



August 30, 2018

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

RE: Docket ID ED-2018–OPE–0027

Dear Secretary DeVos:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 21 undersigned organizations, we write to share our strong concerns with the Department's proposed rule for borrower defenses against repayment published in the Federal Register on July 31, 2018. The Department's proposed rule is woefully inadequate. It denies meaningful relief to thousands of defrauded students; refuses to hold institutions accountable for their abusive conduct; and fails to deter such misconduct from occurring in the first place. Instead, the Department abandons the critical protections included in the 2016 borrower defense rule that bolstered relief and deterrence. These actions are inconsistent with the Department of Education's legal and moral obligation to advance quality higher education and serve the interests of all students, including students of color. The Department should immediately implement the final rule published in the Federal Register on November 1, 2016.

As the Department has asserted on its own website, the role of the agency is to “strengthen the capacity of colleges and universities to promote reform, innovation and improvement in postsecondary education, promote and expand access to postsecondary education and increase college completion rates for America's students, and broaden global competencies that drive the economic success and competitiveness of our Nation.”¹ **Contrary to that mandate, this proposed rule would limit opportunity for students, especially students of color, and facilitate their exploitation by low-quality, high-cost institutions.**

While we are concerned about the impact of this proposed rule on all borrowers, we are especially alarmed about its impact on Black and Latino borrowers.² Such students are overrepresented in the high cost, low-quality programs that have the worst track records for abuse.³ Such students are also the most at risk for high rates of debt and default due to the severe racial inequities that characterize higher education and our social systems more broadly. By failing to provide adequate protection and relief for such students, the Department's rule risks exacerbating the racial disparities that already exist in wealth and economic mobility. We urge the Secretary to preserve the critical components of the 2016 rule that aimed to curb for-profits' abusive conduct by providing meaningful redress and

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deterrence to prevent the longlasting harms faced by all defrauded borrowers, especially borrowers of color.

Any rule must be aimed at curbing institutions' abusive conduct by providing meaningful redress to defrauded students and seek to deter students from attending fraudulent schools in the first place. The proposed rule falls far short of these goals. Instead, it narrows the range of recognized illegal acts by colleges, creates high evidentiary burdens, and imposes substantial procedural obstacles. This approach fails to alleviate the harm suffered by thousands of students, particularly students of color.

We strongly urge the Department to implement the 2016 final rule to ensure the following protections:

1. A rule that works to lessen racial inequities in economic mobility, *not* exacerbate such disparities.

The Department's proposed rule fails to provide borrowers with adequate protection or relief. Such deficiencies adversely impact all students, but the harm is disproportionately felt by Black and Latino borrowers.⁴

2. A rule that allows harmed students to apply for relief prior to default.

The Department's primary proposal contemplates requiring borrowers to default prior to becoming eligible for relief.⁵ Such a proposal would cruelly force students to face the devastating consequences that accompany default: damaging credit, increasing costs, and jeopardizing access to basic necessities.

3. A standard for relief that is fair and accessible for students who were duped by institutions' false promises, faulty information, and predatory practices.

The Department's proposed standard for relief—that a student show an institution made a misrepresentation, “with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth” —would prevent the majority of defrauded students from obtaining relief by severely restricting the circumstances for redress and setting evidentiary burdens that are virtually impossible to satisfy. Such a standard would be nearly impossible to meet given the informational asymmetry between students and institutions.

4. A rule that eases procedural hurdles and prohibits mandatory arbitration clauses which disparately impairs students of color from accessing courts and ultimately obtaining relief.

The procedural protections included in the 2016 rule, merely some of the many protections promulgated in the rule, were meant to help identify and preserve valid claims of defrauded borrowers.⁶ Alarminglly, the Department's new proposed rule has eliminated all of these safeguards.

5. A rule that ensures students whose schools have closed receive a path toward relief.

Current law allows students to discharge federal student loans when they cannot complete their programs of study due to school closure. The current proposal would substantially restrict such relief by denying it to students whose closed institutions offered an opportunity to complete their program at an alternative location or through an orderly wind-down process (often called a “teach-out”).⁷ Students should be given the option, but not be required, to accept a teach-out.

6. Mechanisms for deterrence and holding institutions accountable when misconduct occurs.

Students and taxpayers are best served by a regulatory framework that identifies early warning signs of misconduct. Early identification of problems can deter students from enrolling in the first place and trigger heightened oversight. For example, establishing specific “triggering” events that require institutions to provide disclosures to students and provide financial collateral to insure against potential claims, as the 2016 rule included, would offer critical information to students and help to protect taxpayers from financial risks.

In conclusion, the Department’s failure to implement the 2016 rule’s critical safeguards for students and taxpayers disadvantages all students who have incurred debt at predatory institutions. Such harm is amplified for students of color who are overrepresented at such institutions and experience higher levels of economic distress. We call on the Department to hold institutions accountable and implement the robust borrower defense rule that allows harmed students to absolve themselves of significant amounts of fraudulently incurred debt.

If you have any questions or need additional information, please contact Liz King, director of education policy at The Leadership Conference, at king@civilrights.org or (202) 466-0087 or Genevieve Bonadies Torres, Counsel at The Lawyers’ Committee For Civil Rights Under Law at gbonadies@lawyerscommittee.org or (202) 662-8326.

Sincerely,

The Leadership Conference on Civil and Human Rights
American Association of University Women (AAUW)
American Civil Liberties Union
American Federation of Teachers
Asian Pacific American Labor Alliance
Augustus F. Hawkins Foundation
Center for Responsible Lending
CLASP
Clearinghouse on Women's Issues
The Education Trust
Lawyers’ Committee for Civil Rights Under Law
NAACP Legal Defense & Educational Fund, Inc.
National Alliance for Partnerships in Equity (NAPE)
National Consumer Law Center (on behalf of its low-income clients)
The National Council of Asian Pacific Americans (NCAPA)
National Council of Jewish Women
National Disability Rights Network
National Indian Education Association
National Urban League



TICAS
UnidosUS
Young Invincibles

¹ See: <https://www2.ed.gov/about/offices/list/ope/index.html>

² This letter is focused on the impact on Black and Latino borrowers specifically, rather than all borrowers of color, because of the significant data limitations with regard to Asian American and Pacific Islander (AAPI) students and Native American students. Many AAPI and Native American students face the same or similar barriers to student loan repayment as do Black and Latino borrowers. It is critical that additional data about students' experiences affording college are made available with sufficient disaggregation (e.g. national origin disaggregation for AAPI students) so as to remedy and prevent disparate negative effects of policies on these borrowers. A report about Asian American and Pacific Islander students and financial barriers to college access is available here:

http://www.apiasf.org/research/ARC_Report_2016.pdf.

³ See, for example, *Gainful Employment: A Civil Rights Perspective* (2014) available at

<http://civilrightsdocs.info/pdf/reports/Gainful-Employment-WhitePaper.pdf>.

⁴ See *supra* note 1 (This letter is focused on the impact on Black and Latino borrowers because of the significant data limitations with regard to Asian American and Pacific Islander (AAPI) students and Native American students).

⁵ 83 FR at 37243.

⁶ 81 FR 76080, 76083-86.

⁷ 83 FR at 37245.