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February 4, 2015

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

Dear Secretary Duncan,

I write to express my support for the views of Senators Warren, Blumenthal, Durbin, Hirono, Merkley, Reed, Whitehouse, Baldwin, Boxer, Franken, Markey, Murphy, and Schatz set forth in their December 9, 2014 letter (the "Senators' Letter"). The Senators' Letter asks the Department "to immediately discharge federal student loans incurred by borrowers who have claims against Corinthian Colleges, Inc., including those borrowers covered by the lawsuits filed by the Massachusetts Attorney General" We request that the Department do so promptly, and relieve Massachusetts students of the unlawfully induced debts which Corinthian caused them to incur.

The Massachusetts Attorney General's Office conducted a lengthy investigation of Corinthian Colleges, Inc., with the initial subpoena served in early 2011. Our investigation found that Corinthian engaged in numerous acts of deception and unfairness in violation of Massachusetts' consumer protection laws and the Massachusetts Attorney General's regulations that explicitly address the conduct of career schools. Corinthian relentlessly pursued potential Massachusetts customers, misleading them and preying on their hopes and fears in an effort to secure federal student loan monies. Specifically, our investigation found Corinthian misrepresented to Massachusetts students:

- the urgency of enrollment and the need to enroll immediately in Corinthian schools,
- the school's historical success in finding jobs in the students' field of study,
- the earnings of graduates,
- the employment assistance the school provides graduates,
- the nature, character, and quality of educational programs,
- the transferability of credits,
- the availability of externships, and
- the nature and availability of financial aid.

Our litigation complaint pending in Suffolk Superior Court in Boston provides a variety of examples of these unlawful actions, and also sets forth Corinthian's general systemic plan for deceiving Massachusetts students. Our principal reason for filing our state law enforcement action was and continues to be our desire to help students who were induced by the school's misrepresentations to incur substantial debt which they are now unable to repay. In our view, the violations of state law set forth in the Commonwealth's complaint support a full defense to repayment.

We agree with the Senators' Letter that accountability in this area is essential, both from the standpoint of deterrence and of fairness to students. Schools should not obtain public monies based on actions in violation of state law, and students should not be required to pay for such violations.¹ Based on our investigative findings, we believe the federal loans of Corinthian students in Massachusetts should be canceled. We are willing to assist the Department in any way we can to create a simple and speedy process in order to implement such cancellation.

The need to cancel student loans is particularly acute in Corinthian's case. The school's liabilities likely exceed its assets, and the school has stated that in the absence of a lifeline from the Department it would file for bankruptcy. While our lawsuit, filed last April, seeks full refunds for students (a remedy broader than the cancellation of student loans), given Corinthian's financial position, the surest way to help students will be through cancellation of their federal loans.²

The Department's authority is thus crucial not only to the students burdened with debt as a result of Corinthian's unlawful conduct but also to the states that have conducted investigations of Corinthian. Where state investigations of schools find acts or practices in violation of state law, and where Corinthian's circumstances suggest that litigation may not achieve prompt and meaningful relief, it is essential to provide an efficient mechanism for loan cancellation or forgiveness to students injured by the school's misconduct.

This means, in our view, specifying what constitutes a borrower defense sufficient to justify cancellation of student loans, and, moreover, what process will be used to recognize the defense. The Department's guidance is particularly important where a state investigation finds widespread school misconduct which would justify a complete defense to repayment of student loans under the law of the state. (An example is deceptive statements or misrepresentations on websites or in written materials provided to prospective students.) In such cases, a unified process dealing with a large number of students will be more efficient and much fairer than piecemeal determination of individual claims by those few students able to navigate the process on their own.

We agree with your August 2014 statement in response to a Senate inquiry, in which you noted that students must not be required to default on their loans and then to defend a collection action in court.³ To require students to default before they can 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 (in

¹ Department of Education Letter in Response to Senate inquiry, dated 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").

² While direct recovery from Corinthian poses significant challenges, we are not ruling out successor liability as a means of recompense. However, this raises additional issues under state law.

³ See Footnote 1, *supra*.

Massachusetts, the typical Corinthian loan for graduates was in the \$8,000-10,000 range, and for dropouts, who comprise a substantial portion of students, it was much lower). In cases where state investigations find systematic misconduct involving hundreds of students, it would be inefficient to require each student to separately defend a collection action and to require adjudication of numerous separate actions involving common defenses.

In our view, state attorney general investigative findings of relevant state law violations should be considered sufficient to establish borrower defenses to repayment. In the alternative, the Department may decide to conduct its own investigation of the school's conduct and use an administrative process to establish the borrower defenses.⁴

With respect to the implementation of borrower defenses, we believe that once school misconduct constituting a defense is established, the Department should take appropriate administrative action to cancel the loans. Should the Department need information or testimony from students, our office is available to obtain such information from students in Massachusetts or guide them through the process.

We have worked closely with the Department in providing loan relief for students of for-profit schools entering into consent judgments with our office, and we very much appreciate the assistance repeatedly provided by Department staff. For Corinthian students, however, such relief is not possible. We urge the Department to take action to cancel these students' loans.

I am eager to speak with you about this matter. In the meantime, with any questions please also contact Glenn Kaplan, Chief of the Insurance and Financial Services Division in the Massachusetts Office of the Attorney General, at 617-963-2453.

Sincerely,



Maura Healey
Attorney General of Massachusetts

⁴ This may be a matter in which state enforcers can intervene with the assent of the Department and assist in the prosecution of the matter.