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Durbin, Warren, Murray, Brown urge DeVos to put students before predatory colleges, continue path to debt relief for defrauded students

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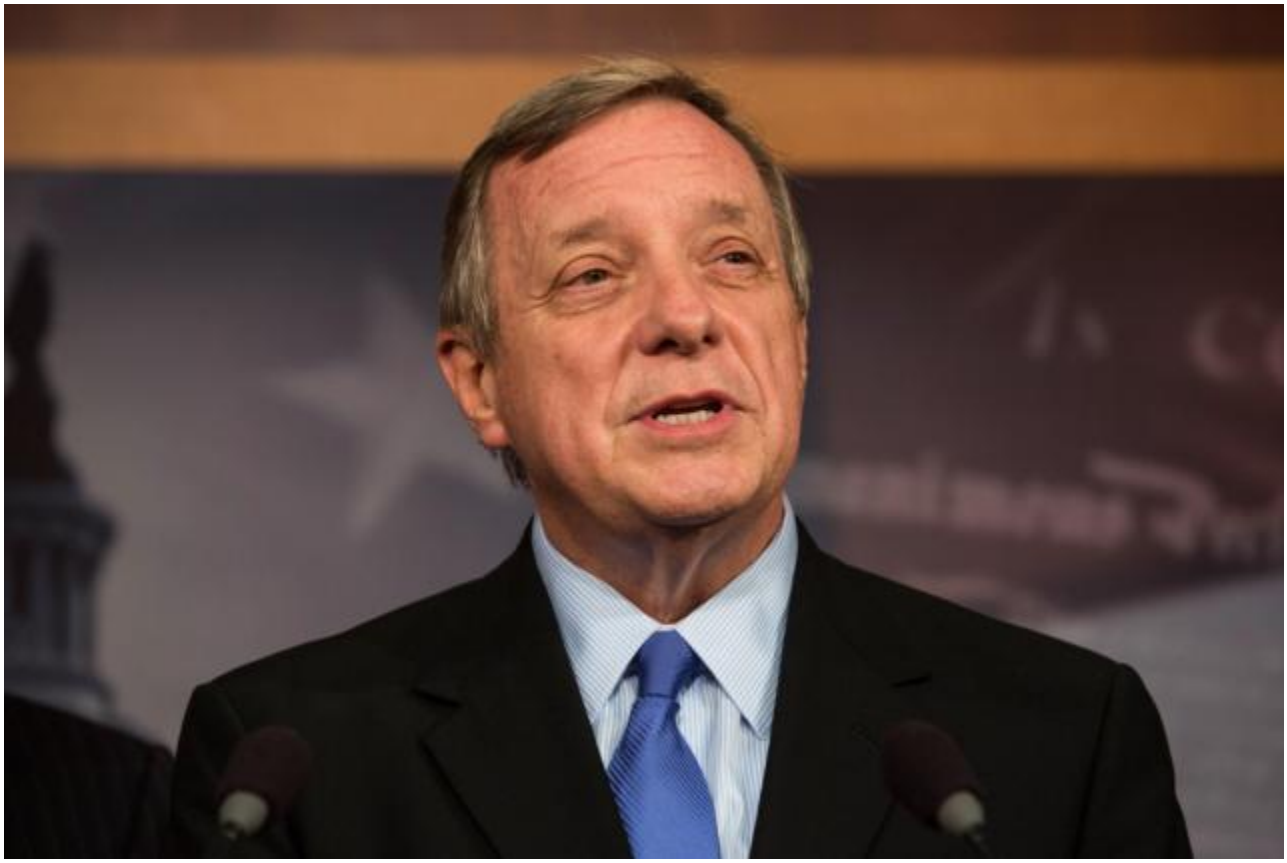

WASHINGTON – Senators Dick Durbin (D-IL), Elizabeth Warren (D-MA), Patty Murray (D-WA), and Sherrod Brown (D-OH) sent a letter to Secretary of Education Betsy DeVos urging her not to delay a new "borrower defense" rule that provides much-needed relief to student borrowers who have been defrauded by institutions, including

for-profit colleges like Corinthian and ITT Tech. Recent reports suggest Secretary DeVos is considering a delay, which would benefit colleges that have cheated and defrauded their students, and left them drowning in debt, often with no degree.

"It appears that aggressive lobbying by the for-profit college industry—the very institutions that created the need for this rule by drawing down billions in taxpayer dollars and defrauding tens of thousands of their own students—may be successfully influencing policies that harm students and borrowers," wrote the Senators. **"Appointees with deep ties to this sector, including Mr. Robert Eitel, are reportedly advocating for this dangerous and short-sighted agenda from within the Administration itself, raising serious ethical questions. The previous employers of these appointees have a direct interest in delaying the implementation of this rule, particularly the provisions that hold institutions financially accountable to protect taxpayers and the U.S. Treasury.**"

The "borrower defense" rule was approved in October 2016, and is set to go into effect July 1, 2017. The new rule includes further protections for students, including banning forced arbitration and requiring for-profit schools to notify prospective students of poor repayment outcomes. Additionally, the rule protects taxpayers by placing risky schools on the hook to provide funds to cover the costs of future fraud or closure.

In May, the senators demanded answers regarding the delay of payment on tens of thousands of student loan discharges and refunds that had been approved, but not yet processed, by the U.S. Department of Education during the Obama Administration. Students are still being forced to make payments on loans the Department had approved for borrower defense claims, but had not yet processed. As of January, nearly 70,000 students were awaiting decision on their applications for relief, but the Department has not provided updated numbers since that time.

Full text of the letter is available here or below:

The Honorable Betsy DeVos

Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Secretary DeVos:

We write to inquire about reports that the U.S. Department of Education ("Department") is considering delaying the implementation of the borrower defense regulations that

protect students who were cheated, defrauded, and left drowning in debt by predatory colleges. Delaying this important pathway to debt relief would harm thousands of students, many with crushing levels of student loan debt and few meaningful job prospects, and would violate the Administrative Procedures Act and the Higher Education Act. We urge you to stand up for students and taxpayers by fully implementing the borrower defense rule without delay.

The final borrower defense rule is scheduled to go into effect in just a few short weeks on July 1, 2017. However, in a June 6 hearing in the United States District Court for the District of Columbia, a U.S. Department of Justice attorney representing the U.S. Department of Education indicated that your agency is "studying its options with regard to the effective date" for this important debt relief and taxpayer protection rule. Additionally, according to media reports on June 5, "the Administration has been eyeing further delays … as it considers opening new negotiated-rulemaking sessions to rewrite" the protections.

Given these developments, it appears that aggressive lobbying by the for-profit college industry—the very institutions that created the need for this rule by drawing down billions in taxpayer dollars and defrauding tens of thousands of their own students—may be successfully influencing policies that harm students and borrowers. Appointees with deep ties to this sector, including Mr. Robert Eitel, are reportedly advocating for this dangerous and short-sighted agenda from within the Administration itself, raising serious ethical questions. The previous employers of these appointees have a direct interest in delaying the implementation of this rule, particularly the provisions that hold institutions financially accountable to protect taxpayers and the U.S. Treasury.

Congress created the authority to discharge the debts of students who have been cheated because students should not be stuck with the bill when a predatory school commits fraud with federal student aid dollars. This authority was instrumental in addressing the collapse of both Corinthian Colleges, Inc. and ITT Educational Services, Inc., which left tens of thousands of students nationwide with mountains of debt for useless degrees. Subsequent negotiated rulemaking and public comment considered and incorporated the advice and recommendations from individuals and groups involved in or concerned with the student financial assistance programs, including students, institutions, and many Members of Congress.

The Administrative Procedure Act (APA) and the Higher Education Act (HEA) provide for negotiated rulemaking to ensure that the views of a variety of stakeholders are considered and incorporated into rules promulgated to enforce the HEA. In order to ensure the Department does not override the interests of stakeholders, the APA and HEA prohibit the Department from unilaterally amending or delaying a final rule except through a new negotiated rulemaking or in very narrow circumstances. For example, the

Department may waive negotiated rulemaking only in the cases where it finds "good cause" that a negotiated rulemaking session would be "impracticable, unnecessary, or contrary to the public interest." In fact, implementing the borrower defense rule without delay is practicable, necessary, and very clearly in the public interest.

The borrower defense rule creates a straightforward and transparent process for defrauded students to apply for relief to which they are entitled under federal law. The rule allows the Secretary to approve both individual and group discharges while also providing due process to schools. The rule also prohibits predatory schools from forcing students to sign away their legal rights by banning forced arbitration agreements that are often slipped into the fine print of enrollment agreements to prevent defrauded students from holding schools accountable for their wrongdoing in court. This provision would ensure that defrauded students have the option to seek redress in court directly from schools, rather than forcing students to seek relief through borrower defense discharges.

The rule also allows students to make informed choices about where to enroll by arming prospective students with valuable consumer information about poor outcomes at for-profit schools, such as when a majority of borrowers are unable to pay back even a single dollar on their student loans. Finally, the rule protects taxpayers and reduces the costs of discharges by placing schools on the hook for the costs of their own fraud and establishing new financial triggers that would require risky schools to provide funds to cover costs of discharges for fraud or closure. These provisions would deter fraud and send a strong message to schools that they will be held financially accountable for mistreating their students.

The borrower defense rule is supported by nearly twenty state attorneys general who work directly with countless defrauded students in their states and have witnessed the abuses in this sector for years. The rule is supported by advocates for students, consumers, communities of color, faculty and staff. Groups representing military veterans and servicemembers—who have suffered some of the most egregious forms of fraud at the hands of predatory colleges in recent decades—also strongly support the borrower defense rule.

During your confirmation, in your written responses to questions, you said, "Fraud should never be tolerated. Period. Bad actors clearly exist…When we find them, we should act decisively to protect students and enforce existing laws." Full implementation of the borrower defense rule is the clear way to act decisively to protect students and enforce existing laws. It is also a critical part of the Department's responsibility to protect students and appropriately oversee taxpayer dollars. Delaying the borrower defense rule would be a monumental dereliction of the duty you have to protect students

and taxpayers, and would increase the risk of repeating the recent history of students left holding the bag while executives at collapsing institutions made away with millions in profits.

As such, we request answers to the following questions regarding the implementation of the borrower defense rule:

Will you implement and enforce the new borrower defense regulation, including the ban on forced arbitration agreements, without delay in order to protect students and taxpayers from fraudulent conduct by schools?

How do you plan to use the authority within the borrower defense rule to hold schools accountable for abuses of their students or taxpayer dollars?

How do you plan to use the authority within the borrower defense rule to protect veterans and service members from predatory institutions that seek to defraud them out of their hard-earned veterans' benefits and load them with unsustainable debt for useless degrees?

We look forward to your prompt response to our questions. Given the forthcoming implementation date of July 1, 2017, we request your reply by no later than June 15, 2017.