October 29, 2020

ATTORNEY GENERAL RAOUL SUPPORTS PROPOSAL TO REINSTATE AUTOMATIC CLOSED SCHOOL DISCHARGE RULE

Proposal Would Provide Student Loan Relief to Tens of Thousands of Student Borrowers

Chicago — Attorney General Kwame Raoul today expressed support for the proposal by advocacy group Student Defense to reinstate and improve upon the automatic closed school discharge rule. Automatic closed school discharge has benefitted tens of thousands of student borrowers in Illinois and across the country, but was rescinded by the U.S. Department of Education.

"The Department of Education is unfairly limiting relief that should be automatically available to students who took out loans to pay for a school that is now closed," Raoul said. "Through no fault of their own, students have been unfairly burdened with overwhelming debt loads and left without a degree. Student Defense's commonsense proposal would protect students from predatory institutions, provide faster relief for student borrowers, and provide automatic relief to students already facing unprecedented financial hardships and economic uncertainty because of the COVID-19 pandemic."

Closed school discharge is a federal student loan program that allows for the discharge of all loans a student used to pay for a school when the school shuts down and the student is unable to complete their program. Under the borrower defense to repayment rule implemented by the Department of Education in 2016, discharge of the loans is automatic, provided the student does not transfer the credits earned at the school to complete a similar degree. The department, however, changed course, issuing a new version of the rule in 2019 that eliminates automatic discharge, requiring students to apply. Historically, many students in the midst of a school closure are unaware of the right to discharge and thus would not know they need to apply to discharge their student loans.

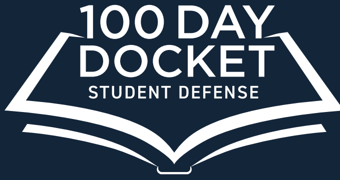
If implemented, Student Defense's proposal would immediately impact Illinois borrowers. For example, because the proposal calls for a shorter waiting period for automatic relief to kick in – down from three years to one year – many student borrowers whose schools closed more than one year ago would receive immediate, automatic relief. In addition, this rule would protect thousands of Illinois students who attend schools that may close in the future, an outcome that is increasingly likely due to the financial pressures caused by the COVID-19 pandemic.

The department's new rule took effect in July 2020, meaning borrowers who attended schools that closed on or after July 1, 2020 will not be eligible for automatic relief. That same month, Attorney General Raoul's office joined a coalition of 23 attorneys general in filing a lawsuit to stop the repeal of the 2016 rule and thereby keep automatic closed school discharge.

In June 2019, Raoul's office called on the U.S. Department of Education to use its discretion to change the closed school discharge eligibility date for students who attended the Illinois Institute of Art. The Illinois Institute of Art lost accreditation in January 2018, but deceived students as to its accreditation until June 2018. It closed in December 2019 but only a handful of its students were eligible for closed school discharge because many had withdrawn six months earlier when the loss of accreditation was exposed. In June of 2019, Raoul's office called on the Department of Education to move back the closed school discharge date to the date the school lost accreditation, January 2018. The department granted the request in Feb. 2020, making hundreds of former Illinois Institute of Art students eligible for closed school discharge. Because the automatic closed school discharge rule was in effect at that time, those students' loans will be discharged

without an application from the students, provided they do not transfer the credits to pursue a similar course of study.

The Illinois Attorney General’s office has long been a national leader in investigating and enforcing consumer protection violations in the higher education field. Attorney General Raoul has overseen the rollout of the state’s first Student Loan Ombudsman, a position created by the Student Loan Servicing Rights Act, to provide resources for student borrowers who are struggling to make student loan payments. Student borrowers who have questions or are in need of assistance can call the Attorney General’s Student Loan Helpline at 1-800-455-2456. Borrowers can also file complaints on the Attorney General’s website.



POLICY BRIEF
October 2020

How to Bring Back and Improve Upon the Automatic Closed School Discharge Rule

In light of the increasing calls for broad-based student loan debt relief, the disproportionate impact that student debt has on minority and low income populations, and the need for increased economic protections and stimulus as a result of the COVID-19 crisis, the United States Department of Education ("Department") must take numerous immediate actions to ensure that student loan borrowers are protected from predatory institutions and institutions that otherwise fail them. One such step is to reinstate and improve upon the Automatic Closed School Discharge Rule ("Automatic CSD Rule"), which was adopted by the Obama Administration as part of the 2016 Borrower Defense Rule, but repealed by Secretary DeVos.

Under the Higher Education Act ("HEA"), the Secretary is statutorily required to "discharge the borrower's liability" on any federal student loan incurred by a student who is "unable to complete the program in which such student is enrolled due to the closure of the institution."[1] The Department's implementing regulations have long required eligible students to apply for the discharge—despite the statutory mandate that the Secretary "shall" discharge the debt of a student who was unable to complete a program due to an institutional closure.

That changed under the Automatic CSD Rule, which provided that a student who was attending a school (or campus) at, or within 120 days, of the time of the closure of the school (or campus) would *automatically* receive a discharge after three years, as long as the Department did not have evidence that the student took out loans to continue their program at a different institution (or campus). Secretary DeVos repealed the automatic component of the rule, requiring eligible student loan borrowers to submit an application in order to receive a discharge.

The DeVos repeal of the Automatic CSD Rule does not impact students who attended a school or campus that closed before July 1, 2020. Nevertheless, and particularly in light of the challenges following the COVID-19 pandemic, researchers are continuing to anticipate the closures of additional institutions and campuses in the months and years to come. Students who attend institutions and campuses that close during these timeframes are not afforded the protections of the Automatic CSD Rule, and therefore must submit an application in order to receive the benefits of a closed school discharge. By taking immediate steps to reinstate and improve the Automatic CSD Rule, the Department can provide substantial relief to borrowers whose educational plans were disrupted by COVID-19, provide faster relief to more borrowers, and generally improve upon a rule that will last into the future.

> Reinstating and improving the Automatic Closed School Discharge Rule will provide substantial, and faster, relief for borrowers well into the future.

Discussion

The Department first provided for automatic closed school discharge relief in the 2016 Borrower Defense Rule.[2] The Automatic CSD Rule provides that the Department must grant automatic student loan discharges to students whose schools (or campuses) closed on or after November 1, 2013, and who do not re-enroll at another Title IV-eligible institution within three years of their school's closure date.[3] As of December 2019, the Department provided approximately $336 million in automatic closed school discharges to approximately 30,000 borrowers.[4]

The 2019 Borrower Defense Rule eliminates the Automatic Provision

such that automatic closed school relief will be provided only for borrowers whose schools closed on or after November 1, 2013 and before July 1, 2020.5 In order to provide relief to students whose schools or campuses close after July 1, 2020—we recommend that the Department move immediately to (1) announce an Interim Final Rule ("IFR"), with an opportunity to comment, to reinstate the Automatic CSD Rule, with the modifications proposed in Section B below; and (2) commence a dedicated negotiated rulemaking on this topic.

Procedural Steps – Simultaneously Issue an Interim Final Rule & Commence Negotiated Rulemaking

The Department is generally required by the HEA to use negotiated rulemaking to develop a notice of proposed rulemaking ("NPRM") for programs authorized under Title IV. Nevertheless, Congress provided the Department authority to *bypass* both negotiated rulemaking (and notice and comment rulemaking) when it finds that for "good cause" adhering to those procedures is "impracticable, unnecessary, or contrary to the public interest."[6] Because such "good cause" exists here, we recommend that the Department promptly issue an IFR and start processing automatic discharges immediately but also, out of abundance of caution, conduct a negotiated rulemaking (followed by notice and comment) while the IFR is in place.

The rationale for the Department to find "good cause" to use an IFR to automate closed school discharge relief closely tracks the rationale used by the Department in 2019 to provide automatic total and permanent disability ("TPD") discharges to veterans.[7] There, the Department found that the requirement to apply for TPD relief was preventing "at least 20,000 totally and permanently disabled veterans from obtaining discharges of their student loans, as the law provides."[8] The Department explained that: "These barriers create significant and unnecessary hardship for these veterans. Removing these barriers is a matter of pressing national concern. Although the Department construes its interim final rulemaking power narrowly, under these circumstances the Department finds good cause to implement the rule immediately."[9]

The same rationale applies here. In the 2016 borrower defense rulemaking, the Department found that nearly half of all eligible borrowers never apply for the closed school discharges to which they are legally entitled.[10] The fact that over 30,000 borrowers received relief under the Automatic Provision in 2019 is further evidence that the closed school application process, like the TPD application process, was creating a significant and unnecessary barrier to relief for eligible borrowers.

In addition, the economic fallout from the COVID-19 pandemic provides further good cause for this relief. Borrowers who are saddled with debt for an education that they could not complete (*i.e.* who have debt but no degree) are likely among the most in need of economic relief. Because changes can be made to the Automatic CSD Rule to more immediately benefit students whose institutions close (see Section B below), the "good cause" standard should be readily met.

As with the November 2019 IFR for TPD, this IFR would go into effect immediately but still allow the public an opportunity to comment.[11] We believe that this is an appropriate "belt-and-suspenders" approach to ensure compliance with the HEA and the Administrative Procedure Act.

The same day that the Department announces the IFR, it should commence the negotiated rulemaking process, the first step of which is to publish a notice in the Federal Register announcing its intent to conduct negotiated rulemaking and identifying the areas in which it intends to develop or amend regulations. This notice also announces regional public meetings to obtain advice and recommendations on the issues to be negotiated from the public, which should take place as soon as possible.[12] Because closed schools with a live corporate parent could conceivably challenge the collection of liabilities from discharges granted automatically based on the IFR, the Department should consider waiting until completion of the negotiated rulemaking process to seek any such relief from schools.

Although the Department may be inclined to include this rulemaking with other provisions for Negotiated Rulemaking (ostensibly for efficiency), we believe that there are long-term efficiency reasons for using separate rulemakings, particularly for issues that should be relatively simple and are unlikely to provoke legal challenges.

Substantive Improvements to the Automatic CSD Rule

This new rulemaking should respond to public comments, but strongly consider bringing back the Obama Administration's Automatic CSD Rule, with the following improvements that will speed up and expand the scope of relief:

1. Reduce the waiting period from three years to one year, which would open the door to immediate automatic relief for recent large closures such as CollegeAmerica, the Dream Center and Education Corporation of America, as well as account for the many closures that are likely to come (due to COVID-19) in the months and years to come;[13]
2. Revisit whether newly acquired program-level data can be used to amend the rule so that it provides relief for students who transferred credits into a completely different program or transferred into a similar program but did not complete it;[14] *and*
3. Consider whether the Department has the administrative capacity or data to extend the November 1, 2013 date backwards to open the door to automatic relief to additional borrowers who do not know that they are statutorily entitled to a closed school discharge. Because the discharge is a statutory right, the Department should acknowledge its obligation to assist borrowers who it knows to be eligible. During the 2016 Borrower Defense rulemaking, the Department "concluded that it would be administratively feasible" to provide the automatic discharge for borrowers who attended schools "that closed on or after November 1, 2013." 81 Fed. Reg. at 76,039. It did not explain why it could not extend that date back further.

Endnotes

1 HEA § 437(c)(1), 20 U.S.C. § 1087(c)(1); HEA § 455(a)(1), 20 U.S.C. § 1087e.

2 *See* 81 Fed. Reg. 75,926, 76,078-82 (Nov. 1, 2016) (codified at 34 C.F.R. §§ 674.33(g)(3), 682.402(d)(8), 685.214(c)(2)).

3 *Id.*

4 *See* U.S. Department of Education Quarterly Report on Automatic Closed School Discharge (posted Feb. 2020), *available at:* https://ifap.ed.gov/electronic-announcements/021920fsapostsnewreportstofsadatacenter (FSA overview) and https://studentaid.gov/sites/default/files/fsawg/datacenter/library/ACSD.xls (data).

5 *See* 84 Fed. Reg. 49,788, 49,889 (Sept. 23, 2019).

6 *See* 5 U.S.C. § 553(b)(B); *see also* HEA § 492(b)(2), 20 USC § 1098a(b)(2) ("All regulations pertaining to this subchapter . . . shall be subject to a negotiated rulemaking . . . unless the Secretary determines that applying such a requirement with respect to given regulations is impracticable, unnecessary, or contrary to the public interest (within the meaning of section 553(b)(3)(B) of title 5), and publishes the basis for such determination in the Federal Register at the same time as the proposed regulations in question are first published."). The Department may find that "good cause" exists to dispense with the negotiated rulemaking requirement, even when it does not find "good cause" to dispense with the notice and comment requirements.

7 *See* 84 Fed. Reg. 65,000 (Nov. 26, 2019).

8 *Id.* at 65,002.

9 *Id.*

10 Prior to promulgating the Automatic Provision in 2016, the Department examined its own historical data on eligible borrowers' use of closed school discharges. The Department looked, for example, at all Direct Loan borrowers at schools that closed from 2008-2011 to see what percentage of them were eligible for a closed school discharge, but had never applied for and/or received one. 81 Fed. Reg. at 76,059. Of the 2,287 borrowers on file, forty-seven percent had no record of a discharge or subsequent Title IV aid in the three years following their school's closure. *Id.*

11 *See* 84 Fed. Reg. 65,001 ("Although the Secretary has decided to issue these final regulations without first publishing proposed regulations for public comment, we are interested in whether you think we should make any changes in these regulations. We invite your comments. We will consider these comments in determining whether to revise the regulations.").

12 20 USC § 1098a(a)(2). Details about the negotiated rulemaking process are available here: https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html

13 Many commenters recommended the shorter one-year window during the 2016 borrower defense rulemaking, explaining that the vast majority of closed school borrowers transfer their credits within several weeks to months of closure and that other schools aggressively market and reach out to affected students immediately following the closure, not years later. *See* 81 Fed Reg 76,037 (Nov. 1, 2016).

14 The Department did not take this approach in 2016 because it did not have access to program-level data, but stated that it would revisit the issue once that data became available. *See* 81 Fed Reg 76,038 (Nov. 1, 2016) ("While current data limitations make it challenging to definitively identify a borrower who has enrolled in a comparable program or who has successfully transferred credits, in future years, the Department may be able to identify those eligible borrowers who did re-enroll, but *not* in a comparable program. In that case, the Department may revisit its ability to provide closed school discharges automatically to those borrowers."). It appears that such data may now be available. In November 2019, the Department announced that it updated the College Scorecard to include program level data. *See* U.S. Dep't of Education Press Release, "Secretary DeVos Delivers on Promise to Provide Students Relevant, Actionable Information Needed to Make Personalized Education Decisions (Nov. 20, 2019), *available at* https://www.ed.gov/news/press-releases/secretary-devos-delivers-promise-provide-students-relevant-actionable-information-needed-make-personalized-education-decisions. According to the press release, whereas previously College Scorecard users could only see institutional data, the updated data ensured that they could "make apples-to-apples comparisons by providing the same data about all of the programs a student might be considering without regard to the type of school." *Id.* With the acquisition of this new program-level data, the Department should revisit whether it has (or can easily obtain) sufficient information to provide closed school discharges automatically to borrowers who re-enrolled in non-comparable programs.

Press Releases

July 15, 2020

ATTORNEY GENERAL RAOUL FILES LAWSUIT AGAINST DEPARTMENT OF EDUCATION OVER CRITICAL BORROWER DEFENSE REGULATIONS

Chicago — Attorney General Kwame Raoul today joined a coalition of 16 attorneys general in filing a lawsuit against U.S. Secretary of Education Betsy DeVos and the U.S. Department of Education challenging their action to unlawfully repeal the 2016 borrower defense regulations and replace them with regulations that do nothing more than benefit predatory for-profit schools at the expense of defrauded students.

In the lawsuit, filed in the U.S. District Court for the Northern District of California, Raoul and the coalition argue that the department's decision to repeal and replace the regulations violates the Administrative Procedure Act (APA), and the coalition asks the court to vacate the department's new regulations.

"Students should not have to pay for student loans they obtained to attend fraudulent schools that promised education and training that they did not provide," Raoul said. "These students deserve a clear and convenient method to discharge their loans from schools that took advantage of them. My office has and will continue to investigate and protect students from institutions that use predatory methods to exploit borrowers."

The 2016 borrower defense regulations established critical protections for student-borrowers who were misled or defrauded by predatory schools by providing borrowers with an efficient pathway to obtain relief from their federal student loans. The regulations also created robust deterrents for schools that engage in predatory conduct. The department repealed the 2016 regulations and replaced them with new regulations that make it virtually impossible for victimized students to obtain financial relief, while rolling back oversight over unscrupulous and predatory schools.

The Higher Education Act requires the secretary of the Department of Education to issue regulations that provide a meaningful process for students to obtain federal student loan relief when their schools have engaged in misconduct. Consistent with this Congressional mandate, in November 2016, the department issued new borrower defense regulations that offered meaningful protections to defrauded student borrowers. The regulations built on lessons learned from the collapse of Corinthian Colleges – a predatory, for-profit chain of colleges that left tens of thousands of students across the nation in need of relief. Specifically, the 2016 regulations provided misled and defrauded borrowers access to a consistent, clear, fair, and transparent process to seek debt relief, and also protected taxpayers by holding schools that engage in misconduct accountable. The regulations also ensured that financially troubled schools provide financial protection to the government to ensure that, if they fail, taxpayers would not be left holding the bag.

Despite these new protections, upon taking office Secretary Betsy DeVos sided with for-profit schools and demonstrated public hostility to the 2016 borrower defense process. Just two weeks before the 2016 borrower-defense regulations were set to go into effect in 2017, the federal government unlawfully delayed them. The Illinois Attorney General's office, along with a coalition of 19 attorneys general, successfully sued Secretary DeVos over the illegal delay. In November 2019, after the secretary's failed delay attempts, the department issued replacement borrower defense regulations that put the interests of predatory schools ahead of student protections. The 2019 borrower defense regulations created a process designed to thwart relief for defrauded students and shield predatory schools from being held accountable.

In today's lawsuit, Raoul and the coalition argue that the department's repeal and replacement of the 2016 borrower defense regulations violates the APA because:

- **It is arbitrary and capricious.** The decision to repeal and replace the 2016 rule was not the product of reasoned decision making as required by the APA. In explaining its rationale for the new regulations, the department rejected prior agency

determinations going back decades without explanation, grounded its analysis in fundamental misunderstandings, failed to consider alternatives, and disregarded facts and circumstances.

- **It does not comply with Congress's requirement that the secretary implement a meaningful process for borrowers to obtain relief**. Instead, it establishes an illusory process that makes it practically impossible for students to qualify for borrower defense relief. The department admits as much by acknowledging that only around 4 percent of borrowers eligible for relief will actually get relief.

The Illinois Attorney General's office has long been a national leader in investigating and enforcing consumer protection violations in the higher education field, including submitting group discharge applications pursuant to the borrower defense to repayment rule. In November 2019, Attorney General Raoul announced that more than $10 million in student loans for former Illinois Institute of Art and Colorado Art Institute students would be discharged by the Department of Education following an application by Colorado and Illinois under the 2016 Borrower Defense to Repayment Rule.

Student borrowers who have questions or are in need of assistance can call the Attorney General's Student Loan Helpline at 1-800-455-2456. Borrowers can also file complaints on the Attorney General's website.

Joining Raoul in filing the lawsuit are the attorneys general of California, Colorado, Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, and Virginia.

-30-

Return to July 2020 Press Releases

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Phil Weiser
ATTORNEY GENERAL

June 3, 2019

The Honorable Elisabeth DeVos
Secretary
U.S. Department of Education
400 Maryland Ave SW
Washington, D.C. 20202

RE: Loan Discharge for Illinois Institute of Art and Art Institute of Colorado Students

Dear Secretary DeVos,

We write to you to request loan discharge for Illinois Institute of Art (IIA) and Art Institute Colorado (AI-CO) students in attendance in 2018. For a period of six months, beginning on January 20, 2018, IIA and AI-CO misled students that their campuses were institutionally accredited by the Higher Learning Commission (HLC), when in fact they were not. After IIA and AI-CO finally disclosed the lack of accreditation, both schools announced that they would close at the end of the calendar year, leaving students reeling and with limited options.

Based on this substantial misrepresentation of accreditation, IIA and AI-CO students should have any federal student loan used to pay for schooling at the affected campuses from January 1, 2018 onward discharged and any amounts paid on those loans refunded. In addition, the closed school discharge eligibility period for these students should be extended to include any student who was in attendance on or after January 20, 2018.

I. Misrepresenting the Loss of Accreditation

There is no dispute that Dream Center Education Holdings (DCEH), parent company of IIA and AI-CO, misrepresented its accreditation. DCEH acknowledged the misrepresentation and the Receiver for DCEH stipulated to the relevant facts. Ex. A, Stipulated Facts; *see also* Ex. B, Settlement Administrator's Third Report, pp. 43-44. In summary, DCEH admits that IIA and AI-CO lost Higher Learning Commission (HLC) accreditation on January 20, 2018 and that it misrepresented that fact to enrolled students, prospective students, and enrolling students until June 15, 2018. Ex. A at ¶¶ 2-9. DCEH admits that it widely disseminated a substantial

misrepresentation about its accreditation via its website, claiming that IIA and AI-CO "remain accredited" when in fact they were not accredited. *Id.* at ¶¶ 5-6. The same misrepresentation was included in DCEH's catalogs and enrollment agreements in the spring of 2018. Ex. C, IIA and AI-CO catalogs, pg. 5 (IIA) & pg. 3 (AI-CO); Ex. D IIA and AI-CO enrollment agreements pg. 5. DCEH acknowledges that accreditation "is essential for students to transfer credits to other schools and for potential employers to recognize degrees," and that affected students need restitution. *Id.* at ¶¶ 1, 9. The Department has also acknowledged the misrepresentation in a May 9, 2019 letter regarding IIA and AI-CO. Ex. E, May 9, 2019 Letter from the Department ("[T]he Higher Learning Commission ("HLC") advised the Department that the Art Institute of Colorado and the Illinois Institute of Art (the "Art Institutes") websites indicated that the schools remained accredited, despite the fact that HLC had put them into Change of Control Candidacy Status ("CCC status"), which HLC treated as non-accredited.")

This substantial misrepresentation is a violation of consent judgments between our offices and DCEH's predecessors that govern the company's conduct. Ex. F, November 15, 2015 Consent Judgment in *People v. Education Management Corporation*.[1] Paragraph 81(b) provides in relevant part that DCEH "shall not make express or implied false, deceptive, or misleading claims to Prospective Students with regard to the academic standing of its programs and faculty including, but not limited to misrepresenting . . . the accreditation" of its schools and programs. *Id.* at ¶ 81(b).

The Settlement Administrator appointed pursuant to the consent judgments found the misrepresentation to be "an egregious act of non-compliance." Ex. G, May 10, 2019 Position Statement of the Settlement Administrator, pg. 5. The Settlement Administrator explores this violation in-depth in his third annual report, noting that the misrepresentation is not only a violation of the consent judgments, but also of HLC policy, which requires disclosure to students within fourteen days. Ex. B, Settlement Administrator's Third Report, pp. 43-44. The Settlement Administrator also highlights the substantial harm to students from the misrepresentation of accreditation, harm that was heightened by the announcement that DCEH would close the IIA and AI-CO campuses:

> [The accreditation] change on January 20 carried significant consequences for the students of [IIA and AI-CO] – including consequences for their federal financial aid and their ability to transfer any credits they earned after January 20 to other schools. These consequences became more dramatic once DCEH announced in July that those schools would close – and thus that many of the students would *need* those credits to transfer to other schools (emphasis in original). *Id.*

As part of the Settlement Administrator's inquiry, DCEH provided a spreadsheet of all affected students. Ex. H, Spreadsheet of affected students. Between January 20, 2018 and June 15, 2018, 1761 students attended IIA and AI-CO. *Id.* These students are eligible for discharge of all student loans used to pay for education at IIA and CO-IA from January 1, 2018 onward and a refund of

[1] The Consent Judgment expressly applies to EDMC's successors and expressly covers asset sales, such as the one used to transfer IIA and AI-CO to DCEH. Colorado's consent judgment is identical to Illinois's. *See* State of Colorado v. Education Management Corporation *et al.* Colorado District Court Case No. 2015CV34015 (Nov. 19 2015).

any amounts paid on those loans pursuant to the borrower defense to repayment regulations, as described below.[2]

II. Borrower Defense to Repayment

DCEH misrepresented its accreditation, thereby inducing students to purchase worthless, nontransferable credits. Such a substantial misrepresentation serves as a sufficient basis to support a borrower defense to repayment for affected students. The Department applies the standard of review in 34 C.F.R. § 685.222 in considering borrower defense to repayment of loans issued after July 1, 2017.[3] Borrowers are eligible for discharge where a preponderance of the evidence shows that the school made a substantial misrepresentation that the borrower reasonably relied on to the borrower's detriment. *See* 34 C.F.R. § 685.222(a)(2) & 34 C.F.R. § 685.222(d)(1). Upon consideration of common facts, the Secretary has the authority to determine whether a group qualifies for loan discharge. *See* 34 C.F.R. § 685.222(f). The Secretary can identify a group eligible for discharge from any source. 34 C.F.R. § 685.222(f)(1)(i). The Department is required to consider group discharge applications submitted by state attorneys general. *See Williams v. DeVos*, 2018 WL 5281741, at *12 (D. Mass. Oct. 24, 2018). ("In short, the Court finds that Attorney General Healey's DTR submission was sufficient to require the Secretary to determine the validity of the plaintiffs' borrower defense.")

The borrower defense regulation defines substantial misrepresentations and specifically contemplates misrepresentations of accreditation in that definition. ("Misrepresentation concerning the nature of an eligible institution's educational program includes, but is not limited to, false, erroneous or misleading statements concerning – (a) The particular type(s), specific source(s), nature and extent of its institutional, programmatic, or specialized accreditation.") 34 C.F.R. § 668.72. Where a substantial misrepresentation is widely disseminated, "there is a rebuttable presumption that each [group] member reasonably relied on the misrepresentation." 34 C.F.R. § 685.222(f)(3).

The facts here are not at issue. DCEH does not dispute that it misrepresented its accreditation for a period of nearly six months, and has stipulated to those facts. Ex. A, ¶¶ 1-9. That the misrepresentation was of the nature of the school's institutional accreditation means that it is by definition a "substantial misrepresentation" pursuant to 34 C.F.R. § 668.72. Reliance on accreditation is axiomatic in higher education. It is a standard that all stakeholders rely on. State regulators, the Department, employers, schools, and students all rely on accreditation to insure compatibility and quality of instruction.[4] In the case of IIA and AI-CO, students naturally relied on DCEH's misrepresentation that the schools were accredited.

Moreover, it is not disputed that DCEH's misrepresentation was widely disseminated. DCEH admits that the misrepresentation appeared on its website. Ex. A, Stipulated Facts, ¶ 5. Every

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[2] The loss of accreditation occurred 12 days after the start of the January 2018 term. Ex. C, IIA catalog, pg. 214. All credits earned for this term are unaccredited and thus all loans used to pay for the term should be discharged.

[3] U.S. Department of Education, Federal Student Aid, Office of Postsecondary Education, Guidance Concerning Some Provisions of the 2016 Borrower Defense to Repayment Regulations *available at* https://ifap.ed.gov/eannouncements/030719GuidConcernProv2016BorrowerDefensetoRypmtRegs.html

[4] *See e.g.* Higher Education Accreditation Concepts and Proposals, pg. 2, Senate Committee on Health, Education, Labor & Pensions, *available at* https://www.help.senate.gov/imo/media/Accreditation.pdf.

student who enrolled from January 20 to June 15, 2019 received the misrepresentation in their enrollment agreement. Ex. D, IIA & AI-CO enrollment agreements, pg. 5. It also appeared in the IIA and AI-CO catalogs. Ex. C, IIA & AI-CO catalogs, pg. 5. This wide dissemination of the misrepresentation creates the rebuttable presumption of reliance. *See* 34 C.F.R. § 685.222(f)(3).

Making matters worse, the affected students were not able to use credits from the spring of 2018 to complete their degrees at IIA or AI-CO because the campuses were closing. Similarly, they are not able to transfer the credits to any other school because IIA and AI-CO were unaccredited. The students were deceived into purchasing credits that cannot be put to use in any way. Loans used to pay for any credits earned after January 1, 2018 should be discharged and any amounts paid on those loans should be refunded.

Our offices have attempted to obtain relief from DCEH directly. Our consent judgments with DCEH have express provisions to resolve violations through corrective action plans instituted by the settlement administrator. Unfortunately, relief from DCEH will necessarily be limited because the company is insolvent and currently in Receivership. The settlement administrator has moved the DCEH Receivership Court to create a constructive trust to provide at least some relief. Ex. G, May 10, 2019 Position Statement of the Settlement Administrator. Even if the Receivership court or a subsequent bankruptcy court were to set aside some amount, it will not cover the full amount paid by students following the loss of accreditation, which exceeds $25 million dollars.[5] The Receiver's May 30, 2019 cash flow statement, for example, shows that sources of cash exceed uses of cash by less than $600,000. Ex. I, Receiver's May 30, 2019 cash flow statement.

III. Closed School Discharge

In addition to granting borrower defense to repayment, the Department should exercise its discretion to extend the 120-day window within which students who withdrew from IIA and AI-CO are eligible for closed school discharge. Any student who withdrew after the school lost accreditation on January 20, 2018 should be eligible.[6] Hundreds of students, when they learned in short succession of the loss of accreditation and impending closure of IIA and AI-CO made the seemingly rational decision to withdraw from the school. Students were not told at this time, however, about the availability of and requirements for closed school discharge. Ex. B, Settlement Administrator's Third Report, pp. 31-35. Students who withdrew in July and August of 2018 were ultimately outside the 120 day window required for closed school discharge

[5] Programs at Art Institutes generally have 15 credits per quarter, which generally cost $483/credit. *See* Ex. C, IIA catalog pg. 123. DCEH misrepresented its accreditation over the course of two quarters. *See Id.* at 208. To compensate students for two full quarters, 30 credits at $483/credit, it would be $14,490/student. To fully compensate 1761 students attending full time for the two quarters where the misrepresentations occurred would be over $25 million dollars. This figure excludes lab fees, the cost of digital textbooks, and starting kit fees which cost anywhere from $599 to $3695/student depending on the program. This figure ignores the amounts for the subsequent unaccredited periods from July to December 2018, which should also be discharged.

[6] It should be noted that there is an argument that the closed school discharge window should be extended to October 17, 2017 for all DCEH schools based on the Department's denial of their application for change in ownership. See February 27, 2019 letter from the Department to DCEH's Receiver and Board Chair available at https://studentaid.ed.gov/sa/sites/default/files/argosy-cio-denial-redacted.pdf. We restrict our argument in this letter to the circumstances surrounding the loss of accreditation at IIA and AI-CO, but do not concede that the date should not be pushed back for all DCEH students.

eligibility. In order to receive relief, IIA and AI-CO students should not be required to have stayed enrolled at, and continued paying tuition to a closing, unaccredited school that defrauded them.

The Department has the power to at least partially right this wrong by extending the closed school discharge eligibility date to the date that IIA and AI-CO lost accreditation. *See* 34 CFR 685.214(c)(1)(i)(B). Indeed the closed school discharge regulation expressly contemplates loss of accreditation as a reason to extend the date within which students who withdrew from school may have their loans discharged. *Id.*

> The Secretary may extend the 120–day period if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law . . . *Id.*

Additionally, a second express basis for extending the closed school discharge date exists in this case because of the finding that DCEH violated state law. The settlement administrator appointed to oversee the Illinois and Colorado state court judgments against DCEH found that DCEH's accreditation misrepresentations constituted a violation of those judgments. *See* Ex. G, May 10, 2019 Position Statement of the Settlement Administrator, pg. 5; *see also* Ex. B, Settlement Administrator's Third Report, pp. 43-44.

The settlement administrator appointed under the Illinois and Colorado judgments discusses DCEH's absolute failure to notify students about closed school discharge. He notes with frustration that he continually advised DCEH of the inadequacy of the information it provided to students on closed school discharge and DCEH's failure for over two months to provide adequate information. Ex. B, Settlement Administrator's Third Report, pp. 31-35. DCEH, for its part, told the administrator that it failed to provide adequate information at the direction of the Department. *Id.* at 32, 34 ("DCEH advises that it did not provide students with additional information because during this time, the Department of Education instructed DCEH not to announce that the schools were closing."). If this allegation is true, the Department betrayed the very students it is tasked with serving, and has a duty to provide any and all relief now available.

Students who attended IIA and AI-CO in the spring of 2018 paid for credits that had no value. The credits could not be used to complete degrees at IIA or CO-IA because the school announced it was closing at the same time it announced the loss of accreditation. The credits could not be transferred to another institution, because they were earned at an unaccredited school. Many students do not even qualify for closed school discharge, because the school obfuscated the details needed to qualify for that program even as the settlement administrator repeatedly urged them to make that information available.

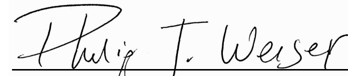
Even in this age of large scale fraud and subsequent closures by for-profit schools, this situation stands out. The sheer audacity of misrepresenting institutional accreditation and the fundamental

harm it causes to students demands that the Department discharge all federal student loans used to pay for education at IIA and AI-CO in 2018, refund students any amounts paid on those loans, and extend the closed school discharge date to January 20, 2018.

Sincerely,

Kwame Raoul
Illinois Attorney General

Sincerely,



Phil Weiser
Colorado Attorney General