

Center for Responsible Lending
910 17th St NW, 5th Fl.
Washington, DC, 20006

December 16, 2013

Ms. Kate Mullan
Acting Director, Information Collection Clearance Division
U.S. Department of Education
400 Maryland Avenue SW., LBJ, Room 2E103
Washington, DC 20202-4537
(Submitted via www.regulations.gov)

RE: Information Collection Request
Application for Approval to Participate in Federal Student Financial Aid Programs
Docket ID # ED-2013-ICCD-0118
OMB Control No. 1845-0012

Dear Ms. Mullan:

We write to urge the Department of Education to address forced arbitration agreements in its Application for Approval to Participate in Federal Student Financial Aid Programs (“Application”).

The Department has solicited comments on the Application pursuant its obligation under the Paperwork Reduction Act (PRA) to seek approval for information collections.¹ Under the PRA, the Department must consider public comments that would “enhance the quality, utility, and clarity of the information to be collected.”² The Office of Information and Regulatory Affairs may not approve an information collection request unless it has determined that “the information shall have practical utility.”³

According to the Department’s Statement of Support to its information collection request, the purpose of the Application is to carry out the Department’s responsibilities as a gatekeeper over financial aid programs. The Application requires that schools report their compliance with certain regulatory requirements and other information in order to be eligible to utilize federal financial aid.⁴ Congress imposed these gatekeeper obligations a result of growing abuse of federal financial aid programs.

We agree with the Department that receiving full and accurate information from the Application would help protect the integrity of the federal student aid program, and could help

¹ 78 Fed. Reg. 68427 (November 14, 2013).

² 44 U.S.C. § 3506(c)(2)(A)(iii).

³ 44 U.S.C. § 3508.

⁴ Department of Education, Supporting Statement for Paperwork Reduction Act Submission 1 (Nov. 8, 2013), available at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201311-1845-009.

prevent students from enrolling in institutions that engage in systematic misrepresentations about their value.⁵ However, the Application does not fulfill this essential purpose.

In particular, forced arbitration agreements between schools and their students and employees may threaten the integrity of the information collected by the Application. Schools increasingly require that students sign arbitration agreements, forfeiting their right to go to court and participate in class actions.⁶ Some schools also require that employees sign arbitration agreements, which includes arbitration of whistleblower claims about violations of the laws and regulations covered by the Application.⁷ Legal advisors are urging schools to impose such arbitration clauses on students and employees in order to avoid a public trial and jury verdict.⁸

As in other consumer contexts⁹, forced arbitration deters students and whistleblowers from filing complaints against schools. Even if students and whistleblowers do manage to file their claims in arbitration, the proceedings lack transparency. Unlike court filings, arbitration documents are usually not available on public databases, and hearings are not held in public courthouses. This silencing of legitimate complaints and lack of transparency undermine the values of useful and clear information disclosure required by the PRA.

The growing predominance of forced arbitration agreements could prejudice the information collected in the Application. Suppressing student and whistleblower claims prevents institutions from learning about internal violations of the very law and regulations about which the Application seeks to collect information. This impedes the free-flow of information needed for the schools' effective internal controls – and could accordingly compromise the information reported by the schools on the Application. The existence of arbitration agreements thus threatens the PRA requirements that the Application enhance the “quality” and ensure the “practical utility” of information provided by applicants.

In light of these concerns, we urge the Department to require that institutions stop forcing students and employees to agree to mandatory arbitration as a condition of attendance or employment. The Application should include information about the presence or absence of arbitration agreements because these agreements affect the quality and usefulness of the information collected.

⁵ Cf. General Accounting Office, *For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices*, GAO-10-948T, Aug 4, 2010.

⁶ See, e.g., *Ferguson v. Corinthian Colleges, Inc.*, 733 F.3d 928. (9th Cir. 2013); *Miller v. Corinthian Colleges Inc.*, 769 F. Supp. 2d 1336 (D. Utah 2011)

⁷ See, e.g., *Canales v. University of Phoenix, Inc.*, 854 F.Supp.2d 119 (D.Me. 2012).

⁸ Gibson Dunn, *Recent Developments in Litigation Involving the Education Sector*, July 2013, available at <http://www.gibsondunn.com/publications/pages/Recent-Developments-Litigation-Involving-Education-Sector-July2013.aspx>.

⁹ See <http://blogs.reuters.com/alison-frankel/2013/12/12/class-actions-deliver-more-money-to-more-people-than-arbitration-cfpb/>; <http://publicjustice.net/blog/consumer-supporter-not-so-much/>; <http://www.citizen.org/documents/private-student-loans-predatory-lending-arbitration-report.pdf>.

Thank you for your attention to this matter.

Sincerely,

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