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Secretary John B. King, Jr.
U.S. Department of Education
c/o Jean-Didier Gaina
400 Maryland Ave., SW, room 6W232B
Washington, DC 20202

Re: Docket ID ED-2015-OPE-0103

Dear Secretary King:

I thank you and the Department for implementing rulemaking on these important issues of defense to loan repayment, letters of credit, and mandatory arbitration.

The proposed rule should be strengthened to better protect students and taxpayers, and I endorse the collective comments of our coalition of student, veterans, civil rights, consumer, education policy, and educator organizations, as well as specific comments from The Institute for College Access and Success, The Century Foundation, Public Citizen, Margaret Reiter, and others, as well as petitions from CREDO Action and Americans for Financial Reform that collectively have garnered tens of thousands of signatures.[1]

I write separately because I want to comment on efforts by for-profit colleges and others to derail this critical effort, and I want to address some of the misleading arguments they have presented.

Despite the wonky nature of this regulatory process, despite the legal and technical jargon required, this rulemaking is about big things — opportunity, justice, and the integrity of our government and our democracy.

As they have done in the past, and as I have described in my ebooks, *Stealing America's Future* (2014) and *Friends in High Places* (2016), and on the *Republic Report* and *Huffington*

[1] I am particularly concerned that, as discussed in Public Citizen's comment, the arbitration provisions, notwithstanding the Department's strong statements about how forced arbitration harms students, contains exceptions so big that they threaten to swallow the rule. Unscrupulous for-profit colleges have demonstrated over and over that they are prepared to game requirements and loopholes with respect to obligations like cohort default rate and 90/10 — finding a way to bring themselves into compliance while undermining the purposes of the law. The dangers of an arbitration rule loaded with loopholes is that predatory colleges will do the same in this context.

Post blogs, the for-profit college industry has clearly spent heavily to try to convince others, especially lobbyists for non-profit and public colleges, to oppose important common sense regulations.

The rule spurring the instant lobbying frenzy would:

1. Implement a law already on the books, at 20 U.S. Code § 1087e(h), by providing standards and procedures for the government to forgive the federal loans of students who were defrauded or abused by their schools.

2. Require schools that behave irresponsibly to post financial letters of credit so money will be available to pay claims in case the school shuts down.

3. Allow students who believe they were defrauded or abused to take their claims to court, instead of permitting for-profit colleges to keep forcing such students into secret arbitration proceedings that rarely provide relief or accountability.

With this rule, the Obama Administration has an opportunity — and a responsibility — to fix a huge problem, give people a better chance to train for careers, and save taxpayers a lot of money over the long term. A strong rule can do all these things.

Over the past six years, I have spoken with scores for-profit college students — veterans, single mothers, immigrants, and others struggling to build better futures. I've also spoken with scores of industry insiders. There are good programs and teachers in the industry. But the abuses are remarkably bad, and they are ongoing.

This new rulemaking process was triggered in large part because the awful predatory Corinthian Colleges collapsed. It's now clear that Corinthian deceived students and regulators. Now students want their loans forgiven, and the Department has begun granting some relief. But Corinthian says it's broke. It's in bankruptcy. Taxpayers are stuck with bill.

Bad behavior at Corinthian is echoed at other schools. Seven of the ten biggest for-profit college companies, which got $8 billion in federal student aid last year, have all been under federal and state law enforcement investigation or settled cases for alleged deceptive acts and other unlawful practices in recent months and years: These are Apollo / University of Phoenix, EDMC, ITT Tech, Career Education Corp., DeVry, Bridgepoint, and Kaplan. By the way, the operator of Kaplan, now called Graham Holdings, previously owned 8 percent of Corinthian. Many other for-profit colleges also have engaged in fraudulent behavior.

By continuing to approve these bad actors for federal student aid, without demanding sufficient reforms, the Department of Education is essentially bestowing its Good Housekeeping seal, telling students it's not just possible to enroll with taxpayer help, but that it's OK, it's a good thing, to enroll.

As you read this, more students are enrolling at these schools. Often they have been lured by misleading TV advertising, or hooked by bait and switch websites that offer jobs, food stamps, veterans advice, and other things that struggling Americans need, when really they're designed to get a phone number so a college recruiter can call 10 times a day, pressuring and deceiving people until they enroll in substandard college programs that will ruin their finances.

A strong debt relief rule is needed to be fair to students who have relied on these deceptive pitches, backed by this government Good Housekeeping seal. It would be just, because the government owed these students more due diligence. A strong rule will compel the government to step up its scrutiny and enforcement with respect to funding predatory schools, because doing otherwise will become just too expensive. In other words, the most important effect of the rule will be on the regulator, the Department of Education, itself.

In our coalition's view, where the Secretary of Education has evidence that a group of students are eligible for loan relief because of school misconduct, those students should have their loans discharged automatically, unless the student declares that he or she does not wish to be part of the relief. Champions for students in Congress have echoed the view that debt relief should be automatic, without compelling each student to prove that he or she suffered from the deception.

Leaning to the side of students' interests would be a long-overdue position for a Department of Education that long has acted as if colleges were its primary constituency.

Over the first 22 years since the law empowered the Department to cancel student loans for reasons of school fraud, the Department has done nothing to make students aware of, or draft rules or create systems to help them to exercise, their rights. As a result, only five students have ever applied, and only three of those had their debt cancelled.

Now, with a new rule looming that would actually implement this law, for-profit college owners and lobbyists have been meeting at the White House, paying for reams of op-eds by consultants parroting industry talking points, and claiming the rule would destroy their companies and destroy the opportunity for students to get an education.

The rule, in fact, would impose serious penalties only on those schools that abuse their students, by means of deceptive recruiting, advertising, and reporting, and other serious misconduct. In the emerging environment where the Department of Education begins imposing some basic standards on schools getting federal aid, colleges that offer quality programs and act responsibly will be able to thrive. Such schools should not be fooled by the persistent defenders of awful predatory colleges into attacking proposals that implement President Obama's long-time determination to protect students and taxpayers and the integrity of the financial aid system.

Within a few years, if properly implemented, the rule will not only help students but also should start *saving* taxpayers billions.

Even the Department's highest cost estimate of implementing debt relief under the rule — $42.7 billion over 10 years — is a tiny percentage of the more than $1 trillion projected loan volume over the same 10-year period, or the $1.3 trillion in current outstanding federal student loans. Moreover, this projected budget impact is overstated because it assumes no change in school practices will be triggered by the regulation. In fact, the budget impact will be less if the rule gives schools incentives to stop defrauding students. Many for-profit colleges responded to the Department's gainful employment rule by changing their practices, including by closing their worst performing programs, freezing or reducing tuition, and providing better job placement services.

The new rule will save money by requiring troubled schools to post escalating letters of credit, so cash is available to compensate ripped off students. The letters of credit would compel irresponsible schools to make money available to pay victims; Corinthian Colleges was getting at much as $1.7 billion a year from taxpayers, and yet when it shut down it claimed it was deep in debt. Last year, EDMC, which still gets $1.47 billion annually from taxpayers, pleaded poverty to the Justice Department in a successful effort to limit to an easy $95 million its punishment for an alleged $11 billion worth of fraud.

The new rule's constraints on mandatory arbitration would allow students to bring lawsuits to expose, punish, and deter egregious misuse of taxpayer dollars by schools — so the burden doesn't fall so hard on regulators and law enforcement agencies. Virtually no non-profit college, other than a few who converted from for-profit status on questionable terms, have forced students to arbitrate their claims, while nearly all for-profit colleges that receive federal aid have been imposing these one-sided arbitration clauses.

Perhaps most importantly, as noted, the establishment of a debt forgiveness process and standards for victims of fraudulent schools will force the Department of Education to think harder about what institutions should be getting our tax dollars in the first place.

Which is precisely why people like Steve Gunderson, head of the for-profit college trade association APSCU (now renamed CECU), and Donald Graham, the owner of for-profit Kaplan University, seem to be so worked up.

Non-profit and public colleges and universities, however, should not be misled by their own lobbyists and trade associations into following that dubious lead. These institutions face a critical choice with respect to the new rules. When the history of this debate is written, do they want it said that they aided and abetted widespread fraud by predatory for-profit colleges, and undermined the futures of millions of Americans, by helping to block reasonable rules? The new rules won't damage honest, effective schools. The rules will help low-income and middle-income students who want a chance for a good career. Traditional higher education leaders should ignore any bad advice they may be getting from their lobbyists and trade associations. They should step up and support President Obama's efforts here.

The lobbying organizations for non-profit and public institutions may have specific concerns about the rule as drafted, and they have every right to engage with the Administration on these matters. But to the extent they adopt the false arguments of the for-profit college industry, or attempt to derail the rule generally, they are doing a disservice to their own member institutions, not to mention the students of these institutions. Traditional higher education should not be driven by their lobbyists to simply act like a special interest group, and a dumb one at that. Traditional high education should not oppose these pro-student rules out of short-sighted and ultimately mistaken analysis about alleged harms to their institutions.

The items linked below give a flavor of the efforts to scare traditional higher ed into opposing the rule:

— Letter to traditional higher education organizations from Edward Wyatt of the public relations firm Sphere Consulting, seeking a meeting and claiming the rule "will result in the biggest taxpayer bailout since TARP." Wyatt explains that, "We represent a consortium of schools that are facing a proposed rulemaking"; he didn't respond to my request to know who is that is. According to Wyatt's letter, the regulations will:

> Put taxpayers at risk for a conservative estimate of $43 billion over the next 10 years. Impact every Higher Education institution in the country. Heavily damage the financial position of longstanding colleges, requiring them to put up millions of dollars in letters of credit to protect against student loan dismissals. Allow unelected Bureaucrats at the Department of Education to serve as judge and jury in determining whether a misrepresentation exists, regardless of intent. Provide a gift to the trial bar. Leave schools with no real due process because of a vague claims procedure. Result in an endless cycle of appeals and reconsideration.

— Numerous quotations given to a reporter for an *Inside Higher Ed* piece entitled "Proposed federal rules for student debt forgiveness worry some nonprofit colleges," which quotes, among others, Stanley A. Freeman, "a lawyer with the D.C.-based firm Powers Pyles Sutter & Verville" (in fact, a former board member of APSCU) and Diane Auer Jones,"a senior fellow at the Urban Institute and a former official in the department during the George W. Bush administration, who later worked for Career Education Corporation" (in fact, also "President AJsquared Consulting ... Successful in leading organizations through start-up and turn-around activities, in achieving regulatory compliance, in developing and implementing effective strategic plans, in leading change management efforts and in transforming organizational culture through decisive, respectful and effective leadership," meaning she is an education industry consultant) - link

— *Inside Higher Ed* op-ed by Dr. Julianne Malveaux, who also is quoted in the *IHE* article above — link

— *The Hill* op-ed by Brian Robertson, "CEO of Crispin Solutions, a public affairs and communications consulting firm," who warns, "Since the proposed rule will apply to all types of higher-education institutions, public, taxpayer-funded schools would also be implicated for shouldering loan discharges..." — link

— *Forbes* contributor interview with Katherine Lee Carey, lawyer at Cooley, which has repeatedly represented the interests of bad actors in the for-profit college industry. Carey tells non-profit and state colleges to "WAKE UP" and object to the new regulations - link. (The same piece appears on the "University Ventures" website.)

— A *Washington Post* essay by Jeffrey Selingo that extensively quotes the same Cooley lawyer, Carey, raising concerns about the rule's impact on traditional colleges and linking to the *Forbes* interview and the *Inside Higher Ed* piece. Days earlier, the *Post* published an editorial entitled "An overreach on for profit-colleges" that warns, "A cottage industry already is forming with law firms and loan-consolidation companies trolling for students with borrower defense claims. Their appeals are not limited to for-profit schools but include well-established traditional colleges and universities. Taxpayers could be on the hook for billions of dollars in student loan discharges." Until recently, the *Post* was owned by the company that owns the predatory for-profit Kaplan University and also owned, until its collapse, a significant stake in predatory Corinthian Colleges. (There are indeed, as the *Post* editorial says, some questionable companies currently using misleading pitches and trying to charge students to apply for debt relief that they can apply for on their own — I have filed complaints with federal agencies about them this year — but that doesn't mean, with or without the new rule, that the Department will be forced to approve meritless claims.)

— A *Weekly Standard* piece parroting the for-profit college industry's doomsday warnings about the impact of the rule on traditional higher education and linking to the *Inside Higher Ed* piece and a Cooley law firm analysis. According to this piece, by Alice B. Lloyd, "The proposed guidance, lawyers warn, is dangerously vague—vague enough that we could sue our alma maters for our lost innocence. Cha-ching!"

— An op-ed in *The Hill* opposing the rule and warning of bad consequences for public and non-profit colleges, this time authored by "Phil Goldberg ... the Director of the Progressive Policy Institute's Center for Civil Justice and a partner in the Washington, D.C. office of Shook Hardy & Bacon, LLP." Shook Hardy & Bacon certainly is a civil justice pioneer, known for its aggressive defense of tobacco, coal, and other toxic special interests.

— A comment by Mark Kantrowitz, the President of MK Consulting Inc. and formerly with the lead generation company Edvisors, posted on the *Inside Higher Ed* article that warns:

> Law school graduates who are unable to repay their student loans will seek to cancel their debt under the defense to repayment. When they are successful, some will set up businesses helping other borrowers discharge their debts. Colleges will fight any obligation to repay the student loans of their graduates, arguing that the regulations lack sufficient due process (e.g., allowing discharge on the allegation of malfeasance without any actual proof). The federal government will then be left shouldering the cost of the defense to repayment discharges. The U.S. Department of Education may be correct in estimating that the cost will be $4 to $5 billion a year, but that's only after pent up demand of $200 to $300 billion is satisfied.Many traditional colleges, not just for-profit colleges, misrepresent the benefits and outcomes of the education they provide. Many

colleges misrepresent loans as grants in their award letters. Many colleges provide inaccurate information to college rankings (e.g., reporting just need-based loans instead of all loans, reporting the average debt among all graduating students as opposed to just those students graduating with student loan debt). Advertising routinely overstates the value of the education. Advice to colleges: Have an attorney review all advertising and marketing materials, plus all communications with students and parents.

— A letter from a "coalition of 18 national taxpayer organizations, representing millions of members and supporters" to Secretary King on July 19; they demand that the Department's regulation "be immediately withdrawn." The coalition includes the conservative groups Heritage Action, Tea Party Patriots, and Grover Norquist's Americans for Tax Reform. They warn that many students at public colleges will seek debt relief under the rule. They say, "We do not need another federal bailout.... Forcing taxpayers to pay for bad student loans is wrong."

These arguments by groups that claim to be dedicated to fiscal responsibility are particularly absurd, as they are being invoked to oppose a rule that could do much to curb the enormous waste, fraud, and abuse engaged in by many for-profit colleges: the monumental misuse of taxpayer dollars — to the tune of billions annually— that has been carefully documented by the Senate HELP committee and others.

The for-profit college trade group APSCU/CECU also has attempted to enlist for-profit college students to oppose the rule, by sending a "toolkit" to college operators that is full of highly misleading arguments about the regulation.

The emerging narrative from opponents of the rule is disturbing. For-profit colleges, their paid allies, and others seem to be seeking to paint students as scam artists whose enrollment in school is simply the beginning of a long con aimed at defrauding taxpayers.

In reality, few students will commit their precious time, their Pell grants, their military tuition assistance and G.I. Bill eligibility, their own out-of-pocket costs, and their private student loan expenses, simply in the hopes of getting just their federal loans forgiven at the end.

In reality, most students who were not genuinely defrauded and disadvantaged won't spend time seeking loan forgiveness, and the Department of Education will not grant claims that lack merit. The new rules give the Department the flexibility to focus on real frauds without harming honest schools.

In reality, most of the documented fraudulent behavior is not by students but by some for-profit colleges, large and small, that have scammed billions of dollars from students and taxpayers alike.

The for-profit college industry's effort to portray students as scammers in order to block reforms that would provide relief to students who themselves were scammed is shameful. Contrary what all these paid advocates for special interests are telling you, a strong debt relief rule will ultimately save taxpayers billions, and it will strengthen opportunity and our economy by directing students to quality education programs that will actually help them build careers.

I would be pleased to further discussed this perspective with you, as well as with any of the persons, groups, and companies mentioned in this comment.

Sincerely,

David Halperin

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