Written Testimony
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Testimony before the House Committee on Education and Labor on
"Examining the Education Department's Implementation of Borrower Defense."

December 12, 2019

Chairman Scott, Ranking Member Foxx, and Members of the Committee:

Let me first thank the committee for its willingness to make this a more productive hearing. We have produced 18,000 pages of documents during the past month, we have briefed you several times, and I'm hopeful we can use today's hearing to continue in that spirit of productive dialogue.

Let me also thank you for the opportunity to set the record straight on this Administration's approach to borrower defense to repayment. Let me be very clear: Students are my number one priority. They are why I come to work every day. So, if students have been deceived by institutions and suffered financial harm as a result, they should be made whole. But if claims are false, or students did not suffer financial harm, then hardworking taxpayers should not pay their student loans for them.

It's a matter of fairness.

Adjudication of these claims must treat students, schools, and taxpayers fairly. Simply discharging all of these loans, as some on this committee suggest, is *not* fair to taxpayers and to those who have paid their loans or to schools.

Any form of blanket approval for forgiveness is not fair to the taxpayers nor does it represent the spirit and intent of any of the borrower defense to repayment rules.

This commitment to fairness continues to guide our thinking with regard to borrower defense. When this Administration's Borrower Defense Rule goes into effect on July 1, 2020, all borrowers will receive the protections that they deserve and will be assured fair treatment. Our regulations explicitly recognize the unique circumstances and experiences of each and every borrower.

There has been a lot disinformation about the 2019 Rule, so let me begin by saying what our 2019 Rule does not do.

First, the borrower defense provisions of the 2019 Rule will apply only to loans first disbursed after July 1, 2020. It *will not* apply retroactively to loans disbursed to students prior to that date. This means that the Department will continue to enforce, in good faith, the previous Administration's 2016 Rule for all loans disbursed between July 1, 2017 and July 1, 2020. For loans first disbursed before July 1, 2017, the pre-2016 standards still apply. That means BD claims on pre-2017 loans will be adjudicated based using the applicable state standard, just as it was before the 2016 Rule. The 2019 Rule thus does not affect this Administration's processing of BD claims currently held by the Department – no student has received a loan governed by the 2019 Rule.

The 2019 Rule does not shield any school from accountability, nor does it relax oversight of bad ones. *All* institutions, no matter their tax status, are held accountable under our 2019 Rule.

Additionally, the 2019 Rule does not demand that students prove that their school intentionally deceived them. Instead, the Rule provides due process for all parties. Our process focuses on individual students and requires evidence from ***both*** the borrower and the school before deciding a claim. And, unlike the prior Administration's 2016 Rule, the student always has the last word because he or she is explicitly allowed to reply to the school's response.

Finally, under our Rule, borrowers have three years ***after*** they ***leave*** an institution, for whatever reason, to file a BD claim. Misrepresentations can, and often do, occur before a student enrolls. So, the actual period in which a student can file a claim would likely be much longer than three years. For example, for a student who earns a bachelor's degree, the effective period would likely be closer to seven years.

Now let me discuss the basics of what our Rule does do.

First, the 2019 Rule puts into place a borrower defense process that is clear, understandable, and easily accessible for borrowers, while also ensuring that claims are processed efficiently, carefully, transparently, and fairly.

Second, students may file either affirmative or defensive claims, all of which will be judged using a preponderance-of-the-evidence standard.

Third, the Rule provides a legally grounded, reasoned, and appropriate definition of "misrepresentation." Before deciding a BD claim, the 2019 Rule requires the Department to allow borrowers and institutions to provide evidence to the Department, obtain relevant evidence in the Department's possession that the Department is using to decide the BD claim, and respond to any evidence in the record. The borrower always receives the last word, as the 2019 Rule

allows the borrower to submit a reply to any response submitted to the Department by the school to the borrower's application for BD relief.

Fourth, the 2019 Rule treats students equally and fairly. The reforms of the 2019 Rule are a much-needed course correction to the current 2016 Rule. Indeed, the 2016 Rule explicitly discusses the example of an individual who wishes to enroll in a selective, regionally accredited liberal arts school. The school gives inflated data to a well-regarded school ranking organization regarding the median grade point average of recent entrants, and also includes that inflated data in its own marketing materials. This inflated data raises the place of the school in the organization's rankings in independent publications.

In this scenario, under the 2016 Rule according to the Obama Administration, even if the student relied on the misrepresentation about the admissions data to his detriment, the borrower cannot obtain relief because the institution that misrepresented itself was "a selective liberal arts" school. The 2016 Rule was thus applied in a discriminatory fashion, excusing "selective liberal arts" schools from responsibility for misrepresentation without ever considering actual student harm. Under the 2019 Rule, and aided by our new College Scorecard, all students at all schools are protected against harm.

Many in Congress and in the higher education community have argued that the answer to these issues is for the Department simply to grant blanket relief for all borrowers, no matter the substance of the BD claim. This, too, is unacceptable. Take the following example: A BD claimant from Corinthian asserts only one allegation -- that he or she attended one of the programs covered by the Department's findings of widespread job placement rate (JPR) misrepresentations. There is no reason to grant blanket relief in this circumstance because the Department can compare the borrower's stated dates of enrollment, campus, and program against

our loan data and Corinthian data to conclude that the borrower's application alleging a job placement rate misrepresentation should be approved or not.

Take another example: A borrower submits an application that makes substantive allegations that would not support an approval under the borrower defense regulation, such as my "my school is terrible" or "my loans are too expensive". Neither example would state a claim under state law, nor would they constitute substantial misrepresentations under the Federal standard in the 2016 Rule.

Similarly, the Department has claims that state "my teacher harassed me" or "I was assaulted by another student". The claims potentially may be actionable against the school but are not related to the borrower's enrollment at the school or the loans taken out to pay for the education and, therefore, do not provide a basis for relief under any of the Borrower Defense Regulations for 1995 or 2016. Yet, many would have the Department simply grant full relief on all these claims.

Let me now turn to the ongoing adjudication of existing claims before the Department.

Yes, there is a backlog of borrower defense claims at Federal Student Aid. To say that I am frustrated by that backlog is an understatement. But rather than focus on *why* there is a backlog, too many have instead focused on creating a media circus.

Here are the inconvenient facts about borrower defense: First, we inherited from the Obama Administration more than 64,000 borrower defense claims. So, I asked the IG to investigate why the Obama Administration made such little progress processing those claims. The IG found "weaknesses" in the procedures established by the previous Administration for approving and denying claims. In fact, the prior Administration was encouraging claims to be filed knowing full

well it lacked the ability even to accurately track them. They had no effective process for the timely review of large numbers of borrower defense claims. Rather than deal with the claims, they just walked away and left these tens of thousands claims behind for this Administration.

Faced with this crushing number of applications, we took action to establish a process for reviewing the backlog of claims, using the prior Administration's categories as our baseline. We quickly adjudicated 32,400 claims.

Our relief methodology for adjudicating the claims was based on the same source of data—Social Security Administration data to be exact—that the Obama Administration used to measure schools under its "gainful employment" rule.

Unfortunately, in May of 2018, a Federal district court in California determined that the manner in which the Department obtained earnings data from the Social Security Administration, pursuant to a data arrangement, violates the Privacy Act. We strongly disagree and have been waiting for a decision on appeal from the 9th Circuit since filing an appeal over a year ago. The Department stands ready to process these claims and continues to explore methods for doing so as it awaits a decision from the 9th Circuit.

Ultimately, what the Department wants, what I want, and what taxpayers deserve, is to provide fair relief to all those borrowers who truly have been harmed. That is what the law requires, that is what you intended by the borrower defense to repayment provision, and that is what we are doing.

Thank you.