CENTER FOR JUSTICE & DEMOCRACY
185 WEST BROADWAY
NEW YORK, NY 10013
TEL: 212.431.2882
centerjd@centerjd.org
http://centerjd.org

July 12, 2017

Wendy Macias
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Re: Docket ID ED-2017-OPE-0076; Borrower Defense/Forced Arbitration

Dear Ms. Marcias:

On November 1, 2016, the U.S. Department of Education finalized an important rule "to protect student loan borrowers from misleading, deceitful, and predatory practices of, and failures to fulfill contractual promises by, institutions participating in the Department's student aid programs." One of the most important parts in this regulation deals with the legal rights of students in the federal Direct Loan program. The rule would prevent institutions participating in this program from forcing defrauded students to resolve disputes in private arbitration, or prevent them from joining together with others in a class action.

Now, the Department has decided to delay the rule's July 1 effective date and begin a negotiated rulemaking process, or a "regulatory reset," claiming that the long, judicious rulemaking process that led to this regulation somehow "missed an opportunity to get it right." The Department has asked for written comments "on the topics suggested by the Department and suggestions for additional topics that should be considered for action by the negotiating committees."

These comments are to express our strong disagreement with the Department's decision to "renegotiate" this regulation. If the Department insists on proceeding with any "renegotiation," we urge the Department to *not* include the forced arbitration/class action topic in this process and to immediately implement the existing rule to ensure that cheated students have access to the courts and that schools engaged in fraud are held accountable.

When the Department wisely finalized its rule in November, it did so after examining years of accumulating evidence of swindles and scams by for-profit schools and colleges, which make money from federal student loans but ultimately provide worthless degrees and place students in severe debt.[1] The Department had carefully examined how these institutions avoid

[1] *See, e.g.,* David Halperin, "This Army Veteran Wanted to Become a Video Game Animator; Instead, he got played by two for-profit colleges," *Slate* (July 20, 2016), http://www.slate.com/articles/life/education/2016/07/why_are_people_so_easily_exploited_by_for_profit_colleges_stealing_america.html; Jessica Silver-Greenberg, Robert Gebeloff, "Arbitration Everywhere, Stacking the Deck of Justice," *New York Times* (October 31, 2015), https://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html?_r=1

accountability by prohibiting students from suing in court through the use of forced arbitration clauses and class action waivers in student contracts.

These clauses force cheated students to resolve disputes in private, secretive, rigged systems controlled by the at-fault institution. The student has no right to appeal an unfair decision. And because students cannot join with others in a class action, there is no way their claim can properly hold the school accountable or stop the illegal or predatory behavior. In other words, these clauses are a gateway to fraudulent and deceitful practices.

Before finalizing its common sense rule, the Department explained:

> Forced arbitration provisions used by many schools in their enrollment agreements – often buried in the fine print – effectively prevent students from seeking redress for harm caused by their school and hide wrongdoing from the Department and the public. Such agreements often bar students from bringing their legal claims in a group, making it financially impossible for individual students to challenge schools. Some agreements require disputes to be filed in secret tribunals where little or no records are kept; some prohibit students from speaking about the claims they file.

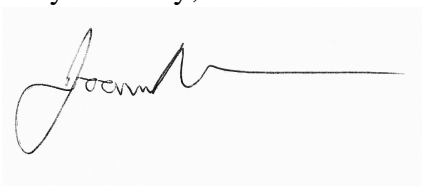
Similarly, when the final rule was issued, the Department said:

> Finally, in a major step to protect student borrowers and prevent schools from shirking responsibility for the injury they cause, the proposed regulations would prohibit the use of so-called mandatory pre-dispute arbitration clauses and class action waivers that deny students their day in court if they are wronged. Under these regulations, schools would no longer be able to use their enrollment agreements, or other pre-dispute arbitration agreements or clauses in other documents, in order to force students to go it alone by signing away their right to pursue relief as a group, or to impose gag rules that silence students from speaking out.

In sum, by preventing predatory schools and colleges from inserting forced arbitration clauses and class action waivers in student contracts, the Department got it *exactly* right. There is absolutely no reason to undo years of careful work to develop this sensible and fully-supported rule. We strongly urge the Department to immediately implement the forced arbitration/class action regulation, and to keep it off any list of "topics that should be considered for action by the negotiating committees."

Thank you for your time and attention to this matter.

Very sincerely,



Joanne Doroshow
Executive Director