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September 6, 2018

The Honorable Betsy DeVos
Secretary of Education
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue SW
Washington, DC 20202

**Re: Intent to Establish Negotiated Rulemaking Committee, 83 Fed. Reg. 36,814
(July 31, 2018); Docket ID ED-2018-OPE-0076**

Dear Secretary DeVos:

Thank you for the opportunity to comment on the Department's recent notice that it will establish a negotiated rulemaking committee to address the agency's regulations on Title IV, Higher Education Act programs. Public Citizen submits these comments in support of amending the TEACH Grant program regulations at the earliest possible date. However, we urge the Department to take a more comprehensive approach than the notice suggests it might, including by addressing previous erroneous conversions and taking steps to prevent future errors by the Department and its servicers that contribute to conversions. We also urge the Department to address the TEACH Grant program through a negotiated rulemaking committee that is separate from, but working at the same time as, the committee(s) to consider other issues identified in the Department's notice. A separate committee is necessary to ensure that the problem of grant-to-loan conversions receives the attention and expertise necessary to address it.

1. The Department's plan to simplify and clarify the TEACH program requirements is critically important.

Public Citizen strongly supports the Department's plan to address the "simplification and clarification of program requirements to minimize inadvertent grant-to-loan conversions and to improve outcomes for" TEACH Grant recipients.¹ In 2015, the U.S. Government Accountability Office (GAO) examined the TEACH Grant program and found that many teachers misunderstood the grant or certification requirements.² The Department's recent study of the program came to a similar conclusion. It found that 19 percent of the surveyed recipients in loan status reported that their grants had converted to loans because they did not know about the annual certification

¹ 83 Fed. Reg. 36,814, 36,815 (July 31, 2018).

² See GAO, Higher Education: Better Management of Federal Grant and Loan Forgiveness Programs for Teachers Needed to Improve Participant Outcomes 27 (2015) (hereinafter, GAO Report), <http://www.gao.gov/assets/670/668634.pdf>.

process, and another 13 percent indicated that their conversions were due to challenges related to annual certification.³

Moreover, many teachers have had their grants converted to loans for what are, at most, minor mistakes in the annual certification process, such as narrowly missed deadlines, even though the teachers *are* meeting the program’s service requirements to work in covered schools and positions. As NPR recently reported, for example, a teacher in Tennessee had her TEACH Grants converted to more than \$22,000 in federal loans after FedLoan, the Department’s current servicer of the program, said it got her certification paperwork late; she says she mailed the documentation in advance of the deadline.⁴ The Department’s own findings suggest there are many others like her. Of particular concern, a recent study by the Department found that 32 percent of TEACH Grant recipients surveyed whose grants had converted to loans said that they were likely or very likely to meet the program’s service requirements or had already done so.⁵

The Department’s immediate attention to conversions that occur despite a recipient’s satisfaction of her service requirement in a covered position and school is critical to ensuring that the program fulfills its purpose: encouraging teachers to commit to work in high-need fields in low-income schools and districts. The Department must develop rules that eliminate unnecessary steps in and take a flexible approach to the certification process, ensure that any consequences for non-compliance with the certification requirements are proportionate to the nature of the errors, and provide clearer information to teachers of what is expected.

The Department should reassess, for example, its current regulation requiring grant-to-loan conversions if recipients, after completing their course of study, do not “actively confirm to the Secretary, at least annually, [their] intention to satisfy the agreement to serve.”⁶ TEACH Grant recipients must teach in covered positions for four of the eight years after they graduate from their course of study, and need not fulfill their service requirement in consecutive years. The practical effect of the Department’s regulation, then, is to require annual certification even in years when a teacher is not asking for service credit related to those years. This requirement has no basis in the statute authorizing the TEACH Grant program, which provides only that a recipient must agree to “submit evidence of [covered] employment in the form of a certification by” her school’s chief administrative officer “upon completion of each year of [covered] service.”⁷

³ Department of Education, Study of the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program 14 (2018) (hereinafter, TEACH Grant Study), <https://www2.ed.gov/rschstat/eval/highered/teach-grant/final-report.pdf>.

⁴ See Chris Arnold & Cory Turner, *Education Department Launches ‘Top-to-Bottom’ Review of Teachers’ Grant Program*, NPR, May 22, 2018, <https://www.npr.org/sections/ed/2018/05/22/605248637/education-department-launches-top-to-bottom-review-of-teachers-grant-program>; see also, e.g., Cory Turner, Chris Arnold, & Clare Lombardo, *Teachers Share Anger, Frustration Over Grants Turned Into Loans*, NPR, Apr. 23, 2018, <https://www.npr.org/sections/ed/2018/04/23/600949682/teachers-share-anger-frustration-over-grants-turned-into-loans>.

⁵ Department of Education, TEACH Grant Study 9.

⁶ 34 C.F.R. § 686.43(a)(4).

⁷ 20 U.S.C. § 1070g-2(b)(1)(D).

2. The rulemaking should provide robust protections and solutions for teachers whose grants have been or may be converted to loans erroneously.

We urge the Department to take a more comprehensive approach to addressing the problem of grant-to-loan conversions than the notice of intent to establish a negotiated rulemaking suggests. The Department's notice of intent refers to problematic conversions as "inadvertent,"⁸ but many thousands of these conversions have occurred due to errors of the Department and its servicers. For example, GAO stated in 2015 that the Department and its servicer had discovered more than 2,200 grants that were erroneously converted into loans.⁹ GAO stated that roughly one in five of these erroneous conversions was due to a recipient's misunderstanding of the grant or certification requirements *or* to the servicer's provision of "inaccurate, unclear, confusing, or misleading explanations" of those requirements to grant recipients.¹⁰

More recently, through a Freedom of Information Act request to the Department, Public Citizen uncovered a document indicating that FedLoan had identified more than 15,000 TEACH Grants for more than 10,000 TEACH Grant recipients that appeared to have been converted in error by a previous servicer.¹¹ It concluded that at least 38 percent of all TEACH Grants converted to loans by this earlier servicer may have been converted in error.¹² Subsequent reporting by NPR indicated that the Department, in the face of these widespread erroneous conversions, forced affected teachers to affirmatively opt in to have their loans reconverted to grants, and reached out to many of them through a single letter that referred to the conversions as "premature[]." ¹³ According to the NPR report, just 15 percent of these recipients had their grants reconverted, sometimes years after the errors occurred.¹⁴

Particularly in light of extensive errors like these, it is imperative that any negotiated rulemaking on the TEACH Grant program address the process available to recipients whose grants have converted or will convert to loans erroneously. The current regulations are inaccurate and misleading. Most importantly, they state that a "TEACH Grant that is converted to a Federal Direct Unsubsidized Loan cannot be reconverted to a grant"¹⁵—a broad prohibition on reversing conversions that is at odds with the Department's actual practice of permitting reconversions where necessary to correct the Department's or a servicer's error. In addition, when the Department adopted the current regulations, it refused to adopt any appeals process, despite the urging of advocates, and instead stated in the preamble to the rule that recipients whose grants were converted to loans in error "may contact" the Department's Student Loan Ombudsman, an entity without final decisionmaking authority, "or other Department staff to resolve the matter."¹⁶ In the

⁸ 83 Fed. Reg. at 36,815.

⁹ GAO Report at 26.

¹⁰ *Id.* at 27.

¹¹ See Press Release, Public Citizen, Department of Education Is Unlawfully Withholding Records on Mismanaged College Grant Program, Lawsuit Says (Mar. 28, 2018).

¹² *Id.*

¹³ Cory Turner & Chris Arnold, *Senators to DeVos on TEACH Grant Debacle: 'Urgent That These Mistakes Are Fixed'*, NPR, July 2, 2018, <https://www.npr.org/sections/ed/2018/07/02/624278514/senators-to-devos-on-teach-grant-debacle-urgent-that-these-mistakes-are-fixed>.

¹⁴ *Id.*

¹⁵ 34 C.F.R. § 686.43(d).

¹⁶ Department of Education, The Teacher Education Assistance for College and Higher Education (TEACH) Grant Program and Other Federal Student Aid Programs, 73 Fed. Reg. 35,472, 35,486 (June 23, 2008) (final rule).

intervening years, however, ED has stated that it does, in fact, maintain a more established process for disputing grant-to-loan conversions, although it has never released details about that process to the public.

The Department should immediately make whole the many individuals who have been harmed by erroneous conversions and make public its policy that teachers *can* dispute conversions and describe that process. As the GAO found in 2015, ED and its servicer have “provid[ed] incomplete and inconsistent information to recipients about the availability of and criteria for disputing a grant-to-loan conversion.”¹⁷ The Department should heed GAO’s admonition that, “[a]bsent clear, consistent, and complete information about whether loan conversions can be disputed and what constitutes servicer error, recipients are unlikely to understand how to navigate the dispute process, criteria on which the dispute decisions are made, or whether a dispute process even exists.”¹⁸

Beyond that, however, the process for disputing and correcting grant-to-loan conversions should not be left to subregulatory policy. It should be set forth in regulations that offer robust consumer protections to affected teachers, including, among other things, a mandatory deadline by which the Department will respond to disputes and a commitment to cease all involuntary collection of converted loans while a dispute is under review or where the Department independently has reason to believe that a grant-to-loan conversion was erroneous.

3. The Department must ensure that a negotiated rulemaking committee has the necessary time and expertise to devote to TEACH Grant program regulations.

Public Citizen is concerned that the scope of the proposed negotiated rulemaking is far too broad and appears to sweep in important protections for students and taxpayers that should be left alone or addressed outside the regulatory process. The Department has identified a large number of issues for discussion, including accreditation, state authorization, regular and substantive interaction requirements in distance education, the definition of a credit hour, and the outsourcing of educational programs to unaccredited entities.

The TEACH Grant program will be just one issue among these many others, and it is substantively distinct. Addressing the grant-to-loan conversion problem will require negotiators with expertise in the TEACH Grant program, the options available to teachers with respect to federal aid, and servicing issues, particularly in the context of a federal grant program.

We strongly urge the Department to create a separate negotiating committee to address only the TEACH Grant program and grant-to-loan conversions. That committee should include:

- Students,
- Teachers whose TEACH Grants have been converted to loans,
- Teachers with ongoing service obligations under the TEACH Grant program,
- Teacher advocates,
- Consumer protection organizations and representatives,
- State attorneys general with an understanding of the TEACH Grant program and servicing issues,

¹⁷ GAO Report at 31.

¹⁸ *Id.* at 11.

- Institutions of higher education that train teachers,
- Financial aid officers at schools with experience administering the TEACH Grant program,
- K-12 school systems, and
- Student loan servicers.

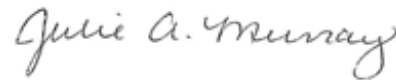
It is crucial that the work of this separate negotiating committee not be delayed. Although the Department can—and should—take immediate action to correct erroneous grant-to-loan conversions that have already occurred and to prevent unnecessary conversions in the future, it must also update its regulations for this program this year to ensure they take effect at the earliest possible time.

If the Department will not create a parallel negotiating rulemaking committee to address only the TEACH Grant program, it should, at a minimum, establish a subcommittee to focus on this issue. That subcommittee should include members of the constituencies identified above.

* * *

We urge the Department to take all necessary steps to ensure that the TEACH Grant issue proposed for inclusion in this negotiated rulemaking will receive the attention and expertise it so desperately needs. The Department must do all it can to protect TEACH Grant recipients from erroneous and any other conversions that do not advance the program's purpose and leave teachers worse off than if they had never received a TEACH Grant.

Sincerely,



Julie A. Murray
On behalf of Public Citizen