

September 29, 2016

The Honorable John B. King, Jr.
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary King:

I write to bring to your attention disturbing new data uncovered by an investigation conducted by my staff relating to the Department of Education's treatment of students who attended Corinthian Colleges, the large, for-profit educational outfit that went belly-up in 2015 amid findings from state and federal authorities that it had defrauded students over and over again. These troubling new data suggest that instead of focusing on getting these students the relief they are entitled to under federal law, the Department's student loan bank – working with its loan servicers and debt collectors – is instead intentionally collecting on debt that it knows may be eligible for discharge.

For over a year now, while the Department's student loan bank has talked extensively about helping former Corinthian students and has encouraged many of them to apply for loan discharges, only a tiny fraction of former Corinthian students – around 4,000 – have actually received relief under the "borrower defense" discharge program. Meanwhile, according to alarming new data that the Department provided to my staff, nearly 80,000 former Corinthian students are currently in some form of debt collection as the direct result of actions by the Department's student loan bank.¹

It is unconscionable that instead of helping these borrowers, vast numbers of Corinthian victims are currently being hounded by the Department's debt collectors — many having their credit slammed, their tax refunds seized, their Social Security and Earned Income Tax Credit (EITC) payments reduced, or their wages garnished — all to pay fraudulent debts that, under federal law and the Department's own policies, are likely eligible for discharge and thus, invalid.

Instead of adding insult to injury for tens of thousands of Corinthian victims by pushing scores of them into debt collection, the Department of Education should stand up for these students as it has promised to do for more than a year and immediately halt all collections on this debt. The Department should also use its expansive, existing authority to discharge these Corinthian borrowers' debts and take additional steps to ensure that no other students are facing collections or shouldering debt that is eligible for discharge due to fraud perpetrated by for-profit colleges.

¹ Based on data provided to the Office of Senator Elizabeth Warren by the Department of Education.

Current Department Policies Toward Debt Relief for Former Corinthian Students

For years before its collapse, Corinthian Colleges faced lawsuits from the Consumer Financial Protection Bureau (CFPB) and from state Attorneys General over allegedly fraudulent conduct. Nonetheless, the Department of Education's student loan bank kept billions flowing to Corinthian – only acknowledging Corinthian's widespread fraud shortly before its collapse.² The subsequent meltdown left an estimated 350,000 students with worthless degrees or credits and mountains of fraudulent student loan debt.³

Federal courts agreed that fraud was baked into Corinthian's entire operation. In October 2015, a federal judge granted a default judgment against Corinthian for violating federal consumer protection laws and ordered the defunct company to pay \$531 million to the CFPB following a lawsuit alleging that the company made material misrepresentations to students.⁴ And in March 2016, California Attorney General Kamala Harris obtained a \$1.1 billion default judgment against the company for its predatory and unlawful practices.⁵

Despite all of this evidence, the Department of Education's student loan bank kept hounding defrauded Corinthian borrowers for loan payments. As more and more fraud has been uncovered, I, along with dozens of my colleagues, repeatedly urged you and your predecessor to use your existing authority under the "borrower defense to repayment" provision of the Higher Education Act⁶ to provide complete, immediate, and automatic relief to all students who were the victims of Corinthian's fraud.⁷

² U.S. Department of Education, "U.S. Department of Education Fines Corinthian Colleges \$30 million for Misrepresentation (press release)" (April 14, 2015) (online at <http://www.ed.gov/news/press-releases/us-department-education-fines-corinthian-colleges-30-million-misrepresentation>).

³ Tamar Lewin, "Government to Forgive Student Loans at Corinthian Colleges," *New York Times* (June 8, 2015) (online at http://www.nytimes.com/2015/06/09/education/us-to-forgive-federal-loans-of-corinthian-college-students.html?_r=0).

⁴ Consumer Financial Protection Bureau, "CFPB Wins Default Judgement Against Corinthian Colleges for Engaging in a Predatory Lending Scheme (press release)" (October 28, 2015) (online at <http://www.consumerfinance.gov/about-us/newsroom/cfpb-wins-default-judgment-against-corinthian-colleges-for-engaging-in-a-predatory-lending-scheme>).

⁵ State of California Department of Justice, Office of the Attorney General, "Attorney General Kamala D. Harris Obtains \$1.1 Billion Judgement Against Predatory For-Profit School Operator (press release)" (March 23, 2016) (online at <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-obtains-11-billion-judgment-against-predatory>).

⁶ 20 U.S.C. § 1087e(h); 34 C.F.R. § 685.206(c)

⁷ Letter from Senators Warren, Baldwin, Blumenthal, Boxer, Durbin, Franken, Hirono, Markey, Merkley, Murphy, Reed, Schatz, and Whitehouse, United States Senate, to Arne Duncan, Secretary of Education, U.S. Department of Education (December 9, 2014) (online at <http://www.warren.senate.gov/files/documents/2014%2012%2009%20Corinthian%20Letter.pdf>); Letter from Senator Elizabeth Warren, Representative Elijah Cummings, Senator Richard Durbin, Senator Al Franken, Senator Jack Reed, and Senator Edward Markey, United States Congress, to Arne Duncan, Secretary of Education, U.S. Department of Education (April 27, 2015) (online at <http://www.warren.senate.gov/files/documents/20150427EducationDepartment.pdf>); and Letter from Senators Warren, Murphy, Murray, Boxer, Durbin, Reed, Merkley, Brown, Whitehouse, Franken, Blumenthal, Baldwin, and Markey, and Representatives Waters, Scott, Cummings, Ellison, and Hahn, to Arne Duncan, Secretary of Education, U.S. Department of Education, and Joseph A. Smith, Special Master, U.S. Department of Education (November 9, 2015) (online at [http://www.warren.senate.gov/files/documents/2015-11-9 letter to ed corinthian debt relief.pdf](http://www.warren.senate.gov/files/documents/2015-11-9%20letter%20to%20ed%20corinthian%20debt%20relief.pdf)).

Unfortunately, to date, the Department has chosen to operate a complex, resource-intensive, unnecessary and baffling scheme to parcel out relief on a student-by-student basis, forcing victims to affirmatively apply for the relief they are entitled to under the law, and insisting on its own separate findings of fraud despite clear evidence of wrongdoing from other state and federal authorities.

In June 2015, the Department announced a so-called “fast track” relief process for borrowers, promising to “find ways to fast track relief based on legal findings for large groups of students.”⁸ During the announcement, Under Secretary Ted Mitchell asserted that there would be “no need for [Corinthian] students to make any individual showing that they were affected by [Corinthian]’s fraud.”⁹ At the time, Secretary Duncan committed to “making sure students receive every penny of relief they are entitled to under law”, and promised to “make this process as easy as possible for [Corinthian students].”¹⁰ In March 2016, the Department announced additional findings of fraud and an expansion of its complicated relief program for more students who the Department acknowledged were defrauded at 91 former Corinthian campuses.¹¹ But even amid announcements of more fraud, the Department inexplicably still refused to establish a real expedited relief program that automatically discharged the debts of Corinthian students who it knows were eligible for discharge. In fact, while these announcements made for good headlines, that broad relief never came.

It was in this context that I asked you at your confirmation hearing how you intended to live up to the Department’s promises and ensure that each and every student who was defrauded received the immediate debt relief to which they were entitled. In that hearing, you committed to adding additional capacity to the borrower defense team that processes students’ applications for discharge, and to acting faster by grouping claims in cases where the Department identified a clear state law violation so that you could “respond to them as quickly as possible.”¹² You further acknowledged that the Department needed to move faster to get relief to borrowers and said that you were “committed to try to protect the interests of borrowers.”¹³ While some progress has indeed been made on some of these commitments, the number of Corinthian borrowers who have actually received relief – especially when compared with the number of eligible borrowers who have instead been pushed into collections – indicates that this process remains badly broken.

⁸ U.S. Department of Education, “Fact Sheet: Protecting Students from Abusive Career Colleges” (June 8, 2015) (online at <http://www.ed.gov/news/press-releases/fact-sheet-protecting-students-abusive-career-colleges>).

⁹ David Halpern, “Arne Duncan Transcript: Some For-Profit Colleges Have ‘the Ethics of Payday Lending,’” *Huffington Post* (June 10, 2015) (online at http://www.huffingtonpost.com/davidhalperin/arne-duncan-transcript-so_b_7557408.html).

¹⁰ U.S. Department of Education, “Fact Sheet: Protecting Students from Abusive Career Colleges” (June 8, 2015) (online at <http://www.ed.gov/news/press-releases/fact-sheet-protecting-students-abusive-career-colleges>).

¹¹ U.S. Department of Education, “U.S. Department of Education Announces Path for Debt Relief for Students at 91 Additional Corinthian Campuses (press release)” (March 25, 2016) (online at <http://www.ed.gov/news/press-releases/us-department-education-announces-path-debt-relief-students-91-additional-corinthian-campuses>).

¹² U.S. Senate Committee on Health, Education, Labor, & Pensions, *Nomination of Dr. John King to serve as Secretary of Education* (Full Committee Hearing), 114th Congress (February 25, 2016) (online at <http://www.help.senate.gov/hearings/nomination-of-dr-john-king-to-serve-as-secretary-of-education>).

¹³ *Id.*

New Data Reveal That Education Department is Still Collecting on Invalid Debt

Part of my concern about the Department's byzantine debt relief program has always been its accessibility to students who simply cannot afford to repay the loans that Corinthian tricked them into borrowing. During your confirmation hearing, in my follow-up questions for the record, I specifically asked you if the Education Department was advising the Treasury Department not to garnish wages or offset federal payments for students attending schools where the Department of Education has an open investigation into potential misconduct. I asked this question because I was concerned about the possibility of the Department sending the names of defrauded Corinthian victims that it knows could be eligible for loan cancellation to the Treasury Department for extreme and draconian debt collection.

When you responded that the Department was not affirmatively shutting down these collections,¹⁴ my staff followed up with yours, seeking additional information on outcomes of former Corinthian students who held federal student loan debts. In response, we received several pieces of new and unsettling data.¹⁵

According to the data provided to my staff, based on their enrollment at Corinthian during the time that the Department found that fraud was occurring, there are 79,717 former Corinthian students who are eligible to apply for debt relief by the Department, but who are nonetheless currently in some form of debt collection with the Department of Education. This means that nearly 80,000 of the students who the Department of Education's student loan bank is supposed to be encouraging to apply for loan discharge—many of whom are eligible for so-called "fast track" relief — are instead being sent to debt collections by that very same office.

Digging into these numbers paints an even more disturbing picture. Over 30,000 of these targeted borrowers are in "Administrative Offset," which means they are having their tax refunds, EITC payments, and other government benefits like Social Security seized in order to pay off their debts. Over 4,000 of these borrowers are currently having their wages garnished by the federal government.¹⁶ Meanwhile, after more than a year of happy talk from the Department, of the hundreds of thousands of former Corinthian borrowers potentially eligible for debt relief, the Department has only announced borrower defense discharges for 3,787 individuals.¹⁷ Assuming these numbers are still accurate, it means the government is literally garnishing the wages of more former Corinthian students with bogus loan debt than have received a borrower defense discharge.

Furthermore, the Department has only received borrower defense discharge applications from only 23,185 former Corinthian borrowers – again, less than a third of the Corinthian borrowers who've been put into collections. This suggests an obvious failure in the effort to

¹⁴ Response from Dr. John King, U.S. Department of Education, to Questions for the Record from the U.S. Senate Committee on Health, Education, Labor, & Pensions (submitted February 26, 2016) (online at http://www.help.senate.gov/imo/media/doc/King_Response_QFRs.pdf).

¹⁵ Based on data provided to the Office of Senator Elizabeth Warren by the Department of Education.

¹⁶ *Id.*

¹⁷ Joseph A. Smith, Special Master for Borrower Defense, U.S. Department of Education, *Fourth Report of the Special Master for Borrower Defense to the Under Secretary* (June 29, 2016) (online at <https://www2.ed.gov/documents/press-releases/report-special-master-borrower-defense-4.pdf>).

inform students of their rights to a discharge, and highlights the absurdity and ineffectiveness of requiring Corinthian victims who are covered by the Department's own fraud findings to actively apply for relief while at the same time subjecting them to aggressive, automatic, and draconian debt collection actions that may hold back tax refunds or garnish their wages and other payments.

The Department has adopted an inexcusable default position: sending every one of these nearly 80,000 students into collection until they manage to jump through the Department's hoops to assert their eligibility for loan cancellation. That is exactly backwards. The Department should do what it has had the authority to do this entire time – immediately and affirmatively discharge the loans of those thousands of Corinthian students it knows were defrauded. At a minimum, instead of penalizing Corinthian victims for the Department's own anemic pace on securing debt relief for eligible students, the Department should halt any collections until it can guarantee and certify that a debt is not eligible for discharge before sending it to collections.

Debt Relief for Other Student Victims of Fraud

Beyond the Corinthian situation, I am also concerned about the Department of Education's general inability or unwillingness to grant debt relief to additional students who may be entitled to it. The Department and other federal and state agencies have documented wrongdoing at multiple schools that make students eligible for discharges. Students who attended these schools, some of whom are also eligible for closed school discharges, should also receive full, automatic discharges without having to fill out individual applications.

Over the past decade, as widespread, fraudulent behavior in the for-profit college sector has come to light, there have been several instances where the Department has either made—or has sufficient evidence to make—findings of unlawful activity that would qualify students for relief, either through borrower defense discharge or through false certification discharge. The long list of predatory schools where there is evidence that schools broke the law and defrauded students includes Marinello School of Beauty¹⁸, ATI Career Training Center¹⁹, Westwood College²⁰, Career Education Corporation schools²¹, FastTrain College²², MedTech College²³,

¹⁸ Letter from Susan D. Crim, Director, Administrative Actions and Appeals Service Group at the Office of Federal Student Aid, U.S. Department of Education, to Dr. Rashad Elyas, CEO, Marinello School of Beauty, Re: Denial of Recertification Application to Participate in Federal Student Financial Assistance Programs (February 1, 2016) (online at <https://studentaid.ed.gov/sa/sites/default/files/marinello-03094400-denial-letter.pdf>).

¹⁹ U.S. Department of Justice, "Government Files Complaint Against Dallas Area-Based For-profit Chain of Schools for False Claims Act Violations (press release)" (August 20, 2012) (online at <https://www.justice.gov/opa/pr/government-files-complaint-against-dallas-area-based-profit-chain-schools-false-claims-act>).

²⁰ U.S. Department of Education, *Staff Report to the Senior Department Official on Recognition of Compliance Issues* (2016) (online at <https://opeweb.ed.gov/aslweb/finalStaffReports.cfm?alID=15&mid=68>).

²¹ *Id.*

²² Paul Fain, "Colleges Used Strippers as Student Recruiters, Feds Say," *Inside Higher Ed* (December 4, 2014) (online at <https://www.insidehighered.com/quicktakes/2014/12/04/college-used-strippers-student-recruiters-feds-say>).

²³ U.S. Department of Education, "U.S. Department of Education Takes Enforcement Action Against Medtech, Colleges in Virginia, Maryland, and Washington, D.C. (press release)" (July 26, 2016) (online at <http://www.ed.gov/news/press-releases/us-department-education-takes-enforcement-action-against-medtech-colleges-virginia-maryland-and-washington-dc>).

Harris School of Business²⁴, American Career Institute²⁵, and Globe University and Minnesota School of Business.²⁶

In order to better understand the effectiveness of the Department's student loan discharge programs involving each of these schools, I ask that you provide my office with the following information for each school listed above, as well as for every former Corinthian campus.

- a) The total number of student loan borrowers enrolled in relevant educational programs during the time that federal or state official have alleged that unlawful fraud occurred;
- b) The total number of students at each of these schools who have been notified by the Department of Education via email or postal mail of their eligibility for discharge, including the total number of notifications by type of notification.
- c) As a subset of (a), the number of students at each of these schools who have applied for discharge, disaggregated by discharge type;
- d) As a subset of (c), the number of students at each of these schools who have received a discharge, disaggregated by discharge type;
- e) As a subset of (c), the number of students at each of these schools who have been denied a discharge, disaggregated by reason for denial;
- f) As a subset of (a), the number of students at each of these schools currently in collections, including the number in administrative offset and the number in wage garnishment, disaggregated by those who have applied for discharge and those who have not.

Conclusion

The Department has taken strong steps over the last several weeks and months to prevent fraud before it happens, imposing enrollment and other restrictions on ITT Tech, proposing strong new rules to hold fraudulent colleges financially accountable for fraud, and shutting down the rubber-stamp for-profit accreditor ACICS. I commend you on your groundbreaking leadership in these areas. I also commend the Department for proposing rules that will ban forced arbitration clauses, which will help students protect themselves. But we cannot leave past victims of these abuses behind, and we cannot forget that thousands of fraud victims, who are barely scraping by beneath massive debt burdens, are depending on the Department to stand up for them and to help right past wrongs.

These new data clearly show that the Department of Education's student loan discharge efforts have failed to provide adequate help to defrauded borrowers. By massively – and

²⁴ Betty Coughlin, Division Director, Office of Federal Student Aid, U.S. Department of Education, to Nick Hastain, President, Harris School of Business, Re: Final Program Review Determination (June 29, 2015) (online at https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/FPRD/HarrisSchoolofBusiness_NJ_021040_06_29_2014_FPRD.pdf).

²⁵Office of the Attorney General of Massachusetts Maura Healey, "Former For-Profit School Admits to Deceiving Students and Falsifying Documents in Precedent-Setting Final Judgment (press release)" (June 6, 2016) (online at <http://www.mass.gov/ago/news-and-updates/press-releases/2016/2016-06-06-for-profit-school-deceiving-students.html>).

²⁶ Christopher Magan, "Fraud ruling threatens Globe U, Minnesota School of Business with closure," *Twin Cities Pioneer Press* (September 8, 2016) (online at <http://www.twincities.com/2016/09/08/fraud-ruling-threatens-globe-u-minnesota-school-of-business-with-closure/>).

absurdly – prioritizing debt collection over debt relief for defrauded Corinthian borrowers, thousands of students who have already suffered from Corinthian's unlawful practices are once again being victimized, this time by a federal student loan bank that cares more about its own bottom line than providing these students the relief they are entitled to under federal law.

Congress has given you ample authority to address this problem immediately and provide immediate debt relief to thousands of deserving student loan borrowers, and I am asking that you take these actions as rapidly as possible. It is time to start using it.

I also ask that you provide a written response and briefing on these efforts to my staff no later than October 14th, 2016. Please contact Josh Delaney (202) 224 - 4543 on my staff if you have any additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Warren", with a long horizontal flourish extending to the right.

Elizabeth Warren

United States Senator