A Union of Professionals

American Federation
of Teachers, AFL-CIO

AFT Teachers
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Jean-Didier Gaina
U.S. Department of Education
400 Maryland Ave., SW
Room 6W232B
Washington, DC 20202

Re: Docket ID ED-2015-OPE-0103
Submitted electronically

On behalf of the 1.6 million members of the American Federation of Teachers, including more than 200,000 higher education faculty and other professional staff, I write to share our views regarding the proposed rule for borrower defenses against federal student loan repayment. We firmly believe that an easily accessible, robust and transparent defense-to-repayment process is necessary to be fair to students and to save billions in taxpayer money in the long term by ensuring stronger accountability for federal funding.

We cannot be a nation that tells students that college is critically important to their future success, and then permits bad actors to cajole them into incurring crushing debt for a valueless degree or no degree at all. A college that is eligible for federal financial aid has effectively been given the Department of Education's stamp of approval, and students are making enormous investments in higher education based on this implicit approval and their desire to better their own lives. But these students—and public confidence in higher education generally—suffer when they are found to have made that investment under fraudulent or misleading circumstances. Students will never be able to get back the time they spent in poor-quality educational programs or recover the opportunity costs lost. And without a statutory change, they will not regain their Pell Grant eligibility. But with a new borrower defense-to-repayment process, the Department of Education can at least allow them to access their statutory right to loan cancellation and to restore their access to federal student loans. Students deserve a fair, simple and transparent process that presumes full debt relief and is adjudicated by qualified and independent professionals.

Corinthian Colleges was not the first, nor will it be the last, school to engage in systemic, pervasive fraud and abuse. Since the collapse of Corinthian, the AFT's goal has remained the same: The borrower defense process *must* provide for broad relief for defrauded students through a simple, easily accessible process. Key to this goal is that in cases where fraud is pervasive—as in the case of Corinthian—students should not have to make the case for loan forgiveness on an individual basis. Instead, the department should facilitate loan forgiveness for these students. The draft regulation is an important landmark toward this goal, but we would like to see more progress before the regulation is finalized.

Automatic Group Discharge

We applaud the recognition that automatic, group discharge is not only allowable but appropriate in many instances. At many points, the draft regulation says that the secretary "may" take an action, such as grouping claims with common facts. We urge the department to consider replacing "may" with "shall" in many of these instances to provide more consistent enforcement of the rule. This rule should not give the impression that grouping common facts is optional based on political or fiscal concerns. Additionally, to help guard against political reluctance harming students' right to loan discharge, we urge the department to allow state attorneys general to petition the department for automatic loan discharge on behalf of groups of borrowers. Where there is sufficient evidence that groups of borrowers have been victims of fraud or misrepresentation, the department should automatically discharge the loans. Students who were harmed by their college should not be forced to jump through additional, unnecessary hoops to individually attest that the information the department has on record is correct.

The establishment of any kind of group discharge process is a major step forward for students and should not be eroded with weak phrasing or a timid vision.

Defining Acts and Omissions

The Higher Education Act of 1965, as amended, authorizes the secretary to define through regulation which acts or omissions by an institution of higher education allow a borrower to assert a defense to repayment. The expanded definition of "misrepresentation" to include omissions and pressure tactics is an important change that should improve the information students receive about their education. The plain language warnings about repayment rates are another welcome change, as is the indication that the department will conduct consumer testing to make these warnings as effective as possible. Limiting these warnings to proprietary institutions is sensible given their structure and the unique risk they pose to students and taxpayers.

However, any federal standard for acts and omissions should be *in addition to*, not instead of, the current standard of an "act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law." A

federal standard as a floor—not a ceiling—for protection is successfully used in various aspects of federal law and regulations, such as in environmental law and consumer protection laws. This is a model that should be replicated in the borrower-defense-to-repayment regulation, especially as the department is unlikely to realize any process streamlining from use of a single standard: Since the current state law standard applies to any loans disbursed prior to July 1, 2017, the department will have to create a process that uses the current state standards to evaluate the thousands of outstanding borrower-defense claims that have already been filed. Since a protocol for considering state-standard borrower-defense claims will be developed, and since state attorneys general are likely to continue to investigate allegations of misrepresentation that violate state laws, limiting student relief by only considering a federal standard will only serve to create additional burden on students and states. Unduly limiting student relief in this way is antithetical to the goals of being fair to students and holding unscrupulous colleges accountable, and should be rejected.

Limiting Relief

The most disappointing feature of the draft regulation is the confusing process to determine borrower relief. Creating such a difficult-to-navigate process that attempts to determine the value of higher education falls far short of the justice that misled students deserve—and is an unnecessary use of department resources that will delay relief for borrowers. Borrower-defense regulations must presume full debt relief for students with a process that is straightforward. After being defrauded by their school, student borrowers should not face an extended process that attempts to determine the value or their education. A presumption of full relief would also create a clear disincentive for institutions to engage in fraud because the secretary may seek recovery of the funds. If the misrepresentation at issue is truly trivial, such as textbook costs—which would be highly unlikely to meet the substantial misrepresentation standard needed for borrower defense to repayment—the burden should be on the department to make the case for partial relief.

Imposing a statute of limitations to bring claims of misrepresentation is entirely inappropriate in this context. A direct loan is a unique financial product, and higher education is not a product at all. Comparisons to other breach-of-contract limitations have no bearing in a context where the government has extraordinary powers to collect, including garnishing wages and Social Security payments. This statute of limitations must be removed.

The improved financial responsibility proposals in the notice of proposed rulemaking will help to ensure that the department can recoup the cost of discharged loans from the institutions that engaged in fraud and abuse, and we are pleased to see these provisions included. However, considerations about relief to students and recovering the cost of the loans should be two discreet processes. Defrauded borrowers should not be punished for

the department's unwillingness or inability to recover funds from unscrupulous institutions. Over the next 10 years, the federal government is projected to make tens of billions of dollars *in profit* from student loans. Should the department be unable to recover the cost of the loans, it is important to remember that the loan program is much better equipped to absorb the cost of these loans than individual student borrowers are. Again, direct loans represent only a portion of the cost of attending college.
We are further concerned that nothing in the notice of proposed rulemaking specifies the qualifications or independence of department officials adjudicating claims, allowing for potential conflicts of interest that will serve this process poorly. This will be especially true if outside actors (like legal aid organizations and state attorneys general) are not allowed to bring group claims, and/or if the process for granting relief for students and the process for recovering costs from institutions are not adequately separated. We ask that the department consider the practices and principles outlined by professor Adam Zimmerman of Loyola Law School regarding agency class-action settlement.

Dispute Resolution
The ban on mandatory arbitration is one of the most significant changes in this regulation and has rightly been celebrated by students and consumer advocates as an important step forward in protecting students and taxpayers. Mandatory arbitration clauses have no place in education. The ban of class-action waivers was also appropriate and appreciated. These practices, which have been exclusively confined to for-profit colleges and to nonprofit colleges that until recently were for-profit institutions, unfairly restrict the rights of citizens to make their case in open court.

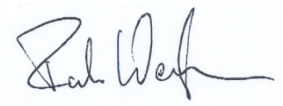
In response to the discussion at negotiated rulemaking, some for-profit colleges dropped these requirements from their enrollment agreements, which is encouraging. But the ban on these practices should remain in the regulation, and these provisions should be strengthened to close any loopholes in the proposal, such as banning mandatory arbitration agreements altogether, not just at the time of enrollment. Allowing students to pursue claims of fraud and misconduct in open court will make it easier for victims of fraud to get a fair hearing. It will also give federal and state regulators access to information that can be used to identify troubling trends earlier and stop abusive practices before they become too widespread. These positive results have the potential to save students and taxpayers invaluable time and money, and should be made as strong as possible to fulfill this promise.

Conclusion
The crisis that followed the collapse of Corinthian Colleges should never be allowed to reoccur. Tens of thousands of students were left with a worthless education and little information about the status of their student debt. But the department has the ability to help set this right. We urge you to build off of the promising start outlined in the proposed

rule and create a borrower defense process that provides for broad relief for defrauded students through a simple, easily accessible process that will protect both students and taxpayers.

Thank you for considering our views.

Sincerely,



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