

March 4, 2016

The Honorable John B. King
Acting Secretary of Education
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue SW
Washington, DC 20202

Dear Secretary King,

The undersigned groups represent a coalition of student, veteran, civil rights, consumer, and civil justice groups. We write to urge the Department of Education (Department) to protect students and taxpayers and prevent colleges from hiding fraud and other wrongdoing by adopting the recommendations of the citizen petition submitted to the Department by Public Citizen on February 24, 2016.¹

Specifically, we strongly support the request that the Department require educational institutions to agree, as a condition on receipt of Title IV assistance under the Higher Education Act (HEA), not to include pre-dispute arbitration clauses in enrollment and other contracts with students, a practice also known as “forced arbitration.” Under these clauses, students lose their right to court proceedings and a jury and are instead forced into privately-administered arbitration to challenge any wrongdoing committed by the school. This process functionally deprives students of their right to relief for the harm they have suffered. As amply set forth in the petition, the Department has the authority to adopt such a rule under the HEA and it would be consistent with the Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq.* Such a rule would aid the Department in meeting its obligations to protect students and to root out fraudulent conduct by schools participating in Title IV programs.

We are deeply concerned about predatory schools in the for-profit college industry that defraud students and families while profiting from federal aid. These schools offer low-quality, high-priced programs, shortchange students in their support service offerings, and often misrepresent their abysmal graduation and job-placement rates. These schools frequently target low-income students, racial and ethnic minorities, and veterans who are often the first in their family to go to college. Students who enroll in these schools often drop out when they realize they have been misled, and those who stay generally realize no benefit for their degree. In either case, the schools’ wrongdoing leaves many students with federal student loan debt that they cannot repay.

Incredibly, even while many of these schools cheat their students out of a meaningful education, forced arbitration allows them to escape civil liability for their wrongdoing. Forced arbitration clauses are buried in the fine print of student enrollment contracts and students are often unaware that these schools have taken away their rights. By contractually restricting students’ access to

¹ See Citizen Petition from Public Citizen to the U.S. Department of Education Acting Secretary Dr. John B. King, Jr., Feb. 24, 2016, available at <http://www.citizen.org/documents/Citizen-Petition-to-ED-Title-IV-Arbitration-Clauses.pdf>.

the justice system in this way, many for-profit colleges have been able to shield themselves from accountability for fraud, deceit, and other harm inflicted on students.

Forced arbitration directly interferes with the Department's oversight responsibilities over Title IV programs. The secretive nature of forced arbitration proceedings greatly diminishes the Department's ability to identify fraud when and where it is occurring. Significantly, arbitration proceedings and awards are presumptively private, and some arbitration clauses forbid students from talking about their experiences in arbitration. Corinthian, which misrepresented key information about its programs and was subject to numerous government investigations and lawsuits, was able to cover up its wrongdoing for years in part because forced arbitration kept crucial information hidden from the public. The Department cannot effectively act as a responsible steward for students and taxpayers if arbitration places critical information beyond its reach.

Arbitration can, and often does, render statutory and constitutional protections meaningless. Arbitration lacks many of the fundamental guarantees of fairness that a court provides. Arbitrators do not have to be trained in the law. In arbitration, students lose their constitutional right to a jury trial; the rules of evidence do not necessarily apply; discovery of relevant evidence may be severely limited; and the losing party's right to court review of an arbitrator's decision is very limited. Arbitration clauses often prevent students from joining their claims together in class action lawsuits and include other explicit waivers of rights.

There is wide agreement on the need for the rule outlined in Public Citizen's citizen petition. Earlier this month, members of the United States Senate called on the Department to deny federal funding to colleges that use forced arbitration clauses in student enrollment contracts for these very reasons.² Additionally, a proposal submitted on February 11 in the current negotiated rulemaking relating to federal student loan borrower relief makes a similar request to revise the administrative capability regulations to identify forced arbitration clauses as an indication of an institution's failure of administrative capability and, accordingly, deny federal funding to schools that include forced arbitration clauses in their student enrollment contracts.³ A recent session of the negotiated rulemaking panel held on February 18, 2016, manifested broad support for the proposal to protect students from forced arbitration. We strongly encourage the Department to take action in light of these requests by members of Congress and advocates for students.

Predatory schools should not be permitted to profit from federal funding while simultaneously failing their students and shielding themselves from accountability when they fail to deliver on their promises. The Department should act decisively to stop the use of these clauses and adopt the rule proposed in the citizen petition. To the extent that the action sought in the citizen petition can be taken through the current negotiated rulemaking, we urge the Department to use this opportunity to protect students.

Sincerely,

² See Letter from Sen. Durbin, *et al.*, to Department of Education Under Secretary Ted Mitchell, Feb. 11, 2016, available at <http://www.durbin.senate.gov/newsroom/press-releases/senators-call-on-department-of-education-to-deny-federal-funding-to-colleges-that-use-forced-arbitration-clauses>.

³ Docket Number: ED-2015-OPE-0103

Alliance for Justice
American Association for Justice
American Association of State Colleges and Universities
Americans for Financial Reform
Center for Justice & Democracy
Center for Responsible Lending
Consumer Action
Consumer Federation of American
Consumer Federation of California
Consumers Union
Demos
The Education Trust
Empire Justice Center
Generation Progress
Higher Ed, Not Debt
Home Owners for Better Building
Homeowners Against Deficient Dwellings
Housing and Economic Rights Advocates
Initiative to Protect Student Veterans
The Institute for College Access & Success
The Leadership Conference on Civil and Human Rights
League of United Latin American Citizens
Mississippi Center for Justice
NAACP
National Association for Black Veterans, Inc.
National Association for College Admission Counseling
National Association of Consumer Advocates
National Consumer Law Center, on behalf of its low-income clients
National Consumers League
National Women Veterans Association of America
New Jersey Citizen Action
New York Legal Assistance Group
Project on Predatory Student Lending of the Legal Services Center of Harvard Law School
Public Good Law Center
Public Counsel
Public Justice
Public Law Center
Robert Shireman, Senior Fellow, The Century Foundation
Student Debt Crisis
Student Veterans of America
University of San Diego School of Law Veterans Legal Clinic
Veterans Education Success
Veterans for Common Sense
Veterans' Student Loan Relief Fund
VetJobs
Woodstock Institute
Young Invincibles