struggling with a massive grade inflation issue that results in students staying in the program and then not being able to pass the NCLEX."[1016]

At the Jacksonville, Florida, campus, ITT retained a nursing instructor who was supposed to be terminated for poor performance, simply because they "had no one to teach the class."[1017]

The abysmal quality of teaching standards at ITT's nursing programs caused many red flags at the boards of nursing in many states. For example, the Indiana Board of Nursing reported numerous problems with ITT's nursing programs over the years. Summarizing a 2014 site visit, the board noted the following:

> Exams need more rigor and there is concern about insufficient number of faculty for 140 current students. There continues to be little evidence that local faculty input into curriculum, admission decision or exam content. None of current faculty was part of interview process for new Director. There are insufficient resources in learning labs, number of hardback volumes in library are small and not recent additions.[1018]

At a January 15, 2015 Indiana State Board of Nursing meeting, the following was noted regarding the ITT nursing programs at the Merrillville, South Bend, and Indianapolis locations: "Feedback has been that nurses don't understand what a nurse does when they come out of school."[1019]

In a 2016 consent agreement with the Ohio State Board of Nursing, ITT's Norwood, Ohio, nursing program was placed under stringent enrollment limitations, heightened control over the academic program, and strict reporting requirements. Specifically, the consent agreement reads: "In addition to providing training to campus and nursing program leadership on this rule, strict procedures have been put in place to insure that

all preceptors used by the Program have valid, unrestricted nursing licenses . . . [and] verif[y] the state of the nursing license for every instructor prior to the start of each quarter (with) [d]ocumentation of this review."[1020] This language reflects serious concern by the state's board of nursing over the quality of the program being offered by ITT.

Another consent agreement, this time with Arizona in 2015,[1021] elaborated on serious findings by the state that ITT's Arizona campuses were in violation of numerous state laws and nursing regulations. The agreement included the following factual findings, among others: (1) student surveys and evaluations were not anonymous;[1022] and (2) three separate site visits provided the board of nursing with deficient documentation and lack of proof that ITT was satisfying the standards of the board.[1023]

Other, independent reviews of ITT's nursing programs also revealed a startling level of mismanagement and general deficiencies. A 2013 report of complaints compiled by the Arizona State Board of Nursing revealed the following claims[1024] against the ITT Breckinridge School of Nursing:

- On April 2, 2012, a faculty member indicated that she "feared for the safety of the students and the safety of the public" when she observed students from the program without adequate assessment and other skills.
- The program's December 2009 admissions resulted in a 31% graduation rate. The March 2010 admissions resulted in a 16% graduation rate, and the June 2010 admissions posted a 2.8% on-time graduation rate.
- A faculty member alleged that Breckinridge had admitted students who were unprepared, stating, "they want bodies and they'll pull them off the street."
- Clinical faculty changed students' answers on nursing exams to improve their scores.
- Students who reported faculty using profane language were subject to scrutiny after being told that retaliation would not occur. A student even transferred campuses because she feared retaliation from the program administrator.
- Campus directors and administrators subjected students and faculty to intimidation, retaliation, disrespect, and lack of responsiveness to serious problems. They even made student evaluations public.

In another example, this time from 2013 at the Henderson, Nevada, campus, a nursing instructor faced corrective action after a student under her supervision delivered the wrong medication. She failed to ensure that the student nurse asked the patient their name and date of birth prior to the administration of medicine; she allowed the student to take medication for two patients into the room at the same time; and she allowed the student to accept and administer a syringe of medication that the student had not drawn up herself and was also unlabeled.[1025]

Additionally, ACICS and independent nursing boards filed reports with damning summaries of the lack of quality of instruction at a number of ITT nursing programs, including:

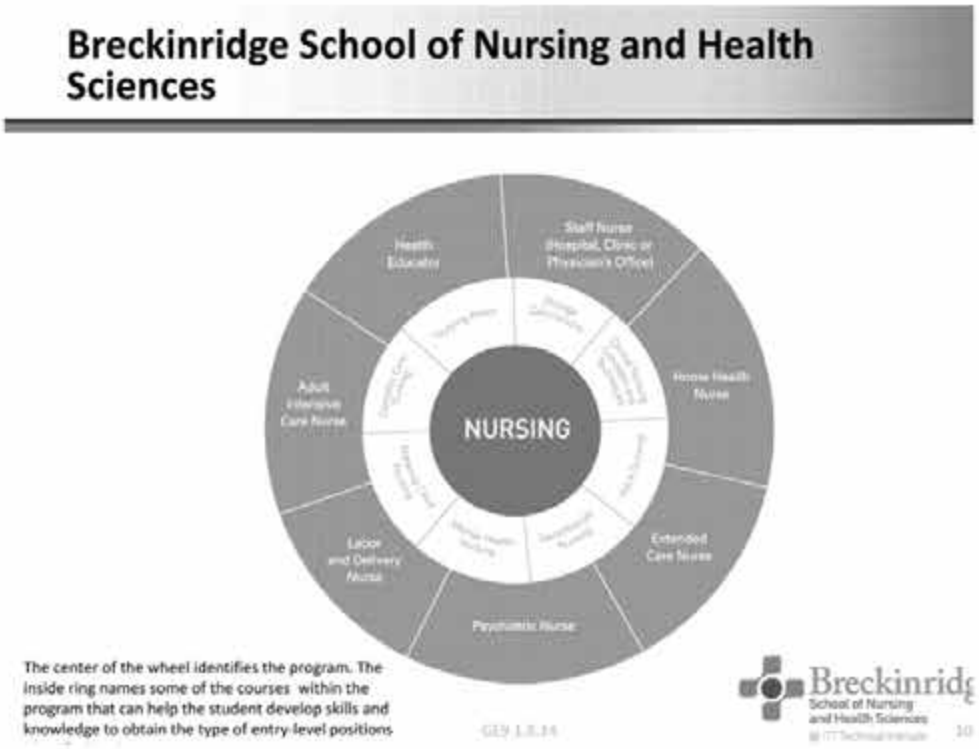
- **Rancho Cordova, California – 2012**: A 2012 ACICS report for the nursing program at this campus determined that ITT's clinical/externship agreements were not mutually signed and did not include specific learning objectives, course requirements, or evaluation criteria.[1026] A progress report on ITT's response to the California Board of Registered Nursing's Report of Noncompliance Findings found seven total areas of noncompliance. The violations included inadequate program staffing and funding, clinically incompetent faculty, and inadequate clinical facilities.[1027]

- **Hilliard, Ohio – 2013**: The Ohio Board of Nursing responded to a 2013 email from the nursing chair asking whether 12 of 60 clinical hours for pediatric nursing could be fulfilled with students observing at a school and writing a paper. The answer was no. The board of nursing additionally noted other issues, including that ITT was teaching maternal/child nursing with no clinicals; that ITT claimed to have a clinical component for critical care nursing fulfilled at a women's reformatory; and that at least one preceptor did not meet the minimum requirement of 2 years nursing experience.[1028]

This disorganization and incompetence had obvious impacts on the student experience. In the words of one student from Fort Wayne, Indiana, the "continual changes" in the nursing program, "including our 7th nursing chair in almost 3 years," "need[] to get resolved," otherwise "it will be a disgrace to say that I graduated from ITT."[1029]

J. ITT Misrepresented the Career Paths Available to Graduates of its Nursing Program

Similar to its misleading marketing of its other programs, ITT also misrepresented the value of its nursing program through the use of a "career wheel"[1030] purporting to demonstrate the wide array of career types available to its nursing graduates. This marketing device misled prospective students into thinking that an associate's degree through ITT's programmatically unaccredited nursing program would allow them to enter highly regulated nursing fields, including Staff Nurse (Hospital, Clinics or Physician's Office), Home Health Nurse, Extended Care Nurse, Psychiatric Nurse, Labor and Delivery Nurse, Adult Intensive Care Nurse, or Health Educator[1031]:



Again, many of these positions were, by definition, out of reach for many ITT nursing graduates, given the nursing program's limitations and lack of accreditation.

Similar marketing materials dubiously extolled the benefits of an ITT nursing degree with claims that the school (1) provided access to classes that combined classroom/lab instruction; (2) allowed students to gain supervised clinical experience; (3) made students eligible to apply for and take the NCLEX exam for licensure as a registered nurse; and (4) provided career services assistance.[1032] ITT also claimed that "[m]ost [ITT] programs of study blend traditional academic content with applied learning concepts."[1033]

Related to program outcomes, there was also job placement rate manipulation at ITT's nursing program. A dean who managed academic affairs at the Tallahassee, Florida, campus from 2011 to 2015 noted that although "[t]he large majority of students ITT reported as being placed were in the nursing field[,] most of these students were already in the field when they started the nursing program."[1034]

ITT's Breckinridge School of Nursing was a confluence of some of ITT's worst abuses, all rolled into one program of study, and its failure is a reflection of ITT's larger culture of lying to students about critical information to ensure high enrollment, squeezing those students for profit, and passing them through deficient and underfunded programs of study.

CONCLUSION

The evidence presented in this report shows the extent of ITT's abusive, misleading, and predatory practices. Its business model relied on ensnaring newly enrolled students immediately with student loan obligations that were concealed and misrepresented. It resorted to deceptive and outright illegal behavior to ensure enrollment in its financial aid system—a system that is still harming thousands of former ITT students to this day with inescapable, life-ruining debt.

ITT was able to escape responsibility for its financial insolvency by declaring bankruptcy in September 2016. Its executives simply walked away from the disaster they created. The students they defrauded, however, were not so lucky, and have been left to this day with the unfair burden of paying back loans they never should have been forced into by false promises of careers and advancement. The evidence in this report shows the widespread, unrelenting pattern of this deception, which profited ITT at the expense of its students.

Unfortunately, the predatory business model that drove ITT continues at numerous for-profit college companies still in operation and receiving federal student aid today. The outrageous abuses at ITT, and the terrible consequences for its students, as revealed in this report, should compel the U.S. Department of Education and other federal and state oversight and law enforcement agencies to vigorously investigate allegations of predatory abuses at current schools and take strong action to protect students and taxpayers.

ENDNOTES

1 See Class Action Adversary Proceeding Complaint, Villalba v. ITT Educational Services Inc. (In re ITT Educational Services Inc.), Adv. Case No. 17-50003 (Bankr. S.D. Ind. Jan. 3, 2017), https://perma.cc/LU3S-CU6F (hereinafter "Villalba Compl."); see also the following link for the complaint's corresponding exhibits and all other relevant case documents: https://perma.cc/TUH3-Q7F7.

2 In re ITT Educational Services Inc., Case No. 16-07207-JMC-7A (Bankr. S.D. Ind. Sept. 16, 2016), https://perma.cc/NN6U-BN9U.

3 Pin cites for exhibits cited in this report are based on the PDF pagination, which includes the cover page of the document as page 1.

4 See infra pp. 22-23 for more information on ITT's mystery shopper program.

5 Pursuant to a judicially approved Protective Order, the Project on Predatory Student Lending has obtained permission to disclose these documents in full to the U.S. Department of Education and in some other contexts. See Order Granting Student Claimants' Mot. Modifying Protective Order, In re ITT Educational Services Inc., Case No. 16-07207-JMC-7A Doc 3980 (Bankr. S.D. Ind. June 17, 2020), https://perma.cc/Q7A4-8JHB; see also Order Granting Student Claimants' Mot. Further Modifying Protective Order, In re ITT Educational Services Inc., Case No. 16-07207-JMC-7A Doc 4473 (Bankr. S.D. Ind. September 17, 2021), https://perma.cc/3T2M-EBNJ; see also Order Granting Mot. For Entry of Protective Order, In re ITT Educational Services Inc., Case No. 16-07207-JMC-7A Doc 2803 (Bankr. S.D. Ind. August 15, 2018), https://perma.cc/3ZJY-XYN2. Additionally, per the stipulations of the Protective Order, exhibits cited in this report and included in the attached appendix may be made available to former ITT students upon request for submission to the Department of Education. Borrowers can request such use at the following link: https://perma.cc/CDR2-AVBR.

6 These statements from former ITT students were submitted as exhibits in the student class's adversary proceeding complaint.

7 Exhibit 1, Email from Compliance at HQ to Human Resources at HQ, Subject: "RE: [Rep at San Diego] 039" (Aug. 27, 2012).

8 Villalba Compl., Merrill Declaration Exhibit 4, Rick Bueche Attestation at 56 ¶¶ 28-29, https://perma.cc/SRL2-NN6E (hereinafter "Merrill Decl. Ex. 4 R. Bueche Attest.").

9 Exhibit 2, Email from CEO Kevin Modany to HQ, Subject: "RE: Presentation" (Nov. 18, 2013).

10 Exhibit 3, ITT Employee Counseling Form, Tallahassee, FL (Sept. 16, 2015).

11 See infra pp. 111-116 for a detailed breakdown of ITT's finances and spending priorities.

12 See infra pp. 77-80 for more information on the "90/10 rule" and its impact on ITT's operations.

13 See Exhibit 4, Email from Dean at Tucson, AZ campus to Employee at Tucson, AZ campus, Subject: "Ethics Violation" (Sept. 27, 2013); see also Villalba Compl., Merrill Declaration Exhibit 2, Rodney Lipscomb Attestation at 33 ¶ 23, https://perma.cc/SRL2-NN6E (hereinafter "Merrill Decl. Ex. 2 R. Lipscomb Attest.").

14 Exhibit 5, Mystery Shopper Report for San Dimas, CA (Sept. 2010).

15 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 34 ¶ 26.

16 Exhibit 6, Email from Student Relations Manager at HQ to Student Complainant at Grand Rapids, MI campus (June 24, 2005). Throughout this report, student complaints and testimony are reproduced as originally written, with alterations only for clarity.

17 See infra pp. 34-39 for details on how ITT misrepresented the transferability of its credits.

18 See infra pp. 40-45, on ITT's accreditation misrepresentations.

19 See infra pp. 122-125, covering ACICS and its problematic relationship with ITT.

20 Exhibit 7, Internal ITT Document: Summary of Mystery Shops -- Beginning Feb. 2010, at 11-12.

21 See infra pp. 81-84 for more on ITT's financial aid machinery.

22 See generally Villalba Compl., Exhibit 13, https://perma.cc/7H2G-PX3H (hereinafter "Villalba Ex. 13") (collected student testimony on ITT obfuscating the distinction between various types of loans and grants).

23 Villalba Ex. 13 at 49-50 ¶ 265 (student enrolled at the Henderson, NV campus from 2007 to 2012).

24 Exhibit 8, NW District CMM Planning Meeting Notes at 2 (2009).

25 Id. at 3.

26 See infra pp. 98-104 on ITT's Opportunity Scholarship and other "scholarship" programs.

27 Villalba Compl., Merrill Declaration Exhibit 1, Jennifer Cody Attestation at 6 ¶ 14, https://perma.cc/SRL2-NN6E (hereinafter "Merrill Decl. Ex. 1 J. Cody Attest.").

28 Exhibit 9, Email from Chief Operating Office at HQ to Student Relations Manager at HQ, Subject: "RE: Indy student complaint" (Jan. 4, 2005).

29 Exhibit 361, Email from Chief Compliance Officer at HQ to CEO Kevin Modany, Subject: "RE: Green Bay—019—Mystery Sh[o]p—In Person" (July 2, 2013).

30 Merrill Decl. Ex. 4 R. Bueche Attest. at 56 ¶ 30.

31 Villalba Compl. at 5 ¶ 22.

32 See infra pp. 65-67 on ITT's marketing of its technology.

33 See infra pp. 68-71 on ITT's lack of investment in educational resources.

34 Exhibit 10, Email from HQ Employee to District Managers, cc: CEO Kevin Modany, Subject: [No Subject] (May 7, 2012).

35 See infra pp. 65-76 on ITT's non-investment in education.

36 See generally Villalba Compl., Exhibit 6, https://perma.cc/U48A-KSNL (hereinafter "Villalba Ex. 6") for sworn student statements on how ITT misrepresented the quality of their instructors, training, curriculum, and facilities.

37 See infra pp. 110-118 regarding ITT's business priorities.

38 Exhibit 11, Email from Compliance/Regulatory Officer at HQ to CEO Kevin Modany, Subject: "RE: Online Issues" (Feb. 19, 2016) (discussing communication from instructor at Kansas City, MO campus complaining of students being forced into online coursework); see also Exhibit 12, Student complaint report (Sept. 11, 2012) (complaint code: Quality of Education, at Murray, UT campus).

39 Exhibit 13, Email from Chief Academic Officer at HQ to CEO Kevin Modany, Subject: "RE:

Hybrid/Blended Textbooks forHU1440, PS1350, and GE175" (Feb. 29, 2012).

40 Exhibit 14, Email from Director of Human Resources to HQ Employees, Subject: "RE: Online Issues" (Feb. 19, 2016).

41 Id.

42 ITT never achieved programmatic accreditation for its nursing program. See infra pp. 134-139.

43 Exhibit 15, Indiana Board of Nursing meeting minutes at 2-3 (Jan. 15, 2015).

44 Exhibit 16, Arizona Board of Nursing investigative documents and ITT Response, at 137 (2013).

45 Exhibit 17, Email from HQ Employee to Regulatory/Compliance at HQ, Subject: "FW: Branch I Applications" (May 23, 2011).

46 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 42 ¶ 72.

47 Exhibit 18, Email from Human Resources at HQ to HQ, Subject: "Termination Recommendation - Knoxville – [redacted]" (Mar. 14, 2012).

48 See infra pp. 54-62 regarding ITT's job placement rate manipulation.

49 See infra pp. 17-18, 110-128 for information on ITT's corporate structure and business priorities.

50 See, e.g., Villalba Compl., Merrill Declaration Exhibit 3, Attestation of Dawn Lueck at 50 ¶ 34, https://perma.cc/SRL2-NN6E (hereinafter "Merrill Decl. Ex. 3 D. Lueck Attest.").

51 Exhibit 19, Email from Human Resources at HQ to Employee at Campus 118 (Columbus, OH), Subject: "draft" (Apr. 25, 2012).

52 Exhibit 20, Email from Student Relations Supervisor at HQ, Subject: "FW: Complaints of passing Students" (Sept. 12, 2012).

53 Merrill Decl. Ex. 4. R. Bueche Attest. at 57 ¶¶ 34, 37.

54 Department of Education Press Release, "Extended Closed School Discharge Will Provide 115K Borrowers from ITT Technical Institute More than $1.1B in Loan Forgiveness," Aug. 26, 2011. https://perma.cc/G383-8RMU.

55 Deptartment of Education Press Release, "Department of Education Announces Approval of New Categories of Borrower Defense Claims Totaling $500 million in Loan Relief to 18,000 Borrowers," June 16, 2021. https://perma.cc/2XA5-F54W.

56 See infra pp. 78-79, 112 for more on ITT's risk-sharing agreements.

57 See infra pp. 122-125 on ITT's relationship with ACICS.

58 Exhibit 501, Email from HQ to CEO Kevin Modany, Subject: "RE: GE Chart" (May 27, 2015).

59 ITT Educational Services, Inc., Annual Report (Form 10-K) (Dec. 31, 2015), https://perma.cc/US3E-6FN8.

60 Id.; see also, e.g., Reference for Business, Company Index for ITT, https://perma.cc/BK5M-98ZQ, (summarizing company history).

61 In re ITT Educational Services Inc., Case No. 16-07207-JMC-7A (Bankr. S.D. Ind. Sept. 16, 2016).

62 See Rick Ganley & Michael Brindley, "After Nashua's Daniel Webster College Signs Off,

What's Next for Students and Staff?," New Hampshire Public Radio (May 26, 2017), https://perma.cc/WVU5-S84J.

63 For example, the Consumer Financial Protection Bureau (CFPB) sued ITT in 2014. See Complaint, Consumer Financial Protection Bureau v. ITT Educational Services, Inc., Civil Action 14-00292-SEB-TAB (S.D. Ind. Feb. 26, 2014) (hereinafter "CFPB Complaint"), https://perma.cc/3ND9-M7PA.

The New Mexico Attorney General also sued ITT that same year, and the Massachusetts Attorney General followed in 2016. *See* Complaint, *New Mexico ex rel. King v. ITT Educational Services, Inc.*, No. D-202-CV-2014-01604 (N.M. 2d Jud. Dist. Ct., Bernalillo County, Feb. 27, 2014) (hereinafter "NM AG Complaint"), https://perma.cc/YDP7-GEN2;

Complaint, *Massachusetts v. ITT Educational Services, Inc.*, Civil Action 16-0411 (Mass. Super. Ct. Mar. 31, 2016) (hereinafter "MA AG Complaint"), https://perma.cc/W4K5-BQ4K.

64 See Gretchen Morgenson, "A Whistle Was Blown on ITT; 17 Years Later, It Collapsed," New York Times (Oct. 21, 2016), https://perma.cc/S2NB-X9M5. See also https://perma.cc/BL3B-B93L (for collection of articles on federal investigations of ITT from the early 2000s.)

65 See "Insider Trading Activities at ITT Educational Services Inc. (ESI), Part 2," Insider Monitor, https://perma.cc/7GK8-GQR9.

66 See Press Release, ITT Educational Services Inc., "ITT CEO to Resign in February" (Aug. 18, 2015), available at https://perma.cc/57FW-GKSM.

67 Id.

68 Exhibit 21, J. Clayton Affidavit at 2 ¶ 6.

69 These regions, or districts, covered at least 35 states and included the following designations: Central, Mid-Atlantic, Midwest, North Central, North East, North West, Ohio Valley, Online, South Atlantic, South Central, South East, Southern, Southern California, and South West.

70 See infra pp. 48-49, 52-54, 114-116, 157-158 for examples of HQ's marketing centralization.

71 Merrill Decl. Ex. 3 D. Lueck Attest. 46 ¶ 8

72 Directors of Finance, or DOFs, were the highest ranking employee in each campus's financial aid department.

73 Merrill Decl. Ex. 1 J. Cody Attest. at 5 ¶¶ 6-7

74 Merrill Decl. Ex. 3 D. Lueck Attest. at 46 ¶ 8-9.

75 Exhibit 22, Email from Registrar at Miami, FL campus to HQ, Subject: "FW: Pre-req waiver request: [redacted]" (June 21, 2012).

76 Exhibit 23, Memorandum to/from HQ employees (Aug. 5, 2010). As noted in the registrar's meeting notes, "Have found a quarter million dollars worth of refunds to be processed. Kevin Modany making decisions on the refunds." Id.

77 See infra pp. 111-118 for more on ITT's business model and corporate strategies.

78 Merrill Decl. Ex. 4 R. Bueche Attest. at 55 ¶¶ 20, 21.

79 Exhibit 24, ITT Internal Document: "Boardroom Process" (Dec. 2011).

80 Exhibit 25, ITT Internal Document: Rep. Meeting Notes (Oct. 26, 2015).

81 Merrill Decl. Ex. 4 R. Bueche Attest. at 53 ¶¶ 4-5.

82 Exhibit 26, Declaration of Pearl Gardner at 3 ¶ 8, Consumer Financial Protection Bureau v. ITT Education, Inc., No. 1:14-cv-00292-SEB-TAB (S D. Ind. Sept. 22, 2016). (Hereinafter "P. Gardner CFPB Decl.").

83 Exhibit 27, Email to/from HQ Employees, Subject: "RE: Admissions Rep Open House Ppt. pptx" (Sept. 21, 2010).

84 Exhibit 26, P. Gardner CFPB Decl. at 4 ¶ 14.

85 Merrill Decl. Ex. 4 R. Bueche Attest. at 54 ¶ 10.

86 Id. at 54 ¶ 12.

87 Id. at 54-55 ¶¶ 17-18.

88 See Exhibit 28, ITT Internal Document: "Representatives Minimum Standards for Conducted Interviews – Definitions and FAQs" (Oct. 2012).

89 Exhibit 21, J. Clayton Affidavit at 3 ¶ 10.

90 Id. at 2 ¶ 7.

91 Exhibit 29, Internal ITT Document: "November 2011 Monthly Manager Report" (Dec. 7, 2011).

92 Exhibit 30, ITT Internal Document: "Strategic Marketing Plan – A Focus on Core Programs" at 38 (2015).

93 Exhibit 31, ITT Procedure Manual: "Recruitment Internet Appointment Setting Procedure" (Feb. 20, 2013).

94 Exhibit 32, Email from outside counsel to Legal & Compliance at HQ, Subject: "summary of 9/8/14 call with [redacted], former ITT representative in Lexington, KY" (Sept. 9, 2014).

95 Id.

96 Id.

97 Exhibit 33, Email from HQ to District Managers and Directors of Field Recruitment, Subject: "Responding both Timely and Effectively to Customer Requests" (June 2, 2015).

98 Exhibit 34, Email from CEO Kevin Modany to Human Resources at HQ, Subject: "Re: PeopleAnswers update" (Sept. 12, 2014).

99 See Exhibit 35, Mystery Shopper Report for San Bernardino, CA (July 2010) (example of a telephonic mystery shopper report).

100 Brief in Support of Motion to Dismiss at 5, Consumer Fin. Prot. Bureau v. ITT Educ. Servs., Inc., No. 1:14-cv-00292-SEB-TAB (S.D. Ind. May 19, 2014), ECF No. 23. https://perma.cc/QC5R-QFGM.

101 Exhibit 36, Email from CEO Kevin Modany to Legal at HQ and outside counsel, Subject: "RE: Davis Update" (July 28, 2014).

102 See Exhibit 27, Internal ITT Document: "Overview of Mystery Shopper Program" (2010).

103 See Exhibit 38, Email from Campus 84 (Harrisburg, PA) to Marketing at HQ, Subject: "FW: Mystery Shopper - Important - Read" (Dec. 22, 2010).

104 U.S. Government Accountability Office "For-Profit Colleges Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices," Nov. 30, 2010. For the full Government Accountability Office Report, see https://perma.cc/VFU5-S3QU.

105 See Exhibit 39, ITT Training Document: "Marketing Training" (Aug. 16, 2010) (marketing training minutes discussing Government Accountability Office investigation and emphasizing the need to "stick to scripts").

106 See Exhibit 40, Mystery Shopper Report for Austin, TX (Dec. 2011).

107 See Exhibit 41, Internal ITT Document: "Operations Review - Compliance and Internal Audit" at 22-24 (Oct. 6, 2011) (PowerPoint on compliance and internal audit data, showing that the frequency of violations remained high in 2011 and that the same violations persisted from 2010).

108 See Exhibit 7, Internal ITT Document: Summary of Mystery Shops -- Beginning Feb. 2010 at 3-4 (detailing 2010 corrective actions taken, which included only five terminations).

109 Exhibit 42, Email from Corporate Counsel at HQ to Human Resources at HQ, Subject: "RE: Mystery Shopper 'Flags' and Corrective Actions- [redacted]" (Sept. 22, 2010).

110 Exhibit 32, Email from outside counsel to Legal & Compliance at HQ, Subject: "summary of 9/8/14 call with [redacted], former ITT representative in Lexington, KY" (Sept. 9, 2014).

111 Exhibit 43, Email from Legal/Compliance to HQ Employees, Subject: "Fwd: Grand Rapids-160--Mystery Shop--In Person" (Nov. 21, 2012).

112 Id.

113 Exhibit 44, Email from CEO Kevin Modany to Legal/Compliance at HQ, Subject: "Fwd: Grand Rapids-160--Mystery Shop--In Person" (Nov. 21, 2012).

114 Exhibit 45, Email from CEO Kevin Modany to Legal at HQ, Subject: "RE: summary re 8/26/14 call with [redacted], former ITT representative" (Aug. 27, 2014).

115 Exhibit 46, Email from CEO Kevin Modany to Legal/Compliance at HQ, Subject: "Fwd: Duluth-071--Mystery Shop--In Person" (Nov. 21, 2012).

116 Exhibit 47, Email from CEO Kevin Modany to COO at HQ, Subject: "FW: Atlanta--109--Mystery Shop--In Person" (Aug. 3, 2015).

117 Exhibit 48, Email from CEO Kevin Modany to COO at HQ, Subject: "FW: Atlanta--109--Mystery Shop--In Person" (Sept. 9, 2013).

118 Exhibit 49, Email from COO at HQ to CEO Kevin Modany, Subject: "FW: Culver City--145--Mystery Shop--In Person" (Apr. 23, 2014).

119 Exhibit 50, ITT Internal Document: "Rep Plan versus Actual Coaching Document" at 2 (Sept. 2013).

120 Exhibit 51, Email from National Director of Career Services at HQ to CEO Kevin Modany, Subject: "RE: site Visits" (Feb. 23, 2016).

121 Exhibit 52, Email from National Director of Career Services at HQ to CEO Kevin Modany, Subject: "Re: Site Visits - Orland Park, IL 074" (Feb. 24, 2016).

122 Exhibit 30, ITT Internal Document: "Strategic Marketing Plan – A Focus on Core Programs" at 6 (2015).

123 The Massachusetts Attorney General's Office, in its 2014 action against ITT, also noted that these rushed enrollment tactics were standard practices for ITT recruiters: "Part of ITT's recruitment strategy was to persuade prospective students to visit a campus as soon as possible, where maximum pressure could be applied to induce them to enroll. Once on campus, prospective students were encouraged to apply, take an admissions exam, and complete a financial aid pre-appointment that same day. . . . As one former student

noted, he was pushed through the admissions process in less than an hour, 'in and out.' Another former student said that the admissions process was 'rushed as if they were doing whatever they could as fast as they could to get my signature.'" MA AG Compl. at 9 ¶¶ 40-41.

124 Exhibit 53, Mystery Shopper Report for Albuquerque, NM at 5 (Apr. 2010).

125 Exhibit 54, Mystery Shopper Report for Webster, TX at 5 (Aug. 2010) (mystery shopper also noted that the recruiter claimed that seats at that campus were "limited" at 3).

126 Villalba Compl., Exhibit 18 at 13 ¶ 59, https://perma.cc/G5MT-LUN8 (hereinafter "Villalba Ex. 18"). This student attended the Ft. Lauderdale, FL campus for Information Security from 2004 to 2007.

127 Villalba Ex. 18 at 21 ¶ 95 (student attended the Oak Brook, IL campus for Information Systems Security from 2009 to 2013).

128 Exhibit 55, Email from Communications Director at HQ to College Directors, Subject: "Shopping Warning" (March 8, 2013).

129 Id.

130 Id.

131 Exhibit 56, ITT Internal Document: "Shoppers Warning" at 2 (Jan. 28, 2014).

132 Exhibit 57, Email from Legal at HQ to CEO Kevin Modany, Subject: "FW: prospective student [redacted]" (Apr. 20, 2016).

133 Exhibit 58, ITT Internal Document: Director of Recruitment coaching notes at 12 (2014).

134 Id. at 10.

135 Exhibit 59, ITT Internal Document: Director of Recruitment coaching notes at 12 (2014).

136 Id. at 2.

137 Exhibit 60, ITT Internal Document: Director of Recruitment coaching notes at 9 (2014).

138 Exhibit 61, ITT Internal Document: Director of Recruitment coaching notes at 13 (2014).

139 Exhibit 62, ITT Internal Document: Director of Recruitment coaching notes at 9 (2014).

140 See infra pp. 99-103 for more information on ITT's Opportunity Scholarship.

141 Exhibit 63, ITT Internal Document: Director of Recruitment coaching notes at 3-4 (2014).

142 Senate Health, Educ., Labor & Pensions Comm., 112th Cong., For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success at 67 (2012) (hereinafter "Senate HELP Report"), *available at* https://perma.cc/S38L-EJ52.

143 Senate HELP Report at 68.

144 Id. at 66.

145 Id. at 67.

146 Exhibit 64, ITT Internal Document: "Best of Best" (2008) (report regarding recruitment metrics).

147 Exhibit 1, Email from Compliance at HQ to Human Resources at HQ, Subject: "RE: [Rep at San Diego] 039" (Aug. 27, 2012).

148 Exhibit 65, "ITT Technical Institutes' Statement Regarding Senator Harkin's Characterization of Standard Practices" (Feb. 7, 2011).

149 Exhibit 66, Email from Legal at HQ to CEO Kevin Modany, Subject: "RE: A Sunday email is rarely a good thing…" (July 30, 2012).

150 Exhibit 67, Email from Compliance at HQ to Operations at HQ, Subject: "Re: Unauthorized Training Material" (Nov. 1, 2012).

151 Exhibit 1, Email from Compliance at HQ to Human Resources at HQ, Subject: "RE: [Rep at San Diego] 039" (Aug. 27, 2012).

152 For additional examples of pain-based recruiting referenced in training documents, see (1) Exhibit 68, ITT Training Presentation: "Mind the Gap – Keeping Your Prospect Involved"; (2) Exhibit 69, ITT Training Presentation: "Objection Resolution Handouts."

153 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 33 ¶ 21. Rodney Lipscomb was Dean of Academic Affairs at ITT's Tallahassee, FL campus from April 2011 to January 2015.

154 Exhibit 70, Email from CEO Kevin Modany to Legal/Regulatory at HQ, Subject: "RE: Albuquerque MOR Corrective Action Review" (Aug. 4, 2015).

155 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 33 ¶ 22.

156 Exhibit 6, Email from Student Relations Manager at HQ to Student Complainant at Grand Rapids, MI campus (June 24, 2005).

157 Exhibit 30, ITT Internal Document: "Strategic Marketing Plan – A Focus on Core Programs" at 29 (2015).

158 CFPB Complaint at 5 ¶ 4. The CFPB noted that these salary and credit score enrollment figures were based on figures verified by ITT's own Chief Financial Officer. Complaint available at https://perma.cc/XF9A-LBJM.

159 See Exhibit 71, Email to HR Partner at HQ and District Manager, Subject: "Summary of Findings – Ethics Violation Allegation" (Oct. 5, 2013) (describing student in Tucson who "requested to be dropped from his classes because he was not proficient in the English language. He could not read his textbook"; the request was denied because the student "passed the Wonderlic test (on his third attempt)"); see also Exhibit 72, ITT Internal Document: Director of Recruitment coaching notes at 3 (2014) (involving a representative in Seattle, Washington who was coached to "SLOW DOWN on the phone" because "many of our prospective students do not speak English").

160 Exhibit 73, Email from Employees at Cary, NC campus to HQ Employees, Subject: "Response to Student Complaint - 114 [redacted]" (June 21, 2012) (Career Services employee noting that student "has a background that is preventing him from qualifying for positions"); see also Exhibit 74, Email from VP of Nursing Program at HQ to HQ Employees, Subject: "RE: Strongsville Nursing: Student Clinical Agreement" (Mar. 6, 2014) (noting that a nursing student had been warned that she might not be able to obtain clinical placements because of her "blemished background check").

161 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 35 ¶ 33.

162 Id. at 34 ¶ 24.

163 Id. at 34 ¶ 27.

164 Id. at 35 ¶ 33.

165 Exhibit 21, J. Clayton Affidavit at 2-3 ¶¶ 8-9.

166 Merrill Decl. Ex. 4 R. Bueche Attest. at 34-35 ¶¶ 28-29.

167 Exhibit 4, Email from Dean at Tucson, AZ campus to Employee at Tucson, AZ campus,

Subject: "Ethics Violation" (Sept. 27, 2013).

168 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 33 ¶ 23.

169 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 34 ¶ 26.

170 In one particularly revealing email circulated amongst the staff at the Harrisburg, Pennsylvania campus (dated December 22, 2010), an employee, remarking on recent mystery shopper findings, stated that "the most [frequently cited issues] are skipping slides, indicating classes are limited in order to create urgency in gaining an application, misrepresenting the price of tuition and guaranteeing financial aid eligibility." Exhibit 38, Email from Campus 84 (Harrisburg, PA) to Marketing at HQ, Subject "FW: Mystery Shopper - Important - Read" (Dec. 22, 2010).

171 Exhibit 75, Mystery Shopper Report for Norwood, MA at 3 (Mar. 2010).

172 Exhibit 5, Mystery Shopper Report for San Dimas, CA at 3 (Sept. 2010).

173 Exhibit 76, Email to/from HQ Employees, Subject: "RE: Merrillville--Mystery Shopper --In Person--Red and Yellow Flags" (Dec. 9, 2010).

174 Exhibit 77, Mystery Shopper Report for Maumee, OH at 3 (June 2010).

175 The Wonderlic Contemporary Cognitive Ability Test (formerly known as the Wonderlic Personality Test) is a basic aptitude and problem-solving assessment consisting of 50 multiple choice questions to be answered in 12 minutes. See https://perma.cc/W8WT-E9QW.

176 Exhibit 78, Internal ITT Document: ACICS Grant Evaluation Report for Youngstown, OH at 13 (Feb. 17, 2006).

177 Id.

178 Merrill Decl. Ex. 4 R. Bueche Attest. at 56-57 ¶ 31.

179 Id. at 55-56 ¶¶ 22, 25.

180 Id. at 6 ¶ 39.

181 Exhibit 79, Email from Human Resources at HQ to HQ, Subject: "FW: Possible Policy Violations 128-Tallahassee" (May 15, 2014).

182 Borrower Defense Unit, U.S. Department of Education, "Recommendation for Everest/WyoTech Borrowers Alleging Transfer of Credit Claims" at 19 (Oct. 24, 2016) (hereinafter "Everest/WyoTech Credit Transferability Memo"), https://perma.cc/TF3E-4U8Q.

183 Borrower Defense Unit, U.S. Department of Education, "Recommendation for Borrower Defense Relief for Heald College Borrowers Alleging Transfer of Credit Claims" at 792 (Oct. 20, 2016) (hereinafter "Heald Transfer of Credits Memo"), https://perma.cc/TF3E-4U8Q.

184 The Department's legal analysis of this issue was informed, in part, by the Federal Trade Commission Act and its related case law. See Everest/WyoTech Credit Transferability Memo at 13-15; see also FTC Act § 5(a)(l), 15 U.S.C. § 45(a)(l); FTC Act § 12(a), 15 U.S.C. § 52(a).

185 Everest/WyoTech Credit Transferability Memo at 14.

186 Id.

187 Exhibit 80, ITT Procedure Manual: "Contact Center Monitoring Procedure CCREC 1.2" at 10 (Aug. 5, 2013).

188 Exhibit 81, Sample ITT Enrollment Catalog, Phoenix, AZ at 58 (2014-2015).

189 Exhibit 82, Student Complaint Report, Bessemer, AL, Complaint Code: Recruitment Process at 2 (Nov. 1, 2010).

190 Exhibit 83, Student Complaint Report, Troy, MI, Complaint Code: Finance/financial aid at 3 (Feb. 22, 2008).

191 Id. at 6-7.

192 Id. at 6.

193 Exhibit 84, Email from HQ to Campus 110 (Chattanooga, TN), Subject: "Chattanooga-110-Mystery Shop-In Person" (Nov. 15, 2011).

194 Exhibit 85, Email from HQ to Campus 086 (Getzville, NY), Subject: "Getzville--Mystery Shopper--In Person" (July 28, 2011).

195 Exhibit 86, Email from Global Compliance to HQ, Subject: "RE: Job 4747271 Detail Report - Site 95 - 201105" (July 26, 2011).

196 Exhibit 87, Email from HQ to Campus 011 (Indianapolis, IN), Subject: "Indianapolis-011-Mystery Shop--In Person" (Oct. 25, 2011).

197 Exhibit 88, Email to/from HQ, Subject: "FW: King of Prussia--Mystery Shop--In Person--Orange Flags" (Apr. 22, 2010). The mystery shopper stated, "I was given a catalog and looking at my unofficial transcript it was determined that there is one gen-ed. [course] I will have to take and one I can test out of," but according to the ITT auditor, "upon further inquiry, the shopper confirmed the Representative did not highlight the information on transferability of course credits in the catalog."

198 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 37 ¶¶ 42-43.

199 Exhibit 89. See for list of 2010/2011 mystery shopper report exhibits with documented instances of ITT recruiters misrepresenting ITT's credit transferability by falsely suggesting it was possible at the discretion of the receiving institution.

200 Exhibit 90. Contains a list of exhibits with 2010/2011 mystery shopper reports that documented ITT recruiters directly lying to prospective students by claiming that ITT credits would transfer to other schools.

201 Exhibit 76, Email to/from HQ Employees, Subject: "RE: Merrillville--Mystery Shopper --In Person--Red and Yellow Flags" (Dec. 9, 2010).

202 Exhibit 188, Mystery Shopper Report for Portland, OR (March 2010) (highlighting added for emphasis).

203 Id. This flagged mystery shopper interaction is doubly notable because it is also an example of recruiters misrepresenting ITT's own flexibility regarding internal (between different ITT campuses and programs) credit transfers.

204 Exhibit 189, Mystery Shopper Report for Bessemer, AL. Dated May 2010.

205 Exhibit 7, Internal ITT Document: Summary of Mystery Shops -- Beginning Feb. 2010 at 10.

206 Id. at 11.

207 Exhibit 190, ITT Employee Corrective Action Form, Nashville, TN (May 6, 2010).

208 Exhibit 191, Mystery Shopper Report for Lathrop, CA (Nov. 2010).

209 Exhibit 192, Email from Campus 120 (Madison, WI) to HQ, Subject: "RE: Madison WI--Mystery Shop--In Person--Yellow Flag" (Dec. 14, 2010).

210 Exhibit 193, Email from HQ to Campus 116 (Madison, AL), Subject: "RE: Madison AL--Mystery Shop--In Person--Red flags" (June 14, 2010).

211 Exhibit 194, Student Complaint Report, King of Prussia, PA, Complaint Code: Finance/financial aid at 2 (Nov. 7, 2008).

212 Exhibit 195, Florida Department of Education Complaint File re ITT Miami at 4 (July 21, 2006).

213 Villalba Compl., Exhibit 10 at 32 ¶ 178, https://perma.cc/HS7S-84NT (hereinafter "Villalba Ex. 10"). This student was enrolled in the Multimedia program from 2003 to 2005.

214 Villalba Ex. 10 at 4 ¶ 19 (student attended the Tempe, AZ campus from 2004 to 2007).

215 Id. at 59 ¶ 352 (student was enrolled in the Construction Management program between 2007 and 2011).

216 Id. at 14 ¶ 75 (student was enrolled in the Computer and Electronics Engineering Technology program between 2009 and 2011).

217 Id. at 46-47 ¶ 273 (student was enrolled in the Network Security/Administration program from 2010 to 2012).

218 Id. at 90-91 ¶ 536 (student attended the Murray, UT campus between 2004 and 2008).

219 Id. at 80-81 ¶ 474 (student was enrolled in the Computer and Electronics Engineering Technology program from 2005 to 2007).

220 Exhibit 196, Student Complaint Report, Earth City, MO, Complaint Code: Quality of Education at 4 (Feb. 14, 2008).

221 Judith S. Eaton "An Overview of U.S. Accreditation," Council for Higher Education Accreditation, (revised Nov. 2015) https://perma.cc/F6AL-4KNH.

222 "The Fundamentals of Accreditation: What Do You Need to Know?," Council for Higher Education Accreditation (Sept. 2002), https://perma.cc/7BTH-EEW2.

223 "Accreditation and the Secretary of Education's Commission on the Future of Higher Education" https://perma.cc/B4TC-4H6A.

224 Higher Education Act § 101(a)(5), 20 U.S.C. § 1001(a)(5).

225 Senate HELP Report at 128.

226 U.S. Government Accountability Office, Report to the Ranking Member, Committee on Education and the Workforce, House of Representatives: Education Should Strengthen Oversight of Schools and Accreditors at 4-5 (Dec. 2014), https://perma.cc/P9XJ-LNDK.

227 Id. at 11.

228 "Overview of Accreditation in the United States," U.S. Department of Education (last modified Dec. 6, 2021), https://perma.cc/3GVX-QKLY.

229 Senate HELP Report at 62.

230 Id.

231 Id. at 129.

232 Id.

233 Id. at 131.

234 Id. at 130.

235 Id. at 128.

236 Id.

237 Id.

238 Id.

239 Everest/WyoTech Credit Transferability Memo at 2.

240 Villalba Ex. 10 at 14-15 ¶ 78 (student studied Computer Aided Drafting and Design [CDD] at ITT's San Bernardino, CA location from 2007 to 2009).

241 Exhibit 197, Student Complaint Report, Kansas City, MO, Complaint Code: Quality of Education at 4 (Oct. 22, 2008).

242 See Exhibit 83, Student Complaint Report, Troy, MI, Complaint Code: Finance/financial aid at 3 (Feb. 22, 2008). ITT's response to this complaint read, in part: "[O]ur campus is accredited by the Accrediting Council for Independent Colleges and Schools. During our recent reaccreditation visit, ITT Technical Institute, Troy Campus, was awarded with the highest distinction of 0 citations!" Id. at 6.

243 Villalba Ex. 10 at 100 ¶ 591 (student attended from 1995 to 1996, earning an associate degree in CAD Drafting and Design).

244 Id. at 76 ¶ 446 (student attended for Construction Management between 2008 and 2012).

245 Id. at 1 ¶ 4 (student attended the Bessemer, AL campus from 2008 to 2010).

246 Id. at 43 ¶ 248 (student was enrolled in the IT-Networking program between 2009 and 2010).

247 Id. at 67 ¶ 399 (student was enrolled in the Computer Networking Systems program from 2009 to 2011).

248 Id. at 66 ¶ 392 (student was enrolled in Computer and Electronics Engineering Technology program from 2009 to 2011).

249 Id. at 62 ¶ 366 (student was enrolled at the Albuquerque, NM campus from 2008 to 2012).

250 Exhibit 7, Internal ITT Document: Summary of Mystery Shops -- Beginning Feb. 2010 at 12.

251 Exhibit 198, ITT Internal Document: Training Presentation "Enrollment Essentials" at 8.

252 Exhibit 7, Internal ITT Document: Summary of Mystery Shops -- Beginning Feb. 2010 at 1-18.

253 Exhibit 199, Mystery Shopper Report for Wyoming (Grand Rapids), MI (Nov. 2010).

254 Exhibit 200, Mystery Shopper Report for Mobile, AL (Dec. 2010).

255 Exhibit 7, Internal ITT Document: Summary of Mystery Shops -- Beginning Feb. 2010 at 12.

256 Exhibit 201, Mystery Shopper Report for Clovis, CA (Aug. 2011).

257 Exhibit 202, Email to/from HQ. Subject: "Dunmore-101-Mystery Shop[p]er--In Person" Dated Dec. 13, 2011.

258 Exhibit 203, Email from HQ to Campus 027 (Eden Prairie, MN). Subject: "Eden Prairie 027--Mystery Shop--In Person" Dated Sept. 1, 2011.

259 Exhibit 204, Email from HQ to Campus 014 (Fort Wayne, IN). Subject: "Fort Wayne-014-Mystery Shop--In Person" Dated Jan. 6, 2011.

260 Exhibit 85, Email from HQ to Campus 086 (Getzville, NY). Subject: "Getzville--Mystery

Shopper--In Person" 07/28/2011.

261 Exhibit 205, Email from HQ to Campus 023 (Lake Mary, FL). Subject: "Lake Mary--023-Mystery Shop--In Person" Dated Nov. 7, 2011.

262 Exhibit 206, Email from Student Relations Supervisor at HQ to Director of Troy, MI campus, Subject: "RE: Student Complaint - 20 [redacted]" (June 6, 2014).

263 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 36 ¶¶ 35-37.

264 Id. at 36-37 ¶ 39.

265 Exhibit 207, Email from HQ to director of Rancho Cordova, CA campus, Subject: "RE: follow-up" (May 26, 2005).

266 Exhibit 208, Email from CFO at HQ to CEO Kevin Modany, Subject: "FW: Job Search ITT Tallahassee" (Dec. 30, 2014).

267 Exhibit 209, Email from HQ to Campus 091 (Arnold, MO), Subject: "Arnold-091-Mystery Shop--In Person" (Nov. 1, 2011); see also Exhibit 210, ITT Employee Corrective Action Form, Madison, AL (June 15, 2010) (corrective action form related to this Mystery Shopper Report).

268 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 36 ¶¶ 36-37.

269 Exhibit 211, Mystery Shopper Report for Lathrop, CA (Oct. 2010).

270 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 37-38 ¶ 44.

271 Id. at 8 ¶ 44.

272 Id.

273 Villalba Compl., Exhibit 9 at 2 ¶ 8, https://perma.cc/24XU-AYUU (hereinafter "Villalba Ex. 9").

274 Exhibit 212, Email from student complainant to Student Surveys, Subject: "RE: ITT Technical Institute Student Course Survey – Your Response (Campus Code 031)"(Aug. 13, 2013).

275 Villalba Ex. 9 at 4 ¶ 16 (student attended the Wyoming, MI campus from 2007 to 2014).

276 Id.

277 Exhibit 213, Email from HQ Employee to [student complainant], Subject: "RE: Complaint" (January 19, 2016).

278 Merrill Decl. Ex. 4 R. Bueche Attest. at 56 ¶ 26.

279 Villalba Compl., Exhibit 2 at 7 ¶ 34, 20 ¶ 101, https://perma.cc/G7AY-23HJ (hereinafter "Villalba Ex. 2"); see also MA AG Complaint at 15 ¶ 65 ("Most students who graduated from a Computer Network Systems program did not obtain the types of jobs listed on the 'career wheel' or on the Graduate Employment Information disclosures.").

280 MA AG Compl. at 15 ¶¶ 63, 65. https://perma.cc/W4K5-BQ4K.

281 Exhibit 214, ITT Internal Document: Career Wheel Examples.

282 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 37 ¶ 40.

283 Id.

284 Id. at ¶ 41.

285 Exhibit 215, ITT Marketing Presentation: "Associate Degree in Software Development" at

10 (July 2013).

286 Id. at 8. See also infra pp. 50-54 for more on unrealistic salary ranges quoted to ITT students.

287 Exhibit 171, Mystery Shopper Report for Oakland, CA (Nov. 2010).

288 Exhibit 205, Email from HQ to Campus 023 (Lake Mary, FL), Subject: "Lake Mary--023-Mystery Shop--In Person" (Nov. 7, 2011).

289 Exhibit 216, Mystery Shopper Report for Aurora, CO (July 2011).

290 Villalba Ex. 2 ¶¶ 15, 21, 26, 71, 78, 121, 130, 157, 17, 179, 290, 293, 350.

291 Exhibit 217, Email from HQ to Director of Duluth, GA (campus 071), Subject: "Duluth—071—Mystery Shop—In Person" (Feb. 18, 2015).

292 Exhibit 218, ITT Training Presentation on the Mystery Shopper Program at 4 (slides explain what not to say and what has been caught as a "red flag").

293 Villalba Ex. 2 at 11 ¶ 52.

294 Id. at 14 ¶ 67.

295 Exhibit 219, Mystery Shopper Report for Chantilly, VA (July 2011).

296 Exhibit 220, Email from HQ to Douglasville, GA (campus 166), Subject: "Douglasville—166—Mystery Shop—In Person" (Mar. 13, 2015).

297 Exhibit 221, Email from HQ to Douglasville, GA (campus 166), Subject: "Douglasville—166—Mystery Shop—In Person" (Apr. 27, 2015).

298 When ITT did not outright lie to students about their expected salaries, they told students to look at generic websites like salary.com (see Exhibit 222, Mystery Shopper Report for Akron, OH (Oct. 2010)), to Google salaries (see Exhibit 223, Mystery Shopper Report for Troy, MI (Feb. 2010)), or to go to the Bureau of Labor Statics website (see Exhibit 224, Mystery Shopper Report for Concord, CA (July 2010)). Much like the use of the Value Proposition document discussed below, the results in these types of searches do not take any specific information into account like the school itself or the appropriate expected regional salary rates.

299 Exhibit 21, J. Clayton Affidavit at 3 ¶ 11.

300 Id. ¶ 12.

301 See generally for ITT Educational Services, Inc., Annual 10-K Reports https://perma.cc/FJ3P-KZHT

302 See MA AG Complaint at 20 ¶ 84.

303 CFPB Complaint at 9 ¶ 47.

304 This document was shown to students from at least 2007 to 2010.

305 See Exhibit 26, P. Gardner CFPB Decl. at 5 ¶ 19.

306 Id.

307 Merrill Decl. Ex. 3 D. Lueck Attest. at 48 ¶ 26.

308 This report is cited extensively in a group borrower defense application submitted by a multistate coalition of attorneys general. See Letter and Memorandum from Attorneys General of 24 States and the District of Columbia to Miguel Cardona, Secretary of the U.S. Department of Education (Apr. 1, 2021), https://perma.cc/4YNU-W8XT.

309 Dr. Matsudaira was appointed Deputy Under Secretary for the U.S. Department of Education in February 2021. He completed his evaluation and final report in July 2020.

310 Exhibit 225, Jordan Matsudaira, An Assessment of ITT Technical Institute's "Value Proposition for Employed Graduates" at 5.

311 Id. at 11.

312 Id.

313 Exhibit 226, Email from CEO Kevin Modany to Legal/Compliance at HQ, Subject: "RE: Clovis 061—Mystery Shop—In Person" (Sept. 1, 2011).

314 Exhibit 227, Email from Human Resources to HQ, Subject: "FW: Greenville on-site visit" (Feb. 19, 2015).

315 Exhibit 228, Internal Audit Report: Greenville, South Carolina (2015).

316 Exhibit 229. Email from HR at HQ to HQ Employee. Subject: "FW: Hilliard--022--Mystery Shop--In Person" (March 18, 2015). According to the email thread, the recruiter was terminated from his role on February 9, 2015.

317 Exhibit 227, Email from Human Resources to HQ, Subject: "FW: Greenville on-site visit" (Feb. 19, 2015).

318 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 42 ¶ 71.

319 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 42 ¶ 72.

320 Exhibit 230, Email from CEO Kevin Modany to National Director of Career Services, Subject: "RE: Update on Tier 1 Programmatic ETG" (Oct. 22, 2012).

321 Exhibit 231, ITT Training Presentation: "Career Services Quarterly Interaction with Students; Step-by-Step Guide for Preparing Your Students for Career Success" at 12 (Dec. 2013).

322 Id. at 19.

323 CFPB Compl. at 7 ¶¶ 32-33.

324 Exhibit 239, ITT Employee Counseling Form: Campus 067, Re: Career Services Coordinator (Mar. 28, 2012).

325 Exhibit 240, ITT HR Complaint Report: Tampa, FL, Re: Career Services at 5 (June 15, 2012).

326 Exhibit 241, Internal Audit Report: Tampa, FL at 31 (2012).

327 Exhibit 242, Email from HR Partner to Employees at HQ, Subject: "RE: Inappropriate Employment: Huntington" (Dec. 3, 2012).

328 Exhibit 243, Email from VP of Career Services at HQ to Legal/Compliance at HQ, Subject: "Career Services Risk Area Update" (Jan. 31, 2012).

329 Exhibit 244, Email from VP of Career Services at HQ to Legal/Compliance at HQ, Subject: "FW: Inappropriate Employment Characterization – Portland" (June 11, 2012).

330 Id.

331 Id.

332 Exhibit 245, Internal Audit Report: Portland, OR at 17-19 (2012).

333 Exhibit 246, Email from Human Resources at HQ to Employees at HQ, Subject: "RE: Termination Recommendation – [redacted] - Tampa, FL" (Mar. 30, 2012).

334 Exhibit 247, Email from National Director of Career Services at HQ to Legal/Compliance at HQ, Subject: "FW: Removed Placements" (May 11, 2012).

335 Exhibit 248, Email from HQ to Human Resources at HQ, Subject: "RE: Termination Recommendation - Norwood – [redacted]" (Mar. 21, 2012).

336 Exhibit 249, ITT Internal Document: Employment Details (Apr. 16, 2012).

337 Exhibit 18, Email from Human Resources at HQ to HQ, Subject: "Termination Recommendation - Knoxville – [redacted]" (Mar. 14, 2012).

338 Exhibit 250, Email from District Manager to Human Resources at HQ, Subject: "FW: : North Charleston Employment Issue" (June 30, 2014) (includes recommendation that employee who falsified the file be terminated).

339 Exhibit 251, Email from National Director of Career Services at HQ to Human Resources at HQ, Subject: "FW: Additional Inappropriate Employment Characterization in Knoxville" (Apr. 5, 2012).

340 Exhibit 243, Email from National Director of Career Services at HQ to Legal/Compliance at HQ, Subject: "Career Services Risk Area Update" (Jan. 31, 2012).

341 Exhibit 252, Internal Audit Report: Albany, NY (2012).

342 Exhibit 232, ACICS Evaluation Report at 233.

343 Exhibit 233, Internal Audit Report: Austin, TX (2013).

344 Exhibit 234, ACICS Placement Discrepancy Form, Troy, MI.

345 Exhibit 235, Internal Audit Report: Troy, MI at 5 (2013).

346 Exhibit 236, ACICS Placement Discrepancy Form: Troy, MI; Exhibit 237, ACICS Placement Discrepancy Form: Troy, MI; Exhibit 238, ACICS Placement Discrepancy Form, Troy, MI; see also Exhibit 235, Internal Audit Report: Troy, MI (2013).

347 Exhibit 253, Email from CEO Kevin Modany to Legal/Compliance at HQ, Subject: "RE: - HQ Career Services – Former Getzville DOCS" (May 13, 2013).

348 Id.

349 Exhibit 254, Internal Audit Report: Getzville, NY (2013); Exhibit 255, Internal Audit Report: Getzville, NY (2014).

350 Exhibit 256, Email from National Director of Career Services at HQ to Legal/Compliance at HQ, Subject: "FW: GEI's for [student names redacted]" (Jan. 13, 2013).

351 Exhibit 257, Email from HQ to VP of Career Services, Subject: "Re: Inappropriate Albany Employments" (Oct. 1, 2013).

352 Exhibit 258, Email from VP of Career Services to HQ, Subject: "REQUEST FOR SUPPORT" (Aug. 27, 2014).

353 Id.

354 Exhibit 259, Internal Audit Report: Mobile, AL (2015).

355 Exhibit 260, Email from National Director of Career Services at HQ to Employees at HQ, Subject: "Additional Information on Houston North Employment" (Apr. 9, 2015).

356 Exhibit 261, Student Complaint Report: Knoxville, TN, Complaint Code: Finance/financial aid at 2-3 (Oct. 7, 2015).

357 Exhibit 249, ITT Internal Document: Employment Details (Apr. 16, 2012).

358 Exhibit 262, Email from National Director of Career Services at HQ to Compliance at HQ, Subject: "FW: Supporting Documentation for the Pensacola Employment Review" (Apr. 5, 2016).

359 Exhibit 263, Email from Human Resources at HQ to HQ, Subject: "Termination Request - [redacted] - Houston West" (Apr. 8, 2016).

360 Exhibit 264, Email from Senior VP of Operations to CEO Kevin Modany, Subject: "Fwd: Termination Request – Director/DOCS [redacted] Pensacola Campus" (Apr. 12, 2016).

361 Exhibit 265, Email from National Director of Career Services at HQ to HQ Employees, Subject: "RE: REMOVAL and Follow-up on Plymouth Meeting Pre-Grad GEI File Request – [redacted]" (June 2, 2016).

362 See Exhibit 246, Email from Human Resources at HQ to Employees at HQ, Subject: "RE: Termination Recommendation – [redacted] - Tampa, FL" (Mar. 30, 2012).

363 Exhibit 266, Email from National Director of Career Services at HQ to HQ Employees, Subject: "Waiver Removal Required" (July 13, 2016).

364 Exhibit 267, Email from National Director of Career Services at HQ to HQ Employees, Subject: "Additional Waiver Removal Required" (July 13, 2016).

365 Exhibit 268, Email from National Director of Career Services at HQ to HQ Employees, Subject: "Third Waiver Removal Required" (July 13, 2016). For other similar examples related to the Philadelphia, PA campus, see Exhibit 269, Email from National Director of Career Services at HQ to Employees at HQ, Subject: "Fourth Waiver Removal Required" (July 13, 2016); Exhibit 270, Email from National Director of Career Services at HQ to Employees at HQ, Subject: "FW: Thanks for the Help" (July 13, 2016); Exhibit 271, Email from Employee at HQ to National Director of Career Services at HQ, Subject: "RE: Guidance from Compliance on Waiver Removals" (July 17, 2016).

366 Exhibit 272, Email from Compliance at HQ to CEO Kevin Modany, Subject: "RE: 2Q 2016 DOCS Removals and Terminations.xls" (July 18, 2016).

367 Id.

368 MA AG Complaint at 13-14 ¶ 58. https://perma.cc/W4K5-BQ4K.

369 Id. at 14 ¶ 59.

370 Id. at 14 ¶ 60.

371 Exhibit 273, Email from Human Resources at HQ to HQ Employee. Subject: "FW: Houston North Instructor Quals and Validity of Employment" 08/26/2015.

372 Senate HELP Report at 22 (536). https://perma.cc/DPG3-ZLGG.

373 Exhibit 274, Email from HQ to District Manager of South Atlantic District, Subject: "RE: South Atlantic District: High risk instructors-Johnson City, TN" (Mar. 10, 2014).

374 Id.

375 Exhibit 275, Email from Director of Human Resources at HQ to HR Partner at HQ. Subject: "RE: Termination Request – Knoxville – [redacted]" 06/09/2011.

376 Exhibit 21, J. Clayton Affidavit at 3 ¶ 17.

377 Exhibit 276, Email from HQ to Legal/Compliance at HQ, Subject: "RE: Complaints of passing Students" (Sept. 11, 2012).

378 Villalba Compl., Exhibit 7 at 8 ¶ 35, https://perma.cc/84MR-TAFM (hereinafter "Villalba Ex.

7") (student attended the Oak Brook, IL campus from 2010 to 2013 and was enrolled in the Information Systems Security program).

379 Exhibit 21, J. Clayton Affidavit at 3 ¶ 14.

380 For ACICS "success" standards, see https://perma.cc/YV7M-X9ZL.

381 Villalba Ex. 7 at 20 ¶ 97 (student attended the Nashville, TN campus for Digital Entertainment and Game Design from 2005 to 2011).

382 MA AG Complaint at 22 ¶ 92.

383 Id. ¶ 91.

384 For more information on ITT's high tuition costs, see infra pp. 110.

385 Villalba Ex. 6 at 11 ¶ 37 (student attended the Rancho Cordova, CA campus from 2004 to 2010 for Information Systems Security).

386 Id. at 18 ¶ 66 (student attended the Tampa, FL campus from 2007 to 2010).

387 Exhibit 277, Email from Indianapolis, IN Employee to Student Relations at HQ, Subject: "RE: [student complainant] complaint" (Oct. 26, 2004).

388 Exhibit 278, Email from Student Complainant at Tucson, AZ campus to Student Survey, Subject: "RE: ITT Technical Institute Student Course Survey – Your Response (Campus Code 054)" (June 30, 2012).

389 Exhibit 279, Email from Student Survey to Compliance at HQ, Subject: "FW: RE: ITT Technical Institute Student Course Survey – Your Response (Campus Code 13)" (Jan. 13, 2012).

390 Exhibit 232, ACICS Evaluation Report Re: Little Rock, AR campus at 183-184 (Sept. 1, 2012).

391 Id.

392 Exhibit 280, ACICS Evaluation Report at 42-43 (Sept. 1, 2012).

393 Exhibit 232, ACICS Evaluation Report at 238 (Sept. 1, 2012); see also Exhibit 233, Internal Audit Report: Austin, TX (2013).

394 Exhibit 232, ACICS Evaluation Report at 238 (Sept. 1, 2012).

395 Villalba Ex. 6. at 1 ¶ 3 (student attended the Bessemer, AL campus for Game Design from 2007 to 2010).

396 Exhibit 10, Email from HQ Employee to District Managers with cc to CEO Kevin Modany, Subject: [No Subject] (May 7, 2012).

397 Exhibit 281, Email from CEO Kevin Modany to COO and Operations at HQ, Subject: "Fwd: Chair, ADGS, and Faculty teaching loads" (Oct. 19, 2012).

398 Exhibit 282, Email from VP of Career Services at HQ to HQ, Subject: "RE: Houston North Instructor Quals and Validity of Employment" (Aug. 31, 2015).

399 Id.

400 Exhibit 283, Email to/from HQ Employees, Subject: "FW: Unethical Business Practices" (Oct. 22, 2015).

401 Exhibit 284, Email from Director of Campus 040 (Tampa, FL) to Human Resources at HQ, Subject: "FW: HS347 (HIT Chair - possible RIF?)" (Mar. 18, 2013).

402 Exhibit 285, Email from HQ to Campus 156, Subject: "RE: School # 156 CDD Program has

failed" (Jan. 28, 2016).

403 Exhibit 10, Email from HQ Employee to District Managers, cc: CEO Kevin Modany, Subject: [No Subject] (May 7, 2012).

404 Exhibit 286, Email from Norwood, OH (campus 086) to CEO Rene Champagne, Subject: "Review of Letter Written by [redacted]" (Aug. 12, 2004).

405 Exhibit 287, Email from SVP of Business Development to CEO Kevin Modany, Subject: "RE: Breckinridge College" (Mar. 4, 2012).

406 Id.

407 Exhibit 288, Email from CEO Kevin Modany to VP of Nursing Program, Subject: "RE: One thing to consider" (Mar. 5, 2013).

408 Exhibit 289, Email from CEO Kevin Modany to VP of Nursing Program and Online Program, Subject: "RE: ITT and Elsevier Pricing Model Suggestion" (Aug. 5, 2013).

409 Exhibit 290, Email from Spokane Valley Employee (Campus 051) to HQ, Subject: "RE: ITT Technical Institute Student Course Survey - Your Response (Campus Code 51)" (Apr. 16, 2012).

410 Exhibit 291, Email from Hanover, MD Campus Employee to HQ, Subject: "RE: Student Complaint - 148 [redacted]" (Aug. 9, 2013).

411 Exhibit 292, ITT Student Complaint Report, Kennesaw, GA, Complaint Code: Course Materials at 4 (Apr. 11, 2014).

412 Exhibit 293, Email from CEO Kevin Modany to CFO at HQ, Subject: "RE: Pearson Additions to Contract" (July 13, 2012).

413 Exhibit 294, Email from CEO Kevin Modany to HQ Employee, Subject: "RE: GS1140 intelliCourse" (Nov. 1, 2012).

414 Id.

415 Exhibit 295, Email from CEO Kevin Modany to HQ Employees, Subject: "Re: Class last night" (Sept. 23, 2012).

416 Exhibit 296, Email from HQ Employee to CEO Kevin Modany, Subject: "RE: feedback from last night" (Oct. 19, 2012).

417 Exhibit 297, Email from HQ Employee to CEO Kevin Modany, Subject: "Fwd: Bad news but ultimately very good news" (Dec. 15, 2012).

418 Exhibit 298, Email from HQ Employee to CEO Kevin Modany, Subject: "RE: student login issues with intelliCourse" (Dec. 20, 2012).

419 Exhibit 299, Email from CEO Kevin Modany to Legal/Compliance at HQ, Subject: "FW: Khan Academy goes offline" (Dec. 19, 2012).

420 Id.

421 Id.

422 Exhibit 300, Email from CEO Kevin Modany to CFO at HQ, Subject: "FW: intelliCourse R1.3 Charter Budget Reconciliation" (Jan. 23, 2013).

423 Exhibit 301, Email from CEO Kevin Modany to HQ Employee, Subject: "RE: Learning Technologies/Intellicourse" (Jan. 30, 2013).

424 Exhibit 302, Email from CEO Kevin Modany to HQ Employee, Subject: "Re: Southfield

band width" (Nov. 13, 2013).

425 Id.

426 Exhibit 303, Student Complaint Report, Charlotte North, NC, Complaint Code: Recruitment, Academic Affairs at 3 (Mar. 6, 2015).

427 Exhibit 304, Email from student complainant to HQ Employees, Subject: "Urgent Scheduling Situation" (Feb. 26, 2012).

428 Exhibit 305, Message to "ITT Leadership" from Employee of Louisville, KY campus.

429 Exhibit 306, Email from Chief Academic Officer at HQ to CEO Kevin Modany and COO, Subject: "Blended Section size data" (Mar. 19, 2012).

430 Exhibit 307, Email from HQ to Deans, Associate Deans of General Studies, Registrars, District Managers, College Directors and HQ officials, Subject: "Sept 17 2012 Blended Sections" (Sept. 10, 2012).

431 Exhibit 13, Email from Chief Academic Officer at HQ to CEO Kevin Modany, Subject: "RE: Hybrid/Blended Textbooks forHU1440, PS1350, and GE175" (Feb. 29, 2012).

432 Exhibit 308, Student Complaint Report, Rancho Cordova, CA, Complaint Code: Dislike distance education (Jan. 3, 2013).

433 Exhibit 11, Email from Compliance/Regulatory Officer at HQ to CEO Kevin Modany, Subject: "RE: Online Issues" (Feb. 19, 2016).

434 Exhibit 14, Email from Director of Human Resources to HQ Employees, Subject: "RE: Online Issues" (Feb. 19, 2016).

435 Id.

436 Exhibit 309, ITT Internal Document: Student Complaint/Grievance Procedure at 5 (March 2013).

437 Exhibit 310, Email from Employee at Campus 024 (Youngstown, OH) to HQ, Subject: "FW: The online Physics class" (Sept. 13, 2012).

438 Exhibit 311, Student Complaint Report, Kansas City, MO, Complaint Code: Dislike distance education (Nov. 15, 2012).

439 Exhibit 312, Student Complaint Report, Green Bay, WI, Complaint Code: Dislike distance education, etc. (Aug. 30, 2012).

440 Exhibit 313, Student Complaint Report, Louisville, KY, Complaint Code: Finance, etc. at 6 (July 24, 2012).

441 Exhibit 314, Email to/from HQ employees, Subject: "FW: Forthcoming complaint – [redacted] - ISS BAS student - IRIS entry attached" (Mar. 7, 2013).

442 Exhibit 315, Email from South Bend, IN Campus to HQ Student Relations Supervisor, Subject: "RE: stu[d]ent issue" (Aug. 29, 2012).

443 Exhibit 316, ITT Internal Document: Enterprise Risk Management Annual Quarterly SME Meeting – Agenda at 7 (Jan. 2014).

444 Exhibit 315, Email from South Bend, IN Campus to HQ Student Relations Supervisor, Subject: "RE: stu[d]ent issue" (Aug. 29, 2012).

445 Exhibit 317, Email to/from HQ Employees, Subject: "Standard_Response_Language[1]" (Aug. 28, 2012).

446 Exhibit 314, Email to/from HQ Employees, Subject: "FW: Forthcoming complaint – [redacted] - ISS BAS student - IRIS entry attached" (Mar. 7, 2013).

447 Exhibit 318, Email from CEO Kevin Modany to COO at HQ, Subject: "Re: Hybrid-Blended Reporting" (June 6, 2013).

448 Exhibit 319, Email from CEO Kevin Modany to Compliance at HQ, Subject: "Re: State Board Student Survey"(July 19, 2013).

449 Exhibit 320, Email from Chief Academic Officer at HQ to CEO Kevin Modany, cc: COO at HQ, Subject: "RE: Hybrid Student Preparation ('HSP') / instructor login -- March 2012 qtr" (Feb. 27, 2012).

450 Exhibit 321, Email from CEO Kevin Modany to Chief Academic Officer at HQ, cc: COO at HQ, Subject: "Re: Dec 10 2012 Qtr: Questa / HSP / Student Observer logon information" (Nov. 30, 2012).

451 Exhibit 322, Email from CEO Kevin Modany to Academic Officer at HQ, cc: COO at HQ, Subject: "Re: Hybrid-Blended Reporting"(June 6, 2013).

452 Exhibit 323, Email from CEO Kevin Modany to COO at HQ. Subject: "RE: Blended SSR - LB.xlsx" 04/26/2013.

453 Exhibit 318, Email from CEO Kevin Modany to COO at HQ. Subject: "Re: Hybrid-Blended Reporting" 06/06/2013.

454 Exhibit 324, Email from CEO Kevin Modany to Online Programs, Subject: Re: "Allocating S3 Instructors" (June 20, 2013).

455 Exhibit 325, Email from CEO Kevin Modany to COO at HQ, cc Academic Officer at HQ, Subject: "Re: Hybrid to Res.xlsx" (Aug. 19, 2013).

456 Exhibit 326, Email from CEO Kevin Modany to Employee at HQ, Subject: "Re: State Board Survey" (July 24, 2013).

457 See infra pp. 98-104 for more information on ITT's scholarship programs.

458 In an email, Kevin Modany derisively commented that if policymakers really wanted to cut college costs, the obvious solution would be to get rid of the 90/10 rule. See Exhibit 327, Email from CEO Kevin Modany to Legal/Compliance at HQ, Subject: "Fwd: MS For-Profit Daily Cram, 8/27/13" (Aug. 27, 2013).

459 Senate HELP Report at 146-147.

460 As of March 10, 2021, Congress has closed the "90/10 loophole." See Stacy Cowley, "Congress Closes Loophole That Made Veterans a Target of For-Profit Schools," New York Times (Mar. 11, 2021), https://perma.cc/8BX3-83JD; Press Release, Veterans Education Success, "Congress' Reconciliation Package Includes Provision to Close Loophole Long-Sought by Veterans Organizations" (Mar. 10, 2021), https://perma.cc/736G-EGX3.

461 See infra pp. 104-106 for more information on how ITT misled and exploited veterans with respect to financial aid.

462 Deanne Loonin, "Piling It On: The Growth of Proprietary School Loans and the Consequences for Students," at 3, National Consumer Law Center (Jan. 2011), https://perma.cc/QHS7-DLZ8.

463 Complaint at 2-3, ¶¶ 6-13, Sallie Mae, Inc. v. ITT Educational Services Inc., Case No. 2012-1937 (Va. Cir. Ct. Dec. 26, 2012), available at https://perma.cc/DJ6Q-MD8R.

464 Id. at 2 ¶ 6.

465 "ITT Educational to Pay Sallie Mae $46 Mln to Settle Loan Dispute," Reuters (Jan. 4, 2013), https://perma.cc/VZ74-TCHB.

466 CFPB Complaint. at 2 ¶ 6.

467 Id. at 19 ¶ 107.

468 Id.

469 Students often looked for options to transfer out of ITT once they realized they had been subjected to this type of coercive financial deceit. However, ITT credits rarely transferred to other schools—or even between ITT's own programs and campuses—a fact that it routinely failed to disclose to incoming recruits. Students were then forced to decide whether to either drop out and forfeit the credits they had already paid for or simply agree to this new loan in order to finish the only higher education they could afford after expending all their federal aid eligibility at ITT. See CFPB Complaint at 2 ¶ 8. For more on ITT misrepresenting the transferability of its credits, see also supra pp. 34-39, and Villalba Ex. 10.

470 CFPB Complaint at 20-21.

471 See infra pp. 79-80, 89-93 for additional information on ITT's student default contingency plans and repackaging efforts.

472 CFPB Complaint at 21

473 See CFPB Complaint at 20-21.

474 See Exhibit 328, Sample PEAKS Note; see also MA AG Complaint at 26 ¶ 105.

475 See Exhibit 329, Sample CUSO Note; see also MA AG Complaint at 26 ¶ 103.

476 Loonin, supra n. 80, at 24.

477 Loonin, supra n. 64, at 19.

478 Exhibit 330, Email to/from HQ Employees, Subject: "RE: Form 10-K" (Aug. 18, 2013).

479 This figure was calculated by looking at data for loans 6 months after they entered repayment and comparing the amount disbursed on those loans to the total amount in default. Thus, it refers to the percentage of loan dollars in default, and not the percentage of borrowers. See Exhibit 331, ITT Private Student Loan Portfolios Default and Loss Project ion Methodology at 4-6, 12, 20-21.

480 See id. at 5-6 (describing adjustments made to actual performance data in order to project default rate and underlying assumptions supporting the adjustments).

481 See Complaint, Securities and Exchange Commission v. ITT Educational Services, Inc., No. 1:15-cv-00758-JMS-MJD (S.D. Ind. May 12, 2015) (hereinafter "SEC Complaint"), available at https://perma.cc/6NRT-H8NK; see also Press Release, Securities and Exchange Commission, "SEC Announces Fraud Charges Against ITT Educational Services" (May 12, 2015), https://perma.cc/Q4JR-5JWC.

482 Exhibit 332, Email from AEA Investors to CEO Kevin Modany, Subject: "RE: Financial Metrics - Jan 2013 Earnings Release.xls CONFIDENTIAL" (Jan. 14, 2013).

483 Exhibit 333, Email to/from CEO Kevin Modany, Subject: "Agenda for Sunday Morning" (July 8, 2015).

484 Exhibit 26, P. Gardner CFPB Decl. at 4 ¶ 11.

485 Financial aid coordinators were instructed that "if you are not able to obtain the student's signature on the TC [temporary credit] Payment Plan Letter before graduation, I [the

company's HQ finance director] would advise you to either attend the graduation practice or ceremony, or catch the student before it starts to obtain the student signature on the letter." Exhibit 334, Email from HQ Employee to CFO, Subject: "March Graduates with Temp Credit" (Feb. 1, 2010).

486 Exhibit 26, P. Gardner CFPB Decl. at 4 ¶ 13.

487 Exhibit 335, ITT Training Presentation: "Back to Basics Quarter 2 North Central District Meeting" at 7 (May 18-19, 2010).

488 Exhibit 336, Email from Finance at HQ to DOF at Campus 036 (Wyoming, MI), Subject: "RE: New Enhancements to Smart Forms" (July 7, 2010). Emphasis added.

489 CFPB Complaint at 12-14; see also Exhibit 26, P. Gardner CFPB Decl. at 3 ¶¶ 5-6.

490 Exhibit 26, P. Gardner CFPB Decl. at 3 ¶ 6.

491 Id. at 6 ¶ 26.

492 Merrill Decl. Ex. 3 D. Lueck Attest. at 48 ¶ 25.

493 Id.

494 Villalba Compl. at 29 ¶ 233 (statement from national finance director at HQ).

495 Merrill Decl. Ex. 3 D. Lueck Attest. at 49 ¶ 30.

496 Exhibit 26, P. Gardner CFPB Decl. at 6-7 ¶ 28.

497 Merrill Decl. Ex. 3 D. Lueck Attest. at 50 ¶ 36.

498 Exhibit 337, ITT Training Presentation: "Financial Aid Process Steps" at 6.

499 Exhibit 338, Email from Employee at Kennesaw, GA (Campus 034) to Student Relations Manager at HQ, Subject: "RE: Student complaint" (June 3, 2005).

500 Exhibit 339, ITT Internal Document: Re Finance, Grade Eligibility, and CSPA Protocols at 39.

501 Id.

502 Id. at 56, 59, 62, 63.

503 Villalba Compl. at 54 ¶ 261.

504 Merrill Decl. Ex. 2. R. Lipscomb Attest. at 40 ¶ 62.

505 CFPB Complaint at 15 ¶ 80.

506 Villalba Ex. 13 at 76 ¶ 398 (student enrolled in Software Application Development program between 2008 and 2012). https://perma.cc/7H2G-PX3H

507 Villalba Ex. 13 at 57 ¶ 303 (student attended Durham, NC campus from 2013 to 2015).

508 Villalba Ex. 13 at 77 ¶ 404 (student enrolled in Information Technology-Information Systems and Cyber Security programs from 2009 to 2014).

509 See generally Exhibit 340, ITT Procedure Manual: "Finance Cost Summary and Payment Addendum" (Dec. 2, 2011).

510 Villalba Compl., Exhibit 11 at 48 ¶ 262, https://perma.cc/4BMW-SUZ9 (hereinafter "Villalba Ex. 11") (student enrolled in Information Systems Security program between 2004 and 2009).

511 Villalba Ex. 11 at 2 ¶ 8 (student attended between 2006 and 2008).

512 Villalba Ex. 11 at 16 ¶ 78 (student enrolled in Criminal Justice program from 2012 to 2015).

513 Exhibit 341, Email from Online Programs (211) to Finance at HQ, Subject: "RE: Enrollment Agreement Verbiage rev2" (Jan. 26, 2011).

514 Merrill Decl. Ex. 3 D. Lueck Attest. at 49 ¶ 29.

515 Exhibit 277, Email from Indianapolis, IN campus to Student Relations Manager at HQ, Subject: "RE: [redacted] complaint" (Oct. 26, 2004).

516 Merrill Decl. Ex. 3 D. Lueck Attest. at 49 ¶¶ 27-28.

517 CFPB Complaint at 19 ¶ 107.

518 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 41 ¶ 64.

519 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 41, 42 ¶¶ 66, 73.

520 Exhibit 342, ITT Training Presentation: "Finance September Kickoff Meeting" at 4-5 (June 24, 2009).

521 Exhibit 343, Email to/from HQ, Subject: "RE: OVD - Reentries and Finance" (Nov. 10, 2010).

522 CFPB Complaint at 19 ¶ 108.

523 Exhibit 344, Email from Finance HQ (National Director, Field Financial Services) to CEO Kevin Modany, Subject: "RE: Temp Credit" (Jan. 7, 2010).

524 Exhibit 345, Email from Finance HQ (National Director, Field Financial Services) to DOF at Campus 035 (Springfield, MO), Subject: "RE: Temp Credit" (Jan. 7, 2010); see also Exhibit 346, Email from Finance HQ (National Director, Field Financial Services) to Campus 012 (Newburgh, IN), Subject: "RE: Temp Credit" (Jan. 7, 2010).

525 Merrill Decl. Ex. 3 D. Lueck Attest. at 50 ¶ 35.

526 Exhibit 347, Email from DOF at Phoenix, AZ Campus to HQ Finance. [No Subject]. (Undated).

527 Exhibit 348, Email from DOF at Campus 064 (Nashville, TN) to HQ, Subject: "RE: Question on Grad into Bachelor's Degree - Student is HERE" (July 15, 2010).

528 Some students with Temporary Credit did not get repackaged into a private loan and instead graduated with outstanding Temporary Credit balances that they had to pay back to ITT directly, which was referred to as the Temporary Credit Graduate Repayment Program. See CFPB Complaint at 25-26.

529 Exhibit 349, Email from Finance at HQ to CFO, Subject: "FW: June Graduates with Temp Credit" (June 1, 2010).

530 Exhibit 350, Email from HQ Finance VP to DOF at Campus 014 (Fort Wayne, IN), Subject: "RE: June Graduates with Temp Credit" (June 2, 2010).

531 Exhibit 351, Email from HQ Finance VP to FAC at Campus 030 (Austin, TX), Subject: "PLUS Loan" (June 22, 2010).

532 Exhibit 352, ITT Training Presentation: Northeast/Mid Atlantic/Southeast District Meeting for Directors and Directors of Recruitment at 9 (June 24-26, 2009).

533 Exhibit 353, Email from Student Survey to HQ, Subject: "FW: ITT Technical Institute Student Course Survey - Your Response (Campus Code 93)" (Mar. 21, 2012).

534 Id.

535 Exhibit 63, ITT Internal Document: Director of Recruitment Coaching Notes at 6 (2014).

536 Exhibit 340, ITT Procedure Manual: "Finance Cost Summary and Payment Addendum" at 5 (Dec. 2, 2011).

537 CFPB Complaint at 25 ¶ 140.

538 An email from an employee at the Springfield, VA campus to ITT's HQ Finance Director demonstrates this mentality. The employee asks, "Why do you think [the] Boston South [campus] has such high AR?" This referred to the campus's accounts receivable, and specifically to its apparently high level of outstanding Temporary Credit that the company wanted repackaged into private loans as soon as possible. In her response, the HQ Finance Director identifies "new FACs" as the problem, suggesting that new financial aid coordinators were not as experienced at pushing students into PEAKS loans through coercive repack sessions. Exhibit 354, Email from National Finance Director at HQ to Director of Springfield, VA (Campus 035), Subject: "RE: PEAK distributions" (Mar. 11, 2010).

539 Exhibit 26, P. Gardner CFPB Decl. at 4 ¶ 11.

540 Exhibit 355, ITT Training Document: General Questions for FACs at 3.

541 Exhibit 356, Email from HQ Finance Director to Campus 113 DOF (Corona, CA), Subject: "RE: AR Follow up Report Tips" (Aug. 4, 2010).

542 Exhibit 39, ITT Training Document: "Marketing Training" (Aug. 16, 2010).

543 Villalba Ex. 18 at 71 ¶ 380.

544 Exhibit 357, ITT Internal Document: "MAD [Middle Atlantic District], NE [Northeast], SE [Southeast] District Meeting" at 6 (April 13-14, 2010) (including a template of the "Orange Sheets" that contained these strict instructions for financial aid staff to follow).

545 Id. at 22.

546 Exhibit 358, ITT Procedure Manual: "Finance Collection Procedure" at 2 (Sept. 16, 2011).

547 Exhibit 8, NW District CMM Planning Meeting Notes at 2 (2009).

548 Id.

549 Exhibit 359, Email from Finance HQ (National Director, Field Financial Services) to DOF at Campus 093 (Lathrop, CA), Subject: "RE: Temp Credit" (Jan. 7, 2010).

550 Id.

551 Id.

552 Exhibit 360, Student Complaint Report, Cordova, TN, Complaint code: Accreditation, Finance, etc. (May 24, 2016).

553 Merrill Decl. Ex. 3 D. Lueck Attest. at 49 ¶ 31.

554 Villalba Ex. 18 at 8 ¶ 35 (student attended from 2003 to 2007 for an associate's degree in Multimedia and bachelor's in Digital Entertainment and Game Design).

555 Villalba Ex. 18 at 13 ¶ 59 (student attended between 2004 and 2007 for Information Security).

556 Villalba Ex. 13 at 47 ¶ 256 (student attended from 2005 to 2008 for Information Security).

557 Villalba Compl., Exhibit 17 at 7 ¶ 37, https://perma.cc/TEE3-64P8 (hereinafter "Villalba Ex. 17") (student enrolled at the Norwood, OH campus between 2006 and 2009).

558 Villalba Ex. 13 at 49-50 ¶ 265 (student enrolled at the Henderson, NV campus from 2007

to 2012).

559 Villalba Compl., Exhibit 12 at 21 ¶ 71, https://perma.cc/F3PC-329D (hereinafter "Villalba Ex. 12") (student enrolled in Business Administration program from 2005 to 2012).

560 Villalba Ex. 13 at 24 ¶ 141 (student enrolled in Paralegal Studies program between 2010 and 2012).

561 Merrill Decl. Ex. 1 J. Cody Attest. at 6 ¶ 13.

562 Exhibit 361, Email from Chief Compliance Officer at HQ to CEO Kevin Modany, Subject: "RE: Green Bay—019—Mystery Ship—In Person" (July 2, 2013).

563 Merrill Decl. Ex. 1 J. Cody Attest. at 6 ¶ 14.

564 Id. at 7 ¶¶ 17-18.

565 Exhibit 142, Mystery Shopper Report for Greenville, SC (Aug. 2010).

566 Exhibit 361, Email from Chief Compliance Officer at HQ to CEO Kevin Modany, Subject: "RE: Green Bay—019—Mystery Ship—In Person" (July 2, 2013).

567 Exhibit 362, Email from Internal Audit at HQ to Mobile, AL (Campus 112), Subject: "Mobile 112—Mystery Shop—In Person" (Sept. 2, 2011).

568 Exhibit 363, Internal Audit Report No. 77-11, Salem, VA at 19 (Sept. 22, 2011).

569 Exhibit 364, Internal Audit Report No. 72-10, Atlanta, GA at 29 (Aug. 6, 2010).

570 See generally Exhibit 365, ITT Internal Document: Smart Forms Portal Walkthrough.

571 See Exhibit 366, Email from Finance HQ (National Director, Field Financial Services) to HQ, Subject: "FW: Peaks & Missing prom notes" (Feb. 26, 2010) (email discussion from 2010 stating that it "might be time to push PEAKS integration" into SmartForms).

572 Exhibit 26, P. Gardner CFPB Decl. at 7-8 ¶¶ 30, 38, 39.

573 Exhibit 367, Email to/from Internal Audit at HQ, Subject: "RE: Termination Recommendation – [redacted] – FAC – Columbia 106" (Sept. 21, 2010).

574 Id.

575 Exhibit 368, Email from Employee at campus 018 to HQ, Subject: "FW: [Redacted]" (May 23, 2016).

576 Id.

577 Merrill Decl. Ex. 3 D. Lueck Attest. at 49 ¶ 29.

578 Exhibit 369, ITT Internal Memo to Legal/Compliance, RE: Online Program Student Start Investigation (Jan. 17, 2008).

579 Exhibit 370, Email from Human Resource Director at HQ to HQ Employee, Subject: "RE: Termination Request – Tallahassee – [redacted]" (May 13, 2011). (email chain ends with corporate directive to terminate offending employee; no mention is made of how, if at all, the student's situation was remedied).

580 See Exhibit 371, E. Schmidt Declaration Re Smart Forms Analysis.

581 Exhibit 372, Internal Audit Report at 8 (May 14, 2008).

582 Exhibit 373, Internal Audit Report No. 45-10, Omaha, NE at 6 (June 7, 2010).

583 Exhibit 26, P. Gardner CFPB Decl. at 7 ¶ 31

584 Merrill Decl. Ex. 3 D. Lueck Attest. 49 ¶ 33.

585 Id. at 50 ¶ 34.

586 Villalba Compl., Exhibit 19 at 5 ¶ 22, https://perma.cc/8NQM-NPZ9 (hereinafter "Villalba Ex. 19") (student enrolled in Information Systems Security program from 2008 to 2012).

587 Id. at 9 ¶ 49 (student enrolled in Drafting and Design program from 2006 to 2009).

588 Id. at 11 ¶ 61 (student attended between 2004 and 2006).

589 For more on the interplay between the 90/10 rule and ITT's business model, see supra at 77-79, 98-99, 104.

590 Exhibit 374, Email from CEO Kevin Modany to CFO at HQ, Subject: "FW: DWC Online Tuition Rate Reduction" (Sept. 24, 2012).

591 Exhibit 375, Email from CEO Kevin Modany to Business Development at HQ, Subject: "RE: Flash: APOL--University of Phoenix Implements Tuition Freeze" (Oct. 11, 2012).

592 Exhibit 376, Email from CEO Kevin Modany to COO at HQ, cc: CFO at HQ & Compliance at HQ, Subject: "Re: Tuition Subsidy (Cash Discount)" (July 2, 2013).

593 Id.

594 APSCU was then the name of a trade association based in Washington, D.C. that represents the interests of for-profit schools. It is today known as Career Education Colleges and Universities, or "CECU."

595 Exhibit 377, Email from Legal/Compliance at HQ to CEO Kevin Modany, Subject: "RE: MS For-Profit Daily Cram 8/27/13" (Aug. 27, 2013).

596 See Exhibit 378, ITT Quarterly Board Report at 13-14, 27 (July 2013). ITT presented the Opportunity Scholarship to its Board as an intervention against increasing amounts of internal financing, which were negatively affecting ITT's financial statements, increasing bad debt expenses, and pressuring its profitability and cash flow.

597 Exhibit 379, ITT Company Presentation Draft for Meeting with Blackstone at 45 (July 24, 2013).

598 Bradley Safalow, "ESI: Closing Out ESI Short Idea with a 100% Gain; Let the Record Show that the Blame for ESI's Demise Lies with Management, Not ED" at 12, PAA Research LLP (Sept. 23, 2016), available at https://perma.cc/SP5K-R2GV.

599 Exhibit 380, Email from Compliance at HQ to HQ Employee, Subject: "FW: PA Opportunity Scholarship Feedback" (Dec. 11, 2012).

600 Exhibit 381, Email from CEO Kevin Modany to COO at HQ, CFO at HQ, & Marketing at HQ, Subject: "FW: Retroactive Application of OS Memorandum 7-1" (July 7, 2013).

601 Exhibit 382, Email from CEO Kevin Modany to Director of Project Development at HQ, Subject: "RE: Opportunity Scholarship Rollout - Potential Implementation Issue" (Jan. 15, 2013).

602 Exhibit 383, Email from CEO Kevin Modany to Director of Student Financial Services at HQ, Subject: "RE: Confirmation on OS/PLUS for Dependent Students" (Dec. 13, 2012).

603 Exhibit 384, ITT Corrective Action Form, Owings Mills, MD (Feb. 27, 2013).

604 Exhibit 385, Email from CEO Kevin Modany to Legal/Compliance at HQ, cc: Marketing at HQ & CFO at HQ, Subject: "Owings Mills" (Dec. 13, 2013).

605 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 40 ¶ 60.

606 Exhibit 386, Email from Marketing at HQ to HQ, Subject: "RE: Opportunity Scholarship

Spots" (Nov. 12, 2012).

607 Exhibit 387, Email from CEO Kevin Modany to Board and others, Subject: "Operational and Financing Update" (Oct. 5, 2014).

608 Exhibit 388, Investor Conference Call at 6 (Apr. 25, 2013).

609 Exhibit 389, Email from CEO Kevin Modany to Board and others, Subject: "Emailing: FSDocLink" (Sept. 12, 2013).

610 See Exhibit 390, Email from SVP Treasurer and Comptroller to HQ Finance and others, Subject: "Re: OS and Title IV Option 4" (Aug. 29, 2015). This message reads, in part: "Once we get through some of these urgent items, I'd like to have a discussion with you about Opportunity Scholarship. There are some areas/exceptions/situations/loopholes for which we need some guidance and clarification, so we can develop consistent processes around these situations and communicate them to the field. This particular one has a large dollar figure attached to it based on student's selections on the Title IV Credit Balance Authorization forms and our resulting activities."

611 Exhibit 391, Student Complaint Report, Norwood, OH, Complaint Code: Finance/financial aid (Dec. 5, 2014). The complaint narrative alleges that the financial aid department misled the student about how much money would be needed to cover tuition. The complaint's resolution notes that the student had already "received the maximum amount of aid." The student was reasonably upset about the amount of student loan debt ITT required and was not interested in taking out any more. The director of finance responded that the student "could apply for scholarships outside of the school but anything she received would reduce her opportunity scholarship" amount.

612 Exhibit 392, Student Complaint Report, Louisville, KY, Complaint Code: Finance/financial aid at 2 (May 29, 2014).

613 Id.

614 Villalba Ex. 11 at 5 ¶ 24 (student attended the Culver, CA campus from 2014 to 2015).

615 Villalba Ex. 11 at 18 ¶ 92 (student was enrolled in the Information Technology - Computer Network Systems program at the Springfield, IL campus from 2013 to 2016).

616 Villalba Ex. 11 at 20 ¶ 100 (student was enrolled in the Business Management program at the Carmel, IN campus from 2013 to 2015).

617 See Complaint at 29 ¶ 104, Caruso v. PEAKS Trust 2009-1 (In Re ITT Educational Services Inc.,), Case No. 16-07207-JMC-7A (Bankr. S.D. Ind. Sept. 7, 2018), ECF No. 2863, available at https://perma.cc/B8RZ-WTES.

618 Exhibit 393, Message from ITT HQ Student Relations Manager to Parents of ITT Student Complainant, Murray, UT campus (Sept. 23, 2004).

619 In an email, Kevin Modany derisively commented that if policymakers really wanted to cut college costs, the obvious solution would be to get rid of the 90/10 rule. See Exhibit 327, Email from CEO Kevin Modany to Legal/Compliance at HQ, Subject: "Fwd: MS For-Profit Daily Cram, 8/27/13" (Aug. 27, 2013).

620 Senate HELP Report at 147.

621 Id.

622 Veterans Education Success, "The ITT Collapse: Lessons Learned and Dealing with Future Challenges" (Oct. 2016), https://perma.cc/5FM5-AVH9.

623 Veterans Education Success, "Trends in Veteran and Servicemember Student Complaints about ITT Technical Institute," (Oct. 13, 2019) https://perma.cc/5DF5-C6P5.

624 Thankfully, as of March 10, 2021, Congress has closed this "90/10 loophole." See Press Release, Veterans Education Success, "90/10 Loophole Closure Is on Its Way to the President's Desk!" (Mar. 10, 2021), https://perma.cc/J579-RDZX.

625 See Letter from Jack Conway, Attorney General of Kentucky, and Other State Attorneys General to U.S. Senator Patty Murray and Other Members of the Senate Committee on Veterans' Affairs and Senate HELP Committee (May 29, 2012), available at https://perma.cc/33YX-TKGR.

626 See generally Senate HELP Report at 153-154.

627 Veterans Education Success, "90/10 Loophole," https://perma.cc/J579-RDZX.

628 Senate HELP Report at 208.

629 Id. at 207.

630 James Briggs, "Veterans Have the Most to Lose if ITT Tech Closes," Military Times (Sept. 6, 2016), https://perma.cc/K66B-HZ7X.

631 Exhibit 26, P. Gardner CFPB Decl. at 4 ¶ 12.

632 Exhibit 226, Email from CEO Kevin Modany to Legal/Compliance at HQ, Subject: "RE: Clovis 061—Mystery Shop—In Person" (Sept. 1, 2011).

633 See generally Villalba Compl., Exhibit 20, https://perma.cc/RW43-BNQY (hereinafter "Villalba Ex. 20") (collecting student testimony regarding how ITT lost or misused aid meant for veterans).

634 Villalba Compl., Exhibit 16 at 2 ¶ 13, https://perma.cc/2NJA-NTCW (hereinafter "Villalba Ex. 16").

635 Villalba Ex. 20 at 7 ¶ 29 (student enrolled in Computer Networking Systems program from 2005 to 2007).

636 Exhibit 394, ITT Training Presentation: "Internal Audit Training" at 4, 8-9 (June 2010).

637 Exhibit 395, Email from CFO to CPA at HQ, Subject: "FW: Bad Debt Expense - Components?" (May 21, 2009).

638 See Veterans Education Success, "Veteran and Servicemember Complaints About Misconduct and Illegal Practices at ITT Technical Institute" (Apr. 2020), https://perma.cc/3RBZ-W9NE.

639 Id.

640 Villalba Ex. 20 ¶¶ 10, 17, 29, 35.

641 Exhibit 21, J. Clayton Affidavit at 4 ¶ 19.

642 Villalba Compl., Exhibit 1 at 75 ¶ 353, https://perma.cc/NMG5-7M47 (hereinafter "Villalba Ex. 1") (graduate attended Plymouth Meeting, PA campus from 2011 to 2013).

643 Villalba Ex. 1 at 72 ¶ 338. (graduation attended the Portland, OR campus from 2000 to 2002 in the Computer Networking Services Technology program).

644 Exhibit 396, Email to/from HQ Career Services Employees, Subject: "FW: ARNOLD CAMPUS GRADUATE" (Jan. 25, 2005).

645 Exhibit 397, ITT Training Document: "Detailed Design Document Employer Relations GE

9.0 Approved" at 18 (Jan. 5, 2012).

646 Exhibit 398, Email from Earth City, MO Campus (016) Employee to Career Services at HQ, Subject: "RE: Student Complaint: [redacted]" (Jan. 25, 2005).

647 Exhibit 231, ITT Training Presentation: "Career Services Quarterly Interaction with Students; Step-by-Step Guide for Preparing Your Students for Career Success" at 11 (Dec. 2013).

648 Exhibit 399, Email from National Director of Career Services at HQ to HQ Employee, Subject: "RE: Student Complaint – 211 [redacted]" (Apr. 17, 2012).

649 Exhibit 400, ITT Student Complaint Report, Complaint Code: Career Services at 2 (Jan. 9, 01/09/2015) (former student of the Tallahassee, TN campus).

650 Exhibit 401, Email from CEO Kevin Modany to National Director of Career Services at HQ, Subject: "RE: Connect" (Oct. 31, 2012).

651 Bill Alpert, "Clever is as Clever Does," Barron's (Apr. 14, 2012), https://perma.cc/J4CH-H5G2.

652 Villalba Compl., Exhibit 24 at 32 ¶ 175, https://perma.cc/STL6-B2TP (hereinafter "Villalba Ex. 24") (student attended Murray, UT campus from 2004 to 2009 and studied Information Systems Security).

653 Villalba Compl., Exhibit 26 at 21 ¶ 95, https://perma.cc/8YYD-35VU (hereinafter "Villalba Ex. 26") (student attended Swartz Creek, MI campus from 2009 to 2011).

654 Villalba Ex. 26 at 5 ¶ 26 (student attended the Rancho Cordova, CA campus from 2004 to 2010).

655 Senate HELP Report at 91.

656 Id. at 90.

657 After Kevin Modany, the next-highest reported corporate executive annualized base salaries were: CFO at $412,000; President and COO at $319,411; and Executive VP and President of Breckinridge School of Nursing at $334,750. All four of these top corporate base salary allotments were increased 3% across the board from the previous year. See ITT Educational Services, Inc., Annual Report (Form 10-K) (Dec. 31, 2014), available at https://perma.cc/9M8E-MTWF.

658 See ITT Educational Services, Inc., Annual Report (Form 10-K) (Dec. 31, 2009), available at https://perma.cc/WK57-ZRYF.

659 See ITT Educational Services, Inc., Annual Report (Form 10-K) (Dec. 31, 2004), available at https://perma.cc/5XM8-BGN2.

660 See ITT Educational Services, Inc., Annual Report (Form 10-K) (Dec. 31, 2006), available at https://perma.cc/7GHC-QGVZ.

661 See ITT Educational Services, Inc., Annual Report (Form 10-K) (Dec. 31, 2011), available at https://perma.cc/4J2Y-J8LL.

662 See Danielle Douglas-Gabriel, "ITT Technical Institutes Shut Down After 50 Years in Operation," Washington Post (Sept. 6, 2016), https://perma.cc/9FLN-BKAN.

663 See ITT Educational Services, Inc., Annual Report (Form 10-K) (Dec. 31, 2015), available at https://perma.cc/US3E-6FN8. In fact, one corporate executive had singled out the statements about ITT's "growth strategy" as deceptive and misleading in preparing the 10Q filing for Q3 2015, recommending that the discussion of growth be deleted and

replaced with a discussion of strategies for responding to declining enrollment. See Exhibit 402, Email from outside consultant to Legal at HQ, Subject: "RE: 2015 Q3: MD&A - Background: ITT's 'Growth Strategy' vs. Responding to Declining Enrollment" (Oct. 14, 2015). This employee was terminated shortly after making these suggestions. See Exhibit 403, Email from Legal at HQ to Compliance at HQ, Subject: "RE: Request for Copy of Report SOX RETALIATION: 12/7 Corrective Action Form & 10/23/15 Misrepresentations in PP&E's" (Jan. 13, 2016).

664 See infra pp. 77-80, 84, 93, 98-102 on ITT's financing strategies.

665 Exhibit 404, Email from CEO Kevin Modany to Legal/Compliance and others at HQ, Subject: "Re: Thunder pricing.pptx" (Aug. 22, 2012).

666 See supra pp. 98-104 on ITT's scholarship programs.

667 Exhibit 404, Email from CEO Kevin Modany to Legal/Compliance and others at HQ, Subject: "Re: Thunder pricing.pptx" (Aug. 22, 2012). Modany affirmed his view that ITT should never cut tuition in 2015, when he stated to a potential buyer that "we don't believe that even in this draconian scenario that" reducing tuition "is appropriate." Exhibit 405, Email from CEO Kevin Modany to HQ Employees, Subject: "RE: school P&Ls" (June 5, 2015).

668 Exhibit 406, Email from CEO Kevin Modany to Marketing at HQ, Subject: "FW: Advertising of the scholarships" (Aug. 31, 2012).

669 Exhibit 407, Email From newsalerts@www.ittesi.com to Compliance at HQ, Subject: "ITT Technical Institutes Reports an Increase in the Affordability of Its Degree Programs" (May 13, 2014).

670 Exhibit 408, ITT Educational Services, Inc. Quarterly Board Report (Oct. 2009).

671 Id. at 5.

672 Id. at 15.

673 Exhibit 409, Email from CEO Kevin Modany to Chief Information Officer at HQ, Subject: "RE: 2013 IT Expense Budget Opportunities" (Jan. 7, 2013).

674 Exhibit 410, Email from CEO Kevin Modany to Compliance at HQ, Subject: "2013 cost reduction plan.xlsx" (Jan. 7, 2013).

675 Exhibit 411, Email from [redacted] to CEO Kevin Modany, Subject: "Re: Missed Call" (Mar. 23, 2013).

676 Id.

677 Exhibit 10, Email from HQ Employee to District Managers, cc: CEO Kevin Modany, Subject: [No Subject] (May 7, 2012).

678 Exhibit 299, Email from CEO Kevin Modany to Legal/Compliance at HQ, Subject: "FW: Khan Academy goes offline" (Dec. 19, 2012).

679 Id.

680 Exhibit 412, Email from CEO Kevin Modany to HQ Officials, Subject: "RE: Proposed orders - additional September laptops" (Sept. 16, 2014).

681 Exhibit 413, Email to/from HQ Employees, Subject: "FW: [redacted] Complaint" (Sept. 12, 2013).

682 Exhibit 414, Email from CEO Kevin Modany to Director of Communications at HQ,

Subject: "RE: [redacted] inquiry" (June 28, 2013).

683 Exhibit 415, Email from CEO Kevin Modany to outside counsel and BPV Capital Management, Subject: "Re: Operational and Financing Update" (Oct. 5, 2014).

684 ITT Educational Services, Inc., Annual Report (Form 10-K) at 47 (Dec. 31, 2014), available at https://perma.cc/9M8E-MTWF.

685 Id. at 61.

686 Exhibit 416, ITT Educational Services, Inc. HQ Department Summary 2014 Budget – CAGR Comparison (2009-2014).

687 Exhibit 417, Email from CEO Kevin Modany to COO at HQ, Subject: "RE: Registration Specialist Justification (2015)" (Oct. 14, 2014).

688 Exhibit 418, Email from CEO Kevin Modany to Cerberus Capital, cc: Compliance at HQ, Subject: "Requested per Campus Data-Confidential Information Subject to NDA" (Sept. 22, 2014).

689 Exhibit 415, Email from CEO Kevin Modany to outside counsel and BPV Capital Management, Subject: "Re: Operational and Financing Update" (Oct. 5, 2014).

690 Id.

691 Exhibit 418, Email from CEO Kevin Modany to Cerberus Capital, cc: Compliance at HQ, Subject: "Requested per Campus Data-Confidential Information Subject to NDA" (Sept. 22, 2014).

692 Exhibit 415, Email from CEO Kevin Modany to outside counsel and BPV Capital Management, Subject: "Re: Operational and Financing Update" (Oct. 5, 2014).

693 Exhibit 419, Email From Employee at 046 (Boise, ID) to Employees at HQ, Subject: "RE: Student Complaint - 46 [redacted]" (Dec. 2, 2014).

694 Exhibit 420, Email from CEO Kevin Modany to AEA Investors, Subject: "Re: Looooooooooooooooong Response to your email :)" (Sept. 27, 2012).

695 Exhibit 421, Email from CEO Kevin Modany to COO at HQ, Subject: "Fwd: ACTION REQUIRED: POTENTIAL LAST-MINUTE EMPLOYMENTS/WAIVERS FOR YOUR CAMPUS!!" (Apr. 30, 2013).

696 Villalba Compl. at 5 ¶ 22.

697 See supra at 89-93 for more information on student loan repackaging.

698 ITT Educational Services, Inc., Annual Report (Form 10-K) at 37 (Dec. 31, 2015), available at https://perma.cc/US3E-6FN8.

699 Senate HELP Report at 6 (520) https://perma.cc/DPG3-ZLGG. The report went on to note: "ITT's 37.1 percent profit margin is the highest amongst the 30 companies the committee examined. . . . The amount of profit ITT generated has increased rapidly, more than doubling from $243 million in 2007 to $614 million in 2010." Id. "Profit is based on operating income before tax and other non-operating expenses including depreciation reported in SEC filings. Marketing and recruiting includes all spending on marketing, advertising, admissions and enrollment personnel as reported to the committee." Id. at 6 (520) n. 2087.

700 ITT Educational Services, Inc., Annual Report (Form 10-K) at 37 (Dec. 31, 2009), available at https://perma.cc/FJ3P-KZHT; see also Senate HELP Report at 6 (520).

701 Senate HELP Report at 93, 24 (538).

702 Id. at 24 (538).

703 Exhibit 30, ITT Internal Document: "Strategic Marketing Plan – A Focus on Core Programs" at 16-17 (2015).

704 See Exhibit 422, ITT Financial Summary for Cerberus Capital (2010-2014).

705 Exhibit 423, Email from CEO Kevin Modany to Chief Marketing Officer at HQ, Subject: "Re: Avoid 'quantity over quality'" (Nov. 3, 2013).

706 Id.

707 Exhibit 424, Email from CEO Kevin Modany to CFO at HQ, Subject: "FW: Additional Spend Analysis" (May 13, 2014).

708 Exhibit 425, Email from Boston Public Affairs to CEO Kevin Modany, cc: HQ Employees, Subject: "Re: Update" (Mar. 31, 2015).

709 Id.

710 Exhibit 426, ITT Internal Document: 2014 Finance Presentation at 13.

711 Exhibit 2, Email from CEO Kevin Modany to HQ, Subject: "RE: Presentation" (Nov. 18, 2013).

712 Exhibit 427, Email from Marketing at HQ to Legal at HQ, cc: CEO Kevin Modany, Subject: "FW: HuffPost article about affiliate sites" (Mar. 2, 2016).

713 Exhibit 428, Email from CEO Kevin Modany to Marketing at HQ, Subject: "RE: Presentation" (Dec. 18, 2013).

714 Exhibit 429, Email from CEO Kevin Modany to Legal at HQ, Subject: "RE: Lead Gen Docs - PRIVILEGED ATTORNEY/CLIENT COMMUNICATION" (Feb. 20, 2015).

715 Exhibit 430, Email from CEO Kevin Modany to Legal at HQ, Subject: "RE: HuffPost article about affiliate sites" (Mar. 2, 2016).

716 Exhibit 2, Email from CEO Kevin Modany to HQ, Subject: "RE: Presentation" (Nov. 18, 2013).

717 Exhibit 431, ITT Internal Document: Performance Management Video Script at 3 (Aug. 19, 2011).

718 Id.

719 Exhibit 432, ITT Policy Manual: Employee Relations Performance Management ER 27.0, Human Resources at 2-5 (July 2011).

720 Exhibit 431, ITT Internal Document: Performance Management Video Script at 8 (Aug. 19, 2011).

721 Exhibit 433, ITT Memorandum from HQ to Directors of Recruitment at 2 (Dec. 18, 2013).

722 Exhibit 434, ITT Internal Document: Enterprise Risk Management Annual/Quarterly SME Meeting – Agenda, Academic Affairs at 19 (Jan. 15, 2010).

723 Exhibit 435, Email from HQ to Human Resources at HQ, Subject: "RE: Termination Recommendation - West Palm Beach - [redacted]" (Feb. 15, 2012).

724 Merrill Decl. Ex. 4 R. Bueche Attest. at 56 ¶ 30.

725 Exhibit 3, ITT Employee Counseling Form, Tallahassee, FL (Sept. 16, 2015).

726 Exhibit 26, P. Gardner CFPB Decl. at 3 ¶¶ 8-9.

727 Merrill Decl. Ex. 4 R. Bueche Attest. at 53-54 ¶ 8.

728 Merrill Decl. Ex. 3 J. Cody Attest. at 5 ¶¶ 6-7.

729 Exhibit 436, ITT Procedure Manual: "Recruitment Representative Tier Inquiry Procedure" at 2 (Apr. 22, 2011).

730 That is, pre-packaged for financial aid. See supra at pp. 89-93 for more information on financial aid packaging.

731 Exhibit 436, ITT Procedure Manual: "Recruitment Representative Tier Inquiry Procedure" at 3 (Apr. 22, 2011).

732 Merrill Decl. Ex. 4 R. Bueche Attest. at 53 ¶ 7.

733 Merrill Decl. Ex. 1 J. Cody Attest. at 6 ¶ 12.

734 Merrill Decl. Ex. 3 D. Lueck Attest. at 47 ¶ 14.

735 Id. at 47 ¶ 15.

736 Exhibit 437, ITT Training Document: "Recruitment Training Meeting" at 2 (Apr. 20, 2007).

737 Merrill Decl. Ex. 1 J. Cody Attest. at 5-6 ¶ 9.

738 Exhibit 438, Email from CEO Kevin Modany to Legal/Compliance at HQ, Subject: "Re: Internal Controls for Postsecondary Education - Sarbox for ED 2010 Aug 29 Final.pptx" (Oct. 30, 2012).

739 Exhibit 439, Email to/from Legal at HQ, Subject: "RE: Greenville Alleged Theft Incident – PRIVILEGED" (May 8, 2015).

740 Exhibit 440, Email from CEO Kevin Modany to outside counsel, Subject: "RE: Update" (Mar. 31, 2015).

741 Exhibit 441, Email from CEO Kevin Modany to outside counsel, Subject: "RE: Decision tree for EEAL complaints" (Mar. 28, 2016).

742 Exhibit 442, Email from CEO Kevin Modany to Employee at HQ, Subject: "Re: Global Knowledge" (Oct. 19, 2012).

743 Exhibit 443, Email from CEO Kevin Modany to HQ Employee, Subject: "Re: International Offerings" (July 4, 2012).

744 Exhibit 444, ITT Internal Memorandum to National Director of Career Services from HQ, at 5-6 (Apr. 23, 2010).

745 Exhibit 445, ITT Internal Memorandum to National Director of Career Services from HQ, at 3 (Aug. 18, 2010).

746 Exhibit 446, Email from National Registrar at HQ to HQ, Subject: "RE: Effective Immediately - Wonderlic Admission Requirements" (July 24, 2014).

747 Id.

748 Exhibit 447, ITT Internal Document: Enterprise Risk Management Annual Quarterly SME Meeting – Agenda at 7.

749 Id. at 10-11.

750 For more on fraud related to job placement rates, see supra at 54-62.

751 Merrill Decl. Ex. 3 D. Lueck Attest. at 50 ¶ 34.

752 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 43 ¶ 75.

753 Id. at 43-44 ¶¶ 82-83.

754 Merrill Decl. Ex. 4 R. Bueche Attest. at 57 ¶¶ 34, 37.

755 Id. at 57 ¶ 38.

756 Merrill Decl. Ex. 1 J. Cody Attest. at 7 ¶¶ 21, 20.

757 Specifically, this employee reported to HQ that a certain recruiter told a prospective student: "What law offices are typically doing these days is, instead of hiring lawyers at $100,000 to $150,000 a year, they'll hire our paralegals at $50,000-$60,000 a year to do the same thing," which constituted an inflated salary and job expectation claim. This whistleblowing employee also noted that this same recruiter told a different prospective student, "Many of our Digital Entertainment and Game Design graduates have gone on to wonderful careers with top gaming companies. . . so you shouldn't have any problem finding a job with that degree." Exhibit 448, Email from Employee at Tampa, FL (Campus 040) to HQ, Subject "RE: Paralegal Compensation Question" (July 17, 2010). The whistleblower noted that the latter statement was both contradicted by the facts (just 5 of 12 graduates were working in field) and contrary to an admonishment from the program chair in the most recent "product knowledge seminar," where the chair had warned that recruiters "should be careful about overpromising on DEGD jobs, as it is extremely challenging to find work in this field in the state of Florida." Id.

758 Exhibit 449, Email from Employee at Tampa, FL (Campus 040) to HQ, Subject "Thank you for the update" (July 28, 2010).

759 Exhibit 450, Email from Admissions Representative at Tulsa, OK campus to HQ, Subject: "[No Subject]" (July 26, 2012).

760 Exhibit 19, Email from Human Resources at HQ to Employee at Campus 118 (Columbus, OH), Subject: "draft" (Apr. 25, 2012).

761 Id.

762 Exhibit 451, Email to/from Online Program Employees, Subject: "FW: Academic Enhancements" (Feb. 8, 2011).

763 Exhibit 20, Email from Student Relations Supervisor at HQ, Subject: "FW: Complaints of passing Students" (Sept. 12, 2012).

764 Exhibit 452, ITT Corrective Action Form, Youngstown, OH at 2 (May 2014).

765 Exhibit 1, Email from Legal/Compliance at HQ to HQ, Subject: "Re: [redacted] 039" (Aug. 27, 2012).

766 Exhibit 453, Email from Student Complainant to Student Survey, Subject: "RE: ITT Technical Institute Student Course Survey - Your Response (Campus Code 063)" (Aug. 3, 2013).

767 "[ACICS] accredited Corinthian Colleges even as it was declaring bankruptcy in 2015, and the agency did not pull the accreditation of ITT Technical Institute until after the federal advisory panel recommended the termination of the council's recognition." Erica L. Green, "It Oversaw For-Profit Colleges That Imploded. Now It Seeks a Comeback," New York Times (Apr. 1, 2018), https://perma.cc/B3K8-Z4YQ; see also Viviann Anguiano, "ACICS Must Be Stripped of its Federal Recognition for Good." Center for American Progress (Mar. 3, 2012), https://perma.cc/C3V7-TWDN.

768 Danielle Douglas-Gabriel, "Education Dept. Drops Embattled For-profit College Accreditor," Washington Post (June 2, 2021), https://perma.cc/NS3H-CUZJ.

769 Exhibit 454, Email from CEO Kevin Modany to HQ Employees, Subject: "Re: ACICS Renewal: ITT EDUCATIONAL SERVICES INC files (10-K) Annual report, for period end 31-Dec-12 (ESI-US)" (Feb. 24, 2013).

770 Id.

771 Exhibit 455, Email from CEO Kevin Modany to EVP/CFO at HQ, Subject: "FW: 2012 ACICS Expenditures" (Jan. 16, 2013).

772 Id.

773 Exhibit 17, Email from HQ Employee to Regulatory/Compliance at HQ, Subject: "FW: Branch I Applications" (May 23, 2011).

774 Exhibit 456, Email from HQ to Regulatory Affairs at HQ, Subject: "RE: CARs" (Aug. 10, 2012).

775 Exhibit 457, Email to/from Regulatory Affairs at HQ, Subject: "RE: ACICS Doc Prog Re-Applications Master as of 021513.xls" (Feb. 27, 2013).

776 Senate HELP Report at 17 (531).

777 Exhibit 458, Email from CEO Kevin Modany to Compliance at HQ, Subject: "RE: 8 24 2015 June 2015 Wk10 Drops Q1 thru Q8.xls" at 3-4 (Aug. 26, 2015).

778 Exhibit 459, Email from Compliance at HQ to CEO Kevin Modany, Subject: "FW: Retention for the Indy campus" (Aug. 22, 2016); see also Exhibit 460, Email from COO at HQ to CEO Kevin Modany, Subject: "FW: New ACICS Retention Rate with Zip Code Mapping" (Sept. 10, 2015).

779 Exhibit 461, Email from CEO Kevin Modany to Compliance at HQ, Subject: "RE: Online.xls" (Oct. 2, 2015); see also Exhibit 462, Email from CEO Kevin Modany to Legal at HQ, Subject: "FW: IT Status Update for CEO, 10-1-15" (Oct. 2, 2015).

780 Exhibit 462, Email from CEO Kevin Modany to Legal at HQ, Subject: "FW: IT Status Update for CEO, 10-1-15" (Oct. 2, 2015).

781 Exhibit 463, Email from CEO Kevin Modany to COO at HQ, Subject: "Re: Online.xls"(Aug. 27, 2015).

782 Exhibit 458, Email from CEO Kevin Modany to Compliance at HQ, Subject: "RE: 8 24 2015 June 2015 Wk10 Drops Q1 thru Q8.xls" (Aug. 26, 2015).

783 Exhibit 464, Email from CEO Kevin Modany to Compliance at HQ, Subject: "RE: Conditional Admission Emails – Congratulations/Start Day Reminder" (Sept. 9, 2015).

784 Exhibit 465, Email from CEO Kevin Modany to HQ Employee, Subject: "Re: Conditional Enrollment Initiative – Please Read and Respond"(Sept. 9, 2015).

785 Exhibit 466, Email from Legal/Compliance at HQ to CEO Kevin Modany, Subject: "RE: 3rd Party Verification" (Feb. 27, 2013).

786 Exhibit 467, Email from Compliance at HQ to National Director of Career Services at HQ and Regulatory Affairs at HQ, Subject: "RE: ACICS Pilot Discrepancy Forms" (Sept. 26, 2012).

787 Exhibit 468, Emailed Letter from ACICS to Louisville, KY campus, Subject: "Student Achievement Review – Campus-Level Deferral Letter" (Apr. 15, 2016).

788 Exhibit 443, Email from CEO Kevin Modany to HQ Employee, Subject: "Re: International Offerings" (July 4, 2012).

789 Id.

790 Exhibit 469, Email from CEO Kevin Modany to Compliance at HQ, Subject: "RE: ACICS Concerns" (Apr. 7, 2013).

791 Exhibit 470, Email from HQ to CEO Kevin Modany, Subject: "RE: Definition of Placement rates Confidential" (Dec. 11, 2012).

792 Exhibit 471, Email from CEO Kevin Modany to ACICS, Subject: "Re: Copy of materials submitted to ACICS" (July 19, 2016).

793 Exhibit 472, Email from CEO Kevin Modany to Legal at HQ, Subject: "Re: Takano Briefing" (June 24, 2015).

794 Exhibit 473, Email from CEO Kevin Modany to Legal/Compliance at HQ, Subject: "RE: GECoalitionLettertoSecDuncan.August21" (Aug. 29, 2012).

795 Exhibit 474, Email from CEO Kevin Modany to outside counsel, Subject: "Re: Holly Patraeus Testimony" (July 31, 2013).

796 Exhibit 475, Email from CEO Kevin Modany to Legal at HQ, Subject: "RE: Interesting read - just out" (Oct. 2, 2015).

797 Exhibit 476, Email from CEO Kevin Modany to Legal at HQ, Subject: "Re: From [redacted] - Miami Herald" (Aug. 8, 2014).

798 Id.

799 Exhibit 477, Email to/from Legal at HQ, Subject: "RE: Hanover" (Sept. 15, 2015).

800 Id.

801 Exhibit 478, Email from CEO Kevin Modany to outside counsel, Subject: "RE: Pg 522 of DTR" (June 14, 2016).

802 Exhibit 479, Email from CEO Kevin Modany to outside counsel, Subject: "RE: for-profit college" (May 24, 2016).

803 Exhibit 478, Email from CEO Kevin Modany to outside counsel, Subject: "RE: Pg 522 of DTR" (June 14, 2016).

804 Exhibit 479, Email from CEO Kevin Modany to outside counsel, Subject: "RE: for-profit college" (May 24, 2016).

805 Exhibit 480, Email from CEO Kevin Modany to Legal at HQ, Subject: "Re: Have You Been Affected by Crushing Student Loan Debt?" (Feb. 9, 2016).

806 Exhibit 481, Email from Legal at HQ to CEO Kevin Modany, Subject: "RE: Harkin report" (July 30, 2014).

807 Exhibit 482, Email from HQ to HQ and outside recipients, Subject: "FW: List of spots" (May 1, 2014).

808 Exhibit 483, Email from HQ to Legal/Compliance at HQ, Subject: "FYI: Graduate spotlights in upcoming Fall 2012 Alumni Magazine" (Oct. 12, 2012).

809 Exhibit 484, Email from CEO Kevin Modany to Marketing at HQ, Subject: "RE: [Redacted]" (Oct. 26, 2012).

810 Id.

811 Exhibit 485, Email from EVP of Nursing Program at HQ to CEO Kevin Modany, Subject: "Re: Please don't go Dr. [redacted]" (Oct. 17, 2013).

812 Exhibit 486, Email from CEO Kevin Modany to HQ Employee, Subject: "Fwd: Dr. [redacted] and ITT Breckingridge [sic] School of Nursing" (Oct. 29, 2013).

813 Exhibit 487, Email from CEO Kevin Modany to EVP of Nursing at HQ, Subject: "Re: Lexington Board Meeting" (Mar. 7, 2013).

814 Exhibit 488, Email from former CEO Rene Champagne to CEO Kevin Modany, Subject: "Re: Sen. Durbin roundtable, Jan. 23rd" (Jan. 11, 2012).

815 Exhibit 489, Email from Legal/Compliance at HQ to CEO Kevin Modany, Subject: "FW: Describing my vision to our Colleagues" (Feb. 24, 2012).

816 Exhibit 490, Email from CEO Kevin Modany to HQ Employee, Subject: "RE: MediaVantage ALERT - With taxpayer money, for-profit colleges spend massively on marketing. Sherrod Brown wants to ban the practice" (June 17, 2015).

817 Exhibit 491, Email from CEO Kevin Modany to Employee at HQ and campus employees, Subject: "RE: IMMEDIATE ACTION REQUIRED: Call Campaign" (Mar. 14, 2011).

818 Exhibit 492, Email from CEO Kevin Modany to Legal at HQ, Subject: "RE: Meeting w/ IN Federal Lobbyist" (June 24, 2013).

819 Exhibit 493, Email from CEO Kevin Modany to HQ, Subject: "Final GE Rule Summary" (Nov. 11, 2014).

820 Exhibit 494, Email from CEO Kevin Modany to BPV Capital, Subject: "Re: ESI: Sued By State Of New Mexico For Unfair Practices Related To Breckenridge School Of Nursing: Urdan/Wells Fargo" (Apr. 10, 2014).

821 Exhibit 495, ITT Educational Services, Inc. Board of Directors Meeting at 4 (Apr. 19, 2010).

822 Id. at 12.

823 Id. at 14.

824 Id. at 16.

825 Exhibit 496, Email from CEO Kevin Modany to HQ Employee, Subject: "RE: GE Informational Rate Data – Updated 4/2/2014" (Apr. 11, 2014).

826 Exhibit 497, ITT Internal Document: "Employee Ethics Alert Line/Compliance Reviews Q1-Q2 2016" at 2 (showing employee reports of improper student employment documentation and use of outdated materials).

827 Exhibit 498, ITT Internal Document: Academic Affairs Presentation at 3 (April/May 2011).

828 Id.

829 Exhibit 499, ITT Internal Document: Academic Affairs Presentation at 3 (April/May 2011).

830 Id.

831 Feedback on this outsourcing strategy was, unsurprisingly, negative: "[T]he changes they [NIIT] made to the Online course (which I was unaware they were making) to create the one course concept in December appears to be having a very bad effect on the Online performance of GS1145 and GS1140. Our withdrawal rates have gone up dramatically for those two courses. There could be other reasons causing the negative effects including email issues, more 2nd week starts this year than last, but my suspicion is that the changes to the curriculum, however well intentioned, are causing the problems." Exhibit 500,

Email from CEO Kevin Modany to Online Programs, Subject: "RE: Recommendation for expansion of High Impact Courses" (Feb. 13, 2014).

832 Exhibit 501, Email from HQ to CEO Kevin Modany, Subject: "RE: GE Chart" (May 27, 2015).

833 Id. Another strategy that ITT used to mitigate poor gainful employment results involved heavy promotion of the Opportunity Scholarship, especially in lieu of cutting ITT's sticker price. For more information on ITT's Opportunity Scholarship, see supra at pp. 99-103.

834 Exhibit 502, Email from CEO Kevin Modany to HQ Employees, Subject: "RE: Interesting Article" (Dec. 17, 2014).

835 Exhibit 503, Email from CEO Kevin Modany to outside counsel, Subject: "Re: U.S. Department of Education" (June 8, 2015).

836 Exhibit 504, Email from Legal at HQ to CEO Kevin Modany, Subject: "Re: More Corinthian News" (Nov. 18, 2015).

837 Exhibit 505, Email from CEO Kevin Modany to outside counsel, Subject: "RE: More Gainful Reporting and More Negotiated Rulemaking" (Aug. 19, 2015).

838 Exhibit 506, Email from CEO Kevin Modany to outside counsel, Subject: "Re: Cost of borrower defense rules still unclear" (Mar. 16, 2016).

839 Exhibit 507, Email from CEO Kevin Modany to Legal at HQ, Subject: "RE: Government to Expand Program to Forgive Student Loan Debt - The New York Times" (Nov. 18, 2015).

840 Exhibit 508, Email from Legal at HQ to CEO Kevin Modany, Subject: "FW: Question" (Nov. 19, 2015).

841 Id.

842 See U.S. Bureau of Labor Statistics, Occupational Outlook Handbook, https://perma.cc/PD73-V3ET.

843 See Institute of Medicine (US) Committee on the Robert Wood Johnson Foundation Initiative on the Future of Nursing, The Future of Nursing: Leading Change, Advancing Health (2011), available at https://perma.cc/9NRQ-45HP.

844 National Council of State Boards of Nursing, "Definition of Nursing Terms," https://perma.cc/R67P-D4WE.

845 Id.

846 This report refers to this organization as NLNAC except when ACEN is used in a direct quotation.

847 Accreditation Commission for Education in Nursing, "Mission, Purpose, and Goal: Accreditation Commission for Education in Nursing," https://perma.cc/KA7M-5TLK.

848 Accreditation Commission for Education in Nursing, "Frequently Asked Questions," https://perma.cc/F9GZ-SWED.

849 Additionally, specialized accreditation is mandatory for nursing programs preparing students for an advanced practice role (e.g., nurse practitioner, nurse midwife, nurse anesthetist, or clinical nurse specialist), in order for graduates to take the licensing/certification examination in the advanced practice role. The agencies that offer the various licensing/certification examinations in the advanced practice roles mandate that the accrediting agency be recognized by the United States Department of Education.

850 For a list of accreditation criteria required by NLNAC/ACEN see ACEN Accreditation Manual Section III: Standards and Criteria (July 2020 ed.), https://perma.cc/TR44-V9PF.

851 See Exhibit 509, Email from Regulatory Affairs at HQ to Compliance at HQ, Subject: "Re: Internal Audit" (Nov. 21, 2012).

852 ITT stayed away from starting nursing programs in states where either regional or programmatic nursing accreditation was a requirement. See Exhibit 510, Email from HQ Employee to Regulatory Affairs at HQ, Subject: "RE: Nursing program opportunities" (July 24, 2013).

853 Exhibit 511, Email from Assistant Director of Regulatory Affairs at HQ to Director at 012, Subject: "RE: Two things…" (Nov. 12, 2012).

854 Exhibit 512, ITT Conference Call Summary (Mar. 28, 2014).

855 Accreditation Commission for Education in Nursing, "Benefits of Accreditation: Accreditation Commission for Education in Nursing," https://perma.cc/MNY4-J9DJ.

856 See Accreditation Commission for Education in Nursing, "Frequently Asked Questions," https://perma.cc/F9GZ-SWED.

857 "No one disputes that accreditation of ITT's nursing program is a 'good thing' and desired by ITT . . . Accreditation signifies that an institution provides a quality education with trained instructors teaching nursing practices that meet national standards . . . [T]here is no doubt accreditation by the NLNAC is significant and was important to Claimant personally." Exhibit 513, Award of Arbitrator at 3-4, [Redacted] v. ITT, Case No. 76434 E00247 MAVE, American Arbitration Association (Dec. 9, 2013).

858 Exhibit 514, Letter to ITT's National Nursing Dean from ITT's Lexington, Kentucky Campus Director and Program Chair (regarding the need for NLNAC accreditation).

859 Press Release, ITT Technical Institute, "ITT Educational Services Inc. Reports 2007 Second Quarter Results Earnings Per Share Increased 58.2 Percent" (July 26, 2007), available at https://perma.cc/6NEK-QY7A.

860 Exhibit 515, Email from Regulatory Affairs at HQ to Employee at HQ, cc: Nursing Program Director at HQ, Subject: "Re: RE: Nursing program opportunities"(July 24, 2013).

861 ITT Educational Services, Inc., Annual Report (Form 10-K) (Dec. 31, 2011), available at https://perma.cc/4J2Y-J8LL.

862 NLNAC/ACEN was then—and continues to be—recognized as the accrediting body for all types of nursing programs by the U.S. Department of Education, the U.S. Department of Health and Human Services, the U.S. Uniformed Nursing Services, the Veterans Health Administration, the National Council of State Boards for Nursing, and the State Boards of Nurse Examiners, among others.

863 In March 2011, the regulatory affairs department reminded officials at HQ that all nursing programs in Indiana must achieve NLNAC accreditation within three years of initial approval. This requirement came into effect in May 2010, after ITT's five Indiana nursing programs began, and it is unclear whether those existing programs were covered by the new rule.

864 Some states eventually did go on to require programmatic nursing accreditation. For example, national nursing accreditation was not required by the Alabama board of nursing between 2010 and 2016, but the board "revamped" its nursing education rules in 2019 to require "all programs in the state to obtain national accreditation by 2022.". See Alabama

Board of Nursing, "Who We Are and What We Do" at 10 (Aug. 2019), available at https://perma.cc/6BPG-9TVQ.

865 See Exhibit 514, Letter to ITT's National Nursing Dean from Lexington, Kentucky Campus Director and Program Chair (undated).

866 See Exhibit 516, Email from EVP of Nursing Program to CEO Kevin Modany, Subject: "FW: Nursing School Looking to Partner with You for Your Hiring Needs!" (Aug. 5, 2013).

867 Exhibit 517, Email from CEO Kevin Modany to HQ Employee, Subject: "RE: fall rotations" (June 14, 2012).

868 Exhibit 518, ITT Internal Document: "Proposal – The Case to Pursue Voluntary Programmatic Accreditation for select BSNHS Campuses."

869 Id.

870 Exhibit 519, Email from Assistant Director of Regulatory Affairs at HQ to HQ Employees, Subject: "Re: NLNAC" (Sept. 28, 2011).

871 Exhibit 520, ITT Internal Document: "Review of Readiness for NLNAC Accreditation" at 3 (Feb. 18, 2013).

872 Exhibit 519, Email from Assistant Director of Regulatory Affairs at HQ to HQ Employees, Subject: "Re: NLNAC" (Sept. 28, 2011).

873 Exhibit 521, Email from CEO Kevin Modany to Executive Vice President and Chief Information Officer at HQ, Subject: "RE: IntelliCourse - Nursing Curriculum - Updated proposal" (Oct. 11, 2012).

874 Exhibit 520, ITT Internal Document: "Review of Readiness for NLNAC Accreditation" at 3 (Feb. 18, 2013).

875 Exhibit 522, Email from Assistant Director of Regulatory Affairs at HQ to Indianapolis Nursing Faculty at 011, Subject: "RE: Hello" (Ja. 23, 2012).

876 Id.

877 Exhibit 523, Email from Assistant Director of Regulatory Affairs at HQ to Senior Vice President, Business Development at HQ, Subject: "FW: Student Survey" (Aug. 7, 2012).

878 Exhibit 524, Email from Student Survey to HQ, Subject: "FW: ITT Technical Institute Student Course Survey - Your Response (Campus Code 66)" (Mar. 26, 2012).

879 Exhibit 525, Arizona Board of Nursing Consent Agreement with ITT at 3 ¶ 6 (May 15, 2015).

880 Exhibit 526, Indiana Board of Nursing Meeting Minutes at 4 (Nov. 19, 2015).

881 Exhibit 527, Email from Vice President of Instructional Operations at 211 to National Nursing Dean at 211, cc: President and Chief Operating Officer at HQ, Subject: "RE: Richardson Nursing Situation" (Dec. 30, 2015).

882 Exhibit 528, Email from Regulatory Affairs at HQ to Employees at HQ and outside recipients, Subject: "RE: Our AR State Board of Nursing Visit today" (Nov. 27, 2012).

883 Exhibit 529, Email from Executive Vice President and Chief Information Officer at HQ to CEO Kevin Modany, Subject: "RE: Recap of our meeting today" (Sept. 25, 2012).

884 Exhibit 530, Email from HQ Employees to Regulatory Affairs at HQ and outside recipients, Subject: "FW: Nursing help" (Aug. 22, 2012).

885 Id.

886 In Arkansas, ITT's unwillingness to spend money on its nursing programs made it a near certainty that these programs could not survive. In terms of resources, the state board of nursing noted "a measure of concern about the size of the clinical lab, given the size of the cohort [ITT was] asking to admit," as well as ITT's failure to meet the requirement, "articulated clearly," "that each and every faculty member, as well as the chair, be provided a private office." Exhibit 528, Email from Regulatory Affairs at HQ to Employees at HQ and outside recipients, Subject: "RE: Our AR State Board of Nursing Visit today" (Nov. 27, 2012). ITT HQ deemed the requirement for private offices "probably a deal breaker." Exhibit 531, Email from Employees at HQ to Regulatory Affairs at HQ, Subject: "RE: Our AR State Board of Nursing Visit today" (Nov. 27, 2012).

887 Exhibit 532, Email from Regulatory Affairs at HQ to Compliance at HQ, Subject: "RE: Dr. [redacted] - February visit to Indy" (Jan. 11, 2013).

888 Exhibit 533, Email from EVP of Nursing Program at HQ to CEO Kevin Modany, Subject: "RE: Nursing faculty - Rancho Cordova" (June 24, 2013).

889 Id.

890 Exhibit 534, Email from EVP of Nursing Program at HQ to CEO Kevin Modany, Subject: "RE: Update per request" (Oct. 2, 2013).

891 Exhibit 535, Letter from Director of Nursing, Rancho Cordova, CA campus (2013).

892 Exhibit 485, Email from EVP of Nursing Program at HQ to CEO Kevin Modany, Subject: "Re: Please don't go Dr. [redacted]" (Oct. 17, 2013).

893 Exhibit 536, Email from CEO Kevin Modany to CFO at HQ, Subject: "FW: Pay for adjunct instructors" (Dec. 19, 2013).

894 Id.

895 Id.

896 Exhibit 537, Email from CEO Kevin Modany to EVP of Nursing Program at HQ, Subject: "RE: Pay for adjunct instructors" (Dec. 19, 2013).

897 Exhibit 538, Email from EVP of Nursing Program at HQ to CEO Kevin Modany, Re: "RE: Pay for adjunct instructors" (Dec. 19, 2013).

898 Exhibit 539, Email from Regulatory Affairs at HQ to Compliance at HQ, Subject: "RE: Nursing and NLNAC" (June 8, 2010).

899 Exhibit 540, Email from CEO Kevin Modany to EVP of Nursing Program at HQ, Subject: "Re: ACEN" (Aug. 12, 2014).

900 Exhibit 541, Email from HQ Employee to CEO Kevin Modany, Subject: "RE: Nursing Faculty and teaching loads" (Oct. 1, 2014).

901 Exhibit 542, Email from CEO Kevin Modany to HQ Employee, Subject: "RE: Nursing Faculty and teaching loads" (Oct. 2, 2014).

902 Exhibit 543, Email from CEO Kevin Modany to CFO at HQ, Subject: "FW: Nursing Faculty and teaching loads" (Oct. 2, 2014).

903 Exhibit 544, Email from CEO Kevin Modany to Employees at HQ, Subject: "RE: Accelerated BSN Program" (Feb. 9, 2014).

904 Id.

905 Exhibit 545, ITT Internal Document: Business Development, "Accelerated BSN Bachelor's

Degree in Nursing Program" at 5-6.

906 Exhibit 509, Email from Regulatory Affairs at HQ to Compliance at HQ, Subject: "Re: Internal Audit" (Nov. 21, 2012).

907 Exhibit 546, Email from Regulatory Affairs at HQ to Employees at Campus 011 (Indianapolis, IN), Subject: "Re: NLNAC Write Up" (Oct. 15, 2010).

908 Exhibit 547, Email from Nursing Chair at 157 to [redacted], Subject: "RE: Update of Mock Visit" (Feb. 14, 2013).

909 Id.

910 Exhibit 515, Email from Regulatory Affairs at HQ to Employee at HQ, cc: Nursing Program Director at HQ, Subject: "Re: RE: Nursing program opportunities" (July 24, 2013).

911 Id.

912 Exhibit 548, Email to/from Regulatory Affairs at HQ, Subject: "Re: RE: Texas nursing" (Jan. 22, 2013).

913 Exhibit 549, Email from HQ to Regulatory Affairs at HQ, Subject: "Re: RE: Call from IL BON" (Feb. 4, 2013).

914 Id.

915 Id.

916 Id.

917 Id.

918 Exhibit 550, Email from Employee at Campus 082 to HQ Regulatory Affairs and Nursing Director at HQ, Subject: "Re: RE: Nursing Board Letter of Deficiency: Bessemer ITT Technical Institute" (May 31, 2013).

919 Exhibit 551, Email from Regulatory Affairs at HQ to HQ, Subject: "Re: RE: AA1.2s for OH and OR nursing programs" (May 24, 2013).

920 Exhibit 509, Email from Regulatory Affairs at HQ to Compliance at HQ, Subject: "Re: Internal Audit" (Nov. 21, 2012).

921 Exhibit 552, Email from Regulatory Affairs to Nursing Regulatory at HQ, Subject: "Re: RE: Henderson Nursing" (Oct. 18, 2012.)

922 Id.

923 Id.

924 Exhibit 553, Email from Nursing Regulatory to Regulatory Affairs at HQ, Subject: "RE: Binders to prepare for BRN visit" (Oct. 30, 2012).

925 Id.

926 Exhibit 554, Email from Nursing Regulatory to Regulatory Affairs at HQ, Subject: "RE: Henderson NLNAC" (Jan. 3, 2013).

927 Id.

928 Exhibit 555, Email from Nursing Regulatory to HQ, Subject: "Re: FW: Indianapolis Mock Visit February 12-13/Other HEN Mock Visit" (Jan. 16, 2013).

929 Exhibit 556, Email to/from Regulatory Affairs at HQ, Subject "Re: FW: Henderson NLNAC" (Jan. 3, 2013).

930 Id.

931 Exhibit 557, Email from/to Regulatory Affairs at HQ, Subject: "RE: Indianapolis Mock Visit February 12-13/Other HEN Mock Visit" (Jan. 17, 2013).

932 Exhibit 558, Email to/from Regulatory Affairs at HQ, Subject: "FW: Mock NLNAC Visit" (Oct. 4, 2012).

933 Exhibit 559, Email from Regulatory Affairs at HQ to EVP of Nursing Program, Subject: "FW: Nevada Board Meeting response information/preparation" (May 14, 2013).

934 Exhibit 560, Email from HQ to Regulatory Affairs at HQ, Subject: "RE: Henderson, NV" (May 14, 2013).

935 Exhibit 561, Email from EVP of Nursing at HQ to HQ, Subject: "RE: Nevada Board Meeting response information/preparation" (May 14, 2013).

936 Id.

937 Exhibit 562, Email from/to Regulatory Affairs at HQ, Subject: "RE: Nevada Nursing Board Meeting" (July 25, 2013).

938 See Exhibit 563, ITT Training Presentation: "Associate Degree Program in Nursing Key Components" at 8 (Aug. 15, 2011).

939 Id.

940 Exhibit 564, Email from Regulatory Affairs at HQ to HQ Employees, Subject: "Re: FW: NLNAC" (Feb. 28, 2011).

941 Exhibit 565, Email from Regulatory Affairs at HQ to HQ Employees, Subject: "Re: FW: Some thoughts based on Indy NLNAC site visit - heads up on what your program needs to be doing" (Feb. 28, 2011).

942 Exhibit 566, Email from Regulatory Affairs at HQ to HQ Employee, Subject: "Re: RE: IND Website/NLNAC" (Mar. 4, 2011).

943 Exhibit 567, Email to/from Regulatory Affairs at HQ, Subject: "Re: NLNAC" (Mar. 11, 2013).

944 Exhibit 549, Email from HQ to Regulatory Affairs at HQ, Subject: "Re: RE: Call from IL BON" (Feb. 4, 2013).

945 See supra at 40-42 regarding national accreditation.

946 Exhibit 568, ITT Marketing Presentation: "Associate's Degree in Nursing Program Overview," Albuquerque, NM, at 5.

947 Id. at 17.

948 Exhibit 569, Email from Director at Campus 060 (Albuquerque, NM) to Chief Academic Officer at HQ, Subject: "FW: Nursing Presentation" (Feb. 15, 2011).

949 Exhibit 570, Email from Nursing Chair at Albuquerque, NM to Campus Nursing Staff, Subject: "FW: Nursing Recruitment and NLNAC" (Dec. 14, 2010).

950 Exhibit 539, Email from Regulatory Affairs at HQ to HQ Officials, Subject: "RE: Nursing and NLNAC" (June 8, 2010).

951 Exhibit 571, Email from Regulatory Affairs at HQ to HQ and Nursing Campus Employees, Subject: "NLNAC" (June 9, 2010).

952 Exhibit 572, Email from Regulatory Affairs at HQ to HQ Officials, Subject: "FW: NLNAC-

Nursing Information Session Question" (June 11, 2010).

953 Exhibit 573, Email from/to Regulatory Affairs at HQ, Subject: "RE: Our AR State Board of Nursing Visit today" (Nov. 27, 2012).

954 Id.

955 Exhibit 574, New Mexico Board of Nursing Site Visit Report for Breckinridge School of Nursing of ITT Technical Institute at 2 (Jan. 4-5, 2012).

956 Exhibit 575, Email from HQ to Director of Albuquerque, NM Campus, Subject: "FW: BON site visit dates / Clinical Issue" (Oct. 1, 2012); see also Exhibit 517, Email from CEO Kevin Modany to HQ Employee, "RE: fall rotations" (June 14, 2012).

957 (1) Exhibit 576, Arbitration Complaint, [Redacted] v. ITT, Case No. 76 434 E 00229 13, American Arbitration Association; (2) Exhibit 577, Arbitration Complaint, [Redacted] v. ITT, Case No. 76 434 E 00226 13, American Arbitration Association; (3) Exhibit 578, Arbitration Complaint, [Redacted] v. ITT, Case No. 76 434 E 00220 13, American Arbitration Association; (4) Exhibit 579, Arbitration Complaint, [Redacted] v. ITT, Case No. 76 434 E 00227 13, American Arbitration Association; (5) Exhibit 580, Arbitration Complaint, [Redacted] v. ITT, Case No. 76 434 E 00220 13 American Arbitration Association.

958 Exhibit 578, Arbitration Complaint, [Redacted] v. ITT, Case No. 76 434 E 00220 13, American Arbitration Association at 5 ¶ 19.

959 See Exhibit 581, Email from Nursing Chair at Albuquerque, NM to Campus Nursing Instructor, Subject: "FW: NLNAC Resource Room Start Materials" (Nov. 10, 2010) (indicating the NLNAC process was on hold in November 2010); see also Exhibit 583, ITT Technical Institute - Albuquerque Nursing Faculty Organization Meeting (instructions for how to maintain files for future NLNAC applications, even though most were on hold at that time); Exhibit 582, Email from Nursing Chair at Albuquerque, NM to Campus Nursing Instructor, Subject: "FW: NLNAC Resource Room Start Materials" (Nov. 16, 2010).

960 Exhibit 513, Award of Arbitrator at 3, [Redacted] v. ITT, Case No. 76434 E00247 MAVE, American Arbitration Association (Dec. 9, 2013).

961 See Exhibit 584, Email from Nursing Dept. Administrative Coordinator at Albuquerque, NM to Campus Director, Subject: "RE: Nursing Presentation" (Feb. 15, 2011); See also Exhibit 568, ITT Marketing Presentation: "Associate's Degree in Nursing Program Overview, Albuquerque, NM (nursing director misrepresenting accreditation status to students); Exhibit 570, Email from Nursing Chair at Albuquerque, NM to Campus Nursing Staff, Subject: "FW: Nursing Recruitment and NLNAC" (Dec. 14, 2010) (ITT intentionally providing vague information and answers to students about accreditation); Exhibit 585, Email from Nursing at Albuquerque, NM to Campus Director, Subject: 'FW: NLNAC Candidacy Presentation" (May 10, 2010); Exhibit 581; Email from Nursing Chair at Albuquerque, NM to Campus Nursing Instructor, Subject: "FW: NLNAC Resource Room Start Materials" (Nov. 10, 2010); Exhibit 586, Albuquerque Nursing Meeting Script & other internal documents related to ITT nursing accreditation process; Exhibit 574, New Mexico Board of Nursing Site Visit Report for Breckinridge School of Nursing of ITT Technical Institute (Jan. 4-5, 2012); Exhibit 575, Email from HQ to Director of Albuquerque, NM Campus, Subject: "FW: BON site visit dates / Clinical Issue" (Oct. 1, 2012) (telling students that accreditation was in progress when the administration knew nothing was being done); Exhibit 587, ITT Career Services Exit Interview (Apr. 2010); Exhibit 588, ITT Career Services Exit Interview (Jan. 2010); Exhibit 583, ITT Technical Institute - Albuquerque Nursing Faculty Organization Meeting (including student surveys indicating students felt they had

been misled about accreditation).

962 See Exhibit 586, Albuquerque Nursing Meeting Script & other internal documents related to ITT nursing accreditation process at 2 (including script explaining that ITT Albuquerque is not pursuing NLNAC accreditation but that it is already authorized by the board of nursing and its graduates pass the NCLEX, so they can be an RN; acknowledgment and sign-in forms regarding same; draft email offering refunds to students who enrolled between December 2009 and March 2010 on the understanding the program would be NLNAC accredited).

963 See, e.g., id. (statement explaining that NLNAC accreditation is optional and unnecessary).

964 See Exhibit 589, Department of Veterans Affairs Memo to Chair, School of Nursing (July 15, 2010) (email explaining that VA hospitals will not take students or graduates from non-NLNAC accredited schools); see also Exhibit 575, Email from HQ to Director of Albuquerque, NM Campus, Subject: "FW: BON site visit dates / Clinical Issue" (Oct. 1, 2012) (stating that the Albuquerque program will lose its last clinical partner due to lack of NLNAC accreditation); see also Exhibit 517, Email from CEO Kevin Modany to HQ, Subject: "RE: fall rotations" (June 14, 2012).

965 Exhibit 513, Award of Arbitrator at 5, [Redacted] v. ITT, Case No. 76434 E00247 MAVE, American Arbitration Association (Dec. 9, 2013).

966 See NM AG Complaint ¶¶ 108-16, 117-22. https://perma.cc/YDP7-GEN2

967 See id.

968 See Exhibit 590, Email from Albuquerque, NM School of Nursing Administrative Coordinator to prospective nursing student, Subject: "RE: nursing school" (May 20, 2009); see also Exhibit 591, Email from Nursing Program Assistant at Albuquerque, NM to prospective nursing student, Subject: "RE: ITT Tech RN Program information" (July 21, 2009) (telling student that other schools decide whether to accept ITT credits); Exhibit 592, ITT Internal Document: "NLN Accreditation Issues" (noting that many schools require NLNAC accreditation to accept credits or associate's degrees); Exhibit 589, Department of Veterans Affairs Memo to Chair, School of Nursing (July 15, 2010); Exhibit 593, ITT Internal Document: "Breckinridge School of Nursing Town Hall Meeting" (Nov. 3, 2011); Exhibit 575, Email from HQ to Director of Albuquerque, NM Campus, Subject: "FW: BON site visit dates / Clinical Issue" (Oct. 1, 2012); Exhibit 594, ITT Internal Document: "Chair and Clinical Coordinator Meeting" (Sept. 12, 2012); Exhibit 595, ITT Internal Document, "Chair and Clinical Coordinator Meeting" (Oct. 1, 2012) (showing that ITT was aware that certain employers required NLNAC accreditation).

969 NM AG Complaint ¶¶ 24-25.

970 Id. ¶ 26

971 Id. ¶¶ 27, 28.

972 Id. at ¶ 26.

973 Id. at ¶ 28.

974 Id. at ¶¶ 29-30.

975 Exhibit 596, Student Complaint Report: Complaint from a former nursing student at the Albuquerque, NM campus at 3-4 (May 14, 2012).

976 Exhibit 597, Email from Compliance at HQ to Regulatory Affairs at HQ, Subject: "FW: Site visit" (Jan. 9, 2013).

977 The CFPB's complaint against ITT also cited ITT's accreditation misrepresentations, specifically with respect to its nursing program: "For example, ITT falsely told prospective nursing students that the nursing programs either were accredited, or would be accredited, by the appropriate bodies to allow them to use their ITT degree to obtain a nursing position. Many students only learned this was untrue after they started at ITT." See CFPB Compl. at 10 ¶ 53.

978 Villalba Ex. 1 at 34 ¶ 158 (student enrolled at the Newburgh, IN campus in Breckinridge School of Nursing from 2009-2011).

979 Exhibit 598, ITT Complaint Report: Complaint from a former nursing student at the Lake Mary, FL campus at 3 (May 10, 2016).

980 Villalba Ex. 2 at 65 ¶ 357 (nursing student enrolled at ITT from 2011 to 2013).

981 Villalba Compl., Exhibit 4 at 15 ¶ 76, https://perma.cc/6Y55-JMLM (hereinafter "Villalba Ex. 4") (former ITT Nursing student enrolled from 2011 to 2013).

982 Exhibit 599, Email to/from HQ Employees, Subject: "RE: Student Complaint" (Mar. 7, 2014).

983 Exhibit 600, Email from/to HQ Employees, Subject: "RE: Accreditation" (Feb. 1, 2013).

984 Exhibit 601, Email from/to HQ Employees, Subject: "Re: RE: Accreditation" (Feb. 1, 2013).

985 Id.

986 Exhibit 600, Email from/to HQ Employees, Subject: "RE: Accreditation" (Feb. 1, 2013).

987 U.S. Government Accountability Office, Postsecondary Education: Student Outcomes Vary at For-Profit, Nonprofit, and Public Schools (GAO-12-143) (Dec. 2011), https://perma.cc/826K-7QKV.

988 Exhibit 520, ITT Internal Document: Review of Readiness for NLNAC Accreditation at 3 (Feb. 18, 2013).

989 ACICS standards for licensure exams are described in the ITT's 2015 annual report (Form-10K). See ITT Educational Services, Inc., Annual Report (Form 10-K) (Dec. 31, 2015), available at http://www.ittesi.com/index.php?s=127.

990 NM AG Complaint at 11 ¶ 55.

991 Exhibit 15, Indiana Board of Nursing meeting minutes at 3 (Jan. 15, 2015).

992 Id.

993 Exhibit 526, Indiana Board of Nursing meeting minutes at 3 (Nov. 19, 2015).

994 Exhibit 525, Arizona Board of Nursing Consent Agreement with ITT 6 ¶ 19 (May 15, 2015).

995 Exhibit 602, Texas Board of Nursing meeting minutes at 2 (Jan. 2016).

996 Id.

997 Exhibit 603, Email from HQ to EVP of Nursing Program at HQ, Subject: "RE: Exit HESI Exam Policy" (May 3, 2013).

998 Id.

999 Exhibit 604, Internal ITT Document re Ohio Nursing Programs at 3.

1000 Exhibit 605, ITT Internal Document re Nursing program (2011).

1001 Id.

1002 Exhibit 606, Student Complaint Report, Complaint from nursing student at Orland Park, IL campus at 3 (July 16, 2015).

1003 Exhibit 607, Student Complaint Report, Orland Park, IL (Jan. 13, 2015).

1004 Exhibit 608, Email from CEO Kevin Modany to EVP of Nursing at HQ, Subject: "Re: Definition of program completers versus withdrawals" (July 24, 2013).

1005 Id.

1006 Villalba Ex. 6 at 22 ¶ 89 (student enrolled in Nursing RN program at Merrillville, IN campus from 2010 to 2013).

1007 Exhibit 74, Email from VP of Nursing Program at HQ to HQ Employees, Subject: "RE: Strongsville Nursing: Student Clinical Agreement" (Mar. 6, 2014).

1008 Exhibit 609, Student Complaint Report, Fort Wayne, IN (July 2012).

1009 Exhibit 610, ITT Student Complaint Report: Nursing student at Merrillville, IN campus at 4-5 (Feb. 27, 2015).

1010 Exhibit 535, Letter from Director of Nursing, Rancho Cordova, CA Campus (2013).

1011 Exhibit 533, Email from EVP of Nursing Program at HQ to CEO Kevin Modany, Subject: "RE: Nursing faculty - Rancho Cordova" (June 24, 2013).

1012 Id.

1013 Exhibit 611, Email from HQ Employee to HR at HQ, Subject: "RE: RSN – Interim Nursing Chair" (Jan. 5, 2016).

1014 Exhibit 527, Email from Vice President of Instructional Operations at 211 to National Nursing Dean at 211, cc: President and Chief Operating Officer at HQ, Subject: "RE: Richardson Nursing Situation" (Dec. 30. 2015).

1015 Id.

1016 Exhibit 612, Email from/to HQ Employees, Subject: "Re: 096-Richardson-Nursing Chair 2015-27415" (Dec. 30, 2015).

1017 Exhibit 613, Email from Jacksonville, FL Campus Employee to HQ, Subject: "RE: [Redacted]" (Dec. 2, 2014).

1018 Exhibit 614, Indiana Board of Nursing Meeting Minutes at 2-3 (June 19, 2014).

1019 Exhibit 15, Indiana Board of Nursing Meeting Minutes at 2-3 (Jan. 15, 2015).

1020 Exhibit 615, Ohio Board of Nursing Consent Agreement at 5 (Jan. 2016).

1021 Exhibit 525, Arizona Board of Nursing Consent Agreement with ITT (May 15, 2015).

1022 Id. at 3 ¶ 7.

1023 Id. at 4-5 ¶¶ 12, 13, 14, 15.

1024 See Exhibit 16, Arizona Board of Nursing Investigative Documents and ITT Response at 135-142 (2013).

1025 Exhibit 616, ITT Corrective Action Form, Nursing, Henderson, NV (Feb. 13, 2013).

1026 Exhibit 280, ACICS Evaluation Report at 687-688 (Sept. 1, 2012).

1027 See generally Exhibit 617 for correspondence between the school of nursing at ITT's Rancho Cordova, California campus and ACICS about the California Board of Registered Nursing's decision to change the school from initial approval status to

warning status. ITT provides details about its proposed teach-out plan, which would allow it to voluntarily end its nursing program, due to its inability to satisfy the requirements of the board of nursing. At 38, 44, 46-48, 70-72.

1028 Exhibit 618, Email from Regulatory Affairs to HQ, Subject: "RE: Observations as clinical experiences" (May 1, 2013).

1029 Exhibit 619, Email from/to HQ Employees, Subject: "FW: ITT Fort Wayne" (Mar. 19, 2013).

1030 See supra pp. 48-50 for more on ITT's use of career wheels.

1031 Exhibit 620, ITT Internal Documents: Career Wheels; see also Exhibit 621, ITT Marketing Presentation: "Breckinridge School of Nursing and Health Sciences - Explore Your Options."

1032 Exhibit 621, ITT Marketing Presentation: "Breckinridge School of Nursing and Health Sciences - Explore Your Options" at 13.

1033 Id. at 15

1034 Merrill Decl. Ex. 2 R. Lipscomb Attest. at 42 ¶ 70.

Project on Predatory Student Lending

www.predatorystudentlending.org

LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL
CENTRO DE SERVICIOS LEGALES
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February 16, 2022

Hon. Miguel Cardona, Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

RE: Dreams Destroyed: How ITT Technical Institute Defrauded a Generation of Students

VIA ELECTRONIC AND CERTIFIED MAIL

Dear Secretary Cardona:

We represent hundreds of thousands of former students of ITT Technical Institute (ITT) in that company's bankruptcy proceedings. We wish to submit for your review the enclosed report: *Dreams Destroyed: How ITT Technical Institute Defrauded a Generation of Students*, available for download here. This report is the culmination of a multi-year review of tens of thousands of ITT-related documents, which include internal documents turned over by ITT to various government entities including the CFPB and state attorneys general, as well as never-before-seen documents and emails we gained access to as a result of the bankruptcy.

After reading *Dreams Destroyed*, and reviewing the accompanying evidence in light of the Department's own findings, we believe you will conclude that **all ITT-related federal student debt must be cancelled immediately, regardless of whether a former ITT student borrower has filed a borrower defense application or completed his or her program of study**

Dreams Destroyed, which incorporates thousands of pages of evidence, exposes several areas of ITT's fraud and wrongdoing, including but not limited to:

- ITT recruiters and financial aid workers were actually salespeople subjected to strict quotas, whose sole goal was to channel as many leads—prospective students—into sources of revenue from federal student aid;

- As a matter of policy, ITT recruiters lied about material facts including its selectivity, job placement rates, salaries students could obtain after graduating its programs, the ability to transfer credits, its accreditation status, its supposedly state-of-the art equipment;

- ITT trained financial aid workers to rush students through the financial aid process and withhold critical information;

- ITT financial aid workers had a pattern of gaining unauthorized access to the student side of its financial aid portal, for which there was no legitimate purpose, and which allowed ITT financial aid workers to sign loan documents without students' knowledge or consent;

- ITT targeted veterans in order to exploit their GI Bill benefits; and

- ITT evaded certain regulatory requirements with bad-faith tactics that were plainly observable.

As the report states, "ITT's dishonesty was baked into how ITT functioned from top to bottom" and "ITT's malfeasance was a feature, not a bug." The Department itself has concluded that ITT "misled students into taking out unaffordable private loans that were allegedly portrayed as grant aid,"[1] "made repeated and significant misrepresentations to students related to how much they could expect to earn and the jobs they could obtain after graduation between 2005 and the institution's closure in 2016,"[2] and that "ITT misled students about the ability to transfer their credits to other institutions from January 2007 through October 2014."[3] In addition, the Department also found that the "value of an ITT education…is likely either negligible or non-existent."[4]

This conclusion is consistent with what we have heard after speaking with thousands of individuals who attended ITT. Jorge Villalba, a representative of students in the bankruptcy case, explains it best:

> *Like many people, I had a dream, but that dream quickly turned into a nightmare thanks to ITT. I have been living inside of a horror story ever since I started back in 2006. I have heard/read so many stories similar to mine, and many even worse than mine. … The thousands of families that have been separated, have fallen ill, and have experienced irreparable damage while they are drowning in debt deserve a second chance in life. ITT cheated us out of an education and killed our dream to one day get ahead. The time that we wasted there can never be brought back. The pain and suffering that we have endured has no dollar value.*

Every single former ITT student was subject to ITT's lies, deception, and fraud, and all related federal student loans are likewise tainted with fraud and misconduct. It is why the Department,

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[1] Department of Education Press Release, "Extended Closed School Discharge Will Provide 115K Borrowers from ITT Technical Institute More than $1.1B in Loan Forgiveness," Aug. 26, 2011. https://perma.cc/G383-8RMU.
[2] Department of Education Press Release, "Department of Education Announces Approval of New Categories of Borrower Defense Claims Totaling $500 million in Loan Relief to 18,000 Borrowers," June 16, 2021. https://perma.cc/2XA5-F54W.
[3] Id. https://www.ed.gov/news/press-releases/department-education-announces-approval-new-categories-borrower-defense-claims-totaling-500-million-loan-relief-18000-borrowers
[4] Borrower Defense Unit, U.S. Dep't of Educ., Recommendation for ITT Borrowers Alleging That They Were Guaranteed Employment—California Students 14 (Jan. 10, 2017).

under your direction, should immediately cancel all federal student debt for every ITT student borrower, regardless whether they have filed for borrower defense.

In addition, we hope that the harm ITT caused to its students is not in vain. There are many lessons that the Department can learn from ITT—from why it was allowed to thrive for so many years despite widespread knowledge of is malfeasance to how former students have been treated since it closed its doors.

Dreams Destroyed includes several recommendations on how the Department can protect students from schools like ITT moving forward. We would also welcome a meeting with you and your staff to discuss these recommendations and anything else related to the report and our findings.

Sincerely,

Eileen Connor
Director
econnor@law.harvard.edu

Victoria Roytenberg
Senior Attorney
vroytenberg@law.harvard.edu

Eric Schmidt
Staff Attorney
eschmidt@law.harvard.edu

Project on Predatory Student Lending
Legal Services Center of Harvard Law School

Encl.

cc: James Kvaal, Under Secretary
Julie Margetta Morgan, Deputy Under Secretary
Ben Miller, Senior Advisor
Richard Cordray, Chief Operating Officer, Federal Student Aid
Colleen Nevin, Borrower Defense Group (with exhibits)

From: Loonin, Deanne
Subject: Group Closed School Request
To: Cordray, Richard; Kvaal, James; Latreille, Bonnie; Cardona, Miguel
Cc: Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Habash, Tariq; 'rsmith@lafla.org'; Jessica Ranucci; Connor, Eileen
Sent: March 24, 2022 12:12 PM (UTC-04:00)
Attached: GroupClSchool2022FINALVERSION.pdf, GroupClosedSchoolApps.pdf

We respectfully submit this request for group closed school discharge on behalf of all student borrowers, including our clients, who attended a for-profit school listed in the Department's official closed school search file with a closure date prior to January 1, 1994.

I have attached copies of the letter and appendices. We have also posted the letter on our web site: https://predatorystudentlending.org/wp-content/uploads/2022/03/GroupClSchool2022FINALVERSION.pdf.

We are also requesting a meeting at your earliest convenience to discuss this request. I will contact you in a few weeks if I have not heard from you by then. Thank you for your consideration of this request.

Deanne Loonin
Project on Predatory Student Lending
dloonin@law.harvard.edu
(617) 390-2723
(b)(6) (cell)

APP. A

List of 121 Schools That Lost Guaranteed Student Loan Eligibility

The Associated Press

July 31, 1992, Friday, BC cycle

Section: Washington Dateline

Length: 1314 words

Dateline: WASHINGTON

Body

Here is a list of schools that lost their eligibility for the Federal Family Education Loan program, formerly called the Guaranteed Student Loan program.

These schools had loan default rates of 35 percent or more for three consecutive years.

The list indicates the length of the school programs, the types of schools and the federal student loan default rates for fiscal 1990. For example, a school designated "1-yr.-Prop., 48.9," is a one-year proprietary, or privately owned trade school that had 48.9 percent of its students loans default two years ago.

The information comes from the Department of Education

ALABAMA

Career Development Institute, Montgomery, 1-yr.-Prop., 48.9.

Career Development Institute, Birmingham, 600-hr.-Prop., 63.4.

Career Development Institute, Mobile, 600-hr.-Prop., 49.4.

International Career Institute, Phenix City, 1-yr.-Prop., 56.6.

Phillips Junior College at Birmingham, Birmingham, 2-yr.-Prop., 54.0.

Rhone's Beauty College, Mobile, 1-yr.-Prop., 53.4.

Riley College, Dothan, 1-yr.-Prop., 66.9.

List of 121 Schools That Lost Guaranteed Student Loan Eligibility

ARIZONA

ABC Welding School, Phoenix, 600-hr.-Prop., 47.6.

ARKANSAS

New Tyler Barber College, North Little Rock, 1-yr.-Prop., 52.8.

CALIFORNIA

Banking Institute, Los Angeles, 600-hr.-Prop., 36.8.

Barstow College, Barstow, 2-yr.-Pub., 61.1.

California Paramedical and Technical College, Long Beach, 1-yr.-Prop., 39.1.

Canada College, Redwood City, 2-yr.-Pub., 52.8.

Compton Community College, Compton, 2-yr.-Pub., 62.1.

Kenneth's College of Hairstyling, Vallejo, 300-hr.-Prop., 55.0.

Lassen College, Susanville, 2-yr.-Pub., 36.3.

Long Beach Community College Dist.-Long Beach City Col, Long Beach, 2 -yr.-Pub., 44.8.

Marinello Schools of Beauty, Arleta, 1-yr.-Prop., 58.1.

Merritt College, Oakland, 2-yr.-Pub., 39.4.

National Business Academy, Van Nuys, 1-yr.-Prop., 51.6.

Palo Verde College, Blythe, 2-yr.-Pub., 40.8.

Southwest College, San Francisco, 600-hr.-Prop., 77.0.

Southwest College, Hayward, 600-hr.-Prop., 67.9.

Universal College of Beauty, Los Angeles, 600-hr.-Prop., 56.5.

Van Nuys College of Business, Van Nuys, 1-yr.-Prop., 44.6.

COLORADO

List of 121 Schools That Lost Guaranteed Student Loan Eligibility

United States Truck Driving School, Wheat Ridge, 1-yr.-Prop., 56.2.

FLORIDA

Diesel Institute of America, Tampa, 1-yr.-Prop., 40.2.

Ft. Lauderdale College, Fort Lauderdale, 4-yr.-Prop., 44.0.

International Career Institute, Panama City, 600-hr.-Prop., 68.9.

Miami Technical Institute, Miami, 2-yr.-Prop., 59.8.

Mr. Arnold's Excellence Beauty School, Miami Beach, 1-yr.-Prop., 77.9.

Romar Hairstyling Academy, Boynton Beach, 1-yr.-Prop., 54.5.

Sarasota Beauty School, Sarasota, 1-yr.-Prop., 47.8.

GEORGIA

Georgia Medical Institute Education Preparation Center, Atlanta, 1-yr.-Prop., 51.8.

Phillips Junior College, Columbus, 2-yr.-Prop., 42.0.

Phillips Junior College, Augusta, 2-yr.-Prop., 38.2.

ILLINOIS

Cannella School of Hair Design, Chicago, 1-yr.-Prop., 37.7.

Chicago Truck Driving School, Chicago, 300-hr.-Prop., 66.6.

East West University, Chicago, 4-yr.-Priv., 37.3

IBA College of Cosmetology, Rockford, 1-yr.-Prop., 36.2.

John Amico's School of Hair Design, Oak Forest, 1-yr.-Prop., 46.0.

PBS Training Center, Chicago, 300-hr.-Prop., 58.4.

State Community College of East St Louis, East St. Louis, 2-yr.-Pub., 62.3.

Taylor Business Institute, Chicago, 1-yr.-Prop., 45.1.

Trend Beauty College, East Alton, 1-yr.-Prop., 45.5.

List of 121 Schools That Lost Guaranteed Student Loan Eligibility

Vogue Academy of Beauty Culture, Chicago, 1-yr.-Prop., 54.9.

INDIANA

North Main Beauty Academy, Evansville, 1-yr.-Prop., 59.5.

KENTUCKY

Hair Design School (the), Louisville, 1-yr.-Prop., 41.5.

Watterson College, Louisville, 2-yr.-Prop., 55.4.

LOUISIANA

Bayou Technical Institute, New Orleans, 1-yr.-Prop., 58.9.

Coastal College, New Orleans, 1-yr.-Prop., 59.4.

Commercial College of Baton Rouge, Baton Rouge, 1-yr.-Prop., 57.0.

Commercial College of Shreveport, Shreveport, 1-yr.-Prop., 61.7.

Delta Career College, Lafayette, 1-yr.-Prop., 65.5.

Delta Junior College, Baton Rouge, 2-yr.-Prop., 45.4.

Diesel Driving Academy, Shreveport, 300-hr.-Prop., 53.0.

Larry's Academy of Hairstyling, Houma, 1-yr.-Prop., 42.9.

Pat Goins Benton Road Beauty School, Bossier City, 1-yr.-Prop., 43.9.

Professional Career Center, Metairie, 600-hr.-Prop., 58.5.

Universal Beauty College, Baton Rouge, 1-yr.-Prop., 71.2.

MARYLAND

Lincoln Technical Institute, Baltimore, 1-yr.-Prop., 38.6.

Maryland Beauty Academy of Essex, Essex, 1-yr.-Prop., 42.6.

MICHIGAN

List of 121 School's That Lost Guaranteed Student Loan Eligibility

Detroit Business Institute, Detroit, 2-yr.-Prop., 42.0.

Detroit Business Institute, Southfield, Southfield, 1-yr.-Prop., 42.0.

Detroit Business Institute, Downriver, Riverview, 1-yr.-Prop., 42.0.

Highland Park Community College, Highland Park, 2-yr.-Pub., 38.9.

Jordan College, Cedar Springs, 5-yr.-Priv, 53.3.

Michigan Career Institute, Detroit, 1-yr.-Prop., 52.0.

Michigan College of Beauty, Detroit, 1-yr.-Prop., 59.6.

PBS Training Center, Southfield, 300-hr.-Prop., 56.4.

State College of Beauty, Wyandotte, 1-yr.-Prop., 36.2.

State College of Beauty, Ann Arbor, 1-yr.-Prop., 36.2.

State College of Beauty, Bloomfield Hills, 1-yr.-Prop., 36.2.

Technical Career Institute, Clinton Township, 1-yr.-Prop., 63.2.

Wayne County Community College, Detroit, 2-yr.-Pub., 38.4.

MISSISSIPPI

Moore Career College, Jackson, 1-yr.-Prop., 61.9.

Phillips Junior College, Jackson, 2-yr.-Prop., 42.6.

NEBRASKA

Nebraska Custom Diesel Drivers Training, Omaha, 600-hr.-Prop., 53.9.

NEW YORK

Beizer Yeshiva, Brooklyn, 4-yr.-Priv, 46.2.

Brooklyn Training Center, Brooklyn, 1-yr.-Prop., 61.5.

Cashier Training Institute, New York, 600-hr.-Prop., 53.2.

Global Business Institute, Far Rockaway, 1-yr.-Priv, 42.6.

List of 121 Schools That Lost Guaranteed Student Loan Eligibility

Wilfred Academy of Hair & Beauty Culture, Bronx, 300-hr.-Prop., 63.4.

Wilfred Academy of Hair And Beauty Culture, New York, 1-yr.-Prop., 49.4.

NORTH CAROLINA

Mr. David's School of Hair Design, Wilmington, 1-yr.-Prop., 40.1.

OHIO

Kenmar Beauty Academy, Canton, 1-yr.-Prop., 43.6.

OKLAHOMA

American Technical Institute, Tulsa, 1-yr.-Prop., 76.9.

Oklahoma Junior College of Business and Technology, Tulsa, 1-yr.-Prop., 41.8.

Paul's Beauty College, Oklahoma City, 1-yr.-Prop., 68.1.

OREGON

International Institute of Transportation Resources, Clackamas, 300 hr-Prop., 36.0.

PENNSYLVANIA

Delaware County Institute of Training, Chester, 600-hr.-Prop., 70.2.

Wilfred Academy, Philadelphia, 300-hr.-Prop., 34.6.

SOUTH CAROLINA

Chris Logan Career College, Myrtle Beach, 1-yr.-Prop., 35.7.

TENNESSEE

Miller-Hawkins Business College, Memphis, 2-yr.-Prop., 42.1.

TEXAS

CBM Education Center, San Antonio, 1-yr.-Prop., 49.6.

List of 121 Schools That Lost Guaranteed Student Loan Eligibility

Delta Career Institute, Beaumont, 1-yr.-Prop., 36.7.

Draughon's College of Business, Fort Worth, 1-yr.-Prop., 51.1.

Draughons College of Nursing Assistants, Fort Worth, 1-yr.-Prop., 67.1.

John's Beauty College, Texas City, 1-yr.-Prop., 74.3.

Lonnie's School of Hair Design, Beaumont, 1-yr.-Prop., 59.8.

Mansfield Business College, Dallas, 1-yr.-Prop., 62.4.

Nelson Beauty College, Dallas, 1-yr.-Prop., 55.9.

SW School of Business & Technical Careers, Eagle Pass, 1-yr.-Prop., 37.7.

SW School of Business & Tech Careers Cosmetology Div, San Antonio, 1-yr.-Prop., 37.7.

Temple Academy of Cosmetology, Temple, 1-yr.-Prop., 65.4.

Texas Beauty College, Dallas, 1-yr.-Prop., 44.1.

Tri-State Beauty School, El Paso, 1-yr.-Prop., 36.1.

University of Hair Design No. 1, Fort Worth, 1-yr.-Prop., 56.4.

University of Hair Design No. 2, Fort Worth, 1-yr.-Prop., 60.9.

Vogue Beauty College No. 12, Houston, 1-yr.-Prop., 55.0.

VIRGINIA

Career Development Center, Newport News, 1-yr.-Prop., 39.5.

Madame Daniel's School of Beauty Culture, Newport News, 1-yr.-Prop., 40.6.

Mansfield School of Business, Virginia Beach, 1-yr.-Prop., 37.1.

Portsmouth School of Beauty Culture, Portsmouth, 1-yr. Prop., 62.9.

WISCONSIN

Diesel Truck Driver Training School, Sun Prairie, 600-hr.-Prop., 48.3.

Pro Schools, Eau Claire, 1-yr.-Prop., 36.2.

Pro Schools, Green Bay, 1-yr.-Prop., 36.2.

Pro Schools, Milwaukee, 1-yr.-Prop., 36.2.

Pro Schools, Milwaukee, 1-yr.-Prop., 36.2.

Pro Schools, Racine, 1-yr.-Prop., 36.2.

Pro Schools, Monona, 1-yr.-Prop., 36.2.

Classification

Language: ENGLISH

Subject: STUDENT LOANS (95%); STUDENT FINANCIAL AID (91%); LABOR & EMPLOYMENT (90%); LOAN DEFAULTS (90%); STUDENTS & STUDENT LIFE (90%); VOCATIONAL & TECHNICAL TRAINING (90%); COMMUNITY COLLEGES (89%); COSMETOLOGY & BARBER SCHOOLS (89%); COLLEGES & UNIVERSITIES (88%); BUSINESS EDUCATION (78%); EDUCATION & TRAINING (78%); DRIVING SCHOOLS (73%)

Industry: LOAN DEFAULTS (90%); VOCATIONAL & TECHNICAL TRAINING (90%); COMMUNITY COLLEGES (89%); COSMETOLOGY & BARBER SCHOOLS (89%); COLLEGES & UNIVERSITIES (88%)

Geographic: MIAMI, FL, USA (93%); FORT LAUDERDALE, FL, USA (92%); LOS ANGELES, CA, USA (92%); BIRMINGHAM, AL, USA (90%); SAN FRANCISCO, CA, USA (79%); TAMPA, FL, USA (79%); OAKLAND, CA, USA (55%); PHOENIX, AZ, USA (56%); CALIFORNIA, USA (92%); ALABAMA, USA (79%); ARKANSAS, USA (79%); FLORIDA, USA (79%); ARIZONA, USA (75%); COLORADO, USA (71%)

End of Document

APP. B

LSNY℠
Legal Services for New York City
Legal Support Unit

350 Broadway • New York, New York 10013-9998 • (212) 431-7200 • Fax (212) 966-9571

Wilhelm H. Joseph
Director

October 5, 1993

David A. Longanecker
Assistant Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-5100

Dear Assistant Secretary Longanecker:

We are writing as a follow-up to our conversation with you at the negotiated rulemaking briefing and on behalf of the attorneys across the country listed below and other Legal Services attorneys who, along with us, represent thousands of victims of proprietary trade school fraud. We are deeply concerned about the integrity of the upcoming tax refund offset program as it affects borrowers potentially eligible for relief under the 1992 amendments to the Higher Education Act. We are requesting that the Department take immediate action to remove, and to direct that guaranty agencies remove, from the offset program borrowers who fall within the following categories:

--all students who attended proprietary schools which the Department or guaranty agencies know to have closed since January 1, 1986; and

--all students who attended proprietary schools known to the Department or guaranty agencies as, after January 1, 1986, having falsely certified the "ability to benefit" of incoming students who lacked high school or GED diplomas.

The "closed school" and "false certification" discharge provisions were effective upon enactment, i.e. as of July 23, 1992. To date, negotiated rulemaking has not produced final regulations. The Department cites this fact time and time again as the reason why requests for individual discharges cannot be granted. It is unacceptable, in the interim, for the Department to authorize or allow the seizure of tax refunds and earned income tax credits owed to individuals apparently eligible for the new discharges. Although the Department's July letter to "offset coordinators" indicates that borrowers who appear eligible for closed school discharge should be excluded from the offset process, that directive apparently is not being honored.

We do not believe that the "Request for Review" form which is sent to borrowers solves the problem. This form advises borrowers that they have the right to contest offset on the basis of a dozen possible grounds, including claims that they were unable to complete their program due to the closing of the school or were falsely certified by the school as eligible. For many reasons, inclusion of these grounds in the fine print of the form does not solve the problem.

First and foremost, since the guaranty agencies are still not authorized to act on requests for discharge -- with the possible exception of those borrowers whose schools appear on the Department's limited April, 1993 list of closed schools -- and since the Department has provided no uniform instructions regarding such requests as to false certification claims, there can be no assurance that borrowers who manage to understand the form and check the appropriate boxes will be able to stop their offset. On the contrary, our experience is that among the guaranty agencies widely different signals were being given in response to inquires concerning the Request for Review.

Second, the form itself is not sufficiently clear. A notice placed in the middle of a multi-page form (and being only in English) has little chance of reaching a population which, in the case of the "false certification" group, is by definition burdened by low literacy skills.

Third, the notice provides no explanation as to the meaning of "false certification," but instead, invites borrowers to supply their own reason why they think they were falsely certified. As the Department itself has yet to provide guidance to guaranty agencies as to the scope of "false certification," one can only guess what a borrower would be told in response to an inquiry concerning false certification directed to the agency sending the notice.

Fourth, since the notices are going to last known addresses, it is very likely that many borrowers will have no notice prior to losing their tax refunds or earned income entitlement.

Finally -- and this is as much a criticism of the Department's general approach to the new discharges as it is a criticism of the intercept program --, in many situations the Department knows better than the borrowers which of them will be eligible for discharge. Where the Department or guaranty agency has information that students who attended a particular school may be entitled to one of the new discharges, the Department should be taking special measures to target these borrowers for possible discharge and, at the very least, to remove these borrowers from the intercept altogether, rather than waiting for these students to identify themselves. This would

include: (1) students who attended schools known to have closed. We would suggest removing all such borrowers whose loan disbursement date was within two years of the known closing date; and (2) Students who attended a school known to have engaged in false certification. This is a finite, and we believe relatively small, number of institutions already known to the Department to have engaged in falsifications of students' "ability to benefit" (ATB) from instruction. For example, the PTC Career Institutes of Philadelphia was found by the Inspector General to be systematically engaging in ATB falsification. I.G. Audit Control No. 003-00001, June 1991. The Inspector General's most recent semi-annual report similarly lists three other schools, Diesel Truck Driver Training School, Inc. in Wisconsin, Moore Career College in Mississippi and International Technical Institute in Tampa, Florida, that all falsely certified ATB students. Since information regarding ATB fraud is not likely to be known by the affected borrowers themselves, it would be unconscionable -- and, we believe, illegal -- to subject them to intercept and the inherent uncertainties of the "Request for Review."

Since the pre-offset notices have already been mailed out, we are requesting that individuals who attended these "problem" schools -- i.e., those that closed or those known to have falsely certified Title IV eligibility -- be sent new notices which advise them of the new discharge provisions, the eligibility grounds, and the fact that they have been removed from the intercept program. Further, the Department should delete these borrowers from offset for loans it holds and instruct the guaranty agencies and Departmental contractors to exclude these individuals from the magnetic tapes due by December 10.

We are hopeful that the Department will do the right thing and halt the intercept process for those potentially eligible for discharge, rather than leaving this matter to the courts. Thank you in advance for your courtesy and cooperation. We look forward to your reply.

Very truly yours,

[redacted]

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Legal Services for New York City
888 O'Farrell St., #E1211
San Francisco, CA 94109
Phone: (415) 563-7859

[redacted]

Kenneth W. Babcock
Public Counsel
3535 W. 6th St., Suite 100
Los Angeles, CA 90020
Phone: (213) 385-2977

Also on behalf of:
Irv Ackelsberg & Alan M. White, Community Legal Services, Inc. (Philadelphia,
Adriane Baker, Legal Aid Society of San Diego (California)
Victoria Campbell, Legal Aid Society of San Diego (California)
Bernard Dempsey, Atlanta Legal Aid (Georgia)
Charles Eiss, Glantz & Glantz (Plantation, Florida)
Neil Fogarty, Hudson County Legal Services (Jersey City, New Jersey)
Brenda Hardison, Legal Services Corp. of Alabama
Katherine Harlow, Cleveland Works (Ohio)
Stanley Hirtle, Legal Aid Society of Dayton (Ohio)
Michaelene Loughlin, Seton Hall Law School (Newark, New Jersey)
Eileen Ordover, Center for Law and Education
Bob Pressman, Center for Law and Education
Jonathan Sheldon, National Consumer Law Center
Jane Greengold Stevens, South Brooklyn Legal Services

cc: Tom Pestka

APP. C

EXHIBIT H

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

February 13, 1995

Daniel Hedges, Esq.
Appalachian Research Defense Fund, Inc.
1116-B Kanawha Boulevard, East
Charleston, West Virginia 25301

Re: Darius Aldridge, et al., v. Secretary of Education, et al., Civil Action No. 2:94-0814

Dear Mr. Hedges:

I am in receipt of your letter, dated January 31, 1995, and post-marked as having been sent on the afternoon or evening of February 1, 1995. In it, you ask for "a written definition or clarification (over and above counsel's interpretation attempting to narrow the entitlement)" of "teach-out," as used in the context of closed school discharges. Despite this request, your nine clients in Aldridge used the term "teach-out," without elaboration, in the identically-worded, sworn statements they submitted to the Department in applying for closed school discharges; and you used those sworn statements in support of your motion for summary judgment filed in early November, 1994. In their statements, each of your clients averred, under penalty of perjury, that "I did not complete my program of study through a teach-out at another school or by transferring academic credits or hours earned at said College to another school." The sworn statements were executed between August 19, 1994 and October 30, 1994, according to the dates your clients placed on them. As you know, by letters delivered to you on the morning of February 1, 1995, the Department approved your clients' claims for closed school discharges.

You inform me in your letter that it has been your practice to advise clients that "a student who falls within the teach-out exclusion is one who had all his/her credits accepted from the closed school, one who graduated from the new school in the same course and fulfilling all the representations and expectations that were part of the original agreement, and one who was charged no new money for completion of the original course beyond that he/she would have had to pay at the original school." This advice is incorrect. Such contentions were expressly rejected by the Secretary in the discussion of comments which the Department published in promulgating the final rules followed by your client in framing their closed school discharge statements. 59 Fed.Reg. 22462 et seq. (April 29, 1994). There, some commenters had recommended including in the regulations a definition of "teach-out," and suggested that "the key elements of a teach-out are: (1)

no charges additional to the original program cost; (b) the identity of subject matter taught; (c) geographic proximity between the original and teach-out schools; (d) demonstrated compatibility of program structure and scheduling (e.g., student is able to begin the teach-out within a reasonable time after the school closure, and the completion dates, class times, and instructional methodology are comparable); and (e) review and approval by the state licensing agency." Id., at 22466-7. The Department's response was as follows:

> The Secretary believes that a prescriptive regulatory definition of "teach-out" is unnecessary. The Secretary notes that because a student may decline to complete the program through a teach-out at another school for any reason, it is therefore reasonable to conclude that a student who chooses to participate in a teach-out and completes the program, has demonstrated an acceptance of those teach-out conditions. In short, a student can be protected from being forced to accept what he or she believes to be an onerous teach-out condition by simply declining the teach-out. A student who, even though inconvenienced, chooses to complete his or her program through a teach-out, has received value from the loan and needs no loan discharge.

Id., at 22467. I enclose a copy of the Department's entire published discussion of the Final Rules on closed school discharges for you to consult should additional questions occur to you.

I note that false statements in the context of closed school discharges can have grave implications -- raising issues of, e.g., perjury, subornation of perjury, and criminal or civil false claims.

Sincerely,

[redacted]

Sarah L. Wanner

cc: Gary Call, Esq.

APP. D

MONDAY

Star-News

MAY 25, 1992

Business/Monday

Monday Job Market

EDUCATIONAL DEFAULT

Staff photo / Paul Morse

Credit crunch: John Allow and his sister Lillian Vargas are fighting off creditors after defaulting on student loans they took out for vocational training, which they say did not give them the skills they need to earn a job.

INSIDE

VOCATIONAL SCHOOLS OFTEN COST MORE, OFFER LESS TO STUDENTS

By Tamie Sorensen
Business Editor

Lillian Vargas was pregnant at [illegible] when a man approached her with a proposition and a sales pitch in Spanish.

He told her that she could learn to speak English and get computer training at National Business Academy. Moreover, Vargas was told she could get financial loans to cover tuition, which she could pay back easily after graduating a well-paying job, the woman said.

The final promise to grab Vargas, a 34-year-old legal immigrant from El Salvador now living in Los Angeles, and her brother about it today, they are among seven former NBA students who are suing the Pasadena-based school for allegedly failing to provide them the education they were promised.

Their story is echoed over and over again across the country. Experts say there are hundreds of vocational schools recruiting students and helping them to receive federally guaranteed student loans — refunds that spend more time processing financial aid papers than educating.

See VOCATIONAL, Page 8

COVER STORY

STUDENT LOAN DEFAULTS HIGH AT TRADE SCHOOLS

Continued from Page 1

"There are some great vocational schools, but there has been a problem. The high default rate and abuses at trade schools has been recognized over the past several years by Congress," says Rep. Carlos Moorhead, R-Glendale. "There are reports that homeless and illiterate people are enrolled and given student loans and then the school either does not provide the service or the students haven't shown up."

Frank Lobb, experts say, students who don't get paid a living can't get the jobs they need to repay loans. The result, he alleges, unnecessarily high numbers of defaults among vocational school borrowers. Nationally, 31 percent of loans to vocational school students go into default, compared to 20 percent for all post-secondary schools. The national average for four-year schools is even lower — just above 8 percent.

But the real concern, Lobb says, is that according to the U.S. Department of Education, more than $200 billion in federally guaranteed student loans has been given out since the program began in 1965. More than $12.9 billion of that is still outstanding.

■■■

National Business Academy Inc. with campuses in Encino and Van Nuys and campuses in Van Nuys, Inglewood and Long Beach, N.M., is an example of a vocational school with high student loan default rates.

Its fiscal 1988 default rate is so high — over 50 percent on federally guaranteed loans — that the U.S. Department of Education required the California State Student Aid Commission to conduct an on-site financial audit of the school in February. The audit report was made public last week.

The report, which became public Tuesday when NBA did not file a response, identified six major problems:

■ The school is not properly testing applicants to be sure they are qualified and able to benefit from training.

■ National Business Academy does not always obtain financial aid forms and/or verify information before releasing checks to students, leaving the door open for students to receive loans they are not eligible for.

■ NBA withholds student grades in violation of the school's own policy and does not provide transcripts to the CSAC auditors.

■ Students and lenders sometimes are not given notice before refunds are made to students who drop classes.

■ The academy has not provided evidence that it offered the counseling required for students who are considering or will choosing withdrawal from school.

■ The school has not complied with all requirements of state student protection laws.

The audit requires National Business Academy to refund $10,750 to lenders and students and to revise a number of policies and report back to the commission staff.

Jeff Clement, vice president of the school, said NBA is in the process of responding to the report.

"There may have been interpretations that they offered. We do run a good school and we've got high placement, and because a guaranteed agency comes up with a report is not reason to say they are absolutely right," he says, adding that the academy's job placement rate is 70 percent.

"They come to and they make reports based on what their interpretation of the law is, and they are not the law," he says.

Clement says the auditor's main beefs include violations and while that's a big step short of the report's findings, many might be a matter of establishing in-house guidelines from NBA's own lawyers.

According to the commission report, National Business Academy's rate of 50 percent of students receive financial aid default rates are 40.02 percent on Stafford Loans and 60.2 percent on Supplemental Loans to Students, the two types of loans available.

According to the U.S. Department of Education, NBA's federal default rate for the Van Nuys campus of 19.5 percent in 1987 and 21.6 percent in 1988 and 16.5 percent in 1989. The federal default rate includes all loans made at the school, while the state rates are cumulative percentages, but only for loans taken out by California institutions.

One major goal of default rate reform is to prevent would-be vocational students from participating in federal student aid programs, according to Department of Education spokesman Stephanie Babyak.

Officials said it does not help the school's default rates are so high is the Department of Education claims and said he will appeal the findings. He said the school has defaulted students some prior to loans to help students avoid default.

High default rates led state auditors to investigate National Business Academy and they found other problems there as well. The school is paying commissions to people for each student they enroll, which state officials say is illegal. Two people, according to the audit report, State law forbids NBA from paying recruiters a bonus unless students graduate.

The report also states that NBA used telemarketers to recruit students for its English as a Second Language program offered at the Van Nuys campus. However, the telephone solicitors are not supposed to tell potential students all required information to potential students. In addition, enrolling students are offered compensation for referring other potential students to the school, according to the report.

According to the recent lawsuit filed by Vargas and others, plaintiff Jose Rodriguez Ayala was offered payment for bringing other students to the school.

Gardner says the school has discontinued paying students for referrals and that using the ESL curriculum is not a violation of state law.

When National Business Academy finishes dealing with the Student Aid Commission, it may have to wrestle with the state Council on Private Postsecondary and Vocational Education, which is currently investigating a complaint about the Inglewood campus.

■■■

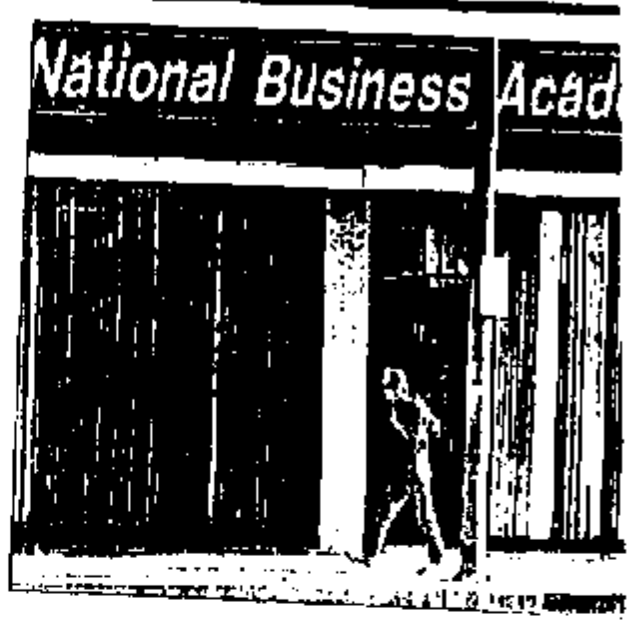
Legal Aid and workers say National Business Academy has a long history of problems.

Efren Acker of the Los Angeles Legal Aid Foundation has worked with U.S. Rep. Maxine Waters, D-Los Angeles, to help up state and federal regulations for vocational schools. She calls National Business Academy "absolutely terrible."

"They're just the worst. They should be closed down," Acker says. "We've just had an end of complaints about these people."

"National Business Academy is really particularly bad," she says. "It seems to be that they count on the all blacks, just don't bother that monolingual Spanish speaking people are easier to rip off."

According to the CSAC audit report, many students have said NBA through



Staff photo / Nancy Moore

Report card: A recent state audit of the Van Nuys campus of Panorama-based National Business Academy cites several problems at the scho

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Gilbert Vargas and the six others involved in the current lawsuit, filed Pacific Legal Services, are asking for $10,000 in actual damages and $10,000 in punitive damages for each student.

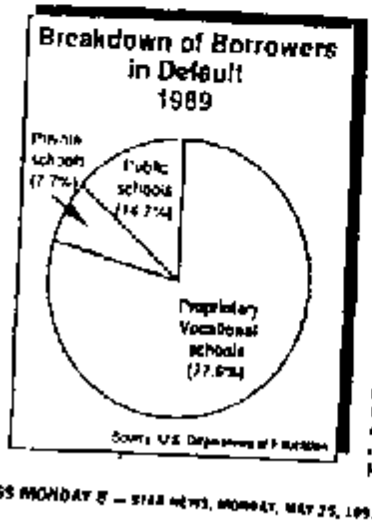
The suit alleges NBA "through representations about its programs, deceived prospective students into enrolling there, provided the students with poor education so inadequate that the students could not and have not obtained employment for which they were trained."

The students say they are now being hounded by collection agencies and have no way to pay. Two of the plaintiffs managed to find jobs and have begun repaying their loans, but the others are unemployed, according to their lawyer, Deanne Enright.

The seven plaintiffs, Vargas, his brother Julio Alfaro, Benito Chavez, Ildefonso Alvarez, Abraham Cortes, Rodriguez Ayala and Magda Diaz, were represented between October and March 1990 by Spanish speaking agents who told they would pick up their courses and English skills would come later, so as not to get behind, according to the suit.

Only when plaintiffs began attending classes did they discover that all of the materials were in English only, that they were with vastly different levels of ability, knowledge and prior training, and that they were lumped into the same classes, that teachers for all the courses of study in the classes changed frequently, that the classes were inadequately monitored, Often, NBA failed to provide any instruction at all for plaintiffs' classes, the suit states.

Vargas, who started classes the same day she enrolled at the main branch of the state campus of NBA, said she went there just a week and a half to find out that her teacher didn't speak Spanish



Staff photo / [illegible]

Lessons in Spanish: Dr. [illegible] Gadallah, a medical instructor, works with students at Watterson College, which officials say is hurt by the negative image some vocational schools have gained.

Finding a trade school

Here are some tips experts offer to find a good vocational school program:

■ Visit the school and take a tour of the campus.

■ Ask to sit in on some classes.

■ Make sure the equipment that you will train on is current and applicable to your field of interest.

■ Talk to students enrolled in the school or to graduates.

■ Ask for names of employers who have hired graduates.

■ Find out if the school offers job placement assistance after graduation.

■ Compare several institutions to see which has the best program at the best price. A local community college might offer comparable courses for much less.

■ Ask the school about its graduation rate, its placement rate and its default rate.

■ To find out the school's student loan default rate, call the U.S. Department of Education, (800) [illegible].

■ When enrolling, be careful. Read all documents before you sign on the dotted line.

■ If you have complaints after enrolling, try to deal with the school to solve the problem.

■ If the school does not respond to complaints, call the state Council for Private Postsecondary and Vocational Education, (916) 445-[illegible].

The Spanish-speaking [illegible] who had recruited her, she says, is no longer working there.

Two weeks later, she went to [illegible] to complain that she wasn't learning. She said she was told not to worry, that she would learn eventually and that she would get [illegible] at a hospital anyway.

[illegible] says the lawsuit was the first he heard that the students were unhappy.

"I did not hear anything of this until it hit. None of the students complained because of their [illegible]," he says. "I was totally taken by surprise. [illegible]"

He denied some of the charges in the suit, saying the seven students in the suit were given instruction in their native language and that NBA always [illegible] an instructor for the [illegible]. [illegible] added that NBA is in the process of [illegible] each of the students' [illegible].

[illegible] Vargas did [illegible] to the lawsuit but says "[illegible] absolutely nothing [illegible] the [illegible]."

Speaking through an interpreter, Vargas said she now owes $[illegible]. A [illegible] of three, she says she wants to be able to [illegible] student loans forgiven and [illegible] could [illegible] medical assistant.

Her brother, [illegible], has [illegible] with the school from [illegible] others.

"Right now, my main concern is [illegible] that the people that are suffering from these kinds of schools," [illegible] Albino of Los Angeles says. "I know a lot of people won't have justice in this case, and that's one of my main concerns."

His attorney agrees. "This is very important to the [illegible] communities in that there is a situation where people who don't speak English well are trying to better themselves," [illegible] says. "[illegible] this incredible overwhelming [illegible] on them. It's a huge problem."

She added that after filing the lawsuit in March, she has been "overwhelmed with calls" from other students.

Albino, 37, says that from the beginning, the language barrier was the biggest problem he faced. He and his sister were recruited in Spanish and then given enrollment and loan papers to sign in English.

"When I started going to school, I had problems because I didn't understand much of the language. I kept going, but it was difficult for me," Albino said. "After four or five weeks, they fired the teachers that I had. Then, I spent almost four weeks without an instructor and after that they got a new instructor but this guy was from India and he didn't speak English and I didn't speak his language."

Since leaving NBA, Albino has been taking adult school classes in the Los Angeles Unified School District to earn his high school diploma. Those classes, he says, are good.

Still, he is still saddled with about $[illegible] worth of loans. "I tried to improve my future, but what I got was creditors on my back harassing me that if I don't pay, they're going to take me to court. It's been hard for me lately."

■ ■ ■

Don Parker, a CSAC spokesman, says the scenario detailed in the National Business Academy lawsuit is a story that is heard over and over again.

"When you buy an education, it's just like buying a sofa, a refrigerator or any other consumer purchase. You need to thoroughly research it [illegible] before you buy it," he says. "A student loan is nothing more than a deferred payment. It's as if you paid on your Visa card."

Unfortunately, there are some bad schools mixed in with the good, most experts acknowledge. Those problem schools almost invariably have disproportionately high student loan default rates.

Vocational schools in California account for 25 percent of total loan dollars, but make up 41 percent of all defaults, making them "far and away the largest amount by orders of magnitude for all of the other segments," Parker said.

Vocational schools have a 33 percent default rate in the state, while the average for California is 18.6 percent. The rate for University of California students is 7.6 percent.

Bob Zendler, coordinator of skills training for the Pasadena Unified School District, says vocational schools "serve a need in society, but if a student wanted to become a medical assistant and they tried the program offered (through Pasadena City College) as opposed to some of the private post-secondary schools, I think they would get a much cheaper education with more quality."

He called the training at proprietary schools "narrow and fast paced."

Pat [illegible], the financial aid director at Glendale Community College, agrees. He says for-profit vocational schools often use students as a vehicle to funnel the government loan dollars through to the institution's treasury.

"If you took a look at their curriculum, you would probably find that most of them are available for one-fifteenth of the price at Pasadena City College," he said.

■ ■ ■

As Congress wrangles this year with the reauthorization of the Higher Education Act, vocational education and default rates have become a controversial topic.

A bill, which was passed by the House of Representatives and now is before the Senate, would prohibit vocational schools from using commission-based recruiters, require pro rata tuition refunds, increase the states' authority to deal with high default rate schools and eliminate schools from the federally guaranteed student loan program if their default rates are 25 percent or higher for three years in a row, [illegible] said.

At the state level, regulations governing vocational schools became much more stringent with the Private Post-Secondary Reform Act of 1989, but enforcement remains a problem.

"It's important that this kind of fraud is stopped. Even though there are some strong laws, there's just not enough people out there enforcing them," [illegible] said.

Still, the issue is far from cut and dried. The stigma of bad vocational schools taints even the schools where default rates are low and compliance with state and federal regulations is not a problem.

Robert [illegible], acting director of Pasadena-based Watterson College, which offers a variety of vocational programs, says his school has been hurt by the negative publicity about trade schools.

"It makes it more difficult for schools like Watterson College because every time there's an article, people think twice about coming to the school," he says.

Watterson has a federal default rate of only [illegible] percent for 1989, comparable to the rate for two-year colleges.

The school, where about 85 percent of students take out loans, has a default management program, including a lecture on the negative consequences of default during orientation and an exit interview with a financial aid counselor.

[illegible] Young, head of the enforcement and investigation unit for the state Council for Private Postsecondary and Vocational Education, says students are part of the problem.

"We are finding the schools don't even know the problem exists," Young says. "Students are coming here first without dealing with the school."

She adds that a lot of students complain after the fact, making it difficult to investigate. "Students need to be proactive rather than reactive," she says.

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WILMERHALE LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL

March 24, 2022

Secretary Miguel Cardona
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Dear Secretary Cardona:

We are submitting this group closed school discharge application on behalf of all individuals (and parents with PLUS loans if applicable) who attended a for-profit school listed in the Department's official closed school search file with a closure date prior to January 1, 1994.

By acting quickly and granting this group discharge, the Department will provide long-delayed relief for the individuals in this cohort who have suffered years of collection harassment, credit damage, occupational license removals, benefits seizures, and other punitive measures. Many have made payments far exceeding the original loan amounts, only to see their balances balloon due to interest and fees. Taxpayers have been hit hard as well, paying exorbitant fees to profit-hungry private collectors attempting to collect largely uncollectable debts.

The Department should establish a rebuttable presumption that all individuals in this cohort qualify for closed school discharges and then automatically approve such relief. [1]

Grounds for Establishing Eligibility Presumption

1. Student Loan Repayment Struggles and Non-Completion

The closed school discharge statute mandates loan discharges for borrowers who were unable to complete their programs due to school closures.[2] The Department should presume that the borrowers in this cohort meet this condition.

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[1] The National Consumer Law Center's on-line treatise contains a list of prior group discharges and relevant documents. See National Consumer Law Center, Student Loan Law § 10.4.2.7 (6th ed. 2019 and Supp.). In addition, the Department is proposing to revive the automatic closed school discharge including for FFEL loans at 34 C.F.R. § 682.402(d)(8) and Perkins loans at 34 C.F.R. § 674.33(g)(3). Some of the borrowers in this group discharge cohort should qualify for this automatic relief. However, the proposed regulations are not yet final and will take time to go into effect in any case.

[2] 20 U.S.C. § 1087(c).

These individuals have struggled to repay their loans for twenty-five years or more. Many are currently in default on their loans or have experienced long periods of default and delinquency. The existence of outstanding balances after such a long period indicates that most if not all of these individuals did not benefit financially from their educational experiences. The Department should go one reasonable step further and presume that most of these borrowers have been unable to repay their loans because they did not complete their programs.

There is a strong correlation between student loan repayment struggles and non-completion. Further, numerous studies demonstrate that non-completers are the least likely to experience even minimal financial success after leaving school.

There is overwhelming evidence that non-completion is one of the most important predictors of loan delinquency and default.[3] For example, non-completers represented about 60% of all borrowers in default in 2015.[4] As summarized by the provost at Washington University, "If you don't finish, you're better off not going at all."[5]

2. Predatory School/Non-Completion Link

There are about 2933 domestic schools on the closed school list with closure dates prior to January 1, 1994. Although we do not know the precise number, a large percentage of these schools were for-profit.

The closed school list is rife with notorious predatory actors including many schools that closed after losing federal loan eligibility due to exorbitantly high default rates. An Associated Press article from 1992 describes the 121 schools that lost guaranteed student loan eligibility due to default rates of 35% or more.[6] This included a Wilfred Beauty Academy branch in New York with a 49.5% default rate and in Philadelphia with a 54.6% default rate.[7] Wilfred was one of a number of predatory schools that closed during this period that also violated admissions regulations, including ability-to-benefit testing requirements.[8]

The strong correlation between for-profit school enrollment and non-completion is another reason why the Department should presume non-completion for this cohort. Completion rates are

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[3] *See, e.g.*, Michael Itzkowitz, Want More Students to Pay Down Their Loans? Help Them Graduate, Third Way (Aug. 8, 2018), https://www.thirdway.org/report/want-more-students-to-pay-down-their-loans-help-them-graduate.
[4] Ben Miller, Center for American Progress, "The Relationship Between Student Debt and College Completion" (June 26, 2015), https://www.americanprogress.org/article/the-relationship-between-student-debt-and-college-completion/.
[5] Christina Cauterucci, "More Single Mothers Are Going to College than Ever. But Very Few will Graduate", Slate (Sept. 22, 2017), https://slate.com/human-interest/2017/09/for-profit-schools-and-low-graduation-rates-plague-a-rising-population-of-single-student-mothers.html.
[6] Associated Press, "List of 121 Schools that Lost Guaranteed Student Loan Eligibility" (July 31, 1992), attached at App. A.
[7] *Id.*
[8] A 2013 New York Times article profiled some of the former Wilfred students and described how the school closed after findings that it falsified applications for federal student loans and misused federal loan money. Emily S. Rueb, Beauty School Students Left with Broken Promises and Large Debts, NYT, (July 28, 2013), https://www.nytimes.com/2013/07/29/nyregion/promised-better-life-by-beauty-schools-graduates-have-little-training-and-lasting-debt.html.

particularly low at most for-profit schools. For example, in 2019, the overall bachelor's degree completion rate was 62 percent at public institutions, 68 percent at private nonprofit institutions, and 26 percent at private for-profit institutions.[9]

3. Racial Justice/Non-Completion Link

Granting relief to this cohort would also help demonstrate the Department's commitment to racial justice.

Student loan debt burdens disproportionately impact people of color. For example, according to a 2020 Brookings report, "more than two-thirds of Black students who attended a for-profit college and left without graduating defaulted on their student loans within 12 years, raising important concerns about racial equity in higher education." [10]

4. The Department's Operational Failures and Misrepresentations Impeded Relief

The closed school discharge was supposed to be effective at the time of enactment in 1992. Instead, the 1992 enactment marked the beginning of a two-year limbo period until the Department finally issued closed school regulations. According to the complaint in the 1996 case *McComas v. Riley,* "The Secretary stonewalled and dragged his feet for over two years in implementing the provisions, turned away students who had legitimate claims for discharge, and continued income tax refund offsets against people who were entitled to discharge."[11] In a 1993 letter to the Department, legal aid advocates expressed concerns that despite the 1992 effective date, the Department was repeatedly citing the lack of regulations as the reason why requests for individual discharges could not be granted.[12]

In informal guidance, the Department stated that until final regulations were adopted, guaranty agencies should not submit discharge applications for borrowers who were offered teach-outs or who earned credits through transfers to similar programs.[13] Yet there was no definition of the term "teach-out" in this guidance.[14] The Department also created a chilling effect by reminding borrowers and their representatives of the potential for serious consequences if they made false statements when applying for discharges even though the Department issued little or no guidance.[15]

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[9] National Center for Education Statistics (NCES), Fast Facts, https://nces.ed.gov/fastfacts/display.asp?id=40.
[10] Stephanie Riegg Celinni, "The Alarming Rise in For-Profit College Enrollment", Brookings (Nov. 2, 2020), https://www.brookings.edu/blog/brown-center-chalkboard/2020/11/02/the-alarming-rise-in-for-profit-college-enrollment/.
[11] McComas v. Riley et. al, Civ. Action No. 3:96-0275 at 16 (S.D. W. Va. 1996).
[12] Letter from Legal Aid Advocates to Asst. Sec. of Education David A. Longanecker (Oct. 5, 1993), attached at App. B.
[13] U.S. Dept. of Educ., "Discharge of Federal Stafford Loans and Federal Supplemental Loans for Students (SLS) loans for borrowers affected by school closures," 93-L-153, 93-G-230 (April 1993).
[14] The ambiguity was intentional. The Department later explained when promulgating the final regulations that "The Secretary believes that a prescriptive regulatory definition of "teach-out" is unnecessary." 59 Fed. Reg. 22462, 22467 (Apr. 29, 1994).
[15] For example, after the final regulations went into effect in a 1995 letter, the Department's Office of General Counsel stated that "…false statements in the context of closed school discharges…can have grave implications—raising issues of, e.g., perjury, subornation of perjury, and criminal or civil false claims." Letter from Sarah L.

The Department compounded the confusion by failing to keep careful records, including on teach-out programs.[16] From the records that do exist, it appears that few schools prior to 1994 offered teach-outs, further supporting the presumption of closed school eligibility for this cohort.[17]

The final regulations published in April 1994, along with accompanying informal guidance, brought some clarity to the process. This was too late for many borrowers, including many of the borrowers requesting this group relief.

5. Intentional Barriers to Relief

Presumably to help find eligible borrowers, the 1994 final regulations required guaranty agencies to review records and identify all schools that appeared to have closed on or after January 1, 1986 and prior to June 13, 1994, and identify the loans made to potentially eligible borrowers.[18] Given the low levels of borrowers obtaining closed school discharges in the 1990's and beyond, it is unlikely that the guaranty agencies diligently carried out this directive. Failure to reach out to eligible borrowers has unfortunately been common practice at the Department for years.[19] The Department's failure to engage in rigorous outreach and its intentional prioritization of collection over borrower rights has resulted in chronically low discharge program utilization rates.[20]

6. Lack of Alternatives

Already confused by the opaque and inaccessible closed school discharge process, the borrowers in this cohort also lacked access to alternative "borrower defense" or "defense to repayment" ("DTR") rights. This was simply due to the timing of their loans. Although the Department should have been inserting the FTC holder rule language or similar "borrower defense" language

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Wanner, U.S. Dept. of Education Office of the General Counsel, to Daniel Hedges, Appalachian Research Defense Fund, Inc. (Feb. 13, 1995), attached at App. C.

[16] The Government Accountability Office did not include data on borrowers who attended colleges that closed prior to 2014 because Department of Education officials stated that the data on program completion for these borrowers had limitations. The report describes other data limitations including with respect to tracking transfers. Government Accountability Office, # 21-105373, College Closures: Many Impacted Borrowers Struggled Financially Despite Being Eligible for Loan Discharges, 8-9 (Sept. 30, 2021).

[17] For example, in the 1993 guidance that the Department issued during the limbo period, the Department compiled a twenty-five page "partial list" of schools for which no arrangement was made for a teach-out and no teach-out was offered by a third party. U.S. Dept. of Educ., "Discharge of Federal Stafford Loans and Federal Supplemental Loans for Students (SLS) loans for borrowers affected by school closures," Att. A, 93-L-153, 93-G-230 (April 1993).

[18] 34 C.F.R. § 682.402(d)(6)(i)(C) (FFEL).

[19] For example, New York Legal Assistance Group sued the Department in 2014 for refusing to notify former students at Wilfred Beauty Schools that they might be eligible to seek false certification discharges. The case settled in 2017. For more information about the case, see "NYLAG sues Secretary of Education for Failing to Notify Former Wilfred students," https://nylag.org/nylag-sues-secretary-of-education-for-failing-to-notify-former-wilfred-students/#:~:text=NYLAG%20sues%20Secretary%20of%20Education,New%20York%20Legal%20Assistance%20Group, including a copy of the stipulated settlement.

[20] In the 2016 rulemaking, the Department found that nearly half of all eligible borrowers never apply for the closed school discharges to which they are legally entitled. 81 Fed. Reg. at 75, 926, 76, 059 (Nov. 1, 2016). In a 2015 article, Department officials estimated the cost of loan discharges at the predatory school chain Corinthian based on a low 6% discharge program usage rate. Michael Stratford, *Corinthian Closes for Good,* INSIDE HIGHER ED (Apr. 27, 2015), https://www.insidehighered.com/news/2015/04/27/corinthian-ends-operations-remaining-campuses-affecting-16000-students.

in FFEL loans from the outset, the Department only began this practice in 1994.[21] Prior to this time, borrowers had to figure out how to raise school-related claims and defenses without a process or forum to do so and without clear authority in their promissory notes. Few borrowers knew about these rights and those that did rarely had legal assistance resources to help them navigate the system and obtain relief.

The Human Impact

Unlike the Department, we cannot determine the names of all the individuals in this cohort. While each person has a unique and important story to tell, we do know from years of representing individuals in similar situations that they all sought higher education to improve their lives and the lives of their families. They placed their hopes and dreams in educational programs that had the stamp of approval from the government of the United States. The government let them down by failing to regulate these schools and then compounding the pain by failing to properly administer the programs intended to provide relief.

Below are a few individual experiences.[22] A common thread among them is that these individuals did not complete their programs, but were unable to apply for closed school discharges because the process was not in effect at the time. Further, as was the case for so many individuals, even if the discharge program had existed, many did not meet the narrow eligibility requirements because they withdrew before the limited time window for borrowers to qualify for closed school discharges if they left before school closure. The Department eventually extended this time period from 90 to 120 days, not nearly long enough for these borrowers and, more generally, not nearly long enough given that most predatory schools never offered quality instruction or such instruction deteriorated long before the official closure.[23]

Robert Fernandez

Mr. Fernandez, a Latino man, enrolled at the Transwestern Institute in Los Angeles in 1987. He obtained federal student loans, but dropped out after a few months because of abuses at the school. These abuses and legal violations persisted for some time, but the school did not officially close until 1990. By the time Mr. Fernandez sought help from legal aid, his sole source of income was General Relief benefits (about $220 per month). His loan balance by then had ballooned to $22,000.

Tommy Washington

Mr. Washington, an African-American man, obtained $3,300 in federal student loans to enroll in a drafting program at National Technical Schools in August 1988. National Technical Schools were owned and operated by United Education & Software, which was sued by the California

[21] The majority of these borrowers will likely have FFEL since there was no Direct Loan program at this time. There may also be some borrowers with Perkins or other types of loans such as Supplemental Loans for Students. Some may have subsequently consolidated their FFEL or other loans.

[22] Some of the names listed here have been changed for confidentiality purposes. We would be happy to share the names with the Department upon request.

[23] 34 C.F.R. 682.402(d)(1)(i) (FFEL). The Department has generally refused to extend this window in most cases.

Attorney General. At the time of Mr. Washington's enrollment, he was unable to use his writing hand due to a recent injury. He specifically asked the school whether its drafting program was completely computerized, as he was unable to manually draft due to this injury. Although the school assured him that all training would be on computer, Mr. Washington's first class required drafting by hand. He could not participate and therefore dropped out. National Technical Schools closed in December 1989. He has been in and out of student loan default since then and is currently unemployed.

Joe Medford

Mr. Medford is a military veteran who attended American Business Inst., which was owned by Wilfred Education Corp., in 1988. Among other abuses and legal violations, the school misrepresented the quality and qualifications of instructors, failed to provide promised job placement services, and falsely promised that students would have job offers by the time they graduated. Mr. Medford's campus closed at least a year after he attended. He is in default on the loans and has already experienced both tax refund offsets and wage garnishment, presumably more than enough to pay off the original principal and more. Mr. Medford's loan balance has ballooned to over $30,000 from a loan that started at about $5,000.

Alexander Largie

Mr. Largie enrolled at the American Business Institute (ABI) in Queens, New York on or around 1987. He borrowed federal student loans to study in ABI's Automating Bookkeeping program. While in the program, he noticed the curriculum was inadequate and teacher retention was low—he consistently had different instructors for the same courses. Mr. Largie left the school and did not complete his program of study in New York. The school closed in 1989. In the years that followed, he could not afford his loan payments and was struggling to pay for necessary medical expenses. His application for closed school discharge was rejected, presumably because of the narrow time window described above.

Hazel Marlene Stamm

Mrs. Stamm enrolled in Wilfred Academy in New Jersey on or around 1989. She borrowed federal loans to study in Wilfred's Cosmetology program. After starting classes, she requested medical level due to her pregnancy. After she returned to Wilfred, Mrs. Stamm learned the school failed to register her medical leave and her federal loan was registered as "defaulted." She only had three weeks left to complete her program of study when Wilfred closed. In the years that followed, she received threatening collections calls and notices about her defaulted student loans. Mrs. Stamm suffers from health problems and is concerned about her outstanding loan balance of least $9,000.

Former Students of National Business Academy (NBA)

The California guaranty agency ("CSAC") and Department's Office of Inspector General found serious problems at National Business Academy schools including violations of enrollment and

recruitment rules and standards and provision of false information to accreditors.[24] A number of former students sued the school in the early 1990's. One of the plaintiffs, Julio Alfaro, explained in a 1992 article that "…I tried to improve my future, but what I got was creditors on my back harassing me that if I don't pay, they're going to take me to court."[25]

It is past time to end this nightmare for this cohort. We urge the Department to immediately grant these discharges and, in the meantime, place all servicing and collection for these accounts on hold.

Thank you for your consideration. Please contact Deanne Loonin if you have questions or need additional information.

SIGNED

Deanne Loonin
Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston St.
Jamaica Plain, MA 02130
dloonin@law.harvard.edu
(617) 390-2723

Jessica Ranucci
New York Legal Assistance Group
100 Pearl Street, 19th Floor
New York, NY 10004

Robyn Smith
Senior Attorney
Legal Aid Foundation of Los Angeles
5211 E. Washington Blvd., Suite 2-457
Commerce, CA 90047
(213) 640-3906

cc: Richard Cordray, Chief Operating Officer FSA
James Kvaal, Under Secretary of Education
Bonnie Latreille, Student Loan Ombudsman

[24] Tania Soussan, "Educational Default: Vocational Schools Often Cost More, Offer Less to Students", Star-News (May 25, 1992), attached at App. D.
[25] *Id.*

List of Attachments

A: Associated Press, "List of 121 Schools that Lost Guaranteed Student Loan Eligibility

B: Letter from Legal Aid Advocates to Asst. Sec. of Education David A. Longanecker (Oct. 5, 1993)

C: Letter from Sarah L. Wanner, U.S. Dept. of Education Office of the General Counsel, to Daniel Hedges, Appalachian Research Defense Fund, Inc. (Feb. 13, 1995)

D: Tania Soussan, "Educational Default: Vocational Schools Often Cost More, Offer Less to Students", Star-News (May 25, 1992),

From: Turi, Michael N.
Subject: RE: Question Regarding FFEL Loan Holders with Approved Borrower Defense to Repayment Applications
To: Cordray, Richard; Harrington, Ashley; Miller, Benjamin; Morgan, Julie; Kvaal, James; Latreille, Bonnie
Cc: Connor, Eileen; Loonin, Deanne
Sent: March 28, 2022 5:24 PM (UTC-04:00)
Attached: Letter to ED re FFEL Discharges.pdf

Dear Mr. Cordray,

I am following up just to confirm that your office received the inquiry submitted by my organization on March 17, 2022. I attach it again for your convenience. Thank you for your attention to this matter.

Sincerely,

Michael N. Turi
Staff Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

(617) 390-2739
www.predatorystudentlending.org

From: Turi, Michael N.
Sent: Thursday, March 17, 2022 10:28 AM
To: 'richard.cordray@ed.gov' <richard.cordray@ed.gov>; 'ashley.harrington@ed.gov' <ashley.harrington@ed.gov>; 'benjamin.miller@ed.gov' <benjamin.miller@ed.gov>; 'julie.morgan@ed.gov' <julie.morgan@ed.gov>; 'james.kvaal@ed.gov' <james.kvaal@ed.gov>; 'Bonnie.J.Latreille@ed.gov' <Bonnie.J.Latreille@ed.gov>
Cc: Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: Question Regarding FFEL Loan Holders with Approved Borrower Defense to Repayment Applications

Dear Mr. Cordray,

Attached please find a letter from my organization concerning borrower defense discharges for individuals with commercially-held Federal Family Education Loans. Please advise us as to your availability to discuss this matter.

Sincerely,

Michael N. Turi
Staff Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

(617) 390-2739
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CENTRO DE SERVICIOS LEGALES
122 Boylston Street
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TEL: (617) 522-3003 • FAX: (617) 522-0715

March 17, 2022

By E-Mail

Richard Cordray
Chief Operating Officer
Department of Education, Office of Federal Student Aid
830 First Street, NE
Union Center Plaza
Washington, DC 20202

Re: FFEL Loan Holders with Approved Borrower Defense to Repayment Applications

Dear Mr. Cordray:

My organization represented a class of student borrowers in the case *Pratt et al. v. Cardona et al.*, D.D.C. No. 20-cv-01501 (filed June 9, 2020). The class, certified by the District Court on September 22, 2020,[1] was comprised of borrowers whose borrower defense applications were approved, but received only partial relief under the Department of Education's 2019 relief methodology. On March 18, 2021, the Department announced that it had rescinded the 2019 methodology and would provide a 100% discharge on the loans associated with the approved borrower defense applications of *Pratt* class members.[2] On November 19, 2021, the case was voluntarily dismissed without prejudice after the Department confirmed to the Court that "it ha[d] sent notices to all borrowers who previously received relief determinations under the December 2019 methodology telling those borrowers that they are eligible for full relief on their borrower defense claims."[3]

The notice sent to borrowers informs them that "If you have William D. Ford Federal Direct Loans (Direct Loans), then 100% of those that you received . . . for the program(s) of study related to your approved claim will be discharged within the next 180 days." We trust that the Department is working diligently to complete the discharge process under that timeline. However, the notice further states that:

- The Department is determining whether you have other Federal non-Direct loans (such as Federal Family Education Loans or Perkins Loans) relating to your claim.
- If you do have those other types of loans, they will also be eligible for full discharge, but you will have to take some additional steps to receive this relief.

---

[1] *Pratt*, ECF No. 19.
[2] https://www.ed.gov/news/press-releases/department-education-announces-action-streamline-borrower-defense-relief-process.
[3] *Pratt*, ECF No. 28 at 1.

- If you have these eligible loans, we will send you more information about the actions that need to be taken for these loans to be discharged. You do not have to take any additional steps unless and until we contact you again.

Based on information that we have received from class members, we understand that borrowers with Federal Family Education Loans (FFEL) have yet to receive any additional information about the steps that they must take in order to receive the promised discharge. As such, we are unable to advise our clients who have FFEL loans on whether they should promptly consolidate their loans into the Direct Loan program, and what the consequences of such consolidation might be.[4] We hope to obtain more information from you as to what action the Department will be taking to provide relief to FFEL loan holders.

Please advise as to your availability to discuss this matter.

Sincerely,

/s/ Michael N. Turi

Michael N. Turi, Esq.
Project on Predatory Student Lending,
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130
(617) 390-2739
mturi@law.harvard.edu

[4] Furthermore, the Department has not made FFEL borrowers aware as to how they may obtain this relief if they are not eligible to consolidate. *See, e.g.*, 34 C.F.R. § 685.220(d)(2) (limiting eligibility for consolidating an already consolidated federal student loan); 20 U.S.C. § 1078-3(a)(3)(A) (defining "eligible borrower" for FFEL consolidation loans).

From: Elyse Hicks
Subject: Re: UPDATES: FSA Consumer Group Listening Session
To: Latreille, Bonnie
Cc: Lisa Donner; Emily Hirtle; Candace Archer; Julia.Barnard@responsiblelending.org; whitney.barkley@responsiblelending.org; Persis Yu; Chris Hicks; carrie@vetsedsuccess.org; Kyra Taylor; ashafroth@nclc.org; econnor@law.harvard.edu; rfitzgerald@pewtrusts.org; Natalia Abrams (SDC); Cody Hounanian (SDCC); Bstein@ticas.org; kelliott@edtrust.org; CHancock@americanprogress.org; Thomas Gokey; [redacted] rlau@nea.org; atherley@civilrights.org; scohen@aft.org; bcuster@americanprogress.org; king@civilrights.org; tplunkett@pewtrusts.org; dan@defendstudents.org; ksouthern@ticas.org; Bob Shireman; hall@tcf.org; moultrie@tcf.org; fast@tcf.org; bustillosl@aauw.org; rweintraub@consumerfed.org; dhawkins@nacacnet.org; sattelmeyer@newamerica.org; syed.ejaz@consumer.org; chuck.bell@consumer.org; blevin@afscme.org; apicard@aft.org; jennifer@vetsedsuccess.org; chris@vetsedsuccess.org; james@vetsedsuccess.org; ATaylor@nclc.org; Amber Saddler; jbass@americanprogress.org; Ella Azoulay; Victoria Jackson; fishmanr@newamerica.org; conroy@newamerica.org; laitinen@newamerica.org; Reid Setzer; Wollard, Kalynn
Sent: April 4, 2022 2:08 PM (UTC-04:00)

Thank you!

On Mon, Apr 4, 2022 at 1:57 PM Latreille, Bonnie <Bonnie.J.Latreille@ed.gov> wrote:

> Tuesday, April 12th*** (This is why I shouldn't send emails when Kalynn is out… ☺)
>
> When she's back, we'll delete the existing invite and send a new one around. Thanks!

From: Latreille, Bonnie
Sent: Monday, April 4, 2022 1:10 PM
To: Lisa Donner <lisa@ourfinancialsecurity.org>; Emily Hirtle <emily@ourfinancialsecurity.org>; Elyse Hicks <elyse@ourfinancialsecurity.org>; Candace Archer <candace@ourfinancialsecurity.org>; Julia.Barnard@responsiblelending.org; whitney.barkley@responsiblelending.org; Persis Yu <persis@protectborrowers.org>; Chris Hicks <chris@protectborrowers.org>; carrie@vetsedsuccess.org; Kyra Taylor <ktaylor@nclc.org>; ashafroth@nclc.org; econnor@law.harvard.edu; rfitzgerald@pewtrusts.org; Natalia Abrams (SDC) <natalia@studentdebtcrisis.org>; Cody Hounanian (SDCC) <cody@studentdebtcrisis.org>; Bstein@ticas.org; kelliott@edtrust.org; CHancock@americanprogress.org; Thomas Gokey <thomas@debtcollective.org>; [redacted] rlau@nea.org; atherley@civilrights.org; scohen@aft.org; bcuster@americanprogress.org; king@civilrights.org; tplunkett@pewtrusts.org; dan@defendstudents.org; ksouthern@ticas.org; Bob Shireman <shireman@tcf.org>; hall@tcf.org; moultrie@tcf.org; fast@tcf.org; bustillosl@aauw.org; rweintraub@consumerfed.org; dhawkins@nacacnet.org; sattelmeyer@newamerica.org; syed.ejaz@consumer.org; chuck.bell@consumer.org; blevin@afscme.org; apicard@aft.org; jennifer@vetsedsuccess.org; chris@vetsedsuccess.org; james@vetsedsuccess.org; ATaylor@nclc.org; Amber Saddler <amber@protectborrowers.org>; jbass@americanprogress.org; Ella Azoulay <eazoulay@americanprogress.org>; Victoria Jackson <vjackson@edtrust.org>; fishmanr@newamerica.org; conroy@newamerica.org; laitinen@newamerica.org; Reid Setzer <rsetzer@edtrust.org>
Cc: Wollard, Kalynn <Kalynn.Wollard@ed.gov>
Subject: UPDATES: FSA Consumer Group Listening Session

Hi everyone,

A couple of updates and requests for you all.

First, moving forward, we will be splitting the consumer group meetings up. The listening session about school accountability issues will be **Tuesday, April ~~11~~th-12th at 1:30 ET.** The listening session about servicing and collections will be **Tuesday, April 19th at 1pm ET.**

- Could folks please let us know which session(s) you'd like to join? We will send updated invites as soon as we get this list.

Second, while those of us at FSA know what the trending topics are, we want to hear what's on your mind. To that end, I'd like to get an agenda on what issues you are looking to discuss. Please know that folks from across nearly every office within FSA will be joining for these sessions.

- Please send me topics you want to discuss related to school accountability **no later than Wednesday, April 5th, COB?**
- Please send me topics you want to discuss related to servicing and collections **no later than Wednesday, April 13th, COB?**

Thanks, and looking forward to speaking with you all soon!

Bonnie Latreille

Student Loan Ombudsman

U.S. Department of Education

Office of Federal Student Aid

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--

Elyse Hicks, Esq., MBA
(she/her)
Consumer Policy Counsel
Americans for Financial Reform
Americans for Financial Reform Education Fund
1615 L Street NW, Suite 450
Washington, DC 20036

elyse@ourfinancialsecurity.org

From: Deanne Loonin
Subject: Status of [redacted] Loan Discharge Applications
To: Scaniffe, Dawn
Cc: [redacted] Latreille, Bonnie; Darcus, Joanna
Sent: April 12, 2022 11:54 AM (UTC-04:00)

Thank you for your consideration of the attached letter. I have separately attached a release form signed by [redacted] granting permission to you and others at the Department to communicate with me directly about this matter. Thank you.

Files attached to this message

Filename	Size
[redacted]OGDLtrApril122022.pdf	2.68 MB
[redacted]EDRelease.pdf	45.3 KB

Please click on the following link to download the attachments:
https://hlsfiletransfer.law.harvard.edu/[redacted]

Note: This message can only be opened by the recipients specified by the sender. If other individuals need to access the attachment, please have the sender resend the attachment and include those individuals.

The attachments are available until: **Friday, 15 April.**

Message ID: [redacted]

From: Persis Yu
Subject: Re: [Meeting Request] Fresh Start
To: Hurley, Jack
Cc: Mike Pierce; Amber Saddler; Abby Shafroth; Kyra Taylor; Eileen Connor; Natalia Abrams; cody hounanian; Alpha Taylor; taylor.roberson@responsiblelending.org; Hardman, Latricia; Jaylon Herbin; Yates, Amanda
Sent: April 21, 2022 10:54 AM (UTC-04:00)
Attached: Data Requests for Implementation of Fresh Start and IDR Waiver (1).docx

Thank you! That time would be great.

Also, following up from the briefing on the IDR announcement, we have pulled together a list of data requests that we think would be instructive for both the implementation of the IDR announcement and for fresh start.

We look forward to discussing this with you all on Tuesday!

Best,
Persis

On Wed, Apr 20, 2022 at 4:03 PM Hurley, Jack <Jack.Hurley@ed.gov> wrote:

> Hi Persis,
>
> I spoke with James and Julie and they are open this Tuesday (4/26) from 1:30 – 2:00. Rich Cordray will also be in attendance. If this time works I will send out an invite to everyone included in this email.
>
> **Jack Hurley**
>
> Confidential Assistant, Office of the Undersecretary
>
> US Department of Education
>
> [redacted] | Jack.Hurley@ed.gov
>
> ---
>
> **From:** Morgan, Julie <Julie.Morgan@ed.gov>
> **Sent:** Thursday, April 7, 2022 10:16 AM
> **To:** Persis Yu <persis@protectborrowers.org>
> **Cc:** Kvaal, James <James.Kvaal@ed.gov>; Mike Pierce <mike@protectborrowers.org>; Amber Saddler <amber@protectborrowers.org>; Abby Shafroth <ashafroth@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Eileen Connor <econnor@law.harvard.edu>; Natalia Abrams <natalia@studentdebtcrisis.org>; cody hounanian <cody@studentdebtcrisis.org>; Alpha Taylor <ataylor@nclc.org>; taylor.roberson@responsiblelending.org; Jaylon Herbin <Jaylon.Herbin@responsiblelending.org>; Hurley, Jack <Jack.Hurley@ed.gov>

Subject: Re: [Meeting Request] Fresh Start

Hi Persis,

I'd be happy to meet. Adding Jack here to help us schedule.

Julie

On Apr 7, 2022, at 9:13 AM, Persis Yu <persis@protectborrowers.org> wrote:

Dear James and Julie,

On behalf of this coalition of borrower advocates, I wanted to share how excited we were to see the Secretary's announcement on fresh start yesterday. This will have a huge impact on millions of defaulted borrowers. I understand that the Department is planning on releasing more details on fresh start in the coming weeks.

We would like to request a meeting with you as soon as possible to discuss the implementation of fresh start to ensure that it is implemented in a way that optimizes this opportunity for borrowers.

Thank you for your consideration of this request. We look forward to hearing from you.

Best,

Persis

--

Persis S. Yu (she/her/hers)

Policy Director & Managing Counsel

Student Borrower Protection Center

www.protectborrowers.org

--

Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

Data Requests for Implementation of Fresh Start and IDR Waiver

1. How many borrowers have been in repayment for more than 20 years?
2. Among borrowers who have been in repayment for more than 20 years, how many of these borrowers:
    a. Are currently in default?
    b. Were in default at some point?
    c. Were in default for 3 or more years?
    d. Were in default for 5-10 of the past 20 years?
    e. Were in default for 10-15 years of the past 20 years?
    f. Were in default for 15-20 of the past 20 years?
    g. How many utilized forbearance for any sequential period of 12 months or more?
    h. How many utilized forbearance for 36 months or more cumulatively during repayment?
    i. How many experienced a period of forbearance followed by a default in the subsequent 2 years?
3. Of the nearly 8 million borrowers currently in default, how many of these borrowers:
    a. Have been in default for fewer than 3 years?
    b. Have been in default for 3-5 years?
    c. Have been in default for 5-7 years?
    d. Have been in default for 7-10 years?
    e. Have been in default for more than 10 years?
    f. Have loans that went into repayment fewer than 5 years ago?
    g. Have loans that went into repayment 5-10 years ago?
    h. Have loans that went into repayment 10-15 years ago?
    i. Have loans that went into repayment 15-20 years ago?
    j. Are collection proof (i.e. do not receive sufficient wages or benefits to have any amount garnished or offset)?
    k. Would qualify for a $0 IDR payment?
    l. Have made payments through AWG?
    m. Have made payments through tax refund offsets?
    n. Have made payments through federal benefits offset (in particular, Social Security)?
    o. Have defaulted one or more times prior to their current default?
    p. Would be projected to pay off their loans within the next 5 years if their payments (voluntary or involuntary) continued at the same annual amount as in 2019?
        i. In the next 10 years?
        ii. In the next 15 years?
        iii. In the next 20 years?
        iv. In the next 25 years?
        v. Never?
    q. How many accessed IDR at any time before default?
    r. How many utilized forbearance for any sequential period of 12 months or more?

s. How many utilized forbearance for 36 months or more cumulatively during repayment?

4. Please provide information regarding characteristics of who is in default. If you have information sufficient to identify the total number of borrowers currently in default for each of the items below, please provide those numbers. If you do not have that information, please provide alternative information (such as longitudinal or sampled information) relevant to the question of how each of the characteristics below relates to federal student loan default.

   How many of the borrowers who are in default, or what portion of borrowers in default ...
   a. Are Black or Latino?
   b. Are women?
   c. Are Pell grant recipients?
   d. Are first generation higher ed students?
   e. Are Parent PLUS borrowers?
   f. Are Social Security recipients?
   g. Are SSDI recipients?
   h. Have debt from a for-profit school?
   i. Did not complete an educational program for which they borrowed?
   j. Did not complete a bachelor's degree/ 4-year educational program or more? (include in this category borrowers who completed only programs shorter than a bachelor's degree programs as well as borrowers who began but did not complete a bachelor's degree/4-year program)
   k. Were previously enrolled in an income driven repayment program?
   l. Were enrolled in an income driven repayment program when they defaulted?
   m. Were previously enrolled in a forbearance?
   n. Were enrolled in a forbearance when or within 12 months of when they defaulted?
   o. Were previously enrolled in a deferment?
   p. Were enrolled in a deferment when or within 12 months of when they defaulted?
   q. Had dependent children while obligated on federal student loans (as may be evidenced by their having reported they had dependents on their FAFSA or IDR forms, or through other data collection mechanisms)?
5. Across all servicers, the number of borrowers who, at some point in their loan history, used forbearances for:
   a. 12 or more consecutive months?
   b. 6 or more total months?
   c. 12 or more total months?
   d. 24 or more total months?
   e. 36 or more total months?
6. Across all servicers, the number of borrowers who, at some point in their loan history, used a combination of deferments and forbearances for:
   a. 12 or more consecutive months?
   b. 6 or more total months?

c. 12 or more total months?
d. 24 or more total months?
e. 36 or more total months?

7. Across all servicers, the number of borrowers who had one month or more of forbearance each year they were enrolled in IDR?

From: Loonin, Deanne
Subject: FW: Group Closed School Request
To: Cordray, Richard; Kvaal, James; Latreille, Bonnie; Cardona, Miguel
Cc: Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Habash, Tariq; 'rsmith@lafla.org'; Jessica Ranucci; Connor, Eileen
Sent: April 27, 2022 11:48 AM (UTC-04:00)
Attached: GroupClSchool2022FINALVERSION.pdf, GroupClosedSchoolApps.pdf

We are writing to check on the status of the attached group closed school discharge application. It has been just over a month since we submitted the request and we have not received a response other than a brief confirmation of receipt.

We also requested a meeting at your earliest convenience to discuss this request. Please also let us know if you have forwarded this request to a person or unit at the Department that is not on this list.

Thank you for your consideration. We hope to meet with you soon.

From: Loonin, Deanne
Sent: Thursday, March 24, 2022 12:12 PM
To: richard.cordray@ed.gov; Kvaal, James <James.Kvaal@ed.gov>; Bonnie.J.Latreille@ed.gov; miguel.cardona@ed.gov
Cc: Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; ashley.harrington@ed.gov; Habash, Tariq <Tariq.Habash@ed.gov>; 'rsmith@lafla.org' <rsmith@lafla.org>; Jessica Ranucci <JRanucci@nylag.org>; Connor, Eileen <econnor@law.harvard.edu>
Subject: Group Closed School Request

We respectfully submit this request for group closed school discharge on behalf of all student borrowers, including our clients, who attended a for-profit school listed in the Department's official closed school search file with a closure date prior to January 1, 1994.

I have attached copies of the letter and appendices. We have also posted the letter on our web site: https://predatorystudentlending.org/wp-content/uploads/2022/03/GroupClSchool2022FINALVERSION.pdf.

We are also requesting a meeting at your earliest convenience to discuss this request. I will contact you in a few weeks if I have not heard from you by then. Thank you for your consideration of this request.

Deanne Loonin
Project on Predatory Student Lending
dloonin@law.harvard.edu
(617) 390-2723
[redacted] (cell)

APP. A

List of 121 Schools That Lost Guaranteed Student Loan Eligibility

The Associated Press

July 31, 1992, Friday, BC cycle

Section: Washington Dateline

Length: 1314 words

Dateline: WASHINGTON

Body

Here is a list of schools that lost their eligibility for the Federal Family Education Loan program, formerly called the Guaranteed Student Loan program.

These schools had loan default rates of 35 percent or more for three consecutive years.

The list indicates the length of the school programs, the types of schools and the federal student loan default rates for fiscal 1990. For example, a school designated "1-yr.-Prop., 48.9," is a one-year proprietary, or privately owned trade school that had 48.9 percent of its students loans default two years ago.

The information comes from the Department of Education

ALABAMA

Career Development Institute, Montgomery, 1-yr.-Prop., 48.9.

Career Development Institute, Birmingham, 600-hr.-Prop., 63.4.

Career Development Institute, Mobile, 600-hr.-Prop., 49.4.

International Career Institute, Phenix City, 1-yr.-Prop., 56.6.

Phillips Junior College at Birmingham, Birmingham, 2-yr.-Prop., 54.0.

Rhone's Beauty College, Mobile, 1-yr.-Prop., 53.4.

Riley College, Dothan, 1-yr.-Prop., 55.9.

List of 121 Schools That Lost Guaranteed Student Loan Eligibility

ARIZONA

ABC Welding School, Phoenix, 600-hr.-Prop., 47.6.

ARKANSAS

New Tyler Barber College, North Little Rock, 1-yr.-Prop., 52.8.

CALIFORNIA

Banking Institute, Los Angeles, 600-hr.-Prop., 36.8.

Barstow College, Barstow, 2-yr.-Pub., 61.1.

California Paramedical and Technical College, Long Beach, 1-yr.-Prop., 39.1.

Canada College, Redwood City, 2-yr.-Pub., 52.8.

Compton Community College, Compton, 2-yr.-Pub., 62.1.

Kenneth's College of Hairstyling, Vallejo, 300-hr.-Prop., 55.0.

Lassen College, Susanville, 2-yr.-Pub., 36.3.

Long Beach Community College Dist.-Long Beach City Col, Long Beach, 2 -yr.-Pub., 44.8.

Marinello Schools of Beauty, Arleta, 1-yr.-Prop., 58.1.

Merritt College, Oakland, 2-yr.-Pub., 39.4.

National Business Academy, Van Nuys, 1-yr.-Prop., 51.6.

Palo Verde College, Blythe, 2-yr.-Pub., 40.8.

Southwest College, San Francisco, 600-hr.-Prop., 77.0.

Southwest College, Hayward, 600-hr.-Prop., 67.9.

Universal College of Beauty, Los Angeles, 600-hr.-Prop., 56.5.

Van Nuys College of Business, Van Nuys, 1-yr.-Prop., 44.6.

COLORADO

List of 121 Schools That Lost Guaranteed Student Loan Eligibility

United States Truck Driving School, Wheat Ridge, 1-yr.-Prop., 56.2.

FLORIDA

Diesel Institute of America, Tampa, 1-yr.-Prop., 40.2.

Ft. Lauderdale College, Fort Lauderdale, 4-yr.-Prop., 44.0.

International Career Institute, Panama City, 600-hr.-Prop., 68.9.

Miami Technical Institute, Miami, 2-yr.-Prop., 59.8.

Mr. Arnold's Excellence Beauty School, Miami Beach, 1-yr.-Prop., 77.9.

Romar Hairstyling Academy, Boynton Beach, 1-yr.-Prop., 54.5.

Sarasota Beauty School, Sarasota, 1-yr.-Prop., 47.8.

GEORGIA

Georgia Medical Institute Education Preparation Center, Atlanta, 1-yr.-Prop., 51.8.

Phillips Junior College, Columbus, 2-yr.-Prop., 42.0.

Phillips Junior College, Augusta, 2-yr.-Prop., 38.2.

ILLINOIS

Cannella School of Hair Design, Chicago, 1-yr.-Prop., 37.7.

Chicago Truck Driving School, Chicago, 300-hr.-Prop., 66.6.

East West University, Chicago, 4-yr.-Priv., 37.3

IBA College of Cosmetology, Rockford, 1-yr.-Prop., 36.2.

John Amico's School of Hair Design, Oak Forest, 1-yr.-Prop., 46.0.

PBS Training Center, Chicago, 300-hr.-Prop., 58.4.

State Community College of East St Louis, East St. Louis, 2-yr.-Pub., 62.3.

Taylor Business Institute, Chicago, 1-yr.-Prop., 45.1.

Trend Beauty College, East Alton, 1-yr.-Prop., 45.5.

List of 121 Schools That Lost Guaranteed Student Loan Eligibility

Vogue Academy of Beauty Culture, Chicago, 1-yr.-Prop., 54.9.

INDIANA

North Main Beauty Academy, Evansville, 1-yr.-Prop., 59.5.

KENTUCKY

Hair Design School (the), Louisville, 1-yr.-Prop., 41.5.

Watterson College, Louisville, 2-yr.-Prop., 55.4.

LOUISIANA

Bayou Technical Institute, New Orleans, 1-yr.-Prop., 58.9.

Coastal College, New Orleans, 1-yr.-Prop., 59.4.

Commercial College of Baton Rouge, Baton Rouge, 1-yr.-Prop., 57.0.

Commercial College of Shreveport, Shreveport, 1-yr.-Prop., 61.7.

Delta Career College, Lafayette, 1-yr.-Prop., 65.5.

Delta Junior College, Baton Rouge, 2-yr.-Prop., 45.4.

Diesel Driving Academy, Shreveport, 300-hr.-Prop., 53.0.

Larry's Academy of Hairstyling, Houma, 1-yr.-Prop., 42.9.

Pat Goins Benton Road Beauty School, Bossier City, 1-yr.-Prop., 43.9.

Professional Career Center, Metairie, 600-hr.-Prop., 58.5.

Universal Beauty College, Baton Rouge, 1-yr.-Prop., 71.2.

MARYLAND

Lincoln Technical Institute, Baltimore, 1-yr.-Prop., 38.6.

Maryland Beauty Academy of Essex, Essex, 1-yr.-Prop., 42.6.

MICHIGAN

List of 121 School's That Lost Guaranteed Student Loan Eligibility

Detroit Business Institute, Detroit, 2-yr.-Prop., 42.0.

Detroit Business Institute, Southfield, Southfield, 1-yr.-Prop., 42.0.

Detroit Business Institute, Downriver, Riverview, 1-yr.-Prop., 42.0.

Highland Park Community College, Highland Park, 2-yr.-Pub., 38.9.

Jordan College, Cedar Springs, 5-yr.-Priv, 53.3.

Michigan Career Institute, Detroit, 1-yr.-Prop., 52.0.

Michigan College of Beauty, Detroit, 1-yr.-Prop., 59.6.

PBS Training Center, Southfield, 300-hr.-Prop., 56.4.

State College of Beauty, Wyandotte, 1-yr.-Prop., 36.2.

State College of Beauty, Ann Arbor, 1-yr.-Prop., 36.2.

State College of Beauty, Bloomfield Hills, 1-yr.-Prop., 36.2.

Technical Career Institute, Clinton Township, 1-yr.-Prop., 63.2.

Wayne County Community College, Detroit, 2-yr.-Pub., 38.4.

MISSISSIPPI

Moore Career College, Jackson, 1-yr.-Prop., 61.9.

Phillips Junior College, Jackson, 2-yr.-Prop., 42.6.

NEBRASKA

Nebraska Custom Diesel Drivers Training, Omaha, 600-hr.-Prop., 53.9.

NEW YORK

Beizer Yeshiva, Brooklyn, 4-yr.-Priv, 46.2.

Brooklyn Training Center, Brooklyn, 1-yr.-Prop., 61.5.

Cashier Training Institute, New York, 600-hr.-Prop., 53.2.

Global Business Institute, Far Rockaway, 1-yr.-Priv, 42.6.

List of 121 Schools That Lost Guaranteed Student Loan Eligibility

Wilfred Academy of Hair & Beauty Culture, Bronx, 300-hr.-Prop., 63.4.

Wilfred Academy of Hair And Beauty Culture, New York, 1-yr.-Prop., 49.4.

NORTH CAROLINA

Mr. David's School of Hair Design, Wilmington, 1-yr.-Prop., 40.1.

OHIO

Kenmar Beauty Academy, Canton, 1-yr.-Prop., 43.6.

OKLAHOMA

American Technical Institute, Tulsa, 1-yr.-Prop., 76.9.

Oklahoma Junior College of Business and Technology, Tulsa, 1-yr.-Prop., 41.8.

Paul's Beauty College, Oklahoma City, 1-yr.-Prop., 68.1.

OREGON

International Institute of Transportation Resources, Clackamas, 300 hr-Prop., 36.0.

PENNSYLVANIA

Delaware County Institute of Training, Chester, 600-hr.-Prop., 70.2.

Wilfred Academy, Philadelphia, 300-hr.-Prop., 34.6.

SOUTH CAROLINA

Chris Logan Career College, Myrtle Beach, 1-yr.-Prop., 35.7.

TENNESSEE

Miller-Hawkins Business College, Memphis, 2-yr.-Prop., 42.1.

TEXAS

CBM Education Center, San Antonio, 1-yr.-Prop., 49.6.

List of 121 Schools That Lost Guaranteed Student Loan Eligibility

Delta Career Institute, Beaumont, 1-yr.-Prop., 36.7.

Draughon's College of Business, Fort Worth, 1-yr.-Prop., 51.1.

Draughons College of Nursing Assistants, Fort Worth, 1-yr.-Prop., 67.1.

John's Beauty College, Texas City, 1-yr.-Prop., 74.3.

Lonnie's School of Hair Design, Beaumont, 1-yr.-Prop., 59.8.

Mansfield Business College, Dallas, 1-yr.-Prop., 62.4.

Nelson Beauty College, Dallas, 1-yr.-Prop., 55.9.

SW School of Business & Technical Careers, Eagle Pass, 1-yr.-Prop., 37.7.

SW School of Business & Tech Careers Cosmetology Div, San Antonio, 1-yr.-Prop., 37.7.

Temple Academy of Cosmetology, Temple, 1-yr.-Prop., 65.4.

Texas Beauty College, Dallas, 1-yr.-Prop., 44.1.

Tri-State Beauty School, El Paso, 1-yr.-Prop., 36.1.

University of Hair Design No. 1, Fort Worth, 1-yr.-Prop., 56.4.

University of Hair Design No. 2, Fort Worth, 1-yr.-Prop., 60.9.

Vogue Beauty College No. 12, Houston, 1-yr.-Prop., 55.0.

VIRGINIA

Career Development Center, Newport News, 1-yr.-Prop., 39.5.

Madame Daniel's School of Beauty Culture, Newport News, 1-yr.-Prop., 40.6.

Mansfield School of Business, Virginia Beach, 1-yr.-Prop., 37.1.

Portsmouth School of Beauty Culture, Portsmouth, 1-yr. Prop., 62.9.

WISCONSIN

Diesel Truck Driver Training School, Sun Prairie, 600-hr.-Prop., 48.3.

Pro Schools, Eau Claire, 1-yr.-Prop., 36.2.

Pro Schools, Green Bay, 1-yr.-Prop., 36.2.

Pro Schools, Milwaukee, 1-yr.-Prop., 36.2.

Pro Schools, Milwaukee, 1-yr.-Prop., 36.2.

Pro Schools, Racine, 1-yr.-Prop., 36.2.

Pro Schools, Monona, 1-yr.-Prop., 36.2.

Classification

Language: ENGLISH

Subject: STUDENT LOANS (95%); STUDENT FINANCIAL AID (91%); LABOR & EMPLOYMENT (90%); LOAN DEFAULTS (90%); STUDENTS & STUDENT LIFE (90%); VOCATIONAL & TECHNICAL TRAINING (90%); COMMUNITY COLLEGES (89%); COSMETOLOGY & BARBER SCHOOLS (89%); COLLEGES & UNIVERSITIES (88%); BUSINESS EDUCATION (78%); EDUCATION & TRAINING (78%); DRIVING SCHOOLS (73%)

Industry: LOAN DEFAULTS (90%); VOCATIONAL & TECHNICAL TRAINING (90%); COMMUNITY COLLEGES (89%); COSMETOLOGY & BARBER SCHOOLS (89%); COLLEGES & UNIVERSITIES (88%)

Geographic: MIAMI, FL, USA (93%); FORT LAUDERDALE, FL, USA (92%); LOS ANGELES, CA, USA (92%); BIRMINGHAM, AL, USA (90%); SAN FRANCISCO, CA, USA (79%); TAMPA, FL, USA (79%); OAKLAND, CA, USA (55%); PHOENIX, AZ, USA (56%); CALIFORNIA, USA (92%); ALABAMA, USA (79%); ARKANSAS, USA (79%); FLORIDA, USA (79%); ARIZONA, USA (75%); COLORADO, USA (71%)

End of Document

APP. B

LSNY
Legal Services for New York City
Legal Support Unit

350 Broadway • New York, New York 10013-9998 • (212) 431-7200 • Fax (212) 966-9571

Wilhelm H. Joseph
Director

October 5, 1993

David A. Longanecker
Assistant Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-5100

Dear Assistant Secretary Longanecker:

We are writing as a follow-up to our conversation with you at the negotiated rulemaking briefing and on behalf of the attorneys across the country listed below and other Legal Services attorneys who, along with us, represent thousands of victims of proprietary trade school fraud. We are deeply concerned about the integrity of the upcoming tax refund offset program as it affects borrowers potentially eligible for relief under the 1992 amendments to the Higher Education Act. We are requesting that the Department take immediate action to remove, and to direct that guaranty agencies remove, from the offset program borrowers who fall within the following categories:

--all students who attended proprietary schools which the Department or guaranty agencies know to have closed since January 1, 1986; and

--all students who attended proprietary schools known to the Department or guaranty agencies as, after January 1, 1986, having falsely certified the "ability to benefit" of incoming students who lacked high school or GED diplomas.

The "closed school" and "false certification" discharge provisions were effective upon enactment, i.e. as of July 23, 1992. To date, negotiated rulemaking has not produced final regulations. The Department cites this fact time and time again as the reason why requests for individual discharges cannot be granted. It is unacceptable, in the interim, for the Department to authorize or allow the seizure of tax refunds and earned income tax credits owed to individuals apparently eligible for the new discharges. Although the Department's July letter to "offset coordinators" indicates that borrowers who appear eligible for closed school discharge should be excluded from the offset process, that directive apparently is not being honored.

We do not believe that the "Request for Review" form which is sent to borrowers solves the problem. This form advises borrowers that they have the right to contest offset on the basis of a dozen possible grounds, including claims that they were unable to complete their program due to the closing of the school or were falsely certified by the school as eligible. For many reasons, inclusion of these grounds in the fine print of the form does not solve the problem.

First and foremost, since the guaranty agencies are still not authorized to act on requests for discharge -- with the possible exception of those borrowers whose schools appear on the Department's limited April, 1993 list of closed schools -- and since the Department has provided no uniform instructions regarding such requests as to false certification claims, there can be no assurance that borrowers who manage to understand the form and check the appropriate boxes will be able to stop their offset. On the contrary, our experience is that among the guaranty agencies widely different signals were being given in response to inquires concerning the Request for Review.

Second, the form itself is not sufficiently clear. A notice placed in the middle of a multi-page form (and being only in English) has little chance of reaching a population which, in the case of the "false certification" group, is by definition burdened by low literacy skills.

Third, the notice provides no explanation as to the meaning of "false certification," but instead, invites borrowers to supply their own reason why they think they were falsely certified. As the Department itself has yet to provide guidance to guaranty agencies as to the scope of "false certification," one can only guess what a borrower would be told in response to an inquiry concerning false certification directed to the agency sending the notice.

Fourth, since the notices are going to last known addresses, it is very likely that many borrowers will have no notice prior to losing their tax refunds or earned income entitlement.

Finally -- and this is as much a criticism of the Department's general approach to the new discharges as it is a criticism of the intercept program --, in many situations the Department knows better than the borrowers which of them will be eligible for discharge. Where the Department or guaranty agency has information that students who attended a particular school may be entitled to one of the new discharges, the Department should be taking special measures to target these borrowers for possible discharge and, at the very least, to remove these borrowers from the intercept altogether, rather than waiting for these students to identify themselves. This would

include: (1) students who attended schools known to have closed. We would suggest removing all such borrowers whose loan disbursement date was within two years of the known closing date; and (2) Students who attended a school known to have engaged in false certification. This is a finite, and we believe relatively small, number of institutions already known to the Department to have engaged in falsifications of students' "ability to benefit" (ATB) from instruction. For example, the PTC Career Institutes of Philadelphia was found by the Inspector General to be systematically engaging in ATB falsification. I.G. Audit Control No. 003-00001, June 1991. The Inspector General's most recent semi-annual report similarly lists three other schools, Diesel Truck Driver Training School, Inc. in Wisconsin, Moore Career College in Mississippi and International Technical Institute in Tampa, Florida, that all falsely certified ATB students. Since information regarding ATB fraud is not likely to be known by the affected borrowers themselves, it would be unconscionable -- and, we believe, illegal -- to subject them to intercept and the inherent uncertainties of the "Request for Review."

Since the pre-offset notices have already been mailed out, we are requesting that individuals who attended these "problem" schools -- i.e., those that closed or those known to have falsely certified Title IV eligibility -- be sent new notices which advise them of the new discharge provisions, the eligibility grounds, and the fact that they have been removed from the intercept program. Further, the Department should delete these borrowers from offset for loans it holds and instruct the guaranty agencies and Departmental contractors to exclude these individuals from the magnetic tapes due by December 10.

We are hopeful that the Department will do the right thing and halt the intercept process for those potentially eligible for discharge, rather than leaving this matter to the courts. Thank you in advance for your courtesy and cooperation. We look forward to your reply.

Very truly yours,

[redacted]

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[redacted]

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Also on behalf of:
Irv Ackelsberg & Alan M. White, Community Legal Services, Inc. (Philadelphia,
Adriane Baker, Legal Aid Society of San Diego (California)
Victoria Campbell, Legal Aid Society of San Diego (California)
Bernard Dempsey, Atlanta Legal Aid (Georgia)
Charles Eiss, Glantz & Glantz (Plantation, Florida)
Neil Fogarty, Hudson County Legal Services (Jersey City, New Jersey)
Brenda Hardison, Legal Services Corp. of Alabama
Katherine Harlow, Cleveland Works (Ohio)
Stanley Hirtle, Legal Aid Society of Dayton (Ohio)
Michaelene Loughlin, Seton Hall Law School (Newark, New Jersey)
Eileen Ordover, Center for Law and Education
Bob Pressman, Center for Law and Education
Jonathan Sheldon, National Consumer Law Center
Jane Greengold Stevens, South Brooklyn Legal Services

cc: Tom Pestka

APP. C

EXHIBIT H

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

February 13, 1995

Daniel Hedges, Esq.
Appalachian Research Defense Fund, Inc.
1116-B Kanawha Boulevard, East
Charleston, West Virginia 25301

Re: Darius Aldridge, et al., v. Secretary of Education, et al., Civil Action No. 2:94-0814

Dear Mr. Hedges:

I am in receipt of your letter, dated January 31, 1995, and post-marked as having been sent on the afternoon or evening of February 1, 1995. In it, you ask for "a written definition or clarification (over and above counsel's interpretation attempting to narrow the entitlement)" of "teach-out," as used in the context of closed school discharges. Despite this request, your nine clients in Aldridge used the term "teach-out," without elaboration, in the identically-worded, sworn statements they submitted to the Department in applying for closed school discharges; and you used those sworn statements in support of your motion for summary judgment filed in early November, 1994. In their statements, each of your clients averred, under penalty of perjury, that "I did not complete my program of study through a teach-out at another school or by transferring academic credits or hours earned at said College to another school." The sworn statements were executed between August 19, 1994 and October 30, 1994, according to the dates your clients placed on them. As you know, by letters delivered to you on the morning of February 1, 1995, the Department approved your clients' claims for closed school discharges.

You inform me in your letter that it has been your practice to advise clients that "a student who falls within the teach-out exclusion is one who had all his/her credits accepted from the closed school, one who graduated from the new school in the same course and fulfilling all the representations and expectations that were part of the original agreement, and one who was charged no new money for completion of the original course beyond that he/she would have had to pay at the original school." This advice is incorrect. Such contentions were expressly rejected by the Secretary in the discussion of comments which the Department published in promulgating the final rules followed by your client in framing their closed school discharge statements. 59 Fed.Reg. 22462 et seq. (April 29, 1994). There, some commenters had recommended including in the regulations a definition of "teach-out," and suggested that "the key elements of a teach-out are: (1)

no charges additional to the original program cost; (b) the identity of subject matter taught; (c) geographic proximity between the original and teach-out schools; (d) demonstrated compatibility of program structure and scheduling (e.g., student is able to begin the teach-out within a reasonable time after the school closure, and the completion dates, class times, and instructional methodology are comparable); and (e) review and approval by the state licensing agency." Id., at 22466-7. The Department's response was as follows:

> The Secretary believes that a prescriptive regulatory definition of "teach-out" is unnecessary. The Secretary notes that because a student may decline to complete the program through a teach-out at another school for any reason, it is therefore reasonable to conclude that a student who chooses to participate in a teach-out and completes the program, has demonstrated an acceptance of those teach-out conditions. In short, a student can be protected from being forced to accept what he or she believes to be an onerous teach-out condition by simply declining the teach-out. A student who, even though inconvenienced, chooses to complete his or her program through a teach-out, has received value from the loan and needs no loan discharge.

Id., at 22467. I enclose a copy of the Department's entire published discussion of the Final Rules on closed school discharges for you to consult should additional questions occur to you.

I note that false statements in the context of closed school discharges can have grave implications -- raising issues of, e.g., perjury, subornation of perjury, and criminal or civil false claims.

Sincerely,

(b)(6)

Sarah L. Wanner

cc: Gary Call, Esq.

APP. D

MONDAY

Star-News

MAY 25, 1992

Business/Monday

Monday Job Market

EDUCATIONAL DEFAULT

Staff photo / Paul Morse

Credit crunch: John Allow and his sister Lillian Vargas are fighting off creditors after defaulting on student loans they took out for vocational training, which they say did not give them the skills they need to earn a job.

INSIDE

VOCATIONAL SCHOOLS OFTEN COST MORE, OFFER LESS TO STUDENTS

By Tamie Sorensen
Business Editor

Lillian Vargas was pregnant at [illegible] when a man approached her with a proposition and a sales pitch in Spanish.

He told her that she could learn to speak English and get computer training at National Business Academy in Alhambra. Vargas was told she could get financial loans to cover tuition, which she could pay back easily after graduating with a well-paying job, the salesman said.

The final promise to grab Vargas, a 34-year-old legal immigrant from El Salvador now living in Los Angeles, and her brother about it today: Both are among seven former NBA students who are suing the Para deiso-based school for allegedly failing to provide them the education they were promised.

Their story is echoed over and over again across the country. Experts say there are hundreds of vocational schools recruiting students and helping them to receive federally guaranteed student loans — refunds that spiral upward during economically distressed times as well as when educating

See VOCATIONAL, Page 8

COVER STORY

STUDENT LOAN DEFAULTS HIGH AT TRADE SCHOOLS

Continued from Page 1

"There are some great vocational schools, but there has been a problem. The high default rate and many of trade schools has been recognized over the past several years by Congress," says Rep. Carlos Moorhead, R-Glendale. "There are reports that homeless and illiterate people are enrolled and given student loans and then the school either does not provide the service or the student doesn't show up."

Public data, experts say, students who don't get paid in full don't get the jobs they enroll in largely for the retail, a shortcoming particularly hard on students of the public system, with traditional school histories. Nationally, 31 percent of loans to vocational school students go into default, compared to 20 percent for all post-secondary schools. The national average for four-year schools is even lower — just above 6 percent.

But the real concern, say the bill. According to the U.S. Department of Education, more than $200 billion in federally guaranteed student loans has been given out since the program began in 1965. More than $12.9 billion of that is still outstanding.

■■■

National Business Academy Inc. with campuses in Encino and Van Nuys and centers in Van Nuys, Inglewood and Long Beach, N.M., is an example of a vocational school with high student loan default rates.

Its fact its default rate is so high — over 50 percent on federally guaranteed loans — that the U.S. Department of Education required the California State Student Aid Commission to conduct an on-site financial audit of the school in February. The audit report was made public last week.

The report, which became public Tuesday when NBA did not file a response, identified six major problems:

■ The school is not properly testing applicants to be sure they are qualified and able to benefit from training.

■ National Business Academy does not always obtain financial aid forms needed before releasing checks to students, leaving the door open for students to receive loans they are not eligible for.

■ NBA withholds student grades in retaliation to the school's accounting agency and uses misleading information in its CSAC catalogs.

■ Students and lenders sometimes are not given initial refunds after students withdraw from classes.

■ The academic year and required progress that it offered the commission to qualify for students who are participating in self-supporting with student loans delay.

■ The school has not complied with all requirements of state student protection laws.

The audit requires National Business Academy to refund $10,750 to lenders and students and to revise a number of policies and report back to the commission staff.

Jeff Clement, vice president of the school, said NBA is in the process of responding to the report.

"There may have been interpretations that they offered. We do run a good school and we've got high placement, and because a guaranteed agency comes up with a report is not reason to say they are absolutely right," he says, adding that the academy's job placement rate is 70 percent.

"They refuse to say they make reports based on what their interpretation of the law is, and they are not the law," he says.

Clement says the auditor's visit "was a little relentless" and adds that a change in some of the report's findings may simply be a matter of establishing in record-keeping how NBA does business.

According to the commission report, National Business Academy's "over 50 percent of students receive financial aid, default rates are 50.02 percent on Stafford Loans and 90.82 percent on Supplemental Loans to Students, the two types of loans available."

According to the U.S. Department of Education, NBA's federal default rate for the Van Nuys campus of 19.5 percent on loans due to begin repayment in 1989 and 16.5 percent in 1988. The federal default rate includes all loans made at the school, while the state rates are a cumulative percentage, but only for loans taken out by California institutions.

One major way to default may change. 35 percent would force the school ineligible to participate in federal student aid programs, according to Department of Education spokesperson Stephanie Babyak.

Officials said to date, and before the school's default rates are as high as the Department of Education claims and said he will appeal the findings. He said the school has defaulted students some prior to loans to help students avoid default.

High default rates led state auditors to investigate National Business Academy and they found other problems there as well. The school is paying commissions to people for each student they enroll, which state law prohibits, and is being fined two times, according to the audit report. State law forbids NBA from paying recruiters a bonus unless students graduate.

The report also states that NBA used teaching assistants to recruit students for its English as a Second Language program offered at the Van Nuys campus. However, the telephone solicitors are not supervised all required information to potential students. In addition, enrolling students are offered compensation for referring other potential students to the school, according to the report.

According to the recent lawsuit filed by Vargas and others, plaintiff Jose Rodriguez Ayala was offered payment for bringing other students to the school.

Gardner says the school has discontinued paying students for referrals and that using the ESL curriculum is not a violation of state law.

When National Business Academy finishes dealing with the Student Aid Commission, it may have to wrestle with the state Council on Private Postsecondary and Vocational Education, which is currently investigating a complaint about the Inglewood campus.

■■■

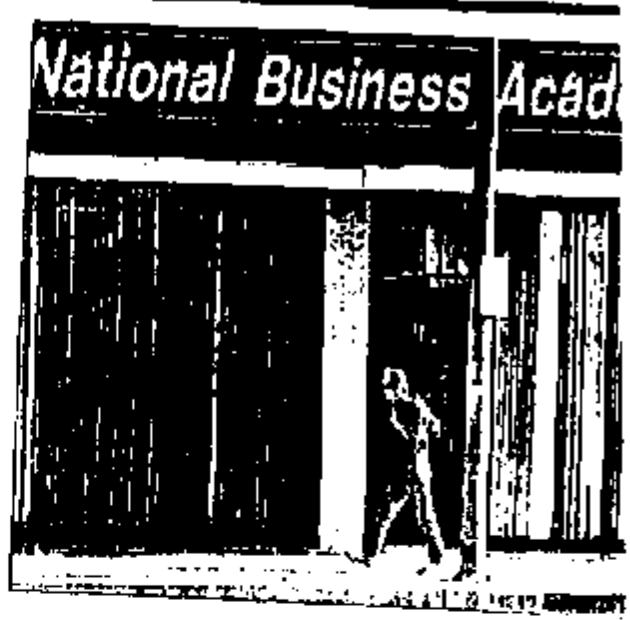
Legal legal aid workers say National Business Academy has a long history of problems.

Ellen Acker of the Los Angeles Legal Aid Foundation has worked with U.S. Rep. Maxine Waters, D-Los Angeles, to help up state and federal regulations for vocational schools. She calls National Business Academy "absolutely terrible."

"They're just the worst. They should be closed down," Acker says. "We've just had an end of complaints about these people."

"National Business Academy is really particularly bad," she says. "It used to be that they went to rip off blacks, but they found that disadvantaged Spanish-speaking people are easier to rip off."

According to the CSAC audit report, many students have said NBA through

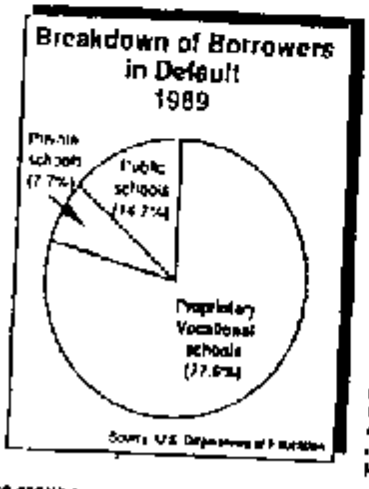


Staff photo / Nancy Moore

Report card: A recent state audit of the Van Nuys campus of Panorama City-based National Business Academy cites several problems at the scho

rolled in the English language classes did not receive instruction in English only, but rather were taught in English with many different books and materials, including some Spanish-only. Instructors said they were discouraged from using English-only materials in the classes because they were inadequately prepared. Often, NBA failed to provide any instructional materials at all for students in the class, the audit states.

Vargas, who started classes there in May, was enrolled at the center based on state estimates of NBA, said she went there just a week and a half to find out that her teacher didn't speak Spanish



Lessons in [illegible]: Dr. [illegible], a medical instructor, works with students at Watterson College, which officials say is hurt by the negative image some vocational schools have earned.

Staff photo / [illegible]

The [illegible] was [illegible] no longer working there.

[illegible] weeks later, she went [illegible] to complain that she wasn't learning. She said she was told not to worry, that she would learn eventually and that she would [illegible].

[illegible] says the [illegible] was the first to [illegible] that the students were unhappy.

[illegible] some of the [illegible] Some of the students complained [illegible] "It was really taken by surprise [illegible]."

[illegible] some of the charges in the [illegible] the several students in the suit were given [illegible] in their native languages and that NIA always [illegible] instruction [illegible] and added that NIA [illegible] of the students' [illegible].

[illegible] some students [illegible] in the [illegible] says "I [illegible] absolutely nothing [illegible]."

[illegible] through an interpreter [illegible] said the new [illegible] program. A [illegible] who only wants [illegible] student loans forgiven and [illegible].

Her brother [illegible] will keep the school from [illegible] others.

[illegible] "[illegible] that the people that are selling [illegible] kind of school," [illegible] of Los Angeles says. "I know a lot of people [illegible] justice in this [illegible] one of [illegible]."

His [illegible] agrees. "This is very [illegible] in the [illegible] community in that [illegible] where people who don't speak English well are trying to better themselves," [illegible] says. "[illegible] there [illegible] something [illegible] It's a huge problem."

She [illegible] that after filing the lawsuit in March, she has been "[illegible] with calls" from other students.

Alfaro, 37, says that from the beginning, the language barrier was the biggest problem he faced. He and his sister were recruited in Spanish and then given enrollment and loan papers to sign in English.

"When I started going to school I had problems because I didn't understand much of the language. I kept going but it was difficult for me," Alfaro said. "After four or five weeks, they fired the teachers that I had. Then I spent at least four weeks without an instructor and after that they got a new instructor but this guy was from India and he didn't speak English and I didn't speak his language."

Since leaving NIA, Alfaro has been taking adult school classes in the Los Angeles Unified School District to earn his high school diploma. Those classes, he says, are good.

Still, he is still saddled with about $[illegible] worth of loans. "I tried to improve my future, but what I got was creditors on my back harassing me that if I don't pay, they're going to take me to court. It's been hard for my family."

■ ■ ■

Dan Parker, a CSAC spokesman, says the scenario detailed in the National Business Academy lawsuit is a story that is heard over and over again.

"When you buy an education, it's just like buying a car, a refrigerator or any other consumer purchase. You need to thoroughly research it, as you're buying before you buy it," he says. "A student loan is nothing more than a deferred payment. It's as if you paid on your Visa card."

Unfortunately, there are some bad schools out there, as even the good ones readily acknowledge. Those problem schools almost invariably have disproportionately high student loan default rates.

Vocational schools in California account for 25 percent of total loans but [illegible] make up 41 percent of all defaults, making them "far and away the largest amount by orders of magnitude for [illegible] of the other segments," Parker said.

Vocational schools have a 33 percent default rate in the state, while the average for California is 18.6 percent. The rate for University of California students is 7.6 percent.

Bob Zenthar, coordinator of skills training for the Pasadena Unified School District, says vocational schools serve a need in society, but if a student wanted to become a medical assistant and they tried the program offered through [Pasadena City College] as opposed to some of the private post-secondary schools, I think they would get a [illegible] education with more quality."

He called the training at proprietary schools "[illegible] and [illegible] paced."

[illegible], the financial aid director at [illegible] Community College, agrees. He says for-profit vocational schools often use students as a vehicle to funnel the government loan dollars through to the [illegible].

"If you took a look at their curriculum, you would probably find that most of those are available for one-[illegible] of the price at Pasadena City College," he said.

■ ■ ■

As Congress wrangles this year with the reauthorization of the Higher Education Act, vocational education and defaults rates have become a controversial topic.

A bill which was passed by the House of Representatives and now is before the Senate would prohibit vocational schools from using commission-based recruiters, require pro-rata tuition refunds, increase the states' authority to deal with high default rate schools and eliminate schools from the federally guaranteed student loan program if their default rates are 25 percent or higher for three years in a row, Akers said.

At the state level, regulations governing vocational schools became much more stringent with the Private Post-Secondary Reform Act of 1989, but enforcement remains a problem.

"It's important that this kind of fraud is stopped. Even though there are some strong laws, there's just not enough people out there enforcing them," [illegible] said.

Still, the issue is far from cut and dried. The stigma of bad vocational schools taints even the schools where default rates are low and compliance with state and federal regulations is not a problem.

Hubert Sowers, acting director of Pasadena-based Watterson College, which offers a variety of vocational programs, says his school has been hurt by the negative publicity about trade schools.

"It makes it more difficult for schools like Watterson College because every time there's an article, people think twice about coming to the school," he says.

Watterson has a federal default rate of only 15.96 percent for 1989, comparable to the rate for two-year colleges.

The school, where about 85 percent of students take out loans, has a default management program, including a [illegible] on the negative consequences of default during orientation and an exit interview with a financial aid counselor.

Katalin Young, head of the enforcement and investigation unit for the Council for Private Post-Secondary and Vocational Education, says students are part of the problem.

"We are finding the schools don't even know the problem exists," Young says. "Students are coming here first without dealing with the school."

She adds that a lot of students complain after the fact, making it difficult to investigate. "Students need to be proactive rather than reactive," she says.

Finding a trade school

Here are some tips experts offer to find a good vocational school program:

- Visit the school and take a tour of the campus.
- Ask to sit in on some classes.
- Make sure the equipment that you will learn on is current and applicable to your field of interest.
- Talk to students enrolled in the school or its graduates.
- Ask for names of employers who have hired graduates.
- Find out if the school offers job placement assistance after graduation.
- Compare several institutions to see which has the best program at the best value. A local community college might offer comparable courses for much less.
- Ask the school about its graduation rate, its placement rate and its default rate.
- To find out the school's student loan default rate, call the U.S. Department of Education, [illegible].
- When enrolling, be careful. Read all documents before you sign on the dotted line.
- If you have complaints after enrolling, try to deal with the school to solve the problem.
- If the school does not respond to complaints, call the state Council for Private, Post-Secondary and Vocational Education, (916) 445-3427.

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WILMERHALE LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL

March 24, 2022

Secretary Miguel Cardona
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Dear Secretary Cardona:

We are submitting this group closed school discharge application on behalf of all individuals (and parents with PLUS loans if applicable) who attended a for-profit school listed in the Department's official closed school search file with a closure date prior to January 1, 1994.

By acting quickly and granting this group discharge, the Department will provide long-delayed relief for the individuals in this cohort who have suffered years of collection harassment, credit damage, occupational license removals, benefits seizures, and other punitive measures. Many have made payments far exceeding the original loan amounts, only to see their balances balloon due to interest and fees. Taxpayers have been hit hard as well, paying exorbitant fees to profit-hungry private collectors attempting to collect largely uncollectable debts.

The Department should establish a rebuttable presumption that all individuals in this cohort qualify for closed school discharges and then automatically approve such relief. [1]

Grounds for Establishing Eligibility Presumption

1. Student Loan Repayment Struggles and Non-Completion

The closed school discharge statute mandates loan discharges for borrowers who were unable to complete their programs due to school closures.[2] The Department should presume that the borrowers in this cohort meet this condition.

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[1] The National Consumer Law Center's on-line treatise contains a list of prior group discharges and relevant documents. See National Consumer Law Center, Student Loan Law § 10.4.2.7 (6th ed. 2019 and Supp.). In addition, the Department is proposing to revive the automatic closed school discharge including for FFEL loans at 34 C.F.R. § 682.402(d)(8) and Perkins loans at 34 C.F.R. § 674.33(g)(3). Some of the borrowers in this group discharge cohort should qualify for this automatic relief. However, the proposed regulations are not yet final and will take time to go into effect in any case.

[2] 20 U.S.C. § 1087(c).

These individuals have struggled to repay their loans for twenty-five years or more. Many are currently in default on their loans or have experienced long periods of default and delinquency. The existence of outstanding balances after such a long period indicates that most if not all of these individuals did not benefit financially from their educational experiences. The Department should go one reasonable step further and presume that most of these borrowers have been unable to repay their loans because they did not complete their programs.

There is a strong correlation between student loan repayment struggles and non-completion. Further, numerous studies demonstrate that non-completers are the least likely to experience even minimal financial success after leaving school.

There is overwhelming evidence that non-completion is one of the most important predictors of loan delinquency and default.[3] For example, non-completers represented about 60% of all borrowers in default in 2015.[4] As summarized by the provost at Washington University, "If you don't finish, you're better off not going at all."[5]

2. Predatory School/Non-Completion Link

There are about 2933 domestic schools on the closed school list with closure dates prior to January 1, 1994. Although we do not know the precise number, a large percentage of these schools were for-profit.

The closed school list is rife with notorious predatory actors including many schools that closed after losing federal loan eligibility due to exorbitantly high default rates. An Associated Press article from 1992 describes the 121 schools that lost guaranteed student loan eligibility due to default rates of 35% or more.[6] This included a Wilfred Beauty Academy branch in New York with a 49.5% default rate and in Philadelphia with a 54.6% default rate.[7] Wilfred was one of a number of predatory schools that closed during this period that also violated admissions regulations, including ability-to-benefit testing requirements.[8]

The strong correlation between for-profit school enrollment and non-completion is another reason why the Department should presume non-completion for this cohort. Completion rates are

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[3] *See, e.g.*, Michael Itzkowitz, Want More Students to Pay Down Their Loans? Help Them Graduate, Third Way (Aug. 8, 2018), https://www.thirdway.org/report/want-more-students-to-pay-down-their-loans-help-them-graduate.
[4] Ben Miller, Center for American Progress, "The Relationship Between Student Debt and College Completion" (June 26, 2015), https://www.americanprogress.org/article/the-relationship-between-student-debt-and-college-completion/.
[5] Christina Cauterucci, "More Single Mothers Are Going to College than Ever. But Very Few will Graduate", Slate (Sept. 22, 2017), https://slate.com/human-interest/2017/09/for-profit-schools-and-low-graduation-rates-plague-a-rising-population-of-single-student-mothers.html.
[6] Associated Press, "List of 121 Schools that Lost Guaranteed Student Loan Eligibility" (July 31, 1992), attached at App. A.
[7] *Id.*
[8] A 2013 New York Times article profiled some of the former Wilfred students and described how the school closed after findings that it falsified applications for federal student loans and misused federal loan money. Emily S. Rueb, Beauty School Students Left with Broken Promises and Large Debts, NYT, (July 28, 2013), https://www.nytimes.com/2013/07/29/nyregion/promised-better-life-by-beauty-schools-graduates-have-little-training-and-lasting-debt.html.

particularly low at most for-profit schools. For example, in 2019, the overall bachelor's degree completion rate was 62 percent at public institutions, 68 percent at private nonprofit institutions, and 26 percent at private for-profit institutions.[9]

3. Racial Justice/Non-Completion Link

Granting relief to this cohort would also help demonstrate the Department's commitment to racial justice.

Student loan debt burdens disproportionately impact people of color. For example, according to a 2020 Brookings report, "more than two-thirds of Black students who attended a for-profit college and left without graduating defaulted on their student loans within 12 years, raising important concerns about racial equity in higher education." [10]

4. The Department's Operational Failures and Misrepresentations Impeded Relief

The closed school discharge was supposed to be effective at the time of enactment in 1992. Instead, the 1992 enactment marked the beginning of a two-year limbo period until the Department finally issued closed school regulations. According to the complaint in the 1996 case *McComas v. Riley,* "The Secretary stonewalled and dragged his feet for over two years in implementing the provisions, turned away students who had legitimate claims for discharge, and continued income tax refund offsets against people who were entitled to discharge."[11] In a 1993 letter to the Department, legal aid advocates expressed concerns that despite the 1992 effective date, the Department was repeatedly citing the lack of regulations as the reason why requests for individual discharges could not be granted.[12]

In informal guidance, the Department stated that until final regulations were adopted, guaranty agencies should not submit discharge applications for borrowers who were offered teach-outs or who earned credits through transfers to similar programs.[13] Yet there was no definition of the term "teach-out" in this guidance.[14] The Department also created a chilling effect by reminding borrowers and their representatives of the potential for serious consequences if they made false statements when applying for discharges even though the Department issued little or no guidance.[15]

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[9] National Center for Education Statistics (NCES), Fast Facts, https://nces.ed.gov/fastfacts/display.asp?id=40.
[10] Stephanie Riegg Celinni, "The Alarming Rise in For-Profit College Enrollment", Brookings (Nov. 2, 2020), https://www.brookings.edu/blog/brown-center-chalkboard/2020/11/02/the-alarming-rise-in-for-profit-college-enrollment/.
[11] McComas v. Riley et. al, Civ. Action No. 3:96-0275 at 16 (S.D. W. Va. 1996).
[12] Letter from Legal Aid Advocates to Asst. Sec. of Education David A. Longanecker (Oct. 5, 1993), attached at App. B.
[13] U.S. Dept. of Educ., "Discharge of Federal Stafford Loans and Federal Supplemental Loans for Students (SLS) loans for borrowers affected by school closures," 93-L-153, 93-G-230 (April 1993).
[14] The ambiguity was intentional. The Department later explained when promulgating the final regulations that "The Secretary believes that a prescriptive regulatory definition of "teach-out" is unnecessary." 59 Fed. Reg. 22462, 22467 (Apr. 29, 1994).
[15] For example, after the final regulations went into effect in a 1995 letter, the Department's Office of General Counsel stated that "…false statements in the context of closed school discharges…can have grave implications—raising issues of, e.g., perjury, subornation of perjury, and criminal or civil false claims." Letter from Sarah L.

The Department compounded the confusion by failing to keep careful records, including on teach-out programs.[16] From the records that do exist, it appears that few schools prior to 1994 offered teach-outs, further supporting the presumption of closed school eligibility for this cohort.[17]

The final regulations published in April 1994, along with accompanying informal guidance, brought some clarity to the process. This was too late for many borrowers, including many of the borrowers requesting this group relief.

5. Intentional Barriers to Relief

Presumably to help find eligible borrowers, the 1994 final regulations required guaranty agencies to review records and identify all schools that appeared to have closed on or after January 1, 1986 and prior to June 13, 1994, and identify the loans made to potentially eligible borrowers.[18] Given the low levels of borrowers obtaining closed school discharges in the 1990's and beyond, it is unlikely that the guaranty agencies diligently carried out this directive. Failure to reach out to eligible borrowers has unfortunately been common practice at the Department for years.[19] The Department's failure to engage in rigorous outreach and its intentional prioritization of collection over borrower rights has resulted in chronically low discharge program utilization rates.[20]

6. Lack of Alternatives

Already confused by the opaque and inaccessible closed school discharge process, the borrowers in this cohort also lacked access to alternative "borrower defense" or "defense to repayment" ("DTR") rights. This was simply due to the timing of their loans. Although the Department should have been inserting the FTC holder rule language or similar "borrower defense" language

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Wanner, U.S. Dept. of Education Office of the General Counsel, to Daniel Hedges, Appalachian Research Defense Fund, Inc. (Feb. 13, 1995), attached at App. C.

[16] The Government Accountability Office did not include data on borrowers who attended colleges that closed prior to 2014 because Department of Education officials stated that the data on program completion for these borrowers had limitations. The report describes other data limitations including with respect to tracking transfers. Government Accountability Office, # 21-105373, College Closures: Many Impacted Borrowers Struggled Financially Despite Being Eligible for Loan Discharges, 8-9 (Sept. 30, 2021).

[17] For example, in the 1993 guidance that the Department issued during the limbo period, the Department compiled a twenty-five page "partial list" of schools for which no arrangement was made for a teach-out and no teach-out was offered by a third party. U.S. Dept. of Educ., "Discharge of Federal Stafford Loans and Federal Supplemental Loans for Students (SLS) loans for borrowers affected by school closures," Att. A, 93-L-153, 93-G-230 (April 1993).

[18] 34 C.F.R. § 682.402(d)(6)(i)(C) (FFEL).

[19] For example, New York Legal Assistance Group sued the Department in 2014 for refusing to notify former students at Wilfred Beauty Schools that they might be eligible to seek false certification discharges. The case settled in 2017. For more information about the case, see "NYLAG sues Secretary of Education for Failing to Notify Former Wilfred students," https://nylag.org/nylag-sues-secretary-of-education-for-failing-to-notify-former-wilfred-students/#:~:text=NYLAG%20sues%20Secretary%20of%20Education,New%20York%20Legal%20Assistance%20Group, including a copy of the stipulated settlement.

[20] In the 2016 rulemaking, the Department found that nearly half of all eligible borrowers never apply for the closed school discharges to which they are legally entitled. 81 Fed. Reg. at 75, 926, 76, 059 (Nov. 1, 2016). In a 2015 article, Department officials estimated the cost of loan discharges at the predatory school chain Corinthian based on a low 6% discharge program usage rate. Michael Stratford, *Corinthian Closes for Good,* INSIDE HIGHER ED (Apr. 27, 2015), https://www.insidehighered.com/news/2015/04/27/corinthian-ends-operations-remaining-campuses-affecting-16000-students.

in FFEL loans from the outset, the Department only began this practice in 1994.[21] Prior to this time, borrowers had to figure out how to raise school-related claims and defenses without a process or forum to do so and without clear authority in their promissory notes. Few borrowers knew about these rights and those that did rarely had legal assistance resources to help them navigate the system and obtain relief.

The Human Impact

Unlike the Department, we cannot determine the names of all the individuals in this cohort. While each person has a unique and important story to tell, we do know from years of representing individuals in similar situations that they all sought higher education to improve their lives and the lives of their families. They placed their hopes and dreams in educational programs that had the stamp of approval from the government of the United States. The government let them down by failing to regulate these schools and then compounding the pain by failing to properly administer the programs intended to provide relief.

Below are a few individual experiences.[22] A common thread among them is that these individuals did not complete their programs, but were unable to apply for closed school discharges because the process was not in effect at the time. Further, as was the case for so many individuals, even if the discharge program had existed, many did not meet the narrow eligibility requirements because they withdrew before the limited time window for borrowers to qualify for closed school discharges if they left before school closure. The Department eventually extended this time period from 90 to 120 days, not nearly long enough for these borrowers and, more generally, not nearly long enough given that most predatory schools never offered quality instruction or such instruction deteriorated long before the official closure.[23]

Robert Fernandez

Mr. Fernandez, a Latino man, enrolled at the Transwestern Institute in Los Angeles in 1987. He obtained federal student loans, but dropped out after a few months because of abuses at the school. These abuses and legal violations persisted for some time, but the school did not officially close until 1990. By the time Mr. Fernandez sought help from legal aid, his sole source of income was General Relief benefits (about $220 per month). His loan balance by then had ballooned to $22,000.

Tommy Washington

Mr. Washington, an African-American man, obtained $3,300 in federal student loans to enroll in a drafting program at National Technical Schools in August 1988. National Technical Schools were owned and operated by United Education & Software, which was sued by the California

[21] The majority of these borrowers will likely have FFEL since there was no Direct Loan program at this time. There may also be some borrowers with Perkins or other types of loans such as Supplemental Loans for Students. Some may have subsequently consolidated their FFEL or other loans.

[22] Some of the names listed here have been changed for confidentiality purposes. We would be happy to share the names with the Department upon request.

[23] 34 C.F.R. 682.402(d)(1)(i) (FFEL). The Department has generally refused to extend this window in most cases.

Attorney General. At the time of Mr. Washington's enrollment, he was unable to use his writing hand due to a recent injury. He specifically asked the school whether its drafting program was completely computerized, as he was unable to manually draft due to this injury. Although the school assured him that all training would be on computer, Mr. Washington's first class required drafting by hand. He could not participate and therefore dropped out. National Technical Schools closed in December 1989. He has been in and out of student loan default since then and is currently unemployed.

Joe Medford

Mr. Medford is a military veteran who attended American Business Inst., which was owned by Wilfred Education Corp., in 1988. Among other abuses and legal violations, the school misrepresented the quality and qualifications of instructors, failed to provide promised job placement services, and falsely promised that students would have job offers by the time they graduated. Mr. Medford's campus closed at least a year after he attended. He is in default on the loans and has already experienced both tax refund offsets and wage garnishment, presumably more than enough to pay off the original principal and more. Mr. Medford's loan balance has ballooned to over $30,000 from a loan that started at about $5,000.

Alexander Largie

Mr. Largie enrolled at the American Business Institute (ABI) in Queens, New York on or around 1987. He borrowed federal student loans to study in ABI's Automating Bookkeeping program. While in the program, he noticed the curriculum was inadequate and teacher retention was low—he consistently had different instructors for the same courses. Mr. Largie left the school and did not complete his program of study in New York. The school closed in 1989. In the years that followed, he could not afford his loan payments and was struggling to pay for necessary medical expenses. His application for closed school discharge was rejected, presumably because of the narrow time window described above.

Hazel Marlene Stamm

Mrs. Stamm enrolled in Wilfred Academy in New Jersey on or around 1989. She borrowed federal loans to study in Wilfred's Cosmetology program. After starting classes, she requested medical level due to her pregnancy. After she returned to Wilfred, Mrs. Stamm learned the school failed to register her medical leave and her federal loan was registered as "defaulted." She only had three weeks left to complete her program of study when Wilfred closed. In the years that followed, she received threatening collections calls and notices about her defaulted student loans. Mrs. Stamm suffers from health problems and is concerned about her outstanding loan balance of least $9,000.

Former Students of National Business Academy (NBA)

The California guaranty agency ("CSAC") and Department's Office of Inspector General found serious problems at National Business Academy schools including violations of enrollment and

recruitment rules and standards and provision of false information to accreditors.[24] A number of former students sued the school in the early 1990's. One of the plaintiffs, Julio Alfaro, explained in a 1992 article that "…I tried to improve my future, but what I got was creditors on my back harassing me that if I don't pay, they're going to take me to court."[25]

It is past time to end this nightmare for this cohort. We urge the Department to immediately grant these discharges and, in the meantime, place all servicing and collection for these accounts on hold.

Thank you for your consideration. Please contact Deanne Loonin if you have questions or need additional information.

SIGNED

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cc: Richard Cordray, Chief Operating Officer FSA
James Kvaal, Under Secretary of Education
Bonnie Latreille, Student Loan Ombudsman

[24] Tania Soussan, "Educational Default: Vocational Schools Often Cost More, Offer Less to Students", Star-News (May 25, 1992), attached at App. D.
[25] *Id.*

List of Attachments

A: Associated Press, "List of 121 Schools that Lost Guaranteed Student Loan Eligibility

B: Letter from Legal Aid Advocates to Asst. Sec. of Education David A. Longanecker (Oct. 5, 1993)

C: Letter from Sarah L. Wanner, U.S. Dept. of Education Office of the General Counsel, to Daniel Hedges, Appalachian Research Defense Fund, Inc. (Feb. 13, 1995)

D: Tania Soussan, "Educational Default: Vocational Schools Often Cost More, Offer Less to Students", Star-News (May 25, 1992),

From: Vitez, Kaitlyn
Subject: RE: Listening Session: School Accountability (external invite)
To: Chuck Bell; Kyra Taylor; Beth Stein; carrie@vetsedsuccess.org; jbass@americanprogress.org; Ella Azoulay; 'fishmanr@newamerica.org'; sattelmeyer@newamerica.org; Eileen Connor; Bob Shireman; dan@defendstudents.org; Kyle Southern; jennifer@vetsedsuccess.org; james@vetsedsuccess.org; moultrie@tcf.org; Thomas Gokey; fast@tcf.org; Carolina Rodriguez; [redacted] Ben Kaufman; Edward Conroy
Cc: Miller, Benjamin; Latreille, Bonnie; Wollard, Kalynn; Bronstein, Andrew; Harrington, Ashley; Gunther, Kenyetta; Yates, Amanda
Sent: April 27, 2022 9:55 PM (UTC-04:00)

Hi folks,

We are adding an agenda item to the school accountability listening session. 28,000 borrowers who enrolled in Marinello Schools of Beauty from 2009 through its closure in February 2016 will receive a group borrower defense loan discharge, totaling approximately $238 million.

Passing along our press release, which is **embargoed** until 6am tomorrow morning. Please do not share beyond your organization.

Thanks, and see you tomorrow.

Kaitlyn Vitez (she/her)
Higher Education Liaison
Office of Communications and Outreach
U.S. Department of Education
(202) 550-7359

U.S. Department of Education
Office of Communications & Outreach, Press Office

400 Maryland Ave., S.W.

Washington, D.C. 20202

FOR RELEASE:

6:00 A.M. ET

April 28, 2022

CONTACT:

Press Office, (202) 401-1576 or press@ed.gov

Education Department Approves $238 Million Group Discharge for 28,000 Marinello Schools of Beauty Borrowers Based on Borrower Defense Findings

The actions mark the first time the Biden-Harris Administration has discharged the debt of a group of borrowers based on borrower defense findings

Today, the Department of Education announced it will deliver relief to tens of thousands of borrowers harmed by pervasive and widespread misconduct at Marinello Schools of Beauty. Borrowers who enrolled in the schools from 2009 through its closure in February 2016 will receive loan discharges based on borrower defense findings. These 28,000 borrowers will receive loan discharges totaling approximately $238 million. This group discharge will provide relief to borrowers who enrolled at Marinello during this period, including those who have not yet applied for a borrower defense discharge.

While the Department continues its work to review borrower defense claims, it is also bringing on four key hires in the Federal Student Aid (FSA) Office of Enforcement with significant federal, congressional, and state oversight experience.

"Marinello preyed on students who dreamed of careers in the beauty industry, misled them about the quality of their programs, and left them buried in unaffordable debt they could not repay," said U.S. Secretary of Education Miguel Cardona. "Today's announcement will streamline access to debt relief for thousands of borrowers caught up in Marinello's lies. At the Department of Education, we will continue to strengthen oversight and enforcement for colleges and career schools that engaged in misconduct and uphold the Biden-Harris Administration's commitment to helping students who have been harmed."

This Marinello group discharge reflects the Department's findings that the school engaged in pervasive and widespread misconduct that negatively affected all borrowers who enrolled at Marinello during the covered time period. These findings led the Department to approve individual borrower defense claims last summer. This group discharge will facilitate relief to additional borrowers harmed by Marinello's actions, including many who have not yet applied for borrower defense. It is the first group discharge for defrauded borrowers to be approved since 2017, after the prior administration did not approve any group claims or new findings.

Today's actions bring the total amount of approved relief based on borrower defense findings during the Biden-Harris Administration to approximately $2.1 billion for 132,000 borrowers.

To date, the Department had approved approximately 300 borrower defense claims at Marinello under findings reached last July that Marinello made widespread, substantial misrepresentations about the instruction that would be offered at its campuses across the country. The Department found that the schools failed to train students in key elements of a cosmetology program, such as how to cut hair. It also found that Marinello left students without instructors for weeks or months at a time as part of a pattern of failing to provide the education it promised. As a result, students would have found it extremely difficult to pass necessary state licensing tests and receive the promised return on their educational investment. Not only did Marinello fail to teach its students, class-action lawsuits filed in Nevada and California alleged that the school

used salons as profit centers and exploited students as a source of unpaid labor.

The Department has continued to analyze the evidence related to Marinello and concluded that the misconduct was so widespread across all the school's campuses over a period of years that all borrowers who attended between 2009 and the schools' closures in 2016 are entitled to full student loan discharges.

The Department's Marinello findings stem primarily from the agency's investigative work that began in 2015 and that resulted in the Department removing the school from the federal student aid programs.

At all times relevant to the findings, Marinello was owned by B&H Education Inc. (B&H), which was a Delaware corporation. The leaders of B&H included Rashed Elyas as President, Mike Flecker as chief financial officer, and Nancy Alpough as financial aid administrator. Department records also identify the following individuals as board members at some point during the period of these borrower defense findings: Nagui Elyas, Erik Brooks, Bob Pan, Tomer Yosef-Or, Brent Stone, James Goodman, Daniel Neuwirth, Anna Keeling, James Rich, Frank Lincoln, and Gerald Taylor.

The Department will soon begin notifying students who attended Marinello of their approvals for discharge, with discharges following in the months after. Borrowers will not have to take any additional actions to receive their discharges.

New Hires in the Office of Enforcement

Holding schools accountable is a priority for the Biden-Harris Administration, and FSA has made four key new hires to bolster its Enforcement Office's leadership team.

Dawn Bilodeau has joined FSA as the Enforcement Office's Senior Advisor for Policies and Oversight after more than 20 years at the Department of Defense, which included roles as the Senior Advisor to the Assistant Secretary of Defense for Readiness and the Director of Defense Voluntary Education Programs. Dawn twice received the Secretary of Defense Medal for Exceptional Civilian Service, and in 2020, she received the Council of College and Military Educators President's Award.

Christopher J. Madaio joins FSA as the Enforcement Office's Director of Investigations. Christopher joins FSA from Veterans Education Success, where he served as the Vice President for Legal Affairs. Prior to that, Christopher served for nearly six years as an Assistant Attorney General in the Consumer Protection Division of Maryland's Office of the Attorney General, where he led multi-state investigations into large institutions of higher education and secured significant relief for students victimized by misconduct.

Brad Middleton will join FSA as the Enforcement Office's Senior Advisor for Strategy. For the last 14 years, Brad has served on the staff of U.S. Senator Richard J. Durbin of Illinois, including serving as his Education Policy Director since

2013. During his time in the Senate, Brad has focused on institutional accountability and providing student loan debt relief for defrauded borrowers.

Nina Schichor joins FSA as the Enforcement Office's Director of Borrower Defense following nearly five years at the National Labor Relations Board and seven years at the Consumer Financial Protection Bureau (CFPB). Most recently, Nina served as Senior Litigation Counsel in the CFPB's Office of Enforcement, where she led teams to conduct investigations into student-related businesses and obtained substantial relief for students harmed by violations of federal consumer financial law.

Continued commitment to targeted relief

Including today's actions, the Department has now approved more than $18.5 billion in loan discharges for more than 750,000 borrowers. This includes:

- $6.8 billion in for more than 113,000 borrowers through Public Service Loan Forgiveness (PSLF).
- More than $8.5 billion in total and permanent disability discharges for more than 400,000 borrowers.
- Last week the Department also announced fixes to long-standing problems in income-driven repayment that will help thousands of borrowers receive forgiveness through that program as well as 40,000 borrowers receive PSLF.

The Department is also working on new regulations that will improve a variety of the existing student loan relief programs and provide greater protections for students and taxpayers.

##

-----Original Appointment-----
From: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Sent: Monday, April 25, 2022 10:38 AM
To: Latreille, Bonnie; Latreille, Bonnie; Wollard, Kalynn; Harrington, Ashley; Yates, Amanda; Chuck Bell; Kyra Taylor; Beth Stein; carrie@vetsedsuccess.org; jbass@americanprogress.org; Ella Azoulay; 'fishmanr@newamerica.org'; sattelmeyer@newamerica.org; Gunther, Kenyetta; Eileen Connor; Bob Shireman; dan@defendstudents.org; Kyle Southern; jennifer@vetsedsuccess.org; james@vetsedsuccess.org; moultrie@tcf.org; Thomas Gokey; fast@tcf.org; Carolina Rodriguez; Vitez, Kaitlyn; [redacted]; Ben Kaufman; Edward Conroy; Bronstein, Andrew
Subject: Listening Session: School Accountability (external invite)
When: Thursday, April 28, 2022 11:00 AM-11:45 AM (UTC-05:00) Eastern Time (US & Canada).

Where: 7W205

Hi folks. We had a few key people from enforcement that were going to be out, so pushing back two days so they can join. Thanks for your continued patience as this meeting slot has moved around.

Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting

Or call in (audio only)
+1 202-991-0393,[redacted] United States, Washington DC

Phone Conference ID:[redacted]
Find a local number | Reset PIN

Learn More | Meeting options

From: Persis Yu
Subject: Re: [Meeting Request] Fresh Start
To: Hurley, Jack
Cc: Mike Pierce; Amber Saddler; Abby Shafroth; Kyra Taylor; Eileen Connor; Natalia Abrams; cody hounanian; Alpha Taylor; taylor.roberson@responsiblelending.org; Hardman, Latricia; Jaylon Herbin; Yates, Amanda
Sent: May 4, 2022 12:28 PM (UTC-04:00)

Hi Jack,

Thank you so much for helping us get this last meeting scheduled. It was a very productive conversation. However, we had a number of items which we were not able to discuss. We would like to request a follow-up meeting with this same group of people.

Please let me know when this might be possible.

Thank you!
Persis

On Tue, Apr 26, 2022 at 10:34 AM Hurley, Jack <Jack.Hurley@ed.gov> wrote:

> Hi Persis and team,
>
> James had an emergency come up so he will not be able to attend. The rest of the team, however, will be good to go. Talk to you in a bit.
>
> Jack
>
> ---
>
> **From:** Persis Yu <persis@protectborrowers.org>
> **Sent:** Thursday, April 21, 2022 10:54 AM
> **To:** Hurley, Jack <Jack.Hurley@ed.gov>
> **Cc:** Mike Pierce <mike@protectborrowers.org>; Amber Saddler <amber@protectborrowers.org>; Abby Shafroth <ashafroth@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Eileen Connor <econnor@law.harvard.edu>; Natalia Abrams <natalia@studentdebtcrisis.org>; cody hounanian <cody@studentdebtcrisis.org>; Alpha Taylor <ataylor@nclc.org>; taylor.roberson@responsiblelending.org; Hardman, Latricia <Latricia.Hardman@ed.gov>; Jaylon Herbin <Jaylon.Herbin@responsiblelending.org>; Yates, Amanda <Amanda.Yates@ed.gov>
> **Subject:** Re: [Meeting Request] Fresh Start
>
>
>
> Thank you! That time would be great.

Also, following up from the briefing on the IDR announcement, we have pulled together a list of data requests that we think would be instructive for both the implementation of the IDR announcement and for fresh start.

We look forward to discussing this with you all on Tuesday!

Best,

Persis

On Wed, Apr 20, 2022 at 4:03 PM Hurley, Jack <Jack.Hurley@ed.gov> wrote:

> Hi Persis,
>
> I spoke with James and Julie and they are open this Tuesday (4/26) from 1:30 – 2:00. Rich Cordray will also be in attendance. If this time works I will send out an invite to everyone included in this email.
>
> **Jack Hurley**
>
> Confidential Assistant, Office of the Undersecretary
>
> US Department of Education
>
> [redacted] | Jack.Hurley@ed.gov
>
> ---
>
> **From:** Morgan, Julie <Julie.Morgan@ed.gov>
> **Sent:** Thursday, April 7, 2022 10:16 AM
> **To:** Persis Yu <persis@protectborrowers.org>
> **Cc:** Kvaal, James <James.Kvaal@ed.gov>; Mike Pierce <mike@protectborrowers.org>; Amber Saddler <amber@protectborrowers.org>; Abby Shafroth <ashafroth@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Eileen Connor <econnor@law.harvard.edu>; Natalia Abrams <natalia@studentdebtcrisis.org>; cody hounanian <cody@studentdebtcrisis.org>; Alpha Taylor <ataylor@nclc.org>; taylor.roberson@responsiblelending.org; Jaylon Herbin <Jaylon.Herbin@responsiblelending.org>; Hurley, Jack <Jack.Hurley@ed.gov>
> **Subject:** Re: [Meeting Request] Fresh Start
>
> Hi Persis,

I'd be happy to meet. Adding Jack here to help us schedule.

Julie

On Apr 7, 2022, at 9:13 AM, Persis Yu <persis@protectborrowers.org> wrote:

Dear James and Julie,

On behalf of this coalition of borrower advocates, I wanted to share how excited we were to see the Secretary's announcement on fresh start yesterday. This will have a huge impact on millions of defaulted borrowers. I understand that the Department is planning on releasing more details on fresh start in the coming weeks.

We would like to request a meeting with you as soon as possible to discuss the implementation of fresh start to ensure that it is implemented in a way that optimizes this opportunity for borrowers.

Thank you for your consideration of this request. We look forward to hearing from you.

Best,

Persis

--

Persis S. Yu (she/her/hers)

Policy Director & Managing Counsel

Student Borrower Protection Center

www.protectborrowers.org

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Persis S. Yu (she/her/hers)

Policy Director & Managing Counsel

Student Borrower Protection Center

www.protectborrowers.org

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Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

From: Richard Cordray
Subject: Re: Another matter
To: Sunstein, Cass
Cc: CASS SUNSTEIN; SHEILA SOLAIMANI; Yates, Amanda
Sent: June 16, 2022 11:21 AM (UTC-04:00)

Of course we can! Amanda will work out the schedule (she'll set 30 minutes but we can always end early) - add whoever you like and I will get some colleagues from OUS (who do higher education policy). If your thoughts are more along the lines of K-12 then we'd have to reassess on our end.
Thanks
Rich

> On Jun 16, 2022, at 11:17 AM, Sunstein, Cass <csunstei@law.harvard.edu> wrote:
>
> An official one! I have been speaking to people at your department about administrative burdens and sludge – we have some overlapping effort to Dhs. Any chance we can find 15 minutes next week to talk? Both of us could add others from education?
>
> Sent from my iPhone

From: Latreille, Bonnie
Subject: RE: Inquiry re [redacted] Borrower Defense Case
To: Turi, Michael N.; Bronstein, Andrew
Cc: Wollard, Kalynn; Connor, Eileen; Loonin, Deanne
Sent: June 23, 2022 6:02 PM (UTC-04:00)

Absolutely! Stay tuned for an invite from Andrew for the last week of July.

From: Turi, Michael N. <mturi@law.harvard.edu>
Sent: Thursday, June 23, 2022 3:18 PM
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

Bonnie – I appreciate your response. I would certainly like to be included on the school accountability stakeholder call if you can facilitate that. Thank you again for your help.

Michael

From: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Sent: Wednesday, June 22, 2022 6:33 PM
To: Turi, Michael N. <mturi@law.harvard.edu>; Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

Hi Michael,

Andrew is going to follow up about this specific case tomorrow. Regarding your other questions, we know lots of folks share these questions and we're hoping to put together a larger set of answers to share during our next school accountability stakeholder call in late July. I appreciate your patience as we work to get this content cleared so we can share.

From: Turi, Michael N. <mturi@law.harvard.edu>
Sent: Wednesday, June 22, 2022 3:51 PM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

Good afternoon,

I am just following up to confirm that you received our follow-up questions below. Thank you very much again for your assistance.

Best,

Michael N. Turi

Staff Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

(617) 390-2739
www.predatorystudentlending.org

From: Turi, Michael N.
Sent: Thursday, May 26, 2022 9:38 AM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re (b)(6) Borrower Defense Case

Dear Andrew,

Thank you so much for reviewing (b)(6) account and confirming that her loans are now discharged. We appreciate the prompt response.

As a follow up question, can you please let us know if ED is processing any refund for (b)(6) prior payments made?

More generally, I wonder if you would be able to share some information with us regarding the back-end processing of borrower defense discharges. We field questions frequently from borrowers who are confused about what their loan accounts show. It would be helpful to be able to explain, for example, whether certain factors, such as prior consolidation or default, or differences between servicers, have any impact on the timing of processing, such as the incremental discharges that appeared to occur in (b)(6) case.

Thanks so much.

Michael N. Turi
Staff Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

(617) 390-2739
www.predatorystudentlending.org

From: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Sent: Tuesday, May 24, 2022 10:03 AM
To: Turi, Michael N. <mturi@law.harvard.edu>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re (b)(6) Borrower Defense Case

Hi Michael,

Thank you for your email. The remainder of (b)(6) discharge was effectuated on May 10, 2022. According to NSLDS, she now has a zero balance. Please let us know if you have any questions.

Thanks,
Andrew

From: Turi, Michael N. <mturi@law.harvard.edu>
Sent: Thursday, May 5, 2022 11:50 AM
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Cc: Loonin, Deanne <dloonin@law.harvard.edu>; Connor, Eileen <econnor@law.harvard.edu>
Subject: Inquiry re (b)(6) Borrower Defense Case

Dear Bonnie,

Attached please find a letter from us concerning the borrower defense discharge of one of our clients, (b)(6) (b)(6) Included is a signed form authorizing us to speak with you on her behalf.

Thank you for your attention to this matter.

Best,

Michael N. Turi
Staff Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

(617) 390-2739
www.predatorystudentlending.org

From: Loonin, Deanne
Subject: Seeking Assistance with Long Delayed Discharges
To: Latreille, Bonnie; Bronstein, Andrew
Sent: June 30, 2022 9:06 AM (UTC-04:00)
Attached: RE CORRECTED Notice of Borrower Defense Discharge Approval.msg, ED Release [redacted] v.1.pdf, Fw_ Notice of Borrower Defense Discharge Approval.eml, 2017.06.16 [redacted] ED Release [redacted] v.1.pdf, 2016.08.17 [redacted] DOE Release [redacted] v.1.pdf

Thank you again for your assistance. I am sending a few client issues for your attention All of these three clients attended Bryman in Massachusetts. This was the school that Corinthian purchased and branded as Everest. Therefore they are not eligible for the recent Corinthian relief and they also are not Vara class members. However, they all had received partial relief discharges and then follow-up (through Pratt case) notices last year that they would be getting full relief. All are still waiting.

1. One of these borrowers, [redacted] called the DTR hotline this week and was again told inaccurately that she only has 25% relief. I have attached the notice she received dated September 10, 2021 stating correctly that she is entitled to 100% discharge plus any refunds. We have been trying for all of these months to get the Department to effectuate this relief. Not only has this not occurred, but as you can see, the Department continues to give misleading and inaccurate information. I have attached a release form so that you can communicate with me directly about this case. I can explain some special circumstances about this borrower (I prefer to do that by phone) to explain why it is best not to contact her directly.
2. [redacted] is in the same situation and is also getting inaccurate information from the Department. I have attached the notice she received about the full discharge (this is one that erroneously stated she attended Marinello) and a release form.
3. [redacted] is in the same situation, release attached. She says that she was told she had to consolidate and she did so but still has not received relief. I do not believe that she has loans other than the Bryman loans, but I need to confirm that.

There are other examples, but I wanted to start with these in hopes that you can resolve quickly. After the holiday, I can send a list of others who are in the same situation, ineligible for the other Corinthian-related relief but owed and promised full relief. Thank you and please let me know if you need additional information.

United States Department of Education

Certification of Identity & Authorization to Disclose Personal Information

Privacy Act Statement. Department regulations require a person who submits a written request for access or disclosure of records to submit personal data sufficient to identify the individual submitting the request. 34 C.F.R. Section 5b.5(b). We solicit the information requested here in order to ensure that the records of individuals who are the subject of Department systems of records are not wrongfully disclosed by the Department. If you fail to furnish this information we will take no action to honor your request. Required information is indicated in CAPS.

FULL NAME OF REQUESTER: [PLEASE PRINT] [redacted]

ADDRESS: [STREET] [redacted]

[CITY] [redacted] [STATE] [redacted] [ZIP] [redacted]

Phone: [redacted] Email: [redacted]

SOCIAL SECURITY NUMBER: [1] [redacted] DATE OF BIRTH: [MM/DD/YY] [redacted]

Authorization to Disclose Personal Information to Another Person

I authorize the Department of Education and its agents to release to, and discuss with, the individual named below as my representative, any records of the Department regarding my student financial assistance loan or grant obligation(s) to the Department, for the purpose of assisting me in satisfying the obligation:

FULL NAME OF REPRESENTATIVE: Alec Harris

ADDRESS: [STREET] 122 Boylston St

[CITY] Jamaica Plain [STATE] MA [ZIP] 02130

PHONE: ( ) 617 390 2741 [Relationship To Requester] Attorney

I authorize the Department to honor this authorization unless and until I revoke it in a written notice and the designated office of the Department receives that notice. I understand that whenever requesting disclosure of information, the representative named here must submit information to verify his or her identity.

I UNDERSTAND THAT IN ORDER TO VERIFY HIS OR HER IDENTITY WHEN MAKING A REQUEST FOR DISCLOSURE BY TELEPHONE, THE REPRESENTATIVE MAY BE REQUIRED TO PROVIDE MY SSN, DOB, AND THE DATE ON WHICH I SIGNED THIS AUTHORIZATION.

I declare under penalty of perjury that I am the person named above as the requester, that I authorize release to the individual named as representative, and that the statements I provided here are true and accurate. I understand that any false statement is subject to punishment under 18 U.S.C. Section 1001 by fine or imprisonment of not more than five years, and that a knowing and willful request made under false pretenses for a record of an individual is subject to punishment under 5 U.S.C. Section 552a(i)(3) by a fine of up to $5000.

DATE: 8/17/14 SIGNATURE [redacted]

[1] You are not required to provide your SSN or DOB. However, we ask you to provide your SSN and DOB only to facilitate the identification of records relating to you, and unless you provide your SSN and DOB, we may be unable to locate any or all records pertaining to you.

Completed authorizations should be mailed to:

US DEPARTMENT OF EDUCATION
PO BOX 5609
GREENVILLE TX 75403-5609

United States Department of Education

Certification of Identity & Authorization to Disclose Personal Information

Privacy Act Statement. Department regulations require a person who submits a written request for access or disclosure of records to submit personal data sufficient to identify the individual submitting the request. 34 C.F.R. Section 5b.5(b). We solicit the information requested here in order to ensure that the records of individuals who are the subject of Department systems of records are not wrongfully disclosed by the Department. If you fail to furnish this information we will take no action to honor your request. Required information is indicated in CAPS.

FULL NAME OF REQUESTER: [PLEASE PRINT] [redacted]

ADDRESS: [STREET] [redacted]

[CITY] [redacted] [STATE] [redacted] [ZIP] [redacted]

Phone [redacted] Email: [redacted]

SOCIAL SECURITY NUMBER: [1] [redacted] DATE OF BIRTH: [MM/DD/YY] [redacted]

Authorization to Disclose Personal Information to Another Person

I authorize the Department of Education and its agents to release to, and discuss with, the individual named below as my representative, any records of the Department regarding my student financial assistance loan or grant obligation(s) to the Department, for the purpose of assisting me in satisfying the obligation:

FULL NAME OF REPRESENTATIVE: Alec Harris

ADDRESS: [STREET] 122 Boylston St

[CITY] Jamaica Plain [STATE] MA [ZIP] 02130

PHONE: ( ) 617-390-2741 [Relationship To Requester] Attorney

I authorize the Department to honor this authorization unless and until I revoke it in a written notice and the designated office of the Department receives that notice. I understand that whenever requesting disclosure of information, the representative named here must submit information to verify his or her identity.

I UNDERSTAND THAT IN ORDER TO VERIFY HIS OR HER IDENTITY WHEN MAKING A REQUEST FOR DISCLOSURE BY TELEPHONE, THE REPRESENTATIVE MAY BE REQUIRED TO PROVIDE MY SSN, DOB, AND THE DATE ON WHICH I SIGNED THIS AUTHORIZATION.

I declare under penalty of perjury that I am the person named above as the requester, that I authorize release to the individual named as representative, and that the statements I provided here are true and accurate. I understand that any false statement is subject to punishment under 18 U.S.C. Section 1001 by fine or imprisonment of not more than five years, and that a knowing and willful request made under false pretenses for a record of an individual is subject to punishment under 5 U.S.C. Section 552a(i)(3) by a fine of up to $5000.

DATE: 6-16-71 SIGNATURE [redacted]

[1] You are not required to provide your SSN or DOB. However, we ask you to provide your SSN and DOB only to facilitate the identification of records relating to you, and unless you provide your SSN and DOB, we may be unable to locate any or all records pertaining to you.

Completed authorizations should be mailed to:

US DEPARTMENT OF EDUCATION
PO BOX 5609
GREENVILLE TX 75403-5609

United States Department of Education

Certification of Identity & Authorization to Disclose Personal Information

Privacy Act Statement. Department regulations require a person who submits a written request for access or disclosure of records to submit personal data sufficient to identify the individual submitting the request. 34 C.F.R. Section 5b.5(b). We solicit the information requested here in order to ensure that the records of individuals who are the subject of Department systems of records are not wrongfully disclosed by the Department. If you fail to furnish this information we will take no action to honor your request. Required information is indicated in CAPS.

FULL NAME OF REQUESTER: [PLEASE PRINT] (b)(6) [redacted]

ADDRESS: [STREET] (b)(6) [redacted]

[CITY] (b)(6) [redacted] [STATE] (b)(6) [redacted] [ZIP] (b)(6) [redacted]

Phone: (b)(6) [redacted] Email: (b)(6) [redacted]

SOCIAL SECURITY NUMBER (b)(6) [redacted] DATE OF BIRTH: [MM/DD/YY] (b)(6) [redacted]

Authorization to Disclose Personal Information to Another Person

I authorize the Department of Education and its agents to release to, and discuss with, the individual named below as my representative, any records of the Department regarding my student financial assistance loan or grant obligation(s) to the Department, for the purpose of assisting me in satisfying the obligation:

FULL NAME OF REPRESENTATIVE: Legal Services Center of Harvard Law School Alec Harris

ADDRESS: [STREET] 122 Boylston Street

[CITY] Boston [STATE] MA [ZIP] 02130

PHONE: ( ) [Relationship To Requester] Attorney

I authorize the Department to honor this authorization unless and until I revoke it in a written notice and the designated office of the Department receives that notice. I understand that whenever requesting disclosure of information, the representative named here must submit information to verify his or her identity.

I UNDERSTAND THAT IN ORDER TO VERIFY HIS OR HER IDENTITY WHEN MAKING A REQUEST FOR DISCLOSURE BY TELEPHONE, THE REPRESENTATIVE MAY BE REQUIRED TO PROVIDE MY SSN, DOB, AND THE DATE ON WHICH I SIGNED THIS AUTHORIZATION.

I declare under penalty of perjury that I am the person named above as the requester, that I authorize release to the individual named as representative, and that the statements I provided here are true and accurate. I understand that any false statement is subject to punishment under 18 U.S.C. Section 1001 by fine or imprisonment of not more than five years, and that a knowing and willful request made under false pretenses for a record of an individual is subject to punishment under 5 U.S.C. Section 552a(i)(3) by a fine of up to $5000.

DATE: 3/30/18 SIGNATURE (b)(6) [redacted]

[1] You are not required to provide your SSN or DOB. However, we ask you to provide your SSN and DOB only to facilitate the identification of records relating to you, and unless you provide your SSN and DOB, we may be unable to locate any or all records pertaining to you.

Completed authorizations should be mailed to:

US DEPARTMENT OF EDUCATION
PO BOX 5609
GREENVILLE TX 75403-5609

From: [redacted]
Subject: Fw: Notice of Borrower Defense Discharge Approval
To: Loonin, Deanne
Sent: June 29, 2022 3:12 PM (UTC-04:00)

Sent from Yahoo Mail for iPhone

Begin forwarded message:

On Tuesday, September 7, 2021, 5:09 PM, U.S. Department of Education <noreply@studentaid.gov> wrote:

Click here to view this email as a web page.

September 7, 2021

Borrower Defense Case: [redacted]

Dear [redacted]

The Department of Education (Department) has approved your claim for discharge of your federal student loans under the borrower defense to repayment rules, 34 C.F.R. §685.206(c) and/or §685.222. We have determined that you are entitled to a discharge of the loans associated with your enrollment in program(s) at Marinello School Of Beauty based on the school's material misrepresentation(s) to you.

What does this mean for you?

- **If you have William D. Ford Federal Direct Loans (Direct Loans), then 100% of those that you received on or after 01-08-2007 for the program(s) of study related to your approved claim will be discharged within the next 180 days.**
- A 100% discharge means the entire remaining balance of those loans will be cancelled.
- You do not owe any more money on those loans and will not have to make any more payments.
- If those loans are in default, the Department will not continue any collections activity or garnishment of wages or offset your tax refunds or Social Security benefits.
- Your loans will remain in forbearance or stopped collections status until the discharges are completed.
- You do not have to take any additional steps to receive this relief.

What about payments I already made?

- We are reviewing your eligibility for a refund, but please note that only some borrowers will receive a refund.
- There are limited cases where borrowers may be eligible for a refund of any prior payments made on the Direct Loans that are being discharged.
- The Department will provide you additional information if you are eligible for a refund.
- You do not have to take any additional steps to receive a refund if you are eligible for one.

Will all of my federal loans be discharged?

- The Department is determining whether you have other Federal non-Direct loans (such as Federal Family Education Loans or Perkins Loans) relating to your claim.
- If you do have those other types of loans, they will also be eligible for full discharge, but you will have to take some additional steps to receive this relief.
- If you have these eligible loans, we will send you more information about the actions that need to be taken for these loans to be discharged. You do not have to take any additional steps unless and until we contact you again.
- If we determine you do have these loans they will remain in forbearance or stopped collections status until you take any additional steps we tell you about and the discharges are completed.

This borrower defense to repayment discharge by the Department does not apply to private student loans. Therefore, nothing in this email applies to any private student loans that you may have.

This email only applies to the federal student loans that you received for the programs of study related to your approved claim.

If you have questions about this notice, you can contact our borrower defense hotline at 1-855-279-6207 from 8 a.m. to 8 p.m. ET on Monday through Friday.

Sincerely,

U.S. Department of Education
Federal Student Aid

Reference ID: ref:_00Dt0Gyiq._500t0DPqFI:ref

From: Loonin, Deanne
Subject: RE: CORRECTED Notice of Borrower Defense Discharge Approval
To: [redacted]
Sent: September 11, 2021 7:57 AM (UTC-04:00)

This is great news. Please keep me posted when you get the actual discharge.

From: [redacted] mailto:[redacted]
Sent: Friday, September 10, 2021 5:19 PM
To: Loonin, Deanne <dloonin@law.harvard.edu>
Subject: Re: CORRECTED Notice of Borrower Defense Discharge Approval

On Fri, Sep 10, 2021 at 1:48 PM U.S. Department of Education <noreply@studentaid.gov> wrote:

Click here to view this email as a web page.

Correction Notice: Please Disregard Notice Sent Sept. 7, 2021

Sept. 10, 2021

Borrower Defense Case: [redacted]

Dear [redacted]

The Department of Education (Department) has approved your claim for discharge of your federal student loans under the borrower defense to repayment rules, 34 C.F.R. §685.206(c) and/or §685.222. We have determined that you are entitled to a discharge of the loans associated with your enrollment in program(s) at Corinthian Colleges, Inc. based on the school's material misrepresentation(s) to you.

What does this mean for you?

- **If you have William D. Ford Federal Direct Loans (Direct Loans), then 100% of those that you received on or after 03-20-2006 for the program(s) of study related to your approved claim will be discharged within the next 180 days.**
- A 100% discharge means the entire remaining balance of those loans will be cancelled.
- You do not owe any more money on those loans and will not have to make any more payments.
- If those loans are in default, the Department will not continue any collections activity or garnishment of wages or offset your tax refunds or Social Security benefits.
- Your loans will remain in forbearance or stopped collections status until the discharges are completed.
- You do not have to take any additional steps to receive this relief.

What about payments I already made?

- We are reviewing your eligibility for a refund, but please note that only some borrowers will receive a refund.
- There are limited cases where borrowers may be eligible for a refund of any prior payments made on the Direct Loans that are being discharged.
- The Department will provide you additional information if you are eligible for a refund.
- You do not have to take any additional steps to receive a refund if you are eligible for one.

Will all of my federal loans be discharged?

- The Department is determining whether you have other Federal non-Direct loans (such as Federal Family Education Loans or Perkins Loans) relating to your claim.
- If you do have those other types of loans, they will also be eligible for full discharge, but you will have to take some additional steps to receive this relief.
- If you have these eligible loans, we will send you more information about the actions that need to be taken for these loans to be discharged. You do not have to take any additional steps unless and until we contact you again.
- If we determine you do have these loans they will remain in forbearance or stopped collections status until you take any additional steps we tell you about and the discharges are completed.

This borrower defense to repayment discharge by the Department does not apply to private student loans. Therefore, nothing in this email applies to any private student loans that you may have.

This email only applies to the federal student loans that you received for the programs of study related to your approved claim.

If you have questions about this notice, you can contact our borrower defense hotline at 1-855-279-6207 from 8 a.m. to 8 p.m. ET on Monday through Friday.

Sincerely,

U.S. Department of Education
Federal Student Aid

Reference ID: ref:_00Dt0Gyiq._500t0GCOoS:ref

830 First Street, NE, Washington, D.C. 20202
StudentAid.gov/borrower-defense

From: Latreille, Bonnie
Subject: RE: Seeking Assistance with Long Delayed Discharges
To: Loonin, Deanne; Bronstein, Andrew
Sent: June 30, 2022 12:21 PM (UTC-04:00)

Thanks, Deanne. I'm going to reply to these separately so I can keep the cases straight.

From: Loonin, Deanne <dloonin@law.harvard.edu>
Sent: Thursday, June 30, 2022 9:06 AM
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Subject: Seeking Assistance with Long Delayed Discharges

Thank you again for your assistance. I am sending a few client issues for your attention All of these three clients attended Bryman in Massachusetts. This was the school that Corinthian purchased and branded as Everest. Therefore they are not eligible for the recent Corinthian relief and they also are not Vara class members. However, they all had received partial relief discharges and then follow-up (through Pratt case) notices last year that they would be getting full relief. All are still waiting.

1. One of these borrowers, [redacted] called the DTR hotline this week and was again told inaccurately that she only has 25% relief. I have attached the notice she received dated September 10, 2021 stating correctly that she is entitled to 100% discharge plus any refunds. We have been trying for all of these months to get the Department to effectuate this relief. Not only has this not occurred, but as you can see, the Department continues to give misleading and inaccurate information. I have attached a release form so that you can communicate with me directly about this case. I can explain some special circumstances about this borrower (I prefer to do that by phone) to explain why it is best not to contact her directly.
2. [redacted] is in the same situation and is also getting inaccurate information from the Department. I have attached the notice she received about the full discharge (this is one that erroneously stated she attended Marinello) and a release form.
3. [redacted] is in the same situation, release attached. She says that she was told she had to consolidate and she did so but still has not received relief. I do not believe that she has loans other than the Bryman loans, but I need to confirm that.

There are other examples, but I wanted to start with these in hopes that you can resolve quickly. After the holiday, I can send a list of others who are in the same situation, ineligible for the other Corinthian-related relief but owed and promised full relief. Thank you and please let me know if you need additional information.

From: Loonin, Deanne
Subject: FW: CORRECTED Notice of Borrower Defense Discharge Approval
To: Latreille, Bonnie
Sent: July 1, 2022 1:43 PM (UTC-04:00)

Sorry, last item for [redacted] Thanks again.

From: [redacted] [mailto:[redacted]
Sent: Friday, July 1, 2022 12:45 PM
To: Loonin, Deanne <dloonin@law.harvard.edu>
Subject: Fwd: CORRECTED Notice of Borrower Defense Discharge Approval

-----Original Message-----
From: U.S. Department of Education <noreply@studentaid.gov>
To: [redacted]
Sent: Fri, Sep 10, 2021 1:48 pm
Subject: CORRECTED Notice of Borrower Defense Discharge Approval

Click here to view this email as a web page.

Correction Notice: Please Disregard Notice Sent Sept. 7, 2021
Sept. 10, 2021
Borrower Defense Case: [redacted]
Dear [redacted]
The Department of Education (Department) has approved your claim for discharge of your federal student loans under the borrower defense to repayment rules, 34 C.F.R. §685.206(c) and/or §685.222. We have determined that you are entitled to a discharge of the loans associated with your enrollment in program(s) at Corinthian Colleges, Inc. based on the school's material misrepresentation(s) to you.

What does this mean for you?

- **If you have William D. Ford Federal Direct Loans (Direct Loans), then 100% of those that you received on or after 02-26-2007 for the program(s) of study related to your approved claim will be discharged within the next 180 days.**
- A 100% discharge means the entire remaining balance of those loans will be cancelled.
- You do not owe any more money on those loans and will not have to make any more payments.
- If those loans are in default, the Department will not continue any collections activity or garnishment of wages or offset your tax refunds or Social Security benefits.

- Your loans will remain in forbearance or stopped collections status until the discharges are completed.
- You do not have to take any additional steps to receive this relief.

What about payments I already made?

- We are reviewing your eligibility for a refund, but please note that only some borrowers will receive a refund.
- There are limited cases where borrowers may be eligible for a refund of any prior payments made on the Direct Loans that are being discharged.
- The Department will provide you additional information if you are eligible for a refund.
- You do not have to take any additional steps to receive a refund if you are eligible for one.

Will all of my federal loans be discharged?

- The Department is determining whether you have other Federal non-Direct loans (such as Federal Family Education Loans or Perkins Loans) relating to your claim.
- If you do have those other types of loans, they will also be eligible for full discharge, but you will have to take some additional steps to receive this relief.
- If you have these eligible loans, we will send you more information about the actions that need to be taken for these loans to be discharged. You do not have to take any additional steps unless and until we contact you again.
- If we determine you do have these loans they will remain in forbearance or stopped collections status until you take any additional steps we tell you about and the discharges are completed.

This borrower defense to repayment discharge by the Department does not apply to private student loans. Therefore, nothing in this email applies to any private student loans that you may have.
This email only applies to the federal student loans that you received for the programs of study related to your approved claim.
If you have questions about this notice, you can contact our borrower defense hotline at 1-855-279-6207 from 8 a.m. to 8 p.m. ET on Monday through Friday.
Sincerely,
U.S. Department of Education
Federal Student Aid

Reference ID: ref:_00Dt0Gyiq._500t0DPj2x:ref

830 First Street, NE, Washington, D.C. 20202
StudentAid.gov/borrower-defense

From: Turi, Michael N.
Subject: Inquiry re [redacted] Borrower Defense Case
To: Latreille, Bonnie
Cc: Loonin, Deanne
Sent: July 7, 2022 1:03 PM (UTC-04:00)
Attached: [redacted] Permission Form - signed.pdf, [redacted] letter 07.2022.pdf

Dear Bonnie,

Attached please find a letter from us concerning the borrower defense discharge of one of our clients, [redacted] Included is a signed form authorizing us to speak with you on her behalf.

Thank you for your attention to this matter.

Best,

Michael N. Turi
Staff Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

(617) 390-2739
www.predatorystudentlending.org

LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL
CENTRO DE SERVICIOS LEGALES
122 Boylston Street
Jamaica Plain, Massachusetts 02130-2246
TEL: (617) 522-3003 • FAX: (617) 522-0715

July 7, 2022

Re: [redacted] Case

Dear Bonnie:

We write concerning one of our longtime clients, [redacted] whose application for defense to repayment was approved on September 7, 2021. Attached please find a signed authorization form allowing us to communicate to you on her behalf.

[redacted] attended Florida Metropolitan University—later Everest University – North Orlando, a Corinthian Colleges school—where she studied accounting. She took out tens of thousands of dollars in federal student loans to pay for school. In November 2015, in light of misrepresentations made to her by Everest, she submitted a defense to repayment application to the Department. That application was approved for a 100% discharge of all loans beginning 05/29/2001.

[redacted] Everest loans are commercially-held federal family education loans (FFEL), serviced by the Florida Department of Education Office of Student Financial Assistance as a guaranty agency. These loans were originally consolidated with loans from other schools in April 2004.

In the September 7, 2021 letter approving [redacted] Everest loans for a 100% discharge, the Department indicated that [redacted] FFEL loans "will also be eligible for full discharge," and ED "will send you more information about the actions that need to be taken for these loans to be discharged. You do not have to take any additional steps unless and until we contact you again."

I am reaching out to inquire as to the status of relief on [redacted] FFEL loans. She has not received any communication since September 7, 2021, and interest on her consolidated Everest loan has continued to accrue substantially during that time. This has continued to affect her debt-to-income ratio and made it challenging for her to obtain credit for which she may otherwise be eligible. Because of the substantial interest associated with this loan, and the uncertainly regarding how much of the interest will be attributable to the Everest principal and thus discharged, it would also be helpful to know whether she will be required to consolidate into the direct loan program, or whether the commercial lender can discharge the FFEL loan under the closed-school discharge process.

If you or another person at the Department could please assist us in looking into the status of [redacted] relief, we would greatly appreciate it.

Sincerely,

Michael N. Turi
Project on Predatory Student Lending,
Legal Services Center of Harvard Law
School
122 Boylston Street
Jamaica Plain, MA 02130
(617) 390-2739
mturi@law.harvard.edu

Click here to view this email as a web page.

September 7, 2021

Borrower Defense Case: (b)(6) [redacted]

Dear (b)(6) [redacted]

The Department of Education (Department) has approved your claim for discharge of your federal student loans under the borrower defense to repayment rules, 34 C.F.R. §685.206(c) and/or §685.222. We have determined that you are entitled to a discharge of the loans associated with your enrollment in program(s) at Corinthian Colleges, Inc. based on the school's material misrepresentation(s) to you.

What does this mean for you?

- **If you have William D. Ford Federal Direct Loans (Direct Loans), then 100% of those that you received on or after 05-29-2001 for the program(s) of study related to your approved claim will be discharged within the next 180 days.**
- A 100% discharge means the entire remaining balance of those loans will be cancelled.
- You do not owe any more money on those loans and will not have to make any more payments.
- If those loans are in default, the Department will not continue any collections activity or garnishment of wages or offset your tax refunds or Social Security benefits.
- Your loans will remain in forbearance or stopped collections status until the discharges are completed.
- You do not have to take any additional steps to receive this relief.

What about payments I already made?

- We are reviewing your eligibility for a refund, but please note that only some borrowers will receive a refund.
- There are limited cases where borrowers may be eligible for a refund of any prior payments made on the Direct Loans that are being discharged.
- The Department will provide you additional information if you are eligible for a refund.
- You do not have to take any additional steps to receive a refund if you are eligible for one.

Will all of my federal loans be discharged?

- The Department is determining whether you have other Federal non-Direct loans (such as Federal Family Education Loans or Perkins Loans) relating to your claim.

- If you do have those other types of loans, they will also be eligible for full discharge, but you will have to take some additional steps to receive this relief.
- If you have these eligible loans, we will send you more information about the actions that need to be taken for these loans to be discharged. You do not have to take any additional steps unless and until we contact you again.
- If we determine you do have these loans they will remain in forbearance or stopped collections status until you take any additional steps we tell you about and the discharges are completed.

This borrower defense to repayment discharge by the Department does not apply to private student loans. Therefore, nothing in this email applies to any private student loans that you may have.

This email only applies to the federal student loans that you received for the programs of study related to your approved claim.

If you have questions about this notice, you can contact our borrower defense hotline at 1-855-279-6207 from 8 a.m. to 8 p.m. ET on Monday through Friday.

Sincerely,

U.S. Department of Education
Federal Student Aid

Reference ID: ref:_00Dt0Gyiq._500t0DPK2Z:ref

Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION

830 First Street, NE, Washington, D.C. 20202
StudentAid.gov/borrower-defense

United States Department of Education

Certification of Identity & Authorization to Disclose Personal Information

Privacy Act Statement. Department regulations require a person who submits a written request for access or disclosure of records to submit personal data sufficient to identify the individual submitting the request. 34 C.F.R. Section 5b.5(b). We solicit the information requested here in order to ensure that the records of individuals who are the subject of Department systems of records are not wrongfully disclosed by the Department. If you fail to furnish this information we will take no action to honor your request. Required information is indicated in CAPS.

FULL NAME OF REQUESTER: [PLEASE PRINT] (b)(6)

ADDRESS: [STREET] (b)(6)

[CITY] (b)(6) [STATE] (b)(6) [ZIP] (b)(6)

Phone: (b)(6) Email: (b)(6)

SOCIAL SECURITY NUMBER: [1] (b)(6) DATE OF BIRTH: [MM/DD/YY] (b)(6)

Authorization to Disclose Personal Information to Another Person

I authorize the Department of Education and its agents to release to, and discuss with, the individual named below as my representative, any records of the Department regarding my student financial assistance loan or grant obligation(s) to the Department, for the purpose of assisting me in satisfying the obligation:

FULL NAME OF REPRESENTATIVE: Project on Predatory Student Lending, Michael Turi, Deanne Loonin

ADDRESS: [STREET] 122 Boylston Street

[CITY] Jamaica Plain [STATE] MA [ZIP] 02130

PHONE: (609) 238-2177 [Relationship To Requester] Attorneys

I authorize the Department to honor this authorization unless and until I revoke it in a written notice and the designated office of the Department receives that notice. I understand that whenever requesting disclosure of information, the representative named here must submit information to verify his or her identity.

I UNDERSTAND THAT IN ORDER TO VERIFY HIS OR HER IDENTITY WHEN MAKING A REQUEST FOR DISCLOSURE BY TELEPHONE, THE REPRESENTATIVE MAY BE REQUIRED TO PROVIDE MY SSN, DOB, AND THE DATE ON WHICH I SIGNED THIS AUTHORIZATION.

I declare under penalty of perjury that I am the person named above as the requester, that I authorize release to the individual named as representative, and that the statements I provided here are true and accurate. I understand that any false statement is subject to punishment under 18 U.S.C. Section 1001 by fine or imprisonment of not more than five years, and that a knowing and willful request made under false pretenses for a record of an individual is subject to punishment under 5 U.S.C. Section 552a(i)(3) by a fine of up to $5000.

DATE: 07/07/2022 SIGNATURE (b)(6)

[1] You are not required to provide your SSN or DOB. However, we ask you to provide your SSN and DOB only to facilitate the identification of records relating to you, and unless you provide your SSN and DOB, we may be unable to locate any or all records pertaining to you.

Completed authorizations should be mailed to:

US DEPARTMENT OF EDUCATION
PO BOX 5609
GREENVILLE TX 75403-5609

[redacted] Permission Form

Final Audit Report 2022-07-07

Created:	2022-07-07
By:	Michael Turi (mturi@law.harvard.edu)
Status:	Signed
Transaction ID:	CBJCHBCAABAABQSodrbkoJiX6uKUkLvRa0l3hy78hsR0

[redacted] Permission Form" History

Document created by Michael Turi (mturi@law.harvard.edu)
2022-07-07 - 1:44:44 PM GMT- IP address: [redacted]

Document emailed to [redacted] for signature
2022-07-07 - 1:45:48 PM GMT

Email viewed by [redacted]
2022-07-07 - 4:52:35 PM GMT- IP address: [redacted]

Document e-signed by [redacted]
Signature Date: 2022-07-07 - 4:53:48 PM GMT - Time Source: server- IP address: [redacted]

Agreement completed.
2022-07-07 - 4:53:48 PM GMT

From: Turi, Michael N.
Subject: RE: Inquiry re [redacted] Borrower Defense Case
To: Bronstein, Andrew
Cc: Latreille, Bonnie; Wollard, Kalynn; Connor, Eileen; Loonin, Deanne
Sent: July 14, 2022 4:28 PM (UTC-04:00)
Attached: 04.19.2022 [redacted] UPDATED Loan Discharge Letter Fedloan.pdf

Andrew – thank you so much for your prompt response. I have just one final question for clarification. On page 2 of the attached notice that [redacted] received from her servicer, it notes that:

"ED instructed us to apply a credit in the amount of $9,923.08 to your account because it took ED an extended period of time to review your claim. We applied the credit first toward unpaid interest and then toward principal if no unpaid interest remained."

Would the additional $9,923.08, which appears to be a compensatory discharge for the delay, not also cover the balance of the Walden loan, in addition to the $6,000+ she had already made in payments?

Thank you again for your help on this matter.

Michael

From: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Sent: Thursday, July 14, 2022 2:03 PM
To: Turi, Michael N. <mturi@law.harvard.edu>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

Hi Michael,

Apologies for the delaying get back to you. Here's what we've learned:

Loans 1 and 2 are the consolidation loans for the schools that received the BD discharge. The balances are $0. Payments made on those loans brought down the balance of loan 3 for Walden School that was not discharged. Any payments go to bringing down the balance of any non-discharged loans before a refund is given. Loan 3 now has a balance of $163.05. It was originally $6,834.

Separately, as you know, Walden University appears on Exhibit C of the proposed settlement. So, if that settlement were approved, it would result in the discharge of the Direct Loans the borrower took out to attend Walden University and a refund on amounts paid toward those loans.

Please let me know if you have any questions.

Thanks,
Andrew

From: Turi, Michael N. <mturi@law.harvard.edu>
Sent: Thursday, July 14, 2022 11:51 AM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen

<econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Andrew – just checking in to see if there are any updates on the status of this inquiry.

Thank you again for your assistance.

Best,

Michael

From: Turi, Michael N.
Sent: Thursday, June 23, 2022 3:17 PM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

Andrew, thank you very much for your help. I look forward to hearing from you when you hear back from the servicer.

Michael

From: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Sent: Thursday, June 23, 2022 1:48 PM
To: Turi, Michael N. <mturi@law.harvard.edu>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

Hi Michael,

Thank you for your email. I'm sorry for the delay getting back to you. Our staff is in contact with [redacted] loan servicer, who has informed FSA that there are several adjustments in process on her account that will take a few days to complete. The servicer has promised to get back to us with a response to your question by the end of next week. We will send you an update as soon as we hear back. Thank you.

Best,
Andrew

From: Turi, Michael N. <mturi@law.harvard.edu>
Sent: Wednesday, June 22, 2022 3:51 PM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

I am just following up to confirm that you received our follow-up questions below. Thank you very much again for your assistance.

Best,

Michael N. Turi
Staff Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

(617) 390-2739
www.predatorystudentlending.org

From: Turi, Michael N.
Sent: Thursday, May 26, 2022 9:38 AM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re (b)(6) Borrower Defense Case

Dear Andrew,

Thank you so much for reviewing (b)(6) account and confirming that her loans are now discharged. We appreciate the prompt response.

As a follow up question, can you please let us know if ED is processing any refund for (b)(6) prior payments made?

More generally, I wonder if you would be able to share some information with us regarding the back-end processing of borrower defense discharges. We field questions frequently from borrowers who are confused about what their loan accounts show. It would be helpful to be able to explain, for example, whether certain factors, such as prior consolidation or default, or differences between servicers, have any impact on the timing of processing, such as the incremental discharges that appeared to occur in (b)(6) case.

Thanks so much.

Michael N. Turi
Staff Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

(617) 390-2739
www.predatorystudentlending.org

From: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Sent: Tuesday, May 24, 2022 10:03 AM
To: Turi, Michael N. <mturi@law.harvard.edu>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re (b)(6) Borrower Defense Case

Hi Michael,

Thank you for your email. The remainder of [redacted] discharge was effectuated on May 10, 2022. According to NSLDS, she now has a zero balance. Please let us know if you have any questions.

Thanks,
Andrew

From: Turi, Michael N. <mturi@law.harvard.edu>
Sent: Thursday, May 5, 2022 11:50 AM
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Cc: Loonin, Deanne <dloonin@law.harvard.edu>; Connor, Eileen <econnor@law.harvard.edu>
Subject: Inquiry re [redacted] Borrower Defense Case

Dear Bonnie,

Attached please find a letter from us concerning the borrower defense discharge of one of our clients, [redacted] Included is a signed form authorizing us to speak with you on her behalf.

Thank you for your attention to this matter.

Best,

Michael N. Turi
Staff Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

(617) 390-2739
www.predatorystudentlending.org

fedloan SERVICING

U.S. Department of Education
Information about your federal student loan

April 19, 2022

[redacted]

IMPORTANT DIRECT LOAN DISCHARGE INFORMATION FOR YOU

Account Number: [redacted]

Dear [redacted]

The U.S. Department of Education (ED) recently communicated with you through email or mail about your application for borrower defense discharge. ED informed you that we, as your federal loan servicer, would contact you in follow up to ED's determination that your application is eligible for partial or full relief based on review of the facts of your claim and the regulatory criteria for relief.

WHAT YOU NEED TO KNOW

We discharged the percentage of your Direct Loans that was determined and communicated to you by ED. As a result, your Direct Loan account serviced by us has a remaining balance to be paid. The table below shows the remaining balance on each Direct Loan associated with your approved borrower defense application.

Soon, you'll receive an updated disclosure of the current balance, payment amount, and payment schedule for each loan. That disclosure also will state when your next payment is due.

Note: This discharge notice applies only to the Direct Loans associated with your approved borrower defense discharge application and identified below. You may still have a remaining balance to be paid on other federal student loans you took out to pay for your (or your child's) education that are serviced by us or another federal student loan servicer. You can review your federal student loan and servicer information in the National Student Loan Data System available at NSLDS.ed.gov.

Loans Adjustment

Loan Sequence	Account Number	Loan Award ID	Disbursement Date	Disbursement Amount	Total Amount Discharged	Total Balance Remaining after Discharge
0001	[redacted]					
0002						
0003						
Totals				[redacted]		

Interest Credit

ED instructed us to apply **a credit in the amount of $9,923.08** to your account because it took ED an extended period of time to review your claim. We applied the credit first toward unpaid interest and then toward principal if no unpaid interest remained. The credit is reflected in the "Total Amount Remaining After Discharge" shown in the table above.

Note: This interest exemption does not apply to privately-held loans from the Federal Family Education Loan (FFEL) Program that you may have. It applies only to your Direct Loans and/or government-held FFEL Program loans.

Consolidation

If any of the loans associated with your approved borrower defense application were previously consolidated into a Direct Consolidation Loan, the servicer of that loan has reduced or will reduce your consolidation loan balance by the discharge amount.

Credit Reporting

Within 60-90 days of this notification, we will update credit reporting agencies on the status of the identified Direct Loans. In doing so, we will ask that they remove any negative credit status previously reported.

Potential Tax Consequences

You may be required to pay federal or state taxes on the amount of borrower defense discharge you receive. With respect to any tax consequences relating to your borrower defense discharge, you may wish to contact a tax advisor to understand whether or how much you will likely owe in taxes as a result of a borrower defense discharge. IRS guidance about this issue is available online at https://www.irs.gov/pub/irs-drop/rp-20-11.pdf. As determined by the IRS, this guidance provides an exemption from federal tax liability for those who received a borrower defense discharge.

WHAT YOU NEED TO DO

Keep this notification for your records. If there's any other action needed by you, we'll inform you of that action through a separate communication.

HOW TO CONTACT US

We're available to help you understand this information. You can contact us using the contact information below:

By Phone: 800-699-2908
By Mail: FedLoan Servicing
PO Box 69184
Harrisburg, PA 17106-9184

Sincerely,

FedLoan Servicing

From: Bronstein, Andrew
Subject: RE: Inquiry re [redacted] Borrower Defense Case
To: Turi, Michael N.
Cc: Latreille, Bonnie; Wollard, Kalynn; Connor, Eileen; Loonin, Deanne
Sent: July 18, 2022 11:50 AM (UTC-04:00)

Hi Michael,

Fedloan double checked and confirmed the remaining balance is after the interest credit. Interest credit applies only to interest accrued after a borrower defense application has been submitted. It does not affect principal or interest accrued prior to the application.

Thanks,
Andrew

From: Turi, Michael N. <mturi@law.harvard.edu>
Sent: Thursday, July 14, 2022 4:28 PM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

Andrew – thank you so much for your prompt response. I have just one final question for clarification. On page 2 of the attached notice that [redacted] received from her servicer, it notes that:

"ED instructed us to apply a credit in the amount of $9,923.08 to your account because it took ED an extended period of time to review your claim. We applied the credit first toward unpaid interest and then toward principal if no unpaid interest remained."

Would the additional $9,923.08, which appears to be a compensatory discharge for the delay, not also cover the balance of the Walden loan, in addition to the $6,000+ she had already made in payments?

Thank you again for your help on this matter.

Michael

From: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Sent: Thursday, July 14, 2022 2:03 PM
To: Turi, Michael N. <mturi@law.harvard.edu>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

Hi Michael,

Apologies for the delaying get back to you. Here's what we've learned:

Loans 1 and 2 are the consolidation loans for the schools that received the BD discharge. The balances are $0. Payments made on those loans brought down the balance of loan 3 for Walden School that was not discharged. Any payments go to bringing down the balance of any non-discharged loans before a refund is given. Loan 3 now has a balance of $163.05. It was originally $6,834.

Separately, as you know, Walden University appears on Exhibit C of the proposed settlement. So, if that settlement were approved, it would result in the discharge of the Direct Loans the borrower took out to attend Walden University and a refund on amounts paid toward those loans.

Please let me know if you have any questions.

Thanks,
Andrew

From: Turi, Michael N. <mturi@law.harvard.edu>
Sent: Thursday, July 14, 2022 11:51 AM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

Hi Andrew – just checking in to see if there are any updates on the status of this inquiry.

Thank you again for your assistance.

Best,

Michael

From: Turi, Michael N.
Sent: Thursday, June 23, 2022 3:17 PM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

Andrew, thank you very much for your help. I look forward to hearing from you when you hear back from the servicer.

Michael

From: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Sent: Thursday, June 23, 2022 1:48 PM
To: Turi, Michael N. <mturi@law.harvard.edu>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

Hi Michael,

Thank you for your email. I'm sorry for the delay getting back to you. Our staff is in contact with [redacted] loan servicer, who has informed FSA that there are several adjustments in process on her account that will take a few days to complete. The servicer has promised to get back to us with a response to your question by the end of next week. We will send you an update as soon as we hear back. Thank you.

Best,
Andrew

From: Turi, Michael N. <mturi@law.harvard.edu>
Sent: Wednesday, June 22, 2022 3:51 PM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re (b)(6) Borrower Defense Case

Good afternoon,

I am just following up to confirm that you received our follow-up questions below. Thank you very much again for your assistance.

Best,

Michael N. Turi
Staff Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

(617) 390-2739
www.predatorystudentlending.org

From: Turi, Michael N.
Sent: Thursday, May 26, 2022 9:38 AM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re (b)(6) Borrower Defense Case

Dear Andrew,

Thank you so much for reviewing (b)(6) account and confirming that her loans are now discharged. We appreciate the prompt response.

As a follow up question, can you please let us know if ED is processing any refund for (b)(6) prior payments made?

More generally, I wonder if you would be able to share some information with us regarding the back-end processing of borrower defense discharges. We field questions frequently from borrowers who are confused about what their loan accounts show. It would be helpful to be able to explain, for example, whether certain factors, such as prior consolidation or default, or differences between servicers, have any impact on the timing of processing, such as the incremental discharges that appeared to occur in (b)(6) case.

Thanks so much.

Michael N. Turi

Staff Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

(617) 390-2739
www.predatorystudentlending.org

From: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Sent: Tuesday, May 24, 2022 10:03 AM
To: Turi, Michael N. <mturi@law.harvard.edu>
Cc: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Wollard, Kalynn <Kalynn.Wollard@ed.gov>; Connor, Eileen <econnor@law.harvard.edu>; Loonin, Deanne <dloonin@law.harvard.edu>
Subject: RE: Inquiry re [redacted] Borrower Defense Case

Hi Michael,

Thank you for your email. The remainder of [redacted] discharge was effectuated on May 10, 2022. According to NSLDS, she now has a zero balance. Please let us know if you have any questions.

Thanks,
Andrew

From: Turi, Michael N. <mturi@law.harvard.edu>
Sent: Thursday, May 5, 2022 11:50 AM
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Cc: Loonin, Deanne <dloonin@law.harvard.edu>; Connor, Eileen <econnor@law.harvard.edu>
Subject: Inquiry re [redacted] Borrower Defense Case

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Bonnie,

Attached please find a letter from us concerning the borrower defense discharge of one of our clients, [redacted] Included is a signed form authorizing us to speak with you on her behalf.

Thank you for your attention to this matter.

Best,

Michael N. Turi
Staff Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

(617) 390-2739
www.predatorystudentlending.org

From: Latreille, Bonnie
Subject: RE: FFEL Loans -- MAJOR DISCREPANCY between Harvard's Sweet site & Dept of Ed page/Hotline
To: Karen CODY-HOPKINS; Ellis, Rebecca C.; Kyra Taylor
Sent: July 22, 2022 2:13 PM (UTC-04:00)

Hi Karen,

Thanks for flagging. I think they are not updating the website language until the settlement is finalized, but I will confirm.

Could you please send me the name of your client who called the call center and received bad information? I'd like to pull that call recording to make sure the agent receives additional training.

From: Karen CODY-HOPKINS <[redacted]>
Sent: Friday, July 22, 2022 2:09 PM
To: Ellis, Rebecca C. <rellis@law.harvard.edu>; Kyra Taylor <ktaylor@nclc.org>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Subject: FFEL Loans -- MAJOR DISCREPANCY between Harvard's Sweet site & Dept of Ed page/Hotline

Not sure who can resolve/clarify this issue so copying a number of people.

I have over 75 clients impacted by the PROPOSED *Sweet* Settlement so I have been answering a number of questions.

Today a client noted a significant difference between the Harvard *Sweet* page & https://studentaid.gov/borrower-defense/ She called the BDTR Hotline which told her FFEL loans do NOT qualify under *Sweet*.

The difference is pretty major as we advise clients with FFELS SHOULD THEY/DO THEY NEED TO CONSOLIDATE.

Sweet website says:

26. I have FFEL loans relating to my borrower defense application. Will I have to consolidate into Direct Loans in order to get my discharge and refund?

No. Under the proposed settlement, the Department has committed to taking all steps necessary to deliver settlement relief. Class members will not have to consolidate their loans or take any other steps to receive the relief they are entitled to.

31. Does the settlement include FFEL / FFELP loans?

Yes, FFEL and FFELP loans are considered federal student loans and are covered by the settlement. This includes commercially held FFEL and FFELP loans.

BUT https://studentaid.gov/borrower-defense/ says:

Does the borrower defense discharge apply to all loans I took out to pay for my program?

No. This borrower defense discharge applies only to your Direct Loans. This borrower defense discharge does not apply to private student loans or other loans you may have received from programs administered by federal or state agencies, including other programs administered by ED.

ED will proceed with the applicable discharge of your Direct Loans. If some of your federal student loans are Federal Family Education Loan (FFEL) Program loans and/or Federal Perkins Loan Program loans, they are not eligible for discharge under the Borrower Defense to Repayment law or regulations.

Any clarification/correction as to which is correct would be greatly appreciated.

--
Karen Cody-Hopkins
Denver, CO
(b)(6)
(b)(6)

From: Latreille, Bonnie
Subject: Re: PPSL Transition
To: dloonin@ppsl.org; econnor@ppsl.org; mturi@ppsl.org
Cc: Bronstein, Andrew
Sent: July 25, 2022 11:55 AM (UTC-04:00)

Big congrats to you all on the transition! I know what a big undertaking that is.

From: Loonin, Deanne <dloonin@law.harvard.edu>
Sent: Monday, July 25, 2022 11:38:42 AM
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: dloonin@ppsl.org <dloonin@ppsl.org>; econnor@ppsl.org <econnor@ppsl.org>; mturi@ppsl.org <mturi@ppsl.org>
Subject: PPSL Transition

We have some big news to share!

As of **August 1, 2022,** the Project on Predatory Student Lending will officially separate from the Legal Services Center at Harvard Law School and operate as an independent nonprofit organization. The Project has grown significantly since it started in 2012 as a legal clinic at HLS and we all feel strongly that now is the time to spread our wings as an independent organization — allowing us to continue to grow and evolve in pursuit of our mission.

For now, not much will be changing except for dropping "Harvard" from our name — we'll still be The Project on Predatory Student Lending (PPSL) and all our cases, clients and staff will come with us.

The one thing that will change right away is our emails, so I want to make sure you have our updated addresses, dloonin@ppsl.org; econnor@ppsl.org; mturi@ppsl.org (copied on this email). **As of August 1, our Harvard emails will no longer be active,** so please update your contacts and use the new PPSL address going forward.

We'll be announcing this more publicly in the coming weeks with more details to come, but wanted you to hear it directly from us first.

We will also be in touch separately about the various borrower related issues we have been discussing with you. Thank you for your attention to those important matters.

Best,
Deanne

Deanne Loonin

PLEASE NOTE MY NEW EMAIL ADDRESS!
Please update your contacts with my new email: dloonin@ppsl.org
Exciting news! As of August 1, 2022, The Project on Predatory Student Lending will operate as an independent organization, fully separate from the Legal Services Center at Harvard Law School. That means our Harvard emails will no longer be active. Please be sure to update your address book with my new email and our new address, 769 Centre Street, Suite 166, Jamaica Plain, MA 02130.

From: Bronstein, Andrew
Subject: RE: Meeting next week
To: Deanne Loonin; Latreille, Bonnie
Cc: Michael Turi
Sent: August 2, 2022 2:13 PM (UTC-04:00)

Perfect. Thank you.

From: Deanne Loonin <DLoonin@ppsl.org>
Sent: Tuesday, August 2, 2022 11:27 AM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Cc: Michael Turi <MTuri@ppsl.org>
Subject: RE: Meeting next week

Great, thanks. I will send a summary of the client cases we sent earlier and the key issues we want to discuss by the end of this week if that works for you.

From: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Sent: Tuesday, August 2, 2022 10:32 AM
To: Deanne Loonin <DLoonin@ppsl.org>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Cc: Michael Turi <MTuri@ppsl.org>
Subject: RE: Meeting next week

Perfect. I'll send an invite now. If possible, please send us a status update on all of the cases we'll be discussing. Looking forward to it. Thanks, and talk soon!
Andrew

From: Deanne Loonin <DLoonin@ppsl.org>
Sent: Tuesday, August 2, 2022 10:26 AM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Cc: Michael Turi <MTuri@ppsl.org>
Subject: Meeting next week

Thanks again Andrew for calling yesterday. Sorry I missed your call. We are available next Monday 8/8 at 3:30 if that still works. Please let us know. And once it's scheduled, please let me know if you need additional information about the borrower information we previously sent. Thanks again.

From: Vitez, Kaitlyn
Subject: RE: Fresh Start update stakeholder call
To: Williams, Rich; Bryant, Michael; Tyrrell, Pete; Wiggins, Hunter; Campbell, Patrick; Piccolo, Marc
Cc: elyse@ourfinancialsecurity.org; emily@ourfinancialsecurity.org; cody@studentdebtcrisis.org; natalia@studentdebtcrisis.org; ashafroth@nclc.org; ataylor@nclc.org; ktaylor@nclc.org; jbass@americanprogress.org; bcuster@americanprogress.org; Careyk@newamerica.org; sattelmeyer@newamerica.org; poliff@pewtrusts.org; rfitzgerald@pewtrusts.org; tplunkett@pewtrusts.org; mike@protectborrowers.org; chris@protectborrowers.org; persis@protectborrowers.org; amber@protectborrowers.org; claire@protectborrowers.org; kat@protectborrowers.org; Jaylon.herbin@responsiblelending.org; Bstein@ticas.org; ksouthern@ticas.org; mstreeter@ticas.org; fast@tcf.org; econnor@ppsl.org; kkennedy@ppsl.org; dloonin@ppsl.org; thomas@debtcollective.org; sparky@debtcollective.org; carey@newamerica.org; Ella Azoulay; Justin Draeger
Sent: August 16, 2022 6:20 PM (UTC-04:00)
Attached: Fresh Start Fact Sheet.pdf

Kaitlyn Vitez (she/her)
Higher Education Liaison
Office of Communications and Outreach
U.S. Department of Education
(202) 550-7359

-----Original Appointment-----
From: Vitez, Kaitlyn
Sent: Tuesday, August 16, 2022 1:15 PM
To: Vitez, Kaitlyn; Williams, Rich; Bryant, Michael; Tyrrell, Pete; Wiggins, Hunter; Campbell, Patrick; Piccolo, Marc
Cc: elyse@ourfinancialsecurity.org; emily@ourfinancialsecurity.org; cody@studentdebtcrisis.org; natalia@studentdebtcrisis.org; ashafroth@nclc.org; ataylor@nclc.org; ktaylor@nclc.org; jbass@americanprogress.org; bcuster@americanprogress.org; Careyk@newamerica.org; sattelmeyer@newamerica.org; poliff@pewtrusts.org; rfitzgerald@pewtrusts.org; tplunkett@pewtrusts.org; mike@protectborrowers.org; chris@protectborrowers.org; persis@protectborrowers.org; amber@protectborrowers.org; claire@protectborrowers.org; kat@protectborrowers.org; Jaylon.herbin@responsiblelending.org; Bstein@ticas.org; ksouthern@ticas.org; mstreeter@ticas.org; fast@tcf.org; econnor@ppsl.org; kkennedy@ppsl.org; dloonin@ppsl.org; thomas@debtcollective.org; sparky@debtcollective.org; carey@newamerica.org; Ella Azoulay; Justin Draeger
Subject: Fresh Start update stakeholder call
When: Tuesday, August 16, 2022 6:15 PM-6:45 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting

Meeting ID: (b)(6)
Passcode: (b)(6)
Download Teams | Join on the web

Or call in (audio only)

+1 (b)(6) United States, Washington DC

Phone Conference ID: [redacted]
Find a local number | Reset PIN

Learn More | Meeting options

A Fresh Start for Borrowers with Federal Student Loans in Default

Borrowers with federal student loans in default will be able to reenter current repayment status and have other federal student aid benefits and protections restored that will increase their long-term repayment success.

Background

On April 6, 2022, the U.S. Department of Education (ED) **announced** it would eliminate the negative effects of default for borrowers with defaulted federal student loans. This will enable approximately 7.5 million borrowers with defaulted federal student loans to return to repayment without any past due balance, just like every other borrower. These borrowers are disproportionately likely to be first-generation college students, have received a Federal Pell Grant, and qualify for low monthly payments under affordable income-driven repayment (IDR) plans.

This initiative, called "Fresh Start," will increase the long-term repayment success of borrowers with defaulted federal student loans, provide substantial benefits to borrowers over the coming months, and last for a period of one year from the end of the payment pause, as described below.

This fact sheet provides an overview about the Fresh Start initiative and steps borrowers must take to make payment arrangements that will keep them out of default long-term. ED intends to post specific guidance for postsecondary schools and guaranty agencies on **the Knowledge Center** on the FSA Partner Connect portal. ED posted preliminary information for borrowers at StudentAid.gov/freshstart and will provide specific communications to borrowers in the coming weeks and months.

Benefits of Fresh Start for Eligible Loans

- **Restores access to repayment options—that could offer monthly payments as low as $0 through IDR plans—and provide opportunities for loan forgiveness**
- **Restores eligibility to receive federal student aid, including Federal Pell Grants and campus-based aid like Federal Work-Study, so borrowers can complete their course of study and increase long-term repayment success**
- **Protects borrowers from involuntary collection efforts and costly collection fees**
- **Restores eligibility for future rehabilitation for borrowers who rehabilitated a defaulted loan during the payment pause**
- **Provides credit reporting features—including removing borrowers from the federal Credit Alert Verification Reporting System (CAIVRS)—making it potentially easier and more affordable for student loan borrowers to afford living expenses**

Loans Eligible for Fresh Start:

- Defaulted William D. Ford Federal Direct Loan (Direct Loan) Program loans
- Defaulted Federal Family Education Loan (FFEL) Program loans (both ED-held and commercial-held)
- Defaulted ED-held Perkins Loans

Commercial-held FFEL Program loans that defaulted after March 13, 2020, through the duration of the payment pause, will be returned to current standing through **ED's action to expand COVID-19 flexibilities**. Because these loans will be returned to current standing, they are not eligible for Fresh Start benefits.

Loans Not Eligible for Fresh Start:

- Defaulted school-held Perkins Loans
- Defaulted Health Education Assistance Loan Program loans
- Student loans remaining with the U.S. Department of Justice (DOJ)
- Direct Loans and commercial-held FFEL Program loans that default after the end of the pause on student loan payments and collections

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Access to Affordable Repayment Plans and Pathways to Forgiveness

Many borrowers with older loans will have access to repayment plans that provide more affordable monthly payments than when they first defaulted on their loans. Starting later this year, borrowers with defaulted federal student loans that are eligible for Fresh Start can find long-term repayment success by taking steps to enroll in affordable **IDR plans**—with monthly payments that could be as low as $0—and potentially qualify for loan forgiveness under IDR and the **Public Service Loan Forgiveness Program**.

Borrowers will receive counseling and communications about the potential benefits of enrolling in IDR plans. To enroll in an IDR plan, borrowers can provide the income information required for enrollment to the default loan servicer—through communications channels outlined below—including attesting to their annual income, family size, marital status, and spouse's annual income if married. This information will be used by the borrowers' new non-default loan servicer, who will enroll them in the IDR plan providing the lowest monthly payment amount once transferred.

Regain Access to Federal Student Aid to Continue College

Borrowers who do not complete their program of study are at a higher risk of default. Under the Fresh Start initiative, borrowers with eligible defaulted federal student loans can now apply for federal student aid to help them complete their credential or degree and increase their long-term repayment success.

Borrowers can apply for federal student grants, loans, or work-study funds through the ***Free Application for Federal Student Aid*** (FAFSA®) form and receive aid even before Fresh Start is fully implemented later this year.

Once new aid is disbursed to borrowers under the Fresh Start initiative, ED will transfer the borrower's eligible defaulted federal student loans to a non-default servicer, which will remove the default status of the loans from borrowers' credit reports. This action allows the borrower to remain eligible to receive federal student aid beyond the Fresh Start period.

No Collections Activity

For one year after student loan payments resume, borrowers with Fresh Start-eligible defaulted federal student loans will not be subject to any collection efforts, including

involuntary collection tools like wage garnishment and offset of certain government payments (such as income tax refunds and Social Security benefits). During the initiative, ED does not charge collection costs and will not make any new referrals to the DOJ for litigation to recover defaulted debt. Simply put, eligible borrowers will have at least one year to make payment arrangements before defaulting on their debts and/or being subject to further collections efforts like most other borrowers eligible for the payment pause.

Restored Eligibility for Loan Rehabilitation
Typically, borrowers who rehabilitate a defaulted federal student loan and default on that loan again cannot rehabilitate it a second time. To ensure that borrowers who could have taken advantage of Fresh Start—but rehabilitated instead—are not harmed, borrowers who rehabilitated their loan during the payment pause will be able to rehabilitate again if they re-default.

Credit Reporting Features and Protections
Due to the *Fair Credit Reporting Act*, loans that have been delinquent for more than seven years generally do not appear on credit reports produced by credit reporting agencies. To ensure the maximum opportunity for borrowers with eligible defaulted federal student loans to get a fresh start, ED will

- delete reporting about loans that have been delinquent for more than seven years, even if the borrower enrolls in a repayment plan through the Fresh Start initiative;
- report all other defaulted loans to credit reporting agencies as "current" and not in a collection status; and
- use a loan's original date of delinquency if borrowers become delinquent or go into default again after this Fresh Start opportunity, which will not reset the seven-year timeline for a borrower's credit report.

Currently, borrowers with defaulted loans are reported to CAIVRS. Lenders, particularly those originating government-backed loans, deny loan applicants if they are flagged in CAIVRS. As of July 10, 2022, ED removed default notations in CAIVRS for borrowers with eligible defaulted federal student loans.

Negative credit reporting information can be a disqualifying factor for some federal employment. Additionally, consumers with negative credit reporting frequently pay more when renting and using insurance products. ED's actions under the Fresh Start initiative will likely help reduce barriers to employment and keep more money in many borrowers' pockets.

Steps Borrowers Must Take to Make Payment Arrangements
Under Fresh Start, all borrowers with eligible defaulted federal student loans will receive important benefits available to borrowers in good standing for the duration of the initiative. Most borrowers with Fresh Start-eligible loans must make long-term payment arrangements with ED or their guaranty agency. Similar to all borrowers when payments resume, borrowers who do not make payment arrangements during the Fresh Start initiative will again be subject to default collections one year after the payment pause ends.

Any borrower with eligible defaulted federal student loans can make payment arrangements during the initiative by visiting **myeddebt.ed.gov**, contacting their loan holder by phone or in writing, or calling the Default Resolution Group at 1-800-621-3115.

Borrowers who make payment arrangements will be transferred to a non-default loan servicer. When borrowers' eligible defaulted federal student loans are transferred to a non-default servicer, ED will remove the default status of the loans from borrowers' credit reports. Borrowers will have one year from the end of the student loan payment pause to make payment arrangements or notify their loan holder that they would like to transfer to a non-

default servicer. Similar to all borrowers when payments resume, borrowers who do not take advantage of this option or pay off their federal student loans during the Fresh Start initiative period will again be subject to default collections one year after the pause ends. In addition, borrowers will lose eligibility for federal student aid, and ED and guaranty agencies will resume reporting their loans as being in collections to credit reporting agencies. ED will closely monitor the repayment performance of borrowers with previously defaulted loans, including enrollment rates into IDR plans that can best support their long-term success.

Illustrative Scenarios

• Jane has a defaulted **ED-held** student loan that's been delinquent for **less than** seven years and wants to return to school to complete a degree. Jane applies for additional federal student aid. When Jane receives additional federal student aid, Jane's loan will be automatically transferred to a non-default servicer and receive an in-school deferment if Jane is enrolled at least half-time. ED will ask credit reporting agencies to delete the defaulted loan from the borrower's credit report, and ED will continue reporting the loan as current on credit reports.	• Jane has a defaulted **ED-held** student loan that's been delinquent for **more than** seven years. Since the defaulted tradeline has been delinquent for more than seven years, it no longer appears on Jane's credit report for most inquiries. ED will ask credit reporting agencies to delete the loan tradeline while Jane remains with the default servicer. Additionally, if Jane makes payment arrangements and transfers to a non-default servicer during Fresh Start, ED will still not report the loan to credit reporting agencies while Jane's loan is with the non-default servicer, or if Jane defaults once more on the same loan.
• Jane has a defaulted **ED-held** student loan that's been delinquent for **less than** seven years. ED will report the loan to credit reporting agencies as current. If Jane desires to transfer to a non-default servicer, ED will ask credit reporting agencies to delete the defaulted loan from Jane's credit report, and ED will continue reporting the loan as current on credit reports. If Jane does not transfer to a non-default servicer within one year of the payment pause ending and Jane redefaults, the loan will be reported as in collections on credit reports—with Jane's original date of delinquency—which will not reset the seven-year timeline on Jane's credit report.	• Jane has a defaulted **commercial-held** FFEL Program loan that's been delinquent for **more than** seven years, which no longer appears on Jane's credit reports for most inquiries. The guaranty agency will ask credit reporting agencies to delete the loan from credit reports while Jane's loan is with the guaranty agency. Additionally, if Jane makes payment arrangements and transfers to a non-default servicer during Fresh Start, ED will still not report the loan to credit reporting agencies while Jane's loan is with the non-default servicer, or if Jane defaults once more on the same loan.
• Jane has a defaulted **commercial-held** FFEL Program loan that's been delinquent for **less than** seven years and defaulted **before March 2020**. The guaranty agency will report the loan to credit reporting agencies as current on credit reports. If Jane transfers to a non-default servicer, the guaranty agency will ask credit reporting agencies to delete the defaulted loan from Jane's credit report and transfer the loan to ED. Then, ED will transfer Jane's account to a non-default loan servicer. Jane's new loan servicer will continue reporting the loan as current on credit reports. If Jane does not transfer to a non-default servicer within one year of the payment pause ending and Jane redefaults, the loan will be reported as in collections on credit reports—with Jane's original date of delinquency—which will not reset the seven-year timeline on Jane's credit report.	• Jane has a defaulted **commercial-held** FFEL Program loan that went into default **after March 2020**, but before the end of the payment pause. Jane's loan is covered by ED's actions to protect borrowers with commercial-held FFEL Program loans, not the Fresh Start initiative. The guaranty agency will ask credit reporting agencies to delete the tradeline from credit reports. ED will transfer Jane's account to a non-default loan servicer. Jane's new loan servicer will continue reporting the loan as current on credit reports. If Jane redefaults, the loan will be reported as in collections on credit reports. ED will report the loan to credit reporting agencies with Jane's new date of delinquency, which will reset the seven-year timeline on Jane's credit report.

Outreach to Borrowers About Fresh Start

ED is committed to ensuring that as many borrowers as possible know about and benefit from the Fresh Start initiative. ED will conduct extensive, proactive outreach to borrowers via email, postal mail, and social media. Information for borrowers also will be posted on **StudentAid.gov**.

Additional Efforts to Reduce Defaults in the Loan Program

In addition to Fresh Start, ED has taken steps to help every student loan borrower successfully manage their payments and avoid possible default so these borrowers will return to a more flexible repayment system than when they first defaulted. This includes improving student loan servicing, strengthening IDR plans, and discharging debts of borrowers who were defrauded by their college or are eligible for other forms of loan forgiveness. Additionally, ED is taking action to support and protect students and taxpayers from poor-performing programs. ED actions include reestablishing the Federal Student Aid Enforcement Office, coordinating with state and federal partners to uphold civil law and promote borrower protection, and holding investors of proprietary colleges accountable. Collectively, these initiatives will reduce defaults in the federal student loan programs.

Aug. 16, 2022

From: Robyn Smith
Subject: Re: Cancellation and Borrower Defense/False Certification Discharges
To: Deanne Loonin
Cc: Latreille, Bonnie; Deanne Loonin; Campbell, Patrick; Bronstein, Andrew; Kyra Taylor; Abby Shafroth; Adam S. Minsky; Persis Yu; Michael Turi; Cara McGraw; Tessitore, Lisa
Sent: August 29, 2022 2:33 PM (UTC-04:00)

When is the stakeholder meeting? I don't think all of us have been invited to it - I have not received any invitation.

Thanks!

Robyn

On Aug 29, 2022, at 11:26 AM, Deanne Loonin <DLoonin@ppsl.org> wrote:

That makes sense, thanks Bonnie.

From: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Sent: Monday, August 29, 2022 1:59 PM
To: Deanne Loonin <[redacted]>; Campbell, Patrick <Patrick.Campbell@ed.gov>; Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Kyra Taylor <ktaylor@nclc.org>; Robyn Smith <rsmith@nclc.org>; Abby Shafroth <ashafroth@nclc.org>; Adam S. Minsky <asminsky@minsky-law.com>; Persis Yu <persis@protectborrowers.org>; Michael Turi <MTuri@ppsl.org>; Cara McGraw <cmcgraw@lafla.org>; Tessitore, Lisa <Lisa.Tessitore@ed.gov>; Deanne Loonin <DLoonin@ppsl.org>
Subject: RE: Cancellation and Borrower Defense/False Certification Discharges

Hi folks,

We have a stakeholder meeting set up for next week. I'd like to propose we discuss this more during that call once we have all the right people in the room, and if we need a second, smaller session, we can schedule it after.

Thanks!

Bonnie

From: Deanne Loonin <[redacted]>
Sent: Monday, August 29, 2022 1:53 PM
To: Campbell, Patrick <Patrick.Campbell@ed.gov>
Cc: Kyra Taylor <ktaylor@nclc.org>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Robyn Smith <rsmith@nclc.org>; Abby Shafroth <ashafroth@nclc.org>; Adam S. Minsky <asminsky@minsky-law.com>; Persis Yu <persis@protectborrowers.org>; Michael Turi <mturi@ppsl.org>; Cara McGraw <cmcgraw@lafla.org>; Tessitore, Lisa <Lisa.Tessitore@ed.gov>; dloonin@ppsl.org
Subject: Re: Cancellation and Borrower Defense/False Certification Discharges

Thanks for the prompt response. We all echo Krya's excitement about the announcement.

The issue Kyra raised has been a primary concern because so many of our clients are eligible for school related discharges through ongoing or settled court cases or through the separate ED announcements (Corinthian, ITT etc..). Some have pending false cert. of closed school discharge applications.

As you know, the timing of these serial discharges is critical particularly with the January 1, 2023 deadline. We want to ensure (as Kyra mentioned) that borrowers are able to maximize the amount discharged. Also, in many cases, the borrowers will be eligible for broader relief (generally refunds) if their loans are discharged through the school-related discharge process. To add more layers, some borrowers with remaining balances should also be eligible for IDR adjustments. In addition, some have a combination of commercial FFEL loans and ED held loans. Many of these borrowers are reluctant to consolidate their commercial FFEL loans, concerned that they will lose their rights to the more comprehensive separate discharges. We can give you some current examples if that would be helpful and I'm sure others will emerge over time.

Again, we would like to meet, even if just briefly, to discuss these concerns. We have the same goal as the Department of ensuring that the cancellation implementation is fair and efficient. Thanks so much.

(I am adding my PPSL email so that it is clear I am contacting you in that capacity.).

On Mon, Aug 29, 2022 at 10:28 AM Campbell, Patrick <Patrick.Campbell@ed.gov> wrote:

> +Lisa
>
> Good morning Kyra.
>
> This is a great question and thankfully one the team working on debt cancellation has been paying close attention to.
>
> We are still finalizing the change request to the servicers, but at a high level... if a borrower is eligible for another discharge or forgiveness those loans will be skipped when applying the debt cancellation waterfall.
>
> If the loan is eligible for forgiveness or discharge after the debt cancellation is applied (e.g., borrower defense) the servicer will back off the debt cancellation and apply the discharge/forgiveness and the debt cancellation will be applied to other loans.
>
> Once we have finalized requirements that explicitly talk about how this will work... we will share.
>
> Hope this helps,
>
> **Patrick Campbell**
> Executive Director
> Vendor Oversight and Program Accountability Directorate (VOPA)
> Student Experience and Aid Delivery (SEAD)
> Federal Student Aid (FSA)
> US Department of Education
> Mobile: (b)(6) [redacted]
>
> <image001.png>
>
> ---
>
> **From:** Kyra Taylor <ktaylor@nclc.org>
> **Sent:** Monday, August 29, 2022 9:58 AM
> **To:** Campbell, Patrick <Patrick.Campbell@ed.gov>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
> **Cc:** Robyn Smith <rsmith@nclc.org>; cc: Deanne Loonin <(b)(6) [redacted]>; Abby Shafroth <ashafroth@nclc.org>; Adam S. Minsky <asminsky@minsky-law.com>; Persis Yu <persis@protectborrowers.org>; Michael Turi <mturi@ppsl.org>; Cara McGraw <cmcgraw@lafla.org>

Subject: Cancellation and Borrower Defense/False Certification Discharges

Hi Patrick and Bonnie--

We are so excited about the cancellation announcement!! I cannot begin to tell you how relieved clients are that they will not need to repay debts smaller than $10,000 and $20,000-- it is truly life changing. I hope you both got a chance to celebrate a little this weekend!

We were wondering how cancellation will affect borrowers who have submitted applications (or are included within group discharges) for other forms of administrative relief. Specifically, we were wondering about the ordering of actions--we were worried that cancellation could affect borrowers' eligibility for the heightened relief they might be eligible for via other forms of administrative discharges like borrower defense, false certification discharge, or closed school discharge. Can you provide some insight into whether this will be an issue? We'd be happy to schedule a time to meet with you to discuss if that would be helpful.

Thanks,

Kyra

--

Kyra Taylor (she/her)
Staff Attorney
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
617.542.8010 | www.nclc.org

--

Deanne Loonin
Law Office of Deanne Loonin, LLC
21 Mohawk Trail
PMB 263
Greenfield, MA 01301-3252

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From: Vitez, Kaitlyn
Subject: RE: stakeholder briefing on IDR
To: Miller, Benjamin; Hurley, Jack; Latreille, Bonnie; Harrington, Ashley; Kvaal, James
Cc: rlau@nea.org; econnor@ppsl.org; mvoight@ihep.org; shireman@tcf.org; sharley@citizen.org; bantunez@aft.org; skahn@rooseveltinstitute.org; rgarza@unidosus.org; mchingos@urban.org; (b)(6) ; dhinojosa@lawyerscommittee.org; king@civilrights.org; Mpolk@nul.org; elyse@ourfinancialsecurity.org; Jaylon.Herbin@responsiblelending.org; jbass@americanprogress.org; (b)(6) ashafroth@nclc.org; carey@newamerica.org; justin.hauschild@studentveterans.org; wdelpilar@edtrust.org; bstein@ticas.org; nsiegel@thirdway.org; kmiller@bipartisanpolicy.org; carrie@vetsedsuccess.org; kristin.mcguire@younginvincibles.org; aaron@defendstudents.org; thomas@debtcollective.org; rfitzgerald@pewtrusts.org; mike@protectborrowers.org; natalia@studentdebtcrisis.org; (b)(6) dsantiago@EdExcelencia.org; jpeller@higherlearningadvocates.org; tang@higherlearningadvocates.org; bryce.mckibben@temple.edu; lesquivel@hispanicfederation.org; chuck.bell@consumer.org; lferrin@publiclawcenter.org; jtyler@lsnyc.org; jjaramillo@heraca.org; jranucci@nylag.org; nzinner@baylegal.org; cmcgraw@lafla.org; jay@vplc.org; kkeefe@empirejustice.org; Ktjapkes@lawestmi.org; md@tzedekdc.org; sphillips@georgiawatch.org; Joshua.Rovenger@lasclev.org; karen@codyhopkinslaw.com; eboltz@lojto.com; asminsky@minsky-law.com; crodriguez@cssny.org; max@risefree.org; Wcole@naacpnet.org; Julie.Ajinkya@apiasf.org; robbie.bellamy@seiu.org; BLevin@afscme.org; kpineda@lclaa.org; Bethany.little@educationcouncil.com; Dakota Hall; Burritt, Jeffrey [NEA]; Morgan B. Polk; Rovenger, Joshua; will@vetsedsuccess.org; della@vetsedsuccess.org; Jorge Tormes; Wendy Wong; moultrie@tcf.org; Jordan Daniels; McCormick, Ellen; Kayla Elliott; Nicole Hochsprung, AFT Higher Education; Lhewa, Tashi; sean.miller@younginvincibles.org; David Hinojosa; Ariel Levinson-Waldman; Erik Goodman; Michele Streeter; Kyle Southern; Jessica Thompson
Sent: August 30, 2022 2:57 PM (UTC-04:00)

Hi all,

Due to scheduling conflicts, I am going to pull down this call scheduled for tomorrow. We hope to reschedule sometime next week when the IDR NPRM is closer to posting in the Federal Register. I've copied out all the staff that the event has been forwarded to, and I will make sure they are included in the forthcoming calendar invite. Thank you for your understanding.

Best,

Kaitlyn Vitez (she/her)
Higher Education Liaison
Office of Communications and Outreach
U.S. Department of Education
(202) 550-7359

-----Original Appointment-----
From: Vitez, Kaitlyn
Sent: Friday, August 26, 2022 1:31 PM
To: Vitez, Kaitlyn; Miller, Benjamin; Hurley, Jack; Latreille, Bonnie; Harrington, Ashley; Kvaal, James
Cc: 'rlau@nea.org'; 'econnor@ppsl.org'; 'mvoight@ihep.org'; 'shireman@tcf.org'; 'sharley@citizen.org'; 'bantunez@aft.org'; 'skahn@rooseveltinstitute.org'; 'rgarza@unidosus.org'; 'mchingos@urban.org'; (b)(6) ; 'dhinojosa@lawyerscommittee.org'; 'king@civilrights.org'; 'Mpolk@nul.org'; 'elyse@ourfinancialsecurity.org'; 'Jaylon.Herbin@responsiblelending.org'; 'jbass@americanprogress.org'; (b)(6) ; 'ashafroth@nclc.org'; 'carey@newamerica.org'; 'justin.hauschild@studentveterans.org'; 'wdelpilar@edtrust.org'; 'bstein@ticas.org'; 'nsiegel@thirdway.org'; 'kmiller@bipartisanpolicy.org'; 'carrie@vetsedsuccess.org'; 'kristin.mcguire@younginvincibles.org'; 'aaron@defendstudents.org'; 'thomas@debtcollective.org'; 'rfitzgerald@pewtrusts.org'; 'mike@protectborrowers.org'; 'natalia@studentdebtcrisis.org'; (b)(6) ; 'dsantiago@EdExcelencia.org'; 'jpeller@higherlearningadvocates.org'; 'tang@higherlearningadvocates.org'; 'bryce.mckibben@temple.edu'; 'lesquivel@hispanicfederation.org'; 'chuck.bell@consumer.org'; 'lferrin@publiclawcenter.org'; 'jtyler@lsnyc.org'; 'jjaramillo@heraca.org'; 'jranucci@nylag.org'; 'nzinner@baylegal.org'; 'cmcgraw@lafla.org'; 'jay@vplc.org';

'kkeefe@empirejustice.org'; 'Ktjapkes@lawestmi.org'; 'md@tzedekdc.org'; 'sphillips@georgiawatch.org'; 'Joshua.Rovenger@lasclev.org'; 'karen@codyhopkinslaw.com'; 'eboltz@lojto.com'; 'asminsky@minsky-law.com'; 'crodriguez@cssny.org'; 'max@risefree.org'; 'Wcole@naacpnet.org'; 'Julie.Ajinkya@apiasf.org'; 'robbie.bellamy@seiu.org'; 'BLevin@afscme.org'; 'kpineda@lclaa.org'; 'Bethany.little@educationcouncil.com'; 'Dakota Hall'; Burritt, Jeffrey [NEA]; Morgan B. Polk; Rovenger, Joshua; will@vetsedsuccess.org; della@vetsedsuccess.org; Jorge Tormes; Wendy Wong; moultrie@tcf.org; Jordan Daniels; McCormick, Ellen; Kayla Elliott; Nicole Hochsprung, AFT Higher Education; Lhewa, Tashi; sean.miller@younginvincibles.org; David Hinojosa; Ariel Levinson-Waldman; Erik Goodman; Michele Streeter; Kyle Southern; Jessica Thompson
Subject: stakeholder briefing on IDR
When: Wednesday, August 31, 2022 12:00 PM-12:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Microsoft Teams meeting

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From: Michael Turi
Subject: RE: Inquiry re (b)(6) Borrower Defense Case
To: Latreille, Bonnie
Cc: Deanne Loonin
Sent: September 15, 2022 2:41 PM (UTC-04:00)

Dear Bonnie,

I was wondering if your office has any update on (b)(6) pending 100% discharge. Thank you very much for your help on this matter.

Best,

Michael N. Turi
Staff Attorney
Project on Predatory Student Lending
769 Centre Street
Jamaica Plain, MA 02130
(617) 322-2495
www.ppsl.org

From: Turi, Michael N.
Sent: Thursday, July 7, 2022 1:03 PM
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Cc: Loonin, Deanne <dloonin@law.harvard.edu>
Subject: Inquiry re (b)(6) Borrower Defense Case

Dear Bonnie,

Attached please find a letter from us concerning the borrower defense discharge of one of our clients, (b)(6) Included is a signed form authorizing us to speak with you on her behalf.

Thank you for your attention to this matter.

Best,

Michael N. Turi
Staff Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

(617) 390-2739
www.predatorystudentlending.org

From: Deanne Loonin
Subject: RE: Update from yesterday re: [redacted]
To: Bronstein, Andrew; Latreille, Bonnie
Sent: September 16, 2022 11:40 AM (UTC-04:00)

Sorry, one last thing on this for now. Can you also confirm the status of refunds? Is there a difference if the borrower consolidated a commercial Corinthian FFEL loan in terms of refunds vs. cases where ED is discharging the commercial FFEL loan without consolidation? We also intend to clarify these issues and ask more questions in future meetings with the Department, thanks.

From: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Sent: Friday, September 16, 2022 11:03 AM
To: Deanne Loonin <DLoonin@ppsl.org>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Subject: RE: Update from yesterday re: [redacted]

Her consolidation went through on 8/12/22.

From: Deanne Loonin <DLoonin@ppsl.org>
Sent: Friday, September 16, 2022 10:51 AM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Subject: RE: Update from yesterday re: [redacted]

Thanks Andrew. To be clear, will it affect her case that she in the process of consolidating? I'm not sure if the consolidation may have already occurred.

Some borrowers as you know were getting relief faster by consolidating. Our understanding is that this is not necessary in the case of Corinthian group discharge borrowers, but I also want to be sure that those that do consolidate will have their discharges processed as well. Thanks so much.

From: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Sent: Friday, September 16, 2022 10:34 AM
To: Deanne Loonin <DLoonin@ppsl.org>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Subject: RE: Update from yesterday re: [redacted]

Hi Deanne,

Thank you for following up. [redacted] case is being processed under the Corinthian group discharge. We've sent her case to the servicer. She should receive a discharge in the next few months.

Thanks,
Andrew

From: Deanne Loonin <DLoonin@ppsl.org>
Sent: Thursday, September 1, 2022 3:41 PM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Subject: RE: Update from yesterday re: [redacted]

I know there is a lot going on and hope you are both ok.

I am checking in about [redacted] She sent me her Navient account statement this week showing that her loans have still not been discharged. I can forward that if it would be helpful. Please let me know when you can the status of her discharge. Thanks again.

From: Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Sent: Tuesday, August 9, 2022 6:19 PM
To: Deanne Loonin <DLoonin@ppsl.org>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Subject: RE: Update from yesterday re: [redacted]

Hi Deanne,

It was a pleasure chatting with you yesterday. Thank you for the information regarding [redacted] I will pass it along and let you know when we have an update. Separately, I *just* (tonight at 5:27pm et) heard from our post-processing team that the expedited approval request for [redacted] is now complete and her discharge has been processed!

Best,
Andrew

Andrew Bronstein
Ombudsman Office | Federal Student Aid | U.S. Department of Education

---

From: Deanne Loonin <DLoonin@ppsl.org>
Sent: Tuesday, August 9, 2022 2:36 PM
To: Bronstein, Andrew <Andrew.Bronstein@ed.gov>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Subject: Update from yesterday re: [redacted]

Thanks again for meeting with us yesterday. I am working on following up on the broader questions and the specific questions about the individual clients.

For now, re: individual clients, I wanted to let you know that [redacted] just confirmed that she already consolidated her loans. You said that you would review her situation post-consolidation to ensure that the discharge is processed. It appears that she does have additional loans that she took out since Everest. I have not seen the consolidation application, but I believe that all of the loans are included. In any case, it is the prior Everest FFEL loans that should be discharged per the Pratt/automatic Corinthian authority. I also informed [redacted] that according to the Department, because she had commercial FFEL loans from Everest, she will not be entitled to a refund.

I will send additional updates as soon as possible. Thank you again for your assistance. Please confirm at your earliest convenience and let me know if you need additional information about [redacted]

From: Deanne Loonin
Subject: FW: Status of Group Closed School Discharge Application and New Contact Information
To: Miller, Benjamin; Habash, Tariq; Latreille, Bonnie; Sullivan, Wayne
Cc: 'rsmith@lafla.org'; Jessica Ranucci
Sent: October 19, 2022 3:33 PM (UTC-04:00)
Attached: GroupClSchool2022FINALVERSION.pdf

I am writing to request an update on the status of this application that PPSL, NYLAG, and LAFLA submitted in March 2022. We still have not received a response. As previously noted, many of the individuals in this cohort are FFEL borrowers that are likely excluded from the recent debt relief announcement.

Thank you for checking into this at your earliest convenience.

From: Deanne Loonin
Sent: Monday, September 12, 2022 4:13 PM
To: Benjamin.miller@ed.gov; Tariq.Habash@ed.gov; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Ashley.Harrington@ed.gov; Ian.Foss@ed.gov
Cc: Wayne.Sullivan@ed.gov; James.Kvaal@ed.gov; Richard.Cordray@ed.gov; 'rsmith@lafla.org' <RSmith@lafla.org>; JRanucci@nylag.org; Eileen Connor <econnor@ppsl.org>
Subject: FW: Status of Group Closed School Discharge Application and New Contact Information

Thank you again for your recent student loan relief actions and announcements.

I am writing to request a status update of the group closed school discharge request that PPSL, NYLAG, and LAFLA submitted in March 2022. We have not received a response to date. Since all of these borrowers had FFEL loans, our understanding is that only those who consolidated into Direct Loans would potentially be eligible for the recently announced cancellation. We do not know the precise numbers, but we believe that there will be many who have not consolidated or who are possibly not eligible to consolidate. Further, even those who consolidated may not be eligible for full relief since these loans are among the oldest federal student loans still outstanding and the balances have ballooned in many cases over the years.

We look forward to hearing back from you soon.

From: Loonin, Deanne <dloonin@law.harvard.edu>
Sent: Wednesday, July 27, 2022 3:56 PM
To: Miller, Benjamin <Benjamin.Miller@ed.gov>; Habash, Tariq <Tariq.Habash@ed.gov>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Harrington, Ashley <Ashley.Harrington@ed.gov>; Foss, Ian <Ian.Foss@ed.gov>
Cc: Kvaal, James <James.Kvaal@ed.gov>; Cordray, Richard <Richard.Cordray@ed.gov>; Deanne Loonin <DLoonin@ppsl.org>; 'rsmith@lafla.org' <rsmith@lafla.org>; Eileen Connor <econnor@ppsl.org>
Subject: Status of Group Closed School Discharge Application and New Contact Information

I am writing to check on the status of the group closed school discharge application that PPSL, NYLAG, and LAFLA submitted in March. I have attached another copy and look forward to hearing back from you soon.

I also wanted to send my new contact information.

As of **August 1, 2022,** the Project on Predatory Student Lending will officially separate from the Legal Services Center at Harvard Law School and operate as an independent nonprofit organization. The Project has grown significantly since it started in 2012 as a legal clinic at HLS and we all feel strongly that now is the time to spread our wings as an independent organization — allowing us to continue to grow and evolve in pursuit of our mission.

For now, not much will be changing except for dropping "Harvard" from our name — we'll still be The Project on Predatory

Student Lending (PPSL) and all our cases, clients and staff will come with us.

The one thing that will change right away is our emails, so I want to make sure you have our updated addresses, dloonin@ppsl.org; econnor@ppsl.org (copied on this email). **As of August 1, our Harvard emails will no longer be active,** so please update your contacts and use the new PPSL address going forward.

Again, we look forward to hearing back soon about the closed school discharge application.

PLEASE NOTE MY NEW EMAIL ADDRESS!

Please update your contacts with my new email: dloonin@ppsl.org
Exciting news! As of August 1, 2022, The Project on Predatory Student Lending will operate as an independent organization, fully separate from the Legal Services Center at Harvard Law School. That means our Harvard emails will no longer be active. Please be sure to update your address book with my new email and our new address, 769 Centre Street, Suite 166, Jamaica Plain, MA 02130.

LEGAL AID FOUNDATION OF LOS ANGELES
Justice • Equity • Hope

NYLAG
New York Legal Assistance Group

WILMERHALE LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL

March 24, 2022

Secretary Miguel Cardona
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Dear Secretary Cardona:

We are submitting this group closed school discharge application on behalf of all individuals (and parents with PLUS loans if applicable) who attended a for-profit school listed in the Department's official closed school search file with a closure date prior to January 1, 1994.

By acting quickly and granting this group discharge, the Department will provide long-delayed relief for the individuals in this cohort who have suffered years of collection harassment, credit damage, occupational license removals, benefits seizures, and other punitive measures. Many have made payments far exceeding the original loan amounts, only to see their balances balloon due to interest and fees. Taxpayers have been hit hard as well, paying exorbitant fees to profit-hungry private collectors attempting to collect largely uncollectable debts.

The Department should establish a rebuttable presumption that all individuals in this cohort qualify for closed school discharges and then automatically approve such relief. [1]

Grounds for Establishing Eligibility Presumption

1. Student Loan Repayment Struggles and Non-Completion

The closed school discharge statute mandates loan discharges for borrowers who were unable to complete their programs due to school closures.[2] The Department should presume that the borrowers in this cohort meet this condition.

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[1] The National Consumer Law Center's on-line treatise contains a list of prior group discharges and relevant documents. See National Consumer Law Center, Student Loan Law § 10.4.2.7 (6th ed. 2019 and Supp.). In addition, the Department is proposing to revive the automatic closed school discharge including for FFEL loans at 34 C.F.R. § 682.402(d)(8) and Perkins loans at 34 C.F.R. § 674.33(g)(3). Some of the borrowers in this group discharge cohort should qualify for this automatic relief. However, the proposed regulations are not yet final and will take time to go into effect in any case.

[2] 20 U.S.C. § 1087(c).

These individuals have struggled to repay their loans for twenty-five years or more. Many are currently in default on their loans or have experienced long periods of default and delinquency. The existence of outstanding balances after such a long period indicates that most if not all of these individuals did not benefit financially from their educational experiences. The Department should go one reasonable step further and presume that most of these borrowers have been unable to repay their loans because they did not complete their programs.

There is a strong correlation between student loan repayment struggles and non-completion. Further, numerous studies demonstrate that non-completers are the least likely to experience even minimal financial success after leaving school.

There is overwhelming evidence that non-completion is one of the most important predictors of loan delinquency and default.[3] For example, non-completers represented about 60% of all borrowers in default in 2015.[4] As summarized by the provost at Washington University, "If you don't finish, you're better off not going at all."[5]

2. Predatory School/Non-Completion Link

There are about 2933 domestic schools on the closed school list with closure dates prior to January 1, 1994. Although we do not know the precise number, a large percentage of these schools were for-profit.

The closed school list is rife with notorious predatory actors including many schools that closed after losing federal loan eligibility due to exorbitantly high default rates. An Associated Press article from 1992 describes the 121 schools that lost guaranteed student loan eligibility due to default rates of 35% or more.[6] This included a Wilfred Beauty Academy branch in New York with a 49.5% default rate and in Philadelphia with a 54.6% default rate.[7] Wilfred was one of a number of predatory schools that closed during this period that also violated admissions regulations, including ability-to-benefit testing requirements.[8]

The strong correlation between for-profit school enrollment and non-completion is another reason why the Department should presume non-completion for this cohort. Completion rates are

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[3] *See, e.g.*, Michael Itzkowitz, Want More Students to Pay Down Their Loans? Help Them Graduate, Third Way (Aug. 8, 2018), https://www.thirdway.org/report/want-more-students-to-pay-down-their-loans-help-them-graduate.
[4] Ben Miller, Center for American Progress, "The Relationship Between Student Debt and College Completion" (June 26, 2015), https://www.americanprogress.org/article/the-relationship-between-student-debt-and-college-completion/.
[5] Christina Cauterucci, "More Single Mothers Are Going to College than Ever. But Very Few will Graduate", Slate (Sept. 22, 2017), https://slate.com/human-interest/2017/09/for-profit-schools-and-low-graduation-rates-plague-a-rising-population-of-single-student-mothers.html.
[6] Associated Press, "List of 121 Schools that Lost Guaranteed Student Loan Eligibility" (July 31, 1992), attached at App. A.
[7] *Id.*
[8] A 2013 New York Times article profiled some of the former Wilfred students and described how the school closed after findings that it falsified applications for federal student loans and misused federal loan money. Emily S. Rueb, Beauty School Students Left with Broken Promises and Large Debts, NYT, (July 28, 2013), https://www.nytimes.com/2013/07/29/nyregion/promised-better-life-by-beauty-schools-graduates-have-little-training-and-lasting-debt.html.

particularly low at most for-profit schools. For example, in 2019, the overall bachelor's degree completion rate was 62 percent at public institutions, 68 percent at private nonprofit institutions, and 26 percent at private for-profit institutions.[9]

3. Racial Justice/Non-Completion Link

Granting relief to this cohort would also help demonstrate the Department's commitment to racial justice.

Student loan debt burdens disproportionately impact people of color. For example, according to a 2020 Brookings report, "more than two-thirds of Black students who attended a for-profit college and left without graduating defaulted on their student loans within 12 years, raising important concerns about racial equity in higher education." [10]

4. The Department's Operational Failures and Misrepresentations Impeded Relief

The closed school discharge was supposed to be effective at the time of enactment in 1992. Instead, the 1992 enactment marked the beginning of a two-year limbo period until the Department finally issued closed school regulations. According to the complaint in the 1996 case *McComas v. Riley,* "The Secretary stonewalled and dragged his feet for over two years in implementing the provisions, turned away students who had legitimate claims for discharge, and continued income tax refund offsets against people who were entitled to discharge."[11] In a 1993 letter to the Department, legal aid advocates expressed concerns that despite the 1992 effective date, the Department was repeatedly citing the lack of regulations as the reason why requests for individual discharges could not be granted.[12]

In informal guidance, the Department stated that until final regulations were adopted, guaranty agencies should not submit discharge applications for borrowers who were offered teach-outs or who earned credits through transfers to similar programs.[13] Yet there was no definition of the term "teach-out" in this guidance.[14] The Department also created a chilling effect by reminding borrowers and their representatives of the potential for serious consequences if they made false statements when applying for discharges even though the Department issued little or no guidance.[15]

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[9] National Center for Education Statistics (NCES), Fast Facts, https://nces.ed.gov/fastfacts/display.asp?id=40.
[10] Stephanie Riegg Celinni, "The Alarming Rise in For-Profit College Enrollment", Brookings (Nov. 2, 2020), https://www.brookings.edu/blog/brown-center-chalkboard/2020/11/02/the-alarming-rise-in-for-profit-college-enrollment/.
[11] McComas v. Riley et. al, Civ. Action No. 3:96-0275 at 16 (S.D. W. Va. 1996).
[12] Letter from Legal Aid Advocates to Asst. Sec. of Education David A. Longanecker (Oct. 5, 1993), attached at App. B.
[13] U.S. Dept. of Educ., "Discharge of Federal Stafford Loans and Federal Supplemental Loans for Students (SLS) loans for borrowers affected by school closures," 93-L-153, 93-G-230 (April 1993).
[14] The ambiguity was intentional. The Department later explained when promulgating the final regulations that "The Secretary believes that a prescriptive regulatory definition of "teach-out" is unnecessary." 59 Fed. Reg. 22462, 22467 (Apr. 29, 1994).
[15] For example, after the final regulations went into effect in a 1995 letter, the Department's Office of General Counsel stated that "…false statements in the context of closed school discharges…can have grave implications—raising issues of, e.g., perjury, subornation of perjury, and criminal or civil false claims." Letter from Sarah L.

The Department compounded the confusion by failing to keep careful records, including on teach-out programs.[16] From the records that do exist, it appears that few schools prior to 1994 offered teach-outs, further supporting the presumption of closed school eligibility for this cohort.[17]

The final regulations published in April 1994, along with accompanying informal guidance, brought some clarity to the process. This was too late for many borrowers, including many of the borrowers requesting this group relief.

5. Intentional Barriers to Relief

Presumably to help find eligible borrowers, the 1994 final regulations required guaranty agencies to review records and identify all schools that appeared to have closed on or after January 1, 1986 and prior to June 13, 1994, and identify the loans made to potentially eligible borrowers.[18] Given the low levels of borrowers obtaining closed school discharges in the 1990's and beyond, it is unlikely that the guaranty agencies diligently carried out this directive. Failure to reach out to eligible borrowers has unfortunately been common practice at the Department for years.[19] The Department's failure to engage in rigorous outreach and its intentional prioritization of collection over borrower rights has resulted in chronically low discharge program utilization rates.[20]

6. Lack of Alternatives

Already confused by the opaque and inaccessible closed school discharge process, the borrowers in this cohort also lacked access to alternative "borrower defense" or "defense to repayment" ("DTR") rights. This was simply due to the timing of their loans. Although the Department should have been inserting the FTC holder rule language or similar "borrower defense" language

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Wanner, U.S. Dept. of Education Office of the General Counsel, to Daniel Hedges, Appalachian Research Defense Fund, Inc. (Feb. 13, 1995), attached at App. C.

[16] The Government Accountability Office did not include data on borrowers who attended colleges that closed prior to 2014 because Department of Education officials stated that the data on program completion for these borrowers had limitations. The report describes other data limitations including with respect to tracking transfers. Government Accountability Office, # 21-105373, College Closures: Many Impacted Borrowers Struggled Financially Despite Being Eligible for Loan Discharges, 8-9 (Sept. 30, 2021).

[17] For example, in the 1993 guidance that the Department issued during the limbo period, the Department compiled a twenty-five page "partial list" of schools for which no arrangement was made for a teach-out and no teach-out was offered by a third party. U.S. Dept. of Educ., "Discharge of Federal Stafford Loans and Federal Supplemental Loans for Students (SLS) loans for borrowers affected by school closures," Att. A, 93-L-153, 93-G-230 (April 1993).

[18] 34 C.F.R. § 682.402(d)(6)(i)(C) (FFEL).

[19] For example, New York Legal Assistance Group sued the Department in 2014 for refusing to notify former students at Wilfred Beauty Schools that they might be eligible to seek false certification discharges. The case settled in 2017. For more information about the case, see "NYLAG sues Secretary of Education for Failing to Notify Former Wilfred students," https://nylag.org/nylag-sues-secretary-of-education-for-failing-to-notify-former-wilfred-students/#:~:text=NYLAG%20sues%20Secretary%20of%20Education,New%20York%20Legal%20Assistance%20Group, including a copy of the stipulated settlement.

[20] In the 2016 rulemaking, the Department found that nearly half of all eligible borrowers never apply for the closed school discharges to which they are legally entitled. 81 Fed. Reg. at 75, 926, 76, 059 (Nov. 1, 2016). In a 2015 article, Department officials estimated the cost of loan discharges at the predatory school chain Corinthian based on a low 6% discharge program usage rate. Michael Stratford, *Corinthian Closes for Good,* INSIDE HIGHER ED (Apr. 27, 2015), https://www.insidehighered.com/news/2015/04/27/corinthian-ends-operations-remaining-campuses-affecting-16000-students.

in FFEL loans from the outset, the Department only began this practice in 1994.[21] Prior to this time, borrowers had to figure out how to raise school-related claims and defenses without a process or forum to do so and without clear authority in their promissory notes. Few borrowers knew about these rights and those that did rarely had legal assistance resources to help them navigate the system and obtain relief.

The Human Impact

Unlike the Department, we cannot determine the names of all the individuals in this cohort. While each person has a unique and important story to tell, we do know from years of representing individuals in similar situations that they all sought higher education to improve their lives and the lives of their families. They placed their hopes and dreams in educational programs that had the stamp of approval from the government of the United States. The government let them down by failing to regulate these schools and then compounding the pain by failing to properly administer the programs intended to provide relief.

Below are a few individual experiences.[22] A common thread among them is that these individuals did not complete their programs, but were unable to apply for closed school discharges because the process was not in effect at the time. Further, as was the case for so many individuals, even if the discharge program had existed, many did not meet the narrow eligibility requirements because they withdrew before the limited time window for borrowers to qualify for closed school discharges if they left before school closure. The Department eventually extended this time period from 90 to 120 days, not nearly long enough for these borrowers and, more generally, not nearly long enough given that most predatory schools never offered quality instruction or such instruction deteriorated long before the official closure.[23]

Robert Fernandez

Mr. Fernandez, a Latino man, enrolled at the Transwestern Institute in Los Angeles in 1987. He obtained federal student loans, but dropped out after a few months because of abuses at the school. These abuses and legal violations persisted for some time, but the school did not officially close until 1990. By the time Mr. Fernandez sought help from legal aid, his sole source of income was General Relief benefits (about $220 per month). His loan balance by then had ballooned to $22,000.

Tommy Washington

Mr. Washington, an African-American man, obtained $3,300 in federal student loans to enroll in a drafting program at National Technical Schools in August 1988. National Technical Schools were owned and operated by United Education & Software, which was sued by the California

[21] The majority of these borrowers will likely have FFEL since there was no Direct Loan program at this time. There may also be some borrowers with Perkins or other types of loans such as Supplemental Loans for Students. Some may have subsequently consolidated their FFEL or other loans.

[22] Some of the names listed here have been changed for confidentiality purposes. We would be happy to share the names with the Department upon request.

[23] 34 C.F.R. 682.402(d)(1)(i) (FFEL). The Department has generally refused to extend this window in most cases.

Attorney General. At the time of Mr. Washington's enrollment, he was unable to use his writing hand due to a recent injury. He specifically asked the school whether its drafting program was completely computerized, as he was unable to manually draft due to this injury. Although the school assured him that all training would be on computer, Mr. Washington's first class required drafting by hand. He could not participate and therefore dropped out. National Technical Schools closed in December 1989. He has been in and out of student loan default since then and is currently unemployed.

Joe Medford

Mr. Medford is a military veteran who attended American Business Inst., which was owned by Wilfred Education Corp., in 1988. Among other abuses and legal violations, the school misrepresented the quality and qualifications of instructors, failed to provide promised job placement services, and falsely promised that students would have job offers by the time they graduated. Mr. Medford's campus closed at least a year after he attended. He is in default on the loans and has already experienced both tax refund offsets and wage garnishment, presumably more than enough to pay off the original principal and more. Mr. Medford's loan balance has ballooned to over $30,000 from a loan that started at about $5,000.

Alexander Largie

Mr. Largie enrolled at the American Business Institute (ABI) in Queens, New York on or around 1987. He borrowed federal student loans to study in ABI's Automating Bookkeeping program. While in the program, he noticed the curriculum was inadequate and teacher retention was low—he consistently had different instructors for the same courses. Mr. Largie left the school and did not complete his program of study in New York. The school closed in 1989. In the years that followed, he could not afford his loan payments and was struggling to pay for necessary medical expenses. His application for closed school discharge was rejected, presumably because of the narrow time window described above.

Hazel Marlene Stamm

Mrs. Stamm enrolled in Wilfred Academy in New Jersey on or around 1989. She borrowed federal loans to study in Wilfred's Cosmetology program. After starting classes, she requested medical level due to her pregnancy. After she returned to Wilfred, Mrs. Stamm learned the school failed to register her medical leave and her federal loan was registered as "defaulted." She only had three weeks left to complete her program of study when Wilfred closed. In the years that followed, she received threatening collections calls and notices about her defaulted student loans. Mrs. Stamm suffers from health problems and is concerned about her outstanding loan balance of least $9,000.

Former Students of National Business Academy (NBA)

The California guaranty agency ("CSAC") and Department's Office of Inspector General found serious problems at National Business Academy schools including violations of enrollment and

recruitment rules and standards and provision of false information to accreditors.[24] A number of former students sued the school in the early 1990's. One of the plaintiffs, Julio Alfaro, explained in a 1992 article that "…I tried to improve my future, but what I got was creditors on my back harassing me that if I don't pay, they're going to take me to court."[25]

It is past time to end this nightmare for this cohort. We urge the Department to immediately grant these discharges and, in the meantime, place all servicing and collection for these accounts on hold.

Thank you for your consideration. Please contact Deanne Loonin if you have questions or need additional information.

SIGNED

Deanne Loonin
Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston St.
Jamaica Plain, MA 02130
dloonin@law.harvard.edu
(617) 390-2723

Jessica Ranucci
New York Legal Assistance Group
100 Pearl Street, 19th Floor
New York, NY 10004

Robyn Smith
Senior Attorney
Legal Aid Foundation of Los Angeles
5211 E. Washington Blvd., Suite 2-457
Commerce, CA 90047
(213) 640-3906

cc: Richard Cordray, Chief Operating Officer FSA
James Kvaal, Under Secretary of Education
Bonnie Latreille, Student Loan Ombudsman

[24] Tania Soussan, "Educational Default: Vocational Schools Often Cost More, Offer Less to Students", Star-News (May 25, 1992), attached at App. D.
[25] *Id.*

List of Attachments

A: Associated Press, "List of 121 Schools that Lost Guaranteed Student Loan Eligibility

B: Letter from Legal Aid Advocates to Asst. Sec. of Education David A. Longanecker (Oct. 5, 1993)

C: Letter from Sarah L. Wanner, U.S. Dept. of Education Office of the General Counsel, to Daniel Hedges, Appalachian Research Defense Fund, Inc. (Feb. 13, 1995)

D: Tania Soussan, "Educational Default: Vocational Schools Often Cost More, Offer Less to Students", Star-News (May 25, 1992),

From: Latreille, Bonnie
Subject: RE: CRLC Session planning (Student Loan Policy Updates)
To: ataylor@nclc.org; persis@protectborrowers.org; econnor@ppsl.org; ashafroth@nclc.org
Sent: October 21, 2022 12:05 PM (UTC-04:00)

Hi all – I'm on but its saying I'm not being let into the room

-----Original Appointment-----
From: ataylor@nclc.org <ataylor@nclc.org>
Sent: Wednesday, October 12, 2022 1:44 PM
To: ataylor@nclc.org; persis@protectborrowers.org; econnor@ppsl.org; Latreille, Bonnie; ashafroth@nclc.org
Subject: CRLC Session planning (Student Loan Policy Updates)
When: Friday, October 21, 2022 12:00 PM-12:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where:

—

This event has been updated

Changed: attachments

When
Friday Oct 21, 2022 · 12pm – 12:30pm (Eastern Time - New (York

Guests
ataylor@nclc.org - organizer
persis@protectborrowers.org
econnor@ppsl.org
bonnie.j.latreille@ed.gov
ashafroth@nclc.org
View all guest info

Reply for bonnie.j.latreille@ed.gov
Maybe | No | Yes
More options

Join with Google Meet

Meeting link
meet.google.com[redacted]

Join by phone
US) +[redacted]
PIN: [redacted]

More phone numbers

Attachments
...Notes - CRLC Session p

Invitation from Google Calendar

You are receiving this email because you are an attendee on the event. To stop receiving future updates for this event, decline this event.

Forwarding this invitation could allow any recipient to send a response to the organizer, be added to the guest list, invite others regardless of their own invitation status, or modify your RSVP. Learn more

From: Michael Turi
Subject: Student loan inquiry re: [redacted]
To: Latreille, Bonnie; Bronstein, Andrew
Cc: Rebecca Ellis; Deanne Loonin
Sent: October 25, 2022 4:25 PM (UTC-04:00)
Attached: [redacted] signed ED release.pdf, ecorrespondence650123230.pdf, Fw_ Notice of Borrower Defense Discharge Approval.pdf

Dear Bonnie and Andrew,

I hope you are well. Thank you again for your continued assistance with our questions and concerns on borrower defense matters.

We wanted to raise two issues on behalf of one of our clients, [redacted] Her signed release form is attached. [redacted] attended Heald College (a Corinthian school) in Roseville, CA from 2008-2010. She took out about $30,000 in FFEL loans to attend, which she consolidated into two Direct Loans in 2014. Her previous servicer was Nelnet, and her current servicer is Aidvantage. [redacted] applied for borrower defense in May 2015 [redacted]

First, when [redacted] went on the FSA website to check her account earlier this week, she saw that it was showing 9 open and active loans with Nelnet ($46,510), which are the loans that she consolidated back in 2014. Her account is also showing two open and active loans with Aidvantage ($40,208), which are her consolidation loans. [redacted] contacted Nelnet and they told her that she has had open student loans with them since 2008 and they were accruing interest up until 2020 – even though none of these should be open or show a balance because of the 2014 consolidation. The person at Nelnet said there was nothing they could do and [redacted] should call the Department of Ed. But when [redacted] called the Department, they said their system showed her loan servicer to be Aidvantage, not Nelnet (which is correct). So they said there was nothing they could do about Nelnet, but [redacted] could file a complaint with the Department. She has done so now, but [redacted] is understandably concerned about whether she will receive full discharge of all of her Corinthian loans when those loans appear to be double-counted at Nelnet and Aidvantage. Are you able to find out why this double-counting is happening and how to fix it?

The second issue relates to a letter [redacted] received from Aidvantage yesterday. A copy is attached. The letter states: "We service no Direct Loans for you on ED's behalf that are eligible for borrower defense discharge. However, ED instructed us to apply a credit in the amount of $10,066.05 to your account because it took ED an extended period of time to review your claim." We understand that this amount is part of the Department's plan to issue interest credits (which, if accurate, looks fine) – but we don't understand why Aidvantage says that it does not service any Direct Loans for [redacted] "that are eligible for borrower defense discharge." As far as she's aware, her consolidation loans are Direct loans, and she recently received a "Notice of Borrower Defense Discharge Approval" from the Department (copy attached). Could you please clarify why Aidvantage is sending this message?

Thank you,

Michael N. Turi
Staff Attorney
Project on Predatory Student Lending
769 Centre Street
Jamaica Plain, MA 02130
(617) 322-2495
www.ppsl.org

United States Department of Education

Certification of Identity & Authorization to Disclose Personal Information

Privacy Act Statement. Department regulations require a person who submits a written request for access or disclosure of records to submit personal data sufficient to identify the individual submitting the request. 34 C.F.R. Section 5b.5(b). We solicit the information requested here in order to ensure that the records of individuals who are the subject of Department systems of records are not wrongfully disclosed by the Department. If you fail to furnish this information we will take no action to honor your request. Required information is indicated in CAPS.

FULL NAME OF REQUESTER: [PLEASE PRINT] [redacted]

ADDRESS: [STREET] [redacted]

[CITY] [redacted] [STATE] [redacted] [ZIP] [redacted]

Phone: ([redacted] Email: [redacted]

SOCIAL SECURITY NUMBER: [1] [redacted] DATE OF BIRTH: [MM/DD/YY] [redacted]

Authorization to Disclose Personal Information to Another Person

I authorize the Department of Education and its agents to release to, and discuss with, the individual named below as my representative, any records of the Department regarding my student financial assistance loan or grant obligation(s) to the Department, for the purpose of assisting me in satisfying the obligation:

FULL NAME OF REPRESENTATIVE: Rebecca Ellis, Michael Turi, and Deanne Loonin

ADDRESS: [STREET] Project on Predatory Student Lending, 769 Centre Street Ste. 166

[CITY] Jamaica Plain [STATE] MA [ZIP] 02130

PHONE: (617-322-2548 [Relationship To Requester] Attorneys

I authorize the Department to honor this authorization unless and until I revoke it in a written notice and the designated office of the Department receives that notice. I understand that whenever requesting disclosure of information, the representative named here must submit information to verify his or her identity.

I UNDERSTAND THAT IN ORDER TO VERIFY HIS OR HER IDENTITY WHEN MAKING A REQUEST FOR DISCLOSURE BY TELEPHONE, THE REPRESENTATIVE MAY BE REQUIRED TO PROVIDE MY SSN, DOB, AND THE DATE ON WHICH I SIGNED THIS AUTHORIZATION.

I declare under penalty of perjury that I am the person named above as the requester, that I authorize release to the individual named as representative, and that the statements I provided here are true and accurate. I understand that any false statement is subject to punishment under 18 U.S.C. Section 1001 by fine or imprisonment of not more than five years, and that a knowing and willful request made under false pretenses for a record of an individual is subject to punishment under 5 U.S.C. Section 552a(i)(3) by a fine of up to $5000.

DATE: 10-25-22 SIGNATURE [redacted]

[1] You are not required to provide your SSN or DOB. However, we ask you to provide your SSN and DOB only to facilitate the identification of records relating to you, and unless you provide your SSN and DOB, we may be unable to locate any or all records pertaining to you.

Completed authorizations should be mailed to:

US DEPARTMENT OF EDUCATION
PO BOX 5609
GREENVILLE TX 75403-5609

aidvantage | Department of Education Loan Servicing

U.S. Department of Education
Information about your federal student loan

PO BOX 9635
WILKES-BARRE, PA 18773-9635

(800) 722-1300

(b)(6)

10/24/22

Dear (b)(6)

The U.S. Department of Education (ED) recently communicated with you through an email from noreply@studentloans.gov or a mailed letter about your application for borrower defense discharge. ED informed you that we, as your servicer, would contact you in follow up to ED's determination that your application is eligible for partial or full relief based on review of the facts of your claim and the regulatory criteria for relief.

WHAT YOU NEED TO KNOW

We service no Direct Loans for you on ED's behalf that are eligible for borrower defense discharge. However, ED instructed us to apply **a credit in the amount of** $10,066.05 to your account because it took ED an extended period of time to review your claim. We applied the credit first toward unpaid interest and then toward principal if no unpaid interest remained.

Note: This interest exemption does not apply to privately-held loans from the Federal Family Education Loan (FFEL) Program that you may have. It applies only to your Direct Loans and/or government-held FFEL Program loans.

WHAT YOU NEED TO DO

The only thing you need to do now is watch for other communications from us. Those communications will provide you with information about the loans we service for you on ED's behalf and inform you when action is needed.

HOW TO CONTACT US

We're available to help you understand this information. You can contact us using the contact information below:

Visit us online at Aidvantage.com or give us a call at 800-722-1300, Monday–Friday 8 a.m. – 11 p.m., Saturday 10 a.m. – 2 p.m. and Eastern.

Sincerely,

Aidvantage - Department of Education Loan Servicing

Important disclosure(s)

Your loan servicer
Your loans are serviced by Aidvantage (NMLS# [redacted])

From: U.S. Department of Education <noreply@studentaid.gov>
To: [redacted] <[redacted]>
Sent: Wednesday, October 19, 2022 at 10:05:33 AM PDT
Subject: Notice of Borrower Defense Discharge Approval

Click here to view this email as a web page.

Seal of the U.S. Department of Education

October 19, 2022

Dear [redacted]

Subject: [redacted]

The Department of Education ("Department") has determined that **the loan(s) you received to attend a school owned and operated by Corinthian Colleges Inc. are eligible for full loan discharge.** This means the remaining balance on the loan(s) will be forgiven. **You do not have to make any more payments on the loan(s).**

Your loan(s) will be discharged because the Department found that Corinthian Colleges Inc. engaged in widespread misconduct that violates consumer protection laws under the borrower defense regulations (34 C.F.R. § 685.206 and/or § 685.222).

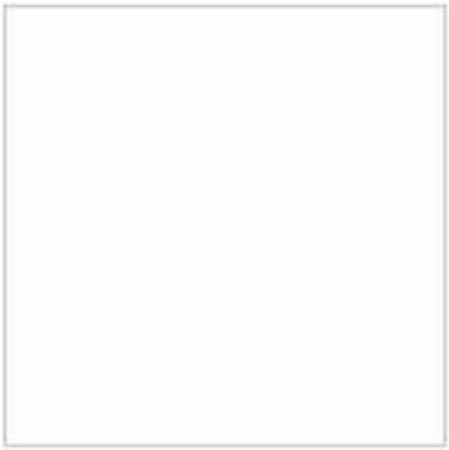
In some instances, you also may receive a refund for prior payments made on your discharged loan(s) related to Corinthian Colleges Inc. Your servicer will let you know if you are eligible for a payment refund, which would be mailed to you. Please check your online account with your loan servicer to ensure your address is correct so you can receive any refund. **Otherwise, you do not have to take any further action to receive your discharge.** Your credit report will also be updated to reflect this discharge when it is complete.

It will take us some time to process your discharge. Until the Department completes its work, your loan(s) will remain paused in forbearance, and we will not ask you to pay. If your loan(s) are in default, we will not attempt to collect on the loan(s) being discharged.

Please note: Borrower defense to repayment does not apply to any private student loans you may have. Also, this letter only applies to a loan(s) you borrowed to attend Corinthian Colleges Inc., not to any loans you may have borrowed to attend any other school.

If you have questions about this notice, please call our borrower defense hotline at 1-855-279-6207 from 8:00-8:00 ET on Monday-Friday or from 11:00-5:00 ET on Saturday or Sunday.

Sincerely,



Richard Cordray
Chief Operating Officer
Federal Student Aid

830 First Street, NE, Washington, D.C. 20002
StudentAid.gov/borrower-defense

From: Flores, Antoinette
Subject: RE: Stakeholder Briefing Call: 90/10, Pell for Prison Education Programs, Changes in Ownership
To: Miller, Benjamin; Rodriguez, Fabiola; Vitez, Kaitlyn; Leon, Kelly S.; Musser, David
Cc: Loyd, Amy; Harrington, Ashley; Wollard, Kalynn; Latreille, Bonnie; Bronstein, Andrew; Romanos, Elias; Garibay, Montserrat; Jaylon.Herbin@responsiblelending.org; whitney.barkley@responsiblelending.org; ashafroth@nclc.org; ataylor@nclc.org; ktaylor@nclc.org; emily@ourfinancialsecurity.org; elyse@ourfinancialsecurity.org; chris@protectborrowers.org; mike@protectborrowers.org; persis@protectborrowers.org; winston@protectborrowers.org; aissa@protectborrowers.org; ksouthern@ticas.org; mstreeter@ticas.org; bstein@ticas.org; fishmanr@newamerica.org; sattelmeyer@newamerica.org; fast@tcf.org; shireman@tcf.org; bcuster@americanprogress.org; jbass@americanprogress.org; econnor@law.harvard.edu; rfitzgerald@pewtrusts.org; tplunkett@pewtrusts.org; nsiegel@thirdway.org; rgarza@unidosus.org; king@civilrights.org; byon@civilrights.org; Wcole@naacpnet.org; barmak@vetsedsuccess.org; carrie@vetsedsuccess.org; della@vetsedsuccess.org; justin.hauschild@studentveterans.org; bantunez@aft.org; Rlau@nea.org; kristin.mcguire@younginvincibles.org; mervyn.jones@younginvincibles.org; aaron@defendstudents.org; alex@defendstudents.org; dan@defendstudents.org; [redacted] alliance@higheredinprison.org; syrita@or-nola.org; jneptune@bard.edu; bpi@bard.edu; lmurphy@jff.org; bwheeler@vera.org; stanley@prisontopro.org; tblount@ficgn.org; mctier@wustl.edu; ashlynne.haycock@taps.org; jsharpe@legion.org
Sent: October 27, 2022 6:19 AM (UTC-04:00)

Good morning. Please see relevant press release and accompanying fact sheet here: https://www.ed.gov/news/press-releases/education-department-unveils-final-rules-protect-veterans-and-service-members-improve-college-access-incarcerated-individuals-and-improve-oversight-when-colleges-change-owners

-----Original Appointment-----
From: Flores, Antoinette
Sent: Tuesday, October 25, 2022 11:40 AM
To: Flores, Antoinette; Miller, Benjamin; Rodriguez, Fabiola; Vitez, Kaitlyn; Leon, Kelly S.; Musser, David
Cc: Loyd, Amy; Harrington, Ashley; Wollard, Kalynn; Latreille, Bonnie; Bronstein, Andrew; Romanos, Elias; Garibay, Montserrat; Jaylon.Herbin@responsiblelending.org; whitney.barkley@responsiblelending.org; ashafroth@nclc.org; ataylor@nclc.org; ktaylor@nclc.org; emily@ourfinancialsecurity.org; elyse@ourfinancialsecurity.org; chris@protectborrowers.org; mike@protectborrowers.org; persis@protectborrowers.org; winston@protectborrowers.org; aissa@protectborrowers.org; ksouthern@ticas.org; mstreeter@ticas.org; bstein@ticas.org; fishmanr@newamerica.org; sattelmeyer@newamerica.org; fast@tcf.org; shireman@tcf.org; bcuster@americanprogress.org; jbass@americanprogress.org; econnor@law.harvard.edu; rfitzgerald@pewtrusts.org; tplunkett@pewtrusts.org; nsiegel@thirdway.org; rgarza@unidosus.org; king@civilrights.org; byon@civilrights.org; Wcole@naacpnet.org; barmak@vetsedsuccess.org; carrie@vetsedsuccess.org; della@vetsedsuccess.org; justin.hauschild@studentveterans.org; bantunez@aft.org; Rlau@nea.org; kristin.mcguire@younginvincibles.org; mervyn.jones@younginvincibles.org; aaron@defendstudents.org; alex@defendstudents.org; dan@defendstudents.org; [redacted] alliance@higheredinprison.org; syrita@or-nola.org; jneptune@bard.edu; bpi@bard.edu; lmurphy@jff.org; bwheeler@vera.org; stanley@prisontopro.org; tblount@ficgn.org; mctier@wustl.edu; ashlynne.haycock@taps.org; jsharpe@legion.org
Subject: Stakeholder Briefing Call: 90/10, Pell for Prison Education Programs, Changes in Ownership
When: Thursday, October 27, 2022 9:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Microsoft Teams meeting

Join on your computer, mobile app or room device
Click here to join the meeting

Meeting ID: [redacted]
Passcode: [redacted]
Download Teams | Join on the web

Or call in (audio only)

+1 202-991-0393,, [redacted] United States, Washington DC
Phone Conference ID: [redacted]
Find a local number | Reset PIN

Learn More | Meeting options

From: Latreille, Bonnie
Subject: RE: FW: CRLC Final Materials Reminder and PPT Template!
To: Persis Yu; econnor@ppsl.org
Sent: October 28, 2022 10:19 AM (UTC-04:00)

Adding in Eileen's correct email. Sorry!

From: Persis Yu <persis@protectborrowers.org>
Sent: Friday, October 28, 2022 10:12 AM
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Cc: Eileen Connor <econnor@law.harvard.edu>
Subject: Re: FW: CRLC Final Materials Reminder and PPT Template!

Also heads up if you haven't done the crowdpass thing yet, the liability waiver is absurd. I refused to sign it and nclc found an alternative process.

On Fri, Oct 28, 2022 at 10:07 AM Persis Yu <persis@protectborrowers.org> wrote:

> Yes. That's my preference.
>
> On Fri, Oct 28, 2022 at 10:03 AM Latreille, Bonnie <Bonnie.J.Latreille@ed.gov> wrote:
>
> > Are we keeping this discussion style without materials?
> >
> > ---
> >
> > **From:** NCLC Conference Team <training@nclc.org>
> > **Sent:** Friday, October 28, 2022 10:01 AM
> > **To:** Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
> > **Subject:** CRLC Final Materials Reminder and PPT Template!
> >
> >
> >
> > Dear CRLC, Bankruptcy Intensive, and CAS Speakers!
> >
> > Again, thank you so much for agreeing to speak at our conference coming up in less than two weeks!!
> > This is my 7th Speaker email but all my previous emails are available below if you need to catch up! =)
> >
> > As we prepare to soft launch our Conference App (Cvent Attendee Hub aka CAH) next week we need ALL session materials uploaded by November 1st. to the Speaker Resource Center (SRC). Once we launch, we will send you all the info on how to download the app and log-in. You will be able to view all your sessions, see your headshot and bio, and review your session materials. This gives us time to fix anything before we launch it with all conference attendees. Please make sure you have also uploaded your latest bio and headshot to the Speaker Resource Center by then as well. Below is the log-in information as well as the template to our PPT we would like you to use (but not mandatory). If you want to use your own template that is ok, we just ask that you incorporate our Publication slides into your presentation where relevant.
> >
> > ## Speaker Resource Center (SRC)
> > This year NCLC is using the event platform's speaker resource center. In it you will find that we have already created a speaker profile for you and you have the ability to upload/update your headshot and bio. The information you provide in this center will help us apply for CLE applications, confirm your sessions, update your bio, headshot, and session materials you provide will be uploaded into our conference mobile app.

Please set aside some time to open **The Speaker Resource Center by clicking here** and log in with your name and the email address that received this message. You'll be sent a verification code via email which, when entered, will provide access to you!

Here is a **guide to the SRC with instructions** for how to modify your profile, see your assigned sessions, upload materials, and more. We also have created a helpful 12 min **video here you can watch** at your convenience that will walk you through the entire process.

Please let me or your session coordinator know if you have any questions about your session materials or the Speaker Resource Center access.

Deadlines and Expectations

NCLC is dedicated to offering exceptional educational opportunities for consumer advocates and attorneys. We know that the expertise you bring to your panel(s) is unmatched and we want to ensure that you're able to get to the point, engage your audience, and enable each session to run smoothly. To do that, we need you to follow the deadlines below so that we will be able to submit CLE applications and launch our conference app on time and with everything included. I have also included a **link to our PowerPoint template here**, which we ask that you use this year to encourage cohesion and professionalism across the board.

Registration

A few of you have not registered yet for the CRLC and/or CAS - so please do so by November 2nd. We are closing down online registration after that, and we do need your information in our system to send you the App log-in info, create your name badge, include you in our food counts and capture any special dietary requests.

Other important deadlines:

- **Google Form**: please fill out this form for us if you have not done so already so we can capture additional info and permissions we need from you.
- **CrowdPass Vaccine Verification:** everyone who is registered for the conference should have received an email requesting proof of vaccination and booster. Please follow the instructions in that email and upload your vaccine/booster card before the deadline. Click here to upload it now. NCLC staff do not need to complete this, HR already has your information.

Thank you and we'll see you soon!

Jessica

---------- Forwarded message ---------
From: **National Consumer Law Center** <training@nclc.org>
Date: Wed, Oct 12, 2022 at 2:47 PM
Subject: CRLC Hotel, AV Requests, Networking Events, and Final Materials Reminder!
To: Training <training@nclc.org>

Hello Speakers!
This is my 6th email to you all outlining some upcoming deadlines and tasks we need completed from you this week and next.

- **Hotel Deadline** Oct 18th. If you have not already reserved your hotel room for the conference

please do so by the upcoming deadline by clicking here.

- **AV REQUESTS for your Session Breakout Room**

  Each breakout session room will be equipped with a head table and chairs, wireless table mics, a podium and mic, a projector and screen, and a laptop. If you need anything else in addition to what we are automatically providing please be sure to send those requests to **Training@nclc.org** by **Oct. 14th** . Some questions to ask your co-panelists are: Do we intend to show a video that requires sound? Do we intend to use a different device (i.e. an Apple product) to display our graphics? Will we need anything other than the products listed above?
- **Networking Events Schedule:** Interested in hosting a networking lunch or group dinner outing? If so please click here and sign-up to lead one. You are responsible for meeting your lunch companions in the hotel lobby and to make reservations (if needed).
- **Google Form**: please fill out this form for us if you have not done so already so we can capture additional info and permissions we need from you.
- **CrowdPass Vaccine Verification:** everyone who is registered for the conference should have received an email requesting proof of vaccination and booster. Please follow the instructions in that email and upload your vaccine/booster card before the deadline.
- **Final Session Materials** due in the Speaker Resource Center by Nov. 1st. Please upload all materials in pdf form (more details below in previous emails).

Thank you and we look forward to seeing you back in-person in less than one month away!
Jessica

---------- Forwarded message ---------
From: **National Consumer Law Center** <training@nclc.org>
Date: Wed, Sep 28, 2022 at 11:29 AM
Subject: CRLC Speaker Bios, Headshots, and Session Agendas (w/ draft materials) due Sept 30th!
To: Training <training@nclc.org>

Hello Speakers!
I hope everyone was able to register last week before the early bird deadline. If you have not registered for the conference yet you can still do so by clicking here.

This is my 5th email to you all and today's big reminder is the CLE Application Deadline of Sept. 30th. We are sending all the applications out next week and we need to make sure we have everyone's updated bios, headshots, and their session agendas. We also would appreciate any draft materials (PPTs, resources, etc in pdf form) for your sessions as well. You can go back in later before Nov. 1st to upload your final versions that will be imported into our conference app.

So please if you have not done so, log into the Speaker Resource Center this week to upload these urgent things for our CLE applications.
Below are the instructions again, please let your session coordinator or myself know if you have any questions:

Speaker Resource Center (SRC)
This year NCLC is using the event platform's speaker resource center. In it you will find that we have already created a speaker profile for you and you have the ability to upload/update your headshot

and bio. The information you provide in this center will help us apply for CLE applications, confirm your sessions, update your bio, headshot, and session materials you provide will be uploaded into our conference mobile app.

Please set aside some time to open **The Speaker Resource Center by clicking here** and log in with your name and the email address that received this message. You'll be sent a verification code via email which, when entered, will provide access to you!

Here is a **guide to the SRC with instructions** for how to modify your profile, see your assigned sessions, upload materials, and more. We also have created a helpful 12 min **video here you can watch** at your convenience that will walk you through the entire process.

Deadlines and Expectations
NCLC is dedicated to offering exceptional educational opportunities for consumer advocates and attorneys. We know that the expertise you bring to your panel(s) is unmatched and we want to ensure that you're able to get to the point, engage your audience, and enable each session to run smoothly. To do that, we need you to follow the deadlines below so that we will be able to submit CLE applications and launch our conference app on time and with everything included. I have also included a **link to our PowerPoint template here**, which we ask that you use this year to encourage cohesion and professionalism across the board.

AV In Your Session Breakout Room
Each breakout session room will be equipped with a head table and chairs, wireless table mics, a podium and mic, a projector and screen, and a laptop. If you need anything else in addition to what we are automatically providing please be sure to send those requests to **Training@nclc.org** by **September 30th**. Some questions to ask your co-panelists are: Do we intend to show a video that requires sound? Do we intend to use a different device (i.e. an Apple product) to display our graphics? Will we need anything other than the products listed above?

Google Form: please fill out this form for us if you have not done so already so we can capture additional info and permissions we need from you.

Thank you again,
Jessica

---------- Forwarded message ---------
From: **National Consumer Law Center** <training@nclc.org>
Date: Tue, Sep 20, 2022 at 11:25 AM
Subject: Important: CRLC Speaker Deadlines and Tasks Reminder!
To: Training <training@nclc.org>

Hello CRLC Speakers!
Thank you for everyone's hard work helping us meet these deadlines and working towards an amazing conference ahead!
This is my 4th email to you all in this series of speaker emails. I am also re-sending the 3 previous speaker emails I have sent with helpful information and guidelines. Please review all 3 if you have not done so already by scrolling down in this email.

We have some important deadlines coming up that I need you to be aware of:

- **Conference early bird registration deadline** is THIS FRIDAY, Sept 23rd. If you have not registered for the conference yet please do so today by clicking here.
- Reserve your hotel room here at the **Hyatt Regency Seattle** with our discounted rate.
- **CLE Applications.** If you have not done so already, please upload your updated bio, headshot, and course materials (agenda, powerpoints in pdf, etc) to the Speaker Resource Center by September 30th. We need this information for our CLE application process. Draft materials are ok, you can do final edits to the course materials as we get closer to the conference (final materials due Nov. 1st). Instructions and video tutorial on how to do this provided in earlier emails below.
- **Google Form**: please fill out this form for us if you have not done so already so we can capture additional info and permissions we need from you.
- Lastly, please **help us spread the word** about the early registration deadline and the conference itself overall! We are so excited to be gathering back in-person at the nation's largest gathering of consumer law advocates. You will notice this week we are posting on LinkedIn every day about various tracks and will be tagging speakers who are on LinkedIn. Please reshare this post in your networks. Also starting this week we will be emailing speaker banners to each of you that will feature your headshot and the name of your session that you can share on your social media and networks as well. As soon as they are ready I will send them over to you.

Let me know if you have any questions.
Thank you again so much for agreeing to speak!

Jessica

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NCLC Conferences and Trainings Team

---------- Forwarded message ---------
From: **National Consumer Law Center** <training@nclc.org>
Date: Thu, Sep 8, 2022 at 4:53 PM
Subject: CRLC Speakers: Registration, Hotel, and Speaker Resource Center Deadline Reminder!

Hello CRLC Speakers!
This is my third email to you all (below are the 1st and 2nd emails, please review if you have not done so and make sure to fill out the google form).

I'm emailing you today to remind you of some important deadlines coming up:

CRLC Registration: Make sure to register for the conference by September 23rd to receive the early bird rate and save 15%

To register please click here and enter the following code to get the discount: **earlybird15**

CRLC Hotel Reservation: If you have not done so already, make sure you reserve your hotel room before the deadline comes up so that you will receive the discounted rate! To book your hotel at the Hyatt Regency Seattle please click here.

Speaker Resource Center and CLE Application: Lastly, please remember our CLE application deadline is coming up this month and we need all the speakers to update their information in the Speaker Resource Center. Upload your bio, photo, and any course materials /agenda you have. More information about the resource center can be found below in an earlier email as well as a training video.

We would love it if you could help us spread the word about this year's CRLC returning back to in-person and ask

consumer attorneys in your network to join us in Seattle! You are welcome to post about the CRLC on your social media or repost/share one of our posts. Mention that you will be speaking and the topic you are speaking about. Also share any upcoming deadlines about early registration so folks can get the best rate!

Thank you very much!
Jessica

---------- Forwarded message ---------
From: **Jessica Hiemenz-Woodbury** <training@nclc.org>
Date: Thu, Sep 8, 2022 at 11:01 AM
Subject: Fwd: CRLC Speakers: Guidelines & Google Form

Hello CRLC Speakers!
This is my second email to you. All of you should have received my first email about two weeks ago and if you have not had a chance to read it, please see below.
We have some important deadlines coming up and want to make sure the process goes smoothly for everyone.
I have also created a document of guidelines with helpful tips on presenting for the CRLC, please take a look here.

There is also a google form that we need every speaker to fill out for us. This will help us in future communication with you. Please take a minute to do this as soon as possible by clicking here.

Also make sure you register for the conference and reserve a hotel room as soon as possible!

Please let me know if you have any questions.
Thank you!
Jessica

---------- Forwarded message ---------
From: **Jessica Hiemenz-Woodbury** <training@nclc.org>
Date: Tue, Aug 9, 2022 at 3:58 PM
Subject: NCLC's CRLC 2022 Speaker Resource Center Guidelines and Important Deadlines

Hello!
This is the first email to all the CRLC 2022 speakers. More emails and reminders will be sent as we get closer to the conference. Thank you to everyone for agreeing to speak at this year's conference. We are very much looking forward to getting back live and in-person for the first time since 2019!

I want to introduce myself, I am Jessica Hiemenz-Woodbury and will be your main point of contact for the CRLC when it comes to our Speaker Resource Center, A/V needs, and onsite support. I worked with many of you previously and am excited once again to work with you. You can reach me at training@nclc.org .

Below are helpful reminders, guides, and timelines for our speakers. Please be sure to review the information you will need in order to work with your panel and course coordinators to complete an incredible session, register on time, and book your hotel room!

Deadlines and Expectations
NCLC is dedicated to offering exceptional educational opportunities for consumer advocates and attorneys. We know that the expertise you bring to your panel(s) is unmatched and we want to ensure that you're able to get to the point, engage your audience, and enable each session to run smoothly. To do that, we need you to follow the deadlines below so that we will be able to submit CLE applications and launch our conference app on time and with everything included. I have also included a **link to our PowerPoint template here**, which we ask that you use this year to encourage cohesion and professionalism across the board.

Speaker Resource Center (SRC)
This year NCLC is using the event platform's speaker resource center. In it you will find that we have already created a speaker profile for you and you have the ability to upload/update your headshot and bio. The information you provide in this center will help us apply for CLE applications, confirm your sessions, update your bio, headshot, and session materials you provide will be uploaded into our conference mobile app.

Please set aside some time to open **The Speaker Resource Center by clicking here** and log in with your name and the email address that received this message. You'll be sent a verification code via email which, when entered, will provide access to you!

Here is a **guide to the SRC with instructions** for how to modify your profile, see your assigned sessions, upload materials, and more. We also have created a helpful 12 min **video here you can watch** at your convenience that will walk you through the entire process.

Deadlines for Speakers
September 23rd: Deadline to inform Jessica of additional AV needs (See below)
September 30th: Deadline to submit bios, head shots, supporting materials, and presentations for CLE application purposes in the Speaker Resource Center (Don't forget to use the attached PowerPoint Template and convert it to a pdf before submitting!)
October 18th: Deadline to book your hotel room
November 1st: Deadline to upload final revisions of materials in the Speaker Resource Center
November 1st: Deadline to register for the CRLC Conference (our **2022 CRLC COVID Safety Policy** also requires that all attendees and speakers have received a COVID vaccine and at least one booster by this date)
November 10-13th: Consumer Rights Litigation Conference and Class Action Symp

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Persis S. Yu (she/her/hers)
Deputy Executive Director
Student Borrower Protection Center
www.protectborrowers.org

--

Persis S. Yu (she/her/hers)
Deputy Executive Director
Student Borrower Protection Center
www.protectborrowers.org

From: [redacted]
Subject: PSLF packet
To: Latreille, Bonnie
Sent: October 28, 2022 12:43 PM (UTC-04:00)
Attached: MOHELA packet.pdf

[redacted]

U.S. Department of Education
c/o MOHELA
6333 Spirit Drive
Chesterfield, MO 63005-1243
(866) 222-7060 (fax)

September 23, 2022

Dear Friend,

I am a federal student loan borrower who recently consolidated FFELP loans in order to apply for PSLF. Although my former servicer, Navient, has received notice of the consolidation, I do not yet have account information with MOHELA. In order to meet the October 31, 2022 deadline, I am forwarding my employer certifications now via certified mail and fax.

Enclosed please find:

- Confirmation of consolidation and account information from Navient
- PSLF/TEPSLF Certification & Application #1 [redacted]
- PSLF/TEPSLF Certification & Application #2 [redacted]
- PSLF/TEPSLF Certification & Application #3 [redacted]

Thank you very much for your assistance.

Sincerely,

[redacted]

NAVIENT

P.O. BOX 9500
WILKES-BARRE, PA 18773-9500

[redacted]

[redacted] we received notification that you've applied to consolidate your federal student loans listed below.

The entire consolidation process may take up to 90 days. Your loans have been placed in forbearance while the Department of Education completes the consolidation of your loans This forbearance will not count against your voluntary forbearance time and while interest will still accrue during the forbearance, it will not be capitalized. You may need to resume making payments if the consolidation is not completed during this forbearance period.

What to expect next
The consolidation loan servicer you selected will contact your current servicer to verify eligibility and your current loan balances.

You'll receive a notice when:

- Your request is processed or if additional information is needed.
- The process has been completed and your loans have been paid in full.
- Your loans have been successfully consolidated.

If your account is delinquent - a separate administrative forbearance has been applied to bring your account current. Unpaid accrued interest for the delinquent period has been capitalized (added to your principal balance). This forbearance does not remove any late fees or any previously reported delinquency information from your credit report.

We're here to help
Visit us online at Navient.com or give us a call.

Account number
[redacted]

Date
09/21/22

Manage your account online
Navient.com

Contact us
888-272-5543

Monday – Thursday,
8 a.m. – 9 p.m.
Friday, 8 a.m. – 8 p.m. Eastern

Sign up for eDelivery Today!
On your Navient.com profile page, provide your email address and indicate you want to sign up for eDelivery.

Important disclosure(s)

Auto Pay suspension during forbearance
If you are receiving an interest rate reduction for using Auto Pay, the rate reduction will be suspended during your forbearance.

Administrative forbearance
If this is your first time applying, your eligible loan(s) may be placed in an administrative forbearance to allow you time to gather any required information and submit your completed application, not to exceed 60 calendar days from the date of this letter. During this administrative forbearance, no payments will be due, but interest will continue to accrue. Please note that, as a result of this additional

Para comunicarse en Español con 'Atención al Cliente',
llame gratis al (888) 272-5543, y marque el numero correspondiente.

990779485314551769 5

F200 E60414 S 4664

interest, your Monthly Payment Amount may be increased to ensure that your loan(s) is paid off within the remaining term under the Promissory Note(s).

Your loan servicer
Your loans are serviced by Navient Solutions, LLC (NMLS# [redacted].

Student Loan Ombudsman – Massachusetts
The Massachusetts Student Loan Ombudsman assists Massachusetts borrowers who have tried unsuccessfully to resolve a problem through customer service offices. You can contact the Massachusetts Student Loan Ombudsman at www.mass.gov/student-loan-assistance.

Loan Information

DISBURSEMENT DATE	ORIGINAL PRINCIPAL	UNPAID PRINCIPAL	INTEREST RATE	LOAN PROGRAM
[redacted]				

PSLF

PUBLIC SERVICE LOAN FORGIVENESS (PSLF) & TEMPORARY EXPANDED PSLF (TEPSLF) CERTIFICATION & APPLICATION

William D. Ford Federal Direct Loan (Direct Loan) Program

OMB No. 1845-0110
Form Approved
Exp. Date 08/31/2023
PSFAP - XBCR

WARNING: Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

SECTION 1: BORROWER INFORMATION

Please enter or correct the following information.

☐ **Check this box if any of your information has changed.**

SSN (b)(6)
Date of Birth
Name (b)(6)
Address (b)(6) (b)(6)
City State (b)(6) Zip Code (b)(6)
Telephone - Primary (b)(6)
Telephone - Alternate
Email

For more information on PSLF, visit StudentAid.gov/publicservice To apply online, visit StudentAid.gov/PSLF.

SECTION 2: BORROWER REQUEST, UNDERSTANDINGS, CERTIFICATION, AND AUTHORIZATION

I request (1) that the U.S. Department of Education (the Department) determine whether I qualify for PSLF or TESPLF, and discharge any qualifying loans that I have, and **(2)** if none of my loans qualify for PSLF or TEPSLF when I submit this form, determine how many qualifying payments I have made towards PSLF and TEPSLF.

☐ I just want to find out how many qualifying payments I have made or if my employer is a qualified employer.

☒ I believe I qualify for forgiveness under PSLF or TEPSLF right now.

☐ If I indicated that I believe I qualify for forgiveness now, I want a forbearance while my application is being processed, but understand that periods of forbearance do not count towards forgiveness.

I understand that:

1. To qualify for forgiveness, I must have made 120 qualifying payments on my Direct Loans while employed full-time by a qualifying employer. Neither the 120 qualifying payments nor the employment have to be consecutive.
2. To qualify for forgiveness, I must be employed full-time by a qualifying employer when I apply for and get forgiveness.
3. By submitting this form, my student loans held by the Department may be transferred to MOHELA.
4. If the Department determines that I appear to be eligible for forgiveness, the Department may contact my employer before granting forgiveness to ensure that I continue to work for the employer.
5. If I am eligible for forgiveness, the amount forgiven will be the principal and interest that was due on my eligible Direct Loans when I made my final qualifying payment. Any amount that I pay on those loans after I have made my final qualifying payment will be treated as an overpayment. I must continue to make payments on any of my other loans.
6. If I am not eligible for forgiveness, I will be notified of the determination, why it was made, and how many qualifying payments I have made towards PSLF and TEPSLF.

I certify that all of the information I have provided on this form and in any accompanying document is true, complete, and correct to the best of my knowledge and belief and that if I cease to be employed by a qualifying employer after I submit this application, but before forgiveness is granted, I will notify the Department (see Section 7) immediately.

☐ Check this box if you cannot obtain certification from your employer because the organization is closed or because the organization has refused to certify your employment. The Department will follow up to assist you in getting documentation of your employment. **Complete Section 3, but do not complete Section 4.**

Borrower's Signature (b)(6) **Date** 8/30/22

Borrower Name [redacted] Borrower SSN [redacted]

SECTION 3: EMPLOYER INFORMATION (TO BE COMPLETED BY THE BORROWER OR EMPLOYER)

1. Employer Name
[redacted]

2. Federal Employer Identification Number (FEIN)
[redacted]

3. Employer Address:
[redacted]

4. Employer Website (if any):
[redacted]

5. Employment Begin Date:
[redacted]

6. Employment End Date:
[redacted] OR ☐ Still Employed

7. Employment Status: ☒ Full-Time ☐ Part-Time

8. Hours Per Week (Average) 40

Include vacation, leave time, or any leave taken under the Family Medical Leave Act of 1993.

9. Is your employer a **governmental** organization?

A governmental organization is a Federal, State, local, or Tribal government organization, agency, or entity, a public child or family service agency, a Tribal college or university, or the Peace Corps or AmeriCorps. Federal service includes military service.

☒ Yes - Skip to Section 4.

☐ No - Continue to Item 10.

10. Is your employer tax-exempt under Section 501(c)(3) of the Internal Revenue Code (IRC)?
If your employer is tax-exempt under another subsection of 501(c) of the IRC, such as 501(c)(4) or 501(c)(6), check "No" to this question.

☐ Yes - Skip to Section 4

☐ No - Continue to Item 11.

11. Is your employer a **not-for-profit** organization that is not tax-exempt under Section 501(c)(3) of the Internal Revenue Code?

☐ Yes - Continue to Item 12.

☐ No - Your employer does not qualify.

12. Is your employer a partisan political organization or a labor union?

☐ Yes - Your employer does not qualify.

☐ No - Continue to Item 13.

13. Which of the following services does your employer provide? Check all that apply and then continue to Section 4. If you you check "None of the above", do not submit this form.

☐ Emergency management
☐ Military service (See Section 6)
☐ Public safety
☐ Law enforcement
☐ Public interest legal services (See Section 6)
☐ Early childhood education (See Section 6)
☐ Public service for individuals with disabilities
☐ Public service for the elderly
☐ Public health (See Section 6)
☐ Public education
☐ Public library services
☐ School library services
☐ Other school-based services
☐ None of the above - the employer does not qualify.

SECTION 4: EMPLOYER CERTIFICATION (TO BE COMPLETED BY THE EMPLOYER)

By signing, **I certify (1)** that the information in Section 3 is true, complete, and correct to the best of my knowledge and belief, **(2)** that I am an authorized official (see Section 6) of the organization named in Section 3, and **(3)** that the borrower named in Section 1 is or was an employee of the organization named in Section 3.

Note: If any of the information is crossed out or altered in Section 3, you must initial those changes.

Official's Name [redacted] Official's Phone [redacted]

Official's Title Associate HR Analyst Official's Email [redacted]

Authorized Official's Signature [redacted] **Date** 08/30/2022

SECTION 5: INSTRUCTIONS FOR COMPLETING THE FORM

When completing this form, type or print using dark ink. Enter dates as month-day-year (mm-dd-yyyy). Use only numbers. Example: March 14, 2016 = 03-14-2016. For more information about PSLF and how to use this form, visit StudentAid.gov/publicservice. **Return the completed form to the address shown in Section 7.**

SECTION 6: DEFINITIONS

QUALIFYING PAYMENT DEFINITIONS

Qualifying payments are on-time, full monthly payments made on an eligible loan after October 1, 2007 under a qualifying repayment plan while employed full-time by a qualifying employer.

An **on-time payment** is a payment made no more than 15 days after the due date for the payment.

Eligible loans are loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program that are not in default.

Qualifying repayment plans for PSLF include the Revised Pay As You Earn (REPAYE) plan, the Pay As You Earn (PAYE) plan, the Income-Based Repayment (IBR) plan, the Income-Contingent Repayment (ICR) plan, the Standard Repayment plan with a maximum 10-year repayment period, and any other Direct Loan repayment plan if payments are at least equal to the monthly payment amount that would be required under the Standard Repayment plan with a 10-year repayment period.

Qualifying repayment plans for TEPSLF include the qualifying repayment plans for PSLF, as well as the Graduated Repayment Plan, Extended Repayment Plan, Standard Repayment Plan for Direct Consolidation Loans, and Graduated Repayment Plan for Direct Consolidation Loans.

QUALIFYING EMPLOYMENT DEFINITIONS

A **Qualifying employer** includes the government, a not-for-profit organization that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code, or a private not-for-profit organization that provides certain public services. Serving in an AmeriCorps or Peace Corps position is also qualifying employment.

Government includes a Federal, State, local or Tribal government organization, agency or entity; a public child or family service agency; or a Tribal college or university.

A **private not-for-profit organization** is an organization that is not organized for profit, is not a labor union, is not a partisan political organization, and provides at least one of the following public services: **(1)** emergency management, **(2)** military service, **(3)** public safety, **(4)** law enforcement, **(5)** public interest legal services, **(6)** early childhood education, **(7)** public service for individuals with disabilities and the elderly, **(8)** public health, **(9)** public education, **(10)** public library services, **(11)** school library services, or **(12)** other school-based services.

AmeriCorps position means a position approved by the Corporation for National and Community Service under Section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).

QUALIFYING EMPLOYMENT DEFINITIONS (CONTINUED)

Peace Corps position means a full-time assignment under the Peace Corps Act as provided for under 22 U.S.C. 2504.

An employee means an individual who is hired and paid by the qualifying employer.

Full-time means working for one or more qualifying employers for the greater of: **(1)** an annual average of at least 30 hours per week or, for a contractual or employment period of at least 8 months, an average of 30 hours per week; or **(2)** unless the qualifying employment is with two or more employers, the number of hours the employer considers full time.

An **authorized official** is an official of a qualifying employer who has access to the borrower's employment or service records and is authorized by the employer to certify the employment status of the organization's employees or former employees, or the service of AmeriCorps or Peace Corps volunteers.

Early childhood education includes licensed or regulated child care, Head Start, and State funded pre-kindergarten.

Law enforcement means crime prevention, control or reduction of crime, or the enforcement of criminal law.

Military service means service on behalf of the U. S. Armed Forces or the National Guard.

Public interest legal services refers to legal services that are funded in whole or in part by a local, State, Federal, or Tribal government.

Public health includes nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations, health support occupations, and counselors, social workers, and other community and social service specialists as such terms are defined by the Bureau of Labor Statistics.

OTHER DEFINITIONS

A **forbearance** is a period during which you are allowed to postpone making payments temporarily, allowed an extension of time for making payments, or temporarily allowed to make smaller payments than scheduled.

SECTION 7: WHERE TO SEND THE COMPLETED FORM

Return the completed form and any documentation to:

Mail to: U.S. Department of Education, MOHELA, 633 Spirit Drive, Chesterfield, MO 63005-1243.

Fax to: 866-222-7060.

Upload to: mohela.com/uploadDocument, if MOHELA is already your servicer.

If you need help completing this form, call:

Domestic: 855-265-4038.
International: 636-532-0600.
TTY: dial 711, then enter 855-265-4038.

Website: mohela.com.

SECTION 8: IMPORTANT INFORMATION ABOUT PSLF AND TEPSLF

You may receive loan forgiveness under this program only after you have made 120 qualifying payments on eligible loans while working full-time in qualifying employment. There are certain additional eligibility requirements for TEPSLF.

PAYMENT ELIGIBILITY

To receive PSLF, you must make 120 on-time, full, scheduled, separate monthly payments on your Direct Loans under a qualifying repayment plan after October 1, 2007.

On-time payments are those that are received by your servicer no later than 15 days after the scheduled payment due date.

Full payments are payments on your Direct Loan in an amount that equals or exceeds the amount you are required to pay each month. If you make multiple, partial payments in a month and the total of those partial payments equals the required full monthly payment amount, those payments will count as one qualifying payment provided all of the partial payments were made within 15 days of the due date.

Scheduled payments are those that are made while you are in repayment. They do not include payments made while your loans are in an in-school or grace status, or in a deferment or forbearance period.

If you were an AmeriCorps or Peace Corps volunteer, you may receive credit for making qualifying payments if you make a lump sum payment by using all or part of a Segal Education Award or Peace Corps transition payment.

You may also receive credit for qualifying payments if a lump sum payment is made on your behalf through a student loan repayment program administered by the U.S. Department of Defense (DOD).

If you make a lump sum payment by using an AmeriCorps Segal Education Award or a Peace Corps transition payment, or if a lump sum payment is made on your behalf through a DOD student loan repayment program, the Department will give you credit for qualifying payments equal to the lesser of **(1)** the number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount you would have made under one of the qualifying repayment plans listed below; or **(2)** 12 payments.

PAYMENT ELIGIBILITY (CONTINUED)

If you make an eligible lump sum payment using a Peace Corps transition payment, you must do so within 6 months of the Employment End Date, as reported in Section 3.

You may only use an AmeriCorps Segal Education Award or Peace Corps transition payment one time to receive credit for more than one qualifying payment towards PSLF. However, lump sum payments made on your behalf under a DOD student loan repayment program may be counted as up to 12 qualifying payments for each year that a lump sum payment is made.

Your payments must be made under a qualifying repayment plan. Qualifying repayment plans for PSLF include the REPAYE plan, the PAYE plan, the IBR plan, the ICR plan, the 10-Year Standard Repayment plan, or any other Direct Loan repayment plan, but only payments that are at least equal to the monthly payment amount that would be required under the 10-Year Standard Repayment plan. Qualifying repayment plans for TEPSLF include the Graduated, Extended, Standard Repayment Plan for Direct Consolidation Loans, and Graduated Repayment Plan for Direct Consolidation Loans.

Though repayment plans other than the REPAYE, PAYE, IBR, and ICR plans are qualifying repayment plans for PSLF, you must enter REPAYE, PAYE, IBR, or ICR to have a remaining balance to forgive after becoming eligible for PSLF. Otherwise, your loans will be fully repaid within 10 years. To apply for these plans, visit StudentAid.gov/IDR.

IMPORTANT: The Standard Repayment Plan for Direct Consolidation Loans made on or after July 1, 2006 has repayment periods that range from 10 to 30 years. Monthly payments you make under this plan are qualifying payments for PSLF only if the repayment period is 10 years, which would be the case only if the total amount of the consolidation loan and your other eligible student loans is less than $7,500. This repayment plan is always a qualifying repayment plan for TEPSLF.

SECTION 8: IMPORTANT INFORMATION ABOUT PSLF (CONTINUED)

LOAN ELIGIBILITY

Only Direct Loan Program loans that are not in default are eligible for PSLF. Loans you received under the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins Loan) Program, or any other student loan program are not eligible for PSLF.

If you have FFEL Program or Perkins Loan Program loans, you may consolidate them into a Direct Consolidation Loan to take advantage of PSLF. However, payments made on those loans before you consolidated them do not count as qualifying PSLF payments. In addition, if you made qualifying payments on a Direct Loan and then consolidate it into a Direct Consolidation Loan, you must start over making qualifying payments on the new Direct Consolidation Loan.

If you are planning to consolidate your FFEL Program or Perkins Loan Program loans into a Direct Consolidation Loan to take advantage of PSLF and do not have any Direct Loans, do not submit this form until you have consolidated your loans and have subsequently made 120 qualifying payments. The online application for Direct Consolidation Loans contains a section that allows you to indicate that you are consolidating your loans for PSLF. If you plan to consolidate Perkins Loan Program loans, first understand that Perkins Loan Program loans may be cancelled for certain types of public service. If you consolidate a Perkins Loan Program loan, you will no longer be eligible for Perkins cancellation. The online application is available at StudentAid.gov/consolidation. If you don't know whether you have Direct Loans, go to StudentAid.gov/dashboard.

EMPLOYMENT ELIGIBILITY

To qualify for PSLF, you must be an employee of a qualifying employer. An employee is someone who is hired and paid by the employer, and who receives an IRS Form W-2 from the employer. You may physically perform your work at a qualifying or non-qualifying organization, as long as you are an employee of a qualifying employer. If you are working at the location of or with an organization under contract with your employer, the organization that hired and pays you must be a qualifying employer, not the organization where you perform your work.

A qualifying organization is a government organization, a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code (IRC), or a private not-for-profit organization that provides certain public services. Service in an AmeriCorps or Peace Corps position is also qualifying employment.

A private not-for-profit organization that is not a tax-exempt organization under Section 501(c)(3) of the IRC may be a qualifying organization if it provides certain specified public services.

EMPLOYMENT ELIGIBILITY (CONTINUED)

These services include **(1)** emergency management, military service, public safety, or law enforcement services, **(2)** public health services, **(3)** public education or public library services, **(4)** school library and other school-based services, **(5)** public interest legal services, **(6)** early childhood education, **(7)** public service for individuals with disabilities and the elderly. The organization must not be a business organized for profit, a labor union, or a partisan political organization.

Employment as a member of the U.S. Congress is not qualifying employment.

You must be employed full-time by your employer.

Generally, you must meet your employer's definition of full-time. However, for PSLF purposes, that definition must be at least an annual average of 30 hours per week.

If you are a teacher or in another position under contract for at least eight out of 12 months, you meet the full-time standard if you work an average of at least 30 hours per week during the contractual period and receive credit by your employer for a full year's worth of employment.

If you are employed in more than one qualifying part-time job simultaneously, you may meet the full-time employment requirement if you work a combined average of at least 30 hours per week with your employers.

Vacation or leave time provided by the employer or leave taken for a condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993, 29, U.S.C. 2612(a)(1) and (3) is equivalent to hours worked in qualifying employment.

TEPSLF ELIGIBILITY

To qualify for TEPSLF, you must be ineligible for PSLF **only** because some or all of your payments were not made under a qualifying repayment plan for PSLF and if the payment that you made 12 months prior to applying for TEPSLF and the last payment made before applying for TEPSLF were at least as much as you would have paid under the REPAYE, PAYE, IBR, or ICR plans.

If you meet these requirements, you will be evaluated for TEPSLF eligibility under the expanded list of qualifying repayment plans for TEPSLF.

OTHER IMPORTANT INFORMATION

You are not permitted to apply the same period of service to receive PSLF and the Teacher Loan Forgiveness or Civil Legal Assistance Attorney Student Loan Repayment programs.

SECTION 8: IMPORTANT INFORMATION ABOUT PSLF (CONTINUED)

OTHER IMPORTANT INFORMATION (CONTINUED)

You have the option to postpone making payments on your Direct Loans if you are submitting this form and you believe that you qualify for forgiveness right now. However, when evaluating whether to choose forbearance, it is important to understand that periods of forbearance do not count towards PSLF or TEPSLF. If you decline forbearance, any payments made after your 120th qualifying payment will be refunded to you or applied to any other outstanding loans held by the Department.

SECTION 9: IMPORTANT NOTICES

Privacy Act Notice. The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authorities for collecting the requested information from and about you are Â§421 et seq., Â§451 et seq., or Â§461 of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 et seq., 20 U.S.C. 1087a et seq., or 20 U.S.C. 1087aa et seq.) and the authorities for collecting and using your Social Security Number (SSN) are Â§Â§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 1091(a)(4)) and 31 U.S.C. 7701(b). Participating in the William D. Ford Federal Direct Loan (Direct Loan) Program, Federal Family Education Loan (FFEL) Program, or Federal Perkins Loan (Perkins Loan) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under the Direct Loan, FFEL, or Federal Perkins Loan Programs, to permit the servicing of your loans, and, if it becomes necessary, to locate you and to collect and report on your loans if your loans become delinquent or default. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the appropriate systems of records notices. The routine uses of this information include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to consumer reporting agencies, to financial and educational institutions, and to guaranty agencies in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loans, to enforce the terms of the loans, to investigate possible fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to state agencies. To provide financial aid history information, disclosures may be made to educational institutions.

To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student enrollment statuses, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

Paperwork Reduction Notice. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0110. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain a benefit in accordance with 34 CFR 685.219. If you have comments or concerns regarding the status of your individual submission of this form, please contact your loan holder directly (see Section 7).

PSLF

PUBLIC SERVICE LOAN FORGIVENESS (PSLF) & TEMPORARY EXPANDED PSLF (TEPSLF) CERTIFICATION & APPLICATION

William D. Ford Federal Direct Loan (Direct Loan) Program

OMB No. 1845-0110
Form Approved
Exp. Date 08/31/2023
PSFAP - XBCR

WARNING: Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

SECTION 1: BORROWER INFORMATION

Please enter or correct the following information.

☐ **Check this box if any of your information has changed.**

SSN (b)(6)
Date of Birth (b)(6)
Name (b)(6)
Address (b)(6)
City (b)(6) State (b)(6) Zip Code (b)(6)
Telephone - Primary (b)(6)
Telephone - Alternate
Email

For more information on PSLF, visit StudentAid.gov/publicservice. To apply online, visit StudentAid.gov/PSLF.

SECTION 2: BORROWER REQUEST, UNDERSTANDINGS, CERTIFICATION, AND AUTHORIZATION

I request (1) that the U.S. Department of Education (the Department) determine whether I qualify for PSLF or TESPLF, and discharge any qualifying loans that I have, and **(2)** if none of my loans qualify for PSLF or TEPSLF when I submit this form, determine how many qualifying payments I have made towards PSLF and TEPSLF.

☐ I just want to find out how many qualifying payments I have made or if my employer is a qualified employer.

☒ I believe I qualify for forgiveness under PSLF or TEPSLF right now.

☐ If I indicated that I believe I qualify for forgiveness now, I want a forbearance while my application is being processed, but understand that periods of forbearance do not count towards forgiveness.

I understand that:

1. To qualify for forgiveness, I must have made 120 qualifying payments on my Direct Loans while employed full-time by a qualifying employer. Neither the 120 qualifying payments nor the employment have to be consecutive.
2. To qualify for forgiveness, I must be employed full-time by a qualifying employer when I apply for and get forgiveness.
3. By submitting this form, my student loans held by the Department may be transferred to MOHELA.
4. If the Department determines that I appear to be eligible for forgiveness, the Department may contact my employer before granting forgiveness to ensure that I continue to work for the employer.
5. If I am eligible for forgiveness, the amount forgiven will be the principal and interest that was due on my eligible Direct Loans when I made my final qualifying payment. Any amount that I pay on those loans after I have made my final qualifying payment will be treated as an overpayment. I must continue to make payments on any of my other loans.
6. If I am not eligible for forgiveness, I will be notified of the determination, why it was made, and how many qualifying payments I have made towards PSLF and TEPSLF.

I certify that all of the information I have provided on this form and in any accompanying document is true, complete, and correct to the best of my knowledge and belief and that if I cease to be employed by a qualifying employer after I submit this application, but before forgiveness is granted, I will notify the Department (see Section 7) immediately.

☐ Check this box if you cannot obtain certification from your employer because the organization is closed or because the organization has refused to certify your employment. The Department will follow up to assist you in getting documentation of your employment. **Complete Section 3, but do not complete Section 4.**

Borrower's Signature (b)(6) **Date** 8/31/22

Borrower Name [redacted] Borrower SSN [redacted]

SECTION 3: EMPLOYER INFORMATION (TO BE COMPLETED BY THE BORROWER OR EMPLOYER)

1. Employer Name
[redacted]

2. Federal Employer Identification Number (FEIN)
[redacted]

3. Employer Address:
[redacted]

4. Employer Website (if any):

5. Employment Begin Date:
[redacted]

6. Employment End Date:
[redacted] OR ☐ Still Employed

7. Employment Status: ☒ Full-Time ☐ Part-Time

8. Hours Per Week (Average) ~~40~~ 35 hours SR

Include vacation, leave time, or any leave taken under the Family Medical Leave Act of 1993.

9. Is your employer a **governmental** organization?

A governmental organization is a Federal, State, local, or Tribal government organization, agency, or entity, a public child or family service agency, a Tribal college or university, or the Peace Corps or AmeriCorps. Federal service includes military service.

☐ Yes - Skip to Section 4.

☒ No - Continue to Item 10.

10. Is your employer tax-exempt under Section **501(c)(3)** of the Internal Revenue Code (IRC)?
If your employer is tax-exempt under another subsection of 501(c) of the IRC, such as 501(c)(4) or 501(c)(6), check "No" to this question.

☒ Yes - Skip to Section 4.

☐ No - Continue to Item 11.

11. Is your employer a **not-for-profit** organization that is **not** tax-exempt under Section 501(c)(3) of the Internal Revenue Code?

☐ Yes - Continue to Item 12.

☐ No - Your employer does not qualify.

12. Is your employer a partisan political organization or a labor union?

☐ Yes - Your employer does not qualify.

☐ No - Continue to Item 13.

13. Which of the following services does your employer provide? Check all that apply and then continue to Section 4. If you you check "None of the above", do not submit this form.

☐ Emergency management
☐ Military service (See Section 6)
☐ Public safety
☐ Law enforcement
☐ Public interest legal services (See Section 6)
☐ Early childhood education (See Section 6)
☐ Public service for individuals with disabilities
☐ Public service for the elderly
☐ Public health (See Section 6)
☐ Public education
☐ Public library services
☐ School library services
☐ Other school-based services
☐ None of the above - the employer does not qualify.

SECTION 4: EMPLOYER CERTIFICATION (TO BE COMPLETED BY THE EMPLOYER)

By signing, **I certify (1)** that the information in Section 3 is true, complete, and correct to the best of my knowledge and belief, **(2)** that I am an authorized official (see Section 6) of the organization named in Section 3, and **(3)** that the borrower named in Section 1 is or was an employee of the organization named in Section 3.

Note: If any of the information is crossed out or altered in Section 3, you must initial those changes.

Official's Name [redacted] Official's Phone [redacted]

Official's Title People & Culture Coordinator Official's Email [redacted]

Authorized Official's Signature [redacted] **Date** 08-30-2022

SECTION 5: INSTRUCTIONS FOR COMPLETING THE FORM

When completing this form, type or print using dark ink. Enter dates as month-day-year (mm-dd-yyyy). Use only numbers. Example: March 14, 2016 = 03-14-2016. For more information about PSLF and how to use this form, visit StudentAid.gov/publicservice. **Return the completed form to the address shown in Section 7.**

SECTION 6: DEFINITIONS

QUALIFYING PAYMENT DEFINITIONS

Qualifying payments are on-time, full monthly payments made on an eligible loan after October 1, 2007 under a qualifying repayment plan while employed full-time by a qualifying employer.

An **on-time payment** is a payment made no more than 15 days after the due date for the payment.

Eligible loans are loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program that are not in default.

Qualifying repayment plans for PSLF include the Revised Pay As You Earn (REPAYE) plan, the Pay As You Earn (PAYE) plan, the Income-Based Repayment (IBR) plan, the Income-Contingent Repayment (ICR) plan, the Standard Repayment plan with a maximum 10-year repayment period, and any other Direct Loan repayment plan if payments are at least equal to the monthly payment amount that would be required under the Standard Repayment plan with a 10-year repayment period.

Qualifying repayment plans for TEPSLF include the qualifying repayment plans for PSLF, as well as the Graduated Repayment Plan, Extended Repayment Plan, Standard Repayment Plan for Direct Consolidation Loans, and Graduated Repayment Plan for Direct Consolidation Loans.

QUALIFYING EMPLOYMENT DEFINITIONS

A **Qualifying employer** includes the government, a not-for-profit organization that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code, or a private not-for-profit organization that provides certain public services. Serving in an AmeriCorps or Peace Corps position is also qualifying employment.

Government includes a Federal, State, local or Tribal government organization, agency or entity; a public child or family service agency; or a Tribal college or university.

A **private not-for-profit organization** is an organization that is not organized for profit, is not a labor union, is not a partisan political organization, and provides at least one of the following public services: **(1)** emergency management, **(2)** military service, **(3)** public safety, **(4)** law enforcement, **(5)** public interest legal services, **(6)** early childhood education, **(7)** public service for individuals with disabilities and the elderly, **(8)** public health, **(9)** public education, **(10)** public library services, **(11)** school library services, or **(12)** other school-based services.

AmeriCorps position means a position approved by the Corporation for National and Community Service under Section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).

QUALIFYING EMPLOYMENT DEFINITIONS (CONTINUED)

Peace Corps position means a full-time assignment under the Peace Corps Act as provided for under 22 U.S.C. 2504.

An employee means an individual who is hired and paid by the qualifying employer.

Full-time means working for one or more qualifying employers for the greater of: **(1)** an annual average of at least 30 hours per week or, for a contractual or employment period of at least 8 months, an average of 30 hours per week; or **(2)** unless the qualifying employment is with two or more employers, the number of hours the employer considers full time.

An **authorized official** is an official of a qualifying employer who has access to the borrower's employment or service records and is authorized by the employer to certify the employment status of the organization's employees or former employees, or the service of AmeriCorps or Peace Corps volunteers.

Early childhood education includes licensed or regulated child care, Head Start, and State funded pre-kindergarten.

Law enforcement means crime prevention, control or reduction of crime, or the enforcement of criminal law.

Military service means service on behalf of the U. S. Armed Forces or the National Guard.

Public interest legal services refers to legal services that are funded in whole or in part by a local, State, Federal, or Tribal government.

Public health includes nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations, health support occupations, and counselors, social workers, and other community and social service specialists as such terms are defined by the Bureau of Labor Statistics.

OTHER DEFINITIONS

A **forbearance** is a period during which you are allowed to postpone making payments temporarily, allowed an extension of time for making payments, or temporarily allowed to make smaller payments than scheduled.

SECTION 7: WHERE TO SEND THE COMPLETED FORM

Return the completed form and any documentation to:

Mail to: U.S. Department of Education, MOHELA, 633 Spirit Drive, Chesterfield, MO 63005-1243.

Fax to: 866-222-7060.

Upload to: mohela.com/uploadDocument, if MOHELA is already your servicer.

If you need help completing this form, call:

Domestic: 855-265-4038.
International: 636-532-0600.
TTY: dial 711, then enter 855-265-4038.

Website: mohela.com.

SECTION 8: IMPORTANT INFORMATION ABOUT PSLF AND TEPSLF

You may receive loan forgiveness under this program only after you have made 120 qualifying payments on eligible loans while working full-time in qualifying employment. There are certain additional eligibility requirements for TEPSLF.

PAYMENT ELIGIBILITY

To receive PSLF, you must make 120 on-time, full, scheduled, separate monthly payments on your Direct Loans under a qualifying repayment plan after October 1, 2007.

On-time payments are those that are received by your servicer no later than 15 days after the scheduled payment due date.

Full payments are payments on your Direct Loan in an amount that equals or exceeds the amount you are required to pay each month. If you make multiple, partial payments in a month and the total of those partial payments equals the required full monthly payment amount, those payments will count as one qualifying payment provided all of the partial payments were made within 15 days of the due date.

Scheduled payments are those that are made while you are in repayment. They do not include payments made while your loans are in an in-school or grace status, or in a deferment or forbearance period.

If you were an AmeriCorps or Peace Corps volunteer, you may receive credit for making qualifying payments if you make a lump sum payment by using all or part of a Segal Education Award or Peace Corps transition payment.

You may also receive credit for qualifying payments if a lump sum payment is made on your behalf through a student loan repayment program administered by the U.S. Department of Defense (DOD).

If you make a lump sum payment by using an AmeriCorps Segal Education Award or a Peace Corps transition payment, or if a lump sum payment is made on your behalf through a DOD student loan repayment program, the Department will give you credit for qualifying payments equal to the lesser of **(1)** the number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount you would have made under one of the qualifying repayment plans listed below; or **(2)** 12 payments.

PAYMENT ELIGIBILITY (CONTINUED)

If you make an eligible lump sum payment using a Peace Corps transition payment, you must do so within 6 months of the Employment End Date, as reported in Section 3.

You may only use an AmeriCorps Segal Education Award or Peace Corps transition payment one time to receive credit for more than one qualifying payment towards PSLF. However, lump sum payments made on your behalf under a DOD student loan repayment program may be counted as up to 12 qualifying payments for each year that a lump sum payment is made.

Your payments must be made under a qualifying repayment plan. Qualifying repayment plans for PSLF include the REPAYE plan, the PAYE plan, the IBR plan, the ICR plan, the 10-Year Standard Repayment plan, or any other Direct Loan repayment plan, but only payments that are at least equal to the monthly payment amount that would be required under the 10-Year Standard Repayment plan. Qualifying repayment plans for TEPSLF include the Graduated, Extended, Standard Repayment Plan for Direct Consolidation Loans, and Graduated Repayment Plan for Direct Consolidation Loans.

Though repayment plans other than the REPAYE, PAYE, IBR, and ICR plans are qualifying repayment plans for PSLF, you must enter REPAYE, PAYE, IBR, or ICR to have a remaining balance to forgive after becoming eligible for PSLF. Otherwise, your loans will be fully repaid within 10 years. To apply for these plans, visit StudentAid.gov/IDR.

IMPORTANT: The Standard Repayment Plan for Direct Consolidation Loans made on or after July 1, 2006 has repayment periods that range from 10 to 30 years. Monthly payments you make under this plan are qualifying payments for PSLF only if the repayment period is 10 years, which would be the case only if the total amount of the consolidation loan and your other eligible student loans is less than $7,500. This repayment plan is always a qualifying repayment plan for TEPSLF.

SECTION 8: IMPORTANT INFORMATION ABOUT PSLF (CONTINUED)

LOAN ELIGIBILITY

Only Direct Loan Program loans that are not in default are eligible for PSLF. Loans you received under the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins Loan) Program, or any other student loan program are not eligible for PSLF.

If you have FFEL Program or Perkins Loan Program loans, you may consolidate them into a Direct Consolidation Loan to take advantage of PSLF. However, payments made on those loans before you consolidated them do not count as qualifying PSLF payments. In addition, if you made qualifying payments on a Direct Loan and then consolidate it into a Direct Consolidation Loan, you must start over making qualifying payments on the new Direct Consolidation Loan.

If you are planning to consolidate your FFEL Program or Perkins Loan Program loans into a Direct Consolidation Loan to take advantage of PSLF and do not have any Direct Loans, do not submit this form until you have consolidated your loans and have subsequently made 120 qualifying payments. The online application for Direct Consolidation Loans contains a section that allows you to indicate that you are consolidating your loans for PSLF. If you plan to consolidate Perkins Loan Program loans, first understand that Perkins Loan Program loans may be cancelled for certain types of public service. If you consolidate a Perkins Loan Program loan, you will no longer be eligible for Perkins cancellation. The online application is available at StudentAid.gov/consolidation. If you don't know whether you have Direct Loans, go to StudentAid.gov/dashboard.

EMPLOYMENT ELIGIBILITY

To qualify for PSLF, you must be an employee of a qualifying employer. An employee is someone who is hired and paid by the employer, and who receives an IRS Form W-2 from the employer. You may physically perform your work at a qualifying or non-qualifying organization, as long as you are an employee of a qualifying employer. If you are working at the location of or with an organization under contract with your employer, the organization that hired and pays you must be a qualifying employer, not the organization where you perform your work.

A qualifying organization is a government organization, a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code (IRC), or a private not-for-profit organization that provides certain public services. Service in an AmeriCorps or Peace Corps position is also qualifying employment.

A private not-for-profit organization that is not a tax-exempt organization under Section 501(c)(3) of the IRC may be a qualifying organization if it provides certain specified public services.

EMPLOYMENT ELIGIBILITY (CONTINUED)

These services include **(1)** emergency management, military service, public safety, or law enforcement services, **(2)** public health services, **(3)** public education or public library services, **(4)** school library and other school-based services, **(5)** public interest legal services, **(6)** early childhood education, **(7)** public service for individuals with disabilities and the elderly. The organization must not be a business organized for profit, a labor union, or a partisan political organization.

Employment as a member of the U.S. Congress is not qualifying employment.

You must be employed full-time by your employer.

Generally, you must meet your employer's definition of full-time. However, for PSLF purposes, that definition must be at least an annual average of 30 hours per week.

If you are a teacher or in another position under contract for at least eight out of 12 months, you meet the full-time standard if you work an average of at least 30 hours per week during the contractual period and receive credit by your employer for a full year's worth of employment.

If you are employed in more than one qualifying part-time job simultaneously, you may meet the full-time employment requirement if you work a combined average of at least 30 hours per week with your employers.

Vacation or leave time provided by the employer or leave taken for a condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993, 29, U.S.C. 2612(a)(1) and (3) is equivalent to hours worked in qualifying employment.

TEPSLF ELIGIBILITY

To qualify for TEPSLF, you must be ineligible for PSLF **only** because some or all of your payments were not made under a qualifying repayment plan for PSLF and if the payment that you made 12 months prior to applying for TEPSLF and the last payment made before applying for TEPSLF were at least as much as you would have paid under the REPAYE, PAYE, IBR, or ICR plans.

If you meet these requirements, you will be evaluated for TEPSLF eligibility under the expanded list of qualifying repayment plans for TEPSLF.

OTHER IMPORTANT INFORMATION

You are not permitted to apply the same period of service to receive PSLF and the Teacher Loan Forgiveness or Civil Legal Assistance Attorney Student Loan Repayment programs.

SECTION 8: IMPORTANT INFORMATION ABOUT PSLF (CONTINUED)

OTHER IMPORTANT INFORMATION (CONTINUED)

You have the option to postpone making payments on your Direct Loans if you are submitting this form and you believe that you qualify for forgiveness right now. However, when evaluating whether to choose forbearance, it is important to understand that periods of forbearance do not count towards PSLF or TEPSLF. If you decline forbearance, any payments made after your 120th qualifying payment will be refunded to you or applied to any other outstanding loans held by the Department.

SECTION 9: IMPORTANT NOTICES

Privacy Act Notice. The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authorities for collecting the requested information from and about you are Â§421 et seq., Â§451 et seq., or Â§461 of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 et seq., 20 U.S.C. 1087a et seq., or 20 U.S.C. 1087aa et seq.) and the authorities for collecting and using your Social Security Number (SSN) are Â§Â§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 1091(a)(4)) and 31 U.S.C. 7701(b). Participating in the William D. Ford Federal Direct Loan (Direct Loan) Program, Federal Family Education Loan (FFEL) Program, or Federal Perkins Loan (Perkins Loan) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under the Direct Loan, FFEL, or Federal Perkins Loan Programs, to permit the servicing of your loans, and, if it becomes necessary, to locate you and to collect and report on your loans if your loans become delinquent or default. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the appropriate systems of records notices. The routine uses of this information include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to consumer reporting agencies, to financial and educational institutions, and to guaranty agencies in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loans, to enforce the terms of the loans, to investigate possible fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to state agencies. To provide financial aid history information, disclosures may be made to educational institutions.

To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student enrollment statuses, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

Paperwork Reduction Notice. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0110. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain a benefit in accordance with 34 CFR 685.219. If you have comments or concerns regarding the status of your individual submission of this form, please contact your loan holder directly (see Section 7).

PSLF

PUBLIC SERVICE LOAN FORGIVENESS (PSLF) & TEMPORARY EXPANDED PSLF (TEPSLF) CERTIFICATION & APPLICATION

William D. Ford Federal Direct Loan (Direct Loan) Program

OMB No. 1845-0110
Form Approved
Exp. Date 08/31/2023
PSFAP - XBCR

WARNING: Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

SECTION 1: BORROWER INFORMATION

Please enter or correct the following information.

☐ **Check this box if any of your information has changed.**

SSN (b)(6)
Date of Birth (b)(6)
Name (b)(6)
Address (b)(6)
City (b)(6) State (b)(6) Zip Code (b)(6)
Telephone - Primary (b)(6)
Telephone - Alternate
Email

For more information on PSLF, visit StudentAid.gov/publicservice. To apply online, visit StudentAid.gov/PSLF.

SECTION 2: BORROWER REQUEST, UNDERSTANDINGS, CERTIFICATION, AND AUTHORIZATION

I request (1) that the U.S. Department of Education (the Department) determine whether I qualify for PSLF or TESPLF, and discharge any qualifying loans that I have, and **(2)** if none of my loans qualify for PSLF or TEPSLF when I submit this form, determine how many qualifying payments I have made towards PSLF and TEPSLF.

☐ I just want to find out how many qualifying payments I have made or if my employer is a qualified employer.

☒ I believe I qualify for forgiveness under PSLF or TEPSLF right now.

☐ If I indicated that I believe I qualify for forgiveness now, I want a forbearance while my application is being processed, but understand that periods of forbearance do not count towards forgiveness.

I understand that:

1. To qualify for forgiveness, I must have made 120 qualifying payments on my Direct Loans while employed full-time by a qualifying employer. Neither the 120 qualifying payments nor the employment have to be consecutive.
2. To qualify for forgiveness, I must be employed full-time by a qualifying employer when I apply for and get forgiveness.
3. By submitting this form, my student loans held by the Department may be transferred to MOHELA.
4. If the Department determines that I appear to be eligible for forgiveness, the Department may contact my employer before granting forgiveness to ensure that I continue to work for the employer.
5. If I am eligible for forgiveness, the amount forgiven will be the principal and interest that was due on my eligible Direct Loans when I made my final qualifying payment. Any amount that I pay on those loans after I have made my final qualifying payment will be treated as an overpayment. I must continue to make payments on any of my other loans.
6. If I am not eligible for forgiveness, I will be notified of the determination, why it was made, and how many qualifying payments I have made towards PSLF and TEPSLF.

I certify that all of the information I have provided on this form and in any accompanying document is true, complete, and correct to the best of my knowledge and belief and that if I cease to be employed by a qualifying employer after I submit this application, but before forgiveness is granted, I will notify the Department (see Section 7) immediately.

☐ Check this box if you cannot obtain certification from your employer because the organization is closed or because the organization has refused to certify your employment. The Department will follow up to assist you in getting documentation of your employment. **Complete Section 3, but do not complete Section 4.**

Borrower's Signature (b)(6) **Date** 8/3-/22

Borrower Name [redacted] **Borrower SSN** [redacted]

SECTION 3: EMPLOYER INFORMATION (TO BE COMPLETED BY THE BORROWER OR EMPLOYER)

1. Employer Name
[redacted]

2. Federal Employer Identification Number (FEIN)
[redacted]

3. Employer Address:
[redacted]

4. Employer Website (if any):
[redacted]

5. Employment Begin Date:
[redacted]

6. Employment End Date:
[redacted] **OR** ☐ Still Employed

7. Employment Status: ☒ Full-Time ☐ Part-Time

8. Hours Per Week (Average) 35

Include vacation, leave time, or any leave taken under the Family Medical Leave Act of 1993.

9. Is your employer a **governmental** organization?

A governmental organization is a Federal, State, local, or Tribal government organization, agency, or entity, a public child or family service agency, a Tribal college or university, or the Peace Corps or AmeriCorps. Federal service includes military service.

☐ Yes - Skip to Section 4.
☒ No - Continue to Item 10.

10. Is your employer tax-exempt under Section **501(c)(3)** of the Internal Revenue Code (IRC)?
If your employer is tax-exempt under another subsection of 501(c) of the IRC, such as 501(c)(4) or 501(c)(6), check "No" to this question.

☒ Yes - Skip to Section 4.
☐ No - Continue to Item 11.

11. Is your employer a **not-for-profit** organization that is **not** tax-exempt under Section 501(c)(3) of the Internal Revenue Code?

☐ Yes - Continue to Item 12.
☐ No - Your employer does not qualify.

12. Is your employer a partisan political organization or a labor union?

☐ Yes - Your employer does not qualify.
☐ No - Continue to Item 13.

13. Which of the following services does your employer provide? Check all that apply and then continue to Section 4. If you you check "None of the above", do not submit this form.

☐ Emergency management
☐ Military service (See Section 6)
☐ Public safety
☐ Law enforcement
☐ Public interest legal services (See Section 6)
☐ Early childhood education (See Section 6)
☐ Public service for individuals with disabilities
☐ Public service for the elderly
☐ Public health (See Section 6)
☐ Public education
☐ Public library services
☐ School library services
☐ Other school-based services
☐ None of the above - the employer does not qualify.

SECTION 4: EMPLOYER CERTIFICATION (TO BE COMPLETED BY THE EMPLOYER)

By signing, **I certify (1)** that the information in Section 3 is true, complete, and correct to the best of my knowledge and belief, **(2)** that I am an authorized official (see Section 6) of the organization named in Section 3, and **(3)** that the borrower named in Section 1 is or was an employee of the organization named in Section 3.
Note: If any of the information is crossed out or altered in Section 3, you must initial those changes.

Official's Name [redacted] Official's Phone [redacted]
Official's Title HR Assistant Official's Email [redacted]
Authorized Official's Signature [redacted] **Date** 08/31/2022

SECTION 5: INSTRUCTIONS FOR COMPLETING THE FORM

When completing this form, type or print using dark ink. Enter dates as month-day-year (mm-dd-yyyy). Use only numbers. Example: March 14, 2016 = 03-14-2016. For more information about PSLF and how to use this form, visit StudentAid.gov/publicservice. **Return the completed form to the address shown in Section 7.**

SECTION 6: DEFINITIONS

QUALIFYING PAYMENT DEFINITIONS

Qualifying payments are on-time, full monthly payments made on an eligible loan after October 1, 2007 under a qualifying repayment plan while employed full-time by a qualifying employer.

An **on-time payment** is a payment made no more than 15 days after the due date for the payment.

Eligible loans are loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program that are not in default.

Qualifying repayment plans for PSLF include the Revised Pay As You Earn (REPAYE) plan, the Pay As You Earn (PAYE) plan, the Income-Based Repayment (IBR) plan, the Income-Contingent Repayment (ICR) plan, the Standard Repayment plan with a maximum 10-year repayment period, and any other Direct Loan repayment plan if payments are at least equal to the monthly payment amount that would be required under the Standard Repayment plan with a 10-year repayment period.

Qualifying repayment plans for TEPSLF include the qualifying repayment plans for PSLF, as well as the Graduated Repayment Plan, Extended Repayment Plan, Standard Repayment Plan for Direct Consolidation Loans, and Graduated Repayment Plan for Direct Consolidation Loans.

QUALIFYING EMPLOYMENT DEFINITIONS

A **Qualifying employer** includes the government, a not-for-profit organization that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code, or a private not-for-profit organization that provides certain public services. Serving in an AmeriCorps or Peace Corps position is also qualifying employment.

Government includes a Federal, State, local or Tribal government organization, agency or entity; a public child or family service agency; or a Tribal college or university.

A **private not-for-profit organization** is an organization that is not organized for profit, is not a labor union, is not a partisan political organization, and provides at least one of the following public services: **(1)** emergency management, **(2)** military service, **(3)** public safety, **(4)** law enforcement, **(5)** public interest legal services, **(6)** early childhood education, **(7)** public service for individuals with disabilities and the elderly, **(8)** public health, **(9)** public education, **(10)** public library services, **(11)** school library services, or **(12)** other school-based services.

AmeriCorps position means a position approved by the Corporation for National and Community Service under Section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).

QUALIFYING EMPLOYMENT DEFINITIONS (CONTINUED)

Peace Corps position means a full-time assignment under the Peace Corps Act as provided for under 22 U.S.C. 2504.

An employee means an individual who is hired and paid by the qualifying employer.

Full-time means working for one or more qualifying employers for the greater of: **(1)** an annual average of at least 30 hours per week or, for a contractual or employment period of at least 8 months, an average of 30 hours per week; or **(2)** unless the qualifying employment is with two or more employers, the number of hours the employer considers full time.

An **authorized official** is an official of a qualifying employer who has access to the borrower's employment or service records and is authorized by the employer to certify the employment status of the organization's employees or former employees, or the service of AmeriCorps or Peace Corps volunteers.

Early childhood education includes licensed or regulated child care, Head Start, and State funded pre-kindergarten.

Law enforcement means crime prevention, control or reduction of crime, or the enforcement of criminal law.

Military service means service on behalf of the U. S. Armed Forces or the National Guard.

Public interest legal services refers to legal services that are funded in whole or in part by a local, State, Federal, or Tribal government.

Public health includes nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations, health support occupations, and counselors, social workers, and other community and social service specialists as such terms are defined by the Bureau of Labor Statistics.

OTHER DEFINITIONS

A **forbearance** is a period during which you are allowed to postpone making payments temporarily, allowed an extension of time for making payments, or temporarily allowed to make smaller payments than scheduled.

SECTION 7: WHERE TO SEND THE COMPLETED FORM

Return the completed form and any documentation to:

Mail to: U.S. Department of Education, MOHELA, 633 Spirit Drive, Chesterfield, MO 63005-1243.

Fax to: 866-222-7060.

Upload to: mohela.com/uploadDocument, if MOHELA is already your servicer.

If you need help completing this form, call:

Domestic: 855-265-4038.
International: 636-532-0600.
TTY: dial 711, then enter 855-265-4038.

Website: mohela.com.

SECTION 8: IMPORTANT INFORMATION ABOUT PSLF AND TEPSLF

You may receive loan forgiveness under this program only after you have made 120 qualifying payments on eligible loans while working full-time in qualifying employment. There are certain additional eligibility requirements for TEPSLF.

PAYMENT ELIGIBILITY

To receive PSLF, you must make 120 on-time, full, scheduled, separate monthly payments on your Direct Loans under a qualifying repayment plan after October 1, 2007.

On-time payments are those that are received by your servicer no later than 15 days after the scheduled payment due date.

Full payments are payments on your Direct Loan in an amount that equals or exceeds the amount you are required to pay each month. If you make multiple, partial payments in a month and the total of those partial payments equals the required full monthly payment amount, those payments will count as one qualifying payment provided all of the partial payments were made within 15 days of the due date.

Scheduled payments are those that are made while you are in repayment. They do not include payments made while your loans are in an in-school or grace status, or in a deferment or forbearance period.

If you were an AmeriCorps or Peace Corps volunteer, you may receive credit for making qualifying payments if you make a lump sum payment by using all or part of a Segal Education Award or Peace Corps transition payment.

You may also receive credit for qualifying payments if a lump sum payment is made on your behalf through a student loan repayment program administered by the U.S. Department of Defense (DOD).

If you make a lump sum payment by using an AmeriCorps Segal Education Award or a Peace Corps transition payment, or if a lump sum payment is made on your behalf through a DOD student loan repayment program, the Department will give you credit for qualifying payments equal to the lesser of **(1)** the number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount you would have made under one of the qualifying repayment plans listed below; or **(2)** 12 payments.

PAYMENT ELIGIBILITY (CONTINUED)

If you make an eligible lump sum payment using a Peace Corps transition payment, you must do so within 6 months of the Employment End Date, as reported in Section 3.

You may only use an AmeriCorps Segal Education Award or Peace Corps transition payment one time to receive credit for more than one qualifying payment towards PSLF. However, lump sum payments made on your behalf under a DOD student loan repayment program may be counted as up to 12 qualifying payments for each year that a lump sum payment is made.

Your payments must be made under a qualifying repayment plan. Qualifying repayment plans for PSLF include the REPAYE plan, the PAYE plan, the IBR plan, the ICR plan, the 10-Year Standard Repayment plan, or any other Direct Loan repayment plan, but only payments that are at least equal to the monthly payment amount that would be required under the 10-Year Standard Repayment plan. Qualifying repayment plans for TEPSLF include the Graduated, Extended, Standard Repayment Plan for Direct Consolidation Loans, and Graduated Repayment Plan for Direct Consolidation Loans.

Though repayment plans other than the REPAYE, PAYE, IBR, and ICR plans are qualifying repayment plans for PSLF, you must enter REPAYE, PAYE, IBR, or ICR to have a remaining balance to forgive after becoming eligible for PSLF. Otherwise, your loans will be fully repaid within 10 years. To apply for these plans, visit StudentAid.gov/IDR.

IMPORTANT: The Standard Repayment Plan for Direct Consolidation Loans made on or after July 1, 2006 has repayment periods that range from 10 to 30 years. Monthly payments you make under this plan are qualifying payments for PSLF only if the repayment period is 10 years, which would be the case only if the total amount of the consolidation loan and your other eligible student loans is less than $7,500. This repayment plan is always a qualifying repayment plan for TEPSLF.

SECTION 8: IMPORTANT INFORMATION ABOUT PSLF (CONTINUED)

LOAN ELIGIBILITY

Only Direct Loan Program loans that are not in default are eligible for PSLF. Loans you received under the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins Loan) Program, or any other student loan program are not eligible for PSLF.

If you have FFEL Program or Perkins Loan Program loans, you may consolidate them into a Direct Consolidation Loan to take advantage of PSLF. However, payments made on those loans before you consolidated them do not count as qualifying PSLF payments. In addition, if you made qualifying payments on a Direct Loan and then consolidate it into a Direct Consolidation Loan, you must start over making qualifying payments on the new Direct Consolidation Loan.

If you are planning to consolidate your FFEL Program or Perkins Loan Program loans into a Direct Consolidation Loan to take advantage of PSLF and do not have any Direct Loans, do not submit this form until you have consolidated your loans and have subsequently made 120 qualifying payments. The online application for Direct Consolidation Loans contains a section that allows you to indicate that you are consolidating your loans for PSLF. If you plan to consolidate Perkins Loan Program loans, first understand that Perkins Loan Program loans may be cancelled for certain types of public service. If you consolidate a Perkins Loan Program loan, you will no longer be eligible for Perkins cancellation. The online application is available at StudentAid.gov/consolidation. If you don't know whether you have Direct Loans, go to StudentAid.gov/dashboard.

EMPLOYMENT ELIGIBILITY

To qualify for PSLF, you must be an employee of a qualifying employer. An employee is someone who is hired and paid by the employer, and who receives an IRS Form W-2 from the employer. You may physically perform your work at a qualifying or non-qualifying organization, as long as you are an employee of a qualifying employer. If you are working at the location of or with an organization under contract with your employer, the organization that hired and pays you must be a qualifying employer, not the organization where you perform your work.

A qualifying organization is a government organization, a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code (IRC), or a private not-for-profit organization that provides certain public services. Service in an AmeriCorps or Peace Corps position is also qualifying employment.

A private not-for-profit organization that is not a tax-exempt organization under Section 501(c)(3) of the IRC may be a qualifying organization if it provides certain specified public services.

EMPLOYMENT ELIGIBILITY (CONTINUED)

These services include **(1)** emergency management, military service, public safety, or law enforcement services, **(2)** public health services, **(3)** public education or public library services, **(4)** school library and other school-based services, **(5)** public interest legal services, **(6)** early childhood education, **(7)** public service for individuals with disabilities and the elderly. The organization must not be a business organized for profit, a labor union, or a partisan political organization.

Employment as a member of the U.S. Congress is not qualifying employment.

You must be employed full-time by your employer.

Generally, you must meet your employer's definition of full-time. However, for PSLF purposes, that definition must be at least an annual average of 30 hours per week.

If you are a teacher or in another position under contract for at least eight out of 12 months, you meet the full-time standard if you work an average of at least 30 hours per week during the contractual period and receive credit by your employer for a full year's worth of employment.

If you are employed in more than one qualifying part-time job simultaneously, you may meet the full-time employment requirement if you work a combined average of at least 30 hours per week with your employers.

Vacation or leave time provided by the employer or leave taken for a condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993, 29, U.S.C. 2612(a)(1) and (3) is equivalent to hours worked in qualifying employment.

TEPSLF ELIGIBILITY

To qualify for TEPSLF, you must be ineligible for PSLF **only** because some or all of your payments were not made under a qualifying repayment plan for PSLF and if the payment that you made 12 months prior to applying for TEPSLF and the last payment made before applying for TEPSLF were at least as much as you would have paid under the REPAYE, PAYE, IBR, or ICR plans.

If you meet these requirements, you will be evaluated for TEPSLF eligibility under the expanded list of qualifying repayment plans for TEPSLF.

OTHER IMPORTANT INFORMATION

You are not permitted to apply the same period of service to receive PSLF and the Teacher Loan Forgiveness or Civil Legal Assistance Attorney Student Loan Repayment programs.

SECTION 8: IMPORTANT INFORMATION ABOUT PSLF (CONTINUED)

OTHER IMPORTANT INFORMATION (CONTINUED)

You have the option to postpone making payments on your Direct Loans if you are submitting this form and you believe that you qualify for forgiveness right now. However, when evaluating whether to choose forbearance, it is important to understand that periods of forbearance do not count towards PSLF or TEPSLF. If you decline forbearance, any payments made after your 120th qualifying payment will be refunded to you or applied to any other outstanding loans held by the Department.

SECTION 9: IMPORTANT NOTICES

Privacy Act Notice. The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authorities for collecting the requested information from and about you are Â§421 et seq., Â§451 et seq., or Â§461 of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 et seq., 20 U.S.C. 1087a et seq., or 20 U.S.C. 1087aa et seq.) and the authorities for collecting and using your Social Security Number (SSN) are Â§Â§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 1091(a)(4)) and 31 U.S.C. 7701(b). Participating in the William D. Ford Federal Direct Loan (Direct Loan) Program, Federal Family Education Loan (FFEL) Program, or Federal Perkins Loan (Perkins Loan) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under the Direct Loan, FFEL, or Federal Perkins Loan Programs, to permit the servicing of your loans, and, if it becomes necessary, to locate you and to collect and report on your loans if your loans become delinquent or default. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the appropriate systems of records notices. The routine uses of this information include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to consumer reporting agencies, to financial and educational institutions, and to guaranty agencies in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loans, to enforce the terms of the loans, to investigate possible fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to state agencies. To provide financial aid history information, disclosures may be made to educational institutions.

To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student enrollment statuses, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

Paperwork Reduction Notice. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0110. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain a benefit in accordance with 34 CFR 685.219. If you have comments or concerns regarding the status of your individual submission of this form, please contact your loan holder directly (see Section 7).

From: Abby Shafroth
Subject: Re: CRLC Session planning (Student Loan Policy Updates)
To: Alpha Taylor
Cc: Latreille, Bonnie; Persis Yu; Eileen Connor
Sent: November 8, 2022 2:26 PM (UTC-05:00)

Hi all,

Alpha and Persis already know this, but I wanted to let you all know that I unfortunately (b)(6) and will not be traveling to Seattle for the conference as a result.

Persis has graciously agreed to cover my topics for the panel, with my notes here (thank you, Persis!) though I imagine that she'll be happy to share the load if others of you are interested in taking over any of the topics I had planned to cover to spread the content around.

Alpha will still be there moderating and coordinating the panel, so you'll be in good hands. (*Reminder: send Alpha your slides by Nov. 10 so he can combine them and bring them to the session.*) And since this panel is stacked with the most knowledgeable student loan experts in the country, I am not worried in the least.

But I'll miss seeing you all in person. We'll have to get Bonnie & Alpha up to Boston some time for another gathering, or create an excuse for Persis, Eileen and I to head down to DC.

A final tech note: We've requested a laptop clicker/remote to advance slides from the head table if you prefer to present from there rather than the podium (given how much back-and-forth there is on this panel), though are still awaiting confirmation that the room will have it. If anyone happens to have a remote that they want to bring as back up, by all means.

Thank you all,
Abby

Abby Shafroth
Staff Attorney
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

On Mon, Oct 31, 2022 at 6:00 AM Alpha Taylor <ataylor@nclc.org> wrote:

> Hi all,
>
> Sorry, I missed the planning call the other day. As discussed, here are notes on the next steps, along with a proposed run of the show with topic assignments.
>
> **Next steps:**
>
> 1. Review and provide feedback on the proposed run of show by Wednesday, 11/28, so we can lock it down.
> 2. Let me know if there are additional materials, you'd like me to upload to the session materials (for attendees)
> 3. If you plan to use PPT slides for your portion(s) of the presentation, please consider using NCLC's conference PowerPoint template here to make it easy to combine into a single PPT for the session, and please

send your slide deck to me by Nov. 10, so I can combine into a single file, flag anything redundant, and share it back out with everyone.

Proposed Run of Show (90 min session):

- **(5min) Alpha:** Welcomes audience, introduces panelists, previews agenda
- **(10 min) Cancellation – Abby**
- **(15 min) Other updates impacting opportunities for loan cancellation (Abby / Eileen / Persis as divided below)**
  - **(2 min) Flag IDR Account Adjustment plus implications for PLSF** (covered in detail in separate session) **(Abby)**
  - **(2 min) Flag new rules on BD, CSD, TPD, False Cert** (covered in detail in separate session) **(Abby)**
  - **(8 min) BD actions apart from rule change (Eileen)**
    - Group discharges
    - Sweet
    - Other BD sub-regulatory updates
  - **(2 min) Potential bankruptcy discharge change in approach (Persis)**
- **(3 min) Elimination of most interest capitalization (Abby)**
- **(5 min) What about FFEL? (& special mandatory assignments) – Persis?**
  - (incl. Tips for borrowers with c-FFEL and Perkins on thinking about consolidating for IDR Account adjustment/PSLF and navigating cancellation)
- **(8 min) End of payment pause / Return to repayment (Persis)**
  - How should we think about scheduled Jan 1 date for RTR – how likely?
  - Will a new IDR plan be available?
  - IDR recert requirements and flexibilities
  - Auto-debit issues
  - Hold harmless
  - (transition – turn to Bonnie to discuss what end of payment pause means for borrowers in default)
  - Tips for how to help borrower prepare for RTR
- **(10 min) Fresh Start and What's next for borrowers in default (Bonnie)**
  - Fresh Start
  - Credit Reporting Changes and What to Look Out For
  - Collection outlook / no collection in 2023, what's next and no PCAs
- **(12 min) Servicing (Bonnie & Persis as divided below)**
  - (7 min) Servicing changes, contracts, USDS, Transfers & Next Gen (and gov't immunity and preemption issues and preemption notice) (Bonnie)
  - (3 min) State licensing laws (Persis)
  - (2 min) SBPC Demand Letter (Persis)
- **(8 min) School accountability issues (Eileen)**
  - Arbitration rules restored
  - GE rulemaking began but kicked to 2023
  - 90/10 and change of ownership regs out (can be light touch)
  - Any other school accountability updates Eileen wants to discuss?
- **(10-15min) Q&A** (questions from audience, moderated by Alpha)
  - **Start with Alpha asking the first question to Bonnie before taking Q's from audience:** Bonnie, when should advocates reach out to the ombuds office, what can you help with?

As always, please let me know if you have any questions or concerns.

Thanks,

Alpha S. Taylor
Staff Attorney
National Consumer Law Center®
1001 Connecticut Ave., NW, Washington, DC 20036 [redacted](direct)-202-452-6252(main)
|
www.nclc.org

On Wed, Oct 12, 2022 at 1:41 PM Alpha Taylor <ataylor@nclc.org> wrote:

Great, I'll send out a calendar invite for noon next Friday.

Alpha S. Taylor
Staff Attorney
National Consumer Law Center®
1001 Connecticut Ave., NW, Washington, DC 20036 [redacted](direct)-202-452-6252(main)
|
www.nclc.org

On Wed, Oct 12, 2022 at 12:21 PM Latreille, Bonnie <Bonnie.J.Latreille@ed.gov> wrote:

Noon on Friday next week works for me.

From: Abby Shafroth <ashafroth@nclc.org>
Sent: Wednesday, October 12, 2022 12:17 PM
To: Persis Yu <persis@protectborrowers.org>
Cc: Eileen Connor <econnor@ppsl.org>; Alpha Taylor <ataylor@nclc.org>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Subject: Re: CRLC Session planning (Student Loan Policy Updates)

I could do noon on Friday or Tuesday

On Wed, Oct 12, 2022 at 12:15 PM Persis Yu <persis@protectborrowers.org> wrote:

> Of those times, noon on Friday would be best. I am also able to do noon on Tuesday and Wednesday too.
>
> On Wed, Oct 12, 2022 at 11:47 AM Eileen Connor <econnor@ppsl.org> wrote:
>
> > Noon M, Tu, W, or Friday next week work for me.
> >
> > ---
> >
> > **From:** Alpha Taylor <ataylor@nclc.org>
> > **Sent:** Wednesday, October 12, 2022 10:29 AM
> > **To:** Persis Yu <persis@protectborrowers.org>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Abby Shafroth <ashafroth@nclc.org>; Eileen Connor <econnor@ppsl.org>
> > **Subject:** Re: CRLC Session planning (Student Loan Policy Updates)
> >
> > Hello,
> >
> > I am following up to see if you all have availability next week to schedule a quick planning call for this session. If so, could you please provide me with dates and times that work best for you?
> >
> > Thanks,
> >
> > **Alpha S. Taylor** Staff Attorney National Consumer Law Center®
> > 1001 Connecticut Ave., NW, Washington, DC 20036 (b)(6) (direct)-202-452-6252(main) | www.nclc.org
>
> On Wed, Sep 28, 2022 at 10:58 PM Alpha Taylor <ataylor@nclc.org> wrote:
>
> > Hi Bonnie, Persis, & Eileen,
> >
> > Thank you for agreeing to join our CRLC panel on "Student Loan Policy Updates." Going forward I'll be the coordinator for this session, and Abby will be joining the panel as our fourth speaker. Here are a few things I want to keep on your radar:
> >
> > 1. **Registration**. If you have not already done so, please register for the conference

here. Also, please upload a headshot and brief bio if we don't already have one on file for you from a prior NCLC conference, or if your bio is out of date. The deadline for this is Friday, but it is flexible so no pressure if you don't get to it this week. The only hard deadline is the Oct. 18 hotel deadline for securing the conference rate / room block, so please book your hotel by then.

2. **CLE Application Deadline**. This Friday is also the deadline to submit materials for CLE. I have uploaded sufficient "materials" for our session to satisfy the CLE application requirements, but if you have additional materials you'd like to submit, by all means please do!

3. **Planning Call**. I'll coordinate a short planning call in mid-October to talk through the session, if we can find a time that works for everyone's busy schedules, and if not, I'll communicate via email and do separate calls as needed. I'll leave it up to the four of you to decide what topic you would like to cover during the session. I'll send another follow-up email to schedule a call within the next week or so.

Please feel free to reach out if you have any questions. You can also reach out to Jessica (training@nclc.org), who is your best contact for all the technical questions about the conference.

Thanks,

Alpha

Alpha S. Taylor Staff Attorney National Consumer Law Center®
1001 Connecticut Ave., NW, Washington, DC 20036 (b)(6)
(b)(6) direct)-202-452-6252(main) | www.nclc.org

--

Persis S. Yu (she/her/hers)

Deputy Executive Director

Student Borrower Protection Center

www.protectborrowers.org

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From: KAREN CODY-HOPKINS
Subject: SWEET POST-CLASS APPLICATION MAILED - KY BDTR GROUP NOT ACKNOELEDGING RECEIPT
To: rellis@ppsl.org; Latreille, Bonnie
Sent: November 28, 2022 5:50 PM (UTC-05:00)
Attached: image001.jpg, USPS BDTR delivery receipt.pdf

Bonnie & Rebecca:

On October 10, 2022 my client [redacted] [DOB: [redacted] Last 4 SSN: [redacted] MAILED HIS POST-CLASS BDTR APPLICATION TO THE ADDRESS ON P. 25 OF THE APPLICATION = U.S. Department of Education, 4255 W HWY 90, Monticello, KY 42633.

USPS Tracking shows the Application was delivered October 15, 2022 am to that address. sEE ATTACHED. He has regularly been calling the BDTR phone # -- 1-855-279-6207 -- but they say they cannot confirm receipt. He is asking USPS if they can put any BETTER trace on the package, but is it possible the KY BDTR intake office has the package but is still logging in packages and that is why they cannot confirm delivery?

Any suggestions on what he can/should do to verify he is recognized as a Post-Class Applicant? I proofed his finished Application 10/7/22 so I know he did it and he has proof he sent it.

Not sure which of you is better to ask...

--
Please contact me with any questions or concerns.
Thank you,

Karen Cody-Hopkins, Attorney
Cody-Hopkins Law Firm
4610 S. Ulster St # 150 [just East of I-25 & Belleview in DTC]
Denver, CO 80237
T: 303-221-4666 F: 303-221-4374
Attorney email: karen@codyhopkinslaw.com
Website: codyhopkinslaw.com
Federal law requires us to state that in our bankruptcy practice, we are a debt relief agency.

Tracking Number:

[redacted]

Copy Add to Informed Delivery

Latest Update

Your item was delivered at the front door or porch at 8:26 am on October 15, 2022 in MONTICELLO, KY 42633.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Delivered, Front Door/Porch
MONTICELLO, KY 42633
October 15, 2022, 8:26 am

Out for Delivery
MONTICELLO, KY 42633
October 15, 2022, 7:02 am

Arrived at Post Office
MONTICELLO, KY 42633
October 15, 2022, 6:51 am

Arrived at USPS Facility
SOMERSET, KY 42501
October 14, 2022, 2:09 pm

Departed USPS Facility
LONDON, KY 40741
October 14, 2022, 1:44 pm

Arrived at USPS Facility
LONDON, KY 40741
October 14, 2022, 10:07 am

Departed USPS Regional Facility
KNOXVILLE TN DISTRIBUTION CENTER
October 14, 2022, 8:26 am

Arrived at USPS Regional Destination Facility
KNOXVILLE TN DISTRIBUTION CENTER
October 14, 2022, 4:29 am

In Transit to Next Facility
October 13, 2022

Arrived at USPS Regional Origin Facility
DENVER CO DISTRIBUTION CENTER
October 12, 2022, 4:16 am

Accepted at USPS Origin Facility
LITTLETON, CO 80127
October 12, 2022, 3:01 am

Shipping Label Created, USPS Awaiting Item
LITTLETON, CO 80127
October 10, 2022, 3:27 pm

Hide Tracking History

From: Michael Turi
Subject: RE: Student loan inquiry re: (b)(6)
To: Latreille, Bonnie; Bronstein, Andrew
Cc: Rebecca Ellis; Deanne Loonin
Sent: November 30, 2022 12:42 PM (UTC-05:00)
Attached: Screenshot_20221121_035220.png, Screenshot_20221121_035233.png, Screenshot_20221121_035311.png

Bonnie and Andrew,

Hope you had a nice holiday. I'm writing to follow up about our client, (b)(6) who we wrote to you about on October 25 (see previous email below). To recap, (b)(6) is a Corinthian (Heald College) borrower (b)(6) (b)(6) As of October 25, (b)(6) had received conflicting information from Aidvantage and Nelnet about the status of her loans.

Now, as of November 21, (b)(6) loan account with Aidvantage is showing that her Heald loans have been cancelled, but those loans are still showing up with Nelnet – even though she consolidated those loans back in 2014 and should not have any open account with Nelnet at all. On Nelnet.com, (b)(6) Heald loans are showing "CLAIMS" status, while on FSA the Nelnet accounts are showing 3 in default and 6 as "IN SCHOOL" status. I'm attaching here screenshots that (b)(6) took of some of her accounts.

Could you please look into this issue and let us know why Nelnet/FSA are still showing open accounts for (b)(6) and whether/when we can expect those accounts to be zeroed out as part of the Corinthian discharge process?

Thank you,

Michael

From: Michael Turi
Sent: Tuesday, October 25, 2022 4:25 PM
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; 'andrew.bronstein@ed.gov' <andrew.bronstein@ed.gov>
Cc: Rebecca Ellis <REllis@ppsl.org>; Deanne Loonin <DLoonin@ppsl.org>
Subject: Student loan inquiry re: (b)(6)

Dear Bonnie and Andrew,

I hope you are well. Thank you again for your continued assistance with our questions and concerns on borrower defense matters.

We wanted to raise two issues on behalf of one of our clients, (b)(6) Her signed release form is attached. (b)(6) (b)(6) attended Heald College (a Corinthian school) in Roseville, CA from 2008-2010. She took out about $30,000 in FFEL loans to attend, which she consolidated into two Direct Loans in 2014. Her previous servicer was Nelnet, and her current servicer is Aidvantage. (b)(6) applied for borrower defense in May 2015 (b)(6) (b)(6)

First, when (b)(6) went on the FSA website to check her account earlier this week, she saw that it was showing 9 open and active loans with Nelnet ($46,510), which are the loans that she consolidated back in 2014. Her account is also showing two open and active loans with Aidvantage ($40,208), which are her consolidation loans. (b)(6) contacted Nelnet and they told her that she has had open student loans with them since 2008 and they were accruing interest up until 2020 – even though none of these should be open or show a balance because of the 2014 consolidation. The person at Nelnet said there was nothing they could do and (b)(6) should call the Department

of Ed. But when [redacted] called the Department, they said their system showed her loan servicer to be Aidvantage, not Nelnet (which is correct). So they said there was nothing they could do about Nelnet, but [redacted] could file a complaint with the Department. She has done so now, but [redacted] is understandably concerned about whether she will receive full discharge of all of her Corinthian loans when those loans appear to be double-counted at Nelnet and Aidvantage. Are you able to find out why this double-counting is happening and how to fix it?

The second issue relates to a letter [redacted] received from Aidvantage yesterday. A copy is attached. The letter states: "We service no Direct Loans for you on ED's behalf that are eligible for borrower defense discharge. However, ED instructed us to apply a credit in the amount of $10,066.05 to your account because it took ED an extended period of time to review your claim." We understand that this amount is part of the Department's plan to issue interest credits (which, if accurate, looks fine) – but we don't understand why Aidvantage says that it does not service any Direct Loans for [redacted] "that are eligible for borrower defense discharge." As far as she's aware, her consolidation loans are Direct loans, and she recently received a "Notice of Borrower Defense Discharge Approval" from the Department (copy attached). Could you please clarify why Aidvantage is sending this message?

Thank you,

Michael N. Turi
Staff Attorney
Project on Predatory Student Lending
769 Centre Street
Jamaica Plain, MA 02130
(617) 322-2495
www.ppsl.org

From: Deanne Loonin
Subject: RE: Debt Collection Meeting
To: Latreille, Bonnie
Sent: December 9, 2022 10:33 AM (UTC-05:00)

Thanks for the reply. I cant meet on Friday because I am flying back to Boston. I can meet the following Monday but I'm not sure if that is too late?

From: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Sent: Friday, December 9, 2022 10:11 AM
To: Deanne Loonin <DLoonin@ppsl.org>
Subject: RE: Debt Collection Meeting

Thanks, Deanne. Do you have any availability next Friday? No worries if not. I can try to move some stuff on my end.

From: Deanne Loonin <DLoonin@ppsl.org>
Sent: Friday, December 9, 2022 10:05 AM
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Subject: Debt Collection Meeting

Thank you for sending the invitation to meet to discuss debt collection issues. I apologize for the late response, but I was out of the office earlier this week. I am not able to make the meeting this afternoon. I am, however, interested in meeting if you are available at another time next week or the week after. For next week, my schedule is more limited, but I can be available Monday 9:30-12:30 ET, Tuesday 10-12 ET, or Wed. 12-1:30. I have more flexibility the following week. I hope we can find a mutually convenient time and thanks again.

From: Vitez, Kaitlyn
Subject: RE: stakeholder briefing tomorrow 11am
To: Jaylon.Herbin@responsiblelending.org; whitney.barkley@responsiblelending.org; ashafroth@nclc.org; ataylor@nclc.org; ktaylor@nclc.org; econnor@ppsl.org; kkennedy@ppsl.org; mike@protectborrowers.org; persis@protectborrowers.org; natalia@studentdebtcrisis.org; cody@studentdebtcrisis.org; Wcole@naacpnet.org; pwhite@naacpnet.org; max@risefree.org; kristin.mcguire@younginvincibles.org; satra.taylor@younginvincibles.org; king@civilrights.org; byon@civilrights.org; rgarza@unidosus.org; rsetzer@edtrust.org; wdelpilar@edtrust.org; bantunez@aft.org; scohen@aft.org; RLau@nea.org; sdunietz@nea.org; robbie.bellamy@seiu.org; bryce.mckibben@temple.edu; Regan Fitzgerald; tplunkett@pewtrusts.org; myudin@rabengroup.com; mark.huelsman@temple.edu
Cc: Miller, Benjamin; Lima, Kevin
Sent: January 10, 2023 11:57 AM (UTC-05:00)

Hello all, if registered for the event, you should have just gotten an email from Kevin Lima via Zoom, alerting you that the meeting has been moved to 12:30pm EST today.

In case you need to send a colleague in your stead, bumping the registration link for you.

Thanks for your patience and flexibility!

Kaitlyn Vitez (she/her)
Higher Education Liaison
Office of Communications and Outreach
U.S. Department of Education
(202) 550-7359

From: Vitez, Kaitlyn <Kaitlyn.Vitez@ed.gov>
Sent: Tuesday, January 10, 2023 11:21 AM
To: Miller, Benjamin <Benjamin.Miller@ed.gov>; Jaylon.Herbin@responsiblelending.org; whitney.barkley@responsiblelending.org; ashafroth@nclc.org; ataylor@nclc.org; ktaylor@nclc.org; econnor@ppsl.org; kkennedy@ppsl.org; mike@protectborrowers.org; persis@protectborrowers.org; natalia@studentdebtcrisis.org; cody@studentdebtcrisis.org; Wcole@naacpnet.org; pwhite@naacpnet.org; max@risefree.org; kristin.mcguire@younginvincibles.org; satra.taylor@younginvincibles.org; king@civilrights.org; byon@civilrights.org; rgarza@unidosus.org; rsetzer@edtrust.org; wdelpilar@edtrust.org; bantunez@aft.org; scohen@aft.org; RLau@nea.org; sdunietz@nea.org; robbie.bellamy@seiu.org; bryce.mckibben@temple.edu; Regan Fitzgerald <rfitzgerald@pewtrusts.org>; tplunkett@pewtrusts.org; myudin@rabengroup.com; mark.huelsman@temple.edu; Lima, Kevin <Kevin.Lima@ed.gov>
Subject: Re: stakeholder briefing tomorrow 11am

Hey folks, many apologies but we will need to reschedule this call for later today or tomorrow. Please stay tuned for an updated time.

Get Outlook for iOS

From: Miller, Benjamin <Benjamin.Miller@ed.gov>
Sent: Tuesday, January 10, 2023 11:00 AM
To: Vitez, Kaitlyn <Kaitlyn.Vitez@ed.gov>; Jaylon.Herbin@responsiblelending.org <Jaylon.Herbin@responsiblelending.org>; whitney.barkley@responsiblelending.org <whitney.barkley@responsiblelending.org>; ashafroth@nclc.org <ashafroth@nclc.org>; ataylor@nclc.org <ataylor@nclc.org>; ktaylor@nclc.org <ktaylor@nclc.org>; econnor@ppsl.org <econnor@ppsl.org>; kkennedy@ppsl.org <kkennedy@ppsl.org>; mike@protectborrowers.org <mike@protectborrowers.org>; persis@protectborrowers.org <persis@protectborrowers.org>; natalia@studentdebtcrisis.org <natalia@studentdebtcrisis.org>; cody@studentdebtcrisis.org <cody@studentdebtcrisis.org>; Wcole@naacpnet.org <Wcole@naacpnet.org>; pwhite@naacpnet.org <pwhite@naacpnet.org>; max@risefree.org <max@risefree.org>; kristin.mcguire@younginvincibles.org <kristin.mcguire@younginvincibles.org>; satra.taylor@younginvincibles.org

<satra.taylor@younginvincibles.org>; king@civilrights.org <king@civilrights.org>; byon@civilrights.org <byon@civilrights.org>; rgarza@unidosus.org <rgarza@unidosus.org>; rsetzer@edtrust.org <rsetzer@edtrust.org>; wdelpilar@edtrust.org <wdelpilar@edtrust.org>; bantunez@aft.org <bantunez@aft.org>; scohen@aft.org <scohen@aft.org>; RLau@nea.org <RLau@nea.org>; sdunietz@nea.org <sdunietz@nea.org>; robbie.bellamy@seiu.org <robbie.bellamy@seiu.org>; bryce.mckibben@temple.edu <bryce.mckibben@temple.edu>; Regan Fitzgerald <rfitzgerald@pewtrusts.org>; tplunkett@pewtrusts.org <tplunkett@pewtrusts.org>; myudin@rabengroup.com <myudin@rabengroup.com>
Subject: Re: stakeholder briefing tomorrow 11am

Hi all,
So sorry for the late notice but the fire alarm just went off here at ED. We are hoping it won't be long. But we will be getting started late. We will send an update if this goes so long that we need to shift the time. Apologies for the confusion.

-Ben

Ben Miller
202-257-0137
Benjamin.Miller@ed.gov

From: Vitez, Kaitlyn <Kaitlyn.Vitez@ed.gov>
Sent: Monday, January 9, 2023 6:11:18 PM
To: Jaylon.Herbin@responsiblelending.org <Jaylon.Herbin@responsiblelending.org>; whitney.barkley@responsiblelending.org <whitney.barkley@responsiblelending.org>; ashafroth@nclc.org <ashafroth@nclc.org>; ataylor@nclc.org <ataylor@nclc.org>; ktaylor@nclc.org <ktaylor@nclc.org>; econnor@ppsl.org <econnor@ppsl.org>; kkennedy@ppsl.org <kkennedy@ppsl.org>; mike@protectborrowers.org <mike@protectborrowers.org>; persis@protectborrowers.org <persis@protectborrowers.org>; natalia@studentdebtcrisis.org <natalia@studentdebtcrisis.org>; cody@studentdebtcrisis.org <cody@studentdebtcrisis.org>; Wcole@naacpnet.org <Wcole@naacpnet.org>; pwhite@naacpnet.org <pwhite@naacpnet.org>; max@risefree.org <max@risefree.org>; kristin.mcguire@younginvincibles.org <kristin.mcguire@younginvincibles.org>; satra.taylor@younginvincibles.org <satra.taylor@younginvincibles.org>; king@civilrights.org <king@civilrights.org>; byon@civilrights.org <byon@civilrights.org>; rgarza@unidosus.org <rgarza@unidosus.org>; rsetzer@edtrust.org <rsetzer@edtrust.org>; wdelpilar@edtrust.org <wdelpilar@edtrust.org>; bantunez@aft.org <bantunez@aft.org>; scohen@aft.org <scohen@aft.org>; RLau@nea.org <RLau@nea.org>; sdunietz@nea.org <sdunietz@nea.org>; robbie.bellamy@seiu.org <robbie.bellamy@seiu.org>; bryce.mckibben@temple.edu <bryce.mckibben@temple.edu>; Regan Fitzgerald <rfitzgerald@pewtrusts.org>; tplunkett@pewtrusts.org <tplunkett@pewtrusts.org>; myudin@rabengroup.com <myudin@rabengroup.com>
Cc: Miller, Benjamin <Benjamin.Miller@ed.gov>
Subject: stakeholder briefing tomorrow 11am

Hi folks,

The Office of the Undersecretary would like to convene a stakeholder briefing at 11am EST tomorrow, on proposals concerning student loan repayment and college accountability. You can register yourself for the meeting here. Most organizations will only have 1 or 2 recipients cc'ed on this email, so please forward the registration link as needed within your organization to cover the call.

Thanks for your flexibility, and talk soon!

Best,

Kaitlyn Vitez (she/her)
Higher Education Liaison
Office of Communications and Outreach
U.S. Department of Education
(202) 550-7359

From: Cordray, Richard
Subject: RE: To FSA Chief Mr. Cordray: Sweet v. Cardona Settlement
To: Mark Bochra; Cardona, Miguel; attorney_general@atg.state.il.us; Ames, Sam; Zack, Hannah; Brockbank, Maia; eoconnor@fas.harvard.edu
Cc: FSAOperations; Merrill, Toby; Wills, Randolph; Bruce, Sandra; Gordon, Bryon S.; Mancuso, Robert; Nix, Sheila; Ramin.Taheri@ed.gov; Zack, Hannah; Brockbank, Maia; Dixon, Monique; Reyes, Alejandro; Galanter, Seth M.; Abrokwa, Alice; Bolton, Jasmine; Jady.Hsin@ed.gov; Meena.Chandra@ed.gov; Chang, Lisa; Karvonides, Mia; McCarthy, Emily; Evans, Sherrell; Schopf, Joshua; Whitman, Gary; Woolley, John; Potamianos, Antigone; yessyka.santana@ed.gov; neil.sanchez@ed.gov
Sent: April 5, 2023 12:32 PM (UTC-04:00)

Dear Mark,

Thank you for this. We are keeping a close eye on developments to preserve the resolution of the settlement we reached in this case. Just for clarification, it is not servicers who are continuing the contest the settlement, but instead a small set of three schools. So far their efforts have not been successful and we will continue our work on the case through all filings that are made.

Rich Cordray
Federal Student Aid

From: Mark Bochra <[redacted]>
Sent: Wednesday, April 5, 2023 12:09 PM
To: Cardona, Miguel <Miguel.Cardona@ed.gov>; Cordray, Richard <Richard.Cordray@ed.gov>; attorney_general@atg.state.il.us; Ames, Sam <Sam.Ames@ed.gov>; Zack, Hannah <Hannah.Zack@ed.gov>; Brockbank, Maia <Maia.Brockbank@ed.gov>; eoconnor@fas.harvard.edu
Cc: FSAOperations <FSAOperations@ed.gov>; Merrill, Toby <Toby.Merrill@ed.gov>; Wills, Randolph <Randolph.Wills@ed.gov>; Bruce, Sandra <Sandra.Bruce@ed.gov>; Gordon, Bryon S. <Bryon.Gordon@ed.gov>; Mancuso, Robert <Robert.Mancuso@ed.gov>; Nix, Sheila <Sheila.Nix@ed.gov>; Ramin.Taheri@ed.gov; Zack, Hannah <Hannah.Zack@ed.gov>; Brockbank, Maia <Maia.Brockbank@ed.gov>; Dixon, Monique <Monique.Dixon@ed.gov>; Reyes, Alejandro <Alejandro.Reyes@ed.gov>; Galanter, Seth M. <Seth.M.Galanter@ed.gov>; Abrokwa, Alice <Alice.Abrokwa@ed.gov>; Bolton, Jasmine <Jasmine.Bolton@ed.gov>; Jady.Hsin@ed.gov; Meena.Chandra@ed.gov; Chang, Lisa <Lisa.Chang@ed.gov>; Karvonides, Mia <Mia.Karvonides@ed.gov>; McCarthy, Emily <Emily.McCarthy@ed.gov>; Evans, Sherrell <Sherrell.Evans@ed.gov>; Schopf, Joshua <joshua.schopf@ed.gov>; Whitman, Gary <GARY.WHITMAN@ed.gov>; Woolley, John <John.Woolley@ed.gov>; Potamianos, Antigone <Antigone.Potamianos@ed.gov>; yessyka.santana@ed.gov; neil.sanchez@ed.gov
Subject: To FSA Chief Mr. Cordray: Sweet v. Cardona Settlement

Dear Secretary Cardona and FSA Chief Mr. Cordray -

To rebutal these corrupt loan servisers, DOE needs to cancle their contract with them because they aren't working for the best interest of the students.

They were not happy with the 9th Circuit so they went to the Supreme Court but already FSA started to cancle the loans long time ago.

https://www.nbcnews.com/politics/supreme-court/colleges-ask-supreme-court-halt-6b-student-loan-debt-settlement-rcna78307

Colleges ask Supreme Court to halt $6B student loan debt settlement

A judge has approved a class-action settlement that could lead to more than 200,000 loans being canceled based on claims that colleges misled students.

www.nbcnews.com

Also you want to know why they don't want to cancel the loans ^ they fear accountabilities. IL Attorney General and blue states AGs can help too.

https://twitter.com/SenWarren/status/1643272309216559106

https://www.businessinsider.com/elizabeth-warren-student-loan-forgiveness-not-enough-for-profit-crackdown-2023-3

Elizabeth Warren wants Biden's Education Department to go beyond broad student-loan forgiveness and crack down on the institutions that cause borrowers' debt loads to spiral

Warren wants Biden to take student-debt relief a step further by cracking down on the programs that harm borrowers, in a letter exclusive to Insider.

www.businessinsider.com

https://i.imgur.com/10rTMl5.png

Sincerely,
Mark

From: Carolina Rodriguez
Subject: Sweet v. Cardona BDR Case Handling for FFELP Borrowers--Guidance Needed
To: Latreille, Bonnie
Cc: Beth Stein; Rebecca Ellis
Sent: April 17, 2023 9:08 AM (UTC-04:00)

Good morning,

I hope everyone is doing well. I need some guidance on this case. My client got the BDR *Sweet v. Cardona* letter back in February. But both Navient and FSA have made it extremely difficult to put his commercially held FFEL loans into a forbearance. He exhausted his traditional forbearances and can't afford any repayment plans.

He now wants to consolidate the loans because of this issue, but I am not sure if that makes sense given the possibility of his loans being discharged "soon." Below is BDR application number in case it is helpful. I appreciate your thoughts on this.

Borrower Defense Application #: [redacted]
Borrower Defense Application School: ITT Technical Institute

Thank you,
Carolina

From: Carolina Rodriguez
Sent: Saturday, October 15, 2022 9:41 AM
To: Bonnie.j.latreille@ed.gov
Cc: Beth Stein <bstein@ticas.org>; Rebecca Ellis <rellis@ppsl.org>
Subject: Sweet v. Cardona BDR Case Handling for FFELP Borrowers

Dear Bonnie:

I hope all is well. I can't even imagine how busy you are. Luckily, this is not a request but more of an FYI about how BDR cases are being handled for commercially held FFEL borrowers.

Long story short: I have been working with a client who went to a *Sweet v. Cardona* covered school. He has commercially held FFEL loans with Navient. Suffice it to say, he can't afford any of the repayment plan options. He called Navient repeatedly and was told he was out forbearances, and he would be going into delinquency. His alternative option was to consolidate. He was then advised to call FSA and request a special exemption to the forbearance limit, which he did. FSA had him submit something in writing requesting it. A few weeks go by, and FSA informs him that his request will take time.

We called back Navient together and explained the issue, again. The rep. tells us that while it is correct that he can get a BDR-based forbearance, the only way he could do that was if Navient had information from FSA about the pending BDR. The rep. sent us back to FSA's BDR team (855-279-6207) and after two hours and three representatives, we got them to send Navient the information needed to request the forbearance. We got a reference number and were told it would take a couple of weeks to go through. Out of full disclosure, it is possible my client did not request a forbearance when he applied and that may be why his information was never transferred.

My client filed the BDR application in June 2021. I am not sure what is the best systemic solution, but we spent weeks to get an outcome. I always worry about FFELP borrowers and the run around they get. As a side note, my

client mentioned that at some point a Navient rep. told him to consolidate to be eligible for BDR but also sent him some paperwork to convert his loans to private. Below is the email I got from my client. I thought he might be confused but I will remind him to send me what Navient sent him, and if true, forward immediately.

> Hello Carolina,
>
> I just finished talking to Navient. As of last week, they have started giving borrowers, who request it, a 30-day courtesy forbearance, calling it a "Clarification Hold," because they are waiting for more information about President Biden's recent announcement. By taking this 30-day forbearance, my past due amount of $2609.38 would be capitalized and then I would be expected to start making payments again on December 5, 2022. This would prevent me from going into default. So I think I should do it but don't want to until you give me your opinion on it first.
>
> Also, the person I spoke with said that I needed to consolidate or transfer my current loan (with Direct Loans, I think she said) to make it a Dept. of Education loan and therefore I would be considered under the Sweet vs. Cardona case otherwise I wouldn't be. If that is the case then I want to do this ASAP to avoid not being considered for forgiveness. **I told her the person I spoke to before also told me this but then sent me out some paperwork that would make my loans private and therefore not be eligible for any forgiveness programs.** I get confused whenever I talk to Navient or the Borrower's Defense Unit, so can we set up a time to call Navient and/or the BDU together and get some clarification and then go from there?
>
> Thanks for all your help. Much appreciated.

Again, I hope all is well. As always, thank you for everything!

Best,

Carolina Rodriguez, LMSW, JD
Director, Education Debt Consumer Assistance Program
Community Service Society of New York
633 Third Ave, 10th Floor | New York, NY 10017
crodriguez@cssny.org
212-614-5457

From: Latreille, Bonnie
Subject: RE: Student loan inquiry re: [redacted]
To: Michael Turi; Bronstein, Andrew
Cc: Rebecca Ellis; Deanne Loonin; Baker, Renee
Sent: May 30, 2023 10:44 AM (UTC-04:00)

Hi Michael,

I apologize for dropping the ball here. I'm getting an answer to your FFEL question now per your other email.

For this email, did we resolve [redacted] reporting or do you still need assistance?

From: Michael Turi <MTuri@ppsl.org>
Sent: Wednesday, November 30, 2022 12:42 PM
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Bronstein, Andrew <Andrew.Bronstein@ed.gov>
Cc: Rebecca Ellis <REllis@ppsl.org>; Deanne Loonin <DLoonin@ppsl.org>
Subject: RE: Student loan inquiry re: [redacted]

Bonnie and Andrew,

Hope you had a nice holiday. I'm writing to follow up about our client, [redacted] who we wrote to you about on October 25 (see previous email below). To recap, [redacted] is a Corinthian (Heald College) borrower [redacted] As of October 25, [redacted] had received conflicting information from Aidvantage and Nelnet about the status of her loans.

Now, as of November 21, [redacted] loan account with Aidvantage is showing that her Heald loans have been cancelled, but those loans are still showing up with Nelnet – even though she consolidated those loans back in 2014 and should not have any open account with Nelnet at all. On Nelnet.com, [redacted] Heald loans are showing "CLAIMS" status, while on FSA the Nelnet accounts are showing 3 in default and 6 as "IN SCHOOL" status. I'm attaching here screenshots that [redacted] took of some of her accounts.

Could you please look into this issue and let us know why Nelnet/FSA are still showing open accounts for [redacted] and whether/when we can expect those accounts to be zeroed out as part of the Corinthian discharge process?

Thank you,

Michael

From: Michael Turi
Sent: Tuesday, October 25, 2022 4:25 PM
To: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; 'andrew.bronstein@ed.gov' <andrew.bronstein@ed.gov>
Cc: Rebecca Ellis <REllis@ppsl.org>; Deanne Loonin <DLoonin@ppsl.org>
Subject: Student loan inquiry re: [redacted]

Dear Bonnie and Andrew,

I hope you are well. Thank you again for your continued assistance with our questions and concerns on borrower defense matters.

We wanted to raise two issues on behalf of one of our clients, [redacted] Her signed release form is attached. [redacted] attended Heald College (a Corinthian school) in Roseville, CA from 2008-2010. She took out about $30,000 in

FFEL loans to attend, which she consolidated into two Direct Loans in 2014. Her previous servicer was Nelnet, and her current servicer is Aidvantage. [redacted] applied for borrower defense in May 2015 [redacted]

First, when [redacted] went on the FSA website to check her account earlier this week, she saw that it was showing 9 open and active loans with Nelnet ($46,510), which are the loans that she consolidated back in 2014. Her account is also showing two open and active loans with Aidvantage ($40,208), which are her consolidation loans. [redacted] contacted Nelnet and they told her that she has had open student loans with them since 2008 and they were accruing interest up until 2020 – even though none of these should be open or show a balance because of the 2014 consolidation. The person at Nelnet said there was nothing they could do and [redacted] should call the Department of Ed. But when [redacted] called the Department, they said their system showed her loan servicer to be Aidvantage, not Nelnet (which is correct). So they said there was nothing they could do about Nelnet, but [redacted] could file a complaint with the Department. She has done so now, but [redacted] is understandably concerned about whether she will receive full discharge of all of her Corinthian loans when those loans appear to be double-counted at Nelnet and Aidvantage. Are you able to find out why this double-counting is happening and how to fix it?

The second issue relates to a letter [redacted] received from Aidvantage yesterday. A copy is attached. The letter states: "We service no Direct Loans for you on ED's behalf that are eligible for borrower defense discharge. However, ED instructed us to apply a credit in the amount of $10,066.05 to your account because it took ED an extended period of time to review your claim." We understand that this amount is part of the Department's plan to issue interest credits (which, if accurate, looks fine) – but we don't understand why Aidvantage says that it does not service any Direct Loans for [redacted] "that are eligible for borrower defense discharge." As far as she's aware, her consolidation loans are Direct loans, and she recently received a "Notice of Borrower Defense Discharge Approval" from the Department (copy attached). Could you please clarify why Aidvantage is sending this message?

Thank you,

Michael N. Turi
Staff Attorney
Project on Predatory Student Lending
769 Centre Street
Jamaica Plain, MA 02130
(617) 322-2495
www.ppsl.org

From: Michael Turi
Subject: RE: Follow-up question regarding FFEL borrowers with approved borrower defense
To: Latreille, Bonnie; Campbell, Patrick; Garry, Michael
Cc: Deanne Loonin
Sent: May 30, 2023 12:13 PM (UTC-04:00)

Thank you, Bonnie. I appreciate the response. I do have two short follow-up questions:

1. Thank you for the update on Corinthian borrowers. Do you know whether a similar list of group borrowers has been sent to lenders for the other schools, such as ITT and Westwood?

2. I understand this to mean that the guidance we received last year (below at the beginning of this e-mail chain) – in other words, that commercial (FFEL) lenders would process an interest credit for a borrower's consolidated loan, which would include the non-CCI portion of the loan – is no longer accurate. We should thus advise FFEL borrowers to expect an interest credit only on the CCI/ITT/etc. portion of the loan. Correct?

Best,

Michael

From: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Sent: Tuesday, May 30, 2023 11:34 AM
To: Michael Turi <MTuri@ppsl.org>; Campbell, Patrick <Patrick.Campbell@ed.gov>; Garry, Michael <Michael.Garry@ed.gov>
Cc: Deanne Loonin <DLoonin@ppsl.org>
Subject: RE: Follow-up question regarding FFEL borrowers with approved borrower defense

Hi Michael,

Apologies for the delay. Here are some answers from our FFEL team.

1. Are discharges for Corinthian borrowers with commercial FFEL loans under way at this point, and if so, should borrowers need to reach out to their servicer and affirmatively request the discharge, as our client did?
   Lists of borrowers that requested a discharge from Corinthian borrowers were provided to guarantor and lenders during August 2022. We just received the list of group borrowers from Corinthian this month; this much larger list is with guaranty agencies, to be provided to lenders.
   Borrowers do not need to contact their lender or guarantor for the discharge to occur.

2. In our e-mail chain below, you indicated that the interest credit for borrowers who submitted BD applications would "appl[y] to the borrower's non-CCI loans." Does that still reflect what ED is communicating to commercial servicers, and if so, do you have any idea why Navient is refusing to process an interest credit for our client's non-CCI loans since 2015?
   The treatment of the Department held loans is different from those held by FFEL lenders and guaranty agencies. The DL regulation allow for refunds to payments made to the Secretary, there is no authority to refund any payments made to lenders and there is nothing that would reimburse a lender for interest accrual on non-CCI loans that had been in forbearance. We discussed payment for accrued interest on loans for borrowers that had been in forbearance, but not eligible for discharge and we were advised that it was not included in settlement agreements for FFEL commercial held holds.

From: Michael Turi <MTuri@ppsl.org>
Sent: Wednesday, May 24, 2023 12:33 PM
To: Campbell, Patrick <Patrick.Campbell@ed.gov>; Garry, Michael <Michael.Garry@ed.gov>
Cc: Deanne Loonin <DLoonin@ppsl.org>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Subject: RE: Follow-up question regarding FFEL borrowers with approved borrower defense

Good afternoon Patrick, Michael, and Bonnie,

Just checking in to see if you have any thoughts re: our two questions below on what servicers have been told about processing FFEL interest credits. As always, thank you very much for your help.

Best,

Michael

From: Michael Turi
Sent: Thursday, May 18, 2023 2:21 PM
To: Campbell, Patrick <Patrick.Campbell@ed.gov>; Garry, Michael <Michael.Garry@ed.gov>
Cc: Deanne Loonin <DLoonin@ppsl.org>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Subject: RE: Follow-up question regarding FFEL borrowers with approved borrower defense

Dear Patrick and Michael,

I hope you are both well. I write to follow up on the below e-mail conversation, which I recognize is from some months ago. I want to reiterate from the outset how much we appreciate your transparent responses to our requests for information.

Our question concerns the status of discharges for Corinthian borrowers with commercially-held FFEL loans. Recently, a client of ours—who submitted a borrower defense application in 2015 and has a consolidated FFEL loan dating back to 2004 with loans from Corinthian and at least 3 other schools—reached out to her commercial servicer, Navient, to inquire about the status of the loan and its ever-increasing interest. In response, Navient noted that our client was entitled to a borrower defense discharge for the Corinthian part of the loan. Navient then processed that discharge. Our client followed up to inquire about whether Navient applied an interest credit for all accrued interest since she submitted her borrower defense application in 2015, and Navient responded that it would only discharge interest directly attributable to the Corinthian loan.

We were surprised to hear that the commercial servicer processed the discharge in this way. So we write to follow up with the following two questions:

1. Are discharges for Corinthian borrowers with commercial FFEL loans under way at this point, and if so, should borrowers need to reach out to their servicer and affirmatively request the discharge, as our client did?
2. In our e-mail chain below, you indicated that the interest credit for borrowers who submitted BD applications would "appl[y] to the borrower's non-CCI loans." Does that still reflect what ED is communicating to commercial servicers, and if so, do you have any idea why Navient is refusing to process an interest credit for our client's non-CCI loans since 2015?

Thank you again for your help on this matter. Please let us know if it would be more helpful to have a broader discussion on the status of borrowers with commercial FFEL loans.

Best,

Michael N. Turi
Staff Attorney
Project on Predatory Student Lending
769 Centre Street
Jamaica Plain, MA 02130
(617) 322-2495
www.ppsl.org

From: Campbell, Patrick <Patrick.Campbell@ed.gov>
Sent: Tuesday, September 20, 2022 2:37 PM
To: Deanne Loonin <DLoonin@ppsl.org>; Michael Turi <MTuri@ppsl.org>; Garry, Michael <Michael.Garry@ed.gov>
Subject: RE: Follow-up question regarding FFEL borrowers with approved borrower defense

I personally would not advise borrowers to consolidate… I don't think it will expedite their discharges, but of course it is a personal decision for each borrower.

Patrick Campbell
Executive Director
Vendor Oversight and Program Accountability Directorate (VOPA)
Student Experience and Aid Delivery (SEAD)
Federal Student Aid (FSA)
US Department of Education
Mobile: [redacted]

Federal Student Aid

From: Deanne Loonin <DLoonin@ppsl.org>
Sent: Tuesday, September 20, 2022 2:29 PM
To: Campbell, Patrick <Patrick.Campbell@ed.gov>; Michael Turi <MTuri@ppsl.org>; Garry, Michael <Michael.Garry@ed.gov>
Subject: RE: Follow-up question regarding FFEL borrowers with approved borrower defense

Thank you for the response. Our follow up question for now: Does this mean that a borrower in this situation can expedite the discharge by consolidating into Direct loans? We have received conflicting messages on this. We appreciate the confirmation that these borrowers are not required to consolidate, but many are looking for ways to expedite this process after waiting so long.

From: Campbell, Patrick <Patrick.Campbell@ed.gov>
Sent: Tuesday, September 20, 2022 4:39 AM
To: Michael Turi <MTuri@ppsl.org>; Garry, Michael <Michael.Garry@ed.gov>
Cc: Deanne Loonin <DLoonin@ppsl.org>
Subject: RE: Follow-up question regarding FFEL borrowers with approved borrower defense

Good morning Michael T.

We have been prioritizing the processing of discharges for borrowers with individual claims. We are still working out the final logistical hurdles for processing commercially held FFEL loans (e.g., how they code them in NSLDS when they discharge them).

I don't want to commit to a time frame, but we are actively working to get those borrowers their discharges.

Patrick Campbell
Executive Director
Vendor Oversight and Program Accountability Directorate (VOPA)
Student Experience and Aid Delivery (SEAD)
Federal Student Aid (FSA)
US Department of Education
Mobile: [redacted]

Federal Student Aid

From: Michael Turi <MTuri@ppsl.org>
Sent: Monday, September 19, 2022 3:38 PM
To: Garry, Michael <Michael.Garry@ed.gov>; Campbell, Patrick <Patrick.Campbell@ed.gov>
Cc: Deanne Loonin <DLoonin@ppsl.org>
Subject: RE: Follow-up question regarding FFEL borrowers with approved borrower defense

Mike and Patrick, thank you once again for your prompt response and for your transparency. We really appreciate your help.

My only follow-up question is whether CCI borrowers with FFEL loans from the *Pratt* class, who received 100% relief determinations back in September 2021 (after originally getting partial relief), will have their relief prioritized given that they have been waiting much longer than the rest of the CCI group from this year's announcement. All of these individuals submitted BD applications.

Thank you,

Michael

From: Garry, Michael <Michael.Garry@ed.gov>
Sent: Friday, September 16, 2022 4:14 PM
To: Campbell, Patrick <Patrick.Campbell@ed.gov>; Michael Turi <MTuri@ppsl.org>
Cc: Deanne Loonin <DLoonin@ppsl.org>
Subject: RE: Follow-up question regarding FFEL borrowers with approved borrower defense

Thank you, Patrick. I don't have anything to add. Have a good weekend, everyone.

Thanks,
Mike

From: Campbell, Patrick <Patrick.Campbell@ed.gov>
Sent: Thursday, September 15, 2022 7:23 PM
To: Michael Turi <MTuri@ppsl.org>
Cc: Deanne Loonin <DLoonin@ppsl.org>; Garry, Michael <Michael.Garry@ed.gov>
Subject: RE: Follow-up question regarding FFEL borrowers with approved borrower defense

+ Michael Garry

Good evening Michael T.

I would like to introduce you to Michael G who heads up the team that handles the processing of borrower defense discharges. I will take a crack at answering your questions and he can confirm if I got it right.

Your Question:

Can you confirm that" "Corinthian borrowers with FFEL loans from the *Pratt v. DeVos* class should ultimately not need to consolidate in order to obtain relief, and furthermore, that an interest credit would be applied to borrowers who have consolidated FFEL loans with interest from both Corinthian and other schools " "is indeed the department's intended policy?"

My Answer:
FSA is not requiring borrowers with approved BD applications to consolidate FFEL loans to receive relief. If a borrower has a FFEL loan from CCI that loan will be discharged.

As for the interest credit... the credit only applies to borrowers who submitted BD applications (not borrowers subject to group discharges) and the credit applies to the borrower's non-CCI loans.

Hope that helps,

Patrick Campbell
Executive Director
Vendor Oversight and Program Accountability Directorate (VOPA)
Student Experience and Aid Delivery (SEAD)
Federal Student Aid (FSA)
US Department of Education
Mobile: [redacted]

Federal Student Aid

From: Michael Turi <MTuri@ppsl.org>
Sent: Thursday, September 15, 2022 3:35 PM
To: Campbell, Patrick <Patrick.Campbell@ed.gov>
Cc: Deanne Loonin <DLoonin@ppsl.org>
Subject: Follow-up question regarding FFEL borrowers with approved borrower defense

Dear Patrick,

We last spoke at the meeting between the department and advocates in late July. I represent several borrowers who received borrower defense approvals under the 2019 "partial relief" policy that were converted into 100% discharges in September of 2021. I had a follow-up question for you about a comment you made on FFEL loans. At the meeting, you mentioned that Corinthian borrowers with FFEL loans from the *Pratt v. DeVos* class should ultimately not need to consolidate in order to obtain relief, and furthermore, that an interest credit would be applied to borrowers who have consolidated FFEL loans with interest from both Corinthian and other schools – interest that continues to accrue while these individuals await discharge.

Can you confirm that the above is indeed the department's intended policy? It would be very helpful to know for my clients who have complex, consolidated FFEL loans and are looking to avoid a huge interest capitalization if forced to consolidate. We have sent a few examples of this to the Ombudsman Office and would be happy to pass them along, if helpful.

I would be happy to discuss by phone if preferable. Thank you very much for your transparency and your help on these matters.

Sincerely,

Michael N. Turi
Staff Attorney

Project on Predatory Student Lending
769 Centre Street
Jamaica Plain, MA 02130
(617) 322-2495
www.ppsl.org

From: Persis Yu
Subject: Request for Meeting with Secretary Cardona and Student Loan Borrowers
To: Miller, Benjamin; Cooper, Michelle; Williams, Rich
Cc: Abby Shafroth; Kyra Taylor; Toby Merrill (tomerrill@law.harvard.edu); Kennedy, Kate M; Natalia Abrams; Nicole Hochsprung; Sarah Cohen; cody hounanian
Sent: March 5, 2021 9:37 AM (UTC-05:00)

Dear Ben,

I am writing on behalf of the National Consumer Law Center, American Federation of Teachers, Project on Predatory Student Lending, and Student Debt Crisis to request a meeting between Secretary Cardona and some of the student loan borrowers our organizations represent.

As the Secretary is considering a wide range of policies that will have huge implications for student loan borrowers, we believe that hearing the voices of these borrowers is paramount. Our organizations would be happy to help in any way to facilitate such a meeting.

Thank you for your consideration of this request. We look forward to hearing from you.

Best,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

From: Miller, Benjamin
Subject: RE: Request for Meeting with Secretary Cardona and Student Loan Borrowers
To: Persis Yu; Cooper, Michelle; Williams, Rich
Cc: Abby Shafroth; Kyra Taylor; Toby Merrill (tomerrill@law.harvard.edu); Kennedy, Kate M; Natalia Abrams; Nicole Hochsprung; Sarah Cohen; cody hounanian
Sent: March 5, 2021 1:14 PM (UTC-05:00)

Hi Persis,
Thanks so much for reaching out. I'm happy to take a look to figure out what we might be able to do. What's your rough sense of how many borrowers you would want to bring? In general, the stakeholder calls have been 15-20 minutes given that we're trying to do outreach from early childhood through postsecondary all at once. That's in the early going. We haven't gotten to the point yet of looking at our longer-term options for outreach and whether that will free up larger blocks of time.

-Ben

From: Persis Yu <pyu@nclc.org>
Sent: Friday, March 5, 2021 9:37 AM
To: Miller, Benjamin <Benjamin.Miller@ed.gov>; Cooper, Michelle <Michelle.Cooper@ed.gov>; Williams, Rich <Rich.Williams@ed.gov>
Cc: Abby Shafroth <ashafroth@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Toby Merrill (tomerrill@law.harvard.edu) <tomerrill@law.harvard.edu>; Kennedy, Kate M <kkennedy@law.harvard.edu>; Natalia Abrams <natalia@studentdebtcrisis.org>; Nicole Hochsprung <nhochsprung@aft.org>; Sarah Cohen <scohen@aft.org>; cody hounanian <cody@studentdebtcrisis.org>
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On Fri, Mar 5, 2021 at 1:13 PM Miller, Benjamin <Benjamin.Miller@ed.gov> wrote:

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From: Persis Yu
Subject: Re: Request for Meeting with Secretary Cardona and Student Loan Borrowers
To: Miller, Benjamin
Cc: Cooper, Michelle; Williams, Rich; Abby Shafroth; Kyra Taylor; Toby Merrill (tomerrill@law.harvard.edu); Kennedy, Kate M; Natalia Abrams; Nicole Hochsprung; Sarah Cohen; cody hounanian
Sent: March 10, 2021 3:43 PM (UTC-05:00)

Hi Ben,

I just wanted to follow-up to see where we are with setting up a meeting between borrowers and Secretary Cardona. We are eager to get these borrowers' voices heard. I appreciate all your work on this!

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Subject: RE: Request for Meeting with Secretary Cardona and Student Loan Borrowers
To: Persis Yu
Cc: Cooper, Michelle; Williams, Rich; Abby Shafroth; Kyra Taylor; Toby Merrill (tomerrill@law.harvard.edu); Kennedy, Kate M; Natalia Abrams; Nicole Hochsprung; Sarah Cohen; cody hounanian
Sent: March 10, 2021 3:44 PM (UTC-05:00)

I was literally emailing scheduler right now to see what call blocks we have open. Would likely be week after next I think, but I'm looking at calendar.

From: Persis Yu <pyu@nclc.org>
Sent: Wednesday, March 10, 2021 3:43 PM
To: Miller, Benjamin <Benjamin.Miller@ed.gov>
Cc: Cooper, Michelle <Michelle.Cooper@ed.gov>; Williams, Rich <Rich.Williams@ed.gov>; Abby Shafroth <ashafroth@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Toby Merrill (tomerrill@law.harvard.edu) <tomerrill@law.harvard.edu>; Kennedy, Kate M <kkennedy@law.harvard.edu>; Natalia Abrams <natalia@studentdebtcrisis.org>; Nicole Hochsprung <nhochsprung@aft.org>; Sarah Cohen <scohen@aft.org>; cody hounanian <cody@studentdebtcrisis.org>
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From: Persis Yu
Subject: rehab for c-ffel
To: Miller, Benjamin; Abby Shafroth; Kyra Taylor
Sent: April 7, 2021 9:32 AM (UTC-04:00)

Hey Ben,

As I understand your announcement last week, all defaulted FFELP loans are considered ED-held and so all of the components of the payment suspension should apply to them, including the waiving of payments for rehabs, correct?

We have heard from advocates that ECMC and ASA have stopped collections but are still requiring rehab payments.

I want to make sure we can accurately advise our community.

Thanks!
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

From: Miller, Benjamin
Subject: RE: rehab for c-ffel
To: Persis Yu; Abby Shafroth; Kyra Taylor
Sent: April 7, 2021 12:33 PM (UTC-04:00)

Got it. That's a helpful flag. I will ask FSA what is happening there. Our intention is that this would mirror what we've been doing in defaulted FFEL, where my understanding is that there is not a requirement for rehab payments.

From: Persis Yu <pyu@nclc.org>
Sent: Wednesday, April 7, 2021 9:32 AM
To: Miller, Benjamin <Benjamin.Miller@ed.gov>; Abby Shafroth <ashafroth@nclc.org>; Kyra Taylor <ktaylor@nclc.org>
Subject: rehab for c-ffel

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Thanks!
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Director, Student Loan Borrower Assistance Project
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7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

From: Persis Yu
Subject: Re: protecting elderly borrowers from SS offset
To: Miller, Benjamin; Johnson Tyler
Cc: Benjamin Miller
Sent: August 16, 2021 12:45 PM (UTC-04:00)

Replying to make sure this goes to Ben's ED email address.

On Mon, Aug 16, 2021 at 12:36 PM Johnson Tyler <jtyler@lsnyc.org> wrote:

> Hi Ben, thanks for calling. The statutory safety valve (31 U.S.C.A. § 3716(c) 3(B), and 31 C.F.R. § 285.12(d)(5)) that could stop SS offset of elderly borrowers is below. As mentioned, I just spoke to 74 year old [redacted] today and she is using a walker now but hasn't been able to get her md to complete the tpd. We're trying a second time to get the md to complete the form, but aren't that optimistic given md's generally need an office visit to complete paperwork and [redacted] can't get there.
>
> Johnson
>
> Johnson M. Tyler, Esq. (*he / him*)
>
> Senior Consumer Attorney
>
> Brooklyn Legal Services
>
> [redacted](cell)
>
> 646-921-0394 (fax)
>
> 718-237-5548 (office, but no during pandemic)
>
> jtyler@lsnyc.org

From: Johnson Tyler
Sent: Friday, December 18, 2020 5:34 PM
To: Benjamin Miller; Persis Yu
Subject: [redacted] update and idea

Hi Ben and Persis,

[redacted] did not succeed in getting a tdp completed. Her md rescheduled her appointment to a

teleconference and she lacked the skills or help to activate it. So she remains slated for SS offset, unless she agrees to other default exit strategies that I've discussed with her.

Which got me to look more closely at the Offset law. It allows DOE (and other agencies) to exempt certain classes of defaulted borrowers from Social Security offset. 31 U.S.C.A. § 3716(c) 3(B), and 31 C.F.R. § 285.12(d)(5). The three prong, exemption test considers: the US Gov's financial interest; the DOE's mission and whether its hindered by collecting the debt from the class; and whether exemption is consistent with the Offset statute.

I think DOE could successfully exempt seniors (65+) from offset using GAO reports and its own data. Many seniors like [redacted] are ill equipped to get MDs to complete TPD paperwork, or maintain IDR eligibility of $0 payments. I'd be happy to discuss (write) further on the three prong test as applied to seniors like [redacted]

My best,

Johnson

Johnson M. Tyler, Esq. (*he / him*)

Senior Consumer Attorney

Brooklyn Legal Services

[redacted] (cell)

646-921-0394 (fax)

718-237-5548 (office, but no during pandemic)

jtyler@lsnyc.org

--

Sent from a small device.

From: Miller, Benjamin
Subject: RE: protecting elderly borrowers from SS offset
To: Persis Yu; Johnson Tyler
Sent: August 16, 2021 2:22 PM (UTC-04:00)

Thanks so much for the email fix Persis! And thanks Johnson for getting this back into my inbox. Will take a look.

From: Persis Yu <pyu@nclc.org>
Sent: Monday, August 16, 2021 12:45 PM
To: Miller, Benjamin <Benjamin.Miller@ed.gov>; Johnson Tyler <jtyler@lsnyc.org>
Cc: Benjamin Miller <bmiller@jbrpt.org>
Subject: Re: protecting elderly borrowers from SS offset

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646-921-0394 (fax)
718-237-5548 (office, but no during pandemic)
jtyler@lsnyc.org

--
Sent from a small device.

From: Miller, Benjamin
Subject: RE: Implementation of the STOP Act
To: Persis Yu; Morgan, Julie; Darcus, Joanna; Merrill, Toby
Cc: Abby Shafroth; Alpha Taylor; Kyra Taylor
Sent: September 10, 2021 9:29 AM (UTC-04:00)

I had asked a question about this while the document was in clearance to confirm there would not be a disruption to legal aid work while the form that will address this is being implemented. Let me find that response and get back to you ASAP.

From: Persis Yu <pyu@nclc.org>
Sent: Friday, September 10, 2021 9:16 AM
To: Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Merrill, Toby <Toby.Merrill@ed.gov>
Cc: Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>
Subject: Implementation of the STOP Act

Dear Colleagues,

I saw the notice on the implementation of the penalties in the STOP Act posted in the federal register: https://www.federalregister.gov/documents/2021/09/10/2021-19536/third-party-access-to-the-departments-information-technology-systems-and-notice-of-criminal

According to the notice, penalties go into effect tomorrow. As far as I am aware, the Department has not yet implemented a process by which legal services, private attorneys, and other non-profit/government individuals can set up credentials to access their clients' NSLDS information as expressly permitted under the STOP Act. I was assured that the penalties imposed by the STOP Act would not go into place until that process was implemented.

Many borrower advocates are worried about being subject to criminal penalties for helping some of the most vulnerable borrowers who cannot access their own NSLDS information without assistance. This will have a significant negative impact on the abilities of borrower advocates to work with their borrowers, especially older borrowers and borrowers with disabilities.

Can you let me know what the Department plans to do to ensure these advocates are able to continue to assist their clients?

Thank you,
Persis

Persis Yu (she/her/hers)
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From: Miller, Benjamin
Subject: RE: Implementation of the STOP Act
To: Persis Yu
Cc: Morgan, Julie; Merrill, Toby; Abby Shafroth; Alpha Taylor; Kyra Taylor
Sent: September 10, 2021 11:53 AM (UTC-04:00)

Got it. I had asked for confirmation that we would not be affecting legal aid until this was all done but I am checking back on an answer on this.

From: Persis Yu <pyu@nclc.org>
Sent: Friday, September 10, 2021 11:17 AM
To: Miller, Benjamin <Benjamin.Miller@ed.gov>
Cc: Morgan, Julie <Julie.Morgan@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Merrill, Toby <Toby.Merrill@ed.gov>; Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>
Subject: Re: Implementation of the STOP Act

Ben,

The third party authorization form doesn't address this issue. The problem is not about being able to contact servicers. It is about being able to get NSLDS information. You cannot provide competent legal representation to a student loan borrower without a borrower's full NSLDS report. Schools and servicers have full access through their own portal to get this information. However, borrower advocates need to get it from borrowers and it is only available through studentaid.gov using an FSA ID. Many of our borrowers are not able to access this information on their own, especially older borrowers and borrowers with disabilities. Therefore legal aid and private attorneys must utilize a borrower's FSA ID in order to assist these borrowers, and the Department has just criminalized that activity.

In order to stop debt relief scams while still allowing legitimate actors to do their jobs, the STOP Act provided that private attorneys, legal aid attorneys, and other non-profit/government entities would get a new pathway to NSLDS information so that we would not need to use our client's FSA IDs in order to get the information necessary to provide competent representation. However, that pathway has not yet been created.

Happy to chat more. I'm around any time this afternoon.

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

On Fri, Sep 10, 2021 at 10:27 AM Miller, Benjamin <Benjamin.Miller@ed.gov> wrote:

> Hi Persis,
> I've confirmed this with FSA and there will not be an issue for you all. My understanding is that the difference is really about having a single universal form to cover all servicers versus what you all do now where you have access forms with individual servicers. Here's more detail below. Happy to chat about it if you'd like. I'm also at [redacted].
>
> Legal aid can continue to access the information through contacting the call center or servicer, as they do now. They

will need to have an access form on file. There is a Third Party Access form that is going through clearance, but until that is cleared by OMB, each servicer has their own form that the legal aid community should be familiar with since they use it now. Once there is an universal form, it should make their lives easier since it will be one form that can be used across all systems and servicers. We will provide a short transition time once the new form is approved (so they will not need their clients to sign a new form the very next day).

From: Persis Yu <pyu@nclc.org>
Sent: Friday, September 10, 2021 9:16 AM
To: Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Merrill, Toby <Toby.Merrill@ed.gov>
Cc: Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>
Subject: Implementation of the STOP Act

Dear Colleagues,

I saw the notice on the implementation of the penalties in the STOP Act posted in the federal register: https://www.federalregister.gov/documents/2021/09/10/2021-19536/third-party-access-to-the-departments-information-technology-systems-and-notice-of-criminal

According to the notice, penalties go into effect tomorrow. As far as I am aware, the Department has not yet implemented a process by which legal services, private attorneys, and other non-profit/government individuals can set up credentials to access their clients' NSLDS information as expressly permitted under the STOP Act. I was assured that the penalties imposed by the STOP Act would not go into place until that process was implemented.

Many borrower advocates are worried about being subject to criminal penalties for helping some of the most vulnerable borrowers who cannot access their own NSLDS information without assistance. This will have a significant negative impact on the abilities of borrower advocates to work with their borrowers, especially older borrowers and borrowers with disabilities.

Can you let me know what the Department plans to do to ensure these advocates are able to continue to assist their clients?

Thank you,
Persis

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www.nclc.org

Using e-mail is inherently insecure. Confidential information, including account numbers, credit card numbers, etc.,

From: Persis Yu
Subject: Proposal for Consenting to Undue Hardship
To: Kvaal, James; Morgan, Julie; Miller, Benjamin; EVMigration_Clare.Mccann; Merrill, Toby; Darcus, Joanna; Habash, Tariq; Williams, Rich; Latreille, Bonnie; Cordray, Richard; Wiggins, Hunter; Harrington, Ashley
Cc: John Rao
Sent: October 22, 2021 4:01 PM (UTC-04:00)
Attached: ED - Undue Hardship Safe Harbor Proposal.pdf

Dear colleagues,

Thank you for the opportunity to meet with us last month to discuss on the need for bankruptcy protections for student loan borrowers.

We are writing to submit a proposal for establishing and implementing an undue hardship program for consenting to discharge of certain student loans in bankruptcy. This proposal is submitted by the National Consumer Law Center, National Association of Consumer Bankruptcy Attorneys, Student Borrower Protection Center, Public Law Center, and interested Law Professors (Professors Dalie Jimenez, Matthew A Bruckner, Chrystin Ondersma, John Patrick Hunt, and Brook Gotberg).

We look forward to answering any questions you may have.

Best,
John Rao and Persis Yu

Persis Yu (she/her/hers)
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Proposal for Establishing and Implementing an Undue Hardship Program for Consenting to Discharge of Certain Student Loans in Bankruptcy

1. Introduction.

Many student loan borrowers seek bankruptcy relief from their financial burdens without any expectation of discharging their student loans. Most borrowers never attempt to obtain discharge of their loans in bankruptcy based on undue hardship because they are aware that the Department of Education and their servicers aggressively oppose discharge.

On February 20, 2018, the Department issued the *Request for Information on Evaluating Undue Hardship Claims in Adversary Actions Seeking Student Loan Discharge Bankruptcy Proceedings* (ED-2017-OPE-0085, "RFI-2018"). It referred to an earlier July 7, 2015 *Dear Colleague Letter* (GEN-15-13), which had generally summarized judicial opinions' applications of the *undue hardship* test, but offered no direction for the Department's internal evaluation of individual requests for such discharges. Among other related questions, the 2018 RFI sought comments and information on:

> (4) circumstances under which loan holders should concede an undue hardship claim by the borrower; and
> (5) whether and how the 2015 Dear Colleague Letter should be amended.

More than 400 comments were received, including submissions by several of the individuals and organizations who now join in offering this proposal.[1] The information produced by the RFI confirmed what had long been apparent – that financially struggling borrowers in bankruptcy had very little likelihood of obtaining discharge under the undue hardship test, and that many improvements to the Department's settlement procedures were necessary. However, until now, no apparent action in that direction has been undertaken.

We are pleased that the Department is now interested in moving forward with developing new settlement procedures and we sincerely welcome the opportunity to assist the Department with this project. Our proposal seeks to ensure that: 1) the Department provides borrowers experiencing undue hardship with equitable access to discharges in bankruptcy by establishing objective settlement standards, 2) borrowers are not discouraged from seeking an undue hardship

[1] This proposal is submitted by the National Consumer Law Center, National Association of Consumer Bankruptcy Attorneys, Student Borrower Protection Center, Public Law Center, and interested Law Professors (Professors Dalie Jimenez, Matthew A Bruckner, Chrystin Ondersma, John Patrick Hunt, and Brook Gotberg).

discharge in bankruptcy, and 3) the settlement procedures will not impose an administrative burden on the Department.

2. Undue Hardship Standard.

In developing settlement procedures, the Department should apply a standard for undue hardship that is consistent with the plain language of section 523(a)(8) of the Bankruptcy Code. The settlement safe harbors we propose here identify debtors that easily satisfy such a standard and can be swiftly identified, but we stress that many more debtors beyond these categories will also meet the undue hardship standard of section 523(a)(8).

The ordinary meaning of "hardship" is "something which is hard to bear," Oxford English Dictionary (3d ed. 2015); "a thing or circumstance that causes ongoing or persistent suffering or difficulty," American Heritage Dictionary of the English Language (Fifth Ed. 2011). "Undue" is defined as "not appropriate or suitable." Oxford English Dictionary (3d ed. 2015). Together these words refer to condition that is unjustifiably difficult for the debtor to endure.

Sheer inability to afford payments is probably the most common form of undue hardship. In that context, the analysis looks at the present and future financial condition of the debtor and the debtor's dependents and asks whether they will endure significant difficulty, such as being unable to maintain a normal standard of living, if the student loan must be repaid rather than discharged. At bottom, if repayment of the student loan would prevent the debtor from satisfying ordinary and necessary living expenses so that a debtor could not effectively "make ends meet," this would be an undue hardship. *See, E.g., In re Skaggs*, 196 B.R. 865, 868 (Bankr. W.D. Okla. 1996).

This meaning of "undue hardship" is consistent with its application in a similar context. In determining whether recovery of a benefit overpayment should be waived, the Veterans Administration regulations provide that one of the factors that should be considered is "undue hardship." The regulation provides that undue hardship is present if: "collection would deprive debtor or family of basic necessities." 38 C.F.R. § 1.965(a).

Congress adopted a construct for "undue hardship" in another section of the Bankruptcy Code, after *Brunner* was embraced by the circuit courts, that comports with its ordinary meaning. Section 524(c) has long required that reaffirmation agreements entered into by the debtor be reviewed, either by the court or through a certification of debtor's attorney, to ensure that the repayment obligation will not impose an "undue hardship on the debtor or a dependent of the debtor." In the 2005 Code amendments, Congress included a presumption to guide bankruptcy courts in applying this undue hardship standard:

> … it shall be presumed that such agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of such agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. 11 U.S.C. § 524(m)(1).

The test created by the presumption looks at the debtor's income and expenses in relation to the payment requirements under the reaffirmed debt. *See, e,g, In re Visnicky*, 401 B.R. 61, 63 (Bankr. D. R.I. 2009); *In re Stevens*, 365 B.R. 610, 612 (Bankr. E.D. Va. 2007). Although the context in which "undue hardship" arises under section 524(c) and (m) is different than dischargeability under § 523(a)(8), there is no escaping the fact that Congress used the identical phrase in both sections of the same statute. At a minimum, the presumptive test added in 2005 sheds light on what Congress intends when it uses the phrase "undue hardship" in a statute with respect to the impact of debt repayment on a debtor. In our view, any debtor whose ordinary and necessary expenses exceed their income satisfies an undue hardship inquiry. This would include debtors who would lack disposable income under the Bankruptcy Code's means test in section 707(b).

Recognizing that such an inquiry may be fact intensive, the safe harbor categories we propose allow the Department to swiftly identify many debtors who indisputably suffer undue hardship. For example, we propose a safe harbor for debtors whose household income has been less than 75% of the state median family income for the current year and the two previous calendar years, as these debtors would have difficulty making ends meet even without the burden of making student loan payment, and an inquiry into specific expenses is unnecessary.

Although hardship can be "undue" because of its magnitude alone, a lesser degree of hardship can be unjustifiable – that is, "undue" – if there are other reasons that the debtor should not have to repay. Several of the proposed safe harbors reflect this type of "undue hardship." For example, where the debtor has income of less than 85% of the state median and has not received a degree at all, the low income indicates that hardship exists, and the debtor's lack of benefit from the student loans contributes to making that hardship unjustifiable. Likewise, hardship is unjustifiable when requiring repayment is likely to produce only a negligible benefit, net of collection costs, to the Treasury. Thus, we propose a safe harbor for debtors whose income is less than 85% of the state median and who owe less than $10,000 in federal student loans.

3. Safe Harbor Categories

We propose establishing and implementing the following safe harbor categories of bankruptcy debtors for whom the Department will concede a finding of undue hardship in order that the debtor's student loans are discharged. These safe harbor protections will apply only to borrowers who file bankruptcy. As a requirement for receiving bankruptcy relief, substantial documentation and other evidence is submitted under oath by borrowers to the bankruptcy court and trustees that verify their distressed financial circumstances. Supervision by bankruptcy trustees and judges enhances the reliability of debtor-borrowers' ability-to-pay assessments and virtually eliminates any "moral hazard" concerns that may arise regarding other forms of student loan cancellation.

We urge the Department to approve the following safe harbor categories for determining that a borrower is eligible for an undue hardship discharge:

A. The borrower is receiving disability benefits under the Social Security Act.

B. The borrower has been determined by the Veterans Administration to have a service-connected disability with a rating of 60% or higher.
C. The borrower's income is less than 75% of the applicable state Median Family Income when the bankruptcy case is filed and for the two previous calendar years.
D. The borrower's income is less than 85% of the applicable state Median Family and one of the following applies:
    1. Not less than 75% of the borrower's income is derived from retirement benefits (under the Social Security Act or from a retirement fund or account);
    2. The borrower provides for the care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent);
    3. The borrower is over the age of 70 when the request for discharge is made;
    4. The borrower's student loans have been in repayment for a period of at least 15 years (including periods of forbearance but not deferrals);
    5. The borrower has student loans for attendance at an institution that did not provide the borrower with a degree or certificate, and the borrower has never received a degree or certificate from any other institution;
    6. The borrower has student loans for attendance at a for-profit school (with "school" defined as a school's main campus or any location or branch of the main campus), or for attendance in a program that was discontinued within the past 5 years; or
    7. The borrower owes less than $10,000 in aggregate for federal student loans.

For safe harbor eligibility, all of the gross income that the borrower regularly receives, as shown on Schedule I (Official Form 106I) filed in the borrower's bankruptcy case, will be counted. This includes income derived under the Social Security Act, even though this income is excluded from income for bankruptcy means-testing calculations. If the borrower is married, the spouse's income will not be counted in determining undue hardship eligibility, provided that the joint debtor is not a co-borrower on the student loans. The applicable state Median Family Income for the borrower is reported on Official Form 122A-1 or 122C-1 filed in the borrower's bankruptcy case.

We have provided a suggested Application form that identifies the various bankruptcy documents and Special Declarations that establish proof of the debtor's eligibility for the safe harbor categories.

4. Safe Harbor Settlement Procedure

We urge the Department to adopt the following procedure for implementing the undue hardship safe harbors for any borrower who files a petition for relief under the Bankruptcy Code and seeks the discharge of federal student loans based on undue hardship.

a. The debtor files an adversary proceeding complaint seeking a discharge under 11 U.S.C. § 523(a)(8) based on undue hardship.

b. If the debtor falls within one or more of the safe harbor categories, the debtor will submit to the Department an Application for a settlement granting full discharge of all outstanding student loans. The Application will include declarations signed by the borrower under penalty of perjury that the information provided is true and correct, and a certification from the borrower's attorney (if the borrower is represented). The Application will refer to standardized proof of eligibility based primarily on the documents filed in the bankruptcy case. We have provided a suggested Application form (which includes an Attachment Coversheet, Special Declarations and Instructions) that the Department may use for this purpose. The Attachment Coversheet will be used by the borrower to provide copies of the designated documents filed in the bankruptcy case that support the borrower's application. We urge the Department to establish a designated email address or web portal for the receipt of these Applications.

c. The borrower's Application for an undue hardship finding and settlement will then be forwarded to the local Assistant United States Attorney (AUSA) assigned to represent the Department in the adversary proceeding. An initial review will be made to determine if the Application and specified attachments establish that the borrower is eligible for one or more of the safe harbor categories. We anticipate that the AUSA can assign this initial review to non-attorney legal assistants. Alternatively, this task could be handled by Federal Student Aid staff.

d. If the provided Application and attachments establish that the borrower is eligible for a safe harbor category, the AUSA will recommend settlement and seek approval from the Department to enter into a stipulated judgment with the borrower granting a discharge. If the AUSA determines that the proof is insufficient or that the borrower otherwise does not fall within one or more of the safe harbor categories, the AUSA shall notify the borrower and the Department of the reasons for this determination, and afford the borrower the opportunity to submit additional proof.

e. The safe harbor settlement recommendation can be made before the AUSA needs to file a responsive pleading to the adversary proceeding complaint in the bankruptcy case or initiate pre-trial discovery. Given the objective criteria and the standardized proof we have identified, this process will result in time savings for AUSAs in comparison to undue hardship cases in which a settlement under the guidance is not sought.

f. The Department will then conduct an administrative review of the accuracy of the AUSA's settlement recommendation. If the Department's review confirms the AUSA's recommendation is accurate, the Department shall give authority to the AUSA to enter into a stipulated judgment granting a discharge. The Department's review under this process should be far less time consuming than the Department's current review of settlement recommendations that are not based on objective standards. The borrower's attorney (or unrepresented borrower) or AUSA will file the stipulated judgment with the

bankruptcy court and request that the court grant the stipulated judgment.

5. Program Materials

To assist the Department in implementing this program, we have attached a suggested Application form, which includes an Attachment Coversheet, Special Declarations and Instructions. We also provide as exhibits the relevant pages from the bankruptcy Official Forms that are referenced in the Application.

Application to ED/FSA for *Safe Harbor Undue Hardship* Finding for a Bankruptcy Discharge

Bankruptcy Case Information

Bankruptcy Court:			Petition Date:
Bankruptcy Debtor(s): Debtor 1: Debtor 2:	Chapter	Case No.	Adversary No.

☐ If checked, I am applying for undue hardship discharge of my federal student loans while my bankruptcy is active, but later than nine months after my petition filing date. I am attaching recently updated bankruptcy documents.

Identification of Student Loans

Borrower Name(s):		Check: ☐ Debtor 1 and/or ☐ Debtor 2
Check if: ☐ Debtor is cosigner of SL or ☐ SL is Parent Plus loan		Student's Name:
Total balances per attached NSLDS web pages	Principal: $	Interest: $

Borrower's Basis for Undue Hardship Finding

I, the Borrower and the Debtor in the above bankruptcy case, hereby claim eligibility for an *undue hardship* finding for a bankruptcy discharge of the student loans I owe, which are held by or guaranteed by the U.S. Department of Education, through the Office of Federal Student Aid (ED/FSA), because paying them would impose undue hardship on myself and my dependents (if any). I believe I qualify for an *undue hardship* finding under the *safe harbor* protection recognized by ED/FSA. Following, are the coversheet for my attachments and special declarations (if required) to support my claim.

☐ A. I receive disability benefits under the Social Security Act.

☐ B. I have been determined by the VA to have a service-connected disability with a rating of 60% or higher.

☐ C. My current income: is less than 75% of the applicable Median Family Income (MFI) shown on Official Form 122A-1 or 122C-1; it has been so during the two full calendar years prior to the bankruptcy filing date (or the date of this Application, if more than nine months after the filing date) as reported on the Statement of Financial Affairs for Individuals; and is so reported on Schedule I as current income (as amended).

☐ D. My income is less than 85% of the applicable Median Family Income shown on OF-122A-1 or OF-122C-1, and check one or more of the following circumstances:

- ☐ D.1. Not less than 75% of my income is from retirement benefits, including Social Security; or
- ☐ D.2. I provide for care and support of an elderly, chronically ill, or disabled household member or member of my immediate family; or
- ☐ D.3. I was at least 70 years of age on the date I executed this Application; or
- ☐ D.4. My federal student loans have been in repayment status for a total of at least 15 years; or
- ☐ D.5. My school did not provide a degree or certificate, and I did not receive one from another school; or
- ☐ D.6. I attended a for-profit school that has closed or has discontinued my program within the last five years; or
- ☐ D.7. The principal balance I owe on all my federal student loans is less than $10,000.

I declare under penalty of perjury that I have read the *Application*, the *Attachment Coversheet* and the bankruptcy documents attached thereto, and the *Special Declarations* (if any), and the information provided is true and correct.

Dated: _____ _____ _____

Debtor 1, Debtor 2,

CERTIFICATION BY DEBTOR'S BANKRUPTCY ATTORNEY [if represented]

I declare that I represent the Debtor in the above bankruptcy case, and I certify that I have no knowledge after an inquiry, that the information contained in this *Application*, the *Attachment Coversheet* and the bankruptcy documents attached thereto, and the *Special Declarations* (if any) is incorrect.

Dated: _____ _____

Attorney for Debtor
[if represented]

CONTACT INFORMATION

Fill in only if Borrower-Debtor is unrepresented:	Firm Name:
Address:	Address:
City & State:	City & State:
Phone: Fax:	Phone: Fax:
Email:	Email:

ATTACHMENT COVERSHEET

Application to ED/FSA for *Safe Harbor Undue Hardship* Finding for a Bankruptcy Discharge

Borrower-Debtor Name:

Attached are documents that I signed under penalty of perjury and filed in my bankruptcy case, and new declarations supporting my eligibility for my *Safe Harbor* category. References are to page and line numbers.

☐ Test A: I receive disability benefits under the Social Security Act.
Attachments: (1) Schedule I (p.2, L.8e), and (2) Statement of Financial Affairs (p.2, L.5)

☐ Test B: The Veterans Administration has determined I have a service-connected disability, rated 60% or higher.
Attachments: (1) Schedule I (p.2; Ls.8f, 8g, and/or 8h), (2) Statement of Financial Affairs (p.2, L.5), and (3) Veterans Administration statement rating service-connected disability of at least 60%.

Calculation of Debtor's applicable Median Family Income (MFI). Read *Instructions & Definitions* before proceeding.
Tests C and D compare your current income with your applicable MFI. Use 122A-1: (p.2, L.13) or 122C-1: (p.3, L.16c).

My Median Family Income from 122A/C			*My Total Current Income from Schedule I*		
01	Annual MFI	$	11	Sched I - L.4	$
02	Divide by	12	12	L.9 +	
03	Monthly MFI =		13	L.11 +	
04	Line 03 x 75% =		14	Total =	
05	Line 03 x 85% =		15	Check if: ☐ < 75% or ☐ < 85%	

If Line 14 is less than Line 04, check box "< 75%" [of MFI] on Line 15 to the left.

If Line 14 is less than Line 05, check box "< 85%" on Line 15.

☐ Test C: The "< 75% " box above is checked, my current (Schedule I) income is less than 75% of the applicable MFI shown on 122A-1 or 122C-1, and it has been during the two full calendar years prior to the bankruptcy petition date or prior to the date of the most recently amended bankruptcy documents.
Attachments: (1) Schedule I (p.2, L.4, 9, and/or 11), and (2) Statement of Financial Affairs (p.2, L.4 and 5)

☐ Test D: The "< 85% " box above is checked, my income is less than 85% of the applicable MFI shown on 122A-1 or 122C-1 and, in addition, I pass the described test(s) checked below.

☐ D.1. Not less than 75% of my income is from retirement benefits (under the Social Security Act or from a retirement plan, fund, or account). The number in Column 24 equals ____%, which is not less than 75%.

20. Social Security income (2:8e)	21. Retirement income (2:8g)	22. Total SS + retirement income	23. Total income (L.14, table above)	24. Divide 22 # by 23 #, state as %

Attachments: Schedule I (p.2, L.8e and/or 8g)

☐ D.2. I provide for care and support of an elderly, chronically ill, or disabled household member or member of my immediate family (including parents, grandparents, siblings, children, and grandchildren), my dependents, and my spouse (who need not qualify as dependents under tax laws).
Attachments: (1) Schedule I (p.2, L.8f, and/or 11), (2) Schedule J (p 1, L.2, 3; p.2, L.19, and/or 21); 122A-2 [Chapter 7] or 122C-2 [Chapter 13] (same page & L # for both forms: p.4, L.26); and (3) Special Declaration

☐ D.3. I was at least 70 years of age on the date I executed this Application.
Attachments: (1) NSLDS printout shows that I am at least 70 years of age.

☐ D.4. My federal student loans have been in repayment status (including periods of forbearance but not deferrals) for a cumulative period of at least 15 years.
Attachments: (1) NSLDS printout with evidence, and (2) Special Declaration

☐ D.5. My student loans are for attendance at an institution that did not provide me a degree or certificate, and I never received a degree or certificate from any other institution
Attachments: (1) NSLDS printout with evidence, (2) Schedule I (p.1, L.1), and (3) Special Declaration

☐ D.6. My student loans are for attendance at a for-profit school (with "school" defined as a school's main campus or any location or branch of the main campus) that has closed, or for attendance in an educational program that was discontinued within the past five years.
Attachments: (1) NSLDS printout with evidence, and (2) Special Declaration

☐ D.7. The principal balance owed on all my student loans is less than $10,000.
Attachments: (1) NSLDS printout shows the amount owed.

SPECIAL DECLARATIONS

Application to ED/FSA for *Safe Harbor Undue Hardship* Finding for a Bankruptcy Discharge

Borrower-Debtor Name:

In support of my *Application to ED/FSA for Safe Harbor Undue Hardship Finding for a Bankruptcy Discharge*, I submit the following Special Declaration(s).

☐ Regarding *Safe Harbor* category D.2, I declare that:
I provide for care and support of an elderly, chronically ill, or disabled household member or member of my immediate family (including parents, grandparents, siblings, children, and grandchildren), my dependents, and my spouse (who need not be considered dependents under tax laws), specifically my _____, who is ____ years old.

☐ Regarding *Safe Harbor* category D.4, I declare that:
my federal student loans have been in repayment status (including periods of forbearance but not deferrals) for a cumulative period of approximately _____ years (which is more than 15 years), and I owe approximately $_____ (principal and interest only) on those loans at this time. I have been unable to pay off this debt.

☐ Regarding *Safe Harbor* category D.5, I declare that:
I attended [school] _____ for the purpose of obtaining a degree or certificate designated as _____ in the field of _____ (which the school offered at the time I enrolled). The institution did not provide me that degree or certificate, and I have never received a degree or certification from any other institution. My current employment status is [e.g., employed, self-employed, unemployed, retired, disabled] _____. My current occupation, if any, is _____, as shown on Schedule I (p.1, L.1).

☐ Regarding *Safe Harbor* category D.6, I declare that:
my student loans are for attendance at a for-profit school (meaning a school's main campus or any location or branch of the main campus), specifically, I attended _____, a for-profit school

- ☐ that has closed (either the main campus or any location or branch of it), and/or
- ☐ where I studied an educational program (_____) that was discontinued within the past five years.

Because of the school's closure or discontinuance of my educational program, I have been unable to pursue a career in that field, which would have been possible if I had been able to complete my educational program at that school. My current employment status is [e.g., employed, self-employed, unemployed, retired, disabled] _____ _____. My current occupation, if any, is _____, as shown on Schedule I (p.1, L.1).

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that the information provided in the above *Special Declaration(s)* is true and correct.

Dated: _____ _____ _____

Debtor 1, Debtor 2,

INSTRUCTIONS & DEFINITIONS

Application to ED/FSA for *Safe Harbor Undue Hardship* Finding for a Bankruptcy Discharge

Please Read These *Instructions & Definitions* Before Completing Your Application.

INSTRUCTIONS

To be eligible to apply to ED/FSA for a *Safe Harbor Undue Hardship* finding for a Bankruptcy Discharge, you must:

1. be in an active Chapter 7 or Chapter 13 bankruptcy case;
2. qualify under *Safe Harbor* category adopted by ED/FSA;
3. file an Adversary Proceeding in your active bankruptcy case, in which you should file a copy of your Application, Attachment Coversheet, all attachments, and Special Declarations. If these documents are filed in the Adversary Proceeding, they will be publicly available through the nationwide PACER system, so carefully redact names of children and other persons, Social Security numbers, account numbers, etc.

Only student loans that are held or guaranteed by ED/FSA are eligible to be considered for bankruptcy discharge under this process. Private student loans are not eligible. You do not need to be represented by an attorney to apply under this program, but having an attorney is advisable.

The Application and Adversary Proceeding should be filed as soon as possible after you file your bankruptcy. However, you may start this process up to nine months after the petition date and use the documents filed in your bankruptcy case. If your bankruptcy case has been active for more than nine months, you must check the appropriate box in the Application, and file amended documents in your bankruptcy case that update the necessary income information, and will be the attachments listed in the Attachment Coversheet. For example, if you became qualified for a *Safe Harbor* category during your bankruptcy case, based on those changed circumstances you may submit the Application and file the Adversary Proceeding at that time.

Steps in Filling out the Application, Attachments Coversheet, and Special Declarations

1. If you qualify under Test A (you receive Social Security disability benefits) or Test B (the Veterans Administration has determined that you have a service-connected disability rated at 60% or more), you do not have to calculate what percent of the Median Family Income (MFI) you receive.

2. If you do not qualify under Tests A or B, you must fill out the table for Tests C and D by referring to your bankruptcy documents. Your income must be either less than 85% of your MFI for the categories in Test D or less than 75% for Test C. Although Social Security-related income does not count as income for the bankruptcy "means test" (122A and 122C forms), that income does count for the *Safe Harbor Undue Hardship* qualification. COVID-related government benefits are also not included in bankruptcy "means test" calculations, and since those benefits are of a temporary nature, they are not included in the *Safe Harbor Undue Hardship* income calculations either. In addition, only income of the borrower is counted for the *Safe Harbor Undue Hardship* qualification – no income of another member of the household or family, including a non-borrower spouse is included. The "family" size of the borrower shall be "1" if there are other sources of income coming into the household. If there are no other sources of income (or if the borrower voluntarily elects to include all income coming into the household) the family size will include the other persons.

3. If you qualify under Test A, B, C, or D, access your account in the National Student Loan Data System (NSLDS) and print out the pages that show:
   a. your principal and interest balances due on your student loans;
   b. which schools you attended in connection with the student loans; and
   c.. how long your student loans have been in repayment status.

4. Fill out the rest of the Application, the Attachment Coversheet, and the Special Declarations form (if required).

5. File the Adversary Proceeding in your bankruptcy court, and submit the Application as required by ED/FSA

DEFINITIONS

The singular includes the plural. Any pronouns are non-binary and fully inclusive and stated as *they, their, them.* "Current income" in this Application means income reported on Schedule I. "Current income" is not the same as "Current Monthly Income," which is the average countable income received during the full six-month period prior to the bankruptcy filing date, which is reported on the 122A and 122C forms.

Term	***Means***	***Term***	***Means***
Adversary Proceeding	Complaint filed in the bankruptcy court, within the bankruptcy case of the borrower-debtor	FRBP	Federal Rules of Bankruptcy Procedure
Borrower	Primary borrower or cosigner of SL	FSA	ED, Office of Federal Student Aid
Debtor	Person in an active bankruptcy case	MFI	*Median Family Income,* as used in bankruptcy cases.
ED	U.S. Department of Education	SL	Federally held or guaranteed student loan

Fill in this information to identify your case:

Debtor 1 _____ (First Name / Middle Name / Last Name)

Debtor 2 (Spouse, if filing) _____ (First Name / Middle Name / Last Name)

United States Bankruptcy Court for the: _____ District of _____

Case number (If known) _____

Check if this is:

- ☐ An amended filing
- ☐ A supplement showing postpetition chapter 13 income as of the following date:

_____
MM / DD / YYYY

Official Form 106I

Schedule I: Your Income

12/15

Be as complete and accurate as possible. If two married people are filing together (Debtor 1 and Debtor 2), both are equally responsible for supplying correct information. If you are married and not filing jointly, and your spouse is living with you, include information about your spouse. If you are separated and your spouse is not filing with you, do not include information about your spouse. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Employment

1. **Fill in your employment information.**

   If you have more than one job, attach a separate page with information about additional employers.

   Include part-time, seasonal, or self-employed work.

   Occupation may include student or homemaker, if it applies.

	Debtor 1	Debtor 2 or non-filing spouse
Employment status	☐ Employed ☐ Not employed	☐ Employed ☐ Not employed
Occupation	_____	_____
Employer's name	_____	_____
Employer's address	_____ Number Street _____ _____ City State ZIP Code	_____ Number Street _____ _____ City State ZIP Code
How long employed there?	_____	_____

Part 2: Give Details About Monthly Income

Estimate monthly income as of the date you file this form. If you have nothing to report for any line, write $0 in the space. Include your non-filing spouse unless you are separated.

If you or your non-filing spouse have more than one employer, combine the information for all employers for that person on the lines below. If you need more space, attach a separate sheet to this form.

		For Debtor 1	For Debtor 2 or non-filing spouse
2. **List monthly gross wages, salary, and commissions** (before all payroll deductions). If not paid monthly, calculate what the monthly wage would be.	2.	$_____	$_____
3. **Estimate and list monthly overtime pay.**	3.	+ $_____	+ $_____
4. **Calculate gross income.** Add line 2 + line 3.	4.	$_____	$_____

Debtor 1 _____ Case number (if known) _____
First Name Middle Name Last Name

		For Debtor 1	For Debtor 2 or non-filing spouse
Copy line 4 here →	4.	$_____	$_____
5. **List all payroll deductions:**			
5a. **Tax, Medicare, and Social Security deductions**	5a.	$_____	$_____
5b. **Mandatory contributions for retirement plans**	5b.	$_____	$_____
5c. **Voluntary contributions for retirement plans**	5c.	$_____	$_____
5d. **Required repayments of retirement fund loans**	5d.	$_____	$_____
5e. **Insurance**	5e.	$_____	$_____
5f. **Domestic support obligations**	5f.	$_____	$_____
5g. **Union dues**	5g.	$_____	$_____
5h. **Other deductions.** Specify: _____	5h.	+ $_____	+ $_____
6. **Add the payroll deductions.** Add lines 5a + 5b + 5c + 5d + 5e +5f + 5g + 5h.	6.	$_____	$_____
7. **Calculate total monthly take-home pay.** Subtract line 6 from line 4.	7.	$_____	$_____
8. **List all other income regularly received:**			
8a. **Net income from rental property and from operating a business, profession, or farm** Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.	8a.	$_____	$_____
8b. **Interest and dividends**	8b.	$_____	$_____
8c. **Family support payments that you, a non-filing spouse, or a dependent regularly receive** Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.	8c.	$_____	$_____
8d. **Unemployment compensation**	8d.	$_____	$_____
8e. **Social Security**	8e.	$_____	$_____
8f. **Other government assistance that you regularly receive** Include cash assistance and the value (if known) of any non-cash assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies. Specify: _____	8f.	$_____	$_____
8g. **Pension or retirement income**	8g.	$_____	$_____
8h. **Other monthly income.** Specify: _____	8h.	+ $_____	+ $_____
9. **Add all other income.** Add lines 8a + 8b + 8c + 8d + 8e + 8f +8g + 8h.	9.	$_____	$_____
10. **Calculate monthly income.** Add line 7 + line 9. Add the entries in line 10 for Debtor 1 and Debtor 2 or non-filing spouse.	10.	$_____ +	$_____ = $_____

11. **State all other regular contributions to the expenses that you list in *Schedule J.***
Include contributions from an unmarried partner, members of your household, your dependents, your roommates, and other friends or relatives.
Do not include any amounts already included in lines 2-10 or amounts that are not available to pay expenses listed in *Schedule J.*
Specify: _____ 11. + $_____

12. **Add the amount in the last column of line 10 to the amount in line 11.** The result is the combined monthly income. Write that amount on the *Summary of Your Assets and Liabilities and Certain Statistical Information*, if it applies 12. $_____ **Combined monthly income**

13. **Do you expect an increase or decrease within the year after you file this form?**
☐ No.
☐ Yes. Explain: _____

Print Save As... Add Attachment Reset

Fill in this information to identify your case:

Debtor 1 _____ (First Name / Middle Name / Last Name)

Debtor 2 (Spouse, if filing) _____ (First Name / Middle Name / Last Name)

United States Bankruptcy Court for the: _____ District of _____

Case number (If known) _____

Check if this is:

- ☐ An amended filing
- ☐ A supplement showing postpetition chapter 13 expenses as of the following date:

_____
MM / DD / YYYY

Official Form 106J

Schedule J: Your Expenses

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach another sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Your Household

1. **Is this a joint case?**

   - ☐ No. Go to line 2.
   - ☐ Yes. **Does Debtor 2 live in a separate household?**
     - ☐ No
     - ☐ Yes. Debtor 2 must file Official Form 106J-2, *Expenses for Separate Household of Debtor 2*.

2. **Do you have dependents?**

   Do not list Debtor 1 and Debtor 2.

   Do not state the dependents' names.

   - ☐ No
   - ☐ Yes. Fill out this information for each dependent.....

Dependent's relationship to Debtor 1 or Debtor 2	Dependent's age	Does dependent live with you?
		☐ No ☐ Yes
		☐ No ☐ Yes
		☐ No ☐ Yes
		☐ No ☐ Yes
		☐ No ☐ Yes

3. **Do your expenses include expenses of people other than yourself and your dependents?**
   - ☐ No
   - ☐ Yes

Part 2: Estimate Your Ongoing Monthly Expenses

Estimate your expenses as of your bankruptcy filing date unless you are using this form as a supplement in a Chapter 13 case to report expenses as of a date after the bankruptcy is filed. If this is a supplemental *Schedule J*, check the box at the top of the form and fill in the applicable date.

Include expenses paid for with non-cash government assistance if you know the value of such assistance and have included it on *Schedule I: Your Income* (Official Form 106I.)

		Your expenses
4.	**The rental or home ownership expenses for your residence.** Include first mortgage payments and any rent for the ground or lot.	4. $_____
	If not included in line 4:	
4a.	Real estate taxes	4a. $_____
4b.	Property, homeowner's, or renter's insurance	4b. $_____
4c.	Home maintenance, repair, and upkeep expenses	4c. $_____
4d.	Homeowner's association or condominium dues	4d. $_____

Debtor 1 _____ Case number (if known) _____
First Name Middle Name Last Name

		Your expenses
5. **Additional mortgage payments for your residence**, such as home equity loans	5.	$_____
6. **Utilities:**		
6a. Electricity, heat, natural gas	6a.	$_____
6b. Water, sewer, garbage collection	6b.	$_____
6c. Telephone, cell phone, Internet, satellite, and cable services	6c.	$_____
6d. Other. Specify: _____	6d.	$_____
7. **Food and housekeeping supplies**	7.	$_____
8. **Childcare and children's education costs**	8.	$_____
9. **Clothing, laundry, and dry cleaning**	9.	$_____
10. **Personal care products and services**	10.	$_____
11. **Medical and dental expenses**	11.	$_____
12. **Transportation.** Include gas, maintenance, bus or train fare. Do not include car payments.	12.	$_____
13. **Entertainment, clubs, recreation, newspapers, magazines, and books**	13.	$_____
14. **Charitable contributions and religious donations**	14.	$_____
15. **Insurance.** Do not include insurance deducted from your pay or included in lines 4 or 20.		
15a. Life insurance	15a.	$_____
15b. Health insurance	15b.	$_____
15c. Vehicle insurance	15c.	$_____
15d. Other insurance. Specify: _____	15d.	$_____
16. **Taxes.** Do not include taxes deducted from your pay or included in lines 4 or 20. Specify: _____	16.	$_____
17. **Installment or lease payments:**		
17a. Car payments for Vehicle 1	17a.	$_____
17b. Car payments for Vehicle 2	17b.	$_____
17c. Other. Specify: _____	17c.	$_____
17d. Other. Specify: _____	17d.	$_____
18. **Your payments of alimony, maintenance, and support that you did not report as deducted from your pay on line 5, *Schedule I, Your Income* (Official Form 106I).**	18.	$_____
19. **Other payments you make to support others who do not live with you.** Specify: _____	19.	$_____
20. **Other real property expenses not included in lines 4 or 5 of this form or on *Schedule I: Your Income*.**		
20a. Mortgages on other property	20a.	$_____
20b. Real estate taxes	20b.	$_____
20c. Property, homeowner's, or renter's insurance	20c.	$_____
20d. Maintenance, repair, and upkeep expenses	20d.	$_____
20e. Homeowner's association or condominium dues	20e.	$_____

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____

Case number _____
(If known)

☐ Check if this is an amended filing

Official Form 107

Statement of Financial Affairs for Individuals Filing for Bankruptcy 04/19

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Give Details About Your Marital Status and Where You Lived Before

1. What is your current marital status?

☐ Married
☐ Not married

2. During the last 3 years, have you lived anywhere other than where you live now?

☐ No
☐ Yes. List all of the places you lived in the last 3 years. Do not include where you live now.

Debtor 1:	Dates Debtor 1 lived there	Debtor 2:	Dates Debtor 2 lived there
		☐ Same as Debtor 1	☐ Same as Debtor 1
Number Street	From _____ To _____	Number Street	From _____ To _____
City State ZIP Code		City State ZIP Code	
		☐ Same as Debtor 1	☐ Same as Debtor 1
Number Street	From _____ To _____	Number Street	From _____ To _____
City State ZIP Code		City State ZIP Code	

3. Within the last 8 years, did you ever live with a spouse or legal equivalent in a community property state or territory? (*Community property states and territories* include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.)

☐ No
☐ Yes. Make sure you fill out *Schedule H: Your Codebtors* (Official Form 106H).

Part 2: Explain the Sources of Your Income

Debtor 1 _____ Case number (if known) _____
First Name Middle Name Last Name

4. **Did you have any income from employment or from operating a business during this year or the two previous calendar years?**
Fill in the total amount of income you received from all jobs and all businesses, including part-time activities.
If you are filing a joint case and you have income that you receive together, list it only once under Debtor 1.

- ☐ No
- ☐ Yes. Fill in the details.

	Debtor 1		Debtor 2	
	Sources of income Check all that apply.	**Gross income** (before deductions and exclusions)	**Sources of income** Check all that apply.	**Gross income** (before deductions and exclusions)
From January 1 of current year until the date you filed for bankruptcy:	☐ Wages, commissions, bonuses, tips ☐ Operating a business	$_____	☐ Wages, commissions, bonuses, tips ☐ Operating a business	$_____
For last calendar year: (January 1 to December 31, _____) YYYY	☐ Wages, commissions, bonuses, tips ☐ Operating a business	$_____	☐ Wages, commissions, bonuses, tips ☐ Operating a business	$_____
For the calendar year before that: (January 1 to December 31, _____) YYYY	☐ Wages, commissions, bonuses, tips ☐ Operating a business	$_____	☐ Wages, commissions, bonuses, tips ☐ Operating a business	$_____

5. **Did you receive any other income during this year or the two previous calendar years?**
Include income regardless of whether that income is taxable. Examples of *other income* are alimony; child support; Social Security, unemployment, and other public benefit payments; pensions; rental income; interest; dividends; money collected from lawsuits; royalties; and gambling and lottery winnings. If you are filing a joint case and you have income that you received together, list it only once under Debtor 1.

List each source and the gross income from each source separately. Do not include income that you listed in line 4.

- ☐ No
- ☐ Yes. Fill in the details.

	Debtor 1		Debtor 2	
	Sources of income Describe below.	**Gross income from each source** (before deductions and exclusions)	**Sources of income** Describe below.	**Gross income from each source** (before deductions and exclusions)
From January 1 of current year until the date you filed for bankruptcy:	_____ _____ _____	$_____ $_____ $_____	_____ _____ _____	$_____ $_____ $_____
For last calendar year: (January 1 to December 31, _____) YYYY	_____ _____ _____	$_____ $_____ $_____	_____ _____ _____	$_____ $_____ $_____
For the calendar year before that: (January 1 to December 31, _____) YYYY	_____ _____ _____	$_____ $_____ $_____	_____ _____ _____	$_____ $_____ $_____

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 (Spouse, if filing) _____
First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____

Case number (If known) _____

Check one box only as directed in this form and in Form 122A-1Supp:

- ❑ 1. There is no presumption of abuse.
- ❑ 2. The calculation to determine if a presumption of abuse applies will be made under *Chapter 7 Means Test Calculation* (Official Form 122A–2).
- ❑ 3. The Means Test does not apply now because of qualified military service but it could apply later.

❑ Check if this is an amended filing

Official Form 122A–1

Chapter 7 Statement of Your Current Monthly Income

04/20

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known). If you believe that you are exempted from a presumption of abuse because you do not have primarily consumer debts or because of qualifying military service, complete and file *Statement of Exemption from Presumption of Abuse Under § 707(b)(2)* (Official Form 122A-1Supp) with this form.

Part 1: Calculate Your Current Monthly Income

1. **What is your marital and filing status?** Check one only.
   - ❑ **Not married.** Fill out Column A, lines 2-11.
   - ❑ **Married and your spouse is filing with you.** Fill out both Columns A and B, lines 2-11.
   - ❑ **Married and your spouse is NOT filing with you. You and your spouse are:**
     - ❑ **Living in the same household and are not legally separated.** Fill out both Columns A and B, lines 2-11.
     - ❑ **Living separately or are legally separated**. Fill out Column A, lines 2-11; do not fill out Column B. By checking this box, you declare under penalty of perjury that you and your spouse are legally separated under nonbankruptcy law that applies or that you and your spouse are living apart for reasons that do not include evading the Means Test requirements. 11 U.S.C. § 707(b)(7)(B).

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write $0 in the space.

	Column A **Debtor 1**	*Column B* **Debtor 2 or non-filing spouse**
2. **Your gross wages, salary, tips, bonuses, overtime, and commissions** (before all payroll deductions).	$_____	$_____
3. **Alimony and maintenance payments.** Do not include payments from a spouse if Column B is filled in.	$_____	$_____
4. **All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.** Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Include regular contributions from a spouse only if Column B is not filled in. Do not include payments you listed on line 3.	$_____	$_____

5. **Net income from operating a business, profession, or farm**	**Debtor 1**	**Debtor 2**			
Gross receipts (before all deductions)	$_____	$_____			
Ordinary and necessary operating expenses	– $_____	– $_____			
Net monthly income from a business, profession, or farm	$_____	$_____	Copy here →	$_____	$_____
6. **Net income from rental and other real property**	**Debtor 1**	**Debtor 2**			
Gross receipts (before all deductions)	$_____	$_____			
Ordinary and necessary operating expenses	– $_____	– $_____			
Net monthly income from rental or other real property	$_____	$_____	Copy here →	$_____	$_____
7. **Interest, dividends, and royalties**				$_____	$_____

Debtor 1 _____ Case number (if known) _____
First Name Middle Name Last Name

	Column A Debtor 1	Column B Debtor 2 or non-filing spouse
8. **Unemployment compensation** Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: ↓		
For you	$_____	
For your spouse	$_____	
9. **Pension or retirement income.** Do not include any amount received that was a benefit under the Social Security Act. Also, except as stated in the next sentence, do not include any compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. If you received any retired pay paid under chapter 61 of title 10, then include that pay only to the extent that it does not exceed the amount of retired pay to which you would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.	$_____	$_____
10. **Income from all other sources not listed above.** Specify the source and amount. Do not include any benefits received under the Social Security Act; payments made under the Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19); payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism; or compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. If necessary, list other sources on a separate page and put the total below.		
_____	$_____	$_____
_____	$_____	$_____
Total amounts from separate pages, if any.	+$_____	+$_____
11. **Calculate your total current monthly income.** Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.	$_____ +	$_____ = $_____ Total current monthly income

Part 2: Determine Whether the Means Test Applies to You

12. **Calculate your current monthly income for the year.** Follow these steps:

12a. Copy your total current monthly income from line 11. **Copy line 11 here** → $_____

Multiply by 12 (the number of months in a year). x 12

12b. The result is your annual income for this part of the form. 12b. $_____

13. **Calculate the median family income that applies to you.** Follow these steps:

Fill in the state in which you live. _____

Fill in the number of people in your household. _____

Fill in the median family income for your state and size of household. 13. $_____

To find a list of applicable median income amounts, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

14. **How do the lines compare?**

14a. ☐ Line 12b is less than or equal to line 13. On the top of page 1, check box 1, *There is no presumption of abuse.* Go to Part 3. Do NOT fill out or file Official Form 122A-2

14b. ☐ Line 12b is more than line 13. On the top of page 1, check box 2, *The presumption of abuse is determined by Form 122A-2.* Go to Part 3 and fill out Form 122A–2.

Debtor 1 _____ Case number (if known) _____
First Name Middle Name Last Name

Part 3: Sign Below

By signing here, I declare under penalty of perjury that the information on this statement and in any attachments is true and correct.

✘ _____ ✘ _____
Signature of Debtor 1 Signature of Debtor 2

Date _____ Date _____
MM / DD / YYYY MM / DD / YYYY

If you checked line 14a, do NOT fill out or file Form 122A–2.

If you checked line 14b, fill out Form 122A–2 and file it with this form.

Print Save As... Add Attachment Reset

Fill in this information to identify your case:

Debtor 1 _____ (First Name / Middle Name / Last Name)

Debtor 2 (Spouse, if filing) _____ (First Name / Middle Name / Last Name)

United States Bankruptcy Court for the: _____ District of _____

Case number (If known) _____

Check as directed in lines 17 and 21:

According to the calculations required by this Statement:

- ☐ 1. Disposable income is not determined under 11 U.S.C. § 1325(b)(3).
- ☐ 2. Disposable income is determined under 11 U.S.C. § 1325(b)(3).
- ☐ 3. The commitment period is 3 years.
- ☐ 4. The commitment period is 5 years.

☐ Check if this is an amended filing

Official Form 122C–1

Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period

04/20

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Calculate Your Average Monthly Income

1. **What is your marital and filing status?** Check one only.
   - ☐ **Not married.** Fill out Column A, lines 2-11.
   - ☐ **Married.** Fill out both Columns A and B, lines 2-11.

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write $0 in the space.

	Column A **Debtor 1**	*Column B* **Debtor 2 or non-filing spouse**
2. **Your gross wages, salary, tips, bonuses, overtime, and commissions** (before all payroll deductions).	$_____	$_____
3. **Alimony and maintenance payments.** Do not include payments from a spouse.	$_____	$_____
4. **All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.** Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Do not include payments from a spouse. Do not include payments you listed on line 3.	$_____	$_____

5. **Net income from operating a business, profession, or farm**

	Debtor 1	Debtor 2			
Gross receipts (before all deductions)	$_____	$_____			
Ordinary and necessary operating expenses	– $_____	– $_____			
Net monthly income from a business, profession, or farm	$_____	$_____	Copy here →	$_____	$_____

6. **Net income from rental and other real property**

	Debtor 1	Debtor 2			
Gross receipts (before all deductions)	$_____	$_____			
Ordinary and necessary operating expenses	– $_____	– $_____			
Net monthly income from rental or other real property	$_____	$_____	Copy here →	$_____	$_____

Debtor 1 _____ Case number (if known) _____
First Name Middle Name Last Name

	Column A Debtor 1	Column B Debtor 2 or non-filing spouse
7. **Interest, dividends, and royalties**	$_____	$_____
8. **Unemployment compensation**	$_____	$_____
Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: ↓		
For you	$_____	
For your spouse	$_____	
9. **Pension or retirement income.** Do not include any amount received that was a benefit under the Social Security Act. Also, except as stated in the next sentence, do not include any compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. If you received any retired pay paid under chapter 61 of title 10, then include that pay only to the extent that it does not exceed the amount of retired pay to which you would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.	$_____	$_____
10. **Income from all other sources not listed above.** Specify the source and amount. Do not include any benefits received under the Social Security Act; payments made under the Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19); payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism; or compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. If necessary, list other sources on a separate page and put the total below.		
_____	$_____	$_____
_____	$_____	$_____
Total amounts from separate pages, if any.	+ $_____	+ $_____
11. **Calculate your total average monthly income.** Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.	$_____ +	$_____ = $_____
		Total average monthly income

Part 2: Determine How to Measure Your Deductions from Income

12. **Copy your total average monthly income from line 11.** ..... $_____

13. **Calculate the marital adjustment.** Check one:

- ☐ You are not married. Fill in 0 below.
- ☐ You are married and your spouse is filing with you. Fill in 0 below.
- ☐ You are married and your spouse is not filing with you.

Fill in the amount of the income listed in line 11, Column B, that was NOT regularly paid for the household expenses of you or your dependents, such as payment of the spouse's tax liability or the spouse's support of someone other than you or your dependents.

Below, specify the basis for excluding this income and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page.

If this adjustment does not apply, enter 0 below.

_____	$_____
_____	$_____
_____	+ $_____
Total	$_____ Copy here → − _____

14. **Your current monthly income.** Subtract the total in line 13 from line 12. $_____

Debtor 1 _____ Case number (if known) _____
First Name Middle Name Last Name

15. **Calculate your current monthly income for the year.** Follow these steps:

15a. Copy line 14 here ➔ ..... $_____

Multiply line 15a by 12 (the number of months in a year). x 12

15b. The result is your current monthly income for the year for this part of the form. ..... $_____

16. **Calculate the median family income that applies to you.** Follow these steps:

16a. Fill in the state in which you live. _____

16b. Fill in the number of people in your household. _____

16c. Fill in the median family income for your state and size of household. ..... $_____
To find a list of applicable median income amounts, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

17. **How do the lines compare?**

17a. ☐ Line 15b is less than or equal to line 16c. On the top of page 1 of this form, check box 1, *Disposable income is not determined under 11 U.S.C. § 1325(b)(3).* **Go to Part 3.** Do NOT fill out *Calculation of Your Disposable Income* (Official Form 122C–2).

17b. ☐ Line 15b is more than line 16c. On the top of page 1 of this form, check box 2, *Disposable income is determined under 11 U.S.C. § 1325(b)(3).* **Go to Part 3 and fill out Calculation of Your Disposable Income (Official Form 122C–2).**
On line 39 of that form, copy your current monthly income from line 14 above.

Part 3: Calculate Your Commitment Period Under 11 U.S.C. § 1325(b)(4)

18. **Copy your total average monthly income from line 11.** ..... $_____

19. **Deduct the marital adjustment if it applies.** If you are married, your spouse is not filing with you, and you contend that calculating the commitment period under 11 U.S.C. § 1325(b)(4) allows you to deduct part of your spouse's income, copy the amount from line 13.

19a. If the marital adjustment does not apply, fill in 0 on line 19a. ..... – $_____

19b. **Subtract line 19a from line 18.** $_____

20. **Calculate your current monthly income for the year.** Follow these steps:

20a. Copy line 19b. ..... $_____

Multiply by 12 (the number of months in a year). x 12

20b. The result is your current monthly income for the year for this part of the form. $_____

20c. Copy the median family income for your state and size of household from line 16c ..... $_____

21. **How do the lines compare?**

☐ Line 20b is less than line 20c. Unless otherwise ordered by the court, on the top of page 1 of this form, check box 3, *The commitment period is 3 years.* Go to Part 4.

☐ Line 20b is more than or equal to line 20c. Unless otherwise ordered by the court, on the top of page 1 of this form, check box 4, *The commitment period is 5 years.* Go to Part 4.

Debtor 1 _____ Case number (if known) _____
First Name Middle Name Last Name

Part 4: Sign Below

By signing here, under penalty of perjury I declare that the information on this statement and in any attachments is true and correct.

✘ _____
Signature of Debtor 1

Date _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

If you checked 17a, do NOT fill out or file Form 122C–2.
If you checked 17b, fill out Form 122C–2 and file it with this form. On line 39 of that form, copy your current monthly income from line 14 above.

Print Save As... Add Attachment Reset

From: Morgan, Julie
Subject: RE: Proposal for Consenting to Undue Hardship
To: Persis Yu; Kvaal, James; Miller, Benjamin; EVMigration_Clare.Mccann; Merrill, Toby; Darcus, Joanna; Habash, Tariq; Williams, Rich; Latreille, Bonnie; Cordray, Richard; Wiggins, Hunter; Harrington, Ashley
Cc: John Rao
Sent: October 22, 2021 4:31 PM (UTC-04:00)

Thanks, Persis! Looking forward to reviewing your recommendations.

From: Persis Yu <pyu@nclc.org>
Sent: Friday, October 22, 2021 4:01 PM
To: Kvaal, James <James.Kvaal@ed.gov>; Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; EVMigration_Clare.Mccann <Clare.McCann@usdedeop.onmicrosoft.com>; Merrill, Toby <Toby.Merrill@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Habash, Tariq <Tariq.Habash@ed.gov>; Williams, Rich <Rich.Williams@ed.gov>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Cordray, Richard <Richard.Cordray@ed.gov>; Wiggins, Hunter <Hunter.Wiggins@ed.gov>; Harrington, Ashley <Ashley.Harrington@ed.gov>
Cc: John Rao <jrao@nclc.org>
Subject: Proposal for Consenting to Undue Hardship

Dear colleagues,

Thank you for the opportunity to meet with us last month to discuss on the need for bankruptcy protections for student loan borrowers.

We are writing to submit a proposal for establishing and implementing an undue hardship program for consenting to discharge of certain student loans in bankruptcy. This proposal is submitted by the National Consumer Law Center, National Association of Consumer Bankruptcy Attorneys, Student Borrower Protection Center, Public Law Center, and interested Law Professors (Professors Dalie Jimenez, Matthew A Bruckner, Chrystin Ondersma, John Patrick Hunt, and Brook Gotberg).

We look forward to answering any questions you may have.

Best,
John Rao and Persis Yu

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

From: Persis Yu
Subject: Questions about sec 1087e(d)(1) and (e)(7)
To: Siegel, Brian
Cc: Miller, Benjamin; Hong, Jennifer
Sent: November 18, 2021 7:13 AM (UTC-05:00)
Attached: DCIA - Acceleration Memo.docx, 10_IDR session two Legal Aid redline proposal.docx

Hi Brian,

Thanks again for meeting the other day. I found our conversation to be very fruitful. I wanted to follow up by asking a question about the legal analysis for tiered cancellation.

As I am looking over the ICR statute, I am hoping that you can help pinpoint where the statute limits the ability to do cancellation on a monthly or annual basis.

The forgiveness provision of the ICR statute, provides the Secretary with wide latitude to decide how to structure cancellation. The Secretary has demonstrated this latitude with the REPAYE regulations where it not only shortened the time frame from 25 to 20 years, it did so for only some borrowers. Arguably, targeting the period for cancellation based upon the type of education a borrower received stretches the ICR statute further than providing cancellation monthly or annually.

The first place where ICR forgiveness is referenced is in sec. 1087e(d)(1)(D) stating:

> "an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS loan made on behalf of a dependent student[.]"

The relevant portion of this part is that the extended repayment period prescribed by the Secretary shall not "exceed 25 years." Certainly, giving people cancellation on a monthly or annual basis could not cause a conflict with the mandate to not "exceed 25 years." Nor would it contradict the requirement that payments be made over "an extended period of time." Payments would still be made over "an extended period of time" as payments would still be required for a number of years.

The other relevant part of section 1087e(e)(7), defining the "Maximum repayment period," states:

> "In calculating the extended period of time for which an income contingent repayment plan under this subsection may be in effect for a borrower, the Secretary

shall include all time periods
during which a borrower of loans under part B, part D, or part E-- …"

The relevant portion of
this paragraph is the requirement that there be an "extended period of time" for which the plan is in effect. Again, because payments would still be made over a number of years even with partial monthly or annual cancellation, the requirement that payments
be made for an "extended period of time" would still be met.

Finally section 1087e(e)(7)
goes on to list the types of payments that would qualify for cancellation. As I indicate, in my proposed regulatory text, I still count this time towards forgiveness. However, unlike the months where a borrower makes the IDR payment and receives partial cancellation,
that cancellation time is counted at the end. Therefore, the requirement that the extended time "shall include all time periods" where borrowers make qualifying payments is also met.

Again, I am happy to engage in a deeper analysis, but from a basic plain reading of the statute, I'm just not sure where that analysis is needed. Please let me know if there is a piece that I am missing.

Also, as we discussed, I'm attaching the memo we have finding that the acceleration clause was not mandated by the FCCS. I'm also attaching my proposed reg text for reference.

I look forward to continuing this conversation.

Best,
Persis

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Proposed Regulatory Text with Edits for Issue Paper #10: Income-driven Repayment Plans

§ 685.209 Income-driven repayment plans.

(a) ***General.*** Income-driven repayment (IDR) plans are plans that are intended to keep payments affordable to borrowers by basing payments on income and family size instead of loan debt and interest rate. There are 5 IDR plans:

(1) The Income-Contingent Repayment (ICR) Plan;
(2) The Income-Based Repayment (IBR) Plan;
(3) The Pay As You Earn (PAYE) Repayment Plan;
(4) The Revised Pay As You Earn (REPAYE) Repayment Plan; and
(5) The Expanded Income-Contingent Repayment (EICR) Plan.

(b) ***Definitions.***

(1) Other definitions TK

(2) ***Partial Financial Hardship*** means a circumstance in which the amount a borrower (and, as applicable, the borrower's spouse) would pay on the 10-year standard repayment plan on eligible loans for the purposes of proration is more than what the borrower would pay on the IBR or PAYE Plan as determined under subsection (e). To determine whether the borrower has a partial financial hardship, the Secretary uses the greater of the balances that were outstanding on the borrower's eligible loans at the time the borrower entered repayment on the loans or the balances on those loans that were outstanding at the time the borrower requested to enter the IBR or PAYE Plan and takes a spouse's income and loan debt into consideration consistent with subsection (d).

(3) ***Eligible new borrower*** means for the purpose of the PAYE Plan means an individual who -

(A) Has no outstanding balance on a Direct Loan Program loan or a FFEL Program loan as of October 1, 2007, or who has no outstanding balance on such a loan on the date he or she receives a new loan after October 1, 2007; and

(B) Receives a disbursement of a Direct Subsidized Loan, Direct Unsubsidized Loan, student Direct PLUS Loan, or a Direct Consolidation Loan on or after October 1, 2011.

(4) ***New borrower*** means for the purposes of the IBR Plan means an individual who has no outstanding balance on a Direct Loan Program or FFEL Program loan on July 1, 2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014.

(5) ***Eligible loans for the purposes of proration*** means loans under subsection (d) as well as FFEL Stafford Loans, FFEL PLUS Loans made to graduate/professional students, and FFEL Consolidation Loans that did not repay a FFEL, or Direct PLUS Loan made to a parent borrower.

(6) ***Discretionary income*** means for the ICR plan, the difference between the applicable total income determined in accordance with subsections (e) and (l) and 100 percent of the applicable poverty guideline; for the IBR, PAYE, and REPAYE~~, and EICR plans~~, it means the difference between the applicable total income and 150% of the applicable poverty guideline or $0, whichever is greater; for the EICR plan, it means the difference between the applicable total income and 400% of the applicable poverty guideline or $0 whichever is greater.

Commented [PY1]: This change maps to the Legal Aid Proposal to increase the discretionary income threshold to 400% of FPL.

(7) ***Family size*** means the number of individuals that is determined by summing:

(A) For all IDR plans, the borrower;

(B) For the ICR, IBR, and PAYE plans, the borrower's spouse

(C) For the REPAYE plan, the borrower's spouse, but only if the spouse's income is included in the calculation of the borrower's monthly payment amount under subsection (e);

(D) For all IDR plans, the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower; and

(E) For all IDR plans, other individuals if, at the time the borrower certifies family size,

the other individuals live with the borrower and receive more than half their support from the borrower and will continue to receive this support from the borrower for the year for which the borrower certifies family size.

(8) ***Support*** includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(9) ***Poverty guideline*** refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(c) ***Borrower eligibility.***

(1) Borrowers are eligible for the ICR, REPAYE, and EICR plans if they have eligible loans;

(2) Borrowers are eligible for the IBR Plan if they have eligible loans and have a partial financial hardship when they initially enter the plan; and

(3) Borrowers are eligible for the PAYE Plan if they have eligible loans, are an eligible new borrower, and have a partial financial hardship when they initially enter the plan.

(d) ***Loans eligible to be repaid under an IDR plan.***

(1) For ICR, IBR, PAYE, and REPAYE plans, eligible loans are Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans for graduate/professional borrowers, and, except for the ICR plan, Direct Consolidation Loans that did not repay a Direct or FFEL PLUS Loan for parents;

(2) For the ICR plan, eligible loans also include Direct Consolidation Loans that repaid a Direct or FFEL PLUS Loans for parents;

(3) For the EICR plan, eligible loans are TK.

(e) ***Treatment of married borrowers.*** (1) Income. Unless a married borrower certifies that the borrower is separated from the borrower's spouse or unable to reasonably access the spouse's income, a spouse's income is included in the calculation of the borrower's monthly payment amount for the tax year of the income the Secretary uses to calculate the borrower's monthly payment under the following conditions:

(A) For the ICR Plan, if the borrower and spouse file a joint Federal income tax return or the borrower and spouse elect to repay their Direct Loans jointly under the ICR plan;

(B) For the IBR, ~~or~~ PAYE, or EICR plans, if the borrower and spouse file a joint Federal income tax return; and

(C) For the REPAYE plan, regardless of whether the borrower and spouse file a joint Federal income tax return.

(2) Loan debt.

(A) For the IBR, PAYE, REPAYE, and EICR plans, the spouse's eligible loan debt for the purposes of adjusting the payment amount and to perform the calculation as described in subsection (g), is included in the calculation of the borrower's monthly payment amount if the spouse's income is included in the calculation of the borrower's monthly payment amount.

(B) For the ICR plan, the spouse's loans meeting the criteria of paragraph (d)(2) of this section are only included in the calculation of the borrower's monthly payment amount if the borrower elects to repay the borrower's eligible Federal student loans jointly under the ICR plan.

(f) ***Setting payment amounts.***

(1) For the ICR Plan, payments are the lesser of:

(A) What the borrower would have paid under a repayment plan that is based on a 12-year repayment plan and that has fixed payments, based on the amount that borrower

Commented [PY2]: As discuss at Week 2, EICR should allow borrowers a path to exclude their spouse's income.

owed when the loan entered the ICR plan multiplied by a percentage based on income established by the Secretary in a Federal Register notice updated annually to account for inflation; or

(B) 20% of discretionary income, divided by 12.

(2) For those who are not new borrowers under the IBR Plan, payments are the lesser of:

(A) 15 percent of discretionary income, divided by 12; or

(B) What the borrower would have paid on a 10-year standard repayment plan based on the loan balance and interest rate that were applicable to the loans at the time the borrower entered the IBR Plan.

(3) For new borrowers under the IBR Plan and for all borrowers on the PAYE Plan, payments are the lesser of:

(A) 10 percent of discretionary income, divided by 12; or

(B) What the borrower would have paid on a 10-year standard repayment plan based on the loan balance and interest rate that were applicable to the loans at the time the borrower entered the IBR or PAYE plans.

(4) For the REPAYE Plan, payments are 10 percent of discretionary income, divided by 12.

(5) For the EICR Plan:

(A) Payments are TK percent of discretionary income, divided by 12;

(B) A Direct Subsidized Loan or Direct Subsidized Consolidation Loan borrower who meets the requirements described in paragraphs (b), (d), (e), (f), (g), (h), (i), or (j) of § 685.204 shall have a $0 payment under this section.

(C) If the borrower is a spouse of an Active Duty service member, they will have a $0 monthly payment for 6 months after their spouse has received orders for a permanent change of duty station or active duty orders for longer than 180 days

i) the borrower will document they are a spouse of an active duty service member by submitting a copy of proof of enrollment in the Defense Enrollment Eligibility Reporting System

ii) the borrower will document their spouse has received orders for a permanent change duty station by submitting a copy of those orders.

(D) A borrower will have a $0 monthly payment for 6 months, unless otherwise specified,

(i) Because of the birth of a son or daughter of the borrower and in order to care for such son or daughter.

(ii) Because of the placement of a son or daughter with the borrower for adoption or foster care.

(iii) in order to care for the spouse, or a son, daughter, or parent, of the borrower, if such spouse, son, daughter, or parent has a serious health condition, as defined by 29 C.F.R. § 825.214, and the borrower will be entitled to a $0 monthly payment for the duration the family member cares for the individual with the serious health condition;

(iv) Because of a serious health condition, as defined by 29 U.S. Code § 2611 and 29 CFR §§ 825.113-119, and the borrower will have a $0 monthly payment for the duration of the condition.

(v) Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the borrower is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces, as defined by 29 C.F.R. §§ 825.122, 124,126-127, and the borrower will have a $0 monthly payment for the duration of the exigency.

(6) For all IDR plans, a borrower's payment will be $0 if the borrower's discretionary income is

Commented [PY3]: Goal of this section is to build the deferments into ICR in order to eliminate the capitalization of interest. This would also expand the category of borrowers who would qualify for a $0 payment based upon reasons identified in the Family Medical Leave Act and to spouses of active duty service members. Note that this would make these $0 payments and would qualify the borrower for monthly cancellation under the section above. Flagging that section (b) & (d) are in-school deferments. We could choose to carve these out of monthly cancellation.

equal to or less than the applicable poverty guidelines.

(g) ***Adjustments to monthly payment amounts.*** Payments calculated under paragraph (f) are adjusted in the following circumstances:

(1) In cases where the spouse's loan debt is included in the borrower's monthly payment amount, the borrower's payment is adjusted by taking the outstanding principal and interest balance of the borrower's eligible loans for the purposes of proration and dividing that by the couple's combined outstanding principal and interest balance on eligible loans for the purposes of proration.

(2) In cases where the borrower also has loans made under the FFEL Program, the borrower's payment is adjusted by taking the outstanding principal and interest balance of the borrower's loans eligible to be repaid under an IDR plan and dividing that by the borrower's outstanding principal and interest balance on eligible loans for the purposes of proration.

(h) ***Interest subsidies.***

(1) For the ICR Plan, there are no interest subsidies;

(2) For the PAYE and REPAYE plans, there is an interest subsidy on Direct Subsidized Loans and Direct Subsidized Consolidation Loans that a borrower is eligible to receive during first 3 years of repayment under the PAYE and REPAYE plans, but only when the amount of the payment attributable to the loans is less than the amount of interest accruing on such loans; in such cases, the Secretary credits the borrower's account with an amount equal to the amount of interest not covered by the borrower's payment;

(3) For the IBR Plan, the 3-year period described in paragraph (2) is suspended for any month during which the borrower is not obligated to make a payment because they are in an economic hardship under § 685.204(g);

(4) For the REPAYE plan, following the 3-year period described in paragraph (2) for Direct Subsidized Loans and Direct Subsidized Consolidation Loans, and during all periods of repayment under the REPAYE Plan on all other loans eligible to be repaid under REPAYE, there is an interest subsidy when the amount of the payment attributable to the loans is less than the amount of interest accruing on such loans; in such cases, the Secretary credits the borrower's account with an amount equal to half of the amount of interest not covered by the borrower's payment; and

(5) ~~For EICR, in cases where the borrower's monthly payment is scheduled to be $0, TX percent of interest is not charged to the borrower.~~ For the EICR plan, following the 3-year period described in paragraph (2) for Direct Subsidized Loans and Direct Subsidized Consolidation Loans, and during all periods of repayment under the EICR Plan on all other loans eligible to be repaid under EICR, there is an interest subsidy when the amount of the payment attributable to the loans is less than the amount of interest accruing on such loans; in such cases, the Secretary credits the borrower's account with an amount equal to the amount of interest not covered by the borrower's payment.

Commented [PY4]: As discussed at Week 2, this would eliminate negative amortization which causes low-income borrowers' balances to grow. This language also keeps the three year subsidy in order to ensure that this plan is at least as generous as all other plans for all borrowers. This will allow the other plans to sunset or become obsolete.

(i) ***Changing repayment plans.*** Borrowers may change between IDR plans for which they are eligible or leave an IDR plan for another repayment plan for which they are eligible.

(j) ***Interest capitalization.***

(1) For the ICR, REPAYE, and EICR plans, interest only capitalizes when it otherwise would under § 682.202(b).

(2) For the IBR or PAYE plans, interest capitalizes when the borrower's payment becomes the amount under paragraphs (f)(2)(B) and (f)(3)(b), except that when payments are set based on paragraph (f)(2)(A) and (f)(3)(A), interest capitalization rules under § 682.202(b) are suspended.

(3) For the IBR Plan, interest also capitalizes when the borrower's payments are set in accordance with subsection (f)(2)(b) or when the borrower leaves the IBR Plan.

(k) ***Forgiveness.***

(1) For borrowers repaying under ICR, for borrowers repaying under the IBR plan who are not new borrowers, and for borrowers repaying under the REPAYE and EICR plan who are repaying at least one loan received for graduate or professional study, including a Direct Consolidation Loan that repaid one or more loans received for graduate or professional study, the borrower receives forgiveness of the remaining balance of the borrower's loans after the borrower has satisfied 300 monthly repayment obligations under paragraph (~~3~~4);

(2) For borrowers repaying under PAYE, for borrowers repaying under the IBR plan who are new borrowers, and for borrowers repaying under the REPAYE and EICR plan who are repaying only loans received for undergraduate study, including a Direct Consolidation Loan that repaid only loans received for undergraduate study, the borrower receives forgiveness of the remaining balance of the borrower's loans after the borrower has satisfied 240 monthly repayment obligations under paragraph (~~3~~4);

(3) For borrowers repaying under EICR:

(A) For every month in which a borrower satisfies a monthly repayment obligation as described in (f), the Secretary shall forgive the difference between the amount the borrower was required to pay in (f) and what the borrower would have paid on a 10-year standard repayment plan based on the loan balance and interest rate that were applicable to the loans at the time the borrower entered the EICR Plan.

(B) Any amount paid by the borrower in excess of the amount the borrower was required to pay in (f) should be applied after the Secretary applies forgiveness in this paragraph.

(C) The borrower receives forgiveness of any remaining balance of the borrower's loans after the borrower has satisfied 120 monthly repayment obligations under paragraph (4).

[Alternative 3] For borrowers repaying under EICR:

(A) For every month in which a borrower satisfies a monthly repayment obligation as described in (f), the Secretary shall forgive the difference between the amount the borrower was required to pay in (f) and the amount the borrower would repay monthly over a shortened cancellation period using standard amortization based on the loan balance and interest rate that were applicable to the loans at the time the borrower entered the EICR Plan.

(B) The Secretary shall determine the shortened cancellation period upon determining the amount the borrower is required to repay in (f) based upon the borrower's adjusted gross income. The Secretary shall utilize a formula in which borrowers with an AGI at or less than 150% of the federal poverty level will have a cancellation period that equals 3 years and borrowers with an AGI at or greater than TK will have a cancellation period that equals 15 years.

(C) Any amount paid by the borrower in excess of the amount the borrower was required to pay in (f) should be applied after the Secretary applies forgiveness in this paragraph.

(D) The borrower receives forgiveness of any remaining balance of the borrower's loans after the borrower has satisfied 180 monthly repayment obligations under paragraph (4).

(~~3~~4) For all IDR plans, the following can lead to the borrower satisfying a monthly repayment obligation:

Commented [PY5]: This is structurally based upon Navient's Forgive-As-You-Go model utilizing a 10 years amortization period. https://www.banking.senate.gov/imo/media/doc/Remondi%20Testimony%204-13-21.pdf

Commented [PY6]: We chose 10 years based upon the remarks that the Independent Student Representative (Michaela) raised at Week 2. Ten years has a rational basis in public policy. Congress, in creating the 10 year standard repayment period, identified 10 years as the appropriate amount of time that borrowers should be encumbered by their student loan debt. Congress then reiterated this number in creating the Public Service Loan Forgiveness program. Since creating the PSLF program, the nature of employment for public service workers has changed. Many public service workers - low income workers of color in particular, work through for-profit companies, despite doing "public service" and earning relatively low wages. Moreover, the work that can be considered "public service" has also changed. As demonstrated by the pandemic, grocery store workers, restaurant workers, etc are "essential workers" but are not captured by the definition in PSLF. By utilizing a 10 year period for IDR, ED can deliver the promise that Congress made to these borrowers. Borrowers who can afford to pay off their loan in 10 years still will because payments will be based upon their income.

Commented [PY7]: The goal of this sentence is to make sure that borrowers can pay extra and not have it impact the amount of cancellation. Paying extra should go to principal and make the balance go down.

Commented [PY8]: This is designed to capture time that borrowers are in other qualifying repayment and forbearances. While they do not get cancellation at the time (thus addressing the moral hazard concerns of including such payments and incentivizing payment in EICR), this ensure that borrowers are not stuck paying extra years because the servicers steered them into a forbearance.

Commented [PY9]: This is structurally based up Navient's Forgive-As-You-Go model utilizing the targeted cancellation amortization period outlined in the Legal Aid proposal.

Commented [PY10R9]: https://www.banking.senate.gov/imo/media/doc/Remondi%20Testimony%204-13-21.pdf

Commented [PY11]: This is the mechanism to determine the amortization period.

(A) Making a payment under an IDR plan, including payments that are calculated to be $0, regardless of whether the payment was satisfied early or late;
(B) Making a payment under the 10-year standard repayment plan under § 685.208(b), regardless of whether the payment was satisfied early or late;
(C) Making a payment under a repayment plan with payments that are as least as much as they would have been under the 10-year standard repayment plan under § 685.208(b), regardless of whether the payment was satisfied early or late;
(D) Deferring ~~or forbearing~~ monthly payments for the following reasons:
(i) A cancer treatment deferment under 455(f)(3) of the Act;
(ii) A Peace Corps service deferment under §682.210(k), as applicable to Direct Loan borrowers under §685.204(j);
(iii) An economic hardship deferment under §685.204(g);
(iv) A military service deferment under §685.204(h);
(v) A rehabilitation training program deferment §685.204(e);
(vi) A unemployment deferment §685.204(f);
(vii) A post-active duty student deferment §685.204(i);
~~(v) An administrative forbearance or mandatory administrative forbearance under § 685.205(b);~~
~~(vi) A medical or dental internship or residency forbearance under § 685.205(a)(3);~~
~~(vii) A national guard duty forbearance under § 685.205(a)(7); or~~
~~(vii) A Department of Defense Student Loan Repayment forbearance under § 685.205(a)(9)~~
(E) Any period of forbearance;
(F) Any periods in which payments are collected under § 685.211(d);
(G) Making any payments pursuant to a rehabilitation agreement or other repayment agreement while in default, or making any voluntary payments while in default for which payments are at least as much as they would have been under an IDR plan;
(H) On a Direct Consolidation Loan, any periods meeting the criteria in paragraph (A)-(F) on a loan that was consolidated.

(l) ***Procedures.***
(1) To enter any IDR plan, and except as provided under TK, the borrower must complete an application on a form approved by the Secretary;
(2) As part of the process of completing a Master Promissory Note or a Loan Consolidation Promissory Note, the borrower must consent to the disclosure of applicable tax information under §§ 455(e)(8) and 493C(c)(2) of the Act~~;~~ and may opt into automatic enrolled in an income-driven repayment plan should the borrower become significantly delinquent on the borrower's loans, defined as missing 80 days' worth of payments. At this point, the borrower may choose a specific income-driven repayment plan into which to be automatically enrolled.
(3) As part of the application for an IDR plan, and if the borrower has not already done so, the borrower must consent to the disclosure of applicable tax information under §§ 455(e)(8) and 493C(c)(2) of the Act unless the borrower has opted into automatic enrollment into an income-driven repayment plan and becomes significantly delinquent on the borrower's loans, as outlined in paragraph (2);
(4) The Secretary uses the borrower's consent under paragraphs (2) or ~~and~~ (3) to obtain the borrower's income and family size from the Internal Revenue Service;
(5) If the Secretary cannot obtain the borrower's income and family size from the Internal Revenue Service, the Secretary requires the borrower and spouse, as applicable, to provide

Commented [PY12]: All deferments and forbearances are included in order to address the concerns about servicer steering. As addressed in (3), in order to address the moral hazard argument, these borrowers will not qualify for immediate monthly cancellation, nor will they be penalized with years of additional payments because they were placed into a deferment or forbearance.

Commented [PY13]: These two categories involve defaulted borrowers. These could be put in a separate part in order to address statutory authority issues.

Commented [PY14]: I am inputting the proposal by New America to auto-enroll delinquent borrowers into IDR. https://d1y8sb8igg2f8e.cloudfront.net/documents/The_Department_of_Education_can_Protect_Borrowers_at_Risk_of_Defaulting_on_the_h69ZKwa.pdf

Commented [PY15R14]: Related New America blog post can be found here: https://www.newamerica.org/education-policy/edcentral/the-department-of-education-can-protect-borrowers-at-risk-of-defaulting-on-their-student-loans

Commented [PY16]: Note: This number was chosen to help borrowers avoid the first instance of negative credit reporting, which occurs after approximately three months' worth of missed payments.

documentation of applicable income and family size information;
(6) After the Secretary obtains sufficient information from the borrower or otherwise to calculate the borrower's monthly payment amount, the Secretary calculates the borrower's payment and establishes the 12 monthly repayment obligations for which the borrower will be obligated to make a payment in that amount;
(7) The Secretary then sends to the borrower a repayment disclosure outlining the borrower's payment amount, explains in general terms how the payment is calculated, informs the borrower of the procedures that will be followed under this subsection, and requests that the borrower contact the Secretary if the payment amount disclosed to the borrower is unaffordable to the borrower;
(8) If the borrower contacts the Secretary and indicates the payment amount is not reflective of the borrower's income or family size, the Secretary allows the borrower to submit alternative documentation of income or family size not based on tax information to account for circumstances such as a decrease in income since filing a tax return, separation from a spouse following filing taxes jointly with that spouse, the birth or impending birth of a child, or other comparable circumstances;
(9) If the borrower provides alternative documentation under paragraph (8) or the Secretary must obtain documentation from the borrower or spouse under paragraph (5), the Secretary places the borrower's loans into an administrative forbearance under § 685.205(b)(9) to promptly process the borrower's application and information;
(10) On an annual basis the Secretary follows the procedures in paragraphs (4) through (9) once the borrower only has 3 monthly payments remaining under the 12-month period specified under paragraph (6).
(11) If the Secretary requires information from the borrower under paragraph (5) to recalculate the borrower's monthly repayment amount under paragraph (10), and the borrower does not provide the necessary documentation to the Secretary by the time the last payment is due under the 12-month period specified under paragraph (6), then:

(A) For the IBR and PAYE plans, the borrower's monthly payment amount is the amount under paragraph (f)(2)(B) or (f)(3)(B);

(B) For the ICR Plan, the borrower's monthly payment amount is the amount the borrower would have paid under a 10-year standard repayment plan based on the loan balance and interest rate that existed for the loan when the borrower entered ICR;

(C) For the REPAYE Plan, the borrower is removed from the REPAYE plan and placed into an alternative repayment plan under § 685.208(j) with fixed payments that are amortized over a period of time that is equal to the lesser of:

(i) 10 years; or

(ii) The remaining period of time that the borrower would have needed to repay loans under the REPAYE plan to receive forgiveness under subsection (j);

(D) For the EICR Plan TK.

(12) At any point during the 12-month period specified under paragraph (6), the borrower may request that the Secretary recalculate the borrower's payment earlier than would have otherwise been the case to account for a self-reported change in the borrower's circumstances; in such cases, the 12-month period specified under paragraph (6) is reset based on the borrower's new information.
(13) If the borrower has opted into automatic enrollment in an income-driven plan, as outlined in paragraph (2), and subsequently becomes 60 days delinquent on the borrower's loans, the Secretary provides the borrower with the following:

(A) Notification that the borrower is at least 60 days delinquent;

(B) A repayment disclosure outlining the borrower's payment amounts if the borrower were to enroll in available income-driven repayment plans, based on information

available to the Secretary;

(C) An explanation that the Secretary shall enroll the borrower into an income-driven plan, as outlined in paragraph (2), if the borrower becomes 80 days delinquent unless the borrower contacts the Secretary to opt out.

(14) If the borrower has opted into automatic enrollment in an income-driven plan, as outlined in paragraph (2), and subsequently becomes 80 days delinquent on the borrower's loans, and if the borrower has not chosen a specific income-driven repayment plan, the Secretary shall:

(A) Enroll the borrower into the income-driven repayment plan that requires the lowest monthly payment amount;

(B) If more than one income-driven repayment plan would offer the borrower the same lowest monthly payment amount, enroll the borrower into the income-driven repayment plan that has the most favorable terms for the borrower

(153) The Secretary tracks a borrower's progress towards eligibility for forgiveness under subsection (k) automatically and forgives loans that meet the criteria under subsection (k) without the need for an application or documentation from the borrower.

Last updated 10/25/2021

MEMORANDUM

Re: The Department of Education's Ability Not to Accelerate Student Loan Debt for Defaulted Borrowers Under the Debt Collection Improvement Act

Question Presented

Does the Debt Collection Improvement Act ("DCIA") obligate the Department of Education to accelerate the student loan balances of defaulted borrowers when the only mention of acceleration in either the DCIA or its implementing regulations provides that agencies "should" include provisions accelerating debts upon default?

Brief Answer

No. The DCIA and its implementing regulations do not mandate that agencies accelerate defaulted loans. The DCIA gives agencies discretion over many collection activities and never mentions debt acceleration. Regulations passed by the Department of the Treasury ("Treasury") and Department of Justice ("DOJ"), pursuant to the DCIA, provide that "[a]gencies that agree to accept payments in regular installments should obtain a legally enforceable written agreement…that contains a provision accelerating the debt in the event of default." The federal government's ordinary understanding of the word "should," the context of its use within these regulations, and the desire on the part of the Treasury and DOJ to give agencies sufficient flexibility to tailor their regulations in accordance with their unique legal and policy considerations suggest that this provision indicates a recommendation rather than a mandate. Thus, the DCIA and its implementing regulations permit the Department of Education to decide not to accelerate defaulted student loan balances.

Discussion

The DCIA does not require agencies to accelerate defaulted balances. Although the DCIA mandates that agencies "take all appropriate steps to collect" delinquent balances,[1] it gives them discretion over specific collection activities. For example, agencies are given discretion over how to apply recovered funds when multiple debts are at issue[2] and can ask the Treasury to exempt payments from administrative offset, which the Treasury is required to do for means-tested programs and can choose to do for others.[3] Besides incorporating agency input into many of the collection tools contemplated by the DCIA, the statute "extend[s] the authority of agencies

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[1] 31 U.S.C. §3720B(g)(9).

[2] 31 C.F.R. §901.3(c)(4). This provision provides that "agencies should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations[,]" but leaves this determination up to agencies.

[3] 31 U.S.C. §31001(a)(3)(B).

to compromise claims" by making permanent the increased authority of agency heads to compromise claims as provided for in the Administrative Dispute Resolution Act.[4] These features incorporate agency judgment into each step of debt collection in pursuit of the DCIA's goal of both preserving government resources and protecting the due process rights of debtors.[5] No part of the DCIA mandates that agencies accelerate defaulted loan balances, but the DCIA does require federal agencies to adopt regulations consistent with those promulgated by the Treasury, DOJ, or General Accounting Office.[6]

In 2000, the Treasury and DOJ put into effect revisions to the Federal Claims Collection Standards ("FCCS") that reflected changes under the DCIA and clarified guidance for federal debt collection procedures. These revisions include the only mention of debt acceleration made under the DCIA; the final rule, which establishes standards for the administrative collection of federal claims, provides that agencies that accept payment in regular installments "should obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and that contains a provision accelerating the debt in the event of default."[7] Since neither the DCIA nor FCCS define their use of the word "should," and neither the Treasury nor DOJ have issued guidance on their preferred interpretation, readers can infer discretion from the word's ordinary meaning, the context of its use, and the regulatory intent behind the FCCS. These principles of statutory interpretation[8] suggest that the word "should" ought to be construed

[4] HORN, *supra* note 2.
[5] *See id.*
[6] 31 U.S.C. §31001(c)(2).
[7] 31 C.F.R. §901.8.
[8] Regulatory interpretation is generally subject to the same rules, presumptions, and canons as statutory interpretation, including consideration of a regulation's "text structure, history, and purpose[.]" Kisor v. Wilkie, 588 U.S. 1, 2 (2019). *See generally* Kevin M. Stack, *Interpreting Regulations* 111 MICH. L. REV. 355, 359-60 (2012).

as recommending, but not requiring, the Department of Education to include provisions accelerating defaulted student loan debt.

A. First, "should"'s ordinary meaning and general use by the federal government suggest that it is something less than mandatory.

When considering a word's meaning absent clear indication from the issuing authority, courts must "look first to the word's ordinary meaning[,]"[9] often looking to dictionary definitions for guidance.[10] Merriam-Webster defines "should" as the "past tense of shall," used to express "condition," "obligation, propriety, or expediency," "futurity from a point of view in the past," "what is probable or expected," or "a request in a polite matter or to soften direct statement."[11] The American Heritage Dictionary defines "should" as expressing "obligation or duty," "probability or expectation," "conditionality or contingency," or moderating "the directness or bluntness of a statement."[12] Black's Law Dictionary does not define "should," but indicates that even "shall" has some latent ambiguity as to whether it conveys a mandate.[13] With this range of definitions, dictionaries do not resolve whether the FCCS convey a prediction, obligation, or request for agencies to accelerate defaulted balances.

Federal guidelines suggest that the FCCS' drafters and its audience would interpret "should" as indicating a recommendation, not a mandate or prediction. The fact that federal agencies might share this understanding is relevant to resolving "should"'s ambiguity since it demonstrates a "shared convention" between regulators and their intended audience, i.e. federal

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[9] Schindler Elevator Corp. v. United States ex rel. Kirk, 563 U.S. 401, 407 (2011).

[10] United States v. Cox, 963 F.3d 915 (9th Cir. 2020); In re Walter Energy, Inc., 911 F.3d 1121, 1143 (11th Circ. 2018).

[11] *Should*, Merriam-Webster (last visited July 20, 2021).

[12] *Should*, The American Heritage Dictionary (5th ed. 2020).

[13] Black's Law Dictionary contemplates "shall" as "generally imperative or mandatory," qualifying that "it may be construed as merely permissive or directory, (as equivalent to 'may,') to carry out the legislative intention and [i]n cases where no right or benefit to any one depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense" and that "as against the government, 'shall' is to be construed as 'may,' unless a contrary intention is manifest." *Shall*, Black's Law Dictionary (last visited July 20, 2021).

agencies.[14] The Federal Register's Document Drafting Handbook defines "should" as "infer[ring] obligation, but not absolute necessity" and instructs agencies to use the word "must" to impose legal obligation, rather than "shall," "will," or "should."[15] (This understanding predates the revised FCCS; in the 1998 version, the Federal Register notes that the Handbook uses "must" instead of "shall" because "must imposes a legal obligation" and uses "should" to "indicate when [the Register] strongly recommend[s] that [agencies] comply with a procedure that is optional."[16]) The Federal Plain Language guidelines further instruct federal employees authoring regulations to eliminate use of the word "shall" in favor of using "must" for an obligation, "must not" for a prohibition, "may" for discretionary action, and "should" for recommended action.[17] These guidelines have been adopted by both the Treasury[18] and the DOJ[19] following the passage of the Plain Writing Act of 2010. In addition to serving as guidance for drafting regulations such as the FCCS, these materials have the same intended audience as the FCCS, suggesting that their common definition of the word "should" ought to be preferred here.

B. The FCCS' context further supports that the Treasury and DOJ used the word "should" to indicate something less than a mandate.

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[14] *See generally* John F. Manning, *Textualism and Legislative Intent*, 91 Va. L. Rev. 419, 433 (2005) (textualism seeks to discover "shared conventions" in its interpretation of statutory language); Frank H. Easterbrook, *What Does Legislative History Tell Us?*, 66 Chi.-Kent L. Rev. 441, 444 (1990) (textualism asks what "assumptions [were] shared by the speakers and the intended audience.")

[15] Federal Register, *Drafting Legal Documents, Principles of Clear Writing* (last updated March 17, 2021), available at https://www.archives.gov/federal-register/write/legal-docs/clear-writing.html.

[16] FEDERAL REGISTER, DOCUMENT DRAFTING HANDBOOK iiii (Oct. 1998), available at https://open.defense.gov/Portals/23/Documents/Regulatory/ddh.pdf.

[17] The Plain Language Action and Information Network, *Federal Plain Language Guidelines* (March 2011), available at https://www.fda.gov/media/85771/download.

[18] U.S. Department of the Treasury, *Plain Writing Act* (last visited July 20, 2021), available at https://home.treasury.gov/subfooter/site-policies-and-notices/plain-writing.

[19] U.S. Department of Justice, *Plain Writing* (last visited July 20, 2021), available at https://www.justice.gov/open/plain-writing-act.

It is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme."[20] The FCCS' use of the word "should" in this provision must be contextualized within the regulation as a whole, which conveys a variety of levels of mandate. For example, the FCCS provide that creditor agencies are "*required* to refer past due, legally enforceable debt" to the Treasury for offset,[21] and agencies that enter into contracts for locating and recovering assets of the United States "*must* establish procedures that are acceptable to the Secretary" beforehand (emphasis added).[22] The inclusion of stronger language elsewhere in the FCCS suggest that the Treasury and DOJ knew how but elected not to similarly mandate acceleration.[23]

Further, the FCCS' mention of debt acceleration can be read in conjunction with nearly identical provisions in agency-specific regulations promulgated prior to the FCCS that use predictive language. For example, the regulations concerning the National Aeronautics and Space Administration's ("NASA"'s) collection of civil claims provide that "[i]f NASA agrees to accept payment in regular installments, it *will* obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults" (emphasis added). These provisions were passed prior to the FCCS, so the Treasury and DOJ's choice to state that agencies "should" rather than "will," "must," or "are required to" accelerate defaulted debt

[20] Utility Air Regulatory Group v. EPA 134 S. Ct. 2427, 2441 (2014).
[21] 31 C.F.R. §901.3(b)(1).
[22] 31 C.F.R. §901.5.
[23] *See, e.g.*, City of Chicago v. Envtl. Def. Fund, 511 U.S. 328, 337-38 (1994) ("Our interpretation is confirmed by comparing [the disputed statute] with another statutory exemption in [the same act]. . . . [T]his [other] provision shows that Congress knew how to draft a waste stream exemption . . . when it wanted to." (internal quotation marks omitted)).

suggests that they chose to convey a recommendation by not using terms that would be more clearly predictive ("will") or obligatory ("must" or "are required to").

C. Finally, granting agencies discretion over debt acceleration is in line with the Treasury and DOJ's purposes in revising the FCCS and tracks the FCCS' regulatory history.

According to the supplementary information included with the Treasury and DOJ's publication of their final rule revising the FCCS in 2000 following the DCIA, the "revised FCCS provide agencies with greater latitude to adopt agency-specific regulations, tailored to the legal and policy requirements applicable to the various types of Federal debt[.]"[24] In their discussion of submitted comments, the Treasury and DOJ respond to "suggested changes pertinent only to specific agencies [that] were not incorporated into the final rule" by assuring commenters that "the final rule provides sufficient flexibility for agencies to adopt agency-specific regulations tailored to the legal and policy requirements of their particular programs."[25] In response to one specific comment suggesting that they "delete the requirement…that agency demand letters discuss alternative methods of payment," and another that "agencies [should] be given flexibility to include only those provisions of demand letters listed in NPRM §901.2(d) 'as appropriate to the circumstances,'" the Treasury and DOJ respond that the NPRM "did not include such a requirement" and "does not restrict an agency's discretion to tailor its use of particular debt collection tools in specific cases."[26] The discussed provision provides that:

> Agencies should include in demand letters such items as the agency's willingness to discuss alternative methods of payment; its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; the agency's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days be transferred to the Department of the Treasury for

[24] Fed. Reg. Doc. 00-29284, 65 FR 70389 (November 21, 2000), available at https://www.federalregister.gov/documents/2000/11/22/00-29284/federal-claims-collection-standards.
[25] *Id.*
[26] *Id.*

> collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.[27]

These responses suggest that the Treasury and DOJ's understanding of this provision is that it provides a strong recommendation, not a requirement that overrides agency discretion. Applying the presumption of consistent usage, the later FCCS provision concerning the inclusion of debt acceleration clauses ought to be construed as also conveying a recommendation rather than a mandate. This construction also aligns with the Treasury and DOJ's claimed purpose to provide agencies with the flexibility to accommodate their unique legal and policy considerations.

This flexibility enables the Department of Education to not accelerate defaulted balances based on agency-specific legal and policy considerations. As the Treasury and DOJ noted in their final rule, the "FCCS focus on Government-wide debt collection procedures and policy," which is why "suggested changes pertinent only to specific agencies were not incorporated into the final rule."[28] Instead, the FCCS were revised to permit agencies the flexibility to adopt regulations tailored to their own unique considerations. The Department of Education has a considerable number of unique legal and policy considerations that might run counter to debt acceleration. An estimated 42.9 borrowers currently hold $1.57 billion in federal student loan debt;[29] prior to the suspension of defaults as part of pandemic relief measures, more than one in ten borrowers were in 90 or more days delinquent or in default on their federal student loans.[30] The "typical amount" of outstanding debt among student borrowers is between $20,000 and $24,999;[31] besides mortgages, student loans are the largest debt burden carried by most

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[27] 31 C.F.R. §901.2(d).
[28] Fed. Reg. Doc. 00-29284, *supra* note 25.
[29] Melanie Hanson, *Student Loan Debt Statistics*, EDUCATIONDATA.ORG (July 10, 2021), available at https://educationdata.org/student-loan-debt-statistics#student-loan-debt-statistics.
[30] Federal Reserve Bank of New York, *Household Debt and Credit* 2019:Q3 (Nov. 2019), available at https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/hhdc_2019q3.pdf.
[31] Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2018* (May 2019), available at https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-student-loans-and-other-education-debt.htm.

Americans.[32] Unlike most forms of consumer debt, however, student loan debt is presumed non-dischargeable through bankruptcy in part because student loans are not backed by any form of collateral;[33] as the rising price of higher education outpaces its returns, this makes student loan debt particularly inescapable.[34] Without the ability to discharge debts in bankruptcy, or forfeit any underlying collateral to ameliorate their debts, defaulted borrowers could be subject to garnishment and offset in pursuit of their full loan balances with little hope of relief once pandemic measures are scaled back. The Department also has to take into consideration how this might affect the country as a whole as countless dollars are diverted from the economy by offset. These are the types of agency-specific considerations that the FCCS leave for agencies to ponder alongside their broader, general recommendations.

In fact, the Department of Education's current iteration of the master promissory note binding federal student loan borrowers provides that the Department "may" accelerate borrowers' loans under certain conditions, rather than the predictive "will" or required "must."[35] By containing the most obviously discretionary language ("may"), this clause seems to reflect that the Department already both understands itself as having discretion over acceleration and has chosen to preserve this discretion against individual borrowers through providing these notes with a discretionary rather than automatic acceleration clause. The direct language of the DCIA, its implementing regulations, and the *Department's own contracts with individual borrowers* thus all suggest that the Department has preserved discretion over debt acceleration.

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[32] Federal Reserve Bank of New York, *Center for Microeconomic Data - Data Bank*, available at https://www.newyorkfed.org/microeconomics/databank.

[33] Anna E. Huffman, *Forgive and Forget? An Analysis of Student Loan Forgiveness Plans*, 24 N.C. BANKING INST. 449 (2020). Available at: https://scholarship.law.unc.edu/ncbi/vol24/iss1/19.

[34] Abigail Johnson Hess, *The cost of college increased by more than 25% in the last 10 years—here's why*, CNBC (Dec. 13, 2019), available at https://www.cnbc.com/2019/12/13/cost-of-college-increased-by-more-than-25percent-in-the-last-10-years.html.

[35] "Master Promissory Note," FederalStudentAid, OMB. No. 1845-0007, available at https://studentaid.gov/mpn/. Cf. ("If you default on a loan, we *will* report this to nationwide consumer reporting agencies" (emphasis added)). *Id.*

Conclusion

The DCIA and its implementing regulations grant the Department of Education the discretion to not accelerate the student loan balances of defaulted borrowers in accordance with its own legal and policy considerations.

From: Persis Yu
Subject: [FOR TRANSMITTAL] Advocates Release Proposal to Overhaul Income-Driven Repayment
To: Kvaal, James; Morgan, Julie; Miller, Benjamin; Latreille, Bonnie; Harrington, Ashley; Williams, Rich; Campbell, Patrick; Foss, Ian; Habash, Tariq
Cc: Mike Pierce; Abby Shafroth; Julia Barnard; Kyra Taylor; Alpha Taylor; Whitney Barkley; Jaylon Herbin; taylor.roberson@responsiblelending.org; Winston Berkman-Breen; Claire Torchiana
Sent: January 12, 2022 12:16 PM (UTC-05:00)
Attached: Final SBPC-NCLC-CRL IDR Waiver Proposal 01-12-2022.pdf

Dear Colleagues,

I wanted to share with you all the whitepaper that the Student Borrower Protection Center, Center for Responsible Lending, and National Consumer Law Center released today calling for the creation of an IDR restoration project, or an IDR waiver.

As we have previously discussed, the fact that only 32 IDR borrowers have ever successfully obtained loan cancellation even though 4.4 million borrowers have been in repayment for 20 years or longer, demonstrates the policy failures of IDR.

An IDR Waiver would offer a path forward for delivering on the promise of IDR to ensure that borrowers can access affordable loan payments in the short term and to provide a way out for borrowers experiencing long-term financial hardship.

Thank you for your consideration of this proposal. We look forward to future discussions on this topic.

Best regards,
Persis

+++

Borrower

Advocates Demand that Education Department Restore the Promise of Income-Driven Repayment

Advocates

Outline Path for the Biden Administration to "Do its Part" in Fixing IDR

January 11, 2021 | WASHINGTON, DC —

Today, the Student Borrower Protection Center, Center for Responsible Lending, and National Consumer Law Center released a whitepaper outlining why the U.S. Department of Education (ED) must act now, before the payment pause ends, to provide relief for the millions of federal student loan borrowers who have never seen the promise of income-driven repayment (IDR) forgiveness. This report outlines how the Biden administration can cut through the red tape that has long stymied the IDR program and deliver a pathway out of student debt—particularly for low-income borrowers and borrowers of color, similar to changes recently made to the Public Service Loan Forgiveness (PSLF) program.

When he extended the payment pause on federal student loans,

President Biden asked "all student loan borrowers to do their part" and recommended borrowers manage their student debt by enrolling in IDR. But like PSLF, trust in IDR, which is built on a promise of debt forgiveness, has been broken. While cancellation under IDR has been theoretically possible since 2016, reports have revealed how industry abuses and policy failures have resulted in only 32 borrowers ever successfully having their loans cancelled via IDR. Meanwhile, more than 4.4 million borrowers have been in repayment for 20 years or longer. ED must act now to restore trust in IDR.

Read the whitepaper here:

https://protectborrowers.org/restoring-the-promise-of-income-driven-repayment-an-idr-waiver-proposal/

"Millions of student loan borrowers are buckling under the weight of a broken system," said Persis Yu, Policy Director and Managing Counsel at the Student Borrower Protection Center.

"The failures of income-driven repayment have kept borrowers in unaffordable debt for decades too long. It is time for the Biden Administration *to do its part* and fulfill the promise of IDR by giving borrowers the credit they deserve."

"The promise of IDR forgiveness after 20 to 25 years should be a light at the end of the tunnel for student loan borrowers," said Abby Shafroth, director of the National Consumer Law Center's Student Loan Borrower Assistance project. But just as 99% of public servants who thought they had qualified for PSLF forgiveness after the first 10 years of the program were denied -- owing to a combination of program complexity, poor servicing and servicing errors -- a vanishingly small number of borrowers are qualifying for IDR forgiveness 25 years into the program's existence for these same reasons. The Department did the right thing by acknowledging that the system had failed borrowers in public service and waiving barriers to PSLF forgiveness, and should do the same thing to restore IDR's promise."

"Income-driven repayment plans are a key lifeline for many student borrowers, allowing them to make affordable payments and have their debts discharged after decades of repayment. Unfortunately, bad servicing and complicated paperwork make it difficult for borrowers to participate successfully," said Julia Barnard, Student Loan Team Co-Lead and Researcher at the Center for Responsible Lending. "Because of these problems, borrowers only have a 1-in-23,000 chance at cancellation under IDR. We urge the Department of Education to make fixing the program an urgent priority in the months ahead."

Recommendations

An IDR waiver is essential to restore the broken promise of IDR. This whitepaper's recommendations are for the Biden administration to:

On a retroactive basis, count all months since the borrower entered repayment following their grace period as qualifying months towards forgiveness. Regardless of which repayment plan the borrower was in, whether they were in forbearance, or whether they were in default.

Provide relief automatically. All of the data that ED needs in order to implement the IDR Waiver is readily available through the National Student Loan Data System (NSLDS). Because of this, borrowers should not need to affirmatively apply for this relief.

Ensure that all federal loan borrowers, regardless of loan program, have access to the IDR Waiver. While FFEL and Perkins loans borrowers could be eligible for IDR, so many borrowers were not properly advised and so have failed to benefit. The IDR waiver must apply to these borrowers who have been left behind.

Background:
When Congress passed the first of the modern income-driven repayment (IDR) plans in 1992, it made a promise to borrowers that federal student loan payments would be affordable, and that even if borrowers were low-income, through eventual cancellation, their student loans would not be a lifetime burden. IDR has failed to deliver on every aspect of that promise. It is time now for the Biden Administration to deliver on the promise of IDR through the creation of an IDR restoration project, or an IDR waiver.

IDR plans are notoriously difficult to navigate, both because of the administrative hurdles of the program and rampant servicer misconduct. To receive debt cancellation under IDR, student loan borrowers must complete an application process and submit documentation to enroll in one of the several income-driven repayment options, and repeat that process every year for decades.

As with so many aspects of the student loan system, the failure of IDR disproportionately harms Black borrowers. A recent

Education Trust study found that IDR is not easing the student debt crisis for Black borrowers and that this program created to help the most vulnerable borrowers has failed to do so on all levels.

The Biden administration recently recognized and took steps to address similar failings in the Public Service Loan Forgiveness (PSLF) program by implementing a waiver of qualifying requirements that would allow the millions of public service workers to finally benefit from the promise of PSLF.

Additional material:

- **Revisiting Relief for Borrowers Waiting for Income-Driven Repayment**
- **Driving Into a Dead End: Why IDR Has Failed Millions with Decades-Old Debts**
- **Education Department's Decades-Old Debt Trap: How the Mismanagement of Income-Driven Repayment Locked Millions in Debt**
- **Almost Two in Three Navient Borrowers Enrolled in IDR Plans and Making Payments During COVID-19 Federal Student Loan Payment Pause Are Underwater**
- **Road to Relief: Supporting Federal Student Loan Borrowers During the COVID-19 Crisis and Beyond**

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The Center for Responsible Lending (CRL) is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices.

The Student Borrower Protection Center is a nonprofit organization focused on alleviating the burden of student debt for millions of Americans. The SBPC engages in advocacy, policymaking, and litigation strategy to rein in industry abuses, protect borrowers' rights, and advance economic opportunity for the next generation of students.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. The NCLC's Student Loan Borrower Assistance Project provides information about student loan rights and responsibilities for borrowers and advocates. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens, and make loan repayment more manageable.

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Restoring the Promise of Income-Driven Repayment: An IDR Waiver Program Proposal

Even before the COVID-19 pandemic and recession, student loan borrowers struggled under the weight of more than $1.6 trillion in debt. One in four borrowers was in default or serious delinquency, and many more struggled to make student loan payments while covering basic needs. Because of decades of structural inequities and discrimination, student loans have burdened Black and Latino borrowers more than other groups, and now these borrowers are also among those disproportionately harmed by the COVID-19 crisis. Millions of lives were already stymied by student loan debt before the crisis; now, as borrowers struggle with COVID-19 and continuing economic uncertainty, they are bracing for financial disaster.

When Congress passed the first of the modern income-driven repayment (IDR) plans in 1992, it made a promise to borrowers that federal student loan payments would be affordable, and that, through eventual cancellation, student loans would not be a lifetime burden even for low-income borrowers. IDR has failed to deliver on every aspect of that promise. It is time now for the Biden administration to deliver on this promise through the creation of an IDR restoration project, or an IDR waiver.

On October 6, 2021, Education Secretary Miguel Cardona announced a set of sweeping changes to the Public Service Loan Forgiveness program, referred to as the PSLF Limited Waiver.[1] This long-overdue relief is designed to address the barriers that prevented borrowers from obtaining PSLF cancellation, including the many ways that the federal student loan system failed to help them navigate into IDR. As part of the PSLF Waiver, U.S. Department of Education (ED) has redefined the way that it is counting qualifying payments towards forgiveness in that program. Under the terms of the PSLF Limited Waiver, public service workers will be eligible to get credit for their service, up to and including complete debt cancellation, regardless of the type of federal student loan taken out or the repayment plan selected.

Many of the problems that led to the failure of the Public Service Loan Forgiveness (PSLF) program are IDR problems in disguise—such as borrowers being steered into the wrong repayment plan and Family Federal Education Loan (FFEL) servicers failing to tell borrowers of consolidation options. These problems will not be corrected by a solution that only addresses the PSLF program. A similar administrative initiative is needed to restore the promise of income-driven repayment and provide relief to millions of borrowers, and in particular, to low-income borrowers and borrowers of color.

[1] U.S. Department of Education. (October 6, 2021). *Fact Sheet on Public Service Loan Forgiveness Overhaul.* Available at https://www.ed.gov/news/press-releases/fact-sheet-public-service-loan-forgiveness-pslf-program-overhaul.

CRL Center for Responsible Lending | SBPC Student Borrower Protection Center | NCLC Student Loan Borrower Assistance National Consumer Law Center

The Broken Pathway to Cancellation for Low-Income Borrowers

Cancellation under income-driven repayment has been theoretically possible since the first group of borrowers reached twenty years in repayment through the IDR program in 2016. Yet, the most recent data from ED reveals that only 32 IDR borrowers have *ever* successfully obtained loan cancellation,[2] even though *4.4 million* borrowers have been in repayment for 20 years or longer.[3] The shockingly low rate of cancellation is emblematic of ED's failure to deliver the relief Congress intended when it passed the statutes enabling the creation of these IDR programs.[4]

Problems with IDR worsen racial disparities in the student loan system.[5] The Education Trust recently published a study based on a nationwide survey of nearly 1,300 Black borrowers and in-depth interviews with 100 Black borrowers. It found that IDR plans are not easing the student debt crisis for Black borrowers, as default rates remain high, despite the availability of these plans.[6] Other studies of Black borrowers, including a recent collaboration between the United Negro College Fund, the University of North Carolina at Chapel Hill's Center for Community Capital, and the Center for Responsible Lending, found that Black students strongly support policy efforts to improve, simplify, and automate IDR plans.[7]

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[2] National Consumer Law Center & Student Borrower Protection Center. (March 2021). *Education Department's Decades-Old Debt Trap: How the Mismanagement of Income-Driven Repayment Locked Millions in Debt*. Available at https://www.nclc.org/images/pdf/student_loans/IB_IDR.pdf. An updated number was requested by negotiators at the most recent negotiated rulemaking involving income driven repayment and by the Student Borrower Protection Center on December 1, 2021.

[3] U.S. Department of Education. (April 2, 2021). *Responses to Data Request by Senator Warren.* Available at https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf.

[4] See, e.g., 153 Cong. Rec. S9536 (daily ed. July 19, 2007), https://www.govinfo.gov/content/pkg/CREC-2007-07-19/html/CREC-2007-07-19-pt1- PgS9534.htm. There are five separate repayment plans tied to a borrower's income: the income-based repayment (IBR) plan, income-contingent repayment (ICR) plan, pay as you earn (PAYE) plan, revised pay as you earn (REPAYE) plan, and income-sensitive repayment (ISR) plan. With the exception of the FFEL ISR plan, all of the income-driven plans work in a similar way. The income-driven repayment plan calculates the borrower's monthly payment using the borrower's income and, if the borrower is unable to repay the loan within a certain number of years, the remaining balance is forgiven. See NCLC, Student Loan Law §3.3.1 (6th ed. 2019), *updated at* www.nclc.org/library.

[5] Pearl, J. (September 2021). "Driving Inequity, Policy Choices are Driving Racial Disparities in Access to Income-Driven Repayment." *Student Borrower Protection Center;* See also: Kaufman, B. November 2020. "New Data Show Borrowers of Color and Low-Income Borrowers are Missing Out on Key Protections, Raising Significant Fair Lending Concerns." *Student Borrower Protection Center.*

[6] Mustaffa, J.B. & Davis, J.C.W. (October 2021). "Jim Crow Debt: How Black Borrowers Experience Student Loans." *The Education Trust.* Available at https://edtrust.org/resource/jim-crow-debt; See also: Pearl, J. September 2020. "Driving Inequity: Are IDR's Documentation Requirements Hurting Borrowers of Color?" *Student Borrower Protection Center.* Available at https://protectborrowers.org/wp-content/uploads/2021/09/Driving_Inequity.pdf.

[7] Center for Responsible Lending, United Negro College Fund, and the University of North Carolina at Chapel Hill's Center for Community Capital. (October 2021). *My Yard, My Debt: National Survey Finds Strong Support Among*

To receive debt cancellation under IDR, student loan borrowers must enroll in one of the several income-driven repayment options and remain in that plan for decades.[8] Currently, there are a variety of IDR plans with different structures and eligibility requirements. Monthly payments can be capped anywhere between 10 percent to 20 percent of discretionary income depending on the plan.[9] Income-contingent repayment (ICR) plan, the first to provide cancellation, is only available to Direct Loan borrowers. However, through loan consolidation, FFEL borrowers could have accessed ICR as early as 1995. Only payments following consolidation would count towards cancellation.

Estimates suggest that out of a total of 4.4 million borrowers in repayment for more than two decades, fewer than 200 student loan borrowers will benefit from debt cancellation under IDR between 2020 and 2025—or a 1-in-23,000 chance.

Unneeded complexity makes these programs notoriously difficult for borrowers to navigate. Moreover, the application process requires borrowers (and servicers) to understand and evaluate the many IDR options, submit documentation, and re-enroll on an annual basis.[10] Many borrowers are unable to meet annual deadlines or understand, have confidence in, and access the very plans that could help them repay their loans successfully. On top of all that, there is also ample evidence indicating that servicers have consistently engaged in a variety of abusive practices and that servicers make many errors that have long-term negative consequences for borrowers.[11]
The historical failure of student loan servicers to keep low-income borrowers in IDR over the long term presents an immediate policy problem. Because of these failures, millions of borrowers remain trapped in the student loan system for decades on end. For many, their only prospect for relief is to

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Black Borrowers for Cancellation, Increasing Pell Grant Amount, More Funding for HBCUs, and More. Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-uncf-policy-memo-nov2021.pdf.

[8] Borrowers may also count monthly payments made under a range of other options so long as the payment amount is equivalent to the amount owed under a standard, 10-year repayment plan. Because of the amount of the payment required under these other options, borrowers cannot persist in them for an extended period of time without repaying their student loans. Consequently, only enrollment and persistence in IDR will lead to debt cancellation.

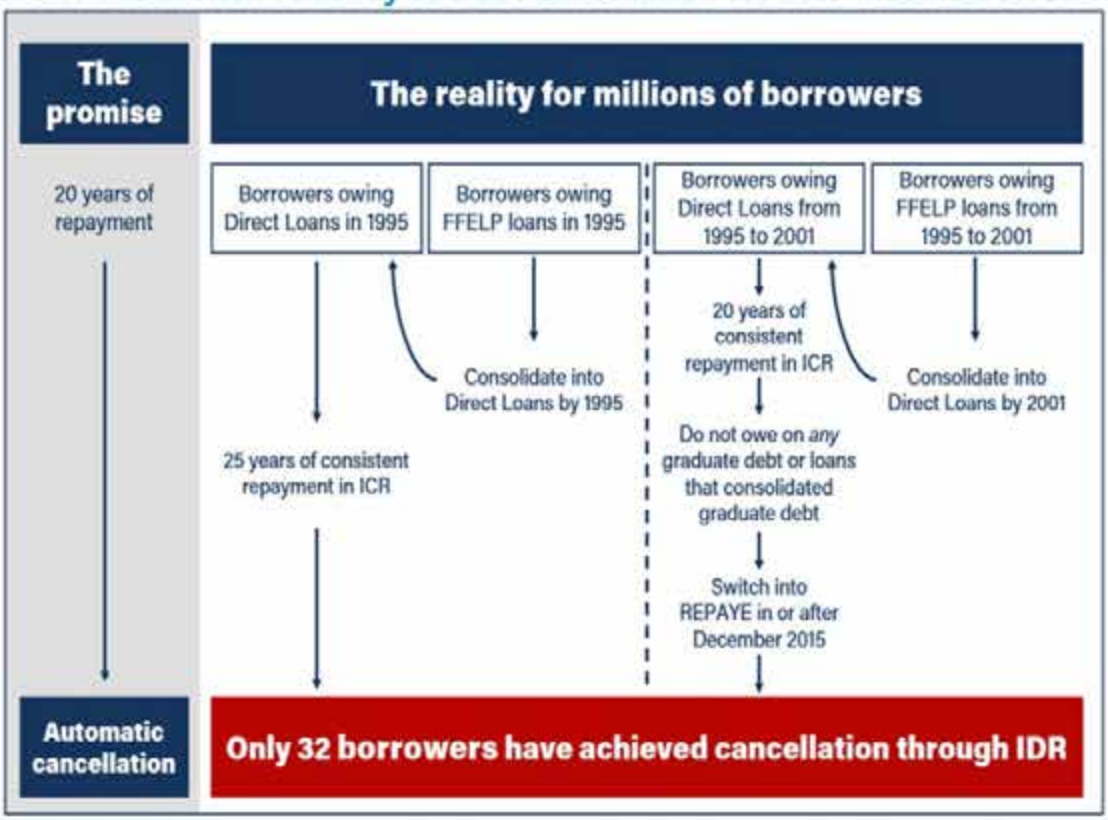
[9] United States Office of Federal Student Aid. (October 2020). *Repayment Plans*. Available at https://studentaid.gov/manageloans/repayment/plans.

[10] National Consumer Law Center. (September 2019). *Testimony of Persis SiChing Yu Before the United States House Committee on Financial Services: A $1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable*. Available at https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-yup-20190910.pdf.

[11] Consumer Fin. Prot. Bureau. (April 25, 2017). *CFPB Monthly Snapshot Spotlights Student Loan Complaints*. Available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-monthly-snapshot-spotlights-student-loan-complaints/.

begin again and spend additional decades awaiting debt cancellation as if they had just entered repayment. The following diagram (Figure 1) illustrates the convoluted pathway that borrowers must flawlessly navigate in order to access cancellation through IDR. Failing to get on the appropriate pathway when repayment begins often means that borrowers must start over. This highlights the dilemma borrowers who owe decades-old debts today face—missing the opportunity to consolidate a loan or enroll in IDR two decades ago creates an absolute bar to debt cancellation on the timeline promised under the law.

Figure 1: The Broken Pathway to Debt Cancellation for Low-Income Borrowers[12]



Note: This diagram shows the various steps that borrowers who have been in debt for more than 20 years would have needed to take to achieve cancellation through IDR. Only 32 borrowers navigated such complexity.

In fact, an internal analysis prepared by the largest student loan servicer, PHEAA, found that of its more than 8.5 million customers, only 48 borrowers would receive debt cancellation under IDR by

[12] National Consumer Law Center & Student Borrower Protection Center. (March 2021). *Education Department's Decades-Old Debt Trap: How the Mismanagement of Income-Driven Repayment Locked Millions in Debt*. Available at https://www.nclc.org/images/pdf/student_loans/IB_IDR.pdf. This image has been lightly adapted for inclusion in this report. For additional context and a longer description of each of these steps, see id.

2025.[13] Moreover, PHEAA's internal data projects the number of IDR borrowers receiving debt cancellation will decline by 83 percent between 2022 and 2025: the number will peak in 2022, when 23 people are estimated to qualify, and taper back down to four individuals by 2025.

Based on market share, these estimates suggest that out of a total of 4.4 million borrowers in repayment for more than two decades, fewer than 200 student loan borrowers will benefit from debt cancellation under IDR between 2020 and 2025—or a 1-in-23,000 chance.[14] As a member of PHEAA's staff noted when sharing this analysis with ED officials, "[i]t seems very low...".[15]

Servicers Systematically Fail Borrowers in IDR Plans

A combination of illegal industry practices and needlessly complex public policies have created additional insurmountable hurdles for those with the oldest debts and have prevented borrowers with more recent loans from accessing the pathway to a debt-free future. Barriers include:

- **Systematic steering of borrowers into deferments and forbearance.** Public enforcement actions allege that the government's largest student loan contractors have systematically steered financially distressed borrowers away from IDR and into high-cost repayment options that are temporary in nature and offer no long-term path to debt cancellation.[16] Public enforcement actions allege this has happened both to borrowers with government-owned student loans and to borrowers with older federal loans held by private creditors.[17]

- **Illegal servicing practices including deception regarding eligibility to enroll in IDR.** These abuses include alleged deception by ED and FFEL student loan servicers as to the availability of IDR and the necessary steps to qualify, dating back to the earliest days of the

[13] Student Borrower Protection Center. (September 2021). *Driving Into a Dead End: Why IDR Has Failed Millions With Decades-Old Debts*. Available at https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf.

[14] Id.

[15] Id. at Appendix, Pennsylvania Higher Education Assistance Agency, Correspondence with the U.S. Department of Education regarding debt cancellation under IDR (Dec. 24, 2020).

[16] New York v. Pa. Higher Educ. Assistance Agency, No. 1:19-cv-09155 (S.D.N.Y. Oct. 3, 2019), https://ag.ny.gov/sites/default/files/pheaa_complaint_with_file_stamp.pdf; Consumer Fin. Prot. Bureau v. Navient Corp., No. 17-cv-00101, 2017 U.S. Dist. LEXIS 123825 (M.D. Pa. Aug. 4, 2017).

[17] Vullo v. Conduent Educ. Serv., LLC, Consent Order (N.Y. Dep't of Fin. Serv. Jan. 4, 2019), https://www.dfs.ny.gov/system/files/documents/2019/01/ea190104_conduent.pdf (alleging that ACS obstructed borrowers' access to federal loan programs; claiming in part, that ACS failed to provide borrowers who sought to consolidate their loans the necessary account information, preventing some from doing so for more than three years); Consumer Fin. Prot. Bureau v. Navient Corp., No. 17-cv-00101, 2017 U.S. Dist. LEXIS 123825 (M.D. Pa. Aug. 4, 2017).

program.[18] Borrowers have also been knocked off track due to systemic mismanagement of borrower accounts by the sole servicer contracted to handle Direct Loans during the first two decades following the creation of the first IDR plan.[19]

- **Widespread servicing errors depriving borrowers of the ability to stay in IDR.** As the federal Consumer Financial Protection Bureau (CFPB) first reported in 2015, shoddy student loan servicing may have prevented as many as *three-in-five* borrowers who managed to enroll in IDR from staying on track year-over-year.[20] Allegations made in public enforcement actions against one large student loan servicer offer evidence that illegal servicing practices are a major driver of this shocking record of failure, which costs these borrowers progress toward debt cancellation under IDR.

Yet another administrative hurdle that prevents borrowers from accessing the benefits of IDR is that borrowers have no way of knowing how close they are to cancellation or why their servicer has decided that certain months in repayment do not count towards cancellation.[21] Borrowers also report that they have encountered an array of problems arising from servicer incompetence, including processing delays and extensive periods in administrative forbearance, inaccurate denials, lost payment histories, lost paperwork, and insufficient information or guidance.[22] These barriers have profound and long-lasting implications for millions of families.

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[18] Consumer Fin. Prot. Bureau, *CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment.* Available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/.

[19] As noted, for the first two decades following the creation of the first widely available IDR plan, Income-Contingent Repayment (ICR), all eligible borrowers had loans serviced by a single company-- Affiliated Computer Services or ACS, formerly a division of the Xerox Corporation. Government records show that this single company committed more than five million individual servicing errors before its contract was finally terminated by the Department of Education in 2013. For further discussion, see Student Borrower Prot. Ctr. & Am. Fed'n of Tchrs., Broken Promises: How the Department of Education's Failures and Industry's Abuses Deny FFEL Borrowers Public Service Loan Forgiveness (2020), https://protectborrowers.org/wp-content/uploads/2020/12/BrokenPromises_FFEL.pdf; Student Borrower Prot. Ctr. & Am. Fed'n of Tchrs., Broken Promises: The Untold Failures of ACS Servicing (2020), https://protectborrowers.org/wp-content/uploads/2020/10/Broken-Promises_ACS.pdf.

[20] Consumer Fin. Prot. Bureau, *CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment*, supra note 17.

[21] See e.g., Pearl, *Driving Inequity*, supra note 4.

[22] Consumer Fin. Prot. Bureau. (April 2017). *CFPB Monthly Snapshot Spotlights Student Loan Complaints.* Available at https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-finds-consumers-complain-needless-hurdles-applying-lower-student-loan-payments/.

Recommendations

The Biden administration should pursue broad-based debt cancellation via executive action as the simplest, most comprehensive, and most equitable remedy for the failures outlined above. But in addition, ED should follow the same reasoning that it applied in creating the temporary PSLF waiver and implement a Retroactive Income-Driven Repayment Waiver. An IDR Waiver would offer a path forward for policymakers who are committed to delivering on the promise of IDR to ensure that borrowers can access affordable loan payments in the short term and to provide a way out for borrowers experiencing long-term financial hardship.

To remedy the decades of IDR failures, the Retroactive IDR Waiver should:

1. **On a retroactive basis, count all months since the borrower entered repayment following their grace period as qualifying months towards forgiveness,** regardless of which repayment plan the borrower was in, whether they were in forbearance, and whether they were in default. Any months since the first IDR plan was implemented in 1995, up through the date of the waiver, should count as qualifying under this limited retroactive waiver.

   Counting all months would address all of the past problems with IDR program rules, implementation, and servicing identified above that have led borrowers to lose out on time toward eventual cancellation. Counting time not just in different repayment plans, but also in forbearances, delinquency, and default is critical to addressing the vast and well-documented servicing problems. Poor servicing, along with servicer delays, and harmful forbearance-steering resulted in struggling borrowers who should have been in IDR instead being shunted into temporary payment delays that only increased and prolonged their indebtedness. Too often these borrowers became delinquent and subsequently defaulted when their deferments or forbearances ended.[23] If the system had worked, such borrowers would instead have been in IDR during that time gaining credit toward forgiveness. Counting all time also has the benefits of being clear and straightforward to communicate to borrowers and operationally simple to implement. And because it is a broad waiver and is retroactive only, this design does not create an incentive for borrowers to voluntarily default or delay repayment going forward.

[23] Given the widespread prevalence of forbearance and deferment steering and the resulting harm caused by borrowers falling into default, simply counting the number of months in forbearance as qualifying may be insufficient to redress the problem. Giving borrowers two or three times the credit for this time, could more adequately address this harm.

2. **Provide relief automatically.** The data that ED needs in order to implement the IDR Waiver is readily available through National Student Loan Data System (NSLDS), and a clean waiver that counts all prior months since entering repayment toward the forgiveness clock is operationally simple to implement. Therefore, borrowers should not need to affirmatively apply for this relief. As experience has demonstrated, imposing bureaucratic hurdles on relief effectively denies relief to the borrowers who need it the most.

3. **Apply the IDR Waiver to all federal loan borrowers, regardless of loan program.** Properly counseled, borrowers with Federal Family Education Loans and Perkins borrowers could have accessed the more generous IDR payment plans through loan consolidation. However, few borrowers received this advice and thus have been denied the benefits of the program. ED can and should fix this through the IDR waiver.

Detailed data must also be made available so that researchers can track borrower progress and time in repayment. Data is needed on the portfolio overall and by loan type, institution type, race/ethnicity, gender, servicer, progress towards forgiveness, and loan status. Unfortunately, the lack of publicly available data makes it difficult for advocates and researchers to identify problems in real time. Indeed, no publicly available data discloses how long borrowers have been enrolled in IDR, provides the average number of qualifying IDR payments borrowers have made after 5, 10, 15, and 20 years of repayment, or accounts for how often servicers are leaving borrowers to languish in administrative forbearances. Additionally, ED must provide borrowers with complete information about their own payment histories and progress towards IDR forgiveness so that borrowers can identify errors and know where they stand now—and not after 20 years have already passed.

Once these fixes have been applied to remedy borrower harms in the past, it is also important to develop forward-looking policy solutions to improve the IDR program for current and future borrowers. Basic principles for improving the repayment system for borrowers in IDR include simplicity, automation, and affordability for the lowest-income borrowers.

ED has an opportunity to produce a new and improved IDR plan through the ongoing rulemaking process. It should embrace the opportunity and use it to put forth a generous and simple plan that will provide borrowers with truly affordable payments that will result in forgiveness after years of repayment. A plan like the Affordable and Budget-Conscious Plan (ABC Plan), outlined in *Road to Relief*, a 2020 publication from the Center for Responsible Lending and the National Consumer Law Center, would help borrowers make progress without subjecting them to burdensome payments that stretch over many decades.[24]

[24] Center for Responsible Lending & National Consumer Law Center. (November 2020). *Road to Relief: Supporting Federal Student Loan Borrowers During the COVID-19 Crisis and Beyond*. Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/nclc-crl-road-to-relief-23nov2020.pdf.

From: Persis Yu
Subject: [FOR TRANSMITTAL] Letter to Sec. Cardona from 104 Organizations re IDR Waiver
To: Cardona, Miguel; Kvaal, James; Cordray, Richard; Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Latreille, Bonnie; Campbell, Patrick; Foss, Ian; Habash, Tariq; Darcus, Joanna
Cc: Mike Pierce; Abby Shafroth; Julia Barnard; Kyra Taylor; Alpha Taylor; Jaylon Herbin; Whitney Barkley; taylor.roberson@responsiblelending.org
Sent: February 9, 2022 10:30 AM (UTC-05:00)
Attached: Final IDR Waiver Coalition Letter 2_9_2022.pdf

Dear Colleagues,

Please find attached a letter to Secretary Cardona signed by 104 diverse organizations calling on the Department to deliver on the promise of income-driven repayment (IDR) through the creation of an Income-Driven Repayment (IDR) Waiver.

As recent settlements with Navient and Conduent highlight, abusive servicing and failed policies have systematically denied borrower access to IDR and prevented borrowers from making progress towards IDR cancellation. Cancellation under income-driven repayment has been theoretically possible since 2016. Yet only **32 IDR borrowers** have ever successfully canceled their loans, even though **4.4 million borrowers** have been in repayment for 20 years or longer. As with so many aspects of the student loan system, the failure of IDR disproportionately harms Black borrowers.

An IDR Waiver is critical to remedying these systemic failings and ensuring that borrowers get credit for the time that should have counted towards IDR cancellation.

We appreciate your careful consideration of these comments and look forward to further discussion with you.

Best,
Persis

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Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org


February 9, 2022

The Honorable Miguel Cardona
United States Department of Education
830 First Street, N.E.
Washington, D.C. 20002

Dear Secretary Cardona,

The undersigned 104 organizations representing students, student loan borrowers, teachers, workers, civil rights, veterans, people of faith, and consumers write to urge you to deliver on the promise of income-driven repayment (IDR) programs for federal student loan borrowers through the creation of an IDR restoration project, or an IDR waiver.

When Congress passed the first of the modern income-driven repayment (IDR) plans in 1992, it made a promise to borrowers that federal student loan payments would be affordable, and that even if borrowers were low-income, through eventual cancellation, their student loans would not be a lifetime burden. IDR has failed to deliver on every aspect of that promise. It is time now for the Biden Administration to restore faith in IDR through the creation of an IDR waiver.

The Biden Administration recently recognized and took steps to address similar failings in the Public Service Loan Forgiveness (PSLF) program by implementing a waiver that would allow the millions of public service workers to finally benefit from the promise of PSLF. While we applaud and celebrate these efforts, we urge the Administration to simultaneously address the parallel failures of the IDR program through a similar waiver.

Cancellation under income-driven repayment has been theoretically possible since the first group of borrowers reached twenty years in repayment through the IDR program in 2016. Yet, the most recent data from ED reveals that only **32 IDR borrowers** have ever successfully canceled their loans, even though **4.4 million borrowers** have been in repayment for 20 years or longer. An internal analysis prepared by the largest student loan servicer, PHEAA, found that of its more than 8.5 million customers, only 48 borrowers would receive debt cancellation under IDR by 2025. Moreover, PHEAA's internal data projects the number of IDR borrowers receiving debt cancellation will **decline** by 83 percent between 2022 and 2025.

The shockingly low rate of cancellation is emblematic of ED's failure to deliver the relief Congress intended when it passed the statutes enabling the creation of these IDR programs. While they were intended to ease the burden of student debt on borrowers, IDR plans are notoriously difficult to navigate, both because of the administrative hurdles of the program and rampant servicer misconduct. To receive debt cancellation under IDR, student loan borrowers must enroll in one of the several income-driven repayment options and remain in that plan for decades. To enroll, borrowers must first know about the program, determine which plan suits their needs, submit a litany of paperwork and documentation, and then repeat this process annually for more than two decades. A September 2021 SBPC report, "Driving Into a Dead End:

Why IDR Has Failed Millions with Decades-Old Debt" suggests that about half of borrowers using REPAYE—the largest IDR plan—fail to persist in the program on a year-to-year basis.

As the recent settlement between 39 states attorneys general and Navient demonstrates, servicers have consistently engaged in a variety of abusive practices and that servicers make many errors that have long-term negative consequences for borrowers. As a result, many borrowers are unable to meet annual deadlines or simply forego the very plans that could help them repay their loans successfully.

As with so many aspects of the student loan system, the failure of IDR disproportionately harms Black borrowers. The Education Trust recently published a study based on a nationwide survey of nearly 1,300 Black borrowers and in-depth interviews with 100 Black borrowers. It found that IDR plans are not easing the student debt crisis for Black borrowers; even default rates remain high, despite the availability of these plans. In short, a program created to help the most vulnerable borrowers has failed to do so on all levels. An IDR waiver is necessary to help rectify past harms done, as student loan borrowers—and, in particular, low-income borrowers and borrowers of color—have been burdened by failures in IDR program administration that created undue financial hardship.

An IDR waiver is essential to restore the broken promise of IDR. As more described in the whitepaper by the Student Borrower Protection Center, National Consumer Law Center, and Center for Responsible Lending, and IDR waiver should:

1. **On a retroactive basis, count all months since the borrower entered repayment following their grace period as qualifying months towards loan forgiveness**, regardless of which repayment plan the borrower was in, whether they were in forbearance, and whether they were in default.

2. **Provide relief automatically.** All of the data that the Department of Education needs in order to implement the IDR Waiver is readily available through NSLDS. Borrowers should not need to affirmatively apply for this relief

3. **Ensure that all federal loan borrowers, regardless of loan program, have access to the IDR Waiver**. While FFEL and Perkins loans borrowers could be eligible for IDR, so many borrowers were not properly advised and so have failed to benefit. The IDR waiver must apply to these borrowers who have been left behind.

We appreciate your careful consideration of these comments and look forward to further discussion with you. Please feel free to contact Persis Yu at persis@protectborrowers.org for any future follow up.

Sincerely,

Student Borrower Protection Center
Center for Responsible Lending
National Consumer Law Center (on behalf of its low-income clients)
1000 Women Strong
Accountable.US
African American Ministers In Action
Alaska PIRG
Albuquerque Mennonite Church
American Association of University Professors (AAUP)
American Association of Veterinary Medical Colleges
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
American Library Association
Americans for Financial Reform Education Fund
Association of Latino Administrators and Superintendents (ALAS)
Association of Young Americans (AYA)
Autistic Self Advocacy Network
Center for Economic Integrity
Center for Law and Social Policy (CLASP)
Center for LGBTQ Economic Advancement & Research (CLEAR)
CFPB Union NTEU 335
Clearinghouse on Women's Issues
Coalition on Human Needs
Community Legal Services of Philadelphia
Community Service Society of New York
Consumer Action
Consumer Federation of America
Consumer Federation of California
Consumer Reports
Council on Social Work Education
Debt-Free MD, Inc. (Maryland)
Dr. N. Joyce Payne Center for Social Justice
Economic Mobility Pathways (EMPath)
Empire Justice Center
Equal Justice Works
Fosterus
Hildreth Institute
Hip Hop Caucus
Hispanic Federation
Housing and Economic Rights Advocates
International Brotherhood of Teamsters
International Federation of Professional and Technical Engineers (IFPTE)

Jobs With Justice
Legal Action Chicago
Loan Repayment Assistance Program of Minnesota
Louisiana Budget Project
Maine Center for Economic Policy
Media Voices
Mississippi Association of Educators
Mobilization for Justice
National Association of Consumer Advocates
National Association of Graduate Professional Students (NAGPS)
National Association of School Psychologists
National Association of Social Workers
National Association of Social Workers – Connecticut Chapter
National Association of Social Workers – Maine Chapter
National Association of Social Workers – New Hampshire Chapter
National Association of Social Workers – New Jersey Chapter
National Association of Social Workers – New Mexico Chapter
National Association of Social Workers – Ohio Chapter
National Association of Social Workers – Oklahoma Chapter
National Association of Social Workers – Pennsylvania Chapter
National Association of Social Workers – Texas Chapter
National Association of Social Workers – Vermont Chapters
National Association of Social Workers – West Virginia Chapter
National Education Association (NEA)
National Urban League
National Young Farmers Coalition
NAVIGATE STUDENT LOANS
New Era Colorado
New Jersey Citizen Action
New York Legal Assistance Group (NYLAG)
NextGen California
Nonprofit Professional Employees Union (NPEU), IFPTE Local 70
NTEU Independent Staff Union
OCA – Asian Pacific American Advocates
Ohio Student Association
Partnership for College Completion
People's Parity Project
Physician Assistant Education Association
Project on Predatory Student Lending
Public Citizen
Public Counsel
Public Higher Education Network of Massachusetts (PHENOM)
Public Justice Center
Public Law Center

SEIU Local 500
SEIU Local 509
Student Debt Crisis Center
Student Public Interest Research Groups
Student Veterans of America
The Collaborative of NC
The Education Trust
The Hope Center for College, Community, and Justice
The Institute for College Access & Success (TICAS)
Tzedek DC
UnidosUS
University of California Graduate & Professional Council
UnKoch My Campus
URGE: Unite for Reproductive & Gender Equity
Virginia Poverty Law Center
Women Employed
Young Invincibles
Zero Debt Massachusetts

From: Persis Yu
Subject: [FOR TRANSMITTAL] Memorandum on IDR Waiver: MOHELA Borrower Voices on the Incomplete Promise of Relief through IDR
To: Kvaal, James; Cordray, Richard; Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Latreille, Bonnie; Campbell, Patrick; Foss, Ian; Habash, Tariq; Darcus, Joanna
Cc: Mike Pierce; Christopher Hicks; Claire Torchiana; Benjamin Kaufman
Sent: March 16, 2022 5:07 PM (UTC-04:00)
Attached: SBPC IDR Complaint Memo - MOHELA 3.16.22

Dear ED and FSA Colleagues,

Attached please find a memorandum highlighting the voices of federal student loan borrowers who demonstrate the need for an IDR waiver. In particular, this memo highlights the voices of borrowers whose loans were serviced by MOHELA.

Thank you for all the work that you are doing to help student loan borrowers. Please do not hesitate to contact me if you have any questions or if you would like to discuss this further.

Best,
Persis

--

Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

STUDENT BORROWER PROTECTION CENTER

MEMORANDUM

March 16, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center

RE: **MOHELA Borrower Voices on the Incomplete Promise of Relief through IDR**

Overview

The promise of affordability and loan relief through income-driven repayment ("IDR") options has largely been broken, plagued by failed policy, unwieldy regulatory requirements, and industry misconduct. A waiver that would credit all of a borrower's time since the start of repayment—irrespective of loan status or payment history—towards forgiveness under IDR would be a powerful step toward finally restoring the purpose of the law. Abusive student loan servicers have greatly undermined the benefits of IDR, including debt cancellation, through illegal forbearance steering and misadvice to borrowers. While these actions have mostly been publicized as they relate to the conduct of one servicer, Navient, they are not limited to one bad actor but are instead prevalent across the industry. As the following memorandum describes in detail, borrowers whose loans are serviced by MOHELA have been robbed of the forgiveness they are entitled to under IDR due to the student loan industry's harmful practices.

Background

Almost three decades ago, in recognition of the massive burden that student loan debt imposes on American households, Congress introduced one of the most vital protections available in any consumer financial market: income-driven repayment.[1] From its inception and throughout its expansion across successive presidential administrations, IDR has been shaped by three core principles: that federal borrowers should be able to afford their monthly student loan bills, that the most financially strapped borrowers should enjoy safeguards from delinquency and default, and, perhaps most importantly, that student loan debt should never become a lifelong affliction.[2] In implementing the latter precept, the U.S. Department of Education ("ED") has entitled federal student loan borrowers in IDR to debt cancellation after 20 to 25 years of consistent, on-time repayment based on the borrower's loan type and particular IDR plan.[3]

The promise of eventual debt cancellation through IDR is a key source of hope for millions of borrowers, many of whom make substantial personal sacrifices even while enrolled in IDR to

[1] https://journals.sagepub.com/doi/abs/10.1177/0002716217701673.
[2] https://protectborrowers.org/idr-history-report/.
[3] https://studentaid.gov/manage-loans/repayment/plans/income-driven.

remain current on their loans.[4] Moreover, the assumption that IDR generally delivers cancellation as promised is the cornerstone of significant federal policy and case law. For instance, the legal regime that makes it extremely difficult for borrowers to discharge student loan debt in bankruptcy partly stems from the assumption that IDR makes student loan payments manageable.[5] Similarly, there is a growing body of policy research that frames substantial policy intervention to alleviate student debt burdens, such as through broad-based cancellation, as unnecessary based on the assumption that IDR can be a source of meaningful relief for most borrowers struggling with student loan debt.[6]

Unfortunately, the promise of eventual debt relief through IDR has proven to be completely broken. Though debt cancellation under IDR has been available for qualifying borrowers since at least 2016, ED data accessed through the Freedom of Information Act ("FOIA") revealed last year that only 32 borrowers have *ever* successfully achieved cancellation via IDR.[7] For relative scale, information uncovered by U.S. Senator Elizabeth Warren indicates that more than 4.4 million borrowers have been in repayment for 20 years or more.[8] Worse, the situation for borrowers pursuing cancellation through IDR appears unlikely to improve. An internal analysis conducted by one large student loan servicer recently found that of the more than 8.5 million borrowers whose federal student loans it manages, only 48 are projected to receive debt cancellation under IDR by 2025.[9] This overall estimate involved the projection of an 83 percent *reduction* between 2022 and 2025 in the number of borrowers that will receive cancellation through IDR each year, prompting one company employee to remark in uncovered emails that the number of borrowers securing cancellation seemed "very low."[10]

The systematic collapse of the promise of relief that Congress made to borrowers flows from decades of inaction, incompetence, and unfortunately frequent malfeasance from federal policymakers, regulators, and the student loan industry. For example, over the past several years, state attorneys general across the country and the Consumer Financial Protection Bureau have brought public enforcement actions against ED's largest student loan servicing contractors for a wide range of abuses related to borrowers' access to IDR, including deploying abusive forbearance steering tactics, deceiving borrowers regarding their obligation to annually recertify income, and failing to timely process IDR applications.[11] These abuses—conducted by the very same companies tasked with guiding borrowers through repayment and empowering them to access their protections under the law—will add years or decades to borrowers' repayment sequences even if they are eventually able to access IDR at all. By that time, borrowers will likely have undergone extensive but entirely unnecessary financial hardship including periods of disastrous delinquency or default.

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[4] https://protectborrowers.org/idr-unaffordability-report/.
[5] https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/07/Help-or-Hardship.pdf.
[6] https://bfi.uchicago.edu/insight/finding/the-distributional-effects-of-student-loan-forgiveness/.
[7] https://protectborrowers.org/new-government-data-exposes-complete-failure-of-education-departments-income-driven-repayment-program/.
[8] https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf#page=2.
[9] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=18.
[10] *Id.*
[11] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=15.

A recent settlement between 39 states attorneys general and the federal student loan servicing giant Navient demonstrates that servicers have consistently and recklessly engaged in a startling variety of abusive practices with long-term consequences for borrowers.[12] While beneficial for some private loan borrowers, the terms of the settlement will not provide relief for the millions of borrowers who lost years of credit towards federal loan forgiveness and over-paid on their monthly student loan bills because of student loan servicers' illegal activities. This episode is yet another instance of the policy apparatus and specifically the promise of affordability through IDR failing borrowers entirely.

Worse, as with so many aspects of the student debt crisis, the weight of IDR's widespread breakdown has landed most heavily on Black borrowers. In particular, a nationwide survey from The Education Trust recently found that Black federal student loan borrowers struggle to access IDR, and that they continue to face both difficulty affording basic life necessities and an ongoing risk of default on their student loans even when enrolled in IDR.[13] Reflecting on IDR's failure to deliver eventual debt cancellation for Black borrowers, the survey noted that Black borrowers feel that repayment under IDR is "a lifetime debt sentence."[14]

The Role of MOHELA

MOHELA was created in 1981 as a quasi-governmental entity in order to participate in the Federal Family Education Loan Program ("FFELP") and issue federally guaranteed loans to Missouri residents.[15] Since then, MOHELA has grown to be one of the largest student loan companies in the world, servicing approximately $75 billion in Direct Loans representing 3,603,208 accounts across the country under its servicing contract with the Department.[16] In addition to its contract servicing Direct Loans for the Department, MOHELA manages a growing portfolio that includes $1.1 billion in FFELP loans representing 56,654 accounts, $18.2 billion in third-party lender owned private loans representing 319,808 accounts and $124.3 million in MOHELA-owned private loans representing 5,702 accounts as of November 30, 2021.[17]

Unsatisfied with profiting just through the massive federal student loan program, MOHELA has broadened its horizons to touch an ever-more exotic set of student financing products, including having entered into third-party contracts to service loans with student loan refinancing companies[18] and income-share agreement providers.[19] In June 2021, the Student Borrower Protection Center found the following:[20]

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[12] https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/.
[13] https://edtrust.org/resource/jim-crow-debt/.
[14] *Id.*
[15] House Bill 326 signed into law on June 15, 1981.
[16] https://www.mohela.com/DL/common/publicInfo/investorInformation.aspx?idx=2380.
[17] *Id.*
[18] See: https://sofi.mohela.com/.
[19] ISA provider Stride Funding, Inc. promotes "Origination & Servicing through trusted partners like Campus Door and MOHELA". Universities, Stride Funding, https://www.stridefunding.com/universities.
[20] https://protectborrowers.org/wp-content/uploads/2021/06/SBPC_ISA-Servicing-Memo.pdf.

> While ISA servicing was initially dominated by a few companies that provided cradle-to-grave ISA program administration—assisting schools and/or third-party investors in setting up ISA origination programs, marketing to students, and then servicing the ISAs once borrowers entered repayment—traditional student loan servicers like the Higher Education Loan Authority of the State of Missouri ("MOHELA"), Launch Servicing, LLC, and others have begun to service ISAs in addition to their more "traditional" student loan portfolios. Although these servicers may not have been involved in origination-related misconduct, their business partners' unlicensed lending and use of ISA design that regularly results in usurious payments lead inexorably to violations of federal and state laws prohibiting unfair, deceptive, and abusive acts and practices, as well as state student loan servicing laws.

MOHELA's growth within and beyond the federal student loan system has involved a track record of borrower harm. For instance, MOHELA has been accused of failing to effectuate loan discharges for borrowers legally entitled to them, and engaging in inaccurate reporting to credit bureaus in violation of the Fair Credit Reporting Act.[21] The company unsuccessfully attempted to use the shield of sovereign immunity to avoid liability for its misconduct—a practice which the Department now prohibits in its servicing contract.[22] Despite this, MOHELA saw its contract with the Department rapidly grow in recent months due to the Pennsylvania Higher Education Assistance Agency ("PHEAA") leaving the market and previously PHEAA serviced borrowers being transitioned to MOHELA.[23]

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices by MOHELA related to IDR have had on borrowers. For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled. Here are a few illustrative stories that capture the pain felt by millions of borrowers:

1. A borrower from Texas:[24] "MOHELA keeps placing my loan in forbearance although I specifically contacted them and told them not to. . . . They are also posting payments late."

2. A MOHELA borrower from New Jersey:[25] "About 11 years ago I owed about $68,000.00 in student loans as I went [through] a divorce I had to use deferment options because I wasn't able to pay. I never went into default and used options to lower my payments but because of payment reductions and for forbearance 's over the years my balance is now over $300,000.00 dollars with interest and fees. My employment status has changed in the past 3 years and I am now able to make payments. I can't afford the standard payment amount on that kind of money nor will I ever be able to pay that back. I offered to sell my home and give all of the money made which would only be about $40,000.00 and find a way to pay the difference of $28,000.00 from the original amount to them but they said

[21] *Perkins v. MOHELA*, 5:19-cv-01281-FB-HJB (W.D. Texas).
[22] https://www.ed.gov/news/press-releases/us-department-education-increases-servicer-performance-transparency-and-accountability-loan-payments-restart.
[23] https://www.nytimes.com/2021/07/08/business/fedloan-pheaa-student-loans.html.
[24] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5197876.
[25] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4144691.

they can't settle the loan for a lower amount. . . . I am upset that the only reason that I can't move ahead in life is because of a student loan balance on my credit report. If I defaulted on it is one thing but because of the interest and fees my life is at a standstill. What can I do to resolve this issue??"

3. A borrower from Virginia:[26] "I was unable to pay my student loan, and place it in forbearance on three separate occasions. I was told by phone operators at MOHELA that I could continue my forbearance for a specified amount of time. As I recall, this was 18 months. I was also told the forbearance lasts 90 days, then I had an additional 90 days to place the account back into forbearance before it would default. I placed my account in forbearance in the spring of [redacted]. I then waited the six months I was told would be the limit, and placed the account into forbearance again. I was told at that time by the phone operator this was perfectly fine, and my account was up to date. I did this a third time in [redacted], and it was only on the third time that I was told the previous operators had given me incorrect information. What they neglected to tell me is the accounts were reported as late to the credit bureau after 90 days, and that I was accumulating 90 day and 120 day delinquencies on my credit report - even though no payments were ever made or needed to be made, and the account was allowed to be in forbearance. I explained this to MOHELA, and have disputed these reports on several occasions, and MOHELA refuses to acknowledge I was acting on bad information given to me by them and their phone operators. No payments would ever have been due. The only thing I was late with was making a phone call, which I was clearly told I had to do within 6 months to avoid default. Had they told me I only had 3 months to avoid dramatically damaging my credit, I would have called in 90 days instead of 6 months. Again, no payments were due, so I had no reason to not call in, other than I was given bad information by MOHELA."

4. A MOHELA borrower from Alabama:[27] "I consolidated this loan from two loans of $2,500.00 each. . . . The loan was in forbearance for a number of years because I was not working. This caused it to increase to $18,000.00. I have been paying on this loan for 7 years with an average payment of $200.00 per month and the amount keeps increasing. I now owe $26,000.00. This to me is unfair and abusive practice. It appears all payments are going toward interest only and at this rate I will be paying well into my retirement as I am approaching retirement age. Will I have to continue making payments well into retirement? At this point when will this debt be satisfied? According to my calculations I have paid this loan 3 times over."

5. Christine, from Oregon:[28] "In 1997-1999 I borrowed $15,000 in student loans while completing a graduate degree in Public Administration. I began making regular payments in 1999. Twice in my career I have been unemployed or marginally employed and entered the forbearance status. This erased all progress on my student loan payments. Throughout my career, I have been employed by non-profit organizations or in government. Since 2011, I have consistently been employed in state and local

[26] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4246286.
[27] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4041133.
[28] Submitted to and on file with the Student Borrower Protection Center.

> government. My loans have been sold three times since 1999. In 2017, a colleague told me about the public service loan forgiveness program. I contacted my current loan holder, MOHELA and was told I had not been under the correct payment plan to qualify and I had to start over with the 20 yr forgiveness period. In the fall of 2019, I contacted MOHELA again because my loan payments were significantly increasing. I asked about loan forgiveness again and was told that I was still not under the correct plan and would again have to start over. I changed payment plans again. I have been paying on this loan for 20 years. During the pandemic, I continued making payments. I now owe just over $5,000. I am making plans to leave public service and start a businesses. As I put together my budget for my personal expenses, the student loan debt will still be a significant monthly bill."

As these stories illustrate, MOHELA's actions have undermined Congress' intent to create affordable repayment plans through IDR that were not a lifelong debt sentence and instead have misled borrowers into forbearance to maximize profits for their shareholders.

ED Can and Must Act to Restore the Promise of Relief through IDR

In October, the Biden administration initiated a sweeping waiver to address longstanding, wide-ranging failures plaguing the Public Service Loan Forgiveness ("PSLF") program.[29] This waiver allowed hundreds of thousands of borrowers to bypass byzantine administrative burdens, sweep aside the lingering effects of past servicing abuses, and rise from the wreckage of decades-long policy blunders to access earned relief.[30] For tens of thousands of borrowers, that relief included immediate debt forgiveness.[31]

Now, borrowers and a broad coalition of advocates are calling on the Biden administration to use authorities already at its disposal to initiate a similarly bold program to deliver justice and relief to the millions of borrowers who have been denied the promise of IDR.[32] As outlined in a white paper co-authored by the Student Borrower Protection Center, the Center for Responsible Lending, and the National Consumer Law Center, this waiver would involve the use of administrative data to retroactively count all months since borrowers entered repayment as qualifying months towards forgiveness under IDR, regardless of the borrower's loan type or prior repayment plan.[33] A coalition of more than 100 unions, consumer protection organizations, and non-profit organizations that represent a broad and diverse population of low to middle income student borrowers and workers across the country recently signed a letter in support of this proposed IDR waiver.[34]

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[29] https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness.
[30] *Id.*
[31] *Id.*
[32] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.
[33] https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/.
[34] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

Until the Biden administration takes substantial action such as implementing the proposed IDR waiver, however, borrowers will continue languishing under the weight of system-wide failure and broken promises. The weight that these borrowers face goes far beyond what may be captured in any statistic outlining how few borrowers have secured cancellation through IDR, how many borrowers continue to face delinquency and default, and how many decades borrowers have been trapped in repayment. The failure of IDR means years of lost payments, rippling financial ruin, and broken promises between citizens and their government at every level.

Servicers like MOHELA have too long put their financial profits ahead of borrowers' financial security. The Biden administration must choose to right that wrong by implementing a IDR waiver that will provide credit towards loan forgiveness for borrowers' time in default, forbearance, and deferment.

From: Persis Yu
Subject: RESENDING: [FOR TRANSMITTAL] Memorandum on IDR Waiver: MOHELA Borrower Voices on the Incomplete Promise of Relief through IDR
To: Kvaal, James; Cordray, Richard; Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Latreille, Bonnie; Campbell, Patrick; Foss, Ian; Habash, Tariq; Darcus, Joanna
Cc: Mike Pierce; Christopher Hicks; Claire Torchiana; Benjamin Kaufman
Sent: March 16, 2022 5:30 PM (UTC-04:00)
Attached: SBPC IDR Complaint Memo - MOHELA 3.16.22.pdf

My apologies. There was a problem with the file. I am resending it now.

On Wed, Mar 16, 2022 at 5:06 PM Persis Yu <persis@protectborrowers.org> wrote:

> Dear ED and FSA Colleagues,
>
> Attached please find a memorandum highlighting the voices of federal student loan borrowers who demonstrate the need for an IDR waiver. In particular, this memo highlights the voices of borrowers whose loans were serviced by MOHELA.
>
> Thank you for all the work that you are doing to help student loan borrowers. Please do not hesitate to contact me if you have any questions or if you would like to discuss this further.
>
> Best,
> Persis
>
> --
>
> Persis S. Yu (she/her/hers)
> Policy Director & Managing Counsel
> Student Borrower Protection Center
> www.protectborrowers.org

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Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
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STUDENT BORROWER PROTECTION CENTER

MEMORANDUM

March 16, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center

RE: **MOHELA Borrower Voices on the Incomplete Promise of Relief through IDR**

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Background

Almost three decades ago, in recognition of the massive burden that student loan debt imposes on American households, Congress introduced one of the most vital protections available in any consumer financial market: income-driven repayment.[1] From its inception and throughout its expansion across successive presidential administrations, IDR has been shaped by three core principles: that federal borrowers should be able to afford their monthly student loan bills, that the most financially strapped borrowers should enjoy safeguards from delinquency and default, and, perhaps most importantly, that student loan debt should never become a lifelong affliction.[2] In implementing the latter precept, the U.S. Department of Education ("ED") has entitled federal student loan borrowers in IDR to debt cancellation after 20 to 25 years of consistent, on-time repayment based on the borrower's loan type and particular IDR plan.[3]

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[4] https://protectborrowers.org/idr-unaffordability-report/.
[5] https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/07/Help-or-Hardship.pdf.
[6] https://bfi.uchicago.edu/insight/finding/the-distributional-effects-of-student-loan-forgiveness/.
[7] https://protectborrowers.org/new-government-data-exposes-complete-failure-of-education-departments-income-driven-repayment-program/.
[8] https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf#page=2.
[9] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=18.
[10] *Id.*
[11] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=15.

A recent settlement between 39 states attorneys general and the federal student loan servicing giant Navient demonstrates that servicers have consistently and recklessly engaged in a startling variety of abusive practices with long-term consequences for borrowers.[12] While beneficial for some private loan borrowers, the terms of the settlement will not provide relief for the millions of borrowers who lost years of credit towards federal loan forgiveness and over-paid on their monthly student loan bills because of student loan servicers' illegal activities. This episode is yet another instance of the policy apparatus and specifically the promise of affordability through IDR failing borrowers entirely.

Worse, as with so many aspects of the student debt crisis, the weight of IDR's widespread breakdown has landed most heavily on Black borrowers. In particular, a nationwide survey from The Education Trust recently found that Black federal student loan borrowers struggle to access IDR, and that they continue to face both difficulty affording basic life necessities and an ongoing risk of default on their student loans even when enrolled in IDR.[13] Reflecting on IDR's failure to deliver eventual debt cancellation for Black borrowers, the survey noted that Black borrowers feel that repayment under IDR is "a lifetime debt sentence."[14]

The Role of MOHELA

MOHELA was created in 1981 as a quasi-governmental entity in order to participate in the Federal Family Education Loan Program ("FFELP") and issue federally guaranteed loans to Missouri residents.[15] Since then, MOHELA has grown to be one of the largest student loan companies in the world, servicing approximately $75 billion in Direct Loans representing 3,603,208 accounts across the country under its servicing contract with the Department.[16] In addition to its contract servicing Direct Loans for the Department, MOHELA manages a growing portfolio that includes $1.1 billion in FFELP loans representing 56,654 accounts, $18.2 billion in third-party lender owned private loans representing 319,808 accounts and $124.3 million in MOHELA-owned private loans representing 5,702 accounts as of November 30, 2021.[17]

Unsatisfied with profiting just through the massive federal student loan program, MOHELA has broadened its horizons to touch an ever-more exotic set of student financing products, including having entered into third-party contracts to service loans with student loan refinancing companies[18] and income-share agreement providers.[19] In June 2021, the Student Borrower Protection Center found the following:[20]

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[12] https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/.
[13] https://edtrust.org/resource/jim-crow-debt/.
[14] *Id.*
[15] House Bill 326 signed into law on June 15, 1981.
[16] https://www.mohela.com/DL/common/publicInfo/investorInformation.aspx?idx=2380.
[17] *Id.*
[18] See: https://sofi.mohela.com/.
[19] ISA provider Stride Funding, Inc. promotes "Origination & Servicing through trusted partners like Campus Door and MOHELA". Universities, Stride Funding, https://www.stridefunding.com/universities.
[20] https://protectborrowers.org/wp-content/uploads/2021/06/SBPC_ISA-Servicing-Memo.pdf.

> While ISA servicing was initially dominated by a few companies that provided cradle-to-grave ISA program administration—assisting schools and/or third-party investors in setting up ISA origination programs, marketing to students, and then servicing the ISAs once borrowers entered repayment—traditional student loan servicers like the Higher Education Loan Authority of the State of Missouri ("MOHELA"), Launch Servicing, LLC, and others have begun to service ISAs in addition to their more "traditional" student loan portfolios. Although these servicers may not have been involved in origination-related misconduct, their business partners' unlicensed lending and use of ISA design that regularly results in usurious payments lead inexorably to violations of federal and state laws prohibiting unfair, deceptive, and abusive acts and practices, as well as state student loan servicing laws.

MOHELA's growth within and beyond the federal student loan system has involved a track record of borrower harm. For instance, MOHELA has been accused of failing to effectuate loan discharges for borrowers legally entitled to them, and engaging in inaccurate reporting to credit bureaus in violation of the Fair Credit Reporting Act.[21] The company unsuccessfully attempted to use the shield of sovereign immunity to avoid liability for its misconduct—a practice which the Department now prohibits in its servicing contract.[22] Despite this, MOHELA saw its contract with the Department rapidly grow in recent months due to the Pennsylvania Higher Education Assistance Agency ("PHEAA") leaving the market and previously PHEAA serviced borrowers being transitioned to MOHELA.[23]

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices by MOHELA related to IDR have had on borrowers. For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled. Here are a few illustrative stories that capture the pain felt by millions of borrowers:

1. A borrower from Texas:[24] "MOHELA keeps placing my loan in forbearance although I specifically contacted them and told them not to. . . . They are also posting payments late."

2. A MOHELA borrower from New Jersey:[25] "About 11 years ago I owed about $68,000.00 in student loans as I went [through] a divorce I had to use deferment options because I wasn't able to pay. I never went into default and used options to lower my payments but because of payment reductions and for forbearance 's over the years my balance is now over $300,000.00 dollars with interest and fees. My employment status has changed in the past 3 years and I am now able to make payments. I can't afford the standard payment amount on that kind of money nor will I ever be able to pay that back. I offered to sell my home and give all of the money made which would only be about $40,000.00 and find a way to pay the difference of $28,000.00 from the original amount to them but they said

[21] *Perkins v. MOHELA*, 5:19-cv-01281-FB-HJB (W.D. Texas).
[22] https://www.ed.gov/news/press-releases/us-department-education-increases-servicer-performance-transparency-and-accountability-loan-payments-restart.
[23] https://www.nytimes.com/2021/07/08/business/fedloan-pheaa-student-loans.html.
[24] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5197876.
[25] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4144691.

they can't settle the loan for a lower amount. . . . I am upset that the only reason that I can't move ahead in life is because of a student loan balance on my credit report. If I defaulted on it is one thing but because of the interest and fees my life is at a standstill. What can I do to resolve this issue??"

3. A borrower from Virginia:[26] "I was unable to pay my student loan, and place it in forbearance on three separate occasions. I was told by phone operators at MOHELA that I could continue my forbearance for a specified amount of time. As I recall, this was 18 months. I was also told the forbearance lasts 90 days, then I had an additional 90 days to place the account back into forbearance before it would default. I placed my account in forbearance in the spring of [redacted]. I then waited the six months I was told would be the limit, and placed the account into forbearance again. I was told at that time by the phone operator this was perfectly fine, and my account was up to date. I did this a third time in [redacted], and it was only on the third time that I was told the previous operators had given me incorrect information. What they neglected to tell me is the accounts were reported as late to the credit bureau after 90 days, and that I was accumulating 90 day and 120 day delinquencies on my credit report - even though no payments were ever made or needed to be made, and the account was allowed to be in forbearance. I explained this to MOHELA, and have disputed these reports on several occasions, and MOHELA refuses to acknowledge I was acting on bad information given to me by them and their phone operators. No payments would ever have been due. The only thing I was late with was making a phone call, which I was clearly told I had to do within 6 months to avoid default. Had they told me I only had 3 months to avoid dramatically damaging my credit, I would have called in 90 days instead of 6 months. Again, no payments were due, so I had no reason to not call in, other than I was given bad information by MOHELA."

4. A MOHELA borrower from Alabama:[27] "I consolidated this loan from two loans of $2,500.00 each. . . . The loan was in forbearance for a number of years because I was not working. This caused it to increase to $18,000.00. I have been paying on this loan for 7 years with an average payment of $200.00 per month and the amount keeps increasing. I now owe $26,000.00. This to me is unfair and abusive practice. It appears all payments are going toward interest only and at this rate I will be paying well into my retirement as I am approaching retirement age. Will I have to continue making payments well into retirement? At this point when will this debt be satisfied? According to my calculations I have paid this loan 3 times over."

5. Christine, from Oregon:[28] "In 1997-1999 I borrowed $15,000 in student loans while completing a graduate degree in Public Administration. I began making regular payments in 1999. Twice in my career I have been unemployed or marginally employed and entered the forbearance status. This erased all progress on my student loan payments. Throughout my career, I have been employed by non-profit organizations or in government. Since 2011, I have consistently been employed in state and local

[26] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4246286.
[27] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4041133.
[28] Submitted to and on file with the Student Borrower Protection Center.

> government. My loans have been sold three times since 1999. In 2017, a colleague told me about the public service loan forgiveness program. I contacted my current loan holder, MOHELA and was told I had not been under the correct payment plan to qualify and I had to start over with the 20 yr forgiveness period. In the fall of 2019, I contacted MOHELA again because my loan payments were significantly increasing. I asked about loan forgiveness again and was told that I was still not under the correct plan and would again have to start over. I changed payment plans again. I have been paying on this loan for 20 years. During the pandemic, I continued making payments. I now owe just over $5,000. I am making plans to leave public service and start a businesses. As I put together my budget for my personal expenses, the student loan debt will still be a significant monthly bill."

As these stories illustrate, MOHELA's actions have undermined Congress' intent to create affordable repayment plans through IDR that were not a lifelong debt sentence and instead have misled borrowers into forbearance to maximize profits for their shareholders.

ED Can and Must Act to Restore the Promise of Relief through IDR

In October, the Biden administration initiated a sweeping waiver to address longstanding, wide-ranging failures plaguing the Public Service Loan Forgiveness ("PSLF") program.[29] This waiver allowed hundreds of thousands of borrowers to bypass byzantine administrative burdens, sweep aside the lingering effects of past servicing abuses, and rise from the wreckage of decades-long policy blunders to access earned relief.[30] For tens of thousands of borrowers, that relief included immediate debt forgiveness.[31]

Now, borrowers and a broad coalition of advocates are calling on the Biden administration to use authorities already at its disposal to initiate a similarly bold program to deliver justice and relief to the millions of borrowers who have been denied the promise of IDR.[32] As outlined in a white paper co-authored by the Student Borrower Protection Center, the Center for Responsible Lending, and the National Consumer Law Center, this waiver would involve the use of administrative data to retroactively count all months since borrowers entered repayment as qualifying months towards forgiveness under IDR, regardless of the borrower's loan type or prior repayment plan.[33] A coalition of more than 100 unions, consumer protection organizations, and non-profit organizations that represent a broad and diverse population of low to middle income student borrowers and workers across the country recently signed a letter in support of this proposed IDR waiver.[34]

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[29] https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness.
[30] *Id.*
[31] *Id.*
[32] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.
[33] https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/.
[34] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

Until the Biden administration takes substantial action such as implementing the proposed IDR waiver, however, borrowers will continue languishing under the weight of system-wide failure and broken promises. The weight that these borrowers face goes far beyond what may be captured in any statistic outlining how few borrowers have secured cancellation through IDR, how many borrowers continue to face delinquency and default, and how many decades borrowers have been trapped in repayment. The failure of IDR means years of lost payments, rippling financial ruin, and broken promises between citizens and their government at every level.

Servicers like MOHELA have too long put their financial profits ahead of borrowers' financial security. The Biden administration must choose to right that wrong by implementing a IDR waiver that will provide credit towards loan forgiveness for borrowers' time in default, forbearance, and deferment.

From:
Subject: RE: [FOR TRANSMITTAL] SBPC & NCLC Letter on Commercial FFEL
To: Persis Yu
Sent: March 19, 2022 12:50 AM (UTC-04:00)

Have you had any conversations with DPC on this tp

From: Persis Yu <pyu@nclc.org>
Sent: Wednesday, March 17, 2021 4:16 PM
To: Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; Williams, Rich <Rich.Williams@ed.gov>; Habash, Tariq <Tariq.Habash@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Campbell, Patrick <Patrick.Campbell@ed.gov>
Cc: Seth Frotman <seth@protectborrowers.org>; Benjamin Kaufman <ben@protectborrowers.org>; Abby Shafroth <ashafroth@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Tamara Cesaretti <tamara@protectborrowers.org>; Mike Pierce <mike@protectborrowers.org>
Subject: Fwd: [FOR TRANSMITTAL] SBPC & NCLC Letter on Commercial FFEL

Hello,

I am writing to follow-up on our letter urging the Department to take immediate action to protect the millions of student loan borrowers with federal loans not held by the Department, including the 6.1 million borrowers with Commercial FFEL loans.

As it stands, a year into the pandemic and commercially held FFEL and Perkins borrowers continue to suffer the economic devastation of the pandemic. Yet, unlike their Direct loan or ED-held FFEL/Perkins counterparts, they are still without a payment suspension. And once again, Congress left these borrowers out of the COVID relief package. This means that it is up to the Department to exercise its responsibility and authority to protect these forgotten federal student loan borrowers during the national emergency.

Borrowers in good standing who cannot afford their payments are forced to use costly forbearances or consolidate and risk putting their loans in a materially worse position. Borrowers in default may still be at risk of involuntary collection activity. Troublingly, based on public records, it appears that the Consumer Financial Protection Bureau has open investigations into two Guaranty Agencies, Ascendium (formerly Great Lakes) and ECMC, for their part in a scheme to cheat borrowers out of their right to rehabilitate defaulted loans without incurring significant collection costs.

We welcome the opportunity to discuss the progress the Department is making to protect c-FFEL and Perkins borrowers at your earliest convenience.

Thank you again for your continued work to protect vulnerable student loan borrowers.

Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

---------- Forwarded message ---------
From: **Mike Pierce** <mike@protectborrowers.org>

Date: Tue, Feb 16, 2021 at 10:50 AM
Subject: [FOR TRANSMITTAL] SBPC & NCLC Letter on Commercial FFEL
To: <julie.morgan@ed.gov>, <Benjamin.miller@ed.gov>, <rich.williams@ed.gov>, <tariq.habash@ed.gov>, <joanna.darcus@ed.gov>, <patrick.campbell@ed.gov>
Cc: pyu@nclc.org <pyu@nclc.org>, Seth Frotman <seth@protectborrowers.org>, Benjamin Kaufman <ben@protectborrowers.org>, Abby Shafroth <ashafroth@nclc.org>, Kyra Taylor <ktaylor@nclc.org>, Tamara Cesaretti <tamara@protectborrowers.org>

Colleagues:

Attached, please find a letter from the Student Borrower Protection Center and the National Consumer Law Center urging the Acting Secretary to take immediate action to protect the millions of student loan borrowers with federal loans not held by the Department, including the 6.1 million borrowers with Commercial FFEL loans.

We look forward to talking about these issues at your convenience. In addition to the attached letter, earlier today we released a brief blog post also discussing these issues, available here:

https://protectborrowers.org/its-time-for-washington-to-stand-up-for-millions-of-student-loan-borrowers-struggling-without-relief-during-covid/

Thank you again for your continued work to protect vulnerable student loan borrowers. We look forward to speaking with many of you this afternoon about this and related issues.

Mike

--

Michael Justin Pierce
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

From: Persis Yu
Subject: [FOR TRANSMITTAL] Memorandum on IDR Waiver: FFEL Borrower Voices on the Incomplete Promise of Relief through IDR
To: Kvaal, James; Cordray, Richard; Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Latreille, Bonnie; Campbell, Patrick; Foss, Ian; Habash, Tariq; Darcus, Joanna
Cc: Mike Pierce; Christopher Hicks; Claire Torchiana; Benjamin Kaufman
Sent: March 23, 2022 3:44 PM (UTC-04:00)
Attached: SBPC IDR Complaint Memo - FFEL 3.23.22.pdf

Dear ED and FSA Colleagues,

Attached please find a memorandum highlighting the voices of federal student loan borrowers who demonstrate the need for an IDR waiver. In particular, this memo highlights the voices of borrowers with Federal Family Education Loan ("FFEL") Program loans. Borrowers with FFEL loans must be included in an IDR waiver, as they have been saddled with unmanageable debts for decades, harmed by servicer and guaranty agency misconduct, and consistently excluded from debt relief.

Thank you for all the work that you are doing to help student loan borrowers. Please do not hesitate to contact me if you have any questions or if you would like to discuss this further.

Best,
Persis

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Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

STUDENT BORROWER PROTECTION CENTER

MEMORANDUM

March 23, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center

RE: **FFEL Borrower Voices on the Incomplete Promise of Relief through IDR**

Overview

The promise of affordability and loan relief through income-driven repayment ("IDR") options has largely been broken, plagued by failed policy, unwieldy regulatory requirements, and industry misconduct. A waiver that would credit all of a borrower's time since the start of repayment—irrespective of loan status or payment history—towards IDR would be a powerful step towards finally restoring the purpose of the law. Borrowers with Federal Family Education Loan ("FFEL") Program loans must be included in an IDR waiver, as they have been saddled with unmanageable debts for decades, harmed by servicer and guaranty agency misconduct, and consistently excluded from debt relief.

Background

Almost three decades ago, in recognition of the massive burden that student loan debt imposes on American households, Congress introduced one of the most vital protections available in any consumer financial market: income-driven repayment.[1] From its inception and throughout its expansion across successive presidential administrations, IDR has been shaped by three core principles: that federal borrowers should be able to afford their monthly student loan bills, that the most financially strapped borrowers should enjoy safeguards from delinquency and default, and, perhaps most importantly, that student loan debt should never become a lifelong affliction.[2] In implementing the latter precept, the U.S. Department of Education ("ED") has entitled federal student loan borrowers in IDR to debt cancellation after 20 to 25 years of consistent, on-time repayment based on the borrower's loan type and particular IDR plan.[3]

The promise of eventual debt cancellation through IDR is a key source of hope for millions of borrowers, many of whom make substantial personal sacrifices even while enrolled in IDR to remain current on their loans.[4] Moreover, the assumption that IDR generally delivers cancellation as promised is the cornerstone of significant federal policy and case law. For instance, the legal regime that makes it extremely difficult for borrowers to discharge student loan debt in bankruptcy partly stems from the assumption that IDR makes student loan payments

[1] https://journals.sagepub.com/doi/abs/10.1177/0002716217701673.
[2] https://protectborrowers.org/idr-history-report/.
[3] https://studentaid.gov/manage-loans/repayment/plans/income-driven.
[4] https://protectborrowers.org/idr-unaffordability-report/.

manageable.[5] Similarly, there is a growing body of policy research that frames substantial intervention to alleviate student debt burdens, such as through broad-based cancellation, as unnecessary based on the assumption that IDR can be a source of meaningful relief for most borrowers struggling with student loan debt.[6]

Unfortunately, the promise of eventual debt relief through IDR has proven to be completely broken. Though debt cancellation under IDR has been available for qualifying borrowers since at least 2016, ED data accessed through the Freedom of Information Act ("FOIA") revealed last year that only 32 borrowers have *ever* successfully achieved cancellation via IDR.[7] For relative scale, information uncovered by U.S. Senator Elizabeth Warren indicates that more than 4.4 million borrowers have been in repayment for 20 years or more.[8] Worse, the situation for borrowers pursuing cancellation through IDR appears unlikely to improve. An internal analysis conducted by one large student loan servicer recently found that of the more than 8.5 million borrowers whose federal student loans it manages, only 48 are projected to receive debt cancellation under IDR by 2025.[9] This overall estimate involved the projection of an 83 percent *reduction* between 2022 and 2025 in the number of borrowers that will receive cancellation through IDR each year, prompting one company employee to remark in uncovered emails that the number of borrowers securing cancellation seemed "very low."[10]

The systematic collapse of the promise of relief that Congress made to borrowers flows from decades of inaction, incompetence, and unfortunately frequent malfeasance from federal policymakers, regulators, and the student loan industry. For example, over the past several years, state attorneys general across the country and the Consumer Financial Protection Bureau have brought public enforcement actions against ED's largest student loan servicing contractors for a wide range of abuses related to borrowers' access to IDR, including deploying abusive forbearance steering tactics, deceiving borrowers regarding their obligation to annually recertify income, and failing to timely process IDR applications.[11] These abuses—conducted by the very same companies tasked with guiding borrowers through repayment and empowering them to access their protections under the law—will add years or decades to borrowers' repayment sequences even if they are eventually able to access IDR at all. By that time, borrowers will likely have undergone extensive but entirely unnecessary financial hardship including periods of disastrous delinquency or default.

A recent settlement between 39 states attorneys general and the federal student loan servicing giant Navient demonstrates that servicers have consistently and recklessly engaged in a startling

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[5] https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/07/Help-or-Hardship.pdf.

[6] https://bfi.uchicago.edu/insight/finding/the-distributional-effects-of-student-loan-forgiveness/.

[7] https://protectborrowers.org/new-government-data-exposes-complete-failure-of-education-departments-income-driven-repayment-program/.

[8] https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf#page=2.

[9] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=18.

[10] *Id.*

[11] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=15.

variety of abusive practices with long-term consequences for borrowers.[12] While beneficial for some private loan borrowers, the terms of the settlement will not provide relief for the millions of borrowers who lost years of credit towards federal loan forgiveness and over-paid on their monthly student loan bills because of student loan servicers' illegal activities. This episode is yet another instance of the policy apparatus and specifically the promise of affordability through IDR failing borrowers entirely.

Worse, as with so many aspects of the student debt crisis, the weight of IDR's widespread breakdown has landed most heavily on Black borrowers. In particular, a nationwide survey from The Education Trust recently found that Black federal student loan borrowers struggle to access IDR, and that they continue to face both difficulty affording basic life necessities and an ongoing risk of default on their student loans even when enrolled in IDR.[13] Reflecting on IDR's failure to deliver eventual debt cancellation for Black borrowers, the survey noted that Black borrowers feel that repayment under IDR is "a lifetime debt sentence."[14]

FFEL Borrowers Have Been Robbed of Loan Relief Through IDR

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices related to IDR have had on FFEL borrowers. For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled.[15]

1. Deborah, a USPS worker, took out a FFEL loan of approximately $9,500 to attend college in 1983. Nearly 40 years later, because of servicer misconduct and the prohibitive 9% interest rate on her FFEL loans, she owes $43,000. Deborah's servicer consolidated her FFEL loans in 2003 against her request, upon which her loan balance increased to $28,000. She made payments when she could but did not have steady employment. When she started working at USPS, she started making regular payments but entered forbearance while she was buying a house. Her loan balance ballooned. Over the past several years, she pays $280 a month on her student loans on an income driven plan, though her payments recently rose to $350 a month. When she called her servicer to tell her she was having difficulty affording the payments, they offered to put her loans into forbearance once again. She declined. She recently checked her statement and realized her servicer put her in a 3-month forbearance against her request, meaning interest will continue to capitalize on her loans. Forty years after attending college, Deborah's loan balance has quadrupled despite making payments, and she feels trapped in a cycle of ever-growing student loan debt.

2. Jessica is 65 years old and borrowed $39,000 in FFEL loans for a master's degree in 1987-91. She has paid off about $26,000 since 1992 but currently owes $250,000—more than six times what she originally borrowed. Jessica was only able to access an IDR plan around 4 years ago because her servicer did not previously tell her it was an option. On

[12] https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/.
[13] https://edtrust.org/resource/jim-crow-debt/.
[14] *Id.*
[15] Names changed for borrowers' privacy.

this plan, she still pays $225 per month, and she will be 86 years old by the time she can finish paying off her loans. Jessica retired from teaching full-time and now works part-time teaching workshops at a local community college. Jessica had two children while in school and then a few years later got divorced. She had to scrape by for years and wasn't able to make loan payments. She has no other debt, paid off her undergraduate student loans, and no assets. Her two kids graduated from college with loans and paid them off. She has considered filing for bankruptcy, but a lawyer told her that her loans will not be dischargeable. Jessica was hoping she would get relief through the Public Service Loans Forgiveness ("PSLF") program, but though she worked for more than 25 years in public service, she does not yet have 10 years of qualifying payments even with the waiver. And, since she retired from full-time work, her part-time teaching does not provide credit for public service going forward. She has had to continue making payments through the COVID-19 pandemic, as FFEL loans were not eligible for the payment pause. While she struggled to make these payments, she did not consolidate into the Direct loan program because she didn't want to further increase her overall balance. After nearly 30 years of being in debt for graduate school, and another two decades of payments facing her, Jessica will have been trapped in her FFEL loan debt for her entire adult life.

3. John from Virginia owes about $7,500 on a FFEL Stafford loan, which requires a payment of $463 a month on an IBR plan. When he read about federal loans being put on hold during the pandemic, he assumed his loans were included. He made his last payment in February 2020, and a few months later received a letter saying his loan went into default. He lost his job during the pandemic, and for a while was able to get Virginia unemployment benefits of $378 a week. His monthly mortgage is $1,716, along with $700 in other monthly bills, and $463 for the FFEL loan—making things totally unmanageable. He does not understand why he has been left out of COVID relief. He thought that the payment pause would help with his financial dilemma but instead it added more stress.

4. Marie attended a for-profit college, California Institute, for fewer than two weeks in 1989. She was living in project-based housing where the school targeted residents to attend its school. Even after Marie withdrew, her school reported that she had remained in the course for several more weeks to keep her financial aid. Two FFEL loans were disbursed in her name, for $2,625 with 8% interest and for $2,800 with 12% interest, which she consolidated in 1995 to a loan balance of $8,774, which were incorrectly set at a 12% interest rate. Twenty-four years after consolidation, her loan balance is now over $105,000, for 2 weeks of college. Marie's servicer, American Education Services ("AES") never informed her of income-driven repayment options and steered into unhelpful forbearances and deferments, which exacerbated the exponential growth of her loan balance. During this time, Marie was earning an average of $20,000 gross for a household of two and would have qualified for $0 or otherwise very low payments under IBR. While her FFEL Consolidation loan appears to have never fallen into default, she did not learn of IDR until she went to a legal aid office for help in 2018, three decades after she attended school. Instead, AES told her that her only option would be to stay in school or put her loans on forbearance or deferment. She continued her education and obtained two degrees and seven certificates. After she could no longer attend school,

> Marie was put into forbearances and applied for several economic hardship deferments. Legal aid helped Marie submit an Income-Based Repayment request in 2018 and it was approved for $0 a month payment. Additionally, because California Institute regularly and unlawfully kept refunds that should have been returned to the Department after students withdrew, legal aid also submitted an unpaid refund request application to her guaranty agency, Ascendium. The guaranty agency denied the application.

As these stories illustrate, FFEL borrowers have for decades buckled under the weight of enormous balances, high interest rates, and are consistently left out of relief options. The FFEL program was terminated in 2010, meaning as of the date of this paper, borrowers who have FFEL loans have been in repayment for a minimum of 12 years, and often for much longer.

FFEL borrowers are only eligible for one IDR plan—Income-Based Repayment ("IBR"), which is one of the least generous IDR plans, costing the lesser of 15% of a borrower's discretionary income or the 10-year Standard Plan monthly payment amount. To access all other IDR plans, FFEL borrowers who are able to must go through the extra step of consolidating their loans, which is a multi-step process involving burdensome paperwork. This step also erases all of a borrower's previous payment history, adding another 20-25 years of payments onto the loan. As the stories above illustrate, many FFEL borrowers have never been advised by their servicer that they are eligible for IDR, and are instead pushed into periods of forbearance and deferment. By the time borrowers are able to access IDR, they have often been through lengthy periods of default, forbearance, and deferments, meaning their loan balances have grown exponentially. Accessing an IDR plan years into repayment may make monthly payments more affordable for FFEL borrowers but adds on decades of payments for borrowers who have already been paying for over a decade. Despite the program ending in 2010, FFEL lenders, guaranty agencies and servicers continue to stay in business and FFEL borrowers' balances only seem to grow.[16]

Despite the significant burdens these borrowers face, FFEL borrowers have consistently been left out of debt relief options. Until the recent waiver, PSLF was not available for FFEL borrowers who worked in public service. And FFEL borrowers who fell on hard times during COVID-19 were only provided relief if they defaulted, and kept having to make payments through the pandemic.

An IDR waiver must include FFEL borrowers, who have been suffering under the weight of student loans for decades, with little relief in sight.

ED Can and Must Act to Restore the Promise of Relief through IDR

In October, the Biden administration initiated a sweeping waiver to address longstanding, wide-ranging failures plaguing the PSLF program.[17] This waiver allowed hundreds of thousands of borrowers to bypass byzantine administrative burdens, sweep aside the lingering effects of past

[16] Indeed, despite the program ending in 2010, states that underwrite bonds with FFELP loans have projected that payments will continue into 2044. *See e.g.*, https://www.hesaa.org/Documents/Financial/AuditedFinancialStatements/2009/NJCLASS_FFELP_2009.pdf.

[17] https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness.

servicing abuses, and rise from the wreckage of decades-long policy blunders to access earned relief.[18] For tens of thousands of borrowers, that relief included immediate debt forgiveness.[19]

Now, borrowers and a broad coalition of advocates are calling on the Biden administration to use authorities already at its disposal to initiate a similarly bold program to deliver justice and relief to the millions of borrowers who have been denied the promise of IDR.[20] As outlined in a white paper co-authored by the Student Borrower Protection Center, the Center for Responsible Lending, and the National Consumer Law Center, this waiver would involve the use of administrative data to retroactively count all months since borrowers entered repayment as qualifying months towards forgiveness under IDR, regardless of the borrower's loan type or prior repayment plan.[21] A coalition of more than 100 unions, consumer protection organizations, and non-profit groups that represent a broad and diverse population of low- to middle-income student borrowers and workers across the country recently signed a letter in support of this proposed IDR waiver.[22]

Until the Biden administration takes substantial action such as implementing the proposed IDR waiver, however, borrowers will continue languishing under the weight of system-wide failure and broken promises. The weight that these borrowers face goes far beyond what may be captured in any statistic outlining how few borrowers have secured cancellation through IDR, how many borrowers continue to face delinquency and default, and how many decades borrowers have been trapped in repayment. The failure of IDR means years of lost payments, rippling financial ruin, and broken promises between citizens and their government at every level.

Servicers have too long put their financial profits ahead of borrowers' financial security. The Biden administration must choose to right that wrong by implementing an IDR waiver that will include FFEL borrowers and provide credit towards loan forgiveness for borrowers' time in default, forbearance, and deferment.

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[18] *Id.*
[19] *Id.*
[20] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.
[21] https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/.
[22] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

From: Persis Yu
Subject: [FOR TRANSMITTAL] Memorandum on IDR Waiver: PHEAA Borrower Voices on the Incomplete Promise of Relief through IDR
To: Kvaal, James; Cordray, Richard; Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Latreille, Bonnie; Campbell, Patrick; Foss, Ian; Habash, Tariq; Darcus, Joanna
Cc: Mike Pierce; Christopher Hicks; Claire Torchiana; Benjamin Kaufman
Sent: March 30, 2022 3:41 PM (UTC-04:00)
Attached: SBPC IDR Complaint Memo - PHEAA 3.30.22.pdf

Dear ED and FSA Colleagues,

Attached please find a memorandum highlighting the voices of federal student loan borrowers who demonstrate the need for an IDR waiver. In particular, this memo highlights the voices of borrowers whose loans were serviced by PHEAA.

Thank you for all the work that you are doing to help student loan borrowers. Please do not hesitate to contact me if you have any questions or if you would like to discuss this further.

Best,
Persis

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Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

STUDENT BORROWER PROTECTION CENTER

MEMORANDUM

March 30, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center

RE: **PHEAA Borrower Voices on the Incomplete Promise of Relief through IDR**

Overview

The promise of affordability and loan relief through income-driven repayment ("IDR") options has largely been broken, plagued by failed policy, unwieldy regulatory requirements, and industry misconduct. A waiver that would credit all of a borrower's time since the start of repayment—irrespective of loan status or payment history—towards forgiveness under IDR would be a powerful step toward finally restoring the purpose of the law. Abusive student loan servicers have greatly undermined the benefits of IDR, including debt cancellation, through illegal forbearance steering and misadvice to borrowers. While these actions have mostly been publicized as they relate to the conduct of one servicer, Navient, they are not limited to one bad actor but are instead prevalent across the industry. As the following memorandum describes in detail, borrowers whose loans are serviced by the Pennsylvania Higher Education Assistance Agency ("PHEAA"), also known as AES and FedLoan Servicing, have been robbed of the forgiveness they are entitled to under IDR due to the company's harmful practices.

Background

Almost three decades ago, in recognition of the massive burden that student loan debt imposes on American households, Congress introduced one of the most vital protections available in any consumer financial market: income-driven repayment.[1] From its inception and throughout its expansion across successive presidential administrations, IDR has been shaped by three core principles: that federal borrowers should be able to afford their monthly student loan bills, that the most financially strapped borrowers should enjoy safeguards from delinquency and default, and, perhaps most importantly, that student loan debt should never become a lifelong affliction.[2] In implementing the latter precept, the U.S. Department of Education ("ED") has entitled federal student loan borrowers in IDR to debt cancellation after 20 to 25 years of consistent, on-time repayment based on the borrower's loan type and particular IDR plan.[3]

The promise of eventual debt cancellation through IDR is a key source of hope for millions of borrowers, many of whom make substantial personal sacrifices even while enrolled in IDR to

[1] https://journals.sagepub.com/doi/abs/10.1177/0002716217701673.
[2] https://protectborrowers.org/idr-history-report/.
[3] https://studentaid.gov/manage-loans/repayment/plans/income-driven.

remain current on their loans.[4] Moreover, the assumption that IDR generally delivers cancellation as promised is the cornerstone of significant federal policy and case law. For instance, the legal regime that makes it extremely difficult for borrowers to discharge student loan debt in bankruptcy partly stems from the assumption that IDR makes student loan payments manageable.[5] Similarly, there is a growing body of policy research that frames substantial intervention to alleviate student debt burdens, such as through broad-based cancellation, as unnecessary based on the assumption that IDR can be a source of meaningful relief for most borrowers struggling with student loan debt.[6]

Unfortunately, the promise of eventual debt relief through IDR has proven to be completely broken. Though debt cancellation under IDR has been available for qualifying borrowers since at least 2016, ED data accessed through the Freedom of Information Act ("FOIA") revealed last year that only 32 borrowers have *ever* successfully achieved cancellation via IDR.[7] For relative scale, information uncovered by U.S. Senator Elizabeth Warren indicates that more than 4.4 million borrowers have been in repayment for 20 years or more.[8] Worse, the situation for borrowers pursuing cancellation through IDR appears unlikely to improve. An internal analysis conducted by one large student loan servicer recently found that of the more than 8.5 million borrowers whose federal student loans it manages, only 48 are projected to receive debt cancellation under IDR by 2025.[9] This overall estimate involved the projection of an 83 percent *reduction* between 2022 and 2025 in the number of borrowers that will receive cancellation through IDR each year, prompting one company employee to remark in uncovered emails that the number of borrowers securing cancellation seemed "very low."[10]

The systematic collapse of the promise of relief that Congress made to borrowers flows from decades of inaction, incompetence, and unfortunately frequent malfeasance from federal policymakers, regulators, and the student loan industry. For example, over the past several years, state attorneys general across the country and the Consumer Financial Protection Bureau have brought public enforcement actions against ED's largest student loan servicing contractors for a wide range of abuses related to borrowers' access to IDR, including deploying abusive forbearance steering tactics, deceiving borrowers regarding their obligation to annually recertify income, and failing to timely process IDR applications.[11] These abuses—conducted by the very same companies tasked with guiding borrowers through repayment and empowering them to access their protections under the law—will add years or decades to borrowers' repayment sequences even if they are eventually able to access IDR at all. By that time, borrowers will likely have undergone extensive but entirely unnecessary financial hardship including periods of disastrous delinquency or default.

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[4] https://protectborrowers.org/idr-unaffordability-report/.
[5] https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/07/Help-or-Hardship.pdf.
[6] https://bfi.uchicago.edu/insight/finding/the-distributional-effects-of-student-loan-forgiveness/.
[7] https://protectborrowers.org/new-government-data-exposes-complete-failure-of-education-departments-income-driven-repayment-program/.
[8] https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf#page=2.
[9] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=18.
[10] *Id.*
[11] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=15.

A recent settlement between 39 states attorneys general and the federal student loan servicing giant Navient demonstrates that servicers have consistently and recklessly engaged in a startling variety of abusive practices with long-term consequences for borrowers.[12] While beneficial for some private loan borrowers, the terms of the settlement will not provide relief for the millions of borrowers who lost years of credit towards federal loan forgiveness and over-paid on their monthly student loan bills because of student loan servicers' illegal activities. This episode is yet another instance of the policy apparatus and specifically the promise of affordability through IDR failing borrowers entirely.

Worse, as with so many aspects of the student debt crisis, the weight of IDR's widespread breakdown has landed most heavily on Black borrowers. In particular, a nationwide survey from The Education Trust recently found that Black federal student loan borrowers struggle to access IDR, and that they continue to face both difficulty affording basic life necessities and an ongoing risk of default on their student loans even when enrolled in IDR.[13] Reflecting on IDR's failure to deliver eventual debt cancellation for Black borrowers, the survey noted that Black borrowers feel that repayment under IDR is "a lifetime debt sentence."[14]

The Role of PHEAA in Breaking the Promise of IDR

PHEAA is a massive financial services company and quasi-governmental agency established by the Commonwealth of Pennsylvania. Initially chartered by the state legislature "to improve the higher educational opportunities of persons who are residents of [Pennsylvania] . . . by assisting them in meeting their expenses of higher education,"[15] it has grown to service, guaranty, and lend hundreds of billions of dollars of student loans held by public and private actors alike.

Whereas PHEAA opened for business in 1964 with a quaint portfolio of about 5,000 loans,[16] at its peak the company grew to handle one out of every ten dollars of non-mortgage consumer debt in the United States.[17] The bulk of this servicing involved federal student loans, with PHEAA ultimately serving hundreds of billions of dollars of federal student loan debt owed by tens of millions of people in and beyond the Commonwealth.

As PHEAA rapidly grew, its record of poor job performance has combined with a glaring lack of accountability mechanisms to spell doom for countless Americans' financial lives. PHEAA proved to be a central player in every major student loan industry scandal of the last decade,

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[12] https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/.
[13] https://edtrust.org/resource/jim-crow-debt/.
[14] *Id.*
[15] 24 Pa. Cons. Stat. § 5105 (1963), https://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1963/0/0290..PDF.
[16] Michael Brown, *FedLoan Servicing Student Loans – Overview and Repayment Options*, Nitro (July 24, 2019), https://www.nitrocollege.com/student-loan-servicers/fedloan.
[17] Seth Frotman & Ben Carter, *Demanding Justice in the Bluegrass State*, Domino: A Blog About Student Debt, (Jan. 2, 2019), https://protectborrowers.org/demanding-justice-in-the-bluegrass-state/.

targeting student loan borrowers coast to coast with illegal and abusive practices and becoming a regular subject of rebuke by government accountability watchdogs.[18]

In 2017, Massachusetts Attorney General Maura Healy filed a lawsuit against the company, alleging that PHEAA disqualified thousands of public servants—who had made years of faithful loan repayments—from loan forgiveness through malfeasance and active misinformation. The case was settled, requiring the company to make corrections to borrowers' IDR qualifying payment counts, though unfortunately some borrowers have not been made whole.[19]

Massachusetts alleged that PHEAA "failed to process borrowers' IDR applications timely and properly, thereby depriving borrowers of the opportunity to make qualifying monthly payments that count towards loan forgiveness. To accommodate its processing delays, PHEAA has put borrowers' accounts into forbearance status, which is not a qualifying repayment plan for loan forgiveness under PSLF or IDR plans."[20] When this causes public servants to lose out on qualifying payments, the lawsuit adds, "PHEAA does not remediate borrowers accounts to account for the lost months. Borrowers therefore bear the brunt of PHEAA's servicing failures."[21] And while, "PHEAA is aware that its delays in processing IDR applications have caused borrowers to lose the opportunity to make qualifying monthly payments for loan forgiveness . . . and has received numerous complaints about processing delays and issues . . . PHEAA has not rectified the problem."

Other government entities have similarly found widespread misconduct by PHEAA. In a February 2019 report, the ED Inspector General ("IG") described PHEAA's servicing work by saying:

> *"[ED] listened to 99 borrower calls [from PHEAA]. It determined that, for 24 (24.2 percent) of the 99 calls, servicer representatives did not provide the borrowers with sufficient information regarding their available options.* ***PHEAA granted forbearances to 17 borrowers when they might have benefitted from a different option,*** *such as possible deferment or income-driven repayment. PHEAA either*

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[18] U.S. Gov't Accountability Off., GAO-15-314, Higher Education: Better Management of Federal Grant and Loan Forgiveness Programs for Teachers Needed to Improve Participant Outcomes 26 (2015), https://www.gao.gov/assets/670/668634.pdf; U.S. Gov't Accountability Off., GAO-15-663, Federal Student Loans: Education Could Do More to Help Ensure Borrowers Are Aware of Repayment and Forgiveness Options (2015), https://www.gao.gov/assets/680/672136.pdf; U.S. Gov't Accountability Off., GAO-18-547, Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers (2018), https://www.gao.gov/assets/700/694304.pdf; U.S. Gov't Accountability Off., GAO-19-595, Public Service Loan Forgiveness: Improving the Temporary Expanded Process Could Help Reduce Borrower Confusion (2019), https://www.gao.gov/assets/710/701157.pdf. See also U.S. Dep't. of Educ., Office of Inspector Gen., ED-OIG/A09Q0003, The Department's Communication Regarding the Costs of Income-Driven Repayment Plans and Loan Forgiveness Programs (2018), https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09q0003.pdf.

[19] https://www.mass.gov/news/ag-healey-secures-first-of-its-kind-relief-in-settlement-with-major-student-loan-servicer.

[20] Complaint at 9, Commonwealth v. Pa. Higher Educ. Assistance Agency, No. 1784CV02682 (Mass. Super. Aug. 23, 2017), https://buckleyfirm.com/sites/default/files/Buckley%20Sandler%20InfoBytes%20-%20Commonwealth%20of%20Massachusetts%20v.%20Pennsylvania%20Higher%20Education%20Assistance%20Agency%20-%20Complaint%202017.08.23.pdf.

[21] *Id.* at 10.

> *provided the other seven borrowers with* ***inaccurate information*** *regarding their options or* ***did not follow internal procedures*** *regarding the order of delinquency resolution options. The* ***24.2 percent rate of noncompliance*** *was additional evidence (to the 8.8 percent rate disclosed in the failed-call report for the same month) of a* ***pattern of noncompliance at PHEAA.***"[22]

PHEAA was not the only subject of the audit, but the "pattern of noncompliance" the IG described certainly contributed to the assessment that FSA needed to "use the contractual accountability provisions available, such as requiring the return of funds or reducing future loan volume, to hold servicers accountable for instances of noncompliance . . . ."[23]

Most recently, Colorado Attorney General Phil Weiser filed a lawsuit against PHEAA after the company refused to fully comply with state law requiring consumer protection oversight.[24] While PHEAA refused to provide the attorney general with a request for records related to PHEAA's handling of student loans during the COVID-19 pandemic, the suit notes that PHEAA has been discovered to have a "pattern of noncompliance … with regard to PHEAA's failure to provide sufficient information regarding available repayment options and, in calls monitored by FSA between PHEAA and borrowers, PHEAA's failed-call rate was significantly higher (10.6%) than the average failed-call rate for all federal loan servicers (4.3%)."[25]

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices by PHEAA related to IDR have had on borrowers, leaving the promise that Congress made through IDR unfulfilled:[26]

1. Crystal G. from Texas: "When I first graduated with my Masters in Social Work degree, I made less than $30,000 a year. I called in numerous times when I was unable to afford the full payment; and instead of offering solutions such as IDR or making a partial payment, I was encouraged to take a financial/economic deferment or forbearance. Now, despite paying on my loans for over 10 years now, I am still several years away from PSLF forgiveness; all because I did what I was encouraged to do by my loan servicer. If I had the opportunity at the time, I would have gladly paid what I could with either a partial payment or IDR."

2. Linda L. from New York: "I took student loans out for my BA, masters and doctorate degrees. I have been in and out of deferment, forbearance and never in IDR until now. I called when I took three years off to care for my children and I was not working and told

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[22] U.S. Dep't. of Educ., Office of Inspector Gen., *Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans*, for example, ED-OIG/A05Q0008, Fed. Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans 13 (2019), https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf.

[23] *Id.* at 2.

[24] Complaint at 4, Fulford v. Pennsylvania Higher Education Assistance Agency, No. 2021cv31665 (Dist. Ct. City and Cnty of Denver, Colo. May 26, 2021), https://coag.gov/app/uploads/2021/05/2021-05-26-PHEAA-Complaint.pdf.

[25] *Id.* at 4.

[26] Submitted to and on file with the Student Borrower Protection Center.

forbearance was my only option and I stupidly agreed. I am on a medical leave now due to getting long term covid at school. I know now not working to ask for an IDR. I am older, wiser, and yes more jaded and I do not trust FedLoan."

3. Jane from Ohio: "I have always struggled to make payments. . . . I always was put on forbearance or economic hardship. I made smaller payments throughout. $50-150 when I could. I thought it was my only option. I now owe more than what I started with after grade school 14 years ago. I'm a speech-pathologist in the schools and we can only get paid so much. I lived in a state where my salary was the same for quite a few years."

4. Shakeeda B. from Massachusetts: "My student servicer encouraged me apply for deferment and forbearance instead of applying for an IDR plan [and] because of that my loans went into default and my income tax was intercepted … that my family and I depend on because we live significantly below the poverty line. Not being in IDR where I would have had a payment of $0 has not only pushed back my payoff date but has also been a huge financial burden on myself and my family."

5. Melissa N. from New York: "When I was in my medical training, I was counseled by the loan specialists to go into forbearance rather than being told that my income-based payment would be nearly $0 and actually affordable. My loans accrued a ton of interest and delayed my application for pslf. I could have been forgiven by now and have money to save for my children. Instead, because I was incorrectly advised and steered to forbearance, I have years of payments left on my loans."

6. Rhonda D. from Kentucky: "I was put in forbearance being told as long as I paid something each month my interest would be controlled and my payments would count. This was false! Although I paid at least $300.00 every single month I only have 38 qualifying payments. I have worked in healthcare since 1998. All of my employment has been approved and yet the waiver has not helped me. I graduated in 2008 with a masters in nursing (working my way up from a nursing assistant, a LPN, an associate degree RN, a BSN and finally a APRN. I had $99k in debt which wasn't too bad. But after all the fees and interest I now owe $133k, I'm 61, and feel so hopeless. I have been misled and misinformed. I'm grateful for the opportunity I've had to serve God through helping so many patients over the years. But I'm really tired. I feel I will go to my grave owing for this education that was supposed to be a better life for my family."

There is a real person behind each of these stories—one who reached out for help and would have been on track for forgiveness if they had been given correct information on IDR. Then, regardless of the life plans they had made, they found their financial life imperiled by PHEAA. For many, that peril is now a permanent financial reality.

ED Can and Must Act to Restore the Promise of Relief through IDR

In October, the Biden administration initiated a sweeping waiver to address longstanding, wide-ranging failures plaguing the PSLF program.[27] This waiver allowed hundreds of thousands of borrowers to bypass byzantine administrative burdens, sweep aside the lingering effects of past servicing abuses, and rise from the wreckage of decades-long policy blunders to access earned relief.[28] For tens of thousands of borrowers, that relief included immediate debt forgiveness.[29]

Now, borrowers and a broad coalition of advocates are calling on the Biden administration to use authorities already at its disposal to initiate a similarly bold program to deliver justice and relief to the millions of borrowers who have been denied the promise of IDR.[30] As outlined in a white paper co-authored by the Student Borrower Protection Center, the Center for Responsible Lending, and the National Consumer Law Center, this waiver would involve the use of administrative data to retroactively count all months since borrowers entered repayment as qualifying months towards forgiveness under IDR, regardless of the borrower's loan type or prior repayment plan.[31] A coalition of more than 100 unions, consumer protection organizations, and non-profit groups that represent a broad and diverse population of low to middle income student borrowers and workers across the country recently signed a letter in support of this proposed IDR waiver.[32]

Until the Biden administration takes substantial action such as implementing the proposed IDR waiver, however, borrowers will continue languishing under the weight of system-wide failure and broken promises. The weight that these borrowers face goes far beyond what may be captured in any statistic outlining how few borrowers have secured cancellation through IDR, how many borrowers continue to face delinquency and default, and how many decades borrowers have been trapped in repayment. The failure of IDR means years of lost payments, rippling financial ruin, and broken promises between citizens and their government at every level.

Servicers have too long put their financial profits ahead of borrowers' financial security. The Biden administration must choose to right that wrong by implementing a IDR waiver that will provide credit towards loan forgiveness for borrowers' time in default, forbearance, and deferment.

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[27] https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness.
[28] *Id.*
[29] *Id.*
[30] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.
[31] https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/.
[32] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

From: Persis Yu
Subject: [FOR TRANSMITTAL] Memorandum on Specific Details on How to Implement an IDR Restoration Program
To: Kvaal, James; Cordray, Richard; Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Latreille, Bonnie; Campbell, Patrick; Foss, Ian; Habash, Tariq; Darcus, Joanna
Cc: Mike Pierce; Christopher Hicks; Claire Torchiana; Abby Shafroth; Kyra Taylor; Alpha Taylor; cody hounanian; Natalia Abrams; taylor.roberson@responsiblelending.org
Sent: April 11, 2022 5:24 PM (UTC-04:00)
Attached: CRL-NCLC-SBPC-SDCC IDR Waiver Details Memo 4.11.22.pdf

Dear colleagues,

Attached please find a memorandum by the Student Borrower Protection Center, Center for Responsible Lending, National Consumer Law Center, and Student Debt Crisis Center with specific details on how we think the IDR restoration program should work for various borrower groups.

We request a meeting with you to discuss these details in the next few days.

Thank you for your continued work to protect student loan borrowers. We look forward to meeting with you.

Best,
Persis
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Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

Memorandum

Date: April 11, 2022
To: Interested Parties
From: Student Borrower Protection Center; Center for Responsible Lending; National Consumer Law Center; Student Debt Crisis Center
RE: Specific Details on How to Implement an IDR Restoration Program

As described in a whitepaper by the Student Borrower Protection Center, National Consumer Law Center, and Center for Responsible Lending, at the most basic level, an IDR restoration program should:

1. **On a retroactive basis, count all months since the borrower entered repayment following their grace period as qualifying months towards loan forgiveness**, regardless of which repayment plan the borrower was in, and whether they were in forbearance, deferment, or default. These months would also qualify towards Public Service Loan Forgiveness credit for borrowers working full-time in public service.

2. **Provide relief automatically.** All of the data that the Department of Education needs in order to implement the IDR restoration program is readily available through NSLDS. Borrowers should not need to affirmatively apply for this relief.

3. **Ensure that all federal loan borrowers, regardless of loan program, have access to the IDR restoration program**, including Parent PLUS, FFEL and Perkins/HEAL loans borrowers, who have so often been left behind by relief programs.

Beyond these base principles, below are further details on how we think the IDR restoration program should work. The waiver of the various IDR requirements and automatic loan forgiveness would be accomplished through the Secretary's use of HEROES authority and 20 U.S.C. § 1082(a) settlement and compromise authority.[1]

First, for all borrowers, we recommend the following:

1. Apply a maximum 20 year time period until forgiveness.
2. Treat borrowers who consolidate their loans fairly by counting all time pre- and post-consolidation, starting from when underlying loans entered repayment, toward the forgiveness period. As the Department of Education has recognized in its proposals for IDR during the 2021 negotiated rulemaking, it is critical to count pre- and post-consolidation time to fully capture time a borrower has spent in repayment. The current practice of not doing so is arbitrary and unfair.

[1] For example, HEROES authority could be used to modify the definition of economic hardship deferment, which counts towards IDR forgiveness, to include all periods of forbearance, delinquencies, and default and all types of deferment in addition to economic hardship.

Below is a table of how various borrower groups should be treated under an IDR restoration program. For FFEL borrowers, Parent PLUS borrowers, and Perkins/HEAL borrowers with less than 20 years of repayment history and who are not enrolled in the relevant IDR plan, we have provided multiple options that the Department could take to provide meaningful relief.

Borrower/Loan Situation	**Actions(s)**
Direct loan borrowers with 20+ years of repayment	Automatically discharge loans, regardless of whether the borrower is enrolled in an IDR plan.
Direct loan borrowers with fewer than 20 years of repayment who are enrolled in an IDR plan when the waiver is enacted	Automatically provide credit towards the IDR plan in which the borrower is enrolled.
Direct loan borrowers with fewer than 20 years of repayment who are NOT enrolled in an IDR plan when the waiver is enacted	Automatically provide qualifying months towards IDR forgiveness credit for all months of payment/deferment/forbearance/default since exited grace period. These "credits" can go towards any IDR plan, but the borrower will have to eventually enroll in one to benefit from forgiveness.
FFEL borrowers with 20+ years of repayment, regardless of whether they are enrolled in an IBR plan	Automatically discharge loans, regardless of whether the borrower is enrolled in the IBR plan.
FFEL borrowers with fewer than 20 years of repayment who are enrolled in IBR when the waiver is enacted	Automatically provide credit towards IBR for all months of payment/deferment/forbearance/default since exited grace period.
FFEL borrowers with fewer than 20 years of repayment who are NOT enrolled in IBR when the waiver is enacted	Automatically provide credit towards IBR for all months of repayment/deferment/forbearance/default since exited grace period. The borrower will have to eventually enroll in IBR plan to benefit from forgiveness.
	The Department purchases FFEL portfolio to consolidate all remaining FFEL loans into Direct loans and provide credit for all of the borrower's time with the FFEL loan, including deferment/default/forbearance. These qualifying payment credits can go towards any IDR plan, but the borrower will have to enroll in one to benefit from

	forgiveness.
	Borrowers are given the option to consolidate into Direct loans (provide a special waiver period to waive interest capitalization). Use HEROES to ensure all time pre-consolidation is counted towards IDR forgiveness period. Borrowers would have to eventually enroll in an IDR plan to benefit from forgiveness.
Parent PLUS borrowers with 20+ years of repayment	Automatically discharge loans, regardless of whether the borrower is enrolled in an IDR plan, and regardless of whether the borrower has consolidated their Parent PLUS loans into a Direct Consolidation Loan.
Parent PLUS borrowers with fewer than 20 years of repayment who are on an ICR plan	Automatically provide credit towards ICR forgiveness period.
Parent PLUS borrowers with fewer than 20 years of repayment who are NOT on ICR plan	Automatically provide credit towards ICR for all months of payment/deferment/forbearance/default since exited grace period. Borrowers will eventually have to consolidate and enroll in ICR to benefit from forgiveness. Use HEROES waiver to ensure that all time pre-consolidation is counted towards ICR forgiveness period.
	Automatically provide credit towards any IDR plan.Waive provisions that bar parent PLUS borrowers from accessing non-ICR IDR plans. Borrowers who enroll in any IDR plan during the waiver window will be allowed to remain in that plan for the remaining life of their loan.
	Borrowers are given the option to consolidate their Parent PLUS loans separately into Direct Consolidation loans (special waiver period to waive interest capitalization, and assistance to ensure borrowers with both Parent PLUS and non-Parent PLUS separate consolidations so their non-Parent PLUS loans remain eligible for more IDR plans). All time pre-consolidation is counted towards ICR forgiveness period. Borrowers would have to

	eventually enroll in ICR plan to benefit from forgiveness.
Perkins/HEAL borrowers with 20+ years of repayment	Automatically discharge loans.
Perkins/HEAL borrowers with fewer than 20 years of repayment	Automatically provide credit towards IDR for all months of payment/deferment/forbearance/default since exited grace period. Borrowers will eventually have to consolidate and enroll in IDR to benefit from forgiveness. Use waiver to ensure all time pre-consolidation will continue to count towards IDR forgiveness.
	Borrowers are given the option to consolidate into Direct Consolidation loans (special waiver period to waive interest capitalization). All time pre-consolidation is counted towards IDR forgiveness period. Borrowers would have to eventually enroll in an IDR plan to benefit from forgiveness.

Please contact Persis Yu, persis@protectborrowers.org, with any questions or comments.

From: Persis Yu
Subject: [FOR TRANSMITTAL] Memorandum on IDR Waiver: Defaulted Borrower Voices on the Incomplete Promise of Relief through IDR
To: Kvaal, James; Cordray, Richard; Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Latreille, Bonnie; Campbell, Patrick; Foss, Ian; Habash, Tariq; Darcus, Joanna
Cc: Mike Pierce; Christopher Hicks; Claire Torchiana; Benjamin Kaufman
Sent: April 13, 2022 4:43 PM (UTC-04:00)
Attached: SBPC IDR Complaint Memo - Default 4.13.22.pdf

Dear ED and FSA Colleagues,

Attached please find a memorandum highlighting the voices of federal student loan borrowers who demonstrate the need for an IDR waiver. In particular, this memo highlights the voices of defaulted borrowers who are struggling under the weight of unbearable student loan debt.

Thank you for all the work that you are doing to help student loan borrowers. Please do not hesitate to contact me if you have any questions or if you would like to discuss this further.

Best,
Persis

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Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

STUDENT BORROWER PROTECTION CENTER

MEMORANDUM

April 13, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center

RE: **Defaulted Borrower Voices on the Incomplete Promise of Relief through IDR**

Overview

The promise of affordability and loan relief through income-driven repayment ("IDR") options has largely been broken, plagued by failed policy, unwieldy regulatory requirements, and industry misconduct. A waiver that would credit all of a borrower's time since the start of repayment—irrespective of loan status or payment history—towards forgiveness under IDR would be a powerful step towards finally restoring the purpose of the law. Defaulted borrowers must be included. As the data below describes, many if not most borrowers in default would have a $0 or low IDR monthly payment. Instead, defaulted borrowers are subject to involuntary collection through wage garnishment, social security offset, and tax offset resulting in borrowers paying hundreds, if not thousands of dollars more a year than they would in an IDR plan. Millions of borrowers who end up in default were never informed of how to enroll in manageable monthly IDR payments and have instead seen their balances balloon due to penalties and fees.

Background

Almost three decades ago, in recognition of the massive burden that student loan debt imposes on American households, Congress introduced one of the most vital protections available in any consumer financial market: income-driven repayment.[1] From its inception and throughout its expansion across successive presidential administrations, IDR has been shaped by three core principles: that federal borrowers should be able to afford their monthly student loan bills, that the most financially strapped borrowers should enjoy safeguards from delinquency and default, and, perhaps most importantly, that student loan debt should never become a lifelong affliction.[2] In implementing the latter precept, the U.S. Department of Education ("ED") has entitled federal student loan borrowers in IDR to debt cancellation after 20 to 25 years of consistent, on-time repayment based on the borrower's loan type and particular IDR plan.[3]

The promise of eventual debt cancellation through IDR is a key source of hope for millions of borrowers, many of whom make substantial personal sacrifices even while enrolled in IDR to

[1] https://journals.sagepub.com/doi/abs/10.1177/0002716217701673.
[2] https://protectborrowers.org/idr-history-report/.
[3] https://studentaid.gov/manage-loans/repayment/plans/income-driven.

remain current on their loans.[4] Moreover, the assumption that IDR generally delivers cancellation as promised is the cornerstone of significant federal policy and case law. For instance, the legal regime that makes it extremely difficult for borrowers to discharge student loan debt in
bankruptcy partly stems from the assumption that IDR makes student loan payments manageable.[5] Similarly, there is a growing body of policy research that frames substantial intervention to alleviate student debt burdens, such as through broad-based cancellation, as unnecessary based on the assumption that IDR can be a source of meaningful relief for most borrowers struggling with student loan debt.[6]

Unfortunately, the promise of eventual debt relief through IDR has proven to be completely broken. Though debt cancellation under IDR has been available for qualifying borrowers since at least 2016, ED data accessed through the Freedom of Information Act ("FOIA") revealed last year that only 32 borrowers have *ever* successfully achieved cancellation via IDR.[7] For relative scale, information uncovered by U.S. Senator Elizabeth Warren indicates that more than 4.4 million borrowers have been in repayment for 20 years or more.[8] Worse, the situation for borrowers pursuing cancellation through IDR appears unlikely to improve. An internal analysis conducted by one large student loan servicer recently found that of the more than 8.5 million borrowers whose federal student loans it manages, only 48 are projected to receive debt cancellation under IDR by 2025.[9] This overall estimate involved the projection of an 83 percent *reduction* between 2022 and 2025 in the number of borrowers that will receive cancellation through IDR each year, prompting one company employee to remark in uncovered emails that the number of borrowers securing cancellation seemed "very low."[10]

The systematic collapse of the promise of relief that Congress made to borrowers flows from decades of inaction, incompetence, and unfortunately frequent malfeasance from federal policymakers, regulators, and the student loan industry. For example, over the past several years, state attorneys general across the country and the Consumer Financial Protection Bureau have brought public enforcement actions against ED's largest student loan servicing contractors for a wide range of abuses related to borrowers' access to IDR, including deploying abusive forbearance steering tactics, deceiving borrowers regarding their obligation to annually recertify income, and failing to timely process IDR applications.[11] These abuses—conducted by the very same companies tasked with guiding borrowers through repayment and empowering them to access their protections under the law—will add years or decades to borrowers' repayment sequences even if they are eventually able to access IDR at all. By that time, borrowers will

[4] https://protectborrowers.org/idr-unaffordability-report/.
[5] https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/07/Help-or-Hardship.pdf.
[6] https://bfi.uchicago.edu/insight/finding/the-distributional-effects-of-student-loan-forgiveness/.
[7] https://protectborrowers.org/new-government-data-exposes-complete-failure-of-education-departments-income-driven-repayment-program/.
[8] https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf#page=2.
[9] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=18.
[10] *Id.*
[11] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=15.

likely have undergone extensive but entirely unnecessary financial hardship including periods of disastrous delinquency or default.

A recent settlement between 39 states attorneys general and the federal student loan servicing giant Navient demonstrates that servicers have consistently and recklessly engaged in a startling variety of abusive practices with long-term consequences for borrowers.[12] While beneficial for some private loan borrowers, the terms of the settlement will not provide relief for the millions of borrowers who lost years of credit towards federal loan forgiveness and over-paid on their monthly student loan bills because of student loan servicers' illegal activities. This episode is yet another instance of the policy apparatus and specifically the promise of affordability through IDR failing borrowers entirely.

Worse, as with so many aspects of the student debt crisis, the weight of IDR's widespread breakdown has landed most heavily on Black borrowers. In particular, a nationwide survey from The Education Trust recently found that Black federal student loan borrowers struggle to access IDR, and that they continue to face both difficulty affording basic life necessities and an ongoing risk of default on their student loans even when enrolled in IDR.[13] Reflecting on IDR's failure to deliver eventual debt cancellation for Black borrowers, the survey noted that Black borrowers feel that repayment under IDR is "a lifetime debt sentence."[14]

The Failures of IDR Lead the Most Vulnerable Borrowers to Default

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices related to IDR have had on borrowers, particularly those who defaulton their federal student loans. For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled.[15]

1. Shakeeda B. from Massachusetts: "My student servicer encouraged me [to] apply for deferment and forbearance instead of applying for an IDR plan. [B]ecause of that my loans went into default and my income tax was intercepted, income tax that my family and I depend on because we live significantly below the poverty line. Not being [in] IDR where I would have had a payment of $0 has not only pushed back my payoff date but has also been a huge financial burden on myself and my family."

2. Lisa D. from Virginia:[16] "I am a special education teacher who serves my community, helps traumatized children daily, and strives to be an upstanding citizen always. I had a student loan go into default when I had to leave my abusive husband and raise my five children on my own. I just did not have the money but since I was not unemployed and was not in school full time I did not qualify for ceasing payments. My loan was referred to a collection agency, and when I could I communicated with them and set up payments.

[12] https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/.
[13] https://edtrust.org/resource/jim-crow-debt/.
[14] *Id.*
[15] Stories on file with the Student Borrower Protection Center.
[16] https://www.regulations.gov/comment/ED-2021-OUS-0082-23674.

I did apply for a reduction in payment because I could not afford the amount they set, but was given an amount to repay each month larger than the amount of disposable income they stated I had. I was in the process of appealing this when the Covid emergency shut payments down temporarily, however this is not the issue in question. What is the issue is that I do not mind making monthly payments that are commensurate with my finances but I do mind that I was informed the only way to get out of default status is to pay my entire amount owed. I owe approximately $64,000 for education to graduate level and on top of that about $36,000 in collection fees! I am 60 years old but still young and dynamic with many hopes and dreams for the future. Yet, I can never be a homeowner because my debt will probably not be paid for several decades. My abusive ex-husband has gone on to own several properties, including a house worth half a million dollars. But I who had to escape from him and raise five children on my own, will never own a home. I do not think this is fair at all. I think that as long as borrowers can show a certain term of on-time payments, they should be allowed out of default status so they can buy homes and engage in other essential life pursuits and goals. After the default, I paid faithfully and was current on my repayments at all times. I have shown that I am a borrower who can be trusted, and I even had direct debit from my account. But I simply did not, do not, and will not have $100,000 to give in one shot so that I can get out of default status. And most other borrowers will not either. This is an unfair and undue burden that should be ameliorated."

3. Florence D. from Wisconsin: "When I began repaying my student loans in 2010 the servicer kept misapplying my payments. I had both subsidized and unsubsidized loans. When I sent in my payments they mistakenly applied the payments to only one of the two loans. After several months trying to get the payments correctly applied, I gave up working with Wells Fargo and made arrangements directly with the Department Of Education. For eleven years I made the payments as negotiated. In May 2021, I applied for the Public Service Loan Forgiveness program. I was told I did not qualify as my loans were in 'default.'"

4. An anonymous defaulted borrower in California:[17] "I graduated with a master's degree in social work and have worked as a Child Welfare Services social worker for the county of San Diego for almost 17 years . . . During this time I took FML from my employer after giving birth and was in danger of defaulting [o]n my loans. I attempted to defer my loans but was told I did not have this option. I soon defaulted on my loan and my wages began being garnished when I returned to work. I started seeing some relief when COVID-19 began and student loans payments were halted. To date, I have been garnished more than the total amount of my original school loan cost and somehow I still continue to owe thousands of dollars. I became a public servant to help others and I can't seem to help myself out of this financial mess. I have been a public servant worker for more than 20 years and still don't see an end in sight with my student loans."

[17] https://www.regulations.gov/comment/ED-2021-OUS-0082-32478.

Additionally, below are borrower stories that have featured in previous memoranda:

1. Ms. Smith is an elderly, disabled, Black woman borrower living on fixed Social Security retirement benefits of $1,800 per month. She suffers from severe back pain, fibromyalgia, and chronic depression. In 2019, when she sought LAFLA's help, Ms. Smith owed around $240,000 on a Federal Family Education Loan ("FFEL") Consolidated loan. Her loans were on a repayment plan with a $2,100 monthly payment, which she had never been able to afford. Between July 2010 and March 2015, she called her loan servicer five times and told it that she could not afford her monthly payments. Each time her loan servicer put her on forbearance. She finally defaulted in July 2015, and experienced tax refund offsets of money she needed to survive. She rehabilitated her loan out of default in February 2019. At this time she sought LAFLA's help. They immediately submitted an IDR request which was granted, with a $0 monthly payment.

2. George is 75 years old and still has approximately $5,200 student loans. He is a retired teacher, Black, and attended a state school. His wages were garnished each month from his part-time job at the YMCA because he defaulted on his student loans. George qualified for a $0 IDR plan, but because he did not have access to a computer and his loan servicer never shared this information with him, he was trapped in default for years. The wage garnishments took away some of the little income that he subsided on in his retirement. After years of being in default, a legal service organization helped him submit documentation and go through the many steps to get out of default and onto a $0 monthly repayment plan, all information which his servicer never provided.

3. Susan took out Parent Plus loans for her daughter to attend Heald College, a for-profit school which was later found to have engaged in predatory recruitment and deception. She thought she had co-signed her daughter's loan, and she does not understand why the government is coming after her to collect. Susan has been in default for years, and her entire tax refund was garnished in 2018. She is a senior and disabled but still works. The garnishment took money that Susan would have otherwise used for her medications and medical bills—she chose to forgo a surgery after her tax refund was garnished. Susan has qualified for a $0 payment on IDR for years, but her servicer never told her this. It was not until she contacted a legal services organization that helped her submit the paperwork and called her servicer on her behalf that she was able to get on this plan.

Under current rules, these borrowers—and millions more like them—are unable to have their time in default count towards eventual IDR cancellation. This is despite the fact that many of these defaulted borrowers were not properly counseled on how to enroll into IDR plans to lower their monthly payments, or were actively steered away from those options. As the ED Office of Inspector General found in 2019, "[f]rom January 2015 through September 2017, monthly reports on FSA's monitoring activities disclosed recurring instances at all servicers of servicer representatives not sufficiently informing borrowers about available repayment options . . . the noncompliance that FSA has repeatedly identified could affect a much larger population of borrowers than those specifically identified by FSA's reviews of samples of borrower accounts. Those risks include increased interest or repayment costs incurred by borrowers, the missed opportunity for more borrowers to take advantage of certain repayment programs, negative

effects on borrowers' credit ratings, and an increased likelihood of delinquency or even default."[18]

Similarly, the Government Accountability Office ("GAO") discovered that millions of borrowers who had slipped into default had been eligible for an IDR plan.[19] In 2015, the GAO reported that 70 percent of borrowers in default had income that would entitle them to a reduced monthly payment under one of these plans.[20] Worse, borrowers who attend for-profit colleges or two-year colleges make up 70 percent of all borrowers in default—and many would qualify for $0 payments in IDR. According to the Consumer Financial Protection Bureau ("CFPB"), the median debt burden and median wages of these borrowers suggest that the typical defaulted borrower likely would qualify for $0 IDR monthly student loan payment or substantially reduced payment, up to a 75 percent, under an IDR plan than under a standard repayment plan.[21]

Black and Latino borrowers and low-income borrowers who would benefit from IDR are systematically being derailed from accessing it, leading them into preventable defaults. Recent analysis shows that Black borrowers are two times more likely than their white peers to fall behind on their student loans without accessing IDR. Similarly, this analysis showed that more than half of borrowers with incomes below $20,000 per year fall behind without accessing IDR, even though virtually all of these borrowers would qualify for $0 monthly payments through IDR.[22] The gap between borrowers' need for IDR and the student loan system's failure in delivering it to them is a key cause of disparities in defaults.

The result for low-income borrowers trapped in the vicious cycle of default is stark. Many find themselves paying more on their student loans through wage garnishment, Treasury offset, and voluntary payments than they would have been required to if properly guided by their student loan servicer, yet none of these payments moves borrowers closer to eventual cancellation.[23]

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[18] *See* United States Department Of Education Office Of Inspector General, Reissuance of Final Audit Report, "Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans," Control Number ED-OIG/A05Q0008 (March 2019), available at https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf.

[19] U.S. Government Accountability Office, GAO-15-663, Federal Student Loans: Education could do more to help ensure borrowers are aware of repayment and forgiveness options (Aug. 2015), available at http://www.gao.gov/products/GAO-15-663.

[20] *See id* at 13.

[21] *See* CFPB, Annual report of the CFPB Student Loan Ombudsman (October 2015), available at https://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf; *See also* Adam Looney & Constantine Yannelis, A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions they Attend Contributed to Rising Loan Defaults, BPEA Conference Draft, The Brookings Institution (Sept. 2015), available at https://www.brookings.edu/wp-content/uploads/2015/09/LooneyTextFall15BPEA.pdf.

[22] Ben Kaufman, New Data Show Borrowers of Color and Low-Income Borrowers Are Missing Out on Key Protections, Raising Significant Fair Lending Concerns, Student Borrower Prot. Ctr. (Nov. 2, 2020), https://protectborrowers.org/new-data-show-borrowers-of-color-and-low-income-borrowers-are-missing-out-on-key-protections-raising-significant-fair-lending-concerns; Ben Miller, The Continued Student Loan Crisis for Black Borrowers, Ctr. for Am. Progress (Dec. 2, 2019), https://www.americanprogress.org/issues/education-postsecondary/reports/2019/12/02/477929/continued-student-loancrisis-black-borrowers/.

[23] For borrowers experiencing administrative wage garnishment, ED can seize up to 15 percent of a borrower's paycheck, which is often significantly more than they would have paid under Income-Based Repayment, Pay As You Earn or Revised Pay As You Earn; tax refund offsets offer no protected income level and the entire refund

STUDENT BORROWER PROTECTION CENTER

ED Can and Must Act to Restore the Promise of Relief through IDR

In October, the Biden administration initiated a sweeping waiver to address longstanding, wide-ranging failures plaguing the Public Service Loan Forgiveness ("PSLF") program.[24] This waiver allowed hundreds of thousands of borrowers to bypass byzantine administrative burdens, sweep aside the lingering effects of past servicing abuses, and rise from the wreckage of decades-long policy blunders to access earned relief.[25] For tens of thousands of borrowers, that relief included immediate debt forgiveness.[26]

Now, borrowers and a broad coalition of advocates are calling on the Biden administration to use authorities already at its disposal to initiate a similarly bold program to deliver justice and relief to the millions of borrowers who have been denied the promise of IDR.[27] As outlined in a white paper co-authored by the Student Borrower Protection Center, the Center for Responsible Lending, and the National Consumer Law Center, this waiver would involve the use of administrative data to retroactively count all months since borrowers entered repayment as qualifying months towards forgiveness under IDR, regardless of the borrower's loan type or prior repayment plan.[28] A coalition of more than 115 unions, consumer protection organizations, and non-profit groups that represent a broad and diverse population of low to middle income student borrowers and workers across the country recently signed a letter in support of this proposed IDR waiver.[29]

Until the Biden administration takes substantial action such as implementing the proposed IDR waiver, however, borrowers will continue languishing under the weight of system-wide failure and broken promises. The weight that these borrowers face goes far beyond what may be captured in any statistic outlining how few borrowers have secured cancellation through IDR, how many borrowers continue to face delinquency and default, and how many decades borrowers have been trapped in repayment. The failure of IDR means years of lost payments, rippling financial ruin, and broken promises between citizens and their government at every level.

(often thousands of dollars for borrowers entitled to the EITC) can be seized; and federal benefit offsets (e.g., Social Security) can seize up to 15 percent of benefits and only protect $750 per month.

[24] U.S. Department of Education, U.S. Department of Education Announces Transformational Changes to the Public Service Loan Forgiveness Program, Will Put Over 550,000 Public Service Workers Closer to Loan Forgiveness (Oct. 2021), available at https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness.

[25] *Id.*

[26] *Id.*

[27] https://protectborrowers.org/wp-content/uploads/2022/04/UPDATED-IDR-Waiver-Coalition-Letter-for-Sign-On.pdf.

[28] https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/.

[29] https://protectborrowers.org/wp-content/uploads/2022/04/UPDATED-IDR-Waiver-Coalition-Letter-for-Sign-On.pdf.

Servicers have too long put their financial profits ahead of borrowers' financial security. The Biden administration must choose to right that wrong by implementing an IDR waiver that will provide credit towards loan forgiveness for borrowers' time in default.

From: Persis Yu
Subject: [FOR TRANSMITTAL] Memorandum on IDR Waiver: Borrower Voices on the Incomplete Promise of Relief through IDR and Recertification
To: Kvaal, James; Cordray, Richard; Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Latreille, Bonnie; Campbell, Patrick; Foss, Ian; Habash, Tariq; Darcus, Joanna
Cc: Mike Pierce; Christopher Hicks; Claire Torchiana; Benjamin Kaufman
Sent: April 22, 2022 1:59 PM (UTC-04:00)
Attached: SBPC IDR Complaint Memo - Annual Recertification 4.22.22.pdf

Dear ED and FSA Colleagues,

Happy Friday!

We applaud the Department of Education's recent efforts to remedy the past failures of IDR. However, the steps outlined in the policy announcement only partially address longstanding IDR failures. Attached please find a memorandum highlighting the voices of federal student loan borrowers who demonstrate the need for a full IDR waiver. In particular, this memo highlights the voices of borrowers who have been forced into short-term forbearances because of problems with annual IDR recertification.

Thank you for all the work that you are doing to help student loan borrowers. I look forward to our continued conversations on this topic.

Best,
Persis

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Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

STUDENT BORROWER PROTECTION CENTER

MEMORANDUM

April 22, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center

RE: **Borrower Voices on the Incomplete Promise of Relief through IDR: IDR Recertification**

Overview

The promise of affordability and loan relief through income-driven repayment ("IDR") options has largely been broken, plagued by failed policy, unwieldy regulatory requirements, and industry misconduct. While we applaud the Department of Education's recent efforts to remedy the past failures of IDR,[1] the steps outlined in the policy announcement only partially address longstanding IDR failures. As we have previously stated, to fully remedy the administrative failures and servicer misconduct around IDR, the policy must provide automatic IDR credit for *all* of a borrower's time in forbearance, deferment, and default.

Borrowers' difficulties with annual income recertification—aptly dubbed the "recertification maze" by some[2]—underscores how unwieldy regulatory requirements and servicer misconduct have combined to drive borrowers' into periods of forbearance, default, and higher debt loads instead of alleviating their loan burden, as IDR was intended to. An IDR policy that does not recognize that borrowers have been trapped in short-term forbearances and driven into default by their servicers and unwieldy IDR regulations falls short.

Background

Almost three decades ago, in recognition of the massive burden that student loan debt imposes on American households, Congress introduced one of the most vital protections available in any consumer financial market: income-driven repayment.[3] From its inception and throughout its expansion across successive presidential administrations, IDR has been shaped by three core principles: that federal borrowers should be able to afford their monthly student loan bills, that the most financially strapped borrowers should enjoy safeguards from delinquency and default, and, perhaps most importantly, that student loan debt should never become a lifelong affliction.[4] In implementing the latter precept, the U.S. Department of Education ("ED") has entitled federal

[1] https://studentaid.gov/announcements-events/idr-account-adjustment; https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs.
[2] https://www.huffpost.com/entry/obama-student-loan-income-based-repayment_n_7010344.
[3] https://journals.sagepub.com/doi/abs/10.1177/0002716217701673.
[4] https://protectborrowers.org/idr-history-report/.

student loan borrowers in IDR to debt cancellation after 20 to 25 years of consistent, on-time repayment based on the borrower's loan type and particular IDR plan.[5]

The promise of eventual debt cancellation through IDR is a key source of hope for millions of borrowers, many of whom make substantial personal sacrifices even while enrolled in IDR to remain current on their loans.[6] Moreover, the assumption that IDR generally delivers cancellation as promised is the cornerstone of significant federal policy and case law. For instance, the legal regime that makes it extremely difficult for borrowers to discharge student loan debt in bankruptcy partly stems from the assumption that IDR makes student loan payments manageable.[7] Similarly, there is a growing body of policy research that frames substantial intervention to alleviate student debt burdens, such as through broad-based cancellation, as unnecessary based on the assumption that IDR can be a source of meaningful relief for most borrowers struggling with student loan debt.[8]

Unfortunately, the promise of eventual debt relief through IDR has proven to be completely broken. Though debt cancellation under IDR has been available for qualifying borrowers since at least 2016, a recent Government Accountability Office ("GAO") report found that only 132 borrowers have *ever* successfully achieved loan cancellation via IDR.[9] For relative scale, information uncovered by U.S. Senator Elizabeth Warren indicates that more than 4.4 million borrowers have been in repayment for 20 years or more.[10] Using the Department's limited data, the GAO found that at least 7,700 loans, totaling around $49 million in repayment, could potentially be eligible for IDR forgiveness.[11] The failure of servicers and the Department to accurately track repayment data means that the GAO was not able to perform a full analysis of what loans are potentially eligible for IDR forgiveness.[12] The report found that the Department's data prior to 2014 is largely incomplete to accurately count a borrower's time in qualifying repayment.[13] Despite the Department's knowledge that payment counts could not be accurate, it continued to instruct servicers to consider previous servicer counts as accurate.[14] Relatedly, the GAO report found that the Department does not provide sufficient information to borrowers about what constitutes a qualifying payment towards IDR forgiveness, including that periods of forbearance and most types of deferments do not count.[15] Similarly, servicers and the Department do not notify borrowers of their progress towards IDR forgiveness, nor that borrowers can request to verify these counts.[16]

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[5] https://studentaid.gov/manage-loans/repayment/plans/income-driven.
[6] https://protectborrowers.org/idr-unaffordability-report/.
[7] https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/07/Help-or-Hardship.pdf.
[8] https://bfi.uchicago.edu/insight/finding/the-distributional-effects-of-student-loan-forgiveness/.
[9] https://www.gao.gov/assets/gao-22-103720-highlights.pdf; https://www.gao.gov/assets/gao-22-103720.pdf at 10.
[10] https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf#page=2.
[11] *Id.*
[12] *Id.*
[13] https://www.gao.gov/assets/gao-22-103720.pdf at 11; 12.
[14] *Id.* at 13; 14.
[15] *Id.*
[16] *Id.*

Worse, the situation for borrowers pursuing cancellation through IDR appears unlikely to improve. An internal analysis conducted by one large student loan servicer recently found that of the more than 8.5 million borrowers whose federal student loans it manages, only 48 are projected to receive debt cancellation under IDR by 2025.[17] This overall estimate involved the projection of an 83 percent *reduction* between 2022 and 2025 in the number of borrowers that will receive cancellation through IDR each year, prompting one company employee to remark in uncovered emails that the number of borrowers securing cancellation seemed "very low."[18]

The systematic collapse of the promise of relief that Congress made to borrowers flows from decades of inaction, incompetence, and unfortunately frequent malfeasance from the Department, federal policymakers, regulators, and the student loan industry. For example, over the past several years, state attorneys general across the country and the Consumer Financial Protection Bureau have brought public enforcement actions against ED's largest student loan servicing contractors for a wide range of abuses related to borrowers' access to IDR, including deploying abusive forbearance steering tactics, deceiving borrowers regarding their obligation to annually recertify income, and failing to timely process IDR applications.[19] These abuses—conducted by the very same companies tasked with guiding borrowers through repayment and empowering them to access their protections under the law—will add years or decades to borrowers' repayment sequences even if they are eventually able to access IDR at all. By that time, borrowers will likely have undergone extensive but entirely unnecessary financial hardship including periods of disastrous delinquency or default.

A recent settlement between 39 states attorneys general and the federal student loan servicing giant Navient demonstrates that servicers have consistently and recklessly engaged in a startling variety of abusive practices with long-term consequences for borrowers.[20] While beneficial for some private loan borrowers, the terms of the settlement will not provide relief for the millions of borrowers who lost years of credit towards federal loan forgiveness and over-paid on their monthly student loan bills because of student loan servicers' illegal activities. This episode is yet another instance of the policy apparatus and specifically the promise of affordability through IDR failing borrowers entirely.

Worse, as with so many aspects of the student debt crisis, the weight of IDR's widespread breakdown has landed most heavily on Black borrowers. In particular, a nationwide survey from The Education Trust recently found that Black federal student loan borrowers struggle to access IDR, and that they continue to face both difficulty affording basic life necessities and an ongoing risk of default on their student loans even when enrolled in IDR.[21] Reflecting on IDR's failure to deliver eventual debt cancellation for Black borrowers, the survey noted that Black borrowers feel that repayment under IDR is "a lifetime debt sentence."[22]

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[17] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=18.
[18] *Id.*
[19] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=15.
[20] https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/.
[21] https://edtrust.org/resource/jim-crow-debt/.
[22] *Id.*

STUDENT BORROWER PROTECTION CENTER

Annual IDR Income Recertification Often Leads Borrowers into Forbearances and Even Default

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices related to IDR have had on borrowers every year when borrowers on an IDR plan must recertify their income. For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled.

1. "I've had issues with the yearly income recertification. There were times that I missed the deadline to recertify. The emails did not include deadlines, or there were no email reminders that I saw, or there was inadequate information in the emails. When I did recertify after realizing that my loan payments jumped up, I often lost months because it took the servicers a long time to approve the recertification."[23]

2. "Since [graduation], I have been unable to find employment at a level that has allowed me to cover the interest or principal amounts. . . . when I went to renew my [IDR] plan, my regular documentation was not accepted. Although I should have sought legal assistance then, I ended up accepting a forbearance at that time which amounted to $7,400 being capitalized onto my balance. I . . . encountered additional problems when I attempted to recertify . . . I repeatedly submitted various documents indicating my income ; however, my application met with delays in approval. [months later], my [request] still had not been approved and I was informed that my account would be delinquent if I did not pay $1,300 that month. As I was unable to pay that amount at the time, I reluctantly agreed to accept another forbearance believing it was the only way to secure additional time for the loan holder to review my paperwork. However, it was not until after the forbearance was actually issued that I learned the amount to be capitalized onto my balance : $41,000, almost six times the amount of the previous forbearance. . . I was informed by a representative from the loan company that I had provided more information than was needed to process my application and told exactly what to write in order to be approved. This is information that could have been provided to me much earlier in the process and would have allowed my IDR plan to have been approved in a more timely manner thus preventing my being placed in a position where I might face delinquency. When I received a second notice of payment due, I called and was offered another forbearance but told that I still had time to decide prior to the deadline so I declined. However, a request was still entered into the system. I was later informed that my application had been accepted by the time of that call and that the other forbearance should not have been offered nor processed. Regardless, two additional forbearances were processed . . . totaling $1,900 and $770 respectively. Under the advisement of a representative from the loan holder, I sent numerous letters detailing what occurred as she said that, having not been properly informed of the interest amount, the forbearance could and should be reversed. Likewise, it was that representative who informed me that the second forbearance . . . should not have even been offered. . . Despite repeated attempts . . . I was unable to get any assistance. . . Had I been informed of the extent to which my loans would be impacted, I would never have agreed to those terms.. . I believe that . . .

[23] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5063930.

the recertification process was dragged out and that I was misled into a situation that has compounded my debt to a level that I will never be able to manage. . . . As of this date, my current balance is $220,000. This is approaching twice the amount I originally borrowed . . . and my employment situation remains unchanged."[24]

3. "I have had many issues. . . over the years. Most notably, long recertification application times. [My servicers] have placed my loans under administrative forbearance multiple times for many months. They have also failed to process my in-school deferment waiver forms that I have submitted. . . I have requested that fedloan resolve this issue about every 3 months but they 'have a backlog of requests.'"[25]

4. "As a participant in the income based repayment plan, I am required to re-certify my income annually. Every year, I comply with the requirements and my payments are recalculated, however, the same issue occurs and a repayment month is skipped and not counted towards the Public Service Loan Forgiveness Program or anything else. I have asked to be allowed to make a payment during this skipped month and every year I am told it is not possible and that any payment would not count as a regular payment and would only be applied to the principal. It all comes down to their systems, policies, and plan to drag everything out at the expense of the consumer. . . . this only benefits Great Lakes as interest accumulates, peoples incomes rise, and the term extends. I know I am only one person, however, the impact across all loans held by Great Lakes is huge."[26]

5. "I submitted the required documentation for the 2015 [income-based] repayment plan 8 weeks before the expiration of my previous IBR application, and within the time period [my servicer] indicated. Due to [my servicer's]delays, my IBR application was not processed timely. While waiting for them to process my application, [my] monthly payment jumped from approximately $200 a month to $1400 a month, causing me to go into overdraft on my checking account. [My student loan servicer] failed to process my application timely even though my application was complete and no documentation was missing and failed to communicate the huge increase in payment."[27]

6. "I was placed on excessive administrative forbearance of 4 months from . . . when applying for an income-driven repayment (IDR) plan when typically it takes 1 month to process the repayment application. I lost months of public service loan forgiveness (PSLF) qualifying payments. . . . I was not informed to file an IDR repayment application. . . and once I filed the IDR form in [my servicer] gave me a timeline of up to 2 months for processing time. . . . [Additionally,] During my annual IDR recertification . . . Fedloan servicing placed me on administrative forbearance and Fedloan servicing automatically transferred my repayment plan from PAYE to REPAYE without my knowledge and without giving me an opt out option so that I can make my normal repayment under my then PAYE plan. Fedloan servicing said that they automatically

[24] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5159277.
[25] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5116078.
[26] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3609986.
[27] https://www.consumerfinance.gov/about-us/blog/when-you-make-student-loan-payments-on-an-income-driven-plan-you-might-be-in-for-a-payment-shock/.

transferred me to REPAY because I did not qualify for PAYE. I already lost one month of repayment when my IDR plan was switched from IBR to PAYE . . . and now I lost another month again because Fedloan servicing realized that they mistakenly approved me for the PAYE plan. Fedloan unilaterally placed me on administrative forbearance, switched my repayment plan, failed to offer me an opt out plan, and failed to inform me of this whole undertaking . . . there has been no remedy."[28]

7. "I have been on the income based repayment plan since 2010. I have re-certified on time when information was requested. Recently you are able to log into the student aid portal. There was an issue with the IRS site and it allowed me to complete the re-certification. On XX/XX/XXXX, I received an email stating that my request was incomplete so I sent my income tax return to them. This is not the first time that I have had trouble with AES removing me from my IBR and I want them to verify the start date of my plan, and if the terms are 20 or 20 years. . . . They have sent my information to a collection agency, which I want this information removed, and any negative credit reporting corrected."[29]

8. "All [my] information for Income Sensitive Loan repayment Recertification was submitted to Navient. Follow up calls from myself to verify they received all the paperwork . . . spoke to a rep who stated the recertification was 'under review' and an answer would be coming . . . Phone call to Navient . . . to follow up, states the recertification is not complete . . . spoke to customer service rep . . . who then spoke to his supervisor and stated they are putting an escalation on the recertification paperwork and it would be completed XX/XX/XXXX. Opened my email . . . to find 3 different letters from Navient stating that [the] Standard Payment plan was back in effect as well as stating that the Income Sensitive Plan was not an option due to using the 5 years already, 5 years that nobody tells you have to begin with. Hours spent on the phone today . . . with a rep who then states there are discrepancies for forbearance time . . . Every year when it is recertification time, I and probably several others go through the same time consuming, unproductive phone calls with representatives who go back and forth, back and forth . . ."[30]

9. "[My] lender, Access Group, never once sent me the recertification notice since I enrolled in the [IDR] program . . . As a result . . . I missed the unknown deadline by a few days and more than $60,000 was capitalized into my student loan. I also just now discovered that the same thing happened around XXXX for around $8,000 after I also apparently missed a deadline. Access Group never provided me with the terms of the IBR Plan when I signed up, and it failed to warn me of the draconian consequences of missing the IBR recertification deadline by even one day. To date, I have never been given a due date for the annual recertification deadline -- even with the new loan servicer, which at least has sent warning letters. . . . Again, Access Group NEVER sent me the annual notification letter for any year I've been in the IBR Plan."[31]

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[28] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4788776.
[29] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4455069.
[30] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4308845.
[31] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3940804.

10. "I am on an income driven payment plan for my FFEL Student Loans that are being serviced by Nelnet. On XX/XX/2020 I submitted my annual recertification and Nelnet sent me an email confirming that my application was received. I received no response to this application. On XX/XX/2020 I again submitted my annual recertification and Nelnet sent me an email confirming that my application was received. I received no response to this application. On XX/XX/2020, I submitted yet another application to have my loans recertified and again Nelnet sent me an email confirming my application was received. I received no response to this application. Around this same date, I sent a message to Nelnet through their website regarding this issue. I did receive a response to this inquiry stating that it would take 15 days for my request to be reviewed. 15 days came and went of course with no response from Nelnet. . . I sent another message to Nelnet through their website. On XX/XX/2020, I actually received an reply email from Nelnet. This time they stated that more information was needed to complete my application. I promptly provided the information that was requested. On XX/XX/2020, Nelnet approved my recertification application. In the meantime, my previous IDR expired, and Nelnet increased my payment from about $240 to $850 per month. I repeatedly told Nelnet that I can not afford this payment. Now, Nelnet has my loans 90 days past due and is reporting late payments to my credit report. I tried to contact Nelnet about this issue and, of course, they did not respond. I feel that Nelnets negligence caused this and my efforts to resolve this are fruitless."[32]

11. "I sent in my IBR annual recertification application with Navient several months ago. A couple of months ago I got a call saying my loan was overdue, because it turns out they had not processed my application. Eventually, after talking to multiple Navient representatives on the phone and hearing several excuses as to why my application had not yet been approved, I had someone tell me that my application had been denied because it lacked a signature, but upon reviewing my application admitted my signature was there, apologized for their error and assured me that my application would be approved, as I had all the necessary documentation I needed. Navient still has not approved and is seeming to refuse to process my application. Their delay is increasing my student loan amount and having other nontrivial financial impacts. I do not know how it is ethical or legal for this company to engage in lending practices that involve delaying processing, either through bad faith or incompetence, to increase their profit and harm customers. Again, it has been many months and they are still not acting after repeated requests. This is not the first year this has happened. This seems to be a regular Navient business practice."[33]

As these stories illustrate, annual IDR recertification is a morass for borrowers due to unwieldy paperwork requirements and, as is typical in the student loan industry, malfeasance by servicers. Every year, borrowers on an IDR plan must re-certify their income to stay enrolled in the plan,[34] which requires paperwork, particularly if a borrower's income or employment information has changed. Approximately one-third of borrowers do not recertify their income on time,[35] which

[32] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4043335.
[33] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4064075.
[34] 34 C.F.R. §§ 685.209(a)(5), (c)(4), 685.221(e).
[35] https://files.consumerfinance.gov/f/documents/cfpb_data-point_borrower-experiences-on-IDR.pdf at 41.

can often be linked to servicers' failure to timely process their paperwork or clearly notify borrowers of the deadline. Servicers often place borrowers in short-term administrative forbearances as they take months to process recertification paperwork. And when borrowers miss the annual recertification deadline, servicers will capitalize interest on their loans, and place them on a standard-repayment plan, which may drastically increase their overall loan balance and monthly payments, potentially leading borrowers to default.

When servicers take a long time to process recertification applications or borrowers miss the deadline, often due to lack of notice by the servicer, borrowers are likely to be placed into forbearances and are more likely to default. Data from the Consumer Financial Protection Bureau and the Department of Education confirms this—a 2019 study found that of the one-third of borrowers who did not certify their income on time, "12 percent of borrowers entered forbearance or deferment . . . and that difficulties could persist . . . with 25 percent in forbearance and 7 percent delinquent while still not recertified six months later."[36] Delinquencies increase in likelihood as time passes from the missed recertification deadline, indeed, "delinquencies more than tripled for borrowers who did not recertify on time after their first year." Other studies have indicated similarly troubling numbers. For instance, Department data indicates that "[i]n the 12-month period that ended in October [2015], nearly three of every five borrowers did not recertify their incomes on time, according to the results of a department survey released last week. Their required monthly payments promptly skyrocketed to what they'd be required to pay on a 10-year basis, their loan balances ballooned as a result of capitalized interest, and as many as 15 percent fell behind on their payments. Nearly a third of the 696,000 borrowers who missed the deadline were forced into forbearance or deferment plans, which delay monthly payments and typically lead to higher loan balances. Another third of the borrowers who didn't recertify their earnings by the deadline did so within six months."[37] Servicers leading borrowers into forbearances and even default through insufficient notice and failure to timely process paperwork is particularly troubling in light of the GAO findings[38] that borrowers may not know that forbearances and default do not count as qualifying payments for IDR forgiveness.

In sum, what appears on the surface to be a simple administrative requirement—annual recertification—is riddled with servicer misconduct and borrower confusion, potentially leading to periods of forbearance, increased loan balances, increased loan payments, and correspondingly, to higher likelihood of default. And any missed months during the recertification maze currently do not count towards loan forgiveness for IDR—which can cumulatively add up to years of missing time over the life of the loan.

While the policy announced by the Department will certainly help thousands of people, it leaves out some of the most vulnerable borrowers. Borrower's difficulties with annual recertification, and particularly their time spent in short-term forbearances and potentially in default—underscores that to fully remedy the failures of the IDR program, an IDR policy must count *all* of borrowers' time in forbearance and default.

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[36] https://www.consumerfinance.gov/about-us/blog/new-report-shows-how-student-loan-borrowers-fare-income-driven-repayment-plans/.

[37] https://www.huffpost.com/entry/obama-student-loan-income-based-repayment_n_7010344.

[38] https://www.gao.gov/assets/gao-22-103720.pdf at 17-19.

STUDENT BORROWER PROTECTION CENTER

ED Can and Must Act to Restore the Promise of Relief through IDR

In October, the Biden administration initiated a sweeping waiver to address longstanding, wide-ranging failures plaguing the Public Service Loan Forgiveness ("PSLF") program.[39] This waiver allowed hundreds of thousands of borrowers to bypass byzantine administrative burdens, sweep aside the lingering effects of past servicing abuses, and rise from the wreckage of decades-long policy blunders to access earned relief.[40] For tens of thousands of borrowers, that relief included immediate debt forgiveness.[41]

Now, borrowers and a broad coalition of advocates are calling on the Biden administration to use authorities already at its disposal to initiate a similarly bold program to deliver justice and relief to the millions of borrowers who have been denied the promise of IDR.[42] As outlined in a white paper co-authored by the Student Borrower Protection Center, the Center for Responsible Lending, and the National Consumer Law Center, this waiver would involve the use of administrative data to retroactively count all months since borrowers entered repayment as qualifying months towards forgiveness under IDR, regardless of the borrower's loan type or prior repayment plan.[43] A coalition of more than 100 unions, consumer protection organizations, and non-profit groups that represent a broad and diverse population of low to middle income student borrowers and workers across the country recently signed a letter in support of this proposed IDR waiver.[44]

Until the Biden administration takes substantial action such as implementing the proposed IDR waiver, however, borrowers will continue languishing under the weight of system-wide failure and broken promises. The weight that these borrowers face goes far beyond what may be captured in any statistic outlining how few borrowers have secured cancellation through IDR, how many borrowers continue to face delinquency and default, and how many decades borrowers have been trapped in repayment. The failure of IDR means years of lost payments, rippling financial ruin, and broken promises between citizens and their government at every level.

Servicers have too long put their financial profits ahead of borrowers' financial security. The Biden administration must choose to right that wrong by implementing a IDR waiver that will provide credit towards loan forgiveness for borrowers' time in default, forbearance, and deferment.

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[39] https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness.
[40] *Id.*
[41] *Id.*
[42] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.
[43] https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/.
[44] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

From: Vitez, Kaitlyn
Subject: RE: Listening Session: School Accountability (external invite)
To: Chuck Bell; Kyra Taylor; Beth Stein; carrie@vetsedsuccess.org; jbass@americanprogress.org; Ella Azoulay; 'fishmanr@newamerica.org'; sattelmeyer@newamerica.org; Eileen Connor; Bob Shireman; dan@defendstudents.org; Kyle Southern; jennifer@vetsedsuccess.org; james@vetsedsuccess.org; moultrie@tcf.org; Thomas Gokey; fast@tcf.org; Carolina Rodriguez; [redacted] Ben Kaufman; Edward Conroy
Cc: Miller, Benjamin; Latreille, Bonnie; Wollard, Kalynn; Bronstein, Andrew; Harrington, Ashley; Gunther, Kenyetta; Yates, Amanda
Sent: April 27, 2022 9:55 PM (UTC-04:00)

Hi folks,

We are adding an agenda item to the school accountability listening session. 28,000 borrowers who enrolled in Marinello Schools of Beauty from 2009 through its closure in February 2016 will receive a group borrower defense loan discharge, totaling approximately $238 million.

Passing along our press release, which is **embargoed** until 6am tomorrow morning. Please do not share beyond your organization.

Thanks, and see you tomorrow.

Kaitlyn Vitez (she/her)
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U.S. Department of Education
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FOR RELEASE:

6:00 A.M. ET

April 28, 2022

CONTACT:

Press Office, (202) 401-1576 or press@ed.gov

Education Department Approves $238 Million Group Discharge for 28,000 Marinello Schools of Beauty Borrowers Based on Borrower Defense Findings

The actions mark the first time the Biden-Harris Administration has discharged the debt of a group of borrowers based on borrower defense findings

Today, the Department of Education announced it will deliver relief to tens of thousands of borrowers harmed by pervasive and widespread misconduct at Marinello Schools of Beauty. Borrowers who enrolled in the schools from 2009 through its closure in February 2016 will receive loan discharges based on borrower defense findings. These 28,000 borrowers will receive loan discharges totaling approximately $238 million. This group discharge will provide relief to borrowers who enrolled at Marinello during this period, including those who have not yet applied for a borrower defense discharge.

While the Department continues its work to review borrower defense claims, it is also bringing on four key hires in the Federal Student Aid (FSA) Office of Enforcement with significant federal, congressional, and state oversight experience.

"Marinello preyed on students who dreamed of careers in the beauty industry, misled them about the quality of their programs, and left them buried in unaffordable debt they could not repay," said U.S. Secretary of Education Miguel Cardona. "Today's announcement will streamline access to debt relief for thousands of borrowers caught up in Marinello's lies. At the Department of Education, we will continue to strengthen oversight and enforcement for colleges and career schools that engaged in misconduct and uphold the Biden-Harris Administration's commitment to helping students who have been harmed."

This Marinello group discharge reflects the Department's findings that the school engaged in pervasive and widespread misconduct that negatively affected all borrowers who enrolled at Marinello during the covered time period. These findings led the Department to approve individual borrower defense claims last summer. This group discharge will facilitate relief to additional borrowers harmed by Marinello's actions, including many who have not yet applied for borrower defense. It is the first group discharge for defrauded borrowers to be approved since 2017, after the prior administration did not approve any group claims or new findings.

Today's actions bring the total amount of approved relief based on borrower defense findings during the Biden-Harris Administration to approximately $2.1 billion for 132,000 borrowers.

To date, the Department had approved approximately 300 borrower defense claims at Marinello under findings reached last July that Marinello made widespread, substantial misrepresentations about the instruction that would be offered at its campuses across the country. The Department found that the schools failed to train students in key elements of a cosmetology program, such as how to cut hair. It also found that Marinello left students without instructors for weeks or months at a time as part of a pattern of failing to provide the education it promised. As a result, students would have found it extremely difficult to pass necessary state licensing tests and receive the promised return on their educational investment. Not only did Marinello fail to teach its students, class-action lawsuits filed in Nevada and California alleged that the school

used salons as profit centers and exploited students as a source of unpaid labor.

The Department has continued to analyze the evidence related to Marinello and concluded that the misconduct was so widespread across all the school's campuses over a period of years that all borrowers who attended between 2009 and the schools' closures in 2016 are entitled to full student loan discharges.

The Department's Marinello findings stem primarily from the agency's investigative work that began in 2015 and that resulted in the Department removing the school from the federal student aid programs.

At all times relevant to the findings, Marinello was owned by B&H Education Inc. (B&H), which was a Delaware corporation. The leaders of B&H included Rashed Elyas as President, Mike Flecker as chief financial officer, and Nancy Alpough as financial aid administrator. Department records also identify the following individuals as board members at some point during the period of these borrower defense findings: Nagui Elyas, Erik Brooks, Bob Pan, Tomer Yosef-Or, Brent Stone, James Goodman, Daniel Neuwirth, Anna Keeling, James Rich, Frank Lincoln, and Gerald Taylor.

The Department will soon begin notifying students who attended Marinello of their approvals for discharge, with discharges following in the months after. Borrowers will not have to take any additional actions to receive their discharges.

New Hires in the Office of Enforcement

Holding schools accountable is a priority for the Biden-Harris Administration, and FSA has made four key new hires to bolster its Enforcement Office's leadership team.

Dawn Bilodeau has joined FSA as the Enforcement Office's Senior Advisor for Policies and Oversight after more than 20 years at the Department of Defense, which included roles as the Senior Advisor to the Assistant Secretary of Defense for Readiness and the Director of Defense Voluntary Education Programs. Dawn twice received the Secretary of Defense Medal for Exceptional Civilian Service, and in 2020, she received the Council of College and Military Educators President's Award.

Christopher J. Madaio joins FSA as the Enforcement Office's Director of Investigations. Christopher joins FSA from Veterans Education Success, where he served as the Vice President for Legal Affairs. Prior to that, Christopher served for nearly six years as an Assistant Attorney General in the Consumer Protection Division of Maryland's Office of the Attorney General, where he led multi-state investigations into large institutions of higher education and secured significant relief for students victimized by misconduct.

Brad Middleton will join FSA as the Enforcement Office's Senior Advisor for Strategy. For the last 14 years, Brad has served on the staff of U.S. Senator Richard J. Durbin of Illinois, including serving as his Education Policy Director since

2013. During his time in the Senate, Brad has focused on institutional accountability and providing student loan debt relief for defrauded borrowers.

Nina Schichor joins FSA as the Enforcement Office's Director of Borrower Defense following nearly five years at the National Labor Relations Board and seven years at the Consumer Financial Protection Bureau (CFPB). Most recently, Nina served as Senior Litigation Counsel in the CFPB's Office of Enforcement, where she led teams to conduct investigations into student-related businesses and obtained substantial relief for students harmed by violations of federal consumer financial law.

Continued commitment to targeted relief

Including today's actions, the Department has now approved more than $18.5 billion in loan discharges for more than 750,000 borrowers. This includes:

- $6.8 billion in for more than 113,000 borrowers through Public Service Loan Forgiveness (PSLF).
- More than $8.5 billion in total and permanent disability discharges for more than 400,000 borrowers.
- Last week the Department also announced fixes to long-standing problems in income-driven repayment that will help thousands of borrowers receive forgiveness through that program as well as 40,000 borrowers receive PSLF.

The Department is also working on new regulations that will improve a variety of the existing student loan relief programs and provide greater protections for students and taxpayers.

##

-----Original Appointment-----
From: Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>
Sent: Monday, April 25, 2022 10:38 AM
To: Latreille, Bonnie; Latreille, Bonnie; Wollard, Kalynn; Harrington, Ashley; Yates, Amanda; Chuck Bell; Kyra Taylor; Beth Stein; carrie@vetsedsuccess.org; jbass@americanprogress.org; Ella Azoulay; 'fishmanr@newamerica.org'; sattelmeyer@newamerica.org; Gunther, Kenyetta; Eileen Connor; Bob Shireman; dan@defendstudents.org; Kyle Southern; jennifer@vetsedsuccess.org; james@vetsedsuccess.org; moultrie@tcf.org; Thomas Gokey; fast@tcf.org; Carolina Rodriguez; Vitez, Kaitlyn; [redacted] Ben Kaufman; Edward Conroy; Bronstein, Andrew
Subject: Listening Session: School Accountability (external invite)
When: Thursday, April 28, 2022 11:00 AM-11:45 AM (UTC-05:00) Eastern Time (US & Canada).

Where: 7W205

Hi folks. We had a few key people from enforcement that were going to be out, so pushing back two days so they can join. Thanks for your continued patience as this meeting slot has moved around.

Microsoft Teams meeting

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DFI v. ED, 24-[illegible] July 22, 2024 Preliminary Inj.


DEPARTMENT OF EDUCATION
UNITED STATES OF AMERICA

From: Persis Yu
Subject: [FOR TRANSMITTAL] Memorandum on IDR Waiver: Borrower Voices on the Incomplete Promise of Relief through IDR and Incomplete Payment Histories
To: Kvaal, James; Cordray, Richard; Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Latreille, Bonnie; Campbell, Patrick; Foss, Ian; Habash, Tariq; Darcus, Joanna
Cc: Mike Pierce; Christopher Hicks; Claire Torchiana; Benjamin Kaufman
Sent: May 4, 2022 7:09 PM (UTC-04:00)
Attached: SBPC IDR Complaint Memo - Incomplete Payment Histories 5.4.22.pdf

Dear ED and FSA Colleagues,

Thank you again for the Department of Education's recent efforts to remedy the past failures of IDR. However, the steps outlined in the policy announcement only partially address longstanding IDR failures. Attached please find a memorandum highlighting the voices of federal student loan borrowers who demonstrate the need for a full IDR waiver. In particular, this memo highlights the voices of borrowers with missing and inaccurate payment histories.

Thank you for all the work that you are doing to help student loan borrowers. I look forward to our continued conversations on this topic.

Best,
Persis

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Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

STUDENT BORROWER PROTECTION CENTER

MEMORANDUM

May 4, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center

RE: **Borrower Voices on the Incomplete Promise of Relief through IDR: Missing and Inaccurate Loan Payment Histories**

Overview

The promise of affordability and loan relief through income-driven repayment ("IDR") options has largely been broken, plagued by failed policy, unwieldy regulatory requirements, and industry misconduct. While we applaud the Department of Education's recent efforts to remedy the past failures of IDR,[1] the steps outlined in the policy announcement only partially address longstanding IDR failures. As we have previously stated, to fully remedy the administrative failures and servicer misconduct around IDR, the policy must provide automatic IDR credit for *all* of a borrower's time regardless of their repayment status *since a borrower exited their grace period*.

The current IDR account adjustment proposal assumes that servicers, the Department, and borrowers have access to full and accurate payment histories. And yet, by the Department's own admissions, neither the Department, servicers, nor borrowers have this history. An IDR adjustment that relies on accurate monthly payment histories is administratively unworkable and falls short. To fully remedy the failures of IDR, the account adjustment must count all months that have elapsed since a borrower exited their grace period towards IDR forgiveness.

Background

Almost three decades ago, in recognition of the massive burden that student loan debt imposes on American households, Congress introduced one of the most vital protections available in any consumer financial market: income-driven repayment.[2] From its inception and throughout its expansion across successive presidential administrations, IDR has been shaped by three core principles: that federal borrowers should be able to afford their monthly student loan bills, that the most financially strapped borrowers should enjoy safeguards from delinquency and default, and, perhaps most importantly, that student loan debt should never become a lifelong affliction.[3] In implementing the latter precept, the U.S. Department of Education ("the Department") has

[1] https://studentaid.gov/announcements-events/idr-account-adjustment; https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs.
[2] https://journals.sagepub.com/doi/abs/10.1177/0002716217701673.
[3] https://protectborrowers.org/idr-history-report/.

entitled federal student loan borrowers in IDR to debt cancellation after 20 to 25 years of consistent, on-time repayment based on the borrower's loan type and particular IDR plan.[4]

The promise of eventual debt cancellation through IDR is a key source of hope for millions of borrowers, many of whom make substantial personal sacrifices even while enrolled in IDR to remain current on their loans.[5] Moreover, the assumption that IDR generally delivers cancellation as promised is the cornerstone of significant federal policy and case law. For instance, the legal regime that makes it extremely difficult for borrowers to discharge student loan debt in bankruptcy partly stems from the assumption that IDR makes student loan payments manageable.[6] Similarly, there is a growing body of policy research that frames substantial intervention to alleviate student debt burdens, such as through broad-based cancellation, as unnecessary based on the assumption that IDR can be a source of meaningful relief for most borrowers struggling with student loan debt.[7]

Unfortunately, the promise of eventual debt relief through IDR has proven to be completely broken. Though debt cancellation under IDR has been available for qualifying borrowers since at least 2016, a recent Government Accountability Office ("GAO") report found that only 132 borrowers have *ever* successfully achieved loan cancellation via IDR.[8] For relative scale, information uncovered by U.S. Senator Elizabeth Warren indicates that more than 4.4 million borrowers have been in repayment for 20 years or more.[9] Using the Department's limited data, the GAO found that at least 7,700 loans, totaling around $49 million in repayment, could potentially be eligible for IDR forgiveness.[10] The failure of servicers and the Department to accurately track repayment data means that the GAO was not able to perform a full analysis of what loans are potentially eligible for IDR forgiveness.[11] And despite the Department's knowledge that payment counts could not be accurate, it continued to instruct servicers to consider previous servicer counts as accurate.[12] Relatedly, the GAO report found that the Department does not provide sufficient information to borrowers about what constitutes a qualifying payment towards IDR forgiveness, including that periods of forbearance and most types of deferments do not count.[13] Similarly, servicers and the Department do not notify borrowers of their progress towards IDR forgiveness, nor that borrowers can request to verify these counts.[14]

Worse, the situation for borrowers pursuing cancellation through IDR appears unlikely to improve. An internal analysis conducted by one large student loan servicer recently found that of

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[4] https://studentaid.gov/manage-loans/repayment/plans/income-driven.
[5] https://protectborrowers.org/idr-unaffordability-report/.
[6] https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/07/Help-or-Hardship.pdf.
[7] https://bfi.uchicago.edu/insight/finding/the-distributional-effects-of-student-loan-forgiveness/.
[8] https://www.gao.gov/assets/gao-22-103720-highlights.pdf; https://www.gao.gov/assets/gao-22-103720.pdf at 10.
[9] https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf#page=2.
[10] *Id.*
[11] *Id.*
[12] *Id.* at 13; 14.
[13] *Id.*
[14] *Id.*

the more than 8.5 million borrowers whose federal student loans it manages, only 48 are projected to receive debt cancellation under IDR by 2025.[15] This overall estimate involved the projection of an 83 percent *reduction* between 2022 and 2025 in the number of borrowers that will receive cancellation through IDR each year, prompting one company employee to remark in uncovered emails that the number of borrowers securing cancellation seemed "very low."[16]

The systematic collapse of the promise of relief that Congress made to borrowers flows from decades of inaction, incompetence, and unfortunately frequent malfeasance from the Department, federal policymakers, regulators, and the student loan industry. For example, over the past several years, state attorneys general across the country and the Consumer Financial Protection Bureau have brought public enforcement actions against ED's largest student loan servicing contractors for a wide range of abuses related to borrowers' access to IDR, including deploying abusive forbearance steering tactics, deceiving borrowers regarding their obligation to annually recertify income, and failing to timely process IDR applications.[17] These abuses—conducted by the very same companies tasked with guiding borrowers through repayment and empowering them to access their protections under the law—will add years or decades to borrowers' repayment sequences even if they are eventually able to access IDR at all. By that time, borrowers will likely have undergone extensive but entirely unnecessary financial hardship including periods of disastrous delinquency or default.

A recent settlement between 39 states attorneys general and the federal student loan servicing giant Navient demonstrates that servicers have consistently and recklessly engaged in a startling variety of abusive practices with long-term consequences for borrowers.[18] While beneficial for some private loan borrowers, the terms of the settlement will not provide relief for the millions of borrowers who lost years of credit towards federal loan forgiveness and over-paid on their monthly student loan bills because of student loan servicers' illegal activities. This episode is yet another instance of the policy apparatus and specifically the promise of affordability through IDR failing borrowers entirely.

As with so many aspects of the student debt crisis, the weight of IDR's widespread breakdown has landed most heavily on Black borrowers. In particular, a nationwide survey from The Education Trust recently found that Black federal student loan borrowers struggle to access IDR, and that they continue to face both difficulty affording basic life necessities and an ongoing risk of default on their student loans even when enrolled in IDR.[19] Reflecting on IDR's failure to deliver eventual debt cancellation for Black borrowers, the survey noted that Black borrowers feel that repayment under IDR is "a lifetime debt sentence."[20]

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[15] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=18.
[16] *Id.*
[17] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=15.
[18] https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/.
[19] https://edtrust.org/resource/jim-crow-debt/.
[20] *Id.*

STUDENT BORROWER PROTECTION CENTER

The Current Waiver Proposal is Based on the Myth of Accurate Payment Histories

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices related to IDR have had on borrowers, particular as to the Department's and servicer's failure to retain accurate loan payment records and data. For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled, and the account adjustment as currently conceived is insufficient to remedy the harm done.

1. Hilary is a 70 year old borrower in California. She had $42k in debt at graduation and now owes about $178k due to interest accruals. She has worked without stopping since graduation while being a single mother, including working for years at a preschool from 2005 to 2019. This preschool happened to be a private for-profit company, so she does not qualify for the Public Service Loan Forgiveness ("PSLF") program. Student debt has prevented Hilary from getting a home, supporting her family, and retiring comfortably.

   Hilary has been in IDR since 1998 after being in forbearance for ~10 year before that. She consolidated in 2000, and it appears her loans were transferred from ACS to MOHELA in 2008. It appears certain records of payments before this transfer were lost. MOHELA recognizes Hilary's first IDR payment as being in February 2001. At least some points during her repayment sequence Hilary received a $0 payment under IDR. MOHELA claims she has 191 months of payments toward IDR forgiveness (she is in REPAYE and has grad loans).

   Hilary can't get a straight answer about how her payments are being counted. She says: "My loan should have been forgiven in 2018 . . . but when I inquired about it, I was told that because my loan was transferred from one servicer to another, I forfeited all the years I had accrued prior to the transfer! I am now 70 years old and have no idea if or when my loan will ever be forgiven-- goodness forbid it should be transferred again!"[21]

2. "After graduating in 2013, I began paying back my student loans in 2013 to Navient. When I requested a payment history, 3 years of payments, totaling $15,000 were missing."[22]

3. "I am requesting the following actions . . . that the DOE review and correct erroneous information on my payment history, especially the years . . . where [my servicer] recorded me as being in forbearance. . . I am writing as a student loan borrower and a public servant. I have been teaching since XXXX, first in public schools and now in a public university. My first student loans were taken out in XXXX and then were consolidated in XXXX. These student loans have caused a lifetime of debt, stress, and worry for me. . . Throughout the time that XXXX serviced my loans, they made a multitude of errors on my records. Those mistakes are still in my payment history, and XXXX refuses to correct them, as my loans were transferred to FedLoan for PSLF."[23]

[21] Story on file with the Student Borrower Protection Center.
[22] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5111194.
[23] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5221350.

4. "My loans/payment [were] serviced by [] . . . transferred to Direct Loans, then again to [their] final destination[,] FedLoans. My payment history only goes back to XX/XX/XXXX! [but] I finished undergrad XX/XX/XXXX. . . I have no history of payments from XXXX. . . . [I] sent request for [history] of payments, hoping it goes further than Dept education records which stops . . . My bank from that period is obsolete, bank has been closed or bought out . . . I have no record of payments. Direct Loans is not even in business to retrieve payment history. I don't see how my payment history would not be transferred to FedLoans . . . I had put too much trust into system to keep tracking for me . . . "[24]

5. "My account was just purchased by another lender. I had documented on my previous account all my payments and payoffs but now none of that is available online. The account originally is through [year] and recently just transferred to [a new servicer]. There is no payment history and my [balance] seems a lot higher than it was originally about a year ago . . . I also have to pay for 4 children now single without child support, working as a state government employee and was interested in loan forgiveness and seeing what new options I have, and I am soon about to change careers along with considering re-entering into school for masters degree, but I am now figuring out I may just be growing a large monster bill."[25]

6. "I am so confused at this point as to whether my loan would even qualify for forgiveness. Both [my servicer's website and the Federal Student Aid website] confuse me. I don't know whether I really have [an] accurate picture as to what happened with my loan. I originally received a disbursement in 2002 for [approximately $45,000] which I believe was when I [] consolidated thinking that it would be to my benefit. I can't even find on the website[s] when I first entered into the IDR repayment plan. I thought I was in it from the beginning and I was told today that I entered it in 2011. So now I only have 115 qualifying payments towards the 20 years when I actually made 211 payments during the lifetime of my loan. My loan has now grown to over $95,000 dollars and they tell me I have 10+ years of payments. My age is approaching 60 and I cannot see how I will be able to continue making my $500+ a month payments as I will be receiving medicare before that! Oh, and on the FedGov website it says I was disbursed a total of $117,000! What?!!"[26]

7. "Since I've entered repayment, I have always been on an income-driven repayment plan. The repayment plans have always been on IBR, ICR, or REPAYE. With the exception of transitioning to what was then the new REPAYE plan, I have never been in any forbearance or deferment. However, FedLoan provides 16 ineligible PSLF payments with the indicator " You Do Not Have A Bill Due For This Payment Period ". My loans were with then XXXX (no longer a servicer[]). These were definitely qualifying payments. My Direct Loan servicers were as follows : XXXX : XX/XX/XXXX through XX/XX/XXXX XXXX : XX/XX/XXXX through XX/XX/XXXX FedLoan/PHEAA :

[24] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5185261.
[25] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5112810.
[26] Story on file with the National Consumer Law Center.

XX/XX/XXXX through present. FedLoan is missing so many months between XX/XX/XXXX through XX/XX/XXXX but has some records of my payment. That is incredibly strange that they retained and are only able to reconstruct part of my payment history with XXXX but not for other months."[27]

8. "Navient is showing that I have missed a payment in XXXX and XXXX of 2020, which is inaccurate and misleading information. I have never paid late on this account . . . The payment history is also showing to be inconsistent. The month of XX/XX/2020 it shows that I was 90 days late and XXXX shows XXXX days late. How is that possible?"[28]

9. "I have been paying on my Direct student loan for over 22 years. I have been on the IDR plan for almost that long. I graduated from Columbia College in Chicago in 1991. My student loan was originally about $56,000 and eventually grew to $141,000 as of today. I was very poor and the first one in my family to attend college. I didn't have any money other than financial aid to help me pay for my studies. I was required to take out loans to help cover the cost of my tuition and books each semester. . . . Once I graduated, I was unable to find a job in journalism . . . I eventually took the only job that was offered to me as a summer teacher at my old elementary school. Then I became a substitute teacher and teacher assistant with the Chicago Public Schools for several years because I could not find a better job. My salary was about $500 weekly. Years later, I went on to accept a job as a customer service representative for AT&T for $12 an hour. My wage eventually grew to $55,000 a year before I was laid off in March 2021 after 20 years of service. I never made enough money to pay off my loans. Luckily, I was approved to pay under the IDR plan many years ago and was able to pay a small amount based on my salary. Now, I am hoping that I have enough years under IDR to be eligible to have my student loan forgiven. I spoke to my student loan servicer Mohela several weeks ago and was told that they are unable to determine how long I have been paying on my loan, and that according to their records, I am nowhere near close to paying them off."[29]

10. "I am totally confused regarding who and who is handling my student loan activities. I took out a loan for graduate school . . . . with XXXX XXXX, then XXXX XXXX contracted my loan to a XXXX and now to Ascendium. . . . [I] [h]ave been paying on my loan since graduation except for [some time] due to XX/XX/XXXX crashed when I lost my job . . . and I requested forbearance until I had another job . . . Further after examining the loan I downloaded it states a loan date of XX/XX/XXXX and disbursement date of XXXX. I graduated from XXXX University in XXXX. I did not take out any loan in XX/XX/XXXX. I was not in any school whatsoever. . . I can not get through to anyone at Ascendium . . . Since it's had to get someone at Ascendium, I went on-line to check my payment history and I am surprise[d] there is NO PAYMENT HISTORY whatsoever."[30]

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[27] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5069934.
[28] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4952630.
[29] Story on file with the SBPC.
[30] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4147277.

11. "My original servicer was Sallie Mae. Navient took over and my payment history of over 10 plus years disappeared. . . . I have never been delinquent on my student loans. Everytime I inquire I am being given the run around and told that I did not start paying the loans until XXXX. This is untrue because I graduated in XXXX and started making payments 6 months later."[31]

As these stories illustrate, borrowers' loan payment and status histories are often missing or incomplete. The current IDR waiver proposal is predicated on the myth that the Department, servicers, and borrowers have full, accurate records of borrowers' payment histories. Specifically, the account adjustment assumes that servicers can track 12 or more months of consecutive forbearance, 36 or more months of cumulative forbearance, and all months spent in deferment prior to 2013 in a borrower's payment history. Similarly, the policy assumes that borrowers have access to accurate payment history records in mandating that borrowers who were steered into shorter-term forbearances can proactively seek account review.

The proposed policy is contrary to the facts: servicers plainly do not have accurate records of borrowers' loan histories. As has been documented, Affiliated Computer Services ("ACS"), the only student loan servicer for federal loans until 2009, consistently failed to keep accurate records of borrowers' payments.[32] But the problem of inaccurate payment history goes far beyond ACS and stretches to the present. As the GAO identified and the Department conceded, servicers do not have accurate records of borrowers' payment histories, especially before 2014, including time spent in deferment and forbearances.[33] As the stories above indicate, transfers between servicers are routine and, when these transfers are effectuated, servicers and borrowers often lose borrowers' payment histories.[34] These problems are only likely to continue given that four major servicers are currently in the process of exiting the student loan market, and approximately 16 million[35] borrowers' accounts are being transferred to new servicers.

Furthermore, as a recent GAO report demonstrated and by the Department officials' own admissions, the Department has known for years that it does not have accurate borrower payment histories, especially before 2014.[36] The Department's National Student Loan Data System ("NSLDS") is riddled with missing data—so much so that the GAO could not accurately perform its analysis of how many loans are eligible for IDR forgiveness.[37] Indeed, "[a]ccording to Education officials, prior to 2014, NSLDS did not contain complete and reliable data on delinquencies or information on repayment plans, which is needed to determine whether a loan is

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[31] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4915688.
[32] https://protectborrowers.org/wp-content/uploads/2020/12/Broken-Promises_ACS-12_9.pdf; https://protectborrowers.org/wp-content/uploads/2020/09/ACS_Findings.pdf.
[33] https://www.gao.gov/assets/gao-22-103720.pdf (at 12). ("In particular, a 2016 Education monitoring report found that months when loans were in an economic hardship deferment or when the approved monthly payment was $0 may not have been consistently counted as qualifying payments. Several servicers also said some counts they received from the original servicer were missing economic hardship deferments or other types of qualifying payments.")
[34] *See* https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf. (at 61-65).
[35] https://www.forbes.com/sites/adamminsky/2021/10/01/student-loan-servicing-transfers-begin-this-week-as-servicer-upheaval-expands-key-details/?sh=5908650260ee.
[36] https://www.gao.gov/assets/gao-22-103720.pdf at 11-12, 28 ("NSLDS did not include information on repayment plans prior to 2014.")
[37] https://www.gao.gov/assets/gao-22-103720.pdf.

on a plan that could qualify for IDR forgiveness. Education took steps to address these data limitations starting in 2014; however, the changes do not retroactively apply to older data according to Education officials. . . . while NSLDS also includes cumulative counts of qualifying payments toward IDR forgiveness, officials advised against using them in our analysis because they are not sufficiently accurate."[38] While the Department took steps in 2014, 2018, and 2020 to improve data collection practices, these changes were not retroactive and did not fully solve the problems.[39]

Without accurate information from the Department or their servicers, borrowers are left to piece together payment histories from their bank account records or receipts. Borrowers' may have closed their bank accounts and lost payment histories, and banks are not required to keep account records beyond five years[40] And, as with all broken policies, the most vulnerable borrowers—or those who do not have the time, resources, or technical savvy to maintain and comb through years of bank and personal records—will be left without recourse for failures of the Department's account adjustment policy.

While the policy announced by the Department will certainly help thousands of people, its design assures it will fall severely short. Even assuming that payment history errors could be fixed, correcting inaccurate IDR payment counts is a complex and time intensive practice: by the Department's own estimate, "the manual review process to verify qualifying payment counts would have taken 8 to 10 hours per loan."[41] **Considering that 4.4 million borrowers may be eligible for IDR forgiveness, the Department's current proposal for servicers and borrowers to count months of forbearance and certain deferments is unworkable**. An IDR waiver that genuinely seeks to solve the failures of IDR should count all months since the start of repayment, or since a borrower exited their grace period, regardless of payment status. A policy that requires the Department, servicers, or borrowers to parse through years of payment histories does not acknowledge the reality of borrowers' lived experiences with our broken student loan system and denies realities the Department has itself acknowledged.

ED Can and Must Act to Restore the Promise of Relief through IDR

In October, the Biden Administration initiated a sweeping waiver to address longstanding, wide-ranging failures plaguing the PSLF program.[42] This waiver allowed hundreds of thousands of borrowers to bypass byzantine administrative burdens, sweep aside the lingering effects of past servicing abuses, and rise from the wreckage of decades-long policy blunders to access earned relief.[43] For tens of thousands of borrowers, that relief included immediate debt forgiveness.[44]

Now, borrowers and a broad coalition of advocates are calling on the Biden Administration to use authorities already at its disposal to initiate a similarly bold program to deliver justice and

[38] *Id.* at 11.
[39] https://www.gao.gov/assets/gao-22-103720.pdf (12-13).
[40] 31 CFR 1010.430(d).
[41] https://www.gao.gov/assets/gao-22-103720.pdf.
[42] https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness.
[43] *Id.*
[44] *Id.*

relief to the millions of borrowers who have been denied the promise of IDR.[45] As outlined in a white paper co-authored by the Student Borrower Protection Center, the Center for Responsible Lending, and the National Consumer Law Center, this waiver would involve the use of administrative data to retroactively count all months since borrowers entered repayment as qualifying months towards forgiveness under IDR, regardless of the borrower's loan type or prior repayment plan.[46] A coalition of more than 100 unions, consumer protection organizations, and non-profit groups that represent a broad and diverse population of low to middle income student borrowers and workers across the country recently signed a letter in support of this proposed IDR waiver.[47]

Until the Biden Administration takes substantial action such as implementing the proposed IDR waiver, however, borrowers will continue languishing under the weight of system-wide failure and broken promises. The weight that these borrowers face goes far beyond what may be captured in any statistic outlining how few borrowers have secured cancellation through IDR, how many borrowers continue to face delinquency and default, and how many decades borrowers have been trapped in repayment. The failure of IDR means years of lost payments, rippling financial ruin, and broken promises between citizens and their government at every level.

Servicers have too long put their financial profits ahead of borrowers' financial security. The Biden Administration must choose to right that wrong by implementing a IDR waiver that will provide credit towards loan forgiveness for borrowers' time in default, forbearance, and deferment since the month a borrower exited their grace period.

[45] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.
[46] https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/.
[47] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

From: Persis Yu
Subject: Re: [Meeting Request] Fresh Start
To: Hurley, Jack
Cc: Mike Pierce; Amber Saddler; Abby Shafroth; Kyra Taylor; Eileen Connor; Natalia Abrams; cody hounanian; Alpha Taylor; taylor.roberson@responsiblelending.org; Hardman, Latricia; Jaylon Herbin; Yates, Amanda
Sent: April 21, 2022 10:54 AM (UTC-04:00)
Attached: Data Requests for Implementation of Fresh Start and IDR Waiver (1).docx

Thank you! That time would be great.

Also, following up from the briefing on the IDR announcement, we have pulled together a list of data requests that we think would be instructive for both the implementation of the IDR announcement and for fresh start.

We look forward to discussing this with you all on Tuesday!

Best,
Persis

On Wed, Apr 20, 2022 at 4:03 PM Hurley, Jack <Jack.Hurley@ed.gov> wrote:

> Hi Persis,
>
> I spoke with James and Julie and they are open this Tuesday (4/26) from 1:30 – 2:00. Rich Cordray will also be in attendance. If this time works I will send out an invite to everyone included in this email.
>
> **Jack Hurley**
>
> Confidential Assistant, Office of the Undersecretary
>
> US Department of Education
>
> (b)(6) | Jack.Hurley@ed.gov
>
> ---
>
> **From:** Morgan, Julie <Julie.Morgan@ed.gov>
> **Sent:** Thursday, April 7, 2022 10:16 AM
> **To:** Persis Yu <persis@protectborrowers.org>
> **Cc:** Kvaal, James <James.Kvaal@ed.gov>; Mike Pierce <mike@protectborrowers.org>; Amber Saddler <amber@protectborrowers.org>; Abby Shafroth <ashafroth@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Eileen Connor <econnor@law.harvard.edu>; Natalia Abrams <natalia@studentdebtcrisis.org>; cody hounanian <cody@studentdebtcrisis.org>; Alpha Taylor <ataylor@nclc.org>; taylor.roberson@responsiblelending.org; Jaylon Herbin <Jaylon.Herbin@responsiblelending.org>; Hurley, Jack <Jack.Hurley@ed.gov>

Subject: Re: [Meeting Request] Fresh Start

Hi Persis,

I'd be happy to meet. Adding Jack here to help us schedule.

Julie

On Apr 7, 2022, at 9:13 AM, Persis Yu <persis@protectborrowers.org> wrote:

Dear James and Julie,

On behalf of this coalition of borrower advocates, I wanted to share how excited we were to see the Secretary's announcement on fresh start yesterday. This will have a huge impact on millions of defaulted borrowers. I understand that the Department is planning on releasing more details on fresh start in the coming weeks.

We would like to request a meeting with you as soon as possible to discuss the implementation of fresh start to ensure that it is implemented in a way that optimizes this opportunity for borrowers.

Thank you for your consideration of this request. We look forward to hearing from you.

Best,

Persis

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Persis S. Yu (she/her/hers)

Policy Director & Managing Counsel

Student Borrower Protection Center

www.protectborrowers.org

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Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

Data Requests for Implementation of Fresh Start and IDR Waiver

1. How many borrowers have been in repayment for more than 20 years?
2. Among borrowers who have been in repayment for more than 20 years, how many of these borrowers:
    a. Are currently in default?
    b. Were in default at some point?
    c. Were in default for 3 or more years?
    d. Were in default for 5-10 of the past 20 years?
    e. Were in default for 10-15 years of the past 20 years?
    f. Were in default for 15-20 of the past 20 years?
    g. How many utilized forbearance for any sequential period of 12 months or more?
    h. How many utilized forbearance for 36 months or more cumulatively during repayment?
    i. How many experienced a period of forbearance followed by a default in the subsequent 2 years?
3. Of the nearly 8 million borrowers currently in default, how many of these borrowers:
    a. Have been in default for fewer than 3 years?
    b. Have been in default for 3-5 years?
    c. Have been in default for 5-7 years?
    d. Have been in default for 7-10 years?
    e. Have been in default for more than 10 years?
    f. Have loans that went into repayment fewer than 5 years ago?
    g. Have loans that went into repayment 5-10 years ago?
    h. Have loans that went into repayment 10-15 years ago?
    i. Have loans that went into repayment 15-20 years ago?
    j. Are collection proof (i.e. do not receive sufficient wages or benefits to have any amount garnished or offset)?
    k. Would qualify for a $0 IDR payment?
    l. Have made payments through AWG?
    m. Have made payments through tax refund offsets?
    n. Have made payments through federal benefits offset (in particular, Social Security)?
    o. Have defaulted one or more times prior to their current default?
    p. Would be projected to pay off their loans within the next 5 years if their payments (voluntary or involuntary) continued at the same annual amount as in 2019?
        i. In the next 10 years?
        ii. In the next 15 years?
        iii. In the next 20 years?
        iv. In the next 25 years?
        v. Never?
    q. How many accessed IDR at any time before default?
    r. How many utilized forbearance for any sequential period of 12 months or more?

s. How many utilized forbearance for 36 months or more cumulatively during repayment?

4. Please provide information regarding characteristics of who is in default. If you have information sufficient to identify the total number of borrowers currently in default for each of the items below, please provide those numbers. If you do not have that information, please provide alternative information (such as longitudinal or sampled information) relevant to the question of how each of the characteristics below relates to federal student loan default.

   How many of the borrowers who are in default, or what portion of borrowers in default ...
   a. Are Black or Latino?
   b. Are women?
   c. Are Pell grant recipients?
   d. Are first generation higher ed students?
   e. Are Parent PLUS borrowers?
   f. Are Social Security recipients?
   g. Are SSDI recipients?
   h. Have debt from a for-profit school?
   i. Did not complete an educational program for which they borrowed?
   j. Did not complete a bachelor's degree/ 4-year educational program or more? (include in this category borrowers who completed only programs shorter than a bachelor's degree programs as well as borrowers who began but did not complete a bachelor's degree/4-year program)
   k. Were previously enrolled in an income driven repayment program?
   l. Were enrolled in an income driven repayment program when they defaulted?
   m. Were previously enrolled in a forbearance?
   n. Were enrolled in a forbearance when or within 12 months of when they defaulted?
   o. Were previously enrolled in a deferment?
   p. Were enrolled in a deferment when or within 12 months of when they defaulted?
   q. Had dependent children while obligated on federal student loans (as may be evidenced by their having reported they had dependents on their FAFSA or IDR forms, or through other data collection mechanisms)?

5. Across all servicers, the number of borrowers who, at some point in their loan history, used forbearances for:
   a. 12 or more consecutive months?
   b. 6 or more total months?
   c. 12 or more total months?
   d. 24 or more total months?
   e. 36 or more total months?

6. Across all servicers, the number of borrowers who, at some point in their loan history, used a combination of deferments and forbearances for:
   a. 12 or more consecutive months?
   b. 6 or more total months?

c. 12 or more total months?
d. 24 or more total months?
e. 36 or more total months?

7. Across all servicers, the number of borrowers who had one month or more of forbearance each year they were enrolled in IDR?

From: Persis Yu
Subject: Request to meet with borrower advocates
To: Kvaal, James; Julia Barnard; Alexis Goldstein; Mike Pierce; Remington Gregg; Natalia Abrams; cody hounanian; Abby Shafroth; Alpha Taylor; Kyra Taylor
Sent: September 20, 2021 4:17 PM (UTC-04:00)

Hello James,

Congratulations on your confirmation as Undersecretary of Education!

I am writing on behalf of several student loan borrower advocacy organizations. We are eager to meet with you to discuss a number of urgent issues facing borrowers, in particular the federal student loan payment pause, imminent transfer of millions of borrowers, and general borrower relief.

The coalition that would like to request this meeting includes Americans for Financial Reform, the National Consumer Law Center, Center for Responsible Lending, Student Debt Crisis, Open Markets, the Student Borrower Protection Center, and Public Citizen.

Please let me know if we can organize such a joint meeting with you.

Thank you and we look forward to speaking with you.

Best,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

From: James.Kvaal@ed.gov
Subject: Re: Request to meet with borrower advocates
To: Persis Yu
Cc: Julia Barnard; Alexis Goldstein; Mike Pierce; Remington Gregg; Natalia Abrams; cody hounanian; Abby Shafroth; Alpha Taylor; Kyra Taylor; Muenzer, Melanie; Hardman, Latricia
Sent: September 20, 2021 5:25 PM (UTC-04:00)

Hi Persis thanks for your note. I'm eager to find time to meet soon. I'm adding Latricia to help us.

On Sep 20, 2021, at 4:17 PM, Persis Yu <pyu@nclc.org> wrote:

Hello James,

Congratulations on your confirmation as Undersecretary of Education!

I am writing on behalf of several student loan borrower advocacy organizations. We are eager to meet with you to discuss a number of urgent issues facing borrowers, in particular the federal student loan payment pause, imminent transfer of millions of borrowers, and general borrower relief.

The coalition that would like to request this meeting includes Americans for Financial Reform, the National Consumer Law Center, Center for Responsible Lending, Student Debt Crisis, Open Markets, the Student Borrower Protection Center, and Public Citizen.

Please let me know if we can organize such a joint meeting with you.

Thank you and we look forward to speaking with you.

Best,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

From: Kvaal, James
Subject: RE: Re:
To: Persis Yu
Sent: October 6, 2021 11:06 AM (UTC-04:00)

Thank you!

From: Persis Yu <pyu@nclc.org>
Sent: Wednesday, October 6, 2021 11:04 AM
To: Kvaal, James <James.Kvaal@ed.gov>
Cc: Morgan, Julie <Julie.Morgan@ed.gov>
Subject: Re:

Hi James,

Here's the cost of default report by Consumer Reports: https://www.consumerreports.org/student-loan-debt-crisis/student-loan-repayment/

Best,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

On Mon, Oct 4, 2021 at 9:10 PM Kvaal, James <James.Kvaal@ed.gov> wrote:

> Persis, thanks for your time today. I'm sorry to say I cannot find the report you mentioned on the cost of student loan defaults relative to standard repayment – was it Consumer Union? Would you be willing to point me in the right direction?
>
> thanks!

From: Persis Yu
Subject: Connecting regarding TPD & SSA disability ratings
To: Miller, Benjamin; Morgan, Julie; John Whitelaw; Bethany Lilly
Sent: February 19, 2021 9:53 AM (UTC-05:00)

Hi Ben and Julie!

I wanted to make sure that you are connected with John Whitelaw, Advocacy Director at Community Legal Aid Society, Inc. (Delaware) and Bethany Lilly, Director of Income Policy at The Arc, who wrote the fantastic paper, Relief for Borrowers with Disabilities, as part of the SBPC paper series.

They have a wealth of information relating the SSA disability rating and many ideas on how to improve the disability discharge program. I hope that you all are able to connect.

Thanks for all the work you all are doing!

Best,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
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From: Morgan, Julie
Subject: default and collections
To: Persis Yu
Sent: March 1, 2021 10:37 AM (UTC-05:00)

Hi! Could we find some time to talk about default and collections? Feel free to add anyone who you think would be useful.

From: Persis Yu
Subject: Re: default and collections
To: Morgan, Julie
Sent: March 2, 2021 7:03 AM (UTC-05:00)

Absolutely. How does Thursday look for you? I'm free between 9 and noon, and then from 1-3. Friday after 11 would work for me too. I can try to pull in someone from CRL and SBPC.

Persis Yu (she/her/hers)
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On Mon, Mar 1, 2021 at 10:36 AM Morgan, Julie <Julie.Morgan@ed.gov> wrote:

> Hi! Could we find some time to talk about default and collections? Feel free to add anyone who you think would be useful.

From: Persis Yu
Subject: Fwd: [FOR TRANSMITTAL] SBPC & NCLC Letter on Commercial FFEL
To: Morgan, Julie; Miller, Benjamin; Williams, Rich; Habash, Tariq; Darcus, Joanna; Campbell, Patrick
Cc: Seth Frotman; Benjamin Kaufman; Abby Shafroth; Kyra Taylor; Tamara Cesaretti; Mike Pierce
Sent: March 17, 2021 4:16 PM (UTC-04:00)
Attached: NCLC-SBPC-Letter-to-ED-Commercial-FFEL-Borrowers-Need-Protection-During-COVID.pdf

Hello,

I am writing to follow-up on our letter urging the Department to take immediate action to protect the millions of student loan borrowers with federal loans not held by the Department, including the 6.1 million borrowers with Commercial FFEL loans.

As it stands, a year into the pandemic and commercially held FFEL and Perkins borrowers continue to suffer the economic devastation of the pandemic. Yet, unlike their Direct loan or ED-held FFEL/Perkins counterparts, they are still without a payment suspension. And once again, Congress left these borrowers out of the COVID relief package. This means that it is up to the Department to exercise its responsibility and authority to protect these forgotten federal student loan borrowers during the national emergency.

Borrowers in good standing who cannot afford their payments are forced to use costly forbearances or consolidate and risk putting their loans in a materially worse position. Borrowers in default may still be at risk of involuntary collection activity. Troublingly, based on public records, it appears that the Consumer Financial Protection Bureau has open investigations into two Guaranty Agencies, Ascendium (formerly Great Lakes) and ECMC, for their part in a scheme to cheat borrowers out of their right to rehabilitate defaulted loans without incurring significant collection costs.

We welcome the opportunity to discuss the progress the Department is making to protect c-FFEL and Perkins borrowers at your earliest convenience.

Thank you again for your continued work to protect vulnerable student loan borrowers.

Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
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---------- Forwarded message ---------
From: **Mike Pierce** <mike@protectborrowers.org>
Date: Tue, Feb 16, 2021 at 10:50 AM
Subject: [FOR TRANSMITTAL] SBPC & NCLC Letter on Commercial FFEL
To: <julie.morgan@ed.gov>, <Benjamin.miller@ed.gov>, <rich.williams@ed.gov>, <tariq.habash@ed.gov>, <joanna.darcus@ed.gov>, <patrick.campbell@ed.gov>
Cc: pyu@nclc.org <pyu@nclc.org>, Seth Frotman <seth@protectborrowers.org>, Benjamin Kaufman <ben@protectborrowers.org>, Abby Shafroth <ashafroth@nclc.org>, Kyra Taylor <ktaylor@nclc.org>, Tamara Cesaretti <tamara@protectborrowers.org>

Colleagues:

Attached, please find a letter from the Student Borrower Protection Center and the National Consumer Law Center urging the Acting Secretary to take immediate action to protect the millions of student loan borrowers with federal loans not held by the Department, including the 6.1 million borrowers with Commercial FFEL loans.

We look forward to talking about these issues at your convenience. In addition to the attached letter, earlier today we released a brief blog post also discussing these issues, available here:

https://protectborrowers.org/its-time-for-washington-to-stand-up-for-millions-of-student-loan-borrowers-struggling-without-relief-during-covid/

Thank you again for your continued work to protect vulnerable student loan borrowers. We look forward to speaking with many of you this afternoon about this and related issues.

Mike

--

Michael Justin Pierce
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

STUDENT BORROWER PROTECTION CENTER

National Consumer Law Center
Fighting Together for Economic Justice

February 16, 2021

The Honorable Philip Rosenfelt
Acting Secretary
Department of Education
400 Maryland Avenue, SW
Washington, DC
20202

Dear Acting Secretary Rosenfelt,

We write today to highlight the ongoing lack of assistance during the COVID-19 pandemic for millions of federal student loan borrowers owing on so-called "commercial FFELP" loans and to call for immediate action to remedy issues past and present that have unduly harmed these borrowers.

Since last March, legislative and executive action has provided most federal student loan borrowers relief from payments, interest charges, and collections.[1] However, 8.2 million federal borrowers have been cut out of this relief because their loans are not owned by the Department of Education.[2] Among these are 6.1 million borrowers who owe on $160 billion in federal student loan debt originated under the now-discontinued Federal Family Education Loan Program (FFELP)—debts owned by private third parties such as banks and guarantee agencies.[3] These borrowers' cumulative balance is larger than the entire private student loan market,[4] larger than the payday loan market,[5] and larger than the total outstanding balance of past-due medical debt in the U.S.[6]

Even before COVID, the outlook for these loans' successful repayment was dimming: the rate at which commercial FFELP loans are being paid down has decreased every year for which data are available,[7] and bonds backed by these loans recently had to extend their maturity by as

[1] *FAQs: Student Loan Repayment During COVID-19*, Student Borrower Prot. Ctr (July 14, 2020), https://protectborrowers.org/faqs-student-loan-repayment-during-covid-19/.
[2] Press Release, U.S. Sen. Comm. on Health Educ. Labor & Pensions, Democratic Colleagues Urge DeVos to Help 8.2 Million Federal Student Loan Borrowers Currently Unable to Access Relief (Oct. 21, 2020), https://www.help.senate.gov/ranking/newsroom/press/murray-democratic-colleagues-urge-devos-to-help-82-million-federal-student-loan-borrowers-currently-unable-to-access-relief.
[3] SBPC calculations based on U.S. Dep't of Educ., Off. of Fed. Student Aid, *Federal Student Loan Portfolio: Portfolio by Loan Status*, https://studentaid.gov/sites/default/files/fsawg/datacenter/library/PortfoliobyLoanStatus.xls.
[4] Student Borrower Prot. Ctr, Private Student Lending (Apr. 2020), https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report_042020.pdf.
[5] Off. of the Comptroller of the Currency, Comptroller of the Currency Supports CFPB Proposed Rule on Short-Term Small-Dollar Lending (Feb. 11, 2019), https://www.occ.gov/news-issuances/news-releases/2019/nr-occ-2019-14.html.
[6] Gallup, The U.S. Healthcare Health Crisis (2019), https://news.gallup.com/poll/248081/westhealth-gallup-us-healthcare-cost-crisis.aspx#ite-248093.
[7] SBPC calculations based on Off. of Fed. Student Aid, *supra* note 3.

much as 54 years to avoid default.[8] By that time, some of the borrowers paying on the federal student loans underlying the bonds will be well over 100 years old.[9] In short, while FFELP loan origination may have ended in 2010, neither these debts nor the borrowers struggling to pay them down are going to simply disappear as a matter of concern for policymakers.[10]

Any discussion of these borrowers and recommendations for bringing about the relief they deserve during COVID must begin with an acknowledgement of the manifestly arbitrary and unfair path by which these borrowers arrived at their current position.[11] All FFELP loans were originally owned by private creditors and guaranteed by the government, but a substantial portion of these loans were purchased by the Department of Education (ED) outright as part of a bailout of the student loan industry during the last financial crisis.[12]

Now, those FFELP borrowers whose loans happen to have been purchased by ED (so-called "ED-held FFELP" borrowers) have been covered during COVID by federal student loan relief.[13] In contrast, those FFELP borrowers whose loans happen not to have been purchased by ED (referred to as "commercial FFELP" borrowers) have gone wholly ignored by both the legislative and executive actions during the pandemic.[14]

As this letter describes in detail, commercial FFELP borrowers face immediate, measurable financial costs due to this government inaction. The effects of the financial hardship these borrowers face may contribute to lasting financial insecurity for them and their families. Further, borrowers feeling this financial strain acutely have expressed frustration and anger that they have been ignored by policymakers throughout the pandemic. Taken together, the short-term and long-term financial effects of federal nonintervention on behalf of commercial FFELP borrowers make a clear case for the following immediate executive actions described in detail below:

- Create a clear path for all commercial FFELP borrowers to take advantage of the payment pause without penalty.

---

[8] Cezary Podkul, *A Borrower Will Be 114 When Bonds Backed by Her Student Loans Mature*, Wall St. J. (Jan. 7, 2020), https://www.wsj.com/articles/a-borrower-will-be-114-when-bonds-backed-by-her-student-loans-mature-11578393002.

[9] *Id.*

[10] *See, e.g.*, Student Borrower Prot. Ctr., Broken Promises: How the Department of Education's Failures and Industry's Abuses Deny FFEL Borrowers Public Service Loan Forgiveness (Dec. 2020), https://protectborrowers.org/wp-content/uploads/2020/12/BrokenPromises_FFEL.pdf.

[11] Note also that the process by which many federal student loan borrowers came to borrow FFELP loans as opposed to Direct Loans was also frequently arbitrary, as it depended in part on which of the two programs (FFELP or Direct) the school that the student attended happened to participate in. *See* Cong. Rsrch. Serv., R40122, Federal Student Loans Made Under the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers (June 22, 2015), https://www.everycrsreport.com/reports/R40122.html ("For the nearly two decades that both the FFEL and DL programs were in operation, [institutions of higher education] were able to participate in the program of their choice.").

[12] Julie Margetta Morgan, Roosevelt Inst., Who Pays? How Industry Insiders Rig the Student Loan System—and How to Stop It (2018), https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI-Who-Pays-Insiders-Rig-Student-Loan-System-201806.pdf.

[13] *FAQs: Student Loan Repayment During COVID-19*, Student Borrower Prot. Ctr., *supra* note 1.

[14] Tariq Habash, *The CARES Act Leaves Behind Millions of Student Loan Borrowers*, Student Borrower Prot. Ctr. (Mar. 27, 2020), https://protectborrowers.org/the-cares-act-leaves-behind-millions-of-student-loan-borrowers/.

- Recognize and remedy the wide breadth of policy errors and industry abuses that commercial FFELP borrowers have had to endure over time.

- Immediately halt all collections by guaranty agencies and pursue administrative action for the Secretary of Education to acquire all defaulted commercial FFELP loans.

I. Commercial FFELP Borrowers Face Immediate, Measurable Financial Costs Due to Government Inaction

As the pandemic and its economic fallout have worsened and as policymakers have failed to provide commercial FFELP borrowers badly needed relief, these borrowers have struggled. Over 1.2 million borrowers owing over $41 billion in commercial FFELP loans—more than a quarter of these loans that are outstanding—are currently in an interest-accruing forbearance or in default.[15] Immediate, measurable financial costs are mounting due to this inaction. For example:

- **A typical commercial FFELP borrower will have paid nearly $6,000 more than a borrower with a loan owned by the Department of Education by the fall.** The average monthly payment on a commercial FFELP loan is $300, implying that the typical commercial FFELP borrower will soon have paid $3,300 in federal student loan bills since the passage of the CARES Act last March while other federal student loan borrowers will not have had to make a single payment or worry about the weight of accruing interest.[16] By the time Biden administration's current payment pause expires in September, this payment burden will have amounted to $5,700.

- **Commercial FFELP borrowers will pay thousands of dollars more for the same amount of loan forgiveness.** Borrowers with both ED-held and commercial FFELP loans are eligible for income-based repayment (IBR), a federal student loan repayment plan that sets FFELP borrowers' monthly student loan bill at 15 percent of their discretionary income and offers loan forgiveness after 25 years of qualifying payments.[17] However, while commercial FFELP borrowers will have to continue paying on these loans to make progress toward IBR forgiveness during COVID, the terms of the CARES Act and subsequent administrative student loan relief dictate that ED-held FFELP borrowers in IBR will get credit toward forgiveness even in months when their payments are paused—that is, when their payment obligation is $0.[18] As a consequence, a commercial FFELP borrower with a moderate income would have to pay hundreds or

[15] SBPC calculations based on Off. of Fed. Student Aid, *supra* note 3.
[16] SBPC estimate based on Fed. Res., Survey of Consumer Finances, https://www.federalreserve.gov/econres/scfindex.htm (last accessed Feb. 13, 2021). These calculations assume similarity in average monthly student payment obligations across varieties of federal student loans.
[17] *Income-Driven Repayment Plans*, Fed. Student Aid, https://studentaid.gov/manage-loans/repayment/plans/income-driven.
[18] *FAQs: Student Loan Repayment During COVID-19*, Student Borrower Prot. Ctr., *supra* note 1.

thousands of dollars during COVID to stay on track for eventual loan forgiveness while a peer with ED-held FFELP loans would not.[19]

- **Debt collectors have collected or seized more than $100 million during the COVID-19 pandemic from defaulted borrowers, including tens of millions in garnished wages and public benefits.** The lack of student loan protections during COVID has opened the most vulnerable commercial FFELP borrowers up to abuse by a debt collection industry that has hardly slowed down its work during the pandemic. There are currently 830,000 borrowers in default on over $24 billion in commercial FFELP loans.[20] And while collections on defaulted debt have been paused for federal student loan borrowers whose debts are owned by ED, new data reveal that Guaranty Agencies (GAs)—the hybrid insurers, servicers, and debt collectors at the heart of the commercial FFELP market[21]—have taken in over $100 million from borrowers through the Treasury Offset Program, administrative wage garnishment, and ostensibly "voluntary" payments made by borrowers since the start of COVID.[22] Moreover, available data reveal stark regional disparities in whether and to what extent GAs have chosen to engage in involuntary collections—garnishing wages and seizing government payments such as tax refunds and social security checks.[23]

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[19] For example, consider two borrowers who both earn the median household income in the U.S.—$68,703. Fed. Res. Bank of St. Louis, Real Median Household Income in the United States, 1984-2019, https://fred.stlouisfed.org/series/MEHOINUSA672N. One borrower has commercial FFELP loans while one has ED-held FFELP loans, but both borrowers have been pursuing loan forgiveness through IBR and had made the same number of qualifying payments toward forgiveness when COVID started. If the ongoing pandemic-related student loan pause expires at its currently slated end-date of September 30th, 2021, the ED-held FFELP borrower will at that time have earned 19 qualifying payments toward IBR forgiveness since March 2020 without paying a single penny. Meanwhile, the commercial FFELP borrower would have had to pay over $8,000 over the period to earn the same number of qualifying payments toward forgiveness. Based on SBPC calculations from *Income-Driven Repayment Plans*, Fed. Student Aid, *supra* note 17. Should the two borrowers continue on their parallel paths after COVID and secure relief in the same month in the future, the commercial FFELP borrower will have paid $8,000 more to earn the same benefit. If the Biden administration extends student loan borrower relief again past September while retaining this disparity for commercial FFELP borrowers, the difference in the cost of forgiveness will only grow larger.

[20] SBPC calculations based on Off. of Fed. Student Aid, *supra* note 3.

[21] Mike Pierce, *What it means to be a student loan service: Guaranty Agency edition* (Mar. 29, 2019), https://protectborrowers.org/what-it-means-to-be-a-student-loan-servicer-guaranty-agency-edition/.

[22] SBPC calculations based on *FFEL Program Lender and Guaranty Agency Reports*, Fed. Student Aid, https://studentaid.gov/data-center/lender-guaranty. Student Borrower Prot. Ctr., Payments to Guarantee Agencies during COVID: Cumulative Voluntary Payments since March, https://public.tableau.com/profile/ben.kaufman4147#!/vizhome/GAfortableauFebruary2021/Dashboard1 Note that voluntary payments to Guaranty Agencies necessarily amount to payments by borrowers that have not consolidated or rehabilitated their loans out of default through federally available programs. *See Getting Out of Default*, Fed. Student Aid, https://studentaid.gov/manage-loans/default/get-out. Instead, these are payments solicited by Guaranty Agencies during a pandemic—a time when borrowers are likely to be undergoing unique economic hardship.

[23] For example, while Texas's guaranty agency has taken in well over $15 million from defaulted commercial FFELP borrowers through administrative wage garnishment since the end of March, several state GAs—including those of Utah, New Hampshire, Michigan, Oklahoma, New Mexico, and Louisiana—have all collected less than $100,000 since March by the same method. Based on SBPC calculations from *FFEL Program Lender and Guaranty Agency Reports*, Fed. Student Aid, *supra* note 22. This disparity cannot be explained away by differences in population; Michigan, for example, has roughly a third of the population of Texas, but has collected far less than a third through its guaranty agency during COVID. See U.S. Census Bureau, Evaluation Estimates (2020), https://www.census.gov/programs-surveys/popest/technical-documentation/research/evaluation-estimates.html. In turn, while defaulted borrowers whose loans happen to have been owned by ED have been granted protections regardless of where in the country they reside, borrowers with commercial FFELP loans could be made the targets of the student debt collection machine even during a pandemic solely as a function of the state they lived in when they went to college. See *FFEL Program Lender and Guaranty Agency Reports*, Fed. Student Aid, *supra* note 22.

II. The Effects of This Financial Hardship May Drive Lasting Financial Insecurity for Borrowers and their Families

As described above, by virtue of federal inaction to assist borrowers who owe commercial FFELP loans, these borrowers are projected to pay thousands of dollars in unnecessary student loan costs during the pandemic. However, it would be a mistake to consider these costs in isolation. Should this lack of aid continue, its ripple effects across commercial FFELP borrowers' financial lives will continue to compound:

- **Struggling commercial FFELP borrowers will face consequences in every area of their financial lives.** For borrowers who are struggling financially from the pandemic and its economic fallout, needing to allocate $300 per month toward student loans could mean not being able to afford basic life expenses. One in nine Americans is food insecure;[24] the $5,700 that the typical commercial FFELP borrower will have put toward these loans from March 2020 through September 2021 could have paid for more than 12 trips to the grocery store for the average family of four.[25] One in three renters has reported housing insecurity since the start of the pandemic;[26] those $5,700 in student loan payments could have covered over four months of rent for the median two-bedroom apartment in the U.S., allowing many borrowers to stave off eviction.[27] More than 60 percent of Americans have been at risk of utility shut offs during COVID;[28] the amount a commercial FFELP borrower will pay on FFELP loans would cover over 13 months of the average utility bill.[29] The list of financial risks for commercial FFELP borrowers due to their still having to make student loan payments goes on, and it includes the possibility of not being able to cover a healthcare deductible if they, like millions of others, should contract the coronavirus.[30] But instead of relief, financially strapped borrowers have received only more student loan bills.

- **Commercial FFELP borrowers will face unique costs and long-term financial hardship for additional expenses that other borrowers will be spared.** As they continue to make payments that peers with other varieties of federal student loans are excused from, commercial FFELP borrowers are left with negative consequences that ripple across their financial lives. These repercussions include the loss of an opportunity

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[24] U.S. Dep't of Ag., Household Food Security in the United States in 2019 (Sep't 2020), https://www.ers.usda.gov/publications/pub-details/?pubid=99281.

[25] SBPC calculations based on Bureau of Labor Statistics, Table 3444, Consumer units of four people by income before taxes (2018-2019), https://www.bls.gov/cex/2019/CrossTabs/sizbyinc/xfour.PDF. Assumes two trips to the grocery store per month.

[26] Press Release, Nat'l Low Income Hous. Coalition, Pandemic Widens Housing Security Disparities (Sep't 8, 2020), https://nlihc.org/resource/pandemic-widens-housing-security-disparities.

[27] SBPC calculations based on Sydney Temple, *America's 2020 Rental Market in Review: Did Renters Pay More During Pandemic?*, Rentable Blog (Dec. 29, 2020), https://www.rentable.co/blog/annual-rent-report/; *see also* Eviction Lab, *Eviction Tracking*, https://evictionlab.org/eviction-tracking.

[28] Press Release, Nat'l Energy Assistance Dirs. Assoc., Summary of State Utility Shut-Off Moratoriums Due to Covid-19 (Oct. 19, 2020), https://neada.org/utilityshutoffsuspensions/.

[29] SBPC calculations based on Bureau of Labor Statistics, *supra* note 25.

[30] *How Much Does Individual Health Insurance Cost?*, eHealth, https://www.ehealthinsurance.com/resources/individual-and-family/how-much-does-individual-health-insurance-cost (last updated Nov. 24, 2020).

for borrowers to pay their way out of higher-interest debts. Consider two identical borrowers, one with commercial FFELP loans and one with ED-held FFELP loans. Like many, these two borrowers may have an outstanding balance on a high-interest credit card. However, with payments paused during COVID, the ED-held FFELP borrower could use the freed up monthly $300 to pay down the credit card balance. Meanwhile, the commercial FFELP borrower may be stuck making only the minimum payment. If the two borrowers follow this course of action while both owing the national average balance of $5,313,[31] the ED-held FFELP borrower will emerge at the scheduled end of the payment pause in September 2021 having already paid off the entire credit card balance, while the commercial FFELP borrower would have barely made a dent, still owing $5,026.[32] Paying down the remainder of that balance while continuing to make only the minimum payment would take the commercial FFELP borrower several additional years and require paying an added $17,105 in interest beyond the interest expense incurred by the ED-held FFELP borrower.[33]

- **While other borrowers enjoy the compound benefits of saving, commercial FFELP borrowers will fall further behind.** Needing to continue paying on federal student loans during COVID robs commercial FFELP borrowers of a key wealth-building opportunity available to other federal student loan borrowers. For example, an ED-held FFELP borrower may choose to invest the paused student loan payments in a retirement account while the commercial FFELP borrower remains required to cover the monthly student loan bill. An ED-held FFELP borrower who simply allocated the paused student loan payment into an S&P 500 tracker each month since March would have seen an over 21 percent return on investment through the start of February 2021, generating almost $4,000 of wealth on only $3,300 in contributions.[34] The commercial FFELP borrower, meanwhile, would have simply paid $3,300 to a student loan company over the same period. Even if the ED-held FFELP borrower's $4,000 generates only a much more modest 5 percent annual rate of return for the next 20 years, that borrower will have over $10,605 to enjoy. These lost savings are just one more example of the lasting and likely permanent effects of the expenses commercial FFELP borrowers are now required to bear.

Research shows that in the last recession, those who did not receive household debt relief took almost four more years to recover with regard to consumer spending, home prices, and employment than those who did.[35] The unique costs being imposed on commercial FFELP borrowers are likely to leave them with a similarly rocky and elongated path to relief from COVID.

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[31] Stefan Lembo Stolba, *Experian 2020 Consumer Credit Review*, Experian (Jan. 4, 2021), https://www.experian.com/blogs/ask-experian/consumer-credit-review/.
[32] SBPC calculations. Assumes a starting credit card balance of $5,313 at an interest rate of 20.5 percent and minimum payments at the greater of $50 or two percent of the borrower's outstanding balance. *See id.*
[33] SBPC calculations, *see id.*
[34] SBPC calculations based on *SPDR S&P 500 ETF Trust (SPY)*, Yahoo! Fin., https://finance.yahoo.com/quote/SPY/history/ (last visited Feb. 12, 2021) (containing data through 2/8/2021).
[35] Tomasz Piskorski & Amit Seru, Debt Relief and Slow Recovery: A Decade after Lehman (Dec. 1, 2018) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3303411.

III. Borrowers Feel this Financial Strain Acutely and Express Frustration and Anger That They Have Been Ignored by Policymakers Throughout the Pandemic

Underlying these statistics are the millions of borrowers struggling to make ends meet during a pandemic all while being denied relief due to no fault of their own decision-making. The following are only a small sample of the narratives of FFELP borrowers who have recently reached out to the Consumer Financial Protection Bureau for help grappling with the weight of these loans during COVID:

- "Due to covid I am not working . . . . I haven't received unemployment although I've been trying for over 4 months now. I have begged them in multiple emails and explained my situation since XXXX and now they said theres no forbearance left and if Im late they will immediately report to my credit so I use much needed funds to pay. Please help. **In this time with no income and being unable to work due to being immunocompromised I am shocked that a company is this heartless.**"[36]

- "I have FFELP loans serviced by Navient and owned by Navient Federal Loan trust. It is my understanding that these are federal loans, but I was told by Navient on XX/XX/2020 that I did not qualify for the interest waiver due to COVID because they are not owned by the Ed Dept. . . . **I had no idea mine were not education dept loans until now**. It says on Navients website that all federal loan interest rates are set by Congress but mine are still showing 3-7 %. I don't know who to reach out to. Both my husband and I have huge student loan balances . . . **and both of us have had our hours cut in half due to the virus**."[37]

- "I was laid off work due to . . . mandatory office closure for the coronavirus. I received an automated email stating to go to StudentAid.gov and apply for Income-Based Repayment plan, which I did. **It also stated if I have any questions, several ways were listed on how to contact them. I tried them all.** I went to the app and tried using online tools to defer, but a pop up stated it was unavailable and needed to call. I called, and the message said the office was shut down, no way to leave a message. I tried their website, also ran into the same issues. I tried to email, but a pop up stated it was also not available. I tried live chat, it stated no one was available. Finally, I went to their social media site, and saw that I was not alone. Hundreds of comments were showing that they too could not get a hold of [my servicer], and were getting no responses. I left a comment, and was told to [direct] message them. . . . I tried again Sunday, on Monday, and Tuesday. No replies. . . . **Then I was billed my full amount, debited right from my checking account yesterday. . . . I have no income at the moment** and they are not helping me during these financially difficult times."[38]

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[36] *Consumer Complaint 3787868*, Consumer Fin. Prot. Bureau (Aug. 10, 2020), https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3787868 (emphasis added).
[37] *Consumer Complaint 3580183*, Consumer Fin. Prot. Bureau (Mar. 25, 2020), https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3580183 (emphasis added).
[38] *Consumer Complaint 3581789*, Consumer Fin. Prot. Bureau (Mar. 26, 2020), https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3581789 (emphasis added).

- "In early XXXX . . . I submitted my application (online) for an income-driven-repayment plan to one of my student loan servicers (Nelnet) ; not only did I complete the necessary form but as a follow up I called [N]elnet to make sure that they received and approved the INCOME DRIVEN REPAYMENT PLAN for one year. Despite my meticulous care in this area —Nelnet just recently sent me a harrassing email erroneously stating that I am currently 15 days past due . . . They have harrassed me in this manner before ——-and along with the current stresses due to covid-19 and trying to keep body and soul together by buying food and paying rent —-there unecessary and frivolous harrassment is **starting to adversely effect my mental and physical health and well being** (I am currently XXXX years old) "[39]

- "I was temporally laid off from my job because we closed for 7 weeks. Under the federal law, ALL student loan payments were put on hold, this includes 0 % interest. . . I have recently gotten letters from Allied Interstate demanding payment on my student loans. Today I got a hefty envelope from them stating if I don't repay my loan, in full, they will start to garnish my wages!!! **How is this legal??? How are they allowed to harass people about their student loans when there is a law in place the no payments are due!!** This needs to be addressed!! Up until XXXX, when the Act took place, I paid my loan every month on time! PLEASE HELP!!"[40]

- "**Due to Covid-19 I have lost my income** . . . my shop was forced to close due to the statewide shutdown on XX/XX/XXXX. I immediately applied for AES 's " disaster forbearance ", and was given confirmation of receipt of my message on XX/XX/XXXX. Since then, **I have received only " past due " notices**. I have applied again and again through their system, each time only receiving confirmation of receipt, and then more past due notices and instructions on how to apply for the forbearance, for which I've applied multiple times. When I try to follow up on that I get nothing. They also note that they are reporting my delinquency to credit agencies every month."[41]

The distinction between commercial and ED-held FFELP borrowers and the disparity across their levels of hardship during COVID serves as yet another reminder of the tendency for the student loan industry to receive generous aid in times of crisis while borrowers are left to struggle.[42]

As mentioned above, the notion of "commercial" and "ED-held" FFELP loans arose during the last financial crisis when the federal government bought swaths of privately held FFELP loans

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[39] *Consumer Complaint 3846466*, Consumer Fin. Prot. Bureau (Sept. 12, 2020), https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3846466 (emphasis added).
[40] *Consumer Complaint 4008326*, Consumer Fin. Prot. Bureau (Dec. 13, 2020), https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4008326 (emphasis added).
[41] *Consumer Complaint 3619550*, Consumer Fin. Prot. Bureau (Apr. 23, 2020), https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3619550 (emphasis added).
[42] Ben Kaufman, *Washington Delivered COVID Aid to the Private Student Loan Industry. It's Time to Protect Borrowers.*, Student Borrower Prot. Ctr. (Jan. 26, 2021), https://protectborrowers.org/washington-delivered-covid-aid-to-the-private-student-loan-industry-its-time-for-borrowers-to-get-a-turn-at-relief/.

from Wall Street banks in a last-ditch effort to prop up the student loan system.[43] While this bailout offered hundreds of billions of dollars' worth of taxpayer-funded relief for some of the largest financial institutions in the world, it did nothing to help borrowers dealing with the same financial crisis. Worse, the millions of people left with their debts on bank balances sheets have found in subsequent years that their level of safety as borrowers has been left to the whims of Wall Street, leading consumers to lose out on key repayment protections,[44] servicemembers to have their rights violated,[45] teachers to be ripped off by their creditors,[46] public servants to have promises of loan forgiveness broken,[47] and even taxpayers to be fleeced by the student loan industry.[48]

That sad legacy carries on today.

IV. Policy Recommendations

The executive branch has within its power the ability to stop Washington's treatment of these borrowers as invisible and their distress as too complex a problem to solve. We urge the following actions to end the unfortunate history of commercial FFELP borrowers being singled out for a lack of student borrower protection:

- **Create a clear path for all FFELP borrowers to take advantage of the payment pause without penalty.** The vast majority of FFELP borrowers have a right under federal law to consolidate their loans into a federal Direct Loan, making them eligible for pandemic-related protections. However, the design of the student loan system and the financial penalties for borrowers considering or pursuing consolidation can make this a costly proposition. For example, federal law requires borrowers who consolidate to pay a higher interest rate and to forfeit progress toward loan forgiveness under income-based repayment.[49] Research by both of our organizations demonstrates that some of these barriers are the result of prior administrations' overly narrow interpretation of the Higher Education Act (HEA). ED already has tools at its disposal to remedy this, and it must use them immediately to protect borrowers from all negative consequences associated with consolidation. Under the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act), the Secretary of Education can use his authority to "waive or modify any statutory or regulatory provision applicable to the student financial assistance programs."

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[43] Morgan, *supra* note 12.
[44] Ombudsman's Office, Consumer Fin. Prot. Bureau, Annual Report to the Director (2015), https://files.consumerfinance.gov/f/201512_cfpb_report_ombudsman-office.pdf.
[45] U.S. Dep't of Jus., Nearly 78,000 Service Members to Begin Receiving $60 Million Under Department of Justice Settlement with Navient for Overcharging on Student Loans (May 28, 2015), https://www.justice.gov/opa/pr/nearly-78000-service-members-begin-receiving-60-million-under-department-justice-settlement.
[46] Amended Class Action Complaint, Hyland et al. v. Navient Corporation, No. 1:18-cv-09031 (S.D.N.Y. Jan. 1, 2019), www.pslfsettlement.com/Portals/0/Document%20Files/First%20Amended%20Complaint.pdf?ver=2020-06-16-150656-000.
[47] Student Borrower Prot. Ctr., Broken Promises, *supra* note 10.
[48] Stacy Cowley, *Navient, a Student Loan Company, Is Ordered to Repay $22 Million to the Government*, N.Y. Times (Feb. 2, 2021), https://www.nytimes.com/2021/02/02/business/navient-a-student-loan-company-is-ordered-to-repay-22-million-to-the-government.html.
[49] *Student Loan Consolidation*, Fed. Student Aid, https://studentaid.gov/manage-loans/consolidation.

This authority along with existing authority under the HEA can be used to ensure that upon consolidation the resulting loan will adopt the same interest rate of the underlying loans after the expiration of any available payment pause and that all qualified payments toward loan forgiveness through IBR remain accounted for.[50] The Secretary should also ensure that this avenue for consolidation is open to all borrowers with commercial FFELP loans and other federal loans not held by the Department of Education—removing any legacy statutory or regulatory barriers to consolidation.

- **Recognize and remedy the wide breadth of policy errors and industry abuses that commercial FFELP borrowers have had to endure.** Fitting with President Biden's calls for the nation to "Build Back Better" in response to COVID, any emergency action to strengthen access to consolidation should also free these borrowers from the myriad problems that have plagued the FFEL program for decades. Specifically, consolidations should afford borrowers relief for past errors that have imposed unnecessary loan costs or denied access to debt relief. For example, by continuing to count payments made before consolidation, the Secretary can award credit towards Public Service Loan Forgiveness (PSLF) based on monthly payments made on a FFELP loan—canceling these loans outright where a FFELP borrower has previously made 120 otherwise-qualifying payments.[51] As has been documented at length elsewhere, administrative errors, policy choices, and extensive industry breakdowns have kept commercial FFELP borrowers from securing relief through income-driven repayment,[52] work in public service jobs,[53] and other legal avenues for discharge.[54] These borrowers need more than a chance to consolidate without losing progress toward forgiveness; they need the government to follow through on promised relief for which these borrowers should have already qualified, but which they have so far been denied through no fault of their own.[55]

- **Immediately halt all collections by guaranty agencies and pursue administrative action for the Secretary of Education to acquire all defaulted commercial FFELP loans.** During the first weeks of the pandemic, the Trump Administration authorized guaranty agencies to halt debt collection and suspend involuntary collection efforts.[56]

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[50] In particular, the HEROES Act of 2003 grants the Secretary of Education authority to "waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under title IV of" the Higher Education Act in "connection with a . . . national emergency" to ensure "administrative requirements placed on . . . recipients of student financial assistance are minimized . . . to ease the burden on such students and avoid . . . defaults." 20 U.S.C. § 1098bb (2003); *see also* Letter from Am. Fed'n of Teachers & Student Borrower Prot. Ctr. to Betsy DeVos, Sec'y, U.S. Dep't of Educ. (Mar. 19, 2020), https://protectborrowers.org/wp-content/uploads/2020/03/AFT-SBPC-HEROES-Act-Letter-Final-for-Circulation-1.pdf.

[51] Student Borrower Prot. Ctr. et al., Delivering on Debt Relief: Proposals, Ideas, and Actions to Cancel Student Debt on Day One and Beyond (Nov. 2020), https://protectborrowers.org/debtreliefreport_lp/.

[52] Persis Yu, *Relief for Borrowers in Income-Driven Repayment*, *in* Delivering on Debt Relief: Proposals, Ideas, and Actions to Cancel Student Debt on Day One and Beyond 75 (Nov. 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3756511.

[53] Student Borrower Prot. Ctr., Broken Promises, *supra* note 10.

[54] Student Borrower Prot. Ctr. et al., Delivering on Debt Relief, *supra* note 51.

[55] Yu, *supra* note 52; Student Borrower Prot. Ctr., Broken Promises, *supra* note 10.

[56] Office of Postsecondary Educ., *Updated Guidance for Interruptions of Study Related to Coronavirus (COVID-19)*, Fed. Student Aid (Apr. 3, 2020), https://ifap.ed.gov/electronic-announcements/040320UPDATEDGuidanceInterruptStudyRelCOVID19.

Yet, as described above, most of the industry did not take these actions, costing borrowers more than $100 million. The Secretary should amend past guidance to guaranty agencies to compel these companies to halt all collections, including debt collection phone calls, negative credit reporting, and involuntary collections, recognizing the immediate financial harm caused by these efforts. The Secretary also has the clear authority to compel any guaranty agency to "...assign to the Secretary any loan of which it is the holder..." if the Secretary determines it is in the federal government's "fiscal interest" to do so.[57] The Secretary should pursue all available options to take possession of defaulted commercial FFELP loans, immediately adding these loans to the federal government's student loan portfolio and affording these borrowers all benefits due to any other borrower with a federally held loan, including the suspension of interest and monthly payments.

Today 8.25 million people owe at least one federally guaranteed loan held by a private creditor. As part of any administrative effort to protect borrowers with commercial FFELP loans and other federally guaranteed loans in the short term, the Secretary should develop a comprehensive strategy to rapidly wind down the existence of private creditors in the federal student loan system. This should include working with Congress to obtain comparable authority to the Ensuring Continued Access to Student Loans Act (ECASLA) to allow private lenders to voluntarily return their FFELP loans to the Department, and force FFELP lenders to assign loans back to the Department if it the Secretary determines it is in the "federal fiscal interest" of the Department and taxpayers.[58]

The Trump administration exercised executive authority to cancel student loan interest charges and pause loan payments for over 40 million federal student loan borrowers.[59] The Biden administration can and should use the same tools to finally offer immediate relief to millions of federal student loan borrowers who have been left behind.

Sincerely,

Student Borrower Protection Center
National Consumer Law Center

CC:

Sen. Patty Murray, Chair, Senate Committee on Health, Education, Labor and Pensions
Sen. Richard Burr, Ranking Member, Senate Committee on Health, Education, Labor and Pensions

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[57] 20 USC 1078(c)(8) ("(8) Assignment to protect Federal fiscal interest. If the Secretary determines that the protection of the Federal fiscal interest so requires, a guaranty agency shall assign to the Secretary any loan of which it is the holder and for which the Secretary has made a payment pursuant to paragraph (1) of this subsection.").
[58] *Supra* note 56.
[59] Kevin M. Lewis & Edward C. Liu, Cong. Rsch. Serv., LSB10568, The Biden Administration Extends the Pause on Federal Student Loan Payments: Legal Considerations for Congress (2021), https://www.everycrsreport.com/reports/LSB10568.html.

Rep. Bobby Scott, Chair, House Committee on Education and Labor
Rep. Virginia Foxx, Ranking Member, House Committee on Education and Labor

From:
Subject: RE: [FOR TRANSMITTAL] SBPC & NCLC Letter on Commercial FFEL
To: Persis Yu; Miller, Benjamin; Williams, Rich; Habash, Tariq; Darcus, Joanna; Campbell, Patrick
Cc: Seth Frotman; Benjamin Kaufman; Abby Shafroth; Kyra Taylor; Tamara Cesaretti; Mike Pierce
Sent: March 17, 2021 6:36 PM (UTC-04:00)

Hi Persis,

Thanks so much for the follow up on this! We really appreciate it.

Julie

From: Persis Yu <pyu@nclc.org>
Sent: Wednesday, March 17, 2021 4:16 PM
To: Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; Williams, Rich <Rich.Williams@ed.gov>; Habash, Tariq <Tariq.Habash@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Campbell, Patrick <Patrick.Campbell@ed.gov>
Cc: Seth Frotman <seth@protectborrowers.org>; Benjamin Kaufman <ben@protectborrowers.org>; Abby Shafroth <ashafroth@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Tamara Cesaretti <tamara@protectborrowers.org>; Mike Pierce <mike@protectborrowers.org>
Subject: Fwd: [FOR TRANSMITTAL] SBPC & NCLC Letter on Commercial FFEL

Hello,

I am writing to follow-up on our letter urging the Department to take immediate action to protect the millions of student loan borrowers with federal loans not held by the Department, including the 6.1 million borrowers with Commercial FFEL loans.

As it stands, a year into the pandemic and commercially held FFEL and Perkins borrowers continue to suffer the economic devastation of the pandemic. Yet, unlike their Direct loan or ED-held FFEL/Perkins counterparts, they are still without a payment suspension. And once again, Congress left these borrowers out of the COVID relief package. This means that it is up to the Department to exercise its responsibility and authority to protect these forgotten federal student loan borrowers during the national emergency.

Borrowers in good standing who cannot afford their payments are forced to use costly forbearances or consolidate and risk putting their loans in a materially worse position. Borrowers in default may still be at risk of involuntary collection activity. Troublingly, based on public records, it appears that the Consumer Financial Protection Bureau has open investigations into two Guaranty Agencies, Ascendium (formerly Great Lakes) and ECMC, for their part in a scheme to cheat borrowers out of their right to rehabilitate defaulted loans without incurring significant collection costs.

We welcome the opportunity to discuss the progress the Department is making to protect c-FFEL and Perkins borrowers at your earliest convenience.

Thank you again for your continued work to protect vulnerable student loan borrowers.

Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

---------- Forwarded message ---------
From: **Mike Pierce** <mike@protectborrowers.org>
Date: Tue, Feb 16, 2021 at 10:50 AM
Subject: [FOR TRANSMITTAL] SBPC & NCLC Letter on Commercial FFEL
To: <julie.morgan@ed.gov>, <Benjamin.miller@ed.gov>, <rich.williams@ed.gov>, <tariq.habash@ed.gov>, <joanna.darcus@ed.gov>, <patrick.campbell@ed.gov>
Cc: pyu@nclc.org <pyu@nclc.org>, Seth Frotman <seth@protectborrowers.org>, Benjamin Kaufman <ben@protectborrowers.org>, Abby Shafroth <ashafroth@nclc.org>, Kyra Taylor <ktaylor@nclc.org>, Tamara Cesaretti <tamara@protectborrowers.org>

Colleagues:

Attached, please find a letter from the Student Borrower Protection Center and the National Consumer Law Center urging the Acting Secretary to take immediate action to protect the millions of student loan borrowers with federal loans not held by the Department, including the 6.1 million borrowers with Commercial FFEL loans.

We look forward to talking about these issues at your convenience. In addition to the attached letter, earlier today we released a brief blog post also discussing these issues, available here:

https://protectborrowers.org/its-time-for-washington-to-stand-up-for-millions-of-student-loan-borrowers-struggling-without-relief-during-covid/

Thank you again for your continued work to protect vulnerable student loan borrowers. We look forward to speaking with many of you this afternoon about this and related issues.

Mike

--

Michael Justin Pierce
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

From: Morgan, Julie
Subject: RE: [FOR TRANSMITTAL] SBPC & NCLC Letter on Commercial FFEL
To: Persis Yu
Sent: March 17, 2021 6:40 PM (UTC-04:00)

Hi Persis,

Thanks so much for the follow up on this! This is reminding me that I dropped the ball on connecting with you on debt collection. Do you have some time on Friday? I could do 11:00, 1:00, or 2:00.

Julie

From: Persis Yu <pyu@nclc.org>
Sent: Wednesday, March 17, 2021 4:16 PM
To: Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; Williams, Rich <Rich.Williams@ed.gov>; Habash, Tariq <Tariq.Habash@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Campbell, Patrick <Patrick.Campbell@ed.gov>
Cc: Seth Frotman <seth@protectborrowers.org>; Benjamin Kaufman <ben@protectborrowers.org>; Abby Shafroth <ashafroth@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Tamara Cesaretti <tamara@protectborrowers.org>; Mike Pierce <mike@protectborrowers.org>
Subject: Fwd: [FOR TRANSMITTAL] SBPC & NCLC Letter on Commercial FFEL

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Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

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Date: Tue, Feb 16, 2021 at 10:50 AM

Subject: [FOR TRANSMITTAL] SBPC & NCLC Letter on Commercial FFEL
To: <julie.morgan@ed.gov>, <Benjamin.miller@ed.gov>, <rich.williams@ed.gov>, <tariq.habash@ed.gov>, <joanna.darcus@ed.gov>, <patrick.campbell@ed.gov>
Cc: pyu@nclc.org <pyu@nclc.org>, Seth Frotman <seth@protectborrowers.org>, Benjamin Kaufman <ben@protectborrowers.org>, Abby Shafroth <ashafroth@nclc.org>, Kyra Taylor <ktaylor@nclc.org>, Tamara Cesaretti <tamara@protectborrowers.org>

Colleagues:

Attached, please find a letter from the Student Borrower Protection Center and the National Consumer Law Center urging the Acting Secretary to take immediate action to protect the millions of student loan borrowers with federal loans not held by the Department, including the 6.1 million borrowers with Commercial FFEL loans.

We look forward to talking about these issues at your convenience. In addition to the attached letter, earlier today we released a brief blog post also discussing these issues, available here:

https://protectborrowers.org/its-time-for-washington-to-stand-up-for-millions-of-student-loan-borrowers-struggling-without-relief-during-covid/

Thank you again for your continued work to protect vulnerable student loan borrowers. We look forward to speaking with many of you this afternoon about this and related issues.

Mike

--

Michael Justin Pierce
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

--
Sent from a small device.

Using e-mail is inherently insecure. Confidential information, including account numbers, credit card numbers, etc., should never be transmitted via e-mail or e-mail attachment. This e-mail message is confidential and/or privileged and is for the use of the intended recipient only. All other use is prohibited.

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From: Persis Yu
Subject: Concern about Guaranty Agencies denying default claims
To: Morgan, Julie
Cc: Abby Shafroth; Kyra Taylor
Sent: May 10, 2021 12:41 PM (UTC-04:00)
Attached: ECMC Letter -Default Claims_r_.pdf

Hi Julie,

I am hearing reports that GAs (ECMC and others) are refusing to process claims on borrowers who have defaulted on their FFELP loans following the Departments announcement date March 31, 2021, and thus preventing FFEL borrowers from having their loans transferred to ED and taking advantage of the 0% interest rate and other COVID protections promised in that announcement.

I have obtained the attached guidance which I hear they are relying on to refuse to process these claims. I hope that the Department will reverse this guidance and ensure that FFEL borrowers are given the protections that have been promised.

Thank you for your prompt attention to this matter.

Best,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

Dan Fisher
President
ECMC Group, Inc.
111 South Washington Avenue
Suite 1400
Minneapolis, MN 55401

RE: Processing Default Claims During Collection Pause

Dear Mr. Fisher:

The U.S. Department of Education (Department), Financial Institution Oversight Service has reviewed your request for guidance related to borrowers with pending default claims with your agency. Under the Departments announcement date March 31, 2021, guarantors were advised to remove the default status for borrowers that defaulted after March 13, 2020 and transfer those loans to the Department. In order to best help delinquent borrowers avoid default during the COVID19 National Emergency, the Department strongly encourages lenders to continue to apply administrative forbearances without a need for borrower contact—including for successive 3-month periods, if necessary—under section 211(f)(12) for any loans becoming delinquent after March 13, 2020 and for the duration of the COVID19 National Emergency. We also encourage FFELP guarantors to take all reasonable measures to ensure that these borrower flexibilities are maximized, including return of default claims to lenders for additional documentation and application of these forbearances.

The Department has received reports of uncertainty among FFELP lenders as to their ability to apply successive administrative forbearances under 34 CFR 682.211(f)(12). Due to the ongoing and prolonged borrower impact of the COVID19 National Emergency, the Department is waiving any requirements for supporting documentation or agreement with the borrower or endorser related to successive or multiple "same situation" administrative forbearances.

If you have any questions, please contact Mr. Mike Sutphin, Division Chief, FFELP Division, by email at Mike.Sutphin@ed.gov or calling (202) 377-3624.

Sincerely,

[redacted]

Jerry Wallace
Director
Financial Institution Oversight Service Group

cc: Mike Sutphin, Division Chief
FFELP Division

From: Morgan, Julie
Subject: RE: Concern about Guaranty Agencies denying default claims
To: Persis Yu
Cc: Abby Shafroth; Kyra Taylor
Sent: May 10, 2021 12:46 PM (UTC-04:00)

Hi Persis,

Thanks so much for flagging this for me. I will confer with others here and find out what's going on.

Julie

From: Persis Yu <pyu@nclc.org>
Sent: Monday, May 10, 2021 12:41 PM
To: Morgan, Julie <Julie.Morgan@ed.gov>
Cc: Abby Shafroth <ashafroth@nclc.org>; Kyra Taylor <ktaylor@nclc.org>
Subject: Concern about Guaranty Agencies denying default claims

Hi Julie,

I am hearing reports that GAs (ECMC and others) are refusing to process claims on borrowers who have defaulted on their FFELP loans following the Departments announcement date March 31, 2021, and thus preventing FFEL borrowers from having their loans transferred to ED and taking advantage of the 0% interest rate and other COVID protections promised in that announcement.

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Thank you for your prompt attention to this matter.

Best,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

From:
Subject: RE: Concern about Guaranty Agencies denying default claims
To: Persis Yu
Cc: Abby Shafroth; Kyra Taylor
Sent: May 20, 2021 10:05 AM (UTC-04:00)

Hi Persis,

I just wanted to follow up with some additional information about this matter. As you may have seen, the Department issued a Dear Colleague letter last week that made clear that

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From: Persis Yu <pyu@nclc.org>
Sent: Monday, May 10, 2021 12:41 PM
To: Morgan, Julie <Julie.Morgan@ed.gov>
Cc: Abby Shafroth <ashafroth@nclc.org>; Kyra Taylor <ktaylor@nclc.org>
Subject: Concern about Guaranty Agencies denying default claims

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Thank you for your prompt attention to this matter.

Best,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

From: Persis Yu
Subject: Letter to Secretary Cardona in Support of Petition to Amend TPD Regulations
To: Cardona, Miguel; Morgan, Julie; Miller, Benjamin; Habash, Tariq; Darcus, Joanna; Latreille, Bonnie
Cc: Abby Shafroth; Alpha Taylor; Kyra Taylor; Alex Elson; Aaron Ament
Sent: June 11, 2021 8:00 AM (UTC-04:00)
Attached: Coalition Letter in Support of Petition to Amend TPD regulations 6.11.21.pdf

Dear Secretary Cardona,

Please find attached an electronic letter signed by 18 organizations in support of the Section 553(e) Rulemaking Petition ("the Petition") submitted on April 19, 2021 by The National Student Legal Defense Network ("Student Defense"), Community Legal Aid Society, Inc. of Delaware, and Justice in Aging.

We strongly urge you to grant the Petition's request to amend the Total and Permanent Disability regulations to automatically discharge debt for all known eligible student borrowers with total and permanent disabilities.

Thank you again for your continued work to protect vulnerable student loan borrowers. Please feel free to contact me if you have any additional questions.

Best,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

June 11, 2021

The Honorable Miguel Cardona
Secretary of Education
United States Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Dear Secretary Cardona,

We write on behalf of a diverse coalition of organizations that work to protect the rights of individuals with disabilities, student loan borrowers, consumers and veterans to ensure that borrowers with disabilities receive the protections and relief they are entitled to under the Higher Education Act. The U.S. Department of Education's ("Department") total and permanent disability ("TPD") regulations unnecessarily prevent qualifying borrowers from accessing and maintaining loan cancellation.

While the Department and Congress work on a long-term fix for TPD, we write in support of the Section 553(e) Rulemaking Petition ("the Petition") submitted on April 19, 2021 by The National Student Legal Defense Network ("Student Defense"), Community Legal Aid Society, Inc. of Delaware, and Justice in Aging, and supported by Senator Chris Coons (D-DE). We strongly urge you to grant the Petition's request to amend the TPD regulations to automatically discharge debt for all known eligible student borrowers with total and permanent disabilities. The Department should then immediately provide loan discharges to all borrowers whom the Department identifies as entitled to the relief through a match with the Social Security Administration ("SSA").

The Department's red tape is preventing hundreds of thousands of borrowers with disabilities from receiving the relief they are entitled to under the law. As of 2020, the SSA has provided information to the Department about over 625,000 individuals with disabilities who are entitled to a TPD discharge. Yet, because of the Department's unnecessary and byzantine application process, two-thirds of these borrowers– approximately 400,000 people—still do not have the relief they are unquestionably entitled to by law. Moreover, tens of thousands of these borrowers never received the notice to inform them of their entitlement to the TPD discharge,[1] so had no reason to even start the Department's unnecessary application process.

Failing to amend the regulations and provide relief before the student loan payment freeze expires on September 30, 2021 will cause significant financial harm to these hundreds of thousands of borrowers. Many will not be able to afford payments,

[1] *See, e.g.,* Government Accountability Office Report: "Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief" at 31, note 61 (Dec. 2016).

forcing them into collections and allowing the government to seize the disability benefits that they depend on to survive.[2]

As set forth in the Petition, the Department has "good cause" to waive both notice-and-comment rulemaking and negotiated rulemaking.[3] For these reasons and more, we support the Petition's call for the Department to provide immediate, automatic relief to more than 400,000 individuals with disabilities and to also eliminate the three-year post-discharge monitoring period to ensure that unnecessary paperwork does not prevent eligible borrowers from maintaining their discharges. You have the power to quickly help these borrowers with disabilities by removing the unnecessary barriers that are preventing them from accessing the relief they are entitled to by law. You can ensure that not one more American loses their disability benefits paying back a debt they do not owe.

Sincerely,

American Association of University Professors (AAUP)
Autistic Self Advocacy Network
Community Legal Aid Society, Inc. of Delaware
Consumer Action
Hildreth Institute
Housing and Economic Rights Advocates
National Association of Consumer Bankruptcy Attorneys (NACBA)
National Consumer Law Center (on behalf of its low-income clients)
National Education Association
Ohio Student Association
Project on Predatory Student Lending
Public Counsel
Student Borrower Protection Center
Student Debt Crisis
Student Defense
Student Veterans of America
The Institute for College Access & Success (TICAS)
Veterans Education Success

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[2] Between 2016 and 2019, the Department used treasury offsets to collect an estimated $20 million in desperately needed benefits from over 20,000 borrowers to satisfy student loans that the Department knew were entitled to be discharged. *See* Office of the Inspector General, Social Security Administration Audit Report, "Social Security Administration Beneficiaries Eligible for Total and Permanent Disability Federal Student Loan Discharge" (Nov. 9, 2020) *available at*: https://www.oversight.gov/node/92106.

[3] 5 U.S.C. § 553(b)(3)(B).

From: Persis Yu
Subject: Follow Up on May 14 Bankruptcy Safe Harbors Letter
To: Morgan, Julie; Miller, Benjamin; Habash, Tariq; Darcus, Joanna
Cc: John Rao
Sent: June 17, 2021 4:55 PM (UTC-04:00)
Attached: NCLC Memo to ED re Predetermination for BK Safe Harbors.pdf

Dear Colleagues,

I am writing to follow up on NCLC and NACBA's May 14, 2021 letter urging the U.S. Department of Education to issue guidance adopting objectively defined criteria ("safe harbors") for undue hardship for student loan borrowers seeking bankruptcy relief, and instructing student loan servicers to consent to the discharge under those circumstances. Attached you will find a memo, recommending that the Department create a process to determine, before a borrower brings an adversarial proceeding, whether it will consent to a discharge.

We look forward to discussing this proposal with you at your earliest convenience.

Sincerely,
Persis Yu and John Rao

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

National Consumer Law Center

NATIONAL HEADQUARTERS
7 Winthrop Square, Boston, MA 02110
(617) 542-8010

WASHINGTON OFFICE
Spanogle Institute for Consumer Advocacy
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036
(202) 452-6252

NCLC.ORG

Memorandum

To: U.S. Department of Education
From: John Rao and Persis Yu, National Consumer Law Center
Date: June 17, 2021
RE: Proposal to Implement Undue Hardship Safe Harbors

On May 14, 2021, the National Consumer Law Center and the National Association of Consumer Bankruptcy Attorneys submitted a letter to Secretary Cardona and COO Cordray urging the U.S. Department of Education to issue guidance adopting objectively defined criteria ("safe harbors") for undue hardship for student loan borrowers seeking bankruptcy relief and instructing student loan servicers to consent to the discharge under those circumstances.

In operationalizing these safe harbors, the Department must prioritize the following principles:

1. Ensuring that borrowers for whom repayment of their student loans would be an undue hardship are able to have their loans discharged
2. Providing an easier and less costly avenue to pursue an undue hardship discharge so that the cost and process do not discourage borrowers from filing adversary proceedings in their bankruptcy cases
3. Providing consistent and clear standards for when the Department will not oppose undue hardship discharges, to reduce bias and discrimination

To meet these objectives, we recommend that the Department create a process to determine, before a borrower brings an adversarial proceeding, whether it will consent to a discharge. This should be based upon clearly and publicly available criteria, such as those identified in our May 14, 2021 letter.

The Department of Education utilized a similar process under the 2016 borrower defense regulations and in the Department's interpretation of its prior regulations. Through that process; borrowers with FFEL Program loans, Perkins Loans, and several less common types of federal student loans could utilize the Direct Loan borrower defense process to seek relief so long as they were willing and able to consolidate into Direct Consolidation Loans.[1] Under this process,

[1] 34 C.F.R § 685.212(k)(2)(iv). See 81 Fed. Reg. 75,926, 75,961 (Nov. 1, 2016).

borrowers with FFEL Program loans and Perkins Loans could submit a borrower defense application directly to the Department. The Department would then make a preliminary determination. If it determined that the borrower qualified for a full or partial discharge, it would instruct the borrower to consolidate and apply that discharge to the Direct Consolidation Loan.

Similarly, borrowers who seek to discharge their federal student loans could submit documents to the Department of Education for a preliminary determination that they qualify for an undue hardship. Based on the outcome of that determination, when a borrower brings an adversarial proceeding, the Department would agree to the relief sought in the borrower's adversary complaint and would enter into a settlement agreement with the borrower.

In making the predetermination, the Department's regulations, guidance, and contracts should direct "federal student loan holders" (i.e., the Department, any guaranty agency, eligible lender or holder of a federal student loan, or any agent of these parties) to accept from the borrower reasonable proof that the borrower meets the criteria. This proof can include a written and sworn statement by the borrower made under penalty of perjury; the borrower's bankruptcy Schedules I and J and Schedule of Current Monthly Income; tax return transcripts for the relevant time period; verification of benefits from the Social Security Administration; or similar evidence.

The benefit of creating such a process would be:

1. Reduce costs of litigation for borrowers who qualify for an undue hardship;
2. Reduce litigation costs for the Department;
3. Increase access to bankruptcy as an option for borrowers who are discouraged from filing for bankruptcy because of the perceived impossibility of meeting the undue hardship standard, or because of the inability to find affordable and competent counsel to bring an adversarial proceeding.

The Department of Education's current process of determining whether to consent to a borrower's undue hardship petition has resulted in an extremely difficult and expensive process for even the most deserving borrowers, largely a consequence of the relentless litigation tactics employed by some student loan servicers or their agents. Failing to apply clear and transparent guidelines also leads to a potentially discriminatory outcome and could leave the Departments of Education and Justice vulnerable to potential civil rights litigation.

Thank you for your consideration of this proposal. We look forward to working with you to create an improved process to assist deserving student loan borrowers with access to their bankruptcy rights.

The rules specified that the following types of loans, if consolidated into a Direct Consolidation Loan, would be eligible for borrower defense relief: Direct Loans, FFEL Program loans, Perkins Loans, health professions student loan, loan for disadvantaged students under subpart II of part A of title VII of the Public Health Service Act, health education assistance loan, or nursing loan made under part E of the Public Health Service Act. 81 Fed. Reg. 75,926, 76,081 (Nov. 1, 2016) (amending § 685.212(k)(2)).

From: John Rao
Subject: Fwd: Response to Letter
To: Morgan, Julie; Persis Yu; Edward Boltz
Sent: August 24, 2021 3:15 PM (UTC-04:00)
Attached: 21-004220.signed_letters.docx

Hi Julie,

Persis sent me your email to her about scheduling the meeting. The response to our letter requested that we contact Sebastian Rozo to schedule the meeting, which I did last week as per the email below.

I look forward to hearing from you or Sebastian about some possible dates that will work for you after Labor day.

Thanks,

John

John Rao

Attorney

National Consumer Law Center®

7 Winthrop Square, 4th Floor

Boston, MA 02110

617.542.8010 | www.nclc.org

---------- Forwarded message ---------
From: **John Rao** <jrao@nclc.org>
Date: Thu, Aug 19, 2021 at 11:12 AM
Subject: Response to Letter
To: <sebastian.rozo@ed.gov>

Hi Sebastian,

I am contacting you about scheduling the listening session referred to in the response from Ms. Morgan to NCLC and NACBA.

Could you please suggest some times after Labor Day that would work for those who will be attending from the Dept.? I will then check on which of those times will work on our end and get back to you.

Thanks,

John

John
Rao

Attorney

National Consumer
Law Center®

7 Winthrop Square,
4th Floor

Boston, MA 02110

617.542.8010 |
www.nclc.org

---------- Forwarded message ---------
From: **Mccann, Clare** <Clare.E.McCann@ed.gov>
Date: Thu, Aug 12, 2021 at 4:13 PM
Subject: FW: Response to Letter
To: pyu@nclc.org <pyu@nclc.org>

Hi Persis,

Hope you're well! I wanted to make sure you saw these responses to NCLC and NACBA that were shared today from the Department. Hopefully they didn't get lost in someone's inbox, but we would also appreciate if you could share them with the appropriate colleagues at those organizations!

Best,

Clare

--

Clare McCann

Office of the Under Secretary

clare.e.mccann@ed.gov

D(6)

From: OUS <OUS@ed.gov>
Sent: Thursday, August 12, 2021 3:52 PM
To: consumerlaw@nclc.org; admin@nacba.com
Cc: Mccann, Clare <Clare.E.McCann@ed.gov>; Hardman, Latricia <Latricia.Hardman@ed.gov>
Subject: Response to Letter

Hi,

We appreciate your letter, please see the attached letter from the Acting Under Secretary at the Education Department in response to a joint letter from NACBA and NCLC.

Best,

Latricia Hardman

Confidential Assistant, Office of the Under Secretary

U.S. Department of Education

--
Sent from a small device.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

August 12, 2021

National Association of Consumer Bankruptcy Attorneys
admin@nacba.com

Dear National Association of Consumer Bankruptcy Attorneys:

Thank you for your May 14 letter to Secretary Cardona and Chief Operating Officer Cordray regarding U.S. Department of Education (Department) guidance for student loan borrowers seeking bankruptcy relief. Your letter was forwarded to me, and I am pleased to respond. An identical response has been sent to the National Consumer Law Center.

The Biden-Harris Administration is committed to ensuring that student loan borrowers have access to relief when their loans are unaffordable. We recognize that the consequences of delinquency and default on federal student loans can be substantial, particularly for borrowers who are suffering from other economic hardships, including many who ultimately file for bankruptcy relief on their debts.

As you may know, the Department has already taken steps to reduce the weight of student loan debt on borrowers. That includes extending the interest-free student loan payment and collections pause through at least January 2022, ensuring borrowers save billions each month. However, we recognize much more needs to be done to address the negative consequences of student loan debt for borrowers who cannot afford to repay.

To that end, the Department is committed to reviewing its 2015 guidance on undue hardship student loan discharges in bankruptcy proceedings, as well as other policies related to such proceedings to assess the types of changes that might better protect borrowers. We were pleased to see the Acting Solicitor General cite this review in her recent filing in *McCoy v. United States*, as you noted in your letter.

We appreciate the suggestions raised in your letter about improvements to how the Department handles bankruptcy proceedings. To understand these items further, we would like to set up a listening session with you, the National Consumer Law Center, and other organizations that work on behalf of low-income borrowers in the coming weeks. Please contact Sebastian Rozo at sebastian.rozo@ed.gov to schedule this listening session with the Department. We look forward to hearing from you soon.

Sincerely,

[redacted]

Julie Margetta Morgan
Senior Advisor to the Under Secretary
Delegated the authority to perform the function
and duties of the Under Secretary

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

August 12, 2021

National Consumer Law Center
consumerlaw@nclc.org

Dear National Consumer Law Center:

Thank you for your May 14 letter to Secretary Cardona and Chief Operating Officer Cordray regarding U.S. Department of Education (Department) guidance for student loan borrowers seeking bankruptcy relief. Your letter was forwarded to me, and I am pleased to respond. An identical response has been sent to the National Association of Consumer Bankruptcy Attorneys.

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Sincerely,

Julie Margetta Morgan
Senior Advisor to the Under Secretary
Delegated the authority to perform the function
and duties of the Under Secretary

From: Persis Yu
Subject: Implementation of the STOP Act
To: Morgan, Julie; Miller, Benjamin; Darcus, Joanna; Merrill, Toby
Cc: Abby Shafroth; Alpha Taylor; Kyra Taylor
Sent: September 10, 2021 9:16 AM (UTC-04:00)

Dear Colleagues,

I saw the notice on the implementation of the penalties in the STOP Act posted in the federal register: https://www.federalregister.gov/documents/2021/09/10/2021-19536/third-party-access-to-the-departments-information-technology-systems-and-notice-of-criminal

According to the notice, penalties go into effect tomorrow. As far as I am aware, the Department has not yet implemented a process by which legal services, private attorneys, and other non-profit/government individuals can set up credentials to access their clients' NSLDS information as expressly permitted under the STOP Act. I was assured that the penalties imposed by the STOP Act would not go into place until that process was implemented.

Many borrower advocates are worried about being subject to criminal penalties for helping some of the most vulnerable borrowers who cannot access their own NSLDS information without assistance. This will have a significant negative impact on the abilities of borrower advocates to work with their borrowers, especially older borrowers and borrowers with disabilities.

Can you let me know what the Department plans to do to ensure these advocates are able to continue to assist their clients?

Thank you,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

From: Miller, Benjamin
Subject: RE: Implementation of the STOP Act
To: Persis Yu; Morgan, Julie; Darcus, Joanna; Merrill, Toby
Cc: Abby Shafroth; Alpha Taylor; Kyra Taylor
Sent: September 10, 2021 10:28 AM (UTC-04:00)

Hi Persis,
I've confirmed this with FSA and there will not be an issue for you all. My understanding is that the difference is really about having a single universal form to cover all servicers versus what you all do now where you have access forms with individual servicers. Here's more detail below. Happy to chat about it if you'd like. I'm also at [redacted]

Legal aid can continue to access the information through contacting the call center or servicer, as they do now. They will need to have an access form on file. There is a Third Party Access form that is going through clearance, but until that is cleared by OMB, each servicer has their own form that the legal aid community should be familiar with since they use it now. Once there is an universal form, it should make their lives easier since it will be one form that can be used across all systems and servicers. We will provide a short transition time once the new form is approved (so they will not need their clients to sign a new form the very next day).

From: Persis Yu <pyu@nclc.org>
Sent: Friday, September 10, 2021 9:16 AM
To: Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Merrill, Toby <Toby.Merrill@ed.gov>
Cc: Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>
Subject: Implementation of the STOP Act

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Can you let me know what the Department plans to do to ensure these advocates are able to continue to assist their clients?

Thank you,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

From: Persis Yu
Subject: Re: Implementation of the STOP Act
To: Miller, Benjamin
Cc: Morgan, Julie; Darcus, Joanna; Merrill, Toby; Abby Shafroth; Alpha Taylor; Kyra Taylor
Sent: September 10, 2021 11:17 AM (UTC-04:00)

Ben,

The third party authorization form doesn't address this issue. The problem is not about being able to contact servicers. It is about being able to get NSLDS information. You cannot provide competent legal representation to a student loan borrower without a borrower's full NSLDS report. Schools and servicers have full access through their own portal to get this information. However, borrower advocates need to get it from borrowers and it is only available through studentaid.gov using an FSA ID. Many of our borrowers are not able to access this information on their own, especially older borrowers and borrowers with disabilities. Therefore legal aid and private attorneys must utilize a borrower's FSA ID in order to assist these borrowers, and the Department has just criminalized that activity.

In order to stop debt relief scams while still allowing legitimate actors to do their jobs, the STOP Act provided that private attorneys, legal aid attorneys, and other non-profit/government entities would get a new pathway to NSLDS information so that we would not need to use our client's FSA IDs in order to get the information necessary to provide competent representation. However, that pathway has not yet been created.

Happy to chat more. I'm around any time this afternoon.

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

On Fri, Sep 10, 2021 at 10:27 AM Miller, Benjamin <Benjamin.Miller@ed.gov> wrote:

> Hi Persis,
>
> I've confirmed this with FSA and there will not be an issue for you all. My understanding is that the difference is really about having a single universal form to cover all servicers versus what you all do now where you have access forms with individual servicers. Here's more detail below. Happy to chat about it if you'd like. I'm also at (b)(6)
>
> Legal aid can continue to access the information through contacting the call center or servicer, as they do now. They will need to have an access form on file. There is a Third Party Access form that is going through clearance, but until that is cleared by OMB, each servicer has their own form that the legal aid community should be familiar with since they use it now. Once there is an universal form, it should make their lives easier since it will be one form that can be used across all systems and servicers. We will provide a short transition time once the new form is approved (so they will not need their clients to sign a new form the very next day).

From: Persis Yu <pyu@nclc.org>
Sent: Friday, September 10, 2021 9:16 AM
To: Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Merrill, Toby <Toby.Merrill@ed.gov>
Cc: Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>
Subject: Implementation of the STOP Act

Dear Colleagues,

I saw the notice on the implementation of the penalties in the STOP Act posted in the federal register: https://www.federalregister.gov/documents/2021/09/10/2021-19536/third-party-access-to-the-departments-information-technology-systems-and-notice-of-criminal

According to the notice, penalties go into effect tomorrow. As far as I am aware, the Department has not yet implemented a process by which legal services, private attorneys, and other non-profit/government individuals can set up credentials to access their clients' NSLDS information as expressly permitted under the STOP Act. I was assured that the penalties imposed by the STOP Act would not go into place until that process was implemented.

Many borrower advocates are worried about being subject to criminal penalties for helping some of the most vulnerable borrowers who cannot access their own NSLDS information without assistance. This will have a significant negative impact on the abilities of borrower advocates to work with their borrowers, especially older borrowers and borrowers with disabilities.

Can you let me know what the Department plans to do to ensure these advocates are able to continue to assist their clients?

Thank you,

Persis

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From: Persis Yu
Subject: Re: Implementation of the STOP Act
To: Miller, Benjamin
Cc: Morgan, Julie; Merrill, Toby; Abby Shafroth; Alpha Taylor; Kyra Taylor
Sent: September 10, 2021 11:55 AM (UTC-04:00)

Thank you Ben. Also, to be clear, the STOP Act also exempts private attorneys too.

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On Fri, Sep 10, 2021 at 11:53 AM Miller, Benjamin <Benjamin.Miller@ed.gov> wrote:

> Got it. I had asked for confirmation that we would not be affecting legal aid until this was all done but I am checking back on an answer on this.
>
> ---
>
> **From:** Persis Yu <pyu@nclc.org>
> **Sent:** Friday, September 10, 2021 11:17 AM
> **To:** Miller, Benjamin <Benjamin.Miller@ed.gov>
> **Cc:** Morgan, Julie <Julie.Morgan@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Merrill, Toby <Toby.Merrill@ed.gov>; Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>
> **Subject:** Re: Implementation of the STOP Act
>
>
>
> Ben,
>
> The third party authorization form doesn't address this issue. The problem is not about being able to contact servicers. It is about being able to get NSLDS information. You cannot provide competent legal representation to a student loan borrower without a borrower's full NSLDS report. Schools and servicers have full access through their own portal to get this information. However, borrower advocates need to get it from borrowers and it is only available through studentaid.gov using an FSA ID. Many of our borrowers are not able to access this information on their own, especially older borrowers and borrowers with disabilities. Therefore legal aid and private

attorneys must utilize a borrower's FSA ID in order to assist these borrowers, and the Department has just criminalized that activity.

In order to stop debt relief scams while still allowing legitimate actors to do their jobs, the STOP Act provided that private attorneys, legal aid attorneys, and other non-profit/government entities would get a new pathway to NSLDS information so that we would not need to use our client's FSA IDs in order to get the information necessary to provide competent representation. However, that pathway has not yet been created.

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Can you let me know what the Department plans to do to ensure these advocates are able to continue to assist their clients?

Thank you,

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From: Morgan, Julie
Subject: note about our meeting
To: Persis Yu; Loonin, Deanne
Cc: Muenzer, Melanie
Sent: October 4, 2021 11:37 AM (UTC-04:00)

Hi Persis and Deanne,

Given the timing of our meeting today with neg reg, as well as Persis' role as a negotiator, I just wanted to provide a quick reminder that our meeting today won't touch on topics covered by neg reg and that we can't accept any feedback from you on neg reg topics during the meeting. Any feedback related to rulemaking topics should be discussed on the record in the public forum. Thanks, and looking forward to our meeting.

Julie

From: Persis Yu
Subject: Re:
To: Kvaal, James
Cc: Morgan, Julie
Sent: October 6, 2021 11:04 AM (UTC-04:00)

Hi James,

Here's the cost of default report by Consumer Reports: https://www.consumerreports.org/student-loan-debt-crisis/student-loan-repayment/

Best,
Persis

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On Mon, Oct 4, 2021 at 9:10 PM Kvaal, James <James.Kvaal@ed.gov> wrote:

> Persis, thanks for your time today. I'm sorry to say I cannot find the report you mentioned on the cost of student loan defaults relative to standard repayment – was it Consumer Union? Would you be willing to point me in the right direction?
>
> thanks!

From: Morgan, Julie
Subject: RE: Re:
To: Persis Yu; Kvaal, James
Sent: October 6, 2021 11:28 AM (UTC-04:00)

Thanks, Persis!

From: Persis Yu <pyu@nclc.org>
Sent: Wednesday, October 6, 2021 11:04 AM
To: Kvaal, James <James.Kvaal@ed.gov>
Cc: Morgan, Julie <Julie.Morgan@ed.gov>
Subject: Re:

Hi James,

Here's the cost of default report by Consumer Reports: https://www.consumerreports.org/student-loan-debt-crisis/student-loan-repayment/

Best,
Persis

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From: Persis Yu
Subject: Re:
To: Kvaal, James
Cc: Morgan, Julie
Sent: October 7, 2021 7:03 AM (UTC-04:00)

James,

I also wanted to draw your attention to the third section (starting page 14) of the report NCLC and CRL published last year, calling for a three year statute of limitations for federal student loans. https://www.nclc.org/images/pdf/student_loans/report-road-to-relief.pdf

This would put federal student loans in better line with other consumer financial products. Here is a report written by some of my colleagues at NCLC who work on other debt products regarding statutes of limitations: https://www.nclc.org/images/pdf/debt_collection/statute-of-limitations-reform-act.pdf

Finally, even former FDIC chair, Sheila Bair said, "To better align the federal government practice with that of private lenders, there should be a time limit on debt collections for student borrowers in default. Three years would be consistent with the most conservative state SOL. At most, the limit should be five years." https://money.yahoo.com/why-federal-student-loans-need-new-protections-on-debt-collection-191652731.html

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From: Kvaal, James
Subject: RE: Re:
To: Persis Yu
Cc: Morgan, Julie
Sent: October 7, 2021 10:10 AM (UTC-04:00)

Thanks very much!

From: Persis Yu <pyu@nclc.org>
Sent: Thursday, October 7, 2021 7:03 AM
To: Kvaal, James <James.Kvaal@ed.gov>
Cc: Morgan, Julie <Julie.Morgan@ed.gov>
Subject: Re:

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From: Persis Yu
Subject: Re: Re:
To: Kvaal, James
Cc: Morgan, Julie
Sent: October 8, 2021 6:23 AM (UTC-04:00)

A couple more resources for you:

There is no evidence of strategic defaults: "Previous studies have found no evidence that student loan borrowers act strategically." Bruckner, Matthew A. and Gotberg, Brook and Jiménez, Dalié and Ondersma, Chrystin D., A No-Contest Discharge for Uncollectible Student Loans (April 5, 2019). 91 U. Colorado L. Rev. 183 (2020), UC Irvine School of Law Research Paper No. 2019-33, Howard Law Research Paper, University of Missouri School of Law Legal Studies Research Paper 2020-05, Available at SSRN: https://ssrn.com/abstract=3366707 (citing Rajeev Darolia & Dubravka Ritter, Strategic Default Among Private Student Loan Debtors: Evidence from Bankruptcy Reform, EDUC. FIN. & POL'Y (2019)).

Perpetual collection increases the risk that ED will fail to adequately monitor and restrict lending to high-risk/low-quality/overpriced schools--to the detriment of borrowers, their families, taxpayers, and society at large: "The ability of debt owners to "wait out" the debtor for decades increases the creditor's moral hazard as it encourages riskier lending."Jiménez, Dalié, Ending Perpetual Debts (December 1, 2017). Houston Law Review, Vol. 55, No. 3, 2018, UC Irvine School of Law Research Paper No. 2018-35, Available at SSRN: https://ssrn.com/abstract=3152256

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On Thu, Oct 7, 2021 at 10:09 AM Kvaal, James <James.Kvaal@ed.gov> wrote:

> Thanks very much!
>
> ---
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> **Sent:** Thursday, October 7, 2021 7:03 AM
> **To:** Kvaal, James <James.Kvaal@ed.gov>
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> **Subject:** Re:
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Persis

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From: Kvaal, James
Subject: RE: Re:
To: Persis Yu
Cc: Morgan, Julie
Sent: October 8, 2021 9:06 AM (UTC-04:00)

Very helpful!

From: Persis Yu <pyu@nclc.org>
Sent: Friday, October 8, 2021 6:23 AM
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Cc: Morgan, Julie <Julie.Morgan@ed.gov>
Subject: Re: Re:

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From:
Subject: RE: Proposal for Consenting to Undue Hardship
To: Persis Yu; Kvaal, James; Miller, Benjamin; EVMigration_Clare.Mccann; Merrill, Toby; Darcus, Joanna; Habash, Tariq; Williams, Rich; Latreille, Bonnie; Cordray, Richard; Wiggins, Hunter; Harrington, Ashley
Cc: John Rao
Sent: October 22, 2021 4:30 PM (UTC-04:00)

From: Persis Yu <pyu@nclc.org>
Sent: Friday, October 22, 2021 4:01 PM
To: Kvaal, James <James.Kvaal@ed.gov>; Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; EVMigration_Clare.Mccann <Clare.McCann@usdedeop.onmicrosoft.com>; Merrill, Toby <Toby.Merrill@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Habash, Tariq <Tariq.Habash@ed.gov>; Williams, Rich <Rich.Williams@ed.gov>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Cordray, Richard <Richard.Cordray@ed.gov>; Wiggins, Hunter <Hunter.Wiggins@ed.gov>; Harrington, Ashley <Ashley.Harrington@ed.gov>
Cc: John Rao <jrao@nclc.org>
Subject: Proposal for Consenting to Undue Hardship

Dear colleagues,

Thank you for the opportunity to meet with us last month to discuss on the need for bankruptcy protections for student loan borrowers.

We are writing to submit a proposal for establishing and implementing an undue hardship program for consenting to discharge of certain student loans in bankruptcy. This proposal is submitted by the National Consumer Law Center, National Association of Consumer Bankruptcy Attorneys, Student Borrower Protection Center, Public Law Center, and interested Law Professors (Professors Dalie Jimenez, Matthew A Bruckner, Chrystin Ondersma, John Patrick Hunt, and Brook Gotberg).

We look forward to answering any questions you may have.

Best,
John Rao and Persis Yu

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From: Morgan, Julie
Subject: credit reporting questions
To: Persis Yu
Cc: Merrill, Toby
Sent: October 27, 2021 10:50 AM (UTC-04:00)

Hi Persis,

Toby and I have a few questions about credit reporting that we thought you (or someone else from NCLC) might be able to answer. Could we meet either after 5:30 today or at 1:30 tomorrow?

Julie

From: Wiggins, Hunter
Subject: RE: Proposal for Consenting to Undue Hardship
To: Persis Yu; jrao@nclc.org
Cc: Morgan, Julie; Cordray, Richard
Sent: October 27, 2021 1:19 PM (UTC-04:00)

Hi Persis – thank you for the proposal you shared with us last week. We'd like to schedule a follow up call/meeting with you and the other drafters of the proposal. Does Nov 9 from 11:30-12:30 eastern work for you? If so I will (re)confirm on our side and send out an invite. Thanks, Hunter

---

From: Persis Yu <pyu@nclc.org>
Sent: Friday, October 22, 2021 3:01 PM
To: Kvaal, James <James.Kvaal@ed.gov>; Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; EVMigration_Clare.Mccann <Clare.McCann@usdedeop.onmicrosoft.com>; Merrill, Toby <Toby.Merrill@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Habash, Tariq <Tariq.Habash@ed.gov>; Williams, Rich <Rich.Williams@ed.gov>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Cordray, Richard <Richard.Cordray@ed.gov>; Wiggins, Hunter <Hunter.Wiggins@ed.gov>; Harrington, Ashley <Ashley.Harrington@ed.gov>
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We look forward to answering any questions you may have.

Best,
John Rao and Persis Yu

From: Persis Yu
Subject: Re: credit reporting questions
To: Morgan, Julie
Cc: Merrill, Toby
Sent: October 27, 2021 1:21 PM (UTC-04:00)

Would 5:30 or 7 work tonight?

On Wed, Oct 27, 2021 at 10:50 AM Morgan, Julie <Julie.Morgan@ed.gov> wrote:

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>
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> Julie

--
Sent from a small device.

From: Merrill, Toby
Subject: RE: credit reporting questions
To: Persis Yu; Morgan, Julie
Sent: October 27, 2021 1:50 PM (UTC-04:00)

7 works for me; I can send a Teams.

From: Persis Yu <pyu@nclc.org>
Sent: Wednesday, October 27, 2021 1:21 PM
To: Morgan, Julie <Julie.Morgan@ed.gov>
Cc: Merrill, Toby <Toby.Merrill@ed.gov>
Subject: Re: credit reporting questions

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> Hi Persis,
>
> Toby and I have a few questions about credit reporting that we thought you (or someone else from NCLC) might be able to answer. Could we meet either after 5:30 today or at 1:30 tomorrow?
>
> Julie

--
Sent from a small device.

From: Morgan, Julie
Subject: RE: credit reporting questions
To: Persis Yu
Cc: Merrill, Toby
Sent: October 27, 2021 5:00 PM (UTC-04:00)

7:00 would be great! I'll send an invite

From: Persis Yu <pyu@nclc.org>
Sent: Wednesday, October 27, 2021 1:21 PM
To: Morgan, Julie <Julie.Morgan@ed.gov>
Cc: Merrill, Toby <Toby.Merrill@ed.gov>
Subject: Re: credit reporting questions

Would 5:30 or 7 work tonight?

On Wed, Oct 27, 2021 at 10:50 AM Morgan, Julie <Julie.Morgan@ed.gov> wrote:

> Hi Persis,
>
> Toby and I have a few questions about credit reporting that we thought you (or someone else from NCLC) might be able to answer. Could we meet either after 5:30 today or at 1:30 tomorrow?
>
> Julie

--
Sent from a small device.

From: Persis Yu
Subject: Re: Proposal for Consenting to Undue Hardship
To: Wiggins, Hunter
Cc: jrao@nclc.org; Morgan, Julie; Cordray, Richard
Sent: October 27, 2021 8:28 PM (UTC-04:00)

That works for us!

Here is the list of drafters:

Dalie Jimenez <djimenez@law.uci.edu>,
Ed Boltz <eboltz@lojto.com>,
Norma Hammes<norma@goldandhammes.com>,
John Hunt <jphunt@ucdavis.edu>,
Chrystin Ondersma <ondersma@law.rutgers.edu>,
Leigh Ferrin <lferrin@publiclawcenter.org>,
Matthew A Bruckner <mbruckner@howard.edu>,
Edward Boltz <[redacted]>,
Brook Gotberg <gotbergb@law.byu.edu>,
Amber Saddler <amber@protectborrowers.org>,
John Rao <jrao@nclc.org>,
Mike Pierce <mike@protectborrowers.org>,
Persis Yu <pyu@nclc.org>

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

On Wed, Oct 27, 2021 at 1:19 PM Wiggins, Hunter <Hunter.Wiggins@ed.gov> wrote:

> Hi Persis – thank you for the proposal you shared with us last week. We'd like to schedule a follow up call/meeting with you and the other drafters of the proposal. Does Nov 9 from 11:30-12:30 eastern work for you? If so I will (re)confirm on our side and send out an invite. Thanks, Hunter

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From: Persis Yu <pyu@nclc.org>
Sent: Friday, October 22, 2021 3:01 PM
To: Kvaal, James <James.Kvaal@ed.gov>; Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; EVMigration_Clare.Mccann <Clare.McCann@usdedeop.onmicrosoft.com>; Merrill, Toby <Toby.Merrill@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Habash, Tariq <Tariq.Habash@ed.gov>; Williams, Rich <Rich.Williams@ed.gov>; Latreille, Bonnie

<Bonnie.J.Latreille@ed.gov>; Cordray, Richard <Richard.Cordray@ed.gov>; Wiggins, Hunter <Hunter.Wiggins@ed.gov>; Harrington, Ashley <Ashley.Harrington@ed.gov>
Cc: John Rao <jrao@nclc.org>
Subject: Proposal for Consenting to Undue Hardship

Dear colleagues,

Thank you for the opportunity to meet with us last month to discuss on the need for bankruptcy protections for student loan borrowers.

We are writing to submit a proposal for establishing and implementing an

undue hardship program for consenting to discharge of certain student loans in bankruptcy. This proposal is submitted by the National Consumer Law Center, National Association of Consumer Bankruptcy Attorneys, Student Borrower Protection Center, Public Law Center, and interested Law Professors (Professors Dalie Jimenez, Matthew A Bruckner, Chrystin Ondersma, John Patrick Hunt, and Brook Gotberg).

We look forward to answering any questions you may have.

Best,

John Rao and Persis Yu

From: Persis Yu
Subject: Bankruptcy research
To: Morgan, Julie; John Rao
Sent: January 6, 2022 7:50 AM (UTC-05:00)
Attached: NCLC-SBPC Impact of undue harship guidance research.docx

Hey Julie,

John and I wanted to follow up with some additional research that we found. Happy to answer any question about it.

Best,
Persis

--

Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

Availability of bankruptcy discharge does not result in strategic default

Darolia, Rajeev and Ritter, Dubravka, Strategic Default Among Private Student Loan Debtors: Evidence from Bankruptcy Reform (2017-11-02). FRB of Philadelphia Working Paper No. 17-38, Available at SSRN: https://ssrn.com/abstract=3064662

> Bankruptcy reform in 2005 restricted debtors' ability to discharge private student loan debt. The reform was motivated by the perceived incentive of some borrowers to file bankruptcy under Chapter 7 even if they had, or expected to have, sufficient income to service their debt. Using a national sample of credit bureau files, we examine whether private student loan borrowers distinctly adjusted their Chapter 7 bankruptcy filing behavior in response to the reform. We do not find evidence to indicate that the moral hazard associated with dischargeability appreciably affected the behavior of private student loan debtors prior to the policy.
>
> As documented in prior research, the BAPCPA induced a large spike in Chapter 7 bankruptcy filings after the bill was signed but before the law was enacted (e.g., see Li, White, and Zhu, 2011). After the policy went into effect, the rate of these filings declined substantially among all borrowers. If PSL debtors were strategically filing for bankruptcy, we would expect to see divergent behavior among the different groups of student loan borrowers after the policy. However, after accounting for potential policy-induced changes in credit supply, we find similar postpolicy filing trends for PSL borrowers and GSL borrowers. In other words, the 2005 nondischargeability provision does not appear to have differentially affected the likelihood of PSL borrowers filing for bankruptcy when compared with other debtors whose incentives were not directly affected by the policy. Therefore, our findings do not provide empirical support to the theoretical concerns about strategic default that inspired lawmakers to make private student loan debt largely nondischargeable in the 2005 bankruptcy reform.

Consumers who could benefit from bankruptcy typically do not file.

Even consumers who would benefit from bankruptcy often do not file because of the cost of filing bankruptcy. This can be best shown by considering the bankruptcy filing rates at the height of the Great Recession. A RAND study of American families during the Great Recession found that by April 2010, 39 percent of households had experienced financial distress. See RAND Labor and Population, Effects of the Financial Crisis and Great Recession on American Households, Michael Hurd And Susann Rohwedder, Nov. 2010 (study measured financial distress by considering the following factors: if the respondent and/or spouse is unemployed, or if the household is more than two months behind on mortgage payments (or in foreclosure), or if the value of the house is less than the amount of the mortgage). However, less than 1.4 percent of the 116.7 million American households filed bankruptcy in 2010. There remained a steady decline in bankruptcy filings after 2010, despite the continuation of challenging economic times for a number of years.

Impact of 2005 Act on bankruptcy filings

Albanesi, Stefania and Nosal, Jaromir, Insolvency after the 2005 Bankruptcy Reform (August 2018). NBER Working Paper No. w24934, Available at SSRN: https://ssrn.com/abstract=3239270

> The 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) is the most important reform of personal bankruptcy in the United States in recent years. This legislation overhauled eligibility requirements and increased monetary costs of filing for bankruptcy. Using administrative credit file data from a nationally representative panel, we quantify the effects of the reform on bankruptcy, insolvency, and foreclosure, we explore the mechanism generating these responses and examine the consequences for households. We find that the reform caused a 50% permanent drop in Chapter 7 filings, a 25% permanent rise in insolvency, but had no effect on Chapter 13 filings. Exploiting the cross-district variation in filing costs resulting from the reform, we show that these responses are driven by liquidity constraints associated with the higher monetary cost of filing for bankruptcy. We show that insolvency is associated with worse outcomes than bankruptcy, in terms of access to credit and credit scores, suggesting that BAPCPA may have removed an important form of relief for financially distressed borrowers.

Bankruptcy filers have lower incomes than other Americans

Consumer Bankruptcy Project Data 82 Am. Bankr. L. J. 349 (2008)

Data from Harvard's Consumer Bankruptcy Project have consistently shown that most debtors who file bankruptcy are poor. The 2007 median for bankruptcy filers was $27,100, compared to the $48,200 national median. The 2007 household incomes of all filers in comparison with the national median figures were indistinguishable from those in 2001 and 1991. The data also reveal that bankruptcy filers have disproportionately higher debt and lower assets.

Despite significant debt problems, most consumers delay filing as long as possible and suffer silently.

Foohey, Pamela and Lawless, Robert M. and Porter, Katherine M. and Thorne, Deborah, Life in the Sweatbox (February 20, 2018). 94 Notre Dame Law Review 219 (2018), University of Illinois College of Law Legal Studies Research Paper No. 18-21, Available at SSRN: https://ssrn.com/abstract=3126901

> The time before a person files bankruptcy is sometimes called the financial "sweatbox." Using original data from the Consumer Bankruptcy Project, we find that people are living longer in the sweatbox before filing bankruptcy than they have in the past. We also describe the depletion of wealth and well-being that defines people's time in the sweatbox. For those people who struggle for more than two years before filing bankruptcy — the "long strugglers" — their time in the sweatbox is particularly damaging. During their years in the sweatbox, long strugglers deal with persistent collection calls, go without healthcare, food, and utilities, lose homes and other property, and yet remain ashamed of needing to file. For these people in particular, though time in the sweatbox undermines their ability to realize bankruptcy's "fresh start," they do not file until long after the costs outweigh the benefits. This Article's findings challenge longstanding narratives about who files bankruptcy and why. These narratives underlie our laws, influence how judges rule in individual cases, and affect how attorneys interact with their clients.

Examples of Bad Faith

The Bankruptcy Code's means test created a presumption of abuse for certain above-median income debtors. When the presumption arises, the United States Trustee Program (USTP) can file a motion to dismiss the case. However, in Fiscal Year 2020, the USTP declined to file a motion to dismiss in about 72 percent of presumptively abusive cases. The USTP's 2020 annual report states that "the percentage of declinations has grown from less than 35 percent in FY 2006 to more than 60 percent in recent years … suggest[ing] that the objective criteria of the means test are now well established and that most debtors' attorneys file cases that trigger the presumption of abuse only if they otherwise satisfy statutory exceptions."

Even if a case is not presumptively abusive under the means test, the USTP may seek dismissal based on the debtor's bad faith. Such actions are rarely taken and generally involve professionals or business owners who have failed to disclose assets or transfers of property before filing, or have falsely represented their current income or expenses. The following are examples of bad faith bankruptcy filings as described in USTP annual reports over the past few years.

Overstating expenses and understating income

> The Bankruptcy Court for the Middle District of Pennsylvania entered an order granting the U.S. Trustee's motion to dismiss, preventing the discharge of $344,784 in unsecured debt. An investigation by the U.S. Trustee's Harrisburg office revealed that the debtors overstated their mortgage and tax expenses on their means test form by more than $1,000 per month. After using the correct figures, the debtors had sufficient monthly disposable income to trigger the presumption of abuse and the U.S. Trustee filed its motion. The U.S. Trustee's motion also argued that the case was abusive under the totality of the circumstances standard because the debtors lacked the need for a discharge based on

their actual financial circumstances.

Lying about employment status, failing to list all assets, transfer of assets/property in order to conceal assets

Ruling for the USTP's Detroit office after a two-day trial, the Bankruptcy Court for the Eastern District of Michigan issued a written opinion denying the debtor's discharge of more than $3.74 million in unsecured debt. The debtor had been a successful area restaurateur, but claimed that she was out of the business and that a restaurant bearing a slightly altered but familiar name belonged to her daughter. In her bankruptcy case, the debtor omitted transfers to her daughter, showed zero income, underreported her liabilities, failed to list all of her assets, and testified falsely at the section 341 meeting of creditors. The court found that the debtor engaged in continuing concealment of transfers, that her subsequent amendment of her bankruptcy schedules did not excuse her false original filings, and that her admission in her answer to the U.S. Trustee's complaint objecting to her discharge that she signed the petition schedules under penalty of perjury was binding.

Committing fraud, concealing assets and income

The Program's San Diego office referred and assisted law enforcement in the Southern District of California with the investigation and prosecution of a disbarred attorney who was sentenced to 34 months in federal prison for committing bankruptcy fraud (concealment of assets) and tax evasion. The defendant pleaded guilty to devising a scheme to defraud his creditors by concealing assets and income valued at nearly $1.5 million, including stock interest in a real estate venture, a luxury yacht, antique silver items, and unauthorized salary payments and other benefits he received in violation of a bankruptcy court order. The defendant also intentionally and willfully evaded payment of more than $5.9 million in taxes, penalties, and interest owed for calendar years 2005 through 2009.

Transfer of assets/property in order to conceal assets, sudden unexplained decline in net worth

After a two-day trial on a complaint to deny discharge filed by the USTP's Lexington office, the Bankruptcy Court for the Eastern District of Kentucky denied a debtor's chapter 7 discharge of $6.3 million in unsecured debt. The debtor did not disclose his transfer of five vehicles valued at $60,000 to a family member shortly before he filed bankruptcy, his interest in real estate, and his ownership of basketball tickets worth more than $10,000. He also failed to explain how his net worth declined from over $7 million two years before he filed bankruptcy to negative $6.5 million as stated in his bankruptcy documents.

Overstating expenses and understating income, retention of luxury items, suspicious timing of bankruptcy filing

The Bankruptcy Court for the Eastern District of Louisiana ruled for the New Orleans

office after a contested hearing and prevented the discharge of nearly $1 million in unsecured debt by dismissing the debtor's chapter 7 case. The U.S. Trustee successfully argued that the debtor, a highly compensated attorney, under-reported his income and over-reported his expenses, and that his filing was abusive under the totality of the circumstances because he had the ability to repay creditors. Although the court did not reach the issue, the U.S. Trustee also argued that a number of factors demonstrated the debtor's bad faith, including the retention of luxury items, the timing of the bankruptcy filing just prior to a state court contempt hearing, and the debtor's failure to provide notice of the filing to most of his creditors.

Failed to disclose his interests in real property & accounts, failure to disclose assets held in someone else's name

The Bankruptcy Court for the District of Hawaii ruled in favor of the Honolulu office to deny a chapter 7 debtor's discharge of $7,876,114 in unsecured debt. The debtor failed to disclose his interests in real property located in Hawaii and Australia. He also failed to disclose five financial accounts, including an account that was held in another person's name and was used to deposit rental income from the debtor's vacation properties. Further, the debtor violated a court order restricting his use of bankruptcy estate funds and sold bankruptcy estate property without informing the bankruptcy trustee or obtaining the bankruptcy court's approval. In addition to obtaining the denial of the debtor's discharge, the U.S. Trustee referred the matter for criminal prosecution. The debtor was ultimately sentenced to 30 months in prison and required to pay more than $700,000 in restitution.

Fraudulent transfer of funds

After a trial on a complaint to deny discharge filed by the U.S. Trustee's Boise office, the Bankruptcy Court for the District of Idaho denied a debtor's discharge of over $10.4 million in unsecured debt. The debtor was the principal of a limited liability company that operated three assisted living centers. He filed chapter 11 cases for his company and himself. After his individual chapter 11 case was converted to chapter 7, the U.S. Trustee objected to his discharge, alleging he fraudulently transferred funds to himself from the debtor company's chapter 11 bankruptcy estate by, among other things, converting payments for patient care to his personal use.

Failure to disclose assets/property

In another case, after a trial the Bankruptcy Court for the Western District of Missouri ruled for the U.S. Trustee's Kansas City office and revoked the debtor's chapter 7 discharge of $2.9 million in unsecured debt. The court agreed with the U.S. Trustee that the debtor obtained his discharge by fraud when he failed to disclose he was holding inventory and equipment subject to a secured creditor's lien after his business failed.

Unexplained loss of property/assets, overstating expenses and understating income

Ruling for the Dallas office after a two-day trial, the Bankruptcy Court for the Northern District of Texas denied a debtor couple's chapter 7 discharge of more than $5 million in unsecured debt. An investigation revealed the husband previously owned a car dealership, personally guaranteed the debt on approximately 70 vehicles that were sold without paying back the lender, and was unable to explain what happened to the vehicles. The debtors also failed to disclose income, interests in businesses, and debts owed to the State of Texas for violations of laws governing the sales of used vehicles.

Failure to disclose assets/property, misrepresenting value of assets

After a two-day trial on a complaint filed by the Eugene office, the Bankruptcy Court for the District of Oregon revoked a debtor's chapter 7 discharge of almost $3.7 million in unsecured debt. The discharge revocation was based on the debtor's failure to disclose an interest in real property, misrepresentation of the value of some of his business interests, and failure to disclose certain accounts receivable.

Failure to disclose assets/property, misrepresenting value of assets, unexplained loss of property/assets

The Bankruptcy Court for the Eastern District of Michigan entered a default judgment denying a debtor's chapter 7 discharge of $509,524 in unsecured debt after the Detroit office objected to his discharge. The U.S. Trustee's investigation revealed the debtor did not disclose a second home and $400,000 in pre-petition income, undervalued approximately $2.5 million in stock holdings and $300,000 in household furnishings, and failed to explain the disposition of the proceeds from his sale of a Lamborghini automobile.

From: Kvaal, James
Subject: RE: [FOR TRANSMITTAL] Advocates Release Proposal to Overhaul Income-Driven Repayment
To: Persis Yu; Morgan, Julie; Miller, Benjamin; Latreille, Bonnie; Harrington, Ashley; Williams, Rich; Campbell, Patrick; Foss, Ian; Habash, Tariq
Cc: Mike Pierce; Abby Shafroth; Julia Barnard; Kyra Taylor; Alpha Taylor; Whitney Barkley; Jaylon Herbin; taylor.roberson@responsiblelending.org; Winston Berkman-Breen; Claire Torchiana
Sent: January 12, 2022 12:36 PM (UTC-05:00)

Thanks for sharing this, Persis. We'll discuss it.

From: Persis Yu <persis@protectborrowers.org>
Sent: Wednesday, January 12, 2022 12:16 PM
To: Kvaal, James <James.Kvaal@ed.gov>; Morgan, Julie <Julie.Morgan@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; Latreille, Bonnie <Bonnie.J.Latreille@ed.gov>; Harrington, Ashley <Ashley.Harrington@ed.gov>; Williams, Rich <Rich.Williams@ed.gov>; Campbell, Patrick <Patrick.Campbell@ed.gov>; Foss, Ian <Ian.Foss@ed.gov>; Habash, Tariq <Tariq.Habash@ed.gov>
Cc: Mike Pierce <mike@protectborrowers.org>; Abby Shafroth <ashafroth@nclc.org>; Julia Barnard <Julia.Barnard@responsiblelending.org>; Kyra Taylor <ktaylor@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Whitney Barkley <Whitney.Barkley@responsiblelending.org>; Jaylon Herbin <jaylon.herbin@responsiblelending.org>; taylor.roberson@responsiblelending.org; Winston Berkman-Breen <winston@protectborrowers.org>; Claire Torchiana <claire@protectborrowers.org>
Subject: [FOR TRANSMITTAL] Advocates Release Proposal to Overhaul Income-Driven Repayment

Dear Colleagues,

I wanted to share with you all the whitepaper that the Student Borrower Protection Center, Center for Responsible Lending, and National Consumer Law Center released today calling for the creation of an IDR restoration project, or an IDR waiver.

As we have previously discussed, the fact that only 32 IDR borrowers have ever successfully obtained loan cancellation even though 4.4 million borrowers have been in repayment for 20 years or longer, demonstrates the policy failures of IDR.

An IDR Waiver would offer a path forward for delivering on the promise of IDR to ensure that borrowers can access affordable loan payments in the short term and to provide a way out for borrowers experiencing long-term financial hardship.

Thank you for your consideration of this proposal. We look forward to future discussions on this topic.

Best regards,
Persis

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Borrower Advocates Demand that Education Department Restore the Promise of Income-Driven Repayment

Advocates Outline Path for the Biden Administration to "Do its Part" in Fixing IDR

January 11, 2021 | WASHINGTON, DC — Today, the Student Borrower Protection Center, Center for

Responsible Lending, and National Consumer Law Center released a whitepaper outlining why the U.S. Department of Education (ED) must act now, before the payment pause ends, to provide relief for the millions of federal student loan borrowers who have never seen the promise of income-driven repayment (IDR) forgiveness. This report outlines how the Biden administration can cut through the red tape that has long stymied the IDR program and deliver a pathway out of student debt—particularly for low-income borrowers and borrowers of color, similar to changes recently made to the Public Service Loan Forgiveness (PSLF) program.

When he extended the payment pause on federal student loans, President Biden asked "all student loan borrowers to do their part" and recommended borrowers manage their student debt by enrolling in IDR. But like PSLF, trust in IDR, which is built on a promise of debt forgiveness, has been broken. While cancellation under IDR has been theoretically possible since 2016, reports have revealed how industry abuses and policy failures have resulted in only 32 borrowers ever successfully having their loans cancelled via IDR. Meanwhile, more than 4.4 million borrowers have been in repayment for 20 years or longer. ED must act now to restore trust in IDR.

Read the whitepaper here: https://protectborrowers.org/restoring-the-promise-of-income-driven-repayment-an-idr-waiver-proposal/

"Millions of student loan borrowers are buckling under the weight of a broken system," said Persis Yu, Policy Director and Managing Counsel at the Student Borrower Protection Center.
"The failures of income-driven repayment have kept borrowers in unaffordable debt for decades too long. It is time for the Biden Administration *to do its part* and fulfill the promise of IDR by giving borrowers the credit they deserve."

"The promise of IDR forgiveness after 20 to 25 years should be a light at the end of the tunnel for student loan borrowers," said Abby Shafroth, director of the National Consumer Law Center's Student Loan Borrower Assistance project. But just as 99% of public servants who thought they had qualified for PSLF forgiveness after the first 10 years of the program were denied -- owing to a combination of program complexity, poor servicing and servicing errors -- a vanishingly small number of borrowers are qualifying for IDR forgiveness 25 years into the program's existence for these same reasons. The Department did the right thing by acknowledging that the system had failed borrowers in public service and waiving barriers to PSLF forgiveness, and should do the same thing to restore IDR's promise."

"Income-driven repayment plans are a key lifeline for many student borrowers, allowing them to make affordable payments and have their debts discharged after decades of repayment. Unfortunately, bad servicing and complicated paperwork make it difficult for borrowers to participate successfully," said Julia Barnard, Student Loan Team Co-Lead and Researcher at the Center for Responsible Lending. "Because of these problems, borrowers only have a 1-in-23,000 chance at cancellation under IDR. We urge the Department of Education to make fixing the program an urgent priority in the months ahead."

Recommendations
An IDR waiver is essential to restore the broken promise of IDR. This whitepaper's recommendations are for the Biden administration to:

On a retroactive basis, count all months since the borrower entered repayment following their grace period as qualifying months towards forgiveness. Regardless of which repayment plan the borrower was in, whether they were in forbearance, or whether they were in default.

Provide relief automatically. All of the data that ED needs in order to implement the IDR Waiver is

readily available through the National Student Loan Data System (NSLDS). Because of this, borrowers should not need to affirmatively apply for this relief.

Ensure that all federal loan borrowers, regardless of loan program, have access to the IDR Waiver. While FFEL and Perkins loans borrowers could be eligible for IDR, so many borrowers were not properly advised and so have failed to benefit. The IDR waiver must apply to these borrowers who have been left behind.

Background:
When Congress passed the first of the modern income-driven repayment (IDR) plans in 1992, it made a promise to borrowers that federal student loan payments would be affordable, and that even if borrowers were low-income, through eventual cancellation, their student loans would not be a lifetime burden. IDR has failed to deliver on every aspect of that promise. It is time now for the Biden Administration to deliver on the promise of IDR through the creation of an IDR restoration project, or an IDR waiver.

IDR plans are notoriously difficult to navigate, both because of the administrative hurdles of the program and rampant servicer misconduct. To receive debt cancellation under IDR, student loan borrowers must complete an application process and submit documentation to enroll in one of the several income-driven repayment options, and repeat that process every year for decades.

As with so many aspects of the student loan system, the failure of IDR disproportionately harms Black borrowers. A recent Education Trust study found that IDR is not easing the student debt crisis for Black borrowers and that this program created to help the most vulnerable borrowers has failed to do so on all levels.

The Biden administration recently recognized and took steps to address similar failings in the Public Service Loan Forgiveness (PSLF) program by implementing a waiver of qualifying requirements that would allow the millions of public service workers to finally benefit from the promise of PSLF.

Additional material:

- **Revisiting Relief for Borrowers Waiting for Income-Driven Repayment**
- **Driving Into a Dead End: Why IDR Has Failed Millions with Decades-Old Debts**
- **Education Department's Decades-Old Debt Trap: How the Mismanagement of Income-Driven Repayment Locked Millions in Debt**
- **Almost Two in Three Navient Borrowers Enrolled in IDR Plans and Making Payments During COVID-19 Federal Student Loan Payment Pause Are Underwater**
- **Road to Relief: Supporting Federal Student Loan Borrowers During the COVID-19 Crisis and Beyond**

###

The Center for Responsible Lending (CRL) is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices.

The Student Borrower Protection Center is a nonprofit organization focused on alleviating the burden of student debt for millions of Americans. The SBPC engages in advocacy, policymaking, and litigation strategy to rein in industry abuses, protect borrowers' rights, and advance economic opportunity for the next generation of students.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. The NCLC's Student Loan Borrower Assistance Project provides information about student loan rights and responsibilities for borrowers and advocates. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens, and make loan repayment more manageable.

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Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org


From: Persis Yu
Subject: [FOR TRANSMITTAL] Memorandum on IDR Waiver: Borrower Voices on Default and Deferment/Forbearance Periods
To: Kvaal, James; Cordray, Richard; Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Latreille, Bonnie; Campbell, Patrick; Foss, Ian; Habash, Tariq; Darcus, Joanna
Cc: Mike Pierce; Christopher Hicks; Claire Torchiana; Benjamin Kaufman
Sent: February 23, 2022 3:50 PM (UTC-05:00)
Attached: Forbearance_Deferment_Default_IDR Complaint Memo (1).pdf

Dear ED and FSA Colleagues,

Attached please find a memorandum highlighting the voices of federal student loan borrowers who demonstrate the need for an IDR waiver.

Moreover, as the memorandum describes in detail, to truly effectuate the program's promise, the waiver must consider all of a borrower's time since the start of repayment, including periods of deferment, forbearance, and default.

Thank you for all the work that you are doing to help student loan borrowers. Please do not hesitate to contact me if you have any questions or if you would like to discuss this further.

Best,
Persis

--

Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

STUDENT BORROWER PROTECTION CENTER

MEMORANDUM

February 23, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center

RE: **Borrower Voices on the Incomplete Promise of Relief through IDR: Default and Deferment/Forbearance Periods**

Overview

The promise of affordability and loan relief through income-driven repayment ("IDR") options has largely been a policy failure, plagued by unwieldy regulatory requirements and industry misconduct. A waiver that would credit all of a borrower's time since the start of repayment – irrespective of loan status or payment history – towards IDR would be a powerful step towards finally restoring the purpose of the law. As the following memorandum describes in detail, to truly effectuate the program's promise, the waiver must consider *all* of a borrower's time since the start of repayment, including periods of deferment, forbearance, and default.

Background

Almost three decades ago, in recognition of the massive burden that student loan debt imposes on American households, Congress introduced one of the most vital protections available in any consumer financial market: income-driven repayment ("IDR").[1] From its inception and throughout its expansion across successive presidential administrations, IDR has been shaped by three core principles: that federal borrowers should be able to afford their monthly student loan bills, that the most financially strapped borrowers should enjoy safeguards from delinquency and default, and, perhaps most importantly, that student loan debt should never become a lifelong affliction.[2] In implementing the latter precept, the U.S. Department of Education ("ED") has entitled federal student loan borrowers in IDR to debt cancellation after 20 to 25 years of consistent, on-time repayment based on the borrower's loan type and particular IDR plan.[3]

The promise of eventual debt cancellation through IDR is a key source of hope for millions of borrowers, many of whom make substantial personal sacrifices even while enrolled in IDR to remain current on their loans.[4] Moreover, the assumption that IDR generally delivers cancellation

[1] https://journals.sagepub.com/doi/abs/10.1177/0002716217701673.
[2] https://protectborrowers.org/idr-history-report/.
[3] https://studentaid.gov/manage-loans/repayment/plans/income-driven.
[4] https://protectborrowers.org/idr-unaffordability-report/.

as promised is the cornerstone of significant federal policy and case law. For instance, the legal regime that makes it extremely difficult for borrowers to discharge student loan debt in bankruptcy partly stems from the assumption that IDR makes student loan payments manageable.[5] Similarly, there is a growing body of policy research that frames substantial policy intervention to alleviate student debt burdens, such as through broad-based cancellation, as unnecessary based on the assumption that IDR can be a source of meaningful relief for most borrowers struggling with student loan debt.[6]

Unfortunately, the promise of eventual debt relief through IDR has proven to be completely broken. Though debt cancellation under IDR has been available for qualifying borrowers since at least 2016, ED data accessed through the Freedom of Information Act ("FOIA") revealed last year that only 32 borrowers have *ever* successfully achieved cancellation via IDR.[7] For relative scale, information uncovered by U.S. Senator Elizabeth Warren indicates that more than 4.4 million borrowers have been in repayment for 20 years or more.[8] Worse, the situation for borrowers pursuing cancellation through IDR appears unlikely to improve. An internal analysis conducted by one large student loan servicer recently found that of the more than 8.5 million borrowers whose federal student loans it manages, only 48 are projected to receive debt cancellation under IDR by 2025.[9] This overall estimate involved the projection of an 83 percent *reduction* between 2022 and 2025 in the number of borrowers that will receive cancellation through IDR each year, prompting one company employee to remark in uncovered emails that the number of borrowers securing cancellation seemed "very low."[10]

The systematic collapse of the promise of relief that Congress made to borrowers flows from decades of inaction, incompetence, and unfortunately frequent malfeasance from federal policymakers, regulators, and the student loan industry. For example, over the past several years, state attorneys general across the country and the Consumer Financial Protection Bureau have brought public enforcement actions against ED's largest student loan servicing contractors for a wide range of abuses related to borrowers' access to IDR, including deploying abusive forbearance steering tactics, deceiving borrowers regarding their obligation to annually recertify income, and failing to timely process IDR applications.[11] These abuses—conducted by the very same companies tasked with guiding borrowers through repayment and empowering them to access their protections under the law—will add years or decades to borrowers' repayment sequences even if they are eventually able to access IDR at all. By that time, borrowers will likely have undergone extensive but entirely unnecessary financial hardship including periods of disastrous delinquency or default.

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[5] https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/07/Help-or-Hardship.pdf.

[6] https://bfi.uchicago.edu/insight/finding/the-distributional-effects-of-student-loan-forgiveness/.

[7] https://protectborrowers.org/new-government-data-exposes-complete-failure-of-education-departments-income-driven-repayment-program/.

[8] https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf#page=2.

[9] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=18.

[10] *Id.*

[11] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=15.

A recent settlement between 39 states attorneys general and the federal student loan servicing giant Navient demonstrates that servicers have consistently and recklessly engaged in a startling variety of abusive practices with long-term consequences for borrowers.[12] While beneficial for some private loan borrowers, the terms of the settlement will not provide relief for the millions of borrowers who lost years of credit towards federal loan forgiveness and over-paid on their monthly student loan bills because of student loan servicers' illegal activities. This episode is yet another instance of the policy apparatus and specifically the promise of affordability through IDR failing borrowers entirely.

Worse, as with so many aspects of the student debt crisis, the weight of IDR's widespread breakdown has landed most heavily on Black borrowers. In particular, a nationwide survey from The Education Trust recently found that Black federal student loan borrowers struggle to access IDR, and that they continue to face both difficulty affording basic life necessities and an ongoing risk of default on their student loans even when enrolled in IDR.[13] Reflecting on IDR's failure to deliver eventual debt cancellation for Black borrowers, the survey noted that Black borrowers feel that repayment under IDR is "a lifetime debt sentence."[14]

Periods of Deferment and Forbearances Drive Borrowers to Default

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices related to IDR have had on borrowers who have been pushed towards forebearances and deferments by their servicer, and correspondingly into devastating periods of default. For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled. Here are a few illustrative stories that capture the pain felt by millions of borrowers[15]:

1. Ms. Hernandez attended United Education Institute in 2011. When she sought assistance from a legal non-profit, the Legal Aid Foundation of Los Angeles ("LAFLA"), in 2019, she was a single parent of three children and was living on a combined income of $960 a month – $700 in wages and $260 in assistance through a state program called "CalWorks."

   Ms. Hernandez was never able to afford the standard monthly payments on her federal loans. When she first reentered repayment in December 2011, she called her loan servicer and told them she was unemployed and could not afford monthly payments. They deferred her loans for 6 months. Then, over the next 2.5 years, the loan servicer put her loans in forbearance whenever she called to explain she could not afford the payments. She defaulted in 2015.

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[12] https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/.
[13] https://edtrust.org/resource/jim-crow-debt/.
[14] *Id.*
[15] Names changed for clients' privacy.

In January 2020, her employer received an order from ED to garnish her wages. She sought LAFLA's assistance. LAFLA immediately arranged for her to enter a rehabilitation plan to get her loans out of default and stop the garnishment. Then, in March 2020, all wage garnishments ceased under the CARES Act due to the COVID crisis. Ms. Hernandez completed her rehabilitation plan and her loans were removed from default in December 2020. She now has a Revised Pay As You Earn ("REPAYE") IDR plan with a $0 monthly payment—and would have qualified for such a payment years before, had her servicer provided this information.

2. Ms. Smith is an elderly, disabled, Black woman borrower living on fixed Social Security retirement benefits of $1,800 per month. She suffers from severe back pain, fibromyalgia, and chronic depression. In 2019, when she sought LAFLA's help, Ms. Smith owed around $240,000 on a Federal Family Education Loan ("FFEL") Consolidated loan. Her loans were on a repayment plan with a $2,100 monthly payment, which she had never been able to afford. Between July 2010 and March 2015, she called her loan servicer five times and told it that she could not afford her monthly payments. Each time her loan servicer put her on forbearance. She finally defaulted in July 2015, and experienced tax refund offsets of money she needed to survive. She rehabilitated her loan out of default in February 2019. At this time she sought LAFLA's help. They immediately submitted an IDR request which was granted, with a $0 monthly payment.

3. Ned is a retired, partially disabled, Black veteran. Circa 1990, Ned's employer told him he had to attend a 6-week course at a truck driving school if he wanted to keep his job as a truck driver. He ended up having to take out around $3,000 in federal student loans, and did not learn anything from the course. Ned is now 68 and his loans have ballooned to almost $7,000. He does not have Internet access or email. He was unable to keep up with the payments and defaulted in 2008. Ted has had over $7,600 garnished from his tax refund since then—it has all gone towards fees and interest with none applied to the principal balance. A retiree living primarily on SSI, Ted has qualified for a $0 REPAYE IDR plan for years, which his servicer never told him about. He did not enter such a plan until late 2019 when a legal services organization contacted his servicer to get him out of default and onto a REPAYE plan, after over a decade of being in default.

4. George is 75 years old and still has approximately $5,200 student loans. He is a retired teacher, Black, and attended a state school. His wages were garnished each month from his part-time job at the YMCA because he defaulted on his student loans. George qualified for a $0 IDR plan, but because he did not have access to a computer and his loan servicer never shared this information with him, he was trapped in default for years. The wage garnishments took away some of the little income that he subsided on in his retirement. After years of being in default, a legal service organization helped him submit documentation and go through the many steps to get out of default and onto a $0 monthly repayment plan, all information which his servicer never provided.

5. Susan took out Parent Plus loans for her daughter to attend Heald College, a for-profit school which was later found to have engaged in predatory recruitment and deception.

She thought she had co-signed her daughter's loan, and she does not understand why the government is coming after her to collect. Susan has been in default for years, and her entire tax refund was garnished in 2018. She is a senior and disabled but still works. The garnishment took money that Susan would have otherwise used for her medications and medical bills—she chose to forgo a surgery after her tax refund was garnished. Susan has qualified for a $0 payment on IDR for years, but her servicer never told her this. It was not until she contacted a legal services organization that helped her submit the paperwork and called her servicer on her behalf that she was able to get on this plan.

7. Kathleen is in default on her loans, and before the pandemic, experienced wage garnishment. Kathleen's loan servicer never communicated her real options to her—she was repeatedly encouraged to use forbearance and deferment. When they told her to do so, she followed their advice. The interest on her loans has caused the balance to balloon. Kathless now realizes that she was not counseled appropriately. Similarly, she has worked for a 501(c)(3) for her entire career and was never approved for public student loan forgiveness—she did not realize until the pandemic that she had a FFEL loan and how that impacted her PSLF eligibility as her servicer did not explain this.

8. Teddy's loans are in default, he has had them for over 20 years—they were in forbearance for 12 of those years. While he worked for a non profit from 2002-2008, he was never able to get PSLF credit because he never made any loan payments because his loans were in forbearance. Teddy has always worked just over minimum wage jobs, but did not realize there were affordable payment options through IDR. In 2019, his wages were garnished—the Department took 1/3 of his gross pay each payment period as payment. Garnishment made it really hard to get by. Teddy lost his apartment and was temporarily homeless until his parents let him move in with them in Texas. He was months behind on my car payments. If his parents were to pass away, Teddy feels he would end up homeless and living in his car, because his current job, where he makes $13/hour, does not provide me enough money to have his own place.

9. Tammy has been in continued forbearance on her loans, but feels that once she runs out of forbearances, she surely will default on her loans. Tammy is alone caring for three children, living in North Carolina. Her husband died in December from COVID and he did not have life insurance. Tammy's rent recently increased. Tammy is feeling stressed, anxious, and depressed about the cancellation of pause. She is currently seeing a psychiatrist and therapist to deal with the stress, which adds a mountain of medical debt that her insurance does not cover.

10. Arthur was in default and completed a rehabilitation program in November 2019 but now struggles to make his monthly payments. Because of being steered into deferments and forbearances over the years, an original balance of $100,000 in federal student debt is now well over $700,000. Arthur would be happy to make payments on a capped debt that could realistically be paid off, but feels at this point that there is no recourse; he feels like death is the only way out of this debt problem.

> 11. Natasha is in her mid 60s, Black and physically disabled. She does not own a home and is having medical issues, and is considering moving to a senior living facility. She attended community college and state-school in the mid 80s, and graduated in 1994. She had to borrow a total of $20,872 in FFEL loans, and has been in and out of repayment since 1994 with Navient as her servicer. Despite nearly 3 decades of being in repayment – including periods of deferment, forbearance, and default—her loan balance has ballooned to $63,825. Navient placed her loans in forbearance a total of 27 times, and she was placed in deferment at other times she could not afford payments. In 2021, a debt relief organization consolidated her loans and got her onto an IDR plan. Once, she remembers getting on an IDR plan, but forgot to recertify her income and was disenrolled. When she contacted the servicer to try to get back on it, she found out her monthly payment had gone up and she was put in forbearance again.

As these stories illustrate, servicers' failure to provide their customers with information about how to access IDR plans and widespread practice of steering borrowers into long-term forbearance and deferments has devastating consequences on borrowers' lives. When this happens, not only do borrowers face years or decades of delayed progress toward IDR, their likelihood of delinquency or default along the way increases.

The practice of deferment and forbearance steering can lead borrowers to default for a number of reasons. While, in theory, deferment and forbearance can be useful tools for borrowers—for instance, for a borrower facing unexpected but temporary circumstances such as medical bills or temporary loss of employment—repeated use of them harms borrowers' financial health in the long-term. In practice, too often servicers repeatedly steer borrowers towards forbearance and deferment, rather than only recommending it as a temporary, stop-gap option, and create the mistaken assumption that these programs are the borrowers only option for relief, and cause borrowers' loans to balloon in the process. As servicers well know, deferment and forbearance periods are limited—borrowers will inevitably run out of these options and be forced to enter into repayment. Because borrowers were never provided with information about income-driven plans as an alternative to other types of repayment plans, they will find themselves with unmanageable payments once these deferment and forbearance periods run out. Relatedly, most borrowers will see their loan balances balloon during periods of forbearance and most types of deferment as interest is capitalized, or added to the loan principal.[16] Once borrowers run out of forbearance and deferment options, these enormous loan balances will make repayment even more unaffordable, trapping borrowers in a lifetime debt trap they can never pay off. Finally, following years of deferment and forbearance steering, borrowers believe that they have no other option but to default because servicers have never explained to borrowers the option of income-driven repayment, which in many cases could put borrowers on a sustainable repayment plan—often a $0 month payment.

As these examples show, as a result of abusive and unnecessary forbearance and deferment steering, borrowers experiencing long-term financial distress find themselves out of deferment

[16] https://protectborrowers.org/wp-content/uploads/2021/09/SBPC_Driving_Runaway_Debt.pdf; https://protectborrowers.org/driving-into-a-dead-end-why-idr-has-failed-millions-with-decades-old-debts/.

and forbearance options and with a ballooned loan balance. Borrowers find themselves cornered, having to choose between housing, food, medical care, taking care of their children, and paying their student loans. Although, for many, IDR could have made their student loan affordable, despite proactively reaching out to their servicers for help, they are led to believe that their only options are short-term forbearance and deferment programs. As Ted's story shows, borrowers can remain in default for decades believing based on what their servicers have told them that they have no other option, as their tax refunds and meager wages are seized by the government to pay off fees.

ED Can and Must Act to Restore the Promise of Relief through IDR

In October, the Biden administration initiated a sweeping waiver to address longstanding, wide-ranging failures plaguing the Public Service Loan Forgiveness ("PSLF") program.[17] This waiver allowed hundreds of thousands of borrowers to bypass byzantine administrative burdens, sweep aside the lingering effects of past servicing abuses, and rise from the wreckage of decades-long policy blunders to access earned relief.[18] For tens of thousands of borrowers, that relief included immediate debt forgiveness.[19]

Now, borrowers and a broad coalition of advocates are calling on the Biden administration to use authorities already at its disposal to initiate a similarly bold program to deliver justice and relief to the millions of borrowers who have been denied the promise of IDR.[20] As outlined in a white paper co-authored by the Student Borrower Protection Center, the Center for Responsible Lending, and the National Consumer Law Center, this waiver would involve the use of administrative data to retroactively count all months since borrowers entered repayment as qualifying months towards forgiveness under IDR, regardless of the borrower's loan type or prior repayment plan.[21] A coalition of more than 100 unions, consumer protection organizations, and non-profit organizations that represent a broad and diverse population of low to middle income student borrowers and workers across the country recently signed a letter in support of this proposed IDR waiver.[22]

Until the Biden administration takes substantial action such as implementing the proposed IDR waiver, however, borrowers will continue languishing under the weight of system-wide failure and broken promises. The weight that these borrowers face goes far beyond what may be captured in any statistic outlining how few borrowers have secured cancellation through IDR, how many borrowers continue to face delinquency and default, and how many decades borrowers have been trapped in repayment. The failure of IDR means years of lost payments,

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[17] https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness.
[18] *Id.*
[19] *Id.*
[20] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.
[21] https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/.
[22] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

rippling financial ruin, and broken promises between citizens and their government at every level.

Servicers have too long put their financial profits ahead of borrowers' financial security. The Biden administration must choose to right that wrong by implementing a IDR waiver that will provide credit towards loan forgiveness for borrowers' time in default, forbearance, and deferment.

From: Persis Yu
Subject: [FOR TRANSMITTAL] Memorandum on IDR Waiver: Nelnet Borrower Voices on the Incomplete Promise of Relief through IDR
To: Kvaal, James; Cordray, Richard; Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Latreille, Bonnie; Campbell, Patrick; Foss, Ian; Habash, Tariq; Darcus, Joanna
Cc: Mike Pierce; Christopher Hicks; Claire Torchiana; Benjamin Kaufman
Sent: March 2, 2022 2:33 PM (UTC-05:00)
Attached: SBPC IDR Complaint Memo - Nelnet 3.2.22.pdf

Dear ED and FSA Colleagues,

Attached please find a memorandum highlighting the voices of federal student loan borrowers who demonstrate the need for an IDR waiver. In particular, this memo highlights the voices of borrowers whose loans were serviced by Nelnet.

Thank you for all the work that you are doing to help student loan borrowers. Please do not hesitate to contact me if you have any questions or if you would like to discuss this further.

Best,
Persis

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Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

STUDENT BORROWER PROTECTION CENTER

MEMORANDUM

March 2, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center

RE: **Nelnet Borrower Voices on the Incomplete Promise of Relief through IDR**

Overview

The promise of affordability and loan relief through income-driven repayment ("IDR") options has largely been broken, plagued by failed policy, unwieldy regulatory requirements, and industry misconduct. A waiver that would credit all of a borrower's time since the start of repayment—irrespective of loan status or payment history—towards IDR would be a powerful step towards finally restoring the purpose of the law. Abusive student loan servicers have greatly undermined the promise of IDR and debt cancellation through illegal forbearance steering and misadvice to borrowers. While these actions have mostly been publicized as to one servicer, Navient, they are not limited to one bad actor but are prevalent across the industry. As the following memorandum describes in detail, borrowers whose loans are serviced by Nelnet have suffered from the industry's harmful practices.

Background

Almost three decades ago, in recognition of the massive burden that student loan debt imposes on American households, Congress introduced one of the most vital protections available in any consumer financial market: income-driven repayment.[1] From its inception and throughout its expansion across successive presidential administrations, IDR has been shaped by three core principles: that federal borrowers should be able to afford their monthly student loan bills, that the most financially strapped borrowers should enjoy safeguards from delinquency and default, and, perhaps most importantly, that student loan debt should never become a lifelong affliction.[2] In implementing the latter precept, the U.S. Department of Education ("ED") has entitled federal student loan borrowers in IDR to debt cancellation after 20 to 25 years of consistent, on-time repayment based on the borrower's loan type and particular IDR plan.[3]

The promise of eventual debt cancellation through IDR is a key source of hope for millions of borrowers, many of whom make substantial personal sacrifices even while enrolled in IDR to remain current on their loans.[4] Moreover, the assumption that IDR generally delivers cancellation

[1] https://journals.sagepub.com/doi/abs/10.1177/0002716217701673.
[2] https://protectborrowers.org/idr-history-report/.
[3] https://studentaid.gov/manage-loans/repayment/plans/income-driven.
[4] https://protectborrowers.org/idr-unaffordability-report/.

as promised is the cornerstone of significant federal policy and case law. For instance, the legal regime that makes it extremely difficult for borrowers to discharge student loan debt in bankruptcy partly stems from the assumption that IDR makes student loan payments manageable.[5] Similarly, there is a growing body of policy research that frames substantial policy intervention to alleviate student debt burdens, such as through broad-based cancellation, as unnecessary based on the assumption that IDR can be a source of meaningful relief for most borrowers struggling with student loan debt.[6]

Unfortunately, the promise of eventual debt relief through IDR has proven to be completely broken. Though debt cancellation under IDR has been available for qualifying borrowers since at least 2016, ED data accessed through the Freedom of Information Act ("FOIA") revealed last year that only 32 borrowers have *ever* successfully achieved cancellation via IDR.[7] For relative scale, information uncovered by U.S. Senator Elizabeth Warren indicates that more than 4.4 million borrowers have been in repayment for 20 years or more.[8] Worse, the situation for borrowers pursuing cancellation through IDR appears unlikely to improve. An internal analysis conducted by one large student loan servicer recently found that of the more than 8.5 million borrowers whose federal student loans it manages, only 48 are projected to receive debt cancellation under IDR by 2025.[9] This overall estimate involved the projection of an 83 percent *reduction* between 2022 and 2025 in the number of borrowers that will receive cancellation through IDR each year, prompting one company employee to remark in uncovered emails that the number of borrowers securing cancellation seemed "very low."[10]

The systematic collapse of the promise of relief that Congress made to borrowers flows from decades of inaction, incompetence, and unfortunately frequent malfeasance from federal policymakers, regulators, and the student loan industry. For example, over the past several years, state attorneys general across the country and the Consumer Financial Protection Bureau have brought public enforcement actions against ED's largest student loan servicing contractors for a wide range of abuses related to borrowers' access to IDR, including deploying abusive forbearance steering tactics, deceiving borrowers regarding their obligation to annually recertify income, and failing to timely process IDR applications.[11] These abuses—conducted by the very same companies tasked with guiding borrowers through repayment and empowering them to access their protections under the law—will add years or decades to borrowers' repayment sequences even if they are eventually able to access IDR at all. By that time, borrowers will likely have undergone extensive but entirely unnecessary financial hardship including periods of disastrous delinquency or default.

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[5] https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/07/Help-or-Hardship.pdf.

[6] https://bfi.uchicago.edu/insight/finding/the-distributional-effects-of-student-loan-forgiveness/.

[7] https://protectborrowers.org/new-government-data-exposes-complete-failure-of-education-departments-income-driven-repayment-program/.

[8] https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf#page=2.

[9] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=18.

[10] *Id.*

[11] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=15.

A recent settlement between 39 states attorneys general and the federal student loan servicing giant Navient demonstrates that servicers have consistently and recklessly engaged in a startling variety of abusive practices with long-term consequences for borrowers.[12] While beneficial for some private loan borrowers, the terms of the settlement will not provide relief for the millions of borrowers who lost years of credit towards federal loan forgiveness and over-paid on their monthly student loan bills because of student loan servicers' illegal activities. This episode is yet another instance of the policy apparatus and specifically the promise of affordability through IDR failing borrowers entirely.

Worse, as with so many aspects of the student debt crisis, the weight of IDR's widespread breakdown has landed most heavily on Black borrowers. In particular, a nationwide survey from The Education Trust recently found that Black federal student loan borrowers struggle to access IDR, and that they continue to face both difficulty affording basic life necessities and an ongoing risk of default on their student loans even when enrolled in IDR.[13] Reflecting on IDR's failure to deliver eventual debt cancellation for Black borrowers, the survey noted that Black borrowers feel that repayment under IDR is "a lifetime debt sentence."[14]

The Role of Nelnet

Nelnet, a publicly traded conglomerate, is one of the largest student loan servicers in the world, servicing $529.0 billion of loans for 16.4 million borrowers across its various subsidiaries and business lines.[15] This business includes handling more than $215 billion of federally-held student loans owed by 6.4 million student loan borrowers under its servicing contract with the Department.[16] In addition, Nelnet holds 120 third-party contracts with national and regional banks, credit unions, and various state and nonprofits to service older Federal Family Education Loans ("FFEL"); rents its servicing platform to other student loans servicers, such as Edfinancial Services, LLC; and services its own $88 million portfolio of privately owned FFEL.[17]

Nelnet has developed a troubling track record in recent years, with borrowers regularly and increasingly facing financial harm due to the company's widespread operational and policy failures. In June 2018, student loan borrowers filed a class action lawsuit against the company, alleging that Nelnet failed to recertify their IDR applications in a timely way, resulting in their IDR applications being denied and unpaid interest capitalized into their principal, and improperly placed borrowers into forbearance.[18] This episode is representative of broader failures. Even by the Department's own metrics, which it uses to compare servicers against one another by measuring their ability to keep borrowers in on-time repayment status and out of default, Nelnet finished second to last during the most recent review period (which ranged from January 1, 2021

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[12] https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/.
[13] https://edtrust.org/resource/jim-crow-debt/.
[14] *Id.*
[15] https://www.sec.gov/Archives/edgar/data/1258602/000125860222000024/0001258602-22-000024-index.htm
[16] https://www.sec.gov/ix?doc=/Archives/edgar/data/0001258602/000125860222000024/nni-20211231.htm
[17] *Id.*
[18] *Olsen v. Nelnet, Inc. et al.*, 4:18-cv-03081 (D. Neb. June 8 2018), https://www.dominalaw.com/documents/NELNET-Lawsuit.pdf.

through June 30, 2021).[19] Rather than invest in its workforce or servicing platform to better serve student loan borrowers during this time period, Nelnet spent more than $50 million on stock buybacks to enrich their investors and shareholders.[20]

Despite this, Nelnet saw its contract with the Department rapidly grow in recent months due to the Pennsylvania Higher Education Assistance Agency ("PHEAA") leaving the market and approximately 850,000 PHEAA borrowers being transitioned to Nelnet Servicing's platform.[21] The company anticipates additional borrowers to be transitioned to the company in 2022.[22]

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices by Nelnet related to IDR have had on borrowers. For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled. Here are a few illustrative stories that capture the pain felt by millions of borrowers:

1. Farah B., from Little Rock, Arkansas: "Nelnet says my loans do not qualify for loan forgiveness even though I have been in public service now going on 7 years working for DHS in Arkansas. I inquired about it as I overheard other people in the office discussing it. So I got all my paperwork filled out so that they could count my time etc. My loans are from 93-08 and then I returned to college again in 2001-2002 so all of my loans are 18 years plus. My loan servicers kept my loans in forbearance up until the last 5 years when a friend of mine at work told me I should apply for IBR. Luckily I took her advice but my student loan debt, originally $34,000 is now $86,000 and I'm worried now that I have to restart my time for public service loan forgiveness but my payments are gonna be outrageous with my kids reaching 18 soon."

2. A borrower from Loudoun County, Virginia:[23] "Nelnet is my loan servicer. When I was younger I was frequently placing my student loans into forbearance because I was never properly counseled on how the interest would continue to compound year over year. ... My current loan information only goes back [redacted] years. However, I've been paying on this account every month with auto-deduct since I got married in [redacted]. Presently if I go back just [redacted]years it shows a principal balance of $14,000.00. I've been out of college since [redacted].... I've paid [redacted], [redacted] in INTEREST alone, $11,000.00 toward principal, equalling $19,000.00. How is there STILL a balance of $9,700.00 when I've been paying $220.00 every month since JUST [redacted]?! AND, there were several years when I was paying $440.00! I have not worked [for 19 months]. I refuse to allow [redact] additional cent of "Interest" on whatever amount I originally owed if I use a forbearance program. At what point can ANYONE determine that I've paid enough in compounding interest and principal? How can it possibly be fair that I still owe over $9,000.00 when I've been paying on this loan for at least 18 years?"

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[19] *Supra* 16.
[20] https://s21.q4cdn.com/368920761/files/doc_financials/2021/q4/117826_Shareholder_Letter_2021_FIN.pdf
[21] *Id.*
[22] *Id.*
[23] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4800434

3. A borrower:[24] "Don't know if this helps anyone, but my federal student loans transferred from Fedloan to Nelnet. I was on REPAYE payment plan with Fedloan with a lower monthly payment, but when the account showed up in Nelnet, it showed standard repayment with the REPAYE amount. Then, the COVID pause was extended from 1/31/2022 to 5/1/2022. After that, my account not only showed standard repayment but also the much higher standard repayment amount. I emailed Nelnet through their contact form because this is hard to explain to a phone agent, but they basically just said I can apply for REPAYE ...again. … The Department of Education had the correct repayment plan at studentaid.gov, so the screw up had to be with Nelnet. So I found a chat feature after logging in to Nelnet's site. Apparently, it's a known issue, and the chat agent had to send a complaint to the processing department to investigate, and they'll email back within 10 business days….

   It still had not been corrected after a month and a half. [The customer service agent] was trying to get me to do a recertification instead. I politely declined because my current, correct payment would have been lower if I didn't recertify immediately. Instead, she proceeded to submit an IDR application for ICR with an income significantly higher than what I had. I found that out a week later checking on my account and chatting with a different agent.

   This current agent said they can't go back and fix it, and I'll simply have to submit another IDR application, which I didn't want to because Nelnet made a mistake during my loan transfer and submitted an application that I did not ask for. I wasn't getting anywhere with her, and she suggested calling and speaking with a supervisor, which I did. Now this supervisor insisted that I submitted the application and that agents couldn't do it and that they got it from Federal Student Aid, which only I had access to. After I insisted several times that 2 agents offered to submit an application on my behalf and that one was submitted without my permission, he finally said that he could submit a complaint to investigate the first chat and see if they can/can't roll back the app. Who knows where that'll go."

4. A borrower from Washington, DC:[25] "... I received notice from my credit monitoring service that late payments had been reported on my credit report. Upon investigation the late payment reporting came from NelNet, a company I had never heard of. Upon contacting NelNet I was told that my federal student loans had been purchased … from my prior loan servicer and then almost immediately put into deferment. When speaking to customer service, I was told multiple times that my loan would be put in further forbearance to make me current. I had told her multiple times during the conversation I would not have trouble paying and could pay the amount in full. [The customer service representative] was insistent that my loans be placed in forbearance, despite my ability to pay, until I asked to speak to her supervisor. The language she was using and insistence on forbearance appeared to come from a script. Upon being transferred to [the]

[24] https://www.reddit.com/r/StudentLoans/comments/rx3q0s/federal_student_loan_transfer_fiasco/ and https://www.reddit.com/r/StudentLoans/comments/szkkla/i_hope_nelnet_burns_to_the_ground_update_2/
[25] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4079562

supervisor, I explained my ability to pay and the circumstances that led to NelNets reporting on my credit. After explaining that I would pay the amount in full, I asked that the late payment be removed as I had never received contact from NelNet (including notice of their becoming my loan servicer, that any amounts were late, that payments were due during CARES Act forbearance), and that studentaid.gov the only method that would have been available for me to see the loan showed no amount due. [The supervisor] stated that by federal law it was illegal to remove NelNets credit reporting. [The supervisor] then advised me not to attempt any dispute as it could further harm my credit."

5. Josh J.:[26] "I was told for years just to go into forbearance even though I asked for an income based repayment plan. Nelnet wouldn't even discuss it with me and forced me into forbearance for 8 years! If I had made payments then I would be forgiven thanks to PSLF in 2 more years."

As these stories illustrate, Nelnet's actions have undermined Congress' intent to create affordable repayment plans that were not a lifelong debt sentence and instead have misled borrowers into forbearance to maximize profits for their shareholders.

ED Can and Must Act to Restore the Promise of Relief through IDR

In October, the Biden administration initiated a sweeping waiver to address longstanding, wide-ranging failures plaguing the Public Service Loan Forgiveness ("PSLF") program.[27] This waiver allowed hundreds of thousands of borrowers to bypass byzantine administrative burdens, sweep aside the lingering effects of past servicing abuses, and rise from the wreckage of decades-long policy blunders to access earned relief.[28] For tens of thousands of borrowers, that relief included immediate debt forgiveness.[29]

Now, borrowers and a broad coalition of advocates are calling on the Biden administration to use authorities already at its disposal to initiate a similarly bold program to deliver justice and relief to the millions of borrowers who have been denied the promise of IDR.[30] As outlined in a white paper co-authored by the Student Borrower Protection Center, the Center for Responsible Lending, and the National Consumer Law Center, this waiver would involve the use of administrative data to retroactively count all months since borrowers entered repayment as qualifying months towards forgiveness under IDR, regardless of the borrower's loan type or prior repayment plan.[31] A coalition of more than 100 unions, consumer protection organizations, and non-profit organizations that represent a broad and diverse population of low to middle

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[26] https://twitter.com/JAdamJohnson/status/1491558515609112579

[27] https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness.

[28] *Id.*

[29] *Id.*

[30] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

[31] https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/.

income student borrowers and workers across the country recently signed a letter in support of this proposed IDR waiver.[32]

Until the Biden administration takes substantial action such as implementing the proposed IDR waiver, however, borrowers will continue languishing under the weight of system-wide failure and broken promises. The weight that these borrowers face goes far beyond what may be captured in any statistic outlining how few borrowers have secured cancellation through IDR, how many borrowers continue to face delinquency and default, and how many decades borrowers have been trapped in repayment. The failure of IDR means years of lost payments, rippling financial ruin, and broken promises between citizens and their government at every level.

Servicers like Nelnet have too long put their financial profits ahead of borrowers' financial security. The Biden administration must choose to right that wrong by implementing a IDR waiver that will provide credit towards loan forgiveness for borrowers' time in default, forbearance, and deferment.

[32] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

From: Persis Yu
Subject: [FOR TRANSMITTAL] Memorandum on IDR Waiver: Parent PLUS Borrower Voices on the Incomplete Promise of Relief through IDR
To: Kvaal, James; Cordray, Richard; Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Latreille, Bonnie; Campbell, Patrick; Foss, Ian; Habash, Tariq; Darcus, Joanna
Cc: Mike Pierce; Christopher Hicks; Claire Torchiana; Benjamin Kaufman
Sent: March 9, 2022 2:05 PM (UTC-05:00)
Attached: SBPC Parent Plus Loans_IDR Memo 3.9.22.pdf

Dear ED and FSA Colleagues,

Attached please find a memorandum highlighting the voices of federal student loan borrowers who demonstrate the need for an IDR waiver. In particular, this memo highlights the voices of borrowers with Parent PLUS loans.

Thank you for all the work that you are doing to help student loan borrowers. Please do not hesitate to contact me if you have any questions or if you would like to discuss this further.

Best,
Persis

Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

STUDENT BORROWER PROTECTION CENTER

MEMORANDUM

March 9, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center

RE: **Parent PLUS Loan Borrower Voices on the Incomplete Promise of Relief through IDR**

Overview

The promise of affordability and loan relief through income-driven repayment ("IDR") options has largely been a policy failure, plagued by unwieldy regulatory requirements and industry misconduct. A waiver that would include all borrowers and credit all of a borrower's time since the start of repayment—irrespective of loan status or payment history—towards IDR would be a powerful step towards finally restoring the purpose of the law.

To fully provide relief, an IDR waiver must include Parent PLUS loan borrowers, who have consistently been saddled with unaffordable debts and provided insufficient options for affordable repayment. Parent PLUS borrowers face unique challenges. The only IDR plan available to them, income-contingent repayment ("ICR"), is the most expensive income-driven plan.[1] To access it, parents must go through the extra step of consolidating their loans, which involves paperwork and can be a lengthy, multi-step process that some parents are not able to complete. Servicers often do not inform many parents that ICR plans are an option, and if they do, it may be years into a borrower's repayment at which point a parent may have already defaulted or been pushed into periods of forbearance and deferment, resulting in an inflated loan balance.

Background

Almost three decades ago, in recognition of the massive burden that student loan debt imposes on American households, Congress introduced one of the most vital protections available in any consumer financial market: income-driven repayment.[2] From its inception and throughout its expansion across successive presidential administrations, IDR has been shaped by three core principles: that federal borrowers should be able to afford their monthly student loan bills, that the most financially strapped borrowers should enjoy safeguards from delinquency and default,

[1] 34 C.F.R.§ 685.208(a)(2)(iv)(D). The ICR plan typically requires payments of 20 percent of one's discretionary income, roughly double the rate of other income-driven repayment plan options, and forgiveness is only available after 25 years, rather than 20 years.
[2] https://journals.sagepub.com/doi/abs/10.1177/0002716217701673.

and, perhaps most importantly, that student loan debt should never become a lifelong affliction.[3] In implementing the latter precept, the U.S. Department of Education ("ED") has entitled federal student loan borrowers in IDR to debt cancellation after 20 to 25 years of consistent, on-time repayment based on the borrower's loan type and particular IDR plan.[4]

The promise of eventual debt cancellation through IDR is a key source of hope for millions of borrowers, many of whom make substantial personal sacrifices even while enrolled in IDR to remain current on their loans.[5] Moreover, the assumption that IDR generally delivers cancellation as promised is the cornerstone of significant federal policy and case law. For instance, the legal regime that makes it extremely difficult for borrowers to discharge student loan debt in bankruptcy partly stems from the assumption that IDR makes student loan payments manageable.[6] Similarly, there is a growing body of policy research that frames substantial policy intervention to alleviate student debt burdens, such as through broad-based cancellation, as unnecessary based on the assumption that IDR can be a source of meaningful relief for most borrowers struggling with student loan debt.[7]

Unfortunately, the promise of eventual debt relief through IDR has proven to be completely broken. Though debt cancellation under IDR has been available for qualifying borrowers since at least 2016, ED data accessed through the Freedom of Information Act ("FOIA") revealed last year that only 32 borrowers have *ever* successfully achieved cancellation via IDR.[8] For relative scale, information uncovered by U.S. Senator Elizabeth Warren indicates that more than 4.4 million borrowers have been in repayment for 20 years or more.[9] Worse, the situation for borrowers pursuing cancellation through IDR appears unlikely to improve. An internal analysis conducted by one large student loan servicer recently found that of the more than 8.5 million borrowers whose federal student loans it manages, only 48 are projected to receive debt cancellation under IDR by 2025.[10] This overall estimate involved the projection of an 83 percent *reduction* between 2022 and 2025 in the number of borrowers that will receive cancellation through IDR each year, prompting one company employee to remark in uncovered emails that the number of borrowers securing cancellation seemed "very low."[11]

The systematic collapse of the promise of relief that Congress made to borrowers flows from decades of inaction, incompetence, and unfortunately frequent malfeasance from federal policymakers, regulators, and the student loan industry. For example, over the past several years, state attorneys general across the country and the Consumer Financial Protection Bureau have

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[3] https://protectborrowers.org/idr-history-report/.
[4] https://studentaid.gov/manage-loans/repayment/plans/income-driven.
[5] https://protectborrowers.org/idr-unaffordability-report/.
[6] https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/07/Help-or-Hardship.pdf.
[7] https://bfi.uchicago.edu/insight/finding/the-distributional-effects-of-student-loan-forgiveness/.
[8] https://protectborrowers.org/new-government-data-exposes-complete-failure-of-education-departments-income-driven-repayment-program/.
[9] https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf#page=2.
[10] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=18.
[11] *Id.*

brought public enforcement actions against ED's largest student loan servicing contractors for a wide range of abuses related to borrowers' access to IDR, including deploying abusive forbearance steering tactics, deceiving borrowers regarding their obligation to annually recertify income, and failing to timely process IDR applications.[12] These abuses—conducted by the very same companies tasked with guiding borrowers through repayment and empowering them to access their protections under the law—will add years or decades to borrowers' repayment sequences even if they are eventually able to access IDR at all. By that time, borrowers will likely have undergone extensive but entirely unnecessary financial hardship including periods of disastrous delinquency or default.

A recent settlement between 39 states attorneys general and the federal student loan servicing giant Navient demonstrates that servicers have consistently and recklessly engaged in a startling variety of abusive practices with long-term consequences for borrowers.[13] While beneficial for some private loan borrowers, the terms of the settlement will not provide relief for the millions of borrowers who lost years of credit towards federal loan forgiveness and over-paid on their monthly student loan bills because of student loan servicers' illegal activities. This episode is yet another instance of the policy apparatus and specifically the promise of affordability through IDR failing borrowers entirely.

Worse, as with so many aspects of the student debt crisis, the weight of IDR's widespread breakdown has landed most heavily on Black borrowers. In particular, a nationwide survey from The Education Trust recently found that Black federal student loan borrowers struggle to access IDR, and that they continue to face both difficulty affording basic life necessities and an ongoing risk of default on their student loans even when enrolled in IDR.[14] Reflecting on IDR's failure to deliver eventual debt cancellation for Black borrowers, the survey noted that Black borrowers feel that repayment under IDR is "a lifetime debt sentence."[15]

The Promise of Affordability has Been Broken for Parent PLUS Borrowers

Below is a selection of Parent PLUS borrower narratives illustrating the human toll that widespread illegal and incompetent practices, and overall policy failures related to IDR have had on borrowers. For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled. Here are a few illustrative stories that capture the pain felt by millions of Parent PLUS borrowers:[16]

1. Tamalin, a second-generation immigrant who was not able to go to college, found herself saddled with Parent PLUS loans. Tamalin knew that college was expensive, but when she received her daughter's acceptance packet in the mail, she was bewildered by the cost and how she would pay. Whenever she called her daughter's school financial aid office,

[12] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=15.
[13] https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/.
[14] https://edtrust.org/resource/jim-crow-debt/.
[15] *Id.*
[16] Names changed for borrowers' privacy.

they would tell her her only option if her daughter wanted to stay enrolled was to take out a Parent PLUS loan. While she would have qualified for a reduced payment under an ICR plan, Tamalin did not know that she had to consolidate her loans to access the plan and struggled under the onerous standard-repayment plan. Tamalin was only informed that she could consolidate her loans and access ICR after she was put in contact with a legal aid organization.

2. Laura is in her 60s and took out Parent PLUS loans for her children. The only income-driven plan she qualifies for is the ICR plan, meaning she pays a higher percentage of her income towards her loans than borrowers on other IDR plans. Her original balance has exponentially grown due to the higher interest rates on Parent PLUS loans. As a result of these financial pressures, Laura feels she cannot retire even though she is of retirement age, or that if she retires now she will be struggling with debt until she dies.

3. Doug has found himself with close to $60,000 in loans he took out for his daughter's education. A retiree, he defaulted several years ago because he was unable to keep up with payments. Almost $300 is garnished from his Social Security check each month. Doug feels he has no real viable option to get out of default—even his monthly payments on an ICR plan ultimately would be about $200 more than the amount garnished each month because of the limited relief ICR plans allow.

4. Barbara took out a Parent PLUS loan to send her son to college in 2006. She lost her job due to COVID and doesn't think she'll be able to get another job due to her age. Her unemployment income runs out soon, and she is struggling with her loan payments, so she applied for an ICR plan but was denied because she entered repayment before 2006. Her only option is to apply for mandatory forbearance, which she can only obtain for up to 3 years. Barbara would like to retire yet has this debt to repay for her son's education, and can't even get on an IDR plan to make her payments easier for the long term. Death seems like the only way out.

5. Patricia felt like she had "no other choice" but to take out approximately $100,000 for her son's attendance at the for-profit Academy of Art University. Each semester, the university administrators would tell her that her son would have to be pulled out of school if she did not sign up for Parent PLUS loans. Patricia wanted him to continue and to get a college education, which she was not able to get, so she agreed. On an annual income of $28,000, Patricia has no idea how she will afford to repay the loans and she feels constant stress as a result. Even the payment amounts on an ICR plan are out of reach, and she feels that default is inevitable.

6. Nancy took out Parent PLUS loans starting in 1999 to pay for her three son's educations. She and her husband are both retired on a fixed pension, after working as a teacher and a corrections officer, respectively. She has been in repayment since 2000. She has had some late payments, deferments and forbearance, but thankfully has not defaulted. As is typical with PLUS loans, her balance has ballooned. She originally borrowed $155,000 from 1999 - 2011, she has repaid $127,030—of that amount the majority has been for

interest, only $35,448.83 has been applied to principal. Despite being in repayment for more than two decades, she still owes $192,000, more than her original total debt. When Nancy and her husband called their servicer to try to get help, they were told to consolidate, which added several more decades to the payment term and increased their monthly payment. Nancy has calculated, and she will be 97 by the time she can pay the loans off. As Nancy puts it "We are not trying to shirk our responsibility. We just want to be able to pay a reasonable (legal) amount of interest."

7. Stacey took out approximately $30,000 in Parent PLUS loans for her daughter's Associates degree at Le Cordon Bleu, a for-profit cooking school. She remembers feeling like she had no other choice and the financial aid office presenting Parent PLUS loans as her daughter's only option. At the orientation, financial advisors signed her up for Parent PLUS loans on the spot, explaining that if her credit wasn't good enough for the Parent PLUS loan, they would just move onto another family member such as a grandparent (though in fact such loans are not available for grandparents). Stacey felt pressured. Ultimately, Stacey took out about three-fourths of the cost of school through Parent PLUS loans. Although Stacey and her daughter agreed that her daughter would help her make payments, her daughter was never able to get a job in her field nor transfer her credits to another school, and is still living at home. Even on an ICR plan, Stacey can barely stay financially afloat while paying on the Parent PLUS loans, and has told her youngest son she will not be able to take out Parent PLUS loans for his education.

8. Jeff has a staggering balance of approximately $700,000 in Parent PLUS loans for his two sons, who attended Brooks Institute, a for-profit college with a troublesome track record of fraud and misrepresentation. The balance has ballooned since he took out the loans a decade ago. Jeff has had to go into forbearance multiple times to avoid default, and the interest on his loans has capitalized – throwing his family into what he describes as a "debt trap" and a "conveyor belt into lifelong financial servitude." Jeff took out the loans because he wanted to help his sons and he believes in the benefits of education, but they have had a devastating and crippling impact on his financial life. He cannot save for retirement, and he is unable to qualify for affordable loans for his small business. While an ICR plan helps, he is still paying almost $700 a month on the loans because the overall balance is so high. As Jeff explained, his Parent PLUS loan debt makes him feel he is "worth more dead than alive."

As these stories illustrate, parents who borrow Parent PLUS loans to send their children to college are buckling under the weight of enormous loan balances, and this burden is hardly alleviated through ICR.

Parent PLUS borrowers struggle with enormous loan balances, coupled with higher interest rates than other types of federal loans.[17] Unlike Direct loans, there is no limit on the amount of

[17] https://studentaid.gov/understand-aid/types/loans/plus/parent. For Direct PLUS Loans first disbursed on or after July 1, 2021, and before July 1, 2022, the interest rate is 6.28%. The interest rate has generally hovered around 7% since 2006. *See* Rachel Fishman, *The Wealth Gap PLUS Debt: How Federal Loans Exacerbate Inequality for Black*

borrowing—a parent can borrow up to the total cost of attendance, as determined by the institution. Generally, a parent borrower's ability to repay the loan is not taken into account. Add to that that many parents will take out PLUS loans for more than one of their children, and parents end up with staggering loan balances that will follow them well into retirement. The most common justification for student loan debt—that high debt burdens are justified by graduates' increased earning potential—is inapplicable to parents who borrow to fund their child's education. To the contrary, most parents will see their earning potential decline over the life of the loan, making the loan more unaffordable over time. Many Parent PLUS borrowers report feeling they simply wanted to help their children, but they have signed up for a debt sentence that will only end upon their death. For these reasons and others, Parent PLUS loans have sometimes been described as the U.S. government's own predatory lending program.[18] ICR payments hardly provide relief, as they cost 20 percent of a parent's income, or double the rate of most other IDR plans.

And while a common assumption has been that Parent PLUS loans exist to increase access to higher education for middle and upper income families by assisting families in covering their expected family contribution, this is not the case. As with all aspects of our broken student loan system, Black, low-income parent borrowers are hit the hardest. Low-income Black families are more likely to take on Parent PLUS loan debt than low-income white families, and more likely to take on higher debt loads.[19]

An IDR waiver that would provide relief to Parent PLUS borrowers would greatly alleviate the burden we have placed on American families trying to help their children, and help undo some of the student loan system's systematic erasure of wealth for Black families.

ED Can and Must Act to Restore the Promise of Relief through IDR

In October, the Biden administration initiated a sweeping waiver to address longstanding, wide-ranging failures plaguing the PSLF program.[20] This waiver allowed hundreds of thousands of borrowers to bypass byzantine administrative burdens, sweep aside the lingering effects of past servicing abuses, and rise from the wreckage of decades-long policy blunders to access earned relief.[21] For tens of thousands of borrowers, that relief included immediate debt forgiveness.[22]

Now, borrowers and a broad coalition of advocates are calling on the Biden administration to use authorities already at its disposal to initiate a similarly bold program to deliver justice and relief to the millions of borrowers who have been denied the promise of IDR.[23] As outlined in a white

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Families, New America (May 2018), at 8, https://www.newamerica.org/education-policy/reports/wealth-gap-plus-debt/.

[18] https://www.politico.com/agenda/story/2015/06/the-us-governments-predatory-lending-program-000094/.

[19] Fishman, *The Wealth Gap* at 13, 16, 18, https://www.newamerica.org/education-policy/reports/wealth-gap-plus-debt/.

[20] https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness.

[21] *Id.*

[22] *Id.*

[23] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

paper co-authored by the Student Borrower Protection Center, the Center for Responsible Lending, and the National Consumer Law Center, this waiver would involve the use of administrative data to retroactively count all months since borrowers entered repayment as qualifying months towards forgiveness under IDR, regardless of the borrower's loan type or prior repayment plan.[24] A coalition of more than 100 unions, consumer protection organizations, and non-profit organizations that represent a broad and diverse population of low to middle income student borrowers and workers across the country recently signed a letter in support of this proposed IDR waiver.[25]

Until the Biden administration takes substantial action such as implementing the proposed IDR waiver, however, borrowers will continue languishing under the weight of system-wide failure and broken promises. The weight that these borrowers face goes far beyond what may be captured in any statistic outlining how few borrowers have secured cancellation through IDR, how many borrowers continue to face delinquency and default, and how many decades borrowers have been trapped in repayment. The failure of IDR means years of lost payments, rippling financial ruin, and broken promises between citizens and their government at every level.

Servicers have too long put their financial profits ahead of borrowers' financial security, and programs meant to assist borrowers have fallen short. The Biden administration must choose to right that wrong by implementing an IDR waiver that will provide credit towards loan forgiveness for all borrowers' time in default, forbearance, and deferment. This waiver must include Parent PLUS borrowers, who have been trapped into a lifetime of unaffordable debt.

[24] https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/.
[25] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

From: Persis Yu
Subject: [FOR TRANSMITTAL] Memorandum on IDR Waiver: Older Borrower Voices on the Incomplete Promise of Relief through IDR
To: Kvaal, James; Cordray, Richard; Morgan, Julie; Miller, Benjamin; Harrington, Ashley; Latreille, Bonnie; Campbell, Patrick; Foss, Ian; Habash, Tariq; Darcus, Joanna
Cc: Mike Pierce; Christopher Hicks; Claire Torchiana; Benjamin Kaufman
Sent: April 6, 2022 3:44 PM (UTC-04:00)
Attached: SBPC IDR Complaint Memo - Older Borrowers 4.6.22.pdf

Dear ED and FSA Colleagues,

Attached please find a memorandum highlighting the voices of federal student loan borrowers who demonstrate the need for an IDR waiver. In particular, this memo highlights the voices of older borrowers who are struggling under the weight of unbearable student loan debt.

Thank you for all the work that you are doing to help student loan borrowers. Please do not hesitate to contact me if you have any questions or if you would like to discuss this further.

Best,
Persis

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Persis S. Yu (she/her/hers)
Policy Director & Managing Counsel
Student Borrower Protection Center
www.protectborrowers.org

STUDENT BORROWER PROTECTION CENTER

MEMORANDUM

April 6, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center

RE: **Older Borrower Voices on the Incomplete Promise of Relief through IDR**

Overview

The promise of affordability and loan relief through income-driven repayment ("IDR") options has largely been broken, plagued by failed policy, unwieldy regulatory requirements, and industry misconduct. A waiver that would credit all of a borrower's time since the start of repayment—irrespective of loan status or payment history—towards forgiveness under IDR would be a powerful step towards finally restoring the purpose of the law. While the student loan crisis is often mischaracterized as a young person's issue, older Americans are struggling under the weight of unbearable student loan debt. This group includes borrowers who have carried student loans for decades, as well as those who attended school later in life to try to better their lives.

Background

Almost three decades ago, in recognition of the massive burden that student loan debt imposes on American households, Congress introduced one of the most vital protections available in any consumer financial market: income-driven repayment.[1] From its inception and throughout its expansion across successive presidential administrations, IDR has been shaped by three core principles: that federal borrowers should be able to afford their monthly student loan bills, that the most financially strapped borrowers should enjoy safeguards from delinquency and default, and, perhaps most importantly, that student loan debt should never become a lifelong affliction.[2] In implementing the latter precept, the U.S. Department of Education ("ED") has entitled federal student loan borrowers in IDR to debt cancellation after 20 to 25 years of consistent, on-time repayment based on the borrower's loan type and particular IDR plan.[3]

The promise of eventual debt cancellation through IDR is a key source of hope for millions of borrowers, many of whom make substantial personal sacrifices even while enrolled in IDR to remain current on their loans.[4] Moreover, the assumption that IDR generally delivers cancellation as promised is the cornerstone of significant federal policy and case law. For instance, the legal regime that makes it extremely difficult for borrowers to discharge student

[1] https://journals.sagepub.com/doi/abs/10.1177/0002716217701673.
[2] https://protectborrowers.org/idr-history-report/.
[3] https://studentaid.gov/manage-loans/repayment/plans/income-driven.
[4] https://protectborrowers.org/idr-unaffordability-report/.

loan debt in bankruptcy partly stems from the assumption that IDR makes student loan payments manageable.[5] Similarly, there is a growing body of policy research that frames substantial intervention to alleviate student debt burdens, such as through broad-based cancellation, as unnecessary based on the assumption that IDR can be a source of meaningful relief for most borrowers struggling with student loan debt.[6]

Unfortunately, the promise of eventual debt relief through IDR has proven to be completely broken. Though debt cancellation under IDR has been available for qualifying borrowers since at least 2016, ED data accessed through the Freedom of Information Act ("FOIA") revealed last year that only 32 borrowers have *ever* successfully achieved cancellation via IDR.[7] For relative scale, information uncovered by U.S. Senator Elizabeth Warren indicates that more than 4.4 million borrowers have been in repayment for 20 years or more.[8] Worse, the situation for borrowers pursuing cancellation through IDR appears unlikely to improve. An internal analysis conducted by one large student loan servicer recently found that of the more than 8.5 million borrowers whose federal student loans it manages, only 48 are projected to receive debt cancellation under IDR by 2025.[9] This overall estimate involved the projection of an 83 percent *reduction* between 2022 and 2025 in the number of borrowers that will receive cancellation through IDR each year, prompting one company employee to remark in uncovered emails that the number of borrowers securing cancellation seemed "very low."[10]

The systematic collapse of the promise of relief that Congress made to borrowers flows from decades of inaction, incompetence, and unfortunately frequent malfeasance from federal policymakers, regulators, and the student loan industry. For example, over the past several years, state attorneys general across the country and the Consumer Financial Protection Bureau have brought public enforcement actions against ED's largest student loan servicing contractors for a wide range of abuses related to borrowers' access to IDR, including deploying abusive forbearance steering tactics, deceiving borrowers regarding their obligation to annually recertify income, and failing to timely process IDR applications.[11] These abuses—conducted by the very same companies tasked with guiding borrowers through repayment and empowering them to access their protections under the law—will add years or decades to borrowers' repayment sequences even if they are eventually able to access IDR at all. By that time, borrowers will likely have undergone extensive but entirely unnecessary financial hardship including periods of disastrous delinquency or default.

A recent settlement between 39 states attorneys general and the federal student loan servicing giant Navient demonstrates that servicers have consistently and recklessly engaged in a startling

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[5] https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/07/Help-or-Hardship.pdf.
[6] https://bfi.uchicago.edu/insight/finding/the-distributional-effects-of-student-loan-forgiveness/.
[7] https://protectborrowers.org/new-government-data-exposes-complete-failure-of-education-departments-income-driven-repayment-program/.
[8] https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf#page=2.
[9] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=18.
[10] *Id.*
[11] https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=15.

variety of abusive practices with long-term consequences for borrowers.[12] While beneficial for some private loan borrowers, the terms of the settlement will not provide relief for the millions of borrowers who lost years of credit towards federal loan forgiveness and over-paid on their monthly student loan bills because of student loan servicers' illegal activities. This episode is yet another instance of the policy apparatus and specifically the promise of affordability through IDR failing borrowers entirely.

Worse, as with so many aspects of the student debt crisis, the weight of IDR's widespread breakdown has landed most heavily on Black borrowers. In particular, a nationwide survey from The Education Trust recently found that Black federal student loan borrowers struggle to access IDR, and that they continue to face both difficulty affording basic life necessities and an ongoing risk of default on their student loans even when enrolled in IDR.[13] Reflecting on IDR's failure to deliver eventual debt cancellation for Black borrowers, the survey noted that Black borrowers feel that repayment under IDR is "a lifetime debt sentence."[14]

Older Borrowers are Buckling under the Weight of Federal Student Loans

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices related to IDR have had on borrowers. For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled.[15]

1. Joe from Burbank, CA, 61 years old. "I finished my master's degree in 1994. My lender, Sallie Mae, never told me about the IDR option. I had to just keep filing for forbearance and deferred payments. I would have gladly chosen IDR. When my number of allowable forbearance and deferred options ran out, I ended up going back to school, because (as far as I was informed), being a full-time student was the only way to continue deferring. I didn't find out about IDR options until 2010 (after my loans got transferred several times), and that discovery was only by my own research. Now I won't be eligible for the 25-year forgiveness until 2035, which will be 10 years after I retire. My original loan of $45,000, plus another $10,000 when I went back to school, has now ballooned to $260,000 because of interest. Furthermore, because my payments are based on my income, every time I get a raise, my school loan payment goes up, so I can never get ahead."

2. Kate. "I am 68 years of age and am blessed with being approved for the income based repayment plan. My loans originate as far back as 1984 and I believe they should be forgiven. I have worked as a mental health counselor for over 30 years now. When will I receive a break on these if ever! I feel I am being penalized because I am stuck with debt probably until my death."

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[12] https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/.
[13] https://edtrust.org/resource/jim-crow-debt/.
[14] *Id.*
[15] Names changed for borrowers' privacy. Stories on file with the Student Borrower Protection Center, the National Consumer Law Center, and the Student Debt Crisis Center.

3. Marjorie, Tulsa, OK. "I have $7,000 in student loan debt. What can I do? I am a wife, mother and grandmother. Please help me get this sword out of my side. I work at a learning disabled private school as an assistant. I am going to turn seventy this June. I got my degree in 1998. I have worked hard all my life."

4. LJ is retired and in his 70s. He has FFEL loans that he has been struggling to pay off for more than 16 years. After 16 years of payments, he still had a remaining balance of $3,000 and recently paid it off with a credit card that he is still paying off. LJ has never heard of IDR—his servicer has never told him about it. Whenever he called his servicers over the years and told them he was having trouble affording payments, his servicers advised him to apply for forbearance.

5. Marilynn, Colorado. "I went through the recession in 2008 and graduated at that point with my masters degree and was 63 years old and nobody would hire me because we were not hiring anybody at that point in time! And now on Social Security I can't afford payments."

Additionally, below are stories that have featured in previous memoranda on issues regarding Parent PLUS loans, FFEL loans, and deferment/forbearance steering. Older borrowers are impacted by all the related issues covered in those memos.

6. Ms. Smith is an elderly, disabled, Black woman borrower living on fixed Social Security retirement benefits of $1,800 per month. She suffers from severe back pain, fibromyalgia, and chronic depression. In 2019, when she sought the Legal Aid Foundation of Los Angeles's help, Ms. Smith owed around $240,000 on a Federal Family Education Loan ("FFEL") Consolidated loan. Her loans were on a repayment plan with a $2,100 monthly payment, which she had never been able to afford. Between July 2010 and March 2015, she called her loan servicer five times and told it that she could not afford her monthly payments. Each time her loan servicer put her on forbearance. She finally defaulted in July 2015, and experienced tax refund offsets of money she needed to survive. She rehabilitated her loan out of default in February 2019. At this time, she sought LAFLA's help. They immediately submitted an IDR request which was granted, with a $0 monthly payment.

7. Ned is a retired, partially disabled, Black veteran. Circa 1990, Ned's employer told him he had to attend a 6-week course at a truck driving school if he wanted to keep his job as a truck driver. He ended up having to take out around $3,000 in federal student loans and did not learn anything from the course. Ned is now 68 and his loans have ballooned to almost $7,000. He does not have internet access or email. He was unable to keep up with the payments and defaulted in 2008. Ted has had over $7,600 garnished from his tax refund since then—it has all gone towards fees and interest with none applied to the principal balance. A retiree living primarily on SSI, Ted has qualified for a $0 REPAYE IDR plan for years, which his servicer never told him about. He did not enter such a plan until late 2019 when a legal services organization contacted his servicer to get him out of default and onto a REPAYE plan, after over a decade of being in default.

8. George is 75 years old and still has approximately $5,200 student loans. He is a retired teacher, Black, and attended a state school. His wages were garnished each month from his part-time job at the YMCA because he defaulted on his student loans. George qualified for a $0 IDR plan, but because he did not have access to a computer and his loan servicer never shared this information with him, he was trapped in default for years. The wage garnishments took away some of the little income that he subsided on in his retirement. After years of being in default, a legal service organization helped him submit documentation and go through the many steps to get out of default and onto a $0 monthly repayment plan, all information which his servicer never provided.

9. Natasha is in her mid 60s, Black and physically disabled. She does not own a home and is having medical issues, and is considering moving to a senior living facility. She attended community college and state-school in the mid 80s and graduated in 1994. She had to borrow a total of $20,872 in FFEL loans and has been in and out of repayment since 1994 with Navient as her servicer. Despite nearly 3 decades of being in repayment—including periods of deferment, forbearance, and default—her loan balance has ballooned to $63,825. Navient placed her loans in forbearance a total of 27 times, and she was placed in deferment at other times she could not afford payments. In 2021, a debt relief organization consolidated her loans and got her onto an IDR plan. Once, she remembers getting on an IDR plan, but forgot to recertify her income and was disenrolled. When she contacted the servicer to try to get back on it, she found out her monthly payment had gone up and she was put in forbearance again.

10. Deborah, a USPS worker, took out a FFEL loan of approximately $9,500 to attend college in 1983. Nearly 40 years later, because of servicer misconduct and the prohibitive 9% interest rate on her FFEL loans, she owes $43,000. Deborah's servicer consolidated her FFEL loans in 2003 against her request, upon which her loan balance increased to $28,000. She made payments when she could but did not have steady employment. When she started working at USPS, she started making regular payments but entered forbearance while she was buying a house. Her loan balance ballooned. Over the past several years, she has paid$280 a month on her student loans on an income-driven plan, though her payments recently rose to $350 a month. When she called her servicer to tell her she was having difficulty affording the payments, they offered to put her loans into forbearance once again. She declined. She recently checked her statement and realized her servicer put her in a 3 month forbearance against her request, meaning interest will continue to capitalize on her loans. Forty years after attending college, Deborah's loan balance has quadrupled despite making payments, and she feels trapped in a cycle of ever-growing student loan debt.

11. Jessica is 65 years old and borrowed $39,000 in FFEL loans for a master's degree in 1987-91. She has paid off about $26,000 since 1992 but currently owes $250,000—more than six times what she originally borrowed. Jessica was only able to access an IDR plan around 4 years ago because her servicer did not previously tell her it was an option. On this plan, she still pays $225 per month, and she will be 86 years old by the time she can finish paying off her loans. Jessica retired from teaching full-time and now works part-time teaching workshops at a local community college. Jessica had two children while in

school and then a few years later got divorced. She had to scrape by for years and wasn't able to make loan payments. She has no other debt, paid off her undergraduate student loans, and has no assets. Her two kids graduated from college with loans and paid them off. She has considered filing for bankruptcy, but a lawyer told her her loans will not be dischargeable. Jessica was hoping she would get relief through the Public Service Loans Forgiveness ("PSLF") program, but though she worked for more than 25 years in public service, she does not yet have 10 years of qualifying payments even with the waiver. And, since she retired from full-time work, her part-time teaching does not provide credit for public service going forward. Jessica has had to continue making payments through the COVID-19 pandemic, as FFEL loans were not eligible for the payment pause. While she struggled to make these payments, she did not consolidate into the Direct loan program because she didn't want to further increase her overall balance. After nearly 30 years of being in debt for graduate school, and another two decades of payments facing her, Jessica will have been trapped in her FFEL loan debt for her entire adult life.

12. Marie attended a for-profit college, California Institute, for fewer than two weeks in 1989. She was living in project-based housing where the school targeted residents to attend its school. Even after Marie withdrew, her school reported that she had remained in the course for several more weeks to keep her financial aid. Two FFEL loans were disbursed in her name, for $2,625 with 8 percent interest and for $2,800 with 12 percent interest, which she consolidated in 1995 to a loan balance of $8,774, which were incorrectly set at a 12 percent interest rate. Twenty-four years after consolidation, her loan balance is now over $105,000, for 2 weeks of college. Marie's servicer, American Education Services ("AES") never informed her of income-driven repayment options and steered into unhelpful forbearances and deferments, which exacerbated the exponential growth of her loan balance. During this time, Marie was earning an average of $20,000 gross for a household of two and would have qualified for $0 or otherwise very low payments under IBR. While her FFEL Consolidation loan appears to have never fallen into default, she did not learn of IDR until she went to a legal aid office for help in 2018, three decades after she attended school. Instead, AES told her that her only option would be to stay in school or put her loans on forbearance or deferment. She continued her education and obtained two degrees and seven certificates. After she could no longer attend school, Marie was put into forbearances and applied for several economic hardship deferments. Legal aid helped Marie submit an Income-Based Repayment request in 2018 and it was approved for $0 a month payment.

13. Nancy took out Parent PLUS loans starting in 1999 to pay for her three son's educations. She and her husband are both retired on a fixed pension, after working as a teacher and a corrections officer, respectively. She has been in repayment since 2000. She has had some late payments, deferments and forbearance, but thankfully has not defaulted. As is typical with PLUS loans, her balance has ballooned. She originally borrowed $155,000 and from 1999 to 2011, she has repaid $127,030—of that amount the majority has been for interest, only $35,448.83 has been applied to principal. Despite being in repayment for more than two decades, she still owes $192,000, more than her original total debt. When Nancy and her husband called their servicer to try to get help, they were told to consolidate, which added several more decades to the payment term and increased their

monthly payment. Nancy has calculated, and she will be 97 by the time she can pay the loans off. As Nancy puts it "We are not trying to shirk our responsibility. We just want to be able to pay a reasonable (legal) amount of interest."

As these stories illustrate, older borrowers are being crushed under the weight of student loan debt, and IDR as it has been implemented has not provided a reprieve from a lifetime debt sentence. The framing of student loan debt as a young person's issue is a mischaracterization, particularly as to the lived experience of Black borrowers. And while prospective regulatory fixes to IDR may help some borrowers moving forward, they will not provide relief to older borrowers who have carried burdensome loans for decades.

In some cases, these borrowers have been out of school for more than two decades but have been unable to pay off their loans due to servicer misconduct, including forbearance and deferment steering, and related periods of default. Borrowers often do not learn of IDR options until they have been in repayment for years, tacking on decades to their payment period. This group disproportionately includes Black borrowers, who because of systemic discrimination in all aspects of the labor, housing and overall market have less wealth than white borrowers.[16] Indeed, "[t]wenty years after starting college, the median debt of White borrowing students has been reduced by 94 percent—with almost half holding no student debt—whereas Black borrowers at the median still owe 95 percent of their cumulative borrowing total."[17]

Older borrowers may also include borrowers who attended post-secondary school in adulthood to better their careers and lives, or "non-traditional students."[18] These borrowers tend to have less wealth to begin with, are more likely to not complete their post-secondary education, and may face age or other types of discrimination in the work place once they exit school, making it harder to pay off their loans.[19] These borrowers too are at risk of being saddled with student loan debt through retirement and even until death. IDR has not provided a pathway out.

Older borrowers also include borrowers who borrowed parent PLUS loans to assist their children in paying for college. In some cases, parents may take out loans for multiple children on top of loans they owe for their own education. As highlighted in the parent PLUS memo, death is often the only recourse to get out of this mountain of debt issued by the federal government.

ED Can and Must Act to Restore the Promise of Relief through IDR

In October, the Biden administration initiated a sweeping waiver to address longstanding, wide-ranging failures plaguing the Public Service Loan Forgiveness ("PSLF") program.[20] This waiver allowed hundreds of thousands of borrowers to bypass byzantine administrative burdens, sweep aside the lingering effects of past servicing abuses, and rise from the wreckage of decades-long

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[16] https://heller.brandeis.edu/iere/pdfs/racial-wealth-equity/racial-wealth-gap/stallingdreams-how-student-debt-is-disrupting-lifechances.pdf.
[17] *Id.* at 4.
[18] *See generally*, https://coenet.org/press_releases_051921.shtml.
[19] *Id.*
[20] https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness.

policy blunders to access earned relief.[21] For tens of thousands of borrowers, that relief included immediate debt forgiveness.[22]

Now, borrowers and a broad coalition of advocates are calling on the Biden administration to use authorities already at its disposal to initiate a similarly bold program to deliver justice and relief to the millions of borrowers who have been denied the promise of IDR.[23] As outlined in a white paper co-authored by the Student Borrower Protection Center, the Center for Responsible Lending, and the National Consumer Law Center, this waiver would involve the use of administrative data to retroactively count all months since borrowers entered repayment as qualifying months towards forgiveness under IDR, regardless of the borrower's loan type or prior repayment plan.[24] A coalition of more than 100 unions, consumer protection organizations, and non-profit groups that represent a broad and diverse population of low to middle income student borrowers and workers across the country recently signed a letter in support of this proposed IDR waiver.[25]

Until the Biden administration takes substantial action such as implementing the proposed IDR waiver, however, borrowers will continue languishing under the weight of system-wide failure and broken promises. The weight that these borrowers face goes far beyond what may be captured in any statistic outlining how few borrowers have secured cancellation through IDR, how many borrowers continue to face delinquency and default, and how many decades borrowers have been trapped in repayment. The failure of IDR means years of lost payments, rippling financial ruin, and broken promises between citizens and their government at every level.

Servicers have too long put their financial profits ahead of borrowers' financial security. The Biden administration must choose to right that wrong by implementing a IDR waiver that will provide credit towards loan forgiveness for borrowers' time in default, forbearance, and deferment.

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[21] *Id.*
[22] *Id.*
[23] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.
[24] https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/.
[25] https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

From: Kvaal, James
Subject: Re: Request to meet with borrower advocates
To: Persis Yu
Cc: Julia Barnard; Alexis Goldstein; Mike Pierce; Remington Gregg; Natalia Abrams; cody hounanian; Abby Shafroth; Alpha Taylor; Kyra Taylor; Muenzer, Melanie; Hardman, Latricia
Sent: September 20, 2021 5:25 PM (UTC-04:00)

Hi Persis thanks for your note. I'm eager to find time to meet soon. I'm adding Latricia to help us.

On Sep 20, 2021, at 4:17 PM, Persis Yu <pyu@nclc.org> wrote:

Hello James,

Congratulations on your confirmation as Undersecretary of Education!

I am writing on behalf of several student loan borrower advocacy organizations. We are eager to meet with you to discuss a number of urgent issues facing borrowers, in particular the federal student loan payment pause, imminent transfer of millions of borrowers, and general borrower relief.

The coalition that would like to request this meeting includes Americans for Financial Reform, the National Consumer Law Center, Center for Responsible Lending, Student Debt Crisis, Open Markets, the Student Borrower Protection Center, and Public Citizen.

Please let me know if we can organize such a joint meeting with you.

Thank you and we look forward to speaking with you.

Best,
Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

From: Hardman, Latricia
Subject: RE: Request to meet with borrower advocates
To: Persis Yu
Sent: September 30, 2021 11:20 AM (UTC-04:00)

Hi Persis,

Thank you so much for submitting a request to meet with the Under Secretary, please let me know if the following times would work for you and the rest of the group.
10/11: 4-5pm
10/13: 1-3pm
10/15: 1-2; 2-3, 3-4

If any of the times listed here don't work I am happy to search for more times.

Best,

From: Persis Yu <pyu@nclc.org>
Sent: Tuesday, September 21, 2021 10:55 AM
To: Kvaal, James <James.Kvaal@ed.gov>
Cc: Julia Barnard <Julia.Barnard@responsiblelending.org>; Alexis Goldstein <agoldstein@openmarketsinstitute.org>; Mike Pierce <mike@protectborrowers.org>; Remington Gregg <rgregg@citizen.org>; Natalia Abrams <natalia@studentdebtcrisis.org>; cody hounanian <cody@studentdebtcrisis.org>; Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Muenzer, Melanie <Melanie.Muenzer@ed.gov>; Hardman, Latricia <Latricia.Hardman@ed.gov>
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Latricia, I look forward to hearing from you with some possible times.

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persis

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From: Persis Yu
Subject: Re: Request to meet with borrower advocates
To: Hardman, Latricia
Sent: September 30, 2021 1:27 PM (UTC-04:00)

Thanks Latricia! I will poll the group and let you know what works best. Thank you!!

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Subject: Re: Request to meet with borrower advocates

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> **To:** Kvaal, James <James.Kvaal@ed.gov>
> **Cc:** Julia Barnard <Julia.Barnard@responsiblelending.org>; Alexis Goldstein <agoldstein@openmarketsinstitute.org>; Mike Pierce <mike@protectborrowers.org>; Remington Gregg <rgregg@citizen.org>; Natalia Abrams <natalia@studentdebtcrisis.org>; cody hounanian <cody@studentdebtcrisis.org>; Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Muenzer, Melanie <Melanie.Muenzer@ed.gov>; Hardman, Latricia <Latricia.Hardman@ed.gov>
> **Subject:** Re: Request to meet with borrower advocates
>
>

recognize the sender and know the content is safe.

Thanks James!

Latricia, I look forward to hearing from you with some possible times.

Best,
persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

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To: Persis Yu
Sent: October 7, 2021 9:41 AM (UTC-04:00)

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From: Persis Yu
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To: Hardman, Latricia
Sent: October 9, 2021 7:49 AM (UTC-04:00)

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From: Hardman, Latricia
Subject: RE: Request to meet with borrower advocates
To: Persis Yu
Sent: October 9, 2021 1:33 PM (UTC-04:00)

Hi Persis,

Yes, 10:30am on October 19th is still available instead of a full hour may we shorten it by 15 mins? Additionally, may you provide me with a list of attendees for the meeting, and a meeting agenda.

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From: Persis Yu <pyu@nclc.org>
Sent: Saturday, October 9, 2021 7:49 AM
To: Hardman, Latricia <Latricia.Hardman@ed.gov>
Subject: Re: Request to meet with borrower advocates

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From: Persis Yu
Subject: Re: Request to meet with borrower advocates
To: Hardman, Latricia
Sent: October 9, 2021 7:56 PM (UTC-04:00)

Great. Here are the attendees:

Julia Barnard <Julia.Barnard@responsiblelending.org>,
Jaylon Herbin <jaylon.herbin@responsiblelending.org>,
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Sarah Cohen <scohen@aft.org>

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Thank you!
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> Hi Persis,
>
> I do apologize I tried really hard to hold that time on the Under Secretary's calendar, but right now it is no longer available. Here are a few more times if possible please let me know which works best for the group today. Also, can specify whether we should schedule this meeting for a half or full hour.
>
> 10/12: Between 10:30-12pm
> 10/19: Between 10-11:30am
>
> Best,
>
> **From:** Persis Yu <pyu@nclc.org>
> **Sent:** Tuesday, October 5, 2021 5:52 PM
> **To:** Hardman, Latricia <Latricia.Hardman@ed.gov>
> **Subject:** Re: Request to meet with borrower advocates
>
>
>
> HI Latricia,
>
> It looks like Oct. 13 from 2-3 works for everyone if that is still available.
>
> Thank you!
>
> Persis

Persis Yu (she/her/hers)
Director, Student Loan Borrower Assistance Project
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
www.nclc.org

On Thu, Sep 30, 2021 at 11:20 AM Hardman, Latricia <Latricia.Hardman@ed.gov> wrote:

Hi Persis,

Thank you so much for submitting a request to meet with the Under Secretary, please let me know if the following times would work for you and the rest of the group.
10/11: 4-5pm
10/13: 1-3pm
10/15: 1-2; 2-3, 3-4

If any of the times listed here don't work I am happy to search for more times.

Best,

From: Persis Yu <pyu@nclc.org>
Sent: Tuesday, September 21, 2021 10:55 AM
To: Kvaal, James <James.Kvaal@ed.gov>
Cc: Julia Barnard <Julia.Barnard@responsiblelending.org>; Alexis Goldstein <agoldstein@openmarketsinstitute.org>; Mike Pierce <mike@protectborrowers.org>; Remington Gregg <rgregg@citizen.org>; Natalia Abrams <natalia@studentdebtcrisis.org>; cody hounanian <cody@studentdebtcrisis.org>; Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Muenzer, Melanie <Melanie.Muenzer@ed.gov>; Hardman, Latricia <Latricia.Hardman@ed.gov>
Subject: Re: Request to meet with borrower advocates

Thanks James!

Latricia, I look forward to hearing from you with some possible times.

Best,
persis

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On Mon, Sep 20, 2021 at 5:25 PM Kvaal, James <James.Kvaal@ed.gov> wrote:

Hi Persis thanks for your note. I'm eager to find time to meet soon. I'm adding Latricia to help us.

On Sep 20, 2021, at 4:17 PM, Persis Yu <pyu@nclc.org> wrote:

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Hello James,

Congratulations on your confirmation as Undersecretary of Education!

I am writing on behalf of several student loan borrower advocacy organizations. We are eager to meet with you to discuss a number of urgent issues facing borrowers, in particular the federal student loan payment pause, imminent transfer of millions of borrowers, and general borrower relief.

The coalition that would like to request this meeting includes Americans for Financial Reform, the National Consumer Law Center, Center for Responsible Lending, Student Debt Crisis, Open Markets, the Student Borrower Protection Center, and Public Citizen.

Please let me know if we can organize such a joint meeting with you.

Thank you and we look forward to speaking with you.

Best,
Persis

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From: Hardman, Latricia
Subject: RE: Request to meet with borrower advocates
To: Persis Yu
Sent: October 18, 2021 2:35 PM (UTC-04:00)

Hi Persis,

I wanted to circle back around to see if there will be a meeting agenda associated with the meeting scheduled for tomorrow and whether there were key topics and questions that you would like to circulate before tomorrow to us.

Best,

From: Persis Yu <pyu@nclc.org>
Sent: Tuesday, September 21, 2021 10:55 AM
To: Kvaal, James <James.Kvaal@ed.gov>
Cc: Julia Barnard <Julia.Barnard@responsiblelending.org>; Alexis Goldstein <agoldstein@openmarketsinstitute.org>; Mike Pierce <mike@protectborrowers.org>; Remington Gregg <rgregg@citizen.org>; Natalia Abrams <natalia@studentdebtcrisis.org>; cody hounanian <cody@studentdebtcrisis.org>; Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Muenzer, Melanie <Melanie.Muenzer@ed.gov>; Hardman, Latricia <Latricia.Hardman@ed.gov>
Subject: Re: Request to meet with borrower advocates

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persis

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On Mon, Sep 20, 2021 at 5:25 PM Kvaal, James <James.Kvaal@ed.gov> wrote:

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Thank you and we look forward to speaking with you.

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From: Persis Yu
Subject: Re: Request to meet with borrower advocates
To: Hardman, Latricia
Sent: October 18, 2021 7:19 PM (UTC-04:00)

Hi Latricia,

We would like to talk about the Department's plans for protecting borrowers at the end of the federal student loan payment pause, during the imminent transfer of millions of borrowers, and issues around general borrower relief.

Thanks!
Persis

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On Mon, Oct 18, 2021 at 2:34 PM Hardman, Latricia <Latricia.Hardman@ed.gov> wrote:

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>
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>
> ---
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> **From:** Persis Yu <pyu@nclc.org>
> **Sent:** Tuesday, September 21, 2021 10:55 AM
> **To:** Kvaal, James <James.Kvaal@ed.gov>
> **Cc:** Julia Barnard <Julia.Barnard@responsiblelending.org>; Alexis Goldstein <agoldstein@openmarketsinstitute.org>; Mike Pierce <mike@protectborrowers.org>; Remington Gregg <rgregg@citizen.org>; Natalia Abrams <natalia@studentdebtcrisis.org>; cody hounanian <cody@studentdebtcrisis.org>; Abby Shafroth <ashafroth@nclc.org>; Alpha Taylor <ataylor@nclc.org>; Kyra Taylor <ktaylor@nclc.org>; Muenzer, Melanie <Melanie.Muenzer@ed.gov>; Hardman, Latricia <Latricia.Hardman@ed.gov>
> **Subject:** Re: Request to meet with borrower advocates

Thanks James!

Latricia, I look forward to hearing from you with some possible times.

Best,
persis

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Sent: September 21, 2021 10:55 AM (UTC-04:00)

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