



August 12, 2022

Jean-Didier Gaina
Analyst, Office of Postsecondary Education
400 Maryland Ave., SW
Room 2C172
Washington, DC 20202

RE: Document ID ED-2021-OPE-0077-1350

Dear Mr. Gaina:

The Lawyers' Committee for Civil Rights Under Law submits these comments in support of the proposed rulemaking published in the Federal Register on July 13, 2022 regarding federal student loan programs, including the William D. Ford Direct Loan (Direct Loan) Program, the Federal Perkins Loan (Perkins) Program, and the Federal Family Education Loan (FFEL) Program. We write to express our support for the proposed regulations and to encourage the Administration to strengthen certain provisions to further address the disproportionate burdens that Black borrowers and communities of color have faced as our nation has shifted towards debt-financed higher education.¹

Formed in 1963, the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee) is a nonpartisan, nonprofit organization that uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have voice, opportunity, and power to make the promises of our democracy real. Through its Educational Opportunities Project, the Lawyers' Committee strives to guarantee that all students receive equal educational opportunities in public schools and institutions of higher learning. Today, it is particularly important for the Lawyers' Committee to advocate for policies that make the promises of education real and less burdensome for Black and Latinx students and borrowers alike.

The proposed regulations make critical improvements to student loan discharge programs and make student loans more affordable. We fully support these necessary changes which are especially important for Black and Latinx borrowers who are overrepresented in and targeted by low-quality, high-cost institutions.² For-profit colleges, in particular, cluster in communities of color and engage in predatory practices that often target historically

¹ Frotman, Seth (2018) "Broken Promises: How Debt-financed Higher Education Rewrote America's Social Contract and Fueled a Quiet Crisis," Utah Law Review: Vol. 2018 : No. 4 , Article 1

² Arbeit, C.A. & Hom, L. (2017). A profile of the enrollment patterns and demographic characteristics of undergraduates at for-profit institutions, U.S. Department of Education, (February 2017), <https://nces.ed.gov/pubs2017/2017416.pdf>



marginalized groups, thereby exacerbating extant racial wealth gaps³ leaving students and their families worse off than when they started.⁴ At bottom, this predatory climate demands robust protections and support for borrowers. The proposed regulations begin to move in the right direction.

As the ripple effects of this debt crisis are felt most acutely by Black and Latinx borrowers and their families, we urge the Administration to address these racial disparities as it considers additional statutory and regulatory changes to student loan discharge programs. These programs have the potential to unlock the doors of opportunity in higher education for many students of color and their families. The targets of predatory practices must guide the strategies and allocation of relief; otherwise, already stark racial inequities will be exacerbated and intergenerational debt burdens will become further entrenched.

Protections for Borrowers from For-Profit Institutions

The Lawyers' Committee applauds the Department's efforts to address the abuses associated with for-profit colleges and provide much needed relief to borrowers who attended them, given the history of harms that have plagued such schools' students and former students. During the COVID-19 pandemic, there has been a concerning spike in enrollment at for-profit schools. The harmful impacts from these institutions' practices are disproportionately shouldered by communities of color as for-profit schools overwhelmingly aim their aggressive recruitment efforts at Black and Latinx communities, resulting in their over-representation in for-profit schools with the worst track record of fraudulent and deceptive practices.⁵ While default rates for student borrowers are high at for-profit schools, in general, they are particularly high for students of color: one study observed that over a twelve-year period, nearly half of white students, more than half of Latinx students, and approximately two-thirds of Black students who borrowed money to attend a for-profit school defaulted on at least one of their loans.⁶ These numbers are troubling and should lead to the Department taking actions to protect

³ Center, Student Borrower Protection, Mapping Exploitation: Examining For-Profit Colleges as Financial Predators in Communities of Color (July 28, 2021). Student Borrower Protection Center Research Paper, Available at SSRN: <https://ssrn.com/abstract=3895261> or <http://dx.doi.org/10.2139/ssrn.3895261>

⁴ Tressie McMillan Cottom, Lower Ed: The Troubling Rise of For-profit Colleges in the New Economy (2017).

⁵ See Bonadies, Genevieve; Rovenger, Joshua; Connor, Eileen; Shum, Brenda; Merrill, Toby (July 2018), For-Profit Schools' Predatory Practices and Students of Color: A Mission to Enroll Rather than Educate, *Harvard Law Review Blog*, <https://blog.harvardlawreview.org/for-profit-schools-predatory-practices-and-students-of-color-a-mission-to-enroll-rather-than-educate/>; See also *Hemphill v. Cardona*, No. 22-cv-1391 (D.D.C. filed May 19, 2022) (class action lawsuit brought by former students of Westwood College that describes how the for-profit school engaged in widespread deception and misrepresentation and also enrolled a disproportionately high share of Black and Latinx students).

⁶ Kelchen, Robert, (Oct. 2017) New Data on Long-Term Student Loan Default Rates, *Kelchen on Education*, <https://robertkelchen.com/2017/10/06/new-data-on-long-term-student-loan-default-rates/>.



borrowers who have attended for-profit institutions. We appreciate the proposed rule's provisions that bolster the protections for student borrowers and ensure predatory institutions are held accountable.

Public Service Loan Forgiveness (PSLF)

By some estimates, approximately \$100 billion in loan forgiveness through PSLF could be available to 3.5 million borrowers, many of whom are borrowers of color who are disproportionately employed in the public sector as, for example, health care professionals and government employees among others.⁷ However, the administrative burden to applying for and receiving relief has left the program woefully underutilized by borrowers of color, leaving a critical tool to reducing racial disparities in debt and wealth on the cutting room floor.⁸

As such, we encourage the Department to consider the following measures to strengthen the current provisions in the proposed rule:

- Commitments to identify and connect with borrowers of color who are eligible for PSLF to help them apply and navigate administrative barriers to relief;
- Commitments to identify and connect with borrowers from for-profit colleges to ensure that they have guidance on applying for PSLF, borrower defense, and other benefits from the Department given the disproportionate harms experienced by them and the exorbitant costs of for-profit education;
- Ensure borrowers with granted borrower defense claims receive full relief in the form of a discharge of loans, full refunds of any payments towards student loans, and the deletion of adverse credit history related to those student loans. Additionally, borrowers with granted claims should have their Title IV-eligibility restored.
- Allow all borrowers and third-party requestors, to assert state legal claims while asserting claims under the proposed federal standard during the borrower defense application process.
- Shorten the ten-year PSLF waiting period for borrowers who attended for-profit institutions prior to August of 2022. We are aware of the exorbitant costs, poor practices, and undelivered promises of many for-profit

⁷ Briones, D., Ruby, N., and Turner, S (2022) Waivers for the Public Service Loan Forgiveness Program: Who Would Benefit from Takeup? NBER Working Paper No. 30208 July 2022

⁸ Elizabeth; Romero, Jessie; and Turner, Sarah. (August 2022) "The Potential Impact of Public Service Student Loan Forgiveness in the Fifth District." *Federal Reserve Bank of Richmond Economic Brief*, No. 22-29



institutions that have resulted in lower job prospects, higher default rates, and high debts. Given this, the wait period should be shortened for these borrowers who have engaged in public service, to ensure that they can flourish financially while serving their communities.

- Make Parent PLUS loans fully eligible for PSLF and other discharge programs as their disproportionate use among low-income families especially Black parents, and their unfavorable terms and conditions exacerbate the racial wealth gap.⁹

Once again, thank you for your ongoing work to support and protect borrowers, especially borrowers of color, as we collectively seek to make educational opportunities available to all who seek them. We appreciate the opportunity to comment on this issue, and we stand committed to ensuring that all students have access to full educational opportunity in our nation's schools. For any questions or for additional information, please contact Chavis Jones at cjones@lawyerscommittee.org or Ernest Bihm at ebihm@lawyerscommittee.org.

Respectfully,

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⁹ Granville, P., 2022. Parent PLUS Borrowers: The Hidden Casualties of the Student Debt Crisis, TCF: The Century Foundation. Retrieved from <https://policycommons.net/artifacts/2460843/parent-plus-borrowers/3482642/> on 10 Aug 2022. CID: 20.500.12592/j7kcc6.