

United States Senate  
WASHINGTON, DC 20510

October 26, 2020

The Honorable Betsy DeVos  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Secretary DeVos,

We write to urge the U.S. Department of Education (“the Department”) take additional steps to protect students and taxpayers in the wake of closures of for-profit colleges. Historically, the Department has failed to hold owners and executives of for-profit colleges that defrauded students financially accountable, despite having the clear legal authority to do so.<sup>1</sup> We urge the Department to do more to protect students and taxpayers, and to use the legal tools at its disposal to hold owners and executives of for-profit colleges that defrauded students personally, financially accountable.

In recent years, the conduct and closures of for-profit colleges such as Corinthian Colleges, ITT Technical Institutes, Argosy University, and Vatterott College have upended the lives of hundreds of thousands of students.<sup>2</sup> According to the findings of numerous state and federal law enforcement agencies, these and other schools misled and defrauded students through deceptive marketing and recruitment activities that made misrepresentations to students to entice them to enroll and take on debt.<sup>3</sup> The ultimate closure of many of these predatory for-profit colleges has left students and taxpayers holding the bag for this fraud, which often made for-profit college owners and executives extremely rich.<sup>4</sup>

The closure of Corinthian Colleges alone has resulted in more than \$558 million in approved student loan discharges for student borrowers,<sup>5</sup> while the company reportedly paid nearly \$1

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<sup>1</sup> Forbes, “Executives Of Predatory Colleges Should Be Held Personally Liable For Misconduct,” Adam S. Minsky, October 5, 2020, <https://www.forbes.com/sites/adamminsky/2020/10/05/elizabeth-warren-executives-of-predatory-colleges-should-be-held-personally-liable-for-misconduct/#2623844b22c9>

<sup>2</sup> USA Today, “Trouble at for-profit colleges in 5 graphs: Here's what's happening,” Lindsay Huth, March 26, 2020, <https://www.usatoday.com/story/news/education/2019/03/26/for-profit-college-closing-argosy-university/3271813002/>

<sup>3</sup> **The Century Foundation, “The For-Profit College Story: Scandal, Regulate, Forget, Repeat,” Robert Shireman, January 24, 2017, <https://tcf.org/content/report/profit-college-story-scandal-regulate-forget-repeat/>**

<sup>4</sup> *Id.*

<sup>5</sup> U.S. Department of Education., “American Career Institute Borrowers to Receive Automatic Group Relief for Federal Student Loans,” Press Release, January 13, 2017, <https://www.ed.gov/news/press-releases/american-career-institute-borrowers-receive-automatic-group-relief-federal-student-loans>.

million in bonuses to its executives weeks before its collapse.<sup>6</sup> Similarly, according to recent court filings, the Department has estimated that the collapse of ITT would cost the Department more than \$440 million, including interest and other charges.<sup>7</sup> These staggering figures show that taxpayers are footing the bill when institutions defraud students or close precipitously while the owners and executives who planned and profited from these schemes walk away unscathed.

Congress did not intend for owners and executives to escape liability for their wrongdoing. The *Higher Education Act of 1965* (HEA) gives the Secretary of Education both the obligation to pursue any student loan discharge resulting from school closure “against the institution and its affiliates and principals” and the additional authority to recover these losses from individuals who exercised “substantial control” over these institutions, including individuals who have an ownership stake and those who served as members of the board of directors, the CEO, or in other positions with substantial control.<sup>8</sup> Specifically, in order “to protect the financial interest of the United States,” the HEA allows the Secretary to require “the assumption of personal liability, by one or more individuals who exercise substantial control over such institution, as determined by the Secretary... for financial losses to the Federal Government, student assistance recipients, and other program participants for funds...and civil and criminal monetary penalties...”<sup>9</sup>

A recent paper and legal analysis from the National Student Legal Defense Network details the relevant statutory provisions and provides a roadmap for the Department not merely to assert a personal liability, but also to collect a judgment.<sup>10</sup> It is simply inexcusable for the Department to continue to allow corporate executives to profit from school closures when Congress has given it the explicit duty and additional authority to seek compensation from those very individuals. The Department, however, has failed to discharge its duties and exercise its authorities provided under law, leaving students and taxpayers on the hook for more than a billion dollars in losses in the last few years alone.<sup>11</sup> This abdication of the Department’s duties has not only cost taxpayers, but has also encouraged future lawbreaking by executives who feel confident they can enrich themselves at the expense of students and taxpayers without consequence.

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<sup>6</sup> Reuters, “Corinthian Colleges exec grilled as creditors hunt for cash,” Tom Hals, June 12, 2015) <https://www.reuters.com/article/corinthian-de-bankruptcy-idUSL1N0YY1ZL20150612>.

<sup>7</sup> Trustee’s Motion to Compromise and Settle Certain Claims with the United States of America ¶ 24, *In re: ITT Educ. Servs., Inc.*, No. 16-07207-JMC-7A, Dkt. 3999 (Bankr. S.D. Ind. June 25, 2020) (“ITT Trustee’s Motion”), available at: [https://casedocs.omniagentsolutions.com/cmsvol2/pub\\_47137/828182\\_3999.pdf](https://casedocs.omniagentsolutions.com/cmsvol2/pub_47137/828182_3999.pdf).

<sup>8</sup> 20 U.S.C. § 1099c(e)(1)(B) (authorizing the Department to require the “assumption of personal liability, by one or more individuals who exercise substantial control over” an institution “for financial losses to the Federal Government, student assistance recipients, and other program participants”; see also 20 U.S.C. 1087(c)(1) (providing that the Secretary “shall pursue” claims “against the institution *and its affiliates or principals*” resulting from certain loan discharges (emphasis added)).

<sup>9</sup> *Id.*

<sup>10</sup> National Student Legal Defense Network, “Protection and the Unseen: Personal Liability under the Higher Education Act,” Daniel A. Zibel and Alice W. Yao, October 2020), <https://www.defendstudents.org/news/body/docket/100-Day-Docket-Personal-Liability-Report.pdf>

<sup>11</sup> *Id.*

The Department's inaction is particularly concerning in light of its leniency in waiving or relaxing letters of credit for troubled for-profit colleges.<sup>12</sup> For example, the Department held a substantial letter of credit from the Education Corporation of America ("ECA"), which it allowed to expire in March 2017. In December 2018, ECA closed all its campuses and the Department was forced to cover the expenses of closed school discharges without the benefit of that forgone letter of credit.<sup>13</sup> Similarly, when the Dream Center chain of schools—including Argosy University and the Art Institutes—was in turmoil in 2018, the Department agreed to release up to \$50 million from the letter of credit to help the school pay for expenses.<sup>14</sup> The Dream Center has since ceased operations, closing dozens of campuses nationwide and making tens of thousands of students eligible for closed school discharges of their loans.<sup>15</sup> In both cases, the Department's actions negate the very statutory purpose for authorizing financial guarantees as a tool to satisfy an institution's potential liability to the federal government.<sup>16</sup>

To our knowledge, in neither case has the Department pursued ECA or Dream Center executives to recover funds and offset the substantial costs incurred by the closures. In fact, the Department, again under your leadership, recently agreed to return \$29 million to the ITT Bankruptcy estate, even though—as noted above—the Department estimated over \$440 million in claims against that estate.<sup>17</sup>

Students and taxpayers deserve better. This is an unacceptable breach of duty to students, taxpayers, and the federal fiscal responsibility. When for-profit college owners and executives defraud students, waste taxpayer dollars, and break the law, and the Department should hold them personally, financially accountable. We, therefore, request responses to the following by no later than November 9, 2020.

1. Please provide an accounting of the total losses to the federal government due to the closures of:
  - a. Institutions owned by Education Corporation of America;
  - b. Institutions owned by Corinthian Colleges, Inc.;
  - c. Institutions owned by ITT Educational Services;
  - d. Institutions owned by Dream Center Education Holdings;
  - e. Vatterott College;

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<sup>12</sup> The Intercept, "Betsy DeVos Quietly Making It Easier for Dying For-Profit Schools to Rip Off a Few More Students On The Way Out," David Dayen, April 12, 2019, <https://theintercept.com/2019/04/12/betsy-devos-for-profit-colleges/>.

<sup>13</sup> National Student Legal Defense Network, "Protection and the Unseen: Personal Liability under the Higher Education Act," Daniel A. Zibel and Alice W. Yao, October 2020), <https://www.defendstudents.org/news/body/docket/100-Day-Docket-Personal-Liability-Report.pdf>

<sup>14</sup> The New York Times, "Emails Show DeVos Aides Pulled Strings for Failing For-Profit Colleges" Erica L. Green and Stacy Cowley, July 23, 2019, <https://www.nytimes.com/2019/07/23/us/politics/dream-center.html>.

<sup>15</sup> Inside Higher Ed, "Art Institutes and Other Former For-Profit Institutions Closing," Ashley A. Smith, December 10, 2018, <https://www.insidehighered.com/news/2018/12/10/dream-center-colleges-closing-years-end>


<sup>16</sup> 20 U.S.C. § 1099c(e)(1)(B)

<sup>17</sup> National Student Legal Defense Network, "Protection and the Unseen: Personal Liability under the Higher Education Act," Daniel A. Zibel and Alice W. Yao, October 2020), <https://www.defendstudents.org/news/body/docket/100-Day-Docket-Personal-Liability-Report.pdf>

- f. Charlotte School of Law;
  - g. Arizona Summit School of Law;
  - h. Globe University & Minnesota School of Business;
  - i. American Career Institute; and
  - j. Medtech Colleges.
2. When providing this accounting, please show, with respect to each school, the total sums of loans discharged, the total amounts of loss to the Department, the total amount of losses offset by any letter of credit or other financial surety, and the amount recovered from any individual executive or owner.
  3. In the last ten years, what are the ten largest aggregate closed school discharges granted, and what was the final cost to the federal government?
    - a. Please provide: the total amount discharged; any funds recouped through a letter of credit or other surety; the amount recovered from the institution or affiliates; and, the amount recovered from any individual executive or owner.
  4. How many times, if any, has the Department of Education under your leadership attempted to recover funds from an individual owner or executive using its authority under 20 U.S.C. § 1099c(e)?
    - a. With respect to each such instance, please provide the name of the institution, the individual(s), and the amounts recovered.

We thank you for your attention to this matter.

Sincerely,



Elizabeth Warren  
United States Senator



Margaret Wood Hassan  
United States Senator



Christopher S. Murphy  
United States Senator



Richard J. Durbin  
United States Senator



Sherrod Brown  
United States Senator



Richard Blumenthal  
United States Senator