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Via overnight mail

February 22, 2017

The Honorable Elisabeth DeVos
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U.S. Department of Education
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United States House of Representatives
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Washington, DC 20515

The Honorable Mitch McConnell
Senate Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Nancy Pelosi
House Minority Leader
United States House of Representatives
233 Cannon H.O.B.
Washington, DC 20515

The Honorable Charles E. Schumer
Senate Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

RE: How For-profit Schools Have Harmed Student Borrowers: the Need for the Gainful Employment Rule, Vigorous Federal Oversight of Accreditors, and the Borrower Defense to Repayment Rule

Dear Secretary DeVos, Speaker Ryan, Senator McConnell, Congresswoman Pelosi, and Senator Schumer,

We, the undersigned Attorneys General of Illinois, Connecticut, Delaware, Hawaii, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and the District of Columbia, as well as the Executive Director of the Office of Consumer Protection of Hawaii, write to express our support for recent federal protections for students and taxpayers in higher education. We are

deeply concerned that rollbacks of these protections would again signal “open season” on students for the worst actors among for-profit post-secondary schools. As the chief consumer law enforcement agencies in our states, our offices handle thousands of complaints concerning higher education every year.¹ We also enforce laws to protect consumers from unfair and deceptive practices perpetrated by higher education providers.

I. **Background: The Need for Rules to Protect Students and Taxpayers from Unfair and Deceptive Practices by For-Profit Higher Education Providers**

Over the last ten years, student loan debt has soared from \$450 billion to nearly \$1.4 trillion.² A major driver of this increase has been for-profit colleges. Of the top 25 schools where students hold the most student loan debt, over half were for-profit schools in 2014.³ This is up from only one for-profit institution in the top 25 in 2000.⁴

In addition to driving the increase in student loan borrowing, for-profit institutions also have significantly more loan defaults than other types of institutions. Since 2013, for-profit institutions accounted for 35% of all federal student loan defaults, but enrolled just 27% of all borrowers.⁵ Many for-profit schools are almost entirely dependent on federal grants and loans. In December 2016, the U.S. Department of Education (“ED”) found that nearly 200 for-profit schools derive more than 90% of their income from federal sources.⁶ The only reason that many of these institutions are in compliance with the federal 90/10 Rule⁷ is that certain categories of federal money, including GI Bill money, are excluded from the rule and thus count toward the 10% that is supposed to be non-federal money.

Over the past fifteen years, millions of students have been defrauded by unscrupulous for-profit post-secondary schools. With accreditors asleep at the wheel, State Attorneys General Offices have stepped in to stop some of the worst abuses. The list of State Attorney General investigations and enforcement actions against for-profit colleges is long, including actions against: American Career Institute; Ashford University/Bridgepoint Education, Inc.; Corinthian Colleges, Inc.; Career Education Corporation; Education Management Corporation; Daymar College; DeVry University; ITT Tech; National College of Kentucky; and Westwood Colleges, among others. These schools, and others like them, engaged in a variety of deceptive and abusive practices. Some promised prospective students jobs, careers, and further opportunities in education that the schools could not provide. Many schools inflated job placement numbers and/or promised career services resources that did not exist. Many nationally-accredited schools

¹ Illinois alone received 1,523 consumer complaints regarding education in 2015.

²Bricker, Jesse, et al., “How Much Student Debt is Out There?”, Board of Governors of the Federal Reserve System: accessible data available at: <https://www.federalreserve.gov/econresdata/notes/feds-notes/2015/how-much-student-debt-is-out-there-accessible-20150807.html#fig1>; <https://www.federalreserve.gov/releases/g19/current/#fn11b>

³ Brookings Institute study: https://www.brookings.edu/wp-content/uploads/2016/07/ConferenceDraft_LooneyYannelis_StudentLoanDefaults.pdf

⁴ Brookings Institute study: https://www.brookings.edu/wp-content/uploads/2016/07/ConferenceDraft_LooneyYannelis_StudentLoanDefaults.pdf

⁵ <https://www2.ed.gov/offices/OSFAP/defaultmanagement/schooltyperates.pdf>

⁶ <https://www.ed.gov/news/press-releases/new-analysis-finds-many-profits-skirt-federal-funding-limits>

⁷ The 90/10 Rule is a federal regulation that requires for-profit schools to receive at least 10% of their income from non-federal sources. By requiring someone other than the federal government to pay for the programs, such as students, employers, or scholarship providers, the Rule is designed to be an indicator of quality.

promised that their credits would transfer, even though credits from nationally-accredited schools often do not transfer to more rigorous regionally-accredited schools. Many students were placed in loans that the schools knew from experience their graduates could not pay back. The schools were overseen by accreditors who failed to take action to protect students or the taxpayers who funded their federal student loans, despite ample evidence of these and other problems. In short, the entire for-profit education system was failing students and taxpayers. As investigations and prosecutions initiated by our offices shed light on these problems⁸, ED began to take steps to remedy these harms, issuing new regulations and reformulating policies to help protect students and taxpayers.

Three of these recent steps – the Gainful Employment Rule, the policy of vigorous federal oversight of accreditors, and the Borrower Defense to Repayment Rule – are essential to protect both consumers and taxpayers from fraudulent actors in the for-profit education sector. The Gainful Employment Rule is a measure of graduates’ debt-to-income and is designed to ensure that programs produce graduates that are able to pay back their student loans. Prospectively, the federal government recognizes accreditors who have standards sufficient to show that they schools they accredit provide a quality education and should have access to federal student loans and grants. Finally, where other protections fail and students are defrauded by bad actors, the Borrower Defense to Repayment Rule provides a formal process for students to assert a defense to repayment of their federal student loans.

II. Corinthian Colleges: An Example of the Harm Faced by Students and Taxpayers

The egregious conduct of Corinthian Colleges illustrates how each of these three policies is necessary to avoid harm to both students and taxpayers. In March 2016, after an extensive review of published job placement rates at Corinthian campuses nationwide, the Department of Education found that the job placement rates were fraudulent for hundreds of cohorts from 2010 – 2014.⁹ Corinthian was telling the world that far more of its students obtained jobs than actually did, inducing students to enroll. Many of these students were left without jobs in their field of study. Without these jobs, many are saddled with debt they cannot repay, defaulting on loans funded with taxpayer dollars.

⁸ *See, e.g.*, AG Harris Obtains \$1.1 Billion Judgment Against Predatory For-Profit School Operator, Mar. 23, 2016, <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-obtains-11-billion-judgment-against-predatory>; Judge Rules Minnesota For-Profit Schools Committed Fraud, Sep. 8, 2016, <https://www.mprnews.org/story/2016/09/08/globe-university-minnesota-school-of-business-fraud>; Madigan Sues National For-Profit College, http://illinoisattorneygeneral.gov/pressroom/2012_01/20120118.html; Madigan Announces Settlements With For-Profit Education Management Corporation http://www.illinoisattorneygeneral.gov/pressroom/2015_11/20151116.html; <http://migration.kentucky.gov/Newsroom/ag/nationalcollegesuit.htm>, Aug. 20, 2013 (Kentucky AG suit against National College); For-Profit School Sued for Deceiving Students and Facilitating Unfair Loans, April 3, 2014, <http://www.mass.gov/ago/news-and-updates/press-releases/2014/2014-04-03-corinthian-complaint.html>; ITT Tech Sued for Deceiving Students About its Computer Network Systems Program and Success in Finding Jobs, April 4, 2016, <http://www.mass.gov/ago/news-and-updates/press-releases/2016/2016-04-04-itt-tech.html>; AG’s office sues ITT Educational Services, <http://www.bizjournals.com/albuquerque/news/2014/02/27;/ags-office-sues-itteducational.html>, Feb. 27, 2014.

⁹ Everest/Wyotech: StudentAid.gov/ev-wy-findings; Heald: StudentAid.gov/heald-findings

Had the gainful employment regulations been in place, Corinthian's programs that weren't producing jobs for students would have been shut down because the median debt-to-income ratio would have shown that students were not making enough money to pay down their loans. Had Corinthian's accreditors reviewed the school's self-reported job placement data on a regular basis, the fraud would have been discovered and stopped much earlier, saving students and taxpayers billions of dollars.

The absence of policies in place to protect prospective students from Corinthian's fraudulent practices also demonstrates the need for an effective process for students to assert a defense to loan repayment. This defense was established in the 1990s when Congress passed legislation allowing students to assert claims against their schools as a defense to repayment of their federal student loans. There was little detail, however, on the process for asserting such claims. The regulations set to take effect on July 1, 2017 give borrower defense to repayment set processes so that students, schools, and taxpayers have an orderly process, and a degree of certainty, moving forward.

Without the Gainful Employment Rule, meaningful oversight of accreditors, and an orderly borrower defense process, we face the prospect of for-profit schools continuing to line their pockets with taxpayer dollars while students and taxpayers experience another crushing wave of defaulted student loan debt.

III. The Gainful Employment Rule

ED's gainful employment regulations are designed to further a simple idea – that students who attend career training programs should be able to repay their federal student loans once they graduate. The Rule allows prospective students to compare debt-to-income ratios across schools. By doing this, the Rule creates an incentive for schools to make good on their promises to students, and protects students from programs that will leave them saddled with debt and without job prospects in the careers for which they trained.

The Rule generally applies to vocational programs at for-profit institutions and to non-degree programs at community colleges. If graduates' annual loan payments exceed 30% of discretionary income and 12% of total earnings in two out of three consecutive years, the program loses access to Title IV federal student loans and grants. A program can also lose access if graduates' annual loan payments exceed 20% of discretionary income and 8% of total earnings for four consecutive years.

Data released on January 9, 2017 indicate that over 800 programs fail the Department's Gainful Employment metrics.¹⁰ **For-profit institutions are responsible for 98% of the failing programs.** But these 800 programs are only a portion of the for-profit school programs that have failed their students. With the Gainful Employment Rule pending, for-profit institutions have already eliminated hundreds of programs where students did not make enough money to cover

¹⁰ <https://www.ed.gov/news/press-releases/education-department-releases-final-debt-earnings-rates-gainful-employment-programs>

their debt obligations, sometimes closing entire institutions that would have failed to provide students with gainful employment under the regulations.¹¹

It is essential that the Gainful Employment Rule be kept in place. Removing the Rule would open students and taxpayers up to the worst excesses of the for-profit higher education sector. It would greatly increase the regulatory and enforcement burden on states and accreditors by removing a central protection from the federal leg of the triad that oversees higher education in the United States.

IV. Vigorous Oversight of Accreditors by ED

The federal government and states need strong partners with specialized knowledge of higher education to provide prospective quality assurance of schools in order to protect students and taxpayers. Accreditors are the organizations tasked with this role. Our experience, however, has shown that without substantive oversight by the federal government, some accreditors are negligent in their role.

The primary example of this dereliction of duty to students and taxpayers is the Accrediting Council for Independent Colleges and Schools (ACICS). As noted in our April 8, 2016 comment to the National Advisory Committee on Institutional Quality and Integrity (NACIQI) opposing ACICS's application for renewal of recognition, **a recent study found that only 35% of students enrolled in ACICS accredited programs graduate, the lowest rate for any accreditor.**¹²

NACIQI, a bipartisan panel, voted to revoke ACICS's recognition in June 2016. The Senior Department Official at ED agreed with NACIQI and revoked ACICS's recognition as an accreditor in September, 2016. ACICS appealed the decision to the Secretary of Education, and in December 2016, the Secretary denied ACICS's appeal.¹³

An accreditor's failure to verify program quality at its accredited institutions jeopardizes the effectiveness of state enforcement efforts and regulations, exposing each state's students to subpar educational programs that provide little value, but for which each student may borrow tens of thousands of dollars in student loans, that are nearly impossible to discharge in bankruptcy.

A prime example of the harm that stems from lax accreditation was brought to light by state action against Westwood College. The Illinois Attorney General's Office sued Westwood College for systematically misrepresenting the ability of its criminal justice graduates to pursue careers in law enforcement. Thousands of Westwood students in Illinois borrowed up to \$75,000

¹¹ <http://www.careered.com/Press-Room/Press-Releases/Career-Education-Corporation/Career-Education-Announces-Strategy-to-Focus-Resources-on-Its-University-Group>; <https://www.insidehighered.com/news/2015/05/07/profit-chains-announce-new-wave-closures-and-sell-offs>; <https://studentaid.ed.gov/sa/about/data-center/school/ge/data>

¹² <https://www.propublica.org/article/accreditors-billions-of-taxpayer-dollars-flowing-to-for-profit-colleges>

¹³ Note that ACICS has sued ED in connection with the Secretary's decision. See *Accrediting Council for Independent Colleges and Schools v. United States Department of Education, et al.*, 16-2448 (D.D.C 2016). Several State Attorneys General, including some signatories of this letter, have moved to intervene in the lawsuit.

each for careers they were unable to pursue because many police departments in Illinois, including the Chicago Police Department and the Illinois State Police, did not accept credits from nationally-accredited schools. Graduates of Westwood's criminal justice program have a median salary below the median salary of a 25-year old with a high school diploma, in part because they were locked out of the career they had been promised. This combination of high debt and limited job prospects is a crushing blow not only to students, but to taxpayers who bear the burden of defaults on these loans. Despite the Illinois Attorney General's January 2012 suit against Westwood, ACICS accredited Westwood up to the day it closed its doors in March 2016.

Similarly, on September 8, 2016, a Hennepin County Court found that the Minnesota School of Business and Globe University systematically misrepresented their criminal-justice program as allowing students to pursue careers as Minnesota police officers or probation or parole officers. The Minnesota School of Business and Globe University were accredited by ACICS throughout the time period of the fraud determined by the Court, and their Chief Operating Officer during that time was in fact the Chair of ACICS's board of directors. Terminating ACICS's recognition is a responsible action that will protect students and taxpayers for years to come.

V. The Borrower Defense to Repayment Rule

In order to fairly and efficiently redress the harms suffered by for-profit college students, the borrower defense to repayment rule promulgated by ED must be allowed to take effect on July 1, 2017. As we noted in our August 1, 2016 comment to the proposed rule, students need a fair and transparent process to apply for borrower defense to repayment, and that process is missing from the existing regulation. The regulation finalized by ED also contains significant protections for taxpayers, including the requirement that schools cannot use arbitration agreements to bar students from bringing borrower defense claims directly against the school in court.

It is important to note that these regulations do not create a new defense to repayment. Congress established the borrower defense to repayment in the 1990s.¹⁴ Furthermore, over the last two years, ED has created substantial documentation of what constitutes a valid borrower defense claim under the existing regulation. Not only will the defense continue to be available, but it is likely that claims will continue to be asserted, particularly if regulations surrounding for-profit institutions, such as gainful employment, are loosened, allowing the bad practices of the past to return. Because the defense will continue to exist, a formal, transparent process to assert the defense, as reflected in the new repayment rule, is essential.

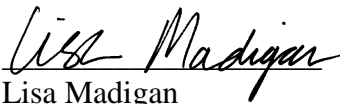
A basic sense of justice requires that the borrower defense to repayment rules be allowed to take effect. Millions of students paid tens of thousands of dollars each in federal student loan money to for-profit schools and received worthless degrees in return. Federal student loan debt is non-dischargeable in bankruptcy. These students cannot be left without a clear recourse. The new borrower defense to repayment regulations provide that recourse and should be allowed to take effect.

Our extensive experience in the higher education field, and our participation in the process of developing these recent policies and regulations, gives us unique insight into the abusive and

¹⁴ 20 U.S.C. § 1087e (h).

deceptive practices of for-profit schools over the last ten years. We cannot overemphasize the harm to students and taxpayers that a rollback of federal protections would cause. Our offices hear from former for-profit students on a daily basis; sadly, many are hopeless. They have little hope of paying off their student loans without the career prospects promised by their schools. They have little hope of continuing their educations without the ability to transfer their credits from the many nationally-accredited for-profits to more rigorous regionally-accredited schools. Allowing for-profit schools unfettered access to federal student loan money without reasonable oversight and accountability is a mistake that American students and taxpayers should not be made to pay for again.

Sincerely,



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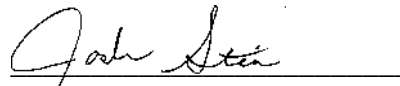
Brian E. Frosh
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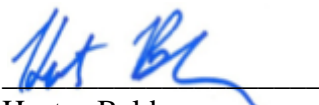
Maura Healy
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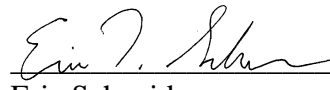
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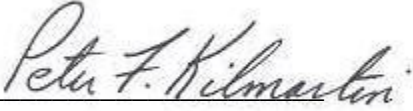
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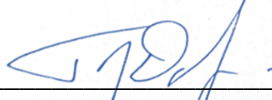
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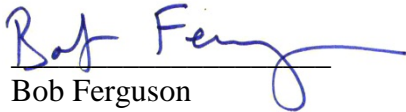
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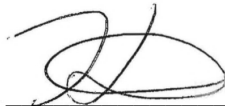
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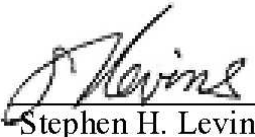
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