

# United States Senate

WASHINGTON, DC 20510

December 7, 2018

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

Dear Secretary DeVos:

We are writing in support of two recently published proposed regulations affecting the Federal Student Aid programs – the Institutional Accountability (including borrower defenses to repayment) regulations published on July 31, 2018, and the Program Integrity: Gainful Employment regulations published on August 14, 2018. We urge you to issue final regulations quickly and use the available legal authority under section 482(c) of the Higher Education Act to allow institutions to implement the improvements in these regulations as quickly as possible.

These two new proposals are a significant improvement over the seriously-flawed regulations issued by the previous administration. Over the past several years, the Senate has received several independent reports, public comments and heard testimony at numerous hearings identifying the shortcomings of the regulations that the Department is now seeking to change.

Therefore, following the implementation of the Department's regulations, Congress should work to establish a viable accountability framework that holds bad actors accountable, regardless of tax status or sector. Responsible stewardship and transparency are vital, and there is still work to be done when Congress revisits the Higher Education Act to protect students and the taxpayer's investment in higher education.

The previous administration's regulatory regime, however, was unduly inflexible, unevenly applied, and ill-suited to address these aims. Moving forward, any viable approach must account for unintended consequences and the system of checks and balances that our Founders established to prevent overreach and abuse by any one branch.

**The Institutional Accountability proposed regulations** would establish a clearer path for borrowers seeking loan discharges based on institutional misrepresentation and expedite the consideration of their claims. They would also encourage institutions to provide remedies directly to borrowers, which would also expedite borrower relief. Contrary to the claims of some of our colleagues, the proposed regulations would not make it substantially harder for borrowers with legitimate claims of misrepresentation to obtain relief and would add much-needed clarity to the process.

**The Program Integrity: Gainful Employment proposed regulations** will establish a framework for improved consumer-driven institutional accountability. Unlike the current regulations, this new framework would provide prospective students with common program-level data for all programs they are considering enrolling in which are eligible for Federal student financial assistance.

In closing, we support your efforts to improve the Department's regulations. However, we believe any delays in issuing and implementing these regulations will deny much needed regulatory relief, create confusion, and require continued compliance with requirements that are being eliminated.

Sincerely,



TIM SCOTT  
United States Senator



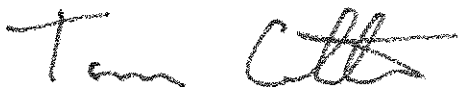
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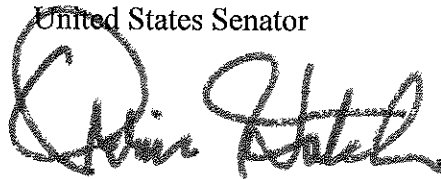
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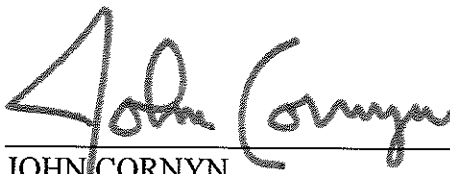
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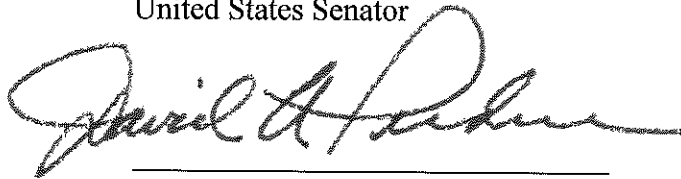
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September 19, 2018

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

Dear Secretary DeVos:

On July 31, 2018, the U.S. Department of Education (Department) proposed new institutional accountability regulations to streamline and improve the borrower defense to repayment (borrower defense) process. Students defrauded by an institution of higher education must have a clearly established and navigable process to submit a claim. Unfortunately, the regulations promulgated by the previous administration drastically exceeded the scope of current law to the detriment of students, institutions, and taxpayers. I am pleased to see your proposal seeks to correct the negative impact the prior rules would have on the student aid system.

Through the *Higher Education Act*, Congress gave the Secretary authority to regulate the acts or omissions of an institution a borrower may assert as a borrower defense.<sup>1</sup> Borrowers have a responsibility to make informed decisions to best suit their needs, but if an institution knowingly misleads or is deceptive to students the school must be held accountable. This proposed rule protects students from financial injury imposed on them by institutions of higher education acting in bad faith.

Consequences borne by students must be at the forefront of statutory and regulatory changes, and this proposed rule is clearly crafted with them in mind. Also important is the impact of proposals on taxpayers and the larger postsecondary education system. Previous regulations were prohibitively expensive to the detriment of both students and taxpayers. This proposal aims to create a system for adjudicating borrower defense claims that provides adequate redress and discourages future acts of fraud, while also protecting taxpayers and future students from the consequences of litigation abuse. The effort to help borrowers make informed decisions before attending college, combined with this proposal to hold bad actors responsible, will result in a healthier education marketplace for all stakeholders.

<sup>1</sup> 20 U.S. Code § 1087e

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Overall, I applaud the Department's thoughtful borrower defense proposal that puts in place a framework that will benefit students and taxpayers. Although disappointed with the short 30-day comment period, I urge you to continue on the path to protect students from fraud. The proposed regulations are a responsible step forward to protect taxpayers, promote student access to higher education, and hold bad actors accountable.

If you have any questions, please contact my staff, Alex Ricci at [alex.ricci@mail.house.gov](mailto:alex.ricci@mail.house.gov) or Jonas Linde at [jonas.linde@mail.house.gov](mailto:jonas.linde@mail.house.gov).

Sincerely,

A handwritten signature in blue ink that reads "Virginia Foxx". The signature is written in a cursive, flowing style.

Virginia Foxx  
Chairwoman

A handwritten signature in blue ink that reads "Brett Guthrie". The signature is written in a cursive, flowing style.

Brett Guthrie  
Chairman  
Subcommittee on Higher Education and  
Workforce Development