National Association for
College Admission Counseling

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July 10, 2017

The Honorable Betsy DeVos
Secretary
Department of Education
400 Maryland Ave, SW
Washington, DC 20202

Docket ID: ED-2017-OPE-0076

Dear Secretary DeVos:

On behalf of the National Association for College Admission Counseling (NACAC), I write to express our concern about your recent decision to review and possibly rewrite the gainful employment and borrower defense regulations.

Founded in 1937, NACAC is an association of more than 16,000 members, including school counselors and college admission staff, who work with students making the transition from high school to postsecondary education ("college"). NACAC is committed to maintaining professional standards that foster ethical and social responsibility among those involved in the college application and enrollment process, as outlined in the NACAC Statement of Principles of Good Practice, which may be accessed on our website (www.nacacnet.org). Through our advocacy efforts, we are also dedicated to ensuring that all students have access to high quality school counseling to help them make informed decisions as they prepare for and pursue college or career.

Gainful Employment

The risk associated with predatory institutions and federal assistance programs is a constant. The Century Foundation, as well as NACAC's own research, details a long history of unscrupulous colleges abusing students and taxpayers. More recently, state and federal investigations, lawsuits and press reports have unveiled widespread and consistent efforts by these colleges to maximize student enrollment while pocketing the federal financial aid dollars that the students bring with them. Student outcomes, such as graduation and job placement,

receives significantly less attention than maximizing profits. What is remarkable is the consistency, resilience, and predictability of the predatory model, which begs the question of why the Department would delay the implementation of regulations designed to protect students and taxpayers.

Congressional investigations on the matter, which until recently were bipartisan, often resulted in a series of recommendations aimed at curbing abusive activities, some of which have been implemented, including a ban on the use of incentive compensation in student recruitment and financial aid; the so-called 90/10 rule, which requires colleges to derive at least 10 percent of their revenue from non-Title IV sources (but which is exploited by unscrupulous colleges); and Gainful Employment (GE) – a provision in the Higher Education Act that requires career education programs receiving federal student aid to "prepare students for gainful employment in a recognized occupation." While Congress wrote the GE language into HEA statute decades ago, there was no attempt to define what "gainful employment' meant until 2010.

NACAC supports the existing gainful employment regulation, which provides important protections against predatory programs that participate in Higher Education Act Title IV programs. Based on implementation to date, it is clear that the regulation has helped to alert students to institutions that are not providing such training. We believe that this regulation is critical to helping students make informed enrollment decisions and protecting students and taxpayers from unscrupulous colleges. As mentioned above, numerous investigations have shown that such colleges aggressively recruit students but often fail to provide a sound education. Too often, students either drop out, or graduate with a credential that few employers value or that is insufficient to qualify them to take state licensing exams. Consequently, students are unable to repay the loans they took out to pay to enroll at the institution. Such students are left worse off than if they never enrolled in the first place, with defaulted loans that cost taxpayers, at a minimum, hundreds of millions of dollars.

Borrower Defense

We also supported the defense to repayment regulation that was intended to help students defrauded by these colleges by forgiving their federal loans and allowing them take out new ones to enroll in a college where they are more likely to succeed. Importantly, this regulation included a provision that forbade colleges from using forced arbitration clauses in their enrollment agreements. Forced arbitration requires parties to resolve their disputes through an arbitration process, which often favors the company over the consumer, in this case students.

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Prior to these rules being issued, unscrupulous colleges inserted into their enrollment agreements language that would require a student resolve her grievances with the college through arbitration, rather than through the courts with an impartial judge and jury. These colleges, which are often owned by massive corporations, are able to hire private arbitration firms of their choosing to decide the dispute; students have little opportunity to present evidence or to appeal an adverse outcome; an arbitrator's decision is often final. The process is highly unfair and severely restricted students' abilities to seek restitution when these colleges break the law. It is also a process to which not one of our association's members requires students to agree.

Over the past several years, state, federal, media and other investigations have uncovered scores of examples of for-profit colleges deceiving prospective students about graduation, job placement, and loan default rates, as well as the ability to transfer credits to another institution or to sit for exams required for certain professions. Most shamelessly, these colleges target homeless students, those who are the first in their family to attend college, minority and/or low-income students, as well as servicemembers and veterans – including those suffering from brain injuries they received while serving our country.

The students that were aggrieved in these examples of misconduct had no meaningful recourse because of forced arbitration clauses included in their enrollment agreements. In many cases, these students had no idea what they were signing; they were blinded by the college recruiters' promises of a better life for them and their families and they are often encouraged to sign the enrollment contract without adequately reviewing it.

By pausing and potentially watering down or even eliminating these regulations would be a mistake and prevent the Department from protecting the students it is supposed to serve.

We strongly urge you to reconsider and allow these regulations to proceed. Please contact our Director for Government Relations Michael Rose (mrose@nacacnet.org) if you have any questions about NACAC or our legislative priorities.

Sincerely,

Joyce E. Smith, NACAC CEO