

Jean-Didier Gaina  
U.S. Department of Education  
Office of Postsecondary Education  
400 Maryland Avenue Southwest  
Washington, D.C. 20202-6110

August 30, 2018

Re: NPRM - Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

Docket ID ED-2018-OPE-0027

Dear Jean-Didier Gaina,

I write on behalf of the National Student Legal Defense Network (“NSLDN”) in response to the proposed rulemaking for the 2018 Borrower Defense Rule (hereinafter the “NPRM”).<sup>1</sup> NSLDN is a non-partisan, 501(c)(3) non-profit organization that works, through litigation and advocacy, to advance students’ rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility. Because there are many important issues facing student loan borrowers with respect to this NPRM, NSLDN will be submitting additional comments regarding the proposed rule. NSLDN’s comment here will focus on the Department’s proposal to fundamentally rewrite the regulation governing eligibility for closed school discharge relief.<sup>2</sup>

When an institution of higher education closes, tremendous uncertainty exists for students. Students have to navigate whether they will be able to continue their postsecondary education at another school, whether they will be on the hook for paying back their student loans for a degree or credential they were ultimately unable to earn, whether they will be able to afford their housing and other living expenses in the aftermath of the closure, and how the school’s closure will impact their future career prospects.<sup>3</sup> Since 2010, there have been 14,851 domestic school closures, averaging roughly 1,856 closures per year and 155 closures per month.<sup>4</sup> Tens of thousands of students attended these schools at the time of—or within 120 days of—closure, making them potentially eligible for loan forgiveness under the Department’s current closed school discharge regulation.<sup>5</sup> If

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<sup>1</sup> 83 Fed. Reg. 37,242 (July 31, 2018).

<sup>2</sup> NSLDN supports the Department’s proposal to extend the window to qualify for a closed school discharge from 120 days to 180 days. 83 Fed. Reg. at 32,767-68. NSLDN also supports the Department’s proposal to specifically provide an opportunity for the Department to review a guaranty agency’s determination of a FFEL borrower’s eligibility for a closed school discharge. *Id.* at 37,268. Finally, NSLDN supports the Department’s proposal to clarify that, instead of submitting a sworn statement, borrowers will be required to submit an application signed under penalty of perjury. *Id.* at 37,266-67.

<sup>3</sup> See, e.g., Alexandra Hegji, *Cong. Research Serv.*, R44737, Summary of “The Closure of Institutions of Higher Education: Student Options, Borrower Relief, and Implications” (Feb. 22, 2018), <https://fas.org/sgp/crs/misc/R44737.pdf>.

<sup>4</sup> “Closed School Search Page,” U.S. Dep’t of Educ., <https://www2.ed.gov/offices/OSFAP/PEPS/docs/closedchoolsearch.xlsx>.

<sup>5</sup> See 34 C.F.R. § 685.214.

any of these thousands of closed schools had simply offered an accreditor- or state-approved teach-out plan under the Department's NPRM, however, affected students would be ineligible for the loan relief that Congress envisioned under the Higher Education Act ("HEA").<sup>6</sup> To make matters worse, this NPRM also proposes to eliminate the provision under which eligible students would automatically receive loan discharges. As set forth below, this fundamental shift in policy is arbitrary and fails to reflect the reasoned decision-making required of the Department under the Administrative Procedure Act ("APA"). For that reason, NSLDN strongly opposes it.

### **1. The Department's Proposal Eliminates a Student's Ability to Make Individualized Educational Choices Following the Closure of a Postsecondary Institution**

Currently, the Department's regulations provide three alternatives for students facing school closure, which the NPRM aims to severely restrict. First, students may complete their program of study by accepting the teach-out plan offered by their closing school.<sup>7</sup> Such a plan may include finishing their program at the closing school before its last official day of instruction or, if the student is unable to finish in that timeframe, at another institution that agrees to provide the closing school's students with a "reasonably similar" educational program.<sup>8</sup> Second, students may attempt to transfer some or all of their credits to an entirely unaffiliated institution.<sup>9</sup> Third, students may walk away, seeking a full discharge of their student loans.<sup>10</sup> Presenting students with multiple options allows an impacted student to make an informed decision about what is best for her own educational future. The Department's proposal eliminates students' ability to make these choices, however. The NPRM removes student loan borrowers' eligibility for closed school discharges whenever a student is merely *offered* an accreditor- or state-approved teach-out plan by their closing school, even if the student does not accept the plan and never completes their program of study. NSLDN strongly opposes this monumental change in closed school discharge eligibility.

There are multiple reasons why a student may choose *not* to accept a closing school's teach-out plan, a fact that the Department's NRPM ignores. For example, some teach-out plans may be offered to students in the form of online programs only. Online options present obvious challenges for students enrolled in certain programs of study, such as culinary or art design, that require in-person, hands-on instruction and training. In addition, other teach-out plans may require students to transfer to a different physical campus of the closing school. Such campuses may be hours away from where the student currently lives, making it logistically or financially impossible for the student

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<sup>6</sup> See 20 U.S.C. §§ 1087(c) (discussing closed school discharges for FFEL borrowers), 1087e(a) (establishing the "same terms, conditions, and benefits" for Direct loan borrowers, "unless otherwise specified in this part"); see also 34 C.F.R. §§ 682.402, 685.214.

<sup>7</sup> 34 C.F.R. § 685.214(c)(1)(i)(C).

<sup>8</sup> See, Alexandra Hegji, *Cong. Research Serv.*, R44737, "The Closure of Institutions of Higher Education: Student Options, Borrower Relief, and Implications" 1-3 (Feb. 22, 2018), <https://fas.org/sgp/crs/misc/R44737.pdf>. A teach-out plan has no standard components, but typically requires a closing school to give its students a reasonable amount of time to complete their degrees or credentials. *Id.* at 2. Teach-out plans are often used when a school is not closing immediately. *Id.* A teach-out agreement, on the other hand, is part of a teach-out plan. *Id.* It occurs when another institution of higher education agrees to teach the closing school's students. *Id.* Teach-out agreements are typically used when a school is closing immediately. *Id.*

<sup>9</sup> 34 C.F.R. § 685.214(c)(1)(i)(C).

<sup>10</sup> *Id.*

to attend. Still other teach-out plans may include an agreement with another institution to allow the closing school's students to complete their degrees or credentials there. These teach-out agreements do not always establish the cost of attendance in advance, which may lead to the student's degree or credential being more expensive than the student originally planned. Furthermore, teach-out plans can be put together hastily, especially when institutions close without warning. Even if school closures take place in a more organized manner, however, teach-out plans are frequently not approved by accrediting agencies until days or months after a student learns that her school is closing. In either instance, teach-out plans would be unhelpful to students trying to make informed choices about their educational futures. Finally, regardless of the precise teach-out plan offered, students at closing schools must confront the very real impact that the closure will have on the value of their degree or credential. In some cases, the reputational harm caused by a school's closure may lead to the student's degree or credential being essentially worthless in the marketplace.<sup>11</sup> Ultimately, because assessing a closing school's teach-out plan requires nuanced decision-making, students should be able to draw their own conclusions about whether to accept the options offered.

Rather than allowing students to make these decisions, the Department's proposal instead seeks to substitute its own judgment, forcing students to either accept the teach-out plan offered or pay back their student loan debt without a marketable degree or credential to show for it. As justification for this paternalistic switch in longstanding policy, the Department boldly asserts that "borrowers may be better served by completing their programs . . . than by having their loans forgiven,"<sup>12</sup> without providing any evidence whatsoever to support that conclusion.<sup>13</sup> This type of decision-making hardly qualifies as a "good reason" under the APA for such a massive change in eligibility requirements.

## **2. The NPRM does not Explain, or Even Acknowledge, the Proposed Changes to the "Exceptional Circumstances" Under Which the Secretary may Grant an Extension to the Current 120-Day Window for Closed School Discharge Eligibility**

The Department also proposes to change the list of examples of "exceptional circumstances" under which the Secretary can extend students' eligibility for closed school discharges once a school has officially closed. The current regulations include, among other examples, the fact that a closing school has lost its accreditation.<sup>14</sup> The NPRM suggests changing this language—"loss of accreditation"—to "revocation or withdrawal by an accrediting agency of the school's institutional accreditation."<sup>15</sup> The Department provides no justification for this change. More importantly, the

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<sup>11</sup> See, e.g., David Dayen, "Chipping Away at my Soul?: Insiders Detail the Decline and Fall of Corinthian's For-Profit College Empire," *Huffington Post* (June 4, 2015), [https://www.huffingtonpost.com/2015/06/04/corinthian-colleges-loan-forgiveness\\_n\\_7492908.html](https://www.huffingtonpost.com/2015/06/04/corinthian-colleges-loan-forgiveness_n_7492908.html) ("At best, potential employers had never heard of the colleges; at worst, they refused to accept them as legitimate. Once law enforcement began circling around Corinthian, the negative publicity became detrimental in the job market.").

<sup>12</sup> 83 Fed. Reg. at 37,268.

<sup>13</sup> For example, the Department has not cited to any studies or analyses of teach-out plans or teach-out agreements or the degree to which students have been able to transfer credits from a closing institution to an unaffiliated institution. The Department also has not analyzed the points raised above or, if it has, it has not made such an analysis available for public comment.

<sup>14</sup> 34 C.F.R. § 685.214(c)(1)(i)(B).

<sup>15</sup> 83 Fed. Reg. at 37,268.

proposed regulatory text changes much more than that, without ever making clear to the public that the Department is proposing to do so. For example, the Department changes the language involving a second example of “exceptional circumstances” from “action by the State to revoke the school's license to operate or award academic credentials in the State” to “the State’s revocation or withdrawal of the school's license to operate or to award academic credentials in the State.”<sup>16</sup> No explanation is provided for this change. The Department also deletes two other examples of “exceptional circumstances” that exist under the current regulation, including (1) “the school's discontinuation of the majority of its academic programs” and (2) “a finding by a State or Federal government agency that the school violated State or Federal law.”<sup>17</sup> Again, no explanation is given for this change. If the Department intends to make these types of changes, it must not only make clear to the public that it is doing so, but must also provide a “good reason,” something the Department has failed to do. As a result, NSLDN opposes the Department’s attempts to alter the examples of “exceptional circumstances” that the Secretary may rely upon in order to grant extensions for closed school discharge eligibility.

### **3. The Department Should Not Eliminate the Automatic Closed School Discharge Provision (hereinafter the “Automatic Provision”) in the NPRM**

- a. The Department engaged in reasoned decision-making when it promulgated the Automatic Provision in 2016.

The Department’s decision to include the Automatic Provision<sup>18</sup> in the 2016 Borrower Defense Rule was the product of reasoned decision-making. The Department relied upon prior data regarding the lack of use of closed school discharges by eligible borrowers to justify the need for such a provision. It also engaged in extensive negotiated rulemaking prior to including the provision in the 2016 Rule. Thus, NSLDN opposes the Department’s proposal to eliminate the Automatic Provision in the NPRM.

Prior to promulgating the Automatic Provision in 2016, the Department examined its own historical data on eligible borrowers’ use of closed school discharges. The Department looked, for example, at all Direct Loan borrowers at schools that closed from 2008-2011 to see what percentage of them were eligible for a closed school discharge, but had never applied for and/or received one.<sup>19</sup> Of the 2,287 borrowers on file, forty-seven percent had no record of a discharge or subsequent Title IV aid

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<sup>16</sup> Compare 83 Fed. Reg. at 37,323, 37,328 with 34 C.F.R. § 685.214(c)(1)(i)(B).

<sup>17</sup> *Id.*

<sup>18</sup> As part of the 2016 Borrower Defense Rule, the Automatic Provision provides that the Department (or guaranty agency) must grant automatic discharges to students whose schools closed on or after November 1, 2013 and who do not re-enroll at another Title IV-eligible institution within three years of their school’s closure date. 81 Fed. Reg. 75,926, 76,078, 76,080-81 (Nov. 1, 2016) (codified at 34 C.F.R. §§ 674.33(g)(8)(iv) (Perkins loans), 682.402(d)(8)(ii) (FFEL loans), and 685.214(c)(2)(ii) (Direct loans)). The Automatic Provision’s goal was to allow the Department to “ensure that as many eligible borrowers as possible receive the discharges for which they qualify.” 81 Fed. Reg. at 76,038.

<sup>19</sup> 81 Fed. Reg. at 76,059.

in the three years following their school's closure.<sup>20</sup> In other words, nearly half of all eligible borrowers never applied for the closed school discharges to which they were legally entitled.<sup>21</sup>

Having realized that closed school discharges were underutilized, the Department expressed its concern that "some borrowers are unaware that they may be eligible for student loan debt relief," possibly because their closing school "fail[s] to advise them of the option for a closed school discharge."<sup>22</sup> As a result, the Department designed the 2016 Rule to ensure that borrowers "receive accurate and complete information with regard to their eligibility for a closed school discharge earlier in the process."<sup>23</sup> The Department also crafted the regulations to guarantee that eligible borrowers "receive automatic discharges if they do not subsequently re-enroll at another school."<sup>24</sup> In other words, the Department prioritized the need to provide debt relief to already eligible, but sometimes ill-informed, student loan borrowers.

In addition to using data to drive its decision-making process, the Department duly promulgated the Automatic Provision as part of the broader 2016 Borrower Defense Rule after an extensive negotiated rulemaking process that lasted more than a year. During that time, the Department held two public hearings and considered over 10,000 public comments regarding possible topics for the rulemakings.<sup>25</sup> The Department then convened a negotiated rulemaking committee comprised of sixteen negotiators that represented a wide range of stakeholders—including students, postsecondary institutions, proprietary institutions, state government actors, and consumer advocates—for three multi-day rulemaking sessions in 2016.<sup>26</sup> Following the rulemaking sessions, the Department proposed regulations,<sup>27</sup> considered additional public comments submitted by over 50,000 parties,<sup>28</sup> and issued a final rule.

Throughout this process, the Department responded to multiple substantive comments about the Automatic Provision specifically. On one side of the debate, several commenters recommended eliminating the Automatic Provision from the regulation. The Department considered these commenters' concerns and, in response, explained:

We disagree with the commenters who recommended eliminating automatic closed school discharges from the final regulations. We note that the current regulations already provide for a closed school discharge without an application, and believe that this is an important benefit to borrowers. We also believe that the final regulations provide sufficient safeguards to prevent abuse, such as the three-year period before an automatic closed school discharge is granted.<sup>29</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See Press Release, U.S. Dep't of Educ., "Borrower Defense Final Regulations: Summary of Major Provisions," available at: <https://www2.ed.gov/documents/press-releases/borrower-defense-final-regulations.pdf>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> 80 Fed. Reg. 63,478-79 (Oct. 20, 2015).

<sup>26</sup> 81 Fed. Reg. 39,330, 39,333-34 (June 16, 2016).

<sup>27</sup> *Id.* at 39,330.

<sup>28</sup> 81 Fed. Reg. 75,926-28 (Nov. 1, 2016).

<sup>29</sup> 81 Fed. Reg. at 76,038.

Other commenters also expressed concern that the Automatic Provision would result in discharges being granted to ineligible borrowers. Again, the Department considered these comments and determined that:

[T]he likely minimal potential cost of granting discharges to a very small number of borrowers who do not qualify is counterbalanced by the benefit of granting closed school discharges to large numbers of borrowers who qualify for them, but do not receive them under our current procedures.<sup>30</sup>

On the opposite side of the debate, several commenters argued that the Automatic Provision did not go far enough, contending that the Department should adopt a one-year waiting period. In response, the Department explained that “the discharge of a loan is a significant benefit to a borrower, with potentially significant fiscal impacts. Absent a closed school discharge application from a borrower, we do not believe that a one-year period of non-enrollment would be sufficient to discharge a borrower’s debt.”<sup>31</sup> As demonstrated by these responses, at each step of the rulemaking process, the Department carefully explained its rationale for including the Automatic Provision in the final 2016 Borrower Defense Rule.

b. The Automatic Provision’s benefits to borrowers should not have been delayed by the Department.

Rather than implementing the Automatic Provision as designed, the Department has taken definitive steps on three separate occasions to delay its implementation as a part of the larger delay of the 2016 Borrower Defense Rule.

First, the Department announced an indefinite delay of the 2016 Rule based on Section 705 of the APA, claiming that it did not have to follow the usual notice and comment or negotiated rulemaking requirements due to litigation filed by the California Association of Private Postsecondary Schools (“CAPPS”). The Department claimed that the CAPPS litigation had called into question certain provisions of the final regulation.<sup>32</sup> Notably, however, the CAPPS litigation did not involve a challenge to the Automatic Provision itself.<sup>33</sup> Given that fact, the Department failed to justify or explain why it was including the Automatic Provision in the delay.

Next, the Department issued an Interim Final Rule (“IFR”)—again without the required notice and comment or negotiated rulemaking—to delay the implementation of the 2016 Rule until July 1, 2018.<sup>34</sup> The Department sought to invoke the “good cause” exception under the APA, 5 U.S.C. § 553(b), and HEA, 20 U.S.C. § 1098(b)(2), to bypass the rulemaking procedures, citing the HEA’s

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<sup>30</sup> *Id.* at 76,039.

<sup>31</sup> *Id.* at 76,038.

<sup>32</sup> 82 Fed. Reg. 27,621 (June 16, 2017).

<sup>33</sup> *See generally* *CAPPS v. DeVos*, No. 17-CV-999 (D.D.C. 2017).

<sup>34</sup> 82 Fed. Reg. 49,114 (Oct. 24, 2017).

master calendar requirement as justification.<sup>35</sup> Initially, the Department argued that because it had delayed the 2016 Rule’s effective date past July 1, 2017, the master calendar requirement mandated that the regulations be implemented no earlier than July 1, 2018.<sup>36</sup> This analysis was incorrect, however. The IFR was totally unnecessary to establish an effective date for the 2016 Rule, as the original effective date would have been restored in the event that the rule withstood legal challenge. In addition, the Department justified the IFR delay by arguing that it was not significant since “delaying the effective date . . . will not change the set of loans eligible for . . . automatic discharge.”<sup>37</sup> Contrary to this statement, however, the Department now proposes to eliminate the Automatic Provision entirely as a rewrite of the 2016 Rule, a change that would clearly have a significant impact on eligible borrowers. Finally, the Department failed to discuss the actual or potential harm the IFR delay might cause borrowers<sup>38</sup> or the previously determined benefits of the Automatic Provision. The Department’s claims are simply insufficient to invoke the “good cause” exception under the APA.

In February 2018, the Department announced its third delay of the 2016 Borrower Defense Rule, including the Automatic Provision, until July 1, 2019.<sup>39</sup> This third delay was issued after a public notice and comment period, but did not involve negotiated rulemaking.<sup>40</sup> Again, the Department sought to invoke the “good cause” exception under the APA, citing the master calendar requirement of the HEA, for the lack of negotiated rulemaking, stating simply that it “would not be practicable, before the July 1, 2018 effective date specified in the IFR, to [do so].”<sup>41</sup> It provided no further explanation for this assertion, failing to establish yet again that the Department had “good cause” for its delay. In addition, the Department claimed that this third delay would not harm eligible borrowers since they could always apply for a closed school discharge prior to the effective date if they did not want to wait for an automatic discharge.<sup>42</sup> This statement disregarded the Department’s earlier assessment of the necessity of the Automatic Provision for those borrowers who were already eligible for a closed school discharge, but did not know about it and had never applied.

Ultimately, the Department’s decision to delay the implementation of the Automatic Provision three times was not justified under the APA and seems intimately related to the Department’s view that the 2016 Borrower Defense Rule needed to be rewritten. The Department cannot lawfully delay a validly promulgated rule for two years, however, in order to buy the agency enough time to undo the substance of the rule, preventing it from ever going into effect. It especially cannot assure borrowers who would otherwise be eligible for automatic closed school discharges under the 2016

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<sup>35</sup> *Id.* at 49,114, 49,117. The master calendar requires that “any regulatory changes . . . affecting the programs” under Title IV “that have not been published in final form by November 1 prior to the start of the award year” beginning on July 1 “shall not become effective until the beginning of the second award year after such November 1 date.” 20 U.S.C. § 1089(c).

<sup>36</sup> 82 Fed. Reg. at 49,114, 49,116.

<sup>37</sup> *Id.* at 49,119.

<sup>38</sup> Those who attended closed schools are among the most likely to default on their student loans, be sent to collections, experience wage garnishment and tax offsets, and face negative consequences on their credit reports.

<sup>39</sup> 83 Fed. Reg. 6,458 (Feb. 14, 2018).

<sup>40</sup> *See* 82 Fed. Reg. 49,155-57 (Oct. 24, 2017).

<sup>41</sup> *Id.* at 49,157.

<sup>42</sup> 83 Fed. Reg. at 6,468.

Borrower Defense Rule that the Department’s repeated implementation delays will not ultimately impact their claims for relief, only to then eliminate the Automatic Provision entirely.<sup>43</sup>

c. The Department has not provided adequate justification for eliminating the Automatic Provision in the NPRM.

The Department provides three justifications for its decision not to include the Automatic Provision in the NPRM. None of these justifications qualify as a “good reason” under the APA for such a drastic policy change.

First, the Department argues that, because the Secretary already has the authority to grant closed school discharges without an application, *see* 34 C.F.R. §§ 674.44(g)(3)(ii), 682.402(d)(8), and 685.214(c)(2), it “do[es] not believe it is necessary to establish . . . a requirement that the Secretary grant automatic closed school discharges.”<sup>44</sup> The Department provides no further explanation for this assertion, including failing to address why the Department did not see the Automatic Provision as duplicative of the Secretary’s authority to grant discharges without an application when it promulgated the provision in 2016. The Department also fails to address why it is no longer concerned about the problem of eligible but uninformed student loan borrowers not applying for the closed school discharges to which they are legally entitled, presumably because their closed schools never notified them about their right to seek such relief.

Second, the Department contends that automatic discharges “could have collateral consequences for students who did not opt-in,” such as finding out after it is too late that the institution where they attended (or the entity maintaining records for that institution) is now refusing to release their official transcripts because they received an automatic discharge.<sup>45</sup> Interestingly, the Department provides no data to demonstrate that this concern is an actual problem faced by student loan borrowers. Even if it were, eliminating the Automatic Provision is not the proper response.

Third, the Department maintains that, because the proposed 2018 Borrower Defense Rule also eliminates eligibility for closed school discharges for those students who are offered an accreditor- or state-approved teach-out plan, but who decline to participate, there is no need for the Automatic Provision.<sup>46</sup> In fact, the Department asserts that applications for closed school discharges “will be useful, and in some cases, necessary” in order to confirm whether a teach-out plan has been provided to a student prior to granting debt relief.<sup>47</sup> It is difficult to follow the Department’s logic

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<sup>43</sup> The Department’s repeated delays are especially egregious in light of recent data obtained by Senator Durbin, which reveals that, as of June 2018, 143,318 former Corinthian students’ accounts are in the Debt Management Collection System (“DMCS”). Response from U.S. Dep’t of Educ., to Richard J. Durbin, U.S. Senator, “Questions for the Record” (June 12, 2018), *available at*: <https://www.durbin.senate.gov/imo/media/doc/BD%20data%20QFR%20response%207.18.pdf>. Of those students, 5,305 have already been subject to wage garnishment and 59,951 to tax refund offsets. *Id.* It stands to reason that at least some of these 143,318 borrowers would have received discharges under the Automatic Provision, but are instead being hounded by the Department’s debt collectors.

<sup>44</sup> 83 Fed. Reg. at 37,267.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

here. It seems that the Department has decided to eliminate automatic relief for obviously qualifying borrowers simply because its new proposed criteria for eligibility has overly complicated the process. Moreover, the Department fails to acknowledge that not all schools will be able to facilitate a teach-out plan for their students. For that reason, there is still a need for the Automatic Provision.

Ultimately, the Department's explanations are not sufficient to rise to the level of "good reasons" to justify the decision to eliminate the Automatic Provision in the NPRM.

#### **4. The Department's Proposed Regulations Fail to Address Closing Schools' Previous Attempts to Limit Their Loan Discharge Liability**

NSLND's final concern is that the NPRM fails to address—or even consider—a major loophole in the current regulation, which has enabled institutions to effectively preclude impacted students from receiving closed school discharge relief.

Under current regulations, student loan borrowers are eligible for closed school discharges if they submit a sworn statement to the Department that they: (1) received federal student loans to attend a school, (2) did not complete their program of study before the school closed or withdrew from their program of study within 120 days before the school closed, and (3) did not complete their program of study at another school through a teach-out agreement or by transferring some or all of their credits there.<sup>48</sup> The Secretary may extend the 120-day window if exceptional circumstances exist,<sup>49</sup> but extensions are rare. For that reason, a school's closure date is key. The Department's regulations define this date as "the date that the school ceases to provide educational instruction in all programs."<sup>50</sup> Once instruction has ceased, the closing school becomes liable for any closed school discharges later granted by the Department.<sup>51</sup>

Because current regulations tie student loan borrowers' eligibility for debt relief to the school's official closure date, closing schools can game the system, effectively limiting their liability for closed school discharges. Consider what happened at the Charlotte School of Law ("CSL"). On December 19 2016, the Department cut off CSL's access to Title IV, HEA funds.<sup>52</sup> Because CSL sent "multiple signals" to its students about whether it would reopen for the spring semester in the aftermath of the Department's decision, a large majority of CSL's student body took steps to withdraw by early February 2017.<sup>53</sup> CSL did not officially close, however, until August 10, 2017—

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<sup>48</sup> See 34 C.F.R. § 685.214(c)(1). Borrowers can also receive relief without an application "if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies." *Id.* § 685.214(c)(2).

<sup>49</sup> *Id.* § 685.214(c)(1)(i)(B).

<sup>50</sup> *Id.* § 685.214(a)(2)(i).

<sup>51</sup> See 20 U.S.C. § 1087(c); see also 34 C.F.R. § 682.402(d). If a school or its parent company fails to pay that liability, there can be a corresponding impact on any other institutions owned, now or in the future, by that same owner or parent company. See, e.g., 34 C.F.R. § 668.1741(b)(1).

<sup>52</sup> Press Release, U.S. Dep't of Educ., "Charlotte School of Law Denied Continued Access to Federal Student Aid Dollars" (Dec. 19, 2016), available at: <https://www.ed.gov/news/press-releases/charlotte-school-law-denied-continued-access-federal-student-aid-dollars>.

<sup>53</sup> Letter from Josh Stein, Attorney Gen., State of N. Carolina, to Betsy DeVos, Sec'y of Educ., U.S. Dep't of Educ. 1-3 (Apr. 12, 2017), available at:

well beyond 120 days from the end of CSL's add/drop period on February 3, 2017.<sup>54</sup> Simply by remaining open, then, CSL limited its liability for closed school discharges to only those students who had not yet graduated with their law degree, who had not yet transferred to another law school, or who had not withdrawn from further studies at the school until after finishing the spring semester. Although the Secretary ultimately extended the window for closed school discharge eligibility back to December 31, 2016, students who had withdrawn prior to that date, but after the December 19 announcement cutting off Title IV, HEA funds to CSL, were still effectively barred from receiving closed school discharges because of the school's reported insistence on continuing to offer spring classes. The Department's NPRM does nothing to stop this sort of gamesmanship. Instead, it codifies closing schools' attempts to limit their closed school discharge liability by ensuring that it will be difficult, if not impossible, for students to qualify for closed school discharges in the future.

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For all of the reasons stated above, NSLDN strongly opposes the Department's restriction on eligibility for closed school discharges submitted by students who were merely offered an accreditor- or state-approved teach-out plan, proposed changes to the language of examples of "exceptional circumstances" under which the Secretary may grant an extended timeframe for closed school discharge eligibility, and elimination of the Automatic Provision.

Thank you for your attention to these important issues facing student loan borrowers. For more information, please contact NSLDN's Counsel, Robyn Bitner, at [robyn@nslldn.org](mailto:robyn@nslldn.org).<sup>55</sup>

Sincerely,

The National Student Legal Defense Network

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[https://www.insidehighered.com/sites/default/server\\_files/files/2017\\_04\\_12%20Ltr%20to%20Betsy%20DeVos%20re%20CSL.PDF](https://www.insidehighered.com/sites/default/server_files/files/2017_04_12%20Ltr%20to%20Betsy%20DeVos%20re%20CSL.PDF).

<sup>54</sup> See "Closed School Search Page," U.S. Dep't of Educ., <https://www2.ed.gov/offices/OSFAP/PEPS/docs/closedchoolsearch.xlsx>; see also Letter from Josh Stein, Attorney Gen., State of N. Carolina, to Betsy DeVos, Sec'y of Educ., U.S. Dep't of Educ. 4 (Apr. 12, 2017), available at: [https://www.insidehighered.com/sites/default/server\\_files/files/2017\\_04\\_12%20Ltr%20to%20Betsy%20DeVos%20re%20CSL.PDF](https://www.insidehighered.com/sites/default/server_files/files/2017_04_12%20Ltr%20to%20Betsy%20DeVos%20re%20CSL.PDF).

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