COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

January 31, 2021

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

Dear Secretary Cardona:

I write to request the Department of Education (Department) review the activities of Everglades College, Inc., ("Everglades College"), currently a section 501(c)(3) tax-exempt organization and a nonprofit institution of higher education (IHE) for the purposes of eligibility to receive and use Title IV funds.

Background

The *Higher Education Act* (HEA) permits public, private nonprofit, and proprietary IHEs to participate in Title IV federal student loan programs, so long as the institutions meet and maintain the eligibility criteria. Proprietary institutions have additional requirements that they must meet, the most notable of which is the 90-10 rule, which requires that no more than 90 percent of a proprietary institution's revenues can come from Title IV programs. This rule, which has been recently made more robust by legislation to close an existing loophole, ensures that proprietary institutions are not entirely dependent on federal aid to meet their primary mission: making money for their owners, executives, and shareholders.

A "nonprofit institution," is an IHE that 1) is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual; 2) is legally authorized to operate as a nonprofit organization by each state in which it is physically located; and; 3) is determined by the U.S. Internal Revenue Service (IRS) to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code.[1] A "proprietary institution of higher education" is an IHE that is not a public or a nonprofit institution.[2]

[1] *See* 26 U.S.C. 501(c)(3)); 34 C.F.R. §600.2.
[2] *See* 20 U.S.C. §1002(b).

When an IHE undergoes a change in ownership that results in a change of its status from "proprietary" to "nonprofit," the Department undertakes a review of this change in ownership and control for purposes of determining Title IV eligibility. As part of its review, in addition to determining whether the institution meets the basic requirements, including having IRS 501(c)(3) tax-exempt status, the Department conducts its own independent analysis of the operations and finances of the IHE in order to determine whether any part of the IHE's net earnings benefits any private shareholder or individual. This analysis includes whether there are ongoing leases with the IHE's former proprietary owner (or a related party) as well as any financing, such as a promissory note, owed to the former proprietary owner.

Differences between IRS and Department Determination of Nonprofit Status
The U.S. Government Accountability Office (GAO) recently investigated the process through which proprietary IHEs convert to nonprofit status and found serious shortcomings, such as the possibility of insiders taking advantage of nonprofit institutions at student and taxpayer expense.[3] GAO found that IRS staff reviewing proprietary IHEs' applications for tax-exempt status did not always seek information to assess whether insiders would improperly benefit from conversions.[4] The Department, on the other hand, has recently strengthened its reviews of conversions based on a new process developed in 2016 under the Obama Administration because the Department recognized that previous review procedures were lacking.[5] The Department now independently reviews the IHE's board of directors, purchase and sale agreements, independent appraiser reports, employment contracts, lease agreements, and debt terms, to assess whether the former owners or insiders were benefitting improperly from the conversion.[6]

As a result, sometimes the Department comes to a different conclusion about nonprofit status than the IRS. For example, in November 2019, the Department rejected Grand Canyon University's (GCU) request to be considered a nonprofit for the purposes of Title IV funding, despite a determination by the IRS that GCU was eligible to receive tax-exempt status as a 501(c)(3) organization.[7] The Department's analysis focused on the relationship between GCU and its former owner, Grand Canyon Education, which continues to provide considerable services to GCU.[8] The Department also upheld its decision on appeal.[9]

Considering that there can be a divergence between the IRS' determination of 501(c)(3) status and the Department's recognition of an IHE as a nonprofit institution for the purposes of Title IV

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[3] *See* U.S. Gov't Accountability Off., GAO-21-89, *Higher Education: IRS and Education Could Better Address Risks Associated with Some For-Profit College Conversions,* 39, Dec. 31, 2020, available at https://www.gao.gov/products/gao-21-89 (hereinafter "GAO Report")).
[4] *See id.* at 32.
[5] *See id.* at 41-42.
[6] *See id.* at 42.
[7] *See* Review of the Change in Ownership and Conversion to Nonprofit Status of Grand Canyon University OPE ID: 00107400, the U.S. Department of Education, Federal Student Aid, November 06, 2019, available at https://s3.documentcloud.org/documents/6548148/Grand-Canyon-University-Decision-on-CIO-11-06-19.pdf (hereinafter "GCU Review").
[8] *See id.*
[9] *See* Reconsideration Review of the Change in Ownership and Conversion to Nonprofit Status of Grand Canyon University OPE ID: 00107400, U.S. Department of Education, Federal Student Aid to Grant Canyon University, January 12, 2021, available at https://drive.google.com/file/d/16MAy_o2-nRoYh18MAmLLmBakEVRm7GKX/view.

eligibility, I request that the Department revisit and review the previous approval of Everglades College's status as a nonprofit institution for the purposes of eligibility to receive and use Title IV funds. As outlined below, Everglades College's conduct appears to violate the first requirement to qualify as a nonprofit for Title IV eligibility because the institution's earnings benefit private shareholders and individuals who are insiders: Dr. Arthur Keiser, the Keiser family, and their related businesses.

Everglades College
Everglades College's current program participation agreement (PPA) expires in 2023. As such, Everglades College must apply to the Secretary of Education for a determination that the institution continues to meet Title IV requirements.[10] This is an opportunity for the Department to consider whether Everglades College operates as a nonprofit for the purpose of Title IV eligibility based on the facts highlighted in this letter.

Everglades College is currently a nonprofit entity that was founded by Dr. Keiser and the Keiser family. Everglades College currently does business as both Everglades University and Keiser University. The sales transactions which resulted in Everglades College owning these two institutions, including their appraisals and the debts owed, raise concerns about whether Everglades College is a nonprofit institution. Further, ongoing transactions with Dr. Keiser, the Keiser family, and their related businesses raise additional concerns that Everglades College is not a nonprofit institution for the purposes of Title IV eligibility, but one that benefits an individual, his family members, and their related businesses.

Sale Transactions, Appraisals, and Debts Owed
The original entity, which later became Everglades College, was American Flyers College (AFC). The Keiser family purchased AFC in 1998 and converted it into Everglades College in 2000 under Florida Non-Profit Law. The IRS granted Everglades College 501(c)(3) exemption status in July 2002 after an extensive negotiation of their application. At the time, the IRS was concerned about several issues, including: 1) the relationship between Everglades College and Dr. Keiser and the Keiser family, especially business agreements and loans; 2) the independence of the Trustees of Everglades College; and 3) the valuation of AFC, which was appraised for $325,000, but when it was purchased by the Keiser family, the sale price was $10,000.[11]

In 2011, Everglades College purchased the operations of the proprietary institution, Keiser School, Inc. (KSI), which was also owned by Dr. Keiser and his family. This entity now does business as Keiser University under Everglades College. The purchase was for approximately $521 million based on an "independent appraisal,"[12] with $300 million owed to the remaining

[10] *See* 34 CFR 600.20(b)(2)(i)(A).
[11] *See* Internal Revenue Service Letter to Everglades College Inc., December 18, 2001, available at https://production-tcf.imgix.net/app/uploads/2016/03/17183441/EvergladesL.pdf; *see generally* "The Covert For-Profit," Robert Shireman, The Century Foundation, September 22, 2015, available at https://tcf.org/content/report/covert-for-profit/.
[12] *See* Everglades College, Inc. Single Audit Report 2015, pg. 14, available at https://www.republicreport.org/wp-content/uploads/2017/06/Everglades-fin-smt-2015.pdf (hereinafter "2015 Audit Report").

KSI entity and $221 million considered a donation from Dr. Keiser.[13] Dr. Keiser also loaned Everglades College $21 million as a "working capital loan."[14] Four years later, Everglades' 2015 financial statement showed a much lower valuation for Keiser University and also showed a reduced debt to KSI by $50 million to a new total of $250 million.[15] According to Everglades College, this debt was further reduced to $75 million to impact Everglades College's composite score.[16] These reductions in debt lead one to question whether the original appraisal was potentially inflated for the benefit of Dr. Keiser and KSI. According to Everglades College's 2019 Form 990, Everglades College continues to owe a debt of $60 million dollars to KSI (approximately $7 million was paid in 2019; $5 million in principle and $2 million in interest).[17]

Continued Lease and Services Transactions
Dr. Arthur Keiser, the Keiser family, and their related businesses earn considerable income and profits from Everglades College. For example, as Chancellor of Keiser University, one of the institutions operating under the Everglades College PPA, Dr. Keiser earns approximately $830,000,[18] which is greater than all but one of the Presidents and Chancellors of the major public or nonprofit institutions in Florida in 2019.[19]

On Everglades College's 2019 Form 990, Dr. Keiser or his family members were declared to own or have an ownership interest in several of the service providers used by Everglades College. The properties on which the Everglades campuses sit continue to be owned by Dr. Keiser or related family members, earning them millions of dollars in rental income annually.[20] Similarly, other service providers used by Everglades College, such as legal services, recruiting services, roofing services, paper filling services, travel services, chartered aircraft services, among others, are also owned in-part by Dr. Keiser or his family members—resulting in substantial income coming from Everglades College.[21] As of the 2019 Form 990, the amounts paid to these Keiser-related business entities totaled $8,879,162, including $1,429,109 for charter aircraft and travel.[22] According to Everglades College itself, the IRS found in 2014 and 2015 that some of the leases with Keiser-related companies were above fair market value and imposed an excise tax as well as unrelated business income taxes as a result.[23]

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[13] Listed as a "Bargain Sale Element" noncash contribution of $221,379,055, pursuant to an "independent appraisal." *See* Everglades College, Inc. Form 990 (2011), Schedule M, available at https://projects.propublica.org/nonprofits/display_990/650216638/2012_11_EO%2F65-0216638_990_201112.
[14] *See id.* at Schedule L.
[15] *See* 2015 Audit Report, *supra* 12.
[16] *See* Letter from Stephen T. Miller of Zerbe, Miller, Fingeret, Frank & Jadav Law Firm, representing Everglades College, Inc. to Manasi Raveendran, Education Oversight Counsel at H. Comm. On Educ. and Labor, Sept. 3, 2021, pg. 14 (on file with the H. Comm. On Educ. and Labor) (hereinafter "Everglades Letter").
[17] *See* Everglades College, Inc. Form 990 (2019), Schedules L and M, available at https://apps.irs.gov/pub/epostcard/cor/650216638_201912_990_2021040517883331.pdf (hereinafter "Everglades 2019 Form 990"); Everglades College, Inc. Single Audit Report (2019), available at https://projects.propublica.org/nonprofits/display_audit/21249020191 (hereinafter "2019 Audit Report").
[18] *See* Everglades 2019 Form 990, *supra* 17, Part VII, Section A.
[19] *See* "I-Team review: State university presidents' pay and bonuses rival those of CEOs," Kylie McGivern, November 14, 2019, https://www.abcactionnews.com/news/full-circle/i-team-review-state-university-presidents-pay-and-bonuses-rival-those-of-ceos (providing the salaries of other Florida university presidents).
[20] *See* Everglades 2019 Form 990, *supra* 17, Schedules L and M.
[21] *See id.*
[22] *See id.* at Schedule L, Part V.
[23] *See* Everglades Letter, *supra* 16 at 13.

Essentially, including Dr. Keiser's salary, loans owed to a Keiser-family business, and payments for services rendered, Dr. Keiser, his family, or entities in which they have an ownership interest altogether received $16,869,635 from Everglades College in 2019.[24] This pattern is repeated to some extent on Everglades' tax filings going back to 2011.

Conclusion

As noted by the GAO, there is inherent value in being classified as a nonprofit entity, including reducing an institution's tax burden, avoiding limits on federal student aid funding, and avoiding the negative public perception associated with proprietary status.[25] As such, it is important that regulators scrutinize those entities that have converted from proprietary to nonprofit status to ensure they are actually operating as nonprofit entities, and not masquerading as such.

The Department utilizes Treasury regulations in its analysis of whether an institution's net earnings benefit any private shareholder or individual.[26] A private shareholder or individual, specifically an insider, is not entitled to unjustly enrich himself at the institution's expense.[27] Further, when a proprietary organization benefits substantially from the activities of the nonprofit organization, it can destroy the nonprofit organization's status.[28] Transactions such as sales or exchanges of property, rental arrangements, and contracts to provide goods or services to the organization often form the basis of this analysis.[29]

In the case of Everglades College, the owner and the owner's family, directly and indirectly through their businesses, substantially benefit from the earnings of the IHE, in violation of the principles of what makes an IHE a nonprofit. Dr. Keiser, his family members, and related businesses have received millions of dollars since 2011 from loan payments, rental properties, and contracts to provide goods and services to Everglades College, including at above fair market values as the IRS has previously found. In summary, based on the information provided above, we request the Department review its previous recognition of Everglades College as a nonprofit institution for the purposes of Title IV eligibility.

Please send all official correspondence and information relating to this request to the Committee's Clerk, Rasheedah Hasan, at Rasheedah.Hasan@mail.house.gov. Please keep Committee staff informed of work on this matter.

Sincerely,

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ROBERT C. "BOBBY" SCOTT
Chairman

cc: The Honorable Virginia Foxx, Ranking Member

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[24] *See id.*
[25] *See* GAO Report, *supra* 3 at 6.
[26] *See* GCU Review, *supra* 7 at 10.
[27] *See* "Overview of Inurement/Private Benefit Issues in IRS 501(c)(3)," 1990 EO CPE Text, pgs. 2, 5-9, available at https://www.irs.gov/pub/irs-tege/eotopicc90.pdf (hereinafter "IRS Text").
[28] *See Intl. Postgraduate Med. Foundation v. C.I.R.*, 56 T.C.M. (CCH) 1140, 1989 WL 3808 (Tax 1989).
[29] *See* IRS Text, *supra* 27 at 3.