

March 3, 2021

Secretary Miguel Cardona  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

Dear Secretary Cardona:

Congratulations on your recent confirmation. As a coalition of organizations that work on higher education accountability and advocate for students, veterans, consumers, educators, college administrators, civil rights, and education policy reforms, we look forward to the opportunity to meet with you, and to work with you on initiatives to better protect students and taxpayers. There are several critical tasks before the Department of Education (ED) with regard to college accountability that we would like to discuss with you, including borrower defense to repayment, gainful employment and other regulatory agenda matters, enforcement, and potential policy initiatives. We appreciate that your staff has already met with us, and that we have had an initial opportunity to discuss our priorities.

However, as an initial matter, we would like to request that you increase transparency with regard to how schools are performing, and with regard to actions the Department takes when schools are harming students and taxpayers. Central to the work of our coalition is an open flow of information regarding how schools are serving students.

The Department holds a significant amount of information around school performance that is in the public interest to disclose. Much of the information we seek was previously made available by the Department, although the periods and manner of release varied. Unfortunately, the previous administration drastically restricted public access to virtually any information regarding Department accountability actions and schools' operations.

We ask that you renew the Department's commitment to promptly sharing this information in an easily accessible manner. Researchers, policymakers, and others need this information to identify ways in which our higher education system can innovate and improve, while students and student advocates need more information to make informed decisions regarding their education and to effectively exercise claims.

We urge you to take immediate action to improve transparency in the following areas:

Eligibility Determinations - Students and taxpayers deserve to know which institutions are at risk of losing eligibility for federal aid. Documents reflecting ED communications with colleges and implementing ED decisions are essential for public awareness of school status and public policy issues. This information includes:

- Program participation agreements (PPAs), especially provisional PPAs including terms and conditions, given these are the agreements used when a school poses unique risks;
- Terms for letters of credit (LOCs) and other sureties;
- Heightened Cash Monitoring and other financial controls, including regular release of 90/10 ratios; and
- Communications limiting or terminating a school's eligibility for federal student aid.

In recent years even formal Department decisions with severe consequences have not been posted, leaving students blindsided. For example, on August 14, 2020, the Department notified the owners of a collection of career schools that federal aid would be retroactively terminated. But the Department did not post that notification, and it appears the schools did not adequately inform students.

Structural Changes - Changes in a school's ownership, structure, or Department recognition status can significantly impact students' experience. Regulations require a clear paper trail when schools pursue major changes. The Department should post:

- Applications for, conditions of, and decisions about structural changes, especially ownership changes, mergers, and conversions from for-profit to nonprofit status; and supporting documentation;
- SEC disclosures posted by publicly-traded schools regarding student-related matters—including acquisitions, civil lawsuits, and law enforcement investigations—as required to be reported to the Department under 34 CFR 668.171. In addition, some for-profit colleges that were previously publicly traded are now free of obligations to make SEC disclosures because they have changed to private equity ownership or converted to nonprofit schools under dubious terms. We believe that for at least some categories of institutions that are not publicly-traded, ED eventually should require schools to provide—and ED should post— analogous disclosures. Such disclosures should include clear reporting of entities exercising ownership and control of Title IV institutions, including investors, lenders, and contractors who use complex structures to conceal their influence from the public.

The prior administration often failed to disclose details of structural changes, many of which were facilitated by senior department officials and ended in bad outcomes for students.

For example, in 2016 the Department rejected an application by a school operator, the Center for Excellence in Higher Education (CEHE), to have its schools treated as nonprofit for purposes of Department rules. In late 2018, the Department secretly reversed that decision, but despite public requests, the reversal was kept hidden until it was reported in the media in April 2020. In May 2020, the Department published a partial list of conversion decisions, including regarding CEHE, on its website, but the list was incomplete and had no links to Department decision documents.

Additionally, in 2019, students were left stranded by sudden closures at the Argosy University, Art Institutes, and South University chains of schools following a series of ownership changes—from Education Management Corporation, to Dream Center Education Holdings, to the Education Principle Foundation. The Department reached multiple decisions regarding these schools—about change of ownership, access to Title IV aid, accreditation, and financial protections—behind closed doors. The secret dealings included concealing that Dream Center, with the acquiescence of senior ED officials, was misleading students about the accreditation status of two campuses. Only after campuses closed, money and efforts wasted, and many students' dreams were shattered were the Department's actions revealed through congressional and media investigations. Still, many questions remain regarding the Dream Center transactions. More broadly, changes are necessary so that these kinds of disastrous results for students and taxpayers do not happen again.

Enforcement and Student Complaints - The prior administration eviscerated enforcement efforts, which are needed to root out and deter predatory actions by schools. While we recognize the need for discretion in revealing enforcement activity, transparency improvements are needed with respect to matters including:

- First, an accurate list of all borrower defense claims filed since 2014 by institution and date of filing.
- All routinely produced reports from program reviews and compliance audits; these documents should be automatically posted;
- A clear record of negative actions by accreditors, which should be aggregated and shared by ED so that the public isn't required to track down such outcomes through accreditor websites, many of which are difficult to navigate and slow to update;
- Draft accreditor recognition reports, as well as monitoring reports and investigations of accreditors, and the reports and accompanying exhibits accreditation agencies submit to the Department, so that the public may thoroughly respond via public comment;
- 90/10 data, which for-profit schools report annually to comply with a requirement that no more than 90 percent of revenue is drawn from Title IV programs. As noted above this data should be released in a prompt, comprehensive, and user-friendly manner, rather

than the current delayed and piecemeal approach — sometimes with schools inexplicably omitted;

- Regularly updated lists of institutions receiving borrower defense claims, providing the number of claims received, approved, denied, and pending review. Eventually, the Department also should provide copies of borrower defense complaints, scrubbed of personally identifying information, analyzed by institution and students' demographic characteristics, and posted in regular reports, similar to the reporting provided by the Obama-administration CFPB on student loan complaints;
- Cohort default data that tracks defaults over a longer period of time, to include institutional default rates 5 and 7 years after students enter repayment; and
- The Department's contract with the Chief Operating Officer, which helps to determine the priority that the Office of Federal Student Aid places on its enforcement efforts.

Financial Protections - Students deserve to know whether their schools have the financial resources to keep the lights on while students attempt to complete their degrees. Schools must inform regulators of financial risk, but typically hide financial risk from students. While some discretion is necessary to avoid heightening unnecessary concern, students who put their dollars and dreams on the line should not be the last to know when their schools are on the brink of collapse. Toward that end, ED should improve transparency regarding:

- Audited financial statements, which are reported to ED annually and—in the case of public, nonprofit, and publicly traded for-profit institutions—are already shared with various stakeholders; these documents should be posted online automatically;
- Records of the numerators, denominators, and strength ratios that are factored into the financial composite score, presented in a way that allows viewers to identify trends over time;
- Lists of schools that fail to timely submit audited financial statements;
- Financial risk updates, such as notice of creditor lawsuits on defaulted debt, unpaid salaries, or past-due lease payments, including the updates required to be reported under 34 CFR 668.171; and
- Terms, amounts, and withdrawals for letters of credit (LOCs) and other sureties, which were previously made public until January 29, 2017; which should be automatically posted as new LOCs are required or changes are made to existing LOC, along with information on the imposition of Heightened Cash Monitoring and other financial protections.

The flow of information that schools already provide to ED can begin immediately. The Department should also commit to a dramatic improvement in the presentation of information. Key data and materials can and should be delivered online in user-friendly formats and it should

be easy for users to aggregate information, such as obtaining data by both school owner and Office of Postsecondary Education ID (OPE ID) numbers.

Where information is aimed at students and prospective students, it should be offered in clear, mobile-friendly formats. When the Department, through accreditors, makes a college eligible for financial aid, it is essentially placing a Good Housekeeping seal of approval on the school; it has a responsibility to deliver any warnings or concerns about schools, and to ensure those schools disclose to students the same.

We look forward to an increased flow of information, and to working with you on issues to comprehensively address predatory practices.

Sincerely,

American Federation of Teacher

American Association of University Women (AAUW)

Center for American Progress

David Halperin, Attorney

Generation Progress

National Association for College Admission Counseling

National Consumer Law Center (on behalf of its low-income clients)

National Education Association

New America Higher Education Program

Project on Predatory Student Lending

The Institute for College Access & Success

Veterans Education Success

Yan Cao, Fellow, The Century Foundation

Young Invincibles