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U.S. House Committee on Education and Labor
Subcommittee on Higher Education and Workforce Investment

Rising to the Challenge: The Future of Higher Education Post COVID-19

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Thank you for the opportunity to testify before the U.S. House of Representatives Committee on Education and Labor, Subcommittee on Higher Education and Workforce Investment. The National Student Legal Defense Network ("Student Defense") is a non-partisan, non-profit organization that uses litigation and advocacy to advance student rights to opportunity and ensure that higher education provides a launching point for economic mobility. I am honored to be able to provide this testimony and recommendations for your consideration.[1]

Higher education was at a crossroads even before COVID-19. In recent years, the cost of college attendance has risen, and associated student debt levels have exploded. Discussions about debt forgiveness and reforming higher education finance have moved out of wonky policy circles and into broader public discourse. State funding has decreased. Many institutions of higher education have increasingly provided online and lower-cost programs to supplement or replace the "traditional" four-year, residential college. This trend has been accelerated by the COVID-19 crisis.

Student demographics have also shifted, with an increasing population of "nontraditional" students, including those who are older, lack financial support from parents or other family members, and are more likely to have dependents.[2] Disparities in higher education have had disproportionate, negative, and long-lasting effects on Black and Latino communities.[3] Student loan servicing and

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[1] Portions of this testimony draw from recent reports I have written and co-written, and which are available at www.100daydocket.org.

[2] *See generally, e.g.*, Ted Mitchell, *Changing Demographics and Digital Transformation*, Educause Review 10 (Winter 2019), *available at:* https://er.educause.edu/-/media/files/articles/2019/3/er191101.pdf.

[3] *See generally, e.g.*, J.P. Morgan Chase & Co. Institute Policy Brief, *Student Loan Debt: Addressing Disparities in Who Bears the Burden* (Oct. 2020), *available at:* https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-

repayment plan failures have exacerbated problems for borrowers. Far too many students have tried to use higher education as a gateway to economic success, only to be left worse off than they were prior to enrollment. And COVID-19 has caused or deepened devastating public health and economic impacts to students and institutions alike.

Recent history has shown how severe economic downturns can impact college enrollment. In the years surrounding the Great Recession, enrollment in for-profit colleges increased at a rate that far exceeded enrollment changes at public or private, non-profit institutions.[4] Similar trends are developing during COVID-19, where enrollment at for-profit colleges is increasing, while enrollment in higher education more broadly is declining.[5]

These statistics paint a troubling picture, when considering the overwhelming evidence that for-profit institutions provide poorer outcomes than other forms of higher education. According to a recent report, for-profit colleges enroll 10 percent of students, but account for half of all student-loan defaults.[6] In terms of graduation rates and measures of post-graduation success, as one economist recently noted, "the majority of empirical evidence on the topic finds that the outcomes of for-profit

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co/institute/pdf/jpmcinstitute-student-loan-debt-policy-brief.pdf; Center for Responsible Lending, et al., *Quicksand: Borrowers of Color & the Student Debt Crisis* (Sept. 2019), *available at:* https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-quicksand-student-debt-crisis-jul2019.pdf.

[4] Between 2006 and 2010, enrollment in for-profit colleges grew by 76%, with far smaller increases at non-profit and public institutions. *See* Stephanie Riegg Cellini, *The alarming rise in for-profit college enrollment,* Brookings Inst., How We Rise (Nov. 2, 2020) (hereinafter "Alarming Rise"), *available at:* https://www.brookings.edu/blog/brown-center-chalkboard/2020/11/02/the-alarming-rise-in-for-profit-college-enrollment/. Similarly, according to data from the National Center for Education Statistics, from 2007-08, 2008-09, and 2009-10, enrollment at private, for-profit institutions grew at a rate of 20,3, 19.4, and 14.5 percent respectively. In contrast, during those same years, enrollment at private non-profit institutions grew at a rate of 2.5, 3.0, and 2.3 percent. *See* National Center for Education Statistics, Digest of Education Statistics, *Total Fall in Enrollment in all postsecondary institutions participating in Title IV aid programs and annual percentage change in enrollment*, Table 303.20, *available at:* https://nces.ed.gov/programs/digest/d19/tables/dt19_303.20.asp.

[5] According to recent reports, "overall postsecondary enrollments declined 2.5 percent in fall 2020, nearly twice the rate of enrollment decline reported in fall 2019." *See* National Student Clearinghouse Research Center, *Term Enrollment Estimates* 2 (Fall 2020), *available at:* https://nscresearchcenter.org/wp-content/uploads/CTEE_Report_Fall_2020.pdf. Meanwhile, "[p]rivate for-profit four-year institutions grew by 5.3 percent over last year and was the only sector to demonstrate enrollment growth at both the undergraduate and graduate levels." *Id.* Other research suggests that while undergraduate enrollment at for-profits has increased three percent over the past year, compared to a nine percent decline in public community college enrollment. *See* Alarming Rise, *supra* n.4.

[6] Ariel Gelrud Shiro & Richard V. Reeves, *The for-profit college system is broken and the Biden administration needs to fix* it, Brooking Inst., How We Rise (Jan. 12, 2021), *available at:* 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/;

students are worse than the outcomes of students in other types of institutions, even after controlling for confounding factors."[7]

At this critical juncture, oversight is critical to protect the interests of students. But the need for oversight is even more important given that Congress has made substantial investments in higher education and students, through billions of dollars in funds to institutions and students through the March 2020 Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), the December 2020 Coronavirus Response and Relief Supplemental Appropriations Act, and the March 2021 American Rescue Plan.

Charged with overseeing the federal student assistance programs authorized by Title IV of the Higher Education Act ("HEA"), the U.S. Department of Education ("Department") has extensive responsibilities and authorities across higher education and with relation to growing student debt problems. For example, the Department has the authority to determine which institutions and entities can participate in the student loan programs (and thus serve as a conduit for federal student loans and grants). The Department's authorities stretch not only to institutions themselves, but also the companies that contract to provide vital student-facing services to institutions with respect to the financial aid programs, such as aid management and recruiting. Congress has also provided the Department authority necessary to halt illegal practices through enforcement and regulation.

Unfortunately, the Department has a scattered history of using its oversight authorities to prevent waste, fraud, and abuse in the student aid system. In 1991, a bipartisan report of the U.S. Senate Permanent Subcommittee on Investigations led by Senator Nunn ("Nunn Report") referred to the Department's "dismal record" in conducting oversight, concluding that the Department "has failed to efficiently or effectively carry out" its responsibilities to oversee federal student aid programs.[8] But the problems didn't begin in 1991. Rather, as Senator Nunn stated on the last day of hearings:

> It is not an exaggeration to say that we have heard no testimony or seen any documents that suggest that the Department has done even an adequate job in managing and overseeing its student loan program responsibilities. Moreover, criticism of the Department's efforts in this area is not unique to this investigation: in 1975 this same Subcommittee heard testimony on student loan program

7 *See* Alarming Rise, *supra* n.4.

8 S. Rep. No. 102-58, at 24 (1991), *available at:* https://files.eric.ed.gov/fulltext/ED332631.pdf.

> problems that is disturbingly similar . . . to that which we have heard in these hearings. GAO, over a period of many years, has also repeatedly brought many of these problems to the Department's attention. Despite all of that, the program's failures seem only to have gotten worse.[9]

The Nunn Report recounted witness testimony regarding "gross mismanagement, ineptitude, and neglect" in overseeing the entirety of the Title IV programs, concluding that the Department's program compliance staff "must assume a far greater and more proactive role in detecting and dealing with fraud, waste, and abuse."[10] Strikingly—years before the current issues surrounding the Department's "Borrower Defense" program (intended to provide relief to students victimized by predatory colleges)—the bipartisan report also stated that the Department "must develop ways to assist those students who continue to be victimized by fraud and abuse" in the student aid system because "the Department's oversight systems have failed."[11] The Department, the Nunn Report concluded, "must not only increase efforts to prevent this type of abuse in the future, but also work with students to ease financial burdens imposed as a result of past abuse."[12] Simply put, the Nunn Report exposed serious problems with the Department's oversight of virtually all facets of the federal student aid system.

Twenty years later, problems remained. In a 2012 report focused on the for-profit education industry, the Senate Committee on Health, Education, Labor, and Pensions, led by Senator Tom Harkin, tacitly—if not expressly—acknowledged certain oversight deficiencies at the Department. Senator Harkin's report, for example, urged the Department to "[c]reate an enforcement task force . . . to focus on targeted enforcement of new and existing regulations."[13] The Harkin Report similarly recommended that the Department be required to "develop clear risk-based criteria that will trigger audits or program reviews."[14]

Yet the problems continued. In 2013, the U.S. Senate Committee on Health, Education, Labor, and Pensions heard testimony from a representative of the American Council on Education—the largest association of institutions of higher

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9 *Id.* at 24–25.

10 *Id.* at 36.

11 *Id.* at 37.

12 *Id.*

13 S. Rep. No. 112-37, Vol. 1 at 205 (2012), *available at* https://www.govinfo.gov/content/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf.

14 *Id.*

education—about how the Department possesses an "incredible range of [enforcement and compliance] powers," which it uses only "rarely" and "unevenly."[15]

In recent years, with Secretary DeVos in charge and the Department stacked with former executives of, and advisors to, for-profit colleges, the Department systematically eliminated or stalled policies and regulations designed to protect students. For example, the Department reduced the standards governing states and accreditors—who also serve gatekeeping functions over Title IV participation.[16] The Department repealed the Gainful Employment Rule, designed to ensure that students attending career-oriented programs had post-graduation earnings sufficient to justify student debt levels.[17] The Department eviscerated its Enforcement Office[18] created in 2016 to police many of the problems described above. Meanwhile, the Department's regulations governing debt relief for defrauded borrowers were weakened and its stalled implementation of the prior regulations became the subject of numerous lawsuits.[19] And as provided in a July 2020 report, the full Education and Labor Committee concluded after a year-long investigation that the Department under Secretary DeVos took "extraordinary measures" to ensure that Title IV funds illegally continued to flow to an institution that lied to students about its lack of accreditation.[20]

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[15] *The Triad: Promoting a System of Shared Responsibility. Issues for Reauthorization of the Higher Education Act: Hearing Before the S. Comm. On Health, Education, Labor, and Pensions,* 113 Cong. 18–19 (2013) (Prepared statement of Terry W. Hartle, Ph.D).

[16] *See, e.g.*, Student Assistance General Provisions, The Secretary's Recognition of Accrediting Agencies, The Secretary's Recognition Procedures for State Agencies, 84 Fed. Reg. 58,834 (Nov. 1, 2019) (codified at 34 C.F.R. §§ 600, 602, 603, 654, 668, 674); Program Integrity: Gainful Employment, 84 Fed. Reg. 31,392 (July 1, 2019) (codified at 34 C.F.R. §§ 600, 668) ("Gainful Employment Repeal"); Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 84 Fed. Reg. 49,788 (Sept. 23, 2019) (codified at 34 C.F.R. §§ 668, 682, 685) ("2019 BD Rule").

[17] Program Integrity: Gainful Employment, 84 Fed. Reg. 31,392 (July 1, 2019) (repeal); *see also* Program Integrity: Gainful Employment, 79 Fed. Reg. 64,890 (Oct. 31, 2014), corrected by 79 Fed. Reg. 71,957 (Dec. 4, 2014) (regulation).

[18] D. Ivory, E. Green, & S. Eder, *Education Department Unwinds Unit Investigating Fraud at For-Profits*, N.Y. Times (May 13, 2018).

[19] *See, e.g.* Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 83 Fed. Reg. 49,788 (Sept. 23, 2019) (amending the 2016 "Borrower Defense" Rule); Compl. *Sweet v. DeVos*, No. 5:19-cv-03674 (N.D. Cal. June 25, 2019), *available at:* https://predatorystudentlending.org/wp-content/uploads/2019/06/Complaint.pdf

[20] U.S. House of Representatives, Comm. on Educ. and Labor, *Shattered Dreams: Examining the Education Department's Role in the Misconduct of Dream Center Education Holdings* 7 (July 2020), *available at*:
https://edlabor.house.gov/imo/media/doc/Shattered%20Dreams%20Examining%20the%20Education%20Departments%20Role%20in%20the%20Misconduct%20of%20Dream%20Center%20Education%20Holdings1.pdf.

This spring marks the thirty-year anniversary of the issuance of the Nunn Report. Babies born when the Nunn Report was released are now likely saddled with their own student debt. In other words, generations of students have been plagued by the Department's insufficient oversight of colleges and universities. The Department must use the tools at its disposal to ensure that all schools participating in the Title IV programs benefit—rather than prey upon—students.

I have divided this testimony into two parts. Part I details numerous instances of the Department's failures to use, or effectively use, its investigatory, compliance, and oversight authorities. Part II describes how the Department can better use these authorities to bring student consumer protections to the forefront of higher education.

PART I
"Déjà Vu All Over Again"

The Department has a host of tools at its disposal to conduct periodic reviews, annual reviews, and targeted investigations. The Department also has the authority to determine which institutions are participating in the Title IV programs, which cannot, and which should only participate on a limited basis. And, from an enforcement perspective, the Department can take punitive steps to punish and deter misconduct and recoup financial losses associated with the misconduct.

Thirty years ago, the Nunn Report outlined scathing conclusions about the Department's failure to use these compliance, oversight, and enforcement authorities. Today, when students need even greater assurances that their tuition dollars are being well spent, similar problems remain.

Certification Decisions

Perhaps the most important decision the Department makes to protect students is to "qualify"[21] an institution for participation in the Title IV programs. By statute, this requires the Department to determine whether a postsecondary institution meets the statutory definition of an "institution of higher education," whether the institution has the legal authority to operate within a state, the "accreditation status" of the institution, "and [its] administrative capability and financial responsibility."[22] These provisions readily allow the Department to consider, for example, whether an institution is able to: provide the services it describes, have adequate administrative resources, meet its financial obligations, and comply with other standards, including the historical performance of the institution (and key

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[21] HEA § 498(a), 20 U.S.C. § 1099c(a)

[22] *Id.*

personnel) with respect to the student aid programs.[23] Here, a cursory review of recent decisions suggests failures:

- In December 2020, the Accrediting Council for Independent Colleges and Schools ("ACICS") ordered Bay Area Medical Academy institution to "show cause" as to why its accreditation should not be revoked due to low post-graduation job placement rates. The school was given until March 2021 to respond, during which time it had to notify prospective and enrolled students of the action.[24] In February 2021, without waiting to see the institution's response, and before the school had placed the required public notification on its website, FSA recertified the institution for an additional two years.[25]

- In May 2019, on the heels of a January 2019 settlement agreement between the corporate parent of Colorado Technical University ("CTU") and 48 state Attorneys General, the Department fully certified CTU for nearly two years of Title IV participation.[26] There are no public reports of the Department taking its own action against the institution, and the decision to recertify the school came while the institution remained under investigation by the Federal Trade Commission and the State of California (which did not join the multistate settlement).[27] Three months after the Department's decision to fully certify the institution, the FTC announced its own settlement with the school, resulting in approximately $30 million in restitution for students.[28] CTU's May 2019 program participation agreement expires at the end of March 2021.[29]

- On February 23, 2021, the Department fully recertified Becker College for three years, acknowledging that the school "meets requirements" set out in the HEA.[30] By statute, this means that the institution "is able to meet all of its financial obligations." One week later, the institutions' state authorizer,

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[23] HEA § 498(c)–(d); 20 U.S.C. § 1099c(c)–(d).

[24] Ltr. fr. M. Edwards, President & CEO, ACICS to S. Cvejic, CEO/Academy Director, Bay Area Medical Academy (Dec. 30, 2020), *available at:* https://static1.squarespace.com/static/5ce58a38738b880001909396/t/5ff6335ba618c61e288bd009/1609970525471/00060173_Bay+Area+Medical+Academy_SF_SA.pdf

[25] U.S. Dep't of Educ., Case Management and Oversight Weekly Institutional Update Report, Reapproved Schools (Feb 6, 2021 thru Feb. 13, 2021) (on file with author).

[26] Perdoceo Educ. Corp., Annual Report (Form 10-K) (Feb. 19, 2020), *available at:* https://sec.report/Document/0001564590-20-005289/.

[27] *Id.*

[28] Stipulated Order for Perm. Inj. And Monetary Judgment, *Fed'l Trade Comm'n v. Career Educ. Corp.*, No. 1:19-cv-05739 (N.D. Ill. Aug. 27, 2019)

[29] Perdoceo Educ. Corp., Annual Report (Form 10-K) (Feb. 24, 2021) (, *available at:* https://sec.report/Document/0001564590-21-008099/

[30] U.S. Dep't of Educ., Case Management and Oversight Weekly Institutional Update Report, Reapproved Schools (Feb 20, 2021 thru Feb. 27, 2021) (on file with author).

together with the regional accreditor, publicly announced that the school's "financial situation has become sufficiently uncertain" such that the state was working with the school to explore options for a likely closure.[31] At the federal level, however, it is unclear whether the Department had taken any steps to coordinate with the institution, require the institution to work with its students or develop teach out agreements, or mitigate potential financial losses to the government and students.

- As the Committee is aware, the Department's involvement in schools owned by the Dream Center Education Holdings represents another costly mistake for students and taxpayers alike. Described in detail in a recent Committee report, the Department in 2018 took "extraordinary measures" to retroactively deem an institution to be a non-profit institution in order to retroactively make legal that which had been illegal (*i.e.*, continued Title IV participation for a school that had lost accreditation and failed to disclose that information to students).[32]

Dream Center aside, this is not to say that each decision was necessarily illegal or contrary to the dictates of the HEA. Nevertheless, each scenario raises substantial questions about the rigor with which the Department considers student protections when certifying institutions for Title IV participation.

Compliance Audits

With certain limited exceptions, every institution participating in the Title IV programs must annually conduct a compliance audit and submit that audit, along with audited financial statements, to the Department within six months after the end of an institution's fiscal year.[33] The compliance audit covers all Title IV program transactions during the audit period and must be conducted by an independent auditor under standards set by the Office of Management and Budget ("OMB") and/or the Department's Office of the Inspector General ("OIG").[34] This is the only Title IV compliance review that each institution must undertake on an annual basis.

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[31] *See Statement from the Mass. Dep't of Higher Ed. And New England Comm'n on Higher Educ.* (March 2, 2021), *available at:* https://www.mass.edu/strategic/documents/2021-03-02%20Public%20Statement%20on%20Becker%20College.pdf.

[32] *See generally* U.S. House of Representatives, Comm. on Educ. and Labor, *Shattered Dreams: Examining the Education Department's Role in the Misconduct of Dream Center Education Holdings* 7 (July 2020).

[33] 34 C.F.R. § 668.23

[34] 34 C.F.R. § 668.23

In 2018, the Government Accountability Office ("GAO") released a report titled *Education's Postsecondary School Certification Process*, which analyzed the Department's review of these compliance audits.[35] That Report described two major flaws in the process.

First, the audits themselves are failing. According to GAO, OIG's review of compliance audits shows widespread deficiencies: of the 739 compliance audits OIG reviewed from fiscal years 2006 through 2017, 77% were conducted in a failing or deficient manner.[36] This is not to say that the institutions had failed, but rather that the audits themselves were failing or deficient. Although GAO acknowledged that this may not be a representative sample, it suggests huge failures in the audit system that demand greater oversight.

Second, despite its statutory responsibility to "manag[e] the administrative and oversight functions supporting the [Title IV] programs,"[37] the office of Federal Student Aid ("FSA") does not oversee auditors. Rather, FSA has effectively outsourced "primary responsibility for issues related to audit quality" to the OIG.[38] But OIG has no authority to bring an enforcement action against an auditor and can only refer an inadequate auditor to FSA or the Department of Justice for action. We have seen no public record of enforcement actions against an auditor responsible for the hundreds of failing or deficient audits referred to in the GAO Report. FSA, meanwhile, can easily determine that conduct by a given auditor does not meet its standards.

All the while, it appears that only a separate federal agency, the Securities and Exchange Commission, has taken action against auditors relating to Title IV non-compliance issues.[39]

Program Reviews

The Department has the statutory responsibility to conduct "program reviews on a systematic basis" of "all institutions of higher education" that participate in Title IV.[40] Congress has instructed the Department to prioritize reviews for institutions that meet certain risk factors, including of those institutions that "the Secretary

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35 U.S. Gov't Accountability Off., GAO-18-481, *Federal Student Aid: Education's Postsecondary School Certification Process* (2018) (hereinafter "GAO Report").

36 *Id.* at 15. More specifically, 23 percent (173) passed, 59 percent (436) failed, and 18 percent (130) passed with deficiencies. *Id.*

37 HEA § 141(a)(1), 20 U.S.C. § 1018(a)(1).

38 GAO Report at 5.

39 Press Release, U.S. Secs. & Exch. Comm'n, *SEC Charges Two Former KPMG Auditors for Improper Professional Conduct During Audit of Not-for-Profit College* (Feb. 23, 2021), *available at:* https://www.sec.gov/news/press-release/2021-32.

40 HEA § 498a(a), 20 U.S.C. § 1099c-1(a).

determines may pose a significant risk of failure to comply" with statutory requirements.[41] Instead of fulfilling these statutory mandates effectively, the Department has acknowledged delays in its program review process.

One such delay involves how frequently institutions receive a program review. According to Departmental data, although approximately there are currently approximately 5,600[42] institutions participating in Title IV, only 1,554 had program reviews finalized between 2013 and 2019 (inclusive). In Fiscal Year 2020, FSA only issued 143 "Final Program Review Determinations [("FPRDs")] or other close out actions."[43] In other words, an institution can go many years—or even decades—without an on-site or off-site program review conducted by the Department. Delays in the process correspond to delays in remediation, penalties, and deterrence of future wrongs.

Likewise, many program reviews take years to complete. For example, on March 6, 2020, the Department released a FPRD regarding a postsecondary institution known as the Allen School.[44] That review began more than nine years earlier, in February 2011, and considered Title IV award years 2009 through 2011. The Department conducted its review, at least in part, because the school "had experienced a large increase in [Title IV] funding," in recent years.[45] More specifically, the school's Title IV funding grew almost 240% between 2007–08 and 2011–12.[46]

Despite identifying "serious concerns," the Department never finalized the review. In 2014, it issued a Program Review Report ("PRR"), which is an interim step in the review process, but waited until 2020 to simply "close the review based on the length of time that has passed since the examination of those records."[47] During the interim period between the PRR and the FPRD, approximately $87 million in Title IV funding flowed to students attending this institution.[48]

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41 HEA § 498a(a)(2)(F), 20 U.S.C. § 1099c-1(a)(2)(F).

42 U.S. Dep't of Educ., Federal Student Aid, *Annual Report FY 2020* 4 (Nov. 16, 2020), *available at:* https://studentaid.gov/sites/default/files/fy2020-fsa-annual-report.pdf

43 *Id.* at 143.

44 *See* Ltr. from Betty Coughlin, Division Director, Federal Student Aid to Jason Teich, President, Allen School re: Final Program Review Determination (Mar. 6, 2020) ("Allen FPRD Letter"), *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/allen-school-ny03358320200306fprdredacted.pdf.

45 *Id.* at Program Review Report 3.

46 *Id.* at Program Review Report 2.

47 Allen FPRD Letter at 1.

48 Data obtained from the Federal Student Aid Data Center's "Title IV Program Volume Reports," *available at:* https://studentaid.gov/data-center/student/title-iv.

According to the Department's Federal Student Aid data center, there are many other examples of reviews taking many years to complete, both for closed and open schools.[49]

"Estimated Actual Loss"

When the Department finds—through either a program review or audit—that an institution of higher education has disbursed Title IV loans to certain ineligible students,[50] the Department applies an "Estimated Actual Loss" ("EAL") formula to determine the amount a school must repay the government. Under EAL, rather

[49] For example, in October 2019, the Department issued its final determination regarding Dade Medical Academy, a school that closed four years prior. The review assessed a liability of more than $114 million, resulting from the "serious nature" of one or more findings. *See* Ltr. from Chris Miller, Division Director, Federal Student Aid to Ernesto Perez, President, Dade Medical College re: Final Program Review Determination (October 21, 2019), *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/dade-medical-college-fl0383230020191021fprdredacted.pdf. It is unclear from public data whether the Department recouped any of these funds through other processes. On February 5, 2020, the Department finalized its review of Velvet Touch Academy of Cosmetology, which it started in May 2014. The review covered the institution's compliance with Title IV requirements during the award years from 2011 through 2014. The Department issued a program review report in 2014. After the school closed in May 2015, the Department did not complete its review until 2020. *See* Ltr. from Marina Fernandez-Rosario, Division Director, Federal Student Aid to Jennifer L. Rodgers, President, Velvet Touch Academy of Cosmetology re: Final Program Review Determination (Feb. 5, 2020), *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/velvet-touch-academy-of-cosmetology-id04194820200205fprdredacted.pdf.

This is not merely a problem with closed schools. In September 2019, the Department finalized its review of Long Island University, assessing approximately $264,000 in liabilities from a review that began in 2011 regarding award years for 2009 through December 2011. *See* Ltr. from Betty Coughlin, Division Director, Federal Student Aid to Kimberley Cline, President, Long Island University re: Final Program Review Determination (Sept. 27, 2019), *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/Long_Island_University_NY_002751_09_27_2019_FPRD_Redacted.pdf.

[50] In this regard, the Department appears inconsistent in its use of the EAL where a false certification discharge may be available. In one 2017 situation, the now-closed Stenotype Institute of Jacksonville was unable to verify Title IV eligibility of students' high school diplomas. The Department imposed approximately $2.4 million in liabilities from this issue, and expressly stated that it did "not allow for a reduction of Direct Loan liabilities through an Estimated Loss calculation where, as here, the institution fails to show that students were ever eligible to receive Direct Loans." Ltr. from Chris Miller, Division Director, Federal Student Aid, to Gloria Wiley, President, Stenotype Institute of Jacksonville re: Final Program Review Determination, Final Program Review Determination 13 (April 10, 2017), *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/Stenotype_Institute_of_Jacksonville_FL_00841700_04102017_FPRD_Redacted.pdf. Yet in similar instances, the Department has applied EAL to reduce liabilities. *See* Ltr. from Cynthia Thompson, Director, Dallas School Participation Division, Federal Student Aid to Dr. Warren Nichols, President, College of the Mainland Jacksonville re: Final Program Review Determination, Final Program Review Determination at 6-7 (Aug. 17, 2017), *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/College_of_the_Mainland_TX_007096_08172017_FPRD_Redacted.pdf.

than requiring the institution to reimburse the government for the illegally disbursed loan or purchase the loan, the Department requires the borrower to repay the loan, but "assert[s] a liability for the estimated actual loss that the government may incur with respect to the ineligible loan[]."[51] Often, applying that formula means that the school repays, at most, pennies on the dollar of the illegally disbursed loan.

Take, for example, the case of Central Nursing College ("CNC") in Gardena, California, which received close to one million federal student aid dollars in 2013–2014.[52] In 2018, after CNC closed, the Department issued its FPRD which found numerous Title IV violations, including that"[t]he lack of adequate documentation [retained by the school] made it impossible to determine with certainty whether students were eligible for the Title IV funds they received."[53] The Department concluded that of the 123 students it reviewed, "35 students received Title IV disbursements to which they were not entitled."[54]

Although CNC violated the Department's regulations, illegally disbursed loans and grants to students, and then went out of business, the Department did not demand that CNC repay the government a cent for $276,482 in illegally issued loans (instead, applying the EAL to assert "$0" in liabilities).[55] Meanwhile, students presumably still have to repay these loans that shouldn't have been provided in the first place.

Similarly, in 2015, the Department found that due to errors calculating "Satisfactory Academic Progress," Northern Illinois University ("NIU") disbursed approximately $624,030 in "ineligible" Direct Loans to students. Although the

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51 Ltr. from Douglas Parrott, Division Director, Federal Student Aid to Dr. Douglas D. Baker, Northern Illinois University, re: Program Review Report 6 (July 27, 2017) ("NIU FPRD"), *available within:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/Northern_Illinois_University_IL_001737_07272017_FPRD_Redacted.pdf. *See also, e.g.*, Ltr. from Betty Coughlin, Division Director, Federal Student Aid to Marcella Maria Garus, President, Villa Maria College of Buffalo re: Final Program Review Determination, Final Program Review Determination at 28 (July 16, 2015), *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/Villa_Maria_College_of_Buffalo_NY_002896_07_16_2015_FPRD_Redacted.pdf (describing the EAL policy).

52 Ltr. from Martina Fernandez-Rosario, Division Director, San Francisco/Seattle School Participation Division, Federal Student Aid to Ms. Katherine Han, Owner Central Nursing College re: Final Program Review Determination, Final Program Review Determination at 3 (March 29, 2018) ("CNC FPRD"), *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/Central_Nursing_College_CA_041500_03_29_2018_FPRD_Redacted.pdf.

53 CNC FPRD at 9–10.

54 *Id.* at 10.

55 *Id.* at 10–11.

Department asserted that it was holding NIU liable for improper disbursements (loans and grants), it only demanded repayment of *less than one percent* ($6,174 of $624,030) of the illegally disbursed loans.[56]

Under EAL, an institution can provide Title IV to students in violation of the Department's regulations, the institution gets to keep the funding, and the student continues to bear the cost. Schools have no incentive to ensure that they are complying with the regulations. Just as if the only punishment for robbing a bank is to return the stolen money, one could see little downside to thievery. If a robber gets caught, they are in the exact same situation in which they otherwise would have been. If the punishment for thievery is returning pennies on the dollar, the deterrence effect of punishment is even lower.[57]

Subpoena Authority

Under the HEA, to "assist the Secretary in the conduct of investigations of possible violations" of Title IV, the Department may "require by subpoena the production of information, documents, reports, answers, records, accounts, papers, and other documentary evidence."[58] The Department is also authorized to "request the Attorney General to invoke the aid of any court of the United States . . . for a court order" to enforce its subpoenas. Yet in December 2018, my organization, Student Defense, submitted a Freedom of Information Act ("FOIA") request seeking the production of all subpoenas issued under this authority since 2010. In response, the Department did not produce a single subpoena directed at an institution of higher education or at an entity (affiliated or unaffiliated) that transacted business with an institution.[59] Rather, the Department produced a single subpoena, directed at the Attorney General of Iowa. Meanwhile, during this same period of time (2010-2018), numerous large institutions collapsed under the weight of state and federal law enforcement investigations.

This is not to say that the Department must be regularly issuing subpoenas. The Department has extensive non-subpoena powers to review records held by

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[56] NIU FPRD at 5–7.

[57] *See, e.g.*, David Weil, *Creating a strategic enforcement approach to address wage theft: One academic's journey in organizational change*, J. Indus. Rel. at 6 (2018), *available at:* https://www.fissuredworkplace.net/assets/D.Weil.Creating_a_Strategic_Enforcement_Approach.JIR_2018.pdf. This is not to suggest that all compliance violations are akin to intentional theft. Nevertheless, where the Department considers institutions to be acting "[a]s a fiduciary responsible for administering Federal funds," 34 C.F.R. § 668.14(b)(2), institutions take that responsibility seriously.

[58] HEA § 490A, 20 U.S.C. § 1097a.

[59] *See* Ltr. From R. Bitner, Student Defense, to Freedom of Information Officer, U.S. Dep't of Educ. (Dec. 6, 2018) *available at:* https://www.defendstudents.org/news/body/nsldn_20181206.pdf.

institutions of higher education.[60] Rather, the complete absence of subpoenas directed at institutions of higher education or third parties—at a time when other agencies were aggressively investigating the sector—suggests an unwillingness to use the tool that Congress has provided to develop and enhance its own investigative capabilities.

Affirmative Enforcement Actions

Apart from determining whether an institution can participate, or continue to participate, in Title IV programs, Congress has given the Department authority to fine institutions, place limitations on their participation, and seek to recover financial losses against owners and executives. Yet the Department has made scant—if any—use of these authorities.

- **Fines**: The Department's use of its fine authority for consumer facing misdeeds is exceedingly rare. According to the Department's School Fine Report, between Fiscal Years 2010 and 2019, the Department imposed a total of $168,739,724 in "fines." Yet this figure is glaringly misleading, insofar as the overwhelming majority of this dollar amount does not represent administrative "fines," but rather were payments made to the government to resolve claims asserted under the False Claims Act. Such cases—the handling of which is led by the U.S. Department of Justice—remedy fraud against the United States and are legally distinct from fines that serve as "punishment for past conduct." For instance, although the Department publicly lists a $48.5 million fine levied on the University of Phoenix and $75.625 million fine against Education Management Corporation, both of those amounts were to resolve False Claims Act lawsuits. [61] In total, of the $168.7 million in "fines" listed on the School Fine Report, approximately $154 million came through the settlement of false claims act cases (or cases designated as "fraud"). Of the remaining approximate $13.7 million, $11.4 million was listed for

[60] *See, e.g.*, 34 C.F.R. § 668.24(d).

[61] *See* Settlement Agreement at 4, *United States ex rel. Hendow v. Univ. of Phoenix*, No. 2:03-cv-00457-GEB-DAD, Dkt. No. 345-1 (E.D. Cal. Dec. 16, 2009) (settlement for $67.5 million, of which $19 million was designated for the *qui tam* relators); U.S. Dep't of Justice, *For-Profit College Company to Pay $95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud, and Other Violations* (Nov. 16, 2015), *available at:* https://www.justice.gov/opa/pr/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and. The settlement resolved *United States ex rel. Washington et al. v. Education Management Corp., et al.*, Civ. No. 07-461 (WDPA); *United States ex rel. Sobek v. Education Management Corp., et al.*, Civ. No. 10-0131 (WDPA); *United States ex rel. Laukaitis et al. v. Education Management Corp., et al.*, Civ. No. 11-601 (WDPA); and *United States ex rel. Rainwater v. Education Management Corp., et al.*, Case No. 3:12-CV-01008 (MDTN).

violations of campus security (Clery Act) issues, $909,000 for IPEDS data reporting issues, and a single case of "misrepresentation" was listed for $27,500.[62]

- **Limitations**: The Department also has power to "limit[]" the participation of any institution that has violated Title IV, the Department's regulations, or any "applicable special arrangement, agreement, or limitation."[63] The Department has interpreted this authority to allow it to place any "reasonable and appropriate" condition on an institution's participation.[64] Despite the clear flexibility that this limitation authority provides, during at least the seven years between and including 2012 and 2018, the Department used this authority only once.[65] Our review the Department's Office of Hearings and Appeals decisions from before and after that period suggest scant use of that authority as well.

The Department's failure to use its limitation authority is perplexing for two reasons. *First*, the limitation authority allows the Department to impose "*[any] conditions* as may be determined by the Secretary to be reasonable and appropriate."[66] This means that the Department can tailor actions and remedies to the particular wrongs of a situation. Presently, if an institution has violated the HEA, its regulations, or other governing laws, the Department generally only considers whether the institution should be allowed to continue to participate in the Title IV programs at all. But in many cases, a remedy in between ending participation and doing nothing at all is appropriate, permitted by statute, and "serve[s] the non-punitive purpose of protecting students and the government from future harm."[67]

Second, in the single instance in recent years in which the Department used this authority, it achieved its desired effect. In 2016, FSA used this authority to place tailored restrictions on DeVry University after finding that it failed to maintain records necessary to "substantiate the truthfulness" of an advertised job placement

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62 Notably, the Department's Fine Report fails to include the April 2015 fine in the amount of $29,665,000 to Corinthian Colleges, Inc. based on substantial misrepresentations made by Heald College). *See* Ltr. from Robin Minor, Acting Director, Administrative Actions and Appeals Service Group, Federal Student Aid to Jack D. Massimino, President/Chief Executive Officer, Corinthian Colleges, Inc. re: Notice of Intent to Fine Heald College (Apr. 14, 2015).

63 34 C.F.R. §668.86(a)(1).

64 34 C.F.R. §668.94(j).

65 *See* Use of Enforcement Power to Limit Institutions and Servicers Participating in the Title IV Programs – December 19, 2018, *available at:* https://www.defendstudents.org/foia/use-of-enforcement-authority#limitation.

66 34 C.F.R. §668.94(j).

67 Elec. Coll. and Comput. Programming, U.S. Dep't. of Educ., Dkt. No. 91-7-ST, 1992 WL 877335, at *1 (July 21, 1992).

rate.[68] The Department did not end DeVry's eligibility, as would have been the case in a termination action. Rather, FSA required DeVry to maintain the factual support underlying its advertised job placement statistics going forward, as well as having the statistics independently audited before publication. This action imposed sanctions commensurate with the Department's findings, while putting all institutions on notice of the importance of the substantiation requirement.

- **Personal Liability:** On the heels of the Nunn Report, and in connection with the 1992 reauthorization of the HEA, Congress explicitly and intentionally added provisions giving the Department the authority—and in some cases, a mandate—to recover financial losses from individuals who "exercise substantial control over [an] institution," *i.e.*, individuals who "directly or indirectly" control a "substantial ownership interest in the institution," and individuals who are "member[s] of the board of directors, the chief executive officer, or other executive officer of the institution or of an entity that holds a substantial ownership interest in the institution" (collectively, the "Institutional Control Group").[69] OIG recommended these provisions, testifying before this Committee that:

> "[T]he HEA should be amended to require owners of corporate proprietary schools to be personally liable for school losses. Current law allows Title IV participation by corporate proprietary schools, but does not provide a means of holding school owners personally liable for losses caused by a school's failure. Thus, when schools close or otherwise fail to meet their financial responsibilities, owners are able to escape with large personal profits while the taxpayer and student are left to pay the bill."[70]

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[68] Letter from Susan Crim, Director, U.S. Dep't of Educ. Administrative Actions and Appeals Service Group to Robert Paul, President, DeVry University re: Notice of Intent to Limit: Placement Rate and Employability Advertisements and Representations for DeVry University (Jan. 27, 2016), https://studentaid.gov/sites/default/files/devry-limitation-notice.pdf ("DeVry Limitation Letter").

[69] *See* P.L. 102-325 § 498 (July 23, 1992) (adding HEA § 498(e)(1), 20 U.S.C. § 1099c(e)(1)(B)). In that same legislation, Congress added other specific references to individual liability, including, for example, in the context of closed school loan and false certification discharges. *See* P.L. 102-325 § 428 (amending HEA § 437 to include § 437(c)(1), 20 U.S.C. § 1087(c)(1) and requiring the Secretary to discharge such loans and to "pursue any claim available to such borrower against the institution *and its affiliates and principals*") (emphasis added). Separately, the HEA provides that if an "individual" "willfully fails to pay" or "willfully attempts in any manner to evade payment of" a refund owed to the Department, such individual may be liable "as a responsible person for a penalty under section 6672(a)" of the Internal Revenue Code of 1986, with respect to the nonpayment of taxes. HEA § 498(e)(6), 20 U.S.C. § 1099c(e)(6); HEA § 437(c)(1), 20 U.S.C. § 1087(c)(1).

[70] H.R. Rep. 102-447, 1992 U.S.C.C.A.N 334, 417–418 (1992).

In addition, OIG recommended that the law "ensure that school owners are held personally liable for the accuracy of information, claims or other statements on which institutional eligibility is based."[71]

Although Congress listened, the Department has never successfully used these authorities to impose and collect administratively assessed liabilities from members of an Institutional Control Group who exercised "substantial control" over an institution with unpaid Departmental debts.

In recent years, when major for-profit college chains have closed, taxpayers have borne a substantial financial burden. When a Title IV college or campus closes, students who attended that institution at or near the time of closure have a right to a discharge of all of their federal Direct Loans related to their enrollment.[72] The Department may incur other liabilities as well. For example, after ITT Technical Institute filed for bankruptcy, the Department asserted a proof of claim in the bankruptcy proceeding estimating over $230 million owed to the Department from the bankrupt entity from not only closed school loan discharges, but also borrower defense discharges, excess Pell Grant funds, and unaccounted funds from other Title IV programs.[73] That estimate subsequently increased to approximately $440 million.[74] In addition, as of January 2017, the federal government had approved the discharge of approximately $558 million in student loans for borrowers from Corinthian Colleges.[75] At the same time, the executives that ran these institutions were paid millions each year.[76]

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71 *Id.*

72 *See* 34 C.F.R. § 685.214.

73 *See* U.S. Department of Education, Official Form 410: Proof of Claim, *In re ITT Educ. Servs., Inc.*, No. 16-07207-JMC- 7A, Dkt. 1427-1 (S.D. Ind. Mar. 17, 2017) ("ED ITT Proof of Claim") (asserting a claim of $230,518,448.19).

74 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. *See also* Order Granting Trustee's Motion to Compromise and Settle Certain Claims with the United States of America, *In re: ITT Educ. Servs., Inc.*, No. 16-07207-JMC-7A, Dkt. 4014 (Bankr. S.D. Ind. July 15, 2020), *available at:* https://casedocs.omniagentsolutions.com/cmsvol2/pub_47137/833433_4014.pdf.

75 U.S. Dep't of Educ., *American Career Institute Borrowers to Receive Automatic Group Relief for Federal Student Loans: Education Department Announces Continued Progress with Borrower Defense and Closed School Loan Discharges* (Jan. 13, 2017), *available at:* https://www.ed.gov/news/press-releases/american-career-institute-borrowers-receive-automatic-group-relief-federal-student-loans.

76 According to press reports, ITT's former CEO received total compensation of $1.4 million in 2015, $3.2 million in 2014, and $3 million in 2013. *See* James Briggs, *Top ITT executives agree to fines, ban from top corporate jobs in SEC settlement*, Indy Star (July 9, 2018), *available at:* https://www.indystar.com/story/money/2018/07/09/top-itt-executives-kevin-modany-daniel-fitzpatrick-settle-sec-charges/769582002. *See also* Adversary Complaint ¶ 11, *In re: ITT Educ. Servs.,*

The closures of ITT and Corinthian Colleges are precisely the sorts of situations that the OIG considered when suggesting that Congress adopt the personal liability provisions. But after these schools closed, the Department seemingly did nothing to recoup losses from the owners or executives.

PART II
"A New Hope"

In many respects, the Department already has ample tools and authorities to resolve the problems noted above without additional legislation or regulation. Program reviews can be conducted more effectively; subpoenas can be issued; the Department can aggressively pursue financial liabilities against institutions, owners, and executives, just as it has historically done with student loan borrowers. But to fully establish student protections within FSA, the Department should take a series of concrete steps.

Elevate student/consumer protections. To effectively reshape enforcement, and create a culture of enforcement and oversight within the Department that prioritizes student interests, Student Defense suggests the following three approaches:

- Ensure that consumer protections, and individuals responsible for monitoring student-consumer protections, are structurally integrated into the compliance and oversight teams. This will ensure, for example, that student interests are being considered when the Department evaluates, for example, whether an institution should be allowed to participate in the Title IV programs or whether to approve an institutional change in ownership.[77]

- Fully staff, fund, and empower the investigations group, whose function it is to investigate misconduct impacting student borrowers. This group should be staffed with a combination of investigators, financial specialists, and

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Inc., Case No. 16-07207-JMC-7A, Dkt. 2562 (Bankr. S.D. Ind. May 31, 2018), *available at:* https://casedocs.omniagentsolutions.com/cmsvol2/pub_47137/672851_2562.pdf. As reported by the Senate HELP Committee, in 2009, the CEO of Corinthian Colleges received $3.3 million, which was "more than eight times as much as the president of the University of California at Irvine." *See* U.S. Senate HELP Committee Report on For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Part II, Corinthian Colleges at 384, ("HELP CCI Findings") *available at:* https://www.help.senate.gov/imo/media/for_profit_report/Contents.pdf. According to that same Senate HELP Committee report, "[t]he chief executive officers of the large publicly traded for-profit education companies took home, on average, $7.3 million in fiscal year 2009." Senate HELP CCI Findings at 384.

[77] *See generally* Student Defense, *Promoting Student Opportunity through Enforcement-Based Accountability* 4–5 (October 2020), *available at:* https://www.defendstudents.org/news/body/docket/100-Day-Docket-Strengthening-Enforcement.pdf.

investigative attorneys in order to conduct and oversee investigations into schools, third-party servicers, auditors, online program management companies, or other entities contracting with institutions of higher education.[78]

- Enhance the Department's internal performance management system. Through the "Policy Improvement" team within FSA, the Department must work more closely to ensure that the program review and enforcement authorities are being carried out in an effective manner to protect student interests.

Create a Liaison Between the Office for Civil Rights ("OCR") and FSA. Within the Department, the Office for Civil Rights plays a central role in enforcing civil rights statutes that fall within the Department's jurisdiction, including with respect to institutions of higher education. FSA plays the central role in overseeing institutions of higher education that participate in Title IV. FSA, more specifically, enforces Program Participation Agreements between the Department and institutions, which require schools to certify compliance with a host of civil rights statutes as a condition of participation in the student aid programs.[79]

The ties between civil rights and student aid are clear. There are "alarming racial disparities in our federal student loan system."[80] Numerous postsecondary institutions have been accused of forms of "reverse redlining," *i.e.*, targeting

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78 *Id.* at 5.

79 For example, Program Participation Agreements require compliance with Title VI of the Civil Rights Act of 1964 and its implementing regulations (barring discrimination on the basis of race, color, or national origin); Title IX of the Education Amendments of 1972 and its implementing regulations (barring discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973 and its implementing regulations (barring discrimination on the basis of physical handicap); The Age Discrimination Act of 1975 and its implementing regulations; The Family Educational Rights and Privacy Act of 1974 and its implementing regulations; and The Standards for Safeguarding Customer Information, issued by the Federal Trade Commission ("FTC"), as required by the Gramm-Leach-Bliley Act.

80 Letter from Senators Elizabeth Warren, Kamala Harris, and Cory Booker to Kenneth L. Marcus, Asst. Sec'y for Civil Rights, U.S. Dep't of Educ. (Feb. 27, 2020) *available at:* https://www.warren.senate.gov/imo/media/doc/2020.02.27%20Letter%20to%20ED%20re%20Borrowers%20of%20Color.pdf.

students of color for enrollment in subpar educational programs.[81] The impacts are long-lasting.[82]

Nevertheless, FSA and OCR have been largely siloed. FSA must work more closely with OCR (and the Civil Rights Division at the U.S. Department of Justice) to ensure compliance with civil rights law, and to use Title IV's enforcement authorities, as appropriate, to address legal violations and issues of non-compliance, along with the structural issues that have had a disparate impact on communities of color.[83]

Create an Office of Public Service. Given well-publicized failures regarding Public Service Loan Forgiveness, as well as issues that relate specifically to student assistance for military members, veterans, and their families, we suggest that FSA establish an Office of Public Service. This office would have chief responsibility for coordinating and elevating issues that particularly impact public servants. In addition, the office could work with offices within FSA that oversee loan servicing, as well as with stakeholders such as the Department of Defense, Department of Veterans' Affairs, and non-governmental organizations.

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Together, these reforms can not only enhance protections for students in higher education but improve public confidence in the Department. I am hopeful that, at this unprecedented time, the Department can use all of its tools to improve higher education for students and borrowers, while ensuring that taxpayer resources are well spent.

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[81] *See, e.g.*, Press Release, Relman Colfax, *Court Approves a $5 Million Settlement of Nation's First Reverse Redlining Case Against a For-Profit College* (July 25, 2013), *available at:* https://www.relmanlaw.com/news-RSHTsettlement; Compl., *Britt v. IEC Corporation*, No. 20-cv-60814 (S.D. Fla Apr. 20, 2020), *available at*: https://predatorystudentlending.org/wp-content/uploads/2020/04/Complaint-Britt-v.-FCC-filed-Apr-20-2020.pdf.

[82] *See generally Quicksand: Borrowers of Color & the Student Debt Crisis*, *supra* n.3.

[83] *Promoting Student Opportunity through Enforcement-Based Accountability*, *supra* n.77 at 5.