



Center for Responsible Lending

December 12, 2018

Ranking Member Bobby Scott  
U.S. House of Representatives Committee on Education and the Workforce  
2101 Rayburn House Office Building  
Washington, DC 20515

Dear Ranking Member Scott,

The Center for Responsible Lending<sup>1</sup> (CRL) appreciates the opportunity to provide comments on our priorities for the reauthorization of the Higher Education Act (HEA). CRL applauds your initial efforts to tackle these policy reforms in H.R. 6543, The Aim Higher Act. We appreciate your dedication to create a bill that gets our country closer to providing a debt-free higher education for American students. We also appreciate your commitment to underrepresented students demonstrated in provide a more accessible higher education to traditionally underrepresented students by strengthening college access programs, simplifying the financial aid application, and establishing policies to ensure students have access to a quality education.

As we approach the 116th Congress, we hope that you will continue to push for a Higher Education Reauthorization Act that holds true to the spirit of the original HEA which sought to open the doors of higher education to all. CRL stands firm in the belief that any reauthorization in the 116th Congress should focus on the outcomes for those who have been traditionally shut out of higher education: low-income students and students of color.

To do this, any HEA reauthorization should provide meaningful access to higher education. Ensuring that students can access a debt-free degree by guaranteeing that the institutional benefactors of federal aid provide, in exchange for taxpayer and student investment, quality affordable education and educational support services.

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<sup>1</sup> The Center for Responsible Lending is a non-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices, including student loan debt incurred as a result of fraudulent representations by higher learning institutions. CRL's views on student lending are informed by its affiliation with Self-Help, one of the nation's largest nonprofit community development financial institutions. Self-Help has provided \$6 billion in financing to 70,000 homebuyers, small businesses and nonprofits and serves more than 80,000 mostly low-income families through 30 retail credit union branches in North Carolina, California, and Chicago.

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Specifically, CRL urges this Committee to only propose and pass legislation that includes the following:

- Access to a debt-free higher education (degree or credential);
- Preservation, streamlining, and improvement of income-based repayment plans and loan forgiveness;
- Strong accountability measures for predatory for-profit institutions;
- Statutory requirements to ensure loan servicers meet basic consumer protection standards and further improvements to student loan servicing to help students pay off their loans;
- Strengthen the Gainful Employment Rule; and,
- Require the Department of Education to enforce the Borrower Defense repayment rule and administer claims for schools that have closed.

### **Debt Free College**

When state legislatures began to tighten their belts in the wake of the Great Recession, public investment in public colleges and universities began to fall. In fact, according to a 2016 paper by the Center on Budget and Policy Priorities, nearly a decade of divestment left a \$10 billion hole in the budgets of institutions of higher education.<sup>2</sup>

In response, public colleges and universities raised tuition, and cut student services.<sup>3</sup> And just as states were slashing budgets and schools were raising prices, families across the country were seeing the wealth they had taken decades to build disappear practically overnight. With foreclosures, job loss, and downturns in the market fracturing family balance sheets, an entire generation of students needed to borrow more than ever before to attend college.

After nearly a decade of rapidly rising student loan debt, Aim Higher provides an opportunity to once again make college affordable for low-and-middle income families. Congress can and should make it possible for any American to attend college without going into debt. Already, the federal government uses federal and state partnerships, leveraging federal resources to encourage state prioritization and investment. Unemployment Insurance, Medicaid, the Student Succeeds Act, and Temporary Assistance for Needy Families, all rely on these partnerships in order to be viable social safety nets.

The Century Foundation, in their paper *Path to Debt-Free College: A Blueprint for Building a Successful Federal-State Partnership*, lays out the lessons learned from established federal state partnerships, and principles for creating a new partnership that will help keep college costs down by encouraging state investment that exceeds pre-recession levels.

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<sup>2</sup> Michael Mitchell, Michael Leachman, and Kathleen Masterson, Center on Budget and Policy “Priorities, Funding Down, Tuition Up State Cuts to Higher Education Threaten Quality and Affordability at Public Colleges” (August 2016) <https://www.cbpp.org/sites/default/files/atoms/files/5-19-16sfp.pdf>

<sup>3</sup> Ibid.

These principles:

- Allow states to choose affordability targets that work for their student populations, with an established threshold they cannot fall below;
- Create federal match funding that is flexible depending on the financial security of the state and the ability of the state to invest in higher education; and
- Ensure that funding is continuous and secure, and that the federal government is ready to increase funding if states are hit with another recession.<sup>4</sup>

Beyond state federal partnerships, a successful debt-free college program must be designed to:

- Guarantee that the debt free college promise covers all expenses associated with college attendance – not just tuition. For many students and their families, tuition is actually affordable. It's the fees and living expenses that put college out of reach.
- Not just target two-year college affordability, but four-year college affordability as well. Two-year tuition is often already low, and the majority of people can attend without borrowing. Instead, it is attending four-year college that necessitates borrowing and puts students and families deeply into debt.<sup>5</sup>
- Include measures to ensure institutional quality and accountability.

### **Preservation and streamlining of income-based repayment plans and loan forgiveness**

Aim Higher makes great strides in correcting the mistakes of the past with respect to auto-enrollment of students in income-based repayments year over year. Yet, we encourage you to take a further look at what can be done on loan forgiveness and discharge of debt after students have made income-based repayments for 10 years. We suggest a more aggressive approach on this. Specifically, those suffering from the burden of student loan debt would benefit significantly from a tax-free loan forgiveness/discharge of debt program after a student has made income-based payments for 10 years at 8-10% of discretionary income. Such a program would not only leave students better off, it would improve our economy by freeing up income for other spending.<sup>6</sup>

The concept of income driven student loan repayment has been and will continue to be essential to making college debt manageable for millions of borrowers and taxpayers. The importance of income-driven repayment plans that are truly affordable cannot be understated. The interplay of student loan payments and other life choices and responsibilities is well documented.<sup>7</sup> In fact, as we watch more and more Americans defer buying a home as they struggle to pay back their

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<sup>4</sup> Mishory, Jen, The Century Foundation, "Path to Debt-Free College: A Blueprint for Building a Successful Federal-State Partnership", September 2018 <https://tcf.org/content/report/path-debt-free-college/>

<sup>5</sup> Baum, Sandy and Jennifer Ma. The College Board, "Trends in Community Colleges: Enrollment, Prices, Student Debt, and Completion", April 2016 <https://trends.collegeboard.org/sites/default/files/trends-in-community-colleges-research-brief.pdf>

<sup>6</sup> The Levy Institute, *The Macroeconomic Effects Of Student Debt Cancellation*, [http://www.levyinstitute.org/pubs/rpr\\_2\\_6.pdf](http://www.levyinstitute.org/pubs/rpr_2_6.pdf).

<sup>7</sup> Jacob Passy, Why Millennials Can't Buy Homes, Marketwatch, Oct. 30, 2017 <https://www.marketwatch.com/story/student-debt-is-delaying-millennial-homeownership-by-seven-years-2017-09-18>

student debt, it is essential that we make repayment possible and affordable and adopt a base percentage that works in tandem with other vital rules and protections such as the Qualified Mortgage Rule, which ensures that mortgage-seekers have an ability to repay their mortgage by capping the debt-to-income ratio that they can take on.

Affordability also requires the continued availability of loan forgiveness. The ability to have debt forgiven after 10-20 years, or 10 under Public Service Loan Forgiveness, is essential to ensuring that borrowers are not subjected to a lifetime of debt. It also makes good fiscal sense. In fact, borrowers on income driven plans will end up paying at least as much as borrowers on standard plans if not more.<sup>8</sup>

All loan forgiveness should also be tax-free. The requirement to pay taxes for those on income-driven plans undermines the central purpose of these plans: to make debt manageable. Payments are already based on income and a formula that ensures that the debt is not unduly burdensome for the borrower. An extra tax bill at the end of repayment will often require funds that participants do not have and thus subject them to paying even more for the debt they already spent decades repaying.

These reforms would also make the job of loan servicers easier. Most servicing is done through call centers with agents who are not well-versed in the many options for repayment. If the repayment options are streamlined, it is more likely that they will understand them and be better able to help borrowers enroll quickly and efficiently, without needless forbearance or deferment periods.

### **Strong accountability measures for predatory for-profit institutions**

Any HEA reauthorization should also include important protections for borrowers and taxpayers and strong accountability mechanisms, particularly for the sector known for the worst abuses, the for-profit college industry. To do this, HEA should include provisions for students to access debt relief when they are defrauded by their schools and metrics for career programs receiving Title IV funding.

### *Borrower Defense to Repayment*

The Department of Education (the Department) recently re-conducted a negotiated rulemaking on the borrower defense to repayment provision of the HEA. As the Department has delayed action on this, over 90,000 claims have languished leaving borrowers stuck in limbo and unable to proceed with their lives. Many of these borrowers were students at the now defunct Corinthian Colleges whose predatory actions have been widely reported and documented. Borrowers and taxpayers deserve a better system and one that is less susceptible to political whims. CRL encourages any HEA to include its own expansive protections in a reauthorization. In

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<sup>8</sup> Betsy Mayotte, Income-Driven Student Loan Repayment Plans Can Cost More, U.S. News & World Report, 2015, <https://www.usnews.com/education/blogs/student-loan-ranger/2015/07/15/income-driven-student-loan-repayment-plans-can-cost-more>

drafting this protection, the Committee should create a statute that includes, at minimum, provisions reflecting the following important characteristics:

- Be based on a broad, general standard of federal and state consumer protection law;
- Consider a broad range of evidence to show consumer protection violations;
- Provide for full relief wherever possible and not limit borrower recovery based on arbitrary statutes of limitations;
- Give heavy weight to actions by state attorneys general and federal consumer protection authorities;
- Ban mandatory arbitration clauses in enrollment contracts;
- Provide cohort-based relief whenever possible;
- Give cohort members opt-out automatic relief, rather than requiring individual applications and showings of reliance or harm;
- Be applicable to all federal loans with no time limit – Direct, Federal Family Education Loan (FFEL), and Perkins; and
- Require the Department of Education to enforce Borrower Defense to repayment rule and administer claims for schools that have closed.

A very important component of borrower defense is the abuse of mandatory arbitration clauses. As part of its proposal to revise the Borrower Defense to Repayment rule, the Department, has reversed course from the final 2016 rule and proposed to allow forced arbitration clauses in school enrollment agreements. Forced arbitration clauses are the almost exclusive province of for-profit colleges.<sup>9</sup> They require students to sign away their rights to their day in court in advance and give a systematic advantage to the college in arbitration. Forced arbitration also commonly takes away students' rights to proceed as a class, greatly limiting their ability to get relief.<sup>10</sup> Most importantly, in the case of borrower defense to repayment, the prevalence of forced arbitration greatly limits the evidence available to the Department to assess defense to repayment claims. Consumers often forgo seeking relief entirely if they cannot go to court because of an arbitration agreement. Even if they do initiate arbitration, the proceedings are generally confidential, so the Department will have limited ability to learn of the findings.<sup>11</sup> Forced arbitration has no place in the relationship between a student and a college. Congress should explicitly prohibit colleges from using arbitration agreements to suppress students' legal rights and limit transparency in addressing disputes and send a clear message to the Department of Education that mandatory arbitration is inappropriate.

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<sup>9</sup> Fair Arbitration Now, Student Loans and For Profit Schools. <https://fairarbitrationnow.org/student-loans-and-for-profit-schools/>

<sup>10</sup> CFPB Study Finds that Arbitration Agreements Limit Relief for Consumers. Mar. 10, 2015. <http://www.consumerfinance.gov/newsroom/cfpb-study-finds-that-arbitration-agreements-limit-relief-for-consumers/>

<sup>11</sup> Public Citizen, The Arbitration Trap: How Credit Card Companies Ensnare Consumers <http://www.citizen.org/documents/ArbitrationTrap.pdf>

## *Gainful Employment*

The Department also recently attempted to rescind and delay the important protections provided in the 2014 Gainful Employment Rule. While a court ordered that the rule take effect, the Department is still planning to replace the rule with a weaker regime. This ill-advised approach can also be remedied by congressional action that will ensure that students have access to quality educational opportunities at an affordable price. We urge the committee to include language in the HEA that, at minimum, encompasses the following:

- Provide program-level accountability for all career training programs;
- Use both the debt-to-income measurement (DTI) of 8% and loan default rates of 35% as adequate measures of quality;
- Measure outcomes for all program participants, not just graduates;
- Limit enrollment in poorly performing programs until they improve;
- Provide financial relief to make whole students in programs that lose eligibility;
- Require clear and conspicuous disclosure of program failure; and,
- Reward rather than burden low-cost programs where most graduates do not borrow.

## **Statutory requirements to ensure loan servicers meet basic consumer protection standards**

Currently, Connecticut, California and the District of Columbia have taken important steps to extend consumer protections to their residents with student loans by enacting some form of compliance requirements for servicers operating in their state. Like the federal-state partnerships in many consumer areas, the ability of states to regulate servicers and protect their citizens is vital to ensuring that the student debt system is fair and effective. As regulators of student loan servicers, states can prohibit misrepresentations, payment misapplications, and false credit reports. They can prevent servicers from putting borrowers in default before guiding them to income-sensitive repayment plans, thus protecting many student borrowers from default and the resulting consequences. States can also enforce their consumer protection laws and protect their residents from servicers who violate the law (and have successfully done so in several states). Reauthorization of the HEA should include express provisions safeguarding these actions as well as future actions by state actors to regulate this industry.

Further, there's a lot that Congress can do to provide federal safeguards against abuse and harm. As the HEA directs the Department to carry out the Direct Loan program as necessary, it should also direct the Department to ensure that all servicing contracts adequately incentivize servicing that minimizes delinquency and default, prioritizes information and disclosure, and requires transparency and accessibility. Good servicing is often the difference between whether a borrower falls behind in repayment and avoiding default should be one of this Committee's major concerns.

Examples of protections that could be included around servicing include:

- Make consumer protection standards for student loan servicing statutory and clarify that the CFPB should have supervisory powers over student loan servicers. In the last year, the

Department of Education has resisted information-sharing with the CFPB and state regulatory agencies; the Department of Education should be required to cooperate with such agencies and let the CFPB and state agencies exercise oversight over consumer protection areas where they have expertise.

- Clarify that state laws regulating student loan servicers are not preempted.
- Direct the Department of Education to take servicer compliance with consumer protection standards into account in deciding how to allocate servicing contracts. The Government Accountability Office has flagged that the Department's failure to do so is a major factor in continued servicer errors and poor performance.<sup>12</sup> The Department should also be directed to develop a compensation structure that encourages servicers to spend time with borrowers that are at risk of delinquency and default and take steps to keep borrowers on track. Specifically, servicers should take time to work with borrowers to enroll them in income-based repayment programs and should not rush to put borrowers in forbearance or deferment where income-based repayment is a better option.
- Finally, the HEA should stop the practice of seizing Social Security income to repay student loans. This leaves borrowers worse off and undermines the important role of a critical federal program that supports low-income people and seniors.

### **Conclusion**

Reauthorization of the HEA offers this Committee the significant opportunity to change the trajectory of higher education in this country. With student debt total at \$1.4 trillion and counting, we are on the verge of another crisis. Rather than continue to add to this debt bill and sanction the continued growth of predatory institutions at the expense of taxpayers and students, we urge this Committee to take strong steps to re-invigorate the original promise of the HEA and afford all students a real opportunity to succeed and access the American dream.

Sincerely,

The Center for Responsible Lending

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<sup>12</sup> GAO, *Federal Student Loans: Education Could Improve Direct Loan Program Customer Service and Oversight*, GAO-16-523, May 16, 2016, <https://www.gao.gov/products/GAO-16-523>