

MEMORANDUM

Date: March 4, 2016

To: U.S. Department of Education

From: Eileen Connor and Noah Zinner, Negotiators for Legal Assistance Organizations That Represent Consumers

Re: Issue Paper 10 – Closed School Discharge Proposals

We appreciate that the Department considered and accepted most of our proposals regarding regulations related to closed school discharges. We support the Department's proposals with the following modifications and additions:

- 1) Closed School Discharge Information for Students Offered Teach-outs: In order to ensure that students are provided accurate and clear information about their options, proposed 34 C.F.R. § 668.14(b)(32) should require disclosures in a form prescribed by the Secretary.
 - 2) Information for Students at Schools that are Finishing Out Programs Before Planned Closures: The Department did not address our previous proposals regarding notices for and rights of students whose schools plan on closing and teaching out the programs themselves. We therefore repeat this proposal and provide possible amendments to 34 C.F.R. § 668.14.
 - 3) Department Review of Closed School Discharge Denials: We support the Department's proposed amendments to the FFEL Loan regulations to provide for Department review of guaranty agency denials of closed school discharge applications, with minor changes.
 - 4) Closed School Discharge Applications for Students in Repayment: We also support, with a few modifications, the Department's proposed amendments to the Direct Loan regulations to provide discharge applications and information to closed school borrowers with the first monthly repayment statement.
 - 5) Automatic Group Closed School Discharges: We propose that the Secretary provide automatic closed school discharges, without requiring applications, to all Direct Loan borrowers who have not applied for a discharge or obtained Title IV financial aid one year after a school has closed.
- 1) Closed School Information for Students Offered Teach-outs – Proposed 34 C.F.R. §§ 668.14(b)(31) and (32):**

We appreciate that the Department proposed new program participation agreement provisions (34 C.F.R. §§ 668.14(b)(31) and (32)) requiring that whenever a closing school

submits a teach-out plan to an accreditor, it must also provide closed school discharge applications to students, along with disclosures that students may opt for a discharge rather than participating in a teach-out. We support this proposal, but are concerned that schools may either provide inaccurate information or provide information in a format that students are unlikely to read or notice.

As an example, Westwood College recently provided a letter to students impacted by its closure. This letter, included as Attachment A, emphasized students' transfer options without mentioning discharge options until the second page. In addition, it provided inaccurate information by stating, "If you apply for and receive a Federal discharge, you will **forfeit** any Westwood credits earned and these credits **will not** be transferable to a partner school." In fact, students may transfer credits to a different program at a different school and still be eligible for a closed school discharge.¹

The Department could avoid these problems by requiring schools to use a form disclosure that it develops. We therefore propose the following amendment:

34 C.F.R. § 668.14 Program participation agreement.

(b) ***

(31) The institution will submit a teach-out plan to its accrediting agency in compliance with 34 CFR 602.24(c), and the standards of the institution's accrediting agency upon the occurrence of any of the following events:

(i) The Secretary initiates the limitation, suspension, or termination of the participation of an institution in any Title IV, HEA program under 34 CFR 600.41 or subpart G of this part or initiates an emergency action under §668.83.

(ii) The institution's accrediting agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

¹ See 34 C.F.R. § 685.214(c)(1)(i)(C); www.studentaid.gov/closedschool ("Q. I transferred credits from a closed school and enrolled in a completely different program of study at a new school and completed the new program. Are the previous loans from the closed school dischargeable? A. Yes, because the program of study at the new school is completely different than that of the closed school, for which the loans were intended.").

(iii) The institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program.

(iv) The institution intends to close a location that provides 100 percent of at least one program.

(v) The institution otherwise intends to cease operations; and

(32) Upon submission of a teach-out plan to its accrediting agency in accordance with paragraph (b)(31) of this section, under which the institution proposes to complete education for currently enrolled students either at another campus of the institution or by arrangement with another institution, the institution will provide all enrolled students with a closed school discharge application and must disclose to all enrolled students *in writing* that they may seek a closed school discharge as an alternative to the teach-out. *The institution must provide a disclosure form provided by the Secretary. If the institution fails to provide the disclosures within five days after submitting a teach-out plan to its accrediting agency, the Secretary shall provide the disclosures in a timely manner before any student agrees to or participates in any teach-out plan.*

2) Information for and Discharge Eligibility of Students at Schools that Finish Out Programs Before Planned Closures – Proposed 34 C.F.R. §§ 668.14(b)(33), 682.402(d)(1)(ii)(A) and 685.214(a)(2)(i):

In our memo of February 3, we proposed that, for schools that plan on closing but intend to allow all students to complete their programs prior to closure, the regulations be amended to require schools to disclose to students the expected date of closure and information about their right to a discharge if they withdraw within 120 days of school closure. If the actual closure date is later than the expected and disclosed date, the regulations should be amended to extend the 120-day look back period by the number of days between the expected and actual date of closure.

Rather than repeating our rationale here, we refer back to the memo of Feb. 3 and propose the following amendments:

34 C.F.R. § 668.14 Program participation agreement.

(b) ***

(33) In the event an institution plans on closing without submitting a teach-out plan to its accrediting agency in accordance with paragraph (b)(31) of this section, the institution shall calculate the expected date of closure within two business days after the institution first decides that it will close. The institution must disclose to all enrolled students in writing the following, in a clear one-page format prescribed by the Secretary, within five business days after the institution first decides that it will close: (i) a statement that the institution is closing; (ii) the date of expected closure; and (iii) information about students' eligibility for closed school discharge if they withdraw within 120 days before the expected closing date or the actual closing date, if earlier. The Secretary shall simultaneously post a copy of the disclosure on its website.

34 C.F.R. § 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments

(d) *Closed School*—

(1) General.

(i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan in accordance with the provisions of paragraph (d) of this section, if the borrower (or the

student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school at which the borrower (or student) was enrolled closed, or the borrower (or student) withdrew from the school not more than 120 days prior to the date the school closed. The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose 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.

(ii) For purposes of the closed school discharge authorized by this section—

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary. *If the school provides a disclosure prior to closure pursuant to paragraph (b)(32) of section 668.14, the school's closure date shall be the expected date of closure identified in the disclosure if it is earlier than the closure date determined by the Secretary;*

34 C.F.R. § 685.214 Closed school discharge.

(a) General.

(1) The Secretary discharges the borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if the borrower (or the

student on whose behalf a parent borrowed) did not complete the program of study for which the loan was made because the school at which the borrower (or student) was enrolled closed, as described in paragraph (c) of this section.

(2) For purposes of this section—

(i) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary. *If the school provides a disclosure prior to closure pursuant to paragraph (b)(32) of section 668.14, the school's closure date shall be the expected date of closure identified in the disclosure if it is earlier than the closure date determined by the Secretary;* and

3) **Department Review of Closed School Discharge Denials – 34 C.F.R. § 682.402(d)(H):**

We support the Department's proposed amendments to the FFEL Loan regulations to provide for Department review of guaranty agency denials of closed school discharge applications, with the following minor changes.

34 C.F.R. § 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments

(d) *Closed School*—

(6)(ii)(A)

(G) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(E) or (F) of this section has satisfied all of the conditions required for a discharge, the

agency shall notify the borrower in writing of that determination within 30 days after making that determination.

(H) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(E) or (F) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination, ~~and the reasons for~~ the determination, of the opportunity for review by the Secretary, and an explanation of the manner in which to request such a review, within 30 days after the date the agency—

- (1) Made that determination based on information available to the guaranty agency;
- (2) Was notified by the Secretary that the school had not closed;
- (3) Was notified by the Secretary that the school had closed on a date that was more than 120 days or the period permitted by the Secretary pursuant to paragraph (d)(1)(i) of this section, whichever is longer, after the borrower (or student) withdrew from the school;
- (4) Was notified by the Secretary that the borrower (or student) was ineligible for a closed school discharge for other reasons; or
- (5) Received the borrower's completed application and sworn statement.

(I) If a borrower described in paragraph (d)(6)(i)(E) or (F) of this section fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days of being notified of that option, the guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The agency may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

(J) A borrower's request for discharge may not be denied solely on the basis of failing to meet any time limits set by the lender, guaranty agency, or the Secretary.

(K) Guaranty agency responsibilities if a borrower requests a review by the Secretary.

(i) Within 30 days after receiving the borrower's request for review under paragraph (d)(6)(ii)(H) of this section, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for review.

(ii) The Secretary notifies the agency and the borrower of a determination upon review. If the Secretary determines that the borrower is not eligible for a discharge under paragraph (d) of this section, within 30 days after being so informed, the agency shall take the actions described in paragraph (d)(5)(i) (I) or (d)(6) (ii) (I), as applicable.

(iii) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (d) of this section, the agency shall, within 30 days after being so informed, take the actions required under paragraphs (d)(6) and (d)(7) of this section, as applicable.

4) Closed School Discharge Applications for Students in Repayment – 34 C.F.R. § 685.214(f):

We also support the Department's proposed amendments to the Direct Loan regulations to provide discharge applications and information to closed school borrowers with the first monthly repayment statement, with the following modifications:

§ 685.214 Closed school discharge.

(f) *Discharge procedures.*

- (1) After confirming the date of a school's closure, the Secretary identifies any Direct Loan borrower (or student on whose behalf a parent borrowed) who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 120 days, or an extended period as determined by the Secretary pursuant to subsection (c)(1)(i)(B) of this section, prior to the closure date.
- (2) If the borrower's current address is known, within 14 business days of the Secretary's determination of the school closure date the Secretary mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.
- (3) If the borrower's current address is unknown, the Secretary attempts to locate the borrower and determines the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school, the school's licensing agency, the school's accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (f)(2) of this section.
- (4) If a borrower fails to submit the ~~written request and sworn statement~~application described in paragraph (c) of this section within 60 days of the Secretary's ~~mailing~~ providing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was

suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(5) Upon resuming collection on any affected loan, the Secretary provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge. If any affected loan has not yet entered repayment, the Secretary provides the borrower with this information with the borrower's first monthly repayment statement.

~~(6)~~ If the Secretary determines that a borrower who requests a discharge meets the qualifications for a discharge, the Secretary notifies the borrower in writing of that determination.

~~(7)~~ If the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower in writing of that determination and the reasons for the determination.

5) Automatic Group Closed School Discharges – 34 C.F.R. § 685.214(c)(2):

We propose that the Secretary provide automatic closed school discharges, without requiring applications, to all Direct Loan borrowers who have not applied for a discharge or obtained Title IV financial aid one year after a school has closed. If a student has not obtained financial aid within this one year period, it is unlikely that he/she has transferred credits and is eligible for a closed school discharge.

34 C.F.R. § 685.214:

(c) Borrower qualification for discharge.

(2) The Secretary may discharge a loan under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for the discharge. *The Secretary shall discharge without an application affected loans of all borrowers identified pursuant to paragraph (f)(1) of this section who do not apply for a discharge, who do not obtain additional Title IV, HEA program assistance within one year after the school's closure date, and who do not choose to opt-out of a discharge. The Secretary shall send a notice of the intended discharge, in which the Secretary describes the consequences of the discharge, to all identified borrowers. Borrowers may mail the form to the Secretary within thirty-five days of the date of the notice to opt out of the discharge.*

ATTACHMENT A



January 25, 2016

Dear Student:

We hope all of you had a wonderful holiday season and we are excited to see you back.

As promised when we communicated with you in December, Westwood has worked hard to create a robust transition plan for the continuation and completion of your education. Over the coming weeks, we will introduce you to the partner schools that will assist you in completing your education and you will have full opportunity to explore what benefits each may offer to you. When you meet with them, each partner school will be able to provide you with specific information on your individual academic circumstances and answer your questions. We will ask you to make your transfer choice no later than February 19. The January 2016 term will be the last one taught at Westwood College, and upon completion of this current term, Westwood will close.

Starting on January 27th, partner schools will be on all Westwood campuses to facilitate transfer arrangements. As part of this process, Westwood will work with you and the partner schools to make your transition at the end of this term as seamless as possible. We are impressed with the quality of schools that have offered to assist you in achieving your goal of graduation and the terms they have agreed to offer Westwood students. Our main focus in negotiating with the partner schools was to ensure that you would be in the same academic and financial situation had you continued at Westwood to complete your education. I believe that we more than accomplished this goal for your benefit.

Most programs will have multiple accredited partner schools from which to choose, including several regionally accredited schools. Each of the partner schools has a campus located within a reasonable distance from your current campus. All partner schools have agreed to accept the transfer of Westwood credits. In most cases all credits will transfer into comparable programs offered by the partner school. In addition, these schools have agreed to charge you the same amount for your program as reflected in your Westwood enrollment agreement. But, if a school has a lower tuition cost than Westwood, you will get the benefit of that lower tuition. Unless completion of this term will allow you to graduate from Westwood, you will get your degree from the partner school to which you transfer. That school will provide you with career services and will maintain your academic records. It is important that you continue on track to complete all of your courses for the January Term. This will make for a smoother transition, and lower your future cost of attendance. Everyone at Westwood College remains focused on your goal of graduation. Some of you will be graduating at the end of the current term and we look forward to helping you celebrate this great accomplishment in your life.

We could not be prouder of our current students and future graduates. This has been a tough time on all of us - students, faculty and staff alike - and we have appreciated your patience as we developed the best possible transition plan for your academic future. It has been our greatest privilege to see you grow and develop through your academic experience at Westwood. Thank you for your commitment to Westwood and for allowing us the privilege to know and educate you.

As always, if you have any questions please feel free to contact the campus president or other campus staff.

Sincerely,

Lou Pagano
Chief Operating Officer
Alta Colleges

Additional Important Information:

Important notice if you have a Federal student loan: You have separate rights if you have a Federal loan:

You may be eligible for forgiveness (“discharge”) of the federal student loans you received to attend Westwood if one of the following happens:

- Westwood closes before you complete your program, or
- If you withdraw from Westwood less than 120 days before Westwood closes.

This Federal discharge will cancel your Federal loan. If you **complete** your program either at Westwood or at another school, you **will not** qualify for this Federal discharge. Westwood encourages you to explore all options for continuation and completion of your education with partner schools before considering a Federal discharge. If you apply for and receive a Federal discharge, you will **forfeit** any Westwood credits earned and these credits **will not** be transferable to a partner school.

For more information on Federal loan discharge eligibility and the application process, go to: studentaid.gov/closedschool.