

February 15, 2019

The Honorable Doug Jones
the Honorable Elizabeth Warren
the Honorable Kamala Harris
and the Honorable Catherine Cortez Masto
United States Senate
Washington, D.C. 20510

Dear Senators:

Thank you for inviting our thoughts on how to address racial disparities in student debt, as well as the various challenges students of color face in college and career training more generally. We are a group of legal services and advocacy organizations committed to dismantling the financial and legal obstacles that students of color experience in pursuit of higher education.

As your January 3, 2019 letter recognizes, the burdens of student debt are not shared equally. Black students borrow more on average than other students seeking the same degree and are over three times more likely to default than their white counterparts.¹ Hispanic borrowers are more than twice as likely as white borrowers to default, even though they graduate with about the same level of debt.² Furthermore, because they borrow more, students of color are disproportionately impacted by the negative effects of poor student loan servicing. Unsurprisingly, expert analysis strongly suggests that these racial disparities in student debt contribute to wealth inequality across life.³

In addition to the financial barriers to equity in higher education, more generally, students of color are less likely to graduate with higher education degrees than their white peers.⁴ Students with prior justice system involvement and undocumented students face barriers to financial aid, while institutions serving predominately students of color lack the same federal financial support as other higher education institutions. Furthermore, once on campus, students of color are more likely to be pushed out of their schools due to safety concerns, such as experiencing sexual harassment and assault and hate crimes.

To start addressing these inequities, we propose that Congress focus on five areas warranting reforms: oversight and accountability of for-profit schools; data collection and transparency; loan servicing; student access and success; and student safety and rights. Below, we briefly note some of the changes needed in each category. Our goal is to highlight some needed areas of focus, not to present in-depth proposals. We would be happy to answer any questions that you may have or to discuss these topics further.

I. Oversight and Accountability of For-Profit Colleges

For-profit colleges play an outsized role in generating and perpetuating disparate outcomes for students of color. People of color are significantly overrepresented in the for-profit student

population: although they account for less than one third of all college students, Black and Latino students represent nearly half of the students enrolled in proprietary colleges.⁵ The disparity extends into graduate school enrollment as well. Compared to 9 percent of white graduate students, well over a quarter of Black students who enroll in graduate programs do so at for-profit institutions.⁶

As you are likely well-aware, many of these for-profit colleges engage in unfair and deceptive methods and practices, including deceptive advertisements, unrelenting recruiting, the absence of promised academic and career development support, and the utilization of draconian contracts designed for people with non-traditional backgrounds or those just barely old enough to sign. Once they are in the door, students attending for-profit institutions have a greater likelihood of taking on educational debt than their counterparts at other four-year schools.⁷ They are also more likely than students at public institutions to take out private or institutional loans, which are generally more costly and offer few of the borrower protections attached to federal student loans, to help fund their education.⁸

With an overall twelve-year default rate of over 50 percent,⁹ outcomes for student borrowers at for-profit schools are undeniably poor across the board; but they are particularly bad for students of color. During the same twelve years, two-thirds of Black students who borrow money to attend a for-profit college default on their loans.¹⁰ The end result is that students—disproportionately students of color—may never be able to return school to obtain credentials that would permit them to pay off their existing debts and advance their careers.

Below, we present some options for Congress to take to curb the worst excesses of the for-profit college industry. We note that this is not intended to be the exclusive list of all actions that Congress should take.

- ***Codify Robust Borrower Defense Protections.*** Federal statute and regulation, along with students’ promissory notes, provide student loan borrowers with the right to discharge their debt on account of their school’s misconduct (“borrower defense”). As of September 2018, over 139,000 borrower defense claims were pending.¹¹ The prior administration promulgated new standards and procedural protections for students asserting their rights under the borrower defense provisions; despite the current administration’s attempt to delay these changes, they are now in effect. Congress should consider codifying some of the most crucial protections in these regulations, including prohibiting schools using Title IV funds from invoking class-action bans or pre-dispute arbitration clauses. Congress should also ensure fair borrower defense decisions by requiring the Department to utilize Administrative Law Judges to render decisions. And, Congress should prohibit the Department from collecting on student borrowers (particularly through coercive methods) while a student has a borrower defense application pending.
- ***Regulate Spending on Marketing and Recruiting.*** Student loans and other financial aid are meant to facilitate students’ endeavors to obtain a quality education. Proprietary schools disproportionately funnel money toward recruitment, marketing, and profits

for shareholders as compared to spending on educational services. In July 2015, Senator Sherrod Brown introduced the Protecting Financial Aid for Students and Taxpayers Act,¹² which would prohibit schools from using funds from Pell grants, federal student loans, and other federal sources including G.I. Bill and DOD tuition benefits for advertising, marketing, and student recruitment. We applaud Senator Brown and his co-sponsors' work in this area and we urge Congress to adopt this or similar legislation during the current session.

- ***Strengthen the “90/10 Rule.”*** For-profit colleges are subject to the “90/10 Rule,” which provides that, in order to maintain eligibility for participation in Title IV programs, for-profit schools may receive a maximum of 90 percent of their revenue from federal financial aid funds; the remaining 10 percent must come from alternative (*i.e.*, private) sources.¹³ Post-9/11 G.I. Bill educational benefits and funds from the Department of Defense’s (“DOD”) Tuition Assistance program are not counted as federal dollars for the purposes of determining schools’ compliance with the 90/10 Rule.¹⁴ Thus, the more service members and veterans a proprietary institution enrolls, the easier it is to meet the 10 percent threshold under Title IV. Although the rule was designed to prohibit for-profit schools from relying exclusively on federal funding, thereby incentivizing them to offer quality programs at competitive prices, the requirement has largely failed to meet its goal. Accordingly, Congress should consider amending the rule to reduce the percentage of revenue for-profit schools may receive from federal aid sources. Congress should also consider classifying G.I. benefits and DOD Tuition Assistance as federal aid for the purposes of the 90/10 Rule.
- ***Bolster the Federal Role in the “Regulatory Triad.”*** Responsibility for overseeing the quality of higher education is split among three entities: state authorizing agencies, which ensure that schools comply with state mandated education requirements and consumer protection statutes, the Department of Education, which oversees compliance with the requirements for Title IV eligibility, and independent accrediting agencies (accreditors), which set standards for academic programs and curricula.¹⁵ A new balance of power—one that is less deferential to non-governmental accreditors—must be struck. Specifically, we urge Congress to require the Department to hold accreditors to a higher standard and to exercise continuing oversight of accreditors.

II. Data Collection and Transparency

The Department of Education doles out approximately \$130 billion in federal financial aid every year.¹⁶ Comprehensive data collection and rigorous analysis are key to understanding whether that money is well spent. Yet, existing data are limited in important ways. Increased access to data and transparency are crucial to making fully informed legislative decisions, and further reform would be vastly simplified if stakeholders could track debt and other student outcomes over time.

Congress should consider taking the following steps:

- Codify a Gainful Employment Standard.*** In order to be eligible for funding under the Higher Education Act, an educational program must either lead to a degree at a non-profit or public institution, or provide students with training that prepares them for “gainful employment in a recognized occupation.”¹⁷ In January 2017, the first time the Department released debt-to-earnings rates pursuant to the gainful employment regulations, more than 800 programs—98 percent of which were in for-profit schools—failed to meet the accountability standards put in place by the rule.¹⁸ Access to this data is critical to understanding and assessing the successes and, more importantly, failures of the vocational education system in the United States. But in August 2018, Secretary of Education Betsy DeVos proposed rescinding the gainful employment rule. Although the Department missed its original deadline to issue a final regulation to that effect, rolling back this information-forcing rule remains a priority of the current administration. While also taking steps to improve coverage and metrics, Congress should intervene now to codify a gainful employment standard.
- Study the Student “Unit Record Ban” to Determine Whether the Department Should Track Student Loan Defaults by Race.*** In its 2008 reauthorization of the HEA, Congress wrote into the statute a provision prohibiting the Department of Education from creating a database to track individual-level data on outcomes for students enrolled in higher education.¹⁹ Known as the “unit record ban,” this rule may be hindering research and analysis of racial gaps in student debt and default outcomes.²⁰ The Department of Education conducts cross-sectional student surveys every four years, but these data sets are limited because they do not allow individual student loan borrowers to be tracked over time.²¹ In May 2017, a bipartisan group of senators introduced the “College Transparency Act” to overturn the unit record ban and allow the National Center for Education Statistics to establish a privacy-protected data system to track student outcomes; no further action was taken on the bill.²² In addition to facilitating longitudinal tracking of student loan defaults by race and geography for the benefit of policymakers, the database contemplated by the legislation would help academic institutions track their students’ outcomes and help students make informed decisions about their postsecondary education. We urge Congress to study the College Transparency Act or similar legislation during this session.

III. Loan Servicing

Loan servicer misconduct comes in many forms that harm borrowers, particularly borrowers of color. From September 2016 to September 2017 alone, the CFPB received nearly 13,000 complaints concerning federal student loan servicing.²³ Student loan servicers commonly steer borrowers into payment plans that are cheaper for the servicer, and costly for the borrower.²⁴ Additionally, borrowers complain of vague communication, misapplied borrower payments, and other customer service misconduct.²⁵

Black students are more likely than other racial groups to borrow, and borrow more, for their education.²⁶ Therefore, the negative effects of poor student loan servicing are disproportionately

damaging to student borrowers of color. Servicer misconduct can have lifelong consequences, forcing students of color into default on their loans, which may ruin a borrower's credit. Because consumer credit serves as a precondition to "employment, housing, and access to credit . . . servicing errors can have spillover effects on many other aspects of borrowers' lives and livelihoods."²⁷

Congress should consider taking the following steps to reduce the harmful practices of loan servicers:

- ***Simplify federal student loans and increase access to loan repayment information.*** Many servicer misconduct practices involve taking advantage of the lack of information that student borrowers have about their own loans. For instance, loan servicers will often encourage students into forbearances, rather than other loan payment plans that may be more beneficial to the borrowers, placing those borrowers at risk of incurring additional costs without any long-term benefits.²⁸ It should be a priority to educate borrowers on the options they have once their loans are in repayment in order to equip borrowers with the knowledge to make the best choices for their financial situation. In the mortgage context, the Consumer Finance Protection Bureau's "Know Before You Owe" initiative helped to streamline mortgage disclosures and better informed consumers on their loan options.²⁹ This initiative combined disclosure forms to make them easier to use, and put more emphasis on the borrower's understanding of their loan.³⁰ Creating a similar program for student borrowers could go a long way to ensuring borrowers are able to stand up for their rights when interacting with their loan servicers. For example, simply streamlining the way students enter income-driven repayment plans could have a significant positive impact on student debt outcomes.³¹
- ***Explicitly support a student loan borrowers' bill of rights.*** Many states already use borrowers' bills of rights to help protect borrowers from predatory servicers. A borrowers' bill of rights adds further regulation of student loan companies and servicers, mandates minimum standards for payment processing, and ensures repayment counseling.³² Additionally, such legislation creates regular reporting requirements on student loan data, which allows regulators to detect servicing issues earlier on in the process.³³ Because the servicing industry has recently challenged states' rights to enact such laws on federal preemption grounds, Congress should explicitly allow states to enact borrowers bills of rights, helping states do their part to protect their student loan borrowers against servicer misconduct.
- ***Set more specific requirements for communications and customer service.*** Many borrowers miss payments or fail to recertify due to vague instructions from their loan servicers. In 2015 it was recommended that DOED "set[] more specific requirements for contractors" for communications with student loan borrowers in order to "maintain a consistent level of service [and] improve overall borrower communication."³⁴ Updating communication and customer service practices would alleviate the burden on the borrower to understand cryptic messages, and make the interactions between the servicer and the borrower more productive and beneficial on both sides. One specific example is that servicers often place target times on their customer service calls, which can be as low as

seven minutes per call.³⁵ This is an inadequate amount of time for a servicer to assess a borrower's financial situation and provide the borrower with the best option for their particular circumstance. By setting proper standards for communications and customer service interactions between borrowers and their servicers, Congress could significantly help borrowers reach better outcomes with their student loan debt.

IV. Student Access and Success

Students of color face many barriers in accessing higher education and achieving success once at an institute of higher education. Advanced degrees have become even more necessary over time to achieve upward mobility and live a healthy economic life in the United States. However, students of color have faced historic discrimination in access to higher education and the disparities continue today – 47% of white adults hold an associate degree or higher, compared to only 30.8% of Black adults and 22.6% of Latino adults.³⁶

The following federal policies can begin to address these disparities by increasing access to education for students of color:

- ***Remove the consideration of criminal background in the determination of federal aid.*** Currently, there is a disproportionate criminalization of men and boys of color – one in three Black men born today and one in six Latino men can expect to go to prison in his lifetime in comparison to one in seventeen white males.³⁷ Additionally, there is a racial wealth gap that requires students of color to need more federal financial aid to attend college. A typical white family has \$140,500 in wealth, while a typical Latino family has \$6,300 and a typical Black family has \$3,400.³⁸ Any requirement of criminal background consideration in the federal financial aid process creates an additional hurdle for students of color who may have had interactions with the criminal justice system and are now trying to improve their lives by getting an education.
- ***Expand opportunities for Dreamers to pursue a higher education and allow undocumented students to access federal student aid.*** While public education is guaranteed by law for undocumented students through grade 12, there are both legal and financial barriers to higher education for these students. The federal DREAM Act, introduced in 2017, would provide meaningful opportunities for Dreamers to receive a secondary education and would allow these students to obtain lawful permanent resident status if they complete college.³⁹ Additionally, undocumented students must be given full access to federal and state financial aid, including grants and scholarships, in order to be successful on their higher education paths. Currently, undocumented students have no access to federal financial aid, which significantly impedes their ability to access higher education.⁴⁰ Finally, undocumented students must be allowed to pay in-state tuition rates of the state in which they reside in order for them to have equal access to higher education. Some state colleges and universities charge undocumented students out-of-state tuition rates or even international student rates, no matter how long the student has been living in the state.⁴¹ This makes it imperative for

there to be a federal policy ensuring in-state tuition for undocumented students in the state in which they reside.

- ***Increase resources and support to HBCUs, Tribal Colleges and Universities, Hispanic Serving Institutions, and Asian American and Native American Pacific Islander Serving Institutions.*** Because of discrimination in education, Black communities have historically created their own institutions of higher education. These schools, and later other types of Minority Serving Institutions (MSIs), have given rise to economic and social mobility for people of color that traditional institutions of higher education have not been able to support. Therefore, these schools must have access to equitable funding and resources from the federal government, including federal research and development funds. Currently, most MSIs face institutional financial barriers to success.⁴² For instance, research has shown that MSIs tend to receive less state and federal financial support when compared to non-MSIs.⁴³ Identifying and alleviating such gaps in funding is integral to ensuring that MSIs can help their students thrive.

V. Student Safety and Rights

Student safety is imperative to ensure that students are not improperly pushed out of higher education institutions. For students of color, both sexual harassment and assault and hate crimes have a devastating effect on student success. Black students were more likely than their white counterparts to “change the way they go to or from schools, or even change to a new school, in response to sexual harassment.”⁴⁴ Due to harmful race and sex stereotypes that label women of color as “promiscuous,” schools are more likely to ignore, blame, and punish women and girls of color who report sexual harassment.⁴⁵ Additionally, many Black girls who defend themselves against perpetrators of sexual harassment are often misidentified as the aggressors.⁴⁶ In terms of hate crimes, U.S. Department of Education data shows that incidents of hate crimes on college campuses have been increasing from 2011 to 2016.⁴⁷ Over half of these hate crimes, 57%, targeted students of color.⁴⁸ For these reasons, it is integral for schools to proactively create safe spaces for students of color in order to provide equity in education.

In order to ensure student safety, Congress should create legislation that ensures schools:

- ***Prevent campus sexual violence, investigate and respond appropriately when incidents occur, and provide a supportive environment for survivors.*** Schools are charged with responding to harassment whenever a student faces unwelcome conduct of a sexual nature.⁴⁹ It is imperative that this definition remain in order to hold schools accountable because students of color are less likely to report sexual assault to police. This correlates with the disproportionate level of police violence directed at people of color. Consequently, schools often provide the only way in which students of color feel they can seek justice when they have survived sexual assault. Additionally, in order to ensure fair proceedings and limit the use of stereotypes in such proceedings, schools should require all officials involved to attend implicit bias trainings.

- ***Protect students from hate crimes while ensuring First Amendment protections for students.*** In order to ensure schools are reacting appropriately to hate crimes on campus, all schools should be required to establish a bias incident reporting system and have a bias incident protocol that involves the affected students and is adequately funded. All officials involved in these procedures should be required to attend implicit bias trainings, including any school law enforcement that interact with students on campus. Additionally, schools have a responsibility to eliminate hostile environments as well as to protect First Amendment speech. Therefore, schools should be required to address hateful speech in a way that is consistent with the First Amendment but that reaffirms the school’s commitment to anti-discrimination and diversity.

VI. Conclusion

In its current state, higher education is entrenching—rather than erasing—patterns of inequality that are the result of longstanding structural racism in the United States. We are heartened by the time and attention you are dedicating to rectifying the many obstacles to equity in higher education that people of color face in their efforts to expand their skillsets, improve their socioeconomic position, and advance their careers through higher education. Although we have only started to scratch the service of the many reforms needed, we are happy to continue discussing these issues with you in the future.

Sincerely,

Lawyers’ Committee for Civil Rights Under Law
Mississippi Center for Justice
North Carolina Justice Center
Project on Predatory Student Lending
Southern Poverty Law Center

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