

**Comment Submitted By 30 Legal Aid and Advocacy Organizations  
to the U.S. Department of Education  
Re: Agency Information Collection Activities; Submission to the Office of Management and  
Budget for Review and Approval; Comment Request; Borrower Defenses Against Loan  
Repayment  
Docket ID: ED-2021-SCC-0155**

February 9, 2022

Thank you for the opportunity to comment on the proposal to continue use of the current Borrower Defense Attestation Form 1845–0132, for borrowers who attended Corinthian Colleges programs covered by the Department of Education’s job placement rate findings. This comment is submitted by organizations that research, work with, and/or directly represent student loan borrowers—many of whom are borrowers of color, low-income, first-generation college students, and military service members and veterans—including the borrowers who were lied to by Corinthian Colleges and left with worthless or no degrees and huge debts.

We applaud the Department’s attention to these borrowers. However, we are disappointed by the Department’s proposal to continue requiring Corinthian borrowers—who are already covered by findings of widespread illegal school misconduct supporting borrower defense discharges—to fill out applications to obtain the long-overdue loan relief to which they are entitled. Instead, we urge the Department to automatically cancel Corinthian borrowers’ debts. As we explain below:

- The Department’s findings that Corinthian misrepresented job placement rates at specified campuses between 2010 and 2014 supports discharging loans of all borrowers who attended those campuses and times, without need to submit the Attestation Form.
- Subsequent Department findings of widespread misconduct—that Corinthian systematically misrepresented to students that they were guaranteed employment and that their credits were broadly transferrable—apply to all Corinthian campuses, programs, and time periods, and thus support automatic discharges for all Corinthian borrowers.
- The Department has dramatically underestimated the burden of requiring Corinthian borrowers to apply for discharges; it should remove that burden from Corinthian borrowers by automatically discharging their debts.

**The Attestation Form is Unnecessary.** The Corinthian Borrower Defense Attestation Form was a stopgap measure put in place in 2015, while the Department was figuring out how to approach borrower defense discharges, and is not needed today.

The Attestation Form was created following [findings](#) by the Department of Education that Heald College (a Corinthian school) illegally [misrepresented job placement rates for most of its programs at campuses across the country between 2010 and 2014](#). As explained in the [first borrower defense report](#), at that time, the Department had not yet established a borrower defense process, and so “analyzed the applicability of its findings . . . to potential borrower defense claims.” Because the analysis was addressed to the question of how it should handle “potential borrower defense claims,” and because the Department had not yet established processes for group relief, the focus was on adjudicating individual claims for relief. Looking to California law, where Heald was based, [the Department found](#) that every former Corinthian student who attended the identified programs during the findings time period had a valid individual claim for

return of their money under the Unfair Competition Law (UCL) if they relied, at least in part, on the misrepresentations; these borrowers thus had a valid borrower defense. The Department then created the Attestation Form for borrowers from these programs to confirm their attendance and reliance and receive “streamlined relief.” The Department found that Corinthian’s other schools, Everest and Wyotech, also misrepresented job placement rates during the same period and provided the Attestation Form for these borrowers as well.

As a result of this history, some have mistakenly assumed that the UCL requires proof of individual reliance on a misrepresentation and that the Department therefore cannot provide automatic, group-wide relief for borrowers covered by the job placement rate findings. This is incorrect. UCL claims may be brought on a group basis through government, representative, and class actions, and reliance for the group may be presumed or inferred based on the materiality of the misrepresentation at issue, or when class representatives can demonstrate that they relied on the misrepresentation.<sup>1</sup> Given the Department’s conclusions that the job placement rate misrepresentations were “[material](#),” “[extensive and pervasive](#),” and the further evidence from [tens of thousands of Corinthian borrowers](#) who have since attested that they relied upon the job placement rate misrepresentations, reliance can be presumed. The Department can and should reasonably conclude that requiring borrowers to attest to their reliance on the misrepresentations is no longer necessary. Instead, the Department should recognize that borrowers who attended Corinthian programs between 2010 and 2014 were subject to extensive, material misrepresentations regarding the value of the school that unfairly influenced decisions to enroll in violation of the UCL, and should grant a group borrower defense discharge to those borrowers without requiring applications.<sup>2</sup>

#### **Evidence of Widespread Misconduct Supports Discharging All Corinthian Debt.**

Although the Department has thus far only created an Attestation Form for borrowers covered by its findings of job placement rate misrepresentations between 2010 and 2014, the Department subsequently made two findings of additional widespread misrepresentations—about guaranteed employment and transferability of credits—that existed throughout Corinthian’s campuses, programs, and time in existence. These findings give all Corinthian borrowers a valid borrower

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<sup>1</sup> *In re Tobacco II Cases*, 46 Cal. 4th 298, 321 (2009) (holding that only named plaintiffs must have standing to bring UCL claims on behalf of a class and rejecting argument that all class members must have the same injury as the named plaintiff in order for a UCL class to be certified, as individualized proof of deception, reliance or injury is not required in UCL cases, and explaining that “a presumption, or at least an inference, of reliance arises wherever there is a showing that a misrepresentation was material.”); *see also in re FCA US LLC Monostable Elec. Gearshift Litig.*, 280 F. Supp. 3d 975, 1001 (E.D. Mich. 2017) (reliance under the UCL may be presumed in car defect class action because the alleged defect is “material to a reasonable person”); *In re ConAgra Foods, Inc.*, 90 F. Supp. 3d 919, 987 (C.D. Cal. 2015) (inference of class-wide reliance appropriate for plaintiffs’ California UCL claim for purchase of cooking oils labeled “100% Natural” that were allegedly made with genetically modified organisms); *Bradach v. Pharmavite, LLC*, 735 Fed. Appx. 251, 254-255 (9th Cir. 2018) (unpublished) (“class members in CLRA and UCL actions are not required to prove their individual reliance on the allegedly misleading statements”; standard is whether members of the public are likely to be deceived; in a class action, court need not investigate class members’ individual interaction with the product).

<sup>2</sup> To the extent the Department lacks program level data for all borrowers, it should simply provide automatic discharges of all loans disbursed for Corinthian students during the 2010-2014 time period, rather than requiring borrowers to attest to which program they were in. The Department has acknowledged that the majority of programs misrepresented job placement rates and that “[Department precedent supports making an inference that an extensive pattern of misrepresentation affected students beyond those in the specific programs where misrepresentations were discovered](#).” *California v. Cardona*, No. 3:17-cv-07106-SK, ECF No. 125-3 at 6 (N.D. Cal., Feb. 28, 2020).

defense. In these findings memoranda, the Department acknowledged that Corinthian Colleges' misconduct was part of the fabric of the schools and that Corinthian education lacked value:

- “The Department has received consistent guaranteed employment claims from borrowers at every campus sampled, including borrowers who enrolled between 1998 and 2013, demonstrating that personnel made consistent guaranteed employment representations throughout the entire time that Corinthian operated its schools. . . . The similarity of student statements across schools, campuses, and years strongly suggests that the [employment] misrepresentations were system-wide and, indeed, part of Corinthian’s institutional culture.”<sup>3</sup>
- “[O]ur review of claims spanning from 1998 through 2010 shows that personnel made consistent transferability claims throughout the entire time that Corinthian operated the schools. [...] Hundreds of [borrower] claims corroborate that Everest made representations that credits were generally transferrable beginning shortly after Corinthian opened or gained control of a campus... Former employees report that corporate decision makers based in California directed admissions staff to make misleading statements and engage in various high-pressure sales tactics to increase enrollment[.] [...]Borrower defense applications confirm the lack of value of an Everest education as many Everest students report that their coursework from Everest has been an impediment rather than an asset as they seek employment. [...]”<sup>4</sup>

Currently, all Corinthian borrowers are covered by these findings, but they must find out about their right to relief, complete a borrower defense application form to obtain it, and often endure multi-year waits for decisions. But in light of Department’s findings of these widespread, material misrepresentations, and the extensive documentation of the ways Corinthian schools systematically broke the law and harmed students in doing so, the Department need not require borrowers to individually apply for relief. It can and should instead issue a group discharge for all Corinthian borrowers.

**The Department Should Remove the High Burden of Applying for Relief.** Filling out an application to obtain thousands of dollars in loan relief may seem like a simple ask, but we are here to tell you it is not.

Outside of the Department and our organizations, few people have even heard of borrower defense discharges, much less know the details regarding who is eligible and how to apply. For years legal aid attorneys across the country have helped Corinthian students, and only the rare borrower has ever heard of borrower defense before an attorney told them about this option. We recognize that the Department has made attempts to tell Corinthian borrowers about their eligibility and to send them applications. It is clear, however, that those attempts have not been successful. The Department estimated that over 350,000 Corinthian borrowers would be eligible for a borrower defense discharge. Yet, an FSA document reveals that, as of August 14, 2019, Department had received only 130,556 borrower defense applications from Corinthian students.<sup>5</sup> The Department’s failure to reach struggling Corinthian borrowers—even in the face

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<sup>3</sup> *Sweet v. DeVos*, No. 3:19-cv-03674-WHA, ECF No. 198-6 at 343 (N.D. Cal, May 4, 2021); *California v. Cardona*, Case No. 3:17-cv-07106-SK, ECF No. 125-3 at 52, 56, 27 (N.D. Cal. Feb. 28, 2020).

<sup>4</sup> *California v. Cardona*, No. 3:17-cv-07106-SK, ECF No. 125-3 at 35, 38, 44, 51 (N.D. Cal., (Feb. 28, 2020).

<sup>5</sup> *Sweet v. DeVos*, No. 3:19-cv-03674-WHA, ECF No. 198-5 at 60 (N.D. Cal, May 4, 2021). Since then, Department reports indicate that the flow of Corinthian borrowers applying for relief has been as high as 1,200 a week but more

of a court injunction—and connect them to relief is perhaps unsurprising in light of the recent disclosure that the Department and its contractors lack accurate contact information for many distressed borrowers, such as those who attended Corinthian.<sup>6</sup> According to a [January 2022 GAO report](#), during the current payment pause “the contractor managing borrowers’ defaulted loans initially did not have valid email addresses for about half of the borrowers in default.”

Further, many borrowers who attended Corinthian have in the years since experienced significant financial distress and resulting instability in their day to day lives—unemployment, lack of secure housing, inability to afford childcare or transportation to work, food insecurity, and medical problems. For these borrowers, navigating the student loan bureaucracy is one more burden atop an already overwhelming mountain of obstacles. As Robert Sapolsky, a neurologist and researcher of stress, [explained](#), poverty and relief programs exist in a “vicious cycle” whereby “[u]nemployment, poverty, health challenges all generate enormous stress” that in turn “makes it harder to effectively and efficiently navigate what is needed in order to get help.”

We also wish to highlight that the Department’s [analysis](#) of the burden posed by continuing use of its attestation form is fundamentally flawed, as its notice assumes that it only takes each applicant one hour to complete the form. Legal aid attorneys observe that it often takes hours for a borrower to understand, compile relevant records, and complete a borrower defense attestation. More importantly, the analysis fails to reflect the most significant burden of continuing to require the form: that hundreds of thousands of borrowers will not know to apply and thus will not receive the relief they are eligible for. Their burden will include thousands of dollars in unaffordable debt, ruined credit, and seized antipoverty payments, including Child Tax Credit, Earned Income Tax Credit, and Social Security payments.

Offering relief only via individual application will also exacerbate administrative and legal challenges for the Department. The Department has struggled for years with a huge backlog of borrower defense applications, and it is clear that adjudicating these applications one by one is not working. Further, the Department’s challenges in handling individual Corinthian borrower defense applications and ensuring that their loans are not unlawfully collected upon has already led it to be found in contempt.<sup>7</sup> If Corinthian debts are not discharged before the end of the payment pause, there is a risk that such loans will again be unlawfully put back into collection.

It need not be this way: Instead of renewing a borrower defense application form for Corinthian borrowers already identified as eligible for borrower defense discharges, the Department should cut the red tape and automatically discharge Corinthian borrowers’ loans.

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recently slowed to roughly 300 a month. *Calvillo Manriquez v. Cardona*, Case No. 3:17-cv-07210-SK, ECF No. 156-2 at n.2 (N.D. Cal. Dec. 2, 2019), ECF No. 319-2 at 3 (N.D. Cal. Feb. 1, 2022).

<sup>6</sup> A [2012 a Senate HELP report](#) observed that Corinthian had a three-year cohort default rate that was 64% higher than the overall rate of for-profit colleges, even as Corinthian invested millions into persuading borrowers to put their loans in extended deferments and forbearances to reduce its default rate.

<sup>7</sup> *Calvillo Manriquez v. Cardona*, Case No. 3:17-cv-07210-SK, ECF Nos. 111, 230 (N.D. Cal. Sept. 18, 2019 and Oct. 24, 2019) (finding the Department in contempt and ordering it to pay a fine for failing to identify and stop collections for all relevant class members in case concerning borrower defense relief for Corinthian borrowers asserting job placement misrepresentations).

Submitted by:

National Consumer Law Center (on behalf of its low-income consumers)

American Federation of Teachers

Bay Area Legal Aid

Center for Law and Education

Center for Public Representation

Children's Law Center of Massachusetts

Community Legal Aid SoCal

Community Legal Aid Society, Inc. (Delaware)

Consumer Bankruptcy Assistance Project

DNA - People's Legal Services

Empire Justice Center

Gulfcoast Legal Services Inc

Housing and Economic Rights Advocates

Legal Action Chicago

Legal Aid Center of Southern Nevada

Legal Aid of Southeastern PA

Legal Aid Society of San Diego

Legal Services of Eastern Missouri

Maryland Consumer Rights Coalition

MS Center for Legal Services

National Center for Law and Economic Justice

North Carolina Coalition for Responsible Lending

Northwest Justice Project

Pisgah Legal Services

Project on Predatory Student Lending

Public Counsel

Public Law Center

Student Borrower Protection Center

The Center for Responsible Lending

The Institute for College Access & Success (TICAS)

Veterans Education Success