
Student Loan Debt Advocacy and Litigation Strategies for Defending Borrowers

Thursday, September 15, 2016

Albany Marriott

CLE Course Materials and NotePad[®]

***Complete course materials distributed in electronic format online in
advance of the program.***

Sponsored by the

New York State Bar Association and The Committee Legal Aid

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New York State Bar Association**

Lawyer Assistance Program 800.255.0569



Q. What is LAP?

- A.** The Lawyer Assistance Program is a program of the New York State Bar Association established to help attorneys, judges, and law students in New York State (NYSBA members and non-members) who are affected by alcoholism, drug abuse, gambling, depression, other mental health issues, or debilitating stress.

Q. What services does LAP provide?

- A.** Services are **free** and include:
- Early identification of impairment
 - Intervention and motivation to seek help
 - Assessment, evaluation and development of an appropriate treatment plan
 - Referral to community resources, self-help groups, inpatient treatment, outpatient counseling, and rehabilitation services
 - Referral to a trained peer assistant – attorneys who have faced their own difficulties and volunteer to assist a struggling colleague by providing support, understanding, guidance, and good listening
 - Information and consultation for those (family, firm, and judges) concerned about an attorney
 - Training programs on recognizing, preventing, and dealing with addiction, stress, depression, and other mental health issues

Q. Are LAP services confidential?

- A.** Absolutely, this wouldn't work any other way. In fact your confidentiality is guaranteed and protected under Section 499 of the Judiciary Law. Confidentiality is the hallmark of the program and the reason it has remained viable for almost 20 years.

Judiciary Law Section 499 Lawyer Assistance Committees Chapter 327 of the Laws of 1993

Confidential information privileged. The confidential relations and communications between a member or authorized agent of a lawyer assistance committee sponsored by a state or local bar association and any person, firm or corporation communicating with such a committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privileges may be waived only by the person, firm or corporation who has furnished information to the committee.

Q. How do I access LAP services?

- A.** LAP services are accessed voluntarily by calling 800.255.0569 or connecting to our website www.nysba.org/lap

Q. What can I expect when I contact LAP?

- A.** You can expect to speak to a Lawyer Assistance professional who has extensive experience with the issues and with the lawyer population. You can expect the undivided attention you deserve to share what's on your mind and to explore options for addressing your concerns. You will receive referrals, suggestions, and support. The LAP professional will ask your permission to check in with you in the weeks following your initial call to the LAP office.

Q. Can I expect resolution of my problem?

- A.** The LAP instills hope through the peer assistant volunteers, many of whom have triumphed over their own significant personal problems. Also there is evidence that appropriate treatment and support is effective in most cases of mental health problems. For example, a combination of medication and therapy effectively treats depression in 85% of the cases.

Personal Inventory

Personal problems such as alcoholism, substance abuse, depression and stress affect one's ability to practice law. Take time to review the following questions and consider whether you or a colleague would benefit from the available Lawyer Assistance Program services. If you answer "yes" to any of these questions, you may need help.

1. Are my associates, clients or family saying that my behavior has changed or that I don't seem myself?
2. Is it difficult for me to maintain a routine and stay on top of responsibilities?
3. Have I experienced memory problems or an inability to concentrate?
4. Am I having difficulty managing emotions such as anger and sadness?
5. Have I missed appointments or appearances or failed to return phone calls?
Am I keeping up with correspondence?
6. Have my sleeping and eating habits changed?
7. Am I experiencing a pattern of relationship problems with significant people in my life (spouse/parent, children, partners/associates)?
8. Does my family have a history of alcoholism, substance abuse or depression?
9. Do I drink or take drugs to deal with my problems?
10. In the last few months, have I had more drinks or drugs than I intended, or felt that I should cut back or quit, but could not?
11. Is gambling making me careless of my financial responsibilities?
12. Do I feel so stressed, burned out and depressed that I have thoughts of suicide?

There Is Hope

CONTACT LAP TODAY FOR FREE CONFIDENTIAL ASSISTANCE AND SUPPORT

The sooner the better!

Patricia Spataro, LAP Director

1.800.255.0569

New York State Bar Association

FORM FOR VERIFICATION OF PRESENCE AT THIS PROGRAM

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program for Attorneys in the State of New York, as an Accredited Provider of CLE programs, we are required to carefully monitor attendance at our programs to ensure that certificates of attendance are issued for the correct number of credit hours in relation to each attendee's actual presence during the program. Each person may only turn in his or her form-you may not turn in a form for someone else. Also, if you leave the program at some point prior to its conclusion, you should check out at the registration desk. Unless you do so, we may have to assume that you were absent for a longer period than you may have been, and you will not receive the proper number of credits.

Speakers, moderators, panelists and attendees are required to complete attendance verification forms in order to receive MCLE credit for programs. Faculty members and attendees: please complete, sign and return this form along with your evaluation, to the registration staff **before you leave** the program.

**You MUST turn in this form at the end of the
program for your MCLE credit.**

**Student Loan Debt Advocacy and Litigation Strategies for Defending
Borrowers. Friday, September 16, 2016 | New York State Bar
Association's Committee on Legal Aid, Albany Marriot, Albany, NY**

Name:

(Please print)

I certify that I was present for the entire presentation of this program

Signature:

Date:

Speaking Credit: In order to obtain MCLE credit for speaking at today's program, please complete and return this form to the registration staff before you leave. **Speakers** and **Panelists** receive three (3) MCLE credits for each 50 minutes of presenting or participating on a panel. **Moderators** earn one (1) MCLE credit for each 50 minutes moderating a panel segment. Faculty members receive regular MCLE credit for attending other portions of the program.

NEW YORK STATE BAR ASSOCIATION

Live Program Evaluation (Attending In Person)

Please complete the following program evaluation. We rely on your assessment to strengthen teaching methods and improve the programs we provide. The New York State Bar Association is committed to providing high quality continuing legal education courses and your feedback is important to us.

Program Name:

Program Code:

Program Location:

Program Date:

1. What is your overall evaluation of this program? Please include any additional comments.

☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional Comments _____

2. Please rate each Speaker's Presentation based on **CONTENT** and **ABILITY** and include any additional comments.

	CONTENT				ABILITY			
	Excellent	Good	Fair	Poor	Excellent	Good	Fair	Poor
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Additional comments (CONTENT)

Additional comments (ABILITY)

3. Please rate the program materials and include any additional comments.

☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional comments

4. Do you think any portions of the program should be **EXPANDED** or **SHORTENED**? Please include any additional comments.

☐ Yes – Expanded ☐ Yes – Shortened ☐ No – Fine as is

Additional comments

5. Please rate the following aspects of the program: **REGISTRATION; ORGANIZATION; ADMINISTRATION; MEETING SITE** (if applicable), and include any additional comments.

	Please rate the following:				
	Excellent	Good	Fair	Poor	N/A
Registration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Organization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Administration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Meeting Site (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments

6. How did you learn about this program?

☐ Ad in legal publication ☐ NYSBA web site ☐ Brochure or Postcard
☐ Social Media (Facebook / Google) ☐ Email ☐ Word of mouth

7. Please give us your suggestions for new programs or topics you would like to see offered



NEWYORK STATE BAR ASSOCIATION

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Student Loan Debt Advocacy and Litigation Strategies for Defending Borrowers

OVERVIEW OF STUDENT LOAN ADVOCACY

By Yan Cao

PART I: ADVOCACY STRATEGIES FOR FEDERAL LOAN DEBTS

Get Out of Default Through Consolidation & Rehabilitation)

By Johnson Tyler

Navigating “Income-Driven Repayment” and Loan Forgiveness Options

By Johnson Tyler

Closed School and Defense to Repayment Discharges

By Maggie Robb

False Certification and Unpaid Refund Discharges

By Johnson Tyler

Disability Discharges

By Maggie Robb

PART II: Advocacy Strategies for Private Loan Debts

By Yan Cao

Key Distinctions Between Federal and Private Loans

Common Collection Pattern

Statute of Limitations, Standing, and Evidentiary Defenses

FDCPA and TILA

PART II: ADVOCACY STRATEGIES FOR SCHOOL-BASED DEBTS

By Johnson Tyler

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Student Loan Debt Advocacy and Litigation for Defending Borrowers

PowerPoint

2016 Partnership Conference: Student Loan Debt Advocacy and Litigation Strategies for Defending Borrowers

*Yan Cao, Staff Attorney, Brooklyn Legal Services
Maggie R. Robb, Staff Attorney, Empire Justice Center
Johnson M. Tyler, Senior Attorney, Brooklyn Legal Services*

Goal for Training

- Introduce practitioners to strategies for mitigating harm in student loan cases
- Discuss practice tips
- Identify areas where further work is needed

AGENDA

- I. OVERVIEW OF THE STUDENT LOAN INDUSTRY**
- II. FEDERAL STUDENT LOANS**
- III. PRIVATE STUDENT LOANS**
- IV. SCHOOL-BASED DEBT**
- V. Q & A**

OVERVIEW OF THE STUDENT LOAN INDUSTRY

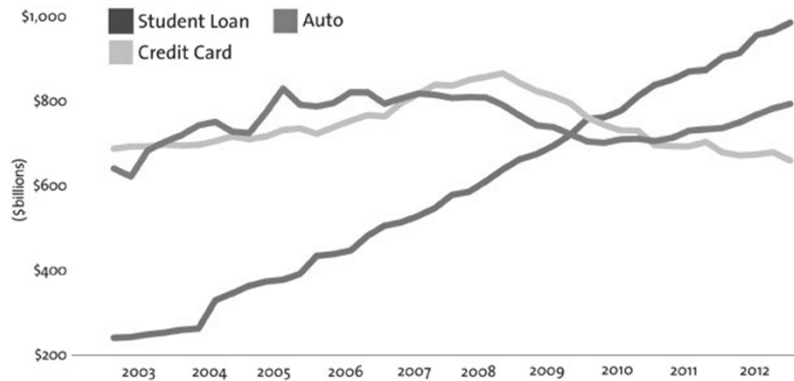
Goals:

- *Understand differences between types of student debt*
- *Gain tools for investigating a client's student debt situation*

Student debt is growing

Maxed Out

Total debt held by borrowers



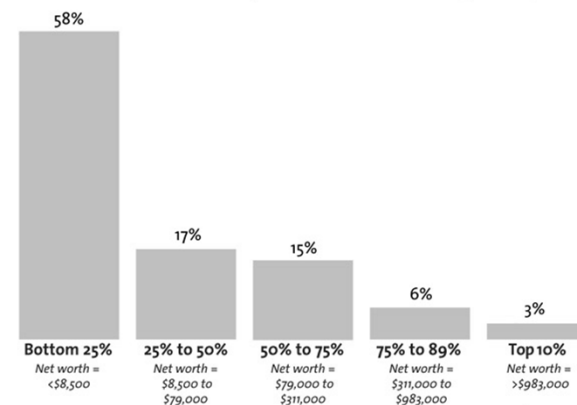
Source: Federal Reserve Bank of New York

Mother Jones

Low-income students are more likely to take on student loan debt

Who Owes the Most?

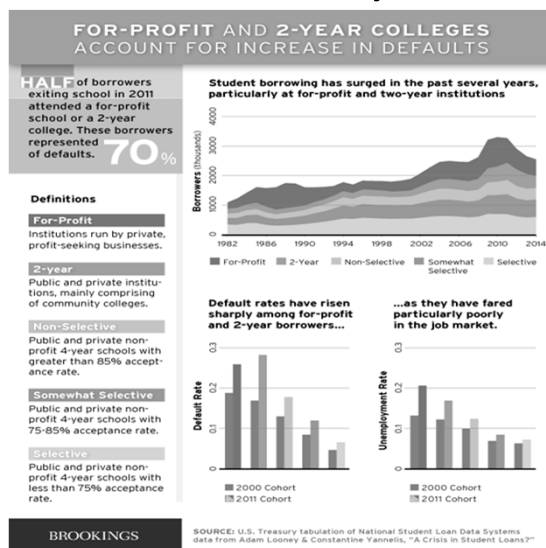
Distribution of total student debt by level of household net worth (percentile)



Sources: Pew Research Center, Federal Reserve Bulletin

Mother Jones

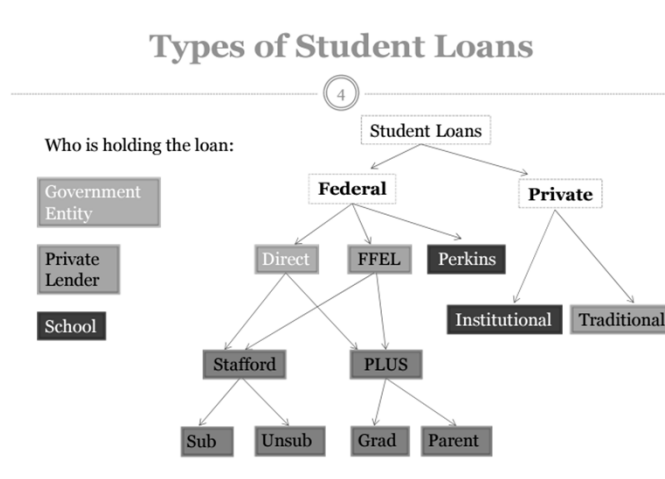
are more likely to default . . .



and suffer more from default

FEDERAL	PRIVATE
<ul style="list-style-type: none"> • Government garnishes 15% of income and/or social security , 100% of tax return, & more • Default fees (25%) • Negative credit reporting • No income-based repayment 	<ul style="list-style-type: none"> • Fees and charges (see contract) • Civil lawsuit and default judgments can lead to a lifetime of garnishment • Negative credit reporting

Many Types of Student Loans



What type of loan?

- Federal Loans - National Student Loan Database
https://www.nslds.ed.gov/nslds/nslds_SA/ or call 800-433-3243.
- Private Loans - Annual Credit Report
<https://www.annualcreditreport.com/index.action>
- Tuition/fees owed to school – **Not a loan.**
- **Practice Note** – these sources are the most reliable databases available but they are both imperfect. If you have records or can access payment history, double-check to confirm that payments are recorded.

PART I: ADVOCACY STRATEGIES FOR FEDERAL LOAN DEBTS

Goals:

- *Learn how to get defaulted borrowers into income-driven repayment, including \$0 payment plans*
- *Learn to spot and apply for federal discharges*

Financial Aid Review --

https://www.nslds.ed.gov/nslds_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

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.

What's the Fed loan's status?

- Current (includes deferment, forbearance)
- Delinquent (<270 days for federal loans)
- Default (>270 days for federal loans, based on terms of the credit agreement for private)
- Judgment

Options for Federal Borrowers in Default



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

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

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

Income-Driven Repayment



Federal Borrowers CANNOT be in default to access any of the income sensitive repayment programs. But delinquency (up to 269 days without payment) is ok.

Programs include:

1. Income Contingent Repayment (ICR)
2. Income Based Repayment (IBR)
3. Pay as You Earn (PAYE)
4. REVISED Pay As You Earn (REPAYE)

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Student Loan Discharges:

A.K.A. federal Loan Forgiveness



1. School Related Discharges (bad acts by school):
 - a. Closed School
 - b. Defense Against Repayment*(Everest example)
 - c. False Certification
 - d. Unpaid Refund
2. Borrower Related Discharges (not school-based)
 - a. Disability
 - b. Death
 - c. Identity theft

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**Case Example of School Based
Discharge: The Everest Institute
Rochester, New York**

1. On April 27, 2015 Corinthian College closed its 30 remaining locations
2. The only New York State Corinthian College campus was located in Rochester, New York
3. Closure of Everest Institute displaced over 300 full time students in Rochester, New York

**Closed School
DISCHARGE Eligibility**

1. Borrower's school closed while she was enrolled or within 120 days after she withdrew. (120 day deadline extended for Corinthian students to June 20, 2014)
2. Borrowers cannot transfer into a "comparable program of study at another school"
3. List of closed schools on Dept. of Education's website

Challenges With Closed School Discharge Application Process

1. Access to the discharge application
2. Application lacks instructions
 - Students cannot transfer into a “comparable program”
 - No definition or evaluation criteria for “comparable program”
3. Discharges have been denied if any credit transfers
4. Burden on borrowers

Defense to Repayment Discharge

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

Defense to Repayment Expedited Discharges and Corinthian Colleges

1. Department of Education has evidence Corinthian misrepresented job placement rates
2. DOE instituted an expedited DTR discharge process for qualifying borrowers
3. To qualify borrowers must prove:
 - a. Attendance at a specific campus;
 - b. Enrollment during specific dates;
 - c. Enrollment in a specific course of study

DTR Qualifying Categories for Everest, Rochester, New York

Accounting (Associate)	7/1/2010-9/30/2014
Admin. Office Tech. (Assoc.)	7/1/2011 – 9/30/2013
Business (Associate)	7/1/2011 – 9/30/2014
Business Account. & App. (Diploma)	7/1/2010 – 9/30/2014
Business Management (Diploma)	7/1/2010 – 9/30/2014
Criminal Justice (Associate)	7/1/2010 – 9/30/2011; 7/1/2013 – 9/30/2014
Medical Assistant (AAS)	7/1/2010 – 9/30/2013
Medical Assistant (Associate)	7/1/2010-7/1/2010
Medical Assistant (Diploma)	7/1/2010-9/30/2013

Coming Soon: New Defense Against Repayment Discharge Regulations

- New Regs will provide a mechanism to discharge loans from bad for-profits and non-profits, not just Corinthian/Everest.
- DOE issued 500+ pages of proposed regulations related to defense against repayment in June 2016.
- Comment period is over, final rules due in November 2016 (hopefully).

Other Discharges: FALSE CERTIFICATION



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. Loan disbursed between 1986 and 7/1/2012.
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 work—DBL—restate using the language in the reg., particular condition would prevent employment
3. **Unauthorized Signature/Payment:** School signed the borrower’s name on the loan & borrower did not attend class.

Other Discharges: UNPAID REFUND



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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Other Discharges: Disability

Three paths to disability discharge:

1. Receiving federal disability benefits—Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits.
 - a. Submit notice of award for SSDI or SSI benefits
 - b. 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
 - c. New Matching Program-DOE and SSA work together to identify and notify borrowers who receive SSD/SSI of possible total and permanent disability discharge eligibility application process

Disability Discharge

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.

PART II: Private Loans

Goals

- *Understand distinctions between collection of federal and private student loans*
- *Discuss common defenses*
- *Identify areas for affirmative litigation*

Key Distinctions

FEDERAL	PRIVATE
<ul style="list-style-type: none"> • Government garnishes income, tax return, social security & more • Alternate repayment plans, discharges • No statute of limitations 	<ul style="list-style-type: none"> • Civil judgment needed to start garnishing activity • Usually no repayment plans or discharges • Statute of Limitations apply

Note: Bankruptcy protections apply to both

Collection Patterns: What happens when a student gets a loan?

ORIGINAL LENDER (e.g. Chase Bank, Sallie Mae) <ul style="list-style-type: none"> • Issues check to school or student • Sells loan
INTERMEDIARY (e.g. NCO, First Marblehead) <ul style="list-style-type: none"> • Buys loans from banks and packages them to investors through statutory trusts
PLAINTIFF TRUST (e.g. NCSLT 2006-1, SLM Trust 2007-4) <ul style="list-style-type: none"> • Purported holders of student loan assets • will try to collect using servicers, debt collectors, law firms

Collection Patterns

- What happens when a student defaults a private loan?

ORIGINAL SERVICER (e.g. AES, Sallie Mae/Navient)

- Issues bills, eventually “charges off” the account
- Usually a distinct entity acting as agent of the Plaintiff trust

DEBT COLLECTION AGENCY (e.g. ACI)

- May try to collect the whole amount
- May offer a settlement
- May attach additional fees

DEBT COLLECTION LAW FIRM (e.g. Forster & Garbus, Rubin & Rothman)

- Default judgments and settlements common when pro se
- Discontinuances common when student is represented

A. SECURITIZATION AND STANDING

NCLC Review of 101 NCSLT Cases in CA

OUTCOME	NUMBER
DEFAULT JUDGMENT	48
JUDGEMENT FOR PLAINTIFF	1
DISMISSED WITHOUT PREJUDICE	26
DISMISSED WITH PREJUDICE	8
SETTLED	1
ADJOURNED/PENDING	17
TOTAL	101

Why default judgments?

- Students are not represented
- Bad service to bad addresses
- PSL Trusts have high default rates and are interested in volume practice
- Student Loans excluded from OCA rules for obtaining defaults in other consumer cases
- Trusts have limited evidence regarding standing, capacity to sue

STATUTE OF LIMITATIONS

- NY Choice of Law - “[W]hen a nonresident sues on a cause of action accruing outside New York, CPLR 202 requires the cause of action to be timely under the limitation periods of both New York and the jurisdiction where the cause of action accrued”
- Ignore Choice of Law Clause in contract

STATUTE OF LIMITATIONS

NY	DELAWARE
6 year statute of limitations for contract-like claims	6 year statute of limitations for “promissory note”
	3 year statute of limitation of contracts

STATUTE OF LIMITATIONS

- Additional Issues
 - When does the SOL start running?
 - “non-negotiable” Del. Code Ann. tit. 6, § 3-104 prevents the writing from being a negotiable instrument for **any purpose**
 - “under seal” – 20 years, but boilerplate is not enough
 - Note: Argue in the alternative. SOL analysis may change if Plaintiff lacks standing.

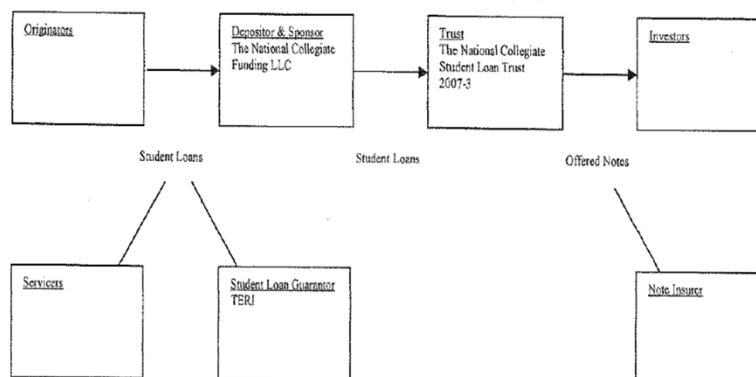
SECURITIZATION AND STANDING

Common Challenges

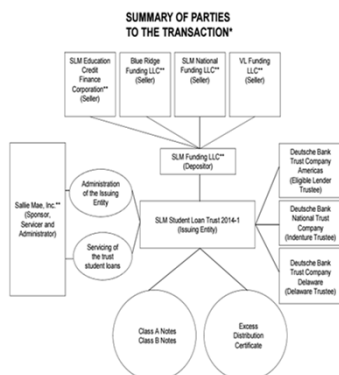
- Complete chain of title?
- Robo-signing? (form affidavit, frequent filers)
- Is the account identified?
- Is evidence admissible (best evidence, authentication and hearsay rules)

NCSLT SECURITIZATION DIAGRAM

The following diagram summarizes the relationship of the principal parties in the transaction:



SLM TRUST SECURITIZATION DIAGRAM



* This chart provides only a simplified overview of the relations between the key parties to the transaction. Refer to this prospectus supplement for a further description.

** Each of these entities is a direct or indirect wholly-owned subsidiary of SLM Corporation.

Pleading Deficiencies

- Plaintiffs' firms are sloppy
 - Missing certificates of conformity for out-of-state affidavits
 - Attorneys attempting to substitute attorney affirmations for a factual affidavits
 - Missing pleadings, form pleadings

Evidentiary Issues

- Plaintiff should provide promissory note and chain of title
- Plaintiff should provide proof of performance (was there a check?)
- Plaintiff should provide accounting of principal, interest, and fees
- Practice Note: Try to use FDCPA, DFS, DCA rules to clarify accounting.

Evidentiary Issues

- The affidavits in support of summary judgment for student loan lenders are riddled with the same evidentiary errors as in the debt buyer cases.
 - Affidavit by an employee of the servicer of the plaintiff without any further explanation of that relationship.
 - Conclusory, form affidavits
- Similarly, as in debt buyer cases, Plaintiff must show through admissible evidence a proper chain of title from originating entity to the current holder of the student loan.

SECURITIZATION AND STANDING

National Collegiate Student Loan Trust 2007-1				
Roster: CHASE BANK				
Lender	Lender Code	Marketer	Loan Product	BSSN
CHASE BANK	804976QT	Chase Bank	DTC - Ed One - Undergraduate	██████-6697

GUARREF	Disb. Date	Tier	Repay Type	Margin
4741879	23-Jan-07	9	DP	0.0775

Fee to Borrower	TERI Admin Fee	Marketing Fee	Total Gross Disbursed	Total Net Disbursed
0.105	0.0175	0.0725	\$6,703.91	\$6,000.00

KEY INFORMATION TO OBTAIN

- Statute of Limitations
 - Promissory Note or Contract?
 - Is default defined in contract?
 - Date of Default
 - Which State's SOL Applies?
- Plaintiff's Position on Standing (Original Creditor? Assignee? Servicer?)
- Calculation of Damages
- Name and Role of Each Entity in Securitization Process
- Dates That Title Transferred
- Identity of Plaintiff's Witness at Trial

Key Documents to Request

- Signed Promissory Note or Loan Agreement
- Note Disclosure Statement
- Proof That Funds Were Disbursed
- Payment History
- All Assignment Agreements (Complete Chain of Title)
- Servicing Agreements
- Documents Relating to Securitization
 - Pooling and Servicing Agreement or Pool Supplement
 - Schedule of Debts (Identifying Subject Loan)
 - Sale Agreement

Plaintiff's Failure to Prove its Case

- Plaintiffs often have shoddy documents and records and are missing documents essential to its claim.
- Plaintiff may not possess the promissory note and only offers the lending disclosure
- Plaintiff may not have evidence its standing to sue.
- The accounting history provided by Plaintiff is often illegible and not a true accounting of damages.
- Other defenses:
 - Ability for a trust to sue in its own name?
 - Is plaintiff a foreign entity licensed to do business in NY?
 - Consumer protection laws and the Holder Rule defense

FEDERAL COUNTERCLAIMS

- Fair Debt Collection Practices Act (FDCPA) – misrepresentations, abusive practices
- Truth in Lending Act (TILA) – lack of disclosure, inaccurate disclosures, failure to prove compliance with new 2010 guidelines
- Both provide attorneys fees

PART III: SCHOOL-BASED DEBTS

Goals:

- *School-based debts are NOT “student loans” in the bankruptcy code*
- *Advise students who seek a release of transcripts*

School Based Debts

- Typical Situation: Borrower takes out Pell Grant, drops-out or earns less than a C average.
- School must then Returns PELL Payment to Feds.
- Borrower who had tuition paid by Pell now owes School.
- Why is this a problem?
- Borrower cannot go back to any school without paying debt because school will not release academic transcript to Dept of Ed when borrower tries to get more fed loans or Pell grants.

School Based Debt (cont.)

- What to do?
- Bankruptcy: School-based debt is NOT “student loans” in the bankruptcy code. If discharged, transcript must be released.
- Pay debt if borrower wants to return to school.
- Most private and public non-profits will not sue, for-profits may.

QUESTIONS & ANSWERS

Student Loan Debt Advocacy and Litigation for Defending Borrowers

Biographies

Maggie R. Robb

Maggie R. Robb is Staff Attorney at the Empire Justice Center in Rochester, New York, focusing on consumer issues.

Maggie joined Empire Justice in 2012 after several years in private practice where she focused on general civil litigation. Maggie works with low-income New Yorkers to resolve legal consumer issues. Following the sudden closure of Everest Institute's Rochester, New York campus in 2015, Maggie represented numerous former Everest Institute students with student loan discharge issues. In addition, Maggie engages in community outreach on a variety of consumer issues including student loan debt, automobile transactions, utility disputes, and rent-to-own issues.

She earned her bachelor of arts in 1995 from the State University of New York at Buffalo and is a 1998 graduate of the University of Dayton School of Law.

Johnson M. Tyler

Johnson M. Tyler is a graduate of Yale College and CUNY Law School. He has worked for 26 years at South Brooklyn Legal Services, focusing much of his work on protecting low income consumers from abusive collection and lending practices. He has filed numerous suits against unscrupulous collectors, including two involving federal student loans. Mr. Tyler has provided expert testimony on debt collection practices and debt relief scams to the U.S. Senate, the Federal Trade Commission, the U.S. Treasury and local lawmakers and agencies, as well as the New York Times, the CBS Evening News, and the Associated Press. Over the last five years, Mr. Tyler has represented hundreds of student loan borrowers, many of whom are Veterans.

Yan Cao

Yan Cao is a Staff Attorney and Skadden Fellow at Brooklyn Legal Services. She advises and represents low-income clients on student loan issues including managing unaffordable federal and private student loan debt, defending against predatory lending, and discharging debt from schools that engage in fraudulent practices. Yan is a graduate of Stanford University and NYU Law School.

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Income-Driven Repayment Plans for Federal Student Loans

What is an income-driven repayment plan?

An income-driven repayment plan is a repayment plan that sets your monthly student loan payment at an amount that is intended to be affordable based on your income and family size. The U.S. Department of Education offers four income-driven repayment plans: Revised Pay As You Earn Repayment Plan (REPAYE Plan), Pay As You Earn Repayment Plan (PAYE Plan), Income-Based Repayment Plan (IBR Plan), and Income-Contingent Repayment Plan (ICR Plan). Most federal student loans are eligible for at least one income-driven repayment plan.

How are monthly payment amounts determined under income-driven repayment plans?

The chart below shows how payment amounts are determined under each income-driven plan. Depending on your income and family size, you may have no monthly payment at all. You can estimate your payments under these plans using the *Repayment Estimator* at [StudentAid.gov/repayment-estimator](https://studentaid.gov/repayment-estimator).

Repayment Plan	Payment Amount
REPAYE Plan	Generally 10 percent of your discretionary income
PAYE Plan	Generally 10 percent of your discretionary income, but never more than the 10-year Standard Repayment Plan amount
IBR Plan	Generally 10 percent of your discretionary income if you are a new borrower on or after July 1, 2014*, but never more than the 10-year Standard Repayment Plan amount Generally 15 percent of your discretionary income if you are not a new borrower on or after July 1, 2014*, but never more than the 10-year Standard Repayment Plan amount
ICR Plan	The lesser of the following: <ul style="list-style-type: none">• 20 percent of your discretionary income or• what you would pay on a repayment plan with a fixed payment over the course of 12 years, adjusted according to your income

* For the IBR Plan, you are a new borrower on or after July 1, 2014, if you had no outstanding balance on a William D. Ford Federal Direct Loan (Direct Loan) Program loan or Federal Family Education Loan (FFEL) Program loan when you received a Direct Loan on or after July 1, 2014. (Because no new FFEL Program loans have been made since June 30, 2010, only Direct Loan borrowers may qualify as new borrowers on or after July 1, 2014.)

Sample Payment Amounts

The tables below provide repayment estimates under the traditional and income-driven repayment plans. These figures are estimates based on an interest rate of 6%, the average Direct Loan interest rate for undergraduate and graduate borrowers. The figures also assume a family size of 1, that you live in the continental U.S., and that your income increases 5% each year. Various factors, including your interest rate, your loan debt, your income, and if and how quickly your income rises, may cause your repayment to differ from the estimates shown in these tables. These figures use the 2016 Poverty Guidelines issued by the U.S. Department of Health and Human Services and Income Percentage Factors issued by the U.S. Department of Education.

Undergraduate Loan Debt* of \$30,000 in Direct Unsubsidized Loans and Starting Income of \$25,000

Repayment Plan	Initial Payment	Final Payment	Time in Repayment	Total Paid	Loan Forgiveness
Standard	\$333	\$333	10 years	\$39,967	N/A
Graduated	\$190	\$571	10 years	\$42,636	N/A
Extended-Fixed	Ineligible	N/A	N/A	N/A	N/A
Extended-Graduated	Ineligible	N/A	N/A	N/A	N/A
REPAYE	\$60	\$296	20 years	\$32,358	\$24,253
PAYE & IBR (new borrowers)	\$60	\$296	20 years	\$39,517	\$27,823
IBR (not new borrowers)	\$90	\$333	21 years, 10 months	\$61,006	\$0
ICR	\$195	\$253	19 years, 6 months	\$52,233	\$0

Combined Undergraduate & Graduate Loan Debt* of \$60,000 in Direct Unsubsidized Loans and Starting Income of \$40,000

Repayment Plan	Initial Payment	Final Payment	Repayment Period	Total Paid	Loan Forgiveness
Standard	\$666	\$666	10 years	\$79,935	N/A
Graduated	\$381	\$1,143	10 years	\$85,272	N/A
Extended-Fixed	\$387	\$387	25 years	\$115,974	N/A
Extended-Graduated	\$300	\$582	25 years	\$126,173	N/A
REPAYE	\$185	\$612	25 years	\$131,444	\$0
PAYE & IBR (new borrowers)	\$185	\$612	20 years	\$97,705	\$41,814
IBR (not new borrowers)	\$277	\$666	18 years, 3 month	\$107,905	\$0
ICR	\$469	\$588	13 years, 9 months	\$89,468	\$0

* Loan debt does not include any consolidation loans.

How long will I be in repayment under each plan?

Under all four plans, any remaining loan balance is forgiven if your federal student loans aren't fully repaid at the end of the repayment period. For any income-driven repayment plan, periods of economic hardship deferment and periods of repayment under certain other repayment plans will count toward your total repayment period. Whether you will have a balance left to be forgiven at the end of your repayment period depends on a number of factors, such as how quickly your income rises and how large your income is relative to your debt. Because of these factors, you may fully repay your loan before the end of your repayment period.

Repayment Plan	Repayment Period
REPAYE Plan	20 years if all loans you are repaying under the plan were for undergraduate study 25 years if any loans you are repaying under the plan were for graduate or professional study
PAYE Plan	20 years
IBR Plan	20 years if you are a new borrower on or after July 1, 2014 25 years if you are not a new borrower on or after July 1, 2014
ICR Plan	25 years

Note: If you're paying under an income-driven repayment plan and are eligible for Public Service Loan Forgiveness, you may qualify for forgiveness of any remaining Direct Loan balance after you have made 10 years of qualifying payments.

Visit [StudentAid.gov/publicservice](https://studentaid.gov/publicservice) to learn more.

Who is eligible for income-driven repayment?

REPAYE Plan

Any borrower with eligible federal student loans may make payments under this plan.

PAYE and IBR Plans

Each of these plans has an eligibility requirement you must meet to qualify for the plan. To qualify, the payment you would be required to make under the PAYE or IBR plan (based on your income and family size) must be less than what you would pay under the Standard Repayment Plan with a 10-year repayment period.

If the amount you would have to pay under the PAYE or IBR plan (based on your income and family size) is more than what you would have to pay under the 10-year Standard Repayment Plan, you wouldn't benefit from having your monthly payment amount based on your income, so you don't qualify. Generally, you'll meet this requirement if your federal student loan debt is higher than your discretionary income or represents a significant portion of your annual income.

In addition to meeting the requirement described above, to qualify for the PAYE Plan you must also be a new borrower as of Oct. 1, 2007, and must have received a disbursement of a Direct Loan on or after Oct. 1, 2011. You're a new borrower if you had no outstanding balance on a Direct Loan or FFEL Program loan when you received a Direct Loan or FFEL Program loan on or after Oct. 1, 2007.

ICR Plan

Any borrower with eligible federal student loans may make payments under this plan

Will I always pay the same amount each month under an income-driven repayment plan?

No. Under all of the income-driven repayment plans, your required monthly payment amount may increase or decrease if your income or family size changes from year to year. Each year you must “recertify” your income and family size. This means that you must provide your loan servicer with updated income and family size information so that your servicer can recalculate your payment. You must do this even if there has been no change in your income or family size.

Your loan servicer will send you a reminder notice when it’s time for you to recertify. To recertify, you must submit another income-driven repayment plan application. On the application, you’ll be asked to select the reason you’re submitting the application. Respond that you are submitting documentation of your income for the annual recalculation of your payment amount.

Although you’re required to recertify your income and family size only once each year, if your income or family size changes significantly before your annual certification date (for example, due to loss of employment), you can submit updated information and ask your servicer to recalculate your payment amount at any time. To do this, submit a new application for an income-driven repayment plan. When asked to select the reason for submitting the application, respond that you are submitting documentation early because you want your servicer to recalculate your payment immediately.

What types of federal student loans are eligible to be repaid under an income-driven repayment plan?

Loan Type	REPAYE Plan	PAYE Plan	IBR Plan	ICR Plan
Direct Subsidized Loans	Eligible	Eligible	Eligible	Eligible
Direct Unsubsidized Loans	Eligible	Eligible	Eligible	Eligible
Direct PLUS Loans made to graduate or professional students	Eligible	Eligible	Eligible	Eligible
Direct PLUS Loans made to parents	Not eligible	Not eligible	Not eligible	Eligible if consolidated*
Direct Consolidation Loans that did not repay any PLUS loans made to parents	Eligible	Eligible	Eligible	Eligible
Direct Consolidation Loans that repaid PLUS loans made to parents	Not eligible	Not eligible	Not eligible	Eligible

Loan Type	REPAYE Plan	PAYE Plan	IBR Plan	ICR Plan
Subsidized Federal Stafford Loans (from the FFEL program)	Eligible if consolidated*	Eligible if consolidated*	Eligible	Eligible if consolidated*
Unsubsidized Federal Stafford Loans (from the FFEL program)	Eligible if consolidated*	Eligible if consolidated*	Eligible	Eligible if consolidated*
FFEL PLUS Loans made to graduate or professional students	Eligible if consolidated*	Eligible if consolidated*	Eligible	Eligible if consolidated*
FFEL PLUS Loans made to parents	Not eligible	Not eligible	Not eligible	Eligible if consolidated*
FFEL Consolidation Loans that did not repay any PLUS loans made to parents	Eligible if consolidated*	Eligible if consolidated*	Eligible	Eligible if consolidated*
FFEL Consolidation Loans that repaid PLUS loans made to parents	Not eligible	Not eligible	Not eligible	Eligible if consolidated*
Federal Perkins Loans	Eligible if consolidated*	Eligible if consolidated*	Eligible if consolidated*	Eligible if consolidated*

*If a loan type is listed as “Eligible if consolidated,” this means that if you consolidate that loan type into a Direct Consolidation Loan, you can then repay the consolidation loan under the income-driven plan.

Note that only federal student loans can be repaid under the income-driven plans. Private student loans are not eligible.

Is an income-driven repayment plan right for me?

Income-driven repayment plans usually lower your federal student loan payments. However, whenever you make lower payments or extend your repayment period, you will likely pay more in interest over time—sometimes significantly more. In addition, under current Internal Revenue Service (IRS) rules, you may be required to pay income tax on any amount that’s forgiven if you still have a remaining balance at the end of your repayment period.

How do I decide which income-driven repayment plan to choose?

If you’ve decided that an income-driven repayment plan is right for you, you’ll want to choose the plan that provides the most benefit to you based on your individual circumstances. Although all four income-driven plans allow you to make a monthly payment based on your income, the plans differ in terms of who qualifies, how much you have to pay each month, the length of the repayment period, and the types of loans that can be repaid under the plan.

If you have only Direct Loans, you can choose from all four income-driven repayment plans. If you’re not sure which plan to choose, you have the option of requesting the income-driven plan that provides the lowest payment amount. Your servicer will determine which plans you qualify for and will then place you on the plan with the lowest monthly payment. If you have FFEL Program loans, your only income-driven repayment plan option is the IBR Plan. However, if you

consolidate your FFEL Program loans into a Direct Consolidation Loan, you'll then have access to the REPAYE, PAYE, and ICR plans. Find out more about loan consolidation at [StudentAid.gov/consolidation](https://studentaid.gov/consolidation).

How do I apply for an income-driven plan?

Before you apply for an income-driven repayment plan, contact your loan servicer if you have any questions. Your loan servicer will help you decide whether one of these plans is right for you.

To apply, you must submit an application called the Income-Driven Repayment Plan Request. You can submit the application online at [StudentLoans.gov](https://studentloans.gov) or on a paper form, which you can get from your loan servicer. The application allows you to select an income-driven repayment plan by name, or to request that your loan servicer determine what income-driven plan or plans you qualify for, and then place you on the income-driven plan with the lowest monthly payment amount.

When you apply, you'll be asked to provide income information that will be used to determine your eligibility for the PAYE or IBR plans and to calculate your monthly payment amount under all income-driven repayment plans. This may be either your adjusted gross income (AGI) or alternative documentation of income.

Your AGI will be used if

- you filed a federal income tax return in the past two years, and
- your current income isn't significantly different from the income reported on your most recent federal income tax return.

You can provide your AGI in one of the following ways:

- Apply using the online Income-Driven Repayment Plan Request and use the IRS Data Retrieval Tool in the application to transfer income information from your federal income tax return.
- Use the paper Income-Driven Repayment Plan Request and provide a paper copy of your most recently filed federal income tax return or IRS tax return transcript.

If you haven't filed a federal income tax return in the past two years, or if your current income is significantly different from the income reported on your most recent federal income tax return (for example, if you lost your job or have experienced a drop in income), alternative documentation of your income will be used to determine your eligibility and calculate your monthly payment amount. You can provide alternative documentation in one of the following ways:

- If you currently receive taxable income, you must submit a paper Income-Driven Repayment Plan Request with alternative documentation of your income, such as a pay stub.
- If you currently don't have any income or if you receive only untaxed income, you can indicate that on the online or paper application. In this case, you're not required to supply further documentation of your income.

February 2016

Public Service Loan Forgiveness Program

What is the Public Service Loan Forgiveness (PSLF) Program?

The PSLF Program is intended to encourage individuals to enter and continue to work full-time in public service jobs. Under this program, you may qualify for forgiveness of the remaining balance due on your William D. Ford Federal Direct Loan (Direct Loan) Program loans after you have made 120 qualifying payments on those loans while employed full-time by certain public service employers. Since you must make 120 qualifying payments on your eligible federal student loans after Oct. 1, 2007, before you can qualify for the loan forgiveness, the first forgiveness of loan balances will not be granted until October 2017.

What federal student loans are eligible for forgiveness under the PSLF Program?

Any nondefaulted Direct Loan is eligible for loan forgiveness. (See below for information on how non-Direct Loans may become eligible.) The Direct Loan Program includes the following loans:

- Direct Subsidized Loans
- Direct Unsubsidized Loans
- Direct PLUS Loans—for parents and graduate or professional students
- Direct Consolidation Loans

NOTE: Parents who received a Direct PLUS Loan may qualify for forgiveness of the PLUS loan, if the parent borrower—not the student on whose behalf the loan was obtained—is employed by a public service organization (*additional conditions apply; see the Q&As below*).

How can other federal student loans become eligible for loan forgiveness under the PSLF Program?

Although loan forgiveness under this program is available only for Direct Loans, loans made under other federal student loan programs may become eligible for PSLF if they are consolidated into a Direct Consolidation Loan. However, only payments made on the Direct Consolidation Loan will count toward the required 120 qualifying payments.

The following loans may be consolidated into a Direct Consolidation Loan:

- Federal Family Education Loan (FFEL) Program loans, which include the following:
 - Subsidized Federal Stafford Loans
 - Unsubsidized Federal Stafford Loans
 - Federal PLUS Loans—for parents and graduate or professional students
 - Federal Consolidation Loans (excluding joint spousal consolidation loans)
- Federal Perkins Loans
- Certain Health Professions and Nursing Loans

NOTE: *To consolidate a Federal Perkins Loan or Health Professions or Nursing Loan into a Direct Consolidation Loan, you also must consolidate at least one FFEL Program loan or Direct Loan. If you are unsure about what kind of loans you have, you can find that information at [StudentAid.gov/login](https://studentaid.gov/login).*

What are the borrower eligibility requirements for loan forgiveness under the PSLF Program?

- You must not be in default on the loans for which you are requesting forgiveness.
- You must be employed full-time by a public service organization
 - when making each of the required 120 qualifying loan payments (*certain repayment conditions apply—see below*);
 - at the time you apply for loan forgiveness; and
 - at the time the remaining balance on your eligible loans is forgiven.

What are the specific loan repayment requirements for loan forgiveness under the PSLF Program?

- You must have made 120 separate monthly payments after Oct. 1, 2007, on the Direct Loans for which you are requesting forgiveness. Payments made before this date do not count toward meeting this requirement. Each of the 120 qualifying payments must be made for the full scheduled installment amount and no later than 15 days after the scheduled payment due date. The 120 required payments do not need to be made consecutively.
- The 120 required payments must be made under one or more of the following Direct Loan Program repayment plans:
 - Revised Pay As You Earn Repayment Plan (REPAYE Plan)
 - Pay As You Earn Repayment Plan (PAYE Plan)
 - Income-Based Repayment Plan (IBR Plan)
 - Income-Contingent Repayment Plan (ICR Plan)
 - 10-year Standard Repayment Plan
 - Any other Direct Loan Program repayment plan; but only payments that are at least equal to the monthly payment amount that would have been required under the 10-year Standard Repayment Plan may be counted toward the required 120 payments

The REPAYE, PAYE, and IBR plans are not available for Direct PLUS Loans made to parents or for Direct Consolidation Loans that repaid Direct or FFEL PLUS Loans made to parents.

The ICR Plan is not available for Direct PLUS Loans made to parents. However, Direct PLUS Loans that repaid Direct or FFEL PLUS Loans made to parents may be repaid under the ICR Plan.

For more information about the repayment plans available in the Direct Loan Program, please visit [StudentAid.gov/repay](https://studentaid.gov/repay).

IMPORTANT NOTE: *The PSLF Program provides for forgiveness of the remaining balance of your eligible loans after you have made 120 qualifying payments on those loans. In general, you will have a remaining balance on a loan after making 120 payments only if you are making reduced monthly payments under the REPAYE, PAYE, IBR, or ICR repayment plans.*

What types of public service jobs will qualify a borrower for loan forgiveness under the PSLF Program?

You must be employed full-time (in any position) by a public service organization, or must be serving in a full-time AmeriCorps or Peace Corps position. Here are the types of organizations that meet the definition of “public service organization” for purposes of the PSLF Program:

- A government organization (including a federal, state, local, or tribal organization, agency, or entity; a public child or family service agency; or a tribal college or university)
- A not-for-profit, tax-exempt organization under section 501(c)(3) of the Internal Revenue Code
- A private, not-for-profit organization (that is not a labor union or a partisan political organization) that provides one or more of the following public services:
 - Emergency management
 - Military service
 - Public safety
 - Law enforcement
 - Public interest law services
 - Early childhood education (including licensed or regulated health care, Head Start, and state-funded prekindergarten)
 - Public service for individuals with disabilities and the elderly
 - Public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations)
 - Public education
 - Public library services
 - School library or other school-based services

What is full-time employment?

You must meet your employer's definition of full-time. However, for PSLF purposes, that definition must be at least an annual average of 30 hours per week. For purposes of the full-time requirement, your qualifying employment at a not-for-profit organization does not include time spent participating in religious instruction, worship services, or any form of proselytizing.

If you are a teacher or other public service organization employee who works under contract for at least eight out of 12 months, you meet the full-time standard if you work an average of at least 30 hours per week during the contractual period and receive credit by your employer for a full year's worth of employment.

If you are employed in more than one qualifying part-time job at the same time, you may meet the full-time employment requirement if you work a combined average of at least 30 hours per week with your employers.

How can I keep track of my eligibility?

The Department of Education has created the **Employment Certification for Public Service Loan Forgiveness** form (Employment Certification form) and a process to help you monitor your progress toward making the 120 qualifying payments necessary to apply for PSLF. You should complete the form, including your employer's certification of employment, and submit it to FedLoan Servicing (PHEAA), the PSLF servicer, at the address listed in Section 6 of the Employment Certification form.

The form allows you to get your employer's certification of employment while you are still employed at that organization or shortly after leaving. The process allows you to receive confirmation of qualifying employment and Direct Loan payment eligibility. You may also submit the form less frequently than annually to cover more than one year's employment or for more than one employer.

While use of the form and process is not required, it will help you keep track of your progress toward meeting the PSLF eligibility requirements. If you do not periodically submit the form, you will still be required to submit a form for each qualifying employer at the time you apply for forgiveness and when forgiveness is granted.

Where can I find additional information about the PSLF Program?

For detailed information—including how to monitor your progress toward qualifying for PSLF—read the PSLF Questions and Answers document at [StudentAid.gov/publicservice](https://studentaid.gov/publicservice) or contact your federal loan servicer.

This information was updated in the fall of 2015. For updates or additional information on federal student aid, visit [StudentAid.gov](https://studentaid.gov).

December 2015



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 _____

Telephone – Primary _____

Telephone – Alternate _____

E-mail (optional) _____

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:

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

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?

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:
_____ to _____

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:

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?

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:

- 19.** Give the score on the test if you know it:

- 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:

- 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: _____ Borrower SSN: - - - - -

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 _____ Date _____

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:

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

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.**



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:

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

6. Dates of attendance at the closed school:

_____ to _____

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 _____

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:
U.S. Department of Education - Loan Discharge Application
P.O. Box 5609
Greenville, TX 75403

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.**

2016 Partnership Conference: Materials: Student Loan Debt Advocacy and Litigation Strategies for Defending Borrowers

Yan Cao, Staff Attorney, Brooklyn Legal Services
Maggie R. Robb, Staff Attorney, Empire Justice Center
Johnson M. Tyler, Senior Attorney, Brooklyn Legal Services

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

National Collegiate Student Loan Trust 2004-1)	
	)	No. _____
Plaintiff,)	
	)	Defendant's
v.	)	First Set of Interrogatories
)	
Jane Doe)	
)	
Defendant.)	

Defendant Jane Doe ("Defendant"), requests that Plaintiff, National Collegiate Student Loan Trust 2004-1 ("Plaintiff"), by an officer or agent thereof, answer the following interrogatories under oath in accordance with Article 31 of the Civil Practice Law and Rules:

Definitions and Instructions

Unless negated by the context of the interrogatory, the following definitions are to be considered to be applicable to all interrogatories contained herein:

(A) "Documents" is an all-inclusive term referring to any writing and/or recorded or graphic matter, however produced or reproduced. The term "documents" includes without limitation, correspondence, memoranda, interoffice communications, minutes, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase order, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs, recordings, telegrams, films, tax returns, and financial statements, and all other such documents tangible or retrievable of any kind. "Documents" also include any preliminary notes and drafts of all the foregoing, in whatever form, for example, printed, typed, longhand, shorthand, on paper, paper tape, tabulating cards, blueprints, magnetic tape, microfilm, films, motion picture films, phonographic records of other form.

(B) With respect to documents, the term "identify" means to give the date, title, author, and addresses; "identify" with respect to documents further means:

- (i) To describe a document sufficiently well to enable the interrogator to know what such document is and retrieve it from a file or wherever it may be located;
- (ii) to describe it in a manner suitable for use as a description in a subpoena;

(iii) to give the name, address, position or title of the person(s) who has custody of the document and/or copies thereof;

(iv) if any such document is no longer in your possession or subject to your control, state what disposition was made of it, state the date of disposition, identify the person(s) responsible for such disposition and the policy, rule, or other authority by which disposition was made.

(C) “Identify” when used in reference to an individual means”

(i) to state his/her full name;

(ii) present residence address or last known address;

(iii) present or last known business address;

(iv) present employer or last known employer;

(v) whether ever employed by a party to this action and, if so, the dates he/she was employed by such party, the name of such party and the last position held as an employee of such party.

(D) Whenever the expression “and/or” is used in these interrogatories, the information called for should be set out both in the conjunctive and the disjunctive, and wherever the information is set out in the disjunctive, it should be given separately for each and every element set out.

(E) Whenever a date, amount or other computation or figure is requested, the exact date, amount or other computation or figure is to be given unless it is not known and then the approximate date, amount or other computation or figure should be give or best estimate thereof; and the answer shall state that the date, amount or other computation or figure is an estimate or approximation.

(F) No answer is to be left blank. If the answer to an interrogatory or subparagraphs of an interrogatory is “none” or “unknown”, such statements must be written the answer.

(G) These interrogatories are deemed to be continuing and if any additional information responsive to them, but not presently supplied, is obtained by you, your servant, employees or agents, the information must be supplied to the party propounding these interrogatories, as though the information was expressly requested by separate interrogatories.

(H) If any privilege is claimed with respect to any information sought by these interrogatories you are to specifically state the privilege claimed and the basis for your assertion of privilege.

(I) The terms “plaintiff” and “Defendants” as well as a party’s full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates.

(J) “You” and “your” refers to Plaintiff and its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates.

(K) The word “concerning” means relating to, referring to, describing, evidencing or constituting.

Interrogatories

1. If you contend the statute of limitations has not expired on the claims you have brought, please state each factual, legal basis for that assertion, identify and produce all documents upon which you base the assertion, and identify the name, address, phone number and title persons with knowledge of the same.

2. If you contend you are the assignee for the alleged account, please state each factual, legal basis for that assertion, identify and produce all documents upon which you base the assertion, and identify the name, address, phone number and title persons with knowledge of the same.

3. If you contend you are the servicer for the alleged account, please state each factual, legal basis for that assertion, identify and produce all documents upon which you base the assertion, and identify the name, address, phone number and title persons with knowledge of the same.

4. For the alleged account you are seeking to collect, please state the name of the putative original creditor, each putative assignee of the debt and each putative servicer of the

debt. Please state the factual and legal basis for your assertion. Please state each factual, legal basis for that assertion, identify and produce all documents upon which you base the assertion, and identify the name, address, phone number and title persons with knowledge of the same.

5. If your answer to the request for admission # 4 or 5 is anything other than an unequivocal admission, please state the date of the letter, restate verbatim the contents of the letter (or attached the letter), provide evidence that the letter was actually drafted and sent, disclose the names of the persons with personal knowledge of these events, and identity the nature and location of documents upon which you base the answer to this interrogatory.

PLEASE TAKE NOTICE that a copy of plaintiff's answers in the form prescribed by CPLR 3134(a) must be served upon the undersigned within twenty (20) days after the service of these interrogatories.

Dated: New York, New York
November 24, 2015

Yours, etc.,

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

National Collegiate Student Loan Trust 2004-1)	
	)	No.
Plaintiff,)	
	)	Defendant's First Notice of Demand
v.	)	for Production of Documents
)	
Jane Doe)	
)	
Defendant.)	

PLEASE TAKE NOTICE that Defendant Jane Doe, requests that plaintiff, National Collegiate Student Loan Trust 2004-1, produce for discovery, on December __, 201__, at 10:00 a.m., at the office of counsel for Defendants, the following documents and things:

Definitions and Instructions

Unless negated by the context of the interrogatory, the following definitions are to be considered to be applicable to all requests contained herein:

(A) "Documents" is an all-inclusive term referring to any writing and/or recorded or graphic matter, however produced or reproduced. The term "documents" includes without limitation, correspondence, memoranda, interoffice communications, minutes, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase order, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs, recordings, telegrams, films, tax returns, and financial statements, and all other such documents tangible or retrievable of any kind. "Documents" also include any preliminary notes and drafts of all the foregoing, in whatever form, for example, printed, typed, longhand, shorthand, on paper, paper tape, tabulating cards, blueprints, magnetic tape, microfilm, films, motion picture films, phonographic records of other form.

(B) Whenever the expression "and/or" is used in these requests, the information called for should be set out both in the conjunctive and the disjunctive, and wherever the information is set out in the disjunctive, it should be given separately for each and every element set out.

(C) These requests are deemed to be continuing and if any additional information responsive to them, but not presently supplied, is obtained by you, your servant, employees or agents, the information must be supplied to the party propounding these requests, as though the information was expressly requested by separate requests.

(D) If any privilege is claimed with respect to any information sought by these requests you are to specifically state the privilege claimed and the basis for your assertion of privilege.

(I) The terms “plaintiff” and “Defendants” as well as a party’s full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates.

(L) “You” and “your” refers to Plaintiff and its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates.

(M) The word “concerning” means relating to, referring to, describing, evidencing or constituting.

Requests for Production

1. The original contract for the alleged debt, any amendments thereto, and any documents referenced in the agreement.

2. The servicing agreement for the alleged debt, any amendments thereto, and any documents referenced in the agreement.

3. The assignment agreement for the alleged debt, any amendments thereto, and any documents referenced in the agreement.

4. If you contend you are the servicer for the alleged account, please produce all documents upon which you base that assertion.

5. If you contend you are the assignee for the alleged account, please produce all documents upon which you base that assertion.

6. If you contend you are the original creditor for the alleged account, please produce all documents upon which you base that assertion.

7. Originals of the entire file received from the putative original creditor.

8. All assignment agreements permitting you to bring this claim, beginning with the first assignment from the original creditor, and every subsequent assignment agreement.

9. All servicing agreements permitting you to bring this claim, beginning with the first assignment from the original creditor, and every subsequent assignment agreement.

10. All servicing agreements that govern the subject account from the date of the signing of the contract for the alleged debt to present.

11. All assignment agreements that govern the subject account from the date of the signing of the contract for the alleged debt to present.

12. If your answer to the request for admission # 4 is anything other than an unequivocal admission, please produce the letter you contend was sent to Defendant.

13. If your answer to the request for admission # 4 is anything other than an unequivocal admission, please produce all documents reflecting that you actually sent the letter to Defendant, including the date of the letter.

14. If your answer to the request for admission # 5 is anything other than an unequivocal admission, please produce the letter you contend was sent to Defendant.

15. If your answer to the request for admission # 5 is anything other than an unequivocal admission, please produce all documents reflecting that you actually sent the letter to Defendant, including the date of the letter.

Dated: New York, New York
November 24, 2015

Yours, etc.,

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

National Collegiate Student Loan Trust 2004-1)
	) No.
Plaintiff,)
	) 1st Notice to Admit
v.)
)
Jane Doe)
)
Defendant.)

PLEASE TAKE NOTICE that pursuant to CPLR Section 3123 (a), Defendant requests that Plaintiff admit the truth of the following matters of fact within twenty days after service of this notice:

Please Admit or Deny the Following

1. You are the assignee for the alleged account.
2. You were assigned the account after it was in default with the original creditor.
3. You were assigned the account after the defendant(s) missed a payment on the account.
4. You are the servicer for the alleged account.
5. You were the servicer of the account after it was in default with the original creditor.
6. You were the servicer of the account after the defendant(s) missed a payment on the account.
7. Your servicing agreement does not transfer title to the alleged debt.
8. There was an assignee from the putative original creditor to present.
9. There was a servicer for the alleged debt.
10. The alleged debt is governed by the statute of limitations of the State of Delaware.

11. The alleged debt is governed by the 3-year statute of limitations of the State of Delaware.
12. The date of the last payment by Defendant was on or before August 7, 2008.
13. Defendant was at least 30 days past due as of September 7, 2008.
14. Defendant was continually past due for at least 30 days from September 7, 2008 to present.
15. The cause of action against Defendant accrued on or before August 7, 2008.
16. The cause of action against Defendant accrued on or before September 7, 2008.
17. Forster & Garbus, LLP never sent Defendant a letter regarding this debt prior to filing suit.
18. Forster & Garbus, LLP has never sent Defendant a letter from the date of the filing of suit to present.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

National Collegiate Student Loan Trust 2004-1)	
	)	No. 21261/2011
Plaintiff,)	
	)	Defendant's
v.	)	Notice of Deposition
)	
Jane Doe)	
)	
Defendant.)	

PLEASE TAKE NOTICE that, under Rule 3106 and 3107 of the Civil Practice Law and Rules, the defendant **Jane Doe** will take the deposition upon oral examination via videotape and transcription of the plaintiff NATIONAL COLLEGIATE STUDENT LOAN TRUST 2004-1, _____ on December __, 2015 at 11:00 AM. Specifically this deposition notice covers the corporate representative and fact witnesses within your control to testify as to the calculation of the amount sought to be collected; the determination as to whether the statute of limitations has expired on the subject account; who the original creditor, assignor, assignee, and/or servicer(s) are for the subject account, and the factual and legal basis for that assertion and the terms of the servicing or assignment agreements.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

-----X
SLM Private Credit Student Loan Trust 2004-A

Index No. **CV-000000-14/BX**

Plaintiff,

- against -

Jane Doe

Defendant.
-----X

**DEFENDANT'S FIRST SET OF
INTERROGATORIES**

PLEASE TAKE NOTICE that, pursuant to Article 31 of the New York Civil Practice Law and Rules, Defendant ("Defendant"), directs the following interrogatories to Plaintiff and requests that in no later than 20 days, Plaintiff provide verified responses to the undersigned.

Instructions

1. In answering these interrogatories, furnish all information in the possession of SLM Private Credit Student Loan Trust 2004-A (hereinafter, "SLM"), its trustees, partners, officers, agents and employees and its attorneys and investigators for its attorneys.

2. If SLM cannot answer the following interrogatories in full after exercising due diligence to secure the information to do so, state the answer to the remainder, and whatever information or knowledge SLM has concerning the unanswered portion.

3. Each interrogatory is considered continuing, and if SLM obtains information which renders your answers to one of them incomplete or inaccurate, SLM is obligated to serve amended answers on the undersigned.

Definitions

As used herein, the following terms shall have the defined meanings set out below:

1. The term "document" means, without limitation, the following items whether printed, recorded, reproduced or stored on papers, cards, tapes, belts, computer devices or any other medium in your possession, custody or control: all writings of any kind including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copy or otherwise, agreements, contracts, insurance policies, legal notices, communications, correspondence, letters, drafts, telegrams, memoranda, summaries of records of telephone conversations, summaries of records of personal conversations, diaries, desk or other calendars, graphs, reports, notebooks, instruction manuals or other instructional materials, note charts, plans, drawings, sketches, summaries and records of meetings or conferences, minutes, opinions or reports of employees and/or consultants, photographs, brochures, pamphlets, advertisements, catalogs, circulars, press releases, any marginal comments appearing on any documents, purchase orders, invoices, specifications, schedules, books, surveys, notes, working papers, charts, tabulations, tapes, data sheets, printouts, microfilms, indexes and any other data compilations or other material stored on or accessible through a computer or other information storage or retrieval system, books of account, checks and other financial records and all other writings and recordings.

2. A request to "identify" a document is a request to attach said document to answers to these interrogatories. If documents are attached to answers to these interrogatories, they must be marked to identify which interrogatory they refer to. In identifying documents you are also requested to produce, you need to supply only so much of the requested information as is not readily apparent from the face of the document. If the document is not attached to the answers to these interrogatories, please state (insofar as may be applicable):

- a. The date of such document;
- b. The type of document or written communication it is;

c. The names and present addresses of the person or persons who prepared such document and of the signers, addressors and addressees of such document;

d. The name of any principal whom or which the signers, addressors and preparers of such document were thereby representing;

e. The present location of such document;

f. The name and present address of the person now having custody of the document;

g. Whether you possess or control the original or a copy thereof and if not, the location and name of the custodian of such original or copy; and

h. A brief description of the contents of such document; and

i. The reason why the document has not been produced.

3. A request to "describe" any oral statement or communication is a request to state:

a. The name and present address of each individual making such statement or communication;

b. The name of any principal or employer whom or which such individual was thereby representing and the position in which such individual was then employed or engaged by such principal or employee;

c. The name and present address of the individual or individuals to whom the oral statement or communication was made, and the name of any principal or employer whom such person or persons were representing at the time of and in connection with such oral statement or communication as well as the employment position in which they were then employed or engaged;

d. The names and present addresses of any other individuals present when such oral statement or communication was made or who heard or acknowledged hearing the same;

e. The place where such oral statement or communication was made;

f. A brief description of the contents of such oral statement or communication.

4. A request to "cite" portions or provisions of any document is a request to state, insofar as applicable with reference to such portion or provision, the title, date, division, page, sheet, and such other information as may be necessary to accurately locate the portion or provision referenced.

5. The term "person" shall include a natural person, partnership, corporation, association, or other group however organized.

6. Whenever a request is made to "identify" a natural person, it shall mean to supply all of the following information:

- a. His/her full name;
- b. His/her employer and position at the time;
- c. The name of any person or entity (natural or artificial) whom she/he is claimed to have represented in connection with the matter to which the interrogatory relates; and
- d. His/her last known address, telephone number, and employer.

7. A request to "explain fully" any answer, denial or claim is a request (insofar as may be applicable) to:

- a. State fully and specifically each fact and/or contention in support of your answer, denial or claim; and
- b. For each such fact or contention, to identify each person who has knowledge relative to that fact or contention, each document that tends to support that fact or contention; and each document that tends to dispute that fact or contention.

8. The terms "SLM," "you" and "your" refer to the plaintiff SLM Private Credit Student Loan Trust 2004-A, its trustees, partners, directors, officers, agents, employees, predecessors in interest and all other persons acting or purporting to act on behalf of any of the foregoing. The term "you" expressly includes the original creditor and all other assignees of the contract upon which your action arises.

9. The term "defendant" refers to the Defendant Jane Doe, and all persons acting or purporting to act on her behalf.

10. The terms "account at issue" and "loan" refer to the student loan account referenced in the Complaint.

11. The term "securitization" shall mean the offering of the loan to you from the loan originator or by you to any party as part of an effort to use defendant's alleged obligation to pay as collateral for the creation of a security to be bought or sold.

IMPORTANT: All questions containing the terms "document," "documents," "identify," describe," "cite," "person" or "explain fully" must be answered in accordance with the definitions of those terms contained in the attached instructions.

Interrogatories

1. Identify the person or persons answering these interrogatories, including their business address, business phone number, and title.
2. Identify all persons with knowledge about the account at issue and alleged debt you sought to collect from defendant. Describe in detail the substance and basis of this knowledge.
3. Identify each document which you have which relates in any way to the defendant or the account at issue in this case, including, but not limited to, any document you intend to introduce into evidence in this case.
4. Identify all documents relating to the securitization of the loan at issue.
5. Identify any trust or other entity that has ever retained an ownership interest in the loan at issue.
6. Identify the originator of the loan at issue.
7. Identify the funds that were disbursed as stated in paragraph 3 of Plaintiff's complaint. Identify to whom the funds were released, how the funds were

provided (check, electronic transfer, etc.) and provide proof of such method. If provided via check, please provide the address of where the check was sent.

8. State the amount of any interest on the advanced funds and origination fee, and how it was computed. Provide a documented accounting showing the application of such fees to Defendant's alleged account.
9. State the amount of any interest on any unpaid interest and late fees, and how it was computed. Provide a documented accounting showing the application of such fees to Defendant's alleged account.
10. Identify the current owner of the loan at issue.
11. Identify the servicer or administrator of this loan.
12. Identify the authority (contract, agreement, letter, or other document) which provides that "Navient Solutions, Inc." is the administrator and agent with respect to all the student loan accounts owned by SLM.
13. Explain fully how you calculated the damages you are seeking in this action and identify the documents on which the computation is based.
14. Identify all parties involved in the chain of assignment of the account from the originator to SLM.
15. Identify the dates on which each and every sale, assignment or transfer of the account occurred.
16. Identify all documents which support your assertion that the account was assigned to you.
17. Explain fully all actions you took to verify the accuracy and completeness of account information on the account at issue before filing this action.
18. Identify the trustee(s) of SLM, including but not limited to the indenture trustee(s).
19. Explain fully the relationship of Sallie Mae Inc., Student Loan Marketing Association, and SLM Education Credit Finance Corporation to SLM.

20. Identify and explain the policies and procedures for designating a loan as charged off.
21. Identify criteria for when a loan qualifies to be designated as charged off.
22. Identify the interest rate on the loan.
23. Identify and describe each document known to Plaintiff which is related to the collection of the alleged account of the Defendant, including but not limited to collection letters, account statements, and settlement offers, not already identified in prior Interrogatories. Identify the entity that created each document, and the contact information of each entity (physical and mailing addresses, phone and fax numbers, and e-mail addresses).
24. Identify by name, position, address, phone number, and e-mail address, all witnesses Plaintiff proposes to call at trial.
25. List all exhibits Plaintiff proposes to introduce at trial.

Dated: New York, New York
November 10, 2015

TO: Forster & Garbus LLP
Attorney for Plaintiff
60 Motor Parkway
Commack, NY 11725

From: 17188528180 Page: 1/8 Date: 1/30/2006 3:45:29 PM
 1109920100 1000 1.001/000 1-493

***Cosigned* Credit Agreement - Signature Page**
NON-NEGOTIABLE CREDIT AGREEMENT - THIS IS A CONSUMER CREDIT TRANSACTION

LOAN PROGRAM INFORMATION

CFS Private Education Undergraduate Loan Academic Period: 08/2005-06/2006

Lender: Charter One Bank, N.A. School: LONG ISLAND UNIVERSITY

Loan Amount: ~~\$12000.00~~ ^{\$18000.00} M.E.A. Repayment Option: Full Deferral
 W.O.

Deferral Period Margin: 4.85 Repayment Period Margin: 4.85 Loan Origination Fee Percentage: 10.50

STUDENT BORROWER INFORMATION (Must be at least 18 years of age)

Borrower Name: [REDACTED] Home Address: [REDACTED]
 Social Security #: [REDACTED] Date of Birth: [REDACTED] Home Telephone: [REDACTED]

Student Citizenship (check one box): ☒ U.S. Citizen ☐ Eligible Non-Citizen (Attach front & back copy of CIS or student visa card) M.E.A. W.O.

Note: Personal reference name and address cannot match that of the Cosigner.

Personal Reference Name: [REDACTED] Reference Home Tel #: [REDACTED] Work Tel #: [REDACTED]
 Reference Street Address: [REDACTED]
 Reference City/State/Zip: [REDACTED]

COSIGNER INFORMATION (Must be at least 18 years of age)

Cosigner Name: [REDACTED] Home Address: [REDACTED]
 Social Security #: [REDACTED] Date of Birth: [REDACTED] Home Telephone: [REDACTED]

Have you ever defaulted on a student loan or declared bankruptcy? ☒ No ☐ Yes

Current Employer: [REDACTED] Employer Telephone: [REDACTED]
 Current Position: Other Years There: 4 Years

Alimony, child support, or separate maintenance incomes do not have to be revealed if you do not want them considered for repaying this obligation. If you are relying on such additional income, please provide details on a separate sheet of paper.

Cosigner Citizenship (check one box): ☒ U.S. Citizen ☐ Eligible Non-Citizen (Attach front & back copy of CIS) M.E.A. W.O.

Note: Personal reference name and address cannot match that of the Student.

Personal Reference Name: [REDACTED] Reference Home Tel #: [REDACTED] Work Tel #: [REDACTED]
 Reference Street Address: [REDACTED]
 Reference City/State/Zip: [REDACTED]

By my signature, I certify that I have read, understand and agree to the terms of and undertake the obligations set forth on all five (5) pages of this Credit Agreement AB-05-06-CSX1.10CFS.0205. I understand that any person who knowingly makes a false statement or misrepresentation on this form is subject to penalties, which may include fines or imprisonment. This Credit Agreement is signed under seal. I understand that I am not required to fix my signature on or to sign electronically this Credit Agreement and any related notices that require signature. If I choose to fix my signature on or to sign electronically this Credit Agreement and any related notices that require signature, I intend: (i) my fax or electronic signature to be an electronic signature under applicable federal and state law, (ii) to conduct business with the Lender by electronic records and electronic signatures, and (iv) that this Credit Agreement will not be governed by Article 3 of the Uniform Commercial Code, and my obligations under this Credit Agreement will not be subject to, but any transfer of my obligations will be subject to, Article 9 of the Uniform Commercial Code.

FOR ALABAMA RESIDENTS: CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

FOR WISCONSIN RESIDENTS - NOTICE TO CUSTOMER: (a) DO NOT SIGN THIS CREDIT AGREEMENT BEFORE YOU READ THE WRITING ON THE FOLLOWING PAGES, EVEN IF OTHERWISE ADVISED.

(b) DO NOT SIGN THIS CREDIT AGREEMENT IF IT CONTAINS ANY BLANK SPACES.

(c) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

(d) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE UNDER THIS CREDIT AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

PLEASE SIGN BELOW: RETURN This Page With Proof of Income and Other Information (if applicable) - FAX TO: 800-704-9406

Signature of Borrower [REDACTED] Date [REDACTED]

BY SIGNING THIS CREDIT AGREEMENT BELOW, I CERTIFY THAT I INTEND TO (i) APPLY FOR JOINT CREDIT AND (ii) BE JOINTLY LIABLE WITH THE BORROWER FOR THIS LOAN.

Signature of Cosigner [REDACTED] Date [REDACTED]

In this Credit Agreement, the words "I", "me", "my", and "mine" mean the person(s) who signed this Credit Agreement as Borrower and Cosigner. The words "you", "your", "yours", and "Lender" mean Charter One Bank, N.A., its successors and assigns, and any other holder of this Credit Agreement. "School" means the school named at the top of the first page of this Credit Agreement. The "servicer" means the Lender or any entity it designates to service my loan.

A. **PROMISE TO PAY:** I promise to pay to you the principal sum of the Loan Amount shown on the first page of this Credit Agreement, to the extent it is advanced to me or paid on my behalf, and any Loan Origination Fee added to my loan (see Paragraph F) ("Principal Sum"), interest on such Principal Sum, interest on any unpaid interest added to the Principal Sum and late fees (see Paragraph E.6).

B. **IMPORTANT - READ THIS CAREFULLY:**

1. When you receive my signed Credit Agreement, you are not agreeing to lend me money until you confirm my income and the Student's enrollment in the School and review the other information requested on the Instructions page and returned with this Credit Agreement. When you have confirmed and reviewed this information, you will schedule a date or dates on which you will electronically transfer the loan funds to the School for me, mail a loan check to the School for me, or mail a loan check directly to me. If the income and/or the enrollment information does not match the information I provided to you when I requested this loan, or if the other information requested on the Instructions page and returned with this Credit Agreement is unsatisfactory, you have the right to not make a loan or to lend an amount less than the loan amount I requested. I agree to accept an amount less than the loan amount I requested and to repay that portion of the loan amount I requested that you actually lend to me. You have the right to disburse my loan through an agent. At your option, you may also make the check co-payable to me and the Cosigner or to me and the School.

2. **HOW I AGREE TO THE TERMS OF THIS LOAN.** By signing this Credit Agreement, and submitting it to the Lender, I am requesting that you make this loan to me in an amount equal to the Loan Amount plus any Loan Origination Fee described in Paragraph F of this Credit Agreement. If you approve this request and agree to make this loan, you will notify me in writing and provide me with a Disclosure Statement, as required by law, at the time the loan proceeds are disbursed. The Disclosure Statement is incorporated herein by reference and made a part hereof. The Disclosure Statement will tell me the amount of the loan which you have approved, the amount of the Loan Origination Fee, and other important information. I will let you know that I agree to the terms of the loan as set forth in this Credit Agreement and in the Disclosure Statement by doing either of the following: (a) endorsing or depositing the check that disburses the loan proceeds; or (b) allowing the loan proceeds to be used by or on behalf of the Student without objection. Upon receipt of the Disclosure Statement, I will review the Disclosure Statement and notify you in writing if I have any questions. If I am not satisfied with the terms of my loan as disclosed in the Disclosure Statement, I may cancel my loan. To cancel my loan, I will give you a written cancellation notice within ten (10) days after I receive the Disclosure Statement. If loan proceeds have been disbursed, I agree that I will immediately return the loan proceeds to you, will not endorse any check which disburses the loan proceeds and will instruct the School to return any loan proceeds to you. If I give notice of cancellation but do not comply with the requirements of this Paragraph B.2, this Credit Agreement will not be canceled and I will be in default of this Credit Agreement. (See Paragraph I.)

C. **DEFINITIONS:**

1. "Disbursement Date" means the date or dates on which you lend money to me in consideration for my Credit Agreement and will be the date(s) shown on any loan check you prepare or the date(s) you initiate any electronic funds transfer.

2. The "Deferment Period" will begin on the Disbursement Date and end on the Deferment End Date.

3. "Deferment End Date" means the date specified below for the applicable loan program (the applicable loan program is stated on the first page of this Credit Agreement).

(a) **Undergraduate Alternative Loan Program:** If I have elected the "Immediate Repayment" option (the applicable repayment option is stated on the first page of this Credit Agreement), there is no Deferment Period, and my first payment will be 30-60 days after the disbursement of my loan. If I have elected the "Interest Only" repayment option (the applicable repayment option is stated on the first page of this Credit Agreement), then interest payments will begin 30-60 days after the disbursement of my loan, the "Deferment End Date" will be the date the Student graduates or ceases to be enrolled at least half-time in the School (or another school participating in this loan program), and principal and interest payments will begin 30-60 days after that date. In any event, if I have elected the "Interest Only" repayment option, the Deferment End Date will be no more than 5 years after the Disbursement Date. If I have elected the "Full Deferral" repayment option (the applicable repayment option is stated on the first page of this Credit Agreement), then the "Deferment End Date" will be 180 days after the Student graduates or ceases to be enrolled at least half-time in the School (or another school participating in this Loan Program). In any event, if I have elected the "Full Deferral" repayment option, the Deferment End Date will be no more than 5½ years after the Disbursement Date.

(b) **Graduate Professional Education Loan Program:** 180 days after the Student graduates or ceases for any other reason to be enrolled at least half-time in the School (or another school participating in this Loan Program), but no more than 4½ years after the Disbursement Date; provided, however, that if the Student begins a medical residency or internship during the Deferment Period, then the Deferment Period will

end 180 days after the day the residency or internship ends, but no more than 8½ years after the Disbursement Date.

4. The "Repayment Period" begins the day after the Deferment Period ends. If there is no Deferment Period for my loan, the Repayment Period will begin when my loan is fully disbursed. The Repayment Period is 20 years unless monthly payments equal to the minimum monthly payment amount (See Paragraph E.2) will repay all amounts owed in less than 20 years, in which case the Repayment Period will be the number of months necessary to pay in full the amount I owe at the minimum payment.

D. **INTEREST:**

1. **Accrual** - Beginning on the Disbursement Date, interest will be calculated at the Variable Rate (Paragraph D.2) and charged on the Principal Sum, and on any unpaid interest later added to the Principal Sum according to Paragraph D.3. During the Repayment Period, interest will be calculated at the Variable Rate and charged on the outstanding balance of this Credit Agreement until all amounts are paid in full. Interest will be calculated on a daily simple interest basis. The daily interest rate will be equal to the annual interest rate in effect on that day, divided by the number of days in that calendar year.

2. **Variable Rate** - The "Variable Rate" is equal to the Current Index plus a Margin. The Margins for both the Deferment Period and the Repayment Period are shown on the first page of this Credit Agreement. In no event will the Variable Rate exceed the maximum interest rate allowed by the laws of the State of Ohio. The Variable Rate will change quarterly on the first day of each January, April, July and October (the "Change Date(s)") if the Current Index changes. The "Current Index" for any calendar quarter beginning on a Change Date (or for any shorter period beginning on the Disbursement Date and ending on the last day of a calendar quarter) is based on the one-month London Interbank Offered Rate ("LIBOR") as published in the "Money Rates" section of *The Wall Street Journal*. The index for each calendar quarter (or for any shorter period beginning on a Disbursement Date and ending on the last day of a calendar quarter) will equal the average of the LIBOR rates published on the first business day of each of the three (3) immediately preceding calendar months, rounded to the nearest one-hundredth percent (0.01%). If *The Wall Street Journal* is not published or the Current Index is not given on that date, then the Current Index will be determined by using the immediately preceding published Current Index. If the Current Index is no longer available, you will choose a comparable index.

3. **Capitalization** - If I have elected the "Full Deferral" repayment option (the applicable repayment option is stated on the first page of this Credit Agreement), I am not obligated to make any payments until the loan enters the Repayment Period and you will add unpaid accrued interest to the principal loan balance as of the last day of each calendar quarter (the last day of December, March, June and September) during the Deferment Period and as of the last day of my Deferment Period. Interest that is added to principal is called "Capitalized" Interest. Capitalized interest will be treated as principal. In addition, if I am in default (see Paragraph I) and the loan has been sold to TERI (see Paragraph L.12), TERI may capitalize accrued and unpaid interest as of the date it purchases my loan. I understand that you will also add all accrued and unpaid interest to the principal balance of my loan at the end of any forbearance period (see Paragraph H).

E. **TERMS OF REPAYMENT:**

1. **Deferment Period** - If I have elected either the "Interest Only" repayment option or the "Full Deferral" repayment option (the applicable repayment option is stated on the first page of this Credit Agreement), you will send statements during the Deferment Period (showing the total outstanding principal balance of my loan and the interest that has accrued on my loan). You reserve the right to send statements or notices to either the Borrower or the Cosigner. Statements will be sent to me at the address shown on your records. If I have elected the "Interest Only" repayment option, I agree to make payments each month during the Deferment Period equal to the accrued interest on the outstanding balance of this Credit Agreement. If I have elected the "Full Deferral" repayment option I may, but am not required to make payments during the Deferment Period. You will add any interest that I do not pay during the Deferment Period to the principal balance, as described in Paragraph D.3.

2. **Repayment Period** - The amount of my monthly payment ("Monthly Payment Amount") will be established based on the rules in this Credit Agreement when my Repayment Period begins. During the Repayment Period, you will send me monthly statements that show the Monthly Payment Amount and the payment due dates, and I will pay the Monthly Payment Amount shown on my monthly statement, which amount will in no event be less than \$25 or the unpaid balance, whichever is less. I understand that the Monthly Payment Amount is due each month. I may pay more than my Monthly Payment Amount at any time without penalty or charge. If my loan is in paid-ahead status, I may, but will not be required to make monthly payments. You reserve the right to send monthly statements to the Borrower and/or the Cosigner. Even if I do not receive monthly statements, I will make consecutive monthly payments in amounts at least equal to the Monthly Payment Amount by the applicable payment due dates until I have paid all of the principal and interest and any other charges I may owe under this Credit Agreement.

3. **Repayment Terms** - My Monthly Payment Amount will be calculated as of the day the Repayment Period begins ("Repayment Date"). It will be recalculated (a) once each year prior to the anniversary of the Repayment Date to the extent that the Monthly Payment Amount would not pay in full the accrued monthly interest on my loan. (c) following any subsequent deferment or forbearance period or (d) following any request by the Borrower to the servicer to change the monthly payment due date (each of

which events is a new "Repayment Date"). As of any Repayment Date, my Monthly Payment Amount will be recalculated. My new Monthly Payment Amount will be disclosed to me by the servicer. The new Monthly Payment Amount will equal the amount necessary to pay in full, over the number of months remaining in the Repayment Period, the amount I owe in equal monthly installments of principal and interest at the Variable Rate in effect at the time of the calculation. I understand that this may result in a reduction or increase in my monthly payment as calculated as of each Repayment Date. I understand that during the Repayment Period (and, if I have elected the "Interest Only" repayment option, during the period of interest payments) the servicer may charge the monthly payment due date of future payments to a later date for the convenience of the servicer in processing payments or in order to coordinate the due dates of all of my loans processed by the servicer.

4. Amounts Owed at the End of the Repayment Period - Since interest accrues daily upon the unpaid principal balance of my loan, if I make payments after my payment due dates, I may owe additional interest. If I have not paid my late fees, I will also owe additional amounts for those late fees. In such cases you will increase the amount of my last monthly payment to the amount necessary to repay my loan in full.

5. Payments - Payments will be applied first to late fees, other fees and charges, accrued interest, and the remainder to principal.

6. Other Charges - If any part of a monthly payment remains unpaid for a period of more than 15 days after the payment due date, I will pay a late fee not exceeding \$5.00 or 5% of the overdue payment amount, whichever is less. To the extent permitted by law, I agree to pay you all amounts you incur in enforcing the terms of this Credit Agreement, including reasonable collection agency and attorney's fees and court costs and other collection costs.

F. LOAN ORIGINATION FEE: If you charge me, I will pay you a Loan Origination Fee at the time my loan is disbursed. The dollar amount of any Loan Origination Fee will be determined by multiplying the Principal Sum times the Loan Origination Fee Percentage shown on the first page of this Credit Agreement. The percentage would be higher if computed only on the amount advanced rather than on the entire Principal Sum (Loan Origination Fee plus the loan amount advanced). For example, a nominal Loan Origination Fee of 6.5% on the entire principal amount would equal 6.9519% of the amount advanced. The Loan Origination Fee I will pay, if any, will be shown on my Disclosure Statement and included with the Principal Sum. To the extent permitted by law, and unless I timely cancel this Credit Agreement (see Paragraph B.2), I will not be entitled to a refund of any Loan Origination Fee after my loan has been disbursed.

G. RIGHT TO PREPAY: I have the right to prepay all or any part of my loan at any time without penalty.

H. FORBEARANCE: If I am unable to repay my loan in accordance with the terms established under this Credit Agreement because of a hardship such as financial or medical difficulty, I may request that you modify these terms. I understand that such modification would be at your option. I understand that I will remain responsible for all interest accruing during any period of forbearance and that you will add any interest that I do not pay during any forbearance period to the principal balance, as described in Paragraph D.3.

I. WHOLE LOAN DUE: To the extent permitted by applicable law, I will be in default and you have the right to give me notice that the whole outstanding principal balance, accrued interest, and all other amounts payable to you under the terms of this Credit Agreement, are due and payable at once (subject to any applicable law which may give me a right to cure my default) if: (1) I fail to make any monthly payment to you when due, (2) I die, (3) I break any of my other promises in this Credit Agreement, (4) any bankruptcy proceeding is begun by or against me, or I assign any of my assets for the benefits of my creditors, or (5) I make any false written statement in applying for this loan or any other loan or at any time during the Deferral or Repayment Periods. If I default, I will be required to pay interest on this loan accruing after default. The interest rate after default will be subject to adjustment in the same manner as before default. Upon default, you may also capitalize any interest and fees (i.e., add accrued and unpaid interest and fees to the principal balance), and increase the Margin used to compute the Variable Rate by two percentage points (2%).

J. NOTICES:

1. I will send written notice to you, any subsequent holder of this Credit Agreement, and the servicer within ten days after any change in name, address, or enrollment status (for example, if the Borrower withdraws from the School or transfers to another school participating in this loan program).

2. Any notice required to be given to me by you will be effective when mailed by first class mail to the latest address you have for me. Unless required by applicable law, you need not give a separate notice to the Cosigner, if any.

K. INFORMATION:

1. I must update the information I provided to you whenever you ask me to do so.

2. I authorize you from time to time to request and receive from others credit related information about me (and about my spouse if I live in a community property state).

3. CREDIT BUREAU REPORTING

You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults in my account may be reflected in my credit report.

I understand that the reporting of information about my account to credit bureaus may adversely affect my credit rating and my ability to obtain other credit. You may also report the status of my loan and my payment history, including information about a late

payment, missed payment or other defaults, to the School and others in accordance with applicable law.

L. ADDITIONAL AGREEMENTS:

1. I understand that you are located in Ohio and that this Credit Agreement will be entered into in the same state. CONSEQUENTLY, THE PROVISIONS OF THIS CREDIT AGREEMENT WILL BE GOVERNED BY FEDERAL LAW AND THE LAWS OF THE STATE OF OHIO, WITHOUT REGARD TO CONFLICT OF LAW RULES.

2. The proceeds of this loan will be used only for my educational expenses at the School. The Cosigner, if any, will not receive any of the loan proceeds.

3. My responsibility for paying the loan evidenced by this Credit Agreement is unaffected by the liability of any other person to me or by your failure to notify me that a required payment has not been made. Without losing any of your rights under this Credit Agreement you may accept (a) late payments, (b) partial payments or (c) payments marked "paid in full" or with other restrictions. You may delay, fail to exercise, or waive any of your rights on any occasion without losing your entitlement to exercise the right at any future time, or on any future occasion. You will not be obligated to make any demand upon me, send me any notice, present this Credit Agreement to me for payment or make protest of non-payment to me before suing to collect on this Credit Agreement if I am in default, and to the extent permitted by applicable law, I hereby waive any right I might otherwise have to require such actions I WILL NOT SEND YOU PAYMENTS MARKED "PAID IN FULL", "WITHOUT RECOURSE" OR WITH OTHER SIMILAR LANGUAGE UNLESS THOSE PAYMENTS ARE MARKED FOR SUCH PAYMENTS ON MY BILLING STATEMENT, OR TO SUCH OTHER ADDRESS AS I MAY BE GIVEN IN THE FUTURE.

4. I may not assign this Credit Agreement or any of its benefits or obligations. You may assign this Credit Agreement at any time.

5. The terms and conditions set forth in this Credit Agreement and Instructions and the Disclosure Statement constitute the entire agreement between you and me.

6. If any provision of this Credit Agreement is held invalid or unenforceable, that provision shall be considered omitted from this Credit Agreement without affecting the validity or enforceability of the remainder of this Credit Agreement.

7. A provision of this Credit Agreement may only be modified if jointly agreed upon in writing by you and me. Any modification will not affect the validity or enforceability of the remainder of this Credit Agreement.

8. To the extent permitted by law, you have the right to apply money from any of my deposit account(s) with you to pay all or a portion of any amount overdue under this Credit Agreement. I hereby authorize you to obtain from the School all amounts which may be owed to me by the School, including any refund due to overpayment, early termination of enrollment, or otherwise.

9. If this Credit Agreement is executed by more than one Borrower, each Borrower agrees that any communication between you and any of the Borrowers will be binding on all of the Borrowers. I intend to be treated as a principal of this Credit Agreement and not as a surety. To the extent I may be treated as a surety, I waive all notices to which I might otherwise be entitled as such by law, and all suretyship defenses that might be available to me (including, without limitation, contribution, subrogation and exoneration). I agree that the Borrower may agree to any forbearance or other modification of the repayment schedule and that such agreement will be binding on me. It shall not be necessary for you to resort to or exhaust your remedies against the borrower before calling upon me to make repayment. For purposes of this paragraph only, "I" and "me" refer to the Cosigner only.

10. All dollar amounts stated in this Credit Agreement are in United States dollars. I will make all payments in United States Dollars with no deduction for currency exchange.

11. If the Student fails to complete the education program paid for with this loan, the Cosigner and I are not relieved of any obligation within or pursuant to this Credit Agreement.

12. I acknowledge that this loan is subject to the limitations on dischargeability in bankruptcy contained in Section 523 (a) (8) of the United States Bankruptcy Code. Specifically, I understand that you have purchased a guaranty of this loan, and that this loan is guaranteed by The Education Resources Institute, Inc. ("TERI"), a non-profit institution.

13. I authorize any school that I may attend to release to you, and any other persons designated by you, any requested information pertinent to this loan (e.g., enrollment status, prior loan history, and current address).

14. I authorize the Lender, any subsequent holder of this Credit Agreement, and their agents to: (1) advise the School of the status of my application and my loan, (2) respond to inquiries from prior or subsequent lenders or holders with respect to my Credit Agreement and related documents, (3) release information and make inquiries to the persons I have given you as references, for the purposes of learning my current address and telephone number, (4) check my credit and employment history and to answer questions about their credit experience with me, and (5) disclose to TERI the Borrower, and/or the Cosigner either in connection with this transaction or any future transaction all information (including status information and non-public personal information) of the Borrower and/or the Cosigner provided in connection with this Credit Agreement. If in the future I apply for a loan that is guaranteed by TERI and funded by another lender, I also authorize the sharing of application information for this loan (other than information in a consumer report) with the other lender and TERI and the reuse of such information by such new lender and TERI in my new application.

15. Waiver by Lender: You waive (give up) any right to claim a security interest in any property to secure this Credit Agreement. This does not affect any right to offset as a matter of law.

16. If I fax my signature(s) on the first page of this Credit Agreement back to you and keep the copy I signed, I understand that under federal law the fax you receive will be an original of the first page of this Credit Agreement. You and I agree that all copies of this Credit Agreement (including the fax you receive and the copy I retain), taken together, shall constitute a single original agreement.

17. If any Borrower or Cosigner elects to sign electronically an electronic record of this Credit Agreement, then the following will apply as between Lender and such person: (a) Lender will keep a non-modifiable electronic record of this document and provide a copy to me upon request, (b) I can and have downloaded and/or printed a copy of this document for my records or notified the Lender to mail me a copy of this document, and (c) the Lender's electronic record of this document and any printout from that record shall be an original for all purposes, including any lawsuit to collect amounts that I owe. If I physically sign a copy of this document that has been electronically signed by any other Cosigner or Borrower, as between me and the Lender the copy I sign (and any fax of that copy I may send to Lender) will be an original. However, the electronic signature of another party to this Credit Agreement and the Lender's electronic record of this document containing that signature will be as valid against me as an original, physical document that is physically signed by all parties.

M. DISCLOSURE NOTICES

**ALL APPLICANTS:
IMPORTANT FEDERAL LAW NOTICE—**

Important information about procedures for opening a new account:

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you:

When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

CALIFORNIA RESIDENTS: I have the right to prohibit the use of information contained in my credit file in connection with transactions not initiated by me. I may exercise this right by notifying the consumer credit reporting agency. A married applicant may apply for a separate account. If you take any adverse action as defined by Section 1785.3 of the California Civil Code and the adverse action is based, in whole or in part, on any information contained in a consumer credit report, I have the right to obtain within 60 days a free copy of my consumer credit report from the consumer reporting agency who furnished you my consumer credit report and from any other consumer credit reporting agency which compiles and maintains files on consumers on a nationwide basis. I have the right as described by Section 1785.16 of the California Civil Code to dispute the accuracy or completeness of any information in a consumer credit report furnished by the consumer credit reporting agency.

CALIFORNIA AND UTAH RESIDENTS: As required by California and Utah law, I am hereby notified that a negative credit report reflecting on my credit record may be submitted to a credit reporting agency if I fail to fulfill the terms of my credit obligations. **IOWA, KANSAS AND NEBRASKA RESIDENTS** (For purposes of the following notice, the word "you" refers to the Borrower and the Cosigner, not the Lender): **NOTICE TO CONSUMER.** This is a consumer credit transaction. 1. DO NOT SIGN THIS CREDIT AGREEMENT BEFORE YOU READ THIS CREDIT AGREEMENT. 2. YOU ARE ENTITLED TO A COPY OF THIS CREDIT AGREEMENT. 3. YOU MAY PREPAY THE UNPAID BALANCE AT ANY TIME WITHOUT PENALTY AND MAY BE ENTITLED TO A REFUND OF UNEARNED CHARGES IN ACCORDANCE WITH LAW.

MARYLAND RESIDENTS: In Paragraph L.1, Lender and I have agreed that this Credit Agreement is governed by federal law and the laws of OHIO, without regard to conflict of laws rules; if any court should nevertheless determine that this Credit Agreement is subject to Maryland laws concerning credit, then only to the extent that Maryland law applies, Lender and I agree and elect that this loan is made under and governed by Subtitle 10, Credit Grantor Closed End Credit Provisions, of Title 12 of the Commercial Law Article of the Annotated Code of Maryland, except as preempted by federal law.

MISSOURI RESIDENTS: Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect me (borrower(s)) and you (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of

the agreement between us, except as we may later agree in writing to modify it.

NEVADA RESIDENTS: This is a loan for study.

NEW JERSEY RESIDENTS: The section headings of this Credit Agreement are a table of contents and not contract terms. Portions of this Credit Agreement with references to actions taken to the extent of applicable law apply to acts or practices that New Jersey law permits or requires. In this Credit Agreement, acts or practices (i) by you which are or may be permitted by "applicable law" are permitted by New Jersey law, and (ii) that may or will be taken by you unless prohibited by "applicable law" are permitted by New Jersey law.

NEW YORK, RHODE ISLAND AND VERMONT RESIDENTS: A consumer report (credit report) may be obtained from a consumer-reporting agency (credit bureau) in connection with this loan. If I request (1) I will be informed whether or not consumer reports were obtained, and (2) if reports were obtained, I will be informed of the names and addresses of the credit bureaus that furnished the reports. If you agree to make this loan to me, a consumer credit report may be requested or used in connection with renewals or extensions of any credit for which I have applied, reviewing my loan, taking collection action on my loan, or legitimate purposes associated with my loan.

OHIO RESIDENTS: The Ohio laws against discrimination require that all creditors make credit equally available to all credit worthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law.

WISCONSIN RESIDENTS: For married Wisconsin residents, my signature on this Credit Agreement confirms that this loan obligation is being incurred in the interest of my marriage or family. No provision of any marital property agreement (pre-marital agreement), unilateral statement under Section 766.59 or court decree under Section 766.70 adversely affects the interest of the Lender unless the Lender, prior to the time that the loan is approved, is furnished with a copy of the agreement, statement, or decree or has actual knowledge of the adverse provision when the obligation to the Lender is incurred. If the loan for which I am applying is granted, my spouse will also receive notification that credit has been extended to me.

N. BORROWER'S CERTIFICATION: I declare under penalty of perjury under the laws of the United States of America that the following is true and correct: I certify that all information I provided to you in connection with this loan, including without limitation, the information contained in this Credit Agreement, is true, complete and correct to the best of my knowledge and belief and is made in good faith. I understand that I am responsible for repaying immediately any funds that I receive which are not to be used or are not used for educational expenses related to attendance at the School for the academic period stated. I certify that I am not now in default on a Federal Perkins Loan, a Federal Stafford Loan, a Federally Insured Student Loan, a Federal Supplemental Loan for Students (SLS), a Federal PLUS Loan, an Income Contingent Loan, a Federal Consolidation Loan, a Federal Ford Direct Loan, or any other education loan received for attendance at any school.

O. STATE-SPECIFIC COSIGNER NOTICES: For the purposes of the following notices only, the words "you" and "your" refer to the Cosigner, where applicable, not to the lender.

FOR OBLIGORS COSIGNING IN WEST VIRGINIA:

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay it if you have to, and that you want to accept this responsibility. You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount. The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record. This notice is not the contract that makes you liable for the debt.

FOR OBLIGORS COSIGNING IN IOWA, NEW YORK AND SOUTH CAROLINA:

NOTICE: You agree to pay the debt identified below although you may not personally receive any property, goods, services, or money. You may be sued for payment although the person who receives the property, goods, services, or money is able to pay. You should know that the Total of Payments listed below does not include finance charges resulting from delinquency, late charges, repossession or foreclosure costs, court costs or attorney's fees, or other charges that may be stated in the Credit Agreement or contract. You will also

have to pay some or all of these costs and charges if the Credit Agreement or contract, the payment of which you are guaranteeing requires the borrower to pay such costs and charges. This notice is not the Credit Agreement or contract that obligates you to pay the debt. Read the Credit Agreement or contract for the exact terms of your obligation.

IDENTIFICATION OF DEBT (S) YOU MAY HAVE TO PAY

Name of Debtor: The Borrower and Cosigner identified on the first page of this Credit Agreement.

Name of Creditor: Charter One Bank, N.A., and its successors and assigns.

Date: If the loan is disbursed by check, the date of the check. If the loan is disbursed electronically, the date the creditor transmits the funds to the School.

Kind of Debt: Education loan.

Total of Payments: The Loan Amount set forth on the first page of this Credit Agreement (to the extent advanced), plus interest and the Loan Origination Fee set forth in this Credit Agreement.

FOR OBLIGORS COSIGNING IN VERMONT:

NOTICE TO COSIGNER

YOUR SIGNATURE ON THIS CREDIT AGREEMENT MEANS THAT YOU ARE EQUALLY LIABLE FOR REPAYMENT OF THIS LOAN. IF THE BORROWER DOES NOT PAY, THE LENDER HAS A LEGAL RIGHT TO COLLECT FROM YOU.

NOTE DISCLOSURE STATEMENT

\$ 20,111.73
03607169
 Loan No.

Borrower(s) [REDACTED]
 Student: [REDACTED]
 Date: February 10, 2006

Lender Name and Address:
CHARTER ONE BANK, N.A.
833 BROADWAY
ALBANY, NY 12207-2415

This disclosure statement relates to your Loan Note disbursed on February 10, 2006.
 Because your Loan is either being disbursed or entering repayment, or the repayment terms are being modified, the following information about your Loan is being given to you.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate. <u>9.941</u> %	The dollar amount the credit will cost you. \$ <u>42,379.20</u>	The amount of credit provided to you or on your behalf. \$ <u>18,000.00</u>	The amount you will have paid after you have made all payments scheduled. \$ <u>60,379.20</u>

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments are due
<u>240</u>	\$ <u>251.58</u>	On the <u>22nd</u> day of each month beginning on <u>12/2009</u>

VARIABLE RATE: The Annual Percentage Rate, which is based on an index plus a margin, may increase during the term of the loan if the index rate increases. The index is (check one):

- ☐ Prime Rate Index Adjusted Monthly - The highest U.S. bank prime rate published in the "Money Rates" section of The Wall Street Journal on the last business day of each calendar month.
- ☐ Prime Rate Index Adjusted Quarterly - The highest U.S. bank prime rate published in the "Money Rates" section of The Wall Street Journal on the last business day of each calendar quarter.
- ☒ LIBOR Index Adjusted Quarterly - The average of the one-month London Interbank Offered Rates published in the "Money Rates" section of The Wall Street Journal on the first business day of each of the three (3) calendar months immediately preceding the first day of each calendar quarter.

Any increase in the index and the Annual Percentage Rate which occurs while principal payments are deferred will increase the amount of any current and all future payments. Any increase in the index and the Annual Percentage Rate which occurs while principal and interest payments are deferred will increase the amount of all future payments. Any increase in the index and the Annual Percentage Rate which occurs after you have begun to make principal and interest payments on your loan will increase the amount of your future principal and interest payments beginning with your next annual payment adjustment date. For example, assume you obtain a loan in your junior year, in the amount of \$10,000, at an interest rate of 11%, and you defer principal and interest payments until after your graduation, and the repayment term of the loan is 20 years. If the interest rate increased to 12% on January 1st of your senior year, the interest which accrues while principal and interest payments are deferred will increase by \$91.01, and your monthly principal and interest payments would increase by \$9.37.

SECURITY: You have given a security interest in all refunds or amounts owed to you at any time by the student's educational institution. Collateral securing other loans with the Lender may also secure this Loan.

LATE CHARGES: If a payment is more than 15 days late, you may be charged \$5.00 or 5% of the payment, whichever is less. If you default, Lender (or any subsequent holder or any subsequent holder of your Loan Note) may increase the margin used to compute the Annual Percentage Rate by two percentage points (2%).

PREPAYMENT: If you pay off early, you will not have to pay a penalty.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, any security interest and prepayment refunds and penalties.

Estimates: All numerical disclosures except the late payment disclosure are estimates.

Principal Amount of Note (Amount Financed plus Prepaid Finance Charge) \$ 20,111.73

Itemization of Amount Financed

Amount paid to [REDACTED] \$
 Amount paid to [REDACTED] \$ 18,000.00
 Total Amount Financed \$ 18,000.00

Itemization of Prepaid Finance Charge

Origination Fee \$ 2,111.73
 Total Prepaid Finance Charge(s) \$ 2,111.73



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

000004084901
R & R File No. 1084959
S 005

NATIONAL COLLEGIATE STUDENT LOAN
TRUST 2006-1

Plaintiff
-against-

[REDACTED]

Defendant(s)

AFFIRMATION THAT THIS IS NOT
A CONSUMER CREDIT TRANSACTION,
NON-MILITARY AFFIRMATION AND
AFFIRMATION OF NON-EXPIRATION
OF STATUTE OF LIMITATIONS

Index No. 306508-14

The undersigned, an attorney admitted to practice in the State of New York, associated with the attorneys for plaintiff, affirms the following to be true under penalties of perjury:

***** SPECIAL AFFIDAVIT OF MERIT NOT REQUIRED *****

1. This lawsuit is not covered by Section 202.27a(a)(1) of the Uniform Civil Rules for the Supreme Court. An affidavit of merit that meets the requirements of that section is therefore not required as part of a default judgment application.

NON - MILITARY

2. This affirmation is made pursuant to the Soldier's and Sailor's Civil Relief Act of 1940, as amended, in support of plaintiff's application to enter judgment against defendant, [REDACTED]

3. On 6/17/15, an electronic request was made by this firm to a website maintained by the Department of Defense Manpower Data Center requesting the defendant's military status. The request included the said defendant's social security number and date of birth, if available. This information was provided to plaintiff's attorney by the plaintiff.

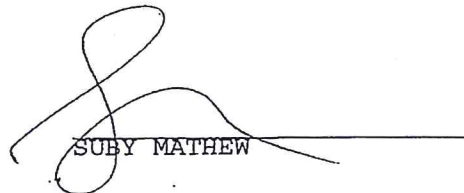
4. The attached military status report was printed from the website on the said date and indicates that the said defendant is not currently on active duty.

STATUTE OF LIMITATIONS

5. THIS CAUSE OF ACTION ACCRUED IN DELAWARE. THE STATUTE OF LIMITATIONS IN THAT STATE IS 03 YEARS. AFTER REASONABLE INQUIRY, I HAVE REASON TO BELIEVE THAT THE STATUTE OF LIMITATIONS HAD NOT EXPIRED ON THE DATE WHEN THE INDEX NUMBER WAS PURCHASED.

6. The above statements are true and correct to the best of my personal knowledge.

Dated: Islandia, New York
June 18, 2015


SUBY MATHEO

ADJUSTABLE RATE NOTE (LIBOR Index - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

September 28, 2006
[Date]

[City]

NY
[State]

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 491,600.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Argent Mortgage Company, LLC.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 7.350 %. This interest rate I will pay may change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on November 1, 2006.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on October 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date".

I will make my payments at: 505 City Parkway West, Suite 100, Orange, CA 92868

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 3,386.99. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of October, 2009, and on that day every six months thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the date 45 days before the Change Date is called the "Current Index."

If at any point in time the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding six percentage point(s) (6.000 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percent (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 9.350 % or less than 7.350 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than One percentage point(s) (1.000 %) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 13.350 % or less than 7.350 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. PREPAYMENT PRIVILEGE

I may repay all or any part of the principal balance of this Note in accordance with the terms of this Section without incurring a prepayment charge. A "prepayment" is any amount that I pay in excess of my regularly scheduled payments of principal and interest that the Lender will apply to reduce the outstanding principal balance on this Note in accordance with this Section.

(A) Application of Funds

I agree that when I indicate in writing that I am making a prepayment, the Lender shall apply funds it receives in accordance with the order of application of payments set forth in Section 2 of the Security Instrument.

(B) Monthly Payments

If I make a prepayment of an amount less than the amount needed to completely repay all amounts due under this Note and Security Instrument, my regularly scheduled payments of principal and interest will not change as a result.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces the principal, the reduction will be treated as a partial prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 2.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. The date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver by Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition, to the protections given to the Note Holder under this Note, A Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. That the Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without the Lender's prior-written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition of Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which the Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

12. GOVERNING LAW PROVISION

This Note and the related Security Interest are governed by Federal and State law applicable to the jurisdiction of the Property.

Oral agreements, promises or commitments to lend money, extend credit, or forbear from enforcing repayment of a debt, including promises to extend, modify, renew or waive such debt, are not enforceable. This written agreement contains all the terms the Borrower(s) and the Lender have agreed to. Any subsequent agreement between us regarding this Note or the instrument which secures this Note, must be in a signed writing to be legally enforceable.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 (Seal)
Borrower DOREEN GLASGOW

Borrower (Seal)

Borrower (Seal)

Borrower (Seal)

7 Approved

CEC Signature Loan

Application and Promissory Note valid through May 2004

Sallie Mae

1-800-695-3317

Push 1 for English or 2 for Spanish,
then extension 7

Lender: Stillwater National Bank Stillwater, Oklahoma

Lender Code: 809081

Section A: Student Applicant Section:

Please read instructions before completing this section.

1. Social Security Number	2. Last Name, Jr./Sr.	3. First Name	4. MI	5. Academic period this loan will help fund (mm/yy)
6. Permanent Home Street Address (include apt # or PO Box)	7. City	8. State	9. Zip Code	10. Home Phone Number
11. Address While in School (include apt # or PO Box)	12. City	13. State	14. Zip Code	15. Alternate Phone While in School
16. Citizenship (circle one) US Citizen or Natural Non-Citizen Permanent Resident * Foreign Student *	17. Date of Birth (mm/dd/yy)	18. Federal S	19. Other S	20. Private S
21. Non-citizen permanent residents and other eligible aliens must submit a copy of the front and back of their INS card (INS Form I-551). Foreign students must submit a copy of either their student VISA (type F1, H1B or J1) or a copy of their INS Form. INS forms I-688 B, I-766, or I-94 are accepted. If INS form I-94 is submitted, the student must also attach a copy of his/her valid passport including the student's photo.	22. You should apply for a federal loan before applying for this CEC Signature Loan, if eligible. (Refer to instructions for more information.) If you have applied for a federal loan please check here and list your lender. <input type="checkbox"/> Yes I have applied for a federal loan. Lender Name: <input type="checkbox"/> No, I am not eligible.			
23. Loan Amount Requested (refer to instructions)	24. School Name, City & State	25. Grade Level	26. Major (Refer to instructions)	27. Have you ever defaulted on a student loan? (If yes, see instructions for required action)
28. E-mail Address	29. Name	30. City	31. State	32. Zip Code
33. Reference's Permanent Address	34. City	35. State	36. Zip Code	37. Reference's Home Phone Number

Section B: Co-borrower Information:

Please read instructions before completing this section.

38. Last Name, Jr./Sr.	39. First Name	40. MI	41. Date of Birth (mm/dd/yy)	42. Social Security Number
43. Current Street Address (include Apt # or Post Office Box)	44. City	45. State	46. Zip Code	47. Home Phone Number
48. Note: For boxes 46, 47 and 48, you do not have to reveal alimony, child support or maintenance income unless you wish it to be considered as a basis for loan repayment. (Refer to instructions)	49. Gross Monthly Income	50. Other Monthly Household Income	51. Monthly Housing Payment	52. Other Monthly Household Payments
53. Employer's Name	54. Employer's Address	55. City	56. State	57. Zip Code
58. Bank Name	59. Checking Account or Savings Account #	60. Have you ever defaulted on a student loan? (Refer to instructions)	61. Citizenship (Circle One) US Citizen Permanent Resident * Non-citizen Permanent Residents must submit a copy of the front and back of their INS card (INS Form I-551)	62. Reference, DO NOT use student
63. Reference's Permanent Address (include Apt # or Post Office Box)	64. City	65. State	66. Zip Code	67. Reference's Home Phone
68. Relationship				

AS A CO-BORROWER, YOU ARE NOT REQUIRED TO ADD A SECOND CO-BORROWER. However, if you want a second co-borrower's income and debts to be considered in the loan decision, please have him/her complete boxes 40-44. Complete boxes 43 and 44 only if the amounts are not included in boxes 27 and 29 above. Non-citizen permanent resident must submit INS card. (Refer to instructions for requirements.)

69. Last Name, Jr./Sr.	70. First Name	71. MI	72. Date of Birth (mm/dd/yy)	73. Social Security Number
74. Gross Monthly Income	75. Other Monthly Household Income	76. Monthly Housing Payment	77. Other Monthly Household Payments	

Section C: Borrower and Co-borrower(s) Signatures:

45. CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT. 1. THE CO-BORROWER, HAVE READ THE APPLICABLE COSIGNER NOTICE.

Notice to Customer (a) Do not sign this before you read the promissory note even if otherwise advised. (b) Do not sign this if it contains any blank spaces. (c) You are entitled to an exact copy of any agreement you sign. (d) You have the right at any time to pay in advance the unpaid balance due under this agreement and you may be entitled to a partial refund of the finance charge.

I declare that the information provided above is true and complete to the best of my knowledge and belief. I have read the Promissory Note (SS2003-A) accompanying this application and the Notice to Cosigner(s). Promise to pay: Jointly and severally with the other signers below, I promise to pay the lender or any other holder of this loan all sums disbursed under the terms of the Promissory Note, plus interest and all other charges that may become due. The terms and conditions set forth in the Promissory Note constitute the entire agreement between us.

Signature of Borrower _____ (seal) Date _____

Co-borrower Signature _____ (seal) Date _____

Second Co-borrower Signature (If boxes 40-44 completed) _____ (seal) Date _____

Section D: School Section:

Must be completed by an authorized school official.

46. School Name	47. School Code	48. Authorized Loan Amounts and Disbursement Dates
49. Grade Level (Circle One) 1 - Freshman 2 - Sophomore 3 - Junior 4 - Senior 5 - Fifth Year	50. Loan period (mm/yy) From 11/10/03 To 06/24/04 51. Anticipated Graduation Date (mm/yy) 12/24/04	52. Disbursement/Major Accounting 53. Enrollment Status (Circle One): Students must be enrolled at least half-time Full Time
54. I hereby certify that the Borrower is eligible for a CEC Signature Loan; that the Total Approved Amount does not exceed the student's cost of education minus other financial aid; that the school will, at the request of the lender, provide the lender with subsequent information regarding the Borrower's whereabouts; that this School will comply with all applicable loan policies and provisions; and that information provided in Sections A and B is true, complete and correct to the best of my knowledge and belief.	55. Signature of School Official	56. Print or type name and title: DUKE
57. Phone	58. Certification Sent Electronically <input type="checkbox"/>	

Mail application to: Sallie Mae Servicing • PO Box 59030 • Panama City FL 32412-9030

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**Signature Student Loan Promissory Note
Document SS2003-A DRAFT of 12/20**

In this Promissory Note the words "I", "me", "my", "mine" and "we" mean the above signed borrower and co-borrower(s), unless the language specifically refers to only one or the other. "You", "your" and "yours" mean the lender as listed on the front of the application and any subsequent holder of this Promissory Note.

A. PROMISE TO PAY

I promise to pay to your order according to the terms below: the sum of the Loan Amount Requested to the extent it is advanced to me, or on my behalf, which includes the Supplemental Fee (together the "Loan Amount"); other interest, fees and charges accrued or capitalized on the Loan Amount as described in this Promissory Note ("Note"); and, in the event of default, reasonable attorney's fees, court costs and collection agency fees to the extent permitted by law.

B. DEFINITIONS

1. **Interim Period** - The "Interim Period" will begin on the date my loan is disbursed. My Interim Period will end 6 months after I graduate or drop below half-time enrollment at an eligible school. If I am enrolled in a health profession and obtain an internship or residency deferment within 6 months after leaving school, my Interim Period will end 6 months after the deferment ends.
2. **Repayment Period** - The "Repayment Period" will begin on the day after the Interim Period ends and will continue up to 300 months depending on my loan balance.
3. **Statement Period** - I will receive statements (or coupons) on my loan at the address shown on your records (see Section K. Notices). The period of time covered by a statement is called a "Statement Period". During the Repayment Period I will receive statements on my loan, unless I enroll in an automatic payment plan. The statements will cover Statement Periods beginning on the first day of the Repayment Period and on the same day of each following Statement Period.
4. **Capitalized Interest or Fees** - From time to time, interest or fees due and not yet paid may be added to the principal amount of the loan. This addition is called "capitalizing." Since interest accrues on the outstanding principal balance, capitalized interest and fees increase the total cost of the loan.
5. **Default** - You may declare my loan in default following an event described in paragraphs 1, 2, 3, 5, 6 or 7 of Section I except as follows:
IOWA, KANSAS, MAINE and SOUTH CAROLINA RESIDENTS: I will be in default if I fail to make a payment as required by this Note or if the prospect of my payment or performance is significantly impaired. The burden of establishing the prospect of significant impairment is on you.
WISCONSIN RESIDENTS: I will be in default (a) if I permit to be outstanding an amount exceeding 1 full payment which has remained unpaid for more than 10 days after its scheduled due date or deferred due date, or I fail to pay the first payment or the last

payment within 40 days of its scheduled due date or deferred due date, or (b) if I fail to observe any other provision of this Note, the breach of which materially impairs my ability to pay the amounts due under the Note.

6. **Disbursement Date** - The date shown on the Loan check or the date the Loan funds are electronically transferred to my school named in Section D of the application ("School").

7. The terms "Interest", "Variable Rate", "Late Charges", "Payment Return Fee", "Collection Costs", and "Supplemental Fees" are defined in the sections so titled.

C. INTEREST

1. **Accrual of Interest** - Interest will accrue from the Loan Disbursement Date until payment in full at the Variable Rate described in paragraph 2.
2. **Variable Rate** - The Variable Rate will change quarterly on the first day of each January, April, July and October (the "Change Date(s)") if the Current Index changes. The Variable Rate for the Interim and Repayment Period is the annual rate equal to the sum of the highest Prime Rate published in *The Wall Street Journal* "Credit Markets" section, "Money Rates" table on the fifteenth day of the last month of the quarter prior to my loan's Disbursement or Change Date (the "Current Index") plus or minus the percentage as identified on my Disclosure Statement, which is hereby incorporated into this Note, per annum (the "Margin") and rounded to the nearest one-eighth (0.125) of one percent. (For example, the Variable Rate for each quarter beginning January 1st will be determined by the applicable Prime Rate published on the preceding December 15th.) The Margin is based on my School, credit history and co-borrower's credit history. Once set, the Margin does not change. The actual interest rate during the quarter in which my loan is disbursed will be on my Disclosure Statement.

If *The Wall Street Journal* is not published or the Prime Rate is not stated, then the Current Index will be determined by using the immediately preceding published Prime Rate. If the Current Index ceases to be available, you will choose a comparable substitute. In no event will the Variable Rate exceed the maximum rate allowed by law.

D. TERMS OF REPAYMENT

1. **Interim Period** - I am not required to make payments during the Interim Period. You will capitalize unpaid accrued interest at the beginning of the Repayment Period. If I am an eligible health student, you will capitalize unpaid accrued interest annually during any residency or internship deferment, at the end of any residency or internship deferment period of less than 12 months, and when I enter repayment.
2. **Repayment Period** - I will make consecutive monthly payments during the Repayment Period in the amounts and on or before the payment due dates shown on my statements until I have paid all of the principal and interest and any other charges I may owe under this Note.

3. **Standard Repayment Terms** - Subject to the terms of paragraph 4, you will establish a schedule whereby I will repay my loan in consecutive monthly installments of principal and interest calculated to equal the amount necessary to amortize the unpaid principal and interest at the Variable Rate then in effect over the number of months remaining in the Repayment Period with the payment amount changing in the month following the month of each Change Date.

4. **Graduated Repayment Option** - I may choose a graduated repayment option, if available. If I convert to this option, I will notify you in writing.

5. **Amounts Owed at the End of the Repayment Period** - Since interest accrues daily upon the unpaid principal balance of my loan, if I make payments after my payment due dates, I may owe additional principal and interest, fees and charges at the end of the Repayment Period. In such case, I shall pay the additional amounts, and you may lengthen the Repayment Period.

6. **Minimum Repayment** - Notwithstanding paragraphs 3, 4 and 5, I agree to pay at least \$50 per month or the unpaid balance, whichever is less on all my Signature Student Loans.

7. **Payments** - Payments will be applied first to Late Charges, then to Payment Return Fees and Collection Costs, then to accrued interest, and the remainder to principal. Payments in excess of the amount due will advance the next payment due date by the number of whole payments satisfied by the extra funds. (For example, if my payment amount is \$100, I am not delinquent and I pay \$400 for the month of January, my next payment due date will be May.)

8. If I wish to make a payment in satisfaction of a disputed amount or balance, I must send it to P.O. Box 3800, Wilkes-Barre, PA 18773-3800 with a letter of explanation. To the extent permitted by law, you may accept late payments, partial payments, or payments marked "payment in full" or having similar language, without waiving your rights under this Note.

E. LATE CHARGE

I will pay a Late Charge if I fail to make any part of an installment payment within 15 days after it becomes due. The amount of the Late Charge will be further defined on my Disclosure Statement.

F. SUPPLEMENTAL FEES

1. **Fee at Disbursement** - You may charge an amount equal to the Supplemental Fee at disbursement of my loan. This fee will be identified on my Disclosure Statement and will be a percentage of the principal balance of my loan. At the time you issue any disbursement, you may either deduct from the disbursement or add to the principal loan balance an amount equal to the Supplemental Fee. Your decision to deduct or add the Supplemental Fee will depend upon the School.

2. **Fee at Repayment** - You may charge me a Supplemental Fee, which will be identified on my Disclosure Statement, either at the beginning of my repayment period or upon an event described in Section I, whichever is earlier. This fee will be a percentage of the principal balance of my loan after

unpaid interest accrued during the Interim Period is capitalized.

3. I understand and agree that the Supplemental Fees are earned when they are assessed and are not subject to rebate if I prepay my loan.

G. PAYMENT RETURN FEE

If I make a payment and that payment is returned or refused by my bank for any reason, I agree to pay a charge of up to \$20.00 for each payment so returned. Such Payment Return Fee may be capitalized without notice.

H. RIGHT TO PREPAY

I have the right to prepay all or any part of my loan at any time without penalty.

I. WHOLE LOAN DUE

Subject to applicable law, you have the right to give me notice that the whole outstanding principal balance, accrued interest, and all other amounts payable to you under the terms of this Note are due and payable at once and to cease to make any further disbursements to me, if:

1. I fail to make any monthly payment to you when due; or
2. I fail to provide a notice required in Section K.1 on time; or
3. I break any of my other promises in this Note; or
4. Any bankruptcy proceeding is begun by or against me, or I assign any of my assets to or for the benefit of my creditors; or
5. I make any false written statement in applying for this loan or at any time during the Interim or Repayment Period; or
6. I die or any co-borrower dies; or
7. I am in default on any loans I may already have with you, or on any loans I may have with you in the future. My failure to receive a statement does not relieve me of my obligation to make my required loan payments in accordance with the terms and conditions of this Note. If any of the listed events occur, I will be required to pay interest on this loan accruing afterwards at the same rate of interest applicable to this loan prior to such event. The interest rate will be subject to adjustment in the same manner as before.

J. COLLECTION COSTS

If I am in default, I agree to pay you reasonable amounts permitted by law, including collection agency fees, outside attorneys' fees and court costs, which you incur in enforcing the terms of this Note.

K. NOTICES

1. I will send written notice to you, or any subsequent holder of this Note, within 10 days after any change in my name, address, telephone number or school enrollment status.
2. Any notice required to be given to me by you will be effective when mailed to the latest address you have for me.
3. You may report the status of this loan to the School and to any credit bureaus.
4. CALIFORNIA RESIDENTS ONLY: A married applicant may apply for a separate account. If you take any adverse action as defined by § 1785.3 of the

California Civil Code and the adverse action is based, in whole or in part, on any information contained in a consumer credit report, I have the right to obtain within 60 days a free copy of my consumer credit report from the consumer reporting agency who furnished you my consumer credit report and from any other consumer credit reporting agency which compiles and maintains files on consumers on a nationwide basis.

CALIFORNIA and UTAH RESIDENTS: As required by California and Utah law, I am hereby notified that a negative credit report reflecting on my credit record may be submitted to a credit reporting agency if I fail to fulfill the terms of my credit obligations. IOWA RESIDENTS ONLY: If you are an Iowa resident and your Loan Amount is \$25,000 or less, this is a consumer credit transaction. IOWA and KANSAS RESIDENTS: NOTICE TO CONSUMER 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law. MARYLAND RESIDENTS ONLY: You elect to make this loan pursuant to Subtitle 10 (Credit Grantor Closed End Credit provisions) of Title 12 of the Maryland Commercial Law Article only to the extent that such provisions are not inconsistent with your authority under federal law (12 U.S.C. § 85, 1463(g), or 1831d, as appropriate) and related regulations and interpretations, which authority you expressly reserve. MASSACHUSETTS RESIDENTS ONLY: Massachusetts law prohibits discrimination based upon marital status or sexual orientation. MISSOURI RESIDENTS ONLY: ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT YOU (BORROWER(S)) AND US (CREDITOR) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT. NEVADA RESIDENTS ONLY: This is a loan for study. NEW JERSEY RESIDENTS ONLY: The section headings of the Note are a table of contents and not contract terms. Portions of this Note with references to actions taken to the extent of applicable law apply to acts or practices that New Jersey law permits or requires. In this Note, acts or practices (i) by you which are or may be permitted by "applicable law" are permitted by New Jersey law, and (ii) that may or will be taken by you unless prohibited by "applicable law" are permitted by New Jersey law. NEW YORK, RHODE ISLAND and VERMONT RESIDENTS: I understand and agree that you may obtain a consumer credit report in connection with this application and in connection with any updates, renewals or extensions of any credit as a result of this application. If I ask, I will be informed whether or not such a report was obtained and, if so, the name and address of the agency that furnished the report. I also understand and agree that you may obtain a

consumer credit report in connection with the review or collection of any loan made to me as a result of this application or for other legitimate purposes related to such loans. OHIO RESIDENTS ONLY: The Ohio laws against discrimination require that all creditors make credit equally available to all credit-worthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law. VERMONT RESIDENTS ONLY: NOTICE TO CO-SIGNER: YOUR SIGNATURE ON THIS NOTE MEANS THAT YOU ARE EQUALLY LIABLE FOR REPAYMENT OF THIS LOAN. IF THE BORROWER DOES NOT PAY, THE LENDER HAS A LEGAL RIGHT TO COLLECT FROM YOU. WISCONSIN RESIDENTS ONLY: For married Wisconsin residents, my signature confirms that this loan obligation is being incurred in the interest of my marriage or family. No provision of any marital property agreement (pre-marital agreement), unilateral statement under § 766.59 of the Wisconsin statutes or court decree under § 766.70 adversely affects your interest unless, prior to the time that the loan is approved, you are furnished with a copy of the marital property agreement, a statement, a decree or have actual knowledge of the adverse provision. If the loan for which I am applying is granted, I will notify you if I have a spouse who needs to receive notification that credit has been extended to me.

L. ADDITIONAL AGREEMENTS

1. I understand that when you accept the attached signed application, you are not agreeing to lend me money and that there will be no such agreement until the time the loan is actually disbursed or receipt of the disclosure statement, whichever happens last. You have the right to lend an amount less than the Loan Amount Requested or to accept or reject my application.
2. If this Note is assigned, the assignee will become the owner of this Note and will have all your rights to enforce this Note against me.
3. I understand that you are located in the State listed on the front of the attached application and this Note will be entered into in the same State. Consequently, the provisions of this Note will be governed by federal laws and the laws of that State, without regard to conflict of law rules.
4. Upon receipt of the Disclosure Statement, I will review it and if I am not satisfied with the terms of my loan as approved, I may cancel this Note and all disbursements. To cancel this Note, I will contact you within 3 days of receipt by me of the loan check and I will not cash any loan checks, or if funds are transmitted electronically, I will instruct the School, within 3 days of receipt by me of the Disclosure Statement, to return the funds to you.
5. By accepting past due payments you do not waive or affect any right to accelerate this Note. I waive any notice of dishonor, notice of protest, presentment, demand for payment, and all other notices or demands in connection with this Note and consent to the addition of a party who will be liable upon this loan or any other loans I have outstanding under the

program, to any and all extensions, renewals, or releases of any party liable upon this loan or any other loans I have outstanding under the program, or waiver or modification that may be granted by you, all without affecting or releasing me or any co-borrower from such loans. My responsibility for repaying this loan is not affected by the liability of any other person to you or by your failure to notify me that a payment has not been made.

6. If any provision of this Note is held invalid or unenforceable, that provision shall be considered omitted from this Note without affecting the validity or enforceability of the remainder of this Note.

7. Any provision of this Note may be modified if jointly agreed upon in writing by you and me or by you and any co-borrower. Any modification will not affect the validity or enforceability of the remainder of this Note.

8. I understand that this loan is an educational loan and is made under a program that includes Stafford loans and other loans and which is funded in part by non-profit organizations, including governmental units and, therefore, is not dischargeable in bankruptcy, except pursuant to 11 U.S. Code § 523(a) 8.

9. I acknowledge that I have received a true and exact copy of this Note.

10. I may not assign this Note or any of its benefits or obligations. You may assign this Note at any time. The obligations of this Note will be binding on my estate.

11. Your failure to exercise any right hereunder does not constitute a waiver thereof. All waivers must be in writing.

12. I hereby waive all my defenses to this Note based on suretyship.

13. I understand that you will use the information on this form, including my Social Security number, and the documentation required of non-U.S. citizens, to verify my identity. I consent to the use of my Social Security number as an account identifier throughout the life of my loan.

M. BORROWER'S CERTIFICATION AND CONSENT TO INFORMATION SHARING

1. I, the borrower, certify that the information contained in Sections A and B of the application is true, complete and correct to the best of my knowledge and belief and is made in good faith, that I am eligible for this loan and that I will repay it according to the terms of this Note. I understand and agree that my lender will be as listed on the front of the attached application. I hereby authorize the School to pay to you any refund that may be due me up to the amount of this loan. I understand that I must immediately repay any funds that I receive which cannot reasonably be attributed to meeting my educational expenses related to attendance at the School. At your option, you may either electronically transmit funds to the School to be applied to my account, or if you issue checks, I authorize you to issue a check jointly payable to me and the School, and send it to the School. If funds are electronically transmitted, I hereby authorize the School to transfer the funds to my account at the School. I understand that failure to complete the educational program undertaken by me does not relieve me of any

obligation of this Note.

2. I authorize any school that I may attend to release to you, the U.S. Department of Education, guarantor or their agent, any requested information pertinent to this loan (e.g., employment, enrollment status, current address) and to release to you whether I am eligible for a future loan. I authorize you, the guarantor or your or its agent to check my credit and employment history for this loan and for future loans that may be offered to me, to answer questions about their credit experience with me, and to release the results of the credit review process to the School. I further authorize you to release any other information on this loan to the School, to other schools I have attended for which I have taken out a student loan, and to the guarantor.

3. I consent to the sharing of any information about this loan with my parent, guardian, child, spouse or sibling who complies with your procedures unless I revoke this consent or unless prohibited by law. I understand that I may revoke this consent by contacting the servicer at 1-888-2SALLIE or P.O. Box 9500, Wilkes-Barre, PA 18773-9500.

4. I certify that all of the loan proceeds are solely to pay for my qualified higher education expenses at the School.

5. I also certify that: I have read the materials explaining the loan program that have been provided to me; I have read, understand and agree to the provisions of the program, my responsibilities and my rights under this program, the terms of this Note and this "Borrower's Certification and Consent to Information Sharing" and that the program is funded in part by non-profit organizations.

N. CORRECTION OF ERRORS

All parties to this Note agree to fully cooperate and adjust all typographical, computer, calculation or clerical errors discovered in any or all of the loan documents including the application, Note and Disclosure Statement. In the event this procedure is used, all parties involved will be notified and receive a corrected copy of the changed document.

O. CO-BORROWER/STUDENT RELEASE

I agree that, if any co-borrower applicant fails to qualify for this loan, that said co-borrower applicant will be released from liability hereunder, but this Note will still bind the student borrower and any remaining co-borrower. I also agree that an approved co-borrower may be released from liability hereunder upon application by a student borrower who has made 24 consecutive on-time monthly payments of principal and interest during the first 2 years of the Repayment Period of this loan (not including deferments and forbearances) and who meets applicable credit criteria at the time of the application, with the student borrower remaining liable for this loan after such co-borrower release. As co-borrower, I agree that if the student borrower is released from liability on this loan for any reason, including infancy, I hereby consent to such release and to my continued liability for this loan after such release.

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[Bills, Notes and Checks](#)
[Promissory Note](#)

Summary judgment denied where plaintiff failed to establish it was originator and owner of promissory note.

Unreported Disposition
49 Misc.3d 1204(A), 26 N.Y.S.3d 216
(Table), 2015 WL 5737936 (N.Y.City
Civ.Ct.), 2015 N.Y. Slip Op. 51399(U)

**This opinion is uncorrected and will not be published in the
printed Official Reports.**

*1 SLM Private Credit Student
Loan Trust 2004-B, Plaintiff,
v.
Sheila Bonet, Defendant.

Civil Court of the City of New York, Bronx County
CV-1666/14
Decided on September 14, 2015

CITE TITLE AS: SLM Private Credit
Student Loan Trust 2004-B v Bonet

SLM Private Credit Student Loan Trust 2004-B v Bonet,
2015 NY Slip Op 51399(U). Corporations—Capacity
to Sue. Bills, Notes and Checks—Promissory Note—
Summary judgment denied where plaintiff failed to
establish it was originator and owner of promissory note.
(Civ Ct, Bronx County, Sept. 14, 2015, McShan, J.)

APPEARANCES OF COUNSEL

For Plaintiff:
Kevin Knab
Forster & Garbus LLP
Sheila Bonet, Pro Se Defendant

ABSTRACT

OPINION OF THE COURT

[Corporations](#)
[Capacity to Sue](#)

Eddie J. McShan, J.

The following papers numbered 1 to 17 were read on this
motion and cross-motion.

No on Calendar of

PAPERS	NUMBERED
Notice of Motion—Order to Show Cause—Exhibits and Affirmation Annexed.....	1—10
Answering Affidavit and Exhibits-(Oral Argument and Exhibit).....	11—14
Replying Affidavit and Exhibits.....	15
Other	

Upon the foregoing cited papers, the Decision/Order of
this Motion is as follows:

Plaintiff commenced the instant proceeding on January
29, 2014 to recover \$3,737.24 with interest from December
17, 2013 allegedly due under a promissory note for a loan
application dated December 15, 2003. Before this Court
is Plaintiff's motion for summary judgment pursuant
to [CPLR § 3212](#). Defendant opposes the Plaintiff's
application raising several affirmative defenses.

Summary Judgment

Plaintiff asserts that it is entitled to a judgment as a
matter of law because Defendant breached the terms
of her student loan by failing to make the required
payments. Plaintiff submits the affidavit of Mary Kay
Mauer, an employee of Navient Solutions, Inc. (Navient),
in support of its application. Ms. Mauer indicates that
she is the custodian of records for Navient which is
an administrator and agent for the Plaintiff. She also

indicates that employees of Navient compile *2 business records memorializing account activity and transaction in order to preserve the accuracy of the transaction. Ms. Mauer asserts that she is competent to testify on behalf of the Plaintiff based upon her personal knowledge of the Plaintiff's business records. She states that the Defendant now owes \$3,737.24 with interest based upon her review of the record.

Plaintiff also submits a Memorandum of Law (memo) from its attorney in further support of its application for summary judgment. Plaintiff argues in the memo that it has standing to bring the instant proceeding to enforce a promissory note entered into between Sallie Mae Inc., currently known as Navient, and the Defendant. Plaintiff states that once the loan is approved, the monies are disbursed to either the educational institution or the borrower from one of the several banks enlisted in the process. Plaintiff alleges that the promissory note is then transferred to SLM Private Credit Student Loan Trust 2004-B, a Delaware statutory trust created pursuant to 12 Delaware § 3401 et seq. Plaintiff notes that 12 Delaware § 3804 grants the trust the authority to be sued or to sue in its own name where it has suffered economic damage or injury.

Plaintiff asserts that it is the proper original creditor of the loan. Plaintiff notes that Sallie Mae is the entity which created the loan despite the fact that Stillwater National Bank & Trust Co. (Stillwater) is listed as the lender in the CEC Signature Loan application. Plaintiff argues that the servicing agent of Sallie Mae and not Stillwater, creates the loan application forms, determines whether to grant the loan, and the terms of the loan. Plaintiff insists that the Stillwater was never the legal owner of the loan, and was obligated to transfer the loans made by Sallie Mae to the Plaintiff at a time prior to the Defendant's application. Plaintiff suggests that by understanding the process of the creation, disbursement, and collection of the loan, the bank which is the source of the funds is not involved in any step of the creation or processing of the loan. Plaintiff asserts that it is the owner of the promissory note by default.

Plaintiff contends that Navient, as the servicing agent of the Plaintiff, creates and keeps its business records from the initial application, to the loan note, to the default letter including all recordings of the disbursements and payments. Plaintiff suggests that Ms. Mauer is not

testifying to the business records of another entity because such records are created, recorded and utilized by the servicing agent of all the Sallie Mae's trust entities. Plaintiff suggests that the Defendant has not proffered any testimony or evidence that another entity owns the loan. Plaintiff also suggests that the Defendant does not contradict its evidence indicating that she applied for the loan, that the loan was approved and disbursed, and that she failed to repay the sums owed.

A party moving for summary judgment bears the burden of making a *prima facie* showing of entitlement to judgment as a matter of law, providing sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). The moving party's evidence, most importantly, must be in admissible form (*Friends of Animals, Inc. v Assoc. Fur Mfr., Inc.*, 46 NY2d 1065 [1979]). The nonmoving party must establish, by admissible evidence, the existence of a factual issue requiring a trial to determine the dispute (*Zuckerman v City of New York*, 49 NY2d 492 [1980]). The nonmoving party cannot provide conclusory allegations of fact or law to defeat a summary judgment application (*Century Ctr. Ltd. v Davis*, 100 AD2d 564 [2d Dept 1984]). In considering whether to grant a summary judgment motion, a "drastic remedy" in this State, this court looks to find issues rather than to determine them, and to evaluate whether the alleged factual issues are genuine or lack substance (*Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 394, 404-05 [1957]). Summary judgment should not be granted where there is any doubt *3 as to the existence of a triable issue (*Moskowitz v Garlock*, 23 AD2d 943 [3d Dept 1965]).

In the instant matter, the Court finds that Plaintiff failed to meet its *prima facie* burden establishing that it is entitled to a judgment as a matter of law (*Winegrad*, 64 NY2d 851). Ms. Mauer's affidavit is insufficient on this record to establish that Plaintiff is the originator and owner of the promissory note. Ms. Mauer's affidavit only establishes that Navient is the Plaintiff's administrator and agent. Although the memo submitted by the Plaintiff's attorney is educational regarding the student loan process at issue herein, the unsworn document provides no probative value of the facts and circumstances of this proceeding (*See for example Blazer v Tri-County Ambulette Serv., Inc.*, 285 AD2d 575 [2d Dept 2001]). The documents submitted on this record do not corroborate Plaintiff's attorney's arguments that Plaintiff is the originator of the

loan. Questions of fact continue to exist as to Stillwater's and Navient's possible entitlement to the loan proceeds. Someone with personal knowledge of the loan process and/or supporting documents are required to establish the Plaintiff's standing.

The Court further finds that Ms. Mauer's affidavit is insufficient to establish the breach of the promissory note even if Plaintiff's standing were established on this record. It is well established that the Plaintiff in a breach of contract action must first prove each of the essential elements of a breach to establish its *prima facie* cause of action (*Dee v Rakower*, 112 AD3d 204 [2d Dept 2013]). Those elements include the existence of the contract, the plaintiff's performance pursuant to the contract, the defendant's breach of his or her contractual obligations, and damages resulting from the breach (*Id.*). Ms. Mauer's affidavit fails to establish the existence of the promissory note between the Plaintiff and Defendant. Moreover, her affidavit does not establish Plaintiff's performance thereunder. Although the supporting documents, including the loan application, approval letter, and truth in lending disclosure suggest that the Plaintiff was approved for the loan, there is nothing in Ms. Mauer's affidavit to indicate that the Defendant accepted the loan. In addition, Plaintiff seeks judgment in an amount significantly higher than the approved amount noted in the truth in lending disclosure. There is no explanation as to how the damages the Plaintiff seeks were calculated.

Capacity to Sue

The Court notes that this matter is currently scheduled for trial on September 17, 2015. Although the sufficiency of the opposition papers to a summary judgment motion need not be considered where the movant has failed to establish a *prima facie* case to a judgment as a matter of law (*Winegrad*, 64 NY2d 851), Defendant raised several affirmative defenses and arguments that warrant further discussion. In addition to challenging the Plaintiff's standing in this matter, Defendant also challenges Plaintiff's capacity to sue. Defendant argues that the Plaintiff has failed to establish that it is in fact a Delaware statutory trust. She also argues that even assuming that the Plaintiff is a trust, only its trustee has the capacity to sue. She notes that a trustee for the Plaintiff did not commence the instant action on behalf of the trust nor is a named party. Defendant asserts that while 12

Delaware § 3804 may grant a trust the capacity to sue in Delaware, it does not grant such capacity to sue in New York State.

Pursuant to [Lien Law § 77](#), enforcement of a trust can be made by “the holder of any trust claim, including any person subrogated to the right of a beneficiary of the trust holding a trust claim, in a representative action brought for the benefit of all beneficiaries of the trust. An action to enforce the trust may also be maintained by the trustee.” The [Restatement \[Second\] of Trusts § 280](#) also *4 states that if a contract right is held in trusts, the trustee can maintain an action against the promisor. It is well established that it is the duty of the trustee to defend and protect the title to the trust estate and as a legal title is in the trustee, only the trustee can sue and be sued in a court of law (*see Matter of Straut*, 126 NY 201 [1891]). If the trustee or holder of the trust is not a named party seeking to enforce the contract, the case should be dismissed because the plaintiff does not have capacity to sue (*Orentreich v Prudential Ins. Co. of Am.*, 275 AD2d 685 [1st Dept 2000]).

Initially, the Court finds that the Plaintiff has waived the affirmative defense that the Plaintiff lacks the capacity to sue because she did not raise it in a pre-answer motion nor in either of her responsive pleading (*see CPLR § 3211[a][3]* and [CPLR 3211\[e\]](#)). Nevertheless, the Court would find the affirmative defense without merit. It is clear here that the trustee is not a named party in the caption. However, Plaintiff is a foreign trust governed by the laws of the state of Delaware. The Court takes notice that 12 Delaware § 3804 grants a trust the capacity to sue and be sued. New York courts have the power to grant comity to a foreign state's legislation so long as there is fair notice and does not violate State policy (*Ehrlich-Bober & Co. v Univ. of Houston*, 49 NY2d 574 [1980]). “The doctrine of comity is not a rule of law, but one of practice, convenience and expediency” (*Id.* citing *Mast, Foos & Co. v Stover Mfg. Co.*, 177 US 485 [1900]). The doctrine of comity does not bind courts to another state's law, but is a voluntary decision to encourage uniformity and harmony “among participants in a system of co-operative federalism” (*Id.*).

Moreover, New York courts will not grant comity when it conflicts with the public policy of the State (*J. Zeevi & Sons v Grindlays Bank*, 37 NY2d 220 [1975]). When determining the public policy of the State, courts “are not free to indulge in mere individual notions of expediency

and fairness but must look to the law as expressed in statute and judicial decision and to the prevailing attitudes of the community” (*Ehrlich-Bober & Co.*, 49 NY2d 574; see *Loucks v Standard Oil Co of NY*, 224 NY 99 [1918]; see also *Intercontinental Hotels Corp. (Puerto Rico) v Golden*, 15 NY2d 9 [1964]). New York policy will not always invariably prevail either (*Ehrlich-Bober & Co.*, 49 NY2d 574). It is also important to point out that this public policy exception to the doctrine of comity is very rarely invoked (*Greschler v Greschler*, 51 NY2d 368 [1980]). Only “where the original claim is repugnant to fundamental notions of what is decent and just in the state where enforcement is sought” will it offend public policy (Restatement [Second] Conflict of Laws; see also *J. Zeevi & Sons*, 37 NY2d 220).

The Court finds that granting comity to the Delaware statute at issue herein is not repugnant to New York State's public policy. The Court finds no prejudice to the Defendant by allowing the Plaintiff, a Delaware statutory trust, to sue in its own name as allowed by 12 Delaware § 3804. Defendant has received fair notice of the Plaintiff's attempt to collect the alleged student loan. In addition, Defendant will be able to assert all of the defenses and affirmative defenses she plead in her amended pleading at the trial in this matter.

Defendant further challenges Plaintiff's capacity to sue by arguing that the Plaintiff is a foreign entity not registered with the New York's Secretary of State but doing business in New York State. Defendant asserts that Plaintiff should be precluded from using the New York courts to collect debts pursuant to [Business Corporation Law § 1312\(a\)](#). She notes that courts have held that the entity issuing and servicing, or seeking to recover money due on credit cards issued to New York residents has a permanent and continuous presence in New York. Defendant asserts *5 that Sallie Mae, the alleged loan originator, is actively involved with students attending New York schools and notes that Plaintiff has brought more than 800 lawsuits in New York State in 2014 alone. Defendant suggests that Plaintiff is engaging in intrastate activities and must be registered with the Secretary of State.

Plaintiff argues that it has a capacity to sue in this court because its business is engaged in interstate commerce and as such is beyond the scope of [Business Corporation Law § 1312\(a\)](#). Plaintiff admits that it is an entity located outside the state of New York, that it is not registered or

authorized to do business within the state of New York, and that it has sued in a New York court. Plaintiff asserts however that it conducts no activity within the state of New York other than soliciting customers. Plaintiff notes that a potential student borrower obtains its application from the educational institution's financial aid office, the application is mailed to and approved by its out-of-state servicing organization, the correspondence to the student borrower is mailed from an out-of-state location, and the funds for this particular loan originated from out-of-state. Plaintiff also notes that it, an entity created and located in the state of Delaware, subsequently owns the loan. Plaintiff argues that there is a presumption that it conducts business in the state where it is formed and accordingly, the burden shifts to the Defendant to prove that the Plaintiff engages in localized business activity to establish that it is barred by [Business Corporation Law § 1312\(a\)](#).

The determination that a foreign corporation is doing business in New York for purposes of [Business Corporation Law § 1312\(a\)](#) is factual in nature (*Netherlands Shipmortgage Corp., Ltd. v Madias, et.al.*, 717 F2d 731 [2d Cir 1983]; see *Berkshire Eng'g Corp. v Scott-Paine*, 29 Misc 2d 1010 [Columbia County Ct 1961]; see also *Lebanon Mill Co., Inc. v Kuhn*, 145 Misc 918 [Mun Ct 1932]). Even though there is no precise measure that may be determinative of whether a foreign corporation is doing business in New York and each case must be decided on its own facts (*William L. Bonnell Co. v Katz*, 23 Misc 2d 1028 [Sup Ct 1960]), general guidelines exist which are instructive (*Madias*, 717 F2d 731). An initial principle New York courts use is not all business activity engaged in by a foreign corporation constitutes doing business in New York (*Vox Arx, AG v Breitenstein*, 52 AD2d 1049 [4th Dept 1976]). Also, it is important to point out that some business activity might be sufficient to subject a foreign corporation to the jurisdiction of New York courts, but may not be enough to constitute doing business under [Business Corporation Law § 1312\(a\)](#) (*Von Arx*, 52 AD2d 1049; *Paper Mfrs. Co. v Ris. Paper Co., Inc.*, 86 Misc 2d 95 [Civ Ct, New York County 1976]).

A foreign company will only be prevented from maintaining an action in New York state under [Business Corporation Law § 1312\(a\)](#) if the defendant can prove that the plaintiff not only operates in New York state, but that their business is wholly intrastate as well (*Domino Media, Inc. v Kranis*, 9 F Supp 2d 378 [SD NY 1998]).

A foreign company's business is intrastate when it is permanent, continuous, systematic and regular within the state and the intrastate business essential to the corporation (*Highfill, Inc. v Bruce & Iris, Inc.*, 50 AD3d 742 [2d Dept 2008]). The traditional standard for doing business in New York for the purposes contained in [Business Corporation Law § 1312\(a\)](#) is described in *Intl. Fuel & Iron Corp. v Donner Steel Co.* (242 NY 224 [1926]). The Court of Appeals held, “[t]o come within this section, the foreign corporation must do more than make a single contract, engage in an isolated piece of business, or an *6 occasional undertaking; it must maintain and carry on business with some continuity of act and purpose” (*Id.*).

[Business Corporation Law § 1312\(a\)](#) does not apply when a company's activities in New York are merely incidental to its business in interstate and international commerce (*Audemars Piguet Holding S.A. v Swiss Watch Intl., Inc.*, 46 F Supp 3d 255 [SD NY 2014]). The New York door-closing statute cannot deny a foreign corporation doing business in New York state from bringing suit when it is engaged in interstate commerce under the protection of USCA Const art I, § 8 (*Colonial Mtge. Co. v First Fed. Sav. and Loan Assn. of Rochester*, 57 AD2d 1046 [4th Dept 1977]). If a foreign corporation's business in New York is merely soliciting business, no matter how extensive those contacts may be, then the foreign corporation is engaged in interstate commerce and is constitutionally beyond reach of [Business Corporation Law § 1312\(a\)](#) (*Paper Mfrs. Co.*, 86 Misc 2d 95). Solicitation of business and facilitation of sale and delivery of merchandise incidental to business in interstate commerce is not the type of activity that constitutes doing business in New York that would prevent an unregistered foreign company from bringing suit in the state (*Digital Ctr., S.L. v Apple Industries, Inc.*, 94 AD3d 571 [1st Dept 2012] quoting *Uribe v Merchants Bank of NY*, 266 AD2d 21 [1999]).

In the instant matter, the parties present conflicting arguments as to whether the plaintiff is engaged in intrastate or interstate activities. As noted hereinabove, a foreign corporation is doing business in New York for purposes of [Business Corporation Law § 1312\(a\)](#) is factual in nature (*Netherlands Shipmortgage Corp. Ltd.*, 717 F2d 731). The Court would be unable to determine the nature of the Plaintiff's activities for purposes of [Business Corporation Law § 1312\(a\)](#) in light of the conflicting affidavits. Such a determination must be made at trial and it would have been the Defendant's burden to establish

that the Plaintiff is engaged in intrastate commerce had she not waived the affirmative defense of lack of capacity as noted hereinabove (*See for example Great White Whale Adv., Inc., v First Festival Prods.*, 81 AD2d 704 [3d Dept 1981]).

Statute of Limitations

Defendant argues that Plaintiff did not commence the instant proceeding within the prescribed statute of limitations. She suggests that Oklahoma's five-year statute of limitations for breach of contract or promissory note applies to the instant matter because the lender Stillwater Bank's home state is Oklahoma. Defendant notes that according to the Plaintiff's account ledger, the breach occurred in or around 2004 when repayment period was scheduled to begin and no payments were made, but the action was commenced in or around January 2014. The Court notes that the Plaintiff did not respond to the Defendant's argument that the statute of limitations has expired.

According to the approval letter and ledger provided by the Plaintiff, the Defendant's loan was approved on December 29, 2003. The Plaintiff charged off the loan on December 31, 2008. The Plaintiff's ledger includes activity until April 10, 2014. The instant proceeding was commenced on January 29, 2014. The Court is unable to determine which states' time limitation is appropriate in this proceeding in light of the standing issues discussed above. Plaintiff is organized in the State of Delaware, and Stillwater is organized in the state of Oklahoma. The *7 Court takes notice that the statute of limitation for promissory notes in the state of Delaware is three years and five years for the state of Oklahoma.

After searching the record, the Court also finds that the Defendant, as the nonmoving party, may be entitled to summary judgment and dismissal of this action based upon the expiration of the statute of limitations. [CPLR § 3212\(b\)](#) provides in part that “. . . If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion.” Caselaw has clearly established that a court may search the record and grant summary judgment in favor of a nonmoving party only with respect to a cause of action or issue that is the subject of the motion before the court (*See for example*

Dunham v Hilco Const. Co., Inc., 89 NY2d 425 [1996]; *Lee v City of Rochester*, 254 AD2d 790 [4th Dept 1998]).

As noted hereinabove, Plaintiff did not address the Defendant's statute of limitation arguments. The Court notes that if the Plaintiff establishes its standing as disputed above, Delaware's statute of limitation of three years will be applicable. It will be the Plaintiff's burden to establish that this proceeding is not barred by the statute of limitations as the Defendant preserved the affirmative defense in her answer. The Court is unable to determine if the activities included on the Plaintiff's ledger after the charge off date tolled the statute of limitations. Accordingly, the Court reserves decision on dismissing this matter pursuant to [CPLR § 3212\(b\)](#) until after the Plaintiff presents its case-in-chief at the trial in this matter.

In light of the foregoing, it is hereby

ORDERED AND ADJUDGED that the Plaintiff's summary judgment motion is hereby denied in its entirety based upon the findings above; and it is further

ORDERED AND ADJUDGED that the parties shall appear for the trial in the matter currently scheduled for September 17, 2015 at 9:30 a.m.

The foregoing shall constitute the decision and order of this Court.

Dated: September 14, 2015

Eddie J. McShan, J.C.C.

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

-----X
SLM PRIVATE CREDIT STUDENT LOAN TRUST 2004-A
Plaintiff,

- against -

**DEFENDANT'S FIRST
DEMAND FOR PRODUCTION
OF DOCUMENTS FOR
DISCOVERY AND INSPECTION**

Index No. CV-000000-14/BX

JANE DOE

Defendant.

-----X

PLEASE TAKE NOTICE that, pursuant to Article 31 of the New York Civil Practice Law and Rules, Defendant, Jane Doe, requests that plaintiff, SLM Private Credit Student Loan Trust 2004-A (hereinafter "SLM"), produce for discovery, no later than 20 days from the date of this request, at 7 Hanover Square, 18th Floor, New York NY 10004, the following documents and things:

Instructions

1. If your response to any request herein is that the documents are not in your possession or custody, describe in detail the unsuccessful efforts you made to locate the records.
2. If your response to any request herein is that the documents are not in your control, identify who has control and location of the records.
3. If a request herein for production seeks a specific document or an itemized category which is not in your possession, control or custody, provide any documents you have that contain all or part of the information contained in the requested document or category.
4. Identify the source of each of the documents you produce.

Definitions

As used herein, the following terms shall have the defined meanings set out below:

1. The term "document" means, without limitation, the following items whether printed, recorded, reproduced or stored on papers, cards, tapes, belts, computer devices or any other medium in your possession, custody or control: all writings of any kind including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copy or otherwise, agreements, contracts, insurance policies, legal notices, communications, correspondence, letters, drafts, telegrams, memoranda, summaries of records of telephone conversations, summaries of records of personal conversations, diaries, desk or other calendars, graphs, reports, notebooks, instruction manuals or other instructional materials, note charts, plans, drawings, sketches, summaries and records of meetings or conferences, minutes, opinions or reports of employees and/or consultants, photographs, brochures, pamphlets, advertisements, catalogs, circulars, press releases, any marginal comments appearing on any documents, purchase orders, invoices, specifications, schedules, books, surveys, notes, working papers, charts, tabulations, tapes, data sheets, printouts, microfilms, indexes and any other data compilations or other material stored on or accessible through a computer or other information storage or retrieval system, books of account, checks and other financial records and all other writings and recordings.

2. The term "person" shall include a natural person, partnership, corporation, association, or other group however organized.

3. The terms "SLM," "you" and "your" refer to the plaintiff SLM Private Credit Student Loan Trust 2004-A, its trustees, partners, directors, officers, agents, employees, predecessors in interest and all other persons acting or purporting to act on behalf of any of the foregoing. The term "you" expressly includes the original creditor and all other assignees of the contract upon which your action arises.

4. The term "defendant" refers to the defendant Jane Doe, and all persons acting or purporting to act on her behalf.

5. The terms "account at issue" and "loan" refer to the student loan account referenced in the Complaint.

6. The term “securitization” shall mean the offering of the loan to you from the loan originator or by you to any party as part of an effort to use defendant’s alleged obligation to pay as collateral for the creation of a security to be bought or sold.

Requests For Production

1. All documents which evidence that the defendant is liable for the account at issue in this case, including, but not limited to, the original loan contract.

2. Your entire file relating to the account at issue or the defendant including but not limited to all account records, applications, account agreements, statements, bills, payment histories, collection records, correspondence, and any documents signed by the defendant.

3. All documents reviewed and/or relied upon in preparing the complaint and statement of damages filed in this action.

4. Copies of any assignments, contracts, Sale Agreements, Purchase Agreements, Forward Flow Agreements with all exhibits and/or attachments or other document including, but not limited to, a complete chain of title for the account, which shows that the plaintiff is the owner of the specific obligation or claim upon which it sues.

5. The governing instrument and certificate of trust for SLM.

6. A copy of the endorsed check which disbursed the proceeds of the loan at issue.

7. All documents relating to the securitization of the loan at issue.

8. Any other documents related in any way to the account at issue or to the defendant.

9. Any and all documents which you intend to use or introduce at trial.

10. All documents supporting your calculation of damages as alleged in the Complaint.

11. All documents purporting to give SLM Private Credit Student Loan Trust 2004-A the right to bring suit.

12. All documents identified in, referred to or used in answering Defendant's First Set of Interrogatories.

13. All documents identifying Navient Solutions, Inc. as the servicer for SLM.

14. All documents purporting to give Navient Solutions, Inc. the authority to service loans for SLM.

Dated: New York, New York
November 10, 2015

TO: Forster & Garbus LLP
Attorney for Plaintiff
60 Motor Parkway
Commack, NY 11725

Statute of Limitations in Private Student Loan Cases¹

- I. If Delaware Plaintiff → **Apply Delaware Statute of Limitations**.²
- II. Statute of Limitations (SOLs) Under Delaware Law
 - a. Consumer contracts → **3-year SOL**.³
 - b. Accounts Stated claims → **3-year SOL**.⁴
 - c. Unjust Enrichment claims → **3-year SOL**.⁵
 - d. Breach of Private Student Loan (PSL) Contract → No direct caselaw.
Argue for a 3-year SOL (see points below).
 - e. True Promissory Note → 6-year SOL under § 8109.⁶
BUT **PSL Agreements do not qualify under § 8109** because:
 - i. No unconditional promise or order to pay a fixed amount of money⁷
 - ii. Key terms stated in subsequent disclosure⁸
- III. Common Violations
 - a. FDCPA - Watch for collection activity on time-barred debt.⁹
 - b. FCRA – Watch for negative reporting on time-barred debt.

¹ For additional resources email Yan Cao, Brooklyn Legal Services at ycao@lsnyc.org.

² See (2010) (discussing New York’s “borrowing statute” or CPLR 202). A contractual Choice of Law provision in the contract DOES NOT alter this. Id.

³ See Del Code Ann. tit. 10, § 8106; Portfolio Recovery Associates, 14 N.Y.3d 410.

⁴ See Brown v. Consol. Fisheries Co., 165 F. Supp. 421, 422 (D. Del. 1955)(applying § 8106); Moore v. Morris, 17 Del. 412, 41 A. 889, 890 (Del. Super. 1898).

⁵ See Gavin v. Club Holdings, LLC, No. CV 15-175-RGA, 2016 WL 1298964, at *8 (D. Del. Mar. 31, 2016) (“The Delaware statute of limitations for unjust enrichment actions is three years.”) (applying § 8106); Medtronic Vascular, Inc. v. Advanced Cardiovascular Sys., Inc., 2005 WL 46553, at *4 (D. Del. Jan. 5, 2005), *aff’d*, 182 Fed. Appx. 994 (2006).

⁶ Del. Code Ann. tit. 10, § 8109. (“When a cause of action arises from a promissory note . . . the action may be commenced at any time within 6 years from the accruing of such cause of action.”); *but see* Saunders v. Stella, 1989 WL 89518, at *1 (Del. Super. 1989) (unpublished) (noting that Courts should ask “whether or not the instruments . . . which purport to be ‘promissory notes’ are in fact and in law promissory notes within the meaning of § 8109.”)

⁷ Fineberg v. Credit Int’l Bancshares, Ltd., 857 F. Supp. 338, 351 (D. Del. 1994); *see also* Del. Code Ann. tit. 6, § 3-104 (defining negotiable instrument); Trent v. N. Carolina, No. 1:13-CV-00275-MOC, 2014 WL 2773579, at *3 (W.D.N.C. June 19, 2014) (“[C]ourts have long and consistently held that [federal] student loans are *not* negotiable instruments . . . because they do not contain an *unconditional promise* or order to pay a *sum certain* as the loans are dischargeable . . . and the time for repayment and amount of the eventual repayment are not conclusively established at the time the student signs the promissory note . . .”) (internal quotations omitted).

⁸ See Del. Code Ann. tit. 6, § 3-106.

⁹ NY creates a duty to disclose where a statute of limitations has expired. See 23 NYCRR 1.3.



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
Web site: 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

1. 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.

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:

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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.

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.

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 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.



LOAN DISCHARGE APPLICATION: UNPAID REFUND

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 _____

Telephone – Primary _____

Telephone – Alternate _____

E-mail (optional) _____

SECTION 2: SCHOOL AND LOAN 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. School Name:

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

6. Are you (or, for a parent PLUS borrower, the student) still attending this school?

- ☐ Yes – You are not eligible for this discharge.
☐ No – Continue to Item 8.

7. Is this school still open?

- ☐ Yes – Contact the school to attempt to resolve the issue before applying. Skip to Item 9.
☐ No – Continue to Item 8.

8. If this school is closed, were you (or, for parent PLUS borrowers, was the student) attending the school when it closed?

- ☐ Yes – You may be eligible for a closed school discharge. If you are unsure about which type of loan discharge is most appropriate for you, contact your loan holder. Continue to Item 9.
☐ No – Continue to Item 9.

9. Do you have any other pending or approved application(s) for discharge of a loan you obtained to attend this school?

- ☐ Yes – Skip to Item 11.
☐ No – Continue to Item 10.

10. Has this school or any third party (see Section 6) made, or is the school/third party considering you for, a refund or payment for any loan for which you are requesting a discharge?

- ☐ Yes – Continue to Item 11.
☐ No – Skip to Section 3.

For items 11–13, attach additional pages if you need to report additional discharges, refunds, or payments.

11. Reason for discharge, refund, or payment:

12. Provide the following about the person or organization from whom you received the discharge, refund, or payment:

a. Name: _____

b. Telephone Number: _____

13. Amount you received or that you expect to receive: \$ _____

Borrower Name: _____ Borrower SSN: - - - - -

SECTION 3: REFUND INFORMATION

If you are unable to provide any of the requested information, write "Don't Know". Attach a copy of any documentation that supports your responses to Items 16 through 20. 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 forms, attendance records, and any correspondence from the school that contains information about the refund you believe the school owes you.

14. Do you have documentation from the school showing the amount of the unpaid refund?

- ☐ Yes – Attach the documentation and continue to Item 15.
☐ No – Skip to Item 16.

15. Do you believe that the amount of the refund shown in the documentation is correct?

- ☐ Yes – Sign and date the form in Section 4. Submit the form and documentation to the loan holder in Section 8.
☐ No – Continue to Item 16.
☐ Don't Know – Continue to Item 16.

16. What amount do you believe the school owes you? \$ _____

17. Why do you believe the school owes you this amount?

18. Your (or, for parent PLUS borrowers, the student's) first and last dates of attendance at the school: _____ to _____

OR Never Attended
OR Don't Know

19. Your (or, for parent PLUS borrowers, the student's) program of study at the school:

20. 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. \$ _____

Sign and date the form in Section 4. Submit the form and documentation to the loan holder in Section 8.

Note: If your (or, for parent PLUS borrowers, the student's) last date of enrollment was before October 7, 2000, contact your loan holder for information about the documentation you must provide to request a discharge of your loan.

SECTION 4: BORROWER CERTIFICATIONS, ASSIGNMENT, AND AUTHORIZATION

▪ I certify that—

1. I received the loan funds for which I am requesting a discharge 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.
2. I (or, for parent PLUS borrowers, the student) did not attend the school, 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 provided in Section 2, Items 8 through 12, I have not received this refund, or any benefit of a refund to which I am entitled, from the school or any third party.
3. I have read and agree to the terms and conditions for loan discharge, as specified in Section 7.
4. 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 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 _____

SECTION 5: 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 page 2 and 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 8.**

SECTION 6: 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 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 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 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.
- **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

- 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 unpaid refund, 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 form.
- 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 8: WHERE TO SEND THE COMPLETED FORM

Return the completed form and any documentation to:
U.S. Department of Education
P.O. Box 5609
Greenville, TX 75403-5609

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

SECTION 9: 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 the 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(l)(4), or 685.216(c)). If you have comments or concerns regarding the status of your individual submission of this form, **contact your loan holder(s) (see Section 8) directly.**