

February 9, 2023

Dear Member of Congress,

Welcome to the 118th Congress! As 40 organizations working on behalf of students, consumers, veterans, faculty and staff, civil rights advocates, and researchers concerned about unaffordable student debts and predatory practices, we write to share our coalition’s higher education priorities. As Congress continues to consider long-overdue reauthorization of the Higher Education Act (HEA) and to evaluate other higher education proposals, we strongly urge you to support policies that better protect students — especially low-income students and students of color — and the taxpayers who invest in them. These policies include:

- Supporting the gainful employment rule for career-focused programs.¹
- Protecting the borrower defense to repayment rule set to take effect July 1, 2023.
- Protecting student veterans, including by rejecting efforts to undermine closure of the 90/10 rule loophole.
- Strengthening the ban on incentive-based compensation for student enrollment recruiters.

The federal government plays a critical role in putting higher education within reach for millions of Americans by providing grants and loans to help finance their education. Unfortunately, some colleges engage in predatory practices that can mislead or defraud students, wasting taxpayer dollars that back financial aid programs; they consistently leave students with low-value or worthless degrees and debts borrowers cannot afford to repay. Data clearly demonstrates that a disproportionate number of these institutions are privately owned and operated on a for-profit basis.²

Predatory colleges disproportionately harm veterans, low-income students, and students of color.³ Frequently, students leave these schools with high debt but with no degree or certification. Prior to the pandemic, students at for-profit colleges defaulted almost four times more often than students who attended public community colleges.⁴ According to the most recent Federal Student Aid annual report,

¹ §101(b)(1), 102(b)(1)(A)(i), and 102(c)(1)(A) of the Higher Education Act of 1965, as amended.

² U.S. Department of Education, Fact Sheet: Department of Education Announces Release of New Program-Level Gainful Employment Earnings Data, <https://bit.ly/3sqwgyH>.

³ D. Halperin, Republic Report, “Law Enforcement Investigations and Actions Regarding For-Profit Colleges,” January 27, 2023, <https://www.republicreport.org/2014/law-enforcement-for-profit-colleges/>; U.S. Senate Health, Education, Labor, Pension Committee Staff Report, “For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success,” July 2012, <https://bit.ly/3l7BIFX>; U.S. Department of Veterans Affairs, Press Release, VA intends to suspend enrollment of new GI Bill students at University of Phoenix, Career Education Corporation, Bellevue University and Temple University,” March 9, 2020, <https://bit.ly/2XCBnXl>.

⁴ J.S. Clayton, “The Looming Student Debt Crisis is Worse Than We Thought,” The Brookings Institution, January 11, 2018, <https://brook.gs/2XHRoSQ>.

“Borrowers who attended for-profit schools disproportionately submit complaints about their schools, relative to the share of Title IV aid funds disbursed for attendance at those schools. The sector accounts for 13 [percent] of annual aid volume but represents nearly three times (38 [percent]) that share of FSA’s identified complaints.”⁵

When predatory schools close, they often do so suddenly, leaving thousands of students locked out and with uncertain futures – even as owners extract a final draw of cash. Meanwhile, predatory colleges exacerbate racial inequity by disproportionately enrolling students of color. Black and Latino students attending for-profit colleges are less likely to complete programs, and they borrow an average of \$10,000 more than Black and Latino students attending public colleges.⁶

The measures outlined below should guard against the predatory and exploitative practices that lead to burdensome student loan debt, poor job prospects, and wasted tax dollars.

Support gainful employment (GE) rule. The HEA requires that all career education programs offered at public, non-profit, and for-profit colleges receiving federal student aid dollars “prepare students for gainful employment in a recognized occupation.” A rule finalized in 2014 articulated what gainful employment required: that programs provide basic information about how many students get jobs, how much they earn, and how much debt they have. The rule also established that programs continuously leaving their graduates with more debt than they could repay would be required to improve or risk losing eligibility for federal funding. The regulation worked to drive improvement. Nine in ten colleges had no failing programs in 2016. Nonetheless, in 2019 the U.S. Department of Education rescinded the rule, at an estimated cost to taxpayers of \$6 billion.⁷

Following a negotiated rulemaking process last year, the Department announced plans to propose a new GE rule in the spring of 2023, with the final rule set to take effect next year. The rule should affirm the principle that student borrowers who pursued postsecondary training for a chosen career field should have enough earning potential to cover the costs of repayment without experiencing financial hardship, and that program completers do not end up with poverty-level wages.

This GE rule will serve as a critical backstop for ensuring program accountability emerging from the Covid-era repayment pause. A strong gainful employment requirement must become permanent and be fully implemented.

⁵ Office of Federal Student Aid. (2023). FY2022 Annual Report. U.S. Department of Education, <https://studentaid.gov/sites/default/files/fy2022-fsa-annual-report.pdf>, p. 144.

⁶ The Leadership Conference Education Fund, “Gainful Employment: A Civil Rights Perspective,” October 2019, <https://bit.ly/3nDAYWk>.

⁷ U.S. Department of Education, “Education Department Releases Final Debt-to-Earnings Rates for Gainful Employment Programs,” and accompanying “Fact Sheet” January 9, 2017, <https://bit.ly/3nL4ola>; <https://www2.ed.gov/documents/press-releases/ge-fact-sheet-online.pdf>; TICAS, “Detailed Comments on the Gainful Employment Notice of Proposed Rulemaking,” pp 6- 8, September 13, 2018, <https://bit.ly/3DR5lhm>.

Protect borrower defense to repayment. The HEA includes a provision that creates a statutory requirement for “borrower defense to repayment.” Similar to consumer protections in other areas of law, the provision allows a borrower’s student loans to be discharged if the loans were taken out as a result of the school deceiving the student in the form of misrepresentation, fraud, or other illegal conduct by the institution.

Although the provision has been law for decades, it was rarely asserted, and no clear process was originally established for students to seek relief. The collapse of Corinthian Colleges and ITT Tech brought broad public attention to pervasive fraudulent misrepresentations made to students by these and other predatory colleges. This attention led to a surge of claims filed by students. In 2016, a regulation was adopted to set forth a process that helped to ensure that neither defrauded students nor taxpayers are left in debt because of wrongdoing by schools. The rule also provided automatic loan cancellation to students whose schools closed suddenly.⁸

Rather than using the process created by the 2016 rule to address the claims of the more than 140,000 student borrowers who filed claims and recover funds from colleges that engaged in misleading tactics, that rule was replaced in 2019 with a new rule making it virtually impossible for borrowers whose colleges had lied to them to succeed in having their loans canceled.⁹ Although [bipartisan majorities](#) in both the House and Senate voted to stop the 2019 borrower defense rule, it went into effect July 1, 2020. Meanwhile, thousands of student borrowers continued to fight to cancel more than a fraction of their student loans administratively and in court.

Students must have a clear and straightforward path to complete loan discharges when their school has deceived them. They must be able to automatically discharge loans when schools close suddenly, and the Department of Education must be able to recover the cost of canceled loans from colleges. The Department made important and welcome strides in 2022. Collectively, the Department’s actions are now relieving hundreds of thousands of defrauded borrowers from the burdens of their student debt balances. Following a negotiated rulemaking process and extensive public comments, the Department published a new borrower defense rule that will take effect July 1, 2023.¹⁰ This new rule must be implemented fully upon taking effect.

Support and protect the 90/10 loophole closure. The 90/10 Rule is an important and longstanding HEA provision that ensures for-profit colleges demonstrate market viability by forbidding for-profit corporations from being wholly dependent on federal funds. It is also important in preventing waste,

⁸ U.S. Department of Education, “U.S. Department of Education Announces Final Regulations to Protect Students and Taxpayers from Predatory Institutions,” October 28, 2016, <https://bit.ly/39vX87O>.

⁹ U.S. Department of Education, 2019 Borrower Defense to Repayment Rule, 34 CFR Parts 668, 682, 685, <https://bit.ly/2XHKWLG>; TICAS, “Defrauded Students Left Holding the Bag Under the Final ‘Borrower Defense’ Rule” September 3, 2019, <https://bit.ly/39vXr2s>; TICAS, “Top 10 Ways the New Borrower Defense Rule is Worse for Students,” 2019, <https://bit.ly/3qlGChE>.

¹⁰ U.S. Department of Education, “Education Department Releases Final Regulations to Expand and Improve Targeted Debt Relief Programs, October 31, 2022, <https://www.ed.gov/news/press-releases/education-department-releases-final-regulations-expand-and-improve-targeted-debt-relief-programs>.

fraud, and abuse in higher education. However, for years, education funds from the U.S. Department of Veterans Affairs (including the GI Bill) and the U.S. Department of Defense (including Tuition Assistance) were inadvertently left out of the statute, and they were not required to be counted as federal funds. This loophole had the unfortunate consequence of incentivizing for-profit schools to target veterans, service members, and their families with aggressive and deceptive recruiting tactics to gain access to their GI Bill and military tuition aid.

That is why, following a decade of advocacy by veteran serving organizations and other concerned groups, the 117th Congress passed a bipartisan measure to close the 90/10 loophole. Closing this loophole should end an era in which predatory institutions viewed our nation’s veterans as little more than dollar signs in uniform.¹¹

To implement the law’s requirement to close the 90/10 loophole, last year the Department of Education facilitated a negotiated rulemaking process that included representatives from veteran serving organizations and representatives from across higher education institutional sectors — including the for-profit sector. Industry representatives joined all other negotiators in agreeing to the tenets of the regulations, and the Department will now implement their consensus agreement.¹²

The resulting guardrails take effect this year and include a phased process of implementation to give affected institutions time to adjust their practices and ensure compliance with new financial requirements. Such adjustments may include the development of new partnerships with employers. We ask Members of Congress to support and protect the rule and, as a result, protections for student veterans.

Strengthen the enrollment incentive-based compensation ban. The Higher Education Act’s ban on incentive compensation (commissioned sales) was enacted with strong bipartisan support in 1992 to reduce high-pressure, deceptive sales tactics in college admissions. Congressional intent was that colleges should not reward individuals or third parties for enrolling students by paying commissions or bonuses based on the number of students enrolled – which could incentivize recruiters to deceive prospective students. Such financial arrangements put the interests of college employees and their associates before the interests of students.

In 2015, the Department of Education’s Inspector General called for greater oversight and enforcement of the ban on incentive compensation, in order to provide greater protection for students and

¹¹ A. Wong, “‘Dollar Signs in Uniform’: Why For-Profit Colleges Target Veterans,” *The Atlantic*, June 24, 2015, <https://www.theatlantic.com/education/archive/2015/06/for-profit-college-veterans-loophole/396731/>.

¹² U.S. Department of Education, “Education Department Unveils Final Rules to Protect Veterans and Service Members, Improve College Access for Incarcerated Individuals and Improve Oversight When Colleges Change Owners,” October 27, 2022, <https://www.ed.gov/news/press-releases/education-department-unveils-final-rules-protect-veterans-and-service-members-improve-college-access-incarcerated-individuals-and-improve-oversight-when-colleges-change-owners>.

taxpayers.¹³ Instead, there has been little enforcement of the ban, while colleges have increasingly relied on the Department’s 2011 guidance document to contract with and compensate third-party online program managers (OPMs) based on the number of students enrolled.¹⁴ The incentive compensation ban must be better enforced to prevent abusive recruiting and sales tactics by colleges.

Additional Issues. Finally, we continue to support measures ensuring:

- Institutional resources are directed toward students through instruction and support services, rather than spent on marketing, advertising, and profit.
- Higher education in prison programs (current and new) properly follow guidance for implementing Pell grant eligibility for incarcerated students. This compliance should ensure predatory practices outlined above are not present or exacerbated in these programs, which disproportionately enroll students of color and from low-income backgrounds.
- Colleges – particularly those converting from for-profit to non-profit or public status – have robust governance structures in place to prevent personal enrichment of institutional leaders and enable independent decision-making.

Thank you for your service in this Congress, as well as for your support of strong higher education policies that minimize waste, fraud, and abuse in higher education. We are all available to serve as resources, and we look forward to working together with this Congress to make certain that common-sense laws and regulations are strengthened and enforced, and to ensure the efficient use of taxpayer dollars by colleges nationwide.

Sincerely,

AAUP

AFL-CIO

American Association of University Women

American Federation of State, County and Municipal Employees (AFSCME)

American Federation of Teachers

Americans for Financial Reform

Carolyn Fast, Senior Fellow, The Century Foundation

Center for American Progress

Center for Law and Social Policy (CLASP)

Center for Responsible Lending

Children's Advocacy Institute

Clearinghouse on Women's Issues

¹³ U.S. Department of Education, Office of Inspector General, “Final Audit Report,” March 24, 2015, <https://bit.ly/3st5whd>.

¹⁴ U.S. Department of Education, Office of Federal Student Aid, Implementation of Program Integrity Rules, March 17, 2011, <https://bit.ly/3YhgNjW>; See also The Century Foundation, “Dear Colleges: Take Control of Your Online Courses,” September 12, 2019, <https://bit.ly/35GXXKE>.

Consumer Action
David Halperin, Attorney
Economic Action Maryland
Goddard Riverside
Housing and Economic Rights Advocates
Hildreth Institute
Maine Center for Economic Policy
National Association for College Admission Counseling
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Consumers League
National Education Association
New America Higher Education Program
New York State Association for College Admission Counseling
Partnership for College Completion
Project on Predatory Student Lending
Public Citizen
Service Employees International Union (SEIU)
Student Defense
Student Veterans of America
The Education Trust
The Institute for College Access & Success
UnidosUS
Veterans Education Success
Veterans for Common Sense
VoteVets
Western New York Law Center
Young Invincibles