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January 14, 2020

Senator Dick Durbin
711 Hart Senate Office Building
Washington, DC 20510

Representative Susie Lee
522 Cannon HOB
Washington, DC 20515

Submitted by electronic mail

Dear Senator Durbin and Representative Lee,

We, the undersigned Attorneys General of Massachusetts, California, Delaware, the District of Columbia, Hawai'i, Illinois, Iowa, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Vermont, Virginia, and Washington write to express our support for the resolution of disapproval that you have introduced regarding the U.S. Department of Education's ("Department") 2019 Borrower Defense Rule ("2019 Rule") pursuant to the Congressional Review Act. In issuing the 2019 Rule, the Department has abdicated its Congressionally-mandated responsibility to protect students and taxpayers from the misconduct of unscrupulous schools. The rule provides no realistic prospect for borrowers to discharge their loans when they have been defrauded by predatory for-profit schools, and it eliminates financial responsibility requirements for those same institutions. If this rule goes into effect, the result will be disastrous for students while providing a windfall to abusive schools.

The 2019 Rule squanders and reverses recent progress the Department has made in protecting students from fraud and abuse. Three years ago, the Department completed a thorough rulemaking process addressing borrower defense and financial responsibility, in which the views of numerous schools, stakeholders, and public commenters were considered and incorporated into a comprehensive set of regulations. The regulations, promulgated by the Department in November 2016 ("2016 Rule"), made substantial progress toward achieving the Department's then-stated goal of providing defrauded borrowers with a consistent, clear, fair, and transparent process to seek debt relief. At the same time, the 2016 Rule protected taxpayers by holding schools accountable that engage in misconduct and ensuring that financially troubled schools provide the government with protection against the risks they create.

The Department's new rule would simply rescind and replace its 2016 Rule, reversing all of its enhanced protections for students and its accountability measures for for-profit schools. The

Department's 2019 Rule provides an entirely unfair and unworkable process for defrauded students to obtain loan relief and will do nothing to deter and hold accountable schools that cheat their students. Among its numerous flaws, the Department's new rule places insurmountable evidentiary burdens on student borrowers with meritorious claims. The rule requires student borrowers to prove intentional or reckless misconduct on the part of their schools, an extraordinarily demanding standard not consistent with state laws governing liability for unfair and deceptive conduct. Moreover, even where a school has intentionally or recklessly harmed its students, it is difficult to imagine how students would be able to obtain the evidence necessary to prove intent or recklessness for an administrative application to the Department. The rule also inappropriately requires student borrowers to prove financial harm beyond the intrinsic harm caused by incurring federal student loan debt as a result of fraud, and establishes a three-year time bar on borrower defense claims, even though students typically do not learn until years later that they were defrauded by their schools. Compounding these obstacles, the rule arbitrarily eliminates the process by which relief can be sought on a group level, permitting those schools that have committed the most egregious and systemic misconduct to benefit from their wrongdoing at the expense of borrowers with meritorious claims who are unaware of or unable to access relief.

We are uniquely well-situated to understand the devastating effects that the 2019 Rule would have on the lives of student borrowers and their families. State attorneys general serve an important role in the regulation of private, postsecondary institutions. Our investigations and enforcement actions have repeatedly revealed that numerous for-profit schools have deceived and defrauded students, and employed other unlawful tactics to line their coffers with federal student-loan funds. We have witnessed firsthand the heartbreaking devastation to borrowers and their families. Recently, for example, state attorneys general played a critical role in uncovering widespread misconduct at Career Education Corporation, Education Management Corporation, the Art Institute and Argosy schools operated by the Dream Center, ITT Technical Institute, Corinthian Colleges, American Career Institute and others, and then working with the Department to secure borrower-defense relief for tens of thousands of defrauded students. Through this work, we have spoken with numerous students who, while seeking new opportunities for themselves and their families, were lured into programs with the promise of employment opportunities and higher earnings, only to be left with little to show for their efforts aside from unaffordable debt.

A robust and fair borrower defense rule is critical for ensuring that student borrowers and taxpayers are not left bearing the costs of institutional misconduct. The Department's new rule instead empowers predatory for-profit schools and cuts off relief to victimized students. During the comment period on the 2019 Rule, we submitted these and other objections to the Department. Rather than engaging with our offices, the Department ignored our comments and left our concerns unaddressed. We commend and support your efforts to disapprove the 2019 Rule to protect students and taxpayers. Congress must hold predatory institutions accountable for their misconduct and provide relief to defrauded student borrowers and, by enacting your resolution of disapproval, ensure that the 2016 Rule remains the operative borrower defense regulation.

Sincerely,

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