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August 16, 2021

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

Dear Secretary Cardona:

I write regarding the U.S. Department of Education's (Department) authority under the *Higher Education Act of 1965* (HEA) to hold owners, executives, and board members of defunct for-profit and converted for-profit colleges individually responsible for liabilities of the institution to the federal government.

The for-profit college industry has a long history of fraud, abuse, and mismanagement.¹ In recent years, when major for-profit college chains, such as Corinthian Colleges, Inc. or ITT Technical Institute, have closed under the weight of federal and state law enforcement investigations, it is the students and taxpayers that have borne the financial burden. In the meantime, the CEOs of Corinthian and ITT Tech – Jack Massamino and Kevin Modany – made \$3 million² to \$8 million³ a year in total compensation, respectively, and received additional bonuses as their institutions³ were on the precipice of bankruptcy.⁴ Further, in 2020, the

¹ See generally S. Rept. No. 102-58 (1990); Senate Health, Education, Labor, and Pensions Committee, *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, (July 30, 2012); see also *Shattered Dreams: Examining the Education Department's Role in the Misconduct of Dream Center Education Holdings*, House Committee on Education and Labor, (July 2020), a 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>.

² See CCI 2012 Annual 10-K Filing, Schedule 14A, pg. 36, a available at <https://www.sec.gov/Archives/edgar/data/1066134/000104746912009261/a2211158zdef14a.htm>.

³ See ITT Education 2014 Annual 10-K Filing, pg. 94, a available at <https://www.sec.gov/Archives/edgar/data/922475/000119312515205473/d915248d10k.htm>.

⁴ See "Murphy, Durbin, Brown, Franken, Blumenthal, Warren & Harris Introduce Students Before Profits Act," September 08, 2017, a available at <https://www.murphy.senate.gov/newsroom/press-releases/murphy-durbin-brown-franken-blumenthal-warren-and-harris-introduce-students-before-profits-act>; see also "Corinthian Colleges exec

Committee released detailed findings supported by documentary evidence demonstrating that the owners and executives of a for-profit institution that converted to a non-profit, Dream Center Education Holdings (Dream Center), defrauded students.⁵ The Department's Office of the Inspector General (OIG) recently corroborated and expanded on the Committee's findings in an audit report.⁶ This collapse cost taxpayers at least \$600 million, and the Department has not collected a dollar from those responsible. Our students and taxpayers deserve better.

Individual accountability is a recognized legal theory to curtail future misconduct by corporate leaders.

Individual accountability is neither a new nor unique legal theory when the government pursues owners, executives, and board members of corporations and converted for-profit institutions for wrongdoing. U.S. courts have allowed the pursuit of individual accountability when the leaders of a corporation have engaged in fraud or wrongdoing or when there might be an injustice to those seeking relief.⁷ In 2015, then Deputy Attorney General Sally Yates issued a memo to the Department of Justice outlining the importance of holding individuals in a corporation accountable in order to deter future illegal activity.⁸ The Yates Memo strategies include requiring corporations to identify and not shield individuals implicated in the misconduct from civil and criminal liability.⁹ Similarly, the Securities and Exchange Commission (SEC) has imposed penalties on some of the individuals involved in collapsed for-profit colleges;¹⁰ however, the SEC claims and penalties have been narrow, based jurisdictionally on misrepresentations to investors.¹¹

The purpose of holding individuals accountable is to ensure not only that there is accountability for the matter at hand, but also that *future* misconduct is curtailed, either by the same individuals or others. Under existing authority, the Department can choose to require individuals to

grilled as creditors hunt for cash," Tom Hals, Reuters, June 12, 2015, available at <https://www.reuters.com/article/corinthian-de-bankruptcy/corinthian-colleges-exec-grilled-as-creditors-hunt-for-cash-idUSL1N0YY1ZL20150612>.

⁵ See generally *Shattered Dreams*, supra 1.

⁶ See Inspection of the Department's Activities Surrounding the Sale of Postsecondary Schools to Dream Center Education Holdings, U.S. Department of Education Office of Inspector General, June 29, 2021, ED-OIG/I05T0010, available at <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2021/i05t0010.pdf>.

⁷ See Jonathan R. Macey and Joshua Mitts, *Finding Order in the Morass: The Three Real Justifications for Piercing the Corporate Veil*, Cornell Law Review, February 18, 2014, pgs. 36-45, available at <https://ssrn.com/abstract=2398033> or <http://dx.doi.org/10.2139/ssrn.2398033>.

⁸ See generally Individual Accountability in Corporate Wrongdoing, Department of Justice, Office of the Deputy Attorney General, <https://www.justice.gov/archives/dag/file/769036/download>.

⁹ See *id.*, pg. 5.

¹⁰ See Former CEO and CFO of ITT Barred and Ordered to Pay Penalties, Litigation Release No. 24188, July 9, 2018, Securities and Exchange Commission v. ITT Educational Services, Inc. et al, No. 1:15-cv-00758-JMS-MJD (S.D. Ind. filed May 12, 2015) <https://www.sec.gov/litigation/litreleases/2018/lr24188.htm>.

¹¹ See *id.*

personally assume liability of the institutional debt, but reports indicate that the Department has not done so to date.¹²

The Department has the authority to recover financial losses from individuals under the HEA.

In 1992, after the Senate investigation on abuses in federal student aid programs, Congress added provisions to the HEA giving the Department authority to recover financial losses from individuals who “exercise substantial control” over educational institutions, namely board members, the chief executive officer, other executives, or major owners.¹³ Additionally, there is no limitation on which types of financial losses are in scope – the statute authorizes the Department to require such individuals to assume personal liability “for financial losses to the Federal Government, student assistance recipients, and other program participants for [Title IV] funds.”¹⁴ Therefore, borrower defense claims by students, which can be assessed against the institution of higher education, could also be assessed against these individuals.¹⁵ Further, the Department’s Office of Hearings and Appeals has recognized the Department’s ability to require these individuals to assume the institutional debts.¹⁶

Given the substantial burden that is currently being borne by students and taxpayers when for-profit and converted for-profit institutions collapse, it is clear the Department has a responsibility to pursue any and all legal avenues available to recoup money that was allocated through financial aid programs. For that reason, I recommend the Department take immediate action to protect students and taxpayers by:

- 1) Conducting a formal legal review of the Department’s strategies to bring personal liability claims against owners, executives, and board members of defunct for-profit and converted for-profit institutions, considering the profits earned by these individuals and their involvement in the respective institution’s closure; and
- 2) Specifically reviewing the viability of bringing potential claims against the owners, executives, and board members of Dream Center, Corinthian Colleges, ITT Technical Institute, Charlotte School of Law, Education Corporation of America, Education Affiliates, Marinello School of Beauty, Westwood College, Vatterott Colleges, and the Center for Excellence in Higher Education (CEHE) schools, being mindful of the potential statute of limitations for these claims.

Additionally, to ensure the Committee best understands the Department’s review of bringing personal liability claims, please respond to the requests below. These documents should be

¹² See generally Daniel A. Zibel and Alice W. Yao, *Protection and the Unseen: Holding Executives Personally Liable Under the Higher Education Act*, National Student Legal Defense Network (Oct. 2020), available at <https://www.defendstudents.org/news/body/docket/100-Day-Docket-Personal-Liability-Report.pdf>.

¹³ See HEA §498(e)(1)(B), 20 U.S.C. §1099c(e)(1)(B).

¹⁴ See *id.*

¹⁵ See Zibel, *supra* 12 at pg. 4.

¹⁶ See *In the Matter of Chicago Educational, Inc.*, Docket No. 94-132-SA, Student Financial Assistance Proceeding, pg. 2, available at <https://oha.ed.gov/oha/files/2019/02/1994-132sa.pdf> (holding that while the OHA might not be the appropriate forum to make such decisions, the Department is free to pursue collection of liability of a closed school, either through its assets or through personal liability of the school’s owners).

The Honorable Miguel Cardona

August 16, 2021

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provided in accordance with the enclosed document production instructions. If the Department has any questions about how to comply with a document request or the production instructions, please contact Committee Clerk, Rasheedah Hasan, at Rasheedah.Hasan@mail.house.gov.

- 1) A written response indicating the Department's decision to pursue personal liability claims related to Dream Center, Corinthian Colleges, ITT Technical Institute, Charlotte School of Law, Education Corporation of America, Education Affiliates, Marinello School of Beauty, Westwood College, Vatterott Colleges, and CEHE Schools;
- 2) A list of all the institutions that have outstanding financial liabilities to the Department in the past 5 years resulting from institutional closures, compliance, or enforcement actions; please include details about a) whether the institution is still open, b) the dates the financial liability was incurred, and c) whether the institution is still receiving any federal funding and the details of that funding;
- 3) The Department's plans on recovering liabilities for each institution that has outstanding financial liabilities greater than \$10 million, including plans to pursue personal liability claims against those individuals that may have exercised substantial control at those institutions.

Please provide the requested information within 2 weeks of the date of this letter or sooner, if available. Please also provide a briefing to Committee Staff on the Department's plan to address personal liability using their oversight function within 4 weeks of the date of this letter or sooner, if available. Please send all official correspondence and information relating to this request to the Committee's Clerk, Rasheedah Hasan, at Rasheedah.Hasan@mail.house.gov.

Sincerely,



ROBERT C. "BOBBY" SCOTT

Chairman

Enclosures: Committee Document Production Instructions

Cc: The Honorable Virginia Foxx, Ranking Member

Cc: Joe Gaeta, Department of Justice, Deputy Assistant Attorney General for Legislative Affairs