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April 9, 2015

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

Dear Secretary Duncan,

We, the undersigned Attorneys General of Massachusetts, California, Connecticut, Illinois, Kentucky, New Mexico, New York, Oregon and Washington, write to urge the Department of Education to immediately relieve borrowers of the obligation to repay federal student loans that were incurred as a result of violations of state law by Corinthian Colleges, Inc. ("Corinthian"). We also write to request that the Department work with state attorneys general to establish a clear system for student borrowers to seek relief from the Department—as allowed under statute, Department regulations, and loan terms—when schools break the law.

The United States Department of Education plays a crucial role in providing Americans access to post-secondary education. The Department's Office of Federal Student Aid provides more than $150 billion in federal loans and grants to over 13 million students each year, the foundation upon which residents in every state pursue higher education.

This federal investment in education continues to grow. Forty million Americans have an outstanding student loan, up from 29 million in 2008. Borrowers carry an average balance of $29,000 in student loan debt. Nationwide, student loan debt now stands at $1.2 trillion, representing an increase of more than 150% since 2005. The scale of our investment demands that the Department and States work cooperatively to counter fraud and abuse within our higher education funding system.

Our greatest concern comes from certain large, predatory for-profit schools that are actively undermining our federal loan programs, depriving students of the education they promise and that the students deserve. These institutions seem to exist largely to capture federal loan dollars and aggressively market their programs to veterans and low-income Americans. As the U.S. Senate Health, Education, Labor and Pensions ("HELP") Committee reported, some for-profit schools "appear to be nothing more than highly efficient government subsidy collectors." The Committee detailed that, during the 2009-2010 school year, for-profit colleges took in $32 billion in taxpayer-backed student aid and spent nearly 25 percent of their revenue on marketing and recruiting, exceeding what was spent on student instruction.

Too often, aggressive recruitment is the only thing these for-profit schools do well. State investigations continue to uncover high-pressure sales tactics coupled with misleading and deceptive marketing that exploit students' hopes and dreams. Dropout rates often top 50 percent, leaving students with enormous debts and nothing to show for it. Even when students do graduate, many find themselves unable to obtain employment in their fields of study and thus unable to repay their loans. Although they enroll only 13 percent of borrowers, for-profit schools account for nearly half of all student loan defaults. Through their predatory practices, these unscrupulous for-profit schools have co-opted a public loan program intended to increase access to higher education and left hundreds of thousands of students in financial ruin. Students and families should not be left to bear the costs.

Fortunately, it is within the Department's existing legal authority to help students who have been harmed by these schools. The Higher Education Act, Department regulations, and federal student loan documents all make clear that students can assert legal claims against schools as a defense to loan payments. Moreover, you recently indicated that even students who have not defaulted on their federal student loans may assert defenses to repaying those loans where schools broke state law by deceiving students and failing to provide promised education or services.[1]

On December 9, 2014, a group of United States Senators wrote to ask the Department to use its authority to discharge the loans of students enrolled in Corinthian programs and to establish clear procedures for borrowers to assert their rights when schools break the law. On February 4, 2015, the Massachusetts Attorney General wrote to urge the Department to exercise its authority under statute, Department regulations, and loan contracts to assist student borrowers. The undersigned state Attorneys General join in urging the Department to cancel the loans of students who attended Corinthian schools.

As alleged in suits brought by the California, Massachusetts, and Wisconsin Attorneys General and the Consumer Financial Protection Bureau, Corinthian's acts and practices provide its student borrowers with state law defenses to repayment. These cases against Corinthian have unmasked a school that relentlessly pursued potential students—including veterans, single parents, and first-time higher education seekers—promising jobs and high earnings, and preying on their hopes in an effort to secure federal funds. Internal Corinthian documents even describe how its marketing strategy was geared toward prospective students who were "isolated," "impatient," had "low self-esteem," had "few people in their lives who care about them," were "stuck," and were "unable to see and plan well for the future." While focusing on different but

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[1] *See* Letter from Secretary Arne Duncan to Senator Elizabeth Warren (August 4, 2014) ("[T]he Department recognizes as a defense to repayment of Direct Loans a claim that the borrower has against the school that is based on the making of the loan or the provision of educational services, if State law recognizes such a claim and if the borrower proves the elements required to establish the claim . . . . [T]he borrower is not required to sue or obtain a judgment against the school in order to assert the . . . defense."). To require students to default before they could assert their rights would be neither fair nor appropriate. For one thing, such a requirement would place students in the untenable position of defaulting without a determination that the defense is justified. For another, the cost of defending a collection action or administrative garnishment or similar proceeding may well exceed the value of the loan.

somewhat overlapping areas of conduct, the California, Massachusetts, and Wisconsin enforcement actions together show that, among other things, Corinthian misrepresented to students:

- the urgency of enrollment to secure a spot in a program;
- the school's historical success placing students in jobs in the students' field of study;
- the earnings of graduates;
- the availability of advertised programs;
- the employment assistance the school provides graduates;
- the school's role in its private loan program;
- the nature, character, and quality of educational programs;
- the school's purported affiliation with the United States Military;
- the transferability of credits;
- the availability of externships; and
- the nature and availability of financial aid.

Moreover, California, Massachusetts, and Wisconsin are not the only states concerned with Corinthian's conduct. Corinthian has publicly acknowledged that it received investigative subpoenas from Florida, Illinois, and New York as well as an additional group of states including Arizona, Arkansas, Connecticut, Iowa, Kentucky, Missouri, North Carolina, Oregon, Pennsylvania, Washington and others.[2] There are affected Corinthian students all across the country.

These students deserve relief. While various enforcers are pursuing Corinthian, these actions will not be enough to provide prompt help to Corinthian's victims. The school's liabilities likely exceed its assets, and it has made clear that it plans to file for bankruptcy and will likely try to limit the relief available to students as a result of the enforcement actions. Although the state lawsuits seek broad remedies, given Corinthian's financial position, the surest and most expedient way to help students is to have the Department relieve borrowers of their obligation to repay these federal loans. Ironically, protection through bankruptcy is not as readily available to Corinthian students because of the difficult burden imposed upon consumers who seek to discharge student loan debts.

In addition to addressing Corinthian loans, we also ask that the Department consider the problem more broadly. Deceptive and unlawful conduct in the for-profit school industry extends beyond Corinthian. Students who have attended other for-profit schools which engaged in illegal conduct should be able to assert similar defenses to repayment of their student debts.

For this reason, we ask that the Department work with our offices to clarify what constitutes a borrower defense sufficient to justify cancellation of student loans, and to specify the process for students to assert, and for the Department to recognize, the defense. Current regulations provide some general guidance, but no specifics to help individual student borrowers

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[2] *See* Corinthian Colleges, Inc., 10Q Filing with Securities and Exchange Commission (May 12, 2014).

obtain relief. For example, there is currently not an application form for students to use in asserting breaches of state law as a defense to repayment. Further, although the Department has indicated that borrowers can raise state law defenses to their servicers,[3] there does not appear to be any public guidance on how servicers should evaluate such claims. We believe that our experience working directly with students asserting legal claims, investigating unlawful conduct, and developing and asserting claims under state law will be helpful to the Department. We are eager to partner with you in establishing systems to assist our students in obtaining relief.

We also hope to work with the Department to develop a process when a state investigation finds widespread misconduct that would justify a complete defense to repayment of student loans under the law of the state. In such cases, a unified process brought by state attorneys general asserting violations of state law on behalf of a large number of students would be fairer and more efficient than piecemeal determination of individual claims by those few students who are able to navigate the process on their own. Students attempting to secure relief from their loans based on school misconduct will find it extremely difficult to obtain the information needed to support their cases. Students do not have the resources to investigate their schools and, absent an independent investigation, may not even know they were deceived. Indeed, students who file suit against for profit schools are often forced into arbitration, where the process and outcome are not publicly known. Our offices can provide that information to the Department and are well positioned to evaluate conduct that requires broad relief.

We respectfully suggest that the Department consider implementing either or both of the following processes for discharging federal student loans based on schools' alleged violations of state law, and welcome the opportunity to discuss each in greater detail:

1. The investigative findings of a state attorney general could be considered sufficient to establish borrower defenses to repayment for all students in the relevant cohort(s), and the state's submission of such findings to the Secretary should be sufficient to be recognized as a defense to repayment of the loans of all affected students.

2. The Department could hold an administrative hearing to adjudicate a school's conduct at which a state attorney general's findings would be *prima facie* evidence of misconduct and the attorneys general could be invited to participate.

After the Department recognizes the students' defenses to repayment, state attorneys general would be happy to help the Department and other federal agencies recoup loan balances from schools that committed state law violations and benefitted from unlawful deception.[4]

We are eager to partner with the Department in ongoing work to establish systems allowing students to make defense to repayment. As state attorneys general, we believe our

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[3] *See* Letter from Secretary Arne Duncan to Senator Elizabeth Warren (August 4, 2014), at 4.
[4] 34 C.F.R. § 685.206(c)(3) ("The Secretary may initiate an appropriate proceeding to require the school whose act or omission resulted in the borrower's successful defense against repayment of a Direct Loan to pay to the Secretary the amount of the loan to which the defense applies.")

expertise and familiarity with state law will be a significant resource and we welcome the opportunity to participate in this necessary work on behalf of our students.

Sincerely,

Maura Healey
Massachusetts Attorney General

Hector Balderas
Office of the New Mexico
Attorney General

Kamala D. Harris
California Attorney General

Eric T. Schneiderman
New York Attorney General

George Jepsen
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