August 30, 2018

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

Docket ID ED–2018–OPE–0027

Docket ID ED-2018-OPE-0042

Dear Secretary DeVos:

I am submitting this single comment twice, in response both to your proposed revision of the 2016 borrower defense rule and to your proposed rule to rescind the 2014 gainful employment regulations. I do so because the two rules, as your two notices of proposed rulemaking (NRPMs) effectively acknowledge, are interrelated, and also because your effective cancellation of both of the existing rules are best discussed in the context of (1) your Department's overall abandonment of meaningful accountability and performance requirements -- requirements that were aimed at protecting students and taxpayers from predatory college abuses -- and (2) your Department's blatant conflicts of interest and skewing of the regulatory process that have brought you to this moment.

The legal and policy flaws in your two proposed rules are numerous. The ones I will address in this comment can be summarized as follows:

- Taken together, your two proposed rules would dramatically reduce incentives for colleges to engage in honest, fair recruiting and treatment of students and to provide a quality education at an affordable price.
- By thus rewarding predatory behavior, each of your two proposed rules would cost taxpayers billions more than would the existing Department of Education rules which they would replace.

- By thus rewarding predatory behavior, your rules also would ruin many more students' lives than would the existing Department of Education rules which they would replace.
- In justifying these rules, you ignore, distort, and misrepresent data and evidence, including data and evidence developed in three rounds of rule-making proceedings under the previous administration (two for gainful employment and one for borrower defense), and you provide no meaningful new data of your own to justify your proposed rules.
- Your proposed rules match the demands of, and thus represent a handover of policy to, the very predatory for-profit colleges whose egregious misconduct made the existing rules a clear necessity.
- Your proposed rules are the product of a corrupt process in which, among other things, individuals with obvious conflicts of interest participated as senior Department officials.

Your two proposed rules are thus arbitrary and capricious, contrary to law, and harmful to the interests of students, taxpayers, effective educational institutions, the economy, and our nation as a whole.

The result is perhaps unsurprising because you have, again and again, molded your policies to the wishes of predatory actors. Examples include: your approval of troubling deals to convert some bad-behaving for-profit schools to non-profit status[1], your reconsideration of the de-recognition of asleep-at-the-switch accreditor ACICS[2], your reprieves to predatory for-profit schools including Globe University and Charlotte School of Law[3], your termination of a cooperation agreement with the Consumer Financial Protection Bureau[4], and your destruction of the Department's enforcement unit.[5]

Last month, your Department announced it planned to re-plow even more regulatory terrain — reconsidering rules that, among other things, govern the

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[1] https://www.republicreport.org/2018/betsy-devos-facilitates-profit-colleges-conversion-therapy/
[2] https://www.nytimes.com/2018/06/11/us/politics/betsy-devos-for-profit-higher-education.html
[3] https://www.republicreport.org/2017/devos-embrace-of-predatory-for-profit-colleges-is-breathtaking/
[4] https://edworkforce.house.gov/uploadedfiles/2017-09-01_signed_letter_to_cfpb.pdf
[5] https://www.nytimes.com/2018/05/13/business/education-department-for-profit-colleges.html

accreditation process and that seek to ensure that online programs provide serious instruction. In an interview[6] that your aide Diane Auer Jones gave to *Inside Higher Ed*, she stressed, as did the Department's announcement, that the goal was to open up new opportunities for "innovation," a word which sounds attractive in theory but often has been invoked in support of policy changes that provide companies with greater access to student aid dollars and with less accountability for delivering results.[7]

I strongly support efforts and innovations that improve students' opportunities for higher education, especially career education. But I have learned that it is important to focus on the details and to demand that those receiving taxpayer dollars produce strong, positive outcomes.

With the support of non-profit foundations and organizations, I have worked (part-time) on the issue of for-profit and career higher education for the past eight years, as an advocate, investigative writer, and lawyer.[8] I have spoken with hundreds of students and industry executives, administrators, recruiters, and teachers. I have reviewed thousands of pages of industry and government documents and academic research. I have attended hundreds of hours of proceedings, including nearly every minute of the rule-making meetings for your two new proposed rules. I have documented on my blog Republic Report[9] and in two e-books[10] how predatory college practices have ruined the lives of countless students, and how money from the for-profit college industry -- most of it provided by taxpayers -- has severely corrupted the policy process.

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6 https://www.insidehighered.com/news/2018/07/30/trump-administration-official-describes-plan-rethink-higher-education-through

7 https://www.insidehighered.com/news/2018/07/31/online-providers-consumer-advocates-odds-over-education-department-regulatory

8 https://www.republicreport.org/author/david-halperin/

9 https://www.republicreport.org/

10 https://www.amazon.com/Stealing-Americas-Future-Profit-Taxpayers-ebook/dp/B00JAJGIIK ; https://www.republicreport.org/wp-content/uploads/2016/01/D-Halperin-Stealing-Americas-Future-ebook.pdf; https://www.amazon.com/Friends-High-Places-Endorses-Profit-ebook/dp/B01HYNJCFE; https://www.republicreport.org/2016/friends-in-high-places-who-endorses-americas-troubled-for-profit-colleges/

Your tenure as Secretary, including the issuance of these two proposed rules, represents the very worst corruption of higher education policy. This is so because the government and media investigations of the past decade laid bare the awful and blatant abuse of taxpayer dollars by predatory schools and the stark financial harms done to students across the country.

Your Department knows what these predatory actors have done, and are still doing, and yet you are now prepared to unshackle them once again to deceive and abuse students -- veterans, military family members, single parents, immigrants, people of color, first generation college students, and others seeking better lives -- with near impunity.

Your two proposed rules are an affront to law, sound public policy, and basic decency. They should be abandoned.

1. The Proposed Borrower Defense Rule (Docket ID ED–2018–OPE–0027) Ignores, Misinterprets, and Misrepresents Critical Facts On Its Way to Undermining Accountability for Predatory Behavior

You propose to dramatically revise the 2016 borrower defense regulation, which was aimed at cancelling federal student loan debts for people who are deceived or otherwise seriously injured by predatory colleges.

The NPRM states that the proposed regulations are designed to achieve a number of goals, including the following goals generally pursued by advocates for students and taxpayers: “Provide students with a balanced, meaningful process ... to ensure that borrower defense to repayment discharges are handled swiftly, carefully, and fairly”; “Encourage students to seek remedies from institutions that have committed acts or omissions that constitute misrepresentation and cause harm to the student”; “Ensure that institutions rather than taxpayers bear the burden of billions of dollars in losses from approvals of borrower defense to repayment discharges”; “Discourage institutions from committing fraud or other acts or omissions that constitute misrepresentation"; "Enable the Department to properly evaluate institutional financial risk in order to protect students and taxpayers"; and "ensure that millions of American students and borrowers are provided with accurate information to inform their enrollment decisions…"

In reality, there is no evidence and no reason to believe that your proposed rule is designed to, or would, help achieve any of those goals.

At the same time, the NPRM offers other goals, ones generally favored by predatory schools and apparently by some of your staff, including: "Enable institutions to respond to borrower defense to repayment claims and provide evidence to support their response"; "Discourage institutions from … closing precipitously"; "Address the concerns expressed by negotiators, as well as in a suit filed by an association against the Department, that large financial liabilities resulting from the unclear borrower defense standard in the 2016 final regulations could cripple or force the closure of colleges and universities, even as they produce positive outcomes for students and provide students with accurate and complete information relating to enrollment"; "Reduce uncertainty about the future of the Federal financial aid system itself due to the strain on the government of large numbers of borrower defense to repayment discharges"; and "ensure that students are not subjected to narrowed educational options as a result of unwarranted school closures."

The NPRM does take significant steps to meet for-profit college industry goals, but the Department's descriptions of these goals are, in large measure, euphemistic expressions of the industry's interest in avoiding accountability.

In particular, the NPRM language about avoiding rules that limit "educational options" parrots a talking point used by for-profit colleges, their lobbyists, and their paid surrogates over the past decade to oppose both the borrower defense and the gainful employment rule.[11]

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[11] See, e.g., https://www.dailysignal.com/2018/07/27/betsy-devos-to-nix-obama-rule-that-hurt-proprietary-colleges-and-students/; https://www.washingtonpost.com/news/grade-point/wp/2016/10/28/new-federal-rules-could-make-it-easier-to-have-student-loans-forgiven/?utm_term=.fd82181ad4b2

The problem with the talking point is that it begs the question of what an "unwarranted school closure" is. Rules that differentiate between schools that are actually helping students to train for careers and those that consistently leave students worse off than when they started, and then press the latter category of schools to reform or else lose access to federal dollars, do not result in "unwarranted" closures.

From my experience speaking with hundreds of for-profit and career college students, executives, and employees, and carefully studying this industry, I can say with confidence that students don't benefit from access to schools that lie to them about matters like school selectivity, accreditation, job placement, and starting salaries, that over-charge and under-educate, and that leave graduates and dropouts alike with worthless degrees and credits, and mountains of debt.

Your proposed rule represents a complete negation of the important reforms in the 2016 borrower defense rule, a total surrender of policy to the for-profit colleges whose bad behavior triggered that rule, and a fundamental rejection of the interests of students and taxpayers.

This action is particularly disgraceful because it comes as yet another for-profit college chain — the Art Institutes and other schools formerly run by EDMC and now by faux non-profit Dream Center Education Holdings — is right now collapsing under the weight of decades of predatory recruiting and high prices[12], resulting in system-wide chaos and turmoil for students.[13]

And while your Department claims that gutting the 2016 rule borrower defense rule will save taxpayers money, in reality the opposite is true: This gift to

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https://www.rollcall.com/news/steve-gunderson-private-sector-schools-help-fill-skills-gap-213045-1.html ; https://www.nytimes.com/2010/10/01/education/01education.html

12 https://www.republicreport.org/2018/leaked-recording-dream-center-exec-blames-durbin-edmc-accreditors-but-not-devos/

13 https://www.postandcourier.com/news/students-left-dangling-as-art-institute-of-charleston-shuts-down/article_3a2bbb52-89e6-11e8-bd5d-2f7b26deb520.html

predatory colleges will end up costing taxpayers billions more, while ruining countless students' lives in the process.

As evinced by comparing the proposed rule with the debates among the negotiators[14], including negotiators associated with predatory for-profit schools [15], during the rule-making meetings, the proposed rule gives the for-profit college industry just about everything that it sought, and gives students and taxpayers just about nothing.

A. The Proposed Borrower Defense Rule Is Inconsistent with the Higher Education Act, Because It Offers Deceived and Abused Students Virtually No Chance of Loan Cancellation

Section 455(h) of the Higher Education Act provides:

> Borrower defenses. Notwithstanding any other provision of State or Federal law, the Secretary shall specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this part...

The 2016 rule established reasonable standards and a fair process for injured students to seek loan relief pursuant to this statutory mandate. In sharp contrast, your proposed rule inserts so many barriers to relief that it would be extremely difficult, if not impossible, for any student to prevail. It thus is inconsistent with a statute that posits a meaningful defense to repayment process.

For example, unlike in the 2016 rule, loan relief under your proposed rule is permitted only for certain defined types of false statements by a school, and not for breaches of contract or violations of state law. Then, in order to obtain loan relief based on a claim that the school made such misrepresentations, the student must somehow prove not only that the school's statements were false, but also that the school knew the information was false or that it acted

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14 https://www.republicreport.org/2018/profit-college-lawyer-suggests-devos-draft-matched-industry-wish-list/

15 https://www.republicreport.org/2017/rewrite-obama-rules-devos-picks-people-tied-predatory-colleges/

with reckless disregard for the truth. But students enrolling in college programs are unlikely to be simultaneously spending time investigating and documenting the knowledge and intent of the school recruiters and others; and nor would they be likely to find a way to document such intent after the fact.

Next, your proposed rule would require students to prove not only that they took out the loans based on the school's misrepresentation, but also that the misrepresentation caused a financial harm beyond just the loan debt — for example that they wouldn't have enrolled in the school if the loan hadn't been available and that their attendance at the school, rather than job market conditions, was the cause of their lack of employment.

The Department has shelved for now its previous proposal, offered in the rule-making meetings, that students prove entitlement to debt relief by the demanding standard of "clear and convincing evidence" — a rare requirement imposed, for example, on the government when it seeks to take away a child from a parent. But, not prepared to give up on the idea, the Department is still asking for public comment on whether it should revert to "clear and convincing." During the rule-making meetings, for-profit college representatives repeatedly stressed their interest in forcing students to prove their cases by this absurdly high standard.[16]

There is no principled or logical basis for imposing the demanding clear and convincing evidence on students seeking loan forgiveness from the government.

More unwarranted barriers: Under your proposed rule, only students whose loans are in default and turned over to a collections agency may seek relief — despite concern by experts, including in the federal government, that such a requirement would encourage people to default. Permitting claims only from former students who default is wholly unfair, because it would deter many

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16 https://www.republicreport.org/2018/profit-college-lawyer-suggests-devos-draft-matched-industry-wish-list/

valid applications for relief; defaulting exposes people to a range of serious financial consequences, as the Department explains on your own website.[17]

The Department says it might consider including in the rule a provision letting other students seek relief, but if so those students would be required to surmount still more barriers, in order to deter “frivolous” claims. Among other things, you propose that non-default claims be barred once a student is three years out of school, even though it can take far longer for students to realize how badly they have been deceived and ripped off.

The NPRM offers no meaningful data or evidence to support its suspicion that non-“defensive” borrower relief claims -- those brought without a default -- are more likely to be frivolous or meritless. Indeed the Department actually admits in the NPRM that it “does not have sufficient information to determine the extent” that allowing non-defensive claims could increase claims by people who have not actually “been harmed” by a school.[18]

In addition, within 48 hours of the NPRM”s publication, the Project on Predatory Student Lending at the Legal Services Center of Harvard Law School pointed out that the Department’s effort to justify permitting only defensive claims includes, 25 times, the assertion that from 1994 to 2015 the Department only allowed defensive claims -- an assertion that is demonstrably false.[19]

In another one-sided provision, the Department would let the accused school see all the student borrower’s evidence, but would conceal the school’s response from the student. (Although the NPRM states, “The borrower and the school will each be afforded the opportunity to see and respond to evidence provided by the other,”[20] there is no provision in the text of the proposed rule to implement student access to the school’s submission -- just one of many indications of the haphazard effort here by a Department set on dumping meaningful regulations as soon as possible.)

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[17] https://studentaid.ed.gov/sa/repay-loans/default#default
[18] BD NPRM at 10. https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-15823.pdf
[19] https://predatorystudentlending.org/wp-content/uploads/2018/08/LSC-Prelim-Cmt-FINAL.pdf
[20] MPRM at 116. https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-15823.pdf

Critically, your proposed rule also would cancel the 2016 rule's provisions for a "group discharge" of loans where a school engaged in a pattern of bad behavior, and for an automatic "closed school discharge" where a school shuts down; instead every student must pursue their own claim. As with other stark changes from the 2016 rule, the NPRM cites no significant evidence or data that justifies a change in position by the Department.

All of these obstacles included in the NPRM would have the effect of deterring or defeating meritorious student claims for loan relief.

In the rule-making meetings, the Department presented draft proposals that were similarly stacked against students. Many of the negotiators on the panel representing students, veterans, and consumers strongly objected. But they weren't the only ones. Negotiator Michale McComis, the head of a major for-profit college accreditor, ACCSC, said that combining all the barriers to loan cancellation "feels a little stacked against the student." McComis later described the collective constraints as "belts and suspenders on pants that are too tight." He added, "I find it just not reasonable that a student would be able to achieve anything… If that's the intent, I'm not sure why we're here."

Looking at the new rule, it appears there was only one reason that the Department invited Mr. McComis and the other negotiators to endure eleven full days of rulemaking meetings, in parallel with similar meetings on the gainful employment rule: to go through the legally-mandated motions before you could cynically eliminate the existing regulations.

Amazingly, the Department indicts its own regulation when it estimates that the behavior of colleges under the proposed rule will be 95 percent of what it would have been under the 2016 rule, yet far fewer borrower defense applications will be approved, and then admits: "Overall, we expect that the changes in the proposed regulations that will reduce the anticipated number of borrower defense applications are related more to changes in the process and emphasis on defensive claims, not due to changes in the type of conduct on the part of an institution that would result in a successful defense…."[21] In other

[21] BD NPRM at 298-304. https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-15823.pdf

words, under the proposed rule, colleges won't behave any better, but students will have their loans forgiven far less frequently, because of the barriers to recovery imposed by the proposed rule. This is not coherent public policy or reasoned decision-making in any respect.

Even if individual students could clear all the hurdles for proving entitlement for loan relief, that only would allow them to enter the next regulatory circle of hell: the circle where your team would apply a biased, illogical set of rules aimed at offering only partial relief to many students — as the your Department has already been doing with former students of the disgraced, predatory, collapsed Corinthian Colleges.[22]

The NPRM's requirement that people seeking borrower relief provide the Department with additional details about their employment history, including reasons for any job terminations, and instances of being denied a job due to "borrower's ability to pass a drug test, satisfy criminal history or driving record requirements, and meet any health qualifications,"[23] adds further insult to injury for no valid purpose.

B. The Proposed Borrower Defense Rule Will Cost Taxpayers Billions As Compared with the 2016 Rule

The Department's 436-page notice explaining the new borrower defense rule claims that the 2016 rule would be too expensive — an estimated $14.9 billion net budget loss for 2017-26 student loan recipients. But that position is as false as it is hard-hearted. It is contrary to reason and common sense, because it ignores the impact of the rule on incentives, and the impact of those incentives on the budget.

When the Department of Education allows a college to become and remain eligible for federal student grants and loans, it essentially puts its stamp of approval on the school. Recruiters for many colleges play up those endorsements in pitching to students. Thus, when it turns out that one of those schools has deceived students about tuition costs, graduation rates, or

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[22] https://www.nytimes.com/2018/06/06/us/politics/betsy-devos-student-debt-relief.html
[23] BD NPRM at 411. https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-15823.pdf

job placement, or otherwise abused them, it’s not just the school that has let the students down; it’s also the Department.

But because, among other reasons, so many for-profit schools force enrolling students to agree never to sue the school, and because the Department never developed until 2016 a full and publicized process for implementing the loan relief law Congress more than 20 years ago, there has been little consequence for schools that consistently engage in predatory behavior.

A solid borrower defense rule, like the one issued in 2016, would force the Department to come to grips with the problem of perpetually sending taxpayer money to schools that consistently ruin students’ lives. As more and more students filed serious debt relief claims against particular schools, the Department would be compelled to take seriously the idea of cutting off or limiting federal aid to those schools. The Department has numerous means for doing so, including through program participation agreements, letters of credit, and enforcement of its various regulations. That reality would deter bad behavior by schools, increasing their incentives to tell students the truth and offer them a quality education, or else shut down.

That’s why a serious borrower defense rule would, within a few years, start *saving money* for taxpayers.

The Department ignores this highly-likely impact on incentives.

Even looked at narrowly, without any consideration of the 2016 rule’s positive effects on behavior, the Department’s budget analysis is cynical: When the Department concludes that its new proposed borrower defense rule would “save” billions by reducing the volume of approved student claims, what it really means is that the rule would take billions of taxpayer money and give it to predatory and questionable colleges that often provide useless programs and insist that students go ahead and pay down those loans anyway.

In addition to imposing multiple obstacles to ripped-off students getting debt relief from the Department, your proposed rule eliminates a 2016 rule provision that would bar colleges from forcing students to accept secret, private arbitration as the only option when they are deceived, abused, or otherwise harmed by their school, and also would bar colleges from denying students the right to aggregate similar claims into a class action or mass action lawsuit.

Today, no legitimate nonprofit or state college includes such oppressive ripoff clauses in their enrollment agreements; only shady for-profit and career schools do that.[24] They do it so they can get away with bad acts. And now your Department proposes to ratify such predatory behavior by enshrining it in government regulations.

(The argument offered by industry and in the NPRM that some students may prefer or benefit from arbitration is extremely misleading: Nothing in the 2016 rule denies any student the option of seeking to resolve claims through private arbitration if the student and the school agree to that path; the issue is whether a school can *force* students into arbitration when they don't want to be there. In addition, that argument says nothing about how students are disadvantaged by forced clauses prohibiting them from combining claims through a class or mass action.)

The new rule also softens the Department's requirements for schools to provide letters of credit to ensure money is available if the school shuts down, even though the collapses of Corinthian and ITT Tech, among others, left students, taxpayers, and creditors holding the bag. The Department, as usual, cites as its reason that it doesn't want to excessively burden colleges.

But in addition to being good public policy, the 2016 rule's ban on mandatory arbitration and related legal restrictions, as well as its heightened financial responsibility rules, would, like the borrower defense provisions, save a great deal of money for taxpayers. Abandoning those provisions, as you now propose, would cost taxpayers even more.

The 2014 rule's constraints on mandatory arbitration and class action bans would allow students to bring lawsuits to expose, punish, and deter egregious misuse of taxpayer dollars by schools — so the enforcement burden doesn't

[24] https://tcf.org/content/commentary/colleges-deny-students-legal-rights/?agreed=1

fall so hard on taxpayer-funded regulators and law enforcement agencies, and so bad actors and bad behavior would be constrained -- thus saving taxpayers potentially billions. Fewer crooked schools would mean fewer schools and students to bail out.

The 2016 financial responsibility standards you now propose to weaken also would help ensure against reckless financial behavior by schools and would mandate larger letters of credit to provide funds in the event of collapse. Again, these 2016 rule provisions could soon save taxpayers billions as compared with your proposed rule.

C. The Proposed Borrower Defense Rule's Animating Assumption -- That Student Dishonesty is a Greater Threat Than Institutional Dishonesty -- Is Unsupported By Evidence

Aiming to justify a suite of non-reforms that would abandon protections for students, the borrower defense NPRM insists that students are at fault if the school does not deliver what they sought: "Postsecondary students are adults who can be reasonably expected to make informed decision and who must take personal accountability for the decisions they make…. students have a responsibility when enrolling at an institution or taking student loans to be sure they have explored their options carefully and weighted the available information to make an informed choice." This official scolding of millions of Americans ignores the voluminous evidence[25] that predatory colleges[26] have fine-tuned the process[27] of separating students from their (and taxpayer) money, taking advantage[28] of a population of students — veterans, single parents, immigrants, first in their family to attend college — who are not always equipped to cope with such sophisticated, deceptive, high-pressure sales approaches.

The NPRM suggests that it is the students, rather than the colleges, who are the shady operators, that students will take unfair advantage of a strong borrower defense rule to submit "[f]alse claims" based on "unsubstantiated

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[25] https://www.help.senate.gov/imo/media/for_profit_report/Contents.pdf
[26] https://www.facebook.com/failstatemovie/
[27] https://www.amazon.com/Stealing-Americas-Future-Profit-Taxpayers-ebook/dp/B00JAJGIIK
[28] https://pubsys.miamiherald.com/static/media/projects/2015/higher-ed-hustle/

allegations" — mirroring your (Secretary DeVos's) own meritless, snide suggestion in a speech last year that injured students seeking loan relief are simply after "free money."[29]

In fact, federal student loan cancellation would not be "free": The 2016 rule did not provide students a path to recovering against guiltless, honest colleges. The former students, even if they somehow did prevail before the Department with bogus claims, would not also get their expensive private loans, which many for-profit students are forced to take out to pay the astronomical tuition, cancelled; in most cases they would not get renewed eligibility for grants or scholarships already used; and they already would have put in countless hours studying, commuting, and attending classes, often with no useful degree to show for all their precious time.

It wouldn't be a very good scam, then. That's why almost all of the borrower defense claims filed by students[30] are against a small cluster of awful predatory for-profit colleges[31], schools that also have been under investigation by multiple law enforcement agencies.[32]

The evidence of school abuses is voluminous and well-documented. The evidence of student abuses? You haven't provided any.

2. **The Proposed Rescission of the Gainful Employment Rule (Docket ID ED–2018–OPE–0027) Ignores, Misinterprets, and Misrepresents Critical Facts On Its Way to Undermining Accountability for Predatory Behavior**

Offering its rationale for rescinding the 2014 gainful employment rule, the Department writes, "In July 2018, the Department published a notice of proposed rulemaking that more appropriately addresses concerns about

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29 https://www.huffingtonpost.com/entry/devos-says-defrauded-students-are-after-free-money_us_59c9239de4b0f2df5e83b032

30 https://tcf.org/content/report/college-complaints-unmasked/?session=1

31 https://www.durbin.senate.gov/imo/media/doc/BD%20data%20QFR%20response%207.18.pdf

32 https://www.republicreport.org/2014/law-enforcement-for-profit-colleges/

institutional misrepresentation by providing direct remedies to students harmed by such misrepresentations (83 FR 37242)."[33] This is the Department asserting that the penalties and requirements of the gainful employment rule are not needed because its proposed revised borrower defense rule will protect students against predatory behavior by colleges. But as discussed above, the Department's version of borrower defense provides no effective remedies at all for students. Taken together, then, your proposed borrower defense rule (which provides no actual remedies for students) and your proposed gainful employment non-rule (which expressly promises to provide no actual remedies for students) provide no remedies for students, no matter how much harm is done to them by colleges funded with taxpayer money.

A. The Gainful Employment Rescission Wrongly Assumes That Federal Rules Must Protect Institutions Against Any Performance Requirements, No Matter How Much Benefit Such Protections Can Provide Students

The gainful employment and borrower defense issues are not primarily about regulation of the private sector; they are about management of a government program. Many career colleges obtain 80 percent, 90 percent, or more of their revenue from federal taxpayers — through the Department of Education, Department of Veterans Affairs, and Department of Defense. The government has an obligation to protect against waste, fraud, and abuse, especially where so many students' futures are at stake.

During the Department's negotiated rule-making meetings on gainful employment, owners and executives of for-profit colleges repeated familiar themes, both during formal sessions and in hallway conversations.

Faced with evidence that many for-profit college students end up dropping out, or graduating but still failing to get ahead economically, the officials, as they have in prior years' sessions, often blamed their own students for borrowing too much money and for failing to be diligent in their course work.

[33] GE NPRM
https://www.federalregister.gov/documents/2018/08/14/2018-17531/program-integrity-gainful-employment#p-137

Just as strikingly, they suggested, over and over, that if a Department of Education rule or proposed rule would force them or their fellow school operators to alter or close a particular education program — whether in teaching, nursing, IT, or hairdressing — there must be something wrong with the rule. They rarely suggest that there might, instead, be something wrong with the program — such as being of low quality, or given to admitting many students that the program is not designed to adequately assist, or simply being overpriced.

This mind-set makes these for-profit college officials the most entitled group I've ever observed. As noted, many for-profit colleges get most of their revenue directly from federal taxpayers through student grants and loans — because so many of the students they enroll are low-income people eligible for federal student aid, or military troops and veterans who earn education benefits. Collectively the industry has received as much as $32 billion in a single year from the federal government. One company, the operator of the University of Phoenix, has taken in as much as $2 billion in a year. For-profit colleges that even many higher education experts have never heard of[34] have been getting hundreds of millions more.

Sending all that money to this industry, taxpayers have a right to expect that the schools will avoid serious waste, fraud, and abuse. We have a right to demand good performance. Especially because bad performance will often leave our fellow citizens — the ones whom this taxpayer money is supposed to assist — worse off than when they started, deep in debt and without improved career prospects.

But what is the actual record of this industry?

There is overwhelming evidence that many for-profit and career schools have engaged and are engaging in deceptive and coercive recruiting and financial aid practices, that they've charged excessive prices, that they've under-spent on education and job placement, and that they've provided false information to government regulators

[34] https://www.huffingtonpost.com/davidhalperin/ex-trump-university-execu_b_10699880.html

More than half of the students who have enrolled in for-profit colleges — many of them veterans, single mothers and other low- and middle-income people seeking a better future — dropped out within about four months.[35] The relentless drive to meet recruiting and revenue goals — to get "asses in classes"[36] — has led many for-profit schools to enroll numerous students[37] whom their programs are not strong enough to help.[38]

Although for-profit colleges often promise that their programs are affordable, the real cost can be nearly double that of Harvard or Stanford. But although there are some good programs in the sector, the quality and reputation of the programs are often weak, so even students who manage to graduate often struggle to find jobs beyond the Office Depot shifts they previously held.

The Department has reported that 72 percent of the for-profit college programs it analyzed produced graduates who, on average, earned less than did high school dropouts.[39] A May 2016 study published by the National Bureau of Economic Research concluded that for-profit college students, graduates and dropouts combined, earned less after leaving school than they did before they enrolled.[40]

Today, about nine percent of all college students attend for-profit colleges, on campuses and online — but these institutions account for more than one-third of student loan defaults. For-profit schools are driving a national student debt crisis that has reached $1.5 trillion in borrowing. They absorb about 17 percent of all federal student aid, diverting sums from often better, more affordable programs at nonprofit and public colleges.

The schools aggressively target the very high-risk students whom they complain about.

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[35] https://www.help.senate.gov/imo/media/for_profit_report/ExecutiveSummary.pdf
[36] http://thisisfusion.tumblr.com/post/28361619315/senator-blasts-for-profit-colleges
[37] https://www.huffingtonpost.com/davidhalperin/edmc-professors-and-stude_b_1909449.html
[38] https://www.huffingtonpost.com/davidhalperin/for-profit-college-enroll_b_5433550.html
[39] https://www.ed.gov/news/press-releases/obama-administration-takes-action-protect-americans-predatory-poor-performing-ca
[40] http://www.nber.org/papers/w22287

Numerous for-profit colleges — from giant companies like Bridgepoint, EDMC, Career Education Corp., and Kaplan, to smaller schools — have been the subject of multiple federal and state law enforcement investigations and actions alleging fraud and deceptive practices, for example, for misleading prospective students about matters like program costs, accreditation, transferability of credits, job placement rates, and likely starting salaries, and lying to government overseers about whether their students have even graduated from high school, about their financial aid status, and much more.

I am submitting, as a separate pdf document, the most recent version of a web page that I maintain providing information on these law enforcement investigations.[41]

Industry claims that all the bad actors are now gone[42] are false. Many of the operations subject to multiple law enforcement probes are still in business, still enrolling students, and my ongoing reporting, based on accounts of industry insiders, confirms that bad behavior continues.[43]

The 2014 gainful employment rule would ultimately take away federal aid from career education and for-profit programs that, year after year, saddled students with more debt than their incomes would reasonably allow them to repay. The rule's requirements for school achievements are not overly demanding; the Department announced in January that about 800 programs failed the first round of the test — less than 10 percent of all relevant programs, in a sector rife with weak performers.[44]

Many of companies and schools that flunked also have been the subject of federal and state law enforcement investigations — EDMC (the Art Institutes, now owned by DCEH), Career Education Corp. (Sanford Brown), Kaplan

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41 https://www.republicreport.org/2014/law-enforcement-for-profit-colleges/
42 https://www.republicreport.org/2018/itt-tech-ceo-is-sued-for-serving-himself-as-company-collapsed/
43 See, e.g.,
https://www.republicreport.org/2018/devos-dystopia-more-art-institutes-and-woz-u-staff-speak/ ;
https://www.republicreport.org/2018/profit-colleges-bizarre-explanation-shutting-students/ :
https://www.republicreport.org/2018/new-criminal-indictment-highlights-continued-career-college-fraud/ :
https://www.republicreport.org/2018/accreditor-scolds-school-devos-may-reward/;
https://www.republicreport.org/2017/owner-troubled-closed-texas-college-now-advises-another-profit-school/
44 https://www.chronicle.com/article/Here-Are-the-Programs-That/238851

University (now Purdue Global), Brightwood (formerly Kaplan College), ITT Tech, University of Phoenix, Everest, Globe University, Marinello School of Beauty, Vatterott, Westwood, and more — indicating that the rule is on the right track; fraudulent schools are often bad value for students, and that's why they engage in deception.

But many for-profit college representatives suggest that, because they see themselves as good people, and because they work hard, they don't want a rule that might force them to alter their programs, or spend additional money on compliance, or lower their prices. They don't want a rule even if many of the schools that will have to change or shut down are among the most shoddy operations in their industry. Apparently, if one "good" program might face adversity, it's unacceptable. It's almost as if the for-profit college owners think they can just raise their hands and get free money.

This mind-set was just reflected during the rule-making meetings in a comment by negotiator Jennifer Blum of for-profit Laureate Education. She posited a situation where a college has a teacher training program that is failing the gainful employment rule "through no fault of their own; it just has to do with the salaries that teachers make." But that's the point of the gainful employment. A school might not think that it's at "fault," but the ex-students are buried in debt from the high tuition.

Some of the industry owners are good people. They are justifiably proud of their staffs, of student success stories. But the work of some of these owners to undo the gainful employment rule hurts students and taxpayers. Because the rules have the potential, over time, to protect millions of people from predatory educational programs that would ruin their financial futures. And that goal is worth some sacrifice, and the exit from the business of some lower-performing programs, as a condition for the industry continuing to receive our tax dollars.

It's better policy to protect students and taxpayers than to protect well-meaning, but ineffective programs. The schools have no entitlement to taxpayer dollars except to the extent they are helping students.

During a break in one of the gainful employment rule-making meetings, one lobbyist for a chain of for-profit schools acknowledged to me that ultimately all his schools were able to comply with the 2014 rule, but he said that the compliance efforts cost perhaps $500,000. That sounded like a lot of money, until I remembered that I know many for-profit college students, from low-income backgrounds, who ended up with $125,000 or more in student loan debt after obtaining degrees that haven't helped them a bit. They've been paying down these loans, and they're broke. The for-profit colleges got $125,000 each time.

And let's be clear: Under the gainful employment rule, the government would never order any school to close. The federal government can only decide whether the school is eligible for taxpayer funds. For-profit operators remain free to run whatever schools or programs they want, if they can get state licensing. Many for-profit schools operate without federal aid, often at much lower prices for students.

To emphasize: This is not the normal government policy trade-off between say, consumer protection, and the interest of banks in maximizing profit. Or environmental protection versus fossil fuel profits. *The for-profit college industry is funded almost entirely with our taxpayer dollars*. And the issue is whether the government, on behalf of taxpayers, should require some meaningful performance standards, enough good results for students, in exchange for those dollars, or whether, instead, the owners are permanently entitled to an open torrent of our money without serious regard to performance.

The Department expresses unease, a sense of unfairness, about a gainful employment rule that only addresses some programs at some schools. But there are good reasons that the 2014 rule covers only non-degree programs at for-profit, non-profit, and state schools, as well as other for-profit programs. First, the authority for the rule is a provision in the law that relates only to career and for-profit programs.[45] Second, there is widespread evidence that many for-profit programs are leaving students with overwhelming debt,

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[45] https://www.law.cornell.edu/uscode/text/20/1002

essentially destroying their financial futures, and law enforcement actions and student complaints about those programs massively outnumber actions and complaints regarding other higher education sectors.

The 2014 gainful employment rule was carefully crafted, was based on data, and was upheld by federal courts. As Professor Sandy Baum has pointed out, the Department's new NPRM inaccurately cites her research as evidence that the debt-to-earnings comparison in the 2014 rule is based on an inappropriate metric; the Baum paper cited by the Department in fact presents evidence that supports strengthening, not weakening the rule.[46]

Some school owners expressed legitimate concerns during past rule-makings. But over five years the Department took those concerns into consideration, and I believe the Department ended up with rules that are more than fair to schools, rules that in fact are not as strong as they should be, but rules that do penalize some of the bad actors while rewarding colleges that actually help students train for careers.

Every day that the Department blocks the 2014 gainful employment rule, as well as the 2016 borrower defense rule, is another day that numerous additional Americans will be deceived into enrolling into programs that will bury them in debt, while enriching their deceivers — all at taxpayer expense.

B. Retaining the Gainful Employment Rule Would Save Billions for Taxpayers

The Department acknowledges that repeal of the gainful employment rule will cost taxpayers as much as $5.3 billion over a decade, because some for-profit and career education programs would have closed under the 2014 rule and thus wouldn't have absorbed federal student aid grants and loans. In other words, the Department admits that the 2014 rule -- the rule it is cancelling -- would save money for taxpayers by pushing the Department to remove from

[46] https://www.urban.org/urban-wire/devos-misrepresents-evidence-seeking-gainful-employment-deregulation

federal aid some college programs that perform at the low end of debt-income comparisons.

The Department suggests that the College Scorecard information it wants to provide -- which would in fact be less information than would be required to be disclosed under the 2014 rule -- could help students avoid some of the less effective programs. But, once again, it offers no evidence for that assertion.

C. Eliminating the Gainful Employment Rule Would Be Inconsistent with the Department's Obligations Under Law

Given the enormous benefits of retaining the 2014 gainful employment rule, eliminating it would be abdication of the Department and the administration's responsibility to administer the Higher Education Act and protect students and taxpayers.

Eliminating the rule would reduce incentives for schools to offer quality programs at affordable prices; in fact, it would give the green light for predatory behavior, and we already are seeing evidence that career schools are resuming or accelerating bad practices.[47] As a result, many more students will enroll in programs that will ruin their financial futures, our economy will be harmed, and taxpayers will be paying for such destructive activity.

The students who suffer, as before, will be veterans, single mothers, people of color, the forgotten Americans President Trump promised to fight for. Many will be tricked into giving their contact information to recruiters by web sites promising jobs or offering fake college rankings and matchmaking systems that are in fact pay-to-play scams.[48] Many will enroll because of false

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47
https://www.republicreport.org/2018/inside-a-for-profit-college-conversion-lucrative-ties-troubling-actions/; https://www.republicreport.org/2018/dehttps://www.republicreport.org/2018/inside-a-for-profit-college-conversion-lucrative-ties-troubling-actions/vos-dystopia-more-art-institutes-and-woz-u-staff-speak/

48 https://www.huffingtonpost.com/davidhalperin/scam-websites-promising-j_b_6146646.html ; https://www.huffingtonpost.com/davidhalperin/for-profit-college-market_b_6213896.html ; https://www.huffingtonpost.com/davidhalperin/neutron-ceo-tells-custome_b_6275122.html ;https://www.republicreport.org/2018/new-fraud-suit-targets-call-center-pushes-students-predatory-colleges/ ; https://www.huffingtonpost.com/davidhalperin/military-branded-websites_b_9131742.html https://www.ftc.gov/news-events/press-releases/2016/04/ftc-charges-education-lead-generator-tricking-job-seekers

promises about the selectivity of the school, the urgency of enrolling immediately, the cost of attending, transferability of credits, job placement, starting salaries, and the value of the degree in obtaining jobs requiring professional licensure. Even if these students graduate — and many don't — and even if they get the job they dreamed of — and many won't — they may not earn enough to pay down their loans, because the tuition was just too high.

That is the problem the 2014 gainful employment rule addressed, and that is the problem that the Department's rescission of the rule arbitrarily, capriciously, and unlawfully fails to address.

3. The Regulatory Process for Both Rules was Improperly Corrupted

The results in both regulatory processes are, again, not entirely surprising, given that: (1) you have stacked your senior management team with former executives of predatory colleges[49]; and (2) the Department stacked the negotiated rulemaking panels with representatives of predatory colleges -- in each case, some of the same predatory for-profit colleges whose misconduct created the need for stronger accountability measures.

You have bestowed a Department official named Diane Auer Jones with the elaborate title "Principal Deputy Under Secretary delegated to perform the duties of Under Secretary and Assistant Secretary for Postsecondary Education," putting her in charge of the Department's higher education work, even though there is no indication that she, or anyone[50], will be formally nominated to the Under Secretary or Assistant Secretary job, which would require Senate confirmation.

It seems clear why your administration would not want to present Ms. Jones at a Senate confirmation hearing. Her involvement is apparent in the range of

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49 https://www.republicreport.org/2018/senators-to-devos-aide-diane-jones-has-significant-conflicts-of-interest/

50 https://www.washingtonpost.com/news/answer-sheet/wp/2018/06/28/trump-is-president-but-his-education-department-is-jeb-bushs/?noredirect=on&utm_term=.fe12ec02806e

regulatory and enforcement decisions that have tailored the Department's policies to the wish list of the worst predatory actors in the for-profit college industry. Ms. Jones's involvement in this abandonment of accountability measures is particularly troubling because before joining the Department she worked for some of those same egregious actors[51], including the college chains Career Education Corp. and CollegeAmerica, both of which have extensive records of deceiving and abusing students, and the trade association CECU/APSCU[52], which has harbored some of the industry's worst predators.[53]

Ms. Jones was, from 2010 until 2015, senior vice president and chief external affairs officer at Career Education Corporation, meaning she was a lobbyist[54] for a predatory for-profit college.

Illinois-based Career Education Corp., whose schools have included American InterContinental University, Colorado Technical University, and Sanford-Brown, was getting as much as $1.9 billion annually in federal student aid dollars during in the peak years of the for-profit college era.[55]

In recent years the company has been under investigation for deceptive practices by the Federal Trade Commission; the Securities and Exchange Commission; and the attorneys general of Arkansas, Arizona, Connecticut, Idaho, Iowa, Kentucky, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Washington, Illinois, Tennessee, Hawaii, New Mexico, Maryland, Florida, Massachusetts, Minnesota, New York, and the District of Columbia.[56]

Among other troubling behavior at the school:

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51 https://www.republicreport.org/2018/another-profit-college-lobbyist-join-devos-education-department/

52 https://www.republicreport.org/2018/senators-to-devos-aide-diane-jones-has-significant-conflicts-of-interest/

53 https://www.republicreport.org/2018/profit-college-lobbyist-blames-obama-john-oliver-new-york-times-oitnb-industry-woes/

54 https://www.huffingtonpost.com/davidhalperin/for-profit-colleges-spend_b_5221407.html

55 https://www.help.senate.gov/imo/media/for_profit_report/PartII/CEC.pdf

56 https://www.republicreport.org/2014/law-enforcement-for-profit-colleges/

- In 2013, the New York Attorney General announced[57] that Career Education Corporation would pay $10.25 million in fines and restitution to students over charges that CEC significantly inflated its job placement rates in communicating with students, accreditors, and government officials. CEC's alleged bad acts included: counting as placed in a permanent job a student who worked one day at a health fair created by CEC; counting graduates of criminal justice programs as placed "in field" if they obtained retail sales jobs; and claiming placement rates as ranging from 55 percent to 80 percent, when the actual figures were 24 percent to 64 percent. CEC was also accused of failing to inform prospective students that some of its programs lacked programmatic accreditation, meaning that graduates would have no opportunity to apply for the kinds of jobs for which they thought they were training.
- In 2010, CEC agreed[58] to pay $40 million to settle a class action lawsuit brought by students who said its San Francisco-based California Culinary Academy had misled them by claiming that 97 percent of graduates were hired for culinary jobs. The school failed to explain to applicants that that figure included graduates working as baristas, prep cooks, and waiters, jobs for which a degree was not required. The students also alleged that CEC invented fake job placements.
- In 2013, a California arbitrator awarded Anna Berkowitz $217,000[59] in the first of over 1,000 claims filed against CEC's Le Cordon Bleu College of Culinary Arts in Pasadena. The arbitrator ruled that CEC committed fraud when its staff told Berkowitz that borrowing $40,000 to pay for eight months of training at the school would make her "a shoe-in" to land a job as a pastry chef earning $75,000 a year to start. Berkowitz and other former Cordon Bleu learned too late that it was highly unlikely they would ever be able to pay off their heavy loans working in the culinary industry.

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57 https://ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit

58 https://www.help.senate.gov/imo/media/for_profit_report/PartII/CEC.pdf

59 http://blogs.laweekly.com/squidink/2013/06/plaintiff_wins_settlement_in_l.php

- In February 2017, CEC agreed[60] to pay $10 million back to U.S. taxpayers to settle a False Claims Act lawsuit[61] brought by former employees alleging that its American Continental University violated the legal ban on paying sales commissions to college recruiters, failed to verify students' proof of graduation, and lied to its accreditor.

Ms. Jones also was an expert witness[62] for CollegeAmerica in a fraud case brought by Colorado's attorney general late last year. That school is part of another chain that has been the subject of multiple investigations and actions for improper practices.[63]

Ethics disclosure forms show that, while working at Career Education Corporation, Ms. Jones lobbied for a measure to defund the gainful employment rule.[64] Yet Ms. Jones reportedly has not recused herself from working on the DeVos Department's repeal of that rule or on any matters related to career education[65], even after ten Senate Democrats wrote to you in April raising concerns about Ms. Jones's conflicts of interest.[66]

In March, during the final round of public rule-making meetings on your Department's plan to gut the gainful employment rule, Ms. Jones could be seen sitting with other Department officials behind the negotiating table.

Ms. Jones, of course, is not doing this work alone. You have filled many of the key higher education positions in her department with former executives of and lawyers for predatory for-profit colleges.[67]

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60 https://www.sec.gov/Archives/edgar/data/1046568/000119312517050424/d347448d8k.htm
61 https://www.leagle.com/decision/infdco20160921877
62 https://www.republicreport.org/2018/another-profit-college-lobbyist-join-devos-education-department/
63 https://www.republicreport.org/2017/with-collegeamerica-trial-underway-someone-just-posted-an-unhinged-attack-on-colorados-attorney-general/
64 https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=C85E8357-11A8-45BD-9889-B7F851B5FF40&filingTypeID=60
65 https://www.nytimes.com/2018/07/26/us/politics/betsy-devos-for-profit-colleges.html
66 https://www.blumenthal.senate.gov/imo/media/doc/04.26.2018%20-%20DeVos%20-%20Jones%20Conflicts%20of%20Interest.pdf
67 https://www.republicreport.org/2018/another-profit-college-lobbyist-join-devos-education-department/

Robert Eitel, who also previously worked at Career Education Corp. and also for Bridgepoint Education, is now your senior counsel, also working on higher education issues.[68] Bridgepoint Education[69] has been under investigation for fraud and other abuses by four federal agencies and five state attorneys general.[70]

You have placed in the critical job of the head of the Department's enforcement unit — in charge of investigating illegal conduct by schools — Julian Schmoke[71], a college administrator who apparently[72] had no investigative experience but previously worked[73] at for-profit DeVry University [74], which has been under investigation by multiple law enforcement agencies and in 2016 paid $100 million to settle a Federal Trade Commission lawsuit charging that it deceived students.

You have placed another Department official, James Manning, in the role of Acting Under Secretary and as the head of the Office of Federal Student Aid (FSA), which oversees compliance by colleges with Department rules regarding taxpayer-funded grants and loans. Sometime between 2015 and 2017, Mr. Manning was paid $110,000 for work as a consultant by USA Funds, a student loan guarantee and debt collection agency run by William Hansen. Mr. Hansen's operation has pressed for the right to continue to engage in predatory loan practices and now, renamed Strada Education Network, is tied to for-profit college operations. Mr. Hansen also sits on the board of Career Education Corp.[75]

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68 https://www.nytimes.com/2017/03/17/business/education-for-profit-robert-eitel.html?_r=0
69 https://www.republicreport.org/2018/profit-bridgepoint-says-colleges-will-become-non-profit-wont/
70 https://www.republicreport.org/2014/law-enforcement-for-profit-colleges/
71 https://www.marketwatch.com/story/trump-admin-reportedly-hires-a-former-for-profit-college-dean-for-fraud-enforcement-2017-08-30
72 https://www.linkedin.com/in/julian-schmoke-phd-5aa7a47/
73 https://www.insidehighered.com/quicktakes/2017/08/30/report-education-department-hires-enforcement-chief
74 https://www.huffingtonpost.com/davidhalperin/new-ceo-says-devry-is-see_b_12123738.html
75 https://www.republicreport.org/2018/senators-question-devos-aides-potential-conflicts-interest/

Your Department general counsel, Carlos Muñiz, was a corporate lawyer who advised Career Education Corp.[76]

Early in the Administration the Department hired as an advisor Taylor Hansen, who previously worked as a lobbyist for the main for-profit college trade group, CECU. Department emails show that this Mr. Hansen quickly got to work setting up meetings to discuss the gainful employment rule, which CECU and Mr. Hansen had aggressively opposed.[77] (Soon after leaving the Department in March 2017, Mr. Hansen spoke to ProPublica and, according to that outlet, said "he wasn't working on the gainful employment regulations at the department."[78])

In addition, the Department packed both the borrower defense and the gainful employment negotiating panels with people who have worked for predatory colleges. To be clear, the for-profit college industry was certainly entitled to representation on each panel. But you had no obligation to fill so many negotiator slots with people tied to for-profit schools and especially to predatory schools, schools that have particularly troubling records, the kinds of schools whose abuses — deceptive recruiting, high prices, low spending on education, financial recklessness, and barring of lawsuits by injured students — were imperiled by the very rules that, influenced by their deliberations at the meetings, you now propose to throw away. Your decision to so stack the panels improperly skewed the process.

Borrower defense negotiators the Department chose included the following:

— Linda Rawles, one of four people selected by by the Department to represent for-profit colleges on the panel, has the title "regulatory counsel" at Bridgepoint Education, a for-profit college company with a remarkably bad record of abusing students and taxpayers[79], and a long trail of law enforcement investigations,

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[76] https://www.documentcloud.org/documents/4387676-Carlos-G-Mu%C3%B1iz-Financial-Disclosure.html

[77] https://www.theatlantic.com/education/archive/2018/07/early-emails-from-trump-education-officials-reveal-ties-to-for-profit-college/566273/

[78] https://www.propublica.org/article/former-lobbyist-with-for-profit-colleges-quits-education-department

[79] https://www.huffingtonpost.com/entry/devos-department-stacks-negotiations-deck-with-for_us_5a0b1bf0e4b06d8966cf32d7

including a major lawsuit recently filed by California's attorney general, with detailed and startling allegations of illegal business practices.[80] The Department didn't note Ms. Rawles' connection to Bridgepoint on its negotiator roster, and nor did Ms. Rawles mention it in introducing herself at the start of the rulemaking. Bridgepoint has a strong stake in getting rid of the Obama accountability rules.

— Aaron Lacey, a negotiator chose by the Department to represent "General counsels/attorneys and compliance officers" is a partner with the law firm Thompson Coburn, which has represented the collapsed, disgraced ITT Tech for-profit college chain and lobbied for giant for-profit Adtalem (DeVry); both companies have faced multiple federal and state law enforcement investigations. Mr. Lacey previously was senior vice president of regulatory affairs and strategic development at Vatterott College, another for-profit college with a disturbing record and legal violations.[81]

— Bryan Black, the other legal compliance lawyer picked, has in fact mostly worked as a personal injury lawyer. Although the DeVos Department did not disclose it on its negotiator roster, Mr. Black, as he noted in introducing himself at the first rulemaking session, is the owner of four Paul Mitchell for-profit beauty schools. I am aware of no compliance issues with these schools, but the use of this slot to add another for-profit college owner was inappropriate.

— Greg Jones was chosen by the Department as one of two negotiators to represent all of the private *non-profit colleges* in the United States. Mr. Jones is president of the non-profit Compass Rose Foundation.[82] Compass Rose operates career colleges in Florida — Sunstate Academy and Jones Technical Institute.

According to an IRS filing, Compass Rose in 2015 paid Greg Jones[83] $247,474, paid his father Donald Jones[84], the foundation's CEO, $280,577, and paid Donald's wife Sharon Jones, the treasurer, $174,092. But those hefty non-profit salaries for the Joneses may not reflect the full measure of their incomes over

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[80] https://oag.ca.gov/news/press-releases/attorney-general-xavier-becerra-sues-profit-ashford-university-defrauding-and
[81] https://www.huffingtonpost.com/davidhalperin/what-college-was-michael_b_5719731.html
[82] http://www.compassrosefoundation.org/
[83] https://www.fapsc.org/page/RegionVIIEvent/Region-VII-Ways-to-Grow-your-School.htm
[84] https://www.businessobserverfl.com/print/Florida-edupreneurs/

the years. A complaint filed with the IRS alleged that a deal by Compass Rose to sell Southwest Florida College in 2009 to the firm AEA Investors, which has since merged the school into for-profit Southern Technical College, gave the Joneses millions of dollars in consulting fees and for a non-compete agreement. The IRS rejected the complaint without providing a reason. (In an email to me, Greg Jones said that the complaint to the IRS "was a baseless claim.")

(AEA Investors operates[85] the former Compass Rose schools through its subsidiary Sextant Education Corp.[86] According to the Washington Post, Betsy DeVos (you) is or was invested in a trust that "has an indirect financial stake" in Sextant / AEA.[87] An AEA Partner, John Cozzi[88], was, for more than a decade, a board member at predatory, now-collapsed ITT Tech.[89])

In 2007, while Compass Rose owned Southwest Florida College, the foundation entered into a settlement agreement with the Department to resolve liabilities from a program review. Compass Rose was required to pay the Department $567,723 and to repurchase federal loans totaling $608,400. According to a former Southwest employee, the school's financial aid office was improperly signing loan documents on behalf of students. (Greg Jones told me by email, "The discrepancy was discovered by our non-profit administration and was immediately self-reported to the United States Department of Education and the Inspector General's Office.")

Greg Jones spoke on a panel addressing the gainful employment and borrower defense regulations at the 2016 annual meeting[90] of the for-profit colleges' main trade association, CECU (formerly APSCU), a group that has relentlessly sought to block the rules and previously included as members some of the most notoriously bad companies in the industry, such as Corinthian Colleges, EDMC, ITT Tech, Kaplan, Career Education Corporation, DeVry, Bridgepoint, ATI, and FastTrain. Also speaking at the same CECU meeting, on a panel addressing the gainful employment rule: fellow negotiator Aaron Lacey. (The other negotiator

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85 https://www.miamiherald.com/news/local/education/article19428927.html
86 http://www.aeainvestors.com/private-equity/investments/
87 https://www.washingtonpost.com/news/grade-point/wp/2017/01/24/betsy-devoss-ethics-review-raises-further-questions-for-democrats-and-watchdogs/?utm_term=.af82b8614261
88 http://www.aeainvestors.com/about-aea/team/bio/?bio-id=177
89 http://www.ittesi.com/index.php?s=114&item=23
90 https://www.huffingtonpost.com/davidhalperin/for-profit-college-indust_b_10308114.html

chosen by the DeVos Department to represent non-profit colleges on borrower defense was Ashley Ann Reich, an official from Liberty University, whose president, Jerry Falwell, has publicly opposed the Obama administration rules.[91])

— Michale McComis, executive director of ACCSC, was the main negotiator selected by the Department to represent accrediting agencies. Although in the meetings he spoke critically at times of the Department's anti-student proposals, his organization is more tied to the for-profit college industry than any other Department-recognized accreditor. As of 2016, 343 of the 390 institutions accredited by ACICS were for-profits[92], and some of the non-profits were former for-profit Corinthian/Everest campuses subsequently run by non-profit debt collector ECMC. After the Obama Department of Education determined in 2016 that the notoriously lax accreditor ACICS no longer merited the federal recognition required to make schools eligible for federal student aid, ACCSC became the national accreditor of choice for for-profit schools.[93]

The second set of negotiations, on gainful employment, also had extra negotiators with ties to the for-profit college industry, some quite troubling:

— Sandy Sarge, a negotiator selected to represent chief financial officers and business officers, worked, according to her bio[94], from 2007 to 2012 at Alta Colleges, the company that ran for-profit Westwood College. Ms. Sarge started at Alta as Divisional CFO for Westwood and says "her principle [sic] supervisor was the President of Westwood Colleges." Later she became Senior Vice President – Operational Finance for Alta, overseeing Westwood and the company's other schools.

Although I don't see any evidence tying Ms. Sarge to misconduct at Alta, the company had a poor record during her tenure there:

In 2009, Alta agreed to pay the U.S. government $7 million to resolve allegations that the company's schools in Texas submitted false claims for federal student grants and loans; the Justice Department alleged that Alta's Texas colleges

91 https://www.nytimes.com/2017/02/01/upshot/with-falwell-as-education-adviser-his-own-college-could-benefit.html?_r=0
92 https://www.insidehighered.com/news/2016/10/06/hundreds-colleges-many-profits-seek-new-accreditor
93 https://www.americanprogress.org/?post_type=acf-field&p=457240
94 http://www.sargeadvisors.com/?page_id=10

obtained its required state licenses by misrepresenting to the state that they complied with job placement reporting requirements and that their interior design programs complied with requirements for a professional license.[95]

In 2012, Westwood paid $4.5 million to settle claims by Colorado's attorney general that it had engaged in deceptive business practices — misleading prospective students, engaging in deceptive advertising, and failing to comply with Colorado's consumer lending laws.[96]

In 2014, Illinois Attorney General Lisa Madigan sued Westwood, alleging that the school, starting in 2004, "engaged and continue to engage in deceptive, unfair, and abusive practices in the marketing and selling of their Criminal Justice program. By misrepresentation and omission of material fact, Defendants misled and continue to mislead students about nearly every important aspect of the career-focused degree in Criminal Justice – from the financing and cost of the program to the likelihood of a positive employment outcome after the student departs the school."

Attorney General Madigan's complaint included devastating allegations of wrongdoing with respect to Westwood's criminal justice program, which was pitched to low-income students in Illinois and cost more than $75,000:

> In the course of marketing the Criminal Justice program to Illinois consumers, Defendants touted future careers in law enforcement – as police, sheriff officers, and FBI agents – and corrections. In reality, only 3.8% of graduates were employed as sworn law enforcement officers or correctional officers. The two most common jobs for graduates of Defendants' Criminal Justice program were security guard (18%) and retail (8.9%) – positions which typically require only a high school diploma or equivalency degree. Remarkably, graduates of Defendants' Criminal Justice program have had a median starting salary below the median salary of a 25-year old with a high school diploma. Not surprisingly, Defendants do not promote these poor outcomes for graduates. Instead,

95 https://www.justice.gov/opa/pr/alta-colleges-pay-us-7-million-resolve-false-claims-act-allegations
96 https://www.republicreport.org/2014/law-enforcement-for-profit-colleges/

> Defendants have misrepresented and omitted key and material information from prospective and enrolled students.

And this cruel trick:

> In one recorded phone call with a prospective student, an admissions representative told the prospective student that only a very small portion of interested students will be recommended for admission, giving rise to cause for celebration among Westwood employees: “You know, I want you to know that on a day-to-day basis, we probably interview maybe 50 to 60 students. And out of those 50 to 60 students, we probably are able to, you know, on a good day recommend five to six. And you heard the celebration — you heard the celebration of everybody, you know, when we were able to recommend a student.” In reality, there is no required or formal recommendation process. According to a senior Alta Colleges, Inc., employee, each student determines whether he or she has met the admission requirements by showing proof of high school graduation or equivalency, and then either meeting the requirements of the placement test or submitting prior examination results.

Westwood settled the Illinois case in 2015 for $15 million.[97] A few months later, the school shut down.[98] Alta Colleges, owned by the Boston private equity firm Housatonic Partners, was getting as much as $338 million a year — more than a third of a billion dollars — from U.S. taxpayers.[99]

— Stephen Chema, representing “general counsels/attorneys and compliance officers” on the gainful employment panel, is an attorney with Ritzert & Leyton. Peter Leyton of that firm has long advised for-profit colleges and for more than a decade served on the board of their troubling trade association CECU. At a 2014 APSCU conference, Leyton presented a 124-page Powerpoint[100] analyzing the gainful employment rule and dismissing lawsuits and law enforcement actions against the industry as the product of “[s]tudent and disgruntled former employee

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97 https://www.republicreport.org/wp-content/uploads/2015/07/Westwood-Colleges-Assurance-of-Voluntary-Compliance14.pdf

98 https://www.huffingtonpost.com/davidhalperin/education-dept-sent-corin_b_9193334.html

99 http://www.protectstudentsandtaxpayers.org/wp-content/uploads/2014/11/AltaCollegesInc.pdf

100 https://www.republicreport.org/2014/apscu-docs-puerto-rico/

complaints" and "plaintiff's attorney 'trolling.'" Leyton, like borrower defense negotiators Lacey, Jones, and another borrower defense negotiator and for-profit college industry lawyer, Chris DeLuca, spoke on the Obama rules at the 2016 meeting of the anti-accountability CECU group.

— Jeff Arthur, one of the negotiators representing for-profit colleges, is vice president of regulatory affairs & chief information Officer at ECPI University. In December 2015, the Virginia Department of Veterans Services withdrew its approval for a campus of Medical Careers Institute, part of for-profit ECPI, to receive GI Bill education funding, because it found the school had engaged in a series of deceptive practices, including introducing a new testing requirement for nursing students without notifying the students of the impact on graduation if they failed to pass; withholding student transcripts against the published school policy; and "an overall lack of clarity and consistency in communicating school policies and changes."[101]

There is other evidence of the Department's bias in this process.

The aggressive resistance by the Department, supported by representatives of for-profit colleges, to allowing members of the public to video live stream the borrower defense and gainful employment rule-making meetings on the internet[102], underscored the Department's apparent determination to sweep this process under the rug as much as possible, as does the Department's failure to timely meet its promises, spurred by the live stream controversy, to post audio recordings of the meetings.[103]

Finally, there is the timing of the NPRM process for each of the two proposed rules. The Department offered an unusually short 30-day comment period for

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101 https://www.dvs.virginia.gov/news-room/education-employment-news/medical-careers-institute-va-beach-approval-withdrawn

102 https://www.huffingtonpost.com/entry/devos-department-meeting-again-stalls-over-opposition_us_5a25927de4b04dacbc9bd987 ; https://www.huffingtonpost.com/entry/devos-department-tries-to-block-public-streaming-of_us_5a09caf7e4b060fb7e59d286

103 See Department notations for one January and all February 2018 borrower defense meetings and all gainful employment meetings ("Audio Recording coming soon") https://www2.ed.gov/policy/highered/reg/hearulemaking/2017/borrowerdefense.html ; https://www2.ed.gov/policy/highered/reg/hearulemaking/2017/gainfulemployment.html

each rule, in contrast to the 90 days provided by the previous administration for its versions of the rules. I also note that the 30-day comment period for borrower defense comprises the month of August, and the comment period for gainful employment is August 14 to September 13. This is a period during which Americans of many backgrounds often are able to take an annual vacation or otherwise are less likely to be engaging on public policy issues, such as by filing comments in a regulatory process. Students, veterans, educators, and taxpayers, and advocates, will not be deterred by this constrained schedule, but we do note the setup as one more sign of your lack of interest in public participation in the process and in public views that conflict with yours.

No doubt industry lobbyists and law firms are well prepared to submit comments that praise and perhaps, for show, slightly nitpic your proposed rules. In addition, I have received information that some schools are directing employees to submit comments praising the rules, regardless of what those employees actually think. Employees (who decline to be identified for fear of losing their jobs) have asked me whether such direction is consistent with free speech values and with honest debate.

As the Department wades through the voluminous comments, I hope you will keep in mind the millions of people who have been left worse off by their enrollment at predatory schools. These are men and women who, because of overwhelming debt for weak or worthless college programs, may never be able to afford to get married, own a home, have a family. Many of them owe more than $25,000 or $50,000 or $100,000, debt they simply cannot afford to pay down[104], and debt they cannot discharge in bankruptcy.

Your proposed rules would ensure that these men and women have almost no chance to get even their federal loans forgiven, no matter how badly they were deceived and abused by a Department-approved school. Your proposed rules mandate that the schools who deceived and abused them are presumptively entitled to a permanent flow of taxpayer dollars, no matter how

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104
https://www.responsiblelending.org/research-publication/debt-and-disillusionment-stories-former-profit-college-students-shared-florida

poorly they perform over decades. Your proposed rules declare that such schools can continue to deny deceived and abused students a day in court and effective legal remedies. Your proposed rules even restrict the flow of truthful, relevant information that schools provide to prospective and current students.

Your proposed rules are, to use a term not found in the Administrative Procedures Act, a disgrace -- nothing more than the surrender of policy, and a near-permanent grant of taxpayer billions, to the worst predatory actors under your jurisdiction.

The Department should cancel both the borrower defense and the gainful employment rulemaking proceedings and immediately begin enforcing the 2014 gainful employment rule and the 2016 borrower defense rule.

Sincerely,

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Appendix

Law Enforcement Investigations and Actions Regarding For-Profit Colleges

Posted and regularly updated at
https://www.republicreport.org/2014/law-enforcement-for-profit-colleges/

and submitted to regulations.gov as a separate comment.