



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,

The National Consumers League strongly opposes the revision or dismantling of the gainful employment regulations finalized in October 2014 and the borrower defense to repayment and college accountability regulations finalized in November 2016. For years, predatory schools in the for-profit college industry have defrauded students and families while profiting from federal aid. 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. These schools have offered low-quality, high-priced programs, shortchanged students in their support service offerings, and often misrepresented their abysmal graduation and job-placement rates. They then employ malicious mandatory arbitration and class action waiver agreements to take away defrauded students' legal recourses. These schools have frequently targeted low-income students, racial and ethnic minorities, and veterans who are often the first in their family to go to college. In reading this letter, we hope the Department of Education reconsiders its position on this critical matter.

**Gainful Employment**

Higher education in the United States is not cheap, yet it is one of the most effective ways to ensure future financial security. Studies have shown that college graduates with a bachelor's degree typically earn 66% more than those with only a high school diploma; they are also far less likely to face unemployment<sup>1</sup>. Thus, it is no surprise that more students than ever are relying on student loans to get access to higher education. An estimated 44.2 million Americans are

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<sup>1</sup><https://www.ed.gov/news/press-releases/fact-sheet-focusing-higher-education-student-success>

burdened with student loan debt, amounting to \$1.44 trillion in total<sup>2</sup>. With such a huge responsibility to both students and taxpayers, it is crucial that the Department fulfill its obligation to borrowers as they take out student loans.

In 2014, the Obama administration introduced the Gainful Employment Information regulation. It requires programs from for-profit, private non-profit and public institutions to provide prospective students key information on program costs, graduation rate, earning prospects and rate of debt to receive federal student aid. This regulation was designed to empower students to make informed decisions on their education and protect them against deceptive practices of predatory institutions. These institutions are notorious for forcing students to pay more up front, irresponsibly encouraging students to take out loans, giving out essentially worthless degrees, giving out misleading and false claims on employment prospect and future salary, and resulting in a disproportionately high rate of student loan default<sup>3</sup>.

So far, the regulation has made a significant, positive impact. The possibility of losing federal aid, which accounts for nearly 90% of the revenue at for-profit institutions<sup>4</sup>, encouraged many colleges to eliminate or improve their worst performing programs, freeze tuition and make other reforms to better the outcomes of their graduates. It also exposed and shut down 300 fraudulent and extraordinarily ineffective programs that are a complete waste of taxpayer money and student time<sup>5</sup>.

### **Preserve Common Sense on Measures on Borrower Forgiveness**

To roll back the borrower defense to repayment and college accountability regulations is to roll back the essential progress made by the Department of Education in protecting student borrowers from the scams of predatory for-profit schools and colleges. For years, predatory schools in the for-profit college industry have enforced deceitful mandatory arbitration and class-action waiver agreements - often buried in the fine print - to trap unsuspecting borrowers in unfair arrangements that all but eliminate their ability to seek damages as a result of the school's malpractice.

In response, the Department of Education introduced a common-sense proposal to stop this behavior. The rule prevents institutions participating in the Federal Direct Loan program from forcing defrauded students to resolve disputes in private arbitration, or prevent them from joining together with others in a class action. Without this measure, students have no legitimate means of recourse as these predatory agreements force cheated students to resolve disputes in private, secretive, rigged systems controlled by the at-fault institution. The student has no right to

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<sup>2</sup> <https://studentloanhero.com/student-loan-debt-statistics/>

<sup>3</sup> <https://www.usnews.com/education/best-colleges/paying-for-college/articles/2013/08/22/student-borrowing-higher-at-for-profit-than-public-colleges>

<sup>4</sup> <https://www.ed.gov/news/press-releases/fact-sheet-obama-administration-increases-accountability-low-performing-profit-institutions>

<sup>5</sup> <https://www.nytimes.com/2017/06/30/upshot/new-evidence-shows-devos-is-discarding-college-policies-that-are-effective.html>

appeal a decision. And because students cannot join with others in a class action, there is no way their claim can properly hold the school accountable or stop the illegal or predatory behavior.

The Department's rule is also aimed squarely at protecting taxpayers from abrupt school closures. Had students at the now defunct Corinthian Colleges 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.

In sum, reversing the passage of these common-sense measures that protect student borrowers from the predatory practices of for-profit schools and colleges makes absolutely no sense. The previous negotiated rulemaking processes were thorough, and gave full opportunity for all perspectives to be heard, including the perspective of students harmed by the practices of said schools, as well as expert advocates. The Department should abandon its plans to initiate a new negotiated rulemaking and instead focus its limited resources on implementing the rule immediately. Thank you for your consideration.

Sincerely,

Sally Greenberg  
Executive Director  
National Consumers League

Peter Blum and Trang Nguyen  
National Advocates  
National Consumers League