

Statement of National Consumer Law Center Attorney and Negotiator Robyn Smith on U.S. Department of Education's Harmful Departure from Consensus on State Authorization Distance Education Regulations

FOR IMMEDIATE RELEASE: November 1, 2019

National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org) or (617) 542-8010

Boston – On October 31, 2019, the U.S. Department of Education issued final rules, effective July 1, 2020, that will erode states' rights to enforce consumer protections applicable to for-profit online education colleges. The rules will have a disastrous effect on students, especially low-income and other vulnerable students.

Following is a statement by Robyn Smith, of counsel to the National Consumer Law Center and Senior Attorney for the Legal Aid Foundation of Los Angeles, who was the lead negotiator representing civil legal services organizations on the Department's negotiations rulemaking committee.

"I am outraged by the final regulations. The Department of Education did not give sufficient voice for consumers and students on the negotiating committee. It stacked the committee with industry negotiators from schools and accreditation agencies. It vetoed the participation of states attorneys general, even though the committee was considering regulations concerning states' rights to take action against unscrupulous online for-profit schools. It departed from long-time rules under which it provided factual justification for the regulations it proposed before the proposals were discussed by the committee. In addition, the Department did not respond to *any* of the data requests regarding accreditation and distance education submitted by myself and the legal services negotiators who served on the subcommittees.

"Despite this, I negotiated in good faith. Although I faced opposition and sometimes hostility from some committee members, I stood firm on the regulations most important to the low-income students I represent – people of color, women, first generation students, veterans, working parents, and other low-income people who are most often targeted by deceptive for-profit schools. The most crucial regulation was enacted by the Department itself in November 2016. This regulation ensured that states retain their right to protect their residents from predatory, out-of-state for-profit colleges offering distance education, even when the states sign onto interstate reciprocity agreements.

"I did my best to reduce the harmfulness of the Department's accrediting agency proposals. Because I counted the committee's agreement to retain the 2016 distance education regulation as a major concession, and under tremendous pressure from the rest of the committee, I eventually agreed to the weakening of accrediting agency standards. I did so on the premise that the Department was negotiating in good faith and that it would not depart from consensus language without a very strong factual justification for doing so. I would not have agreed to the Department's proposed set of rules otherwise.

“Now, the Education Department has reneged on its “historical consensus” and changed the critical distance education regulation in the final rules without sufficient factual justification. It amended the regulation to allow schools to offer distance education under reciprocity agreements that prohibit states from enforcing the state laws specifically enacted to prevent for-profit school abuses. In doing so, it ignored the overwhelming evidence that for-profit schools, including distance education schools, often engage in widespread and costly fraud harming both students and taxpayers. As a result, the Department has limited the ability of states to protect millions of students from predatory schools that waste students’ time and money while loading them with unaffordable debt.”

Related Materials

Comments to the U.S. Education Department re: its proposed rules on Recognition of Accrediting Agencies and Recognition Procedures for State Agencies, July 11, 2019:

Comments opposing the Department’s initial rulemaking, September 14, 2018

Issue brief: Wake-Up Call to State Governments: Protect Online Education Students from For-Profit School Fraud, December 2015

Report: Ensuring Educational Integrity: 10 Steps to Improve State Oversight of For-Profit Schools, June 2014