



DEPARTMENT OF THE ATTORNEY GENERAL

DAVID Y. IGE
GOVERNOR

CLARE E. CONNORS
ATTORNEY GENERAL

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Hawaii Attorney General Files Suit Against Secretary DeVos and U.S. Department of Education for Unlawfully Repealing Critical “Borrower Defense” Regulations

HONOLULU – Hawaii Attorney General Clare E. Connors joined a coalition of 23 attorneys general in a lawsuit against Secretary of Education Betsy DeVos and the U.S. Department of Education (ED) challenging their action to unlawfully repeal the 2016 “borrower defense” regulations and replace them with regulations that do nothing more than benefit predatory for-profit schools at the expense of defrauded students. The 2016 borrower defense regulations established critical protections for student-borrowers who have been misled or defrauded by predatory schools by providing borrowers an efficient pathway to get relief from their federal student loans, and creating robust deterrents for schools that engage in predatory conduct. Under the Trump Administration, ED repealed the 2016 regulations and replaced them with new regulations that make it virtually impossible for victimized students to obtain financial relief, while rolling back oversight over unscrupulous and predatory schools. In the lawsuit, the coalition argues that ED’s decision to repeal and replace the Obama-era regulations violates the Administrative Procedure Act (APA), and asks the court to vacate ED’s new regulations.

“The US DOE’s new regulations are not consistent with the Higher Education Act and are not the product of reasoned decision making,” said Attorney General Connors. “The new regulations do little to protect individual student borrowers here in Hawaii.”

The Higher Education Act requires that the Secretary of Education issue regulations that provide for a meaningful process for students to obtain federal student loan relief where their schools have engaged in misconduct. Consistent with this Congressional mandate, in November 2016, ED issued new borrower defense regulations that offered meaningful protections to defrauded student borrowers. The regulations built on lessons learned from the collapse of Corinthian Colleges – a predatory, for-profit chain of colleges that left tens of thousands of students across the nation in need of relief. Specifically, the 2016 regulations provided misled and defrauded borrowers access to a consistent, clear, fair, and transparent process to seek debt relief, and also protected taxpayers by holding schools that engage in misconduct

accountable. The regulations also ensured that financially troubled schools provide financial protection to the government to ensure that, if they fail, taxpayers would not be left holding the bag.

Despite these new protections, upon taking office Secretary DeVos sided with for-profit schools and demonstrated public hostility to the 2016 borrower defense process. Just two weeks before the 2016 borrower-defense regulations were set to go into effect in 2017, the Trump Administration unlawfully delayed them. A coalition of 20 attorneys general, including AG Connors, successfully sued Secretary DeVos over the illegal delay. In November 2019, after the Secretary's failed delay attempts, ED issued replacement borrower defense regulations that put the interests of predatory schools ahead of student protections. The 2019 borrower defense regulations created a process designed to thwart relief for defrauded students and shield predatory schools from being held accountable.

In the lawsuit, filed in the U.S. District Court for the Northern District of California, the coalition argues that ED's repeal and replacement of the 2016 borrower defense regulations violates the APA because:

- **It is arbitrary and capricious.** The decision to repeal and replace the 2016 rule was not the product of reasoned decision making as required by the APA. In explaining its rationale for the new regulations, ED rejected prior agency determinations going back decades without explanation, grounded its analysis in fundamental misunderstandings, failed to consider alternatives, and disregarded facts and circumstances.
- **It does not comply with Congress's requirement that the Secretary implement a meaningful process for borrowers to obtain relief.** Instead, it establishes an illusory process that makes it practically impossible for students to qualify for borrower defense relief. ED admits as much by acknowledging that only around 4 percent of borrowers eligible for relief will actually get relief.

In filing this lawsuit, Attorney General Connors joins the attorneys general of California, Massachusetts, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Wisconsin, and the District of Columbia.

A copy of the complaint is available [here](#).

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For more information, contact:

Krishna F. Jayaram
Special Assistant to the Attorney General
(808) 586-1284
Email: atg.pio@hawaii.gov
Web: <http://ag.hawaii.gov>
Twitter: @ATGHgov