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NEWS FOR IMMEDIATE RELEASE

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Wisconsin DOJ Joins Bipartisan Effort in Support of Changes to 90/10 Rule, Calls for Stronger Borrower Protections

Letter to U.S. Department of Education Stresses Importance of Preventing Abuse and Exploitation by Predatory For-Profit Schools

MADISON, Wis. – Following a monthslong negotiated rulemaking process by the U.S. Department of Education aimed at reaching new regulatory proposals, the Wisconsin Department of Justice (DOJ) is joining a bipartisan group of states in providing comments commending the Department’s proposed improvements to the 90/10 Rule, which prohibits for-profit schools from receiving more than 90 percent of their revenue from federal student aid. The comments also call on the Department to adopt stronger regulations to protect borrowers from the perils of improper conversions by for-profit schools to nonprofit status.

“These proposed regulations will help prevent predatory conduct that harms taxpayers,” said Attorney General Josh Kaul. “We must continue enhancing protections for student loan borrowers.”

The letter applauds the Department for proposing regulations that would protect borrowers from dangerous loopholes that have plagued the 90/10 Rule, eliminating financial incentives for schools to aggressively target members of the military. The proposed regulations were approved by consensus during the negotiated rulemaking.

The 90/10 Rule was originally directed by Congress in 1992 as a response to findings of fraud, waste, and abuse in the for-profit higher education sector, including issues like tuition increases tied to maximum financial aid, disbursements of financial aid without concern for whether students could repay their debt, and other problems with

program integrity. According to the letter, Congress created the 90/10 Rule as a “bright-line quality-control measure” for schools.

Bad actors, however, soon found ways to exploit gaps in the 90/10 framework, specifically the exclusion of benefits disbursed from Veterans Affairs (VA) from the calculation of federal aid revenues. Because the Post 9/11 GI Bill made billions of dollars in new educational revenue available for veterans and their families, a market of potential paying students emerged for schools looking to exploit and maximize financial aid. While these new benefits administered by the VA were funded by taxpayers, none of these dollars counted towards schools’ 90 percent cap on federal funding. According to the letter, the “90/10 loophole” not only undermined the purpose of the Rule, but it created perverse incentives for abusive and low-quality programs to target recruitment at servicemembers and veterans.

The Department’s proposed updates to the 90/10 Rule effectuate Congress’s recent action to close the loophole related to financial aid administered by the VA and improve the Rule’s application.

In addition to supporting the Department’s proposed 90/10 regulations, the comments also address the Department’s proposed regulations regarding changes in institutional ownership. While the coalition applauds the Department for addressing the risks associated with for-profit to nonprofit conversions, it urges the adoption of additional measures to ensure that the Department is not “inadvertently creating loopholes that are subject to abuse by institutions with problematic financial incentives.” A report published in 2020 found that 75 percent of institutions converting from for-profit to nonprofit status between January 2011 and August 2020 were sold to entities that have never before operated education institutions. One third of these transactions involved some level of “insider involvement,” raising the risk of continued financial entanglements with previous owners.

The letter also includes recommendations to strengthen protections against improper revenue-sharing between converted nonprofit institutions and former owners or affiliated entities, and to reconsider regulations that would reduce the threshold for what automatically constitutes a change of ownership requiring Departmental review.

In filing this bipartisan letter DOJ is joined by the attorneys general of Alabama, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, and Washington.