



**National
Urban League**

*Empowering Communities.
Changing Lives.*

August 30, 2018

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

Re: Docket ID ED-2018-OPE-0027

Dear Secretary DeVos,

On behalf of the National Urban League and its 90 local affiliates across 37 states and the District of Columbia, we write to staunchly oppose the Department of Education's proposed rule on borrower defense for students who have been defrauded or misled by their institution (Docket ID ED-2018-OPE-0027).

The National Urban League is concerned that the Department's proposed rule continues a policy shift away from protecting students and toward protecting institutions, particularly those who have defrauded students or misrepresented themselves or their programs. We believe that the Department's proposal not only aim to limit the number of claims received, but intentionally denies relief to borrowers while refusing to hold institutions accountable for fraud and misconduct.

The National Urban League is particularly concerned about the impact that this rescission will have on black and brown borrowers. For-profit colleges have preyed on low-income students for many years, but the last decade has revealed the extent of the damage done by these institutions. Four-year for-profit colleges boast a below par graduation rate of 35 percent compared to 65 percent at public four-year colleges and 76 percent at private four-year colleges and leave their students saddled with more debt and fewer employment prospects than non-profit public and private institutions.¹ In the 2011-12 school year, 26 percent of U.S. students enrolled in for-profit schools were black compared to 16 percent overall. At the four-year level, black enrollment at for-profit schools was nearly double that of public and non-profit schools (27 percent and 13 percent, respectively).² Moreover, nearly 50 percent of black borrowers defaulted on their student loans within a 12-year period³ and amongst black students who have dropped out of for-profit schools, 75 percent default on their loans within 12 years.⁴

¹ <https://capseecenter.org/research/by-the-numbers/for-profit-college-infographic/>

² <https://nces.ed.gov/pubs2017/2017416.pdf>

³ <https://robertkelchen.com/2017/10/06/new-data-on-long-term-student-loan-default-rates/>

⁴ <https://www.insidehighered.com/news/2017/10/17/half-black-student-loan-borrowers-default-new-federal-data-show>

We believe that the racial wealth gap and discrimination in the job market will continue to compound predatory recruiting and lending practices by these low-quality, high-cost programs. Given the Department's refusal to hold these institutions accountable and its effort to limit borrowers' access to their right to debt relief, we believe that the proposed changes to the borrower defense rule are detrimental to students. We urge the Department to maintain the 2016 borrower defense rule and we also encourage the Department to strengthen it by shifting focus away from institutions being able "to tell their side of the story" and back to protecting students against fraudulent and deceptive practices from unscrupulous institutions.

We have outlined our specific concerns and recommendations below.

Maintain Consideration of Affirmative and Defense Claims

The Department's proposed rulemaking includes a question of whether to continue to consider affirmative claims of Direct Loans or to limit the Department's efforts to just defensive claims. Considering only defensive claims would mean that students and borrowers would be forced to default on their loan repayment before the Department would accept their application for debt relief despite having been wronged by their institution.

The Department's intent to only accept defensive claims is detrimental to the communities that the National Urban League serves. The student loan debt crisis is particularly acute for black student borrowers. Black students are often forced to borrow more than their peers because of gross disparities in both family income and wealth.⁵ The reasons for the aforementioned high student loan default rates among black students are numerous: black students are more likely to take out student loans;⁶ black students are more likely to attend predatory for-profit colleges, which have a troubling track record of not delivering on academic and economic promises;⁷ and black students who do graduate face discrimination in the job market where the racial pay gap has widened over time.⁸

In its 2016 guidance, the Department's final notice read, "...when borrowers default on their loans, everyday activities like signing up for utilities, obtaining insurance, or renting an apartment can become a challenge. Borrowers who default might also be denied a job due to poor credit, struggle to pay fees necessary to maintain professional licenses, or be unable to open a new checking account." Given the research and data on default rates in communities of color and what we know about the detrimental impact of defaulting, the Department has a responsibility to protect students from destroying potential and future opportunities as a result of the misrepresentation by and fraudulent actions of institutions.

We urge the Department continue to accept both affirmative and defensive claims.

⁵ <https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-wealth-holding-by-race-and-ethnicity-evidence-from-the-survey-of-consumer-finances-20170927.htm>

⁶ <https://www.americanprogress.org/issues/education-postsecondary/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american-borrowers/>

⁷ <https://www.motherjones.com/politics/2014/09/for-profit-university-subprime-student-poor-minority/>

⁸ <https://www.nytimes.com/2017/09/20/opinion/college-racial-income-gap.html>

Maintain Current Burden of Proof Standard

The Department's notice proposes an extreme change in the burden of proof needed for a claim to be accepted. Current regulations uphold the state standard of consumer protection, which is "preponderance of the evidence"⁹ in order for a claim to be accepted. This standard places trust in the borrower and gives the benefit of the doubt until an investigation is complete. The Department's proposed changes include maintaining this burden of proof for defensive claims, but also to create a uniform standard based on "misrepresentation made with knowledge of its false, misleading, or deceptive nature or with reckless disregard for the truth." The National Urban League believes this is a strategy to limit the number of claims received because this standard is almost impossible to meet.

In addition to continuing to accept both affirmative and defensive claims, we recommend that the department maintain "preponderance of the evidence" as the burden of proof in order to submit claims.

Maintain Six-Year Statute of Limitations

The Department's notice makes a major change to the statute of limitations regarding when a borrower can submit a claim. Current law states that "a borrower may assert a right to recover amounts previously collected by the Secretary under this paragraph not later than six years after the breach by the school of its contract with the student."¹⁰ The Department's proposed changes offers 30-65 days for a defaulted borrower following a notice of collection action or three years if they are in good financial standing.¹¹ The National Urban League sees this as a barrier to access the resources borrowers have a right to receive when defrauded.

It is the recommendation of the National Urban League that the Department either maintain or lengthen the statute of limitations on filing a claim.

Maintain Prohibition of Pre-Arbitration Dispute Agreements and Class Action Waivers

Finally, the Department's notice includes a rescission of the prohibition of pre-dispute arbitration agreements and class action waivers. This action would prevent a student from being able to bring a suit against a school that has defrauded them and would instead force students to go through an arbitrator of the school's choosing. We believe that if a student has been defrauded or if a school has misrepresented themselves in any capacity, borrowers should have a right to their day in court. In addition, it seems that the Department should be clear about the possible conflict of interest that comes along with having a school accused of misrepresentation or misconduct to provide their own arbitrator. We believe that simply requiring that schools notify students of what pre-dispute arbitration agreements or class

⁹ <https://ifap.ed.gov/fregisters/attachments/FR110116.pdf>

¹⁰ Ibid.

¹¹ <https://www.gpo.gov/fdsys/pkg/FR-2018-07-31/pdf/2018-15823.pdf>

action waivers are creates a real lack of accountability for schools and leaves students at the mercy of their institution again.

It is our recommendation that the Department maintain the prohibition of pre-dispute arbitration agreements and class action waivers.

Overall, we at the National Urban League recommends that the Department of Education at minimum maintain the borrower defense rule finalized in 2016 in order to best protect students and taxpayers from the misconduct of institutions. We believe that this rule made progress in creating opportunities for recourse for students and borrowers while holding schools accountable for their actions. We look forward to continued engagement with the Department on this issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "marc morial", with a stylized flourish at the end.

Marc H. Morial
President and CEO
National Urban League