

## **DEPARTMENT OF EDUCATION**

### **STATEMENT BY DIANE AUER JONES ACTING UNDER SECRETARY OF EDUCATION BEFORE THE COMMITTEE ON OVERSIGHT AND REFORM SUBCOMMITTEE ON ECONOMIC AND CONSUMER POLICY MAY 22, 2019**

Good morning, Chairman Krishnamoorthi and Ranking Member Cloud. Thank you for the opportunity to appear before you today to discuss the work the Department of Education (the Department) is doing under Secretary DeVos's leadership to ensure students and taxpayers are protected in the event of school closures.

As enrollments continue to shrink, workforce needs change, and rising costs encourage more students to seek nontraditional education options, more campuses will close – and these closures will include both non-profit and proprietary institutions, as is the case already.

The Department has the responsibility to protect students and taxpayer resources. In order to ensure that federal student aid funds made available under Title IV of the Higher Education Act are used properly, the Department conducts program reviews to confirm that institutions of higher education meet statutory and regulatory eligibility requirements and are financially responsible and administratively capable. In addition, the Department reviews each institution's audited financial statements annually to identify signs of financial weakness or instability. For private institutions, the Department uses those statements to compute the composite score that reflects an institution's financial health.

Based on these calculations, when warranted, the Department may place an institution under heightened cash monitoring (HCM) payment method to restrict an institution's ability to draw down federal Title IV funds from the Department's disbursement system. This step enables the Department to provide additional oversight over a variety of financial or federal compliance issues, some of which may be serious and others that may be less troublesome. There are two levels of Heightened Cash Monitoring—HCM 1 and HCM 2. Under HCM 1, an institution draws down federal funds after it has submitted disbursement records to the Department and disbursed aid to students using its own funds. Under HCM 2, an institution makes disbursements to students using its own funds, and then submits a reimbursement payment request to the Department.

Institutions may be placed on HCM 1 or HCM 2 as a result of compliance issues including accreditation issues, late or missing annual financial statements and or audits, outstanding liabilities owed to the Department, concerns about an institution's administrative capability, concerns about an institution's financial responsibility, and possibly severe findings uncovered

during a program review. Thus, HCM, coupled with additional oversight, help safeguard taxpayer funds and promote institutions' proper stewardship of the federal student financial aid programs, thereby protecting the interest of the nation's students. The Department also requires institutions that fail to meet the required Financial Responsibility Composite Scores to post a letter of credit (LOC), which is designed to offset the costs incurred by the Department in the event of a closure. The Department has flexibility to establish the amount of the LOC, but it must be at least 10 percent of the institution's annual student aid distribution. In order to post a letter of credit, financial institutions may require schools to provide close to 100 percent of the funds required under the LOC, depending on the financial circumstances of the school. In some instances an institution may have already resolved a financial challenge by the time a LOC is provided and in other instances a LOC may be beyond the institution's financial wherewithal to obtain, forcing an unstable institution into closure. The Department has, however, routinely worked with institutions experiencing challenges in obtaining letters of credit to find alternative ways of providing the Department with financial protection.

Like HCM2, while LOCs are designed to protect taxpayers against the cost of a precipitous closure, posting an LOC can actually be the triggering event that forces the institution to close, in particular if the institution is already financially unstable. The larger the LOC, the more likely the institution will close precipitously. Therefore, the Department must make difficult decisions based on whether the priority is for the institution to engage in an orderly teach-out, or if hastening a precipitous closure is the more appropriate outcome.

#### Accreditors and State Authorizing Bodies

Accreditors and states also monitor an institution's financial condition and place institutions on sanctions when there are signs of financial instability. Like the Department, accreditors base their assessment on audited financial statements, which means that the assessment relies on dated information that may no longer accurately reflect the financial condition of the institution. Accreditors may also require an institution to participate in heightened financial monitoring, but an institution's financial condition can change rapidly and in unexpected ways. Institutions that do not resolve their financial challenges may lose accreditation, which causes them to lose access to federal student aid programs.

The Department has worked closely with accreditors and states over the last year to navigate several challenging school closures. Every situation is unique and there is rarely a clear indicator for when it is appropriate for title IV participation to end or for accreditation or state authorization to be removed. Most institutional accreditors typically work quickly to review and approve teach-out plans, to help identify potential teach-out partners, and to evaluate teach-out agreements. However, this may be more challenging with programmatic accreditors. In part this is because programmatic accreditation leads to occupational licensing, so the accreditor must align its standards with those of licensing bodies. Programmatic accreditors often have policies that are focused on professional standards but that can impede teach-outs. Such policies include imposing enrollment caps on programs or institutions they accredit, requiring institutions to have a signed externship agreement for every student they accept, requiring programs to maintain specific student-to-faculty ratios, and meeting various performance thresholds such as graduation rates or licensure exam pass rates.

Even when students in programmatically accredited programs are the strongest and most accomplished students at a closing institution, they can be the hardest to place into a teach-out opportunity because of the added complexity of programmatic accreditation and occupational licensing. Typically, an institution willing to serve as a teach-out partner may need permission from their programmatic accreditor to exceed their current enrollment cap, to temporarily exceed typical student-to-faculty ratios, to enroll students without signed agreements with externship hosts, and to consider licensure pass rates of students who arrive near the end of their programs separately from those who completed at least half of their program at the receiving institution. And the cost of operating programmatically accredited programs means there are generally fewer programs, and therefore fewer options for students when the program in which they are currently enrolled closes.

Two recent closures that have captured considerable news attention involved institutions placed into receiverships in Federal district courts. Such proceedings, which may arise under Federal or state law, have rarely been used by creditors of Title IV eligible institutions and provide creditors with the opportunity to request a court to appoint a “receiver” to manage the assets and liabilities of an institution for the benefit of the creditors. Prior to these proceedings, the Department had little experience with institutions being placed into receiverships. Although the Higher Education Act makes clear that if an institution declares bankruptcy it may no longer participate in Title IV programs, the law is silent on receiverships, as are the Department’s regulations. The Department is currently examining the extent to which receiverships affect its ability to provide effective oversight of the Title IV program.

Although the Department warned both institutions that going into Federal receivership would result in HCM2 status, and the Department tried to provide instruction to each receiver on how to operate in the HCM2 context, in both cases the receivers ended up closing the institutions.

The decision to end an institution’s Title IV participation or remove its accreditation or state authorization is a hard one to make, especially if a teach-out plan is not in place and teach-out or transfer partners are not ready to enroll students. Teach-out agreements are the contracts between closing schools and new institutional partners, so they generally are not developed until the school is on the brink of closure. Unfortunately, accreditors define teach-outs differently, with some accreditors allowing only students in the final year of a program to be part of a teach-out agreement, others allowing teach-out agreements to include all students, and still others being unwilling to even review a teach-out agreement until months after the institution already closed. And in some instances, a potential teach-out partner needed to go through a lengthy approval process at the state level in order to serve in the teach-out partner role. Our recent negotiated rulemaking reached consensus around new definitions to ensure that all accreditors define teach-outs the same way, and to ensure that teach-out plans and agreements are required and reviewed earlier – prior to the institution’s closure.

### After a Closure

When an institution closes, accreditors, states and the Department spring into action to provide students with information about their options, including closed school loan discharge, to secure

student records and to help find alternative institutions for students to attend. States host teach-out and transfer fairs where other institutions are invited to meet with students and present them with new options, and often times the Department participates in those events. The Department creates a closed school webpage to help students understand their options, and in many instances communicates directly with students through email or webinars to help them understand their options, including closed school loan discharge.

With respect to federal student loans, when an institution closes, students who did not complete their program of study because the school closed while they were enrolled or who left the institution no more than 120 days prior to closure, and who did not complete the program of study through a teach-out at another institution, are entitled to a closed school loan discharge. Because students are otherwise limited in the number of semesters for which they may receive Pell Grants, the Department also restores eligibility for the period of time students received Pell Grants during their enrollment at the closed school.

Additionally, for many students, higher education is a family affair which requires sacrifices on the part of parents, children and spouses. And for students already exhausted from juggling the demands of school, work, and family, a school closure can strike the final blow and destroy their college ambitions forever. For these students, financial relief may be welcomed, but starting their coursework over or being forced to find a new major may be untenable. College closures can also have devastating impacts on employees and communities as well.

For example, in some of the recent closures of non-profit institutions in New England, the institutions employed many individuals who lived in the community and students who enrolled at the institutions created a consumer market for other community businesses. These institutions also provided cultural events and continuing education opportunities for residents. In the case of some proprietary institutions, these were one of few or even the only institutions that offered certain academic programs, and there is no other institution that can accommodate the students.

The Department, accreditors and states must work together to solve the many challenges associated with collecting and maintaining records after a school closes. In some instances, states take on the role of records management, and become the repository for student transcripts and other records. However, some states do not have the capacity to take on this responsibility and students may find it challenging to access the records they need to transfer to a new institution, provide proof of graduation for employers, or supply the records needed to qualify for occupational licensing. States have requested that the Department make funds available – such as funds from cashed letters of credit – to support records collection and maintenance.

### Regulatory Reform

The Department has recognized that some of the current policies and procedures are insufficient in protecting students and taxpayers from precipitous school closures. To address these challenges, the Department has begun the process of rewriting some regulations, including those related to school closure. The Higher Education Act requires the Department to go through negotiated rulemaking when making changes to regulations impacting federal student aid

programs. While the Department cannot discuss the content of proposed regulations before they are published in the Federal Register for public comment, we can highlight the key policies on which consensus was reached during the negotiated rulemaking process.

In January, the Department convened a negotiated rulemaking, which took place over a period of four months and involved many groups with different views and interests. The group reached consensus in April on a number of potential regulatory changes to help identify at-risk institutions earlier, and put more substantive teach-out plans in place earlier so students have a clear pathway to credential completion in the event that the school closes.

The consensus proposed regulations would, among other things, create better off-ramps that facilitate and incentivize orderly closures rather than precipitous closures. Also, the consensus was these proposed regulations would also encourage accreditors and the Department to take action sooner because a built-in wind-down period will provide new alternatives to precipitous closures. This time would provide regulators as well as faculty and staff time to help students find a new institution, obtain their records and understand their financial aid options. During this wind-down period, institutions would not be allowed to enroll new students.

The consensus also was that the proposed regulations would provide accreditors with new tools to require institutions to develop and implement teach-out plans earlier and they would require accreditors to review teach-out agreements prior to a campus closure, once these regulations complete the requisite notice and public comment period and become final regulations. While teach-out plans currently provide high level information about what a school will do when it closes, the consensus proposal calls for those plans to also provide information about each program the institutions offers, and other institutions that could potentially serve as a teach-out or transfer partner in the event of a closure. In addition, the consensus was that these regulations would clarify that an accreditor can and should require institutions to seek teach-out agreements earlier, and review them prior to the school's closure.

Of course, the Department will publish these proposed regulations for notice and comment, and we look forward to public feedback and input on them to help develop final regulations that will effectively and efficiently meet these important goals.

Orderly closures are possible, and while not perfect, they yield the best results. Teach-out and transfer options enable some students to move to institutions that have other opportunities the closing school did not offer. In some cases, the closing school provides scholarships to students to compensate for the disruption they experience. In other instances, the receiving schools provides direct payments to teach-out providers to cover the cost of offering the teach-out, or to cover any differences in tuition costs between the closing and receiving institution. Teach-out plans and teach-out agreements must be approved by the accreditor of both the closing and the receiving institution, and in some instances, states must also approve the plans. While each teach-out presents unique challenges, my experience over the last 6 months is that accreditors, the Department, and states, as well as many institutions, come together to find good options for students and to work through the kinds of bureaucracy that would otherwise delay approvals by months or years.

While the Department works on changes to provide smoother transitions for students who wish to complete their programs, the Department will also continue to offer se changes will not replace or eliminate the options a student has for closed school loan discharge and Pell grant utilization period resets.

The Department believes higher education marketplace must remain dynamic and able to accommodate the inevitable ebbs and flows of student enrollments. If there is another economic recession, many Americans will likely decide to go back to school, and once again public institutions will be bursting at the seams and private institutions will be expanding to accommodate demand.

As a nation, we have become very good at adjusting our higher education capacity by adding new institutions and campuses, and creating new programs. However, in times like the present, when the economy is soaring and other options exist, we must become equally skillful at closing campuses and eliminating outdated or ineffective programs in a way that protects students and taxpayers alike.

The Department is making progress, but we have more work to do. I welcome this opportunity to discuss the government's past management of school closures and our efforts to encourage more orderly closures in the future.



Diane Auer Jones is the Principal Deputy Under Secretary, Delegated the Duties of the Under Secretary and Assistant Secretary for Post-Secondary Education at the U.S. Department of Education. Diane has a diverse background in higher education, having spent the first 10 years of her career serving as a biology professor at the Community College of Baltimore County, and later working at Princeton University and Career Education Corporation. Diane also has an extensive background in science and education policy having worked at the National Science Foundation, for the U.S. House of Representatives Committee on Science, and for the White House Office of Science and Technology Policy. She served as the assistant secretary for postsecondary education at the Department of Education during the George W. Bush administration. Prior to rejoining the Department of Education, she served as a senior policy advisor to the Secretary of Labor and focused on workforce development issues, including the expansion of apprenticeships in the United States. She holds a bachelor's degree in biology from Salisbury University, a master's degree in applied molecular biology from UMBC and a massage therapy certificate from the Baltimore School of Massage.