



AMERICAN
COMMITMENT



AMERICANS FOR
PROSPERITY

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for TAX REFORM



GRASSROOT
INSTITUTE OF HAWAII

July 19, 2016

John B. King, Jr.
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary King:

On behalf of our organizations and the millions of members and supporters we represent, we write to express concern about the Department of Education's (ED) proposed "Defense to Repayment Regulations" rule published in the Federal Register on June 16, 2016. This proposed rule would principally benefit trial lawyers at the expense of taxpayers.

The proposed rule would prohibit pre-dispute arbitration agreements and class action waivers and create a stampede to file claims for loan forgiveness based on a newly broadened, vague standard requiring only that a plaintiff allege a school made a "substantial misrepresentation." This overly broad phrase is defined as a "statement" or "omission" with a "likelihood or tendency to mislead under the circumstances."

The existing rules were designed to allow students to sue for loan forgiveness when they were victims of intentional fraud or another violation of state law. The newly proposed rule is so broad and vague that complaints will proliferate based on innocent errors and alleged misunderstandings – with the costs shifted back to schools or to federal taxpayers.

Schools will have little recourse to defend against the allegations. Determination of whether an institution has made a "substantial misrepresentation" to a student or group of students is made unilaterally by an ED hearing examiner.

The cost to taxpayers will run well into the billions of dollars. The ED's own analysis in the proposed rule found "a net budget impact in costs over the 2017-2026 loan cohorts ranging between \$1.997 billion in the lowest impact scenario to \$42.698 billion in the highest impact scenario."

Such an enormous commitment of federal taxpayer dollars should not be made through agency rulemaking, but by Congress which is elected by the American people and is responsible under the Constitution for exercising the power of the purse.



Moreover, the ED’s estimates significantly understate taxpayer exposure because they only consider the federal budget impact, including offsetting recoveries from schools. But because the rule applies to public, taxpayer-funded institutions, a significant portion of the recoveries will come from state taxpayers. Public colleges and universities will also shoulder substantial administrative and legal costs to contest complaints. These costs will ultimately be passed on to taxpayers.

Worse, the new administrative process will be the tip of the iceberg because the rule’s bar on class action waivers and pre-dispute arbitration, combined with the vague and expansive new “misrepresentation” standard, are a recipe for vexatious litigation, massive legal fees, and expensive settlements.

This mess of bureaucratic red tape will also impact those with legitimate claims to fraud and abuse, who would be better served by streamlining the process for complaints under the current clear legal standard requiring a breach of state law.

Given the enormous costs and consequences, the proposed rule should be withdrawn and action in this area should be left to the people’s elected representatives in Congress.

Sincerely,

- Jim Martin, 60 Plus Association
- Melissa Ortiz, Able Americans
- Phil Kerpen, American Commitment
- Sean Noble, American Encore
- Brent Gardner, Americans for Prosperity
- Grover Norquist, Americans for Tax Reform
- Alex-St. James, Blacks Economic-Security Trust Fund
- Jeff Mazzella, Center for Individual Freedom
- Neil Siefring, FreedomWorks
- George Landrith, Frontiers of Freedom
- Andresen Blom, Grassroot Hawaii Action
- Michael Needham, Heritage Action
- Andrew Langer, Institute for Liberty
- Seton Motley, Less Government
- Pete Sepp, National Taxpayers Union
- David Williams, Taxpayers Protection Alliance
- Jenny Beth Martin, Tea Party Patriots
- Ron Robinson, Young America’s Foundation

Cc: Sen. Lamar Alexander, Chairman, Senate Committee on Health, Education, Labor & Pensions
Rep. John Kline, Chairman, House Education and the Workforce Committee