



Testimony of Robyn Smith,
Legal Aid Foundation of Los Angeles and National Consumer Law Center,
Before the U.S. House of Representatives Subcommittee on
Higher Education and Workforce Investment
regarding
“Protecting Students and Taxpayers: Improving the Closed School Discharge Process”
September 30, 2021

Introduction

Chairwoman Wilson and Members of the Committee, thank you for inviting me to testify today about improving the federal loan discharge process for borrowers harmed by sudden school closures. I offer my testimony on behalf of the low-income clients of the Legal Aid Foundation of Los Angeles (LAFLA)¹ and the National Consumer Law Center (NCLC).²

My comments are grounded in the work I have done for over 20 years on behalf of low-income student loan borrowers harmed by for-profit schools, most recently in my job as a Senior Attorney at the

¹ The Legal Aid Foundation of Los Angeles (LAFLA) is a nonprofit law firm serving low-income clients across Los Angeles County, California. LAFLA seeks to achieve equal justice for people living in poverty through direct representation, systems change, and community education. LAFLA is a public interest leader on student loan work, having developed student loan and for-profit school expertise over the last 30 years. LAFLA provides outreach and education, self-help clinics, and direct legal assistance to financially distressed student loan borrowers. It has helped hundreds of borrowers harmed by the illegal conduct of higher education institutions to obtain federal student loan discharges. LAFLA serves as a resource for and often consults with other legal services organizations carrying out this work throughout the country. See LAFLA’s website at <https://lafla.org/get-help/student-loan-issues/>.

² The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. Since 1969, we have worked with thousands of legal services, government, and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues. NCLC’s Student Loan Law Manual is the most comprehensive and detailed treatise regarding the rights and options of student loan borrowers. NCLC’s Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates, and provides direct legal representation to student loan borrowers. We work with other advocates across the country representing low-income clients. 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. See the Project’s web site at www.studentloanborrowerassistance.org.

Legal Aid Foundation of Los Angeles. My comments are also based on the work I do with the National Consumer Law Center, where I consult with legal services and other advocates across the country who assist student loan borrowers with closed school discharges.

A closed school discharge is a Congressional imperative to alleviate some of the harm that students experience when schools close. A sudden school closure is devastating. Students have often given up jobs to go to school and spent months or years working towards a now-unavailable diploma or degree. In the case of for-profit schools, the credits earned are typically worthless and not transferable to any other college. Closed school borrowers face having to repay thousands of dollars in federal student loans, as well as private student loans co-signed by a family member, without the credential necessary to earn sufficient income to do so. Although a closed school discharge cannot return the lost time, effort, or job, or pay off a private student loan, it is a bright light in a devastating situation over which students have no control. As I explain in the following sections, the Department's failure to grant widespread, automatic closed school discharges to all who are eligible has destroyed the financial well-being of too many low-income people harmed by for-profit school closures, a disproportionate number of whom are people of color.

School Closures Have Long-term Devastating Financial Consequences for Borrowers Who Are Disproportionally Low-income People of Color.

Legal services organizations have long witnessed the suffering endured by federal student loan borrowers after their school has abruptly closed. The vast majority of the borrowers we assist attended for-profit schools, many of which closed after a government agency or accreditor took action based on deceptive or unlawful business practices.³ These students are disproportionately Black, Latinx, and other

³ Examples include American Business Institute and Wilfred Beauty Academy, Education Corp. of America, Charlotte Law School, schools owned by Education Management Corp. and Dream Center Foundation (Art Institutes Argosy University, Brown-Mackie Colleges), Corinthian Colleges, ITT Technical Institute, Marinello Colleges of Beauty, just to name a few.

people of color.⁴ For-profit school students are also primarily low-income,⁵ non-traditional students, who did not go from high school straight to college. Many are already in the workforce and have children to support. They are first generation students, older students, immigrants, and veterans who follow their American dream and seek college educations they are told will position them to find good employment, increase their earnings and break out of poverty.

These borrowers, whose education is often the most significant investment of their lives, are understandably distressed when their schools suddenly close. In most cases, they are not able to transfer credits or complete their education. According to a 2019 GAO study, only 4% of students were able to transfer credits from for-profit to public schools between 2004 and 2009, and

students who transferred from for-profit schools to public schools lost an estimated 94% of their credits. Even if a student's credits transfer, they may not apply toward fulfilling degree requirements for their intended major. In these cases, a student will likely have to take additional courses at their new school, which could potentially delay graduation and result in additional costs to pay for repeated courses.⁶

In addition, the unpaid federal loans can prevent borrowers from starting over at quality higher education institutions, either because their loans are in default or because they are at or close to federal borrowing limits and have used up their lifetime Pell Grant allotment. As a result, closed school borrowers who are unable to obtain discharges cannot improve their earning capacity through higher education and have extreme difficulty repaying their loans. The lack of a discharge is a barrier to upward mobility and economic stability for too many closed school borrowers.

Once in default, closed school borrowers and their families experience severe cascading financial consequences. The federal government has collection powers against defaulted student loans that far exceed the collection powers of most unsecured creditors. Wielding these coercive collection tools, the government often siphons thousands of dollars from borrowers already experiencing financial

⁴ See, e.g., Michael Vasquez & Dan Bauman, [How America's College Closure Crisis Leaves Families Devastated](#), CHRON. OF HIGHER EDUC. (April 4, 2019) (according to a study by the *Chronicle of Higher Education*, a disproportionate number of students whose for-profit schools closed between 2014 and 2018 were people of color.).

⁵ *Id.* (the study also found that over half of the students whose for-profit schools closed between 2014 and 2018 were Pell Grant recipients).

⁶ U.S. Gov't Accountability Off., GAO-19-553T, [GI Bill: Veterans Affected by School Closures](#) 9 (Jun 19, 2019).

distress. The government can garnish a borrower's wages without a judgment, seize tax refunds (including the Earned Income Tax Credit and Child Tax Credit), and seize portions of federal benefits such as Social Security.

Not only do these punitive collection activities negatively impact both the physical and mental health of borrowers and their families, they can push low-income households over the financial brink. Facing involuntary collections often means that our clients cannot afford their rent and utilities, pay for medication, cover transportation to and from work, or even buy food. Many experience evictions and homelessness, which displace their children from their communities and schools. In addition, a ruined credit history increases the cost of credit and makes it more difficult for borrowers to find employment, housing, and transportation, among other life necessities.

Closed school discharges grant borrowers much-needed financial benefits. After a discharge is granted, the borrower's credit report is cleared of negative student loan history. The federal debt and Pell Grants obtained to attend the closed school are wiped away. Refunds are made to borrowers for all amounts paid voluntarily or involuntarily through wage garnishment or tax refund or federal benefit offsets. These borrowers can finally attempt to move forward with their lives.

The Department Has Failed to Comply with Congress's Closed School Discharge Mandate for Borrowers' Whose Schools Closed Prior to 1994.

At least since 1986, thousands of for-profit schools have closed, leaving tens or hundreds of thousands of low-income students, primarily people of color, with student debt that they have been unable to repay, through no fault of their own. During Senate subcommittee hearings in 1990, the Inspector General of the Department of Education (Department) estimated that of 500 schools the Department had put on a watch list prior to 1990, 150 went out of business and "a large number of students were harmed along the way."⁷ He also estimated that, between October 1985 and June 1988, 53 of these school closures left about 10,000 students with \$30 million (equal to over \$57 million today) worth of loans they

⁷ *Abuses in Federal Student Aid Programs: Hearings Before the Perm. Subcomm. on the Investigations of the Comm. on Government Affairs*, 101st Cong., 2nd Sess. 42 (Feb. 20, 26, 1991) (testimony of James Thomas, Inspector General, U.S. Dep't of Educ.).

had to repay.⁸

Until Congress took notice of the harm that sudden for-profit school closures inflicted on students, the remedy for these students was largely non-existent. Then, in 1990, the Senate Permanent Subcommittee on the Investigations of the Committee on Government Affairs began an 18-month investigation into the cause of an enormous spike in federal student loan defaults.⁹ The above-described testimony of the Inspector General, as well as other evidence, revealed that widespread and sudden for-profit school closures had led to massive numbers of student loan defaults.¹⁰ The Subcommittee recognized the suffering caused to student loan borrowers, stating “should the student eventually default, he or she is no longer eligible for Title IV student financial aid and can encounter future credit problems, tax refund seizures, and/or difficulties with collection agencies.”¹¹ In addition, Congress voiced concerns that closed school students

are in double jeopardy: they are deprived of the training for which they incurred the original loan obligation and they are also barred from receiving the future Federal aid necessary to acquire training to obtain a job in order to repay the loan. . . . The Committee desires in cases where a school closes during the middle of a borrower’s course of instruction . . . the Secretary shall discharge the borrower’s liability by repaying the amount owed on the loan¹²

Based on these findings and concerns, in 1992 Congress amended the Higher Education Act (HEA) to mandate that the Department grant loan discharges to borrowers who are unable to complete their education due to a school closure.¹³ The HEA’s closed school discharge mandate applies to Perkins Loans, Federal Family Education Loan Program (FFEL) Loans and Direct Loans, including Parent PLUS Loans.¹⁴ Congress applied the mandate retroactively to all students who had received federal loans after

⁸ *Id.* at 32.

⁹ [S. Rep. No. 58](#), 102nd Cong., 1st Sess. 6 (1991) (hereinafter, “Nunn Report”).

¹⁰ *Id.*

¹¹ *Id.* at 11; *see also id.* at 10 (“these students have to pay for an education they never received. Lacking proper training, [they] are not able to get jobs by which they can repay [their] federally guaranteed loans and thus suffer the added humiliation of seeing their credit ratings destroyed in the process.”) (quoting Sen. Roth).

¹² H.R. Rep. No. 447, 102nd Cong., 2nd Sess. 52 (1992), reprinted in 1992 U.S.C.C.A.N. 334, 385.

¹³ 20 U.S.C. § 1087(c)(1) (the Department “shall discharge a borrower’s liability on a loan” if the student “is unable to complete the program in which such student is enrolled due to the closure of the institution . . .”).

¹⁴ 20 U.S.C. §§ 1987(c) (FFEL Program Loans); 1087e(a)(1) (Direct Loans have the same terms and conditions as FFEL Loans unless otherwise specified); 1087dd(g)(1) (Perkins Loans, including National Direct Student Loans).

January 1, 1986 and whose schools closed before they could complete.¹⁵

The Department did not start granting discharges until late 1994, after it published the first closed school discharge regulations and procedures.¹⁶ Although the regulations imposed an affirmative application requirement for closed school eligibility,¹⁷ they also allowed the Department to grant automatic discharges to borrowers or groups of borrowers who were eligible based on information in its possession.¹⁸ In addition, the regulations required the Department and guaranty agencies to identify, based on their own records, students who were eligible for loan discharges due to school closures between January 1, 1986 and August 29, 1994.¹⁹ After writing these regulations, the Department could have used its discretion to grant widespread automatic discharges to these retroactively identified borrowers. Instead, it required all borrowers to submit applications, even when many of them were difficult to locate and unaware a closed school discharge was even an option. In doing so, the Department improperly narrowed the remedial impact of the closed school discharge provision and disregarded the plain wording of the HEA, which does not in any way pre-condition discharge eligibility on the submission of an application.

The Department Continued to Fail to Comply with Congress's Closed School Discharge Mandate After 1994.

The Department has continued to require closed school borrowers to submit applications as a pre-condition for eligibility in most circumstances. Although the automatic closed school discharge regulation has been in effect for over 25 years, I am not aware of any instances in which the Department has exercised its discretionary authority²⁰ to provide widespread automatic discharges to eligible borrowers. Instead, the Department has consistently required borrowers to submit a discharge application

¹⁵ 20 U.S.C. §§ 1087(c)(1), 1087dd(g)(1).

¹⁶ 59 Fed. Reg. 22,462 (April 29, 1994).

¹⁷ 34 C.F.R. § 682.402(d)(6).

¹⁸ 34 C.F.R. §§ 682.402(d)(8)(i)(B) (FFEL Loans), 685.214(c)(2)(i) (Direct Loans), 674.33(g)(3)(i)(B) (Perkins Loans).

¹⁹ *Id.* (final FFEL Loan regulation 34 C.F.R. § 682.402(d)(6) required guaranty agencies to identify and notify all borrowers eligible for a discharge due to a school closure between Jan., 1986 and Aug. 24, 1994).

²⁰ The authority provided by 34 C.F.R. § 685.214(c)(i), not § 685.214(c)(ii).

in an often confusing and onerous process. The Department only began granting large numbers of automatic discharges in 2017, after it published a new regulation that *required* discharges for all borrowers who, according to its records, were unable to complete their programs due to a school closure between November 1, 2013 and July 1, 2020 and who had not re-enrolled in another Title IV eligible postsecondary institution within 3 years.²¹

Thus, outside of this limited automatic discharge requirement, most eligible borrowers who attended closed schools after 1994 through the present must apply for a discharge. While the Department and guaranty agencies have been required to identify and notify all potentially eligible borrowers after each new school closure since 1994,²² this has been the *only* notice most borrowers have received regarding their discharge eligibility. This notice process is not sufficient to ensure that all eligible borrowers are aware of their closed school discharge rights, nor is it sufficient to ensure that they are able to obtain a discharge when eligible. Indeed, no notice process can ensure that all eligible borrowers are aware of and able to apply for closed school discharges.

Under the current process, the Department does not typically send notice to students until up to six months after the school closes. In the meantime, closing for-profit schools often aggressively push students to transfer credits to other for-profit schools.²³ These schools rarely provide information about closed school discharges.²⁴ If they do, the information is often buried, inaccurate, or both.²⁵ At the same

²¹ 34 C.F.R. § 685.214(c)(2)(ii).

²² 34 C.F.R. §§ 682.402(d)(6)(f), 685.214(f).

²³ *See, e.g.*, letter from Paul Gardener, Center for Excellence in Higher Education (CEHE) to students, attached as Exhibit A, and letter from Department of Education to Paul Gardener, CEO, CEHE (July 29, 2021), attached as Exhibit B. While CEHE is allegedly nonprofit, in 2016 the Department denied its request to be recognized as a nonprofit institution for the purposes of Title IV eligibility. *See* letter from Ron Bennett, U.S. Dep’t of Educ., to Eric Juhlin, CEO, CEHE (Aug. 11, 2016). While the Department eventually agreed to recognize CEHE as a nonprofit in a settlement after CEHE filed a lawsuit, its underlying reasoning was sound. *See* Robert Shireman, How For-Profits Masquerade as Nonprofit Colleges, The Century Foundation (Oct. 7, 2020), available at <https://tcf.org/content/report/how-for-profits-masquerade-as-nonprofit-colleges/?agreed=1>.

²⁴ The Department itself stated, “in some instances, the closing school might inform borrowers of the option to complete their program through a teach-out, but fail to advise them of the option for a closed school discharge.” 81 Fed. Reg. at 39,369.

²⁵ *See, e.g.*, Letter from Lou Pagano, Chief Operating Officer, Alta Colleges, to Westwood students (Jan. 25, 2016), attached as Exhibit C; Letter from Rene C. Nunez, Vice President Compliance/Student Relations, ICDC College, to ICDC students (May 20, 2016), attached as Exhibit D; and communications from CEHE to students, attached as Exhibit A.

time, the students face aggressive solicitations from other for-profit schools, often at events or through communications arranged by the closed school or a state agency.

After a few days, the Department or state government agencies may meet with some students and provide information about closed school discharges. The government agencies do not always coordinate with each other, and they rarely coordinate with legal services organizations (although we offer to work with them). While they may provide some information about closed school discharges to students, they typically emphasize how students can obtain their transcripts and transfer to other schools.

By the time that borrowers receive notifications about their discharge rights from the Department, they have moved on with their lives as best as they are able. Bombarded with calls, letters, and emails from fraudulent debt collection companies offering debt forgiveness, emails and letters from their loan servicers, debt collection letters from private student lenders, and other student loan information, borrowers are often overwhelmed by and confused about which notifications are legitimate and which are not.²⁶

It is no wonder that, as the Department has admitted based on its own data, “[m]any borrowers eligible for a closed school discharge do not apply.”²⁷ In 2014, a Department official stated that only 6% of borrowers who are eligible for closed school discharges typically apply.²⁸ In 2016, the Department stated that for the period between 2011 and 2015 only about one-fifth, or 20%, of eligible borrowers whose schools closed received a discharge.²⁹ At that time, the Department was “concerned that borrowers are unaware of their possible eligibility for a closed school discharge.”³⁰ Indeed, in May, 2019, Department data showed that low percentages of eligible borrowers from each of the following schools, all of which closed in the prior 7 years, had received closed school discharges: ITT Tech – 34%;

²⁶ As an example, many of the closed school clients of the LAFLA from Marinello Schools of Beauty received the solicitation attached as Exhibit E.

²⁷ 81 Fed. Reg. at 39,369.

²⁸ Paul Fain, *Best of a Bad Situation?*, INSIDE HIGHER EDUC. (Dec. 9, 2014).

²⁹ 81 Fed. Reg. at 76,065 (“there were 43,268 students attending closed schools, of which 9,606 students received a closed school discharge.”).

³⁰ 81 Fed. Reg. at 39,369.

Charlotte Law School – 47%; Education Corp. of America – 16%; Vaterott College – 19%; and Dream Center Educ. Holdings – 28%.³¹ While these numbers have likely increased because the Department has granted some automatic discharges pursuant to the 2016 regulation³² to borrowers whose schools closed after November 1, 2013 and who did not enroll in another school within 3 years, the students whose schools closed less than three years ago have not yet received discharges under this regulation.

The lack of effective notice to students about their closed school discharge rights leads to low application percentages and to too many borrowers struggling to repay loans they do not legally owe. No outreach system, however, could ensure that all eligible borrowers are aware of and able to obtain discharges. The only way to ensure that all eligible borrowers receive closed school discharges is for the Department to immediately start granting automatic discharges to borrowers who are eligible according to its records, both looking backward and moving forward.

The Department’s Closed School Discharge Process Has Left Hundreds of Thousands of Borrowers Harmed by School Closures Without Debt Relief.

According to a study done by the Chronicle of Higher Education, during a 5-year period from the beginning of 2014 through the end of 2018 alone, sudden school closures blind-sided close to half a million students at over 1,200 college campuses.³³ Because the Department has not provided widespread automatic discharges for schools that closed between January 1, 1986 and 2014, a 28-year period not included in the Chronicle study, there are likely hundreds of thousands of other low-income borrowers who continue to suffer from the burden of invalid debt.

As a result, legal services organizations have a constant influx of borrowers whose schools closed from two to thirty-five years ago. All are low-income, most are African American, Latinx or other people of color, and most have experienced years of financial hardship caused by defaulted federal loans. Most have no idea that they are eligible for a discharge, while others have been unable to obtain a discharge

³¹ U.S. Dep’t of Educ., [Responses to Questions Submitted by Sen. Patty Murry: Post-Publication QFR Responses for Sen. Appropriations Comm.](#), 1 (May 16, 2019).

³² 34 C.F.R. § 685.214(c)(3)(ii).

³³ Michael Vasquez & Dan Bauman, [How America’s College Closure Crisis Leaves Families Devastated](#), CHRON. OF HIGHER EDUC. (April 4, 2019).

without the assistance of an attorney.

The Department's failure to provide widespread and automatic closed school discharges to these borrowers has systematically removed wealth from economically disadvantaged families and communities, including communities of color, through the collection of burdensome and invalid debt, often through seizures of wages, tax refunds, and federal benefits. The Department's refusal to comply with the HEA closed school discharge mandate through automatic discharges has also prevented these borrowers from building wealth by preventing them from obtaining a higher education at a legitimate institution that would allow them to increase their incomes and improve the economic well-being of their families. The effects cascade through generations. Cruelly, the communities hit hardest by the Department's decades-long failure are the same communities currently hit hardest by the COVID-19 global health crisis. Immediate Department action to start automatically discharging the debts of eligible borrowers would have an enormous economic benefit for these borrowers, their families and their communities.

The Department Has the Authority to and Should Start Granting Automatic Discharges to All Eligible Borrowers Now.

The Department's refusal to grant automatic closed school discharges to these borrowers is contrary to law. Using the follow criteria, the Department should immediately begin using its authority to grant automatic discharges.

The Department Should Grant Automatic Discharges to All Eligible Borrowers Who Attended Schools that Closed on or After January 1, 1986 through the Present. Under the mandatory language of the HEA closed school discharge provision, the Department has the obligation to rectify this injustice starting immediately. The closed school discharge regulations explicitly give the Department discretion to grant automatic closed school discharges, without any borrower applications, if it determines that an individual borrower or a group of borrowers is eligible based on information in its

possession.³⁴ The Department should exercise this authority and discharge loans for all borrowers who attended schools that closed on or after January 1, 1986. Relief should go to borrowers who did not subsequently enroll in Title IV-eligible institutions or enrolled but failed to complete their programs. The Department should require guaranty agencies and Perkins Loan holders to do the same.³⁵

This relief should be granted to borrowers whose schools closed through the present, in part to grant much-needed relief to borrowers who are likely suffering from the economic harms of the COVID pandemic. The Department may do so pursuant to its current discretionary authority to grant discharges without application based on information in its possession.³⁶ It may also waive the requirement that it confirm that a borrower has not re-enrolled in a Title IV-eligible institution within 3 years after a school closed before granting a discharge³⁷ pursuant to the Higher Education Relief Opportunities for Students Act of 2003.³⁸

The Department has all of the information it needs to provide automatic closed school discharge relief. It has compiled a list of all schools that have closed and the dates of their closure.³⁹ Its National Student Loan Data System includes all the information necessary for the Department and other loan holders to identify eligible borrowers.⁴⁰ In order to prioritize relief for those who have likely suffered the longest from invalid debt burdens, the Department should start with borrowers who attended for-profit schools, moving from 1986 to the present.

³⁴ 34 C.F.R. §§ 682.402(d)(8)(i) (FFEL Loans), 685.214(c)(2)(i) (Direct Loans).

³⁵ Guaranty agencies and Perkins Loan holders may grant automatic closed school discharges with the Department's permission. 34 C.F.R. §§ 682.402(d)(8)(i) (FFEL Loans), 674.33(g)(3)(i)(B) (Perkins Loan).

³⁶ 34 C.F.R. §§ 682.402(d)(8)(i) (FFEL Loans), 674.33(g)(3)(i)(B) (Perkins Loan).

³⁶ 34 C.F.R. §§ 685.214(c)(3)(i) (Direct Loans), 682.402(d)(8)(i) (FFEL Loans), 674.33(g)(3)(i)(B) (Perkins Loan).

³⁷ 34 C.F.R. §§ 685.214(c)(3)(ii).

³⁸ The Department has waived and modified Title IV regulations under the HEROES Act in response to the COVID-19 crisis. *See, e.g.*, 85 Fed. Reg. 79856 (Dec. 11, 2020) (waiving, among other things, requirements that borrowers with income-driven repayment plans annually certify their income; and applying pre-July 1 borrower defense-to-repayment (DTR) regulations and standards to Direct Consolidation Loans disbursed after July 1, 2020, for DTR applications submitted prior to July 1, 2020).

³⁹ *See* Dep't of Educ., Closed School Search File, available at <https://www2.ed.gov/offices/OSFAP/PEPS/closedschools.html>.

⁴⁰ The information available includes dates the loans were disbursed; (2) schools to which they were disbursed; (3) the last date of a borrower's attendance at the school, including whether a borrower withdrew or did not complete due to a school closure; (4) whether a borrower subsequently obtained Title IV financial aid to attend another postsecondary school and, if so, whether the borrower completed that program.

The Department Should Provide an Opt-Out Procedure. We anticipate that the vast majority of eligible borrowers will want an automatic closed school discharge. However, the Department has previously warned that when borrowers get a discharge, they give up the right to benefit from their closed school attendance, such as by transferring the credits after a discharge. The Department should therefore provide an opt-out procedure, in which borrowers are provided notice about the consequences of the discharge and given the opportunity to opt-out.

The Department Should Send Discharge Information to All Borrowers Who Were in Attendance at the Time Their Schools Closed. The Department should notify borrowers whose eligibility is not obvious according to Department records, but who were in attendance at the time their schools closed. This is necessary for several reasons.

First, the regulations recognize that even when students re-enroll in higher education after a school closure, they should be eligible for relief when they may have derived any benefit from the closed school education. As described above, many students are unable to transfer credits and have to retake classes for which they already paid. Even if they can transfer some credits, they may enroll in entirely different programs. In these situations, the students are eligible under the current regulations which provide eligibility to borrowers who did not subsequently complete the same or comparable program through a teach-out or by transferring credits.⁴¹ The Department should therefore send closed school discharge information to all borrowers who were enrolled at a school when it closed, even if they subsequently enrolled in and completed a program at another institution.

In the event borrowers subsequently enroll in and complete programs at another school, the Department should grant discharges as long as the borrowers attest that they did not transfer any credits from their closed schools, did not complete the same or a comparable program, or both. Requiring borrowers to provide documentation proving this can be both burdensome and daunting for borrowers who lack attorney representation. If such documentation is required, many borrowers will not understand

⁴¹ 34 C.F.R. §§ 685.214(c)(1)(i)(C), (c)(2)(i)(B); 682.402(d)(3)(ii)(C).

how to obtain the necessary documentation and will give up on seeking a closed school discharge.

Second, as I have described in a report recently published by the Student Borrower Protection Center,⁴² closed for-profit schools often report false information regarding student completions and withdrawals in order to keep Title IV funds and avoid liability for closed school discharges. Closed schools sometimes falsely report that students completed their education prior to closure, when in fact they either withdrew or were in attendance but had not completed their education before closure. Schools also make mistakes and provide incorrect federal loan documentation and data – recording on a promissory note, for example, that a student attended a campus that he/she did not attend. Because many of these closures happened decades ago and the Department does not require the schools or state oversight agencies to maintain the student records indefinitely, borrowers often cannot obtain the records necessary to prove that the information reported by the school was false. Denying discharges by unfairly imposing burdensome evidentiary requirements on borrowers who have no control over their schools' records is contrary to Congress's mandate and remedial intent to provide broad debt relief.

Even when students testify under oath that they did not complete their educations, attended particular campuses, withdrew prior to closure, or were on an approved leave of absence, the Department has often disregarded their testimony. Instead, it typically relies on old electronic data reported by closed schools to deny discharges, even though the Department often knows, through prior audits, program reviews, or investigations, that the schools reported false information to the Department regarding the payment of refunds, student enrollment and completion dates, etc. Legal services organizations have represented borrowers in cases where the Department relied on information reported by schools whose owners and management were prosecuted for federal crimes.

To account for past Department denials based on incorrect information reported by schools, as well as the Department's own errors, the Department should also provide closed school discharge information to borrowers who do not appear to meet the closed school eligibility criteria or whose

⁴² See Robyn Smith, *Relief for Students Harmed by School Closures*, Student Borrower Protection Center (November 2020), attached as Exhibit F.

previous discharge applications were denied. Moreover, when back-up documentation is no longer available to confirm the data or information reported by a closed school, the Department should give the borrower the benefit of the doubt and grant the discharge application, even when the attested statements of the borrower are contradicted by information reported by the closed school.

The Department Should Develop More Accessible Application Procedures. All discharge applications and communications should be available, at a minimum, in Spanish as well as English. In the 1980s and 1990s, many for-profit schools expanded their aggressive sales tactics and targeted 3 million undocumented immigrants who were granted amnesty in 1988, many of whom were Spanish speakers who did not speak English.⁴³ Since that time, for-profit schools have continued to target non-English speaking people. Legal services organizations continue to assist Spanish-speaking immigrants with closed school discharges, including for schools that have closed in the last 20 years.

The Department should also provide the applications and any communication in other languages whenever there are significant numbers of non-English speaking borrowers who were impacted by school closures.

There are other operational issues that the Department should address. Many times, legal services organizations must appeal frivolous denials based on facts that are not reflected either in the borrower's application or the Department's student loan data. The Department often fails to carefully review the applications and evidence, instead routinely denying applications based on inapplicable and incorrect facts. In addition, many denial letters appear to have been created in a slapdash manner without regard to the seriousness of the borrower's situation, rife with grammatical and typographical errors. While borrowers with attorneys can appeal these decisions to federal court if necessary, unrepresented borrowers are likely to give up. To the extent that loan servicers are involved in this process, the Department must do a better job of monitoring loan servicers' review and processing of discharge applications.

Finally, many of our clients report that they told their loan servicers and third-party debt

⁴³ Schools for Scandal, CONSUMER REPORTS 303, 304 (May 1992).

collectors that their schools closed, sometimes on numerous occasions over many years whenever they sought assistance because they could not afford their monthly payments or received debt collection calls. However, in many cases neither the loan servicers nor the debt collectors advised the borrowers of their closed school discharge rights. The Department should ensure that all contractors who interface with borrowers provide closed school discharge information whenever a borrower raises this issue. These contractors should also offer to help the borrowers complete the discharge application, which is a dense form that is difficult for many borrowers to understand and complete. The Department should also flag all potentially eligible borrowers in its data system in order to facilitate the provision of closed school discharge information and increase the granting of automatic discharges.

Conclusion

The Department's application requirements and reluctance to use the authority it has to provide widespread automatic closed school discharges have hindered Congress's broad remedial intent in enacting the HEA's closed discharge mandate. It has caused decades of unnecessary suffering to thousands of students who are clearly eligible for discharges according to the Department's records. The Department's refusal to grant automatic discharges has caused enormous financial harm to low-income borrowers who are disproportionately people of color and have endured onerous debt collection for decades.

There is little to be gained by continuing to wage this economic war on poor people who were harmed, through no fault of their own, by school closures. Pursuing this largely impoverished group of students who were failed by their schools costs the government time and money and is unlikely to produce substantial collections. The Department should immediately change course and comply with its statutory mandate to grant broad and automatic closed school discharges as initially intended by Congress.

Thank you for the close attention you are paying to how to protect the most vulnerable student loan borrowers, and for the opportunity to provide this testimony. I look forward to your questions.

Exhibit A

Dear Students,

We want to share an important development about your education.

Center for Excellence in Higher Education, the parent company of Independence University (“IU”), Stevens-Henager College (“SHC”), CollegeAmerica (“CA”), and California College San Diego (“CCSD”), has made the difficult decision to close all its colleges as of August 1, 2021. You will be notified of any change to that date.

This decision was not taken lightly. In April 2021 our accreditor withdrew IU’s accreditation. In addition, the U.S. Department of Education (“USDOE”) is withholding all student funding since May of this year. We are seeking an appeal of the withdrawal of accreditation and pursuing options to obtain the funding held by USDOE. However, the combination of these two actions has made it impossible to effectively continue academic operations. We will begin a process of winding down our operations through a process called a “teach-out.”

We are heartbroken by this decision and truly wish to see our students continue their educational efforts to complete their degrees. We continue to strive to help our students succeed.

Pending regulatory approvals, we have entered Teach Out Agreements with a regionally accredited institution of higher education that will permit most currently enrolled students to complete the same or similar programs online. We are in the process of identifying any on ground options that may also be available. Staff will be contacting you and holding a series of meetings to help explain your options and answer your questions. After those meetings, you will be asked to select an option and sign a document attesting to your choice. If after meeting with the staff, you decide not to complete your degree by accepting one of the transfer options, you may withdraw.

It is our sincere hope that you decide to select the transfer option so that you can complete your education, graduate, and earn your degree. This has always been our mission, and you have always been our focus. Regardless of your choice, we will do everything we can to make this transition as smooth as possible.

Student Services, including Financial Aid and Registrar services, will continue to be available to students through our teach-out partner. Upon closure, we plan to move student records and transcripts to one or more of our teach-out partners and, if that is not possible, to the applicable state education agency. Students and graduates will be advised on the process to request records.

We understand that news of this decision will be met with uncertainty and disappointment. We are committed to keeping you informed of our progress through ongoing communication. Information and updates regarding this transition to closure will be delivered via mail, email, and the student portal.

We are honored that you have chosen IU, SHC, CA and CCSD. We are committed to providing a quality education and to fulfilling our promise to help you reach your career goals, and we pledge our total support in assisting you through this transition.

Sincerely,

Paul Gardner
Interim CEO
Center for Excellence in Higher Education, Inc.

From: **Paul Gardner** <wehearyou@independence.edu>
Date: Fri, Jul 30, 2021 at 8:24 PM
Subject: Important information for IU transfer students



Dear Students -

First and foremost, we want you to know that things are changing quickly, by the minute as we get new information to assist you. Staff are doing the very best they can to keep you informed with changes that may affect you.

You previously received a letter providing choices for the next step in your education. Many of you chose to continue your education with South University or Miami International University of Art & Design. We applaud your choice! If you completed the Docusign document, your next step is to go to the corresponding school link below and follow the directions. The links will direct you to the website where you will connect with the university.

[Graphic & Web Design | Art Institutes South University](#)

It is vital that you go to that particular website in order to effect a seamless transition. **Signing the Docusign document was the first step and will not guarantee you move to the next step. You must take action.**

We know the communication is not perfectly clear, and we apologize, but we are moving at an incredible pace. There are almost 7,000 students impacted by this process. Please bear with us - we are working round the clock to help you continue in your quest for an education.

One new development - **you may keep your computer and tablet at no charge no matter what option you choose.** We hope that this small token helps you achieve your educational goals.

Additional communication will follow. It is wise to frequently check your email as we move through this transition. Please, continue to reach out to your student services advisor with questions.

Sincerely,
Paul Gardner - CEO
Center for Excellence in Higher Education

Exhibit B



July 29, 2021

sent via email: paul.gardner@independence.edu

Paul R. Gardner
Chief Executive Officer
Center for Excellence in Higher Education (CEHE)
4021 South 700 East
Suite 400
Salt Lake City, UT 84107-9923

Mr. Gardner:

This is to follow up on our conversation earlier today where you confirmed that CEHE is closing all of its locations effective August 1, 2021. As discussed, the Department is requesting that you provide a copy of the exact communication that has been provided to students, and a description of how this information is being disseminated; as well as copies of future planned communications prior to their distribution for Department approval. In addition, the Department is requesting copies of the scripts being provided to staff to assist them with communications to students regarding their options.

As mentioned on the call, the information that we have received from students suggests that CEHE is not providing students complete information regarding all of the options available to them when an institution closes. As you are aware, when an institution closes, students who are attending the institution at the time of closure, and students who withdrew within a set time period prior to the closure, are eligible for a closed school loan discharge. 34 C.F.R. 685.214. As you are also aware, students are not obligated to take a teach-out offered by an institution, and may choose instead to have their loans discharged. Students must be provided the accurate information regarding their options, which includes the ability to have their loans discharged. To the extent CEHE has provided incomplete information to students about their options, CEHE must update and correct those communications immediately, and must first submit the revised communication to the Department for approval.

The Department has also learned that students are being pressured to agree to transfer to South University and Miami International University of Art and Design based on the agreement entered into between CEHE and those entities. Although the Department does not approve teach-out agreements, we did review this unusual arrangement which is not a typical teach-out agreement for anticipated school closures. The Department has concerns about the terms of the arrangement which make it appear that the students will only have the choice of transferring to these institutions in order to continue their education. That is not an accurate representation of student options. Further, the Department has concerns with what appears to be a sale of student

Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION

Federal Student Aid, Multi-Regional and Foreign Schools Participation Division
830 First Street NE, Union Center Plaza, 7th Floor, Washington, DC 20202-5340
StudentAid.gov

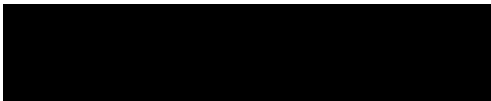
enrollments to the teach-out/transfer entities. This is certainly not the purpose of a teach-out arrangement. Furthermore, this arrangement, which could position CEHE to profit from student transfers, heightens our concern about students not being advised of all options available to them.

The Department has other serious concerns, including that the proposed transfer institutions may not currently offer all of the programs necessary to accommodate all of CEHE's students. The Department is also concerned that there may be privacy issues with student information being transferred without full disclosure and consent of the students. It is also our understanding that the accreditor and state licensing bodies have not approved the arrangement, which is required. Based on all of these factors, the Department does not believe that the arrangement, as currently written, is in the best interest of the students.

Within 24 hours, you must provide the Department, for its approval, a draft of an updated, accurate, and complete communication for impacted students. If you fail to do so, we reserve the right to take further action, including alerting state Attorneys General of potential unfair, deceptive, and abusive acts and practices.

The Department appreciates the full cooperation of CEHE to ensure that students have complete and accurate information, and to assist them in completing their education.

Sincerely,



Michael Frola
Division Director
Multi-Regional and Foreign School Participation Division

cc: Michale McComis, Executive Director, Accrediting Commission of Careers Schools and Colleges, via mccomis@accsc.org
Kevin LaMountain, Executive Director, AZ State Board for Private Postsecondary Education, via kevin.lamountain@az.ppse.gov
Deborah Cochrane, Chief, CA Bureau for Private Postsecondary Education, via Deborah.Cochrane@dca.ca.gov,
Daniel O'Bannon, Director, Division of Consumer Protection, State of Utah, via dobannon@utah.gov

Exhibit C



January 25, 2016

Dear Student:

We hope all of you had a wonderful holiday season and we are excited to see you back.

As promised when we communicated with you in December, Westwood has worked hard to create a robust transition plan for the continuation and completion of your education. Over the coming weeks, we will introduce you to the partner schools that will assist you in completing your education and you will have full opportunity to explore what benefits each may offer to you. When you meet with them, each partner school will be able to provide you with specific information on your individual academic circumstances and answer your questions. We will ask you to make your transfer choice no later than February 19. The January 2016 term will be the last one taught at Westwood College, and upon completion of this current term, Westwood will close.

Starting on January 27th, partner schools will be on all Westwood campuses to facilitate transfer arrangements. As part of this process, Westwood will work with you and the partner schools to make your transition at the end of this term as seamless as possible. We are impressed with the quality of schools that have offered to assist you in achieving your goal of graduation and the terms they have agreed to offer Westwood students. Our main focus in negotiating with the partner schools was to ensure that you would be in the same academic and financial situation had you continued at Westwood to complete your education. I believe that we more than accomplished this goal for your benefit.

Most programs will have multiple accredited partner schools from which to choose, including several regionally accredited schools. Each of the partner schools has a campus located within a reasonable distance from your current campus. All partner schools have agreed to accept the transfer of Westwood credits. In most cases all credits will transfer into comparable programs offered by the partner school. In addition, these schools have agreed to charge you the same amount for your program as reflected in your Westwood enrollment agreement. But, if a school has a lower tuition cost than Westwood, you will get the benefit of that lower tuition. Unless completion of this term will allow you to graduate from Westwood, you will get your degree from the partner school to which you transfer. That school will provide you with career services and will maintain your academic records. It is important that you continue on track to complete all of your courses for the January Term. This will make for a smoother transition, and lower your future cost of attendance. Everyone at Westwood College remains focused on your goal of graduation. Some of you will be graduating at the end of the current term and we look forward to helping you celebrate this great accomplishment in your life.

We could not be prouder of our current students and future graduates. This has been a tough time on all of us - students, faculty and staff alike - and we have appreciated your patience as we developed the best possible transition plan for your academic future. It has been our greatest privilege to see you grow and develop through your academic experience at Westwood. Thank you for your commitment to Westwood and for allowing us the privilege to know and educate you.

As always, if you have any questions please feel free to contact the campus president or other campus staff.

Sincerely,

Lou Pagano
Chief Operating Officer
Alta Colleges

Additional Important Information:

Important notice if you have a Federal student loan: You have separate rights if you have a Federal loan:

You may be eligible for forgiveness (“discharge”) of the federal student loans you received to attend Westwood if one of the following happens:

- Westwood closes before you complete your program, or
- If you withdraw from Westwood less than 120 days before Westwood closes.

This Federal discharge will cancel your Federal loan. If you **complete** your program either at Westwood or at another school, you **will not** qualify for this Federal discharge. Westwood encourages you to explore all options for continuation and completion of your education with partner schools before considering a Federal discharge. If you apply for and receive a Federal discharge, you will **forfeit** any Westwood credits earned and these credits **will not** be transferable to a partner school.

For more information on Federal loan discharge eligibility and the application process, go to: studentaid.gov/closedschool.

Exhibit D



ICDC COLLEGE[®]

Corporate Headquarters – Main Campus – Online Campus

6812 Pacific Blvd., Huntington Park, CA 90255

Ph. (323) 277-0240 Fax (323) 277-9284

May 20, 2016

Dear ICDC College Student:

This letter is meant to update you on the closure of ICDC College that was announced on March 31, 2016.

We at ICDC College are committed to your success and want to help you in any way we can to help you succeed. In that regard, we are proud to have worked very hard to reach an agreement with Trident University International to conduct a “teach-out” of your current program. The teach-out plan has received approval of ICDC’s accreditor, Accrediting Commission of Career Schools and Colleges, and Trident’s accreditor, WASC Senior College and University Commission, and it has been acknowledged by the U.S. Department of Education and the California Bureau for Private Postsecondary Education.

In order to conduct the teach-out with a seamless transition for students, Trident agreed to employ many of ICDC College’s instructors and staff, and to offer ICDC’s current programs. There will be no interruption in your education; you will continue to have primarily the same instructors, support staff, and program that you are used to and currently taking at no additional charge beyond the charges agreed to in your enrollment agreement with ICDC. Trident will begin overseeing the teach-out of your courses on May 23, 2016. Should you wish to participate in the teach-out and continue your education, you will login to your account and class in the same manner in which you have always logged into your classes. You are not required to participate in the teach-out with Trident.

In the event that you choose to discontinue your program prior to the closure of ICDC College and not take part in the teach-out, a refund may be requested pursuant to ICDC College’s Refund Policy as found in your Enrollment Agreement and Catalog. In the event you funded any part of your education with Federal Title IV funds, a refund of those funds may be requested pursuant to ICDC College’s Return of Title IV Funds Refund policy which is also found in your Enrollment Agreement and Catalog.

Also, for California residents only, when you enrolled you paid an assessment to the Student Tuition Recovery Fund (STRF). The State of California created STRF to relieve or mitigate economic losses suffered by California residents who were students while attending certain schools regulated by the Bureau for Private Postsecondary Education.

You may be eligible for STRF if you are a California Resident; prepaid tuition, paid the STRF assessment, and suffered an economic loss as a result of any of the following:

1. The school closed before the course of instruction was completed.
2. The school's failure to pay refunds or charges on behalf of the student to a third party for license fees or any other purpose, or to provide equipment or materials for which a charge was collected within one hundred eighty (180) calendar days before the closure of the school.
3. The school's failure to pay or reimburse loan proceeds under a federally guaranteed student loan program as required by law or to pay or reimburse proceeds received by the school prior to closure in excess of tuition or other cost.
4. There was a decline in the quality of the course of instruction within thirty (30) calendar days before the school closed or, if the decline began earlier than thirty (30) calendar days prior to closure, the period of decline determined by the Bureau.
5. An inability to collect on a judgment against the institution for a violation of the California Private Postsecondary Education Act of 2009.

However, no claim can be paid to any student without a social security number or a taxpayer identification number.

The Bureau's physical address is 2535 Capitol Oaks Drive, Suite 400, Sacramento, California, 95833 and its website address is www.bppe.ca.gov.

For more information on Federal loan discharge, go to: <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/closed-school>.

If you choose to participate in the teach-out, you will receive a welcome letter from the President of Trident University International shortly which will provide additional information about the teach-out process.

If you have any questions or need any help with this process please do not hesitate to contact me at (424) 666-5116 or you can e-mail me at rene.nunez@icdcollege.edu.

Yours Very Truly,

Rene C. Nuñez
Vice-President Compliance/Student Relations
ICDC College

Enclosures

Exhibit E

Marinello

SCHOOLS OF BEAUTY

Loan Forgiveness Experts

Call Us At: (844)533-8697

Visit Us At: Marinelloloanaid.com

Email Us At: Info@postgradservices.com

"Loan Forgiveness Experts who get you the most
out of forgiveness"

Exhibit F

RELIEF FOR BORROWERS WHOSE SCHOOLS CLOSED

Robyn Smith

Of Counsel

National Consumer Law Center

Introduction

From the beginning of 2014 through the end of 2018, close to half a million students were blind-sided by the sudden closure of over 1,200 college campuses.¹ According to a study by the *Chronicle of Higher Education*, 88 percent of these campuses were operated by for-profit colleges.² These closures included Corinthian Colleges in

From the beginning of 2014 through the end of 2018, close to half a million students were blind-sided by the sudden closure of over 1,200 college campuses.

2015 (28 campuses),³ ITT Tech in 2016 (130 campuses),⁴ and Vatterott College (15 campuses), Education Corp. of America (70 campuses), and Dream Center Education Holdings (41 campuses of the Art Institutes and Argosy University) in 2018.⁵ In total, five years of school closures upended the lives of 451,270 students, who were disproportionately women, low-income Pell-Grant recipients, and people of color.⁶

These students are not alone. Since the Higher Education Act (HEA) was first amended to make financial aid available to for-profit postsecondary schools, hundreds of thousands of other students have been displaced by school closures.⁷ The exponential growth in the for-profit school sector started in 1978, after the HEA was amended to provide financial aid eligibility to students who had not earned a high school diploma or equivalent, as long as they demonstrated an “ability to benefit” from the training offered

¹ Michael Vasquez & Dan Bauman, *How America's College-Closure Crisis Leaves Families Devastated*, Chron. of Higher Educ. (Apr. 4, 2019), <https://www.chronicle.com/article/how-americas-college-closure-crisis-leaves-families-devastated/>.

² *Id.*

³ Goldie Blumenstyk & Casey Fabris, *Abrupt Closing of Corinthian Campuses Leaves 16,000 Students Scrambling*, Chron. of Higher Educ. (Apr. 28, 2015), <https://www.chronicle.com/article/abrupt-closing-of-corinthian-campuses-leaves-16-000-students-scrambling/>.

⁴ Vasquez & Bauman, *supra* note 1.

⁵ Ashley A. Smith, *The End of ITT Tech*, Inside Higher Educ. (Sept. 7, 2016), <https://www.insidehighered.com/news/2016/09/07/itt-tech-shuts-down-all-campus>.

⁶ Vasquez & Bauman, *supra* note 1.

⁷ See, e.g., David Whitman, The Century Found., Vietnam Vets and a New Student Loan Program Bring New College Scams (Feb. 13, 2017), <https://tcf.org/content/report/vietnam-vets-new-student-loan-program-bring-new-college-scams/?session=1> (describing for-profit school fraud in early 1970s, including a description of for-profit Advance Schools, Inc. which opened in 1970, enrolled 80,000 students at its peak, and closed in April 1975, “leaving behind more than \$100 million in outstanding [federal student] loans (almost \$450 million in today's dollars)”).

by the college.⁸ More unscrupulous schools proliferated in 1986, when Congress increased the annual and aggregate federal student loan limits and removed additional borrower and school limitations.⁹

These changes opened the floodgates to for-profit schools more eager to fill their pockets than provide educations. After 1978, for-profit schools began aggressively recruiting low-income students and people of color outside of homeless shelters, welfare and unemployment offices, and housing projects.¹⁰ They later expanded their aggressive sales tactics in 1988, targeting a new market of recruits—3 million undocumented immigrants who were granted amnesty.¹¹ Between 1982 and 1988, loan volume at for-profit schools increased from \$684 million to \$4.15 billion.¹²

During that same time, many of these schools closed, leaving tens of thousands of low-income students, primarily people of color, with student debt that they were unable to repay, through no fault of their own. The Inspector General of the U.S. Department of Education estimated that between October 1985 and June 1988, 53 schools (some of which had multiple campuses) suddenly closed, leaving about 10,000 students with \$30 million (equal to over \$57 million today) worth of loans they had to repay.¹³

Problems

Until Congress took notice of widespread for-profit school closures and the harm they inflicted on students in 1992, the remedy for these students was largely out of reach. Through 1986, Department of Education (“ED”) regulations for Federally Insured Student Loans (FISLs) allowed students to raise a school’s closure as a defense

⁸ S. Rep. No. 102-58, at 6 (1991), <https://files.eric.ed.gov/fulltext/ED332631.pdf> [hereinafter “Nunn Report”]; Middle Income Student Assistance Act, Pub. L. No. 95-566, § 6, 92 Stat. 2403 (1978) (codified at 20 U.S.C. § 1088), <https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg2402.pdf#page=1>.

⁹ Nunn Report, *supra* note 8, at 6.

¹⁰ *Schools for Scandal*, Consumer Rep. 303, 304 (May 1992) (Appendix A).

¹¹ *Id.*

¹² Nunn Report, *supra* note 8, at 7.

¹³ *Abuses in Fed. Student Aid Programs: Hearings Before the Permanent Subcomm. on the Investigations of the Comm. on Gov’t Affairs*, 101st Cong. 32 (1990), <https://catalog.hathitrust.org/Record/007609802> (testimony of James Thomas, Inspector General, U.S. Dep’t of Educ.) [hereinafter “IG Testimony”].

to repayment if the school made the loan.¹⁴ Although regulations governing pre-1986 Stafford Loans never had such an explicit provision, ED adopted a policy encouraging guaranty agencies to excuse a portion or all of a student's Stafford Loan when a school closed while the student was still enrolled, if the school made the loan.¹⁵

As a practical matter, these defenses were difficult for students to assert. Most students were unaware they could raise school closure as a defense to repayment because neither ED nor guaranty agencies notified them about their rights or created processes through which borrowers could assert this defense. As a result, borrowers typically needed attorney representation in order to assert school closure as a defense to federal debt collection lawsuits.

Borrower Highlight

In 1978, Ms. Hilda Fernandez* was in the 6th grade when she was removed from her home and placed in the foster care system. For the next seven years, Ms. Fernandez moved between foster homes so frequently that she never completed another grade level. As a result, Ms. Fernandez was, and still is, unable to read or write. In 1985, when she turned 18, Ms. Fernandez aged out of the foster care and became homeless. At this time, a recruiter from for-profit Adelphi Business College recruited her off the street, promising that she would be able to complete its computer program and obtain a high-paying job. She obtained \$2500 in federal student loans and enrolled. Shortly after she enrolled, Adelphi suddenly closed. For the next 6 years, she was frequently homeless. In 1986 and 1989, she obtained federal student loans after she was recruited by Pacific Coast College and National Technical College. She dropped out of both programs because she could not read or write. Both the Department and California Attorney General determined that these schools engaged in widespread fraud. Now Ms. Fernandez is unemployed and continues to struggle with homelessness. She remains responsible for paying all these loans. ED recently denied her application for a false certification discharge for the loans she obtained to attend National Technical College.

* The name in this story has been changed to preserve confidentiality

In 1990, the Senate Permanent Subcommittee on the Investigations of the Committee on Government Affairs began an 18-month investigation into the cause of the spike in Guaranteed Student Loan Program ("GSLP") defaults. The cost of defaults, as a percentage of all GSLP program costs, "rose from about 10 percent in FY 1980

¹⁴ 34 C.F.R. § 682.518 (1982) (since rescinded) (Appendix B); see also *United States v. Griffin*, 707 F.2d 1477 (D.C. Cir. 1983).

¹⁵ U.S. Dep't of Educ., Dear Colleague Letter, 89-G-159, Compromise and Write-off Procedures (1989), <https://library.nclc.org/sites/default/files/may1989dearcoll.pdf>.

to 36 percent in FY 1989, and to more than 50 percent in FY 1990.”¹⁶ During this investigation, the Inspector General testified that in the 3-year period ending in 1988, ED had certified 2,000 schools.¹⁷ Of the 500 schools it had put on a watch list, 150 went out of business (including the 53 noted above), “where a large number of students were harmed along the way.”¹⁸ The IG and others testified about numerous instances of widespread fraud among many of these schools.¹⁹ ED, however, had *not* decertified a single one of these 500 schools.²⁰

Based on this and other testimony, the Subcommittee placed the blame for the widespread fraud and school closures on ED. It concluded that “through gross mismanagement, ineptitude, and neglect in carrying out its regulatory and oversight functions, [ED] had all but abdicated its responsibility to the students it is supposed to service”²¹ The Subcommittee determined that the student loan default spike was caused by the “complete breakdown in effective regulation and oversight,” which had opened the door for “major fraud and abuse . . . , particularly at proprietary schools.”²²

The Senators were struck by the injustice of students’ continuing obligation to repay their federal loans, even when they were unable to complete their education due to school closures and, in some cases, the criminal convictions of school management and employees.²³ Senator Nunn and other Senators specifically asked about school closures:

The Senators were struck by the injustice of students’ continuing obligation to repay their federal loans, even when they were unable to complete their education due to school closures and . . . the criminal convictions of school management and employees.

¹⁶ Nunn Report, *supra* note 8, at 1.

¹⁷ IG Testimony, *supra* note 13, at 41-42.

¹⁸ *Id.* at 42.

¹⁹ IG Testimony, *supra* note 13, Parts 1 & 2.

²⁰ *Id.*

²¹ Nunn Report, *supra* note 8, at 33.

²² *Id.* at 11.

²³ *Id.* at 11.

Sen. Nunn: So, even if the student had nothing to do with the problem, went in, in good-faith, borrowed the money, went to school, attended classes, worked hard, and the school goes out of business, they still owe the money?

Mr. Thomas: That is correct, sir.²⁴

The Subcommittee further recognized the suffering this policy caused closed school students, stating “should the student eventually default, he or she is no longer eligible for Title IV student financial aid and can encounter

future credit problems, tax refund seizures, and/or difficulties with collection agencies.”²⁵

... [I]n 1992 Congress enacted the closed school discharge provision to hold students harmless for the debts incurred if their school shut down.

Based on these findings, in 1992 Congress enacted the closed school discharge provision to hold students harmless for the debts incurred if their school shut down.²⁶ Through the HEA amendments of 1992, Congress mandated that ED “shall discharge a borrower’s liability on a loan” if the student “is unable to complete the program in which such

student is enrolled due to the closure of the institution”²⁷ The HEA’s closed school discharge mandate applies to loans disbursed on or after January 1, 1986, and covers Federal Family Education Loan Program (FFEL) Loans and Direct Loans, including Parent PLUS Loans, as well as Perkins Loans.²⁸

²⁴ IG Testimony, *supra* note 13, at 32.

²⁵ Nunn Report, *supra* note 8, at 11; *see also id.* at 10. (“[T]hese students have to pay for an education they never received. Lacking proper training, [they] are not able to get jobs by which they can repay [their] federally guaranteed loans and thus suffer the added humiliation of seeing their credit ratings destroyed in the process.”) (quoting Sen. Roth).

²⁶ *See, e.g.*, H.R. Rep. No. 102-447, at 52 (1992), *reprinted in* 1992 U.S.C.C.A.N. 334, 385 (“The Committee heard testimony that many institutions of higher education have closed over the past several years, leaving thousands of low-income students unable to complete their education and yet obligated to repay student loans, which the institutions received on their behalf. These students did not receive any credentials and in fact often received little or no training. . . . The Committee is concerned that these students are in double jeopardy: they are deprived of the training for which they incurred the original loan obligation and they are also barred from receiving the future Federal aid necessary to acquire training to obtain a job in order to repay the loan. . . . The Committee desires in cases where a school closes during the middle of a borrower’s course of instruction . . . the Secretary shall discharge the borrower’s liability by repaying the amount owed on the loan.”).

²⁷ 20 U.S.C. § 1087(c)(1) (emphasis added).

²⁸ *Id.* (FFEL Loans); 20 U.S.C. § 1087e(a)(1) (Direct Loans have the same terms and conditions as FFEL Loans unless otherwise specified); 20 U.S.C. § 1087dd(g)(1) (Perkins Loans, including National Direct Student Loans).

A. Regulatory Narrowing

Given Congress's clear intent to rectify the harms perpetrated upon thousands of vulnerable students by the sudden closure of for-profit schools, the HEA's affirmative discharge mandate is remedial. As such, ED should have liberally and expansively construed the provision to effectuate Congress's intent.²⁹ Instead, ED adopted regulations in 1994 that imposed an affirmative application requirement for closed school discharge eligibility.³⁰ It did so even though ED and guaranty agencies were able to identify, based on their own records, students who were eligible for loan discharges due to school closures between January 1, 1986 and August 29, 1994.³¹ In imposing an application requirement, ED impermissibly narrowed the remedial impact of the closed school discharge provision and disregarded the plain wording of the HEA, which does not in any way pre-condition discharge eligibility on the submittal of an application.

ED also went against the recommendations of the participants of three regional meetings conducted prior to the promulgation of the final discharge regulations in 1994. These participants recommended that ED grant closed school discharges to borrowers who are eligible based upon the records of ED or guaranty agencies, without any application requirement.³² Legal aid organizations commented that the low-income students whose schools had closed between January 1986 and late 1994 would likely be difficult to locate because they tended to move frequently (by virtue of housing costs, evictions, homelessness, etc.).³³ In addition, to the extent students received notice of their new discharge eligibility, many would likely have difficulty

In imposing an application requirement, ED impermissibly narrowed the remedial impact of the closed school discharge provision and disregarded the plain wording of the HEA.

²⁹ *Cortez v. Trans Union, L.L.C.*, 617 F.3d 688, 722 (3rd Cir. 2010) (Fair Credit Reporting Act); see also *Atchison v. Buell*, 480 U.S. 557, 562 (1987) (Federal Employers' Liability Act); *Avila v. Rixinger & Assocs., L.L.C.*, 817 F.3d 72, 75 (2nd Cir. 2016) (Fair Debt Collection Practices Act); *Zimmerman v. Puccio*, 613 F.3d 60, 71 (1st Cir. 2010) (Credit Repair Organization Act); *Begala v. PNC Bank, Ohio, Nat'l Ass'n*, 163 F.3d 948, 950 (6th Cir. 1998) (Truth-in-Lending Act).

³⁰ 59 Fed. Reg. 22,462 (Apr. 29, 1994).

³¹ *Id.* (The final FFEL Loan regulation 34 C.F.R. § 682.402(d)(6) required guaranty agencies to identify and notify all borrowers eligible for a discharge due to a school closure between Jan. 1986 and Aug. 24, 1994.).

³² 59 Fed. Reg. 2,486, 2,487 (Jan. 14, 1994) (the record is unclear as to whether the participants in the 4th regional meeting addressed this issue). ED rejected this recommendation primarily on the grounds that it needed sworn statements from borrowers to pursue claims against closed schools. *Id.* at 2,491.

³³ See Stanley Hirtle & Elizabeth Hurst, Legal Aid Society of Dayton, Ohio, Comments on Proposed Rulemaking, 34 C.F.R. pt. 682, 59 Fed. Reg. 2,486 (Feb. 11, 1994) (on file with author).

understanding the notices or applications, or would distrust the notices due to years of collection harassment by government servicers and collection agencies.³⁴ For these reasons, any application requirement was likely to significantly reduce the number of eligible students who would actually receive the closed school discharges mandated by Congress. This is exactly what happened. Legal services organizations across the country continue to see clients whose schools closed as many as 35 years ago and who have no idea they are eligible for a discharge.³⁵

Borrower Highlight

When she was just 18 years old in 1991, Ms. Julie Dolber* saw flyers posted in her Central Los Angeles neighborhood offering security guard training. Ms. Dolber visited the school, the for-profit college Brookline Technical Institute in Anaheim. Based on its promises of providing a high-quality education and job placement program that would lead to a lucrative career in private security, Ms. Dolber obtained \$4,625 in federal student loans to enroll in its security guard program. During the few months that she attended, various signs indicated that the school was struggling financially. The buses used to transport the students from her neighborhood to Anaheim were downgraded from privately chartered coach buses to standard yellow school buses, and then to passenger vans. She also heard teachers complaining that their paychecks were bouncing. A few months later, Ms. Dolber arrived at the school and found herself locked out. The school had closed. Ms. Dolber sought the assistance from a legal services organization in 2016, after the government had seized a federal income tax refund to repay her defaulted federal loans.

Although the organization applied for a closed school discharge on Ms. Dolber's behalf, ED denied it on the grounds that Ms. Dolber had no proof that she was enrolled at Brookline Technical Institute when it closed. The legal services organization was able to obtain an old document, from the now-defunct California agency that had guaranteed her student loans, with the dates of her attendance. After the organization submitted this additional evidence, ED finally granted Ms. Dolber's closed school discharge application. The Department discharged approximately \$19,000 in outstanding student loan debt and refunded Ms. Dolber \$7,800.

* The name in this story has been changed to preserve confidentiality

³⁴ *Id.*

³⁵ See Nat'l Consumer Law Ctr., Comments from the Legal Aid Community to the U.S. Dep't of Educ. re: Proposed Regulations on Borrower Defenses and Use of Forced Arbitration by Schools in the Direct Loan Program, and Proposed Amendments to Closed School and False Certification Discharge Regulations, at 53 (Aug. 1, 2016), https://www.nclc.org/images/pdf/special_projects/sl/comments_legal_aid_docketid-ED-2015-OPE-0103.pdf.

For schools that closed after 1994, low rates of students who are eligible for closed school discharges actually receive them due to ED's application requirement. In 2016, ED admitted that although it and guaranty agencies attempt to notify all eligible borrowers of their closed school discharge rights, "[m]any borrowers eligible for a closed school discharge do not apply."³⁶ In May 2019, ED data showed that low percentages of eligible borrowers from each of the following schools, all of which closed in the last 7 years, had received closed school discharges:

Institution	Percent of Eligible Borrowers Who Received Closed School Discharges ³⁷
Charlotte Law School	47%
ITT Tech	34%
Dream Center Education Holdings	28%
Vatterott College	19%
Education Corporation of America	16%

Prior to the 2010s, when ED and guaranty agencies had far less access to up-to-date student contact information and fewer ways to contact them, the application and discharge rates were probably much lower. In 2014, an ED official stated that prior to 2014 ED typically received closed school discharge applications from only 6 percent of eligible borrowers.³⁸

B. Reluctance to Exercise Automatic Discharge Authority

The closed school discharge regulations explicitly give ED, guaranty agencies (with ED permission), and Perkins Loan holders (also with ED permission) discretion to grant automatic closed school discharges, without any borrower applications, if they determine that an individual borrower or a group of borrowers is eligible based on

³⁶ 81 Fed. Reg. 39,330, 39,369 (June 16, 2016).

³⁷ U.S. Dep't of Educ., Responses to Questions Submitted by Sen. Patty Murray: Post-Publication QFR Responses for Sen. Appropriations Comm., at 1 (May 16, 2019), <https://www.help.senate.gov/imo/media/doc/SenMurrayQFRresponses32819LHHShearing.pdf>.

³⁸ Paul Fain, *Best of a Bad Situation?*, Inside Higher Ed (Dec. 9, 2014), <https://www.insidehighered.com/news/2014/12/09/feds-respond-criticism-bid-ecmc-buy-most-corinthian>.

information in their possession.³⁹ Yet, despite the abysmal application response and closed school discharge rates, we are aware of no instances in which ED exercised the authority under these regulations.

ED exercised its discretion for the first time by enacting an automatic closed school discharge regulation in 2016. This regulation required automatic discharges for all students who, according to ED records, were unable to complete their programs due to a school closure on or after November 1, 2013 and who had not re-enrolled in another Title IV eligible postsecondary institution within 3 years of the school closure.⁴⁰ It enacted similar regulations applicable to FFEL Loans and Perkins Loans.⁴¹ As of December 2019, ED had provided over \$300 million in automatic closed school discharges to about 30,000 borrowers.⁴²

In 2014, an ED official stated that prior to 2014 ED typically received closed school discharge applications from only 6 percent of eligible borrowers.

Notably, this data demonstrates the need for automatic closed school discharges—30,000 is an enormous number of borrowers who were eligible, but failed to apply for, closed school discharges. Absent ED's decision to grant automatic discharges, they would be suffering from the burden of loan repayment and the consequences of default.

ED repealed this provision in 2019, such that the regulations will no longer require ED to provide automatic discharges to students whose schools close on or after July 1, 2020.⁴³ This is especially troubling given that thousands of colleges, struggling with the adverse economic impacts of the COVID-19 pandemic, are likely to close in the coming months.

³⁹ 34 C.F.R. § 682.402(d)(8)(i) (FFEL Loans); 34 C.F.R. § 685.214(c)(2)(i) (Direct Loans); 34 C.F.R. § 674.33(g)(3)(i)(B) (Perkins Loan).

⁴⁰ 34 C.F.R. § 685.214(c)(2)(ii) (Direct Loans).

⁴¹ 34 C.F.R. §§ 682.402(d)(8)(ii) (FFEL Loans), 674.33(g)(3)(ii) (Perkins Loans).

⁴² Federal Student Aid, Federal Student Aid Posts New Reports to FSA Data Center, U.S. Dep't of Educ. (Feb. 19, 2020), <https://ifap.ed.gov/electronic-announcements/021920fsapostsnewreportstofsadatacenter>.

⁴³ 84 Fed. Reg. 49,788, 49,889 (Sept. 23, 2019).

C. Reluctance to Expand Pre-Closure Withdrawal Eligibility Period

Current regulations require ED to discharge the loans of all borrowers who withdraw within 120 or 180 days, whichever is applicable, of school closure.⁴⁴ The regulations also grant ED broad discretion to extend the pre-withdrawal eligibility period, or “look-back period,” based on extenuating circumstances, for as long as it deems necessary.⁴⁵ The regulations do not define extenuating circumstances, but provide examples of the type of conduct or events that cause or indicate significant deterioration in educational services prior to closure, such as loss of accreditation or the discontinuance of a majority of a school’s programs.⁴⁶ These examples are explicitly non-exhaustive.⁴⁷

The extenuating-circumstances provision was enacted to ensure that students who withdraw prior to a school’s closure due to the deterioration of educational services are able to obtain discharges.⁴⁸ In anticipation of closing, schools often fail to maintain necessary equipment and facilities, stop paying instructor wages, fail to replace

In anticipation of closing, schools often fail to maintain necessary equipment and facilities, stop paying instructor wages, fail to replace instructors who depart, and discontinue programs before students have completed them.

instructors who depart, and discontinue programs before students have completed them. As the GAO recently noted, “research has indicated that a school’s financial struggles can have negative effects on its operations. For example, two studies that we reviewed found that financial shortfalls can cause schools to reduce course offerings and increase class sizes. Two other studies have also found that declines in schools’ resources per student can result in reduced student supports and lower rates of graduation.”⁴⁹

⁴⁴ 34 C.F.R. § 682.402(d)(1)(i) (withdrawal period of 120 days for FFEL Program Loans); 34 C.F.R. §§ 685.214(c)(1)(i)(B), (c)(2)(i)(B) (for Direct Loans disbursed prior to July 1, 2020, withdrawal period of 120 days; for Direct Loans disbursed or after that date, withdrawal period of 180 days); 34 C.F.R. § 674.33(g)(4)(i)(B) (withdrawal period of 120 days for Perkins Loans).

⁴⁵ 34 C.F.R. §§ 682.402(d)(1)(i) (FFEL Loans); 685.214(c)(1)(i)(B), (c)(2)(i)(B) (Direct Loans); 674.33(g)(4)(i)(B) (Perkins Loans).

⁴⁶ 34 C.F.R. § 685.214(c)(1)(i)(B) (Direct Loans for schools that closed prior to July 1, 2020).

⁴⁷ 34 C.F.R. §§ 682.402(d)(1)(i) (FFEL Program Loans); 685.214(c)(1)(i)(B), (c)(2)(i)(B) (Direct Loans); 674.33(g)(4)(i)(B) (Perkins Loans).

⁴⁸ 59 Fed. Reg. 2,486, 2,488 (Jan. 14, 1994).

⁴⁹ U.S. Gov’t Accountability Off., GAO-17-555, Higher Education: Education Should Address Oversight and Communication Gaps in its Monitoring of the Financial Condition of Schools, at 28 (2017), <https://www.gao.gov/products/GAO-17-555> (citations omitted).

Schools also engage in misconduct designed to keep them in business and reduce liability for closed school discharges.⁵⁰ They often conceal their financial precarity by refusing to pay living “stipends” from Title IV funds to students, while reporting that those funds have been paid; reporting that students have completed their programs, when in fact they have not; concealing that students have withdrawn in order to keep Title IV funds that should be refunded; and failing to report students who are on leaves of absence when the school closes. In his testimony before the Senate Subcommittee in 1990, the Inspector General detailed multiple schools that had illegally reported that students were enrolled, when in fact they had withdrawn, in order to keep Title IV funds they were legally required to refund.⁵¹ More recently, before it closed, Argosy University kept over \$13 million in Title IV living stipends intended for students, and spent it on payroll and other overhead expenses, while concealing this fraud from ED by altering financial records.⁵²

ED rarely lengthens the 120- or 180-day look-back period. It has done so only in extreme circumstances, such as after the implosion of Corinthian Colleges.⁵³ This means that many students aware of these look-back periods are forced to stay enrolled, even when they cannot afford to do so because they have not received their living stipends or they are unable to learn anything because instructors are absent, facilities are not available, computers and instructional equipment have broken down, or small classes are merged into large and unmanageable classes containing a mix of beginning and advanced students. Those who are unaware of the look-back periods and who drop out due to deterioration in their programs but do so before the look-back period is triggered, are ineligible for closed school discharges.

⁵⁰ The HEA requires ED to “pursue any claim available to any [borrower who has been granted a closed school discharge] against the institution and its affiliates and principals.” 20 U.S.C. § 1087(c).

⁵¹ IG Testimony, *supra* note 13, at 36 (testimony mentioned, among others, National Technical Schools in Los Angeles; and a barber school that had expanded into teaching masonry programs).

⁵² Vasquez & Bauman, *supra* note 1.

⁵³ ED extended the pre-withdrawal eligibility period back to the date it first put Corinthian Colleges on heightened cash-monitoring status. See Press Release, U.S. Dep’t of Educ., U.S. Department of Education Heightens Oversight of Corinthian Colleges (June 19, 2014), <https://www.ed.gov/news/press-releases/us-department-education-heightens-oversight-corinthian-colleges>; Kelly Field, *Plan to Forgive Corinthian Students’ Loans Gives Hope to Other Borrowers*, Chron. of Higher Educ. (July, 2015), <https://www.chronicle.com/article/plan-to-forgive-corinthian-students-loans-offers-hope-to-other-borrowers/>.

D. ED Has Denied Closed School Discharges Based on Evidence from Fraudulent Schools, While Disregarding the Sworn Testimony of Harmed Students

As noted above, closed for-profit schools often report false information regarding student completions and withdrawals in order to keep Title IV funds and avoid liability for closed school discharges. Schools have reported that students completed their education prior to closure, when in fact they either withdrew or were in attendance but had not completed their education when the schools closed. These schools also make mistakes and provide incorrect federal loan documentation—recording on a promissory note, for example, that a student attended a campus different than the one he or she attended, which may have a later closing date.

Borrower Highlight

In the spring of 1988, Ms. Elena Rogers* was raising a newborn daughter on her own. Hoping to get training for a stable job so that she could support her daughter, Ms. Rogers obtained \$6,625 in federal student loans to enroll in a data entry program at American Business Institute (“ABI”). After about seven months, the school suddenly closed. A federal grand jury had indicted the CEO and 18 employees of Wilfred Education American Corporation, ABI’s owner, for the misuse of federal funds and falsifying loan applications, among other criminal violations.†

Ms. Rogers did not know about her eligibility for a closed school discharge. For over 30 years she struggled to make her federal student loan payments. Ms. Rogers finally sought help from a legal services organization in 2018 because the government was demanding payment of over \$26,000, and she was concerned about her wages being garnished. After discovering that a default judgment had been entered against her, the legal services organization submitted a closed school discharge application on Ms. Rogers’ behalf. ED denied the application on the grounds that ABI had reported that she had completed her program. ED essentially disregarded Ms. Rogers’ credible sworn statements and relied on completion information reported by a school run by administrators who were convicted of submitting false information to ED.

* The name in this story has been changed to preserve confidentiality

† Emily S. Rueb, *Suit Seeks Relief for Trade School Students with Years of Debt but No Career*, The New York Times (Feb. 25, 2014), <https://www.nytimes.com/2014/02/26/nyregion/suit-seeks-relief-for-trade-school-students-with-years-of-debt-but-no-diploma.html>.

Despite the fact that students testify under oath that they did not complete their educations while attending particular campuses, ED often disregards their testimony. Instead, ED relies on old electronic data reported by the school to deny discharges, even though ED officials should know, based on prior audits, program reviews, or

investigations, that the school reported false information to ED regarding the payment of refunds, the reporting of student enrollment and completion dates, etc.

Solutions

ED's application requirements and reluctance to use its authority to provide widespread closed school discharges have hindered Congress's broad remedial intent in enacting the HEA's closed discharge mandate. It has caused decades of unnecessary suffering to thousands of students who are clearly eligible for discharges according to the records of ED, guaranty agencies, and Perkins Loan holders. ED's narrowly drafted regulations, combined with its reluctance to grant widespread automatic discharges, has trapped borrowers harmed by school closures in poverty and prevented them from obtaining quality higher educations that would give them the skills they need to find better jobs and improve the well-being of their families.

ED's narrowly drafted regulations, combined with its reluctance to grant widespread automatic discharges, has trapped borrowers harmed by school closures in poverty

As detailed above, ED has the obligation, under the mandatory language of the HEA discharge provision, to rectify this injustice by granting automatic discharges to these students. ED should use its existing statutory and regulatory authority to discharge, without borrower applications, all federal loans for students⁵⁴ who, according to information within its possession, or the possession of a guaranty agency or Perkins Loan holder, were unable to complete their educational programs due to school closures, as specified in this section.

ED's Federal Student Aid system, including the National Student Loan Data System, should include all the following information for Direct Loan, FFELP Loan and most Perkins Loan borrowers: (1) dates the loans were disbursed; (2) schools to which they were disbursed; (3) the last date of a borrower's attendance at the school, including whether a borrower withdrew or did not complete due to a school closure; (4) whether a borrower subsequently obtained Title IV financial aid to attend another postsecondary school and, if so, whether the

⁵⁴ ED should also grant discharges to any parents or guardians who obtained Parent PLUS loans on their behalves, which is also required by the HEA. See *supra* note 27.

borrower completed that program. ED, as well as guaranty agencies and Perkins Loans holders, should therefore have all the data necessary to identify eligible borrowers.

A. Automatic Discharges for Borrowers Whose Loans Were Disbursed Before January 1, 1986

As set forth in above, ED has authority to grant closed school discharges of FISL and Stafford Loans that were disbursed before January 1, 1986. Based on this authority, combined with its settlement and compromise authority,⁵⁵ ED should grant full loan discharges (cancellation of all outstanding debt, refunds of all amounts paid on loan by borrower, and removal of negative credit history) to FISL or Stafford Loan borrowers who (1) did not complete their programs and (2) were in attendance within one year prior to their school's closure or were in attendance on or after the date their schools lost Title IV eligibility, whichever date is earlier.

B. Automatic Discharges for Borrowers Whose Loans Were Disbursed in Whole or in Part on or After January 1, 1986 and Prior to July 1, 2020

The closed school regulations governing FFEL, Direct, and Perkins Loans allow ED, guaranty agencies (with ED permission), and Perkins Loan holders (with ED permission) to grant closed school discharges, *without an application*, if ED determines that an individual borrower or a group of borrowers are eligible based on information in their possession.⁵⁶ ED should use this existing authority to grant discharges as follows.

⁵⁵ See 34 C.F.R. § 30.70. For an in-depth description of ED's authority to settle and compromise student loans, see Letter to Sen. Elizabeth Warren from Eileen Connor, Deanne Loonin & Toby Merrill (Jan. 13, 2020), <https://static.politico.com/4c/c4/dfadddb94fd684ccfa99e34bc080/student-debt-letter-2.pdf.pdf>.

⁵⁶ 34 C.F.R. §§ 682.402(d)(8)(i) (FFEL Loans), 685.214(c)(3)(i) (Direct Loans), 674.33(g)(3)(i)(B) (Perkins Loan).

1. Borrowers Whose Schools Closed Between January 1, 1986 and August 29, 1994⁵⁷

ED should grant discharges to all students who (1) did not complete their programs due to the closure of one of the ten correspondence schools identified in a 1997 Dear Colleague Letter and (2) were enrolled in, or on a leave of absence from, the school during the extended pre-closure withdrawal periods set by ED.⁵⁸

For all other schools that closed between January 1, 1986 and August 29, 1994, ED should provide closed school discharges to all borrowers who (1) did not complete their programs at the school due to its closure and (2) were enrolled in, or on a leave of absence from, their school after one of the following dates, whichever is earliest: within one year prior to their school's closure; within any longer look-back period prior to their school's closure previously set by ED; or within any longer period set by ED in the future based on evidence of school misconduct.

ED should liberally construe the remedial extenuating-circumstances regulation and extend the look-back period, for schools closed between January 1986 and August 1994, to at least one year prior to closure. The Senate Subcommittee heard testimony of multiple witnesses, including the Inspector General, detailing years of egregious for-profit school fraud that went undetected by ED.⁵⁹ The Subcommittee concluded that this fraud and the subsequent school closures were caused by ED's "gross mismanagement, ineptitude, and neglect in carrying out its regulatory and oversight functions."⁶⁰ Many students likely withdrew long prior to these school closures because the fraudulent schools provided little or no actual training. ED should also extend the pre-withdrawal eligibility period beyond one year whenever it has evidence of misconduct prior to school closure.

Current regulations bar closed school discharge eligibility if a student completes the same or comparable program through a teach-out or after the transfer of even one credit to another institution.⁶¹ These teach-out and

⁵⁷ Guaranty agencies and lenders were required by the 1994 regulations to identify and notify all borrowers who were eligible for discharges based on the closure of schools between January 1, 1986 and August 29, 1994. 34 C.F.R. §§ 682.402(d)(8)(i). See also, U.S. Dep't of Educ., Dear Colleague Letter, 94-L-166/94-G-256, Guidance Concerning Closed School and False Certification Loan Discharges and Relief for Unauthorized Endorsements in the Federal Family Education Loan (FFEL) Program (Sept. 1994), <http://library.nclc.org/companion-material/file/94-L-166.pdf>.

⁵⁸ U.S. Dep't of Educ., Dear Colleague Letter, 97-L-197/97-G-300 (July 1997), <https://ifap.ed.gov/dear-colleague-letters/07-01-1997-97-g-300-letter-provides-guidance-concerning-closed-school-loan>.

⁵⁹ See *Abuses in Fed. Student Aid Programs*, *supra* note 20.

⁶⁰ Nunn Report, *supra* note 8, at 33.

⁶¹ See, e.g., 34 C.F.R. §§ 685.214(c)(1)(i)(C), (c)(2)(i)(C) (Direct Loans).

credit-transfer bars to discharge eligibility have unfairly prevented deserving students from receiving closed school discharges.

This regulation was applied retroactively to students whose schools closed prior to August 29, 1994. Doing so was contrary to both the intention and plain language of the HEA discharge provision, which included no language regarding teach-outs. It is likely that many students received little or no training from teach-outs they completed prior to 1994, when teach-outs were typically offered by the same for-profit schools that ED had allowed to engage in major fraud and abuse. In its comments to the 1994 proposed regulations, one legal aid office recommended that ED “be suspicious of teach-outs.”⁶² As an example, it cited a teach-out that “was voluntarily carried out by the school’s teachers without support after management fled.”⁶³

While states and accreditors should oversee and approve teach-outs to protect already harmed closed school students, the Subcommittee hearings revealed that states and accrediting agencies had neglected their duty to oversee for-profit schools and allowed them to commit fraud.⁶⁴ There were no federal or state minimum requirements for teach-out schools, nor any definition of a teach-out in federal law. Because legal aid organizations were concerned about the lack of oversight of teach-outs based on their experiences, they commented that “certain minimum criteria must be present for a teach-out to be meaningful to the student and to provide a legitimate basis for excluding borrowers for discharge eligibility.”⁶⁵ Recommended minimum criteria included review and approval by the state licensing agency.⁶⁶ Although ED rejected this proposal.

Moreover, few students were able to transfer all their credits to another school prior to 1994. At the time, schools typically only accepted a few credits and required students to re-earn the remaining credits they had already completed. While we do not have data for that period, the U.S. Government Accountability Office recently studied

⁶² Hirtle & Hurst, *supra* note 33, at 5.

⁶³ *Id.*

⁶⁴ In his testimony, the IG also described how both states and accrediting agencies had failed to oversee schools, detect and stop fraud, or take any other actions to protect students. See IG Testimony, *supra* note 13 at 33, 41.

⁶⁵ Comments submitted by Nat’l Consumer Law Ctr. and Other Legal Services Organizations to Dep’t of Educ. 10 (Feb. 14, 1994) (on file with author).

⁶⁶ *Id.*

the transfer of credits between 2004 and 2009. It reported that that only 4 percent of students were able to transfer credits from for-profit to public schools and that:

. . . [S]tudents who transferred from for-profit schools to public schools lost an estimated 94% of their credits. Even if a student's credits transfer, they may not apply toward fulfilling degree requirements for their intended major. In these cases, a student will likely have to take additional courses at their new school, which could potentially delay graduation and result in additional costs to pay for repeated courses.⁶⁷

Nonetheless, under ED's policies, students who transferred even just one credit were still on the hook for all the loans paid to the closed school, even when they were required by their new school to retake previously completed classes.

ED should therefore grant automatic discharges to students whose schools closed between 1986 and August 1994 *regardless* of whether the student completed the same or similar program through a teach-out or by transferring credits. The minimal potential cost of granting discharges to these borrowers, a few of whom may have completed decent teach-outs or transferred all their credits to another school, is counterbalanced by the enormous benefit of granting discharges to the large majority of borrowers who were truly harmed by for-profit school closures prior to August 29, 1994.

2. Borrowers Whose Schools Closed Prior between August 29, 1994 and the Present

For schools that closed between August 29, 1994 and the present, ED should provide automatic closed school discharges to all borrowers who (1) did not complete their programs at the school and (2) were enrolled or on a leave of absence when the school closed, or withdrew within 120 or 180 days, whichever is applicable, or any longer period specified by ED, prior school closure; (3) did not subsequently complete a program at another Title IV-eligible school; and (4) are not currently enrolled in a Title IV-eligible program.

⁶⁷ U.S. Gov't Accountability Off., GAO-19-553T, GI Bill: Veterans Affected by School Closures 9 (June 19, 2019), <https://www.gao.gov/assets/700/699817.pdf>.

In addition, using its extenuating-circumstances authority, ED should, at a minimum, extend the pre-closure withdrawal eligibility period for all closed schools to the date of the event, if any, that led to a school's financial instability and eventual closure. ED should undertake a review of all school closures to determine whether any meet the following criteria and, if so, extend the pre-withdrawal eligibility period to the date indicated:

- (1) The date that ED put the school on heightened cash-monitoring (HCM) status, if the school was not subsequently restored to full eligibility without monitoring prior to closure. ED has done this before, including by extending the closed school pre-withdrawal eligibility period for Corinthian students back to June 20, 2014, the date upon which it placed Corinthian's schools on HCM status.⁶⁸ ED should do the same for the schools owned by Education Corporation of America (ECA), which was placed on HCM status in March 2015 and closed in December 2018, and ITT Tech, which was placed on HCM status in August 2014 and closed in September 2016;⁶⁹
- (2) The date that an institutional accrediting agency revoked accreditation or put the school on probation, issued an order to show cause, or took other adverse public action which was not lifted prior to the school's closure. This includes Charlotte Law School, whose accreditor, the American Bar Association, placed it on probation on February 3, 2016, and which subsequently closed on August 10, 2017.⁷⁰
- (3) The date of any adverse judgment, whether stipulated or based on a contested proceeding, obtained by ED, another federal agency, or by one or more state attorneys general against the school for state or federal violations that required a payment that adversely impacted the school's finances. This includes the Art Institutes, Argosy University, South University, and Brown-Mackie Colleges, which were owned by Education Management Corporation (EDMC). On November 16, 2015, a federal court entered a Consent Judgment ordering EDMC to pay \$95.5 million to ED and several states for its illegal scheme to pay incentive compensation to recruiters based on the number of students they enrolled.⁷¹ This judgment was the beginning of the end for these schools. It led to the closure of 22 Brown-Mackie campuses in

⁶⁸ See *supra* note 51.

⁶⁹ Alex Elson, Student Defense, Justice at Last 4-6 (Oct. 2020), <https://www.defendstudents.org/news/body/docket/100-Day-Docket-Expanding-Debt-Relief.pdf> (my thanks to Alex and the National Legal Defense Network for making similar recommendations and doing the research on these dates and the schools that started their descent to closure) (citations omitted).

⁷⁰ *Id.* at 3 (citations omitted).

⁷¹ *Id.* at 4 (citations omitted).

June 2016, and the sale of most other campuses to the Dream Center Foundation. Most of these campuses closed in December 2018 and March 2019.⁷²

- (4) If ED denied a school's application seeking to renew Title IV eligibility (re-certification) or revoked a school's Title IV eligibility, the earliest date of the school's violations underlying these decisions. This includes Medtech College, which closed immediately upon ED's denial of its application for recertification on July 26, 2016. ED's denial was based on substantial misconduct that occurred in 2014 (and possibly earlier).⁷³

C. Borrowers Previously Denied Closed School Discharges

To the extent that ED, a guaranty agency, or a Perkins Loan holder previously denied an application for any students who meet the criteria described above, ED should reassess those applications and grant discharges whenever a borrower's application establishes eligibility, regardless of any contradictory electronic information or incorrect paperwork provided by the school.

D. Closed School Discharge Notifications to Borrowers Who Do Not Meet the Above Criteria

ED should also notify borrowers who do not appear to meet the above eligibility criteria about their potential eligibility. This is necessary to account for past ED errors, as well as the possibility that ED, guaranty agencies, and Perkins Loan holders may miss borrowers who are eligible for automatic discharges per the above criteria. It is also necessary for students who would have been eligible, but who were denied discharges due to either (1) ED's overly narrow closed school discharge regulations or (2) ED's reliance on false or incorrectly reported information from fraudulent schools. Finally, there may be borrowers who completed a subsequent program by transferring credits to another school, but who should qualify for a discharge because that program was not the same or comparable to the program in which they were enrolled at the closed school.

⁷² *Id.* (citations omitted).

⁷³ *Id.* at 6-7 (the evidence underlying ED's denial of Medtech College's application is not publicly available, and may pre-date 2014) (citations omitted).

ED should notify all students who attended closed schools within the applicable pre-withdrawal eligibility periods, but who do not meet the criteria outlined above according to ED, guaranty agency, or Perkins Loan holder records, of their potential eligibility for discharges. This includes students who were reported as completing their programs during that time period, as some schools falsely report student completions in order to illegally keep financial aid that they are required to refund and to avoid liability to ED.

ED should send a simple one-page closed school loan discharge application and one-page letter explaining eligibility criteria and submission instructions to all such students. The cover letter and application should be available in all languages in which closed schools provided instruction. The application should request only necessary information—the student’s or borrower’s Social Security number and contact information; the school the student attended; the last date of attendance; whether the student completed his/her program; and, if not, whether the student was in attendance when the school closed, was on an approved leave of absence when it closed, or had withdrawn within the applicable time period prior to the school’s closure. ED, guaranty agencies, and Perkins Loan holders should suspend all collection activity for at least 90 days after sending the letter and application.

If such a borrower submits a sworn application that meets the discharge criteria described in this paper, ED should grant the discharge if (1) there is no evidence contradicting the borrower’s statement or (2) the only evidence contradicting the borrower’s application is information reported by a fraudulent school.

E. Borrowers Whose Schools Close on or After July 1, 2020

Finally, ED should immediately implement an automatic closed school discharge policy for students whose schools close on or after July 1, 2020, and who (1) do not re-enroll in any Title IV-eligible program within one year or (2) re-enroll in a Title IV-eligible program but withdraw within 1 year. While ED repealed the automatic discharge regulation it had enacted in 2016, it need not re-enact a similar regulation in order to implement this policy. As ED itself noted, it “already has the authority to grant a [closed school] discharge without an application . . . at [its] discretion, and, therefore, we do not believe that it is necessary to establish . . . a requirement that [ED] grant automatic closed school discharges.”⁷⁴

⁷⁴ 83 Fed. Reg. 37,242, 37,267 (July 31, 2018) (citing 34 C.F.R. §§ 682.402(d)(8) (FFEL Loans), 685.214(c)(2) (Direct Loans), and 674.33(g)(3)(ii) (Perkins Loans)).

Conclusion

ED continues to engage in the onerous collection of student debt owed by thousands of borrowers who are or should be eligible for closed school discharges based on its own records, or the records of other loan holders. Many of these borrowers—for-profit school students who are primarily low-income people and people of color—have endured onerous debt collection for decades. Many have paid the principal and more on their loans through wage garnishment, Social Security offsets, and other types of involuntary collection, yet still owe ED far more than they ever borrowed in interest and collection fees.

There is little to be gained by continuing to wage this economic war on poor people who were harmed, through no fault of their own, by school closures caused by ED's neglect, mismanagement and outdated monitoring tools. Pursuing this largely impoverished group of students who were failed by ED and their schools costs the government time and money and is unlikely to produce substantial collections.

Instead of construing the closed school discharge provisions narrowly, ED should change course and comply with its statutory mandate to grant broad and automatic closed school discharges as initially intended by Congress.

There is little to be gained by continuing to wage this economic war on poor people who were harmed, through no fault of their own, by school closures caused by ED's neglect, mismanagement, and outdated monitoring tools.