

July 12, 2017

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Re: Docket ID ED-2017-OPE-0076; Comments on proposed negotiated rulemaking to revise the gainful employment and borrower defense regulations

Dear Secretary DeVos:

As organizations working on behalf of students, consumers, veterans, faculty and staff, civil rights, and college access, we strongly oppose the delay, dismantling, or weakening of the gainful employment regulations finalized in October 2014 and the “borrower defense to repayment” and college accountability regulations finalized in November 2016. Students, veterans, and taxpayers have waited far too long already for these critical protections from unmanageable student debt, sudden school closures, and waste, fraud and abuse in higher education. Students and taxpayers cannot afford a “pause” in the Education Department’s progress against fraud and waste.

The best way to help Americans obtain quality, affordable career education and training is to enforce these and other current rules, not to delay, dismantle, or renegotiate them. As [20 state attorneys general](#) told Congress earlier this year, rollbacks of these rules will “signal ‘open season’ on students for the worst actors among for-profit postsecondary schools.” Multiple investigations have revealed that federal taxpayers are subsidizing schools and programs that consistently leave students and veterans with loans they cannot repay and credentials they cannot use. Some schools have gone so far as to recruit people who are homeless, enroll students without their consent, and use tactics that invoke “pain” and “fear” to pressure students into enrolling. Such practices have continued in large part because predatory schools, such as ITT Technical Institutes and Corinthian Colleges, vigorously enforce forced arbitration clauses to prevent students from challenging these practices in court.

The gainful employment and borrower defense regulations are the product of extensive expert input and analysis, negotiated rulemaking, and public comment. Multiple [public interest organizations](#) are on record strongly supporting them and their implementation without delay. [Veterans and service member organizations](#) have been particularly outspoken because they, along with students of color and low-income students, have been disproportionately harmed by predatory colleges. The Department’s intent in reopening these regulations is called into question by the decision to put in charge of its regulatory review process Robert Eitel, who was until three months ago employed by a company under investigation by the Justice Department for violations of the Higher Education Act and that has told investors that these regulations could have a “material adverse effect” on the company.

Gainful Employment. The gainful employment regulation enforces the Higher Education Act’s requirement that all career education programs receiving federal student aid “prepare students for gainful employment in a recognized occupation.” This rule requires all career education programs receiving federal funding at public, non-profit and for-profit colleges to provide basic program

information to help students decide where to enroll, such as what share of students graduate on time, what share get jobs in the field, and how much graduates typically earn and how much debt they have. It requires the worst-performing career training programs—those consistently leaving their graduates with more debt than they can repay—to improve or lose eligibility for federal funding.

The regulation has already had a significant positive impact. The mere threat of sanctions under this rule prompted many colleges to eliminate their worst performing programs, to freeze tuition and implement other reforms to improve outcomes for their graduates. In part due to these reforms, nine in ten colleges with rated gainful employment programs have no failing programs, and even among for-profit colleges eight in ten have *no failing* programs. At the same time, the gainful employment rule has uncovered scores of failing programs that taxpayers are currently subsidizing—programs like the Art Institute of Fort Lauderdale’s associates degree in video production, which is still actively recruiting new students and charging \$44,010 in tuition and fees despite [abysmal outcomes](#), including a 17% on-time completion rate, a 25% job placement rate, median graduate earnings of only \$14,264, and median debt of \$29,074.

Delaying or weakening the gainful employment rule will lead to a new race to the bottom as unscrupulous schools compete to enroll as many students as possible without regard to the quality of the training, the student’s preparation, or the job prospects. Dismantling the rule would be costly as well, to the tune of \$1.3 billion over 10 years according to a July 2016 Congressional Budget Office analysis.

The 2014 gainful employment rule has been reviewed and upheld in its entirety by [two different](#) federal district courts and unanimously [affirmed](#) by the U.S. Court of Appeals for the D.C. Circuit. More recent data and studies have only strengthened the evidence to support the regulation. In response to a separate lawsuit brought by the trade association for cosmetology schools, a federal district judge recently denied the association’s request for a preliminary injunction to block the regulation. The judge deliberately limited his order to appeals brought by members of this one association so as to *avoid* “upending the entire GE regulatory scheme.” Yet the Department is now citing this extremely narrow court ruling, limited to alternate earnings appeals by certain cosmetology schools, as a pretext to do just that—to upend the entire regulation.

Borrower Defense and College Accountability. Given that the borrower defense regulation was just finalized in November 2016, there is simply no justification for revisiting it. Rather than wasting government resources on a new negotiated rulemaking process, we urge the Department to use its limited resources to immediately implement the rule, including the provisions on forced arbitration and class action waivers.

The rule helps ensure that neither defrauded students nor taxpayers are left on the hook for wrongdoing by schools. It codifies a process for providing student loan relief to defrauded borrowers, and ensures that students at schools that close suddenly know their options and that their loans are automatically discharged if they do not continue their studies within three years of the school’s closure. It also makes it much harder for schools to hide fraud and evade accountability by blocking students’ access to the courts. Most for-profit colleges continue to require students to sign mandatory arbitration clauses and class action bans to force students to sign away their rights to dispute wrongdoing in court, allowing fraud to continue undetected for years. The rule is also aimed squarely at protecting taxpayers from abrupt school closures. Had Corinthian students had access to the courts and the Department of

Education obtained a letter of credit from the company, taxpayers would not now be on the hook for the more than \$550 million in federal student loan discharges for former Corinthian students.

Finally, we urge the Department to immediately act on the tens of thousands of borrower defense claims pending under the 1995 borrower defense regulation. The Department has in its possession evidence that students were defrauded at many schools, including [Corinthian Colleges](#), [Marinello School of Beauty](#), [ATI Career Training Center](#), [Westwood College](#), [Career Education Corporation schools](#), [FastTrain College](#), [MedTech College](#) and [Globe University and Minnesota School of Business](#). We are deeply disturbed by [news reports](#) that the Department has not approved a single new borrower defense claim since January 20. Many borrowers have been waiting for more than a year for the Department to act. Forty-seven Republican and Democratic attorneys general recently contacted more than 100,000 former Corinthian students eligible for discharges by attestation, which has likely generated a significant increase in claims. The Department has both a moral and a legal obligation to promptly review applications and grant relief to defrauded students, and federal contractors should not be [aggressively collecting](#) on loans that the Department knows are eligible for discharge.

The existence of a new rulemaking process provides no basis for the Department to refuse to implement and enforce the current regulations in the interim. If the Department wishes to alter current regulations, it must do so through negotiated rulemaking, not unilaterally outside the processes established by Congress. Thank you for consideration of these comments.

Sincerely,

AFL-CIO
Allied Progress
American Association of University Professors (AAUP)
American Association of University Women (AAUW)
American Federation of Teachers
Americans for Financial Reform
Center for Law and Social Policy (CLASP)
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumers for Auto Reliability and Safety
Consumers Union
Democrats for Education Reform
Demos
East Bay Community Law Center
Education Reform Now
The Education Trust
Faculty Forward Network
Generation Progress
The Greenlining Institute
Higher Ed Not Debt
Homeowners Against Deficient Dwellings
Housing and Economic Rights Advocates

Institute for America's Future
The Institute for College Access & Success (TICAS)
League of United Latin American Citizens (LULAC)
Maryland Consumer Rights Coalition
Mobilization for Justice, Inc.
NAACP
National Association for College Admission Counseling
National Association of Consumer Advocates (NACA)
National Association of Consumer Bankruptcy Attorneys
National Black Justice Coalition
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Employment Lawyers Association
New Jersey Citizen Action
One Wisconsin Now
Project on Predatory Student Lending of the Legal Services Center of Harvard Law School
Public Citizen
Public Counsel
Public Good Law Center
Public Higher Education Network of Massachusetts (PHENOM)
Public Justice
Public Law Center
Service Employees International Union (SEIU)
Student Debt Crisis
Student Veterans of America
U.S. PIRG
UnidosUS
Veterans Education Success
Veterans for Common Sense
Veterans' Student Loan Relief Fund
Woodstock Institute
Young Invincibles