

Good Afternoon

Thank you for the opportunity to provide this public comment on potential issues for future negotiated rulemaking.

My name is Bob Muth and I am a professor of law at the University of San Diego. I am also the Managing Attorney of USD's Veterans Legal Clinic. The Veterans Legal Clinic provides pro bono legal representation for veterans, active duty servicemembers, reservists, guardsmen and their families. Since 2012, a significant percentage of our casework has been comprised of assisting veterans who were scammed out of their Post 9/11 GI Bill benefits, almost exclusively by for-profit schools. While not every for-profit school is bad, virtually all of the veterans who have sought our assistance attended for-profit schools.

Our clients are veterans who have served their country honorably and are trying to use their GI Bill benefits to assist them in making a successful transition back to civilian life. It is unconscionable that so many for-profit schools have sought to make a quick buck off the backs of these veterans at the expense of the American taxpayer. Often our clients' stories are heartbreaking – veterans struggling with service-connected disabilities trying to obtain higher education so they can find a solid career path to support their families after their service to this country, only to find out that the school they have invested their hard-earned GI Bill benefits had deceived them.

Our clients have been lied to about nearly everything a school could lie to a prospective student about. False representation with respect to accreditation status, job placement assistance, expected starting salaries, ability to transfer credits earned at the school, the quality of the school, and the total expected cost of the program to the veteran. Often, our clients have taken out student loans on top of expending all of their GI Bill funds at these schools.

I respectfully urge you to keep these student veterans in mind as you select which constituencies are represented during the negotiated rulemaking process. The focus should be on ensuring that the rules work for the intended beneficiaries -- the students, the borrowers, the student veterans rather than for-profit school representatives.

The Department has provided an excellent list of topics for regulation in the hearing notice, but I'd urge you to prioritize the following issues:

First, the borrower defense to repayment regulation is vital to protect student borrowers from having to repay crushing debt that should not have been incurred in the first place and to deter schools from engaging in fraudulent behavior in the future. The Veterans Legal Clinic has assisted numerous veterans seeking to submit a defense to repayment claim. The changes adopted by the Department in 2019 to the borrower defense rule made it nearly impossible for students to successfully have their loans discharged. Accordingly, the 2019 rule serves the interests of bad actor schools and not student borrowers and the rule should be changed. One concern that arose even under prior versions of the rule was the difficulty students had in understanding what was required of them to submit a borrower defense claim. In creating a new rule, I urge you to consider the end-user consumer and making sure that the process is accessible and easy to understand. It is critical to streamline the process as much as possible so that claims are adjudicated expeditiously and also the rule should allow for advocates to file defense claims on behalf of similarly situated borrowers.

Second, gainful employment rules are a critical tool to ensure that programs designed and marketed as career education programs actually support students find good jobs in their chosen career field and not incur massive student debt that they will lack the means to be able to repay. Student veterans are often particularly interested in career education programs and the rule should be reinstated. A strong gainful employment rules helps to ensure career education programs are held accountable and so that students are provided the skills, training and education they need to thrive in their career path while not unduly burdened by student debt.

Arbitration:

Third, the Department should reinstate the ban on pre-dispute arbitration clauses and class action waivers. Arbitration is a form of alternative dispute resolution that seeks to resolve legal disputes outside of courts. Forced arbitration stacks the deck in favor of schools that engaged in predatory behaviors. Legal clauses requiring students to arbitrate disputes, rather than to file complaints in court, are usually slipped into lengthy enrollment agreements and the students have no idea what arbitration is, what rights the arbitration process forces them to give up, or how having their case resolved via arbitration might not be in their interest. Arbitration hides the bad acts of certain schools from the regulators, prosecutors, consumer protection advocates and the media. Similarly, class action waivers included in enrollment contracts serve the interests of the worst schools and harm students. A student who has been harmed by a for-profit school, even if that harm might result in tens of thousands of dollars in damages, will find it extremely difficult to engage an attorney to handle their individual matter. Accordingly I respectfully urge you to reinstate the ban on pre-dispute arbitration clauses and class action waivers.

90/10:

Finally, Congress acted this year to close the 90/10 loophole that heavily incentivized for-profit schools to target student veterans with predatory sales tactics in order to maximize the number of non-veteran students the school can enroll. I understand the Department can not begin rulemaking on this issue until October 1, 2021, but I urge you to do so as soon as possible after that date.

Thank you once again for the opportunity to provide this public comment today and thank you to the dedicated staff at the Department for your work on these important issues facing students.