

January 9, 2019

Dear Member of Congress:

Welcome to the 116th Congress. During the next two years, it is likely that Congress will consider reauthorization of the Higher Education Act (HEA). As 49 organizations working on behalf of students, consumers, veterans, service members, faculty and staff, civil rights, and college access, we urge you to work toward an HEA reauthorization that both offers opportunity for students, including low-income students and students of color, and strengthens safeguards against low-quality and unscrupulous colleges for students, families, and taxpayers.

The federal government plays a critical role in putting higher education within reach for millions of Americans by providing grants and loans to help finance their education. Since its passage in 1965, the HEA has provided a path to the affordable financing that has helped generations of Americans complete postsecondary education. In order to be eligible for federal student aid, a higher education institution must meet certain requirements, such as meeting quality standards established by an accrediting agency and ensuring that student recruiting is done in an ethical manner. These basic requirements are intended to ensure that students use federal dollars to attend programs that offer a path to success and to ensure that taxpayer dollars are protected.

Unfortunately, some colleges engage in predatory practices or misconduct, and/or consistently leave students with debts they cannot afford. The data clearly demonstrate that a disproportionate number of these institutions are privately owned and operated on a for-profit basis. Veterans, low-income students, and students of color have been disproportionately harmed by predatory colleges. Taxpayers are investing billions of dollars in for-profit colleges *annually* via federal student financial aid programs, with a disproportionate share of students left with high levels of debt, often in the absence of a degree or a diploma. As just one example, nearly 20,000 students attending schools owned by Education Corporation of America learned in December that their schools would be closing despite the more than \$289 million in taxpayer money ECA took in just in the 2017-18 school year.<sup>1</sup>

The current administration has sought to roll back regulations and other protections that have been put in place to address these well-documented issues. As you begin to work toward an HEA reauthorization, we ask that you ensure that common-sense protections for students and taxpayers are protected and improved. Specifically, we seek to ensure that four core existing protections are strengthened in any reauthorization: borrower defense to repayment, gainful employment, the 90-10 rule, and the incentive compensation ban.

### **Borrower Defense to Repayment**

The Higher Education Act includes a provision that allows for “borrower defense to repayment.” The provision allows a student’s financial aid obligations to be discharged if a borrower demonstrates the

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<sup>1</sup>Andrew Kreighbaum, “Collapse of For-Profit Chain Long in the Making,” Inside Higher Ed, Dec. 6, 2018, <https://www.insidehighered.com/news/2018/12/06/closure-education-corporation-america-raises-questions-about-oversight-and-support>. Taxpayer investment dollars calculated using data from the U.S. Department of Education, Federal Student Aid Data Center, Title IV Program Volume Reports, <https://studentaid.ed.gov/sa/about/data-center/student/title-iv>. Figures include all Pell Grant and Direct Loan disbursements received at Virginia College, Brightwood College, Brightwood Career Institute and New England College of Business and Finance.

loans were agreed to as a result of misrepresentation, fraud, or other illegal conduct. While the provision has been law for many years, it was rarely asserted, and no clear process was established by regulation. The collapse of Corinthian Colleges and ITT Tech brought broad public attention to pervasive fraudulent misrepresentations made to students by these and some other predatory colleges, and resulted in a surge of claims filed by students. In 2016, a regulation was adopted that helps ensure that neither defrauded students nor taxpayers are left on the hook for wrongdoing by schools. It creates a process for providing student loan relief to defrauded borrowers and ensures that students at schools that close suddenly know their options. The rule is aimed squarely at protecting taxpayers from abrupt school closures and clarifies the Department of Education's right to claw back funds from schools that engage in fraud and misrepresentation. Had the rule been in place when Corinthian Colleges collapsed, taxpayers might have had an opportunity to recover the more than \$550 million in federal student loan discharges for former Corinthian students.

The current administration has illegally delayed the rule, left more than 139,000 student borrowers languishing without acting on their borrower defense applications, and proposed an alternate rule that would make it significantly harder for students who were defrauded to have their federal student loans discharged. ***Any HEA bill must ensure that students have a clear and straightforward path to complete loan discharges when the school they attended has been engaged in misconduct, including misrepresentation or fraud.***

### **Gainful Employment**

The gainful employment regulation defines the Higher Education Act's requirement that all career education programs receiving federal student aid dollars "prepare students for gainful employment in a recognized occupation." The rule sets out that the career education programs at public, nonprofit, and for-profit colleges provide basic information about how many students get jobs, how much they earn, and how much debt they have. It requires that those programs that continuously leave their graduates with more debt than they can repay must improve their outcomes, reduce their costs or lose eligibility for federal funding. The regulation has already had a significant positive impact, and 9 in 10 colleges have no failing programs. Nonetheless, the Department of Education is seeking to eliminate the rule at an estimated cost of \$5 billion in student aid that flow to programs that would be forced to improve or close under the rule. ***Any HEA bill must allow for the gainful employment regulation to be maintained and fully implemented.***

### **90-10 Rule**

The 90-10 Rule is a long-standing HEA provision that ensures that no college receives all of its revenue from federal student aid funds. The rule has its genesis in the original post-World War II GI Bill and is intended to ensure that some students are willing to commit their own resources toward a program. A college or school offering a quality education at a competitive price should be able to attract other sources of tuition from employers, scholarship providers, state funds, and students themselves.

While the thresholds set by the rule have been lowered from the original 85-15 set in 1992, 90-10 remains an important protection. Additionally, under current law, GI Bill funds and Department of Defense Tuition Assistance are not counted as federal education dollars for this purpose. This has the unfortunate consequence of putting a premium on enrolling veterans, service members, and their families, and led to the aggressive and deceptive recruiting of them to enroll in high-priced, low-quality

programs. ***Any HEA bill must maintain the existing protections of the 90-10 rule and should restore the 85-15 threshold while closing the Department of Defense /Veterans Affairs loophole.***

### **Incentive Compensation Ban**

The Higher Education Act's ban on incentive compensation (commissioned sales) was enacted with strong bipartisan support in 1992 to reduce high-pressure, deceptive sales tactics. Congressional intent was that colleges should not reward individuals or third parties for enrolling students, through incentive compensation or similar means, because it puts the financial interests of college employees and their associates before the needs of students.

In 2015, the Department of Education's Inspector General called for even greater oversight and enforcement of the ban on incentive compensation, in order to provide greater protection for students and taxpayers. Instead, Education Secretary Betsy DeVos may take steps to weaken the ban, opening up the door to more of the problematic marketing practices that the Government Accountability Office outlined in a 2010 report. ***Prohibiting these abusive sales tactics by colleges must remain a core focus of any HEA reauthorization.***

### **Additional Regulatory Proposals**

The Department of Education has set forth a regulatory agenda for 2019 that impacts virtually every aspect of the higher education system. The Department appears to be usurping the role of the Congress by putting forth a proposal to systemically re-examine rules governing fundamental issues that span from the faculty role in student instruction and guidelines around the quantity of instruction or learning that students are purchasing, to safeguards on the outsourcing of education to unproven entities and the oversight of institutions of higher education by states and accreditors.

Behind each of these rules there is a history of harm to students that drove their creation. We recognize that the federal government can play a role in supporting high-quality innovation, but also that the students most in need of higher education's benefits are instead harmed when federal money flows to so-called innovation with too little accountability attached. At a time when every federal dollar is scrutinized, and student debt has surged to \$1.5 trillion, Congress should act to make certain that common-sense laws and regulations are maintained and enforced to ensure the efficient use of taxpayer dollars.

We urge you to support a strong HEA that minimizes waste, fraud, and abuse in higher education, and that protects students, their families, and the taxpaying public from predatory colleges.

Sincerely,

AFL-CIO  
American Federation of Teachers  
Americans for Financial Reform  
Association of Young Americans (AYA)  
Center for Responsible Lending  
Children's Advocacy Institute  
CLASP

Consumer Action  
Consumer Advocacy and Protection Society (CAPS)  
Consumer Federation of California  
Democrats for Education Reform  
Demos  
East Bay Community Law Center, Consumer Justice Clinic  
Economic Mobility Pathways (EMPath)  
The Education Trust  
Generation Progress  
Higher Education Loan Coalition  
Hildreth Institute  
Housing and Economic Rights Advocates  
The Institute for College Access & Success (TICAS)  
Legal Aid Society of San Bernardino  
Maryland Consumer Rights Coalition  
NAACP  
National Association for College Admission Counseling  
National Association of Consumer Advocates  
National Center for Law and Economic Justice  
National Consumers League  
National Education Association  
PHENOM (Public Higher Education Network of Massachusetts)  
Project on Predatory Student Lending, Legal Services Center of Harvard Law School  
Public Citizen  
Public Good Law Center  
Public Law Center  
Student Action  
Student Debt Crisis  
Student Veterans of America  
U.S. Public Interest Research Group (PIRG)  
UnidosUS  
United States Student Association  
Urban Assembly  
Veterans Education Success  
Veterans for Common Sense  
Vietnam Veterans of America  
Women Employed  
Woodstock Institute  
Young Invincibles  
Maine Center for Economic Policy  
Service Employees International Union (SEIU)  
University of San Diego Veterans Legal Clinic