OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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August 3, 2021

Chairman Dick Durbin
Senate Judiciary Committee
Dirksen Senate Office Building Room 226
Washington, DC 20515

RE: Written Testimony for August 3, 2021 Judiciary Committee Hearing on Student Loan Bankruptcy Reform

Dear Chairman Durbin and Ranking Member Grassley:

Thank you for the invitation to speak to the Committee on the pressing issue of student loan bankruptcy reform. I am excited to contribute to the discussion on potential game-changing reform for student loan borrowers. My office has extensive experience with the burden that student loans place on consumers. In 2019, my office received over 700 complaints about higher education, most concerning for-profit schools and student loans.[1] These high-cost schools target low-income students and their federal student loans, which are incredibly and unnecessarily difficult for these students to discharge in bankruptcy. As a result, these students are burdened with loans that many will never pay off in their lifetimes. Those loans negatively impact students' abilities to make important life decisions. We have the opportunity to rectify this financial catastrophe for American students here and now.

I. The Student Loan Problem

Americans hold over $1.7 trillion in student loan debt.[2] In 2018-19, 61 percent of students at Illinois four-year institutions graduated with debt, and the average debt of those students was $29,666.[3] In Illinois, the average student loan borrower's debt burden is $37,600,

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[1] *Attorney General Raoul Announces Top 10 List of Consumer Complaints* (March 6, 2019), *available at* https://illinoisattorneygeneral.gov/pressroom/2019_03/20190306.html
[2] *Student Loans Owned and Securitized, Outstanding*, Board of Governors of the Federal Reserve System (US) (July 28, 2021), *available at* https://fred.stlouisfed.org/series/SLOAS.
[3] The Institute For College Access & Success (TICAS), https://college-insight.org/explore.

spread across over 1.5 million residents for a total of almost $60 billion.[4] Across the nation, millions of Americans are struggling, and many are failing, to repay their student loans.[5] The student loan default rate is alarmingly high. By some estimates, nearly 30% of federal student loan borrowers default within 12 years of entering college.[6] These loan burdens have dramatic, negative effects on the lives of average Americans. Americans saddled with student loan debt they cannot repay put off buying homes or getting married and starting families.[7] These impacts are also long-lasting: student loan debt affects not only young people but also those nearing retirement.[8] Further, the compounding effects of student debt are increasing gender and racial disparities.[9] Among full-time, full-year undergraduate students in 2015-2016, a higher percentage of Black students received loans (71%) than the next-closest group, white students (56%).[10]

A meaningful contributor to our nation's growing student debt load are predatory, for-profit schools. For-profit schools are the most expensive institutions by sector. For example, in Illinois for the 2018-2019 academic year, the average tuition at a 2-year public institution was $3,984 while the average tuition at a private, for-profit 2-year institution was $14,815.[11] Illinois community colleges are also open access institutions, meaning that any student is eligible to attend – including those who end up attending for-profit school alternatives.[12] For-profits also have the highest debt loads across degree types. For example, in 2015 and 2016, "[a]mong bachelor's degree completers, those who attended public institutions received the lowest cumulative loan amount ($28,600), followed by those who attended private nonprofit institutions ($33,900) and those who attended private for-profit institutions ($43,900)."[13] For-profit schools also have the worst repayment rates: a shocking 98% of the programs that failed the Department's Gainful Employment metrics, which measured students' ability to repay their loans

[4] Student Loan Debt By State, EducationData.org, https://educationdata.org/student-loan-debt-by-state.
[5] *See* PEW, Student Loan System Presents Repayment Challenges (Nov. 6, 2019), *available at* https://www.pewtrusts.org/en/research-and-analysis/reports/2019/11/student-loan-system-presents-repayment-challenges.
[6] *See* Judith Scott-Clayton, *The looming student loan default crisis is worse than we thought*, BROOKINGS INST. (Jan. 11, 2018), *available at* https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/.
[7] Leonhardt, Megan, *For many older millennials, student loan debt delayed buying homes, starting families and pursuing creative careers*, MSNBC (April 6, 2021), available at https://www.cnbc.com/2021/04/06/student-loans-affected-older-millennials-homes-families-careers.html.
[8] Trawinski, Lori, et al., *The Student Loan Debt Threat: An Intergenerational Problem*, AARP (May 14, 2019), *available at* https://www.aarp.org/ppi/info-2019/the-student-loan-debt-threat-an-intergenerational-problem.html.
[9] *See Deeper in Debt: Women & Student Loans*, AAUW (May 2017), *available at* https://www.aauw.org/resources/research/deeper-in-debt/; *see also* Miller, Ben, *New Federal Data Show a Student Loan Crisis for African American Borrowers*, Center for American Progress (Oct. 16, 2017), *available at* https://www.americanprogress.org/issues/education-postsecondary/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american-borrowers/.
[10] *Status and Trends in the Education of Racial and Ethnic Groups 2018*, National Center for Education Statistics (Feb. 2019), *available at* https://nces.ed.gov/pubs2019/2019038.pdf.
[11] TICAS, *supra* note 3.
[12] *See* Illinois Public Community College Act, 110 ILCS 805/3-17.
[13] *Fast Facts*, National Center for Education Statistics (2020), *available at* https://nces.ed.gov/fastfacts/display.asp?id=900.

by comparing debts to earnings, were at for-profit schools.[14] My office has long been grappling with these issues and supporting student borrowers, which I hope will help inform the Committee's analysis of needed reforms.

II. Illinois Attorney General Enforcement Actions

My office has extensive experience investigating fraud at for-profit schools and discharging debt students incurred as a result of those schools' fraudulent schemes. Since I took office in 2019, we have discharged over $20 million in fraudulently-obtained student loan debt for Illinois borrowers, all of it used to pay for-profit schools. Unfortunately for borrowers, our best efforts run up against the reality that the federal government is by far the largest lender in the student lending market. When the schools declare bankruptcy or seek similar refuge in receivership, funds are not available to make borrowers whole. Borrowers who need relief must be able to discharge their federal student loans. Our experience investigating Westwood College and ITT Technical Institute help illustrate the difficult position these students are in.

a. Westwood College

My office sued Westwood College in January 2012, nearly 10 years ago.[15] Despite the school's closure, the widespread discharge of students' private student loans, and my continuous advocacy, Westwood students are still waiting for relief on their federal student loans. My office brought claims against Westwood for misrepresenting the ability of students with Westwood credits to become police officers in Illinois. Many police departments, including the Illinois State Police and, until 2010, the Chicago Police Department, would not accept Westwood credits.[16]

We also had claims against the school for making private student loans they knew students could not repay. These loans were loss leaders designed to bring in just enough money to evade the 90/10 rule, which requires schools to get 10% of their revenue from sources other than Title IV federal aid. Default rates were as high as 90% for some cohorts.[17]

Westwood shut down nationwide in 2015 following a settlement with my office. While the fraudulently-issued private student loans were discharged, the loans held by the federal government remained. In 2016, my office applied to the U.S. Dept. of Education to discharge the loans of defrauded students. In 2019, I wrote to the Department, pressuring it to discharge the

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[14] Kreighbaum, Andrew, *Overburdened with Debt*, Inside Higher ED (Jan. 10, 2017), *available at* https://www.insidehighered.com/news/2017/01/10/federal-data-show-hundreds-vocational-programs-fail-meet-new-gainful-employment; *citing data available at* https://studentaid.gov/data-center/school/ge.

[15] The original complaint was filed in Cook County Chancery Court in January 2012. The complaint was subsequently amended and removed to U.S. District Court for the Northern District of Illinois *See People of the State of Illinois v. Alta Colleges, et al.,* Case No. 1:14-cv-03786, Document #: 57, Filed: 09/30/14.

[16] *Id. at para. 6.*

[17] *Id. at para. 114.*

Westwood loans.[18] In July 2021, the Department finally began to discharge some individual applications based on evidence we provided with our application.[19]

The relief is welcome, but students need more. The Department discharged loans for just under 500 borrowers, but we applied for relief for over 3,000 students who attended Westwood from 2004 to 2015. The tuition for Westwood's criminal justice degree was as high as $75,000, and Westwood had other similarly-priced programs.[20] There are thousands of other borrowers who were not part of our lawsuit and cannot repay their student loans. Many of those students have been paying their student loans for over 10 years, and would benefit immensely from the ability to discharge their loans in bankruptcy.

b. ITT Technical Institute

Similar to Westwood, ITT was a for-profit school that used unfair and deceptive tactics to enroll students. At its height, ITT was one of the largest for-profit schools in the nation, operating 145 campuses in 35 states, including four in Illinois.[21] Also similar to Westwood, ITT engaged in a scheme to evade the 90/10 rule by pressuring students to take out private loans the school knew the students could not repay.[22] Default rates were estimated to exceed 80% for some cohorts.[23]

ITT closed its doors and filed for bankruptcy in September of 2016. Like many for-profits, ITT charged higher tuition rates than public colleges offering the same programs and depended disproportionately on federal loans.[24] As of 2010, approximately 65.8% of ITT's revenue was derived from federal education funds: around $1.1 billion.[25] Instead of investing these funds in its students, in 2009, ITT allocated $489 million of its revenue (37.1%) to profit.[26]

To fund these profits, ITT use boiler room tactics to recruit students, demanding its recruiters make 140 sales calls a day and manipulate students' emotions through their "pain funnel" sales technique, whereby they ask increasingly painful questions to make the sale.[27] Our

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[18] *Attorney General Raoul Calls On U.S. Department of Education to Discharge Federal Student Loans* (June 5, 2019), *available at* https://illinoisattorneygeneral.gov/pressroom/2019_06/20190605.html.
[19] *Attorney General Raoul Announces Department of Education Will Discharge $16 Million in Federal Student Loans for Former Students of Westwood College* (July 9, 2021), *available at* https://illinoisattorneygeneral.gov/pressroom/2021_07/20210709b.html.
[20] *See People of the State of Illinois v. Alta Colleges, et al.,* Case No. 1:14-cv-03786, Document #: 57, para. 2, Filed: 09/30/14.
[21] *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, Committee on Health, Education, Labor, and Pensions, United States Senate (July 30, 2012) at 558, available at https://www.govinfo.gov/content/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf ("HELP Report").
[22] Illinois Assurance of Voluntary Compliance with PEAKS (Sept. 14, 2020) at para. 26, 57-58, available at https://www.illinoisattorneygeneral.gov/pressroom/2020_09/2020915-ITT_PEAKS_AVC-Final-Fully-Executed.pdf
[23] *Id*. at para. 62.
[24] "Compared to public colleges offering the same programs, the price of tuition is higher at ITT. Tuition for an Associate degree in business administration at ITT's Indianapolis, IN campus was $44,895. The same program at Ivy Tech Community College in Bloomington, IN costs $9,385." HELP Report at 566.
[25] HELP Report at 561.
[26] HELP Report at 564.
[27] HELP Report at 572-74.

investigation revealed that ITT misled students about a variety of important topics, including students' future expected income. The low-income consumers ITT targeted could rarely afford to pay its high tuition out of pocket, so ITT's predatory business model relied on these consumers obtaining federal loans. As of 2012, ITT estimated that 34% of its 2009 student cohort would default on their federal loans.[28] Meanwhile, the private loans that ITT pushed students into to skirt the 90/10 Rule were nothing more than loss leaders. Loans with Student CU Connect CUSO LLC (CUSO) had estimated default rates at 75%[29], and loans with PEAKS Trust 2009-1 (PEAKS) had estimated default rates to exceed 80%.[30]

My office has successfully discharged many of these private student loans. In June 2019, my office, along with 44 other attorneys general, announced a settlement against CUSO providing for more than $168 million in student loan debt relief nationwide, benefitting more than 18,000 students.[31] Similarly, in September 2020, my office, along with 47 other attorneys general, announced a settlement against PEAKS providing $330 million nationwide in private student loan discharges.[32]

However, just like Westwood, the federal loans continue to burden students. My office, continues to seek justice for these former students. Just this past April, a group of 25 states, including Illinois, submitted a group discharge application[33] to the U.S. Department of Education on behalf of ITT students who attended from at least 2007 to 2010. Those students were subject to misrepresentations by ITT, which grossly overstated incomes students could expect to receive with an ITT education.

I acknowledge and applaud the Department's June 16 announced granting of 18,000 borrower defense to repayment applications for former ITT students, worth approximately $500 million due, in part, to ITT's repeated earning misrepresentations. I also applaud the commendable results[34] achieved by former ITT students in their class action against ITT while acknowledging that ITT's bankruptcy ensures that these students will only receive pennies on the dollar. Therefore, despite years of dogged work by multiple parties, many former ITT students are still saddled with loans they cannot afford. Those most-negatively impacted by these debts – that is those most likely to declare bankruptcy – cannot afford to wait any longer for relief.

III. The Need for Bankruptcy Reform

We can only do so much to stem the tide of the student loan crisis by enforcing consumer fraud laws. Many for-profit schools file for bankruptcy themselves, including ITT and Corinthian

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[28] HELP Report at 533.
[29] Illinois Assurance of Voluntary Compliance with Student CU Connect CUSO LLC (June 18, 2020).
[30] *Id*.
[31] Attorney General Raoul Announces Settlement With ITT Tech Private Student Loan Lender (June 18, 2019) *available at* https://illinoisattorneygeneral.gov/pressroom/2019_06/20190618.html.
[32] Attorney General Raoul Announces $9.4 Million In Relief For Former ITT Tech Students In Illinois (Sept. 15, 2020) *available at* https://illinoisattorneygeneral.gov/pressroom/2020_09/20200915.html.
[33] Application for Borrower Defense on Behalf of ITT Students (April 1, 2021), *available at* https://illinoisattorneygeneral.gov/pressroom/2021_04/2021_States_Group_BD_Application_ITT.pdf.
[34] Student Class Action Settlement Agreement (Jan. 3, 2018), *available at* https://predatorystudentlending.org/wp-content/uploads/2018/02/2290-1-student-settlement-motion-exhibits.pdf.

Colleges, hampering our ability to make students whole. Students deserve the same right to bankruptcy relief as the schools.

The standard loan repayment plan is designed so that loans are payable within 10 years. Among those Americans who don't pay off their debt within this period are borrowers who may never be able to pay their debt. Under current law, the vast majority of these borrowers[35] are unable to discharge their student debt in bankruptcy. This leaves many of them burdened with student loan debt over the course of their entire lives, even when it is unlikely that they will ever be able to repay their debt. Allowing student loans to be freely dischargeable after 10 years from the time they first became payable serves two key purposes – it provides relief for Americans experiencing the most financial strain and who are otherwise eligible for bankruptcy relief, while also protecting the solvency of governmental student loan. Further, there are ample provisions in the Bankruptcy Code to guard against fraud, bad faith, and abuse and ensure relief is limited to those debtors deserving of relief.[36] Discharging such debts will allow these former students to have the lives they may have been putting off: buying homes, getting married, and even starting families.[37]

Further, I strongly urge the Committee to ensure that institutions are held accountable for failing to provide students an affordable education by tying bankruptcy discharges to institutional finances. Aligning incentives at institutions with students' financial success was a recommendation made by the Senate Committee on Health, Education, Labor, and Pensions in its landmark 2012 report[38] on for-profit schools and a goal of the 2014 Gainful Employment Rule, the rescission of which my office has challenged.[39] Failing to hold these predatory institutions accountable does nothing but line the pockets of shareholders at the expense of taxpayers. On the other hand, aligning incentives with giving the most vulnerable students the ability to discharge their loans in bankruptcy will undoubtedly reduce tuition costs and reduce the amount of outstanding student loan debt in this nation. Struggling borrowers have been waiting long enough. The time for reform is now.

Sincerely,

Kwame Raoul
Illinois Attorney General

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[35] As reported in one study, only 0.1 percent of all bankruptcy filers with student loan debt attempt to discharge student loans in bankruptcy. Jason Iuliano, *An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard*, 86 AM. BANKR. L.J. 495, 499 (2012).
[36] *See, e.g.,* 11 U.S.C. §§ 523(a)(2), (a)(4) (exceptions to discharge for debts incurred through misrepresentation or fraud), 11 U.S.C. §§ 547 (preferences), 548 (fraudulent transfers), 707(b) (dismissal or conversion for abuse); 1325(a)(3) and (a)(7) (good faith in filing the case and proposing the plan required).
[37] *See Student Loan Debt in Philadelphia*, Anna Tranfaglia, Federal Reserve Bank of Philadelphia, pg. 4, (May 2020) *available at:* https://www.philadelphiafed.org/-/media/frbp/assets/community-development/reports/student-loan-debt-in-philadelphia.pdf
[38] HELP Report at 3.
[39] *See Program Integrity: Gainful Employment*, 79 Fed. Reg. 64,890 (Oct. 31, 2014); *see also Pennsylvania et al. v. DeVos et al.*, 20-cv-01719, Dkt. 1 (D.D.C. June 24, 2020).