

**PROTECTING STUDENTS AND TAXPAYERS:
IMPROVING THE CLOSED SCHOOL
DISCHARGE PROCESS**

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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**PROTECTING STUDENTS AND TAXPAYERS:
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DISCHARGE PROCESS**

Thursday, September 30, 2021

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

The Subcommittee met, pursuant to notice, at 10:15 a.m. via Zoom, Hon. Frederica S. Wilson (Chairwoman of the Subcommittee) presiding.

Present: Representatives Wilson, Takano, Leger Fernández, Manning, Bowman, Pocan, Castro, Espaillat, Bonamici, Scott, Murphy, Grothman, Stefanik, Banks, Miller-Meeks, Good, McClain, Letlow and Foxx (*ex officio*).

Staff present: Katie Berger, Professional Staff; Jessica Bowen, Professional Staff; Rashage Green, Director of Education Policy; Christian Haines, General Counsel; Rasheedah Hasan, Chief Clerk; Sheila Havenner, Director of Information Technology; Ariel Jona, Policy Associate; Andre Lindsay, Policy Associate; Max Moore, Staff Assistant; Mariah Mowbray, Clerk/Special Assistant to the Staff Director; Kayla Pennebecker, Staff Assistant; Véronique Pluviose, Staff Director; Manasi Raveendran, Oversight Counsel—Education; Banyon Vassar, Deputy Director of Information Technology; Claire Viall, Professional Staff; Michael Davis, Minority Operations Assistant; Amy Raaf Jones, Minority Director of Education and Human Resources Policy; Hannah Matesc, Minority Director of Member Services and Coalitions; Chance Russell, Minority Professional Staff Member; and Mandy Schaumburg, Minority Chief Counsel and Deputy Director of Education Policy.

Chairwoman WILSON. Good morning. Good morning to all of you. We're ready to begin. I will count down from five and then we will start, 5, 4, 3, 2, 1. The Subcommittee on Higher Education Workforce Investment will come to order.

Welcome everyone. I note that a quorum is present. The Subcommittee is meeting today to hear testimony on protecting students and taxpayers, improving the closed school discharge process. This is an entirely remote hearing. All microphones will be kept muted as a general rule to avoid unnecessary background noise.

Members and witnesses will be responsible for unmuting themselves when they are recognized to speak, and when they wish to seek recognition. I also ask that Members please identify them-

selves before they speak. Members should keep their cameras on while in the proceeding. Members shall be considered present at the proceedings when they are visible on camera, and they should be considered not present when they are not visible on camera.

The only exception to this 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 you are muted and use your phone to immediately call the Committee's IT director whose number was provided in advance.

Should the Chair experience technical difficulties or need to step away to vote on the floor, Representative Bonamici—thank you Ms. Bonamici, as a Member of the Subcommittee, or another majority Member of the Subcommittee 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 more than one person on the software platform sitting in the same room.

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

In order to ensure the Committee's five-minute rule is adhered to, staff will be keeping track of time using the Committee's digital timer which appears in its own thumbnail picture. Members and witnesses are asked to wrap up promptly when their time has expired.

Pursuant to Committee Rule 8(c) opening statements are limited to the Chair and the Ranking Member. This allows us to hear from our witnesses sooner and provide all Members with adequate time to ask questions. I now recognize myself for the purpose of making an opening statement.

Today we're meeting to discuss ways to improve the Closed School Discharge Program which provides relief to students when their institution abruptly closes. This discussion will focus on new preliminary findings from a Government Accountability Office study that will be presented to the Committee this morning.

In the last decade at least five large, for-profit college chains have collapsed overnight leaving tens of thousands of students with significant student loan debt, and often without degrees. These school closures can be devastating for students, plunging them into financial and emotional despair, while robbing them of the education and opportunity they deserve.

The support these students Congress included a closed student discharge provision in the Higher Education Act. Under current law affected students have three options. No. 1—continue presenting the degree either through a teach out plan offered by their own institution, or through agreements with other institutions.

No. 2—transfer to another institution of their choice, or three—apply for a discharge of their Federal student loans. Unfortunately, the first two options are fraught with challenges. Many institutions will not accept credits earned at default schools, and institutions

that do participate in teach out plans or accept credits, are often very low quality.

In fact, in 2017 GAO found that students who transferred their credits from for-profit schools to public school lost 94 percent of their credits. The students applying for a full discharge of their Federal student loan is often the best option because it both reduces their financial burden, and restores their eligibility for Federal student aid.

The closed school discharge process should be simple to understand and easy to navigate for students. The GAO's finding show that this is not the case as we'll hear today that three key problems at the Education Department must solve.

First, many students do not become aware that they are entitled to loan relief until they have already damaged their credit through delinquency and default. It is critical that affected students receive more timely information about the process for applying for closed school discharge.

One way to address this challenge is to restore the automatic school discharge process that was implemented under the Obama administration. This process streamlined relief for affected students without forcing them to submit information that the Education Department already has.

Unfortunately, the Trump administration under Betsy DeVos eliminated this program. The Education Department also could reduce the 3-year waiting period that student borrowers must endure before their loans are fully discharged.

Second, students who experience a school closure often do not go on to complete their degrees at another institution. The teach out options that defunct schools are required to provide their students often follow them into other low-quality schools. The Education Department should address this challenge by conducting greater oversight, over teach out plans and other agreements between institutions.

And finally, the GAO's preliminary finding once again demonstrate that low-quality, for-profit schools are costing students and taxpayers billions of dollars. 96 percent of the students who receive closed school discharges between 2010 and 2020 attended for-profit schools. I'll say that again, 96 percent of the students who received closed school discharges between 2010 and 2020 attended for-profit schools.

Congress and the Education Department must work together to crack down predatory schools that continue to cheat our students and our taxpayers. The challenges described in the GAO's preliminary findings are important and extremely timely.

In the next 2 weeks the Education Department will begin considering changes to the closed school discharge process. I hope the Rulemaking Committee will closely review the lessons that can be learned from the GAO's report.

[The prepared statement of Chairwoman Wilson follows:]

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

Today, we are meeting to discuss ways to improve the Closed School Discharge program, which provides relief to students when their institution abruptly closes.

This discussion will focus on new preliminary findings from a Government Accountability Office study that will be presented to the Committee this morning.

In the last decade, at least five large for-profit college chains have collapsed overnight, leaving tens of thousands of students with significant student loan debt—and often without degrees. These school closures can be devastating for students, plunging them into financial and emotional despair while robbing them of the education and opportunities they deserve.

To support these students, Congress included a closed school discharge provision in the Higher Education Act. Under current law, affected students have three options:

- One—Continue pursuing their degrees either through a teach-out plan offered by their own institution or through agreements with other institutions;
- Two—Transfer to another institution of their choice;
- Or Three—Apply for a discharge of their Federal student loans.

Unfortunately, these first two options are fraught with challenges. Many institutions will not accept credits earned at defunct schools, and institutions that do participate in teach-out plans or accept credits are often very low quality.

In fact, in 2017, GAO found that students who transferred their credits from for-profit schools to public schools lost 94 percent of their credits.

For students, applying for a full discharge of their Federal student loans is often the best option because it both reduces their financial burden and restores their eligibility for Federal student aid. The Closed School Discharge process should be simple to understand and easy to navigate for students.

The GAO's findings show that is not the case. As we'll hear today, there are three key problems that the Education Department must solve.

First—Many students do not become aware that they are entitled to loan relief until after they have already damaged their credit through delinquency and default. It is critical that affected students receive more timely information about the process for applying for closed school discharge.

One way to address this challenge is to restore the automatic school discharge process that was implemented under the Obama administration. This process streamlined relief for affected students without forcing them to submit information that the Education Department already has. Unfortunately, the Trump administration, under Betsy DeVos, eliminated this program.

The Education Department also could reduce the 3-year waiting period that student borrowers must endure before their loans are fully discharged.

Second—Students who experience a school closure often do not go on to complete their degrees at another institution. The teach-out options that defunct schools are required to provide their students often funnel them into other low-quality schools.

The Education Department should address this challenge by conducting greater oversight over teach-out plans and other agreements between institutions.

And finally, the GAO's preliminary findings once again demonstrate that low-quality for-profit schools are costing students and taxpayers billions of dollars. 96 percent of the students who received closed school discharges between 2010 and 2020 attended for-profit schools.

I'll say that again: 96 percent of the students who received closed school discharges between 2010 and 2020 attended for-profit schools.

Congress and the Education Department must work together to crackdown on predatory schools that continue to cheat students and taxpayers.

The challenges described in the GAO's preliminary findings are important and timely. In the next 2 weeks, the Education Department will begin considering changes to the closed school discharge process. I hope the rulemaking committee will closely review the lessons that can be learned from the GAO's report.

I want to thank the GAO and all of our witnesses for being with us today. I now recognize the distinguished Ranking Member for the purpose of making an opening statement, Representative Murphy.

Mr. MURPHY. Thank you, Madam Chairman. Thank you very much everyone for coming today. When a college class closes thousands of students are thrown off their academic paths, some permanently. This often leaves students that are left with tens of thousands of dollars in debt and no degree to show for it. Without

credentials, it is exponentially more difficult for these students to repay their loans.

They are thus left in a worst place then when they started their degree. This is simply not right. These students deserve protections. They should not face the full financial burden of student loan debt if their school's closure forced them to end their education abruptly.

In the best-case scenario when a school closes students should have the option to continue their program at another college. Students have already invested time and money into starting a degree, and it would be unfortunate to see this effort go to waste.

Finishing their programs would be a far greater benefit for students in the long-term, really than just forgiving their loan. Simply discharging students' debt without providing every avenue possible to degree completion leave taxpayers bearing an unnecessary burden. This is simply not a reasonable pathway, nor is it right for an administration to use its narrow authority to grossly abuse the closed school discharge program.

In August the Biden administration announced that it was expanding the "look back window," to students who attended ITT Tech in 2008. A full 8 years before it closed. This will cost taxpayers over a billion dollars. This policy is simply reckless and financially honestly absurd. It is clear that the Biden administration is using this narrow program as a trojan horse for the Democrat's radical mass student loan forgiveness agenda. We must resist these efforts if we're ever to get our Nation's financial house in order.

The money simply does not grow on trees. Education is an investment, and all investments have inherent risks. We need to get back to the belief in this country that personal responsibility means something. Everything is not free when faced with adverse circumstances.

While no student however should be left holding the bag if their school preemptively closes, we should ensure that schools receiving Federal financial dollars are financially viable, rather than cleaning up the mess after they've closed.

This topic is just one of many that we should be discussing in the context of a higher and full reform of the Higher Education Act. If we're serious about addressing this issue, I urge the Committee together that we work together in a bipartisan manner, which we can do, to adequately legislate.

The pandemic exposed some significant flaws with our country's higher educational system. Our country's college students deserve better from their institutions. When discussing such reforms it is critical that we balance the interest of hard-working taxpayers with those of student borrowers.

It is difficult to explain to a hard-working American that never went to college why he or she would have to pay off someone else's student loan. Blue collar Americans have struggled the most throughout this pandemic, many losing their jobs or being told they aren't allowed to show up for work.

And all of these Americans now are being asked to pay for white collar degrees. That is simply not right. Degree completion is a student's best bet for a successful future. This should be our focus, not

burdening taxpayers with debt that is neither their fault, nor their responsibility.

[The prepared statement of Mr. Murphy follows:]

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

When a college closes, thousands of students are thrown off their academic path, some permanently. This often means students are left tens of thousands of dollars in debt and no degree to show for it.

Without credentials, it is exponentially more difficult for these students to repay their loans. They are thus left in a worse place than when they started their degree. This is simply not right.

These students deserve protections and should not face the full financial burden of student loan debt if their school's closure forced them to end their education abruptly.

In the best-case scenario, when a school closes, students should have the option to continue their program at another college. Students have already invested time and money into starting the degree, and it would be unfortunate to see this effort go to waste. Finishing their programs will be a far greater benefit for students in the long term really than just forgiving their loan.

Simply discharging students' debt without providing every avenue possible to degree completion leaves taxpayers bearing an unnecessary burden. This is simply not a reasonable pathway. Nor is it right for an administration to use its narrow authority to grossly abuse the closed school discharge program.

In August, the Biden administration announced that it was expanding the 'look back window' to students who attended ITT Tech in 2008-a full 8 years before it closed. This will cost taxpayers over \$1 billion.

This policy is simply reckless and financially, honestly, absurd. It is clear that the Biden administration is using this narrow program as a Trojan horse for the Democrats' radical mass student loan forgiveness agenda. We must resist

these efforts if we are ever to get our Nation's financial house in order. The money simply does not grow on trees. Everything is not free.

Education is an investment, and all investments have inherent risks. We need to get back to the belief in this country that personal responsibility means something. Everything is not free when faced with adverse circumstances.

While no student, however, should be left holding the bag if their school preemptively closes, we should ensure that schools receiving Federal dollars are financially viable, rather than cleaning up the mess after they close.

This topic is just one of many that we should be discussing in the context of a full reform of the Higher Education Act. If we are serious about addressing this issue, I urge the committee work together in a bipartisan manner, which we can do, to adequately legislate.

The pandemic exposed some significant flaws with our country's higher education system. Our country's college students deserve better from their institutions.

When discussing such reforms, it is critical that we balance the interests of hardworking taxpayers with those of student borrowers.

It is difficult to explain to a hardworking American that never went to college why he or she would have to pay off someone else's student loan.

Blue-collar Americans have struggled the most throughout this pandemic, many losing their jobs or being told they aren't allowed to show up for work. And these are the Americans we are asking to pay for white-collar degrees.

That is simply not right.

Degree completion is a student's best bet for a successful future. This should be our focus, not burdening taxpayers with debt that is neither their fault nor their responsibility.

Thank you Madam Chairman. I look forward to an excellent Subcommittee meeting, and I appreciate the time to speak. I yield back.

Chairwoman WILSON. Thank you. Without objection all other 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 o'clock p.m. on Thursday, October 14, 2021.

I will now introduce the witnesses and thank you so much for coming today. Our first witness is Melissa Emrey-Arras who is a director of GAO's Education Workforce and Income Security Team. She oversees GAO's higher education work. Prior to joining GAO she worked as a private sector consulting company conducting program evaluations for State and local governments, and worked in non-profit agencies serving children and families.

Melissa earned a master's degree in public policy from Harvard University, and a bachelor's degree from Swarthmore College. Welcome Melissa.

Our second witness is Karyn Rhodes who's a mother, grandmother, entrepreneur, and real estate agent from Torrance, California. In 1988 as a single mother Miss Rhodes took out \$6,625.00 in Federal student loans to enroll in a data entry program at American Business Institute, ABI, which suddenly closed 7 months into Ms. Rhodes' education.

Ms. Rhodes has never been informed about her right to a closed school discharge, but eventually had her loans discharged in August 2020.

Our third witness is Preston Cooper, who is a Research Fellow at The Foundation for Research on Equal Opportunity, a non-partisan, non-profit think tank focused on bringing opportunities to those who least have it.

Mr. Cooper's work focuses on the Federal student loan program and the economics of higher education. He's also a regular contributor to Forbes. Mr. Cooper holds a bachelor's degree from Swarthmore College and a master's degree in economics from George Mason University, welcome.

And last we will hear from Robyn Smith, who currently works as a Senior Attorney with the Legal Aid Foundation of Los Angeles where she concentrates on student loan and for-profit school issues. She also acts as, Of Counsel, for the National Consumer Law Center where she coauthored NCLC Student Loan Law Treatise.

Mrs. Smith also worked as a supervising Deputy Attorney General at the California Attorney General's Office where she investigated and prosecuted fraudulent for-profit colleges. Last, she has authored a report on the Department of Education's existing authority to provide widespread discharges to borrowers impacted by student loan closures welcome.

We appreciate the witnesses for participating today, and we all look forward to your testimony. Let me remind the witnesses 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. 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 your time is up.

Please be attentive to the time. Wrap up when your time is over and remute your microphone. If any of you experience technical difficulties during your testimony or later in the hearing do not disconnect. Stay on the platform, make sure you are muted, and use

your phone to immediately call the Committee's IT Director whose number was provided to you in advance.

We will let all 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 Miss Emrey-Arras, that's it.

STATEMENT OF MELISSA EMREY-ARRAS, DIRECTOR, EDUCATION, WORKFORCE AND INCOME SECURITY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. EMREY-ARRAS. You got it.

Chairwoman WILSON. Good morning.

Ms. EMREY-ARRAS. Good morning, Chairwoman Wilson, Republican Leader Murphy, Chairman Scott, Republican Leader Foxx, and Members of the Subcommittee. I am pleased to be here today to discuss GAO's work on closed school discharges. When a college closes it can derail the education of many students leaving them with loans, but no degree.

Those who cannot complete their education may be eligible to have their Federal student loans forgiven through a closed school discharge from the Department of Education. I will focus my remarks on GAO's research findings in two areas. One, what is known about borrowers who were enrolled in colleges that closed, and two, the extent to which these borrowers received closed school discharges.

Beginning with a look at the borrowers who were enrolled at schools that closed, we found that about 246,000 of Federal student loan borrowers were enrolled in over 1,100 colleges that closed from 2010 through 2020. We also found that 86 percent of these borrowers were enrolled at for-profit colleges that closed. While some students at closed schools managed to complete their programs or transfer, including some students who transferred to another college that also subsequently closed, we found that many of the borrowers enrolled at closed schools did not complete their program or transfer making them eligible for a closed school discharge.

Specifically, we found that over 40 percent of impacted borrowers did not complete their program before their college closed, or transferred to another college, showing that closures are often the end of the road for a student's education.

Next, turning to GAO's research findings on closed school discharges, we found that over 80,000 borrowers had their Federal student loans forgiven through the closed school discharge process. The majority of these borrowers applied for loan forgiveness, however, over 27,000 received relief through a process that took effect in 2018, which automatically discharged loans for eligible borrowers.

The automatic process discharges loans for eligible borrowers 3 years after a closure, and helps those who have not applied for a loan discharge. According to education officials, some of these borrowers may not have been aware that they were eligible for loan discharges.

Automatic discharges have accounted for at least 42 percent of discharges since borrowers became eligible for them. The automatic discharge process has provided relief to many borrowers struggling

to repay their loans. About 73 percent of borrowers who eventually received automatic discharges faced difficulty repaying their loans.

Specifically, 52 percent of these borrowers defaulted on their loans, and an additional 21 percent were past due on their loans by 90 days or more at some point during repayment. More than half of the borrowers who fell into default before receiving an automatic discharge did so within a year and a half of their college closing.

Since education processes discharges 3 years after a closure, many borrowers will receive these automatic discharges, or facing the consequences of default for a substantial amount of time before receiving the automatic discharge. Borrowers who eventually received automatic discharges faced higher rates of default than other borrowers.

For instance, borrowers receiving automatic discharges defaulted at about five times the national average, and about nine times the rate of those who applied for and received discharges. Although many borrowers are at risk of facing severe financial burdens from their Federal student loans that were past due or in default, they did not apply for a discharge.

Borrowers in default may be subject to wage garnishment or reduction in income tax refunds, and some social security benefits. Defaulted loans and loans past due for 90 days or more will also appear on the borrower's credit record, which may make it more difficult for them to obtain their other loans and can also harm their ability to obtain a job or rent or buy a home.

Many borrowers who were struggling to repay their loans eventually received relief through the automatic process. Since education eliminated the process, borrowers impacted by future closures will have to apply to receive the discharge. Those who do not apply potentially because they are not aware of their eligibility, may face long-term financial burdens from student loans that are past due or in default even though those loans are eligible to be discharged.

This completes my statement, and I would be pleased to answer any questions you may have.

[The prepared statement of Ms. Emrey-Arras follows:]

PREPARED STATEMENT OF MELISSA EMREY-ARRAS



United States Government Accountability Office

Testimony
Before the Subcommittee on Higher
Education and Workforce Investment,
Committee on Education and Labor,
House of Representatives

For Release on Delivery
Expected at 10:15 a.m. ET
Thursday, September 30, 2021

COLLEGE CLOSURES

Many Impacted Borrowers Struggled Financially Despite Being Eligible for Loan Discharges

Statement of Melissa Emrey-Arras, Director,
Education, Workforce, and Income Security



September 2021

Highlights of GAO-21-105373, a testimony before the Subcommittee on Higher Education and Workforce Investment, Committee on Education and Labor, House of Representatives

Why This Matters

When a college closes, it can derail the education of many students, leaving them with loans but no degree. Those who cannot complete their education may be eligible to have their federal student loans forgiven through a "closed school discharge" from the Department of Education, but this process has changed in recent years.

We examined what happens to borrowers after colleges closed.

Key Takeaways

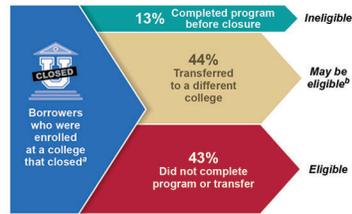
- **About 246,000** borrowers were enrolled at over 1,100 colleges that closed from 2010 through 2020.
- **43%** of impacted borrowers did not complete their program before their college closed or transfer to another college—showing that closures are often the end of the road for a student's education.
- **Over 80,000** of these borrowers had their loans forgiven through a closed school discharge.

The majority of borrowers who had loans forgiven applied for it, but over 27,600 received relief through a new process that took effect in 2018 which automatically discharged loans for eligible borrowers 3 years after a closure.

The automatic discharge process has provided relief to many borrowers struggling to repay their loans. More than **70%** of borrowers who eventually received an automatic discharge were in default or past due on their loans. These borrowers were facing severe financial consequences (e.g., wage garnishments, reduced tax refunds, credit score drops), but may not have been aware that they were eligible for loan forgiveness.

Education eliminated the automatic process in July 2020, so borrowers impacted by future closures will have to apply for forgiveness.

Outcomes for Borrowers Who Attended Colleges That Closed and Their Eligibility for Loan Discharges



Source: GAO analysis of Department of Education data. | GAO-21-105373

^aBorrowers refers to students who borrowed federal student loans and met certain eligibility criteria.

^bBorrowers are not eligible for a discharge if they are completing or have completed a comparable program at another college. Borrowers who transferred but did not complete their program are eligible for a discharge.

How GAO Did This Study

We analyzed Education data on federal student loan borrowers who were enrolled at colleges that closed from 2010-2020. We reviewed relevant federal laws, regulations, and agency documents. We also interviewed Education officials and subject matter experts.

For more information, contact: Melissa Emrey-Arras at (617) 788-0534 or EmreyArrasM@gao.gov

Chair Wilson, Republican Leader Murphy, and Members of the Subcommittee:

I am pleased to be here today to discuss the effect of college closures on federal student loan borrowers. Recent college closures have derailed the educational pursuits of many students.¹ For example, some recent closures, such as ITT Technical Institute in 2016, as well as colleges operated by Dream Center Education Holdings in 2019 and by Concordia University in 2020, involved college chains that together enrolled thousands of students across multiple campuses.

When a college closes, some students may be able to finish their program before the school closes and others may choose to continue their education by transferring to another college. However, for other students a closure can be the end of the road for their education, leaving them with student loan debt but no degree. Those that do not complete their education may be eligible for a closed school discharge of their federal student loans from the Department of Education (Education).² College closures can therefore be costly to students—who have spent time, effort, and financial resources in pursuit of higher education—and to taxpayers who ultimately may be responsible for the costs of the discharged federal student loans.

My remarks today examine (1) what is known about borrowers who were enrolled at colleges that closed; and (2) the extent to which these borrowers received closed school discharges. For these objectives, we analyzed data from Education's Postsecondary Education Participants System to identify college closures from January 1, 2010 through

¹The Department of Education defines a college closure as a college, or branch campus, that has ceased to provide educational programs and permanently closed its doors.

²Borrowers must meet certain eligibility criteria, such as attending the school when the college closed or withdrawn soon before its closure. See 34 C.F.R. § 685.214(c). For the purposes of this testimony, we are using the terms "loan discharge" or "discharge" to refer to closed school loan discharges. Education also administers other kinds of student loan discharges, including Borrower Defense to Loan Repayment, which gives discharges to borrowers who attended colleges that misled them or engaged in other misconduct in violation of state laws, as well as discharges related to total and permanent disability, Perkins Loans, or death.

December 31, 2020.³ We also analyzed data on the federal student loan borrowers who were enrolled at colleges that closed from 2010 through 2020 or withdrew soon before the closure, making them potentially eligible for a closed school discharge.⁴ These data on borrower outcomes and discharges are from Education's National Student Loan Data System, the agency's central database for federal student aid information, and were current as of April 2021 when Education provided the data to us.⁵ We assessed the reliability of the data by comparing data elements used in our analyses to data published by Education, identifying and removing observations outside of the scope of analysis (e.g., closures prior to 2010), reviewing documentation about the specific data systems, and interviewing Education officials responsible for these systems. As a result of this assessment, we concluded that the Education data were sufficiently reliable for reporting the number and characteristics of the population of closed colleges and the student loan borrowers who were enrolled at these colleges. We analyzed Education documents and interviewed officials about the department's policies and procedures for closed school discharges. We also reviewed relevant federal laws and regulations, and interviewed representatives from three organizations that represent borrowers and two research organizations to obtain their views on students' experiences with applying for and receiving a closed school discharge.

We provided relevant sections of this statement to Education for comment. Education provided technical comments, which we addressed as appropriate.⁶

We conducted our work for this testimony in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to

³The Postsecondary Education Participants System is Education's primary system for tracking colleges' eligibility to participate in federal student aid programs, including dates of closures. We also analyzed data from Education's Integrated Postsecondary Education Data System to identify the sector of each closed college.

⁴We selected data from 2010 through 2020 because it allowed us to assess trends over time for borrowers affected by closures.

⁵As later discussed, our analysis does not include students affected by Education's August 2021 announcement that it would make discharges available to approximately 115,000 additional borrowers who attended ITT Technical Institute.

⁶We are also conducting related work that will examine Education's outreach to borrowers about their eligibility for closed school discharges. We plan to complete this work in 2022.

provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Closed school discharge eligibility

Students who were enrolled at a college that closed may be eligible to have the full balance of their federal student loans forgiven if they are unable to complete their program of study due to the closure of the college.⁷ To be eligible for a closed school discharge, federal student loan borrowers (or a student on whose behalf a parent borrowed) generally must: 1) have been enrolled when the college closed or withdrawn soon before its closure⁸; 2) not have completed the program of study at the college before it closed; and 3) not be completing or have completed a comparable program at another college through a teach-out⁹ or by transferring credits or hours earned at the closed college.¹⁰

According to Education regulations, receiving a discharge qualifies borrowers for reimbursement of any amounts previously paid or collected on those loans. Additionally, Education is required under regulations to report discharges to relevant consumer reporting agencies so that all adverse credit history assigned to the loan can be removed from borrowers' credit reports.

⁷Parents who borrowed Parent PLUS Loans for a student enrolled at a closed college may also be eligible for a closed school discharge.

⁸To fall within the eligibility window for closed school discharges, borrowers must have withdrawn within 180 days of a college's closure if they had loans disbursed on or after July 1, 2020, within 120 days if they had loans disbursed from July 1, 2014 through June 30, 2020, or within 90 days if they had loans disbursed before July 1, 2014. Education may also extend the window of eligibility if the Secretary determines that exceptional circumstances related to a college's closing justify an extension. Borrowers on an approved leave of absence when the college closed may also be eligible for a discharge.

⁹Teach-outs refer to a written course of action that a closing school may take to help students finish their programs of study. Some plans include written agreements between the closed school and other schools that are still open for instruction that allow a student to finish their program of study at one or more schools.

¹⁰Borrowers who transfer academic credits may still be eligible if they 1) do not complete their program at the new school or 2) transfer from the closed college to a non-comparable program of study at the receiver college.

Process for obtaining a
Closed School Discharge

Education manages the discharge process, including overseeing its student loan servicers, which are responsible for receiving and reviewing discharge applications and processing approved discharges. Loan servicers are also required to send an application and explanation of the qualifications and procedures for obtaining a discharge to all potentially eligible borrowers after a college closes.¹¹

Borrowers have different options for obtaining a closed school discharge depending on the date of their college's closure. Borrowers impacted by a closure can submit a closed school discharge application. In addition, some borrowers are eligible to have their loans automatically discharged by Education without filing an application through a process that took effect in October 2018¹² if they were enrolled at a college that closed on or after November 1, 2013 and did not continue their education by re-enrolling in another Title IV-eligible college within 3 years of the school closure.¹³ Education created this automatic process to address concerns that some eligible borrowers were not applying for discharges. The process is generally intended to provide automatic discharges to

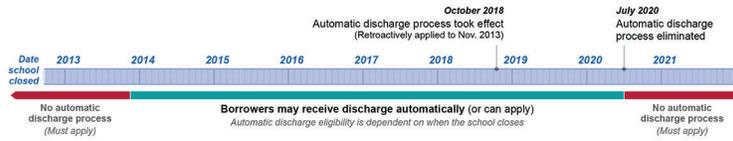
¹¹As of July 2020, Education and its student loan servicers are solely responsible for providing students with information about their potential eligibility for a closed school discharge as a result of recently issued regulations rescinding a prior requirement that closing colleges also provide this information to students. See Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 84 Fed. Reg. 49,788, 49,854, 49,910 (Sept. 23, 2019) (removing paragraph (b)(32) from 34 C.F.R. § 668.14).

¹²The regulations were initially scheduled to take effect on July 1, 2017, but prior to the effective date, Education issued a final rule establishing July 1, 2019, as the new effective date. Following a series of lawsuits, a court vacated the delay of the 2016 regulations. Consequently, the 2016 regulations went into effect October 16, 2018. See "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," 83 Fed. Reg. 6,458, 6,458-69 (Feb. 14, 2018); *Bauer v. DeVos*, 332 F. Supp. 3d 181, 186 (D.C. Cir. 2018).

¹³See 34 C.F.R. § 685.214(c)(3)(ii). Borrowers must have otherwise met the qualifications for enrollment at the closed colleges. This process was later eliminated for borrowers who were enrolled at a school that closed after July 1, 2020. Colleges must meet requirements under Title IV of the Higher Education Act to be eligible to participate in federal student aid programs.

qualifying borrowers 3 years after their college closes.¹⁴ Education subsequently implemented new regulations that eliminated the automatic discharge process for closures occurring on or after July 1, 2020, meaning borrowers enrolled in colleges that closed after this date must apply for a discharge (see fig. 1).¹⁵

Figure 1: Timing of the Automatic Closed School Discharge Process



Source: GAO analysis of relevant federal regulations. | GAO-21-105373

Note: Because Education does not automatically discharge loans until 3 years after the closure, Education will continue to administer the automatic process through July 2023.

In August 2021, Education announced it will establish a negotiated rulemaking committee in October to consider additional regulatory revisions related to closed school discharges, among other issues.

¹⁴For example, borrowers who were enrolled at a college that closed in January 2017 and otherwise met the eligibility criteria for a discharge would have been eligible to receive an automatic discharge by January 2020. Because the regulations allow for borrowers who were enrolled at colleges that closed as early as November 2013 to be eligible for automatic discharges and the process did not take effect until October 2018, some borrowers did not become eligible for an automatic discharge until more than 3 years after their school closed.

¹⁵See 84 Fed. Reg. 49,788, 49,848, 49,930-31 (Sept. 23, 2019). Because Education does not automatically discharge loans until 3 years after the closure, Education will continue to administer this process through July 2023. When announcing the final regulations to eliminate the automatic process, Education stated that providing automatic closed school discharges to borrowers ran counter to its goals of encouraging students at closed schools to complete their educational programs. The Department's rationale also included the belief that borrowers should be able to decide whether a discharge is in their best interest and that the existing application process was not overly burdensome or difficult to navigate. According to current regulations, the Secretary has discretion to discharge borrowers' loans without an application if the Secretary determines that the borrower qualifies for the discharge of a loan based on information in Education's possession. See 34 C.F.R. § 685.214(c)(3).

Most Borrowers Impacted by a Closure Were Enrolled at For-Profit Colleges and Many Did Not Complete Their Program or Transfer

About 246,000 Borrowers Were Enrolled at a College That Closed from 2010 through 2020, and Most Attended For-Profits

About 246,000 borrowers¹⁶ were enrolled at 1,106 colleges that closed from 2010 through the end of 2020.¹⁷ These college closures ranged in size from small branch campuses to large college chains serving tens of thousands of borrowers across multiple locations.¹⁸ Borrowers enrolled in colleges that closed collectively had about \$4 billion in federal student loans, with a median loan debt of about \$9,500.¹⁹ The total number of students affected by college closures is even higher because students

¹⁶For the purposes of our analysis, "borrower" refers to any student who borrowed federal student loans (or student on whose behalf a parent borrowed) and was either a) enrolled or on an approved leave of absence when their college closed, or b) withdrew within the window of eligibility for a closed school discharge. To fall within the eligibility window for closed school discharges, borrowers must have withdrawn within 180 days of a college's closure if they had loans disbursed on or after July 1, 2020, within 120 days if they had loans disbursed from July 1, 2014 through June 30, 2020, or within 90 days if they had loans disbursed before July 1, 2014. Education may also extend the window of eligibility if the Secretary determines that exceptional circumstances related to a college's closing justify an extension.

¹⁷For the purpose of our analysis, we combined college closures that 1) have the same 6-digit Office of Postsecondary Education Identification Number (OPEID) and 2) closed within the same calendar year. Because our testimony is focused on the impact of college closures on borrowers, we did not include over 7,100 OPEIDs that Education reported as closed but did not have any federal student loan borrowers enrolled or on an approved leave of absence when the college closed or that withdrew shortly before its closure, meaning there were no borrowers at these schools who potentially would have been eligible for a closed school discharge.

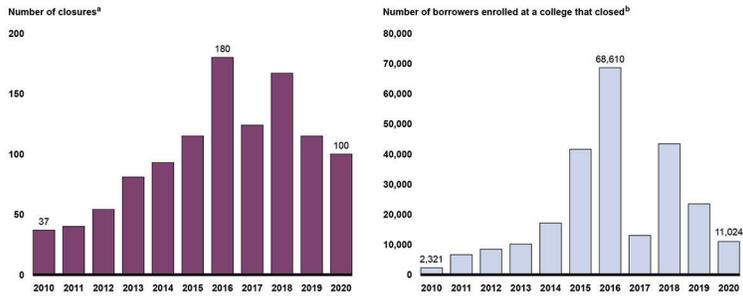
¹⁸While some closures constitute a branch campus or campuses closing, the majority of closures included the college's main campus closing. From 2010 through 2020, about 800 main campuses closed.

¹⁹The average loan debt was about \$16,400 per borrower.

who did not receive federal student loans were not included in our analysis.²⁰

Both the number of college closures and affected borrowers have varied since 2010, peaking in 2016 when the large for-profit chain ITT Technical Institute closed (see fig. 2). Other large college closures include Corinthian Colleges in 2015 and Dream Center Education Holdings in 2019. Although many experts initially predicted an increase in college closures in 2020 due to the COVID-19 pandemic, college closures decreased to the lowest levels since 2014 during this time, which some experts have attributed, in part, to Congress providing about \$75 billion in stimulus funding to colleges throughout the course of the pandemic.

Figure 2: Annual Number of College Closures and Affected Borrowers, 2010-2020



Source: GAO analysis of Department of Education data. | GAO-21-105373

^aGAO combined college closures that 1) have the same 6-digit Office of Postsecondary Education Identification Number and 2) closed within the same calendar year. Colleges that closed without any federal student loan borrowers enrolled prior to closure were not included in this analysis.

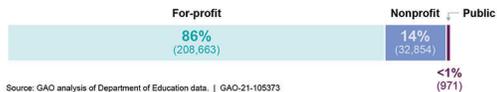
^b“Borrower” refers to any student who borrowed federal student loans (or student on whose behalf a parent borrowed) and was either a) enrolled or on an approved leave of absence when their college closed, or b) withdrew within the window of eligibility for a closed school discharge. Data reflect

²⁰About 67 percent of undergraduate students did not participate in the federal student loan program during the 2018-2019 school year, according to the most recent data from the Integrated Postsecondary Education Data System. Education’s National Student Loan Data System does not include enrollment information on these students.

borrowers as of April 2021 and include those borrowers who were enrolled at a college that closed from calendar year 2010 through 2020.

Among borrowers affected by a closure between 2010 and 2020, 86 percent were enrolled at a for-profit college (see fig. 3). A relatively small number of for-profit colleges accounted for a majority of borrowers affected by college closures. About 51 percent of all borrowers affected by college closures were enrolled at one of the 34 for-profit colleges that enrolled 1,000 or more borrowers at the time they closed. Three of these for-profit colleges that closed each had 10,000 or more borrowers enrolled. During this time, seven nonprofit colleges also closed with 1,000 or more borrowers enrolled.

Figure 3: Federal Student Loan Borrowers Enrolled at a College that Closed from 2010 through 2020, by College Type



Source: GAO analysis of Department of Education data. | GAO-21-105373

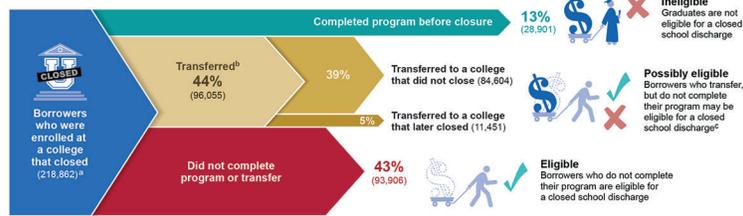
Note: Percentages may not add up to 100 due to rounding. GAO combined college closures that 1) have the same 6-digit Office of Postsecondary Education Identification Number and 2) closed within the same calendar year. Colleges that closed without any federal student loan borrowers enrolled were not included in this analysis. Additionally, GAO measured the size of closures by how many students who took out federal student loans (or whose parents who took out loans on students' behalf) were either a) enrolled or on an approved leave of absence when their college closed, or b) withdrew within the window of eligibility for a closed school discharge. Data reflect borrowers as of April 2021 and include those borrowers who were enrolled at a college that closed from calendar year 2010 through 2020.

Over 40 Percent of Borrowers Enrolled at a College That Closed Did Not Complete or Continue Their Education

A college closure represented the end of many borrowers' educational pursuits. Forty-three percent of borrowers enrolled at a college that closed did not complete their program or continue their education by transferring to another college, according to available data from

Education.²¹ In addition, 44 percent of borrowers transferred to another college after a closure, and 13 percent were able to complete their program prior to their college closing (see fig. 4). A greater proportion of borrowers at for-profit colleges that closed did not complete their program or transfer compared to borrowers at other types of colleges that closed. At for-profit colleges that closed, 44 percent of borrowers did not complete or transfer, compared to 34 percent of borrowers at nonprofit college closures and 22 percent of borrowers at public colleges.

Figure 4: Educational Outcomes as of April 2021 for Federal Student Loan Borrowers Who Enrolled at a College that Closed from 2014 through 2020



Source: GAO analysis of Department of Education data. | GAO-21-105373

^a"Borrower" refers to any student who borrowed federal student loans (or student on whose behalf a parent borrowed) and was either a) enrolled or on an approved leave of absence when their college closed, or b) withdrew within the window of eligibility for a closed school discharge. GAO did not include borrowers who were enrolled at colleges that closed prior to calendar year 2014 because Education officials stated that the data on program completion for those borrowers had limitations.

^bFor the purposes of GAO's analysis, "transfers" refers to borrowers at closed colleges who re-enroll at another college after a closure and take out federal student loans at the receiver college.

^cBorrowers who transfer academic credits or hours may also be eligible for a closed school discharge if they transfer from the closed college to a non-comparable program of study at the receiver college. Borrowers are not eligible if they are in the process of completing the program of study or a

²¹Our reported statistics on borrower outcomes are based on data from 2014 through 2020, unless otherwise noted. We did not include borrowers who attended colleges that closed prior to 2014 because Education officials stated that the data on program completion for those borrowers had limitations. Additionally, for the purposes of our analysis, "transfers" refers to borrowers at closed colleges who re-enroll at another college after a closure and take out federal student loans at the receiver college. Education officials said the department is prohibited from collecting individualized data on students who enroll without taking out federal student loans, but the limited data Education has on these students and our own analysis of separate data from Education's Beginning Postsecondary Students Longitudinal Study suggest the number is small.

comparable program through a teach-out, or by transferring academic credits or hours earned at the closed college to another college.

An additional factor that can affect whether borrowers are able to continue or complete their education is the circumstances surrounding a college's closure. For example, colleges that cease operations in an orderly process over several months can give students time to complete the current school term and make arrangements to transfer and continue their education at another school. We previously reported that the effect from college closures is often worse if the closures occur abruptly with little or no advance warning, because these colleges generally do not have time to establish transfer arrangements that allow students to easily continue their education at another college.²²

A college closure can have negative consequences for borrowers regardless of whether they transfer or complete their program. Transferring to another college after a closure enables borrowers to continue their education, but it is not always in borrowers' best interest, according to Education officials and our analysis of Education data. For instance, many borrowers who transfer lose credits in the transfer process, transfer to colleges that are at-risk of closing, and struggle to complete their education after transferring.

- Students often lose some college credits when they transfer. We have previously reported that students who attend a for-profit college, which account for most college closures, generally lose most of their credits when transferring to a new college. For example, we reported that students transferring among for-profit colleges, lost an average of 83 percent of their credits.²³ For-profit to for-profit transfers were the most common transfer path among borrowers who were enrolled at a closed college, accounting for about 37 percent of transfers from 2014

²²See GAO, *Higher Education: Education Should Address Oversight and Communication Gaps in Its Monitoring of the Financial Condition of Schools*, GAO-17-555 (Washington, D.C.: August 2017).

²³See GAO, *Higher Education: Students Need More Information to Help Reduce Challenges in Transferring College Credits*, GAO-17-574 (Washington, D.C.: August 2017). We also reported that, on average, for-profit borrowers who re-enroll at public colleges are unable to transfer 94 percent of their credits. From 2014 through 2020, about 30 percent of borrowers transferred from a for-profit to a public college.

through 2020. Borrowers who are unable to transfer credits could incur additional costs to repeat courses.²⁴

- Some borrowers who already had their education disrupted from one college closure transferred to another college that later shut its doors as well. From 2014 through 2020, nearly 11,500 borrowers transferred to a college that subsequently closed, accounting for about 5 percent of borrowers affected by closures in that time period. If these borrowers did not complete their program at the second college, they are potentially eligible to discharge loans associated with both colleges.
- Many borrowers who transferred did not end up completing their programs at the new colleges. Of about 11,300 borrowers in our data set that transferred prior to 2015, nearly 49 percent (about 5,500 borrowers) did not graduate within 6 years of transferring.²⁵ Borrowers who transferred but are not currently completing their education may be eligible for a loan discharge, whereas borrowers who transferred to a comparable program and graduated are ineligible.

Borrowers who complete their program prior to the closure of their college can benefit from having a degree, but the degree may be devalued by the closure, according to Education officials. Representatives from a borrower advocate group explained that when colleges close, the college may suffer reputational damage and the quality of education may deteriorate leading up to the closure. As a result, borrowers who get a degree at a closing college may incur unmanageable amounts of debt in exchange for a relatively low-value degree. These borrowers are ineligible for a loan discharge.

²⁴Some closing colleges may have established a teach-out process that may limit credit loss. For example, some teach-outs include contracts with a receiver college that allow students to transfer credits and finish their program of study after their college closes. However, some schools, particularly those that closed abruptly, may not have an approved teach-out process in place.

²⁵We limited our analysis of 6-year graduation rates to borrowers who transferred between 2010 and 2014. This allowed us to include only borrowers who have potentially been at the receiver school for 6 or more years.

The Discharge Process Provided Relief to Many Borrowers Who Struggled To Repay Their Loans

Education Discharged Loans for over 80,000 Borrowers Enrolled at Colleges That Closed from 2010 through 2020, Many through the Automatic Process

Education has granted discharges to over 80,000 borrowers who were enrolled at colleges that closed from 2010 through 2020.²⁶ These discharges provided an important protection to borrowers whose educational pursuits were cut short through no fault of their own. In total, Education discharged about \$1.1 billion of loans for borrowers at 682 college closures, and the median loan debt discharged for affected borrowers was about \$9,900.²⁷ Of all discharges Education granted to borrowers, about 96 percent went to students at for-profit colleges, with nearly two-thirds of discharges going to borrowers concentrated at just 21 for-profit colleges. This analysis reflects data as of April 2021. In August 2021, Education announced that the agency would make \$1.1 billion in discharges available to an additional 115,000 borrowers who attended ITT Technical Institute prior to its closure in September 2016.²⁸ Education expanded the closed school discharge eligibility window beyond the standard 120 days to include borrowers who attended ITT Technical

²⁶Education has also provided borrower defense loan discharges to about 5,300 borrowers who attended a college that closed and were potentially eligible for a closed school discharge as well. According to Education documents, if a borrower at a college that has closed may qualify for either a closed school discharge or a borrower defense discharge, the agency encourages the borrower to apply for a closed school discharge. The closed school discharge application process is generally less burdensome than the borrower defense application process, according to Education documents and officials we interviewed.

²⁷Borrowers who received a discharge had slightly higher loan balances compared to the median loan debt for all borrowers at a closed college, which was about \$9,500. The average amount discharged was about \$13,700 per borrower, while the average loan amount for all borrowers was about \$16,400 per borrower.

²⁸According to the announcement, the discharges are available to borrowers who left ITT Technical Institute on March 31, 2008 or later and otherwise met the eligibility criteria for a discharge. Most of these borrowers did not enroll at another institution within three years of ITT Technical Institute closing and will receive a discharge automatically. Borrowers who enrolled elsewhere but did not complete their program of study may still be eligible for a discharge, but will need to submit an application, according to the announcement.

Institute on or after March 31, 2008. Borrowers who attended ITT Technical Institute within 120 days of its closure who applied for a discharge or received one automatically in 2019–3 years after the college’s closure—are included in our analysis.

Automatic discharges have accounted for at least 42 percent of discharges since borrowers became eligible for them in November 2013.²⁹ During this period, Education automatically discharged about \$360 million of loans for over 27,600 eligible borrowers who did not proactively apply for and receive a discharge. In comparison, Education discharged about \$526 million to over 38,700 borrowers through the traditional, application-based process (see fig. 5). A large proportion of borrowers have received discharges through the automatic process, and according to Education officials, some may not have been aware that they were eligible for discharges. Education officials and representatives from a borrower advocate group also told us that another reason some eligible borrowers do not take advantage of application-based discharges is because the onus is on those borrowers to apply for a discharge. Education’s automatic process has therefore provided eventual relief to borrowers who did not proactively apply.

Figure 5: Proportion of Federal Student Loan Borrowers Receiving a Closed School Discharge by Type of Discharge, as of April 2021 for Colleges That Closed 2013-2018^a



Source: GAO analysis of Department of Education data. | GAO-21-105373

²⁹We are reporting the total number of discharges as of April 2021, the date at which Education provided us data. Because borrowers are not eligible for an automatic discharge until 3 years after their college closes, our analysis includes automatic discharges for borrowers who were enrolled at colleges that closed up through April 2018. Additionally, according to Education officials, loan servicers misclassified some initial automatic discharges as application-based discharges in Education’s data system. As a result, the actual proportion of automatic discharges may be higher than was indicated in our analysis of the data. These officials said that when Education was first processing automatic discharges, the department had not yet established a code to distinguish automatic discharges from application-based discharges so all discharges, including automatic discharges were coded as application-based. Officials said that loan servicers may have also misclassified some automatic discharges when borrowers who were in the process of applying for a discharge received one through the automatic process. Education officials stated that they have provided servicers guidance on how to report discharges, and this is no longer an issue.

²⁹GAO is comparing application-based discharges and automatic discharges for borrowers enrolled at colleges that closed from November 2013—when borrowers first became eligible for automatic discharges—and April 2015, the most recent closure date for which borrowers could have received an automatic discharge at the time of analysis. Eligible borrowers who were enrolled at a college that closed on or after November 1, 2013, and before July 1, 2020 become eligible for automatic discharges 3 years after the college closes.

Although the automatic process may catch many eligible borrowers that do not receive application-based discharges, it is not an option for some borrowers. Under Education regulations, borrowers who transfer after a college closure but do not complete their program at the receiver college are generally eligible for a closed school discharge if they submit an application, but they are not eligible to receive a closed school discharge through the automatic process.³⁰ Of about 5,500 borrowers who transferred prior to 2015 and did not complete their programs within 6 years, only about 700 applied for and received discharges as of April 2021. The remaining borrowers (about 4,800) may be eligible for a loan discharge if they apply, but will not receive an automatic discharge under Education's current rules.

Most Borrowers Who Received Automatic Discharges Struggled to Repay Their Loans Although They Were Eligible for Relief

About 73 percent of borrowers who eventually received automatic discharges—that is, eligible borrowers who did not apply for and receive a discharge—faced difficulty repaying their loans. Specifically, 52 percent of these borrowers defaulted on their loans, and an additional 21 percent were past due on their loans by 90 days or more at some point during

³⁰See 34 C.F.R. § 685.214(c)(3)(ii). Similarly, borrowers who transfer to non-comparable programs are generally eligible for loan discharges if they apply, but they will not receive discharges automatically. When Education and loan servicer officials assess borrower applications for closed school discharges, they use a variety of factors to determine whether two programs are comparable. These factors include the academic or professional nature of the programs, the similarity in course requirements, and the treatment of transfer credits. However, Education officials told us that while colleges report data on programs borrowers attend, these data are not sufficient to make determinations about whether programs are comparable for the purpose of administering automatic discharges.

repayment.³¹ More than half of the borrowers who fell into default before receiving an automatic discharge did so within a year and a half of their college closing. Since Education processes automatic discharges 3 years after a closure, many borrowers were facing the consequences of default for a substantial amount of time before receiving an automatic discharge.

Borrowers who eventually received automatic discharges faced higher rates of default than other borrowers. For instance, borrowers receiving automatic discharges defaulted at about five times the national average and about twice as frequently as borrowers who completed their program at colleges that closed. This is consistent with Education reporting that shows that borrowers who do not complete their degree, such as borrowers who are eligible for automatic discharges, are at elevated risk for default.³² Further, we found that borrowers receiving automatic discharges defaulted at about nine times the rate of those who applied for and received discharges. About 11 percent of the borrowers who applied for and received a discharge were at least 3 months past due on their loans at some point, and only 6 percent defaulted on their loans.³³

Although many borrowers were at risk of facing severe financial burdens from their federal student loans that were past due or in default, they did not apply for a discharge. Borrowers in default may be subject to wage garnishment or reductions in federal or state income tax refunds and

³¹About 20,100 of the 27,600 borrowers who received automatic discharges faced difficulty repaying their loans. This includes about 14,300 borrowers who defaulted and an additional 5,800 who were past due on their loans by 90 days or more. Student loan servicers report borrowers who are past due on their federal student loan for 90 days or more to the three major national credit bureaus. If a borrower is past due on their loans for 270 days or more their loan may go into default. However, borrowers past due on their loans for fewer than 360 days can avoid default if they begin making payments or postpone loan payments through forbearance or deferment. Borrowers' reported past due or default status corresponds to any loans associated with the closed college they attended. In limited circumstances, the loans reported as past due or defaulted may be different from the loans that were automatically discharged, for instance if the borrower had previously completed one degree at the school and was pursuing another degree at the same college at the time of closure.

³²Students who take out college loans but do not graduate are nearly three times more likely to default than borrowers who complete their program, according to data from Education's Beginning Postsecondary Students Longitudinal Study.

³³Borrowers receiving application-based discharges are less likely to go into default in part because most (75 percent) receive their discharges within one year of the school closing. Because loans past due for 360 days or more are considered in default, these borrowers likely did not have loans in repayment long enough to default.

some Social Security benefits to collect on the defaulted loan.³⁴ Defaulted loans and loans past due for 90 days or more will also appear on the borrower's credit record, which may make it more difficult for them to obtain other loans and could also harm their ability to obtain a job or rent or buy a home.³⁵

Many borrowers who were struggling to repay their loans eventually received relief through the automatic discharge process. Since Education eliminated the automatic process for closures beginning in July 2020, borrowers impacted by future closures will have to apply to receive a discharge. Those who do not apply for a discharge, potentially because they are not aware of their eligibility, may face long term financial burdens from student loans that are past due or in default, even though those loans are eligible to be discharged.

Chair Wilson, Republican Leader Murphy, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Melissa Emrey-Arras, Director, Education, Workforce, and Income Security Issues at (617) 786-0534 or EmreyArrasM@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony include Will Colvin (Assistant Director), Brian Schwartz (Analyst-in-Charge), Kristy Kennedy, Jon Muchin, and Michael Naretta. In addition, key support was provided by Andrew Bellis, James Bennett, Deborah Bland, Gina Hoover, John Mingus, Jessica Orr, Rachel Stoiko, and Adam Wendel.

³⁴Upon default, the entire unpaid balance of the loan and any accrued interest is immediately due. Defaulted borrowers may also be ineligible for assistance under federal loan programs and may not receive any additional federal student aid until the loan is repaid in full or the borrower resolves the default through other means, such as loan consolidation or loan rehabilitation.

³⁵Borrowers with poor credit ratings may also be charged a higher interest rate than someone with a good credit rating. They also may have trouble obtaining car loans or other forms of consumer credit, signing up for utilities, or obtaining a cell phone plan, according to information from Education.



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Chairwoman WILSON. Thank you so much. Next we'll hear from Ms. Rhodes.

STATEMENT OF MS. KARYN RHODES, STUDENT BORROWER

Ms. RHODES. Good morning everyone. My name is Karyn Rhodes and I live in Torrance, California. I'm a wife, mother, grandmother and now a self-made entrepreneur. I would like to share this testimony of my 30 year long journey with the Department of Education to get a closed school loan discharge.

My goal is to help anyone who is experiencing, or who has experienced a defaulted school loan as a result of a school closure. In

1988 I was a single mother who worked for Comcast as a customer service representative. In this position I was struggling financially.

I wanted to provide a better life for my daughter, so I decided to try to become a data entry clerk. This position required a degree, and I discovered that the American Business Institute in Los Angeles offered this course. I made an appointment to tour the school. After the tour I enrolled and took out \$6,625.00 in Federal student loans.

I officially started school in April 1988, and attended classes while balancing my job and taking care of my daughter. Seven months later while trying to attend one of my night classes, several other students and I were stopped by the police from entering the school premises and were told there would not be any classes today. The police told us they could not give us any information, but they stated that there was an open investigation with the school and asked us to leave.

The following week I called the school multiple times and left voice mails for all the employees listed on the school's website, but with no answer. I decided to drive to the school in hopes of reaching one of the faculty Members. Once I arrived I saw other students that showed up to the school as well.

All we saw was a note taped to the school's main door stating that the school was closed. No other information was listed. One student informed me that the owners of the school had committed fraud and were indicted. I was stunned. Week after week I kept calling and stopping by, but nothing changed.

I also reached out to other school branches, but I received no assistance. I then understood I was on my own and stuck with the debt from a school that was now closed. In the first few years after the school closed I told the people who were collecting my student loans about the closure, and asked for my loan to be canceled because I never received my degree.

However, my requests were denied because at that time Congress had not created a closed school discharge process. For almost three decades I struggled to make my student loan payments and eventually defaulted. During that time I was a junior operator at a hair salon while attending cosmetology school, and my husband was the main provider for our family.

Although, according to my legal aid lawyer, I was eligible for this discharge since 1994. I had never been invited to apply by my loan servicer or debt collectors, even when I explained that my school had closed. The Department of Education obtained a judgment against me in Federal Court and seized \$2,100.00 in Federal income tax refunds.

I was confused why my tax returns were seized because I had no knowledge of the judgment. I was never served, nor received any paperwork, and did not have any legal representation. Due to the judgment I was not eligible for stopping the tax refund offsets through consideration or rehabilitation. This also prevented me from going back to school because I would never be able to secure any Federal funding when I had a defaulted loan on my credit.

This caused me tremendous stress and I felt the education system had failed me. In October 2018 I received a letter attempting to collect on my school loan. It stated that my original \$6,625.00

loan had ballooned to a \$26,000.00 debt. I was informed that I needed to make payments on the loan or else they would pursue wage garnishments against me.

I agreed to start making \$60.00 month payments to protect my family and our wages while I continued to pursue a school loan discharge. I researched on the internet and found that there was a class action suit against American Business Institute, so I called and spoke with Legal Aid Foundation of Los Angeles, explaining my situation.

On December 23, 2018, Legal Aid assisted me by submitting a closed school discharge application. On December 21, my application was denied. In August 2020, Legal Aid submitted an appeal, a few weeks later I received a letter stating that I was granted my closed school discharge.

I was so excited and relieved that I finally was free of that \$26,000.00 debt. I was also refunded the \$2,100.00 that was taken in income tax refunds. Legal Aid also succeeded in having the judgment removed from my credit as well as the lawsuit dismissed with prejudice.

This was the icing on the cake for me and a day to remember. I was overjoyed that it was finally over after almost 30 years. I felt vindicated and that the truth had prevailed in the end. I am glad my God never let me give up. He led me to the right people to help me, and they were at Legal Aid of Los Angeles. Thank you for this opportunity to share my story, and thank you Chairwoman Wilson, Ranking Member Murphy and Members of the Committee for this opportunity to share my experiences.

[The prepared statement of Ms. Rhodes follows:]

PREPARED STATEMENT OF KARYN RHODES

**Testimony of Karyn Rhodes to the U.S. House of Representatives Committee on
Education & Labor****Thursday, September 30, 2021****Higher Education and Workforce Investment (HEWI) Subcommittee Hearing:
“Protecting Students and Taxpayers: Improving the Closed School Discharge Process”**

My name is Karyn Rhodes, and I live in Torrance, California. I am a wife, mother, grandmother, and now a self-made entrepreneur. I would like to share this testimony of my thirty-year long journey with the Department of Education to get a closed school loan discharge. My goal is to help anyone who is experiencing or has experienced a defaulted school loan as a result of a school closure.

In 1988, I was a single mother who worked for Comcast as a customer service representative. In this position I was struggling financially. I wanted to provide a better life for my daughter, so I decided to try to become a Data Entry Clerk. This position required a degree, and I discovered that the American Business Institute in Los Angeles offered this course. I made an appointment to tour the school. After the tour, I enrolled and took out \$6,625 in Federal student loans. I officially started school in April 1988 and attended classes while balancing my job and taking care of my daughter.

Seven months later, while trying to attend one of my night classes, several other students and I were stopped by the police from entering the school premises and were told there would not be any classes today.

The police told us they could not give us any information, but they stated that there was an open investigation with the school and asked us to leave.

The following week I called the school multiple times and left voicemails for all of the employees listed on the school’s website, but with no answer. I decided to drive to the school in the hopes of reaching one of the faculty members. Once I arrived, I saw other students had showed up to the school as well. All we saw was a note taped to the school’s main door, stating that the school was closed. No other information was listed. One student informed me that the owners of the school had committed fraud and were indicted. I was stunned. Week after week, I kept calling and stopping by, but nothing changed. I also reached out to other school branches, but I received no assistance. I then understood I was on my own and stuck with debt from a school that was now closed.

In the first few years after the school closed, I told the people who were collecting my student loans about the closure and asked for my loan to be cancelled because I never received my degree. However, my requests were denied because at that time Congress had not created a closed school discharge process.

For almost three decades, I struggled to make my student loan payments and eventually defaulted. During that time, I was a junior operator at a hair salon while attending cosmetology school and my husband was the main provider for our family. Although, according to my legal aid lawyer, I was eligible for this discharge since 1994, I had never been invited to apply by my loan servicer or debt collectors, even when I explained that my school had closed.

The Department of Education obtained a judgment against me in federal court and seized \$2,100 in federal income tax refunds. I was confused why my tax returns were seized, because I had no knowledge of the judgment. I was never served nor received any paperwork and did not have any legal representation.

Due to the judgment, I was not eligible for stopping the tax refund offsets through consideration or rehabilitation. This also prevented me from going back to school because I would never be able to secure any federal funding when I had a defaulted loan on my credit.

This caused tremendous stress, and I felt the education system had failed me.

In October 2018, I received a letter attempting to collect on my school loan. It stated that my original \$6,625 loan had ballooned to a \$26,000 debt.

I was informed that I needed to make payments on the loan or else they would pursue wage garnishments against me. I agreed to start making \$60 monthly payments to protect my family and our wages, while I continued to pursue a school loan discharge.

I researched on the Internet and found that there was a class action suit against American Business Institute. So, I called and spoke with Legal Aid Foundation of Los Angeles (LAFLA), explaining my situation. On December 13, 2018, LAFLA assisted me by submitting a closed school discharge application. On December 21, my application was denied.

In August 2020, LAFLA submitted an appeal. A few weeks later, I received a letter stating that I was granted my closed school discharge. I was so excited and relieved that I was finally free of that \$26,000 debt. I was also refunded the \$2,100 that was taken in income tax refunds. LAFLA also succeeded in having the judgment removed from my credit as well as the lawsuit dismissed with prejudice.

This was the icing on the cake for me and a day to remember. I was overjoyed that it was finally over after almost 30 years. I felt vindicated and that the TRUTH had prevailed in the end. I am glad my God never let me give up. He led me to right people to help me, and they were at LAFLA.

Thank you for this opportunity to share my story.

Chairwoman WILSON. Thank you. Thank you so much. We'll now hear from Mr. Cooper.

**STATEMENT OF PRESTON COOPER, RESEARCH FELLOW, THE
FOUNDATION FOR RESEARCH ON EQUAL OPPORTUNITY**

Mr. COOPER. Good morning Chairwoman Wilson, Ranking Member Murphy and distinguished Members of the Subcommittee. Thank you for the opportunity to testify today on improving the closed school discharge process. My name is Preston Cooper, and I am a Research Fellow in higher education policy at the Foundation for Research on Equal Opportunity, a non-profit, non-partisan

think tank focused on bringing opportunity to people with incomes below the U.S. median.

My remarks today are my own and do not represent the views of my employer. Closed school discharges are an important feature of the student loan safety net, but policymakers should view them as a last resort.

Students affected by school closures did not originally go to college with the intention of taking out loans that would later be discharged. They went to college in order to earn a degree or certificate, and build a better life for themselves. When schools close we want students to complete their programs through a teach out, or transfer their credits to another university and earn a credential there.

This will make them ineligible for a discharge, but they will get what they originally wanted, a degree. Closed school discharges should be the last option we consider not the first. When they occur it means we have failed students. The problem is not that schools sometimes close.

School closures will always be a fact of life, in fact creative destruction in higher education is desirable. If schools never close it would be a sign of stagnation in higher education. The challenge is not preventing school closures, but managing them to ensure students can complete their education elsewhere and do not impose excessive burdens on taxpayers through the closed school discharge process.

Institutions can sometimes shut down with little warning, leaving students scrambling to complete their education. The Department of Education's track record of predicting school closures ahead of time is poor. The key metric it uses to assess school's financial health once suggested that a school for hypnotists is in better shape than Harvard University financially.

Institutions such as Corinthian Colleges have found ways to manipulate financial responsibility metrics, and limit the Department's ability to take action to protect students and taxpayers.

The private sector has often proven better than the Department of Education at assessing the true State of institution's financial health. According to the GAO in 2016 private credit rating agencies gave junk bond status to 30 colleges that received a clean bill of financial health from the Department of Education.

To that end Congress should leverage the power of the private sector to help the Department predict when schools will close, and provide the financial incentives for schools to shut themselves down in an orderly fashion.

The solution is to require schools to purchase insurance to cover the costs associated with closed school discharges. Each year the Department of Education would calculate taxpayer's total potential liability in the event of a school closure. Aid-dependent schools would then be required to purchase insurance on the private market to fully cover those potential losses.

If the school fails, and closed school discharges are granted, the insurance company would make taxpayers whole. The key benefit is that insurance companies could vary institution's premiums according to the financial risk each school presents. Institutions on stronger financial footing would pay lower premiums.

Schools with a well-defined teach out plan and articulation agreements with other colleges to ensure transferability of credit would also get a break on their premiums, but unscrupulous institutions such as Corinthian Colleges, might not be able to secure insurance coverage at all.

The insurance mandate creates a direct financial incentive for institutions to serve students better. There is ample precedent for insurance mandates. Car owners must purchase insurance as must homeowners if they want to get a mortgage. It's not unreasonable to ask colleges and universities which receive taxpayer funding in excess of 100 billion dollars every single year to meet the same standard as ordinary people.

The best way to serve students is not to grant as many closed school discharges as possible, but to make closed school discharges unnecessary. Students take on debt because they want a degree or certificate. Schools need incentives to maximize their students' chances of earning that credential, even in the event of the school closure.

And insurance mandate for higher education could provide those incentives while protecting taxpayers at the same time. Thank you again for the opportunity to testify today, and I look forward to your questions.

[The prepared statement of Mr. Cooper follows:]



*Statement Before the United States Congress
House Committee on Education and Labor
Higher Education and Workforce Investment Subcommittee
Hearing on "Protecting Students and Taxpayers: Improving the Closed School Discharge
Process"*

Closed School Discharges

How an Insurance Mandate for Higher Education Can Protect Students and Taxpayers

Preston Cooper

Research Fellow, The Foundation for Research on Equal Opportunity

September 30, 2021

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Good morning, Chairwoman Wilson, Ranking Member Murphy, and distinguished Members of the Subcommittee. Thank you for the opportunity to testify today on improving the closed school discharge process. My name is Preston Cooper and I am a research fellow in higher education policy at the Foundation for Research on Equal Opportunity, a nonprofit, nonpartisan think tank focused on bringing opportunity to people with incomes or wealth below the U.S. median.

While closed school discharges are an important aspect of the student loan safety net, when they occur, it means we have failed student borrowers. Far better than a loan discharge is ensuring that students have the chance to achieve what they went to college for in the first place: a degree or certificate. To that end, Congress should require institutions to purchase insurance to reimburse taxpayers in the event of a closed school discharge. This policy will provide a financial incentive for institutions to take steps to avoid such discharges, such as improving transferability of credit. An insurance mandate can also fit into a broader system of incentives-based accountability for federally-dependent institutions of higher education.

Background on closed school discharges

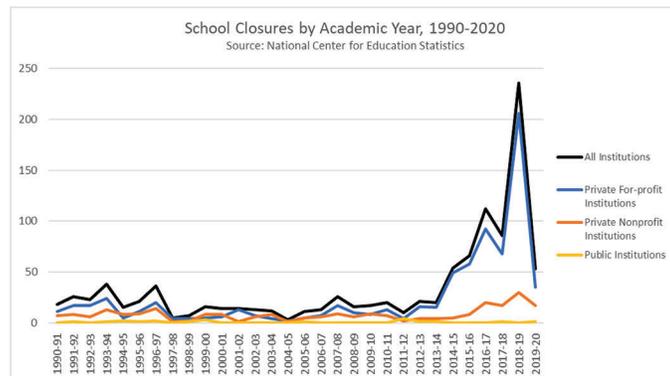
Higher education is a risky investment, so the federal government includes several provisions in its student aid programs to mitigate the risk to students. One of these provisions is the closed school discharge. If a school closes while a student is still enrolled (or closes within 180 days after she withdrew), she may be eligible to have her federal student loans canceled. However, the student is ineligible for a discharge if she completes

her academic program before the school closes, or if she successfully transfers her credits to another school.¹

In recent years, the Education Department (ED) has taken action to automatically cancel the loans of some students eligible for a closed school discharge. The Obama administration's Borrower Defense to Repayment rule authorized automatic discharges for students who attended a school that closed between November 1, 2013 and July 1, 2020. The Secretary of Education has periodically used his discretionary authority to grant additional discharges, including a recent \$1.1 billion to 115,000 former students of ITT Technical Institute, a now-defunct chain of for-profit institutions. Students are now eligible for a discharge if they withdrew from ITT Tech on or after March 31, 2008 (which is more than eight years before the institution closed).²

ED does have some tools available to protect taxpayers from the losses imposed by closed school discharges. For instance, it may require financially troubled institutions to post a letter of credit in order to cover taxpayer losses in the event of a discharge. But this strategy often fails in practice, as the shuttering of ITT Tech demonstrates.

On August 25, 2016, the Obama administration required ITT Tech to post surety equal to \$153 million, on top of \$94 million that the school had already posted. The school was given 30 days to provide a letter of credit. At the same time, ED banned ITT Tech from enrolling new students using federal financial aid.³ These two actions, though justified in the abstract, had a crippling financial effect on the school. Unable to secure the additional letter of credit and facing a precipitous decline in revenues, ITT Tech closed permanently on September 6.⁴ The \$94 million letter of credit it posted covered only a fraction of the closed school discharges associated with the institution, which are still ongoing.



According to U.S. Department of Education data, nearly 700 institutions have closed their doors in the last 10 years.⁵ School closures are an inevitable aspect of the higher education system. Indeed, if schools did not periodically close, it would be a sign of stagnation and sclerosis among American colleges. The landscape of a healthy higher education system should change over time as labor market needs evolve and innovation delivers better pedagogical techniques.

The problem is the manner in which schools sometimes close. Too often, schools such as ITT Tech shut their doors with little warning. Students may be unable to complete their coursework or transfer their credits to another institution. While this will make those students eligible for a closed school discharge, loan forgiveness was not their original goal when they began attending school; rather, they pursued higher education in hopes of earning a credential. Closed school discharges should be regarded as a last resort, and not

only because they represent a significant burden on taxpayers. When discharges occur, it means that we have failed our students.

Current financial responsibility rules are inadequate

ED needs a way to recognize ahead of time when a school is in danger of closure. Currently, ED uses a measure called the Financial Responsibility Composite Score to assess schools' financial health. Private institutions are required to submit audited financial statements to ED, which ED then uses to calculate a score between negative 1.0 and positive 3.0. Schools with a score of less than 1.0 are considered not financially responsible. ED may require institutions receiving a failing score to post a letter of credit, or suspend them from participation in federal financial aid programs altogether. Schools with scores between 1.0 and 1.5 are subject to heightened cash monitoring.⁶

However, composite scores have long been recognized as an inadequate measure of schools' financial health. Their power to predict school closures is limited at best. According to a Government Accountability Office report issued in 2017, half of the institutions that shuttered between 2010-11 and 2015-16 received *passing* composite scores from ED right before they closed. Eighty percent of institutions that received *failing* scores in 2010-11 were still operating as of June 2016.⁷ As one *Inside Higher Ed* writer pointed out, ED's composite scores suggest that a school for hypnotists is on stronger financial footing than Harvard University, which has a \$42 billion endowment.⁸

GAO found that financial responsibility composite scores do not reflect current best practices in accounting. Moreover, they take two to three years to calculate (the most recent available set of composite scores is from academic year 2018-19), meaning ED is

slow to react to changes in schools' financial health.⁹ Scores are also vulnerable to manipulation. Corinthian Colleges, another defunct chain of for-profit schools, took advantage of the fact that composite scores give schools credit for long-term debt by taking out enormous loans, labeling them "long-term debt," and repaying them almost immediately. Corinthian collapsed in 2015, and closed school discharges associated with the school have cost taxpayers hundreds of millions of dollars. The institution received a passing score from ED as recently as 2012.¹⁰

There is suggestive evidence that score manipulation is ongoing. The most recent set of scores show that eight times as many institutions received a barely-passing composite score of 1.5 as received a score of 1.4, just below passing. In the absence of manipulation, we would expect a much smoother gradient around the passing threshold.¹¹

While ED updated its methodology for calculating composite scores in 2020, GAO argues that the changes "do not fully address the current limitations of the composite score formula" and do not "incorporate new financial metrics that would provide a broader indication of schools' financial health, such as liquidity, historical trend analysis, or future projections."¹²

These shortcomings mean that ED often cannot predict ahead of time when schools are in danger of closure, which limits ED's ability to request letters of credit and take other actions to protect taxpayers. By the time a school's financial troubles become apparent, it may be too late to take protective action. Requesting a letter of credit at this stage may even hasten a school's collapse, as occurred in the case of ITT Tech.

Moreover, when schools close, students often cannot transfer their credits to another institution. Transfer students typically lose 43 percent of their credits. Credit loss

rates can be over 90 percent for students who wish to transfer between for-profit and public schools, though the problem is bigger than for-profits: transfers between public community colleges result in a 69 percent loss of credit, on average.¹³ Poor transferability of credits both deprives students of the chance to earn a credential and places a greater burden on taxpayers, who must grant closed school discharges when students cannot continue their education.

The solution: an insurance mandate

School closures will always occur in the higher education system. The challenge is not in preventing these closures, but in managing them to ensure students can complete their education elsewhere and do not impose excessive burdens on taxpayers through the closed school discharge process. While closed schools may be a fact of life, closed school discharges do not have to be.

Private-sector analysts have often proven better than ED at assessing the true state of institutions' financial health. For instance, in 2016 ED gave passing financial responsibility composite scores to 30 schools that received "junk bond" status from private credit rating agencies. Analysts in the private sector correctly identified financial weaknesses at those schools which ED's financial responsibility formula missed.

Congress should leverage the deep institutional knowledge and sharper financial incentives of the private sector to help ED predict when schools will close. To that end, Congress should require institutions dependent on federal student aid to purchase insurance that fully covers the financial risk they pose to taxpayers.

Such a system would work as follows. Each year ED would calculate taxpayers' total potential liability in the event of a school closure. Aid-dependent schools would then be required to purchase insurance on the private market to fully cover those potential losses. If the school fails, the insurance company would reimburse ED for all costs associated with closed school discharges.

The initial benefit of this plan is to save taxpayers money in the event of a closed school discharge. But the broader benefit is that it creates incentives for institutions to serve their students better.

Insurance companies would be free to vary the premiums they charge institutions based on the perceived risk each institution represents. Institutions on stronger financial footing would pay lower premiums. Moreover, schools with a well-defined teach-out plan and articulation agreements with other colleges to ensure transferability of credit would also pay lower premiums, since the government's losses would be lower in the event of a school closure. Institutions would need to secure insurance coverage before they gain the right to participate in federal financial aid programs. Insurance companies would therefore provide an additional screen to keep unscrupulous institutions from gaining access to taxpayer funding.

The key advantage of this strategy is that insurance companies have a direct financial incentive to properly assess each school's financial viability, teach-out plans, and transferability of credit policies. Moreover, private companies will be quicker to react to changes in institutions' financial health, and can also update the methodology they use to assess financial responsibility faster than ED.

The insurance mandate is analogous to the letters of credit that ED periodically demands from at-risk schools, but far more proactive. While ED must wait to request a letter of credit until an institution's financial problems have become apparent, the insurance mandate will protect taxpayers at during every stage of their relationship with institutions.

Naturally, such a mandate should have a phase-in period of several years, so that a sudden new requirement on institutions does not itself result in closures. But when such a mandate is fully implemented, it will simply hold colleges to the same standard as average people. The government requires car owners to purchase insurance, and banks may legally force mortgage borrowers to have homeowner's insurance. An insurance mandate is the least we can ask of institutions to protect students and taxpayers, who fund them to the tune of over \$100 billion per year.

Incentives-based accountability for colleges and universities

The insurance mandate for aid-dependent institutions of higher education should fit into a broader policy program of accountability focused on outcomes. The federal government should leverage its financial power to ensure that students and taxpayers are getting the outcomes they expect from federally-dependent schools. The best way to do this is to set up the right financial incentives for institutions to achieve excellence in degree completion, graduate earnings, cost minimization, and loan repayment rates.

Closed school discharges represent more than a cost to taxpayers. If such discharges are happening, then students have failed to earn the degree or certificate they expected from their institutions. It is far better for students to either earn a credential or transfer

their credits to another school than to have their student loans forgiven. Institutions need a financial incentive to ensure their students can do so. An insurance mandate will provide this encouragement.

But degree completion is just one piece of the accountability puzzle. The federal government must also ensure that the credentials it pays for are worth something in the labor market. New data on graduates' earnings from the College Scorecard shows that is not always the case.¹⁴ At the same time, high rates of student loan default reveal the dissatisfaction with which many students regard the education they received.

An insurance mandate should therefore be just one piece of an incentives-based accountability system for American higher education. The insurance mandate rewards institutions for good financial health and adequate transferability of credit. Other policies, such as student loan risk-sharing¹⁵ and prizes for good earnings outcomes,¹⁶ could also constitute pieces of this system.

Conclusion

Closed school discharges should be seen as a failure, both of students and taxpayers. While school closures will always happen, a mandate for federally-dependent institutions to purchase insurance can protect students from the consequences of those closures and make taxpayers whole in the event of a discharge. An insurance mandate should be part of a broader move towards incentives-based accountability in higher education policy, so that students and taxpayers see the best possible return on their investment.

¹ U.S. Department of Education, Office of Federal Student Aid, "Closed School Discharge," <https://studentaid.gov/manage-loans/forgiveness-cancellation/closed-school>

- ² U.S. Department of Education, "Extended Closed School Discharge Will Provide 115K Borrowers from ITT Technical Institute More Than \$1.1B in Loan Forgiveness," August 26, 2021, <https://www.ed.gov/news/press-releases/extended-closed-school-discharge-will-provide-115k-borrowers-itt-technical-institute-more-11b-loan-forgiveness>
- ³ Ron Bennett, Letter to Kevin M. Modany Re: Provisional/LOC Alternative, August 25, 2016, <https://www2.ed.gov/documents/press-releases/itt-letter-08252016.pdf>
- ⁴ Michael Stratford and Kimberly Hefling, "ITT Tech shutdown could cost taxpayers nearly \$500m," *Politico*, September 6, 2016, <https://www.politico.com/story/2016/09/itt-tech-closes-its-doors-227765>
- ⁵ Digest of Education Statistics, National Center for Education Statistics, "Table 317.50: Degree-granting postsecondary institutions that have closed their doors, by control and level of institution: 1969-70 through 2019-20," Prepared November 2020, https://nces.ed.gov/programs/digest/d20/tables/dt20_317.50.asp?current=yes
- ⁶ U.S. Department of Education, Office of Federal Student Aid, "Financial Responsibility Composite Scores," <https://studentaid.gov/data-center/school/composite-scores>
- ⁷ Government Accountability Office, "Education Should Address Oversight and Communication Gaps in Its Monitoring of the Financial Condition of Schools," August 2017, <https://www.gao.gov/assets/gao-17-555.pdf>
- ⁸ Ry Rivard, "Scores of Problems," *Inside Higher Ed*, March 10, 2014, <https://www.insidehighered.com/news/2014/03/10/can-us-government-tell-colleges-poor-financial-shape-those-are-not>
- ⁹ Ben Miller, "The Coronavirus Pandemic Isn't the Time To Abandon Financial Accountability for Private Colleges," *Center for American Progress*, June 9, 2020, <https://www.americanprogress.org/issues/education-postsecondary/news/2020/06/09/485955/coronavirus-pandemic-isnt-time-abandon-financial-accountability-private-colleges/>
- ¹⁰ U.S. Department of Education, Office of Inspector General, "Federal Student Aid's Processes for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students and Taxpayers," February 24, 2017, <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2017/a09q0001.pdf>
- ¹¹ U.S. Department of Education, Office of Federal Student Aid, "Financial Responsibility Composite Scores," <https://studentaid.gov/data-center/school/composite-scores>
- ¹² Government Accountability Office, "Education Should Address Oversight and Communication Gaps in Its Monitoring of the Financial Condition of Schools," August 2017, Update Accessed September 25, 2021, <https://www.gao.gov/products/gao-17-555>
- ¹³ Government Accountability Office, "Students Need More Information to Help Reduce Challenges in Transferring College Credits," August 2017, <https://www.gao.gov/assets/gao-17-574.pdf>
- ¹⁴ Preston Cooper, "For most students, it's what you study – not where you study," *Economics21*, December 12, 2019, <https://economics21.org/most-college-students-not-major-where-attend-school>
- ¹⁵ Jason Delisle, "How to Make Student Debt Affordable and Equitable," *Manhattan Institute*, July 23, 2019, <https://www.manhattan-institute.org/replacing-federal-student-loan-program>
- ¹⁶ Preston Cooper, "Why Free Community College Solves the Wrong Problem," *James G. Martin Center*, September 17, 2021, <https://www.jamesmartin.center/2021/09/why-free-community-college-solves-the-wrong-problem/>

Chairwoman WILSON. Thank you, thank you very much. Well now hear from Ms. Smith.

STATEMENT OF ROBYN SMITH, SENIOR ATTORNEY, LEGAL AID FOUNDATION OF LOS ANGELES

Ms. SMITH. Chairwoman Wilson, Ranking Member Murphy and Members of the Committee, thank you for inviting me to testify today about improving the Federal loan discharge process for borrowers harmed by sudden school closures.

I offer my testimony on behalf of the low-income clients of the Legal Aid Foundation of Los Angeles and the National Consumer Law Center. Legal Services organizations have long witnessed the

suffering endured by Federal student loan borrowers after their school has abruptly closed.

At least since 1986 thousands of for-profit schools have closed leaving hundreds of thousands of low-income students with student debt that they have been unable to repay through no fault of their own.

In 1992 after Senate Subcommittee hearings revealed, the extensive harm caused by school closures, Congress amended the Higher Education Act to mandate that the Department grant loan discharges to borrowers who are unable to complete their education due to school closure.

Congress applied the mandate retroactively to students whose schools closed after January 1 of 1986. The Department's closed school regulations published in 1994 provide discretion to the Department to grant automatic discharges to borrowers who are eligible based on information in its possession instead of using this authority to grant retroactive automatic discharges to borrowers harmed by school closures between 1986 and the present, the Department has required students to submit applications, even though students remain unaware that a closed school discharge is even an option.

Although the Department recently used this automatic discharge authority for some ITT Tech students, there are thousands of other schools that closed between 1986 and the present whose former students continue to suffer from the burden of Federal debt they do not owe.

As a result, legal services organizations have a constant influx of borrowers whose schools closed from 2 to 35 years ago. All are low-income and most attended for-profit schools and are African American, Latin X, or other people of color. Most have no idea that they are eligible for a discharge, while others have been unable to obtain a discharge without the assistance of an attorney.

They usually seek our help after they have defaulted, and the government has garnished their wages, seized tax refunds, or seized portions of Federal benefits such as social security. These punitive collection measures push our clients over the financial brink, ruining their credit histories, and causing severe distress when they cannot afford to pay for rent, utilities, transportation to and from work, medical supplies or even food.

Thus the Department's decades long failure to grant automatic closed school discharges has systemically removed the wealth from economically disadvantaged families and communities of color through the collection of burdensome and invalid debt.

Its failure has also prevented these borrowers from building wealth by barring many from earning a credential at a legitimate institution that would allow them to improve the economic well-being of their families. Cruelly the communities hit hardest by the Department's failure are the same communities currently hit hardest by the COVID-19 global health crisis.

The Department's application requirements and reluctance to provide wide-spread automatic closed school discharges have hindered Congress's broad remedial intent in enacting the Higher Education Act's closed discharge mandate. It has caused decades of unnecessary suffering to thousands of students who are disproportio-

tionately people of color who are clearly eligible for discharges according to the Department's own records.

There is little to be gained by continuing to wage this economic war on poor people who were harmed through no fault of their own by sudden school closures. At a minimum, the Department should immediately change course and comply with its statutory mandate by immediately beginning to grant automatic closed school discharges to all borrowers whose schools closed after January 1 of 1986 who are clearly eligible for discharges according to its own records.

I describe in my written testimony other steps that the Department should take to alleviate the devastating consequences of abrupt school closures. Thank you for your close attention to this urgent issue, and for the opportunity to provide this testimony. I look forward to your questions.

[The prepared statement of Ms. Smith follows:]

PREPARED STATEMENT OF ROBYN SMITH



Testimony of Robyn Smith,
Legal Aid Foundation of Los Angeles and National Consumer Law Center,
Before the U.S. House of Representatives Subcommittee on
Higher Education and Workforce Investment
regarding
“Protecting Students and Taxpayers: Improving the Closed School Discharge Process”
September 30, 2021

Introduction

Chairwoman Wilson and Members of the Committee, thank you for inviting me to testify today about improving the federal loan discharge process for borrowers harmed by sudden school closures. I offer my testimony on behalf of the low-income clients of the Legal Aid Foundation of Los Angeles (LAFLA)¹ and the National Consumer Law Center (NCLC).²

My comments are grounded in the work I have done for over 20 years on behalf of low-income student loan borrowers harmed by for-profit schools, most recently in my job as a Senior Attorney at the

¹ The Legal Aid Foundation of Los Angeles (LAFLA) is a nonprofit law firm serving low-income clients across Los Angeles County, California. LAFLA seeks to achieve equal justice for people living in poverty through direct representation, systems change, and community education. LAFLA is a public interest leader on student loan work, having developed student loan and for-profit school expertise over the last 30 years. LAFLA provides outreach and education, self-help clinics, and direct legal assistance to financially distressed student loan borrowers. It has helped hundreds of borrowers harmed by the illegal conduct of higher education institutions to obtain federal student loan discharges. LAFLA serves as a resource for and often consults with other legal services organizations carrying out this work throughout the country. See LAFLA’s website at <https://lafla.org/get-help/student-loan-issues/>.

² The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. Since 1969, we have worked with thousands of legal services, government, and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues. NCLC’s Student Loan Law Manual is the most comprehensive and detailed treatise regarding the rights and options of student loan borrowers. NCLC’s Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates, and provides direct legal representation to student loan borrowers. We work with other advocates across the country representing low-income clients. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens, and make loan repayment more manageable. See the Project’s web site at www.studentloanborrowerassistance.org.

Legal Aid Foundation of Los Angeles. My comments are also based on the work I do with the National Consumer Law Center, where I consult with legal services and other advocates across the country who assist student loan borrowers with closed school discharges.

A closed school discharge is a Congressional imperative to alleviate some of the harm that students experience when schools close. A sudden school closure is devastating. Students have often given up jobs to go to school and spent months or years working towards a now-unavailable diploma or degree. In the case of for-profit schools, the credits earned are typically worthless and not transferable to any other college. Closed school borrowers face having to repay thousands of dollars in federal student loans, as well as private student loans co-signed by a family member, without the credential necessary to earn sufficient income to do so. Although a closed school discharge cannot return the lost time, effort, or job, or pay off a private student loan, it is a bright light in a devastating situation over which students have no control. As I explain in the following sections, the Department's failure to grant widespread, automatic closed school discharges to all who are eligible has destroyed the financial well-being of too many low-income people harmed by for-profit school closures, a disproportionate number of whom are people of color.

School Closures Have Long-term Devastating Financial Consequences for Borrowers Who Are Disproportionally Low-income People of Color.

Legal services organizations have long witnessed the suffering endured by federal student loan borrowers after their school has abruptly closed. The vast majority of the borrowers we assist attended for-profit schools, many of which closed after a government agency or accreditor took action based on deceptive or unlawful business practices.³ These students are disproportionately Black, Latinx, and other

³ Examples include American Business Institute and Wilfred Beauty Academy, Education Corp. of America, Charlotte Law School, schools owned by Education Management Corp. and Dream Center Foundation (Art Institutes Argosy University, Brown-Mackie Colleges), Corinthian Colleges, ITT Technical Institute, Marinello Colleges of Beauty, just to name a few.

people of color.⁴ For-profit school students are also primarily low-income,⁵ non-traditional students, who did not go from high school straight to college. Many are already in the workforce and have children to support. They are first generation students, older students, immigrants, and veterans who follow their American dream and seek college educations they are told will position them to find good employment, increase their earnings and break out of poverty.

These borrowers, whose education is often the most significant investment of their lives, are understandably distressed when their schools suddenly close. In most cases, they are not able to transfer credits or complete their education. According to a 2019 GAO study, only 4% of students were able to transfer credits from for-profit to public schools between 2004 and 2009, and

students who transferred from for-profit schools to public schools lost an estimated 94% of their credits. Even if a student's credits transfer, they may not apply toward fulfilling degree requirements for their intended major. In these cases, a student will likely have to take additional courses at their new school, which could potentially delay graduation and result in additional costs to pay for repeated courses.⁶

In addition, the unpaid federal loans can prevent borrowers from starting over at quality higher education institutions, either because their loans are in default or because they are at or close to federal borrowing limits and have used up their lifetime Pell Grant allotment. As a result, closed school borrowers who are unable to obtain discharges cannot improve their earning capacity through higher education and have extreme difficulty repaying their loans. The lack of a discharge is a barrier to upward mobility and economic stability for too many closed school borrowers.

Once in default, closed school borrowers and their families experience severe cascading financial consequences. The federal government has collection powers against defaulted student loans that far exceed the collection powers of most unsecured creditors. Wielding these coercive collection tools, the government often siphons thousands of dollars from borrowers already experiencing financial

⁴ See, e.g., Michael Vasquez & Dan Bauman, *How America's College Closure Crisis Leaves Families Devastated*, CHRON. OF HIGHER EDUC. (April 4, 2019) (according to a study by the *Chronicle of Higher Education*, a disproportionate number of students whose for-profit schools closed between 2014 and 2018 were people of color.).
⁵ *Id.* (the study also found that over half of the students whose for-profit schools closed between 2014 and 2018 were Pell Grant recipients).

⁶ U.S. Gov't Accountability Off., GAO-19-553T, *GI Bill: Veterans Affected by School Closures* 9 (Jun 19, 2019).

distress. The government can garnish a borrower's wages without a judgment, seize tax refunds (including the Earned Income Tax Credit and Child Tax Credit), and seize portions of federal benefits such as Social Security.

Not only do these punitive collection activities negatively impact both the physical and mental health of borrowers and their families, they can push low-income households over the financial brink. Facing involuntary collections often means that our clients cannot afford their rent and utilities, pay for medication, cover transportation to and from work, or even buy food. Many experience evictions and homelessness, which displace their children from their communities and schools. In addition, a ruined credit history increases the cost of credit and makes it more difficult for borrowers to find employment, housing, and transportation, among other life necessities.

Closed school discharges grant borrowers much-needed financial benefits. After a discharge is granted, the borrower's credit report is cleared of negative student loan history. The federal debt and Pell Grants obtained to attend the closed school are wiped away. Refunds are made to borrowers for all amounts paid voluntarily or involuntarily through wage garnishment or tax refund or federal benefit offsets. These borrowers can finally attempt to move forward with their lives.

The Department Has Failed to Comply with Congress's Closed School Discharge Mandate for Borrowers' Whose Schools Closed Prior to 1994.

At least since 1986, thousands of for-profit schools have closed, leaving tens or hundreds of thousands of low-income students, primarily people of color, with student debt that they have been unable to repay, through no fault of their own. During Senate subcommittee hearings in 1990, the Inspector General of the Department of Education (Department) estimated that of 500 schools the Department had put on a watch list prior to 1990, 150 went out of business and "a large number of students were harmed along the way."⁷ He also estimated that, between October 1985 and June 1988, 53 of these school closures left about 10,000 students with \$30 million (equal to over \$57 million today) worth of loans they

⁷ *Abuses in Federal Student Aid Programs: Hearings Before the Perm. Subcomm. on the Investigations of the Comm. on Government Affairs*, 101st Cong., 2nd Sess. 42 (Feb. 20, 26, 1991) (testimony of James Thomas, Inspector General, U.S. Dep't of Educ.).

had to repay.⁸

Until Congress took notice of the harm that sudden for-profit school closures inflicted on students, the remedy for these students was largely non-existent. Then, in 1990, the Senate Permanent Subcommittee on the Investigations of the Committee on Government Affairs began an 18-month investigation into the cause of an enormous spike in federal student loan defaults.⁹ The above-described testimony of the Inspector General, as well as other evidence, revealed that widespread and sudden for-profit school closures had led to massive numbers of student loan defaults.¹⁰ The Subcommittee recognized the suffering caused to student loan borrowers, stating “should the student eventually default, he or she is no longer eligible for Title IV student financial aid and can encounter future credit problems, tax refund seizures, and/or difficulties with collection agencies.”¹¹ In addition, Congress voiced concerns that closed school students

are in double jeopardy: they are deprived of the training for which they incurred the original loan obligation and they are also barred from receiving the future Federal aid necessary to acquire training to obtain a job in order to repay the loan. . . . The Committee desires in cases where a school closes during the middle of a borrower’s course of instruction . . . the Secretary shall discharge the borrower’s liability by repaying the amount owed on the loan¹²

Based on these findings and concerns, in 1992 Congress amended the Higher Education Act (HEA) to mandate that the Department grant loan discharges to borrowers who are unable to complete their education due to a school closure.¹³ The HEA’s closed school discharge mandate applies to Perkins Loans, Federal Family Education Loan Program (FFEL) Loans and Direct Loans, including Parent PLUS Loans.¹⁴ Congress applied the mandate retroactively to all students who had received federal loans after

⁸ *Id.* at 32.

⁹ S. Rep. No. 58, 102nd Cong., 1st Sess. 6 (1991) (hereinafter, “Nunn Report”).

¹⁰ *Id.*

¹¹ *Id.* at 11; *see also id.* at 10 (“these students have to pay for an education they never received. Lacking proper training, [they] are not able to get jobs by which they can repay [their] federally guaranteed loans and thus suffer the added humiliation of seeing their credit ratings destroyed in the process.”) (quoting Sen. Roth).

¹² H.R. Rep. No. 447, 102nd Cong., 2nd Sess. 52 (1992), reprinted in 1992 U.S.C.A.N. 334, 385.

¹³ 20 U.S.C. § 1087(c)(1) (the Department “shall discharge a borrower’s liability on a loan” if the student “is unable to complete the program in which such student is enrolled due to the closure of the institution . . .”).

¹⁴ 20 U.S.C. §§ 1987(c) (FFEL Program Loans); 1087e(a)(1) (Direct Loans have the same terms and conditions as FFEL Loans unless otherwise specified); 1087dd(g)(1) (Perkins Loans, including National Direct Student Loans).

January 1, 1986 and whose schools closed before they could complete.¹⁵

The Department did not start granting discharges until late 1994, after it published the first closed school discharge regulations and procedures.¹⁶ Although the regulations imposed an affirmative application requirement for closed school eligibility,¹⁷ they also allowed the Department to grant automatic discharges to borrowers or groups of borrowers who were eligible based on information in its possession.¹⁸ In addition, the regulations required the Department and guaranty agencies to identify, based on their own records, students who were eligible for loan discharges due to school closures between January 1, 1986 and August 29, 1994.¹⁹ After writing these regulations, the Department could have used its discretion to grant widespread automatic discharges to these retroactively identified borrowers. Instead, it required all borrowers to submit applications, even when many of them were difficult to locate and unaware a closed school discharge was even an option. In doing so, the Department improperly narrowed the remedial impact of the closed school discharge provision and disregarded the plain wording of the HEA, which does not in any way pre-condition discharge eligibility on the submission of an application.

The Department Continued to Fail to Comply with Congress's Closed School Discharge Mandate After 1994.

The Department has continued to require closed school borrowers to submit applications as a pre-condition for eligibility in most circumstances. Although the automatic closed school discharge regulation has been in effect for over 25 years, I am not aware of any instances in which the Department has exercised its discretionary authority²⁰ to provide widespread automatic discharges to eligible borrowers. Instead, the Department has consistently required borrowers to submit a discharge application

¹⁵ 20 U.S.C. §§ 1087(c)(1), 1087dd(g)(1).

¹⁶ 59 Fed. Reg. 22,462 (April 29, 1994).

¹⁷ 34 C.F.R. § 682.402(d)(6).

¹⁸ 34 C.F.R. §§ 682.402(d)(8)(i)(B) (FFEL Loans), 685.214(c)(2)(i) (Direct Loans), 674.33(g)(3)(i)(B) (Perkins Loans).

¹⁹ *Id.* (final FFEL Loan regulation 34 C.F.R. § 682.402(d)(6) required guaranty agencies to identify and notify all borrowers eligible for a discharge due to a school closure between Jan., 1986 and Aug. 24, 1994).

²⁰ The authority provided by 34 C.F.R. § 685.214(c)(i), not § 685.214(c)(ii).

in an often confusing and onerous process. The Department only began granting large numbers of automatic discharges in 2017, after it published a new regulation that *required* discharges for all borrowers who, according to its records, were unable to complete their programs due to a school closure between November 1, 2013 and July 1, 2020 and who had not re-enrolled in another Title IV eligible postsecondary institution within 3 years.²¹

Thus, outside of this limited automatic discharge requirement, most eligible borrowers who attended closed schools after 1994 through the present must apply for a discharge. While the Department and guaranty agencies have been required to identify and notify all potentially eligible borrowers after each new school closure since 1994,²² this has been the *only* notice most borrowers have received regarding their discharge eligibility. This notice process is not sufficient to ensure that all eligible borrowers are aware of their closed school discharge rights, nor is it sufficient to ensure that they are able to obtain a discharge when eligible. Indeed, no notice process can ensure that all eligible borrowers are aware of and able to apply for closed school discharges.

Under the current process, the Department does not typically send notice to students until up to six months after the school closes. In the meantime, closing for-profit schools often aggressively push students to transfer credits to other for-profit schools.²³ These schools rarely provide information about closed school discharges.²⁴ If they do, the information is often buried, inaccurate, or both.²⁵ At the same

²¹ 34 C.F.R. § 685.214(c)(2)(ii).

²² 34 C.F.R. §§ 682.402(d)(6)(f), 685.214(f).

²³ See, e.g., letter from Paul Gardener, Center for Excellence in Higher Education (CEHE) to students, attached as Exhibit A, and letter from Department of Education to Paul Gardener, CEO, CEHE (July 29, 2021), attached as Exhibit B. While CEHE is allegedly nonprofit, in 2016 the Department denied its request to be recognized as a nonprofit institution for the purposes of Title IV eligibility. See letter from Ron Bennett, U.S. Dep't of Educ., to Eric Juhlin, CEO, CEHE (Aug. 11, 2016). While the Department eventually agreed to recognize CEHE as a nonprofit in a settlement after CEHE filed a lawsuit, its underlying reasoning was sound. See Robert Shireman, How For-Profits Masquerade as Nonprofit Colleges, The Century Foundation (Oct. 7, 2020), available at <https://tcf.org/content/report/how-for-profits-masquerade-as-nonprofit-colleges/?agreed=1>.

²⁴ The Department itself stated, "in some instances, the closing school might inform borrowers of the option to complete their program through a teach-out, but fail to advise them of the option for a closed school discharge." 81 Fed. Reg. at 39,369.

²⁵ See, e.g., Letter from Lou Pagano, Chief Operating Officer, Alta Colleges, to Westwood students (Jan. 25, 2016), attached as Exhibit C; Letter from Rene C. Nunez, Vice President Compliance/Student Relations, ICDC College, to ICDC students (May 20, 2016), attached as Exhibit D; and communications from CEHE to students, attached as Exhibit A.

time, the students face aggressive solicitations from other for-profit schools, often at events or through communications arranged by the closed school or a state agency.

After a few days, the Department or state government agencies may meet with some students and provide information about closed school discharges. The government agencies do not always coordinate with each other, and they rarely coordinate with legal services organizations (although we offer to work with them). While they may provide some information about closed school discharges to students, they typically emphasize how students can obtain their transcripts and transfer to other schools.

By the time that borrowers receive notifications about their discharge rights from the Department, they have moved on with their lives as best as they are able. Bombarded with calls, letters, and emails from fraudulent debt collection companies offering debt forgiveness, emails and letters from their loan servicers, debt collection letters from private student lenders, and other student loan information, borrowers are often overwhelmed by and confused about which notifications are legitimate and which are not.²⁶

It is no wonder that, as the Department has admitted based on its own data, “[m]any borrowers eligible for a closed school discharge do not apply.”²⁷ In 2014, a Department official stated that only 6% of borrowers who are eligible for closed school discharges typically apply.²⁸ In 2016, the Department stated that for the period between 2011 and 2015 only about one-fifth, or 20%, of eligible borrowers whose schools closed received a discharge.²⁹ At that time, the Department was “concerned that borrowers are unaware of their possible eligibility for a closed school discharge.”³⁰ Indeed, in May, 2019, Department data showed that low percentages of eligible borrowers from each of the following schools, all of which closed in the prior 7 years, had received closed school discharges: ITT Tech – 34%;

²⁶ As an example, many of the closed school clients of the LAFLA from Marinello Schools of Beauty received the solicitation attached as Exhibit E.

²⁷ 81 Fed. Reg. at 39,369.

²⁸ Paul Fain, *Best of a Bad Situation?*, INSIDE HIGHER EDUC. (Dec. 9, 2014).

²⁹ 81 Fed. Reg. at 76,065 (“there were 43,268 students attending closed schools, of which 9,606 students received a closed school discharge.”).

³⁰ 81 Fed. Reg. at 39,369.

Charlotte Law School – 47%; Education Corp. of America – 16%; Vaterott College – 19%; and Dream Center Educ. Holdings – 28%.³¹ While these numbers have likely increased because the Department has granted some automatic discharges pursuant to the 2016 regulation³² to borrowers whose schools closed after November 1, 2013 and who did not enroll in another school within 3 years, the students whose schools closed less than three years ago have not yet received discharges under this regulation.

The lack of effective notice to students about their closed school discharge rights leads to low application percentages and to too many borrowers struggling to repay loans they do not legally owe. No outreach system, however, could ensure that all eligible borrowers are aware of and able to obtain discharges. The only way to ensure that all eligible borrowers receive closed school discharges is for the Department to immediately start granting automatic discharges to borrowers who are eligible according to its records, both looking backward and moving forward.

The Department’s Closed School Discharge Process Has Left Hundreds of Thousands of Borrowers Harmed by School Closures Without Debt Relief.

According to a study done by the Chronicle of Higher Education, during a 5-year period from the beginning of 2014 through the end of 2018 alone, sudden school closures blind-sided close to half a million students at over 1,200 college campuses.³³ Because the Department has not provided widespread automatic discharges for schools that closed between January 1, 1986 and 2014, a 28-year period not included in the Chronicle study, there are likely hundreds of thousands of other low-income borrowers who continue to suffer from the burden of invalid debt.

As a result, legal services organizations have a constant influx of borrowers whose schools closed from two to thirty-five years ago. All are low-income, most are African American, Latinx or other people of color, and most have experienced years of financial hardship caused by defaulted federal loans. Most have no idea that they are eligible for a discharge, while others have been unable to obtain a discharge

³¹ U.S. Dep’t of Educ., [Responses to Questions Submitted by Sen. Patty Murray: Post-Publication OFR Responses for Sen. Appropriations Comm.](#) 1 (May 16, 2019).

³² 34 C.F.R. § 685.214(c)(3)(ii).

³³ Michael Vasquez & Dan Bauman, [How America’s College Closure Crisis Leaves Families Devastated](#), CHRON. OF HIGHER EDUC. (April 4, 2019).

without the assistance of an attorney.

The Department's failure to provide widespread and automatic closed school discharges to these borrowers has systematically removed wealth from economically disadvantaged families and communities, including communities of color, through the collection of burdensome and invalid debt, often through seizures of wages, tax refunds, and federal benefits. The Department's refusal to comply with the HEA closed school discharge mandate through automatic discharges has also prevented these borrowers from building wealth by preventing them from obtaining a higher education at a legitimate institution that would allow them to increase their incomes and improve the economic well-being of their families. The effects cascade through generations. Cruelly, the communities hit hardest by the Department's decades-long failure are the same communities currently hit hardest by the COVID-19 global health crisis. Immediate Department action to start automatically discharging the debts of eligible borrowers would have an enormous economic benefit for these borrowers, their families and their communities.

The Department Has the Authority to and Should Start Granting Automatic Discharges to All Eligible Borrowers Now.

The Department's refusal to grant automatic closed school discharges to these borrowers is contrary to law. Using the follow criteria, the Department should immediately begin using its authority to grant automatic discharges.

The Department Should Grant Automatic Discharges to All Eligible Borrowers Who Attended Schools that Closed on or After January 1, 1986 through the Present. Under the mandatory language of the HEA closed school discharge provision, the Department has the obligation to rectify this injustice starting immediately. The closed school discharge regulations explicitly give the Department discretion to grant automatic closed school discharges, without any borrower applications, if it determines that an individual borrower or a group of borrowers is eligible based on information in its

possession.³⁴ The Department should exercise this authority and discharge loans for all borrowers who attended schools that closed on or after January 1, 1986. Relief should go to borrowers who did not subsequently enroll in Title IV-eligible institutions or enrolled but failed to complete their programs. The Department should require guaranty agencies and Perkins Loan holders to do the same.³⁵

This relief should be granted to borrowers whose schools closed through the present, in part to grant much-needed relief to borrowers who are likely suffering from the economic harms of the COVID pandemic. The Department may do so pursuant to its current discretionary authority to grant discharges without application based on information in its possession.³⁶ It may also waive the requirement that it confirm that a borrower has not re-enrolled in a Title IV-eligible institution within 3 years after a school closed before granting a discharge³⁷ pursuant to the Higher Education Relief Opportunities for Students Act of 2003.³⁸

The Department has all of the information it needs to provide automatic closed school discharge relief. It has compiled a list of all schools that have closed and the dates of their closure.³⁹ Its National Student Loan Data System includes all the information necessary for the Department and other loan holders to identify eligible borrowers.⁴⁰ In order to prioritize relief for those who have likely suffered the longest from invalid debt burdens, the Department should start with borrowers who attended for-profit schools, moving from 1986 to the present.

³⁴ 34 C.F.R. §§ 682.402(d)(8)(i) (FFEL Loans), 685.214(c)(2)(i) (Direct Loans).

³⁵ Guaranty agencies and Perkins Loan holders may grant automatic closed school discharges with the Department's permission. 34 C.F.R. §§ 682.402(d)(8)(i) (FFEL Loans), 674.33(g)(3)(i)(B) (Perkins Loan).

³⁶ 34 C.F.R. §§ 682.402(d)(8)(i) (FFEL Loans), 674.33(g)(3)(i)(B) (Perkins Loan).

³⁷ 34 C.F.R. §§ 685.214(c)(3)(i) (Direct Loans), 682.402(d)(8)(i) (FFEL Loans), 674.33(g)(3)(i)(B) (Perkins Loan).

³⁸ 34 C.F.R. §§ 685.214(c)(3)(ii).

³⁹ The Department has waived and modified Title IV regulations under the HEROES Act in response to the COVID-19 crisis. *See, e.g.*, 85 Fed. Reg. 79856 (Dec. 11, 2020) (waiving, among other things, requirements that borrowers with income-driven repayment plans annually certify their income; and applying pre-July 1 borrower defense-to-repayment (DTR) regulations and standards to Direct Consolidation Loans disbursed after July 1, 2020, for DTR applications submitted prior to July 1, 2020).

⁴⁰ *See* Dep't of Educ., Closed School Search File, available at <https://www2.ed.gov/offices/OSFAP/PEPS/closedschools.html>.

⁴¹ The information available includes dates the loans were disbursed; (2) schools to which they were disbursed; (3) the last date of a borrower's attendance at the school, including whether a borrower withdrew or did not complete due to a school closure; (4) whether a borrower subsequently obtained Title IV financial aid to attend another postsecondary school and, if so, whether the borrower completed that program.

The Department Should Provide an Opt-Out Procedure. We anticipate that the vast majority of eligible borrowers will want an automatic closed school discharge. However, the Department has previously warned that when borrowers get a discharge, they give up the right to benefit from their closed school attendance, such as by transferring the credits after a discharge. The Department should therefore provide an opt-out procedure, in which borrowers are provided notice about the consequences of the discharge and given the opportunity to opt-out.

The Department Should Send Discharge Information to All Borrowers Who Were in Attendance at the Time Their Schools Closed. The Department should notify borrowers whose eligibility is not obvious according to Department records, but who were in attendance at the time their schools closed. This is necessary for several reasons.

First, the regulations recognize that even when students re-enroll in higher education after a school closure, they should be eligible for relief when they may have derived any benefit from the closed school education. As described above, many students are unable to transfer credits and have to retake classes for which they already paid. Even if they can transfer some credits, they may enroll in entirely different programs. In these situations, the students are eligible under the current regulations which provide eligibility to borrowers who did not subsequently complete the same or comparable program through a teach-out or by transferring credits.⁴¹ The Department should therefore send closed school discharge information to all borrowers who were enrolled at a school when it closed, even if they subsequently enrolled in and completed a program at another institution.

In the event borrowers subsequently enroll in and complete programs at another school, the Department should grant discharges as long as the borrowers attest that they did not transfer any credits from their closed schools, did not complete the same or a comparable program, or both. Requiring borrowers to provide documentation proving this can be both burdensome and daunting for borrowers who lack attorney representation. If such documentation is required, many borrowers will not understand

⁴¹ 34 C.F.R. §§ 685.214(c)(1)(i)(C), (c)(2)(i)(B); 682.402(d)(3)(ii)(C).

how to obtain the necessary documentation and will give up on seeking a closed school discharge.

Second, as I have described in a report recently published by the Student Borrower Protection Center,⁴² closed for-profit schools often report false information regarding student completions and withdrawals in order to keep Title IV funds and avoid liability for closed school discharges. Closed schools sometimes falsely report that students completed their education prior to closure, when in fact they either withdrew or were in attendance but had not completed their education before closure. Schools also make mistakes and provide incorrect federal loan documentation and data – recording on a promissory note, for example, that a student attended a campus that he/she did not attend. Because many of these closures happened decades ago and the Department does not require the schools or state oversight agencies to maintain the student records indefinitely, borrowers often cannot obtain the records necessary to prove that the information reported by the school was false. Denying discharges by unfairly imposing burdensome evidentiary requirements on borrowers who have no control over their schools' records is contrary to Congress's mandate and remedial intent to provide broad debt relief.

Even when students testify under oath that they did not complete their educations, attended particular campuses, withdrew prior to closure, or were on an approved leave of absence, the Department has often disregarded their testimony. Instead, it typically relies on old electronic data reported by closed schools to deny discharges, even though the Department often knows, through prior audits, program reviews, or investigations, that the schools reported false information to the Department regarding the payment of refunds, student enrollment and completion dates, etc. Legal services organizations have represented borrowers in cases where the Department relied on information reported by schools whose owners and management were prosecuted for federal crimes.

To account for past Department denials based on incorrect information reported by schools, as well as the Department's own errors, the Department should also provide closed school discharge information to borrowers who do not appear to meet the closed school eligibility criteria or whose

⁴² See Robyn Smith, *Relief for Students Harmed by School Closures*, Student Borrower Protection Center (November 2020), attached as Exhibit F.

previous discharge applications were denied. Moreover, when back-up documentation is no longer available to confirm the data or information reported by a closed school, the Department should give the borrower the benefit of the doubt and grant the discharge application, even when the attested statements of the borrower are contradicted by information reported by the closed school.

The Department Should Develop More Accessible Application Procedures. All discharge applications and communications should be available, at a minimum, in Spanish as well as English. In the 1980s and 1990s, many for-profit schools expanded their aggressive sales tactics and targeted 3 million undocumented immigrants who were granted amnesty in 1988, many of whom were Spanish speakers who did not speak English.⁴³ Since that time, for-profit schools have continued to target non-English speaking people. Legal services organizations continue to assist Spanish-speaking immigrants with closed school discharges, including for schools that have closed in the last 20 years.

The Department should also provide the applications and any communication in other languages whenever there are significant numbers of non-English speaking borrowers who were impacted by school closures.

There are other operational issues that the Department should address. Many times, legal services organizations must appeal frivolous denials based on facts that are not reflected either in the borrower's application or the Department's student loan data. The Department often fails to carefully review the applications and evidence, instead routinely denying applications based on inapplicable and incorrect facts. In addition, many denial letters appear to have been created in a slapdash manner without regard to the seriousness of the borrower's situation, rife with grammatical and typographical errors. While borrowers with attorneys can appeal these decisions to federal court if necessary, unrepresented borrowers are likely to give up. To the extent that loan servicers are involved in this process, the Department must do a better job of monitoring loan servicers' review and processing of discharge applications.

Finally, many of our clients report that they told their loan servicers and third-party debt

⁴³ Schools for Scandal, CONSUMER REPORTS 303, 304 (May 1992).

collectors that their schools closed, sometimes on numerous occasions over many years whenever they sought assistance because they could not afford their monthly payments or received debt collection calls. However, in many cases neither the loan servicers nor the debt collectors advised the borrowers of their closed school discharge rights. The Department should ensure that all contractors who interface with borrowers provide closed school discharge information whenever a borrower raises this issue. These contractors should also offer to help the borrowers complete the discharge application, which is a dense form that is difficult for many borrowers to understand and complete. The Department should also flag all potentially eligible borrowers in its data system in order to facilitate the provision of closed school discharge information and increase the granting of automatic discharges.

Conclusion

The Department's application requirements and reluctance to use the authority it has to provide widespread automatic closed school discharges have hindered Congress's broad remedial intent in enacting the HEA's closed discharge mandate. It has caused decades of unnecessary suffering to thousands of students who are clearly eligible for discharges according to the Department's records. The Department's refusal to grant automatic discharges has caused enormous financial harm to low-income borrowers who are disproportionately people of color and have endured onerous debt collection for decades.

There is little to be gained by continuing to wage this economic war on poor people who were harmed, through no fault of their own, by school closures. Pursuing this largely impoverished group of students who were failed by their schools costs the government time and money and is unlikely to produce substantial collections. The Department should immediately change course and comply with its statutory mandate to grant broad and automatic closed school discharges as initially intended by Congress.

Thank you for the close attention you are paying to how to protect the most vulnerable student loan borrowers, and for the opportunity to provide this testimony. I look forward to your questions.

Exhibit A



Dear Students,

We want to share an important development about your education.

Center for Excellence in Higher Education, the parent company of Independence University (“IU”), Stevens-Henager College (“SHC”), CollegeAmerica (“CA”), and California College San Diego (“CCSD”), has made the difficult decision to close all its colleges as of August 1, 2021. You will be notified of any change to that date.

This decision was not taken lightly. In April 2021 our accreditor withdrew IU’s accreditation. In addition, the U.S. Department of Education (“USDOE”) is withholding all student funding since May of this year. We are seeking an appeal of the withdrawal of accreditation and pursuing options to obtain the funding held by USDOE. However, the combination of these two actions has made it impossible to effectively continue academic operations. We will begin a process of winding down our operations through a process called a “teach-out.”

We are heartbroken by this decision and truly wish to see our students continue their educational efforts to complete their degrees. We continue to strive to help our students succeed.

Pending regulatory approvals, we have entered Teach Out Agreements with a regionally accredited institution of higher education that will permit most currently enrolled students to complete the same or similar programs online. We are in the process of identifying any on ground options that may also be available. Staff will be contacting you and holding a series of meetings to help explain your options and answer your questions. After those meetings, you will be asked to select an option and sign a document attesting to your choice. If after meeting with the staff, you decide not to complete your degree by accepting one of the transfer options, you may withdraw.

It is our sincere hope that you decide to select the transfer option so that you can complete your education, graduate, and earn your degree. This has always been our mission, and you have always been our focus. Regardless of your choice, we will do everything we can to make this transition as smooth as possible.

Student Services, including Financial Aid and Registrar services, will continue to be available to students through our teach-out partner. Upon closure, we plan to move student records and transcripts to one or more of our teach-out partners and, if that is not possible, to the applicable state education agency. Students and graduates will be advised on the process to request records.

We understand that news of this decision will be met with uncertainty and disappointment. We are committed to keeping you informed of our progress through ongoing communication. Information and updates regarding this transition to closure will be delivered via mail, email, and the student portal.

We are honored that you have chosen IU, SHC, CA and CCSD. We are committed to providing a quality education and to fulfilling our promise to help you reach your career goals, and we pledge our total support in assisting you through this transition.

Sincerely,

Paul Gardner
Interim CEO
Center for Excellence in Higher Education, Inc.

From: **Paul Gardner** <wehearyou@independence.edu>
Date: Fri, Jul 30, 2021 at 8:24 PM
Subject: Important information for IU transfer students



Dear Students -

First and foremost, we want you to know that things are changing quickly, by the minute as we get new information to assist you. Staff are doing the very best they can to keep you informed with changes that may affect you.

You previously received a letter providing choices for the next step in your education. Many of you chose to continue your education with South University or Miami International University of Art & Design. We applaud your choice! If you completed the Docusign document, your next step is to go to the corresponding school link below and follow the directions. The links will direct you to the website where you will connect with the university.

[Graphic & Web Design | Art Institutes](#)
[South University](#)

It is vital that you go to that particular website in order to effect a seamless transition. **Signing the Docusign document was the first step and will not guarantee you move to the next step. You must take action.**

We know the communication is not perfectly clear, and we apologize, but we are moving at an incredible pace. There are almost 7,000 students impacted by this process. Please bear with us - we are working round the clock to help you continue in your quest for an education.

One new development - **you may keep your computer and tablet at no charge no matter what option you choose.** We hope that this small token helps you achieve your educational goals.

Additional communication will follow. It is wise to frequently check your email as we move through this transition. Please, continue to reach out to your student services advisor with questions.

Sincerely,
Paul Gardner - CEO
Center for Excellence in Higher Education

Exhibit B



July 29, 2021

sent via email: paul.gardner@independence.edu

Paul R. Gardner
Chief Executive Officer
Center for Excellence in Higher Education (CEHE)
4021 South 700 East
Suite 400
Salt Lake City, UT 84107-9923

Mr. Gardner:

This is to follow up on our conversation earlier today where you confirmed that CEHE is closing all of its locations effective August 1, 2021. As discussed, the Department is requesting that you provide a copy of the exact communication that has been provided to students, and a description of how this information is being disseminated; as well as copies of future planned communications prior to their distribution for Department approval. In addition, the Department is requesting copies of the scripts being provided to staff to assist them with communications to students regarding their options.

As mentioned on the call, the information that we have received from students suggests that CEHE is not providing students complete information regarding all of the options available to them when an institution closes. As you are aware, when an institution closes, students who are attending the institution at the time of closure, and students who withdrew within a set time period prior to the closure, are eligible for a closed school loan discharge. 34 C.F.R. 685.214. As you are also aware, students are not obligated to take a teach-out offered by an institution, and may choose instead to have their loans discharged. Students must be provided the accurate information regarding their options, which includes the ability to have their loans discharged. To the extent CEHE has provided incomplete information to students about their options, CEHE must update and correct those communications immediately, and must first submit the revised communication to the Department for approval.

The Department has also learned that students are being pressured to agree to transfer to South University and Miami International University of Art and Design based on the agreement entered into between CEHE and those entities. Although the Department does not approve teach-out agreements, we did review this unusual arrangement which is not a typical teach-out agreement for anticipated school closures. The Department has concerns about the terms of the arrangement which make it appear that the students will only have the choice of transferring to these institutions in order to continue their education. That is not an accurate representation of student options. Further, the Department has concerns with what appears to be a sale of student

Federal Student Aid
AN OFFICE OF THE U.S. DEPARTMENT OF EDUCATION

Federal Student Aid, Multi-Regional and Foreign Schools Participation Division
830 First Street NE, Union Center Plaza, 7th Floor, Washington, DC 20202-5340
StudentAid.gov

Center for Excellence in Higher Education
Page 2 of 2

enrollments to the teach-out/transfer entities. This is certainly not the purpose of a teach-out arrangement. Furthermore, this arrangement, which could position CEHE to profit from student transfers, heightens our concern about students not being advised of all options available to them.

The Department has other serious concerns, including that the proposed transfer institutions may not currently offer all of the programs necessary to accommodate all of CEHE's students. The Department is also concerned that there may be privacy issues with student information being transferred without full disclosure and consent of the students. It is also our understanding that the accreditor and state licensing bodies have not approved the arrangement, which is required. Based on all of these factors, the Department does not believe that the arrangement, as currently written, is in the best interest of the students.

Within 24 hours, you must provide the Department, for its approval, a draft of an updated, accurate, and complete communication for impacted students. If you fail to do so, we reserve the right to take further action, including alerting state Attorneys General of potential unfair, deceptive, and abusive acts and practices.

The Department appreciates the full cooperation of CEHE to ensure that students have complete and accurate information, and to assist them in completing their education.

Sincerely,



Michael Frola
Division Director
Multi-Regional and Foreign School Participation Division

cc: Michale McComis, Executive Director, Accrediting Commission of Careers Schools and Colleges, via mccomis@accsc.org
Kevin LaMountain, Executive Director, AZ State Board for Private Postsecondary Education, via kevin.lamountain@az.ppse.gov
Deborah Cochrane, Chief, CA Bureau for Private Postsecondary Education, via Deborah.Cochrane@dca.ca.gov,
Daniel O'Bannon, Director, Division of Consumer Protection, State of Utah, via dobannon@utah.gov

Exhibit C



January 25, 2016

Dear Student:

We hope all of you had a wonderful holiday season and we are excited to see you back.

As promised when we communicated with you in December, Westwood has worked hard to create a robust transition plan for the continuation and completion of your education. Over the coming weeks, we will introduce you to the partner schools that will assist you in completing your education and you will have full opportunity to explore what benefits each may offer to you. When you meet with them, each partner school will be able to provide you with specific information on your individual academic circumstances and answer your questions. We will ask you to make your transfer choice no later than February 19. The January 2016 term will be the last one taught at Westwood College, and upon completion of this current term, Westwood will close.

Starting on January 27th, partner schools will be on all Westwood campuses to facilitate transfer arrangements. As part of this process, Westwood will work with you and the partner schools to make your transition at the end of this term as seamless as possible. We are impressed with the quality of schools that have offered to assist you in achieving your goal of graduation and the terms they have agreed to offer Westwood students. Our main focus in negotiating with the partner schools was to ensure that you would be in the same academic and financial situation had you continued at Westwood to complete your education. I believe that we more than accomplished this goal for your benefit.

Most programs will have multiple accredited partner schools from which to choose, including several regionally accredited schools. Each of the partner schools has a campus located within a reasonable distance from your current campus. All partner schools have agreed to accept the transfer of Westwood credits. In most cases all credits will transfer into comparable programs offered by the partner school. In addition, these schools have agreed to charge you the same amount for your program as reflected in your Westwood enrollment agreement. But, if a school has a lower tuition cost than Westwood, you will get the benefit of that lower tuition. Unless completion of this term will allow you to graduate from Westwood, you will get your degree from the partner school to which you transfer. That school will provide you with career services and will maintain your academic records. It is important that you continue on track to complete all of your courses for the January Term. This will make for a smoother transition, and lower your future cost of attendance. Everyone at Westwood College remains focused on your goal of graduation. Some of you will be graduating at the end of the current term and we look forward to helping you celebrate this great accomplishment in your life.

We could not be prouder of our current students and future graduates. This has been a tough time on all of us - students, faculty and staff alike - and we have appreciated your patience as we developed the best possible transition plan for your academic future. It has been our greatest privilege to see you grow and develop through your academic experience at Westwood. Thank you for your commitment to Westwood and for allowing us the privilege to know and educate you.

As always, if you have any questions please feel free to contact the campus president or other campus staff.

Sincerely,

Lou Pagano
Chief Operating Officer
Alta Colleges

Additional Important Information:

Important notice if you have a Federal student loan: You have separate rights if you have a Federal loan:

You may be eligible for forgiveness ("discharge") of the federal student loans you received to attend Westwood if one of the following happens:

- Westwood closes before you complete your program, or
- If you withdraw from Westwood less than 120 days before Westwood closes.

This Federal discharge will cancel your Federal loan. If you **complete** your program either at Westwood or at another school, you **will not** qualify for this Federal discharge. Westwood encourages you to explore all options for continuation and completion of your education with partner schools before considering a Federal discharge. If you apply for and receive a Federal discharge, you will **forfeit** any Westwood credits earned and these credits **will not** be transferable to a partner school.

For more information on Federal loan discharge eligibility and the application process, go to: studentaid.gov/closedschool.

Exhibit D



ICDC COLLEGE®

Corporate Headquarters – Main Campus – Online Campus

6812 Pacific Blvd., Huntington Park, CA 90255 Ph. (323) 277-0240 Fax (323) 277-9284

May 20, 2016

Dear ICDC College Student:

This letter is meant to update you on the closure of ICDC College that was announced on March 31, 2016.

We at ICDC College are committed to your success and want to help you in any way we can to help you succeed. In that regard, we are proud to have worked very hard to reach an agreement with Trident University International to conduct a "teach-out" of your current program. The teach-out plan has received approval of ICDC's accreditor, Accrediting Commission of Career Schools and Colleges, and Trident's accreditor, WASC Senior College and University Commission, and it has been acknowledged by the U.S. Department of Education and the California Bureau for Private Postsecondary Education.

In order to conduct the teach-out with a seamless transition for students, Trident agreed to employ many of ICDC College's instructors and staff, and to offer ICDC's current programs. There will be no interruption in your education; you will continue to have primarily the same instructors, support staff, and program that you are used to and currently taking at no additional charge beyond the charges agreed to in your enrollment agreement with ICDC. Trident will begin overseeing the teach-out of your courses on May 23, 2016. Should you wish to participate in the teach-out and continue your education, you will login to your account and class in the same manner in which you have always logged into your classes. You are not required to participate in the teach-out with Trident.

In the event that you choose to discontinue your program prior to the closure of ICDC College and not take part in the teach-out, a refund may be requested pursuant to ICDC College's Refund Policy as found in your Enrollment Agreement and Catalog. In the event you funded any part of your education with Federal Title IV funds, a refund of those funds may be requested pursuant to ICDC College's Return of Title IV Funds Refund policy which is also found in your Enrollment Agreement and Catalog.

Also, for California residents only, when you enrolled you paid an assessment to the Student Tuition Recovery Fund (STRF). The State of California created STRF to relieve or mitigate economic losses suffered by California residents who were students while attending certain schools regulated by the Bureau for Private Postsecondary Education.

You may be eligible for STRF if you are a California Resident; prepaid tuition, paid the STRF assessment, and suffered an economic loss as a result of any of the following:

1. The school closed before the course of instruction was completed.
2. The school's failure to pay refunds or charges on behalf of the student to a third party for license fees or any other purpose, or to provide equipment or materials for which a charge was collected within one hundred eighty (180) calendar days before the closure of the school.
3. The school's failure to pay or reimburse loan proceeds under a federally guaranteed student loan program as required by law or to pay or reimburse proceeds received by the school prior to closure in excess of tuition or other cost.
4. There was a decline in the quality of the course of instruction within thirty (30) calendar days before the school closed or, if the decline began earlier than thirty (30) calendar days prior to closure, the period of decline determined by the Bureau.
5. An inability to collect on a judgment against the institution for a violation of the California Private Postsecondary Education Act of 2009.

However, no claim can be paid to any student without a social security number or a taxpayer identification number.

The Bureau's physical address is 2535 Capitol Oaks Drive, Suite 400, Sacramento, California, 95833 and its website address is www.bppe.ca.gov.

For more information on Federal loan discharge, go to: <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/closed-school>.

If you choose to participate in the teach-out, you will receive a welcome letter from the President of Trident University International shortly which will provide additional information about the teach-out process.

If you have any questions or need any help with this process please do not hesitate to contact me at (424) 666-5116 or you can e-mail me at rene.nunez@icdcollege.edu.

Yours Very Truly,

Rene C. Nuñez
Vice-President Compliance/Student Relations
ICDC College

Enclosures

Exhibit E

Marinello

SCHOOLS OF BEAUTY

Loan Forgiveness Experts

Call Us At: (844)533-8697

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"Loan Forgiveness Experts who get you the most
out of forgiveness"

Exhibit F

**RELIEF FOR BORROWERS WHOSE SCHOOLS
CLOSED**

Robyn Smith
Of Counsel
National Consumer Law Center

Introduction

From the beginning of 2014 through the end of 2018, close to half a million students were blind-sided by the sudden closure of over 1,200 college campuses.¹ According to a study by the *Chronicle of Higher Education*, 88 percent of these campuses were operated by for-profit colleges.² These closures included Corinthian Colleges in

From the beginning of 2014 through the end of 2018, close to half a million students were blind-sided by the sudden closure of over 1,200 college campuses.

2015 (28 campuses),³ ITT Tech in 2016 (130 campuses),⁴ and Vatterott College (15 campuses), Education Corp. of America (70 campuses), and Dream Center Education Holdings (41 campuses of the Art Institutes and Argosy University) in 2018.⁵ In total, five years of school closures upended the lives of 451,270 students, who were disproportionately women, low-income Pell-Grant recipients, and people of color.⁶

These students are not alone. Since the Higher Education Act (HEA) was first amended to make financial aid available to for-profit postsecondary schools, hundreds of thousands of other students have been displaced by school closures.⁷ The exponential growth in the for-profit school sector started in 1978, after the HEA was amended to provide financial aid eligibility to students who had not earned a high school diploma or equivalent, as long as they demonstrated an “ability to benefit” from the training offered

¹ Michael Vasquez & Dan Bauman, *How America's College-Closure Crisis Leaves Families Devastated*, *Chron. of Higher Educ.* (Apr. 4, 2019), <https://www.chronicle.com/article/how-americas-college-closure-crisis-leaves-families-devastated/>.

² *Id.*

³ Goldie Blumenstyk & Casey Fabris, *Abrupt Closing of Corinthian Campuses Leaves 16,000 Students Scrambling*, *Chron. of Higher Educ.* (Apr. 28, 2015), <https://www.chronicle.com/article/abrupt-closing-of-corinthian-campuses-leaves-16-000-students-scrambling/>.

⁴ Vasquez & Bauman, *supra* note 1.

⁵ Ashley A. Smith, *The End of ITT Tech*, *Inside Higher Educ.* (Sept. 7, 2016), <https://www.insidehighered.com/news/2016/09/07/itt-tech-shuts-down-all-campuses>.

⁶ Vasquez & Bauman, *supra* note 1.

⁷ See, e.g., David Whitman, *The Century Found, Vietnam Vets and a New Student Loan Program Bring New College Scams* (Feb. 13, 2017), <https://cd.org/content/report/vietnam-vets-new-student-loan-program-bring-new-college-scams/?session=1> (describing for-profit school fraud in early 1970s, including a description of for-profit Advance Schools, Inc. which opened in 1970, enrolled 80,000 students at its peak, and closed in April 1975, “leaving behind more than \$100 million in outstanding [federal student] loans (almost \$450 million in today's dollars)”).

by the college.⁸ More unscrupulous schools proliferated in 1986, when Congress increased the annual and aggregate federal student loan limits and removed additional borrower and school limitations.⁹

These changes opened the floodgates to for-profit schools more eager to fill their pockets than provide educations. After 1978, for-profit schools began aggressively recruiting low-income students and people of color outside of homeless shelters, welfare and unemployment offices, and housing projects.¹⁰ They later expanded their aggressive sales tactics in 1988, targeting a new market of recruits—3 million undocumented immigrants who were granted amnesty.¹¹ Between 1982 and 1988, loan volume at for-profit schools increased from \$684 million to \$4.15 billion.¹²

During that same time, many of these schools closed, leaving tens of thousands of low-income students, primarily people of color, with student debt that they were unable to repay, through no fault of their own. The Inspector General of the U.S. Department of Education estimated that between October 1985 and June 1988, 53 schools (some of which had multiple campuses) suddenly closed, leaving about 10,000 students with \$30 million (equal to over \$57 million today) worth of loans they had to repay.¹³

Problems

Until Congress took notice of widespread for-profit school closures and the harm they inflicted on students in 1992, the remedy for these students was largely out of reach. Through 1986, Department of Education (“ED”) regulations for Federally Insured Student Loans (FISLs) allowed students to raise a school’s closure as a defense

⁸ S. Rep. No. 102-58, at 6 (1991), <https://files.eric.ed.gov/fulltext/ED332631.pdf> [hereinafter “Nunn Report”]; Middle Income Student Assistance Act, Pub. L. No. 95-566, § 6, 92 Stat. 2403 (1978) (codified at 20 U.S.C. § 1088), <https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg2402.pdf#page=1>.

⁹ Nunn Report, *supra* note 8, at 6.

¹⁰ *Schools for Scandal*, Consumer Rep. 303, 304 (May 1992) (Appendix A).

¹¹ *Id.*

¹² Nunn Report, *supra* note 8, at 7.

¹³ *Abuses in Fed. Student Aid Programs: Hearings Before the Permanent Subcomm. on the Investigations of the Comm. on Gov’t Affairs*, 101st Cong. 32 (1990), <https://catalog.hathitrust.org/Record/007609802> (testimony of James Thomas, Inspector General, U.S. Dept’t of Educ.) [hereinafter “IG Testimony”].

to repayment if the school made the loan.¹⁴ Although regulations governing pre-1986 Stafford Loans never had such an explicit provision, ED adopted a policy encouraging guaranty agencies to excuse a portion or all of a student's Stafford Loan when a school closed while the student was still enrolled, if the school made the loan.¹⁵

As a practical matter, these defenses were difficult for students to assert. Most students were unaware they could raise school closure as a defense to repayment because neither ED nor guaranty agencies notified them about their rights or created processes through which borrowers could assert this defense. As a result, borrowers typically needed attorney representation in order to assert school closure as a defense to federal debt collection lawsuits.

Borrower Highlight

In 1978, Ms. Hilda Fernandez* was in the 6th grade when she was removed from her home and placed in the foster care system. For the next seven years, Ms. Fernandez moved between foster homes so frequently that she never completed another grade level. As a result, Ms. Fernandez was, and still is, unable to read or write. In 1985, when she turned 18, Ms. Fernandez aged out of the foster care and became homeless. At this time, a recruiter from for-profit Adelphi Business College recruited her off the street, promising that she would be able to complete its computer program and obtain a high-paying job. She obtained \$2500 in federal student loans and enrolled. Shortly after she enrolled, Adelphi suddenly closed. For the next 6 years, she was frequently homeless. In 1986 and 1989, she obtained federal student loans after she was recruited by Pacific Coast College and National Technical College. She dropped out of both programs because she could not read or write. Both the Department and California Attorney General determined that these schools engaged in widespread fraud. Now Ms. Fernandez is unemployed and continues to struggle with homelessness. She remains responsible for paying all these loans. ED recently denied her application for a false certification discharge for the loans she obtained to attend National Technical College.

* The name in this story has been changed to preserve confidentiality

In 1990, the Senate Permanent Subcommittee on the Investigations of the Committee on Government Affairs began an 18-month investigation into the cause of the spike in Guaranteed Student Loan Program ("GSLP") defaults. The cost of defaults, as a percentage of all GSLP program costs, "rose from about 10 percent in FY 1980

¹⁴ 34 C.F.R. § 682.518 (1982) (since rescinded) (Appendix B); see also *United States v. Griffin*, 707 F.2d 1477 (D.C. Cir. 1983).

¹⁵ U.S. Dept of Educ., Dear Colleague Letter, 89-G-159, *Compromise and Write-off Procedures* (1989), <https://library.nclc.org/sites/default/files/may1989dearcolld.pdf>.

to 36 percent in FY 1989, and to more than 50 percent in FY 1990.¹⁶ During this investigation, the Inspector General testified that in the 3-year period ending in 1988, ED had certified 2,000 schools.¹⁷ Of the 500 schools it had put on a watch list, 150 went out of business (including the 53 noted above), "where a large number of students were harmed along the way."¹⁸ The IG and others testified about numerous instances of widespread fraud among many of these schools.¹⁹ ED, however, had *not* decertified a single one of these 500 schools.²⁰

Based on this and other testimony, the Subcommittee placed the blame for the widespread fraud and school closures on ED. It concluded that "through gross mismanagement, ineptitude, and neglect in carrying out its regulatory and oversight functions, [ED] had all but abdicated its responsibility to the students it is supposed to service . . ."²¹ The Subcommittee determined that the student loan default spike was caused by the "complete breakdown in effective regulation and oversight," which had opened the door for "major fraud and abuse . . . , particularly at proprietary schools."²²

The Senators were struck by the injustice of students' continuing obligation to repay their federal loans, even when they were unable to complete their education due to school closures and, in some cases, the criminal convictions of school management and employees.²³ Senator Nunn and other Senators specifically asked about school closures:

The Senators were struck by the injustice of students' continuing obligation to repay their federal loans, even when they were unable to complete their education due to school closures and . . . the criminal convictions of school management and employees.

¹⁶ Nunn Report, *supra* note 8, at 1.

¹⁷ IG Testimony, *supra* note 13, at 41-42.

¹⁸ *Id.* at 42.

¹⁹ IG Testimony, *supra* note 13, Parts 1 & 2.

²⁰ *Id.*

²¹ Nunn Report, *supra* note 8, at 33.

²² *Id.* at 11.

²³ *Id.* at 11.

Sen. Nunn: So, even if the student had nothing to do with the problem, went in, in good-faith, borrowed the money, went to school, attended classes, worked hard, and the school goes out of business, they still owe the money?

Mr. Thomas: That is correct, sir.²⁴

The Subcommittee further recognized the suffering this policy caused closed school students, stating “should the student eventually default, he or she is no longer eligible for Title IV student financial aid and can encounter

future credit problems, tax refund seizures, and/or difficulties with collection agencies.”²⁵

... [I]n 1992 Congress enacted the closed school discharge provision to hold students harmless for the debts incurred if their school shut down.

Based on these findings, in 1992 Congress enacted the closed school discharge provision to hold students harmless for the debts incurred if their school shut down.²⁶ Through the HEA amendments of 1992, Congress mandated that ED “shall discharge a borrower’s liability on a loan” if the student “is unable to complete the program in which such

student is enrolled due to the closure of the institution”²⁷ The HEA’s closed school discharge mandate applies to loans disbursed on or after January 1, 1986, and covers Federal Family Education Loan Program (FFEL) Loans and Direct Loans, including Parent PLUS Loans, as well as Perkins Loans.²⁸

²⁴ IG Testimony, *supra* note 13, at 32.

²⁵ Nunn Report, *supra* note 8, at 11; see also *id.* at 10. (“[T]hese students have to pay for an education they never received. Lacking proper training, [they] are not able to get jobs by which they can repay [their] federally guaranteed loans and thus suffer the added humiliation of seeing their credit ratings destroyed in the process.”) (quoting Sen. Roth).

²⁶ See, e.g., H.R. Rep. No. 102-447, at 52 (1992), reprinted in 1992 U.S.C.C.A.N. 334, 385 (“The Committee heard testimony that many institutions of higher education have closed over the past several years, leaving thousands of low-income students unable to complete their education and yet obligated to repay student loans, which the institutions received on their behalf. These students did not receive any credentials and in fact often received little or no training. . . . The Committee is concerned that these students are in double jeopardy: they are deprived of the training for which they incurred the original loan obligation and they are also barred from receiving the future Federal aid necessary to acquire training to obtain a job in order to repay the loan. . . . The Committee desires in cases where a school closes during the middle of a borrower’s course of instruction . . . the Secretary shall discharge the borrower’s liability by repaying the amount owed on the loan.”).

²⁷ 20 U.S.C. § 1087(c)(1) (emphasis added).

²⁸ *Id.* (FFEL Loans); 20 U.S.C. § 1087e(a)(1) (Direct Loans have the same terms and conditions as FFEL Loans unless otherwise specified); 20 U.S.C. § 1087dd(g)(1) (Perkins Loans, including National Direct Student Loans).

A. Regulatory Narrowing

Given Congress's clear intent to rectify the harms perpetrated upon thousands of vulnerable students by the sudden closure of for-profit schools, the HEA's affirmative discharge mandate is remedial. As such, ED should have liberally and expansively construed the provision to effectuate Congress's intent.²⁹ Instead, ED adopted regulations in 1994 that imposed an affirmative application requirement for closed school discharge eligibility.³⁰ It did so even though ED and guaranty agencies were able to identify, based on their own records, students who were eligible for loan discharges due to school closures between January 1, 1986 and August 29, 1994.³¹ In imposing an application requirement, ED impermissibly narrowed the remedial impact of the closed school discharge provision and disregarded the plain wording of the HEA, which does not in any way pre-condition discharge eligibility on the submittal of an application.

In imposing an application requirement, ED impermissibly narrowed the remedial impact of the closed school discharge provision and disregarded the plain wording of the HEA.

ED also went against the recommendations of the participants of three regional meetings conducted prior to the promulgation of the final discharge regulations in 1994. These participants recommended that ED grant closed school discharges to borrowers who are eligible based upon the records of ED or guaranty agencies, without any application requirement.³² Legal aid organizations commented that the low-income students whose schools had closed between January 1986 and late 1994 would likely be difficult to locate because they tended to move frequently (by virtue of housing costs, evictions, homelessness, etc.).³³ In addition, to the extent students received notice of their new discharge eligibility, many would likely have difficulty

²⁹ Cortez v. Trans Union, L.L.C., 617 F.3d 688, 722 (3rd Cir. 2010) (Fair Credit Reporting Act); see also Atchison v. Buell, 480 U.S. 557, 562 (1987) (Federal Employers' Liability Act); Avila v. Rlexinger & Assocs., L.L.C., 817 F.3d 72, 75 (2nd Cir. 2016) (Fair Debt Collection Practices Act); Zimmerman v. Puccio, 613 F.3d 60, 71 (1st Cir. 2010) (Credit Repair Organization Act); Begala v. PNC Bank, Ohio, Nat'l Ass'n, 163 F.3d 948, 950 (6th Cir. 1998) (Truth-in-Lending Act).

³⁰ 59 Fed. Reg. 22,462 (Apr. 29, 1994).

³¹ *Id.* (The final FFEL Loan regulation 34 C.F.R. § 682.402(d)(6) required guaranty agencies to identify and notify all borrowers eligible for a discharge due to a school closure between Jan. 1986 and Aug. 24, 1994.)

³² 59 Fed. Reg. 2,486, 2,487 (Jan. 14, 1994) (the record is unclear as to whether the participants in the 4th regional meeting addressed this issue). ED rejected this recommendation primarily on the grounds that it needed sworn statements from borrowers to pursue claims against closed schools. *Id.* at 2,491.

³³ See Stanley Hirtle & Elizabeth Hurst, Legal Aid Society of Dayton, Ohio, Comments on Proposed Rulemaking, 34 C.F.R. pt. 682, 59 Fed. Reg. 2,486 (Feb. 11, 1994) (on file with author).

understanding the notices or applications, or would distrust the notices due to years of collection harassment by government servicers and collection agencies.³⁴ For these reasons, any application requirement was likely to significantly reduce the number of eligible students who would actually receive the closed school discharges mandated by Congress. This is exactly what happened. Legal services organizations across the country continue to see clients whose schools closed as many as 35 years ago and who have no idea they are eligible for a discharge.³⁵

Borrower Highlight

When she was just 18 years old in 1991, Ms. Julie Dolber* saw flyers posted in her Central Los Angeles neighborhood offering security guard training. Ms. Dolber visited the school, the for-profit college Brookline Technical Institute in Anaheim. Based on its promises of providing a high-quality education and job placement program that would lead to a lucrative career in private security, Ms. Dolber obtained \$4,625 in federal student loans to enroll in its security guard program. During the few months that she attended, various signs indicated that the school was struggling financially. The buses used to transport the students from her neighborhood to Anaheim were downgraded from privately chartered coach buses to standard yellow school buses, and then to passenger vans. She also heard teachers complaining that their paychecks were bouncing. A few months later, Ms. Dolber arrived at the school and found herself locked out. The school had closed. Ms. Dolber sought the assistance from a legal services organization in 2016, after the government had seized a federal income tax refund to repay her defaulted federal loans.

Although the organization applied for a closed school discharge on Ms. Dolber's behalf, ED denied it on the grounds that Ms. Dolber had no proof that she was enrolled at Brookline Technical Institute when it closed. The legal services organization was able to obtain an old document, from the now-defunct California agency that had guaranteed her student loans, with the dates of her attendance. After the organization submitted this additional evidence, ED finally granted Ms. Dolber's closed school discharge application. The Department discharged approximately \$19,000 in outstanding student loan debt and refunded Ms. Dolber \$7,800.

* The name in this story has been changed to preserve confidentiality

³⁴ *Id.*

³⁵ See Nat'l Consumer Law Ctr., Comments from the Legal Aid Community to the U.S. Dep't of Educ. re: Proposed Regulations on Borrower Defenses and Use of Forced Arbitration by Schools in the Direct Loan Program, and Proposed Amendments to Closed School and False Certification Discharge Regulations, at 53 (Aug. 1, 2016), https://www.nclc.org/images/pdf/special_projects/sl/comments_legal_aid_docketid_ED-2015-OPE-0103.pdf.

For schools that closed after 1994, low rates of students who are eligible for closed school discharges actually receive them due to ED's application requirement. In 2016, ED admitted that although it and guaranty agencies attempt to notify all eligible borrowers of their closed school discharge rights, "[m]any borrowers eligible for a closed school discharge do not apply."³⁶ In May 2019, ED data showed that low percentages of eligible borrowers from each of the following schools, all of which closed in the last 7 years, had received closed school discharges:

Institution	Percent of Eligible Borrowers Who Received Closed School Discharges ³⁷
Charlotte Law School	47%
ITT Tech	34%
Dream Center Education Holdings	28%
Vatterott College	19%
Education Corporation of America	16%

Prior to the 2010s, when ED and guaranty agencies had far less access to up-to-date student contact information and fewer ways to contact them, the application and discharge rates were probably much lower. In 2014, an ED official stated that prior to 2014 ED typically received closed school discharge applications from only 6 percent of eligible borrowers.³⁸

B. Reluctance to Exercise Automatic Discharge Authority

The closed school discharge regulations explicitly give ED, guaranty agencies (with ED permission), and Perkins Loan holders (also with ED permission) discretion to grant automatic closed school discharges, without any borrower applications, if they determine that an individual borrower or a group of borrowers is eligible based on

³⁶ 81 Fed. Reg. 39,330, 39,369 (June 16, 2016).

³⁷ U.S. Dep't of Educ., Responses to Questions Submitted by Sen. Patty Murray: Post-Publication QFR Responses for Sen. Appropriations Comm., at 1 (May 16, 2019), <https://www.help.senate.gov/imo/media/doc/SenMurrayQFRresponses32819LHSHearing.pdf>.

³⁸ Paul Fain, *Best of a Bad Situation?* Inside Higher Ed (Dec. 9, 2014), <https://www.insidehighered.com/news/2014/12/09/feds-respond-criticism-bid-ecmc-buy-most-cornthian>.

information in their possession.³⁹ Yet, despite the abysmal application response and closed school discharge rates, we are aware of no instances in which ED exercised the authority under these regulations.

ED exercised its discretion for the first time by enacting an automatic closed school discharge regulation in 2016. This regulation required automatic discharges for all students who, according to ED records, were unable to complete their programs due to a school closure on or after November 1, 2013 and who had not re-enrolled in another Title IV eligible postsecondary institution within 3 years of the school closure.⁴⁰ It enacted similar regulations applicable to FFEL Loans and Perkins Loans.⁴¹ As of December 2019, ED had provided over \$300 million in automatic closed school discharges to about 30,000 borrowers.⁴²

Notably, this data demonstrates the need for automatic closed school discharges—30,000 is an enormous number of borrowers who were eligible, but failed to apply for, closed school discharges. Absent ED's decision to grant automatic discharges, they would be suffering from the burden of loan repayment and the consequences of default.

ED repealed this provision in 2019, such that the regulations will no longer require ED to provide automatic discharges to students whose schools close on or after July 1, 2020.⁴³ This is especially troubling given that thousands of colleges, struggling with the adverse economic impacts of the COVID-19 pandemic, are likely to close in the coming months.

In 2014, an ED official stated that prior to 2014 ED typically received closed school discharge applications from only 6 percent of eligible borrowers.

³⁹ 34 C.F.R. § 682.402(d)(8)(i) (FFEL Loans); 34 C.F.R. § 685.214(c)(2)(i) (Direct Loans); 34 C.F.R. § 674.33(g)(3)(i)(B) (Perkins Loan).

⁴⁰ 34 C.F.R. § 685.214(c)(2)(ii) (Direct Loans).

⁴¹ 34 C.F.R. §§ 682.402(d)(8)(ii) (FFEL Loans), 674.33(g)(3)(ii) (Perkins Loans).

⁴² Federal Student Aid, Federal Student Aid Posts New Reports to FSA Data Center, U.S. Dep't of Educ. (Feb. 19, 2020), <https://fsap.ed.gov/electronic-announcements/021920fsapostsnewreportstofsadatacenter>.

⁴³ 84 Fed. Reg. 49,788, 49,889 (Sept. 23, 2019).

C. Reluctance to Expand Pre-Closure Withdrawal Eligibility Period

Current regulations require ED to discharge the loans of all borrowers who withdraw within 120 or 180 days, whichever is applicable, of school closure.⁴⁴ The regulations also grant ED broad discretion to extend the pre-withdrawal eligibility period, or “look-back period,” based on extenuating circumstances, for as long as it deems necessary.⁴⁵ The regulations do not define extenuating circumstances, but provide examples of the type of conduct or events that cause or indicate significant deterioration in educational services prior to closure, such as loss of accreditation or the discontinuance of a majority of a school’s programs.⁴⁶ These examples are explicitly non-exhaustive.⁴⁷

The extenuating-circumstances provision was enacted to ensure that students who withdraw prior to a school’s closure due to the deterioration of educational services are able to obtain discharges.⁴⁸ In anticipation of closing, schools often fail to maintain necessary equipment and facilities, stop paying instructor wages, fail to replace

In anticipation of closing, schools often fail to maintain necessary equipment and facilities, stop paying instructor wages, fail to replace instructors who depart, and discontinue programs before students have completed them.

instructors who depart, and discontinue programs before students have completed them. As the GAO recently noted, “research has indicated that a school’s financial struggles can have negative effects on its operations. For example, two studies that we reviewed found that financial shortfalls can cause schools to reduce course offerings and increase class sizes. Two other studies have also found that declines in schools’ resources per student can result in reduced student supports and lower rates of graduation.”⁴⁹

⁴⁴ 34 C.F.R. § 682.402(d)(1)(i) (withdrawal period of 120 days for FFEL Program Loans); 34 C.F.R. §§ 685.214(c)(1)(i)(B), (c)(2)(i)(B) (for Direct Loans disbursed prior to July 1, 2020, withdrawal period of 120 days; for Direct Loans disbursed or after that date, withdrawal period of 180 days); 34 C.F.R. § 674.33(g)(4)(i)(B) (withdrawal period of 120 days for Perkins Loans).

⁴⁵ 34 C.F.R. §§ 682.402(d)(1)(i) (FFEL Loans); 685.214(c)(1)(i)(B), (c)(2)(i)(B) (Direct Loans); 674.33(g)(4)(i)(B) (Perkins Loans).

⁴⁶ 34 C.F.R. § 685.214(c)(1)(i)(B) (Direct Loans for schools that closed prior to July 1, 2020).

⁴⁷ 34 C.F.R. §§ 682.402(d)(1)(i) (FFEL Program Loans); 685.214(c)(1)(i)(B), (c)(2)(i)(B) (Direct Loans); 674.33(g)(4)(i)(B) (Perkins Loans).

⁴⁸ 59 Fed. Reg. 2,486, 2,488 (Jan. 14, 1994).

⁴⁹ U.S. Gov’t Accountability Off., GAO-17-555, Higher Education: Education Should Address Oversight and Communication Gaps in its Monitoring of the Financial Condition of Schools, at 28 (2017), <https://www.gao.gov/products/GAO-17-555> (citations omitted).

Schools also engage in misconduct designed to keep them in business and reduce liability for closed school discharges.⁵⁰ They often conceal their financial precarity by refusing to pay living "stipends" from Title IV funds to students, while reporting that those funds have been paid; reporting that students have completed their programs, when in fact they have not; concealing that students have withdrawn in order to keep Title IV funds that should be refunded; and failing to report students who are on leaves of absence when the school closes. In his testimony before the Senate Subcommittee in 1990, the Inspector General detailed multiple schools that had illegally reported that students were enrolled, when in fact they had withdrawn, in order to keep Title IV funds they were legally required to refund.⁵¹ More recently, before it closed, Argosy University kept over \$13 million in Title IV living stipends intended for students, and spent it on payroll and other overhead expenses, while concealing this fraud from ED by altering financial records.⁵²

ED rarely lengthens the 120- or 180-day look-back period. It has done so only in extreme circumstances, such as after the implosion of Corinthian Colleges.⁵³ This means that many students aware of these look-back periods are forced to stay enrolled, even when they cannot afford to do so because they have not received their living stipends or they are unable to learn anything because instructors are absent, facilities are not available, computers and instructional equipment have broken down, or small classes are merged into large and unmanageable classes containing a mix of beginning and advanced students. Those who are unaware of the look-back periods and who drop out due to deterioration in their programs but do so before the look-back period is triggered, are ineligible for closed school discharges.

⁵⁰ The HEA requires ED to "pursue any claim available to any [borrower who has been granted a closed school discharge] against the institution and its affiliates and principals." 20 U.S.C. § 1087(c).

⁵¹ IG Testimony, *supra* note 13, at 36 (testimony mentioned, among others, National Technical Schools in Los Angeles; and a barber school that had expanded into teaching masonry programs).

⁵² Vasquez & Bauman, *supra* note 1.

⁵³ ED extended the pre-withdrawal eligibility period back to the date it first put Corinthian Colleges on heightened cash-monitoring status. See Press Release, U.S. Dept of Educ., U.S. Department of Education Heightens Oversight of Corinthian Colleges (June 19, 2014), <https://www.ed.gov/news/press-releases/us-department-education-heightens-oversight-corinthian-colleges>; Kelly Field, *Plan to Forgive Corinthian Students' Loans Gives Hope to Other Borrowers*, Chron. of Higher Educ. (July, 2015), <https://www.chronicle.com/article/plan-to-forgive-corinthian-students-loans-offers-hope-to-other-borrowers/>.

D. ED Has Denied Closed School Discharges Based on Evidence from Fraudulent Schools, While Disregarding the Sworn Testimony of Harmed Students

As noted above, closed for-profit schools often report false information regarding student completions and withdrawals in order to keep Title IV funds and avoid liability for closed school discharges. Schools have reported that students completed their education prior to closure, when in fact they either withdrew or were in attendance but had not completed their education when the schools closed. These schools also make mistakes and provide incorrect federal loan documentation—recording on a promissory note, for example, that a student attended a campus different than the one he or she attended, which may have a later closing date.

Borrower Highlight

In the spring of 1988, Ms. Elena Rogers* was raising a newborn daughter on her own. Hoping to get training for a stable job so that she could support her daughter, Ms. Rogers obtained \$6,625 in federal student loans to enroll in a data entry program at American Business Institute ("ABI"). After about seven months, the school suddenly closed. A federal grand jury had indicted the CEO and 18 employees of Wilfred Education American Corporation, ABI's owner, for the misuse of federal funds and falsifying loan applications, among other criminal violations.[†]

Ms. Rogers did not know about her eligibility for a closed school discharge. For over 30 years she struggled to make her federal student loan payments. Ms. Rogers finally sought help from a legal services organization in 2018 because the government was demanding payment of over \$26,000, and she was concerned about her wages being garnished. After discovering that a default judgment had been entered against her, the legal services organization submitted a closed school discharge application on Ms. Rogers' behalf. ED denied the application on the grounds that ABI had reported that she had completed her program. ED essentially disregarded Ms. Rogers' credible sworn statements and relied on completion information reported by a school run by administrators who were convicted of submitting false information to ED.

* The name in this story has been changed to preserve confidentiality

† Emily S. Rauh, *Suit Seeks Relief for Trade School Students with Years of Debt but No Career*, The New York Times (Feb. 25, 2014), <https://www.nytimes.com/2014/02/26/nyregion/suit-seeks-relief-for-trade-school-students-with-years-of-debt-but-no-diploma.html>

Despite the fact that students testify under oath that they did not complete their educations while attending particular campuses, ED often disregards their testimony. Instead, ED relies on old electronic data reported by the school to deny discharges, even though ED officials should know, based on prior audits, program reviews, or

investigations, that the school reported false information to ED regarding the payment of refunds, the reporting of student enrollment and completion dates, etc.

Solutions

ED's application requirements and reluctance to use its authority to provide widespread closed school discharges have hindered Congress's broad remedial intent in enacting the HEA's closed discharge mandate. It has caused decades of unnecessary suffering to thousands of students who are clearly eligible for discharges according to the records of ED, guaranty agencies, and Perkins Loan holders. ED's narrowly drafted regulations, combined with its reluctance to grant widespread automatic discharges, has trapped borrowers harmed by school closures in poverty and prevented them from obtaining quality higher educations that would give them the skills they need to find better jobs and improve the well-being of their families.

ED's narrowly drafted regulations, combined with its reluctance to grant widespread automatic discharges, has trapped borrowers harmed by school closures in poverty . . .

As detailed above, ED has the obligation, under the mandatory language of the HEA discharge provision, to rectify this injustice by granting automatic discharges to these students. ED should use its existing statutory and regulatory authority to discharge, without borrower applications, all federal loans for students⁵⁴ who, according to information within its possession, or the possession of a guaranty agency or Perkins Loan holder, were unable to complete their educational programs due to school closures, as specified in this section.

ED's Federal Student Aid system, including the National Student Loan Data System, should include all the following information for Direct Loan, FFELP Loan and most Perkins Loan borrowers: (1) dates the loans were disbursed; (2) schools to which they were disbursed; (3) the last date of a borrower's attendance at the school, including whether a borrower withdrew or did not complete due to a school closure; (4) whether a borrower subsequently obtained Title IV financial aid to attend another postsecondary school and, if so, whether the

⁵⁴ ED should also grant discharges to any parents or guardians who obtained Parent PLUS loans on their behalves, which is also required by the HEA. See *supra* note 27.

borrower completed that program. ED, as well as guaranty agencies and Perkins Loans holders, should therefore have all the data necessary to identify eligible borrowers.

A. Automatic Discharges for Borrowers Whose Loans Were Disbursed Before January 1, 1986

As set forth in above, ED has authority to grant closed school discharges of FISL and Stafford Loans that were disbursed before January 1, 1986. Based on this authority, combined with its settlement and compromise authority,⁵⁶ ED should grant full loan discharges (cancellation of all outstanding debt, refunds of all amounts paid on loan by borrower, and removal of negative credit history) to FISL or Stafford Loan borrowers who (1) did not complete their programs and (2) were in attendance within one year prior to their school's closure or were in attendance on or after the date their schools lost Title IV eligibility, whichever date is earlier.

B. Automatic Discharges for Borrowers Whose Loans Were Disbursed in Whole or in Part on or After January 1, 1986 and Prior to July 1, 2020

The closed school regulations governing FFEL, Direct, and Perkins Loans allow ED, guaranty agencies (with ED permission), and Perkins Loan holders (with ED permission) to grant closed school discharges, *without an application*, if ED determines that an individual borrower or a group of borrowers are eligible based on information in their possession.⁵⁸ ED should use this existing authority to grant discharges as follows.

⁵⁶ See 34 C.F.R. § 30.70. For an in-depth description of ED's authority to settle and compromise student loans, see Letter to Sen. Elizabeth Warren from Eileen Connor, Deanne Loonin & Toby Merrill (Jan. 13, 2020), <https://static.politico.com/4c/c4/dfad4bb94f6684cfc99e34bc080/student-debt-letter-2.pdf.pdf>.

⁵⁸ 34 C.F.R. §§ 682.402(d)(8)(i) (FFEL Loans), 685.214(c)(3)(i) (Direct Loans), 674.33(g)(3)(i)(B) (Perkins Loan).

1. Borrowers Whose Schools Closed Between January 1, 1986 and August 29, 1994⁵⁷

ED should grant discharges to all students who (1) did not complete their programs due to the closure of one of the ten correspondence schools identified in a 1997 Dear Colleague Letter and (2) were enrolled in, or on a leave of absence from, the school during the extended pre-closure withdrawal periods set by ED.⁵⁸

For all other schools that closed between January 1, 1986 and August 29, 1994, ED should provide closed school discharges to all borrowers who (1) did not complete their programs at the school due to its closure and (2) were enrolled in, or on a leave of absence from, their school after one of the following dates, whichever is earliest: within one year prior to their school's closure; within any longer look-back period prior to their school's closure previously set by ED; or within any longer period set by ED in the future based on evidence of school misconduct.

ED should liberally construe the remedial extenuating-circumstances regulation and extend the look-back period, for schools closed between January 1986 and August 1994, to at least one year prior to closure. The Senate Subcommittee heard testimony of multiple witnesses, including the Inspector General, detailing years of egregious for-profit school fraud that went undetected by ED.⁵⁹ The Subcommittee concluded that this fraud and the subsequent school closures were caused by ED's "gross mismanagement, ineptitude, and neglect in carrying out its regulatory and oversight functions."⁶⁰ Many students likely withdrew long prior to these school closures because the fraudulent schools provided little or no actual training. ED should also extend the pre-withdrawal eligibility period beyond one year whenever it has evidence of misconduct prior to school closure.

Current regulations bar closed school discharge eligibility if a student completes the same or comparable program through a teach-out or after the transfer of even one credit to another institution.⁶¹ These teach-out and

⁵⁷ Guaranty agencies and lenders were required by the 1994 regulations to identify and notify all borrowers who were eligible for discharges based on the closure of schools between January 1, 1986 and August 29, 1994. 34 C.F.R. §§ 682.402(d)(5)(i). See also, U.S. Dep't of Educ., Dear Colleague Letter, 94-L-166/94-G-256, Guidance Concerning Closed School and False Certification Loan Discharges and Relief for Unauthorized Endorsements in the Federal Family Education Loan (FFEL) Program (Sept. 1994), <http://library.nclt.org/companion-material/file/94-L-166.pdf>.

⁵⁸ U.S. Dep't of Educ., Dear Colleague Letter, 97-L-197/97-G-300 (July 1997), <https://ifap.ed.gov/dear-colleague-letters/07-01-1997-97-g-300-letter-provides-guidance-concerning-closed-school-loan>.

⁵⁹ See *Abuses in Fed. Student Aid Programs*, *supra* note 20.

⁶⁰ Nunn Report, *supra* note 8, at 33.

⁶¹ See, e.g., 34 C.F.R. §§ 685.214(c)(1)(i)(C), (c)(2)(i)(C) (Direct Loans).

credit-transfer bars to discharge eligibility have unfairly prevented deserving students from receiving closed school discharges.

This regulation was applied retroactively to students whose schools closed prior to August 29, 1994. Doing so was contrary to both the intention and plain language of the HEA discharge provision, which included no language regarding teach-outs. It is likely that many students received little or no training from teach-outs they completed prior to 1994, when teach-outs were typically offered by the same for-profit schools that ED had allowed to engage in major fraud and abuse. In its comments to the 1994 proposed regulations, one legal aid office recommended that ED “be suspicious of teach-outs.”⁶² As an example, it cited a teach-out that “was voluntarily carried out by the school’s teachers without support after management fled.”⁶³

While states and accreditors should oversee and approve teach-outs to protect already harmed closed school students, the Subcommittee hearings revealed that states and accrediting agencies had neglected their duty to oversee for-profit schools and allowed them to commit fraud.⁶⁴ There were no federal or state minimum requirements for teach-out schools, nor any definition of a teach-out in federal law. Because legal aid organizations were concerned about the lack of oversight of teach-outs based on their experiences, they commented that “certain minimum criteria must be present for a teach-out to be meaningful to the student and to provide a legitimate basis for excluding borrowers for discharge eligibility.”⁶⁵ Recommended minimum criteria included review and approval by the state licensing agency.⁶⁶ Although ED rejected this proposal.

Moreover, few students were able to transfer all their credits to another school prior to 1994. At the time, schools typically only accepted a few credits and required students to re-earn the remaining credits they had already completed. While we do not have data for that period, the U.S. Government Accountability Office recently studied

⁶² Hirtle & Hurst, *supra* note 33, at 5.

⁶³ *Id.*

⁶⁴ In his testimony, the IG also described how both states and accrediting agencies had failed to oversee schools, detect and stop fraud, or take any other actions to protect students. See IG Testimony, *supra* note 13 at 33, 41.

⁶⁵ Comments submitted by Nat’l Consumer Law Ctr. and Other Legal Services Organizations to Dep’t of Educ. 10 (Feb. 14, 1994) (on file with author).

⁶⁶ *Id.*

the transfer of credits between 2004 and 2009. It reported that that only 4 percent of students were able to transfer credits from for-profit to public schools and that:

... [S]tudents who transferred from for-profit schools to public schools lost an estimated 94% of their credits. Even if a student's credits transfer, they may not apply toward fulfilling degree requirements for their intended major. In these cases, a student will likely have to take additional courses at their new school, which could potentially delay graduation and result in additional costs to pay for repeated courses.⁶⁷

Nonetheless, under ED's policies, students who transferred even just one credit were still on the hook for all the loans paid to the closed school, even when they were required by their new school to retake previously completed classes.

ED should therefore grant automatic discharges to students whose schools closed between 1986 and August 1994 *regardless* of whether the student completed the same or similar program through a teach-out or by transferring credits. The minimal potential cost of granting discharges to these borrowers, a few of whom may have completed decent teach-outs or transferred all their credits to another school, is counterbalanced by the enormous benefit of granting discharges to the large majority of borrowers who were truly harmed by for-profit school closures prior to August 29, 1994.

2. Borrowers Whose Schools Closed Prior between August 29, 1994 and the Present

For schools that closed between August 29, 1994 and the present, ED should provide automatic closed school discharges to all borrowers who (1) did not complete their programs at the school and (2) were enrolled or on a leave of absence when the school closed, or withdrew within 120 or 180 days, whichever is applicable, or any longer period specified by ED, prior school closure; (3) did not subsequently complete a program at another Title IV-eligible school; and (4) are not currently enrolled in a Title IV-eligible program.

⁶⁷ U.S. Gov't Accountability Off., GAO-19-553T, GI Bill: Veterans Affected by School Closures 9 (June 19, 2019), <https://www.gao.gov/assets/700/699817.pdf>.

In addition, using its extenuating-circumstances authority, ED should, at a minimum, extend the pre-closure withdrawal eligibility period for all closed schools to the date of the event, if any, that led to a school's financial instability and eventual closure. ED should undertake a review of all school closures to determine whether any meet the following criteria and, if so, extend the pre-withdrawal eligibility period to the date indicated:

- (1) The date that ED put the school on heightened cash-monitoring (HCM) status, if the school was not subsequently restored to full eligibility without monitoring prior to closure. ED has done this before, including by extending the closed school pre-withdrawal eligibility period for Corinthian students back to June 20, 2014, the date upon which it placed Corinthian's schools on HCM status.⁶⁸ ED should do the same for the schools owned by Education Corporation of America (ECA), which was placed on HCM status in March 2015 and closed in December 2018, and ITT Tech, which was placed on HCM status in August 2014 and closed in September 2016.⁶⁹
- (2) The date that an institutional accrediting agency revoked accreditation or put the school on probation, issued an order to show cause, or took other adverse public action which was not lifted prior to the school's closure. This includes Charlotte Law School, whose accreditor, the American Bar Association, placed it on probation on February 3, 2016, and which subsequently closed on August 10, 2017.⁷⁰
- (3) The date of any adverse judgment, whether stipulated or based on a contested proceeding, obtained by ED, another federal agency, or by one or more state attorneys general against the school for state or federal violations that required a payment that adversely impacted the school's finances. This includes the Art Institutes, Argosy University, South University, and Brown-Mackie Colleges, which were owned by Education Management Corporation (EDMC). On November 16, 2015, a federal court entered a Consent Judgment ordering EDMC to pay \$95.5 million to ED and several states for its illegal scheme to pay incentive compensation to recruiters based on the number of students they enrolled.⁷¹ This judgment was the beginning of the end for these schools. It led to the closure of 22 Brown-Mackie campuses in

⁶⁸ See *supra* note 51.

⁶⁹ Alex Elson, Student Defense, Justice at Last 4-6 (Oct. 2020), <https://www.defendstudents.org/news/body/docket/100-Day-Docket-Expanding-Debt-Relief.pdf> (my thanks to Alex and the National Legal Defense Network for making similar recommendations and doing the research on these dates and the schools that started their descent to closure) (citations omitted).

⁷⁰ *Id.* at 3 (citations omitted).

⁷¹ *Id.* at 4 (citations omitted).

June 2016, and the sale of most other campuses to the Dream Center Foundation. Most of these campuses closed in December 2018 and March 2019.⁷²

- (4) If ED denied a school's application seeking to renew Title IV eligibility (re-certification) or revoked a school's Title IV eligibility, the earliest date of the school's violations underlying these decisions. This includes Medtech College, which closed immediately upon ED's denial of its application for recertification on July 26, 2016. ED's denial was based on substantial misconduct that occurred in 2014 (and possibly earlier).⁷³

C. Borrowers Previously Denied Closed School Discharges

To the extent that ED, a guaranty agency, or a Perkins Loan holder previously denied an application for any students who meet the criteria described above, ED should reassess those applications and grant discharges whenever a borrower's application establishes eligibility, regardless of any contradictory electronic information or incorrect paperwork provided by the school.

D. Closed School Discharge Notifications to Borrowers Who Do Not Meet the Above Criteria

ED should also notify borrowers who do not appear to meet the above eligibility criteria about their potential eligibility. This is necessary to account for past ED errors, as well as the possibility that ED, guaranty agencies, and Perkins Loan holders may miss borrowers who are eligible for automatic discharges per the above criteria. It is also necessary for students who would have been eligible, but who were denied discharges due to either (1) ED's overly narrow closed school discharge regulations or (2) ED's reliance on false or incorrectly reported information from fraudulent schools. Finally, there may be borrowers who completed a subsequent program by transferring credits to another school, but who should qualify for a discharge because that program was not the same or comparable to the program in which they were enrolled at the closed school.

⁷² *Id.* (citations omitted).

⁷³ *Id.* at 6-7 (the evidence underlying ED's denial of Medtech College's application is not publicly available, and may pre-date 2014) (citations omitted).

ED should notify all students who attended closed schools within the applicable pre-withdrawal eligibility periods, but who do not meet the criteria outlined above according to ED, guaranty agency, or Perkins Loan holder records, of their potential eligibility for discharges. This includes students who were reported as completing their programs during that time period, as some schools falsely report student completions in order to illegally keep financial aid that they are required to refund and to avoid liability to ED.

ED should send a simple one-page closed school loan discharge application and one-page letter explaining eligibility criteria and submission instructions to all such students. The cover letter and application should be available in all languages in which closed schools provided instruction. The application should request only necessary information—the student's or borrower's Social Security number and contact information; the school the student attended; the last date of attendance; whether the student completed his/her program; and, if not, whether the student was in attendance when the school closed, was on an approved leave of absence when it closed, or had withdrawn within the applicable time period prior to the school's closure. ED, guaranty agencies, and Perkins Loan holders should suspend all collection activity for at least 90 days after sending the letter and application.

If such a borrower submits a sworn application that meets the discharge criteria described in this paper, ED should grant the discharge if (1) there is no evidence contradicting the borrower's statement or (2) the only evidence contradicting the borrower's application is information reported by a fraudulent school.

E. Borrowers Whose Schools Close on or After July 1, 2020

Finally, ED should immediately implement an automatic closed school discharge policy for students whose schools close on or after July 1, 2020, and who (1) do not re-enroll in any Title IV-eligible program within one year or (2) re-enroll in a Title IV-eligible program but withdraw within 1 year. While ED repealed the automatic discharge regulation it had enacted in 2016, it need not re-enact a similar regulation in order to implement this policy. As ED itself noted, it "already has the authority to grant a [closed school] discharge without an application . . . at [its] discretion, and, therefore, we do not believe that it is necessary to establish . . . a requirement that [ED] grant automatic closed school discharges."⁷⁴

⁷⁴ 83 Fed. Reg. 37,242, 37,267 (July 31, 2018) (citing 34 C.F.R. §§ 682.402(d)(8) (FFEL Loans), 685.214(c)(2) (Direct Loans), and 674.33(g)(3)(ii) (Perkins Loans)).

Conclusion

ED continues to engage in the onerous collection of student debt owed by thousands of borrowers who are or should be eligible for closed school discharges based on its own records, or the records of other loan holders. Many of these borrowers—for-profit school students who are primarily low-income people and people of color—have endured onerous debt collection for decades. Many have paid the principal and more on their loans through wage garnishment, Social Security offsets, and other types of involuntary collection, yet still owe ED far more than they ever borrowed in interest and collection fees.

There is little to be gained by continuing to wage this economic war on poor people who were harmed, through no fault of their own, by school closures caused by ED's neglect, mismanagement and outdated monitoring tools. Pursuing this largely impoverished group of students who were failed by ED and their schools costs the government time and money and is unlikely to produce substantial collections.

Instead of construing the closed school discharge provisions narrowly, ED should change course and comply with its statutory mandate to grant broad and automatic closed school discharges as initially intended by Congress.

There is little to be gained by continuing to wage this economic war on poor people who were harmed, through no fault of their own, by school closures caused by ED's neglect, mismanagement, and outdated monitoring tools.

Chairwoman WILSON. Thank you so much. Under Committee Rule 9(a) we will now question witnesses under the five-minute rule. I will be recognizing our Subcommittee Members in seniority order. Again, to ensure that the Member's five-minute rule is adhered to staff will be keeping track of time, and a timer will sound when time has expired. Please be attentive to the time. Wrap up when your time is over and remute your microphone.

As the Chairwoman, I now recognize myself for five minutes. Ms. Emrey-Arras the automatic discharge process was designed to provide relief for borrowers if they did not complete their program or transfer to another school within 3 years after their college closed.

Is this time period quick enough to catch eligible borrowers before they face negative financial consequences?

Ms. EMREY-ARRAS. Great question. We found that 73 percent of the borrowers who went on to receive the automatic discharges defaulted, or were past due on those loans by 90 days or more prior to getting a discharge, and over half of those borrowers defaulted within a year and a half of the college closing.

So within a year and a half many were defaulting, and then it wasn't until a year and a half later that they received the discharge.

Chairwoman WILSON. Wow. Ms. Rhodes can you please describe your experiences in the first weeks immediately after the school closed? Ms. Rhodes?

Ms. RHODES. Yes. There we go I'm sorry. OK. After a few weeks of the school closing I really wanted to complete my education and become a data entry clerk. I wanted to finish my schooling as I had planned to do. My school closing caused me great stress. I was so devastated about not completing my courses, graduating and receiving my diploma. I didn't know what I was going to do now, and I was really worried about having outstanding loans.

All I know was that I had to continue working to provide for my daughter until I could figure it out—what my next step was going to be. I didn't apply to any other schools because accumulating another debt didn't make any sense to me.

However, in 1991 I was offered an opportunity to assist as a junior operator in a salon, and I jumped on that opportunity to do the apprenticeship and I became a cosmetologist.

Chairwoman WILSON. Do you recall if you received any information about your eligibility for a closed school discharge during this time, and if so, was it difficult to understand the process given everything you experienced in that time. Did you know anything about this process?

Ms. RHODES. No. At the time there wasn't any closed school discharge, so I was unable to receive any information regarding my eligibility, and I feel like I was in the first wave of closed schools, and I was left to fight this issue on my own with no assistance from anyone.

Chairwoman WILSON. Did you know if anyone else in your class was able to have any success the way that you were able to get success, or do you think most of them are just thrown away?

Ms. RHODES. I would say we were thrown away. We were all in the same situation. The school closed and we just had nowhere to turn, no information.

Chairwoman WILSON. Were most of the students African American?

Ms. RHODES. I would say it was mixed, but yes my area would be considered more African American.

Chairwoman WILSON. And how were you recruited to go to the school? How did you find out about it?

Ms. RHODES. I basically wanted, I worked for Comcast, and I wanted to become a data entry clerk, and they had a position available, but I had to get a degree, so I just searched the internet, and then found the school and it essentially was about five minutes from my home, that was perfect for me, and I could take night

classes and still take care of my daughter, so that's why I chose the school.

Chairwoman WILSON. Were there any other people in your community who had gone to that school, or were there any recruitment efforts from that school, or any other for-profit college in that community?

Ms. RHODES. There were other students that was in my neighborhood, but I didn't know them personally, but they were from the general area, yes.

Chairwoman WILSON. Were there any recruitment efforts from the for-profit schools in that area to recruit you?

Ms. RHODES. I would say yes a little bit because they were in like a mall, so of course when you come in they kind of would give you flyers to join the school, so yes, a little bit of that recruitment.

Chairwoman WILSON. Thank you so much. I now recognize the Ranking Member for the purpose of questioning the witnesses.

Mr. MURPHY. Thank you Madam Speaker, or Madam Chairman rather, and I want to thank all the witnesses that came today. Very good information. We obviously have a problem here. It's tragic when someone has put their name on the dotted line on a loan, and they put it forth with a good faith effort to get an education, and it's tragic when those places close their doors, and then the person is left with a burden of debt that is through literally no fault of their own.

That said, is it fair to have someone who's never been to college and that just works hard at a blue-collar job to pay off that debt? There has to be something that we can put forth in the middle. And so let me just ask Mr. Cooper first a question. I'm intrigued by—I live in the world of medicine, and we all have to have malpractice insurance regardless.

Is there any avenue that we can put forth for these for-profit schools to get insurance beforehand before anything goes on that is recognized as them having financial troubles? Because we all know that State institutions are backed by the State. They have backing in that regard. Private institutions—I went to a private undergraduate college, had a large endowment otherwise. And so I wonder if that's an avenue that has been pursued, we should pursue that may help prevent the taxpayer from having to take the burden if defaults occur?

Mr. COOPER. Thank you, Doctor Murphy, that's a great question. So right now the Department does have some discretionary authority to request protection from schools when it looks like they're in danger of closures, such as requesting a letter of credit, in order to make taxpayers whole in the event of a closed school discharge.

The problem is that this is very reactive, not proactive. The Department often waits to request a letter of credit until the problems in the schools have already become apparent, and at that point it's very hard for a school that has just been deemed financially irresponsible by the Department, to go to a bank and say please give us a letter of credit.

And so that's why I believe we need a more proactive approach to financial protection, and that's where my proposal for an insurance mandate comes in which is analogous to the malpractice insurance mandate for doctors which you described. If institutions

wish to participate in the Federal student loan program they are putting some financial risk on taxpayers because there is a risk that those schools will close and there will be hundreds of millions if not billions of dollar of closed school discharges associated with those closures that will place a burden on taxpayers.

So my proposal is for them as a condition for participating in the Federal student loan program to have to purchase insurance in order to make taxpayers whole in the event of a discharge. And this won't only have the benefit of protecting taxpayers, but will also have the benefit of providing a financial incentive for schools to make sure that when they do face the risk of closure it's done in an orderly fashion, and that students are able to either complete their programs through a teach out, or transfer their credits to another school and complete their education there.

Both of those scenarios would make them ineligible for a closed school discharge, but it will get them what they original went to college for which is a degree.

Mr. MURPHY. Yes. I think that's actually fair. I think that's a reasonable compromise for all this. We don't burden the taxpayers with money that unjustifiably is not their debt, and then but we hold them accountable for some of the other things. And one thing I wish we would also look into I think one of the speakers commented that up to 94 percent of credits were not accepted by other institutions.

Well some of these institutions need to accept some of these credits, and I think as a condition of getting student loans they need to be much more lenient in accepting credits from for-profit institutions because you know we know that there is profit motive on the non-profit schools that they want those students to pay and do more of that.

So you know there has to be a happy medium. I think running to the one side where all of a sudden there's more and more and more taxpayer money put into a program, put into these colleges and universities I think is wrong. I think there's a much smarter way to do that protects consumers, protects students, but also protects colleges and universities.

We don't need to have a hoarding approach to all of this. So Madam Chairman I'm not sure of my time that's left. How much time do I have left. I can't even see it. 17 seconds? Well I could talk about the baseball game last night, but we won't talk about that considering it was such a resounding victory. But anyway I want to thank the speakers for coming in, and Madam Chair I'll yield back.

Chairwoman WILSON. Thank you. Thank you Dr. Murphy. Now Mr. Takano from California.

Mr. TAKANO. Thank you Madam Chair. You know you touched some glimmer of hope. I think the Ranking Member does recognize there's a problem. However these solutions I really beg to differ. I don't see the good in say a top-quality medical school being forced to accept credits from a fly by night medical school, or a school—but let's not talk about medical schools, but a regular school with a great reputation that has great standards to be accepting credits from a school that just closed. That makes no sense to me.

That means even less accountability and less value for the taxpayer. But anyway, Ms. Smith. I want to thank you for your testimony today. Very quickly, before I begin the rest of my questions and respond to the Ranking Member more sensibly, I wanted to inquire if the extension of the lookback window for ITT was within the Education Department's authority?

Ms. SMITH. Yes. The extension back was within the Department's authority both as extenuating circumstances, but it also has the clear authority to grant automatic discharges based on information in its own possession. It can determine and has determined who withdrew from that school before it closed within the extended period and is granting automatic discharges.

So this really shows that the Department has the authority and can in fact look back according to its own records to see who did not—who's eligible for a closed school discharge and grant widespread discharges if it wants to.

For ITT Tech I understand that's about 115,000 borrowers. That of course is just the tip of the iceberg. There are probably hundreds of thousands of borrowers who remain stuck with debts that they don't owe, and struggling from that who have no idea still that they should be eligible for a closed school discharge.

Mr. TAKANO. Well thank you. So the Department of Education has recently moved to provide other forms of loan relief, including total and permanent disability charges to borrowers without requiring them to submit an application. Can you explain how automatic processes can remove major barriers from borrowers and get them benefits they are entitled to under law?

Ms. SMITH. Sure. So, as you all know a closed school discharge not only discharges the debt, it also provides a restoration of Pell Grants and removes the negative history from credit reports so people who have for decades dealt with defaulted debt, who struggled because they can't get ahead. That idea with wage garnishments, they have bad credit reports, they can't get housing.

And I see these folks, many of whom are people of color all the time who've gone to schools in the 80's, and 90's, and as recent as you know several years ago. So the closed school discharge is a bright light of hope for these borrowers who struggled for so long because it clears their history and they can go back to school, they don't have the psychological and emotional burden that kind of debt can bring.

And so these discharges are incredibly important for also restoring the wealth to those communities. As I said the communities most impacted are communities of color and low-income communities who traditionally have been excluded from higher education.

So it is important to restore the wealth to those communities, to get them back on track to be able to go to legitimate institutions of higher education and pursue better, more financial stability for themselves and their communities.

Mr. TAKANO. So, Ms. Smith would you consider shortening the period of eligibility for the closed school discharge will be from the current 3-year wait period? I mean it seems like that wait period, to me is a real problem.

Ms. SMITH. Yes it is as Melissa explained. Most borrowers first of all when a school closes, they look right away to transfer their

credits, so it's within a year I would say that most borrowers decide either to move on to another school, or to give up. So the other issue of course is you want to give them a closed school discharge before they go into default.

They have 6 months grace period, then 270 days before they will go into default, so it's important I think to shorten the period to about 1 year because that would get them out of default or keep them from going to default in the first place.

Mr. TAKANO. Well thank you. I would like to explore that more, but my time is running out. It does seem to me that students are at a period like of real trauma or crisis, the schools close, it's not their fault. They should be given a choice about whether what they do next.

Anyway before I yield back Madam Chair I'd like to enter into the record a statement submitted to the Higher Education Work Force Investment Committee from Veterans Education Success, a statement for the record. I ask unanimous consent.

Chairwoman WILSON. So ordered. Thank you so much.

Mr. TAKANO. I yield back Madam Chair.

Chairwoman WILSON. Thank you. Now Mr. Banks.

Mr. BANKS. Thank you, Madam Chair. According to the U.S. Department of Education's College Affordability and Transparency Center, the average tuition rate for a public 2-year technical school is only \$3,588.00. When Corinthian College closed its campuses the Obama administration approved approximately 15,000 students for loan discharge relief who owe a total of 200 million dollars in student debt, forcing the taxpayers to foot the bill.

In other words each former Corinthian student was on average granted over \$13,000.00 in relief, meaning that it cost taxpayers nearly four times as much to pay for borrower's school discharge claim than it does to pay for the entirety of their trade school education. Mr. Cooper what are your thoughts on creating policy that allows students in the discharge process to pursue a different type of education at technical and trade school?

Mr. COOPER. Thank you. Thank you, Representative Banks. I think that is the No. 1 goal that when a school closes we want students to have the opportunity to complete their education elsewhere, or complete their education at the original school through a teach out.

Because when students take on loans they're not taking on loans with the hope that they will eventually be discharged, they're taking on loans with the hope that they'll be able to use this financing in order to get a degree or a certificate somewhere. And so I would say that is the No. 1 goal. We do want them to transfer to other schools, whether those are other private institutions or community colleges, and complete the credential there.

I do know that if the programs which they are transferring is significantly different from the program which they were originally enrolled in at the school that was closed, they still might be eligible for a closed school discharge in that circumstance, but still it is the No. 1 goal for them to be able to get that credential that they originally went to college for and build a better life for themselves.

Mr. BANKS. So we know that the Department has historically had difficulties tracking transfer and re-enrollment of students in

institutions of higher education. This is concerning given that the Biden administration's proposed changes to the closed school discharge regulations that were circulated this week would reinstate the automatic closed school discharge policy implemented under the Obama administration.

But we've changed the re-enrollment period from 3 years to one. So for instance a student who attended a closed institution and had their loans discharged, and then enrolled in a new institution a few years later in a similar program, may receive a free degree.

Mr. Cooper can you explain why reinstating the automatic closed school discharge is a poor policy?

Mr. COOPER. Yes that is correct. And I believe that if you do instate these automatic closed school discharges which cast a very wide net that I don't really see a way for the Department of Education to effectively verify when a successful transfer of credits and a successful degree completion done at another college has taken place, but we're always going to—there are always going to be some errors like that.

I see that as fairly unavoidable, specifically when you're looking back to the pre-2014, pre-2019 enrollments in colleges when the data on program enrollments was just much poorer. And you know that's why I believe that the approach really needs to be centered around making sure that closed school discharges are not even necessary in the first place.

That you know when we've exhausted all other options, yes we should make it easier for people to receive a closed school discharge, but we should only do that after we've exhausted all other options, and we have exhausted the options of trying to get students into other programs and into other programs where they might be able to get what they originally came for which is a degree.

Mr. BANKS. Mr. Cooper what other Federal policies have been enacted recently that you can think of that have propped up failing schools beyond their natural lifespan?

Mr. COOPER. Yes. Well, I do know that the Department of Education under, excuse me, under President Obama did propose a number of policies that would have affected different sectors very differently, specifically they did target the for-profit sectors specifically, and some of those regulations might have been justified in terms of trying to do a stronger emphasis on outcomes and accountability, but I do worry that some of those regulations have basically exempted entire swaths of the higher education system, specifically public and private non-profit colleges that are enrolling the vast majority of students, about 86 percent of students, and therefore potentially ignoring the abuses and the potential poor outcomes that are transpiring at those schools which were not covered by Federal regulations.

Mr. BANKS. Thank you my time is expired.

Chairwoman WILSON. Thank you. Thank you so much. And now Ms. Manning of North Carolina.

Ms. MANNING. Thank you, thank you, Madam Chair and Ranking Member. Mr. Cooper I want to make sure I understand your proposal. You're suggesting that all schools should be required to

purchase insurance to protect against losses for schools that shut down leaving students with large debts and no degrees?

Mr. COOPER. That is correct.

Ms. MANNING. So you're suggesting this for non-profit and for-profit schools?

Mr. COOPER. Yes, that is correct because both non-profit and for-profit schools are subject to the current financial responsibility composites for regulations, and if either of them shut down there are potential closed school discharge costs associated with that.

Ms. MANNING. But I know you're aware that 86 percent of borrowers who were impacted by school closures attended for-profit schools right?

Mr. COOPER. Yes I'm aware of that.

Ms. MANNING. And 96 percent of students who received closed school discharges between 2010 and 2020 schools attended for-profit schools correct?

Mr. COOPER. I believe that's correct yes.

Ms. MANNING. So you would punish all schools with this insurance requirement even though the real problem lies with for-profit schools?

Mr. COOPER. Well I don't like to think of it as punishing schools. I like to think of it as——

Ms. MANNING. You would impose this burden on all schools?

Mr. COOPER. Yes. But——

Ms. MANNING. OK. And wouldn't you assume Mr. Cooper that schools required to purchase insurance would pass those additional costs on to students in their tuition or fees?

Mr. COOPER. Yes that is a potential cost, but I do believe that it could be rectified with additional aid to students to counter out accountability.

Ms. MANNING. Ah, so you actually want to increase student loan debt by saddling schools, and therefore students, with the cost of buying insurance.

Mr. COOPER. That is not how I would state my position.

Ms. MANNING. No. But that's what the outcome would be correct?

Mr. COOPER. Yes, but I believe that——

Ms. MANNING. OK. And wouldn't this be a boom to the insurance industry?

Mr. COOPER. Well, the insurance industry that would be able to sell insurance to these schools yes, but the insurance——

Ms. MANNING. OK. And so what you're proposing would help the insurance industry and would burden students with potentially higher student debt at a time when what we're trying to do is make school more affordable because more students needs a higher education to get jobs that pay a livable wage. Isn't that correct?

Mr. COOPER. Yes. But I believe that this proposal——

Ms. MANNING. OK thank you very much. I'm going to move on to Ms. Emrey-Arras. Your testimony mentions that transferring to another college may not be a great option for students after closure. Can you talk about that a little bit more? Can you explain why is it that so many of the credits that the students get at for-profit schools are non-transferrable?

Ms. EMREY-ARRAS. Thank you for that question. So when students transfer their tuitions, one is can they bring their credits

with them? And two, is can they complete their education at that second school? And in terms of that first issue of can they bring their credits with them, in this work looking at closed schools we found that most students leaving a for-profit transferred to another for-profit school.

And in our prior work we found that for that pathway students lose on the average 83 percent of their credits. Another common pathway that we found in this work is going from a for-profit school to a public school, and as you've heard previously we found that pathway results in a loss of 94 percent of credits. And I would say—

Ms. MANNING. And why is that? Why is it that non-profit schools are so reluctant to accept the credits from for-profit schools?

Ms. EMREY-ARRAS. I'm not able to comment on that. It's not the subject of this work, but I would say that those rates are much higher than the average credit loss rates. In average we found previously when students transferred regardless of where they were coming from, or where they were going, they lost a little over 40 percent.

So these rates we're seeing are more than double the transfer loss rates for the general population per prior work.

Ms. MANNING. Thank you so much. And Ms. Smith do you have any answer to why so many credits are lost when transferring from for-profits to non-profits?

Ms. SMITH. Yes. Thank you for that question. In our experience a majority of for-profit schools that closed suddenly, there's been a large time period during which the education has deteriorated when a school is having financial issues, they tend to cut salaries, they stop paying teachers, teachers stop showing up.

They stop updating equipment, and in addition these are often schools that are already very low quality and engage in other types of fraud to get the students in the door. So the students from these schools don't actually often have the skills or the education they need to succeed starting at a higher level at another institution.

So those institutions take a hard look at those credits and say can this student actually succeed in starting at a higher level, or do they really need to retake those courses, so they get a good education? We don't want people dropping out because they're put into higher level course and then they can't complete it.

So that's a primary reason that you don't see the transfers.

Ms. MANNING. Thank you. Madam Chair I yield back.

Chairwoman WILSON. Thank you. Thank you so much. Ms. Miller-Meeks of Iowa.

Mrs. MILLER-MEEKS. Thank you so much Madam Chairwoman, and I find it fascinating that there's a concern about having all colleges pay into insurance to cover colleges that are discharged when we just passed legislation and passed appropriations that don't cover the Hyde Amendment, so we want all taxpayers to pay for abortions, even if they are morally or religiously opposed to abortions.

So there seems to be no concern about having all taxpayers pay for other things when it's to someone's preference. So interestingly enough Mr. Cooper, you noted that the higher education landscape is changing, and that Federal policies should adapt with it. What

are some of the key changes or drivers of this changing landscape, and how big of an impact do you believe that changing demographics will have on college enrollment?

Mr. COOPER. Thank you Congresswoman. So one of the most important factors that are driving changes in higher education enrollment is the fact that higher education is a rather counter cyclical industry, so when the economy is not so great people will tend to want to go back to school in order to get another degree, and potentially increase the scope of their job opportunities.

And when the economy is doing better, then the labor market will look much better relative to education, because higher wages and more jobs available will mean more opportunities out there. During the decade of the 2010's we did see this, that there was a long decline in college enrollments between 2010 and 2019.

That may be the case again as the economy begins to recover from the COVID-19 recession, and this is going to have effects on the higher education sector that when enrollment contracts in this way due to the improving economy, not all colleges are going to be able to survive, and that's a natural part of the cyclical nature of the higher education sector.

And some colleges are going to close, it's unfortunate, but it is a reality, and that's why we do need to be prepared for when those college closures happen and make sure that both students and taxpayers are protected.

Mrs. MILLER-MEEKS. So I think that we saw this in the past several years when you had MBA programs at both public and private colleges. There was a proliferation of MBA programs, but now we've seen those close. And part of that I think is this dynamic between the college degree you're achieving, and then the income opportunities, or employment opportunities thereafter, and do they you know is there a benefit to getting that higher education.

So is this demographic similar for undergraduate as well as for graduate schools—that landscape that you're talking about changing?

Mr. COOPER. That is definitely true. When the economy is improving, and when there are more opportunities out there, that simply that reduces the demand to get the next degree because students will say why should I spend two, or three or 4 years in college when there is a great job opportunity waiting for me right now?

But when the economy does turn south, then you see students going into those MBA programs which might not have the returns they promised, so they're going into other programs that they hope will be able to graduate them to a better life, but it is extremely cyclical and it's getting more cyclical with each business cycle.

Mrs. MILLER-MEEKS. And I think you know certainly we don't you know want, we want all bad actors, bad performers held accountable. We want students who are trying to you know improve their education get a better education, improve their employment opportunities. You know we want them to be made whole.

And so I guess in that vein looking at what's happened in the past and where we are economically now do you see more colleges closing their doors in the very near future?

Mr. COOPER. I think it's certainly a possibility. We don't still fully understand how college enrollments, and therefore the number of colleges operating is going to react to the COVID-19 pandemic. You know if we recover fairly quickly economically, that might result in fewer students going to college, and therefore more college closures.

I'm not going to say that it's definitely going to happen, but it's definitely a major possibility, and an eventuality that we need to be prepared for.

Mrs. MILLER-MEEKS. Thank you so much. I thank all of our witnesses and I yield back my time Madam Chair.

Chairwoman WILSON. Thank you very much and now we'll hear from our Vice Chair of the Committee Mr. Bowman from New York, welcome.

Mr. BOWMAN. Thank you so much Madam Chair. Mrs. Rhodes thank you for being here today and telling us your story. As you say our education system failed you on so many levels. I was particularly heartbroken hearing your testimony that you have been eligible for a closed school discharge since 1994, but that you were never made aware of the process, or of your eligibility.

If the closed school discharge process had applied to you automatically back in the 90's, how would that have affected your life?

Ms. RHODES. Well I will say this. If the school closed discharge was applied automatically it would have made my life easier and less stressful. I really wanted to succeed at this school, but that wasn't an option for me after the school closed. I would have continued pursuing my education in another school of my choice, and I would have definitely graduated.

I'm a motivated woman who never gives up when my mind is set on something I want, I will pursue it and complete it. I eventually finished several education courses that I did not have to take out student loans for despite what happened to me. I am now a cosmetologist, salon owner, a real estate agent, and I own a trucking company with my husband, so I succeeded but.

Mr. BOWMAN. Well of course you did because you're strong. That's why you succeeded. Thank you so much.

Ms. RHODES. Thank you.

Mr. BOWMAN. For sharing that.

Ms. RHODES. Thank you.

Mr. BOWMAN. Ms. Emrey-Arras thank you for being with us as well. I know that I and my colleagues on this Committee appreciate the excessive work that the GAO has done to investigate and shine a light on this topic. Your testimony provided really important information on how college closures affect borrowers, and how important a closed school discharge process is.

And I'm hoping you could provide a bit more information about the experiences of these borrowers related to defaults. Specifically, how do the default rates of borrowers affected by a college closure differ from the average borrower?

Ms. EMREY-ARRAS. Thank you for the question Congressman. The default rates for borrowers who went to closed schools are higher than the default rates for the general student population. For example, we found that between 2010 and 2020, 19 percent of all borrowers who attended closed schools defaulted, and that 19

percent was much higher than the comparable rate in the general Federal student loan borrower population, which was about 11 percent.

But think about those numbers. 19 percent for everyone affected by a school closure, now let's move to those that were affected by the automatic loan discharge process. Those folks have even higher default rates. The people who were then eligible for automatic discharges defaulted at 52 percent, so those are folks that are in significant distress, and those people are defaulting on loans that are eligible to be discharged, and they're defaulting about a year and a half after their school closes, and then waiting for another year and a half to get the discharge.

Mr. BOWMAN. Yes. Thank you. Quick followup. In your opinion what do these differential rates tell us about how we can improve our higher education system to better support all students?

Ms. EMREY-ARRAS. GAO doesn't have a particular opinion on this issue. We just want to make sure that the facts are available for policymakers to consider.

Mr. BOWMAN. OK awesome. Thank you so much. Madam Chair I yield back.

Chairwoman WILSON. Thank you. And now we'll hear from Representative Good.

Mr. GOOD. Thank you Chairwoman Wilson and Ranking Member Murphy for holding this important hearing. It's crucial that American institutions for higher learning are providing the best possible education for our students. In a free market economy, it's important for students to be incentivized to complete their degrees, and be equipped with the tools to contribute to the workforce.

It's also essential that competitive forces would incentivize educational institutions to provide the best possible education for our students. I am concerned that colleges and universities aren't focused on the most important, pardon me, I've lost my place there. That they aren't focused on the most important thing which is developing critical thinking. Students who are effectively prepared to contribute to the American economy.

As has been said in testimony today, instead of trying to right the ship it seems too often that these sinking schools are just throwing up their hands and walking away and shirking all responsibly and leaving American taxpayers holding the bag.

I hope that moving forward we can have truly beneficial discussions surrounding this topic and not resort to the consistent default solution from my colleagues in the majority to simply throw more money at the issue, and simply forgive loans with zero questions asked.

I would also ask the majority to consider the fiscal implications of all the policies that we enact because that has to always be a factor for sustainable government and sustainable economy. I would also ask the majority would consider the morality of flip-pantly requiring those who don't or can't attend college, or those who sacrifice diligently to pay off their own student loans be required to pay for student loan balances of others regardless of the circumstances.

That said, Mr. Cooper thank you for taking the time to come before the Committee today. You said that when discharges occur it

means that we failed our students. You're exactly right, and I would add that the policies of the current administration are failing our students in many other ways as well.

And I appreciate in your testimony you mentioned that the composite score tool used to determine the financial health of an institution is an untenable tool. What would a responsible and accurate evaluation tool that would give a timely and thorough assessment of the financial state of institution look like?

Mr. COOPER. Thank you Congressman. So in 2017 the GAO identified a number of shortcomings with the financial responsibility composite score metric. One of the most important in my mind is that it only looks at a single, at the financial metrics for a single fiscal year, but pretty much any accountant in the private sector will tell you that you need to look at what are the trends, you know, are institutions getting more financially health, less financially healthy?

What are the historical trends, what are the future projections that you need to have that context in order to get a true assessment of the institution's financial health. Another major problem with the scores is that they're vulnerable to manipulation by colleges which have orbits of accountants to figure out every loophole in its force, most infamously Corinthian Colleges which manipulated scores while it was still in existence by borrowing tens of million dollars in long-term debt on the last day of the fiscal year, paying it back on the next day during the next Fiscal Year and getting credit for all those debt repayments.

So there are certainly ways that we can fix the financial responsibility formula today, and I believe the Department of Education is actively working on them. They haven't addressed all of the shortcomings. I'm glad to see that they're at least thinking about it, but I think in the long-run the only way to ensure that the metrics of financial responsibility are keeping up with the times and keeping up with what a financially responsible institution looks like in the 21st Century is to bring the private sector into the equation, and to leverage the power of the private insurance industry in order to help assess how healthy are institutions really.

And what can we do in order to make them more financially healthy.

Mr. GOOD. Thank you. Is there anything else that you might add, changes that you feel should be made to the accreditation process as to ensure that these educational institutions are held accountable for the product they're producing?

Mr. COOPER. I agree. I think that the accreditation system is not a really well suited to the task of a gatekeeping the hundreds of billions of dollars in Federal loan and grant money that go out the door every year, and that's why I think we should be probably moving away from relying on accreditors to hold colleges accountable, and more toward a system of outcomes-based accountability incentives-based accountability, that directly holds institutions accountable for their financial health and for the outcomes that they're delivering for students.

Mr. GOOD. Thank you, Mr. Cooper. And Madam Chairman I see I'm out of time, so I yield back. Thank you.

Chairwoman WILSON. Thank you, thank you so much. Ms. Bonamici from Oregon welcome.

Ms. BONAMICI. Thank you, and thank you to the Chair and Ranking Member, but truly thank you to our witnesses today. Ms. Rhodes just following up on Representative Bowman's comment. You started your data entry clerk program in 1988, and the Higher Education Act was changed to add the closed school provisions in 1992.

So you were eligible shortly thereafter then. I'm glad you found legal aid, but I find it tragic that it took decades. And listening to your story, thank you for sharing it, really I think exemplifies why we need to make some changes here today.

We have unanticipated closures we know of institutions and especially for-profit colleges, and they can have devastating effects on students, academically and financially, and again Ms. Rhodes thank you for sharing your personal story. I can't imagine what those decades were like for you and the frustration.

I used to work with Legal Aid, so I understand the importance of the work they do, but I also understand what you were going through. And so, since 2017 in Oregon, my home State has seen a significant number of school closures at Oregon State University, Concordia University, Oregon Culinary Institute, Pioneer Pacific College. We have to do everything we can to assist students who are faced with the consequences of those closed schools.

And I do note that there are the options of transferring credits and teach out programs, but as we've heard a lot of credits just don't transfer, especially from for-profit institutions. But the GAO found that tens of thousands of borrowers eligible for closed school discharges were not applying for forgiveness, even though most of them were suffering financial consequences.

So I want to ask Ms. Smith what steps can the Department take to improve the outreach and communication to borrowers who have been affected by school closures, so they are aware of all their options, including their potential eligibility for a discharge?

Ms. SMITH. Thank you that's an excellent question. The Department can do a lot to improve outreach, for example it can do a lot more with emails that are clearly labeled closed school discharges. It can provide many more communications to students as soon as the school closes instead of waiting for example 6 months to contact those students.

But the point I think that's most important to make is that no matter what the Department does, you're going to have a significant number of borrowers who just don't know or understand their closed school discharge rights. When a school closes its complete chaos.

Ms. BONAMICI. Right.

Ms. SMITH. The students are getting incomplete and inaccurate information from their schools who typically push them into enrolling somewhere else and transferring credits so that they are not liable for a closed school discharge amounts to the Department, and students and the government are both focused on helping them to transfer credits, so they're not really thinking at that point about what other options they have, and they are in a state of

panic and distress so that they often don't even notice that information if it is provided.

Ms. BONAMICI. I wanted to try to get another question in Miss Smith also for you, and I appreciate the answer. With so much of what we do here we're looking at how we address problems after they happen, but we really need to look at prevention.

So an additional step would be for the Department to be more aware of the warning signs. For example, ITT Technical Institute officially closed in 2016. There were signs of financial issues for several years, which the Department recently shared in their decision to extend eligibility for students receiving the closed school discharge.

At the time of their closure ITT Tech had 520 students enrolled in Portland and Salem in Oregon, and Courtney University in Portland similarly. They had long-standing financial trouble that contributed in part because of enrollment decline, but they began consolidating courses of study, but what really changes should the Department, or other regulatory entities make so they can act earlier in the process to protect students impacted.

Ms. SMITH. In the case of ITT Tech, and many of the schools, the Department had information and could have taken steps much, much sooner. It should I think create an enforcement unit that not only tracks these schools financially and do a better job of it, but also do more investigations regarding potential fraud.

And the point I want to make is that as long as you have for-profit education receiving guaranteed Federal subsidies of up to 90 percent of their revenues, there is going to be fraud, and there will be school closures whenever you have businesses receiving that much money from one guaranteed source no matter what you do you will have school closures no matter what steps the Department takes to monitor those schools.

Ms. BONAMICI. I appreciate that very much, and I know that we're working on it with the Higher Education Act reauthorization. And I'm out of time, but I just want to note that I will be submitting a question because of this accountability issue about the financial responsibility composite score, and what we can do to make sure that is really more accurate and helpful in identifying problems at the outset. So I'm out of time, I yield back. Thank you Madam Chair.

Chairwoman WILSON. Mr. Grothman of Wisconsin.

Mr. GROTHMAN. OK, OK. OK I have another question for Mr. Cooper. I think your proposal, what you're saying here is in line with the view many of us have, specifically I think that schools like taxpayers, have to have some skin in the game. However, your proposal also introduced another actor in the mix that have an incentive to protect students and taxpayers because they too bear financial risk.

Why is it important that Federal policy ensures that all stakeholders have skin in the game, and are there examples in Federal policy, including those outside of higher education that illustrate the benefit of risk sharing?

Mr. COOPER. Thank you. Thank you Congressman. Yes. I believe that you know accountability is really key. It's most important. And one of the reasons that we do see so many disasters in the

closed school discharge arena is that right now schools really do not have the financial incentives to serve their students well in the event of a closure, and that we do need to make sure that procedures are in place for students to either be able to complete the teach out or transfer their credits in the event of the school closure.

And that's where my insurance proposal comes in, that this is one of the things that will provide a direct financial incentive for that to happen. But the conversation about incentives and accountability shouldn't necessarily end there. That I think that there is potential for an entire overall of the way that we do higher education accountability to focus it more around incentives.

One of the proposals out there which has attracted bipartisan interest is to do some sort of risk sharing for institutions which participate in Federal aid programs. And basically the idea behind this is that if students are unable to repay their Federal student loans after attending the college or university that the college or university would then be liable for a portion of the unpaid debts.

And this would align the incentives of both the school and the student because if the student is able to graduate and get a good paying job, and pay back their loans, then the institution will be placed under much less financial liability for that. So yes, I believe that you know making use of incentives in order to do accountability for institutions which are dependent on the Federal purse for their revenues is basically the only way to ensure that we don't have repeat disasters like we saw with Corinthian and ITT Tech, and the many other disasters that have been mentioned over the course of this hearing.

Mr. GROTHMAN. OK. You made an important point in your testimony that students ultimately go to college to get a degree. And I think the approach taken by Secretary DeVos recognized that. Are there particular policies that the Biden administration should consider during the rulemaking process that were implemented under the previous administration?

Mr. COOPER. Yes. I think one of the most important policies that the Biden administration could continue is the DeVos administration's policy of transparency. So in 2019 the DeVos Department of Education launched what's called the program level college scorecard, which is a first of its kind data base that essentially provides outcomes information for many, many, many different—over 200,000 different programs both bachelor's degrees, associate's degrees, certificates, graduate degrees.

It provides earnings data. It provides loan repayment rates, and this is really an invaluable source of information for students who are looking for the best way to get an education, to create a better life for themselves, to graduate into a job which is going to deliver them a middle-class income and a middle-class lifestyle.

I am encouraged to see that there is bipartisan interest in this with the Obama, the Trump, and the Biden administration seem to have interest in continuing these transparency efforts, and I look forward to seeing what the Biden administration recommends.

Mr. GROTHMAN. I'll give you another question I know how to answer. When you begin to do things like put graduation rates and that in there it's helpful, but I think we also use graduation rates as an important sign we have a good or bad high school. And I

think one of the ways that schools deal with it is that they let everybody graduate.

And you know already you're out of people with college degrees. You wonder, you know, you've got a college degree. Are you afraid in how you deal with the fact that as people you know go down this path, the universities just dumb down the degrees to look good.

Mr. COOPER. I agree that's definitely a concern, and that's one reason why I'm reluctant to do accountability policy directly based on graduation rate, because as you say it is very easy for the institution to manipulate. And I think that if it's done it should be done in conjunction with other metrics such as graduate earnings and loan repayment rates, which are much harder for the institutions to fake.

Mr. GROTHMAN. OK. Would you be in favor of some sort of generalized test to say you've got to pass the test to get a college degree?

Mr. COOPER. I think it's certainly a possibility that we could consider, but I also think we should recognize that higher education has a huge diversity of offerings out there, and not all programs are going to teach the same material, and I'm not sure it would be possible to design a standardized test which is both going to test the knowledge earned during a liberal arts bachelor's degree and you know a certificate of welding at a community college.

Mr. GROTHMAN. Thank you, and thank you for letting me go over.

Chairwoman WILSON. Thank you so much. Mr. Espailat of New York welcome.

Mr. ESPAILLAT. Thank you, thank you Madam Chair. My question is—my first question is for Melissa Emrey-Arras. According to your testimony the automatic discharge process is not an option for all borrowers that are eligible for closed school discharge. Can you explain which borrowers are not being caught in this safety net? Who does that apply to?

Ms. EMREY-ARRAS. Happy to Congressman, thank you for the question. There are two groups that are not eligible for the automatic process, so they are eligible to apply, but they cannot get it automatically. Those are individuals who transfer but don't complete their program at the second college.

And what we found in our work was that almost half of the people who did transfer were in the situation of not completing within 6 years. So you have a sizable population that are transferring and not completing, and those individuals are not eligible for that automatic process.

Similarly, there's a second group of borrowers who transfer to another college in what's called a non-comparable program. So it's different than the original program that they were studying at the first college. Those folks are also eligible for a discharge, but cannot obtain it automatically.

Mr. ESPAILLAT. Thank you. My next question is for Karyn Rhodes. Karyn may you describe the process of putting together and completing a closed school discharge application? How was your experience with that?

Ms. RHODES. Thank you for the question. It wasn't easy. And it was the most difficult part for me was finding proof of documentation from 1988 needed for my application. And my lawyer from

Legal Aid was able to find more information than I was, which was unbelievable. My application was denied at first, and then Legal Aid sent an appeal, and then it was granted after that.

And it took almost 2 years to finally get my school loan discharged and receive relief from the debt.

Mr. ESPAILLAT. Were you able to get like a lawyer easily, or someone that was experienced in this area?

Ms. RHODES. No actually I contacted legal aid through researching the internet and found that American Business Institute, there was a class action suit, and that's how I was able to reach Legal Aid, they were handling the class action suit, so they—

Mr. ESPAILLAT. So it's not like Legal Aid had a unit you know within their office that dealt you know with this kind of help right?

Ms. RHODES. Not to my knowledge. I just saw them on the internet, and I reached out to them immediately, because that was the first time I had seen anything related to my school that I could get some assistance.

Mr. ESPAILLAT. OK. And how long did you have to wait to receive relief from the Department of Education?

Ms. RHODES. It was about 2 years. I contacted Legal Aid in 2018, and so it took about 2 years from then for the process from them starting the application, to being denied, and then submitting an appeal. And then I was granted my closed school discharge after that in August 2020.

Mr. ESPAILLAT. Very good thank you. Thank you Karyn. My last question is to Robyn Smith. And you mentioned in your testimony that many of the individuals who you worked with have been unable to obtain a discharge without the assistance of an attorney right? So on this same line of thought, you know how difficult is it out there to get an attorney? And it seems that you know it's necessary to have one to really be able to navigate through this entire process.

Ms. SMITH. That's a great question, thank you so much. First of all we do have 1.5 I'm half of attorneys dedicated to student loans at Legal Aid Foundation of LA, but most Legal Aid's in the country just don't have the resources to do that so it's very difficult for most low-income people to get legal assistance. It is difficult also to get these closed school discharges often because schools have reported incorrect information to the Department.

In Ms. Rhodes case, the American Business Institute, which at the same time was being prosecuted for fraud had fraudulently reported that she graduated before the school closed. That mean that we, after the appeal, after the initial application was denied, we had to do a FOIA request to the Department of Education to get evidence to show that it did in fact lie about student outcomes, and it took us a year and a half to do before we could successfully appeal her case.

Mr. ESPAILLAT. Thank you, thank you, Madam Speaker I yield back, Madam Chair.

Chairwoman WILSON. Thank you. Thank you. Ms. Letlow welcome.

Ms. LETLOW. Thank you. And to all the witnesses thank you for taking the time to testify before the Committee today. It's deeply concerning that the rate of school closures has drastically increased

over the last decade. School closures are harmful to students and the educational system as a whole.

I've said before education is the key to success. We must do all we can to ensure our students have the opportunity to learn, grow, and find career opportunities that best suit their talents. Therefore, I believe Congress and the Department should focus our attention to help students who are enrolled in a closing school to receive assistance to continue their education.

We should not leave students without a path forward to obtain a degree. Mr. Cooper simply forgiving the debt of students attending closed schools without ensuring they have had every opportunity to continue their education seems like a misguided approach.

Rather, it's important that Congress and the Department value the time and effort, and the work these students did during their time at school. Do you believe our current policies are too heavily slanted toward loan discharge, rather than helping students complete their education?

Mr. COOPER. That certainly seems to be my perception that may be the case, that there doesn't seem to be enough emphasis on helping students get what they originally came to college for, which is a degree or certificate, helping them either complete their program or transfer their credits to another school and complete there.

It does seem at times that the goal of the administration is to deliver as many closed school discharges as possible, rather than necessarily trying to help these students get what they originally came to college for. That's not to say you know that's always going to be a great option.

I mean some schools have been more fraudulent, and the proper remedy there is probably a closed school discharge. But that's not the case all the time, and I do believe that there should be more emphasis on helping students complete the education that they originally set out to get in the first place.

Ms. LETLOW. Thank you so much. I do have a followup question for you Mr. Cooper. As you noted in your testimony the Biden administration recently expanded the look back window for discharge eligibility to students attending ITT Tech to 8 years before it's closure.

I find it difficult to believe that the Department's had the ability to accurately verify the over 115,000 claims that they approved. In fact, the Office of Federal Student Aid announced this month that a number of borrowers improperly received approvals for borrower defense claims as they did not attend an eligible school.

Do you have any indication as to how the Department may be verifying this information, and how can we ensure that taxpayer dollars are not being spent on fraudulent or incorrect discharge cases?

Mr. COOPER. Thank you Congresswoman. I don't have any special insight into the Department's process for how they're adjudicating these claims, but I would say that I'm skeptical, especially when we have a look back window that's going back to 2008, 13 years ago before a lot of the more sophisticated transfer tracking data and program tracking data that came online.

I would be very skeptical that they're able to verify truly whether each of those students who's receiving a discharge is in fact eligible for one.

Ms. LETLOW. Thank you so much Mr. Cooper. And I yield back the remainder of my time to the Ranking Member.

Ms. FOXX. Thank you very much Dr. Letlow. While I appreciate the work GAO has done in compiling this data on closed school discharges, it seems to me this work is far from complete. While GAO's testimony includes some potentially troubling numbers, we do not have the additional context necessary to properly assess this data.

As Mr. Cooper just indicated, indeed the report does not include any context as to why some students have not received relief. Further, there's nothing to help further the discussion about which policies may be affected, and which need reform. Unfortunately, we know that over the next decade many institutions will close their doors because students are increasingly looking for options other than the traditional brick and mortar model.

Federal policy needs to adapt to these changes. Rather than rushing a hearing on an incomplete report, the responsible thing to do would be to let GAO complete its work so we have a full picture about the implications of the Department's policies. In the meantime I would suggest the Committee turns its focus toward a bipartisan reform with the Higher Ed Act.

So Mr. Cooper I have a question. Under certain circumstances institutions may be required to remit a letter of credit to the Department to serve as collateral when there are concerns about the financial viability of an institution. Mr. Cooper as you noted in your testimony your proposal was similar to this policy, but is more proactive.

In essence, your proposal would address these problems on the front end, rather than have taxpayers pick up the tab on the back end. Can you describe the benefits of a more proactive approach such as yours including for students, schools, and taxpayers?

Mr. COOPER. Thank you Dr. Foxx I'd be happy to. So as you noted one of the main problems right now with the way we're holding institutions accountable for their financial outcomes is that our system is very reactive, so the Department does have the authority to request letters of credit from financially troubled schools in order to protect taxpayers, but often the Department waits to request these letters of credit until the financial troubles have become apparent and few banks are willing to extend this kind of surety to an institution which the Department has just said is in serious financial trouble.

In some cases requesting a letter of credit can actually accelerate the collapse of an institution as you saw in the case of ITT Tech in which the Department requested the letter of credit from the institution which ITT Tech was not able to secure, and therefore had to shut down just 2 weeks after the Department made its request.

This is why we need a more proactive approach in terms of holding schools accountable for the costs that they impose on taxpayers. I believe that if an institution decides to participate in the Federal student loan program, it is putting a certain amount of financial risk on taxpayers who will have to pick up the tab if the school

closes without a teach out plan, or without a transfer of credit policies in place.

And that's why because institutions are presenting this risk to taxpayers that they should be required to purchase insurance in order to make taxpayers whole in the event of a closure which will also provide the right incentives for schools to make sure that when its closure does have to happen, the school is wound down in an orderly fashion and students have numerous options to complete their education.

Ms. FOXX. Madam Chair I'm going to yield back time from my time. Madam Chair I wouldn't go over that long, except I'll yield back time when it's my time OK?

Chairwoman WILSON. OK. Thank you so much I appreciate it. And now Mr. Castro of Texas.

Mr. CASTRO. Thank you Chair. The Department of Education has a duty under Federal law to provide debt relief to students who were defrauded by a for-profit college, and left holding the bag with nothing to show for it.

School closures have left thousands of students many unable to find jobs in their field of study saddled with incredible student loan debt. And too many families shoulder the burden of debt when relief is available. To think that about half of eligible borrowers did not apply for a discharge, even 3 years after their school closed, and struggle with crippling debt is really shameful.

That's why the conversation that we're having today about supporting these students is very important. Restoring the automatic discharge process is the right thing to do. We must protect students when they are affected by abrupt school closures, and I'm glad the Biden administration has taken steps to extend relief to students.

I'd like to hear from Ms. Rhodes, our student borrower in this, so that she can share with the Committee how the Department of Education could have assisted her and many students who needed relief, and so Ms. Rhodes I had a question for you.

Although you were eventually able to get your loans discharged, how do you think the Department of Education should have done a better job to mitigate the consequences that you experienced? And also, after your school closed, how long did it take you to decide your next steps, and whether or not you wanted to transfer to another institution?

Ms. RHODES. Thank you. As far as what I feel the Department of Education should have done, I feel that they should have done a better job to mitigate the consequences of a school closure for all students. When they decided to close the school there should have been a program in place to help students transition from a closed school to another school of their choice.

They should have made sure that all of the students with the loan from any school closure had access to the appropriate resources, and that could have been discharged—that could have discharged their debt. My hope is that the Department of Education will implement a program that is easy for students to be informed about their options when a school closes.

Inform them on how to transfer to another school, or about the discharge process, giving students like myself the full access to the

resources needed to complete their application and receive their discharge loans in a timely manner. It shouldn't take several years to get assistance or relief from a closed school loan, and your second question?

Mr. CASTRO. How long did it take you to decide your next steps, and whether or not you wanted to transfer to another institution?

Ms. RHODES. OK. It didn't take me very long to figure out my next steps because I basically was working, and just decided to continue to work. Once I realized the school was closed and I had no other options, no assistance to help me, I just continued working and just moved on. That was my only options at the time.

Mr. CASTRO. Was there anything in your discussions with others that were affected in the same way that you were, classmates for example. Was there any other advice that you have for us, or anything else that you've picked up from them that you want to share with the Committee as we think about this issue?

Ms. RHODES. Basically I really feel like it should be some kind of mainly informing the students of what's going on because I think that was the biggest problem. We didn't know what was going on. We didn't know what to do. We didn't know why the school was closing. We're hearing the information secondhand.

And then we have no resources to go anywhere to get assistance, so our hands were kind of tied. It's like what do you do? You have this debt looming over you and you can't do anything about it, and you have to pay it back. And then I for years felt that it was very unfair that I had to carry a debt and be responsible, and then it's ballooning to \$26,000.00, and I can't get any assistance.

And even when I applied I was denied without having Legal Aid or an attorney, so it's very difficult to navigate the process, so they need to have something to help us be able to work through the process.

Mr. CASTRO. Notable. Thank you, Ms. Rhodes, for sharing your story with us.

Ms. RHODES. Thank you.

Mr. CASTRO. When for-profit institutions that close their doors often thousands, hundreds or thousands of students suffer, and so we want to make sure that we prioritize the needs of defrauded students, and provide immediate and complete relief to that, so thank you. I yield back.

Chairwoman WILSON. Thank you Mr. Castro. And now we'll go to Ranking Member Foxx. You have 4 minutes left.

Ms. FOXX. Thank you Madam Chair, I appreciate that very much. I'll keep to my commitment. Mr. Cooper I would like to go back to you. While my colleagues are focused on one particular sector, both your testimony and that of GAO's note that for-profits are not the only schools that have been forced to close their doors.

Further, I think it's safe to say that many more will have closed in the previous 18 months, many more would have closed in the previous 18 months if it were not for the substantial support provided through the CARES Act, and subsequent relief packages.

What factors are driving this trend of non-profit school closures, and do you expect this trend to accelerate? What changes to the way we handle these closures should be made to prepare for this coming consolidation in higher education?

Mr. COOPER. Thank you, Dr. Foxx. Yes as you mentioned that for-profit institutions are not the only institutions that close, while they're most of them, they're not all of the institutions. And I do worry that you now as we're seeing the number of students participating in higher education has been dropping since about 2010, and that's a pretty natural process because as the economy was improving over the course of the 2010's, fewer students wanted to go into education, most had better job opportunities, there were more jobs available, there were higher earning jobs available.

And so the labor market simply looked more attractive to them. And so this is great for students obviously, but it leaves the question of what happens to the institutions? And of course some of them are going to close. That's a natural part of the higher education system. Institutions are going to close sometimes, and we need to make sure that we are prepared to deal with the consequences of those closures when they happen.

Private non-profit institutions as noted, were relieved by the tremendous relief that Congress committed in the CARES Act and subsequent relief packages which definitely staved off a number of college closures, but that might not be the case forever. It might be the case that we might see another round of college closures as the economy recovers from the recession associated with the COVID-19 pandemic.

And there's no guarantee that all of those closures are going to be for-profit colleges, it's possible that private non-profit colleges will be among the closures as well. It's also possible I would say that for-profit colleges in order to avoid the disproportionate regulation that is targeting them, might simply decide to change their tax status to non-profits, and thereby avoid those regulations, which is one reason that we also can't ignore the private non-profit sector.

So yes, it's something that we absolutely need to be prepared for, and that's why I believe the insurance mandated proposal that I laid out in my written testimony is the best way to use incentives-based accountability in order to protect taxpayers and the students when these closures inevitably happen.

Ms. FOXX. Thank you very much. Ms. Emrey-Arras, isn't it true that borrowers will still be able to obtain a closed school discharge by submitting a short application? And can you describe quickly what this application process looks like?

Ms. EMREY-ARRAS. Yes Dr. Foxx thank you for the question. Yes borrowers will still be able to apply for a discharge through that process, and they will need to complete the application form which is two and a half pages, and has information about the borrower and their attendance at the closed school.

Ms. FOXX. Thank you very much and again thank you Madam Chairman for your tolerance on my going over at the time that was given to me, I yield back.

Chairwoman WILSON. Thank you so much, thank you. I'll go down here. Our distinguished Chairman of the Committee Mr. Scott.

Mr. SCOTT. Thank you, thank you Madam Chairman and I want to thank all the witnesses for being with us today. First Ms. Smith in the clients that you represent, are they given any credit for pay-

ments made after they were entitled to discharge, or is just the balance due when the dust settles it's the only thing that gets discharged?

Ms. SMITH. Thank you. That's a great question. When the discharge happens they get a complete discharge of all amounts that are outstanding on the debt, so that includes interest and fees. They also get a refund of any amounts that they have paid back, and they do also get their Pell Grant eligibility restored, which is very important because then that allows them to restart the higher education at a legitimate institution if they want to.

Mr. SCOTT. What do they get paid back?

Ms. SMITH. When it sometimes—

Mr. SCOTT. What do they get paid back?

Ms. SMITH. They get paid back all amounts that were involuntarily taken from them, for example, if tax refunds were taken, if their wages were garnished, if social security was offset they get all of that money back.

Mr. SCOTT. What about payments that were made after they were entitled to a discharge?

Ms. SMITH. Yes. All of that is returned as well.

Mr. SCOTT. OK thank you. Ms. Emrey-Arras we've heard a little back and forth about non-profits and profits. We're looking into the for-profit conversions and the non-profits for reasons that have been articulated to avoid any abuse there.

But what is the percentage of those abruptly closing in terms of profit and non-profit?

Ms. EMREY-ARRAS. I don't have the figures of the schools at my hands. I know that 86 percent of the borrowers who were affected by school closures had been attending for-profit schools.

Mr. SCOTT. Thank you. And we've heard from the Ranking Member and from Mr. Cooper about the importance of being proactive rather than reactive. Let me ask you a couple of questions all at once. One, should we be expecting more from our accreditors?

These people they don't go insolvent overnight, should the accreditors be doing more? And if they abruptly close what could we have done to have made the school, not the taxpayer, pay for the closed school discharges? We know there's a letter of credit that can be available, but I understand one school had a nice letter of credit, but the Department of Education let them spend most of it.

So when the dust settles there wouldn't be much for reimbursement. What could we reasonably expect in terms of bonding or to cover these losses, and personal responsibility for officers that were involved in the fraud?

Ms. EMREY-ARRAS. Thank you for those questions, Chairman Scott. In terms of our prior work I can note that we have done work previously looking at accreditors, and whether accreditors sanction schools that were in financial distress, and we found that they did not always do so, so we have that work out there that shows that they have not always done that.

In addition, we have done work—actually let me clarify. This work is a little bit dated, but the work on the accreditors found that they did not always sanction for schools that had quality metrics. They actually did a better job on the financial metric side in terms of holding schools accountable.

In terms of our other work on what the Department of Education should do. We have an existing recommendation that has been referred to previously in Mr. Cooper's statement, which is to have the Department of Education improve the financial composite score.

We found that it is an imprecise measure of school closures. It does not always predict which schools are going to close—those that are in financial trouble are not always caught in this metric, and we have an outstanding recommendation on that issue from 2017.

So we're still waiting for the Department of Education to implement our recommendation. And our recommendation is to improve that composite score so that it does take into account broader metrics of financial health, including liquidity and historical trends.

Mr. SCOTT. And you also suggested that it could be subject to manipulation, I assume your recommendation would correct for that. What about bonding and personal responsibility to recoup the losses, rather than taxpayer get left holding the bag?

Ms. EMREY-ARRAS. We haven't done work on that sir.

Mr. SCOTT. In terms of the bonding or letters of credit?

Ms. EMREY-ARRAS. We have done work in a prior study on the financial responsibility score looking at the fact that letters of credit are required, but again you may not get to that point if the financial composite score doesn't correctly identify schools in financial distress.

So even if that is a potential tool for the Department, they may not always use that tool.

Mr. SCOTT. And you didn't look into personal responsibility of officers who may be involved in the fraud?

Ms. EMREY-ARRAS. Correct. We have not looked at that sir.

Mr. SCOTT. Thank you. Thank you Madam Chair, I yield back. Madam Chair I yield back.

Chairwoman WILSON. Ms. McClain.

Mrs. MCCLAIN. Hi. Thank you Madam Chair. Can you hear me?

Chairwoman WILSON. I can, thank you.

Mrs. MCCLAIN. OK thank you. I'm curious and I have a couple questions is we're not forcing these students to go to a for-profit college correct? They do have options to go to a non-profit college correct? Anyone can answer.

Mr. COOPER. Yes that's correct.

Mrs. MCCLAIN. OK. So the student does have some choice in terms of what college they choose right? I guess my question is this why is the answer always a bail out on the taxpayer when students have choices? Now I'm not saying that I don't have any empathy for the students who fall victim to this, but at the end of the day why if they have a choice does the bearer of the responsibility always fall on the taxpayer?

I don't think that's fair either. So Mr. Cooper I think something needs to be said for personal responsibility. So students are willingly taking out massive loans for an education. Do you get any sense that these students are doing the background research that they need to do prior to taking out this massive loan and choosing the school of choice before they take out thousands of dollars in loans?

Mr. COOPER. Thank you Congresswoman McClain. I think it's definitely very important to consider personal responsibility in these discussions, but it often goes unexamined, and yes there is a responsibility for the student to do their due diligence when they're choosing a school and to make use of the data that is available out there that the Department of Education under Secretary DeVos has made available on student outcomes.

But I also do believe that there are things that policymakers can also do in order to guide the system in the right direction because the Education Department as we've seen, as Ms. Emrey-Arras has noted, is not necessarily great at predicting when these schools are going to close.

Their current financial responsibility metrics are simply not predictive. They're somewhat predictive, but they're generally not very good at predicting when these schools are going to close. And so I wonder that when the Department of Education is having such a hard time with this, that students might also not necessarily have all the information available to them in order to figure out is this school that I'm attending at risk of closure?

Because as we've seen the data that the Department of Education is putting out in terms of the financial responsibility metrics, the financial responsibility composite scores is flawed, and they do not always figure into when the school is going to close. And students that might be thinking about that might be making their decisions based on incomplete or imperfect information out there.

And so yes, we absolutely shouldn't dismiss the role of personal responsibility, but I also believe that there is a role for policy in terms of improving the information that's available to students and pushing the higher education system in the right direction.

Mrs. MCCLAIN. But to that end why is it my responsibility as a taxpayer to bail that institution out? Why not bail out failing other industries of people? Why does it always fall on the taxpayer?

Mr. COOPER. I agree with you that it shouldn't be the taxpayer's responsibility to bail out these institutions.

Mrs. MCCLAIN. OK.

Mr. COOPER. That's why I propose that institutions be required to purchase insurance to make taxpayers whole.

Mrs. MCCLAIN. I fully agree with you on that because I think as a taxpayer who does their due diligence, I shouldn't be responsible for somebody else's you know, where does that road end is I think the issue. And I like the idea of instead of giving loans, or forgiving the loans excuse me, forgiving the loans, maybe we should focus our effort instead of putting the burden on the taxpayer, finding other resources to get students into other schools.

Because at the end of the day that was their ultimate goal right, was to get an education of which they were defrauded on, or for whatever reason a bad institution for example. That would be to me a much better use of our time, effort, energy and resources as opposed to burdening the taxpayers with paying their debt.

Let's help them, and let's spend our time and effort and energy on finding another school as opposed to burdening the taxpayer. Would you agree with that synopsis?

Mr. COOPER. I fully agree yes.

Mrs. MCCLAIN. OK. With that I yield back.

Chairwoman WILSON. Thank you so much.

Mrs. MCCLAIN. Thank you.

Chairwoman WILSON. I think we all have exhausted our witnesses with our testimony and questions today. Is there anyone else? OK. I remind my colleagues that pursuant to Committee practice materials for submission for 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 October 14, 2021, preferably in Microsoft Word format. The material 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 the internet link, and 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 should be submitted to the clerk electronically by emailing submissions to edandlabor.hearings@mail.house.gov. Again, I want to thank all of the witnesses for their participation today. Members of the Subcommittee may have additional questions for 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. I now recognize the distinguished Ranking Member for a closing statement, Doctor Murphy.

Mr. MURPHY. Thank you Madam Chairman. I just want to extend a thank you to the speakers who came and witnesses who came today. I think we learned a great deal. We learned a lot and I think there was a lot of common ground discussed. I will say as someone who took out thousands of dollars of student loans myself to go to college and enter medical school, I would be devastated if I showed up 1 day and the school was closed, and I was left holding the bill.

So I am truly empathetic with the cause that we are discussing here. But I want to return to just to one issue that I think is something that the Committee actually can find a great deal of bipartisan support for, and that was the issue of that insurance.

But I just want to make sure that everyone understands how insurance actually works. A comment made by one of my colleagues argued that the burden of purchasing insurance would fall equally on all institutions, including those with the likelihood—very little likelihood of closure, and that's factually correct.

But then again let's remember what insurance does, and I often fall back on my experience in medicine, and I apologize for this, but it's what I know best. As a physician I am required, as are all phy-

sicians to pay malpractice insurance, but the infinite majority of physicians do not have claims put against them.

So while I may never not have a claim put against me, I am still paying malpractice insurance. And so while it's very similar in this concept that the function of a specific risk of an individual policy holder, which in this case is the individual school. And so they have to take some—pay for some risk for others that are within the educational system for failure.

Therefore, however but in total contrast the policies that we're talking about today—the ones which the Biden administration seeks to expand, places the entire burden of the student's debt on hard-working taxpayers, a significant number of which never went to college.

And so I just want to make this distinction very, very clear. We have two different very different paradigms. We have the tried-and-true method of insurance protection, or sadly enough, the often-repeated policy of continuing placing burdens on taxpayers. And while it's important that students who are unable to complete their degree have protections, I believe there's consensus on this Committee.

It's equally important that we understand that taxpayers do as well. The proposal that was discussed today about insurance is one way of doing so. And this is why I really suggest that we work together in a bipartisan manner to reform the Higher Education Act, and discuss this further. It is a proactive way of helping these students who have been left out in the cold. It's critical that we do this despite my colleague's focus sometimes on a limited set of defunct proprietary claims that policy experts agree that over the coming decades we will see also another wave of school closures.

So let's get this right now. This is not being just for for-profit schools, but for everyone. So let us work together on a proactive way of dealing with this rather than just dumping things often times again on taxpayers, most of which have no skin in this game.

So let's talk about ensuring that students have the ability to complete their degree, which is the ultimate goal, and earn their credentialing that leads to a process of life-long success, and that should be our No. 1 priority. Burdening taxpayers further with other people's debt should be our last resort. Thank you Madam Chairman, thank you again visitors, and I yield back.

Chairwoman WILSON. Thank you Dr. Murphy. I now recognize myself for a closing statement. I want to thank all of the witnesses for your time today. You have just been exceptional. All of us have learned so much, and we take your testimony very, very seriously, so thank you for taking the time from your busy day to come before our Higher Education Committee and testifying.

We appreciate it so much. I want to particularly thank the Government Accountability Office for sharing its preliminary findings with our Committee, we really appreciate it. The GAO's examination of the closed school discharge process identified important challenges that the Education Department must address to support students affected by abrupt college closures.

As our witnesses discussed, school closures are devastating to students, plunging them into financial and emotional despair, while robbing them of the education and opportunities they de-

serve. As the Education Department and the Negotiating Committee begin considering changes to the closed school discharge process, borrowers like Miss Rhodes, must be at the center of their discussions.

The GAO's findings point to three clear steps that the Education Department can take to improve the closed school discharge process. First, restore the automatic school discharge process and streamline relief for students.

Second, conduct better oversight of teach out plans to help students complete their degrees. And third, crack down on predatory schools that are costing students and taxpayers billions of dollars. I look forward to working with the Education Department to better protect students and taxpayers affected by school closures, a majority of which are predatory colleges, including holding these owners and executives that defraud their students to take on personal responsibility for their actions.

I look forward to hearing more from you as you answer questions that are submitted to you, and thank you again for being our witnesses today. If there is no further business without objection the Subcommittee stands adjourned. Thank you so much.

[Additional submission by Hon. Mark Takano, a Representative
in Congress from the State of California follows:]



STATEMENT FOR THE RECORD
SUBCOMMITTEE HEARING ON CLOSED SCHOOL DISCHARGE
SUBMITTED TO THE
HIGHER EDUCATION AND WORKFORCE INVESTMENT SUBCOMMITTEE
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
September 30, 2021

Chairwoman Wilson, Ranking Member Murphy, and Members of the Subcommittee:

We appreciate the opportunity to share with the Subcommittee our perspective on the Closed School Discharge program at the U.S. Department of Education ("Department"). The unexpected closing of a college dramatically impacts the lives of all its students and their families in numerous harmful ways. Student veterans are particularly affected by these sudden school closures, as we have unfortunately seen time and again.¹

Veterans Education Success is a non-profit organization that works on a bipartisan basis to advance higher education success for veterans, service members, and military families, and to protect the integrity and promise of the GI Bill and other federal education programs. In addition to research, providing free casework to students having trouble with the GI Bill or impacted by predatory schools, and elevating the voices of student veterans to help policymakers understand veterans' experiences in higher education, we are focused on addressing ways to increase the continued academic success of military-connected students in the pursuit of their academic goals.

The closed school discharge program offers a potential lifeline to borrowers by canceling their federal student loans if they meet certain requirements.² While we greatly appreciate the program and support its intent to help mitigate the terrible circumstances these student borrowers face, we believe it can be improved in a number of areas.

The Impact of College Closures on Military-Connected Students

Predatory schools have a long history of targeting veterans to harvest federal education benefits, dating back to the inception of the original GI Bill following World War II.³ There are countless examples of predatory colleges' shutting down and leaving student veterans stranded, with ITT Technical Institute, Corinthian Colleges, Argosy University, and many other recent closures.⁴ Many of these institutions exhibited warning signs prior to their closure, including law enforcement investigations and federal and state regulator actions like being placed on Heightened Cash Monitoring Level 2.⁵ Yet, these colleges -- on the verge of closing -- continued receiving federal aid and GI Bill benefits until the very end.

Veterans have been left scrambling and have turned to military and veterans service organizations to help them move forward. The veterans community has assisted them in finding housing after having been evicted from their homes and offered financial aid to pay for bills or buy groceries when their monthly housing allowance from the U.S. Department of Veterans Affairs unexpectedly ended when these institutions closed.

¹ Chris Quintana and Diane Zhang, *A College Closed, Upending One Veteran's Life. Two Years Later He is Still Rebuilding*, USA Today (May 18, 2021), <https://www.usctoday.com/in-depth/news/education/2021/05/18/online-college-closed-left-army-veteran-homeless/4894634001/>.

² Closed school discharge page at the Department of Education, <https://studentaid.gov/manage-loans/forgiveness-cancellation/closed-school>.

³ See this series of articles by David Whitman, *The Cycle of Scandal*, The Century Foundation (2017-2018), <https://td.org/topics/education/the-cycle-of-scandal-at-for-profit-colleges/>.

⁴ ITT Tech had around 8,000 veterans enrolled at the time of closure, Natalie Gross, *Why Aren't More Vets Applying to Get Their GI Bill Restored*, Military Times Reboot Camp (May 7, 2018), <https://rebootcamp.militarytimes.com/news/education/2018/05/07/why-arent-more-vets-applying-to-get-gi-bill-restored/>.

⁵ Walter Ochinko, *VA and SAAs Should Act on Early Warning Signs When Risks to GI Bill Beneficiaries and Taxpayers Emerge at Participating Schools*, Veterans Education Success (October 2019), <https://vetsedsuccess.org/va-and-saas-should-act-on-early-warning-signs-when-risks-to-gi-bill-beneficiaries-and-taxpayers-emerge-at-participating-schools/>.

Consider the testimony of one student veteran, LaChelle Griffin, who explained to the House Committee on Veterans' Affairs her experience with the closure of Virginia College:

"[I]n the summer of 2018, I found out that the school would be closing in August of 2019. I was concerned at first, but felt relieved to know that I would be done with my classes and graduated by that time, so I stayed at Virginia College. I continued to attend classes and then, suddenly, I went to school in December of 2018 and I was told that the school would be closing the very next week. I was devastated and did not know what to do. I had completed all of my coursework and only had 90 days of clinicals left to complete before I could graduate. I called numerous schools to see if they would allow me to finish my clinicals and award me a degree, but none were willing. I also contacted employers about allowing me to finish my clinical portion. No one was interested without having a contract with the school. On top of that, I can't find any school that will accept my credits from Virginia College."⁶

Similarly, another student veteran, Kendrick Harrison, shared this with Congress when Argosy University closed abruptly in 2019:

"[I was] fighting tooth and nail for a degree that got pulled from under me three months before graduation ... My family and I were evicted, my car was repossessed ... I honored my commitment to the United States Army. I protected and defended this great nation, only to come back and be robbed by predatory industries that are supposed to uplift the same community."⁷

These stories are illustrative of the experience many thousands of other students have endured, and highlight just how disruptive and harmful precipitous college closures can be, at no fault of the student. Schools undergoing closures must be held liable for the damaging long-term effects of their negligence. As a first step, we believe it is imperative the closed school discharge program works properly so affected students have an avenue for relief.

Recommendations for Improving the Closed School Discharge Program

We acknowledge the Department is undergoing a negotiated rulemaking on a number of topics including closed school discharge. While we hope the Department will make the necessary improvements to the program that are within its purview, we offer this Subcommittee a few recommendations that will hopefully illuminate areas in need of oversight and/or potential legislation.

- *Clear Information to Students:*

The Department must improve its dissemination of information to students about the closed school discharge program. While the Department does host a website and notify students of their options when a college is shutting down, it needs to present clearer information to help students understand the implications of the choice they face to either receive closed school relief or to transfer their existing credits to a comparable program at a new school.

⁶ LaChelle's full testimony is available at <https://vetsedsuccess.org/our-student-veteran-testimony-lachelle-griffin-to-the-house-committee-on-veteran-affairs-hearing-on-the-fact-of-mid-semester-school-closures/>.

⁷ Kendrick Harrison's remarks at a House of Representatives press conference starting around the 22:00 minute mark, <https://www.facebook.com/RepSusiel.ee/videos/578573342997313/>; see also *supra* note 1 for more information about his story.

- *Requirements for Schools:*

The Department should ensure schools are held liable for the costs of closed school discharges by increasing letters of credit for schools showing signs of closure. Schools that do close down should have to follow a unified procedure to close down in an orderly fashion. A new law in Maryland may provide a useful model: The "Institutions of Postsecondary Education—Disorderly School Closures Act" protects students in the event of future catastrophic closures by canceling debts owed by students, refunding tuition paid, ensuring that students have transfer options and access to their academic records, and holding school owners responsible for what happens in the event their school goes out of business.⁸

Regarding teach-outs, far too often, we have seen students transfer to other low-quality for-profit schools that do not offer them the best chance of success simply because that institution would accept the most credits or had a teach-out program with the closed school. These teach-outs should be validated with certain assurances regarding cost, time remaining to completion, and more to prevent further harm.

- *Improve the Department's Procedures for Granting Closed School Discharge:*

Closed school discharge should be automatic. Under the 2016 borrower defense rule, closed school discharge is automated 3 years after the school closure. This automated discharge is available only to students who attended a closed school from November 1, 2013, to July 1, 2020, since the Department rewrote the borrower defense rule and removed this provision.⁹ Automatic discharge should be reinstated and occur at an earlier date than 3 years after a college closed down, so that student veterans are not unnecessarily paying down their loans if they have no intention of re-enrolling in college.

The Department recently extended the closed school look-back period for discharges related to the ITT Tech closure.¹⁰ Borrowers who did not complete their degree and left ITT Tech on or after March 31, 2008, are now eligible to receive a closed school discharge. The Department provided this relief to "borrowers whose attendance at ITT overlapped with a period during which the institution engaged in widespread misrepresentations about the true state of its financial health and misled students into taking out unaffordable private loans that were allegedly portrayed as grant aid."¹¹

We hope Congress will work with the Department to ensure the closed school look-back period is extended for other schools with similar histories of widespread misrepresentation.

- *Prevent Future School Closures:*

Finally, the single most important step the Department could take to prevent victimization of students and taxpayers as a result of school closures would be to require all institutions

⁸ <http://mgaleg.maryland.gov/mgawebseite/legislation/Details/SB0446?ys=2020RS>.

⁹ See *Top 10 Ways the New Borrower Defense Rule is Worse for Borrowers*, TICAS, The Century Foundation, and National Consumer Law Center (September 23, 2019).

<https://ticas.org/accountability/top-10-ways-new-borrower-defense-rule-worse-borrowers/>.

¹⁰ *Extended Closed School Discharge Will Provide 115K Borrowers from ITT Technical Institute More Than \$1.1B in Loan Forgiveness*, Department of Education Press Release (August 26, 2021).

<https://www.ed.gov/news/press-releases/extended-closed-school-discharge-will-provide-115k-borrowers-itt-technical-institute-more-11b-loan-forgiveness>.

¹¹ *Id.*

participating in federal student aid programs to have financial reserves commensurate with the dollar amount of federal funds they put at risk. In the aftermath of the cycle of waste, fraud, and abuse in the 1980s, Congress provided the Department with broad authority to define and enforce financial responsibility criteria for institutional participation in Title IV student aid programs.

That Title IV authority, originally incorporated in the 1992 reauthorization of the Higher Education Act, has never been adequately regulated or exercised by the Department. Current regulations simply do not ensure that schools are adequately capitalized before they can access enormous sums of federal aid, nor does the Department monitor institutional practices, such as payment of dividends, stock buybacks, or sale and transfer of assets, that drain resources away from schools that are headed for collapse, leaving students and taxpayers to cover the resulting losses.

Not only would a more robust approach to institutional financial responsibility better protect students and Title IV funds, it would also protect student veterans' GI Bill benefits and funds flowing from the Department of Veterans Affairs, who are also regularly victimized by precipitous school closures. We are pleased to note that the original list of items the Department of Education proposed for possible negotiated rulemaking includes provisions related to financial responsibility and we strongly urge quick action by the Department to strengthen the relevant regulations.

Conclusion

We urge the Subcommittee to continue oversight of the closed school discharge program and to work with the Department to improve its administration. Student veterans should have a straightforward path available to them should they need to utilize the program. We hope the Subcommittee will help make sure the program fulfills its true potential.

Veterans Education Success sincerely appreciates the opportunity to express our views before the Subcommittee today.

Disclosure Statement

Pursuant to Rule XI(2)(g)(4) of the House of Representatives, Veterans Education Success has received no federal grants in Fiscal Year 2021 nor in the previous two years.

[Question submitted for the record and the response by Ms. Emrey-Arras follows:]

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VACANCY

October 8, 2021

Ms. Melissa Emrey-Arras
Director
Education, Workforce and Income Security
US Government Accountability Office
10 Causeway Street, Room 575
Boston, MA 02222

Dear Ms. Emrey-Arras:

I would like to thank you for testifying at the Subcommittee on Early Childhood, Elementary, and Secondary Education hearing entitled "*Protecting Students and Taxpayers: Improving the Closed School Discharge Process*" held on Thursday, September 30, 2021.

Please find enclosed additional questions submitted by Committee Members following the hearing. Please provide a written response no later than Friday, October 15, 2021, for inclusion in the official hearing record. Your responses should be sent to Rasheedah Hasan (Rasheedah.Hasan@mail.house.gov), Mariah Mowbray (Mariah.Mowbray@mail.house.gov), and Manasi Raveendran (Manasi.Raveendran@mail.house.gov) of the Committee staff. They 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

Subcommittee on Higher Education and Workforce Investment Hearing
"*Protecting Students and Taxpayers: Improving the Closed School Discharge Process*"
Thursday, September 30, 2021
10:15 a.m. (Eastern Time)

Representative Suzanne Bonamici (D – OR)

1. The financial responsibility composite score is meant to reflect the overall relative health of institutions. Unfortunately, these financial responsibility scores have failed to predict nearly half of college closures over the last decade. Clearly, something needs to change to improve the accuracy of these scores to make sure that the Department can identify institutions that are in financial trouble.

Question: What can the Department do to make the financial composite score more accurate so it can identify problems at institutions earlier?



October 15, 2021

The Honorable Robert "Bobby" Scott
Chairman
Committee on Education and Labor
House of Representatives

Subject: Responses to Questions for the Record, Hearing Entitled "Protecting Students and Taxpayers: Improving the Closed School Discharge Process"

Dear Chairman Scott,

Enclosed please find GAO's response to your questions regarding my testimony on closed school discharges before the House Subcommittee on Higher Education and Workforce Investment on September 30, 2021.

If you have any questions about the responses to your questions or need additional information, please contact me at (617) 788-0534 or emreyarras@gao.gov.

Sincerely yours,

A handwritten signature in black ink that reads "Melissa Emrey-Arras".

Melissa Emrey-Arras
Director, Education, Workforce and
Income Security Issues

Enclosure

Questions for the Record for Ms. Melissa Emrey-Arras
House Committee on Education and Labor
Subcommittee on Higher Education and Workforce Investment
Hearing on September 30, 2021
Protecting Students and Taxpayers: Improving the Closed School Discharge Process

Representative Suzanne Bonamici

The financial responsibility composite score is meant to reflect the overall relative health of institutions. Unfortunately, these financial responsibility scores have failed to predict nearly half of college closures over the last decade. Clearly, something needs to change to improve the accuracy of these scores to make sure that the Department can identify institutions that are in financial trouble.

Question: What can the Department do to make the financial composite score more accurate so it can identify problems at institutions earlier?

The Department of Education (Education) should fully implement the recommendation from our 2017 report to update the composite score formula to better measure schools' financial conditions and capture financial risks.¹ Although Education has taken steps to address some of the weakness we identified, there are still significant limitations that hamper the score's effectiveness at identifying at-risk schools.

Most notably, the composite score formula (which was established in 1997) still does not capture recent advances in financial analysis that could provide a broader indicator of a school's financial health. For example, liquidity (i.e., access to cash) has become an important financial measure since the 2007-09 economic downturn, when some schools had trouble meeting payroll and fulfilling contractual obligations. In response, credit rating agencies and industry best practices have incorporated liquidity measures into their methodologies. However, Education's current composite score focuses on schools' overall wealth, rather than on spendable cash and liquid investments and therefore may overstate the assets available to a school to spend on operations.

Additionally, Education's composite score is solely based on annual snapshots of a school's finances, whereas credit rating agencies we interviewed incorporate historical trend analysis and future projections into their school assessments that can capture downward trends or emerging risks in a school's finances that Education's composite score could miss.

Updating the composite score to address these limitations would provide Education with a more accurate measure of schools' financial health and help reduce the risk to students and taxpayer by enabling the department to better identify schools that are in financial trouble.

¹ GAO, *Higher Education: Education Should Address Oversight and Communication Gaps in Its Monitoring of the Financial Condition of Schools*, GAO-17-555 (Washington, D.C.: Aug. 21, 2017).

[Questions submitted for the record and the responses by Ms. Smith follow:]

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JULIA LETLOW, LOUISIANA
VACANCY

October 8, 2021

Ms. Robyn Smith
Senior Attorney
Legal Aid Foundation of Los Angeles
5228 Whittier Boulevard
Los Angeles, CA 90022

Dear Ms. Smith:

I would like to thank you for testifying at the Subcommittee on Early Childhood, Elementary, and Secondary Education hearing entitled "*Protecting Students and Taxpayers: Improving the Closed School Discharge Process*" held on Thursday, September 30, 2021.

Please find enclosed additional questions submitted by Committee Members following the hearing. Please provide a written response no later than Friday, October 15, 2021, for inclusion in the official hearing record. Your responses should be sent to Rasheedah Hasan (Rasheedah.Hasan@mail.house.gov), Mariah Mowbray (Mariah.Mowbray@mail.house.gov), and Manasi Raveendran (Manasi.Raveendran@mail.house.gov) of the Committee staff. They 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

Chairman Robert C. "Bobby" Scott (D – VA)

- 1) Ms. Smith, recently, the Department extended the look-back period for students that attended ITT Technical Institute, which officially closed in September 2016. While the look-back period for that closure was originally May 2016, the Secretary under his discretion extended the closed school discharge window to March 31, 2008 based on a review of external evidence from the bankruptcy court proceedings for ITT. This evidence demonstrated that March 2008 was when the company's executives publicly disclosed the start of a financial scheme that kicked off a series of misrepresentations to hide the true nature of the school's finances. Similar stories exist about other for-profit institutions that have abruptly shuttered. Given this, do you think there should be changes in how the Secretary uses that discretionary authority to extend the look-back period?
- 2) Ms. Smith, as we heard from the GAO testimony, closed school discharges have cost taxpayers more than \$1 billion. What recommendations do you have for the Department and Federal Student Aid to better recoup funds to make student borrowers and taxpayers whole?



Supplemental Testimony of Robyn Smith,
Legal Aid Foundation of Los Angeles and National Consumer Law Center,
Before the U.S. House of Representatives Subcommittee on
Higher Education and Workforce Investment
regarding
“Protecting Students and Taxpayers: Improving the Closed School Discharge Process”
October 21, 2021

Introduction

Chairman Scott, Chairwoman Wilson, Ranking Member Murphy and Members of the Committee, thank you for inviting me to answer two additional questions regarding closed school discharges. I offer my supplemental testimony on behalf of the low-income clients of the Legal Aid Foundation of Los Angeles (LAFLA) and the National Consumer Law Center (NCLC). For more information about LAFLA, NCLC, and my background, please refer to the testimony I submitted on September 30, 2021.

Question 1: Recently, the Department extended the look-back period for students that attended ITT Technical Institute, which officially closed in September 2016. While the look-back period for that closure was originally May 2016, the Secretary under his discretion extended the closed school discharge window to March 31, 2008 based on a review of external evidence from the bankruptcy court proceedings for ITT. This evidence demonstrated that March 2008 was when the company’s executives publicly disclosed the start of a financial scheme that kicked off a series of misrepresentations to hide the true nature of the school’s finances. Similar stories exist about other for-profit institutions that have abruptly shuttered. Given this, do you think there should be changes in how the Secretary uses that discretionary authority to extend the look-back period?

Legal services organizations have long witnessed the long decline in the quality of education provided by schools prior to sudden closures. We see many students who withdraw more than 6 months before a closure because it has cut essential instructional services to stay afloat financially. In these cases, institutions often stop investing in necessary instructional equipment, materials and facilities, stop paying instructor wages, refuse to replace instructors who have departed, and discontinue programs before

students have completed them.

These schools also engage in misconduct designed to keep them in business and reduce liability for closed school discharges to the Department of Education (the Department).¹ They often conceal their financial precarity by refusing to pay living “stipends” from Title IV funds to students, while reporting that those funds have been paid;² reporting that students have completed their educations, when in fact they have not; concealing that students have withdrawn in order to keep Title IV funds that should be refunded; pressuring recruiters to deceptively increase student enrollments and revenues; and failing to report students who are on leaves of absence when the school closes. As the GAO has plainly stated: “research has indicated that a school’s financial struggles can have negative effects on its operations.”³

The Department promulgated the “exceptional circumstances” regulation to ensure that closed school discharge relief is available to students who, due to such practices, withdraw more than 120 or 180 days prior to the school closure.⁴ The regulations do not define extenuating circumstances, but provide examples of the type of conduct or events that cause or indicate significant deterioration in educational services prior to closure, such as loss of accreditation or the discontinuance of a majority of a school’s programs.⁵ These examples are explicitly non-exhaustive.⁶

Unfortunately, the Department has rarely used this discretion. The Department’s failure to extend the look-back period means that many students who withdraw due to school misconduct remain on the

¹ The HEA requires the Department to “pursue any claim available to any [borrower who has been granted a closed school discharge] against the institution and its affiliates and principals” 20 U.S.C. § 1087(c).

² For example, before it closed, Argosy University kept over \$13 million in Title IV living stipends intended for students, and spent it on payroll and other overhead expenses while altering financial records so that it would appear that the stipends had been paid to students. Michael Vasquez & Dan Bauman, *How America’s College Closure Crisis Leaves Families Devastated*, CHRON. OF HIGHER EDUC. (April 4, 2019).

³ U.S. Gov’t Accountability Off., GAO-17-555, Higher Education: Education Should Address Oversight and Communication Gaps in its Monitoring of the Financial Conditions at Schools 28 (2017) (“For example, two studies that we reviewed found that financial shortfalls can cause schools to reduce course offerings and increase class sizes. Two other studies have also found that declines in schools’ resources per student can result in reduced student supports and lower rates of graduation.”) (citations omitted).

⁴ See 34 C.F.R. §§ 682.402(d)(1)(i) (FFEL Loans); 685.214(c)(1)(i)(B), (c)(2)(i)(B) (Direct Loans); 674.33(g)(4)(i)(B) (Perkins Loans).

⁵ 34 C.F.R. § 685.214(c)(1)(i)(B) (Direct Loans for schools that closed prior to July 1, 2020).

⁶ 34 C.F.R. §§ 682.402(d)(1)(i) (FFEL Program Loans); 685.214(c)(1)(i)(B), (c)(2)(i)(B) (Direct Loans); 674.33(g)(4)(i)(B) (Perkins Loans).

hook for repayment of their federal loans. Students, for example, may withdraw because they cannot afford expenses necessary to stay in school after the school has withheld the portion of their federal financial aid available for living expenses (often referred to as “living stipends”). They may also withdraw because classes get cancelled, instructors fail to show up for class, computers and instructional equipment break down, or small classes are merged into large and unmanageable classes involving students at multiple levels of their programs.

Recently, we were encouraged to see the Department extended the ITT Tech closed school look-back period to March 31, 2008, providing much needed relief to borrowers who withdrew during this period because:

the institution engaged in widespread misrepresentations about the true state of its financial health and misled students into taking out unaffordable private loans that were allegedly portrayed as grant aid. ITT's malfeasance drove its financial resources away from educating students in order to keep the school in business for years longer than it likely would otherwise have, resulting in debts that are being discharged starting today.⁷

In order to ensure that the Department provides relief to these harmed students more often, it should incorporate a presumption into the exceptional-circumstances regulation. This presumption should expand the look-back eligibility period to the date of the types of events specified in the regulation, unless the Department publishes a written finding, based on clear and convincing evidence, that the school did not reduce instructional expenses or student services, misrepresent its financial health to students, shareholders, or any government agency, or engage in substantial misrepresentations⁸ from that date.

The Department should apply this presumption in the future and retroactively. It should review all schools that have closed without an orderly and pre-planned process, to determine whether this presumption should apply to them as well. The following are examples of criteria that should trigger the presumption for an extension of the eligibility look-back period to the date indicated:

⁷ U.S. Dep't of Educ., Press Release, *Extended Closed School Discharge Will Provide 115K Borrowers from ITT Technical Institute More Than \$1.1B in Loan Forgiveness* (Aug. 26, 2021), available at <https://www.ed.gov/news/press-releases/extended-closed-school-discharge-will-provide-115k-borrowers-itt-technical-institute-more-11b-loan-forgiveness>.

⁸ 34 C.F.R. Part 668, Subpart F.

- If a school discontinued 50% or more of its programs during a 12-month period, the date on which the number of discontinued programs reached 50%.
- The date that the Department put a school on heightened cash-monitoring (HCM) status, if the school was not subsequently restored to full eligibility without monitoring prior to closure. The Department has done this before, including by extending the closed school pre-withdrawal eligibility period for Corinthian Colleges students back to June 20, 2014, the date upon which it placed Corinthian's schools on HCM status.⁹ The Department should do the same for the schools owned by Education Corporation of America (ECA), which was placed on HCM status in March 2015 and closed in December 2018.¹⁰
- The date that an institutional accrediting agency revoked accreditation, put the school on probation, issued an order to show cause, or took other adverse public action which was not lifted prior to the school's closure. This includes Charlotte Law School, whose accreditor, the American Bar Association, placed it on probation on February 3, 2016, and which subsequently closed on August 10, 2017.¹¹
- In the event a state or federal government agency has issued an order or obtained an adverse court judgment against the school for federal or state law violations that requires the payment of penalties, fines, restitution, or other moneys, and the payments have adversely impacted the school's finances, the date on which the first federal or state violations upon which the order or judgment is based occurred. This includes the Art Institutes, Argosy University, South University, and Brown-Mackie Colleges, which were owned by Education Management Corporation (EDMC). On November 16, 2015, a federal court entered a Consent Judgment ordering EDMC to pay \$95.5 million to ED and several states for its

⁹ See U.S. Dep't of Educ., Press Release, *U.S. Department of Education Heightens Oversight of Corinthian Colleges* (June 19, 2014), Kelly Field, *Plan to Forgive Corinthian Students' Loans Gives Hope to Other Borrowers*, CHRON. OF HIGHER EDUC. (July, 2015).

¹⁰ Alex Elson, *Justice at Last*, Nat'l Student Loan Defense Network, 4-6 (Oct. 2020) (citations omitted), available at <https://www.defendstudents.org/news/body/docket/100-Day-Docket-Expanding-Debt-Relief.pdf/>.

¹¹ *Id.* at 3 (citations omitted).

illegal scheme to pay incentive compensation to recruiters based on the number of students they enrolled.¹² This judgment was the beginning of the end for these schools. It led to the closure of 22 Brown-Mackie campuses in June 2016, and the sale of most other campuses to the Dream Center Foundation. Most of these campuses closed in December 2018 and March 2019.¹³

- When the Department denies a school's application seeking to renew Title IV eligibility (recertification) or revokes a school's Title IV eligibility, the earliest date of the school's violations underlying these decisions. This includes Medtech College, which closed immediately after the Department denied its application for recertification on July 26, 2016. The Department's denial was based on substantial misconduct that occurred 2014 (and possibly earlier).¹⁴

Each of the described circumstances clearly implicates a degradation in educational value long preceding the closure date. Government agency findings of legal violations necessarily relate to conduct that predated the findings themselves by months or even years. A school's decision to discontinue the majority of its programs obviously calls into question the quality of those that remain. These and the remaining above-described circumstances should trigger a presumption extending the look-back period for closed school discharge eligibility.

Question 2: As we heard from the GAO testimony, closed school discharges have cost taxpayers more than \$1 billion. What recommendations do you have for the Department and Federal Student Aid to better recoup funds to make student borrowers and taxpayers whole?

Congress entrusted the Department and Federal Student Aid (FSA) with the authority¹⁵ needed to serve as a responsible steward of the Title IV program. Yet, the Department has failed to build an internal

¹² *Id.* at 4 (citations omitted).

¹³ *Id.* (citations omitted).

¹⁴ *Id.* at 6-7 (the evidence underlying the Department's denial of Medtech College's application are not publicly available, and may pre-date 2014) (citations omitted).

¹⁵ While the Department has policy making authority, FSA is tasked with implementing the regulations. 20 U.S.C.A. § 1018(b)(2)(A)(vi). Thus, for the response to Question 2, the "Department" refers to FSA and the Department collectively.

enforcement or investigatory capacity commensurate with the responsibility Congress provided. As a result, irresponsible and poor performing schools continue to receive federal aid while obscuring their financial instability and hiding the use of predatory practices that increase litigation and enforcement liability.

Even when the Department knows a school is in trouble and at risk of closing, it has routinely failed to use the mitigation tools it has within its arsenal to protect students and taxpayers. In the past, when the Department has become aware that a school is becoming an increasingly risky investment – due to financial instability, a change in ownership, or the discovery of predatory conduct, among many other reasons – it has typically allowed the school to continue enrolling new students and receive federal aid with little limitation.¹⁶ As a result, schools can spend unlimited time in Heightened Cash Monitoring status – a strong tool the Department has to closely monitor schools that are considered financially unstable – with little or no impact on their ability to recruit students, often using predatory means to do so.¹⁷ The failure to aggressively intervene when a school shows signs of trouble increases the volume of wasted tax dollars as well as the number of borrowers who are harmed.

To protect taxpayer dollars and student borrowers from the consequences of sudden school closures, the Department must make better use of the enforcement authority it already has. It should take swift action to minimize harm, improve how it assesses financial responsibility and risk, require sufficient

¹⁶ For example, despite violating financial responsibility regulations from 2006 on, Education Management Corporation's schools (Art Institutes, Argosy, South University and others) were allowed to continue receiving federal funding. U.S. Dep't of Educ., Office of Inspector General, *Inspection of the Department's Activities Surrounding the Sale of Postsecondary Schools to Dream Center Education Holdings*, No. 105T0010 at 3 (June 29, 2021), available at <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2021/i05t0010.pdf>. The schools were still permitted to receive federal funds even after entering into a settlement with the Dept. of Justice and 40 state attorneys general that resolved allegations that the schools were utilizing predatory and deceptive recruitment practices. See U.S. Dep't of Just., Press Release, *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>.

¹⁷ For example, Walden University has remained on Heightened Cash Monitoring since 2015 due to repeated financial responsibility failures of its parent company, Laureate. See U.S. Dep't of Educ., Heightened Cash Monitoring, <https://studentaid.gov/data-center/school/hcm>. Daymar College has continued to receive federal funding even after it settled a case with the Kentucky attorney general which resolved allegations that the school engaged in predatory recruitment practices. See Complaint, Case No. 11-CI-01016 (Jul 27, 2011) https://ag.ky.gov/pdf_news/daymar-complaint.pdf.

financial guarantees from at-risk institutions, and act to recover funds from school investors and executives via bankruptcy, civil litigation, and criminal litigation quickly after a school closes. To save taxpayer dollars and protect borrowers, the system needs wholesale improvement.

A. The Department should strengthen its oversight and take swift action to ensure that schools are following statutory and regulatory safeguards that are designed to protect against school closures.

Mitigating the damage a closing school causes is best accomplished by ensuring that only high quality, financially stable schools are allowed to receive federal aid in the first place. Congress entrusted the Department with the power to determine when a school fails to be a sound investment for taxpayer dollars and borrowers. Accordingly, it has the responsibility to determine which institutions “qualify” for participation in Title IV programs¹⁸ and may certify that institutions are eligible to receive Direct Loan funding only when, among other things, the institution demonstrates sufficient “financial responsibility,”¹⁹ has not had “severe performance deficiencies,”²⁰ has no outstanding debts owed to the Department,²¹ and demonstrates sufficient “administrative capacities.”²² Each of these criteria may be used to assess whether or not a school is at risk of closing. In addition, because Congress expected the Department to be a responsible steward of federal funds, Congress gave it the discretion to establish other criteria needed “to protect the financial interest of the United States” and promote the purpose of the Higher Education Act (HEA).²³ Thus, the Department has the discretion to use other methods to identify institutions that may adapt their business practices to avoid detection by the aforementioned criteria.

The Department should implement a number of changes to better identify schools at risk of sudden closures and mitigate the harm to taxpayers and students. First, the Department should increase staff and resources available to focus on the investigation of schools that are failing any of these criteria. Currently, the Department typically performs largely paper-based program reviews of all Title IV schools, which

¹⁸ 20 U.S.C. §§ 1002(a)(5), 1099c(a);

¹⁹ *Id.* at § 1099c(c).

²⁰ *Id.* at § 1087c(c)(2)(D).

²¹ *Id.* at § 1087c(c)(2)(E).

²² *Id.* at § 1099c(d).

²³ *Id.* at § 1087c(c)(2)(F).

involves a review of a school's financial aid documentation. While this is an important review for all Title IV schools, the Department should increase the number of specialized staff charged with affirmatively investigating, beyond a review of student federal financial aid files, institutions that have failed one or more of the above-described standards. The staff should also be charged with independently identifying schools that are engaging in illegal conduct that can cause financial instability or taxpayer and student losses (instead of waiting for state enforcement actions or borrowers to raise the alarm). Indeed, the Department has allowed schools to continue receiving aid for years even after they have failed to meet these mandatory standards, resulting in the loss of billions taxpayer dollars.²⁴ FSA recently announced the formation of an Enforcement Office,²⁵ but to be successful, it must have the resources to hire adequate numbers of well-trained staff. In addition, it must have the resources needed to allow it to monitor, identify, and prepare the Department to take appropriate action against at-risk schools, using a variety of monitoring and investigative tools such as undercover shoppers, interviews of former students, undercover reviews of admissions training processes, and audits of marketing claims that financially unstable or predatory schools often falsify, such graduate placement rates.

Second, the Department can better utilize provisional program participation agreements (PPPAs) to prevent taxpayer losses and student harm. The Higher Education Act allows the Department to implement a corrective action plan in the form of a PPPA for schools that fail many of the above criteria. The Department can use PPPAs to restrict access to federal funding and require schools to implement necessary improvements, providing that if the school fails to improve, the Department will quickly cut off federal aid. Despite the availability of this critical accountability tool, the Department has not yet revoked a single PPPA, even in cases where there has been evidence that many schools subject to those agreements have broken the law or continued to fall far short of the Department's mandatory financial

²⁴ See Dan Zibel, Aaron Ament, & Kirin Jessel, *The Missing Billion*, Nat'l Student Loan Defense Network (June 2021), available at https://www.defendstudents.org/news/body/NSLNDN_paper_Missing_Billion.pdf.

²⁵ U.S. Dep't of Educ., Press Release, *U.S. Department of Education to Establish an Enforcement Office Within Federal Student Aid* (Oct. 8, 2021), available at <https://www.ed.gov/news/press-releases/us-department-education-establish-enforcement-office-within-federal-student-aid>.

stability requirements.²⁶

Finally, in addition to bolstering investigational focus and capacity and strengthening its use of PPAs as an accountability tool, the Department can reduce taxpayer losses by ensuring that schools and their owners pay the fines and fees associated with statutory and regulatory violations before being allowed to renew their eligibility in the Title IV program. Failure to pay such fees is a strong sign that either the school lacks the financial capability of doing so or does not care to comply with federal law, both of which indicate a school could suddenly close due to financial mismanagement or an eventual government action based on illegal practices. In the past, after the Department has found that a school has violated statutory authority and imposed a fine, it has often failed to aggressively pursue collections against that school. In its recent report *The Missing Billion*, the National Student Loan Defense Network illustrated how the Department has allowed schools to continue receiving Title IV aid despite failing to pay fines, fees, and judgments and displaying clear performance deficiencies as a result of school fraud and other illegal conduct that harmed students.²⁷ The report found that institutions' debts currently total nearly \$1.5 billion.²⁸

The Department has even allowed individuals to own or operate schools that receive Title IV funding when the prior schools they owned and operated closed and then failed to reimburse the Department for the resulting taxpayer losses. For example, TA Associates, which owned the now-defunct Vatterott Colleges, owes the Department over \$244,350,339.²⁹ Yet, the Department has continued to allow TA Associates to hold a substantial ownership interest in Full Sail, a school chain that continues to receive Title IV funds, without holding either Full Sail or TA Associates liable for the debt.³⁰

²⁶ Yan Cao, *Predatory Colleges Think They Are Too Flawed To Fail. Biden's Department of Education Should Prove Them Wrong*, The Century Found. (Sept. 9, 2021), available at <https://tcf.org/content/commentary/predatory-colleges-think-flawed-fail-bidens-department-education-prove-wrong/?session=1>.

²⁷ Dan Zibel, Aaron Ament, & Kirin Jessel, *The Missing Billion*, Nat'l Student Defense Network (June 2021), available at https://www.defendstudents.org/news/body/NSLDN_paper_Missing_Billion.pdf.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

B. The Department should improve how it measures financial responsibility.

Currently, the Department's financial responsibility measure does not adequately identify financially unstable schools. The Department requires that schools receiving federal aid pass a series of tests which essentially measure three ratios: primary reserves, equity, and net income.³¹ The "composite score" reflects all three ratios and is intended to reflect the overall health of the institution. A composite score can range from negative 1.0 to positive 3.0. If an institution has a score equal or greater to 1.5, it is considered financially stable. Schools with a score between 1.0 and 1.5 are subject to cash monitoring, whereas schools with a score below 1.0 may continue to receive federal funding if they are provisionally certified. As a condition of provisional certification, the school is required to post a letter of credit equal to ten percent or more of the Title IV aid the school received in the institution's most recent fiscal year.

These standards require too little of schools when they are in clear financial trouble and fail to adequately sound the alarm on many risky schools. Experts have concluded that the financial responsibility standards have often failed to provide adequate warning that a school closure is coming and have failed to provide adequate compensation when closures have occurred.³² The failure of the financial responsibility score to warn of impending closures may be due to its failure to include potential legal liability in its calculation. Schools often appear financially sound despite carrying significant risk due to the predatory practices they use to enroll students or engaging in securities fraud. When such schools ultimately close, if they were provisionally certified and had a financial accountability score, many were only required to post a letter of credit equal to ten percent of the Title IV funds received in the most recent fiscal year. This amount barely scratches the surface of a closed school's liabilities for closed school discharges.

The Department should strengthen the financial responsibility score so that it better identifies at

³¹ This is a summary of the financial responsibility provisions from the Department's website, *available at* <https://studentaid.gov/data-center/school/composite-scores>.

³² See, e.g., Robert Shireman, *The Policies That Work--And Don't Work-- To Stop Predatory For Profit Colleges*, The Century Found. (May 20, 2019), *available at* <https://tcf.org/content/report/policies-work-dont-work-stop-predatory-profit-colleges/#policy7>.

risk schools and substantially increase the amount of funding schools must provide through a letter of credit when they fail the financial responsibility standards.

C. The Department should conduct an in-depth investigation after a school closes and must use all tools available after a school closes to recoup losses.

Currently, when a school closes, as far as we know the Department does not complete a post-mortem to analyze why the school closed and whether any misconduct was associated with the closure. In fact, the Department does little to preserve necessary evidence to establish school liability and ensure that students are able to obtain debt relief. This evidence includes student records, advertisements, email servers, admissions officers' scripts, lead generator arrangements, and other information which will disappear if the Department does not ensure that it is maintained. (Many of the state governments and accreditors also fail to ensure that these records are maintained). As a result, the Department limits its ability to recoup losses caused by the closure because it does not seek out the evidence necessary to prosecute the school and the deeper pockets who may have profited from the school. While the Department may file a claim as a creditor in the school's eventual bankruptcy, it generally files low-priority claims as an unsecured creditor and, as a result, recoups only pennies on the dollars owed.

The Higher Education Act allows the Department to hold school officials, investors, and others personally liable for specific types of institutional debt.³³ By failing to engage in a post-mortem investigation and ensure the maintenance of evidence after a school closes, however, the Department is forgoing the opportunity to hold school executives, officials, or investors who engaged in illegal misconduct liable for the closure of the school and any other resulting losses. It effectively turns a blind eye to criminal conduct, and ignores potential civil actions that could yield substantial dividends. If the Department were to engage in a robust investigation, it would deter unscrupulous school owners from capriciously closing schools and might give rise to RICO, False Claims Act, and other federal claims that would allow it to recover lost funds. The Department should investigate school closures and all avenues

³³ Dan Zibel & Alice Yao, *Protection and the Unseen*, Nat'l Student Loan Defense Network (Oct. 2020), available at <https://www.defendstudents.org/news/body/docket/100-Day-Docket-Personal-Liability-Report.pdf>

to the recoupment of losses sustained by taxpayers and students.

Thank you again for the close attention you are paying to how to protect the most vulnerable student loan borrowers, as well as taxpayers, and for the opportunity to provide this testimony. Please feel free to contact me if you have any additional questions.

[Whereupon, at 12:28 p.m., the Subcommittee adjourned.]

