

United States Senate
WASHINGTON, DC 20510

December 9, 2014

The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary Duncan:

The dramatic collapse of Corinthian Colleges, Inc. as a result of mismanagement and allegedly fraudulent activity has not only undermined the educational credentials and aspirations of hundreds of thousands of current and former students across the country – it has also left them burdened with millions in outstanding debt. Congress anticipated this problem when it provided avenues for relief from overwhelming debt taken on by students at duplicitous colleges. These legal tools, however, are of little value unless the regulators at the Department of Education actually use them. For this reason, we are writing to request that the Department implement clear policies and procedures that put teeth into its existing legal authority to discharge federal student loans when borrowers have legal claims against their schools -- and to call on the Department to utilize that authority to immediately discharge federal student loans incurred by borrowers who have claims against Corinthian Colleges, Inc., including those borrowers covered by the lawsuits filed by the Massachusetts Attorney General and the California Attorney General and other similar federal and state investigations.

When students take on loans to pay for college, they are making a serious financial decision that will affect them for years to come. Borrowers deserve to know that their colleges are taking these investments just as seriously. If colleges fail to hold up their end of the bargain -- if they break the law in ways that bear on their students' educational experience or finances -- students should not literally be stuck paying the price.

Congress recognized the importance of accountability in this area when it gave the Department of Education broad authority under the Higher Education Act to cancel student loans in the event that colleges and universities violate students' rights. Under 20 U.S.C. § 1087e(h), the Secretary is required to "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."¹

Despite this broad authority, to date, the Department of Education has issued only narrow regulations that lay out how defaulted borrowers might take advantage of their right to discharge based on a school's act or omissions.² The Department's contractual agreements with students, however, make clear that borrowers have a broader right to discharge based on violation of state law regardless of loan status. The promissory note for Direct Loans describes a borrower's rights under the loan agreement, stating:

¹ 20 U.S.C. § 1087e(h).

² 34 CFR § 685.206(c).

In some cases, you may assert, as a defense against collection of your loan, that the school did something wrong or failed to do something that it should have done. You can make such a defense against repayment only if the school's act or omission directly relates to your loan or to the educational services that the loan was intended to pay for, and if what the school did or did not do would give rise to a legal cause of action against the school under applicable state law.³

In addition, your August 4, 2014 response to a June 26, 2014 inquiry several of us made regarding borrowers' rights to present claims to the Department further stated:

[T]he Department recognizes as a defense to repayment of Direct Loans a claim that the borrower has against the school that is based on the making of the loan or the provision of educational services, if State law recognizes such a claim and if the borrower proves the elements required to establish the claim. A borrower or class of borrowers who obtain a judgment against a school upholding a claim can more readily establish that claim as a defense to repayment, but the borrower is not required to sue or obtain a judgment against the school in order to assert the claim against the school as a defense to repayment of a Direct Loan. Department regulations explicitly provide that a defaulted borrower may assert that the defaulted loan is not legally enforceable, but a borrower who is not in default can also assert a claim that the loan is not legally enforceable on the basis of a claim against the school.

The Massachusetts Attorney General filed a lawsuit against Corinthian Colleges in April alleging, among other things, that Corinthian Colleges, Inc. misrepresented graduation rates, job placement rates, and other information about its campuses to students in order to induce them to enroll and take on costly federal student loans. The California Attorney General has instituted a similar lawsuit, and more than a dozen other state attorneys general are engaged in investigations into unlawful practices at Corinthian Colleges that may result in further state lawsuits.

The claims by the Massachusetts and California Attorneys General directly relate to both the loans students incurred and the educational services they received. The misrepresentations Corinthian made distorted the quality of the educational services its campuses offered and induced students to enroll – and to take on thousands of dollars in federal student loan debt to finance their education.

It is clear that these states have advanced colorable causes of action under state law against Corinthian, and they have engaged in extensive investigations to produce evidence supporting those claims. According to both the Direct Loan promissory note and the guidance you provided in your August 4 letter, the Department believes that students in those states who obtained loans to attend schools like Corinthian during the time period covered by the states' lawsuits can assert that their federal student loans are not legally enforceable. The process for doing so, however, is far from clear.

To rectify this problem, we are requesting that you respond to the following within 30 days:

1. Consistent with its authority under HEA, its Direct Loan promissory note, and the guidance of the August 4 letter –

³ Master Promissory Note, William D. Ford Federal Direct Loan Program, OMB No. 1845-0007, Exp. 2/29/16
<http://www.direct.ed.gov/pubs/dlmpn.pdf>

- a. Will the Department of Education accept the claims brought by the Attorney General of Massachusetts and the Attorney General of California, and any other states that file suit against Corinthian as defenses to repayment of federal student loans for state residents who attended Corinthian Colleges campuses in the time period covered by the causes of action?
 - b. If the Department of Education will not accept a state attorney general's judgment that there is a legitimate state claim as a sufficient defense to repayment, what evidence must state attorneys general provide to the Department of Education to demonstrate that borrowers in the state have a defense to repayment based on Corinthian Colleges' actions?
 - c. If borrowers who attended Corinthian College campuses in other states can show that they were affected by the same actions or circumstances that gave rise to the causes of action in the California and Massachusetts lawsuits, will the Department of Education also discharge their debts?
2. What plans does the Department of Education have for developing a simple, clear and transparent procedure for borrowers to assert defenses to repayment based on the acts or omissions of their colleges and universities?
 3. What plans does the Department of Education have for granting group discharges to borrowers who are covered by lawsuits brought against colleges by state or federal agencies?
 4. Given the Department's authority under the Higher Education Act, its Direct Loan promissory note, and the guidance of the August 4 letter –
 - a. Please describe any processes the Department of Education currently has in place to allow borrowers, including those not in default, to assert a defense to repayment based on an act or omission of the institution that gives rise to a cause of action under state law.
 - b. Has the Department of Education or its servicers and collectors developed a form that borrowers can use to assert their claims, and if not, does it have plans to do so?
 5. Please describe the standards the Department of Education employs to determine whether a borrower's cause of action under state law is sufficient to constitute a defense to repayment, particularly when the borrower has not sued or obtained a judgment against the institution.
 6. Please describe the conditions under which the Department would afford the borrower further relief beyond relieving the obligation to pay the loan, including reimbursing any amount the borrower has already paid toward the loan, determining that the borrower is not in default and is eligible to receive Title IV aid, and updating reports to credit bureaus.
 7. Please make public any guidance that the Department of Education has provided to its Direct Loan servicers and collectors on how to handle borrowers' state law claims and when to recognize a borrower's state law claim as a defense to repayment.

8. To what extent have borrowers in good standing been successful in asserting defenses to repayment based on a state law cause of action against their institutions? In answering this question, please provide the following information regarding the 2013-2014 academic year: the number of state law claims made; the number of borrowers that successfully challenged the legal enforceability of their loans on such a basis, disaggregated by defaulted borrowers and borrowers that are current on payments; the number of state law claims denied; and the number of claims still pending.

9. The Consumer Financial Protection Bureau recently filed a complaint against Corinthian Colleges, Inc. alleging that Corinthian engaged in unlawful deceptive practices by making material misrepresentations or omissions to students regarding the likelihood of receiving a job upon graduation and the assistance Corinthian would provide to help students find a job. Accordingly, we request a response to the following questions -
 - a. Federal law empowers state attorneys general to bring actions to enforce the Consumer Financial Protection Act, including the provisions invoked by CFPB's lawsuit against Corinthian.⁴ As such, do the allegations in the CFPB's lawsuit constitute recognized state claims under the Department of Education's standards, and can a borrower use the claims asserted in CFPB's lawsuit as sufficient proof of a defense to repayment?

 - b. If these unlawful deceptive acts or practices are also prohibited under state laws, and if a borrower asserts that he or she was subjected to one or more of these practices, would this provide a sufficient basis for a borrower to assert a defense to repayment?

10. The Secretary's authority under 20 U.S.C. § 1087e(h) to specify acts or omissions by institutions that constitute defenses to repayment is not limited to causes of action under state law.
 - a. Why has the Department of Education limited its regulations and the rights afforded under the master promissory note to causes of action under state law?

 - b. Does the Department of Education consider any violations of federal law to be defenses to repayment?

 - c. Has the Department considered other expansions of its § 1087e(h) authority to help students and/or to hold educational institutions accountable for poor performance?


The federal legal protections for students in this area are about accountability – both for our schools and for our regulators. Discharging debt where schools illegally take advantage of their own students costs the government money. As a result, these protections provide a significant incentive for federal regulators to do their jobs on the front end to keep colleges from breaking the law in the first place. But this is also about our values. If a college sells its students a bill of goods in order to persuade them to take on massive debt, it is wrong to stick students with the cost of that bill.

⁴ 12 U.S.C. § 5552.


Unfortunately, while these protections are part of the law, the Department of Education has not yet established a clear and transparent process for implementing them. Without such a process, duplicitous colleges are free to break the law, to suck down billions in federal student loan dollars, to treat students unfairly -- and to stick borrowers with the bill. This is exactly what we have seen at Corinthian Colleges. If the Department fails to act, we will undoubtedly see it again.

We request your prompt attention to this matter, and we look forward to your response.


Sincerely,



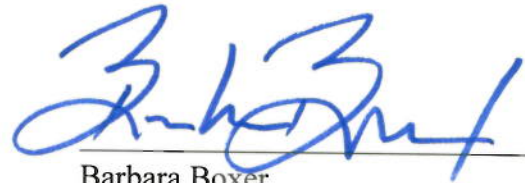
Elizabeth Warren
United States Senator




Tammy Baldwin
United States Senator




Richard Blumenthal
United States Senator



Barbara Boxer
United States Senator



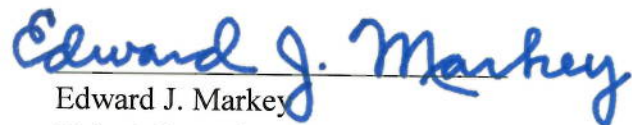
Richard J. Durbin
United States Senator



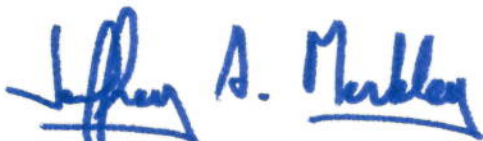
Al Franken
United States Senator



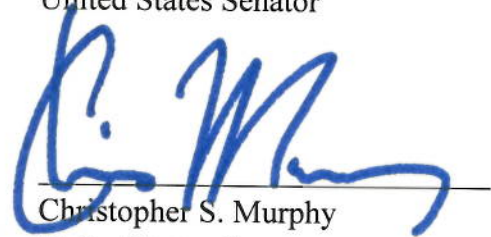
Mazie K. Hirono
United States Senator



Edward J. Markey
United States Senator



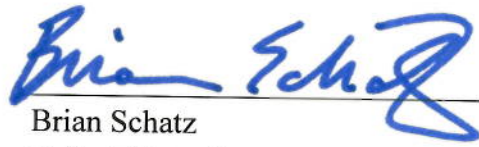
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Brian Schatz
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Sheldon Whitehouse
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