

April 13, 2021

Secretary Miguel Cardona
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202

Dear Secretary Cardona:

We, the undersigned organizations that work on higher education accountability, and advocate for students, military service members and veterans, low-income consumers, educators, and college administrators, as well as for educational equity, request your urgent attention to the borrower defense crisis you have inherited at the Department of Education.

The federal student aid program is intended to open the door to higher education and economic mobility for students otherwise unable to afford the cost, but for too long predatory schools have exploited the program and left students worse off. As law enforcement actions have documented, these schools have utilized psychological manipulation, false promises, and substantial misrepresentations to enroll unsuspecting students, often [targeting Black and Latino](#), first-generation, and [low-income](#) college students, who are new to postsecondary education or hoping to break out of poverty. Too often, these students are buried in debt with a worthless degree or no degree at all. Military service members, veterans, and their families are recruited particularly aggressively by unscrupulous for-profit schools to access the “[military gravy train](#)” and abuse the 90/10 loophole. These borrowers are suffering now: a [recent survey](#) found that many borrower defense applicants are front-line workers whose student debt has made them particularly vulnerable to economic hardship in the pandemic.

We urge you to act quickly to provide relief to these defrauded student loan borrowers who were failed by the Department under then-Secretary Betsy DeVos. We applaud you for rescinding the Department’s harmful policy of providing defrauded borrowers only partial loan relief and instead granting full relief to borrowers with previously approved borrower defenses. But this relief applies to only a small fraction of the borrowers harmed first by predatory colleges and then by the Department’s failed response.

The Department’s Failed Approach to Borrower Defense

Over the past four years, borrowers who applied for loan relief based on school misconduct have been ignored and gaslighted by secret policies designed to minimize relief. They waited in limbo while their applications sat in a black hole because Secretary DeVos quietly suspended resolution of applications for years. By December 2019, when the Department finally restarted issuing decisions, the number of borrowers awaiting adjudication had [swelled to more than 200,000](#), from 40,000 in January 2017. Many borrowers [waited three years or more](#) for a decision, and many continue to wait.

When the Department began issuing decisions after its lengthy pause, it unleashed a flood of “perfunctory denials” so flimsy that [a federal court described the process as “Kafkaesque”](#) and concluded “borrowers cannot possibly understand why their applications have been denied.” [Documents unveiled through litigation](#) show that the adjudication process was designed to churn out denials at [breakneck speed](#) while systematically ignoring ample evidence that would support relief. For example, [legal directives](#) made clear that while denials could be readily made by contract attorneys, “the bar for new approvals is high” and could only be approved by “a majority of the senior attorneys and the [Borrower Defense Unit] Director.” At the same time, contract attorneys were required to process [at least 5 applications per hour](#), with bonuses available for faster work, leaving little time to investigate allegations. Troublingly, the Department ignored the pleas of the legal aid community to construe *pro se* applications liberally, and instead adopted an expedient but harsh policy of automatically [denying applications for “failure to state a claim” if the borrower did not use lawyerly language](#) to specifically allege each element of a legal claim—even when available evidence demonstrates that the borrower was eligible for relief.

The process also [systematically disregarded relevant evidence of school misconduct](#). Evidence from government investigations and law enforcement findings was largely disregarded, as was the testimony of borrowers submitted under penalty of perjury. Even when hundreds of borrowers attested to the same misconduct by a single school, that corroborating evidence was disregarded as [“insufficient”](#) to prove a pattern or practice of misconduct for group relief, and was not considered when adjudicating individual applications. This policy of ignoring borrower testimony is inconsistent with the law of evidence and with the goal of getting at the truth.

To date, only a fraction of the students entitled to relief have received it. For example, although the Obama Administration identified [over 300,000](#) individuals from Corinthian who were eligible for borrower defense relief, it appears that only some [72,000](#) borrowers total—from any school—have received relief. And the Department has yet to announce any new findings supporting borrower defense approvals beyond those that were already established before January 2017.

Borrowers who have been waiting for years for relief are rightly frustrated, and want to see action now. Consider, for example, a recent tweet from Army veteran Tasha Berkhalter:

“Been waiting so long for an answer on my loan forgiveness from DOE after being taken advantage of as a Veteran from ITT Tech...why is this even a question to evaluate and review? Make it right! Remove the Loans! Give Me My Life Back!!!”¹

¹ More student stories are available at <https://predatorystudentlending.org/sweetvdevos-studentloantruth/> and <https://vetsedsuccess.org/veterans-with-pending-borrower-defense-applications-at-the-education-department/>.

Requested actions:

We call on you to promptly take action to right the wrongs of the Department over the last four years. Specifically, we urge you to:

- Provide relief to borrowers who have been failed by the broken process of the past four years, including outrageous waits and wrongful denials of relief. These students have already suffered twofold — first by being defrauded by schools that should have been removed from the federal student aid program long ago, and second by being put through a byzantine and fundamentally flawed process.
- Create a fair and efficient adjudication process for new borrower defense claims.
- Acknowledge that the individual application process, which forces students to assert legal arguments and provide extensive documentation, has prevented the most vulnerable defrauded borrowers from obtaining relief. The Department should issue group discharges without applications for borrowers who attended schools for which there is sufficient evidence of widespread misconduct.
- Take aggressive measures to more carefully safeguard Title IV funds and protect students from wrongdoing in the future. Among other things, we encourage the Department to use the many tools at its disposal to investigate open schools that are the subject of large numbers of student complaints. The Department should hold schools and executives accountable including by recouping liabilities where appropriate, increasing financial protection for taxpayers against future wrongdoing, and assessing penalties, including, if warranted, terminating schools from Title IV eligibility. We emphasize that while pursuing consequences for schools, there is no honorable reason to withhold relief to which students are entitled and which they desperately need.

We stand ready to assist you. We would be happy to provide you an opportunity to meet with defrauded students. If you have any questions or would be interested in a virtual meeting with borrowers and/or our organizations, please contact help@vetsedsuccess.org or ashafroth@nclc.org.

Sincerely,

American Association of University Women (AAUW)
American Federation of Teachers
Americans for Financial Reform Education Fund
Center for American Progress
Consumer Federation of California
Generation Progress
Housing and Economic Rights Advocates
National Association for College Admission Counseling
National Consumer Law Center (on behalf of its low-income clients)
National Education Association

National Military Family Association
Project on Predatory Student Lending, Legal Services Center of Harvard Law School
Public Counsel
Public Good Law Center
Public Law Center
Student Borrower Protection Center
Student Defense
The Education Trust
The Institute for College Access and Success (TICAS)
U.S. Coast Guard Chief Petty Officers Association & Enlisted Association
Veterans Education Success
Yan Cao, Fellow, The Century Foundation
Young Invincibles

cc: Veterans Affairs Secretary Denis McDonough