



The Education Trust

Closing the gaps in opportunity and achievement, pre-k through college.

August 30, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Re: Docket ID ED-2018-OPE-0027-0001

Dear Secretary DeVos:

On behalf of The Education Trust, an organization dedicated to closing long-standing gaps in opportunity and achievement separating low-income students and students of color from their peers, thank you for the opportunity to provide comments on the proposed borrower defense to repayment rules.

Put simply, the Department's Notice of Proposed Rule-Making (NPRM) issued on July 31st represents a full abdication of the Department's responsibility to protect students and taxpayers.

The right of borrowers to assert a defense to repayment has been in effect since 1994 in order to ensure students who are victims of fraudulent institutions are able to be made whole. The collapse of Corinthian College, followed by that of ITT Technical Institute, demonstrated just how critical it is for the Department to have a robust borrower defense rule that puts students and taxpayers first.

So while we fully reject the Department's proposed rule and instead call for the Department to implement the 2016 rule, it is important to highlight just how much the Department's proposal would harm borrowers, particularly those who are low-income or people of color who are disproportionately enrolled in the schools where the Department's own estimates identify the most misconduct, and taxpayers.

Borrowers should not be unduly burdened in asserting a defense to repayment.

The NPRM shifts an inordinate burden to the borrowers in what appears to be a clear effort to prevent borrowers from asserting any defenses at all:

- It limits the claims borrowers can make to just those asserting misrepresentation, eliminating claims that assert a breach of contract or a judgment against the school.
- It requires borrowers to prove that the institution "acted with an intent to deceive, knowledge of the falsity of a misrepresentation, or a reckless disregard for the truth," which is far above what the typical student would be able to provide evidence for individually.
- It even considers raising the evidentiary standard to a clear and convincing standard of evidence, which is not aligned with current consumer protection laws or other Department proceedings.
- It narrows the time window in which a deceived borrower can assert a defense.
- It inappropriately requires deceived borrowers to disclose private information. Borrower defense determinations should be based on a school's lies and misrepresentations, not on a borrower's perceived "failings" in the eyes of the Department. Such a proposal is nothing short of victim-blaming.

- It eliminates group applications and requires each individual borrower to pursue a claim, even in cases of widespread fraud. This provision, in particular, is not just an undue burden on the borrower, but is also a reckless waste of taxpayer dollars and Department resources.

Borrowers should not be forced into default.

One of the more egregious proposals in the NPRM is the potential limiting of relief to “defensive” claims. Default is the worst financial outcome for a borrower and for taxpayers, and it has ripple effects in many other areas — from housing to employment and beyond. It is adding insult to injury for the Department to require borrowers to be in such distress before they are able to attempt to be made whole.

Borrowers should not be forced into arbitration.

Deceived borrowers deserve their day in court. Allowing predatory institutions to force students into arbitration proceedings and out of class action lawsuits significantly favors these institutions and provides less of a deterrent to wrongdoing. Requiring disclosure of forced arbitration is utterly insufficient, as it still denies borrowers their right to a trial.

Taxpayers should not be on the hook for institutions’ misconduct.

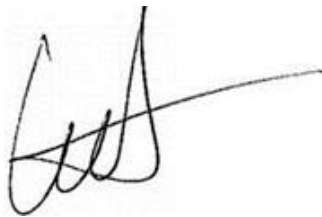
When institutions rip off students, they should be held responsible and the Department should have as many means as possible available to them to recoup money from these actors. Instead, this proposal weakens the Department’s ability to require that troubled schools set aside funds to cover potential taxpayer costs, making it more likely that taxpayers will be left footing the bill for institutions’ misconduct.

Borrowers should have access to loan discharges when their schools close.

Students whose schools close should have the right to choose whether they want to transfer their credits and finish their degree or get a fresh start. The Department’s proposal to take that choice away from borrowers will leave too many students harmed by the actions of their schools and drowning in debt.

Through this proposal, the Department has again signaled that it committed to protecting predatory actors at the expense of students and taxpayers. At every turn, this proposal sets up new barriers that are designed to deny deceived borrowers any realistic opportunity to be made whole. The Department should abandon this effort and instead move forward in implementing the 2016 rule.

Sincerely,



Wil Del Pilar
Vice President of Higher Education
The Education Trust