NATIONAL STUDENT LEGAL DEFENSE NETWORK

TESTIMONY OF DANIEL A. ZIBEL
Senate Committee on Health, Education, and the Environment
SB 0795: Higher Education – Private Career Schools and For-Profit Institutions of Higher Education - Regulation
Position: Favorable with Amendment
February 28, 2018

Good afternoon and thank you for the opportunity to testify today regarding Senate Bill 0795. My name is Dan Zibel and I am the Vice President and Chief Counsel of the National Student Legal Defense Network ("NSLDN"). NSLDN is non-partisan, non-profit organization that works to advance students' rights to educational opportunity and ensure that higher education provides a launching point for economic mobility.

NSLDN strongly supports this bill, with amendments. A student's higher education enrollment decision can have a tremendous positive, or, sadly, negative impact on the rest of his or her life. This bill, with amendments, will establish an effective fund to protect Maryland students in the event that an institution of higher education closes. Moreover, the bill also establishes certain key consumer protection disclosure requirements, in order to increase transparency in the market for higher education.

Higher education is more than just a launching point for equality and economic mobility. It is a big dollar business. The Federal Reserve recently estimated that students and graduates collectively owe more than $1.4 trillion in student loan debt.[1] In 2014-2015, revenues at degree-granting institutions in the United States totaled $567 billion, including $20 billion in revenue at degree-granting for-profit institutions.[2] Cost of college and career training has skyrocketed. Default rates are increasing, particularly at for-profit colleges.[3] And there is ample evidence, both research-based and anecdotal, of market failures leading to disastrous results for students.

Unfortunately, there is no shortage of unscrupulous actors in higher education, particularly, but not exclusively, in the for-profit sector. In a 2012 Report authored by then U.S. Senator Tom Harkin, for-profit colleges—including private career schools—had a "norm" of "overpriced tuition, predatory recruiting practices, sky-high dropout rates, billions of taxpayer dollars spent on aggressive marketing and advertising, and companies gaming regulations to maximize profits."[4] Students in the higher education market are unlike other consumers, insofar as the choices they make can follow them for decades. As one

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[1] Board of Governors of the Federal Reserve System (US), Student Loans Owned and Securitized, Outstanding [SLOAS], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/SLOAS, February 24, 2018.

[2] National Center for Education Statistics, Postsecondary Institution Revenues (May 2017) *available at*: https://nces.ed.gov/programs/coe/indicator_cud.asp

[3] Judith Clayton-Scott, The Looming Student Debt Crisis is Worse than We Thought, 2 Evidence Speaks Reports No. 34 (Jan. 10, 2018) at 1 ("For example, for-profit borrowers default at twice the rate of public two-year borrowers (52 versus 26 percent after 12 years), but because for-profit students are more likely to borrow, the rate of default among all for-profit entrants is nearly four times that of public two-year entrants (47 percent versus 13 percent).").

[4] Press Release, Harkin: Report Reveals Troubling Realities of For-Profit Schools *available at*: https://www.help.senate.gov/ranking/newsroom/press/harkin-report-reveals-troubling-realities-of-for-profit-schools

study stated: "[b]y the time an adult figures out the value of the education he or she purchased, it is too late to do anything about it."[5]

Consumer Disclosures Protect Students: There can be no doubt that factual disclosures by institutions are valuable for both students and regulators. For students, honest consumer disclosures around graduate outcomes, total cost, anticipated debt levels, program length, and regulatory or law enforcement problems, can enable prospective student to assess the merits of a particular institution. As an example, the U.S. Department of Education's College Scorecard website allows students to search and filter information so that they can compare costs, average loan amounts, and the average student's ability to repay student loans across multiple institutions. Information disclosure, however, can also aid regulators, accreditors, and government agencies, in ensuring that institutions are providers of quality education.[6] Numerous consumer protection government enforcement actions, including a recent action against a school with a campus in Silver Spring, MD, have been based on substantial misrepresentations made by institutions in legally required disclosures.[7]

NSLDN supports the amendments that improve the timing, method and substance of consumer disclosures. We support amendments that will require disclosures be made *before* enrollment and re-enrollment. We support amendments that require disclosures to be *clear and conspicuous*. We support amendments that will *enhance* the specificity and detail of the disclosures.

Support Students When Institutions Close: The closure of an institution of higher education is an incredibly disruptive occurrence for students, with can have a tremendous impact on a student's life and future plans. According to data released by the U.S. Department of Education, thirty-eight institutions or campuses in Maryland that were eligible to receive federal student aid funding closed between 2013 and 2017.[8] Although the needs of students impacted at the time of a closure are wide-ranging (*e.g.*, assessing transfer and teach-out options, obtaining transcripts, housing issues), the financial impact on a student can be devastating—particularly if students are unable to transfer earned credits to another institution, as happened to many students enrolled at ITT Technical Institute at the time of its closure in September 2016.[9]

Although federal closed school loan provisions can offer some relief for impacted students, those protections are far from sufficient. *First*, the federal closed school loan provisions only apply to federal student loans. Students who incur private loans or who save their hard-earned dollars to help pay for higher education are not recompensed for those amounts by the federal government in the event of a

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[5] R. Shireman, Perils in the Provision of Trust Goods: Consumer Protection and the Public Interest in Higher Education (May 2014) (hereinafter "Perils in the Provision") *available at*: https://cdn.americanprogress.org/wp-content/uploads/2014/05/ConsumerProtection.pdf

[6] Public disclosure may have other benefits. For example, as one commentator has noted, "[c]onsider the detailed prospectuses that come from stocks and mutual funds. Very few individual investors read them, but they and other filings required by the Securities and Exchange Commission have resulted in a relatively clean system for the sale of company stock to the public. Investment scams are rare because company information is scoured by the media, by institutional investors and their analysts, and by watch- dog groups, essentially serving as monitors on behalf of all potential investors." Perils in the Provision at 22.

[7] *See, e.g.*, Ltr. fr. R. Minor to J. Massimino (Apr. 14, 2015) *available at*: https://www2.ed.gov/documents/press-releases/heald-fine-action-placement-rate.pdf; Ltr. fr. S. Crim to W. Winkowski (July 26, 2016) *available at*: https://studentaid.ed.gov/sa/sites/default/files/medtech-recert-denial.pdf

[8] *See* Closed School Search File *available at* https://www2.ed.gov/offices/OSFAP/PEPS/closedschools.html (last visited Feb. 25, 2018).

[9] Doug Ware, U.S. Dept. of Education drops hammer on ITT Tech with devastating restrictions (Aug. 26, 2016) *available at*: https://www.upi.com/US-Dept-of-Education-drops-hammer-on-ITT-Tech-with-devastating-restrictions/8701472237496/

closure. *Second*, there are recent examples of for-profit institutions operating on the brink of closure—effectively ending the student's program of choice—but nevertheless remaining "open" for purposes of avoiding their students becoming eligible for closed school loan discharge.[10] This second risk is real, it has happened, and it has deprived students of loan relief due to the closure of an institution.

In closing, NSLDN urges a favorable report with amendments on SB 795.

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ADDITIONAL FACTS REGARDING HIGHER EDUCATION IN MARYLAND

Maryland is far from an outlier when it comes to issues of student debt. For example, according to one recent report, the nationwide, state-average debt level for the Class of 2016 ranges from $20,000 to $36,350 and the share of graduates with debt ranges from 43 percent to 77 percent.[11] In Maryland, 54% of graduates in the class of 2016 will graduate with debt, with an average debt load of $27,455.[12] According to data made public by the U.S. Department of Education's College Scorecard, the graduation rates at numerous for-profit colleges in Maryland are particularly low. For example, federal data indicates that Strayer University – Maryland in Suitland has 2,160 graduates, but only 17% of first-time, full-time students at that school graduate within 150% of the ordinary completion time.[13] And at Kaplan University-Hagerstown, only 39% of first-time, full-time students graduate within the 150% period.[14] Nor are Maryland students immune from being defrauded by their institutions. According to July 2017 information provided by the U.S. Department of Education, roughly 1,040 Marylanders had "borrower defense" claims pending with the Department, asserting that an institution of higher education had violated state law with respect to the student loan process.[15] These claims are largely, if not exclusively, filed by students and former students asserting conduct at for-profit institutions.[16]

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[10] Under federal regulations, a "school's closure date is the date that the school ceases to provide educational instruction in *all* programs, as determined by the Secretary." 34 C.F.R. § 685.214(a)(2(i) (emphasis added). Accordingly, an institution that participates in Title IV federal student aid programs can operate on the brink of closure—with nearly all students forced to leave the institution—but nevertheless remain "open," on a small scale, for purposes of preventing students from accessing federal closed school loan discharges. Institutions may be incentivized to do this because the federal Higher Education Act permits the Department to seek to recover from the institution any amounts that are discharged as closed school loan discharges. *See* HEA 437(c)(2), 20 U.S.C. § 1087(c)(2); 34 C.F.R. § 685.214(e).

[11] *See* Student Debt and the Class of 2016, 12th Annual Report by The Institute on College Access and Success *available at*: https://ticas.org/sites/default/files/pub_files/classof2016.pdf

[12] In reality, the debt load is much worse because these statistics above do not consider for-profit colleges, the growth of which has led to a tremendous surge in student loan defaults, *see* n.4, and do not consider non-graduates, *i.e.*, students who do not complete their programs.

[13] https://collegescorecard.ed.gov/search/?state=MD&control=profit&sort=advantage:desc

[14] *Id.*

[15] *See* Ltr. fr. J. Manning (Acting Under Secretary of Education) to Sen. Richard Durbin (July 7, 2017) *available at*: https://www.durbin.senate.gov/imo/media/doc/17-010570%20Durbin%20Outgoing.pdf with attachments *available at:* https://www.durbin.senate.gov/imo/media/doc/17-010570%20Enclosure%201.pdf & https://www.durbin.senate.gov/imo/media/doc/17-010570%20Enclosure%202.pdf. The pending Maryland figures do not include information about the 31,773 claims that had been approved by the Department prior to January 20, 2017. And although a large majority of these claims were submitted by students who attended either Corinthian Colleges or ITT Technical Institute, approximately 20% of the claims were submitted by students who attended other institutions – including institutions in Maryland. *See generally* Y. Cao & T. Habash, College Complaints Unmasked: 99 Percent of Student Fraud Claims Concern For-Profit Colleges (Nov. 8, 2017) *available at*: https://tcf.org/content/report/college-complaints-unmasked/.

[16] *Id.*