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U.S. Department of Education  
400 Maryland Avenue, SW  
Mail Stop 294– 20  
Washington, DC 20202

August 29, 2018

Re: July 31, 2018 Notice of Proposed Rulemaking Regarding Borrower Defenses to Repayment

Docket ID: ED–2018–OPE–0027

Dear Mr. Gaina,

On behalf of the American Association of Collegiate Registrars and Admissions Officers (AACRAO), I write to respectfully submit our comments on the U.S. Education Department’s Notice of Proposed Rulemaking (NPRM) regarding borrower defenses to repayment that was published in the Federal Register on July 31, 2018.

AACRAO is a nonprofit association of more than 11,000 campus enrollment officials who represent approximately 2,600 institutions and agencies in the United States and more than 40 other countries. Our members play a central role in protecting and maintaining the academic integrity of their institutions as admissions gatekeepers and as codifiers and custodians of the institutional academic policies that govern the awarding of credits and credentials. They also have a systemic interest in academic integrity across the spectrum of educational institutions, since they must make decisions based upon credits and credentials granted by previously attended colleges and universities.

Over the past decade, our members have become increasingly alarmed by the dramatic rise of diploma mills and the frequency of applications based on fraudulent and questionable credentials. Weak accountability measures within the Title IV gate-keeping provisions have not only allowed subpar institutions to gain access to federal financing, they have also created perverse incentives for many previously participating schools to vastly inflate their offerings and pose as legitimate colleges and universities.

Each year, billions of dollars from Title IV programs enable students to participate in and benefit from higher education programs. Unfortunately, the lax eligibility standards and poor gate-keeping of these programs allow some institutions to take advantage of students and taxpayer funds. These institutions often display multiple indications of potential trouble, such as high-attrition/low-graduation rates, non-transferability of academic credits to other institutions, low licensure pass-rates for programs in licensed professions, low job placement rates for their vocational programs, high-debt/low-income characteristics for the vast majority of their students, high default-rates, and very high levels of dependence on federal dollars. The ability of subpar institutions to game the federal gate-keeping “triad” (i.e., states, accrediting agencies, and the federal government) undermines public support for federal student aid programs and devalues all academic credentials, even those that have been earned at legitimate institutions.

AACRAO strongly supports efforts to update federal accountability measures for institutions of higher education to ensure that students are receiving an education worth their time and money. Clear and consistent processes are needed for borrowers seeking debt relief from institutions that have committed acts or omissions that constitute misrepresentation and cause harm to students. Additionally, improvements to Title IV gatekeeping and subsequent monitoring of participating colleges and universities are key to deterring future institutional abuses or abrupt closures. At the same time, legitimate institutions must be assured adequate consideration to respond to borrower defense to repayment claims and provide evidence to support their response.

We are greatly concerned that the proposed borrower defenses to repayment regulation fails to balance these concerns. First, we strongly oppose language included numerous times in the rule that states that institutions have the right to withhold the official academic transcripts of borrowers that receive a 100 percent discharge of a loan for which the defense to repayment application has been submitted. Such statements are misleading and not representative of our member institutions' common policies and practices. AACRAO believes that institutions have a moral obligation to maintain and provide students access to their institutional records and academic transcripts—especially in the case of education disruption due to institutional misrepresentation or an unforeseen school closure—whether those records are retained at the institution or through a third-party entity.

In nine instances, the Department includes language regarding institutions withholding official academic transcripts for students granted successful relief under the proposed rule. Specifically, the proposed regulations state:

- 1) *The proposed regulations also would remind borrowers submitting affirmative or defensive claims that if the borrower receives a 100 percent discharge for the loan, the institution has the right to withhold an official transcript for the borrower, as has always been the case in instances in which the borrower has been awarded student loan discharge through false certification, closed school or defense to repayment discharge. (83 FR 37253)*

AACRAO is especially concerned with the phrase “as has always been the case,” as we have never heard of an institution withholding an individual’s transcript “in instances in which the borrower has been awarded student loan discharge through false certification, closed school or defense to repayment discharge.” This statement is extremely misleading and should be omitted from any final regulation.

Although a September 1, 1998 Dear Colleague Letter encourages institutions to withhold official academic transcripts from students with outstanding financial obligations, the guidance states that doing so is “solely an institutional decision.”<sup>1</sup> While many institutions may withhold the official transcript of a student owing a balance to their institution, we are unaware of any institution that would withhold a transcript from a student awarded a defense to repayment discharge. In the instance of a successful discharge claim, the institution found by the

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<sup>1</sup> “Federal Perkins Loan Program (Formerly National Direct/Defense Student Loan Programs) Assignment Submission Procedures for Schools with Cohort Default Rates of 19 Percent and Lower As of June 30, 1993,” Published September 1998, DCLID: CB-98-13, Attachment A. [https://ifap.ed.gov/dpclatters/doc0358\\_enclosure.htm](https://ifap.ed.gov/dpclatters/doc0358_enclosure.htm)

Department to have committed acts or omissions that constitute misrepresentation would be held responsible for the debt to the Department, not the student. Therefore, withholding a transcript from a defrauded borrower would be unnecessarily punitive, creating a barrier from continuing their education.

- 2) *In addition, the Secretary proposes to include a provision emphasizing to borrowers submitting affirmative or defensive claims that if the borrower receives a 100 percent discharge for the loan, the institution has the right to withhold an official transcript for the borrower, to avoid any confusion or surprise that would result from such withholding. (83 FR 37262)*
- 3) *These borrowers may be unaware that the institution might withhold official transcripts from students who receive closed school discharges. (83 FR 37267)*
- 4) *Under PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM  
§ 685.206 Borrower responsibilities and defenses.  
Alternative B for Paragraph (d)(2) (Defensive and Affirmative)  
(3)(vi) State that the borrower understands that in the event that the borrower receives a 100 percent discharge of the loan for which the defense to repayment application has been submitted, the institution may refuse to verify, or to provide an official transcript that verifies the borrower's completion of credits or a credential associated with the discharged loan. (83 FR 37326)*

Additionally, we oppose the Department's repeated use of this misleading assertion regarding withholding transcripts to justify barring group or class action claims and automatic discharges for closed schools under the proposed rule.

- 5) *Because an institution can refuse to provide an official transcript for a borrower whose loan has been forgiven, group discharges could render some borrowers unable to verify their credentials or work in the field for which they trained and have enjoyed employment. (83 FR 37244)*
- 6) *In addition, it would be inappropriate to subject borrowers who did not individually submit defense to repayment claims to the possible collateral consequences of debt relief, including potentially having their transcript withheld. (83 FR 37263)*
- 7) *In addition, because an institution (or the entity maintaining records from a closed school) might withhold official transcripts of borrowers who received a defense to repayment of closed school discharge, automatic discharges could have collateral consequences for students who did not opt-in. (83 FR 37267)*
- 8) *Because an institution might withhold official transcripts from students who receive a defense to repayment loan discharge, (as institutions are permitted to do in the case of loan discharges), automatic discharges could have collateral consequences for students who unknowingly had their loans discharged. (83 FR 37285)*
- 9) *Although the 2016 regulations included an automatic closed school loan discharge for eligible borrowers who did not re-enroll within 3 years of their school's closure, upon*

*further consideration, the Department has determined that this could have unintended consequences for students because an institution, or the custodian of its student records, is permitted to and might withhold the official transcripts of borrowers who received a closed school discharge. (83 FR 37286)*

Further, AACRAO believes that the proposed measures to bar group or class action claims and reintroduce mandatory arbitration clauses would further diminish protections for defrauded borrowers. Allowing institutions to require students, as a condition of enrollment, to sign mandatory pre-dispute arbitration agreements and class-action waivers limits the ability of students to hold a college or university accountable in a court of law when the institution's misconduct has caused harm. These tactics can allow unscrupulous institutions to shield themselves from being held responsible for wrongdoing while preventing students from receiving relief.

Additionally, we believe that the proposal to change the evidentiary standard used to evaluate discharge claims would create substantial new barriers to relief for defrauded students. The new evidentiary burdens—requiring students to demonstrate that their institution knowingly made false, misleading, or deceptive statements in advertising or recruitment materials or in reference to a program with a reckless disregard for the truth—would dramatically reduce potential relief for borrowers as well as liability for colleges. It fails to protect students against institutional misconduct and effectively prevents them from receiving the relief defrauded borrowers are entitled to by law.

Finally, AACRAO is alarmed by the Department's proposal to require defrauded students to intentionally default on their loans before they are eligible to apply for debt relief. The proposed policy would unnecessarily expose struggling borrowers—many of whom are low-income, underrepresented minorities, single parents, or veterans—to a host of additional negative consequences, including collection actions like fees and wage garnishment. Additionally, limiting loan forgiveness applications to those in default on their student loans would greatly decrease the number of eligible defrauded borrowers. The proposed rule would reduce loan forgiveness by nearly \$13 billion over 10 years compared to the borrower defenses to repayment rule issued in 2016, which would have provided an estimated \$15 billion in relief to students.

We believe that the Department's proposed borrower defenses to repayment rule does not go far enough to protect defrauded student or discourage institutions from committing acts of fraud or abuse. Numerous elements of the proposed rule would negatively impact defrauded borrowers. AACRAO strongly urges the Department to reconsider its recent proposals and to restore the 2016 version of the borrower defenses to repayment rule in its stead.

Sincerely,



Michael V. Reilly  
Executive Director