Congress of the United States
Washington, DC 20515

August 30, 2018

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

Re: Docket ED-2018-OPE-0027

Dear Secretary DeVos:

We write in strong opposition to the U.S. Department of Education's ("Department") proposed "borrower defense" rule and urge you to abandon this proposal in favor of rules finalized in 2016 that provide much-needed debt relief to students who fall victim to abusive and unlawful practices of some colleges. The Department's proposal would effectively end relief for the approximately 375 defrauded students in our home state of Connecticut with pending borrower defense claims and is another troubling example of the Department prioritizing the interests of for-profit education companies over those of students.

Colleges that engage in misconduct often leave students with high levels of debt and struggling to find a job in their chosen field. Following the collapse of Corinthian Colleges, Inc. ("Corinthian") in 2015, systemic fraud was uncovered, including falsified job placement rates provided to students at the company's Everest, Heald, and WyoTech chains. The Department correctly sought to address these serious problems by issuing rules that improved the student debt relief process for those left with considerable debt but no degree or college credits of any value. However, instead of using these rules to review a growing backlog of borrower defense claims, processing has stalled and the Department has allowed significant delays in relief to victims.

As you know, the *Higher Education Act of 1965* gives you the authority to help defrauded students by discharging—and refunding—their federal student loan debt when those students were misled by their schools or were the victims of unlawful and abusive practices.[1] This authority predates the previous administration, and has been promulgated through rules that have been in place since 1995.[2] The Department's new borrower defense proposal does not meet the requirements delineated in these rules and federal statute, and is a radical departure from Congressional intent. If it is not withdrawn or heavily modified, your proposal will effectively eliminate $12.7 billion in potential debt relief for defrauded borrowers and harm students in several significant ways:

- The proposed rule requires borrowers to default before they can file a borrower defense claim, which could impact students' credit scores, require them to pay unnecessary fees, and send them into collections, wage garnishment, and tax offset. In addition, the rule limits borrowers to 30-65 days after receiving a notice of collection to apply for relief, versus the six years that was allowed in the 2016 rule.

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[1] 20 U.S.C. 1087e(h)
[2] 34 C.F.R. § 685.206(c)(1)

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- The proposal establishes an unattainably high bar for relief by requiring borrowers to show that the school knew the information they provided to students was false or misleading, or that the school had reckless disregard for the truth. In addition, the proposal overturns a ban on forced arbitration, which forces students to waive their legal right to file lawsuits. These policies make it nearly impossible for students to achieve relief and clearly puts the interests of fraudulent for-profit institutions ahead of debt-burdened students.

- The proposed rule eliminates group discharge in cases of widespread misconduct at a school and instead requires each former student to show misrepresentation and individually apply for relief. Most claims for discharge share significant facts to other cases from the same institution. Given that the Department does not have the capacity to review and process applications one-by-one in a timely manner, group relief is integral to making the borrower defense rule work.

- The proposed rule asks applicants invasive and insulting questions about their private life and work history, including whether a borrower can pass a drug test, one's criminal record, and health background.

- The rule permits a school to retaliate against a student who has filed a claim by denying the student transcripts and refusing to verify earned credentials of students with successful claims.

- The proposed rule removes protections for taxpayers against a predatory school's fraudulent practices by eliminating financial responsibility standards endorsed by the Department's own Inspector General, such as giving the Department greater authority to obtain financial protection under certain early warning indicators of financial instability.

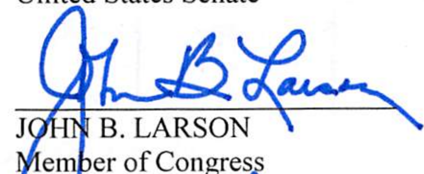
Based on these serious concerns, we reiterate our strong opposition to the proposed rule and implore the Department to withdraw this harmful proposal that fails to fulfill the intent of federal law. The Department's rule will undoubtedly have devastating consequences for defrauded Connecticut student loan borrowers who are depending on the Department to take this issue seriously and process their claims.

Sincerely,

CHRISTOPHER S. MURPHY
United States Senate

RICHARD BLUMENTHAL
United States Senate

ROSA DELAURO
Member of Congress



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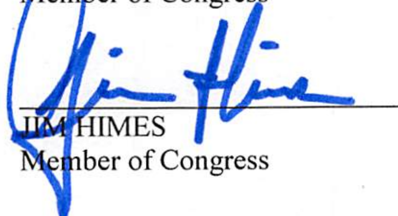

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