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POLICY & ACTION FROM CONSUMER REPORTS

February 23, 2018

The Honorable Lamar Alexander
Chairman
Committee on Health, Education, Labor and Pensions
United States Senate
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor and Pensions
United States Senate
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

Consumers Union, the advocacy division of Consumer Reports,[1] appreciates the opportunity to provide comments to the Committee as it considers introducing legislation to reauthorize the Higher Education Act (HEA). Given the challenges that today's students face in accessing quality, affordable higher education - and repaying the loans they have to borrow to pay for school - we urge the Committee to focus on three goals:

- **Address the ongoing debt crisis by reducing current borrowers' burdens in repayment.**
- **Increase access and affordability for current and future students.**
- **Ensure program integrity by removing bad actors from the system.**

Any reauthorization of the HEA will be utterly insufficient unless it prioritizes these three areas for reform.

[1] Consumers Union is the advocacy division of Consumer Reports, an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumers Union works for pro-consumer policies in the areas of financial services, transportation, food and product safety, health care, energy, telecommunications and technology, privacy and data security, antitrust and competition policy, and other consumer issues, in Washington, D.C., in the states, and in the marketplace. Consumer Reports is the world's largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million subscribers to its magazine, website, and other publications.

Address the ongoing debt crisis

HEA reauthorization presents an enormous opportunity to improve outcomes for people currently repaying their federal education loans, given the sheer complexity and confusion that borrowers experience while in repayment. Although income-driven repayment plans and other benefits have been available for years, too many borrowers still struggle to keep up with payments and are at risk of preventable defaults. Borrowers in the federal system often have to pay at high interest rates that cannot be refinanced. For those dedicating their lives to a career in public service, apprehension remains as to whether this Administration will retain its commitment to the Public Service Loan Forgiveness (PSLF) program. Adding to the confusion are loan servicers acting on behalf of the government that often give borrowers incorrect information, or simply fail to act in their best interests to help them pay their loans. Meanwhile, borrowers with private education loans have drastically fewer consumer protections.

The following reforms would help improve outcomes for current borrowers:

- *Provide all federal borrowers the option of a flexible, income-driven repayment plan that helps borrowers manage payments*

All federal borrowers, regardless of when they borrowed or their current income, should have access to an income-driven repayment plan that caps their monthly payments at 10 percent of their discretionary income.[2] No minimum payment amount should be required for the poorest borrowers. To keep balances manageable, interest accrual and capitalization should be limited as much as possible, if not eliminated. Maximum repayment periods should not exceed 20 years, and any canceled balances should be exempt from income taxation. The REPAYE plan, which we helped negotiate in 2015, should serve as an instructive example for the Committee to consider when designing a universal income-driven repayment plan.[3]

- *Create a refinancing option for federal loans, so that borrowers in good standing can lower their interest rates while remaining in the federal system*

At a time of historically low interest rates, federal loan borrowers are stuck with high interest rates - and the only option for refinancing is to go to the private market. Most borrowers may not even qualify for refinancing should they wish it, given that the refinance companies currently on the market tend to focus on high-income borrowers with prestigious degrees. Even if a borrower does qualify, however, there are risks to doing so - namely, losing access to all the benefits that come with having a federal loan. To provide better options for federal borrowers, the HEA should provide a mechanism for federal refinancing when borrowers demonstrate repayment in good standing. In addition, borrowers on income-driven plans should get credit for pre-refinance payments made, so they still count toward their repayment period. Similar credit should also be given for pre-refinance payments made toward PSLF.

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[2] We would also recommend defining "discretionary income" as income above 200 percent of the federal poverty line, to protect the most vulnerable borrowers.

[3] For more specific recommendations on designing a generous income-driven repayment plan, *see* Comments from Consumers Union to U.S. Dep't of Educ. (Aug. 10, 2015), *available at* https://consumersunion.org/wp-content/uploads/2015/08/CUcomment_REPAYE_FINAL.pdf.

- *Preserve and strengthen PSLF*

Public service employees are essential to our society - they are teachers, doctors, social workers and others who work for the public good, often at lower salaries than they could earn in the private sector. To fulfill the promise made during the last HEA reauthorization, which first created PSLF, the next reauthorization should protect the program and consider improvements. At minimum, all public sector and nonprofit employees[4] should have access to full loan discharges after 10 years. In addition, the Committee should consider the feasibility of discharging as-you-go - for example, a ten percent reduction to the balance at the end of each year of public service. This could help prevent complications from submitting ten years' worth of paperwork all at once to qualify for PSLF, and provide more certainty to borrowers who may need to move in and out of public service jobs while in repayment.

- *Require loan servicers to act in borrowers' best interests*

Simply put, loan servicers have greatly contributed to the current student debt crisis by failing to protect borrowers' interests throughout the repayment process. Despite the availability of flexible repayments, deferments and forbearances, 3-year cohort default rates on federal education loans remain high at 11.5 percent (approximately 1 in 9 students).[5] However, over the last several years, very detailed and dramatic evidence of serious customer service problems in loan servicing have emerged. 1 out of 4 borrowers nationally are in default on their loans. Studies by the Consumer Financial Protection Bureau[6] and the Government Accountability Office[7] show that servicers routinely fail to tell borrowers about available relief, including income-driven repayment plans and disability discharges, and instead allow borrowers to fall into default. Borrowers who default are subject to aggressive collection methods - from administrative wage garnishment to Social Security and tax refund offsets.

To prevent unnecessary defaults, HEA reauthorization must include minimum requirements for loan servicers; above all, servicers must be required to act in the best interests of the borrower. Servicers should be required to take proactive steps to help struggling borrowers, including offering income-driven repayment plans as the first option. If a borrower reports a disability, public service employee status, closed school, or any other information triggering special rights, servicers should be required to retain that information and provide the borrower information on how to exercise those rights. Before, during and after a servicing transfer, servicers should be

[4] There is ongoing confusion as to which types of nonprofits (other than 501(c)(3)) are considered public service employers. The Department of Education recently came under scrutiny for reversing determinations of eligibility for borrowers working at certain nonprofits who thought they were eligible for PSLF. *See* Am. Bar Ass'n v. King, Case No. 16-2476 (filed D.D.C. Dec. 20, 2016) (alleging improper denials of PSLF employer eligibility for certain nonprofits).

[5] U.S. Dep't of Educ., Official Cohort Default Rates for Schools (updated Sept. 25, 2017), https://www2.ed.gov/offices/OSFAP/defaultmanagement/cdr.html.

[6] Consumer Financial Protection Bureau, Student Loan Servicing, Analysis of Public Input and Recommendations for Reform, September 2015, available at: *available at* http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.

[7] United States Government Accountability Office, Report to Congress, Federal Student Loans: Education Could Do More to Help Ensure Borrowers Are Aware of Repayment and Forgiveness Options, August 2015, *available at* https://www.gao.gov/assets/680/672136.pdf.

required to retain important documents and account information, as well as provide appropriate notice to borrowers about the transfer. Servicers should also be required to allocate payments fairly - whether partial, full, or overpayments - to minimize interest charges and fees.[8]

- *Increase protections for private loan borrowers*

Private education loans are especially risky, given that they lack the flexible repayment options that federal loans have by law. They are also difficult to discharge in bankruptcy, which means that servicers and collectors have little incentive to work with borrowers voluntarily. To protect these borrowers, HEA reauthorization should include new protections for private student loan borrowers - including a right to flexible repayment plans and other loss mitigation options. Lenders should also be required to halt collections while evaluating struggling borrowers for loss mitigation purposes. Finally, full bankruptcy rights must be restored to borrowers with private loans; there is simply no rationale for treating private student loans more harshly than other kinds of unsecured loans from private lenders.

Increase access and affordability

HEA reauthorization must be forward-looking, with the goal not just of addressing the current debt crisis but also preventing more students from getting mired in debt. Public divestment from higher education has largely contributed to the rising tuition and student debt levels across the nation. We must reaffirm our commitment to education as a public good, and provide the resources that schools and students need to succeed.

To that end, HEA reauthorization must preserve and protect the Pell Grant, as well as other grant and work-study programs, which are vital to providing access particularly to low- and moderate-income students. Interest subsidies on Stafford loans are also essential to mitigating debt burdens for students. Finally, we support increased funding for community colleges and other schools that provide low-cost, high quality education and training to students.

Ensure program integrity

In order to ensure that students are attending schools that will educate them appropriately and help them improve their futures, it is essential that HEA reauthorization include strong accountability measures that root out bad actors when they fail to provide the education or training they promised, put students into unaffordable debts, or simply abuse their access to federal taxpayer dollars. It is also crucial that the HEA continues to permit states to play an active role in overseeing education providers, as well as loan servicers and debt collectors, to protect their resident students from harm.

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[8] For more specific recommendations on how to improve student loan servicing, *see* Comments from Consumers Union to Consumer Fin. Protection Bureau (July 13, 2015), *available at* https://consumersunion.org/wp-content/uploads/2015/07/CFPB_RFI_servicing_0715.pdf.

- *Preserve and improve strong gainful employment standards for career education programs*

HEA reauthorization must retain the essential requirement that career education programs "prepare students for gainful employment in a recognized occupation." This requirement is particularly essential given the growth of career education programs across the country, and the long-running and consistent pattern of abuse that both federal and state investigations have revealed regarding the practices of some of these institutions, particularly for-profit schools. The the most recent gainful employment rule implementing this provision addressed these abuses by ensuring that career programs are preparing students for employment that enables them to maintain low debt-to-earnings levels. The mere threat of sanctions under this rule prompted many colleges to eliminate their worst-performing programs and to implement other reforms to improve outcomes for their graduates. The statutory standard must be preserved, at minimum. Furthermore, the Committee should consider strengthening it to: (1) close a number of loopholes that would otherwise enable colleges to game the standards; (2) protect low-cost programs that are not putting most of their students in debt; (3) limit enrollment at schools that need to improve their standards; and (4) provide monetary relief to students who have been harmed by low-performing career college programs.[9]

- *Enable borrowers to assert a defense to repayment of their loans if they were harmed or misled by their school*

To relieve the unfair debt burdens that predatory schools have inflicted on student borrowers in recent years, and deter such conduct in the future, HEA reauthorization must preserve strong borrower defense rights based on applicable State law. Since the collapse of Corinthian Colleges in 2015, thousands of students have been seeking relief from their loans - and most apparently remain pending despite overwhelming evidence that Corinthian was engaging in widespread fraud and deceit.[10] Borrowers should be able to assert a defense to repayment of their loans, at any time, and obtain full relief where there is evidence that a school engaged in illegal misconduct, such as fraud or unfair, deceptive, or abusive practices. To ensure transparency and deter bad conduct, schools should also be prohibited from using pre-dispute arbitration clauses in their enrollment agreements if they want to receive Title IV funds.[11] Such clauses enabled schools like Corinthian and ITT Tech to engage in misconduct for years while students were blocked from seeking redress in the courts.

Schools should also be held to reasonable financial responsibility standards that include trigger warnings - such as high cohort default rates, state or federal investigations, and other signs of financial stress - to catch problems early before schools collapse and leave taxpayers on the hook.

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[9] For more specific recommendations, *see* Comments from Consumers Union to U.S. Dep't of Educ. (May 27, 2014), *available at* https://consumersunion.org/wp-content/uploads/2014/05/CUcomment_NPRM_GE-rule_2014.pdf.

[10] *See* Complaint at ¶56, California v. DeVos., Case No. 17-7106 (filed N.D. Cal. Dec. 14, 2017) (estimating that approximately 50,000 Corinthian claims remain pending).

[11] For more specific recommendations related to borrower defenses, *see* Comments from Consumers Union to U.S. Dep't of Educ. (Aug. 1, 2016), *available at* https://consumersunion.org/wp-content/uploads/2016/08/CUcomment_borrowerdefense_8.1.2016.pdf.

- *Preserve cohort default rates as a measure of school performance*

The cohort default rate is an essential measure of how all former students - whether or not they graduated from their programs - are faring with the loans they took on to get an education at a particular school. Students who drop out are especially at risk - having debt but no credential to show for their time in school. High defaults are a strong indicator that students are dropping out because the program is not providing the education they were promised, or that the program is too expensive to justify continuing with enrollment. Meanwhile, the consequences of defaulting on a federal education loan are dire: there is no statute of limitations on collecting a federal student debt, and the government has extraordinary tools to use against student borrowers. A borrower's wages can be subjected to administrative wage garnishment; tax refunds can be seized; and Social Security benefits can be offset to repay the debt. Any school whose students are falling into default at rates above 30 percent, as in current law, should be subject to intense scrutiny to determine whether they should remain eligible for Title IV aid. Furthermore, the cohort default rate standard should be improved to include safeguards that prevent schools from evading accountability by temporarily suppressing defaults.

- *Ban incentive compensation for recruiters and third parties*

HEA reauthorization should preserve the incentive compensation ban in current law, and apply it without exception. Schools should not reward individuals or third parties in their dealings with students, because it puts the financial interests of schools, employees and their associates before the needs of students. To protect students and taxpayers, in 2015 the Education Department's Inspector General called for even greater oversight and enforcement of the ban on incentive compensation.[12] Weakening it would invite more fraud and abuse.

- *Maintain and strengthen the 90-10 rule*

HEA reauthorization must include the 90-10 rule, which simply requires proprietary schools to obtain at least 10 percent of their revenue from sources other than Title IV aid. It is a very modest rule, given that schools can derive the remaining 10 percent from other public sources, such as the GI Bill and other benefits available to the military-connected community. In recent years, some for-profit schools have come under fire for aggressively recruiting military personnel to enroll and use their education benefits on top of available Title IV funds.[13] These schools have in effect been almost entirely propped up by federal funds, while producing poor outcomes for their students. Weakening or eliminating the requirement to obtain at least some revenue from other sources would all but ensure that predatory schools can hurt students with impunity at the taxpayer's expense. Instead, the rule should be improved by restoring the ratio to 85-15, as it was 20 years ago, and by including military education benefits in the cap on federal funds upon which for-profit schools can rely. Schools should also be prevented from evading the caps through campus consolidations.

[12] Office of Inspector Gen., U.S. Dep't of Educ., Federal Student Aid's Oversight of Schools' Compliance with the Incentive Compensation Ban 1-2 (2015), *available at* https://www2.ed.gov/about/offices/list/oig/auditreports/fy2015/a05n0012.pdf.

[13] Senate Report at 68-72.

- *Preserve the oversight role of the states*

The HEA has always recognized the importance of the states as an essential element of program integrity "triad" -- whereby states, accrediting agencies, and the Department of Education all serve to monitor and protect the federal student aid programs. The state role remains vital today and no reauthorization bill should be considered if it preempts state authority in this area.

  - Distance education providers

In particular, the HEA should retain the essential role of states in ensuring the quality of education provided by online education programs. States are required under current law and regulations to conduct an active review of schools seeking to enroll students in their state. In recent years, such active review has been complicated by significant growth in distance education program enrollments, especially at for-profit colleges.[14] Unfortunately, increasing complaints about fraud at some institutions indicate that the need for oversight is overwhelming.

The recent growth of an interstate reciprocity agreement, known as NC-SARA, has raised concerns due to its potential for incentivizing schools to headquarter in states with weaker consumer protection laws while marketing their programs to out-of-state students. Such an agreement could result in distance education students having fewer protections than their brick and mortar counterparts in the same state.

A rule issued by the Department at the end of 2016, while a step in the right direction, left essential gaps that will leave some distance education students subject to weaker protections. Any HEA reauthorization bill should strengthen state authority by (1) ensuring that a student's home state always has authority to apply its own laws to protect its residents, regardless of whether it joins a reciprocity agreement, and (2) prohibiting providers from enrolling students in professional certificate or licensing programs that lack the required accreditation for students to practice the profession in their home states.[15]

  - Education loan servicers and debt collectors

In addition, any legislation should retain state authority to oversee student loan servicers. States have a longstanding and well-established role in protecting consumers against unfair and deceptive practices when it comes to financial products, loan servicing, and debt collection. The Department of Education has drawn its regulations regarding servicers quite narrowly to *avoid* wide-ranging state preemption, as noted in a recent letter from 26 attorneys general to Secretary DeVos.[16] Enforcement of laws and standards regarding student loan servicing should ideally be a joint state-federal responsibility, but at a minimum states can and must retain broad powers to

[14] Program Integrity and Improvement; Proposed Rule, 81 Fed. Reg. 48598, 48607 (proposed July 25, 2016).

[15] For more discussion of the state authorization rule, *see* Letter from Whitney Barkley, Christine Lindstrom & Suzanne Martindale to U.S. Dep't of Educ. (Aug. 24, 2016), *available at* http://consumersunion.org/wp-content/uploads/2016/08/WB_CL_SM_group-comment_state-auth_8-24-2016.pdf.

[16] Letter from Attorney General Eric Schneiderman and 25 other state attorneys general to Secretary Betsy DeVos, (Oct. 23, 2017), *available at* http://www.marylandattorneygeneral.gov/news%20documents/DeVos_10_24_17.pdf (discussing importance of state oversight and enforcement of laws relating to student loans).

act, especially in the breach of federal action. We are deeply concerned that if states do not act, customers of student loan servicers will continue to have virtually no consumer protections.

As discussed above, student loan servicers play a critical role in the success, or failure, of student loan borrowers' efforts to repay their debt. For the vast majority of student loan borrowers, their servicer is their only point of contact when it comes to their student debt and the only source they know to turn to when problems arise. Servicers manage borrowers' accounts, process borrowers' monthly payments, notify distressed borrowers of and enroll them in alternative repayment plans, and communicate directly with borrowers. When these tasks are carried out accurately and in a timely manner, borrowers are able to seamlessly enroll in the repayment plans best suited for them, without experiencing roadblocks that could derail them from successfully repaying their student debt.

Conclusion

Thank you for the opportunity to comment on these issues, and we look forward to working with the Committee as it continues its consideration of the Higher Education Act.

Sincerely,

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