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November 24, 2017

The Honorable Elisabeth DeVos
Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Jean-Didier Gaina
United States Department of Education
400 Maryland Avenue, SW, Room 6W248
Washington, DC 20202

Re: Docket ID ED-2017-OPE-0112
Submitted electronically

Dear Secretary DeVos and Mr. Gaina:

As you are aware, we, the undersigned Attorneys General of Massachusetts, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, have filed suit challenging the Department's various efforts to delay implementation of the final borrower defense to repayment regulations ("Borrower Defense Rule"). *Massachusetts et al. v. Dept. of Educ. et al*, No. 17-1331 (D.D.C. filed July 6, 2017). We continue to object to the Department's improper delay tactics for the reasons outlined in the Amended Complaint and Renewed Motion for Summary Judgment filed in that lawsuit.¹ In addition, we provide the following comments to highlight our further concerns with the Department's latest effort to delay the Borrower Defense Rule. The proposed rulemaking, which would delay until July 1, 2019 the effective date of numerous provisions of the Borrower Defense Rule, would harm borrowers and serve no legitimate purpose. Such an effort on the part of the Department to effectively rescind the Borrower Defense Rule would be an abrogation of the Department's responsibilities to

¹ *First Amended Complaint*, 1:17-cv-01331-RDM, Document 46, Filed 10/30/17; *Plaintiffs' Renewed Motion for Summary Judgment*, 1:17-cv-01331-RDM, Document 50, Filed 11/10/17.

promote the best interests of students and taxpayers and would violate the rulemaking requirements of the Higher Education Act (“HEA”).

The Department’s Proposed Rule Will Harm Student Borrowers

The Borrower Defense Rule was finalized on November 1, 2016 after robust and thorough negotiated rulemaking. Numerous stakeholders, including state attorneys general, student advocates, and for-profit schools, participated in this rulemaking process. The resulting regulations established protections for students and taxpayers from predatory schools, including those in the for-profit education sector. The Borrower Defense Rule was established to protect students from abuse on the part of predatory schools. This Rule also protects taxpayers by holding schools accountable when their unlawful actions result in discharges of student loans and by prohibiting schools from using arbitration agreements and class action waivers to stop students from bringing claims against their schools in court.

The Department’s proposed delay rule fails to appreciate or address the harms caused to student borrowers and other members of the public by the postponed implementation of numerous provisions of the Borrower Defense Rule. In particular, the Department’s proposed rule does not mention or account for the harm caused to student borrowers by the postponement of new standards that streamline the loan discharge process, provide automatic loan discharges for groups of students who were unable to complete their degrees due to school closure, and require schools with poor loan repayment outcomes to provide enhanced disclosures. The proposed rule also fails to mention the harm to students that will result from the delay of provisions enabling students to bring legal actions against abusive schools and strengthening financial responsibility standards that deter misconduct. The loss of these protections is a substantial and, in some cases, irreparable harm to students. In the absence of the Borrower Defense Rule, student borrowers may be unable to obtain loan discharges in cases of school fraud and misconduct or bring actions in court against abusive schools, and students may enroll in abusive schools without receiving the information necessary to make informed decisions about their education.

The only reason advanced in the proposed rule to justify this damaging delay is the preservation of the “regulatory status quo” in order to ensure that the Department has adequate time to “develop revised regulations.” This rationale does not adequately justify depriving student borrowers and taxpayers of critical protections established by the Borrower Defense Rule. The Department should faithfully implement existing regulations and follow procedures required by law in undertaking new rulemaking.

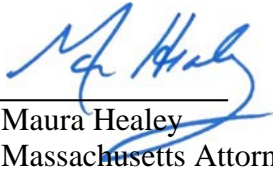
The Department’s Proposed Rule Violates the HEA’s Negotiated Rulemaking Requirement

The Department acknowledges that publishing the proposed rule without engaging in negotiated rulemaking would be noncompliant with the HEA’s rulemaking requirements under 20 U.S.C. § 1098a. Nonetheless, the Department claims that it is entitled to a waiver of the rulemaking requirements under the HEA’s “good cause” exception because it would be “impracticable” for the Department to follow the HEA’s requirements. This is, again, an inadequate justification. The good cause exception is not an invitation to circumvent procedures intended to ensure that stakeholders are given an opportunity to weigh in on regulatory changes. Delaying until July 1,


2019 the critical protections established by the Borrower Defense Rule is a significant action on the part of the Department that must be exposed to the full public consultation and negotiated rulemaking procedures required by the HEA to preserve the democratic accountability and legality of the rulemaking process.

Students count on the Department to protect their interests. The Department has a crucial and indispensable role to play in preventing misconduct by schools, protecting students from abuse, and protecting taxpayers from bearing the costs of schools' misconduct. The Borrower Defense Rule was designed to make progress towards these very goals. We call on the Department to fulfill its responsibilities to students and taxpayers and cease its efforts to postpone implementation of the Borrower Defense Rule.


Sincerely,



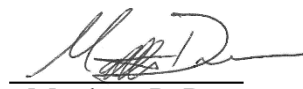
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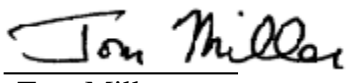
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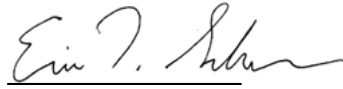
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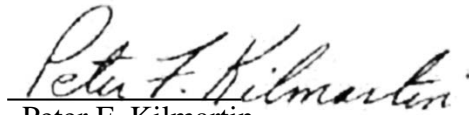
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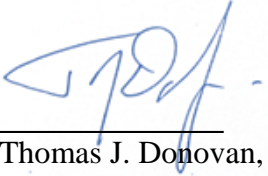
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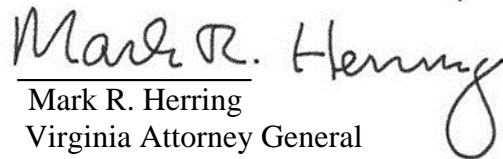
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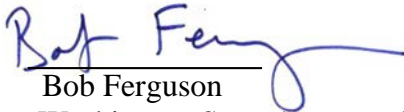
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