



July 12, 2017

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

Re: Docket ID ED-2017-OPE-0076; Comments on proposed negotiated rulemaking to revise the gainful employment and borrower defense regulations

Dear Secretary DeVos:

Americans for Financial Reform (“AFR”) is a coalition of more than 200 national, state, and local groups who have come together to advocate for reform of the financial industry. Members of AFR include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.¹ We write today to oppose any delay to or re-opening of the Borrower Defense to Repayment and Gainful Employment regulations. The Department of Education (the “Department”) has already conducted the arduous process of negotiated rulemaking on both of these rules, where all constituencies were able to weigh in. Establishing new negotiated rulemakings on these rules is a waste of taxpayer money and government resources. The Gainful Employment and Borrower Defense rules should be enforced, not reopened to be dismantled.

I. Introduction

As a coalition formed in the wake of the subprime mortgage crisis to lay the foundation for a strong, stable, and ethical financial system, AFR is highly attuned to the similarities between the subprime crisis and the recent crises in the for-profit education sector. In both cases, bad actors specifically targeted vulnerable populations – veterans,² minorities,³ and low-income people.⁴ Both used high-pressure sales tactics to push borrowers into high-interest loans with deceptive terms. And both have armies of lobbyists to seek favorable regulatory treatment,⁵ and receive

¹ A complete list of Americans for Financial Reform’s coalition members is available at <http://ourfinancialsecurity.org/about/our-coalition/>.

² Jacob Davidson, *How For-Profit Colleges Target Military Veterans (and Your Tax Dollars)*, TIME, <http://time.com/money/3573216/veterans-college-for-profit/>.

³ Kai Wright, *Young, black and buried in debt: How for-profit colleges prey on African-American ambition*, SALON (June 9, 2013), http://www.salon.com/2013/06/09/young_black_and_buried_in_debt_how_for_profit_colleges_preay_on_african_american_ambition/.

⁴ John Hechinger, *For-Profit Colleges Fail Poor Students, Report Says*, BLOOMBERG (Nov. 23, 2010), <http://www.bloomberg.com/news/articles/2010-11-23/for-profit-colleges-fail-to-help-poor-minorities-education-trust-says>.

⁵ David Halperin, *The Perfect Lobby: How One Industry Captured Washington, DC*, THE NATION (Apr. 3, 2014), <http://www.thenation.com/article/179161/perfect-lobby-how-one-industry-captured-washington-dc>.

extensive taxpayer support in a variety of ways.⁶ But the abuses by for-profit schools is even more extreme in the sense that they are entirely dependent on government funding for their very existence.

For-profit colleges also exploited the economic devastation that followed the bursting of the housing bubble – where, according to Pew, Black wealth fell by more than half, and Latino wealth fell by 66 percent⁷ – to increase enrollment from the ranks of the newly unemployed. In internal documents obtained by the Department of Justice, Corinthian described its target demographic as people who were “isolated” and “stuck.”⁸ This targeting worked: the biggest increase in enrollment in for-profit schools came in the immediate wake of the crisis, from 2008-2009, when many Americans were feeling stuck. And many of these same communities targeted in the subprime crisis were targeted once again by for-profit schools. Between 2004 and 2010, Black enrollment in four-year for-profit schools jumped 264 percent (contrasted with just a 24 percent growth in black student enrollment in four-year public colleges during the same time period).⁹ An analysis of Corinthian’s 2014 enrollment numbers shows that people of color comprised the majority (62 percent) of its students, women comprised 71 percent of its students, and African-American women comprised 26 percent. And a report from The Leadership Conference on Civil and Human Rights, *Gainful Employment: A Civil Rights Perspective*, showed that African-American and Latino students are over-represented in for-profit colleges, making up 41 percent of the student body.

As the Department knows, in too many cases, these institutions provided terrible outcomes for their students. The National Bureau of Economic Research found that on average, those who pursue Associate’s and Bachelor’s degrees at for-profit schools make *less money* after they attend than they did before.¹⁰ Both the Gainful Employment rule and the Borrower Defense rule update contained preventative medicine meant to combat these kinds of abuses. And the Borrower Defense rule update clarified how students who fell victim to this kind of fraud may pursue relief. We are deeply concerned by the Department’s decision to open new negotiated rulemakings on these regulations. It will do nothing to curtail these abuses, and will betray the promise Secretary DeVos has made to “protect individual borrowers from fraud, ensure accountability across institutions of higher education and protect taxpayers.”¹¹

⁶ Chris Kirkham, *Corinthian, Department of Education reach deal; campuses to be sold*, LA TIMES (June 23, 2014), <http://www.latimes.com/business/la-fi-corinthian-deal-20140623-story.html>.

⁷ Rakesh Kochhar, Richard Fry and Paul Taylor, *Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics*, PEW RESEARCH CENTER (July 26, 2011), <http://www.pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/>

⁸ *Attorney General Kamala D. Harris Files Suit in Alleged For-Profit College Predatory Scheme*, STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, OFFICE OF THE ATTORNEY GENERAL (Oct. 10, 2013), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-files-suit-alleged-profit-college-predatory>.

⁹ Julianne Hing, *Are For-Profit Colleges the Answer for Black Students?*, COLORLINES (Sept. 10, 2016), <http://www.colorlines.com/articles/are-profit-colleges-answer-black-students>.

¹⁰ Stephanie Riegg Cellini and Nicholas Turner, *Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data*, NBER WORKING PAPER NO. W22287 (May 2016), <http://ssrn.com/abstract=2786445>.

¹¹ Secretary DeVos Announces Regulatory Reset to Protect Students, Taxpayers, Higher Ed Institutions, U.S. Department of Education (Jun. 14, 2017), <https://content.govdelivery.com/accounts/USED/bulletins/1a250b5>.

II. Borrower Defense to Repayment

a. Re-doing Borrower Defense Wastes Taxpayer Money and Government Resources

Rather than re-doing negotiated rulemakings on Gainful Employment and Borrower Defense, the Department should instead focus its resources on ensuring that borrowers targeted by unscrupulous and illegal practices by their schools have the chance move on with their lives. Borrowers who attended schools like Corinthian and ITT Tech stare down serious consequences every day, from the burden of the debt itself, to ruined credit that interferes with their ability to own or rent a home, to ongoing unemployment or underemployment, to being hounded by debt collectors to repay loans foisted on them by schools who broke the law.

Consumer advocates, State attorneys general, and lawmakers alike have, since 2014, not only called on the Department to provide automatic, group relief to the former Corinthian students harmed by its illegal acts, but also urged the Department to develop a fair and efficient group process for discharging debt moving forward.¹² To roll back the clarity on process and procedures that the 2016 Borrower Defense update provided will do *nothing* to advance Secretary DeVos's stated goal of protecting students as her first priority.¹³

It is even more concerning that while students wait for the debt cancellation they are owed by law, this administration has hired Robert Eitel. Mr. Eitel took a leave of absence from being the vice president for regulatory legal services for the for-profit chain Bridgepoint, a chain that would benefit not only from the illegal delay of Borrower Defense this administration has advanced, but benefit again from any dismantling of this decades-old rule. Bridgepoint also faced scrutiny from the Securities and Exchange Commission (SEC), the State attorneys general of California and Massachusetts, and is under investigation by the Department of Justice for possible violations of the 90/10 rule, which ensures that schools cannot receive more than 90%

¹² E.g.: Letter from 13 Senators Urging Department Of Education To Discharge Loans For Students At Colleges That Break The Law, U.S. SENATOR ELIZABETH WARREN (Dec. 9, 2014), <http://www.warren.senate.gov/files/documents/2014%2012%209%20Corinthian%20Letter.pdf>; Representative Maxine Waters, *What the Department of Education can learn from the foreclosure crisis*, The Hill (May 18, 2015), <http://thehill.com/opinion/op-ed/242238-what-the-department-of-education-can-learn-from-the-foreclosure-crisis>; Letter from 35 Senators to the White House, calling for Automatic Relief To Groups Of Students Who Have Been Victims Of Predatory Practices, US SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR & PENSIONS (Mar. 9, 2016), <http://www.help.senate.gov/ranking/newsroom/press/senate-dems-students-deserve-immediate-debt-relief-after-attending-schools-engaged-in-deceptive-and-predatory-practices>; Letter from 43 lawmakers in the House and Senate urged Secretary of Education Dr. John King to create strong protections and a streamlined path to debt relief for student loan borrowers in the Department's forthcoming "borrower defense" rule, U.S. SENATOR JEFF MERKLEY (Apr. 29, 2016), <https://www.merkley.senate.gov/news/press-releases/wyden-merkley-urge-education-secretary-to-provide-full-debt-relief-to-defrauded-student-borrowers>; Letter from 19 State Attorneys General asking for a group process for discharging debt for defrauded students, THE COMMONWEALTH OF MASSACHUSETTS, OFFICE OF THE ATTORNEY GENERAL (Mar. 18, 2016), http://www.ncdoj.gov/getdoc/35445542-e651-4c03-a44c-e0b1c687bcd0/DoE-Letter_2016_03_18.aspx; and Letter from 34 Consumer and Civil rights orgs asking the Department to provide automatic discharges when there is sufficient evidence of wrongdoing, AMERICANS FOR FINANCIAL REFORM (Mar. 11, 2016), http://ourfinancialsecurity.org/wp-content/uploads/2016/03/CoalitionLetterOnBorrowerDefense_March11_2016.pdf.

¹³ Secretary DeVos Announces Regulatory Reset to Protect Students, Taxpayers, Higher Ed Institutions, U.S. Department of Education (Jun. 14, 2017), <https://content.govdelivery.com/accounts/USED/bulletins/1a250b5>.

of their revenue from Title IV funds.¹⁴ While the *NYTimes* has reported that Eitel has volunteered to recuse himself from weighing in on the Gainful Employment regulation, Eitel must also recuse himself from any involvement in the Borrower Defense rule.¹⁵ These two rules are highly interconnected, and there are many provisions in the 2016 Borrower Defense update that would impact Bridgepoint, including the financial responsibility sections of the rule update. In addition, in a recent SEC filing Bridgepoint openly admitted that the Borrower Defense rule “could damage our reputation in the industry and have a material adverse effect on enrollments and our revenues, financial condition, cash flows and results of operations.”¹⁶ The same conflicts that led to Eitel’s recusal from Gainful Employment are present in Borrower Defense, and Mr. Eitel must recuse himself from any updates to either rulemaking.

b. The Urgent Need to Review and Approve Outstanding Borrower Defense Discharges

To date, Secretary DeVos has only committed to processing the 16,000 borrower defense applications that were already approved during the Obama Administration, and to reviewing 64,301 cases that were pending on January 20, 2017.¹⁷ This is completely inadequate. If Secretary DeVos truly believes that “fraud, especially fraud committed by a school, is simply unacceptable,” then the Department must continue to process and grant discharges to the 125,000 former Corinthian students covered by the Department’s two enforcement actions against the school.¹⁸ The Department must *also* review and process applications from students who attended schools such as ITT Tech and the Art Institute who have applied for borrower defense but have been stuck in limbo.

The Department must also provide data on the number of discharge applications received since January 20, 2017. The only data the Department has provided under Secretary DeVos’s tenure about applications *received, but not yet approved* came from a report from the *AP* which stated that when Obama left office, there were 64,301 new borrower defense applications.¹⁹ The Department has shamefully provided no updates as to the number of new applications for discharge filed *after* January 20, 2017, though we in the advocacy community know that many

¹⁴ Mike Freeman, *U.S. Probes Bridgepoint Education, again*, THE SAN DIEGO UNION-TRIBUNE, (Jul. 14, 2016) <http://www.sandiegouniontribune.com/business/sdut-bridgepoint-probe-ashford-university-investigation-2016jul14-story.html>

¹⁵ Patricia Cohen, *Betsy DeVos’s Hiring of For-Profit College Official Raises Impartiality Issues*, NYTIMES (Mar. 17, 2017), <https://www.nytimes.com/2017/03/17/business/education-for-profit-robert-eitel.html>.

¹⁶ Form 10-K, Bridgepoint Education, Inc., U.S. SECURITIES AND EXCHANGE COMMISSION, (Mar. 7, 2017), <https://www.sec.gov/Archives/edgar/data/1305323/000130532317000016/bpi201610k.htm>.

¹⁷ Collin Binkley, *Promised college loan forgiveness, borrowers wait and wait*, ASSOCIATED PRESS, (Jun. 26, 2017) <https://apnews.com/c57f0c42e39243f184ed52ef22a5e7b5>.

¹⁸ See: *Department of Education and Attorney General Kamala Harris Announce Findings from Investigation of Wyotech and Everest Programs*, U.S. DEPARTMENT OF EDUCATION (Nov. 17, 2015), <http://www.ed.gov/news/press-releases/department-education-and-attorney-general-kamala-harris-announce-findings-investigation-wyotech-and-everest-programs>. (“The Department’s findings apply to Corinthian campuses that served approximately 85,000 Wyotech and Everest students.”), and *Arne Duncan Transcript: Some For-Profit Colleges Have ‘the Ethics of Payday Lending*, Huffington Post, (Jun. 10, 2015), http://www.huffingtonpost.com/davidhalperin/arne-duncan-transcript-so_b_7557408.html. (“[T]here are about 40,000 borrowers who are impacted by today’s decision”).

¹⁹ *Supra* note 17.

new applications have been filed. Finally, the Department must immediately respond to the bipartisan Senate call for basic information on borrower defense and closed school discharges.²⁰

If the Department fails to provide relief to these students, it will reduce the incentive the decades-old Borrower Defense regulation provides to the Department itself, to ensure that they are monitoring schools appropriately on the front end, and preventing scams from happening in the first place.

c. Forced Arbitration and Class Action Bans

The 2016 Borrower Defense rule update prohibited the use of forced arbitration clauses at schools that receive federal financial aid. Forced arbitration is a practice that denies students the right to hold their school accountable in court when it breaks the law. Delaying this rule and opening it up to revisions sought by the for-profit college industry will mean that countless students wronged by their schools will be denied access to their day in court.

The rule's provisions on forced arbitration and class action bans are necessary to ensure taxpayers and defrauded students are not left to bear the cost of wrongdoing by for-profit schools that violate the law. As the Education Department's Inspector General recently concluded, "If the new borrower defense regulations are enforced, [the Education Department's Office of Federal Student Aid] should receive important, timely information from publicly traded, private for-profit, and private non-profit schools that experience triggering events or conditions," and "make it easier for FSA to obtain financial protection...from Title IV schools that may be at increased risk of potential closure."²¹ Had Corinthian students had access to the courts and the Department of Education obtained a letter of credit from the company, taxpayers would not now be on the hook for the more than \$550 million in federal student loan discharges for former Corinthian students.

These provisions will also help root out fraud and widespread misconduct by ensuring schools cannot bury student claims in secret proceedings. Legal claims brought by students – individually or as a class – function as a market-based mechanism to ensure the costs created by systemic misconduct fall solely on the bad actor school, rather than being borne by the entire industry, taxpayers, or defrauded students. Since arbitration clauses often also bar students from making their allegations public, forced arbitration allows bad actors to pocket millions in profits from fraudulent practices, and in fact, gain a competitive edge in the marketplace by ripping off students. There is no justification for delaying implementation for these provisions when the majority of for-profit colleges continue to require students to sign mandatory arbitration clauses and class action bans that allow fraud to continue undetected for years and force innocent parties to bear the cost.

²⁰ Senators Cortez Masto, Heller to Education Secretary DeVos: Don't Break Promise To Veterans Exploited By For-Profit Colleges, U.S. SENATOR CATHERINE CORTEZ MASTO AND U.S. SENATOR DEAN HELLER (May 31, 2017), <https://www.cortezmasto.senate.gov/news/press-releases/cortez-masto-heller-to-education-secretary-devos-dont-break-promise-to-veterans-exploited-by-for-profit-colleges>.

²¹ *Federal Student Aid's Processes for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students and Taxpayers*, UNITED STATES DEPARTMENT OF EDUCATION, OFFICE OF INSPECTOR GENERAL, (Feb. 24, 2017) <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2017/a09q0001.pdf>.

d. Closed School Discharges

If an institute of higher education closes while a student was still enrolled, or if the student had withdrawn from the school within 120 days of its closure, they are eligible for a closed school discharge. Students failing to know their rights has led to only 6% of eligible borrowers submitting closed school discharges in the past.²²

The 2016 update to the Borrower Defense rule was due to solve this problem by giving students automatic closed school discharges if three years had passed since their school closed, and they had not transferred any credits to comparable programs. The 2016 Borrower Defense rule update was due to being providing these automatic closed school discharges to eligible students beginning July 1, 2017. Secretary DeVos's delay of the rule, which has been contested in court, is actively preventing defrauded students from getting the closed school discharges they are owed.

In an attempt to justify this betrayal of students, the Department spins it as a savings to the taxpayer, noting that the rule delay would “avoid these significant costs to the Federal government and ultimately the Federal taxpayer.”²³ Taxpayer savings borne on the backs of students defrauded by an institution that collapsed under the weight of its own fraud are nothing to celebrate. They are savings paid for by the ruined lives of students and their families, who remain buried in debt for degrees that are now worthless. More puzzling, still, is the fact that the Department portends it cares about saving money in this case, but is evidently unconcerned with the \$1.3 billion it would cost the government over ten years to dismantle the Gainful Employment rule, according to a July 2016 Congressional Budget Office analysis.

III. Gainful Employment

Americans for Financial Reform also opposes the Department's decision to create a new negotiated rulemaking on the Gainful Employment rule. The Gainful Employment rule advances a common-sense principle: schools that consistently leave students worse off than when they first enroll should not receive federal financial aid. The rule works to ensure that taxpayers are not subsidizing schools that bury their students in debt for a useless degree. The first set of Gainful Employment's career education program rates, published in January 2017, make clear the utility of this data.²⁴ Some of the programs that consistently left students with more debt than they could repay were at schools that have since collapsed, such as Westwood College and ITT Tech.

²² 81 Fed. Reg. at 39369.

²³ 82 Fed. Reg. 27, 621 (June 16, 2017).

²⁴ *Education Department Releases Final Debt-to-Earnings Rates for Gainful Employment Programs*, U.S. DEPARTMENT OF EDUCATION, (Jan. 9, 2017) <https://www.ed.gov/news/press-releases/education-department-releases-final-debt-earnings-rates-gainful-employment-programs>.

Prior to its collapse, ITT faced lawsuits and investigations²⁵ from regulators²⁶ and law enforcement alike.²⁷

Former Corinthian student Jessica King, a member of the Debt Collective who graduated from Everest Newport in 2008 has repeatedly stated that had she been aware of either the investigations, poor job placement rates, or poor repayment rates at her campus, she would have never attended. In a personal correspondence, she pointed out a July 2014 *NYTimes* article noting that Everest Newport would have failed the original gainful employment standard.²⁸ Without the kinds of pre-emptive protections for students provided by the gainful employment rule, as well as the warnings for students in the 2016 borrower defense update,²⁹ students like Ms. King only discover once it's too late that employers will not hire graduates of her school,³⁰ and that her resume was better without the Everest degree on it.³¹

IV. Conclusion

Dismantling the Gainful Employment and Borrower Defense rules will do nothing more than unleash a new wave of waste, fraud and abuse. This country teaches its citizens that Education is a path to a better life. For far too many years, allowing Title IV funds to flow to institutions engaging in fraud have turned this dream into a nightmare. The Department has a choice of where it goes next. If it continues down this path of re-opening gainful employment and borrower defense its legacy will be damning students to lives full of poverty, while making executives of proprietary institutions into millionaires. We sincerely hope this Department chooses a different path.

²⁵ Form 8-K, ITT Education Services, Inc., U.S. SECURITIES AND EXCHANGE COMMISSION, (Sep. 18, 2015) https://www.sec.gov/Archives/edgar/data/922475/000092247515000033/form8_k.htm.

²⁶ *CFPB Sues For-Profit College Chain ITT for Predatory Lending*, CONSUMER FINANCIAL PROTECTION BUREAU, (Feb. 26, 2014) <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-college-chain-itt-for-predatory-lending/>.

²⁷ *New Mexico v. ITT Educational Servs., Inc*, No. D-202-CV-2014 (Bernalillo Cty. Ct., N.M.)

²⁸ Kevin Carey, *Corinthian Colleges Is Closing. Its Students May Be Better Off as a Result*, NYTIMES (July 2, 2014), <http://www.nytimes.com/2014/07/03/upshot/corinthian-colleges-is-closing-its-students-may-be-better-off-as-a-result.html>. (See: "To end up in these categories, programs must have terrible results. At Corinthian-owned Everest College's Newport News, Va., campus, for example, more than 500 students completed the medical assistant certificate program during the 2007-08 and 2008-09 school years. After hitting the job market, they earned an average of \$12,553 per year in 2011. Since 90 percent of full-time medical assistants are paid at least \$21,080 per year, according to the Bureau of Labor Statistics, this suggests that many of these students couldn't get jobs in their field at all. The 10-month program costs 'about \$20,000,' according to a telephone representative whom I spoke to this week only after an online representative refused to tell me the price, saying, 'I don't have access to that information.' It's not surprising that a third of all the program's borrowers defaulted on their loans.").

²⁹ [81 FR 39400](http://www.federalregister.gov/?date=2015-09-14&page=103).

³⁰ Aimee Picchi, *Feeling burned, for-profit college grads want loans erased*, CBS: MONEY WATCH (Jan. 27, 2016), <http://www.cbsnews.com/news/feeling-burned-for-profit-college-grads-want-loans-erased/>. (See: "After graduation, she sent out 150 resumes but didn't get a bite. Finally, she asked a doctor for honest feedback and was told that the school had a negative reputation. He offered to hire her as a receptionist, but said he couldn't hire her as a medical assistant.").

³¹ Casey Quinlan, *Why Graduates Of For-Profit Colleges Are Struggling To Pay Back Student Loans*, THINK PROGRESS (Sept. 14, 2015), <http://thinkprogress.org/education/2015/09/14/3700687/the-recession-changed-the-face-of-student-debt-but-regulators-have-been-slow-to-react/>. (Jessica King was "advised by a potential employer that she should remove Everest from her resume").

For questions, please contact Alexis Goldstein, AFR's Senior Policy Analyst, at 202-466-1885.

Sincerely,

Americans for Financial Reform