

# United States Senate

WASHINGTON, DC 20510

April 29, 2016

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

Dear Secretary King,

Last month, we wrote to President Obama about the need to provide fair and equitable debt relief to the victims of unlawful, unfair, deceptive, or abusive practices in higher education. These practices have become far too common in some sectors of higher education, and we believe strongly that it is time to improve the accountability system for our colleges and universities that collectively receive \$150 billion in federal student aid revenue each year.

During the recent “borrower defense” negotiated rulemaking, the committee considered many different proposals to protect student borrowers and provide them with a path to full debt relief and getting their money back when they have been defrauded. We applaud the U.S. Department of Education (“the Department”) for responding to our requests and subsequently making many positive changes to the draft rules that were presented to negotiators. In particular, we note significant changes to create a more streamlined option for groups of students in similar situations to seek relief and to improve the statute of limitations on borrowers’ ability to receive a discharge of outstanding loan debt. As you know, the rulemaking committee was unable to reach consensus on the proposed regulations. This leaves the path for “borrower defense” in your hands.

This rule is a significant opportunity for the Department to improve upon proposals that were presented to negotiators and to further strengthen the outcome for students. In particular, we commend the Administration’s proposal to ban the use of mandatory arbitration agreements in school enrollment agreements—and it is critical that the final regulation not walk away or step back from that goal. Students who are the victims of fraud or misrepresentations should have the ability to file a lawsuit, both individually and as part of a class of students. We strongly encourage you to hold colleges accountable by banning mandatory arbitration requirements as a condition of the receipt of federal taxpayer dollars.

Mandatory arbitration prevents students from seeking compensation for wrongdoing directly from the school that committed fraud or engaged in misconduct against them in a truly impartial forum. It is also used to bury student complaints about the harm that has been done. Fortunately, the Higher Education Act provides the Secretary with broad authority to establish conditions for participating in federal student aid that “protect the financial interest of the United States.” We

firmly believe that banning mandatory arbitration is in the financial interest of both students and taxpayers. By enabling students to pursue colleges directly when they have been subjected to deceptive or abusive practices, the Department would be better safeguarding the taxpayers' investment in higher education. Simply disclosing when these bullying tactics like mandatory arbitration are used, or only protecting certain classes of students instead of individuals seeking redress, would not be strong enough to fully protect students.

We also hope the Department will make other improvements to the "borrower defense" rule. For example, we hope that the rule will better align with state consumer protection agencies and attorneys general, both of which provide essential safeguards and oversight. If a state attorney general has evidence that a school has broken the state's consumer protection laws, then the Department should work with that attorney general in reviewing evidence of unlawful acts of omissions that would qualify a student borrower for full relief. And if a state attorney general secures a judgment or determination in a court of competent jurisdiction or an admission by the school that misconduct has occurred, borrowers should receive automatic, full relief.

The Department's proposal is flawed in limiting the grounds under which a borrower can seek relief by narrowing the types of state law that could provide for a "borrower defense" to cases where a school breaches a contract or engages in "substantial misrepresentations." This standard increases the burden of proof on affected students and needlessly excludes other categories of unfair, deceptive, abusive, or fraudulent misconduct that are covered by state laws to protect them, including: affirmative-disclosure obligations; debt collection requirements; protections against deceptive advertising; prohibitions on unfair business practices; federal protections incorporated into state law; and important state-law theories of liability used to hold accountable all parties to a violation. Borrowers should be able to seek relief after schools make misrepresentations upon which students could be reasonably expected to rely—without being caught up in complex arguments about the substantiality of the misrepresentation.

Finally, we also believe that there should be further improvements to the process for borrowers to seek or receive full relief, regardless of when the students enrolled, when misconduct was uncovered, or the type of federal loan. We hope the rule provides full relief to defined groups of borrowers without a prior individual application comparable to how the Department is now handling borrowers with permanent disabilities and borrowers eligible for the Servicemembers Civil Relief Act interest rate cap. An individual application requirement would be unduly burdensome in egregious and widespread instances of misconduct.

In particular, we believe that permitting relief to classes would be an efficient and fair way to provide discharges to similarly-situated borrowers who have been harmed. It is still our belief that students should not have to apply for relief in instances where federal or state agencies already have evidence of unlawful activity. And we would like to see a clear and transparent process in cases where the Department is gathering additional evidence; this includes giving Department officials a degree of independence to make determinations that are in the best interest of the borrower.

As the Department continues to finalize the proposed regulations, we hope that you will consider these and other proposals to strengthen the rule in ways that will provide relief to students who have been the victims of deceptive or predatory practices. Thank you for your prompt attention to this matter.

Sincerely,



PATTY MURRAY  
United States Senator



ELIZABETH WARREN  
United States Senator



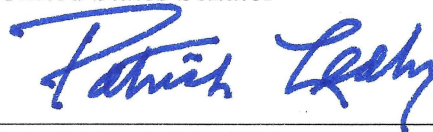
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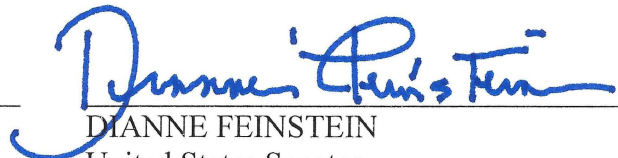
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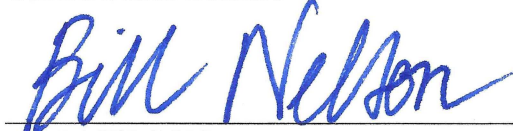
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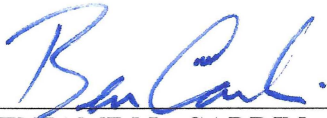
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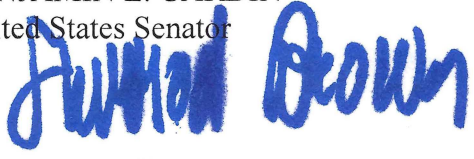



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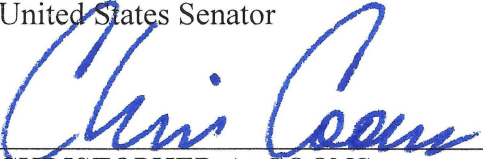
  
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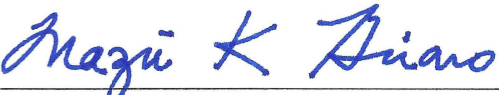
  
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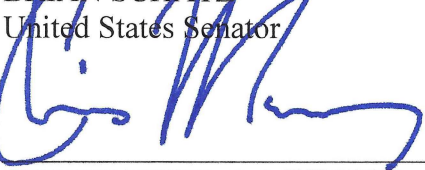
  
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