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March 26, 2023

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

Dear Secretary Cardona,

I am writing in response to the Department of Education's (the Department) efforts to transform the income-driven repayment program and identify low financial value programs at institutions of higher education.[1] Further, I support the Department's continuation to make improvements to the federal student loan program and hold institutions of higher education accountable— including reestablishing the Office of Enforcement in the Office of Federal Student Aid to conduct oversight of bad actors in the higher education industry[2] and withdrawing accreditation authorization for the Accrediting Council for Independent Colleges and Schools due to its repeated failures to fulfill its watchdog role.[3]

The Department, however, should not stop there. As I offer support for your effort to identify low financial value programs that saddle students with mountains of debt that they have little hope of repaying, I also write to bring to your attention several other areas where the Department can and should strengthen accountability and oversight of institutions of higher education that too often leave students with insurmountable debts. Specifically, the Department should take the following actions:

1) Ensure that institutions that fall below standards are subject to provisional Program Participation Agreements that set out strong corrective conditions with closely supervised, measurable benchmarks for improvement, and that schools that fail to improve see their Title IV funding revoked.

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[1] The Department of Education, "New Proposed Regulations Would Transform Income-Driven Repayment by Cutting Undergraduate Loan Payments in Half and Preventing Unpaid Interest Accumulation," press release, January 10, 2023, https://www.ed.gov/news/press-releases/new-proposed-regulations-would-transform-income-driven-repayment-cutting-undergraduate-loan-payments-half-and-preventing-unpaid-interest-accumulation; Federal Register, "Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program," January 11, 2023, https://www.federalregister.gov/documents/2023/01/11/2022-28605/improving-income-driven-repayment-for-the-william-d-ford-federal-direct-loan-program.
[2] The Department of Education, "U.S. Department of Education to Establish an Enforcement Office Within Federal Student Aid," press release, October 8, 2021, https://www.ed.gov/news/press-releases/us-department-education-establish-enforcement-office-within-federal-student-aid.
[3] Associated Press, "Accreditor of for-profit colleges loses federal recognition," Carole Feldman and Chrissie Thompson, August 19, 2022, https://apnews.com/article/education-government-and-politics-8b8d86f4aa6785d5540e5d3e0b78905b.

2) Strengthen enforcement of for-profit colleges' manipulation of cohort default rates.

3) Review college conversions to ensure "covert for-profit" colleges are not redirecting funds to benefit private parties at the expense of students.

4) Use its authority to protect students and taxpayers and promote accountability by holding for-profit college owners and executives personally financially liable when the colleges they run fail or lie to students who take on massive student loan debts.

5) Improve oversight of online program management companies and their incentive compensation arrangements with colleges.

6) Conduct more stringent oversight of school accreditors, including terminating Department recognition of accreditors to protect students and taxpayers if necessary.

7) Conduct fair lending risk assessments and ensure all stakeholders in the federal financial aid programs are complying with fair lending and civil rights laws.

8) Rapidly re-institute and strengthen Gainful Employment rules, and ensure that low-quality programs are swiftly held accountable to prevent further financial harm to students who may end up in low-wage jobs or with debts that are not affordable relative to their actual incomes.

The remainder of this letter provides additional detail on the need for these actions and the benefits they will have for students.

## 1. Program Participation Agreements (PPAs)

PPAs define the terms and conditions that higher education institutions must meet to participate in Title IV programs.[4] PPAs essentially serve as a contract in which an institution commits to meeting federal standards related to financial responsibility and administrative capability to protect the interests of its students.[5] However, far too many predatory for-profit institutions have harvested money from their students and federal tax dollars without upholding the standards for federal aid they promised to provide.[6]

In particular, the Department has failed to effectively utilize provisional PPAs as a tool to ensure that schools remain accountable. Provisional PPAs allow schools that have fallen below standards to continue receiving federal aid as long as they agree to correct their problems and

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[4] Federal Student Aid, "Updated Program Participation Agreement Signature Requirements for Entities Exercising Substantial Control Over Non-Public Institutions of Higher Education," March 23, 2022, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-23/updated-program-participation-agreement-signature-requirements-entities-exercising-substantial-control-over-non-public-institutions-higher-education.

[5] *Id.*

[6] The Century Foundation, "Predatory Colleges Think They Are Too Flawed to Fail. Biden's Department of Education Should Prove Them Wrong", Yan Cao, September 9, 2021 https://tcf.org/content/commentary/predatory-colleges-think-flawed-fail-bidens-department-education-prove-wrong/.

come back into compliance.[7] For example, even though the Center for Excellence in Higher Education (CEHE) was subject to probationary status through a provisional PPA for several years, CEHE still was able to collect billions of taxpayer dollars before closing overnight without any warning to students.[8]

Moreover, the Department rarely has used its authority to revoke PPAs for substantial misrepresentations, even though many schools have been found to have defrauded students and otherwise violated federal standards.[9] In 1999, six years after Congress granted the Department the authority to use provisional PPAs, the Department's Office of the Inspector General (OIG) conducted a review of the effectiveness of provisional PPAs in managing "at-risk schools who may fail to take corrective action."[10] The OIG's review found that it was impossible to evaluate the effectiveness of provisional PPAs because not a single provisional PPA was revoked by the Department in those six years despite evidence that institutions violated federal standards.[11] Alarmingly, nearly 22 years after the OIG review, the Department apparently has *still* not revoked a single provisional PPA, despite the OIG's 1999 recommendation that the Department appropriately utilize its revocation authority.[12]

The Department has an opportunity to strengthen and enforce accountability by ensuring that institutions that fall below standards are subject to provisional PPAs that set out strong corrective conditions with measurable benchmarks for improvement. The Department also should closely supervise schools on provisional PPA status to ensure they are taking steps to improve while receiving federal aid and ensure that schools that fail to improve see their Title IV funding revoked.

**2. For-Profit & Predatory Schools**

I am glad to see the Department taking steps to prevent predatory and deceptive practices by for-profit institutions, including strengthening requirements for for-profit institutions seeking to convert to nonprofit status.[13] When implemented, these actions would ensure that efforts by for-profit colleges attempting to convert to nonprofit status are genuine changes and not maneuvers to avoid accountability to students and taxpayers.

For-profit colleges have a long record of engaging in deceptive and manipulative practices and aggressively recruiting vulnerable students into low quality, high-cost education and training programs that leave students with high amounts of student loan debt and a greater likelihood to

[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] The Department of Education, "Education Department Releases Proposed Regulations to Protect Veterans and Service Members, Increase College Oversight, and Increase College Access for Incarcerated Individuals," press release, July 26, 2022, https://www.ed.gov/news/press-releases/education-department-releases-proposed-regulations-protect-veterans-and-service-members-increase-college-oversight-and-increase-college-access-incarcerated-individuals.

default on their loans.[14] Although for-profit colleges enroll only 5 percent of students,[15] they account for nearly a quarter of all student loan defaults.[16] More than 66 percent of students enrolled in for-profit colleges for the 2015-16 school year took out federal loans, compared to 55 percent at four-year public schools.[17]

The dismal employment outcomes of students enrolled at for-profit colleges contradict any justification for the higher expenses they charge. Even when compared to high school graduates who did not pursue a postsecondary education, there is no evidence that students who graduate from for-profit colleges with associate degrees have higher earnings.[18] The outcomes for Black and Latino students at for-profit colleges are even more striking. Roughly two-thirds of Black and Latino borrowers drop out of four year for-profit schools.[19] Nearly 60 percent of Black students who took on student debt to attend a for-profit school in 2004 defaulted on their loans by 2016, compared to only 36 percent of their white peers.[20]

Federal law requires the Department to use Cohort Default Rates (CDR), which measures an institution's share of their federal student loan borrowers who default after entering repayment, to evaluate a college's eligibility to participate in federal student aid programs.[21] Predatory for-profit schools, however, have been caught manipulating CDR data to avoid federal accountability.[22]

In 2012, the U.S. Senate Committee on Health, Education, Labor and Pensions (HELP) launched an investigation that found for-profit colleges used specialized contractors to steer students away from defaulting and towards forbearance without regard for the financial interest

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14 Federal Reserve Bank of New York, "Student Debt and Default: The Role of For-Profit Colleges," Luis Armona, Rajashri Chakrabarti, Michael F. Lovenheim, October 2021, https://www.newyorkfed.org/research/staff_reports/sr811.html; Student Borrower Protection Center, "The Web of Players and Practices Allowing Predatory For-Profit Schools to Flourish," https://protectborrowers.org/the-web-of-players-and-practices-allowing-predatory-for-profit-schools-to-flourish/.
15 National Center for Education Statistics, "Total fall enrollment in degree-granting postsecondary institutions, by attendance status, sex of student, and control of institution: Selected years, 1947 through 2031," https://nces.ed.gov/programs/digest/d22/tables/dt22_303.10.asp?current=yes.
16 Federal Student Aid, "National Student Loan Cohort Default Rate," https://fsapartners.ed.gov/sites/default/files/2022-09/NationalCDR.PYComparisonCharts.pdf.
17 The Urban Institute, "Borrowing," 2016, https://collegeaffordability.urban.org/covering-expenses/borrowing/#/.
18 National Library of Medicine, "Does it pay to attend a for-profit college? Vertical and horizontal stratification in higher education," Patrick Denise, February 9, 2015, https://pubmed.ncbi.nlm.nih.gov/26004455/.
19 Demos, "The Debt Divide: The Racial and Class Bias Behind the 'New Normal' of Student Borrowing," Mark Huelsman, May 19, 2015, https://www.demos.org/research/debt-divide-racial-and-class-bias-behind-new-normal-student-borrowing.
20 The Brookings Institute, "The for-profit college system is broken and the Biden administration needs to fix it," Ariel Gelrud Shiro and Richard V. Reeves, January 12, 2021, https://www.brookings.edu/blog/how-we-rise/2021/01/12/the-for-profit-college-system-is-broken-and-the-biden-administration-needs-to-fix-it/.
21 New America, "Debt, Default, and Collections," https://www.newamerica.org/education-policy/topics/higher-education-funding-and-financial-aid/federal-student-aid/federal-student-loans/debt-default-and-collections/.
22 Student Borrower Protection Center, "A Shadow Industry is Manipulating Student Loan Borrowers' Default Rates—It's Time to Stop these Practices," Tariq Habash, December 10, 2020 https://protectborrowers.org/cdr_blog/.

of the borrower.[23] The HELP investigation found that the for-profit chains Kaplan University, Bridgepoint Education, ITT Technical Institute (ITT), and the University of Phoenix contracted with "default prevention companies" to steer borrowers at risk of default towards forbearance rather than help students access affordable loan repayment plans as a way to lower their CDR.[24] Further, the investigation found an internal presentation from the for-profit school chain, Education Management Corporation, which encouraged staff to, "Get comfortable with doing a verbal forbearance!!!," and, "DON'T B AFRAID-KEEP CALLING and KEEP CALLING LET THEM KNOW THIS IS NOT GOING TO GO AWAY."[25] A 2018 Government Accountability Office (GAO) report further called attention to the prevalence of CDR manipulation and the need for improved oversight of schools to prevent this practice.[26] Therefore, the Department should address these concerns by scrutinizing and halting unlawful CDR manipulation practices and strengthen enforcement when for-profits manipulate CDR.

### 3. School Owners & Personal Financial Liability

For too long, executives and owners of for-profit colleges have not been held accountable for scamming students out of a high-quality education and burdening them with huge amounts of debt while continuing to take in huge profits. In the 1992 reauthorization of the Higher Education Act (HEA), Congress gave the Department the authority to hold leaders of fraudulent colleges personally liable.[27] Specifically, the HEA explicitly authorizes the Department "to the extent necessary to protect the financial interest of the United States" and recover any financial losses from people who "exercise substantial control" over institutions of higher education, including owners, board members, CEOs, and other executives.[28] These authorities establish Congress' clear directive that taxpayers should not bear the burden when an institution fails to meet its obligations to students, taxpayers, and the government. However, in the three decades since the reauthorization, the Department rarely has exercised this power over for-profit executives and owners of for-profit colleges.[29] This inaction continued even as Corinthian Colleges' executives were paid nearly $1 million in bonuses weeks before its disastrous collapse[30] and while Kevin Modany, the CEO of ITT, made more than $7.5 million from his salary, bonuses, and stocks in

[23] United States Senate Committee on Health, Education, Labor and Pensions, "For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success," July 30, 2012, p. 467, https://www.help.senate.gov/imo/media/for_profit_report/PartII.pdf.
[24] Student Borrower Protection Center, "Affirming Accountability," December 2020, https://protectborrowers.org/wp-content/uploads/2020/12/Affirming-Accountability.pdf.
[25] United States Senate Committee on Health, Education, Labor and Pensions, "For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success," July 30, 2012, p. 468, https://www.help.senate.gov/imo/media/for_profit_report/PartII/EDMC.pdf.
[26] Government Accountability Office, "Federal Student Loans: Actions Needed to Improve Oversight of Schools' Default Rates," April 2018, https://takano.house.gov/imo/media/doc/GAO%20--FINAL--%20REPORT%20Student%20Default%20Rate%20Oversight.pdf.
[27] 20 U.S.C. § 1099c(e)
[28] *Id.*
[29] National Student Legal Defense Network, "Protection and the Unseen: Holding Executives Personally Liable under the Higher Education Act," Report, Daniel A. Zibel, Alice W. Yao, October 2020, https://www.defendstudents.org/news/body/docket/100-Day-Docket-Personal-Liability-Report.pdf.
[30] Reuters, "Corinthian Colleges exec grilled as creditors hunt for cash," Tom Hals, June 12, 2015, https://www.reuters.com/article/corinthian-de-bankruptcy-idUSL1N0YY1ZL20150612.

2009, at a time when many Americans were grappling with the economic impacts of the Great Recession. [31]

In October 2020, Senators Hassan, Murphy, and I sent the Department a letter outlining the importance of holding executives at predatory for-profit colleges personally liable for their schools' failings.[32] In October 2022, Senators Durbin, Blumenthal, Baldwin, Booker, Hirono, and I sent the Department another letter urging it to work swiftly to leverage its authority to better hold for-profit college executives accountable.[33] I will reiterate these calls for the Department to use its statutory authority to protect students and taxpayers and promote accountability by holding for-profit college owners and executives personally financially liable. I applaud the Department for updating steps last year to ensure that even when a school closes, the Department can recover funds from entities that had ownership interest in the school instead of leaving the bill to taxpayers, students, or borrowers.[34] Further, I support the Department's recently released guidance that clarifies how it will implement Section 498(e) of the *Higher Education Act*, which outlines the authority of the Department has to require college owners and operators at private institutions to assume personal liability.[35]

### 4. Online Program Management Companies

The Online Program Management (OPM) market has grown significantly over the past decade with at least 550 colleges working with OPM providers.[36] OPMs partner with colleges to support their online programs, including recruitment, marketing, and course development, in exchange for a share of the programs' revenue.[37] These partnerships are becoming more integral to university finances and operations. One report in 2021 found that some institutions are relying

[31] U.S. Senate Committee on Health, Education, Labor and Pensions, "For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success," June 30, 2012, p. 84, https://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf; Investopedia, "2008 Recession: What it Was and What Caused It," Michael J Boyle, February 7, 2023, https://www.investopedia.com/terms/g/great-recession.asp.

[32] Office of U.S. Senator Elizabeth Warren, "Warren, Hassan, Murphy, Colleagues to Betsy DeVos: For-Profit College Executives and Shareholders Who Cheat Students Should Be Held Personally Accountable," press elease, October 27, 2020, https://www.warren.senate.gov/newsroom/press-releases/warren-hassan-murphy-colleagues-to-betsy-devos-for-profit-college-executives-and-shareholders-who-cheat-students-should-be-held-personally-accountable.

[33] Office of U.S. Senator Dick Durbin, "Durbin, Warren Urge Department Of Education To Hold Predatory For-Profit College Executives Accountable For Scamming Students," press release, October 18, 2022, https://www.durbin.senate.gov/newsroom/press-releases/durbin-warren-urge-department-of-education-to-hold-predatory-for-profit-college-executives-accountable-for-scamming-students.

[34] The Department of Education, "U.S. Department of Education Announces Steps to Hold Institutions Accountable for Taxpayer Losses," press release, March 23, 2022, https://www.ed.gov/news/press-releases/us-department-education-announces-steps-hold-institutions-accountable-taxpayer-losses-0.

[35] The Department of Education, "Education Department Takes Steps to Hold Leaders of Risky Colleges Personally Liable," press release, March 2, 2023, https://www.ed.gov/news/press-releases/education-department-takes-steps-hold-leaders-risky-colleges-personally-liable; 20 U.S. Code § 1099c

[36] U.S. Government Accountability Office, "Higher Education: Education Needs to Strengthen Its Approach to Monitoring Colleges' Arrangements with Online Program Managers," April 5, 2022, https://www.gao.gov/products/gao-22-104463.

[37] *Id.*

on OPMs for as much as 40 to 50 percent of their total enrollment.[38] A reliance on OPM partnerships to generate revenue likely will continue as public and private nonprofit colleges recover from a drop in undergraduate enrollment caused by the COVID-19 pandemic.[39] I previously have raised questions about these revenue-share agreements because of concerns that some OPM companies are failing to comply with federal law and are contributing to rapidly rising college costs.[40]

The increasing prevalence of online learning and higher education institutions relying on OPMs to manage their online courses raises concerns about predatory practices used by OPMs that contribute to rising student debt loads. In 2020, Senator Brown and I sent letters to leading OPMs, requesting information on their relationships with schools.[41] The responses received confirmed that OPMs often have tuition-sharing arrangements with universities, which commit an ongoing percentage of tuition revenue to the OPM to finance the start-up and ongoing costs of operating online degree programs.[42]

In these situations, OPMs exploit a loophole in the Higher Education Act that prohibits institutions from providing "commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities."[43] The prohibitive policy is known as incentive compensation, which third party entities, such as OPMs, were excluded from through a 2011 guidance issued by the Department.[44] This 2011 guidance created an exemption for bundled services, allowing tuition-sharing so long as the OPM firm provides a range of services (such as technological support, marketing, and advising) and that payment to the firm covers all services

[38] The Century Foundation, "Invasion of College Snatchers," Stephanie Hall, September 30, 2021, https://tcf.org/content/report/invasion-college-snatchers/?agreed=1.
[39] National Student Clearinghouse, "Undergraduate Enrollment Declines Nearly 8% and Community Colleges Drop 15% Since Fall 2019," Todd Sedmak, November 18, 2021, https://www.studentclearinghouse.org/blog/undergraduate-enrollment-drops-nearly-8-and-community-colleges-decline-15-since-fall-2019/.
[40] Letter from U.S. Senators Warren, Brown, and Smith to Online Program Managers, January 14, 2022 https://www.warren.senate.gov/imo/media/doc/2022.01.14%20Follow%20up%20letter%20to%20Online%20Program%20Managers%20(OPMs)_.pdf.
[41] Letter from U.S. Senators Warren and Brown to Multiple Online Program Management Companies, January 23, 2020, https://www.warren.senate.gov/imo/media/doc/Letters%20to%20multiple%20orgs.%20re%20OPM%20Business%20practices.pdf.
[42] Academic Partnerships, Wiley, Pearson, and 2U all confirmed that they use a tuition-sharing or revenue-sharing model. Academic Partnerships reported that on average, they are paid 46.4% of revenue. Responses are on file with the Office of Sen. Warren. "Senators Warren and Brown Examine Questionable Business Practices of Largest Managers of Online Degree Programs," January 24, 2020, https://www.warren.senate.gov/oversight/letters/senators-warren-and-brown-examine-questionable-business-practices-of-largest-managers-of-online-degree-programs.
[43] Penn State University, College of Education, "Examining the OPM," John J. Cheslock, Kevin Kinser, Sarah T. Zipf, and Eunjong Ra, December 2021, p. 32, https://osf.io/py3sz/download; Higher Education Act, 34 C.F.R. § 668.14
[44] Federal Student Aid, "Subject: Implementation of Program Integrity Regulations," March 17, 2011, https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2011-03-17/gen-11-05-subject-implementation-program-integrity-regulations; The Department of Education, "U.S. Department of Education Launches Review of Prohibition on Incentive Compensation for College Recruiters," press release, February 15, 2023, https://www.ed.gov/news/press-releases/us-department-education-launches-review-prohibition-incentive-compensation-college-recruiters.

collectively.[45] This loophole incentivizes OPMs to aggressively recruit students in order to boost their revenue, including calling prospective students multiple times a day, encouraging students with low academic GPAs to apply and take out federal Grad Plus loans that allow students to borrow as much as colleges charge.[46] These practices often disproportionately lure more students from low-income backgrounds into enrolling in high-debt programs with false promises of increased earnings.[47] Although colleges work with OPMs to support programs eligible for federal student aid, there is a lack of transparency regarding the payment arrangements made with OPM providers..[48]

Since issuing the 2011 guidance, the number of students recruited and enrolled by online programs using the bundled service exemption has increased.[49] The GAO recently published a report on OPMs, finding that the Department has failed to sufficiently scrutinize OPM arrangements despite the significant federal funding that supports OPMs.[50] I applaud the Department's recent launch of a review on the impact of its 2011 incentive compensation guidance.[51] The Department should reverse the 2011 decision to exempt OPMs using bundled service agreements from the incentive compensation ban if it finds that the exemption has led to violations in federal law.

Ultimately, given the growth in online enrollment and associated federal student debt, the Department immediately should strengthen its enforcement against OPM companies that are clearly overstepping the rules, and signal to the industry that its practices will be more heavily scrutinized going forward.

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[45] Federal Student Aid, "Subject: Implementation of Program Integrity Regulations," March 17, 2011, https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2011-03-17/gen-11-05-subject-implementation-program-integrity-regulations; Higher ED Dive, "Are tuition-share agreements between colleges and OPMs on solid legal footing?" Natalie Schwartz, June 18, 2021, https://www.highereddive.com/news/are-tuition-share-agreements-between-colleges-and-opms-on-solid-legal-footi/602051/.

[46] The Wall Street Journal, "USC Pushed a $115,000 Online Degree. Graduates Got Low Salaries, Huge Debts," Lisa Bannon, Andrea Fuller, November 9, 2021, https://www.wsj.com/articles/usc-online-social-work-masters-11636435900.

[47] *Id.*

[48] Government Accountability Office, "Higher Education: Education Needs to Strengthen Its Approach to Monitoring Colleges' Arrangements with Online Program Managers," April 5, 2022, pp. 16-18, https://www.gao.gov/products/gao-22-104463.

[49] The Department of Education, "U.S. Department of Education Launches Review of Prohibition on Incentive Compensation for College Recruiters," press release, February 15, 2023, https://www.ed.gov/news/press-releases/us-department-education-launches-review-prohibition-incentive-compensation-college-recruiters.

[50] Government Accountability Office, "Higher Education: Education Needs to Strengthen Its Approach to Monitoring Colleges' Arrangements with Online Program Managers," , April 5, 2022, https://www.gao.gov/products/gao-22-104463.

[51] The Department of Education, "U.S. Department of Education Launches Review of Prohibition on Incentive Compensation for College Recruiters," press release, February 15, 2023, https://www.ed.gov/news/press-releases/us-department-education-launches-review-prohibition-incentive-compensation-college-recruiters.

## 5. Accreditor Accountability

College accreditors are the cornerstone of the nation's higher education quality assurance system, serving as a critical gatekeepers to the over $120 billion in federal student loan investments..[52] However, a lack of accountability and poor oversight have allowed poor performing and even fraudulent colleges to flourish at the expense of students and taxpayers, leading the *Wall Street Journal* to call college accreditors "watchdogs of college education [that] rarely bite."[53]

The Department has made significant strides to protect against a "race to the bottom" in quality standards by restoring the public dashboards of accreditor outcomes, combatting "Accreditor Shopping" to prevent institutions from seeking accreditation through agencies with less rigorous standards, and clarifying expectations for accrediting agencies when evaluating schools and programs for recognition.[54] These changes are intended to ensure accrediting agencies are holding themselves and the institutions they review to a higher standard.[55] Therefore, I support the Department's actions to provide increased transparency around the accreditation process by publishing reviews of accrediting agencies and accreditation performance ahead of National Advisory Committee on Institutional Quality and Integrity (NACIQI) meetings.[56] The Department should build on these steps by disaggregating outcomes data by race & ethnicity in public dashboards, and also including accreditors' responses to the Department's inquiries and internal evaluations of accreditor compliance and making them available for the public and members of NACIQI to review on an even timelier basis.

I am supportive of the Department taking action this past August to protect students and taxpayers by rejecting an appeal from the Accrediting Council for Independent Colleges and Schools (ACIQS) to remain operational after finding that the council was incapable of meeting federal standards.[57] From February 28 March 2, 2023, NACIQI held a review of several large accreditation agencies as part of the Department's accreditor federal recognition process.[58] As the Department continues to review these accreditors, I ask for transparency as it relates to

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[52] The Department of Education, "Federal Student Aid," https://www2.ed.gov/about/offices/list/fsa/index.html.
[53]The Wall Street Journal, "The Watchdogs of College Education Rarely Bite," Andrew Fuller and , June 17, 2015, http://www.wsj.com/articles/the-watchdogs-of-college-education-rarely-bite-1434594602.
[54] The Department of Education, "Postsecondary Accreditation Cannot Become a Race to the Bottom," Antoinette Flores, July 19, 2022, https://blog.ed.gov/2022/07/postsecondary-accreditation-cannot-become-a-race-to-the-bottom; The Department of Education, "U.S. Department of Education Terminates Federal Recognition of ACICS, Enhances Federal Aid Program Participation Requirements for ACICS-accredited Colleges," press release, August 19, 2022, https://www.ed.gov/news/press-releases/us-department-education-terminates-federal-recognition-acics-enhances-federal-aid-program-participation-requirements-acics-accredited-colleges.
[55] *Id.*
[56] The Department of Education, "Greater Transparency of Accrediting Agency Recognition," February 8, 2022, https://www2.ed.gov/admins/finaid/accred/greater-transparency-in-accreditor-recognition.pdf; Center for American Progress, "The National Advisory Committee on Institutional Quality and Integrity: Overview and Resources,"Marissa Alayna Navarro, Jared C. Bass, and Stephanie Michelle Hall, February 22, 2022, https://www.americanprogress.org/article/the-national-advisory-committee-on-institutional-quality-and-integrity-overview-and-resources/.
[57] The Washington Post, "Education Dept. ousts college accreditor from oversight role", Danielle Douglas-Gabriel, August 19, 2022, https://www.washingtonpost.com/education/2022/08/19/acics-accreditation-recognition-colleges/.
[58] The Department of Education, "Final Staff Analyses for Accrediting Agencies under Review," February 24, 2023, https://www2.ed.gov/admins/finaid/accred/accred-agencies.html.

document releases and complain procedures in the process of reviewing accreditors' applications for renewal of recognition to hold agencies with track records of approving institutions with bad student outcomes accountable.[59] I am particularly concerned with the Higher Learning Commission (HLC), which accredits 507 public institutions, 397 private nonprofit institutions, and 26 for-profit institutions, continues to accredit a high number of colleges whose graduates earn less than the typical high school graduate six years after enrolling in the institution.[60] In January 2022, Veterans Education Success wrote to the Department to provide evidence that HLC failed to meet its obligations under the statutory standards outlined in the Higher Education Act, including an inability to detect institutional abuses and the wide prevalence of unacceptable student outcomes at the institutions it accredits.[61] The Department is obligated to conduct stringent oversight of school accreditors to assure adequate educational quality, including taking punitive action to terminate Department recognition of accreditors to protect students and taxpayers if necessary.

Finally, the Department also should carefully consider who will fill future vacancies on the NACIQI advisory board and ensure members are selected on the basis of integrity, impartiality, and good judgment.[62] Members previously have written to the Department on multiple occasions to ensure that conflicts of interest, especially in cases of covert for-profit conversions to non-profit entities, do not usurp the integrity of the accreditation process.[63] It is imperative for the Department to heed these calls. Further, the Department should require NACIQI members to obtain additional training on how evolving regulations should influence their decision-making when reviewing accrediting agencies, assess the frequency of accreditor review (including unannounced site visits and interim monitoring), and integrate public comment and student outcomes more fully into the accreditation review process.[64]

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[59] The Century Foundation, "Major College Accrediting Agencies Are Up for Federal Review. Here's What to Expect," Tiara Moultrie, January 23, 2023, https://tcf.org/content/commentary/major-college-accrediting-agencies-are-up-for-federal-review-heres-what-to-expect/.

[60] The Century Foundation, "Major College Accrediting Agencies Are Up for Federal Review. Here's What to Expect," Tiara Moultrie, January 23, 2023, https://tcf.org/content/commentary/major-college-accrediting-agencies-are-up-for-federal-review-heres-what-to-expect/; Veterans Education Success, "National Advisory Council on Institutional Quality and Integrity (NACIQI) on Accreditation to the Department of Education," January 20, 2022, https://vetsedsuccess.org/national-advisory-council-on-institutional-quality-and-integrity-naciqi-on-accreditation-to-the-department-of-education/.

[61] Veterans Education Success," Our Letter to the Department of Education on the Higher Learning Commission (HLC)," Barmak Nassirian, January 20, 2022, https://vetsedsuccess.org/our-letter-to-the-department-of-education-on-hlc/.

[62] Federal Register, "National Advisory Committee on Institutional Quality and Integrity (NACIQI)," August 16, 2022, https://www.federalregister.gov/documents/2022/08/16/2022-17624/national-advisory-committee-on-institutional-quality-and-integrity-naciqi; Federal Register, "National Advisory Committee on Institutional Quality and Integrity," February 2, 2023, https://www.federalregister.gov/documents/2023/02/02/2023-02173/national-advisory-committee-on-institutional-quality-and-integrity.

[63] Letter from Senators Warren, Murray, Blumenthal, Durbin, and Brown to the Department of Education, May 9, 2018, https://www.warren.senate.gov/imo/media/doc/2018.05.09%20Letter%20to%20Carlos%20Muniz%20re%20Dr.%20Arthur%20Keiser%20Chairman%20of%20NACIQI.pdf; Letter from Senators Durbin, Brown, and Warren to the Department of Education, February 14, 2022, https://www.durbin.senate.gov/imo/media/doc/2.14.22%20ED%20NACIQI%20Charimanship%20Letter.pdf.

[64] Private letter from James Kvaal to Senator Elizabeth Warren, May 28, 2021, on file with Office of Senator Elizabeth Warren.

## 6. Transparency of the Student Loan Portfolio

The Department took a critical step toward improving the College Scorecard early last year with the inclusion of data on institutional-level post-graduation earnings, loan repayment rates, and other metrics that will help consumers make better-informed choices about where to enroll and draw attention to the institutions that leave students without good jobs and mountains of debt.[65] The Department should build on this increased transparency by releasing more data on the scale and status of its student loan portfolio and student outcomes at the institutional-level, including data on loan default rates, repayment rates, financial responsibility scores, and forbearance status. Further, I applaud the Department's announcement of its first-ever Chief Economist.[66]

President Biden's announcement to make proposed changes to Income-Driven Repayment (IDR) plans will provide another powerful metric for assessing the overall student loan portfolio.[67] The newly proposed IDR plan, which was announced in January 2023, will allow undergraduate borrowers to pay no more than 5 percent of their monthly discretionary income on undergraduate loans and raise the amount of income that is considered non-discretionary and is consequently protected from repayment.[68] Under this proposed rule, no borrower earning under 225 percent of the federal poverty level would have to make a monthly payment.[69] When this rule is finalized and implemented, the Department should collect and publish information from institutions on their percentage of graduates who make $0 monthly payments. This information can be useful to borrowers in determining the return on investment of an educational institution.

## 7. Civil Rights & Fair Lending Laws

Higher education experts and advocates have raised concerns that lenders' use of educational data to make credit decisions could result in discrimination.[70] A 2020 study by the Student Borrower Protection Center (SBPC) found that lenders charge borrowers who attend community colleges, Historically Black Colleges and Universities (HBCUs), and Hispanic-Serving

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[65] The Department of Education, "New Updates to College Scorecard Make Tool More Useful for Students and Families With Data About College Costs, Graduation Rates, and Post-College Earnings," press release, February 7, 2022, https://www.ed.gov/news/press-releases/new-updates-college-scorecard-make-tool-more-useful-students-and-families-data-about-college-costs-graduation-rates-and-post-college-earnings.

[66] The Department of Education, "Announcing the First-Ever Chief Economist at ED," James Kvaal, June 8, 2022, https://blog.ed.gov/2022/06/announcing-the-first-ever-chief-economist-at-ed/.

[67] The White House, "Fact Sheet: President Biden Announces Student Loan Relief for Borrowers Who Need it Most", press release, August 24, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/.

[68] *Id.*; The Department of Education, "New Proposed Regulations Would Transform Income-Driven Repayment by Cutting Undergraduate Loan Payments in Half and Preventing Unpaid Interest Accumulation," press release, January 10, 2023, https://www.ed.gov/news/press-releases/new-proposed-regulations-would-transform-income-driven-repayment-cutting-undergraduate-loan-payments-half-and-preventing-unpaid-interest-accumulation.

[69] *Id.*

[70] Market Watch, "Your college major may affect your ability to get a student or personal loan, creating a 'frightening' future for graduates," Jillian Berman, July 27, 2019, https://www.marketwatch.com/story/consumer-advocates-worry-your-college-major-could-affect-your-ability-to-get-a-loan-2019-07-24.

Institutions (HSIs) more for credit.[71] For example, the SBPC study found that Wells Fargo charged a hypothetical community college student borrower over $1,000 more on a $10,000 private loan when compared to a student borrower enrolled at a four-year college.[72] SBPC's study also showed that Upstart, a prominent financial technology firm that considers educational data in their lending practices, charged higher interest rates to borrowers depending upon where they attended school; if the student attended an HBCU or HSI, the borrower would be charged much more in interest and fees compared to if they went to New York University.[73] These discriminatory lending practices are in violation of fair lending laws, including the Equal Credit Opportunity Act (ECOA), which makes it "unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction".[74]

In 2014, the Federal Deposit Insurance Corporation (FDIC) brought an enforcement action against Sallie Mae Bank and Navient Solutions, after finding their use of CDR in their credit-scoring model for pricing student loans violated ECOA.[75] Another 2022 FDIC study revealed a pattern of discrimination in the underwriting process of student loans, and called into question the institutional use of CDR to determine which students could apply for private student loan consolidation and refinancing.[76] The FDIC found that the use of CDR as a loan eligibility factor resulted in the "disproportionate exclusion" of students who attended HBCUs from applying for credit.[77] Participants in federal financial aid programs, including schools, private-sector financial firms, and government contractors, are expected to comply with a range of civil rights and fair lending laws.[78] I call on the Department to leverage its partnership with other agencies such as the Consumer Financial Protection Bureau to support fair lending risk assessments and ensure student lending practices comply with fair lending and civil rights laws.

**8. Gainful Employment**

The Department's 2014 "gainful employment" (GE) rules would have helped ensure that college programs adequately prepared students and did not leave them unable to find work and struggling to repay insurmountable debt loads, or otherwise would put the school at risk of losing

[71] Student Borrower Protection Center, "Educational Redlining," February 2020, pp. 4-5, https://protectborrowers.org/wp-content/uploads/2020/02/Education-Redlining-Report.pdf.
[72] *Id.*
[73] *Id.*
[74] *See* 15 U.S.C. § 1691 (a)(l) (prohibiting discrimination on the basis of race, color, religion, national origin, sex or marital status, age, because all or part of an applicant's income derives from public assistance, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act).
[75] Federal Deposit Insurance Corporation, "FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act," press release, May 13, 2014, https://archive.fdic.gov/view/fdic/4897.
[76] Federal Deposit Insurance Corporation, "Consumer Compliance Supervisory Highlights," March 31, 2022, https://www.fdic.gov/regulations/examinations/consumer-compliance-supervisory-highlights/documents/ccs-highlights-march2022.pdf.
[77] Federal Deposit Insurance Corporation, Division of Depositor and Consumer Protection, "Consumer Compliance Supervisory Highlights," March 31, 2022, p. 9, https://www.fdic.gov/regulations/examinations/consumer-compliance-supervisory-highlights/documents/ccs-highlights-march2022.pdf.
[78] 15 U.S.C. § 1691 (a)

access to Title IV funding.[79] But the Trump Administration inexplicably rescinded the rule in 2019.[80]

Along with the list of low financial value postsecondary programs that the Department is creating, I applaud the Biden Administration's plan to revive and strengthen the GE rule,[81] which will take the necessary further step of holding non-degree and certificate programs, particularly those at predatory for-profit colleges, accountable. Nevertheless, I am concerned about ongoing delays in its implementation. I recognize the second negotiated rulemaking committee was unable to reach a consensus on proposed regulations for GE, thereby delaying the release of the GE proposal to spring 2023.[82] Further delay of the GE rule only will prolong the timeline for when poorly performing institutions could face penalties, exacerbating these institutions' harmful impact on students who are enrolled in these schools. Therefore, I urge the Department to begin building the infrastructure needed to implement GE as quickly as permissible, and while the Department works to implement this essential piece of its regulatory accountability agenda, I urge the Department to consider using their authorities to ensure that institutions offering low-quality programs are swiftly held accountable to prevent further financial harm to students who may end up with debts that are not affordable relative to their actual incomes.

## Conclusion

I am encouraged by The Department's attention to the need for stronger accountability among institutions of higher education and the steps that the Department already has taken to hold higher institutions accountable for their actions. However, I believe more must be done. The Department should take every opportunity to utilize the authority Congress has given it to ensure that schools are more accountable to students and taxpayers. I appreciate your prompt action to do so.

Sincerely,

Elizabeth Warren
United States Senator

[79] Federal Register, "Program Integrity: Gainful Employment," October 31, 2014, https://www.federalregister.gov/documents/2014/10/31/2014-25594/program-integrity-gainful-employment.
[80] Federal Student Aid, "Gainful Employment Electronic Announcement #122 – Early Implementation of the Rescission of the Gainful Employment Rule," June 28, 2019, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2019-06-28/gainful-employment-electronic-announcement-122-early-implementation-rescission-gainful-employment-rule.
[81] The Department of Education, "Issue Paper 3: Gainful Employment," February 2022, https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/3ge.pdf.
[82] National Association of Student Financial Aid Administrators, "ED Delays 5 Regulatory Rules to Spring 2023," Hugh T. Ferguson, June 23, 2022, https://www.nasfaa.org/news-item/27506/ED_Delays_5_Regulatory_Rules_to_Spring_2023.