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July 28, 2016

The Honorable John King, Jr.  
Secretary  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

Attn: Jean-Didier Gaina Re: Docket ED-2015-OPE-0103

Dear Secretary King:

On behalf of Clark Atlanta University, I am writing to comment on the U.S. Department of Education's Notice of Proposed Rulemaking (NPRM) published on June 16, 2016 in the *Federal Register* regarding Borrower Defense to Repayment. I support the Department's efforts to crack down on predatory institutions and to provide remedies for students who have been misled or defrauded by their institutions.

Nonetheless, I urge you in the strongest terms to reconsider these proposals, given their sweeping scope and potentially damaging financial impact on historically black colleges and universities (HBCUs), including Clark Atlanta University. In particular, I strongly urge you to reconsider three aspects of the proposed regulation: the definition of "misrepresentation" that could open the floodgates to frivolous debt relief claims; new, automatic mandates that institutions secure letters of credit under broad criteria that would financially constrain already under-resourced HBCUs by mandating that they put substantial sums into escrow; and new disclosure requirements that could result in unwarranted negative reputational and financial consequences.

I believe that HBCUs are not the primary target of these proposed regulations and neither should they be. HBCUs have not been the focus of federal and state investigations; have not had false claims lawsuits filed against them, and have not defrauded students. Indeed, HBCUs have for over 100 years delivered quality postsecondary educational opportunities to students who otherwise would not have had an opportunity to earn college degrees. HBCU graduates have strong levels of satisfaction, as confirmed a 2015 *Gallup-USA Funds Minority College Graduates Report*, which found that black HBCU graduates are significantly more likely than black non-HBCU graduates to strongly agree that their university prepared them well for life outside of college (55 percent vs. 29 percent). In short, my institution and other HBCUs offer great value to

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students and taxpayers, and are producing the college graduates who are most underrepresented in American higher education.

With regard to the draft regulation's definition of "misrepresentation," I am deeply concerned that this overly broad definition could thrust Clark Atlanta University and other HBCUs into financially precarious circumstances. The proposed definition would include erroneous statements made inadvertently and innocently and, thus, would unnecessarily expose my institution to frivolous and unfounded claims for loan forgiveness generating potentially significant financial liabilities. This issue is vitally important, because it is the basis for both alleged borrower claims for loan forgiveness as well as potential administrative action by the Secretary – including fines or termination from participation in Title IV programs under the Higher Education Act. I strongly urge the Department to specifically state that any statement or other action that might fall under the scope of the definition of misrepresentation be a *willful* act, which would exclude mistakes that were without intent to mislead.

Further, the cumulative impact of the Department's financial responsibility proposals could cause a cascading negative financial impact on HBCUs and other under-resourced but viable institutions that provide quality educational opportunities. The draft regulations propose that a college or university be mandated to obtain one or more costly letters of credit – each of which must be at least 10 percent of its Title IV funds or equivalent cash deposit – under twelve new automatic conditions, such as for certain pending lawsuits based on *claims of any kind* that could lead to a significant financial judgment, certain accreditation actions, high cohort default rates, and *virtually any other criteria* that the Secretary might impose. Secured letters of credit, which require institutions to put up collateral, may not be easily obtained and may generate other financial constraints for an institution. Put more bluntly, these requirements could cause the closure of some HBCUs that are striving to provide quality educational opportunities to students but are financially fragile, in the event that an institution is unable to obtain a mandated letter of credit.

I believe that the Department would not intentionally undermine the financial and academic stability that Clark Atlanta University and many other small private institutions are working so hard to achieve for their schools and students, but that could be the effect of the draft proposals. The proposed disclosure requirements concerning letters of credit to prospective and enrolled students are unnecessarily broad and not targeted to those institutions engaged in exploitive practices. Indeed, the collective impact of the proposed letter of credit and associated disclosure requirements could result in new questions being raised about the financial health of my institution not only by students, but also by other stakeholders such as alumni, donors, foundations, financial institutions and other community partners – not to mention the larger public and the press. The resulting reputational damage potentially has devastating ramifications for any HBCU that might be subject to these requirements.

**HBCUs are not the cause of the problem the Department seeks to solve, and should not be subjected to inappropriate and expensive sanctions. Given the potential consequential impact of the NPRM on these institutions, I urge that the provisions concerning borrower defense claims be revised to address the concerns raised and that the financial responsibility**

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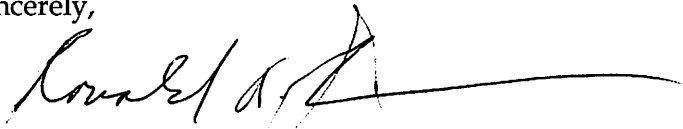
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**provisions be eliminated altogether. I therefore request that the Department revise the NPRM and provide another opportunity for a 30-day public comment period based on the revised NPRM before a final regulation is promulgated.**

I would be pleased to provide any additional information that would be helpful during this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald A. Johnson", followed by a long horizontal line extending to the right.

Ronald A. Johnson, Ph.D.  
President  
Clark Atlanta University