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August 1, 2016

Jean-Didier Gaina
U.S. Department of Education
400 Maryland Ave. S.W.
Room 6W232B
Washington, DC 20202

Dear Mr. Gaina:

We are writing on behalf of the National Association of Independent Colleges and Universities (NAICU) regarding the Notice of Proposed Rulemaking (NPRM) on borrower defenses to repayment that was published in the Federal Register on June 16, 2016 (Docket ID ED-2015-OPE-0103). We intend this letter to complement two other comment letters we sent in conjunction with the American Council on Education and a third letter we sent in conjunction the National Association of College and University Business Officers (NACUBO).

As mentioned in all three of those letters, we support the underlying intent of the regulation to protect both students and taxpayers from fraudulent institutions. The common purpose in each of the comment letters is to ensure the Department's efforts are effectively targeted to zero in on the problem.

As part of that effort, we appreciate the distinction made in the NPRM using the contrasting outcomes of nonprofit/public institutions and those of for-profit schools as the basis for restricting the loan repayment rate disclosure to for-profit schools. We want to suggest that this variance in outcomes arises from fundamental differences in the governance structures and missions of the public and non-profit sectors versus the for-profit sector, and that these differences provide a more substantive basis for differentiating this regulation among the sectors.

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Non-profit and public institutions have governance and financial restrictions that help protect consumers that do not exist at for-profit institutions. In particular, under 34 CFR 600.2 (which mirrors the Internal Revenue Code and state nonprofit corporation law) a nonprofit institution is prohibited from distributing its assets to private individuals. This is contrary to the structure of for-profit institutions.

When a non-profit institution faces financial challenges, its trustees have no personal financial investment to protect, so are less likely to close precipitously in order to protect personal assets. As a matter of fact, non-profit trustees are obligated to act in the best interests of the institution's mission that is typically centered on the educational needs of students or a related purpose. When a rare closure does occur, such closures tend to be orderly and responsible, not precipitous, and at little cost to taxpayers.

It was this recognition of the reduced risk of precipitous closure at public institutions that led to an exemption from the ratios tests and composite score under the Financial Responsibility Standards. After two decades of experience with these standards, we know of no incidence of a precipitous closure at any traditional, non-profit institution. We suggest that this outcome arises from our non-profit governance structures, and also provides an additional justification to those outlined in the NACUBO letter for decoupling the financial responsibility triggers from the NPRM as they apply to nonprofits.

Thank you for the opportunity to comment on this proposal. We appreciate your consideration of our concerns.

Sincerely,

David L. Warren
President