

Congress of the United States
House of Representatives
Washington, D.C. 20515

March 9, 2016

President Barack Obama
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

Dear President Obama:

Today, more than ever, a postsecondary education remains the surest path to the middle class for American students and families. Our nation has some of the world's best colleges and universities, which provide millions of Americans with the skills they need to participate in our 21st century economy. However, recent reports of misconduct, like the findings of the Department of Education ("ED") that Corinthian Colleges made misrepresentations of job placement rates to students, illustrate that some schools prey on student borrowers through the use of unfair, deceptive, or abusive practices. These borrowers are often left with crushing student loan debt and little to show for it. Victims of these dishonest practices should not be left holding the bag. We are writing to urge you to provide a fair process for making these affected student borrowers whole again through ED's current borrower defense to repayment ("DTR") rulemaking.

We are disappointed that the draft rules propose a two-year time limit for defrauded borrowers to submit a DTR claim. It may take several years before a student borrower learns that a federal or state entity has found that his school committed an offense that would give the borrower a DTR. Regardless of when the claim is filed, a victimized borrower deserves to be made whole. This is especially true considering the collection process on a student loan can last decades for a distressed borrower. Student borrowers mistreated by their schools cannot discharge their student loans in bankruptcy. If a borrower misses the proposed two year limit, he may have to make as many as 25 years of qualifying payments in hopes of receiving some relief through the loan forgiveness process. Considering the harsh consequences and near-endless time frames that student borrowers face repaying their loans, we urge the Department not to place an arbitrary time limit on when borrowers can file a DTR claim.

In addition, we are concerned that the draft standards for DTR may reduce the chances than an average borrower will be able to receive timely relief. Under the proposed regulations, a borrower can pursue a DTR claim against a school four ways: if the borrower obtains a judgment against the school; if the school breaches a contract with the borrower; if the school or its representatives make a substantial misrepresentation that the borrower relied upon in deciding to attend the school; or if an act or omission of their school gives rise to a cause of action against

the school under applicable State law (the current standard, which will remain in effect for loans disbursed before July 2017).

On their face these new standards improve the ability of a borrower to make a successful claim, but each of these standards will in practice rely heavily on legal proceedings, limiting the ability of the average person to negotiate them alone. The regulation also fails to address the proliferation of binding arbitration clauses in higher education, which have the potential to keep even the most legally adept borrowers out of court and prevent them from doing the discovery necessary to succeed on a borrower's defense claim. The regulation does not take this reality into account.

While the findings of an investigation conducted by a state attorney general or a federal agency could provide the facts necessary for a student borrower to proceed on a DTR claim, such findings do not guarantee a borrower will have a successful claim. The discovery of a substantial misrepresentation by one of these offices starts the two-year clock on a borrower's ability to make a claim, as a school could argue that the existence of findings or a settlement agreement could be reasonably discovered by a borrower. Settlements between schools and agencies are sometimes quite protracted, and often include no admission of guilt or wrongdoing that a borrower might need to bring a successful claim. Furthermore, the draft regulations could have created a rebuttable presumption that a successful DTR exists, for an individual or a group, if a substantial misrepresentation is found by a state attorney general or agency, but the proposed regulations did not establish such a presumption. Each claimant, therefore, must prove his individual case and ED would have to individually consider, each and every case. Without a clearer picture of the fact-finding process to be established by the Secretary to resolve these claims, it is difficult to see how these new standards will improve the chances an average defrauded borrower has to receive timely relief.

Taking these failings into account, it is troubling that the draft regulation sunsets the ability to pursue a DTR claim under the current 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. State consumer protection laws against unfair and deceptive acts and practices (UDAP), could be a strong backstop for borrowers. The fact that new borrowers will not be able to avail themselves of these laws to pursue a DTR claim in the future will make the pursuit of a successful DTR claim challenging.

Finally, we are disappointed that the draft rules do not propose to grant relief to a group of students who have all been similarly mistreated by an institution. While a group of student borrowers can pursue a claim together under common facts, relief is limited to the group that applied. Once a successful DTR claim has been granted to one or more students, other students similarly affected should become immediately eligible for the same relief and not have to file a new claim. Preventing group relief, and asking victimized students to individually prove evidence of misconduct, is unnecessarily burdensome. When clear evidence of misrepresentation or misconduct exists, we urge the Department to reach out to all affected borrowers and grant group discharges rather than placing an individual burden on each defrauded student.

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A postsecondary education is one of the best investments a student can make in his or her future. When a school spoils the promise of this pursuit by using unfair, deceptive, or abusive practices against its students, leaving them with serious student loan debt, we must do everything we can to make them whole again by granting student loan relief. Thank you for your attention to this matter. We look forward to your response.

Very truly yours,



ROBERT C. "BOBBY" SCOTT

Ranking Member

House Committee on Education & the Workforce



MAXINE WATERS

Ranking Member

House Committee on Financial Services