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February 7, 2019

Senator Elizabeth Warren
317 Hart Senate Office Building
Washington, DC 20510-2103

Honorable Elijah Cummings
Chairman, Committee on Oversight and Reform
2163 Rayburn House Office Building, 2163
Washington, DC 20515-2007

Honorable Suzanne Bonamici
2231 Rayburn House Office Building, 2231
Washington, DC 20515-3701

Dear Senator Warren, Chairman Cummings and Representative Bonamici:

I am writing in response to your December 21, 2018, letter to [redacted], the former president and chief executive officer of Education Corporation of America ("ECA"), and me (the "December 21 Letter"). Thank you for this opportunity to provide you with information regarding the unfortunate circumstances that left ECA with no choice but to cease operations, thereby adversely impacting ECA's thousands of students, faculty and staff.

I note that this response contains sensitive information regarding students, faculty and business operations. Therefore, I would ask you to inform me before further dissemination of these documents.

Introduction

First, I would like to provide you with some important background information. I was appointed on November 14, 2018, by Judge Tilman Self of the U.S. District Court for the Middle District of Georgia in Macon to serve as Receiver to manage ECA's business. ECA announced on December 5, 2018, that it was discontinuing operations and that all of its residential campuses would be closing following the completion of the academic terms then in progress. Immediately following the announcement, [redacted] resigned his positions at ECA. As a result, I am now the sole authority overseeing ECA's dissolution on behalf of the court.

In the days following the closure announcement, most of ECA's corporate staff members were terminated. A small number of staff members were kept in place to work through the wind-down and closure activities, including providing transcripts and other records to students and regulators and working with other schools to set up transfer and teachout opportunities. Those staff members also were terminated as their duties were completed, and only a few ECA corporate staff members are still in place today. Their primary responsibility is working with me and my small team to facilitate the sale of ECA's remaining assets in the coming weeks before ECA itself is dissolved.

My team and I have worked diligently to assemble the information that you have requested. However, given the very limited resources available to me and the limitations on our understanding of ECA's history and document archives, I cannot state with any certainty that we have identified all responsive documents or that we have fully described events leading up to the December 2018 closure announcement. Nevertheless, this narrative and the supporting exhibits represent my current understanding of the facts and circumstances during the requested time period. Based on what I know and have learned, there was no deliberate attempt by anyone at ECA to mislead students or the public about ECA's status, and ECA aspired to operate in a compliant and effective manner.

Key Events and Developments

The December 21 Letter describes various aspects of ECA's status with the U.S. Department of Education ("ED") and the Accrediting Council for Independent Colleges and Schools ("ACICS") since 2015. The first request for information in the December 21 Letter seeks a timeline of events since January 2015, and we have provided this information. However, it is useful to go back a bit further to gain a full understanding of ECA's financial condition and ongoing reporting status with ED.

ED's Retroactive Change in Financial Reporting Requirements

As of the beginning of 2012, ECA owned and operated a single "institution" as defined by ED. This institution, which was based in Birmingham, Alabama, at the time operated some 26 campuses doing business as Virginia College, Golf Academy of America, and Ecotech Institute (collectively, "Virginia College"). Virginia College was directly owned by Virginia College, LLC ("VC LLC"), at the time an indirect, wholly owned subsidiary of ECA.

During 2012, VC LLC opened six new Virginia College campuses. In June 2012, ECA purchased all of the ownership interests in New England College of Business and Finance, LLC ("NECBF LLC"), which operates New England College and Business and Finance ("NECB"), largely relying on debt financing. NECB is regionally accredited by the New England Commission on Higher Education and operates as a separate institution.

Both Virginia College and NECB historically provided ED with annual audited financial statements that were prepared at the institutional level, i.e., VC LLC and NECBF LLC, respectively, on which ED would base its financial responsibility analysis. These financial statements were submitted in accordance with the plain language of 34 C.F.R. § 668.32(d), which provides that institutions must annually submit audited financial statements to ED. Both VC LLC and NECBF LLC provided audited financial statements that scored solid results in ED financial responsibility composite score determinations.

Consistent with past practices, both Virginia College and NECB filed institutional-level audited financial statements in June 2013 for fiscal year ("FY") 2012 (*i.e.*, the 12 months ended December 31, 2012) and expected to file institutional-level statements for FY 2013. In March 2014, however, more than two months after the end of FY 2013 and only a few months before the FY 2013 audited financial statements were due, ED unexpectedly wrote to ECA to advise that it would no longer accept institutional-level audits and instead would require FY 2013 audited financial statements at the ECA level, on which henceforth it solely would make its financial responsibility determination.[1] While this may seem to be a subtle change, it significantly impacted the evaluation of the institutions.

Because of the retroactive nature of the request, ECA asked ED not to impose this significant change for FY 2013 and instead to make it effective for FY 2014.[2] ECA provided several arguments to support its request, most significant of which was that ECA's acquisition of NECBF LLC was structured in order to meet the financial responsibility requirements as ED historically had imposed them. If ED had provided notice that it was changing its interpretation of the regulations, ECA could have structured the NECBF LLC acquisition differently, such as seeking additional capital from its investor, or even abandoned the acquisition entirely, in order to ensure the composite score was favorable. ED nevertheless affirmed its decision to change ECA's financial reporting obligations retroactively, thereby eliminating any opportunity for ECA to raise capital or take any other steps to prepare its financial statements for the newly announced ED analysis.[3]

ECA Institutions Placed on HCM1

As a result, and not unexpectedly, ED's review of the FY 2013 audited financial statements in late 2014 produced a composite score of -0.8 out of 3.0.[4] Because ECA's composite score was below 1.0, it chose to continue participating in the federal student aid programs under the Provisional Certification Alternative, meaning that it was placed on Heightened Cash Monitoring Level 1 ("HCM1") and was required to provide a letter of credit ("LC") to ED in the amount of $27,877,192. ECA obtained the LC on January 22, 2015.

[1] Letter (March 7, 2014) from [redacted] at ED to [redacted], ECA's controller.

[2] Letter (April 22, 2014) from [redacted] at Cooley, LLP, to [redacted].

[3] Letter (April 28, 2014) from [redacted] to [redacted].

[4] Letter (November 12, 2014) from [redacted] to [redacted], ECA's chief executive officer.

Your December 21 Letter correctly notes that ED placed ECA on HCM1 in March 2015. As the foregoing summary makes clear, however, the triggering event for this development was not ED's "concerns about the schools' compliance and stability" so much as it was ED's retroactive change in its interpretation of the financial responsibility regulations. We note that when ED placed ECA on HCM1 in March 2015, there were 482 other public and private institutions on HCM1 or Heightened Cash Monitoring Level 2 ("HCM2") for various reasons.[5]

Acquisition of Kaplan Campuses

By the time ED completed its analysis of ECA's FY 2013 audited financial statements in late 2014 and required ECA to post an LC in January 2015, ECA already was deep in discussions with Kaplan Higher Education, LLC ("KHE"), regarding the possible acquisition of a group of career colleges from KHE (the "Kaplan Campuses"). ECA and KHE subsequently announced on February 12, 2015, that ECA would purchase 21 institutions comprising 38 campuses in an all-stock transaction following receipt of all required and customary regulatory approvals.[6] The transaction, which was completed on September 3, 2015, gave KHE a preferred equity interest in ECA. Nearly all of the Kaplan Campuses were profitable or cash-flow positive, and the acquisition was immediately accretive to ECA's bottom line.

Additional Capitalization of ECA and Release of LC

As part of its efforts to consummate the KHE transaction, and given ED's FYH 2013 financial responsibility determination, ECA took significant steps to strengthen its balance sheet. As a first step, on February 3, 2015, ECA's majority shareholder, [redacted] ("[redacted]"), invested an additional $[redacted]. ECA also negotiated a new equity investment from [redacted] ("[redacted]"). Coincident with the closing of the KHE transaction, in which KHE acquired preferred stock in ECA, [redacted] also invested $[redacted]. The aggregation of these and other equity transactions in September 2015 brought more than $100 million in new equity to bolster ECA's balance sheet.[7]

None of these 2015 transactions were reflected in the audited FY 2014 results filed with ED in June 2015, but ECA was stronger as a result of these additional investments at the time of the FY 2014 submission. Because this information did yet not appear on the balance sheet, however, ED notified ECA in September 2015 that the FY 2014 audited statements again produced a

[5] U.S. Department of Education, *List of Institutions on HCM as of June 1, 2015* (online at https://studentaid.ed.gov/sa/about/data-center/school/hcm) (accessed January 18, 2019).

[6] Joint Press Release (February 12, 2015) by ECA and KHE.

[7] *See* letter (September 11, 2015) from [redacted] ECA's general counsel and chief compliance officer, to [redacted].

composite score of -0.8, and it kept ECA on HCM1 and continued to require that ECA maintain an LC.[8]

ECA's FY 2015 audited financial statements were the first to reflect all of the changes that resulted from the KHE acquisition and the new investments. In May 2016, ECA provided ED with its FY 2015 statements, which produced a composite score above the threshold to demonstrate its financial responsibility. Over the subsequent months, ECA engaged in a dialogue with ED about ED's review of the FY 2015 statements and ECA's request that ED release the LC and consider removing ECA from HCM1.[9] On April 13, 2017, nearly a year after the submission of the FY 2015 audit, ED finally confirmed that ECA's composite score was 1.7 and released the LC.[10]

Despite the increased composite score, ED kept all of the ECA institutions on HCM1 because it had not yet completed its review of certain financial aid compliance audits. ECA notes that at the time ED made its April 2017 determination to keep ECA institutions on HCM1, ED had increased the number of public and private institutions on HCM1 or HCM2 for various reasons to 544.[11]

Integration and Rebranding of the Kaplan Campuses

Following the September 2015 acquisition of the Kaplan Campuses, ECA spent many months focused on integrating the campuses into the ECA management and operational platforms. Among the most critical undertakings was rebranding the campuses. Because KHE continued to utilize the Kaplan name for other enterprises that it retained, ECA was contractually obligated to rename the acquired campuses within several months after the transaction. After extensive marketing studies, ECA decided to rename all of the Kaplan Campuses as Brightwood College (Brightwood Career Institute in Pennsylvania) (henceforth, "Brightwood").

The renaming project that introduced a new and previously unknown brand into the marketplace had a significant negative impact on enrollments and revenues across the Brightwood system. Although ECA anticipated some downward pressure resulting from the name change and developed a digital marketing campaign to increase awareness of the new brand, not only was the drop-off in leads and the resulting effect on enrollments substantially worse than anticipated, but the recovery was slower than projected.

[8] Corrected Letter (September 15, 2015) from [redacted] to [redacted] ECA's chief executive officer.

[9] Email exchange June-October 2016 between [redacted] at ED and [redacted].

[10] Letter (April 13, 2017) from [redacted] to [redacted].

[11] U.S. Department of Education, *List of Institutions on HCM as of March 1, 2017* (online at https://studentaid.ed.gov/sa/about/data-center/school/hcm) (accessed January 17, 2019).

Impact of Kaplan Integration on ECA Composite Score

Because of the integration costs and the negative impact on revenues from the Brightwood rebranding, ECA failed to achieve a favorable composite score for FY 2016. Although the balance sheet remained strong, thanks to the September 2015 capital infusion, the financial responsibility composite score fell to 1.2, placing ECA "in the zone" and obligating it to remain on HCM1, although no LC was required.

As a result of the composite score calculation, ED advised ECA that it could continue to participate in the federal student aid programs under one of two possible alternatives.[12] ECA chose the "Zone Alternative," under which it agreed to remain in HCM1 status and to provide supplemental information to ED. ECA was required to advise ED of any adverse or restrictive actions taken by a regulatory body or accrediting agency, violations of any loan covenants, litigation by any creditor to collect on debt obligations, and significant accounting or financing changes.

Importantly and beyond the standard "Zone Alternative" terms, ECA also agreed to provide ED with additional reporting beginning December 1, 2017, including (a) on a biweekly basis, 13-week projected cash flow statements with disclosure notes describing (i) material financial transactions, (ii) merger and acquisition activity, (iii) any corporate restructuring, (iv) the opening or closing of a campus, and (v) any new programs to be launched within the next 60 days; and (b) on a monthly basis, an updated student roster. ED subsequently modified the reporting requirement as of March 10, 2018, to include a biweekly cash balance with available cash on hand and monthly actual and projected cash flow statements with an explanation of variances.[13] To be clear, these were not standard Zone Alternative or HCM1 reporting requirements, and ED was updated every other week regarding ECA's financial position in real time.

ACICS Loss of Recognition

At the same time ECA was working to integrate the Brightwood campuses, it was faced with a new and ultimately disastrous headwind. ACICS, which at this point accredited all but one of ECA's 70+ campuses, underwent periodic review by ED in 2016 to renew its federal recognition as an accrediting agency. The advisory panel that reviews accrediting agency recognition applications and makes recommendations to the ED Secretary regarding recognition matters voted in June 2016 to recommend that ACICS's recognition be withdrawn.

The June 2016 recommendation attracted a great deal of attention in the media. ECA provided information to its students regarding the recommendation, including clarifying for them that

[12] Letter (10-18-17) from [redacted] to [redacted].

[13] Letter (2-28-18) from [redacted] to [redacted].

ACICS's recognition remained in effect and that they continued to be enrolled in an accredited institution. There is little doubt, however, that this news also contributed to the enrollment and revenue challenges that ECA experienced in FY 2016.

The negative impact on ECA became much more significant after Secretary King withdrew ACICS's recognition in December 2016. Even though federal regulations allow an institution to continue to participate in federal student aid programs for up to 18 months after its accreditor loses recognition while it seeks alternate accreditation, students understandably were very concerned about their schools' accreditation status and ability to continue operating. ECA again provided current and prospective students with information describing this unprecedented situation. All of the students' concerns and the negative attention surrounding the ACICS situation undoubtedly had significant adverse impact on enrollment throughout 2017.

ECA Seeks Alternate Accreditation

In Fall 2016, ECA, like nearly all other ACICS-accredited institutions, began exploring options for alternate accreditation for its institutions. ECA had only a couple of options from which to choose, none of which were perfectly aligned with ECA's operations in terms of timing, scope or program level. ECA ultimately opted to apply to the Accrediting Council on Continuing Education & Training ("ACCET"), for which applications were filed in May 2017, despite the fact the agency did not have authority to accredit all of the existing ECA programs.

ACCET's scope of recognition does not extend beyond the associate's degree. Therefore, ACCET required Virginia College to discontinue its bachelor's and master's degree programs before it could submit applications for ACCET accreditation. Virginia College ceased new enrollments in these programs, arranged for students who could not graduate before March 31, 2018, to transfer to other institutions, and notably refunded tuition paid by students for whom no transfer options were available. ACCET also required ECA to discontinue other programs of study that were incompatible with ACCET's standards. These decisions to discontinue programs collectively removed many hundreds of students from ECA's population and weighed substantially on ECA's revenues and profitability.

ECA ultimately paid ACCET approximately $1.4 million in 2017 and 2018 for application fees, team visit expenses and other financial obligations related to the applications for accreditation. At the same time, it paid substantial fees to ACICS for continued accreditation, which ECA had to maintain for several reasons, including making sure that its students could continue to qualify for required certifications and licenses. These extraordinary accreditation expenses further exacerbated ECA's financial challenges.

In May 2018, ACCET denied the application for accreditation filed by Virginia College and deferred action on the Brightwood applications. ECA firmly believes that ACCET's denial decision was deeply flawed for numerous reasons, chief among them ACCET's determination to ground its decision on the outcomes of programs that Virginia College had taught out as much as a year or more before applying to the agency. By the time ACCET issued its decision on the appeal on August 31, 2018, however, the accumulated impact of declining enrollments caused by general downtrends in the market, the program eliminations and changes required by ACCET, the disruptions and fear induced by the accreditation warnings, along with extraordinary accreditation expenses, had adversely impacted ECA's financial position. Thus, ECA determined that it needed to devote its remaining resources to restructuring the business for survival, rather than pursuing an expensive, if ultimately winnable, legal challenge of the ACCET decision.

Restructuring and Receivership

The ECA Board of Directors ("Board") reviewed ECA's financial condition at its August 2018 meeting. At this point, the Brightwood campuses were continuing to grow, albeit slowly, and the decline in enrollments at the Virginia College, Golf Academy of America, and Ecotech Institute campuses appeared finally to be leveling off. Nevertheless, more than 24 months of enrollment declines, external factors, and extraordinary accreditation expenses had taken their toll on the company's cash flow.

The Board directed management to proceed with restructuring plans, including identifying campuses for teachout and eventual closure (the "Restructuring Plan"). Shortly after that directive, on September 10, 2018, ECA announced that it was discontinuing new enrollments at 26 campuses and would close each campus following the teachout of its students. The teachouts were projected to be completed between June 2019 and April 2020.

The company also entered into new talks with its investors regarding raising additional capital to support the Restructuring Plan. [redacted] and [redacted] ultimately agreed to a debt financing package of up to $38 million that they would make available to ECA in the closing months of 2018. The company's projections indicated that this level of new funding would be sufficient to see ECA through restructuring because the company was expected again to be cash-flow positive beginning in January 2019.

As a condition for providing the funding, however, the investors insisted that ECA would need to take steps to ensure that the new capital would be used to support ongoing operations and position the company to complete the restructuring effort successfully. The company therefore began planning to file a request for the appointment of a federal receiver.

ECA lawyers and management advised ED in a telephone call on October 10, 2018, nearly a week prior to the filing, that ECA intended to file litigation in the U.S. District Court in Birmingham, Alabama, with motions asking for a declaratory judgment that the appointment of a receiver would not impact ECA's ability to participate in the federal student aid programs or constitute a change of control under federal regulations and seeking the appointment of a federal receiver. The next day, ECA sent an email to ED that reiterated the details surrounding ECA's plans to enter into federal receivership.[14]

The Complaint was filed on October 16, 2018 (the "Birmingham Case"), and ECA immediately notified ED.[15] Separately, and to discuss the similarities and differences between the Birmingham Case and an earlier successful state-level receivership filing by another large school group, ECA prepared a four-page summary of the receivership process, implications, and rationale for ED staff to assist with their understanding of the action.[16]

The judge granted ECA a temporary restraining order ("TRO") on October 19. Following a hearing on ECA's motions on October 29, however, the judge dismissed the Birmingham Case on November 5, finding that the court did not have jurisdiction. The court also allowed the TRO to expire. However, another federal court had a different jurisdictional issue to adjudicate, and ECA's focus immediately moved to Georgia.

The landlord of the Virginia College campus in Macon, Georgia, filed a proceeding against VC LLC in Georgia state court on September 21, 2018, and ECA subsequently removed this case, styled *VC Macon, GA, LLC, v. Virginia College, LLC*, to the U.S. District Court for the Middle District of Georgia in Macon (the "Macon Case"), where it was stayed as a result of the TRO in the Birmingham Case. When that TRO expired, ECA filed its answer and an emergency motion for the appointment of a receiver and an injunction in the Macon Case on November 5 and November 6, respectively. U.S. District Court Judge Tilman Self in Macon held an emergency hearing on November 7, at which time he entered a new TRO staying litigation against ECA. Following a subsequent hearing on November 14, Judge Self entered an order appointing me as a federal receiver over ECA's assets and granting the more permanent preliminary injunction.

ED Places ECA on HCM2 and Requires New LC

However, just before I was appointed, on November 8, 2018, just one day after the initial hearing in the Macon Case and nearly a month after ECA first raised the receivership issue with the agency, ED notified ECA that it was placing ECA on HCM2,[17] a status that severely restricts an institution's cash flow from the federal student aid programs and almost always is fatal to institutions that are largely dependent on tuition revenues for operations. ED based its decision

[14] Email (October 11, 2018) from [redacted] to [redacted] and [redacted] at ED.

[15] Email exchange (October 16, 2018) between [redacted] and [redacted] and [redacted]

[16] Memorandum (October 16, 2018) from [redacted] to [redacted] and [redacted].

[17] Letter (November 8, 2018) from [redacted] to [redacted]

on representations that ECA made in the Birmingham Case that it would not be able to survive if it were not placed into receivership. When the judge in the Birmingham Case in fact failed to place ECA into receivership, ED determined that it "has no choice but to place ECA on HCM2 in order to protect its interests and the interests of taxpayers." Notably, ED procedures provide no opportunity to formally appeal a decision to place an institution on HCM2 status despite the swift and typically devastating consequences of this action.

Immediately upon learning of ED's decision on HCM2, ECA advised ED that the federal judge in the Macon Case was considering a motion from ECA regarding federal receivership. ECA told ED that it expected a decision in the Macon Case in a matter of days and that ECA was in no danger of closing before the Macon judge rendered a decision. ECA reiterated that a decision to appoint a receiver would unlock the new debt financing from ECA's investors that already was approved and ready for release, and that this new capital would carry ECA into 2019, at which point ECA again would be cash-flow positive. The new funding and ECA's improving financial condition would allow the teachouts of the 26 campuses that had been announced in September 2018 to continue as planned and would give ECA the necessary time to prepare the remaining campuses for sale, as contemplated by the receivership plan. ED rejected these arguments and issued the HCM2 determination on November 8.

As noted above and as predicted, Judge Self placed ECA in federal receivership on November 14. That same day, ED wrote a second letter to ECA requiring ECA to post a substantial LC in order to continue participating in the federal student aid programs. Because of the frequent and real-time reporting of ECA's financial information that had been going on for many months, ED knew that ECA would not be able to fulfill this requirement.

On November 15, ECA wrote to ED to advise ED that ECA had been placed in federal receivership the previous day.[18] ECA reiterated to ED that the appointment of the federal receiver would allow the new financing to come into the company, would enable the previously announced teachouts to continue, and would ensure the company's continuing operations as it prepared the remaining campuses for sale. ECA noted, however, that the HCM2 determination and LC demand, if not amended, almost certainly would interfere with ECA's ability to continue to operate.

ECA wrote to ED again on two separate occasions on November 19 to seek reconsideration of the HCM2 determination.[19, 20] These subsequent communications outlined in significant detail ECA's current operational status and its plans for restructuring under the protection of the federal receivership. The Restructuring Plan would allow all students at the campuses slated for closure

[18] Email (November 15, 2018) from [redacted] to [redacted] and [redacted].

[19] Email (November 19, 2018) from [redacted] to [redacted] and [redacted].

[20] Email exchange (November 19, 2018) between [redacted], ECA's chief financial officer, and [redacted] [redacted] and [redacted].

to complete their programs and would prevent any interruption in studies for students at continuing campuses that would be sold by the receivership estate. ECA also detailed how the reasons that ED gave for placing ECA on HCM2 had been addressed by the appointment of the receiver and the additional financing that now would be available to ECA. Finally, ECA explicitly advised ED that any delay in returning ECA to HCM1 or otherwise modifying the HCM2 determination to enable ECA's cash flow could derail all of its restructuring efforts and force it to a precipitous closure.

ED responded to ECA's urgent requests on November 21, 2018.[21] ED's letter, dated November 19, simply stated that the information that ECA provided did not allay ED's concerns and that ECA would remain on HCM2.

I then attempted to open a dialogue with ED in furtherance of ECA's restructuring efforts. I sent an email to ED on November 21 introducing myself and seeking a meeting with ED at ED's earliest convenience to discuss ECA's restructuring plans and the HCM2 status. ED responded on November 26 and proposed a meeting a week later on December 3 or December 4. I followed up to explain the urgency of the matter and asked for an earlier meeting, which ultimately took place in Washington on Friday, November 30.[22] [redacted], ECA's chief financial officer at the time, joined me at the ED meeting in Washington. At this meeting, [redacted] and I provided details regarding the receivership appointment and ECA's financial conditions and plans for restructuring.

We left this meeting believing that we had made progress in helping the ED officials to understand ECA's dire cash position and to realize that ECA would be forced to shut its doors within days if the HCM2 restrictions were not lifted so that aid funds again began to flow. However, I received a call Saturday evening, December 1, from an ED official who indicated that ED still was reluctant to rescind the HCM2 directive.

On Sunday, December 2, ED sent ECA an email seeking a host of additional documents,[23] nearly all of which ECA provided by early Sunday evening. In addition, I sent [redacted] an email on Sunday thanking him for the Friday meeting and for agreeing to speak again on December 3.

I and several ECA administrators had calls with ED officials on December 3. ED continued to ask for additional information but refused to discuss a solution that would restore ECA's cash flow. During one of these calls, ED advised us that ECA simply needed to discontinue operations.

[21] Letter (November 19, 2018) from [redacted] to [redacted].

[22] Email exchange (November 21-30, 2018) between [redacted], ECA's receiver, and [redacted].

[23] Email (December 2, 2018) from [redacted] to [redacted]

ECA made one last-ditch effort to convince ED to change course. On December 3, [redacted] sent a memorandum by email directly to Secretary DeVos that was copied to other senior ED officials and congressional leaders.[24] In the memorandum, [redacted] explained the situation and implored Secretary DeVos to exercise her discretion to lift the HCM2 status imposed on ECA and to restore ECA's funding in order to avoid the imminent precipitous closure of 70 ECA schools across the United States. [redacted] explained that this pending calamity, which was entirely avoidable, would result in nearly incalculable harm to ECA's students and employees, ECA's vendors and landlords, and the American taxpayers. To my knowledge, other than to acknowledge receipt, neither Secretary DeVos nor any other ED official has ever responded to [redacted] email.

ECA Is Forced to Discontinue Operations

The ECA Board met by teleconference on Monday evening, December 3, to discuss the situation. The Board acknowledged that without some sort of immediate reprieve from ED on HCM2 or the LC, ECA would have to discontinue operations within the next 24-36 hours because it would be out of cash.

We had another call with ED officials on December 4, at which time we relayed our determination that ECA had no choice but to cease operations. During that call, ECA advised ED that it would need access to approximately $3 million in federal student aid funding to supplement additional funds that would be provided by [redacted] in order to ensure that ECA could complete the current academic terms in December and would be able to conduct a somewhat orderly shutdown. ED agreed that it could release some funding that already was in process when it placed ECA on HCM2 on November 8, and it asked for detailed information to support this request. On December 5, ED advised ECA that it would release up to approximately $2.9 million if ECA satisfied certain conditions.[25] Although ECA has continued to work with ED and to provide requested information, ED as of February 5 still has not released any of this promised funding.

The final element of ECA's decision to discontinue operations at Virginia College was provided by ACICS. Even though a show-cause hearing before ACICS to discuss ECA finances was scheduled for December 5, ACICS issued a determination on December 4 withdrawing the accreditation of all ACICS-accredited institutions.[26]

On December 5, ECA began making announcements to its students and staff and to regulators that it had not been able to find a solution to its financial challenges and that it therefore was

[24] Email (December 3, 2018) from [redacted], ECA's chief executive officer, to Secretary Betsy DeVos.

[25] Email exchange (December 4-5, 2018) between [redacted], ECA's chief financial officer, and [redacted]

[26] Letter (December 4, 2018) from Michelle Edwards, ACICS president, to [redacted].

shutting down operations at all of its Virginia College, Brightwood College, Brightwood Career Institute, Golf Academy of America and Ecotech Institute campuses at the conclusion of the academic terms then in progress. The announcements reported that many of the campuses would cease operations as of December 7, with another large group completing on December 18. All of the discontinuing campuses would be closed by December 21.

Summary of Key Events Leading to Closure

As I understand the situation based on the knowledge that I have gained over the last couple of months about ECA, its finances and operations, and various external factors, I have concluded that ECA's demise resulted from a regrettable combination of (a) ED's decision to place ECA on HCM2; (b) extraordinary regulatory challenges resulting primarily from ED's actions regarding ACICS; (c) macroeconomic market forces that placed significant downward pressure on enrollments and student demand; (d) unexpected difficulties in establishing the new Brightwood brand name in the marketplace; (e) failure by the investors to infuse the additional funding; and (f) ACICS's withdrawal of ECA's accreditation. Although ECA likely could have withstood most of these pressures, all of them together proved to be a burden too heavy to bear.

Although my tenure as the Court-appointed receiver of ECA has been short, I witnessed several of the key events mentioned above that led to the closure and wind-down of ECA. First, ED's decision to place ECA on HCM2 had direct ramifications on ECA's ability to secure the additional funding necessary for the Restructuring Plan. According to the investors, ECA's placement on HCM2 was a substantial change in conditions that, again according the investors, caused their offer for the additional funding to ECA to be reconsidered and rescinded. I and my team negotiated and communicated with the investors to ensure that it was understood that without the additional funding, the Restructuring Plan would not be given an opportunity to succeed. I also was abundantly clear with the investors that unless the originally promised additional funding was received in a timely manner, ECA would face a necessary wind-down. Through the continued discussions and negotiations with the investors, it became clear that additional funding would not be given while ECA remained on HCM2.

ED was made fully aware of the financial condition of the company and the obstacle that ECA's being continued on HCM2 created to securing the additional funding from the investors. As previously noted, ECA and I made several urgent requests to ED that ECA be removed from HCM2, or in the alternative, that ED agree to other oversight arrangements that would allow ECA's cash flow to resume so that ECA would be able to obtain the additional funding from the investors for the Restructuring Plan. I communicated to ED that the Restructuring Plan would provide ECA's thousands of students with an opportunity to continue their education while other elements of the Restructuring Plan were implemented. I specifically informed ED that without some form of relief from HCM2, the investors would not provide the additional funding, and ECA would have no choice but to implement the necessary wind-down of ECA without providing a full proper teach-out. No relief was provided, and no additional funding was secured from the investors.

and provide responsive materials. I reiterate, however, that we are providing the most comprehensive response we have been able to pull together given the limitations on our resources and knowledge of ECA's operations. Documents requested in the December 21 Letter are appended to this response.

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As I hope you will understand from this narrative and the responsive materials, ECA was put in an untenable position in late 2018. It worked hard for several months to devise and implement a Restructuring Plan that would have allowed it to discontinue and ultimately close 26 underperforming campuses and to focus its attentions on the operations and eventual sale of the ongoing campuses, all without interrupting the enrollment or progress of any of its students. Its plans, for which it had lined up necessary and sufficient financial support from its investors, would have protected the continued employment of many hundreds of faculty and staff members. If it had been able to implement the Restructuring Plan, the calamitous effects of the December 2018 closure determination would have been avoided. However, as I have detailed, a series of unfortunate events made this outcome impossible to achieve.

Please feel free to contact me with further questions.

Sincerely,

[redacted]

John F. Kennedy, Esq.
Receiver

Enclosures
cc: Honorable Jim Jordan, Ranking Member, Committee on Oversight and Reform
Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor