



# Pro Bono Manual

## Student Debt Initiative: Securing Debt Relief for Low-Income New Yorkers

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# Student Debt Initiative:

## Securing Debt Relief For Low-Income New Yorkers

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This initiative pairs low-income New Yorkers who are unable to repay their student loans with pro bono attorneys. Many clients are victims of sham trade schools that promised an education or job placement, but failed to deliver anything of value. Advocates can secure discharge of the debt in some circumstances, consolidate, or get the client into an income-based repayment plan. Legal Services NYC provides training, a manual, mentorship, and oversight on all cases.

### The Problem

Low-income New Yorkers frequently obtain federal student loans to pay for programs that they believe will help them gain a decent education and secure a job. Many of these “schools” collapse before a student can obtain a degree, or fail to deliver on promised career placements. The education provided from sham schools has little lasting value, but the accrued student debt endures. Even those who attend legitimate institutions fall on hard times, and need help to address their student debt, and respond to aggressive debt servicers.

### The Clients

Low-income New Yorkers who struggle with unpaid federal student debt, many of whom are in default after attending predatory, for-profit educational institutions. Many are subject to constant harassment by debt collectors. Others have their wages garnished and tax refunds intercepted. Older clients see their Social Security garnished.

### The Cases

Pro Bono advocates work directly with clients and negotiate with the Department of Education and student debt collectors to discharge debt or create manageable debt repayment plans.

### Who We Are

Legal Services NYC fights poverty and seeks racial, social and economic justice for low income New Yorkers. For almost 50 years, we have challenged systemic injustice and helped clients meet basic needs for housing, income and economic security, family and immigration stability, education, and health care. LSNYC is the largest civil legal services provider in the country; our staff of nearly 350 people in neighborhood based offices and outreach sites across all five boroughs helps more than 80,000 New Yorkers annually.



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# Exhibit 1





## Road Map to your Federal Student Loan Case

(Key Terms, Links, and What to do with your Client)

### ➔ Step 1. First Client Contact:

1. Why is client seeking help with student loans (*e.g.*, delinquent or defaulted)?
  - Federal and/or State income tax intercept, federal benefits offset, frozen bank account and/or wage garnishment means loans are in default. If no collection activity is happening, loan may still be in default, but less likely.
2. What is the client's household composition and household income?
  - Source of income (Social Security or Supplemental Security Income or Veteran's Disability or Workers Compensation) may reveal disability status.
  - Amount and source of income dictates affordability and collectability.
  - Income and household size govern some federal student loan repayment plans.
  - **Note:** spousal income counts even if they file a tax return jointly.
3. What type of loan(s) does the client have (federal or private)?
  - Most clients are unaware of their loan type and might confuse a private student loan as a federal student loan and vice-versa. LSNYC will normally have obtained this information before the placement. If not, follow these steps.
    - i. Apply for a Federal Student Aid ID — some folks will be unable to do this on their own, as they might not be computer or Internet savvy or not have access to either. To apply for a FSA ID, the client can visit <https://fsaid.ed.gov/npas/index.htm>. Moreover, they should enter the name they used when they borrowed the student loan.
    - ii. Request their credit reports. Once a year, everyone is entitled to a free credit report from each of the three major bureaus. The client can visit this [website](#) to request their free credit reports.
  - **Note:** If government benefits or income tax refund are being offset, then those defaulted student loans are definitely federal.

4. Additional intake questions (helpful for assessment for discharge):

- Which school did you attend?
- Were you in a degree or certificate program?
- What did you study?
- How old were you when you enrolled?
- When did you enroll in school (most federal loan discharges, except disability or bankruptcy discharges, apply to student loan borrowers whose loans were disbursed in part or in whole after 1/1/1986)?
- At the time of your enrollment, did you:
  - i. Have a high school diploma or GED?
  - ii. If no high school diploma or GED, were you given an Ability to Benefit test?
- Did the school close while you were enrolled or soon after you withdrew?
- Were you told that the loan would be reimbursed?
- How long were you enrolled?
- Did you complete the program?
- Are you disabled?

➔ **Step 2. First meeting with client—client must bring:**

1. **Any paperwork on loans.** Collection letters, monthly statements, old contracts, court documents, NSLDS information and credit reports. If you believe the client might be eligible for a discharge, like False Certification, ask that they bring or at least request a copy of their high school transcript or GED or any other information that may be relevant to a potential discharge application.
2. **Income documentation.** Current paystubs, bank statements or federal benefit award letter, pension documentation, and recent tax returns (if filed).
3. **Authorization.** Have the client sign a release authorizing you to contact the lender, loan servicer, guaranty agency and/or the US Department of Education. Please note that in some instances the aforementioned parties require the use of their own third party authorization forms.

➔ **Step 3. Identify a course of action—potential routes for federal loans:**

1. **Discharge.** This is the best option. Assess whether the loan can be discharged. Potential discharges include the False Certification, Closed School, Unpaid Refund, and disability discharge, Public Services Forgiveness, or others.<sup>1</sup> For a full list of discharges, visit this [link](#).
2. **Affordable Repayment Plans<sup>2</sup> (applies if loan is not in default):**
  - [REPAYE](#) (loan forgiveness after 20 years for undergrad or 25 years if loans include both undergrad and graduate).
    - i. 10% of discretionary income paid towards loan. So typically results in lowest payment, and thus best option for a financially strapped borrower.
    - ii. Only loans eligible for REPAYE are direct loans, so any FFEL loans must be converted to direct first.
  - [Income Based Repayment](#) (loan forgiveness after 20-25 years – depending on when loan was borrowed).
    - i. Both FFEL and Direct loans are eligible. 15% of discretionary income paid towards loan, so more paid than under REPAYE.
    - ii. However, interest will keep accruing on loan and possible tax consequence if any portion of the loan is forgiven.
  - [Pay As You Earn](#) (same as REPAYE except all loans forgiven after 20 years.)
    - i. Must be a “new borrower” of Direct Loans who borrowed after 10/1/2007 with a disbursement after 10/1/2011— loan forgiveness after 20 years with similar consequences to IBR.
  - [Income Contingent Repayment](#) : This is the worst option, but perhaps only option for Parent PLUS and Graduate PLUS loans. If payment is 20% of discretionary income, which is defined as all income above 100% of poverty line (as opposed to REPAYE, IBR and PAY where discretionary income is that above 150% of poverty line), loan forgiveness after 25 years.

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<sup>1</sup> A False Certification, Closed School or Unpaid Refund discharge can result in full loan extinguishment, refund of all voluntary and involuntary payments made, and credit report repair. A disability discharge does not provide for a refund of all loan payments or credit repair. Therefore, the school related discharges are better than disability discharges and those should be the first discharges considered. If they are not available to the client and the client is eligible for disability discharge, apply for that option.

<sup>2</sup> This is not a full list of available repayment plans and some repayment plans do not apply to all federal loans. Some clients might not qualify for an income sensitive repayment plan, but might qualify for another type of repayment plan. For a full list of repayment plans, visit this [link](#).

- To determine what the monthly payment would be for IBR, PAYE, or ICR, go to <https://studentloans.gov/myDirectLoan/mobile/repayment/repaymentEstimator.action>.
- **Parent PLUS Loans:** No income sensitive-repayment plan unless Parent PLUS loan is consolidated with parent's own student loan, and then Income-Contingent Repayment is available. Parent can defer payment until child graduates from school or drops out. Term of repayment can be extended from 10 to 25 years.

### 3. Getting out of Default<sup>3</sup> (if no discharge available):

- **Consolidation:** This is often the best option for resolving a defaulted federal student loan if the client is unable to obtain a discharge. Generally, this option allows borrowers to consolidate one or more eligible federal student loans into one consolidated loan and allows for repayment under one of the income-based repayment plans. Not all borrowers will be eligible for this option. Consolidation is done online without servicer or collector participation.
- **Rehabilitation:** This takes longer and is more paperwork intense, but has a better effect on credit report than consolidation. Rehabilitation requires 9 reasonable and affordable monthly payments over 10 months after which a borrower is brought out of default. Servicers and collectors administer rehabilitations.

## ➔ Step 4. Create Action Plan:

### 1. Apply for Discharge Based on Improper School Behavior:

- If you have a solid basis for a school-related discharge, put together the following documents:
  - i. Discharge [form](#) required by DOE.
  - ii. Affidavit from client telling story in support of discharge.
  - iii. Dirt on school either from, closed school database, LSNYC's database of bad trade schools, or dirt from web.
  - iv. If no dirt found, or only a little, consider filing a FOIL or FOIA request.
  - v. Cover letter from advocate.

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<sup>3</sup> Some repayment plans are only available once the borrower is no longer in default. The Student Aid [website](#) can help a borrower decipher which payment plan might work best

- vi. Any other evidence that corroborates client's claim (*e.g.*, news stories, testimonials of other students in a similar situation, proof of no high school diploma or GED).

## 2. **Apply for Total and Permanent Disability (TPD) Discharge:**

- If the borrower is ineligible for a school related discharge, then assess for TPD discharge.
- The US Department of Education considers a borrower eligible for this discharge if:
  - i. You are a veteran and can submit documentation from the U.S. Department of Veterans Affairs (VA) showing that the VA has determined that you are unemployable due to a service-connected disability.
  - ii. You are receiving Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits. You can submit a Social Security Administration (SSA) notice of award for SSDI or SSI benefits stating that your next scheduled disability review will be within five to seven years from the date of your most recent SSA disability determination.
  - iii. You can submit certification from a physician that you are totally and permanently disabled. Your physician must certify that you are unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that:
    - Can be expected to result in death,
    - Has lasted for a continuous period of not less than 60 months, or
    - Can be expected to last for a continuous period of not less than 60 months.

## 3. **For Current or Delinquent (not defaulted) Federal Student Loans:**

- Assess for discharge.
- If ineligible for discharge, assess if payments can be reduced via IBR, ICR, REPAYE, PAYE or some other non-standard repayment plan. Go to [this link to see monthly rates under various plans](#).
- Consider **forbearance** or **deferment**.
  - i. **Forbearance:** no repayment for up to three years, interest always accumulates and is capitalized at end.

- ii. **Deferment:** may have to prove eligibility (*e.g.*, UIB award letter for unemployment deferment), but is better than forbearance because the federal government pays interest on subsidized Stafford loans.

#### 4. **Defaulted Loan (if ineligible for discharge):**

- **Consolidation** by going to [this link](#).
- **Rehabilitation** by calling servicer and entering into nine-month payment plan on each defaulted loan.
  - i. Note: You will not get out of default by rehabilitating one loan, but not others in default. You have to do them all.
- Once out of default, or as part of consolidation application or rehabilitation, reduce monthly payment via IBR, ICR, PAYE, or REPAYE.

**\*\*Please note that loans that are subject to a judgment have limited options for resolution, but not all is lost. For more information on potential options, visit this [link](#).**

#### ➔ **Key Tips for Contact with Debt Collector/Servicer/Guaranty Agency/US DOE:**

1. Contact a debt collector, servicer, guaranty agency or the US DOE by conference call with the client, or call when the client is in your office, whenever possible. If that is not possible, utilize the authorization to represent document.
  - **Note:** Only use the authorization to represent document when necessary because once this has been utilized, it may become difficult for the client to communicate with servicer or the servicer to communicate with client directly in the future.
2. Servicer will pump you and the client for information. You can always disclose the client's DOB, SSN, and address. They will ask for client's phone number—ask the client's permission to provide it.
  - **Note:** Most guaranty agencies are not subject to Fair Debt Collection Practices Act (FDCPA). Private debt collectors do have to abide by FDCPA.
3. When speaking to the servicer/collector:
  - Establish the status of loan(s)—*e.g.*, current, default, deferred.
  - Ask about the options that are available to the client if he or she cannot afford mandated payment.
  - **Note:** Their advice may be wrong! Take notes and tell LSNYC when it is incorrect.

➔ **Final Thoughts: Look for Patterns and Systemic Abuse and Notify LSNYC:**

1. **Bad Private Collectors:** If you want a borrower in default to consolidate and enter into an Income-Driven Repayment plan, have the client call the collector and ask how to do it. Note how the collector responds. Some collectors will try to steer client into a payment plan that benefits the collector but not the borrower. This probably violates the FDCPA.
2. **Forbearance versus IBR.** Forbearance means no repayment (for up to three years), but the interest on the loan is capitalized so that when forbearance ends, you pay interest on your interest. The interest on repayment plans is not capitalized, unless you stop them. So an income driven repayment plan is a better route to take than forbearance. Servicers who push forbearance over entering into an income-driven repayment plan should be noted.
3. **Collector or servicer suggests consolidation of both federal and private loans.** Never do this because all federal protections are lost. Some servicers, such as Navient (formerly Sallie Mae), suggest this.
4. **Difficulty locating who services a loan.** Locating who is servicing the loan may take many calls. It should not. If it does, keep track of who you called and when and we can complain to the Consumer Financial Protection Bureau at [this link](#). The CFPB link makes filing a complaint easy (15 minutes, max) and these complaints often trigger better service.

➔ **Key Links referenced in the Legal Outline are compiled here:**

1. Request a Federal Student Aid ID:  
<https://fsaid.ed.gov/npas/index.htm>.
2. Student Loan Data System:  
[https://www.nslds.ed.gov/nslds\\_SA/](https://www.nslds.ed.gov/nslds_SA/)
3. Federal Student Loan Resource Website:  
<http://www.studentloanborrowerassistance.org>
4. Know Before You Go College Scorecard:  
<http://www.whitehouse.gov/issues/education/higher-education/college-score-card>.
5. Discharge Forms:  
<http://www.studentloanborrowerassistance.org/resources/referral-resource/important-forms/>
6. List of closed schools with dates, go to:  
<https://www2.ed.gov/offices/OSFAP/PEPS/closedschools.html>

7. Consolidation application:  
<https://studentaid.ed.gov/repay-loans/consolidation#how-apply>
8. Direction Consolidation FAQs:  
<http://loanconsolidation.ed.gov/help/faq.html>
9. Guaranty and Lender Ombudsman Programs:  
<http://www.studentloanborrowerassistance.org/resources/referral-resource/ombudsman-programs/>
10. Repayment Plans:  
<https://studentaid.ed.gov/repay-loans/understand/plans>
11. Electronic Complaint to CFPB:  
<http://www.consumerfinance.gov/complaint/>

➔ **Glossary—Key Terms:**

1. **Direct Loan:** AKA William D. Ford Direct Loan. These loans are originated by the Department of Education, and all loans insured by federal government that are disbursed after 2010 are Direct Loans. These are the type of loans you need to be repaying to qualify for Public Service Loan Forgiveness and Pay as You Earn.
2. **Federal Family Education Loan (FFEL):** Loans originated by private lenders (Citibank, Sallie Mae, BoA, Chase) that are insured by the federal government via the 35 guaranty state agencies. Because the lenders gave huge kickbacks to the financial aid departments of everyone from Columbia to Hofstra (adding considerable expense), Congress eliminated the program in 2010. The loans are still out there though and do not qualify for PAYE or Public Service Loan Forgiveness. However, they can be consolidated into Direct Loans so as to qualify. Borrowers can also access IBR to repay FFEL.
3. **Parent PLUS Loan:** Parent is the borrower for child's undergraduate studies. Loan can be as much as the entire cost of tuition. Ability to repay is not assessed other than a credit check. Interest accrues and payments are due while student is enrolled in school. Interest is higher than other loans—currently over 7% v. Stafford loans, which is under 4%.
4. **Default:** 270+ days in arrears.
5. **Delinquent:** No payment made, or a payment made late. This cycle can last for 270 days, after which you move into “default.” You can get caught up on your delinquent payments by asking the servicer to capitalize the arrears and restart the payment, including a payment under an income driven repayment plan.
6. **Discharge:** Loan forgiveness.



7. **Consolidation:** Taking out one loan that pays off one or several outstanding federal student loans.
8. **Rehabilitation:** One time opportunity to clear default on a loan via 9 reasonable and affordable monthly payments over 10 months.
9. **Forbearance:** A discretionary excuse for making no payment. Interest accumulates and then is capitalized when you leave forbearance and enter repayment. You get up to three years of forbearances.
10. **IBR:** Income Based Repayment plan.
11. **ICR:** Income Contingent Repayment plan.
12. **PAYE and REPAYE:** Pay As You Earn plan and Revised Pay As You Earn plan.

➔ **If you need additional help or guidance:**

1. Reach out to your LSNYC mentoring attorney. See contact information at Tab 5 of the Manual.
2. Go to the National Consumer Law Center student loan website, [www.studentloanborrowerassistance.org](http://www.studentloanborrowerassistance.org), and access their book on student debt (for a fee).
3. Federal student loan and CFPB websites:
  - <http://www.consumerfinance.gov/students/>
  - <https://studentloans.gov>
  - <http://studentaid.ed.gov>

## Exhibit 2

Legal Services NYC leverages its limited resources with a range of pro bono partnerships across all of our practice areas.

## Impact Litigation

LSNYC regularly co-counsels with large law firms when it brings impact litigation. For example:

- Paul Weiss co-counsels with LSNYC's Queens office and Catholic Migration to challenge the eviction and harassment of nearly 50 rent-regulated tenants by a notorious predatory landlord in *Centino v. Zara Realty* (N.Y. Sup. Ct. Qns Cty).
- Fried Frank co-counseled with LSNYC's Brooklyn office to intervene into an owner's bankruptcy to prevent a predatory landlord from regaining control of a large apartment building. *In re Gordon* (E.D.N.Y. Bankr.).
- Seyfarth Shaw and LSNYC's Staten Island office brought suit against the New York City Housing Authority (NYCHA) for terminating a blind client's Section 8 rental subsidy without providing him with notice in an accessible format in *Williams v. NYCHA* (E.D.N.Y.). The case settled in January, 2014, with NYCHA agreeing to change its practices across the board.

## Special Projects

LSNYC also partners with law firms on a range of more limited projects. These include representing clients on appeals of limited issues, drafting amicus briefs, and assisting with research and strategy. These projects provide law firm lawyers with the chance to engage in legal writing, research, and sometimes court arguments in a capacity that is limited in scope.

## Client Service Initiatives

LSNYC offers a number of ongoing projects that partner law firms and corporations with individual clients who have discrete needs. LSNYC provides training, supervision, and technical support, while pro bono partners take the lead on the cases.

See the next page for descriptions of these projects, and to find out how to get involved.

# Pro Bono at Legal Services NYC

## Client Service Initiatives

- **Unemployment Insurance Hearings.** LSNYC partners with Brown Rudnick to represent a number of low-income clients at unemployment insurance hearings.
- **U-Visas.** LSNYC partners with the Asian American Bar Association of New York (AABANY) to help low-income immigrants who are victims of domestic violence obtain immigration relief.
- **Family Law Administrative Appeals.** LSNYC's Bronx office partners with Patterson Belknap and other law firms to represent clients challenging their inclusion on the New York State Central Register for Child Abuse and Maltreatment.
- **Bankruptcy Assistance Project.** LSNYC's Bankruptcy Assistance Project (NYCBAP) partners with dozens of leading law firms to help debtors file pro se Chapter 7 bankruptcy petitions and help clients with contested matters. To date, over 700 attorneys have participated, providing assistance to over 3,000 debtors.
- **Housing Repairs.** LSNYC's Brooklyn and Queens offices partner with several large law firms to represent low income clients in "HP actions"—cases in which a client has significant repair issues in her apartment that a landlord is refusing to remedy.
- **Wills Clinics.** LSNYC's Bronx and Brooklyn offices offer wills clinics to low income clients. Bronx Legal Services partners with Carter Ledyard to serve elderly clients, while Brooklyn Legal Services partners with Katten Muchin to serve HIV+, LGBT and elderly clients.
- **Student Debt.** LSNYC partners with Con Edison to help low-income clients who are struggling with unpaid federal student debt—usually from attending predatory, for-profit educational institutions.
- **Orders of Protection.** LSNYC partners with Arnold & Porter and others to represent survivors of domestic violence to obtain civil orders of protection in family court.

## About Us

Legal Services NYC fights poverty and seeks racial, social and economic justice for low income New Yorkers. For almost 50 years, we have challenged systemic injustice and helped clients meet basic needs for housing, income and economic security, family and immigration stability, education, and health care. LSNYC is the largest civil legal services provider in the country; our staff of nearly 350 people in neighborhood based offices and outreach sites across all five boroughs helps more than 80,000 New Yorkers annually.

Law firms, corporations, law firm lawyers, and in-house counsel who are interested in partnering with LSNYC are encouraged to reach out to learn more. Please contact:

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# Housing Repair Actions: Prosecuting Code Violations on Behalf of Low-Income New Yorkers

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Thousands of low-income New Yorkers live in apartments that are in a state of shocking disrepair: without functioning appliances, exposed to wind and water, insufficiently heated, or infested with mold and vermin. Landlords who refuse to fix these conditions are in violation of New York City Code. Yet virtually no tenants who attempt to enforce that code can afford an attorney. This pro bono project pairs volunteer attorneys with low-income tenants who have been screened by Legal Services NYC (LSNYC).

## The Clients

Low-income tenants who suffer from dangerous and degrading living conditions, including deficient heat, lack of clean water, mold, or pervasive vermin.

## The Cases

To obtain apartment repairs, tenants must bring Housing Part actions in Housing Court—commonly known as “HPs.” Fewer than 1% of tenants have representation in HP actions, while more than 95% of landlords do. Without legal counsel, many tenants do not know how to prepare for court and are unaware of their rights. And they frequently leave without adequate remedy. Representation changes that, and results in fairer outcomes for clients. The actions are straightforward, and take less than 25 hours of time.

## Benefits for Pro Bono Partners

Participating attorneys will litigate repair cases from start to finish. That means pro bono attorneys will interview clients, draft complaints, negotiate settlements, in some cases write and argue motions and, on rare occasions, even go to trial. Volunteers will also receive training, a manual, and technical support from housing experts at LSNYC. Best of all, pro bono attorneys will know that they are giving New Yorkers who have nowhere else to turn a fair shot at safe and livable housing.

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# Civil Orders of Protection: Representing Low-Income Domestic Violence Survivors in Family Court

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This initiative connects survivors of domestic violence with pro bono attorneys to obtain civil orders of protection in family court. Experts at Legal Services NYC (LSNYC) screen the cases, in some instances make initial appearances, and are available for technical assistance. LSNYC also provides training and a manual.

## The Problem

Survivors of domestic violence often face threats and violence, even after leaving an abusive partner. An Order of Protection signed by a family court judge requires the abuser to stop the violence and threats. It can also order the abuser to stay away from a home, school, or job. If the order is violated, the abuser can be arrested and prosecuted.

## The Clients

Low-income survivors of domestic violence who seek Orders of Protection to stay safe.

## The Cases

Orders of Protection are hugely significant for clients, but provide an opportunity for pro bono attorneys to take on a discrete matter. Although the number of hours varies by case, they should require no more than 35 hours of time spread out over several months. The work consists of client interviews, simple fact discovery, drafting papers, and one-to-three appearances in Family Court to conduct a hearing.

## Benefits for Pro Bono Advocates

These cases provide pro bono attorneys the opportunity to appear in court, make oral arguments, conduct direct and cross-examinations, draft papers, and work directly with clients in need.

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# SSI/SSD Federal Appeals:

## Representing Low-Income People With Disabilities Who Have Been Denied Benefits

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This initiative connects pro bono attorneys with disabled low-income clients who have been denied Supplemental Security Income (SSI) or Social Security Disability (SSD) benefits, and lost their administrative appeals. Pro bono attorneys will draft briefs to federal district court—E.D.N.Y. or S.D.N.Y.—and argue the hearings if oral argument is scheduled. Experts at Legal Services NYC (LSNYC) screen and evaluate the cases and provide mentorship throughout. Cases take approximately 50 hours.

### The Problem

SSI is a need-based program available to extremely low-income, disabled individuals. SSD provides benefits to disabled individuals based on their employment history. These benefits dramatically improve the quality of life for people without means and provide income security. Individuals who are eligible for SSI/SSD are often unfairly rejected, and, without counsel for their administrative appeals, often lose those hearings.

### The Clients

Low-income New Yorkers with disabilities.

### The Cases

SSI/SSD federal appeals involve briefing and, in some cases, oral argument. Cases are decided on the underlying closed record. There is no discovery in these cases.

### Experience for Pro Bono Attorneys

Pro bono attorneys will work directly with clients, draft and file briefs in federal court, and may have the opportunity to give oral argument. LSNYC will screen clients, supervise and advise on cases, review briefs, and accompanying attorneys to any oral argument.

### Who We Are

Legal Services NYC fights poverty and seeks racial, social and economic justice for low income New Yorkers. For almost 50 years, we have challenged systemic injustice and helped clients meet basic needs for housing, income and economic security, family and immigration stability, education, and health care. LSNYC is the largest civil legal services provider in the country; our staff of nearly 350 people in neighborhood based offices and outreach sites across all five boroughs helps more than 80,000 New Yorkers annually.



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# Disability Hearings: Representing Low-Income Clients for SSI & SSD Benefits

---

This initiative connects pro bono attorneys with low-income clients who need representation at Supplemental Security Income (SSI) and Social Security Disability (SSD) administrative hearings. Pro bono attorneys argue the hearings, cross-examine experts, take testimony, draft supporting papers, and work directly with clients. Experts at Legal Services NYC (LSNYC) screen and evaluate the cases, and provide supervision throughout. Cases take approximately 40 hours.

## The Problem

SSI is a need-based program available to extremely low-income, disabled individuals. SSD provides benefits to disabled individuals based on their employment history. These benefits dramatically improve the quality of life for people without means. Individuals who are eligible for SSI/SSD are often unfairly rejected, yet they have no right to counsel for administrative appeals. Their odds change dramatically when an attorney takes the case.

## The Clients

Low-income people with disabilities.

## The Cases

SSI/SSD administrative appeals involve hearings, briefing, and analysis of medical records.

## Experience for Pro Bono Attorneys

Pro bono attorneys will gain experience arguing before a federal Administrative Law Judge, take testimony, prepare clients as witnesses, cross-examine experts, draft papers, and analyze records. LSNYC will screen clients, supervise and advise on cases, review briefs, and accompany attorneys to their first hearing.

## Who We Are

Legal Services NYC fights poverty and seeks racial, social and economic justice for low income New Yorkers. For almost 50 years, we have challenged systemic injustice and helped clients meet basic needs for housing, income and economic security, family and immigration stability, education, and health care. LSNYC is the largest civil legal services provider in the country; our staff of nearly 350 people in neighborhood based offices and outreach sites across all five boroughs helps more than 80,000 New Yorkers annually.



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# New Americans:

## Helping Low-Income Immigrants Become Naturalized Citizens of the United States

---

This pro bono initiative connects low-income immigrants with pro bono attorneys who will help them with the application process to become U.S. citizens. Experts at Legal Services NYC (LSNYC) screen the cases. LSNYC also provides training, a thorough manual, and mentorship for volunteers.

### The Problem

Low-income immigrants who are ready to become U.S. citizens frequently find the process confusing and intimidating, leading to delay and sometimes to unnecessary rejection. A dedicated advocate can make all the difference in making an application and interview successful.

### The Clients

Low-income immigrants who seek to become naturalized citizens of the United States.

### The Cases

Pro bono attorneys will prepare all aspects of the naturalization proceeding, including assisting with preparation of the application, requesting any relevant waivers, preparing the client for the naturalization interview, and accompanying the client to his or her naturalization interview. Although the number of hours varies by case, they usually require no more than 20 hours of time spread out over six-to-twelve months.

### Benefits for Pro Bono Advocates

These cases provide pro bono advocates the opportunity to have direct interactions with clients, advocate for them before the United States Citizenship and Immigration Services, prepare clients for interviews, and attend the interviews as an advocate. Successful outcomes are common—and life-changing to clients.

### Who We Are

Legal Services NYC fights poverty and seeks racial, social and economic justice for low income New Yorkers. For almost 50 years, we have challenged systemic injustice and helped clients meet basic needs for housing, income and economic security, family and immigration stability, education, and health care. LSNYC is the largest civil legal services provider in the country; our staff of nearly 350 people in neighborhood based offices and outreach sites across all five boroughs helps more than 80,000 New Yorkers annually.



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# U-Visas:

## Immigration Relief for Low-Income Survivors of Domestic Violence

---

This pro bono initiative connects immigrant survivors of domestic violence with pro bono attorneys to obtain legal status in the United States. Experts at Legal Services NYC (LSNYC) screen the cases and provide technical assistance. LSNYC also provides training, a manual, and mentorship for volunteers.

### The Problem

Immigrant survivors of domestic violence face several obstacles to safety. In addition to cultural and language barriers, abusers may use immigration status or threats of deportation to assert power and control. Immigrant victims are also less likely to call the police out of fear of deportation and of being separated from their children.

### The Clients

Low-income immigrants who are survivors of domestic violence, and seek legal status in the United States.

### The Cases

U Nonimmigrant Status—commonly known as “U-Visas”—are available to crime victims who have suffered substantial physical or mental abuse and have cooperated with law enforcement. Pro bono attorneys prepare U-Visas for LSNYC clients from start to finish. Although the number of hours varies by case, each should require no more than 40 hours of time. There are no specific deadlines, but time spent preparing the application can be spread out over several months.

### Benefits for Pro Bono Attorneys

These cases provide pro bono attorneys the opportunity to have substantive interactions with clients who are in desperate need, to draft persuasive narratives on behalf of those clients, and to advocate directly with the United States Citizenship and Immigration Services. Successful outcomes are common—and life-changing for clients.

### Who We Are

Legal Services NYC fights poverty and seeks racial, social and economic justice for low income New Yorkers. For almost 50 years, we have challenged systemic injustice and helped clients meet basic needs for housing, income and economic security, family and immigration stability, education, and health care. LSNYC is the largest civil legal services provider in the country; our staff of nearly 350 people in neighborhood based offices and outreach sites across all five boroughs helps more than 80,000 New Yorkers annually.



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# VAWA Self-Petitions: Immigration Relief for Low-Income Survivors of Domestic Violence

---

This pro bono initiative connects immigrant survivors of domestic violence with pro bono attorneys to obtain legal status in the United States. Experts at Legal Services NYC (LSNYC) screen the cases and provide technical assistance. LSNYC also provides training and a manual.

## The Problem

Undocumented immigrant survivors of domestic violence face various issues, including the inability to legally work and support their families, threats of deportation, and threats of being separated from their children. All of this on top of the abuse they have already suffered from their batterers. Batterers also often threaten to—and sometimes do—report undocumented intimate partners to authorities.

## The Clients

Low-income immigrants who are survivors of domestic violence, and seek legal status in the United States.

## The Cases

VAWA Self-Petitions can lead to green cards for abused spouses and children of United States Citizens and green card holders. Pro bono attorneys will prepare VAWA Self-Petitions for LSNYC clients from start to finish. Although the number of hours varies from case-to-case, they should require no more than 50 hours of time spread out over three-to-six months. Pro bono attorneys will have several weeks to prepare for any substantive representation.

## Benefits for Pro Bono Attorneys

These cases provide pro bono attorneys the opportunity to have direct and substantive interactions with clients who are in desperate need, to draft persuasive narratives on behalf of those clients, and to advocate directly with the United States Citizenship and Immigration Services. Successful outcomes are common—and life-changing for clients.

## Who We Are

Legal Services NYC fights poverty and seeks racial, social and economic justice for low income New Yorkers. For almost 50 years, we have challenged systemic injustice and helped clients meet basic needs for housing, income and economic security, family and immigration stability, education, and health care. LSNYC is the largest civil legal services provider in the country; our staff of nearly 350 people in neighborhood based offices and outreach sites across all five boroughs helps more than 80,000 New Yorkers annually.



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# Unemployment Insurance Hearings: Representing Low-Wage Workers Before Administrative Law Judges

---

This initiative connects low-wage workers with pro bono attorneys who will represent them in unemployment insurance (UI) administrative hearings and appeals before the New York State Unemployment Insurance Appeal Board. Experts at Legal Services NYC screen the cases. LSNYC also provides training, a thorough manual and mentorship for volunteers.

## The Problem

Tens of thousands of low-wage workers—many with limited English, job skills, and education—are wrongfully denied unemployment benefits. Unemployment insurance is the sole means of temporary wage replacement for workers and it prevents many families from spiraling into poverty. A dedicated advocate can make all the difference by representing the clients at hearings: only 28% of unrepresented clients win their hearings while represented clients have a 90% success rate.

## The Clients

Low-wage workers who are wrongfully denied unemployment benefits.

## The Cases

Pro bono attorneys will directly represent clients at UI hearings. Although the number of hours varies by case, they usually require no more than 15 hours of time spread out over several weeks.

## Benefits for Pro Bono Advocates

UI hearings may last several hours and offer the chance to hone litigation skills. Pro bono attorneys work directly with clients, develop a theory of the case, conduct direct and cross-examination, and prepare a closing statement. Successful outcomes are common—and life-changing to clients.

## Who We Are

Legal Services NYC fights poverty and seeks racial, social and economic justice for low income New Yorkers. For almost 50 years, we have challenged systemic injustice and helped clients meet basic needs for housing, income and economic security, family and immigration stability, education, and health care. LSNYC is the largest civil legal services provider in the country; our staff of nearly 350 people in neighborhood based offices and outreach sites across all five boroughs helps more than 80,000 New Yorkers annually.



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# Cy Pres Awards at Legal Services NYC:

## Providing Access to Justice for Thousands of Low-Income People

---

Legal Services NYC (LSNYC) uses cy pres awards to provide access to justice for thousands of low-income New Yorkers who would otherwise go without representation. Our dedicated advocates offer free civil legal services on consumer rights, foreclosure, tenant rights, homelessness, veterans' rights, government benefits, disability, education, discrimination, and disaster relief, among other things.

### Who We Are

Legal Services NYC fights poverty and seeks racial, social and economic justice for low income New Yorkers. For almost 50 years, we have challenged systemic injustice and helped clients meet basic needs for housing, income and economic security, family and immigration stability, education, and health care. LSNYC is the largest civil legal services provider in the country; our staff of nearly 350 people in neighborhood based offices and outreach sites across all five boroughs helps more than 80,000 New Yorkers annually.

### Cy Pres Awards & Residual Funds at LSNYC

LSNYC has received millions of dollars in unused residual funds from class actions. LSNYC is a natural fit for such awards: just as the purpose of the class action mechanism is to provide access to justice for people who would otherwise be left without relief, LSNYC's purpose is to provide free legal services to low-income people who would otherwise go without counsel in crucial civil proceedings.

### What LSNYC Achieves with Cy Pres Awards

Every \$100,000 sent to LSNYC permits us to serve approximately 350 additional low-income New Yorkers. Key program areas that cy pres awards benefit include:

- **Consumer Rights.** LSNYC assists clients with a range of consumer issues, including bankruptcy, debt collection, student debt, privacy rights, credit report errors, banking problems, payday loans, and impermissible utility terminations.
- **Tenant/Housing Rights.** LSNYC provides legal advice and representation to tenants with a wide range of housing problems, including non-payment and holdover evictions cases, illegal evictions, and bad conditions.
- **Employment.** LSNYC assists clients with unemployment insurance and other employment related problems. We focus in particular on the re-entry problems of ex-offenders.
- **Foreclosure Protection.** LSNYC provides advice and representation to victims of predatory lending who are at risk of losing their homes. In addition to providing advice and litigating cases in court, LSNYC is sometimes able to help clients negotiate better financial arrangements with lenders.

# Cy Pres Awards at Legal Services NYC:

## Providing Access to Justice for Thousands of Low-Income People

---

- **Family Law.** LSNYC assists clients with child custody, divorce, child support, and orders of protection. Many of our clients are victims of domestic violence.
- **Veterans Justice.** LSNYC has the largest veterans justice project in the country, serving more than 800 clients every year. LSNYC provides a broad range of civil legal services for veterans, service members, and their families in all five boroughs.
- **Access to Benefits.** LSNYC helps people access and retain government benefits, ensuring they can keep food on the table and a roof over their heads.
- **Disability.** LSNYC helps people with disabilities by assisting them in retaining and obtaining disability benefits, fighting discrimination, and advocating for fair access to public accommodations.
- **Education.** LSNYC helps children secure special education plans, and challenge unfair suspensions so that children can obtain the education that they are entitled to.
- **Immigration.** LSNYC helps immigrants who are victims of violence obtain legal status, and assists with naturalization proceedings, family-based petitions, and work permit renewals.
- **Anti-Discrimination Work.** LSNYC fights discrimination that impacts low-income New Yorkers. We challenge unlawful discrimination based on race, gender, disability, sexual orientation, HIV status, English language proficiency, and other protected categories.
- **Disaster Relief.** LSNYC serves victims of Superstorm Sandy by helping provide access to food stamps, shelter, and FEMA benefits. Today, lawyers represent Sandy-affected clients in a range of storm-related matters, including housing repairs, assist with the build-it-back program, and negotiations with insurers and banks.
- **Tax.** LSNYC provides legal representation, advice and referral to low-income taxpayers who have disputes with the Internal Revenue Service and the New York State Department of Taxation and Finance.

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# Exhibit 3



# Student Debt Initiative: Securing Debt Relief For Low-Income New Yorkers



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1

# Pro Bono at Legal Services NYC



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2

## WHO WE ARE

Legal Services NYC fights poverty and seeks racial, social, and economic justice for low-income New Yorkers. LSNYC is the largest civil legal services provider in the country, helping more than 80,000 New Yorkers annually.



5  
Boroughs

400 Dedicated  
Staff

80,000 New Yorkers  
Helped Annually

3

## PROGRAM AREAS



Veterans Justice	Access to Benefits	Disability	Education
Immigration	Anti- Discrimination Work	Disaster Relief	LGBT
Consumer Rights	Housing	Employment	Family Law

4

## OTHER PRO BONO OPPORTUNITIES



1. Securing disability benefits: SSI hearings & federal appeals.
2. Safety for DV survivors: Civil Orders of Protection.
3. Immigration relief: U-Visas, VAWA self-petitions, and naturalizations.
4. Bankruptcy relief.
5. Prosecuting housing repair actions.

5

## STUDENT DEBT IS A POVERTY ISSUE



1. Our clients are extremely low-income—generally below 200% of federal poverty line.
2. Low-income people more likely to borrow and to default on student loans.
3. Targeted by predatory for-profit schools.
4. Left with huge debts and no means of repaying them.
5. Lots of relief available, but almost no one will represent these individuals.

6

## DENISE'S STORY



1. In 1985, Denise was a young mother caring for 2 small children. She borrowed \$5k & enrolled in a for-profit secretarial school.
2. Her babysitter quit after 2 weeks, forcing her to withdraw. The school told her it would refund the loan to the government.
3. 30 years later, Denise was supporting three children and grandchild as a home health attendant. She was anxiously awaiting her tax refund—worth almost two months of wages.
4. DOE intercepted it because the school—which had been closed by DOE for fraud—had never actually returned the loan.
5. The collector told Denise she was out of luck. Plus she owed an extra \$5k in interest and penalties.
6. LSNYC filed an unpaid refund petition with a supporting affidavit on her behalf. She had her tax refund returned and the entire loan forgiven.

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## THE GOOD NEWS



1. There are many forms of relief available, and you will achieve one of them for your client.
2. Depending on circumstances, that ranges from debt discharge to consolidation & income-driven repayment.
3. Clients sometimes get money back, but in any event stop having significant money taken from them.
4. Getting out of default has huge financial and emotional benefits for clients.

8

## AGENDA FOR TODAY



1. **Overview of the Problem**
2. **What to do on a Case**
  - Identify and classify the loans
  - Use discharges (loans are forgiven)
  - Get out of default and into affordable payments
3. **Practice Notes** (private loans, strategy, and recognizing patterns of bad behavior)

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## PART 1: OVERVIEW



1. Historical context
2. Statutory and regulatory background
3. Repayment and default on federal loans

10

## STUDENT LOAN MESS



1. Student loan debt is up from \$240 Billion in 2003 to over \$1.2 Trillion in 2016. 1 in 8 borrowers are in default.
2. Similar to the mortgage crisis.
3. Borrower's ability to repay the loan not part of the lender's underwriting criteria.
4. Student loan debt is slowing economy. Consumers with student loan debt are less likely to buy houses and cars.

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## SHAM FOR-PROFIT SCHOOLS



1. Sham trade schools and for-profit colleges target low-income people with promises of a new life of riches. They enroll everyone regardless of training, ability, or readiness.
2. Federal and state regulators do a poor job policing for-profit schools.
  - Cohort Default Rate Rule: lose federal funding if exceed national average by 30% x 3 yrs, or 40% x 1 yr.
  - 90/10 Rule: Lose federal student loan aid if more than 90% of tuition income derived from federal loans.
  - 2014 Gainful Employment Rule: Lose federal aid if students do not earn enough to repay student loan debts. Will not have any effect until 2017 at earliest – designed to knock out 1,400 predatory for-profits.

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# MILITARY VETERANS POST-9/11 GI BILL



## 1. 90-10 Rule.

- No more than 90% of revenue can come from federal student loans.
- Post-9/11 GI Bill funds count towards the 10% of 90-10 rule, even though it is federal money.
- For every veteran signed up, for-profit pulls down federal loan payments for 9 non-Veterans.

## 2. For-profits lure homeless, disabled, financially needy veterans with 9/11 housing stipend of \$700-\$2500 per month—paid by the federal government.

## 3. In 2012, Senator Harkin Reports \$1.6 Billion or 25% of 9/11 GI Bill money goes to for-profit schools.

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## HOW TO ID A BAD SCHOOL



1. DOE publishes data on outcomes of low-income borrowers.
2. ProPublica massages it into searchable form by school.
  - The percentage of a school's former students who currently earn less than high school diploma (\$25k) 6 years after entering the school.
  - The percentage of a school's former students who are unable to reduce the principal owed on their loans by even \$1, despite making regular monthly payments.
  - The percentage of a school's students that graduate within 6 years.
3. ProPublica's website:  
<https://projects.propublica.org/colleges/>

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## PAYING FOR SCHOOL



1. Tuition is high:
  - a. NYU Boarder = \$65k per year
  - b. Non-competitive non-profits:
    - Long Island University: 87% admitted; \$42k/year sticker, \$22k for "scholarship" students
  - c. For-profit colleges:
    - U of Phoenix: \$22k/year
  - d. For-profit trade or certificate:
    - Apex: \$19k/year
2. Students and parents borrow heavily
3. Federal programs help pay for higher education
4. Private student loans fill gaps

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## REPAYING STUDENT LOANS



- Federal student loan payments are due monthly once you drop-out or graduate.

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## STANDARD REPAYMENT



- Pay off the entire principal and interest in ten years.
- *E.g.*, if you owe \$30,000 (average student loan debt) at 6.8% interest, your monthly payment is \$345/month for 120 months.

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## CAN'T AFFORD STANDARD REPAYMENT?



1. **Deferment/Forbearance** for 6 months to 3 years is possible for the following reasons:
  - Still in school, current military service, summer bridge, unemployment, economic hardship, parental leave, internship, etc.
  - In most situations, interest will be capitalized on loans in forbearance or deferment. This is bad and borrowers should go to income-based repayment where interest accumulates but is not capitalized.
  - *You can ask for a forbearance/deferment up to 270 days after last payment.*
2. **Extended repayment plans** (10 years extended to 25).

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## CAN'T AFFORD STANDARD REPAYMENT(CONT.)



### INCOME SENSITIVE REPAYMENT PLANS

**Borrowers CANNOT be in default (> 270 days late) to access programs, but can be delinquent (<270 days late).**

Programs include:

1. Income Based Repayment (IBR): 15% of discretionary income.  
Discretionary income = AGI above 150% of poverty line for family.
2. Pay as You Earn (PAYE) and REPAYE. 10% of discretionary income.  
Discretionary income = AGI above 150% of poverty line for family.
3. Income Contingent Repayment (ICR): 20% of discretionary income.  
Discretionary income = AGI above 100% of poverty line for family.

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## PAYMENT STATUS: DELINQUENT VS. DEFAULT



1. If you are late on a payment, you are “delinquent.”
2. Delinquent borrowers have 270 days to get their act together by:
  - a) starting to pay again regularly; or
  - b) getting an excuse for not repaying, or
  - c) getting into an affordable payment plan.
3. **Getting an excuse for no payment is easy** and eliminates “delinquency” status. *E.g.*, returned to school, deployed in military (no payment due at all), discretionary **deferments** (6 months max) sick, unemployed, “hardship” **forbearances** (3 years).
4. Can also get out of “delinquency” by enrolling in an Income-Driven Repayment Plan.

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## NO PAYMENT ON FED LOAN FOR 270 DAYS MOVES BORROWER FROM “DELINQUENT” TO “DEFAULT”



### Default Is Much Worse than “Delinquent”

- Automatic 25% fee collection fee assessed to the debt— *i.e.*, in one day a \$30,000 debt increases to \$37,500.
- Can’t enroll in an income-sensitive plans.
- Cannot use unused deferments or forbearances.

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## EXTRAORDINARY U.S. ENFORCEMENT POWERS AGAINST BORROWER IN DEFAULT



1. Default occurs when loan is 270+ days in arrears.
2. Gov't gains administrative enforcement powers—without law suit.
3. Administrative income tax refund offset—100% of refund taken.
4. Administrative federal benefits offset (e.g. Social Security) once in default. 15% taken, but monthly benefit cannot fall below \$750.
5. If the above fail, government usually sues in state or federal court. If suit results in judgment, interest increases to 9%.
6. No statute of limitations for federally insured loans.

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## MORE BAD NEWS ON DEFAULTED FEDERAL LOANS



1. Cannot borrow new federal student loans or other federal loans, like FHA insured mortgage.
2. Negative credit reporting, which affects housing, employment, etc.
3. Bankruptcy relief is severely limited.
  - Stringent “undue hardship” standard. *E.g.*, \$81k in student loans not dischargeable to borrower who lost sight after graduating and can no longer work.

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## DEFAULT NATION



- **Income sensitive repayment are complex and underused**
  - 51% eligibility; 13% enrollment
  - 7.3 million borrowers still in default as of 10 2015
- **In 2011, national 3-year default rate was 11.8%**
- **In 2014: 5-year default rate:**
  - **53%** at Kaplan University, Davenport (\$6 bil total debt)
  - **45%** at University of Phoenix, Phoenix (\$35.5 bil total debt)
- **Servicer Misconduct**
- **Fraudulent Scams** – *“eerily similar to what happened in the wake of the mortgage meltdown . . . many of the same practices, and many of the same entities, have sort of migrated over . . . [to] the student loan space.”* – CFPB Ombudsman

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## SIDEBAR: PUBLIC SERVICE STUDENT LOAN FORGIVENESS



1. Need to enroll in an income driven repayment plan (IBR, ICR, PAYE, or REPAYE)
2. Loans must be direct loans, not FFEL loans
3. Must work at a 501(c)(3) or government agency (school, medical center, DA, etc.)
4. Need to make 120 payments under IDR plan while employed in public service

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## PART 2: THE CASES

1. Identify the type and status of each loan (e.g., in forbearance, delinquent or default).
2. Evaluate and apply for discharges.
3. Getting out of default if #2 fails.
4. Enroll client in income-sensitive repayment after #3 (if no discharge).

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## PART 2.1: IDENTIFY THE LOANS

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## FEDERAL OR PRIVATE?



1. Determining whether a student loan is federal or private is crucial.
  - See <http://www.studentloanborrowerassistance.org/start-here/what-type-of-loan-do-i-have/> for ideas about how to distinguish federal vs. private.
2. Create a Federal Student Aid ID.  
<https://www.nslds.ed.gov/npas/index.htm>
3. Then examine federal loans on the National Student Loan Data System (NSLDS).  
[https://www.nslds.ed.gov/nslds\\_SA/](https://www.nslds.ed.gov/nslds_SA/)
4. Use credit reports to identify private student loans.  
[www.annualcreditreport.com](http://www.annualcreditreport.com)

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## FEDERAL LOANS



Many loan programs, each with distinct regulations and repayment options.

- **Pell** Grant (\$5,775)
- **Stafford** via Federal Family Education Loan (FFEL) pre-July 2010 (\$5,500 to \$7,500)
- **Stafford** via Direct Loans (\$5,500 to \$7,500)
- **Perkins** Loan (\$4,000)
- **Parent and Grad Plus Loans** (all unmet need)

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# UNDERSTANDING NSLDS PRINTOUT



1. How many loans?
2. Types of loans?
3. When were the loans borrowed?
4. What school were the loans for?
5. Are loans in default?

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Financial Aid Review - [REDACTED]

[https://www.nsls.ed.gov/nsls\\_SA/SaFinShowSummary.do](https://www.nsls.ed.gov/nsls_SA/SaFinShowSummary.do)


National Student Loan Data System (NSLDS) for Stu

NSLDS is a repository of information from many sources. Changes to the data are made by those sources. Collecting the data into one central location such as NSLDS gives you convenience and saves you time. If for any reason you disagree with the information reported to NSLDS, please contact one or more of the sources of your data listed on the detail pages on this site. The Department is also available as a resource at 1-800-4FEDAID if you need additional assistance. Your comments and corrections will help improve the services NSLDS provides.

Aid Summary for [REDACTED] Your enrollment status is WITHDRAWN, effective 03/28/2008.

Loans							
	Type of Loan	Loan Amount	Loan Date	Disbursed Amount	Canceled Amount	Outstanding Principal	Outstanding Interest
1	STAFFORD UNSUBSIDIZED	\$4,000	10/19/2007	\$4,000	\$0	\$4,799	\$326
2	STAFFORD SUBSIDIZED	\$3,500	10/19/2007	\$3,500	\$0	\$3,760	\$9
Total STAFFORD UNSUBSIDIZED						\$4,799	\$326
Total STAFFORD SUBSIDIZED						\$3,760	\$9
Total All Loans						\$8,559	\$335


Grants				
	Award Year	Type Of Grant:	School	Scheduled Amount
1	2007 - 2008	FEDERAL PELL GRANT	CALIBER TRAINING INSTITUTE	\$4,310
Total All Grants				\$4,310

Information contained on these pages reflects the most current data in the NSLDS database. The data contained on this site is for general information purposes and should not be used to determine eligibility, loan payoffs, overpayment status, or tax reporting. Please consult the Financial Aid Officer at your school or the specific holder of your debts for further information.

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Loan Detail -- [REDACTED] [https://www.nslds.ed.gov/nslds\\_SA/SaFinShowLoanDetail.do?smc](https://www.nslds.ed.gov/nslds_SA/SaFinShowLoanDetail.do?smc)

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NSLDS is a repository of information from many sources. Changes to the data are made by those sources. Collecting the data into one central location such as NSLDS gives you convenience and saves you time. If for any reason you disagree with the information reported to NSLDS, please contact one or more of the sources of your data listed on the detail pages on this site. The Department is also available as a resource at 1-800-4FEDAID if you need additional assistance. Your comments and corrections will help improve the services NSLDS provides.

Detail Loan Information for [REDACTED] Your enrollment status is WITHDRAWN, effective 03/28/2008.

Type of Loan: 1 STAFFORD UNSUBSIDIZED  
 Loan obtained while attending the CALIBER TRAINING INSTITUTE

Date Entered Repayment: 09/29/2008  
 Loan Period Begin Date: 09/17/2007  
 Loan Period End Date: 06/06/2008

Amounts and Dates							
Loan Amount	Outstanding Principal Balance	Outstanding Principal Balance As of Date	Outstanding Interest Balance	Outstanding Interest Balance As of Date	Interest Rate	Canceled Amount	Canceled Date
\$4,000	\$4,799	10/31/2011	\$326	10/31/2011	FIXED	\$0	

Disbursement(s) and Status(es)				
Disbursement Date	Disbursement Amount	Loan Status	Status Description	Status Effective Date
04/24/2008	\$2,000	RP	IN REPAYMENT	09/30/2008
10/30/2007	\$2,000	IG	IN GRACE PERIOD	03/29/2008
		IA	LOAN ORIGINATED	10/19/2007

Servicer/Lender/Guaranty Agency Information	
Contact Type	Contact
Current Servicer:	ACS ATTN: BORROWER SERVICES DEPARTMENT P.O. BOX 7051 UTICA NY 135047051 800-835-4611 <a href="https://www.afsa.com/FFEL/FEEDBACK_SSL.HTML">HTTPS://WWW.AFSA.COM/FFEL/FEEDBACK_SSL.HTML</a>
Current Lender:	WELLS FARGO BANK, N.A. 301 EAST 58TH STREET NORTH P.O. BOX 5185 SIOUX FALLS SD 571040422 800-658-3567 <a href="http://www.studentloans@wellsfargo.com">www.studentloans@wellsfargo.com</a>
Current Guaranty Agency:	NATIONAL STUDENT LOAN PROGRAM 1300 O ST LINCOLN NE 68508 800-735-8778 Ext: 6300 <a href="mailto:nsllps@NSLP.ORG">nsllps@NSLP.ORG</a>

Information contained on these pages reflects the most current data in the NSLDS database. The data contained on this site is for general information purposes and should not be used to determine eligibility, loan payoff, overpayment status, or tax reporting. Please consult the Financial Aid Officer at your school or the specific holder of your debts for further information.

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## KEY PARTIES



1. U.S. Department of Education
2. State or Private Non-Profit Guaranty Agency—  
NYS HESC, ECMC, PHEAA
3. Loan Servicer (Navient, FedLoan, Nelnet).
4. Collection Agencies (Pioneer Credit Recovery,  
Windham Professionals)
5. Private attorneys (Solomon & Solomon, Mullen  
& Iannarone)



## PART 2.2: DISCHARGE (LOAN FORGIVENESS)

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## STUDENT LOAN DISCHARGES



1. **School Related Discharges** (bad acts by school)
  - a. False Certification (effective 1/1/1986)
  - b. Closed School (effective 1/1/1986)
  - c. Unpaid Refund (effective 1/1/1986)
  - d. Defense Against Repayment (effective 8/10/1993)
2. **Borrower Related Discharges** (not related to acts by school)
  - a. Disability
  - b. Death
  - c. Identity theft

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## FALSE CERTIFICATION DISCHARGE



1. **Ability to Benefit:** Student lacked GED/high school diploma at the time of her enrollment and school failed to administer an “ability to benefit” test, provided the answers to the test, gave an unapproved test, or falsified the test results.
2. **Disqualifying Status:** At the time of enrollment, the borrower could not get a job in field of study due to legal impediments. *E.g.*, drug conviction prevents pharmacy.
3. **Unauthorized Signature/Payment:** School signed the borrower’s name on the loan & borrower did not attend class.

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## CLOSED SCHOOL DISCHARGE



1. Eligible if school closed:
  - while borrower was enrolled, or
  - within 120 days after she withdrew.
2. List of closed schools on DOE’s website: more than 11,000 of them!

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## UNPAID REFUND DISCHARGE



1. Borrowers who attended less than 60% of the loan repayment period may be entitled to a refund.
2. Some borrowers may be entitled to a full refund if they never attended a single class or withdrew soon after enrolling.

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## DEFENSE AGAINST REPAYMENT



1. Can be used in any proceeding to collect on a Direct Loan.
2. Borrower may assert as a defense against repayment:
  - any act or omission of the school attended by the student
  - that would give rise to a cause of action against the school under applicable State law.

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## CREATING A STRONG SCHOOL-RELATED DISCHARGE APPLICATION (1)



If you suspect that your client went to a predatory for-profit trade school, or a school that was in some way a bad-actor, your client may qualify for greater relief.

### ➤ **Step 1. Gather information on the school.**

- Search the web for news.
- LSNYC's database of bad schools.
- Look at college scorecard.
- Look at list of closed schools.
- See "Does the School Have a Bad Reputation" in the Legal Outline (Tab 4) for names of known bad actors and links.

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## CREATING A STRONG SCHOOL-RELATED DISCHARGE APPLICATION (2)



### ➤ **Step 2. If you don't have much success with Step 1:**

- Submit FOIL and FOIA requests.
- These go to U.S. DOE and NYS Bureau of Proprietary Schools, respectively.
- Postpone filing application until you've requested and received response to FOIA and FOIL.
- See model FOIA and FOIL letters in the Manual (Tab 7).
- **To protect borrower from defaulting or becoming delinquent while you wait for information, consider IBR, ICR, PAYE, deferment or forbearance.**

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## CREATING A STRONG APPLICATION SCHOOL-RELATED DISCHARGE (3)



### ➤ **Step 3. Cover letter.**

- Draft a persuasive cover letter that incorporates bad history into narrative. See Manual for samples.
- For disability discharge applications, the cover letter is more perfunctory because school can be great – no bad actor needed.

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## CREATING A STRONG SCHOOL-RELATED DISCHARGE APPLICATION (4)



- **Step 4. Complete discharge application.** See Manual for forms that are used and filled out (Tabs 8-9).
- **Step 5. Prepare a client affidavit.** See Manual for model affidavits (Tabs 10-11). The more detail, the better. Focus on events that led student to enroll, to drop out, to remember if test was given, etc.

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## DISABILITY DISCHARGE (1)



### Three paths to disability discharge:

#### 1. Receiving federal disability benefits—Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits.

- Submit notice of award for SSDI or SSI benefits.
- Award must state that your next scheduled disability review will be within five to seven years from the date of your most recent SSA disability determination.

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## DISABILITY DISCHARGE (2)



#### 2. Certification from a physician that you are totally and permanently disabled.

- a. Certification must state that you are unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that:
  - Can be expected to result in death,
  - Has lasted for a continuous period of not less than 60 months, or
  - Can be expected to last for a continuous period of not less than 60 months.

#### 3. Veterans can submit documentation showing that the VA has determined that you are unemployable due to a service-connected disability.

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## IDENTIFY THEFT



1. Need a court “verdict or judgment” that you were a victim of ID theft.
2. Have to agree to cooperate with the DOE in prosecuting the thief. 34 CFR 685.21(c)(4).
3. This is a near impossible standard to meet.

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## APPEALING DISCHARGE DENIALS



1. A discharge application denial can be appealed to federal court under the APA’s abuse of discretion standard. This is a high standard!
2. You can also re-file an application with new facts rather than appeal.

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## PART 2.3: IF NO POSSIBLE DISCHARGE, GET OUT OF DEFAULT

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## GETTING OUT OF DEFAULT



**Three options to get the borrower out of default and stop collection:**

1. Settlement (lump sum payment)
2. Consolidation
3. Rehabilitation

**NOTE: Counsel borrowers on the choice between consolidation and rehabilitation. Servicers may provide inaccurate information.**

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## LUMP SUM PAYMENT / SETTLEMENT



1. Borrower must show financial hardship.
2. Case-by-case, but usually borrower pays 70% of the loan and interest. Collection fees are waived.
3. Call the collection agency to find out the minimum acceptable compromise payment.
4. Not a viable option unless borrower has lump sum payment(s) on hand.

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## CONSOLIDATION (1)



1. A consolidation loan is a new loan taken out to pay back other loan(s).
2. In essence, the borrower refinances the federal student loan(s) and packages them into one.
3. Upside: It's quick. It takes 45 minutes to file a consolidation application online, which gets decided in about 45 days. You can elect an income driven repayment plan which typically results in a monthly payment of \$0.00 a month.
4. Downside: Credit score not improved as much as with rehabilitation (but credit improvement not that great).

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## CONSOLIDATION (2)



### **Consolidation is not available to:**

- Defaulted borrowers with a wage garnishment order
- Borrowers with a student loan judgment
- Borrowers whose only loan is a Direct Consolidation Loan
- Parent PLUS loans if child is trying to consolidate parental loan onto child's account. A parent with own loans can consolidate Parent PLUS loans.

**!!Use caution when consolidating Parent PLUS loans!!**

**If parent consolidates other federal loans with a Parent PLUS loan, lose ability to apply for Income-Based Repayment. Can consolidate Parent PLUS loan on its own and apply for Income-Contingent Repayment.**

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## CONSOLIDATION (3)



### **Mechanics of consolidation:**

1. Borrower applies for a direct consolidation loan and selects a payment plan.
2. To consolidate out of default, borrower must make 3 consecutive monthly payments to the original servicer OR select an income-sensitive repayment option—IBR or ICR or PAYE (no monthly payments necessary).
3. Consolidation application available online (sample at Tab 12).

**Note:** Student loan “debt relief” scammers offer to fix student loan problem but just consolidate for huge fee. No need to pay someone to do it.

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## REHABILITATION (1)



1. Rehabilitation is a one-time opportunity to clear the default on a student loan.
2. It **may be the only option** for a borrower in default who cannot consolidate— e.g., borrower only has one loan and that defaulted loan is a direct loan.
3. **Upside:** May be cheaper than consolidation. DOE usually pays 22% of the 25% fee associated with any defaulted direct loan that is rehabilitated. In contrast, if you consolidated that loan, the 25% collection fees would be reduced only by 7%.
4. **Downside:** Takes much longer than consolidation. Rehabilitation requires nine reasonable and affordable payments over ten months.

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## REHABILITATION (2)



5. **Downside:** If more than one loan is in default, each loan must be rehabilitated separately.
  - That means multiple “reasonable and affordable” payments per month for nine months.
6. After rehabilitation, income-based repayment plans are available.
7. Once rehabilitated, default record on credit report is erased—but late payments are not.
  - This improves credit score slightly more than consolidation where history or default and late payments both stay on credit report for seven years after consolidation.

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## PART 2.4: ENROLL IN AN INCOME SENSITIVE REPAYMENT PLAN

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## INCOME-SENSITIVE REPAYMENT

Programs include:

1. Income-Based Repayment (IBR)
2. Income-Contingent Repayment (ICR)
3. Pay As You Earn (PAYE)
4. New program: Revised Pay As You Earn (REPAYE)

**NOTE: Borrowers in default CANNOT access any income sensitive repayment programs.**

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## INCOME-BASED REPAYMENT (IBR)



1. Established July 1, 2009.
2. Available to both FFEL and Direct Loan borrowers experiencing financial hardship.
3. Payment is 15% of income above **150%** of poverty line for family size.
  - Poverty line for a single adult is \$12k. If single adult earns \$30k she pays \$150 a month toward student loan.
  - If income below 150% of poverty line, payment is \$0.
  - Outstanding balance after 25 years of payment forgiven.

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## INCOME-CONTINGENT REPAYMENT (ICR)



1. Available to Direct Loan borrowers only.
2. Loan forgiven after 20 years of ICR payment.
3. Payment is 20% of income above **100%** of poverty line.
  - a. *E.g.*, a single adult earning \$30k pays \$300 a month toward student loan.
  - b. Not as good as IBR.
  - c. ICR applies to Parent Plus Loans consolidated into direct loans. 34 CFR 685.208(a)(2)(iii).

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## PAY AS YOU EARN (PAYE)



1. Only available to **“new” borrowers** as of **October 1, 2007**.
2. Disbursement of a Direct Loan on or **after October 1, 2011**.
3. Borrower must have a partial financial hardship.
4. Only Direct Loans are eligible—NOT including Parent PLUS loans.
5. Payments are low and based on income and family size, not on outstanding balance of loans.
6. Must reapply every year, re-documenting income and family size.
7. After 20 years of paying under PAYE, the remaining balance on the loan is forgiven.
8. Interest not covered by PAYE payments is not capitalized.
9. There are disadvantages: more interest, may owe taxes on any forgiven amounts.

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## RE-PAYE



1. Extends PAYE relief to all Direct Loans regardless of when loan was issued.
2. More generous than IBR – payment set at 10% of income above 150% of poverty line.
3. But FFEL loans not eligible, only Direct Loans. FFEL loans can be converted.
4. Loans forgiven after 20 years for undergrad loans, 25 years for grad loans.

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## PART 3. PRACTICE NOTES

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### PRIVATE STUDENT LOANS (1)

1. Borrower is at the mercy of the loan servicer or collection agency.
2. Discharges, IBR/ICR, and consolidation/rehabilitation not available.
3. Deferment/forbearance not a right.
4. A court judgment is required to garnish wages.
5. But borrowers have strong standing defenses if sued.
  - As in the mortgage crisis, private student loan trusts are unable to establish chain of title from original lender to trust.
  - Many of these loans were made to low income people from 2005 to 2007 when underwriting guidelines were non-existent.

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## PRIVATE STUDENT LOANS (2)



### 1. Six year statute of limitations.

- May be shorter if purported owner or originator of loan is incorporated in another state and you can borrow that state's SOL.

### 2. As with federal loans, only stringent "undue hardship" test for bankruptcy.

### 3. DO NOT consolidate private loans and federal loans together.

- Federal loans lose all federal protections (dischargability, IBR, ICR, etc.).

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## IDENTIFY PATTERNS OF WRONGDOING (1)



### 1. Look for abusive or improper behavior.

### 2. Bad Private Collectors:

- If you want client with defaulted loans to consolidate, ask the client to call the collector for help.
- Some collectors will try to steer client to rehabilitate the loan rather than consolidate as the collector makes its fee that way.
- This may be worse for client and probably violates the FDCPA.

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## IDENTIFY PATTERNS OF WRONGDOING (2)



1. Collectors may encourage consolidation of both federal and private loans. **Never do this.**
2. Locating who is the servicer may take many calls.
  - It should not.
  - If it does, keep track of who you called and when and we can complain to the CFPB.
  - The complaint is easy to do and the CFPB is trying to make the system better.
3. **Please notify LSNYC immediately when you identify any of these behaviors.**

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## WORKING EFFECTIVELY WITH OUR CLIENTS



1. Legal Services NYC serves—and you will be assisting—vulnerable people with few options.
2. Extremely low-income. Many other crises may be going on.
3. Many borrowers with disabilities have psychiatric impairments, not physical ones. May present in a chaotic manner at times, or have trouble with organization and timing.
4. Consider taking steps to make meetings easier—pay for MetroCard, meet downstairs, etc.
5. Phones may run out of minutes.
6. Please be kind, be patient, and reach out to LSNYC if you have trouble with any client. We are happy to help.

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ANY QUESTIONS?



# Exhibit 4



# Legal Outline

Student Debt Initiative:  
Securing Debt Relief for Low-Income New Yorkers

Updated February 19, 2016

## I. Background

### A. The Student Loan Mess in 2014.

#### 1. Education debt over \$1 trillion.

- a. 85% is federally insured, 15% is private.
- b. More than either outstanding credit card debt or auto loan debt.
- c. Up from \$240 Billion in 2003.
- d. 1 in 8 borrowers now in default.
- e. Many others in forbearance (*i.e.*, given permission to not repay due to underemployment, continued studies, etc.).

2. **Sham schools.** Many for-profit trade and degree granting schools target vulnerable populations to enroll into their programs. Many of those schools exist to solely draw down federal aid dollars and do not provide a quality education. Most students that attend these schools are saddled with insurmountable student loan debt and are worse off than before they enrolled in these schools. 31% of all federal loans go to for-profit schools, even though only 13% of students go to for-profit schools. U.S. DOE, Press Release, *Obama Administration Takes Action to Protect Americans from Predatory, Poor-Performing Career Colleges* (March 14, 2014). **Nearly half of all defaulted federal loans involve loans to for-profit schools.** U.S. Senator Harkin, Press Release *Harkin Calls on For-Profit Colleges to End Deceptive Recruiting Practices* (Feb. 8, 2011).

3. **Student loan debt slowing economy.** Federal Reserve Study shows large decrease in home and car purchases by student loan borrowers. Dip occurs in 2009 and is accompanied by increase in student loan defaults. Norris, Floyd, *The Hefty Yoke of Student Loan Debt*, New York Times (Feb. 20, 2014).

4. **Parallels with mortgage crisis.** Like the mortgage crisis, student debt loads are astronomical, borrowers are defaulting in large numbers, little consideration was given to the quality of the education being offered, and the government insures federal student loans so that lenders do not suffer financial losses.

5. **Targeting veterans.** Many recent war veterans are eligible for the Post-9/11 GI Bill and other grants and awards to help with the cost of their education. Unfortunately, many sham schools target veterans to be able to draw down those benefits and because of how those funds are treated under the 90/10 rule, detailed below.

**B. The Federal Government Supports Students through Loans and Grants.**

1. Pell Grant
2. Federal Family Education Loan (FFEL) Subsidized and Unsubsidized Loans (pre-7/2010)
3. Direct Subsidized and Unsubsidized Loans
4. Perkins Loan
5. Parent and Grad PLUS Loans

**C. Students Rely on Student Aid and Private Loans to Pay the Rest.**

1. **Need-based grants and loans** from the school.
2. **Private school “discounts.”** “Merit” scholarships regardless of financial need of student used by private schools to attract well-credentialed students.
  - i. This leaves less financial aid for low-income students.
  - ii. Ivy league schools do not provide merit scholarships. Most other non-profit private schools do.
3. **Private student loans.** Presently about 1 in 10 loans are private.
  - i. Some are securitized like mortgages.

**D. Parents and Other Guardians who Guarantee Dependents’ Loans.**

1. **Parent Plus Loans.** These are expensive federal loans (currently 7.21% interest) that the parent or guardian, not the student, must repay. Parent Plus loans cover the outstanding college costs not met by Stafford loans and other grants and scholarships. The dollar amount of a Parent Plus loan can be quite high. Parents without negative

credit entries (defaults, judgments, etc.) qualify regardless of their income. Repayment begins 60 days after disbursement with a ten year term although one can defer payment until the student graduates. If the loan is deferred, interest is capitalized. Parents having difficulty repaying can opt for a 25-year term (or can get a deferment or forbearance). One cannot enter into Income-Based Repayment on a Parent Plus Loan. If a parent consolidates a Parent Plus loan taken for a child's education with the parent's own federal student loan, then the parent can do Income-Contingent Repayment on the consolidated loans. If the child dies, or if the parent becomes disabled or dies, the Parent Plus loan is discharged. If the child becomes disabled, the parent remains liable for the loan.

2. **Private student loans.** Most require a co-signing parent or relative. Both the student and the parent are liable for the loans. When payment begins on the loan depends on the contract. Most private loans require repayment regardless of the parent's disability or death, or the child's disability or death.

## **II. For-Profit Schools**

### **A. Attempts to Regulate For-Profit Universities and Trade Schools have Failed.**

1. **1980s - Cohort default rate.** A "claw back" provisions whereby the DOE would sanction and ultimately terminate participation in federal aid programs for any school that consistently (three years in a row) had 35% of its graduating class defaulting on federal loans. It worked. Many trade schools went out of business.
2. **1992 - Crack-down, 85-15 rule.** No more than 85% of revenue of private for profit school can come from federal aid.
3. **1998 - For-profit lobby wins, 90-10 rule.** Allows more federal aid to go to bogus schools.
4. **1998 - Cohort default rate definition weakened.** For-profit university lobbying waters down the definition of default. Under 1998 rule, most students unable to make a single payment were excluded from a school's cohort default rate, making the test meaningless.
5. **Gainful Employment Regulations.**
  - i. **2011 - For-profits lose right to receive federal funds in 2015 if they miss these benchmarks:** 35% or more of grads three years after leaving school are paying



down principal and such payments must equal less than 12% of the borrower's income.

- ii. **2012** - For-profit schools successfully challenge gainful employment regulations in court, sending DOE back to drawing board.
  - iii. **2014** - Gainful Employment Regulations. For profits schools cannot receive federal student loans if their educational programs do not lead to “gainful employment.” A program will be considered to lead to gainful employment and “pass” the metric if annual loan payments of a typical graduate do not exceed 20 percent of his or her yearly discretionary income or 8% of his or her total yearly earnings. Only program completers are evaluated. Discretionary earnings are defined as those above 150% of the federal poverty level.
- 6. How to ID a Predatory School.**
- i. DOE publishes data on outcomes of low-income borrowers.
  - ii. ProPublica massages it into searchable form by school.
    - a. The percentage of school's former students who currently earn less than high school diploma (\$25k) 6 years after entering the school.
    - b. The percentage of a school's former students who are unable to reduce the principal owed on their loans by \$1, despite making regular monthly payments.
    - c. The percentage of school's students that graduate within 6 years.
  - iii. ProPublica's website: <https://projects.propublica.org/colleges/>
- 7. For-Profit School Litigation in the News.**

- i. **Consumer Financial Protection Bureau v. ITT Technical Institute**. Costs \$21k a year, 39% grad rate; 34% default rate. 55,000 students, 140 campuses across the country.
- ii. **Whistleblower lawsuit against Premier Education Group**. School enrolled students who lacked aptitude, or could not get licensed in fields they pursued (e.g. sex offender studying to be a teacher assistant; drug felon studying to be a pharmaceutical aide).

- iii. **Government to Forgive Student Loans at Corinthian Colleges.** U.S. DOE is creating a process to allow any student — whether from Corinthian or elsewhere — to be forgiven their loans if they had been defrauded by their colleges. Over 10,000 students from Corinthian, a for-profit that closed its doors in 2014, will benefit from the process and have their loans forgiven.

<http://www.nytimes.com/2015/06/09/education/us-to-forgive-federal-loans-of-corinthian-college-students.html>.

- iv. **For-Profit College Operator EDMC Will Forgive Student Loans.** The for-profit college operator Education Management Corporation will forgive \$102 million in loans to about 80,000 former students nationwide as part of an agreement with state attorneys general.

[http://www.nytimes.com/2015/11/17/us/for-profit-college-operator-edmc-will-forgive-student-loans.html?\\_r=0](http://www.nytimes.com/2015/11/17/us/for-profit-college-operator-edmc-will-forgive-student-loans.html?_r=0).

## B. Veterans Targeted by For-Profit and Trade Schools

1. **Post-9/11 GI Bill is very generous.**
  - i. For service post-9/11/01 that lasted 36 months, the Veterans Administration (“VA”) pays up to \$12k for New York veterans to go to private or public school or trade school.
  - ii. Veteran also gets a **housing stipend** of \$700 to \$2500 depending whether you live at home or board. (Rate depends on location of school and veteran.)
2. **90-10 rule.** Under the rule, for-profit schools are not allowed to have more than 90% of their revenue come from federal student loans. Although Post-9/11 GI Bill funds are federal dollars, it counts towards the remaining 10% of the 90-10 rule. In other words, for every veteran a for-profit school signs up, they can sign up 9 more non-veterans.
3. **Housing stipend as bait.** Lures homeless, disabled, financially needy veterans to enroll using their Post 9/11 GI Bill award.
4. **Significant abuse.** United States Senator Harkin **reported** that “[f]or-profit colleges received \$1.7 billion in Post-9/11 GI Bill benefits during the 2012-13 academic year - almost as much as the total cost of the program just four years earlier.”

### III. Federal Government's Collection Powers and Impact of Default

- A. **Collection Powers.** When the borrower is in default—meaning 270 days without a payment—the government may take the following administrative steps without court action:
1. Garnish wages.
  2. Offset Social Security (not SSI) and certain other federal benefits.
  3. Offset of Income Tax Refund – big hit for low-income workers who get Earned Income Tax Credit.
  4. Litigation: defaulted borrowers can be sued for the collection of a defaulted student loan. A court judgment allows the government to freeze the borrower's bank account and go after personal property.
  5. No statute of limitations.
  6. Difficult to discharge in bankruptcy. Have to show repayment causes “undue hardship.”
    - i. For example, 31-year-old with \$89k of debt who is unemployed and blind was denied bankruptcy discharge.

B. **Additional Impact of Default.**

1. Barred from borrowing new federal student loans and other types of federal loans, like a FHA insured mortgage.
2. Negative credit reporting: can block people from employment or a promotion, housing, and obtaining credit or reduction in available credit.
3. Professional license suspension, revocation, denial.

### IV. Key Parties

- A. U.S. Department of Education.

- B. [Private Non-Profit or State Guaranty Agency](#) (Education Credit Management Corp (ECMC), NYS Higher Education Services Corp (NYS HESC), USA Funds, etc.).
- C. [Loan Servicer](#) (Sallie Mae, MOHELA, etc.).
- D. [Collection Agency](#) (GC Services, Pioneer Credit Recovery, etc.).
- E. Others: representatives of the U.S. DOE such as Assistant U.S. Attorneys and private law firms (e.g., Solomon & Solomon; Mullen & Iannarone); the NYS Attorney General, as representative of NY HESC.

#### V. **First Recourse: Loan Forgiveness or “[Discharge](#)”**

It is important to assess a borrower’s eligibility for a discharge regardless of whether the loan is current, delinquent or in default. The preferable discharge for a borrower would be ones that include full debt cancellation, full refund of all voluntary and involuntary payments made, and credit repair. Generally, the school-related discharges (where the school has acted badly) offer full refunds of what has been taken (except not always in Unpaid Refund discharges). Similarly, school-related discharges generally do not result in taxable income (as does a disability discharge.) Therefore, if someone is eligible for a False Certification discharge and a Total and Permanent Disability discharge, it is probably in the best interest of the borrower to apply for the False Certification discharge to obtain the a refund relief.

**Note: School related discharges (False Certification, Closed School and Unpaid Refund) are only available on loans that were disbursed after January 1, 1986.**

**Note: To find out which school got the loan and when, go to [The National Student Loan Data System \(NSLDS\)](#).**

#### A. **Does the School have a Bad Reputation?**

1. School related discharges are premised on the school deceiving, lying or providing a terrible product to the student. While it is not necessary that the school have a bad reputation, it certainly helps in bolstering any one of the school related discharge claims listed below.
2. [The DOE's closed school database](#). You can download this gigantic spreadsheet and then search the database to see if your borrower’s school was ever closed by DOE due to malfeasance.

3. **LSNYC's database of bad schools.** Thanks to the New Economy Project, LSNYC has a thick electronic file on the bad acts of the following schools: American Business Institute; Berk Trade & Business School; Blake Business School; Briarcliffe College; Caliber Training Institute; CDI Career Development; Center for Media Arts; City Technical; Colorado Technical University (CTU); French Fashion Academy; Katherine Gibbs; Interboro, Manhattan Technical Business; Mayer School of Fashion; MTI Business School; Paralegal Institute; Robert Fiance Beauty School; Sanford Brown; SCS Business & Technical Institute; Superior Training Institute; Universal Business & Media School; and Wilfred Beauty Academy.
4. **College Scorecard.** Examine tuition, default rate and graduation rates for indicia of a predatory school.
5. Search the internet for dirt on the school. Disgruntled students post warnings; accrediting agencies and inspectors general issue reports; attorneys general sue.
6. Look up school at **ProPublica's** college scorecard to see earning power of degree and/or graduation rates. <https://projects.propublica.org/colleges/>
7. Send a FOIA to the DOE on enforcement actions against the school. <http://www2.ed.gov/policy/gen/leg/foia/request.html>. Or FOIL to the NYS Bureau of Proprietary Schools <http://www.nysed.gov/foil/>.

B. **False Certification Discharges**

There are four types of False Certification Discharges, but the three most common ones utilized are listed below:

1. **Ability to Benefit (ATB)**. Student lacked GED/high school diploma at time of enrollment and school failed to administer an ATB test or conducted testing in an improper manner. Note, as of July 2012, schools are no longer required to administer ATB tests because federal aid will only be disbursed to students with a high school diploma, GED, or equivalent home schooling. A person without a GED or HS diploma therefore should not be able to take out a federal loan after July 2012.  
  
➔ **Tab 10.** Sample ability to benefit discharge petition. The discharge form can be found [here](#).
2. **Disqualifying Status**. At the time of enrollment, the borrower failed to meet the legal requirements for employment in his/her state of residence in the occupation for which the program of study was intended because of:

- i. Age;
  - ii. Physical or mental condition;
  - iii. Criminal record; or
  - iv. Other reason that might be accepted by DOE.
3. **Unauthorized Signature/Payment**. School signed the borrower's name on the loan application or promissory note without the borrower's authorization **and** he/she did not attend class—you can request a copy of the promissory note from the servicer.

Borrower will need to provide multiple copies of his/her signature, including some in a two-year window around the date of the origination of the loan.

The discharge form can be found [here](#).

C. **Closed School Discharge**

1. Borrower's school closed while he/she was enrolled or within 120 days after he/she withdrew.
  - ➔ **Tab 8.** Sample closed school discharge application. The discharge form can be found [here](#).
  - ➔ For a list of school closure dates, visit this [link](#).

D. **Unpaid Refund Loan Discharge.**

1. School failed to pay a tuition refund required under federal law. (This is possible if the borrower withdrew during the school's published refund period.)
2. Only the amount of the unpaid refund would be discharged. In some cases, a full refund is warranted because the borrower never attended a single class or withdrew soon after enrollment.
  - ➔ **Tab 11.** Sample unpaid refund petition. The discharge form can be found [here](#).

#### E. **Total and Permanent Disability (“TPD”) Discharge.**

1. School can be legitimate (*e.g.*, you can get a TPD if you went to Harvard).
2. Parent PLUS loans can be discharged due to disability of parent, but not due to disability of student.

#### 3. **Disability Discharge Forms.**

- i. Handled by Nelnet, the Department of Education’s TPD servicer.
- ii. Disability discharge forms can be downloaded and application can be started [here](#).

➔ **Tab 9.** Sample disability discharge application.

- iii. Physician must certify that borrower is totally and permanently disabled—*i.e.* “unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than **60 months**, or can be expected to last for a continuous period of not less than 60 months.”
- iv. **If the application gets returned because the doctor uses abbreviated medical terminology, let LSNYC know.** Doctors use abbreviations all the time, *e.g.*, “lbs.” for pounds; “OA” for osteoarthritis, HTN for hypertension, but DOE often rejects disability applications containing such abbreviations based on an internal rule, not a regulation or statute. This may be illegal.

#### 4. **Alternative ways to prove disability.**

- i. **Veterans Affairs disability payment** that is based on 100% disability. Acceptable *in lieu* of a form completed by a doctor but other parts of application must be filed.
- ii. **Social Security Administration** notice of award for benefits stating that the borrower’s next scheduled disability review will be within 5-7 years from the date of the most recent determination. (For Social Security Income or Social Security Disability recipients only.)

5. **Reinstatement period.** For three years after disability discharge, discharge will be revoked if annual employment earnings exceed \$15,510 or the borrower receives a new federal student loan. There is no reinstatement period if borrower qualifies under the VA method of proof.
  - i. Borrower will be asked to state in writing that their income does not exceed \$15,510 at various points throughout the 3 years. It is the borrower's responsibility to comply with these requests. After 3 years, the borrower will no longer be required to send proof of annual earnings.
  - ii. If client wants to work full time or go back to school in the next three years, a disability discharge may not be an option.

**F. Rare Discharges.**

1. **9/11 Discharge** for 9/11 victims and their families.
2. **Death of student or parent in Parent PLUS Loan.**
3. **Teacher Loan Forgiveness.**
4. **Public Service Loan Forgiveness.**
  - i. Started in 2007. If you pay 10 years (120 payments) while working full time for federal, state, or local government agency, or a not-for-profit, your student loan balance after 120 payments is forgiven. The credited payments need not be consecutive (you are allowed to move back and forth between public service and for-profit markets), but 120 public service payments must be made before loan forgiveness can occur.
  - ii. The loans you are repaying must be Direct Loans in order to qualify for forgiveness. This means if you are paying FFEL loans, you need to consolidate those loans into Direct Loans. The FFEL payments do not count.
  - iii. If you are working less than 30 hours a week, you are presumed not to be working full time. However, that is a rebuttable presumption.
  - iv. First time that borrowers can be eligible for forgiveness is 2017.



- v. Note: If you do not change your payments from the standard payment (which schedules the loan's entire principal and interest repayment in ten years) to an income-based repayment plan, there will be no balance to forgive after ten years.

#### **G. Appealing Discharge Denials.**

1. If the discharge application is denied by a guaranty agency servicing a FFEL loan, one appeals directly to the Guaranty Agency, which then forwards the appeal to the U.S. DOE. The DOE reviews appeals of guaranty agency denials. There are time frames that must be adhered to in guaranty appeal process.
2. If the loan is a Direct Loan and DOE denies the application, you can appeal to DOE for a re-review (DOE's appeal process is not clear at all).
3. If that fails, then you will need to bring an action in federal court pursuant to the Administrative Procedure Act.
4. Please note that the borrower can always reapply for the discharge if they have new evidence to corroborate their claim — this is an entirely new application, not an appeal.

#### **VI. Second Recourse: Consolidation or Rehabilitation.**

There are four ways to get a loan out of default—but the first two are extremely rare.

**A. Pay off full balance of the loan.** Not a viable option for 99.99% of borrowers.

**B. Make a Compromise or Settlement.**

1. Collection agencies and servicers will allow those with a financial hardship to settle for less than the full amount of the loan.
2. Generally, approximately 70% of the balance of the loan minus collection fees.
3. Call the collection agency to find out the minimum acceptable compromise payment.
4. Not a viable option for 99% of borrowers.

**C. Consolidation.** For most, this is the best option for getting out of default if you cannot discharge the loan. It can be done on line without making any payment, can result in an affordable, income driven, repayment rate, and brings the borrower out of default within

about 45 days. Rehabilitation takes at least 9 months, and requires monthly payments that cannot be missed.

1. **Purpose of consolidation.** Allows borrower to consolidate one or multiple federal student loans into one loan.
2. **Which loans may be consolidated?** Most, if not all, FFEL and Direct Loans can be consolidated—most borrowers will choose to consolidate all of their loans into one, but they can choose to exclude some. A parent should use caution when consolidating a Parent PLUS loan with his or her own student loans. Parent PLUS loans are not eligible for income sensitive repayments plans. However, if consolidated, Parent PLUS loans may qualify for an Income-Contingent Repayment (ICR) Plan but not Income-Based Repayment (IBR) Plan. Other federal loans on their own are likely IBR eligible, but will lose that status if consolidated with Parent Plus loans.
  - i. If borrower selects Income-Based Repayment (discussed in Section VII, below) or Income-Contingent Repayment (discussed in Section VII, below), they need to release their tax returns. If they have no recent taxable income, they can check a box on the form to that effect.
    - a. Clients who don't have documentation of income may utilize alternative documentation of income (ADOI), if, for example, they only receive public assistance.
  - ii. Once a borrower consolidates, she cannot consolidate the same loans again. She can, however, consolidate the loan with additional federal student loans.
  - iii. Perkins loans can be consolidated with other federal student loans, but not on their own.
3. **Procedure for consolidation.**
  - i. Borrower applies for a direct consolidation loan.  
<https://studentloans.gov/myDirectLoan/consolidationRedirect.action?webSource=DLCS>.
  - ii. You must select one servicer (four choices are: PHEAA, Nelnet, Great Lakes, and Navient) to whom you will make future payments.

You must select repayment method (IBR, ICR, REPAYE or PAYE).

- iii. To consolidate out of default, borrower must either:
  - a. Make 3 consecutive monthly payments to the original servicer OR
  - b. Select a repayment plan based on their income—IBR or ICR or PAYE (“Pay As You Earn” Plan, discussed in Section VII, below—no monthly payments necessary).
- iv. Borrower can apply online and e-sign promissory note, apply online and mail promissory note, or print out all forms and mail them.

➔ **Tab 12.** Sample consolidation application. Application available [here](#).

- v. The borrower is applying for a new loan, so they will need the contact information and addresses of two references.
- vi. Borrower should hear about approval/rejection of consolidation application within 2-3 months.

4. **Barriers to consolidation.** Consolidation is not available to:

- i. Defaulted borrowers with a wage garnishment order
- ii. Borrowers with a student loan judgment
- iii. Borrowers whose only loan is a Direct Consolidation Loan
- iv. Borrowers with a Joint Consolidation Loan
- v. Parent PLUS loans if child is trying to consolidate parental loan onto child’s account. A parent with their own loans can consolidate Parent PLUS loans.

**Note: Parent PLUS loans are ineligible for repayment under IBR. If a Parent PLUS borrower consolidates all of their non-Parent PLUS federal student loans with a Parent PLUS loan, they lose their ability to apply for IBR. Therefore, it might not make sense to consolidate Parent PLUS loans in with other loans. A Parent PLUS loan can be consolidated on its own to take advantage of ICR.**

5. **Tip: Get help from the collection agency.** Most collection agencies have consolidation specialists, so if borrower is interested in consolidation, he/she is a

good person to ask for more information. However, it is not necessary to contact the collection agency and the borrower could simply apply online. Please note that there have been instances in which a debt collector misrepresents the program. This may constitute a violation of the Fair Debt Collection Practices Act (FDCPA). You should contact Johnson Tyler at 718-237-5548 if you believe an FDCPA violation might exist.

➔ **Tab 13.** Check out this helpful “[Frequently Asked Questions](#)” on Direct Consolidation Loans’ page from the government.

#### **D. Rehabilitation**

1. Two advantages over consolidation is that it is somewhat cheaper and slightly looks better on credit report. See <http://www.studentloanborrowerassistance.org/wp-content/uploads/2013/05//information-sheet.pdf>.
2. In rehabilitation, the borrower makes 9 consecutive, timely, monthly payments in 10 months that are reasonable and affordable. It thus takes longer to “rehabilitate” each defaulted loan than it would to consolidate them.
3. A disadvantage of rehabilitation is that if you have multiple loans in default, you must rehabilitate each loan. This means multiple payments over nine months that all have to be on time.
4. Rehabilitation may be the only option if borrower already consolidated all other loans out of default and then defaulted on the consolidated loan.
5. Once rehabilitation is complete, default status will be immediately taken off the borrower’s credit report. In contrast, when you consolidate defaulted loans, your credit report will continue to show that you were once in default for seven years.
6. Steps for rehabilitation:
  - i. No application—this is set up with the loan servicer or collection agency over the phone. Payments can be set up automatically with a debit card or can be sent by check/money order.
  - ii. Borrower can rehabilitate for as low a payment as \$5/month. Servicer or collector will assess how much is “reasonable and affordable” based on IBR standards (15% of disposable earnings after income exceeds 150% of poverty line for borrower and dependents.)

<http://www.studentloanborrowerassistance.org/collections/federal-loans/getting-out-of-default-federal/rehabilitation/>. The adjusted gross income from tax return is used to determine what is reasonable and affordable. If income has changed or no tax returns were filed last year, you can use the “alternative documentation” form to report income.

[https://www.myeddebt.com/borrower/PDFFrames.jsp?fileName=form.alternative\\_documentation.of.income.pdf](https://www.myeddebt.com/borrower/PDFFrames.jsp?fileName=form.alternative_documentation.of.income.pdf).

- iii. Explain the borrower’s financial situation and they should provide a rehabilitation plan based on the borrower’s income.
- 7. After loan is rehabilitated, borrowers can enter into a new payment plan: IBR, REPAYE, etc. After the sixth monthly payment, the borrower is once again eligible for federal student aid even though he or she technically is still in default.
- 8. Rehabilitation is not an option if there is a judgment against a borrower for a loan.
- 9. Collector earns a commission on rehabilitation, so they will push for this option over a consolidation.

**E. Potential Roadblocks to Consolidation or Rehabilitation: Judgments and Wage Garnishments.**

- 1. Borrowers will probably **not** know if default judgments were ever entered against them for the loan. (By contrast, borrowers will typically know if Social Security is being reduced or whether their wages were ever garnished when they were working.)
- 2. Call the servicer/collection agency. If there’s a wage garnishment order but no judgment, the borrower should be able to rehabilitate the loan.
- 3. If there’s a judgment against the borrower, how to deal with it is up to the discretion of the collection agency or loan servicer or, if applicable, the attorney representing the DOE.
- 4. Many will offer no satisfactory option; the borrower can only pay the compromise payment or the full balance of the loan to get out of default.
- 5. Some will allow the borrower to make a certain amount of monthly payments to release the judgment. Others will direct you to their legal department to talk about vacating the judgment.

6. The law firm of Solomon and Solomon has agreed to vacate judgments so the borrower can consolidate and then go into IBR. Another law firm, Mullen and Iannarone, P.C., has not done this yet, but perhaps you can persuade them otherwise.
7. If no satisfactory options are available, try calling the ombudsman's office for the servicer or guaranty agency. They are impartial and may be able to offer better advice about dealing with the judgment.
  - i. If Education Credit Management Corp. (ECMC) is the guaranty agency for the loan, ombudsman Diane Zitir (651-325-3015) is very helpful with this. She will require a release form or borrower on the line.
    - a. ECMC's policy for dealing with judgments is that they get released after 3 monthly payments if the borrower plans to consolidate, and 6 monthly payments if the borrower plans to rehabilitate—but the agent you speak to may not know this.
  - ii. If Higher Education Student Assistance Authority (HESAA) is the guaranty agency for the loan, ombudsman E.H. Stewart, Jr. (609-588-3351) is very helpful with this (he will require a release form or borrower on the line).
    - a. HESAA's policy for dealing with judgments is that they get vacated immediately if the borrower intends to consolidate—but the agent you speak to may not know this.

➔ **Tab 14.** Guaranty and Lender Ombudsman Programs can be found [here](#).

## **VII. Payment Plans for Current & Delinquent Loans or Once Borrower is Out of Default**

### **A. Income Based Repayment (IBR) plan.**

1. The best option for most of our clients—payments are \$0/month for a single adult with income below \$17,000/year.
2. Borrower must have partial financial hardship.
3. Payment rate is based on income and family size, not the outstanding balance of the loan.
4. Payment increases with income, decreases with family size.

5. Interest not covered by IBR payments on subsidized loans is paid by DOE for three years. Thereafter, interest on subsidized loans is capitalized when borrower ends IBR program. The interest on non-subsidized loans in IBR is capitalized when the Borrower ends IBR.
6. Borrower must reapply for IBR every year—payments may change based on changes to income and family size.
7. After 25 years of paying under IBR (even if \$0/month), the remaining balance on the loan is forgiven. 20 years for new borrowers on or after July 1, 2014.
8. Available for all federal Direct or FFEL loans **but not Parent PLUS loans**.
9. Available for defaulted loans that are being consolidated.
10. For defaulted loans that are being rehabilitated, first have to rehabilitate loan over nine months before can be eligible for IBR.
11. There are disadvantages.
  - i. Repaying for a longer time, so more interest accrues.
  - ii. Will have to pay taxes on the amount that is forgiven after 20/25 years—it will be taxable income (unless Congress changes the law).
  - iii. Have to remember to reapply every year—otherwise the loan will automatically be put on the standard repayment plan whereby the loan and interest are paid in full in 10 years. But a borrower can still reapply after this occurs.

B. **Income Contingent Repayment (ICR) Plan**

1. Similar to IBR, but does not require a financial hardship.
2. Only available for Direct loans (including Direct Consolidation loans), not including Parent PLUS loans. However, a Parent PLUS loan can be consolidated into a Direct Consolidation Loan to become eligible for ICR.
3. Payments based on income, family size, and total amount of Direct Loans.
4. If the borrower needs to make lower payments but does not qualify for IBR, try ICR.

5. After 25 years of paying under ICR (even if \$0/month), the remaining balance on the loan is forgiven.
6. Payments will probably be larger than under ICR, but check the DOE's [Repayment Estimator](#).
7. Available for defaulted loans that are being consolidated.
8. For defaulted loans that are being rehabilitated, first have to rehabilitate loan over nine months before being eligible for ICR.
9. There are disadvantages.
  - i. Payments are larger than under IBR.
  - ii. Borrower is still repaying for a longer time and will pay more interest eventually than on a general plan.
  - iii. Borrower may have to pay taxes on the amount that is forgiven after 25 years.

C. [Pay As You Earn](#) (“PAYE”) Plan

1. Only available to **“new” borrowers** as of Oct. 1, 2007.
  - i. Borrower cannot have any outstanding loans as of that date, or no outstanding loans at all times that borrower received a new federal loan after 10/1/07.
  - ii. Must have received a **disbursement** of a Direct Loan on or **after Oct. 1, 2011**.
2. Better than IBR because only 10% of discretionary income is paid, as opposed to 15 % under IBR.
3. But only Direct Loans are eligible, not including Parent PLUS loans.
4. Payments are low and based on income and family size, not on outstanding balance of loans.
5. Payment rates can be seen on page two of the income-driven repayment plans [fact sheet](#).



6. Must reapply every year, re-documenting income and family size.
7. After 20 years of paying under PAYE, the remaining balance on the loan is forgiven.
8. Interest not covered by PAYE payments for subsidized loans is paid for three years by DOE. After that, interest that accrues under PAYE is capitalized when the borrower exits PAYE
9. Note a borrower seeking to enroll in PAYE whose post 10/1/07 loan is in default will have to rehabilitate or consolidate the loan to get it out of default before enrolling in PAYE.
10. There are disadvantages.
  - i. Borrower is repaying for a longer time, and will therefore be paying more interest over time
  - ii. Borrower may owe taxes on the amount that is forgiven after 20 years.
  - iii. Borrower must reapply every year.
    - a. If borrower does not reapply, will be automatically put on the standard plan.

**D. Revised Pay As You Earn (“REPAYE”) Plan**

1. Available to direct loans regardless of when they were issued.
2. Better than IBR because only 10% of discretionary income is paid, as opposed to 15% under IBR.
3. Borrowers with FFEL loans need to convert them to direct loans.
4. Direct Parent PLUS loans are not eligible. All other direct loans, including direct graduate plus loans are eligible.
5. Payments are low and based on income and family size, not on outstanding balance of loans.
6. Payment rates can be seen on page two of the income-driven repayment plans [fact sheet](#).

7. Must reapply every year, re-documenting income and family size.
8. After 20 years of paying under REPAYE for undergraduate loans, or 25 years for graduate and undergrad loans, the remaining balance on the loan is forgiven.

### **VIII. What if a Borrower is *not in Default* but Having Trouble Paying?**

- A. Discharges are all still available.
- B. Can apply for IBR—contact servicer and ask for IBR application or apply on-line.  
  
➔ IBR online application available [here](#).
- C. Can apply for ICR if not eligible for IBR. Go to same website as above for on-line application.
- D. Certain recent borrowers might be eligible for PAYE. Go to same website as above for on-line application.
- E. [Deferment/Forbearance](#) for 6 months to 3 years.
  1. To be negotiated with servicer; different types and forms for each servicer.
  2. Possible deferments include:
    - i. In-school deferment
    - ii. Military deferment
    - iii. Rehabilitation training deferment
    - iv. Summer bridge deferment
    - v. Unemployment deferment
    - vi. Economic hardship deferment
    - vii. Parental leave deferment
    - viii. Internship deferment

3. Deferments and Interest.
  - i. Government pays interest on subsidized Stafford and Perkins loans.
  - ii. Interest on unsubsidized Stafford and Parent Plus and Graduate Plus loans goes unpaid and is capitalized (added to principal) when deferment.
4. Forbearances include:
  - i. Student loan debt burden forbearance
  - ii. General forbearance
  - iii. Mandatory forbearance
  - iv. Teacher loan forgiveness forbearance
  - v. Internship forbearance
5. Unemployment deferments and economic hardship deferments are most common for low-income borrowers.
6. **Interest accrues during forbearances, and if no payments are made toward interest during forbearance period, it capitalizes.** This is why low income borrowers should pick IBR rather than forbearance when they have trouble repaying a loan.
7. Servicers will limit number of deferments/forbearances.

## **IX. The Veterans Retraining Assistance Program (VRAP).**

- A. Program ended on March 31, 2014.
- B. Offered veterans up to 12 months of training assistance at \$1564/month.
- C. Payments were made directly to the veteran; veteran is responsible for paying tuition, fees, books, etc.

- D. In order to receive checks, veteran had to be enrolled full-time at a VA-approved education program offered by a community college or technical school that led to a degree/certificate in a high demand occupation.
- E. Veterans had to be 35-60, unemployed, not dishonorably discharged, and not eligible for another VA education benefit program like the GI Bill.

**X. Defaulted/Delinquent Private Student Loans.**

- A. Borrower is at the mercy of the loan servicer/collection agency.
- B. Some private loans serviced by Sallie Mae can be discharged based on disability. Call the servicer to find out. Sallie Mae has its own disability application but it mirrors the federal standard.
- C. Other discharges (False Certification, Unpaid Refund, and School Closure) are not available, and neither are any income-sensitive repayment plans, although private lenders may allow you to pay interest only for a period of time.
- D. For private loans, a court judgment is required in order to garnish wages. Statute of limitations does apply (six years New York, shorter in other states, including Delaware), as well as other debt collection defenses.
- E. Post-judgment, a borrower can petition the court for a lower garnishment rate on a student loan if it causes hardship.
- F. **DO NOT consolidate private loans and federal loans together if the servicer allows it.**
  - 1. The federal loans in such consolidation will lose all federal benefits (discharge, IBR, ICR, PAYE, etc.).

# Exhibit 5



## KEY CONTACTS

### Helping Low-Income People with Federal Student Debt

Legal Point People	
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# Exhibit 6

## Executive Summary

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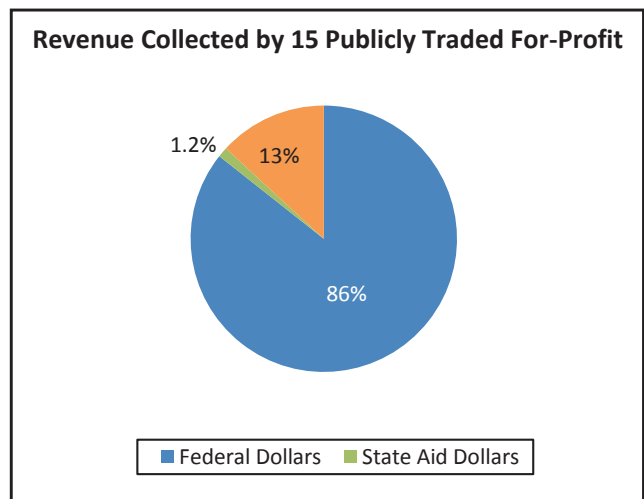
- A 2-year investigation by the Senate Committee on Health, Education, Labor, and Pensions demonstrated that Federal taxpayers are investing billions of dollars a year, \$32 billion in the most recent year, in companies that operate for-profit colleges. Yet, more than half of the students who enrolled in those colleges in 2008-9 left without a degree or diploma within a median of 4 months.
- For-profit colleges are owned and operated by businesses. Like any business, they are ultimately accountable by law for the returns they produce for shareholders. While small independent for-profit colleges have a long history, by 2009, at least 76 percent of students attending for-profit colleges were enrolled in a college owned by either a company traded on a major stock exchange or a college owned by a private equity firm. The financial performance of these companies is closely tracked by analysts and by investors.
- Congress has failed to counterbalance investor demands for increased financial returns with requirements that hold companies accountable to taxpayers for providing quality education, support, and outcomes. Federal law and regulations currently do not align the incentives of for-profit colleges so that the colleges succeed financially when students succeed.
- For-profit colleges have an important role to play in higher education. The existing capacity of non-profit and public higher education is insufficient to satisfy the growing demand for higher education, particularly in an era of drastic cutbacks in State funding for higher education. Meanwhile, there has been an enormous growth in non-traditional students—those who either delayed college, attend part-time or work full-time while enrolled, are independent of their parents, or have dependents other than a spouse. This trend has created a “new American majority” of non-traditional students.
- In theory, for-profit colleges should be well-equipped to meet the needs of non-traditional students. They offer the convenience of nearby campus and online locations, a structured approach to coursework and the flexibility to stop and start classes quickly and easily. These innovations have made attending college a viable option for many working adults, and have proven successful for hundreds of thousands of people who might not otherwise have obtained degrees.
- But for-profit colleges also ask students with modest financial resources to take a big risk by enrolling in high-tuition schools. As a result of high tuition, students must take on significant student loan debt to attend school. When students withdraw, as hundreds of thousands do each year, they are left with high monthly payments but without a commensurate increase in earning power from new training and skills.
- Many for-profit colleges fail to make the necessary investments in student support services that have been shown to help students succeed in school and afterwards, a deficiency that undoubtedly contributes to high withdrawal rates. In 2010, the for-profit colleges examined employed 35,202 recruiters compared with 3,512 career services staff and 12,452 support services staff, more than two and a half recruiters for each support services employee.
- This may help to explain why more than half a million students who enrolled in 2008-9 left without a degree or Certificate by mid-2010. Among 2-year Associate degree-seekers, 63 percent of students departed without a degree.
- The vast majority of the students left with student loan debt that may follow them throughout their lives, and can create a financial burden that is extremely difficult, and sometimes impossible, to escape.



- During the same period, the companies examined spent \$4.2 billion on marketing and recruiting, or 22.7 percent of all revenue. Publicly traded companies operating for-profit colleges had an average profit margin of 19.7 percent, generated a total of \$3.2 billion in pre-tax profit and paid an average of \$7.3 million to their chief executive officers in 2009.
- In the absence of significant reforms that align the incentives of for-profit colleges to ensure colleges succeed financially only when students also succeed, and ensure that taxpayer dollars are used to further the educational mission of the colleges, the sector will continue to turn out hundreds of thousands of students with debt but no degree, and taxpayers will see little return on their investment.

### *The Federal Investment and the Changing Sector*

- In the 1990s, two-thirds of for-profit colleges enrolled students in training programs lasting less than 1 year. The sector was primarily composed of small trade schools that awarded Certificates and diplomas in fields like air-conditioning repair, cosmetology, and truck driving. While Certificate and diploma offerings have continued to grow, growth in degree programs has been more significant. Between 2004 and 2010, the number of Associate degrees awarded by for-profit colleges increased 77 percent and the number of Bachelor's degrees awarded increased 136 percent.
- For profit colleges are rapidly increasing their reliance on taxpayer dollars. In 2009-10, the sector received \$32 billion, 25 percent of the total Department of Education student aid program funds.
- Pell grants flowing to for-profit colleges increased at twice the rate of the program as a whole, increasing from \$1.1 billion in the 2000-1 school year to \$7.5 billion in the 2009-10 school year.
- Among the companies examined by the committee, the share of revenues received from Department of Education Federal student aid programs increased more than 10 percent, from 68.7 in 2006 to 79.2 percent in 2010.
- Committee staff estimates that in 2009 when all sources of Federal taxpayer funds, including military and veterans' benefits, are included, the 15 publicly traded for-profit education companies received 86 percent of revenues from taxpayers.
- For-profit colleges also receive the largest share of military educational benefit programs: 37 percent of post-9/11 GI bill benefits and 50 percent of Department of Defense Tuition Assistance benefits flowed to for-profit colleges in the most recent period. Because of the cost of the programs however, they trained far fewer students than public colleges. Eight of the top 10 recipients of Department of Veterans Affairs post-9/11 GI bill funds are for-profit education companies.

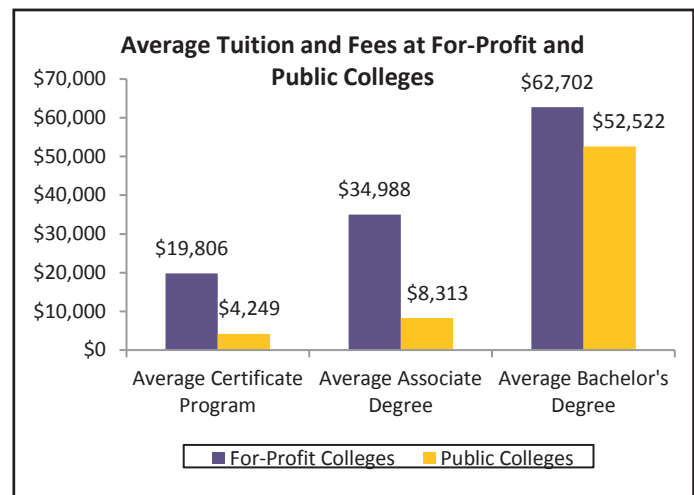


## Why Are Companies that Own For-Profit Colleges Financially Successful

### *High Cost of Programs:*

- Most for-profit colleges charge higher tuition than comparable programs at community colleges and flagship State public universities.
  - Bachelor's degree programs averaged 20 percent more than the cost of analogous programs at flagship public universities.
  - Associate degree programs averaged four times the cost of degree programs at comparable community colleges.
  - Certificate programs similarly averaged four and a half times the cost of such programs at comparable community colleges.

- The for-profit education companies examined rarely set tuition below available Federal student aid.
- Internal company documents provide examples of tuition increases being implemented to satisfy company profit goals, that have little connection to increases in academic and instruction expenses, and demonstrate that for-profit education companies sometimes train employees to evade directly answering student questions about the cost of tuition and fees.



- Aggressive and Sometimes Misleading and Deceptive Recruiting Practices:
- Documents indicate that the recruiting process at for-profit education companies is essentially a sales process. Investors' demand for revenue growth is satisfied by enrolling a steady stream of new student enrollees or "starts." During the period examined, at many companies the performance of each person in the admissions chain, from CEO to newly-hired junior recruiters, was rated at least in part based on the number of students enrolled.
- The committee found that the 30 for-profit education companies examined employed 35,202 recruiters, or about one recruiter for every 53 students attending a for-profit college in 2010.
- Documents demonstrate that in order to achieve company enrollment goals, recruiting managers at some companies created a boiler-room atmosphere, in which hitting an enrollment quota was the recruiters' highest priority. Recruiters who failed to bring in enough students were put through disciplinary processes and sometimes terminated. Before a ban on incentive compensation was re-instituted in mid-2011, recruiters' salaries at many for-profit colleges were tightly tied to enrolling a certain number of new students.
- Internal documents, interviews with former employees, and Government Accountability Office (GAO) undercover recordings demonstrate that many companies used tactics that misled prospective students with regard to the cost of the program, the availability and obligations of Federal aid, the

time to complete the program, the completion rates of other students, the job placement rate of other students, the transferability of the credit, or the reputation and accreditation of the school.

- For-profit colleges seek to enroll a population of non-traditional prospective students who are often not familiar with traditional higher education and may be facing difficult circumstances in their lives. Recruiting materials indicate that at some for-profit colleges, admission representatives were trained to locate and push on the pain in students' lives. They were also trained to "overcome objections" of prospective students in order to secure enrollments. Additionally, companies trained recruiters to create a false sense of urgency to enroll and inflate the prestige of the college.
- For-profit colleges gather contact information of prospective students, or "leads," by paying third-party companies known as "lead generators" that specialize in gathering and selling the information. Among the 62 lead generators used by companies analyzed, the cost per lead ranged between \$10 and \$150. Lead generators advertise themselves as a free, safe, and reliable way to get information about college, but lead generator Web sites generally direct students only to schools and programs that pay them, and have a history of engaging in online marketing using aggressive and misleading methods.
- Servicemembers, veterans, spouses, and family members have become highly attractive prospects to for-profit colleges, and many schools have put significant resources into recruiting and enrolling students eligible for these benefits.
  - Lead generation Web sites, specifically designed to attract members of the military and veterans, use layouts and logos similar to official military websites, but do not inform users that the purpose of the site is to collect contact information on behalf of the site's for-profit college clients.
  - Internal documents show that some schools' pursuit of military benefits led them to recruit from the most vulnerable military populations, sometimes recruiting at wounded warrior centers and veterans hospitals.
  - In addition to aggressively seeking military personnel, the investigation showed that some recruiters misled or lied to service members as to whether their tuition would be fully covered by military benefits.

### *How Are Students Performing*

Because a large proportion of students attending for-profit colleges are not first time, full-time students, and therefore fall outside the Department of Education's tracking of student outcomes, it is difficult to understand how many students are succeeding at for-profit colleges and in what types of degree programs. To fill the information gap, committee staff analyzed retention and withdrawal information for a cohort of students enrolling between 2008-9 and found that:

Status of Students Enrolled in For-Profit Education Companies in 2008–9, as of 2010		
Degree Level	Enrollment	Percent Withdrawn
Associate Degree	474,817	62.9
Bachelor's Degree	374,264	54.3
Certificate	246,792	38.5
All Students	1,095,873	54.4

- 596,556 students who enrolled in 2008-9, or 54 percent, left without a degree or Certificate by mid-2010.

- 298,476 students who enrolled in 2-year Associate degree programs in 2008-9, or 63 percent, departed without a degree. Nine companies had Associate degree programs with withdrawal rates over 60 percent.
- Online: Among companies that provided data that enabled committee staff to compare students attending online and on-campus, students attending online withdrew at much higher rates. Sixty-four percent of students attending online programs left without a degree compared to 46 percent of students attending campus-based programs offered by the same companies.
- Publicly Traded: Colleges owned by a company that is traded on a major stock exchange had 2008-9 student withdrawal rates 9 percent higher than the privately held companies examined. Among the 15 publicly traded companies, 55 percent of students departed without a degree. Among the 15 privately held companies examined, 46 percent of students departed without a degree.

### *Why Do Many Students Fail to Complete For-Profit Programs*

#### *Spending Choices of For-Profit Education Companies:*

- For-profit colleges devote tremendous amounts of resources to non-education related spending including marketing, recruiting, profit and executive compensation, while spending relatively small amounts on instruction. In fiscal year 2009, the education companies examined by the committee spent:
  - \$4.2 billion or 22.7 percent of all revenue on marketing, advertising, recruiting, and admissions staffing.
  - \$3.6 billion or 19.4 percent of all revenue on pre-tax profit.
  - \$3.2 billion, or 17.2 percent of all revenue on instruction.
  - This means that the companies together devoted less to actual instruction costs (faculty and curriculum) than to either marketing and recruiting or profit.
  - Additionally, the CEOs of the publicly traded, for-profit education companies took home, on average, \$7.3 million in 2009. In contrast, the five highest paid leaders of large public universities averaged compensation of \$1 million, while the five highest paid leaders at non-profit colleges and universities averaged \$3 million.

#### *Academic Quality:*

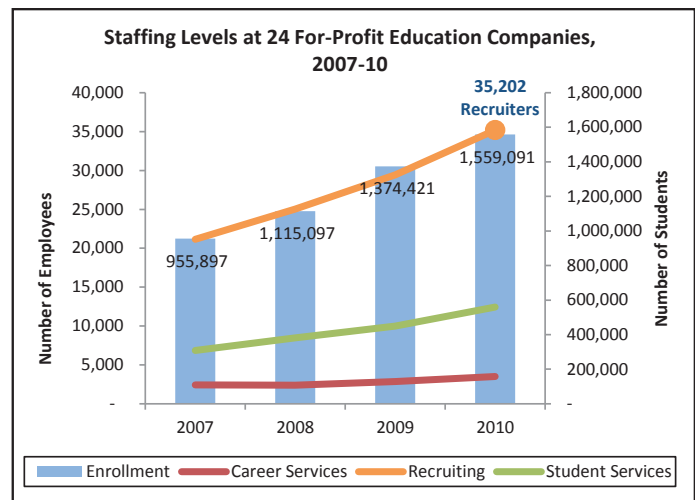
- Undercover observation by the GAO and student complaints reveal that some for-profit schools have curricula that do not challenge students and academic integrity policies that are sometimes not enforced.
- The use of part-time faculty is a key component of the efficiencies the for-profit model can deliver, but it must be balanced with ensuring that the faculty is able to exercise genuine academic independence and has a vested stake in the quality of the institution. The investigation found that in 2010, 80 percent of the faculty employed at the schools examined was part-time. Ten companies had more than 80 percent part-time faculty and five companies had more than 90 percent part-time faculty.

### *Student Services:*

- The investigation found that while for-profit colleges make large investments in staff to recruit new students, once a student is enrolled that same level of service is often not available. This is true even though the companies seek to enroll the students that research demonstrates are most critically in need of those services. As Dr. Arnold Mitchem, president of the Council for Opportunity in Education told the committee: “First of all, we all need to understand there’s a radical difference in educating and graduating a low-income first-generation student than there is a middle-income student ... [In] the for-profit sector they address the financial barriers, but they have not adequately addressed the supportive services barriers.”
- While the investigation demonstrated a wide variety among for-profit colleges in the commitment to student services staffing and to the student services provided, overall the companies examined employed almost three times as many recruiters as student service representatives.

### *Career Placement Services:*

- The disparity in staffing is more acute when it comes to career services staff. The committee staff analysis indicates that for-profit colleges employ about 10 recruiters for every career services staff member. Despite advertising that attending the school is a pathway to a better job or career, two of the largest for-profit colleges have no career services staff to help students.
- Testimony and internal documents indicate that at some for-profit colleges career services staff are often more focused on meeting placement quotas required by some accreditors than actually helping students achieve quality jobs in the field of their degree or Certificate.



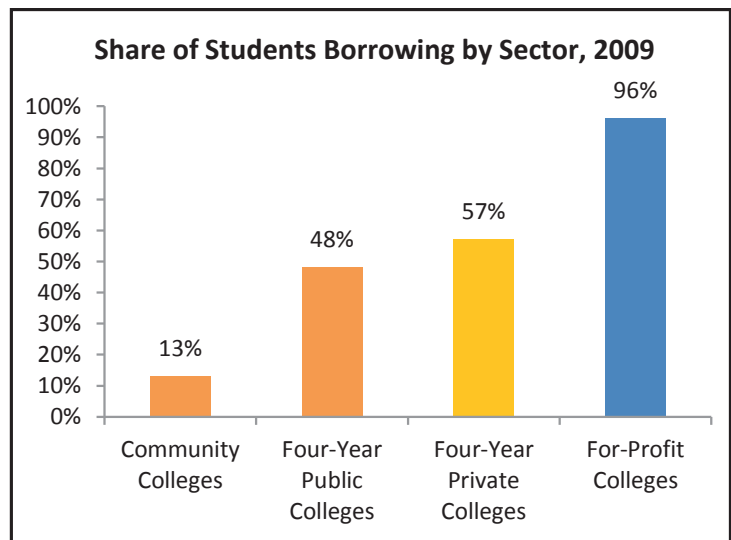
### *Programmatic Accreditation and Licensure:*

- Some for-profit colleges train students in fields that require programmatic accreditation, in addition to institutional accreditation, in order for graduates to obtain employment in the field. Institutions that offer programs that lack programmatic accreditation are inconsistent in how they disclose this lack of programmatic accreditation. While some programs are upfront about this issue, others post the disclosure deep in their Web sites or in the fine print in their enrollment agreements, while framing the disclosure in terms that makes it difficult for students to recognize the gravity of this issue.

### *What Are the Consequences for Students*

- Ninety-six percent of for-profit students take out student loans, according to the most recent U.S. Department of Education data. In comparison, 13 percent of students at community colleges, 48 percent at 4-year public, and 57 percent at 4-year private non-profit colleges borrow money to pay for school.

- For-profit schools enroll far more high-dollar borrowers. Fifty-seven percent of Bachelor's students who graduate from a for-profit college owe \$30,000 or more. In contrast, 25 percent of those who earned degrees in the private, non-profit sector and 12 percent from the public sector borrowed at this level.



- Because many students who attend for-profit colleges are unable to get financing through private lending companies, many participate in institutional loan programs operated by for-profit education companies. The committee staff found that institutional loans operated by for-profit education companies often carry high interest rates, and do not provide students with the same safeguards as Federal loans.
- In 2009 seven large for-profit education companies offered institutional loans with interest rates ranging from 11.2 to 18 percent. During this period the Stafford loan rate was 5.6 percent. These same companies listed expected default rates of 42 to 80 percent.
- Students who attended a for-profit college accounted for 47 percent of all Federal student loan defaults. More than 1 in 5 students enrolling in a for-profit college—22 percent—default within 3 years of entering repayment on their student loans.
- Default rates are driven by students who drop out, those who are left with debt but little means to repay it given the incomplete education and lack of a degree. Students' ability to repay their loans is tightly tied to whether the student stayed in school and achieved a degree.
- Students who attend for-profit schools are more likely to experience unemployment after leaving school. According to a National Center for Education Statistics study, 23 percent of students who attended for-profit schools in 2008-9 were unemployed and seeking work.

### Why is This Happening

- Accreditation:** The self-reporting and peer-review nature of the accreditation process exposes it to manipulation by companies that are more concerned with their bottom line than with academic quality and improvement. Accrediting agencies seek to help colleges improve. Because of this institutional focus on continuous improvement, they sometimes appear to have difficulty drawing and enforcing bright lines and minimum standards.
- State Oversight:** State oversight of for-profit education companies has eroded over time due to a variety of factors, including State budget cuts and the influence of the for-profit college industry with State policymakers. The U.S. Department of Education had never defined minimum requirements for State authorization, and many States have taken a passive or minimal role in approving institutions, reviewing and addressing complaints from students and the public, and ensuring that colleges are in compliance with State consumer protection laws.



- Federal Law and Regulation: Federal regulations impose two key checks on for-profit colleges: the proportion of Federal money that the colleges collect, known as the 90/10 rule, and the percentage of students who may default on Federal student loans before the college loses eligibility for Federal financial aid. In addition, some accreditors also require colleges to meet standards regarding the percentage of graduates who obtain employment in their field of study. Some for-profit colleges employ questionable tactics to meet these requirements.
- The investigation documented the use of multiple strategies to comply with the letter of the 90/10 rule with policies that defy the goal and spirit of the regulation.
  - Since for-profit colleges report 90/10 figures by Office of Postsecondary Education ID (OPEID) numbers, instead of by campus, and one OPEID may contain multiple campuses, some companies consolidate and switch campuses between OPEIDs to lower their reported 90/10 number regardless of the proximity of the campus.
  - Some for-profit colleges have stopped the flow of student aid funds to certain OPEIDs at the end of the fiscal year. This tactic may hurt students because campuses that do not receive student aid funds may not disburse, in a timely manner, living-expense checks to students who depend on those funds to pay for books, housing, food, transportation, and childcare.
  - Some schools have raised their initial enrollment fee—which must be paid in cash—or insisted on cash payments from students in order to lower their reported 90/10 ratio. While asking students to make up-front payments on their education can be a good idea because it is interest-free and also helps them to understand what it will be like to make payments on their loans later, it seems that some for-profit schools are primarily seeking to drive down their 90/10 ratios with these cash payments.
  - Department of Education regulations dictate that scholarships awarded to a student do not count as Federal financial aid and instead count on the “10” side of the 90/10 calculation, but only if the scholarships are awarded by an organization independent of the school. Several companies that operate for-profit colleges have designed scholarship programs that should be more closely scrutinized.
  - Some schools increase tuition in order to create a gap between the total amount of Federal aid a student can receive and the cost of attending. This illustrates the fundamental problem with the cost of for-profit schools—that the tuition fees and other academic charges bear no relationship to the cost of providing the education. This gap means that students attending these schools must find even more financing by taking out private loans, taking on more debt through a private or institutional loan, or making monthly cash payments, often by credit card, directly to the school to pay for the artificially high cost of the school. The student is left with more debt, likely at a higher rate of interest, so the school can generate sufficient non-Federal income.
  - Because neither Department of Defense (DOD) nor Veterans Affairs (VA) educational benefits originate in Title IV of the Higher Education Act, money received through these programs is not counted as Federal financial aid for the purposes of 90/10. This loophole creates an incentive to see servicemembers as nothing more than “dollar signs in uniform.”

- Many for-profit education companies also commit significant resources to default management efforts that keep students out of default for the duration of the 2-year (soon 3-year) monitoring window. Default management may involve a multitude of strategies premised on sound goals, such as enrolling students who are likely to graduate and succeed, giving those students the support and tools they need to learn and secure a degree that is valued in the job marketplace, helping them secure a well-paying job, and offering financial literacy classes and quality debt counseling. However, internal documents show that at some schools the emphasis is on signing students up for forbearance and deferment with the sole goal of protecting the colleges so that they do not lose access to Federal taxpayer-funded student aid dollars.
  - Evidence suggests that some for-profit colleges use forbearance and deferment as tools to move the school's default rate, without concern for a student's particular situation or whether it is in the best financial interest of the individual. Many students will end up paying more over the life of their loan after a forbearance or deferment.
  - As default rates have increasingly become a problem for for-profit colleges, many have turned for help to third party vendors that operate call centers with hundreds of employees trained to "cure" student defaults. While the vendor used by at least 12 of the 30 companies examined counsels delinquent students on all repayment options, including income-based repayment options, internal documents demonstrate that the majority of students approached by the vendor end up in forbearance, leading to increased debt. Documents obtained from four large for-profit education companies demonstrate that, on average, over 75 percent of the students "cured" were forbearances or deferments, while only 24 percent were the result of a student making payments on their loans.
  - For-profit colleges market themselves as career focused, and encourage students to enroll by offering the prospect of better jobs and better wages. Accordingly, for-profit colleges use job placement data to promote their programs, and to satisfy national accrediting agencies and State regulators that the students who complete the programs are finding jobs in their field. However, when job placement rates are audited by outside agencies, problems have repeatedly been found, and a number of law enforcement investigations over the past 5 years have revealed falsified information in the placement rates of some colleges.
  - Rapid enrollment growth and lack of adequate policies and procedures have also led to situations in which for-profit colleges have improperly retained unearned title IV student aid funds that should have been returned to the Department of Education, or are not returning the funds in a timely matter.

### *What Needs to Be Done*

- Enhance transparency by collecting relevant and accurate information about student outcomes.
  - Require that the Department of Education collect comprehensive student outcome information and enable data retrieval by corporate ownership;
  - Establish a uniform and accurate methodology for calculating job placement rates;
  - Increase the regulation of private lending.



- Strengthen the oversight of Federal financial aid.
  - Tie access to Federal financial aid to meeting minimum student outcome thresholds;
  - Prohibit institutions from funding marketing, advertising and recruiting activities with Federal financial aid dollars;
  - Improve cohort default rate tracking by expanding the default reporting rate period beyond 3 years;
  - Require that for-profit colleges receive at least 15 percent of revenues from sources other than Federal funds;
  - Use criteria beyond accreditation and State authorization for determining institutions' access to Federal financial aid.
- Create meaningful protections for students.
  - Create an online student complaint clearinghouse, managed by the Department of Education, for the collection and referral of student complaints to appropriate overseeing agencies, organizations and divisions;
  - Prohibit institutions that accept Federal financial aid from including mandatory binding arbitration clauses in enrollment agreements;
  - Enforce minimum standards for student services that include tutoring, remediation, financial aid, and career counseling and job placement;
  - Extend the ban on incentive compensation to include all employees of institutions of higher education, and clarify that this ban extends to numeric threshold or quota-based termination policies.

# Exhibit 7

## Sample Discovery and Freedom of Information Act Requests

Page 633

Add to text after first full letter on page:

### F.4 Freedom of Information Act Sample Requests

[Date]

U.S. Department of Education  
Office of Management  
Regulatory Information Management Services  
400 Maryland Avenue, SW, LBJ 2W220  
Washington, DC 20202-4536  
ATTN: FOIA Public Liaison

Sent via e-mail to EDFOIAManager@ed.gov

Dear FOIA Public Liaison:

On behalf of the National Consumer Law Center, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, I hereby request the following records and information:

- 1) Samples of all communications, including those sent by mail, electronically, and other means for use by the Department on or after July 1, 2010, when communicating with federal student loan borrowers about disability discharges. This includes, but is not limited to, communications about approvals, denials, reinstatement rights, or requests for additional information.
- 2) Samples of all communications, including those sent by mail, electronically, and other means for use by the Department on or after July 1, 2010, when communicating with physicians who have signed disability discharge applications on behalf of borrowers.
- 3) All policies, public statements, handbooks, guidance, instructions, and similar documents concerning procedures and grounds for the discharge of student loan debt on the grounds of disability on or after July 1, 2010.

In your response to this request, please specify whether: (1) you are providing all documents responsive to the request; (2) no documents exist that are responsive to the request; or (3) documents exist that are responsive to the request, but you are claiming that some or all of those documents are exempt from disclosure.

If it is your position that some of the requested documents or some portion of any of the requested documents are exempt from disclosure, please provide the nonexempt portions of those records. In addition, if it is your position that records exist that are responsive to this request, but that those records (or portions of those records) are exempt from disclosure, please identify the records that are being withheld and state the basis for the denial for each document being withheld. Also, please identify the person making the decision to deny the request.

The National Consumer Law Center requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii), because it does not seek the records for a commercial purpose and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government. The National Consumer Law Center, a nonprofit corporation founded in 1969, assists consumers, advocates, and public policy makers nationwide who use the powerful and complex tools of consumer law to ensure justice and fair treatment for all, particularly those whose poverty renders them powerless to demand accountability.

The National Consumer Law Center regularly issues reports, books, and newsletters on consumer issues, including student loan law, which are distributed to consumers, lawyers, academics, and other interested parties. These publications, which are listed on our website, [www.nclc.org](http://www.nclc.org), often include information obtained through FOIA. We also post information on NCLC's Student Loan Borrower Assistance web site, [www.studentloanborrowerassistance.org](http://www.studentloanborrowerassistance.org). We expect to publish information we receive pursuant to this FOIA request because to do so would contribute significantly to the public's understanding of student loan programs. Please note that your office has previously granted fee waivers for our organization and should have basic information about us on file.

Accordingly, we request that you waive all fees for locating and duplicating the requested records. If, however, a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out.

We will expect a response within 20 working days as provided by law. If you have any questions regarding this request, please contact me at (617) 542-8010.

Thank you very much for your attention to this matter. .

Sincerely,

Deanne Loonin

# STUDENT LOAN LAW

2013 Supplement



See *page ix* for information  
about the companion website.

Deanne Loonin

Contributing Authors: Persis S. Yu, Robyn Smith, Geoff Walsh



## Sample FOIL Letters

**From:** [http://www.dos.ny.gov/coog/Right\\_to\\_know.html#requestsample](http://www.dos.ny.gov/coog/Right_to_know.html#requestsample)

### Requesting Records (Sample)

Records Access Officer  
Name of Agency  
Address of Agency  
City, NY, ZIP code

Re: Freedom of Information Law Request  
Records Access Officer:

*Records Access Officer:*

*Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, I hereby request records or portions thereof pertaining to (or containing the following) \_\_\_\_\_ (attempt to identify the records in which you are interested as clearly as possible). If my request appears to be extensive or fails to reasonably describe the records, please contact me in writing or by phone at \_\_\_\_\_.*

*If there are any fees for copying the records requested, please inform me before filling the request (or: ... please supply the records without informing me if the fees are not in excess of \$\_\_\_\_\_).*

*As you know, the Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly. If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.*

*Sincerely,  
Signature  
Name  
Address  
City, State, ZIP code*

### Requesting Records via Email (Sample)

*(It has been suggested that agencies create an email address dedicated to the receipt of requests. It is recommended that you review the website of the agency maintaining the records that you seek in order to locate its email address and its records access officer.)*

*(The subject line of your request should be "FOIL Request".)*

*Dear Records Access Officer:*

*Please email the following records if possible (include as much detail about the record as possible, such as relevant dates, names, descriptions, etc.):*

*OR*

*Please advise me of the appropriate time during normal business hours for inspecting the following records prior to obtaining copies (include as much detail about the records as possible, including relevant dates, names, descriptions, etc.):*

*OR*

*Please inform me of the cost of providing paper copies of the following records (include as much detail about the*

*records as possible, including relevant dates, names, descriptions, etc.).*

**AND/OR**

*If all of the requested records cannot be emailed to me, please inform me by email of the portions that can be emailed and advise me of the cost for reproducing the remainder of the records requested (\$0.25 per page or actual cost of reproduction).*

*If the requested records cannot be emailed to me due to the volume of records identified in response to my request, please advise me of the actual cost of copying all records onto a CD or floppy disk.*

*If my request is too broad or does not reasonably describe the records, please contact me via email so that I may clarify my request, and when appropriate inform me of the manner in which records are filed, retrieved or generated.*

*If it is necessary to modify my request, and an email response is not preferred, please contact me at the following telephone number: \_\_\_\_\_.*

*If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name, address and email address of the person or body to whom an appeal should be directed.*

*(Name)*

*(Address, if records are to be mailed).*

***Appeal A Written Denial (Sample)***

*Name of Agency Official*

*Appeals Officer*

*Name of Agency*

*Address of Agency*

*City, NY, ZIP code*

*Re: Freedom of Information*

*Law Appeal*

*Dear \_\_\_\_\_:*

*I hereby appeal the denial of access regarding my request, which was made on \_\_\_\_\_ (date) and sent to \_\_\_\_\_ (records access officer, name and address of agency).*

*The records that were denied include: \_\_\_\_\_ (describe the records that were denied to the extent possible and, if possible, offer reasons for disagreeing with the denial, i.e., by attaching an opinion of the Committee on Open Government acquired for its website).*

*As required by the Freedom of Information Law, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within 10 business days of the receipt of an appeal. If the records are denied on appeal, please explain the reasons for the denial fully in writing as required by law.*

*In addition, please be advised that the Freedom of Information Law directs that all appeals and the determinations that follow be sent to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, New York 12231.*

*Sincerely,*

*Signature*

*Name*

*Address*

*City, State, ZIP code*

***Appeal A Denial due to an Agency's Failure to Respond in a Timely Manner (Sample)***

*FOIL Appeals Officer  
Name of Agency  
Address of Agency  
City, NY, ZIP code*

*Re: Freedom of Information  
Law Appeal*

*Dear \_\_\_\_\_:*

*I requested (describe the records) by written request made on \_\_\_\_\_ (date). More than five business days have passed since the receipt of the request without having received a response... or... Although the receipt of the request was acknowledged and I was informed that a response would be given by \_\_\_\_\_ (date), no response has been given. Consequently, I consider the request to have been denied, and I am appealing on that basis.*

*As required by the Freedom of Information Law, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within 10 business days of the receipt of an appeal. If the records are denied on appeal, please explain the reasons for the denial fully in writing as required by law.*

*In addition, please be advised that the Freedom of Information Law directs that all appeals and the determinations that follow be sent to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, New York 12231.*

*Sincerely,  
Signature  
Name  
Address  
City, State, ZIP code*



# Exhibit 8



# LOAN DISCHARGE APPLICATION: SCHOOL CLOSURE

William D. Ford Federal Direct Loan Program / Federal Family Education Loan Program / Federal Perkins Loan Program

OMB No. 1845-0015  
Form Approved  
Exp. Date 12/31/2014

WARNING: Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document will be subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

## SECTION 1: BORROWER IDENTIFICATION

Please enter or correct the following information. ☐ Check this box if any information has changed.

SSN | | | - | | | - | | | |

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone – Primary ( ) \_\_\_\_\_

Telephone – Alternate ( ) \_\_\_\_\_

E-mail (optional) \_\_\_\_\_

## SECTION 2: STUDENT INFORMATION

Before completing this section, carefully read the entire form, including the instructions, definitions, and terms and conditions in Sections 4, 5, and 6 on this form. If you are a student borrower applying for loan discharge, begin with Item 3. If you are a parent borrower applying for a PLUS loan discharge, begin with Item 1.

1. Student Name (Last, First, MI): \_\_\_\_\_

2. Student SSN: | | | - | | | - | | | |

3. Closed School Name: \_\_\_\_\_

4. Date school closed (if known): | | | - | | | - | | | |

5. Closed School Address (street, city, state, zip code): \_\_\_\_\_

6. Dates of attendance at the closed school: From | | | - | | | - | | | | To | | | - | | | - | | | |

7. Name of the program of study that you (or, for a parent PLUS borrower, the student) were enrolled in at the time the school closed: \_\_\_\_\_

8. Did you (or, for a parent PLUS borrower, the student) complete the program of study at the closed school? ☐ Yes ☐ No

If No, check all reasons that apply:

☐ You (or, for a parent PLUS borrower, the student) were on an **approved** leave of absence when the school closed:

From | | | - | | | - | | | | To | | | - | | | - | | | |

☐ The school closed while you (or, for a parent PLUS borrower, the student) were still enrolled.

☐ You (or, for a parent PLUS borrower, the student) withdrew from the school on: | | | - | | | - | | | |

☐ Other (please explain): \_\_\_\_\_

9. Did you (or, for a parent PLUS borrower, the student) complete or are you in the process of completing the same program of study or a comparable program of study at another school? ☐ Yes ☐ No If Yes, complete Item a) and b) below:

(a) Did the other school give you (or, for a parent PLUS borrower, the student) credit for training received at the closed school by allowing transfer of credits or hours earned at the closed school, or by any other means? ☐ Yes ☐ No

(b) Were you (or, for a parent PLUS borrower, the student) required to start the program of study over from the beginning at the other school? ☐ Yes ☐ No

10. Did the holder of your loan receive any money back (a refund) from the closed school on your behalf? ☐ Yes ☐ No ☐ Don't Know

If Yes, give the amount and explain why the money was refunded: \_\_\_\_\_

11. Did you (or, for a parent PLUS borrower, the student) make any monetary claim with, or receive any payment from, the closed school or any third party (see definition in Section 5) in connection with enrollment or attendance at the school? ☐ Yes ☐ No ☐ Don't Know If Yes, please provide the following information:

(a) Name/address/telephone number of the party with whom the claim was made or from whom payment was received: \_\_\_\_\_

(b) Amount/status of claim: \_\_\_\_\_

(c) Amount of payment received: \$ \_\_\_\_\_

(Write "none" if no payment was received.)

## SECTION 3: BORROWER CERTIFICATION AND AUTHORIZATION

My signature below certifies that –

- I have read and agree to the terms and conditions of this loan discharge, as specified in Section 6 on the following page.
- Under penalty of perjury, I certify that all of the information I have provided on this form and in any accompanying documentation is true and accurate to the best of my knowledge and belief.
- I authorize the entity to which I submit this request (i.e., the school, the lender, the guaranty agency, the U.S. Department of Education, and their respective agents and contractors) to contact me regarding my request or my loan(s), including repayment of my loan(s), at the number that I provide on this form or any future number that I provide for my cellular telephone or other wireless device using automated telephone dialing equipment or artificial or prerecorded voice or text messages.

Borrower's Signature: \_\_\_\_\_ Today's Date: \_\_\_\_\_

#### SECTION 4: INSTRUCTIONS FOR COMPLETING THIS FORM

Type or print using dark ink. Enter dates as month-day-year (mm-dd-yyyy). Use only numbers. Example: June 24, 2011 = 06-24-2011. If you need more space to answer any of the items, continue on separate sheets of paper and attach them to this form. Indicate the number of the item(s) you are answering and include your name and account number on all attached pages.

*Return the completed form and any attachments to the address in Section 8.*

#### SECTION 5: DEFINITIONS

- The Federal Family Education Loan (FFEL) Program includes Federal Stafford Loans (both subsidized and unsubsidized), Federal Supplemental Loans for Students (SLS), Federal PLUS Loans, and Federal Consolidation Loans.
- The William D. Ford Federal Direct Loan (Direct Loan) Program includes Federal Direct Stafford/Ford (Direct Subsidized) Loans, Federal Direct Unsubsidized Stafford/Ford (Direct Unsubsidized) Loans, Federal Direct PLUS (Direct PLUS) Loans, and Federal Direct Consolidation (Direct Consolidation) Loans.
- The Federal Perkins Loan (Perkins Loan) Program includes Federal Perkins Loans, National Direct Student Loans (NDSL), and National Defense Student Loans (Defense Loans).
- The date a school closed is the date that the school stopped providing educational instruction in **all programs**, as determined by the U.S. Department of Education (the Department).
- The holder of your FFEL Program loan(s) may be a lender, a guaranty agency, or the Department. The holder of your Direct Loan Program loan(s) is the Department. The holder of your Perkins Loan Program loan(s) may be a school or the Department.
- Loan discharge due to school closure cancels your obligation (and any endorser's obligation, if applicable) to repay the remaining balance on a FFEL Program Loan, a Direct Loan Program Loan, or a Perkins Loan Program Loan, and qualifies you for reimbursement of any amounts paid voluntarily or through forced collection on the loan. For consolidation loans, only the amount of the underlying loans (the loans that were consolidated) that were used to pay for the program of study listed in Item 7 will be considered for discharge. The loan holder reports the discharge to all credit reporting agencies to which the holder previously reported the status of the loan.
- The student refers to the student for whom a parent borrower obtained a Federal PLUS Loan or Direct PLUS Loan.
- Dates of attendance: The "to" date means the last date that you (or, for a parent PLUS borrower, the student) actually attended the closed school.
- Program of study means the instructional program leading to a degree or certificate in which you (or, for a parent PLUS borrower, the student) were enrolled.
- Third party refers to any entity that may provide reimbursement for a refund owed by the closed school, such as a State or other agency offering a tuition recovery program or a holder of a performance bond.

#### SECTION 6: TERMS AND CONDITIONS FOR LOAN DISCHARGE BASED ON SCHOOL CLOSURE

- I received FFEL Program, Direct Loan Program, or Perkins Loan Program loan funds on or after January 1, 1986, to attend (or, if I am a parent PLUS borrower, for the student to attend) the school identified as "closed school" in Section 2 of this form. Those funds were either received by me directly, or applied as a credit to the amount owed to the school. I (or, if I am a parent PLUS borrower, the student) was enrolled at that school or on an **approved** leave of absence on the date that it closed, or withdrew from the school not more than 90 days before it closed (or longer if authorized by the Department). Due to the school's closure, I (or, if I am a PLUS borrower, the student) did not complete the program of study at that school. I (or, if I am a parent PLUS borrower, the student) did not complete and am not in the process of completing that program of study or a comparable program at another school by transferring credits or hours earned at the closed school to another school, or by any other means by which I (or, if I am a parent PLUS borrower, the student) benefited from the training provided by the closed school.
- Upon request, I will provide testimony, a sworn statement, or other documentation reasonably available to me that demonstrates to the satisfaction of the Department or its designee that I meet the qualifications for loan discharge based on school closure, or that supports any representation that I made on this form or on any accompanying documents.
- I agree to cooperate with the Department or its designee in any enforcement action related to this application for loan discharge.
- I understand that this application may be denied, or my discharge may be revoked if I fail to provide testimony, a sworn statement, or documentation upon request, or if I provide testimony, a sworn statement, or documentation that does not support the material representations I have made, or if I (or, if I am a parent PLUS borrower, the student) completed or am in the process of completing the program of study or a comparable program at another school through transfer of credits or hours from the closed school or by any other means by which I (or, if I am a parent PLUS borrower, the student) benefited from the training provided by the closed school.
- I further understand that if my loan(s) is discharged based on any false, fictitious, or fraudulent statements that I knowingly made on this form or on any accompanying documents, I may be subject to civil and criminal penalties under applicable federal law.
- I hereby assign and transfer to the Department any right to a refund on the discharged loan(s) that I may have from the school identified in Section 2 of this form and/or any owners, affiliates, or assigns of the school, and from any third party that may pay claims for a refund because of the actions of the school, up to the amount discharged by the Department on my loan(s).

#### SECTION 7: IMPORTANT NOTICES

Privacy Act Disclosure Notice: The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authorities for collecting the requested information from and about you are §421 et seq., §451 et seq., and §461 et seq. of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 et seq., 20 U.S.C. 1087a et seq., and 20 U.S.C. 1087aa et seq.) and the authorities for collecting and using your Social Security Number (SSN) are §§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 20 U.S.C. 1091(a)(4)) and 31 U.S.C. 7701(b). Participating in the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal Direct Loan (Direct Loan) Program, or the Federal Perkins Loan (Perkins Loan) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under the FFEL, Direct Loan, and/or Perkins Loan Programs, to permit the servicing of your loan(s), and, if it becomes necessary, to locate you and to collect and report on your loan(s) if your loan(s) become delinquent or in default. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the appropriate systems of records notices. The routine uses of this information include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to consumer reporting agencies, to financial and educational institutions, and to guaranty agencies in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loan(s), to enforce the terms of the loan(s), to investigate possible fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to state agencies. To provide financial aid history information, disclosures may be made to educational institutions. To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student enrollment status, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

Paperwork Reduction Notice: According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 0.5 hours (30 minutes) per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the information collection. Individuals are obligated to respond to this collection to obtain a benefit in accordance with 34 CFR 682.402(d)(3) and 34 CFR 685.214(c). Send comments regarding the burden estimate(s) or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20210-4537, or e-mail [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) and reference OMB Control Number 1845-0015. Note: Please do not return the completed Loan Discharge Application to this address.

#### SECTION 8: WHERE TO SEND THE COMPLETED LOAN DISCHARGE APPLICATION

*Return the completed loan discharge application and any attachments to:  
(If no address is shown, return to your loan holder.)*

*If you need help completing this form, call:  
(If no telephone number is shown, call your loan holder.)*



August 14, 2015

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Education Credit Management Corporation  
P.O. Box 64909  
Saint Paul, MN 55164-0909

Re: Student Loan Refund Request

Dear ECMC representative:

I represent \_\_\_\_\_, an individual that Education Credit Management Corporation (“ECMC”) has contacted over the past several years in regard to a purported student loan debt owed based on the federal student loans that \_\_\_\_\_ borrowed to enroll at the Nassau School for Medical and Dental Assistants (the “**Nassau School**”) during the 1990-91 and 1991-92 academic years. I write on \_\_\_\_\_ behalf seeking discharge and a refund of erroneously collected amounts in connection with these student loans, pursuant to the Loan Discharge Application attached hereto as **Exhibit A** and supporting affidavit, attached hereto as **Exhibit B**. Your recent correspondence with \_\_\_\_\_ lists his Account/Loan number as \_\_\_\_\_. As is reflected in the Department of Education’s Closed School Search Database, the Nassau School closed in February 1992, midway through the second academic year of \_\_\_\_\_ enrollment.

As recounted by then-Administrative Law Judge Thomas W. Reilly, an agent of the Department of Education, in a decision issued on April 17, 1995 (the “**Decision**”, a copy of which is attached hereto as **Exhibit C**), because the Nassau School failed to perform a required file review and close-out audit upon its February 1992 closure, the Department of Education ordered the return of “all of the funds disbursed to the Nassau School . . . under Title IV of the Higher Education Act of 1965 . . . in the 1990-91 and 1991-92 award years, and included costs and estimated default losses under the Stafford Loan program.” Accordingly, any and all federal student loan funds issued in connection with the 1990-91 and 1991-92 award years were recouped by the Department of Education, and student loan debt was thus retired at that time. For nearly 20 years, \_\_\_\_\_ heard nothing about his former student loans; he assumed that because of the circumstances surrounding the school’s closure, he did not owe a debt.

Approximately eighteen years after the Nassau School’s closure, \_\_\_\_\_ began to receive collections notices from ECMC regarding his Nassau School student loans.

Education Credit Management  
Corporation  
August 14, 2015  
Page 2

Shortly thereafter, [REDACTED] was notified that his tax refund for the 2009 tax year was taken and applied to the balance of his student loans. In 2013, [REDACTED] wages were garnished over a three-month period in partial satisfaction of the outstanding student loan balance. In 2015, [REDACTED] tax refund was again taken through the IRS offset program and applied towards his student loan balance. In total, \$2,208.22 was taken from [REDACTED] in connection with these already-repaid student loans. These payments are confirmed by the transaction history that you provided to [REDACTED], which is attached hereto as **Exhibit D**. During this time, [REDACTED] repeatedly contacted representatives of the IRS and DOE, but was unable to obtain any relief. In part because of the financial hardship caused by the garnishments and offsets, in June 2015 [REDACTED] filed a petition for relief under chapter 7 of the Bankruptcy Code. As a pro bono volunteer attorney working with the New York City Bankruptcy Assistance Project, I assisted [REDACTED] in filing his petition and continue to assist him in obtaining relief from the erroneous seizure of his wages and tax returns based on a student loan debt that was recouped twenty years ago.

[REDACTED] claim for a refund is completely credible. The attached Decision, issued by a Department of Education administrative law judge, shows that the loan funds in question were recouped by the Department of Education twenty years ago. Further DOE/ECMC records, including the NSLDS report attached hereto as **Exhibit E**, indicate that the debt originated from [REDACTED] enrollment at the Nassau School during the 1990-91 and 1991-92 school years. Based on the foregoing, as well as the attached Loan Discharge Application and supporting Affidavit from [REDACTED], I request on [REDACTED] behalf a discharge of his loan and a full refund of the erroneously collected \$2,208.22 as soon as possible.

Please feel free to contact me with any questions. Thank you for your attention to this matter.

[REDACTED]

[REDACTED]

**EXHIBIT A**





# LOAN DISCHARGE APPLICATION: SCHOOL CLOSURE

William D. Ford Federal Direct Loan (Direct Loan) Program, Federal Family Education Loan (FFEL) Program, and Federal Perkins Loan Program

OMB No. 1845-0058  
Form Approved  
Exp. Date 08/31/2017

**WARNING:** Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

## SECTION 1: BORROWER IDENTIFICATION

Please enter or correct the following information.

☐ Check this box if any of your information has changed.

SSN

Name

Address

City, State, Zip Code

Telephone – Primary

Telephone – Alternate

E-mail (optional)

## SECTION 2: SCHOOL CLOSURE INFORMATION

1. You are applying for this loan discharge as a:  
☒ Student borrower – Skip to Item 4.  
☐ Parent borrower – Continue to Item 2.
2. Student Name (Last, First, MI):  
\_\_\_\_\_
3. Student SSN:  
\_\_\_\_\_
4. Closed School Name:  
Nassau School for Medical & Dental Assts
5. Closed School Address (street, city, state, zip):  
40 East 29th Street, New York, NY 10016
6. Dates of attendance at the closed school:  
09-04-1990 to 02-28-1992
7. Name of the program you (or, for a parent PLUS borrower, the student) were enrolled in at the time the school closed:  
\_\_\_\_\_
8. Did you (or, for a parent PLUS borrower, the student) complete the program of study **at the closed school**?  
☐ Yes – You are not eligible for this discharge.  
☒ No – Continue to Item 9.
9. Were you (or for a parent PLUS borrower, the student) on an **approved** leave of absence when the school closed?  
☐ Yes – Provide the dates of the leave of absence, then skip to Item 13:  
\_\_\_\_\_ to \_\_\_\_\_  
☒ No – Continue to Item 10.
10. Were you (or, for a parent PLUS borrower, the student) still enrolled in the program of study when the school closed?  
☒ Yes – Skip to Item 13.  
☐ No – Continue to Item 11.
11. Did you (or, for a parent PLUS borrower, the student) withdraw from the school before the school closed?  
☐ Yes – Continue to Item 12.  
☐ No – Skip to Item 13.
12. On what date did you withdraw from the school?  
\_\_\_\_\_
13. Did you (or, for a parent PLUS borrower, the student) complete or are you in the process of completing the same or a comparable program of study at another school?  
☐ Yes – Continue to Item 14.  
☒ No – Skip to Item 16.
14. Are you (or, for a parent PLUS borrower, the student) completing the new program through a teach-out agreement (see Section 5)?  
☐ Yes – You are not eligible for this discharge.  
☐ No – Continue to Item 15.
15. Did the other school give you (or, for a parent PLUS borrower, the student) credit for training received at the closed school by allowing transfer credits or hours earned at the closed school, or by any other comparable means?  
☐ Yes – You are not eligible for this discharge.  
☐ No – Continue to Item 16.

Borrower Name: \_\_\_\_\_

Borrower SSN: ■■■■■■■■ -

## SECTION 2: SCHOOL CLOSURE INFORMATION (CONTINUED)

16. Did the holder of your loan receive any money back (a refund) from the closed school on your behalf?

☐ Yes – Continue to Items 17–19.  
☐ No – Skip to Item 19.  
☒ Don't Know – Skip to Item 19.

17. What was the amount of the refund?

\$ \_\_\_\_\_

18. Explain why the money was refunded:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. Did you (or, for a parent PLUS borrower, the student) make any monetary claim with, or receive any payment from, the closed school or any third party (see definition in Section 5) in connection with enrollment or attendance at the school?

☐ Yes – Continue to Items 20–22.  
☒ No – Sign and date the form in Section 3.  
Submit the form to the loan holder in Section 7.  
☐ Don't Know – Sign and date the form in Section 3.  
Submit the form to the loan holder in Section 7.

20. Provide the following about the party with whom the claim was made or from whom payment was received:

a. Name: \_\_\_\_\_

b. Address (street, city, state, zip code):  
\_\_\_\_\_  
\_\_\_\_\_

c. Telephone number: \_\_\_\_\_

21. What is the amount and the status of the claim?

a. Amount: \$ \_\_\_\_\_

b. Status: \_\_\_\_\_

22. What was the amount of any payment received? If none, write "none".

\$ \_\_\_\_\_

Sign and date the form in Section 3. Submit the form to the loan holder in Section 7.

## SECTION 3: BORROWER CERTIFICATIONS, ASSIGNMENT, AND AUTHORIZATION

- I **certify** that: (1) I received the Direct Loan, FFEL, or Perkins Loan Program loan funds directly, or as a credit that was applied to the amount owed to the school; (2) I (or, if I am a parent PLUS borrower, the student) was enrolled at the school identified in Section 2, was on an **approved** leave of absence on the date that the school closed, withdrew from the school not more than 120 days before it closed, or withdrew from the school more than 120 days before it closed if the Department determines that exceptional circumstances related to the school's closing justify an extension of this 120-day period (see Section 6); (3) Due to school closure, I (or, if I am a parent PLUS borrower, the student) did not complete the program of study at the closed school; (4) I (or, if I am a parent PLUS borrower, the student) did not complete and am not in the process of completing the program or a comparable program of study at the closed school at another school through a teach-out, by transferring credits or hours earned at the closed school to another school, or by any other comparable means; (5) I have read and agree to the terms and conditions for loan discharge, as specified in Section 6; (6) Under penalty of perjury, all of the information I have provided on this form and in any accompanying documentation is true and accurate to the best of my knowledge and belief.
- I **hereby assign and transfer** to the U.S. Department of Education (the Department) any right to a refund on the amount discharged that I may have received from the school identified in Section 2 of this form and/or any owners, affiliates, or assignees of the school, and from any third party that may pay claims for a refund because of the actions of the school, up to the amount discharged by the Department on my loan(s).
- I **authorize** the loan holder to which I submit this request (and its agents or contractors) to contact me regarding my request or my loan(s), including repayment of my loan(s), at the number that I provide on this form or any future number that I provide for my cellular telephone or other wireless device using automated telephone dialing equipment or artificial or prerecorded voice or text messages.

Borrower's Signature \_\_\_\_\_

Date 08-14-2015



## SECTION 4: INSTRUCTIONS FOR COMPLETING THE FORM

When completing this form, type or print using dark ink. Enter dates as month-day-year (mm-dd-yyyy). Use only numbers. Example: March 14, 2014 = 03-14-2014. If you need more space to answer any of the items, continue on separate sheets of paper and attach them to this form. Indicate the number of the Item(s) you are answering and include your name and Social Security Number (SSN) on the top of page 2 and on all attached pages. **Return the completed form and any attachments to the address shown in Section 7.**

## SECTION 5: DEFINITIONS

- The **William D. Ford Federal Direct Loan (Direct Loan) Program** includes Federal Direct Stafford/Ford (Direct Subsidized) Loans, Federal Direct Unsubsidized Stafford/Ford (Direct Unsubsidized) Loans, Federal Direct PLUS (Direct PLUS) Loans, and Federal Direct Consolidation (Direct Consolidation) Loans.
- The **Federal Family Education Loan (FFEL) Program** includes Federal Stafford Loans (both subsidized and unsubsidized), Federal Supplemental Loans for Students (SLS), Federal PLUS Loans, and Federal Consolidation Loans.
- The **Federal Perkins Loan (Perkins Loan) Program** includes Federal Perkins Loans, National Direct Student Loans (NDSL), and National Defense Student Loans (Defense Loans).
- The **date a school closed** is the date that the school stopped providing educational instruction in **all programs** as determined by the Department.
- **Dates of attendance:** The "to" date means the last date that you (or, for a parent PLUS borrower, the student) actually attended the closed school.
- The **holder** of your Direct Loan Program loan(s) is the Department. The holder of your FFEL Program loan(s) may be a lender, a guaranty agency, or the Department. The holder of your Perkins Loan Program loans may be a school or the Department. Your loan holder may use a servicer to handle billing and other communications related to your loans. References to "your loan holder" on this form mean either your loan holder or your servicer.
- **Loan discharge** due to school closure cancels your obligation (and any endorser's obligation, if applicable) to repay the remaining portion on a Direct Loan, FFEL, or Perkins Program loan, and qualifies you for reimbursement of any amounts paid voluntarily or through forced collection on the loan. For consolidation loans, only the amount of the underlying loans that were used to pay for the program of study listed in Section 2 will be considered for discharge. The loan holder reports the discharge to all credit reporting agencies to which the holder previously reported the status of the loan and removes any adverse credit history previously associated with the loan.
- The **student** refers to the student for whom a parent borrower obtained a Direct PLUS Loan or Federal PLUS Loan.
- **Program of study** means the instructional program leading to a degree or certificate in which you (or, for parent PLUS borrowers, the student) were enrolled.
- **School** means the school's main campus, or any location or branch of the main campus.
- **Teach-out agreement** means a written agreement between schools that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if a school ceases to operate before all students have completed their program of study.
- **Third party** refers to any entity that may provide reimbursement for a refund owed by the closed school, such as a State or other entity offering a tuition recovery program or a holder of a performance bond.

## SECTION 6: TERMS AND CONDITIONS FOR LOAN DISCHARGE BASED ON SCHOOL CLOSURE

- You are only eligible for this form of discharge if you received the loan on which you are requesting discharge on or after January 1, 1986.
- You are only eligible for this form of discharge if the location or campus that you were attending closed. If you were taking distance education classes, you are only eligible for discharge if the main campus of your school closed.
- You must have been enrolled at the closed school or on an approved leave of absence on the date that the school closed, or withdrawn from the school not more than 120 days before it closed to be eligible for this form of discharge.
- If you withdrew more than 120 days before the school closed, you may be eligible for this form of discharge if the Department determines that exceptional circumstances related to the school's closing justify an extension of this 120-day period. Examples of exceptional circumstances include, but are not limited to: (1) the closed school's loss of accreditation; (2) the closed school's discontinuation of the majority of its academic programs; (3) action by the State to revoke the closed school's license to operate or award academic credentials in the State; or (4) a finding by a State or Federal government agency that the closed school violated State or Federal law.



## SECTION 6: TERMS AND CONDITIONS FOR LOAN DISCHARGE BASED ON SCHOOL CLOSURE (CONTINUED)

- By signing this form, you are agreeing to provide, upon request, testimony, a sworn statement, or other documentation reasonably available to you that demonstrates to the satisfaction of the Department or its designee that you meet the qualifications for loan discharge based on school closure, or that supports any representation that you made on this form or any accompanying documents.
- By signing this form, you are agreeing to cooperate with the Department or the Department's designee in any enforcement action related to this application.
- This application may be denied, or your discharge may be revoked, if you fail to provide testimony, a sworn statement, or documentation upon request, or if you provide testimony, a sworn statement, or documentation that does not support the material representation that you made on this form or on any accompanying documents.

## SECTION 7: WHERE TO SEND THE COMPLETED FORM

Return the completed form and any required documentation to:  
(If no address is shown, return to your loan holder.)

If you need help completing this form, call:  
(If no telephone number is shown, call your loan holder.)

## SECTION 8: IMPORTANT NOTICES

**Privacy Act Notice.** The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authorities for collecting the requested information from and about you are §421 *et seq.*, §451 *et seq.* and §461 *et seq.* of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 *et seq.*, 20 U.S.C. 1087a *et seq.*, and 20 U.S.C. 1087aa *et seq.*) and the authorities for collecting and using your Social Security Number (SSN) are §§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 20 U.S.C. 1091(a)(4)) and 31 U.S.C. 7701(b).

Participating in the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, or the Federal Perkins Loan (Perkins Loan) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under the Direct Loan, FFEL, or Perkins Loan Programs, to permit the servicing of your loan(s), and, if it becomes necessary, to locate you and to collect and report on your loan(s) if your loan(s) becomes delinquent or defaults. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the

appropriate systems of records notices. The routine uses of this information include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to consumer reporting agencies, to financial and educational institutions, and to guaranty agencies in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loan(s), to enforce the terms of the loan(s), to investigate possible fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to state agencies. To provide financial aid history information, disclosures may be made to educational institutions. To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student enrollment statuses, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary

to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

**Paperwork Reduction Notice.** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0058. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain a benefit (34 CFR 682.402(e)(3), or 685.215(c)). If you have comments or concerns regarding the status of your individual submission of this form, **contact your loan holder(s) (see Section 7) directly.**

# Exhibit 9





TPD-APP

## DISCHARGE APPLICATION: TOTAL AND PERMANENT DISABILITY IMPORTANT INFORMATION

- William D. Ford Federal Direct Loan Program
- Federal Family Education Loan Program
- Federal Perkins Loan Program
- TEACH Grant Program

### READ THIS FIRST

- This is an application for a total and permanent disability discharge of your William D. Ford Federal Direct Loan (Direct Loan) Program, Federal Family Education Loan (FFEL) Program, and/or Federal Perkins Loan (Perkins Loan) Program loan(s), and/or your Teacher Education Assistance for College and Higher Education (TEACH) Grant Program service obligation.
- You only need to submit a single application to the U.S. Department of Education to apply for discharge of all of your Direct Loan, FFEL, and/or Perkins Loan program loans and your TEACH Grant service obligations. **Throughout this application, the words "we," "us," and "our" refer to the U.S. Department of Education.**
- To qualify for this discharge, you must meet **one** of the following requirements:
  1. You are a veteran who has been determined by the U.S. Department of Veterans Affairs (VA) to be **unemployable due to a service-connected disability**, and you provide documentation from the VA of that determination;  
**OR**
  2. You have received a Social Security Administration (SSA) notice of award for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) stating that **your next scheduled disability review will be 5 to 7 years or more from the date of your last SSA disability determination**, and you provide a copy of that SSA notice of award.  
**OR**
  3. You provide a certification from a physician in Section 4 of this Discharge Application that you are unable to engage in any substantial gainful activity (see definition in Section 5) by reason of a medically determinable physical or mental impairment that:
    - Can be expected to result in death;
    - Has lasted for a continuous period of not less than 60 months; or
    - Can be expected to last for a continuous period of not less than 60 months.
- If you do not meet requirement #1 or requirement #2, you may qualify for discharge by obtaining a certification from a physician in Section 4 of this application, as described above for requirement #3. If you can provide the documentation to show that you meet requirement #1 or #2 above, you are **not** required to have a physician complete Section 4.
- If you are a veteran applying for discharge under requirement #1, you must provide documentation from the VA showing that the VA has determined that you are unemployable due to a **service-connected** disability. You do not meet this requirement if your disability is not service-connected. The following two types of VA determinations meet this requirement: (1) a determination that you have a service-connected disability (or disabilities) that is 100% disabling; or (2) a determination that you are totally disabled based on an individual unemployability determination.
- If you are applying for discharge under requirement #2, the SSA notice of award that you provide must show that your next scheduled disability review will be **5 to 7 years or more from the date of your last SSA disability determination**. You do not meet this requirement if the notice of award states that your next scheduled disability review will be within less than 5 years. If the notice of award does not clearly state the date of your next scheduled review, contact the SSA office that issued the award and request a Benefits Planning Query (BPQY). The BPQY provides a summary of your SSA disability benefits, including the scheduled date for your next disability review. If your BPQY shows that your next scheduled review will be 5 to 7 years or more from the date of your last SSA disability determination, you may submit a copy of your BPQY to show that you meet requirement #2.
- If you are granted a discharge based on requirement #2 or requirement #3, we will monitor your status during a 3-year post-discharge monitoring period. Your discharged loans or TEACH Grant service obligation may be reinstated if you do not meet certain requirements during this period, as explained in Section 6 of this form.
- Except for VA or SSA determinations as described above (requirements #1 and #2), a disability determination by another federal or state agency does not qualify you for this discharge.
- Loan amounts discharged due to total and permanent disability may be considered taxable income by the Internal Revenue Service (IRS). Contact the IRS for more information.
- If you wish to designate an individual or organization to represent you in matters related to your total and permanent disability discharge request, you must complete the Total and Permanent Disability: Applicant Representative Designation form. You may obtain this form from our Total and Permanent Disability Discharge Servicer (see below for contact information).
- Before submitting your application, make sure that Section 3 and (if required) Section 4 include all requested information. Incomplete or inaccurate information may cause your application to be delayed or rejected.

### WHERE TO SEND YOUR COMPLETED DISCHARGE APPLICATION

Send your completed application with any required documentation (see the instructions in Section 2 on page 2) to the following address:

U.S. Department of Education  
TPD Servicing  
PO Box 87130  
Lincoln, NE 68501-7130

If you need help completing this form, contact our Total and Permanent Disability Discharge Servicer:

Phone: 1-888-303-7818

E-Mail: [disabilityinformation@nelnet.net](mailto:disabilityinformation@nelnet.net)

Web site: [www.disabilitydischarge.com](http://www.disabilitydischarge.com)



## DISCHARGE APPLICATION: TOTAL AND PERMANENT DISABILITY

William D. Ford Federal Direct Loan, Federal Family Education Loan, Federal Perkins Loan, and TEACH Grant Programs

**WARNING:** Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying documents will be subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

### SECTION 1: APPLICANT IDENTIFICATION

Please enter or correct the following information.

☐ Check this box if any of your information has changed.

SSN  -  -

DOB  -  -

Name

Address

City, State, Zip Code

Telephone (  )

E-mail Address (Optional)

### SECTION 2: INSTRUCTIONS FOR COMPLETING AND SUBMITTING THIS APPLICATION

- Carefully read the entire application, including page 1, the instructions in this section, and the additional information on the following pages.
- Type or print in dark ink. Sign and date the application in Section 3. If you are required to have a physician complete Section 4, enter your name and Social Security Number at the top of page 2 (if not preprinted).
- Send the completed application with any required documentation to:

**U.S. Department of Education, TPD Servicing, PO Box 87130, Lincoln, NE 68501-7130**

- Are you a veteran who has received a determination from the U.S. Department of Veterans Affairs (VA) that you are **unemployable due to a service-connected disability**?  
☐ Yes – Attach documentation of the VA determination and complete Section 3. **You are not required to have a physician complete Section 4.**  
☐ No – Continue to Item 2.
- Have you received an SSA notice of award for SSDI or SSI benefits or an SSA Benefits Planning Query (BPQY) stating that **your next scheduled disability review will be 5 to 7 years or more from the date of your last SSA disability determination**?  
☐ Yes – Attach a copy of the SSA notice of award or BPQY and complete Section 3. **You are not required to have a physician complete Section 4.**  
☐ No – Complete Section 3 and **have a physician who is a doctor of medicine or osteopathy complete and sign Section 4. You must submit this application to us within 90 days of the date of your physician's signature in Section 4.**

### SECTION 3: APPLICANT'S DISCHARGE REQUEST, AUTHORIZATION, UNDERSTANDINGS, AND CERTIFICATIONS

I **request** that the U.S. Department of Education discharge my Direct Loan, FFEL, and/or Perkins Loan, program loan(s), and/or my TEACH Grant service obligation.

I **authorize** any physician, hospital, or other institution having records about the disability that is the basis for my request for a discharge to make information from those records available to the U.S. Department of Education.

I **understand** that:

- If I am applying for discharge based on a physician's certification in Section 4, I must submit this application to the U.S. Department of Education within 90 days of the date of my physician's signature in Section 4.
- Unless I am a veteran who provides the documentation described above in Section 2, Item 1, I may be required to repay a discharged loan or satisfy a discharged TEACH Grant service obligation if I fail to meet certain requirements during a post-discharge monitoring period, as explained in Section 6.
- If I am a veteran who does not meet the requirement described above in Section 2, Item 1, and I have obtained a certification from a physician in Section 4, the certification by the physician on this form is only for the purposes of establishing my eligibility to receive a discharge of a Direct Loan Program loan, a FFEL Program Loan, a Perkins Loan Program loan, and/or a TEACH Grant service obligation, and is not for purposes of determining my eligibility for, or the extent of my eligibility for, VA benefits.
- If I wish to designate an individual or organization to represent me in matters related to my total and permanent disability discharge request, I must complete and submit the Total and Permanent Disability Discharge: Applicant Representative Designation form.

I **certify** that: **(1)** I have a total and permanent disability, as defined in Section 5; and **(2)** I have read and understand the information on the discharge process, the terms and conditions for discharge, and the eligibility requirements to receive future loans or TEACH Grants as explained in Sections 6 and 7.

Signature of Applicant or Applicant's Representative (see NOTE below)

Date

Printed Name of Representative (if applicable)

**NOTE:** You may designate an individual or organization to represent you in matters related to your total and permanent disability discharge request. If you wish to designate a representative, you must complete the Total and Permanent Disability: Applicant Representative Designation form. You may obtain this form from our Total and Permanent Disability Discharge Servicer. See the "Read This First" section of this form for contact information.

Applicant Name: \_\_\_\_\_ Applicant SSN: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

#### SECTION 4: PHYSICIAN'S CERTIFICATION

##### Information and Instructions for Physician:

- The applicant identified above is applying for a discharge of a federal student loan and/or a teaching service obligation for a federal grant on the basis that he or she has a total and permanent disability, as defined in Section 5 of this form. To qualify for a discharge, the applicant must be unable to engage in any substantial gainful activity (as defined below and in Section 5) by reason of a medically determinable physical or mental impairment that **(1)** can be expected to result in death; or **(2)** has lasted for a continuous period of not less than 60 months; or **(3)** can be expected to last for a continuous period of not less than 60 months. This disability standard may be different from standards used under other programs in connection with occupational disability, or eligibility for social service or veterans benefits. A determination that the applicant is disabled by another federal agency (for example, the Social Security Administration) or a state agency does not automatically establish the applicant's eligibility for this loan discharge.
- Complete this form only if you are a doctor of medicine or osteopathy legally authorized to practice in a state, as defined in Section 5, and only if the applicant's condition meets the definition of total and permanent disability in Section 5.
- Print legibly in dark ink or type. All fields must be completed. If a field is not applicable, enter "N/A." Your signature date must include month, day, and year (mm-dd-yyyy).**
- Provide all requested information for Items 1, 2, and 3 below, and attach additional pages if necessary. Complete the physician's certification at the bottom of this page. The applicant's loan discharge application cannot be processed if the information requested in this section is missing or if your signature is missing.
- If you make any changes to the information you provide in this section, you must initial each change.
- Please return the completed form to the applicant or the applicant's representative.** The U.S. Department of Education may contact you for additional information or documentation.

**1. Medically Determinable Physical or Mental Impairment.** Does the applicant have a medically determinable physical or mental impairment that **(a)** prevents the applicant from engaging in any substantial gainful activity, in any field of work, and **(b)** can be expected to result in death, or has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months?

☐ Yes ☐ No

**Substantial gainful activity** means a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both. *If the applicant is able to engage in any substantial gainful activity, in any field of work, you must answer "No." The determination of whether or not the applicant can perform substantial gainful activity is not based on whether the applicant can perform his or her current or past job or profession.*

**IF THE ANSWER TO QUESTION 1 IS NO, DO NOT COMPLETE THIS APPLICATION.**

**2. Disabling Condition.** Complete Items **(a)** and **(b)** regarding the applicant's disabling impairment. **Do not use abbreviations or insurance codes.**

**(a)** Provide your diagnosis of the applicant's impairment: \_\_\_\_\_

**(b)** Describe the severity of the disabling physical or mental impairment, including, if applicable, the phase of the disabling condition: \_\_\_\_\_

**3. Limitations.** Explain how the disabling condition prevents the applicant from engaging in substantial gainful activity in any field of work by responding to Items **(a)** through **(e)** below, as relevant to the applicant's condition. Attach additional pages if more space is needed.

In addition to what is required below, you may include any additional information that you believe would be helpful in understanding the applicant's condition, such as medications used to treat the condition, surgical and non-surgical treatments for the condition, etc.

**(a)** Limitations on sitting, standing, walking, or lifting: \_\_\_\_\_

**(b)** Limitations on activities of daily living: \_\_\_\_\_

**(c)** Residual functionality: \_\_\_\_\_

**(d)** Social/behavioral limitations, if any: \_\_\_\_\_

**(e)** Current Global Assessment Function Score (for psychiatric conditions): \_\_\_\_\_

##### Physician's Certification

- I certify** that, in my best professional judgment, the applicant identified above is unable to engage in any substantial gainful activity in *any* field of work by reason of a medically determinable physical or mental impairment that **(1)** can be expected to result in death; or **(2)** has lasted for a continuous period of not less than 60 months; or **(3)** can be expected to last for a continuous period of not less than 60 months.
- I understand** that an applicant who is currently able to engage in any substantial gainful activity in *any* field of work does not have a total and permanent disability as defined on this form.

I am a doctor of (check one) ☐ medicine ☐ osteopathy/osteopathic medicine.

I am legally authorized to practice in the state identified below and I have provided my professional license number below.

State Where Legally Authorized to Practice \_\_\_\_\_

Professional License Number (stamp is acceptable; subject to verification through state records) \_\_\_\_\_

Physician's Signature (a signature stamp is not acceptable) \_\_\_\_\_

Date (mm-dd-yyyy) \_\_\_\_\_

Printed Name of Physician (first name, middle initial, last name) \_\_\_\_\_

Address (stamp is acceptable) \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

( ) \_\_\_\_\_

( ) \_\_\_\_\_

Telephone \_\_\_\_\_

Fax \_\_\_\_\_

E-mail Address (Optional) \_\_\_\_\_

## SECTION 5: DEFINITIONS

- If you have a **total and permanent disability**, this means that:

- (1) You are unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death, or that has lasted for a continuous period of not less than 60 months, or that can be expected to last for a continuous period of not less than 60 months; **OR**
- (2) You are a veteran who has been determined by the VA to be **unemployable due to a service-connected disability**.

### IMPORTANT INFORMATION ABOUT THE DEFINITION OF “TOTAL AND PERMANENT DISABILITY”:

To demonstrate that you have a total and permanent disability in accordance with paragraph (1) of this definition, you must either (a) provide a copy of an SSA notice of award for SSDI or SSI benefits or an SSA Benefits Planning Query (BPQY) stating that your next scheduled disability review will be 5 to 7 years from the date of your last SSA disability determination, or (b) have a physician who is a doctor of medicine or osteopathy complete Section 4 of this application.

To demonstrate that you have a total and permanent disability in accordance with paragraph (2) of this definition, you must provide documentation of a determination from the VA that you are unemployable due to a service-connected disability. See page 1 of this form for more information on acceptable documentation.

The above definition of “total and permanent disability” may differ from disability standards used by other federal agencies. Except for certain individuals who have received SSA notices of award for SSDI or SSI benefits, as explained above, or for certain veterans, a disability determination by another federal or state agency does not establish your eligibility for a discharge of your loan(s) and/or TEACH Grant service obligation due to a total and permanent disability.

- **Substantial gainful activity** means a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.
- A **discharge of a loan** due to a total and permanent disability cancels your obligation (and, if applicable, an endorser’s obligation) to repay the remaining balance on your Direct Loan, FFEL, and/or Perkins Loan program loans. A **discharge of a TEACH Grant service obligation** cancels your obligation to complete the teaching service that you agreed to perform as a condition for receiving a TEACH Grant.
- The **post-discharge monitoring period** begins on the date we grant a discharge of your loan(s) or TEACH Grant service obligation and lasts for three years. If you fail to meet certain conditions at any time during or at the end of the post-discharge monitoring period, we will reinstate your obligation to repay your loan(s) or complete your TEACH Grant service. See Section 6 for more information.  
**Note to Veterans:** The post-discharge monitoring period does not apply if you are a veteran who receives a discharge based on a determination from the VA that you are unemployable due to a service-connected disability.
- The **William D. Ford Federal Direct Loan (Direct Loan) Program** includes Federal Direct Stafford/Ford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford/Ford Loans (Direct Unsubsidized Loans), Federal Direct PLUS Loans (Direct PLUS Loans), and Federal Direct Consolidation Loans (Direct Consolidation Loans).
- The **Federal Family Education Loan (FFEL) Program** includes Federal Stafford Loans (both subsidized and unsubsidized), Federal Supplemental Loans for Students (SLS), Federal PLUS Loans, and Federal Consolidation Loans.
- The **Federal Perkins Loan (Perkins Loan) Program** includes Federal Perkins Loans, National Direct Student Loans (NDSL), and National Defense Student Loans (Defense Loans).
- The **Teacher Education Assistance for College and Higher Education (TEACH) Grant Program** provides grants to students who agree to teach full time for at least four years in high-need fields in low-income elementary or secondary schools as a condition for receiving the grant funds. If a TEACH Grant recipient does not complete the required teaching service within eight years after completing the program of study for which the TEACH Grant was received, the TEACH Grant funds are converted to a Direct Unsubsidized Loan that the grant recipient must repay in full, with interest, to the U.S. Department of Education.
- The **holder** of your FFEL Program loan(s) may be a lender, a guaranty agency, or the U.S. Department of Education. The holder of your Perkins Loan Program loan(s) may be a school you attended or the U.S. Department of Education. The holder of your Direct Loan Program loan(s) and/or your TEACH Grant Agreement to Serve (if you received a TEACH Grant) is the U.S. Department of Education. Your loan holder may use a servicer to handle billing and other matters related to your loan. The term “holder” as used on this application means either your loan holder or, if applicable, your loan servicer.
- The term “**state**” for purposes of the physician’s certification in Section 4 (the physician must be licensed to practice in a state) includes the 50 United States, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
- A **representative** is a member of your family, your attorney, a law firm or legal aid society, or another individual or organization authorized to act on your behalf in connection with your total and permanent disability discharge application.

## SECTION 6: DISCHARGE PROCESS / ELIGIBILITY REQUIREMENTS / TERMS AND CONDITIONS FOR DISCHARGE (continues on next page)

### APPLYING FOR DISCHARGE (ALL APPLICANTS):

1. **Submission of discharge application.** After you submit your completed discharge application and any required documentation to us, we will send you a notice that will:
  - Acknowledge receipt of your application;
  - Explain the process for our review of total and permanent disability discharge applications; and
  - Inform you that your loan holders will suspend collection activity or continue the previous suspension of collection activity on your loans while we review your application for discharge (you are not required to make any payments on your loans during this period).
2. **Consequences of failure to submit discharge application.** If you do not submit an application for total and permanent disability discharge to us within 120 days of notifying us that you intend to submit an application, collection activity will resume on your loans, and your loan holder may capitalize any unpaid interest that accrued during the 120-day period. This means that the unpaid interest will be added to the principal balance of your loans, and interest will then be charged on the increased loan principal amount. However, if you have a FFEL Program loan and the loan holder is a guaranty agency, or if you have a Federal Perkins Loan, unpaid interest will not be capitalized at the end of the 120-day period.



## **SECTION 6: DISCHARGE PROCESS / ELIGIBILITY REQUIREMENTS / TERMS AND CONDITIONS FOR DISCHARGE (continued)**

### **DISCHARGE PROCESS FOR VETERANS WHO HAVE BEEN DETERMINED BY THE VA TO BE UNEMPLOYABLE DUE TO A SERVICE-CONNECTED DISABILITY:**

- 1. Our review of your discharge application.** We will review the documentation from the VA to determine if you are totally and permanently disabled as described in paragraph (2) of the definition of “total and permanent disability” in Section 5 of this application.
- 2. Determination of eligibility or ineligibility for discharge.** If we determine that you are totally and permanently disabled, you will be notified that your loans and/or TEACH Grant service obligation has been discharged. The discharge will be reported to nationwide consumer reporting agencies, and any loan payments received on your loan on or after the effective date of the determination by the VA that you are unemployable due to a service-connected disability will be refunded to the person who made the payments.

If we determine that you are **not** totally and permanently disabled, you will be notified of that determination. The notification will include:

- The reason or reasons for the denial of your discharge application;
- An explanation that your loans are due and payable to the loan holder under the terms of the promissory note that you signed and that your loans will return to the status they were in at the time you applied for a total and permanent disability discharge;
- An explanation that your loan holder will notify you of the date you must resume making payments on your loans; and
- An explanation that if you applied for a discharge of a TEACH Grant service obligation, you must comply with all terms and conditions of your TEACH Grant Agreement to Serve.

The notification will also explain your ability to request reconsideration of this determination or to submit a new discharge application:

- You may request that we re-evaluate your discharge application if, within 12 months of the date of the notification from us that you are ineligible for discharge, you provide us with additional documentation from the VA that supports your eligibility for discharge (you do not have to submit a new application); or
- If the documentation from the VA does not indicate that you are unemployable due to a service-connected disability, you may reapply for discharge under the “Discharge Process For All Other Applicants,” as described below (you must submit a new application with the required documentation from the SSA or a physician’s certification in Section 4).

### **DISCHARGE PROCESS FOR ALL OTHER APPLICANTS:**

- 1. Our review of your discharge application.** If you submit a discharge application supported by an award of benefits notice from the SSA or an SSA Benefits Planning Query (BPQY), we will review the SSA notice of award (or BPQY) to determine if it meets the requirements described in Section 2, Item 2 of this form. If you submit a discharge application supported by a physician’s certification in Section 4 of this application, we will review the physician’s certification and any accompanying documentation to determine if you are totally and permanently disabled as described in paragraph (1) of the definition of “total and permanent disability” in Section 5 of this application. We may also contact your physician for additional information, or may arrange for an additional review of your condition by an independent physician at our expense. Based on the results of this review, we will determine your eligibility for discharge.

If we determine during our review of your application that you received a Direct Loan or Perkins Loan program loan, or a TEACH Grant before the date we received the SSA notice of award (or BPQY) or before the date the physician certified your application in Section 4, and a disbursement of that loan or grant is made after that date, but before we have granted a discharge, we will suspend processing of your discharge request until you ensure that the full amount of the disbursement is returned to the loan holder or (for a TEACH Grant) to us.

If you apply for a total and permanent disability discharge and we determine as part of its review that a new Direct Loan or Perkins Loan program loan or a new TEACH Grant was made to you on or after the date we received the SSA notice of award (or BPQY) or the date the physician certified your application in Section 4, and before the date we grant a discharge, we will deny your discharge request. Collection will resume on your loans and you will again be responsible for complying with the terms and conditions of your TEACH Grant Agreement to Serve.

- 2. Determination of eligibility or ineligibility for discharge.** If we determine that you are totally and permanently disabled, we will notify you that a discharge has been approved, and that you will be subject to a post-discharge monitoring period for three years beginning on the discharge date. The notification of discharge will explain the terms and conditions under which we will reinstate your obligation to repay your loan or to complete your TEACH service, as described in Item 3, below. The discharge will be reported to nationwide consumer reporting agencies, and any loan payments that were received after the date we received the SSA notice of award for SSDI or SSI benefits (or BPQY) or after the date the physician certified your discharge application will be returned to the person who made the payments.

If we determine that you are **not** totally and permanently disabled, we will notify you of that determination. The notification will include:

- The reason or reasons for the denial of your discharge application;
- An explanation that your loans are due and payable to the loan holder under the terms of the promissory note that you signed and that your loans will return to the status that would have existed if your total and permanent disability discharge application had not been received;
- An explanation that your loan holder will notify you of the date you must resume making payments on your loans;
- An explanation that if you applied for a discharge of a TEACH Grant service obligation, you must comply with all terms and conditions of your TEACH Grant Agreement to Serve;
- An explanation that you are not required to submit a new total and permanent disability discharge application if, within 12 months of the date of our notification to you that you are ineligible for discharge, you provide additional information regarding your disabling condition that supports your eligibility for discharge, and you request that we re-evaluate your discharge application; and
- An explanation that if you do not request re-evaluation of your prior discharge application within 12 months of the date of our notification of ineligibility for discharge, and you still wish to have us re-evaluate your eligibility for a total and permanent disability discharge, you must submit a new total and permanent disability discharge application to us.
- If you request a re-evaluation of your total and permanent disability discharge application or submit a new total and permanent disability discharge application, as described above, your request must include new information regarding your disabling condition that was not provided to us in connection with your prior application for discharge.

## **SECTION 6: DISCHARGE PROCESS / ELIGIBILITY REQUIREMENTS / TERMS AND CONDITIONS FOR DISCHARGE (continued)**

- 3. Post-discharge monitoring period.** If you are granted a discharge, we will monitor your status during the 3-year post-discharge monitoring period that begins on the date the discharge is granted. We will reinstate the requirement for you to repay your loans and/or complete your TEACH Grant service if, at any time during or at the end of the post-discharge monitoring period, you:
- Receive annual earnings from employment that exceed the poverty guideline amount (see **Note** below) for a family of two in your state, regardless of your actual family size;
  - Receive a new loan under the Direct Loan Program or the Perkins Loan Program, or a new TEACH Grant;
  - Receive a disbursement of a Direct Loan Program or Perkins Loan Program loan or a TEACH Grant that was initially disbursed prior to your discharge date and you fail to ensure that the disbursement is returned to the loan holder or (for a TEACH Grant) to us within 120 days of the disbursement date; or
  - Receive a notice from the SSA indicating that you are no longer disabled or that your continuing disability review will no longer be the 5- to 7-year period indicated in the SSA notice of award for SSDI or SSI benefits or BPQY.

During the 3-year post-discharge monitoring period, you (or your representative) must:

- Promptly notify us of any changes in your address or telephone number;
- Promptly notify us if your annual earnings from employment exceed the poverty guideline amount for a family of two in your state (see **Note** below), regardless of your actual family size;
- Upon request, provide us with documentation of your annual earnings from employment, on a form that we will provide; and
- Promptly notify us if you receive a notice from the SSA indicating that you are no longer disabled or that your continuing disability review will no longer be the 5- to 7-year period indicated in the SSA notice of award for SSDI or SSI benefits or BPQY (after you had been previously determined to be disabled by the SSA, were receiving SSDI or SSI benefits, and had a continuing disability review period of 5 to 7 years or more from the date of your last SSA disability determination).

**Note:** The poverty guideline amounts are updated annually and may be obtained at <http://aspe.hhs.gov/poverty>. We will notify you of the current poverty guideline amounts during each year of the post-discharge monitoring period.

- 4. Reinstatement of obligation to repay discharged loans or complete discharged TEACH Grant service obligation.** If you do not meet the requirements described above in Item 3 at any time during or at the end of the post-discharge monitoring period, we will reinstate your obligation to repay your loans and/or to complete your TEACH Grant service. If your loans are reinstated, you will be responsible for repaying your loans to us in accordance with the terms of your promissory note(s). Your loans will be returned to the status that would have existed if we had not received your total and permanent disability discharge application. However, you will not be required to pay interest on your loans for the period from the date of the discharge until the date your repayment obligation was reinstated. We will be your loan holder. If your TEACH Grant service obligation is reinstated, you will again be subject to the requirements of your TEACH Grant Agreement to Serve. If you do not meet the terms of that agreement and the TEACH Grant funds you received are converted to a Direct Unsubsidized Loan, you must repay that loan in full, and interest will be charged from the date(s) that the TEACH Grant funds were disbursed.

If your obligation to repay your loans or to complete your TEACH Grant service is reinstated, we will notify you of the reinstatement. This notification will include:

- The reason or reasons for the reinstatement;
- For loans, an explanation that the first payment due date on the loan following the reinstatement will be no earlier than 60 days following the date of the notification of reinstatement; and
- Information on how you may contact us if you have questions about the reinstatement, or if you believe that your obligation to repay a loan or complete TEACH Grant service was reinstated based on incorrect information.

## **SECTION 7: ELIGIBILITY REQUIREMENTS TO RECEIVE FUTURE LOANS OR TEACH GRANTS**

### **FOR VETERANS WHO RECEIVE A TOTAL AND PERMANENT DISABILITY DISCHARGE BASED ON A DETERMINATION BY THE VA THAT THEY ARE UNEMPLOYABLE DUE TO A SERVICE-CONNECTED DISABILITY:**

If you are a veteran who is granted a **discharge** based on a determination that you are totally and permanently disabled as described in paragraph (2) of the definition of “total and permanent disability” in Section 5 of this application, you are not eligible to receive future loans under the Direct Loan Program or the Perkins Loan Program, or future TEACH Grants, unless:

- You obtain a certification from a physician that you are able to engage in substantial gainful activity; and
- You sign a statement acknowledging that the new loan or TEACH Grant service obligation cannot be discharged in the future on the basis of any injury or illness present at the time the new loan or TEACH Grant is made, unless your condition substantially deteriorates so that you are again totally and permanently disabled.

### **FOR ALL OTHER INDIVIDUALS WHO RECEIVE A TOTAL AND PERMANENT DISABILITY DISCHARGE:**

If you are granted a **discharge** based on a determination that you are totally and permanently disabled in accordance with paragraph (1) of the definition of “total and permanent disability” in Section 5 of this application, you are not eligible to receive future loans under the Direct Loan Program or the Perkins Loan Program, or future TEACH Grants, unless:

- You obtain a certification from a physician that you are able to engage in substantial gainful activity;
- You sign a statement acknowledging that the new loan or TEACH Grant service obligation cannot be discharged in the future on the basis of any injury or illness present at the time the new loan or TEACH Grant is made, unless your condition substantially deteriorates so that you are again totally and permanently disabled; and

If you request a Direct Loan Program or Perkins Loan Program loan, or a new TEACH Grant, within three years of the date that a previous loan or TEACH Grant was discharged, you resume payment on the previously discharged loan or acknowledge that you are once again subject to the terms of the TEACH Grant Agreement to Serve before receiving the new loan.

## SECTION 8: IMPORTANT NOTICES

**Privacy Act Notice.** The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authorities for collecting the requested information from and about you are §421 *et seq.*, §451 *et seq.*, §461 *et seq.*, and §420L *et seq.* of the Higher Education Act of 1965, as amended (the HEA) (20 U.S.C. 1071 *et seq.*, 20 U.S.C. 1087a *et seq.*, 20 U.S.C. 1087aa *et seq.*, and 20 U.S.C. 1070g *et seq.*) and the authorities for collecting and using your Social Security Number (SSN) are §§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 1091(a)(4)) and §31001(i)(1) of the Debt Collection Improvement Act of 1996 (31 U.S.C. 7701(c)). Participating in the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Perkins Loan (Perkins Loan) Program, and/or the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a FFEL, Direct Loan, and/or Perkins Loan program loan or a TEACH Grant, to receive a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) or a discharge of a TEACH Grant service obligation, to permit the servicing of your loan(s) or TEACH Grant(s), and, if it becomes necessary, to locate you and to collect and report on your loan(s) if your loan(s) become delinquent or in default. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the appropriate systems of records notices.

For a loan or for a TEACH Grant that has not been converted to a Direct Unsubsidized Loan, the routine uses of the information that we collect about you include, but are not limited to, its disclosure to federal, state, or local agencies, to institutions of higher education, and to third party servicers to determine your eligibility to receive a loan or a TEACH Grant, to investigate possible fraud, and to verify compliance with federal student financial aid program regulations.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

For a loan, including a TEACH Grant that has been converted to a Direct Unsubsidized Loan, the routine uses of this information also include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to creditors, to financial and educational institutions, and to guaranty agencies to verify your identity, to determine your program eligibility and benefits, to permit making, servicing, assigning, collecting, adjusting, or discharging your loan(s), to enforce the terms of the loan(s), to investigate possible fraud and to verify compliance with federal student financial aid program regulations, to locate you if you become delinquent in your loan payments or if you default, or to verify whether your debt qualifies for discharge or cancellation. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state or local agencies. To provide financial aid history information, disclosures may be made to educational institutions. To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student enrollment status, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

**Paperwork Reduction Notice.** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 0.5 hours (30 minutes) per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the information collection. Individuals are obligated to respond to this collection to obtain a benefit in accordance with 34 CFR 674.61(b) or (c), 34 CFR 682.402(c)(2) or (c)(9), 34 CFR 685.213(b) or (c), and 34 CFR 686.42(b). Send comments regarding the burden estimate(s) or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20210-4537, or e-mail [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) and reference OMB Control Number 1845-0065. **IMPORTANT: Do NOT return the completed Discharge Application to this address. If you return the completed form to this address, it will delay the processing of your application.**

If you have comments or concerns regarding the status of your individual submission of this form, contact the U.S. Department of Education at 1-888-303-7818.

# Exhibit 10

October 25, 2013

Dolores M. Iannarone  
300 East Main Street, Suite 3  
Smithtown, NY 11787

Re: [REDACTED] Discharge Application  
SSN: [REDACTED]  
04-cv-1151 EDNY

Dear Ms. Dolores M. Iannarone

We spoke earlier this month about this case which is currently in federal court. Mr. [REDACTED] contacted us regarding a wage garnishment order that he received from the court. We in turned looked into whether there was a way to deal with this loan that has gone to judgment. As I mentioned earlier, we believe he is eligible for a loan discharge for false certification (ability to benefit). Please find the enclosed application Exhibit A, which we ask you to forward to your client.

Mr. [REDACTED] is currently in default on a student loan used to finance his purported education at Berk Trade School, Inc. ("Berk"). Mr. [REDACTED] was at Berk in 1988 and 1989. On 20 January, 2005, a default judgment was entered against Mr. [REDACTED], and on 24 July, 2013, a writ of garnishment was issued against Mr. [REDACTED] employer, The Home Depot, Inc.

Mr. [REDACTED] is applying for a discharge of this student loan because Berk never administered an Ability to Benefit test, as required by 34 CFR 668.32(e)(5).

As you can see from Mr. [REDACTED] affidavit (dated October 8, 2013 and attached as Exhibit B), Mr. [REDACTED] never obtained either a high school diploma or a GED. Indeed, he only finished the eighth grade in Jamaica. See Mr. [REDACTED] Affidavit. His work history, as a laborer and now as a stock person and helper at Home Depot, is consistent with his limited education.

Because he lacked a high school diploma or GED, Berk was required to administer an Ability to Benefit (ATB) test in order to certify Mr. [REDACTED] eligibility for Title IV HEA program assistance. Berk failed to administer this test. See Mr. [REDACTED] Affidavit.

South Brooklyn Legal Services  
105 Court Street, 3<sup>rd</sup> Floor Brooklyn, NY 11201  
Phone: 718-237-5500 Fax: 718-855-0733 www.sbls.org  
John C. Gray, Project Director

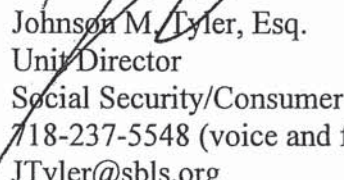
Towards justice and dignity for all – Por la Justicia y Dignidad de Todos



His claim is completely credible. The US Department of Education found widespread fraud by Berk with respect to ATB testing. I have attached a one page summary of a much larger study that your client, the DOE, conducted concerning Berk. Exhibit C. The study examined ATB testing by Berk from 1988 to 1991. It looked at 31 students' files. In 19 of the 31 files (61% of the time,) Berk did not give the test, or gave a faulty test, or altered the test results so it looked like the student passed the ATB test, or admitted the student after the student failed the test.. I obtained this test result from a colleague who obtained several hundreds of documents related to Berk from the DOE via a FOIA. The Email to the FOIA person at DOE that triggered the production of this one page report is part of Exhibit C.)

Thank you for forwarding this cover letter, along with the application, to your client so that they can fully evaluate Mr. [REDACTED] False Certification (ability to benefit) discharge application.

Sincerely Yours,



Johnson M. Tyler, Esq.  
Unit Director  
Social Security/Consumer Rights  
718-237-5548 (voice and fax)  
[JTylers@sbls.org](mailto:JTylers@sbls.org)



# LOAN DISCHARGE APPLICATION: FALSE CERTIFICATION (ABILITY TO BENEFIT)

Federal Family Education Loan Program / William D. Ford Federal Direct Loan Program

WARNING: Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying documents will be subject to penalties that may include fines, imprisonment or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

OMB No. 1845-0015  
Form Approved  
Exp. Date 10/31/2011

## SECTION 1: BORROWER IDENTIFICATION

Please enter or correct the following information.

SSN [REDACTED]  
Name [REDACTED]  
Address [REDACTED] Apt. 2A  
City, State, Zip Code BROOKLYN, NY 11218  
Telephone - Home [REDACTED]  
Telephone - Other ( )  
E-mail (optional)

## SECTION 2: STUDENT INFORMATION

Before completing this section, carefully read the entire form, including the instructions, definitions, and terms and conditions in Sections 4, 5, and 6 on this form. If you are a student borrower applying for loan discharge, begin with Item 3. If you are a parent borrower applying for a PLUS loan discharge, begin with Item 1.

1. Student Name (Last, First, MI): [REDACTED]
2. Student SSN: [REDACTED]
3. School Name: BERK TRADE & BUSINESS SCHOOL
4. School Address (street, city, state, zip code): 384 Atlantic Avenue, Brooklyn, NY 11217
5. Dates of attendance at the school: From [ ]-[ ]-[ ]-[ ]-[ ]-[ ] To [ ]-[ ]-[ ]-[ ]-[ ]-[ ]
6. Name of the program of study that you (or, for parent PLUS borrowers, the student) were enrolled in at the school:
7. Did you (or, for parent PLUS borrowers, the student) have a high school diploma or GED at the time of enrollment at the school?  
☐ Yes ☒ No NOTE: If Yes, you are not eligible for a loan discharge based on false certification of ability to benefit.
8. Did you (or, for parent PLUS borrowers, the student) receive a GED before completing the program of study at the school?  
☐ Yes ☒ No If Yes, date GED received: [ ]-[ ]-[ ]-[ ]-[ ]-[ ]
9. Before you (or, for parent PLUS borrowers, the student) were admitted to the school, did the school give an entrance examination to test your (or, for parent PLUS borrowers, the student's) ability to benefit from the program of study listed in Item 6?  
☐ Yes ☒ No ☐ Don't Know If No or Don't Know, go to Item 10.
- (a) Give the date of the test if you know it: [ ]-[ ]-[ ]-[ ]-[ ]-[ ]
- (b) Give the name of the test if you know it:
- (c) Give the score on the test if you know it:
- (d) Did anything appear improper about the way the test was given or scored? ☐ Yes ☐ No  
If Yes, explain in detail what appeared improper, and provide the name, telephone number and address of anyone who can support your statement (if you need more space, see the instructions in Section 4):

10. Did you (or, for parent PLUS borrowers, the student) complete a developmental or remedial program at the school?  
☐ Yes ☒ No ☐ Don't Know If Yes, list the program name, dates, courses, and grades earned:

11. Did the holder of your loan receive any money back (a refund) from the school on your behalf? ☐ Yes ☐ No ☒ Don't Know  
If Yes, give the amount and explain why the money was refunded:

12. Did you (or, for parent PLUS borrowers, the student) make any monetary claim with, or receive any payment from, the school or any third party (see definition in Section 5) in connection with enrollment or attendance at the school? ☐ Yes ☒ No ☐ Don't know If Yes, please provide the following information:

(a) Name/address/telephone number of the party with whom the claim was made or from whom payment was received:

(b) Amount/status of claim: (c) Amount of payment received: \$  
(Write "none" if no payment was received.)

## SECTION 3: BORROWER CERTIFICATION

My signature below certifies that I have read and agree to the terms and conditions that apply to this loan discharge, as specified in Section 6 on the following page. Under penalty of perjury, I certify that all of the information I have provided on this form and in any accompanying documentation is true and accurate to the best of my knowledge and belief.

Borrower's Signature: [REDACTED] Today's Date: 8 October 2013



#### SECTION 4: INSTRUCTIONS FOR COMPLETING THE APPLICATION

Type or print using dark ink. Enter dates as month-day-year (mm-dd-yyyy). Use only numbers. Example: June 24, 2006 = 06-24-2006. If you need more space to answer any of the items, continue on separate sheets of paper and attach them to this form. Indicate the number of the item(s) you are answering and include your name and social security number (SSN) on all attached pages.

**Sign and date the form, then send the completed form and any attachments to the address in Section 8.**

#### SECTION 5: DEFINITIONS

- The Federal Family Education Loan (FFEL) Program includes Federal Stafford Loans (both subsidized and unsubsidized), Federal Supplemental Loans for Students (SLS), Federal PLUS Loans, and Federal Consolidation Loans.
- The William D. Ford Federal Direct Loan (Direct Loan) Program includes Federal Direct Stafford/Ford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford/Ford Loans (Direct Unsubsidized Loans), Federal Direct PLUS Loans (Direct PLUS Loans), and Federal Direct Consolidation Loans (Direct Consolidation Loans).
- The holder of a borrower's FFEL Program loan(s) may be a lender, a guaranty agency, or the U.S. Department of Education (the Department). The holder of a borrower's Direct Loan Program loan(s) is the Department.
- Loan discharge due to false certification of ability to benefit cancels the obligation of a borrower (and endorser, if applicable) to repay the remaining balance on a FFEL Program or Direct Loan Program loan, and qualifies the borrower for reimbursement of any amounts paid voluntarily or through forced collection on the loan. For consolidation loans, only the amount of the underlying loans (the loans that were consolidated) that were used to pay for the program of study listed in Item 6 will be considered for discharge. The loan holder reports the discharge to all credit reporting agencies to which the holder previously reported the status of the loan.
- The student refers to the student for whom a parent borrower obtained a Federal PLUS Loan or Direct PLUS Loan.
- Program of study means the instructional program leading to a degree or certificate in which you (or, for PLUS borrowers, the student) were enrolled.
- Third party refers to any entity that may provide reimbursement for a refund owed by the school, such as a State or other agency offering a tuition recovery program or a holder of a performance bond.

#### SECTION 6: TERMS AND CONDITIONS FOR LOAN DISCHARGE BASED ON FALSE CERTIFICATION (ABILITY TO BENEFIT)

- I received FFEL Program or Direct Loan Program loan funds on or after January 1, 1986, to attend (or, if I am a parent PLUS borrower, for the student to attend) the school identified in Section 2 of this form. Those funds were either received by me directly, or applied as a credit to the amount owed to the school.
- I will provide, upon request, testimony, a sworn statement, or other documentation reasonably available to me that demonstrates to the satisfaction of the Department or its designee that I meet the qualifications for loan discharge based on false certification of ability to benefit, or that supports any representation that I made on this form or on any accompanying documents.
- I agree to cooperate with the Department or its designee regarding any enforcement actions related to my request for loan discharge.
- I understand that my request for loan discharge may be denied, or my discharge may be revoked, if I fail to provide testimony, a sworn statement, or documentation upon request, or if I provide testimony, a sworn statement, or documentation that does not support the material representations I have made on this form or on any accompanying documents.
- I further understand that if my loan(s) is discharged based on any false, fictitious, or fraudulent statements that I knowingly made on this form or on any accompanying documents, I may be subject to civil and criminal penalties under applicable federal law.
- I hereby assign and transfer to the Department any right to a refund on the discharged loan(s) that I may have from the school identified in Section 2 of this form and/or any owners, affiliates, or assigns of the school, and from any third party that may pay claims for a refund because of the actions of the school, up to the amount discharged by the Department on my loan(s).

#### SECTION 7: IMPORTANT NOTICES

**Privacy Act Disclosure Notice:** The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authorities for collecting the requested information from and about you are §421 *et seq.* and §451 *et seq.* of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 *et seq.*, and 20 U.S.C. 1087a *et seq.*) and the authorities for collecting and using your Social Security Number (SSN) are §§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 20 U.S.C. 1091(a)(4)) and 31 U.S.C. 7701(b). Participating in the Federal Family Education Loan (FFEL) Program or the William D. Ford Federal Direct Loan (Direct Loan) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under the FFEL and/or Direct Loan Programs, to permit the servicing of your loan(s), and, if it becomes necessary, to locate you and to collect and report on your loan(s) if your loan(s) become delinquent or in default. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the appropriate systems of records notices. The routine uses of this information include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to consumer reporting agencies, to financial and educational institutions, and to guaranty agencies in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loan(s), to enforce the terms of the loan(s), to investigate possible fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to state agencies. To provide financial aid history information, disclosures may be made to educational institutions. To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student enrollment status, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

**Paperwork Reduction Notice:** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a currently valid OMB control number. The valid OMB control number for this information collection is 1845-0015. The time required to complete this information collection is estimated to average 0.5 hours (30 minutes) per response, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this application, please write to: U.S. Department of Education, Washington, DC 20202-4537.

If you have questions regarding the status of your individual submission of this application, contact your loan holder (see Section 8).

#### SECTION 8: WHERE TO SEND THE COMPLETED LOAN DISCHARGE APPLICATION

Send the completed loan discharge application and any attachments to:

U.S. Department of Education  
P.O. Box 5609  
Greenville, TX 75403-5609


If you need help completing this form, call:



AFFIDAVIT

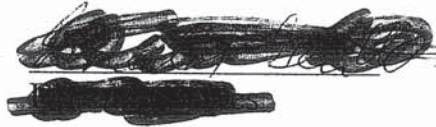
STATE OF NEW YORK     )  
                                      : SS:  
COUNTY OF KINGS     )

---

 being duly sworn, deposes and states:

1. I live at 200 E. 8<sup>th</sup> Street, Apt. 2A, Brooklyn, NY 11218
2. I was born in Jamaica in 1954.
3. I stopped attending school in the 8<sup>th</sup> grade at the age of 16, after my family moved.
4. It was normal for young men to complete high school, including my brother Winston, who also attended college.
5. After I stopped attending school, I worked as an electrician's apprentice, until I was laid off a year and a half later. I only did simple work such as drilling holes, and never used blueprints, or used mathematical measurements.
6. After being laid off as an electrician's apprentice, I handcrafted cloth hats, which I sold to street vendors for 9 years, until I came to the United States in 1981.
7. I became a permanent resident of the United States in 1986.
8. I received a federal student loan in 1988 to complete a 6 month certification program for electrical installation at Berk Trade School, which I did on 7 February 1989.
9. I have never received a High School Diploma, its equivalent, or a GED.
10. Berk Trade School did not administer an Ability to Benefit test before, during or after I attended the school.

11. I was not able to understand the majority of the lessons I received at Berk Trade School.
12. After receiving the certificate from Berk Trade School, I was never successful finding employment in electrical installation.
13. I realize that I should study for a GED as I see there are better paying jobs than the one I have at Home Depot.
14. At Home Depot, where I work now, I mostly help customers find products and lift heavy stuff. My arm is presently hurting badly due to a problem with a disc in my neck.



Sworn Before Me  
8 October 2013



NOTARY PUBLIC

JOHNSON M. TYLER  
Notary Public, State of New York  
No. 02TY4991127  
Qualified in Kings County  
Commission Expires Dec. 5, 2015

2/16/2015

## DOCUMENTATION OF ATB VIOLATIONS

School. Herk Trade & Business School

SID: 011830

Source IDS-Program Review 91102007 (Report not Available)

Finding. IDS report shows ATB - Testing Requirements Not Met

Applicable Time Frame 89 90 91

Source: SFA Review 92202031

Finding: 19 ATB Violations found out of 31 random samples (61%)

- 1 Students admitted to program after failing tests
- 2 School used several tests - could not verify approval by accrediting agency (NATTS)
- 3 Inability to verify validity of test scores due to numerous questionable changes to answers that were questionable and ambiguous to who made the changes
- 4 Misattribution of test scores and incorrect grading
- 5 Tests contained in students files are not identifiable (students names were not indicated on tests)

Applicable Time Frame: 88 89 90 91

Recommendations. Discharge all

Keller, Chad

---

To: Carter, Sharon; Bush, Carolyn  
Cc: Randolph, Naomi  
Subject: RE: FOIA Assignment: 12-01733-F Herman De Jesus

Sharon,

In overrighing to you a draft responsive to #1 and #4. It include the cost estimate sheet to the 100 percent package.

A response to #7:

- a) 8 ATE discharges granted
- b) 10 ATE discharge applications denied
- c) 0 ATE discharge applications pending

Chad

**From:** Carter, Sharon  
**Sent:** Tuesday, August 07, 2012 12:08 PM  
**To:** Keller, Chad; Bush, Carolyn  
**Cc:** Randolph, Naomi  
**Subject:** FW: FOIA Assignment: 12-01733-F Herman De Jesus

Please review the attached FOIA request and determine if you have any responses. If so, please provide responses to me as soon as possible before August 17, 2012. If you do not have any responses please send a response that also indicates that.

Thanks

**From:** Goldsmith, Elizabeth  
**Sent:** Monday, August 06, 2012 10:19 AM  
**To:** Randolph, Naomi; Carter, Sharon  
**Subject:** FOIA Assignment: 12-01733-F Herman De Jesus

Good afternoon,

A FOIA request has been assigned to your office:

K:\Communications\FOIA\FOIA Requests\FY 2012 FOIA\12-01733-F Herman De Jesus

Your Office's Due Date: 8/27/2012

Other Offices Assigned within FSA: Proprietary Collections

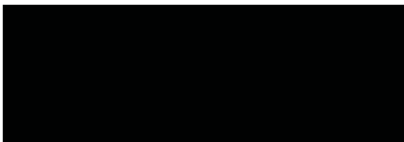
Requester Type: Ad-Other, so

Cost Limit Specified: \$250 - whatever accepted

FSA FOIA Contact: Elizabeth Goldsmith (202) 377-3808



KRAMER LEVIN NAFTALIS & FRANKEL LLP



July 20, 2015

Via U.S. Mail

US Department of Education  
P.O. Box 5609  
Greenville, TX 75403-5609

Re: Loan Discharge Application of Stanley Leggette

To Whom it May Concern:

This firm represents [REDACTED], an Army veteran who is among those exploited by American Business Institute in Brooklyn, New York ("ABI"), a notorious "educational" institution with which your Department is quite familiar. We write with regard to the applications of Mr. [REDACTED] for a discharge of federal student loans for false certification (ability to benefit).

Mr. [REDACTED] is currently in default on approximately \$10,000 in student loans used to finance his purported education at ABI. He attended ABI in 1988 and 1989. Mr. [REDACTED] is applying for a discharge of these student loans because ABI neglected to properly administer an Ability to Benefit ("ATB") test pursuant to the requirements of 43 CFR 668.32(e)(5). Mr. [REDACTED]'s discharge application is enclosed herewith.

As Mr. [REDACTED] states in his affidavit (attached hereto as Exhibit A ("Aff.")), he has never obtained a high school diploma or a GED, despite many attempts to pass the GED exam. His work history, including entry-level positions in delivery, shipping and receiving, retail and the New York City Parks Department, is consistent with his limited education. (Aff. ¶¶16-17). As stated in Mr. [REDACTED]'s affidavit, when he enrolled at ABI, Mr. [REDACTED] intended to take a GED course and business courses. (Aff. ¶4). He was not made aware that the documents presented to him in connection with his application to ABI pertained to the student loans. (Aff. ¶9).

Because Mr. [REDACTED] lacked a high school diploma or GED, ABI was required to administer an ATB test to determine Mr. [REDACTED]'s eligibility for Title IV HEA program

1177 AVENUE OF THE AMERICAS NEW YORK NY 10036-2714 PHONE 212.715.9100 FAX 212.715.8000

990 MARSH ROAD MENLO PARK CA 94025-1949 PHONE 650.752.1700 FAX 650.752.1800

47 AVENUE HOCHÉ 75008 PARIS FRANCE PHONE (33-1) 44 09 46 00 FAX (33-1) 44 09 46 01

WWW.KRAMERLEVIN.COM

US Department of Education  
July 20, 2015  
Page 2

assistance. ABI administered a test to Mr. [REDACTED] to determine his "learning level for the GED course" and subsequently placed him in a GED preparation course, from which Mr. [REDACTED] subsequently withdrew after he realized that actual GED preparatory instruction was not being provided. (Aff. ¶¶6-8). While Mr. [REDACTED] does not recall the exact nature of this exam, it is clear that ABI did not properly administer the ATB test as required for eligibility for Mr. [REDACTED]'s federal student loans. After the test Mr. [REDACTED] took at ABI, he was placed in a GED course, which did not lead [REDACTED] to obtain a GED. (Aff. ¶¶6-8).<sup>1</sup> It is clear that had ABI properly administered the ATB test, Mr. [REDACTED] could not have been determined eligible for Title IV HEA program assistance. Mr. [REDACTED]'s placement in a GED course at ABI is *prima facie* evidence that he did not satisfy the requirements for Title IV HEA program eligibility.

While the facts of ABI's admission of Mr. [REDACTED] stand on their own, Mr. [REDACTED]'s claim also accords with ABI's history of failure with respect to ATB testing:

- A 1996 United States Department of Education ("USDOE") Documentation of ATB Violations (attached hereto as Exhibit B) identifies over one hundred instances of incorrect grading of or missing ATB tests by ABI, and recommends "that all ATB applications be discharged."
- An April 1989 General Alert Memorandum among USDOE staff (attached hereto as Exhibit C) states that ABI's Newark, New Jersey school mismarked or failed to administer ATB tests for nearly 75% of admitted students.
- A June 1989 Program Review of ABI (attached hereto as Exhibit D) conducted by USDOE uncovered many instances of inaccurate compilation of student scores on ATB tests.
- The 2003 Program Review Determination conducted by USDOE (attached hereto as Exhibit E) states that ABC falsified the ATB testing of hundreds of students.
- In 2004, USDOE brought a Federal Student Aid Proceeding against American Business College (an affiliate of ABI), stating in its Brief (Docket No. 03-100-SP; attached hereto as Exhibit F) that "it is clear that ABC falsified ATB tests in order to illegally obtain Title IV funds."

Based on the foregoing, the enclosed application and the attached affidavit of Mr. [REDACTED] and supporting materials, we respectfully request a complete discharge of Mr. [REDACTED]'s federal student loans obtained in connection with ABI. (Documentation of Mr. [REDACTED]'s loans from the USDOE website is attached hereto as Exhibit G). Please contact my

---

<sup>1</sup> Mr. [REDACTED] has never been able to obtain a GED, even after attending a GED course which was properly taught by the New York City Parks Department. (Aff. ¶17).

KRAMER LEVIN NAFTALIS & FRANKEL LLP

US Department of Education

July 20, 2015

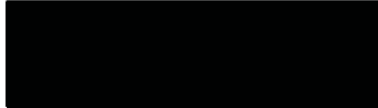
Page 3

colleagues Jeffrey Taub at (212) 715-9150 or Ted Lamm at (212) 715-9173 should you have any questions.

Thank you for your prompt action in connection with Mr. Leggette's applications.



Enclosures & attachments





# LOAN DISCHARGE APPLICATION: FALSE CERTIFICATION (ABILITY TO BENEFIT)

William D. Ford Federal Direct Loan (Direct Loan) Program  
Federal Family Education Loan (FFEL) Program

OMB No. 1845-0058  
Form Approved  
Exp. Date 08/31/2017

**WARNING:** Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

## SECTION 1: BORROWER IDENTIFICATION

Please enter or correct the following information.

☐ Check this box if any of your information has changed.

SSN

Name

Address

City, State, Zip Code Brooklyn, NY, 11213

Telephone – Primary

Telephone – Alternate None

E-mail (optional) None

## SECTION 2: ABILITY TO BENEFIT INFORMATION

1. You are applying for this loan discharge as a:

- ☒ Student borrower – Skip to Item 4.  
☐ Parent borrower – Continue to Item 2.

2. Student Name (Last, First, MI):

3. Student SSN:

4. Did you (or, for a parent PLUS borrower, the student) attend a postsecondary school prior to July 1, 2012?

- ☒ Yes – Skip to Item 6.  
☐ No – Continue to Item 5.

5. Were you (or, for a parent PLUS borrower, the student), prior to July 1, 2012, officially registered at a postsecondary school, and scheduled to attend?

- ☐ Yes – Continue to Item 6.  
☐ No – You are not eligible for this discharge.

6. Provide the following information about the postsecondary school referenced in Item 4 or 5:

a. School Name:

American Business Institute

b. School Address (street, city, state, zip code):

152 Court Street  
Brooklyn, NY, 11201

7. On what date did you (or, for a parent PLUS borrower, the student) begin attendance or register at the postsecondary school in Item 4 or 5?

10-01-1988

8. Is the postsecondary school in Item 6 the same school that you attended when you received the loan(s) you are requesting be discharged?

- ☒ Yes – Skip to Item 11.  
☐ No – Continue to Item 9.

9. School Name:

10. School Address (street, city, state, zip code):

11. Dates of attendance at the school:

10-01-1988 to 04-01-1989

12. Name of program of study that you (or, for a parent PLUS borrower, the student) were enrolled in when you received the loan(s) you are requesting be discharged:

GED and Business Courses

13. Did you (or, for a parent PLUS borrower, the student) have a high school diploma or General Education Development (GED) credential while enrolled?

- ☐ Yes – You are not eligible for this discharge.  
☒ No – Continue to Item 14.

14. Did you (or, for a parent PLUS borrower, the student) receive a GED before completing the program?

- ☐ Yes ☒ No

15. When did you first enroll in a postsecondary school?

10-01-1988



Borrower Name: \_\_\_\_\_

Borrower SSN: \_\_\_\_\_

**SECTION 2: ABILITY TO BENEFIT INFORMATION (CONTINUED)**

16. Before you (or, for a parent PLUS borrower, the student) were admitted to the school, did the school give an entrance examination?
- ☒ Yes – Continue to Items 17 – 20.  
☐ No – Skip to Item 22.  
☐ Don't Know – Skip to Item 22.
17. Give the date of the test if you know it:  
\_\_\_\_\_
18. Give the name of the test if you know it:  
Unknown
19. Give the score on the test if you know it:  
Unknown
20. Did anything appear improper about the way the test was given or scored?
- ☒ Yes – Continue to Items 21 – 22.  
☐ No – Skip to Item 22.
21. Explain in detail what appeared improper:  
They never showed me my score and placed me in a GED class after I took it.
22. Provide the following about anyone who can support your statement:
- a. Name: \_\_\_\_\_
- b. Address (street, city, state, zip code):  
\_\_\_\_\_  
\_\_\_\_\_
- c. Telephone number:  
\_\_\_\_\_
23. Did you (or, for a parent PLUS borrower, the student) complete a developmental or remedial program at the school?
- ☐ Yes – Continue to Items 24 – 27.  
☒ No – Skip to Item 28.  
☐ Don't Know – Skip to Item 28.
24. Provide the name of the program:  
\_\_\_\_\_
25. Provide the dates of the program:  
\_\_\_\_\_ to \_\_\_\_\_
26. Provide the courses you took in the program:  
\_\_\_\_\_  
\_\_\_\_\_
27. Provide the grades you earned in the program:  
\_\_\_\_\_  
\_\_\_\_\_
28. Did you (or, for a parent PLUS borrower, the student) successfully complete 6 credits or 225 clock hours of coursework that applied toward a program offered by the school before you received a Direct Loan or FFEL Program loan to pay for attendance in this program?
- ☐ Yes – You are not eligible for this discharge.  
☒ No – Continue to Item 29.  
☐ Don't Know – Continue to Item 29.
29. Did the holder of your loan receive any money back (a refund) from the school on your behalf?
- ☐ Yes – Continue to Items 30 – 31.  
☐ No – Skip to Item 32.  
☒ Don't Know – Skip to Item 32.
30. What was the amount of the refund?  
\$ \_\_\_\_\_
31. Explain why the money was refunded:  
\_\_\_\_\_
32. Did you (or, for a parent PLUS borrower, the student) make any monetary claim with, or receive any payment from, the school or any third party (see definition in Section 6) in connection with enrollment or attendance at the school?
- ☐ Yes – Continue to Items 33 – 35.  
☒ No – Sign and date the form in Section 3. Submit this form to the loan holder in Section 7.  
☐ Don't Know – Sign and date the form in Section 3. Submit this form to the loan holder in Section 7.
33. Provide the following about the party with whom the claim was made or from whom payment was received:
- a. Name: \_\_\_\_\_
- b. Address (street, city, state, zip code):  
\_\_\_\_\_  
\_\_\_\_\_
- c. Telephone number:  
\_\_\_\_\_
34. What is the amount and the status of the claim?
- a. Amount: \_\_\_\_\_
- b. Status: \_\_\_\_\_
35. What was the amount of any payment received? If none, write "none".  
\$ \_\_\_\_\_
- Sign and date the form in Section 3. Submit this form to the loan holder in Section 7.

Borrower Name: [REDACTED]

Borrower SSN: [REDACTED]

### SECTION 3: BORROWER CERTIFICATIONS, ASSIGNMENT, AND AUTHORIZATION

- I certify that—
  1. I have read and agree to the terms and conditions for loan discharge, as specified in Section 5.
  2. Under penalty of perjury, all of the information I have provided on this form and in any accompanying documentation is true and accurate to the best of my knowledge and belief.
- I hereby assign and transfer to the U.S. Department of Education (the Department) any right to a refund on the amount discharged that I may have from the school identified in Section 2 of this form and/or any owners, affiliates, or assignees of the school, and from any third party that may pay claims for a refund because of the actions of the school, up to the amount discharged by the Department on my loan(s).
- I authorize the loan holder to which I submit this request (and its agents or contractors) to contact me regarding my request or my loan(s), including repayment of my loan(s), at the number that I provide on this form or any future number that I provide for my cellular telephone or other wireless device using automated telephone dialing equipment or artificial or prerecorded voice or text messages.

Borrower's Signature [REDACTED]

Date

7/15/2015

### SECTION 4: DEFINITIONS

- The **William D. Ford Federal Direct Loan (Direct Loan) Program** includes Federal Direct Stafford/Ford (Direct Subsidized) Loans, Federal Direct Unsubsidized Stafford/Ford (Direct Unsubsidized) Loans, Federal Direct PLUS (Direct PLUS) Loans, and Federal Direct Consolidation (Direct Consolidation) Loans.
- The **Federal Family Education Loan (FFEL) Program** includes Federal Stafford Loans (both subsidized and unsubsidized), Federal Supplemental Loans for Students (SLS), Federal PLUS Loans, and Federal Consolidation Loans.
- The **holder** of your Direct Loan Program loan(s) is the U.S. Department of Education (the Department). The holder of your FFEL Program loan(s) may be a lender, a guaranty agency, or the Department. Your loan holder may use a servicer to handle billing and other communications related to your loans. References to "your loan holder" on this form mean either your loan holder or your servicer.
- **Loan discharge** due to false certification of ability to benefit cancels your obligation (and any endorser's obligation, if applicable) to repay the remaining portion on a Direct Loan or FFEL Program loan, and qualifies you for reimbursement of any amounts paid voluntarily or through forced collection on the loan. For consolidation loans, only the amounts of the underlying loans that were used to pay for the program of study listed in Section 2 will be considered for discharge. The loan holder reports the discharge to all credit reporting agencies to which the holder previously reported the status of the loan.
- The **student** refers to the student for whom a parent borrower obtained a Direct PLUS Loan or Federal PLUS Loan.
- **Third party** refers to any entity that may provide reimbursement for a refund owed by the school, such as a State or other entity offering a tuition recovery program or a holder of a performance bond.

### SECTION 5: TERMS AND CONDITIONS FOR LOAN DISCHARGE BASED ON FALSE CERTIFICATION

- You are only eligible for this form of discharge if you received the loan on which you are requesting discharge on or after January 1, 1986.
- By signing this form, you are agreeing to provide, upon request, testimony, a sworn statement, or other documentation reasonably available to you that demonstrates to the satisfaction of the Department or its designee that you meet the qualifications for loan discharge based on false certification, or that supports any representation that you made on this form or any accompanying documents.
- By signing this form, you are agreeing to cooperate with the Department or the Department's designee in any enforcement action related to this application.
- This application may be denied, or your discharge may be revoked, if you fail to provide testimony, a sworn statement, or documentation upon request, or if you provide testimony, a sworn statement, or documentation that does not support the material representation that you have made on this form or on any accompanying documents.



## SECTION 6: INSTRUCTIONS FOR COMPLETING THE FORM

When completing this form, type or print using dark ink. Enter dates as month-day-year (mm-dd-yyyy). Use only numbers. Example: February 10, 2014 = 02-10-2014. If you need more space to answer any of the items, continue on separate sheets of paper and attach them to this form. Indicate the number of the item(s) you are answering and include your name and Social Security Number (SSN) on the top of pages 2 and 3 and on all attached pages. **Return the completed form and any attachments to the address shown in Section 7.**

## SECTION 7: WHERE TO SEND THE COMPLETED FORM

Return the completed form and any required documentation to:  
(If no address is shown, return to your loan holder.)

If you need help completing this form, call:  
(If no telephone number is shown, call your loan holder.)

## SECTION 8: IMPORTANT NOTICES

**Privacy Act Notice.** The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authorities for collecting the requested information from and about you are §421 et seq. and §451 et seq. of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 et seq. and 20 U.S.C. 1087a et seq.) and the authorities for collecting and using your Social Security Number (SSN) are §§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 1091(a)(4)) and 31 U.S.C. 7701(b). Participating in the William D. Ford Federal Direct Loan (Direct Loan) Program or the Federal Family Education Loan (FFEL) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under Direct Loan and/or FFEL Programs, to permit the servicing of your loan(s), and, if it becomes necessary, to locate you and to collect and report on your loan(s) if your loan(s) becomes delinquent or defaults. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the appropriate systems of records notices. The routine uses of this information include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to consumer reporting agencies, to financial and educational institutions, and to guaranty agencies in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loan(s), to enforce the terms of the loan(s), to investigate possible

fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to state agencies. To provide financial aid history information, disclosures may be made to educational institutions. To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student enrollment statuses, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures

may also be made to qualified researchers under Privacy Act safeguards.

**Paperwork Reduction Notice.** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0058. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain a benefit (34 CFR 682.402(e)(3), or 685.215(c)). If you have comments or concerns regarding the status of your individual submission of this form, **contact your loan holder(s) (see Section 7) directly.**

## EXHIBIT A

AFFIDAVIT

STATE OF NEW YORK       )  
                                      :       SS:  
COUNTY OF KINGS       )

██████████, being duly sworn, deposes and states:

1. I live at ██████████ Brooklyn, New York 11213.
2. I am 56 years old.
3. I served in the United States Army for approximately six months in 1979 before receiving an honorable discharge.
4. In 1988 I registered to attend American Business Institute in Brooklyn in order to take a GED course and business courses.
5. I have never received a high school diploma, its equivalent, or a GED.
6. After I enrolled there, American Business Institute gave me a test to determine my learning level for the GED course. I was never told the results of this test.
7. The GED course instructors at American Business Institute often skipped class and I was frequently switched into classes at a higher learning level than mine.
8. Because the instructors skipped class and I was placed in classes that were not at my level, I did not complete the GED course and was never able to take business classes at American Business Institute. I withdrew from the school when I determined that I was not going to be able to complete the GED or take the business courses that I was supposed to be taking.
9. I did not receive any information regarding student loans, borrowing or debt when I registered to attend American Business Institute, but I was told that I would receive funds for books, supplies and other school-related expenses. I was never told that I would be taking a student loan.
10. I never received any funds from American Business Institute for books, supplies or other school-related expenses. After I withdrew from American Business Institute I learned that the person who enrolled me at the school had been fired for taking the checks that were supposed to go to students.
11. Soon after I attended American Business Institute I learned that it had closed. When I returned to the school building the school was gone.
12. Between my attendance at American Business Institute and 2000 I lived at the same address.
13. Between my attendance at American Business Institute and 2000 I did not receive any statements or bills for student loans.



14. In 2000 I received a phone call from a person who refused to identify himself and notified me that I was "in default" on a federal student loan. This was the first time that I heard about owing any money for federal student loans.
15. Since I attended American Business Institute, I have taken the GED exam at least four times but have not been able to obtain a GED.
16. Since I attended American Business Institute, I have held jobs as a food runner, a delivery person, an entry level employee in shipping and receiving, and an employee of the New York City Parks Department. I have never been able to obtain a position in business.
17. The New York City Parks Department, where I currently work cleaning a park in Brooklyn, gave a GED course which I took. The course instructors never skipped classes and I was not switched out of my learning level. I took the GED test after completing the course but did not pass.
18. I want to obtain a GED but I will never attend a school like American Business Institute again because they bring you in for one thing, but they do something completely different.

[Redacted Signature]

Sworn Before Me on  
07/15/2015, 2015  
[Signature]  
NOTARY PUBLIC

JOHNSON M. TYLER  
Notary Public, State of New York  
No. 02TY4991127  
Qualified in Kings County  
Commission Expires Dec-6, 2018

2/16/2019

**EXHIBIT B**



## DOCUMENTATION OF ATB VIOLATIONS

**SCHOOL:** Wilfred American Educational Corp., D/B/A Wilfred Beauty Academics, American Business Institutes, Washington School for Secretaries, Computer Processing Institutes and South Bay Colleges.

**SID:** 00894900 00779100 00779800 00780900  
02160402 01244000 00937900 00945300  
00863800 02112400 02105200 02115000  
02160700 02112100 02118400 02160400  
02160403 02144300 02165600 01190100  
02144200 00959900 00827000 00759500  
02081500 02067500 00912700 00912800  
00827100 02105000 00781300 00865100  
01258300 01258200 01309100 03014300

**SOURCE:** OIG reports through June 30, 1987, covering approximately 50 schools.

**FINDINGS:** Non-compliance found in revised set of audit reports completed by the CPA firm and verified by Stephen R. Eisenberg, Supervisory Auditor, OIG, Audit, NY, NY. Findings of incorrect grading of admission tests and/no copy of ability to benefit test in student files.

(b)(6)  
ACN: (b)(6) EIN: (b)(6)  
Sample size 20: SFA: (b)(6)  
7 exams tested; 1 exam graded incorrectly; 3 missing; \$ fine.

(b)(6)  
ACN: (b)(6) EIN: (b)(6)  
Sample size 34: SFA: (b)(6)  
34 exams tested; 6 exams graded incorrectly; 2 students did not have high school diplomas or equivalent and did not pass an admissions test. The balance of the breakdown was not provided in the report. \$ fine.

(b)(6)  
ACN: (b)(6) EIN: (b)(6)  
Sample size 23: SFA: (b)(6)  
23 exams tested; 18 exams graded incorrectly; 1 missing; \$ fine.

(b)(6)  
ACN: (b)(6) EIN: (b)(6)  
Sample size 27: SFA: (b)(6)  
27 exams tested; 5 incorrectly graded; none missing.

(b)(6)  
ACN: (b)(6) EIN: (b)(6)  
Sample size 9: SFA: (b)(6)  
9 exams tested; 4 incorrectly graded; 4 missing.

(b)(6)  
ACN: (b)(6) EIN: (b)(6)  
Sample size 130: SFA: (b)(6)  
91 exams tested; 26 incorrectly graded; 7 missing. \$ fine for missing tests as well as \$ fine for incorrectly graded exams.

(b)(6)  
ACN: (b)(6) EIN: (b)(6)  
Sample size 71: SFA: (b)(6)  
71 exams tested; 20 incorrectly graded; 4 missing. \$ fine.

(b)(6)  
ACN: (b)(6) EIN: (b)(6)



Sample size 19: SFA (b)(6)  
 19 exams tested; 9 incorrectly graded; 1 missing.

ACN: (b)(6) EIN: (b)(6)  
 Sample size 20: SFA (b)(6)  
 19 exams tested; 10 incorrectly graded.

ACN: (b)(6) EIN: (b)(6)  
 Sample size 20: SFA (b)(6)  
 61 exams tested; 16 incorrectly graded; 4 missing or incomplete.

ACN: (b)(6) EIN: (b)(6)  
 Sample size 21: SFA (b)(6)  
 21 exams tested; 7 incorrectly graded; 3 missing.

ACN: (b)(6) EIN: (b)(6)  
 Sample size 10: SFA (b)(6)  
 10 exams tested; 4 incorrectly graded; 1 missing.

ACN: (b)(6) EIN: (b)(6)  
 Sample size 10: SFA (b)(6)  
 10 exams tested; 5 incorrectly graded; 2 missing.

ACN: (b)(6) EIN: (b)(6)  
 Sample size 18: SFA (b)(6)  
 18 exams tested; 8 incorrectly graded.

In 15 other reports no improper grading and testing took place or the issue was not addressed.

Applicable time frame: (b)(6)  
 OIG, Audit Supervisor, Stephen K. Eisenberg states in 4-2-96 letter to ED that no reports were submitted after 6-30-87.

#### RECOMMENDATION:

Systemic violations found in multiple reports. A Federal Grand Jury indicted the CEO of Wilfred American Educational Corporation plus 18 past and present employees for fraud and falsifying information on applicants and applications. Since the corporation was cited as early as June 1984 for improper grading practices it is recommended that all ATB applications be discharged.

#### CONCLUSION:

Consistent pattern of gross violations of DOE regulations in multiple programs over multiple years indicates a strong resistance to following DOE regulations for administering funds and ATB student testing. Violations appeared system wide.

Helen King, Loan Analyst

6-19-96

*approved 6/20/96 [Signature]*

## EXHIBIT C



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE INSPECTOR GENERAL

APR 28 1989

MEMORANDUM

TO: Molly Hockman  
Director, Division of Audit and Program Review  
Office of Postsecondary Education

FROM: John P. Higgins, Jr. *JPH*  
Director, Policy and Planning Staff

SUBJECT: Office of Inspector General Alert Concerning  
American Business Institute (ABI), Newark,  
New Jersey

The purpose of this memorandum is to alert you to information which surfaced during our investigation of Wilfred American Educational Corporation (WAEC). While WAEC has not been given the opportunity to provide written comments, sufficient evidence was gathered to conclude that serious harm to the Federal government's interest could occur if you were not informed of our conclusions prior to the completion of our work.

Background

WAEC operates nationwide chains of beauty schools and business schools, including ABI-Newark. WAEC establishes operating policies for all the schools, and Edward Blankstein Inc. the financial aid consultant.

The Department of Education authorized \$370,287 in PELL awards to ABI-Newark for the fiscal year ending September 30, 1988. Total payments as of August 8, 1988 were \$342,241. For fiscal year 1989, the PELL authorization is \$328,150. ABI-Newark also participates in the Stafford Loan Program (formerly GSL) as a non-lender. However, it has not been authorized to administer campus-based programs.

OSFA-New York conducted a program review at ABI-Newark covering the award years 1984/85 through 1987/88. In a January 19, 1989 letter to the school, OSFA indicated that the findings as stated in the review report were not yet cleared, and failure to resolve the issues within 30 days may result in a recommendation that administrative action be taken against the school.



The Higher Education Assistance Foundation (HEAF) conducted a program review at ABI-Newark in February 1988. The review noted, serious problems and administrative errors in the schools handling of the student loan program. The major problems cited were improper loan disbursements to students who were no longer attending school, and late and unpaid GSL refunds. A copy of the report is attached.

On December 2, 1988, the Department of Education, pursuant to 34 CFR 85.411, suspended Wilfred American Educational Corporation and its president, Philip E. Jakeway, Jr., from participating in any covered transaction under nonprocurement programs and activities of any Federal agency, and issued a proposal to include within the scope of the suspension action 56 educational institutions then owned by the corporation that were participating in Federal financial assistance programs. The Department's actions follow an Office of Inspector General investigation which resulted in the indictment of Jakeway, Wilfred, and 18 employees on October 20, 1988. Jakeway and the corporation were indicted on charges of conspiracy to defraud the U.S. Department of Education, racketeering, wire fraud, embezzlement, and making false statements. Nineteen additional WAEC employees have also been convicted, 8 in Massachusetts, 4 in the District of Columbia and 7 in California.

On March 1, 1989, the Department of Education, pursuant to 34 CFR 85.411 also suspended Career Education Assistance Corporation, a wholly owned subsidiary of WAEC, based on its affiliation with WAEC.

During April 1989, five of the eighteen employees who were indicted on October 20, 1988 were also suspended pursuant to 34 CFR 85 411.

OIG also performed a Quality Control Review (QCR) of the working papers supporting 10 audits of WAEC schools' SFA programs, including ABI-Newark, prepared by Blumenkrantz and Zachary for the two year period ended June 30, 1986. The QCR for ABI-Newark was extended to include an OIG review of the same student files reviewed by the CPA to assess the adequacy and accuracy of the CPA's SFA compliance work. We have attached a copy of OIG's letter to the CPA, detailing the deficiencies noted and rejecting the reports. The CPA has requested an extension until June 15, 1989, to rectify the problems.

#### Ability to Benefit

ABI-Newark admitted students who did not have the ability to benefit and did not meet the minimum requirements to receive SFA funds. The school required applicants to take a written test and achieve minimum scores to enroll in its programs and receive SFA funding. ABI's policy, during our audit period,



was that all applicants were required to pass the test. The exams were originally graded by school personnel. OIG's re-grading of 298 of the approximately 400 cases of students who were admitted for the 1987-88 school year and later dropped or terminated indicated that in 179 cases (60.1%) the exams were mismarked, and in 43 cases (14.4%) the exams should have been failures or there were no exams. The PELL and Title IV Student Loan Funds for these students totalled \$23,511 and \$68,520.

#### Financial Aid Transcripts

ABI-Newark did not always document its request for financial aid transcripts for students who had attended other schools. In other cases, where the transcripts were requested and received and indicated prior default, ABI gave the students additional SFA funds anyway. Of 109 cases where students had attended other schools, in 37 cases (33.9%), ABI either did not document its requests for transcripts or ignored transcripts that indicated prior default. The 37 students later dropped out or were terminated. The PELL and Title IV Student Loan Funds for these students totalled \$11,000 and \$59,507.

#### Cash Management

ABI-Newark's requests for Federal cash were not justified by its Federal program expenditures. During the period December 1987 through May 1988, ABI-Newark's average daily cash balance was approximately \$248,000. This represented 269 days cash requirements, and resulted in imputed interest costs to the Government of \$7,500. The school's financial aid consultant stated the excess requests were made in anticipation of the school being authorized to administer campus-based programs. We note, however, that such authorization was not granted, expenses were not incurred, and the requests were not justified. Moreover, the excess cash was not returned.

#### Refunds and Overpayments

ABI-Newark does not always make timely refunds to GSL lenders. In 16 of 30 refund cases, ABI did not make the refund within 30 days (or 40 days if withdrawal was prior to October 1, 1987). The school's failure to make timely refunds resulted in the Government incurring increased costs of interest subsidy and special allowance.

ABI-Newark does not always refund overpayments of PELL grants to the PELL SFA account. Of the 20 cases of students who attended orientation and then dropped out, the school received a second PELL payment but failed to refund it for 5 of them.

In a sixth case, a refund should have been made to a GSL lender, and was not made.

<u>STUDENT</u>	<u>PELL OVERPAYMENT</u>	<u>GSL REFUND NOT MADE</u>
A	\$700	
B	700	
C	700	
D	90	
E	90	
F		\$617

### Financial Reporting

ABI's FISAP reports could not always be reconciled to supporting documentation provided by the school. Without accurate reports, ED does not have reliable information to monitor the school's administration of the SFA programs. The list of discrepancies was provided to the school and is summarized below:

<u>Item</u>	<u>Total Per FISAP 1985/86</u>	<u>Total Per Supporting Documentation</u>	<u>Differences</u>	<u>Notes</u>
Total Tuition and Fees	\$2,904,045		\$2,904,045	1
Eligible Applicant				2
Dependent	424	422	2	
Independent	559	556	3	
Cont. Students	7777	7769	8	
New Starts	1287	1309	<22>	

<u>Item</u>	<u>Total Per FISAP 1986/87</u>	<u>Total Per Supporting Documentation</u>	<u>Differences</u>	<u>Notes</u>
Total Tuition and Fees	\$1,789,234		\$1,789,234	1
Total PELL Expnd.	477,415	\$ 503,963	<26,545>	3
Eligible Applicants				4
Dependent	226	227	<1>	
Independent	236	240	<4>	
Cont. Students	5,412	5,419	<7>	
New Starts	573	665	<92>	



### Notes

1. ABI did not provide supporting documentation for Total Tuition and Fees.
2. Supporting documentation included 18 students who were not identified by dependency status.
3. ABI submitted a verification/correction worksheet adjusting the reported PELL expenditures to \$503,963. Supporting documentation for this adjustment was not provided.
4. Supporting documentation included 106 students who were not identified by dependency status.

Finally, ABI-Newark's Form 272 - Federal Cash Transactions Report for the period 10/1/87 - 12/31/87 reported \$92,454 in PELL disbursements.. However, the back-up documentation only supported \$82,654.

### Coordination of Student Aid Programs

In a December 15, 1986 letter to ED, WAEC's attorney claimed that controls had been established to preclude the awarding of assistance in excess of students' financial needs. A subsequent letter dated November 11, 1988 reiterated that such a system was in place. However, discrepancies still exist between PELL and GSL applications, which were not resolved by the school or the financial aid consultant.

The student folders for students who received both PELL and GSL indicated differences in reported Adjusted Gross Income (AGI) and dependency status. A schedule of discrepancies follows:

<u>STUDENT</u> 1985/86	<u>REPORTED AGI</u>		<u>DEPENDENCY STATUS</u>	
	<u>PELL</u>	<u>GSL</u>	<u>PELL</u>	<u>GSL</u>
G	\$ 0	\$ 1,800		
H	0	1,500		
I	0	1,500		
J	0	1,500		
K	4,824	10,000		
L	21,215	23,000		
M	13,000	3,276		

1986/87

N	0	1,500		
O	0	1,500		
P	6,544	10,250		
Q			IND.	DEP.
R			IND.	DEP.

#### Other Matters

- ... ABI withholds student loan proceeds from students without their approval. The document used by ABI to justify the withholding, "calculation of expense advance worksheet" does not indicate the borrower's written authorization for the school to hold excess loan proceeds to assist the borrower in managing them over the course of the period of attendance for which the loan was received.
- ... A November, 1986 monitoring review by the State of New Jersey's Division of Vocational Education disclosed two deficiencies. A supervising instructor was not certificated, and a sales representative was not certificated.
- ... ABI's student contract provides a three-day cancellation clause, provided the student has not entered into instruction. This limitation violates New Jersey regulations. The school advised us and we confirmed that the contract has since been modified to remove this limitation.
- ... ABI's New Jersey license expired February, 1988. The State informed us that ABI did not submit the renewal package until May 9, 1988. The license has since been renewed, retroactive to March 1, 1988.
- ... ABI-Newark's use of credit rather than clock hours to measure satisfactory progress does not comply with New Jersey State requirements. The State requires courses to be structured by clock hours. However, because ABI's attendance policy is very lenient, this violation did not significantly affect student's eligibility for SFA funding.

Nothing in this Alert is intended to obviate the need to adhere to regulations and procedures that govern the administration of ED's programs.

For further information, please contact me on 732-4781.

Attachments

**EXHIBIT D**



UNITED STATES DEPARTMENT OF EDUCATION

REGION II

FEDERAL BUILDING

26 FEDERAL PLAZA

NEW YORK, NEW YORK 10278

June 19, 1989

Mr. Philip E. Jakeway, Jr.  
Wilfred American Education Corporation  
1657 Broadway  
New York, New York 10019

Re: American Business Institute  
Brooklyn, New York

American Business Institute  
New York, New York

Dear Mr. Jakeway:

On April 4, 5, 10 & 11, 1989 Program Specialists, Robert Biehl, Christopher Curry, Rose Benas and Felix Lugo, conducted a review of the Title IV federal student financial assistance programs administered at your institution. The review covered the following programs: Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan and Stafford loan. The findings of that review are presented in the enclosed report. This review was undertaken as a result of information related to Mr. Ronald Lipton of our Program Compliance Branch. Any questions concerning matters pertaining to Wilfred's status under the provisions of being under the Cash Reimbursement method of payment should be referred to Mr. Lipton. Matters pertaining to this report should be referred to Mr. Biehl.

Findings of non-compliance are referenced to the applicable regulations and specify the action required in order to comply with the regulations and statutes. Please review the report and respond to each finding by indicating what actions have been taken to date or will be taken. Your response should be sent directly to Mr. Biehl within 30 days.

I would like to express my appreciation for the courtesy and cooperation extended during the review. If you have any questions concerning the report, please call our office at (212) 264-4022.

Sincerely,

*Robert J. McKiernan*  
Robert J. McKiernan, Chief  
Institutional Review Branch  
Student Financial Assistance

bcc: Reading File  
Program Rew File



## INTRODUCTION

On April 4-5 and April 10-11, 1989 Robert Biehl, Christopher Curry, Rose Benas and Felix Lugo visited American Business Institute at its Manhattan and Brooklyn locations for the purpose of performing a program review of the administration of Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan and Part B loan programs (Stafford and SLS). A sample of 71 student files was selected for review, which included students from the 86-87, 87-88, and 88-89 award years. (See Appendix A for the Manhattan School and Appendix B for the Brooklyn School-students are identified by number). The pertinent records, forms and procedures at the institution were examined. In addition, interviews were conducted with the appropriate personnel.

## DISCLAIMER

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning specific practices and procedures of Wilfred Academy must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Also, it does not relieve the institution of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV programs.

PROGRAM REVIEW REPORT

INSTITUTION: American Business Institute  
1657 Broadway  
New York, New York 10019-9998  
(212) 582-9040  
EIN: 1131936625A1  
American Business Institute  
152 Court Street  
(718) 875-3800  
Brooklyn, New York 11201  
EIN: 1112295299A1

TYPE AND CONTROL: Proprietary One Year - Less than Two Years

ACCREDITATION: A I C S

ENROLLMENT: Brooklyn - 725  
Manhattan - 166

REVIEWING ED OFFICIALS: Robert E. Biehl Chris Curry  
Rose A. Benas Felix Lugo

DATES OF REVIEWS: Manhattan April 4-5, 1989  
Brooklyn April 10-11, 1989

INSTITUTIONAL OFFICIALS CONTACTED:

Manhattan - Philip E. Jakeway, III, Director  
Elliott B. Jones, Regional Vice President  
Ken McMickens, District Manager  
Sylvester Lewis, Faculty Director  
Georgia Mattinson, Regional Financial Aid  
Director  
Ira Menkes, Corporate Comptroller

Brooklyn - Stanley Gruverman, President  
Lawrence Stieglitz, Director  
Terri Pagarski, National Education Director

OFSA PROGRAM PARTICIPATION: Pell Grant Part B Loans  
Campus-Based (Stafford SLS & PLUS)  
34 34 Programs  
25 34

AWARD YEARS REVIEWED: 1986-87  
1987-88  
1988-89



1. Pell Payments Before Completion of Required Clock Hours.

Finding: The institution systematically pays Pell Grants to students before they have completed the number of clock hours for which prior disbursements were paid. ABI is licensed in New York as a clock hour school and must measure progress in clock hours.

The reviewers identified examples of improper disbursements for all programs reviewed, for all years (86-87, 87-88, 88-89), for full and part-time students at both the Brooklyn and Manhattan Schools.

The following are examples of this finding:

Student 10 was enrolled in a 720 clock hour program. His second Pell disbursement for his program, status, and academic year was payable after he completed the 240 clock hours for which he had previously been paid. However, the disbursement was made after he completed only 208 clock hours.

Student 12 was enrolled in a 1500 clock hour program. Disbursements of Pell payments were scheduled after completion of 300 clock hour increments. However, her second Pell was paid 5/19/87 after completion of only 261 clock hours. In fact the student dropped out effective 4/24/87.

Student 13 was to have completed 360 hours of a 720 clock hour program before she was paid her second Pell disbursement. However, the second disbursement was paid on 11/19/87 after she had completed only 290 clock hours. She dropped out effective 10/22/87.

Students B1, B9, B14 and B25 reflect similar cases for the Brooklyn ABI school.

(These cases are referenced for example only. Several other cases in the sample also reflect improper disbursements).

Regulations: 34 CFR, 690.75, Pell Grant, 3/15/85  
34 CFR, 690.3, Pell Grant, 3/15/85

Requirement: Regulations provide that an institution may pay a subsequent Pell Grant to an eligible student only after he has completed the number of clock hours for which he has already been paid, if the student is enrolled in an eligible program that is measured in clock hours. In addition, for a student enrolled in a term, the term extends until the number of clock hours for which the student has been paid are completed.

ABI Brooklyn and Manhattan must review the files and Pell records of all students in the 1984-85, 85-86, 86-87, 87- 88 and 88-89 award years to identify students who received subsequent (after the first) Pell Grants before completing the hours for which the student had already been paid. In those cases in which a student did not complete the number of hours for which payment was made, the subsequent payment must be returned to the Pell account (for students in the 88-89 award year), or the payments must be returned to the Department of Education for students in closed award years.

ABI must prepare a report of students, for whom improper disbursements were made in the following format:

Award Year  
Student's Name  
Social Security Number  
Number of Hours in Program  
Number of Hours Required for Each Scheduled Disbursement  
Number of Hours Completed at Date of Each Improper  
Disbursement  
Student's Scheduled Award  
Amount of Each Improper Disbursement  
Total Amount of all Improper Disbursements

All Information for this report must be certified as to its accuracy and completeness by a Certified Public Accountant whose statement must accompany this report.

Upon receipt of this information, further instructions will be provided.

## 2. Withholding Title IV Funds Without Authorization.

Finding: ABI has been withholding proceeds from student loans (Stafford and SLS) and Pell Grants without obtaining the student's expressed, written permission.

For example, the account record for student #8 reflects a Pell disbursement of \$94.91 against a remaining balance of \$94.91 on 6/30/87. At the same time, an adjustment to the Expense Advance Account for the remaining Pell Award of \$605.09 was made with the notation "BEOG 6/87-6/30/87", reflecting the distribution of the student's \$700 Pell Award.

In the instance of student #B9, \$995 out of a \$1960.21 SLS check was applied to the student's tuition account. The remaining \$965.21 was applied to the Expense Advance Account even though the student's tuition account had a remaining balance of only \$587.



In these examples, students would have been entitled to refunds, but the funds were transferred to the Expense Advance Account, from which they received funds on a monthly allotment.

ABI refers to the institution document entitled "Calculation of Expense Advance Worksheet" as justification for the retention of the Title IV Funds, instead of promptly refunding the excess Financial Aid. The pertinent paragraph of the worksheet reads as follows:

"The money I receive from these monthly payment checks will be used for additional expenses such as carfare and lunches while attending school. I understand that I will not receive monthly payments until my Anticipated Financial Aid is received. If I become terminated for any reason, the balance of my Expense Advance will be applied first toward my tuition then to reduce my loan or refunded to the appropriate funding agency."

This statement does not meet the requirements for withholding Title IV Funds. The statement is not in the nature of a request. It does not reflect any choice on the part of the student, nor that the student's authorization may be withdrawn at his/her request. The student must clearly authorize the school, in writing to hold the excess Stafford/SLS/Pell Funds.

Regulations: 34 CFR, 682.604, GSL, 11/10/86  
34 CFR, 690.78, Pell Grant, 10/14/87

Requirement: As the worksheet is a corporate document and in use at other institutions owned and operated by the Wilfred American Educational Corporation (WAE), WAE must immediately cease the utilization of the worksheet as justification for withholding Pell, Stafford and SLS Funds at all locations where it is currently in use. To resolve this finding WAE must identify those students where funds were withheld without permission. For current students WAE may attempt to obtain the expressed written permission required for withholding funds. Should students not grant permission, WAE must promptly deliver the funds to the students. WAE is also reminded that any arrangement is voluntary and may be cancelled at any time upon request of the student.

For its failure to comply with the regulatory procedures for check handling we are proposing that WAE pay a fine of one hundred dollars (\$100.00) to the Department of Education for each instance in which Pell, Stafford or SLS Funds were withheld from students without permission.

This fine is being proposed under the Department of Education's informal compliance procedures. If you choose not to pay the fine, we shall refer this case to the Program Compliance Branch,

Division of Audit and Program Review. That Branch may initiate a formal administrative action pursuant to Title 34, Part 668, Subpart G, which provides for fine, limitation, suspension or termination proceedings. Under a formal fine action, the amount of the fine may not be limited to the amount informally proposed.

For each student who received a loan or Pell Grant for a period of attendance commencing on or after July 1, 1983 and whose funds, or portions thereof, were improperly withheld, the following information must be provided in a report; one report for each WAE institution:

Name of Borrower  
Social Security Account number  
Program  
Amount Withheld

WAE must have this report certified as to its accuracy and completeness by an independent Certified Public Accountant. The scope of the accountant's review must include a determination of whether WAE has obtained borrower's permission to withhold funds or has disbursed the funds to students where permission was not obtained.

The accountant's statement must accompany this response.

Instructions for payment of the fine will be provided at a later date.

### 3. Improper Payment Periods.

Finding: ABI is a clock hour school that has academic terms. Currently, ABI defines its academic term as two modules for day programs and evening programs. In 1988- 90 the term will consist of 3 modules per term for the evening programs. As a result, some courses, those with an odd number of modules, had half terms. For example, the Word Processing Secretary Course consists of 5 modules or 2 1/2 terms. Therefore, students 30 and 36 were scheduled for a \$2200 Pell Grant to be paid in three disbursements of \$880, \$880 and \$440. The evening Data Entry Operator is 7 modules, or 3 1/2 terms. Students in this course are scheduled to receive 3 1/2 disbursements.

Regulation: 34 CFR, 690.3, Pell Grant, 3/15/85

Requirement: A payment period for an institution that has academic terms and measures progress in clock hours is



defined as a semester, trimester, quarter or other academic term if the student completes the clock hours scheduled for the term. Once ABI has defined its term, it must schedule payments according to its prescribed term. There is no provision for paying according to a partial term or a specially scheduled term.

ABI must review the student files for all students enrolled in courses that consist of irregular terms for the 88-89 award year. Pell payments must be recalculated to meet the definition of a term for all students who did not complete the course. In other words, if a term is two modules and a course is 5 modules long, the Pell must be disbursed in two disbursements only, based on the number of clock hours that the two modules consist of. There can be no payment for a partial term.

ABI must report the results of its review in the following format:

Name of Student  
Student Social Security Number  
Title of Program of Study  
Number of Clock Hours in Program  
Number of Terms in Program  
Number of Pell Disbursements Made and Amount  
Number and Amount of Pell Disbursements That Should Have  
Been Made  
Difference Between Amount Paid and Due

Future instructions will be provided upon submission of this report.

In addition, ABI must immediately cease using improper payment periods.

#### 4. Late Refunds to Guaranteed Student Loan Lenders.

Finding: The institutions do not always make timely refunds to lenders of unearned tuition attributable to the Part B Loans, Stafford (formerly GSL) SLS and Plus loans. Institutions are required to refund unused Part B loan funds to the lender within 30 days of the date the institution determines that the student has withdrawn (within 40 days prior to 12/26/86).

In both the Manhattan and Brooklyn schools, numerous examples of late refunds to lenders were found by the reviewers, including a refund to the lender for Student 21 whose date of withdrawal was 3/31/88, as determined by ABI, and whose refund check was endorsed by the bank on September 15, 1988. In another example, Student 3 last attended on June 4, 1986. The refund to the bank was dated September 25, 1986.

Additional late refunds were noted for Students B17, B27, 22, 25, 34, 35 and 37 then last dates of attendance are compared to dates of refund checks and dates checks were received by banks.

For each of these students, refunds should have been made to the lenders within 30 days (40 days for student 3) of the date the institution determined that the student was no longer in attendance. These late refunds caused the Department of Education to pay lenders excess interest and special allowance fees for the time period the institution had improperly retained these funds.

Regulation: 34 CFR, 682.607, GSL, 11/10/86

Requirement: ABI will be responsible for making all refunds owed to the Part B loan programs and will be liable for the excess interest and special allowance fees paid on loans by the Department of Education.

Each institution must conduct a review of all Part B refunds due to lenders for all students who withdrew, graduated or were terminated for whom refunds were due during the 1984-85, 85-86, 86-87, 87-88 and 88-89 award years for the Brooklyn School, and 86-87 for the Manhattan School, to determine the extent of late refunds. The report must be prepared in the following format:

Award Year  
Student's name  
Social Security Number  
Student's last date of attendance  
Date refund check cancelled by Part B loan lender (if refund has not yet been made, notate "none")  
Dollar Amount of Refund  
Name of Lender

Upon receipt of this report, the institution will be sent detailed instructions regarding the payment of the interest and special allowances due, as well as the repayment of any outstanding liabilities.

##### 5. Incorrect Refund Calculations.

Finding: The reviewers found some instances of incorrect refund calculations. For example, Student B3 enrolled twice and two separate refund calculations were prepared by the institution. According to the Student Charge Calculation Sheets (SCCS) prepared for both enrollments, total charges were \$708.87 and \$2447.97 for a total of \$3156.84. According to the tuition account card, and the SCCS, the student received two Pell awards for \$587 each and two loans, one for \$2386.57 and the other for \$3626.88 for a total of \$7187.45. However, refunds to the banks of \$1662.02 and \$1458.57 total only \$3120.59 instead of \$4030.61, a difference of \$910.02.



Student B7 withdrew. According to the SCCS, total charges were \$3874.90 but total receipts were \$4465.70. However, there was no record of a refund in the file. An inconsistency appears in this file. The tuition account card includes a loan in the amount of \$2355.70 while the SCCS shows only \$1764.90 as the loan amount.

No evidence of attendance was found for Student 27 although a tuition account card shows receipt of Pell for \$420 and loan of \$1176.25. There was no indication of refunds.

Student 25 withdrew after fewer than seven weeks, but the refund calculation was based upon eight weeks enrollment. The refund to the bank was \$295; it should have been \$540.

Student 36 enrolled twice but only one tuition account card was in the file. It indicated that earned tuition in the two sessions amounted to \$1504.37 and \$5282.19 for a total of \$6786.56. Title IV funding, loans and Pell grants, amounted to \$8220.63. The only refund indication in the student's file is a copy of a check made out to the student for \$169.19. There is no indication of any refunds to Title IV programs.

Regulation: 34 CFR, 668.22, General Provisions, 12/1/86

Requirement: ABI must examine the files of all students for whom refunds were made, or should have been made, during the three award years 1986-89 to ascertain if all computations are correct, that the period of student's enrollment is accurate and that there are no double charges, or overcharges. A report must be prepared for each incident in which an error had been made and that report should include the following information:

Student Name  
Social Security Number  
Award Year  
Copies of Student Charge Calculation Sheets  
Copies of Corrected SCCSs.  
Copy of Endorsed Refund Checks (back and front).  
Copy of Tuition Account Card

Upon receipt of this information, further instructions will be provided.

#### 6. Missing Financial Aid Transcripts

Finding: The reviewers found that the institutions failed to obtain the required financial aid transcripts for a number of students in the samples who received Title IV assistance. These students indicated that they had previously attended other postsecondary institutions. The students are Students 1, B16, B17, B20 and B30.

Regulations: 34 CFR, 668.14, General Provisions, 6/28/85  
34 CFR, 668.19, General Provisions, 12/1/87

Requirement: The institution must take steps to receive a financial aid transcript for a student, when required, prior to disbursing Title IV funds or it may disburse (except SLS and Stafford) funds for one payment period only after failure to receive a requested transcript in a timely manner. The school may certify an application for a Stafford or SLS loan but shall not release the proceeds before receipt of a required financial aid transcript.

The institution must attempt to obtain the required financial aid transcripts on the above-named students. Copies of these must be submitted to this office.

Further, the institution must review the files of all Title IV aid recipients for the 1986-87 year for the Brooklyn School to determine the extent of missing financial aid transcripts. Attempts must be made to obtain the missing transcripts. If these are not obtained, Pell Grant campus-based aid, and loan disbursements to the affected students are institutional liabilities. If the institution has documentation that it requested a transcript prior to disbursement, only second Pell Grant, and campus-based aid disbursements are liabilities. Please provide the following information on any transcript you are unable to obtain:

Student's Name  
Social Security Number  
Award Year  
Amount of Disbursements (by Title IV program - only second disbursements if the institution previously requested a transcript)  
Amount of Part B loan certified  
Date of loan disbursement

Please provide documentation for any transcripts previously requested but not received for students with Title IV aid disbursed.

Upon receipt of this report, further instructions will be provided.

7. Unresolved Conflicting Information.

Finding: The files of Students 13, B28, and B32 in the sample contained discrepant information.

Student 13 reported one college student in her household in the Verification Worksheet and two college students in her household in the SAR.



Student B28 reported two household members in the Verification Worksheets and four household members in the photocopy of the SAR.

Student B32's file contained conflicting information regarding citizenship status. The 1985-86 Federal Aid Application listed the student as a citizen, while the 1986-87 application indicated

him to be an eligible non-citizen. Although the student wrote a note claiming citizenship, specific documentation as to the status is required to resolve the conflict as noted in the Federal Student Financial Aid Handbook. Please review Chapter 2 of the handbook.

Regulations: 34 CFR, 668.16, General Provisions, 12/31/80  
34 CFR, 668.14, General Provisions, 12/1/87

Requirement: The ability of an institution to coordinate information it collects and to resolve discrepancies are critical elements in an evaluation of administrative capability. Each institution, Manhattan and Brooklyn, must resolve the discrepancies within a 30 day period. The institution must submit documentation used in the resolution of this finding. If the resolutions result in reductions in the amount of aid to which the student is eligible, the overpayments are institutional liabilities. If the institution cannot resolve the discrepancies, any Title IV monies disbursed are institutional liabilities. Instructions for repayment of the liabilities will be provided with our final program review determination.

8. Untimely Notification to Lender of Change in Student Status.

Finding: ABI is not consistently providing timely notification to Lenders when a recipient of a Stafford or SLS loan changed enrollment status. For example, the record for Student B28 reflected a last date of attendance of 2-26-87, but the notification in the file was signed and dated by an official of the institution 5-13-87. This exceeds the 60 days requirement as prescribed in the regulations.

In another case, student #7 had no notification to the lender in the file, based on withdrawal from ABI.

Additionally, records at N.Y. State Loan Services Corporation, guarantor for most of ABI's student loans, indicate ABI Brooklyn has not met the requirements for submitting Student Confirmation Rosters (SCR) within 30 days of receipt.

For example, the S.C.R. generated in October of 1987, was never received by the Guarantor. The S.C.R. generated in February, 1988 was not received until 5-24-88.

Diligence in the reporting of student enrollment status is very important in insuring that students are properly prepared to assume their repayment obligations on Educational Loans, and in reducing student loan defaults.

Regulation: 34 CFR, 682.610, GSL, 11/10/86

Reference: HEA-1986 (P.L. 99-498) Sec 428

Requirement: ABI-Brooklyn must review the files of student loan recipients at the institution since July 1, 1984 to determine to what extent untimely notification of changes in student status occurred. Changes include: withdrawal from the institution; failure to return from a leave of absence; SLS recipients who cease to be enrolled on a full-time basis; Stafford Loan recipients who cease to be enrolled on a half-time basis prior to October 17, 1986; and Stafford Loan recipients who cease to be enrolled on a full-time basis subsequent to October 17, 1986.

Notification of changes not previously reported must be sent to lenders. The following report must also be provided to this office for every student meeting the criteria above:

Student's Name  
Social Security Number  
Award Year  
Date of enrollment change  
Date Notification sent to lender  
Name of Lender

The institution will be provided instructions after review of the report.

ABI - Manhattan must insure notification is sent to the lender for Student #7, and submit a copy of that notification to the regional office with the response to this report.

#### 9. Pell Disbursement To Eligible Student

Finding: The institution disbursed Pell Grant funds to Student 10, who holds a baccalaureate degree from SUNY- Stony Brook and was, therefore not eligible for Pell.

Regulation: 34 CFR, 690.6, Pell Grant, 3/15/85

Reference: Federal Student Financial Aid Handbook, Chapter 4  
Pell Grant, Student Eligibility, pages 4-10.

Requirement: The institution must immediately return to the Pell Grant Account the funds improperly disbursed to this student. A copy of the refund check must be sent to this office with the



response to this report. The institution must take appropriate action to assure that Pell funds are disbursed to qualified eligible students only, in the future.

10. Inadequate Administration of Ability to Benefit Testing Procedure.

Finding: ABI admits students based on the Ability to Benefit Provision. The review uncovered cases where the scores of the test used to determine student's ability to benefit had been inaccurately compiled. The score for Student B17, when recalculated, resulted in a score of 52, which is less than the minimum requirement as delineated by ABI. The student therefore is not an eligible student, for Title IV purposes. Additional errors were noted in the compilation of scores for Student B28, and B14, although these students maintained eligibility.

Regulations: 34 CFR, 658.6, General Provisions, 12/31/80  
34 CFR, 658.7, General Provisions, 12/1/87

Requirement: ABI Brooklyn must review the files of all students admitted under the "ability to benefit" provisions for the last 5 award years, in order to determine the extent to which students were not properly admitted. The institution must calculate all test scores, and shall provide the following information for each student whose score did not meet the criteria for admission:

Student's Name  
Student Social Security Number  
Award Year  
Type and Amount of Title IV assistance disbursed to student

Further instructions will follow the submission of this report.

**EXHIBIT E**





**F E D E R A L  
S T U D E N T A I D**  
*We Help Put America Through School*

**JUL 29 2003**

Mr. William Cuevas Irizarry, President  
American Business College  
PO Box 6602, Sta. Rosa Unit  
Bayamon, PR 00959

**CERTIFIED MAIL**

Return Receipt Requested

Re: Expedited Final Program Review Determination  
PRCN: 200240220394 and 200240220405  
OPE ID: 02552100

Dear Mr. Cuevas:

From August 19 through 23, 2002, a team of Institutional Review Specialists, from the New York Case Management Team (NYCMT), conducted a program review of the Title IV, HEA programs administered at American Business College (ABC), located at 19 Calle Marti, Bayamon, Puerto Rico, 9 Arzuaga Street, Carolina, Puerto Rico, and 2449 Militar Avenue, Isabela, Puerto Rico. The focus of the review was to determine ABC's compliance with Title IV program statutes and regulations. The review consisted of, but was not limited to, an examination of the institution's Title IV policies and procedures, student aid and academic files, and financial ledgers. Although the review was thorough, it was not all-inclusive. The absence of statements in this letter concerning some of the institution's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures.

The review and subsequent investigation uncovered serious areas of non-compliance of Title IV program requirements. ABC should consider this Expedited Final Program Review Determination Letter (EFDL) a combined Program Review Report and Final Program Review Determination Letter.

The New York Case Management Team has made final determinations for all of the findings resulting from the program review. The purpose of this EFDL is to (1) identify the liabilities due from ABC, (2) provide instructions for the payment of the liabilities to the U.S. Department of Education (the Department), (3) notify you of your right to appeal, and (4) close the program review.

**Chronology of Events**

Subsequent to the on-site visit of August 2002, the NYCMT together with members of AAAD and the Office of General Counsel (OGC) interviewed current and former ABC students. Through these interviews, the Department discovered that ABC routinely falsified student documentation in order to obtain, and retain, Title IV funds to which it was not entitled. The specific findings identified through the program review process are detailed later in this letter. As a result of those findings, the NYCMT placed ABC on the reimbursement system of payment on September 30, 2002, and subsequently referred ABC to AAAD for appropriate administrative action.

On November 7, 2002, the Department imposed an emergency action and initiated termination and fine actions against ABC. On November 18, 2002, the school appealed that action. ABC closed in November 2002.

Students referenced in this letter by number are identified in Appendices A and B<sup>1</sup>. The students in Appendix A were also cited in the emergency/termination action and fine action initiated by the Department's Administrative Actions and Appeals Division (AAAD).

### Findings and Program Determinations

#### 1. Illegal Disbursement of Funds to Students Who Did Not Meet Requisite Eligibility Requirements

Only eligible students may receive Title IV program funds. 20 U.S.C. § 1091; 34 C.F.R. § 668.32. To be eligible, students must be academically qualified to study at a postsecondary level. In this regard, a student must have a high school diploma, a general education development certificate (GED), or be beyond the age of compulsory school attendance and have the ability to benefit from the program of instruction that is being provided. See 20 U.S.C. § 1091; 34 C.F.R. § 668.32(e). A student who does not have a high school diploma or GED must pass an independently administered ability to benefit (ATB) test prior to receiving Title IV funds. 34 C.F.R. § 668.32(e)(2). If a student does not meet one of these criteria, s/he is ineligible to receive Title IV funds.

As part of your fiduciary obligation to the Department, you were required to ensure that ABC only sought and disbursed Title IV funds to students who had the requisite educational background or who passed a valid ability to benefit test. You continually breached your fiduciary duty to the Department by using falsified ATB tests as the basis for students' Title IV eligibility.

Students 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 53, 54, 55, 56, 57, 58, 59, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 75, 77, 79, 80, 81, 82, 83, 84, 85, 87, 89, 90, 91,

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<sup>1</sup> Appendix A lists the students who were also included in the Emergency Action/Termination, and Fine Actions. Appendix B lists the additional ability to benefit students obtained from the lists provided to the Department by the institution.



93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 112, 113, 114, 116, 118, 119, 121, 122, 123, 124, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142, 143, 147, 148, 149, 150, 151, 153, 155, 156, 157, 158, 159, 160, 161, 162, 164, 165, 166, 167, 170, 171, 172, 174, 175, 177, 178, 179, 180, 181, 182, 184, 185, 186, 187, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 233, 234, 235, 236, 237, 238, 239, 240, 241, 243, 244, 245, 246, 247, 248, 249, 250, 251, 254, 256, 257, 258, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 275, 276, 277, 279, 280, 281, 282, 283, 284, 285, 288, 289, 290, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 312, 313, 314, 318, 320, 322, 323, 325, 326, 327, 328, 329, 330, 331, 334, 335, 336, 337, 338, 340, 341, 342, 343, 344, 345, 347, 348, 349, 351, 352, 353, 354, 355, 357, 358, 359, 360, 361, 362, 364, 365, 366, 367, 373, 376, 378, 379, 380, 382, 383, 384, 388, 389, 390, 391, 394, 395, 396, 397, 398, 399, 400, 402, 405, 406, 407, 409, 410, 412, 413, 414, 415, 417, 418, 419, 420, 421, 423, 424, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 440, 442, 443, 444, 445, 446, 447, 448, 450, 451, 455, 457, 458, 459, 460, 461, 463, 464, 465, 467, 468, 469, 470, 471, 472, 473, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 494, 495, 496, 497, 498, 500, 501, 503, 504, 505, 506, 507, 508, 509, 511, 512, 513, 515, 516, 517, 518, 519, 520, 521, 522, 523, 525, 526, 527, 528, 530, 531, 532, 534, 536, 537, 538, 539, 540, 541, 542, 543, 547, 548, 549, 550, 552, 554, 555, 556, 558, 559, 560, 561, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 576, 577, 579, 581, 583, 585, 587, 588, 589, 590, 592, 594, 595, 596, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 624, 625, 626, 630, 631, 632, 633, 634, 635, 637, 638, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 659, 660, 661, 662, 663, 664, 665, 667, 668, 669, 671, 672, 673, 674, 675, 677, 678, 679, 680, 681, 682, 685, 686, 687, 688, 689, 690, 691, 692, 694, 695, 696, 698, 699, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 713, 714, 717, 718, 723, 724, 725, 726, 728, 729, 730, 731, 732, 734, 735, 736, 737, 738, 739, 740, 741, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 756, 757, 758, 759, 762, 763, 765, 769, 771, 772, 773, 774, 776, 779, 780, 781, 783, 784, 785, 786, 787, 788, 789, 791, 792, 793, 795, 797, 798, 800, 801, 802, 803, 804, 805, 807, 808, 809, 810, 811, 813, 814, 816, 817, 818, 820, 821, 822, 823, 824, 825, and 826 were admitted to ABC as ATB students, and therefore, were required to meet Title IV ATB requirements in order to be eligible to receive Title IV funds. In this regard, the students were required to pass an independently administered ATB test prior to receiving Title IV funds. These students have Spanish Assessment of Basic Education (SABE) tests in their files, which were allegedly administered by Mr. Pablo Burgos. The Department has determined that the students either did not take the ATB test at all, or it was administered by school officials. Consequently, the students are not eligible for the Title IV funds received.

The Department has further determined that although Mr. Burgos may have actually administered SABE tests after January 2002, he is not recognized by McGraw Hill, the publisher of the SABE exam, as a certified test administrator. Consequently, the SABE tests for students 3, 19, 52, 60, 67, 86, 92, 115, 117, 168, 169, 173, 176, 182, 183, 212,



227, 310, 316, 319, 332, 356, 363, 368, 369, 370, 371, 372, 374, 375, 377, 381, 385, 386, 387, 392, 393, 401, 403, 404, 408, 411, 416, 422, 425, 426, 439, 441, 449, 452, 453, 454, 456, 462, 466, 474, 475, 493, 499, 502, 510, 514, 524, 529, 533, 535, 544, 545, 546, 551, 553, 557, 562, 575, 578, 580, 582, 584, 586, 591, 593, 597, 610, 623, 627, 628, 629, 636, 639, 640, 658, 666, 670, 676, 683, 684, 693, 697, 700, 712, 715, 716, 719, 720, 721, 722, 727, 733, 742, 754, 755, 760, 761, 764, 766, 767, 768, 770, 775, 777, 778, 782, 790, 794, 796, 799, 806, 812, 815, and 819 are not considered valid ATB tests for purposes of meeting the Title IV eligibility requirements. Therefore, these students are also ineligible for the Title IV funds received.

It is clear that ABC falsified ATB tests, and relied on invalid tests in order to illegally obtain Title IV funds. ABC's wanton disregard for its fiduciary responsibility to the Department resulted in the illegal procurement of Title IV funds.

#### Final Determination

During the review, ABC officials provided the Department with a list of ATB students that were purportedly tested by (b)(6). The Department has used this list as the basis for determining the liabilities for this finding. Since the Department has determined that the ATB tests for most of the students were not, in fact, given by Mr. (b)(6), the students were ineligible to receive Title IV funds. The students who may have actually taken a test administered by (b)(6) were also ineligible for the funds received, because (b)(6) was not a certified test administrator. Consequently, the Department is assessing liabilities for the Title IV Pell Grant funds drawn down for all ATB students.

We will provide detailed instructions regarding the payment of determined liabilities later in this letter.

#### 2. Illegal Retention of Unearned Tuition

In order to be eligible for Title IV aid, a student must be enrolled in a program requiring a minimum of 15 weeks and 600 hours of instructional time. 34 C.F.R. § 668.8(d). Once it is determined that a student is enrolled in an eligible program, the amount of a student's Federal Pell Grant is calculated by using the guidelines established in the Title IV regulations. 34 C.F.R. §§ 690.62, 690.63. The calculations to be used by an institution vary depending on the length of the student's program and the method by which the institution measures its academic program. For an institution such as ABC, whose programs are measured in clock hours, the calculations focus on the number of hours and number of weeks required to complete the student's program of study. Sec 34 C.F.R. § 690.63.

Once a Pell Grant award is calculated, clock hour institutions must disburse the award to a student in incremental payments that relate to the number of clock hours in the student's program of instruction. 34 C.F.R. §§ 690.63, 690.64. The first payment period for an eligible program that is one academic year in length or less and is measured in clock

hours is defined as the period of time in which the student completes the first half of his or her educational program. The second payment period is the period of time in which the student completes the second half of his or her educational program. 34 C.F.R. § 668.64(b)(1). Under these regulations, an institution may not disburse a second payment of Pell Grant funds to a student until the student has completed the requisite hours for which Pell disbursements have previously been made. 34 C.F.R. § 690.75(a)(3)(i). For a student whose educational program is more than one academic year, the payment period for subsequent academic years, or fractions of academic years, is the period of time in which a student completes one-half of the academic year or the remaining hours in the student's educational program, whichever is to be completed first. 34 C.F.R. § 668.64(b)(2).

In addition to the disbursement requirements outlined above, an institution must comply with Title IV refund requirements. During the 1999-2000 award year, Title IV and its implementing regulations required an institution to have a fair and equitable refund policy under which the institution made a refund of unearned tuition, fees, room and board, and other charges to a student who received Title IV program assistance if the student withdrew, dropped out, was expelled from the institution, or otherwise failed to complete the program on or after his/her first day of classes of the period of enrollment for which he or she was charged. 34 C.F.R. § 668.22(a)(1)(ii) (1999-2000). An institution's refund policy was fair and equitable if the policy provided for a refund of at least the larger of the amount provided under the requirements of applicable state law, the Federal pro rata refund policy for any student attending the institution for the first time, or the institution's refund policy. 34 C.F.R. § 668.22(b)(1999-2000).

In calculating refunds under these standards, an institution was required to include as "other charges" the cost of books and equipment that was charged to the student. The institution, however, could exclude from the calculation the documented cost of unreturnable equipment that was issued to the student. 34 C.F.R. § 668.22(c)(5)(ii)(1999-2000). An institution could also exclude from the refund calculation a reasonable administrative fee that was the lesser of 5% of the tuition, fees, room and board, and other charges assessed the student, or \$100. 34 C.F.R. § 668.22(c)(4)(1999-2000).

Consistent with its fiduciary responsibility, an institution was required to pay a refund allocable to the Pell Grant Program within 30 days of the date that the student officially withdrew, was expelled, or the institution determined that the student had unofficially withdrawn.<sup>2</sup> 34 C.F.R. § 668.22(h)(2)(iv)(1999-2000). When a student withdrew without notifying the institution, the withdrawal date was the last recorded date of class attendance by the student. 34 C.F.R. § 668.21(b)(1999-2000).

Beginning on October 7, 2000, institutions are required to follow the new Return to Title IV (R2T4) requirements, rather than the old refund regulations, when a student withdraws

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<sup>2</sup> At the time of the review, ABC was only participating in the Pell Grant program.



prior to the completion of his/her program of study.<sup>3</sup> For students withdrawing after that date, the institution is required to determine if the amount of Title IV assistance disbursed to the student exceeds the amount of Title IV funds earned as of the date of the student's withdrawal. For institutions such as ABC that are required to take attendance, the student's withdrawal date is the last recorded date of attendance. The Title IV funds not earned by the student must be returned to the appropriate Title IV program within 30 days from the date of the institution's determination that the student withdrew. 34 C.F.R. § 668.22 (2001).

During the award years in question, ABC's programs varied in length from the 900 hour Nail Technician and Esthetics Programs to the 1200 hour Basic Cosmetology Program. Due to the nature of the programs, students at ABC were required to complete the entire clock hours contained in their programs of study. There was no excused absence policy that would permit students to complete their programs of study without actually attending the entire clock hours required.

During the program review, Department officials requested complete attendance records for all of the students in their sample. ABC's formal attendance records were maintained in a computer system housed in the office. The information contained in the computerized records is allegedly taken directly from the instructors' roll books. Students' disbursements and/or refund calculations are based on the information contained in the computerized records.

The Department's investigation established that ABC repeatedly violated the disbursement and refund regulations cited above. First, the Department discovered that ABC disbursed funds to students who did not have the requisite clock hours of instruction to earn the disbursements. Ineligible disbursements were made to students 7, 11, 100, and 216. To mask these illegal disbursements, ABC falsified the attendance for students 7 and 216.

In addition, ABC illegally retained Title IV funds by failing to properly calculate refunds for students who withdrew from the institution prior to completing their programs of study. In calculating pro-rata refunds, ABC improperly included in the refund calculations the equipment cost charged to the students, rather than the actual documented cost of that equipment. These excessive equipment charges were included for students who did not even receive the equipment for which they were being charged. Further, when calculating refunds under the R2T4 requirements, the school improperly included unearned Title IV funds in the calculations. In each case, ABC retained more Title IV funds than the institution was actually entitled to receive.

Refunds were incorrectly calculated for students 1, 2, 4, 5, 6, 8, 9, 10, 12, 16, 18, 21, 25, 26, 27, 28, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 50, 52, 53, 54, 56, 57, 58, 60, 62, 63, 64, 65, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 85, 86, 88, 89, 90, 92, 94, 96, 98, 99, 100, 102, 103, 104, 105, 106, 107, 109, 111, 113, 114, 115, 116,

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<sup>3</sup> Between July 1, 1999, and October 7, 2000, institutions were permitted to use the new formula, but were not required to do so.



117, 119, 120, 121, 123, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 139, 141, 143, 144, 145, 146, 151, 152, 153, 154, 156, 157, 159, 160, 161, 163, 165, 166, 167, 168, 169, 170, 172, 173, 174, 175, 176, 177, 179, 180, 181, 183, 188, 189, 190, 191, 192, 193, 196, 197, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 212, 213, 215, 216, 217, 220, 221, 223, 225, 227, 228, 229, 233, 234, 236, 240, 241, 242, 243, 245, 248, 249, 250, 252, 253, 254, 256, 257, 259, 260, 262, 264, 266, 267, 269, 272, 273, 274, 275, 276, 278, 280, 281, 282, 283, 286, 287, 288, 289, 290, 291, 293, 294, 295, 297, 300, 302, 303, 306, 308, 310, 311, 316, 317, 319, 320, 321, 322, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 337, 338, 339, 340, 341, 342, 344, 346, 349, 350, 351, 352, 353, and 354. In the case of students 212 and 216, ABC falsified the attendance to mask its retention of unearned tuition for those students.

The improper conduct outlined above exemplifies ABC's blatant disregard for its responsibilities to the Department, and underscores the fact that ABC cannot be trusted with Federal funds.

#### Final Determination

Based on a review of student files and interviews conducted with ABC students, the Department has determined that the institution made ineligible disbursements of Pell Grant funds to students and failed to properly calculate refunds for students who withdrew from the institution prior to completing their programs of study. In some instances, ABC falsified student attendance documentation to mask that fact.

The Department's investigation established that it cannot trust the veracity of ABC's documentation as a whole. Consequently, it is virtually impossible to determine whether the Title IV funds disbursed to the institution have been properly spent. Under these circumstances, the Department could rightfully require the institution to return all Title IV funds it received during the years in question. The Department, however, acknowledges that ABC actually earned some of the Title IV funds that have been disbursed. In order to reconcile these issues, the Department has determined that the use of an error rate projection calculation would be the most reasonable approach under the circumstances. The specifics regarding this error rate calculation will be discussed later in this letter.

The projected error rate will establish liabilities for the illegal disbursement and retention of unearned tuition finding as outlined above. We will provide detailed instructions regarding the payment of determined liabilities later in this letter.

#### Payment Instructions

##### Payment Due the U. S. Department of Education

As noted above, the liabilities for the ATB/basis of admission violations (Finding 1) were based on the actual universe of those students as known to the Department. The Department calculated the liabilities for the ineligible disbursement and refund violations (Finding 2) using an error rate projection calculation.

The Department has calculated the liabilities as follows:

- A. We have identified all of the students who received Pell Grant awards during the 1999-2000, 2000-2001, and the 2001-2002 award years. These are identified in Attachment A.

1999-2000	\$1,010,710
2000-2001	\$1,370,414
2001-2002	\$2,529,978

Attachment A includes the amount of Pell Grant funds received by ABC on behalf of each student. The attachment also includes the per student liabilities for all students for the ATB/basis of admission violation (Finding 1) and for all students in the sample for the refund and ineligible disbursement violations (Finding 2), for each of the relevant award years.

- B. Attachment B lists the per student liabilities for all of the students in the ATB/basis of admission violation. As noted above, the liability is based on the actual universe of those students as known to the Department.

1999-2000	\$392,047
2000-2001	\$485,090
2001-2002	\$799,868

- C. Attachment C identifies the students in the program review sample who did not also fall within the ATB/basis of admission finding. These students were used as the basis for the error rate and projected liability calculation. The finding relevant to the error rate calculation is the refund and ineligible disbursement violations (Finding 2). The projected liabilities are:

1999-2000	\$30,933
2000-2001	\$53,119
2001-2002	\$484,431

1. Error Rate Determination

- a. The liabilities per student in the program review sample were identified for the refund and ineligible disbursement finding for each award year.
- b. The total Pell Grant funds received for all students in the program review sample who *did not* also fall into the ATB/basis of admission finding were identified.



- c. The total student liabilities in the sample were divided by the total Pell received by the students in this sample to calculate the percentage of Pell funds reviewed that the Department was able to determine were misspent. This is the error rate for the *sample* for each award year.

2. Projection Calculation

- a. The total Pell funds disbursed to the institution for each award year were identified.
- b. The Pell funds received by the students in the ATB/basis of admission findings were subtracted from the total Pell in order to obtain the universe of Pell funds applicable to the remaining finding. These funds were excluded from the "projection universe" because the Department has already assessed liabilities for the full universe of students it has identified as relevant to this finding.
- c. The error rate, as calculated above, for each award year was multiplied by the Pell funds received for the students in the "projection universe" to determine the projected liabilities for the ineligible disbursement and refund finding.

D. Total Liabilities

Finding	99-00	00-01	01-02	Totals
ATB/Basis of Admission (Finding 1) (Attachment B)	\$392,047	\$485,090	\$799,868	\$1,677,005
Projected Liabilities (Finding 2) (Attachment C)	<u>\$30,933</u>	<u>\$53,119</u>	<u>\$484,431</u>	<u>\$568,483</u>
Total	\$422,980	\$538,209	\$1,284,299	<u>\$2,245,488</u>

The total liability due to the Department of Education is **\$2,245,488**. This liability must be paid by electronic transfer of funds through the Treasury Financial Communications System known as FEDWIRE. You must request that your bank transmit the payment through FEDWIRE by way of the Federal Reserve Bank in New York. If your bank does not maintain an account at the Federal Reserve Bank, it will use the services of a correspondent bank when making payments through FEDWIRE. Instructions for completing the electronic fund transfer message format are enclosed.

Your institution must make this payment within forty-five (45) days of the date of this letter. If payment is not received by the Department within that 45 day period, interest will accrue in monthly increments, starting with the date of this letter, until the date of receipt of your payment. If you have any questions regarding interest accruals or payment

credits, you may telephone (202) 401-1450 and ask to speak to your institution's account representative.

If within 45 days of the date of this letter, your institution has neither made payment in accordance with these instructions nor entered into an arrangement to repay the liability under terms satisfactory to the U.S. Department of Education, the Department intends to collect the amount due and payable by administrative offset against payments due your organization from the Federal Government. **Your institution may object to the collection by offset only by challenging the existence or amount of the debt.** Your institution makes this challenge by timely appealing this determination under the procedures described in the "Appeal Procedures" section of this letter. The Department will use those procedures to consider any objection to offset. No separate appeal opportunity will be provided. If a timely appeal is filed, the Department will defer offset until completion of the appeal, unless the Department determines that offset is necessary as provided in 34 C.F.R. § 30.28. This debt may also be referred to the Department of the Treasury for further action as authorized by the Debt Collection Improvement Act of 1996.

#### Payment Plan

If full payment to the U. S. Department of Education cannot be made within 45 days of the date of this letter, the institution may contact the Financial Improvement Receivables Group at (202) 401-1450 to apply for a payment plan. Interest charges and other conditions apply. The institution may direct written requests to the following address:

U. S. Department of Education  
Financial Improvement Receivables Group  
600 Independence Avenue, SW  
FOB 10B, Room 3400  
Washington, DC 20202-4330

ABC must ensure that the resolutions of the program review findings are confirmed by your independent auditor during the institution's next FSA audit.

#### Appeal Procedures

This constitutes the Department's Final Program Review Determination with respect to the liabilities identified from the August 23, 2002, program review conducted at your institution. If your institution wishes to appeal to the Secretary for a review of monetary liabilities established by this Final Program Review Determination, the institution must file a written request for a hearing. This request must be received by the Department no later than *45 days* from the date the institution receives this final program review determination letter. The institution must enclose with its appeal request an original and four copies of the information submitted. Your appeal request may be sent by regular, overnight, or courier mail to:



Ms. Mary E. Gust, Director  
Administrative Actions and Appeals  
U. S. Department of Education  
FSA/Schools Channel/CMO  
830 First Street, NE  
UCP3, Room 83E1  
Washington, DC 20002-5267

Your institution's appeal request must: (1) indicate the findings, issues, and facts you dispute; (2) state the institution's position, together with pertinent facts and reasons supporting its position; (3) include all documentation it believes the Department should consider in support of the appeal; and (4) include a copy of this final program review determination.

If your institution's appeal request is complete and made on a timely basis, the Department will schedule an administrative hearing in accordance with § 487(b)(2) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. § 1094(b)(2). The procedures followed with respect to your institution's appeal will be those provided in 34 C.F.R. Part 668, Subpart H.

Program records relating to the period covered by this program review must be retained until *the later of*: resolution of the loan(s), claim(s) or expenditure(s) questioned in the program review, 34 C.F.R. § 668.24 (e)(3)(i); or the end of the retention period applicable to the record under 34 C.F.R. § 668.24 (e)(1) and (e)(2).

The regulations also require that you submit with your request for review any institutional work papers, records, or other materials that you may later wish to offer in this proceeding to support your position (34 C.F.R. § 668.113(b)).

Your continued cooperation throughout the program review process is appreciated. If you have any questions concerning this final program review determination, please contact Patricia Edelson at (212) 637-6411.

bcc:  
Reading File  
Correspondence File  
Patricia Edelson  
Kathy Hochhalter  
Denise Morelli  
Yvette Jones  
Bob James  
Consejo  
NACCAS

Sincerely,



Robert J. McKiernan, Area Case Director  
Case Management Division - Northeast  
New York Team

Enc.  
c: Dana M. Fallon, Esq.



**EXHIBIT F**

UNITED STATES DEPARTMENT OF EDUCATION

IN THE MATTER OF

AMERICAN BUSINESS COLLEGE,

Respondent

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Docket No. 03-100-SP

Federal Student  
Aid Proceeding

BRIEF FOR FEDERAL STUDENT AID

Denise Morelli  
Office of the General Counsel  
U.S. Department of Education  
400 Maryland Ave. S.W.  
Room 6E249  
Washington, D.C. 20202

Counsel for FSA

UNITED STATES DEPARTMENT OF EDUCATION

IN THE MATTER OF

AMERICAN BUSINESS COLLEGE,

Respondent

)  
) Docket No. 03-100-SP  
)  
)  
) Federal Student Aid  
) Proceeding

**BRIEF OF FEDERAL STUDENT AID**

**STATEMENT OF THE CASE**

On November 7, 2002, the U.S. Department of Education (Department), Federal Student Aid (FSA), Administrative Actions and Appeals Division (AAAD), imposed an emergency action against American Business College (ABC). In addition, FSA issued a notice of its intent to terminate the eligibility of ABC to participate in programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 et seq. (Title IV) and to fine the institution \$2,074,000. Subsequent to the issuance of the actions, ABC closed and the fine portion of the administrative action was settled.

On July 29, 2003, FSA issued a Final Program Review Determination (FPRD) assessing \$2,245,488 in liabilities against ABC for the Title IV violations discovered during the program review and subsequent investigation. Liabilities were assessed for the illegal Title IV funds obtained by ABC through the use of falsified Ability to Benefit (ATB) tests, the ineligible Title IV disbursements, and the unearned tuition funds the school retained when it used falsified hours, unearned Pell funds, and excessive equipment charges in its refund calculations.

On September 29, 2003, ABC appealed the FPRD pursuant to 34 C.F.R. § 668.113. This appeal proceeding is governed by 34 C.F.R. Part 668, Subpart H. Under those provisions, ABC has the burden of proving that it complied with all Title IV program requirements and made

proper expenditures. 34 C.F.R. § 668.116(d). As set forth below, ABC falls severely short of meeting that burden.

## **STATEMENT OF THE FACTS**

### **A. Background**

From August 19-23, 2002, the New York Case Management Team conducted a program review at ABC to evaluate the institution's administration of the Title IV programs. Consistent with standard procedure, the reviewers selected a sample of student files to review and requested that the school provide all relevant Title IV documentation for these students. The requested documentation, which included student eligibility documents, attendance records, and financial records, was provided to the reviewers by various school officials.

Subsequent to the on-site portion of the review, Department officials conducted interviews with numerous students who had attended ABC. During the course of this subsequent investigation, it became clear that ABC was ignoring critical Title IV requirements and was falsifying financial information and student file documents to cover that fact.

On September 3, 2002, the school was placed on the reimbursement system of payment. Based on the egregious misconduct committed by ABC, FSA issued a combined emergency action/termination and fine action against the school on November 7, 2002.<sup>1</sup> In that action, ABC was fined \$2,074,000 as punishment for its misconduct. The fine action was resolved through settlement.

### **B. FPRD**

In order to fulfill its responsibility of ensuring that improperly spent Title IV funds are repaid to the Department, FSA reviewed the documentation obtained during the program review and subsequent investigation to determine the extent of the liabilities resulting from ABC's

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<sup>1</sup> The emergency action and termination action were rendered moot by the school's closure.



misconduct. FSA's review of the records established that ABC's error rate for the violations discovered during the review would, under Department policy, warrant a directive that the school conduct a full file review for all students relevant to each violation to determine the full extent of the violations. From the file reviews, the Department would determine the liabilities associated with those Title IV violations.

In this case, however, the Department determined that ABC falsified student file documentation. The fraud committed by ABC calls into question the veracity of the school's documentation as a whole. Consequently, the Department determined that the results of any file review submitted by the institution would be tainted, and therefore, would not provide the Department with an accurate accounting of Title IV funds misspent by the institution. Rather than require the school to repay all Title IV funds received, however, the Department used a methodology that recognized that some of the Title IV funds received by ABC were properly spent. ED Ex. 365 at 8-9.

As fully set forth in the FPRD, the Department did assess full liabilities for all students who were admitted under the ATB standard prior to January 2002.<sup>2</sup> ED Ex. 365 at 6-8. Full liabilities were assessed for these students because the information obtained from the ATB students that were interviewed established that the ATB tests were falsified. In contrast, information received from some non-ATB students who were interviewed established that those students' records were accurate, and therefore, the institution properly obtained the Title IV funds for those students. Since not all of the files reviewed contained falsified records, or other information establishing a Title IV violation, a straight error rate projection was used to establish

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<sup>2</sup> As set forth below, the Department is withdrawing the portion of the ATB finding that involved the test administrator's certification. The liability total that is listed in this brief reflects the adjustment that was made as a result of that withdrawal.



liabilities for the remaining ineligible disbursement and refund findings.<sup>3</sup> The total liability resulting from the Department's calculations is \$2,026,590.

## **ARGUMENT**

### **ABC'S MISCONDUCT AND ITS FAILURE TO COMPLY WITH TITLE IV REQUIREMENTS RESULTED IN THE LOSS OF \$2,026,590 IN FEDERAL FUNDS**

#### **A. FSA Properly Found That ABC Falsified Records to Mask Its Illegal Receipt of Title IV Funds for Students Who Did Not Meet Requisite Eligibility Requirements**

Only eligible students may receive Title IV program funds. 20 U.S.C. § 1091; 34 C.F.R. § 668.32. To be eligible, students must be academically qualified to study at a postsecondary level. In this regard, a student must have a high school diploma, a general education development certificate (GED), or be beyond the age of compulsory school attendance and have the ability to benefit from the program of instruction that is being provided. See 20 U.S.C. § 1091; 34 C.F.R. § 668.32(e). A student who does not have a high school diploma or GED must pass an independently administered ability to benefit (ATB) test prior to receiving Title IV funds. 34 C.F.R. § 668.32(e)(2). If a student does not meet one of these criteria, he/she is ineligible to receive Title IV funds.

As part of its fiduciary obligation to the Department, ABC was required to ensure that ABC only sought and disbursed Title IV funds to students who had the requisite educational background or who passed a valid ability to benefit test. ABC continually breached its fiduciary duty to the Department by using falsified ATB tests as the bases for students' Title IV eligibility.<sup>4</sup>

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<sup>3</sup> The exact methodology used to establish the liabilities is set forth in specific detail in the FPRD. See ED Ex. 365 at 8-9.

<sup>4</sup> Falsified tests were used as the basis of admission for Students 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 53, 54, 55, 56,

The Department has determined that the cited students were admitted to ABC as ATB students, and therefore, were required to meet Title IV ATB requirements in order to be eligible to receive Title IV funds. In this regard, the students were required to pass an independently administered ATB test prior to receiving Title IV funds. Although these students have Spanish Assessment of Basic Education (SABE) tests in their files, which were allegedly administered by Mr. Pablo Burgos, the Department has determined that these tests were falsified. The tests were either not administered at all, or were administered by school officials. See for example ED Exs. 31 at 15 –17, 47 at 11-15, 71 at 13-15, 117 at 23-31, 181 at 24-27, 216 at 14-18, 247 at 19-25.<sup>5</sup> In either case, the students were ineligible to receive Title IV funds. It is clear that ABC falsified ATB tests in order to illegally obtain Title IV funds. ABC's wanton disregard for its fiduciary responsibility to the Department resulted in the illegal procurement of Title IV funds.<sup>6</sup>

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57, 58, 59, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 75, 77, 79, 80, 81, 82, 83, 84, 85, 87, 89, 90, 91, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 112, 113, 114, 116, 117, 118, 119, 121, 122, 123, 124, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142, 143, 147, 148, 149, 150, 151, 153, 155, 156, 157, 158, 159, 160, 161, 162, 164, 165, 166, 167, 170, 171, 172, 174, 175, 176, 177, 178, 179, 180, 181, 182, 184, 185, 186, 187, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 208, 209, 210, 211, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 228, 229, 230, 231, 233, 234, 235, 236, 237, 238, 239, 240, 241, 243, 244, 245, 246, 247, 248, 249, 250, 251, 254, 256, 257, 258, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 275, 276, 277, 279, 280, 281, 282, 283, 284, 285, 288, 289, 290, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 312, 313, 314, 316, 318, 319, 320, 322, 323, 325, 326, 327, 328, 329, 330, 331, 332, 334, 335, 336, 337, 338, 340, 341, 342, 343, 344, 345, 347, 348, 349, 351, 352, 353, 354, 355, and 356.

<sup>5</sup> These are just examples of the 71 statements being provided in the Department's exhibits.

<sup>6</sup> As set forth in the FPRD, the Department determined that Mr. Burgos may have administered tests after January 2002. The Department, however, had obtained information from the test publisher, McGraw-Hill that supported a finding that Mr. Burgos was not certified by McGraw-Hill to administer the test. See ED Ex. 367. ABC has submitted new information from McGraw-Hill that is inconsistent with the information initially obtained by the Department. The Department has verified that the information initially provided to the Department was incorrect. Consequently, the Department is withdrawing the liabilities associated with the second portion of the finding. Those liabilities amount to \$218,898. See ED Ex. 369.

During the review, ABC officials provided the Department with a list of ATB students that were purportedly tested by Mr. Pablo Burgos. Based on the significant number of students interviewed, the Department determined that prior to January 2002, Mr. Burgos did not actually administer the ATB tests. Consequently, the Department considers all students whose "test date" on the ATB list was prior to January 2002, to be ineligible for the Title IV funds received. Since the Department was able to identify the entire universe of these students full liabilities were assessed. The total liabilities for these students is \$1,458,107. See ED Ex. 369 at 1.

ABC first maintains that it should not be held liable for the ATB funds listed above because the Department has not established that all ATB tests were falsified. Respondent's Brief (Res. Br.) at 3. Consequently, the school maintains that it should only be held liable for the funds disbursed to students for whom the Department has submitted proof that the tests were falsified. ABC's claim should be summarily rejected.

The Department has submitted declarations for 71 students, all of which establish that either one of ABC's employees, and not Mr. Burgos, administered the ATB tests, or they did not take the test at all. Despite this fact, ABC presented the Department with falsified ATB tests representing Mr. Burgos as the test administrator. See for example ED Exs. 8 at 3, 10 at 19, 11 at 17. ABC's suggestion that the Department cannot assess liabilities because it did not interview every ATB student to establish that all of the tests are falsified is simply ridiculous. It would be virtually impossible for the Department to locate and interview every ATB student listed on ABC's list, and it should not be expected to do so. The Department interviewed a sufficient number of students to establish that the school's falsification of ATB tests was widespread. The widespread nature of the falsification would certainly give the Department a



sufficient basis for its presumption that all of the ATB tests were falsified. The Department has clearly met its burden on this issue.

In contrast, ABC has failed to submit sufficient evidence to establish that any of the tests administered prior to January 2002 were valid. In fact, the school acknowledges that three of its employees administered ATB tests to some students. The school, however, fails to quantify the term "some" by providing a list of students that it is acknowledging were administered invalid tests by the employees in question.<sup>7</sup> Contrary to ABC's suggestion that employees only administered the ATB tests in a few isolated instances, the statements provided by the Department establish that the practice was widespread.

To support its claim that not all of the tests were falsified, ABC submitted declarations from three employees, Daniel Pagan, Moises Galarza, and Jorge Collazo. Res. Ex. 361. In each declaration, the employees maintained that they did not administer the ATB test to the students in question. These statements, however, are in direct conflict with the statements provided to the Department by the students. Compare Res. Ex. 361 at 1-2 and ED Ex. 174 at 15-18; Res. Ex. 361 at 6-7 and ED Ex. 242 at 10-14; Res. Ex. 361 at 8 and 279 at 9-12. In the circumstances at hand, the student statements should be deemed credible.

The Department routinely interviews students in these types of cases. There is absolutely no reason a student would lie to Department officials regarding who administered them the ATB tests. The students are unaware that the tests must be independently administered, and therefore, the fact that an employee gave them the test is simply not significant. Even in the unlikely case where a student may understand the requirements, it would not be in their interest to say an

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<sup>7</sup> The school's claim, even if true, that Mr. Burgos actually graded the tests administered by the employees does not make the tests valid for purposes of establishing Title IV eligibility. The tests must be independently administered in order to meet the regulatory requirements. See 34 C.F.R. § 668.32(e)(2).

employee gave them the test, because the student could be liable for the tuition if the Pell funds had to be returned to the Department. There is simply no basis to conclude that these students, as well as others, lied in their statements.

In contrast, the employees in question would have sufficient basis to lie in their statements. These employees were involved in a scheme to defraud the Federal Government. The employees administered the ATB tests and either falsely represented, or permitted someone else to falsely represent, that the tests were administered by Mr. Burgos.<sup>8</sup> These tests were then used as the basis for their employer to illegally obtain Title IV funds. The individuals could be held criminally liable for these actions.

The evidence submitted by the Department clearly establishes that there was widespread falsification of ATB tests at ABC. As outlined above, ABC's claims to the contrary are without merit, and therefore, should be rejected.

The Tribunal should also reject ABC's claim that the students attending the Isabella campus should be removed from the liability calculation. Although the Department was unable to interview students from that campus due to its location on a different part of the island, there is no reason to believe that the school would only falsify the tests at the Bayamon and Carolina locations, and not at the Isabella location. The statements of the employees at that location that were submitted by ABC are suspect for the same reasons outlined above for the employees at the other locations. Consequently, the funds disbursed to the students at the Isabella location should be included in the liability total.

ABC's argument that a projection should be used for the ATB finding should also be summarily rejected. See Res. Br. At 10. As outlined in the FPRD, the Department could have rightfully requested the return of all Title IV funds because the falsifications that were

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<sup>8</sup> All of the tests had Mr. Burgos' name entered as the test administrator.



discovered called into question the veracity of the documents as a whole. An error rate projection was used for the refund and ineligible disbursement findings in lieu of a mandate to return all funds, because the Department did have information that some of the non-ATB students actually earned the funds that were disbursed and retained by ABC. The Department does not have that same information with respect to the ATB tests administered prior to January 2002. In addition, the Department was able to isolate the total universe of ATB students with the lists provided by the school itself. Under these circumstances there is simply no reason to calculate a projected liability, rather than assess a full liability. Consequently, ABC's argument should be rejected.

**B. The Department Properly Determined That ABC Illegally Disbursed and Retained Title IV Funds**

In order to be eligible for Pell funds, a student must be enrolled in a program requiring a minimum of 15 weeks and 600 hours of instructional time. 34 C.F.R. § 668.8(d). Once it is determined that a student is enrolled in an eligible program, the amount of a student's Federal Pell Grant is calculated by using the guidelines established in the Title IV regulations. 34 C.F.R. §§ 690.62, 690.63. The calculations to be used by an institution vary depending on the length of the student's program and the method by which the institution measures its academic program. For an institution, such as ABC, whose programs are measured in clock hours, the calculations focus on the number of hours and number of weeks required to complete the student's program of study. See 34 C.F.R. § 690.63.

Once a Pell Grant award is calculated, clock hour institutions must disburse the award to a student in incremental payments that relate to the number of clock hours in the student's program of instruction. 34 C.F.R. §§ 690.63, 690.64. The first payment period for an eligible program that is one academic year in length or less and is measured in clock hours is defined as

the period of time in which the student completes the first half of his or her educational program. The second payment period is the period of time in which the student completes the second half of his or her educational program. 34 C.F.R. § 668.64(b)(1). Under these regulations, an institution may not disburse a second payment of Pell Grant funds to a student until the student has completed the requisite hours for which Pell disbursements have previously been made. 34 C.F.R. § 690.75(a)(3)(i). For a student whose educational program is more than one academic year, the payment period for subsequent academic years, or fractions of academic years, is the period of time in which a student completes one-half of the academic year or the remaining hours in the student's educational program, whichever is to be completed first. 34 C.F.R. § 668.64(b)(2).

In addition to the disbursement requirements outlined above, an institution must comply with Title IV refund requirements. During the 1998-1999 and 1999-2000 award years, Title IV and its implementing regulations required an institution to have a fair and equitable refund policy under which the institution made a refund of unearned tuition, fees, room and board, and other charges to a student who received Title IV program assistance if the student withdrew, dropped out, was expelled from the institution, or otherwise failed to complete the program on or after his/her first day of classes of the period of enrollment for which he or she was charged.

34 C.F.R. § 668.22(a)(1)(ii) (1999-2000). An institution's refund policy was fair and equitable if the policy provided for a refund of at least the larger of the amount provided under the requirements of applicable state law, the Federal pro rata refund policy for any student attending the institution for the first time, or the institution's refund policy. 34 C.F.R. § 668.22(b)(1999-2000).

In calculating refunds under these standards, an institution was required to include as “other charges” the cost of books and equipment that was charged to the student. The institution, however, could exclude from the calculation the documented cost of unreturnable equipment that was issued to the student. 34 C.F.R. § 668.22(c)(5)(ii)(1999-2000). An institution could also exclude from the refund calculation a reasonable administrative fee that was the lesser of 5% of the tuition, fees, room and board, and other charges assessed the student, or \$100. 34 C.F.R. § 668.22(c)(4)(1999-2000).

Consistent with its fiduciary responsibility, an institution was required to pay a refund allocable to the Pell Grant Program within 30 days of the date that the student officially withdrew, was expelled, or the institution determined that the student had unofficially withdrawn.<sup>9</sup> 34 C.F.R. § 668.22(h)(2)(iv)(1999-2000). When a student withdrew without notifying the institution, the withdrawal date was the last recorded date of class attendance by the student. 34 C.F.R. § 668.21(b)(1999-2000).

Beginning on October 7, 2000, institutions are required to follow the new Return to Title IV (R2T4) requirements, rather than the old refund regulations, when a student withdraws prior to the completion of his/her program of study.<sup>10</sup> For students withdrawing after that date, the institution is required to determine if the amount of Title IV assistance disbursed to the student exceeds the amount of Title IV funds earned as of the date of the student’s withdrawal. For institutions such as ABC that are required to take attendance, the student’s withdrawal date is the last recorded date of attendance. The Title IV funds not earned by the student must be returned

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<sup>9</sup> At the time of the review, ABC was only participating in the Pell Grant program.

<sup>10</sup> Between July 1, 1999, and October 7, 2000, institutions were permitted to use the new formula, but were not required to do so.



to the appropriate Title IV program within 30 days from the date of the institution's determination that the student withdrew. 34 C.F.R. § 668.22(2001).

During the award years in question, ABC's programs varied in length from the 900 hour Nail Technician and Esthetics Programs to the 1200 hour Basic Cosmetology Program. Due to the nature of the programs, students at ABC were required to complete the entire clock hours contained in their programs of study. There was no excused absence policy that would permit students to complete their programs of study without actually attending the entire clock hours required.

During the program review, Department officials requested complete attendance records for all of the students in their sample. ABC's formal attendance records were maintained in a computer system housed in the office. The information contained in the computerized records was allegedly taken directly from the instructors' roll books. Students' disbursements and/or refund calculations were based on the information contained in the computerized records.

The Department's investigation established that ABC repeatedly violated the disbursement and refund regulations cited above. First, the Department discovered that ABC disbursed funds to students who did not have the requisite clock hours of instruction to earn the disbursements. Ineligible disbursements were made to Students 7, 11, 100, and 216. To mask these illegal disbursements, ABC falsified the attendance for Students 7 and 216.

The attendance records that were used to determine Student 7's eligibility for a second disbursement of Title IV funds show that she attended ABC until June 2000, and accumulated 457.50 hours. See ED Ex. 7 at 3. Based on these hours, the school awarded the student a second Pell. See ED Ex. 7-5. The student, however, informed the Department officials that she stopped attending in March 2000. See ED Ex. 7 at 6. As of the end of March, Student 7 only had 337.5

hours, and therefore, was not eligible for the second Pell disbursement. By falsifying the student's hours, the school obtained Title IV funds to which it was not entitled.

A similar situation occurred for Student 216. The attendance record provided to the Department showed that the student attended until April 2001 and accumulated 482 total hours. See ED Ex. 216 at 7. Based on these hours, the school drew down a second Pell disbursement of \$1650. See ED Ex. 216 at 13. The student, however, informed Department reviewers that she only attended until December, because she didn't receive her equipment and was unhappy with the school. See ED Ex. 216 at 14. The total hours accumulated by the end of December were 385, which were insufficient to earn a second disbursement. By falsifying the student's hours, the school was able to secure Title IV funds to which it was not entitled.

ABC attempts to dispute the Department's position on these two students by submitting declarations from employees stating that the hours entered in the computerized attendance came directly from the teacher's roll books, and the teacher's roll books reflect the correct hours. See Res. Ex. 264 at 1, 4, 26. The information, however, is inconsistent with the statements made by the students in question. As with the ATB issue above, the students have no reason to lie about the time frame they attended the institution. In addition, it is unlikely a teacher would remember the specific time frames each of his/her students attended, especially at a large school, such as ABC, which has a high withdrawal rate. It is not clear at what point the "extra" hours were actually added, but it is clear that the institution inflated the students' hours in order to obtain additional funds to which it was not entitled.

For Students 11 and 100, the ineligible disbursements can be established from the face of the documents. The attendance records for Student 11 establish that the student had accumulated 769 hours at the time she withdrew. See ED Ex. 11 at 8. Despite the fact that the student had



not reached 900 hours, ABC improperly disbursed a third Pell. See ED Ex. 11 at 12. The attendance records for Student 100 establish that the student only completed 100 hours at the time she withdrew. See ED Ex. 100 at 14. An additional disbursement was made when the student re-enrolled, but the student never attended any additional hours. See ED Ex. 100 at 14.<sup>11</sup> That ineligible disbursement was never returned.<sup>12</sup>

In addition, ABC illegally retained Title IV funds by failing to properly calculate refunds for students who withdrew from the institution prior to completing their programs of study.<sup>13</sup> In calculating pro-rata refunds, ABC improperly included in the refund calculations the equipment cost charged to the students, rather than the actual documented cost of that equipment. These excessive equipment charges were included for students who did not even receive the equipment for which they were being charged.

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<sup>11</sup> Contrary to ABC's argument, this was not simply an entry error on the ledger. See Res. Br. at 8. The Department's disbursement records establish that the school did draw down the \$1283 disbursement. See ED Ex. 363 at 4.

<sup>12</sup> The liabilities for these students are included with the refund finding for purposes of a projection. If the student was also in the ATB finding, the liabilities were removed from the projection to avoid duplication.

<sup>13</sup> Refunds were incorrectly calculated for students 1, 2, 4, 5, 6, 8, 9, 10, 12, 16, 18, 21, 25, 26, 27, 28, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 50, 52, 53, 54, 56, 57, 58, 60, 62, 63, 64, 65, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 85, 86, 88, 89, 90, 92, 94, 96, 98, 99, 100, 102, 103, 104, 105, 106, 107, 108, 109, 111, 113, 114, 115, 116, 117, 119, 120, 121, 123, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 139, 141, 143, 144, 145, 146, 151, 152, 153, 154, 156, 157, 159, 160, 161, 163, 165, 166, 167, 168, 169, 170, 172, 173, 174, 175, 176, 177, 179, 180, 181, 183, 188, 189, 190, 191, 192, 193, 196, 197, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 212, 213, 215, 216, 217, 220, 221, 223, 225, 227, 228, 229, 233, 234, 236, 240, 241, 242, 243, 245, 248, 249, 250, 252, 253, 254, 256, 257, 259, 260, 262, 264, 266, 267, 269, 272, 273, 274, 275, 276, 278, 280, 281, 282, 283, 286, 287, 288, 289, 290, 291, 293, 294, 295, 297, 300, 302, 303, 306, 308, 310, 311, 316, 317, 319, 320, 321, 322, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 337, 338, 339, 340, 341, 342, 344, 346, 349, 350, 351, 352, 353, and 354. In the case of Students 212 and 216, ABC falsified the attendance to mask its retention of unearned tuition for those students.

For example, in the pro-rata refund calculation for Student 8, ABC used an equipment charge of \$225.<sup>14</sup> See ED Ex. 8 at 11. When she was interviewed, however, the student informed Department reviewers that the only equipment she received was the mannequin head. See ED Ex. 8 at 15. Since the student only received the mannequin head, the Department limited the amount ABC could put in its calculation to the documented cost of that item. See ED Exs. 8 at 12, 368 (Declaration of Patricia Edelson). The regulation makes clear that an institution may only include the documented cost of equipment the student “actually obtains” when calculating pro-rata refunds. 34 C.F.R. § 668.22(c)(5)(ii) (1999-2000). ABC similarly inflated the equipment charges used in the refund calculations for the other students cited in the FPRD.

When calculating refunds under the R2T4 requirements, the school improperly included unearned Title IV funds in the calculations. In each case, ABC retained more Title IV funds than the institution was actually entitled to receive. The Department recalculated all of the refunds to determine if additional funds were owed. See for example ED Ex. 2 at 3-4, Res. Ex. at 26-27.

Although it is not completely clear in the brief, it appears that the school is acknowledging this error. See Res. Br. at 6. The school, however, suggests that the Department’s computerized R2T4 form that was used by the school prompted the financial aid officer to input incorrect information. That claim is completely baseless. The Department provides complete directions on how to accurately calculate these refunds. Thousands of schools input the correct information into these same forms each year. If the financial aid director was unclear on what information to input into the calculation, he should have sought help, rather than risk making an incorrect assumption. Further, the fact that the employee thought he was performing the calculation correctly has no bearing on the issue of liability. If a refund is

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<sup>14</sup> It is not clear where the figure was obtained, because the student enrollment agreement lists a figure of \$125 for books and equipment. See ED Ex. 8 at 6.



incorrectly calculated, the institution must return any additional funds owed, regardless of the reason the error was made.

In the case of Student 212, ABC falsified the hours the student attended in order to retain additional funds to which it was not entitled. The computerized attendance records for this student show that he attended until May 2002 and completed 204 hours. See ED Ex. 212 at 3. That figure was used in the school's refund calculation. See ED Ex. 212 at 5-6. The student, however, informed Department officials that he began his program in January 2002 and only attended one month. See ED Ex. 212 at 10. Since the student did not have an exact date for his withdrawal, the Department gave the school credit for the 84 hours earned in January and February, and used those hours in the revised refund calculation. See ED Ex. 212 at 7-8. As a comparison of the two refund calculations establishes, the use of falsified hours significantly lowered the Title IV funds the school claimed it was required to return.

In an effort to undermine the Department's findings, ABC maintains that the Department incorrectly calculated the R2T4 refunds. In support, ABC submitted a chart prepared by its auditor outlining what the school claims are the liabilities that should be assessed for the refund violations discovered in the files the Department actually reviewed. See ED Ex. 366. In this submission, the auditor simply lists the amount of refund he calculated for each student involved in the finding, but he fails to submit any actual refund calculations to support his claims. Although the submission is extremely difficult to follow, the Department believes that the auditor is claiming the Department erred in the hours used for the denominator of step 2 of the calculation. See Res. Ex. 366 at 4-6; Res. Br. at 11-12.

For example, Student 2 was enrolled in a 1005 hour program. See ED Ex. 2 at 1. The student withdrew after completing 556 hours, and a refund calculation was performed. See ED

Ex. 2 at 2; Res. Ex. 26-27. In determining the percentage of a program that has been completed by a student, the school may choose as the denominator of the calculation either the number of hours in the payment period or the number of hours in the period of enrollment. 34 C.F.R. § 668.22 (e)(5)(ii)(A). An institution, however, must be consistent in the refund calculations in its use of either the payment period or the period of enrollment. 34 C.F.R. § 668.22 (e)(5)(ii)(B). As evidenced in ABC's own refund calculation, the school used the 1005 period of enrollment when calculating this student's refund under R2T4.<sup>15</sup> The Department accepted the school's choice and used the period of enrollment when recalculating refunds for this finding.

ABC and its auditor are now claiming that an entirely new methodology must be employed. The school and auditor appear to maintain that the period of enrollment for purposes of this refund calculation must be limited to the number of hours in an academic year if the program length is longer than an academic year. See Res. Br. at 11; Res. Ex. 366 at 4-6. In support, the auditor cites an example in the Federal Student Aid Handbook where 900 hours was used as the period of enrollment. From that example, the auditor claims that 900 hours should be used in all refund calculations where the program is longer than an academic year. Id. This claim is patently wrong.<sup>16</sup>

The refund regulations specifically define the period of enrollment as "the academic period established by the institution for which institutional charges are generally assessed (i.e. length of student's program or academic year)." 34 C.F.R. § 668.22(l). The example cited by the auditor is completely consistent with the regulations. The 900 hours were used as the period

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<sup>15</sup> Other examples showing the school used the period of enrollment in the refund calculations can be found in Res. Exs. at 50-51, 73-74, 121-122, 279-280.

<sup>16</sup> It should be noted that the regulation cited in Res. Br. as support for this proposition does not say what the school claims. The regulation merely says that an institution can choose to use either the payment period or period of enrollment. See Res. Br. at 11; see also 34 C.F.R. § 668.22(c)(5)(ii)(A).

of enrollment in that example, because that is the academic period for which the student had been charged. See ED Ex. 366 at 1-2.<sup>17</sup> The example clearly does not support a position that 900 hours must be used in all refund calculations as the period of enrollment. ABC's attempt to undermine the Department's position by completely misquoting the law should be summarily rejected.

As shown above, the Department's recalculations are consistent with the law and supported by the individual facts pertaining to each student. Consequently, the Tribunal Should uphold these findings.

### **C. The Projection Used by FSA is Completely Proper and Should Be Upheld**

Based on a review of student files and interviews conducted with ABC students, the Department has determined that the institution routinely falsified student eligibility documentation. Due to the falsification of records, the Department had no choice but to consider the institution's Title IV student eligibility documentation completely unreliable. Consequently, it was virtually impossible to determine whether the Title IV funds disbursed to the institution have been properly spent. Under these circumstances, the Department could rightfully have required the institution to return all Title IV funds it received during the years in question. The Department, however, acknowledged that ABC actually earned some of the Title IV funds that have been disbursed. In order to reconcile these issues, the Department determined that the use of an error rate projection calculation would be the most reasonable approach under the circumstances.

The methodology used for the projected liabilities is set out in detail in the FPRD. First, FSA excluded the ATB finding from the projection, because full liabilities were assessed for

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<sup>17</sup> Under the student profile, the example states that the student charges were \$5000 for the academic year. ED Ex. 366 at 2.



those findings.<sup>18</sup> This was done solely to avoid duplicating liabilities. The reviewer then determined the error rate in the ineligible disbursement and refund findings for each award year. That error rate was applied to the total universe of FSA recipients for each award year to determine the projected liability for the violations. A review of the details of the methodology used by FSA clearly establishes that the liabilities for these findings were calculated using a straight error rate projection.

This Tribunal has upheld the exactly methodology used in the FPRD at issue in this case. See In the Matter of Hamilton Professional Schools, Docket No. 02-49-SP, U.S. Department of Education (June 11, 2003)(Hamilton).<sup>19</sup> In upholding the liabilities, the Tribunal found that an error rate projection is a well-established method for assessing Title IV liability and is particularly “well-suited to a situation where the institution’s files are compromised by evidence of falsification and fraud.”<sup>20</sup> Hamilton at 14. As outlined above, a similar ruling should be made in this case.

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<sup>18</sup> Some of the students who the Department has now removed from the ATB finding also had ineligible disbursement or refund findings. Since there is no longer an ATB liability assessed for these students, they should be included in the projection. The Department, however, will not revise the projection at this stage of the proceedings.

<sup>19</sup> The use of error rate projections for calculating liabilities owed to the Federal Government has also been upheld in other cases. See Chauffeur’s Training School v. U.S. Department of Education, 967 F.Supp. 719 (N.D.N.Y. 1997); Michigan Department of Education v. U.S. Department of Education, 875 F.2d 1196 (6<sup>th</sup> Cir. 1989); Yorktown Medical Laboratory, Inc. v. Perales, 948 F. 2d 84 (2d Cir. 1991); see also In the Matter of Branell Institute, Docket No. 93-157-SA, U.S. Department of Education (July 22, 1994).

<sup>20</sup> In a recent decision in In the Matter of Instituto de Estetica y Belleza Marugie, Docket No. 03-21-SP, U.S. Department of Education (March 1, 2004), Judge O’Hair upheld FSA’s use of an error rate projection, but accepted the school’s new methodology to avoid the duplication of liabilities for ATB students. It is the Department’s position that Judge O’Hair erred in his ruling, but the specific errors made in the decision will not be discussed in detail here because the school has accepted FSA’s methodology of removing the ATB students at the beginning steps of the projection calculation for the ineligible disbursement and refund findings.

ABC and its auditor maintain that the Department's error rate projection is wrong, because only withdrawal students should have been included in the total universe. ABC argues that by not limiting the total universe to the withdrawal students, the Department's calculation assumes all of the non-ATB students were withdrawals, and therefore, the total liabilities are overstated. See Res. Br. at 11-12; Res. Ex. 366 at 1-2. ABC's argument is without merit, and should be rejected.

First, the projection used for the non-ATB findings included both ineligible disbursement and refund findings. Consequently, the use of a universe of only withdrawal students would not be proper. Second, a projection is used to determine the percentage of violations that would likely occur in a population as a whole, based on the violations discovered in a sample of files reviewed. It is assumed that the percentage of any particular type of student, such as withdrawals, that are in the sample will occur in the same frequency in the population as a whole. Consequently, the Department does not need to limit the universe to withdrawal students in order to obtain a valid projection. In fact, in order to use a limited universe of only withdrawal students, as ABC argues, the sample would need to have been made up exclusively of withdrawals. The sample in this case was not limited in that manner, and therefore, the universe should not be limited either.

As shown above, the Department properly used an error rate projection to determine the liabilities for the ineligible disbursement and refund findings. The methodology used is completely sound and should be upheld by this Tribunal.

### **CONCLUSION**

As outlined above, ABC illegally disbursed and retained Title IV funds to which it was not entitled. In many cases, ABC attempted to mask these serious Title IV violations by

falsifying student file documentation. In determining the liabilities, the Department correctly recalculated Title IV refunds. In addition, the Department's decisions to assess full liabilities for the ATB students in question, and to use an error rate projection for the ineligible disbursement and refund findings were both sound and reasonable. Consequently, the Tribunal should affirm the Department's findings and order the school to repay \$2,026,590 in misspent Title IV funds.

Respectfully submitted.

Dated: April 23, 2004

A handwritten signature in black ink, appearing to read "Denise Morelli". The signature is fluid and cursive, with the first name "Denise" and last name "Morelli" clearly distinguishable.

Denise Morelli  
Counsel for FSA

## EXHIBIT G





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### National Student Loan Data System (NSLDS) for Students

NSLDS is a repository of information from many sources. Changes to the data are made by those sources. Collecting the data into one central location such as NSLDS gives you convenience and saves you time. If for any reason you disagree with the information reported to NSLDS, please contact one or more of the sources of your data listed on the detail pages on this site. The Department is also available as a resource at 1-800-4FEDAID if you need additional assistance. Your comments and corrections will help improve the services NSLDS provides.

Detail Loan Information for [REDACTED]

Your enrollment status is LESS THAN HALF TIME, effective  
11/30/1988.

Type of Loan: 4 STAFFORD SUBSIDIZED

Loan obtained while attending the AMERICAN BUSINESS INSTITUTE

Date Entered Repayment: 06/01/1990

Loan Period Begin Date: 10/01/1988

Loan Period End Date: 07/31/1989



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#### Amounts and Dates

Loan Amount	Outstanding Principal Balance	Outstanding Principal Balance As of Date	Outstanding Interest Balance	Outstanding Interest Balance As of Date	Interest Rate Type	Interest Rate	Canceled Amount	Canceled Date
\$2,625	\$0	08/28/2003	\$0	08/28/2003	VARIABLE	N/A	\$0	

#### Disbursement(s) and Status(es)

Disbursement Date	Disbursement Amount	Loan Status	Status Description	Status Effective Date
11/30/1988	\$2,625	DN	DEFAULTED, THEN PAID IN FULL BY CONSOLIDATION	08/28/2003
		DL	DEFAULTED, IN LITIGATION	02/10/1993
		DU	DEFAULTED, UNRESOLVED	08/09/1990

#### Servicer/Lender/Guaranty Agency/ED Servicer Information

Contact Type	Contact
Current Lender:	JP MORGAN CHASE BANK, NA POST OFFICE BOX 3047 CHANDLER AZ 852443047 800-228-7605 COLLEGE.ANSWER@SLMA.COM
Current Guaranty Agency:	NEW YORK STATE HIGHER EDUCATION SERVICES HESC 99 WASHINGTON AVE. ALBANY NY 12255 888-697-4372

Information contained on these pages reflects the most current data in the NSLDS database. The data contained on this site is for general information purposes and should not be used to determine eligibility, loan payoffs, overpayment status, or tax reporting. Please consult the Financial Aid Officer at your school or the specific holder of your debts for further information.



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Detail Loan Information for [REDACTED]

Your enrollment status is LESS THAN HALF TIME , effective  
11/30/1989.

Type of Loan: 1 DIRECT CONSOLIDATED UNSUBSIDIZED  
Loan obtained while attending the SCHOOL CODE FOR CONSOLIDATION LOANS

Date Entered Repayment: 09/01/2003  
Loan Period Begin Date: N/A  
Loan Period End Date: N/A

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## Amounts and Dates

Loan Amount	Outstanding Principal Balance	Outstanding Principal Balance As of Date	Outstanding Interest Balance	Outstanding Interest Balance As of Date	Interest Rate Type	Interest Rate	Canceled Amount	Canceled Date
\$1,869	\$2,060	09/17/2011	\$817	09/17/2011	FIXED	4.38%	\$0	

## Disbursement(s) and Status(es)

Disbursement Date	Disbursement Amount	Loan Status	Status Description	Status Effective Date
08/22/2003	\$1,869	DU	DEFAULTED, UNRESOLVED	03/09/2010
		DF	DEFAULTED, UNRESOLVED	12/02/2009
		RP	IN REPAYMENT	11/08/2003
		IA	LOAN ORIGINATED	08/22/2003

## Servicer/Lender/Guaranty Agency/ED Servicer Information

Contact Type	Contact
Current ED Servicer:	DEBT MANAGEMENT AND COLLECTIONS SYSTEM U.S. DEPARTMENT OF EDUCATION P.O. BOX 5609 GREENVILLE TX 75403

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Detail Loan Information for [REDACTED]

Your enrollment status is LESS THAN HALF TIME , effective  
11/30/1989.

Type of Loan: 3 SUPPLEMENTAL LOAN (SLs)

Loan obtained while attending the AMERICAN BUSINESS INSTITUTE

Date Entered Repayment: 12/01/1989

Loan Period Begin Date: 10/01/1988

Loan Period End Date: 07/31/1989

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## Amounts and Dates

Loan Amount	Outstanding Principal Balance	Outstanding Principal Balance As of Date	Outstanding Interest Balance	Outstanding Interest Balance As of Date	Interest Rate Type	Interest Rate	Canceled Amount	Canceled Date
\$2,575	\$0	08/28/2003	\$0	08/28/2003	VARIABLE	N/A	\$0	

## Disbursement(s) and Status(es)

Disbursement Date	Disbursement Amount	Loan Status	Status Description	Status Effective Date
01/09/1989	\$2,575	DN	DEFAULTED, THEN PAID IN FULL BY CONSOLIDATION	08/28/2003
		DL	DEFAULTED, IN LITIGATION	02/10/1993
		DU	DEFAULTED, UNRESOLVED	08/09/1990

## Servicer/Lender/Guaranty Agency/ED Servicer Information

Contact Type	Contact
Current Lender:	JP MORGAN CHASE BANK, NA POST OFFICE BOX 3047 CHANDLER AZ 852443047 800-228-7605 COLLEGE.ANSWER@SLMA.COM
Current Guaranty Agency:	NEW YORK STATE HIGHER EDUCATION SERVICES HESC 99 WASHINGTON AVE. ALBANY NY 12255 888-697-4372

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Detail Loan Information for [REDACTED]

Your enrollment status is LESS THAN HALF TIME , effective  
11/30/1989.

Type of Loan: 4 STAFFORD SUBSIDIZED

Loan obtained while attending the AMERICAN BUSINESS INSTITUTE

Date Entered Repayment: 06/01/1990

Loan Period Begin Date: 10/01/1988

Loan Period End Date: 07/31/1989

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## Amounts and Dates

Loan Amount	Outstanding Principal Balance	Outstanding Principal Balance As of Date	Outstanding Interest Balance	Outstanding Interest Balance As of Date	Interest Rate Type	Interest Rate	Canceled Amount	Canceled Date
\$2,625	\$0	08/28/2003	\$0	08/28/2003	VARIABLE	N/A	\$0	

## Disbursement(s) and Status(es)

Disbursement Date	Disbursement Amount	Loan Status	Status Description	Status Effective Date
11/30/1988	\$2,625	DN	DEFAULTED, THEN PAID IN FULL BY CONSOLIDATION	08/28/2003
		DL	DEFAULTED, IN LITIGATION	02/10/1993
		DU	DEFAULTED, UNRESOLVED	08/09/1990

## Servicer/Lender/Guaranty Agency/ED Servicer Information

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Current Lender:	JP MORGAN CHASE BANK, NA POST OFFICE BOX 3047 CHANDLER AZ 852443047 800-228-7605 COLLEGE.ANSWER@SLMA.COM
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# Exhibit 11

South  
Brooklyn  
Legal  
Services

Legal  
Services NYC

June 13, 2014

Douglas M. Fisher  
Solomon and Solomon, P.C.  
5 Columbia Circle  
Albany, NY 12203  
518-456-7200x274

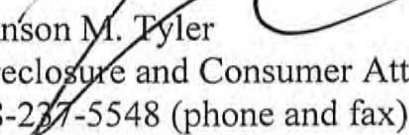
RE: [REDACTED]

Account # [REDACTED]

Dear Doug,

The ability to benefit discharge application of Ms. [REDACTED] was denied because the loan predates January 1, 1986. The DOE rep who denied the claim (attached is his email) asked me to send in an unpaid refund application instead. Apparently, there is no restriction on pre-1986 loans for such relief. Please find the attached unpaid refund application with affidavit and cover letter. Could you please forward this application to your client and specifically to Mr. James S. Farrar, Loan Analyst Federal Student Aid at [James.farrar@ed.gov](mailto:James.farrar@ed.gov). ?

Sincerely,

  
Johnson M. Tyler  
Foreclosure and Consumer Attorney  
718-237-5548 (phone and fax)  
[jtyler@sbls.org](mailto:jtyler@sbls.org)

South Brooklyn Legal Services  
105 Court Street, 4<sup>th</sup> Floor Brooklyn, NY 11201  
Phone: 718-237-5500 Fax: 718-855-0733 [www.sbls.org](http://www.sbls.org)  
Meghan Faux, Acting Project Director

Towards justice and dignity for all – Por la Justicia y Dignidad de Todos

 LSC



## Tyler, Johnson

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**From:** Farrar, James <James.Farrar@ed.gov>  
**Sent:** Monday, June 09, 2014 11:39 AM  
**To:** Tyler, Johnson  
**Subject:** RE: [REDACTED]  
**Attachments:** [Untitled].pdf

Johnson M. Tyler,

Ms. [REDACTED] ATB application was denied. A copy of the denial letter is attached (pdf). She may prevail under an Unpaid Refund Application. Department policy is to evaluate UNP applications even if the student borrower attended prior to 1-1-86. Please e-mail or send a completed UNP application to me or to my attention for consideration.

James S. Farrar  
Loan Analyst  
Federal Student Aid

[James.farrar@ed.gov](mailto:James.farrar@ed.gov)

or

U.S. Department of Education  
50 Beale Street 8<sup>th</sup> Floor 8600  
San Francisco, CA 94105

South  
Brooklyn  
Legal  
Services

Legal  
Services NYC

June 13, 2014

Us Dep't of Education  
James S. Farrar  
Loan Analyst  
Federal Student Aid

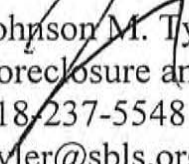
[James.farrar@ed.gov](mailto:James.farrar@ed.gov)

RE: [REDACTED]  
SS# [REDACTED]  
DOE [REDACTED]

Dear Mr. Farrar,


Pursuant to your email on June 9, 2014, please find the enclosed unpaid refund application for student loan discharge.

Sincerely,

  
Johnson M. Tyler  
Foreclosure and Consumer Attorney  
718-237-5548 (phone and fax)  
[jtyler@sbls.org](mailto:jtyler@sbls.org)

South Brooklyn Legal Services  
105 Court Street, 4<sup>th</sup> Floor Brooklyn, NY 11201  
Phone: 718-237-5500 Fax: 718-855-0733 [www.sbls.org](http://www.sbls.org)  
Meghan Faux, Acting Project Director

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# LOAN DISCHARGE APPLICATION: UNPAID REFUND

William D. Ford Federal Direct Loan Program / Federal Family Education Loan Program

OMB No. 1845-0058  
Form Approved  
Exp. Date 6/30/2014

**WARNING:** Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document will be subject to penalties which may include fines, imprisonment or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

## SECTION 1: BORROWER IDENTIFICATION

Please enter or correct the following information:

SSN

Name

Address

City, State, Zip Code Brooklyn, NY 11212

Telephone - One ( )

Telephone - Two ( )

E-mail (optional)

## SECTION 2: SCHOOL AND LOAN INFORMATION

Before responding, carefully read the entire form, including the instructions, definitions, and terms and conditions in Section 5, 6, and 7 on this form. If the school that you believe owes you a refund is currently open, you should first contact the school to attempt to resolve this issue before applying for an unpaid refund loan discharge. If you are a student borrower applying for a loan discharge, begin with Item 3. If you are a parent borrower applying for a PLUS loan discharge, begin with Item 1.

1. Student Name (Last, First, MI):	2. Student SSN:
3. School Name: <u>American Business Institute</u>	4. School Address (street, city, state, zip code): <u>1657 Broadway - NY NY 10019</u>
5. Is this school still open? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't Know	6. If this school is closed, were you (or, for parent PLUS borrowers, was the student) attending the school when it closed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7. Do you have any other pending or approved application(s) for discharge of a loan you obtained to attend this school? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
8. Has this school or any third party (see the definition of "third party" in Section 6 on the following page) made a refund or payment for any loan for which you are requesting a discharge, or is such a refund or payment being considered? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If your answers to Items 7 and 8 are "No," skip to Section 3. If your answer to Item 7 or 8 is "Yes," provide the information requested in Items 9, 10, and 11 for each discharge, refund or payment, if known. Use a separate sheet of paper if you need to report more than one discharge, refund or payment.	
9. Reason for discharge, refund or payment:	

10. From whom did you request or from whom did you receive the discharge, refund or payment? Include telephone number.

Name: Phone Number:

11. Amount you received or that you expect to receive: \$

## SECTION 3: REFUND INFORMATION

If you have documentation from the school showing the amount of the unpaid refund, attach a copy to this form. If you believe that the amount of the refund shown in the documentation from the school is correct, skip to Section 4. If you don't believe that the amount is correct or if you don't have this documentation, complete Items 12 through 16. If you are unable to provide any of the requested information, write "Don't Know."

12. What amount do you believe the school owes you? \$ 5000

13. Why do you believe the school owes you this amount?  
NSLDS shows two loans to ABI for \$2500 each. I only attended a few days and then withdrew.

14. Your (or, for parent PLUS borrowers, the student's) first and last dates of attendance at the school:  
11/9/05 to 11/18/05 OR ☐ Never Attended only a few days

15. Your (or, for parent PLUS borrowers, the student's) program of study at the school:  
Computerized book keeping. PS I cannot remember exact dates of attendance

Item 16 requests information about the amount of the financial aid you received for the period of enrollment for which the loan was intended. For example, if you received a loan for the spring term only and you left school during the spring term, provide an amount for that term only. However, if you received a loan for the winter and spring terms, provide the total amount for both terms. If the unpaid refund is for more than one loan and the loans were for different periods of enrollment, provide the amount requested in Item 16 for each period of enrollment separately, using a separate sheet of paper for your additional response(s).

16. If your (or, for parent PLUS borrowers, the student's) last date of enrollment was on or after October 7, 2000, enter the total amount of the federal grants and loans received for any part of the period of enrollment for which the loan was intended. \$

Note: If your (or for parent PLUS borrowers, the student's) last date of enrollment was before October 7, 2000, please contact your servicer for information about the documentation you must provide to request a discharge of your loan. see attached affidavit

Attach a copy of any documentation that supports your responses to Items 12 through 16. Examples of documentation may include, but are not limited to, the school's catalog, refund policy, tuition bill(s), enrollment contract, student account statement, registration forms, withdrawal form, attendance records, and any correspondence from the school that contains information about the refund you believe the school owes you.

## SECTION 4: BORROWER CERTIFICATION AND AUTHORIZATION

My signature below certifies that—

- I received each loan for which I am requesting a discharge on or after January 1, 1986. I received the loan funds directly, or they were applied as a credit to my (or, for parent PLUS borrowers, the student's) school account to pay the amount owed to the school.
- I (or, for parent PLUS borrowers, the student) did not attend the school or withdrew or was terminated from the school within the time frame that would entitle me to a refund of some or all of my loan funds. Except as explained in Section 2, Items 7 through 11, I have not received this refund, or any benefit of a refund to which I am entitled, from the school or any third party.
- I have read and agree to the terms and conditions for loan discharge, as specified in Section 7 on the following page.
- I hereby assign and transfer to the Department any right to a refund on the amount discharged that I may have from the school identified in Section 2 of this form and/or any owners, affiliates, or assignees of the school, and from any third party that may pay claims for a refund because of the actions of the school, up to the amount discharged by the Department on my loan(s).
- Under penalty of perjury, all of the information I have provided on this application and in any accompanying documentation is true and accurate to the best of my knowledge and belief.
- I authorize the school, the lender, the guaranty agency, the U.S. Department of Education, and their respective agents and contractors to contact me regarding my loan(s), including repayment of my loan(s), at the current or any future number that I provide for my cellular telephone or other wireless device using automated telephone dialing equipment or artificial or prerecorded voice or text messages.

Borrower's Signature: [Signature]

Today's Date: 6/13/14



## SECTION 5: INSTRUCTIONS FOR COMPLETING THE FORM

Before you complete this application, you need to know the following:

- If the school is currently open, you should first contact the school and attempt to resolve the unpaid refund issue before applying for this type of discharge.
- If you (or, for parent PLUS borrowers, the student) are currently attending the school, you are not eligible for this type of discharge. You should contact the school about the refund that you believe you are owed.
- If you (or, for parent PLUS borrowers, the student) were enrolled when the school closed or withdrew from the school within 90 days before the school closed and you (or, for parent PLUS borrowers, the student) did not complete the program of study at another school, you may wish to apply for a closed school loan discharge rather than an unpaid refund discharge. If you are unsure about which type of loan discharge is most appropriate for you, contact your loan holder at the address shown in Section 9.

When completing this form, type or print using dark ink. Enter dates as month-day-year (mm-dd-yyyy). Use only numbers. Example: June 24, 2011 = 06-24-2011. If you need more space to answer any of the items, continue on separate sheets of paper and attach them to this form. Indicate the number of the item(s) you are answering and include your name and social security number (SSN) on all attached pages. If a refund is owed for more than one student or from more than one school, use separate forms for each student or school.

Return the completed form and any attachments to the address shown in Section 9.

## SECTION 6: DEFINITIONS

- The Federal Family Education Loan (FFEL) Program includes Federal Stafford Loans (both subsidized and unsubsidized), Federal Supplemental Loans for Students (SLS), Federal PLUS Loans, and Federal Consolidation Loans.
- The William D. Ford Federal Direct Loan (Direct Loan) Program includes Federal Direct Stafford/Ford (Direct Subsidized) Loans, Federal Direct Unsubsidized Stafford/Ford (Direct Unsubsidized) Loans, Federal Direct PLUS (Direct PLUS) Loans, and Federal Direct Consolidation (Direct Consolidation) Loans.
- Loan discharge due to an unpaid refund cancels your obligation (and any endorser's obligation, if applicable) to repay the portion of your loan that should have been refunded. Any accrued interest and other charges on the amount of the unpaid refund will also be discharged, and you will be reimbursed for any amount that you have repaid that exceeds the remaining balance of the loan after the discharge. For consolidation loans, only the amount of the unpaid refund that was included in the consolidation loan will be discharged. The loan holder reports the discharge to all credit reporting agencies to which the holder previously reported the status of the loan.
- The student (as in "or, for parent PLUS borrowers, the student") refers to the student for whom a parent borrower obtained a Federal PLUS Loan or Direct PLUS Loan.
- Program of study means the instructional program leading to a degree or certificate in which you (or, for parent PLUS borrowers, the student) were enrolled.
- Third party refers to any entity that may provide reimbursement for a refund owed by the school, such as a State or other entity offering a tuition recovery program or a holder of a performance bond.

## SECTION 7: TERMS AND CONDITIONS FOR LOAN DISCHARGE BASED ON UNPAID REFUND

- I will provide, upon request, testimony, a sworn statement, or other documentation reasonably available to me that demonstrates to the satisfaction of the U.S. Department of Education (the Department) or its designee that I meet the qualifications for loan discharge based on an unpaid refund, or that supports any representation that I made on this form or on any accompanying documents.
- I agree to cooperate with the U.S. Department of Education (the Department) or the Department's designee in any enforcement action related to this application.
- I understand that this request may be denied, or my discharge may be revoked, if I fail to provide testimony, a sworn statement, or documentation upon request, or if I provide testimony, a sworn statement, or documentation that does not support the material representation I have made on this form or on any accompanying documents.
- I further understand that if my loan is discharged based on any false, fictitious, or fraudulent statements that I knowingly made on this form or on any accompanying documents, I may be subject to civil and criminal penalties under applicable federal law.

## SECTION 8: IMPORTANT NOTICES

**Privacy Act Notice.** The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authorities for collecting the requested information from and about you are §421 *et seq.* and §451 *et seq.* of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 *et seq.* and 20 U.S.C. 1087a *et seq.*) and the authorities for collecting and using your Social Security Number (SSN) are §§428B(f) and 484(a)(4) of the HEA (20 U.S.C. 1078-2(f) and 1091(a)(4)) and 31 U.S.C. 7701(b). Participating in the Federal Family Education Loan (FFEL) Program or the William D. Ford Federal Direct Loan (Direct Loan) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under the FFEL and/or Direct Loan Programs, to permit the servicing of your loan(s), and, if it becomes necessary, to locate you and to collect and report on your loan(s) if your loan(s) become delinquent or in default. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer matching program, to third parties as authorized under routine uses in the appropriate systems of records notices. The routine uses of this information include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to consumer reporting agencies, to financial and educational institutions, and to guaranty agencies in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loan(s), to enforce the terms of the loan(s), to investigate possible fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to state agencies. To provide financial aid history information, disclosures may be made to educational institutions. To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student enrollment status, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

**Paperwork Reduction Notice.** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 0.5 hours (30 minutes) per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the information collection. Individuals are obligated to respond to this collection of information to obtain a benefit in accordance with 34 CFR 682.402(j)(4) and 34 CFR 685.216(c). Send comments regarding the burden estimate(s) or any other aspect of this collection of information, including suggestions for reducing this burden to the U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20210-4537 or e-mail [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) and reference OMB Control Number 1845-0058. Note: Please do not return the completed Loan Discharge Application due to Unpaid Refunds to this address.

## SECTION 9: WHERE TO SEND THE COMPLETED LOAN DISCHARGE APPLICATION

Return the completed loan discharge application and any attachments to:  
(If no address is shown, return to your loan holder.)

U.S. Department of Education  
FedLoan Servicing  
P.O. Box 69184  
Harrisburg, PA 17106-9184  
Or Fax to: 717-720-1628

If you need help completing this form, call: 800-699-2908  
(If no telephone number is shown, call your loan holder.)

If you are calling internationally, call: 717-720-1985

If you use a telecommunications device for the deaf (TTY), call: 800-722-8189

Web site: [www.MyFedLoan.org](http://www.MyFedLoan.org)



**AFFIDAVIT IN SUPPORT OF UNPAID REFUND DISCHARGE**

**State of New York**

**County of Kings**

[REDACTED], the defendant, being duly sworn, deposes and states:

1. I live at [REDACTED] Brooklyn, NY 11212. I am 47 years old and work as a home attendant.
2. I earn about \$3,242 a month. I support three (3) adult children who live with me, and one grandchild. My rent is \$1,247. One of my adult children is on SSI, the other is unemployed, and the third works as a dishwasher.
3. I submit this affidavit in an attempt to get the Department of Education to forgive my student loan debt and return the tax refund for 2013 that it withheld this year.
4. The first time I learned I had a student loan debt was in October 2013 when I received an Administrative Offset Notice from the U.S. Department of Justice, dated October 3, 2013. (Attached as Exhibit A.) This notice concerned a federal court action against me.
5. I responded to this wage garnishment letter by calling the law firm that sent the notice, Solomon and Solomon.
6. When I called, I did not know what the debt was about. The man who I spoke with said it was for a student loan.