

# United States Senate

WASHINGTON, DC 20510

October 18, 2022

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

Dear Secretary Cardona:

We applaud the Department of Education's ("the Department") recent and ongoing efforts to clear the backlog of borrower defense to repayment claims that the Trump Administration allowed to accumulate. Students who were defrauded by some of the worst actors in the for-profit college industry, including Corinthian Colleges, ITT Technical Institute, and Westwood College, have finally received the relief they deserve after years of waiting. As the Department rights these wrongs, we urge you to use your clear statutory authority under 20 U.S.C. § 1099c(e) to hold school owners and executives personally liable for scamming students and taxpayers and recoup funds related to certain student debt discharges, including closed school discharges, borrower defense discharges, and other discharges premised on misconduct by for-profit institutions of higher education.

Despite the Department repeatedly finding that fraudulent for-profit colleges widely mislead students and misrepresented their costs, ability to transfer credits, and earning potential, their executives continue to take home huge profits. Too often, students are left saddled with debt and no career path while the executives at these institutions prioritize profits over student outcomes. ITT Technical Institute's CEO, Kevin Modany, made more than \$7.5 million from his salary, bonus, and stocks in 2009, a year when the majority of Americans were still navigating the Great Recession.<sup>1</sup> Corinthian College's executives were paid nearly \$1 million in bonuses weeks before its disastrous collapse.<sup>2</sup> When owners and executives are not held personally accountable, they continue to take home large profits as students and taxpayers end up holding the bag.

In a 1991 House Committee on Education and Labor hearing, former Inspector General Thomas recommended that the 1992 reauthorization of the *Higher Education Act* (HEA) should, "require owners of corporate proprietary schools to be personally liable for school losses."<sup>3</sup> The HEA expressly authorizes the Department to recoup financial losses from individuals who "exercise substantial control" over institutions, including owners, board members, CEOs, and

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<sup>1</sup> [For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success](#) (p. 84). U.S. Senate Committee on Health, Education, Labor and Pensions. June 30, 2012.

<sup>2</sup> [Corinthian Colleges exec grilled as creditors hunt for cash](#). Reuters. June 12, 2015.

<sup>3</sup> [Integrity in Federal Student Financial Aid Programs, 102nd Congress \(1991\) \(testimony of James B. Thomas Jr.\)](#).

other executives.<sup>4</sup> The HEA also does not state that a Program Participation Agreement (PPA) signature is required to hold an owner, board member, CEO, or executive personally liable. On the contrary, the HEA allows the Secretary of Education to determine substantial control as a person who, “directly or indirectly controls a substantial ownership interest in the institution,” or “represents [...] substantial ownership interest in the institution.”<sup>5</sup>

The public record, however, is devoid of any instance where the Department has exerted its authority to hold executives and owners personally liable. As a result, the federal government shoulders the full financial burden of schools’ misdeeds while executives face little personal risk for continuing to take advantage of both students and taxpayers. During an October 2021 House Education and Labor Committee hearing, Chairman Scott urged Federal Student Aid Chief Operating Officer (COO) Cordray to use the Department’s personal liability authorities to recoup federal funds instead of leaving taxpayers on the hook for the misdoings of unscrupulous institutions. Mr. Cordray agreed.<sup>6</sup>

Nearly a year later, the Department has approved more than \$14.5 billion in loan discharges for nearly 1.1 million borrowers, but has failed to hold Corinthian College, ITT Technical Institute, and other higher education profiteers accountable for their predatory practices.<sup>7</sup> In a March 31, 2022, letter to Chairman Scott, Under Secretary Kvaal asserted that because the Department “did not require the owners of [certain] institutions to assume for losses by co-signing the [PPAs], [...] there is no clear path to collect liabilities from entities or individuals associated with the shuttered institutions.”<sup>8</sup> While we appreciate that the Department has amended its practices with respect to signatories on those agreements, and “recently denied an institution’s application to be recertified to participate in the Federal financial aid programs after an entity owner refused to sign the institution’s PPA,” there is nothing in the HEA that limits the application of personal liability to those individuals who signed a PPA.<sup>9</sup>

After issuing nearly \$6 billion of loan forgiveness for defrauded former Corinthian Colleges students on June 13, 2022, the Department said it did not have the authority to pursue owners and executives for debts related to these discharges.<sup>10</sup> Furthermore, the proposed regulations from the Department’s recent Notice of Proposed Rulemaking on this issue state that the federal government would recoup only two percent of borrower defense discharges from companies and individuals responsible. This is contrary to what the HEA authorizes and what COO Cordray agreed to do. This stance also greenlights executives to continue to prey on students while lining their pockets.

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<sup>4</sup> 20 U.S.C. § 1099c(e)

<sup>5</sup> 20 U.S.C. § 1099c(e)(2)

<sup>6</sup> [For-Profit College Conversions: Examining Ways to Improve Accountability and Prevent Fraud](#). U.S. House Committee on Education and Labor. April 20, 2021.

<sup>7</sup> [Education Department Approves \\$1.5 billion in Debt Relief for 79,000 Borrowers Who Attended Westwood College](#). U.S. Department of Education. August 30, 2022.

<sup>8</sup> [Under Secretary Kvaal response to Chairman Scott regarding the personal liability of owners, executives, and board members of for-profit colleges](#). March 31, 2022

<sup>9</sup> [Updated Program Participation Agreement Signature Requirements for Entities Exercising Substantial Control Over Non-Public Institutions of Higher Education](#). Federal Student Aid. March 23, 2022.

<sup>10</sup> [Biden administration says it lacks power to pursue Corinthian executives](#). POLITICO. June 13, 2022

Given the ongoing obscurity around this policy, we request your response to following questions by November 1, 2022:

1. Please provide an accounting of the total losses to the federal government due to students being defrauded by the following colleges:
  - Institutions owned by Corinthian Colleges, Inc.;
  - Institutions owned by ITT Educational Services;
  - Westwood College;
  - Kaplan Career Institute;
  - Marinello Schools of Beauty;
  - DeVry University; and
  - Minnesota School of Business and Globe University.
2. When providing this accounting, please show, with respect to each school, the total amount recovered from any individual executive, owner, or board member.
3. Please provide an explanation for the Department's position that it lacks legal authority under 20 U.S.C. § 1099c(e) to hold college executives personally liable for losses to students and taxpayers.
4. In the wake of approving student loan debt relief for students who attended Corinthian Colleges and ITT Technical Institute, the Department said it would not hold former owners or executives personally liable.<sup>11</sup> Please provide an explanation for this decision.
5. Please explain the apparent inconsistencies between Mr. Cordray's testimony to Chairman Scott and Under Secretary Kvaal's March 2022 letter to Chairman Scott regarding the Department's authority to hold individual owners and executives personally accountable.
6. Personal liability is designed to deter future misconduct. When former owners and executives walk away unscathed, they are incentivized to prey on students and taxpayers in the future. Since PPAs can include specific conditions for an institution to receive Title IV funding, as former Secretary DeVos used in the 2020 case with Florida Coastal School of Law, they can act as a deterrent for this predation.<sup>12</sup> We applaud the Department's updated PPA signature requirements, insofar as they make it explicit to schools that the HEA provides the Department the authority to hold "entities" liable if they have a significant effect on a school's administrative capability or financial responsibility. Please clarify whether an individual could be considered an "entity" if the individual meets the criteria in the Department's updated requirements. Going forward, how will the Department determine how much to recoup from a person who "exercises substantial control?"

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<sup>11</sup> [Debt Relief for All Former ITT Students](#). Inside Higher Ed. August 17, 2022.

<sup>12</sup> [Consumer Information Institution Update](#). Florida Coastal School of Law. 2021.

Students and taxpayers should not be left holding the bag when predatory for-profit colleges and executives cause lifelong damage to students' educational and financial well-being, nor should the Department adopt positions that encourage executives to prey on students. We strongly urge the Department to work swiftly to leverage its authority in the future and retroactively to better hold bad actors accountable for their actions. Thank you for your consideration. We look forward to your prompt response.

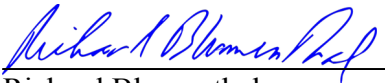
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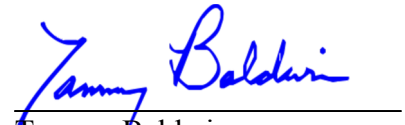
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