



Justice at Last

Pathways to Promptly Expanding Closed School and Borrower Defense Relief Using Existing Regulations

By Alex Elson



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BY ALEX ELSON*

Student loan debt relief has been a central topic in the 2020 presidential election and during discussions about COVID-19 relief. While there has been much debate regarding the nature and scope of broad-based relief for all student loan borrowers, few dispute that borrowers who have been particularly harmed by their school’s misconduct and/or closure should promptly receive the relief that they are entitled to under existing laws and regulations. Indeed, the hundreds of thousands of students who attended large for-profit colleges that closed, and/or who were defrauded by predatory chains such as Corinthian College and ITT Tech, are among those that need debt relief the most. They are disproportionately low-income students and students of color whose dreams were stolen by companies that raked in millions through lies about their programs and subsequently closed, leaving students with worthless (if any) credentials and mountains of debt. To date, the vast majority of these borrowers have not received the relief they are entitled to.

This memorandum focuses on ways that the Department, in the first 100 days, can use its existing “closed school discharge” and “borrower defense” regulations to provide full student loan debt relief to this subset of particularly harmed student loan borrowers.¹

Section I discusses how the Department can promptly provide relief to tens of thousands of borrowers that were harmed by school closures by using its authority to extend closed school discharge eligibility periods and then, for students who attended institutions that closed between November 1, 2013 and July 1, 2020, provide the relief automatically without the borrower needing to apply.² In addition to providing critical relief to borrowers, this would potentially moot tens of thousands of borrower defense claims, thus reducing any backlog of claims, as well as effectively overturning erroneously denied claims.

In Section II, we discuss how the Department should promptly expand its existing borrower defense findings by looking first to *its own administrative findings* of misrepresentations and other consumer harms that could give rise to borrower defense claims. Remarkably, the Department has gone so far as to end Title IV participation for many institutions based on such consumer harms, but, years later, has not made a single borrower defense finding or granted a single claim from borrowers attending such institutions. The Department should use this evidence—as well as evidence submitted by state attorneys general and others—to develop long-overdue borrower defense findings and provide automatic, full relief to eligible borrowers. The Department should also ensure that, going forward, borrower defense relief is included in the administrative review process from the outset. Finally, the Department should immediately rescind its borrower defense partial relief methodology and provide full relief to all borrowers who fall within its Corinthian and ITT findings,³ including those for whom the Department has granted a claim but provided less than full relief.

Expand Closed School Discharge Relief Legal Framework

Under the Higher Education Act (“HEA”), the Secretary “shall discharge the borrower’s liability” on a federal Direct Loan if a borrower is “unable to complete the program in which [he or she was] enrolled due to the closure of the institution.”⁴ For loans disbursed prior to July 1, 2020, the Department’s regulations provide that a closed school discharge must be granted if a borrower is enrolled at the school at the time it closed or withdrew not more than 120 days prior to the school’s closure, and did not complete the program of study or transfer academic credits to a

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comparable program at another school.⁵ Parent PLUS loan borrowers are eligible for a closed school discharge if the student on whose behalf the loan was taken out qualifies.⁶

By regulation, the 120-day period for loans disbursed before July 1, 2020 may be extended if the Secretary determines that “exceptional circumstances” related to the school’s closing would justify an extension.⁷ In a rulemaking finalized on November 1, 2013, the Department sought to “add[] clarity” to this provision by including a non-exhaustive list of the types of exceptional circumstances under which it would extend the 120-day window.⁸ The regulations were therefore amended to provide that such circumstances “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.”⁹ In the July 29, 2013 Notice of Proposed Rulemaking for the November 1, 2013 regulations, the Department was clear that this list is not exhaustive and that the circumstances of each closing must be analyzed on a case-by-case basis:

It is important to note that, although the Secretary would view the cited examples as exceptional circumstances, these examples would not be exclusive or otherwise narrow the scope of exceptional

circumstances that the Secretary would consider. The Secretary has the discretion to consider other extenuating circumstances that may warrant a closed school loan discharge for a borrower who withdrew from a school more than 120 days before the school closed. As the Department noted during the negotiated rulemaking session, the Secretary determines whether exceptional circumstances exist on a case-by-case basis and takes into account the facts of the particular situation.¹⁰

Because all of the schools discussed in Section B below closed on or after November 1, 2013 and have been closed for at least three years, the Department should provide the relief discussed herein automatically, without delay, pursuant to the Automatic CSD Rule. *See supra* note 2.

Finally, it is important to note that the IRS does not treat discharges pursuant to the Department’s closed school discharge authority as taxable income.¹¹

Specific Recommendations

In the first 100 days of a new administration, the Department should conduct a review of school closures to determine where extensions (or further extensions) of the closed school window are warranted.¹² To do this, the Department should compare its school closure list to evidence in its possession from its own findings, including from program reviews and audit determinations. In addition, the Department should review evidence arising from state attorney general submissions, borrower defense claims, and any other channels.

In this section, we recommend extensions to the look-back period for seven institutions, a small selection of the total number of institutions that the Department should review. (Notably, while we do not address the well-known closure of Corinthian College, we believe the next Secretary should closely examine whether additional events justify extending the look-back date even further than the current June 20, 2014 extended date.¹³) Table 1 provides a summary of our recommendations; details are in the text below. Note that for some schools, publicly available information is insufficient to provide a specific recommended look-back date. For these schools, the Department should promptly review its files in order to determine the most appropriate date.

Table 1: Proposed Extensions to Closed School Discharge Look-Back Dates

Institution	Closure Date	Current Look- Back Date	Recommended Look-Back Date
Charlotte School of Law	8/10/2017	12/31/2016	02/06/2016 or earlier
Dream Center/EDMC	12/14/2018 & 3/8/2019 (most campuses)	6/29/2018 (most campuses) 1/20/2018 (Illinois Institute of Art and Art Institute of Colorado)	11/16/2015 or earlier
Education Corporation of America (ECA)	12/7/2018	8/9/2018	3/1/2015 or earlier
ITT Tech	9/6/2016	5/9/2016	8/19/2014 or earlier
Marinello School of Beauty	2/4/2016	10/7/2015	2013 or earlier
MedTech College	8/10/2016 (VA) 8/23/2016 (KY) 9/16/2016 (IN) 9/23/2016 (Radians)	4/12/2016 4/25/2016 5/19/2016 5/26/2016	2014 or earlier
Westwood	3/8/2016	11/9/2015	2012 or earlier

Charlotte School of Law

The Charlotte School of Law (“CSL”) closed on August 10, 2017.¹⁴ On March 9, 2018, the Department announced that it would extend the closed school discharge look-back period, but only to December 31, 2016, 224 days prior to the school’s closure. According to the Department, this decision expanded eligibility for closed school relief to “nearly a dozen additional students[.]”¹⁵ This slight extension is not enough.

By letter dated December 19, 2016, the Department denied CSL’s recertification application to participate in Title IV.¹⁶ The recertification denial letter details a long history of CSL’s non-compliance with ABA standards, starting in January 2015 when the ABA Accreditation Committee issued a decision announcing that it had “reason to believe” that CSL had “not demonstrated compliance” with certain ABA standards.¹⁷ As set out in that recertification denial, on February 3, 2016, the ABA Accreditation Committee

made twenty factual findings and then concluded that CSL was “not in compliance” with ABA Standards 301(a), 501(a), 501(b), and Interpretation 501-1. Following the February 3, 2016 decision, CSL had numerous opportunities to establish its compliance with the accreditation standards. Ultimately, its non-compliance was deemed both “substantial” and “persistent,” and led to the ABA placing CSL on probation.¹⁸ Shortly thereafter, the Department found that CSL’s failure to “meet the requirements established by the ABA” was of “sufficient severity to merit the denial of recertification.”¹⁹ Months later, CSL closed. At the time of its closing, CSL had one of the highest debt-to-income ratios of any law school in the country, with its graduates borrowing more than *five times* their first-year earnings, according to the median figures.²⁰

The Department should extend the closed school discharge look-back window to at least February 3, 2016, when the ABA first found CSL to be out of compliance with its standards.

Dream Center/EDMC

Education Management Corporation, or EDMC, was a for-profit education company that operated nationwide under four post-secondary school brands: the Art Institutes, South University, Argosy University, and Brown-Mackie College. In 2015, student enrollment across EDMC brands exceeded 100,000 students.²¹

On November 16, 2015, the United States, as well as a consortium of 39 state attorneys general and the District of Columbia, reached a global settlement with EDMC. In summary:

- ▶ EDMC agreed to pay \$95.5 million to the U.S. Department of Justice and several states based on the DOJ’s findings that EDMC unlawfully recruited students by running a high-pressure boiler room where admissions personnel were paid based purely on the number of students they enrolled.²²
- ▶ Attorneys General from 39 states and the District of Columbia entered a 69-page global Consent Judgment resolving allegations of fraud and abuse by EDMC, including claims that EDMC: (a) used deceptive solicitations touting educational benefits that were available to few students; (b) engaged in extremely high-pressure recruitment; (c) falsely claimed that programs were accredited by an accreditor necessary to obtain licensure in certain professions; and (d) misrepresented job-placement and graduation rates. The settlement required EDMC to undertake compliance obligations, including disclosures, prohibitions on deceptive recruiting practices, and oversight by an administrator.²³

In June 2016, EDMC announced that it would close 22 of its 26 Brown-Mackie campuses, and that the schools would not accept any new students.²⁴ The Department has not extended the closed school look-back date for Brown-Mackie.

On October 17, 2017, EDMC finalized the sale of its Art Institute, Argosy University and South University education systems to a non-profit charity known as the Dream Center Foundation (“Dream Center”). The Dream Center experiment did not last long—by December 14, 2018, it closed 24 Argosy and Art Institute campuses. The schools entered federal receivership on January 18, 2019,

and by March 8, 2019, nearly all remaining Dream Center campuses closed.²⁵

On November 8, 2019, for the schools that closed on December 14, 2018, the Department extended the closed school look-back date by approximately six weeks, to June 29, 2018. In February 2020, the Department further extended the date to January 20, 2018, but only for students who attended the Art Institute of Colorado (two Denver, CO locations) and Illinois Institute of Art (Chicago, IL Schaumburg, IL, and Novi, MI locations), all of which lost accreditation on January 20, 2018 and did not inform students for the next six months.²⁶ The Department has not extended the look-back date for the Dream Center schools that closed in 2019.

Multiple Senators and state Attorneys General have urged the Department to extend the closed school discharge look-back date for all Dream Center schools to October 17, 2017, the date the Dream Center took over.²⁷ We believe, however, that for all closed schools previously owned by EDMC as of November 2015—the Art Institute, Argosy, South University, and Brown-Mackie—the Department should extend the closed school date to at least November 16, 2015, the date of the Consent Judgment that revealed the long history of misconduct that set the schools on a path toward financial instability and closure.

Education Corporation of America (ECA)

On December 5, 2018, ECA announced the immediate closure of more than 70 campuses across 18 states, including the campuses of Brightwood Career Institute, Brightwood College, Ecotech Institute, Golf Academy of America, and Virginia College.²⁸ ECA’s collapse immediately displaced approximately 18,000 students.²⁹ The Department has not extended the closed school look-back window for any ECA campuses.

The troubles for ECA began well-before the current look-back period. In March 2015, amid concerns about its compliance and financial stability, the Department placed many of ECA’s campuses on heightened cash monitoring status, resulting in additional federal oversight of student aid funds.³⁰ The documents supporting this decision do not appear to be publicly available. The Department restricted

the flow of federal funds to more ECA colleges in October 2017 and, based on review of the company's 2016 financial statements, required additional financial and operating reporting and review requirements in February 2018 and August 2018.³¹

When the Department released the first set of gainful employment data in January 2017, ECA's schools were some of the worst performing, with high debt and low earnings for its graduates. Of approximately 200 ECA programs across 21 campuses, nearly one-third—60 programs—were failing or at risk of failing the gainful employment rule.³²

ECA was also plagued by numerous accreditation issues. In December 2016, after the Department denied the recognition of Virginia College's accreditor, ACICS, Virginia College had 18 months to find a new accreditor. Virginia College ultimately sought accreditation from ACCET. On May 1, 2018, ACCET denied accreditation to Virginia College due to, among other things, poor graduation rates, poor job placement rates, high faculty turnover rates, and the failure to provide students access to proper supplies.³³ On May 8, 2018, relying in part on ACCET's findings, ACICS placed Virginia College on show cause status.³⁴ Also in May, multiple Brightwood College and Brightwood Career Institute campuses were required by their accreditor to "show cause" why their accreditation should not be withdrawn.³⁵

In September 2018, ECA announced it would close and end new enrollment at 26 campuses by 2020, which represented one third of the campuses it owned at the time.³⁶ On December 4, 2018, ACICS withdrew accreditation from Virginia College.³⁷ All ECA campuses closed the next day.

While records relating to ECA's placement on heightened cash monitoring status in March 2015 are not publicly available, that event appears to have been the first in a chain of events that led to ECA's closure. Accordingly, we believe the Department should extend ECA's look-back date to at least March 1, 2015.

ITT Technical Institute (ITT)

ITT closed on September 6, 2016 and the Department has not extended the closed school discharge window.³⁸ At the time of its closure, ITT was operating 136 locations

across 38 states, serving approximately 35,000 students.³⁹ On September 16, 2016, ITT filed a Voluntary Petition for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the Southern District of Indiana. Multiple senators and state attorneys general have unsuccessfully called upon the Department to use its authority to extend the look-back period for ITT.⁴⁰

The Department's approach to the Corinthian look-back date is instructive here. For Corinthian, the Department extended the date to June 20, 2014, the date upon which the Department placed the institution on heightened cash-monitoring status.⁴¹

We recommend extending the look-back date to at least August 19, 2014, the date upon which the Department sent a letter to ITT citing the school's failure to submit timely acceptable annual compliance audits and/or audited financial statements. The letter resulted in the institution's placement on heightened cash-monitoring status as well as the requirement that ITT be provisionally certified for at least five years and post an irrevocable letter of credit for five years.

The August 19, 2014 letter was the first in a series of events that led to ITT's closure. Between 2014 and 2016, multiple civil lawsuits were filed against ITT by both federal and state law enforcement agencies.⁴² In addition, as of April 2016 there were civil investigative demands pending from 19 state attorney general offices regarding ITT's marketing and advertising, recruitment, financial aid, academic advising, career services, admissions practices, programs, licensure exam pass rates, accreditation, student retention, graduation rates, and job placement performance.⁴³

On April 20, 2016, ITT's accreditor, ACICS, issued a show-cause directive after finding ITT to be out of compliance with many of its accreditation standards.⁴⁴ ACICS based its determination on "multiple sources of adverse information *since 2014* regarding a variety of financial and regulatory issues confronting the institution[.]"⁴⁵ On June 6, 2016, the Department required ITT to increase its letter of credit from 10% to 20% of the total Title IV funding received in its most recent fiscal year.⁴⁶ This amounted to an increase of \$43,938,303, from \$79,707,879 to \$123,646,182.⁴⁷

On August 25, 2016, the Department again increased ITT's letter of credit, this time to 40% of the total Title IV funding received during its most recent fiscal year (nearly \$250 million) and prohibited ITT from enrolling new students who use federal financial aid.⁴⁸ ITT closed on September 6, 2016. The Department should not penalize students for taking the reasonable step of abandoning ITT's sinking ship. Accordingly, we believe the Department should extend ITT's look-back date to at least August 19, 2014, which was the first in this series of events.

Marinello School of Beauty

On February 1, 2016, the Department issued letters to five Marinello Schools of Beauty ("Marinello"), comprised of 23 locations, notifying them that it denied recertification of their eligibility to participate in the federal student aid programs.⁴⁹ Three days later, Marinello closed all 56 of its operating campuses, located in California, Connecticut, Kansas, Nevada, and Utah.⁵⁰

The Department's assessment concluded that Marinello "failed to adhere to a fiduciary standard of conduct, failed to comply with critical Title IV program requirements, failed to meet Title IV standards of administrative capability, and made numerous misrepresentations to students."⁵¹

Among other things, the Department found that Marinello illegally disbursed Title IV funds by "fabricating high school diplomas" and "misled students regarding key elements of their educational programs and financial charges."⁵²

Marinello also faced significant legal trouble. On July 22, 2013, six former employees sued the school under the False Claims Act alleging that it had improperly obtained federal student loan funds.⁵³ In August 2016, Marinello's insurer agreed to pay \$8.6 million to resolve claims.⁵⁴ In addition, in February 2018 three former Marinello students sued the Department to challenge the denial of their applications for student loan discharges based on misconduct by the school starting in February 2013, when plaintiff Lizette Menendez first inquired about enrolling in Marinello's cosmetology program.⁵⁵ In April 2018, the Department provided plaintiffs with the full discharges that they sought.⁵⁶

While the Department's recertification denial does not provide specific dates for its findings, it appears from the

allegations in these lawsuits that the misconduct at issue likely took place prior in or around 2013. However, because the underlying evidence that supported these findings is not public, we do not have sufficient information to propose a precise look-back date, be it in 2013 or earlier. The Department should therefore review the evidence in its possession regarding Marinello in order to determine the appropriate extension date.

Medtech College

Medtech College operated campuses in Virginia, Maryland, and Washington, D.C ("Medtech Virginia"), as well as campuses in Kentucky, and Indiana. It also operated Radians College, which it purchased in 2011, located in Washington, D.C.

On July 26, 2016, the Department denied Medtech Virginia's application for recertification of eligibility to participate in the federal student aid programs.⁵⁷ The Department's assessment revealed that:

- (1) Medtech significantly overstated the job placement rates it reported to its institutional accreditor in its 2014 Annual Report, (2) Medtech significantly overstated the job placement rates it disclosed to the Department and the public through its Gainful Employment disclosures, (3) Medtech made numerous misrepresentations as to the job placement of individual students, and (4) Medtech contracted with a third-party placement rate verifier and failed to report that contractual arrangement in direct contravention of the Department's regulations.⁵⁸

Medtech Virginia closed all campuses on August 10, 2016.⁵⁹ On August 23, Medtech closed its Lexington, Kentucky campus.⁶⁰ On September 16, Medtech closed all of its Indiana campuses (located in Indianapolis, Fort Wayne and Greenwood).⁶¹ On September 23, Medtech closed Radians College.⁶²

In its recertification denial, the Department found substantial misconduct in 2014, and perhaps earlier. Because the underlying evidence that supported the Department's findings is not public, we do not have sufficient information to propose a precise look-back date, or to determine if the look-back extension should apply

to Radians College. The Department should review the evidence in its possession to determine the appropriate extension date(s) for all Medtech campuses.

Westwood College

Westwood College, owned by Alta Colleges, Inc., closed on March 8, 2016. Despite a long record of troubling conduct that extends back over a decade, the Department has not extended the closed school discharge window for any Westwood campuses.

Examples of Westwood and Alta's misconduct include: (i) in 2009, Alta agreed to a \$7 million settlement with the United States in a false claims case stemming from allegations that the school obtained state licenses by misrepresenting to the state licensing agency that they complied with state job-placement reporting requirements;⁶³ (ii) in 2011, the VA disqualified three Westwood campuses from the GI Bill after finding erroneous, deceptive, and misleading advertising and enrollment practices;⁶⁴ (iii) in 2012, the Colorado Attorney General filed a complaint against Westwood stemming from an investigation into the college's business and recruiting practices that revealed, among other things that the school misrepresented and inflated its job-placement rates, the average wages of graduates, the transferability of course credits, and the total cost of Westwood degrees. Westwood and the attorney general reached a \$4.5 million settlement in March 2012;⁶⁵ (iv) on January 18, 2012, the Illinois Attorney General sued Westwood for misleading practices relating to its criminal justice program;⁶⁶ Westwood settled the suit for \$15 million in 2015 after failing to gain dismissal of the case.⁶⁷

In November 2015, Westwood suspended all new enrollments and, in January 2016, informed students that the school would close in March 2016.⁶⁸ On June 5, 2019, the Illinois Attorney General announced that he sent a letter to the Department seeking the discharge of federal students loans for borrowers defrauded by Westwood, based on an application for group relief submitted by his office "over two years ago," for which the Department had not even "acknowledge[d] receipt."⁶⁹

Because the underlying evidence that supported these findings and settlements is not public, we do not have sufficient information to propose a precise look-back date,

be it in 2012 or earlier. The Department should therefore review the evidence in its possession regarding Westwood to determine the appropriate extension date.⁷⁰

Borrower Defense

Under the HEA, 20 U.S.C. § 1087e(h), and its implementing regulations, student loan borrowers who can show that the school they attended engaged in certain wrongful acts or omissions have a defense against repayment of their federal student loan debt through a process known as "borrower defense" to repayment.⁷¹ Borrower defense was little known and rarely used until Corinthian Colleges collapsed in 2014, leading to a flood of borrower defense claims.⁷² By the end of the Obama administration, the Department had provided student loan discharges to over 30,000 borrowers, nearly all from Corinthian.⁷³ In each case, the Department granted a full discharge of the loans and granted refunds of loan payments already made.⁷⁴

In February 2016 the Department announced the creation of a Federal Student Aid Enforcement Unit ("Enforcement Unit"), designed to "respond more quickly and efficiently to allegations of illegal actions by higher education institutions."⁷⁵ The Enforcement Unit was to consist of a newly-created investigations unit to operate alongside, and in close collaboration with, the borrower defense unit. Among other things, the Enforcement Unit was to "collaborate with the Program Compliance Unit regarding evidence which may impact ongoing program compliance reviews" as well as work closely with state and federal agencies to build cases against institutions of higher education, and provide relief to eligible borrowers.⁷⁶ The Enforcement Unit was therefore a fundamental redesign of how the Department approached enforcement; with close collaboration between the enforcement/administrative review teams and the borrower defense teams, relief to borrowers was, for the first time, to be a critical component of the larger enforcement process.

This never happened. Under Secretary DeVos, the Department all but dismantled the newly-created Enforcement Unit, effectively isolating borrower defense from the rest of the Department, as well as from state attorneys general and other third parties.⁷⁷ Contrary to

the purpose and design of the Enforcement Unit, the Department today does not appear to even consider its *own factual findings* from program reviews, audit determinations, and other administrative channels in establishing borrower defense findings. For example, the Department has ended many schools' participation in the federal student loan program based on findings of misrepresentations and other consumer harms that could give rise to borrower defense claims—in 2016 alone, the Department issued recertification denials based on student/consumer harms to: Medtech College,⁷⁸ Globe University and the Minnesota School of Business,⁷⁹ Charlotte School of Law,⁸⁰ Computer Systems Institute (CSI),⁸¹ and the Marinello School of Beauty.⁸² Yet the Department has not made a single borrower defense finding relating to these schools and, despite many claims from students attending these schools, not a single borrower has received relief, and some have been denied.⁸³

We therefore recommend that the Department promptly expand its existing borrower defense findings by looking to evidence—in its possession—of misrepresentations, fraud or other misconduct that would give rise to a borrower defense claim. The Department should use this evidence to develop long-overdue findings and provide automatic, full borrower defense relief to eligible borrowers. In addition, going forward the Department should revive the Enforcement Unit and ensure that borrower defense relief is included in the administrative review process from the outset.

In addition to using its own administrative findings, the Department should develop borrower defense findings and provide full borrower defense relief based on:

- ▶ Judicial findings, such as those against Globe University/MSB⁸⁴ and CollegeAmerica⁸⁵ and
- ▶ Submissions by State Attorneys General seeking group borrower defense discharges. The Department has reported to Congress that it has received submissions from Attorneys General seeking group borrower defense discharges for students who attended at least the following institutions: (i) Westwood College, (ii) the Illinois Institute of Art and Art Institute of Colorado, (iii) Anthem University, (iv) Lincoln Technical Institute, and (v) Globe University and the Minnesota School of Business; (vi) Corinthian Colleges and (vii) Kaplan University.⁸⁶ The Department should review all such evidence and provide group relief where appropriate.

Finally, with respect to existing borrower defense findings, the Department has not publicly made any findings in addition to the Corinthian, very limited ITT (*see supra* note 3), and American Career Institute (“ACI”) findings that existed at the end of the Obama administration.⁸⁷ Under the approach taken by the Obama administration, approved Corinthian, IIT, and ACI borrowers received complete discharges of their federal loans.⁸⁸ Secretary DeVos, however, has attempted to implement two tiered “partial relief” methodologies for Corinthian and ITT borrowers that (i) provide approved borrowers with little to no financial relief⁸⁹ and (ii) are both the subject of ongoing litigation.⁹⁰ The Department should promptly rescind these “partial relief” methodologies and, consistent with its prior practices, provide full relief to all borrowers who fall within existing Corinthian and ITT findings, including those for whom the Department has granted a claim but provided less than full relief.

Endnotes

- 1 To be clear, this is not an omnibus debt relief memorandum—it does not address existing proposals for regulatory change and broad-based debt relief, and should not be read to suggest that the institutions discussed herein are the only institutions to which these principles should apply. Rather, the goal here is to provide concrete examples of specific, long-overdue relief that the Department can immediately provide, using existing regulations, to discrete categories of borrowers, irrespective of and in addition to any other forms or sources of debt relief.
- 2 In 2016, as part of the Borrower Defense rulemaking, the Department created the Automatic Closed School Discharge Rule (“Automatic CSD Rule”), which provided that a student who was attending a school (or campus) at or within 120-days of the time of closure 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 the program at a different institution (or campus). 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)). This rule applied to all schools (or campuses) that closed on or after November 1, 2013. *Id.* The 2019 Borrower Defense Rule repealed the Automatic CSD Rule as of July 1, 2020, but that repeal is not retroactive. Accordingly, the Department must continue to grant automatic closed school relief for borrowers whose schools closed on or after November 1, 2013 and before July 1, 2020. See 84 Fed. Reg. 49,788, 49,889 (Sept. 23, 2019). In a separate memorandum, we discuss how the Department should commence a rulemaking in order to reinstate and improve upon the Automatic CSD Rule.
- 3 The Department’s ITT findings should promptly be expanded. At the end of the Obama administration, the ITT findings applied only to California borrowers, and the Department has not publicly expanded those findings. See, e.g., Cory Turner, *Betsy DeVos Overruled Education Dept. Findings On Defrauded Student Borrowers*, National Public Radio (Dec. 11, 2019), available at: <https://www.npr.org/2019/12/11/786367598/betsy-devos-overruled-education-dept-findings-on-defrauded-student-borrowers>.
- 4 20 U.S.C. § 1087(c)(1); 34 C.F.R. §§ 682.402(d)(1)(i) (FFEL), 685.214(a)(1) (Direct Loan) (emphasis added).
- 5 34 C.F.R. § 685.214(c)(1)(i). For loans first disbursed on or after July 1, 2020, the 2019 Borrower Defense Rule extends the closed school discharge window from 120 to 180 days. See 84 Fed. Reg. 49848 (Sept. 23, 2019).
- 6 34 C.F.R. §§ 682.402(d)(1)(i) (FFEL), 685.214(a)(1) (Direct Loan).
- 7 34 C.F.R. §§ 682.402(d)(1)(i) (FFEL), 685.214(c)(1)(i)(b) (Direct Loan).
- 8 See 78 Fed. Reg. 65768, 65771 (Nov. 1, 2013).
- 9 34 C.F.R. § 685.214(c)(1)(i)(B). For loans disbursed on or after July 1, 2020, the 2019 Borrower Defense Rule revised the non-exclusive list of exceptional circumstances in § 685.214(c)(1)(i)(B) (redesignated § 685.214(c)(2)(i)(B)) to include: “the revocation or withdrawal by an accrediting agency of the school’s institutional accreditation; the revocation or withdrawal by the State authorization or licensing authority of the school’s authorization or license to operate or to award academic credentials in the State; the termination by the Department of the school’s participation in a title IV, HEA program; or the teach-out of the student’s educational program exceeds the 180-day look-back period for a closed school loan discharge.” 84 Fed. Reg. 49850 (Sept. 23, 2019).
- 10 78 Fed. Reg. 45618, 45628 (July 29, 2013).
- 11 See HEA §§ 437(c)(4), 464(g)(4), and 455(a)(1) (providing that closed school discharge relief for borrowers of FFELs, Direct Loans, and Perkins Loans are not taxable); IRS Rev. Proc. 2020-11, 2020-6 I.R.B. 406 (2020) (providing that the IRS will not treat loans discharged through the “Closed School discharge process” as taxable revenue).
- 12 School closure information, including closure dates, is available through school-specific FSA fact sheets, available at: https://studentaid.gov/announcementsevents/closedschool?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=
- 13 The Department extended the Corinthian look-back date to June 20, 2014, the date upon which the Department placed the institution on heightened cash-monitoring status. See U.S. Dep’t of Educ. Press Release, U.S. Department of Education Heightens Oversight of Corinthian Colleges (June 19, 2014), available at: <https://www.ed.gov/news/press-releases/us-department-education-heightens-oversight-corinthian-colleges>
- 14 Charlotte School of Law Fact Sheet, available at: <https://studentaid.gov/sites/default/files/charlotte-law.pdf>.
- 15 U.S. Dep’t of Educ. Press Release, Secretary DeVos Extends Closed School Discharge to More Charlotte School of Law Students (Mar. 9, 2018), available at: <https://www.ed.gov/news/press-releases/secretary-devos-extends-closed-school-discharge-more-charlotte-school-law-students>.
- 16 See Letter from Susan Crim, FSA, to Chidi Ogene, President of CSL (Dec. 19, 2016), available at: <https://studentaid.gov/sites/default/files/csl-recert-denial.pdf>.
- 17 *Id.* at 3.
- 18 *Id.* at 8.
- 19 *Id.*
- 20 See Debra Cassens Weiss, *Latest figures show why many law grads struggle with debt; which schools had highest and lowest debt-to-income ratios?* ABA Journal (Dec. 5, 2019) (citing U.S. Department of Education data), available at: <https://www.abajournal.com/news/article/latest-figures-show-why-debt-loads-are-a-struggle-for-many-law-grads>.
- 21 See United States Dep’t of Justice Press Release, For-Profit College Company to Pay \$95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations (Nov. 16, 2015), available at: <https://www.justice.gov/opa/pr/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and>.
- 22 *Id.*
- 23 See Stipulated General Judgement, *State of Or. v. Educ. Mgmt. Corp.*, No. 15CV30936 at ¶ 74 (Or. Cir. Ct. Nov. 17, 2015).
- 24 See Ashley A. Smith, *Decreases in Enrollment Lead to Brown Mackie Closing*, Inside Higher Ed (June 15, 2016), available at: <https://www.insidehighered.com/news/2016/06/15/decreases-enrollment-lead-brown-mackie-closing>. The majority of the remaining campuses were sold to Ross Medical Education Center in 2017. See Ross Education Website, About Us, available at: <https://rosseducation.edu/our-school/>.
- 25 See *Digital Media Solutions, LLC v. S. Univ. of Ohio, LLC et al.*, No. 1:19-cv-145 (N.D. Ohio Jan. 18, 2019).
- 26 A complete list of closed Dream Center campuses and dates is available here: <https://studentaid.gov/announcements-events/dceh-schools>.
- 27 See, e.g., Letter from 30 State Attorneys General to Sec. DeVos (Oct. 17, 2019), available at: <https://www.doj.state.or.us/wp-content/uploads/2019/10/LTR-10172019-to-Sec-DeVos-re-Closed-School-Discharge-DCEH.pdf>; Follow Up Letter from Attorneys General to Sec. DeVos (Feb. 4, 2020), available at: https://www.ag.state.mn.us/Office/Communications/2020/Docs/DeVosLTR_re_CSD_DCEH_02042020.pdf; Letter from Senators Durbin, Bennet, Duckworth, Gardner to Sec. DeVos at 2 (Dec. 13, 2019), available at: <https://www.durbin.senate.gov/newsroom/press-releases/durbin-bennet-duckworth-gardner-to-devos-extend-closed-school-discharge-eligibility-for-illinois-colorado-students>.
- 28 See ECA Fact Sheet, available at: <https://studentaid.gov/sites/default/files/education-corporation-america.pdf>; see also Letter from Sen. Elizabeth Warren & Rep. Elijah Cummings to Stu Reed, President and CEO of ECA and John F. Kennedy, Receiver (Dec. 21, 2018), available at: <https://www.warren.senate.gov/imo/media/doc/Letter%20to%20ECA.pdf>.
- 29 See *VC Macon, GA LLC v. Va. Coll. LLC*, No. 5:18-cv-00388, Dkt. 99 (Receiver’s Initial Report) (M.D. Ga. Dec. 12, 2018).
- 30 U.S. Department of Education, Heightened Cash Monitoring List for March 2015, available at: <https://studentaid.gov/data-center/school>

- /hcm.
- 31 See *Educ. Corp. of America, et al., v. United States Dep't of Educ., et al.*, No. 2:18-cv-01698 (N.D. Ala. Compl. filed Oct. 16, 2018).
 - 32 See U.S. Department of Education, Office of Federal Student Aid, "Gainful Employment Information," available at: <https://studentaid.gov/data-center/school/ge>. See also Amicus Curiae Br. of Southern Poverty Law Center, et. al in Opp. to Pls' Mot. for Prelim. Injunc., *Educ. Corp. of America, et al., v. United States Dep't of Educ., et al.*, No. 2:18-cv-01698, Dkt. 45 at 2-14 (N.D. Ala. Brief. filed Oct. 31, 2018) ("In the most recent calculations for Virginia College, only 3 of the 35 programs evaluated passed [the gainful employment] metric. For Brightwood Career Institute, only 4 of the 33 programs evaluated passed the Department's debt-to- discretionary income metric. For Brightwood College, 125 programs were evaluated, but only 23 passed this debt-to-discretionary income metric. . . . The Institutions maintain cohort default rates that are, in some cases, *double* the national cohort default rate for all institutions of higher education, and many of their campuses have cohort default rates *triple* the national rate.") (internal citations omitted).
 - 33 ACCET, Initial Accreditation Denial (Appealable – Not a Final Action) at 2, 56 (May 1, 2018), available at: <https://perma.cc/39J8-S74X> (finding that 31 of the 33 campuses did not "meet the required completion and job placement benchmark as detailed" in their standards, and further that the institutions failed to "demonstrate positive students outcomes to validate the vast majority of its training programs at the vast majority of campuses"). In August 2018, ACCET denied ECA's appeal. See Letter from William Larkin, Executive Director, ACCET, to John Carreon, Senior Vice President, Regulatory Affairs and Associate General Counsel, Virginia College (Aug. 31, 2018), available at: <http://s3.amazonaws.com/docs.accet.org/downloads/adverse/1539.pdf>.
 - 34 See ACICS Press Release, ACICS Withdraws Accreditation of All Institutions Owned by Virginia College LLC (Dec. 6, 2018), available at: <https://www.acics.org/news/acics-withdraws-accreditation-of-all-institutions-owned-by-virginia-college-llc?rq=virginia%20college>; Letter from Michelle Edwards, President & CEO, ACICS, to Gregory Gossett, Campus President, Virginia College (May 8, 2018), available at: https://www.acics.org/uploadedFiles/Actions/00010582_VirginiaColl_SC_AdverseInformation.pdf.
 - 35 Andrew Kreighbaum, *Another Setback for Programs Overseen by Troubled Accrator*, Inside Higher Ed (May 22, 2018), available at: <https://www.insidehighered.com/news/2018/05/22/profit-chain-falls-short-attempt-get-new-accreditors-approval>.
 - 36 Andrew Kreighbaum, *For-Profit Chain Will Close Dozens of Campuses*, Inside Higher Ed (Sept. 12, 2018), available at: <https://www.insidehighered.com/news/2018/09/12/profit-chain-will-close-dozens-campus>.
 - 37 Letter from Michelle Edwards, President & CEO, ACICS, to Stuart Reed, CEO, ECA (Dec. 4, 2018), available at: https://static1.squarespace.com/static/5ce58a38738b880001909396/t/5d94c61791d85d51e88c9e0f/1570031127647/00016224_ECA-VC_WS_Redacted.pdf.
 - 38 See <https://studentaid.gov/announcements-events/itt>. As of December 2019, approximately 7,700 ITT borrowers received approximately \$95 million in relief under the Automatic CSD Rule. See National Student Legal Defense Network Press Release, Student Advocates Announce Closed School Discharges for Over 30,000 Student Borrowers (Jan. 16, 2020) (linking to a January 15, 2020 letter from the Department to Student Defense), available at: <https://www.defendstudents.org/news/student-advocates-announce-closed-school-discharges-for-over-30000-student-borrowers>.
 - 39 See <https://studentaid.gov/announcements-events/itt>. See also Daniel Douglas-Gabriel, *ITT Technical Institutes Shut Down After 50 Years in Operation*, Washington Post (Sept. 6, 2016), available at: <https://www.washingtonpost.com/news/grade-point/wp/2016/09/06/itt-technical-institutes-shut-down-after-50-years-in-operations/>.
 - 40 See Letter from 22 State Attorneys General to Mark A. Brown, COO of FSA, at 2 (Nov. 13, 2019), available at: https://illinoisattorneygeneral.gov/pressroom/2019_11/Letter_to_Dept_of_Ed_ITT_loan_discharges.pdf; Letter from Senators Durbin, Warren, Blumenthal and Brown to Sec. DeVos at 2 (Sep. 4, 2019), available at: <https://www.durbin.senate.gov/newsroom/press-releases/durbin-dem-senators-press-devos-to-provide-automatic-closed-school-discharges-to-former-itt-tech-students>.
 - 41 See U.S. Dep't of Educ. Press Release, U.S. Department of Education Heightens Oversight of Corinthian Colleges (June 19, 2014), available at: <https://www.ed.gov/news/press-releases/us-department-education-heightens-oversight-corinthian-colleges>.
 - 42 See, e.g., *Consumer Fin. Protection Bureau v. ITT Educ. Servs., Inc.*, No. 14-cv-292 (S.D. Ind. Compl. filed Feb. 26, 2014); *SEC v. ITT Educ. Servs., Inc., et al.*, No. 15-cv-0758 (S. D. Ind. Compl. filed May 12, 2015); *State of New Mexico v. ITT Educ. Servs., Inc.*, No. D-202-CV-2014-01604 (N.M. 2d Dist. Ct. Compl. filed Feb. 26, 2014); *Commonwealth of Massachusetts v. ITT Educ. Servs., Inc.*, No. 16-0411 (Mass. Sup. Ct. Compl. filed Mar. 31, 2016).
 - 43 See Letter from Anthony S. Bieda, ACICS to Kevin Modany, President of ITT at 1 (April 20, 2016) (listing civil investigative demands pending from Arkansas, Arizona, Colorado, Connecticut, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maryland, Minnesota, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee, Washington and the District of Columbia), available at: https://www.bppe.ca.gov/enforcement/actions/final_acics_20160420.pdf.
 - 44 *Id.*
 - 45 *Id.* at 1 (emphasis added).
 - 46 See Letter from Michael Frola, FSA, to Kevin Modany, CEO of ITT (June 6, 2016), available at: <https://studentaid.gov/sites/default/files/itt-notification.pdf>.
 - 47 *Id.*
 - 48 See Letter from Ron Bennett, FSA, to Kevin Modany, President of ITT at 1 (Aug. 25, 2016), available at: <https://www2.ed.gov/documents/press-releases/itt-letter-08252016.pdf>; see also U.S. Dep't of Educ. Press Release, Department of Education Bans ITT from Enrolling New Title IV Students, Adds Tough New Financial Oversight (Aug. 25, 2016), available at: <https://www.ed.gov/news/press-releases/departement-education-bans-itt-enrolling-new-title-iv-students-adds-tough-new-financial-oversight>.
 - 49 These letters were sent to the following Marinello campuses: Las Vegas, NV (OPEID 00736700); Los Angeles, CA (OPEID 00747600); Burbank, CA (OPEID 01265000); Moreno Valley, CA (OPEID 02221300); and Sacramento, CA (OPEID 03094400). All five letters are provided on the Department's Marinello closure page, available at: <https://studentaid.gov/announcements-events/marinello>.
 - 50 See FSA Marinello Closure Page, available at: <https://studentaid.gov/announcements-events/marinello> and FSA Frequently Asked Questions About Marinello School of Beauty, available at: <https://studentaid.gov/announcements-events/marinello/faq>. Marinello also closed a location in Massachusetts on December 23, 2015. *Id.*
 - 51 *Id.* at 1.
 - 52 *Id.* at 2, 8.
 - 53 See *United States ex rel. Caron, et al. v. B&H Education, Inc., et al.*, No. 13-cv-5256-RGK (C.D. Cal. Compl. filed July 22, 2013).
 - 54 See U.S. Dept. of Justice Press Release, Defunct Cosmetology School's Insurer Pays \$8.6 Million to Resolve Claims that School Improperly Obtained Federal Student Loan Funds (Aug. 24, 2016), available at: <https://www.justice.gov/usao-cdca/pr/defunct-cosmetology-school-s-insurer-pays-86-million-resolve-claims-school-improperly>.
 - 55 See *Menendez, et al. v. DeVos, et al.*, No. 2:18-CV-01061 (C.D. Cal. Compl. filed Feb. 7, 2018).
 - 56 See Legal Aid Foundation of Los Angeles Press Release, Students Defrauded By Marinello Schools Of Beauty Obtain Belated Discharges After Filing Suit Against The Department Of Education (April 10, 2018), available at: <https://lafai.org/get-help/student-loan-issues/students-defrauded-by-marinello-schools-of-beauty-obtain>

- belated-discharges-after-filing-suit-against-the-department-of-education/.
- 57 See Letter from Susan Crim, FSA, to William Winkowski, President of Medtech (July 26, 2016), *available at*: <https://studentaid.gov/sites/default/files/medtech-recert-denial.pdf>. Medtech Virginia's main location was in Falls Church, VA, with additional locations in Silver Spring, MD and Washington, D.C.
- 58 See FSA Medtech Closure Page, *available at*: <https://studentaid.gov/announcements-events/medtech>. In addition to the denial of recertification, the Department directed JTC Education Holdings, Inc., Medtech's parent company, to remit a larger letter of credit as a condition of continued participation in the federal student aid programs. *Id.*
- 59 *Id.*
- 60 See Medtech Kentucky school closure fact sheet, *available at*: <https://studentaid.gov/sites/default/files/medtech-kentucky.pdf>.
- 61 See Medtech Indiana school closure fact sheet, *available at*: <https://studentaid.gov/sites/default/files/medtech-indiana.pdf>.
- 62 See Medtech Radians College school closure fact sheet, *available at*: <https://studentaid.gov/sites/default/files/radians.pdf>. The Medtech College campus in Orlando, Florida and the Medtech Institute campus in Atlanta, Georgia were under new ownership at the time of these closures and were therefore not impacted by the closures. See Federal Student Aid, Medtech Frequently Asked Questions, *available at*: <https://studentaid.gov/announcements-events/medtech/faq>.
- 63 See United States Dep't of Justice Press Release, Alta Colleges to Pay U.S. \$7 Million to Resolve False Claims Act Allegations (Apr. 20, 2009), *available at*: <https://www.justice.gov/opa/pr/alta-colleges-pay-us-7-million-resolve-false-claims-act-allegations>.
- 64 See Senator Durbin Press Release, VA Disqualifies Three Westwood College Campuses From GI Bill Program (Mar. 2, 2011), *available at*: <https://www.durbin.senate.gov/newsroom/press-releases/durbin-va-disqualifies-three-westwood-college-campuses-from-gi-bill-program>.
- 65 Colorado Attorney General Press Release, Attorney General Announces \$4.5 Million Settlement with Westwood College to Address Deceptive Business Practices (Mar. 14, 2012) (linking to the complaint, release, and consent judgment), *available at*: <https://stopfraudcolorado.gov/about-consumer-protection/press-releases/2012-03-14-000000/attorney-general-announces-45-million.html>.
- 66 See *Illinois v. Alta Colleges, Inc., et al.*, No. 14-cv-03786 (N.D. Ill.).
- 67 See Ashley A. Smith, *For-Profit Settles With Illinois Attorney General for \$15M*, Inside Higher Ed (Nov. 6, 2015), *available at*: <https://www.insidehighered.com/quicktakes/2015/11/06/profit-settles-illinois-attorney-general-15m>.
- 68 See Illinois Board of Higher Education Fact Sheet, *available at*: <https://www.ibhe.org/assets/files/Westwood.pdf>.
- 69 Illinois Attorney General Press Release, Attorney General Raoul Calls on U.S. Department of Education to Discharge Federal Student Loans (June 5, 2019), *available at*: https://illinoisattorneygeneral.gov/pressroom/2019_06/20190605.html.
- 70 The Department should also review the extensive discussion of misconduct and findings against Westwood and Alta Colleges, Inc. in the U.S. Senate Health, Education, Labor and Pensions (HELP) Committee's 2012 report on for profit colleges, *available at*: https://www.help.senate.gov/imo/media/for_profit_report/PartII/Alta.pdf.
- 71 Specifically, the HEA provides that, "Notwithstanding any other provision of State or Federal law, the Secretary shall specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this part, except that in no event may a borrower recover from the Secretary, in any action arising from or relating to a loan made under this part, an amount in excess of the amount such borrower has repaid on such loan." 20 U.S.C. § 1087e(h). Regulations implementing this law were promulgated in 1995, 2016, and 2019. The vast majority of borrowers with pending claims are subject to the 1994 and 2016 rules. The 1995 rules apply to loans issued before July 1, 2017. See 34 C.F.R. § 685.206(c). The Obama Administration expanded upon the borrower defense rule in 2016. See Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 84 FR 49,788, at 49,814 (Sept. 23, 2019) (codified at 34 C.F.R. §§ 668, 682, 685) (the 2016 rule is generally applicable to loans issued between July 1, 2017 and July 1, 2020). In September 2019, the Department finalized another set of rules that apply to loans issued on or after July 1, 2020. See Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 84 Fed. Reg. 49,788 (Sept. 23, 2019) (codified at 34 C.F.R. §§ 668, 682, 685).
- 72 As of May 2020, the Department had received over 320,000 borrower defense claims. See Borrower Defense Quarterly Report, dated May 2020, *available at*: <https://studentaid.gov/data-center/student/loan-forgiveness/borrower-defense-data>.
- 73 See U.S. Dep't of Educ. Office of Inspector General, *Federal Student Aid's Borrower Defense to Repayment Loan Discharge Process*, at 3 (Dec. 8, 2017), *available at*: <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/i04r0003.pdf>.
- 74 *Id.* at 31-32.
- 75 See U.S. Dep't of Educ. Press Release, Student Aid Enforcement Unit Formed to Protect Students, Borrowers, Taxpayers (Feb. 8, 2016), *available at*: <https://www.ed.gov/news/press-releases/student-aid-enforcement-unit-formed-protect-students-borrowers-taxpayers>.
- 76 *Id.*
- 77 See Danielle Ivory, Erica L. Green, and Steve Eder, *Education Department Unwinds Unit Investigating Fraud at For-Profits*, New York Times (May 13, 2018), *available at*: <https://www.nytimes.com/2018/05/13/business/education-department-for-profit-colleges.html>.
- 78 See *supra* note 56.
- 79 See Letters from Susan Crim, FSA, to Jeffrey Myhre, President of Globe University and the Minnesota School of Business (Dec. 6, 2016), *available at*: <https://studentaid.gov/sites/default/files/globe-recert-denial.pdf> and <https://studentaid.gov/sites/default/files/msb-recert-denial.pdf>.
- 80 See *supra* note 15.
- 81 See Letter from Susan Crim, FSA, to Julie Lowder, CEO Computer Systems Institute (January 29, 2016), *available at*: <https://studentaid.gov/sites/default/files/csi-denial-letter.pdf>. On February 2, 2016, Senator Durbin wrote a letter calling on the Department to create borrower defense findings and provide expedited student loan relief for students who were the victims of CSI's fraud, as established in the Department's recertification denial. See Letter from Senator Durbin to Under Secretary Mitchell (Feb. 2, 2016), *available at*: <https://www.durbin.senate.gov/newsroom/press-releases/durbin-calls-for-extended-student-loan-relief-for-illinois-students-deceived-by-the-computer-science-institute>.
- 82 See *supra* note 48.
- 83 See *Sweet v. DeVos*, No. 19-cv-03674-WHA, Dkt. 108-2 (Letter from Kathryn Davis, U.S. Dep't of Justice, to Eileen Connor, Legal Services Center of Harvard Law School (Aug. 10, 2020)) at 9-10 (N.D. Cal. Compl. filed June 25, 2019) (explaining that, to date, the Department has "established categories of eligible borrower defense claims" for only Corinthian and ITT); see also *id.* at 2, 13-24 (explaining that claims from borrowers attending the Charlotte School of Law, Marinello School of Beauty, ITT, Westwood, ECA, and many others have been denied).
- 84 See *Minnesota v. Minn. Sch. of Business, Inc.*, No. 27-cv-14-12558, 2016 WL 9709976, at *2-*3 (Minn. Dist. Ct. Sept. 8, 2016) (Trial Order).
- 85 See *Colorado, et. al. v. Center for Excellence in Higher Educ., et. al.*, No. 2014-cv-34530, Findings of Fact, Conclusions of Law, and Judgement (Dist. Ct. Denver Cty. Col. Aug. 21, 2020), *available at*: <https://coag.gov/app/uploads/2020/08/CollegeAmerica-FINDINGS-OF-FACT-CONCLUSIONS-OF-LAW-AND-JUDGMENT.pdf>.

- 86 See *Blanchette v. DeVos*, No. 19-cv-01775-RC, Dkt. 12-2 at 5-6 (D.D.C) (attaching Department chart of submissions by state Attorneys General seeking group borrower defense relief). The Department has already cancelled the 2018 federal student loans for borrowers who attended the Illinois Institute of Art and the Art Institute of Colorado. See *Infusino v. DeVos*, No. 19-cv-3162 (CRC), Dkt. 12 (D.D.C).
- 87 See *supra* note 82. See also U.S. Dep't of Educ. Press Release, American Career Institute Borrowers to Receive Automatic Group Relief for Federal Student Loans (Jan. 13, 2017) (explaining that, in 2017, the Department made findings and granted automatic borrower defense debt relief to approximately 4,500 borrowers who attended ACI in Massachusetts), available at: <https://www.ed.gov/news/press-releases/american-career-institute-borrowers-receive-automatic-group-relief-federal-student-loans>.
- 88 See *supra* note 72.
- 89 See, e.g., Stacy Cowley, *The Students are Victims of Fraud, but the Government Won't Help*, New York Times (July 10, 2020), available at: <https://www.nytimes.com/2020/07/10/business/student-loans-betsy-devos-borrower-defense.html>. For example, for former ITT students with valid claims, the Department's methodology calls for no relief for students in a majority of the school's programs. See United States Department of Education, Borrower Defense Partial Relief Methodology Chart for ITT Educational Services, Inc. Programs (December 2019), available at: <https://studentaid.gov/sites/default/files/borrower-defense-partial-relief-methodology-itt.pdf>.
- 90 On December 20, 2017, the Department announced its first attempt at a partial relief methodology. See U.S. Dep't of Educ. Press Release, Improved Borrower Defense Discharge Process Will Aid Defrauded Borrowers, Protect Taxpayers (Dec. 20, 2017), available at: <https://www.ed.gov/news/press-releases/improved-borrower-defense-discharge-process-will-aid-defrauded-borrowers-protect-taxpayers>. After borrowers filed suit to challenge it, on May 25, 2018 a federal court enjoined the Department from using the methodology. See *Calvillo Manriquez v. DeVos*, 345 F. Supp. 3d 1077 (N.D. Cal. 2018) (finding that that the borrowers challenging the partial relief methodology demonstrated a likelihood of success on the merits on their argument that the Department's implementation of the rule violated the Privacy Act and was causing irreparable harm). On December 10, 2019, the Department issued a memorandum adopting a second partial methodology and, on June 9, 2020, borrowers again filed suit. See *Pratt v. DeVos*, No. 20-cv-1501-TNM (D.D.C). On September 23, 2020, the court granted plaintiffs' motion for class certification. *Id.* Dkt. 19. Both cases remain ongoing.



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