

# United States Senate

WASHINGTON, DC 20510

September 10, 2018

The Honorable Steven Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

The Honorable David Kautter  
Acting Commissioner and Assistant Secretary  
of the Treasury for Tax Policy  
Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224

Dear Secretary Mnuchin and Acting Commissioner Kautter:

Former students affected by ITT Educational Services, Inc.'s (ITT Tech) systemic misconduct and closure are experiencing significant financial distress. We urge you to clarify that fraudulently issued student loan debt taken out by former ITT Tech students, and subsequently discharged, is not considered income for federal tax purposes, and ask that you issue additional guidance on the matter as soon as possible.

As you know, you issued Revenue Procedures 2015-57 and 2018-39 regarding the taxation of both federal and private student loan discharges for former Corinthian College, Inc. (Corinthian) students receiving relief. Thousands of students received relief through these means and, thanks to this guidance, were not subject to potential tax liability on their debt relief. The fact patterns and rationale behind the guidance issued for Corinthian borrowers is substantially similar to the situation for ITT Tech borrowers who have received or may be eligible for federal and private student debt relief.

Like Corinthian, ITT Tech also collapsed under a cloud of scrutiny and misconduct. The company was the subject of lawsuits and investigations for fraud, deceptive marketing, misuse of taxpayer funds, and illegally steering students into predatory private loans by the Consumer Financial Protection Bureau, U.S. Department of Justice, the Securities and Exchange Commission, 19 state attorneys general, and numerous whistleblower lawsuits. The Department of Education ultimately restricted ITT Tech from enrolling new students.

On January 13, 2017, several months after ITT Tech's collapse, the Department of Education indicated that it had "received over 2,500 borrower defense claims from former ITT [Tech] students and is beginning to award the first discharges to affected students."<sup>1</sup> Nearly a year after that, the Department of Education's Office of Inspector General released a report that confirmed the previous Administration had begun to collect evidence regarding fraudulent claims ITT Tech made to students.<sup>2</sup> Specifically, the Department of Education found evidence and prepared legal

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<sup>1</sup> U.S. Department of Education. Press release: American Career Institute Borrowers to Receive Automatic Group Relief for Federal Student Loans. January 13, 2017. <https://www.ed.gov/news/press-releases/american-career-institute-borrowers-receive-automatic-group-relief-federal-student-loans>

<sup>2</sup> U.S. Department of Education, Office of Inspector General. Federal Student Aid's Borrower Defense to Repayment Loan Discharge Process. December 8, 2017. <https://ed.gov/about/offices/list/oig/auditreports/fy2018/i04r0003.pdf>

memoranda regarding ITT Tech's guaranteed employment misrepresentation claims for its California campuses, and was beginning to collect more evidence.<sup>3</sup> However, the Inspector General found that under the current Administration, the borrower defense unit "had identified additional categories of claims warranting further research" but that "this research was placed on hold."

Since that time, the Department of Education has indicated that it has received more than 14,000 borrower defense claims from former ITT Tech students.<sup>4</sup> Many of these students are likely eligible for relief, and some students have already received it. Furthermore, it is possible that current litigation by ITT Tech's bankruptcy trustee against the parent company's former CEO and eight former directors for damages of \$250 million could result in additional relief for students.

We are concerned that borrowers of federal or private student loans, or both, who obtain debt relief could have received 1099-C forms or may receive them in the future. If this is the case, many borrowers may therefore pay taxes not actually owed, and must individually challenge automated tax assessments for which they are not liable. Others may need to amend tax returns or face tax audits. And, Treasury and IRS should seek to avoid imposing substantial and unnecessary costs on taxpayers through case-by-case adjudication. We believe the ITT Tech situation could be alleviated and avoided by issuing guidance similar to Revenue Procedures 2015-57 and 2018-39 that addressed discharged debt related to Corinthian students, given that the very same authorities that Treasury and IRS relied on for that guidance should apply to defrauded ITT Tech students.

Specifically, we urge you to issue further guidance that clearly indicates that borrowers of federal and private student loans that were cancelled on the basis of fraud, misrepresentation, or unfair or deceptive acts or practices by ITT Tech may exclude the discharged amount from gross income. These infirmities reach back to the origination of these student loans. We look forward to working with your agencies to ensure these students receive fair treatment. If you have any questions, please contact Brad Middleton with the Office of Senator Durbin at [brad\\_middleton@durbin.senate.gov](mailto:brad_middleton@durbin.senate.gov) or Adam Carasso with the Office of Senator Wyden at [adam\\_carasso@finance.senate.gov](mailto:adam_carasso@finance.senate.gov). Thank you for your attention to this matter.

Sincerely,



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Richard J. Durbin  
United States Senator



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Ron Wyden  
United States Senator

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<sup>3</sup> Letter from The Honorable Kathleen S. Tighe, Inspector General, U.S. Department of Education, to Senator Patty Murray. January 4, 2018. <https://www2.ed.gov/about/offices/list/oig/misc/edigmurray01042018.pdf>

<sup>4</sup> Declaration of Julian Schmoke in Support of the United States' Objection to Motion for an Order Pursuant to Fed. R. Bankr. P. 2004 for an Examination of the Department of Education. Case 16-07207-JMC-7A. Doc 2695. July 9, 2018.