

## MEMORANDUM

**Date:** November 12, 2021

**To:** U.S. Department of Education

**From:** Persis Yu and Joshua Rovenger, Negotiators for Legal Assistance Organizations that Represent Students and/or Borrowers

**Re:** Borrower Defense Group Process Proposals

We appreciate the Department's willingness to consider alternative proposals for the group borrower defense process. In light of our discussion at Session 2, we propose the following:

- The Department should strike sub-section (c) of § 685.402 and replace it with the following:

(c) State and third-party initiated group application. The Secretary shall consider a group borrower defense application from States, State attorneys general, State oversight or regulatory agencies, or legal aid representatives.<sup>1</sup>

- (1) To initiate a group borrower defense application, the third-party applicant must submit an application to the Secretary, on a form approved by the Secretary –
  - (i) Identifying the requested group, including at minimum:
    - (A) The name of the institution;
    - (B) Campuses or programs, if applicable;
    - (C) A description of the conduct that forms the basis for the borrower defense claim under the federal standard in section 685.401(b) or under the applicable state standard in [Cross-Reference];
    - (D) The period under which the conduct in (c)(1)(i)(C) of this section occurred;
  - (ii) Providing evidence that supports the claims made in paragraph (c)(1)(i); and
- (2) The third-party applicant must provide any other information or supporting documentation reasonably requested by the Secretary.

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<sup>1</sup> To the extent that the Department has concerns about additional third-party representatives: (1) there is no bar in the HEA or otherwise that would preclude such inclusion, and (2) the underlying principles of organizational and associational standing support doing so. We are happy to further discuss the authority for this change.

- (3) The Secretary must adjudicate the group discharge application unless the Secretary has formed a similar group under paragraph (b) of this Section. If the Secretary has formed such a group, the Secretary shall notify the third-party applicant and hold the group submission in abeyance pending the resolution of the Secretary-initiated group claim.
- (4) The Secretary shall adjudicate the merits of a group application submitted pursuant to this sub-section within 365 days of receipt and shall issue a written decision consistent with the requirements of § 685.406.
- (5) The denial of a group borrower defense application submitted pursuant to this sub-section shall not have any preclusive effect on a borrower submitting an individual borrower defense application regarding the same conduct at the same school.
- (6) The third-party applicant may request reconsideration of the decision consistent with § 685.407.

- Maintain (i) and (ii) in sub-section (d), but replace the text in sub-section (d) with:

(d) Borrower status after group formation or group application. (1) Upon formation of a group of borrowers under sub-section (b), or upon receipt of a group application under sub-section (c), the Secretary –