

The *Growing* Missing Billion

Growing Failure by the Department of Education to Collect Unpaid Debts from Colleges Is Costing Taxpayers Billions

In June 2021, Student Defense released the Missing Billion, a landmark report documenting how the U.S. Department of Education, in recent years, has allowed institutions of higher education to walk away from more than \$1 billion in debts owed to taxpayers. Newly uncovered evidence established as part of Student Defense’s ongoing investigation establishes that the problem has gotten far worse. And with the Government Accountability Office having estimated the cost of the student loan program over the last twenty-five years to be approaching \$200 billion,¹ it is incumbent on the Department to hold accountable those responsible for substantial losses.

New findings from our investigation include:

- 1. Department documents shows that between March 2021 and January 31, 2022, outstanding debt owed to the Department grew by approximately \$174 million dollars (from roughly \$1.2 billion to \$1.375 billion) meaning that institutions of higher education collectively owe at least \$1.375 billion to taxpayers.**

Our analysis also reveals that approximately \$78 million in liabilities has been assessed due to discharges under the 2016 “Automatic Closed School Discharge Rule.” Under the Higher Education Act, when a student loan is discharged due to the closure of the borrower’s institution (a statutory right), the Department “shall” subsequently pursue any claim available to such borrower against the institution, a requirement acknowledged only a few years ago by Secretary DeVos. *See* 20 U.S.C. § 1087(c)(1); Decision of Sec’y DeVos, 360 Degrees Beauty Academy, U.S. Dep’t of Educ., No. 18-28-SP at 2 n.7 (Nov. 13, 2020). Nevertheless, these substantial sums remain uncollected.

¹ *See generally* U.S. Government Accountability Office, Education Has Increased Federal Cost Estimates of Direct Loans by Billions due to Programmatic and Other Changes, GAO-22-105365 (July 2022).

The Department's failures to collect on debts owed by institutions of higher education stands also in stark contrast to its recent, correct pronouncements that recoupment from institutions is "critical" to "increase institutional accountability" and "deter future practices" that could lead to additional discharges.²

2. The Department has failed to assess any liabilities for amounts discharged through Borrower Defense, even when institutions continue participating in Federal Student Aid programs.

In addition, none of the \$1.375 billion appears to relate to any attempts by the Department to hold institutions responsible for the nearly \$8 billion in discharges "related to borrower defense and school closures" estimated (by the Department) to have been granted under this administration. Despite clear statutory authority to hold institutions, and their owners and key executives, accountable for financial losses to the government, there is no public evidence that the Department has taken any steps to recoup this \$8 billion from those entities or individuals.

For example, the Department announced in February 2022 that it would discharge \$71.7 million in borrower defense claims to around 1,800 former DeVry University students.³ The Department said that it planned to initiate an action against DeVry to collect on the liabilities. At the time of the announcement, The *New York Times* reported that Undersecretary James Kvaal said:

"We do think that it is really important to show that we are willing to take these actions against open schools, and that there will be liabilities for the current owners of open schools."⁴

Despite this pronouncement, the Department has not filed an action in federal court or, to the best of our knowledge, at the Department's Office of Hearings and Appeals to hold DeVry (or any entity or individual) accountable for the costs of the borrower defense discharge. Nor, to our knowledge, has the Department cited DeVry via any other mechanism for the costs of these discharges.

3. Despite more than \$1.375 billion outstanding, the Department has not assessed a single penny against an individual to try and recoup these sums.

As former Deputy Attorney General Sally Yates wrote in September 2015 in a directive to the Department of Justice, "one of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing."⁵ Yet the Student Defense investigation has failed to uncover a *single instance* (and the Department has never identified one) in which the Department has used its clear statutory authority to try and collect on the unpaid liabilities (or other debts) by using its statutory powers to require the "assumption of personal liability" by any individual with substantial control over an institution. And in addition to its unambiguous statutory authority to hold individuals accountable, the

2 See Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 87 Fed. Reg. 41,878, 41,884, 41,888 (proposed July 13, 2022).

3 Press Release, U.S. Dep't of Educ., Education Department Approves \$415 Million in Borrower Defense Claims Including for Former DeVry University Students (Feb. 16, 2022), <https://www.ed.gov/news/press-releases/education-department-approves-415-million-borrower-defense-claims-including-former-devry-university-students>.

4 Stacy Cowley, *The Education Department Will Wipe Out Loans for Students Defrauded by DeVry University*, N.Y. Times (Feb. 16, 2022), <https://www.nytimes.com/2022/02/16/business/student-loans-devry-university.html>.

5 U.S. Dept. of Justice, Memorandum from Sally Yates to Ass't Attorney Generals, Individual Accountability for Corporate Wrongdoing (Sept. 9, 2015), <https://www.justice.gov/archives/dag/file/769036/download>

Department, the Department has been encouraged to use that authority by both branches of Congress⁶ and the trade association representing for-profit colleges.⁷ Moreover, FSA Chief Operating Officer Rich Cordray has committed, in Congressional testimony, to using this authority.⁸

4. The Department is plagued by slipshod record keeping, shielding the true extent of the problem from public oversight.

Student Defense is deeply concerned with the Department's slipshod record keeping, which could conceal larger problems with the system. For example, the organization is aware of at least one for-profit institution complaining to the Department—after the publication of *Missing Billion*—about debts previously identified by the Department as unpaid, when they had actually been repaid. Moreover, newly obtained evidence shows debts that should have been, but were not, included in earlier data. For example, the February 2021 information that formed the basis of the *Missing Billion* showed a single debt owed by defunct Heald College (part of the Corinthian College chain). The new evidence shows three debts for Heald – only one of which was shown in February 2021, but all of which predated February 2021 (and thus should have been reported in prior releases). Finally, the Department (via the United States Department of Justice) has informed Student Defense that information regarding unpaid debts is maintained *entirely* by the Office of Financial & Operations (OFO)—and therefore it does not track the debts by the “OPEID” number, a unique identifier for institutions participating in the student aid programs that is relied upon by the Department, other federal agencies, states, and accreditors.

* * *

6 Letter from Rep. Bobby Scott to Sec'y Miguel Cardona (Aug. 16, 2021), <https://edlabor.house.gov/imo/media/doc/Chairman%20Scott%20Request%20for%20ED%20to%20Impose%20Personal%20Liability.pdf>; Letter from Sen. E. Warren to Sec'y Betsy DeVos (Oct. 26, 2020), [https://www.warren.senate.gov/imo/media/doc/2020.10.26%20Letter%20to%20ED%20re%20personal%20liability%20authorities%20\(001\)%20\(1\).pdf](https://www.warren.senate.gov/imo/media/doc/2020.10.26%20Letter%20to%20ED%20re%20personal%20liability%20authorities%20(001)%20(1).pdf).

7 Cory Turner, *When Colleges Defraud Students, Should the Government Go After Executives?* National Public Radio (March 1, 2022), <https://www.npr.org/2022/03/01/1062679587/for-profit-colleges-student-loan-borrowers-fraud> (quoting Career Education Colleges and Universities head Jason Altmire).

8 *Id.* (quoting FSA Chief Operating Officer Richard Cordray).