

October 13, 2022

The following bullet points summarize CECU's more comprehensive presentation of points regarding the U.S. Department of Education's (ED) contemplated Borrower Defense to Repayment Rule (RIN: 1840-AD53) addressed during CECU's October 13, 2022, Executive Order 12866 OIRA meeting, also with other staff from the Office of Management and Budget and the Department.

THE JULY 13, 2022, NPRM SUFFERS FROM LEGAL, PROCEDURAL, AND REGULATORY DEFICIENCIES AND, THEREFORE, MUST BE WITHDRAWN AND REPLACED

A. The Department Should Not 'Cut Corners' And Must Meaningfully Consider Comment Submissions

- a. CECU submitted a 130+ page comment submission outlining many of the legal and regulatory deficiencies in the proposed BDR Rule.
- b. More than 5,300 comments were submitted in response to the July NPRM and many of these comments consist of lengthy and legally substantive arguments. A little more than a month following the comment deadline, the Department distributed the proposed final rule for interagency review.

B. Substantial Changes In Circumstances Require That The Department Redo Or Conduct For The First Time Certain Analyses

- a. In the weeks and months following publication of the July NPRM, there have been numerous, material changes in circumstances that the Department did not account for in the NPRM. The failure to do so undermines or renders inaccurate and incomplete the budgetary and impact assessment presented in the July NPRM.

C. The July NPRM Does Not Comply With the Information Quality Act (or "Data Quality Act")

- a. The July NPRM fails to comply with the Data Quality Act, which requires that the information the Department relies on must be objective, where "objectivity refers to the accuracy, reliability, and unbiased nature of information." In order to comply with this standard, the Department must rely only on high-quality information including "peer-reviewed, scientific evidence-based research that is appropriately documented."

- b. The failure to comply with the Data Quality Act is evidenced by the following:
 - i. the Department’s cost-benefit analysis lacks supporting data and documentation;
 - ii. the Department has failed to sufficiently explain its proposals with reasoning and quality “peer-reviewed” data; and
 - iii. the Department fails to justify with quality empirical data the July NPRM’s proposals regarding, for example, arbitration agreements and class action waivers, or the group claim process based on the Department’s assumptions around borrower behavior.
- c. On October 5, 2022, 13 members of Congress sent OIRA a letter detailing several deficiencies in the July NPRM and requested, in part, that OIRA hold the Department to the requirements of the Data Quality Act. Ten of these members sit on the House Education and Labor Committee, which has oversight over the Department’s higher education programs and initiatives.
- d. The Department must withdraw the deficient July NPRM and replace it with one that complies with the Data Quality Act.

D. Finally, the July NPRM Has Not Corrected for the Legal or Regulatory Deficiencies Identified in CECU’s Comment Submission or That Were Raised During Our Prior OIRA Meeting

- a. As CECU communicated during its first OIRA meeting on June 6, 2022, as well as in its comment submission, the contemplated regulatory changes under the proposed BDR Rule are problematic because they: (i) fail to comport with the terms of the implementing statute; (ii) deprive schools of essential due process protections; (iii) threaten disproportionate financial and reputational harm to schools; and (iv) as previously discussed, are not based on reliable or complete studies or analyses as to budgetary or noneconomic impact.

E. Conclusion — Our Essential Ask

For these reasons, the Department should withdraw the deficient July NPRM. Further, CECU requests that the Department meaningfully and thoughtfully review its comment submission as well as the thousands of other comment submissions in response to the July NPRM.