



June 13, 2017

The Honorable Betsy DeVos  
Secretary  
U.S. Department of Education  
400 Maryland Avenue S.W.  
Washington, D.C. 20202

Dear Secretary DeVos:

On behalf of the United Negro College Fund (UNCF), the National Association for Equal Opportunity in Higher Education (NAFEO) and our member institutions, we appreciate your interest in ways in which the U.S. Department of Education could reduce excessive federal regulatory burdens on colleges and universities. In that regard, we write to you because of the potential detrimental impact of the U.S. Department of Education's (Department) Borrower Defense to Repayment regulation on historically black colleges and universities (HBCUs) and predominantly black institutions (PBIs). This regulation was issued in final form on November 1, 2016 and is scheduled to take effect on July 1, 2017.

We request that the implementation of the borrower defense regulation be delayed and that the Department begin a new negotiated rulemaking process aimed at producing a regulation that provides appropriate recourse for postsecondary students negatively impacted by predatory practices but does not create unwarranted institutional financial burdens. A new regulatory process is needed to significantly narrow the scope of this regulation, limit institutional liabilities for unwarranted claims, provide greater certainty for both students and institutions and ensure due process for HBCUs and PBIs, as well as other institutions that are serving their students well. Should a new rulemaking process commence, we also request that there be substantial representation on the rulemaking committee from HBCUs and PBIs.

UNCF and NAFEO represent 101 accredited HBCUs and 85 PBIs that, collectively, enroll more than 700,000 students who are primarily first-generation, low-income and/or minority students, with tuition rates substantially lower than those charged by other four-year public and private, nonprofit institutions. Not only do our member institutions provide an affordable and high quality education, but also their productivity in generating African Americans with college degrees is extraordinary and student satisfaction is strong. In short, HBCUs and PBIs offer a great value to their students, communities and taxpayers, and continue to be leaders in educating African-American college graduates who excel in their fields.

While the students seeking federal loan forgiveness based on fraudulent practices are not those attending and graduating from HBCUs and PBIs, our organizations were actively engaged throughout the regulatory drafting process and provided considerable analysis, data, input and feedback on potential negative impacts to HBCUs and PBIs. Our July 29, 2016 [letter](#) to the Department highlighted real-world consequences for our schools and the students that they serve. Unfortunately, most of our concerns were not addressed in the final rule.

We support efforts to establish a clear and consistent process to provide relief to students who were defrauded by the abrupt closure of Corinthian Colleges, Inc., ITT Educational Services, Inc. and several other for-profit institutions. Nonetheless, we remain concerned that key provisions of this rule must be dramatically improved in order to prevent significant harm to HBCUs that are serving students very well.

Specifically, we remain concerned about the sweeping scope of the regulation and vague standards for determining ‘misrepresentation’ that could unfairly leave HBCUs and PBIs liable for frivolous claims, unwarranted fines and unfounded penalties. Such provisions could result in significant costs that would divert precious resources better spent on serving the needs of students. Furthermore, the appeals process, as established through the final regulation, continues to limit due process protections for institutions.

Additionally, the final financial responsibility and disclosure provisions in the regulation pertaining to private colleges and universities would impose onerous requirements on private HBCUs to pledge collateral or secure new letters of credit based on certain triggering events, some of which are simply inappropriate in that they do not relate to the financial condition of an institution. Worse, the increasing financial responsibility requirements and related mandatory disclosures to prospective and current students could cause a cascading negative financial impact on some institutions by prejudicing students against enrolling (or continuing enrollment) in otherwise successful institutions. Put bluntly, these requirements could lead to the irreparable financial and reputational harm to HBCUs that are, in fact, providing quality educational opportunities to students.

In light of the far-reaching implications of this rule, we urge that the Department suspend any enforcement of the regulation and start a new rulemaking process. By taking these important steps, the Department will be able to create a more thoughtful proposal that truly protects the interests of students, institutions and taxpayers.

We would be pleased to provide any additional information that might be helpful to you. Thank you for your consideration of our views.

Sincerely,



Michael L. Lomax, Ph.D.  
President & CEO  
UNCF



Lezli Baskerville, J.D., LL.D.  
President & CEO  
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