

September 13, 2018

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

Submitted electronically via: <http://regulations.gov>

RE: Docket ID ED-2018-OPE-0076

Dear Secretary DeVos:

As 62 organizations and advocates for students, families, taxpayers, veterans and service members, we write to express grave concern that the Department of Education's 2019 regulatory agenda will result in the weakening of critical protections for students, while permitting abusive and low-quality educational providers to waste and abuse taxpayer dollars. We urge the Department to reject any changes that weaken accountability and consumer protection.

Each year, the federal government invests more than \$150 billion in student loans, scholarships and tax credits in higher and career education. 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 "innovation" with too little accountability attached. One need only look at the recent collapse of two large systems that largely served working adults, Corinthian Colleges and ITT Technical Institutes, to underscore the need to strengthen safeguards and accountability for student outcomes.

The Department's regulatory agenda for 2019 would open up a slate of rules at the heart of defining higher education and the guidelines designed to protect students' and taxpayers' investments. Behind each of these rules, there is a history of harm to students that drove their creation; weakening or eliminating them will only invite the return of those abuses. For example:

- **Student-teacher interaction:** Online education can be a high-quality opportunity for students, but without some minimal expectation of teacher-student interaction, students and taxpayers would end up paying high costs for programs that amount to little more than online textbooks. The current requirement that distance education programs provide "regular and substantive" interaction between students and instructors was created to end a long history of fraud and abuse in correspondence education. It was recommended by President George H.W. Bush's Department of Education and was enacted with bipartisan agreement in Congress. The rule already allows schools

to use federal aid for entire courses without any student-teacher interaction as long as those courses make up no more than half of the program. Changes must not open the doors to allowing the operation of programs, at taxpayer expense, that are little more than online readings.

- **Measuring education:** A standard definition of a credit hour helps to ensure students and taxpayers are getting the education they pay for. The Department created the current credit hour definition in 2010 in response to findings from its independent inspector general that institutions were inflating the value of college courses, with little or no oversight from the accreditors. The rule clarified that the credit hour signified an amount of academic work by students roughly equivalent to the traditional lecture-plus-study-time standard, “verified by evidence of student achievement” and allowing for flexible, innovative approaches “completely consistent with innovative practices such as online education, learning-based credit, and academic activities that do not rely on ‘seat time.’”<sup>1</sup> Even the inspector general has said that the definition “does not mandate the classroom hours or seat time required for a course or program.”<sup>2</sup>
- **Outsourcing education to unproven entities:** Only schools accredited by a recognized accrediting agency, authorized by a state and approved by the Department are eligible for federal student aid. The Department’s 2019 regulatory agenda includes opening up rules that cap institutions’ ability to outsource their programming to outside organizations, including unaccredited and unaccountable entities. Weakening the limitations on schools’ ability to outsource educational programming would undermine the oversight system tasked with ensuring sufficient educational quality and could leave students and taxpayers confused or misled over who is providing the education they are buying.
- **Narrowing oversight by states and accreditors:** The Department now seeks to make changes to accreditation and state authorization rules that could ultimately reduce the rigor of oversight from both accreditors and states. Weakening protections for students and safeguards for taxpayer dollars through changes to state authorization or accreditation rules risks opening the floodgates to unscrupulous schools, undermining the quality of higher education and the integrity of federal spending.

There is room to improve federal law in some of these areas to better achieve quality assurance and allow careful innovation and experimentation that will serve students better. Yet in order to craft thoughtful improvements in these areas, it is imperative that the problems be defined carefully and precisely, beyond unsubstantiated claims about stifled innovation.

Furthermore, the Department’s recent actions provide little assurance that it will regulate responsibly, with a basic understanding of historical abuses and the risks of recreating them. Already, under your leadership, the Department has delayed a rule respecting state sovereignty and oversight of distance

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<sup>1</sup> Eduardo M. Ochoa, “Guidance to Institutions and Accrediting Agencies Regarding a Credit Hour as Defined in the Final Regulations Published on October 29, 2010,” U.S. Department of Education (2011).

<sup>2</sup> Office of Inspector General, “Western Governors University Was Not Eligible to Participate in the Title IV Programs,” U.S. Department of Education (2017), 11.

education, undermined states' ability to protect student loan borrowers, ceased processing loan-discharge applications of borrowers who were lied to by their institutions, proposed weakening rules for future cheated students, and proposed gutting both disclosures and minimum required standards to prevent gainful employment programs leaving students with debts they cannot afford.

We are deeply concerned that the result of the Department's forthcoming rulemaking will only weaken access to high-quality higher education and key consumer protections for today's students, undermining the federal aid system through a new wave of abuses. The Department's proposed 2019 regulatory proposals must not serve to line the pockets of for-profit institutions, private companies and unscrupulous providers, with students' and taxpayers' hard-earned dollars. We must reverse course and head in a new direction, before the Department of Education puts the American higher education system on a collision course with failure.

Sincerely,

Allied Progress

American Federation of Labor & Congress of Industrial Organizations (AFL-CIO)

American Federation of Teachers

Americans for Financial Reform Education Fund

Association of the United States Navy

Association of Young Americans (AYA)

Center for Law and Social Policy (CLASP)

Center for Public Interest Law

Center for Responsible Lending

Children's Advocacy Institute

College Advising Corps

Consumer Action

Consumer Advocacy and Protection Society (CAPS)

Consumer Federation of California

Demos

East Bay Community Law Center

EMPath

Empire Justice Center

Generation Progress

Goddard Riverside Community Center

Government Accountability Project

Higher Ed Not Debt

Higher Education Loan Coalition

Hildreth Institute

Housing and Economic Rights Advocates

Legal Services NYC

Maryland Consumer Rights Coalition

Mississippi Center for Justice  
NAACP  
National Association of Consumer Advocates  
National Center for Law and Economic Justice  
National Consumer Law Center (on behalf of its low-income clients)  
National Consumers League  
National Student Legal Defense Network  
New America Education Policy Program  
New Settlement Apartments College Access Center  
New York Communities for Change  
NJ Citizen Action  
One Wisconsin Now  
PHENOM (Public Higher Education Network of Massachusetts)  
Public Counsel  
Public Good Law Center  
Public Law Center  
Service Employees International Union (SEIU)  
StreetSquash  
Student Action  
Student Debt Crisis  
Student Veterans of America  
The College Access Consortium of New York, Inc.  
The Education Trust  
The Harvard Project on Predatory Student Lending  
The Institute for College Access and Success (TICAS)  
The Legal Aid Society of NYC  
U.S. Public Interest Research Group (PIRG)  
UnidosUS  
United States Student Association  
University of San Diego Veterans Legal Clinic  
Veterans Education Success  
Veterans for Common Sense  
Vietnam Veterans of America  
Woodstock Institute  
Young Invincibles