

Congress of the United States
House of Representatives
Washington, DC 20515

April 28, 2016

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

Dear Secretary King:

Last month, members of the House wrote to President Obama urging for a fair process to make defrauded student borrowers whole again through the Department of Education's (the Department) current "borrower defense" rulemaking. We commend the Department for incorporating many requests from that letter into the revised draft rule language that was presented to negotiators, including options for group relief and an expansion of a borrower's statute of limitations time limit for making a claim. In particular, we applaud the Department for seeking to address our serious concerns with the proliferation of mandatory arbitration clauses in higher education. As the negotiating committee was unable to reach consensus last month, it now falls to the Department to issue a proposed rule under established notice/comment procedures. We are writing to encourage the Department to further improve upon the draft and to craft a final rule that fully protects students and makes defrauded borrowers whole. Specifically, we urge the Department in that rule to ban the use of mandatory arbitration clauses and to retain the state law claim standard as a basis for borrower defense.

While we appreciate the Department's commitment to limiting mandatory arbitration clauses in higher education, an outright ban on mandatory arbitration for institutions of higher education is necessary to fully protect students. Mandatory arbitration clauses strip basic legal rights away from students and ban worthwhile actions from ever being heard in court. While proposals limiting the use of this practice against certain classes of students and requiring additional disclosures from schools may place constraints on mandatory arbitration, only a complete ban will guarantee students are fully protected.

Under the Higher Education Act, the Department has clear authority to establish standards around an institution's administrative capability to administer Title IV student aid programs. We agree with legal analysis developed by consumer advocates and legal assistance experts which argues that a school's use of mandatory arbitration in practice operates as an infringement on a student's procedural rights and indicates an institution's inability to soundly administer Title IV student aid programs. We urge the Department to revise the necessary regulations to put an end to the harmful use of mandatory arbitration clauses in higher education.

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We also remain disappointed that the draft rules propose to sunset the ability to pursue a borrower defense claim under the current “state law” standard— any act or omission of the school that relates to the making of the loan or the provision of educational services that would give rise to a cause of action against the school under applicable State law. While the proposed federal standard allows for claims based on a “breach of contract” or “substantial misrepresentation,” these will naturally be determinations based on judgments of fact and law. Giving borrowers the right to pursue their claims when an institution’s actions give rise to a cause of action evens the playing field. By allowing borrower defense claims to be made under the State law standard, defrauded student borrowers can fully avail themselves of the strong, well-established consumer protection laws in place at the state level. It is vital that this body of law also serve as grounds to pursue a borrower defense claim. As the proposed regulations are finalized, we urge the Department to retain the state laws standard for defrauded borrowers.

Each day, millions of Americans enrolled at postsecondary institutions around the country are hard at work, building the skills they need to participate in our 21st century economy. They deserve to pursue their education knowing that if they are defrauded in that pursuit, they will be made whole financially. As your Department finalizes its borrower defense regulation, we hope you do everything you can to protect these hard working students and make defrauded borrowers whole through student loan relief. Thank you for your attention to this matter. We look forward to your response.

Sincerely,



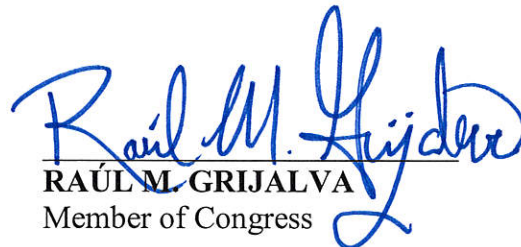
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Ranking Member
Committee on Education and the Workforce



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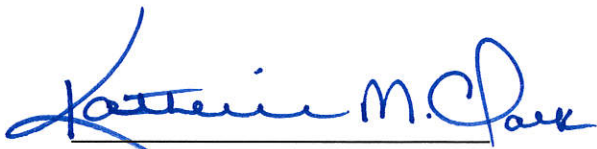
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