



California Legislature

May 8, 2020

The Honorable Bobby Scott, Chair
The Honorable Virginia Foxx, Ranking Member
U.S. House Committee on Education and Labor
2176 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Lamar Alexander, Chair
The Honorable Patty Murray, Ranking Member
U.S. Senate Committee on Health, Education, Labor, and Pensions
428 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Chair Scott, Chair Alexander, Ranking Member Foxx, and Ranking Member Murray:

Last year, the California State Assembly proposed a comprehensive accountability and reform package for the for-profit college sector to protect California students, veterans, and taxpayers. In light of recent news related to the Coronavirus Aid, Relief, and Economic Security (CARES) Act and its applicability to the for-profit college industry, we write to request your consideration of three proposals to ensure taxpayer money is judiciously spent and proper oversight is being exercised over this sector of education.

The CARES Act provided \$14 billion in emergency funding to higher education. An April 7th letter sent to U.S. Secretary of Education Betsy DeVos by Senators Elizabeth Warren (D-MA), Dick Durbin (D-IL), Sherrod Brown (D-OH), and Richard Blumenthal (D-CT) asserts that “the most legally sound interpretation of the CARES Act would exclude for-profit colleges from the fund entirely.” However, Secretary DeVos has made for-profit colleges eligible for the CARES Act aid, and recently announced a distribution plan which allocates over \$1 billion to these schools. Separate from the CARES Act’s higher education aid, there is also a possibility that parent corporations of for-profit colleges may attempt to seek funding from other business-oriented COVID-19 relief programs set up by the federal government, for which public and nonprofit schools are not eligible.

Recent analyses performed by the Center for American Progress and *MarketWatch* found that nearly 80 percent of the top 100 for-profit schools estimated to be receiving funds under Secretary DeVos's plan had students who filed federal complaints alleging they were victims of fraud by those colleges under the Borrower Defense to Repayment rule. Twenty-three of these schools had previously failed the Gainful Employment rule, an Obama-era regulation that tested the cost of a school's educational program against the actual wages of graduates. Twelve schools also faced recent legal action for alleged misuse of federal student aid programs and fraud related to aggressive recruitment practices. And at the same time as these schools are set to receive over \$1 billion from taxpayers, President Trump and Secretary DeVos have taken steps to weaken or dismantle these and other student-centered protections for this industry.

To highlight some concerning examples, Academy of Art University (AAU) in San Francisco is receiving \$3.79 million from the CARES Act at the same time a decade-long federal False Claims Act lawsuit is proceeding against the school. Four whistleblowers have alleged that AAU cheated the government out of millions of dollars, and management engaged in illegal incentive compensation schemes to pressure employees to enroll as many students as possible, docking their pay when they did not meet recruitment targets. In 2018, a Ninth Circuit Court of Appeals panel ruled sufficient evidence existed that the school may have engaged in illegal activity and ordered the case to proceed. Only a month ago, the U.S. Supreme Court declined to hear the college's latest appeal, finally paving the way for the trial to commence, with a scheduled date of March 1, 2021.

Additionally, the Milan Institute and Unitek College are slated to receive \$3.96 million and \$3.75 million, respectively, in CARES Act aid. Both colleges have locations in California that are currently on the U.S. Department of Education's Heightened Cash Monitoring (HCM) list, through which the Department provides additional oversight for institutions with financial or federal compliance issues. Unitek College's Hayward and Fremont campuses are on the first level of HCM due to failing scores on a fiscal responsibility scale used by the Department. Two Milan Institute campuses in California are on the second, more severe level of HCM as a result of "concerns about the institution's ability to manage the Title IV programs including student file maintenance, record retention, and verification." Yet both of these schools are receiving millions in CARES Act funds with little oversight.

Given the for-profit college sector's checkered history, we believe stringent guardrails and robust oversight are necessary to ensure recent patterns of fraud and abuse at some institutions do not repeat with new infusions of taxpayer dollars. We write to express our support for the critical protective measures outlined in the Senators' letter, which include prohibiting the use of funds for executive compensation, stock or share repurchases, marketing or recruitment; freezing executive compensation for one year after receipt of funds; and prohibiting colleges receiving CARES Act money from seeking stimulus funds from other sources of federal aid; among

others. A small handful of these recommendations have been incorporated by the Department already, but more action is needed. We propose three additional measures for your consideration in developing subsequent COVID-19 aid bills related to higher education.

First, we request that any subsequent higher education aid bills, if they include for-profit colleges, only provide funds to these schools for the purpose of providing direct emergency financial aid to students. For-profit colleges offered a significant amount of programming via online education before the COVID-19 crisis began, and as a result are not facing the same costs and challenges that public and private nonprofit schools are facing in this new online learning environment. Many students at for-profit colleges are low-income students of color and veteran students, due in part to the industry's practice of targeting these populations with aggressive marketing in order to maximize the amount of federal and state financial aid dollars colleges can draw down. According to 2016-17 data, approximately 85 percent of for-profit school students nationwide qualify for and receive some form of financial aid – most commonly student loans or federal grants, such as the Pell Grant. These students are economically vulnerable and likely in need of aid due to COVID-19's impact on the economy.

However, there is a risk that some of these colleges will shuffle funding so that non-student aid can free up other funds to be used for boosting advertisement, marketing, or recruitment efforts, for stock buybacks, or for the benefit of shareholders and executives. Even though the current CARES Act aid is not permitted to be used for these types of activities, without a robust accounting of the dollars, bad actors may use CARES Act or future aid to supplant existing costs and use newly freed funds to participate in the same prohibited activities. Expecting an uptick in aggressive marketing and recruitment, in particular, is not without precedent. When the federal government took action after the 2008 recession to boost Pell Grant aid as an economic recovery tool, many schools ramped up recruitment efforts to capitalize on that expanded source of revenue – which ultimately led to an increase in student loan defaults. We therefore request any future aid to for-profit colleges be limited to direct grants to students.

Second, we urge you to consider giving state governments a role in overseeing the funds that are flowing to higher education institutions from the CARES Act and funds that may come in the future from additional COVID-related assistance. State agencies that work directly with schools operating in California – including, for example, the California Student Aid Commission and the Bureau for Private Postsecondary Education – are well-positioned to ensure that the 50 percent student aid requirement of the CARES Act is being followed, and that any future taxpayer dollars provided to schools will be utilized wisely. Given their efforts to gut important Obama-era student and taxpayer protections, it is unlikely that a DeVos-led Department will perform the oversight sorely needed for these colleges.

Lastly, we are hopeful that Speaker Pelosi's proposed COVID-19 oversight committee will be approved by the broader House and begin work as soon as possible. We would additionally request that the House consider hiring professional staff for this committee with the expertise and capacity to perform oversight at the level necessary to ensure aid dollars are being targeted to the students and institutions who most need them.

We are grateful for your leadership and for all the work you have done in support of California and the nation during this unprecedented crisis. We look forward to a continued partnership and thank you for your attention to this letter.

Sincerely,



DAVID CHIU
Assemblymember, 17th District



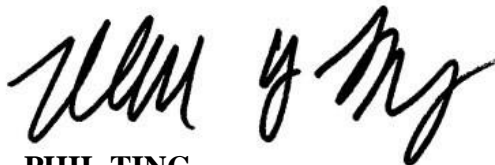
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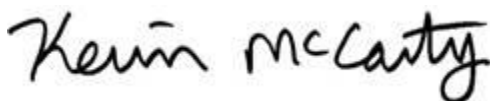
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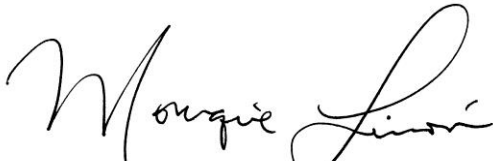
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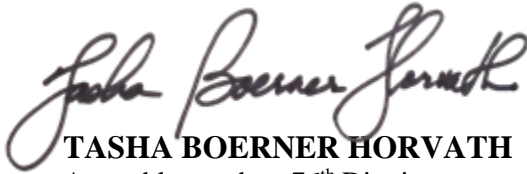
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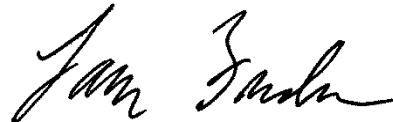
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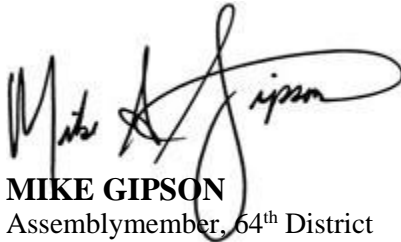
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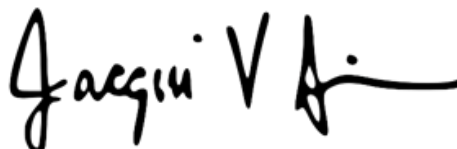
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REGINALD BYRON JONES-SAWYER, SR.

Assemblymember, 59th District

CC: The Honorable Zoe Lofgren, Chair, California Democratic Congressional Delegation
The Honorable Susan Davis, Member, House Committee on Education and Labor
The Honorable Mark Takano, Member, House Committee on Education and Labor
The Honorable Mark DeSaulnier, Member, House Committee on Education and Labor
The Honorable Josh Harder, Member, House Committee on Education and Labor

The Honorable Dianne Feinstein

The Honorable Kamala Harris