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**Testimony of Joanna Darcus, MLAC Racial Justice Fellow  
Student Loan Borrower Assistance Project at the National Consumer Law Center**

**Before the U.S. Department of Education, Washington, D.C.**

***Regarding***  
**Intent to Establish Negotiated Rulemaking Committee; Public Hearings**  
***on Borrower Defense and Gainful Employment***  
**(Docket ID ED-2017-OPE-0076)**

**July 10, 2017**

Good morning. My name is Joanna Darcus, and I am an attorney at the National Consumer Law Center. Today, I speak on behalf of our low-income clients, and in support of fully implementing the borrower defense and gainful employment regulations.

We condemn the Department's decision to delay both the borrower defense and gainful employment rules. Together, these regulations provide critical protections to students and student loan borrowers who have been ensnared by deception and false promises. These rules also serve to protect the schools that do right by students and provide high-quality education with the taxpayer dollars they receive. Unfortunately, we have not had the chance to see just what a difference strong borrower defense and gainful employment rules can make.

Stalling these rules disproportionately harms certain groups of students and student loan borrowers. Many predatory, for-profit schools target first-generation and low-income college students, students of color, veterans, and other non-traditional students. These groups represent a large share of those who stand to benefit from effective enforcement of the borrower defense and gainful employment rules. They deserve better.

Predatory, for-profit schools targeted and then ripped off our clients. Our clients are not unique. We work closely with thousands of civil legal aid, government, and private attorneys who assist clients who are similarly situated. Students and loan borrowers tend to seek out lawyers when their situations feel dire. Often, they believe they have no recourse or they have

done everything they could do on their own. Their hopes were dashed, their time was wasted, and they were unaware of further options for relief. They come to us in their distress.

Saddled with debt they cannot afford to repay, many student loan borrowers have now experienced default—and the debt collection activity that comes along with it. Private debt collection contractors make money while student loan borrowers struggle with wage garnishment and offsets of their tax refunds and Social Security benefits. Those who apply for borrower defense relief may receive respite in the form of stopped collections or forbearances, but that is not a permanent resolution. Those who are in default continue to face onerous consequences. That includes negative credit reporting which can impede their ability to obtain housing or even employment in some fields.

The Higher Education Act requires career education programs to “prepare students for gainful employment in a recognized occupation.” The gainful employment regulations were created to ensure that students do not find themselves in the same predicament as our clients. Early reports suggest that the gainful employment regulations are working well.

Yet, instead of fully implementing and enforcing the gainful employment rules, the Department of Education has chosen to focus its attention on rewriting them. Rewriting them now is a waste of taxpayer money. The Department does a disservice to students and taxpayers when it allows programs to continue to receive federal aid dollars even when those programs cannot demonstrate that their graduates land well-paying jobs that set them up to repay the debt they incurred to the federal government.

The Department has taken the same delaying approach to the borrower defense rules. Students who were defrauded or left high and dry when schools broke their promises have had the right to raise defenses to repayment of student loans for decades. But for years, the Department never saw fit to give them a process. As attorneys who represent individual student loan borrowers, we know that the absence of a process is often tantamount to denial of the right.

Our clients—and tens of thousands like them—are still waiting for the Department to review their borrower defense applications or grant relief and actually discharge their loans. This state of affairs is neither sustainable nor acceptable. Students deserve relief and they have waited too long for a process. The Department should review claims and provide relief now.

Too many schools strip students of the opportunity to take fraud and deception claims to court. They force students into secret arbitration proceedings and prevent students with similar concerns from pursuing their claims together in class action proceedings. Lawsuits create public records that can assist law enforcement and regulatory agencies when they are investigating

school practices. Delaying the borrower defense regulations will put student rights to go to court on hold. Students need their day in court now.

The borrower defense regulations also provide important updates to other statutory discharges. For example, closed school discharges are available to many students affected by such closures. Yet, historically, only a tiny fraction of eligible students obtains that relief. The provisions that make closed school discharge relief automatic after three years ensure that borrowers, who are entitled to relief, actually receive it. The regulations also provide long overdue updates to the criteria used to discharge loans when schools falsely certify their students' ability to benefit from their programs of study.

The borrower defense and gainful employment regulations offer students and borrowers both prevention and a cure for the predatory practices that some schools employ. Revising the rules wastes time and taxpayer dollars. We urge the Department to implement them fully—as written—now.

Thank you for this opportunity to provide testimony about the importance of strong borrower defense and gainful employment regulations.