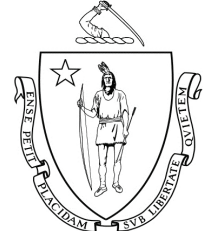




XAVIER BECERRA
ATTORNEY GENERAL

THE STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL



MAURA HEALEY
ATTORNEY GENERAL

October 30, 2018

Submitted via Overnight Mail

The Honorable Elisabeth DeVos
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Implementation of Mandatory Automatic Closed-School Discharges

Dear Secretary DeVos:

We, the undersigned Attorneys General of California, Massachusetts, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, call on the U.S. Department of Education (“Department”) to immediately discharge the loans of borrowers eligible for automatic closed-school discharge under 34 C.F.R. §§ 674.33(g)(3)(ii), 682.402(d)(8)(ii), 685.214(c)(2)(ii). These regulations require that the Department automatically discharge the student loans of borrowers who attended a school that closed on or after November 1, 2013, and who did not subsequently re-enroll in a title IV-eligible program within three years from the date the school closed. Approximately 1,400 schools closed in 2014 and 2015, including the various schools owned by Corinthian Colleges.¹ Under the Department’s automatic closed-school discharge regulations, tens of thousands of borrowers who attended these schools are now entitled to have their federal student loans discharged without any further action on their part. The Department has no discretion to withhold discharges of these loans and should effectuate them immediately.²

Our offices have firsthand experience with for-profit schools that have closed abruptly

¹ <http://www2.ed.gov/offices/OSFAP/PEPS/docs/closedchoolsearch.xls> (last visited Oct. 30, 2018).

² If there is any delay in effectuating these discharges, the Department must, at a bare minimum, halt collections on any borrower that it has reason to believe might be eligible for a closed-school discharge.

mid-year. The students of those schools receive no benefit from a partially completed program but have typically incurred substantial federal student-loan debt. Worse yet, numerous investigations and enforcement actions undertaken by our offices have revealed widespread misconduct on the part of closed for-profit schools. These schools frequently deceive and defraud students, employing a multitude of unlawful tactics to obtain federal student-loan funds without delivering an education of value to students. When their misconduct is uncovered by enforcement actions, schools have closed and filed bankruptcy, leaving students deeply indebted and with no source of redress, while school executives move on unscathed to their next venture. In just the last few years, for example, state attorneys general played a critical role in uncovering widespread misconduct at Corinthian Colleges, American Career Institute, and Westwood College, all of which closed without warning.

In 2016, the Department published final regulations addressing, among other matters, the inequitable situation of students whose schools have closed by including a process to automatically discharge their loans. Since at least 1995, the Department has provided a loan-discharge process for students who were unable to complete their program because their school closed. *See, e.g.*, 34 C.F.R. § 685.214(a). Although such relief is presumptively available for all eligible students, in almost all cases the student must submit “a written request and sworn statement” to initiate relief. *Id.* § 685.214(c). In 2016, the Department sought to remedy the very real problem that as many as 47% of students eligible for a closed-school discharge never apply. 81 Fed. Reg. 39,396.

Closed-school relief is critical for these borrowers. As the Department is aware, research has consistently shown that students who do not complete their educational programs are among the most likely to default on their loans. Tragically, this often leaves them worse off than when they enrolled—stuck with a significantly increased debt load, no diploma, and usually with no better career prospects. These problems are particularly pernicious for students who attend for-profit schools. For example, in 2009, the Department found that 31% of students who enrolled at a for-profit college but who did not complete their program of study had accumulated federal loans equal to or exceeding their annual income.³ For these borrowers, a discharge of their loans will have immense benefits for them and their families. Too few eligible borrowers apply for closed-school discharges, simply because they are unaware of their eligibility or even the existence of the discharge program to begin with.

The Department’s 2016 regulations sensibly sought to address this problem by automatically discharging the loans of borrowers who attended schools that closed on or after November 1, 2013, and who did not subsequently re-enroll in a title IV-eligible institution within three years from the date the school closed. 34 C.F.R. §§ 674.33(g)(3)(ii) (Perkins Loan Program), 682.402(d)(8)(ii) (Federal Family Education Loan Program), 685.214(c)(2)(ii) (Federal Direct Loan Program). Because the Department already possesses the necessary data to determine all eligible borrowers, *see, e.g., id.* § 685.214(f), the Department is able to

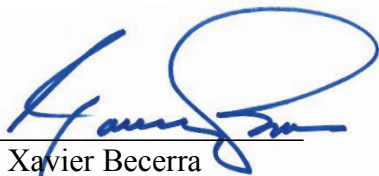
³ *See* U.S. Department of Education, Stats in Brief: Federal Student Loan Debt Burden of Noncompleters 5 (Apr. 2013), <http://nces.ed.gov/pubs2013/2013155.pdf>.

automatically grant this relief without the borrower taking any affirmative steps. The Department's 2016 regulations leave no discretion to withhold this relief. Three years after a school closes, the Department is obligated to process the closed-school discharges for all eligible students. In 2016, the Department made this clear: "the final regulations to provide that closed school discharges for Perkins, FFEL and Direct Loan borrowers who have not re-enrolled in a title IV-eligible institution within three years of their schools' closures *are not discretionary*." 81 Fed. Reg. 76,038 (emphasis added).

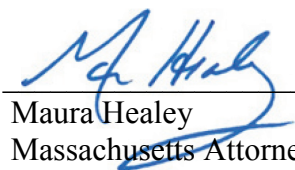
The 2016 regulations went into effect at noon on October 16, 2018, after a federal court invalidated the Department's repeated delay attempts and denied an industry trade group's motion to halt implementation of the regulations. These regulations unambiguously require the Department to process automatic closed-school discharges immediately and without exception. Although the Secretary may disagree with the Department's 2016 policy, there is no legitimate basis for the Department to unlawfully withhold agency action where applicable regulations dictate a specific, unequivocal command about which the Secretary has no discretion whatsoever. *See, e.g., Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 63 (2004).

We ask that you make available to our offices an appropriate Department official who will be able to advise us, with specificity, regarding the Department's plan for effectuating the automatic closed-school discharges mandated by the 2016 regulations and the date by which the Department realistically anticipates these discharges will be completed. Please communicate the identity of this person and their availability no later than one week from the date of this letter.

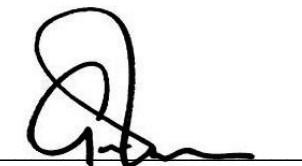
Sincerely,



Xavier Becerra
California Attorney General



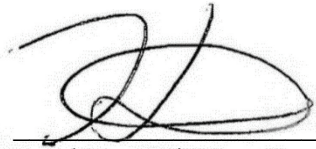
Maura Healey
Massachusetts Attorney General



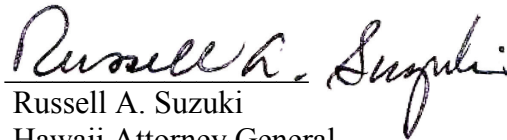
George Jepsen
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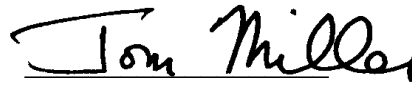
Karl A. Racine
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Russell A. Suzuki
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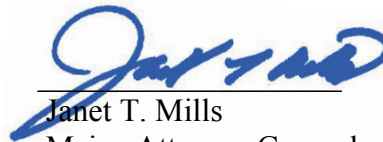
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Thomas J. Miller
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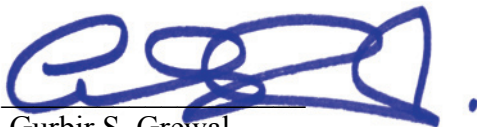
Janet T. Mills
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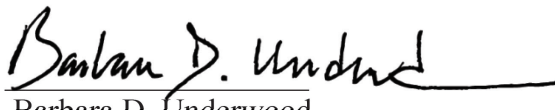
Brian E. Frosh
Maryland Attorney General



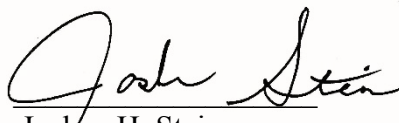
Lori Swanson
Minnesota Attorney General



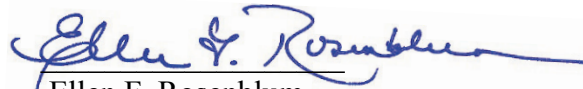
Gurbir S. Grewal
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Barbara D. Underwood
New York Attorney General



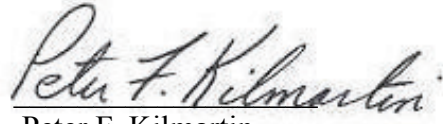
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North Carolina Attorney General



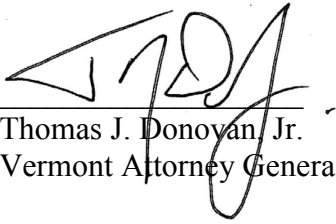
Ellen F. Rosenblum
Oregon Attorney General



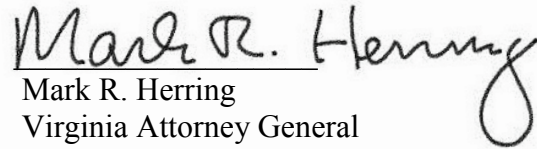
Josh Shapiro
Pennsylvania Attorney General



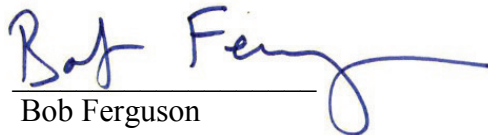
Peter F. Kilmartin
Rhode Island Attorney General



Thomas J. Donovan, Jr.
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Mark R. Herring
Virginia Attorney General



Bob Ferguson
Washington State Attorney General