

July 12, 2017

Wendy Macias
U.S. Department of Education
1990 K St. NW, Room 8013
Washington, DC 20006

RE: Negotiated Rulemaking Committee; Public Hearings [Docket ID: ED-2017-OPE-0076]

Dear Ms. Macias:

Consumers Union, the policy and mobilization arm of Consumer Reports,¹ appreciates the opportunity to testify in response to the Department's plans to convene a negotiated rulemaking committee that will revisit the rules for asserting a defense to repayment of federal education loans, as well as gainful employment standards for career education programs.

We are very troubled by the Department's decision to reopen these rules, given that they were just recently finalized after painstaking negotiation already and they seek to address well-documented problems with schools receiving federal financial aid dollars that have put students into debt for bad programs.

These two rules work together, informed by years of public evidence and diverse stakeholder engagement, to ensure that students and taxpayers do not bear the financial burden of subsidizing failing higher education programs. They should be vigorously enforced – and even strengthened – to implement the goals of the Higher Education Act. We strongly urge the Department to preserve key protections for students and take steps forward, not back, to prevent fraud and abuse of the federal financial aid system.

Gainful Employment

The gainful employment rules implements the Higher Education Act's important requirement that career education programs "prepare students for gainful employment in a recognized occupation." It measures how graduates of these programs are doing after they leave school by collecting data on how much they earn relative to their debts, and warns schools to improve outcomes or risk losing Title IV eligibility. It also sets forth disclosures so that students can make informed choices about where to enroll.

The gainful employment rule has been extensively negotiated – and litigated. Two federal court jurisdictions upheld its validity in response to litigation challenges brought in

¹ Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the areas of telecommunications, health care, food and product safety, energy, and financial services, among others. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

2015,² and the rule has been in effect for less than one year. Since going into effect, the gainful employment rule has helped identify failing programs and led schools to make positive changes that improve outcomes for students.

Borrower Defense

The borrower defense rule, finalized just last November, was also carefully crafted through negotiated rulemaking in response to the flagrant fraud and abuse that failed schools like Corinthian³ and ITT Tech⁴ perpetrated upon thousands of students, leaving them stuck in debt without a meaningful education. The borrower defense rule sets out a path to relief for students who have been defrauded or misled so that they can have their debts canceled and move on with their lives. Many affected students are only just learning about the new rule and trying to navigate the process now. It would be confusing, heartbreaking and destructive to take this option away for obtaining relief after suffering fraud and broken promises.

The Department must base its rulemaking decisions on evidence – and the evidence of widespread abuses at for-profit colleges are common knowledge. An extensive two-year investigation by the U.S. Senate⁵ found that some for-profit colleges use aggressive marketing practices to specifically target people from underserved populations for recruitment. Many for-profit schools have come under fire in recent years with federal agencies⁶ and state attorneys general⁷ for falsifying job placement numbers to hide poor outcomes from potential students. Meanwhile, students attending for-profit colleges are much more likely to drop out of their programs, and ultimately default on their loans.⁸

² Ass'n of Private Sector Colleges and Univs. v. Duncan, No. 14 Civ. 1870 (D.D.C. June 23, 2015), *affirmed*, No. 15 Civ. 5190 (D.C. Cir. Mar. 8, 2016); Ass'n of Proprietary Colleges. Inc. v. Duncan, No. 14 Civ. 8838 (S.D.N.Y. May 27, 2015).

³ See Danielle Douglas-Gabriel, *Embattled For-Profit Corinthian Colleges Closes its Doors*, WASH. POST, Apr. 26, 2015, available at https://www.washingtonpost.com/news/business/wp/2015/04/26/embattled-for-profit-corinthian-colleges-closes-its-doors/?utm_term=.189d8a523bb9.

⁴ See Lauren Camera, *ITT Tech Closes its Doors*, U.S. NEWS & WORLD REPORT, Sept. 6, 2016, available at <https://www.usnews.com/news/articles/2016-09-06/itt-tech-closes-its-doors>.

⁵ S. COMM. ON HEALTH, EDUCATION, LABOR & PENSIONS, FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS, S. REP. NO. 112-37, pt. 1 (2012).

⁶ See, e.g., Press Release, DeVry University Agrees to \$100 Million Settlement with FTC (Dec. 15, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/12/devry-university-agrees-100-million-settlement-ftc>.

⁷ See, e.g., Press Release, Attorney General Conway Files Lawsuit Against Third For-Profit School (Sept. 27, 2011), available at <http://migration.kentucky.gov/newsroom/ag/nationalcollegesuit.htm>; Press Release, AG Schneiderman Announces Groundbreaking \$10.25 Million Settlement with For-Profit Education Company that Inflated Job Placement Rates to Attract Students (Aug. 19, 2013), available at <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit>; Press Release, Attorney General Kamala D. Harris Files Suit in Alleged For-Profit College Predatory Scheme (Oct. 10, 2013), available at <http://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-files-suit-alleged-profit-college-predatory>.

⁸ S. REP. NO. 112-37, pt. 1, at 17.

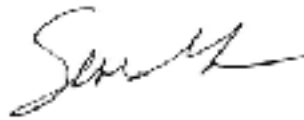
Furthermore, many students who have already submitted applications are still waiting for a response from the Department. Since the change of Administration, it appears that the Department has stopped approving borrower defense claims. These students have a right to assert a defense to repayment under the borrower defense rule, which has existed since 1995 and remains in effect regardless while negotiated rulemaking is in process. We urge the Department to promptly review and approve debt relief for eligible students.

Conclusion

Students and taxpayers have endured enough harm, from years of past inaction to stop fraud and abuse. The Department must maintain sensible, evidence-based rules that support good education programs and cut off bad ones. Students need to have their rights and dignity respected when schools fail them and leave them in debt. Otherwise, the promise of a better future through education can quickly become a nightmare from which it is hard for students and families to recover.

We appreciate the opportunity to participate in the public hearings for this effort, and look forward to working with the Department on these important issues as the committee convenes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Suzanne Martindale', written in a cursive style.

Suzanne Martindale
Staff Attorney