## January 14, 2020

### ATTORNEY GENERAL RAOUL SUPPORTS CONGRESSIONAL EFFORT TO REJECT RULE THAT WOULD HURT STUDENT BORROWERS

***Raoul, 19 AGs Urge Disapproval of Department of Education's 2019 Borrower Defense Rule***

**Chicago** — Attorney General Kwame Raoul, as part of a coalition of 20 attorneys general, today supported congressional efforts to reject the U.S. Department of Education's 2019 rewrite of the Borrower Defense to Repayment Rule. The department's new version of the rule fails to protect students and taxpayers from the misconduct of unscrupulous schools.

In a letter to Congress, Raoul and the attorneys general commended efforts to reject the Department of Education's (DOE) 2019 Borrower Defense Rule pursuant to a resolution of disapproval under the Congressional Review Act.

"Student borrowers should have a clear and convenient method to discharge their loans from schools that take advantage of their students," Raoul said. "My office has and will continue to investigate and protect students from institutions that use predatory methods to exploit borrowers."

The DOE's new rule would rescind and replace its comprehensive 2016 Borrower Defense Rule, which involved a thorough rulemaking process addressing borrower defense and financial responsibility, and included input by numerous schools, stakeholders, and public commenters. The 2016 Borrower Defense Rule provided defrauded borrowers with a transparent process to seek debt relief and protected taxpayers by holding accountable schools that engage in misconduct.

According to Raoul and the coalition, the final rule provides no realistic prospect for borrowers to discharge their loans when they have been defrauded by predatory for-profit schools, and it eliminates financial responsibility requirements for those same institutions. Raoul and the attorneys general argue the DOE's new rule provides an unworkable process for defrauded students to obtain loan relief and will do nothing to deter and hold accountable schools that cheat their students. Instead of ensuring that borrowers are not bearing the costs of institutional misconduct, the department's new rule empowers predatory for-profit schools and cuts off relief to victimized students.

The Illinois Attorney General's office has long been a national leader in investigating and enforcing consumer protection violations in the higher education field, including discharge application pursuant to the borrower defense to repayment rule. In November 2019, Attorney General Raoul announced that over $10 million in student loans for former Illinois Institute of Art and Colorado Art Institute students would be discharged by the Department of Education following an application by Colorado and Illinois under the 2016 Borrower Defense to Repayment Rule. The department's 2019 version of the rule would not allow similar group applications.

Recently, Attorney General Raoul has overseen the rollout of the state's first Student Loan Ombudsman, a position created by the Student Loan Servicing Rights Act, to provide resources for student borrowers who are struggling to make student loan payments. Attorney General Raoul has also advocated for protections for veterans in higher education, joining a coalition of state attorneys general calling on the DOE last year to automatically discharge student loans for totally and permanently disabled veterans. In August 2019, the DOE was ordered to create a process to automatically discharge the loans.

Student borrowers who have questions or are in need of assistance can call the Attorney General's Student Loan Helpline at 1-800-455-2456. Borrowers can also file complaints on the Attorney General's website.

Joining Raoul in submitting the letter are attorneys general of California, Delaware, the District of Columbia, Hawaii, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Vermont, Virginia, Washington.

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January 14, 2020

Senator Dick Durbin
711 Hart Senate Office Building
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Representative Susie Lee
522 Cannon HOB
Washington, DC 20515

Submitted by electronic mail

Dear Senator Durbin and Representative Lee,

We, the undersigned Attorneys General of Massachusetts, California, Delaware, the District of Columbia, Hawai'i, Illinois, Iowa, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Vermont, Virginia, and Washington write to express our support for the resolution of disapproval that you have introduced regarding the U.S. Department of Education's ("Department") 2019 Borrower Defense Rule ("2019 Rule") pursuant to the Congressional Review Act. In issuing the 2019 Rule, the Department has abdicated its Congressionally-mandated responsibility to protect students and taxpayers from the misconduct of unscrupulous schools. The rule provides no realistic prospect for borrowers to discharge their loans when they have been defrauded by predatory for-profit schools, and it eliminates financial responsibility requirements for those same institutions. If this rule goes into effect, the result will be disastrous for students while providing a windfall to abusive schools.

The 2019 Rule squanders and reverses recent progress the Department has made in protecting students from fraud and abuse. Three years ago, the Department completed a thorough rulemaking process addressing borrower defense and financial responsibility, in which the views of numerous schools, stakeholders, and public commenters were considered and incorporated into a comprehensive set of regulations. The regulations, promulgated by the Department in November 2016 ("2016 Rule"), made substantial progress toward achieving the Department's then-stated goal of providing defrauded borrowers with a consistent, clear, fair, and transparent process to seek debt relief. At the same time, the 2016 Rule protected taxpayers by holding schools accountable that engage in misconduct and ensuring that financially troubled schools provide the government with protection against the risks they create.

The Department's new rule would simply rescind and replace its 2016 Rule, reversing all of its enhanced protections for students and its accountability measures for for-profit schools. The

Department's 2019 Rule provides an entirely unfair and unworkable process for defrauded students to obtain loan relief and will do nothing to deter and hold accountable schools that cheat their students. Among its numerous flaws, the Department's new rule places insurmountable evidentiary burdens on student borrowers with meritorious claims. The rule requires student borrowers to prove intentional or reckless misconduct on the part of their schools, an extraordinarily demanding standard not consistent with state laws governing liability for unfair and deceptive conduct. Moreover, even where a school has intentionally or recklessly harmed its students, it is difficult to imagine how students would be able to obtain the evidence necessary to prove intent or recklessness for an administrative application to the Department. The rule also inappropriately requires student borrowers to prove financial harm beyond the intrinsic harm caused by incurring federal student loan debt as a result of fraud, and establishes a three-year time bar on borrower defense claims, even though students typically do not learn until years later that they were defrauded by their schools. Compounding these obstacles, the rule arbitrarily eliminates the process by which relief can be sought on a group level, permitting those schools that have committed the most egregious and systemic misconduct to benefit from their wrongdoing at the expense of borrowers with meritorious claims who are unaware of or unable to access relief.

We are uniquely well-situated to understand the devastating effects that the 2019 Rule would have on the lives of student borrowers and their families. State attorneys general serve an important role in the regulation of private, postsecondary institutions. Our investigations and enforcement actions have repeatedly revealed that numerous for-profit schools have deceived and defrauded students, and employed other unlawful tactics to line their coffers with federal student-loan funds. We have witnessed firsthand the heartbreaking devastation to borrowers and their families. Recently, for example, state attorneys general played a critical role in uncovering widespread misconduct at Career Education Corporation, Education Management Corporation, the Art Institute and Argosy schools operated by the Dream Center, ITT Technical Institute, Corinthian Colleges, American Career Institute and others, and then working with the Department to secure borrower-defense relief for tens of thousands of defrauded students. Through this work, we have spoken with numerous students who, while seeking new opportunities for themselves and their families, were lured into programs with the promise of employment opportunities and higher earnings, only to be left with little to show for their efforts aside from unaffordable debt.

A robust and fair borrower defense rule is critical for ensuring that student borrowers and taxpayers are not left bearing the costs of institutional misconduct. The Department's new rule instead empowers predatory for-profit schools and cuts off relief to victimized students. During the comment period on the 2019 Rule, we submitted these and other objections to the Department. Rather than engaging with our offices, the Department ignored our comments and left our concerns unaddressed. We commend and support your efforts to disapprove the 2019 Rule to protect students and taxpayers. Congress must hold predatory institutions accountable for their misconduct and provide relief to defrauded student borrowers and, by enacting your resolution of disapproval, ensure that the 2016 Rule remains the operative borrower defense regulation.

Sincerely,

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Massachusetts Attorney General

Xavier Becerra
California Attorney General

Kathleen Jennings
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