

July 21, 2021

The Honorable Miguel Cardona, Ed.D.  
Secretary  
U.S. Department of Education  
400 Maryland Ave SW  
Washington, DC 20202

Dear Secretary Cardona:

We write to express concern regarding Adtalem’s proposed acquisition of Walden University and to urge a careful review of the risks and guardrails to protect students and taxpayers, as well as to call for a more transparent review process that provides opportunities for public input.

### **I. Walden Has Failed to Qualify for Federal Funding**

Walden has generated numerous concerns regarding misrepresentations and violations of the standards in Title IV of the Higher Education Act. Walden has generated 1,166 borrower defense claims and multiple lawsuits.<sup>1</sup> Its students have sued the company alleging that, according to internal documents, multiple graduate programs were designed to take longer to complete than the advertised time frame. Walden intentionally misled students to get them to enroll.<sup>2</sup> Students alleged that Walden frequently changed instructors and graduation requirements in a bait-and-switch practice that extended students’ enrollment periods and increased their loan debts.<sup>3</sup>

Additionally, Walden employees recently alleged that the school sets nursing students up to fail by enrolling high numbers of students who will not be placed into clinical experiences that students need to graduate and obtain gainful employment. Walden has the responsibility to arrange clinical opportunities for each nursing student it enrolls. However, many students have

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<sup>1</sup> For borrower defense data, see Aarthi Swaminathan, “Education Department data details struggle for students who feel defrauded,” Yahoo Finance, April 20, 2021, available at <https://finance.yahoo.com/news/borrower-defense-education-students-defrauded-152343336.html>.

<sup>2</sup> *Wright et al. v. Walden Univ. LLC and Laureate Ed. Inc.*, 16cv4037, Complaint (D. Minn. Dec. 1, 2016), available at <https://drive.google.com/file/d/1NNRmNfeQ7AcLg228h6CL6nJ9gY4oiOk0/view>.

<sup>3</sup> Anna Schechter, “Student Sues Walden University: ‘I Wasted Six Years of My Life,’” NBC News, December 2, 2016, available at <https://www.nbcnews.com/news/us-news/student-sues-walden-university-i-wasted-six-years-my-life-n690706>. Molly Hensley-Clancy, “Lawsuit Targets The Biggest Education Company You’ve Never Heard Of,” BuzzFeed News, February 2, 2015, available at <https://www.buzzfeednews.com/article/mollyhensleyclancy/laureate-lawsuit#.gyW4k5M4l>.

been forced to find clinical placements on their own or incur additional expenses to pay private companies to find placements for them.<sup>4</sup> These payments are an additional undisclosed program cost. While the Department of Justice has opted not to join a case filed under the False Claims Act, Title IV requires a higher standard: schools must provide the education they promise and must not use misrepresentations or omissions to enroll students.<sup>5</sup>

Notwithstanding these concerns, Adtalem recently informed investors that a June 23, 2021, pre-acquisition review (PAR) letter from the Department of Education found no “known or present impediments” to Walden’s eligibility to receive federal funds.<sup>6</sup> Yet Walden is not currently certified to receive federal student aid funds.<sup>7</sup> Walden’s most recent provisional certification was obtained in 2017 and expired in March 2020. **After more than a year of review, ED remained unable to certify Walden’s eligibility** to participate, even provisionally, in Title IV programs. Given that an acquisition would follow a lengthy period during which Walden lacked certification to receive federal funds, Walden should be reviewed as a reinstatement or new applicant and not as an applicant that can simply be waived through a cursory change-in-ownership review with no “impediments.”

## II. Transparency in Change-in-Ownership Review is Urgently Needed

Many advocacy groups have called on your administration to bring more transparency to the submission and review of change-in-ownership applications.<sup>8</sup> This lack of transparency denies current and prospective students a meaningful opportunity to evaluate their educational options, even as shareholders evaluate the future earnings that they expect from students’ enrollments. It deprives the public of an opportunity to provide input or come forward with concerns that may be relevant to a robust review of proposed structural changes. For too long, shareholders have been the first (sometimes the only) group of stakeholders who have received notice or information regarding structural changes that deeply affect the lives of students and the nature of publicly funded programs.

In a recent report, the Department of Education's Office of Inspector General discussed findings from an investigation of ED’s handling of Dream Center Education Holding Co.’s purchase and

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<sup>4</sup> Letter from Engine Capital And Hawk Ridge To Board Of Adtalem Global Education, February 1, 2021, <https://www.prnewswire.com/news-releases/engine-capital-and-hawk-ridge-issue-open-letter-to-board-of-adtalem-global-education-301218671.html>.

<sup>5</sup> See 20 USC 1099c(c)(1)(A) (requiring that schools “provide the services described in official publications and statements”); 34 CFR Subpart F (prohibited misrepresentations).

<sup>6</sup> Adtalem 8k, July 13, 2021, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000730464/000115752321000863/a52459329.htm>.

<sup>7</sup> For a list of schools receiving funds on a [month-to-month](#) basis, see Yan Cao, Kevin Miller, The Century Foundation, “The Education Department Should Review these Risky Schools,” March 15, 2021, available at <https://tcf.org/content/commentary/the-education-department-should-review-these-risky-schools/>.

<sup>8</sup> Letter to Secretary Cardona, March 2, 2021, available at <https://protectstudentsandtaxpayers.org/wp-content/uploads/ED-ltr-transparency-2021.pdf>.

sale of the Art Institutes and affiliated schools.<sup>9</sup> In those cases, ED, under the previous administration, exploited the lack of transparency in change-in-ownership review to take “unprecedented action” to undermine accountability and promote favorable conditions for the private parties that would benefit from those transactions.<sup>10</sup> As a result, ED delivered over \$200 million to schools that should have been “deemed ineligible” under a proper interpretation of governing law; reduced by over \$40 million the protection that students and taxpayers had in the form of financial sureties from the schools; and subjected thousands of students to predatory institutions that ripped them off and ultimately left them stranded with no path to graduation.

With the ink barely dry on the ED OIG report, it appears—based on Adtalem’s disclosures to shareholders—that ED may have taken yet another round of “unprecedented” actions to facilitate a deeply troubling change in ownership that will deliver a potentially predatory school to new owners with a troubling track record. The analysis below relies on Adtalem’s disclosures because ED has not provided access to the public records described therein. Most details regarding the change in ownership are not known, but public documents provide cause for alarm.

### **III. Adtalem Requested Special Treatment Despite Poor Management Record**

Given Walden’s current inability to obtain certification, approval of a change in ownership would require the Department to decide that Adtalem could significantly improve Walden’s operations and meet the standards of Title IV participation. However, Adtalem’s prior poor stewardship of DeVry University suggests that it lacks the ability to sufficiently improve Walden’s performance.

Under Adtalem’s ownership and oversight, DeVry University engaged in deceptive recruitment tactics—including using unsubstantiated marketing claims to mislead and enroll students—leading to the only limitation action in ED’s recent history.<sup>11</sup> Responding to these unlawful practices, the Department conditioned DeVry’s federal funding on a set of conditions (“the limitation conditions,” attached) that included limitations on the addition of new programs, limitations on enrollments accompanied by enrollment monitoring, a letter of credit, a cap on receipt of federal funds (including veterans’ benefits), and more. DeVry is still subject to these conditions; however, ED did not hold Adtalem accountable for its past performance. (Adtalem sold DeVry University to Cogswell Education LLC in 2018.)

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<sup>9</sup> U.S. Department of Education Office of Inspector General (ED OIG), “Inspection of the Department’s Activities Surrounding the Sale of Postsecondary Schools to Dream Center Education Holdings,” June 29, 2021, available at <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2021/i05t0010.pdf>.

<sup>10</sup> Id. at 3.

<sup>11</sup> See U.S. Department of Education (ED) Notice of Intent to Limit Issued to DeVry University, Jan. 27, 2016, available at <https://studentaid.gov/sites/default/files/devry-limitation-notice.pdf>; ED OIG, “DeVry University’s Compliance with Federal Verification and Reporting Requirements,” August 27, 2019, available at <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05t0009.pdf>.

In addition to ED’s limitation action, Adtalem bears responsibility for enforcement actions brought against its schools by a set of regulators including the Federal Trade Commission, the Department of Justice, the Department of Defense, and state attorneys general. Moreover, a recently settled whistleblower action alleged that **Adtalem was unable to stop DeVry’s unlawful practices even after it entered a settlement with the FTC in December 2016.** Internal documents show that recruiters were instructed to “get very aggressive, very quickly” to boost revenue for Adtalem’s 2018 sale to DeVry.<sup>12</sup> The Department should investigate these claims, as well as the 18,942 borrower defense claims submitted by former students of DeVry, Carrington College, and Keller Graduate School of Management.<sup>13</sup> A recent decision granting relief to 18,000 ITT Tech borrowers came with a price tag of \$500 million.<sup>14</sup> To the extent that DeVry engaged in unlawful conduct while under Adtalem’s management, the Department must hold Adtalem financially responsible for the unlawful acts of its corporate subsidiaries. The Department must also factor that past performance into its evaluation of Adtalem’s administrative capability to bring Walden into compliance with Title IV rules.

Given Adtalem’s administrative failures, if the Department has indeed granted provisional approval for a change in ownership, it must use every tool at its disposal—including the limitation conditions imposed on DeVry—to protect students and taxpayers from further mismanagement by Walden. However, Adtalem’s July 2021 disclosure claim suggests the opposite happened: ED granted provisional approval of the Walden acquisition, meeting the parties’ requirements for closing the deal. Those conditions required obtaining special treatment from the Department, including:<sup>15</sup>

- Unrestricted ability to expand programs, locations, and enrollment levels at Walden and other Adtalem subsidiaries;
- Immunity for Adtalem subsidiaries from the limitation conditions imposed on DeVry because of unlawful actions that occurred during Adtalem’s management; and
- A cap on financial guarantees for Walden University or any other Adtalem subsidiary.

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<sup>12</sup> *U.S. ex rel Moriarty v. Adtalem Global Ed, Inc., et al.*, Complaint (ND GA, filed June 28, 2018), available at [https://drive.google.com/file/d/1iKa1VZrrSzlYoaypM\\_tDklsHQ-Pt7lig/view?usp=sharing](https://drive.google.com/file/d/1iKa1VZrrSzlYoaypM_tDklsHQ-Pt7lig/view?usp=sharing).

<sup>13</sup> Aarthi Swaminathan, “Education Department data details struggle for students who feel defrauded,” Yahoo Finance, April 20, 2021, available at <https://finance.yahoo.com/news/borrower-defense-education-students-defrauded-152343336.html>.

<sup>14</sup> U.S. Dept. of Ed., “Department of Education Announces Approval of New Categories of Borrower Defense Claims Totaling \$500 Million in Loan Relief to 18,000 Borrowers, June 16, 2021, available at <https://www.ed.gov/news/press-releases/department-education-announces-approval-new-categories-borrower-defense-claims-totaling-500-million-loan-relief-18000-borrowers>.

<sup>15</sup> Laureate Ed. Inc., Definitive information statement, filed Nov. 20, 2020, available at [https://www.sec.gov/Archives/edgar/data/912766/000110465920127556/tm2034931-2\\_defm14c.htm](https://www.sec.gov/Archives/edgar/data/912766/000110465920127556/tm2034931-2_defm14c.htm).

In the absence of detail suggesting a modification of the parties' definitive agreement or outlining protections that will be imposed as conditions to the change in ownership, ED appears to have granted Adtalem's wish for special regulatory treatment.

#### **IV. Approving Walden's Change in Ownership with Adtalem's Conditions Would Set a New Low**

Given the history of weak controls by Walden (leading to over a year of non-certification) and by Adtalem (leading to limits on Cogswell after the sale of DeVry), any change of ownership should be accompanied by serious growth limitations on both programs and enrollments. Adtalem needs additional accountability for its past performance, which may include a letter of credit commensurate with the extensive borrower defense liability arising from the actions of its subsidiaries. Transparency is critical in this process. Current and prospective students deserve to know if (and under what terms) Adtalem will run their school; the public, including former students, deserve an opportunity to provide input. The Department must address the bad practices of both Walden and Adtalem if an acquisition is approved.

Sincerely,

American Federation of Teachers  
Center for Responsible Lending  
New America Higher Education Program  
The Institute for College Access and Success (TICAS)  
Veterans Education Success  
David Halperin, Attorney

CC: Richard Cordray, Chief Operating Officer, Federal Student Aid  
Michele Asha Cooper, Acting Assistant Secretary for Postsecondary Education  
Julie Margetta Morgan, Senior Advisor, Office of the Under Secretary  
Kristen Donoghue, Senior Advisor, Federal Student Aid  
Bonnie Latreille, Ombudsman, Federal Student Aid  
Emma Leheny, Principal Deputy General Counsel and Acting General Counsel  
Toby Merrill, Deputy General Counsel, Office of the General Counsel  
Ben Miller, Senior Advisor to the Chief of Staff