RISING TO THE CHALLENGE: THE FUTURE OF HIGHER EDUCATION POST COVID–19

HEARING

BEFORE THE

SUBCOMMITTEE ON HIGHER EDUCATION AND WORKFORCE INVESTMENT

OF THE

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEENTH CONGRESS

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RISING TO THE CHALLENGE: THE FUTURE OF HIGHER EDUCATION POST COVID–19

Wednesday, March 17, 2021

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EDUCATION AND
WORKFORCE INVESTMENT,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:03 p.m., via Zoom, Hon. Frederica Wilson (Chairwoman of the subcommittee) presiding.

Present: Representatives Wilson, Takano, Jayapal, Omar, Leger Fernández, Jones, Manning, Bowman, Pocan, Castro, Sherrill, Courtney, Bonamici, Scott (ex officio), Murphy, Grothman, Banks, Comer, Fulcher, Miller-Meeks, Good, McClain, Harshbarger, Spartz, and Foxx (ex officio).

Staff present: Tylease Alli, Chief Clerk; Katie Berger, Profession Staff; Ilana Brunner, General Counsel; Sheila Havenner, Director of Information Technology; Eli Hovland, Policy Associate; Ariel Jones, Policy Associate; Andre Lindsay, Policy Associate; Max Moore, Staff Assistant; Mariah Mowbray, Clerk/Special Assistant to the Staff Director; Kayla Pennebecker, Staff Assistant; Veronique Pluviose, Staff Director; Benjamin Sinoff, Director of Education Oversight; Banyon Vassar, Deputy Director of Information Technology; Claire Viall, Professional Staff; Cyrus Artz, Minority Staff Director; Kelsey Avino , Minority Professional Staff Member; Courtney Butcher, Minority Director of Member Services and Coalitions; Amy Raaf Jones, Minority Director of Education and Human Resources Policy; Dean Johnson, Minority Legislative Assistant; Hannah Matesic, Minority Director of Operations; Carlton Norwood, Minority Press Secretary; Alex Ricci, Minority Professional Staff Member; Chance Russell, Minority Legislative Assistant; and Mandy Schaumburg, Minority Chief Counsel and Deputy Director of Education Policy.

Chairwoman WILSON. The Subcommittee on Education and Workforce Investment will come to order. I believe we have a quorum call. We have a Member who is being waived on the committee. He's not a Member of the committee, but after each of the Members speak he will be able to participate.

I want to welcome everyone. I note that a quorum is present, so that's great. Everybody is on time and ready. The subcommittee is meeting today to hear testimony on the future of higher education post COVID–19. And you will notice that some of the women are wearing white. This is a special day for us, this particular suffrage day.

This is an entirely remote hearing. All microphones will be kept muted as a general rule to avoid unnecessary background noise. Members and witnesses they'll be responsible for unmuting themselves when they are recognized to speak, or when they wish to seek recognition.

I also ask that Members please identify themselves before they speak, so call out your name before you speak. Members should keep their cameras on while in the proceeding. Members shall be considered present in the proceeding when they are visible on camera and they shall be considered not present when they are not visible on camera.

The only exception to this is if they are experiencing technical difficulty and inform committee Staff of such difficulty. If any Member experiences technical difficulties during the hearing you should stay connected on the platform, make sure that you are muted, and use your phone to immediately call the committee's IT director, whose number was provided to you in advance.

Should the Chair experience technical difficulty I'll need to stop. If I have to step away to vote on the floor Representative Mark Takano as a Member of this subcommittee, or another Majority Member of the subcommittee, if he is not available, is hereby authorized to assume the gavel in the Chair's absence.

This is an entirely remote hearing and as such the committee's hearing room is officially closed. Members who choose to sit with their individual devices in the hearing room must wear headphones to avoid feedback, echoes, and distortion resulting from sitting in the same room.

Members are also expected to adhere to social distancing and safe healthcare guidelines, including the use of masks, hand sanitizers, and wiping down their areas before and after their presence in the hearing room.

In order to ensure that the committee's five-minute rule is adhered to, staff will be keeping track of time using the committee's field timer. The field timer will appear in its own thumbnail picture and will be named 001__timer. There will be no one minute remaining warning. The field timer will sound its audio alarm when time is up.

Members and witnesses are asked to wrap up promptly when their time has expired. While a roll call is not necessary to establish a quorum in official proceedings conducted remotely or with remote participation, the committee has made it a practice whenever there is an official proceeding with remote participation for the Clerk to call the roll and help make clear who is present at the start of the proceeding.

Members should say their name before announcing they are present. This helps the Clerk, and also helps those watching the platform and the live stream who may experience a few seconds delay.

At this time I ask the Clerk to call the roll.

The CLERK. Ms. Wilson?

Chairwoman WILSON. Ms. Wilson is here.

The CLERK. Mr. Takano?

Mr. TAKANO. Present.
The CLERK. Ms. Jayapal?
[No response.]
The CLERK. Ms. Omar?
[No response.]
The CLERK. Ms. Leger Fernández?
Ms. LEGER FERNÁNDEZ. Ms. Leger Fernández is here.
The CLERK. Mr. Jones?
Mr. JONES. Here.
The CLERK. Ms. Manning?
Ms. MANNING. Ms. Manning is here.
The CLERK. Mr. Bowman?
Mr. BOWMAN. Mr. Bowman is here.
The CLERK. Mr. Pocan?
Mr. POCAN. Mark Pocan's here.
The CLERK. Ms. Sherill?
[No response.]
The CLERK. Mr. Espaillat?
[No response.]
The CLERK. Mr. Grijalva?
[No response.]
The CLERK. Mr. Courtney?
Mr. COURTNEY. Courtney's here.
The CLERK. Ms. Bonamici?
Ms. BONAMICI. Ms. Bonamici's present.
The CLERK. Mr. Murphy?
Mr. MURPHY. Murphy is present.
The CLERK. Mr. Grothman?
[No response.]
The CLERK. Ms. Stefanik?
[No response.]
The CLERK. Mr. Banks?
[No response.]
The CLERK. Mr. Comer?
[No response.]
The CLERK. Mr. Fulcher?
Mr. FULCHER. Fulcher's here.
The CLERK. Ms. Miller-Meeks?
[No response.]
The CLERK. Mr. Good?
Mr. GOOD. Good is here.
The CLERK. Ms. McClain?
[No response.]
The CLERK. Ms. Harshbarger?
Ms. HARSHBARGER. I'm present.
The CLERK. Ms. Spartz?
[No response.]

The CLERK. Chairwoman Wilson that concludes the roll call. I just wanted to add in here thank you Cheryl, thanks.

Ms. FOXX. Madam Chair, this is Virginia Foxx. I am present also and I love your hat today.

Chairwoman WILSON. Thank you. Thank you so much. Pursuant to Committee Rules agency opening statements are limited to the Chair and the Ranking Member. This allows us to hear from our witnesses sooner and provide Members with adequate time to ask questions.

I recognize myself now for the purpose of making an opening statement. But before I do that I just have to say that I want to welcome especially Keith Thornton. Keith is one of your witnesses and you will hear from him shortly, but he is a member of the 5,000 Role Models of Excellence Projects that I have been bragging about to all of you for years, especially to you Representative Foxx.

Now I didn't want my time to start until now. Today we meet to examine the impact of the COVID–19 pandemic on higher education and what we can do to expand access to quality higher education. I want to start by reaffirming a well-established fact that the foundation of our work that a college degree is the surest pathway to financial security and a rewarding career.

That is why as a Miami Dade County School Board Member, I led the creation of the 5,000 Role Models of Excellence Project, an in-school mentoring and dropout prevention program that has helped prepare thousands of black boys for higher education and adulthood.

Unfortunately, the COVID 19 pandemic has created new barriers to postsecondary degrees. Campus closures and the abrupt transition to online platforms saved lives. But we know that remote instruction has also made it harder for students across the country to access and complete college.

These consequences have not been felt evenly. As with every other facet of our society, Americans who entered the pandemic with fewer resources were disproportionately impacted by the disruption to in person instruction.

Research indicates that achievement gaps between black and white students are wider in online classes than traditional settings. And on campus resources that underserved students normally rely on, like computer labs and reliable high speed internet, are restricted while campuses are closed.

Now, fewer students—particularly fewer low-income students and students of color are pursuing a higher education. Social, psychological, and economic hardships have also forced many students to drop out during the pandemic. And now we know students who discontinue their education are more likely to default on student loans, and less likely to re-enroll which lowers their chances of increased lifetime earnings.

Institutions are also facing unprecedented state and local budget shortfalls which have already caused drastic funding cuts and cost more than 300,000 higher education jobs. In addition, decreased enrollment and campus closures are eroding schools' revenue.

For example, undergraduate enrollment at community colleges is down 10 percent compared to before the pandemic. Consider that when the pandemic started many institutions were still recovering from state budget cuts made during the Great Recession.

To address these challenges, Congress secured urgent funding for higher education by passing three major relief packages: The Coronavirus Aid, Relief, and Economic Security Act, or CARES Act; the Coronavirus Response and Relief Supplemental Appropriations Act, and just last week the American Rescue Plan.

This combined investment of more than 75 billion dollars has helped our higher education system avert an existential crisis. This relief is helping institutions maintain basic operations, keep staff on payroll, and prepare for reopening safely, and it is helping students avoid hunger, homelessness, and other hardships.

Importantly, these relief packages also secured critical funding for state and local governments, supporting our nation's public institutions, the workers they employ, and the communities they support.

While this relief may have saved our higher education system from financial calamity, justice demands that the Federal Government do more, far more, to address the longstanding disparities that have been exacerbated by the pandemic.

For example, as institution access COVID–19 relief funding, we must strengthen institutional oversight to prevent waste and protect students from predatory for-profit schools. These institutions have a well-documented record of using taxpayer dollars to target vulnerable students during economic downturns, leaving them with worthless degrees and unreasonable loans. We cannot allow history to repeat itself.

Congress must also take bold action to lower the cost of college. It's too expensive. This includes creating a federal and state partnership that incentivizes states to reinvest in their public institutions and offer free community college. And it includes expanding Pell Grants, the cornerstone of federal student aid, and so that fewer students that have to take take—fewer will have to take out student loans.

As the Subcommittee has already established, this pandemic is not only testing our students and institutions. It is also testing Congress's commitment to ensuring that all students have access to safe, affordable, and quality education.

Today I look forward to discussing what we must do to rise to that challenge. I want to thank our witnesses again, for being with us and I now yield to the Ranking Member Mr. Murphy for his opening statement. Mr. Murphy, Representative Murphy.

[The statement of Chairwoman Wilson follows:]

STATEMENT OF HON. FREDERICA S. WILSON, CHAIRWOMAN, SUBCOMMITTEE ON EDUCATION AND WORKFORCE INVESTMENT

Today, we meet to examine the impact of the COVID–19 pandemic on higher education and what we can do to expand access to quality higher education.

I want to start by reaffirming a well-established fact at the foundation of our work-that a college degree is the surest pathway to financial security and a rewarding career.

That is why, as a Miami-Dade County School Board Member, I led the creation of the 5,000 Role Models of Excellence Project, an in-school mentoring and drop-out prevention program that has helped prepare thousands of black boys for higher education and adulthood.

Unfortunately, the COVID–19 pandemic has created new barriers to a postsecondary degree.

Campus closures and the abrupt transition to online platforms saved lives. But we know that remote instruction has also made it harder for students across the country to access and complete college.

These consequences have not been felt evenly. As with every other facet of our society, Americans who entered the pandemic with fewer resources were disproportionately impacted by the disruption to in-person instruction.

Research indicates that achievement gaps between Black and white students are wider in online classes than traditional settings. And on-campus resources that underserved students normally rely on, like computer labs and reliable high-speed internet, are restricted while campuses are closed.

Now, fewer students-particularly fewer low-income students and students of color-are pursuing a higher education at all.

Social, psychological, and economic hardships have also forced many students to drop out during the pandemic. And we know students who discontinue their education are more likely to default on student loans and less likely to re-enroll, which lowers their chances of increased lifetime earnings.

Institutions are also facing unprecedented State and local budget shortfalls, which have already caused drastic funding cuts and cost more than 300,000 higher education jobs. In addition, decreased enrollment and campus closures are eroding schools' revenue. For example, undergraduate enrollment at community colleges is down 10 percent compared to before the pandemic. Consider that, when the pandemic started, many institutions were still recovering from State budget cuts made during the Great Recession.

To address these challenges, Congress secured urgent funding for higher education by passing three major relief packages:

- the *Coronavirus Aid, Relief, and Economic Security Act*, or *CARES Act*,
- the *Coronavirus Response and Relief Supplemental Appropriations Act*, and, just last week,
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This combined investment of more than $75 billion has helped our higher education system avert an existential crisis. The relief is helping institutions maintain basic operations, keep staff on payroll, and prepare for reopening safely. And it is helping students avoid hunger, homelessness, and other hardships.

Importantly, these relief packages also secured critical funding for State and local governments, supporting our nation's public institutions, the workers they employ, and the communities they support.

While this relief may have saved our higher education system from financial calamity, justice demands that the Federal Government do far more to address the longstanding disparities that have been exacerbated by the pandemic.

For example, as institutions access COVID–19 relief funding, we must strengthen institutional oversight to prevent waste and protect students from predatory for-profit schools. These institutions have a well-documented record of using taxpayer dollars to target vulnerable students during economic downturns, leaving them with worthless degrees and unreasonable loans. We cannot allow history to repeat itself.

Congress must also take bold action to lower the cost of college. This includes creating a Federal and State partnership that incentivizes States to reinvest in their public institutions and offer free community college. And it includes expanding Pell Grants, the cornerstone of Federal student aid, so that fewer students have to take out student loans.

As the subcommittee has already established, this pandemic is not only testing our students and institutions. It is also testing Congress's commitment to ensuring that all students have access to safe, affordable, and quality education.

Today, I look forward to discussing what we must do to rise to that challenge.

I want to thank our witnesses, again, for being with us and I now yield to the Ranking Member, Mr. Murphy, for his opening Statement.

Mr. MURPHY. Thank you, Chairwoman Wilson. I appreciate the opportunity. I love your hat also and I look forward to the opportunity of working with you. I enjoyed our conversation the other day. I think we have so much common ground to work on. I could not agree with you more that individuals and minorities and rural communities have been disproportionately affected by this because of school closures, all of the more reason to get our kids back in school.

America's higher education system has been in desperate reform for years. The systems weaknesses were further exacerbated by this pandemic. There are many pathways to success besides the traditional Baccalaureate degree, and institutions opposed to secondary education need to realize that fact if they hope to have the students thrive in the coming decades.

I could not also Chairwoman, agree with you more about the affordability of colleges. They've gone unchecked without reducing costs for years and I look forward to working with you on that, nothing specific. We're not here today to discuss whether higher education needs reform, as I think everybody on this committee agrees so.

According to one analysis, four in ten Baccalaureate degree recipients are underemployed in their first jobs after school, and roughly 60 percent of students it takes at least six years to complete their degree program. Certainly, these numbers are not worth celebrating.

Now is not the time to expand on policies that have failed us from government before. And while Congress does play a role in improving all forms of postsecondary education, it should not take the form of expensive government handouts that push unworkable partisan priorities, and priorities that have shown that government has led to the increased cost of education.

When COVID–19 placed heavy strains on our higher education system Congress acted quickly to provide the necessary funding for educational institutions to combat this once in a century, and hopefully, once in a much longer-term pandemic.

Under President Trump, Congress allocated 35 billion dollars, that's 35 with a B towards these efforts. Republicans do not take spending taxpayer dollars lightly, which is why my Republican colleagues voted against the Democrat led budget reconciliation bill.

We wanted to help people, but unfortunately this was pushed before unilateral with a large spending bill. But these unprecedented levels of taxpayer money being funneled into educational institutions, combined with valid concerns about return on investment. It is imperative that Congress take a close look at how the Department of Education and institutions of higher learning spend hard earned taxpayer dollars, and consider necessary structural reform to the Higher Education Act to serve students better.

I'm disappointed that we're not going into this further, and this hearing is seemingly having a lack of actual and necessary oversight because I believe that is our purpose. We have a responsibility to diligently and responsibly allocate taxpayer dollars to those who truly need assistance. Too many on this committee find it too easy to spend hard earned taxpayer dollars without promising accountability.

I have no problem with us investing in our students, but we have to hold institutions accountable. As a committee our loyalty should be to all students, present and future. Any conversations surrounding postsecondary education must aim to reduce the cost of attendance, and boost graduation rates while at the same time supporting students to pursue the type of education that works for them. It is not a one size fits all.

And that means whether it be seeking a Baccalaureate degree, or pursuing an equally valuable skill based alternative, such as a career in technical education or apprenticeships that lead to in demand good paying jobs.

Before the pandemic, there were over 7 million unfilled jobs in the United States, in part due to a skills gap. With employers in desperate need for qualified employees, now is the time more than ever, to strengthen all learning opportunities that provide students with skills and the necessary knowledge to succeed in the workforce.

This type of strategy will not only benefit students, but will boost our entire economy. Higher education is in a state of emergency, but we cannot allow this to turn into an excuse to nationalize the entire postsecondary education system. The U.S. Constitution grants no authority over education to the Federal Government. Education is not mentioned in the Constitution and for a good reason.

The founders wanted most aspects of our lives to be managed by those closest to them, either by State, or local or by family, businesses, and other elements of society. Certainly, they saw no role for the Federal Government in education.

Now if we're going to be involved in education, we ought to expect specific financial and productive return on our investment and not put students into oblivion of debt. Committee Republicans are focused on supporting students and completing affordable, postsecondary education that will prepare them to enter the workforce with the skills that they need for life long learning, and life long success.

We ought to work together, and I mean collaboration, to give students access to educational options that will prepare them to enter the workforce with the skills they need for that lifelong success. Students need pathways, not partisanship, and it is my hope and my expectation that this is a step in a productive and a bipartisan direction.

Again thank you all for being here. I look forward to discussing reforms for higher education that increase student access without expensive government handouts, partisan programs. And I want to thank the Chairwoman for a wonderful discussion. As I said next week I look forward to working on trying to do great things for our students in education, and provide all students with a wonderful means of pathway to success. Thank you, and I will yield back.

[The statement of Ranking Member Murphy follows:]

STATEMENT OF HON. GREGORY F. MURPHY, RANKING MEMBER, SUBCOMMITTEE ON EDUCATION AND WORKFORCE INVESTMENT

Thank you, Madam Chair and thank you to all our witnesses for joining us here today.

America's higher education system has been in desperate need of reform for years. The system's weaknesses were further exacerbated by the COVID–19 pandemic. There are many pathways to success besides the traditional baccalaureate degree, and institutions of postsecondary education need to realize this fact if they hope to help their students thrive in the coming decades.

We are not here today to discuss whether higher education needs reform, as both sides can agree that the system needs work. According to one analysis, four in ten baccalaureate-degree recipients are underemployed in their first jobs after school. Roughly 60 percent of students complete their degree program within 6 years. Certainly, these are not numbers worth celebrating.

Now is not the time to expand on failed, big government policies. While Congress has a role to play in improving all forms of postsecondary education, it should not take the form of expensive government handouts that push unworkable, partisan priorities.

When COVID–19 placed heavy strains on our higher education system, Congress acted quickly to provide the necessary funding for educational institutions to combat this once-in-a-century pandemic. Under President Trump, Congress allocated roughly $35 billion toward these efforts. That is 35 billion with a b.

Republicans do not take spending taxpayers' dollars lightly, which is why my Republican colleagues voted against the Democrats' budget reconciliation bill. Unfortunately, Democrats unilaterally pushed ahead with their large spending bill.

With these unprecedented levels of taxpayer money being funneled into educational institutions, combined with valid concerns about return on investment, it is imperative that Congress take a close look at how the Department of Education and institutions of higher learning spent hard-earned taxpayer dollars, and consider necessary structural reforms to the *Higher Education Act* to serve students better. I am disappointed that this hearing seems to have a glaring lack of actual and necessary oversight.

We have a responsibility to diligently and responsibly allocate taxpayer dollars to those who truly need assistance. Too many in this Committee find it way too easy to spend hard-earned taxpayer dollars without promising accountability. As a Committee, our loyalty should be to all students, present and future.

Any conversation surrounding postsecondary education must aim to reduce the cost of attendance and boost graduation rates, while also supporting students to pursue the *type of education that works for them*—whether it be seeking a baccalaureate degree or pursuing equally valuable, skills-based alternatives, such as career and technical education and apprenticeships, that lead to in-demand, good-paying jobs.

Before the pandemic, there were over seven million unfilled jobs in the U.S., in part due to a skills gap. With employers in desperate need for qualified employees, now is the time to strengthen all learning opportunities that provide students with the skills and knowledge necessary to succeed in the work force.

This type of strategy will not only benefit students but will boost our entire economy.

Higher education is in a State of emergency, but we cannot allow this to turn into an excuse to nationalize the entire postsecondary education sector. The U.S. Constitution grants no authority over education to the Federal Government. Education is not mentioned in the Constitution of the United States, and for good reason. The Founders wanted most aspects of life managed by those who were closest to them, either by State or local government or by families, businesses, and other elements of civil society. Certainly, they saw no role for the Federal Government in education. Now, if we are going to be involved in education, we ought to expect a civic, financial, and productive return on our investment.

Committee Republicans are focused on supporting students in completing an affordable postsecondary education that will prepare them to enter the work force with the skills they need for lifelong success.

We ought to work together—and I mean actual collaboration—to give students access to education options that will prepare them to enter the work force with the skills they need for lifelong success. Students need pathways not partisanship.

It is my hope that this hearing is a step in the productive and bipartisan direction. Again, thank you all for being here, and I look forward to discussing reforms to higher education that increase student success without expensive government handouts

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Chairwoman WILSON. Without objection, all of the Members who wish to insert written statements into the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5:00 p.m. on March 31, 2021.

I will now introduce the witnesses. Keith Thornton, Jr., is a senior at Florida International University, FIU, where he's majoring in recreation and sports management. Keith is a 5000 Role Models of Excellence Project Wilson Scholar in an educational talent search TRIO program alum, and he is a Pell Grant recipient.

During the COVID–19 pandemic Keith received emergency financial aid from both the CARES Act and CERTIA, which helped him stay afloat. I am pleased to recognize my colleague Representative Mark Takano to briefly introduce his constituent who is appearing before us as a witness today. Representative Mr. Takano, do I see you?

Mr. TAKANO. Thank you, Chair Wilson. It's my distinct honor to welcome Chancellor Eloy Ortiz Oakley, who is Chancellor of the

California Community College system. Mr. Oakley was appointed Chancellor for the California Community Colleges in 2016, and is best known throughout California and the Nation for implementing innovative programs and policies that help students succeed in college.

One of the most exciting developments in California Madam Chair, is the use of alternatives to testing to actually place students into college level classes and avoid unnecessary remediation. This has huge implications for diversifying——

[Audio difficulties]

Mr. VASSAR. Chairwoman Wilson, I believe Mr. Takano's connection became severed possibly.

Chairwoman WILSON. All right. So I'd like to welcome Chancellor Eloy Ortiz Oakley as a witness. Welcome. It's a pleasure to have you here today. The Chancellor was appointed for the California Community Colleges in 2016, and is best known throughout California and the Nation for implementing innovative programs and policies that help students succeed in college.

Prior to becoming Chancellor Mr. Oakley was a Superintendent President of the Long Beach Community College District. After serving in the U.S. Army, Chancellor Oakley began his education at a community college, first enrolling at Golden West College and then transferring to the University of California Irvine where he received a bachelor of arts in environmental analysis and design and master of business administration. Welcome.

Our next witness is Daniel Zibel. He is the Vice President and Chief Counsel and co-founder of the National Student Legal Defense Network. Mr. Zibel is an expert on consumer protection and higher education and leads Student Defense Network to ensure that student loan borrowers can access the courts to assert their rights against predatory loan servicing practices.

Prior to joining Student Defense, Dan served as a Deputy Assistant General Counsel for post-secondary education at the Department of Education where he served as the lead legal counsel to the enforcement unit at Federal student aid, and on the Obama administration's interagency task force on foreign project education.

Mr. Zibel has a Bachelor of Arts in Political Science from Haverford College and a law degree from the University of Michigan Law School. Welcome.

Next Ms. Lindsey Burke is a Director of the Center for Education Policy and Mark A. Kolokotrones Fellow in Education. Lindsey Burke oversees the Heritage Foundation's research and policy on issues pertaining to pre-school, K–12, and higher education reform.

She also serves as a fellow with EdChoice, the Legacy Foundation of Milton and Rose Friedman and is on the National Advisory Board of Learn4Life, a network of public charter schools. Is on the board of the Educational Freedom Institute, and serves on the Board of Choice Media.

Ms. Burke holds a bachelor's degree in politics from Hollins University, a master of teaching degree from the University of Virginia, and a Ph.D. in education policy from George Mason University.

These are my instructions to you as witnesses. We appreciate your participation today, and we look forward to your testimony.

Let me remind you that we have read your written statements, and they will appear in full in the hearing record. Pursuant to Committee Rule 8(d) and committee practice, each of you is asked to limit your oral presentation to a five-minute summary of your written statement.

I also remind you as witnesses that pursuant to Title 18 of the U.S. Code, Section 1001, it is illegal—illegal, to knowingly and willfully falsify any statement, representation, writing, document, or material fact presented to Congress or otherwise conceal or cover up a material fact.

Before you begin your testimony please remember to unmute your microphone. During your testimony staff will be keeping track of time, and a timer will sound when time is up. Please be attentive to the time. Wrap up when your time is over, and re mute your microphone.

If any of you experience technical difficulties during your testimony, or later in the hearing, you should stay connected on the platform, but make sure you are muted, and use your phone to immediately call the IT director whose number was provided to you in advance.

We will let all of the witnesses make their presentations before we move to Member questions. When answering a question please remember to unmute your microphone. I will first recognize my friend and son, Keith Thornton from Florida International University. Keith.

STATEMENT OF KEITH THORNTON, STUDENT, FLORIDA INTERNATIONAL UNIVERSITY

Mr. THORNTON. Good afternoon everyone. Again my name is Keith Thornton, Junior. Chairman Member Wilson, Ranking Member Murphy, Members of the subcommittee, thank you for allowing me to testify today. I value the opportunity to come before you on behalf of all students across the Nation whose educations have been disrupted by the pandemic and who have relied on emergency aid to remain financially afloat and continue pursuing their degree.

The fact that my experience during this challenging period is in many ways not unique is a testament to the severity of this crisis, and the ongoing need for Federal relief.

I am a senior at Florida International University studying recreation and sports management. And since my freshman year, I have benefited from the support of fellow students, teachers, and positive campus environment. This support network has been critical to helping me remain focused and weather many of the challenges that have arisen in the past year.

I am also a proud graduate of the South Florida TRIO Program, which enabled me to form long-lasting relationships with instructors and students who have been a consistent source of motivation. My program instructor, Ms. Tiffany Tyler, regularly checks in with me and checks in with my family to see if everything is going well with us. And there was a point in time where I was even contemplating whether or not college was for me.

And in the end I was able to go to my peers within the program and they were encouraging me to continue pushing through and now I'm in a position where I'm getting ready to graduate. And Ms.

Tiffany Tyler and others provided the guidance and mentorship that I needed to not only continue my education, but to also enjoy it.

In the past year, these supportive relationships have been more important than ever. When the pandemic hit, my education was disrupted. I had to suspend my internship, and I lost my job. I had been working for about 2 months before the start of the semester, which enabled me to move into an apartment and forego taking out an additional loan and having to stay on campus.

And losing that income was a heavy blow, so it was a great relief when a few weeks later I received emergency funds from FIU that were made available through the CARES Act. And this aid helped me purchase school supplies and even keep up with bills, whether it was rent, or anything concerning my car because I had to travel.

Without that financial support, I would have been forced to jeopardize my future by taking out more loans that I initially hadn't planned for. The second round of aid that I received through the Coronavirus Response and Relief Supplemental Appropriations Act has similarly provided a lifeline that gave me the opportunity to continue my studies without added financial stress.

This has been critically important because even without having to worry about replacing the income I lost when my job ended, it has been challenging to remain focused on my studies. And although I haven't allowed myself to become discouraged, or to give up, COVID–19 has had a huge effect on my ability to stay motivated.

I struggled with the transition of virtual learning and not having the same support network around me. Without the presence of my peers and teachers, I felt more alone and forced to rely on my own strength.

Still, it has been my relationships with mentors, counselors, and other students that have enabled me to remain on track. And with their continued support, and thanks to the emergency financial aid I received, I look forward to graduating as soon as this summer.

I would like to thank the Members of this committee for thinking of students across the United States who, like me, suddenly had to take on unexpected costs when the pandemic hit, and for delivering meaningful relief.

I would also urge you to continue to provide support for students who are most in need. We represent the future, and I, like many of my counterparts, want to use our degrees to make an impact. Although Florida tuition rates have remained flat for eight years, many students would benefit from an effort double the Pell considering the significant financial burden that exists on us and our families.

Receiving financial aid that removes some of this strain helps put students in a position to thrive. And as its name implies, FIU has an international focus, and I want to also speak to the importance of ensuring that international students have the same opportunities to succeed.

They are pursuing the same dreams and have in many cases been equally impacted by the pandemic. So I want to thank you for the opportunity to speak here today, and I look forward to answering any questions you may have. Thank you.

[The prepared statement of Mr. Thornton follows:]

PREPARED STATEMENT OF KEITH THORNTON

Chairwoman Wilson, Ranking Member Murphy, members of the subcommittee, thank you for allowing me to testify today. I value the opportunity to come before you on behalf of all students across the nation whose educations have been disrupted by the pandemic and who have relied on emergency aid to remain financially afloat and continue pursuing their degrees. The fact that my experience during this challenging period is in many ways not unique is a testament to the severity of this crisis and the ongoing need for federal relief.

I am a senior at Florida International University studying recreation and sports management. Since my freshman year, I have benefited from the support of fellow students, teachers, and a positive campus environment. This support network has been critical to helping me remain focused and weather many of the challenges that have arisen in the past year.

I am also a proud graduate of the South Florida TRIO Program, which enabled me to form long-lasting relationships with instructors and students who have been a consistent source of motivation. My program instructor, Ms. Tiffani, regularly checks in with me and my family. There was a point in time where I was even contemplating whether or not college was for me. In the end I was able to go to my peers within the program and they were encouraging me to continue pushing through and now I'm in a position where I'm getting ready to graduate! Ms. Tiffani and others provided the guidance and mentorship I needed to not only continue my education but also enjoy it.

In the past year, these supportive relationships have been more important than ever.

When the pandemic hit, my education was disrupted, I had to suspend my internship, and I lost my job. I had been working for two months before the start of the semester, which enabled me to move into an apartment and forgo taking out additional loans. Losing that income was a heavy blow. So it was a great relief when a few weeks later, I received emergency funds from FIU that were made available through the CARES Act. This aid helped me purchase school supplies and keep up with bills.

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This has been critically important because even without having to worry about replacing the income I lost when my job ended, it has been challenging to remain focused on my studies. Although I haven't allowed myself to become discouraged or to give up, COVID-19 has had a huge effect on my ability to stay motivated. I struggled with the transition to virtual learning and not having the same support network around me. Without the presence of my peers and teachers, I felt more alone and forced to rely only on my own strength.

Still, it has been my relationships with mentors, counselors, and other students that have enabled me to remain on track.

With their continued support, and thanks to the emergency financial aid I received, I look forward to graduating as soon as this summer.

I would like to thank the members of this committee for thinking of students across the United States, who, like me, suddenly had to take on unexpected costs when the pandemic hit, and for delivering meaningful relief.

I would also urge you to continue to provide support for students who are most in need. We represent the future and I, like many of my counterparts, want to use my degree to make an impact. But the high cost of higher education places a significant burden on us and our families. Receiving financial aid that removes some of this strain helps put students in a position to thrive.

As its name implies, FIU has an international focus, so I also want to speak to the importance of ensuring that international students have the same opportunities to succeed. They are pursuing the same dreams and have in many cases been equally impacted by the pandemic.

Thank you for the opportunity to speak here today. I look forward to answering any questions you may have.

Chairwoman WILSON. Thank you so much Keith, thank you. We will now hear from Chancellor Eloy Ortiz Oakley. Chancellor.

STATEMENT OF CHANCELLOR ELOY ORTIZ OAKLEY, CHANCELLOR, CALIFORNIA COMMUNITY COLLEGES

Mr. OAKLEY. Well good afternoon everyone. And Chair Wilson, Ranking Member Murphy, and Members of the subcommittee my name is Eloy Ortiz Oakley. I'm a proud community college transfer student, and I'm pleased to serve as the Chancellor of the California Community Colleges.

I'm honored to speak to you today on the future of higher education, as we look to the end finally, of the COVID–19 pandemic. My remarks will focus on how our community colleges are supporting our students to stay enrolled and complete their studies, and how an effective partnership with Congress and the Federal Government can lead to an equitable recovery by investing in higher education and supporting the displaced workers ravaged by this pandemic.

First, let me tell you a little bit about the California Community Colleges. We are the largest and most diverse system of higher education in the Nation with 116 colleges serving more than 2 million students in urban, suburban, and rural communities. They are the primary pathway to educational and economic mobility for Californians, and we are proud to serve the top 100 percent of our students.

Like much of the Nation 1 year ago today, our State went into an immediate lockdown to ensure the health and safety of our workers, families, and students. Our colleges are—I want first commend Governor Gavin Newsom for his swift and decisive action. Our colleges also acted decisively.

In a matter of weeks our faculty and college leaders mobilized to convert tens of thousands of courses and programs to an online, or remote modality. The support of Congress has been critical to our system, and our students during this critical moment.

The funds provided by the CARES Act were used, among other things to help our diverse students purchase things like laptops, Wi-Fi hotspots, and as emergency financial aid to students who lost their jobs, in many cases were struggling to find their next meal, or stave off eviction.

As we look to the future of higher education, the most important task is to ensure that students can attend, and afford the total cost of college. As no doubt you have heard, community colleges have seen a sudden and alarming decrease in enrollments since the start of the pandemic.

We believe that this is due to many factors, foremost among them being that our students, they balance multiple responsibilities. They are parents. Primary breadwinners. They balance multiple jobs, and they share the same Wi-Fi with a full household and are facing—many of them are facing homelessness and other challenges.

The economic devastation brought by the COVID pandemic has hit our lowest income students the hardest. We are appreciative of the ongoing discussions about tuition free community college and would note that California provides nearly three billion dollars in student financial aid to waive tuition for low income students attending community colleges and four-year universities.

However, the cost of college goes beyond tuition. It includes textbooks, supplies such as laptops, housing, food, transportation and child care. We have used funds from the stimulus legislation passed by Congress to provide direct emergency one-time assistance to our most vulnerable students.

We need stable, permanent system of student financial aid that acknowledges the true costs of attending college. This is true not just in California, but across the country where the movement to double the Federal Pell is gaining momentum, and we are pleased to support this effort.

Our commitment is two-fold—increasing financial aid for students to cover non-tuition related expenses, and scaling those additional student supports that they need to complete their education. Additionally, financial support is needed to ensure equitable broadband access for all.

High-speed internet is not a luxury. If anything, what we have learned from this pandemic is that every American household must have access to reliable high-speed broadband. I also believe the community college training programs are critical to preparing America's workforce, and ensuring an equitable recovery. California's workforce programs, including those funded by the Federal Perkins Career Technical Education Program match, employers and high-skill, high-wage industries with educated and qualified workers.

We strongly encourage these programs that provide new pathways to secure employment and that pay a living wage. I believe that we should place an emphasis of community college programs that focus on the skills and competencies workers need to get back into the workforce in a meaningful way.

We also further support oversight of the for-profit industry. We thank Congress for including the America Rescue Plan Act language that strengthens the 90/10 rule which helps hold for-profits accountable for their reliance on Federal aid dollars.

Finally, congressional action is needed to support our undocumented students. This is not a partisan issue for us. This is a moral and economic imperative. Undocumented students are our future teachers, business owners, doctors and entrepreneurs. We urge Congress to codify the deferred action for childhood arrivals program.

I will close by adding that with regard to equity higher education now is the time to double down on efforts to insure that students have the supports they need to be successful, whether they're in California, middle America, or the Atlantic Coast. I'm proud to represent a State that leads with equity at the center of everything we do. We cannot do this alone. Ongoing Federal support, a partnership with the Biden administration, leaders of this subcommittee and the entire Congress are needed to make this happen.

I thank you for the time. I'm honored to be here today, and I look forward to answering your questions.

[The prepared statement of Mr. Oakley follows:]

PREPARED STATEMENT OF ELOY ORTIZ OAKLEY

California Community Colleges

Remarks by Eloy Ortiz Oakley
Chancellor, California Community Colleges

House Higher Education and Workforce Subcommittee
Public Hearing
Wednesday, March 17, 2021

Good afternoon, Chair Wilson, Ranking Member Murphy, and Members of the Subcommittee: I am Eloy Ortiz Oakley, a proud community college transfer student and I am pleased to serve as Chancellor of the California Community Colleges. I am honored to speak to you today on the future of higher education as we look to the end of the COVID-19 pandemic. My remarks will focus on how our California Community Colleges are supporting our students to stay enrolled in and complete their studies, and how an effective partnership with Congress and the federal government can lead to an equitable economic recovery by investing in higher education.

First, let me tell you a little about the California Community Colleges. We are the largest system of higher education in the United States, with 116 colleges serving more than two million students in urban, suburban and rural communities. The footprint of our colleges cannot be understated. They are the primary pathway to educational and economic mobility for Californians and serve as the starting point for nearly two thirds of all California State University and University of California bachelor degree earners.

Like much of the nation one year ago today, our state went into an immediate lockdown to ensure the health and safety of our workers, families, and students. I want to commend Governor Gavin Newsom for his swift and decisive action. Our colleges acted decisively, too, proving that what we thought was impossible was indeed, possible. Difficult, but possible. In a matter of weeks, faculty and college leaders mobilized to convert tens of thousands of courses and programs to an online modality.

Equity is at the heart of everything our community colleges do for our students. The support of Congress has been critical to our system and our students during this time. The funds provided by CARES Act were used, among other things, to help our students and faculty purchase laptops and wi-fi hotspots, and as emergency financial aid to students who lost their jobs and, in many cases, were hungry and/or at risk of eviction or homelessness.

As we look to the future of higher education, the first and most important task is to ensure that students can attend, and afford, the cost of college. As you no doubt have heard, community colleges have seen an unfortunate and alarming decrease in enrollment since the

California Community Colleges

start of the pandemic. Through a number of statewide surveys from California research organizations we believe that this is due to a variety of factors, foremost among them being that our students balance multiple responsibilities in addition to being a student. They are parents, they are primary breadwinners, they balance multiple jobs to stay afloat, they share the same wi-fi with a full household, or they may be hungry and facing homelessness. The economic devastation brought by the COVID pandemic has hit our lowest-income students the hardest.

When it comes down to it, a big factor in determining whether or not to stay enrolled in school is if you can afford it. We are appreciative of the ongoing discussions about tuition-free community college, and would note that California provides nearly $3 billion in student financial aid to waive tuition for low-income students attending community colleges and four-year universities every year. These investments mean that more than half of all California public college students are able to attend without having to worry about working excessive hours or taking out student debt to afford tuition.

The cost of college goes beyond tuition; it includes textbooks and supplies such as laptops, housing, food, transportation, and childcare. We have used funds from the relief and stimulus legislation passed by Congress to provide emergency, one-time assistance to our most vulnerable students, but there is no future for higher education if our students cannot afford to stay in school. We need a stable, permanent system of student financial aid that acknowledges the true cost of attendance. This is true not just in California but across the country, where the movement to double the federal Pell Grant is gaining momentum, and we are pleased to support that effort. The California Community College commitment is two-fold – increasing financial aid to students to cover non-tuition related expenses, and scaling those additional student supports to ensure they meet their end goals. This includes streamlining the process for transferring to a four-year university as well.

Additionally, federal support is needed to ensure equitable broadband internet access for all Americans and close the digital divide. High-speed internet is no longer a luxury item like it was 20 years ago; if working from home this past year has proven anything to us, it is that every American household must have access to reliable, high-speed broadband. It is just as much of a necessity as gas, water, or power.

I would also note that community college job-training programs are critical to training America's workforce for the 21st century and ensuring an equitable economic recovery. In California, many workforce programs – including those funded by the federal Perkins Career Technical Education program and others – help expand and grow worker skills, and match employers in high-skill, high-wage industries with trained and qualified workers. Many of these are the "essential workers" who have been on the front lines of the COVID pandemic.

California Community Colleges

Therefore, we strongly encourage the expansion of career and technical education programs that seek to strengthen partnerships between community colleges and industry sectors and provide new pathways to securing employment that pays a living wage. We also support further oversight of the for-profit college industry, which provides workforce education but so often leaves students saddled with significant loan debt and degrees of little to no value. We thank Congress for strengthening the "90/10" rule, which helps hold for-profits accountable for their reliance on federal aid dollars, as part of the American Rescue Plan stimulus package.

Finally, let me note that congressional action is needed to support our undocumented students. This is not a partisan issue for us; it is a moral imperative. An estimated 70,000 undocumented students attend California Community Colleges, with thousands more attending colleges and universities across the nation. Undocumented students are our future teachers, business owners, doctors and entrepreneurs, and yet they face an uncertain future without a permanent pathway to citizenship. We cannot have an equitable recovery without paving the road to codifying the Deferred Action for Childhood Arrivals (DACA) program.

Let me close by saying that, when it comes to the fight for equity in higher education, now is not the time to take our foot off the gas pedal; now is the time to double down to ensure our students have the supports they need to be successful. They are our future. I am proud to represent a state and a system that leads with equity at the center of everything we do in higher education – but we cannot do it alone. Ongoing federal support, a partnership with the Biden Administration, the leaders of this Subcommittee, the entire Congress, and our partners in other states, will be essential to closing equity gaps.

I hope my remarks today have been helpful in highlighting how our nation can put equity at the heart of our shared vision for the future of higher education. I am, of course, happy to answer any questions from the Subcommittee.

Thank you.

Chairwoman WILSON. Thank you so much. We will now hear from Lindsey Burke.

STATEMENT OF DR. LINDSEY M. BURKE, PH.D., DIRECTOR, CENTER FOR EDUCATION POLICY, AND MARK A. KOLOKOTRONES FELLOW IN EDUCATION, THE HERITAGE FOUNDATION

Ms. BURKE. Good afternoon. My name is Lindsey Burke. I am a Mark A. Kolokotrones Fellow in Education and the Director of the Center for Education Policy at the Heritage Foundation.

Thank you Chairwoman Scott and Chairwoman Foxx and thank you subcommittee Chairwoman Wilson and Ranking Member Murphy for the opportunity to testify today.

COVID–19 has posed challenges to every aspect of education in America from preschool through college. But it has also presented opportunities to rethink whether the current higher education system is serving students in the best way possible, and whether there are opportunities for reform.

The congressional response to COVID–19 has now included three major aid packages. As part of the CARES Act passed in March 2020, higher education received 14 billion dollars in additional Federal funding on top of the sector's standard annual appropriations.

That was followed by another 22.7 billion dollars in new funding as part of the December 2020 package. And then by the most recent American Rescue Plan Act which will provide yet another 40 billion to the higher education sector. In all, colleges will have received an additional 76 billion dollars in Federal spending over the past 12 months alone—a monumental sum, nearly equivalent to the Department of Education's entire annual discretionary budget.

Colleges should now take the opportunity to make sure that that money is used responsibly. College boards of trustees and regents need to direct their universities to tackle program prioritization and reinvest funds in programs that advance their core mission rather than continuing to engage in a facilities and amenities arms race.

From 2001 to 2011 the number of non-teaching employees and administrators increased 50 percent faster than teaching faculty. At the same time the 6-year completion rate for students pursuing a bachelor's degree stood at just 60 percent in 2020. One-third of college graduates are underemployed, working in jobs that do not require a bachelor's degree, and business leaders also report that college courses do not prepare graduates for the workforce, or provide them with the practical or technical skills needed to be successful in their careers.

Schools should focus resources on teaching and learning and should evaluate productivity by assessing and prioritizing academic programs that really reinforce their core mission and prepare students for the workforce or further academic study. The colleges and universities should also review facilities and amenities expenditures and auxiliary services such as dining services and student housing, janitorial services, and consider outsourcing delivery and management of these functions which are unrelated to their core mission as academic institutions.

And for its part Congress should not lose sight of the tens of billions in new relief funding now that it has been appropriated, and should make sure the Department of Education is providing timely and useful oversight of how colleges are spending that money.

Congress should also rescind the elastic clause of the HEA prohibiting creditors from using their title for keeping authority to impose onerous regulations on institutions. And Federal policymakers should make space for private lending to re-emerge and for innovative education financing options to flourish by reducing Federal subsidies, including eliminating the Federal PLUS Loan program, both the parent PLUS and grad PLUS components.

And finally, Federal officials should allow colleges to limit student borrowing. Currently, colleges are barred from assessing a student's likelihood of repaying a loan based on that student's course of study or borrowing history. Although these factors can predict a student's ability to repay their loans, colleges are not allowed to limit the amount students can borrow.

Congress should amend the HEA to allow colleges to limit borrowing, helping students to exit school with lower levels of debt.

Colleges and universities across the country do face challenges associated with the COVID–19 pandemic, but so does nearly every sector of society. Ever increasing Federal spending and subsidies will not correct problems that have plagued the higher education sector for decades, and which predated the Coronavirus.

Congress should take this opportunity to pursue reforms that will help colleges navigate the pandemic, while also increasing their value proposition moving forward thank you.

[The prepared statement of Ms. Burke follows:]

PREPARED STATEMENT OF LINDSEY M. BURKE

The Heritage Foundation

CONGRESSIONAL TESTIMONY

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

Testimony before
House Education and Labor Committee
Higher Education and Workforce Investment Subcommittee

United States House of Representatives

March 17, 2021

Lindsey M. Burke, Ph.D.
Mark A. Kolokotrones Fellow in Education and the Director of the Center for Education Policy
The Heritage Foundation

My name is Lindsey Burke. I am the Mark A. Kolokotrones Fellow in Education and the Director of the Center for Education Policy at the Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

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Thank you Chairman Scott and Ranking Member Foxx, and thank you subcommittee Chairwoman Wilson and subcommittee ranking member Murphy for the opportunity to testify today.

COVID-19 has posed challenges to every aspect of education in America, from preschool through college. But it has also presented opportunities to rethink whether the current higher education system is serving students in the best way possible, and whether there are opportunities for reform. Every sector of society has been impacted by the COVID-19 pandemic, but colleges and universities across the country have received an enormous federal bailout that is likely to insulate universities from needed reform.

The Congressional response to COVID-19 has now included three major aid packages. As part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act passed in March 2020, higher education received $14 billion in additional federal funding, on top of the sector's standard annual appropriations. That was followed by another $22.7 billion in new funding as part of the December 2020 Coronavirus Response and Relief Supplemental Appropriations (CRRSAA) Act, and then by the most recent American Rescue Plan (ARPA) Act, which will provide yet another $40 billion to the higher education sector. In all, colleges will have received an additional $76 billion in federal spending over the past 12 months – a monumental sum nearly equivalent to the Department of Education's entire annual discretionary budget.

Although the pandemic has presented challenges, that does not change the fact that it is not the job of federal taxpayers to pay for tens of billions in new higher education spending. Rather, states need to reopen their economies, and indeed, many are starting to do so. Although the impacts vary by state, state budget deficits are not materializing as some had feared. State and local tax revenues increased in 2020 and are predicted to increase further in 2021.[1] Reopening and enabling businesses to serve their customers and thrive is the key to generating revenue. With vaccines becoming more widely available and states lifting lockdown restrictions, additional federal spending is unnecessary.

Indeed, over the course of the last year, a majority of states (23 out of the 45 for which data are available) saw either no change in higher education funding or, in the case of three of those states (Alabama, Massachusetts, and Florida), actually saw increases in state higher education funding. Among states that reduced funding, California made up one-third of the total funds cut, and those reductions are already slated to be restored next fiscal year.[2]

Sometimes colleges are going to face budget constraints, but that is true for all sectors. Ask any business owner. Government shutdowns will likely put pressure on university revenue streams, from charitable contributions to state appropriations in some cases. But the pandemic did not cause financial stress in higher education; rather, it exacerbated problems long-plaguing the sector. Instead of continuing to spend more taxpayer money, colleges need to do some belt-tightening. Mounting national debt is unsustainable and the cost of all of this elevated spending will be passed down to our children.

However, now that the additional federal spending is out the door, colleges should take the opportunity to make sure it is used responsibly. College boards of trustees and regents need to direct their universities to tackle program prioritization and reinvest funds in programs that advance their core mission, rather than continuing to engage in a facilities and amenities arms race.[3]

From 2001 to 2011, the number of non-teaching employees and administrators increased 50 percent faster than teaching faculty.[4] Indeed, non-instructional staff at universities across the country now accounts for more than half of university payroll costs.[5] Just 40 percent of full-time employees at non-doctoral colleges are instructional staff, a figure that drops to just 28 percent at doctoral-

[1] Scott Lincicome, We're Paying $1.9 Trillion for What? *Cato Institute,* February 17, 2021, at https://www.cato.org/commentary/were-paying-19-trillion-what

[2] Victoria Yuen, American Rescue Plan Could Help Prevent State Public Higher Education Cuts, Center for American Progress, March 10, 2021, at https://www.americanprogress.org/issues/education-postsecondary/reports/2021/03/10/496936/american-rescue-plan-help-prevent-state-public-higher-education-cuts/

[3] Heidi Ganahl and Lindsey Burke, Leading through the Crisis: How College Regents and Trustees Can Steady the Fiscal Ship, *The Daily Signal,* June 9, 2020, at https://www.dailysignal.com/2020/06/09/leading-through-the-crisis-how-college-regents-and-trustees-can-steady-the-fiscal-ship/

[4] Douglas Belkin and Scott Thrum, Deans List: Hiring Spree Fattens College Bureaucracy – And Tuition, *The Wall Street Journal,* December 28, 2012, at https://www.wsj.com/articles/SB10001424127887323316804578161490716042814

[5] Critical Care: Policy Recommendations to Restore American Higher Education after the 2020 Coronavirus Shutdown, *National Association of Scholars,* April 18, 2020, at https://www.nas.org/reports/critical-care/full-report

granting universities.[6] As higher education scholar Preston Cooper recently found, "since 2003, only one-third of the increase in colleges' and universities' core expenditures has gone to spending on instruction. Almost all the rest has fed the growth of the vast administrative apparatus of these institutions."[7]

Colleges have needed a course correction for decades, and are now looking at these various stimulus bills as a way to pay for general fiscal maladministration. There are real problems, but those will take structural reforms and changes at the university level. Although colleges face new hurdles in the COVID-19 era, they will continue to face perennial challenges moving forward, absent a willingness to correct course.

Changes at the university-level. In order to right the fiscal ship, college leadership should analyze their school's data on revenue and spending, including a formal review of non-teaching and administrative positions. Schools should focus resources on teaching and learning, and should evaluate productivity by assessing and prioritizing academic programs that reinforce their core mission and prepare students for the workforce or further academic study. In addition to assessing spending and administrative bloat, colleges and universities should also review facilities and amenities expenditures and auxiliary service costs such as dining services, student housing, and janitorial services, and consider outsourcing delivery and management of these functions, which are unrelated to their core mission as academic institutions.[8]

Changes in federal policy. For its part, Congress should not lose sight of the tens of billions in new relief funding now that it has been appropriated, and should make sure the Department of Education is providing timely and useful oversight of how colleges are spending that money. The Department of Education should enable maximum transparency to taxpayers around how those dollars are being spent by colleges through public reporting that is easily accessible on the Department of Education's website. The Department should also maintain the rule issued last year that only students who are eligible to participate in federal loan programs are eligible for emergency federal aid. This helps make sure finite funds are targeted appropriately.

Ubiquity of federal subsidies has insulated colleges from making tough choices over the years, from engaging in program prioritization or keeping staffing levels in check. And ever-increasing college costs have muddied colleges' value proposition. Across the country, tuition and fees for in-state students attending four-year universities have nearly tripled in real terms since 1990.[9] Since 1970, inflation-adjusted tuition rates have quintupled at both public and private colleges.[10] At the same time, federal subsidies have increased dramatically, with spending on student loans rising 328

[6] Preston Cooper, Why College is Too Expensive – And How Competition Can Fix It, *Foundation for Research on Equal Opportunity,* March 5, 2021, at https://freopp.org/why-college-is-too-expensive-and-how-competition-can-fix-it-cb2eb901521b
[7] *Ibid.*
[8] Lindsey M. Burke and Adam Kissel, Leading the Way on Higher Education Reform through Smart Giving: A Roadmap for Private Philanthropy, *Philanthropy Roundtable,* 2020, at https://www.philanthropyroundtable.org/home/programs/civic-education/leading-the-way-on-higher-education-reform-through-smart-giving-a-roadmap-for-private-philanthropy
[9] Trends in College Pricing 2020, The College Board, Published Charges Over Time, at https://research.collegeboard.org/pdf/trends-college-pricing-student-aid-2020.pdf
[10] Preston Cooper, Why College is Too Expensive – And How Competition Can Fix It, *Foundation for Research on Equal Opportunity,* March 5, 2021, at https://freopp.org/why-college-is-too-expensive-and-how-competition-can-fix-it-cb2eb901521b

percent over the last 30 years, from $20.4 billion during the 1989-90 school year to $87.5 billion during the 2019-20 school year.[11] Moreover, there has not been state disinvestment in higher education. Inflation-adjusted state appropriations for public colleges and universities have increased $1,700 per pupil since 1980.[12] As University of Ohio economist Richard Vedder explains:

> "[I]t takes more resources today to educate a postsecondary student than a generation ago.… Relative to other sectors of the economy, universities are becoming less efficient, less productive, and, consequently, more costly."[13]

This inefficiency is also seen in standard outcome measures such as graduation rates. The *six-year* completion rate for students pursuing a bachelor's degree stood at just 60 percent in 2020 – meaning just six in 10 students complete a four-year bachelor's degree in six years.[14] This can be explained in part by the fact that the typical *full-time* college student spends only 2.76 hours per day on all education-related activities, including attending class and completing homework and assignments. As my Heritage Foundation colleagues Jamie Hall and Mary Clare Amselem and I wrote in a 2016 report, "On average, Americans will not work as little as they did at age 19 until they reach age 59, when significant numbers cut back on their work hours or enter retirement."[15]

Students who do complete college are nonetheless ill-prepared for the workforce. One-third of college graduates are underemployed, working in jobs that do not require a bachelor's degree.[16] For example, while 75 percent of engineering majors are in jobs that require a bachelor's degree, that figure drops to just 40 percent for communications majors.[17] At the same time, business leaders report college courses do not prepare graduates for the workforce or provide them with the practical or technical skills needed to be successful in their careers.[18] For example, a 2018 survey conducted by the National Association of Colleges and Employers found that although almost 80 percent of students believed they were proficient in oral and written communication, just 42 percent of employers agreed. Those findings reinforced earlier survey data from the Association of American Colleges and Universities, which found that while 62 percent of students felt they were competent in

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[11] *Ibid.*
[12] *Ibid.*
[13] Richard K. Vedder, "Restoring the Promise: Higher Education in America," 2019, Independent Institute, Oakland, CA, p. 29.
[14] Madeline St. Amour, Completion Rates Flat Over All, *Inside Higher Ed,* December 8, 2020, at https://www.insidehighered.com/quicktakes/2020/12/08/completion-rates-flat-over-all
[15] Lindsey M. Burke, Mary Clare Amselem, and Jamie Hall, Big Debt, Little Study: What Taxpayers Should Know about College Students' Time Use, *The Heritage Foundation,* July 19, 2016, at https://www.heritage.org/node/10537/print-display
[16] Jaison R. Abel, Richard Deitz, and Yaquin Su, Are Recent College Graduates Finding Good Jobs? *Current Issues in Economics and Finance,* Federal Reserve Bank of New York, Vol. 20, No. 1 (2014), at https://www.newyorkfed.org/medialibrary/media/research/%20current_issues/ci20-1.pdf
[17] Jaison R. Abel, Richard Deitz, and Yaqin Su.
[18] Dana Wilkie, Employers Say College Grads Lack Hard Skills, Too, SHRM, October 21, 2019, at https://www.shrm.org/resourcesandtools/hr-topics/employee-relations/pages/employers-say-college-grads-lack-hard-skills-too.aspx

oral and written communication, just 28 percent of employers agreed.[19] This gap in skills has negative economic impacts, as it has left more than six million jobs empty across the country.[20]

This all calls into question the value-add of many institutions for their students. Employers need a qualified workforce, and too often, universities are not delivering.

HEA reforms to enable longer-term solutions. Congress should pursue several policy reforms in any future reauthorization of the Higher Education Act to increase transparency to taxpayers and reduce costs for students, including 1) transparency around programmatic outcomes, 2) rescission of the "elastic clause," 3) eliminating the PLUS Loan program, and 4) allowing colleges to limit student borrowing.

Transparency around programmatic outcomes. Accountability in higher education should focus on outcomes, not delivery models, with particular attention paid to programmatic outcomes. For example, Title IV eligibility could be tied to passage rates for courses of study and professions that use third-party certification exams, such as the bar exam in the legal field. College scorecard data should also transparently report on programs and colleges in which students leave with high levels of debt relative to their earnings after graduating.

Rescission of the "elastic clause." Congress can provide flexibility to colleges and universities that will help them meet the challenges emanating from the COVID-19 pandemic by prohibiting accreditors from using their Title IV gatekeeping authority to impose onerous regulations on institutions. Federal law (20 U.S.C. § 1099b(g)) endows accreditors with the authority to require colleges to adopt standards outside of the scope of the HEA.[21] This "elastic clause" enables accreditors to impose additional standards unrelated to basic oversight of taxpayer funding, extending to issues such as institutional governance, that inhibit innovation. Congress should amend this "elastic clause" so that a university cannot lose eligibility to Title IV funding based on metrics not included in the Higher Education Act. For example, if an accreditor wanted to pass a dress code and base Title IV eligibility on universities adopting it, they could do so under the current system. Closing this loophole would secure institutions' self-governance and refocus accreditors on academic quality. This is a common sense adjustment that has the potential for major impact.

Elimination of the PLUS Loan Program. Reforms to the existing student loan and grant programs are also needed to curb college costs and mitigate the inflationary effects now referred to as the Bennett Hypothesis. In 1987 former Secretary of Education William Bennett wrote a *New York Times* oped entitled "Our Greedy Colleges," first arguing that federal subsidies fuel increases in college costs. Since that time, a growing body of research has supported Secretary Bennett's hypothesis. David O. Lucca, Taylor Nadauld, and Karen Shen of the Federal Reserve Bank of New York identified indicators of the Bennett Hypothesis at play. They found that credit expansion (increasing subsidized federal student loans) leads to a tuition increase of 60 cents for every

[19] Jeremy Bauer-Wolf, Overconfident Students, Dubious Employers, *Inside Higher Ed*, February 23, 2018, at https://www.insidehighered.com/news/2018/02/23/study-students-believe-they-are-prepared-workplace-employers-disagree

[20] Douglas Belkin, Josh Mitchell, and Melissa Korn, House GOP to Propose Sweeting Changes to Higher Education, *The Wall Street Journal*, November 29, 2017, at https://www.wsj.com/articles/house-gop-to-propose-sweeping-changes-to-higher-education-1511956800

[21] 20 U.S. Code § 1099b - Recognition of accrediting agency or association, Legal Information Institute, Cornell Law School, at https://www.law.cornell.edu/uscode/text/20/1099b

additional dollar of subsidized federal loans.[22] A major driver of college cost increases is the federal PLUS loan program, which includes both Parent PLUS (by which parents can secure federal loans for their undergraduate student) and Grad PLUS (through which graduate students can obtain federal student loans). PLUS loans enable students to borrow up to the cost of attendance, enabling colleges to raise tuition prices profligately.

Prior to the COVID-19 pandemic, more than 40 percent of federal student loan borrowers (borrowing via the Direct Loan program) were either in default or deferment or delinquent, behind on more than $200 billion owed to taxpayers.[23] To correct course, Congress should make space for private lending to reemerge, and for innovative higher education financing options such as income share agreements to flourish. They can do so by reducing federal subsidies, including eliminating the federal PLUS loan program (both the Parent PLUS and Grad PLUS components), and through accreditation reform that would enable students to pay for individual courses and courses of study that are more applicable to the job market.[24]

Allow colleges to limit borrowing. Currently, colleges are legally barred from assessing a student's likelihood of repaying a loan based on that student's course of study or borrowing history, for example. Although these factors can predict a student's ability to repay their loans in the future, colleges are not allowed to limit the amount of student loans a student borrows. Congress should amend the HEA to allow colleges to limit borrowing, helping students to exit school with lower levels of debt. As the National Association of Student Financial Aid Administrators has suggested, schools should be able to help students borrow responsibly, helping them to avoid delinquency and default, by being allowed to set lower loan limits below the federal cap and by restricting lending through school-determined criteria, such as enrollment status and chosen course of study.[25] As the James G. Martin Center's Shannon Watkins writes, "Penalizing schools for high student loan default rates is sensible, but only if they are given flexibility to try to stop the problem before it arises."[26]

Conclusion

Colleges and universities across the country do face challenges associated with the COVID-19 pandemic, but so does nearly every sector of society. Ever-increasing federal spending and subsidies will not correct problems that have plagued the higher education sector for decades, and which predated the coronavirus. Spending continues to saddle taxpayers – two-thirds of whom do not hold bachelor's degrees – with a financial burden that is growing unsustainable and that will saddle future generations with debt. Congress should take this opportunity to pursue reforms that will help colleges navigate the pandemic while also increasing their value proposition moving forward.

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[22] David O. Lucca, Taylor Nadauld, and Karen Shen, "Credit Supply and the Rise in College Tuition: Evidence from the Expansion in Federal Student Aid Programs," Federal Reserve Bank of New York Staff Report No. 733, July 2015, Revised February 2017, https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr733.pdf?la=en
[23] Josh Mitchell, More than 40 percent of Student Borrowers Aren't Making Payments, *The Wall Street Journal,* April 7, 2016, at https://www.wsj.com/articles/more-than-40-of-student-borrowers-arent-making-payments-1459971348
[24] For more on this, see: Lindsey Burke and Stuart Butler, Accreditation: Removing the Barrier to Higher Education Reform, Heritage Foundation, September 21, 2021, at https://www.heritage.org/education/report/accreditation-removing-the-barrier-higher-education-reform
[25] Discussion Draft: Dynamic Loan Limits Working Group Proposal, National Association of Student Financial Aid Administrators, July 2016, at https://www.nasfaa.org/uploads/documents/Dynamic_Loan_Limits_Discussion_Draft.pdf
[26] Shannon Watkins, Why Colleges Should Be Allowed to Limit Students' Federal Loans, The James G. Martin Center for Academic Renewal, June 26, 2017, at https://www.jamesgmartin.center/2017/06/colleges-allowed-limit-students-federal-loans/

Increasing transparency around programmatic outcomes, limiting the power of accreditors as gatekeepers to Title IV funding, eliminating the PLUS Loan program, and allowing colleges to limit student borrowing are important steps in achieving that goal.

Thank you again to the Education and Labor Committee's Subcommittee on Higher Education and Workforce Investment for the opportunity to speak today.

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Chairwoman WILSON. Thank you so much for your testimony. Finally, we will hear from Daniel Zibel, welcome.

STATEMENT OF MR. DANIEL A. ZIBEL, VICE PRESIDENT AND CHIEF COUNSEL, NATIONAL STUDENT LEGAL DEFENSE NETWORK

Mr. ZIBEL. Good afternoon Madam Chair Wilson, Ranking Member Murphy and Members of the committee. I am the Vice President and Chief Counsel of Student Defense. We use litigation and advocacy to bring change for students on issues of consumer protection and higher education.

I want to thank you for having me here today. As we all know beyond the health effects and tragic losses of this past year, the Coronavirus has fundamentally altered so many aspects of American lives. With respect to higher education there have been enormous impacts on students, perspective students, families, study loan borrowers and repayment, recent graduates, or those who left school without a credential at all.

COVID has exacerbated economic problems, including growing disparities in a system of higher education that has benefited so many, but has left so many others particularly in communities of color with long-lasting, negative effects.

We are seeing signs now of an enrollment resurgence at for-profit colleges. Although overall, post-secondary enrollment decline in the fall of 2020, enrollment at for-profit colleges actually increased. This trend is similar to what happened around the Great Recession, and is worrisome in light of the overwhelming evidence that students who attend for-profit colleges have worse outcomes at large than their peers at public or non-profit institutions.

Thankfully, the U.S. Department of Education has ample tools to make sure that taxpayer funded student loans and grants are not propping up predatory institutions while leaving students with mountains of debt and worthless degrees. This spring marks the 30th anniversary of a bipartisan report by the Senate Permanent Subcommittee on Investigations, which offered a scathing review of the department's oversight mechanisms and led to bipartisan legislation that gave the department many of the oversight tools it has today.

So at a time when the needs of students and borrowers are so pressing, the department is not effectively using the tools that Congress provided to ensure that colleges are best serving students and taxpayers. For example, on the heels of the 1991 report, Congress sought to ensure that taxpayers were protected when colleges failed their students.

Because taxpayers can be on the hook for hundreds of millions of dollars when an institution closes or defrauds its students, Congress authorized the department to recover financial losses, not only from institutions themselves, but also from the individuals who own or run those institutions, including board members and top executives.

Thirty years later the department has never brought an action under this authority. The department has largely failed to fine schools for consumer facing wrongs, or issue other sanctions on predatory institutions. And there are far too many examples of the department certifying a school for years of access to student aid funds, even when a school is facing a known risk of losing State authorization or accreditation, or is under investigation by State and Federal law enforcement.

Enforcement is not just about punishing misconduct. It's also about deterring future misconduct. But even in terms of routine compliance, the department's program review process and compliance audits are riddled with delays and inefficiencies. An Inspector General's sample of 739 audits over an 11 year period found more than 75 percent to have been conducted in a failing or deficient manner.

I've noted additional failures in my written testimony. This is not to say that Federal student aid is always missing the mark. But given the enormous investment in student aid, and the life-long effects that failures can have on students and borrowers, the department must be doing a better job of oversight.

I want to emphasize three additional high level recommendations. First, FSA must embed student protections in all of its decisions. Decisions should be about what is best for students. FSA currently considers regulated entities to be its partners. It's long past time for students and borrowers to be the true borrowers of the department.

Second, the department must collaborate to reduce racial disparities around student debt. FSA should work closely with the department's Office for Civil Rights, and the Civil Rights Division of Justice, each of which has unique authorities and expertise.

Third, FSA should create a public service office to oversee issues relating specifically to teachers, nurses and so many others. There should be personnel dedicated to coordinating with the VA on the GI bill, and with the Department of Defense on post-secondary programs for military members and their families.

And the department must improve the bipartisan public service loan forgiveness program for all public servants. At this time, the department can and must do better. Oversight is one piece of a larger puzzle to ensure the promise of higher education. I look forward to your questions. Thank you.

[The prepared statement of Mr. Zibel follows:]

PREPARED STATEMENT OF DANIEL A. ZIBEL

STUDENT DEFENSE
NATIONAL STUDENT LEGAL DEFENSE NETWORK

1015 15th St. NW, Suite 600
Washington, DC 20005
www.defendstudents.org

WRITTEN TESTIMONY OF DANIEL A. ZIBEL
VICE PRESIDENT & CHIEF COUNSEL
NATIONAL STUDENT LEGAL DEFENSE NETWORK

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

March 17, 2021

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

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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

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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

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.

Chairwoman WILSON. Thank you so much. Thank you to all of the witnesses, and again welcome. Under Committee Rule 9(a) we will now question the witnesses under the five-minute rule. I will be recognizing our subcommittee Members in seniority order, again to ensure that the Members' five-minute rule is adhered to, staff will be keeping track of time.

And the timer will sound when time has expired. Please be attentive to the time. Wrap up when your time is over, and re-mute your microphone.

As chairwoman I now recognize myself for five minutes.

This question goes to Mr. Thornton. Have you had unexpected emergency expenses due to the pandemic? If so, how has receiving emergency funding, including from the CARES Act helped you meet your basic needs and ensure you could continue in school?

And how do you think additional investments in student aid, like restoring the purchasing power of the Pell Grant would impact future generations of students?

Mr. THORNTON. Yes. Thank you Congresswoman Wilson. So to answer this question I would say that you know some unexpected emergency expenses that have come up due to the pandemic are kind of what I mentioned was me, unfortunately losing my job last year, right before school started.

Initially I had the job for about 2 months, and it put me in a position to where I was comfortable enough to be able to go out and you know get my own apartment. And with the job not needing as many employees, I was let go from that job, so it put me in a position to where I had to pour a lot of funds from my savings, and it put me in a position to where I wasn't really as able to provide for myself in terms of rent, bills, and even things concerning school, being able to purchase materials.

So as far as receiving under the CARES Act, it literally came just in time, and I was able to use that to not only take care of myself as far as where I was staying, but even take care of myself as far as school is concerned. And I purchased the necessary materials in order to stay afloat and gain the wisdom and knowledge that I needed in order to pass my courses.

So that was about later last year sometime, and to answer your question as far as additional investments in student aid. I think it would be awesome. I think it definitely would help us as students a lot, just given the current situation still with this pandemic, a lot of people are still losing their jobs.

It's hard for people to even find jobs, and a lot of people, students my age, we work so that we can take care of ourselves as far as school is concerned. So when it comes to receiving additional funds and additional aid it would help a lot. I think it would definitely have a huge impact on us being able to stay in school an also be able to provide for ourselves concerning our school as well.

Chairwoman WILSON. Thank you so much. And with programs like 5,000 Role Models of Excellence and the TRIO Program alone, how has mentoring impacted your success?

Mr. THORNTON. I would say it has greatly impacted my success even now. As I mentioned with a shout out to Ms. Tiffany Tyler who has played a huge role in me being here, in my first year here, she made it memorable, honestly.

And for her to continue to remain in contact with me, checking with me, see how I'm doing with school, checking in on my GPA, making sure that I'm able to stay afloat, making sure that I'm applying to scholarships. She honestly helped me out so much. And for that I'm extremely grateful.

And even within the 5000 Role Models of Excellence Program and TRIO Program, outside of mentors I was able to build lasting relationships with young men like myself who were a part of this program and who are still pursuing a degree. I know that Ms. Congresswoman Wilson is familiar with a fine young man named Preston Cooper who not only was my roommate he was a 5,000 Role Models Alum.

And he's honestly been a great addition to my life and has helped me grow in many different ways. So the 5,000 Role Model in Excellence Program and TRIO Program has been tremendous and has helped me to get where I am now, as I mentioned to potentially be able to graduate by the end of this summer.

Chairwoman WILSON. Thank you. Mr. Zibel how can the Department of Education better protect students, especially those most vulnerable to abuse from predatory institutions? Predatory actors.

Mr. ZIBEL. Sure thank you Chair Wilson. Look, under over the last 4 years I think what we've seen is an administration that eviscerated a lot of important protections for students. Repealing the gainful employment rule, raising the bar for Trump borrower defense, or you know the student loan discharges for defrauded students, you know, to the point where I think the last Congress even used the Congressional Review Act to try to veto what Secretary DeVos had done, stalling a worse relief for borrowers who had been defrauded by for-profit colleges.

So part of it is restoring a lot of those protections, but that's not it. That can't be it. There has to be a cultural shift at the department by putting student interest first. Enforcement in this space can't just be about punishing actors, and providing debt relief after the fact. We've got to be deterring conduct in the first place.

Student lives are at stake, and the ramifications of this are longlasting, so we really need to be thinking about that first. Our organization has been writing a lot about this over the past six-months at 100daydocket.org about how to reinvigorate enforcement and really put those culture protections at the front end for all students and student loan borrowers.

Chairwoman WILSON. Thank you so much. I now recognize Dr. Foxx for her questioning.

Ms. FOXX. Thank you Madam Chairman I appreciate that. Dr. Burke, well thanks to all of our witnesses today. Dr. Burke thank you for your testimony. Congressional Democrats are passionate about oversight of one particular sector of postsecondary education, the for-profit sector.

The congressional Republicans care about all students at all institutions. What are the current institutional accountability metrics in the Higher Ed Act and how effective are they? Were these effective during the pandemic, or were they exposed as deficient?

Ms. BURKE. Well thank you Chairwoman Foxx for that question. The current accountability metrics in the Higher Education Act, I would say are rather lacking if we just look at outcomes. And that applies to all sectors. I think that it is inaccurate to say that problems in higher education are solely a function of career and technical education programs.

If we look at traditional four-year brick and mortar colleges, unfortunately, we see low graduation rates across the board. I mentioned that the 6-year graduation rate is 60 percent earlier, that's something that should concern us all.

I really think that we should compare apples to apples when we're thinking about accountability. If you look at certificate programs across the country, just 45 percent of students who pursue a certificate at a public college had earned it with 3 years. That figure actually rises to 70 percent for students who attend for-profit colleges.

And then there are other metrics as well. Andrew Gillan who researches in this area found that there are 514 colleges, many of these are community colleges at which the loan default rates of their students actually exceed their graduation rates, and he has called these red flag institutions.

And so you know we need accountability across the board. I think one way to do that is to advertise the college scorecards a little bit more. There's a lot of data already on that college scorecard. There are data about almost everything that you could want to know about college outcomes.

So I think it would help greatly if we had actors in the K–12 space like school boards, across the country making public schools aware of the information, making guidance counselors aware so they can provide that information to students. Sunlight really is the best disinfectant and that applies to accountability within the higher education system as well.

And then of course I would argue that one of the accountability measures that we really need is accountability for taxpayer dollars because at the end of the day our taxpayer funds, the Federal Government originates and services 90 percent of all student loans now.

And a big step in the right direction, as I mentioned earlier, would actually be to reduce some of these Federal subsidies to make space for private lending to re-emerge. Private lenders are in a better position to judge a student's ability to repay those loans moving forward.

I think that is the single best accountability measure that we could put into place.

Ms. FOXX. Well thank you very much. When I heard Mr. Zibel say that it is inappropriate to punish actors, and we needed to put students first, I thought that he was talking about the Obama administration actually.

Do you have an idea on how we could align the incentives of institutions, employers, taxpayers, and students. I think you mentioned about accountability, but how do we align the incentives so that it appears to be a win-win, instead of a win-lose situation all the time?

Ms. BURKE. Yes that's a great question Representative Foxx. I think one of the best things to do is really a State level effort, and we're already seeing this in 32 states across the country, Virginia, Tennessee, Indiana, many others, where they have policies in place that allocate their funds to public colleges based on measures that include course completion, so I think that's one good step in the right direction.

And then again at the end of the day, I think we can take a cue from the market. We can look at what industry is doing when it comes to really realigning incentives. There are many industry upscaling programs that are out there at the moment. You can look at companies, Amazon, FedEx, others that will actually prepay tuition for programs that are aligned with different career paths within their organization, and so I think that's a way to really responsibly align incentives.

A lot of that though is going to have to happen at the State level and within the private sector.

Ms. FOXX. Great. Well you gave me a good segue to talk about fostering a culture of life-long learning, which we think is very important. But the current system is not designed for multiple access points and off ramps. What HEA reforms can Congress make to create a system where short-term programs, stackable credentials, and life-long learning is the new normal?

Ms. BURKE. Well that's such a critical question as well. You know there are conversations right now around allowing existing Title IV funds to go to shorter term programs to allow students to direct those dollars to options that currently aren't eligible under ETA rules because of those time limitations.

I think that's a really good step in the right direction. That would enable a lot of individuals, people who want to switch careers, you know, mid-career to engage in earn and learn opportunities, to take some of those Title IV funds to shorter term program.

I think that's a step in the right direction. There are larger reforms that need to take place like decoupling Federal financing from accreditation to allow Title IV dollars to flow in a more piecemeal way, but at least in the near-term, those short-term options are a good step in the right direction.

Ms. FOXX. Thank you Madam Chairman. I yield back.

Chairwoman WILSON. Thank you, thank you. Mr. Takano of California. Mr. Takano are you still connected? We'll come back to Mr. Takano. Is Mr. Murphy on? Mr. Murphy of North Carolina, Mr. Murphy.

Mr. MURPHY. Thank you Chairwoman Wilson. First of all I want to acknowledge Keith Thornton, Mr. Thornton, just to congratulate you on the fine work that you've done, wish you the best of success. You know that success comes from within, and it doesn't come from being handed down to you, but it comes from hard work and opportunity.

So I congratulate you on what you've done, and encourage you to do even greater things and we look forward to hearing back from you. So a question I'll direct, at least the first one toward Dr. Burke, and thank you for joining us today. Your testimony will help us as we seek to work with our Democratic colleagues to reform the HEA, and the best interest of students and taxpayer.

I want to stress the importance of bipartisanship. Last year Congress came together in a bipartisan manner to pass two COVID–19 relief packages that included specific, and very significant funding for postsecondary education.

I have to say I was disappointed that this last funding package went across party lines and was not a bipartisan effort, and that's disappointing I think, not only for the country, but for our Congress as whole. We need to really work together. The American people are better served when we tackle problems shoulder to shoulder.

In that vein Dr. Burke, let me ask your assessment of what Congress did last year with the Higher Education Emergency Relief Funding. Can you put into context the size and the scope of the postsecondary educational bailout? You talked about numbers before, but I'd like you to flush that out a little bit more if you will.

Ms. BURKE. Sure. Thank you Representative Murphy for that question. I did talk about numbers before. I think it's important to reiterate some of those numbers. The CARES Act was 14 billion for higher ed, and then we saw the second package in December. That was another 21 billion dollars in that supplemental proposal.

And then again colleges and universities will receive 40 billion as a result of this third package. So in all we're talking about over 70 billion dollars. As I said this is more than the entire Department of Education's annual discretionary budget, so it really is a breathtaking sum.

I did a back of the envelope calculation this morning, and if you consider the fact that there are 20 million roughly, college students across the country, and we have now expended as a result of these three packages in additional Federal spending, 76 billion. That's over $3,800.00 per college student, just in these additional funds that have gone out the door.

So it really is like I said, I don't think there's a better word to describe it than a breathtaking sum of new Federal spending. And of course this is not free money. This is taxpayer money. It gets handed down to future generations. Right now we have about 28 trillion dollars standing as our national debt, that's $84,000.00 per person in the country, and this will certainly add to that.

So it's a large amount of money and it really needs some oversight.

Mr. MURPHY. I think we're good. That's OK. All right. Well thank you Dr. Burke. Let me just say you know I've been very concerned about administrative bloat, and I wrote a couple papers on that. I was on a board of trustees at a liberal arts college, and I saw our administrative bloat compared to the 42 other sister colleges skyrocket.

My fear is that Mr. Zibel would prefer we had more committees, more Vice Presidents, more other bureaucracy. And as we've seen the level, the amount of educational dollars that actually go toward teaching students, does pale in comparison to that of adding more administrative bloat.

I fear that now that we've poured all this massive money to colleges, instead of actually learning to contract their budgets and be responsible with them, will actually do just the opposite. We'll see more lazy rivers. We'll see more quiet oasis rooms. We'll veer from the mission of colleges to teach students before.

So to your point they're going to now be flush with money. And anybody flush with money is probably in some ways, I fear, because of higher education and what they've done historically in the last 10–15 years, they're going to spend it. And what does that do in all of a sudden 5–10 years when that money runs out, all of a sudden that is going to be demanded upon students and giving them much, much, much higher access or risk, or again being bankrupt when they have all these massive charges.

I wish you could speak to that just a little bit about administrative bloat, and what this money is you think in your prediction, is actually going to do to college costs in the future.

Ms. BURKE. Sure thank you for that question. Administrative bloat is a huge problem. We have seen significant numbers and staffing increases over the past decade. I mentioned earlier that from 2001 to 2011 the number of non-teaching employees and administrators increased 50 percent faster than teaching faculty and colleges across the country.

If you just look at non-instructional staff at universities around the country, that now accounts for more than half of university payroll costs, the non-instructional staff. Just 40 percent of full-time employees at non-doctoral colleges are instructional staff.

And that figure actually drops to 28 percent at doctoral granting institutions. So just 28 percent at those institutions are teaching faculty. This is something that higher education scholar Preston Cooper has looked into at length, and he has a new report he just put out that I would commend where he recently found that since 2003 only one-third of the increase in colleges and universities core expenditures has gone to spending on instruction, just one-third of the increase goes to instruction.

As he says almost all of the rest has fed the growth of the vast administrative apparatus of these institutions. And so as I mentioned in my opening statement, colleges really have needed a course correction for decades, and so you know, I think too many unfortunately are now looking at these various stimulus bills as a way to pay for general fiscal mal-administration over the past two decades.

Mr. MURPHY. Dr. Burke thank you. We're passed our time. I appreciate it. Thank you Madam Chairman, I'll yield back.

Chairwoman WILSON. Thank you Mr. Murphy. Ms. Burke you are consistently going over time. Please be mindful of the clock. It's there for you. You seem not to hear me when I'm telling you that you're over time, so you will have to keep up with the time, and when you see that your time is up please stop. We have a long hearing and a lot of people to ask questions. Thank you.

Mr. Takano of California is our next person, speaker.

Mr. TAKANO. Thank you Madam Chair. My question is for Chancellor Oakley. Chancellor could you comment briefly on how California deals with the balance between the administrative costs and instructional costs?

Mr. OAKLEY. Absolutely. And it's a pleasure to be here again answering these questions. First of all in California you know each State is different. But in California in the community colleges, we actually have a law. It's called the 50 Percent Law, which requires every community college to assign at least 50 percent of all revenues that come from the State to instruction, to the classroom.

Now because the nature of instruction has changed quite a bit over time, we have had to expand that view because there are a number of other efforts that go into supporting a student, including a lot of the student supports that help a student succeed. So that is the way we handle it, and I would also say that because our system is comprised of 73 districts, all have locally elected boards, as well as a State system which has a board of Governors.

There is a sunlight all over our system. So these questions are constantly addressed. They're constantly examined, and we're constantly being held accountable for where our dollars go.

Mr. TAKANO. Thank you Chancellor. You know this hearing is in relationship to the American Rescue Plan and how it relates to education. I know that in California your sister institutions, the California State University System, and the UC system, have suspended the use of standardized tests for the purposes of admission.

Do you expect that—it's not really an experiment, it was sort of forced by circumstances. Do you expect these sorts of things, these sorts of practices to continue after the pandemic is over?

Mr. OAKLEY. I do. In the California community colleges we've eliminated the use of standardized placement exams. We have found through our own research, as well as research that's happened across the country, that the use of standardized exams for the purpose of placing the students in courses has significantly undermined low-income students from all backgrounds.

The same is true for standardized admissions exams. And I think the research is overwhelming now. I think places like the University of California have seen the impact that it has had on low-income students and communities of color. And I don't believe that we are going back to those practices in the future.

Mr. TAKANO. Is it not true that this innovation, this experimentation of not using tests like the placement, or to place students into college level classes at California community colleges. But that was going on pre-pandemic is what I understand, and can you tell us about what you've seen? Is your faculty happy with this? Have the outcomes been good? Have your transfer rates suffered because of the fact that you're placing students by using instruments other than standardized tests?

Mr. OAKLEY. So first of all the use of what we call multiple measures placement. That is using multiple sources of information to gain information about a student, and place them in the course that they deserve to be in, and particularly in math and English, has been going on for several years in certain pilots across the system.

A couple of years ago this became law for the entire system. Since then students who have been placed using this method, without using standardized placement exams, students are succeeding in numbers equal to those students that may have begun in remedial courses before then.

We have seen significant, significant increases in the number of students of color that have been placed in transfer level English and math, and they are succeeding at the same rates as other students. So we have seen nothing but success thus far. It's given us a lot of good information about how we continue to roll this system out.

And as we continue to rely less and less on remedial courses, and rely more and more on providing students a pathway to getting into courses that actually count toward their educational goal. And that's been the biggest change. So many courses were created in remedial education before this change that were leading nowhere.

And so many students, particularly those of low income status were getting trapped in these courses and not being able to complete their educational goal.

Mr. TAKANO. Thank you Chancellor my time is up. It sounds like innovation was already happening in California community colleges, and it sounds like diversifying the higher education is also being significantly impacted. Madam Chair I yield back.

Chairwoman WILSON. Thank you so much. We'll now here from Mr. Grothman from Wisconsin.

Mr. GROTHMAN. Yes. Thanks for having me. I have a question here for Dr. Burke. You know over the weekend I ran into another woman, age 51. She got laid off. She had a general degree, had a good job, and now she can't find anything. And she was just bemoaning the fact that when she was you know, rather than go to a four-year college, why she wasn't a welder, a medical tech of some nature, something or other.

And I still hear back home well-paid guidance counselors advising everybody to go to college when again and again, I find people not going to college lined up higher paid with less student debt, and more job security. What can we do to straighten out these reasonably well-paid guidance counselors to give people a little bit better advice, not to mention, on the other end of the thing.

When I talked to our employers in construction, in medical field, and manufacturing. Well right now the only thing holding us back from building more housing in Wisconsin, we can't find anybody to do the work. What can we do to straighten out these guidance counselors there Dr. Burke? It's a lot of people's lives.

Ms. BURKE. Thank you Representative Grothman. I completely agree with you that we need to be communicating to students that there are multiple pathways to climbing the ladder of upward, economic mobility in America. And too often, the only answer that we give them when asked what they should do, is attend a traditional four-year college.

And that has not served many students well who would be better situated in the future if they did something other than go through that four-year brick and mortar route. And you know to your point about construction workers and mechanics, electricians, waitresses, you know, all of these individuals end up bearing the cost of Federal bailouts, and ever-increasing Federal subsidies in the higher education sector.

I think it's always important to bear in mind that still today two-thirds of Americans do not hold bachelors degrees, and it is that two-thirds of Americans who also have to pick-up the cost for ever-increasing Federal spending.

Mr. GROTHMAN. OK. I'll give you a general question. You know again I hear talking to my trade unions or tech schools and people, you know, going back, getting a skill, maybe in their early 30's, after they already got a college degree in their early 20's.

Percentage-wise Doctor Burke, I have no idea what percentage of people going to a four-year college would be better off not going to one today in your opinion.

Ms. BURKE. Well it's hard to say, and it depends on how you quantify better off. You know even an individual who might not see a massive increase in earnings after having graduated, might still say that the experience was worthwhile for them.

People go to college for a lot of different reasons. But one thing we do know is there are an awful lot of students who leave without earning that paper credential that they had so fought to get. So many students right now are leaving without graduating, and I mentioned 60 percent, 6 year college graduation rate. And really the worst position you can be in is having gone to two or three or three and a half years of undergrad work, taken out those loans and not graduated with that paper credential.

And unfortunately, we do see that in many cases. So I think that for those individuals you could make the case that another path would have been much more worthwhile, but it is hard to quantify.

Mr. GROTHMAN. Well, OK I know there's certain authors who take a stab at it, but I'm going to come back to the woman I talked to over the weekend. You know I frequently make the pitch for young people to get a skill, rather than college, and that you're going to graduate with less debt, and frequently make more money immediately.

One thing I don't think is taken into account is if you do wind up with some middle low management thing, and you're laid off when you're 50 or 55, in our society frequently you're almost unemployable. Whereas if you have a skill, you can keep working until you're 60 or 70 or 80 if you want to. Could you comment on the benefit of having a skill, a specific skill set in manufacturing, med, tech, whatever, as opposed to a general degree on people who get laid off when they're over 40?

Ms. BURKE. Sure. Well what we do know, and I can't give you specific numbers on the skill-based side. But what we do know is that there are a large proportion of students who are leaving undergraduate work, and entering jobs that do not require a college degree. And so this high level of what we refer to as underemployment is a real problem.

And I think does suggest that many of those students would have been better served pursuing options that are skills-based in nature.

Mr. GROTHMAN. Well thank you Dr. Burke. I appreciate what you're saying, and I hope you continue to educate young people around the country to get a second opinion from their guidance counselors, who are frequently well-paid and giving bad advice for their pay. Thank you.

Chairwoman WILSON. Thank you. Thank you so much. Ms. Jayapal from Washington I see you driving, welcome.

Ms. JAYAPAL. Thank you Madam Chair. I am not driving I promise you, but I am in a car because I didn't want to miss this very important hearing. It is clear that the pandemic has had a negative impact on college enrollment for all students, particularly low-income, first generation, and certainly freshman of color, who we've seen a nearly 30 percent decline in community college enrollment across the country.

And since a degree, a higher education degree, whether it's skills training, or a four year college, remains a strong pathway to the middle class our economic recovery may be largely dependent on affordable access to postsecondary education. And that's why I'm excited for the Seattle Promise Program in my district, and proposals like My College for All Act which President Biden has embraced, to make both four-year and two year public higher education free for families earning up to $125,000.00.

Mr. Thornton it's very clear from your testimony that Federal programs like TRIO have been meaningful to you personally, and in your student career, in spite of programs that help some students shoulder the cost of textbooks, housing, food, and childcare, data still shows that due to COVID–19 as many as 56 percent of students will need additional aid to stay enrolled.

Is it your opinion that more comprehensive Federal assistance would help students to stay in school?

Mr. THORNTON. Yes. Thank you so much for asking, and I definitely agree that additional funding would help students be able to stay in school. I think kind of being a living testimony to the current situation with the pandemic, me plus a bunch of other students like myself, some people we literally worked, some students we worked to actually stay in school to pay tuition, to pay to afford books and school materials.

And I think that additional funding definitely would assist in the students being able to stay in school, and pursue their dreams, or their dream job, or pursue a career with their major.

Ms. JAYAPAL. So important. Thank you so much. Considering Pell has gone from covering 80 percent of the [audio issues] to less than 30 percent at a public four-year college, would you speak more on this disparity making college increasingly out of reach for too many people?

Mr. VASSAR. I think the beginning of your question was not heard Congresswoman Jayapal.

Ms. JAYAPAL. Oh OK, thank you. This is a question for Chancellor Oakley. Non-tuition costs are an important consideration since Pell has gone from covering 80 percent of expenses to less than 30 percent at a public four-year college. Would you speak more on this disparity making college increasingly out of reach for too many people?

Mr. OAKLEY. Absolutely and thank you for that question Representative Jayapal. This is particularly an acute situation in states like California. High cost of living states, high cost of living communities. Our students, particularly those who attend California community colleges and those who attend broad access public institutions come from some of the lowest income communities in California and throughout the country.

So the cost of attending college is the most significant cost. States like California for example, the California community colleges has the lowest tuition in the country. In addition, more than half of our students don't pay tuition because of the California College Promise.

So the cost of attending college, the true cost of attending college is the issue that keeps so many students from one, attending college, and two, attending full-time because so many of them have to juggle multiple issues, have to maintain work in order to provide for their families and for their own education.

So Pell is a significant component to helping those individuals afford to go to college, to complete their college education in a four-year period of time. And it has not been keeping up with the cost of attending college.

And so supporting an increase in Pell is certainly something that we support, as well as continuing to reduce the cost of attendance is also a key ingredient.

Ms. JAYAPAL. Thank you so much. And my College For All bill would double Pell, and it would allow states with tuition programs to redirect any of their savings toward making college more accessible. How would—my College for All bill also uses a Federal/State partnership to make public four-year universities free for qualifying students.

Chancellor, how would having a Federal partnership that allows states to redirect savings to non-tuition costs help colleges nationally as they struggle with low enrollment?

Mr. OAKLEY. Well I believe this Federal/State partnership is critical. States are in the primary role of providing support for our colleges and universities and they're doing—states like California are doing a remarkable job of providing the additional support, lowering tuition, keeping tuition low, keeping the cost of college low.

So this partnership would be beneficial in that states like California could use those additional resources to provide additional support for students, either support services or support for non-tuition related costs.

Ms. JAYAPAL. Thank you so much. And this is a key important piece, and I look forward to working with you. Madam Chair I yield back.

Chairwoman WILSON. Thank you. Thank you so much. According to my records Mr. Good of Virginia is the next questioner. Mr. Good you're on.

Mr. GOOD. Thank you Madam Chairman, and thank you to all of our witnesses for being with us today. My questions will be directed specifically to Dr. Burke. Dr. Burke I wanted to ask you how do you think Federal funding has contributed to the exploding costs of higher education?

Ms. BURKE. Well thank you for that question Representative Good. It has clearly contributed. If you look at the inflation adjusted tuition rates since the 1970's. Those have quintupled at both public and private colleges across the country. And then when you compare that number to Federal subsidies, and those subsidies over the same time period have really increased dramatically with spending on student loans rising 328 percent over the last 30 years, from about 20 billion in 1990 to about 87.5 billion in the most recent year of data available.

So, and I would also say that this question of disinvestment and State spending is I think, also a little bit off the mark. Because if you look at appropriations for public colleges and universities at the State level, those have increased $1,700.00 per pupil in real terms since 1980.

So it is safe to say, I would agree with Economist Richard Vetter at the University of Ohio that dumping Federal subsidies out of helicopters as he once put it, has only enabled universities to increase their costs, their spending profligately, and really pass that on to students.

Mr. GOOD. I've had students tell me, and parents tell me that once they get on the student loan treadmill it just continues. In other words they get loans, it's almost you have to work deliberately to stop the student loans from coming. Once you enroll that first semester that first year, it seems automatic.

In your testimony you talked about requiring university's report on the use of Federal funding. What specific questions might you ask them to report on?

Ms. BURKE. Sure. And I think specifically with regard to the new money that has gone out the door, we really need to know whether colleges are using these funds to actually help students who are struggling. There's statutory requirements. About 50/50 of those dollars going to student-based aid, and then the other 50 percent going to institutional priorities, but we really do need to take a look and encourage colleges, and the Department of Ed to assess if they're sending that money to students who are financially struggling.

And then second I would say, we should assess if they're actually using those funds to build out their IT and distance learning capacities to navigate any sort of similar existential threat in the future that they might face like another pandemic.

Mr. GOOD. You've done a great job of verbalizing what most of us have already seen in the way that college education costs are just going through the roof, far outpacing inflation, multiple times over.

Besides addressing funding, what policies do you think Congress could do that could help enact the amount of the non-classroom, non-education expenses specifically, the more what many might think are wasteful or exorbitant, or excessive, whether it's staff, or whether it's activities that are being funded.

What role do you think Congress could play. How could Congress help address the amount of spending that's going to administrative type and other, maybe what some people might think, excessive and wasteful spending?

Ms. BURKE. Well I think the single best thing Congress could do would be eliminate the Plus Loan program. The Grad Plus Loan program in particular, this allowed graduate students to borrow up to the cost of attendance, and then the Parent Plus program allows parents to borrow for their undergrad student's college experience.

And that really encourages, a family level of debt, and family level borrowing for families. So eliminating the Plus Loan program would be the No. 1 step to take. And as I mentioned earlier, actually allowing colleges themselves to limit the amount of money that students borrow.

Mr. GOOD. It seems we have systemic issues where there's not a partnership between parents, families if you will, of students and the institutions, and trying to together work to make college affordable without putting people of course into excessive debt.

What might be included? What role might Congress play to help improve competition in such that like a career in education, a technical education, temporary programs, vocational programs, community college, and other workforce development pathways might be able to get on equal footing with the traditional four-year school.

Ms. BURKE. Yes thanks. Again, I think one of the best options there would actually be reforming accreditation, decoupling Federal financing from accreditation to allow new quality assurance mechanisms to pop up, to allow a State to for instance, enable the Mayo Clinic to credential a nursing course, or the State of Virginia to allow Mount Vernon to credential a history course.

And then enable Title IV funds to actually follow students to those individually credentialled courses and courses of study. And again, couple that with those short-term options for Title IV funding that would allow individuals to go find the skills and competencies they need immediately without going through a four-year brick and mortar college, would be a second extremely important step in that direction.

Mr. GOOD. I think I've about expired my time. I thank you very much for answering my questions, and again appreciate you and all the other witnesses being with us today. I yield back my time Chairman.

Chairwoman WILSON. Thank you so much. Ms. Leger Fernández of New Mexico welcome.

Ms. LEGER FERNÁNDEZ. Hello. Thank you so much Chair Wilson. And thank you to the witnesses for joining us today. Mr. Zibel, we've heard misrepresentations about your testimony. Would you like to respond quickly?

Mr. ZIBEL. Thank you Congresswoman. You know I think there were two comments. One from Ranking Member Foxx. I guess to put it bluntly, I don't think I said anything about punishment not being important. I think it is an important aspect of deterring misconduct.

And when there is an institution of higher education, and we've seen this for decades. I really would encourage the Members to go back and look at the bipartisan report that Senator Sam Nunn and his committee drafted, back in the early nineties.

And it really is déjà vu all over again for some of what we've been seeing. And you know this is about protecting students at the front end. This is about making sure that students aren't saddled with debt, that they will never repay because of worthless degrees. This is about making sure that individuals are getting the economic opportunity through education to better their lives, and to ensure that the taxpayer investment in this, through grants and loans is being well spent.

So you know it's not about partisan politics. I think if you look back at the history of this, Secretary Bennett, the Education Secretary under President Reagan was a fierce critic of the for-profit education industry, and for good reason at that time. And you know, history has a tendency to repeat itself, and you know, that's what the Department of Education needs to be doing, is really making sure that that does not happen again.

It does not happen to saddle yet another generation of students with these mountains of debts that will never be repaid.

Ms. LEGER FERNÁNDEZ. Thank you for that clarification, and also making sure that we all focus. Our focus should be, indeed, on the students. And in thinking about the focus on the students I am, like the chair and others who have testified today, concerned about the non-tuition costs of college, and that the pandemic has simply worsened food insecurity, and that that's something that the Rescue Act can address with the emergency funding.

Miss Chairwoman, I ask unanimous consent to enter into the record an article from the Santa Fe Reporter entitled, "New Mexico College Students Face Food Insecurity."

Chairwoman WILSON. So ordered.

Ms. LEGER FERNÁNDEZ. I'm also concerned about declines in student enrollment. And students of color in particular, right, have seen steep enrollment declines during the pandemic. In New Mexico, as an example, we've seen about a 10 percent decline from fall 2019 to fall 2020.

We are also in New Mexico, facing the need to diversify our energy sector and move to a green economy, and will really need those partnerships without our higher education schools to lead in training for this just renewable innovative economy, like I like to say, in New Mexico.

In Santa Fe Community College we just partnered with our National Labs and the renewable energy sector connecting schools and employers. Chancellor Ortiz Oakley, what do you believe are the best practices to recover student enrollment, and especially addressing those programs which could develop the workforce for new economies like the green economy?

Mr. OAKLEY. Thank you for that question Congresswoman. First and foremost, I strongly believe that community colleges are the greatest answer to a recovery with equity in America. They are closest to the students that we're talking about. They open their arms to every student, whether recently displaced worker, or a recent graduate from a high school.

And community college is college, so they are preparing students for success in 21st Century economy. So first of all, I believe one of the greatest impacts on our students has been the economic fallout, the health effects from the pandemic. Our communities of color and low-income communities have been hit the hardest. So for them it is an economic issue, so providing direct, emergency support of any kind possible, is one of the best antidotes to helping them be able to make the choice between paying rent, and paying for their tuition and books, so that they can continue their education.

Second, it's addressing the needs of displaced workers. So many working adults were already struggling post the last recession. This pandemic, the economic fallout, has devastated their opportunity to be in the economy in a meaningful way. So supporting short-term, career-training programs, to help get the support, the skills and competencies that workers need today, I think is critically important to a recovery with equity.

Ms. LEGER FERNÁNDEZ. Thank you very much Chancellor, I yield back.

Chairwoman WILSON. Thank you. Ms. Miller-Meeks of Iowa you're next. You're now live.

Ms. MILLER-MEEKS. Thank you so much. I appreciate it Madam Chair. Thank you for holding this subcommittee hearing, and for providing for the witness testimonies. Thank all of you for testifying today. So I'm a little unusual. I'm one of eight kids. When I was burned at 15, decided to become a doctor. And so I left home at 16.

I actually enrolled in San Antonio Junior College as it was called at that time, then was able to get a degree in nursing, a master's in education and ultimately a medical degree. So I fully support what you've said about community colleges and a pathway for education, especially for minority, for women, for under-represented groups of low-income, but actually for any student who wishes to go onto college, especially if they're concerned and aren't quite sure what they want to major in, or what will be a successful career path for them.

Having said that I was able to work, go to school and have a combination of loans. And so my question for Dr. Burke is that there appears to be a dramatic rise in the number of loans borrowed for graduate level programs, and often these graduate level programs lead to high-paying jobs.

And I'm concerned about the combination of unlimited Federal lending, and unlimited loan forgiveness for these individuals who may ultimately result in a higher income career pathway. So can you briefly explain in you're concerned about this, and you know what can Congress do to create a responsible lending program, and how can these reforms lead to lowered college cost for students?

Ms. BURKE. Great thank you Representative Miller-Meeks. I appreciate that. It is, it's a major concern I think for many of us. The proposals that are out there right now to forgive student loan debt anywhere from $10,000.00 to $50,000.00 and student loan debt, depending on what proposal you look at, are incredibly regressive in nature.

They would really shift the burden of paying for college away from those individuals who do in fact directly benefit from their education onto, as I mentioned, the two-thirds of Americans who don't have bachelors degrees, and would presumably not earn as much down the road on average, as their college-going counterparts.

And you also bring up a really important point, which is the point about professional degrees and borrowing. We know that individuals who pursue professional degrees in particular, on average, do quite well. Doctors, lawyers, and so the idea that we would forgive those student loans among those individuals who statistically speaking are likely to earn a decent living moving forward, really, as I said earlier, is regressive.

And so I think to get back to my earlier point, if we want to drive down costs, we need to tackle the Plus Loan program. The private lending market will meet the needs of students who are pursuing professional degrees, knowing full well that their ability to repay those loans will be very high in the future.

Ms. MILLER-MEEKS. Thank you for that. And in Iowa we have concurrent enrollment for high school and for community colleges as pathways to success. We also have the Iowa Student Loan program, and you had mentioned about private lending and Federal lending.

We're very concerned. They do a great job of mentoring students, advising them, looking at if they're a certain educational pathway, how that will result in income and ability to pay back loans. And I'm concerned about, you know, doing away with an institution such as the Iowa Student Loan program which does a great job of preparing students and also giving financial literacy.

So if students want to find good jobs after college, and that could mean that it leads to a baccalaureate, but it could be a different career pathway. And there is a discrepancy between what students feel like they know what employers say about their job readiness, and I just was going to ask if there are some non-traditional education pathways that students should be exploring, Dr. Burke.

Ms. BURKE. Thank you. There certainly are a lot of really innovative non-traditional pathways that are out there, and I think interest is growing in these pathways, because we know that employers, as I mentioned earlier, are reporting that students who attend the traditional four-year route, aren't often prepared.

There was a survey that came out in 2018 from the National Association of Colleges and Employers that found that although almost 80 percent of students believe they're proficient in oral and written communication, just 42 percent of employers agreed.

And then that survey was followed-up by a subsequent survey from the Association of American Colleges and Universities that found that similarly, while 62 percent of students felt they were competent in these skills, just 28 percent of employers agreed. So this gap in skills was eluded to earlier, does have negative economic impacts.

It's left more than six million jobs empty across the country, so I think all of that calls into question the value add for a lot of institutions.

Ms. MILLER-MEEKS. Thank you Madam Chair. I yield back my time.

Chairwoman WILSON. Thank you, thank you. And now our good friend Mr. Jones of New York. Welcome to the committee, welcome.

Mr. JONES. Thank you so much for your leadership Madam Chair. And thank you to all of the witnesses for appearing before us today. On behalf of the American people I want to thank Chancellor Oakley for your innovative work to address the challenges faced by community college students during the pandemic.

Mr. Zibel, for your work to hold the bad actors in our higher education system accountable, and of course Mr. Thornton for sharing your important first-hand experiences as a student during these hard times. While the ongoing pandemic has put a strain on colleges and universities, we can all agree that the core problems in U.S. higher education predate the COVID–19 pandemic.

Wages have been stagnant for literally decades when you adjust for inflation, even as the cost of a four-year college education has soared. The average debt of someone graduating from a four-year college or university today is four times higher than it was in the early nineties, and this burden is not shared equally.

Women, people of color, and members of the LGBTQ community hold a disproportionate amount of student debt, and find themselves less likely to graduate with a four-year degree. In my district, in Westchester and Rockland Counties in New York, where the cost of living is sky-high, thousands of young people must live at home with their parents in part, due to the student debt that they shoulder.

This delays, or outright forecloses their home ownership, which we know to be the single greatest generator of wealth in America. So I look forward to working with my colleagues to address these issues, and want to thank them for their work to make college accessible, affordable, and equitable for all.

Before turning to my questions, I do want to set the record straight on the idea that increases in financial aid somehow lead to increases in tuition. That is simply not true. First of all no study on the so-called Bennett hypothesis has been able to find convincing evidence that this hypothesis is real, at least at public institutions.

However, a rigorous study found that for-profit institutions eligible for Federal student aid, charged 78 percent more than comparable programs at ineligible, for-profit institutions. This strongly suggests that we need better oversight of the for-profit sector, not that we should stop providing students with Federal aid to enroll in college.

Mr. Zibel, I'd like to begin with you. As you stated in an interview last year, there are many problems for the government to address in this country right now, and the Department of Education doesn't have to wait for Congress to act when it comes to providing student debt relief.

I've been a leader on this issue in the Congress. Indeed Congress has already given the Department of Education clear statutory authority to forgive Federally owned student debt under the Higher Education Act. So Mr. Zibel would you agree that under existing law, yes or no, the President or his education secretary has the ability to forgive federally-owned student loan debt with a stroke of a pen.

Mr. ZIBEL. So thank you Congressman for your question, and I appreciate your earlier commentary leading up to it. This is an important topic, and something that I understand that the White House and the department are taking a very, very close look at. You know quite frankly it is not something I have ever taken the kind of legal dive that I think needs to be taken.

And I really want to defer to the experts who have taken the dive on that one before, commenting in front of Congress today. But I think what's immediately clear is that there are buckets of student loan borrowers for whom that immediate 100 percent loan relief is doable right now. These are the 400,000 borrowers who government has already determined are eligible for total and permanent disability discharges.

These are the borrowers that the department has already found victimized by predatory for-profit colleges. These are borrowers who are attending schools that closed. And government needs to be taking those steps right now today, to discharge 100 percent of those loans.

Mr. JONES. Yes. Mr. Zibel I appreciate that, reclaiming my time, and actually I agree with you, and I would like to enter it back into the record a paper you co-authored in October 2020 on this very issue of for-profit colleges, personally causing financial losses to students and taxpayers because of their misconduct. Madam Chair I'd like to enter that into the record.

Chairwoman WILSON. So ordered.

Mr. JONES. And I would just to put a finer point on this, I understand that you don't consider yourself an expert on this subject, but Mr. Zibel you would at least agree that the Department of Education has already used its statutory authority to pause the collection of student debt, and indeed the accrual of interest, which is obviously a form of student debt cancellation, yes or no?

Mr. ZIBEL. Yes. I mean quite——

Mr. JONES. Thank you. Reclaiming my time. Thank you so much. And finally, as we close, as concerns about the spread of COVID–19 increase, so did reported incidents of bullying, racism, and xenophobia toward the Asian, Asian American, and Asian Pacific Islander, or AAPI communities on college campuses across the country.

Consequently, individuals from these communities reportedly afraid to engage on basic day to day tasks, like going to the grocery store, or walking alone in their neighborhoods. Chancellor Oakley, what can colleges and universities do to ensure that AAPI students feel safe and valued in their classes and on campuses?

Mr. OAKLEY. Thank you for that question Congressman. First of all to be very clear, all colleges and universities should immediately and clearly repudiate any attacks on the Asian American or Pacific Islander community. We need to engage directly with our students, our faculty and our staff to discuss these issues, to ensure that we remove the stigma that has been applied to Asian American communities around the COVID–19 pandemic, or anything else.

So we should treat this issue like we would any other racial reckoning issue and take it on head-on. We have a direct role in that, and we have our classrooms and our colleges, and our microphone to be able to weigh in on this.

Mr. JONES. Thank you sir. Madam Chair I yield back.

Chairwoman WILSON. Thank you so much. Let me be mindful to the witnesses. There's a time limit. And when you see stop I will give you the opportunity to finish your thought, but not a whole minute. Some of these issues are so important we need to address them, but we have to be fair. Thank you so much. And now Mrs. McClain of Michigan you're now live Mrs. McClain.

Mrs. MCCLAIN. Thank you so much Madam Chair. I appreciate the opportunity to be on this committee, and I appreciate everyone on the committee as well as all the witnesses. My question is really regarding oversight and directed to Dr. Burke.

You suggest Congress keep a watch on the tens of billions of dollars colleagues are spending in emergency relief. What exactly are some categories of expenses you are most interested in, and what indicators should Congress pay attention to that show it used taxpayers money responsibly?

Ms. BURKE. Thank you for that question Representative McClain. So as I eluded to earlier, there are statutory allowances for these additional funds, and then there are the I think recommendations for what colleges should be using these funds for.

So for example, the public and non-profit schools can use the money in these emergency higher education reform dollars for financial aid to students, and then they can use about half for institutional revenue, so that can be anything from faculty and staff training, it can be payroll costs, it can be backfilling lost revenue, it can be backfilling lost revenue due to a lack of sporting events, so it really runs the gamut.

So those are indeed allowable uses of these funds. At the university level though, I think what they really should be using these funds for is to support struggling students. And as I said earlier, build out their IT infrastructures so that they can navigate these challenges in the future.

And so I think that's the role of oversight at the Department of Ed, is to really look at what they're doing. They do have to submit reports, universities do regularly on how they're spending these funds. I hope the department makes those reports as public as possible.

Mrs. McCLAIN. Thank you. I yield back my time. Thank you very much.

Chairwoman WILSON. Thank you. We'll now hear from Ms. Manning of North Carolina.

Ms. MANNING. Thank you Madam Chair, and thank you to all the witnesses for being with us today. My first question is to Chancellor Oakley. I have two terrific community colleges in my district. I visited them when I was in district last to see the incredible things they're doing, and how they're holding up during his pandemic.

They're doing all they can to support their students, but they have seen enrollment decline. How have you handled the tuition, the reduce tuition revenue from declining enrollment if your community colleges had to take cost-cutting measures? And if so, what kinds of things are they doing?

Mr. OAKLEY. Thank you for that question Representative Manning. And North Carolina has amazing community colleges. First of all, the pandemic has had a direct impact on the revenue and expenses that community colleges have had to incur.

One, as you mentioned, there has been a decline in enrollment. This means a decline in student fees, tuition, other revenue that colleges collect, as well as the increased cost to going remote or online almost overnight, providing the training to support the faculty, and the direct support to students.

So what we've done is work first and foremost with a State, the legislature and the Governor, to make sure that they are aware of those costs, and make sure they are aware of those revenue declines.

Fortunately, Governor Newsom and the legislature provided direct support for our colleges and universities, and we've also been working with Congress. We're very appreciative of the aid that you've provided us. I do agree that that aid needs to go to support students, and support the classrooms, so that we can become more resilient.

And I think by and large, community colleges across the Nation have done exactly that. They have been on the front lines. They did an amazing job of on a dime, transitioning to remote learning, and that remote learning has had a cost. And so we need to continue to support community colleges like yours in North Carolina, because they do the yeoman's work in supporting those who have been hit hardest by the pandemic.

Ms. MANNING. Thank you. And as hope is on the horizon and we look toward the post-pandemic world, what steps do you think community colleges can take to reverse those enrollment declines?

Mr. OAKLEY. Well I think given the resources that have been made available, community colleges need to be reaching out directly to their communities, directly to their students, trying to understand what their needs are, ensuring that emergency aid goes directly to them, and working with employers, and community members to provide them the jobs that they need, the hours that they need in order to make ends meet, so that they can continue their education.

So I think that is the beauty of community colleges, they are in communities, they work with community members, mayors, employers, that has to be done on steroids in order for us to reach those students.

Ms. MANNING. Thank you. Let me ask you about another area. I am a former immigration attorney, and the plight of undocumented students is one that is of great concern to me. And I believe we need to find a pathway to citizenship for our DACA students, as well as a pathway to success for all of our future workers.

Is this something that you believe we need to address, and do you have any comments on what we can be doing to address this?

Mr. OAKLEY. We absolutely need to address this. California community colleges have over 70,000 DACA students, the largest of any State in the country. These are individuals that serve their communities. They work in their communities. They do everything possible to support their communities, so we need to provide them the support that they need to come out of the shadows, get the education that they need, and contribute meaningfully to the economy, and to support their families.

So absolutely, we would implore Congress to codify the DACA program, and to provide a pathway to citizenship.

Ms. MANNING. Thank you so much sir. I'm going to turn to Mr. Zibel. I recently received an e-mail from a constituent who was very concerned because her non-profit college is being merged with an out of State institution that was formerly a for-profit institution, but is becoming non-profit.

And in tracking colleges that convert from for-profit to non-profit status, the Century Foundation found that three non-profit schools with the most fraudulent complaints were those that had converted to non-profit status, but have not truly shifted their governance or power structures away from owners who had a financial interest.

What are for-profits colleges, or why rather, are for-profit colleges increasingly converting to non-profit status, and what role should the Education Department play in ensuring that if they say they're non-profit they actually are?

Mr. ZIBEL. So I see that my time is just about up, if it I may permitted this briefly, I can try and do that. I think the reality is that the department needs to be scrutinizing transactions very, very carefully to make sure that what is a bona fide non-profit, is actually a non-profit and that a for-profit is not acting as a non-profit.

And I think GAO put out a report about a month and a half ago or so, on this issue, actually said the department was doing a better job of reviewing these and scrutinizing these, but really this isn't a one stop look at a school, it's got to be a long-term constant review to make sure that the people who are profiting before aren't still profiting after the transaction.

Ms. MANNING. Thank you so much and I yield back.

Chairwoman WILSON. Thank you so much, thank you. I know it's hard remotely. Next we'll hear from Mr. Comer of Kentucky.

Mr. COMER. Thank you Madam Chair, and I'm going to wear both my committee hats with these questions, my Education Committee as well the Oversight Committee. Over the last few years Congress has appropriated record levels of funding to universities and many universities are using it well.

For instance, universities in my district have really focused on trying to provide educational opportunities that are focused on the workforce, and what the regional employers want and need and offer the best paying jobs.

Kalamazoo University is a great example. They've adapted the certification process then I have some communities colleges—Henderson Community College, Madisonville Community Colleges, working on some really innovative workforce development type programs that are in need.

So the funds that have been invested in those programs obviously have been well-spent, however there are valid concerns that in many other instances, many of the universities didn't serve the students with the best possible outcome and in their best interest about the taxpayers and the student.

Last year the Trump administration issued a ruling clarifying that only Title IV eligible students qualify to receive emergency student aid funding provided by the CARES Act and COVID relief. The rule is currently held up in the court process. My question is for Dr. Burke. Do you think the rule was consistent with other practices related to Federal student aid? I'll stop there.

Ms. BURKE. Thank you Representative Comer. I do think it is consistent. These funds are open just to students who are Title IV eligible, that's consistent not only with Title IV broadly, but it's also consistent with other prior practices. If you look at the 1996 Welfare Reform Act for example, that limited public assistance programs to most legal immigrants for five years, or until they attained citizenship.

So there's precedent there as well, not only in the existing Title IV program, but also in the '96 Act.

Mr. COMER. Dr. Burke what's the most responsible way institutions can direct these emergency student aid dollars?

Ms. BURKE. Yes, right. So it's a great question. They really should target it toward students who are in the most need of that spending. And many of these dollars are flowing to universities based on the proportion of students who are Pell eligible, and so there is that built in system in place already which was a good step in the right direction I think, a good safeguard to put into place.

But making sure that you know at the university level, they're not just giving a blanket across the board aid to every student in the institution of you know $1,000.00 or whatever it might be, but actually assessing those students who are in need at the university level.

Mr. COMER. Great. Let me shift gears and talk about COVID–19 that the health and educational institutions adapt to meet the challenges of COVID–19, that the Department of Education and Congress provided many of these institutions temporary relief from a lot of regulatory burdens.

Dr. Burke are there any related modified regulations or guidance that Congress should re-evaluate as institutions are planning for future semesters?

Ms. BURKE. Sure thank you. So as I mentioned earlier I think there are a few regulations that are in place that do deserve a second look. That elastic clause that I mentioned in my opening testimony, I know it sounds like a very specific reform, but right now that enables accreditors to layer on numerous additional requirements on a university. Just a hypothetical, if an accreditor wanted to mandate a dress code, it's not outside of the scope of that elastic clause.

And so removing that clause to keep what accreditors can do solely focused on the metrics that are contained within the statute of the HEA would be a very good step in the right direction.

Mr. COMER. OK. That's good to know. Dr. Foxx, and Fred Keller, and myself are all on the Oversight Committee. We're really focused on the regulatory process and the change of administration has brought a lot of regulatory changes and uncertainty in a lot of different industries and education would be right in there.

So we relaxed a lot of regulations during COVID, and in many cases that worked out very well. And I would like to make a lot of those relaxed regulations permanent. Obviously, we always have to look at the regulatory process, and education is no different. So I appreciate that. And Madam Chair I appreciate the hearing, and look forward to future hearings, and appreciate our witnesses for being here today. I yield back.

Chairwoman WILSON. Thank you so much. Thank you. And now we'll hear from Mr. Bowman of New York, who is the new Vice Chair of the full Education and Labor Committee, welcome. Proud of you.

Mr. BOWMAN. Thank you Madam Chair, and thank you to all the witnesses for being here today. My question is for Mr. Thornton. I'm going to start with Mr. Thornton. During your testimony you mentioned that at one point you didn't feel that college was for you, or you didn't feel that you were college material. I know I'm paraphrasing here.

Can you speak to why that was? Like why did you have that feeling at that time?

Mr. THORNTON. Yes. Thank you so much for that Mr. Bowman. And the reason why I felt that way, so this was my freshman year. And coming into school, honestly, things began to get a little rough for me personally, primarily with school, being able to maintain the focus on being able to uphold to the standard of being able to achieve the school curriculum in terms of you know the certain classes, excuse me, that I had to take.

So with that constant pressure, me putting pressure on myself and even with outside pressure that was not necessarily intentional with three of my sisters are going to college, all of them obtaining their master's degrees.

I personally had some pressure that I felt in myself with having to reach those goals and attain that degree. And even with being able to not fail, and feeling like I didn't want to put my family's money at risk of just being wasted because of where I was at.

So that's kind of the reason as to why. Those are some of the thoughts I was having internally as far as being able to stay in school.

Mr. BOWMAN. Yes I know what you mean. I have three sisters as well, and raised by a single mom. So I know the pressure that the women in our lives put on us.

Mr. THORNTON. Yes.

Mr. BOWMAN. To reach their standard. So how did you overcome it? You know what did the university provide to you in terms of advisers, in terms of academic support, what have you, how did you overcome that pressure and that feeling that you didn't belong? And how were you able to set yourself right?

Mr. THORNTON. Yes of course. So when it came down to referring whether I did, it took me having to speak up, rather than waiting for something or for someone to come to me and ask me how I was doing. So it took me reaching out to, as I mentioned, you know, a TRIO program instructor, Ms. Tiffany Tyler, who has played a huge role in my life, reaching out to her, speaking to her about some of these things.

Her guiding me and really encouraging me to continue to push forward, and even my counterparts, my peers within the university. I've built long-lasting relationship through the TRIO program as I've mentioned 5000 Role Models as well.

And even you know I'm part of a club here on campus as well. Having those people in my life, and just speaking and sharing my heart, sharing my life with them. There are times where I was able to do homework with them, study with them, and it really just pushed me to stay in school to think about the future, the ways in which I can have an impact in the world with a degree.

So you know having people in my life was a huge component of me deciding that this is something that I can do, and something that I will do, and that's kind of you know pushed me to where I am today getting ready to graduate. So that's been a huge motivator for me.

Mr. BOWMAN. Thank you so much for sharing that. You're an inspiration to me personally, and to all of us, so please keep going brother. I appreciate you. Chancellor Oakley, since the onset of COVID–19 there has been an increased demand from mental health services as students deal with trauma, and economic and health crises, in addition to managing their school work.

Chancellor, how have your institutions managed this increased need?

Mr. OAKLEY. Thank you for that question Congressman. The mental health toll that the pandemic and the economic fallout has taken on our students has been significant. Many of them are in communities where we have had not only the economic impact of COVID–19, the health impacts because many of those communities lacked access to quality healthcare, but also the racial reckoning that has gripped this country, happens in the communities that we serve.

So all those things have come together. We have been working with the Newsom administration and our legislature to gain access to resources that help fund mental health services. Our legislature has provided some of those resources. We are working with counties and cities to share resources, to make sure that our students have access to those mental health resources, but they are only a drop in the bucket.

And this is an area where Congress also has been helpful because some of those relief funds have been used to provide that kind of assistance, that kind of support to our students who need it critically right now for them to continue their education.

Mr. BOWMAN. Thank you for that. Mr. Zibel, though enrollment is trending down at community colleges, the reverse is true for for-profit colleges. While for-profit colleges saw substantial and consistent enrollment drops in the years leading up to the pandemic, the sections enrollment spiked up last fall.

This appears to be a pattern as for-profit colleges have saw a similar enrollment spike after the Great Recession. Do you have any concerns with these trends, and what lessons can we learn from the years following the Great Recession?

Chairwoman WILSON. Mr. Vice Chair your time is up.

Mr. BOWMAN. Oh sorry, thank you.

Chairwoman WILSON. Thank you. Someone else—he'll probably answer it in another question from another Member. Thank you so much. We'll now go to Ms. Spartz of Indiana.

Ms. SPARTZ. Thank you Madam Chair. I just have a question to all the panel. You know we all agree we have a lot of problems and challenges in higher ed. I was a college faculty myself, and I also taught in public accounting college. It was a national team, a trainer for several other accounting firms. We had a lot of talk, a lot of discussions, a lot of different performances, so I understand it.

We need to have better return on investment, following investments in human capital. Colleges need to have skin in the game, and we need to have better outcomes, not worthless diplomas, none of that, inflated grades and all these things and now the kids are not ready to life-long learning.

So my question is we had lots of talk, lots of discussion, proposal but nothing ever gets done. So my question is, and I'll start with Dr. Burke, is there any prospects where actually something gets done, or we'll be discussing for next 10 years how we're going to reform higher ed and nothing is going to happen.

So what are your thoughts on the prospect of anything happening in the near future.

Ms. BURKE. Thank you for that question Congresswoman Spartz. So I think the prospect for reforms like moving on either short-term Pell, or enabling students to use their Title IV funds for shorter term courses. I think the prospects are pretty good for that in terms of bipartisan support overall.

There are, of course, some inherent concerns with some of these proposals that you don't increase spending overall on these programs when you enable those dollars to flow to shorter term courses, but I think that there are ways to structure those reforms to make sure that the cap remains tight, but still enable students to have more flexibility and to make those dollars more nimble.

Ms. SPARTZ. But I'm talking about better outcomes in all postsecondary education, so having real reform when we understand that you know, we should bring some value right? If we're going to invest in human capital, and use taxpayers money particularly to do that, we need to have a return on investment.

And colleges need to have skin in the game, and they shouldn't be piling up all this debt on these kids, a lot of them, with no jobs right? Because I only care if you have a job, and you have some meaningful employment that it brings some value.

So is there any prospect of having that ever accomplished?

Ms. BURKE. So I do think that there is some agreement that in general the current metrics for example, the cohort default rate, are just really not cutting it in terms of providing the data that we need and the, you know, oversight that we need for some of these institutions.

And so there are conversations that are happening about changing that metric to something maybe closer to a programmatic default rate that could work better. There is still going to be problems inherent in that approach as well, and so to my mind it all comes back to the fact that we are even having this conversation because Federal taxpayers are implicated, and financing so much of the higher education system today.

So winding down the debt in the student loan program, I think is a necessary precondition for reigning in costs and providing some needed accountability.

Ms. SPARTZ. Yes our colleges do have to have skin in the game too.

Ms. BURKE. Yes.

Ms. SPARTZ. So I'm sure. Dr. And Mr. Zibel and Mr. Oakley, and maybe Mr. Thornton quickly. Do you think there is any prospect of meaningful reform in the near future? Yes, no, because I'm not sure how much time I have left.

Mr. ZIBEL. I actually think there is Congresswoman, and especially you know if you talk about skin in the game, and making sure that there's value.

I think one of the most important things that administration can do is bring back the Gainful Employment Rule, which was designed to solve exactly the kind of problems that you were just referring to where students are graduating from programs without any prospect of employment in relationship to the amount of debt that they are taking.

Secretary DeVos repealed that rule. And you know I'm hopeful that the Department of Education can bring it back, and actually give it time to work going forward.

Ms. SPARTZ. Mr. Oakley?

Mr. OAKLEY. Short answer is yes. I see a lot of reform happening. The fact that you have a person from a community college testifying today means that things are changing, that we are recognizing the value that institutions like community colleges provide to the country. So I'm very hopeful and I see a lot of change in California.

Ms. SPARTZ. OK. Well hopefully we'll stay optimistic and get some hope. Mr. Thornton what do you think? You're probably new to all this.

Mr. THORNTON. Yes I definitely am new to all this. But I would say that I do have hope and faith that there will be a change moving forward in the future. I'm excited to see how things continue to grow and to progress as Mr. Oakley attested to. You know, him coming from a community college background I think is amazing just to see him here now, and just even having that same dream and hope for other people that were in his position.

So I definitely feel good moving forward to see some changes in America.

Ms. SPARTZ. OK thank you. I will stay hopeful, and I'll yield back.

Chairwoman WILSON. Thank you. Thank you so much. And a veteran Member of the committee now, I yield to Mr. Pocan. How are you, Wisconsin.

Mr. POCAN. Very good thank you Madam Chair, and I appreciate. Thanks to the witnesses, and my apologies to everyone for coming back and forth. Every vote we have is 45 minutes. Unfortunately, we have about 100 colleagues who have not been vaccinated so we can't shorten the time period, and it's chaotic because of it. So my apologies up front.

A very quick yes/no question Dr. Burke. I'm hoping, I'm not sure if I heard something right. Were you just talking about winding down the student loan programs? Is that a yes or no in the near future?

Ms. BURKE. Yes.

Mr. POCAN. OK yes. Thank you. I'll move on. So Mr. Thornton. I was someone who when I went to school I grew up in a lower middle class family, got lots of student loans, Pell Grants, things that Ms. Burke apparently doesn't like.

And that's why I was able to go to college, and get a degree and appreciate, you know, what you're talking about right now and the support that you got. I think also part of the testimony was that all this money went to the administrative ether at universities, but I assume you like me, don't consider our lives administrative ether.

You talked a little bit in your opening remarks about how some of the support from the programs that we've done with COVID helped you very directly to be able to continue to be able to go to school. Can you talk a little more, just a little more about that, or about any friend's stories also that have been helped because of the programs that Congress did around COVID?

Mr. THORNTON. Yes. Thank you so much for that Mr. Pocan. And I could speak for myself personally, kind of like what I mentioned as far as the last semester, the fall semester that just passed. Me initially having a job, me being able to take care of myself financially, whether it be with school expenses, or expenses outside of school whether it was rent or bills.

Me losing my job put me in a position to where I just really had to take a lot from my personal savings, so with the funding that was provided I was able to provide for myself in different ways, primarily with school and you know school materials.

And in addition to that things outside of school. So the funding that was provided definitely played a huge role in my life personally, and you know I could definitely speak about that for sure.

Mr. POCAN. Thank you. What's your major by the way? I don't know if I caught that because we're always back and forth. I didn't catch that.

Mr. THORNTON. Oh yes of course. My major is recreation and sports management.

Mr. POCAN. Awesome. Well I wish you great fortune with that, and thanks so much for being here and sharing your stories. A question for Chancellor Oakley. You know we just had a staff assistant position open in my office. We got 330 applications for it, and we noticed a lot of them graduated in May 2020 and have not had a job since then, obviously because of COVID.

Is there anything that universities are doing, or should be doing to kind of help that student, that this year has been an incredibly tough year? Many of them probably are living back home because we noticed the addresses are from around the country. But what can we do to help those students, because you know, I'm glad that they were able to get the education, but I know the next connecting step is to a good job.

Mr. OAKLEY. So very quickly. I mean working with employers, working with industries to provide for some type of paid internship I think is critical for all college graduates to have the opportunity to get into the workforce as soon as things start to open up.

It's critically important that college students have access to have the skills that they need, but also in terms of what they need to do the work, but how to exist in a place of employment. So I think we need to double our efforts to help students get some sort of workforce opportunity, internship or other paid workforce training.

Mr. POCAN. Great. Thank you. And then a final followup if I can because I have to go to vote on this series now. It has to do with Dr. Burke's question that we need to wind down our financial aid programs, that there's just too much of a largess out there.

Mr. OAKLEY. Well I think we agree on the umbrella which is there is too much debt. I do think that we need to continue to improve the amount of resources that we're providing to the lowest income Americans and help them pay for the cost of attending college which continues to increase.

Mr. POCAN. And that includes more Pell I would assume.

Mr. OAKLEY. Absolutely.

Mr. POCAN. Great. Thank you very much. I yield back Madam Chair.

Chairwoman WILSON. Thank you, thank you. According to my records Ms. Harshbarger of Tennessee you can go on the record. Mr. Fulcher of Idaho? Ms. Stefanik of New York? Mr. Banks of Indiana? Ms. Omar of Minnesota.

Ms. OMAR. Thank you very much chairwoman, and thanks to all our witnesses for joining us. To Mr. Pocan's point it's been a really busy day, so I do apologize if some of the questions I ask have already been asked of you. Even before the COVID–19 pandemic hit, there were many students who were struggling to cover the cost of basic needs like housing, food and childcare.

The COVID–19 pandemic has added to many of the hurdles faced by minority and low-income students working to complete their college educations. And these challenges are compounded for student parents.

A recent report including the GAO study, has highlighted the challenges that a student parents face in terms of college persistence and completion. Madam Chair I request unanimous consent to enter this into the record.

Chairwoman WILSON. So ordered.

Ms. OMAR. Chancellor Oakley, how have child center closures affected the ability of student parents to remain in school?

Mr. OAKLEY. This has had a devastating effect on our students, and thank you for that question Congresswoman. This has had a devastating effect. So many of our students in the California community colleges, and this is true of community colleges across the Nation, are working parents.

And so lack of access to childcare, and the fact that so many of them have had their children in their household having to work on educating them remotely, sharing Wi-Fi with them, all of these have created challenges that have made it very difficult for working parents to continue their education.

Ms. OMAR. I appreciate that. I was a working parent when I completed my college education, and so I'm wondering if there is any support that colleges are providing currently to this vulnerable student group, and if you have any recommendations for Congress to provide support.

Mr. OAKLEY. Well I think right now the most important thing to do is to provide these working parents, these students, direct emergency support. They need economic support right now, so that when they're making choices about whether to feed their family, or to continue to enroll in college, we don't force them into those choices.

So I think we need them to participate in the economy. We need them to complete their education, so I think investing directly in supporting these working students is critical to our future, and to an equitable recovery.

Ms. OMAR. And how do you see the creation of an environment that does set these students up for success post-COVID?

Mr. OAKLEY. So I think it's critical that we work with employers, that we work with labor organizations that support these working parents to focus on insuring that we provide what they need to get into jobs that pay a livable wage so they can support their families.

Ms. OMAR. I appreciate that. Madam Chair I will yield back.

Chairwoman WILSON. Thank you so much. I see Mr. Fulcher from Idaho's camera on. I'm not sure if he is available? We'll go now to Ms. Sherrill of New Jersey? Mr. Espaillat of New York? Mr. Grijalva of Arizona? And a true, true veteran of the Education Committee Mr. Courtney of Connecticut, he's here.

Mr. COURTNEY. Thank you Chairwoman Wilson, and thank you to all the witnesses. Keith, your testimony has been really stellar, and you know, congratulations to you and the Chairman for the great work that you and her work in terms of you know, creating these kinds of pathways for young people.

Mr. Zibel I have actually been watching a little bit out of the corner of my eye during the hearing. Chairman Powell from the Federal Reserve is sort of giving his sort of update regarding the economy, and announced that again, the sort of low interest rate, zero percent policy—monetary policy, of the Federal Reserve is actually going to continue through 2023.

I mean a very I think, you know forceful policy position to keep borrowing costs down. And as we know, you know, for the last year that's been the policy, and people in the private sector have benefited greatly from it. You know residential property owners, credit card debt, car loan debt, but you know the one form of debt that is still stuck with the higher interest rates is student loan debt.

And you know President Biden's pause, which is a good thing in terms of helping people's cash-flow, who are student loan borrowers, that expires at the end of September 2021. And so, you know, potentially you know those higher interest rates are going to snap back into place.

Again, even if there is student loan forgiveness of $10,000.00 or $50,000.00, there's still going to be a lot of debt left over there. And so you know I was wondering if you could sort of talk about it from a consumer point of view. I mean the only decisionmaker that can change that is Congress.

That's pretty well understood as the President really is not a unilateral authority under the Higher Education Authorization to cut rates by himself, and we've done that a number of times over you know the time that Frederica and I have been in Congress.

You know it just seems like it screams out for action by Congress not to let these interest rates snap back, and first to do something about taking advantage of the low interest rate environment. And I was wondering if you could comment on that.

Mr. ZIBEL. Certainly, Congressman. It's an excellent question and I should caveat this was you know I'm not an economist. I'm a lawyer. But you know, just as a matter of principle I think that everything you are saying makes a lot of sense. There is no reason why student loan borrowers should be saddled with higher interest rates than you know, other financial products.

I think Congress would be well to look at reforms to the Bankruptcy Code. Student loans are not dischargeable in bankruptcy for the most part, and that is something that I think both the administration and Congress could be taking a look at to really try and bring relief to borrowers who are struggling so immensely right now.

Mr. COURTNEY. Well thank you. Again we've tried actually in the last few Congresses, myself, Frederica and others have you know cosponsored bills to bring down the interest rates. And again, given Chairman Powell's announcement today, I mean it really is more than high time for us to move out and create some parody in terms of lending costs for people with student loan debt.

And you know Mr. Oakley, I don't know if you have any sort of comment on that. I realize maybe you know the interest rate issue for current students is not as urgent, but certainly you know, later in life it could really pose a real hindrance on their success.

Mr. OAKLEY. Well absolutely. I mean all the things that were just mentioned, and I certainly support Mr. Zibel's characterization of the challenge. We need Congress to act to support students who do have to take out these loans by reducing the interest rate, by allowing them to go through bankruptcy court.

So these are issues that saddle our students for decades. And in many ways keep them from participating meaningful in the American economy, and from creating wealth.

Mr. COURTNEY. Great. Well thank you. You know just to share with the committee and the witnesses, I had a constituent who emailed the other day about a student loan bill that he received, which again was paying 7.8 percent interest. Again, totally trapped.

And there was a warning quote in there that only the U.S. Congress can lower that rate. Because you know I'm sure that the loan servicer is getting bombarded with questions about why do I still have to pay 7.8 percent interest when you know, everything else is you know close to zero.

And I think you know they're basically saying call your Congressman. So hopefully, you know, more people will talk about that, because it really is something that we as a committee should take a look at. And with that I yield back Madam Chairwoman.

Chairwoman WILSON. Thank you very much. Mr. Fulcher I see from Idaho, I see you back and forth. You are on camera. You're next. Mr. Fulcher are you going to join us? If not we'll go to Ms. Bonamici.

Ms. BONAMICI. Thank you Madam Chair. And thank you to all the witnesses. In particular, I want to thank Mr. Thornton. Thank you so much for sharing your experience. It's really helpful for us to learn from. I also want to not let it go unsaid that there are with regard to Dr. Burke's comments about limiting borrowing based on someone's course of study, multiple issues and problems with that, particularly from the equity perspective.

And very subjective who makes that decision, and you know, just take a look someday at what philosophy majors make. They're very successful because they know how to think critically, and employers are looking for skills like empathy and teamwork, and problem solving. Those are all things that come from studying broad fields, including the humanities.

So I want to turn to Chancellor Oakley. Nice to see you again. We know there are serious inequities in higher education, and that's true in Oregon and across the country even before the COVID–19 pandemic, and students were already struggling to cover not just the cost of tuition, but we know other expenses, housing, transportation, childcare, food.

Now there are unexpected costs because of the pandemic adding to it. And particularly for community college students like I was, these costs are significantly higher than the costs of tuition. So Chancellor Oakley, recent reports including a GAO study have highlighted food and housing insecurity, and I have spoken with college students, particularly community college students in Oregon about this.

I'd like to enter the GAO report into the record Madam Chair.

Chairwoman WILSON. So ordered.

Ms. BONAMICI. Thank you. So Chancellor, how are the California community colleges providing for example, case management and services to low-income students, and how are you connecting them with resources like those that are available through SNAP, WIC and TANF? And how are you making sure the students access those resources while they're not physically on campus?

Mr. OAKLEY. Thank you for that question Congresswoman Bonamici. You are absolutely right. There was a huge crisis in our system before the pandemic. We saw record amounts of food insecurity. Record amounts of housing insecurity and the pandemic has significantly exacerbated the problem.

So we have been working first and foremost, we are a community college, we are working with cities, with non-profit institutions, in localities where we exist in providing support for our students.

We've provided support for technology, for food through food pantries, and things of that nature. We've also worked with our legislature and Governor Newsom to provide emergency aid. Just a few weeks ago the legislature passed an emergency action package that provides emergency support directly to students, which will support their needs for food and housing insecurity, as well as mental health services and other things that are impacting them right now.

We've also continued to advocate to you all, to Congress, and to this new administration of the need to provide this direct emergency support. I understand——

Ms. BONAMICI. Chancellor, I don't want to interrupt but I——

Mr. OAKLEY. That's quite all right.

Ms. BONAMICI. ——I have a consumer protection background, so I absolutely must get a question in for Mr. Zibel. Thank you so much for being here. The Obama administration as you know, established the Borrower Defense Rule to streamline the process for students to assert their right to loan forgiveness when they're defrauded by the institution.

Unfortunately, the Trump administration failed to implement the rule and give students the relief they deserve. So what can the Biden administration do immediately to address the problems with Borrower Defense that were created by the past administration?

Mr. ZIBEL. Sure. Thank you for the question. There is a lot the department can do, and I think most immediately it's taking the issue seriously, providing relief, 100 percent relief to the borrowers who it has already determined to have been defrauded by a predatory college.

There is simply no excuse at this point in time for the department dragging its heels on that. I want to, you know the consequences for these borrowers, it's devastating for them for an economic impact, housing impact, mental health impacts.

But the other point that I want to emphasize on this is that these are borrowers who really feel like not only did their school fail them, but their government failed them. Their government failed them by putting a seal of approval on these schools, leading them down a path, and then not giving forgiveness, even though they've already made sufficient findings to do so.

Ms. BONAMICI. In my remaining few seconds, just to followup on that. Some of my colleagues on the other side of the aisle were talking about complaining about what they call administrative bloat. But actually some of the worst bloat I'm aware of is when colleges use Federal funds to advertise for perspective students.

Recent data indicates that colleges spend 730 million dollars on advertising and degree granting for-profit institutions, and that's you know 40 percent of all higher education advertising spending for just 6 percent of the students, so that is something that I would say is administrative bloat we should be looking at is what the for-profits institutions are doing to try to recruit on often-times students.

So I see my time is over, and I yield back. Thank you Madam Chair.

Chairwoman WILSON. Thank you. You have a lot of seniority but your time is up. And now Mr. Scott, esteemed Chairman of the entire committee on Education and Labor. Do you want to close us out?

Mr. SCOTT. I'll try. Thank you very much. Let me first ask Ms. Burke you mentioned we talked about short-term Pell's, but I think there's a consensus that this is a good idea. The only caveat we have is people open up little storefronts and stealing all the money, dealing out worthless credentials.

We want to limit those privately to community colleges, and referrals from job training, workforce investment, Opportunity Act boards. Do you think that would be sufficient to keep these in the hands of those that are actually using them well?

Ms. BURKE. I think coupled with some State accreditation reform efforts as in enabling states to make some determination about which industries within their state could provide those short-term courses. I think that would be a good step in the right direction to actually push it down to the State level, that oversight role, in terms of quality assurance of these programs.

Mr. SCOTT. Thank you. And let me ask Dr. Oakley. We have a lot of suggestions on how to spend a lot of money on colleges, and could you give us an idea of your priorities talking about either free college, or free community college, double the Pell Grant, loan discharge programs like public service loan forgiveness, a borrower defense, or income contingent, or discharging loans $10,000.00 or $50,000.00, or eliminate interest on loans.

Could you tell us what we ought to be looking at first?

Mr. OAKLEY. Thank you Mr. Chair. First of all I mean all of those issues are important issues to our students, but for us I mean first and foremost allowing students to pay for the total cost of attending college is critical, so that they can attend full-time, so that they can complete their education and get into the workforce.

So things like doubling Pell is critically important. Free community college is certainly important, so that the funds that you make available can be spent on the total cost of attending college. And then finally I'd say supporting colleges, community colleges in particular to reach out to displaced workers, and helping get the skills that they need to get back into the workforce.

Mr. SCOTT. We've heard a couple of comments about the interest rates. What about significantly reducing, or even eliminating interest. Why is the Federal Government charging people interest? We ought to be subsidizing loans, not using it as a profit center.

Mr. OAKLEY. Well I would certainly agree that a low or no interest loans to our students who are struggling and who need that support to get into the economy is a very important step that Congress could take.

Mr. SCOTT. Thank you. Mr. Zibel during the Obama administration the Department of Education worked with the State law enforcement agencies, especially attorneys general to investigate and hold for-profit colleges accountable. Can you talk about what happened during the last 4 years, and whether or not executives at for-profit colleges should be held personally liable for misconduct, or financial losses to students and taxpayers?

Mr. ZIBEL. Certainly, Mr. Chairman. Look, the Department of Education has to be working alongside State and other Federal partners. This should not be an adversarial relationship, as I think it has been over the past 4 years. In terms of institutional enforcement I see what the Department of Education did in the Corinthian colleges matter.

It's a real example of when the department worked alongside the office of then Attorney General Kamala Harris to bring an enforcement action, and take an action against one of the most predatory actors.

When schools are closing, the department has to be working with states to make sure that student needs are met in terms of transfers, and transcript availability and basic needs around housing.

So I think that is a real important step that the department has to be taking going forward. In terms of personal liability, I think I mentioned a little bit earlier, absolutely. This is not a proposal that we have come up with. This is not a proposal that must have been developed in the past year or two, this is something that Congress put into the Higher Education Act about 30 years ago.

And you know President George H.W. Bush signed it into law. It was passed by a bipartisan Congress. And I think that the concept is really simple. That when there are institutions that cause losses to students and taxpayers, they should be held accountable, and the individuals that directed that conduct should be held accountable.

The Securities and Exchange Commission for example does it even for for-profit college executives about protecting investors. But for some reason the Department of Education has not done that to protect students.

So this is about deterring misconduct. If you know that you personally may have to write a check at the end of the day, you are probably going to be a lot better of a steward of a taxpayer and student funds.

Mr. SCOTT. Thank you. And thank you Madam Chair. And I want to thank Keith for being with us today. He's certainly an example of why we're here. And certainly, a shining example of why the 5,000 Role Models of Excellence are so important. So thank you Keith for being with us today.

Chairwoman WILSON. Thank you. Thank you so much Mr. Chair. I remind my colleagues that pursuant to committee practice, materials for submission of the hearing record must be submitted to the Committee Clerk within 14 days following the last day of the hearing.

So by close of business on March 31, 2021 preferably in Microsoft Word format. The materials submitted must address the subject matter of the hearing. Only a Member of the subcommittee, or an invited witness may submit materials for inclusion in the hearing record.

Documents are limited to 50 pages each. Documents longer than 50 pages will be incorporated into the record by way of an internet link that you must provide to the Committee Clerk within the required timeframe.

But please recognize that in the future that link may no longer work. Pursuant to House rules and regulations, items for the record must be submitted to the Clerk electronically by email submissions to EDANDLABOR.HEARINGS@MAILTHEHOUSE.GOV.

Members are encouraged to submit materials to the inbox before the hearing, or during the hearing at the time the Member makes the request. Again, I want to thank the witnesses for their participation today. Keith you have made FIU, Miami-Dade County Public Schools so proud.

We love you. 5,000 Role Models love you. We are 5,000. I want to thank you, all of the witnesses. You were absolutely stupendous. You did a great job at our committee today. Members of the subcommittee may have some additional questions for each of you and we ask the witnesses to please respond to those questions in writing.

The hearing record will be held open for 14 days in order to receive those responses. I remind my colleagues that pursuant to committee practice witness questions for the hearing record, must be submitted to the Majority Committee Staff or Committee Clerk within 7 days. The questions submitted must address the subject matter of the hearing.

We're now into closing statements. I recognize the Distinguished Ranking Member for a closing statement, Dr. Murphy who is a medical doctor.

Mr. MURPHY. Thank you Ms. Representative Wilson. I want to thank you especially, but also thank the committee Members and the panelists. I think this was an excellent, excellent meeting, and a lot of good issues discussed.

And I think there was a lot of lessons learned today. Both Democrats and Republicans, I think we agree. We agree very plainly that our postsecondary education system is in need of reform. I mean I think that I can say that without any doubt. Everybody knows that things have got a little bit out of hand.

Where the reform may be, may be in question, and difference of opinion about and amongst the panelists and the committee, but I think reform my all means is a consensus statement.

College costs are obviously way too high, and continue to rise. We simply cannot continue the rise of college costs as they are today. We are bankrupting our students. We are doing a disservice to our taxpayers. We simply cannot allow that. Graduation rates are low, honestly embarrassingly low.

I look at some institutions 6 year graduation rates are in the teens, and that's not acceptable. We're doing a disservice to those students, and again to the taxpayers. Employers are finding recent graduates, college graduates, ill-prepared for college success. And that burden rests solely on our educators.

If these kids are paying so much and mortgaging their future, our educators have the burden of making sure that they're prepared and that their money was well-spent. You don't continue the status quo. You don't continue to pour money into programs that have been proven failures. They're not failing because of lack of money. They're failing because they were bad and poorly designed programs.

Congress acted quickly last year in a bipartisan fashion to help the sector deal with the pandemic. I was very, very proud to be a Member of Congress at that time because we saw the American people, and we saw institutions in America as needing our help and we got together in a bipartisan manner.

Most recently, not so bipartisan, and that's in my opinion, a real shame that that occurred. But now Congress has to turn to long-term issues. The Higher Education Act is in dire need of reform to better serve our students. The disaster, and I spoke about this earlier, of the rise of administrative bloat must be reversed.

We cannot continue pouring money into institutions that do not use it toward education and preparing our students for success and lifelong learning. Some policy solutions have been presented at the hearing, eliminate the Grad Plus Program, allow institutions to limit borrowing on a programmatic basis, an entrance into the marketplace by enabling short-term Pell Grants and reforming the accreditation system, and also—and a recent topic, I think reforming the interest rates on these loans. By all means, I think that needs to be done, especially with what we're talking about with zero rates.

I don't think loan forgiveness. All you're doing is passing that on to individuals who actually paid for their education, who actually worked for their education, I don't think that is appropriate.

Not all of the ideas are bipartisan, by all means. But I want to encourage the subcommittee to work to find workable solutions under Madam Wilson's leadership, and I have pledged to work together in a bipartisan manner for us to actually do what's great for our students and what's good for their success. Thank you Madam Chairman I will yield back.

Chairwoman WILSON. Thank you. Thank you Doctor. I now recognize myself for the purpose of making my closing statement. I want to again thank our expert witnesses for joining our subcommittee's first hearing of this Congress, and for your testimonies.

Our discussion today made clear that the relief funding we provided for higher education over the last year has been critical to helping both institutions and students weather the Coronavirus pandemic. But we were also reminded that both Congress and the Biden administration have much work to do to ensure underserved students are not left behind in our recovery from this pandemic.

Securing relief funding alone is a disservice to the students. We must take bold steps to strengthen student protections and expand access to student aid, so that we build back a better higher education system for everyone.

This committee has a great responsibility to not only help our higher education system survive this pandemic, but also ensure that all students across this Nation have access, if they want it, to a college degree that leads to a rewarding career. I look forward to working with my colleagues to achieve this ultimate goal.

If there is no further business before this committee without objection, the subcommittee stands adjourned. And thank you so much for joining us.

[Additional submission by Ms. Bonamici follow:]

BROOKINGS

Report

Commercials for college? Advertising in higher education

Stephanie Riegg Cellini and Latika Chaudhary Tuesday, May 19, 2020

In the United States, the barrage of advertising from colleges and universities is unrelenting. Colleges seem to advertise nearly everywhere—on TV, on the internet, and even on subway trains. Commercial advertising is among the most pervasive recruiting tactics used by postsecondary institutions, but we know very little about it. Just how much do colleges spend on advertising? The answer: a lot. In 2017, the most recent year for which data are available, degree-granting U.S. postsecondary institutions spent roughly $730 million on advertising—including TV, cable, outdoor, and online ads.

College advertising spending was even higher just a few years ago. It grew throughout the early 2000s, reached a peak of $1.2 billion in 2013, and has since declined. Trends in advertising spending appear to track patterns of enrollment in for-profit institutions, but with a lag. This correlation is not surprising. As we describe below, for-profit institutions account for the largest share of ad spending, but the smallest share of students: Degree-granting for-profit institutions account for about 40% of all higher education advertising spending, while serving just 6% of students. Among the institutions that advertise, for-profit institutions spend almost $400 on advertising per student, compared to just $48 per student among nonprofits and $14 per student among public institutions. These stark differences by sector remain when we control for other institutional characteristics that may drive advertising spending, such as size, level, chain status, and the percentage of online students.

“Degree-granting for-profit institutions account for about 40% of all higher education advertising spending, while serving just 6% of students.”

These figures—and the others used in this report—are based on calculations of Kantar Media’s “Ad$pender” data, which tracks network TV, cable television, spot television, national magazine, newspaper, outdoor, and internet display ads. Kantar estimates the dollars spent by each firm (in our case, colleges) for advertising in the 100 largest media market areas in the United States.[1] Since colleges are not currently required to report advertising expenditures to the Department of Education, these estimates are among the first to assess just how much colleges in the U.S. spend on commercial advertising and how these patterns have changed over time.[2]

Advertising and policy

Recent policy debates have centered around whether for-profit institutions should face more oversight relative to other institutions due to a business model that may lead them to focus more on enrollments (and therefore profit)—and less on student success. Concerns surrounding very high tuition, high student debt and default rates, and poor earnings outcomes in the sector prompted the 2014 “Gainful Employment” (GE) regulations that required for-profits and non-degree programs in other institutions to meet certain debt-to-earnings thresholds to maintain eligibility for federal student aid. The regulation sparked debates over whether for-profits should face tighter accountability metrics than institutions in other sectors (Cellini et al. 2017, Murakami 2020, Gillen 2020). In 2019, Education Secretary Betsy DeVos repealed the GE regulations, largely justifying the move based on claims that it unfairly singled out the for-profit sector (Federal Register 2019). Similar debates have arisen in the application of and proposed fixes to the so-called “90/10 rule,” which stipulates that proprietary institutions receive no more than 90% of their revenue through federal student aid programs (Looney and Lee 2019).

At the heart of these debates is a question as to whether for-profits behave differently because of their for-profit status and the incentives it creates, or whether differences in behavior are driven by other institutional or student characteristics. We address this question in the context of advertising by controlling for institutional characteristics with regression analysis and find support for the exceptionalism of the for-profit sector.

Policymakers have also raised valid concerns over the lack of transparency in advertising and recruitment in higher education in recent years. Critically, advertising expenditures may be added to a college's "student services" expenditures in the Department of Education's annual survey of college finances in the Integrated Postsecondary Education Data System (IPEDS), making assessments of student services—and advertising—nearly impossible to disentangle. We therefore estimate the share of student services expenditures that are likely accounted for by commercial advertising. Among for-profit colleges, we find that advertising expenditures make up over 40% of reported student services spending in the IPEDS data. Among the group of for-profits with over $1 million in ad spending, the average ad spending increases to 85% of reported student services.

"Among the group of for-profits with over $1 million in ad spending, the average ad spending increases to 85% of reported student services."

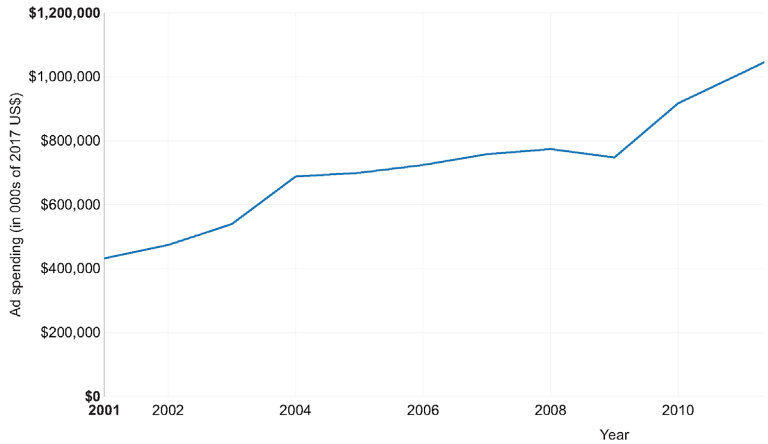
Beyond transparency, allegations of false advertising have plagued the for-profit sector. Several high-profile investigations and lawsuits have resulted in large settlements and debt-relief for students who were victims of misrepresentations by institutions such as the (now-shuttered) Corinthian Colleges (U.S. Department of Education 2015), DeVry University (Federal Trade Commission 2016), and most recently the University of Phoenix (Federal Trade Commission 2019). Under the federal government's ban on misrepresentation and incentive compensation, the Department of Education may withdraw access to federal student aid for institutions that make misrepresentations to students, but analysts suggest a lack of enforcement in recent years (Shireman 2019).

An understanding of commercial advertising in higher education can contribute to our understanding of student enrollment choices, the growth of for-profit and online education, and differences in recruiting practices across institutions and sectors. Further, insights from our analyses can inform policymakers about the potential responses of students and institutions to changes in regulatory policy surrounding student recruitment, information disclosure, and federal student aid. While the Trump administration has eased enforcement of restrictions on advertising and recruiting for for-profit colleges, House Democrats have proposed explicit restrictions on marketing and advertising as a condition of Title IV receipt in their reauthorization of the Higher Education Act (U.S. House Committee on Education and Labor 2019). An understanding of the magnitude and prevalence of college advertising—and differences by sector—is a first step toward assessing the impacts of these policies on institutions, students, and taxpayers.

The growth of college advertising

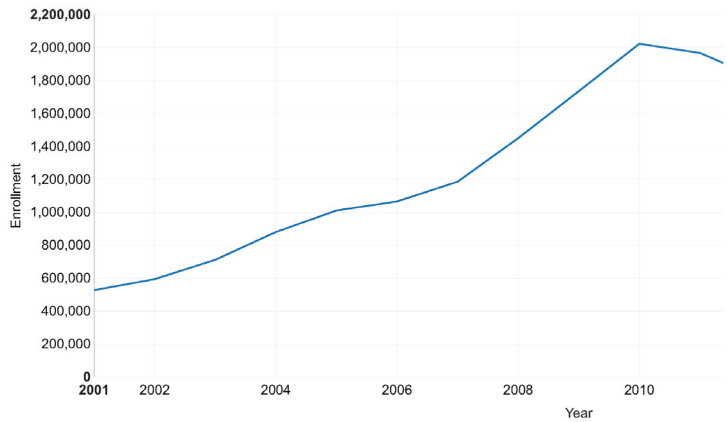
Figure 1A plots total advertising spending (in constant 2017 dollars) by all degree-granting higher education institutions each year from 2001 to 2017. Spending on advertising increased dramatically over the early 2000s, peaking around $1.2 billion in 2013 before declining in more recent years. As noted earlier, this pattern mirrors enrollment in the for-profit sector—shown in Figure 1B—but with a slight lag. Enrollment more than tripled in the sector between 2000 and 2010, then declined with new regulations and the closure of several large for-profit chains. It seems likely that for-profit institutions may have boosted advertising to counteract the increased scrutiny of the sector between 2010 and 2013, but eventually advertising spending declined as colleges closed.

Figure 1A: Advertising expenditures in US higher education, 2001-2017



Author's calculations based on Kantar Media's "Ad$pender" data.

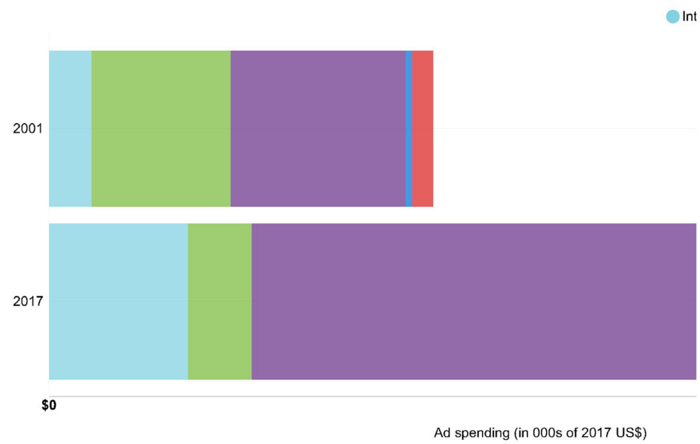
Figure 1B: Enrollment in degree-granting for-profits, 2001-2017



IPEDS.

In Figure 2 below, we look more closely at the different advertising modes or platforms (TV, print, Internet, radio, and outdoor) used by higher education institutions in 2001 and 2017. The upper bar shows the magnitude and distribution of ad spending by mode in 2001. Television advertising makes up the largest share at 46% (roughly $143 million), with print sources next (36%), and internet advertising at 11% of the total. By 2017, internet advertising grew to 16% (and $113 million) as the second-most popular advertising medium, but TV advertising had an even larger share of ad spending at 56% ($413 million). Print declined to 7%, mirroring the general decline in ad expenditures in newspapers and magazines in the 2000s.

Figure 2: Modes of college advertising, 2001 and 2017

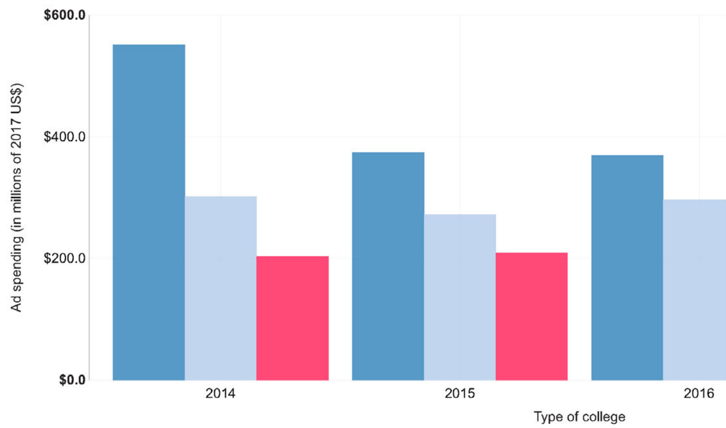


Kantar Media's "Ad$pender" data and IPEDS.

Advertising by sector

Of course, commercial advertising varies substantially across institutions and sectors—with the for-profit sector making up the largest share of expenditures. Breaking down patterns by sector in Figures 3A and 3B highlights the stark differences. In 2014, at the peak of ad spending, for-profit institutions spent over $500 million on ads—more than the total spent by nonprofits and public institutions combined. The sector accounted for 52% of ad spending, while serving just 8% of students. By 2017, for-profit advertising dropped to $275 million—again likely reflecting sanctioning and subsequent closures of several large for-profit chains. Nonetheless, the sector still accounts for about 40% of total ad spending, while serving only about 6% of students (NCES 2018, Table 303.10).

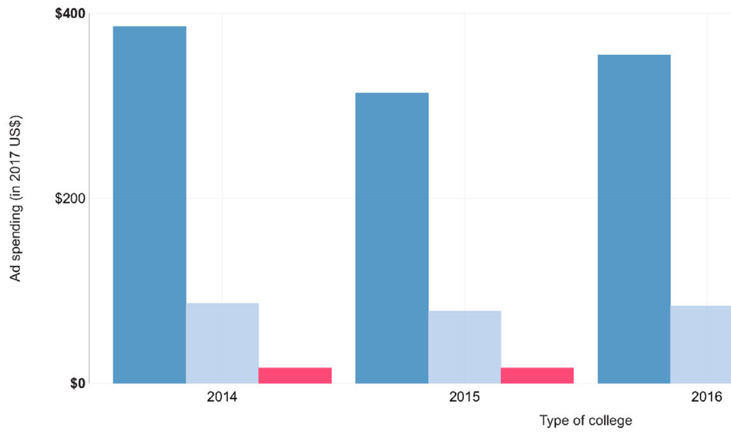
Figure 3A: Total college ad spending by sector, 2014-2017



Kantar Media's "Ad$pender" data and IPEDS.

Perhaps more important than total ad expenditures are ad expenditures per student. Figure 3B shows per-student advertising expenditures over time—the differences by sector are striking. On a per-student basis, for-profit colleges outspend nonprofits more than 4 to 1 and outspend public institutions more than 20 to 1—a pattern that has held steady over time.

Figure 3B: Per-student college ad spending by sector, 2014-2017



Kantar Media's "Ad$pender" data and IPEDS.

Institutional averages

Looking more closely at the data, Table 1 shows our most up-to-date 2017 estimates of advertising spending averaged across institutions and split by various characteristics. We focus on institutions that could be matched in the IPEDS and Kantar data, and therefore our estimates represent averages conditional on any commercial advertising over the period we study.[3]

Table 1: Ad spending by institution type and characteristics, 2017

	Number	Mean ad spending ($000s)	Mean ad spending per student ($)	Ad $ / Student service $	Ad $ / Total expenditures

	(1) Number	(2) Mean ad spending ($000s)	(3) Mean ad spending per student ($)	(4) Ad $ / Student service $	(5) Ad $ / Total expenditures
	(1)	(2)	(3)	(4)	(5)
All institutions	2,041	336	53	4.3%	0.3%
For-profit	145	1,250	371	43.4%	2.0%
Nonprofit	855	273	48	1.8%	0.2%
Public	1,041	171	14	1.1%	0.1%
Multi-campus chain	90	2,788	430	37.7%	2.1%
Non-chain	1,951	223	36	2.8%	0.2%
Online	65	2,883	90	5.1%	0.9%
Not online	1,705	203	36	3.4%	0.2%
Four-years or more	1,489	425	57	4.7%	0.0%
Two-years	552	99	43	3.1%	0.3%
Enrollment 5,000 or more	895	650	28	2.6%	0.2%
Enrollment under 5,000	1,146	92	73	5.6%	0.4%

Notes: Sample includes degree-granting institutions that appear in both Kantar data (and therefore have non-zero ad spending) and IPEDS. Multi-campus chains are aggregated and subsidiaries are assigned to parent institutions. See data appendix for details.

In line with the patterns noted earlier for the sector as a whole, institution-level averages show the same pattern: For-profit colleges far outspend institutions in other sectors. On average, for-profit colleges spent $1.25 million on advertising in 2017, as shown in column 2. This exceeds the $273,000 spent by nonprofits and the $171,000 spent by publics. On a per-student basis, the patterns are again quite striking and similar to those found for the sector as a whole: For-profits spent $371 per student on average, compared to just $48 per student for nonprofits and $14 per student for public institutions.[4]

In the lower rows of columns 2-3, we see that multi-campus chains have much larger advertising budgets than independent institutions ($2.7 million vs. $223,000) and spend much more per student ($430 vs. $36). Online institutions—which we define as having 50% or more of their students taking classes exclusively by distance education—have similarly high overall advertising spending, but much lower per-student spending ($90) than multi-campus chains.[5] Four-year colleges spend more than their two-year counterparts and unsurprisingly, larger institutions spend more overall (column 2), but spend less per-student (column 3). Note that each institution appears in each category (e.g., a college may be for-profit, online, multi-campus, four-year, and large); however, within each category, the groups (e.g., for-profit, nonprofit, public) are mutually exclusive. In our data, for-profits are more likely than institutions in other sectors to be online, two-year colleges, and multi-campus chains. They have higher average enrollment than nonprofit institutions (6,500 vs. 4,000), but lower enrollment than public institutions (11,700). We control for these characteristics in our regression analyses below.

“Including advertising in student services gives a faulty impression of spending on student success, and could be misleading for policymakers and students.”

As noted above, postsecondary institutions do not explicitly report advertising expenditures to the federal government in the annual IPEDS survey of college finances. Rather, these expenditures may be listed under the category of “student services” or other areas. Including advertising in student services gives a faulty impression of spending on student success, and could be misleading for policymakers and students. Recent policy proposals have suggested separating advertising and other recruitment expenses from student services (e.g., U.S. House Committee on Education and Labor 2019).

In column 4 we compare ad spending to spending on student services listed in IPEDS. Advertising spending accounts for 43% of student services expenses reported by for-profit institutions, compared to less than 2% for all other sectors. Multi-campus chains (which are predominantly but not exclusively for-profit) have a similarly high percentage (38%), but the average for online institutions is much lower (5%). Relative to total expenditures, advertising expenditures account for about 2% in for-profits, but just 0.2% or less in other sectors (column 5).

Big spenders

While it is clear that for-profit colleges are outspending others, in Table 2 we look more closely at the data to identify the top 10 ad-spending colleges of 2017. Six of the top 10 spenders are large for-profit chains. The top spender, the University of Phoenix outspends its competitors by nearly $25 million. At $76 million spent in 2017, its ad spending has declined considerably since a peak of $142 million in 2013. The two nonprofit colleges in the top 10, Southern New Hampshire University and Western Governors University, are large online colleges that cater to working students and are well-known as competitors of the large for-profit chains. Grand Canyon University, DeVry University, Capella University, Kaplan University (since acquired by Purdue University), and Strayer University represent some of the largest and most well-known for-profits with a large online presence.[6]

Table 2: Top 10 higher education advertisers, 2017

	Institution	Sector	Total ad spending	Total fall enrollment	Per-student ad spending
1	U. of Phoenix	For-profit	$75.9 million	120,621	$629
2	Southern New Hampshire U.	Nonprofit	$51.4 million	90,955	$565
3	Grand Canyon U.	For-profit	$28.7 million	83,284	$345
4	Western Governors U.	Nonprofit	$25.5 million	98,627	$259
5	DeVry U.	For-profit	$24.7 million	28,724	$861

	Institution	Sector	Total ad spending	Total fall enrollment	Per-student ad spending
6	Capella U.	For-profit	$23.1 million	36,284	$637
7	Kaplan U.	For-profit	$19.2 million	38,619	$496
8	Strayer U.	For-profit	$14.0 million	44,970	$310
9	Pennsylvania State U.	Public	$9.1 million	93,318	$98
10	U. of Maryland	Public	$8.5 million	59,379	$144

Notes: Authors' estimates of ad spending based on Kantar Media's "Ad$pender" data and IPEDS fall enrollment data aggregrated at the parent-level for all branches.

Two public institutions round out the top 10, Penn State and the University of Maryland. Both spend less than $10 million per year and less than $150 per student, far lower than any of the institutions in the top eight spots. Both institutions appear to have invested heavily in online "campuses" in recent years, with Penn State's World Campus and the University of Maryland's (recently renamed) Global Campus.

To take a closer look at high-spending colleges, we break our sample into colleges that spent $1 million or more in any year between 2014 and 2017 in Table 3. In the high-spending group, advertising spending averages $5 million, including $9 million among for-profits. Per-student, the high-spending group averages $500 per student, with for-profits more than doubling that average at $1,200 per student. Most striking is that ad spending comprises 85% of student services spending among the high-spending for-profits. Even for for-profits that spend less than $1 million per year, ad spending comprises one-third of student service spending—compared to 3% or less in other sectors.

Table 3: Ad spending for institutions over and under $1 million in ad spending, 2017

	Number	Mean ad spending ($000s)	Mean per-student ad spending ($)	Ad $ / Student service $	Ad $ / Total expenditures
	(1)	(2)	(3)	(4)	(5)
Over $1 million in ad spending					
All	96	5,033	496	31%	3%

	Number	Mean ad spending ($000s)	Mean per-student ad spending ($)	Ad $ / Student service $	Ad $ / Total expenditures
	(1)	(2)	(3)	(4)	(5)
For-profit	28	9,142	1,203	85%	6%
Nonprofit	37	4,224	287	9.9%	1.4%
Public	31	2,288	107	7.6%	0.7%
Under $1 million in ad spending					
All	1,945	105	31	3.0%	0.2%
For-profit	117	160	175	33%	1.0%
Nonprofit	818	95	37	1.5%	0.2%
Public	1,010	106	11	0.9%	0.1%

Notes: Sample includes degree-granting institutions appear in both Kantar data (and therefore have non-zero ad spending) and IPEDS. Multi-campus chains are aggregated and subsidiaries are assigned to parent institutions. See data appendix for details.

Interestingly, the average spending per-student among for-profits in this table is higher than for the top-10 spenders shown in Table 2. Unlike the large colleges in Table 2, many for-profits spending more than $1 million have small enrollments. If we rank colleges by spending per student rather than total ad spending, seven of the top 10 are for-profit colleges with small enrollments—of these seven, all but two have enrollments below 1,000 students.

For-profit exceptionalism

Recent policy debates around GE regulations and the 90/10 rule—among others—have centered around whether for-profit institutions should face more oversight relative to other institutions due to a business model that may lead them to focus more on enrollments (and therefore profit) and less on student success. A key question is whether for-profits behave differently because of their for-profit status or whether differences in behavior are driven by other institutional characteristics. To shed light on this question, we push further in isolating the correlation between ad spending and sector by running regressions that control for level (four-year vs. two-year), majority of students online, multi-campus chain status, size, as well as changes over time that affect all institutions.[7]

In Table 4, we show results of our regressions for several different samples of colleges. We begin with the broadest sample of all degree-granting colleges and universities—including those that are not present in the Kantar data and presumably spend $0 on commercial advertising (column 1 and 3). We find large positive associations between for-profit sector and ad spending per student that are significant at the 1% level. In this comprehensive sample, we see that for-profit institutions spend $627,000 more overall and $121 more per student than public colleges. These findings indicate that the patterns of high ad spending by for-profit institutions are not driven by differential selection into our sample of advertising colleges.

Table 4: Regression analyses of college ad spending per student and sector

	Total ad spending (in $000s)		Per-student ad spending ($)	
	All	Advertisers only	All	Advertisers only
	(1)	(2)	(3)	(4)
For-profit	627***	1,242**	121***	281***
	(223)	(496)	(34)	(75)
Nonprofit	146*	326***	29***	53***
	(84)	(124)	(6)	(9)
Covariates	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes
Observations	11,185	7,206	11,179	7,200
R-squared	0.074	0.106	0.064	0.121

Notes: *** p<0.01, ** p<0.05, * p<0.1. Covariates include multi-campus chain, online, four-year, and an indicator for enrollment >5000. Standard errors in parentheses clustered at the institutional level. See data appendix for estimation details.

Conditional on having any advertising spending (columns 2 and 4), for-profits outspend publics by $1.2 million and nearly $300 per student. Importantly, these effects are sizable and significant even when controlling for level, chain, enrollment, and online status, suggesting that the for-profit business model—rather than other institutional characteristics—are at least partially responsible for advertising behavior. We observe much more modest differences in ad spending per student between public and nonprofit colleges across our sample, suggesting that—conditional on any advertising—nonprofits spend about $326,000 more than publics overall and $53 more per student.

Conclusions and policy implications

Advertising spending by U.S. higher education institutions has been volatile in the past decade, roughly matching the growth and decline of enrollment in for-profit colleges. In 2017, U.S. colleges spent over $700 million on commercial advertising, down from a peak of $1.2 billion in 2013. For-profit colleges account for a disproportionate share of this spending: They account for 40% of ad spending while educating 6% of students. They outspend nonprofits 4 to 1 and publics 20 to 1 on a per-student basis. Although some of these raw differences could be due to differences in institutional characteristics, rather than for-profit status per se, our regression analyses suggest that even after controlling for size, level, chain, and online status, large differences by sector remain. For-profits continue to outspend public colleges by about $1.2 million per institution and $280 per student in our regression results.

"The many recent settlements of false advertising cases against high-profile for-profit institutions suggest the need for increased scrutiny of ad content and mechanisms for student reporting of misleading advertising."

We caution that our estimates are likely an underestimate of total advertising expenditures by U.S. colleges. They are based on Kantar's estimates of commercial advertising expenditures by degree-granting institutions in only the 100 largest media markets. Further, our estimates do not include the many other forms of recruitment and marketing that colleges undertake to attract prospective students.

Nonetheless, we find that spending on commercial advertising comprises about 43% of reported expenditures on student services for for-profits in IPEDS data and up to 85% for some of the highest spending for-profit institutions. We recommend that policymakers push further in mandating that institutions separately report advertising, recruitment, and marketing in IPEDS to avoid potentially misleading claims of high spending on student services.

Whether college advertising is desirable from a social perspective depends critically on the content of the advertising and the quality of education provided by the advertising college. The many recent settlements of false advertising cases against high-profile for-profit institutions suggest the need for increased scrutiny of ad content and mechanisms for student reporting of misleading advertising. Coupled with this, studies demonstrating negligible earnings gains, disappointing employment outcomes, high default rates, and large debt incurred by students attending for-profit colleges[8] suggest the need for further oversight of the sector—both in advertising and in student outcomes. We suggest that policymakers do more to enforce existing laws prohibiting misrepresentation in college advertising and consider taking additional measures to enhance transparency and accountability in the for-profit sector.

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Report Produced by **Brown Center on Education Policy**

Footnotes

1. 1 See data description in **Appendix A** for more details. Notably, we focus only on degree-granting institutions in Kantar's "colleges and universities" category. Our estimate will understate total expenditures in higher education, since vocational institutions are omitted. Future research will explore advertising by non-degree institutions.
2. 2 Hall (2019) examines internet advertising by colleges in 2016.
3. 3 See **data appendix** for details on matching. Notably, we can match about 35% of for-profits, 52% of nonprofits, and 65% of public institutions in IPEDS. Multi-campus institutions are aggregated to a single "parent" institution.
4. 4 Medians in the for-profit sector are lower than means due to a large number of smaller institutions spending little on advertising (medians are $70,000 in total spending and $89 per student), but patterns across sectors are similar (e.g., median per-student spending in for-profits is more than five times median per-student spending in nonprofits).
5. 5 Note that categories are not mutually exclusive, so some of the same institutions are for-profit, multi-campus chains, and online.
6. 6 Enrollment data are estimates based on IPEDS fall enrollment counts aggregated at the parent-institution level.
7. 7 See **data appendix** for details on data and estimation.
8. 8 See for example, Cellini and Turner (2019), Darolia et al. (2015), Looney and Yannelis (2015), Deming, Goldin, and Katz (2012), Scott-Clayton (2018), Cellini and Darolia (2018).

[Additional submission by Ms. Omar follow:]

GAO Report 19-522: More Information Could Help Student Parents Access Additional Federal Student Aid

https://www.govinfo.gov/content/pkg/CPRT-117HPRT46620/pdf/CPRT-117HPRT46620.pdf

[Additional submissions by Ms. Leger Fernández follow:]

SANTA FE REPORTER

New Mexico College Students Face Food Insecurity

The Food Depot and UNM associate professor team up for awareness, film screening

Courtesy The Food Depot

Help keep local journalism fighting for you. Donate today to Friends of the Reporter.

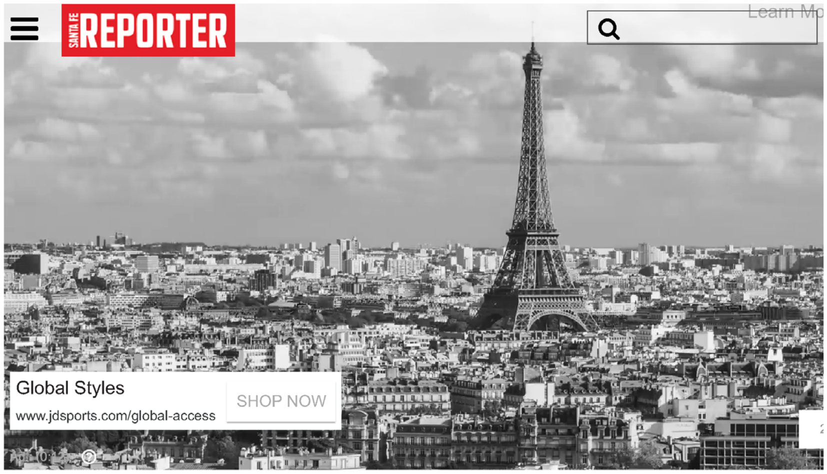
By Riley Gardner | March 16 at 8:07 PM

"This is a systemic problem," Sarita Cargas, associate professor at the University of New Mexico, tells SFR. "A lot of people in older generations don't understand what students are facing these days."

Last April, the UNM Basic Needs Project—a collection of experts, UNM staff members and community members—conducted a study on economic conditions for students at the university. Their report, Basic Needs Insecurity at UNM, found nearly a quarter of all students surveyed described themselves as food insecure, with 52% of Indigenous students, 48% of gay and lesbian students and 35% of Hispanic students describing themselves as unsure of when their next meal might come.

Such concerns have become a major focus for Cargas, who was a leader in the study and is intent on reducing the numbers.

"College tuition has risen hugely and family incomes have stagnated. [Food insecurity] is hugely stigmatized," she explains. "There's a direct correlation between graduations and food insecurity—and while correlation isn't causation, we keep asking why this is happening and we aren't talking about meeting their basic needs."



Sherry Hooper, executive director of The Food Depot in Santa Fe, feels Cargas' findings on the ground and on the regular.

"Government funded programs tend to be targeted to children under 18 or to senior citizens," Hooper says. "We do see a need from college students here."

As such, Cargas has teamed up with The Food Depot up for a talk on the study, in addition to a free online documentary screening of *Hungry to Learn* presented by The Food Depot, New Mexico First and Presbyterian Health Services. Directed by Geeta Gandbhir and produced by journalist Soledad O'Brien, *Hungry to Learn* looks into the complexities of college food insecurity and its impacts on overall health.

The causes are wide-ranging, from a lack of generational wealth to academic prohibition on outside work an international students struggling without work visas. Certain programs, particularly postgraduate, bar students from having outside work. The study found nearly 30% of postgraduate law students, who are among those barred, struggle with access to regular meals.

"Students are not yet sophisticated in managing money," Cargas notes. "It's hard to financially plan when you've got nothing and you've got no generational wealth. Thousands of students are independent on their own—students from foster care, older students or some with dependents or the LGBTQ+. FAFSA is outdated, and the Pell Grant used to cover 70% of student tuition—now it covers 30%."

Colleges and universities do make attempts for students to have better access to food. UNM has a food pantry, as does Santa Fe Community College, yet many of these systems were built for a pre-pandemic world, and the survey was conducted in the early days of COVID-19, well before the economic impact had fully been felt.

Hooper warns that despite perceptions the economy will bounce back, food insecurity will likely trail for a long time aft ... college students. The Food Depot is preparing for that reality.

"We're in a recovery mode, but we're still seeing a big hunger response the pandemic," Hooper explains. "We don't expect that to go away any time soon. People may not go back to a full-time job for a very long time. People impacted the most are those in the hospitality and service industry—many of those people are college students. They can't work from home like some professionals can."

Cargas tells SFR that UNM took the report seriously, and set up a steering committee to find solutions and to enlarge its food pantry. For Cargas, there's nothing wrong with that, but she notes food pantries are a band-aid to systemic accessibility issues. Colleges, she says, should be more direct in how they offer assistance.

Hooper echoes that sentiment.

"When we see direct support to families in need, we do see a decrease in people coming in," she says. "It's directly impacting families, letting them catch up on rent. We've got to meet people where they are."

Cargas hopes colleges can start offering grocery gift certificates, making dining hall meals more accessible and allowing higher pay and more hours for students in work study programs. Outside of federal and state relief bills, however, there's not a lot of money to go around in a sagging economy. Pre-pandemic, The Food Depot had an annual food budget of $600,000. That's up to nearly $2.4 million now as nonprofits, shelters and corporate donations such as grocery stores—who once donated and distributed food items—struggle to make their own ends meet.

Meanwhile, demand for food assistance in New Mexico continues to rise. Hooper notes The Food Depot serves nearly 3000 people every day it's open, and many of are college students and young adults with dependents.

Senate Bill 370, a $5 million emergency food pantry appropriation, was introduced by Sen. Bill Tallman (Bernallio) last month. The bill's fate has yet to be decided, but in the meantime Cargas and Hooper are going on the educational offensive to educate New Mexicans about the severe battles college students face.

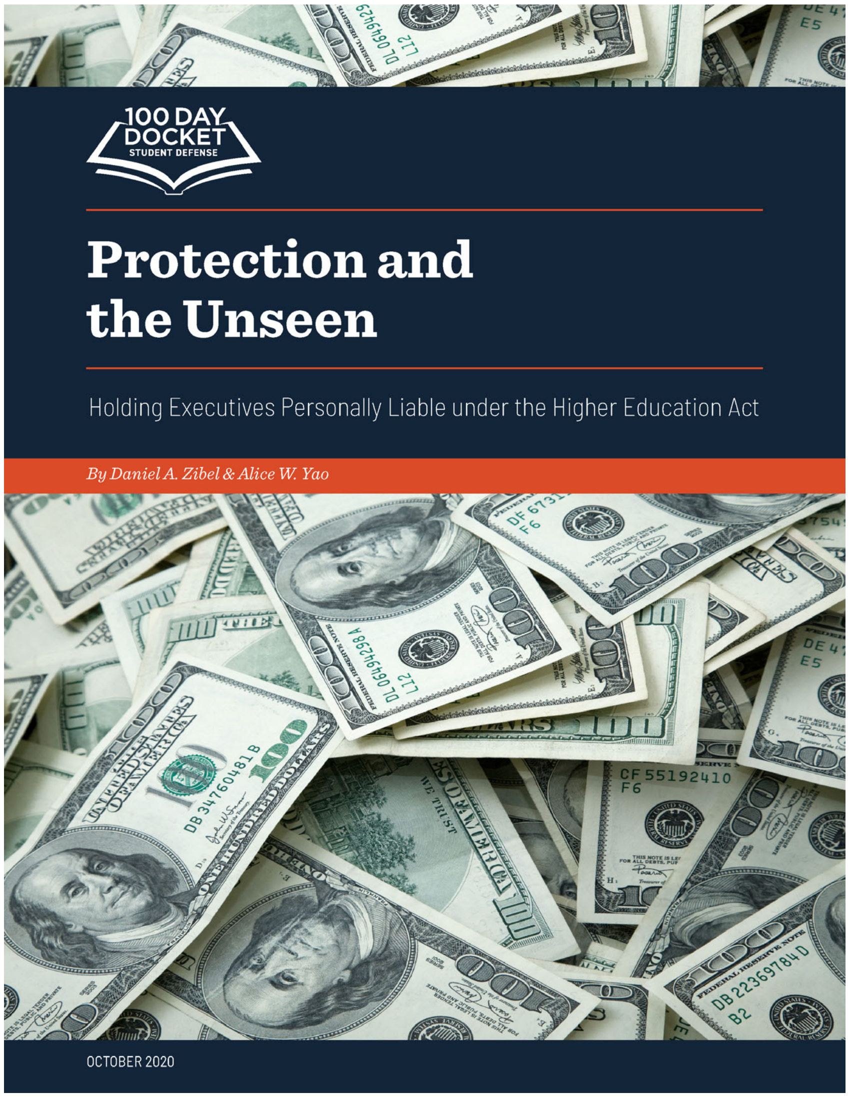
"These students are the ones taking the risks," Cargas says. "These students are courageous, trying to better their lives and their families futures. We need to support them."

Hungry to Learn*'s free screening streams until March 28. You can register for Hooper and Cargas' talk and get a streaming link here.*

GAO Report 19-95: Better Information Could Help Eligible College Students Access Federal Food Assistance Benefits

https://www.govinfo.gov/content/pkg/CPRT-117HPRT46621/pdf/CPRT-117HPRT46621.pdf

[Additional submission by Mr. Jones follow:]



100 DAY DOCKET
STUDENT DEFENSE

Protection and the Unseen

Holding Executives Personally Liable under the Higher Education Act

By Daniel A. Zibel & Alice W. Yao

OCTOBER 2020

Protection and the Unseen:

Holding Executives Personally Liable under the Higher Education Act

BY DANIEL A. ZIBEL & ALICE W. YAO[1]

ABSTRACT: In establishing the student aid programs in Title IV of the Higher Education Act, and in committing to provide billions of dollars annually to institutions of higher education, Congress emphasized that owners and executives must be held personally accountable for financial losses that result from the acts of their institutions. Although the U.S. Department of Education routinely assesses liabilities against institutions, the prospect of recovering from institutions with substantial liabilities is often uncertain and, to our knowledge, the Department has been unsuccessful in using its authorities under the HEA to administratively impose personal liability on an institution's owners and executives. By exercising its authority to require institutions, owners, and executives to have "skin in the game" using the enhanced enforcement mechanisms we describe in this paper, the Department would better protect taxpayers and lead institutions of higher education towards less risky and predatory behavior.

Introduction

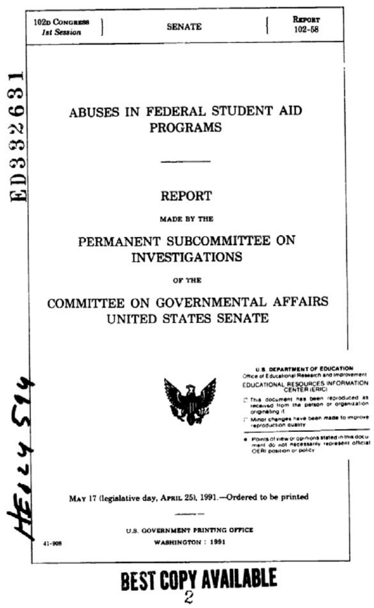
In vesting the U.S. Department of Education with authority to run a taxpayer-funded, multi-trillion student lending and grant program, Congress made clear that institutions of higher education ("IHEs") must bear responsibility for financial losses they cause to the United States. This proposition is articulated throughout the Higher Education Act of 1965 ("HEA"), as amended, including in the provisions setting the boundaries for institutional eligibility in the student financial aid programs. More specifically, to participate in the Title IV programs, an IHE must establish its ability to "meet all of its financial obligations," including those liabilities and debts incurred to the Secretary. The HEA is also replete with references to how the Department "may" require institutions to submit "financial guarantees" sufficient to satisfy certain of its liabilities,[2] "shall" require institutions to be financially liable for certain failures associated with the Direct Loan program,[3] and "shall" pursue claims against an IHE for losses associated with certain loan discharges.[4] Collectively, these authorities establish Congress's clear instruction that taxpayers not bear the burden when an institution collapses or fails to meet its obligations to students or the government.

But Congress did not stop there. In fact, on the heels of a bipartisan Senate investigation reporting on abuses in the federal student aid programs led by Senator Sam Nunn and in connection with the 1992 reauthorization of the HEA, Congress added provisions giving the Department 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").[5]

These provisions were not mere happenstance, but were specifically recommended by the Department's Inspector General, who testified before the U.S. House of Representatives Committee on Education and Labor that:

> "the 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."[6]



102D CONGRESS
1st Session

SENATE

REPORT
102-58

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ABUSES IN FEDERAL STUDENT AID PROGRAMS

REPORT

MADE BY THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

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The cover of 1991's Senate Investigation, which uncovered many of the same problems that persist to this day.

In addition, the Inspector General 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."[7]

Yet despite this unambiguous Congressional intent and the clear statutory language, to our knowledge, the Department has never successfully used these authorities to impose and collect administratively assessed liabilities from members of an Institutional Control Group who exercise "substantial control" over an IHE with unpaid administrative debts to the Department.

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, taxpayers have borne a substantial financial burden. When an IHE closes, students who attended that institution at or near the time of closure have a right to a discharge of all federal Direct Loans taken to finance enrollment at that institution.[8] 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 for borrower defense discharges, excess Pell Grant funds, and unaccounted funds from other Title IV programs.[9] That estimate subsequently increased to approximately $440 million.[10] 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.[11] At the same time, the executives that ran these institutions into the ground were paid millions each year,[12] and one ITT executive even claimed that he was owed millions more in severance and deferred compensation while the company was in bankruptcy.[13]

This scenario is by no means unique to ITT or Corinthian. The closures of other for-profit institutions have also cost taxpayers significant amounts of money resulting from discharged student loans. In addition to the cost of ITT Technical Institute's closure, as of May 2019, the Department had recently "discharged more than $43 million in student loans for borrowers who attended [closed] programs operated by Education Corporation of America, Dream Center Education Holdings, Vatterott College, and Charlotte School of Law."[14] It is unclear how much, if any, the Department has recovered from the losses caused by these institutions.

And while the Department has the authority to require institutions to post a "letter of credit" or other form of financial surety to guard against losses to taxpayers, those letters are often woefully insufficient. For example, when the

Department requires an institution to post a letter of credit, the amount of that surety is typically set between 10% and 50% of the previous year's Title IV draw. But closed school discharges do not simply relate to the previous year's Title IV amounts—and can require the Department to discharge the entirety, not just a percentage, of numerous years of student debt. Indeed, even the $94 million surety secured by the Department of Education in the months leading up to ITT's collapse proved inadequate.[15]

Although the Department has—and uses—a process[16] to impose administrative liabilities against institutions, that process is largely insufficient to recover the amounts discharged in federal loans[17] if an institution has closed or otherwise ended its Title IV participation. This is because the process hinges upon the Department's administration of Title IV programs.[18] Unless the institution continues to participate in the Title IV programs, or the institution or a member of the Institutional Control Group owns or controls a different institution—scenarios in which the Department controls the continued flow of Title IV funds[19]—the Department's administrative authorities to collect financial liabilities lack a clear enforcement mechanism.

Even when a closed institution enters bankruptcy and the Department has the opportunity to make a claim to the entity's estate, the Department is often in the position of an unsecured creditor,[20] or simply does not collect liabilities at all. For example, in 2019, the Department assessed more than $12 million in institutional liabilities against now-defunct WyoTech-Long Beach, which was part of the Corinthian chain. The Department expressly noted, however, its establishment of liabilities was "not a demand" that WyoTech pay the liabilities, and that the Department "will seek recovery of this liability only in accordance with applicable bankruptcy law," suggesting that it has no intent to "seek to recover" the liability from members of the Institutional Control Group.[21] Likewise, Park West Barber School filed for bankruptcy on April 26, 2016.[22] On June 2, 2016, the U.S. Bankruptcy Court for the Middle District of North Carolina ordered any potential creditor to file a proof of claim by September 2, 2016. As per the court's order, any creditor "who do[es] not file a proof of claim or before [that] date will not share in any distribution from the debtor's estate."[23] The Department did not do so, but *more than nine months* later, in June 2017, the Department established, via a Final

Imposing personal liability for corporate misdeeds is a tool widely available to civil law enforcement.

Program Review Determination, a liability of more than $19.8 million, which it said was "not a demand for payment" and which it would seek to recover "in accordance with the laws governing bankruptcy."[24] When the Chapter 7 Trustee certified in a court filing that the Park West estate had been fully administered, she confirmed that the U.S. Department of Education neither stated a claim to assets nor received a distribution from the estate.[25]

Imposing personal liability for corporate misdeeds is a tool widely available to civil law enforcement. For example, in September 2015, Deputy Attorney General Sally Yates issued a memorandum (the "Yates Memo") within the U.S. Department of Justice ("Justice") in which she described how "[o]ne of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing."[26] As Yates wrote, this form of "accountability is important for several reasons: it deters future illegal activity, it incentivizes changes in corporate behavior, it ensures that the proper parties are held responsible for their actions, and it promotes the public's confidence in our justice system."[27] Even in the context of for-profit colleges, the U.S. Securities and Exchange Commission has reached settlements with corporate executives—at levels criticized as resoundingly insufficient[28]—for wrongdoings to investors, albeit not to students, under the Securities and Exchange Act.[29]

This paper is part of a series drafted by Student Defense that explores underused authorities in the HEA, and which highlights how a reinvigorated Department can protect students and taxpayers—even absent any new legislation or regulations. The goal of this paper is to highlight the mechanisms that the Department can use to better protect taxpayer interests and incentivize owners and executives to act in the best interests of students. By promoting and exercising authorities, the Department can protect taxpayers from financial losses and carry out the clear intent of the HEA, and its 1992 amendments, by ensuring that institutions that leave taxpayers on the hook, and those who control them, do not profit while students suffer.

Statutory Authorities to Require or Allow the Assumption of Liability by Individuals for Financial Losses to the United States

The HEA includes an array of authorities that either *require* the Department to hold certain individuals personally liable for losses to the government or gives it the authority to do so. These authorities are not mutually exclusive; an institution may incur financial losses to the Department on any number of bases,[30] and the Department may use one or all of these authorities to require the assumption of liability by one or more members of the Institutional Control Group.

First, and most broadly, to the extent "necessary to protect the financial interest of the United States," the Secretary may require a member of the Institutional Control Group to assume personal liability for "financial losses to the Federal Government, student assistance recipients, and other program participants" for funds under Title IV.[31] In addition, with the same language about protecting the financial interest of the United States, the Secretary may also require "financial guarantees" from such individuals in an amount "determined by the Secretary to be sufficient to satisfy the institution's potential liability to the Federal Government, student assistance recipients, and other program participants for funds under [Title IV]."[32]

These two authorities apply broadly to members of the Institutional Control Group. By statute and regulation, the Secretary "generally considers a person to exercise substantial control over an institution" if:

> (i) the individual directly or indirectly controls at least a twenty-five percent ownership interest in the institution;
>
> (ii) the individual, either alone or together with other individuals, represents, under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who have, individually or in combination with the other persons represented or the individual representing them, a twenty-five percent ownership interest in the institution; or
>
> (iii) the individual is a member of the board of directors, the chief executive officer, or other executive officer of the institution or of an entity that holds a twenty-five percent ownership interest in the institution.[33]

Thus, any individual who is a member of the board of directors, the CEO, or other executive officer of the institution may be held personally liable. In addition, any individual who directly or indirectly controls at least twenty-five percent of the institution or is a member of the board, the CEO, or other officer of an entity that holds at least twenty-five percent of the institution may also be held personally liable.

This section of the HEA does not limit the types of events that give rise to these liabilities. Accordingly, for example, if a student loan borrower submits a "borrower defense" claim—*i.e.*, asserting a "defense to repayment" of a federal loan based on an act or omission of the IHE—the Department can assess that liability to the institution—*i.e.*, making the IHE liable for the costs of loan discharges. In the borrower defense context, the Department has regulations specifically setting forth the process by which it can recover financially from the IHE.[34] In other contexts, *e.g.*, for closed school loan discharges, the Department uses a program review to administratively assess a liability.[35] In such a case, if the institution itself, for whatever reason, does not pay that liability, the Department can use these authorities to impute the liabilities to, or require assumption by, one or more members of the Institutional Control Group.

Second, Congress established certain situations in which student loan borrowers have a right to a discharge of their federal student loans, *e.g.*, where the student is "unable to complete the program in which such student is enrolled due to the closure of the institution," where the student's eligibility was "falsely certified" by the institution, where the individual's eligibility was "falsely certified as a result of a crime of identity theft," or where the institution "failed to make a refund of loan proceeds which the institution owed to such student's lender."[36] In cases where these standards are met, the Secretary has been instructed by Congress to "discharge the borrower's liability," to "repay[] the amount owed on the loan" (in the case of Federal Family Education Loan Program ("FFEL") loans), and then to either settle the loan obligation or "pursue any claim available to such borrower against the institution and its affiliates and principals."[37] Unlike with respect to borrower defense discharges, this statutory language is mandatory, evincing Congress's clear intent for the Department to recover from the institutions or its "affiliates and principals" when these discharges are granted.

Third, under the HEA, any individual who the Secretary determines exercises "substantial control" over an institution and is "required to pay, on behalf of a student or borrower, a refund of unearned institutional charges to a lender[] or to the Secretary," but "willfully fails to pay such refund or willfully attempts in any matter to evade such payment," shall be held liable not only for the amount of the refund, but also that same amount as a penalty owed to the Department.[38]

Finally, although not as explicit, other provisions in the HEA highlight the importance Congress placed on collecting from those who have caused financial losses. For instance, the HEA requires the Department to include, in the Direct Loan Agreement ("DLA")[39] with IHEs participating in the Direct Loan program, provisions requiring an institution to "accept responsibility and financial liability stemming from its failures to perform its functions pursuant to the [DLA]."[40] While this authority, on its face, only applies to an "institution," and not an individual, if an institution can be held financially liable for losses to the United States, the Department can, under the authorities noted above, require personal assumption of liability. In addition, the HEA directs the Department to promulgate regulations that establish "reasonable standards of financial responsibility and appropriate institutional capability" for institutions participating in Title IV, HEA programs, "including any matter the Secretary deems necessary to the sound administration of the financial aid programs, such as the pertinent actions of any owner, shareholder, or person exercising control over an eligible institution."[41] The Department's regulations provide that an institution is not financially responsible if "[a] person who exercises substantial control over the institution, or any member or members of the person's family alone or together" "[e]xercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a Title IV, HEA program requirement" or "[o]wes a liability for a violation of a Title IV, HEA program requirement" that is not being repaid in accordance with an agreement with the Secretary.[42] In addition, institutions are required to report to the Secretary if someone gains the ability to "affect substantially the actions of the institution."[43] Failure to do so can result in adverse action being taken against the institution.[44]

Procedural Mechanisms to Hold Individuals Personally Liable for Losses to the United States Caused by an IHE

Implementing these existing statutory provisions could have a substantial impact in the higher education market. As David Weil, former head of the U.S. Department of Labor's Wage and Hour Division, has noted, when a regulatory agency makes full use of its financial enforcement remedies—such as civil penalties or liquidated damages—it provides "economic incentive[s] to comply with the law in the first place, creating incentive to change future behavior."[45] But this, Weil notes, is often not the case in many enforcement agencies. In the context of the Fair Labor Standards Act, Weil has specifically highlighted the need to ensure that "all parties"—irrespective of corporate formalities or relationship—are held responsible for workplace standards. Likewise, the 2015 Yates Memo emphasized how "pursuing individual actions in civil corporate matters will result in significant long-term deterrence."[46] To put in the context of Title IV, if those individuals who possess substantial control over an institution lack personal incentive to ensure repayment of liabilities after a school closes or otherwise, those debts and liabilities will likely remain unpaid. This is precisely the scenario that the Department's Inspector General sought to address when he recommended the amendments to the HEA in 1992.[47]

Nevertheless, despite the clear grants of authority to the Department to impose personal liability, or require financial guarantees, neither the HEA nor the Department's regulations include specific procedures by which the Department can demand payment from an individual or can effectuate a judgment to collect such payments. The Department does, however, have well-established precedent and process for assessing liabilities against an institution. For example, after Federal Student Aid ("FSA") conducts a Program Review of an institution, it issues a Final Program Review Determination ("FPRD") which may require an institution to pay liabilities to the Department or students.[48] Similarly, the Department may assess liabilities against an institution after reviewing its annual financial audit[49] or its "close out" audit after the institution's participation in Title IV ends.[50] The Department has also established procedures by which an IHE can appeal a liability determination to the Department's Office of Hearings and Appeals ("OHA") and then to the Secretary of Education.[51]

Shortly after the 1992 HEA Amendments took effect, the Department's Office of Student Financial Assistance, the precursor to the modern FSA, attempted to use these administrative processes to impose personal liability. In a 1994 opinion, OHA acknowledged the Department's authority to require "financial guarantees of personal liability from an owner to satisfy the institution's potential liability to the Department," which could include a demand for the owner's assumption of personal liability for the payment of liabilities to the Department.[52] Notably, the Administrative Judge also highlighted how the Department "has limited resources and is not well equipped to go behind the corporate form."[53]

Despite its commentary on the topic, the 1994 OHA opinion did not restrict or limit the Department's administrative authorities. However, the following year, OHA slammed the door shut on using OHA as an appellate body over situations in which the Department required the individual assumption of financial liabilities. The facts surrounding *In the Matter of Cosmetology College* arose after the school was sold and the original owner retained no ownership or control. Although the new owner received approval from the state authorizer and an accreditor, he did not submit or complete a change-in-ownership form from the Department. Roughly six months after the sale, the institution closed. The Department subsequently attempted to recover Title IV funds from the original owner of the institution. Reviewing the facts, OHA determined that while the school was liable to the Department for approximately $161,000, it was outside OHA's jurisdiction to "address the question of personal liability," which was to be "resolved between the respective contestants."[54]

Within a few short years, this position—that determinations of personal liability were beyond OHA's jurisdiction—had become well-established. In 1996, citing the *Cosmetology College* decision, OHA noted that: "[c]oncerning the issue of [the owner's] personal liability, I agree with counsel for [the Department] that the issue is beyond the scope of this proceeding and jurisdiction."[55] *See also, e.g., In the Matter of Excelsis Beauty College*, Dkt. No. 98-108-SA, U.S. Dep't of Educ. (October 4, 1999) ("The statements in *Cosmetology College* are unambiguous; the personal liability of a former owner is not a matter within the jurisdiction of this tribunal."); *In the Matter of Metropolitan Beauty Aca•emy*, Dkt. No. 02-56-SA, U.S. Dep't of Educ. (Jan. 29, 2003) ("This obligation is an institutional responsibility falling on Metropolitan. If this responsibility creates personal ramifications involving the present and prior owners, those disputes remain outside the purview of this tribunal."). To our knowledge, none of these cases was reversed on appeal.[56]

The limitations by OHA on the scope of its own jurisdiction—and the apparent acceptance of that position by the Department's Office of the General Counsel[57]—does not bind the Department's exercise of its authority to require the assumption of personal liability more broadly. As an initial matter, the Department could certainly seek to use these authorities in a different case and appeal any adverse jurisdictional determination to the Secretary, *i.e.*, requesting that the Secretary reverse this position.[58] But even that approach would leave unanswered the question of how the Department would *collect* a liability, even if such a liability could be established administratively and appealed through OHA. (Importantly, as described above, the Department's authorities to collect a liability from an institution rest largely on its authority to end an institution's eligibility to participate in Title IV.)

Importantly, OHA has recognized that its jurisdictional limitation does not preclude the Department from requiring the assumption of debt or taking collection efforts against individuals.[59] In *In the Matter of Chicago E•ucational, Inc.*, the institution—Chicago Educational Inc. ("CEI")—went out of business and sought to dismiss, as moot, an audit that assessed liabilities against it. In that case, OHA ruled that the fact that the school had closed did not render the case moot because the Department could still seek to collect upon the liability. OHA recognized that it was "the wrong forum to consider whether CEI has any assets, or whether CEI's owner has any personal liability[.]" Those issues, according to OHA, were for other courts to consider.

Outside of the HEA and its own administrative processes, however, the Department has both the mandate and the means to hold individuals personally liable for these debts. As described in OMB Circular A-129, all federal agencies "shall have a fair but aggressive program to recover delinquent debt," which includes overpayments to contractors, grantees, employees, and beneficiaries, as well as fines, penalties and other debts that are not paid or otherwise resolved.[60] Short of simply compromising, settling, or simply writing off the debt, the Department has two primary avenues for collection: (a) judicial collection through the U.S. Department of Justice ("Justice") under the Federal Debt Collection Procedures Act ("DCPA");[61] or (b) administrative collection through the U.S. Department of Treasury ("Treasury") under the Debt Collection Improvement Act ("DCIA").[62]

A. Pursuing Owners and Executive in Court: The Federal Debt Collection Procedures Act

Although the HEA gives the Department authority to require individuals to assume an institutional debt, it does not provide cause of action for the Department or the United States to use in court to actually *collect* on that assumed debt. In such a case, the DCPA provides the "exclusive civil procedure for the United States" to either "recover a judgment on a debt" or to "obtain, before judgment on a claim for a debt, a remedy[.]"[63] Although this statute, to our knowledge, has never been used by the United States to collect on an administrative debt established by the Department,[64] it has been used by other agencies to collect from owners of entities that owe debts to the government.[65] Indeed, the Act was enacted "to create a comprehensive statutory framework for the collection of debts owed to the United States government, in order to improve the efficiency and speed in collecting those debts."[66]

To collect on an assumed debt, the Department should first establish the debt[67] by issuing a "certificate of indebtedness" to the member of the Institutional Control Group from whom it seeks to collect, informing that individual or individuals of the debt and the required assumption.[68] As a practical matter, this would take place after the institution's liability to the Department becomes final and unpaid.[69]

Under the Federal Claims Collection Standards ("FCCS"), the Department must then "promptly" refer to Justice for litigation those "debts on which aggressive collection activity has been taken" in accordance with the standards for the administrative collection of claims.[70] Nevertheless, if the Secretary has determined that administrative collection should not be used because it would be best to "exempt[]" that "class of debt"—*i.e.*, debts owed by IHEs resulting from participation in the Title IV program—from administrative collection, the Secretary may do so consistent with the FCCS.[71]

Once the debt has been referred to Justice, the United States would file a complaint against the individual in U.S. District Court under the DCPA, alleging the "(1) the existence of a debt, (2) owed by defendants, (3) that is payable to the Government, (4) that a demand for payment of the debt has been made to defendants, and that (5) payment of the debt has thus far been refused by defendants."[72] Because no "judgment" will have yet been issued under the DCPA, the United States could seek "prejudgment remedies" or to simply establish a judgment through procedures of the District Court and then seek post-judgment remedies.

Thus, in the example of Park West Barber School, discussed above, which owed more than $19.8 million to the Department after it closed in 2016, FSA would first assess the liability through a Final Program Determination Letter. The Department did exactly that in June 2017.[73] The institution would then have all rights to administratively appeal that liability through OHA. Once that liability is final and remains unpaid, the Department would issue Certificates of Indebtedness to one or more members of the Institutional Control Group, citing its authority to require the assumption of personal liability under HEA § 498(e)(1)(B), 20 U.S.C. § 1099c(e)(1)(B). Justice would then use its ordinary DCPA litigation authority to bring suit against the individuals for debts owed, and—in all likelihood—promptly file for summary judgment to establish the liability as a monetary judgment.[74] By ensuring that the existence and amount of debt (as to the IHE) is "final"[75] before the Department issues the Certificate of Indebtedness, any issues in a subsequent court proceeding under the DCPA should be limited to the issue of "substantial control" and the assumption of liability, rather than the existence of the liability itself.[76] Once a judgment is established, the DCPA sets forth the mechanism to collect upon the judgment, or enforce the judgment through payment, the execution of a lien, or other collection mechanism.[77]

B. Pursuing Owners and Executives Administratively: The Debt Collection Improvement Act

In addition to the judicial remedies under the DCPA, the federal Debt Collection Improvement Act provides extensive administrative collection powers over debts owed to the Department. Under the DCIA, the Department has the authority to collect on its debt in a variety of ways without a court order, including by reporting delinquent non-tax debt to credit agencies, offsetting the debtor's federal tax refund or federal benefit payments, or garnishing a debtor's wages.[78]

Ultimately—whether offset, wage garnishment, or adverse credit reporting—the Department would use the same mechanisms it currently uses for involuntary collections from defaulted student loan borrowers. For example, to collect on debt by offset, as is the case under the DCPA, the Department would first need to establish a final debt to the IHE and then notify the debtor of the assumption of that liability.[79] If unpaid, the Department would certify to the Bureau of the Fiscal Service ("Fiscal Service") at Treasury that the debt is valid and legally enforceable for purposes of an offset, including a certification that the debt is due, in the amount stated, with no legal bars to collection, and that the Department has met all due process requirements applicable to the debt it seeks to collect through offset.[80] The Department would also submit to Fiscal Service the identifying information for the debtor, as well as the balance due on the debt.[81] Treasury then would accept notice from ED that a debtor owes a "past-due legally enforceable debt," offset the debtor's federal tax refund or federal benefit payment, pay the amount offset to ED, and notify the debtor of the offset.[82]

To be certain, these mechanisms—offset, garnishment, or credit reporting—may be of limited utility in the case of particularly wealthy or destitute former executives, who may be unlikely to have future "wages" subject to garnishment or tax refunds to offset. And while Social Security offset is an option, a fifteen percent offset of even the maximum Social Security benefit may not provide much disincentive to change corporate behavior.

Pre-Enforcement Activities: Financial Guarantees and Providing Notice

In addition to working with Justice and Treasury to use judicial and administrative authorities to collect debts, the Department can use two pre-enforcement approaches to notify IHEs of its intentions to exercise its collection authorities. Although the clarity of existing authorities does not require the Department to notify regulated entities of an intent to hold individuals personally accountable, doing so would promote the same sort of deterrence effects that come with actually using the authority.[83] By publicizing these approaches in advance of enforcement, the Department will be transparent and put IHEs—and the public—on notice of its intent to use the extent of the authorities that Congress has provided.[84] Of course, providing notice could also have the effect that institutions insure against the risk of potential future loss, which has the advantage of requiring a third-party underwriter to assess the risk of insurance and use that assessment in its insurance pricing scheme.[85]

Such communications and notice can take a number of forms. *First*, the Department can—with evidence that doing so is "necessary to protect financial interest of the United States"—require members of the Institutional Control Group to post financial guarantees to mitigate future losses. *Second*, the Department can publicize guidance regarding how the Department intends to make discretionary referrals to Treasury or Justice to collect liabilities. *Third*, the Department can modify its gatekeeping agreements with IHEs, namely the Program Participation and Direct Loan Agreements, to both provide notice and ease any challenges related to collections.

A. Financial Guarantees by Members of the Institutional Control Group

As noted above, the HEA provides the Department authority, to the "extent necessary to protect the financial interest of the United States," to require that an institution or one or more individuals who exercise "substantial control" over the institution to provide "financial guarantees" to the Department "in an amount determined by the Secretary to satisfy the institution's potential liability to the Federal Government, student assistance recipients, and other program participants for federal funds under [Title IV]."[86] In contrast to the assumption of personal liability for a debt, discussed above, a "financial guarantee" suggests a pre-payment or escrow of funds sufficient to cover future liabilities.

To our knowledge, this authority has not been used by the Department. In final regulations adopted in 1997, the Department included a provision whereby an institution that is not financially responsible "because the persons or entities that exercise substantial control over the institution owe a liability" can nevertheless participate in the Title IV program by meeting certain standards. In such a case, the Secretary has the authority to require the institution or individuals who exercise substantial control over the institution (or both) to "submit to the Secretary financial guarantees for an amount determined by the Secretary to be sufficient to satisfy any potential liabilities that may arise from the institution's participation in the title IV, HEA programs."[87] But of course, the Secretary's authority to require "financial guarantees" from "an institution participating" or "seeking to participate" is broader than the 1997 regulations and can be used by the Department to ensure that institutions do not act in a manner that is contrary to "the financial interest of the United States."

B. Notice of Intent to Collect

Additionally, the Department could issue an internal policy directive[88] or other interpretive statement informing IHEs and the public of its intent to issue Certificates of Indebtedness to those who own or exercise "substantial control" of an IHE when liabilities remain unpaid. Such a statement could explain the importance of the certificate, and the authority of the United States to use the certificate to collect upon debts owed. The Department could also set forth the criteria it will use to determine whether a referral should be made to Justice in order to initiate an action under the DCPA: relying on the size of the debt, the circumstances that gave rise to the debt, and whether the Department would consider mitigating factors (such as institutional performance on Cohort Default Rates or other metrics).

IHEs and individuals who are part of an Institutional Control Group are, quite naturally, likely to have reservations about the concept of personal liability, perhaps asserting that, particularly for non-profit institutions, individuals may be less likely to serve on a board of directors. But this too is something that the Department can consider by obtaining public comments on an internal policy to guide its use of these authorities. For instance, the Department may wish to more aggressively require the assumption of personal liability, and take more aggressive collection actions, when an individual has personally profited (either through shareholder distributions from a proprietary school, or excessive salary at a non-profit or proprietary school) from the acts and omissions of the IHE that gave rise to the liability. Such an approach could be considered consistent with the testimony of the Department's Inspector General in 1992, which was cited by Congress when adopting these provisions.[89] Likewise, the Department could confirm that its intent is not to impose a blanket requirement that members of the Institutional Control Group assume personal liability in all circumstances, but rather would assess the institution's performance meeting the core objectives of the Higher Education Act. Ultimately, however, under the Supreme Court's decision in *Heckler v. Chaney*, the decision to make such a referral is almost certainly within the Department's discretion.[90]

C. Modifying the Program Participation Agreement and Direct Loan Agreement

Finally, the Department can also use its gatekeeping agreements with institutions[91]—*i.e.*, documents that an IHE must physically sign—to periodically remind IHEs that the Department has both the authority and the mandate to recover from individuals when an entity has unpaid liabilities. Including provisions that pertain to personal liability may result in more careful administration of Title IV, HEA programs, thus preventing unnecessary school closures, eliminating or reducing the possibility of borrower defense claims, or the expenditure or other use of excess funds that would result in the discharge of loans or the return of funds to the Department.

Although the Department need not change these agreements to impose personal liability on those with "substantial control," doing so could remind key officials (including those who sign the agreements) that such liability is a potential outcome. Doing so could also ease the Department's use of federal debt collection authorities. For example, the Department could include:

- A provision requiring institution representatives who sign the DLA to acknowledge that there may be a valid claim for funds, within the meaning of the 31 U.S.C. § 3701, against those who exercise "substantial control," over the institution (*i.e.*, the "institutional control group") stemming from the failure to "perform [an institution's] functions pursuant to the [DLA]."
- A provision requiring all individuals with "substantial control" over an institution to acknowledge, in writing, that the Department can legally require them to personally assume liabilities established by the Department. Such a provision should also include an acknowledgment by the individuals that institutional liabilities to the Department that are past-due can be legally enforceable against those individuals. Such a provision can also require their consent to the use of nontax debt collection mechanisms to the extent permitted by law.[92]
- A provision requiring that the institution and individuals with "substantial control" over the institution consent to the maintenance of information regarding such "claims" in a "system of records," that identifies not only the institution but also the members of the Institutional Control Group, and place those individuals on notice that information regarding the failure to repay any such liability will be provided to consumer reporting agencies.[93]
- A provision acknowledging that the procedures afforded to the institution for a reconsideration of any liability, *i.e.*, the OHA appeal process in 34 C.F.R. Part 668 Subpart G, are sufficient "reconsideration" procedures for a liability assessment under 31 U.S.C. § 3711(e)(2). The provision could note that if such procedures are followed, and the debt remains delinquent for a "period of 180 days" after a requirement of assumption, the Department can "transfer the debt or claim to the Secretary of the Treasury" who may take "appropriate action to collect" on the claim.[94]

Endnotes

1 Dan Zibel is Chief Counsel, Vice President, and a co-founder of the National Student Legal Defense Network ("Student Defense"). He previously served as Deputy Assistant General Counsel for Postsecondary Education in the Office of General Counsel at the U.S. Department of Education. Alice Yao is Senior Counsel at Student Defense. She previously served as an attorney in the Office for Civil Rights at the Department.

2 HEA § 498(e)(1)(A), 20 U.S.C. § 1099c(e)(1)(A).

3 HEA § 454(a)(3), 20 U.S.C. § 1087d(a)(3).

4 HEA § 437(c)(1), 20 U.S.C. § 1087(c)(1).

5 *See* P.L. 102-325 § 498 (July 23, 1992) (adding HEA § 498(e)(1)(B), 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).

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

7 *Id.*

8 *See* 34 C.F.R. § 685.214.

9 *See infra* n. 20.

10 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.

11 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.

12 According to press reports, ITT CEO Kevin Modany 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., 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, Jack Massimino 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.

13 Adversary Complaint ¶ 69, *In re: ITT Educ. Servs., Inc.*

14 Andrew Kreighbaum, *Growing Price Tag for College Shutdowns*, Inside Higher Ed (Sept. 4, 2019), *available at*: https://www.insidehighered.com/news/2019/09/04/costs-federal-government-mount-profit-college-shutdowns.

15 During 2014, the Department obtained over $94 million from ITT to hold in escrow to protect the Department from losses. *See* Adversary Complaint ¶¶ 18, 21, *In re ITT Educ. Servs., Inc.*, No. 16-07207-JMC-7A, Dkt. 2862 (Bankr. S.D. Ind. Sept. 7, 2018). Following the filing of an Adversary Complaint against the Department in the bankruptcy proceeding—in which the ITT bankruptcy trustee asserted, *inter alia*, that the Department was "unjustly enriched" by receiving those payments—the Department ultimately settled with the Trustee and returned $29 million to the ITT estate. ITT Trustee's Motion to Compromise and Settle ¶¶ 13, 31(b). As part of the settlement, the Department acknowledged that it estimated losses totaling $440 million. *See supra* n.10. The Department also agreed to cap a claim in the bankruptcy at approximately $283 million. *See* ITT Trustee's Motion ¶¶ 31(h)(2). In light of the $440 million in estimated losses, mitigated by the $65 million in escrow funds retained by the Department, the Settlement appears to concede that approximately $102 million in estimated losses will never be recovered from the institution.

16 *See generally* 2019-20 Federal Student Aid Handbook, Vol. 2, Chapter 8 (discussing the use of program reviews to assess liabilities against participating IHEs), *available at:* https://ifap.ed.gov/sites/default/files/attachments/2020-01/1920FSAHbkVol2Master.pdf.

17 *See generally* Ben Miller, *College Executives Need to Pay Up When Their Schools Close Abruptly*, Center for American Progress (March 19, 2019), *available at:* https://www.americanprogress.org/issues/education-postsecondary/news/2019/03/19/467366/college-executives-need-pay-schools-close-abruptly/; Yan Cao, *How DeVos is about to Make Life Harder for Victims of School Closures*, The Century Foundation (July 23, 2019) *available at:* https://tcf.org/content/report/devos-make-life-harder-victims-school-closures/.

18 We note that the United States has successfully obtained civil judgments against individuals in cases brought under the False Claims Act relating to an institution's participation in the Title IV programs. *See, e.g.*, Final Judgment, *United States v. FastTrain II Corp. et al.*, No. 12-Civ-21431-COOKE/TORRES, Dkt. No. 233 (S.D. Fla. Feb. 16, 2017) (awarding damages in the amount of $4,129,765, trebled, minus any restitution he pays to the government, together with pre- and post-judgment interest," plus a "civil penalty of $11,000 for each of the 924 false claims Defendants made to the Department of Education").

19 Under the Department's regulations governing "past performance," an otherwise eligible IHE is deemed not to be financially responsible if a person who exercises substantial control over an institution, or any member of that person's family alone or together "[e]xercises or exercised substantial control over another institution . . . that owes a liability for a violation of a title IV, HEA program requirement" or "[o]wes a liability for a violation of a title IV, HEA program requirement." 34 C.F.R. § 668.174(b). *But see infra* at n. 87 & accompanying text (discussing 34 C.F.R. § 668.175(g)).

20 For example, after ITT Educational Services, Inc., the parent of ITT Technical Institute, filed for bankruptcy in 2016, the Department filed a proof of claim in that proceeding to attempt to recover debts owed to the United States. *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"). *See also* Voluntary Petition for Non-Individuals Filing for Bankruptcy, *In re ITT Educ. Servs., Inc.*, No. 16-07207-JMC-7A, Dkt. 1 (S.D. Ind. Sept. 16, 2016) ("ITT Bankruptcy Petition"). In the ED ITT Proof of Claim, the Department stated a claim of $230,518,448.19. In contrast, ITT's Summary of Assets and Liabilities, filed in October 2016, showed total assets of $389,175,935.14—of which approximately $47,000 was owed to secured creditors, $9,387,474.49 to priority unsecured claims, and more than $1 billion in unsecured claims.

21 Ltr. from Martina Fernandez-Rosario, Division Director San Francisco/Seattle School Participation Division, Federal Student Aid to Mr. Craig Jalbert re: WyoTech-Long Beach Final Program Review Determination 14 (February 22, 2019) (emphasis in original) ("WyoTech-Long Beach FPRD") *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/WyoTech_Long_Beach_CA_012873_02222019_FPRD_Redacted.pdf; *see also, e.g.*, Ltr from Chris Miller, Division Director, Federal Student Aid to Sean Harding, Anthem College re: Final Program Review Determination for Anthem College (May 5, 2015) (establishing $320,023 in liabilities but asserting that it was "not [making] a demand for payment") *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/AnthemCollege_Georgia_02263108_FPRD__05_05_2015.pdf; Ltr. from Betty Coughlin, Division Director, Federal Student Aid to Juanita Serbia Hernandez, President, Serbia's Technical College re: Final Program Review Determination (Feb. 2, 2017) (establishing $314,561 in liabilities but asserting that it was "not [making] a demand for payment"), *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/Serbia_Technical_College_PR_025024_2_2_17_FPRD_Redacted.pdf.

22 Chapter 7 Voluntary Petition, *In re: Park West Barber Sch., LLC*, No. 16-90356, Dkt. 1 (Bankr. M.D.N.C. April 26, 2016).

23 Notice of Need to File Proof of Claim Due to Recovery of Assets, *In re: Park West Barber Sch., LLC*, No. 16-90356, Dkt. 9 (Bankr. M.D.N.C. June 2, 2016).

24 Ltr. from Chris Miller, Division Director, Federal Student Aid to Corey L. Bell, Jr., President, Park West Barber School re: Final Program Review Determination 2 (June 28, 2017), *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/Park_West_Barber_School_NC_04149300_06282017_FPRD_Redacted.pdf.

25 Chapter 7 Trustee's Final Account and Distribution Report Certification that the Estate has been Fully Administered and Application to be Discharged, *In re: Park West Barber Sch., LLC*, No. 16-90356, Dkt. 88 (Bankr. M.D.N.C. July 17, 2017).

26 Memorandum from Deputy Attorney General Sally Yates, U.S. Dep't of Justice (Sept. 9, 2015) *available at:* https://www.justice.gov/archives/dag/file/769036/download.

27 *Id.*

28 Ltr. from Sen. Elizabeth Warren, Sen. Sherrod Brown, et al. to Hon. Jay Clayton, Chairman Securities & Exchange Comm'n (March 4, 2019) (criticizing the SEC's settlement with former Corinthian College executives), *available at:* https://www.warren.senate.gov/imo/media/doc/Letter%20to%20Jay%20Clayton%20on%20Corinthian%20SEC%20Settlement%203.4.2019.docx.pdf; Ltr. from Sen. Richard Durbin, Sen. Elizabeth Warren et al. to Hon. Jay Clayton, Chairman Securities & Exchange Comm'n (July 20, 2018) (criticizing the SEC's settlement with former ITT executives), *available at:* https://www.durbin.senate.gov/imo/media/doc/7.20.18%20ITT%20SEC%20letter%20FINAL.pdf.

29 *See* Litigation Release No. 24410, U.S. Securities & Exchange Comm'n, SEC Charges Former Executive Officers for Their Roles in Corinthian College's Disclosure Failures (February 25, 2019), *available at:* https://www.sec.gov/litigation/litreleases/2019/lr24410.htm; Press Release, U.S. Securities & Exchange Comm'n, Former CEO and CFO of ITT Barred and Ordered to Pay Penalties (July 6, 2018) *available at:* https://www.sec.gov/news/press-release/2018-129.

30 In the case of ITT, the ED ITT Proof of Claim asserted losses incurred for amounts based on closed school discharges, borrower defense discharges, and spending or otherwise using excess Pell Grant funds, thereby breaching fiduciary duties to, and Program Participation Agreements with, the Department. *See* ED ITT Proof of Claim at 1–4.

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

32 HEA § 498(e)(1)(A), 20 U.S.C. § 1099c(e)(1)(A).

33 HEA § 498(e)(2)(A), 20 U.S.C. § 1099c(e)(2)(A). *See also* 34 C.F.R. § 668.15(f)(2). Notably, the twenty-five percent ownership figure was adopted by regulation, not by statute. The Secretary may, of course, change that figure—reinterpreting the statutory phrase "standard ownership interest"— through the standard regulatory process.

34 34 C.F.R. § 668.87.

35 *See, e.g.*, Ltr. from Brenda Yette, Federal Student Aid to Jeffrey Myher, President, Globe University re: Final Program Review Determination – Closed School Loan Discharges 4 (Aug. 5, 2019) *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/Globe_University_MN_004642_080519_FPRD_Redacted.pdf (assessing closed school loan discharge liabilities through a Final Program Review Determination and highlighting how, if additional liabilities accrue, "the Department will use the program review process to recover those liabilities from Globe at that time").

36 HEA § 437(c), 20 U.S.C. § 1087(c).

37 *Id.*

38 More specifically, the HEA provides that the liability shall be "to the same extent with respect to such [unpaid] refund that such an individual would be liable as a responsible person for a penalty under § 6672(a) of [the] Internal Revenue Code." HEA § 498(e)(6)(C); 20 U.S.C. § 1099c(e)(6)(C). That section of the IRC provides for a penalty "equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over." IRC § 6672(a); 26 U.S.C. § 6672(a). Nevertheless, it is not immediately obvious how the Department would actually levy a penalty directly on an individual, as opposed to requiring the individual to assume the liabilities of an institution and collect via the mechanisms set out herein.

39 Any IHE participating in the Title IV programs must enter a Program Participation Agreement ("PPA") with the Department. The PPA is a standard agreement that incorporates Title IV and its implementing regulations. HEA § 487, 20 U.S.C. § 1094; 34 C.F.R. § 668.14. Separately, institutions that wish to participate in the Direct Loan program—by far the largest of the Title IV programs—must also enter into an additional agreement (known as the Direct Loan Agreement, or "DLA") with the Secretary setting forth the terms of participation. *See generally* HEA §§ 451–454, 20 U.S.C. §§ 1087a–1087d.

40 HEA § 454(a)(3), 20 U.S.C. § 1087d(a)(3).

41 HEA § 487(c)(1)(B), 20 U.S.C. § 1094(c)(1)(B).

42 34 C.F.R. § 668.15(c)(1). *See also id.* § 668.174(b). If a member of the Institutional Control Group of Institution A becomes a member of the Institutional Control Group of Institution B, and Institution A has an outstanding liability to the Department, the inclusion of that individual as a member of Institution B's Institutional Control Group will result in the Department deeming Institution B to not be financially responsible, and thus ineligible to participate in Title IV programs. Institution A's liability does not transfer to Institution B, but the consequences of an unpaid liability will follow the members of Institution A's Institutional Control Group.

43 *Id.* § 600.21(a)(6).

44 *Id.* § 600.21(e).

45 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.researchgate.net/publication/325287123_Creating_a_strategic_enforcement_approach_to_address_wage_theft_One_academic%27s_journey_in_organizational_change.

46 Yates Memo, *supra* n. 26.

47 *See supra* nn. 5–6 & accompanying text.

48 *See, e.g.*, Ltr. from Martina Fernandez-Rosario, Division Director San Francisco/Seattle School Participation Division, Federal Student Aid to Dr. Chang Yi Hsiang, President, World Medical Institute re: Final Program Review Determination (June 6, 2019) (assessing a $1,202,646 liability on the institution) *available at:* https://studentaid.gov/sites/default/files/fsawg/datacenter/library/FPRD/World_Medicine_Institute_HI_030725_06062019_FPRD_Redacted.pdf; WyoTech-Long Beach FPRD at 14 (assessing a $12,672,570 liability on a closed institution); *see also generally* 2019-20 Federal Student Aid Handbook 2-207.

49 *See generally* 34 C.F.R. § 668.23.

50 *Id.* § 668.26.

51 *See generally* 34 C.F.R. Part 668, Subpart H.

52 *In the Matter of Mile Hi Coll.*, Dkt. No. 93-105-ST, U.S. Dep't of Educ. (March 15, 1994), *available at:* https://oha.ed.gov/oha/files/2019/02/1993-105st.pdf.

53 *Id.*

54 *In the Matter of Cosmetology Coll.*, Dkt. No. 94-96-SP, U.S. Dep't of Educ. (Aug. 23, 1995), *available at:* https://oha.ed.gov/oha/files/2019/02/1994-96-sp.pdf. Indeed, the Department's regulations establishing the appeal procedures apply to any "institution" or "third-party servicer" that seeks to appeal a final audit determination or final program review determination. *See* 34 C.F.R. § 668.111(a). This language has not changed in any relevant respect since the addition of the HEA's personal liability provisions in 1992.

55 *In the Matter of Aero-Space Inst.*, Dkt. No. 96-59-SA, U.S. Dep't of Educ. (Aug. 26, 1996), *available at:* https://oha.ed.gov/oha/files/2019/02/1996-59-sa.pdf.

56 The OHA decisions in *Cosmetology College* and *Excelsis Beauty College* were "certified" as the Final Decisions of the Department by Secretaries Richard Riley and Rod Paige, respectfully. *See In the Matter of Cosmetology College*, Dkt. No. 94-96-SP, U.S. Dep't of Educ. (Nov. 27, 1995), *available at:* https://oha.ed.gov/oha/files/2019/03/1994-96-SP.pdf.; *In the Matter of Excelsis Beauty College*, Dkt. No. 98-109-SA (Oct. 11, 2001), *available at:* https://oha.ed.gov/oha/files/2019/03/1998-108-SA.pdf.

57 *See In the Matter of Aero-Space Institute*, Dkt. No. 96-59-SA, U.S. Dep't of Educ. (Aug. 26, 1996), *available at:* https://oha.ed.gov/oha/files/2019/02/1996-59-sa.pdf (noting the tribunal's "agree[ment] with counsel for [the Department] that the issue [of personal liability] is beyond the scope of this proceeding and jurisdiction.").

58 *See* 34 C.F.R. § 668.118–120 (describing the procedures for parties to appeal an OHA decision to the Secretary and granting the Secretary authority to "reverse the decision" of a hearing official).

59 *In the Matter of Chicago Educ., Inc.*, Dkt. No. 94-132-SA, U.S. Dep't of Educ. (Aug. 16, 1995), *available at:* https://oha.ed.gov/oha/files/2019/02/1994-132sa.pdf.

60 Executive Office of the President, Office of Management and Budget, Circular A-129: Policies for Federal Credit Programs and Non-Tax Receivables at 20 (Jan. 2013), *available at:* https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A129/a-129.pdf. Separately, the federal "Claims Collection Standards" provide that "[f]ederal agencies shall aggressively collect all debts arising out of activities of . . . that agency." 31 C.F.R. § 901.1(a).

61 28 U.S.C. § 3001 *et seq.* This should not be confused with the Fair Debt Collection Practices Act, 15 U.S.C. § 1692–1692p, which is the most common use of the term "FDCPA." For sake of clarity, we refer to the Federal Debt Collection Procedures Act as the "DCPA."

62 31 U.S.C. § 3720A.

63 28 U.S.C. § 3001(a)(1)–(2). The exception to this "exclusive" procedure, in applicable here, is when "another Federal law specifies the procedures for recovering" on a claim for the debt. *Id.* § 3001(b).

64 There are, however, a handful of instances in which the DCPA is cited in cases regarding the Department's efforts to collect on individual student loans. *See, e.g.*, *United States v. George*, 144 F. Supp. 2d 161 (E.D.N.Y. 2001). In addition, the DCPA has been used to obtain prejudgment attachment in cases involving Title IV funds brought by the United States under the False Claims Act. *See generally*, *United States v. Teeven*, 862 F. Supp. 1200, 1207 (D. Del. 1992).

65 *See, e.g., U.S. Small Bus. Admin. v. Bensal*, 853 F.3d 992 (9th Cir. 2017) (affirming summary judgment in favor of the Small Business Administration to void the debtor's disclaimer of his share of an estate under the DCPA for loans guaranteed by the debtor); *see also* 28 U.S.C. 3002(15)(b) (defining "United States" to include an "agency, department, commission, board, or other entity of the United States).

66 *NLRB v. E.D.P. Med. Comput. Sys., Inc.*, 6 F.3d 951, 954 (2d Cir. 1993) (internal quotations and citations omitted).

67 The DCPA defines a "debt" to include an amount that is owing to the United States on account of a "fine, assessment, penalty, restitution, damages, . . . recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States." 28 U.S.C. § 3002(3). Federal student loans of all types would fall under the DCPA because "the Government is either the lender or . . . the guarantor of the loan." *Sobranes Recovery Pool I, LLC v. Todd & Hughes Const. Corp.*, 509 F.3d 216, 224 (5th Cir. 2007).

68 *See, e.g.*, U.S. Department of Justice, Sample Certificate of Indebtedness (last visited Aug. 20, 2020), *available at:* https://www.justice.gov/sites/default/files/jmd/legacy/2013/12/27/cert-indebedtedness.pdf. *See also U.S. v. Bedi*, 318 F. Supp. 3d 561 (N.D.N.Y. 2018) (government's complaint to recover debt owed under the DCPA was supported by a Certificate of Indebtedness); *U.S. v. Ouachita Gravel Co.*, No. 6:18-CV-06093-RTD, 2019 WL 5309118 (W.D. Ark. Oct. 21, 2019) (same).

69 *See* 34 C.F.R. § 668.13(b) (affording institutions 45 days to appeal an audit determination or final program review determination to OHA). A party has thirty days to submit an appeal of an OHA determination to the Secretary. 34 C.F.R. § 668.119(a). If the party does not appeal that decision, it becomes final. *Id.* § 668.121(b). If the party appeals to the Secretary, the decision of the Secretary is final, unless there is a remand back to OHA. *Id.* § 668.121(a).

70 31 C.F.R. § 904.1(a). Under the FCCS, debts over one million dollars, or other such amount as the Attorney General may direct, get referred to the Civil Division. Debts of a lesser amount can be revered to Justice's Nationwide Central Intake Facility. *Id.*

71 *Id.* § 901.1(e)(6).

72 *Bedi*, 318 F. Supp. 3d at 568.

73 *See supra* n. 24 & accompanying text.

74 *See, e.g., U.S. v. Ouachita Gravel Co.*, No. 6:18-CV-06093-RTD, 2019 WL 5309118 (W.D. Ark. Oct. 12, 2019) (U.S. Department of Labor's Mine Health and Safety Administration sought summary judgment based on debts owed by defendant company).

75 *See* 34 C.F.R. § 668.121(a) (absent an appeal to the Secretary, the decision of OHA is the final agency action); *id.* § 668.131(b) (in the event of an appeal of an OHA decision to the Secretary, the opinion of the Secretary is the final agency action). *Cf.* 34 C.F.R. § 668.123 (declaring that the Department "will take steps to collect the debt at issue" if the Secretary sustains a liability).

76 *Bedi*, 318 F. Supp. 3d at 566; *see also United States v. Behrens*, 656 Fed. Appx. 789, 790 (8th Cir. 2016).

77 28 U.S.C. §§ 3201–3206.

78 34 C.F.R. §§ 285.2–285.5.

79 The statutory and regulatory authorities governing the Department's notice requirements for federal tax offset are 31 U.S.C. § 3720A(b)(1), 31 C.F.R. § 285.2(d)(1)(ii)(B), and 34 C.F.R. § 30.33(b). The statutory and regulatory authorities governing the Department's notice requirements for offset of other federal benefit payments are 31 U.S.C. § 3716(a)(1) and 31 C.F.R. § 285.4(d).

80 31 U.S.C. § 3716(a); *id.* § 3720A(b); 31 C.F.R. § 285.2(d)(1)(i); *id.* § 285.5(b), (d)(3).

81 31 C.F.R. § 285.5(d)(5).

82 26 U.S.C. § 6402(d)(1). *See also* 31 U.S.C. § 3716(c)(6); *id.* § 3720A(c); 31 C.F.R. § 285.4(f); *id.* § 285.4(h). Fiscal Service has the authority to reject a certification that is not submitted in the proper form or lacks required information. *See, e.g.*, *id.* § 285.2(d)(5).

83 Weil, *supra* n. 45, at 10 (discussing the importance of communicating with regulated entities of a new enforcement strategy).

84 Similarly, as Professor Cass Sunstein, who also served as the Administrator of the Office of Information and Regulatory Affairs under President Obama, recently highlighted, post-enforcement publicity also has deterrent effect on future wrongdoing. Cass Sunstein, Bloomberg Opinion, *When It Comes to Workplace Safety, Shaming Works* (March 9, 2020) *available at:* https://www.bloomberg.com/opinion/articles/2020-03-09/osha-shaming-tactic-improved-workplace-safety-before-trump; *see also* Matthew S. Johnson, *Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws*, 11 Am. Econ. R. 1866 (2020) (finding that "press releases revealing OSHA noncompliance lead to substantial improvements in workplace safety and health," and, more specifically, that such a release "leads to 73 percent fewer violations at 'peer' facilities in the same sector within a 5 kilometer radius").

85 The Department has previously noted the relevance of third-party insurance to its consideration of institutional financial responsibility. In the 2016 Borrower Defense Final Rule, the Department included certain reporting requirements and surety triggers, which were obviated where an institution had sufficient insurance to cover debts and liabilities that could result from the condition. *See, e.g.*, Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program, 81 Fed. Reg. 75,926, 76,006 (Nov. 1, 2016) (discussing the Final Rule).

86 HEA § 498(e)(1)(A), 20 U.S.C. § 1099c(e)(1)(A).

87 34 C.F.R. § 668.175(g)(2)(ii).

88 One approach would be to issue a memorandum, akin to the so-called "Hansen Memo" on incentive compensation, or to the "Mitchell Memo," which effectively revoked the internal guidance expressed in the Hansen Memo. *See* Memorandum from William D. Hansen, Deputy Secretary to Terri Shaw, Chief Operating Officer, Federal Student Aid re: Enforcement policy for violations of incentive compensation prohibition by institutions participating in student aid programs (Oct. 30, 2002) ("Hansen Memo"), *available at:* https://www.hmbr.com/wp-content/uploads/2015/06/Hansen-Incentive-Compensation-Memo.pdf; Memorandum from Ted Mitchell, Undersecretary of Education to James Runcie, Chief Operating Officer, Federal Student Aid re: Enforcement of the statutory prohibition on payment of incentive compensation by postsecondary institutions (June 2, 2015) ("Mitchell Memo"), *available at:* https://assets.documentcloud.org/documents/2095024/mitchell-incentive-compensation-memo.pdf.

89 *See supra* n. 6 & accompanying text.

90 470 U.S. 821, 837–38 (1985) (holding that, absent Congressional indication to the contrary, an agency's decision to exercise its civil enforcement authorities are "committed to agency discretion by law" under the Administrative Procedure Act, 5 U.S.C. § 701(a)(2)).

91 *See* HEA § 487(a), 20 U.S.C. § 1094(a) (program participation agreement); HEA § 454(a)(6), 20 U.S.C. § 1087d(a)(6) (direct loan agreement). To modify the direct loan agreement, the Department would need to conclude that it was "necessary to protect the interest of the United States and to promote the purposes of [Title IV]" to do so.

92 31 U.S.C. §§ 3716, 3720D.

93 *Id.* § 3711(e).

94 *Id.* § 3711(g).

National Student Legal Defense Network
1015 15th Street NW, Suite 600
Washington, D.C., 20005
202-734-7495
info@defendstudents.org

[Questions submitted for the record and the responses by Ms. Burke follow:]

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

March 29, 2021

Lindsey M. Burke, Ph.D.
Director, Center for Education Policy, and Mark A. Kolokotrones Fellow in Education
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, D.C. 20002

Dear Dr. Burke,

I would like to thank you for testifying at the March 17, 2021 Subcommittee on Higher Education and Workforce Investment hearing entitled "*Rising to the Challenge: The Future of Higher Education Post COVID-19*."

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Monday, April 5, 2021, for inclusion in the official hearing record. Your responses should be sent to Ben Sinoff of the Committee staff. He can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Enclosure

Higher Education and Workforce Investment Subcommittee Hearing
"Rising to the Challenge: The Future of Higher Education Post COVID-19"
Wednesday, March 17, 2021
1:00 p.m. (Eastern Time)

Representative Russ Fulcher (R – ID)

1. According to the U.S. Census Bureau's American Community Survey, 84% of the bottom 10% of students on degree attainment live in rural counties. This has gotten worse with COVID-19 due to lack of broadband access, limited choice, and other challenges.
2. Some 14% of the nation's rural counties have colleges and universities in them. In Idaho, loss of jobs in logging and forest management, mining, and energy exploration reduces job opportunities for students, including those getting degrees in forestry, engineering, biology, and various drone, GPS, and software management technology.
3. What recommendations can you offer to small schools who don't have the administrative resources to deal with compliance to federal rules? Are there federal rules you recommend eliminating, waiving for the next school year, or amend to help lower the expense of managing these schools?

Representative Jim Banks (R – IN)

1. A four-year college degree is a good bet for some students, but too many people don't graduate, and others don't choose programs with a good payoff. What are some alternatives to the four-year degree that could help students who aren't being served well by the current system?
2. Under Secretary DeVos, the Department of Education released comprehensive data on what students earn and how much debt they take on at the college major level. This was an important look at which programs pay off and which ones don't. How should the Department of Education build on this? What additional information would you like to see tracked and released?
3. Some people say college has fueled a degree treadmill, and that the benefits are as much of a "signaling device" as anything else. Can you explain this and is there a way to get off of the treadmill?
4. You mentioned increasing non-instructional staff earlier. What are a few examples of those positions, and how are institutions able to keep hiring them?

Representative Diana Harshbarger (R – TN)

1. Higher Education Data Transparency
   - Dr. Burke, as students choose the college or career of their choice, now more than ever, it is important for students to have accurate information on how institutions and academic programs will prepare them for success.
   - The Trump Administration made significant reforms to the Department of Education's College Scorecard — for the first time, publishing typical earnings of graduates two years after their graduation in specific fields of study.

- How can the College Scorecard program-level data help students and families choose the best post-secondary option for their future?
- How can this public data also help deter rising college costs?

2. Reform Federal Work Study
    - Dr. Burke, for many years, there has been interest in reforming the Federal Work Study (FWS) program to ensure student participants are well positioned to enter the workforce after graduation.
    - However, before the pandemic, over 90 percent of FWS wages were paid to students employed in on-campus jobs that frequently do not align with their program of study or future career interests.
    - Under current law, only 25% of an institution's FWS funding can be awarded to students working at private sector companies.
    - During the Trump Administration, the Department of Education launched a Federal Work Study Experimental Site Initiative and removed these barriers for work-study students to receive real-world job experience.
    - What recommendations do you have for how Congress can also improve upon the Federal Work Study program to enable work-study students to gain job experience in the career of their choice?

3. Student Loan Repayment
    - Dr. Burke, since March of last year, federal student loan borrowers have been in a loan forbearance status — not required to pay their student loans.
    - This relief if set to expire on September 30, 2021.
    - Can you detail why federal student loan borrowers should begin repaying their loans now if they can and what options were already in-place before the pandemic, for borrowers struggling to repay their loans?

4. Student Loan Cancellation
    - Dr. Burke, President Biden recently argued against cancelling $50,000 of federal student loans for borrowers. Despite even the President's voiced strong concerns of student loan cancellation, others continue to push for this unfair and misguided policy.
    - For the record — can you tell this subcommittee, why would ***any*** student loan cancellation policy be harmful for borrowers and taxpayers?

Rising to the Challenge: The Future of Higher Education Post COVID-19
Response to Member questions post-hearing

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

April 5, 2021

Lindsey M. Burke
Director, Center for Education Policy and Mark A. Kolokotrones Fellow in Education
The Heritage Foundation

Response to questions from Representative Russ Fulcher (R-ID)

1. According to the U.S. Census Bureau's American Community Survey, 84% of the bottom 10% of students on degree attainment live in rural counties. This has gotten worse with COVID-19 due to lack of broadband access, limited choice, and other challenges.
2. Some 14% of the nation's rural counties have colleges and universities in them. In Idaho, loss of jobs in logging and forest management, mining, and energy exploration reduces job opportunities for students, including those getting degrees in forestry, engineering, biology, and various drone, GPS, and software management technology.
3. What recommendations can you offer to small schools who don't have the administrative resources to deal with compliance to federal rules? Are there federal rules you recommend eliminating, waiving for the next school year, or amend to help lower the expense of managing these schools?

Federal regulations and reporting requirements can be particularly burdensome for smaller colleges and universities. Congress along with officials at the U.S. Department of Education can reduce these burdens by rescinding the elastic of the Higher Education Act (HEA) and streamlining the surveys required of colleges to provide data to the IPEDS system. Colleges should also review existing practices to identify areas in which productivity could be improved. Specifically:

A. **Rescission of the "elastic clause."** Congress can provide flexibility to colleges and universities by prohibiting accreditors from using their Title IV gatekeeping authority to impose onerous regulations on institutions. Federal law (20 U.S.C. § 1099b(g)) endows accreditors with the authority to require colleges to adopt standards outside of the scope of the HEA.[1] This "elastic clause" enables accreditors to impose additional standards unrelated to basic oversight of taxpayer funding, extending to issues such as institutional governance, which inhibit innovation. Congress should amend this "elastic clause" so that a university cannot lose eligibility to Title IV funding based on metrics not included in the Higher Education Act. This is also likely to reduce reporting requirements for colleges.
B. **Streamline IPEDS.** Universities must participate in the Integrated Postsecondary Education Data System (IPEDS) three times each year, collecting and submitting data to the U.S. Department of

[1] 20 U.S. Code § 1099b - Recognition of accrediting agency or association, Legal Information Institute, Cornell Law School, at https://www.law.cornell.edu/uscode/text/20/1099b

Education on a range of university outcomes and practices. These reporting requirements can be burdensome, particularly for smaller institutions. When the surveys change, as they do from time-to-time, colleges must find and report on new data they may not have previously collected, adding to the reporting burden. The National Center for Education Statistics (NCES) should streamline the questions included in the IPEDS surveys to, for example, eliminate reporting requirements on libraries, while reducing the frequency of reporting requirements (to every other year or every three years) for measures such as human resources and institutional characteristics. This would reduce administrative burdens for smaller institutions that do not have staff dedicated to completing and monitoring federal requests for data.

C. **Assess institutional practices.** For their part, smaller colleges should evaluate productivity by assessing and prioritizing academic programs that reinforce their core mission and prepare students for the workforce or further academic study. Colleges should also review facilities and amenities expenditures and auxiliary service costs such as dining services, student housing, and janitorial services, and consider outsourcing delivery and management of these functions, which are unrelated to their core mission as academic institutions.[2]

Representative Jim Banks (R-IN)

1. A four-year college degree is a good bet for some students, but too many people don't graduate, and others don't choose programs with a good payoff. What are some alternatives to the four-year degree that could help students who aren't being served well by the current system?

Young adults should really think about their career goals, and consider what higher education options are the best path for achieving them, before enrolling in a four-year college. They should explore four year colleges, along with community college, online options, career and technical education, trade schools, and apprenticeships. Young adults should also shadow individuals working in fields they want to pursue. They should have conversations with people they know in careers of interest to better understand their day-to-day work and to help inform their decision about the higher education options that are right for them.

2. Under Secretary DeVos, the Department of Education released comprehensive data on what students earn and how much debt they take on at the college major level. This was an important look at which programs pay off and which ones don't. How should the Department of Education build on this? What additional information would you like to see tracked and released?

The Department of Education should build on the existing college scorecard by popularizing the information on the site. For instance, public high school faculty, such as guidance counselors, should familiarize high school students with the information on school outcomes. The information currently tracked on the score card is robust, and additional data collection from the Department is not necessary, as many private entities provide information on college outcomes.

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[2] Lindsey M. Burke and Adam Kissel, Leading the Way on Higher Education Reform through Smart Giving: A Roadmap for Private Philanthropy, *Philanthropy Roundtable,* 2020, at https://www.philanthropyroundtable.org/home/programs/civic-education/leading-the-way-on-higher-education-reform-through-smart-giving-a-roadmap-for-private-philanthropy

3. Some people say college has fueled a degree treadmill, and that the benefits are as much of a "signaling device" as anything else. Can you explain this and is there a way to get off of the treadmill?

Median income for men with a bachelor's degree has remained at around $72,000 since 1990. When combined with the fact that degree attainment continues to rise, this suggests that obtaining a bachelor's degree may have more to do with the stigma of not attending a four year college than the actual value the degree is adding. Add to this the fact that many industries that previously did not require bachelor's degrees on the part of their employees now do so, despite the fact that the requirements of the job have largely remained the same. The way to get off this treadmill is to allow for alternatives to the four year degree model to flourish. In order to do so, policy should not favor a single route to climbing the ladder of upward mobility. Congress should decouple federal financing from accreditation in order to allow students to take their HEA Title IV funds to short term training programs, to individual courses and courses of study, and to industry-based courses and training.

4. You mentioned increasing non-instructional staff earlier. What are a few examples of those positions, and how are institutions able to keep hiring them?

As I mentioned in my testimony, non-instructional staff at universities across the country now accounts for more than half of university payroll costs.[3] Examples of these positions include librarians, computer technicians, office/administrative support, business and finance offices at universities, and maintenance and food service. Universities are able to continue hiring non-teaching faculty at a pace that exceeds increases in student enrollment in part due to the ubiquity of federal subsidies. Federal subsidies should be limited (something that should be accomplished by eliminating the PLUS Loan program), and college boards of trustees and regents should reinvest funds in programs that advance their core mission, rather than continuing to engage in a facilities and amenities arms race.[4]

Representative Diana Harshbarger (R – TN)

1. Higher Education Data Transparency

- Dr. Burke, as students choose the college or career of their choice, now more than ever, it is important for students to have accurate information on how institutions and academic programs will prepare them for success.
- The Trump Administration made significant reforms to the Department of Education's College Scorecard – for the first time, publishing typical earnings of graduates two years after their graduation in specific fields of study.
- How can the College Scorecard program-level data help students and families choose the best post-secondary option for their future?

Although the value of higher education cannot solely be captured in terms of earnings after graduation, earnings are one important measure of success, and for many students, increasing their earnings

[3] Critical Care: Policy Recommendations to Restore American Higher Education after the 2020 Coronavirus Shutdown, *National Association of Scholars,* April 18, 2020, at https://www.nas.org/reports/critical-care/full-report
[4] Heidi Ganahl and Lindsey Burke, Leading through the Crisis: How College Regents and Trustees Can Steady the Fiscal Ship, *The Daily Signal,* June 9, 2020, at https://www.dailysignal.com/2020/06/09/leading-through-the-crisis-how-college-regents-and-trustees-can-steady-the-fiscal-ship/

potential is a key reason for attending college. For those students, how colleges and programs of study (where the data are available) fare in terms of their ROI is critical. Students should take an opportunity to look at the average debt load of graduates at particular colleges and in particular areas of study when available, and see how those average debt balances compare to average earnings in their chosen field of study. High debt-to-earnings ratios can be a red flag.

- How can this public data also help deter rising college costs?

Policymakers should use data from the College Scorecard to shine a spotlight on the fact that federal subsidies flow to institutions that have a poor track record of success. And although tying scorecard data to access to Title IV funding would likely bring with it myriad unintended consequences, the data should be used as a transparency tool when Congress discusses the future of the student loan and grant programs currently authorized through the HEA.

2. <u>Reform Federal Work Study</u>

- Dr. Burke, for many years, there has been interest in reforming the Federal Work Study (FWS) program to ensure student participants are well positioned to enter the workforce after graduation.
- However, before the pandemic, over 90 percent of FWS wages were paid to students employed in on-campus jobs that frequently do not align with their program of study or future career interests.
- Under current law, only 25% of an institution's FWS funding can be awarded to students working at private sector companies.
- During the Trump Administration, the Department of Education launched a Federal Work Study Experimental Site Initiative and removed these barriers for work-study students to receive real-world job experience.
- What recommendations do you have for how Congress can also improve upon the Federal Work Study program to enable work-study students to gain job experience in the career of their choice?

The Federal Work Study Experimental Site Initiative should be expanded and made permanent, allowing all students who participate in the Federal Work Study Program to apply their compensation to private sector employers. Students should be able to work in any industry (public, private, non-profit) that aligns with their career goals or that supports them while working as undergraduate students. Maintaining the 25% cap on private sector participation only benefits the universities, which capture the federal remuneration in the form of subsidized labor. If the Federal Work Study Program continues as a subsidy, the amount of funding should not differ between jobs on-campus versus off campus. For example, pay for on-campus jobs is currently subsidized at 75 percent, compared to a 50 percent federal subsidy for jobs off-campus. This structure makes it difficult for the FWS program to connect students to employment opportunities that are applicable to their field of study. Congress should also remove the 25 percent cap on the amount schools can use in a given year to for FWS students in the private sector.

As *Inside Higher Ed* reported, "The result of these skewed rules is entirely predictable. According to the Department of Education, of the $1.085 billion spent on FWS during the 2016-17 school year, $996 million -- or 92 percent -- went to subsidizing on-campus jobs... Of the $1.085 billion spend, only

$726,208 -- or less than 0.1 percent -- helped students gain work experience at 'private for-profit organizations,' aka the United States economy."[5]

3. Student Loan Repayment
   - Dr. Burke, since March of last year, federal student loan borrowers have been in a loan forbearance status – not required to pay their student loans.
   - This relief is set to expire on September 30, 2021.
   - Can you detail why federal student loan borrowers should begin repaying their loans now if they can and what options were already in-place before the pandemic, for borrowers struggling to repay their loans?

Loan borrowers should continue repaying their loans now, even with the pause on repayments in effect, so they can take the opportunity to pay more toward their loan principal. Interest is not currently accruing on federal student loan balances for the borrower, so any amount they can pay goes directly toward the principal, enabling borrowers to potentially make a larger "dent" in their outstanding balance.

For borrowers who struggle to make repayments, there were already options in place pre-pandemic (and which remain in place) to help students make their monthly payments. Those include various federal income-based repayment plans: Revised Pay As You Earn Repayment Plan (REPAYE Plan), Pay As You Earn Repayment Plan (PAYE Plan), Income-Based Repayment Plan (IBR Plan), and Income-Contingent Repayment Plan (ICR Plan). Although each of these plans vary slightly in terms of structure and eligibility, they are all designed to cap monthly payments at an amount affordable to the borrower.

4. Student Loan Cancellation
   - Dr. Burke, President Biden recently argued against cancelling $50,000 of federal student loans for borrowers. Despite even the President's voiced strong concerns of student loan cancellation, others continue to push for this unfair and misguided policy.
   - For the record – can you tell this subcommittee, why would ***any*** student loan cancellation policy be harmful for borrowers and taxpayers?

Any amount of loan cancellation requires someone who is *not* the borrower, and who did not agree to take on debt, to assume the debt of a total stranger. And because the federal government originates and services approximately 90 percent of all student loans today, it is the taxpayer who assumes the debt of borrowers when loan forgiveness of any amount occurs. This is unfair to the individuals who chose not to take on debt to attend college. Perhaps they worked their way through college, or signed up for the armed services to receive the earned benefit of the G.I. Bill. Perhaps they enrolled for two years at a community college to make their bachelor's degree more affordable by getting core classes taken care of before transferring to a four year school. Or perhaps they eschewed college altogether because they didn't want to assume debt. Many Americans have worked hard after graduating, living modestly, to make sure they could pay off their student loan debt. Forgiveness unfairly foists the debt of someone else on to all of these individuals.

[5] Ryan Craig, Work-Study Doesn't Work, *Inside Higher Ed,* April 26, 2019, at https://www.insidehighered.com/views/2019/04/26/change-federal-work-study-program-so-it-encourages-useful-work-opinion

Loan forgiveness is also harmful because it will likely drive up college costs in the future. Loan forgiveness today will likely be expected in the future by borrowers enrolling in college in the coming years. Universities will be even more likely to increase tuition knowing that forgiveness could be on the way. It is a lending and spending cycle that does nothing to address the root causes of tuition inflation, while indebting all Americans with more debt.

[Questions submitted for the record and the responses by Chancellor Oakley follow:]

Questions for the Record from
REPRESENTATIVE MIKIE SHERRILL

Higher Education and Workforce Investment Subcommittee Hearing
"Rising to the Challenge: The Future of Higher Education Post COVID-19"
Wednesday, March 17, 2021
1:00 PM

1. Chancellor Oakley – you noted in your testimony that California provides nearly $3 billion each year in student financial aid to waive tuition for low-income students attending institutions of higher education. These investments allow half of all California public college students to obtain a degree without paying any tuition at all. How important is this program for students?

    a. Many students in our higher education system have a very limited ability to pay for other costs associated with college, such as housing, nutrition, transportation, and books. In many cases, expanded costs of a few hundred dollars or a job loss or medical emergency in the family can cause a student to drop out. How do we make sure that these students are taken care of, going beyond support for tuition payments?

    b. Many of our underserved students who benefit from a similar type of tuition assistance in New Jersey end up not graduating from their community college, technical school, or 4-year college, which can significantly impact their ability to find a good-paying job after school. How can we help these students to graduate on time from college, and how can we try to match them with in-demand jobs once they graduate?

    c. Similarly, an important way to help our students graduate on-time is to provide critical wrap-around services that prepare them to succeed in the classroom and workforce. These include advising and mentoring from professional staff, job preparedness training such as mock interviews and resume support, and stipends to cover needed costs such as transportation and childcare. How can we ensure that low-income students attending our community colleges receive these services?

    d. In New Jersey, a lot of the in-demand, good-paying jobs are in high-tech manufacturing and machine tooling. Does the California Community College system have manufacturing training programs to prepare students for these types of jobs, and can these programs be structured as a two-year degree? Furthermore, do your colleges partner with union apprenticeship programs to provide training for apprentices, and will the National Apprenticeship Act help to support this relationship?

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1. Chancellor Oakley – you noted in your testimony that California provides nearly $3 billion each year in student financial aid to waive tuition for low-income students attending institutions of higher education. These investments allow half of all California public college students to obtain a degree without paying any tuition at all. **How important is this program for students?**
   - State investments to waive tuition for low-income Californians are essential to student success because it enables institutions of higher education to spend more time scaling the supports that keep students on a pathway to completion. Our California Community College tuition waiver programs look at this work holistically. The end goal of the California College Promise Program and Promise Grant Program are intended to increase the percentage of students who earn associate degrees or career education certificates, increase the percentage of students who transfer from a community college to a California State University or University of California campus, and reduce and eliminate regional achievement gaps and achievement gaps for students from underrepresented groups.
   - The premise with these programs is that they provide a foundation for college access, affordability and success under which all of the other programs designed to assist students with college costs and other obstacles can be integrated to help achieve completion, transfer, wage gains, time-to-degree and most of all, to closing equity gaps.

   a. Many students in our higher education system have a very limited ability to pay for other costs associated with college, such as housing, nutrition, transportation, and books. In many cases, expanded costs of a few hundred dollars or a job loss or medical emergency in the family can cause a student to drop out. **How do we make sure that these students are taken care of, going beyond support for tuition payments?**

      - California Community Colleges offers one of the lowest per course tuition rate in the county at $46 per unit and when you factor non-tuition related expenses, the total cost of attendance is higher for California Community College students than for California State University (CSU) and University of California (UC) students. Throughout our system and colleges, we have consistently observed that the biggest challenge to a student's ability to stay enrolled and complete their studies is not tuition fees but non-tuition related costs such as housing, healthcare, food, transportation, lack of childcare, among other expenses.

- This is especially the case in California, where many of our colleges are located in high cost areas. The consequences of not providing sufficient aid to help students cover these costs include working multiple jobs, taking out private loans, using credit cards with high interest rates, and at worst, stopping school altogether.
- Congress can play an essential role in taking care of our students and supporting them achieve their end goal of earning a college education. We encourage a state/federal matching program to ensure that states already making tuition-waiver investments would be allowed to use federal dollars to help alleviate the total cost of attendance by assisting students with non-tuition costs such as food, housing, transportation, childcare, and textbooks.
- Additionally, coupled with a stronger state/federal partnership, Congress can significantly expand student success by doubling the maximum award of the Pell Grant. As you may know, the purchasing power of the Pell Grant has eroded sharply over the course of several decades, from covering 75% of the total cost of attendance in the 1960s to only covering a third of the total cost of attendance today. Because our federal financial aid system has not kept up with the cost of college, we are shouldering more and more of the financial burden on our students, particularly low-income students of color, who struggle to pay the cost of college and are forced to take on high amounts of student loan debt. An increase in the Pell Grant would provide greater fiscal security to students and encourage the transition from part-time to full-time, which would increase graduation rates and reduce the overall time to degree attainment.

b. Many of our underserved students who benefit from a similar type of tuition assistance in New Jersey end up not graduating from their community college, technical school, or 4-year college, which can significantly impact their ability to find a good-paying job after school. **How can we help these students to graduate on time from college, and how can we try to match them with in-demand jobs once they graduate**?
    - When it comes down to it, a big factor in determining whether to stay enrolled in school is if you can afford it, because the cost of college goes beyond tuition. While tuition-waiver programs are important, students need both financial aid to cover the total cost of attendance and wrap around supports. No amount of financial aid will help our students succeed if we do not address the structural inequities that keep them from being successful in school. We need a stable, permanent system of student financial aid and next layer of this affordability conversation includes pairing financial aid support with good policy investments that support students on the pathway. Beyond tuition waivers, states must double down on significant policy student success reforms so that our college students can focus on their most important job- reaching their college dreams. This means fixing a broken remedial education system, streamlining transfer

pathways, reducing the number of excess units so that students can graduate faster and/or on time.

- Another strategy is to focus relentlessly on students' end goals, not just on completion. Getting students to their individual educational goals – whether a degree, certificate, transfer or specific skill set –is an explicit focus for all of our colleges. More than just offering courses, California Community Colleges have adopted the Guided Pathways framework, which helps students reach their goals by creating highly-structured, crystal clear roadmaps that lead to a defined educational or career objective based one's interests.
- Lastly, California Community Colleges have spearheaded innovation in scaling "Earn and Learn" opportunities for students to gain the skills and competencies necessary to secure a high-quality job that pays a living wage. Our regional consortia seek to strengthen partnerships and connections with in-demand employers to identify skills needed and to create dedicated pathways for our students obtain hands-on work experience with an employer. Congress can help grow these types of workforce programs by renewing the Trade Adjustment Assistance Community College and Career Training (TAACCCT) grant program which provided designated funding to help colleges create and industry aligned curriculum with stackable credentials to help students be competitive in the labor market. The TACCT program was also helpful in accelerating learning strategies to improve student outcomes including credit for prior learning, competency based models, and online training.

c. Similarly, an important way to help our students graduate on-time is to provide critical wrap-around services that prepare them to succeed in the classroom and workforce. These include advising and mentoring from professional staff, job preparedness training such as mock interviews and resume support, and stipends to cover needed costs such as transportation and childcare. **How can we ensure that low-income students attending our community colleges receive these services?**

- Providing students with these wrap-around services is a top priority of the California Community Colleges. To improve student outcomes and close achievement gaps, California Community Colleges has established a number of system-wide goals, called the *Vision for Success,* which orients our efforts and represents the north star of our colleges. However, much like the availability of tuition-waivers, the goals outlined in the Vision for Success provide a baseline or a framework for colleges to design intentional strategies to support students to completion.
- It is important to look at systemwide reforms and not boutique programs that only serve a small population of students. Some examples of systemwide efforts to provide holistic support for students include improving faculty diversity, streamlining transfer, eliminating remedial

education barriers that keep too many students from accessing gateway transfer level courses.

- When we look at services, every college must tailor support services to address their students' needs. The population of one campus may be predominantly working adults, which requires us to consider offering services outside of the traditional 9-5 window to the evenings and the weekends. Another campus may have a high population of veteran students or students experiencing homelessness or hunger. These are incredibly difficult challenges but as we look to expand wrap around services, we must ensure that students receive both services and support to stay in school. This means coupling policy investments with student services.
- Of the 116 California community colleges, 59 have established and/or are expanding comprehensive Basic Need Centers where students receive case management services including support applying for public benefits including WIC, Medi-Cal, and TANF funded benefits. Many of our colleges offer on-campus food pantries where students can gain access to free, healthy food. Additionally, each of the financial aid offices at a California Community College have dedicated staff assigned to ensure low income students are aware of and receive campus and community based resources. To ensure that wrap around services are being offered to students with disabilities, each of our 116 colleges has a director designated to provide counseling, tutoring and individualized updates to the students' academic accommodation plans.
- Due to COVID-19, these services have transitioned to an online modality, a silver lining because this has allowed us to expand our reach and more students are now able to benefit.

d. In New Jersey, a lot of the in-demand, good-paying jobs are in high-tech manufacturing and machine tooling. **Does the California Community College system have manufacturing training programs to prepare students for these types of jobs, and can these programs be structured as a two-year degree? Furthermore, do your colleges partner with union apprenticeship programs to provide training for apprentices, and will the National Apprenticeship Act help to support this relationship?**
    - In 2016, our system launched a three-year pilot program called the "CCC Maker Initiative," which strategically prepares students for careers and contributes to regional economies by leveraging private-partnerships to create and operate "Makerspaces," innovative on-campus labs that give students hands-on skill and experiences that are desired by in-demand industry sectors. The initiative creates career pathways and stackable credentials that lead to employment that pays a living wage in the STEAM and STEM fields. For example, American River College in Sacramento, CA features a Design Hub, a campus-based, interdisciplinary center serving faculty and students and multiple industry partners. Students grow

their manufacturing and applied science skills through a Problem-Based Learning (PBL) curriculum, which requires work on projects both inside and outside the college through hands-on training in a campus workroom and an associated internship with industry employers in the community. Since the Design Hub's inception, businesses and organizations have valued quality of the Problem-Based Learning experience and hired student interns directly from the program. While the CCC Maker Space Initiative has been targeted to non-traditional students (part-time, over 25 years old, and returning students), given this model's success, we believe this structure can be integrated into our Associates Degree in Manufacturing Technology program moving forward and we are actively looking at strategies on how to scale up these hands-on programs across our colleges.

e. Yes, many of our community college districts offer apprenticeship programs that provide hands-on job training with supplemental classroom instruction. Many of our business partners are union represented and governed by a collective bargaining agreement in the electrician, carpentering, and mechanical fields, among others. Further, our apprenticeship programs are designed to operate in high-growth industries in emerging and transitioning occupations that meet local labor market needs and that are validated by current labor market data. Despite the effectiveness of these programs, a pressing challenge is that many of our apprenticeship programs are heavily impacted, and do not have a sufficient number of open slots to adequately meet the demand. To that end, the *National Apprenticeship Act 2021* will be instrumental in providing additional apprenticeship opportunities for community college students by allocating $3.5 billion in new federal investment over 5 years. We are also strongly encouraged by the provisions in the bill to encourage employer participation and recruitment for individuals with barriers to employment, including individuals impacted by the criminal justice system and individuals with disabilities. Enhancing accessibility of apprenticeship opportunities is critical to ensuring an equitable opportunity to secure a high-paying job in an in-demand industry. Overall, we feel the bill would modernize and diversify the national apprenticeship system by encouraging the expansion of job-training opportunities in new and non-traditional industries such as healthcare and information technology, which is critical to equipping a competitive workforce in a dynamic 21st century economy.

[Questions submitted for the record and the responses by Mr. Zibel follow:]

Questions for the Record from
REPRESENTATIVE MIKIE SHERRILL

Higher Education and Workforce Investment Subcommittee Hearing
"Rising to the Challenge: The Future of Higher Education Post COVID-19"
Wednesday, March 17, 2021
1:00 PM

1. Mr. Zibel, the American Rescue Plan included a historic provision to close the 90/10 loophole. As a result of the closure of this loophole, for-profit institutions will be required to derive not less than ten percent of their revenue from funds other than federal education assistance funds, including from the GI Bill. This will protect the integrity of the $120 billion spent on federal financial aid every year and guard against the waste of taxpayer dollars. The "90/10" rule also helps to ensure that federal resources are not funneled to institutions that are fully reliant on taxpayer-funded programs for financial viability. Now that the loophole is closed, the "90/10" rule will protect veterans and servicemembers who, until recently, have been targets of predatory recruiting practices by low-quality providers.

    a. How will the closure of the 90/10 loophole impact students, particularly veterans who are attending college with support from the GI Bill?

    b. What other steps can the federal government take to ensure that as many of our veterans as possible attend an institution of higher education and graduate with a degree, certificate, or credential?

STUDENT DEFENSE
NATIONAL STUDENT LEGAL DEFENSE NETWORK

1015 15th St. NW, Suite 600
Washington, DC 20005
www.defendstudents.org

Responses of
Daniel A. Zibel
Vice President & Chief Counsel
National Student Legal Defense Network
to the Questions for the Record from
Representative Mikie Sherrill

Higher Education and Workforce Investment Subcommittee Hearing
"Rising to the Challenge: The Future of Higher Education Post COVID-19"
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1. **Mr. Zibel, the American Rescue Plan included a historic provision to close the 90/10 loophole. As a result of the closure of this loophole, for-profit institutions will be required to derive not less than ten percent of their revenue from funds other than federal education assistance funds, including from the GI Bill. This will protect the integrity of the $120 billion spent on federal financial aid every year and guard against the waste of taxpayer dollars. The "90/10" rule also helps to ensure that federal resources are not funneled to institutions that are fully reliant on taxpayer-funded programs for financial viability. Now that the loophole is closed, the "90/10" rule will protect veterans and servicemembers who, until recently, have been targets of predatory recruiting practices by low-quality providers.**

    a. **How will the closure of the 90/10 loophole impact students, particularly veterans who are attending college with support from the GI Bill?**

As part of the 1992 reauthorization of the Higher Education Act, Congress adopted a provision redefining which institutions of higher education are eligible to participate in the Title IV programs to exclude those institutions that did not obtain at least 15 percent of revenue from sources other than Title IV. *See* P.L. 102-325 (1992). Since its adoption as the 85/15 rule, the provision has been modified in two key respects. *First*, as part of the 1998 reauthorization, Congress altered the percentages from 85/15 to the current 90/10 requirement. *See* P.L. 105-244 (1998). *Second*, as part of the 2008 reauthorization, Congress moved the provision from an institutional eligibility requirement (*i.e.*, in the definitional section of the statute) to a condition of the Program Participation Agreements that the Department enters into with participating proprietary institutions. *See* P.L. 110-315 (2008). *See also* H.R. Conf. Rep. 110-803, 556, 2008 U.S.C.C.A.N 1124, 1220 (2008).

Regardless of the formula or statutory structure, the Rule has long been premised on the idea that for-profit schools should not be funded solely by federal dollars.[1] As one pair of authors put it: "The rule was intended as a validation of the quality of the education provided and the tuition price: if an institution is providing a valuable education, someone other than the federal government should be willing to pay for students to attend."[2]

The Rule had a key flaw, however, insofar as it excluded federal aid provided from sources other than Title IV of the Higher Education Act. Alternatively stated, the billions in funding received under the Post 9/11 GI Bill and the Department of Defense tuition assistance program did not count towards the 90/10 calculation. The Rule has long been criticized for creating a perverse and misguided incentive for proprietary institutions to recruit heavily from military members and veterans.

Through the American Recovery Plan, and by eliminating this 90/10 loophole, Congress has altered the incentive structure. Although recruitment can continue, military members and veterans should no longer be singled out by for-profit schools—with aggressive, predatory recruitment tactics that have plagued the industry—solely because of the availability of non-Title IV funding. Student Defense applauds Congress and the Administration for finally closing the loophole.

b. What other steps can the federal government take to ensure that as many of our veterans as possible attend an institution of higher education and graduate with a degree, certificate, or credential?

Congress has created numerous higher education programs to benefit military members, their families, and veterans who have served our nation. But the federal government can do more to ensure that the door to higher education remains open, that veterans and members of the military complete their programs, and that the programs provide value in relation to the time and monetary investment. Although there are many steps that Congress and the Administration can take to protect

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[1] *See generally* Congressional Research Service, Institutional Eligibility and the Higher Education Act: Legislative History of the 90/10 Rule and its Current Status (Jan. 19, 2005), *available at*: http://research.policyarchive.org/1904.pdf

[2] Vivien Lee & Adam Looney, Brookings Institution, *Understanding the 90/10 Rule: How reliant are public, private, and for-profit institutions on federal aid?* (Jan. 2009), *available at:* https://www.brookings.edu/wp-content/uploads/2019/01/ES_20190116_Looney-90-10.pdf

veterans, and policies that can be adopted to guard against abuses, I want to highlight just a few such proposals and priorities:

(1) The Department of Education should establish, within Federal Student Aid, an Office of Public Service with chief responsibility for coordinating, and working with other offices as appropriate, on issues related to public service. Given well-publicized failures regarding Public Service Loan Forgiveness ("PSLF"), and issues that relate more specifically to student assistance for military members and their families, this office can elevate those issues, and other Department programs that particularly impact public servants. This office should not be limited to veterans, but it should also consider public servants such as teachers and governmental public health workers. The office should work closely with FSA sub-components that generally oversee student loan servicing issues, stakeholders at the Department of Defense and Department of Veterans' Affairs, and non-governmental stakeholders surrounding programs like PSLF.

(2) The federal government must use its authorities to protect students and borrowers from fraudulent, unfair, deceptive, and other illegal practices by institutions of higher education. As noted in my written testimony, there are too many examples of how agencies have failed to use compliance, oversight, and enforcement tools to punish misconduct and deter future misconduct by institutions of higher education and other entities within our higher education system. Federal agencies—including the Department of Education, Department of Defense, Department of Justice, Veterans' Administration, Consumer Financial Protection Bureau, and Federal Trade Commission—must work together, and alongside state law enforcement, to ensure that student consumer protections are paramount and enforced.

    In addition to *post hoc* enforcement, the Department of Education, Department of Defense, and Veterans' Administration must carefully consider, at the front end, whether institutions that participate in the programs administered by these agencies are effectively serving students. For example, for profit institutions that fail to provide programs that "prepare students for gainful employment in a recognized occupation" must not have access to federal Title IV funding, and the Department of Education must promulgate standards to effectuate that statutory mandate. In addition, the Department of Education must move quickly to restore protections for, and provide relief to, all students—including veterans—who have been victimized by predatory colleges.

(3) Federal agencies should elevate and properly administer the "8 Keys to Veterans' Success," established under the Obama Administration.[3] Under that program, the Department of Education, the Veterans' Administration, and the Department of Defense highlighted eight steps that colleges and universities can take to support veterans.[4] Unfortunately, this program has fallen apart in recent years. Although the Department of Education still maintains—and publicizes on its website—a list of 2,323 colleges that "have committed to supporting veterans as they pursue their education and employment goals," a number of the institutions included on the list have a history of predatory conduct against students, and many have closed (including schools owned by the Education Corporation of America and Dream Center Education Holdings).

(4) Congress and the Administration should renew oversight of the "My Career Advancement Account" ("MYCAA") program. Administered by the Department of Defense, MYCAA provides up to $4,000 in tuition assistance to help military spouses improve their employment opportunities through education or training. Although this program is important and should continue to facilitate career training for military spouses, additional oversight is necessary to ensure that these funds are being well-spent and are serving students. According to information received in response to a Freedom of Information Act request, for-profit institutions are the largest recipients of MYCAA funding. Moreover, numerous institutions of higher education remain eligible to receive MYCAA funding even while an accrediting agency has ordered the institution to "show cause" as to why institutional accreditation should not be revoked or have been placed on warnings by an accreditor. Both facts suggest that oversight within this program is important to best serve military families.

# # #

[3] *See* The White House, *8 Keys to Success: Supporting Veterans, Military and Military Families on Campus* (Aug. 13, 2013), *available at:* https://obamawhitehouse.archives.gov/blog/2013/08/13/8-keys-success-supporting-veterans-military-and-military-families-campus

[4] *See* U.S. Dep't of Educ., 8 Keys to Veterans' Success Sites, *available at:* https://www.ed.gov/veterans-and-military-families/8-keys-success-sites (last visited March 30, 2021).

[Whereupon, at 3:51 p.m., the subcommittee was adjourned.]

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