August 12, 2022

Michelle Asha Cooper, Ph.D.
Acting Assistant Secretary for Postsecondary Education
and Deputy Assistant Secretary for Higher Education Programs
United States Department of Education
400 Maryland Avenue, SW
Room 2C179
Washington, DC 20202

Dear Dr. Cooper:

Thank you for the opportunity to provide comments on the Notice of Proposed Rulemaking issued on July 13, 2022 (Docket ID ED-2021-OPE-0077). We represent a broad coalition of organizations working on behalf of students, veterans, faculty and staff, civil rights advocates, researchers, and other stakeholders concerned about institutions receiving Title IV funds that rely on deceptive and fraudulent tactics to lure students into programs that provide little or no value.

Below, we provide further backing for strong measures to protect students and taxpayers' investment in federal financial aid programs. We also provide recommendations on improvements to the proposed regulations. By incorporating these recommendations, the Department can add further assurance to students and taxpayers that their investments in higher education will be to their benefit, as well as to the benefit of our broader citizenry and economy.

As many of us noted last summer, weak oversight and accountability especially endanger students from low-income backgrounds, students of color, women, and veterans—populations that are disproportionately targeted by predatory for-profit schools. Nine out of ten Black and Latina/o students who graduated from a for-profit undergraduate degree program had to borrow, and they borrowed at least $10,000 more, on average, than those attending public colleges. Black students attending for-profit colleges are more than twice as likely—and Latina/o students more than four times as likely—to take out private loans as their peers at other types of colleges. These data, coupled with the lived experiences of so many students and borrowers, make it critical for the Department of Education (ED) to revive and strengthen protections through the regulatory process.

Borrower Defense to Repayment. The borrower defense to repayment (BD) regulation is a critical tool that enables the Department to both protect borrowers from having to repay debt that should be discharged and to deter prospective school misconduct. Actions by the Department since many of us submitted comments in July 2021 on proposed negotiated rulemaking topics only add further evidence of the need for strengthened protections for student borrowers victimized by predatory institutions. These actions have included:

- In February 2022, the Department approved approximately 3,800 BD claims for student borrowers who attended DeVry University, Westwood College, the nursing program at ITT Technical Institute, and the criminal justice programs at Minnesota School of Business and Globe University. These approved claims resulted in nearly $131 million of relief.

- In April 2022, ED approved BD discharges totaling $55.6 million for 1,800 borrowers for claimants defrauded by Westwood College, Marinello Schools of Beauty, and the Court Reporting Institute.

The BD rule put in place by the previous administration set such stringent requirements for students to receive relief that, in 2020, the House and Senate—on a bipartisan basis—used the Congressional Review Act to reject it. President Trump vetoed Congress' effort, however, and the 2019 rule is in effect for new borrowers. Alternating periods of action and inaction, perfunctory denials, and a partial relief approach that granted defrauded students only pennies on the dollar in relief—and that the current Department has thankfully rejected—have created an urgent need for revisiting and strengthening the BD rule.

We appreciate the proposed rule's provisions to clarify omission or misrepresentation of facts about an institution or program that can serve as a basis for borrower defense; add aggressive and deceptive recruitment of students as a basis for BD claims; and set timelines for adjudicating claims, among others. Such steps will help ensure more borrowers will not have experiences like Juaquin Brown—a claimant who shared during the December 9, 2021, negotiated rulemaking public comment period that he was approaching the five-year anniversary of filing a BD claim without yet receiving a response. "I have two degrees from a school that I can't put on my resume," said Mr. Brown. He continued, "I don't know how hard that is for anybody here to swallow, but for me, that's hard."

Juaquin Brown's experience is far from unique. As evidence of the scale of borrowers awaiting BD claim adjudication, on June 22, 2022, the Department announced a proposed settlement agreement with plaintiffs in *Sweet v. Cardona* that would cancel at least $6 billion in fraudulent student loans for approximately 200,000 borrowers.

Here, we offer a set of recommendations to further strengthen the final rule. We encourage the Department, in the final rule, to:

- Enable legal aid organizations to serve as third-party requestors that can initiate the group discharge process. This adjustment would revert to the Department's final position at the conclusion of negotiations.
- Enable all borrowers—or third-party requestors acting on their behalf—to assert state law claims simultaneously with claims under the proposed federal standard during the initial application process.
- Ensure all borrowers with a granted claim are entitled to full relief in the form of a discharge, refund, and the deletion of adverse credit history. Approved claimants should also have their Title IV eligibility restored. If the Department insists on providing itself with partial relief authority, the final rule should only allow partial relief for the specific or similar claims the Department excludes from full relief.
- Require individual applications to be reviewed under a liberal pleading standard; these applications should be afforded a presumption of reliance. In addition, the Department should clarify that both group or individual BD claims can be substantiated on borrower attestations or sworn statements alone.
- Affirm *individuals* pursuing BD claims will have a rebuttable presumption that claimants reasonably relied upon an institution's act or omission giving rise to the borrower defense claim.

The current proposal includes the rebuttable presumption for *group* (§685.406(b)(2)) but not *individual* (§685.406(c)) claims.

- Clarify application of "substantial misrepresentation" and "misrepresentation," as well as the indication of a borrower's reliance on inaccurate or deceptive expectations programs or institutions may have shared with prospective students. With certain types of false, erroneous, or misleading statements being identified as "misrepresentation" in §668.72, §668.73, and §668.74 and not as "substantial misrepresentation," we are concerned the regulations may be misconstrued to mean that if a student demonstrates only the conduct specifically identified as "misrepresentation," then they will have failed to meet the threshold requirement of a "substantial misrepresentation."
- Strike all references to a "materially complete" individual application; ED should begin interest-free forbearance and pause collections upon receiving a claimant's application.
- Provide a careful review of denied claims, commensurate with the level of review that is provided to granted claims.

We also note the Department's stated intention to more assertively pursue recoupment of funds lost when institutions defraud students. By decoupling the claim adjudication and recoupment processes, ED will be better positioned to process claims expeditiously while also better protecting taxpayers from picking up the tab of financial aid dollars lost because of institutional malfeasance. The real threat of financial penalty should serve as a deterrent for the representatives of institutions who would otherwise engage in the same kind of practices perpetrated by schools as those listed above.

The burdensome BD rule and long claim processing delays have had direct negative effects on the lives of many borrowers. As Career Education Corporation (CEC) borrower Ashley Pizzuti shared during the negotiated rulemaking public comment period on October 17, 2021:

> I applied for borrower defense over five years ago. Yet, my application was denied under [Secretary] DeVos for lack of evidence. CEC has been proven to be a bad actor, yet here we are still holding the bag. Our lives are permanently on hold, controlled by this debt while most of us reached middle and retirement age with little options.

Accompanying this letter, we present a petition calling on Secretary Cardona to implement a stronger borrower defense rule. More than 300 people signed this petition, reflecting concern across the country about this vital issue.

Borrower defense to repayment represents a critical protection for student borrowers defrauded by unscrupulous institutions and individuals representing those institutions. The previous administration contorted the BD rule to serve the interests of the colleges that had defrauded students. We applaud the Department's efforts to ensure BD instead serves the interests of defrauded borrowers. We trust you will give serious consideration to the recommendations in this section to further protect borrowers and strengthen accountability in the system.

Arbitration. We commend the Department's affirmation of students' rights to pursue claims against fraudulent institutions through the justice system, rather than being forced into arbitration. All too often, arbitration is stacked against students and in favor of the interests of institutions. The proposal would advance the Department's and the public's interests in transparency, institutional accountability, and borrowers' rights.

Total and Permanent Disability (TPD) Discharge. We were pleased negotiators who comprised the Affordability and Student Loans Committee in fall 2021 reached consensus on proposed language for TPD discharges. The Department's proposal would simplify and clarify the TPD process, expand eligibility requirements in alignment with statute, and remove unnecessary bureaucratic hurdles to ensure borrowers receive the relief to which they are entitled.

This proposal would include several groups of Social Security beneficiaries statutorily entitled to relief who were previously excluded from eligibility; eliminate the unnecessary and onerous three-year income-monitoring period; expand the forms of documentation from the Social Security Administration (SSA) accepted as a basis for discharge; and expand the types of medical professionals who can certify discharge applications.

According to a 2016 Government Accountability Office analysis, 98 percent of reinstated disability discharges occurred because of onerous paperwork requirements—not because borrowers with disabilities no longer met eligibility requirements.

The consequences of past practices have had devastating effects on the lives of many borrowers with disabilities. Attorney Johnson Tyler of Brooklyn Legal Services shared during the October 5, 2021, public comment period:

> I have a client, Linda, who was on [reduced Social Security benefits] for ten years, during which time about $6,000 [was] taken from her in Social Security disability benefits. And, consequently, she came to my attention because she's being evicted. And so, we had an attorney and the public assistance people involved in trying to save her housing and keep her out of a shelter, but she had been very sick. She'd been on dialysis. She'd had a kidney transplant, and she never fell into any category that would have automatically discharged her.

The proposed rule states, "The Secretary will discharge a loan under this section without an application or any additional documentation from the borrower *if the Secretary*—(i) Obtains data from the Department of Veterans Affairs (VA) showing that the borrower is unemployable due to a service-connected disability; or (ii) Obtains data from the Social Security Administration described in paragraph (b)(2)(iv)(C) of this section" (emphasis added). Under this language, we are concerned the Secretary would be required to provide automatic relief only *if* the Secretary obtained data from SSA or the VA; there is no obligation to obtain such data. Under current language, the Secretary could decide not to seek data from the VA or SSA, then would not obligate ED to implement this critical provision. Accordingly, we believe the rule must place an affirmative obligation on the Secretary to take all reasonable and necessary steps to obtain data from the VA and SSA.

Mindful of borrowers like Linda, we strongly support the Department's proposal to address the shortcomings of the TPD process.

Closed School Discharge. As negotiators discussed in fall 2021, institutional closure represents a clear and direct harm for borrowers who hold credentials from institutions that cease to exist. In August 2021, the Department made discharges available to 115,000 borrowers who attended the now-defunct ITT

Technical Institute. ITT notoriously spent years misleading students and defrauding financial aid programs before collapsing in September 2016. These borrowers waited nearly five years for this justice.

To improve the closed school discharge process for the future, we echo the legal aid community's support of several key improvements the Department proposes. The provisions include:

- Removing the "comparable program" exclusion and a loophole that has allowed institutions to avoid liability by counting graduates from programs other than those in which affected students were enrolled. This change will recognize the real harm borrowers experience when institutions to which they have given significant time and money cease to be going concerns, regardless of whether they ultimately find a way to complete a credential elsewhere. Many former students from shuttered schools—some of which closed precipitously—have reported the difficulty they have encountered securing in-field employment when their resumes include mention of those defunct institutions.
- Increasing eligibility for automatic discharges and reducing wait times before making discharges. As the Government Accountability Office noted in September 2021, a three-year re-enrollment period is too long. Over 70 percent of borrowers who received automatic closed school discharges under the three-year provision had fallen into delinquency or default. By shortening the time borrowers from closed schools wait to receive discharges, the Department would reduce the instances of borrowers in this difficult position from quickly re-enrolling in low-quality, often high-cost programs that may not align with their educational and professional goals.
- Opening eligibility for automatic discharges to borrowers from schools that closed prior to November 1, 2013—a group especially unlikely to be aware of their rights to discharges and, as a result, in need of targeted outreach to know of this possibility.
- Enabling borrowers who attended within 180 days of a school's closure to obtain relief.

We recommend several additional provisions to further strengthen closed school discharge beyond those in the NPRM:

- Implement an automatic one-year grace period between the school closure date and the date borrowers are entitled to the automatic discharge. This approach would ease the burden on student loan borrowers, who will not have to enter repayment for six months, as well as on the Department, which will not have to collect payments, only to refund borrowers six months later.
- Ensure the lookback period includes whenever a closing school announced its intentions to go out of business. Under current provisions, schools can avoid liability by announcing that they will close more than 180 days in advance. They know many students will withdraw upon learning of the school's impending closure. The Department should close this loophole by making the extended lookback standard procedure.
- Amend 34 CFR 668.14 to require that an institution inform the Department it will close concurrently with its public announcement of closure. This change—which would guard against significant time delays in ED becoming aware of impending school closures—would reinstate an important requirement in the 2016 rule that the 2019 rule omits.
- Mandate that the institution provide borrowers with notices informing them of their rights shortly after announcing that the institution will close.

We applaud the Department's intent to expand eligibility to more borrowers affected by school closures. Over the years, the Department has interpreted this provision in both permissive and restrictive ways, but the statutory right is explicit and unchanged: If borrowers cannot complete the program in which they are enrolled because of an institutional closure, they are entitled to a discharge. We believe that the proposed rules will help ensure affected borrowers realize the intent of this statutory guarantee.

False Certification. We welcome the consensus language negotiators found on proposed rules to protect students whose institutions falsely certify them for Title IV aid eligibility. We support proposed regulations in the NPRM to expand the documentation ED would consider when borrowers file for false certification discharge. In addition, we support the proposal's provision enabling groups of borrowers who experience the same behavior by their institutions to receive discharges of their federal student loans.

Public Service Loan Forgiveness (PSLF). In this proposal, the Department has shown a laudable commitment to addressing the many well-documented deficiencies of the PSLF program.

The proposed changes improve PSLF by clarifying the definition of full-time employment; allowing greater flexibility in what counts as a qualifying payment; allowing and moving toward automation of PSLF; and formalizing a reconsideration process. These changes build on (and are in the spirit of) the improvements made by the temporary PSLF waiver. We support these changes to PSLF, as well as other changes that would bring the program closer to the vision that animated the creation of PSLF in the first place: Public service workers should have their student loans forgiven after 10 years of full-time qualifying public service.

Interest Capitalization. We were pleased negotiators reached consensus on proposed language for ending the damaging practice of interest capitalization. We commend the Department for its efforts to remove all instances of interest capitalization not required by statute.

As part of its commitment, the Department should fully remove §685.209(a)(2)(iv) to ensure that accrued interest is not capitalized upon determination that a borrower no longer has a partial financial hardship on an income-contingent repayment plan. This is an important step toward ensuring that borrowers do not experience unnecessary balance growth, and it will reduce confusion in an already complex system.

We also urge ED to work with Congress to eliminate the remaining instances of interest capitalization—including when borrowers leave deferment, in some instances in income-based repayment plans, and for borrowers with FFELP loans—to ensure consistency in the repayment system.

Removing interest capitalization is only one step toward restricting balance growth. As part of its new income-driven repayment program, the Department should safeguard the benefits that come with lower payments by fully eliminating negative amortization.

Growing balances cause financial and psychological barriers to repayment, and they make it more expensive to attend college for student borrowers who can least afford it. These borrowers often include those for whom racism, structural discrimination, and a lack of resources contribute to their debt and the challenges they face in repayment.

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Thank you for the opportunity to provide these comments, and for your work to serve the interests of students and student loan borrowers. In addition to the comments and recommendations above, we are including a sampling of relevant experiences students and borrowers have shared over the past year. The appendix below includes these student voices.

We look forward to the process and actions ahead to strengthen protections against waste, fraud, and abuse. These measures will ensure accountability provisions are in place to advance the interests of students and borrowers, rather than the institutions that too often take advantage of them. If you have any questions or need any clarification of these comments, please contact Dr. Kyle Southern, Associate Vice President at The Institute for College Access and Success, by email at ksouthern@ticas.org.

Sincerely,

American Federation of Teachers
Americans for Financial Reform Education Fund
Association of Young Americans (AYA)
Center for American Progress
National Consumer Law Center (on behalf of its low-income clients)
National Women's Law Center
New America Higher Education Program
Project on Predatory Student Lending
Service Employees International Union (SEIU)
The Education Trust
The Institute for College Access & Success
UnidosUS
Veterans Education Success
Young Invincibles
Carolyn Fast, The Century Foundation
David Halperin, Attorney

Appendix

The following quotations indicate how referenced proposed rules would affect student borrowers and student veterans. Current former students shared their experiences either with signatory organizations or during public comment periods throughout the negotiated rulemaking process. We submit these experiences for the record, as a way of demonstrating the real harm done by fraudulent institutions, long delays in processing claims, and the time and money lost by students through no fault of their own. Their experiences show the need for more student-oriented regulations, streamlined processes, and stronger guardrails for Title IV programs. Some comments have been lightly edited for clarity.

"Like many other veterans, I have wasted my time, my own money, and my government benefits attending two for-profit schools that made many false promises."

- Navy veteran Nicole Wilson (Testimony here).

“I never expected that going to college would be such a negative force in my life. But so far, I have no college degree, very few transferable college credits, and unrelenting student loan debt.”

- Air Force veteran Joshua Queen (Testimony here).

"When the school recruited me, they told me that 90 percent of its graduates were guaranteed jobs right out of the gate, with average salaries starting around $60,000-$70,000 a year. That was not true. And on top of that, I have student loan debt around $50,000, even though ITT told me that my GI Bill benefits would cover my entire education."

- Army veteran Brian Whitehead (Testimony here)

"I’m here today to respectfully ask this panel to help make it easier for veterans like me to access the Public Service Loan Forgiveness program. For the past two months, I have had to jump through multiple hoops just to access the benefits I earned through my military service. I understand the Biden Administration has proposed reforms to the program to lessen the bureaucratic burden for students. However, for veterans, there is still too much red tape involved. [T]o this day, I have been unable to access the program."

- Air Force veteran Jodi Parks (Testimony here)

“I’m here today to ask the Department of Education to prevent for-profit colleges from targeting veterans with false promises, leaving us with crushing loan debt and worthless degrees. […] As I was in the process of getting my benefit set up, the school had me sign a lot of documents, which I didn’t realize at the time that I was also signing up for loans that I never requested, and I did not want. So, all of this has greatly impacted my quality of life, my mental health and stress levels. I have complex post-traumatic stress from my days in the military and I’m now 100 percent disabled.”

- Michelle Poitier, negotiated rulemaking public comment, 10/5/21

“The International Academy of Design and Technology promised me the world and fell short on every promise. The areas that they thrived in, however, were their abilities to use high pressure sales and marketing tactics to increase admission—and frighten potential students into believing that they would

be unable to start school if they didn't sign up in that moment. […] After that experience, I learned and educated myself about the borrower defense to repayment application, and submitted it. I waited for four years hoping for some sort of resolution, and it was during this time that I found out how many students were in the same position as me. That should be comforting, but it's infuriating."

- Mikyeila Cordero, negotiated rulemaking public comment, 10/6/21

"I started to collect data on other Brooks' borrowers. Out of 500 borrowers, we collectively hold over $70 million. That's $70 million for just under 500 people—all student loan debt. […] I applied for borrower defense over five years ago. Yet, my application was denied under [Secretary Betsy] DeVos for lack of evidence. [Career Education Corporation] has been proven to be a bad actor, yet here we are still holding the bag. Our lives are permanently on hold, controlled by this debt while most of us reached middle and retirement age with little options."

- Ashley Pizzuti, negotiated rulemaking public comment, 10/7/21

"I have been in the process with Borrower Defense for almost three years. […] It's been a grueling process, it's been hard, it's been frustrating. I applied. [I] received it, [but] received almost no communication for a long time, and then when I did get communication [in] April of this year, I was told that 100 percent was approved for discharge, and that the tax returns that had been taken from me to pay those loans would be refunded. That still hasn't happened. I was told in October, and that still has not happened."

- Andrea Smith, negotiated rulemaking public comment, 11/3/21

"It's my opinion that at the time I enrolled at Le Cordon Bleu, I was coerced in[to] this predicament with a promise of becoming a chef. In reality, I have been unable to obtain a position as a chef upon graduation. Each class is only six weeks long, and that really doesn't give you any time to retain any type of information at all. […] I was promised a chef's average of $50,000 to $80,000 as soon as I graduated, and that was false information because the only job I was ever able to obtain was a line cook or a prep cook, [for] which beginning salary was at the time, I believe, $9 an hour."

- Adrian Figueroa, negotiated rulemaking public comment, 12/7/21

"On Monday, December 13th, [2021], I will have reached five years [since applying] for borrower defense of repayment. I have still not heard an answer. Today makes 1,822 days. A lot of times, I just want to be in the background…but I would like to be acknowledged. […] I have two degrees from a school that I can't put on my resume. I don't know how hard that is for anybody here to swallow, but for me, that's hard. […] I should be able to call the phone number and [have] somebody provide me some type of status update. Everybody here today is a consumer. I don't know how many people will sit here and wait 1,822 days for an answer."

- Juaquin Brown, negotiated rulemaking public comment, 12/9/21

"I want to talk about the TPD rule--our proposal here--and why automation is really important. So, in 2019, about 175,000 people applied for TPD, but the administration this year, when they automated it, they found over 300,000 people who are eligible hadn't applied for it. That's a huge number; that's

almost twice the number of people who apply. In addition, that's in a category--that's a minor category. It's a pretty small category. It's only one out of every ten Social Security disability recipients fall into that category. […] The other thing I want to talk about is what happens when you don't apply for this discharge. Often people have their Social Security benefits reduced by 15 percent. That's what happens when you're in default, that half the people who have been applying on their own have been in default when they apply, and they're trying to stop that. That has a huge impact on people, because with disability comes a low-income generally. It's very costly."

- Johnson Tyler, negotiated rulemaking public comment, 10/5/21