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U.S. Department of Education
Re: Docket ID ED-2018-OPE-0076-0644
Submitted online at Regulations.gov

To the U.S. Department of Education:

The Department's proposed regulations on accreditation and other issues are wholly inadequate to protect students and taxpayers against predatory abuses by colleges.

Combined with other Department actions under Secretary of Education Betsy DeVos -- the cancellation of the gainful employment rule, the gutting of the borrower defense rule, the refusal to process borrower relief claims, the restoration of discredited accreditor ACICS, the approval of troubling conversions of poor-performing for-profit schools to non-profit status, the effective shut-down of the Department's enforcement unit, the ending of cooperation with other enforcement agencies -- this latest rollback represents a brazen handover of policy to the worst actors in higher education, those that have used deception to sell low-quality, over-priced higher education programs to unsuspecting victims.¹

Most recently, it was revealed that Secretary DeVos, in signing off on loan discharges for about 16,000 former students of predatory Corinthian Colleges -- students for whom the Obama administration approved borrower defense claims in its final days -- added a comment that she was doing so "with extreme displeasure."² This expression of antipathy toward abused students seems wholly consistent with the Secretary's bitter 2017 remark that under the Obama borrower defense rule "all one had to do was raise his or her hands to be entitled to so-called free money."³

Never in the history of the Department of Education has there been a Secretary so openly contemptuous of students, so bent on spreading the story, also reflected in her Department's borrower defense rule commentary⁴, that it is the students, not the predatory schools, who are

¹ <https://www.republicreport.org/2019/what-im-telling-congress-today-about-betsy-devos/>

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<https://www.politico.com/newsletters/morning-education/2019/07/10/for-profit-enrollment-rises-and-so-does-student-debt-new-federal-data-shows-455313>

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https://www.huffpost.com/entry/devos-says-defrauded-students-are-after-free-money_b_59c9239de4b0f2df5e83b032

⁴ <https://www.republicreport.org/2018/urgent-tell-devos-today-dont-abandon-ripped-off-students/>

the scammers. The Department has not presented any evidence of that suggestion, just ugly accusations.

The lawless and corrupted nature of this entire plan by the Trump administration and the DeVos Department is underscored by the fact that Secretary DeVos's top higher education aides during this administration -- including Robert Eitel, Carloz Muniz, and the clear architect of the rule changes, Diane Auer Jones -- previously worked at and advised not just for-profit colleges, but some of the worst predatory actors in the for-profit college industry.⁵

Secretary DeVos, a portion of whose riches have been invested in for-profit higher education⁶, has ignored all the evidence of school fraud.

President Trump ran his own Trump University, whose fraudulent practices mirrored those of predatory schools that receive federal student aid.⁷

In 2016, candidate Trump promised to fight for veterans, for the people of the "inner cities," for the working class "forgotten man and woman." Those people, along with single parents, people of color, immigrants, and people whose families have limited experience with higher education, have been the prey of unscrupulous for-profit college owners, from the strip mall to suites on Wall Street. The abuses of these schools — deceptive advertising, coercive recruiting, financial aid fraud — are well documented and have been the subject of numerous law enforcement probes.

Under the instant proposed rule, just about anyone or anything that wants to call itself an education provider can get access to taxpayer-funded grants and loans with minimal oversight and accountability. The Department would have lower standards for accreditors, and accreditors would have fewer oversight obligations with respect to schools. In addition, schools would be able to outsource much of their education programming to unaccredited, unmonitored outside contractors, and new buyers could take over collapsing predatory chains with little obligation to assume their liabilities.

The defects and injustices in the current rule are myriad.

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<https://www.republicreport.org/2019/career-education-corp-tied-to-devos-aides-pays-millions-to-settle-state-claims-of-illegal-practices/>;

https://www.washingtonpost.com/news/grade-point/wp/2018/04/28/senate-democrats-question-the-role-of-a-former-for-profit-college-lobbyist-at-the-education-department/?utm_term=.e8f65847080b;

<https://www.republicreport.org/2019/in-ny-times-devos-aide-claims-she-blew-whistle-on-her-for-profit-college/>

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<https://www.americanprogress.org/issues/education-postsecondary/news/2017/01/27/297572/inside-the-financial-holdings-of-billionaire-betsy-devos/>

⁷ <https://www.newyorker.com/news/john-cassidy/trump-university-its-worse-than-you-think>;

First, there were deep flaws in the Department’s process.

The Department stacked the negotiated rulemaking panel against students. In addition to eliminating, in its initial selection, the slots for state officials that had been provided in previous higher education rulemakings, the Department cut down the number of consumer and student advocates as compared with previous panels, so that, in the words of the sole consumer representative, the panel was “incredibly imbalanced” against consumer protection. The slot representing veterans, normally given to a strong advocate for student protections, such as representatives from the groups Student Veterans of America and Veterans Education Success, was given to an official of the Enlisted Association of the National Guard of the United States, which receives financial support from about a dozen for-profit colleges, including American Intercontinental University, Ashford University, and the University of Phoenix — all the subject of law enforcement investigations by state and/or federal law enforcement agencies.

Then, when the rulemaking sessions began, the Department blocked the inclusion on the panel of an official representing a state attorney general office. Consumer advocates had shown that the new regulations would create opportunities for bad actors to engage in more waste, fraud, and abuse at the expense of students and taxpayers, and the state attorneys general have been at the forefront of providing protections against such misconduct, yet the Department used its vote to keep the AGs off the panel — even when all other negotiators, representing schools, accreditors, and other interests, were willing to accept a compromise that would add an AG lawyer as an alternate negotiator.

In addition, the Department’s rulemaking agenda included over a dozen separate issues, with so many disparate topics crammed in that negotiators lacked adequate time to evaluate each issue. More detailed discussions were relegated to subcommittee meetings that the public was barred from attending in person and that were conducted simultaneously.

The draft rules distributed by the Department during the rulemaking sessions were reckless in the extreme -- such as a provision that would allow colleges to contract out 100% of their academic programs to unaccredited, unaccountable outside businesses. The Department’s aim seemed to have been to make their subsequent concessions seem generous and reasonable, when, in fact, they remained irresponsible.⁸

Then the Department and its allies on the panel aggressively pressured the few pro-student representatives to accept a consensus rule, threatening that in the absence of consensus the Department was free to draft its own, even more anti-student rule.⁹

⁸ See

<https://www.americanprogress.org/issues/education-postsecondary/reports/2019/04/18/468840/trump-administration-undoing-college-accreditation/>

⁹ <https://www.chronicle.com/article/Consensus-or-Chaos-Education/246064>

Finally, in June, the Department and White House refused to meet with student advocates before issuing the proposed rule, even abruptly cancelling one meeting that it had already scheduled. Then the Department cut short the period for public comments, given the public only thirty days to file written objections.¹⁰

Second, during the rulemaking meetings, the Department consistently failed to provide adequate evidence of the existence of the problems they allegedly were trying to solve, or to provide adequate evidence that the agency's proposed solutions would benefit students and taxpayers. In the absence of such evidence, the proposed rule is an invalid exercise of agency authority.

Third, the proposed rule would weaken accreditor oversight and thus make it easier for colleges and education companies to engage in predatory practices that would harm students and taxpayers.

The proposed rule would allow colleges to remain out of compliance with accreditor standards for up to three years -- and in some cases even longer -- before the accreditor had to take any action. (See proposed 34 CFR 602.18(d).) The rule also would allow colleges to remain accredited for up to an additional four years after an accreditor action -- an exceptionally long time to sustain harms against students. (See proposed 34 CFR 602.20(a)(2).) The Department has failed to offer meaningful evidence to justify such delays in accountability. The Department should drop these provisions and maintain the existing requirements that cap the time for an institution to come into compliance at not more than two years.

The rule also would allow accreditors to establish "alternative" standards for certain programs that they deem "innovative." (See proposed 34 CFR 602.18(c).) This is a dangerous opening to more low-quality programs that harm students and rip off taxpayers. The Department admits that its changes "could have the unintended consequence of encouraging some accreditors to lower standards." (84 FR 27405.) The Department should not permit accreditors to invent new, weakened standards to accommodate "innovative" programs. It should eliminate the proposed language permitting alternative standards.

Fourth, the rule would weaken Department oversight of accreditors, even when accreditors failed to do their jobs.

The Department's proposed regulations would weaken the substantive and procedural protections that current law provides against accrediting agencies that, through negligence, incompetence, or malfeasance, permit college abuses on their watch. Under the rule, the Department would maintain recognition of an accreditor that demonstrated weak performance in key areas, so long as there was "substantial" compliance with standards. Critical monitoring of

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<https://www.republicreport.org/2019/trump-administration-cancels-meetings-that-pro-student-groups-sought-on-devos-rules/>

accreditors would be hidden from public view and shielding from public comment; the oversight role of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) would be curtailed. Under these rules, it would be difficult for the Department to ever hold accountable a bad-behaving accrediting body. (See proposed 602.3, 602.36.) The Department should delete these provisions and instead continue to hold noncompliant accreditors to public accountability standards now required by the law, including requiring an agency to demonstrate that it effectively applies its standards and ensuring that agencies resolve their problems within twelve months or lose recognition.

The proposed rule also improperly lowers the bar for requirements to become an accreditor. Specifically, the Department proposes to allow new agencies to spin off from existing ones without adequately demonstrating their experience (see proposed 34 CFR 602.12); permits new agencies to serve as gatekeepers for federal aid more readily and without first requiring evidence they can be trusted in that role (see proposed 34 CFR 602.10), and eliminates requirements that the agency be trusted by peer organizations, practitioners, and other stakeholders. (See proposed 34 CFR 602.13). All these anti-reforms will make it more likely that accreditor oversight of bad-behaving colleges will be weakened.

Moreover, the proposed rule fundamentally undermines the Department's obligation to conduct a comprehensive and rigorous evaluation of accreditors and limits the Department's scope of review to a rote box-checking exercise that fails to account for how well accreditors actually apply their standards in practice. (See proposed 34 CFR 602.32, 34 CFR 602.16(a)(1), 602.36, and associated regulations throughout the rules.)

The Department should drop these irresponsible changes.

Fifth, the rule would produce even greater harm to students and taxpayers when colleges expand, fail, or change owners.

The proposed rule would permit and even encourage new buyers to make big profits off collapsing school chains without assuming responsibility for many of the debts and abuses of those chains under prior owners. (See proposed 34 CFR 600.32(c)) That would encourage college operators to engage in risky and predatory behavior, knowing that they could still find eager buyers for schools if their operations collapsed. The costs would instead fall on students and taxpayers.

The rule would further harm students by providing that after a school closes -- even if the Department revoked the institution's agreement to participate in federal student aid -- it could continue receiving federal aid to conduct a teach-out for 120 days. (See proposed 34 CFR 668.26.) That provision would make more students ineligible for a closed school discharge of their loans; instead they would have to continue an education that may well be low-quality or worthless, with credits that are unlikely to transfer to a quality school.

The rule also would make it easier for colleges to add new campuses without oversight from accreditors. (See, for example, proposed CFR 602.22(c))

The Department should delete these provisions.

Conclusion

The Department should cancel this proposed rule, and instead work to protect students and taxpayers, not predatory colleges.