December 20, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Ave, S.W.
Washington, D.C. 20202

Dear Secretary DeVos:

We write to express extreme concern about the U.S. Department of Education's (" Department") actions leading up to the recent announcement from Education Corporation of America's (ECA) that the chain of for-profit colleges is abruptly closing its doors, and to demand the Department take immediate steps to aid and protect students, veterans, and taxpayers in the wake of this significant collapse.

On Wednesday, December 5, 2018, ECA announced that it would immediately close the 70 campuses it owns, including the campuses of Brightwood Career Institute, Brightwood College, Ecotech Institute, Golf Academy of America, and Virginia College. This closure immediately displaces approximately 18,000 students enrolled in 20 states, many of whom took out thousands of dollars in federal student loans to attend its doomed programs.[1] According to data from the Department of Veterans Affairs, this closure will impact over 4,000 student veterans who had been using their GI Bill funds at an ECA campus.[2]

The Department's ECA Failures

ECA's widely-known problems piled up for years, but accelerated over the past few months. Beginning in March 2015, amid concerns about the schools' compliance and financial stability, the Department placed many of ECA's Virginia College campuses on a financial restriction known as Heightened Cash Monitoring.[3] The Department restricted the flow of federal funds to more ECA colleges in October 2017 and required additional financial and operating reporting and review requirements in February 2018 and August 2018.[4] Despite the Department's long-

[1] Receiver's Initial Report, *VC Macon, Ga LCC v. Virginia College LLC,* Case No. 5:18-cv-00388-TES, United States District Court for the Middle District of Georgia, December 12, 2018, https://www.courtlistener.com/recap/gov.uscourts.gamd.107889/gov.uscourts.gamd.107889.99.0.pdf

[2] U.S. Department of Veterans Affairs, GI Bill Comparison Tool, https://www.va.gov/gi-bill-comparison-tool/.

[3] U.S. Department of Education, Office of Federal Student Aid, "Heightened Cash Monitoring," https://studentaid.ed.gov/sa/about/data-center/school/hcm.

[4] Complaint, *Education Corporation of America, Virginia College, LLC and New England College of Business and Finance, LLC v. United States Department of Education and Betsey Devos,* Case No. 2:18-cv-01698 (N.D. Al. 2018), October 16, 2018, https://www.insidehighered.com/sites/default/server_files/media/ECA-complaint_0.pdf.

standing knowledge of ECA's financial instability, in the months leading up to the ultimate collapse, the Department appears to have taken little action to protect students and taxpayers.

Meanwhile, in May 2018, ECA's accreditor, the Accrediting Council for Independent Colleges and Schools (ACICS), sanctioned Virginia College, ECA's largest chain of for-profit colleges, by requiring the chain to demonstrate why it should maintain accreditation.[5] Virginia College, Golf Academy, and Ecotech were also separately denied accreditation by the Accrediting Council for Continuing Education and Training in May 2018, due to a long list of concerns and failure to meet accreditation standards.[6] In September 2018, ECA announced it would close and end new enrollment at 26 campuses by 2020, which represented one third of the campuses they owned at the time.[7]

In October 2018, ECA attempted to overhaul its corporate structure with a court-approved receivership and sued the Department in order to maintain access to federal student aid funds while it pursued a receivership plan.[8] In this lawsuit, ECA revealed that sharp declines in student enrollment pushed the company to the financial brink and caused it to drift towards collapse. ECA revealed its financial turmoil had "resulted in numerous lawsuits," threats of eviction, and the inability to pay its mounting debts, which all contributed to its desire to go into receivership.[9] ECA also argued that if it did not prevail in litigation, the company's debts and financial struggles would, "almost certainly result in a disorderly and chaotic process that will irreparably harm students' interests…."[10]

As a party to this lawsuit, the Department should have been aware of ECA's October 2018 statements in court documents. For nearly two months before ECA's announcement that it was closing its doors, the Department knew that ECA was not only continuing to struggle financially, but was on the very brink of failure. Moreover, after a federal judge dismissed the lawsuit in November, the Department had information in its possession indicating that ECA was at high-risk of a "disorderly and chaotic" collapse.

According to a Department spokesperson, the Department had been "in daily conversations" with the company about students' futures in the event of a collapse.[11] But there is no evidence

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[5] ACICS Letter, "Continued Institutional Show-Cause Directive," September 7, 2018, http://www.acics.org/uploadedFiles/Actions/00010582_VirginiaColl-SCC.pdf

[6] Inside Higher Ed, "Another Setback for Programs Overseen by Troubled Accreditor," Andrew Kreighbaum, May 22, 2018, https://www.insidehighered.com/news/2018/05/22/profit-chain-falls-short-attempt-get-new-accreditors-approval.

[7] Inside Higher Ed, "For-Profit Chain Will Close Dozens of Campuses," Andrew Kreighbaum, September 12, 2018, https://www.insidehighered.com/news/2018/09/12/profit-chain-will-close-dozens-campuses.

[8] Inside Higher Ed, "For-Profit College Chain Sues to Keep U.S. Aid," Andrew Kreighbaum, October 19, 2018, https://www.insidehighered.com/news/2018/10/19/profit-college-chain-sues-feds-keep-federal-aid-amid-restructuring.

[9] Complaint, *Education Corporation of America, Virginia College, LLC and New England College of Business and Finance, LLC v. United States Department of Education and Betsey Devos,* Case No. 2:18-cv-01698 (N.D. Al. 2018), October 16, 2018, https://www.insidehighered.com/sites/default/server_files/media/ECA-complaint_0.pdf.

[10] *id.*

[11] Politico, "Trump administration slams for-profit college chain for sudden closure," Michael Stratford, December 5, 2018, https://subscriber.politicopro.com/education/article/2018/12/trump-administration-slams-for-profit-college-chain-for-sudden-closure-1012027.

that the Department used its knowledge of a potential collapse to actually warn students or to secure financial surety or protection for taxpayers. Moreover, the Department has pursued a policy agenda that will make ECA-type collapses more likely—placing students and taxpayers at extreme risk.

The Department's Policy Actions that Contribute to 'Disorderly and Chaotic' Collapses of Risky For-Profit Colleges

ECA's collapse is a reminder that the Department, under your leadership, has taken a series of actions to prevent accountability for risky for-profit colleges, creating a higher education landscape that is far more vulnerable to sudden meltdowns and predatory behavior.

The Department has, for example, moved to both illegally delay and propose to rescind the gainful employment rule, aimed at cutting off federal student aid to career and for-profit programs that consistently leave graduates deep in debt for credentials that do not lead to jobs that allow students to repay their loans. Many ECA programs likely would have eventually been kicked out of the federal student aid program had the Department continued to implement and enforce the regulation. Of approximately 200 ECA programs across 21 campuses, nearly one-third – 60 programs – are failing or at risk of failing the gainful employment rule due to loading students up with too much debt that they could never repay.[12]

The Department also sought to illegally delay the "borrower defense" rule, which, among other student protections, strengthens loan cancellation rights for students at schools like ECA that suddenly shut down. The rule also protects taxpayers by establishing a number of financial triggers that allow the Department to automatically recalculate a school's financial responsibility composite score, and that require troubled schools to protect taxpayers with surety against the costs associated with borrower defense and closed school loan discharges. Full implementation of this rule from Day One of the Administration would have mitigated the risks of ECA's collapse for taxpayers and students.

The Department has also dramatically understaffed and stalled the work of the Student Aid Enforcement Unit, a special team – created in the wake of the Corinthian collapse – that had been investigating widespread allegations and complaints against schools, which are predominantly at for-profit colleges.[13] This team was responsible for working with other state and federal regulators to investigate fraudulent activities at colleges that potentially violated federal rules.

Given that ECA had at least 98 borrower defense claims from federal loan borrowers[14] and two dozen complaints from veterans,[15] there were clear allegations of predatory or deceptive

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[12] U.S. Department of Education, Office of Federal Student Aid, "Gainful Employment Information," https://studentaid.ed.gov/sa/about/data-center/school/ge.

[13] The New York Times, "Education Department Unwinds Unit Investigating Fraud at For-Profits," Danielle Ivory, Erica L. Green, and Steve Eder, https://www.nytimes.com/2018/05/13/business/education-department-for-profit-colleges.html.

[14] The Century Foundation, "College Fraud Claims Up 29 Percent Since August 2017," Tariq Habash and Yan Cao, https://tcf.org/content/commentary/college-fraud-claims-29-percent-since-august-2017/

behavior at ECA that could have spurred an investigation had the Student Aid Enforcement Unit been allowed to operate without political meddling from the large number of former for-profit college executives inside the Department.

And just last month, the Department inexplicably restored the federal recognition of the ACICS, the same failed college accreditor that rubber-stamped Corinthian Colleges, Inc. and ITT Educational Services, Inc. for federal funds up until the days that both companies went bankrupt. Unsurprisingly, ACICS continued its trend of poor oversight by fully accrediting ECA programs until literally the day before ECA announced its planned closure.

The Department's Lack of Clear Guidance to ECA's Students

Now that ECA has collapsed, the Department has an urgent responsibility to help the students it failed to protect and to provide these students with clear, helpful, and actionable guidance regarding their options, including their eligibility for closed school loan discharges, borrower defense claims and discharges, and their options for completing their education. This guidance is critical to protect students from inaccurate or incomplete information that could leave them even worse off after transferring. Students who have been put in this terrible position deserve only the highest quality options going forward.

We, therefore, urge the Department to immediately take the following four actions to assist and protect ECA's students:

1. **Provide students all relevant information related to their financial aid, including the discharge of student loans, the restoration of Pell Grants, tuition recovery funds, and other financial aid:**

    a. First, the Department must send closed school loan discharge applications to all eligible students, as required by federal regulations (34 CFR 685.214). The Department must explain to students their closed school discharge options, give them any necessary paperwork, and provide assistance to students in completing closed schools discharge applications—especially since many ECA credits are unlikely to transfer to reputable institutions.

    b. Second, the Department must notify students of their right to apply for borrower defense discharge, in addition to their eligibility for closed school discharge. The Department must ensure that any communication coming from the Department, ECA, ACICS, or state authorizers provides students with information about both borrower defense and closed school loan discharges.

    c. Third, the Department must also notify students of their rights to Pell Grant restoration and the Department must halt collections activity on federal student loans owed by students that attended ECA.

[15] U.S. Department of Veterans Affairs, "GI Bill Comparison Tool Data" *available at* https://www.va.gov/gi-bill-comparison-tool.

2. **Extend the window for a closed school discharge back to May 8, 2018, when Virginia College was initially sanctioned by its accrediting agency.** Federal regulations allow the Secretary to extend the 120 window for students to obtain a closed school discharge, "if the Secretary determines that exceptional circumstances related to a school's closing justify an extension."[16] The Department should extend the window because ECA's sanctions from ACICS and its inability to secure accreditation at another agency sent an ominous signal to students and likely led many students to withdraw. In fact, ECA acknowledged in court filings from its October 2018 lawsuit that the company's tenuous accreditation led some students to withdraw.[17] The Department should not punish these students for abandoning ship before it sunk.

3. **Require state agencies to approve transfer options that ECA proposes and ensure students who wish to complete their education are presented high-quality options.** Sending displaced students and veterans from one failed college to another predatory or failing college would add insult to injury. Given ACICS's failure to secure formal, signed teach-out agreements for all of ECA's students and campuses, ECA's students are particularly vulnerable to predatory schools looking to enroll these students for their federal student aid of GI Bill dollars. The Department must not simply throw its hands up and refer students to their state agencies without any additional guidance or oversight. To do so would be an abdication of the Department's responsibility to protect ECA students from other high-risk schools, including schools that have been sanctioned by their accrediting agency, are limping along on financial restrictions like Heighten Cash Monitoring, have multiple pending complaints or borrower defense claims from current or former students, or have faced recent federal or state investigations for predatory behavior. Moreover, the Department should ensure that transfer institutions guarantee students that their credits will be accepted, and that students will not be charged additional tuition and fees. Transfer opportunities must include all colleges with similar programs within a reasonable physical proximity to the closing ECA campuses and must not include exclusively online institutions. The Department should also publish each transfer college's completion, student debt, and earnings outcomes to help students evaluate transfer opportunities.

4. **Hold the owners and investors of ECA financially liable for closed school and borrower defense discharges.** It was the Department's responsibility to secure financial protection for taxpayers from ECA in the event that the school collapsed to cover the costs of discharges. Yet, to our knowledge, no such financial protection was required despite the Department's years-long awareness of ECA's financial troubles. If such taxpayer protection does not exist, the Department should use its legal authority to go after ECA, its investors, and its creditors, such as the private equity firms Willis Stein & Partners and Monroe Capital LLC, for the costs of loan discharges. Students and taxpayers should not be left holding the bag for the Department's failures.

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[16] 34 CFR 685.214

[17] Complaint, *Education Corporation of America, Virginia College, LLC and New England College of Business and Finance, LLC v. United States Department of Education and Betsey Devos,* Case No. 2:18-cv-01698 (N.D. Al. 2018), October 16, 2018, https://www.insidehighered.com/sites/default/server_files/media/ECA-complaint_0.pdf.

The Department allowed over $280 million taxpayer dollars to flow to ECA during the 2017-18 school year despite clear warning signs that it was in deep financial crisis.[18] In late 2018, thousands of students made career decisions, enrolled, took out student loans, and based their educational plans on the assumption that ECA schools would be there for them in January 2019 and beyond, although the company was actually on its last leg.

ECA's collapse is the first major for-profit college collapse under the Trump Administration. While the series of actions taken by the Department under your watch leaves us concerned that it will not be the last for-profit college collapse, the Department now has an urgent responsibility to act to protect ECA's students. The Department must remember its primary obligation to students and undertake these common-sense steps to protect students and taxpayers in the coming weeks and months. Please provide a written update to our offices on these asks by no later than January 17, 2019.

Sincerely,

Elizabeth Warren
United States Senator

Sherrod Brown
United States Senator

Mazie K. Hirono
United States Senator

Richard J. Durbin
United States Senator

Richard Blumenthal
United States Senator

Dianne Feinstein
United States Senator

Kamala D. Harris
United States Senator

Bernard Sanders
United States Senator

[18] U.S. Department of Education, Federal Student Aid Office, "Title IV Program Volume Reports," https://studentaid.ed.gov/sa/about/data-center/student/title-iv.