

Secretary John King, Jr.  
U.S. Department of Education  
400 Maryland Avenue SE  
Washington, DC 20202

Docket No. ED-2015-OPE-0103

August 1, 2016

Dear Secretary King:

On behalf of the National Association for College Admission Counseling (NACAC), thank you for the opportunity to submit comments on Docket No. ED-2015-OPE-0103. NACAC appreciates the Department's ongoing efforts ensure transparency and accountability in the federal student aid system.

Founded in 1937, NACAC is an association of more than 15,000 members, including school counselors and college admission staff, who work with students making the transition from high school to postsecondary education ("college"). NACAC is committed to maintaining professional standards that foster ethical and social responsibility among those involved in the college application and enrollment process, as outlined in the NACAC Statement of Principles of Good Practice, which may be accessed on our website ([www.nacacnet.org](http://www.nacacnet.org)). Through our advocacy efforts, we are also dedicated to ensuring that all students have access to high quality school counseling to help them make informed decisions as they prepare for and pursue college or career.

#### Loan Repayment Warnings

NACAC supports the Department's proposed rule that certain institutions with a student loan repayment rate of less than or equal to zero be required to issue warnings to enrolled and prospective students. Students invest in higher education with the belief that they will gain skills and credentials that enable them to recoup on their investment and live a more prosperous life—a belief that is encouraged by marketing materials and statements by institutional salespersons. In those circumstances in which loan repayment rates are so extremely low, an unambiguous disclosure of the rate to prospective students will serve as an important warning that the economic returns on enrollment at a given institution are, at best, uncertain. NACAC recognizes that loan repayment rates alone do not necessarily represent all relevant data prospective students need to make informed decisions, and we encourage the Department to continue exploring and implementing other student/consumer protection measures.

NACAC is pleased that the Department specifies that the warnings must be placed in all promotional materials, including those "made available to students by *or on behalf of the institution*" (emphasis added). Institutions employ complex marketing mechanisms, including the use of lead generators and other third-party contractors. NACAC urges the Department to



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interpret this definition as including all advertising and promotional materials and services for which an institution has paid or contracted. This will help curtail unscrupulous institutions' ability to skirt their responsibility to prospective students.

#### "Misrepresentation" Definition

NACAC is pleased that the Department has specified that the definition of "misrepresentation" includes the omission of certain information. Students, particularly those who are first generation or low income, do not always know what information is important or what questions to ask before enrolling at an institution, making it all the more essential that institutions operate in an ethical manner. Institutions should be upfront with prospective students, providing them all the facts they need to evaluate their options and make an informed decision. By including omissions in the definition of misrepresentation, the Department is taking an important step to ensure institutions do not withhold pertinent information.

#### Predispute Arbitration Clauses

NACAC supports the Department's proposed ban on predispute arbitration clauses in enrollment agreements. The restriction, as proposed, would prohibit institutions from requiring students to enter mandatory arbitration agreements that prevent them from later litigating certain claims against the institutions. Investigations by media as well as state and federal agencies and Attorneys General have produced abundant documentation that misrepresentation and aggressive, unethical recruitment tactics are widespread within the for-profit education sector. Unscrupulous institutions routinely mislead prospective students as to the quality of instruction, recognition of the degree within the market, cost of attendance, completion prospects, and likelihood of job placement, among other critical pieces of information. As a result, students – particularly first-generation and low-income – enroll in programs that fail to prepare them for the workforce, but which nonetheless leave them deeply indebted.

The use of predispute arbitration clauses exacerbates the harmful effects of this deception. Salespersons at unscrupulous institutions have been shown to employ boiler room tactics, playing off of students' pain points and fears, to pressure them into signing densely legal enrollment contracts. Students do not have the opportunity to carefully peruse the documents or to consult with an attorney to make sure they understand the ramifications of the provisions contained therein. When students then later sue over claims arising from an institution's misrepresentation and unethical recruitment practices, they discover their claims can only be heard in arbitration—a process that tends to disadvantage students.

NACAC believes that banning predispute arbitration clauses is an important step in securing robust student protections against unethical recruitment and enrollment practices. The college enrollment process should be transparent, and institutions should provide students reliable information that does not misrepresent or omit important details. As discussed above, consumer disclosures will help guarantee front-end transparency and curb damaging misrepresentation. Prohibiting institutions from using predispute arbitration clauses will ensure that, when substantial misrepresentation does occur, students are able to seek the legal relief to which they are entitled through the method of their choice, including class actions. While NACAC supports the Department's proposed rule, we believe the ban on predispute arbitration clauses should be expanded beyond borrower defense claims and class action waivers. A more comprehensive rule could protect not just federal student loan borrowers, but all students who enroll at unscrupulous institutions, regardless of how they finance their education.

Thank you again for the opportunity to submit comments on Docket No. ED-2015-OPE-0103. NACAC supports the proposed rule and is available to discuss additional ways the Department can augment existing, or develop additional, student protection measures. Please contact Michael Rose, Associate Director of Government Relations, at [mrose@nacacnet.org](mailto:mrose@nacacnet.org) to learn more about NACAC and our policy recommendations.

Sincerely,



Joyce Smith, CEO



National Association for  
College Admission Counseling