September 20, 2017

Ms. Hilary Malawer
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

RE: Docket ID ED-2017-OS-0074-0001 Evaluation of Existing Regulations (82 FR 28431):

Young Invincibles is a national nonpartisan organization dedicated to expanding economic opportunity for young people and amplifying their voices in the political process. We are committed to preserving and expanding affordable access to higher education because it is a critical path to economic security for our generation. We are also deeply concerned about the Department of Education's plan to roll back a wide range of regulations. Previous administrations created many of the rules to protect students and taxpayers from predatory businesses, poorly performing schools, and unscrupulous servicers. The Department of Education provides billions in financial aid every year. Done right, this is an essential ladder to opportunity for millions of students and expands economic growth for the nation as a whole. However, without common sense rules of the road, taxpayers risk wasting billions on schools that do not help students succeed, and millions of borrowers end up with debt they can never afford to repay.

YI urges the Department in the strongest possible terms to step back from weakening or eliminating key consumer protections and reiterate our support for the existing gainful employment, borrower defense, and incentive compensation rules. Undermining these regulations benefits the worst performing and most predatory schools at the expense of student interests. If the Department is serious about improving student prospects it should look elsewhere to make changes. A good start would be the simplification and improvement of the FAFSA verification process. The Department should also recreate two memoranda of understanding (MOU) with the Consumer Financial Protection Bureau (CFPB) to improve borrower experiences with student loans. Both options are far more in line with the Department's mission and goals.

The Department of Education Should Put Students and Taxpayers First

The Department of Education has an important role to play to ensure that students and families can use limited federal aid on a quality education. It also owes a responsibility to protect taxpayer investments in the federal financial aid from unscrupulous actors who obtain those resources through misrepresentations or outright fraud. The necessary checks to achieve these essential goals save billions at relatively little administrative cost. The Departments' attempt to weaken or eliminate a number of consumer protections risks abdicating its fundamental mission and responsibilities to students and taxpayers.

Eliminating administrative red tape is an appealing talking point, but calls for wholesale deregulation have deleterious consequences in practice. Higher education is a major financial investment, often with little information available about educational quality or job market outcomes upon graduation. This is unlike many other major investments such as taking out a loan to buy a car or a mortgage on a house. The Department of Education provides some of that information by lending a seal of credibility to institutions that where students can go to receive federal student aid.[1] Many of the consumer protections the Department has put in place including those we discuss below ensure minimum standards of behavior among institutions receiving federal resources. Students count on these protections. It is essential that the public can rely on the federal government to ensure that market actors offer a legitimate educational product and obey basic rules regarding what they tell students about how much they charge, job placement, and federal financial aid.

Failing to exercise proper oversight of the federal financial aid system is incredibly expensive. Corinthian Colleges received $3.5 billion in federal loans over the last five years of its existence despite dismal educational outcomes. The 152 for-profit colleges that have been investigated by states and the federal government over the last few years received $8.1 billion in federal aid in 2014-15 alone.[2] Taxpayers help sustain our higher education system by supplying around $175 billion in federal aid, and that money needs to go where it maximizes access, affordability, completion and quality.[3]

Finally, data suggests that these rules are fairly cheap to enforce. A comprehensive regulatory burden study conducted by Vanderbilt University found that financial aid compliance cost schools very little. In fact, across 13 institutions surveyed by Vanderbilt, financial aid compliance represented just 0.3 percent of non-research expenditures.[4] Regional accreditation costs, which the Department cannot control, accounted for 0.5 percent.[5] Just 3.6 percent of costs were for higher education issues exclusive of accreditation.[6] 80 percent of the federal compliance costs identified at Vanderbilt were related to the university's research funding, for which institutions receive generous overhead allocations.[7] In other words, while the Department could save pennies on the dollar in administrative costs for institutions, it could put student economic security and billions of taxpayers dollars at risk. Those priorities our out of line with its mission and responsibility to students and taxpayers.

Gainful Employment, Borrower Defense, and Incentive Compensation

Beyond expressing our strong general opposition to misguided deregulation attempts, YI supports several existing administrative regulations we discuss in detail here. These include the gainful employment, borrower defense, and incentive compensation rules. The Department should enforce these regulations and immediately halt any undertakings to delay, weaken, or eliminate those rules.

As indicated in our previous comment, before issuing new regulations in this area, the Department of Education amassed a strong pool of evidence indicating that many for-profit colleges were dubiously profiting off of federal student aid without providing quality education that advanced graduates' career opportunities. A series of reports and investigations completed over the last 6 years outlined the following issues:

- The Senate HELP Committee found that for-profit education companies enroll roughly 10 percent of students nationwide, but despite this, they receive 25 percent of Pell Grants and Stafford Loan dollars and account for *47 percent of all federal student loan defaults.*[8]
- The Education Trust found that most for-profit institutions require students with family incomes less than $30,000 to contribute more than 100 percent of their average household income toward college costs and offer students a less than one-in-four chance at graduating.[9]
- The College Board found that students who earned bachelor's degrees at for-profit colleges had, on average, far more debt ($31,000) than students who graduated from public ($8000) and private non-profit ($17,000) institutions.[10]
- The Department of Education stated in 2014 that 72 percent of for-profit college graduates earn less than those with just a high school diploma.[11]

Despite this grim picture, over the past few years, we have seen positive movement within the for-profit sector to improve the quality of the for-profit college market, spurred in part by the Department taking these problems seriously and promulgating the gainful employment rule. The rule has prompted improvements: Out of the over 500 career education programs flagged under the first year of applying the gainful employment rule, over 300 have already been shut down by the institution offering them.[12] Many failing programs were at schools we already know were deceiving students and have closed like ITT

Tech[13] and Westwood University[14], sparing untold numbers of students from wasting their limited federal financial aid on worthless credentials.

Additionally, the rule has not had the catastrophic impact predicted by the for-profit industry. Approximately 75% of all programs passed the debt to earnings ratios prescribed by the rule, and around 90% of colleges with career education programs had no failing programs at all, including for-profit chains like Strayer University, Capella University, and several others.[15] While the rule has had positive effects on the for-profit higher education market, it is also important to note that the majority of programs subject to gainful employment Rule are at public and private non-profit institutions. In fact, career education programs from Harvard and Johns Hopkins also failed the standards outlined by the rule, indicating that high debt programs with limited earning potential will be monitored regardless of sector.[16]

While these developments are promising, there are still several schools operating various programs that failed the first round of the rule and are saddling students with debt that is more than double the average amount of annual wages earned by participants in that specific program.[17] Students and taxpayers cannot rely on the unalloyed good will of those operating career education programs, and delaying, weakening, or eliminating the rule will let them off the hook. The accountability measures within the rule must remain in place to bar ineffective and predatory programs from operating and prompt the improvements like those we have seen so far.

Equally key to supplementing the protections granted students and taxpayers by the gainful employment Rule is the more recently finalized borrower defense Rule. The borrower defense Rule creates clearer processes and strengthens protections for students who have been misled and are looking to get back on track toward their goal of obtaining higher education. By delaying enforcement and opening a negotiated rulemaking to change the rule, the Department allows schools to continue subjecting defrauded students to mandatory arbitration clauses and an opaque application process, both of which burden the exercise of their statutory right to have their loans forgiven. The delay also hinders the ability of the Department to hold accountable schools that misrepresent the benefits of their educational programs and the exact nature of financial aid provided to students. Delaying the rule will also eliminate notices given to students attending, or considering attending, schools that have been accused of illegal behavior by various government agencies.

The need to enforce the borrower defense rule can also be seen in the ponderously slow discharge process that has led to tens of thousands of students waiting anxiously as promises to discharge their debt remain unfulfilled and applications that have been open for years go unresolved. The Department should be putting its weight and energy behind granting individual discharge applications and issuing group discharges wherever justified, not embarking on another set of negotiated rulemakings that will yield uncertainty for students and taxpayers at best, and denude them of essential protections at worst.

The best way for the Department to ensure accountability and transparency for schools invested in by individual students and the federal taxpayer is to effectively enforce these rules as constructed. Over 50 organizations working on behalf of students, consumers, veterans, active service members, faculty and staff, civil rights, and college access support the rules[18], as well as 20 state Attorneys General[19], and dozens of members of Congress.[20] Furthermore, 78 percent of Americans say they support loan relief for borrowers whose schools provided deceptive information about their programs or outcomes.[21] These rules, after years of development and careful consideration by Department officials and stakeholders at every level, should be given the chance to be fully implemented.

Finally, part of the "program participation agreement" rule, also known as "incentive compensation," is an important rule to remove financial incentives for predatory recruiting by school employees. The rule prevents colleges from paying bonuses or other financial rewards to recruiters based on how many students they enroll. In the years when the rule was relaxed, one college ran "boiler rooms" to maximize their chances of enrolling students, regardless of their chance of succeeding at the school or ability to pay.[22] The now defunct ITT Tech also became famous for using the "pain funnel", a sales technique whereby the prospective student was made to feel worse and worse about their failure to solve problems they had encountered in their life through a series of questions, finally resulting in what one trainer described as students being brought to "their inner child, an emotional place intended to have the prospect say yes I will enroll."[23] These tactics, and other misrepresentations about job placement rates, ability to transfer credits, and other enticements, are unacceptable and extremely damaging to a student's ability to select the best school for them and ultimately achieve a college credential. It is crucial to leave the current incentive compensation ban in place to help prevent this kind of unscrupulous behavior.

Simplify FAFSA Verification and Create new memoranda of understanding with the CFPB

Instead of focusing on rolling back the student and taxpayer protections described above, the Department should turn its attention to two areas where its action could improve the lives of students and families. YI recommends that the Department take steps to simplify the FAFSA verification process and enter back into Memorandums of Understanding with the Consumer Financial Protection Bureau to more effectively share information and protect student loan borrowers.

An area where the Department can proactively act to improve higher education access would be to simplify and streamline the FAFSA verification process. The current process is unnecessarily burdensome to students and families applying for aid. Currently, verification acts as a barrier to Pell-eligible students actually receiving Pell. 78 percent of Pell-eligible students not selected for verification received a Pell grant, while only 56 percent of Pell-eligible students selected for verification ultimately received a Pell Grant.[24] Additionally, Pell-eligible students made up a staggering 98 percent of all students flagged for verification in 2014-2015.[25]

The Department should review the entire verification process and adjust the filters used to prevent the disproportionate targeting of Pell-eligible students and families. This can be accomplished by allowing those that did not have to file a tax return to not have to prove that they did not do so, as well as letting students and families use copies of their tax return instead of having to formally acquire an official tax transcript. These changes can dramatically improve the process that students rely upon to receive essential financial aid, and free up financial aid professionals to counsel students on the different types of aid available to them and how to plan to cover their expenses over the course of their education.

Additionally, the Department of Education decided recently to terminate two memoranda of understanding between itself and the CFPB.[26] These agreements allowed for both agencies to collaborate on a host of issues, including the resolution of complaints from student borrowers in relation to their federal or private student loans and the joint oversight of student loan servicers. The Department's decision to terminate those MOU is concerning to advocates and student borrowers helped by both the CFPB and the Department over the past several years. In fact, the CPFB had resolved nearly 20,000 student loan complaints as of the beginning of last month, in keeping with language in Dodd-Frank that required the Department and the CFPB to enter into a MOU to "ensure coordination in providing assistance to and serv[e] borrowers seeking to resolve complaints related to their private or education or Federal student loans." As such, the Department risks non-compliance with that statutory provision if there is no MOU in place, and should meet with the CFPB to determine the parameters for a new MOU as soon as possible to ensure borrower complaints are serviced and proper oversight of student loan servicers is effectuated.

<u>Conclusion</u>

The Department of Education should must put protecting students and families first as it moves forward with its work. Rules like gainful employment, borrower defense, and incentive compensation should be preserved, not eroded. Additionally, the Department should improve the FAFSA verification process to the benefit of student and families and re-develop its relationship with the CFPB to hold student loan servicers accountable. Young Invincibles looks forward to continuing to share our perspective on these and other issues of importance in higher education in the months and years to come.

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[1] We acknowledge that the accreditation system also plays a role in ensuring educational quality, but is outside the scope of this comment. From conversations in student roundtables and stories we know that students perceive the seal of the Department of Education as a mark of credibility in its own right.

[2] Patricia Cohen, "For-Profit Colleges Accused of Fraud Still Receive U.S. Funds" *New York Times*, October 12, 2015, https://www.nytimes.com/2015/10/13/business/for-profit-colleges-accused-of-fraud-still-receive-us-funds.html.

[3] American Council of Trustees and Alumni, "Accreditation: A Cal to Action for Trustees," 1, https://www.goacta.org/images/download/accreditation_guide.pdf.

[4] Ben Miller, "The Red Tape Ruse," *U.S. News & World Report,* February 11, 2016, https://www.usnews.com/opinion/knowledge-bank/articles/2016-02-11/colleges-arent-being-burdened-by-red-tape.

[5] Vanderbilt University, The Cost of Federal Regulatory Compliance in Higher Education: A Multi-Institutional Study, October 2015, https://news.vanderbilt.edu/files/Regulatory-Compliance-Report-Final.pdf. Vanderbilt reports that $14 million of compliance costs are for financial aid and accreditation, and that accreditation represents 6 percent of the $146 million in total costs. That means financial aid represents 5.25 million, or 3.6 percent of the total.

[6] Ibid.

[7] "Fact Sheet: An Assessment of the Cost of Federal Regulatory Compliance at Vanderbilt University, https://news.vanderbilt.edu/files/2015-VU-CRC-Fact-Sheet.pdf; Andy Thomason, Vanderbilt Releases More Information on Elusive Red-Tape Study," *Chronicle of Higher Education*, July 31, 2015, http://www.chronicle.com/blogs/ticker/vanderbilt-releases-more-information-on-elusive-red-tape-study/102661.

[8] U.S. Senate Health, Education, Labor and Pensions Committee, *For Profit Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, July 30, 2012, 3, http://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf.

[9] The Education Trust, *Priced Out: How the Wrong Financial-Aid Policies Hurt Low-Income Students*, 7, http://www.edtrust.org/sites/edtrust.org/files/PricedOutFINAL.pdf.

[10] The College Board, Analysis of NPSAS:08 in Trends in Student Aid, 2009.

[11] Program Integrity: Gainful Employment 600-668 Office of Postsecondary Education, Department of Education; Notice of proposed rulemaking, 29 Federal Register 57 (25 March 2014), pp. 16535.

[12] Kevin Carey, "DeVos is Discarding College Policies New Evidence Shows Are Effective," *New York Times*, June 30, 2017, https://mobile.nytimes.com/2017/06/30/upshot/new-evidence-shows-devos-is-discarding-college-policies-that-are-effective.html?referer=https://t.co/SgHCSDWtbr?amp=1.

[13] David Halperin, "New Student Lawsuit Details ITT Scam," Huffington Post, January 3, 2017, http://www.huffingtonpost.com/davidhalperin/new-student-lawsuit-detai_b_13941516.html.

[14] Jason Knowles and Ann Pistone, "Westwood College to forgive $15M in loans to criminal justice students," *ABC7Chicago*, November 4, 2015, http://abc7chicago.com/education/westwood-college-to-forgive-$15m-in-student-loans/1068354/.

[15] Pauline Abernathy, "Statement on Implementation of Gainful Employment Regulation," *The Institute for College Access and Success*, January 9, 2017, http://ticas.org/sites/default/files/pub_files/ticas_stmt_on_ge_rates.pdf; Pauline Abernathy, "What Does a Failing College Look Like?", *The Institute for College Access and Success*, March 7, 2017, http://ticas.org/blog/what-does-failing-program-look.

[16] Robert Kelchen, "Highlights from the Gainful Employment Data Release," January 10, 2017, https://robertkelchen.com/2017/01/10/highlights-from-the-gainful-employment-data-release/; Fernanda Zamudio-

Suaréz, “Here Are the Programs That Failed the Gainful-Employment Rule”, *Chronicle of Higher Education*, January 9, 2017, http://www.chronicle.com/article/Here-Are-the-Programs-That/238851.

[17] Pauline Abernathy, “What Does a Failing College Look Like?”, *The Institute for College Access and Success*, March 7, 2017, http://ticas.org/blog/what-does-failing-program-look.

[18] “Coalition Letter to Member of Congress”, March 22, 2017, http://www.protectstudentsandtaxpayers.org/wp-content/uploads/2017/03/Coalition-Letter-on-GE-BD-IC.3.21.17.pdf.

[19] Illinois Attorney General Lisa Madigan, et al., “How For-profit Schools Have Harmed Student Borrowers: the Need for the Gainful Employment Rule, Vigorous Federal Oversight of Accreditors, and the Borrower Defense to Repayment Rule”, February 22, 2017, http://www.protectstudentsandtaxpayers.org/wp-content/uploads/2017/03/Multistate-letter-on-for-profits-Feb-2017.pdf.

[20] Patty Murray, et al., “Letter Opposing the Delay of Borrower Defense”, June 29, 2017, https://www.help.senate.gov/imo/media/doc/062917%20DeVos%20BD%20Delay%20Letter.pdf.

[21] Rachel Fishman, “A New World for Profits,” *New America Foundation*, November 23, 2016, https://www.newamerica.org/education-policy/edcentral/new-world-for-profits/.

[22] Harter, Secrest & Emery LLP, “U.S. Department of Education Reinterprets Incentive Compensation Ban,” December 10, 2015, https://www.hselaw.com/news-and-information/legalcurrents/900-u-s-department-of-education-reinterprets-incentive-compensation-ban; Chris Kirkham, “For-profit college will pay $95.5 million to settle 'boiler room' recruiting case,” *The Los Angeles Times*, November 16, 2015, http://www.latimes.com/business/la-fi-for-profit-college-settlement-20151116-story.html.

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[25] Ibid.

[26] Andrew Kreighbaum, “Education Dept. Ends Partnership With CFPB,” *Inside Higher Ed*, September 5, 2017, https://www.insidehighered.com/news/2017/09/05/education-dept-rebukes-cfpb-overreach-kills-information-sharing-agreement.