June 8, 2017

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

Dear Secretary DeVos:

We write to inquire about reports that the U.S. Department of Education (“Department”) is considering delaying the implementation of the borrower defense regulations that protect students who were cheated, defrauded, and left drowning in debt by predatory colleges. Delaying this important pathway to debt relief would harm thousands of students, many with crushing levels of student loan debt and few meaningful job prospects, and would violate the Administrative Procedures Act and the Higher Education Act. We urge you to stand up for students and taxpayers by fully implementing the borrower defense rule without delay.

The final borrower defense rule is scheduled to go into effect in just a few short weeks on July 1, 2017. However, in a June 6 hearing in the United States District Court for the District of Columbia, a U.S. Department of Justice attorney representing the U.S. Department of Education indicated that your agency is “studying its options with regard to the effective date” for this important debt relief and taxpayer protection rule.1 Additionally, according to media reports on June 5, “the Administration has been eyeing further delays ... as it considers opening new negotiated-rulemaking sessions to rewrite” the protections.2

Given these developments, it appears that aggressive lobbying by the for-profit college industry—the very institutions that created the need for this rule by drawing down billions in taxpayer dollars and defrauding tens of thousands of their own students—may be successfully influencing policies that harm students and borrowers. Appointees with deep ties to this sector, including Mr. Robert Eitel, are reportedly advocating for this dangerous and short-sighted agenda from within the Administration itself, raising serious ethical questions. The previous employers of these appointees have a direct interest in delaying the implementation of this rule, particularly the provisions that hold institutions financially accountable to protect taxpayers and the U.S. Treasury.

Congress created the authority to discharge the debts of students who have been cheated because students should not be stuck with the bill when a predatory school commits fraud with federal

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1 Halperin, David. “For-Profit Colleges Sue To Block Protections For Defrauded Students and Taxpayers.” May 25, 2017, updated June 6, 2017. www.huffingtonpost.com/entry/59276417e4b0d2a92f2f4274.
student aid dollars. This authority was instrumental in addressing the collapse of both Corinthian
Colleges, Inc. and ITT Educational Services, Inc., which left tens of thousands of students
nationwide with mountains of debt for useless degrees. Subsequent negotiated rulemaking and
public comment considered and incorporated the advice and recommendations from individuals
and groups involved in or concerned with the student financial assistance programs, including
students, institutions, and many Members of Congress.

The Administrative Procedure Act (APA) and the Higher Education Act (HEA) provide for
negotiated rulemaking to ensure that the views of a variety of stakeholders are considered and
incorporated into rules promulgated to enforce the HEA. In order to ensure the Department does
not override the interests of stakeholders, the APA and HEA prohibit the Department from
unilaterally amending or delaying a final rule except through a new negotiated rulemaking or in
very narrow circumstances. For example, the Department may waive negotiated rulemaking only
in the cases where it finds "good cause" that a negotiated rulemaking session would be
"impracticable, unnecessary, or contrary to the public interest." In fact, implementing the
borrower defense rule without delay is practicable, necessary, and very clearly in the public
interest.

The borrower defense rule creates a straightforward and transparent process for defrauded
students to apply for relief to which they are entitled under federal law. The rule allows the
Secretary to approve both individual and group discharges while also providing due process to
schools. The rule also prohibits predatory schools from forcing students to sign away their legal
rights by banning forced arbitration agreements that are often slipped into the fine print of
enrollment agreements to prevent defrauded students from holding schools accountable for their
wrongdoing in court. This provision would ensure that defrauded students have the option to
seek redress in court directly from schools, rather than forcing students to seek relief through
borrower defense discharges.

The rule also allows students to make informed choices about where to enroll by arming
prospective students with valuable consumer information about poor outcomes at for-profit
schools, such as when a majority of borrowers are unable to pay back even a single dollar on
their student loans. Finally, the rule protects taxpayers and reduces the costs of discharges by
placing schools on the hook for the costs of their own fraud and establishing new financial
triggers that would require risky schools to provide funds to cover costs of discharges for fraud
or closure. These provisions would deter fraud and send a strong message to schools that they
will be held financially accountable for mistreating their students.

The borrower defense rule is supported by nearly twenty state attorneys general who work
directly with countless defrauded students in their states and have witnessed the abuses in this
sector for years. The rule is supported by advocates for students, consumers, communities of
color, faculty and staff. Groups representing military veterans and servicemembers—who have
suffered some of the most egregious forms of fraud at the hands of predatory colleges in recent
decades—also strongly support the borrower defense rule.

3 5 U.S. Code § 553(b)(3)(B); 20 U.S. Code § 1098a(b)(2)
During your confirmation, in your written responses to questions, you said, “Fraud should never be tolerated. Period. Bad actors clearly exist... When we find them, we should act decisively to protect students and enforce existing laws.” Full implementation of the borrower defense rule is the clear way to act decisively to protect students and enforce existing laws. It is also a critical part of the Department’s responsibility to protect students and appropriately oversee taxpayer dollars. Delaying the borrower defense rule would be a monumental dereliction of the duty you have to protect students and taxpayers, and would increase the risk of repeating the recent history of students left holding the bag while executives at collapsing institutions made away with millions in profits.

As such, we request answers to the following questions regarding the implementation of the borrower defense rule:

1. Will you implement and enforce the new borrower defense regulation, including the ban on forced arbitration agreements, without delay in order to protect students and taxpayers from fraudulent conduct by schools?

2. How do you plan to use the authority within the borrower defense rule to hold schools accountable for abuses of their students or taxpayer dollars?

3. How do you plan to use the authority within the borrower defense rule to protect veterans and servicemembers from predatory institutions that seek to defraud them out of their hard-earned veterans’ benefits and load them with unsustainable debt for useless degrees?

We look forward to your prompt response to our questions. Given the forthcoming implementation date of July 1, 2017, we request your reply by no later than June 15, 2017.

Sincerely,

[Signatures]

Elizabeth Warren
United States Senator

Patty Murray
United States Senator

Sherrod Brown
United States Senator

Richard J. Durbin
United States Senator