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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CENTER FOR EXCELLENCE IN HIGHER EDUCATION, an Indiana Corporation, *Plaintiff,* v. JOHN B. KING, JR., in his official capacity as Secretary of the United States Department of Education; UNITED STATES DEPARTMENT OF EDUCATION; and UNITED STATES OF AMERICA, *Defendants*.	**COMPLAINT AND JURY DEMAND** Case No. 2:16-cv-00911-PMW Magistrate Judge Paul M. Warner

COMPLAINT AND PRAYER FOR RELIEF

Plaintiff, Center for Excellence in Higher Education, Inc. ("Plaintiff" or "CEHE"), alleges the following, by and through its attorneys, for its complaint against Defendants John B. King, Jr., in his official capacity as Secretary of the United States Department of Education ("King" or the "Secretary"), the United States Department of Education (the "Department"), and the United States of America (the "United States"):

PARTIES

1. CEHE is a tax-exempt, nonprofit corporation under section 501(c)(3) of the Internal Revenue Code ("IRC"), incorporated under the laws of the State of Indiana, with its principal place of business at 4021 S 700 E, Suite 400, Salt Lake City, Utah 84107.

2. John B. King, Jr. is the Secretary of the Department. His official address is 400 Maryland Avenue, S.W., Washington, D.C. 20202. He is being sued in his official capacity. In that capacity, King has overall responsibility for the operation and management of the Department. King, in his official capacity, is therefore responsible for the Department's acts and omissions alleged herein.

3. The United States Department of Education is, and was at all times relevant hereto, an executive agency of the United States Government. The Department, in its current form, was created by the Department of Education Organization Act of 1979, 20 U.S.C. § 3401 *et seq.*, Pub. L. No. 96-88, 93 Stat. 668. The Department is headquartered at 400 Maryland Avenue, S.W., Washington, D.C. 20202.

4. The United States of America is the federal government formed under the Constitution of the United States, with its capital in Washington, D.C.

JURISDICTION AND VENUE

5. This action arises under the Higher Education Act of 1965, 20 U.S.C. § 1001, *et seq.* ("HEA"). This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331. The Court is authorized to issue the nonmonetary relief sought herein pursuant to 28 U.S.C. §§ 2201, 2202.

6. Venue is proper in this Court under 28 U.S.C. § 1391(e)(l) because this is an action against the United States, an officer of the United States, and an agency of the United States. A substantial part of the events or omissions giving rise to this action occurred in this judicial district. Plaintiff resides in this judicial district. No real property is involved in the action.

FACTUAL ALLEGATIONS

A. CEHE Acquires Ownership of Formerly Proprietary Colleges

7. CEHE is a nonprofit public benefit corporation incorporated under the Indiana Nonprofit Corporation Act of 1991 ("the Act") on December 22, 2006.

8. Founded by philanthropists who had donated millions of dollars to colleges and universities in the United States and who were concerned about higher education's continuing decline, CEHE was organized for the purpose of promoting excellence in higher education by working with philanthropists, institutions of higher education, and charitable organizations to develop and implement research and educational programs designed to ensure that American colleges and universities were training students for the challenges of a global marketplace. CEHE's founders believed that through effective philanthropy, due diligence, proper

governance, and management accountability, America's colleges and universities could be transformed into high-performing institutions that prepare today's students to be tomorrow's leaders.

9. CEHE is authorized under its articles of incorporation to pursue these purposes—as well as to assist and engage in all activities which serve chartable, educational, literary and scientific purposes, which are permitted to be carried on by nonprofit corporations under the Act and under the provisions of section 501(c)(3) of the IRC.

10. CEHE's founding Board of Directors consisted of Michael Leven, representing the Marcus Foundation, James Arthur Pope, representing the John William Pope Foundation, and Charles Harper, from the Templeton Foundation.

11. On September 4, 2007, the Internal Revenue Service ("IRS") classified CEHE as a public charity under 509(a)(1) and 170(b)(1)(a)(vi) of the IRC and exempt under section 501(c)(3) of the IRC from federal income taxation. See **Exhibit 1** (September 4, 2007 IRS 501(c)(3) Determination Letter).

12. On that date, the IRS issued CEHE a determination letter classifying CEHE as a tax-exempt nonprofit corporation under section 501(c)(3) of the IRC. The determination letter also confirmed that contributions to CEHE were tax deductible under section 170 of the IRC.

13. In 2012, after years of evaluating and commenting on higher education, CEHE began exploring the opportunity of tackling head-on the challenges facing higher education by becoming a direct provider of higher education.

14. Those investigations culminated in negotiations for CEHE to merge its operations with those of Stevens-Henager College, Inc., a Utah corporation; CollegeAmerica Denver, Inc., a

Colorado corporation; CollegeAmerica Arizona, Inc., a Colorado corporation; California College San Diego, Inc., a Utah corporation; and CollegeAmerica Services, Inc., a Nevada corporation (collectively, "the Acquired Corporations").

15. Prior to the merger, the Acquired Corporations were owned and operated by the Carl Barney Living Trust ("CBLT") whose trustee was Carl Barney ("Barney").

16. Several of the Acquired Corporations owned and operated colleges ("the Colleges") that participated in federal student financial aid programs ("Title IV programs") as eligible proprietary institutions of higher education.

17. At the time of the negotiations, CEHE's Board of Directors consisted of G.M. Curtis, a retired professor of history at Hanover College and Fellow at the Liberty Fund; Todd Zywicki, George Mason University Foundation Professor of Law, Senior Scholar of the Mercatus Center at George Mason University, and Senior Fellow at the F.A. Hayek Program; and William Dennis, former professor at Denison University and Senior Fellow of the Atlas Economic Research Foundation.

18. The individuals comprising CEHE's Board of Directors ("the independent board") had no ownership interest in or other affiliation with the Acquired Corporations, the Colleges, the CBLT, or Barney.

19. Prior to approving the merger, the independent board retained legal counsel, consulted valuation experts, and conducted significant due diligence on the Acquired Corporations, including an evaluation of the fair market value of the Colleges. See **Exhibit 2** (Declaration of John S. Mercer).

20. On December 31, 2012, the Acquired Corporations merged with and into CEHE. As a result of the merger, CEHE, as the surviving corporation, acquired ownership and operation of the Colleges as nonprofit colleges within the meaning of section 501(c)(3) of the IRC.

21. Following the merger, CEHE amended its articles of incorporation and bylaws, which included naming Barney as a member of CEHE and the Chairman of the Board of Directors. The independent board approved the amendments to CEHE's governance documents before the merger occurred.

22. CEHE's amended governance documents also added, among others, Todd Zywicki, William Dennis, and G.M. Curtis, former directors of the independent board, to CEHE's Board of Directors.

23. The Indiana Nonprofit Act of 1991, under which CEHE is incorporated, obligates CEHE's directors, including Barney, to discharge their duties (1) in good faith, (2) with the care an ordinary person in a like position would exercise under similar circumstances, and (3) in a manner the directors reasonably believe to be in the best interests of the corporation. Indiana Code Ann. § 23-17-13-1. CEHE's Board of Directors have always made a good faith effort to discharge their duties in compliance with these requirements and, in particular, so acted in their capacity as the independent directors with respect to the merger.

24. Barney and/or CBLT do not own CEHE's assets under the laws of the State of Indiana, which is where the nonprofit was organized and created. Similarly, neither have any ownership rights to the assets of CEHE.

B. The IRS Approved CEHE as an Educational Organization

25. Soon after the merger, CEHE submitted a letter to the IRS requesting confirmation of its public charity status and reclassification from that of a publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC to that of an educational organization under sections 509(a)(1) and 170(b)(1)(A)(ii) ("the determination letter request"). See **Exhibit 3** (February 27, 2013 Post-Merger Request Letter to IRS).

26. Enclosed with the determination letter request, CEHE included an executed Form 8940, "Request for Miscellaneous Determination," and a completed Schedule B of the IRS Form 1023 with respect to that section of the form applicable to educational institutions.

27. The determination letter request also provided significant details about the terms of the merger and related transactions, including all of the information the IRS needed to determine whether the merger agreement and related financial transactions complied with the IRS' limitations on private inurement, prohibitions against private benefit, and rules concerning excess benefit transactions in section 4958 of the IRC.

28. The determination letter request explained that:

a. CEHE issued promissory notes for the acquisition of the Colleges in an amount that reflected their fair market value;

b. CEHE's independent Board of Directors reviewed the form and amount of consideration to be paid to the former owner of the Acquired Corporations, and concluded (i) that the merger provided CEHE with fair market value; (ii) that CEHE would provide a modest consulting fee, substantially lower than fair market value, to the former owner for his continued advisory services; and (iii) that leases of land and buildings from the former owner were at fair market rates; and

c. CEHE's independent Board of Directors approved all changes to CEHE's corporate governance before consummation of the transaction.

29. On July 25, 2014, the IRS issued CEHE a determination letter confirming CEHE's tax-exempt classification under section 501(c)(3) of the IRC. See **Exhibit 4** (July 25, 2014 IRS Letter Updating Charity Status). The determination letter further explained that, upon review of CEHE's determination letter request and supporting documentation, the IRS concluded CEHE met the requirements for classification as an educational organization as described in sections 509(a)(1) and 170(b)(1)(A)(ii) of the IRC.

C. New Ownership and Control of the Colleges by the Nonprofit Organization Triggers a Change of Ownership and Control Under the Department's Regulations

30. Prior to the merger, the Acquired Corporations owned the Colleges and they were proprietary institutions pursuant to the Department's regulatory definition. At that time, each of the Colleges participated in Title IV programs, operating multiple campuses in several states. All of the Colleges were in good standing with their respective state regulatory agencies, accrediting bodies, and the Department.

31. Upon the merger, the Acquired Corporations merged with and into CEHE, transferring exclusive ownership and operational control of the Colleges into CEHE, a nonprofit corporation.

32. Following the merger, the Colleges met the definition for a nonprofit institution under the HEA, as ones "owned and operated by one or more nonprofit corporations or

associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual." 20 U.S.C. § 1003.

33. Likewise, the Colleges met the Department's regulatory definition for a nonprofit institution contained in 34 C.F.R. § 600.2. To wit:

a. The Colleges were owned and operated by CEHE, a nonprofit corporation, with no shareholder or individual benefiting from the net earnings of the corporation;

b. The Colleges were legally authorized to operate as nonprofit organizations in each state in which they are physically located; and

c. The IRS determined that CEHE was a tax-exempt organization to which tax contributions are deductible under 501(c)(3) of the IRC.

34. Under the Department's regulations, this change in ownership and control terminated the Colleges' eligibility to participate in federal student financial aid programs under the HEA. 34 C.F.R. § 600.31.

35. Under the HEA, when an institution of higher education undergoes a change in ownership or control, the institution's program participation agreement expires and the institution's eligibility to participate in HEA programs ceases. 34 C.F.R. § 600.31.

36. While the loss of eligibility to participate in HEA programs occurs when a new owner acquires an institution, the Department also recognizes other kinds of "covered transactions" that result in a change in ownership or control, including when a for-profit institution becomes a nonprofit institution. 34 C.F.R. § 600.31(d)(7); 59 Fed. Reg. 22324 (Apr. 20, 1994); Federal Student Aid Handbook, Volume 2, Chapter 5, p. 2-92 (August 2015).

37. Indeed, the Department has clarified that a change in an institution's tax status "from a taxable to a tax-exempt entity that qualifies under 501(c)(3) of the Internal Revenue Service. . . constitutes a change of ownership and control." 59 Fed. Reg. 22324 (Apr. 20, 1994).

38. To reestablish the Colleges' eligibility to participate in HEA programs, the Department's regulations required CEHE to submit applications to the Secretary to approve the Colleges' new owner's participation in Title IV federal financial aid programs. The Department's regulations permit the Secretary to continue an institution's participation in Title IV programs on a provisional basis while the institution awaits reinstatement of eligibility for the institution's new owner. 34 C.F.R. § 600.20(g).

D. CEHE Submits A Change of Ownership Application Through the Department's Pre-Acquisition Review Process

39. Given the significant effect a change in ownership has on an institution's participation in Title IV programs, the Department allows institutions anticipating a change in ownership to submit a pre-acquisition review application for its review. The pre-acquisition review application is submitted via an electronic application ("E-App") system established and maintained by the Department. The purpose of the pre-acquisition review is to allow the Department to review the proposed change of ownership and identify any concerns, clarifications, or issues it may have before the transaction is consummated.

40. Although the Department neither approves nor denies a pre-acquisition review application, the Department notifies the institution whether or not the pre-acquisition review application is approvable, if the institution properly completed the E-App, and whether the Department identified any items that need to be addressed before a final application would be approvable. 64 Fed. Reg. 58608 (Oct. 29, 1999).

41. The purpose of this pre-acquisition review process is to permit the Department to determine whether the institution has completely and accurately answered all the questions in the application. 64 Fed. Reg. 58608; Department of Education, Federal Student Aid Handbook, Vol. 2, Ch. 5, p. 2-94 (August 2015).

42. The pre-acquisition review process also allows the institution to ascertain what, if any, additional requirements the Department may impose on the institution to re-establish eligibility. This is the fundamental purpose of the Department's pre-acquisition review process.

43. CEHE took advantage of the Department's pre-acquisition review process. Before acquiring the Colleges, CEHE apprised the Department of the planned changes to the corporate ownership of the Colleges.

44. In a letter dated October 2, 2012, counsel for the Colleges informed the Department of the planned merger of the Acquired Corporations into CEHE. See **Exhibit 5** (October 2, 2012 Pre-Acquisition Review Request Letter). The letter also informed the Department that CEHE was recognized by the IRS as a nonprofit corporation exempt from federal income taxation since 2007.

45. Counsel further explained that, upon completion of the merger, CEHE would be the sole owner and operator of the Colleges. The letter informed the Department about the anticipated funding for the transaction and the effect of the planned transaction on the Colleges' existing leases, facilities, and operational resources.

46. Finally, in view of the significant stake the Colleges—and their students—had in ensuring a smooth change of ownership, the letter inquired as to whether or not the merger of the

Colleges into CEHE would prompt the Department to impose any special terms or conditions upon CEHE in new program participation agreements.

47. On November 2, 2012, the Department responded to the Colleges' pre-acquisition review request by requesting additional documentation it wanted to examine including the following:

a. A copy of CEHE's 501(c)(3) determination letter from the IRS;

b. The names of the individuals or entities comprising CEHE's Board of Directors;

c. A copy of CEHE's bylaws and articles of incorporation;

d. A detailed description or copy of any draft contracts or agreements that CEHE may enter into as a result of the change of ownership; and

e. A copy or detailed description of the planned payment arrangements associated with the loans necessary to consummate the transaction of the change in ownership.

48. Counsel for the Colleges responded to the Department's November 2, 2012 letter shortly thereafter, submitting the required pre-acquisition review E-App and providing the Department with the requested information and documentation. See **Exhibit 6** (November 2, 2012 Response to Pre-Acquisition Review Request Letter).

49. CEHE's November 2, 2012 letter included as attachments, CEHE's 501(c)(3) determination letter (dated September 4, 2007), the names of the individuals and entities comprising CEHE's Board of Directors, and CEHE's articles of incorporation and bylaws.

50. The response letter also included a detailed memorandum describing the anticipated transaction. The memorandum included draft contracts and agreements and a detailed description of the planned payment arrangements to consummate the merger.

51. The detailed description of the planned payment arrangements that the Colleges provided to the Department disclosed the existence of seller loans and identified how the payment amounts would be determined and the manner in which payments would be made to the seller.

52. By letter dated December 20, 2012, the Department informed the Colleges of the results of its pre-acquisition review and its assessment of CEHE's response and the related documentation the Department had received from the Colleges. See **Exhibit 7** (December 20, 2012 Pre-Acquisition Review Letter from Department). The Department reminded CEHE that the Secretary could continue an institution's participation in Title IV programs on a provisional basis *only* if the institution submitted a materially complete application within ten (10) business days after the change in ownership occurred.

53. In its pre-acquisition review response, the Department added that, to the extent CEHE completed the E-App and submitted the required documentation following the merger, the Department foresaw no impediment to the issuance of a temporary program participation agreement upon CEHE becoming the owner and operator of the Colleges.

54. In the Department's pre-acquisition review response, it identified only one unique requirement with which the Colleges would have to comply following the change in ownership from proprietary to nonprofit. Notably, the Department stated that, because the change in ownership included an institutional change in structure from proprietary to nonprofit, CEHE would have to report the Colleges' percentage of annual revenue received from Title IV programs (the "90/10 rule") for the Colleges' upcoming fiscal year ending December 31, 2013. CEHE relied on the Department's representation in this regard. In its letter informing the

Colleges of the results of its review, the Department provided no indication that it would classify the Colleges as proprietary institutions for Title IV regulatory purposes following the change in ownership while the Colleges' E-Apps were pending.

55. The Department had previously announced that "the change from for-profit to nonprofit status warrants adopting as those conditions of the required provisional certification *those restrictions that would have applied to the institution had it remained a for-profit entity*." 59 Fed. Reg. 22324 (Apr. 20, 1994). Importantly, however, those conditions of the provisional certification that would apply, had the institution remained a for-profit entity, must be specified in the institution's provisional program participation agreement. 34 C.F.R. § 668.14(a)(1); see also Mission Group Kansas v. Riley, 146 F.3d 775 (10th Cir. 1998) (addressing the Secretary's assertion that he was authorized to "[specifically] condition[] [an institution's] receipt of Title IV funds on their complying with the [90/10] rule for a provisional period – despite [the institution's] non-profit status").

56. This requirement for specificity in the provisional program participation agreement applies equally to the temporary provisional program participation agreement issued to CEHE immediately following its ownership of the Colleges. Consistent with its regulations, the Department specified only one for-profit requirement (the 90/10 Rule) with which the Colleges were required to comply following the change in ownership. The 90/10 Rule requirement was specifically limited to the Colleges' first fiscal year following the change in ownership. See Department of Education, Federal Student Aid Handbook, Vol. 2, Ch. 5, p. 2-65 (August 2015) ("A school that converts from a for-profit to a nonprofit status must report its

compliance with the 90/10 revenue test for the first year after its conversion."); See also **Exhibit 7**.

57. CEHE informed the Department of the Colleges' change in ownership within ten business days of the transaction closing and provided supplementary documentation to its previously filed E-Apps, as required by 34 C.F.R. § 600.20(g).

58. Upon receipt and verification of CEHE's materially complete application, the Department, on January 31, 2013, issued CEHE temporary provisional program participation agreements ("TPPAs") for the Colleges. The TPPAs continued the Colleges' participation in Title IV programs on a provisional basis while the Department completed its review of CEHE's applications for new program participation agreements following the Colleges' change of ownership.

E. The Department Delays Action On CEHE's Approvable Application For Over Forty-Four Months

59. On January 31, 2013, the Department issued TPPAs to CEHE for the Colleges. The TPPAs continued the Colleges' participation in Title IV programs on a provisional basis while the Department continued its review of CEHE's applications for new program participation agreements following the Colleges' change in ownership. 34 C.F.R. § 600.20(h).

60. Because CEHE was a nonprofit corporation at the time it acquired the Colleges, CEHE was subject to the regulations applicable to nonprofit organizations after the merger. CEHE was also required to submit new applications for the Colleges' participation following the merger.

61. Although CEHE was required to comply with the Department's 90/10 Rule for the 2013 fiscal year, the Secretary did not impose that requirement in the TPPAs it issued to

CEHE. Regardless, each of the Colleges complied with the 90/10 Rule during the 2013 fiscal year.

62. Following the Secretary's execution of the TPPAs on January 31, 2013, the Colleges were allowed to continue to participate in Title IV programs on a month-to-month basis.

63. Since issuance of the TPPAs, several of the Department's public disclosures confirmed the Colleges' nonprofit status. For example, data collected and reported in the Department's College Scorecard, College Navigator, and Integrated Postsecondary Education Data System websites list the Colleges as nonprofit institutions. Additionally, all of CEHE's actions, communications, and correspondence with the Department since the merger have correctly identified the Colleges as nonprofit institutions.

64. Each year, the Department requires institutions participating in Title IV programs to submit audited financial statements in order to demonstrate that they meet the Department's financial responsibility standards. 34 C.F.R. § 668.171(a). The Secretary determines whether an institution is financially responsible, in part, based on the institution's equity, primary reserve, and net income ratios. 34 C.F.R. § 668.171(b)(1). Under the Department's regulations, the formula for these ratios for nonprofit institutions is different from the formula for proprietary institutions. 34 C.F.R. § 668.172(b)(1-2). An independent auditor must prepare an institution's annual audited financial statement report and, in order to do so, must know whether to apply the nonprofit or for-profit institution formula for the ratios.

65. Moreover, pursuant to the regulations of the Office of Management and Budget applicable to nonprofit audits and generally accepted accounting principles ("GAAP"), the

accounting standards applicable to nonprofit institutions of higher education differ substantively from those applicable to proprietary institutions.

66. Between November 2012 and April 2016, CEHE submitted to the Department four annual audited financial statements. Each of these audited financial statements clearly identified CEHE's 501(c)(3) status and the Colleges' nonprofit status.

67. The Department accepted CEHE's audited financial statements that were prepared in accordance with the accounting standards applicable to nonprofit corporations and/or institutions. It also relied upon CEHE's audited financial statements to make determinations as to the Colleges' compliance with the Department's financial responsibility requirements. Indeed, following its review of CEHE's 2013 and 2014 audited financial statements, the Department concluded that CEHE's financial responsibility composite score fell short of the Department's regulatory minimum. As a result, the Department demanded a substantial letter of credit ("LOC"). The Department's initial LOC demand to CEHE was for $71,600,000, which represented 50% of the Title IV distributed by the Colleges in the previous financial aid award year. Historically, LOC's required by the Department based on concerns about an institution's financial responsibility have been much smaller than the amount the Department demanded of CEHE.

68. The Department informed CEHE of its demand for an LOC in a letter dated January 26, 2015. See **Exhibit 8** (January 26, 2015 Department Letter Demanding 50% Letter of Credit). The letter explained that the Department required an LOC because CEHE's composite score was below the Department's minimum requirement. The Department knew at the time it required CEHE to post the LOC that CEHE was a nonprofit corporation operating the Colleges

as nonprofit institutions because CEHE's audited financial statements for 2013 and 2014 had been prepared in accordance with the standards for nonprofit institutions.

69. From April through June 2015, CEHE made numerous urgent requests to meet with Department officials to discuss the LOC. The Department repeatedly refused to meet. It was only after CEHE's numerous electronic mails and letters explaining why the Department's demand for an LOC of over seventy million dollars was unwarranted that the Department ultimately agreed to lower its LOC demand to $42.9 million dollars on May 1, 2016.

70. However, even with the lower LOC demand, CEHE advised the Department that it could not secure such a large LOC given the Colleges' financial position and the current banking environment in the United States. CEHE further informed the Department that the only reason CEHE failed to meet the composite score minimum was because of the debt and goodwill on CEHE's balance sheet. CEHE demonstrated to the Department that CEHE met all of the other financial responsibility requirements. Finally, notwithstanding CEHE's otherwise overall financial stability, CEHE informed the Department that its demand for an immediate $42.9 million dollar LOC would cause the Colleges to be unable to pay on-going expenses and payroll and therefore force the Colleges to close.

71. On May 11, 2015 CEHE sent a letter to the head of the Department's Federal Student Aid ("FSA") division requesting an immediate meeting to avoid the closure of the Colleges and the negative impact closure would have on students and employees. The Department again refused to meet. It was only after a Utah Congressional delegation intervened on behalf of CEHE that the Department agreed to meet.

72. On May 16, 2015, the Department advised Eric Juhlin, CEHE's Chief Executive Officer, that it would meet with him on May 20, 2015 to discuss its $42.9 million dollar LOC demand. However, before the Department would meet with CEHE on May 20, 2015, it demanded an initial $14.3 million dollar LOC by May 18, 2015. CEHE asked the Department to suspend any LOC demand until after the parties had the chance to meet on May 20, 2015. The Department agreed to do so, but only on the condition that CEHE immediately suspend the Colleges' participation in Title IV programs. CEHE had no choice but to suspend the Colleges' participation in Title IV programs because of its need to meet with the Department.

73. Mr. Juhlin, CEHE's legal counsel, and CEHE's Chairman met with Robin Minor, head of the FSA division, and other Department officials on May 20, 2015. During the meeting, Department officials refused to answer any questions from CEHE. Initially, the Department officials said that their meeting participation would be limited to listening to what CEHE had to say and that they would not respond to any questions from CEHE. Despite months of prior communications between the parties, the Department revealed for the first time during the meeting that its LOC demand was also predicated upon a pending federal False Claims Act *qui tam* action and a lawsuit by the Colorado Attorney General against CEHE. As of the date of the meeting, each case was still in the pleading and discovery stage.

74. During the meetings, CEHE presented a plan to restructure its debt and other balance sheet accounts designed to cause CEHE to meet the required composite score. CEHE also sought assurances from the Department that, if it implemented the plan, the LOC demand would be withdrawn following CEHE's submission of audited financial statements demonstrating a compliant composite score. The Department refused to provide any such

assurance. Instead, the Department stated it would take several months review any new audited financial statements and renewed its demand that CEHE immediately post an LOC for $42.9 million dollars.

75. Ultimately, the Department agreed to an alternative to its LOC demand. The Department said CEHE could make three escrow deposits of $14.3 million dollars each, totaling $42.9 million dollars, by December 31, 2015, in lieu of a letter of credit.

76. CEHE then implemented a restructuring plan, which included, in late 2015, a renegotiation and reduction of existing debt. The reduction totaled $300,000,000. Accordingly, CEHE's audited financial statements for fiscal year 2015 were submitted to the Department in March 2016. The audited financial statements demonstrated that CEHE met the Department's required composite score of at least 1.5. Despite CEHE's satisfaction of the 1.5 composite score along with all of the other requirements of financial responsibility and its request that the escrow funds be released, to date, the Department has refused to release them.

77. CEHE's 2013, 2014, and 2015 annual audited financial statement reported the Colleges' composite score *using the calculation applicable to nonprofit institutions* and each audited financial statement submitted to the Department conspicuously identified CEHE's and the Colleges' nonprofit status. In fact, the Colleges' composite score would have been higher if it had been prepared under the Department's standards applicable to proprietary institutions.

78. As noted above, the Department used the 2013 and 2014 audited financial statements as the basis for its demand for an LOC. In making its LOC demand, the Department treated the seller notes as debt. Had the Department treated the seller notes as equity equivalents,

CEHE's composite score would not have been below the Department's required threshold because there would have been far less debt and a significant increase in equity equivalents.

79. In its August 11, 2016 Decision on Change of Ownership ("Decision") demanding that the Colleges be considered proprietary institutions for Title IV purposes, the Department has chosen to treat the seller notes as equity equivalents as opposed to debt. The Department now claims that the payments on the seller notes are distributions of net profits such as a dividend. **Exhibit 9**.

80. The Department has offered no statutory or regulatory basis for characterizing the seller notes as debt in its demand for an LOC in early 2015 and then treating the seller notes as equity equivalents in its August 2016 Decision.

81. By September 2013, the Department had received all of the merger documents (including the seller notes) and related information necessary to make a determination of whether the seller notes were equity equivalents or debt. The Department has never explained why it took almost three years for it to issue its Decision. It also appears that the Department conveniently changed its characterization of the seller notes to meet its political purposes with respect to the demand for an LOC and its Decision denying nonprofit status under Title IV. Such action is arbitrary and capricious.

82. The Department knew at the time it required CEHE to post the escrow deposit that CEHE's Colleges were owned and operated by a nonprofit corporation and that CEHE was operating the institutions as a nonprofit. As noted above, CEHE had prepared and submitted annual audited financial statements to the Department under nonprofit institution auditing standards and the Department had accepted them.

83. Despite knowing and previously accepting that the Colleges had been operating as nonprofit institutions, the Department *first* notified CEHE that the Department wanted to consider the Colleges as proprietary institutions in a letter dated March 15, 2016. See **Exhibit 10** (March 15, 2016 Department Initial Notice Letter). The Department has never explained why it took thirty-nine (39) months after CEHE acquired the Colleges and one year after it imposed the LOC requirement on CEHE's institutions to reach this conclusion.

84. The Department's March 15, 2016 letter included no reference to any statutory or regulatory support for an assertion that the Colleges must be proprietary institutions for Title IV purposes even though the change of ownership and control transferred to a nonprofit corporation and even though the changes necessitated the applications. See 34 C.F.R. § 600.20(b)(2)(iii) (requiring an institution to reapply "to the Secretary for a determination that institution" meets the applicable requirements to "[r]eestablish eligibility . . . *after the institution changes its status* as proprietary, nonprofit, or public institution") (emphasis added).

85. Upon information and belief, the Department has arbitrarily targeted institutions submitting change in ownership applications in instances in which the new owner is a nonprofit corporation by treating those institutions as if they were proprietary institutions during the pendency of their applications. This practice is improper and unjust because it is occurring without forewarning and is contrary to the Department's historic practice. It is being done solely to subject the institutions to more burdensome compliance requirements.

86. For example, on August 29, 2015, the Department notified CEHE via email that the Colleges had failed to report information required by the gainful employment regulations

applicable to proprietary institutions. See **Exhibit 11** (August 29, 2015 Department Electronic Mail re: Gainful Employment).

87. The Department's gainful employment regulations became effective on July 1, 2015, some two-and-one-half years after CEHE acquired the Colleges. Regardless, these regulations are not applicable to CEHE because CEHE's Colleges are nonprofit colleges exclusively offering degree-granting programs.

88. In an email dated August 30, 2015, CEHE promptly notified the Department that CEHE had no programs to which gainful employment requirements applied because CEHE's nonprofit colleges were exclusively offering degree-granting programs.

89. The Department's March 15, 2016 letter indicates that the Department had always considered the Colleges for-profit institutions. **Exhibit 10**. This letter reversed the Department's previous notification that the Colleges were required to comply with only one regulation applicable to proprietary institutions (i.e., the 90/10 Rule) for the year immediately following the change in ownership. **Exhibit 7.** As such, the Department retroactively applied proprietary school regulations to CEHE.

90. CEHE responded to the Department's March 15, 2016 letter by letter dated April 20, 2016. See **Exhibit 12** (April 20, 2016 CEHE Letter to Department). The letter expressed CEHE's concern about the Department's contention that it considered the Colleges to be for-profit institutions despite the fact the institutions had been operating as nonprofit institutions for over three years. Since it was such a shocking and important matter to CEHE, it asked for an immediate meeting or a telephone conference with the Department to resolve the issues.

91. Upon information and belief, the Department is subjecting converted nonprofit institutions to for-profit requirements, without prior notice, while the institution's change in ownership applications are pending before the Department. Such actions indicate an intentional effort to close those formerly for-profit institutions. As noted above, the Department's recent efforts to impose its gainful employment rules on nonprofit institutions are particularly revealing in this regard. For example, during the negotiated rulemaking sessions for gainful employment, the President's Special Assistant for Education publically observed that the Administration "believe[s] [it] needs to cut [for-profits] out. . . of federal aid." Roberto J. Rodriguez, Conference on Student Loans-Opening Plenary Session (Oct. 24, 2013). The assistant affirmed that this was "the whole premise behind [the] [gainful] employment regulation[s]." Id.

92. Upon information and belief, the Department intentionally delayed action on CEHE's change of ownership applications pending resolution of litigation challenging the implementation of the gainful employment regulations. See Assoc. of Private Sector Colleges & Universities v. Duncan, No. 15-5190, 2016 U.S. App. LEXIS 4381 (D.C. Cir. Mar. 8, 2016).

F. The Department Acted Arbitrarily and Capriciously in Denying CEHE's Application and its Request for Reconsideration

93. On August 11, 2016, approximately forty-four months after CEHE submitted its change of ownership applications, the Department issued a press release along with a redacted version of the Decision denying CEHE's Colleges nonprofit status for Title IV regulatory purposes. See **Exhibit 13 (**August 11, 2016 Press Release Denying Request to Convert to Non-Profit Status ("Press Release")).

94. The second sentence of the Press Release clarified how this affected CEHE going forward: "The denial means that the colleges' programs must continue to meet requirements under the federal Gainful Employment regulations."

95. CEHE first learned of the Department's Decision through the Department's Press Release. **Exhibit 9**.

96. The Decision claims that the Colleges failed to meet the definition of a nonprofit institution set forth in 34 C.F.R. § 600.2.

97. The Department defines a "nonprofit institution" as an institution that is (i) "owned by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual"; (ii) "legally authorized to operate as a nonprofit organization by each State in which it is physically located"; and (iii) "determined by the U.S. Internal Revenue Service to be an organization to which tax contributions are tax-deductible in accordance with section 503(c)(3) of the Internal Revenue Code." 34 C.F.R. § 600.2.

98. Alternatively, in a different subsection, the Department defines a nonprofit institution simply as any entity that "[i]s determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code." 34 C.F.R. § 600.2.

99. Under the HEA, a proprietary institution is by definition not "a public or other nonprofit institution." 20 U.S.C. § 1002 (b)(1)(C); 34 C.F.R. § 600.5(a)(1).

100. The Decision asserts, "[a] state authorization and IRS determination do not themselves confer nonprofit status for Title IV purposes." The Department stated further that it

"must make an independent determination that the institution is 'owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholders or individual.'"

101. The Department denied CEHE's application to participate in Title IV programs under its nonprofit status stating that it reached this conclusion based on this independent determination. The Decision argues that the Colleges failed to meet the definition of nonprofit institutions because the merger transaction "was structured" to benefit the former owner and because the former owner "retained control" over the Colleges as a member of CEHE and as "Board Chairman of CEHE's board."

102. The Department identified three particular findings supporting its Decision:

a. The financing for the merger transaction "results in financial benefit which inures to [the former owner]" of the Colleges;

b. The Colleges leased property owned by the former owner and "lease payments" "provide[d] additional economic benefit" to the former owner; and

c. The former owner "retained control" of the Colleges in his role as member of CEHE and as "Board Chairman of CEHE's Board."

See **Exhibit 9.**

103. The Decision also informed CEHE that the Colleges would have to be operated as proprietary institutions for Title IV regulatory purposes if the Colleges wanted to continue participating in Title IV programs. In other words, CEHE would have to "meet the. . . HEA reporting and program eligibility requirements applicable to for-profit institutions, including the 90/10 eligibility requirements. . . and the gainful employment program requirements. . . ."

104. The Department's Decision instructed CEHE to submit gainful employment certifications within three weeks notwithstanding the fact the Department was aware that the Colleges had already been operating as nonprofit institutions for almost four years.

105. As noted in its Press Release, the Department intended its Decision to send a "clear message" to other schools thinking of "converting to non-profit status" – "Don't waste your time."

106. The Department on August 11, 2016 issued the Decision. It established a ten-day deadline for CEHE to submit any request for reconsideration CEHE intended to make.

107. On August 12, 2016, CEHE asked the Department for an extension of the ten-day deadline to submit a request for reconsideration. CEHE made the request due to the significance of the issues, the uncertainty caused by the Decision, and concern about the impact on the Colleges' students and employees. While it took the Department almost four years to evaluate and respond to CEHE's applications for changes in ownership, CEHE only asked for a thirty-day extension. See **Exhibit 15** (August 12, 2016 Letter to Department Requesting Extension).

108. The Department denied CEHE's request for an extension on August 16, 2016, asserting that the 10-day period was sufficient to provide any additional factual information. See **Exhibit 16** (August 16, 2016 Denial of Request for Extension Re: Request for Reconsideration).

109. CEHE met the deadline by filing a Request for Reconsideration on August 21, 2016 with the Department ("Request for Reconsideration"). See **Exhibit 14**.

110. Since the Decision imposed an ultimatum that CEHE had to either sign Provisional Program Participation Agreements by August 31, 2016 to avoid losing the right to participate in Title IV programs, CEHE asked the Department to extend the deadline for

executing the Provisional Participation Agreements to September 30, 2016. See **Exhibit 17** (August 16, 2016 Letter to Department Requesting New Deadline to Sign PPAs). The request was also made to provide the Department with adequate time to carefully review and consider CEHE's request for reconsideration.

111. The Department denied CEHE's request on August 17, 2016. See **Exhibit 18** (August 17, 2016 Denial of Request for Extension of Time to Respond). The denial also reiterated the Department's contention that the Colleges' gainful employment certifications were past due. This assertion is further indicates the Department's improper motives and/or bad faith. CEHE had previously told the Department that, solely to preserve the Colleges' participation in Title IV programs, CEHE would submit the gainful employment certifications despite not being lawfully subject to them. CEHE then asked the Department to make its E-Apps accessible so CEHE could update its information including submitting the gainful employment certifications. Because the database is not accessible to CEHE without the Department's assistance, CEHE's E-Apps are technically still under review. The Department never responded to CEHE's requests seeking access to open the E-Apps. In any event, CEHE could not update the E-App to provide the gainful employment certifications because the Department refused to act.

112. Contrary to subsequent actions described below, the denial also promised that if a request for reconsideration was submitted, "the Department will review and consider that request." **Exhibit 18**.

113. In what may be an unprecedented action by the Department, on August 22, 2016, less than 24 hours after CEHE submitted a 17-page Request for Reconsideration that included over 90 pages of exhibits, the Department denied CEHE's Request for Reconsideration through a

press statement by its spokeswoman, Kelly Leon. She stated that the Department was "standing firmly behind its decision to deny" CEHE's applications seeking to the Colleges recognized as nonprofit institutions for purposes of Title IV programs. The Department's denial was also reported by media groups, such as *Politico*. The press statement was made even though CEHE has not received any communication in response to its Request for Reconsideration from the office that issued the Decision.

114. CEHE feels compelled by duress and the lack of a reasonable alternative to sign the PPAs proffered by the Department because of the catastrophic impact the Department's denial of access to Title IV programs would have on the students and employees at the Colleges, the economic damage CEHE would suffer, and in order to mitigate any such damages. CEHE intends to do so, under protest, by the deadline unilaterally imposed by the Department. Notwithstanding, CEHE is reserving all of its available legal rights and remedies. By signing the PPAs because of the Department's coercion, CEHE is not waiving any of its rights and expressly reserves all rights to pursue any remedies available to it so that the Colleges are properly recognized and granted status as nonprofit institutions having all rights to participate in Title IV programs, among any other remedies and damages.

G. The Department's Application Of Its Nonprofit Requirements Is Arbitrary And Capricious and Inconsistent with the Treatment of Similarly Situated Nonprofit Schools

115. The Department's three-part definition of a nonprofit institution in its regulations implements the definition of a nonprofit institution found in the HEA. The HEA defines a nonprofit institution as "a school. . . or institution owned and operated by one or more nonprofit

corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual." 20 U.S.C. § 1003.

116. The private inurement prohibition contained in the HEA's definition of a nonprofit is essentially the same language included in the definition of a nonprofit under section 501(c)(3) of the IRC, which includes, in relevant part, that "no part of the net earnings of [the nonprofit corporation] inures to the benefit of any private shareholder or individual."

117. Indeed, before the HEA was adopted in 1965, the IRS had developed an interpretation of private inurement under section 501(c)(3) of the IRC. Congress intended this established meaning of the private inurement prohibition to control in the HEA.

118. At the time of the enactment of the HEA, federal courts had interpreted the private inurement prohibition of 501(c)(3) to permit tax-exempt nonprofit corporations to borrow money from an insider to purchase assets at fair market value and to repay the debt with revenue from the tax-exempt operations ("Transactional Exemption").

119. Federal courts have clarified that the Transactional Exemption applies to any transaction negotiated at arm's length with a person having no prior relationship with the exempt entity, regardless of the relative bargaining strength of the parties or the resultant control that the contract gives a party over the exempt entity.

120. The IRS formally adopted this position in Treasury Regulation 53.4958-4.

121. This regulation provides that the private inurement prohibition does not apply to fixed payments made pursuant to an initial contract, even if such payment would otherwise constitute an excess benefit transaction. See Treasury Regulation 53.4958-4(a)(3)(i) and (vii).

122. An initial contract is a binding written contract between an organization and an individual who was not an insider immediately prior to entering into the contract. See Treasury Regulation 53.4958-4(a)(3)(iii).

123. A fixed payment means an amount of cash or other property specified in an initial contract or determined by a fixed formula specified in the contract that is paid or transferred in exchange for the provision of specified services or property. See Treasury Regulation 53.4958-4(a)(3)(ii)(A).

124. A fixed formula may incorporate an amount that depends on future specified events or contingencies (e.g., revenues generated by activities of the organization) provided that no person exercise discretion when calculating the payment amount or in determining whether payment is made. These regulations permit the use of a cash-flow-based formula to determine the amount and timing of payments.

125. Prior to its Decision requiring that CEHE's Colleges be considered proprietary institutions, the Department had consistently interpreted 34 C.F.R. § 600.2 in accordance with the IRS' interpretation of private inurement when ruling on change of ownership applications following an institution's change to nonprofit status.

126. Upon information and belief, the Department has approved numerous change of ownership applications from formerly proprietary institutions seeking to participate in Title IV programs as nonprofit institutions following transactions in which the nonprofit buyer made cash-flow-based payments to the for-profit seller.

127. Indeed, on November 23, 2011, the Department approved the change in ownership application of Remington Colleges, Inc., a nonprofit corporation classified as a public

charity under section 170(b)(1)(A)(ii) of the IRC ("Remington"), to participate in Title IV programs as a nonprofit institution following its acquisition of schools previously owned by Education America, Inc., a for-profit corporation.

128. The Remington transaction was substantially similar to the CEHE transaction. Like the CEHE transaction, the Remington transaction was structured as an asset purchase in which the seller received payment in the form of promissory notes. The terms of the Remington note provided for payments based on Remington's future cash flow formula similar to the formula used to finance the CEHE transaction. Remington leased numerous buildings directly from the former owner or entities the former owner controlled. Remington's Board of Directors included the primary shareholder of the former owner of the educational institutions.

129. Moreover, like the CEHE transaction, the terms of the Remington transaction were submitted to the IRS as a part of Remington's application for designation as a tax exempt public charity under section 501(c)(3) of the IRC. The IRS issued a determination letter granting Remington tax-exempt status and classified Remington as a public charity. The IRS would not have issued the determination letter if the Remington's conversion transaction financing and lease contracts constituted a private benefit to the former owner.

130. The Department was aware of the terms of the Remington transaction when it approved Remington's change in ownership application.

131. In January 2012, the Department similarly approved the application of schools previously owned by Keiser School, Inc., a for-profit corporation, and acquired by Everglades Colleges, Inc., a nonprofit corporation classified as a public charity under section 170(b)(1)(A)(ii) of the IRC ("Everglades").

132. The Everglades transaction was structured as an asset purchase and donation with the seller receiving promissory notes as the form of payment.

133. Similar to the CEHE transaction, the terms of the Everglades note provide for payments based on Everglades' surplus earnings. The primary shareholder of the former owner in that transaction was the president of the nonprofit schools and a member of the board of trustees when the nonprofit submitted its change-in-control application. Moreover, like the CEHE transaction, Everglades' nonprofit schools leased property from entities owned in part by the former owner's primary shareholder.

134. More recently, in 2015, the Department approved the change-in-control application of previously for-profit schools acquired by UMA Education, Inc., a nonprofit corporation classified as a public charity under Section 170(b)(1)(A)(ii) of the IRC ("UMA"). UMA consummated the conversion transaction in March of 2015.

135. Like the CEHE transaction, the UMA transaction was structured so that the seller received promissory notes as the form of payment. The terms of the notes provide for payments of a fixed amount but delays payment until UMA's net current assets exceed certain specified thresholds based upon its cash flow. Like the cash flow notes CEHE issued, UMA is obligated to make note payments to the seller depending upon its cash flow. Furthermore, the executive officers of the seller in the UMA transaction became executive officers of UMA following the transaction.

136. Both before and after the CEHE transaction, the Department has applied the IRS private inurement principles and approved change of ownership applications and participation for nonprofit institutions using cash-flow formula based notes.

137. Congress has been fully aware of the Department's approval of these transactions and has taken no action to amend the HEA to require an interpretation of the private inurement principle inconsistent with the well-established IRS interpretation.

138. The Senate Committee on Health, Education, Labor and Pensions' report ("HELP report") on for-profit education has a section devoted to nonprofit conversion transaction. It specifically mentions the Everglades and Remington transactions. The HELP report notes that the transactions were accomplished using contingent note payments and that the sellers remained involved after the transactions and nonprofit conversions. Notwithstanding this report, Congress took no action to amend the HEA to reverse these longstanding interpretations of 20 U.S.C. § 1003 in order to preclude transactions involving promissory note payments based upon a nonprofit's cash flow.

139. Although the HEA has been amended on numerous occasions, the definition of a nonprofit institution (20 U.S.C. § 1003) has remained unchanged since the initial Higher Education Act of 1965.

140. Moreover, the Department continued after the issuance of the HELP report to apply its private benefit prohibition consistent with the longstanding IRS interpretation when approving applications following for-profit to nonprofit conversion transactions.

141. In requiring CEHE's Colleges to be proprietary for Title IV purposes, the Department reversed its long-standing position and abandoned its prior practice of applying 34 C.F.R. § 600.2 consistent with the IRS private inurement principles. Moreover, this determination came years after CEHE submitted the applications.

142. The Department's profit distribution theory reflected in the Decision ignores how the seller promissory notes are treated under GAAP. The debt is classified as long-term debt. Long-term debt is a liability on a nonprofit's statement of financial position (a nonprofit's balance sheet equivalent). The payments due on the debt are classified as expenses on a nonprofit's statement of activities (a nonprofit's income statement equivalent). Under GAAP's nonprofit accounting standards, nonprofits do not have net earnings but have a net change in assets. The net change in assets is determined after accounting for the seller note payments in the same manner as all other indebtedness of a nonprofit. The audited financial statement submitted to the Department reflects the "above the net change in assets line" treatment of the payment of interest and principal and related accruals relating to the seller note.

143. The determination of the payment amount owed on the seller promissory notes in the CEHE transaction being tied to cash flow does not convert the obligation to one to be paid from net earnings under any definition of net earnings or net change in assets under GAAP standards or otherwise. The Department's conclusion that the payment amount determination formula contained in the promissory notes in the CEHE transaction is the same as a distribution of net change in assets or profits is incorrect and ignores applicable accounting principles.

144. The term "net earnings" is not ambiguous. It has had the well-established and commonly understood meaning contained in GAAP for decades. Congress intended for net earnings to have that meaning when it adopted the HEA. The Department's interpretation of net earnings as reflected in its Decision directly contravenes precedent and Congressional intent.

COUNT I
(Declaratory Judgment Action)

145. Plaintiff incorporates the preceding paragraphs as if they were fully set forth herein.

146. The Colleges are nonprofit institutions as defined in the Department's regulations.

147. Both the HEA and the Department's regulations define nonprofit institutions and proprietary institutions in a mutually exclusive manner.

148. As a matter of law, the Colleges became nonprofit institutions of higher education on the date of the merger.

149. Because the Colleges meet the Department's definition of a nonprofit institution of higher education, the Department acted arbitrarily and capriciously in concluding that the Colleges are proprietary institutions of higher education, which is a decision contrary to the HEA and the Department's regulations.

150. An actual and justiciable controversy has arisen between the parties regarding the Department's regulations concerning the definition of a nonprofit institution and the Department erred in concluding that the Colleges are proprietary institutions of higher education.

151. There is no adequate remedy by which these controversies may be resolved other than the relief requested herein.

152. Plaintiff is therefore entitled, pursuant to Rule 57 of the Federal Rules of Civil Procedure, to a declaratory judgment order from this Court declaring that the Colleges are nonprofit institutions for purposes of Title IV programs and entitled to be regulated as nonprofit institutions commencing on the date of the change in ownership.

COUNT II
(Administrative Procedure Act)

153. Plaintiff incorporates the preceding paragraphs as if they were fully set forth herein.

154. The Department's Decision denying CEHE's change in ownership applications to participate in Title IV programs as a nonprofit institution is arbitrary and capricious, and Plaintiff is therefore entitled to have the decision vacated and set aside pursuant to 5 U.S.C. § 706.

155. The Department's Decision disregards clear Congressional intent expressed in the HEA to the extent it interprets 34 C.F.R. § 600.2's "private benefit" principle to disqualify a section 501(c)(3) nonprofit corporation from being a nonprofit institution of higher education under the HEA because it has purchase money indebtedness with payment amounts based upon a cash-flow formula.

156. Moreover, the Department's decision is arbitrary and capricious because the Decision reverses the Department's prior interpretation of 34 C.F.R. § 600.2 without providing a reasoned explanation for this change.

157. The Department failed to engage in reasoned decision-making and arbitrarily and capriciously treated CEHE differently than similarly situated institutions whose applications the Department approved.

158. The facts alleged above and the numerous political activities by the Department described in **Exhibit 14** highlight the Department's extremely improper series of actions during the extraordinarily long time it was considering CEHE's change of ownership applications. The actions by the Department evidence a politicization of the change in ownership process intended to achieve a political agenda and in contravention of its duty to act impartially, fairly, and within

the confines of recognized law and precedent. The Department's Decision refusing to recognize CEHE as a nonprofit educational institution denies CEHE the associated rights and protections to which it is entitled as a matter of law and it is arbitrary, capricious, and violates the APA.

159. The actions by the Department are part of its concerted effort to deny CEHE and its Colleges regulatory status permitted by the HEA and likewise deny them the ability to survive and operate as nonprofit educational institutions for the public good.

160. Plaintiff is, therefore, entitled to an order and judgment from this Court declaring that the Department's August 11, 2016 letter Decision is not in accordance with law and is arbitrary and capricious within the meaning of 5 U.S.C. § 706, and ordering the Department to hold that the Colleges are nonprofit educational institutions for all purposes.

COUNT III
(Equitable Estoppel)

161. Plaintiff incorporates the preceding paragraphs as if they were fully set forth herein.

162. Upon the completion of the merger, the Department affirmatively informed CEHE that it would be required to comply with the 90/10 requirement imposed on for-profit institutions only during the 2013 fiscal year.

163. The Department did not require CEHE or the Colleges to comply with any other HEA regulations generally applicable only to proprietary institutions at any time prior to March 15, 2016.

164. Moreover, following the merger, the Department-run College Scorecard, College Navigator, and Integrated Postsecondary Education Data System websites conspicuously identified CEHE as a nonprofit institution for Title IV purposes.

165. CEHE reasonably relied upon the Department's pre-acquisition review response not identifying any special conditions other than its imposition of a single proprietary requirement (i.e., compliance with 90/10 during the 2013 fiscal year) when proceeding to close the transaction.

166. CEHE complied with the 90/10 rule for the 2013 fiscal year. Since the merger, CEHE operated the Colleges in compliance with the Department's nonprofit regulations.

167. This includes, among other compliance requirements, CEHE's preparation of financial statements and audits in fiscal years 2013, 2014, and 2015, which were prepared in accordance with the Department's standards for nonprofit institutions.

168. The Department accepted each of CEHE's annual financial audits. Each financial audit conspicuously identified CEHE's nonprofit status and the Colleges as nonprofit institutions.

169. CEHE's 2013 annual financial audit reported its composite score *using the nonprofit ratios*.

170. CEHE's composite score would have been higher if prepared under the Department's standards for proprietary institutions. Similarly, the score would have been higher if the seller notes had been classified in a manner consistent with the Department's position in its Decision that the seller note payments are distributions of net earnings and not indebtedness.

171. The Department specifically reviewed CEHE's 2013 annual financial audit and imposed significant additional financial requirements on CEHE based on its composite score as determined under the applicable nonprofit ratios.

172. On January 26, 2015, the Department cited CEHE's composite score in demanding that CEHE post an LOC for $71,600,000 if it wanted to continue participating in Title IV programs.

173. The Department knew at the time it made the demand that CEHE considered itself a nonprofit institution and that it operated in accordance with the related nonprofit requirements. By that date, the Department had already received CEHE's 2013 fiscal year financial audit, which was prepared under the Department's nonprofit standards.

174. The Department's position that the seller notes are a form of equity providing for distributions of net earnings or profits as opposed to classifying them as indebtedness is contrary to its interpretations of CEHE's audited financial statements. For example, the Department relied on those audited financial statements to impose a $42,996,000 escrow deposit requirement.

175. The Department first notified CEHE on March 15, 2016 that it still considered CEHE a proprietary institution for Title IV program purposes. It was not until August 11, 2016, that the Department denied CEHE's application to participate in Title IV programs as a nonprofit institution of higher education.

176. The Department's affirmative acts at all times prior to March 15, 2016 were consistent with its recognition that the Colleges had nonprofit status and that they would be regulated as nonprofit institutions under the HEA.

177. CEHE relied upon the Department's regulations in operating the Colleges as nonprofits while the Department considered its applications for almost four years. By operating the Colleges consistent with the Department's regulations applicable to nonprofits, CEHE reasonably relied on the Department's communications and actions to conclude that it was not

considered for-profit institutions and subject to such related regulations. As a result of the arbitrary and capricious Decision, the Colleges' continued eligibility to participate in the Title IV programs is in immediate jeopardy. The Colleges will suffer irreparable and significant damage if the Colleges are required to comply with the Department's for-profit regulations.

178. Plaintiff is, therefore, entitled to an order and judgment from this Court estopping the Department from denying CEHE's nonprofit status and classifying CEHE as a proprietary institution for purposes of the HEA and Title IV programs.

COUNT IV
(Judicial Estoppel)

179. Plaintiff incorporates the preceding paragraphs as if they were fully set forth herein.

180. On May 2, 2014, the United States intervened in a False Claims Act *qui tam* action against Stevens-Henager College and CEHE (as the owner of or the successor in interest to Stevens-Henager College), alleging that Stevens-Henager College knowingly made false certifications regarding its compliance with the requirements of Title IV of the HEA in its 2007 and 2010 PPAs.

181. In its complaint in intervention, the Government alleged that CEHE is an Indiana nonprofit corporation and that CEHE became the owner of the Colleges on December 31, 2012.

182. In doing so, the Government correctly acknowledged that CEHE owns and operates the Colleges as nonprofit institutions.

183. On March 30, 2016, prior to the filing of an answer, the District Court for the District of Utah entered an order ruling on a motion to dismiss the complaint in intervention in which the Court adopted the Government's allegation that the Colleges merged into an Indiana

nonprofit corporation, CEHE, on December 31, 2012, and that CEHE *operates* the schools as a result of the merger. See ECF Doc. 245, United States District Court of Utah, Central Division.

184. Plaintiff is, therefore, entitled to an order from this Court estopping the Department from asserting that the Colleges' former owner "retains control" over the Colleges, an assertion that is contrary to the position taken by the United States in earlier litigation instigated against CEHE.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

1. Under the First Cause of Action, an order and judgment declaring that the Colleges are nonprofit institutions for purpose of Title IV programs and therefore entitled to be regulated as nonprofit institutions commencing with the date of the change in ownership;

2. Under the Second Cause of Action, an order and judgment declaring that the Department's August 11, 2016 letter Decision is not in accordance with law and is arbitrary and capricious within the meaning of 5 U.S.C. § 706, and ordering the Department to hold that the Colleges are nonprofit educational institutions for all purposes;

3. Under the Third Cause of Action, an order and judgment estopping the Department from denying CEHE's nonprofit status and classifying CEHE as a proprietary institution for purposes of the HEA and Title IV programs;

4. Under the Fourth Cause of Action, an order and judgment from this Court estopping the Department from asserting that the Colleges' former owner "retains control" over the Colleges, an assertion that is contrary to the position taken by the United States in earlier litigation instigated against CEHE;

5. Attorneys' fees and costs; and

6. Any other relief that the Court deems just and equitable.

JURY DEMAND

Pursuant to Rule 38, Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of all issues so triable.

Dated this August 30, 2016:

Respectfully submitted,

SNELL & WILMER L.L.P.

/s/Amber M. Mettler
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Amber M. Mettler
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EXHIBIT LIST TO CEHE COMPLAINT

1. September 4, 2007 IRS 501(c)(3) Determination Letter;
2. Affidavit of John S. Mercer;
3. February 27, 2013 Post-Merger Request Letter to IRS (without referenced exhibits);
4. July 25, 2014 IRS Letter Updating Charity Status;
5. October 2, 2012 Pre-Acquisition Review Request Letter;
6. November 2, 2012 Response to Pre-Acquisition Review Request Letter;
7. December 20, 2012 Pre-Acquisition Review Letter from Department;
8. January 26, 2015 Department Letter Demanding 50% Letter of Credit;
9. August 11, 2016 Department Decision on Change of Ownership (Redacted);
10. March 15, 2016 Department Initial Notice Letter;
11. August 29, 2015 Department Electronic Mail re: Gainful Employment;
12. April 20, 2016 Letter to Department;
13. August 11, 2016 Press Release Denying Request to Convert to Non-Profit Status;
14. August 21, 2016 Request for Reconsideration;
15. August 12, 2016 Letter to Department Requesting Extension;
16. August 16, 2016 Denial of Request for Extension Re: Request for Reconsideration;
17. August 16, 2016 Letter to Department Requesting New Deadline to Sign PPAs; and
18. August 17, 2016 Denial of Request for Extension of Time to Respond.

EXHIBIT
1

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: SEP 04 2007

CENTER FOR EXCELLENCE IN HIGHER
EDUCATION INC
C/O FREDERIC J FRANSEN
3815 RIVER CROSSING PKY STE 100
INDIANAPOLIS, IN 46240

Employer Identification Number:
20-8091013
DLN:
17053074017007
Contact Person:
DONNA ELLIOT-MOORE ID# 50304
Contact Telephone Number:
(877) 829-5500

Accounting Period Ending:
DECEMBER 31
Public Charity Status:
170(b)(1)(A)(vi)
Form 990 Required:
YES
Effective Date of Exemption:
DECEMBER 22, 2006
Contribution Deductibility:
YES
Advance Ruling Ending Date:
DECEMBER 31, 2010

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. During your advance ruling period, you will be treated as a public charity. Your advance ruling period begins with the effective date of your exemption and ends with advance ruling ending date shown in the heading of the letter.

Shortly before the end of your advance ruling period, we will send you Form 8734, Support Schedule for Advance Ruling Period. You will have 90 days after the end of your advance ruling period to return the completed form. We will then notify you, in writing, about your public charity status.

Please see enclosed Information for Exempt Organizations Under Section 501(c)(3) for some helpful information about your responsibilities as an exempt organization.

Letter 1045 (DO/CG)

CENTER FOR EXCELLENCE IN HIGHER

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings and Agreements

Enclosures: Information for Organizations Exempt Under Section 501(c)(3)
Statute Extension

Letter 1045 (DO/CG)

EXHIBIT
2

AFFIDAVIT OF JOHN S. (JAY) MERCER

Comes now John S. (Jay) Mercer, first being duly sworn upon his oath and under the penalties for perjury states:

1. I am an attorney in good standing and licensed to practice law in the State of Indiana.

2. I have practiced law since 1986, primarily in the areas of healthcare, education and exempt organizations.

3. I have provided legal services to the Center for Excellent in Higher Education, Inc. ("CEHE") since January 2010.

4. In July 2012, I was consulted with regard to a potential transaction involving the Merger of CEHE with Stevens-Henager College, Inc., CollegeAmerica Denver, Inc., CollegeAmerica Arizona, Inc., California College, Inc., California College San Diego, Inc. and CollegeAmerica Services, Inc. ("Colleges").

5. On August 27, 2012, I met with the board of directors of CEHE, including Messrs. Curtis, Dennis and Zywicki. I have attached a copy of the issues agenda as Exhibit 1. During the meeting I explained to the director their fiduciary duties, responsibilities and liabilities involved in the proposed transaction with the Colleges. I stressed the need for a fair market value to guard against the possibility of an excess benefit transaction. I also discussed the due diligence needed to approve the transaction.

6. In October 2012, I received a copy of the "Board of Directors Valuation Presentation" dated October 5, 2012, that had been prepared by Barrington Research Associates. ("Barrington"). I also participated in a 2.5 hour conference call in respect to the valuation

presentation.

7. Following the conference call I recommend to CEHE's board of directors that they obtain an independent peer review of the Barrington valuations. On October, 11, 2012, I engaged Blue & Co., LLC ("Blue"), an organization known to me as specializing the representation of exempt organizations, to perform an analysis and issue an Appraisal Review Report of the assumptions, adjustments, and validity of the methodologies applied by Barrington in the valuation of the Colleges.

8. On September 30, 2012, Blue produced a Summary Appraisal Review Report which is attached hereto as Exhibit 2.

9. Blue concluded that the value of the common equity of CollegeAmerica as of September 30, 2012 on a control, non-marketable basis contained within the Barrington Presentation is likely fairly stated and consistent with fair market value.

10. Leading up to the closing the occurred on December 31, 2012, I devoted approximately 150 hours to conducting a review of the transaction, including the negotiation of terms, review and drafting the transactional documents and due diligence review of disclosures.

11. On October 22, 2012, I was provided electronic access to the CollegeAmerica Data Room which was represented to me to be full access to material contracts, agreements and leases, as well as, descriptions or summaries of consents and approvals, intellectual property rights, benefit plans, insurance policies, financial reports, program audits and pending litigation. ("Disclosures").

12. The Disclosures I reviewed included:

a. Review of the organizational records of each merging corporations and LLCs, including Articles, Bylaws, Resolutions and minutes.

b. Review of financial statements for prior 3 years.

c. Review of any employment agreements with the term in excess of one year.

d. Review of any consulting management or professional agreements a term in excess of one year.

e. Review of any employment, consulting, management, professional or vendor agreements with individuals "related" to Carl Barney or "related" to any current Board Member, LLC Member and/or highly compensated individuals affiliated with the merger organizations.("Related" means related to each other through family or business relationships).

f. Review of any policies of tenure or policies that restrict "at-will" employment.

g. Review of any notices, claims, audits, or other official notices investigation by the Internal Revenue Service, United Department Education or any State or local regulatory agency which the corporation s or LLCs have received within the last three years.

h. Review of any compliance or settlement agreements with any governmental agency or accrediting organization regarding operational, financial or educational deficiencies or regulatory compliance.

i. Certificates of accreditation from accrediting organizations.

j. Contracts, commitments, notes, debt instruments, security agreements, leases, guarantees that have a term of exceeds one year.

k. Organizational chart for each college.

l. Description of any payments, agreements or pledges for support of political candidate or party or used in support of or to influence legislation.

m. All contracts with any individuals or organizations to raise funds for the corporations. (Professional fund raising).

n. Descriptions of any Joint ventures, partnerships or affiliations with organizations that will not terminate and/or merger on or before the closing of the transition.

o. Description of any intellectual property to be sold as part of the sale.

p. Copies of tax returns for the past three years for each organization being merged.

q. Description of any loan to or by a current or former officer, director, trustee, key employee, highly compensated employee.*

r. Description of any on-going settlement payments or compensation arrangement, such as a severance payment to a former employee that will continue after the merger or are not fully funded.

s. Description of all unfunded and/or uninsured liabilities.

t. Description of any and all pending or threatened litigation.

u. Description of any of the following services provided by the corporations or LLCs to any officer, director or employee: first class or charter travel, travel cost for companions, tax indemnification, housing allowance for personal residence, sports or social club memberships, personal services(e.g. maid, chauffer, chef).

13. This affidavit is offered to counter the allegation by the Department of Education in its letter of August 11, 2016, *"there is no evidence that CEHE - as opposed to Mr. Barney- conducted any valuation of the Colleges before entering into the Merger Agreement and resulting financing which obligated CEHE to $431,000,000 in indebtedness to the Trust with $419,000,000 of that amount representing goodwill."*

14. The statement contained in Section 5.9, *"The Purchaser acknowledges that it has completed limited due diligence review with respect to the Corporation and the College,"* has been misinterpreted by the Department of Education, where the term "limited" was intended to convey a minimum level of due diligence recommend by me in a Memorandum that was presented to the CEHE board of directors following the meeting of August 27, 2012. The Memorandum, while not dated, was prepared August 28, 2012 and is attached hereto and incorporated by reference as Exhibit 3.

15. The minutes of the board meeting dated December 27, 2012 recite that the decision to proceed with the transaction was based on "substantial due diligence." Substantial due diligence was completed by me as has been more fully described above.

16. There exist a rebuttable presumption of reasonableness for this transaction where:

a. The compensation arrangement with Mr. Barney and the Trust and the terms of the property transfer from Mr. Barney and the Trust were approved in advance by the CEHE board of directors and none of the board members had a conflict of interest with respect to the compensation arrangement or property transfer (Treas. Reg. 53.4958-6(a)(1));

b. The board of directors obtained and relied upon appropriate data as to the comparability data prior to making its determination (Treas. Reg. 53.4958-6(a)(2)); and

c. The board of directors adequately documented the basis for its determination concurrently with making that determination (Treas. Reg. 53.4958-6(a)(3)).

17. Treas. Reg 53.4958-6, further provides that presumption that arises under paragraph 6(a) of this section may only be rebutted by establishing sufficient contrary evidence to rebut the probative value of the comparability data relied upon by the authorized body. With respect to any fixed payment (within the meaning of § 53.4958-4(a)(3)(ii)), rebuttal evidence is limited to evidence relating to facts and circumstances **existing on the date the parties enter into the contract** pursuant to which the payment is made (except in the event of substantial nonperformance). With respect to all other payments (including non-fixed payments subject to a cap, as described in paragraph (d)(2) of this section), rebuttal evidence may include facts and circumstances up to and including the date of payment. See § 53.4958-4(b)(2)(i). may only rebut the presumption with sufficient contrary evidence to rebut the probative value of the comparability data relied upon, and only with evidence relating to facts and circumstances **existing at the time of the contract** (for a fixed payment) or at the time of the payment (for a non-fixed payment). (Emphasis added). The Department of Education has improperly used later valuations and subsequent disclosures not available to the board members on December 27, 2012, in concluding that the board failed to act with due diligence in approving the transaction.

John S. (Jay) Mercer

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Sworn to and subscribed in my presence this 17th day of August 2016.

Signature Jennifer S. Gallcher

Printed Jennifer S. Gallcher

My Commission Expires: 8/17/24 My County of Residence: Hendricks

Prepared by: John S. (Jay) Mercer, #11260-49, MERCER BELANGER, 1500 One Indiana Square Indianapolis, IN 46204

Board of Directors Meeting
Special Agenda for Review of Merger Transaction:

1. MERCER BELANGER- Representation of CEHE
    - Potential conflicts
    - Representation of decision makers
    - Trust/Skepticism
    - Ask tough questions
    - Due Diligence

2. Initial concerns –
    - Do not know Carl Barney – reliance upon Fred Fransen
    - Agreement time table
    - Financing method not decided
    - Representations and warranties from CEHE
    - Assurances, surety, continuation from Carl Barney
    - Conduit – "straw man" transaction

3. Board's Duties/Responsibilities/Liabilities
    - Inurement/ Private benefit
    - Excess benefit rules and intermediate sanctions
    - Personal liability for excess benefits
    - Liability for Transactional Managers

4. Inurement/ Private Benefit
    - Non-profit – purpose and mission
    - Reason for transaction – primary benefit
    - Operation in future/fulfill mission
    - Undue private benefit

5. Excess Benefit
    - FMV valuation
    - Due diligence on valuation
    - Liability vs. good faith
    - Indemnity for potential liability
    - Assurances required and extent of due diligence as Transactional Managers

6. Review of Proposed Structure of Deal
    - Specific concerns

EXHIBIT
tabbies
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CollegeAmerica

Summary Appraisal Review Report

AS OF SEPTEMBER 30, 2012

Report Date: November 9, 2012

EXHIBIT

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CPAS / ADVISORS

blue

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CPAS · ADVISORS

blue

Blue & Co., LLC / One American Square, Suite 2200 / Box 82062 / Indianapolis, IN 46282
main 317.633.4705 fax 317.633.4889 email blue@blueandco.com

November 9, 2012

Frederic J. Fransen
Executive Director
Center for Excellence in Higher Education, Inc.
8520 Allison Pointe Blvd., Ste. 220
Indianapolis, IN 46250

Dear Mr. Fransen:

Pursuant to your request, Blue & Co., LLC ("Valuation Analysts") has prepared a review of the Barrington Research Associates ("Barrington") board presentation provided by your legal counsel (the "Presentation"), regarding the valuation of CollegeAmerica (the "Company") on October 5, 2012 with respect to the fair market value of common equity of CollegeAmerica as of September 30, 2012 on a control, non-marketable basis. The appraisal was originally prepared for Center for Excellence in Higher Education, Inc. (the "Purchaser") for potential acquisition of CollegeAmerica.

You and your legal counsel have requested the Valuation Analysts perform an analysis and issue an Appraisal Review Report of the assumptions, adjustments, and validity of the methodologies applied by Barrington in the valuation. We are utilizing the Presentation provided by legal counsel, which has been included as **Appendix B**, to this report.

This letter is intended to provide you with an overview of the purpose and scope of our analyses and conclusions. Please refer to the attached report for a discussion and presentation of the analyses performed in connection with this engagement.

SCOPE AND INTENDED USE OF THE APPRAISAL REVIEW

<u>Reporting Format</u>

Our analysis and report is intended to be in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP") promulgated by the Appraisal Foundation,[1] the ethics and standards of the ASA, IBA and NACVA[2] and with IRS business valuation development and reporting guidelines.

[1] The Appraisal Standards Board (ASB) of the Appraisal Foundation develops, interprets, and amends the *Uniform Standards of Professional Appraisal Practice* (USPAP) on behalf of appraisers and users of appraisal services. The Appraisal Foundation is authorized by Congress as the source of Appraisal Standards and Appraiser Qualifications. USPAP uses the terms appraiser and appraisal report. SSVS uses the terms valuation engagement and detailed report. USPAP also uses the term appraiser while SSVS uses the term valuation analyst. We use these terms interchangeably in this report.

[2] ASA American Society of Appraisers; IBA Institute of Business Appraisers; NACVA National Association of Certified Valuation Analysts.

The scope of our work on this assignment is being performed under Uniform Standards of Professional Appraisal Practice ("USPAP") Standard Rule 3 as an Appraisal Review. Appraisal Review assignment reporting formats are not specifically addressed by USPAP Standard 3, rather the substantive content of the report determines its compliance. In performing an Appraisal Review assignment in accordance with USPAP's Standards and Standard Rules, specifically Standard 3, we must:[3]

- state the identity of the client and any intended users, by name or type;
- state the intended use of the appraisal review;
- state the purpose of the appraisal review;
- state information sufficient to identify:
  - the work under review, including any ownership interest in the property that is the subject of the work under review;
  - the date of the work under review;
  - the effective date of the opinions or conclusions in the work under review; and
  - the appraiser(s) who completed the work under review, unless the identity is withheld by the client.
- state the effective date of the appraisal review;
- clearly and conspicuously:
  - state all extraordinary assumptions and hypothetical conditions; and
  - state that their use might have affected the assignment results.
- state the scope of work used to develop the appraisal review;
- state the reviewer's opinions and conclusions about the work under review, including the reasons for any disagreement;
- when the scope of work includes the reviewer's development of an opinion of value, review opinion, or real property appraisal consulting conclusion related to the work under review, the reviewer must:
  - state which information, analyses, opinions, and conclusions in the work under review that the reviewer accepted as credible and used in developing the reviewer's opinion and conclusions;
  - at a minimum, summarize any additional information relied on and the reasoning for the reviewer's opinion of value, review opinion, or real property appraisal consulting conclusion related to the work under review;
  - clearly and conspicuously:
    - state all extraordinary assumptions and hypothetical conditions connected with the reviewer's opinion of value, review opinion, or real property appraisal consulting conclusion related to the work under review; and
    - state that their use might have affected the assignment results.

Additionally, this Appraisal Review will take into consideration the valuation standards and guidelines set forth within the Statement of Standards for Valuation Services No. 1 (SSVS) of the American Institute of Certified Public Accountants. SSVS defines an appraisal (business valuation) engagement as "an engagement to estimate value in which a valuation analyst determines an estimate of the value of a subject interest by performing appropriate procedures, as outlined in the AICPA Statement on Standards for Valuation Services, and is free to apply the valuation approaches and methods he or she deems appropriate in the circumstances."

---

[3] USPAP Standard 3, p. U-35.

To gain an understanding of the operations of CollegeAmerica, we analyzed the Presentation, which contained financial information, and/or operational data, and background and industry information. To understand the environment in which CollegeAmerica operates, we researched the status of and trends in the various industries that have an impact on it. We also studied economic conditions as of the Valuation Date and their impact on CollegeAmerica and the industry.

We requested the underlying valuation report summarized in the Presentation from the Purchaser and Barrington, but did not receive such report. Therefore, our review is based solely on information contained in the Presentation. As of the date of the report we do not believe that we will receive any additional information or support for the work contained within the Presentation.

As discussed in this report, we reviewed all valuation approaches and methods considered by Barrington, including the income, asset, and market approaches to derive an opinion of value of the subject. Our conclusion of value reflects these findings, our judgment and knowledge of the marketplace, and our expertise in valuation.

In conducting the Appraisal Review, our investigation and analysis included (but was not limited to) consideration of the following:

- Board presentation regarding the valuation of CollegeAmerica, as provided by Barrington Research Associates
- Federal Reserve statistical releases
- Current and future economic conditions as forecast by various sources
- Miscellaneous other information

The procedures employed in valuing the subject interest in the Company included such steps as we considered necessary, including (but not limited to):

- An analysis of CollegeAmerica's financial information and specific data included in the Presentation
- An analysis of the Company's expectations for future operations and other information as provided within the Presentation
- An analysis of the education industry in general
- An analysis of the general economic environment as of the Valuation Date, including investors' equity and debt-return expectations
- An analysis of other pertinent facts and data resulting in our conclusion of value

DEFINITION AND PREMISE OF VALUE

Terms and Definitions

The standard of value is fair market value, defined as "the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts."[4]

[4] International Glossary of Business Valuation Terms.

Fair market value is also defined in Revenue Ruling 59-60 as "the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts." Revenue Ruling 59-60 also defines the willing buyer and seller as hypothetical as follows: "Court decisions frequently state in addition that the hypothetical buyer and seller are assumed to be able, as well as willing, to trade and to be well informed about the property and concerning the market for such property." Furthermore, fair market value assumes that the price is transacted in cash or cash equivalents. Revenue Ruling 59-60, while used in tax valuations, is also used in many nontax valuations.[5]

Based upon the Presentation, fair market value is defined on slide 70 as "the price at which a willing buyer and a willing seller would enter into a transaction...both parties having full access to all relevant information...and neither party being under duress."

VALUATION REVIEW PROCEDURES

The Valuation Analyst has considered the history, character, and operations of the Company to the extent possible and as provided through the Presentation. In accordance with the requirements of USPAP, the Code of Professional Ethics and Professional Standards of the American Society of Appraisers, the three approaches to value (Cost, Market and Income) were considered.

This valuation review was performed solely to assist in the determination of the reasonability of the concluded value contained within the Presentation, and the resulting opinion should not be used for any other purpose or by any other party for any purpose, without our express written consent.

We have made our best efforts to ensure that our analysis and report are in conformance with the USPAP promulgated by the Appraisal Foundation,[6] the ethics and standards of the ASA, IBA and NACVA[7] and with IRS business valuation development and reporting guidelines.

VALUATION REVIEW CONCLUSION

In arriving at our review opinion, we noted some issues with the Presentation that we believed required further scrutiny. These issues included:

- The Cost Approach was not discussed.
    - Additionally, the Presentation did not include the Company's balance sheet.
- Certain "add-backs" to the income statements had no detailed explanation as to their nature or reasoning for the add backs.

[5] Fair Market Value is further defined by § 1.170A-1(c)(2) Internal Revenue Service Code of Federal Regulations.

[6] The Appraisal Standards Board (ASB) of the Appraisal Foundation develops, interprets, and amends the *Uniform Standards of Professional Appraisal Practice* (USPAP) on behalf of appraisers and users of appraisal services. The Appraisal Foundation is authorized by Congress as the source of Appraisal Standards and Appraiser Qualifications. USPAP uses the terms appraiser and appraisal report. SSVS uses the terms valuation engagement and detailed report. USPAP also uses the term appraiser while SSVS uses the term valuation analyst. We use these terms interchangeably in this report.

[7] ASA American Society of Appraisers; IBA Institute of Business Appraisers; NACVA National Association of Certified Valuation Analysts.

- Given the information provided within the Presentation, the discount rate utilized under the Income Approach was lower than what we might have expected.
  - Two different betas and a "regulatory premium" were applied with no explanation contained within the Presentation.
  - It appears that no adjustment was made for Company specific risk.
- A capitalization of benefits method was not discussed or included within the Presentation.
- No industry methods or rules of thumb were discussed or included within the Presentation.
- The conclusion of value contained within the Presentation was expressed as the weighted average of three methods.
  - Despite the fact that this practice is contrary to Revenue Ruling 59-60, no explanation is provided for the use of weighting of the three methods.

We have also considered certain other areas of interest within our review report; however we believe that the points listed above are of primary concern. That being said and considering the limitations of the nature and amount of information included in a presentation format as opposed to a fully-contained appraisal report as defined by SSVS-1, we cannot draw any conclusions as to the effect of the underlying information that we did not receive. Noting certain factors, assumptions, and differences in theory and based upon the analyses performed, we have recalculated the potential value of the Company under the methods utilized in the Presentation.

	Value (Presentation)	Recalculated Value (Review)		
Comparable Transaction Analysis	$536,000	$540,000		
Comparable Company Analysis	558,000	511,300	-	535,800
Discounted Cash Flow Analysis	753,000	680,000		
Estimated Fair Market Value	**$650,000**			
Overall Potential Range ($ in millions)		**$511,300**	**-**	**$680,000**

Based upon the table above, it appears that the estimated fair market value for the Company shown on slide 71 of the Presentation is consistent with our overall range of recalculated value. Therefore, excluding those points noted previously, it is our opinion that the conclusion of value of the common equity of CollegeAmerica as of September 30, 2012 on a control, non-marketable basis contained within the Presentation is likely fairly stated and consistent with fair market value. Since we have not received all the information we requested or discussed certain issues with the original appraisal firm, our opinion is limited to the information available and should new information be received, our conclusion could change.

VALUATION REVIEW TERMS AND CONDITIONS

The analyses used in this report are based on estimates, assumptions and other information provided to us by the representatives of the owners of the Company, Barrington and legal counsel.

Neither the Valuation Analyst nor Blue & Co., LLC has any interest or other conflict which could cause a question as to the independence or objectivity of this appraisal review. Our fee in this matter is not contingent on the outcome of our opinion.

The attached Assumptions and Limiting Conditions, Certifications, and Qualifications of the Valuation Analyst(s) are integral parts of this valuation review opinion.

Distribution of this letter and report and its associated results, which is to be distributed only in its entirety, is for internal use only and intended for and restricted to the Purchaser and legal counsel, and is solely for the purpose mentioned previously. This letter and accompanying report are not to be used with, circulated, quoted, or otherwise referred to in whole or in part for any other purpose or by any other party for any purpose without our express written consent.

Sincerely,

Bradley H. Minor

AMERICAN SOCIETY OF APPRAISERS BRADLEY H. MINOR ASA ACCREDITED SENIOR APPRAISER

Bradley H. Minor, CPA/ABV/CFF, ASA, CVA, CMEA, Director

Kameron H. McQuay

Kameron H. McQuay, CPA/ABV, CVA, Director

SUMMARY OF ECONOMIC OVERVIEW & OUTLOOK

In valuing any asset it is important to consider the condition of, and outlook for, the economy or economies of the particular geographic regions in which the asset operates or is located. This analysis of economic conditions and outlook is required because the performance of an asset is affected to varying degrees by the overall trends in the economic environment in which it operates or is located and its value cannot be determined in isolation of these factors.

"In part because of the dampening effect of the higher tax rates and curbs on spending scheduled to occur this year and next, the Congressional Budget Office ("CBO") expects that the economy will continue to recover slowly, with real GDP growing by 2.0% this year and 1.1% next year (as measured by the change from the fourth quarter of the previous calendar year). CBO expects economic activity to quicken after 2013 but to remain below the economy's potential until 2018.

In CBO's forecast, the unemployment rate remains above 8% both this year and next, a consequence of continued weakness in demand for goods and services. As economic growth picks up after 2013, the unemployment rate will gradually decline to around 7% by the end of 2015, before dropping to near 5½% by the end of 2017.

While the economy continues to recover during the next few years, inflation and interest rates will remain low. In CBO's forecast, the price index for personal consumption expenditures increases by just 1.2% in 2012 and 1.3% in 2013, and rates on 10-year Treasury notes average 2.3% in 2012 and 2.5% in 2013. As the economy's output approaches its potential later in the decade, inflation and interest rates will rise to more normal levels."[8]

SUMMARY OF INDUSTRY OVERVIEW & OUTLOOK

Significant Factors Affecting the Industry

We performed research related to the Education and Training Services industry via First Research to verify industry factors considered by Barrington in their valuation of CollegeAmerica.

Based on our research on the education industry, certification classes are driven by employment trends, especially in the medical, high technology, and manufacturing industries, and personal income for more leisure industries (i.e. those that rely on individual desire for self-expression and self-fulfillment, such as yoga, fly fishing, etc.).

Economic recessions can have a mixed impact on this industry. Based on the historical trends noted in First Research, certification class enrollment tends to increase during periods of recessions, as unemployed workers will go back to school to learn new skills. This was noted specifically in a 2008 research report:

[8] Congressional Budget Office *Budget and Economic Outlook: Fiscal Years 2012 to 2022* released on January 31, 2012.

"Swelling Unemployment Could Increase Demand for CTE - Rising US unemployment, which reached 6.7 percent in November 2008 compared to 4.7 percent in November 2007, is likely to boost demand for career and technical education (CTE) programs. The job losses, spread across various sectors, are expected to cause unemployed workers to seek training to learn new skills. Professional associations in hard-hit industries such as real estate have added continuing education courses to reflect changing market conditions."

Meanwhile, leisure studies is a challenge for the education industry, as this type of training is more for outside hobbies, rather than for improvement for potential employment. A recession or high periods of employment leads to a decrease in enrollment, due to the discretionary nature of these courses.

The education industry is heavily regulated at the state and federal level. This includes audits and compliance reviews by the U.S. Department of Education, the Office of Inspector General, and state, guaranty, and accrediting agencies. Accredited schools are able to receive government funding and participate in federal financial aid programs. Increased regulations and compliance requirements and federal funding difficulties increases the risk and uncertainty of the education industry.

Barrington noted that the federal government in the past two years has increased scrutiny and regulatory burdens on the education industry, which was noted in a 2010 research report:

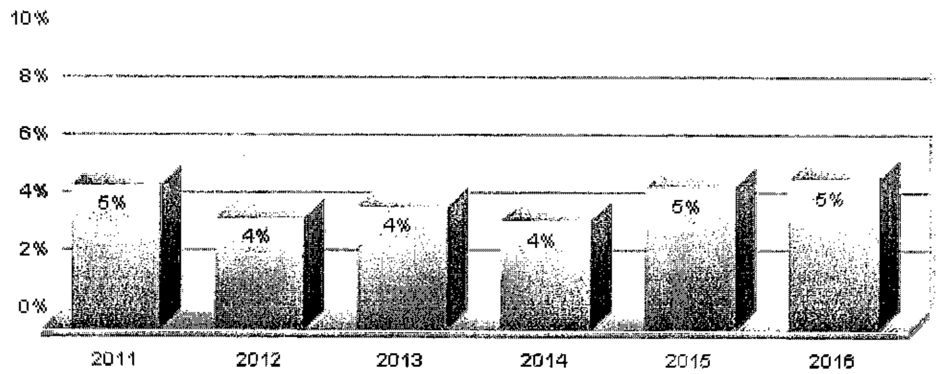
"Financial Aid at For-Profit Schools at Risk - For-profit colleges have come under fire recently from government agencies for leading students to take on heavy debt loads without providing adequate career preparation, according to The Wall Street Journal. The U.S. Government Accountability Office called out 15 such colleges, including two Kaplan campuses, in August 2010 for allegedly giving students misleading loan advice to enroll them. Legislation tying federal aid programs at for-profit colleges to graduates' success in paying off loans could cause some institutions to be ineligible for student aid, resulting in revenue declines."

Finally, due to the continued recession and increased regulations on the education industry, Barrington noted that valuation ratios have decreased in the past few years, which we have noted in our research.

According to First Research, valuation multiples for the education and training services industry have declined between March 2007 (earliest available historical data) and the most recent available data. In data through March 2007, the market value of invested capital ("MVIC") to sales ratio was .9, while the MVIC to EBIT ratio was 3.5. Meanwhile, in data through August 2011, MVIC to sales ratio has fallen to .6, while MVIC to EBIT ratio is now at 3.3. This seems to support the discussion related to valuations and multiples having fallen in the past several years.

However, the industry seems to be recovering and poised for increased growth, based on industry forecasts. The output of U.S. educational services, an indicator for education and training services, is forecast to grow at an annual compounded rate of 4 percent between 2012 and 2016.

Educational Services Growth Recovers



Data Published: September 2012

The following quarterly updates from First Research in 2012 give us additional comfort in the recovery of the education industry, as noted by Barrington in the Presentation:

"Trend: Industry Poised for Moderate Growth - The education and training services industry could grow by 4.3 percent in 2013 compared to 2012, according to the latest industry forecast for First Research from INFORUM. Career technical education (CTE), an important industry segment, will continue to fuel some 29 million middle-class jobs that require a two-year degree or less, according to Georgetown University's Center on Education and the Workforce. Nursing assistants, occupational therapists, paralegals, and refrigeration technicians are among the many opportunities that pay between $35,000 and $75,000 a year."

"For-Profits Exceed Gainful Employment Requirements - For-profit education companies performed better than expected in meeting the US government's new gainful employment guidelines, according to Dow Jones News Service. The Education Department found only 5 percent of programs failed to meet the requirements under the gainful employment regulation. Companies risk losing access to federal student aid if they fail to meet three key measures: loan repayment rates, debt-to-earnings annual ratio, and debt-to-discretionary earnings ratio.

The annual loan repayment rate requires at least 35 percent of a program's former students actively repay their loans, while the debt-to-earnings ratio requires that a student's maximum annual loan payment and student debt not exceed 12 percent of his or her earnings. Some industry observers suggest larger companies like DeVry, Apollo, and Grand Canyon are well-positioned to court new students and stand to benefit the most if smaller programs lose federal aid."

"For-Profits Anticipate Enrollment Boost - For-profit educators anticipate enrollment to taper in 2012 and 2013 before more new students register for classes, according to Dow Jones Newswires. The sector has experienced shrinking enrollment and public scrutiny over educational values, although some institutions have bucked the trend. Strayer Education, which caters chiefly to working adults, saw new-student enrollment grow 12 percent during first quarter 2012, the first quarterly increase since the first half of 2010. The company courted more graduate students and boosted its corporate partnerships. In contrast, ITT – which offers degrees in electronics and industrial design, among other fields – saw new-student enrollment slip 17 percent."

"Online Enrollments Grow - Enrollment in online education continues to outpace the overall higher education student population, according to a recent survey by Babson Survey Research Group and the College Board. More than 6 million students were enrolled in at least one online course in 2011, 10% more than in the previous year. In contrast, overall higher education enrollment grew only 2% during the same period. Nearly two-thirds of higher education institutions cite online education as a critical component to their long-term strategies. Online learning continues to boast vast opportunities for career and technical educators."

REVIEW OF THE BARRINGTON RESEARCH ASSOCIATES VALUATION PRESENTATION

We requested, but were not provided the actual appraisal report prepared by Barrington Research Associates in the valuation of CollegeAmerica. Therefore, we are relying on the information and methodologies outlined in the Presentation, filed at Appendix B, which is summarized as follows:

- Industry Overview
- Historical Financial Statements
- Adjusted Financial Statements
    - Customary Add-backs
    - Marketing Adjustment
- Financial Projections
- Comparable Companies Analysis
- Comparable Transactions Analysis
- Discounted Cash Flow (DCF) Analysis
- Conclusion of Value

Historical Income Statements

We analyzed the summarized historical financial statements shown in the Presentation. We did not perform a review or audit the financial information and are relying on the reported results for the Company as presented.

We reviewed Barrington's adjustments (add-backs) to the historical income statements. The Presentation did not provide any detail related to the reasoning for the add backs noted on slide 14. Typically, these types of adjustments are to remove the effect of non-operating/discretionary and/or non-recurring expense/revenue items.

1. Other revenues – Typically other revenue is a deduction.
2. Bad debt expense, campus start-up costs, good neighbor start-up costs, Esmond & Associates fees, transaction expense, settlements, IT infrastructure expenses, rent for closed campuses – It is unclear why these expenses were added back to the income statements.
3. Legal – other, private office admin, consulting, corporate travel, unallocated call center expenses – These expenses appear to be recurring expenses, as they appear to be incurred every year between 2005 and 2012. There is no explanation as to why these were added back to the operations of CollegeAmerica.

Financial Observations

Barrington summarized several observations regarding CollegeAmerica's historical income statements.

1. Revenues and EBITDA were confirmed to increase approximately 34% and 46% compound annual rate respectively between 2005 and 2010.
2. EBITDA margins were confirmed to be approximately 41% and 39% in 2009 and 2010 respectively.

As noted by Barrington, these growth rates were very high as compared to the industry and would not be sustainable in the long-term.

In our research of margins from benchmark data from IRS Corporate Ratios (Based on 2009 Returns), margins for the Education Services industry for all reporting companies is 13.04% operating profit (EBIT). We then added in depreciation and amortization to arrive at 16.73% EBTIDA margin for IRS benchmarks.

We also looked at data from RMA Annual Statement Studies 2011-2012 for the same industry. RMA only reported EBIT and EBT and did not report individual common size expenses for us to calculate an estimate of EBTIDA. However, RMA operating profit (EBIT) is on average 14.2%, which is comparable to that found in IRS Corporate Ratios.

Finally, commentary in First Research regarding the education industry for "net profit" averages 3%, which would indicate an even lower EBITDA margin. Therefore, the benchmarks above seem to corroborate Barrington's observation that the margins earned in 2009 and 2010 are high and are likely not sustainable in the long-term. By 2012, EBITDA margin had decreased to approximately 21%; while this is below peak margins in 2009 and 2010 it is still above the industry averages noted above.

Barrington noted that CollegeAmerica's cost per lead, cost per interview, and conversion rates in the back half of 2012 are improving and approaching levels in 2009. Longer-term, growth in enrollments, revenues and EBITDA are expected to approach pre-2010 levels. Based on these financial observations and discussions above, we believe this should be reflected in CollegeAmerica's discount rate, which we will discuss later in this report.

Marketing Adjustments

Barrington made a material adjustment related to CollegeAmerica's director of marketing, who assumed sole advertising responsibility from the founder in March 2010. According to the Presentation, the director of marketing "drastically" increased the marketing budget in 2011, which included utilizing funds for ineffective marketing endeavors. Additionally, some funds were spent on services with related parties that might be considered disallowed or otherwise non-operating in nature for valuation purposes.

In March 2012, the director of marketing was terminated and the founder assumed responsibility for marketing again and expenditures and conversion rates appear to have begun to return to historical levels.

This appears to be a relevant adjustment to the historical income statements, due to the unusual and non-recurring nature of the marketing activities and related reduction in revenue. The Presentation discusses the effect of the wayward director of marketing on CollegeAmerica's revenues and expenses.

We believe the concept of the marketing adjustment is valid in terms of valuation methodology and reasonable based on the received facts and circumstances regarding the operations of CollegeAmerica. ***However, without the full valuation report with details on the calculations of the actual numbers related to the marketing adjustment, we cannot comment to the reasonableness of the calculation of the financial implications related to this adjustment shown on slide 14. We have assumed that management and the Purchaser have reviewed the adjustment made by Barrington and it is reasonable and correctly calculated.***

Comparable Company Analysis

Under this method, Barrington has selected a number of publicly traded companies that are similar to the Company in that they provide educational services. The selected companies also appear to be fairly comparable in terms of annual revenue. As a result, we believe that the companies selected are likely appropriate for use under this method.

Through analysis of financial data for these public companies, Barrington has identified certain metrics that have been used to impute a value for the Company. Fourteen companies were specifically identified in the Presentation, with eight being used in application of this method. Additionally, four companies were singled out as being "good comparison companies" based upon qualitative factors (the "Big 4").

The primary bases for comparison of the selected public companies to the Company were the price to earnings ratio, the ratio of equity value to earnings before interest expense, depreciation, and amortization (EBITDA), and the ratio of equity value to sales (net revenue). A summary of this information is presented below (also see slide 30 of the Presentation):

Presenation Public Company Data

	P/E				EV/EBITDA				EV/Sales			
	2010A	**2011A**	**2012E**	**2013E**	**2010A**	**2011A**	**2012E**	**2013E**	**2010A**	**2011A**	**2012E**	**2013E**
APEI	22.9	17.1	16.2	13.7	9.3	7.3	6.8	5.7	2.6	2	1.7	1.4
LOPE	21.7	20.9	16.6	14.7	10.7	10.2	7.9	6.7	2.6	2.4	2.1	1.8
CPLA	9.6	9.8	12.1	11.6	3	3.2	3.8	3.7	0.8	0.8	0.8	0.8
APOL	5.4	5.9	8.2	9.3	1.8	2.1	3.1	3.6	0.6	0.6	0.7	0.7
NAUH	12.8	25.5	15.3	12.1	5	7.4	5.7	5.6	0.9	0.8	0.7	0.7
STRA	6.6	7.2	11	11.4	3.4	4	5.7	5.9	1.3	1.3	1.4	1.4
DV	5.9	4.9	7.1	12.2	2.3	3.3	4.6	4.2	0.6	0.6	0.7	0.6
EDMC	2.1	1.8	2.8	6.8	2.6	3.4	4.4	4.1	0.6	0.6	0.7	0.7
Mean	10.9	11.6	11.2	11.5	4.8	5.1	5.3	4.9	1.3	1.1	1.1	1.0
Median	8.1	8.5	11.6	11.9	3.2	3.7	5.2	4.9	0.9	0.8	0.8	0.8
Mean and median	9.5	10.1	11.4	11.7	4.0	4.4	5.2	4.9	1.1	1.0	0.9	0.9
Big 4	16.0	17.7	14.8	13.0	7.1	7.2	6.5	6.0	1.9	1.6	1.5	1.3

Morningstar Public Company Data

	P/E				EV/EBITDA				EV/Sales			
	2010A	**2011A**	**2012E**	**2013E**	**2010A**	**2011A**	**2012E**	**2013E**	**2010A**	**2011A**	**2012E**	**2013E**
APEI	23.40				1.7				0.5			
LOPE	20.40				1.6				0.4			
CPLA	18.30				1.8				0.5			
APOL	11.70				0.9				0.3			
NAUH	2.80	19.80				3.0			0.2	0.6		
STRA	15.70				0.8				0.3			
DV	13.60	12.60				2.5			0.6	0.6		
EDMC	12.50	14.40				3.2			0.8	0.7		
Mean	14.8	15.6			1.4	2.9			0.4	0.6		
Median	14.7	14.4			1.6	3.0			0.4	0.6		
Mean and median	14.7	15.0			1.5	3.0			0.4	0.6		
Big 4	15.6	19.8			1.4	3.0			0.3	0.6		

Upon review of the public company data presented above, we believe that there may be some discrepancies between the financial ratios presented and data that we retrieved from the Guideline Company database published by Morningstar. Although Morningstar did not provide all data contained within the presentation, we had retrieved those which were available through reasonable effort.

In order to determine the potential effect of the difference between the Presentation comparable data and the metrics that we had retrieved from Morningstar, we applied the same methodology used in the Presentation to our sampled data.

CollegeAmerica

College of America

Financial metrics	P/E				EV/EBITDA				EV/Sales			
$ in millions	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E
Unadjusted metrics	46.7	37.1	21.7	29.5	82.7	66.1	39.0	54.9	240.5	245.3	217.6	246.6
Adjusted metrics	50.5	50.3	35.5	29.5	92.5	91.1	65.0	54.9	248.4	265.0	248.1	246.6

Presenation Public Company Data

	P/E				EV/EBITDA				EV/Sales			
	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E
Mean and median	9.5	10.1	11.4	11.7	4.0	4.4	5.2	4.9	1.1	1.0	0.9	0.9
Big 4	16.0	17.7	14.8	13.0	7.1	7.2	6.5	6.0	1.9	1.6	1.5	1.3

Valuation Indications - M&M

Financial metrics	P/E				EV/EBITDA				EV/Sales				
$ in millions	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	Average
Unadjusted metrics		373.6	246.4	344.0		291.3	202.8	270.0		237.6	201.3	217.3	264.9
Adjusted metrics		506.5	403.1	344.0		401.4	338.0	270.0		256.7	229.5	217.3	329.6

Valuation Indications - Big 4

Financial metrics	P/E				EV/EBITDA				EV/Sales				
$ in millions	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	Average
Unadjusted metrics		655.7	320.6	382.8		477.6	254.5	328.0		398.6	321.0	326.7	385.1
Adjusted metrics		889.1	524.5	382.8		658.2	424.1	328.0		430.6	365.9	326.7	481.1
Average (M&M and Big 4)		606.2	373.7	363.4		457.1	304.9	299.0		330.9	279.4	272.0	365.2

Morningstar Public Company Data

	P/E				EV/EBITDA				EV/Sales			
	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E
Mean and median	14.7	15.0			1.5	3.0			0.4	0.6		
Big 4	15.6	19.8			1.4	3.0			0.3	0.6		

Valuation Indications - M&M

Financial metrics	P/E				EV/EBITDA				EV/Sales				
$ in millions	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	Average
Unadjusted metrics		556.5				196.6				156.4			303.2
Adjusted metrics		754.5				271.0				169.0			398.2

Valuation Indications - Big 4

Financial metrics	P/E				EV/EBITDA				EV/Sales				
$ in millions	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	Average
Unadjusted metrics		734.6				200.7				135.0			356.8
Adjusted metrics		995.9				276.6				145.8			472.8
Average (M&M and Big 4)		760.4				236.3				151.5			382.7

Based upon our understanding of the application of this methodology, it would appear that either a weighted average was applied to the selected comparable company metrics in the Presentation or there is some disconnect between the calculated average valuation indication of $398M (slide 39). As shown above, we have calculated a value of approximately $365M using the same data. Interestingly, when we used the financial metrics that were calculated using the Morningstar data the indicated value was closer to the amount shown in the Presentation (approximately $383M).

	Presentation	Review	
Comparable company analysis - value before merger premium	**$398.8**	**$382.7**	**$365.2**
Times:			
Merger premium - slide 44	40%	40%	
Indicated value - slide 45	$558.3		
Less:			
Indicated value - reviewed calculation		535.8	511.3
Potential net difference ($ in millions)		**22.5 -**	**47.1**
Divided by:			
Indicated value - slide 45		558.3	
Potential net difference (%)		**4% -**	**8%**

Our analysis above shows that the potential result of applying the metrics derived from our review of the Presentation could result in a difference in value of between approximately $22.5M and $47.1M; however it is important to note that we generally believe that any two independent valuations that fall within a variance in indicated value of less than 10% are in agreement in regard to their opinion. Since we have estimated that the potential net differences between our reviewed calculations and the indicated value presented in slide 45 of the Presentation to be between 4% and 8%, it is our opinion that the discrepancies noted are likely immaterial.

Control Premium

In the comparable company analysis, Barrington applies multiples from publicly traded companies to CollegeAmerica's financial performance to determine a "minority interest" value of $398.8 million.

To arrive at a control value, as is the case with the purchase of interest of CollegeAmerica, Barrington applies a 40% control premium, based on a range of premium from actual transactions that have occurred in the market. This leads to a value after merger premium of $558.3 million.

The methodology utilized by Barrington is generally accepted by many in the valuation community. These valuators believe that since the valuation multiples are from publicly traded companies, where no one owner has any sort of control, they are based on a minority interest. Therefore, to arrive at a control position value, one must apply a control premium, as is the case in the valuation of CollegeAmerica.

However, many others believe that the public company multiples are neutral in respect to a minority versus control position, and that the determination of whether to include a control premium or minority interest discount is based on the cash flows of the subject company.

Both valuation methodologies related to control premiums from guideline company multiples are accepted within the valuation community and therefore, we believe it is reasonable methodology for Barrington to have utilized.

Comparable Transactions Analysis

Barrington states that under this method, actual transactions of comparable companies were used to obtain transaction multiples that were then applied to certain Company metrics in order to determine a "control sale" value (slide 47). The metrics selected, as shown below, were price to EBITDA and price to revenue.

Generally, when calculating a control value under this methodology, the selected multiples are based upon a market value of invested capital (MVIC) for the comparable company transaction. Barrington has in this case used an equity value for the companies sampled, with the difference being that an equity value includes the structured debt of the company. MVIC on the other hand is the equity value of the company with the structured debt added back.

The theory behind using MVIC to express a control value is that under a control scenario, owners of a company have the discretion to manipulate capital structure to include debt as deemed necessary.

In order to determine the possible effect of using equity value as opposed to MVIC under this method, we recalculated the value of the Company using MVIC to EBITDA and MVIC to sales metrics obtained from the Pratt's Stats database for entities that were as similar in nature to the Company as we could determine. We did not have access to the identical company data that Barrington had used, however we believe that the companies selected were similar enough for purposes of this analysis.

It is important to note that there was a slight difference in our calculation of the price to revenue implied value obtained using the equity value data originally selected by Barrington. The value shown on slide 48 using this metric is between $348.8 and $549.3 million, where we have calculated a value of between $352.3 and $548.6 million; however the difference is in our opinion likely immaterial to our analysis and has been noted to make the reader of this report aware that there is a discrepancy in the table below and the Presentation.

In calculating the implied values below, a 40% discount factor has been applied by Barrington to account for the timing of the transactions used under this method. The Presentation states that the industry has not had significant transaction activity in the most recent periods since the date of the valuation, and the market for similar companies is not nearly as strong as reflected in the data presented. Additionally, Barrington states that the application of this method is subjective (slide 47) in nature and as such, we do not have issue with the fact that the Presentation does not include support for the 40% discount factor or that the factor was used in determining the implied value shown on slide 48.

Based upon the MVIC data that we've used under this method, the implied value range is from $308.0 to $624.1 million. The implied value of $348.8 to $549.3 shown in the Presentation using equity value data is within the MVIC range, and as a result we believe that this range is consistent with our findings despite the difference in the theoretical level of control.

Target Company Name	Acquirer Company Name	Announce Date	Equity Value ($ in millions)	Price / EBITDA	Price / Revenue
Renaissance Learning	Permira Advisors	8/16/2011	$455	11.5	3.3
Nobel Learning	Leeds Equity Partners	5/18/2011	125	7.8	0.5
Laureate Education	S.A.C. Capital	1/28/2007	3,226	14.3	2.8
Education Management	Goldman Sachs & Providence	3/6/2006	3,244	12.6	3.0
Educate	Sterling; Citigroup; Educate	9/25/2006	346	9.5	1.0
eCollege.com	Pearson Education	5/14/2007	504	25.5	9.2
Concorde Career Colleges	Liberty Partners	6/21/2006	109	15.3	1.3
		Mean		13.8	3.0
		Median		12.6	2.8
		Laureate, EDMC & Concorde		14.1	2.4
		Less: 40% discount		60%	60%
		Adjusted multiples		8.4	1.4
		Times: College America metrics		65.0	248.1
		Implied valuation		548.6	352.3

CompanyName	BusinessDescription	Sale Date	Market Value of Invested Capital (MVIC)	MVIC / EBITDA	MVIC / Sales
Hesser, Inc.	Owner and Operator, Post Secondary Schools (College)	3/13/1998	$15,000,000	8.6	0.9
Western State University of Southern California	Law School	3/1/2001	12,600,000	15.9	1.5
American Education Centers, Inc.	Offers Diploma and Associate Degree Programs	9/2/2003	116,000,000	26.0	5.1
Wyo-Tech Acquisition Corporation	Offers Diploma and Degree Programs in Auto - Diesel Tech	7/1/2002	84,400,000	20.7	2.7
Interboro Institute, Inc.	Owns and Operates a Two-Year College	1/14/2000	672,500	0.5	0.1
U.S. Education Corporation	Owns and Operates Private Career Colleges	9/18/2008	298,185,000	47.6	2.1
Penn Foster Education Group, Inc.	Provider of Consumer-Based Distance Education	12/7/2009	176,264,000	12.3	2.0
Heald Capital, LLC	Offers Certificate Programs and Associate Level Degrees	1/4/2010	440,572,000	11.7	2.4
		Mean		17.9	2.1
		Median		14.1	2.0
		Average of mean and median		16.0	2.1
		Less: 40% discount		60%	60%
		Adjusted multiples		9.6	1.2
		Times: College America metrics		65.0	248.1
		Implied valuation		624.1	308.0

Under this method, Barrington goes on in the Presentation to show additional EBITDA multiples based upon market intelligence, historical trending and prior offers for the Company. Solely based upon the information contained within the Presentation, the sources and in some cases the meaning of this data is unclear. Although the EBITDA multiples shown are consistent with the transaction data from slide 48, we have no opinion to their reliability absent any further detail from Barrington.

Comparable Transaction Analysis - Review

Education industry transactions		$308.0	$624.1
Market intelligence	from Presentation	520.0	585.0
Historical multiples	from Presentation	455.0	650.0
Offers received	from Presentation	507.0	669.9
Implied valuation (average)		**$539.9**	

As shown above, the net difference in implied value due to the potential variance in our application of MVIC to the equity values used in the Presentation is approximately $4.3 million (slide 52).

Cost of Equity

Barrington utilized the Capital Asset Pricing Model ("CAPM") to determine an appropriate discount rate or required rate of return of an asset. The formula for CAPM is as follows:

$E(R_i) = R_f + (\text{Beta} \times RP_m) + RP_s + RP_u$

Where:

$E(R_i)$	=	Expected (market required) rate of return
R_f	=	Rate of return for a risk-free security as of the Valuation Date
Beta	=	Measure of systematic risk
RP_m	=	Equity risk premium for the "market"
RP_s	=	Risk premium for size
RP_u	=	Risk premium for specific company, u stands for unsystematic risk

Barrington CAPM:

Base case: 13.86% = 1.65% + (1.59 x 6.01%) + 2.65%

Low beta case: 13.23% = 1.65% + (0.82 x 6.01%) + 2.65% + 4.00%

The risk free rate (R_f) was based on the 10-year U.S. Treasury yield as of September 30, 2012. Many valuators utilize the 20-year bond rate as a proxy to a risk free security, which as of this date was 2.42%. However, there is debate whether it is more accurate to use a shorter-term Treasury bill or a long-term Treasury bond to represent the risk free rate of return. The Presentation did not outline the reasoning behind the use of a shorter period 10 year yield.

Beta is typically derived from a group of guideline public companies that are similar to the subject company. Beta is representative of industry risk. Barrington utilized betas derived from public companies considered in comparable company analysis, which appears reasonable.

The equity risk premium (RP_m) is often based on Ibbotson *Cost of Capital Handbook* and is currently 6.62%. Barrington on the other hand utilized the equity risk premium from Stern School of Business professor Aswath Damodaran's *Equity Risk Premiums (ERP): Determinants, Estimation and Implications – The 2012 Edition*, which is 6.01%. The source for Barrington's equity risk premium appears to be reputable and reasonable.

The increased risk premium for being a small company versus a large publically traded company is the size premium and is typically derived from Ibbotson, which Barrington has utilized in its discount rate.

Finally, CAPM requires consideration of any risks specific to the subject company. There is little objective data and no quantitative means of establishing the specific risk of a subject company, and it is typically based on judgment and experience. These are any risks in addition to the equity, industry, and size risks outlined above. General factors that should be considered include:

1. Business risk
    a. Size relative to the benchmarks used for earlier risk premiums
    b. Geographical concentration
    c. Management strength and depth
    d. Product line concentration
    e. Customer mixture and reliance
    f. Supplier mixture and reliance
    g. Competitive strengths and weaknesses
    h. Quality and variability of earnings
2. Industry
3. Financial risk
    a. Degree of leverage
    b. Coverage ratios
    c. Liquidity
    d. Access to sources of capital

We noted that Barrington utilized a discount rate based on two scenarios of CAPM with different betas and a Barrington estimate for a "regulatory" premium. No explanation was given for utilizing the two beta scenarios and what the regulatory premium is or how it was calculated.

It appears that Barrington did not include any sort of specific company risk premium that would take into consideration the riskiness of investing in CollegeAmerica specifically. Examples of these risks were discussed above. Given we did not have access to the valuation report underlying the Presentation, we do not know whether Barrington considered any additional specific company risk related to CollegeAmerica that should be incorporated in the discount rate.

Based on the Presentation and our analysis, we believe it is possible that some sort of specific company risk should have been included in the calculation of the discount rate for CollegeAmerica due to factors such as the following:

1. As Barrington noted in the background analysis, CollegeAmerica has experienced high compound growth since 2005, which may not be sustainable.
2. EBITDA margins are very high compared to the industry (30%-40%) versus less than 20% for the industry. These margins are likely not sustainable in the long-term.
3. CollegeAmerica's founder delegated marketing duties to another manager in 2010. As discussed earlier, the marketing manager made several poor decisions in 2010 and 2011, which affected CollegeAmerica's bottom line. Barrington made a marketing adjustment due to the "non-recurring" nature of the reduced revenue and increased expenses. This may indicate issues with management's ability to maintain profitability long-term.

As a measure of how the discount rate used in the Presentation could potentially vary based upon the points raised above, we have recalculated the discount rate using the following assumptions:

- Risk free rate = 20-year US treasury bond rate
- Market risk premium = Ibbotson equity risk premium
- Regulatory risk = no regulatory risk assumed
- Company specific risk = varies by company; a range of 0% to 4% was assumed

As shown in the table below, based upon the assumptions listed above we've selected a discount rate of 16% as opposed to the 14% rate shown on slide 66 of the Presentation.

Cost of Equity - II (Presentation)

	Risk-Free Rate			Beta		Market Risk Premium			Market Discount Rate		Size Premium		Regulatory Premium		Equity Discount Rate
Base case	1.65%	+	(	1.59	x	6.01%	)	=	11.21%	+	2.65%	+	0.00%	=	13.86%
Low beta case	1.65%	+	(	0.82	x	6.01%	)	=	6.58%	+	2.65%	+	4.00%	=	13.23%
											Selected discount rate			=	**14.00%**

Cost of Equity - II (Review)

	Risk-Free Rate			Beta		Market Risk Premium			Market Discount Rate		Size Premium		Company Specific Risk		Equity Discount Rate
Base case	2.42%	+	(	1.59	x	6.62%	)	=	12.95%	+	2.65%	+	0.00%	=	15.60%
Low beta case	2.42%	+	(	0.82	x	6.62%	)	=	7.85%	+	2.65%	+	4.00%	=	14.50%
											Selected discount rate			=	**16.00%**

Discounted Future Benefits Method

Barrington applied a five year discrete projection period and a terminal year (operations into perpetuity) in arriving at a value of CollegeAmerica under the DCF method. The five year discrete projection period is based on CollegeAmerica's projections for 2013 – 2017 and additional adjustments for working capital and capital expenditures to arrive at free cash flows of the Practice.

To determine the terminal year value, Barrington applied an EBITDA multiple to projected EBITDA in 2017. The EBITDA multiple of 8.0 was used, which appears high. On Slide 37, the comparable company enterprise value to EBITDA multiples "Mean & Median Index" ranges from 4.0 to 5.2, while the "Big Four Index" ranges from 6.0 to 7.1. It appears that Barrington is utilizing an EBITDA multiple greater than that of industry comparable companies.

We were not provided support for how this multiple was determined in the Presentation. Hence, based on the information received, the multiple may be inflating the concluded value under the DCF method. However, the full valuation report may provide additional information on the reasoning for utilizing this multiple.

As a measure of the potential impact of the difference in discount rate that we have selected in the previous table, and using the upper limit of the industry comparable EBITDA multiples for the "Big Four Index" as shown in the Presentation, we have recalculated the discounted cash flow indication of value for the Company.

Terminal Value Analysis - Review

	2013	2014	2015	2016	2017
EBITDA	$56,456	$82,399	$106,943	$128,923	$146,969
Terminal value multiple					7.1
Terminal value					**$1,043,480**

Cash Flows for DCF Analysis - Review

	Discount Rate	2013	2014	2015	2016	2017
Free cash flows		$32,535	$27,805	$41,247	$53,937	$62,478
Terminal value						1,043,480
Total cash flows		32,535	27,805	41,247	53,937	1,105,958
Mid-point convention		0.5	1.5	2.5	3.5	4.5
PV factor using:	16%	0.9285	0.8004	0.6900	0.5948	0.5128
Discounted cash flows		30,208	22,255	28,461	32,084	567,124
Net present value						**$680,131**

It is important to note that we have also implemented a mid-point convention in the calculation above, where an end-of-year convention was used in the Presentation. Use of a mid-point convention assumes that cash flows for the company are evenly distributed over the course of the year; the end-of-year convention is typically used when cash is received at the end to the year. Based on a typical school year semester system, we have assumed that cash is probably received in a manner somewhat periodically over the course of the year and have thus decided that the mid-point convention may be more appropriate.

Based upon the table above, we have calculated a value of approximately $680 million, compared to the value of approximately $753 million shown on slide 68.

Valuation Conclusion

After determining the value of CollegeAmerica under the Comparable Transaction Analysis, Comparable Company Analysis, and Discounted Cash Flow Analysis, Barrington utilized a weighted average of the three methods, as shown below, to arrive at a conclusion of value for CollegeAmerica:

	Value (Presentation)	Recalculated Value (Review)		
Comparable Transaction Analysis	$536,000	$540,000		
Comparable Company Analysis	558,000	511,300	-	535,800
Discounted Cash Flow Analysis	753,000	680,000		
Estimated Fair Market Value	**$650,000**			
Overall Potential Range ($ in millions)		**$511,300**	**-**	**$680,000**

However, Revenue Ruling 59-60 states: "Because valuations cannot be made on the basis of a prescribed formula, there is no means whereby the various applicable factors in a particular case can be assigned mathematical weights in deriving the fair market value. For this reason, no useful purpose is served by taking an average of several factors (for example, book value, capitalized earnings and capitalized dividends) and basing the valuation on the result. Such a process excludes active consideration of other pertinent factors, and the end result cannot be supported by a realistic application of the significant facts in the case except by mere chance."

While Revenue Ruling 59-60 discourages the use of weighting multiple methods, weighting is frequently accepted in the valuation community in general practice. However, the Presentation did not give any support for the weightings used in arriving at the conclusion of value and we, therefore, are unable to determine whether this weighting was reasonable.

The Presentation included a summary of the comparable company analysis, comparable transactions analysis, and the discounted future benefits method. Valuation standards also require the valuator to consider the asset approach, capitalized benefits approach, and rules of thumb/industry methods, in addition those methods shown in the Presentation.

CONCLUSION OF VALUATION REVIEW

In arriving at our review opinion, we noted some issues with the Presentation that we believed required further scrutiny. These issues included:

- The Cost Approach was not discussed.
    - Additionally, the Presentation did not include the Company's balance sheet.
- Certain "add-backs" to the income statements had no detailed explanation as to their nature or reasoning for the add backs.

- The discount rate utilized under the Income Approach was lower than what we might have expected.
    - Two different betas and a "regulatory premium" were applied with no explanation contained within the Presentation.
    - No adjustment was made for Company specific risk.
- A capitalization of benefits method was not discussed or included within the Presentation.
- No industry methods or rules of thumb were discussed or included within the Presentation.
- The conclusion of value contained within the Presentation was expressed as the weighted average of three methods.
    - Despite the fact that this practice is contrary to Revenue Ruling 59-60, no explanation is provided for the use of weighting of the three methods.

We have also considered certain other areas of interest within our review report; however we believe that the points listed above are of primary concern. That being said and considering the limitations of the nature and amount of information included in a presentation format as opposed to a fully-contained appraisal report as defined by SSVS-1, we cannot draw any conclusions as to the effect of the underlying information that we did not receive. Noting certain factors, assumptions, and differences in theory and based upon the analyses performed, we have recalculated the potential value of the Company under the methods utilized in the Presentation.

	Value ($ in Millions)	**Recalculated Value**		
Comparable Transaction Analysis	$536,000	$540,000		
Comparable Company Analysis	558,000	511,300	-	535,800
Discounted Cash Flow Analysis	753,000	680,000		
Estimated Fair Market Value	**$650,000**			
Overall Potential Recalculated Range		**$511,300**	**-**	**$680,000**

Based upon the table above, it appears that the estimated fair market value for the Company shown on slide 71 of the Presentation is consistent with our overall range of recalculated value. Therefore, excluding those points noted previously, it is our opinion that conclusion of value of the common equity of CollegeAmerica as of September 30, 2012 on a control, non-marketable basis contained within the Presentation is likely fairly stated and consistent with fair market value.

However, we requested additional information and have not received that as of the date of this report. The information requested, but not received may have had a significant impact on our conclusion.

ASSUMPTIONS AND LIMITING CONDITIONS

This valuation review is subject to the following assumptions and limiting conditions:

1) The Appraisal Review analyses arrived at herein are valid only for the stated purpose as of the date of the valuation.

2) Public information and industry and statistical information have been obtained from sources we believe to be reliable. However, we make no representation as to the accuracy or completeness of such information and have performed no procedures to corroborate the information.

3) This report and the analyses arrived at herein are for the exclusive use of our client for the sole and specific purposes as noted herein. They may not be used for any other purpose or by any other party for any purpose. Furthermore the report and analyses are not intended by the author and should not be construed by the reader to be investment advice in any manner whatsoever. The Appraisal Review represents the considered opinion of Blue & Co., LLC, based on information furnished to them by you, Barrington and other sources.

4) Neither all nor any part of the contents of this report (especially the analyses within, the identity of any valuation specialist(s), or the firm with which such valuation specialists are connected or any reference to any of their professional designations) should be disseminated to the public through advertising media, public relations, news media, sales media, mail, direct transmittal, or any other means of communication, including but not limited to the Securities and Exchange Commission or other governmental agency or regulatory body, without the prior written consent and approval of Blue & Co., LLC.

5) Future services regarding the subject matter of this report, including, but not limited to testimony or attendance in court, shall not be required of Blue & Co., LLC unless previous arrangements have been made in writing.

6) We have not visited the premises and we have not made a physical inspection of the property. No investigation of legal fee or title to the property has been made, and the owner's claim to the property has been assumed valid. No land survey has been made. No appraisals of real or personal property have been made by Blue & Co., LLC.

7) No change of any item in this appraisal report shall be made by anyone other than Blue & Co., LLC, and we shall have no responsibility for any such unauthorized change.

8) Unless otherwise stated, no effort has been made to determine the possible effect, if any, on the subject business due to future Federal, state, or local legislation, including any environmental or ecological matters or interpretations thereof.

9) If prospective financial information approved by management has been used in our work, we have not examined or compiled the prospective financial information and therefore, do not express an audit opinion or any other form of assurance on the prospective financial information or the related assumptions. Events and circumstances frequently do not occur as expected, and there will usually be differences between prospective financial information and actual results, and those differences may be material.

10) We have not conducted interviews with the current management of the Entity, or their representatives, concerning the past, present, and prospective operating results of the entity.

11) Except as noted, we have relied on the representations of Barrington and other third parties concerning the value and useful condition of all equipment, real estate, investments used in the business, and any other assets or liabilities, except as specifically stated to the contrary in this report. We have not attempted to confirm whether or not all assets of the business are free and clear of liens and encumbrances or that the entity has good title to all assets.

12) The approaches and methodologies used in our work did not comprise an examination in accordance with generally accepted accounting principles, the objective of which is an expression of an opinion regarding the fair presentation of financial statements or other financial information, whether historical or prospective, presented in accordance with generally accepted accounting principles. We express no opinion and accept no responsibility for the accuracy and completeness of the financial information or other data provided to us by others. We assume that the financial and other information provided to us is accurate and complete, and we have relied upon this information in performing our valuation.

13) The Appraisal Review may not be used in conjunction with any other appraisal or study. The analyses in this report are based on the program of utilization described in the report, and may not be separated into parts. The review was prepared solely for the purpose, function and party so identified in the report. The report may not be reproduced, in whole or in part, and the findings of the report may not be utilized by a third party for any purpose, without the express written consent of Blue & Co., LLC.

14) Unless otherwise stated in the report, the Appraisal Review has not considered or incorporated the potential economic gain or loss resulting from contingent assets, liabilities or events existing as of the valuation date.

15) In all matters that may be potentially challenged by a Court or other party we do not take responsibility for the degree of reasonableness of contrary positions that others may choose to take, nor for the costs or fees that may be incurred in the defense of our recommendations against challenge(s). We will, however, retain our supporting workpapers for your matter(s), and will be available to assist in defending our professional positions taken, at our then current rates, plus direct expenses at actual, and according to our then current Standard Professional Agreement.

16) Any decision to purchase, sell or transfer any interest in the subject entity or its subsidiaries shall be Entity ownership's responsibility, as well as the structure to be utilized and the price to be accepted.

17) The selection of the price to be accepted requires consideration of factors beyond the information we will provide or have provided. An actual transaction involving the subject business might be concluded at a higher value or at a lower value, depending upon the circumstances of the transaction and the business, and the knowledge and motivations of the buyers and sellers at that time. Due to the economic and individual motivational influences which may affect the sale of a business interest, Blue assumes no responsibility for the actual price of any subject business interest if sold or transferred.

18) All facts and data set forth in our letter report are true and accurate to the best of the Blue's knowledge and belief.

19) We have no responsibility or obligation to update this report for events or circumstances occurring subsequent to the date of this report.

20) Our Appraisal Review, shown herein, pertains only to the subject business, the stated value standard (fair market value), as at the stated valuation date, and only for the stated valuation purpose(s).

21) Our report will not be used for financing, or included in a private placement or other public documents and may not be relied upon by any third parties.

22) The report assumes all required licenses, certificates of occupancy, consents, or legislative or administrative authority from any local, state or national government, or private entity or organization have been or can be obtained or reviewed for any use on which the analyses contained in the report are based.

23) Blue & Co., LLC does not consent to be an expert with respect to matters involving the Securities and Exchange Commission. For purposes of this report, the foregoing sentence means that Blue & Co., LLC shall not be referred to by name or anonymously in any filing or document. Should you breach this stipulation and refer to Blue & Co., LLC by name or anonymously, you will amend such filing or document upon written request of Blue & Co., LLC.

24) We express no opinion for matters that require legal or other specialized expertise, investigation, or knowledge beyond that customarily employed by business appraisers.

25) Unless stated otherwise in this report, we express no opinion as to: 1) the tax consequences of any transaction which may result, 2) the effect of the tax consequences of any net value received or to be received as a result of a transaction, and 3) the possible impact on the market value resulting from any need to effect a transaction to pay taxes.

26) All of the assumptions and limiting conditions are in addition to, and not in lieu of, those found in the report body and Certification section of the report

VALUATORS' REPRESENTATION[9]

I certify to the best of my knowledge and belief that:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed and this report has been prepared to my best effort to be in conformity with the American Institute of Certified Public Accountants, Uniform Standards of Professional Appraisal Practice, the Business Valuation Standards of the American Society of Appraisers, the Institute of Business Appraisers and the Standards of the National Association of Certified Valuation Analysts.
- The American Society of Appraisers has a mandatory recertification program for all of its senior members. All senior members (ASA designation) signing this report are in compliance with that program.
- No significant professional assistance was provided to the persons signing this report.

[9] Representation in satisfaction of the USPAP Certification requirement.

Additionally, I certify to the best of my knowledge and belief that:

- I am not a party to the transaction, am not related to any party to the transaction, am not married to any person with a relationship to the transaction, am not regularly used by any of the parties to the transaction and do not perform a majority of appraisals for these persons.
- I hold myself out to the public as a valuation practitioner and perform appraisals of privately-held businesses on a regular basis.
- I am qualified to make appraisals of the type of property being valued including, by background, experience, education, and memberships in professional associations.
- I understand that an intentionally false or fraudulent overstatement of value may subject me to a civil penalty.
- My fee is not based upon a percentage of the appraised value of the property.

Sincerely,

Bradley H. Minor, CPA/ABV/CFF, ASA, CVA, CMEA, Director

Kameron H. McQuay, CPA/ABV, CVA, Director

BRADLEY H. MINOR, CPA/ABV/CFF, ASA, CVA, CMEA

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BIO

Brad started with Blue in 1989 with a degree in business (accounting major) from Indiana University. Brad began performing business valuations in 1990. He is a Certified Valuation Analyst (CVA) and an Accredited Senior Appraiser (ASA) – Business Valuation member of the American Society of Appraisers. Additionally, he is a Certified Public Accountant (CPA) and has earned the AICPA's specialty designations for business valuators (ABV) and forensic accountants (CFF). He is also a Certified Machinery and Equipment Appraiser (CMEA) member of the National Business Brokers Association.

Brad was elected to Director in 2008 and has overseen the firm's Valuation and Financial Forensics Group since 1999. He performs business valuations, assists with real estate and machinery & equipment appraisals, and has supported attorneys and clients in various areas of litigation. Brad has given presentations on various topics such as: family limited partnerships, valuing construction companies, valuing professional practices, valuing ESOPs, valuing healthcare entities, business valuation standards and general business valuation topics.

Brad served on the AICPA Business Valuation Committee (2003 through 2007) and has served as a member of the AICPA's "Ask the Experts" Technical Advisory Panel and the "ABV Mentor Program." He has served as chairman of the Litigation Support Group of AGN International – North America. He served on the Editorial Advisory Board and was a frequent contributor of articles to the national publication "National Litigation Consultant's Review." He is the co-author of the June 1997 book entitled "Valuation of a Closely Held Business" for Research Institute of America, a national business publisher.

EDUCATION

Indiana University, Bloomington, IN (Graduated 1989)
BS Business (Accounting Major)

PROFESSIONAL DESIGNATIONS

- Certified Public Accountant (CPA), Indiana, 1992
- Certified Valuation Analyst (CVA), 1994 (National Association of Certified Valuation Analysts)
- Diplomate of the American Board of Forensic Accounting 1997, (The American College of Forensic Examiners)
- Accredited in Business Valuation (ABV), 1998 (American Institute of Certified Public Accountants)
- Accredited Senior Appraiser (ASA) in Business Valuation, 2000 (American Society of Appraisers)
- Certified in Machinery and Equipment Appraisals (CMEA), 2005 (National Equipment & Business Brokers Institute)
- Certified in Financial Forensics (CFF), 2008 (American Institute of Certified Public Accountants)
- Fellow of the American College of Forensic Examiners (FACFEI), 2008 (The American College of Forensic Examiners)

BUSINESS HISTORY

Blue & Co., LLC, Director of Valuation and Litigation Services Department — *1990 to Present*
Indianapolis, Indiana and Evansville, Indiana

Brad has been working in the valuation and litigation support services department since 1990 and has overseen the department for the firm since 1999. This department provides a full range of services, including business valuation, insurance loss claims, forensic accounting, budgeting, forecasting, business plans, assisting with real estate and machinery and equipment appraisals, and support to attorneys in virtually all areas of litigation, including expert testimony and consultation. The majority of Mr. Minor's time is spent in this area. Mr. Minor also consults regularly with closely held businesses in all areas of their operations and is responsible for tax consulting and planning for several corporate and individual tax clients.

Blue & Co., LLC, Senior in Tax Department — *1989 to 1990*
Indianapolis, Indiana

Experience in the tax department included working directly with clients in planning and compliance with tax laws. Areas of experience include corporate, partnership, and individual taxation, buying and selling of businesses, and divorce taxation issues.

Internal Revenue Service, Internal Revenue Agent — *1987 to 1988*
Evansville, Indiana

Held this position originally as a co-op student while attending I.U. and later on a part-time basis during senior year of college. Exposed to all areas within organization including audit, collection, and criminal investigation. Main responsibilities were those of a normal revenue agent, auditing individual and small business tax returns.

ASSOCIATION AND CIVIC MEMBERSHIPS AND ACTIVITIES

- American Institute of CPA's (Business Valuation Exam Review Course Task Force 1998 – 2002, Fundamentals of Business Valuation (FBV) Task Force 2002, Business Valuation Committee 2003 - 2007). Business Valuation Volunteer of the Year Award recipient 2001
- Indiana CPA Society (Litigation Committee 1996)
- Accountants Global Network ("AGN") (Litigation Support Committee 1995/1996, Committee Chairman 1996/1997 and 1997/1998)
- American Society of Appraisers (Indiana Chapter Secretary 1998/1999, 2000/2001; Vice President 2001/2002)
- Member of the Institute of Business Appraisers
- Member of the American College of Forensic Examiners
- Member of the Estate Planning Council of Indianapolis

LECTURES, WRITINGS, SPEECHES, SEMINARS, COURSES, ETC.

- "Valuations A to Z - Part 2, Specific Methods & Techniques", Columbus Bar Association, with Jeffry Moffatt and Gina Grote, Columbus, OH, June 11, 2012.
- "Business Valuation for the Divorce Attorney", Evansville Bar Association, with Jarit Loughmiller, Evansville, IN, March 23, 2012.
- "Estate and Gift Tax Case Update", Hoosier Hills Estate Planning Council, Bloomington, IN, with Dave Maschino, John Kotlarczyk, and Kristine Bouaichi, February 16, 2012.
- "Benchmarking in Physician Practice Valuations", Webinar for The Healthcare Practice Group (HPG) and the National Association of Certified Valuation Analysts, September 30, 2010 and January 27, 2011.
- "BV Practice Management Toolkit" American Institute of Certified Public Accountants, Contributing Author, aicpa.org/FVS, 2009.
- "New Exposure Draft of Proposed Statement on Standards for Valuation Services (SSVS)" Accountant's Global Network Business Valuation Teleconference, December 14, 2006.
- "The Value of Valuations in Healthcare" Ohio Society of CPA's Health Care Conference, with Kam McQuay and Alex Fritz, November 14, 2006.
- "Tips for Starting a BV Practice" Journal of Accountancy, September 2006.
- "ASC's... If You Don't Know What the Acronym Means You Probably Shouldn't Value Them" National Litigation Consultant's Review, March 2006.

- "Review of "The Expert Witness Handbook, Tips and Techniques for the Litigation Consultant" by Dan Poynter", National Litigation Consultant's Review, December 2005.
- Lead editor and reviewer for "Business Valuation Practice Management Toolkit" American Institute of Certified Public Accountants, November 2005.
- "A "Scrushy" Situation", National Litigation Consultant's Review, October 2005.
- "It's a Rate, Rate, Rate, Rate World", National Litigation Consultant's Review, August 2005.
- "AICPA Business Valuation Standards", Accountant's Global Network, North American Regional Meeting, May 18, 2005, St. Louis, MO.
- "Back to the Basics, Legal Lingo 101", National Litigation Consultant's Review, May 2005.
- "How the BV Professional Can Work Effectively with Non-BV Appraisers (Co-Authored with Dr. Brent C Smith)", National Litigation Consultant's Review, March 2005.
- "Seak, Inc.'s "National Guide to Expert Witness Fees and Billing Procedures (Review of)", National Litigation Consultant's Review, December 2004.
- "Expert Preparation of the Expert Witness (a primer for litigation support team members)", National Litigation Consultant's Review, August 2004.
- "New BV Standards and Other AICPA Matters", Accountant's Global Network, North American Regional Meeting, May 25, 2004, Palm Springs, CA.
- "Using Management Planning, Inc.'s Restricted Stock Study", National Litigation Consultant's Review, March 2004.
- "Be Prepared for New AICPA Standards", National Litigation Consultant's Review, February 2004.
- "Litigation Services and Applicable Standards (Review of)", National Litigation Consultant's Review, December 2003.
- "Down on the Farm Damages", National Litigation Consultant's Review, August 2003.
- "Market Approach Methods", Accountant's Global Network, North American Regional Meeting, May 20, 2003, Cincinnati, OH.
- "Library Organization", National Litigation Consultants' Review, May 2003.
- "Come to the Fight Heavily Armed", National Litigation Consultants' Review, March 2003.
- "OneSource", National Litigation Consultants' Review, December 2002.

- "A Time to Shred", National Litigation Consultants' Review, October 2002.
- Review and assistance on "Be a Bulldog", National Litigation Consultants' Review, August 2002.
- "Sweating the Small Stuff", National Litigation Consultants' Review, May 2002.
- "Do I Need to File a Gift Tax Return", Blue Notes, Spring 2001 and The Business Edition (formerly the Columbus Business Scene), July 2001.
- "To ABV or Not to ABV", The CPA Consultant, Newsletter of the AICPA Consulting Services Section, February/March 2001.
- *"Business Killers"*, Indiana's Midwest Builders Convention, February 11, 2000, Indianapolis, IN.
- *"Valuation Case Analysis"*, National Association of Certified Valuation Analysts (NACVA) Indiana Chapter Meeting, Discussion Leader, August 17, 1999, Indianapolis, IN.
- "Internal Revenue Service Acquiesces in Capital Gains Discount Case", Blue Notes, Spring 1999.
- *"The Business of Litigation Support"*, Accountants Global Network (AGN) International World Congress, October 23, 1998, San Diego, CA.
- *"Valuation of Specific Assets"*, Indiana Continuing Legal Education Forum (ICLEF) Selected Topics in Probate Administration, October 17, 1997, Indianapolis, IN.
- Co-author of *"Valuation of a Closely Held Business"*, Research Institute of America, June, 1997, Copyright 1997.
- *"ESOPs Succession Planning"*, NBD Bank, May 1, 1997, Indianapolis, IN.
- *"Tax & Pension Aspects of ESOPs"*, The Indiana ESOP Association Professionals Meeting, March 13, 1997, Indianapolis, IN.
- *"Business Valuation Potpourri"*, Blue & Co., LLC Firmwide Audit and Accounting Training Seminar, September 20, 1996, Indianapolis, IN.
- *"Valuation of Construction Companies"*, Construction Industry Task Force Reunion, AGN, June 15, 1996, Fort Collins, CO.
- *"Valuation of the Practice"*, Indiana Continuing Legal Education Forum (ICLEF) <u>What Happens When the Professional/Executive Dies?</u> Seminar, December 5, 1995, Indianapolis, IN.
- *"Business Valuations"*, American Society of Women Accountants, November 16, 1995, Indianapolis, IN.

- *"Family Limited Partnerships, Brief Overview of Business Valuations"*, Indianapolis Chapter of CLU and ChFC, September 12, 1995, Indianapolis, IN.

- *"What is Litigation Support? Why a Business Valuation?"* Blue & Co. Firmwide Tax Training Seminar, November 20, 1991, Indianapolis, IN.

SELECTED BUSINESS VALUATION AND LITIGATION SUPPORT COURSES AND TRAINING

- American Society of Appraisers, Employee Stock Ownership Plans (ESOP) Valuation Course (BV206); Anaheim, CA, October 1995.
- American Society of Appraisers, Business Valuation Selected Advanced Topics (BV204); Indianapolis, IN April 1995, Passed BV204 Exam.
- National Association of Certified Valuation Analysts, Business Valuation and Certified Valuation Analysts (CVA) Training Program; Salt Lake City, Utah; November 1994.
- Partnerships and Other Pass-Through Entities; New York University, NY; July 1994.
- American Society of Appraisers, Business Valuation Case Study (BV203); Passed BV203 Exam; Denver, CO; May 1994.
- Tax Consequences of Buying and Selling a Business, sponsored by the IU Graduate School of Business; Indianapolis, IN; December 1993.
- AGN Business Valuation Seminar; Passed Introduction to Business Valuation (BV201) and Business Valuation Methodology (BV202) Exams; St. Louis, MO; May 1993.
- AGN, Litigation Support Training Seminar; Denver, CO; September 1992; San Diego, CA, September 1999.

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EDUCATION

University of Evansville – Evansville, Indiana
Bachelor of Science – Finance

ACADEMIC HONORS

Graduated with Honors
Guthrie May Award Winner – Most Outstanding Graduate

BUSINESS HISTORY

Blue & Co., LLC, Director — *1992 to Present*

Coordinates services to physicians and their group practices. Responsibilities include development of Firm Marketing and Quality Control System as it relates to physician entities.

Additional responsibilities include corporate compliance activities for both hospital and physicians' organizations, Indiana Medicaid reimbursement issues, operational assessments of healthcare organizations, compliance and HIPAA impact, business valuation for Healthcare facilities, oversight of hospital acquisition programs, as well as a frequent speaker to physician and hospital groups.

Harding Shymanski & Co., Healthcare Professional Division-Manager — *1989 to 1992*

Responsible for all aspects of consulting service engagements including office practice set-up, accounting and financial management issues, coding and reimbursement analysis, billing and collection reviews, adoption of retirement plans and personal financial planning for physicians. Directed the activities of employees in the Healthcare Department.

Harding Shymanski & Co., Staff Accountant *1983 to 1989*

Delivered high quality audit and accounting services to various clients. Managed engagements for small and large audit clients requiring concurrent supervision of multiple engagement teams ranging from two to six professionals. Responsibilities also included the review and preparation of corporate and individual income tax returns.

PROFESSIONAL AND CIVIC MEMBERSHIPS

American Institute of Certified Public Accountants
Indiana CPA Society
National Association of Certified Valuation Analysts
Medical Group Management Association
Indiana Medical Group Management Association
Healthcare Financial Management Association
Indiana University – Purdue University Indianapolis
    Adjunct Faculty, School of Public and Environmental Affairs
Child Advocacy Center
    Past President and Director
Young Life of Evansville
Young Life of Carmel
    Committee Member
Accountants Global Network
    Healthcare Professionals Executive Committee
Carmel-Clay School District
    High School Soccer Coach

Appendix A

JEFFRY M. MOFFATT, CPA/ABV/CITP, CVA

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Website: www.blueandco.com

EDUCATION

Indiana University, Kelley School of Business
Master of Professional Accountancy
Bachelor of Science in Business – Computer Information Systems

BUSINESS HISTORY

Blue & Co., LLC, Manager *2008 to Present*

A member of the Valuation and Healthcare Strategy Group primarily focused on the analysis and development of methods for aligning hospitals, healthcare systems and other healthcare related entities with physician groups and other care providers. Additional healthcare industry related services provided include physician and practice benchmarking, physician compensation analysis and practice management and assessment.

Also a member of Valuation and Forensic Services, providing business valuations, litigation support and other valuation consulting and appraisal services.

Prestige Group, Inc., Assistant Controller *2005 to 2008*

Primarily responsible for billing and reimbursement of subcontracted services for a domestic and international logistics services broker with operations in Indianapolis, IN, Dallas, TX and Houston, TX. Created internal billing and payment systems controls through the development of database systems tying together several disparate operations, sales and accounting systems.

PROFESSIONAL AND CIVIC MEMBERSHIPS

- American Institute of Certified Public Accountants – Accredited in Business Valuation (ABV) Champion
- Indiana CPA Society
- National Association of Certified Valuators and Analysts
- Healthcare Financial Management Association

- American Health Lawyers Association
- Indiana University Master of Health Administration Program Mentor
- United Way Emerging Leaders Program
- The Earth House Collective – Executive Board of Directors

LECTURES, WRITINGS, SPEECHES, SEMINARS, COURSES, ETC.

- "Healthcare Reform: The Rx for Physicians", *The Financial Diagnosis*, Kentucky Healthcare Financial Management Association, August 2010.
- "Owners' Compensation in Physician Practice Valuations" National Association of Certified Valuators and Analysts, September 14, 2010, October 14, 2010 and January 20, 2011.
- "Benchmarking Physician Practices" National Association of Certified Valuators and Analysts, September 23, 2010, October 26, 2010 and January 27, 2011.
- "Effects of Healthcare Reform: The 2011 Outlook for Physician Practice Valuations", *The Value Examiner*, November/December 2010.
- "Healthcare Valuation – What you Need to Know!", National Association of Valuators and Analysts State Chapter 2010, Tri-Annual Meeting (Indiana), November 19, 2010.
- "Valuing Medical Practices For a Divorce in the Current Healthcare Environment", *Valuing Professional Practices and Licenses, Third Edition*, Wolters Kluwer Law & Business, 2012.
- "Valuation A to Z (Part One): Fundamentals and Applications", Columbus Bar Association (Ohio), May 30, 2012.
- "Valuation A to Z (Part Two): Specific Methods and Techniques", Columbus Bar Association (Ohio), June 11, 2012.
- "Financial Projections and Financial Statement Adjustments for Valuation", National Association of Valuators and Analysts State Chapter 2010, Tri-Annual Meeting (Indiana), July 20, 2012.
- "Valuating Healthcare Transactions and Agreements", Columbus Bar Association (Ohio), October 5, 2012

MICHAEL L. UENG, CPA/ABV, CVA

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EDUCATION

University of Michigan, Ross School of Business
Master of Accounting
Bachelor of Business Administration with emphases in Accounting and Finance

BUSINESS HISTORY

Blue & Co., LLC, Manager *2009 to Present*

A member of the Valuation and Healthcare Strategy Group and a key contributor in providing healthcare practice management services, specifically focusing on business valuations for physician practices, hospitals and other healthcare related entities.

Clifton Gunderson, LLP, Assurance Senior Associate *2006 to 2008*

Performed reviews of Indiana, Ohio, and Mississippi Cost Reports of long-term care and mental health providers with responsibility for planning engagements, managing fieldwork, reviewing work of staff, and completing final report. Trained entire healthcare group during implementation of paperless audit software.

Worked on performance audits of Medicaid Management Information System (MMIS) of fiscal intermediary for the state of Indiana and State Children's Health Insurance Plan administrator for the state of Mississippi, and assisted in recalculation of Medicaid certified public expenditures by all public hospitals in the state of Alabama for Medicaid and DSH settlement.

PROFESSIONAL AND CIVIC MEMBERSHIPS

American Institute of Certified Public Accountants
National Association of Certified Valuation Analysts
Indiana CPA Society
Healthcare Financial Management Association

MEMORADUM

TO: Board of Directors of CEHE
From: Jay Mercer, Counsel to the Board
Re: Minimum Due Diligence

As discussed at our most recent meeting, the level of due diligence necessary for this transaction is driven by the comfort level of the transaction decision makers; CEHE Board of Directors. I have been requested to provide the Board with an outline of the minimum due diligence that I would recommend. This list of minimum due diligence requirements is based on the following assumptions:

- Barney will contribute as a charitable gift the value of the goodwill of the colleges.
- CEHE will purchase the tangible assets of the colleges at fair market value.
- The financing of the purchase of the tangible assets will be collateralized based on a pledge of the tangible assets and personal guarantee from Barney.
- Barney shall provide an indemnification agreement that will be backed by a bond or letter of credit or other appropriate collateral.
- The CEHE Board of Directors shall remain active participants of the Board for term of 3 years following the merger.

<u>Minimum Due Diligence Review</u>:

1. A meeting between Carl Barney, CEHE Board members and Barney's proposed Board members.
2. Review of the organizational records of each merging corporations and LLCs, including Articles, Bylaws, Resolutions and minutes.
3. Review of financial statements for last 3 years.
4. Review of any employment agreements with the term in excess of one year.
5. Review of any consulting management or professional agreements a term in excess of one year.

EXHIBIT
3

6. Review of any employment, consulting, management, professional or vendor agreements with individuals " related" to Carl Barney or "related" to any current Board Member, LLC Member and/or highly compensated individuals affiliated with the merger organizations. ("Related" means related to each other through family or business relationships). *

7. Review of summary plan description for any employee benefit plans.

8. Review of any collective bargaining or labor relations agreements.

9, Review of any policies of tenure or policies that restrict "at-will" employment.

10. Review of any notices, claims, audits, or other official notices investigation by the Internal Revenue Service, United Department Education or any State or local regulatory agency which the corporation s or LLCs have received within the last three years.

11. Review of any compliance or settlement agreements with any governmental agency or accrediting organization regarding operational, financial or educational deficiencies or regulatory compliance.

12. Certificates of accreditation from accrediting organizations.

13. Contracts, commitments, notes, debt instruments, security agreements, leases, guarantees that have a term of exceeds one year.

14. Appraisals of all personal property, real estate and goodwill by an appraiser in good standing with the American Society of Appraisers in accordance with USPAP requirements.

15. Organizational chart for each college.

16. Description of any payments, agreements or pledges for support of political candidate or party or used in support of or to influence legislation. *

17. All contracts with any individuals or organizations to raise funds for the corporations.(Professional fund raising). *

18. Descriptions of any Joint ventures, partnerships or affiliations with organizations that will not terminate and/or merger on or before the closing of the transition.*

19. Description of any intellectual property to be sold as part of the sale.

20. Copies of tax returns for the past three years for each organization being merged.

21. Description of any loan to or by a current or former officer, director, trustee, key employee, highly compensated employee.*

19. Description of any on-going settlement payments or compensation arrangement, such as a severance payment to a former employee that will continue after the merger or are not fully funded.

20. Description of all unfunded and/or uninsured liabilities.

21. Description of any and all pending or threatened litigation.

22. Description of any of the following services provided by the corporations or LLCs to any officer, director or employee: first class or charter travel, travel cost for companions, tax indemnification, housing allowance for personal residence, sports or social club memberships, personal services(e.g. maid, chauffer, chef).*

Minimum Representations and Warranties:

Due Organization - in good standing under and by virtue of the laws of its state of organization.

Corporate Power and Authority - possesses the requite authority to enter into the transaction.

Marketable Title – good title to the property sold.

ERISA Complaint- compliant in all employee benefit plans.

Licenses and Accredited- fully licensed and accredited in each state as a college.

Environmental Compliance - substantial compliance with all Environmental laws and the has never been any release or threatened release or disposal of hazardous waste solid waste or other waste is occurring or has occurred on under or to any real property which COLLEGES have an interest.

Taxes – current in all tax obligations.

Compliance with Laws – no known violations of law.

Insurance – all property currently insured.

* Transactions that would need to be unwound as they could jeopardize the tax exempt status of CEHE following the merger.

EXHIBIT 3

HUNTON & WILLIAMS

HUNTON & WILLIAMS LLP
550 SOUTH HOPE STREET, SUITE 2000
LOS ANGELES, CALIFORNIA 90071-2627

TEL 213 • 532 • 2000
FAX 213 • 532 • 2020

DOUGLAS M. MANCINO
DIRECT DIAL: 213 • 532 • 2121
EMAIL: dmancino@hunton.com

February 27, 2013

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Internal Revenue Service
Attention: EP/EO Determinations Processing
P.O. Box 12192
Covington, KY 41012-0192

Re: Center for Excellence in Higher Education, Inc. (EIN: 20-8091013)
Request for a Determination Letter Reclassifying Public Charity Status from IRC section 170(b)(1)(A)(vi) to IRC section 170(b)(1)(A)(ii)

Dear Sir or Madam:

Center for Excellence in Higher Education, Inc., an Indiana nonprofit public benefit corporation ("CEHE"), was recently party to numerous transactions, as described herein, pursuant to which CEHE succeeded to the assets and operations of four colleges. CEHE hereby respectfully requests a determination letter acknowledging reclassification of its public charity status from that of a publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code (the "Code") to that of an educational organization under sections 509(a)(1) and 170(b)(1)(A)(ii) of the Code.

Enclosed with this letter is:

- a check made payable to the United States Treasury in the amount of $400 for the user fee as required by Revenue Procedure 2013-8, § 6.08, 2013-1 IRB 237;
- an executed Form 8940, "Request for Miscellaneous Determination" (attached as **Exhibit A**); and
- a Form 2848, "Power of Attorney," (attached as **Exhibit B**) authorizing the undersigned and others to represent CEHE before the Internal Revenue Service in connection with this request for redetermination.

I. STATEMENT OF FACTS

CEHE was established by philanthropists who had donated millions of dollars to U.S. colleges and universities and were concerned about higher education's continuing decline. CEHE's principal purpose, as described in its Form 1023, Application for Exemption as an Organization described in Section 501(c)(3) of the Internal Revenue Code, was to educate the public about the state of higher education in America and to help donors promote excellence in higher education through philanthropy. Those founders believed that through effective philanthropy, due diligence, proper governance, and management accountability, America's colleges and universities could be transformed into high-performing institutions that prepare today's students to be tomorrow's leaders.

CEHE has recently undertaken a significant change in its operations, and has decided to tackle the issue head-on. As a result of the group of related transactions described below (the "Restructuring Transactions"), CEHE, as of December 31, 2012 (the "Effective Date"), has acquired and now owns and operates Stevens-Henager College, CollegeAmerica Arizona, CollegeAmerica Denver and California College San Diego as nonprofit colleges organized and operated exclusively for educational purposes within the meaning of section 501(c)(3) of the Code and Treasury Regulation § 1.501(c)(3)-1(d)(3)(i)(*a*) (individually, a "College," and collectively, the "Colleges").

CEHE's ownership and operation of the Colleges is and shall remain subject to and intended to be compliant with the various operational requirements of section 501(c)(3) of the Code, including the limitation on private benefit, the prohibition against private inurement, and the excess benefit transaction rules in section 4958 of the Code. CEHE intends to operate the Colleges to provide for continually improving educational and operational excellence.

Since the Effective Date, the principal function of the Colleges owned and operated by CEHE has been the presentation of formal instruction and each of the Colleges maintains a regular faculty and curriculum and has a regularly enrolled body of pupils in attendance at the place where its educational activities are regularly carried on. *See* Treasury Regulation § 1.170A-9(c). Further, the non-college or university activities previously carried on by CEHE (principally grant-making to section 501(c)(3) organizations) will be *de minimis* relative to the substantial activities and operations of the Colleges, and in any case will be merely incidental to the furtherance of CEHE's primary educational activities and purpose.

Additional information about each of the Colleges is included herewith in a completed Schedule B of Form 1023 for each College (attached as **<u>Exhibit C</u>**) as required by the Instructions for Form 8940, Part II, Line 8g, Table 2, and in the Exhibits to the Schedule B provided for each College (as listed on Exhibit C). The information provided includes degrees offered, classroom building locations and accreditations.

1. The Restructuring Transactions

Prior to the Effective Date, the Colleges were operated by Stevens-Henager College, Inc., a Utah corporation ("Stevens-Henager College"), CollegeAmerica Denver, Inc., a Colorado corporation ("CollegeAmerica Denver"), CollegeAmerica Arizona, Inc., a Colorado corporation ("CollegeAmerica Arizona"), and California College San Diego, Inc., a Utah corporation ("CCSD"). CollegeAmerica Services, Inc., a Nevada corporation ("CASI"), provided management and administrative services to the Colleges.

Through forward mergers,[1] each of the aforementioned entities (the "disappearing corporations") merged with and into CEHE on the Effective Date. CEHE acquired CollegeAmerica Denver and CCSD as charitable contributions and paid no consideration for them pursuant to the "gift" (or "no consideration") merger agreements attached hereto as **Exhibit D**.

In an amount intended to reflect their fair market value, CEHE promissory notes were issued as consideration for its acquisition of Stevens-Henager College, CollegeAmerica Arizona and CASI pursuant to the merger agreements attached hereto as **Exhibit E**.

Carl B. Barney, the former sole shareholder of the disappearing corporations, also personally made a $10,000,000 cash contribution to CEHE.

The Board of Directors of CEHE, which was then comprised of individuals who were unrelated to the disappearing corporations, reviewed the form and amount of the consideration, and the representations and warranties and other information provided to CEHE pursuant to each of the Merger Agreements and with respect to the Restructuring Transactions taken as a whole. Based on its review of an independent appraisal, related valuations and other appropriate data and its substantial due diligence, the Board of Directors of CEHE determined, and CEHE represents, that (i) each Merger Agreement provided CEHE with fair market value or better in the contemplated transaction, (ii) the Restructuring Transactions, taken as a whole, provided CEHE with a discount reflecting a sizable charitable contribution to CEHE by Mr. Barney, (iii) Mr. Barney will be paid a modest consulting fee for his continued advisory services to the Colleges in an amount substantially lower than the fair market value of such services, and (iv) the leases of land and buildings by the College from entities related to Mr. Barney are at fair market rental rates.

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[1] The mergers do not qualify as reorganizations within the meaning of section 368 of the Code nor do they constitute transactions governed by section 351 of the Code. Rather, the corporations merged with and into CEHE in taxable "forward mergers" which, for tax purposes, are treated as if the disappearing corporations has sold their assets to CEHE and as if the disappearing corporations had then undergone a complete liquidation. See Rev. Rul. 69-6, 1969-1 C.B. 104.

2. Corporate Governance Changes

Concurrent with the Restructuring Transactions, CEHE amended its articles of incorporation and bylaws to increase the size of its board, elect new officers (including Mr. Barney as Chairman), and establish Mr. Barney as the sole statutory member of CEHE, all subject to and effective upon the closing of the Restructuring Transactions. A copy of the Amended and Restated Articles of Incorporation of CEHE is attached hereto as **Exhibit F**. A copy of the Amended and Restated Bylaws of CEHE is attached hereto as **Exhibit G**. These amended Articles and Bylaws were approved, along with the Restructuring Transactions and numerous related resolutions, pursuant to the unanimously adopted resolutions of CEHE's independent Board of Directors as composed prior to the Effective Date.

II. DETERMINATION REQUESTED

CEHE respectfully requests the Internal Revenue Service (the "Service") to issue a determination letter formally reclassifying the public charity status of CEHE from that of a publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code to that of an educational organization described in sections 509(a)(1) and 170(b)(1)(A)(ii) of the Code.

III. STATEMENT OF LAW

Section 509(a) of the Code provides that the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than certain organizations, including those described in section 170(b)(1)(A) (other than in subparagraphs (vii) and (viii) of section 170(b)(1)(A)).

Sections 509(a)(1) and 170(b)(1)(A)(ii) of the Code exclude from private foundation status "an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at a place where its educational activities are regularly carried on."

Treasury Regulations § 1.170A-9(c)(1) provides that an educational organization is described in section 170(b)(1)(A)(ii) of the Code if:

> its primary function is the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term includes institutions such as primary, secondary, preparatory, or high schools, and colleges and universities. It includes Federal, State, and other public-supported schools which otherwise come within the definition. It does not include organizations engaged in both educational and noneducational activities unless the latter are

> merely incidental to the educational activities. A recognized university which incidentally operates a museum or sponsors concerts is an educational organization within the meaning of section 170(b)(1)(A)(ii). However, the operation of a school by a museum does not necessarily qualify the museum as an educational organization…

In Revenue Ruling 76-91, 1976-1 C.B. 149, considered in General Counsel Memorandum 36311 (June 16, 1975), the owners of a hospital, a profit-making institution, formed a nonprofit corporation to purchase and operate the hospital. Over one-half of the board of directors of the nonprofit corporation consisted of stockholders of the for-profit institution. The ruling noted that the nonprofit corporation will operate the hospital in a charitable manner in accordance with section 501(c)(3) rather than on a proprietary basis, although "the operation of the facility and the type of service provided will remain essentially unchanged." In order to establish the selling price of the hospital, the owners obtained an independent appraisal of the tangible assets and then computed the value of the intangible assets using the capitalization of excess earnings formula. The ruling concluded that the nonprofit corporation qualified for exemption under section 501(c)(3) of the Code.

In Revenue Ruling 76-441, Situation 1, 1976-2 C.B. 147, a nonprofit corporation was the successor to a former for-profit school. The nonprofit corporation purchased all of the for-profit school's personal property and leased the land and buildings from the former owners of the for-profit school. The personal property was purchased at fair market value and the rental of the leased property was at a fair market rental. The former owners were paid reasonable compensation for their services. The ruling concluded that the nonprofit corporation qualified for exemption under section 501(c)(3) of the Code.

IV. ANALYSIS AND CONCLUSION

CEHE now owns and operates the Colleges as nonprofit colleges for educational purposes within the meaning of section 501(c)(3) of the Code. CEHE's ownership and operation of the Colleges is and shall remain subject to and intended to be compliant with the various operational requirements of section 501(c)(3) of the Code, including the limitations on private benefit, the prohibition against private inurement, and the excess benefit transaction rules in section 4958.

The near exclusive function of CEHE is now the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils in attendance at the place where its educational activities are regularly carried on. See Treasury Regulation § 1.170A-9(c). Educational organizations include colleges, and CEHE now owns and operates the Colleges. Non-educational activities of CEHE (including grant-making to other section 501(c)(3) organizations) will be *de minimis* relative to CEHE's primary purpose of operating the Colleges, and will be incidental to CEHE's educational activities.

Finally, it is respectfully submitted that the Restructuring Transactions were consistent with Revenue Rulings 76-91 and 76-441.

As a result, CEHE now qualifies as a public charity pursuant to sections 509(a)(1) and 170(b)(1)(A)(ii) of the Code.

* * * *

I request that a copy of the determination letter be faxed to me at (213) 532-2020. CEHE waives any disclosure violations resulting from the fax transmission.

Thank you for your consideration in this request for reclassification. Please feel free to call me with any questions at (213) 532-2121.

Sincerely yours,

Douglas M. Mancino

Douglas M. Mancino
HUNTON & WILLIAMS LLP

Enclosures: Check for $400 made payable to the U.S. Treasury
Exhibits A – G as described herein

cc: Carl B. Barney
Eric Juhlin
Matthew Gerber (w/attachments, all others via email w/o attachments)
Frederic Fransen
Ofer Lion
Jay Mercer
Lenny Esmond

EXHIBIT
4

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: JUL 25 2014

Center for Excellence in Higher Education
C/O Ofer Lion
Hunton & Williams LLP
550 South Hope St, Suite 2000
Los Angeles, CA 90071

Employer Identification Number:
20-8091013
Person to Contact - ID Number:
E. Zaebst - 0203427
Contact Telephone Number:
877-829-5500 Toll-Free
Form 990 Required:
Yes

Dear Sir or Madam:

In your letter dated February 27, 2013, you requested classification as a public charity described in section 170(b)(1)(A)(ii) of the Internal Revenue Code.

In our letter dated September 2007, we determined that you were exempt under section 501(c)(3) of the Code. We further determined that you weren't a private foundation and you were classified as a public charity described in sections 509(a)(1) and 170(b)(1)(A)(vi).

Based on the information you provided, we determined you meet the requirements for classification as an organization described in sections 509(a)(1) and 170(b)(1)(A)(ii) of the Code.

Accordingly, we have updated your public charity status in our records as you requested.

Since your exempt status wasn't under consideration, you continue to be classified as an organization exempt from federal income tax under section 501(c)(3) of the Code.

Grantors and contributors may generally rely on this determination of your foundation status unless the Internal Revenue Service publishes notice that you are no longer recognized as tax exempt or classified as a public charity in the Internal Revenue Bulletin. However, if a grantor or contributor takes any action, or fails to take any action, which causes you to lose your exempt status or causes you to be reclassified as a private foundation, that party cannot rely on this determination. Furthermore, a contributor or grantor who knows that the Internal Revenue Service has notified you of any change in your exempt status or foundation status cannot rely on this determination.

Please see enclosed Publication 4221-PC, *Compliance Guide for 501(c)(3) Public Charities*, for helpful information about your responsibilities as an exempt organization.

Because this letter could help resolve any questions about your exempt status and/or foundation status, you should keep it with your permanent records.

We sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Tamera Ripperda

Director, Exempt Organizations

Enclosure:
Publication 4221-PC

EXHIBIT
5

POWERS
POWERS PYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

STANLEY A. FREEMAN
Stan.Freeman@ppsv.com
202.872.6757

October 2, 2012

STRICTLY CONFIDENTIAL
VIA E-MAIL AND FEDERAL EXPRESS

Ms. Kerry L. O'Brien
Compliance Manager
School Participation Team - Denver
U.S. Department of Education
1244 Speer Boulevard, Suite 201
Denver, CO 80204-3518

Re: **Stevens-Henager College, Inc. – OPE ID 003674**
d/b/a Stevens-Henager College (main campus: Ogden, UT; branch campuses: Boise, ID, Logan, UT, Provo, UT, Salt Lake City, UT, St. George, UT); and Independence University (Salt Lake City, UT; satellite campuses: Nampa, ID, Layton, UT, Lehi, UT)
CollegeAmerica Denver, Inc. – OPE ID 025943
d/b/a CollegeAmerica (main campus: Denver, CO; branch campuses: Colorado Springs, CO, Fort Collins, CO, Cheyenne, WY; satellite campus: South Colorado Springs, CO)
CollegeAmerica Arizona, Inc. – OPE ID 031203
d/b/a CollegeAmerica (main campus: Flagstaff, AZ; branch campuses: Idaho Falls, ID, Phoenix, AZ)
California College San Diego, Inc. – OPE ID 021108
d/b/a California College San Diego (main campus: San Diego, CA; branch campus: San Marcos, CA; satellite campus: National City, CA)

Dear Ms. O'Brien:

We are writing to seek feedback from the U.S. Department of Education concerning planned changes to the corporate ownership of the Title IV-participating institutions listed above (collectively, "CollegeAmerica") as a result of their planned merger into a non-profit corporation which has been recognized by the Internal Revenue Service as exempt from federal income taxation. After completion of the merger, the non-profit corporation will be the sole owner of the Title IV-participating institutions. Please note that while the majority of physical campuses are within Region VIII, two of the four main campuses are in Region IX. Accordingly, a copy of this letter is being sent to the Region IX case team.

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POWERS
POWERS PYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

CollegeAmerica operates multiple campuses in several states, with main campuses in Colorado, Arizona, California, and Utah. The CollegeAmerica schools are in good standing with their regulatory oversight agencies. Consistent with the colleges' longstanding practice of careful cooperation with the Department on institutional certification and compliance matters, we have been asked to inform the Department of these plans and to inquire whether the planned conversion of the Title IV-participating institutions to not-for-profit status may impact CollegeAmerica's ongoing certification to participate in the federal student aid programs. The planned changes are described below, and the specific questions that we would like to discuss with you follow.

Description of Contemplated Changes

The four corporations listed at the beginning of this letter are under the common ownership of the Carl Barney Living Trust, the sole shareholder of each corporation.[1] The conversion of the schools to non-profit status will be accomplished by means of a merger of the existing for-profit corporations that own the Title IV-participating institutions into Center for Excellence in Higher Education, Inc. ("CEHE"), an Indiana public benefit corporation that has been recognized by the Internal Revenue Service as exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code. CollegeAmerica recognizes that the conversion process will trigger a change in ownership resulting in a change in control under the governing regulations. CollegeAmerica will of course comply with the change in ownership application requirements and is preparing to file pre-acquisition review applications for each of the four separate institutions to facilitate that application and approval process.

It is anticipated that the funding required to consummate the transaction will be obtained in part through outside financing and in part through a loan that Mr. Barney or his Trust will make to the new non-profit owner, CEHE. The planned transaction will have no adverse impact on the academic programs, faculty, management, or administrative capability of CollegeAmerica. After completion of the transaction, the existing executive team will remain in place. Furthermore, the existing management systems, leases, facilities, infrastructure, information technology systems, curricula and other operational resources will continue in place.

[1] The Carl Barney Living Trust (the "Trust") is a revocable trust. Carl Barney is both the Trustor and the sole Trustee of the Trust. As Trustor, Mr. Barney has the express authority to revoke the Trust. As sole Trustee, Mr. Barney votes all of the shares of the companies owned by the Trust. Please note that one of the four companies listed at the top of this letter, California College San Diego, Inc., is a wholly owned subsidiary of California College, Inc. California College, Inc., is solely owned by the Carl Barney Living Trust.

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ATTORNEYS AT LAW

The debt that CEHE will incur to finance the acquisition of CollegeAmerica via merger will impact its composite score in the first few years. Based upon the most recent audited financial statements, each of the four listed CollegeAmerica entities had composite scores well in excess of the 1.5 standard. It is anticipated that, for at least the initial years after the merger is consummated, the composite score for CEHE may be below 1.0 due to the debt that will finance the merger. Similarly, the audited same day balance sheet to be submitted in connection with the change in ownership and the balance sheets for the initial years after the sale may not meet the acid test ratio used to compute financial responsibility under 34 C.F.R. 668.15(b)(8).

Change in Ownership/Control Considerations and Questions

In view of the significant stake that CollegeAmerica, its students, and the Department each have in ensuring that the transition from for-profit to non-profit status proceeds smoothly without adverse impact on the institutions or their students, we respectfully request a meeting to discuss the following questions with the Department:

1) As noted above, it is expected that the composite score for the new owner of CollegeAmerica, CEHE, will not meet 1.0 in the first few years. It is also possible that the audited balance sheet for CEHE as of the effective date of the merger of the CollegeAmerica companies into the new non-profit corporate owner may fall short of the criteria applicable as part of the change in ownership approval process. Assuming that one or both of these circumstances arise, will the Department permit CollegeAmerica to continue to participate in the Title IV programs, both (1) during the year 2013; and (ii) in subsequent fiscal years, by posting a 10 percent letter of credit, coupled with the other terms specified in the provisional certification alternative set forth at 34 C.F.R. §668.175(f)?
2) CEHE, the acquiring entity, was incorporated in 2006 and possesses two years of audited financial statements. Copies are attached for your convenience and will be included with the pre-acquisition review applications that will be filed in connection with the planned transaction. Therefore, CollegeAmerica and CEHE anticipate that no growth restrictions would be imposed in connection with the change in ownership approval. Is that anticipation correct?
3) Will the acquisition via merger of the four for-profit corporations which own CollegeAmerica by CEHE prompt the Department to impose any special or unusual terms and conditions upon CEHE or CollegeAmerica in conjunction with its processing of the CollegeAmerica change in ownership application?

We respectfully request an opportunity to meet with your team to discuss these questions, the planned conversion to non-profit status, the accompanying change in ownership

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ATTORNEYS AT LAW

approval process, or any additional questions you may have. We would appreciate scheduling this meeting as soon as possible since the goal is to consummate these changes before the end of this year. Thank you very much.

Please do not hesitate to contact me with any questions.

Sincerely,

Stanley A. Freeman

SAF/ed
Enclosure

cc: Ms. Martina Fernandez-Rosario
Area Case Director
School Participation Team – San Francisco
U.S. Department of Education
50 Beale Street, Room 9700
San Francisco, CA 94105
(via e-mail and Federal Express)

Sikich®

Center for Excellence in Higher Education, Inc.

Financial Statements
December 31, 2011 and 2010

sikich.com

TABLE OF CONTENTS

Certified Public Accountants & Advisors

Sikich®

Members of American Institute of Certified Public Accountants

8555 North River Road, Suite 300 • Indianapolis, IN 46240

INDEPENDENT AUDITORS' REPORT

To the Board of Directors of
Center for Excellence in Higher Education, Inc.:

We have audited the accompanying statements of financial position of Center for Excellence in Higher Education, Inc. ("CEHE"), (a non-profit organization) as of December 31, 2011 and 2010 and the related statements of activities and changes in net assets and cash flows for the years then ended. These financial statements are the responsibility of CEHE's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Center for Excellence in Higher Education, Inc. as of December 31, 2011 and 2010 and the results of its changes in net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated September 12, 2012 on our consideration of Center for Excellence in Higher Education, Inc.'s internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in accessing the results of our audits.

Sikich, LLP

Sikich LLP

Indianapolis, Indiana
September 12, 2012

CENTER FOR EXCELLENCE IN HIGHER EDUCATION, INC.
STATEMENTS OF FINANCIAL POSITION
DECEMBER 31, 2011 AND 2010

ASSETS

	2011	2010
CURRENT ASSETS:		
Cash and cash equivalents	$ 18,989	$ 30,390
Accounts receivable	-	388
Current portion of pledges receivable	108,000	-
Total Current Assets	126,989	30,778
OTHER ASSETS:		
Net pledge receivable, net of current portion	412,335	-
	$ 539,324	$ 30,778

LIABILITIES AND NET ASSETS

	2011	2010
CURRENT LIABILITIES:		
Accounts payable	$ -	$ 3,909
Total Current Liabilities	-	3,909
NET ASSETS:		
Unrestricted	17,963	9,388
Temporairly restricted	521,361	17,481
Total Net Assets	539,324	26,869
	$ 539,324	$ 30,778

See accompanying notes to the financial statements.

CENTER FOR EXCELLENCE IN HIGHER EDUCATION, INC.

STATEMENTS OF ACTIVITIES AND CHANGES IN NET ASSETS
YEAR ENDED DECEMBER 31, 2011

	Unrestricted	Temporarily Restricted	Total
REVENUES AND SUPPORT:			
Grant revenue	$ 10,000	$ 407,000	$ 417,000
Contributions	25,744	549,074	574,818
In-kind contribution	68,190	-	68,190
Miscellaneous revenue	377	-	377
Net assets released from restrictions	452,194	(452,194)	-
Total Revenues and Support	556,505	503,880	1,060,385
EXPENSES:			
Program services	454,860	-	454,860
General and administrative	91,700	-	91,700
Fundraising	1,370	-	1,370
Total Expenses	547,930	-	547,930
CHANGE IN NET ASSETS	8,575	503,880	512,455
NET ASSETS, beginning of year	9,388	17,481	26,869
NET ASSETS, end of year	$ 17,963	$ 521,361	$ 539,324

See accompanying notes to the financial statements.

CENTER FOR EXCELLENCE IN HIGHER EDUCATION, INC.
STATEMENTS OF ACTIVITIES AND CHANGES IN NET ASSETS
YEAR ENDED DECEMBER 31, 2010

	Unrestricted	Temporarily Restricted	Total
REVENUES AND SUPPORT:			
Grant revenue	$ 25,000	$ 10,200	$ 35,200
Contributions	50	32,910	32,960
In-kind contribution	85,320	-	85,320
Net assets released from restrictions	25,629	(25,629)	-
Total Revenues and Support	135,999	17,481	153,480
EXPENSES:			
Program services	30,350	-	30,350
General and administrative	97,820	-	97,820
Fundraising	-	-	-
Total Expenses	128,170	-	128,170
CHANGE IN NET ASSETS	7,829	17,481	25,310
NET ASSETS, beginning of year	1,559	-	1,559
NET ASSETS, end of year	$ 9,388	$ 17,481	$ 26,869

See accompanying notes to the financial statements.

CENTER FOR EXCELLENCE IN HIGHER EDUCATION, INC.
STATEMENTS OF CASH FLOWS
YEARS ENDED DECEMBER 31, 2011 AND 2010

	2011	2010
CASH FLOWS FROM OPERATING ACTIVITIES:		
Change in net assets	$ 512,455	$ 25,310
Adjustments to reconcile change in net assets to net cash (used) provided by operating activities:		
(Increase) decrease in:		
Accounts receivable	388	(388)
Pledges receivable	(520,335)	-
Increase (decrease) in:		
Accounts payable	(3,909)	3,909
NET CASH (USED) PROVIDED BY OPERATING ACTIVITIES	(11,401)	28,831
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	(11,401)	28,831
CASH AND CASH EQUIVALENTS, beginning of year	30,390	1,559
CASH AND CASH EQUIVALENTS, end of year	$ 18,989	$ 30,390

See accompanying notes to the financial statements.

CENTER FOR EXCELLENCE IN HIGHER EDUCATION, INC.

NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2011 AND 2010

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Business **-** Center for Excellence in Higher Education, Inc. (“CEHE”) is a non-profit corporation established in December of 2006 to promote excellence in higher education by working with philanthropists and others interested in reforming American colleges and universities. Education reform, for these purposes, is defined as increasing access, reducing costs, and improving the quality of higher education with the goal to make universities, schools, departments, and ultimately individual faculty members accountable for the quality and effectiveness of their work.

Basis of Accounting **–** CEHE’s financial statements have been prepared on the accrual basis of accounting. Revenue is recognized when earned and expenses when the obligation is incurred.

Basis of Presentation **-** As required by Financial Statement Presentation Disclosure Topic of Financial Accounting Standards Board Accounting Standards Codification (FASB ASC), CEHE is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets.

Net Assets **-** The financial statements report amounts separately by class of net assets:

> ***Unrestricted net assets -*** Unrestricted amounts are those, which are currently available by the Board for use in CEHE’s activities.
>
> ***Temporarily restricted net assets -*** Temporarily restricted expendable amounts are those, which are restricted by donors for specific purposes. On December 31, 2011 and 2010, CEHE had temporarily restricted a portion of its net assets.
>
> ***Permanently restricted net assets -*** Permanently restricted amounts are those, which are subject to donor-imposed stipulations that require that they be maintained permanently by CEHE. Generally, the donors of these assets permit the use of all or part of the income earned on the related investments for general or specific purposes. As of December 31, 2011 and 2010, CEHE had no permanent restrictions on its net assets.

Cash and Cash Equivalents **-** For purposes of the statement of cash flows, CEHE considers all investments with a maturity of three months or less and certificates of deposit to be cash equivalents. In the normal course of business, CEHE may maintain cash held at financial institutions in excess of the Federal Deposit Insurance Corporation (FDIC) limit of $250,000.

Contributions and Pledges **–** Contributions are recognized when the donor makes an unconditional promise to give to CEHE and are recorded at their fair value as revenues and assets in that same period. Contributions that are restricted by the donor are reported as increases in unrestricted net assets if the restrictions expire in the year in which the contributions are recognized. All other donor restricted contributions are reported as increases in temporarily restricted net assets. When a restriction expires, temporarily restricted net assets are reclassified to unrestricted net assets.

CEHE quarterly reviews contributions and pledges receivable and write-off the amount of individual pledges, if any it determines to be uncollectible. A discount rate commensurate with the risks involved in holding pledges receivable due in future years was used in calculating the present value of future cash flows. There was no allowance for doubtful pledges as of December 31, 2011 and 2010. The following unconditional promises to give are included in CEHE's pledges receivable:

Amounts due in:

	2011	2010
Less than one year	$ 108,000	$ -
One to five years	432,000	-
Total pledges receivable	540,000	-
Less discounts to net present value (1.89%)	19,665	-
Net pledges receivable	$ 520,335	$ -

Contributed Materials and Services - Contributed services are recognized as contributions in accordance with Contributions Disclosure Topic of FASB ASC, if the services (a) create or enhance non-financial assets or (b) require specialized skills, are performed by people with those skills, and would otherwise be purchased by CEHE. Contributions of tangible assets are recognized at fair value when received. The amounts reflected in the accompanying financial statements as in-kind contributions are offset by like amounts included in expenses or additions to fixed assets.

Non-cash and in-kind contributions are recorded at fair market value and recognized as revenue in the accounting period when they are received. CEHE received $68,190 and $85,320 of in-kind contributions during 2011 and 2010, respectively. These contributions were for professional services rendered to the organization in the form of bookkeeping and management. In-kind donations have been treated as non-cash transactions for the purpose of the statement of cash flows.

Volunteers provide program services throughout the year that are not recognized as contributions in the financial statements since they do not meet the recognition criteria under Contributions Disclosure Topic of FASB ASC. These services include assistance and instruction of some education programs.

Revenue Recognition - CEHE reports grants of cash and other assets as restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor restriction expires, that is, when a stipulated time restriction ends or purpose restriction is accomplished, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions. If a restriction is fulfilled in the same time period in which the contribution is received, CEHE reports the support as unrestricted.

Advertising Costs - CEHE uses advertising to promote its programs to the community and donors. Advertising costs are expensed as incurred. There were advertising expenses of $18,771 and $572 for the years ended December 31, 2011 and 2010, respectively.

***Income Taxes* -** CEHE is a not-for-profit organization exempt from income taxes under Section 501(c)(3) of the U.S. Internal Revenue Code. Accordingly, no provision for income taxes has been reflected in CEHE's financial statements.

CEHE has adopted the provisions of Uncertain Tax Positions Disclosure Topics of FASB ASC, which prescribes a recognition threshold of more-likely-than-not to be sustained upon examination. Measurement of tax uncertainty occurs if the recognition threshold has not been met. This guidance also addresses de-recognition, classification, interest and penalties, disclosure, and transition. In the normal course of business, CEHE is subject to examination by taxing authorities. CEHE's tax returns for years subsequent to fiscal 2007 are open, by statute, for review by authorities. However, at present, there are no ongoing income tax audits or unresolved disputes with the various tax authorities that the Organization currently files or has filed.

***Concentrations* of Credit Risk -** Financial instruments that potentially subject CEHE to concentrations of credit risk consist primarily of temporarily cash investments and accounts receivable. As of December 31, 2011 and 2010, CEHE had no uninsured cash balances exceeding the FDIC limit of $250,000.

Concentrations of credit risk with respect to contracts and grants receivable are limited due to CEHE's ability to accomplish the terms of the grants. Credit losses, if any, have been provided in the financial statements and have been within management's expectations.

Management Estimates - Management uses estimates and assumptions in preparing these financial statements in accordance with accounting principles generally accepted in the United States of America. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, at the date of the financial statements and the reported amounts of revenues, expenses, gains, losses, and other changes in net assets during the reporting period. Actual results could vary from the estimates that were used.

NOTE 2 - DESCRIPTION OF PROGRAM AND SUPPORTING SERVICES

Established US-Based Foundation - CEHE partnered with a free market university in Guatemala, Universidad Francisco Marroquin (UFM), helping it to establish a new US-Based foundation.

Higher Education Reform - CEHE conducted a research project related to higher education reform, commissioning several studies examining institutional and governance reforms designated to increase the efficiency of higher education. This included, for example, a study of honors colleges within a community college system, and online education.

Fund for Higher Education Donors - One of CEHE's purposes is to create a fund for donors to work together in support of scholarly and student-oriented projects on university campuses. CEHE has been successful at identifying and working with large dollar donors in other ways. It continues to explore ways to work with smaller donors through various marketing partnerships and continues to work to discover how best to market such programs in a cost-efficient manner.

NOTE 3 - TEMPORARILY RESTRICTED NET ASSETS

Temporarily restricted net assets at December 31, 2011 and 2010 are available for the following purposes:

	2011	2010
National Review Giving Club	-	15,296
PRIs	700	700
Ayau Society	-	1,485
Morality of Capitalism	520,335	-
Higher Education Productivity Project	326	-
	$ 521,361	$ 17,481

During December 31, 2011 and 2010, temporarily restricted assets were released from donor restrictions by incurring expenses satisfying the restricted purposes or by occurrence of other events specified by donors.

	2011	2010
National Review Giving Club	24,592	34
Ayau Society	16,185	25,595
Morality of Capitalism	4,743	-
Higher Education Productivity Project	396,674	-
Other programs	10,000	-
Net assets released from restrictions by satisfaction of program restrictions	$ 452,194	25,629

NOTE 4 - SUBSEQUENT EVENT

In preparing these financial statements, CEHE has evaluated subsequent events and transactions for potential recognition or disclosure through September 12, 2012, the date the financial statements were available to be issued.

CEHE is involved in negotiations relating to a proposed merger. The details of the merger have not been finalized as of September 12, 2012, however management has expressed its intent to complete the transaction, barring any outstanding circumstances.

Certified Public Accountants & Advisors

Sikich

Members of American Institute of
Certified Public Accountants

8555 North River Road, Suite 300 • Indianapolis, IN 46240

INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

To the Board of Directors of
Center for Excellence in Higher Education, Inc.:

We have audited the financial statements of Center for Excellence in Higher Education, Inc. (an Indiana nonprofit organization) as of and for the years ended December 31, 2011 and 2010 and have issued our report thereon dated September 12, 2012. We conducted our audit in accordance with auditing standards generally accepted in the United States of American and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller general of the United States.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered Center for Excellence in Higher Education, Inc.'s internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Center for Excellence in Higher Education, Inc.'s internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the entity's internal control over financial reporting.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether Center for Excellence in Higher Education, Inc.'s financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and accordingly, we do not express such an opinion. The results of our tests disclose no instances of noncompliance or other matters that are required under *Government Auditing Standards.*

This report is intended solely for the information and use of the board of Directors, management and federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Sikich, LLP

Sikich LLP

Indianapolis, Indiana
September 12, 2012

EXHIBIT 6

RECEIVED
NOV 13 2012
POWERS, PYLES, SUTTER & VERVILLE PC

November 2, 2012

Mr. Stanley A. Freeman
Powers Pyles Sutter & Verville PC
Attorneys at Law
1501 M Street, NW, Seventh Floor
Washington, DC 20005

Certified Mail
Return Receipt Requested
#: 7007 0710 0001 0674 6125

RE: College America Change in Ownership
OPE ID: 00367400
OPE ID: 02594300
OPE ID: 03120300
OPE ID: 02110800

Dear Mr. Freeman:

The San Francisco/Seattle and Chicago/Denver School Participation Divisions (SPDs) have reviewed your October 2, 2012 letter, and the financial statements of the Center for Excellence in Higher Education, Inc., concerning the planned changes to the corporate ownership of Title IV participating institutions collectively known as College America. In order to provide the information requested in your letter, and to evaluate the effects of this change in ownership, we need additional documentation/information, as noted below:

A. Additional information on the financial statements of the Center for Excellence in Higher Education, Inc. (CEHE) -
   1) Please disclose the individuals/entities that constitute the related party transaction note.
   2) Provide related party disclosures in compliance with 34 C.F.R. § 668.23(d).
   3) Disclose the individuals/entities that constitute donors.
   4) Disclose the individuals/entities that provide the in-kind contributions.
   5) Disclose the individuals/entities that provide the pledges.
   6) Provide a detailed description of any security for the pledges. If the security is not in CEHE's possession, please provide a description of the security and also provide the filing date of any security agreement with a local government.
   7) Please indicate if the pledges are from related parties.
   8) Indicate if the pledges are secured.

B. Additional information for the change in ownership -
   1) Disclose all investors, both current and potential, with regard to the change in ownership.
   2) Provide a copy of CEHE's 501(c)(3) status documents from the Internal Revenue Service.
   3) Provide a list of paid staff for the periods covered by the audit/financial statements.
   4) Provide a detailed narrative of what CEHE has done as an entity for the period covered by the audit/financial statements.

5) Provide monthly financial statements for the period covered by the audit/financial statements.
6) Disclose the individuals/entities that comprise CEHE's board of directors.
7) If the State has approved this conversion/change in ownership, please provide a copy of the approval. This includes all state entities required to approve the transaction, including state government agencies in all states in which the schools are located.
8) Provide a copy of CEHE's articles of incorporation and by-laws.
9) Provide a copy of all contracts/agreements CEHE is currently a party to.
10) Provide a detailed description or copy of any draft contracts/agreements that may be entered into as a result of the conversion/change in ownership.
11) Please indicate if CEHE will be operating the four institutions involved in the proposed change in ownership or if there will be a management agreement with another entity.
12) Provide a copy of or a detailed description of the planned payment arrangements associated with the loans necessary to consummate the transaction of the change in ownership.
13) Please inform us whether the change in ownership will include merging all four institutions into one OPE ID number or if each institution will retain its current separate institutional status.
14) If CEHE plans to exercise operational control over the schools, will the articles of incorporation be amended to include the operation of postsecondary institutions?
15) If CEHE does not plan to exercise operational control over the schools, are they merely holding an ownership interest in them as an investment, while the schools retain their own corporate identities?

The documentation specified above should be sent to the following addresses:

1. Mr. Mike Fuller, Financial Analyst
   U.S. Department of Education
   Federal Student Aid
   San Francisco/Seattle School Participation Division
   915 Second Avenue, Suite 390
   Seattle, WA 98174

2. Ms. Marion Peak, Financial Analyst
   U.S. Department of Education
   Federal Student Aid
   Chicago/Denver School Participation Division
   1244 Speer Blvd., Suite 201
   Denver, CO 80204-3518

In answer to your questions about a required Letter of Credit (LOC) and provisional conditions to be included in the Program Participation Agreement (PPA), please note that we are unable to commit to specific terms until we have reviewed all applications and supporting documents related to the transaction.

If you have any questions or need further assistance, please email Mike Fuller, Financial Analyst, at michael.fuller@ed.gov or Marion Peak, Financial Analyst, at marion.peak@ed.gov. Please also include Gayle Palumbo at gayle.palumbo@ed.gov and Kerry O'Brien at kerry.o'brien@ed.gov on all email correspondence.

Sincerely,

Martina Fernandez-Rosario
Division Director
San Francisco/Seattle School Participation Division

EXHIBIT
7

December 20, 2012

Eric S. Juhlin
Chief Executive Officer
CollegeAmerica Denver
4021 South 700 East, Suite 400
Salt Lake City, UT 84107

Re: Preacquisition Review of the Proposed Change in Ownership
CollegeAmerica Denver, Denver, CO, OPE 025943
CollegeAmerica Flagstaff, Flagstaff, AZ, OPE 031203
California College San Diego, San Diego, CA, OPE 021108
Stevens Henager College, West Haven, UT, OPE 003674

Dear Chief Executive Officer Juhlin:

At your request, the Chicago/Denver School Participation Division of the U.S. Department of Education (Department), Federal Student Aid has conducted a preacquisition review of the proposed change in ownership application for **the above referenced institutions.**

The preacquisition review of an application is a **review** to determine, before the Change in Ownership takes place, if there are any problems with the institution's application. Note we only reviewed **the above named institutions'** applications, the supporting documents that were submitted with the applications, and additional supporting documents that were submitted in response to our letter of November 2, 2012, and other supporting documents that were submitted on request.

Uninterrupted Participation in the Title IV Programs

Under the provisions of 34 C.F.R. § 600.20, the Department may continue the institution's participation on a provisional basis only if the institution submits a "materially complete application," as described in 34 C.F.R. § 600.20(g)(2), that is received by the Department no later than 10 business days after the date the change occurred. Therefore, in order for us to consider offering an institution a temporary provisional Program Participation Agreement, the institution must submit the following:

- Complete electronic Application for Approval to Participate in the Federal Student Aid programs

- Copy of the institution's state license or equivalent that:

  - Was in effect on the day before the change in ownership, and
  - Authorized the institution to provide a program of postsecondary education in the state in which it is physically located

- Copy of the accrediting approval that:
  - Was in effect on the day before the change in ownership and had granted the institution accreditation status, and
  - Includes approval of the non-degree programs it offers

- Audited financial statements of the institution's two most recently completed fiscal years that are prepared in accordance with the requirements of 34 C.F.R. § 668.23. Under 34 C.F.R. § 668.23(d), these statements must be prepared on an accrual basis in accordance with generally accepted accounting principles (GAAP), and audited by an independent auditor in accordance with generally accepted governmental auditing standards (GAGAS)

- Audited financial statements of the new owner's two most recently completed fiscal years that are prepared and audited in accordance with 34 C.F.R. § 668.23. Under 34 C.F.R. § 668.23(d), these statements also must have been audited in accordance with GAGAS, and prepared in accordance with GAAP. If the new owner cannot provide these audited financial statements, the Department will accept financial statements audited in accordance with generally accepted auditing standards (GAAS). In this instance, however, additional requirements and/or conditions may be imposed and

- A letter from the U.S. Department of Treasury stating that the acquiring entity is a qualified tax exempt organization under the provisions of section 501(c)3.

To the extent that the above listed documents have already been received by the Department, or were already in the possession of the Department, I do not perceive any impediment to the issuance of a Temporary Provisional Program Participation Agreement upon the completion of the sale transaction.

As this is a change in structure for the institutions from proprietary to private not-for-profit, you are reminded that the institutions will have to report their Title IV revenue percentages (90/10 percentages) for the next fiscal year (FYE 12/31/2013).

During the course of the review, you will be required to submit a same day balance sheet as of the transaction date for the acquiring entity, Center for Excellence in Higher Education.

It is our understanding that the four individual schools named above will continue after the transaction date as individually eligible Title IV schools, each under the ultimate ownership of Center for Excellence in Higher Education. Please advise us as soon as possible if this will not be the case.

For the purpose of our review, we are requesting that you supply the names of the members of the Board of Trustees for Center for Excellence in Higher Education, and the states where they reside, for those persons who will be on the Board from the transaction date going forward.

Your attention is directed to the default rates of the four schools. The rates for the past three years for all four schools are above 10%; two of the schools – CollegeAmerica Denver and CollegeAmerica Flagstaff – have had default rates over 25% during the last two years. CollegeAmerica Denver, whose default rates exceeded 25% in each of the last two years, may be subject to sanction if their default rate exceeds 25% for the next year. As part of our review process, we will review the schools' default management plans and practices to determine the adequacy of the existing plans.

Next Steps

You are reminded that once the change in ownership takes place, the institution must notify the Department of Education within 10 business days. Since you have already submitted the Preacquisition application, please send this notification by scanning and emailing it or faxing it to my attention at 312-730-1520.

Continuation of the Temporary PPA

Please note that under 34 C.F.R. § 600.20(h)(2)(iii), the temporary PPA expires on the last day of the month following the month in which the change in ownership occurred. The Temporary PPA can be extended on a month-to-month basis only if, prior to the expiration date, the institution submits:

- A "same day" balance sheet showing the financial position of the institution, as of the date of the ownership change, that is prepared in accordance with GAAP and audited in accordance with GAGAS;

- If not already provided, approval of the change in ownership from the state in which the institution is located by the agency that authorizes the institution to legally provide postsecondary education in that state;

- If not already provided, approval of the change in ownership from the institution's accrediting agency; and

- If the institution is not exempt from the requirement under 34 C.F.R. § 668.14(b)(15), a Default Management Plan.

- A copy of the purchase agreement between the buyer and the seller that is related to the transaction, and related agreements between those parties.

If the institution fails to provide the above items by the stated expiration date of the Temporary Program Participation Agreement, the Agreement will expire on that date, without further notice.

Steps to be taken by prospective owners

You are reminded of the recommendations we have provided to all institutions in the Federal Student Aid Handbook. Specifically, the prospective owner should request that the former owner provide copies of the institution's existing Eligibility and Certification Approval Report (ECAR), institutional refund policy, return of Title IV funds policy, any required default management plan, program reviews, audited financial statements (for at least the two most recently completed fiscal years), and compliance audits.

If you have any questions, please contact **Earl Flurkey** at **312-730-1521.**

Sincerely,

Earl F Flurkey

Earl Flurkey
Compliance Manager

EXHIBIT 8

January 26, 2015

Eric S. Juhlin, President
Stevens Henager College
4021 South 700 East, Suite 400
Salt Lake City, Utah 84107 9923

Certified Mail
Return Receipt Requested
7012 1640 0000 0567 7699

RE: Provisional Certification Alternative
OPE ID: 00367400 Stevens Henager College
02594300 College America Denver
02110800 California College San Diego
03120300 College America Flagstaff

Dear Mr. Juhlin:

The Chicago/Denver School Participation Division (SPD) has completed its review of the fiscal year ended 12/312013 audited financial statements of Center for Excellence in Higher Education (Center), Inc. on behalf of the above named colleges.

In assessing the financial strength of the Center, our financial analyst reviewed the financial statements using the indicators that are set forth in regulations at 34 C.F.R. § 668.171.

Financial Ratios 34 C.F.R. § 668.171(b)(1)

These statements yield a composite score of 0.2 out of a possible 3.0. A minimum score of 1.5 is necessary to meet the requirement of the financial standards. Accordingly, the Center fails to meet the standards of financial responsibility as described in 34 C.F.R. § 668.172, Financial Ratios.

Additional factors were considered in arriving at the amount of the letter of credit:

- The 2013 balance sheet includes a very high amount of debt. Long term debt, current portion and future portion, amount to $423,000,000, or 79% of total assets.

- The 2013 balance sheet contains a high amount of Goodwill. Goodwill amounts to $419,042,664 or 78% of total assets.

- The schools are undergoing a change in ownership where the new owning entity has no prior experience in administering Title IV programs.

- The acid test ratio for the Center's balance sheet of 0.53:1 also fails the test of financial responsibility.

In view of its failure to meet the financial responsibility standards, and in view of the additional risk factors noted above, the above named colleges may continue to participate in the Title IV, HEA programs under the following:

Provisional Certification (34 C.F.R. § 668.175(f))

The Center must post a letter of credit in the amount of $71,657,360 and the above named colleges must be provisionally certified for a period of up to three complete award years. This amount represents 50% of the Title IV, HEA program funds received by the institutions during their most recently completed fiscal year.

The Center and the above named colleges must comply with all of the requirements specified for the Provisional Certification Alternative in 34 C.F.R. § 668.175(f), including the Zone Alternative in 34 C.F.R. § 668.175(d)(2) and (3), and Requesting Funds 668.162(e), including the disbursement of Title IV, HEA program funds under the cash monitoring 1 payment method.

Compliance with Zone Alternative Requirements:

1) **Method of Payment** – The Center and the above named colleges are required to make disbursements to eligible students and parents under either the cash monitoring or reimbursement payment method as described under 34 C.F.R. § 668.162(d) and (e). The institutions will be placed on the cash monitoring 1 payment method.

Under the Heightened Cash Monitoring 1 (HCM1) payment method as stated in 668.162(d), the institutions must first make disbursements to eligible students and parents before it requests or receives funds for the amount of those disbursements from the Department. This "Records First" requirement is fully described in the 2013-2014 Funding Authorization and Disbursement Information eAnnouncement, issued March 15, 2013. The funding request may not exceed the amount of the actual disbursements that were made to the students and parents included in the funding request. Providing the student accounts are credited before the funding requests are initiated, the institution is permitted to draw down funds through the Department's electronic system for grants management and payments, G5, for the amount of disbursements it made to eligible students and parents.

The Records First requirement also means that institutions on HCM1 that are participating in the Direct Loan (DL) program will have their Current Funding Level (CFL) reduced to the greater of Net Approved and Posted Disbursements (NAPD) or Net Draws (processed payments less all refunds, returns, offsets, and drawdown adjustments). In the event of returning to Advanced Funded status, the institutions will be expected to continue processing DL awards as Records First until the next DL global funding increase is processed.

Refer to the following eAnnouncement, http://ifap.ed.gov/eannouncements/attachments/031513AttachImportantReminders1314FundingAuthandDisbursInfo.pdf, for additional information about the Records First requirement.

2) **Notification Requirements** – The Center is required to provide information to the SPD by certified mail or electronic or facsimile transmission no later than 10 days after any of the oversight or financial events, as described below, occur. The Center must also include with the information it submits, written notice that details the circumstances surrounding the event(s) and, if necessary, what steps it has taken or plans to take, to resolve the issue.

- Any adverse action, including probation or similar action, taken against the institutions by their accrediting agency, applicable state agencies or other Federal agency;
- Any event that causes the institutions, or related entity as defined in the Statement of Financial Accounting Standards (SFAS) 57, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statements;
- Any violation by the Center or the institutions of any loan agreement;
- Any failure of the Center or the institutions to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;
- Any withdrawal of owner's equity/net assets from the institutions by any means, including by declaring a dividend; or
- Any extraordinary losses as defined in accordance with Accounting Principles Board (APB) Opinion No. 30
- Any filing of a petition by the Center or the institutions for relief in bankruptcy court.

Letter of Credit Requirements

The irrevocable letter of credit must be made payable to the Secretary, U.S. Department of Education. The letter of credit is necessary in the event that the institutions would close or terminate classes at other than the end of an academic period. It assures the Secretary that funds would be available from which to make refunds, provide teach-out facilities and meet institutional obligations to the Department.

A sample irrevocable letter of credit is enclosed. College America Services letter of credit must be issued by a United States bank. Your lending institution must use this format on its letterhead with no deviation in the language contained therein. The letter of credit must provide coverage until 12/31/2016. The irrevocable letter of credit must be received prior to 75 calendar days from the date of this letter. Please note that if the Center fails to provide the irrevocable letter of credit within 75 calendar days, the institutions may be referred to the Department's Administrative Actions and Appeals service Group (AAASG) office for termination and/or other administrative action under 34 C.F.R. § 668.86. Also, note that information regarding the financial analysis score, results, and the LOC is subject to the Freedom of Information Act (FOIA) of 1966, as amended.

Please mail the irrevocable letter of credit to the following address:

Veronica Pickett, Director
Performance Improvement and Procedures Service Group
U.S. Department of Education
Federal Student Aid/Program Compliance
830 First Street, NE, UCP3, MS 5435
Washington, DC 20002-8019

The Center is required to notify the Chicago/Denver School Participation Division within 3 calendar days, in the event the LOC issuing institution should fail, resulting in financial transactions and operations being administered by the Federal Deposit Insurance Corporation. The Center will also be required to submit a new replacement LOC issued by a different and non-failed U.S. bank, within 75 calendar days.

Promptly contact Clare Barger, Senior Institutional Review Specialist, for Chicago/Denver School Participation Division at (312) 730-1595 with any questions regarding the College America Services current DL award authorization level or the Records First requirements.

If you have any questions regarding the financial responsibility determination, or disagree with the reason or methodology used for this determination, please contact Marion Peak, Financial Analyst, within 30 calendar days at (303) 844-3320.

Sincerely,

Douglas A. Parrott
Director
Chicago/Denver School Participation Division

Enclosures: Sample Irrevocable Letter of Credit

cc: Utah Department of Commerce
AZ State Board for Private Postsecondary Education
CA Bureau for Private Postsecondary & Vocational Education - Department of Consumer Affairs
State of Colorado - Department of Regulatory Agencies
CO State Department of Higher Education - Private Occupational Schools
ID State Board of Education (EXEMPT)
UT System of Higher Education State Board of Regents

WY Wyoming Department of Education
Accrediting Commission of Career Schools and Colleges

IRREVOCABLE LETTER OF CREDIT

<Insert name, address and telephone number of issuing bank>

To beneficiary:
U.S. Department of Education
ATTN: Veronica Pickett, Director
Performance Improvement and Procedures
Federal Student Aid/Program Compliance
830 First Street, NE, UCP3, MS 5435
Washington, DC 20002-8019

Date: <Insert Date LOC Issued>
Amount: **$**<Insert U.S. Dollar amount>
Expiration Date: <Insert Date>

Dear Sir/Madam:

We hereby establish our Irrevocable Letter of Credit Number <Insert LOC Number> in your favor for the account of:

<Insert Name and Address of Institution>
OPE-ID #: <Insert 8 digit Office of Postsecondary Education ID number>

Hereafter, <Insert Name of Institution> ("Institution"), presents, in the amount of **$**<Insert Dollar Amount> (U.S. dollars), available by your draft (or drafts drawn on us) at sight accompanied by:

a) the original of this letter of credit instrument (along with originals of all amendments), and
b) a statement signed by the Secretary ("Secretary"), U.S. Department of Education ("Department"), or the Secretary's representative, certifying that the drafted funds will be used for one or more of the following purposes, as determined by the Secretary:
   1) to pay refunds of institutional or non-institutional charges owed to or on behalf of current or former students of the Institution, whether the Institution remains open or has closed,
   2) to provide for the "teach-out" of students enrolled at the time of the closure of the Institution, and
   3) to pay any liabilities owing to the Secretary arising from acts or omissions by the Institution, on or before the expiration

of this letter of credit, in violation of requirements set forth in the Higher Education Act of 1965, as amended ("HEA"), including the violation of any agreement entered into by the Institution with the Secretary regarding the administration of programs under Title IV of the HEA.

Should the Institution fail to renew the letter of credit within ten (10) days prior to its expiration, as directed by the Department, the Department may call the letter of credit and place the funds in an escrow account at the Department pending a prompt determination of the extent to which those funds will be used in accordance with subparagraphs 1) through 3), above.

We hereby agree with you that partial drawings are permitted and that drafts drawn under and in compliance with the terms of this letter of credit will be duly honored upon due presentation at our offices on or before the expiration date of this letter of credit.

This letter of credit is subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication Number 590.

Printed Legal Name	Authorized Signature	Date Signed

Printed Official Title of Authorized Signer

EXHIBIT 9

August 11, 2016

Eric Juhlin
Chief Executive Officer
Center for Excellence in Higher Education
4021 South 700 East, Suite 400
Salt Lake City, Utah 84107

Certified Mail
Return Receipt Requested
7012 1640 0000 0217 1312

Re: Decision on Change of Ownership for:
Stevens Henager College, OPE 003674
CollegeAmerica Denver, OPE 025943
CollegeAmerica Arizona, OPE 031203
California College San Diego, OPE 021108

Dear President Juhlin:

The Chicago/Denver School Participation Division of the U.S. Department of Education ("Department") has reviewed The Center for Excellence in Higher Education's ("CEHE") application for approval of a change in ownership or structure for the above named schools. This application results from a transaction that occurred as of December 27, 2012 ("the Transaction"), as further described below. Each of the above named schools ("the Colleges") submitted an electronic application ("eapp") for Change in Ownership by November 7, 2012 (California College of San Diego submitted their eapp on October 22, 2012). Temporary Provisional Program Participation Agreements were effective as of January 1, 2013, and extended for an initial one month period until January 31, 2013. Since the Colleges provided materially complete applications timely, their provisional participation has been extended on a month-to-month basis under their status as for-profit institutions since January 31, 2013 while the Department has evaluated the applications as provided in 34 C.F.R. 600.20(h).

CEHE was established as an Indiana public benefit corporation in December 2006, and was issued a 501(c)(3) tax exemption by the IRS. CEHE was established "to promote excellence in higher education by working with philanthropists and others interested in reforming American colleges and universities. Education reform, for these purposes, is defined as increasing access, reducing costs, and improving the quality of higher education with the goal to make universities, schools, departments and ultimately individual faculty members accountable for the quality and effectiveness of their work." CEHE 2015 Audited Financial Statements, Note 1. Prior to the Transaction, CEHE had operated for approximately six years without being engaged in delivering educational programs. As a result of the Transaction, the Companies (and thereby the

Colleges) were merged into CEHE, and CEHE was transformed into an entity primarily delivering educational services. The Colleges have petitioned the Department to recognize their conversion to nonprofit status for the purposes of administration and oversight of their participation in the Title IV Student Financial Assistance programs, based on CEHE's 501(c)(3) exempt status which had been approved by the IRS many years prior to the Transaction.[1]

When an institution experiences a change of ownership that results in a change of control, the institution's existing participation expires on that date. 34 C.F.R. §§ 668.14(g)(1), 668.26(a)(5). Institutions that provide a timely notice of a change of ownership and a materially complete application may continue to participate in the federal student aid programs authorized pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §1070 et seq. ("Title IV, HEA programs") under a temporary provisional program participation agreement which includes the same terms and conditions that were in effect prior to the change of ownership. 34 C.F.R. § 600.20(h).

This letter sets out the Department's decision concerning CEHE's requested approvals for the change of ownership and change to nonprofit status. As explained below, the Department is denying the applications with respect to recognizing the Colleges as nonprofit institutions for purposes of Title IV, HEA programs. The Department has enclosed new provisional program participation agreements ("PPAs") to approve the Colleges as for-profit entities for purposes of the Title IV, HEA programs. The Colleges will need to sign and return these new PPAs to the Department for counter-signature for the Colleges to continue participating in Title IV beyond the end of this month. The existing temporary PPAs will expire on August 31, 2016, as provided in 34 C.F.R. §600.20(h). If the Colleges do not enter into the new PPAs by that date, the Colleges will no longer be certified to participate in Title IV, HEA programs.

I. THE DEPARTMENT EMPLOYS A THREE-PRONG TEST FOR DETERMINING AN INSTITUTION'S NONPROFIT STATUS, INCLUDING AN INDEPENDENT EVALUATION OF ECONOMIC BENEFIT AND CONTROL

The Department regulations identify certain covered transactions for an institution that constitute a change of ownership that require the institution to apply and obtain approval from the Department to continue participating in the Title IV, HEA programs. These include instances where an institution is sold, merged with one or more eligible institutions, experiences a change in the owner of the controlling stock, has a transfer of assets that comprise a substantial portion of the educational business of the institution, or has a change in status as a for-profit, nonprofit, or public institution. 34 C.F.R. § 600.31(d). To establish eligibility and to continue participation in the Title IV, HEA programs, an institution must demonstrate to the Department that, after the change, the institution qualifies to be certified to participate under 34 C.F.R. Part 668, Subpart B pursuant 34 C.F.R. § 600.31(a)(3)(ii).

Redacted [redacted]

Because the Colleges have applied to be considered nonprofit institutions, they must meet the Department's test for eligibility. The Department regulations define a nonprofit institution as an institution that:

> (i) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;
>
> (ii) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and
>
> (iii) Is determined by the Internal Revenue Service to be an organization to which contributions are tax deductible under 26 U.S.C. §501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)).

34 C.F.R. §600.2. A state authorization and IRS determination do not themselves confer nonprofit status for Title IV purposes. The Department must make an independent determination that the institution is "owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual."

CEHE provided documents and records in support of its application, and the Department requested additional documents and information in the course of its review.[2] Having reviewed the information provided by CEHE, the Department is denying the request to approve the Colleges' change to nonprofit status for participation in the Title IV, HEA programs. CEHE's acquisition of the Colleges did not present the traditional situation where an institution is acquired by a new owner and the former owner no longer plays a role in the continued operation of the institution. In the acquisition here, the Transaction was structured so that the Trust retained the benefit of a continued stream of Title IV revenues, and Mr. Barney obtained significant control of CEHE, and by extension, retained control of the Colleges.

For these reasons, the Department has determined that the Colleges do not meet the required definitional elements set forth in 34 C.F.R. § 600.2. Of particular concern are the following: that the financing of the Transaction results in financial benefit which inures to Mr. Barney's beneficial interests via the Trust; that lease payments to entities controlled by Mr. Barney provide additional economic benefit to him; and that Mr. Barney has retained control of the Colleges through his role [redacted] as the sole member, [redacted] and as Board Chairman of CEHE's Board.

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[2] In response to the Department's request for additional information on June 13, 2016, CEHE provided information and documents on June 29, 2016, and notified the Department that it was designating all of the documents produced in response to the Department's June 13, 2016 request as privileged and confidential, asserting that they consisted of trade secrets and commercial or financial information. The Department advised CEHE that the Department's determination with regard to the designation and public release of the documents and information would be governed by the Department's responsibilities under the Freedom of Information Act. CEHE had provided documents prior to the June 29th submission that were also marked "Confidential."

II. THE TRANSACTION WAS STRUCTURED SO THAT THE COLLEGES' TITLE IV FUNDING WOULD CONTINUE TO BENEFIT THE CARL BARNEY LIVING TRUST, JUST AS IT HAD BEFORE THE MERGER

34 C.F.R. § 600.2 provides, in the definition of "nonprofit," that "no part of the net earnings [shall] benefit any private shareholder or individual." The Transaction that resulted in the change of the Colleges' ownership was structured in such a way that an income stream of over $400 million was intended to continue to flow to the Carl Barney Living Trust ("the Trust"), the former owner of the Colleges, just as an income stream flowed to the Trust while the Colleges operated in a for-profit status.

The Transaction was effectuated through the merger of the entities that owned and operated the Colleges and an affiliated service company into CEHE (*i.e.*, Stevens-Henager, Inc. ("SH"), CollegeAmerica Denver, Inc. ("CAD"), CollegeAmerica Arizona, Inc. ("CAA"), California College San Diego, Inc. ("CCSD"), and CollegeAmerica Services, Inc. ("CASI")). SH, CAD, CAA, CCSD and CASI are hereinafter collectively referred to as "the Companies," or with reference to an individual entity as "the Company." *See* CEHE 2012 Audited Financial Statements at Note 1. Before the Transaction, the Companies were all individually owned by the Trust, and Carl Barney is the Trustee of the Trust. The Companies were merged into CEHE pursuant to individual merger agreements (hereinafter collectively referred to as the "Merger Agreements," or individually by their entity names). The parties to the various Merger Agreements are CEHE as "Purchaser," the individual Companies, and the Trust as "Stockholder" of the Companies. *See* CEHE 2012 Audited Financial Statements at Note 6. The Merger Agreements for CASI, SH, and CAA provide for a total aggregate maximum merger consideration of $431,000,000 as of December 27, 2012. [redacted] To finance the Transaction, [redacted] the Trust purchased two notes from CEHE in the aggregate amount of $431,000,000 ("Term Note A" and "Term Note B").[3] *See* CEHE 2012 Audited Financial Statements at Note 8. [redacted]

The Transaction was approved [redacted] on December 27, 2012. [redacted] there is no evidence that CEHE [redacted] conducted any valuation of the Colleges before entering into the Merger Agreement and resulting financing which obligated CEHE to $431,000,000 in indebtedness to the Trust with $419,000,000 of that amount representing goodwill. [redacted]

[3] Term Note A was in the amount of $200,000,000; Term Note B was in the amount of $231,000,000.

Redacted

[redacted]

Redacted [redacted] the equity of SH, CAA and CASI Redacted [redacted] was sold, and as discussed below Redacted [redacted] Mr. Barney indeed placed restrictions on CEHE: by Negative Covenants set forth in the Redacted [redacted] Contingent Note Agreement; Redacted [redacted] Redacted [redacted] Mr. Barney's control over CEHE was exercised as a CEHE member and CEHE Board Chair, and through the Trust as lender under various financing instruments (*i.e.*, Redacted [redacted] the Contingent Note Agreement, and a series of notes Redacted [redacted].

As set forth above, the Transaction was financed [redacted] whereby CEHE executed Term Notes A and B (collectively, the "Term Notes") effective as of December 31, 2012. The Notes provided for the accrual and quarterly payment of interest at the rate of 1% per annum ("Fixed Rate"), [redacted] *See* CEHE 2012 Audited Financial Statements at Note 8. Significantly, the Notes also required quarterly mandatory prepayments of the greater of 75% of the Excess Cash Flow[4] of CEHE, or 10% of CEHE's total revenues. [redacted] Term Note A matured the earlier of December 31, 2017, or the first fiscal year in which CEHE has at least $50,000,000 Change in Net Assets [redacted] Term Note B matured the earlier of December 31, 2019, or the first fiscal year in which CEHE has at least $75,000,000 Change in Net Assets [redacted] *See* CEHE 2012 Audited Financial Statements at Note 8; CEHE 2015 Audited Financial Statements at Note 7.

Payments to the Trust under the Notes are essentially based on the excess of revenues over expenses -- the same way as net income in a for-profit entity. Instead of this excess being retained and allocated to CEHE's mission as would be expected in a nonprofit,[5] the excess is distributed to the Trust under the guise of Note payments. In the notes to CEHE's December 31, 2012 financial statements, CEHE identified its "future minimum principal payments" to the Trust as follows:

2013- $32 million
2014- $36 million
2015- $40 million
2016- $44 million
2017- $48 million
By December 2019 - $231 million

See CEHE 2012 Audited Financial Statements at Note 8. [redacted]

[4] [redacted]

[5] The websites for each of the Colleges includes the following explanation of the Colleges' nonprofit status: "Nonprofit Difference – Learn how a nonprofit college benefits you -- What does it mean to be a nonprofit college? In essence, it means that [College] can put your needs and your goals first. It means that ***we can invest your tuition in your success and the success of your fellow students***. It means that we're uniquely set up to help you gain the competitive advantage in today's job market because we can focus on you, the student." (Emphasis added). While suggesting to students that their tuition is exclusively being used for educational services, the Colleges fail to mention that a portion of the tuition revenue is being paid to the Trust under the Notes.

Subsequent to the closing of the Transaction in December 2012, and with the agreement of the Trust, CEHE's obligation to the Trust under the Notes was modified [redacted] On March 17, 2015, [redacted] to cancel the [redacted] the Term Notes, and to replace those instruments with a Contingent Note Agreement ("CNA") and Contingent Notes A and B. The CNA and the related Contingent Notes were executed effective as of March 23, 2015 and March 31, 2015 respectively. *See* CEHE 2015 Audited Financial Statements at Note 7. Pursuant to the CNA, the Note payments remained conditioned on CEHE's Excess Cash Flow, and eliminated the alternative calculation based on 10% of revenues, as well as the accrual and payment of interest. CNA at 4, 6 and ¶2.5.1 (75% of CEHE's Excess Cash Flow each quarter). [redacted]

The CNA also contained a series of Negative Covenants, [redacted] *See* CNA at ¶¶5.1-5.12. CEHE did not notify the Department of this significant debt restructuring with the Trust even though CEHE's application for the change of ownership for the original transaction was still under review.

CEHE's obligation for payments to the Trust was further modified in November 2015. CEHE 2015 Audited Financial Statements at Note 7. [redacted]

[redacted] on November 6, 2015, [redacted] Contingent Note B was cancelled and Contingent Note A was restated and reduced to $75,000,000. Restated Contingent Note A [redacted] imposed the Fixed Rate [redacted] interest accrual and quarterly payments, and retained the mandatory quarterly payments based on 75% of CEHE's Excess Cash Flows. CEHE 2015 Audited Financial Statements at Note 7. [redacted]. The note may have been written down to reduce long-term debt to improve the

6 [redacted]

Colleges' composite score calculations under the Department's financial responsibility ratios[7] or because the CEHE Board and Mr. Barney recognized that CEHE would not be able to satisfy the remaining obligation under the two notes. In either case, the significant reduction suggests that the initial consideration of $431,000,000 (and the corresponding indebtedness) was highly inflated. Redacted [redacted] Redacted [redacted]

The Department has determined that the payments under the Term, Contingent, and Restated Contingent Notes, which Redacted [redacted] are essentially profit distributions to the Trust – substantially the same as it received when it was the sole shareholder of the Companies. The payment structure using contingent cash flow from the institutions' operating income, in combination with the continuing control exercised by Mr. Barney, is evidence of an entity that has not transitioned. Redacted [redacted] the Restated Contingent Note, Redacted [redacted] further demonstrates that the primary benefit of the Transaction was to be enrichment of the Trust. As such, this "Excess Cash" stream of income to benefit the Trust, in combination with the control exercised by Mr. Barney, precludes the Colleges from qualifying to participate in Title IV, HEA programs as nonprofit institutions under the Department's regulations.

Another element of economic benefit flows to Mr. Barney as a result of nine lease agreements between the Colleges and real estate entities owned or controlled by Mr. Barney. At the time of the Transaction, seven of those leases were already in place, with lease expiration dates ranging from 2015 to 2020. As set forth in the Colleges' and CEHE's audited financial statements for the relevant years, the campus leases provided the following stream of income to Mr. Barney's affiliated real estate companies during the period 2010-2015:

2010 - $3,485,000
2011 - $4,323,000
2012 - $4,643,584 (presumably, this amount is primarily, if not entirely, for payments prior to the Transaction)
2013 - $5,097,509
2014 - $5,962,535
2015 - $3,458,226

Redacted [redacted]

[7] In May 2015, CEHE was instructed to submit a Letter of Credit to the Department based upon CEHE's failed financial composite score calculated under the Department's financial responsibility regulations. Ultimately, CEHE posted cash (in three separate installments) in lieu of the LOC. CEHE's 2015 Audited Financial Statements (at Note 7) reflect that CEHE executed three promissory notes which were issued in June 2015 ($9 million), September 2015 ($2 million) and December 2015 ($5 million), all including 5% interest payable quarterly and the notes mature in January 2017. These notes are payable to Redacted [redacted] and presumably relate to the security requirement imposed by the Department.

Redacted
[redacted]

III. MR. BARNEY'S CONTINUING AND MULTIPLE CEHE ROLES DEMONSTRATE THAT THE COLLEGES CONTINUE TO BE SUBSTANTIALLY CONTROLLED BY MR. BARNEY

Mr. Barney is a CEHE member, he is Chairman of its Board, and he is a surety resource. Through the Trust and Redacted [redacted], he is CEHE's principal lender. Through affiliated real estate companies, he is landlord for several of the Colleges' campuses. As noted above, the Department's decision to approve the change of ownership to CEHE but deny the request to change the Colleges' status to nonprofit is based in part on this continuing control by Mr. Barney following the Transaction. *See* 34 C.F.R. § 600.31 (definition of "control"). Thus, the Colleges do not currently meet the Department requirement of being "owned and operated" by a nonprofit (34 C.F.R. § 600.2) because the Trust enjoys both an income stream and effective control through Mr. Barney's continuing involvement. As described below, this control is and has been effectuated through Redacted [redacted] the CNA, the leases, Redacted [redacted] as well as Mr. Barney's roles as lender (through the Trust), member, Board Chair, and landlord. Although Mr. Barney's control may have been reduced through certain later events, Redacted [redacted] Redacted [redacted] Mr. Barney's current control is still significant.

Ensuring Mr. Barney's ongoing control was an integral part of the Transaction from its inception. This is not surprising given the small size of CEHE in comparison to the Colleges, and the financing that was facilitated and provided by Mr. Barney. Redacted [redacted] Redacted [redacted] Redacted [redacted] the CNA) included Negative Covenants which restricted CEHE's authority to manage its operations in areas which require the Trust's consent, providing further control for Mr. Barney as Trustee of the Trust. *See* Redacted [redacted]

8 Redacted [redacted]

[redacted]

[redacted]

In addition, [redacted] funds so CEHE could satisfy the financial responsibility surety triggered by the Colleges' failing composite score calculations. All of these controls remain in place, [redacted]

Thus, Mr. Barney, both individually and through the Trust, continues to exert significant control over CEHE's management and operations, and accordingly, the Department has determined that it is not operated by a nonprofit organization as required under 34 C.F.R. § 600.2.

IV. THE COLLEGES' CHANGE OF OWNERSHIP IS APPROVED WITHOUT APPROVAL OF NONPROFIT STATUS

The Department is approving the change of ownership from the Trust to CEHE, and approves the Colleges as for-profit institutions for purposes of their continued participation in the Title IV, HEA programs. CEHE may request approval for nonprofit status for the Colleges when it applies for recertification in the future, and the Department will continue to evaluate the relationship between CEHE and its former owner in connection with such a request. The for-profit status for the CEHE Colleges is for purposes of their participation in the Title IV, HEA programs. The Department does not take a position with respect to CEHE's non-profit 501(c)(3) status with the Internal Revenue Service.

The temporary PPAs under which the Colleges have been operating since the change of ownership in December 2012 continued the prior approval for those Colleges to participate under a for-profit status. The for-profit status for the continued participation of the Colleges is therefore unchanged. CEHE is reminded that the Colleges must meet the Title IV, HEA reporting and program eligibility requirements applicable to for-profit institutions, including the 90/10 eligibility requirements described in 34 C.F.R. §668.28 and the gainful employment program requirements set out in 34 C.F.R. Subpart Q. CEHE must also submit the gainful employment certifications required under 34 C.F.R.§414 for all of its certificate and degree programs that it would like to continue to have included in its federal student aid participation. These certifications must be submitted no later than the date CEHE returns the signed PPAs.

For the reasons set out above, the Department is denying the applications from CEHE for the four Colleges to participate in the Title IV, HEA programs as non-profit institutions. The temporary approvals for the Colleges will expire at the end of this month. The Department has included with this letter the provisional PPAs for the four Colleges. If CEHE wants the Colleges to continue to participate in Title IV, HEA programs without interruption, the PPAs should be signed and returned to the Department no later than August 31, 2016 for counter-signature.

The basis for this determination and the facts upon which it is based have been set out above. If CEHE has additional factual information about the above-referenced agreements and arrangements that it believes the Department should consider, CEHE should submit a request for reconsideration to this office that identifies those facts within 10 days of the date of this letter. The request should identify the relevant portions of the documents already provided to the Department, and include any additional documents that have not already been provided to the Department. Please note that a request for reconsideration will not stay the expiration of the temporary approvals which expire on August 31, 2016.

Please contact Earl Flurkey (312-730-1521) if you have any questions regarding the content of this letter.

Sincerely,

Douglas N. Parrott

Douglas Parrott
Division Director

Enclosures:
Stevens Henager College (OPE 003674) Program Participation Agreement
CollegeAmerica Denver (OPE 025943) Program Participation Agreement
CollegeAmerica Arizona (OPE 031203) Program Participation Agreement
California College San Diego (OPE 021108) Program Participation Agreement

cc:

Stevens Henager College
CollegeAmerica Denver
CollegeAmerica Arizona
California College of San Diego
Accrediting Commission of Career Schools and Colleges

EXHIBIT 10

March 15, 2016

Mr. Eric Juhlin
Chief Executive Officer
Center for Excellence in Higher Education
4021 South 700 East
Suite 400
Salt Lake City UT, 84107-9923

Certified Mail Return Receipt Requested
Domestic Return Receipt:
7012 1640 0000 0216 6776

Re: Document Request
OPEID: 00367400 – Stevens Henager College
02110800 – California College San Diego
02594300 – CollegeAmerica Denver
03120300 – CollegeAmerica – Flagstaff

Dear Mr. Juhlin:

This is in response to your email request (1) for a meeting to discuss new developments with respect to CEHE's change in accreditors, and (2) to gain access to CEHE's applications which are currently not available to CEHE for update entries. You state you did not receive a response to your February 24th and February 29th emails which conveyed those requests to us. Please note that I responded by email to you on March 3rd (email string attached above) that access to CEHE's applications had been opened on that day for CEHE to make any changes that are needed to bring the applications up to date. I noted that that access would remain open until you re-submit the applications to the Department, or for five days. I checked the applications on March 9th. The applications were closed, but no changes had been made to them.

Frequently when an accrediting agency conducts a review at a school during a time when the school has an open application with the Department, the agency wants to see that the school is reporting information to the Department that agrees with the information that the school has provided the agency. As none of these applications have been updated since 2014, I expect that various data elements in the applications will have to be refreshed. Consequently, we are glad to open the access to CEHE's applications to allow CEHE to bring the applications up to date. As the system allows at most a five day window to make any updates, please alert me when you are ready to make the updates, and I will again open the access for you.

You also requested a meeting to discuss new developments. We don't believe that a meeting at this time would be productive as all we can report to you is that the applications are still under review. During the course of the review we determined that certain items require additional information or actions from CEHE:

Stevens Henager, Lehi, UT location OPE 003674-08 is currently shown as an eligible location in our record (PEPS), and CEHE has applied for continued eligibility for this location on the current eapp. However, there is no current accreditor approval for this location. Also, CEHE does not list this location on its current web site. Please clarify for us the current status of this location.

Stevens Henager, Ogden UT location, has never been Title IV eligible, and CEHE has not applied for eligibility for this location in the current eapp. Also, it is not listed on the current accreditation record as supplied by ACCSC. However, the school's web site shows this location as an active location, including a listing of available programs and contact information for this location. Please clarify for us the current status of this location. If this location is currently, or has been in the past, an active Title IV participating location, please supply accreditation documents or records that reflect its accreditation status for the periods during which it has been a Title IV participating location.

Stevens Henager, Layton UT location, OPE 003674-07 is currently Title IV eligible. CEHE has applied for continued eligibility on the current eapp. The school's web site shows it as an active location, including a listing of available programs and contact information for this location. However, it is not showing as an accredited location on the current accreditor's record as supplied by ACCSC. An accreditation letter from 2011 shows that it was previously accredited as a "satellite campus" of the Ogden UT location, which has never been Title IV approved. CEHE must supply documentation to show that it was appropriately accredited as an additional location during the period that Title IV aid has been disbursed to students in that location. CEHE must also resolve the Layton Campuses eligibility in relation to the Ogden Campus.

CollegeAmerica – Denver, South Colorado Springs location, OPE 025943-04 is currently Title IV approved in PEPS. It is also state and accreditor approved. CEHE has applied for continued eligibility for this location in its current eapp. However, this location is not shown on CEHE'S web site. Please clarify for us the current status of this location.

In addition, we also reviewed the schools' required Gainful Employment disclosures, and the required posting of certain policies, procedures and consumer information. An earlier review of the CEHE schools' web sites showed that each of the schools had posted a significant amount of this information on their respective web sites. However, a more recent review showed that this information has been deleted from the schools' web sites. During the period when the applications have been pending, these institutions have remained for-profit institutions for Title IV program purposes, and continue to be subject to the Gainful Employment disclosure requirements and the requirement to post specific policies, procedures and consumer information. The CEHE institutions must reinstate this information immediately to support their continued participation in the Title IV programs.

Furthermore, in support of the continuing review of CEHE's applications, the Department requests that CEHE provide copies of certain documents and information concerning the relationship that individuals in senior leadership positions in CEHE or in the schools have with other organizations that provide services to CEHE and/or the schools. In particular, the Related Party Transactions note in the FYE 2013 and the FYE 2014 financial statements for CEHE identified a member of the board of directors as having the following interests:

- Owner and operator of real estate leasing companies from which CEHE leases some campus facilities;
- Owner of a company which provides accounting services to CEHE;
- Owner of a company which provides consulting services to CEHE.

The FYE 2014 financial statements also disclosed in Note 4 that CEHE factored an accounts receivable portfolio with a credit agency. Please identify whether a CEHE board member, senior manager or sole member of CEHE has an ownership or other interest in this credit agency. If so, please provide details as to the nature of such interest including compensation and/or management control of the credit agency.

Please send copies of any contracts or agreements that CEHE or any of its schools has with these companies. Also, identify the member of the board that is referenced in this note, and provide the compensation that that person receives from each of these companies. Also, please identify whether any other member of the board of directors, senior manager or sole member of CEHE has received or is currently receiving compensation from any of these companies, and whether that compensation is contingent upon the company's business with CEHE.
In addition, if CEHE has any services agreement with any party, or has a note or other debt instrument with any party, whether or not such party/parties are a member of the board of CEHE, a senior manager of CEHE, or a member of CEHE, please provide those agreements and notes, together with any appendices.

In addition, please provide a copy of CEHE's conflict of interest policy, and an explanation as to whether and how any of these relationships is in compliance with that policy.

Furthermore, if any CEHE board members, senior managers or the sole member have relationships with other entities that do business with CEHE and/or its schools, please provide the same details for those relationships as well.

Please address your response to me directly at:

Federal Student Aid
Chicago/Denver School Participation Division
500 W. Madison St., Suite 1576
Chicago, Il 60661
Attn: Earl Flurkey

If you have any questions, you can call me at 312-730-1521. Thank you for your prompt attention to this matter.

Sincerely,

Earl Flurkey

Earl Flurkey
Compliance Manager

EXHIBIT 11

From: U.S. Department of Education - Federal Student Aid
To: Eric Juhlin
Cc: Sonia Martinez
Subject: Title IV Reporting Requirement Not Met
Date: Saturday, August 29, 2015 12:02:37 PM

August 29, 2015
Mr Eric S Juhlin
CollegeAmerica Denver
1385 South Colorado Boulevard
Suite A512
Denver, CO 80222

Dear Mr Eric S Juhlin:

The purpose of this letter is to inform you of your institution's failure to report information on its Gainful Employment (GE) programs to the Department of Education's National Student Loan Data System (NSLDS) by the required reporting deadline date of July 31, 2015.

Regulations published in the Federal Register on October 31, 2014 became effective on July 1, 2015. [See the Gainful Employment link on the Home Page of our "Information for Financial Aid Professionals" (IFAP) web site at www.ifap.ed.gov.] Included in those regulations at 34 CFR 668.411 is a provision that institutions report certain data to NSLDS for all of the institution's students who received Title IV federal financial aid funds for enrollment in a GE program during the 2008-2009 through the 2013-2014 award years. GE programs that have required medical or dental residencies must also report data for the 2007-2008 award year. See Gainful Employment Electronic Announcement #53 on IFAP for information on which academic programs are GE programs under the regulations.

NSLDS implemented the functionality to allow institutions to report information for your institution's GE programs to NSLDS on February 11, 2015. Gainful Employment Electronic Announcements #51 and #52, both of which are posted to IFAP, provide detailed information on reporting record layouts and submission options.

Failure to comply with all applicable regulatory requirements, including the requirement to report GE program information to NSLDS, is an indication that your institution lacks the administrative capability to participate in the Title IV student financial assistance programs. Such a determination could result in your institution being subject to one or more sanctions, including loss of its eligibility to participate in the federal student aid programs. Whether, and how severe an institution's sanctions will be, is partially dependent on how quickly the institution becomes compliant by properly reporting GE information to NSLDS. Therefore, your institution must report its GE information without any further delay.

In Gainful Employment Electronic Announcement #59, posted to IFAP on August 20, we provided instructions for using the NSLDS GE Program Tracking List page within NSLDS. If you believe that NSLDS reporting is not required for one or more of the programs indicated on the GE Program Tracking page, you must inform us by updating the GE Program Tracking page for the program and selecting one of the following reasons from the "Status Reason" drop-down.

- No students enrolled in GE program
- Program was not Title IV eligible in award year
- Other (Additional information is required)

We note that institutions frequently enter into contractual arrangements with other organizations to fulfill institutional obligations with respect to the Title IV federal student financial assistance programs. If your institution has entered into an arrangement to have its regulatory obligation to report GE information to NSLDS met by a third-party, we remind you of the regulations at 34 CFR 668.25, which include a provision that the institution remains liable for any omission or error by its third-party servicers.

If you or your staff have questions about NSLDS, contact the NSLDS Customer Support Center at 800/999-8219. You can also contact Customer Support by e-mail at nslds@ed.gov.

Should you or your staff have any questions about the information in this letter, please send an e-mail to GE-Missing-Data@ed.gov.

Sincerely,

Jeff Baker, Director
Policy Liaison and Implementation

CC: Ms Sonia Martinez, Financial Aid Director

From:	GE-Missing-Data
To:	Eric Juhlin
Subject:	Thank You
Date:	Saturday, August 29, 2015 12:20:31 PM

Thank you for recent submission to the Gainful Employment Missing Information mailbox. This message confirms that we have received your E-Mail.

Your submission will be reviewed and a response will be provided.

Thank you for contacting the U.S. Department of Education's
Federal Student Aid.

EXHIBIT 12

CEHE Center for Excellence in Higher Education | Stevens-Henager College Since 1891 | Independence University | CollegeAmerica Since 1964 | California College San Diego

April 20, 2016

Mr. Earl Flurkey
Compliance Manager
Federal Student Aid
U.S. Department of Education
500 West Madison Street, Suite 1576
Chicago, IL 60661

SENT VIA EMAIL

Re: U.S. Department of Education's ("ED") Statement that Center for Excellence in Higher Education's ("CEHE") Institutions Remain For-Profit

OPEIDs:
00367400 – Stevens-Henager College
02110800 – California College San Diego
02594300 – CollegeAmerica Denver
03120300 – CollegeAmerica Flagstaff

Dear Mr. Flurkey:

Your March 15, 2016 letter contained the following statement:

> *"During the period when the applications have been pending, these institutions have remained for-profit institutions for Title IV program purposes..."*

CEHE found this statement simultaneously confusing and ***very*** concerning. Since 2007, CEHE has been an Indiana nonprofit corporation, qualified (*without interruption*) under section 501(c)(3) of the Internal Revenue Code ("Code"). In the 39 months since CEHE closed the transaction, took over ownership and control of the institutions, and received Temporary Provisional Program Participation Agreements from ED, CEHE has operated its colleges as nonprofit institutions and diligently complied with applicable Title IV regulations.

All of the information that CEHE has provided ED since CEHE became the institutions' owner has clearly evidenced that CEHE was operating as a nonprofit qualified under section 501(c)(3) of the Code.

Prior to your letter, and at no time during the 39 months that CEHE has owned the colleges, has ED has ever indicated, inferred, notified, or communicated in any way to CEHE that ED considered CEHE's institutions for-profit. Adding to our confusion is the fact that in several public disclosures, ED has designated our institutions as nonprofit (e.g., College Navigator and College Scorecard).

Our concern is ED's implication that the laws and regulations for for-profit colleges have applied to CEHE's since the closing. Whereas CEHE, as a qualified 501(c)(3), has in good faith operated in compliance with the laws and regulations applicable to nonprofit institutions.

CEHE has reviewed the applicable laws and regulations and believes that they support CEHE's position that the institutions have been nonprofit, for all purposes, since December 31, 2012, when CEHE became the owner. Please share with us the laws or regulations that ED has relied upon to conclude that CEHE's colleges have remained for-profit for Title IV purposes. CEHE needs to know which regulations apply to its colleges. That's the only way CEHE can continue to maintain its compliance with Title IV regulations.

Obviously this is a very important and extremely urgent matter to CEHE, its students, faculty and staff. Due to the urgency of this matter, we request an immediate written response, a meeting, or a telephone conference with appropriate ED personnel. Please contact me (phone: 801-622-1555 or email: eric.juhlin@collegeamerica.edu) as soon as possible to let me know ED's preference for the next steps. It is our genuine desire to resolve this issue with ED as soon as possible.

Sincerely,

Eric Juhlin
Chief Executive Officer

cc: Douglas Parrott, Division Director
Robin Minor, Student Financial Aid
Steve Finley, Office of General Counsel
Tony Guida, Duane Morris
Carl Barney, Chairman
Matt Gerber, General Counsel

EXHIBIT 13

From: U.S. Department of Education <OPA@ed.gov>
Sent: Thursday, August 11, 2016 10:32 AM
To: U.S. Department of Education
Subject: EMBARGOED: Department Denies Request for Chain of For-Profit Colleges to Convert to Non-Profit Status

EMBARGOED UNTIL 11 A.M. ET ON THURSDAY, AUG. 11, 2016.

U.S. Department of Education
Office of Communications & Outreach, Press Office
400 Maryland Ave., S.W.
Washington, D.C. 20202

FOR IMMEDIATE RELEASE:
Aug. 11, 2016

CONTACT:
Press Office, (202) 401-1576 or press@ed.gov

Department Denies Request for Chain of For-Profit Colleges to Convert to Non-Profit Status

Center for Excellence in Higher Education campuses must continue to be accountable to taxpayers, students through federal regulations

The U.S. Department of Education today denied a request from the Center for Excellence in Higher Education (CEHE), a Utah-based chain of for-profit career colleges, to convert to non-profit status for purposes of federal financial student aid. The denial means that the colleges' programs must continue to meet requirements under the federal Gainful Employment regulations[ed.gov].

"This should send a clear message to anyone who thinks converting to non-profit status is a way to avoid oversight while hanging onto the financial benefits: Don't waste your time," said U.S. Education Secretary John B. King Jr.

This denial does not directly affect the approximately 12,000 students who attend the four institutions owned by CEHE - Stevens-Henager[stevenshenager.edu] in Utah and Idaho, CollegeAmerica Denver[collegeamerica.edu], CollegeAmerica Arizona[collegeamerica.edu], California College San Diego[cc-sd.edu] and CollegeAmerica Services[collegeamerica.edu] - but it does mean that the Department will continue to limit the colleges to getting no more than 90 percent their revenue from Title IV federal student aid. It also means that the institutions must meet all federal regulations for for-profit colleges.

CEHE first applied for non-profit status with the Department in the fall of 2012. In reviewing that request, the Department determined that CEHE, which had been a small educational non-profit that did not provide educational services, acquired four for-profit college companies owned by the Carl Barney Living Trust. CEHE promised to pay the Trust more than $400 million dollars, and the colleges were merged into CEHE. When that happened, Mr. Barney became the board chairman of CEHE, and because of the way the transaction was structured, retained significant control of the colleges, despite the change in ownership to CEHE.

While CEHE is recognized by the Internal Revenue Service as a non-profit company, the colleges' tuition revenue continues to flow to Mr. Barney through the Trust to pay off the debt that CEHE owes from acquiring the colleges, and through the rent that some of Mr. Barney's other companies receive as landlords for several of the college campuses. Under 34 C.F.R. § 600.2 of the Higher Education Act[www2.ed.gov] regulations, non-profit institutions must be owned and operated by a non-profit where no part of the net earnings benefit any private shareholder or individual.

"Schools that want to convert to non-profit status need to benefit the public," said U.S. Under Secretary of Education Ted Mitchell. "If the primary beneficiary of the conversion is the owner of the for-profit school, that doesn't meet the bar. It's not even close."

Since 2012, the four institutions have continued participating in the Title IV financial aid programs on month-to-month agreements as for-profit institutions. In a letter to the company's CEO, Eric Juhlin, the Department approved the change in ownership that CEHE requested but continues to recognize Mr. Barney as maintaining significant control of the institutions and the Title IV revenue they produce.

During the review of the change in ownership request, the Department requested additional documentation from CEHE. The company provided information to the Department but marked much of it as confidential, and that information has been removed from copies of the letter made available for public review. Documents subject to CEHE's confidentiality designation would have to be requested for public review under the Freedom of Information Act.

During the time the applications were under review, risk factors identified in CEHE's financial statements - including a lawsuit against one of the institutions filed by the Colorado Attorney General - led the Department to require CEHE to provide a $42.9 million surety, which is 30 percent of the annual federal student aid funding for 2013 for the four institutions. That surety remains in place but is subject to adjustment based on CEHE's financial condition and other risks.

To qualify for federal student aid, the law requires that most for-profit programs and certificate programs at private non-profit and public institutions prepare students for gainful employment in a recognized occupation.

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EXHIBIT 14

Center for Excellence in Higher Education | INDEPENDENCE UNIVERSITY Since 1891 | STEVENS-HENAGER COLLEGE Since 1891 | CALIFORNIA COLLEGE SAN DIEGO | COLLEGEAMERICA

August 21, 2016

Mr. Douglas Parrott
Division Director
U.S. Department of Education
Federal Student Aid, School Participation Team – Chicago
500 West Madison Street
Chicago, IL 60661

Sent via email to Douglas.Parrott@ed.gov

Re: Request for Reconciliation concerning:
OPEIDs: 00367400 – Stevens Henager College
02110800 – California College San Diego
02594300 – CollegeAmerica Denver
03120300 – CollegeAmerica – Flagstaff

Dear Mr. Parrott:

On August 11, 2016, 44 months after the Center for Excellence in Higher Education ("CEHE") submitted change of ownership applications for the colleges listed above (the "Colleges"), the Department notified CEHE of its decision on the applications ("Decision"). Prior to sending the Decision to CEHE, the Department ambushed CEHE by distributing a press release containing inappropriate and unsubstantiated accusations, vilifying CEHE and the Colleges' former owner. As a result, the media, CEHE employees, its bank, business associates, and colleagues learned about the Decision before CEHE's Chief Executive Officer.

I. Improper Political Motive and Denial of Fundamental Fairness and Justice

Delivering its Decision to the media *before* providing a copy to CEHE[1] reveals the Department's intent to politicize the CEHE change of ownership process. The advance press release, which contained egregious, unsubstantiated charges against CEHE, the Colleges' former owner, and the Carl Barney Living Trust ("Trust"), denies CEHE fundamental fairness and due process.

[1] The Department issued a press release and redacted copy of its decision to media outlets at 10:32am eastern (see Exhibit 1). The Department did not send its decision to CEHE until 10:42am eastern (see Exhibit 2).

The orchestrated timing of the press release indicates that this Decision was based upon advancing a political agenda and not on an unbiased application of law and regulation. Further evidence that this Decision was based upon a political agenda is the fact that two of the most senior executives in the Department of Education, Secretary of Education John King and Under Secretary Ted Mitchell, made alarming and unprecedented direct quotes in the press release. Secretary of Education King stated that "*This [denial of nonprofit status] should send a clear message to anyone who thinks converting to non-profit (sic) status is a way to avoid oversight while hanging onto the financial benefits: don't waste your time*." This statement reveals the Department's basis for the Decision. This statement also includes a gratuitous allegation from the Secretary that CEHE's change of ownership was an attempt to avoid regulatory oversight. That allegation is false; and is intended to intimidate other colleges from lawfully exercising their rights pursuant to the Higher Education Act of 1964, as amended ("HEA").

The Secretary's quote is followed by one from Under Secretary Ted Mitchell: *"Schools that want to convert to non-profit (sic) status need to benefit the public. If the primary beneficiary of the conversion is the owner of the for-profit school, that doesn't meet the bar. It's not even close."* It is disturbing that the Under Secretary would make such a statement when the Department's Decision contains no facts, evidence, or support for such an egregious allegation. Why? Because CEHE's Colleges demonstrably do benefit the public. In fact, in the fall of 2015, CEHE presented clear evidence directly to Under Secretary Mitchell demonstrating how the Colleges benefit the public[2]. For example, since January 2013, CEHE's Colleges have awarded scholarships and grants to students totaling over $28 million dollars[3]. Further, CEHE's Colleges have provided 100% free GED preparatory tutoring and instruction (including paying the cost for participants to take the GED exam) through its Good Neighbor Initiative. This program alone has helped over 3,000 people earn their GED for free! Such efforts provide substantial public benefit.

For the Department to issue a press release such as this (with false, inflammatory, and threatening claims) as the means of informing a college of a significant decision exemplifies an agenda-driven judgment and effort to smear CEHE Colleges.

Even though CEHE has operated its Colleges as nonprofit institutions since December 31, 2012,

[2] See Exhibit 3 – letter from Duane Morris attorney to Under Secretary Ted Mitchell.
[3] See Exhibit 4 – CEHE Grants and Scholarships since January 2013.

the Department did not give CEHE any notice of its belief that the Colleges remained "for-profit" for Title IV regulatory purposes until the Department sent a request for documents to CEHE on March 15, 2016. Since then, CEHE has submitted at least eight urgent requests to the Department imploring the Department to meet with CEHE, in person or by telephone, to review the basis for the Department's position. Instead of meeting with CEHE, the Department denied all of our requests and then ambushed CEHE with its Decision. As discussed below, the Decision is based on a misapplication of law, disregards the plain language of applicable regulations, ignores controlling Internal Revenue Service ("IRS") precedent, and/or relies upon unfounded surmise or conjecture contradicted by objective facts.

The Department's political agenda is not a proper basis for this Decision. It is wrong for government officials to impugn the character and credibility of a lawful nonprofit institution (and its principals) simply because the nonprofit organization acquired what had previously been proprietary institutions. The Decision assigns malicious motives to perfectly moral and lawful activities. It is particularly immoral for the government to "poison the well" with a press release (before informing the institution and affording it an opportunity to respond) – designed to influence members of the public or seek to affect judicial or regulatory processes.

II. The Ultimate Aim of the Department's Decision

This Decision is based upon the bias and animus of certain loud critics of the private career college sector. Evidence shows that the Decision is driven by an agenda originating with a discredited former Department of Education Deputy Undersecretary Robert Shireman (who is now with the Century Foundation, a self-proclaimed "progressive" think tank). Following his alleged collusion with short-sellers of publically traded proprietary colleges in 2010[4] and his sudden departure from the Department of Education, Mr. Shireman, in 2014, launched an attack against proprietary colleges that had converted to nonprofit corporations. He initiated his attack by filing a complaint against Keiser College's former owner, Dr. Arthur Keiser. Then, in March 2015, Mr. Shireman provided information to the New York Times for an article which, among many false allegations, invented a claim that CEHE's acquisition of the Colleges was to evade new regulations applicable to for-profit colleges[5].

After release of the New York Times article, a group of 21 legislators sent a letter to then

[4] See Exhibit 5 – Robert Shireman Background
[5] See Exhibit 6 – NY Times Article

Secretary of Education Arne Duncan demanding that the Department rigorously scrutinize transactions involving for-profit colleges being merged into nonprofit corporations[6]. Clearly, this letter persuaded the Department to take whatever action it could to appease these legislators' demands to discredit and prohibit nonprofit corporations from controlling former proprietary colleges. Mr. Shireman continued to advance his agenda by publishing a "study" titled "*The Covert For-Profit*" in October 2015[7]. Prior to publishing this so-called "study", the Century Foundation contacted CEHE for comment. CEHE promptly corrected many falsehoods and inaccuracies that Mr. Shireman had planned on including in his report[8]. *The Department has almost completely adopted Mr. Shireman's agenda.* That adoption indicates the true basis for the Department's Decision. In doing so, the Department has inappropriately based its Decision on advancing a political agenda. This is legally and morally wrong. The Decision must be governed solely by existing laws and regulations and the Department must reconsider the Decision without taking into account any political agenda.

III. CEHE's Mission Benefits the Public and CEHE Operates Good Colleges

CEHE believes it is important for the Department to acknowledge that our Colleges' results are measurably better than government 2-year community colleges. Our Colleges serve similar students. On one important measure, graduation rates, CEHE's Colleges perform better than the 2-year public colleges in the states where CEHE's Colleges are located[9]. According to the most recent data from the Department's IPEDS system, CEHE's Colleges in California have an average graduation rate of 33.5% and California's community colleges have an average graduation rate of 27.4%; CEHE's Colleges, therefore, have an average graduate rate 22% better than public 2-year colleges. Similar results have been achieved in the other states where CEHE operates Colleges. CEHE's Colleges in Arizona have an average graduation rate of 41.9% versus 16.2% for Arizona community colleges (159% better). CEHE's Colleges in Colorado have an average graduation rate of 33.3% versus 28.2% for Colorado community colleges (18% better). And CEHE's College in Salt Lake City, Utah has a graduation rate of 28.8% versus 15.9% for Salt Lake City Community College (81% better). On many other important objective measures, such as time-to-completion, CEHE's Colleges are superior.

[6] See Exhibit 7 – Democrat Letter to Duncan
[7] See Exhibit 8 – Covert For-Profit Report
[8] See Exhibit 9 – CEHE Response to Century Foundation Before "Covert" Report Published
[9] See Exhibit 10 – IPEDS Graduation Rate Data for CEHE Colleges and Community Colleges

CEHE Centre for Excellence in Higher Education | IU Independence University Since 1891 | Stevens-Henager College Since 1891 | California College San Diego | CollegeAmerica

IV. Basis for Reconsideration

While the Decision contains substantial misrepresentations and inaccuracies warranting reconsideration[10], CEHE will focus its request for reconsideration on to two primary charges levied against CEHE, the Colleges' former owner, and the Trust. These two charges serve as the putative basis for the Decision. Both charges are baseless and unsupported by evidence, law, or regulation. CEHE addresses other miscellaneous determinations from the Decision in the attached Appendix 2[11].

The first charge is that the Colleges' former owner's continued participation in the organization (and his alleged significant post-transaction control) does not conform to required definitional elements in 34 C.F.R. §600.2. The second charge is that the Trust and the Colleges' former owner have inappropriately retained the benefit of a continued stream of Title IV revenues, via debt payments and lease payments, which also fail to conform to required definitional elements in 34 C.F.R. §600.2. As set forth below, both of these determinations are inaccurate and inconsistent with the law and precedent.

a. CEHE's Colleges Satisfy 34. C.F.R § 600.2

34 C.F.R. §600.2 defines a nonprofit institution as one that:

> (1)(i) is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;
>
> (ii) is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and
>
> (iii) is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3).

CEHE's Colleges satisfy <u>all</u> of the definitional elements for a nonprofit institution in 34 C.F.R. §600.2. The Colleges <u>are</u> owned and operated by a nonprofit corporation. CEHE is legally authorized to operate as a nonprofit organization in each State where it is physically located. The Department does not dispute this fact. And, CEHE has been determined by the IRS to be an

[10] See Appendix 1 – Decision Inaccuracies and Misrepresentations
[11] See Appendix 2 – Miscellaneous Determinations in the Decision

organization to which contributions are tax deductible in accordance with section 501(c)(3) of the IRS Code. The Department does not dispute this fact.

In the Department's first charge, the Department does not contest that the institutions are *owned* by a nonprofit corporation; rather, the Department's determination is that the Colleges former owner's involvement with CEHE somehow means that the institutions are not *"operated"* by a nonprofit corporation.

b. Operated by a Nonprofit Corporation

There is <u>nothing</u> in the definition for a nonprofit institution in 34 C.F.R. §600.2 that defines, restricts, or prohibits, an institution's previous owner from being involved following a change of ownership or control. The Department states that,

> *"CEHE's acquisition of the colleges did not present the <u>traditional</u> situation where an institution is acquired by a new owner and the former owner no longer plays a role in the continued operation of the institution."* (<u>emphasis</u> added)

The Department claims that the subject transaction is not a "traditional" conversion transaction because the former owner continues to maintain a role in the nonprofit corporation. TO the contrary, CEHE's transaction is in fact more traditional than the one described by the Department in its Decision.

These types of conversions have been taking place for decades. The Department itself has reviewed and approved similar conversions as part of change of ownership applications where the colleges' previous owner remained involved following the transaction. *See* the Department's approval of nonprofit conversions involving Ultimate Medical Academy (2015), Keiser University (2011), and Remington College (2011).

The use of the word "traditional" in this context is nothing more than sleight of hand for arbitrarily denying CEHE's change of status without, and in spite of, controlling state law and the Internal Revenue Code. Furthermore, the Department's implied determination that a former owner being involved with the nonprofit organization following a change to nonprofit is somehow wrong, bad, or not "traditional" is baseless.

Over 40 years ago, the IRS published two revenue rulings, Revenue Ruling 76-91, 1976-1 C.B.

Center for Excellence in Higher Education | Independence University Since 1891 | Stevens-Henager College Since 1891 | California College San Diego | CollegeAmerica

150[12], and Revenue Ruling 76-441, 1976-2 C.B. 147[13]. In Revenue Ruling 76-91, the owners of a for-profit hospital formed a new nonprofit corporation to purchase and operate the hospital. "Over one-half of the board of directors of [the nonprofit corporation purchasing the hospital] consists of the stockholders [of the selling for profit hospital]." The IRS still ruled, that despite such control, the nonprofit corporation qualified for tax-exempt status under section 501(c)(3) of the Internal revenue Code.

Similarly, in Revenue Ruling 76-441, Situation 1, the successor nonprofit corporation purchased a for-profit school's personal property and leased the land and buildings from the former owners of the for-profit school. The former owners of the school were then employed by the nonprofit school. Again, the IRS ruled that the nonprofit corporation qualified for tax-exempt status despite the real property lease and post-sale employment relationship. These two published revenue rulings dispel the notion that a former owner must have no involvement with the nonprofit corporate buyer following a conversion of status transaction regardless of its form.

The Department's position that the former owner's alleged control over CEHE, whether due to his status as a substantial contributor or due to his Trust's status as a CEHE lender or both, is simply incorrect as evidenced by the Internal Revenue Service's pronouncements. There are more than 70,000 nonprofit organizations in the United States today and the majority of them have been founded and funded by a single donor or family. Their nonprofit status under federal (Internal Revenue Code) or state (Indiana) law is not altered or precluded solely by reason of the fact that a donor and his/her family retain control - even if that control is perpetual.

The fact that CEHE is a public charity for tax purposes does not alter that conclusion. The IRS has explicitly addressed the question of the relationship of control to eligibility for tax exemption, and the Department cannot deny controlling IRS precedent that requires approval of CEHE's applications. More significantly, as indicated above, the Department itself has previously approved changes of ownership (as recently as last year) involving a conversion from for-profit to nonprofit status with circumstances similar to CEHE's.

In this Decision, the Department is acting arbitrarily in ignoring its previous record of following well-established IRS precedent. For example, in Revenue Ruling 66-219, 1966-2 C.B. 208[14], the IRS ruled that an organization would not be precluded from establishing its section 501(c)(3)

[12] See Exhibit 11 – Revenue Ruling 76-91
[13] See Exhibit 12 - Revenue Ruling 76-441
[14] See Exhibit 13 – Revenue Ruling 66-219

status "merely because the creator of the organization (if a trust) is either the sole or controlling trustee or merely because the organization is controlled by one individual." Similarly, in General Counsel Memorandum 33647 (Oct. 9, 1967), the IRS Office of Chief Counsel concluded that control of a section 510(c)(3) organization by a founder's family, even when control is assured into the foreseeable future, would not preclude section 501(c)(3) exemption.

c. No Part of CEHE's Net Earnings Benefit a Private Individual

The Department's second charge is that CEHE's institutions do not conform to required definitional elements in 34 C.F.R. §600.2 because the net earnings benefit a private individual when CEHE makes debt payments to the Trust, and lease payments to entities owned by the Colleges' former owner.

The Department's three-part definition for a nonprofit institution implements the definition of a nonprofit found in the Higher Education Act ("HEA"). 20 U.S.C. §1003 defines a nonprofit institution as:

> *"a school…or institution owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual."*

The private inurement prohibition contained in the HEA's definition of a nonprofit is essentially the same language included in the definition of a nonprofit included in Section 501(c)(3) of the Internal Revenue Code:

> *Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.*

Indeed, before the HEA was adopted in 1965, the IRS had developed an interpretation of private inurement under Section 501(c)(3) of the Internal Revenue Code. Congress intended this established meaning of private inurement prohibition to control in the HEA. Rather than state that the nonprofit had to be a 501(c)(3) tax exempt entity in 20 U.S.C. § 1003, Congress imposed the requirement that a nonprofit organization be able to satisfy requirements of 501(c)(3) by tracking the particular language of private benefit in 501(c)(3).

When the HEA was enacted, federal courts had interpreted the private inurement prohibition of 501(c)(3) to permit tax exempt nonprofit corporations to borrow money from an insider to purchase assets at fair market value and to repay the debt with revenue from the tax exempt operations. Comm'r v. Johnson, 267 F. 2d 382 (1st Cir. 1959) ("Transactional Exemption").

Federal courts have clarified that this Transactional Exemption applies to any transaction negotiated at arm's length with a person having no prior relationship with the exempt entity, regardless of the relative bargaining strength of the parties or the *resultant* control that the contract gives a party over the exempt entity. Cancer Council, Inc. v. Comr., 165 F. 3d 1173 (7th Cir. 1999). The IRS formally adopted this position in Treasury Regulation 53.4958. The regulations pertain to the receipt of private benefits or inurement from a tax exempt entity, including a nonprofit corporation having tax exempt status under 501(c)(3).

Treasury Regulation 53.4958-4 provides that the private inurement prohibition of 501(3) does not apply to fixed payments made pursuant to an initial contract, even if such payment would otherwise constitute an excess benefit transaction. See Treasury Regulation 53.4958-4(a)(3)(i) and (vii). An initial contract is defined as a binding written contract between an organization and an individual who was not an insider immediately prior to entering into the contract. See Treasury Regulation 53.4958-4(a)(3)(iii). And a fixed payment means an amount of cash or other property specified in an initial contract or determined by a fixed formula specified in the contract that is paid or transferred in exchange for the provision of specified services or property. See Treasury Regulation 53.4958-4(a)(3)(ii)(A). Regulations provide that a fixed formula may incorporate an amount that depends on future specified events or contingencies (e.g., revenues generated by activities of the organization) if no person exercises discretion when calculating the payment amount or whether payment is made. These regulations permit the use of a cash-flow based formula to determine the amount and timing of payments.

Prior to CEHE's Decision, the Department has consistently interpreted 34 C.F.R. § 600.2 in accordance with the IRS's interpretation of private inurement when ruling on change in ownership or control applications following an institution's conversion to nonprofit status. For the Department, in CEHE Decision, to now conclude that debt service and lease payments are net earnings benefiting a private individual is contrary to IRS rulings. This conclusion by the Department also ignores the manner in which debt (loan and lease payments) is classified on balance sheets and income statements pursuant to Generally Accepted Accounting Standards ("GAAP") and Financial Accounting Standards Board ("FASB") standards.

Virtually every nonprofit college in the U.S. has debt and incurs lease expenses. Columbia University, the alma mater of U.S. Secretary of Education John King, had $1.28 billion dollars of debt at the end of 2012[15]. Stanford University, the alma mater of Under Secretary Ted Mitchell, had $1.5 billion dollars of debt at the end of 2013[16]. Is it the Department's position that these institutions, like CEHE, fail the definition in 34 C.F.R. §600.2 because part of their tuition revenue is paid to individuals or entities who hold the debt? In CEHE's Decision, the Department, for the first time, takes the position that an institution fails to meet the definition of a nonprofit institution in 34 C.F.R. §600.2 if the institution uses part of its revenue to pay debt held by private individuals or trusts. If consistently and fairly applied, the Department's position (in CEHE's Decision) would mean that every nonprofit institution in the United Sates that has debt service and/or rent payments ***fails*** to meet the definitional element in 34 C.F.R. §600.2. Such a position by the Department is untenable.

The Department cannot discriminate and selectively interpret its regulations differently for CEHE's Colleges, or indeed, any one institution or group of institutions. Whether an institution's debt is held by one or more individuals is irrelevant. Whether an institution makes rent payments to one or more individuals is also irrelevant. The Department has, for decades, consistently and routinely (by its actions and approvals) established that a nonprofit institution's payment of debt service or rent to one or more private individuals does not violate the definitional element prohibiting the payment of net earnings benefits to private individuals. The Department must reconsider its determination in CEHE's case and equally apply the interpretation of the definitional elements it has applied to other nonprofit institutions.

The Department goes on to claim that:

> *"In the acquisition here, the Transaction was structured so that the Trust retained the benefit of a continued stream of title IV revenues..."*

[15] See Exhibit 14 – Columbia University Debt as of 2012
[16] See Exhibit 15 – Stanford University Debt as of 2013

This is an extreme mischaracterization of what actually occurred and the Department uses this statement as the foundation for a refusal to recognize CEHE's status as a bona fide nonprofit corporation under Indiana law and Title IV regulations. **The Trust is and was nothing more than a lender.**

The Trust has retained no right, title or interest in any particular stream of revenue and is indeed prohibited from doing so under both Indiana law and section 501(c)(3) of the Internal Revenue Code. The Trust is nothing more than a creditor of CEHE - just as a commercial lender would be if CEHE had obtained commercial financing. It is significant that the Decision references no state or federal law (including the Internal Revenue Code) under which indebtedness incurred by CEHE to the Trust is anything other than a bona fide indebtedness for all purposes (including the Department's consideration of the change of ownership applications). To conclude otherwise, without any factual or legal support, is arbitrary and capricious.

The Department's conclusion that provisions in CEHE's debt, requiring mandatory prepayments of principal in amounts equal to the Excess Cash Flow, are distribution of profits to the Trust is not supported by either commercial lending norms or the facts of the transaction. As the Department is aware, the debt is required, by applicable law, to be on market terms. Many banks and other financial institutions reduce the risk of nonpayment by requiring the borrowers to repay loans to the extent of available funds. The definition of "Excess Cash Flow" in CEHE's notes is almost identical to the definition of this term in the loan documents of major financial institutions.

In reality, this construct for repayment of the notes was designed to mitigate any risk that CEHE might default on the notes. The Colleges' institutional accreditor, ACCSC, strongly expressed concern as to whether CEHE would be able to pay its debt to the Trust. To address this concern, and insure financial viability of the Colleges after closing, the parties determined it was in the best interest of the Colleges (as opposed to the Colleges' former owner) not to have a fixed schedule for the repayment of the principal. Instead, CEHE was required to pay its debt when it had available cash after satisfying all operational and capital expenditure needs. Cash is not the same as profits. Once the debt is paid in full (or refinanced with a different lender) CEHE will have no obligation to the Trust. In summary, the mandatory prepayment of principal of an arms' length loan is not the legal or functional equivalent of a stream of income to benefit the Trust.

The Department further asserts that negative covenants in the notes are evidence of the Trust's control of the Colleges. On the contrary, these covenants show that the obligations and debt are not, in any way, a sharing of profits. Negative covenants are customary in commercial lending and the negative covenants in CEHE's notes are much less restrictive than typically found in notes with a major financial institution. CEHE's negative covenants reflect market norms that were required to be reflected in the transaction. The negative covenants are not, in any way, indicia of the Trust having control of CEHE and the Colleges.

Finally, for almost two years, the IRS has conducted audits of this transaction. The IRS has audited the transaction itself and CEHE's Form 990 tax return. While the audits are just now being completed, the IRS has not concluded that the former owner, as a sole member, cannot continue to be involved with the surviving nonprofit organization. Furthermore, the IRS has never alleged or concluded that there is any inappropriate benefit or inurement flowing to the Colleges' former owner or to the Trust. The IRS has obviously done the arithmetic (which the Department should have done) on this transaction, which shows that the CEHE merger has actually _cost_ the Colleges' former owner approximately $77 million dollars[17]. From a financial perspective, the merger with CEHE was the least beneficial transaction that the Colleges' former owner ever entered into.

With respect to leases and lease expense - it is true that the Colleges, at the time of the transaction, had some exiting lease obligations in properties owned by entities controlled by the Colleges' former owner. However, as stated above, CEHE's payment of rent expense cannot be considered a stream of "net earnings" flowing to a private individual. Moreover, in 2015, the CEHE Board of Directors asked the Colleges' former owner to divest the real estate where the Colleges had leases. This request was solely due to the fuss critics had been raising about CEHE's Colleges leasing space in buildings owned by the Colleges' former owner. The former owner agreed to do so. However, before doing so, the CEO and Board of CEHE wanted to lock in long-term leases at favorable rates. Mr. Eric Juhlin, CEHE's CEO, was authorized to negotiate on the behalf of the CEHE Board of Directors and did so in a professional and independent manner, negotiating long-term leases that included reductions in rent and significant periods of rent abatement. The former owner did not participate in the negotiations, but rather hired an independent attorney and an independent real estate broker to conduct arms-length negotiations with Mr. Juhlin.[18]

Congress was aware that colleges were converting to nonprofits using seller financing. They

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[17] See Exhibit 16 – Accounting of Transaction for Carl Barney

[18] All of the information and evidence of independent re-negotiations of the Colleges' leases was provided to the Department in CEHE's responses to the Department's March and June 2016 document requests.

were also aware of the politically-based claims that some of the transactions were being pursued solely to evade regulation, and that proponents were asking the Department to stop approving them. In addition to the public attack waged by Mr. Shireman and the letter from the United States Senators to Secretary Duncan, the Senate Committee on Health, Education, Labor and Pensions' report on for profit higher education published by the committee in July 2012 criticized these transactions as being intended to evade regulation. The HEA has been amended numerous times since these allegations were made, and Congress has taken no action to amend 20 U.S.C. § 1003. Accordingly, the Department cannot arbitrarily impose an alternative interpretation to deny CEHE's application.

V. CEHE Board Actions Prior to the Transaction

The Department alleges that the CEHE board (pre-transaction) failed to properly evaluate the transaction and that the sole purpose of the transaction was to benefit the Trust and not to further the philanthropic mission of CEHE. The Department's conclusion is riddled with factual errors and is based on a fundamental misunderstanding of the nature of the transaction, the purpose of the transaction, and the due diligence conducted by CEHE. In fact, CEHE's board acted to insure that the transaction would further the philanthropic mission of CEHE and not redound to the benefit of the Colleges' former owner.

The Department's characterizations of the facts are fundamentally incorrect on critical elements of the transaction—indeed, so much so that those errors alone provide sufficient grounds for the Department to reverse its conclusion. For example, the Department states:

> *"The Transaction was approved by CEHE's Board... at a Board meeting on December 27, 2012. Although the minutes of that meeting recited that the decision was based on 'substantial due diligence,' there is no evidence that CEHE—as opposed to Mr. Barney—conducted any valuation of the Colleges before entering into the Merger Agreement."*

The Department further asserts:

> *"Indeed, despite the statement of 'substantial' due diligence in the CEHE Board Minutes, the Merger Agreements state that CEHE performed 'limited due diligence review.'"*

These conclusions rest on fundamental errors, misunderstandings, and misrepresentations of the transactions. Consider first the statement that *"...there is no evidence that CEHE—as opposed to Mr. Barney—conducted any valuation of the Colleges before entering into the Merger Agreements."* This statement is simply incorrect. As recited in the attached affidavit of Jay Mercer[19], counsel for CEHE at the time of the transaction, and Fredric Fransen[20], President of CEHE at that time, an overriding concern of the CEHE board at the time of the transaction was to ensure that the transaction would not provide any excess benefit to the Colleges' former owner.

The CEHE board did not simply accept the valuation conducted by Barrington. Instead, the CEHE board demanded an independent evaluation of Barrington's appraisal. The board retained Blue & Co. of Indianapolis, Indiana, an experienced and leading consulting company in this space, to conduct an independent review and analysis of Barrington's appraisal. Blue and Co.'s report is attached[21]. Blue & Co. presented its findings to CEHE's entire board in a conference call and it was separately reviewed by counsel for CEHE. Contrary to the Department's claim, the Blue & Company report was conducted expressly "for purposes of the CEHE Board's due diligence." Thus, the Department's claim that CEHE's board failed to conduct an independent analysis of the company's value and review of Barrington's appraisal is completely incorrect.

As Attorney Mercer's affidavit makes clear, the Department has misrepresented Mercer's characterization of the due diligence conducted by Mercer and the CEHE board when it contends that *"the Merger Agreements state that CEHE performed 'limited due diligence review."* The Department has construed Mercer's statement to be exactly the opposite of what it says. Mercer clearly states, *"I have been requested to provide the Board with an outline of the minimum due diligence that I would recommend"* and then lists multiple and extensive steps that the board should take in order to satisfy its minimum duties of due diligence.

Although it is difficult to understand how the Department misunderstood this clear language, it seems necessary to explain this further: Mercer was not characterizing CEHE's board as having performed a "limited due diligence" review; he was explaining what the minimum level of due diligence would be for CEHE's board to satisfy its duties with respect to the transaction.

The Department claims that the CEHE board failed in its duty to conduct due diligence with

[19] See Exhibit 17 – Affidavit of Jay Mercer
[20] See Exhibit 18 – Statement of Fred Fransen
[21] See Exhibit 19 - Blue & Co's Report

respect to the transaction. Not true. First, as indicated above, the board retained attorney Jay Mercer, a distinguished attorney with extensive experience in corporate law, nonprofits, and transactions of this type. Mercer reports that over the 6-month period during which the transaction was reviewed, Mercer devoted approximately 150 hours to ensuring that the CEHE board complied with all due diligence requirements, including participating in a 2 ½ hour conference call regarding the valuation presentation. The Department now raises precisely the same issues that Mercer identified as the heart of CEHE's due diligence deliberations.

At the board's meeting with Mercer on August 27, 2012, Mercer "explained to the directors their fiduciary duties, responsibilities and liabilities involved in the proposed transaction with the Colleges." Moreover, he "stressed the need for a fair market value to guard against the possibility of an excess benefit transaction" and "also discussed the due diligence needed to approve the transaction." Over that same 6-month period, the CEHE board met numerous times by conference call with and without counsel present to discuss the transaction. As Mercer details, he provided a comprehensive due diligence checklist for the board to follow to ensure that the board complied with the letter and the spirit of its nonprofit mission.

Given the extensive effort, care, and time spent by CEHE and its counsel over the 6-month period culminating in the closing of the transaction, it defies belief that the Department could conclude that the board failed to perform adequate due diligence; or that its due diligence could be characterized as "limited." The only concrete assertion made by the Department to support its conclusion—that the board failed to conduct independent analysis of the Barrington appraisal—is clearly not true.

The Department's assertion that CEHE's purpose in conducting this transaction was to benefit the Colleges' former owner misconstrues the transaction, CEHE's purpose in entering into the transaction, and smears the integrity and competence of CEHE's board without any evidence to support it. The Department provides basis for why CEHE or its board would have had any reason or desire to enrich or otherwise benefit the Colleges' former owner. None of the members of the board had ever even met the Colleges' former owner prior to the merger opportunity. The Department identifies no motive for why the CEHE board would have had the slightest interest in enriching or otherwise benefiting the Colleges' former owner.

As detailed in Fred Fransen's statement, the sole motivation for the board was its belief that entering into this merger would be the most effective way to advance CEHE's philanthropic mission. There is not a single shred of evidence to support the Department's bizarre theory that the CEHE board had any desire or motive to benefit the Colleges' former owner individually as opposed to advancing CEHE's philanthropic mission.

The Department's failure to identify any motive for the CEHE board to enter the transaction with the intent of benefiting the Colleges' former owner, eliminates any support for the Department's inference that the CEHE board was complicit in an alleged scheme of the Colleges' former owner's self-enrichment.

According to Mr. Fransen's statement, CEHE functioned as an independent nonprofit organization since 2006. Following a change of financial supporters, in the wake of the 2008 financial crisis, the board was reconstituted to add the members who were serving at the time of the transaction with the Colleges. All three of CEHE's pre-transaction board members have long histories in the nonprofit sector as university professors and employees of nonprofit organizations. CEHE had a multi-year operation record as an independent nonprofit organization pursuing its specific mission and operating independently of any third-parties. As with the Department's failure to provide evidence that CEHE had any motivation to benefit the Colleges' former owner, the Department also fails to evidence its theory that the Colleges' former owner controlled CEHE (an organization with which the Colleges' former owner had no preexisting relationship) sufficiently to carry out an alleged scheme or to induce or overbear the CEHE board into entering into the merger. Certainly there is nothing in the record to support this fanciful conclusion.

According to Mr. Fransen, if the former owner's intent was anything other than advancing the philanthropic mission of CEHE, *"there would have been no purpose for CEHE to engage in the transaction."* The members of CEHE's board had no pre-existing relationship with the Colleges' former owner and, as records previously provided to the Department show[22], did not gain materially from the transaction.

The Department has fundamentally misunderstood and mischaracterized the merger transaction between CEHE and the Colleges. The Department's characterization of the transaction as a scheme by "shills" on the CEHE board to enrich the Colleges' former owner is laughable. The record unequivocally demonstrates that CEHE was an independent organization at the time of the merger; the merger was conducted to advance CEHE's philanthropic mission; it was done with extensive due diligence with the advice of experienced legal counsel; and the Department

[22] See documents CEHE provided in response to Department requests from March and June 2016

has identified no motive or theory as to how the Colleges' former owner could have persuaded the independent CEHE board of substantial academics to participate in an alleged scheme of self-enrichment.

The Department's conclusions amount to unsupported nonsense. Given the failure of the Department to accurately recognize the due diligence conducted by the CEHE board, particularly the blatant misstatement that the board did not conduct its own due diligence with respect to valuation, the Department should reconsider its Decision.

VI. Request for Reconsideration

The facts, evidence, and precedent overwhelmingly demonstrate that the Department's Decision that CEHE's Colleges fail to meet the Department's regulatory definition for nonprofit is incorrect and politically driven. CEHE therefore requests the Department to reverse its Decision and issue standard, non-provisional, Program Participation Agreements to CEHE's Colleges recognizing their true status as nonprofit institutions. CEHE's Colleges are entitled to receive non-provisional participation agreements because the Colleges have already completed 3½ years of compliant operation under provisional participation agreements when the customary timeframe is two years.

Sincerely,

Eric S. Juhlin
Chief Executive Officer

CC: Steve Gombos, Ritzert & Leyton
Dr. Michale McComis, ACCSC
CEHE Board of Directors

EXHIBIT 1

From: U.S. Department of Education <OPA@ed.gov>
Sent: Thursday, August 11, 2016 10:32 AM
To: U.S. Department of Education
Subject: EMBARGOED: Department Denies Request for Chain of For-Profit Colleges to Convert to Non-Profit Status

EMBARGOED UNTIL 11 A.M. ET ON THURSDAY, AUG. 11, 2016.

U.S. Department of Education
Office of Communications & Outreach, Press Office
400 Maryland Ave., S.W.
Washington, D.C. 20202

FOR IMMEDIATE RELEASE:
Aug. 11, 2016

CONTACT:
Press Office, (202) 401-1576 or press@ed.gov

Department Denies Request for Chain of For-Profit Colleges to Convert to Non-Profit Status

Center for Excellence in Higher Education campuses must continue to be accountable to taxpayers, students through federal regulations

The U.S. Department of Education today denied a request from the Center for Excellence in Higher Education (CEHE), a Utah-based chain of for-profit career colleges, to convert to non-profit status for purposes of federal financial student aid. The denial means that the colleges' programs must continue to meet requirements under the federal Gainful Employment regulations[ed.gov].

"This should send a clear message to anyone who thinks converting to non-profit status is a way to avoid oversight while hanging onto the financial benefits: Don't waste your time," said U.S. Education Secretary John B. King Jr.

This denial does not directly affect the approximately 12,000 students who attend the four institutions owned by CEHE - Stevens-Henager[stevenshenager.edu] in Utah and Idaho, CollegeAmerica Denver[collegeamerica.edu], CollegeAmerica Arizona[collegeamerica.edu], California College San Diego[cc-sd.edu] and CollegeAmerica Services[collegeamerica.edu] - but it does mean that the Department will continue to limit the colleges to getting no more than 90 percent their revenue from Title IV federal student aid. It also means that the institutions must meet all federal regulations for for-profit colleges.

CEHE first applied for non-profit status with the Department in the fall of 2012. In reviewing that request, the Department determined that CEHE, which had been a small educational non-profit that did not provide educational services, acquired four for-profit college companies owned by the Carl Barney Living Trust. CEHE promised to pay the Trust more than $400 million dollars, and the colleges were merged into CEHE. When that happened, Mr. Barney became the board chairman of CEHE, and because of the way the transaction was structured, retained significant control of the colleges, despite the change in ownership to CEHE.

While CEHE is recognized by the Internal Revenue Service as a non-profit company, the colleges' tuition revenue continues to flow to Mr. Barney through the Trust to pay off the debt that CEHE owes from acquiring the colleges, and through the rent that some of Mr. Barney's other companies receive as landlords for several of the college campuses. Under 34 C.F.R. § 600.2 of the Higher Education Act[www2.ed.gov] regulations, non-profit institutions must be owned and operated by a non-profit where no part of the net earnings benefit any private shareholder or individual.

"Schools that want to convert to non-profit status need to benefit the public," said U.S. Under Secretary of Education Ted Mitchell. "If the primary beneficiary of the conversion is the owner of the for-profit school, that doesn't meet the bar. It's not even close."

Since 2012, the four institutions have continued participating in the Title IV financial aid programs on month-to-month agreements as for-profit institutions. In a letter to the company's CEO, Eric Juhlin, the Department approved the change in ownership that CEHE requested but continues to recognize Mr. Barney as maintaining significant control of the institutions and the Title IV revenue they produce.

During the review of the change in ownership request, the Department requested additional documentation from CEHE. The company provided information to the Department but marked much of it as confidential, and that information has been removed from copies of the letter made available for public review. Documents subject to CEHE's confidentiality designation would have to be requested for public review under the Freedom of Information Act.

During the time the applications were under review, risk factors identified in CEHE's financial statements - including a lawsuit against one of the institutions filed by the Colorado Attorney General - led the Department to require CEHE to provide a $42.9 million surety, which is 30 percent of the annual federal student aid funding for 2013 for the four institutions. That surety remains in place but is subject to adjustment based on CEHE's financial condition and other risks.

To qualify for federal student aid, the law requires that most for-profit programs and certificate programs at private non-profit and public institutions prepare students for gainful employment in a recognized occupation.

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EXHIBIT 2

Eric Juhlin

From:	Parrott, Douglas <Douglas.Parrott@ed.gov>
Sent:	Thursday, August 11, 2016 8:42 AM
To:	Eric Juhlin
Subject:	Decision on Change of Ownership for Stevens Henager College, OPE 003674, CollegeAmerica Denver, OPE 025943, CollegeAmerica Arizona, OPE 031203, California College San Diego, OPE 021108
Attachments:	image2016-08-11-093318.pdf

Mr. Juhlin,

The Department's Decision on Change of Ownership for Stevens Henager College, OPE 003674, CollegeAmerica Denver, OPE 025943, CollegeAmerica Arizona, OPE 031203, California College San Diego, OPE 021108 is attached to this message.

August 11, 2016

Eric Juhlin
Chief Executive Officer
Center for Excellence in Higher Education
4021 South 700 East, Suite 400
Salt Lake City, Utah 84107

Certified Mail
Return Receipt Requested
7012 1640 0000 0217 1312

Re: Decision on Change of Ownership for:
Stevens Henager College, OPE 003674
CollegeAmerica Denver, OPE 025943
CollegeAmerica Arizona, OPE 031203
California College San Diego, OPE 021108

Dear President Juhlin:

The Chicago/Denver School Participation Division of the U.S. Department of Education ("Department") has reviewed The Center for Excellence in Higher Education's ("CEHE") application for approval of a change in ownership or structure for the above named schools. This application results from a transaction that occurred as of December 27, 2012 ("the Transaction"), as further described below. Each of the above named schools ("the Colleges") submitted an electronic application ("eapp") for Change in Ownership by November 7, 2012 (California College of San Diego submitted their eapp on October 22, 2012). Temporary Provisional Program Participation Agreements were effective as of January 1, 2013, and extended for an initial one month period until January 31, 2013. Since the Colleges provided materially complete applications timely, their provisional participation has been extended on a month-to-month basis under their status as for-profit institutions since January 31, 2013 while the Department has evaluated the applications as provided in 34 C.F.R. 600.20(h).

CEHE was established as an Indiana public benefit corporation in December 2006, and was issued a 501(c)(3) tax exemption by the IRS. CEHE was established "to promote excellence in higher education by working with philanthropists and others interested in reforming American colleges and universities. Education reform, for these purposes, is defined as increasing access, reducing costs, and improving the quality of higher education with the goal to make universities, schools, departments and ultimately individual faculty members accountable for the quality and effectiveness of their work." CEHE 2015 Audited Financial Statements, Note 1. Prior to the Transaction, CEHE had operated for approximately six years without being engaged in delivering educational programs. As a result of the Transaction, the Companies (and thereby the

Colleges) were merged into CEHE, and CEHE was transformed into an entity primarily delivering educational services. The Colleges have petitioned the Department to recognize their conversion to nonprofit status for the purposes of administration and oversight of their participation in the Title IV Student Financial Assistance programs, based on CEHE's 501(c)(3) exempt status which had been approved by the IRS many years prior to the Transaction.[1]

When an institution experiences a change of ownership that results in a change of control, the institution's existing participation expires on that date. 34 C.F.R. §§ 668.14(g)(1), 668.26(a)(5). Institutions that provide a timely notice of a change of ownership and a materially complete application may continue to participate in the federal student aid programs authorized pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §1070 et seq. ("Title IV, HEA programs") under a temporary provisional program participation agreement which includes the same terms and conditions that were in effect prior to the change of ownership. 34 C.F.R. § 600.20(h).

This letter sets out the Department's decision concerning CEHE's requested approvals for the change of ownership and change to nonprofit status. As explained below, the Department is denying the applications with respect to recognizing the Colleges as nonprofit institutions for purposes of Title IV, HEA programs. The Department has enclosed new provisional program participation agreements ("PPAs") to approve the Colleges as for-profit entities for purposes of the Title IV, HEA programs. The Colleges will need to sign and return these new PPAs to the Department for counter-signature for the Colleges to continue participating in Title IV beyond the end of this month. The existing temporary PPAs will expire on August 31, 2016, as provided in 34 C.F.R. §600.20(h). If the Colleges do not enter into the new PPAs by that date, the Colleges will no longer be certified to participate in Title IV, HEA programs.

I. THE DEPARTMENT EMPLOYS A THREE-PRONG TEST FOR DETERMINING AN INSTITUTION'S NONPROFIT STATUS, INCLUDING AN INDEPENDENT EVALUATION OF ECONOMIC BENEFIT AND CONTROL

The Department regulations identify certain covered transactions for an institution that constitute a change of ownership that require the institution to apply and obtain approval from the Department to continue participating in the Title IV, HEA programs. These include instances where an institution is sold, merged with one or more eligible institutions, experiences a change in the owner of the controlling stock, has a transfer of assets that comprise a substantial portion of the educational business of the institution, or has a change in status as a for-profit, nonprofit, or public institution. 34 C.F.R. § 600.31(d). To establish eligibility and to continue participation in the Title IV, HEA programs, an institution must demonstrate to the Department that, after the change, the institution qualifies to be certified to participate under 34 C.F.R. Part 668, Subpart B pursuant 34 C.F.R. § 600.31(a)(3)(ii).

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[1] Following the Transaction, in February 2013, CEHE requested classification as an educational organization under 26 U.S.C. 170(b)(1)(A)(ii). In its response to CEHE's request, the IRS indicated that CEHE had been determined to be a public charity in September 2007 under § 170(b)(1)(A)(vi) of the Internal Revenue Code, and stated that it was updating CEHE's "public charity status" in its records. The IRS further noted that CEHE's exempt status under 501(c)(3) "wasn't under consideration." Letter from IRS to Ofer Lion, dated July 25, 2014.

Because the Colleges have applied to be considered nonprofit institutions, they must meet the Department's test for eligibility. The Department regulations define a nonprofit institution as an institution that:

> (i) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;
>
> (ii) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and
>
> (iii) Is determined by the Internal Revenue Service to be an organization to which contributions are tax deductible under 26 U.S.C. §501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)).

34 C.F.R. §600.2. A state authorization and IRS determination do not themselves confer nonprofit status for Title IV purposes. The Department must make an independent determination that the institution is "owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual."

CEHE provided documents and records in support of its application, and the Department requested additional documents and information in the course of its review.[2] Having reviewed the information provided by CEHE, the Department is denying the request to approve the Colleges' change to nonprofit status for participation in the Title IV, HEA programs. CEHE's acquisition of the Colleges did not present the traditional situation where an institution is acquired by a new owner and the former owner no longer plays a role in the continued operation of the institution. In the acquisition here, the Transaction was structured so that the Trust retained the benefit of a continued stream of Title IV revenues, and Mr. Barney obtained significant control of CEHE, and by extension, retained control of the Colleges.

For these reasons, the Department has determined that the Colleges do not meet the required definitional elements set forth in 34 C.F.R. § 600.2. Of particular concern are the following: that the financing of the Transaction results in financial benefit which inures to Mr. Barney's beneficial interests via the Trust; that lease payments to entities controlled by Mr. Barney provide additional economic benefit to him; and that Mr. Barney has retained control of the Colleges through his role originally as the sole member, and now as one of three members of CEHE, and as Board Chairman of CEHE's Board.

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[2] In response to the Department's request for additional information on June 13, 2016, CEHE provided information and documents on June 29, 2016, and notified the Department that it was designating all of the documents produced in response to the Department's June 13, 2016 request as privileged and confidential, asserting that they consisted of trade secrets and commercial or financial information. The Department advised CEHE that the Department's determination with regard to the designation and public release of the documents and information would be governed by the Department's responsibilities under the Freedom of Information Act. CEHE had provided documents prior to the June 29th submission that were also marked "Confidential."

II. THE TRANSACTION WAS STRUCTURED SO THAT THE COLLEGES' TITLE IV FUNDING WOULD CONTINUE TO BENEFIT THE CARL BARNEY LIVING TRUST, JUST AS IT HAD BEFORE THE MERGER

34 C.F.R. § 600.2 provides, in the definition of "nonprofit," that "no part of the net earnings [shall] benefit any private shareholder or individual." The Transaction that resulted in the change of the Colleges' ownership was structured in such a way that an income stream of over $400 million was intended to continue to flow to the Carl Barney Living Trust ("the Trust"), the former owner of the Colleges, just as an income stream flowed to the Trust while the Colleges operated in a for-profit status.

The Transaction was effectuated through the merger of the entities that owned and operated the Colleges and an affiliated service company into CEHE (*i.e.*, Stevens-Henager, Inc. ("SH"), CollegeAmerica Denver, Inc. ("CAD"), CollegeAmerica Arizona, Inc. ("CAA"), California College San Diego, Inc. ("CCSD"), and CollegeAmerica Services, Inc. ("CASI")). SH, CAD, CAA, CCSD and CASI are hereinafter collectively referred to as "the Companies," or with reference to an individual entity as "the Company." *See* CEHE 2012 Audited Financial Statements at Note 1. Before the Transaction, the Companies were all individually owned by the Trust, and Carl Barney is the Trustee of the Trust. The Companies were merged into CEHE pursuant to individual merger agreements (hereinafter collectively referred to as the "Merger Agreements," or individually by their entity names). The parties to the various Merger Agreements are CEHE as "Purchaser," the individual Companies, and the Trust as "Stockholder" of the Companies. *See* CEHE 2012 Audited Financial Statements at Note 6. The Merger Agreements for CASI, SH, and CAA provide for a total aggregate maximum merger consideration of $431,000,000 as of December 27, 2012. The CAD Merger Agreement and the CCSD Merger Agreement state that the assets of those two entities were contributed to CEHE as a "charitable gift." To finance the Transaction, CEHE and the Trust entered into a Note Purchase Agreement ("NPA") whereby the Trust purchased two notes from CEHE in the aggregate amount of $431,000,000 ("Term Note A" and "Term Note B").[3] *See* CEHE 2012 Audited Financial Statements at Note 8. The NPA describes the financing as the Trust purchasing "securities in the form of Notes" from CEHE, and that CEHE "shall use all of the proceeds from the sale of the Notes to assist in financing" the Transaction, upon the completion of which, SH, CAA, CASI, CAD, and CCSD, "will have merged with and into" CEHE.

The Transaction was approved by CEHE's Board (Messrs. Curtis, Dennis and Zywicki) at a Board meeting on December 27, 2012. Although the minutes of that meeting recite that the decision was based on "substantial due diligence," there is no evidence that CEHE – as opposed to Mr. Barney – conducted any valuation of the Colleges before entering into the Merger Agreement and resulting financing which obligated CEHE to $431,000,000 in indebtedness to the Trust with $419,000,000 of that amount representing goodwill. Indeed, despite the statement of "substantial" due diligence in the CEHE Board Minutes, the Merger Agreements state that CEHE performed "limited due diligence review." *See, e.g.*, CASI Merger Agreement

[3] Term Note A was in the amount of $200,000,000; Term Note B was in the amount of $231,000,000.

at ¶5.8, SH Merger Agreement at ¶5.9, CAA Merger Agreement at ¶5.9 (no merger consideration was allocated to CAD or CCSD). To the extent that the December 27, 2012 Board Minutes reflect that the Board reviewed a "qualified appraisal" of the Companies, it appears that the reference is to the valuation (dated as of December 10, 2012) CEHE provided to the Department that was prepared by Barrington Research (hereinafter "Barrington Valuation"). The Barrington Valuation was commissioned by Mr. Barney for use by the "Company" (defined in the valuation as "College America"), and states that it was prepared "for tax purposes," (Barrington Valuation at 4, Item G), further supporting the Department's conclusion that this valuation was prepared for the Trust, and was not prepared for purposes of *the CEHE Board's* due diligence. Indeed, The Department notes that a November 2015 Confidential Settlement Agreement between CEHE, the Trust and Mr. Barney (discussed in more detail below) references CEHE's allegation that at the time of the Transaction, "Barney did not adequately disclose certain information that would have been material to the decision of CEHE to consummate the mergers … ." Confidential Settlement Agreement at ¶1. The Department concludes from this November 2015 statement that if CEHE had decided to proceed with the Transaction knowing about the "material" information, there would have been a substantial adjustment to the financial terms of the Transaction.

The Merger Agreements for SH, CAA and CASI each identify an "Initial Allocation" of Merger Consideration of the Allocable Amount (not to exceed an aggregate of $431,000,000), with the following amounts: SH - $309,000,000; CAA - $44,000,000; CASI- $78,000,000. Merger Agreements at ¶3.1. The Merger Agreements also provide that within 75 days of the Closing (*i.e.,* on or before March 15, 2013), the Trust was to provide a statement to CEHE adjusting the Initial Allocation by any actual change to the final ascertained value allocated to SH, CAA and CASI, as determined by a qualified appraisal. The documents provided to the Department by CEHE also contain what appears to be a later valuation prepared by Rocky Mountain Advisory (report date of September 12, 2013). However, there is no evidence that the Rocky Mountain Valuation was the qualified appraisal for purposes of finally determining the Merger Consideration allocated to each of SH, CAA and CASI. Thus, the Department has not been provided with evidence of any post-closing statement based on a qualified appraisal as required by the Merger Agreement, or any indication that subsequent valuation adjustments were made. The Rocky Mountain Valuation also notes that it was prepared "solely to assist Mr. Barney in determining equity value in connection with *donating equity of the Company on or before December 31, 2012*, to a not-for-profit institution. We are aware of *no plans by Mr. Barney to impose restrictions, rights or earmarks on the contributed equity* … ." Rocky Mountain Valuation at 6 (emphasis added).

But the equity of SH, CAA and CASI was not "donated," it was sold, and as discussed below with regard to the NPA and other documents, Mr. Barney indeed placed restrictions on CEHE: by Negative Covenants set forth in the NPA and a subsequent Contingent Note Agreement; by being able to control appointment to the Board; and by the ability to block decisions that required unanimous approval by the members of CEHE. Mr. Barney's control over CEHE was exercised as a CEHE member and CEHE Board Chair, and through the Trust as lender under various financing instruments (*i.e.,* the NPA, the Contingent Note Agreement, and a series of notes dated December 31, 2012, March 31, 2015, and November 6, 2015).

As set forth above, the Transaction was financed pursuant to an NPA whereby CEHE executed Term Notes A and B (collectively, the "Term Notes") effective as of December 31, 2012. The Notes provided for the accrual and quarterly payment of interest at the rate of 1% per annum ("Fixed Rate"), with a Floating Rate adjustment as defined in the Notes. Notes at ¶2. *See* CEHE 2012 Audited Financial Statements at Note 8. Significantly, the Notes also required quarterly mandatory prepayments of the greater of 75% of the Excess Cash Flow[4] of CEHE, or 10% of CEHE's total revenues. Notes at ¶5.1. Term Note A matured the earlier of December 31, 2017, or the first fiscal year in which CEHE has at least $50,000,000 Change in Net Assets (as defined in the NPA). Term Note A at ¶4. Term Note B matured the earlier of December 31, 2019, or the first fiscal year in which CEHE has at least $75,000,000 Change in Net Assets (as defined in the NPA). *See* CEHE 2012 Audited Financial Statements at Note 8; CEHE 2015 Audited Financial Statements at Note 7.

Payments to the Trust under the Notes are essentially based on the excess of revenues over expenses -- the same way as net income in a for-profit entity. Instead of this excess being retained and allocated to CEHE's mission as would be expected in a nonprofit,[5] the excess is distributed to the Trust under the guise of Note payments. In the notes to CEHE's December 31, 2012 financial statements, CEHE identified its "future minimum principal payments" to the Trust as follows:

2013- $32 million
2014- $36 million
2015- $40 million
2016- $44 million
2017- $48 million
By December 2019 - $231 million

See CEHE 2012 Audited Financial Statements at Note 8. The NPA also provided for the Trust's interest to be protected by a lien on all of CEHE's assets, and further provided for various Negative Covenants, whereby CEHE was restricted from taking certain actions without consent of the Trust, including, *inter alia,* any change of membership interests in CEHE (the sole member at the time being Mr. Barney), any further encumbrances of collateral or other assets, any capital expenditures in excess of $100,000 (or in aggregate amounts as indicated in the NPA), any additions of new business locations (including offices and warehouses), or any prepayment of subordinated indebtedness. NPA at ¶¶5.1-5.12.

[4] Pursuant to the definitions of the NPA, "Excess Cash Flow" is measured by the Change in Net Assets ("CNABIDA") less certain identified expenses.

[5] The websites for each of the Colleges includes the following explanation of the Colleges' nonprofit status: "Nonprofit Difference – Learn how a nonprofit college benefits you -- What does it mean to be a nonprofit college? In essence, it means that [College] can put your needs and your goals first. It means that ***we can invest your tuition in your success and the success of your fellow students***. It means that we're uniquely set up to help you gain the competitive advantage in today's job market because we can focus on you, the student." (Emphasis added). While suggesting to students that their tuition is exclusively being used for educational services, the Colleges fail to mention that a portion of the tuition revenue is being paid to the Trust under the Notes.

Subsequent to the closing of the Transaction in December 2012, and with the agreement of the Trust, CEHE's obligation to the Trust under the Notes was modified on two separate occasions. On March 17, 2015, the CEHE Board acted by Unanimous Consent[6] to cancel the NPA and the Term Notes, and to replace those instruments with a Contingent Note Agreement ("CNA") and Contingent Notes A and B. The CNA and the related Contingent Notes were executed effective as of March 23, 2015 and March 31, 2015 respectively. *See* CEHE 2015 Audited Financial Statements at Note 7. Pursuant to the CNA, the Note payments remained conditioned on CEHE's Excess Cash Flow, and eliminated the alternative calculation based on 10% of revenues, as well as the accrual and payment of interest. CNA at 4, 6 and ¶2.5.1 (75% of CEHE's Excess Cash Flow each quarter). In an e-mail related to the approval of the CNA, CEHE's Chief Financial Officer commented that the changes to the Notes "reflected the original intent of Mr. Barney that the debt would be contingent on CEHE *making money* and having available excess cash flow to make debt payments." March 17, 2015 e-mail from Paul Gardner. The CNA also contained a series of Negative Covenants, as had the NPA. *See* CNA at ¶¶5.1-5.12. CEHE did not notify the Department of this significant debt restructuring with the Trust even though CEHE's application for the change of ownership for the original transaction was still under review.

CEHE's obligation for payments to the Trust was further modified in November 2015. CEHE 2015 Audited Financial Statements at Note 7. In October 2015, Mr. Juhlin wrote to Mr. Barney concerning the over-valuation of the institutions, itemizing several issues (some of which occurred pre-merger) that Mr. Juhlin described as having "a profound and negative effect on CEHE and the value of its goodwill in the colleges" and seeking to have Mr. Barney reduce the Contingent Notes "to zero." Juhlin letter to Barney, October 21, 2015. Mr. Juhlin also conveyed CEHE's request that two additional members be added to CEHE, and that Mr. Barney divest himself of the real estate that was leased to the Colleges through Barney-controlled entities.

Thereafter, on November 6, 2015, CEHE, Mr. Barney and the Trust entered into a Confidential Settlement Agreement ("Settlement Agreement"). Under the Settlement Agreement, Contingent Note B was cancelled and Contingent Note A was restated and reduced to $75,000,000. Restated Contingent Note A re-imposed the Fixed Rate and Floating Rate interest accrual and quarterly payments, and retained the mandatory quarterly payments based on 75% of CEHE's Excess Cash Flows. CEHE 2015 Audited Financial Statements at Note 7. The Maturity Date for the outstanding principal and interest was defined as "90 days after the end of the first Fiscal Year in which *the Barney Trust* has at least Fifty Million ($50,000,000) in Change of Net Assets [and if CEHE is able to refinance the Note]. Restated Contingent Note A at ¶2.1 (erroneously designated at ¶3.1), ¶3, and ¶4.1(a) (erroneously designated as ¶5.1(a)) (emphasis added). The note may have been written down to reduce long-term debt to improve the

[6] Mr. Barney executed the Unanimous Consent, despite the view of Mr. Juhlin (in an e-mail dated March 25, 2015) that Messrs. Barney and Esmond should abstain from executing the Unanimous Consent because of their involvement with the renegotiation of the terms of the indebtedness.

Colleges' composite score calculations under the Department's financial responsibility ratios[7] or because the CEHE Board and Mr. Barney recognized that CEHE would not be able to satisfy the remaining obligation under the two notes. In either case, the significant reduction suggests that the initial consideration of $431,000,000 (and the corresponding indebtedness) was highly inflated. Additional provisions of the Settlement Agreement (dealing with the leases and Mr. Barney's membership status) are discussed below.

The Department has determined that the payments under the Term, Contingent, and Restated Contingent Notes, which are and were contingent on CEHE "making money," are essentially profit distributions to the Trust – substantially the same as it received when it was the sole shareholder of the Companies. The payment structure using contingent cash flow from the institutions' operating income, in combination with the continuing control exercised by Mr. Barney, is evidence of an entity that has not transitioned. With regard to the Restated Contingent Note, the fact that the triggering event was when the *Trust* reached a certain figure, further demonstrates that the primary benefit of the Transaction was to be enrichment of the Trust. As such, this "Excess Cash" stream of income to benefit the Trust, in combination with the control exercised by Mr. Barney, precludes the Colleges from qualifying to participate in Title IV, HEA programs as nonprofit institutions under the Department's regulations.

Another element of economic benefit flows to Mr. Barney as a result of nine lease agreements between the Colleges and real estate entities owned or controlled by Mr. Barney. At the time of the Transaction, seven of those leases were already in place, with lease expiration dates ranging from 2015 to 2020. As set forth in the Colleges' and CEHE's audited financial statements for the relevant years, the campus leases provided the following stream of income to Mr. Barney's affiliated real estate companies during the period 2010-2015:

2010 - $3,485,000
2011 - $4,323,000
2012 - $4,643,584 (presumably, this amount is primarily, if not entirely, for payments prior to the Transaction)
2013 - $5,097,509
2014 - $5,962,535
2015 - $3,458,226

Pursuant to the Settlement Agreement (November 2015), Mr. Barney agreed to "make all reasonable efforts to divest himself of all real estate" leased to the Colleges on or before December 31, 2016. Settlement Agreement at ¶2(e). As an element of further benefit to Mr. Barney in the form of enhanced value to the properties, Mr. Juhlin renegotiated most of the College leases to extend the terms until 2025 or 2026. The new lease terms were approved by

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[7] In May 2015, CEHE was instructed to submit a Letter of Credit to the Department based upon CEHE's failed financial composite score calculated under the Department's financial responsibility regulations. Ultimately, CEHE posted cash (in three separate installments) in lieu of the LOC. CEHE's 2015 Audited Financial Statements (at Note 7) reflect that CEHE executed three promissory notes which were issued in June 2015 ($9 million), September 2015 ($2 million) and December 2015 ($5 million), all including 5% interest payable quarterly and the notes mature in January 2017. These notes are payable to the Prometheus Foundation (a Nevada nonprofit controlled by Barney) and presumably relate to the security requirement imposed by the Department.

the Board acting by Unanimous Consent on November 6, 2015.[8] The Board minutes do not reflect any discussion of whether the Colleges could or should have sought alternative locations for their campuses at the time of the lease expirations, rather than committing to extensions of those leases.

III. MR. BARNEY'S CONTINUING AND MULTIPLE CEHE ROLES DEMONSTRATE THAT THE COLLEGES CONTINUE TO BE SUBSTANTIALLY CONTROLLED BY MR. BARNEY

Mr. Barney is a CEHE member, he is Chairman of its Board, and he is a surety resource. Through the Trust and the Prometheus Foundation, he is CEHE's principal lender. Through affiliated real estate companies, he is landlord for several of the Colleges' campuses. As noted above, the Department's decision to approve the change of ownership to CEHE but deny the request to change the Colleges' status to nonprofit is based in part on this continuing control by Mr. Barney following the Transaction. *See* 34 C.F.R. § 600.31 (definition of "control"). Thus, the Colleges do not currently meet the Department requirement of being "owned and operated" by a nonprofit (34 C.F.R. § 600.2) because the Trust enjoys both an income stream and effective control through Mr. Barney's continuing involvement. As described below, this control is and has been effectuated through CEHE articles of incorporation and bylaws, the NPA, the CNA, the leases, and the Settlement Agreement, as well as Mr. Barney's roles as lender (through the Trust), member, Board Chair, and landlord. Although Mr. Barney's control may have been reduced through certain later events, such as the requirement for him to eventually sell the campus properties CEHE leases, Mr. Barney's current control is still significant.

Ensuring Mr. Barney's ongoing control was an integral part of the Transaction from its inception. This is not surprising given the small size of CEHE in comparison to the Colleges, and the financing that was facilitated and provided by Mr. Barney. Pursuant to CEHE's December 27, 2012 Amended and Restated Bylaws, Mr. Barney became CEHE's sole member, with the right to "hold office for life," and possessed with the sole authority to elect the Board without restriction; to approve the sale, lease, or exchange of CEHE's property; to discharge a Director for cause during that Director's term; to remove the Board Chair with or without cause (although he has been the Board Chair since the Transaction); and his consent was required for any amendment or repeal of CEHE's Bylaws. *See* December 27, 2012 Amended and Restated Bylaws at §§ 2.01, 2.02, 2.03, 2.06, 2.11, 3.03, 3.12, Article IX. At the time of the Transaction, the CEHE Board was increased from three to eleven board directors, with the additional eight directors appointed for a one year term, and Mr. Barney was appointed Board Chair. Minutes of December 27, 2012 Special Board Meeting at III and V. The NPA (and later, the CNA) included Negative Covenants which restricted CEHE's authority to manage its operations in areas which require the Trust's consent, providing further control for Mr. Barney as Trustee of the Trust. *See* NPA at ¶¶5.1-5.12; *see also* CNA at ¶¶5.1-5.12. As CEHE's sole member, Mr. Barney alone could appoint new Board directors.

[8] Mr. Barney did not execute the Unanimous Consent.

In February 2014, the Bylaws were amended again by Unanimous Consent, *expanding* the types of actions where CEHE would be required to obtain member approval (*i.e.*, approval by Mr. Barney), including the disposition of assets over $500,000, the licensing or transfer of intellectual property, the appointment or removal of the Chief Operating Officer, the approval of budgets, and the making of loans. Action by Unanimous Consent, effective February 5, 2014.

As described above, the November 2015 Settlement Agreement also required the appointment of two other members to CEHE. Mr. Barney himself chose the two new members, and they were added effective September 1, 2015. Regardless of whether two or twenty members were added, they cannot "out-vote" Mr. Barney, because approval of any action by the members requires unanimous consent. *See* September 1, 2015 Action by Unanimous Consent, amending §2.01 of the Bylaws (which provided for voting under Indiana law). Thus, Mr. Barney retained the ability to block any action requiring member approval, including with regard to the Negative Covenants in the CNA, and the extensive member approval items in the February 2014 Bylaw amendments, and he thereby retained the power to unilaterally withhold consent for a variety of CEHE actions.

In addition, through the Prometheus Foundation, he provided the funds so CEHE could satisfy the financial responsibility surety triggered by the Colleges' failing composite score calculations. All of these controls remain in place, despite CEHE's allegations that Mr. Barney failed to disclose "material" information at the time of the Transaction. *See* Settlement Agreement at ¶1 (describing allegations). And yet, Mr. Barney's position and control was further secured because the Settlement Agreement provided that neither CEHE, the other members, nor the Board could take any action to remove Mr. Barney as a member for any "acts or omissions" of Mr. Barney prior to November 6, 2015. Settlement Agreement at ¶2(c).

Thus, Mr. Barney, both individually and through the Trust, continues to exert significant control over CEHE's management and operations, and accordingly, the Department has determined that it is not operated by a nonprofit organization as required under 34 C.F.R. § 600.2.

IV. THE COLLEGES' CHANGE OF OWNERSHIP IS APPROVED WITHOUT APPROVAL OF NONPROFIT STATUS

The Department is approving the change of ownership from the Trust to CEHE, and approves the Colleges as for-profit institutions for purposes of their continued participation in the Title IV, HEA programs. CEHE may request approval for nonprofit status for the Colleges when it applies for recertification in the future, and the Department will continue to evaluate the relationship between CEHE and its former owner in connection with such a request. The for-profit status for the CEHE Colleges is for purposes of their participation in the Title IV, HEA programs. The Department does not take a position with respect to CEHE's non-profit 501(c)(3) status with the Internal Revenue Service.

The temporary PPAs under which the Colleges have been operating since the change of ownership in December 2012 continued the prior approval for those Colleges to participate under a for-profit status. The for-profit status for the continued participation of the Colleges is therefore unchanged. CEHE is reminded that the Colleges must meet the Title IV, HEA reporting and program eligibility requirements applicable to for-profit institutions, including the 90/10 eligibility requirements described in 34 C.F.R. §668.28 and the gainful employment program requirements set out in 34 C.F.R. Subpart Q. CEHE must also submit the gainful employment certifications required under 34 C.F.R.§414 for all of its certificate and degree programs that it would like to continue to have included in its federal student aid participation. These certifications must be submitted no later than the date CEHE returns the signed PPAs.

For the reasons set out above, the Department is denying the applications from CEHE for the four Colleges to participate in the Title IV, HEA programs as non-profit institutions. The temporary approvals for the Colleges will expire at the end of this month. The Department has included with this letter the provisional PPAs for the four Colleges. If CEHE wants the Colleges to continue to participate in Title IV, HEA programs without interruption, the PPAs should be signed and returned to the Department no later than August 31, 2016 for counter-signature.

The basis for this determination and the facts upon which it is based have been set out above. If CEHE has additional factual information about the above-referenced agreements and arrangements that it believes the Department should consider, CEHE should submit a request for reconsideration to this office that identifies those facts within 10 days of the date of this letter. The request should identify the relevant portions of the documents already provided to the Department, and include any additional documents that have not already been provided to the Department. Please note that a request for reconsideration will not stay the expiration of the temporary approvals which expire on August 31, 2016.

Please contact Earl Flurkey (312-730-1521) if you have any questions regarding the content of this letter.

Sincerely,

Douglas N. Parrott

Douglas Parrott
Division Director

Enclosures:
Stevens Henager College (OPE 003674) Program Participation Agreement
CollegeAmerica Denver (OPE 025943) Program Participation Agreement
CollegeAmerica Arizona (OPE 031203) Program Participation Agreement
California College San Diego (OPE 021108) Program Participation Agreement

cc:

Stevens Henager College
CollegeAmerica Denver
CollegeAmerica Arizona
California College of San Diego
Accrediting Commission of Career Schools and Colleges

EXHIBIT 3

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PHILADELPHIA
CHICAGO
WASHINGTON, DC
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GOWERS INTERNATIONAL

September 21, 2015

VIA E-MAIL AND REGULAR MAIL

Ted Mitchell
Under Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

James W. Runcie
Chief Operating Officer, Federal Student Aid
U.S. Department of Education
830 First Street, NE, UCP-3, 112G1
Washington, D.C. 20202

Re: **Center for Excellence in Higher Education ("CEHE")**
OPE IDs: 00367400 – Stevens-Henager College
02594300 - CollegeAmerica Denver
02110800 - California College San Diego
03120300 - CollegeAmerica Flagstaff

Dear Messrs. Mitchell and Runcie:

I am writing to you regarding the April 27, 2015, letter (based on a *New York Times* article) from 19 Members of Congress to the Secretary (attached) requesting that the Department review transactions whereby for-profit colleges converted their institutions to nonprofit organizations. The Center for Excellence in Higher Education (CEHE) transaction was mentioned, and I'm writing on CEHE's behalf to offer assistance and information that may help with your response to the Members and their concerns about CEHE's specific transaction. I also note that the Department has yet to approve the change of ownership associated with this December 31, 2012 transaction.

Initially, and to begin a dialogue, here is the background of the transaction: CEHE, a section 501(c)(3) public charity, was established in 2007 by philanthropists who had donated millions of dollars to U.S. colleges and universities and were concerned about the state of higher education in this country. CEHE's principal purpose, as described in its Application for Exemption as an Organization described in Section 501(c)(3) of the Internal Revenue Code (the

"Code"), was to educate the public about higher education in America and to help donors promote excellence in higher education through philanthropy. Those founders believed that through effective philanthropy, due diligence, proper governance, and management accountability, America's colleges and universities could be transformed into high-performing institutions that prepare today's students to be tomorrow's leaders. See https://www.insidehighered.com/news/2007/09/19/donors

From 2007 until 2012, CEHE operated as a publicly-supported charity. It conducted a series of research programs and supported faculty interested in improving higher education at colleges and universities around the country and internationally. CEHE also engaged in several research projects, acting in the background to help philanthropists who wanted to promote structural reform of higher education more generally.

In 2012, Fred Fransen, the Executive Director of CEHE and a philanthropic advisor, approached Carl Barney and suggested a merger with his colleges (CollegeAmerica, Stevens-Henager College, and California College San Diego) (the "Colleges") with CEHE; if Mr. Barney was interested, Mr. Fransen said he would propose such a merger to the CEHE Board.

The CEHE Board saw this as a beneficial opportunity, as did Mr. Barney. He wanted the Colleges to become nonprofit institutions to better carry out his philanthropic goals and the mission of the Colleges to better serve their student bodies. Mr. Barney also shared much of the same vision for higher education as the founders of CEHE.

On December 31, 2012, CEHE merged with and now operates the Colleges as nonprofit colleges organized and operated exclusively for educational purposes.

The IRS was provided with all relevant documents pertaining to the merger along with its required application for a change in its public charity status; and on July 25, 2014, issued a favorable determination letter acknowledging reclassification of CEHE as an educational institution described in sections 509(a)(1) and 170(b)(1)(A)(ii) of the Code (copy attached). CEHE was and remains compliant with the requirements of section 501(c)(3) of the Code, including the prohibition against private inurement, and the excess benefit transaction rules in section 4958 of the Code.

The merger of the Colleges with an existing and previously unaffiliated nonprofit differs materially from other transactions that have occurred recently and that were referenced in the April 2015 letter from Members of Congress. Other differentiating details include the following:

1. Prior to the transactions, the Board of Directors of CEHE had no relationship whatsoever with Mr. Barney or anyone else at the Colleges. The negotiations for the merger were conducted at arms-length between CEHE and the owner of the Colleges, Mr. Barney.

2. The CEHE Board, as well as its separate counsel, independent accountant, and independent valuation consultant reviewed the form and amount of the consideration proposed to be paid by CEHE for the Colleges as well as the terms and conditions of the merger transactions as a whole.

3. Aided by an independent appraisal, related valuations and other appropriate data and its due diligence, the CEHE Board determined that (a) the merger transaction provided CEHE not only with fair market value, but a "bargain sale"; (b) the transactions, taken as a whole, provided CEHE with a discount reflecting a substantial charitable contribution to CEHE by Mr. Barney of more than $200 million; (c) Mr. Barney took no fees of any kind including management fees; and (d) the leases of land and building by the Colleges from entities related to Mr. Barney were continuing at the same fair market value rates as formerly established.

4. The CEHE transaction resulted in real changes and the Colleges operate as a bona fide public charity:

(a) The members of the historical, independent Board of CEHE remained on the Board after the transactions; no monies were paid to the CEHE Board for the transactions;

(b) CEHE's Colleges have not raised tuition since their conversion to nonprofit, tax-exempt status;

(c) A substantial contribution of over $200 million was made to CEHE;

(d) Mr. Barney has personally contributed accounts receivable valued at approximately $24 million along with an additional cash contribution of $10 million to CEHE;

(e) Since the merger, Mr. Barney personally continued to make substantial charitable donations of about $5 million dollars;

(f) Since the merger, CEHE has issued grants of nearly $7 million dollars to other unaffiliated colleges, universities and charitable organizations;

(g) CEHE provides numerous scholarship programs to assist students with paying for college;

(h) The debt issued by CEHE to finance the transaction was deeply subordinated to ensure that CEHE would remain financially sound and bears interest at a below-market rate of 1%; and

(i) There are no other management contracts, non-compete agreements or any other agreements wherein Mr. Barney or any person related to him profits personally.

Unfounded allegations have been made that the merger was done solely to evade regulations. This is not the case for CEHE or the Colleges. The Colleges continue to be in compliance with the 90:10 rule even though they are no longer bound by it. Further, CEHE recently received favorable determinations in a program review closing all matters that the Department had previously indicated were causes for concern.

I know you will want more detail. I would like to schedule a time when we can discuss how I may help the Department resolve the Members' questions. Kindly let me know when you wish to discuss this.

Sincerely,

Anthony J. Guida Jr.

TJG/njp
Encl.

cc: Mushtaq Gunja, Chief of Staff, Office of the Under Secretary
Robin Minor, Chief Compliance Officer, Program Compliance, USED
Carl Barney, Chairman CEHE
Eric Juhlin, Chief Executive Officer CEHE

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: JUL 25 2014

Employer Identification Number:
20-8091013
Person to Contact - ID Number:
E. Zaebst - 0203427
Contact Telephone Number:
877-829-5500 Toll-Free
Form 990 Required:
Yes

Center for Excellence in Higher Education
C/O Ofer Lion
Hunton & Williams LLP
550 South Hope St, Suite 2000
Los Angeles, CA 90071

Dear Sir or Madam:

In your letter dated February 27, 2013, you requested classification as a public charity described in section 170(b)(1)(A)(ii) of the Internal Revenue Code.

In our letter dated September 2007, we determined that you were exempt under section 501(c)(3) of the Code. We further determined that you weren't a private foundation and you were classified as a public charity described in sections 509(a)(1) and 170(b)(1)(A)(vi).

Based on the information you provided, we determined you meet the requirements for classification as an organization described in sections 509(a)(1) and 170(b)(1)(A)(ii) of the Code.

Accordingly, we have updated your public charity status in our records as you requested.

Since your exempt status wasn't under consideration, you continue to be classified as an organization exempt from federal income tax under section 501(c)(3) of the Code.

Grantors and contributors may generally rely on this determination of your foundation status unless the Internal Revenue Service publishes notice that you are no longer recognized as tax exempt or classified as a public charity in the Internal Revenue Bulletin. However, if a grantor or contributor takes any action, or fails to take any action, which causes you to lose your exempt status or causes you to be reclassified as a private foundation, that party cannot rely on this determination. Furthermore, a contributor or grantor who knows that the Internal Revenue Service has notified you of any change in your exempt status or foundation status cannot rely on this determination.

Please see enclosed Publication 4221-PC, *Compliance Guide for 501(c)(3) Public Charities*, for helpful information about your responsibilities as an exempt organization.

Because this letter could help resolve any questions about your exempt status and/or foundation status, you should keep it with your permanent records.

We sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Tamera Ripperda

Director, Exempt Organizations

Enclosure:
Publication 4221-PC

EXHIBIT 4

CEHE Institutional Scholarship/Grant[1] Postings[2]

Campus	2013 Jan-Dec	2014 Jan-Dec	2015 Jan-Dec	2016 Jan-Jun	Total
Boise	54,720	157,844	279,535	167,078	**756,024**
Cheyenne	1,800	63,507	64,446	37,249	**172,991**
Colorado Springs	114,459	272,181	327,994	90,215	**809,795**
Denver	135,641	202,405	278,345	114,554	**788,472**
Ft. Collins	66,904	66,855	168,964	55,689	**399,636**
Flagstaff	51,102	189,636	151,903	58,831	**498,592**
International	0	3,750	57,750	37,500	**99,000**
Idaho Falls	4,700	65,946	209,554	123,067	**406,268**
Layton	0	1,500	7,820	8,410	**17,730**
Logan	93,312	123,312	160,220	124,328	**619,431**
Nampa	39,354	81,855	248,357	89,769	**491,872**
National City	79,282	154,138	248,694	162,014	**655,128**
Independence Univ.	2,246,334	3,385,612	4,368,002	2,446,178	**12,811,203**
Ogden	105,978	150,325	178,807	114,493	**655,416**
Phoenix	124,867	558,277	785,316	389,911	**1,908,374**
Provo	183,787	275,845	282,281	185,110	**1,205,970**
San Diego	93,962	205,572	449,516	281,087	**1,214,989**
St. George	57,585	136,992	280,404	143,433	**639,494**
Salt Lake	213,650	509,212	761,607	331,863	**1,998,673**
San Marcos	3,000	35,000	249,700	179,039	**466,738**
Total	**3,670,437**	**6,639,764**	**9,559,214**	**5,139,815**	**28,204,585**

[1] Includes Only the Institutional Scholarship/Grant Categories Listed On Next Page

[2] Institutional Scholarship/Grant Amounts Posted to Student Ledgers from 1/1/2013 - 6/30/2016

Institutional Scholarship and Grant Categories Included

Scholarship/Grant Categories	Amount	Percent
CE Academic Scholarship	$414,581	1%
CE African American Scholarship	$181,022	1%
CE Alliance Grants	$5,686,762	20%
CE Asian Student Scholarship	$149,671	1%
CE B2B Scholarship	$43,834	0%
CE Bachelor Upgrade Scholarship	$1,034,486	4%
CE Clinical Employee Grant 33%	$2,536	0%
CE Clinical Grant 33 %	$1,088,148	4%
CE Counselor's Choice	$272,926	1%
CE Dislocated Worker Discount	$159,550	1%
CE Employee Family Scholarship (20%)	$219,898	1%
CE Entrepreneur Scholarship	$149,826	1%
CE Family Grant	$3,980,397	14%
CE First Time Degree Scholarship	$461,838	2%
CE Future in Nursing Scholarship	$257,468	1%
CE GED Scholarship	$572,778	2%
CE Healthcare Provider Scholarship	$537,353	2%
CE High School Scholarship	$3,030,784	11%
CE Hispanic Student Scholarship	$290,278	1%
CE Hospital Grant 50 %	$13,636	0%
CE Inside Grant	$99,499	0%
CE Inside Scholarship	$1,240,629	4%
CE International Scholarship	$97,500	0%
CE IT Professional Scholarship	$392,225	1%
CE Leadership Scholarship	$325,667	1%
CE Legacy Grant	$6,882	0%
CE Master's Degree Scholarship	$3,557,868	13%
CE Mayor's Scholarship	$351,939	1%
CE Moms in Math Scholarship	$187,858	1%
CE Native American Scholarship	$134,732	0%
CE NPAC 25%	$9,931	0%
CE Presidential Scholarship	$441,089	2%
CE Professional Mens Scholarship	$209,939	1%
CE Professional Womens Scholarship	$409,621	1%
CE Single Parent Scholarship	$400,740	1%
CE Student Clinical Scholarship	$116,618	0%
CE Your Future - Assoc	$157,702	1%
CE Your Future - Bachelors	$181,047	1%
CE Your Future - Full Tuition Scholarship	$862,754	3%
CE Your Future - Half Tuition Scholarship	$472,574	2%
Grand Total	**$28,204,585**	**100%**

EXHIBIT 5

ROBERT SHIREMAN BACKGROUND

In 2009, The Obama Administration Hired Bob Shireman As Deputy Undersecretary At The Department Of Education. "In 2009, with the Obama administration in place, the environment changed substantially. The Obama administration immediately hired Bob Shireman as deputy undersecretary at the DOE; Shireman had formerly been at the DOE under President Clinton. The first issue to be addressed was the revocation of the Safe Harbors, which would effectively render incentive compensation illegal--again." (Robert Macarthur, "Online Education Fraud: The Diary Of A Short Seller," Online Education Fraud)

- **In June 2010 When Shireman Left The Education Department, He Was Immediately Hired As A Consultant Until 2011.** "When Shireman left the department in June 2010, he was immediately hired as a consultant." (Melanie Sloan, "Education Official Who Left Under Ethical Cloud Returns To Washington," *Roll Call*, 7/14/14)

"In 2004, Shireman Launched The Institute For College Access And Success (TICAS)." "In 2004, Shireman launched the Institute for College Access and Success, where his early leadership on the issue of rising student debt prompted Congress to adopt income-based repayment for student loans." ("The Team," California Competes, Accessed 3/3/15)

Shireman Was Under Investigation By An Inspector General For Violating Ethic Laws

Former Deputy Undersecretary Of Education Robert Shireman "Left The Government Under A Cloud," Facing An Investigation By An Inspector General For Ethics Violations. "Robert Shireman, former Deputy Undersecretary of Education, left the government under a cloud, and still faces an Inspector General investigation into whether he violated ethics laws by discussing sensitive government information about a pending and hotly contested negotiated rulemaking proceeding with an outside organization he founded, The Institute for College Access and Success (TICAS), and for which he served as president just prior to his tenure at Education." (Anne Weismann, "Robert Shireman's Continuing Efforts To Influence Education Policy, Citizens For Ethics, 9/25/14)

- **In April 2012, Justice Department Lawyers Wrote A Letter To Mr. Shireman Saying, "We Have Documents Showing Your Involvement Or Interaction With TICAS In Matters Pending Before The U.S. Department Of Education In Violation Of The Statute."** "'We have documents showing your involvement or interaction with TICAS in matters pending before the U.S. Department of Education in violation of the statute,' Justice Department lawyers wrote in a letter to Mr. Shireman in April 2012. 'Your conduct may render you personally liable,' the letter stated. The letter and other legal documents showing the Justice Department's interest in Mr. Shireman were recently disclosed as part of a legal proceeding on the scope of a subpoena request." (Brody Mullins, "Former Education Official Faces Federal Investigation," *The Wall Street Journal*, 5/16/13)

- **Shireman Is Being Investigated For "Discussing Sensitive Government Information About A Pending And Hotly Contested Negotiated Rulemaking Proceeding With An Outside Organization He Founded, The Institute For College Access And Success (TICAS)."** "Robert Shireman, former Deputy Undersecretary of Education, left the government under a cloud, and still faces an Inspector General investigation into whether he violated ethics laws by discussing sensitive government information about a pending and hotly contested negotiated rulemaking proceeding with an outside organization he founded, The Institute for College Access and Success (TICAS), and for which he served as president just prior to his tenure at Education." (Anne Weismann, "Robert Shireman's Continuing Efforts To Influence Education Policy, Citizens For Ethics, 9/25/14)

- **"In Court Papers Dated April 17, 2013, The Department's Office Of Inspector General Said That For Two Years Beginning February 2009, 'There Were Communications Between Mr. Shireman And TICAS Through Mr. Shireman's TICAS Email And Personal Email Accounts.'"** (Brody Mullins, "Former Education Official Faces Federal Investigation," *The Wall Street Journal*, 5/16/13)

In July 2014, Senators Richard Burr And Tom Coburn Wrote A Letter To Education Secretary Arne Duncan Requesting Records Related To Shireman Sharing "Sensitive Government Information". "In a letter to Education Secretary Arne Duncan, Republican Sens. Richard Burr and Tom Coburn reiterated a request for records related to former

Education Department official Bob Shireman. A 2010 investigation found that Shireman, as deputy undersecretary of education, shared 'sensitive government information' with The Institute for College Access and Success, which he founded." ("Senators Want Shireman Info," *Politico Pro*, 7/17/14)

- **Letter: "We Were, And Continue To Be, Concerned Over Department Employees Engaged In Improper Release Of Information That Might Have Resulted In The Financial Gain Of Certain Individual Investors."** "In March, a U.S. District Court ordered TICAS to turn over relevant emails and documents. 'We were, and continue to be, concerned over department employees engaged in improper release of information that might have resulted in the financial gain of certain individual investors,' the senators wrote." ("Senators Want Shireman Info," *Politico Pro*, 7/17/14)

- **The Senators Requested "Department Communications And Contracts With Shireman And TICAS, To Be Delivered Within 10 Business Days."** "They requested department communications and contracts with Shireman and TICAS, to be delivered within 10 business days." ("Senators Want Shireman Info," *Politico Pro*, 7/17/14)

Shireman Used His Relationship With Wall Street Investors To Tighten Regulation Of For-Profit Colleges

Shireman Was Considered "The Former Architect Of The Obama Administration's Effort To Tighten Regulation Of For-Profit Colleges." "Robert Shireman is skeptical. The former architect of the Obama administration's effort to tighten regulation of for-profit colleges now heads California Competes, a higher education reform group." (Doug Lederman, "Blurring the Nonprofit/For-Profit Divide," Inside Higher Ed, 2/23/15)

- **Uncovered Records Show "Extensive Contact Between DOE Officials And Wall Street Investors."** "During his time as Deputy Undersecretary, Mr. Shireman headed the effort to more stringently regulate for-profit education companies. An investigation by CREW uncovered records showing extensive contact between DOE officials and Wall Street investors." ("CREW Seeks Records Related To Former Education Official Robert Shireman," Citizens For Ethics, 6/2/14)

- **Records Also Revealed Many Emails Where "Short-Sellers Were Influencing Proposed Regulations In A Way That Stood To Drive Down The Stock Price Of For-Profit Colleges And Allow Investors To Reap Huge Profits."** "Particularly troubling were the many emails that revealed short-sellers were influencing proposed regulations in a way that stood to drive down the stock price of for-profit colleges and allow investors to reap huge profits." ("CREW Seeks Records Related To Former Education Official Robert Shireman," Citizens For Ethics, 6/2/14)

Department Emails Show Shireman And "Other Senior Department Officials Shared Information With TICAS And Other Groups That Were Pushing The Education Department To Clamp Down On For-Profit Colleges." "Mr. Shireman and other senior department officials shared information with TICAS and other groups that were pushing the Education Department to clamp down on for-profit colleges, according to departmental emails released in recent years. The for-profit firms rely on government-backed student loans for a big chunk of their revenue." (Brody Mullins, "Former Education Official Faces Federal Investigation," *The Wall Street Journal*, 5/16/13)

In 2012, A Federal Judge Blocked Shireman's Gainful Employment Regulations

Robert Shireman Was "A Leading Advocate" For The Gainful Employment Regulations Which Placed Stricter Regulations On For-Profit Higher Education. "During the gainful employment rule-making session, Department officials had floated the idea of creating a program-level default rate requirement, which might be harder for for-profits to manipulate; this could be a positive development if the Department follows through... 'In a recent memo to some colleagues, Robert Shireman, who previously served as Deputy Undersecretary of Education in the Obama Administration and was a leading advocate for accountability measures, outlined the Department's enforcement shortcomings.'" (David Halperin, "Arne Duncan's Last Best Chance to Save Students From Abusive For-Profit Colleges," *The Huffington Post*, 10/10/13)

- **In 2012, A Federal Judge Blocked The Regulations.** "Let's stipulate up front that Bob Shireman is anything but an objective observer of for-profit higher education. For much of President Obama's first term, he made life a living hell for colleges in the sector through his aggressive pursuit of new regulations designed to ensure they were preparing their graduates for 'gainful employment.' A federal judge blocked the rules in 2012, and Shireman moved on to a new job in California where he has focused more on the performance of the state's community colleges than on for-profit institutions." (Doug Lederman, "For-Profits' Fundamental Difference," Inside Higher Ed, 5/22/14)

A Inspector General's Investigation In 2012 Found That The Education Department's Process For Handling The Administration's "Gainful Employment Regulations" Was "Not Sufficiently Transparent". "The inspector general's investigation of Shireman, which began in December 2011, according to court filings, is related to a broader inquiry of how the Education Department handled the contentious fight over the administration's 'gainful employment regulations' governing vocational programs at for-profit and community colleges. In June 2012, the inspector general issued a report that largely cleared the department of accusations that it had improperly leaked market-moving information about its 'gainful employment' rules to outsiders, especially Wall Street investors. Still, it found that the department's process was not sufficiently transparent and, separately, noted that it was investigating a former official for possible ethics violations." (Michael Stratford, "Judge Compels TICAS Emails," Inside Higher Ed, 3/20/14)

Shireman Pushed Department Of Education Officials For Information Without FIOA Requests

Emails Show Government Officials Became "More Cautious In Their Dealings With Mr. Shireman." "CREW's FOIA request sought, in part, records from January 1, 2013 through the present related to Mr. Shireman and TICAS. Many of the hundreds of responsive documents Education provided are heavily redacted. But there are more than 80 pages of emails sent to, from, or including Mr. Shireman and Education officials. They suggest Education officials have – appropriately – become more cautious in their dealings with Mr. Shireman." (Anne Weismann, "Robert Shireman's Continuing Efforts To Influence Education Policy, Citizens For Ethics, 9/25/14)

- **Shireman Pushed For Inside Information From An Education Official Who Refused Without A FOIA Request.** "In response to one request by Mr. Shireman for information, an Education official noted she could not give it out without a FOIA request. Mr. Shireman pushed back, apparently not used to having his requests for inside information from Education turned down." (Anne Weismann, "Robert Shireman's Continuing Efforts To Influence Education Policy, Citizens For Ethics, 9/25/14)

Shireman Faces Questions Over His Consulting Agreement With The Department Of Education

Shireman Has Also Faced Questions About The "Terms Of His Sweetheart Deal" With The Department Of Education "To Stay On As A Paid Advisor While Still Retaining All Of His Federal Benefits." "Other questions have emerged about the terms of a sweetheart deal Mr. Shireman made with Education to stay on as a paid advisor while still retaining all of his federal benefits." (Anne Weismann, "Robert Shireman's Continuing Efforts To Influence Education Policy, Citizens For Ethics, 9/25/14)

- **In June 2010 When Shireman Left The Education Department, "He Was Immediately Hired As A Consultant" And Continued To Receive "Health Care, Paid Leave And Retirement Benefits Although The Department's Personnel Manual Specifically Prohibits Consultants From Receiving Such Benefits."** "When Shireman left the department in June 2010, he was immediately hired as a consultant. Despite this change in employment status, documents show Education officials allowed Shireman to continue receiving health care, paid leave and retirement benefits although the department's personnel manual specifically prohibits consultants from receiving such benefits." (Melanie Sloan, "Education Official Who Left Under Ethical Cloud Returns To Washington," *Roll Call*, 7/14/14)

- **When Details Were Pressed Over The Agreement, The Education Department "Redacted The Identities Of The Officials Who Signed Off On The Arrangement."** "When CREW sought details about Shireman's consulting agreement, Education redacted the identities of the officials who signed off on the arrangement." (Melanie Sloan, "Education Official Who Left Under Ethical Cloud Returns To Washington," *Roll Call*, 7/14/14)

Shireman's Foundation TICAS Faces Legal Action From The Department Of Justice For Failure To Comply

The Department Of Justice Was Forced To File Legal Action After TICAS Refused "To Comply With An OIG Subpoena For Records Regarding Its Interaction With Mr. Shireman." "ICAS refused to comply with an OIG subpoena for records regarding its interaction with Mr. Shireman, forcing the Department of Justice to file legal action." ("CREW Seeks Records Related To Former Education Official Robert Shireman," Citizens For Ethics, 6/2/14)

- **"In March, A Federal Court Ordered TICAS To Turn Over Documents."** ("CREW Seeks Records Related To Former Education Official Robert Shireman," Citizens For Ethics, 6/2/14)

- **"Hundreds Of Other Emails Reveal TICAS Officials Are Continuing To Weigh In On Education Policy, Most Recently On The Pell Grant And Student Loan Programs, And To Push For Advance Notice Of When Data Will Be Publicly Disclosed."** "Hundreds of other emails reveal TICAS officials are continuing to weigh in on Education policy, most recently on the Pell Grant and student loan programs, and to push for advance notice of when data will be publicly disclosed. Apparently TICAS continues to believe even without Mr. Shireman at the helm at Education, it has an inside track." (Anne Weismann, "Robert Shireman's Continuing Efforts To Influence Education Policy, Citizens For Ethics, 9/25/14)

###

EXHIBIT 6

Some Owners of Private Colleges Turn a Tidy Profit by Going Nonprofit

By PATRICIA COHENMARCH 2, 2015

Keiser University's campus in Sarasota, Fla. The Keiser family sold the 15-campus university to a nonprofit that it had created. Credit Scott McIntyre for The New York Times

After a recent government crackdown on the multibillion-dollar career-training industry, stricter limits on student aid and devastating publicity about students hobbled by debt and useless credentials, some for-profit schools simply shut down.

But a few others have moved to drop out of the for-profit business altogether, in favor of a more traditional approach to running a higher education institution.

And the nonprofit sector, it turns out, can still be quite profitable.

Consider Keiser University in Florida. In 2011, the Keiser family, the school's founder and owner, sold it to a tiny nonprofit called Everglades College, which it had created.

As president of Everglades, Arthur Keiser earned a salary of nearly $856,000, more than his counterpart at Harvard, according to the college's 2012 tax return, the most recent publicly available. He is receiving payments and interest on more than $321 million he lent the tax-exempt nonprofit so that it could buy his university.

And he has an ownership interest in properties that the college pays $14.6 million in rent for, as well as a stake in the charter airplane that the college's managers fly in and the Holiday Inn where its employees stay, the returns show. A family member also has an ownership interest in the computer company the college uses.

Keiser University, which has about 20,000 students spread over 15 campuses, is one of a handful of for-profit colleges that have switched to the nonprofit arena or are considering that move.

The shift means more restrictions on moneymaking ventures and loss of ownership. But nonprofit schools — defined as providing a public benefit — do not have to pay taxes, are eligible for certain state grants and can receive more money from the federal student loan program.

Consumer advocates and legal experts warn that some institutions might be shifting primarily to avoid stepped-up government scrutiny and regulation. Moreover, said Lloyd Mayer, an associate dean and law professor at Notre Dame Law School: "There is a concern that the now-nonprofit colleges may be providing an impermissible private benefit to their former owners. These sorts of arrangements raise yellow flags."

Dr. Keiser, who started Keiser University in 1977 with his mother, Evelyn, now 91, scoffed at such criticism. "My goal has been to build a family legacy," he said. Becoming a nonprofit "was a natural transition for us," and "for our students, too," he said, allowing the institution to expand into a residential college.

He said that the family had long planned the move to the nonprofit sector, laying the groundwork in 1998, when it first bought a small Florida college and later converted it to the nonprofit Everglades. Keiser now offers 100 degrees and certificates in subjects that include baking and pastry arts, nursing and political science.

As for any financial conflicts of interest, he said: "We disclosed everything. There's nothing wrong with it."

Dr. Keiser, who is the House Republicans' appointee to the Education Department panel that oversees accreditation, formerly was chairman of the governing board of the Association of Private Sector Colleges and Universities, which filed a lawsuit in November challenging new federal regulations. These require for-profit colleges and trade schools to show that their students will eventually earn enough money to pay their student loans.

The rules are a result of longstanding complaints that the industry lures mostly poor and minority students with misleading information about the value of the schools' degrees and costs, and then saddles them with onerous debt.

According to estimates from the Obama administration, about 1,400 programs that enroll 840,000 students would fail the new gainful employment rules. If they do, the government can impose sanctions that could eventually lead to a cutoff of federal student aid and loans, the schools' lifeblood. For-profit colleges receive roughly $30 billion a year in taxpayer-funded student aid.

Some institutions are already struggling. The giant for-profit chain Corinthian Colleges, which once took in $1.4 billion a year in taxpayer funds, has virtually collapsed after a series of state and federal inquiries and lawsuits.

For-profit schools vigorously opposed the newest rules, arguing that they would ruin institutions that serve students who have few other educational options. Defenders point out that some have better graduation records than community colleges and are much better at responding to a changing job market.

The states have opened another line of attack, with at least 24 attorneys general investigating whether for-profit colleges under their jurisdiction have engaged in false advertising, illegal recruiting practices or predatory loan schemes.

Arthur Keiser Credit Willie J. Allen Jr./Tampa Bay Times

Keiser University was the subject of an investigation by the Florida attorney general before its sale to the family's nonprofit. In 2012, it reached a settlement and agreed to offer thousands of students free retraining, but did not admit any wrongdoing.

In November, Robert Shireman, a fierce industry critic and former Education Department official, filed a complaint with the Internal Revenue Service accusing Mr. Keiser and three board members of violating tax regulations and using the nonprofit "for personal gain."

According to Everglades's 2012 tax return, one of the university's nine board members owns a business that provided the college's paperless filing system. A family member of a second board member owns Cutting Edge Recruiting Solutions, which the college used. A third, who owns a pool maintenance company in Florida, received "a net share of income from the aquatic engineering program."

An emailed response from Keiser said that all the financial arrangements "are at fair market value terms and conditions," and that the college adheres to "generally accepted auditing and accounting principles," as defined by the I.R.S.

Keiser University was valued at $521 million, tax returns show. Dr. Keiser said the valuation was arrived at by two independent auditors.

He lent Everglades $321 million for the sale and donated much of the rest, a charitable gift that potentially shaved tens of millions of dollars off his tax bill. The Keiser family maintained an ownership interest in the land and property.

Other owners have followed a similar template of financing the purchase of their for-profit colleges through a combination of loans and tax-deductible donations to a closely affiliated nonprofit. The new tax-exempt entity subsequently leases the space from the original owners at multimillion-dollar annual rents. The before-and-after management team is often virtually the same.

The Education Department has final approval over the shift to nonprofit status, reviewing a school's financial obligations and administrative capabilities. None have yet been rejected.

"I don't think anyone with any rudimentary knowledge with how nonprofits are supposed to operate and the for-profit college industry could fail to conclude that the transaction is structured to benefit insiders and that the former owners are making a lot of money off the nonprofit," said David Halperin, a Washington lawyer and the author of "Stealing America's Future: How For-Profit Colleges Scam Taxpayers and Ruin Students' Lives."

Such a characterization unfairly smears the whole industry, said Neil Lefkowitz, a Washington lawyer who specializes in transactions involving education companies. "The concept of for-profit education has been quite demonized, and so many institutions are really feeling the pinch," he said.

In 2012, Carl B. Barney sold several for-profit colleges, including Stevens-Henager, CollegeAmerica and California College, to a small Denver-based nonprofit, the Center for Excellence in Higher Education, which, according to court documents, consists of a single member: Mr. Barney, its chairman.

Mr. Barney lent the nonprofit $431 million for the sale, and donated millions more, the center's tax returns and court records show. He also collected nearly $5.1 million in rent from the schools in 2013. The value of its "intangible assets" — such as its reputation and copyrighted trade secrets — was listed at $419 million.

A lawsuit joined by the Justice Department last year charged that the sale was, "at least in part, to evade certain regulatory requirements that apply to for-profit schools," and that "the schools continue to operate more or less as they did prior to the merger."

In December, the Colorado attorney general sued Mr. Barney and the schools over misleading and illegal practices. "These allegations are entirely false and they defame us," Mr. Barney said. "We are fighting back to the very end."

He derided the notion that he was making any money from the schools or the center, an organization devoted to libertarianism and the free-market philosophy of Ayn Rand. "You cannot profit from a nonprofit," Mr. Barney said.

In 2011, Remington College, another Florida-based for-profit school, was sold to a nonprofit with the owners lending it $136 million for the sale, according to its 2013 tax return.

In January, Herzing University, based in Wisconsin with campuses in eight states, announced that it had completed its conversion to a tax-exempt nonprofit. And Grand Canyon University in Phoenix is trying to convert from a publicly traded company worth more than $2 billion to a nonprofit.

Because of the stigma now dogging for-profit colleges, nonprofit status has become a crucially important marketing tool.

"Some are truly not doing this to evade regulations," Mr. Lefkowitz said. "They are really having trouble recruiting students."

EXHIBIT 7

Congress of the United States
House of Representatives
Washington, DC 20515

April 27, 2015

The Honorable Arnold Duncan
Secretary
U.S. Department of Education
400 Maryland Ave., S.W.
Washington, D.C. 20202

Dear Secretary Duncan:

A recent front-page article in *The New York Times*, "Some Owners of Private Colleges Turn a Tidy Profit by Going Nonprofit," described how some owners of for-profit colleges have converted their institutions to non-profits in ways that do not appear to be legitimate. For example, in addition to receiving a high salary, the president of one "non-profit" college takes in tens of millions of dollars from the college in rent, loan payments, and even income from private planes and hotels used by college employees, according to the article. The president of another recently-converted non-profit also serves as the college's major creditor and has the sole power to create and disband the college's board.

Under the Department's regulations, the presumption is that an institution that has changed its ownership is not eligible for federal funds unless you determine, affirmatively, that it meets the standards. Where there is evidence that a purported non-profit institution is not operating as a valid charity, it is a clear indication that the entity lacks financial responsibility and therefore cannot be approved by you as eligible to receive federal financial aid funds. We request an explanation of why such payments, if they are occurring, would not be considered violations of the Antideficiency Act.

We write to ask you to carefully examine the recent conversions to determine whether these institutions may legitimately be treated as non-profits for purposes of Department of Education regulations or whether they instead should remain covered by the rules and notifications governing for-profits. In particular, we ask whether the Department reviewed or consulted with the IRS regarding:

- The price paid by the non-profit to acquire the for-profit institution, whether it was arrived at in accordance with state and federal laws, and what documentation the Department has reviewed regarding the sale.
- The role of owners and executives of the for-profit institution in the management of the non-profit institutions, before and after the acquisition, and whether it is in compliance with state and federal rules governing charities.
- Any purported donation of assets by owners in the context of the transaction and the method used to determine the value of the donation.
- The retention of real property by the owners of the for-profit in the context of the acquisition by the non-profit and whether the ongoing payment of rent to trustees and management of the non-profit is appropriate for a charity.

- Other past and ongoing payments to trustees of the non-profit organization and whether those payments are appropriate under IRS and state regulations governing charities.
- Bylaws, conflict of interest guidelines, and other governance documents for the non-profit and whether they reflect the standards expected of charities.

It is critical for the Department of Education to undertake robust reviews of conversions of for-profit institutions to non-profits, including the critically-important conflict-of-interest issues enumerated above. When colleges violate non-profit requirements, the Department of Education cannot be assured of the institution's integrity. We request a report detailing the status of the changes of ownership and the content of your review of all conversions over the last 5 years, including: Keiser University and Everglades University; Herzing University; California College San Diego, Stevens-Henager, CollegeAmerica and the Center for Excellence in Higher Education; Remington College and EducationAmerica.

If you do not have a process for rigorous review of conversions from for-profit to non-profit status, we ask that you impose an immediate moratorium on the approval of new conversions until an appropriate process can be established and urge you to review the previous approvals of conversions. Please also report to us the information that is being provided to consumers about these institutions; in particular, does the Department of Education's College Navigator accurately portray whether an institution is operating as a valid non-profit? Finally, please provide us with details regarding any current request for authorization or guidance from for-profit institutions that are considering converting, including: Grand Canyon University and Career Education Corporation.

As you know, non-profit and public institutions are given greater access to many federal programs because they lack the personal financial motives that can sometimes cause for-profit entities to take advantage of consumers and/or taxpayers. Conversely, for-profit companies are more robustly regulated because they are run by people with a conflict of interest. If we continue to allow for-profit institutions to exist under the guise of a non-profit status, we will be allowing the owners to evade the rules, leaving students and taxpayers highly vulnerable.

We appreciate your prompt attention to this issue, and we look forward to hearing about your current procedures and of your plans for ensuring that taxpayers and consumers are adequately protected.

Sincerely,

Rosa L. DeLauro
ROSA L. DeLAURO
Member of Congress

Earl Blumenauer
EARL BLUMENAUER
Member of Congress

Susan A. Davis
SUSAN A. DAVIS
Member of Congress

Janice Hahn
JANICE HAHN
Member of Congress

Mark Takano
MARK TAKANO
Member of Congress

Keith Ellison
KEITH ELLISON
Member of Congress

Jackie Speier
JACKIE SPEIER
Member of Congress

John Conyers Jr.
JOHN CONYERS, JR.
Member of Congress

Jan Schakowsky
JAN SCHAKOWSKY
Member of Congress

Jim McDermott
JIM McDERMOTT
Member of Congress

Elijah E. Cummings
ELIJAH E. CUMMINGS
Member of Congress

Steve Cohen
STEVE COHEN
Member of Congress

Beto O'Rourke.

BETO O'ROURKE
Member of Congress

Grace F. Napolitano
GRACE F. NAPOLITANO
Member of Congress

Maxine Waters
MAXINE WATERS
Member of Congress

Jerry McNerney
JERRY McNERNEY
Member of Congress

Raúl M. Grijalva
RAÚL M. GRIJALVA
Member of Congress

Barbara Lee
BARBARA LEE
Member of Congress

Sam Farr
SAM FARR
Member of Congress

EXHIBIT 8

The Covert For-Profit

How College Owners Escape Oversight through a Regulatory Blind Spot

Robert Shireman

Over the past decade, abuses by colleges operating in the for-profit education sector have been well documented.[1] Buoyed by a tide of government-enabled financing, these for-profit colleges expanded their enrollment from 1990 to 2013 more than ten times faster than did nonprofit or public schools,[2] and they widely engaged in aggressive and misleading recruitment and other predatory practices[3]—all to fill programs that had abysmally low completion and job placement rates. Many students that had enrolled in for-profit colleges were left with huge student loan debts and little else to show for their education investment. Meanwhile, taxpayers shelled out billions of dollars in financing and tax breaks for these schools, with little accountability to ensure that their students were getting an education that would lead to gainful employment.

Today, many of these for-profit institutions find themselves on the defensive and are now being scrutinized more closely, both by the government agencies that finance them and by consumers who may seek, instead, to enroll at public and other nonprofit institutions. High-profit, high-enrollment schools such as ITT Tech, DeVry, and the University of Phoenix are allowed to continue to participate in the federal loan program, but under even stricter rules.[4]

Recently, a new trend in the abuse of college students and federal education dollars may be under way: the creation of the covert for-profit. The owners of some for-profit institutions have sought to switch their schools to nonprofit status, freeing them from the regulatory burdens of for-profit colleges, while continuing to reap the personal financial benefits of for-profit ownership.

Prompted by news of several recent conversions of for-profit colleges into nonprofits, The Century Foundation has obtained IRS and U.S. Department of Education records and communications that call into question the legitimacy of some of these conversions. Through four case studies, based on hundreds of pages of documents obtained from government agencies, the examination reveals a dangerous regulatory blind spot, with the two federal agencies each assuming, wrongly, that the other is monitoring the integrity of the "nonprofit" claims of these colleges.

This report begins by describing the role of nonprofit governance in promoting good stewardship in education and the problems that have resulted from unrestrained profit-seeking in American higher education. The case studies then lay out four instances of possible covert for-profits, where owners have managed to affix a nonprofit label to their colleges while engineering substantial ongoing personal financial benefits for themselves. The report concludes with specific steps government regulators should take to prevent illegitimate claims to nonprofit status and to protect students and the public interest.

An enterprise organizes itself as "nonprofit" to provide some assurance to customers and donors that while the organization needs money to pursue its mission, the ultimate goal is not financial. Two core requirements are designed to offer that assurance. First, anyone who is paid is, ultimately, answerable to someone who is not. Those unpaid overseers are often called "trustees" because they are entrusted with the responsibility of ensuring that the organization is pursuing a charitable or educational goal rather than simply financial gain. They are unpaid (except in special circumstances) so that their judgment of what is best for students or society is not skewed by a personal financial interest. Second, any money that is earned by the organization beyond what is needed to pay expenses (the amounts that would be profit in a for-profit entity) is reinvested in the organization. In other words, no one owns stock or shares that can be sold or earn dividends. The trustees control the organization in the same way that owners would, but they cannot take the money for themselves.[5]

Nonprofits are common in ventures that involve goals that are difficult to measure or populations that are vulnerable, such as public health, caring for the poor, the arts, religious or spiritual fulfillment—and education. In return for serving society's interests above private interests, nonprofit organizations are favored in providing certain types of services and are granted tax exemptions that can be substantial.

The unpaid trustees are seen as such a bulwark against abuse that the organizations are, in some cases, allowed to engage in practices that would be illegal in a for-profit context. Many nonprofits, for example, involve vast numbers of people who work for free as volunteers, a practice that is highly restricted in the for-profit environment. Imagine a supermarket or snack food chain enlisting two million underage girls to sell cookies: the operation would be shut down and the companies would be prosecuted. Yet the nonprofit Girl Scouts do exactly that every year, selling 175 million overpriced cookies baked by for-profit contractor bakeries. This "child labor" is not illegal because the Girl Scouts councils are nonprofit: their unpaid boards are trusted to engage in this cookie selling, which they believe benefits the girls and is consistent with the values of the organization. Compared to the supermarket owner or cookie baker, the Girl Scout councils are far more likely to make decisions that truly benefit the girls—*because council members do not have a personal financial interest*. They are not allowed to keep the money for themselves.

The nonprofit organization that runs Wikipedia offers a different type of example of how being a nonprofit affects the decisions that are made. While Facebook, Google, and other investor-owned Internet companies have all decided to take and sell our personal data for profit, Wikipedia has, remarkably, respected users' anonymity. Wall Street types, salivating over Wikipedia's billions of page views and massive troves of salable user data, think the people who run the organization are completely nuts. One analyst detailed all of the ways that Wikipedia could earn money, from selling advertisements to t-shirts, and calculated the website's lost revenue at $2.8 billion a year—forty-six times the organization's current income.[6]

Who would leave that kind of money on the table? People who are not allowed to take it. If Wikipedia had owners instead of trustees, the temptation to grab nearly $3 billion would be impossible to resist, even though it would destroy Wikipedia as we know it. Instead, Wikipedia has kept consumers' interests at the forefront because it is a nonprofit organization. It is a different beast as a result of being structured without owner-investors.

Putting non-owners in control serves as an internal regulatory mechanism, muting the temptation to "cut corners on quality or otherwise take advantage of user vulnerability," economists say. As a result, nonprofits "are more immune against moral hazards than for-profit firms would be under similar circumstances."[7]

In many contexts, a for-profit business structure operates beautifully, almost miraculously, leading to positive outcomes for provider and consumer alike. In education, however, because of the nature of the goal and "customer" (both students and society), the results of for-profit provision have frequently proved one-sided. The ability of investors to pocket whatever (often taxpayer-supplied) funds that are not already spent, or to buy and sell shares in the business organization, can prompt noticeably different choices on a range of institutional decision points, such as:

- Which students to recruit and enroll; whether to enroll students who are on the borderline of academic qualifications.
- Whether and how fast to grow enrollment, given the need to maintain quality.
- How much to charge which students (pricing and aid/discounts).
- Who to hire as instructors and staff.
- How much to rely on full-time versus adjunct faculty.
- How much to defer to faculty expertise.
- The type of information and advice to provide to potential students.
- Which programs (majors) to create, expand, or contract.
- How standardized the curriculum should be.
- How and where to advertise; what information to put on the website.
- How much to spend on recruitment of applicants.
- What level of student performance is adequate to pass a class or to receive a degree.

At every turn in the educational enterprise, the owner's profit motive can distort the educational mission, making owner-operated schools more aggressive and singly-focused on maximizing return, even to the point of self-deception. And in fact, the presence of profit in higher education over the years has led to a series of scandals—and resulting attempts at reform.

When the G.I. Bill (the Servicemen's Readjustment Act of 1944) was enacted for soldiers returning from World War II, the funds they received could be used at any type of school. By 1949, more than five thousand new for-profit schools had sprung up. Investigations revealed that many of the schools were "inflating tuitions, extending the length of courses, enrolling too many students," and keeping students on the attendance rolls long after they had stopped attending.[8] To address the problems, Congress adopted a paying-customer requirement: schools would need to show that someone other than veterans was enrolled so that the schools could not simply price their programs to milk whatever maximum amount taxpayers offered up. It was a market test, called the <u>85–15 rule</u> because no more than 85 percent of the students in a program could be veterans financed by the government.[9]

Sobered by the G.I. Bill experience, Congress, when creating the <u>first national student loan program in 1959</u>, restricted funding to public and nonprofit institutions.[10] When for-profits were later invited in, it was through what was considered a <u>narrow and limited exception:</u> loans would be available only for job-specific training, leading to "gainful employment in a recognized occupation."[11] Experts <u>had assured Congress</u> that occupational programs were a safe role for schools with owners because the programs would lead to graduates earning "sufficient wages so as to make the concept of student loans to be [repaid] following graduation a reasonable approach to take."[12] Unlike a broader liberal arts education, which is difficult to measure, it would be easy to tell if a for-profit school is not offering valid training for a job.

The narrow vocational exception worked well for a while. But colleges were allowed to self-certify that a particular program was occupational in nature. While a program labeled as Liberal Arts or Philosophy might be rejected by the U.S. Department of Education, in most cases the companies' assertions were not challenged. As a result, over time, the colleges broadened and extended their offerings while continuing to check the box—declaring that each program "leads to gainful employment in a recognized occupation"—to gain them access to federal grants and loans. The career schools slowly but decidedly started thinking of themselves as no different from public and nonprofit colleges—even though the financial incentives and control structures were different in critically important ways.

In the 1980s, an explosion of student loan defaults led to what President Reagan's secretary of education William J. Bennett called "shameful and tragic" actions by for-profit institutions, evidence of "serious, and in some cases pervasive, structural problems in the governance, operation, and delivery of postsecondary vocational-technical education." Releasing a report to Congress about the problem, Bennett said, "The pattern of abuses revealed in these documents is an outrage perpetrated not only on the American taxpayer but, most tragically, upon some of the most disadvantaged, and most vulnerable members of society." The head of the trade association representing for-profit pledged to work with the secretary and the Congress to "close down any institution that is not operating in an ethical way."[13]

The 1980s abuses led Congress to enact a long list of reforms in 1992. Most of the reforms applied to all colleges, whether they had investor-owners or not. One provision that applied to for-profit institutions was a Department of Education version of the G.I. Bill's paying-customer requirement. Originally 85–15, and later changed to 90–10, it requires schools to show that they are not wholly reliant on money from the Department of Education.

In recent years, problems in federally funded for-profit education have reemerged with the advent of online education, weakened regulations, and lax enforcement. Starting in 2009, the Department of Education took a number of steps to firm up regulations designed to prevent fraud and abuse in the federal financial aid programs. Most of the regulations, such as the ban on bounty-paid recruiters, apply to all types of colleges and programs.

The regulatory proposal that was fought most vigorously by the for-profit lobby was a clarification of what it means to be an occupational program that "prepares students for gainful employment in a recognized occupation." Offering career-preparation programs is the primary route by which for-profit institutions gain access to federal funds, and the new "gainful employment" rules will end federal funding of programs that consistently fail to bring graduates adequate earnings given the student loan debt they are taking on.[14]

With the public and regulators increasingly cautious about for-profit education, what are college owners to do?

To escape the gainful employment and 90–10 rules, and to reassure consumers who have become wary of for-profit schools, some large education companies are beginning to explore whether they simply can reclassify themselves as nonprofits.[15] A valid and complete conversion—led by trustees with no financial interest and operating in good faith—would provide the oversight that makes nonprofits a better value and less inclined toward predatory practices.

Unfortunately, the conversion to nonprofit status is susceptible to abuse by covert for-profits—schools that obtain the nonprofit label yet continue operating like for-profit institutions—leaving consumers and taxpayers more vulnerable than ever.

Covert for-profit colleges can exist because while the Department of Education relies on the Internal Revenue Service's judgment of which institutions are and which are not valid nonprofits,[16] the IRS rests its determination on the declarations and self-regulation by the trustees of these nonprofits, based mostly on an honor system. As with other taxpayers, the IRS relies on the honesty of the individuals and corporations that file tax returns, an honesty that is tested only in case of an audit, which often takes place years afterward.

The path to nonprofit status starts, of course, with paperwork. Organizations that seek to be designated by the IRS as a tax-exempt nonprofit must complete a Form 1023, which asks a long list of questions about the entity's goals, structure, management, and finances. Sometimes, an examiner in the IRS Exempt Organizations Division will seek clarifications before designation as a tax-exempt entity is awarded, but the conclusion of the process relies on the assumption that the information provided by the respondent accurately reflects how the organization will wind up operating.

The IRS is quite aware that organizations evolve, sometimes in ways that are contrary to the rules that are supposed to apply to nonprofit entities. Since it would be impossible for the IRS to review and approve the nearly constant changes at the nation's more than 1,630,000 recognized tax-exempt organizations, the IRS relies on a system of self-regulation, backed up by the threat of potentially retroactive revocation of tax exempt status. For example, when awarded nonprofit status, organizations are told by the IRS that if they change their structures and operations, they do so at their own peril:

A ruling or determination letter recognizing exemption may not be relied upon if there is a material change inconsistent with the exemption in the ***character****, the* ***purpose****, or the* ***method of operation*** *of the organization.*[17]

The "IRS determination letter" is not only revocable, it can be revoked *retroactively*

if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or engaged in a prohibited transaction. . .for the purpose of diverting corpus or income from its exempt purpose.[18]

The revocation can go back as far as the entity's original approval as a nonprofit so that an entity that we all thought was a charity can be declared to have never been one. This look-back reparation was tested and affirmed in a seminal case decided in 2013: an organization aimed at helping people make down payments on purchasing homes was found to not be functioning as a valid nonprofit, and the IRS in 2010 revoked its tax-exempt status effective back to the organization's creation in 2000, ten years earlier.[19]

Put simply, if an organization acts like a for-profit entity, restructuring or operating in a way that is benefiting a particular person or family, the nonprofit designation can be revoked retroactively by the IRS.

The IRS, however, reexamines less than 1 percent of existing nonprofits each year,[20] which means that an entity without the requisite internal checks and balances in place to ensure nonprofit governance can operate in violation of IRS rules for years, or even decades, without getting caught.

Meanwhile, the Department of Education currently relies solely on the IRS label in determining nonprofit status. Beyond the IRS designation, there is no routine effort to ensure that a school is actually following the core expectations of nonprofits.[21] Maneuvering to affix a nonprofit label allows a school to essentially hide in plain sight, avoiding the regulations and scrutiny applicable to for-profit colleges as well as the financial accountability required of nonprofits.

Government records of four newly designated nonprofit schools that had all previously been operating as for-profit entities reveals some troubling behavior. While IRS Form 1023 filled out by the four college chains undergird the claims that they are making to nonprofit status, the annual tax returns (Form 990) filed by the colleges, and other evidence about the schools' actual activities and intentions, indicate that three of the four are operating in ways that are not at all consistent with what the organizations asserted when they were seeking the initial IRS approval; the fourth college's application appears to have gone through the IRS review without detection or discussion of its internal conflicts of interest.

Each year, more than half a billion tax exempt dollars have been flowing to just the four institutions examined for this report: Herzing University; Remington Colleges, Inc.; Everglades College; and the Center for Excellence in Higher Education (CEHE). The findings of this report, however, indicate that their regulatory treatment as nonprofit schools may not be justified.

When Herzing University was profiled in a U.S. Senate report in 2012, it was a privately held, for-profit company headquartered in Milwaukee, Wisconsin, with eleven campuses in eight states. While still relatively small, it had grown by 260 percent since 2001, to more than 8,000 students. Founded in 1965 by Henry and Suzanne Herzing, the company was originally a computer-training institute. Over time, it had morphed into a "university" offering Associate and Bachelor's degree programs in business management, electronics, health care, graphic design, and public safety, as well as some Master's degrees (online only). [22]

In the 2008–09 school year, Herzing's federal financial aid revenue grew to $73,633,448, a 42 percent increase over the prior year. At the same time, however, the proportion of revenue coming from paying customers or other sources of financial aid was dropping: 18 percent overall in 2008, 15 percent in 2009, 14 percent in 2010.[23] As a result, the school was approaching the 10 percent minimum that is required under the Department of Education's 90-10 rule. While the company is not allowed to count its own scholarships given to students as part of the 10 percent, support from independent scholarship programs would count.

On December 29, 2009, Henry Herzing submitted a Form 1023 to the IRS, seeking a tax-exempt designation for a new corporation called the Herzing Educational Foundation Ltd., which would provide college scholarships to poor students. The application was assigned to specialist Terry Izumi in the Cincinnati, Ohio, office of the IRS. Izumi was skeptical. Normally, giving scholarships to the poor would be a slam-dunk for an organization seeking nonprofit status. But the application was unusual because the scholarships would pay tuition at only one particular school, bearing Henry Herzing's name. Izumi investigated and discovered that the eponymous college was a business owned by Herzing.

In a letter to Henry Herzing, Izumi explained that, to be considered nonprofit, an organization must demonstrate that "it is not organized or operated for the benefit of private interests," such as particular individuals, their family members, shareholders, or people controlled—directly or indirectly—by business owners or their family members. Why, Izumi asked, is the board of the Herzing Educational Foundation composed of people who own or operate the for-profit college, rather than by independent members of the community? If the board continues to include people with a financial interest in Herzing University, what system of checks and balances will be used to assure that the assets of the nonprofit are used exclusively for charitable purposes? How does the public know that you are not using the scholarship program as a recruiting tool of the for-profit entity?

After talking with Izumi by phone more than once, Herzing's lawyer sent to the IRS an eight-page letter, asserting that: (1) the foundation's day-to-day operations "will be minimal," with volunteers doing the bulk of the work in administering, perhaps, $60,000 in scholarships; (2) "there is no intent to use the assets of the organization for any other purpose" besides scholarships; and (3) "it is not anticipated that Henry Herzing will have a significant formal voice" in the nonprofit's activities. Two weeks later the IRS granted the scholarship foundation's request for status as a public charity. Then, last year, the foundation's leadership decided to use the nonprofit entity in a very different way (see Table 1).

Table 1

The nonprofit purchased Herzing University for $86 million from the Herzing family, effective January 1, 2015, and continues some leases of property from Herzing family members. According to a press report, a state official said that Herzing likely made the change to avoid new federal regulations and to gain access to state grant funding.[24] In response to a request for comment, attorneys for Herzing University (the nonprofit) assert that the purchase price, to be paid over thirty years, and the leases are approved by independent board members at fair market values and that "rigorous conflict-of-interest rules are followed in all such instances."

After questions were raised about the transaction by this author and by members of Congress, the university on July 6, 2015, asked the IRS to update its classification to reflect that it had become an educational institution. The IRS did so on August 19, noting that it had not undertaken a fresh review of the entity's nonprofit status. As of September 9, 2015, the Department of Education considers Herzing's request to be considered a nonprofit an open case "undergoing substantive review."[25]

Between the time that the Herzing Educational Foundation submitted its application for tax-exempt status and the actual designation by the IRS, more than eight months had passed, about the average time that it takes for IRS review of a Form 1023. Remington Colleges, Inc., with nineteen campuses in ten states and an online operation, got its IRS designation in eight weeks flat.

At the same time that it sought nonprofit status, Remington Colleges purchased a chain of schools, Educate America, owned primarily by Jerald Barnett, Jr., for $217,500,000. The college was quite open about the fact that it was attempting to evade the 90–10 rule, which requires colleges to show that at least 10 percent of their revenue is from courses other than the U.S. Department of Education. The *Chronicle of Higher Education* quoted school officials as saying that the reason for becoming nonprofit was to escape the 90–10,[26] a U.S. Senate committee's review of financial data concluded that the school's difficulties in meeting the 90 percent threshold "likely served as the prime impetus for conversion to nonprofit status,"[27] and the school's application for tax-exempt status actually includes escaping regulations as a reason for becoming nonprofit.[28]

For a nonprofit, however, the structure of Remington Colleges, Inc., is extremely unusual. As described earlier, the board of trustees for a nonprofit is normally comprised of people who care about the organization's mission but do not gain any financial benefit from it. Carleton College in Minnesota, for example, is controlled by forty-two trustees (see Figure 1). Only one of them, the president of the university (who is hired by the rest of the board), earns anything at all. Everyone else donates time and, likely, money to the college, without the expectation of a financial return on their investment.

Figure 1

Remington Colleges, in contrast, has a five-member board of trustees. One of them is the CEO of the colleges. Another is the primary creditor, Jerald Barnett, whose company is collecting payments from Remington's purchase of his Education America campuses and who is the landlord for the properties used by the schools. The three other board members, considered independent in the Remington application for tax-exempt status, are the principal and two employees of a financial services firm, Stephens, Inc., which assisted with the purchase of the Educate America campuses for a fee of $2.5 million. Furthermore, Stephens, Inc., will continue to be paid by Remington to manage the retirement plan for employees (amounts not disclosed). Not only that, but Remington has given Stephens, Inc., <u>an explicit waiver</u> regarding conflicts of interest—meaning that the firm can choose investments that benefit Stephens, Inc., even if the investment choices are bad for Remington Colleges.[29] And the Remington board of trustees is actually not even in control. Instead, Warren Stephens, the owner of Stephens, Inc., has the power to replace Remington board members without cause.[30]

As Figure 2 shows, Remington's control structure is extremely convoluted, and may lack protections against self-dealing.

Figure 2

How did the IRS miss all of this in the exemption application? The IRS may have rushed because of the requester's insistence on an expedited review, accompanied with an explanation that created the impression that the U.S. Department of Education needed an answer within a particular time frame, which the lawyers for Remington described as about seven weeks from the date of their application. Among the exhibits submitted by Remington in the 2010 Form 1023 application was the following "Expedite Request":

The application materials provided by the IRS appear to indicate that the Remington application was approved without any questions from the IRS specialist to the applicant, in stark contrast to time and attention that the IRS put into its review of the Herzing application.

Remington officials did not respond to a request for comment from The Century Foundation.

The Form 1023 that Arthur Keiser submitted to the IRS in September 2000 seeking nonprofit status for Everglades College raised suspicions, leading to a twenty-one-month, 388-page tug-of-war between the Everglades lawyers and the IRS. The exchange between Keiser and the IRS is curious in its complexity—the IRS obviously saw many red flags in the application, yet eventually granted the college tax-exempt status. The record of the IRS requests and how Everglades responded to them provides a telling illustration of the principles at stake concerning nonprofit governance.

On March 7, 2000, Arthur Keiser petitioned the Florida Division of Corporations to change the name of a for-profit company he had purchased, American Flyers College, Inc., to Everglades College, Inc., and to convert the entity to a nonprofit corporation under Florida law. On September 6, 2000, Keiser filed a Form 1023 with the IRS seeking federal tax-exempt status for the converted company. The application was assigned to charitable organization specialist Aletha Bolt and then transferred to specialist John Jennewein in Cincinnati.

The IRS had a lot of questions. The first set, sent in a January 2001 letter, included inquiries about a lease agreement between the proposed nonprofit and a company owned by the Keisers, Keiser School, Inc.; details of the purchase of the for-profit predecessor corporation; the assets and liabilities of Everglades and of the Keisers; and an appraisal of the value of the college. Everglades responded.

The IRS asked for more information about compensation of board members, the salaries and qualifications of faculty, and related topics. Everglades responded.

The IRS requested more information including the Keiser purchase agreement, the management agreement between Everglades Management (previously disclosed as owned in part by Keiser) and the college, any loan agreements, and an explanation of the connections to Keiser College, Keiser Career Institute, and Keiser Management Inc., Susan Ziegelhofer, the president of Everglades College, Inc., responded that there was no purchase agreement: the transfer of the college "was a charitable contribution of the entire educational facility." She further declares that there are no loans between the for-profit and tax-exempt entities.

In response, the IRS requested that Everglades provide the following information regarding loans or payments to Keiser-controlled entities:

For each of the following please explain and specify the accounts:

a. Accounts Payable and Accrued Expenses please provide a detail [sic] explanation why there is a $50,951.18 debit balance in this account?

b. If you have no loan or note agreements who is the loan with and what is the relationship for the Loan Payable of $16,208.41 and please explain the terms and conditions of the loan?

c. Who is the Loans and Notes Receivable with and what is the relationship and please explain the terms and conditions of the loan?

d. Who is the Loan Receivable in the amount of $1,655 with and what is the basis for the loan and please explain the terms and conditions of the Loan Receiveable?

e. Why do you show an amount due to Keiser College for the amount of $463. [sic]

f. If you have no management contracts or fees charged by Everglades Management, Inc explain why do you show an amount of $8,232 due to them? If it is for services please explain the services and what the basis for the charge?

On July 10, 2001, Arthur Keiser, writing as chancellor of Everglades College, explained the various loans and amounts.

On July 16, 2001, a letter from the director of the Exempt Organization Division of the IRS declared the case closed because "we have not received the information necessary to make a determination of your tax-exempt status."

Months went by, with no documents in the IRS file indicating what, if anything, happened. Then, on December 18, 2001, Jennewein sent to Everglades a detailed seven-page description of the problems with the request for tax-exempt status for Everglades. He cited as reasons for concern the fact that the Memorandum of Understanding for flight training "is serving the private benefit of a for-profit entity" and that "Everglades gave scholarships . . . to students at Keiser College, a for-profit college owned by Arthur, Evelyn, and Robert Keiser." Therefore, as Jennewein described in his letter, Everglades is serving the private benefit of a for-profit entity," as well as renting of Keiser-owned buildings:

Correspondence dated March 30, 2001 signed by Arthur Keiser, President of Everglades College, stated that the building in which the school is located is owned by a partnership in which related parties have a 42% interest and unrelated parties owned a 58% interest. The related parties are Keiser Building Corp., which is owned by Arthur Keiser who owns a 2% interest in the partnership; Spectrum Investment Associates which owns a 40% interest in the partnership is owned 48% by Arthur Keiser, 48% by Belinda Keiser and 4% by Robert Keiser. These joint venture (owned 42% by related parties) leases space to Keiser College which in turn's subleases to Everglades College, Inc. The entire building comprises 83,824 square feet, including the are [sic] occupied by Everglades College. Also, housed in this facility are Keiser Career Institute and Everglades Management Company. Again, this arrangement services the private benefit of the Keisers and they're related for profit entities.

He cited the laws, regulations, and court cases governing tax-exempt entities, including a case that says:

When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if it furthers other exempt purposes.[32]

He cited a school-specific ruling from the IRS that hinges in part on the board of the nonprofit being "completely different" from the for-profit entity's owners:

Rev. Rul. 76-441, 1976-2 C.B. 147, presents two situations concerning school operations. In the first scenario a nonprofit school succeeded to the assets of a for-profit school. While the former owners were employed in the new school, the board of directors was completely different. The ruling concludes that the transfer did not serve a private interest. Part of that conclusion was based on the independence of the board. In the second scenario, the for-profit school converted to a nonprofit school. The former owners became the new school's directors. The former owners/new directors benefited financially from the conversion. The ruling concludes that private interest was served. The conclusion is stated as follows: "The directors were, in fact, dealing with themselves and will benefit financially from the transactions. Therefore, (the applicant) is not operated exclusively for educational and charitable purpose and does not quality for exemption from federal income tax under Section 501 (c) (3) of the Code."

He explained why Everglades does not qualify as tax-exempt, and suggested that the application be withdrawn:

Everglades College is privately held and controlled by the Keisers despite the fact that they do not constitute a majority of the governing board. Therefore, it appears you operate for the benefit of private interests of the Keisers. You are similar to the organization in Old Dominion Box Co. . . . because you operate for the benefit of private parties. Operating for the benefit of the Keisers is a substantial nonexempt purpose that will preclude exemption.

Although Everglades College is offering educational courses to further one career, the central question is whether you operate for the benefit of private interest of designated individuals, or the creator or the creator's family. In Rev. Rul. 76-441 a for-profit school was converted to a nonprofit school in which former owners/new directors benefited financially from the conversion. The ruling concludes that private interest was served. Although the operation of a school is a charitable activity, the manner in which you operate leads to conclude that your school bestows significant private benefit for the Keisers and their for-profit corporation.

Based on the facts and circumstances provided to date, it appears you cannot satisfy the basic requirements for exemption, in that you fail the operational test. To determine if you qualify under Section 1.501(c) (3)-1 (c) (1) of the regulations the Service determines if the organization engages primarily in activities which accomplish one or more exempt purposes. Section 1.501 (c) (3) – 1 (d) (1) (ii) of the regulations expands on the operated exclusively concept by providing that an organization is not operated exclusively to further exempt purposes unless it serves a public rather than a private interest. Based on the facts that you have provided in your application for recognition of exemption, it appears you are operated for a private purpose rather than a public purpose.

On January 2, 2002, the Everglades attorneys sent a letter, signed also by Arthur Keiser, detailing their responses to the December IRS letter, declaring that the Keiser scholarship recipients "were selected by an independent Board of Trustees"; that the rent paid to the Keisers is at fair market value and that "Dr. Keiser's preference would be for Everglades College to be housed in a different facility; however, its cash flow and working capital needs will not allow for such a move at this time"; and that the college will actually be run not by the board of directors of the corporation, but by the board of trustees (which includes Chancellor Keiser), which is an "independent governing board."

The thirteen-page Everglades response asserted multiple times that "Everglades College is governed by an independent Board of Trustees. Dr. Keiser has no control over the Board of Trustees or its decisions." Responding to the IRS's concern that Everglades College appears to operate for the benefit of the Keisers, the letter said that the opposite was the case: "now that Keiser College is planning to become a four-year program. . . . Everglades College will actually become a 'competitor' to Keiser College." The letter said at least twice that any benefit to the Keisers from Everglades was incidental at most, and concluded by saying: "Again, let me reiterate that neither Dr. Keiser nor any members of his family or any entities owned or controlled by them have derived, or will derive, any non-incidental private benefit attributable to Everglades College."

The IRS followed up with a request for more information, such as purchase agreements and details on shared space with Keiser College, asking specifically about the independence of the board of trustees. Everglades responded. The IRS then sent a letter recommending that the board of directors be expanded by two people "selected from the community in which you serve." Everglades responded by adding two new directors, Dale Chynoweth and Zev Helfer, "who were selected from the community [and] are unrelated to the members of the current Board of Directors" (Arthur and Belinda Keiser, and James Waldman, an attorney who was then vice mayor of Coconut Creek).

Eventually, on July 7, 2002, the IRS relented and granted Everglades College tax-exempt status, saying to Keiser, "assuming your operations will be as stated in your application for recognition of exemption." As Table 2 shows, this conditions appears not to have been met.

Table 2

The spirit of nonprofit governance by an independent board of trustees appears to be severely strained in the case of Everglades College. According to records available from the Florida Division of Corporations, at the time that Dale Chynoweth was added to the board of directors, he was hardly "unrelated" to other board members, as he was partner with Arthur Keiser in at least one business (Spectrum Business Park Association). In the ensuing years, the two were business partners in multiple properties that are rented by Everglades College. Zev Helfer joined Arthur Keiser as a business partner (College Pathology Labs, Inc.) just months before being named as an added "unrelated" director of Everglades College, Inc. James Waldman became a state representative, is the general counsel of Everglades College, Inc., and is the registered agent for various related Keiser businesses.

In addition to a board of directors, the corporate bylaws submitted to the IRS for Everglades College, Inc., call for a separate board of trustees to run the college. The bylaws declared that "The independence of the Board of Trustees is crucial to ensure that Everglades College meets the needs of the communities in which it serves," and Everglades told the IRS that no more than two trustees would either be employees or have "any other business relationship with Everglades College." The 2011 Form 990 submitted to the IRS for Everglades College indicates that three of the trustees owned businesses involved in transactions with Everglades College.

The Form 990 for 2011 also revealed that Everglades College had purchased the schools owned by the Keiser family, valued at $521,379,055, with $300,000,000 paid through a loan from the Keisers themselves and the remainder considered a tax-deductible donation by the Keisers. In total, the 2011 Form 990 reveals that Everglades College, Inc., paid $34,481,789 to entities owned by Keiser family members, including:

- $10,875,079 pursuant to the purchase agreement for the Keiser schools;

- $21,205,015 in rent and hotel stays at properties owned at least in part by the Keisers;

- $1,449,086 for chartered plane travel through companies at least partly owned by the Keisers; and

- $130,305 for services from a computer company owned by Keiser family members.

To provide some perspective on the enormity of the $34 million total, consider that the highest-paid nonprofit president as reported by the *Chronicle of Higher Education* for 2012 earned $7 million,[33] and the $34 million would cover the combined salaries of all of the top forty highest-paid public university presidents in 2013.[34]

Arthur Keiser told a reporter that selling his Keiser schools to Everglades was about "ensuring his family would have a continuing role in running the university."[35]

Offered the opportunity to comment on a summary of these findings, a representative of Keiser University provided a brief statement describing the school's history and asserting that "The structure of the corporation and acquiring of assets followed ALL state and federal guidelines and regulations."

On March 1, 2013, the IRS received a Form 8940 "Request for Miscellaneous Determination" from a small organization, the Center for Excellence in Higher Education (CEHE), which had originally been incorporated in Indiana in 2006. CEHE asked the IRS to approve the organization's shift from being considered tax-exempt as a charity to being considered tax-exempt as an educational organization. The law firm submitting the request explained that the change was being requested because CEHE had acquired a set of for-profit colleges owned by Carl Barney or by trusts of which he is the sole beneficiary.

The materials submitted to the IRS describing the organizational changes that were involved in the purchase of Carl Barney's colleges run more than five hundred pages. Within the IRS documents examined for this report, there is no indication that the IRS has verified that the purchased colleges are following the rules of nonprofit governance. The colleges, nonetheless, now describe themselves as dedicated to putting students first because they are nonprofit. Carl Barney's colleges were valued at $636,147,213 for the purposes of the purchase by CEHE. Of this amount, $431 million was incorporated into interest-bearing notes committing CEHE to pay Barney over time, and the remaining $205 million was considered a tax-deductible contribution from Barney to the nonprofit.

As part of the transaction, Barney became the "sole member" of the CEHE corporate entity, with "the right, inter vivos or by testament, to transfer such membership to another person," according to the CEHE's revised articles of incorporation. The revised bylaws state further that Barney, as the sole member, had the authority to name and remove board members. In other words, Carl Barney, who is owed $431 million by CEHE, fully controlled the supposedly nonprofit CEHE. On September 16, 2015, Barney filed a change in the CEHE articles of incorporation with Indiana secretary of state adding two additional members: Peter LePort and C. Bradley Thompson.

The various campuses owned by CEHE earn revenue of about $200 million per year, largely from federal programs that are funded by U.S. taxpayers. The various schools run by CEHE have recently come under fire. In 2014, the U.S. Department of Justice joined in a lawsuit against Stevens-Henager College, alleging that the school was using improper bonuses to pay its recruiters.[36] In December 2014, Colorado officials sued CollegeAmerica over misleading advertising.[37] In June 2015, several CollegeAmerica schools were placed on probation by their accreditor, based on concerns about low job placement rates.[38] And as of September 9, 2015, the Department of Education considers CEHE's request to be considered a nonprofit an open case "undergoing substantive review."[39]

Is the $636 million a fair price for Barney's colleges? In response to a request for comment, a CEHE official told The Century Foundation that the amount was reviewed by an independent valuation consultant and that the prior board of CEHE were not paid in the sale. Yet according to the organization's financial statements, the bulk of the price, $419 million, was not for tangible assets, but instead for the colleges' supposedly valuable reputations (accountants apply the term "goodwill" to the difference between a business's purchase price and the fair market value of the tangible assets). In other words, Barney is being paid and claiming a tax deduction for CEHE acquiring the reputations of colleges that are currently the subjects of multiple government investigations.

According to the organization's Form 990 for 2013, the eleven-member board of CEHE, only two of whom are uncompensated, paid Barney, the chairman of the board, more than $16 million that year: $11,231,444 of the purchase price with interest, $5,097,509 for property leases, and a small salary.

Covert for-profit colleges cost the public by misleading consumers, dodging taxes, and evading regulations that apply to Education Department financial aid. Further, their actions, and the failure of the federal government to address the problem, seriously undermine the integrity of the system of oversight of colleges and universities, as well as of charitable organizations as a whole.

Shortchanging Consumers

Colleges emphasize that they are public or nonprofit because these labels mean something. The labels certify that everything the college does, including how it spends its money, is overseen by trustees who are not seeking personal financial gain. They are vouching for the institution, and they affirm that there are valid educational or other charitable purposes behind every penny spent by the institution.

Placing ultimate control of colleges in the hands of people who do not have a conflict of interest produces better overall outcomes for students and society. For-profit colleges charge higher prices to the neediest students, have higher dropout rates, yield lower earnings for their graduates, and their students have greater difficulty repaying their student loans. In addition, for-profit colleges divert much of their tuition revenue to profit and marketing rather than education. At more than nine out of ten nonprofit institutions, the proportion of tuition revenue that is spent on instruction (actual teaching by faculty) is at least 50 percent. The schools examined in this report all fall far below that mark. Herzing was the highest at 39 percent, with Everglades/Keiser at 31 percent, Remington at 31 percent, and Carl Barney's school's spending only 16 percent of tuition revenue on instruction.[40]

Much of what matters most in education, however, is difficult if not impossible to quantify and measure because it involves the unknown potential futures of students. Colleges operate as nonprofit or public entities to prevent students' futures from being sacrificed to enrich an investor who wants a bigger, faster financial return. Operating as a nonprofit does not guarantee that students are treated well, but it increases their chances by eliminating owner and investor pressures.

All four of the colleges in this report are using their claim to nonprofit status as a marketing tool. But if they are not actually controlled by financially disinterested boards, then that layer of consumer protection is absent, and consumers are being misled.

Hiding from Regulations

As described earlier in this report, for-profit colleges are allowed access to federal financial aid only under particular circumstances.

First, for-profit schools must meet a market test, demonstrating that a portion of their revenue comes from somewhere other than federal aid. Even though this requirement has serious loopholes, many for-profit colleges still come very close to transgressing the 90 percent limit on Department of Education revenue, so the threshold is a serious concern that could motivate schools to seek nonprofit status. And in fact, as noted earlier, Remington was quite open that the 90–10 rule was an impetus for seeking to be considered nonprofit.

Second, programs at for-profit institutions are eligible for Department of Education aid only if they are focused on training for a job, leading to gainful employment. They are not eligible to receive federal funding for programs that focus on less tangible benefits, such as intellectual enrichment—only public and nonprofit institutions are trusted to receive public funding to offer degrees involving broader, less measurable goals.

Covert for-profit colleges that obtain paperwork identifying them as nonprofit institutions, yet fail to follow nonprofit governance structures, are evading these regulatory structures.

The colleges examined for this report have in recent years received a total of more than half a billion dollars every year in Pell Grants and students loans from the Department of Education. They also take in additional funds from other federal and state agencies, as well as additional tuition payments from students and their families.

If the colleges are not truly the nonprofit entities they claim to be, then many of these funds are being claimed inappropriately.

Evading Taxes

While the consumer protection offered by non-owner control is the most critical issue at play, there are two ways that tax laws treat nonprofits differently from for-profit entities. One is that donations to nonprofits can be deducted from the donor's income, reducing his income tax liability. This is a gain that comes not to the college but to the individual making the donation—though obviously the deductibility also helps the institution's fundraising. At least two of the conversions described in this report involved transactions in which the purchasing nonprofit gave the sellers credit for a "donated" portion of the sale price. If the deductions were taken by the sellers involved in the CEHE and Everglades transactions, the forgone federal income tax revenue could total more than $100 million.

The other benefit afforded nonprofit institutions is that their net income—revenue they decide to hold for future charitable purposes—is not subject to corporate income taxes. If the entities examined for this report ultimately have their nonprofit status revoked retroactively, then they will owe back taxes on the net income for every year that nonprofit status was inappropriately claimed. Based on the tax returns examined for this report, this liability could run into the hundreds of millions of dollars.

The four examples of covert for-profit colleges examined in this report should be enough to suggest swift and decisive action by regulatory agencies. The potential for a flood of conversion efforts makes attention to this issue all the more urgent: As recently as June, a lawyer involved in CEHE's purchase of Carl Barney's schools was being touted by his firm as an expert who can help other for-profit colleges avoid regulations and taxes by converting to nonprofit status.[41] With the gainful employment rule having taken effect in July 2015, more for-profit colleges may search for a way to dodge the requirement rather than comply. Indeed, on an investor call in November 2014, executives of one publicly traded company downplayed the coming regulations, explaining that they had options available, including "organizational structural changes, such as moving to a nonprofit model. . . . [W]e currently have a nonprofit entity that could be used in such a transaction."[42]

What follows are recommendations for both the IRS and the Department of Education.

IRS Monitoring and Enforcement

The problem of inadequate oversight of charities by the Exempt Organizations Division of the IRS (caused in part by inadequate funding of the IRS) has been a focus of congressional attention and a recent report by the Government Accountability Office.[43] Among other things, the IRS has committed to refining its targeting of reviews of existing nonprofits so that the most significant hazards are more likely to be addressed in a timely manner. The plans do not go far enough, however, because they take into consideration only the IRS's priorities rather than the interests of other federal agencies that rely on IRS determinations. The issue is not just about charities' assertions that donations will be tax deductible, but also the cascade of events that follows such a determination: the public funding that will be going to the institutions, and students and families taking out student loans and committing time and energy to an education that is not what was advertised.

Because the IRS handles tax documents, it is particularly attuned to issues of privacy. But the work of the Exempt Organizations Division is different because nonprofit organizations are required to have some degree of transparency. Particularly when the tax-exempt status of these organizations opens the door to federal funding, the IRS should work hand-in-hand with the relevant federal agencies to make sure that its determinations about organizations' nonprofit status are accurate, valid, and current, based on information available from all sources.

Education Department Monitoring and Enforcement

It is problematic that the Department of Education has been relying solely on IRS letters to determine a college's eligibility for federal financial aid. The agency's own regulations call for a more rigorous review, requiring colleges that wish to be treated as nonprofit to show, in addition to the IRS designation, that "no part of the net earnings" of the school "benefits any private shareholder or individual," and that the school is authorized as a nonprofit institution by the states in which it operates.[44]

With this in mind, the secretary of education should immediately:

- Aggressively review recent nonprofit conversions to determine regulatory compliance.
- Place a moratorium on Department of Education approval of any additional institutions seeking to be treated as nonprofit.
- Revise the documentation and assertions required of institutions claiming nonprofit status.
- Seek the assistance of states and accreditors to identify any institutions that are claiming to be nonprofit but may be operating in a manner that inappropriately benefits an individual or shareholder.

During the moratorium, the Department of Education and the IRS should develop a joint work plan for the review of nonprofit institutions going forward. The application for access to federal aid (program participation agreement) should require all institutions to attest they are in full compliance with IRS and Department of Education rules regarding nonprofit operations. Internal conflicts of interest and changes in governance should be fully assessed before federal aid is made available to an institution. Finally, any proposed change of ownership involving a nonprofit institution should be subject to public review prior to approval by the department.

It is clear that the 90–10 rule, which applies only to for-profit colleges, is one reason that for-profit college owners are now seeking ways to cloak themselves as nonprofit. In addition to examining more closely any nonprofit conversions, the Department of Education should also monitor for-profit institutions' relationships with scholarship entities to prevent their inappropriate use in the 90–10 calculations. If the 10 percent portion in the 90–10 rule is achieved with funds controlled, directly or indirectly, by the for-profit—such as through an affiliated nonprofit scholarship fund—then the market accountability mechanism is undermined. In addition, Congress may want to consider applying an improved version of the 90–10 rule more broadly. While nonprofit and public institutions typically have far fewer than 90 percent of their students using federal aid, some do price some programs to take maximum advantage of the federal aid that is available. Requiring some market price accountability in those situations is worth considering.

Longer term, the Department of Education should consider whether the determination of a school's eligibility is well placed in its current location at Federal Student Aid (FSA). FSA's primary task is operational, processing millions of FAFSAs and millions of grant and loan payments. The role of policing schools might be carried out more effectively if it was placed at an enforcement entity, such as the Office of Inspector General. While care should be taken not to expect too much from moving organizational boxes, this may be one case where there could be real benefits. The White House might even consider the idea of linking the school eligibility roles of the Departments of Education, Veterans Affairs, Defense, and Labor.

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Robert Shireman is a senior fellow at The Century Foundation working on education policy with a focus on for-profit college accountability, quality assurance, and consumer protections.

1. See Committee on Health, Education, Labor, and Pensions, United States Senate, *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* (Washington, D.C.: Government Printing Office, July 30, 2012), http://www.gpo.gov/fdsys/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf.

2. National Center on Education Statistics, "Undergraduate Enrollment," http://nces.ed.gov/programs/coe/indicator_cha.asp, accessed August 31, 2015.

3. U.S. Department of Education, "Obama Administration Takes Action to Protect Americans from Predatory, Poor-Performing Career Colleges," March 14, 2014, http://www.ed.gov/news/press-releases/obama-administration-takes-action-protect-americans-predatory-poor-performing-career-colleges.

4. Alia Wong, "The Downfall of For-profit Colleges," *Atlantic,* February 23, 2015, http://www.theatlantic.com/education/archive/2015/02/the-downfall-of-for-profit-colleges/385810/.

5. The requirement that nonprofits reinvest rather than distribute profits is known as a "nondistribution constraint." Henry B. Hansmann, "The Role of Nonprofit Enterprise," Yale Law Journal 89, no. 5 (1980): 835–901.

6. Michael Johnston, "Wikipedia Revenue Analysis: How a Wiki Could Make $2.8B a Year," MonetizePros blog, http://monetizepros.com/blog/2013/analysis-how-wikipedia-could-make-2-8-billion-in-annual-revenue/. In comparison, Wikimedia's Form 990 shows revenue of $45 million.

7. Helmut K. Anheier and Jeremy Kendall, "Trust and voluntary organisations: Three theoretical approaches," Working Paper 5, Centre for Civil Society, 2000, http://eprints.lse.ac.uk/29035/.

8. Glenn C. Altschuler and Stuart M. Blumin, *The GI Bill: A New Deal for Veterans* (New York: Oxford University Press, 2009).

9. The 85-15 rule is discussed in a Supreme Court ruling that upheld it, *Cleland v. National Coll. of Business,* 435 U.S. 213 (1978), https://supreme.justia.com/cases/federal/us/435/213/case.html. For a discussion of more recent versions of the rule see Robert Shireman, "Behind the Fraud Charges against ITT Education," *Huffington Post,* May 13, 2015, http://www.huffingtonpost.com/robert-shireman/behind-the-stock-fraud-ch_b_7271134.html.

10. The National Defense Education Act of 1959 defined an eligible institution of higher education as one that is, among other things, a "public or other nonprofit institution." *The National Defense Education Act of 1959,* Public Law 85-864, U.S. Statutes at Large 72 (September 2, 1958), http://www.gpo.gov/fdsys/pkg/STATUTE-72/pdf/STATUTE-72-Pg1580.pdf.

11. *Higher Education Act of 1965*, Public Law 89-329, 89th Cong. 1st sess. (Government Printing Office, 1965), https://bulk.resource.org/gao.gov/89-329/00004C64.pdf.

12. See the history included in the proposed regulation. Department of Education, "Program Integrity: Gainful Employment; Proposed Rule," *Federal Register* 79 (57) (2014): 16426–643, http://www.gpo.gov/fdsys/pkg/FR-2014-03-25/pdf/2014-06000.pdf.

13. Robert Rothman, "Bennett Asks Congress to Put Curbs on 'Exploitative' For-Profit Schools," *Education Week*, February 17, 1988, http://www.edweek.org/ew/articles/1988/02/17/07450039.h07.html. And American Council on Education, "Bennett Cites Abuses, Defaults at Proprietary Schools , " *Higher Education and National Affairs*, February 15, 1988.

14. For more information about the gainful employment rule, which took effect on July 1, 2015, see "Gainful Employment Rule Questions & Answers," Protect Students and Taxpayers website, June 30, 2015, http://www.protectstudentsandtaxpayers.org/wp-content/uploads/2015/06/GainfulEmploymentQA_June-30-2015-_5-pages.pdf.

15.See Career Education Corporation earnings call, November 6, 2014, and Ronald J. Hansen, "GCU Non-profit Would Break New Ground, Enrich Execs," Arizona Republic, January 26, 2015, http://www.azcentral.com/story/money/business/2015/01/17/gcu-non-profit-break-new-ground-enrich-execs/21942343/.

16. Technically, an entity organizes itself as a nonprofit under state law, and seeks from the IRS the additional designation of being a "tax-exempt" nonprofit, one that is not subject to corporate income taxes (because it will be reinvesting its earnings into charitable purposes). Depending on the type of IRS approval, donors may also be able to deduct their contributions from personal income taxes.

17. 26 CFR 601.201(n)(3)(ii).

18. CFR 601.201(n)(6)(i) and (vii).

19. *Partners in Charity, Inc. v. Commissioner* 141 T.C. 151, 141 T.C. No. 2 (2013).

20. U.S. Government Accountability Office, "Tax-Exempt Organizations: Better Compliance Indicators and Data, and More Collaboration with State Regulators Would Strengthen Oversight of Charitable Organizations," December 2014, http://www.gao.gov/assets/670/667595.pdf.

21. Author's communication with staff of the U.S. Department of Education, including a discussion with the Office of the Undersecretary on June 1, 2015.

22. Committee on Health, Education, Labor, and Pensions, United States Senate, *For Profit Higher Education.*

23. Revenue and 90–10 figures were provided by Herzing University in response to a request for comment.

24. Rick Romell, "Herzing University becomes a nonprofit organization," *Milwaukee Journal-Sentinel,* January 2, 2015, http://www.jsonline.com/business/herzing-university-becomes-a-nonprofit-organization-b99419151z1-287365131.html.

25. Letter from Ted Mitchell, undersecretary of education, to Representative Rosa L. DeLauro, September 9, 2015, on file with the author.

26. Goldie Blumenstyk, "Another College Takes the Path From For-Profit to Nonprofit," *Chronicle of Higher Education*, January 20, 2011.

27. See report on Education America (Remington) in Committee on Health, Education, Labor, and Pensions, United States Senate, *For Profit Higher Education.*

28. See discussion on page 96 of the application for tax-exempt status.

See section XXI of the Stephens Retirement Services "Investment Management and Plan Services Agreement," at pages 128-9 of Remington's Form 1023 source document, available online.

30. The revised bylaws give the "sole member" of Remington Colleges, Inc., the authority replace trustees. The sole member is Warren Stephens, through his effective control of The Stephens Charitable Trust. See page 70 of Remington's Form 1023: "The sole member of the College is the Jackson T. Stephens Charitable Trust (the "Trust"), a Sec. 501 (c)(3) organization. Warren Stephens, a member of the Board, is a trustee of, and effectively controls, the Trust."

31. See 2010 Form 1023 in Remington source documents, available online.

32. *International Postgraduate Medical Foundation v. Commissioner,* 56 T.C.M. 1140 (1989).

33. See Shirley Ann Jackson at Rensselaer Polytechnic Institute, in "Executive Compensation at Public and Private Colleges," database at *The Chronicle of Higher Education* (paywall), http://chronicle.com/factfile/ec-2015/#id=18461_194824_2012_private.

34. "Compensation of Chief Executives at Public Colleges, 2013-13," *Chronicle of Higher Education,* June 12, 2015, A31.

35. Paul Fain, "Dropping Profit," *InsideHigherEd,* July 17, 2014, https://www.insidehighered.com/news/2014/07/17/few-profits-have-become-nonprofits-despite-regulatory-environment.

36. David Halperin, "Justice Department Sues For-Profit Stevens-Henager College," *Huffington Post*, June 9, 2014 (updated), http://www.huffingtonpost.com/davidhalperin/breaking-justice-dept-sue_b_5120249.html.

Kieran Nicholson, "CollegeAmerica sued by Colorado AG for 'deceptive trade practices," *Denver Post,* February 17, 2015, http://www.denverpost.com/news/ci_27544803/collegeamerica-sued-by-colorado-ag-deceptive-trade-practices.

38. Letters released by the Accrediting Commission of Career Schools and Colleges, June 17, 2015, http://www.accsc.org/UploadedDocuments/Commission%20Actions/Probation%20Summary%206-17-15.pdf.

Career Education Corp earnings call, November 6, 2014.

U.S. Government Accountability Office, "Tax-Exempt Organizations."

34 CFR 600.2.

EXHIBIT 9

September 25, 2015

SENT VIA EMAIL

Ms. Torie Smith
The Century Foundation
One Whitehall Street, 15th Floor
New York, NY 10004

Dear Ms. Smith:

On September 22, 2015 you informed me that the Century Foundation would soon publish a report that included information about Center for Excellence in Higher Education, Inc. ("CEHE"). You listed eight statements about CEHE that the Century Foundation planned to include in its report and informed me that CEHE had two days to provide written comments to these statements if CEHE wanted its comments considered before final publication of your report.

Here are the eight statements which the Century Foundation claims to be accurate and truthful, "*based on public information and documents provided pursuant to public records requests to federal agencies.*"

1. In March 2013 CEHE filed a request with the IRS to approve the organization's shift from being considered tax-exempt as a think tank to being considered tax-exempt as a school. The IRS has not approved or denied the request.
2. The colleges purchased by CEHE were valued at $636,147,213. Of this amount, $431 million was incorporated into interest-bearing notes committing CEHE to pay Carl Barney over time, and the remaining $205 million was considered a tax-deductible contribution from Barney to CEHE.
3. As part of the transaction, Barney became the "sole member" of the CEHE corporate entity, with "the right, inter vivos or by testament, to transfer such membership to another person," according to the CEHE's revised articles of incorporation. The revised bylaws state further that Barney, as the sole member, has the authority to name and remove board members.
4. In 2014, the U.S. Department of Justice sued Stevens-Henager College, alleging that the school was using illegal bounties to pay its recruiters.
5. In February 2015, Colorado officials sued CollegeAmerica over misleading advertising.
6. In June 2015, the CollegeAmerica schools were placed on probation by their accreditor, based on concerns about low job placement rates.
7. In 2012, CEHE colleges had cash revenues, not including school loans, of $180,182,000, of which $169,805,000 came from government sources.
8. In 2012, CEHE valued its corporate goodwill at $419 million.

There are significant errors, falsehoods, and misrepresentations in the eight statements you present as facts that the Century Foundation has "*found*" about CEHE.

CEHE's Response to Century Foundation Statements

1. ***In March 2013 CEHE filed a request with the IRS to approve the organization's shift from being considered tax-exempt as a think tank to being considered tax-exempt as a school. The IRS has not approved or denied the request.***

This statement contains false, misleading, and inaccurate information.

1a. CEHE was never considered, registered, or approved by the IRS as a tax-exempt "*think tank*." CEHE has been classified as a tax-exempt public charity since September 4, 2007 and remains classified as a tax-exempt public charity today. CEHE has ***never*** requested a change in its classification from a public charity to a private foundation.

1b. **Your statement that CEHE filed a request with the IRS in March 2013 is inaccurate.** On February 27, 2013, CEHE filed a request with the IRS to evaluate whether donors to CEHE could deduct their contributions under section 170(b)(1)(A)(**ii**) of the IRS Code.

1c. **Your statement that the IRS has not approved or denied a CEHE request is inaccurate**. On July 25, 2014, CEHE received a response from the IRS to CEHE's February 27, 2013 letter acknowledging that CEHE was considered a public charity under 509(a)(1) of the Code and that donors to CEHE could deduct contributions under section 170(b)(1)(A)(ii) of the IRS Code.

2. ***The colleges purchased by CEHE were valued at $636,147,213. Of this amount, $431 million was incorporated into interest-bearing notes committing CEHE to pay Carl Barney over time, and the remaining $205 million was considered a tax-deductible contribution from Barney to CEHE.***

This statement is incomplete, misleading, and inaccurate. CEHE does not have any debt to Carl Barney as an individual.

3. ***As part of the transaction, Barney became the "sole member" of the CEHE corporate entity, with "the right, inter vivos or by testament, to transfer such membership to another person," according to the CEHE's revised articles of incorporation. The revised bylaws state further that Barney, as the sole member, has the authority to name and remove board members.***

Following CEHE's December 31, 2012 transaction, Carl Barney was the sole member of CEHE. Today, however, CEHE has multiple members.

4. ***In 2014, the U.S. Department of Justice sued Stevens-Henager College, alleging that the school was using illegal bounties to pay its recruiters.***

This statement contains false, misleading, and inaccurate information.

4a. The U.S. Department of Justice did not sue Stevens-Henager College. In 2014, a lawsuit against Stevens-Henager College was filed on behalf of the U.S. Government by two relators. Upon review of the relators' complaint, the Department of Justice decided to intervene in a narrow part of the action and declined to intervene in other parts of the action.

The Department of Justice's complaint in intervention is presently subject to multiple CEHE motions for dismissal which are likely.

4b. The U.S. Department of Justice has never alleged that Stevens-Henager College was using "illegal bounties" to pay its recruiters. The Century Foundation's use of this term is pejorative, misleading and defamatory.

The truth is that Justice Department alleges that from July 1, 2007 to May 20, 2009, Stevens-Henager College's compensation practices improperly included the payment of bonuses to admissions personnel when students successfully completed one academic year of college. This allegation is made despite a regulatory Safe Harbor which specifically allowed such compensation.

5. ***In February 2015, Colorado officials sued CollegeAmerica over misleading advertising.***

This statement contains false, misleading, and inaccurate information.

5a. No action, lawsuit, or complaint was filed against CollegeAmerica in February 2015 by Colorado officials or by any other plaintiff.

6. ***In June 2015, the CollegeAmerica schools were placed on probation by their accreditor, based on concerns about low job placement rates.***

This statement contains false, misleading, and inaccurate information.

6a. In June 2015, CollegeAmerica received notice from its institutional accreditor, Accrediting Commission of Career Schools and Colleges (ACCSC), that the following CollegeAmerica campus locations were being placed on probation: Denver, CO, Colorado Springs, CO, Ft. Collins, CO, and Cheyenne, WY. CollegeAmerica's other campuses in Phoenix, AZ, Flagstaff, AZ, and Idaho Falls, ID were ***not*** placed on probation.

Additionally, none of CollegeAmerica's programmatic accreditors have placed any campus on probation. CollegeAmerica is presently appealing ACCSC's probation decision.

7. In 2012, CEHE colleges had cash revenues, not including school loans, of $180,182,000, of which $169,805,000 came from government sources.

This statement contains false, misleading, and inaccurate information.

7a. The numbers quoted above are inaccurate. CEHE colleges' cash revenues for 2012 totaled approximately $187 million, of which approximately $158 million came from Federal Title IV government financial aid programs.

8. In 2012, CEHE valued its corporate goodwill at $419 million.

Of the eight statements made by the Century Foundation, this statement is accurate.

In an effort to provide you a more complete and comprehension picture of CEHE, consider the following. CEHE, a section 501(c)(3) public charity, was established in 2007 by philanthropists who had donated millions of dollars to U.S. colleges and universities and were concerned about the state of higher education in this country.

CEHE's principal purpose, as described in its Application for Exemption as an Organization described in Section 501(c)(3) of the Internal Revenue Code (the "Code"), was to educate the public about higher education in America and to help donors promote excellence in higher education through philanthropy. Those founders believed that through effective philanthropy, due diligence, proper governance, and management accountability, America's colleges and universities could be transformed into high-performing institutions that prepare today's students to be tomorrow's leaders.

From 2007 until 2012, CEHE conducted a series of research programs and supported faculty interested in improving higher education at colleges and universities around the country and internationally. CEHE also engaged in several research projects, acting in the background to help philanthropists who wanted to promote structural reform of higher education more generally.

In 2012, Fred Fransen, the Executive Director of CEHE and a philanthropic advisor, approached the colleges' stockholder, Carl Barney, and suggested a merger with the colleges. The CEHE Board of Directors saw this as a beneficial opportunity. Mr. Barney wanted the colleges to become nonprofit institutions to better carry out his philanthropic goals and the mission of the colleges to better serve their student bodies. Mr. Barney also shared much of the same vision for higher education as the founders of CEHE.

On December 31, 2012, CEHE merged with and now operates the colleges as nonprofit institutions organized and operated exclusively for educational purposes. The IRS was provided with all relevant documents pertaining to the merger. CEHE was and remains a public charity compliant with the requirements of section 501(c)(3) of the IRS Code.

The merger of these colleges with an existing and unaffiliated nonprofit entity differs materially from other for-profit to nonprofit college transactions. CEHE's transaction differs as follows:

1. Prior to the transactions, the Board of Directors of CEHE had no relationship whatsoever with Mr. Barney or anyone else at the colleges. The negotiations for the merger were conducted at arms-length between CEHE and the stockholder of the colleges, Mr. Barney.

2. The CEHE Board, as well as its separate counsel, independent accountant, and independent valuation consultant, reviewed the form and amount of the consideration proposed to be paid by CEHE for the colleges as well as the terms and conditions of the merger transactions as a whole.

3. Aided by an independent appraisal, related valuations and other appropriate data and its due diligence, the CEHE Board determined that:

   a) the merger transaction provided CEHE not only with fair market value, but a "bargain sale";

   b) the transactions, taken as a whole, provided CEHE with a discount reflecting a substantial charitable contribution to CEHE by Mr. Barney of more than $200 million;

   c) Mr. Barney took no fees of any kind, including management fees; and

   d) the leases of land and buildings by the colleges were continued at the same fair market value rates as in place prior to the transaction.

4. The CEHE transaction resulted in real changes, and the colleges operate as a bona fide public charity:

   a) The members of the historical, independent Board of CEHE remained on the Board after the transactions; no monies were paid to the CEHE Board for the transactions;

   b) CEHE's colleges have not raised tuition since their conversion to nonprofit;

   c) A substantial contribution of over $200 million was made to CEHE;

d) As part of the merger, Mr. Barney has personally contributed accounts receivable valued at approximately $24 million along with an additional cash contribution of $10 million to CEHE;

e) Subsequent to the merger, Mr. Barney has personally continued to make substantial charitable donations to CEHE of about $5 million dollars;

5. Since the merger, CEHE has awarded grants of nearly $7 million dollars to other unaffiliated colleges, universities and charitable organizations;

a) CEHE provides numerous scholarship programs to assist students with paying for college;

b) The debt issued by CEHE to finance the merger was deeply subordinated to ensure that CEHE would remain financially sound and bears interest at a below market rate of only 1% annually; and

6. There are no management contracts, non-compete agreements or any other agreements wherein Mr. Barney or any person related to him profits personally from the colleges or CEHE.

Unfounded allegations have been made that the merger was done solely to evade regulations. This is not the case for CEHE or the colleges. For example, the colleges have maintained compliance with the 90:10 Rule, even though they are no longer bound by it. Further, CEHE recently received favorable determinations in a program review, closing all matters that the Department of Education had previously indicated were causes for concern.

Ms. Smith, unfortunately there has been and continues to be a politicized campaign to discredit lawful conversions to nonprofit. We think the credibility of the Century Foundation's report is important to you and its recipients; therefore, we have taken the time to provide the above truthful information. If you would like to verify the truth of anything else, do not hesitate to contact me.

Sincerely,

Eric S. Juhlin
Chief Executive Officer
801-281-7603 direct
Eric.juhlin@collegeamerica.edu

EXHIBIT 10

National Center for Education Statistics [1]
Graduation rates (150% of normal time)
for CEHE and California 2-year Public Colleges
as of August 2014

UnitId	Rank	Institution name	Grad Rate (%)
117803	NA	Los Angeles County College of Nursing and Allied Health	N/A
123493	1	Charles A Jones Career and Education Center	96.9
371690	2	Downey Adult School	96.4
383084	3	Hacienda La Puente Adult Education	76.3
413802	4	East San Gabriel Valley Regional Occupational Program	71.9
113333	5	De Anza College	59.2
114716	6	Foothill College	55.7
113634	7	Diablo Valley College	39.4
116439	8	Irvine Valley College	39.3
120290	9	Ohlone College	39.0
120342	10	Orange Coast College	38.9
399212	11	Santiago Canyon College	38.5
119137	12	Moorpark College	36.2
113236	13	Cypress College	36.0
111461	14	College of the Canyons	35.9
115126	15	Golden West College	35.0
122205	16	Saddleback College	34.6
366401	17	Las Positas College	34.5
123013	18	Santa Rosa Junior College	33.9
485263	**19**	**California College San Diego**	**33.5**
122889	20	Santa Barbara City College	33.0
112172	21	Citrus College	32.9
118912	22	MiraCosta College	31.8
121044	23	Pasadena City College	31.8
117894	24	Los Medanos College	31.4
119331	25	Napa Valley College	31.3
117195	26	Lake Tahoe Community College	31.2
119164	27	Mt San Antonio College	31.0
444219	28	Folsom Lake College	30.8
122384	29	San Diego Miramar College	30.2
113856	30	East Los Angeles College	29.9
122977	31	Santa Monica College	29.9
123341	32	Sierra College	29.9
110246	33	Butte College	29.8
113980	34	El Camino Community College District	29.7
125499	35	West Valley College	29.5
114433	36	Feather River Community College District	29.2
121901	37	Riverside City College	29.0
119067	38	Monterey Peninsula College	28.9
114859	39	Fullerton College	28.6
113193	40	Cuesta College	28.5
125462	41	West Hills College-Coalinga	28.5
111920	42	Chabot College	28.1

National Center for Education Statistics [1] Graduation rates (150% of normal time) for CEHE and California 2-year Public Colleges as of August 2014			
UnitId	Rank	Institution name	Grad Rate (%)
123484	43	College of the Siskiyous	27.9
117706	44	Los Angeles Pierce College	27.9
125028	45	Ventura College	27.7
120971	46	Palomar College	27.6
123563	47	Solano Community College	27.5
110334	48	Cabrillo College	27.1
121363	49	Porterville College	27.1
109208	50	American River College	27.0
122658	51	San Joaquin Delta College	27.0
124113	52	Taft College	26.9
112190	53	City College of San Francisco	26.6
108807	54	Allan Hancock College	26.4
113096	55	Cosumnes River College	26.4
114938	56	Gavilan College	25.7
115393	57	Hartnell College	25.5
123217	58	College of the Sequoias	25.2
113111	59	Crafton Hills College	25.2
121619	60	Santa Ana College	25.2
115861	61	Imperial Valley College	24.9
118930	62	Mission College	24.9
460464	63	Norco College	24.9
117052	64	Reedley College	24.6
448594	65	West Hills College-Lemoore	24.5
126119	66	Yuba College	24.1
109350	67	Antelope Valley College	23.8
119216	68	Mt San Jacinto Community College District	23.8
122180	69	Sacramento City College	23.8
117247	70	Laney College	23.7
114266	71	Evergreen Valley College	23.6
117645	72	Long Beach City College	23.5
118347	73	College of Marin	23.2
122375	74	San Diego Mesa College	23.2
120421	75	Oxnard College	23.1
109819	76	Bakersfield College	23.0
460394	77	Moreno Valley College	22.9
112561	78	Columbia College	22.8
122746	79	San Jose City College	22.7
113573	80	College of the Desert	22.5
117690	81	Los Angeles Harbor College	22.2
115296	82	Grossmont College	21.6
117724	83	Los Angeles Trade Technical College	21.3
117733	84	Los Angeles Valley College	21.1
113218	85	Cuyamaca College	20.7

National Center for Education Statistics [1] Graduation rates (150% of normal time) for CEHE and California 2-year Public Colleges as of August 2014			
UnitId	**Rank**	**Institution name**	**Grad Rate (%)**
123527	86	San Bernardino Valley College	20.7
111939	87	Chaffey College	20.5
108667	88	College of Alameda	20.4
121886	89	Rio Hondo College	19.6
123299	90	Shasta College	19.4
111896	91	Cerro Coso Community College	19.3
112826	92	Contra Costa College	19.3
118718	93	Merced College	19.1
118976	94	Modesto Junior College	19.0
123800	95	Southwestern College	18.6
118684	96	Mendocino College	18.5
120953	97	Palo Verde College	18.5
115001	98	Glendale Community College	18.1
114789	99	Fresno City College	17.8
455512	100	Woodland Community College	17.7
125170	101	Berkeley City College	17.1
395362	102	Copper Mountain Community College	16.9
117788	103	Los Angeles City College	16.9
112385	104	Coastline Community College	16.5
122791	105	College of San Mateo	16.2
123509	106	Skyline College	16.2
117867	107	Los Angeles Mission College	16.0
111434	108	Canada College	15.9
117274	109	Lassen Community College	15.7
125471	110	West Los Angeles College	15.5
125091	111	Victor Valley College	15.2
117715	112	Los Angeles Southwest College	15.0
111887	113	Cerritos College	14.9
122339	114	San Diego City College	14.3
121707	115	College of the Redwoods	11.0
112686	116	El Camino College-Compton Center	11.0
118772	117	Merritt College	10.5
109907	118	Barstow Community College	9.3
Average for California 2-year Public Colleges			**27.4**
485263	**19**	**CEHE's California College San Diego**	**33.5**
Percentage Difference			**22.1%**

[1] *Data from National center for Educational Statistics:*
https://nces.ed.gov/ipeds/datacenter/Institutionbyname.aspx
Summary data for Title IV Partipating, Public 2-year, and CEHE Colleges
Graduation rate is 150% of normal time reported in 2014

National Center for Education Statistics [1] Graduation rates (150% of normal time) for Salt Lake City 2-year Public College and CEHE as of August 2014			
UnitId	Rank	Institution name	Grad. Rate (%)
438151	1	Stevens-Henager College - Murray	28.8
230746	2	Salt Lake Community College	15.9
Percentage Difference			81.1%

[1] Data from National center for Educational Statistics:
https://nces.ed.gov/ipeds/datacenter/Institutionbyname.aspx
Summary data for Title IV Partipating, Public 2-year, and CEHE Colleges
Graduation rate is 150% of normal time reported in 2014

National Center for Education Statistics [1] Graduation rates (150% of normal time) for CEHE and Arizona 2-year Public Colleges as of August 2014			
UnitId	**Rank**	**Institution name**	**Grad. Rate (%)**
103945	**1**	**CollegeAmerica-Flagstaff**	**46.4**
474890	**2**	**CollegeAmerica-Phoenix**	**37.4**
104577	3	Eastern Arizona College	35.8
442781	4	Tohono O'Odham Community College	31.0
104425	5	Cochise County Community College District	23.0
364025	6	Chandler-Gilbert Community College	20.1
106148	7	Yavapai College	19.0
364016	8	Paradise Valley Community College	17.8
104346	9	Central Arizona College	17.7
105145	10	GateWay Community College	17.5
105747	11	Scottsdale Community College	16.5
104160	12	Arizona Western College	16.5
105792	13	South Mountain Community College	16.5
104708	14	Glendale Community College	14.9
105154	15	Mesa Community College	14.3
384333	16	Estrella Mountain Community College	12.5
105428	17	Phoenix College	12.3
105206	18	Mohave Community College	11.5
105525	19	Pima Community College	11.1
404426	20	Coconino Community College	6.0
105349	21	Northland Pioneer College	5.1
105668	22	Rio Salado College	4.4
Average for Arizona 2-year Public Colleges			**16.2**
Average for CEHE's CollegeAmerica			**41.9**
Percentage Difference			**159.0%**

[1] *Data from National center for Educational Statistics:*
https://nces.ed.gov/ipeds/datacenter/Institutionbyname.aspx
Summary data for Title IV Partipating, Public 2-year, and CEHE Colleges
Graduation rate is 150% of normal time reported in 2014

National Center for Education Statistics [1] Graduation rates (150% of normal time) for CEHE and Colorado 2-year Public Colleges as of August 2014			
UnitId	**Rank**	**Institution name**	**Grad. Rate (%)**
128151	1	Pickens Technical College	76.7
128258	2	Trinidad State Junior College	40.4
448761	**3**	**CollegeAmerica-Fort Collins**	**39.4**
448752	**4**	**CollegeAmerica-Colorado Springs**	**39.3**
127778	5	Otero Junior College	35.5
127389	6	Lamar Community College	32.5
126748	7	Colorado Northwestern Community Co	30.4
127732	8	Northeastern Junior College	29.7
127617	9	Morgan Community College	28.4
127909	10	Red Rocks Community College	26.2
126207	11	Aims Community College	25.5
126872	**12**	**CollegeAmerica-Denver**	**21.3**
127200	13	Front Range Community College	19.5
127884	14	Pueblo Community College	19.4
126289	15	Arapahoe Community College	18.5
126863	16	Community College of Aurora	18.4
127820	17	Pikes Peak Community College	12.0
126942	18	Community College of Denver	10.1
Average for Colorado 2-year Public Colleges			**28.2**
Average for CEHE's CollegeAmerica			**33.3**
Percentage Difference			**18.1%**

[1] *Data from National center for Educational Statistics:*
https://nces.ed.gov/ipeds/datacenter/Institutionbyname.aspx
Summary data for Title IV Partipating, Public 2-year, and CEHE Colleges
Graduation rate is 150% of normal time reported in 2014

EXHIBIT 11

Rev. Rul. 76-91, 1976-1 C.B. 150

Proprietary hospital acquired by nonprofit corporation. The purchase, in a transaction not at arm's length, of all of the assets of a profit-making hospital by a nonprofit hospital corporation at a price that includes the value of intangible assets, determined by the capitalization of excess earnings formula, does not result in the inurement of the hospital's net earnings to the benefit of any private shareholder or individual or serve a private interest precluding exemption under section 501(c)(3) of the Code.

Advice has been requested whether a nonprofit hospital that acquires certain property in the manner and under the circumstances described below qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The owners of X hospital, a profitmaking institution, created Y, a nonprofit corporation, to purchase and operate the hospital. Over one-half of the board of directors of Y consists of stockholders in X. Although Y will operate the hospital in a charitable manner in accordance with section 501(c)(3) rather than on a proprietary basis, the operation of the facility and the type of service provided will remain essentially unchanged.

Y's creating instrument meets the organizational requirements of section 1.501(c)(3)-1(b) of the Income Tax Regulations, including the limitation of its purposes to those described in section 501(c)(3) of the Code and the dedication of its assets to such purposes.

In order to establish the selling price of the hospital, the owners obtained an independent appraisal of the tangible assets and then computed the value of the intangible assets by the capitalization of excess earnings formula as set forth in Rev. Rul. 68-609, 1968-2 C.B. 327. The value of the intangible assets by this method was substantial.

Y purchased the hospital for the price arrived at by the above method. Such price represents the fair market value of the tangible and intangible assets.

Y submitted evidence establishing that the intangible assets have a direct and substantial relationship to the performance of the exempt functions of the hospital.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the regulations defines the term 'private shareholder or individual' as any person having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized exclusively for one or more charitable purposes unless it serves a public rather than a private interest.

Generally, where an organization purchases assets from an independent third party, a presumption exists that the purchase price (arrived at through negotiations) represents fair market value. However, where the purchaser is controlled by the seller (or there is a close relationship between the two) at the time of the sale, this presumption cannot be made because the elements of an arm's length transaction are not present.

In situations where there is common control of or a close relationship between the buyer and seller and both tangible and intangible assets are being purchased, the value of the tangible assets must first be established by independent appraisal. The purchaser must then establish the components of the intangible assets, indicate how these components will be used to further its exempt purposes, and establish the aggregate value of these intangibles.

In the case of a hospital, accreditation for an internship or residency program, good labor relations, an active medical staff, and a favorable location, are some factors that might have intangible value and enable a hospital to carry on a public service function more efficiently.

Where an organization claiming exemption from Federal income tax under section 501(c)(3) of the Code purchases intangible assets for a use that is directly and substantially related to its exempt purpose, the capitalization of excess earnings formula is an acceptable method of determining their value. In the present case, Y has established that the hospital it acquired has intangible assets and that the hospital will continue to be operated in a manner to provide essentially the same services it had previously. In these circumstances, the intangible assets will contribute directly and substantially to the accomplishment of Y's exempt purposes, and, therefore, it is appropriate for Y to value them by means of the capitalization of excess earnings formula. Thus, the purchase of the intangible assets of X by Y did not result in the inurement of Y's net earnings to the benefit of any private shareholder or individual, nor did the transaction serve a private rather than a public interest.

Accordingly, Y qualifies for exemption from Federal income tax under section 501(c)(3) of the Code.

Even though an organization considers itself within the scope of this Revenue Ruling, it must file an application on Form 1023, Application for Recognition of Exemption, in order to be recognized by the Service as exempt under section 501(c)(3) of the Code. The application should be filed with the District Director of Internal Revenue for the district in which is located the principal place of business or principal office of the organization. See sections 1.501(a)-1 and 1.508-1(a) of the regulations.

EXHIBIT 12

Rev. Rul. 76-441, 1976-2 C.B. 147

For-profit school converted to nonprofit school. An otherwise qualifying nonprofit organization that purchases or leases at fair market value the assets of a former for-profit school and employs the former owners, who are not related to the current directors, at salaries commensurate with their responsibilities is operated exclusively for educational and charitable purposes. An organization that takes over a school's assets and its liabilities, which exceed the value of the assets and include notes owed to the former owners and current directors of the school, is serving the directors' private interests and is not operated exclusively for educational and charitable purposes.

Advice has been requested whether the nonprofit organizations described below, which otherwise qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, are operated exclusively for charitable and educational purposes.

Situation 1.

X is the successor nonprofit organization to a former for-profit school. X purchased all of the for-profit school's personal property and leased the land and buildings from the former owners of the for-profit school. The personal property was purchased at fair market value and the rental of the leased facilities is at a fair market rental.

The former owners of the for-profit school are employed by X to reside at the school on a 24 hour basis and provide supervision and care of the students. The salaries paid to the former owners are commensurate with their responsibilities and are reasonable compensation for their services.

None of X's officers or directors is related by blood or marriage to the former owners, nor is any of them a business associate of the former owners.

Situation 2.

Y, a nonprofit organization, received all of the stock in a for-profit school as a gift. Y dissolved the for-profit school and assumed all of its liabilities, including notes owed to the former owners. The financial information indicates that the liabilities of the for-profit school exceeded the fair market value of its assets. Y's Board of Directors is composed of the former owners of the stock of the for-profit school.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In Situation 1, X purchased the former school's personal property at fair market value in an arm's length transaction and is paying a fair rental value for the use of the land and buildings. X has also established that it pays the former owners of the for-profit school reasonable compensation for their services.

Accordingly, X has established that it is operated to serve a public rather than a private interest. Therefore, X is operated exclusively for educational and charitable purposes and qualifies for exemption from Federal income tax under section 501(c)(3) of the Code.

In Situation 2, however, the Directors of Y benefitted in their individual capacities from Y's acceptance of a transfer of the stock in the for-profit school and its assumption of all the pre-existing liabilities thereof in connection with its subsequent liquidation. Since these liabilities included the notes owed to such directors and the liabilities of the for-profit school exceeded the fair market value of its assets, the nonprofit school is substantially serving the directors' private interests in honoring them. The directors were, in fact, dealing with themselves and will benefit financially from the transaction. Therefore, Y is not operated exclusively for educational and charitable purposes and does not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

Even though an organization considers itself within the scope of Situation 1 of this Revenue Ruling, it must file an application on Form 1023, Application for Recognition of Exemption, in order to be recognized by the Service as exempt under section 501(c)(3) of the Code. The application should be filed with the District Director of Internal Revenue for the district in which is located the principal place of business or principal office of the organization. See sections 1.508-1(a) and 1.501(a)-1 of the regulations.

EXHIBIT 13

Rev. Rul. 66-219, 1966-2 C.B. 208

An organization, which otherwise meets the requirements for qualification for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954, will not be precluded from establishing an exempt status under section 501(a) of the Code merely because the creator of the organization (if a trust) is either the sole or controlling trustee or merely because the organization is controlled by one individual. But see sections 503 and 504 of the Code, providing for denial of exemption of certain organizations described in section 501(c)(3) of the Code because the organization has engaged in a prohibited transaction, as defined in section 503(c), or because of the nonuse or misuse, as provided in section 504(a), of amounts accumulated out of income for purposes or functions constituting the basis for exemption of the organization under section 501(a) of the Code.

EXHIBIT 14

From Columbia University's 990 Report

Part X Balance Sheet

Check if Schedule O contains a response to any question in this Part X . . . . ☑

				(A) Beginning of year		(B) End of year
Assets	1	Cash—non-interest-bearing		0	1	0
	2	Savings and temporary cash investments		825,719,295	2	1,286,707,034
	3	Pledges and grants receivable, net		1,039,384,000	3	978,343,805
	4	Accounts receivable, net		241,100,795	4	278,529,522
	5	Loans and other receivables from current and former officers, directors, trustees, key employees, and highest compensated employees Complete Part II of Schedule L		1,475,000	5	1,688,419
	6	Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), persons described in section 4958(c)(3)(B), and contributing employers and sponsoring organizations of section 501(c)(9) voluntary employees' beneficiary organizations (see instructions) Complete Part II of Schedule L		0	6	0
	7	Notes and loans receivable, net		111,108,803	7	115,695,910
	8	Inventories for sale or use		1,547,000	8	1,879,687
	9	Prepaid expenses and deferred charges		41,433,948	9	38,270,328
	10a	Land, buildings, and equipment cost or other basis Complete Part VI of Schedule D	10a 6,276,608,171			
	b	Less accumulated depreciation	10b 2,381,636,709	3,718,959,273	10c	3,894,971,462
	11	Investments—publicly traded securities		2,737,609,594	11	2,601,291,177
	12	Investments—other securities See Part IV, line 11		4,455,342,462	12	5,078,626,530
	13	Investments—program-related See Part IV, line 11		0	13	0
	14	Intangible assets		0	14	0
	15	Other assets See Part IV, line 11		453,571,679	15	363,473,264
	16	**Total assets.** Add lines 1 through 15 (must equal line 34)		13,627,251,849	16	14,639,477,138
Liabilities	17	Accounts payable and accrued expenses		227,280,816	17	264,758,054
	18	Grants payable		0	18	0
	19	Deferred revenue		239,703,597	19	255,332,844
	20	Tax-exempt bond liabilities		1,333,131,000	20	1,288,657,000
	21	Escrow or custodial account liability Complete Part IV of Schedule D		0	21	0
	22	Loans and other payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons Complete Part II of Schedule L		0	22	0
	23	Secured mortgages and notes payable to unrelated third parties		0	23	0
	24	Unsecured notes and loans payable to unrelated third parties		202,769,000	24	190,239,233
	25	Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17-24) Complete Part X of Schedule D		1,066,560,000	25	1,022,899,033
	26	**Total liabilities.** Add lines 17 through 25		3,069,444,413	26	3,021,886,164
Net Assets or Fund Balances		**Organizations that follow SFAS 117 (ASC 958), check here ▶ ☑ and complete lines 27 through 29, and lines 33 and 34.**				
	27	Unrestricted net assets		4,634,928,039	27	5,088,780,879
	28	Temporarily restricted net assets		3,646,550,000	28	4,017,343,216
	29	Permanently restricted net assets		2,276,329,397	29	2,511,466,880
		Organizations that do not follow SFAS 117 (ASC 958), check here ▶ ☐ and complete lines 30 through 34.				
	30	Capital stock or trust principal, or current funds			30	
	31	Paid-in or capital surplus, or land, building or equipment fund			31	
	32	Retained earnings, endowment, accumulated income, or other funds			32	
	33	Total net assets or fund balances		10,557,807,436	33	11,617,590,974
	34	Total liabilities and net assets/fund balances		13,627,251,849	34	14,639,477,138

EXHIBIT 15

Stanford University 990 Report

Part X **Balance Sheet**

Check if Schedule O contains a response or note to any line in this Part X . . . . ☑

					(A) Beginning of year		(B) End of year
Assets	1	Cash-non-interest-bearing			167,491	1	197,773
	2	Savings and temporary cash investments			784,275,739	2	630,016,595
	3	Pledges and grants receivable, net			644,811,377	3	711,795,169
	4	Accounts receivable, net			440,131,767	4	540,899,348
	5	Loans and other receivables from current and former officers, directors, trustees, key employees, and highest compensated employees Complete Part II of Schedule L			4,560,843	5	10,146,687
	6	Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), persons described in section 4958(c)(3)(B), and contributing employers and sponsoring organizations of section 501(c)(9) voluntary employees' beneficiary organizations (see instructions) Complete Part II of Schedule L			0	6	0
	7	Notes and loans receivable, net			527,206,208	7	578,481,451
	8	Inventories for sale or use			6,051,425	8	5,613,335
	9	Prepaid expenses and deferred charges			56,171,680	9	62,255,758
	10a	Land, buildings, and equipment cost or other basis Complete Part VI of Schedule D	10a	8,154,354,561			
	b	Less accumulated depreciation	10b	3,595,441,527	4,207,926,735	10c	4,558,913,034
	11	Investments—publicly traded securities			5,545,012,603	11	7,118,193,718
	12	Investments—other securities See Part IV, line 11			19,323,631,791	12	21,010,960,688
	13	Investments—program-related See Part IV, line 11			0	13	0
	14	Intangible assets			0	14	0
	15	Other assets See Part IV, line 11			0	15	0
	16	**Total assets.** Add lines 1 through 15 (must equal line 34)			31,539,947,659	16	35,227,473,556
Liabilities	17	Accounts payable and accrued expenses			1,602,081,261	17	1,443,948,910
	18	Grants payable			0	18	0
	19	Deferred revenue			584,067,049	19	616,574,642
	20	Tax-exempt bond liabilities			1,466,079,607	20	1,501,429,376
	21	Escrow or custodial account liability Complete Part IV of Schedule D			0	21	0
	22	Loans and other payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons Complete Part II of Schedule L			0	22	0
	23	Secured mortgages and notes payable to unrelated third parties			1,632,353,400	23	1,763,206,815
	24	Unsecured notes and loans payable to unrelated third parties			0	24	0
	25	Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17-24) Complete Part X of Schedule D			532,261,114	25	681,172,585
	26	**Total liabilities.** Add lines 17 through 25			5,816,842,431	26	6,006,332,328
Net Assets or Fund Balances		**Organizations that follow SFAS 117 (ASC 958), check here ▶ ☑ and complete lines 27 through 29, and lines 33 and 34.**					
	27	Unrestricted net assets			13,485,416,232	27	15,467,693,876
	28	Temporarily restricted net assets			6,612,755,241	28	7,844,163,298
	29	Permanently restricted net assets			5,624,933,755	29	5,909,284,054
		Organizations that do not follow SFAS 117 (ASC 958), check here ▶ ☐ and complete lines 30 through 34.					
	30	Capital stock or trust principal, or current funds				30	
	31	Paid-in or capital surplus, or land, building or equipment fund				31	
	32	Retained earnings, endowment, accumulated income, or other funds				32	
	33	Total net assets or fund balances			25,723,105,228	33	29,221,141,228
	34	Total liabilities and net assets/fund balances			31,539,947,659	34	35,227,473,556

Exhibit 14 - 089

EXHIBIT 16

Eric Juhlin

From:	Eric Juhlin
Sent:	Thursday, March 31, 2016 10:58 AM
To:	'robin.minor@ed.gov'; Finley, Steve (Steve.Finley@ed.gov); douglas.parrott@ed.gov; Michael Frola (michael.frola@ed.gov)
Cc:	Guida, Tony
Subject:	Update on CEHE's Financial Stability
Attachments:	20160331 - CEHE Notice to DOE of 1.5 Composite Score for FY2015.pdf; CEHE 12-31-15 Audit - Signed.pdf

Dear Ms. Minor, Mr. Parrott, Mr. Finley, and Mr. Frola:

Please review the attached letter and audit report.

Sincerely,
Eric S. Juhlin
Chief Executive Officer
Center for Excellence In Higher Education
4021 South 700 East, Suite 400
Salt Lake City, UT 84107
801-622-1555 office

EXHIBIT 17

AFFIDAVIT OF JOHN S. (JAY) MERCER

Comes now John S. (Jay) Mercer, first being duly sworn upon his oath and under the penalties for perjury states:

1. I am an attorney in good standing and licensed to practice law in the State of Indiana.

2. I have practiced law since 1986, primarily in the areas of healthcare, education and exempt organizations.

3. I have provided legal services to the Center for Excellent in Higher Education, Inc. ("CEHE") since January 2010.

4. In July 2012, I was consulted with regard to a potential transaction involving the Merger of CEHE with Stevens-Henager College, Inc., CollegeAmerica Denver, Inc., CollegeAmerica Arizona, Inc., California College, Inc., California College San Diego, Inc. and CollegeAmerica Services, Inc. ("Colleges").

5. On August 27, 2012, I met with the board of directors of CEHE, including Messrs. Curtis, Dennis and Zywicki. I have attached a copy of the issues agenda as Exhibit 1. During the meeting I explained to the director their fiduciary duties, responsibilities and liabilities involved in the proposed transaction with the Colleges. I stressed the need for a fair market value to guard against the possibility of an excess benefit transaction. I also discussed the due diligence needed to approve the transaction.

6. In October 2012, I received a copy of the "Board of Directors Valuation Presentation" dated October 5, 2012, that had been prepared by Barrington Research Associates. ("Barrington"). I also participated in a 2.5 hour conference call in respect to the valuation

presentation.

7. Following the conference call I recommend to CEHE's board of directors that they obtain an independent peer review of the Barrington valuations. On October, 11, 2012, I engaged Blue & Co., LLC ("Blue"), an organization known to me as specializing the representation of exempt organizations, to perform an analysis and issue an Appraisal Review Report of the assumptions, adjustments, and validity of the methodologies applied by Barrington in the valuation of the Colleges.

8. On September 30, 2012, Blue produced a Summary Appraisal Review Report which is attached hereto as Exhibit 2.

9. Blue concluded that the value of the common equity of CollegeAmerica as of September 30, 2012 on a control, non-marketable basis contained within the Barrington Presentation is likely fairly stated and consistent with fair market value.

10. Leading up to the closing the occurred on December 31, 2012, I devoted approximately 150 hours to conducting a review of the transaction, including the negotiation of terms, review and drafting the transactional documents and due diligence review of disclosures.

11. On October 22, 2012, I was provided electronic access to the CollegeAmerica Data Room which was represented to me to be full access to material contracts, agreements and leases, as well as, descriptions or summaries of consents and approvals, intellectual property rights, benefit plans, insurance policies, financial reports, program audits and pending litigation. ("Disclosures").

12. The Disclosures I reviewed included:

a. Review of the organizational records of each merging corporations and LLCs, including Articles, Bylaws, Resolutions and minutes.

b. Review of financial statements for prior 3 years.

c. Review of any employment agreements with the term in excess of one year.

d. Review of any consulting management or professional agreements a term in excess of one year.

e. Review of any employment, consulting, management, professional or vendor agreements with individuals "related" to Carl Barney or "related" to any current Board Member, LLC Member and/or highly compensated individuals affiliated with the merger organizations.("Related" means related to each other through family or business relationships).

f. Review of any policies of tenure or policies that restrict "at-will" employment.

g. Review of any notices, claims, audits, or other official notices investigation by the Internal Revenue Service, United Department Education or any State or local regulatory agency which the corporation s or LLCs have received within the last three years.

h. Review of any compliance or settlement agreements with any governmental agency or accrediting organization regarding operational, financial or educational deficiencies or regulatory compliance.

i. Certificates of accreditation from accrediting organizations.

j. Contracts, commitments, notes, debt instruments, security agreements, leases, guarantees that have a term of exceeds one year.

k. Organizational chart for each college.

l. Description of any payments, agreements or pledges for support of political candidate or party or used in support of or to influence legislation.

m. All contracts with any individuals or organizations to raise funds for the corporations. (Professional fund raising).

n. Descriptions of any Joint ventures, partnerships or affiliations with organizations that will not terminate and/or merger on or before the closing of the transition.

o. Description of any intellectual property to be sold as part of the sale.

p. Copies of tax returns for the past three years for each organization being merged.

q. Description of any loan to or by a current or former officer, director, trustee, key employee, highly compensated employee.*

r. Description of any on-going settlement payments or compensation arrangement, such as a severance payment to a former employee that will continue after the merger or are not fully funded.

s. Description of all unfunded and/or uninsured liabilities.

t. Description of any and all pending or threatened litigation.

u. Description of any of the following services provided by the corporations or LLCs to any officer, director or employee: first class or charter travel, travel cost for companions, tax indemnification, housing allowance for personal residence, sports or social club memberships, personal services(e.g. maid, chauffer, chef).

13. This affidavit is offered to counter the allegation by the Department of Education in its letter of August 11, 2016, *"there is no evidence that CEHE - as opposed to Mr. Barney- conducted any valuation of the Colleges before entering into the Merger Agreement and resulting financing which obligated CEHE to $431,000,000 in indebtedness to the Trust with $419,000,000 of that amount representing goodwill."*

14. The statement contained in Section 5.9, *"The Purchaser acknowledges that it has completed* <u>*limited*</u> *due diligence review with respect to the Corporation and the College,"* has been misinterpreted by the Department of Education, where the term "limited" was intended to convey a minimum level of due diligence recommend by me in a Memorandum that was presented to the CEHE board of directors following the meeting of August 27, 2012. The Memorandum, while not dated, was prepared August 28, 2012 and is attached hereto and incorporated by reference as Exhibit 3.

15. The minutes of the board meeting dated December 27, 2012 recite that the decision to proceed with the transaction was based on "substantial due diligence." Substantial due diligence was completed by me as has been more fully described above.

16. There exist a rebuttable presumption of reasonableness for this transaction where:

a. The compensation arrangement with Mr. Barney and the Trust and the terms of the property transfer from Mr. Barney and the Trust were approved in advance by the CEHE board of directors and none of the board members had a conflict of interest with respect to the compensation arrangement or property transfer (Treas. Reg. 53.4958-6(a)(1));

b. The board of directors obtained and relied upon appropriate data as to the comparability data prior to making its determination (Treas. Reg. 53.4958-6(a)(2)); and

c. The board of directors adequately documented the basis for its determination concurrently with making that determination (Treas. Reg. 53.4958-6(a)(3)).

17. Treas. Reg 53.4958-6, further provides that presumption that arises under paragraph 6(a) of this section may only be rebutted by establishing sufficient contrary evidence to rebut the probative value of the comparability data relied upon by the authorized body. With respect to any fixed payment (within the meaning of § 53.4958-4(a)(3)(ii)), rebuttal evidence is limited to evidence relating to facts and circumstances **existing on the date the parties enter into the contract** pursuant to which the payment is made (except in the event of substantial nonperformance). With respect to all other payments (including non-fixed payments subject to a cap, as described in paragraph (d)(2) of this section), rebuttal evidence may include facts and circumstances up to and including the date of payment. See § 53.4958-4(b)(2)(i). may only rebut the presumption with sufficient contrary evidence to rebut the probative value of the comparability data relied upon, and only with evidence relating to facts and circumstances **existing at the time of the contract** (for a fixed payment) or at the time of the payment (for a non-fixed payment). (Emphasis added). The Department of Education has improperly used later valuations and subsequent disclosures not available to the board members on December 27, 2012, in concluding that the board failed to act with due diligence in approving the transaction.

JSMercer

John S. (Jay) Mercer

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Sworn to and subscribed in my presence this 17th day of August 2016.

Signature Jennifer S Gallicher

Printed Jennifer S Gallicher

My Commission Expires: 8/17/24 My County of Residence: Hendricks

Prepared by: John S. (Jay) Mercer, #11260-49, MERCER BELANGER, 1500 One Indiana Square Indianapolis, IN 46204

Board of Directors Meeting
Special Agenda for Review of Merger Transaction:

1. MERCER BELANGER- Representation of CEHE
    - Potential conflicts
    - Representation of decision makers
    - Trust/Skepticism
    - Ask tough questions
    - Due Diligence

2. Initial concerns –
    - Do not know Carl Barney – reliance upon Fred Fransen
    - Agreement time table
    - Financing method not decided
    - Representations and warranties from CEHE
    - Assurances, surety, continuation from Carl Barney
    - Conduit – "straw man" transaction

3. Board's Duties/Responsibilities/Liabilities
    - Inurement/ Private benefit
    - Excess benefit rules and intermediate sanctions
    - Personal liability for excess benefits
    - Liability for Transactional Managers

4. Inurement/ Private Benefit
    - Non-profit – purpose and mission
    - Reason for transaction – primary benefit
    - Operation in future/fulfill mission
    - Undue private benefit

5. Excess Benefit
    - FMV valuation
    - Due diligence on valuation
    - Liability vs. good faith
    - Indemnity for potential liability
    - Assurances required and extent of due diligence as Transactional Managers

6. Review of Proposed Structure of Deal
    - Specific concerns

EXHIBIT
1

CollegeAmerica

Summary Appraisal Review Report

AS OF SEPTEMBER 30, 2012

Report Date: November 9, 2012

EXHIBIT
2

CPAS / ADVISORS
blue

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CPAS · ADVISORS

blue

Blue & Co., LLC / One American Square, Suite 2200 / Box 82062 / Indianapolis, IN 46282
main 317.633.4705 fax 317.633.4889 email blue@blueandco.com

November 9, 2012

Frederic J. Fransen
Executive Director
Center for Excellence in Higher Education, Inc.
8520 Allison Pointe Blvd., Ste. 220
Indianapolis, IN 46250

Dear Mr. Fransen:

Pursuant to your request, Blue & Co., LLC ("Valuation Analysts") has prepared a review of the Barrington Research Associates ("Barrington") board presentation provided by your legal counsel (the "Presentation"), regarding the valuation of CollegeAmerica (the "Company") on October 5, 2012 with respect to the fair market value of common equity of CollegeAmerica as of September 30, 2012 on a control, non-marketable basis. The appraisal was originally prepared for Center for Excellence in Higher Education, Inc. (the "Purchaser") for potential acquisition of CollegeAmerica.

You and your legal counsel have requested the Valuation Analysts perform an analysis and issue an Appraisal Review Report of the assumptions, adjustments, and validity of the methodologies applied by Barrington in the valuation. We are utilizing the Presentation provided by legal counsel, which has been included as **Appendix B**, to this report.

This letter is intended to provide you with an overview of the purpose and scope of our analyses and conclusions. Please refer to the attached report for a discussion and presentation of the analyses performed in connection with this engagement.

SCOPE AND INTENDED USE OF THE APPRAISAL REVIEW

Reporting Format

Our analysis and report is intended to be in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP") promulgated by the Appraisal Foundation,[1] the ethics and standards of the ASA, IBA and NACVA[2] and with IRS business valuation development and reporting guidelines.

[1] The Appraisal Standards Board (ASB) of the Appraisal Foundation develops, interprets, and amends the *Uniform Standards of Professional Appraisal Practice* (USPAP) on behalf of appraisers and users of appraisal services. The Appraisal Foundation is authorized by Congress as the source of Appraisal Standards and Appraiser Qualifications. USPAP uses the terms appraiser and appraisal report. SSVS uses the terms valuation engagement and detailed report. USPAP also uses the term appraiser while SSVS uses the term valuation analyst. We use these terms interchangeably in this report.

[2] ASA American Society of Appraisers; IBA Institute of Business Appraisers; NACVA National Association of Certified Valuation Analysts.

The scope of our work on this assignment is being performed under Uniform Standards of Professional Appraisal Practice ("USPAP") Standard Rule 3 as an Appraisal Review. Appraisal Review assignment reporting formats are not specifically addressed by USPAP Standard 3, rather the substantive content of the report determines its compliance. In performing an Appraisal Review assignment in accordance with USPAP's Standards and Standard Rules, specifically Standard 3, we must:[3]

- state the identity of the client and any intended users, by name or type;
- state the intended use of the appraisal review;
- state the purpose of the appraisal review;
- state information sufficient to identify:
  - the work under review, including any ownership interest in the property that is the subject of the work under review;
  - the date of the work under review;
  - the effective date of the opinions or conclusions in the work under review; and
  - the appraiser(s) who completed the work under review, unless the identity is withheld by the client.
- state the effective date of the appraisal review;
- clearly and conspicuously:
  - state all extraordinary assumptions and hypothetical conditions; and
  - state that their use might have affected the assignment results.
- state the scope of work used to develop the appraisal review;
- state the reviewer's opinions and conclusions about the work under review, including the reasons for any disagreement;
- when the scope of work includes the reviewer's development of an opinion of value, review opinion, or real property appraisal consulting conclusion related to the work under review, the reviewer must:
  - state which information, analyses, opinions, and conclusions in the work under review that the reviewer accepted as credible and used in developing the reviewer's opinion and conclusions;
  - at a minimum, summarize any additional information relied on and the reasoning for the reviewer's opinion of value, review opinion, or real property appraisal consulting conclusion related to the work under review;
  - clearly and conspicuously:
    - state all extraordinary assumptions and hypothetical conditions connected with the reviewer's opinion of value, review opinion, or real property appraisal consulting conclusion related to the work under review; and
    - state that their use might have affected the assignment results.

Additionally, this Appraisal Review will take into consideration the valuation standards and guidelines set forth within the Statement of Standards for Valuation Services No. 1 (SSVS) of the American Institute of Certified Public Accountants. SSVS defines an appraisal (business valuation) engagement as "an engagement to estimate value in which a valuation analyst determines an estimate of the value of a subject interest by performing appropriate procedures, as outlined in the AICPA Statement on Standards for Valuation Services, and is free to apply the valuation approaches and methods he or she deems appropriate in the circumstances."

[3] USPAP Standard 3, p. U-35.

To gain an understanding of the operations of CollegeAmerica, we analyzed the Presentation, which contained financial information, and/or operational data, and background and industry information. To understand the environment in which CollegeAmerica operates, we researched the status of and trends in the various industries that have an impact on it. We also studied economic conditions as of the Valuation Date and their impact on CollegeAmerica and the industry.

We requested the underlying valuation report summarized in the Presentation from the Purchaser and Barrington, but did not receive such report. Therefore, our review is based solely on information contained in the Presentation. As of the date of the report we do not believe that we will receive any additional information or support for the work contained within the Presentation.

As discussed in this report, we reviewed all valuation approaches and methods considered by Barrington, including the income, asset, and market approaches to derive an opinion of value of the subject. Our conclusion of value reflects these findings, our judgment and knowledge of the marketplace, and our expertise in valuation.

In conducting the Appraisal Review, our investigation and analysis included (but was not limited to) consideration of the following:

- Board presentation regarding the valuation of CollegeAmerica, as provided by Barrington Research Associates
- Federal Reserve statistical releases
- Current and future economic conditions as forecast by various sources
- Miscellaneous other information

The procedures employed in valuing the subject interest in the Company included such steps as we considered necessary, including (but not limited to):

- An analysis of CollegeAmerica's financial information and specific data included in the Presentation
- An analysis of the Company's expectations for future operations and other information as provided within the Presentation
- An analysis of the education industry in general
- An analysis of the general economic environment as of the Valuation Date, including investors' equity and debt-return expectations
- An analysis of other pertinent facts and data resulting in our conclusion of value

DEFINITION AND PREMISE OF VALUE

Terms and Definitions

The standard of value is fair market value, defined as "the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts."[4]

[4] International Glossary of Business Valuation Terms.

Fair market value is also defined in Revenue Ruling 59-60 as "the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts." Revenue Ruling 59-60 also defines the willing buyer and seller as hypothetical as follows: "Court decisions frequently state in addition that the hypothetical buyer and seller are assumed to be able, as well as willing, to trade and to be well informed about the property and concerning the market for such property." Furthermore, fair market value assumes that the price is transacted in cash or cash equivalents. Revenue Ruling 59-60, while used in tax valuations, is also used in many nontax valuations.[5]

Based upon the Presentation, fair market value is defined on slide 70 as "the price at which a willing buyer and a willing seller would enter into a transaction...both parties having full access to all relevant information...and neither party being under duress."

VALUATION REVIEW PROCEDURES

The Valuation Analyst has considered the history, character, and operations of the Company to the extent possible and as provided through the Presentation. In accordance with the requirements of USPAP, the Code of Professional Ethics and Professional Standards of the American Society of Appraisers, the three approaches to value (Cost, Market and Income) were considered.

This valuation review was performed solely to assist in the determination of the reasonability of the concluded value contained within the Presentation, and the resulting opinion should not be used for any other purpose or by any other party for any purpose, without our express written consent.

We have made our best efforts to ensure that our analysis and report are in conformance with the USPAP promulgated by the Appraisal Foundation,[6] the ethics and standards of the ASA, IBA and NACVA[7] and with IRS business valuation development and reporting guidelines.

VALUATION REVIEW CONCLUSION

In arriving at our review opinion, we noted some issues with the Presentation that we believed required further scrutiny. These issues included:

- The Cost Approach was not discussed.
    - Additionally, the Presentation did not include the Company's balance sheet.
- Certain "add-backs" to the income statements had no detailed explanation as to their nature or reasoning for the add backs.

[5] Fair Market Value is further defined by § 1.170A-1(c)(2) Internal Revenue Service Code of Federal Regulations.
[6] The Appraisal Standards Board (ASB) of the Appraisal Foundation develops, interprets, and amends the *Uniform Standards of Professional Appraisal Practice* (USPAP) on behalf of appraisers and users of appraisal services. The Appraisal Foundation is authorized by Congress as the source of Appraisal Standards and Appraiser Qualifications. USPAP uses the terms appraiser and appraisal report. SSVS uses the terms valuation engagement and detailed report. USPAP also uses the term appraiser while SSVS uses the term valuation analyst. We use these terms interchangeably in this report.
[7] ASA American Society of Appraisers; IBA Institute of Business Appraisers; NACVA National Association of Certified Valuation Analysts.

- Given the information provided within the Presentation, the discount rate utilized under the Income Approach was lower than what we might have expected.
  - Two different betas and a "regulatory premium" were applied with no explanation contained within the Presentation.
  - It appears that no adjustment was made for Company specific risk.
- A capitalization of benefits method was not discussed or included within the Presentation.
- No industry methods or rules of thumb were discussed or included within the Presentation.
- The conclusion of value contained within the Presentation was expressed as the weighted average of three methods.
  - Despite the fact that this practice is contrary to Revenue Ruling 59-60, no explanation is provided for the use of weighting of the three methods.

We have also considered certain other areas of interest within our review report; however we believe that the points listed above are of primary concern. That being said and considering the limitations of the nature and amount of information included in a presentation format as opposed to a fully-contained appraisal report as defined by SSVS-1, we cannot draw any conclusions as to the effect of the underlying information that we did not receive. Noting certain factors, assumptions, and differences in theory and based upon the analyses performed, we have recalculated the potential value of the Company under the methods utilized in the Presentation.

	Value (Presentation)	Recalculated Value (Review)		
Comparable Transaction Analysis	$536,000	$540,000		
Comparable Company Analysis	558,000	511,300	-	535,800
Discounted Cash Flow Analysis	753,000	680,000		
Estimated Fair Market Value	**$650,000**			
Overall Potential Range ($ in millions)		**$511,300**	**-**	**$680,000**

Based upon the table above, it appears that the estimated fair market value for the Company shown on slide 71 of the Presentation is consistent with our overall range of recalculated value. Therefore, excluding those points noted previously, it is our opinion that the conclusion of value of the common equity of CollegeAmerica as of September 30, 2012 on a control, non-marketable basis contained within the Presentation is likely fairly stated and consistent with fair market value. Since we have not received all the information we requested or discussed certain issues with the original appraisal firm, our opinion is limited to the information available and should new information be received, our conclusion could change.

VALUATION REVIEW TERMS AND CONDITIONS

The analyses used in this report are based on estimates, assumptions and other information provided to us by the representatives of the owners of the Company, Barrington and legal counsel.

Neither the Valuation Analyst nor Blue & Co., LLC has any interest or other conflict which could cause a question as to the independence or objectivity of this appraisal review. Our fee in this matter is not contingent on the outcome of our opinion.

The attached Assumptions and Limiting Conditions, Certifications, and Qualifications of the Valuation Analyst(s) are integral parts of this valuation review opinion.

Distribution of this letter and report and its associated results, which is to be distributed only in its entirety, is for internal use only and intended for and restricted to the Purchaser and legal counsel, and is solely for the purpose mentioned previously. This letter and accompanying report are not to be used with, circulated, quoted, or otherwise referred to in whole or in part for any other purpose or by any other party for any purpose without our express written consent.

Sincerely,

Bradley H. Minor, CPA/ABV/CFF, ASA, CVA, CMEA, Director

Kameron H. McQuay, CPA/ABV, CVA, Director

SUMMARY OF ECONOMIC OVERVIEW & OUTLOOK

In valuing any asset it is important to consider the condition of, and outlook for, the economy or economies of the particular geographic regions in which the asset operates or is located. This analysis of economic conditions and outlook is required because the performance of an asset is affected to varying degrees by the overall trends in the economic environment in which it operates or is located and its value cannot be determined in isolation of these factors.

"In part because of the dampening effect of the higher tax rates and curbs on spending scheduled to occur this year and next, the Congressional Budget Office ("CBO") expects that the economy will continue to recover slowly, with real GDP growing by 2.0% this year and 1.1% next year (as measured by the change from the fourth quarter of the previous calendar year). CBO expects economic activity to quicken after 2013 but to remain below the economy's potential until 2018.

In CBO's forecast, the unemployment rate remains above 8% both this year and next, a consequence of continued weakness in demand for goods and services. As economic growth picks up after 2013, the unemployment rate will gradually decline to around 7% by the end of 2015, before dropping to near 5½% by the end of 2017.

While the economy continues to recover during the next few years, inflation and interest rates will remain low. In CBO's forecast, the price index for personal consumption expenditures increases by just 1.2% in 2012 and 1.3% in 2013, and rates on 10-year Treasury notes average 2.3% in 2012 and 2.5% in 2013. As the economy's output approaches its potential later in the decade, inflation and interest rates will rise to more normal levels."[8]

SUMMARY OF INDUSTRY OVERVIEW & OUTLOOK

Significant Factors Affecting the Industry

We performed research related to the Education and Training Services industry via First Research to verify industry factors considered by Barrington in their valuation of CollegeAmerica.

Based on our research on the education industry, certification classes are driven by employment trends, especially in the medical, high technology, and manufacturing industries, and personal income for more leisure industries (i.e. those that rely on individual desire for self-expression and self-fulfillment, such as yoga, fly fishing, etc.).

Economic recessions can have a mixed impact on this industry. Based on the historical trends noted in First Research, certification class enrollment tends to increase during periods of recessions, as unemployed workers will go back to school to learn new skills. This was noted specifically in a 2008 research report:

[8] Congressional Budget Office *Budget and Economic Outlook: Fiscal Years 2012 to 2022* released on January 31, 2012.

"Swelling Unemployment Could Increase Demand for CTE - Rising US unemployment, which reached 6.7 percent in November 2008 compared to 4.7 percent in November 2007, is likely to boost demand for career and technical education (CTE) programs. The job losses, spread across various sectors, are expected to cause unemployed workers to seek training to learn new skills. Professional associations in hard-hit industries such as real estate have added continuing education courses to reflect changing market conditions."

Meanwhile, leisure studies is a challenge for the education industry, as this type of training is more for outside hobbies, rather than for improvement for potential employment. A recession or high periods of employment leads to a decrease in enrollment, due to the discretionary nature of these courses.

The education industry is heavily regulated at the state and federal level. This includes audits and compliance reviews by the U.S. Department of Education, the Office of Inspector General, and state, guaranty, and accrediting agencies. Accredited schools are able to receive government funding and participate in federal financial aid programs. Increased regulations and compliance requirements and federal funding difficulties increases the risk and uncertainty of the education industry.

Barrington noted that the federal government in the past two years has increased scrutiny and regulatory burdens on the education industry, which was noted in a 2010 research report:

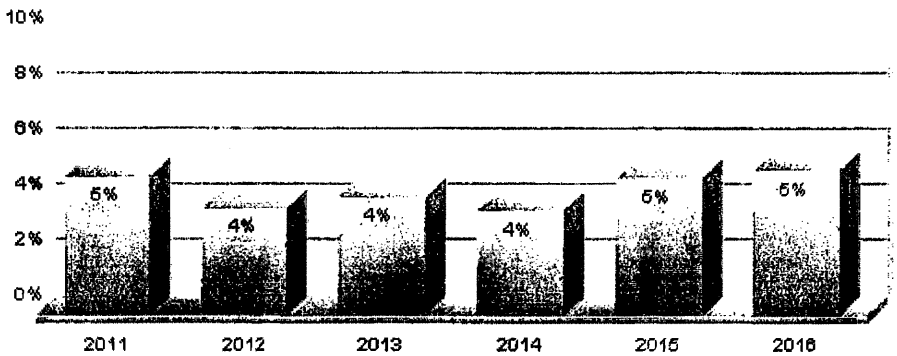
"Financial Aid at For-Profit Schools at Risk - For-profit colleges have come under fire recently from government agencies for leading students to take on heavy debt loads without providing adequate career preparation, according to The Wall Street Journal. The U.S. Government Accountability Office called out 15 such colleges, including two Kaplan campuses, in August 2010 for allegedly giving students misleading loan advice to enroll them. Legislation tying federal aid programs at for-profit colleges to graduates' success in paying off loans could cause some institutions to be ineligible for student aid, resulting in revenue declines."

Finally, due to the continued recession and increased regulations on the education industry, Barrington noted that valuation ratios have decreased in the past few years, which we have noted in our research.

According to First Research, valuation multiples for the education and training services industry have declined between March 2007 (earliest available historical data) and the most recent available data. In data through March 2007, the market value of invested capital ("MVIC") to sales ratio was .9, while the MVIC to EBIT ratio was 3.5. Meanwhile, in data through August 2011, MVIC to sales ratio has fallen to .6, while MVIC to EBIT ratio is now at 3.3. This seems to support the discussion related to valuations and multiples having fallen in the past several years.

However, the industry seems to be recovering and poised for increased growth, based on industry forecasts. The output of U.S. educational services, an indicator for education and training services, is forecast to grow at an annual compounded rate of 4 percent between 2012 and 2016.

Educational Services Growth Recovers



Data Published: September 2012

The following quarterly updates from First Research in 2012 give us additional comfort in the recovery of the education industry, as noted by Barrington in the Presentation:

"Trend: Industry Poised for Moderate Growth - The education and training services industry could grow by 4.3 percent in 2013 compared to 2012, according to the latest industry forecast for First Research from INFORUM. Career technical education (CTE), an important industry segment, will continue to fuel some 29 million middle-class jobs that require a two-year degree or less, according to Georgetown University's Center on Education and the Workforce. Nursing assistants, occupational therapists, paralegals, and refrigeration technicians are among the many opportunities that pay between $35,000 and $75,000 a year."

"For-Profits Exceed Gainful Employment Requirements - For-profit education companies performed better than expected in meeting the US government's new gainful employment guidelines, according to Dow Jones News Service. The Education Department found only 5 percent of programs failed to meet the requirements under the gainful employment regulation. Companies risk losing access to federal student aid if they fail to meet three key measures: loan repayment rates, debt-to-earnings annual ratio, and debt-to-discretionary earnings ratio.

The annual loan repayment rate requires at least 35 percent of a program's former students actively repay their loans, while the debt-to-earnings ratio requires that a student's maximum annual loan payment and student debt not exceed 12 percent of his or her earnings. Some industry observers suggest larger companies like DeVry, Apollo, and Grand Canyon are well-positioned to court new students and stand to benefit the most if smaller programs lose federal aid."

"For-Profits Anticipate Enrollment Boost - For-profit educators anticipate enrollment to taper in 2012 and 2013 before more new students register for classes, according to Dow Jones Newswires. The sector has experienced shrinking enrollment and public scrutiny over educational values, although some institutions have bucked the trend. Strayer Education, which caters chiefly to working adults, saw new-student enrollment grow 12 percent during first quarter 2012, the first quarterly increase since the first half of 2010. The company courted more graduate students and boosted its corporate partnerships. In contrast, ITT – which offers degrees in electronics and industrial design, among other fields – saw new-student enrollment slip 17 percent."

"Online Enrollments Grow - Enrollment in online education continues to outpace the overall higher education student population, according to a recent survey by Babson Survey Research Group and the College Board. More than 6 million students were enrolled in at least one online course in 2011, 10% more than in the previous year. In contrast, overall higher education enrollment grew only 2% during the same period. Nearly two-thirds of higher education institutions cite online education as a critical component to their long-term strategies. Online learning continues to boast vast opportunities for career and technical educators."

REVIEW OF THE BARRINGTON RESEARCH ASSOCIATES VALUATION PRESENTATION

We requested, but were not provided the actual appraisal report prepared by Barrington Research Associates in the valuation of CollegeAmerica. Therefore, we are relying on the information and methodologies outlined in the Presentation, filed at Appendix B, which is summarized as follows:

- Industry Overview
- Historical Financial Statements
- Adjusted Financial Statements
  - Customary Add-backs
  - Marketing Adjustment
- Financial Projections
- Comparable Companies Analysis
- Comparable Transactions Analysis
- Discounted Cash Flow (DCF) Analysis
- Conclusion of Value

<u>Historical Income Statements</u>

We analyzed the summarized historical financial statements shown in the Presentation. We did not perform a review or audit the financial information and are relying on the reported results for the Company as presented.

We reviewed Barrington's adjustments (add-backs) to the historical income statements. The Presentation did not provide any detail related to the reasoning for the add backs noted on slide 14. Typically, these types of adjustments are to remove the effect of non-operating/discretionary and/or non-recurring expense/revenue items.

1. Other revenues – Typically other revenue is a deduction.
2. Bad debt expense, campus start-up costs, good neighbor start-up costs, Esmond & Associates fees, transaction expense, settlements, IT infrastructure expenses, rent for closed campuses – It is unclear why these expenses were added back to the income statements.
3. Legal – other, private office admin, consulting, corporate travel, unallocated call center expenses – These expenses appear to be recurring expenses, as they appear to be incurred every year between 2005 and 2012. There is no explanation as to why these were added back to the operations of CollegeAmerica.

Financial Observations

Barrington summarized several observations regarding CollegeAmerica's historical income statements.

1. Revenues and EBITDA were confirmed to increase approximately 34% and 46% compound annual rate respectively between 2005 and 2010.
2. EBITDA margins were confirmed to be approximately 41% and 39% in 2009 and 2010 respectively.

As noted by Barrington, these growth rates were very high as compared to the industry and would not be sustainable in the long-term.

In our research of margins from benchmark data from IRS Corporate Ratios (Based on 2009 Returns), margins for the Education Services Industry for all reporting companies is 13.04% operating profit (EBIT). We then added in depreciation and amortization to arrive at 16.73% EBTIDA margin for IRS benchmarks.

We also looked at data from RMA Annual Statement Studies 2011-2012 for the same industry. RMA only reported EBIT and EBT and did not report individual common size expenses for us to calculate an estimate of EBTIDA. However, RMA operating profit (EBIT) is on average 14.2%, which is comparable to that found in IRS Corporate Ratios.

Finally, commentary in First Research regarding the education industry for "net profit" averages 3%, which would indicate an even lower EBITDA margin. Therefore, the benchmarks above seem to corroborate Barrington's observation that the margins earned in 2009 and 2010 are high and are likely not sustainable in the long-term. By 2012, EBITDA margin had decreased to approximately 21%; while this is below peak margins in 2009 and 2010 it is still above the industry averages noted above.

Barrington noted that CollegeAmerica's cost per lead, cost per interview, and conversion rates in the back half of 2012 are improving and approaching levels in 2009. Longer-term, growth in enrollments, revenues and EBITDA are expected to approach pre-2010 levels. Based on these financial observations and discussions above, we believe this should be reflected in CollegeAmerica's discount rate, which we will discuss later in this report.

Marketing Adjustments

Barrington made a material adjustment related to CollegeAmerica's director of marketing, who assumed sole advertising responsibility from the founder in March 2010. According to the Presentation, the director of marketing "drastically" increased the marketing budget in 2011, which included utilizing funds for ineffective marketing endeavors. Additionally, some funds were spent on services with related parties that might be considered disallowed or otherwise non-operating in nature for valuation purposes.

In March 2012, the director of marketing was terminated and the founder assumed responsibility for marketing again and expenditures and conversion rates appear to have begun to return to historical levels.

This appears to be a relevant adjustment to the historical income statements, due to the unusual and non-recurring nature of the marketing activities and related reduction in revenue. The Presentation discusses the effect of the wayward director of marketing on CollegeAmerica's revenues and expenses.

We believe the concept of the marketing adjustment is valid in terms of valuation methodology and reasonable based on the received facts and circumstances regarding the operations of CollegeAmerica. ***However, without the full valuation report with details on the calculations of the actual numbers related to the marketing adjustment, we cannot comment to the reasonableness of the calculation of the financial implications related to this adjustment shown on slide 14. We have assumed that management and the Purchaser have reviewed the adjustment made by Barrington and it is reasonable and correctly calculated.***

Comparable Company Analysis

Under this method, Barrington has selected a number of publicly traded companies that are similar to the Company in that they provide educational services. The selected companies also appear to be fairly comparable in terms of annual revenue. As a result, we believe that the companies selected are likely appropriate for use under this method.

Through analysis of financial data for these public companies, Barrington has identified certain metrics that have been used to impute a value for the Company. Fourteen companies were specifically identified in the Presentation, with eight being used in application of this method. Additionally, four companies were singled out as being "good comparison companies" based upon qualitative factors (the "Big 4").

The primary bases for comparison of the selected public companies to the Company were the price to earnings ratio, the ratio of equity value to earnings before interest expense, depreciation, and amortization (EBITDA), and the ratio of equity value to sales (net revenue). A summary of this information is presented below (also see slide 30 of the Presentation):

Presenation Public Company Data

	P/E				EV/EBITDA				EV/Sales			
	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E
APEI	22.9	17.1	16.2	13.7	9.3	7.3	6.8	5.7	2.6	2	1.7	1.4
LOPE	21.7	20.9	16.6	14.7	10.7	10.2	7.9	6.7	2.6	2.4	2.1	1.8
CPLA	9.6	9.8	12.1	11.6	3	3.2	3.8	3.7	0.8	0.8	0.8	0.8
APOL	5.4	5.9	8.2	9.3	1.8	2.1	3.1	3.6	0.6	0.6	0.7	0.7
NAUH	12.8	25.5	15.3	12.1	5	7.4	5.7	5.6	0.9	0.8	0.7	0.7
STRA	6.6	7.2	11	11.4	3.4	4	5.7	5.9	1.3	1.3	1.4	1.4
DV	5.9	4.9	7.1	12.2	2.3	3.3	4.6	4.2	0.6	0.6	0.7	0.6
EDMC	2.1	1.8	2.8	6.8	2.6	3.4	4.4	4.1	0.6	0.6	0.7	0.7
Mean	10.9	11.6	11.2	11.5	4.8	5.1	5.3	4.9	1.3	1.1	1.1	1.0
Median	8.1	8.5	11.6	11.9	3.2	3.7	5.2	4.9	0.9	0.8	0.8	0.8
Mean and median	9.5	10.1	11.4	11.7	4.0	4.4	5.2	4.9	1.1	1.0	0.9	0.9
Big 4	16.0	17.7	14.8	13.0	7.1	7.2	6.5	6.0	1.9	1.6	1.5	1.3

Morningstar Public Company Data

	P/E				EV/EBITDA				EV/Sales			
	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E
APEI	23.40				1.7				0.5			
LOPE	20.40				1.6				0.4			
CPLA	18.30				1.8				0.5			
APOL	11.70				0.9				0.3			
NAUH	2.80	19.80				3.0			0.2	0.6		
STRA	15.70				0.8				0.3			
DV	13.60	12.60				2.5			0.6	0.6		
EDMC	12.50	14.40				3.2			0.8	0.7		
Mean	14.8	15.6			1.4	2.9			0.4	0.6		
Median	14.7	14.4			1.6	3.0			0.4	0.6		
Mean and median	14.7	15.0			1.5	3.0			0.4	0.6		
Big 4	15.6	19.8			1.4	3.0			0.3	0.6		

Upon review of the public company data presented above, we believe that there may be some discrepancies between the financial ratios presented and data that we retrieved from the Guideline Company database published by Morningstar. Although Morningstar did not provide all data contained within the presentation, we had retrieved those which were available through reasonable effort.

In order to determine the potential effect of the difference between the Presentation comparable data and the metrics that we had retrieved from Morningstar, we applied the same methodology used in the Presentation to our sampled data.

College of America

Financial metrics $ in millions	P/E 2010A	P/E 2011A	P/E 2012E	P/E 2013E	EV/EBITDA 2010A	EV/EBITDA 2011A	EV/EBITDA 2012E	EV/EBITDA 2013E	EV/Sales 2010A	EV/Sales 2011A	EV/Sales 2012E	EV/Sales 2013E
Unadjusted metrics	46.7	37.1	21.7	29.5	82.7	66.1	39.0	54.9	240.5	245.3	217.6	246.6
Adjusted metrics	50.5	50.3	35.5	29.5	92.5	91.1	65.0	54.9	248.4	265.0	248.1	246.6

Presenation Public Company Data

	P/E 2010A	P/E 2011A	P/E 2012E	P/E 2013E	EV/EBITDA 2010A	EV/EBITDA 2011A	EV/EBITDA 2012E	EV/EBITDA 2013E	EV/Sales 2010A	EV/Sales 2011A	EV/Sales 2012E	EV/Sales 2013E
Mean and median	9.5	10.1	11.4	11.7	4.0	4.4	5.2	4.9	1.1	1.0	0.9	0.9
Big 4	16.0	17.7	14.8	13.0	7.1	7.2	6.5	6.0	1.9	1.6	1.5	1.3

Valuation Indications - M&M

Financial metrics $ in millions	P/E 2010A	P/E 2011A	P/E 2012E	P/E 2013E	EV/EBITDA 2010A	EV/EBITDA 2011A	EV/EBITDA 2012E	EV/EBITDA 2013E	EV/Sales 2010A	EV/Sales 2011A	EV/Sales 2012E	EV/Sales 2013E	Average
Unadjusted metrics		373.6	246.4	344.0		291.3	202.8	270.0		237.6	201.3	217.3	264.9
Adjusted metrics		506.5	403.1	344.0		401.4	338.0	270.0		256.7	229.5	217.3	329.6

Valuation Indications - Big 4

Financial metrics $ in millions	P/E 2010A	P/E 2011A	P/E 2012E	P/E 2013E	EV/EBITDA 2010A	EV/EBITDA 2011A	EV/EBITDA 2012E	EV/EBITDA 2013E	EV/Sales 2010A	EV/Sales 2011A	EV/Sales 2012E	EV/Sales 2013E	Average
Unadjusted metrics		655.7	320.6	382.8		477.6	254.5	328.0		398.6	321.0	326.7	385.1
Adjusted metrics		889.1	524.5	382.8		658.2	424.1	328.0		430.6	365.9	326.7	481.1
Average (M&M and Big 4)		606.2	373.7	363.4		457.1	304.9	299.0		330.9	279.4	272.0	365.2

Morningstar Public Company Data

	P/E 2010A	P/E 2011A	P/E 2012E	P/E 2013E	EV/EBITDA 2010A	EV/EBITDA 2011A	EV/EBITDA 2012E	EV/EBITDA 2013E	EV/Sales 2010A	EV/Sales 2011A	EV/Sales 2012E	EV/Sales 2013E
Mean and median	14.7	15.0			1.5	3.0			0.4	0.6		
Big 4	15.6	19.8			1.4	3.0			0.3	0.6		

Valuation Indications - M&M

Financial metrics $ in millions	P/E 2010A	P/E 2011A	P/E 2012E	P/E 2013E	EV/EBITDA 2010A	EV/EBITDA 2011A	EV/EBITDA 2012E	EV/EBITDA 2013E	EV/Sales 2010A	EV/Sales 2011A	EV/Sales 2012E	EV/Sales 2013E	Average
Unadjusted metrics		556.5				196.6				156.4			303.2
Adjusted metrics		754.5				271.0				169.0			398.2

Valuation Indications - Big 4

Financial metrics $ in millions	P/E 2010A	P/E 2011A	P/E 2012E	P/E 2013E	EV/EBITDA 2010A	EV/EBITDA 2011A	EV/EBITDA 2012E	EV/EBITDA 2013E	EV/Sales 2010A	EV/Sales 2011A	EV/Sales 2012E	EV/Sales 2013E	Average
Unadjusted metrics		734.6				200.7				135.0			356.8
Adjusted metrics		995.9				276.6				145.8			472.8
Average (M&M and Big 4)		760.4				236.3				151.5			382.7

Based upon our understanding of the application of this methodology, it would appear that either a weighted average was applied to the selected comparable company metrics in the Presentation or there is some disconnect between the calculated average valuation indication of $398M (slide 39). As shown above, we have calculated a value of approximately $365M using the same data. Interestingly, when we used the financial metrics that were calculated using the Morningstar data the indicated value was closer to the amount shown in the Presentation (approximately $383M).

	Presentation	Review	
Comparable company analysis - value before merger premium	**$398.8**	**$382.7**	**$365.2**
Times:			
Merger premium - slide 44	40%	40%	
Indicated value - slide 45	$558.3		
Less:			
Indicated value - reviewed calculation		535.8	511.3
Potential net difference ($ in millions)		**22.5** -	**47.1**
Divided by:			
Indicated value - slide 45		558.3	
Potential net difference (%)		**4%** -	**8%**

Our analysis above shows that the potential result of applying the metrics derived from our review of the Presentation could result in a difference in value of between approximately $22.5M and $47.1M; however it is important to note that we generally believe that any two independent valuations that fall within a variance in indicated value of less than 10% are in agreement in regard to their opinion. Since we have estimated that the potential net differences between our reviewed calculations and the indicated value presented in slide 45 of the Presentation to be between 4% and 8%, it is our opinion that the discrepancies noted are likely immaterial.

Control Premium

In the comparable company analysis, Barrington applies multiples from publicly traded companies to CollegeAmerica's financial performance to determine a "minority interest" value of $398.8 million.

To arrive at a control value, as is the case with the purchase of interest of CollegeAmerica, Barrington applies a 40% control premium, based on a range of premium from actual transactions that have occurred in the market. This leads to a value after merger premium of $558.3 million.

The methodology utilized by Barrington is generally accepted by many in the valuation community. These valuators believe that since the valuation multiples are from publicly traded companies, where no one owner has any sort of control, they are based on a minority interest. Therefore, to arrive at a control position value, one must apply a control premium, as is the case in the valuation of CollegeAmerica.

However, many others believe that the public company multiples are neutral in respect to a minority versus control position, and that the determination of whether to include a control premium or minority interest discount is based on the cash flows of the subject company.

Both valuation methodologies related to control premiums from guideline company multiples are accepted within the valuation community and therefore, we believe it is reasonable methodology for Barrington to have utilized.

Comparable Transactions Analysis

Barrington states that under this method, actual transactions of comparable companies were used to obtain transaction multiples that were then applied to certain Company metrics in order to determine a "control sale" value (slide 47). The metrics selected, as shown below, were price to EBITDA and price to revenue.

Generally, when calculating a control value under this methodology, the selected multiples are based upon a market value of invested capital (MVIC) for the comparable company transaction. Barrington has in this case used an equity value for the companies sampled, with the difference being that an equity value includes the structured debt of the company. MVIC on the other hand is the equity value of the company with the structured debt added back.

The theory behind using MVIC to express a control value is that under a control scenario, owners of a company have the discretion to manipulate capital structure to include debt as deemed necessary.

In order to determine the possible effect of using equity value as opposed to MVIC under this method, we recalculated the value of the Company using MVIC to EBITDA and MVIC to sales metrics obtained from the Pratt's Stats database for entities that were as similar in nature to the Company as we could determine. We did not have access to the identical company data that Barrington had used, however we believe that the companies selected were similar enough for purposes of this analysis.

It is important to note that there was a slight difference in our calculation of the price to revenue implied value obtained using the equity value data originally selected by Barrington. The value shown on slide 48 using this metric is between $348.8 and $549.3 million, where we have calculated a value of between $352.3 and $548.6 million; however the difference is in our opinion likely immaterial to our analysis and has been noted to make the reader of this report aware that there is a discrepancy in the table below and the Presentation.

In calculating the implied values below, a 40% discount factor has been applied by Barrington to account for the timing of the transactions used under this method. The Presentation states that the industry has not had significant transaction activity in the most recent periods since the date of the valuation, and the market for similar companies is not nearly as strong as reflected in the data presented. Additionally, Barrington states that the application of this method is subjective (slide 47) in nature and as such, we do not have issue with the fact that the Presentation does not include support for the 40% discount factor or that the factor was used in determining the implied value shown on slide 48.

Based upon the MVIC data that we've used under this method, the implied value range is from $308.0 to $624.1 million. The implied value of $348.8 to $549.3 shown in the Presentation using equity value data is within the MVIC range, and as a result we believe that this range is consistent with our findings despite the difference in the theoretical level of control.

CollegeAmerica

Target Company Name	Acquirer Company Name	Announce Date	Equity Value ($ in millions)	Price / EBITDA	Price / Revenue
Renaissance Learning	Permira Advisors	8/16/2011	$455	11.5	3.3
Nobel Learning	Leeds Equity Partners	5/18/2011	125	7.8	0.5
Laureate Education	S.A.C. Capital	1/28/2007	3,226	14.3	2.8
Education Management	Goldman Sachs & Providence	3/6/2006	3,244	12.6	3.0
Educate	Sterling; Citigroup; Educate	9/25/2006	346	9.5	1.0
eCollege.com	Pearson Education	5/14/2007	504	25.5	9.2
Concorde Career Colleges	Liberty Partners	6/21/2006	109	15.3	1.3
		Mean		13.8	3.0
		Median		12.6	2.8
		Laureate, EDMC & Concorde		14.1	2.4
		Less: 40% discount		60%	60%
		Adjusted multiples		8.4	1.4
		Times: College America metrics		65.0	248.1
		Implied valuation		548.6	352.3

CompanyName	BusinessDescription	Sale Date	Market Value of Invested Capital (MVIC)	MVIC / EBITDA	MVIC / Sales
Hesser, Inc.	Owner and Operator, Post Secondary Schools (College)	3/13/1998	$15,000,000	8.6	0.9
Western State University of Southern California	Law School	3/1/2001	12,600,000	15.9	1.5
American Education Centers, Inc.	Offers Diploma and Associate Degree Programs	9/2/2003	116,000,000	26.0	5.1
Wyo-Tech Acquisition Corporation	Offers Diploma and Degree Programs in Auto - Diesel Tech	7/1/2002	84,400,000	20.7	2.7
Interboro Institute, Inc.	Owns and Operates a Two-Year College	1/14/2000	672,500	0.5	0.1
U.S. Education Corporation	Owns and Operates Private Career Colleges	9/18/2008	298,185,000	47.6	2.1
Penn Foster Education Group, Inc.	Provider of Consumer-Based Distance Education	12/7/2009	176,264,000	12.3	2.0
Heald Capital, LLC	Offers Certificate Programs and Associate Level Degrees	1/4/2010	440,572,000	11.7	2.4
		Mean		17.9	2.1
		Median		14.1	2.0
		Average of mean and median		16.0	2.1
		Less: 40% discount		60%	60%
		Adjusted multiples		9.6	1.2
		Times: College America metrics		65.0	248.1
		Implied valuation		624.1	308.0

Under this method, Barrington goes on in the Presentation to show additional EBITDA multiples based upon market intelligence, historical trending and prior offers for the Company. Solely based upon the information contained within the Presentation, the sources and in some cases the meaning of this data is unclear. Although the EBITDA multiples shown are consistent with the transaction data from slide 48, we have no opinion to their reliability absent any further detail from Barrington.

Comparable Transaction Analysis - Review

Education industry transactions		$308.0	$624.1
Market intelligence	from Presentation	520.0	585.0
Historical multiples	from Presentation	455.0	650.0
Offers received	from Presentation	507.0	669.9
Implied valuation (average)		**$539.9**	

As shown above, the net difference in implied value due to the potential variance in our application of MVIC to the equity values used in the Presentation is approximately $4.3 million (slide 52).

Cost of Equity

Barrington utilized the Capital Asset Pricing Model ("CAPM") to determine an appropriate discount rate or required rate of return of an asset. The formula for CAPM is as follows:

$E(R_i) = R_f + (\text{Beta} \times RP_m) + RP_s + RP_u$

Where:

$E(R_i)$	=	Expected (market required) rate of return
R_f	=	Rate of return for a risk-free security as of the Valuation Date
Beta	=	Measure of systematic risk
RP_m	=	Equity risk premium for the "market"
RP_s	=	Risk premium for size
RP_u	=	Risk premium for specific company, u stands for unsystematic risk

Barrington CAPM:

Base case: 13.86% = 1.65% + (1.59 x 6.01%) + 2.65%

Low beta case: 13.23% = 1.65% + (0.82 x 6.01%) + 2.65% + 4.00%

The risk free rate (R_f) was based on the 10-year U.S. Treasury yield as of September 30, 2012. Many valuators utilize the 20-year bond rate as a proxy to a risk free security, which as of this date was 2.42%. However, there is debate whether it is more accurate to use a shorter-term Treasury bill or a long-term Treasury bond to represent the risk free rate of return. The Presentation did not outline the reasoning behind the use of a shorter period 10 year yield.

Beta is typically derived from a group of guideline public companies that are similar to the subject company. Beta is representative of industry risk. Barrington utilized betas derived from public companies considered in comparable company analysis, which appears reasonable.

The equity risk premium (RP_m) is often based on Ibbotson *Cost of Capital Handbook* and is currently 6.62%. Barrington on the other hand utilized the equity risk premium from Stern School of Business professor Aswath Damodaran's *Equity Risk Premiums (ERP): Determinants, Estimation and Implications – The 2012 Edition*, which is 6.01%. The source for Barrington's equity risk premium appears to be reputable and reasonable.

The increased risk premium for being a small company versus a large publically traded company is the size premium and is typically derived from Ibbotson, which Barrington has utilized in its discount rate.

Finally, CAPM requires consideration of any risks specific to the subject company. There is little objective data and no quantitative means of establishing the specific risk of a subject company, and it is typically based on judgment and experience. These are any risks in addition to the equity, industry, and size risks outlined above. General factors that should be considered include:

1. Business risk
    a. Size relative to the benchmarks used for earlier risk premiums
    b. Geographical concentration
    c. Management strength and depth
    d. Product line concentration
    e. Customer mixture and reliance
    f. Supplier mixture and reliance
    g. Competitive strengths and weaknesses
    h. Quality and variability of earnings
2. Industry
3. Financial risk
    a. Degree of leverage
    b. Coverage ratios
    c. Liquidity
    d. Access to sources of capital

We noted that Barrington utilized a discount rate based on two scenarios of CAPM with different betas and a Barrington estimate for a "regulatory" premium. No explanation was given for utilizing the two beta scenarios and what the regulatory premium is or how it was calculated.

It appears that Barrington did not include any sort of specific company risk premium that would take into consideration the riskiness of investing in CollegeAmerica specifically. Examples of these risks were discussed above. Given we did not have access to the valuation report underlying the Presentation, we do not know whether Barrington considered any additional specific company risk related to CollegeAmerica that should be incorporated in the discount rate.

Based on the Presentation and our analysis, we believe it is possible that some sort of specific company risk should have been included in the calculation of the discount rate for CollegeAmerica due to factors such as the following:

1. As Barrington noted in the background analysis, CollegeAmerica has experienced high compound growth since 2005, which may not be sustainable.
2. EBITDA margins are very high compared to the industry (30%-40%) versus less than 20% for the industry. These margins are likely not sustainable in the long-term.
3. CollegeAmerica's founder delegated marketing duties to another manager in 2010. As discussed earlier, the marketing manager made several poor decisions in 2010 and 2011, which affected CollegeAmerica's bottom line. Barrington made a marketing adjustment due to the "non-recurring" nature of the reduced revenue and increased expenses. This may indicate issues with management's ability to maintain profitability long-term.

As a measure of how the discount rate used in the Presentation could potentially vary based upon the points raised above, we have recalculated the discount rate using the following assumptions:

- Risk free rate = 20-year US treasury bond rate
- Market risk premium = Ibbotson equity risk premium
- Regulatory risk = no regulatory risk assumed
- Company specific risk = varies by company; a range of 0% to 4% was assumed

As shown in the table below, based upon the assumptions listed above we've selected a discount rate of 16% as opposed to the 14% rate shown on slide 66 of the Presentation.

Cost of Equity - II (Presentation)

	Risk-Free Rate		Beta		Market Risk Premium		Market Discount Rate		Size Premium		Regulatory Premium		Equity Discount Rate
Base case	1.65%	+ (	1.59	x	6.01%	) =	11.21%	+	2.65%	+	0.00%	=	13.86%
Low beta case	1.65%	+ (	0.82	x	6.01%	) =	6.58%	+	2.65%	+	4.00%	=	13.23%
									Selected discount rate			=	**14.00%**

Cost of Equity - II (Review)

	Risk-Free Rate		Beta		Market Risk Premium		Market Discount Rate		Size Premium		Company Specific Risk		Equity Discount Rate
Base case	2.42%	+ (	1.59	x	6.62%	) =	12.95%	+	2.65%	+	0.00%	=	15.60%
Low beta case	2.42%	+ (	0.82	x	6.62%	) =	7.85%	+	2.65%	+	4.00%	=	14.50%
									Selected discount rate			=	**16.00%**

Discounted Future Benefits Method

Barrington applied a five year discrete projection period and a terminal year (operations into perpetuity) in arriving at a value of CollegeAmerica under the DCF method. The five year discrete projection period is based on CollegeAmerica's projections for 2013 – 2017 and additional adjustments for working capital and capital expenditures to arrive at free cash flows of the Practice.

To determine the terminal year value, Barrington applied an EBITDA multiple to projected EBITDA in 2017. The EBITDA multiple of 8.0 was used, which appears high. On Slide 37, the comparable company enterprise value to EBITDA multiples "Mean & Median Index" ranges from 4.0 to 5.2, while the "Big Four Index" ranges from 6.0 to 7.1. It appears that Barrington is utilizing an EBITDA multiple greater than that of industry comparable companies.

We were not provided support for how this multiple was determined in the Presentation. Hence, based on the information received, the multiple may be inflating the concluded value under the DCF method. However, the full valuation report may provide additional information on the reasoning for utilizing this multiple.

As a measure of the potential impact of the difference in discount rate that we have selected in the previous table, and using the upper limit of the industry comparable EBITDA multiples for the "Big Four Index" as shown in the Presentation, we have recalculated the discounted cash flow indication of value for the Company.

Terminal Value Analysis - Review

	2013	2014	2015	2016	2017
EBITDA	$56,456	$82,399	$106,943	$128,923	$146,969
Terminal value multiple					7.1
Terminal value					**$1,043,480**

Cash Flows for DCF Analysis - Review

	Discount Rate					
Free cash flows		$32,535	$27,805	$41,247	$53,937	$62,478
Terminal value						1,043,480
Total cash flows		32,535	27,805	41,247	53,937	1,105,958
Mid-point convention		0.5	1.5	2.5	3.5	4.5
PV factor using:	16%	0.9285	0.8004	0.6900	0.5948	0.5128
Discounted cash flows		30,208	22,255	28,461	32,084	567,124
Net present value						**$680,131**

It is important to note that we have also implemented a mid-point convention in the calculation above, where an end-of-year convention was used in the Presentation. Use of a mid-point convention assumes that cash flows for the company are evenly distributed over the course of the year; the end-of-year convention is typically used when cash is received at the end to the year. Based on a typical school year semester system, we have assumed that cash is probably received in a manner somewhat periodically over the course of the year and have thus decided that the mid-point convention may be more appropriate.

Based upon the table above, we have calculated a value of approximately $680 million, compared to the value of approximately $753 million shown on slide 68.

Valuation Conclusion

After determining the value of CollegeAmerica under the Comparable Transaction Analysis, Comparable Company Analysis, and Discounted Cash Flow Analysis, Barrington utilized a weighted average of the three methods, as shown below, to arrive at a conclusion of value for CollegeAmerica:

	Value (Presentation)	Recalculated Value (Review)		
Comparable Transaction Analysis	$536,000		$540,000	
Comparable Company Analysis	558,000	511,300	-	535,800
Discounted Cash Flow Analysis	753,000		680,000	
Estimated Fair Market Value	**$650,000**			
Overall Potential Range ($ in millions)		**$511,300**	**-**	**$680,000**

However, Revenue Ruling 59-60 states: "Because valuations cannot be made on the basis of a prescribed formula, there is no means whereby the various applicable factors in a particular case can be assigned mathematical weights in deriving the fair market value. For this reason, no useful purpose is served by taking an average of several factors (for example, book value, capitalized earnings and capitalized dividends) and basing the valuation on the result. Such a process excludes active consideration of other pertinent factors, and the end result cannot be supported by a realistic application of the significant facts in the case except by mere chance."

While Revenue Ruling 59-60 discourages the use of weighting multiple methods, weighting is frequently accepted in the valuation community in general practice. However, the Presentation did not give any support for the weightings used in arriving at the conclusion of value and we, therefore, are unable to determine whether this weighting was reasonable.

The Presentation included a summary of the comparable company analysis, comparable transactions analysis, and the discounted future benefits method. Valuation standards also require the valuator to consider the asset approach, capitalized benefits approach, and rules of thumb/industry methods, in addition those methods shown in the Presentation.

CONCLUSION OF VALUATION REVIEW

In arriving at our review opinion, we noted some issues with the Presentation that we believed required further scrutiny. These issues included:

- The Cost Approach was not discussed.
    - Additionally, the Presentation did not include the Company's balance sheet.
- Certain "add-backs" to the income statements had no detailed explanation as to their nature or reasoning for the add backs.

- The discount rate utilized under the Income Approach was lower than what we might have expected.
    - Two different betas and a "regulatory premium" were applied with no explanation contained within the Presentation.
    - No adjustment was made for Company specific risk.
- A capitalization of benefits method was not discussed or included within the Presentation.
- No industry methods or rules of thumb were discussed or included within the Presentation.
- The conclusion of value contained within the Presentation was expressed as the weighted average of three methods.
    - Despite the fact that this practice is contrary to Revenue Ruling 59-60, no explanation is provided for the use of weighting of the three methods.

We have also considered certain other areas of interest within our review report; however we believe that the points listed above are of primary concern. That being said and considering the limitations of the nature and amount of information included in a presentation format as opposed to a fully-contained appraisal report as defined by SSVS-1, we cannot draw any conclusions as to the effect of the underlying information that we did not receive. Noting certain factors, assumptions, and differences in theory and based upon the analyses performed, we have recalculated the potential value of the Company under the methods utilized in the Presentation.

	Value ($ in Millions)	Recalculated Value		
Comparable Transaction Analysis	$536,000	$540,000		
Comparable Company Analysis	558,000	511,300	-	535,800
Discounted Cash Flow Analysis	753,000	680,000		
Estimated Fair Market Value	**$650,000**			
Overall Potential Recalculated Range		**$511,300**	-	**$680,000**

Based upon the table above, it appears that the estimated fair market value for the Company shown on slide 71 of the Presentation is consistent with our overall range of recalculated value. Therefore, excluding those points noted previously, it is our opinion that conclusion of value of the common equity of CollegeAmerica as of September 30, 2012 on a control, non-marketable basis contained within the Presentation is likely fairly stated and consistent with fair market value.

However, we requested additional information and have not received that as of the date of this report. The information requested, but not received may have had a significant impact on our conclusion.

ASSUMPTIONS AND LIMITING CONDITIONS

This valuation review is subject to the following assumptions and limiting conditions:

1) The Appraisal Review analyses arrived at herein are valid only for the stated purpose as of the date of the valuation.

2) Public information and industry and statistical information have been obtained from sources we believe to be reliable. However, we make no representation as to the accuracy or completeness of such information and have performed no procedures to corroborate the information.

3) This report and the analyses arrived at herein are for the exclusive use of our client for the sole and specific purposes as noted herein. They may not be used for any other purpose or by any other party for any purpose. Furthermore the report and analyses are not intended by the author and should not be construed by the reader to be investment advice in any manner whatsoever. The Appraisal Review represents the considered opinion of Blue & Co., LLC, based on information furnished to them by you, Barrington and other sources.

4) Neither all nor any part of the contents of this report (especially the analyses within, the identity of any valuation specialist(s), or the firm with which such valuation specialists are connected or any reference to any of their professional designations) should be disseminated to the public through advertising media, public relations, news media, sales media, mail, direct transmittal, or any other means of communication, including but not limited to the Securities and Exchange Commission or other governmental agency or regulatory body, without the prior written consent and approval of Blue & Co., LLC.

5) Future services regarding the subject matter of this report, including, but not limited to testimony or attendance in court, shall not be required of Blue & Co., LLC unless previous arrangements have been made in writing.

6) We have not visited the premises and we have not made a physical inspection of the property. No investigation of legal fee or title to the property has been made, and the owner's claim to the property has been assumed valid. No land survey has been made. No appraisals of real or personal property have been made by Blue & Co., LLC.

7) No change of any item in this appraisal report shall be made by anyone other than Blue & Co., LLC, and we shall have no responsibility for any such unauthorized change.

8) Unless otherwise stated, no effort has been made to determine the possible effect, if any, on the subject business due to future Federal, state, or local legislation, including any environmental or ecological matters or interpretations thereof.

9) If prospective financial information approved by management has been used in our work, we have not examined or compiled the prospective financial information and therefore, do not express an audit opinion or any other form of assurance on the prospective financial information or the related assumptions. Events and circumstances frequently do not occur as expected, and there will usually be differences between prospective financial information and actual results, and those differences may be material.

10) We have not conducted interviews with the current management of the Entity, or their representatives, concerning the past, present, and prospective operating results of the entity.

11) Except as noted, we have relied on the representations of Barrington and other third parties concerning the value and useful condition of all equipment, real estate, investments used in the business, and any other assets or liabilities, except as specifically stated to the contrary in this report. We have not attempted to confirm whether or not all assets of the business are free and clear of liens and encumbrances or that the entity has good title to all assets.

12) The approaches and methodologies used in our work did not comprise an examination in accordance with generally accepted accounting principles, the objective of which is an expression of an opinion regarding the fair presentation of financial statements or other financial information, whether historical or prospective, presented in accordance with generally accepted accounting principles. We express no opinion and accept no responsibility for the accuracy and completeness of the financial information or other data provided to us by others. We assume that the financial and other information provided to us is accurate and complete, and we have relied upon this information in performing our valuation.

13) The Appraisal Review may not be used in conjunction with any other appraisal or study. The analyses in this report are based on the program of utilization described in the report, and may not be separated into parts. The review was prepared solely for the purpose, function and party so identified in the report. The report may not be reproduced, in whole or in part, and the findings of the report may not be utilized by a third party for any purpose, without the express written consent of Blue & Co., LLC.

14) Unless otherwise stated in the report, the Appraisal Review has not considered or incorporated the potential economic gain or loss resulting from contingent assets, liabilities or events existing as of the valuation date.

15) In all matters that may be potentially challenged by a Court or other party we do not take responsibility for the degree of reasonableness of contrary positions that others may choose to take, nor for the costs or fees that may be incurred in the defense of our recommendations against challenge(s). We will, however, retain our supporting workpapers for your matter(s), and will be available to assist in defending our professional positions taken, at our then current rates, plus direct expenses at actual, and according to our then current Standard Professional Agreement.

16) Any decision to purchase, sell or transfer any interest in the subject entity or its subsidiaries shall be Entity ownership's responsibility, as well as the structure to be utilized and the price to be accepted.

17) The selection of the price to be accepted requires consideration of factors beyond the information we will provide or have provided. An actual transaction involving the subject business might be concluded at a higher value or at a lower value, depending upon the circumstances of the transaction and the business, and the knowledge and motivations of the buyers and sellers at that time. Due to the economic and individual motivational influences which may affect the sale of a business interest, Blue assumes no responsibility for the actual price of any subject business interest if sold or transferred.

18) All facts and data set forth in our letter report are true and accurate to the best of the Blue's knowledge and belief.

19) We have no responsibility or obligation to update this report for events or circumstances occurring subsequent to the date of this report.

20) Our Appraisal Review, shown herein, pertains only to the subject business, the stated value standard (fair market value), as at the stated valuation date, and only for the stated valuation purpose(s).

21) Our report will not be used for financing, or included in a private placement or other public documents and may not be relied upon by any third parties.

22) The report assumes all required licenses, certificates of occupancy, consents, or legislative or administrative authority from any local, state or national government, or private entity or organization have been or can be obtained or reviewed for any use on which the analyses contained in the report are based.

23) Blue & Co., LLC does not consent to be an expert with respect to matters involving the Securities and Exchange Commission. For purposes of this report, the foregoing sentence means that Blue & Co., LLC shall not be referred to by name or anonymously in any filing or document. Should you breach this stipulation and refer to Blue & Co., LLC by name or anonymously, you will amend such filing or document upon written request of Blue & Co., LLC.

24) We express no opinion for matters that require legal or other specialized expertise, investigation, or knowledge beyond that customarily employed by business appraisers.

25) Unless stated otherwise in this report, we express no opinion as to: 1) the tax consequences of any transaction which may result, 2) the effect of the tax consequences of any net value received or to be received as a result of a transaction, and 3) the possible impact on the market value resulting from any need to effect a transaction to pay taxes.

26) All of the assumptions and limiting conditions are in addition to, and not in lieu of, those found in the report body and Certification section of the report

VALUATORS' REPRESENTATION[9]

I certify to the best of my knowledge and belief that:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed and this report has been prepared to my best effort to be in conformity with the American Institute of Certified Public Accountants, Uniform Standards of Professional Appraisal Practice, the Business Valuation Standards of the American Society of Appraisers, the Institute of Business Appraisers and the Standards of the National Association of Certified Valuation Analysts.
- The American Society of Appraisers has a mandatory recertification program for all of its senior members. All senior members (ASA designation) signing this report are in compliance with that program.
- No significant professional assistance was provided to the persons signing this report.

[9] Representation in satisfaction of the USPAP Certification requirement.

Additionally, I certify to the best of my knowledge and belief that:

- I am not a party to the transaction, am not related to any party to the transaction, am not married to any person with a relationship to the transaction, am not regularly used by any of the parties to the transaction and do not perform a majority of appraisals for these persons.

- I hold myself out to the public as a valuation practitioner and perform appraisals of privately-held businesses on a regular basis.

- I am qualified to make appraisals of the type of property being valued including, by background, experience, education, and memberships in professional associations.

- I understand that an intentionally false or fraudulent overstatement of value may subject me to a civil penalty.

- My fee is not based upon a percentage of the appraised value of the property.

Sincerely,

Bradley H. Minor, CPA/ABV/CFF, ASA, CVA, CMEA, Director

Kameron H. McQuay, CPA/ABV, CVA, Director

Appendix A

BRADLEY H. MINOR, CPA/ABV/CFF, ASA, CVA, CMEA

General Data

Indianapolis Business Address:
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Email: bminor@blueandco.com
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BIO

Brad started with Blue in 1989 with a degree in business (accounting major) from Indiana University. Brad began performing business valuations in 1990. He is a Certified Valuation Analyst (CVA) and an Accredited Senior Appraiser (ASA) – Business Valuation member of the American Society of Appraisers. Additionally, he is a Certified Public Accountant (CPA) and has earned the AICPA's specialty designations for business valuators (ABV) and forensic accountants (CFF). He is also a Certified Machinery and Equipment Appraiser (CMEA) member of the National Business Brokers Association.

Brad was elected to Director in 2008 and has overseen the firm's Valuation and Financial Forensics Group since 1999. He performs business valuations, assists with real estate and machinery & equipment appraisals, and has supported attorneys and clients in various areas of litigation. Brad has given presentations on various topics such as: family limited partnerships, valuing construction companies, valuing professional practices, valuing ESOPs, valuing healthcare entities, business valuation standards and general business valuation topics.

Brad served on the AICPA Business Valuation Committee (2003 through 2007) and has served as a member of the AICPA's "Ask the Experts" Technical Advisory Panel and the "ABV Mentor Program." He has served as chairman of the Litigation Support Group of AGN International – North America. He served on the Editorial Advisory Board and was a frequent contributor of articles to the national publication "National Litigation Consultant's Review." He is the co-author of the June 1997 book entitled "Valuation of a Closely Held Business" for Research Institute of America, a national business publisher.

EDUCATION

Indiana University, Bloomington, IN (Graduated 1989)
BS Business (Accounting Major)

PROFESSIONAL DESIGNATIONS

- Certified Public Accountant (CPA), Indiana, 1992
- Certified Valuation Analyst (CVA), 1994 (National Association of Certified Valuation Analysts)
- Diplomate of the American Board of Forensic Accounting 1997, (The American College of Forensic Examiners)
- Accredited in Business Valuation (ABV), 1998 (American Institute of Certified Public Accountants)
- Accredited Senior Appraiser (ASA) in Business Valuation, 2000 (American Society of Appraisers)
- Certified in Machinery and Equipment Appraisals (CMEA), 2005 (National Equipment & Business Brokers Institute)
- Certified in Financial Forensics (CFF), 2008 (American Institute of Certified Public Accountants)
- Fellow of the American College of Forensic Examiners (FACFEI), 2008 (The American College of Forensic Examiners)

BUSINESS HISTORY

Blue & Co., LLC, Director of Valuation and Litigation Services Department *1990 to Present*
Indianapolis, Indiana and Evansville, Indiana

Brad has been working in the valuation and litigation support services department since 1990 and has overseen the department for the firm since 1999. This department provides a full range of services, including business valuation, insurance loss claims, forensic accounting, budgeting, forecasting, business plans, assisting with real estate and machinery and equipment appraisals, and support to attorneys in virtually all areas of litigation, including expert testimony and consultation. The majority of Mr. Minor's time is spent in this area. Mr. Minor also consults regularly with closely held businesses in all areas of their operations and is responsible for tax consulting and planning for several corporate and individual tax clients.

Blue & Co., LLC, Senior in Tax Department *1989 to 1990*
Indianapolis, Indiana

Experience in the tax department included working directly with clients in planning and compliance with tax laws. Areas of experience include corporate, partnership, and individual taxation, buying and selling of businesses, and divorce taxation issues.

Internal Revenue Service, Internal Revenue Agent *1987 to 1988*
Evansville, Indiana

Held this position originally as a co-op student while attending I.U. and later on a part-time basis during senior year of college. Exposed to all areas within organization including audit, collection, and criminal investigation. Main responsibilities were those of a normal revenue agent, auditing individual and small business tax returns.

ASSOCIATION AND CIVIC MEMBERSHIPS AND ACTIVITIES

- American Institute of CPA's (Business Valuation Exam Review Course Task Force 1998 – 2002, Fundamentals of Business Valuation (FBV) Task Force 2002, Business Valuation Committee 2003 - 2007). Business Valuation Volunteer of the Year Award recipient 2001
- Indiana CPA Society (Litigation Committee 1996)
- Accountants Global Network ("AGN") (Litigation Support Committee 1995/1996, Committee Chairman 1996/1997 and 1997/1998)
- American Society of Appraisers (Indiana Chapter Secretary 1998/1999, 2000/2001; Vice President 2001/2002)
- Member of the Institute of Business Appraisers
- Member of the American College of Forensic Examiners
- Member of the Estate Planning Council of Indianapolis

LECTURES, WRITINGS, SPEECHES, SEMINARS, COURSES, ETC.

- "Valuations A to Z - Part 2, Specific Methods & Techniques", Columbus Bar Association, with Jeffry Moffatt and Gina Grote, Columbus, OH, June 11, 2012.
- "Business Valuation for the Divorce Attorney", Evansville Bar Association, with Jarit Loughmiller, Evansville, IN, March 23, 2012.
- "Estate and Gift Tax Case Update", Hoosier Hills Estate Planning Council, Bloomington, IN, with Dave Maschino, John Kotlarczyk, and Kristine Bouaichi, February 16, 2012.
- "Benchmarking in Physician Practice Valuations", Webinar for The Healthcare Practice Group (HPG) and the National Association of Certified Valuation Analysts, September 30, 2010 and January 27, 2011.
- "BV Practice Management Toolkit" American Institute of Certified Public Accountants, Contributing Author, aicpa.org/FVS, 2009.
- "New Exposure Draft of Proposed Statement on Standards for Valuation Services (SSVS)" Accountant's Global Network Business Valuation Teleconference, December 14, 2006.
- "The Value of Valuations in Healthcare" Ohio Society of CPA's Health Care Conference, with Kam McQuay and Alex Fritz, November 14, 2006.
- "Tips for Starting a BV Practice" Journal of Accountancy, September 2006.
- "ASC's... If You Don't Know What the Acronym Means You Probably Shouldn't Value Them" National Litigation Consultant's Review, March 2006.

- "Review of "The Expert Witness Handbook, Tips and Techniques for the Litigation Consultant" by Dan Poynter", National Litigation Consultant's Review, December 2005.
- Lead editor and reviewer for "Business Valuation Practice Management Toolkit" American Institute of Certified Public Accountants, November 2005.
- "A "Scrushy" Situation", National Litigation Consultant's Review, October 2005.
- "It's a Rate, Rate, Rate, Rate World", National Litigation Consultant's Review, August 2005.
- "AICPA Business Valuation Standards", Accountant's Global Network, North American Regional Meeting, May 18, 2005, St. Louis, MO.
- "Back to the Basics, Legal Lingo 101", National Litigation Consultant's Review, May 2005.
- "How the BV Professional Can Work Effectively with Non-BV Appraisers (Co-Authored with Dr. Brent C Smith)", National Litigation Consultant's Review, March 2005.
- "Seak, Inc.'s "National Guide to Expert Witness Fees and Billing Procedures (Review of)", National Litigation Consultant's Review, December 2004.
- "Expert Preparation of the Expert Witness (a primer for litigation support team members)", National Litigation Consultant's Review, August 2004.
- "New BV Standards and Other AICPA Matters", Accountant's Global Network, North American Regional Meeting, May 25, 2004, Palm Springs, CA.
- "Using Management Planning, Inc.'s Restricted Stock Study", National Litigation Consultant's Review, March 2004.
- "Be Prepared for New AICPA Standards", National Litigation Consultant's Review, February 2004.
- "Litigation Services and Applicable Standards (Review of)", National Litigation Consultant's Review, December 2003.
- "Down on the Farm Damages", National Litigation Consultant's Review, August 2003.
- "Market Approach Methods", Accountant's Global Network, North American Regional Meeting, May 20, 2003, Cincinnati, OH.
- "Library Organization", National Litigation Consultants' Review, May 2003.
- "Come to the Fight Heavily Armed", National Litigation Consultants' Review, March 2003.
- "OneSource", National Litigation Consultants' Review, December 2002.

- "A Time to Shred", National Litigation Consultants' Review, October 2002.
- Review and assistance on "Be a Bulldog", National Litigation Consultants' Review, August 2002.
- "Sweating the Small Stuff", National Litigation Consultants' Review, May 2002.
- "Do I Need to File a Gift Tax Return", Blue Notes, Spring 2001 and The Business Edition (formerly the Columbus Business Scene), July 2001.
- "To ABV or Not to ABV", The CPA Consultant, Newsletter of the AICPA Consulting Services Section, February/March 2001.
- "*Business Killers*", Indiana's Midwest Builders Convention, February 11, 2000, Indianapolis, IN.
- "*Valuation Case Analysis*", National Association of Certified Valuation Analysts (NACVA) Indiana Chapter Meeting, Discussion Leader, August 17, 1999, Indianapolis, IN.
- "Internal Revenue Service Acquiesces in Capital Gains Discount Case", Blue Notes, Spring 1999.
- "*The Business of Litigation Support*", Accountants Global Network (AGN) International World Congress, October 23, 1998, San Diego, CA.
- "*Valuation of Specific Assets*", Indiana Continuing Legal Education Forum (ICLEF) Selected Topics in Probate Administration, October 17, 1997, Indianapolis, IN.
- Co-author of "*Valuation of a Closely Held Business*", Research Institute of America, June, 1997, Copyright 1997.
- "*ESOPs Succession Planning*", NBD Bank, May 1, 1997, Indianapolis, IN.
- "*Tax & Pension Aspects of ESOPs*", The Indiana ESOP Association Professionals Meeting, March 13, 1997, Indianapolis, IN.
- "*Business Valuation Potpourri*", Blue & Co., LLC Firmwide Audit and Accounting Training Seminar, September 20, 1996, Indianapolis, IN.
- "*Valuation of Construction Companies*", Construction Industry Task Force Reunion, AGN, June 15, 1996, Fort Collins, CO.
- "*Valuation of the Practice*", Indiana Continuing Legal Education Forum (ICLEF) What Happens When the Professional/Executive Dies? Seminar, December 5, 1995, Indianapolis, IN.
- "*Business Valuations*", American Society of Women Accountants, November 16, 1995, Indianapolis, IN.

- *"Family Limited Partnerships, Brief Overview of Business Valuations"*, Indianapolis Chapter of CLU and ChFC, September 12, 1995, Indianapolis, IN.

- *"What is Litigation Support? Why a Business Valuation?"* Blue & Co. Firmwide Tax Training Seminar, November 20, 1991, Indianapolis, IN.

SELECTED BUSINESS VALUATION AND LITIGATION SUPPORT COURSES AND TRAINING

- American Society of Appraisers, Employee Stock Ownership Plans (ESOP) Valuation Course (BV206); Anaheim, CA, October 1995.
- American Society of Appraisers, Business Valuation Selected Advanced Topics (BV204); Indianapolis, IN April 1995, Passed BV204 Exam.
- National Association of Certified Valuation Analysts, Business Valuation and Certified Valuation Analysts (CVA) Training Program; Salt Lake City, Utah; November 1994.
- Partnerships and Other Pass-Through Entities; New York University, NY; July 1994.
- American Society of Appraisers, Business Valuation Case Study (BV203); Passed BV203 Exam; Denver, CO; May 1994.
- Tax Consequences of Buying and Selling a Business, sponsored by the IU Graduate School of Business; Indianapolis, IN; December 1993.
- AGN Business Valuation Seminar; Passed Introduction to Business Valuation (BV201) and Business Valuation Methodology (BV202) Exams; St. Louis, MO; May 1993.
- AGN, Litigation Support Training Seminar; Denver, CO; September 1992; San Diego, CA, September 1999.

Appendix A

KAMERON H. MCQUAY, CPA/ABV, CVA

General Data

Indianapolis Business Address:
One American Square, Ste. 2200
Indianapolis, IN 46282

Telephone:
Business: 317.633.4705
Direct and Fax: 317.713.7933
Email: kmcquay@blueandco.com
Website: www.blueandco.com

EDUCATION

University of Evansville – Evansville, Indiana
Bachelor of Science – Finance

ACADEMIC HONORS

Graduated with Honors
Guthrie May Award Winner – Most Outstanding Graduate

BUSINESS HISTORY

Blue & Co., LLC, Director — *1992 to Present*

Coordinates services to physicians and their group practices. Responsibilities include development of Firm Marketing and Quality Control System as it relates to physician entities.

Additional responsibilities include corporate compliance activities for both hospital and physicians' organizations, Indiana Medicaid reimbursement issues, operational assessments of healthcare organizations, compliance and HIPAA impact, business valuation for Healthcare facilities, oversight of hospital acquisition programs, as well as a frequent speaker to physician and hospital groups.

Harding Shymanski & Co., Healthcare Professional Division-Manager — *1989 to 1992*

Responsible for all aspects of consulting service engagements including office practice set-up, accounting and financial management issues, coding and reimbursement analysis, billing and collection reviews, adoption of retirement plans and personal financial planning for physicians. Directed the activities of employees in the Healthcare Department.

Harding Shymanski & Co., Staff Accountant *1983 to 1989*

Delivered high quality audit and accounting services to various clients. Managed engagements for small and large audit clients requiring concurrent supervision of multiple engagement teams ranging from two to six professionals. Responsibilities also included the review and preparation of corporate and individual income tax returns.

PROFESSIONAL AND CIVIC MEMBERSHIPS

American Institute of Certified Public Accountants
Indiana CPA Society
National Association of Certified Valuation Analysts
Medical Group Management Association
Indiana Medical Group Management Association
Healthcare Financial Management Association
Indiana University – Purdue University Indianapolis
  Adjunct Faculty, School of Public and Environmental Affairs
Child Advocacy Center
  Past President and Director
Young Life of Evansville
Young Life of Carmel
  Committee Member
Accountants Global Network
  Healthcare Professionals Executive Committee
Carmel-Clay School District
  High School Soccer Coach

Appendix A

JEFFRY M. MOFFATT, CPA/ABV/CITP, CVA

General Data

Business Address:
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Indianapolis, IN 46282

Telephone:
Business: 317.633.4705
Direct and Fax: 317.275.7405
Email: jmoffatt@blueandco.com
Website: www.blueandco.com

EDUCATION

Indiana University, Kelley School of Business
Master of Professional Accountancy
Bachelor of Science in Business – Computer Information Systems

BUSINESS HISTORY

Blue & Co., LLC, Manager — *2008 to Present*

A member of the Valuation and Healthcare Strategy Group primarily focused on the analysis and development of methods for aligning hospitals, healthcare systems and other healthcare related entities with physician groups and other care providers. Additional healthcare industry related services provided include physician and practice benchmarking, physician compensation analysis and practice management and assessment.

Also a member of Valuation and Forensic Services, providing business valuations, litigation support and other valuation consulting and appraisal services.

Prestige Group, Inc., Assistant Controller — *2005 to 2008*

Primarily responsible for billing and reimbursement of subcontracted services for a domestic and international logistics services broker with operations in Indianapolis, IN, Dallas, TX and Houston, TX. Created internal billing and payment systems controls through the development of database systems tying together several disparate operations, sales and accounting systems.

PROFESSIONAL AND CIVIC MEMBERSHIPS

- American Institute of Certified Public Accountants – Accredited in Business Valuation (ABV) Champion
- Indiana CPA Society
- National Association of Certified Valuators and Analysts
- Healthcare Financial Management Association

- American Health Lawyers Association
- Indiana University Master of Health Administration Program Mentor
- United Way Emerging Leaders Program
- The Earth House Collective – Executive Board of Directors

LECTURES, WRITINGS, SPEECHES, SEMINARS, COURSES, ETC.

- "Healthcare Reform: The Rx for Physicians", *The Financial Diagnosis*, Kentucky Healthcare Financial Management Association, August 2010.
- "Owners' Compensation in Physician Practice Valuations" National Association of Certified Valuators and Analysts, September 14, 2010, October 14, 2010 and January 20, 2011.
- "Benchmarking Physician Practices" National Association of Certified Valuators and Analysts, September 23, 2010, October 26, 2010 and January 27, 2011.
- "Effects of Healthcare Reform: The 2011 Outlook for Physician Practice Valuations", *The Value Examiner*, November/December 2010.
- "Healthcare Valuation – What you Need to Know!", National Association of Valuators and Analysts State Chapter 2010, Tri-Annual Meeting (Indiana), November 19, 2010.
- "Valuing Medical Practices For a Divorce in the Current Healthcare Environment", *Valuing Professional Practices and Licenses, Third Edition*, Wolters Kluwer Law & Business, 2012.
- "Valuation A to Z (Part One): Fundamentals and Applications", Columbus Bar Association (Ohio), May 30, 2012.
- "Valuation A to Z (Part Two): Specific Methods and Techniques", Columbus Bar Association (Ohio), June 11, 2012.
- "Financial Projections and Financial Statement Adjustments for Valuation", National Association of Valuators and Analysts State Chapter 2010, Tri-Annual Meeting (Indiana), July 20, 2012.
- "Valuating Healthcare Transactions and Agreements", Columbus Bar Association (Ohio), October 5, 2012

Appendix A

MICHAEL L. UENG, CPA/ABV, CVA

General Data

Indianapolis Business Address:
One American Square, Ste. 2200
Indianapolis, IN 46282

Telephone:
Business: 317.633.4705
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Email: mueng@blueandco.com
Website: www.blueandco.com

EDUCATION

University of Michigan, Ross School of Business
Master of Accounting
Bachelor of Business Administration with emphases in Accounting and Finance

BUSINESS HISTORY

Blue & Co., LLC, Manager — *2009 to Present*

A member of the Valuation and Healthcare Strategy Group and a key contributor in providing healthcare practice management services, specifically focusing on business valuations for physician practices, hospitals and other healthcare related entities.

Clifton Gunderson, LLP, Assurance Senior Associate — *2006 to 2008*

Performed reviews of Indiana, Ohio, and Mississippi Cost Reports of long-term care and mental health providers with responsibility for planning engagements, managing fieldwork, reviewing work of staff, and completing final report. Trained entire healthcare group during implementation of paperless audit software.

Worked on performance audits of Medicaid Management Information System (MMIS) of fiscal intermediary for the state of Indiana and State Children's Health Insurance Plan administrator for the state of Mississippi, and assisted in recalculation of Medicaid certified public expenditures by all public hospitals in the state of Alabama for Medicaid and DSH settlement.

PROFESSIONAL AND CIVIC MEMBERSHIPS

American Institute of Certified Public Accountants
National Association of Certified Valuation Analysts
Indiana CPA Society
Healthcare Financial Management Association

MEMORADUM

TO: Board of Directors of CEHE
From: Jay Mercer, Counsel to the Board
Re: Minimum Due Diligence

As discussed at our most recent meeting, the level of due diligence necessary for this transaction is driven by the comfort level of the transaction decision makers; CEHE Board of Directors. I have been requested to provide the Board with an outline of the minimum due diligence that I would recommend. This list of minimum due diligence requirements is based on the following assumptions:

- Barney will contribute as a charitable gift the value of the goodwill of the colleges.
- CEHE will purchase the tangible assets of the colleges at fair market value.
- The financing of the purchase of the tangible assets will be collateralized based on a pledge of the tangible assets and personal guarantee from Barney.
- Barney shall provide an indemnification agreement that will be backed by a bond or letter of credit or other appropriate collateral.
- The CEHE Board of Directors shall remain active participants of the Board for term of 3 years following the merger.

<u>Minimum Due Diligence Review</u>:

1. A meeting between Carl Barney, CEHE Board members and Barney's proposed Board members.
2. Review of the organizational records of each merging corporations and LLCs, including Articles, Bylaws, Resolutions and minutes.
3. Review of financial statements for last 3 years.
4. Review of any employment agreements with the term in excess of one year.
5. Review of any consulting management or professional agreements a term in excess of one year.

EXHIBIT
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6. Review of any employment, consulting, management, professional or vendor agreements with individuals " related" to Carl Barney or "related" to any current Board Member, LLC Member and/or highly compensated individuals affiliated with the merger organizations. ("Related" means related to each other through family or business relationships). *

7. Review of summary plan description for any employee benefit plans.

8. Review of any collective bargaining or labor relations agreements.

9, Review of any policies of tenure or policies that restrict "at-will" employment.

10. Review of any notices, claims, audits, or other official notices investigation by the Internal Revenue Service, United Department Education or any State or local regulatory agency which the corporation s or LLCs have received within the last three years.

11. Review of any compliance or settlement agreements with any governmental agency or accrediting organization regarding operational, financial or educational deficiencies or regulatory compliance.

12. Certificates of accreditation from accrediting organizations.

13. Contracts, commitments, notes, debt instruments, security agreements, leases, guarantees that have a term of exceeds one year.

14. Appraisals of all personal property, real estate and goodwill by an appraiser in good standing with the American Society of Appraisers in accordance with USPAP requirements.

15. Organizational chart for each college.

16. Description of any payments, agreements or pledges for support of political candidate or party or used in support of or to influence legislation. *

17. All contracts with any individuals or organizations to raise funds for the corporations.(Professional fund raising). *

18. Descriptions of any Joint ventures, partnerships or affiliations with organizations that will not terminate and/or merger on or before the closing of the transition.*

19. Description of any intellectual property to be sold as part of the sale.

20. Copies of tax returns for the past three years for each organization being merged.

21. Description of any loan to or by a current or former officer, director, trustee, key employee, highly compensated employee.*

19. Description of any on-going settlement payments or compensation arrangement, such as a severance payment to a former employee that will continue after the merger or are not fully funded.

20. Description of all unfunded and/or uninsured liabilities.

21. Description of any and all pending or threatened litigation.

22. Description of any of the following services provided by the corporations or LLCs to any officer, director or employee: first class or charter travel, travel cost for companions, tax indemnification, housing allowance for personal residence, sports or social club memberships, personal services(e.g. maid, chauffer, chef).*

Minimum Representations and Warranties:

Due Organization - in good standing under and by virtue of the laws of its state of organization.

Corporate Power and Authority - possesses the requite authority to enter into the transaction.

Marketable Title – good title to the property sold.

ERISA Complaint- compliant in all employee benefit plans.

Licenses and Accredited- fully licensed and accredited in each state as a college.

Environmental Compliance - substantial compliance with all Environmental laws and the has never been any release or threatened release or disposal of hazardous waste solid waste or other waste is occurring or has occurred on under or to any real property which COLLEGES have an interest.

Taxes – current in all tax obligations.

Compliance with Laws – no known violations of law.

Insurance – all property currently insured.

* Transactions that would need to be unwound as they could jeopardize the tax exempt status of CEHE following the merger.

EXHIBIT 18

August 17, 2016

DA·R·ES
Donor Advising, Research & Educational Services
www.donoradvising.com

Mr. Douglas Parrott
Division Director
Federal Student Aid
830 First St., N.E.
Washington, D.C. 20202

Dear Mr. Douglas:

I am writing in response to your letter of August 11, 2016, informing the Center for Excellence in Higher Education that you were refusing to recognize the Center for Excellence in Higher Education as a non-profit institution for Title IV purposes.

As the founding Executive Director of the Center for Excellence in Higher Education (CEHE), and someone who played a significant role in the transaction between Mr. Carl Barney and CEHE, I believe your letter is mistaken both in your general characterization of the transaction, as well as in some key facts. Properly understanding the context of the transaction, as well as the facts, I believe, would have led you to a different conclusion, and I would encourage you to reconsider your ruling in light of these facts.

Your letter correctly characterizes the founding and mission of CEHE. A full review of the activities of CEHE from 2006-2008 will reflect that it was very successful in carrying out this mission. With the financial crisis of 2008, however, CEHE's founding donors withdrew their support. From 2008 until 2012, CEHE and a new board explored a variety of programs, with mixed success, but the challenge of finding consistent sources of funding led me, as Executive Director, to introduce the board to Carl Barney, who was looking for a non-profit organization which could participate in his exit strategy vis-à-vis his schools.

I had gotten to know Mr. Barney through my primary work as a consultant to high net worth donors interested in education. This requires some further explanation.

Starting in August 2011, I worked as a philanthropic advisor to Mr. Barney, who was then contemplating an exit strategy for his ownership of the schools. While our conversations were confidential, I believe it is appropriate to say that Mr. Barney's motivations for this transaction were highly philanthropic. While the transaction was structured as a sale, in fact - looked at with a long view - the overwhelming value of the proceeds of the sale are intended to be put to philanthropic use, both during and - to an even greater degree - after the end of Mr. Barney's life. With his permission, I would be happy to provide more detail on this aspect of our conversations.

It was with the knowledge of Mr. Barney's philanthropic intentions that I recommended to CEHE's board that it explore a transaction with Mr. Barney. In broad strokes, from CEHE's point of view, the intent of the transaction was to acquire a significant asset which could generate cash flow and fund the original mission of CEHE. I continue to believe this is the intent and practice of CEHE today, although I am no longer directly involved.

Had this not been Mr. Barney's intent, there would have been no purpose for CEHE to engage in the transaction. Neither I nor any of the CEHE's then board members (two of whom continue on the CEHE board) have benefited financially from the transaction in any way that I am aware other than reimbursement of time and expenses. The members of the board had no pre-existing relationship with Mr. Barney and, as the subsequent record has shown, did not gain materially from the transaction.

I believe your letter omits entirely any theory for the motivation of CEHE's board to engage in what was an involved and time-consuming transaction, if not to further CEHE's mission. Had they not been convinced that a transaction with Mr. Barney could significantly enhance CEHE's original mission, there would have been no purpose to engaging in it. Moreover, I can say with the utmost certainty, that CEHE's board members are individuals of both the highest integrity and great knowledge and experience in non-profit matters. CEHE, including both myself as executive director and its board, were no shills for Mr. Barney; rather, we all took very seriously our fiduciary duties as stewards of CEHE's mission.

While it is true that until the merger CEHE did not function as an entity providing educational services, I believe it is a mischaracterization of its post-merger mission to say that engaging in educational philanthropy is not also a key component of its mission and activities. Indeed, the original agreement called for a specific relationship between funding for CEHE's charitable mission and debt service while the debt was being retired, and anticipated a tremendous increase in funds for this mission once the debt had been paid. While the charitable activity during the period of debt retirement would have been modest in relation to the educational activity, it would not have been insignificant, based on the assumptions at the time. But more importantly, from the moment of the debt retirement, CEHE would have become one of the major educational charities in the country. It was with this expectation, I concluded, and I believe CEHE's board agreed, that it was worth moving forward with the merger.

I have not been privy to information about CEHE's activities since February 2014, but can also attest that during the post-transaction period during which I continued to advise CEHE (January 2013 – February 2014), considerable energy went into exploring the mechanism for applying CEHE's surpluses to philanthropic purposes and planning for the period following retirement of the debt.

I believe therefore that your analysis misses the big picture.

On the matter of net earnings, while it is true that Mr. Barney continued to receive funds from CEHE after the transaction, to the best of my recollection, the funds he received were tied either to debt, or to his role as owner of real estate used by the schools at market or below-market rates. In neither case was this part of net earnings. Indeed, safeguards were put in place against the contingency that the schools were not able to meet their debt obligations from revenue. I believe the agreement clearly lays this out.

You characterize these arrangements, however, as allowing Mr. Barney to draw from net earnings. I believe the intent of these provisions was exactly the opposite: 1) to allow Mr. Barney to receive the full, fair market value of the schools at the time of their sale, *if and only if* future business conditions validated the accuracy of the appraisal, and 2) simultaneously to create limits to the debt obligation, should the schools not be able to service the debt. The actions taken by Mr. Barney and the Board to adjust the debt and other arrangements subsequent to the merger are fully in keeping with this interpretation.

It also overlooks the great care to which I, as Executive Director, and the board members of CEHE and their counsel, Jay Mercer, went to assure that we were attentive to the spirit and letter of our fiduciary obligations. We were fully aware of the lopsided nature of the relationship between CEHE and Mr. Barney's schools, and as a result took extra care to assure that we were attentive to our responsibilities as stewards of the public trust in a pubic charity such as CEHE.

I would therefore like to comment specifically on the question of the appraisal and the due diligence conducted by CEHE and its board as part of the merger process. You note that the appraisal which formed the basis of the valuation was conducted by Barrington Research. I participated in one or more presentations of its appraisal findings by Barrington. Moreover, while with the advice of counsel, CEHE's board concluded that it did not need to conduct a separate appraisal, it did conclude that additional due diligence was called for on the question of the appraisal.

As a result, we engaged Blue & Co., a large Indianapolis firm which specializes in this area. They presented to the CEHE board an evaluation of the methodology of the Barrington appraisal, which was reviewed and discussed by the CEHE board. There were no adverse findings in that report, as I recall, which would indicate that an additional, full appraisal was necessary.

Moreover, CEHE conducted additional due diligence on key questions. Upon completion of the transaction, I turned all CEHE records over to the new CEHE office in Utah, and as a result I am working from memory. Nevertheless, one additional area where CEHE concluded that it needed to conduct an additional, independent evaluation of the proposed transaction was in the area of executive compensation, and CEHE also hired a third party to review and do a salary evaluation of Eric Juhlin. It, too, validated the permissibility of the terms of the transaction.

I strongly believe, therefore, that your letter and findings:

1. Mischaracterize the intent of the transaction and the behavior of the parties;

2. Fail to properly recognize the extreme care and attention to both the spirit and the letter of the requirements for due diligence of CEHE's board and staff;

3. And therefore reach a misguided conclusion which is not in keeping with the facts available to CEHE, its board, staff, and counsel at the time of the transaction.

I would therefore most respectfully encourage you to reconsider your decision and approve CEHE for treatment as a non-profit entity for Title IV purposes.

Sincerely,

FJ Fran

Frederic J. Fransen, Ph.D.
CEHE Executive Director 2006-2012

EXHIBIT 19

CollegeAmerica

Summary Appraisal Review Report

AS OF SEPTEMBER 30, 2012

Report Date: November 9, 2012

CPAs ADVISORS

blue

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CPAs ADVISORS

blue

Blue & Co., LLC / One American Square, Suite 2200 / Box 82062 / Indianapolis, IN 46282
main 317.633.4705 fax 317.633.4889 email blue@blueandco.com

November 9, 2012

Frederic J. Fransen
Executive Director
Center for Excellence in Higher Education, Inc.
8520 Allison Pointe Blvd., Ste. 220
Indianapolis, IN 46250

Dear Mr. Fransen:

Pursuant to your request, Blue & Co., LLC ("Valuation Analysts") has prepared a review of the Barrington Research Associates ("Barrington") board presentation provided by your legal counsel (the "Presentation"), regarding the valuation of CollegeAmerica (the "Company") on October 5, 2012 with respect to the fair market value of common equity of CollegeAmerica as of September 30, 2012 on a control, non-marketable basis. The appraisal was originally prepared for Center for Excellence in Higher Education, Inc. (the "Purchaser") for potential acquisition of CollegeAmerica.

You and your legal counsel have requested the Valuation Analysts perform an analysis and issue an Appraisal Review Report of the assumptions, adjustments, and validity of the methodologies applied by Barrington in the valuation. We are utilizing the Presentation provided by legal counsel, which has been included as **Appendix B**, to this report.

This letter is intended to provide you with an overview of the purpose and scope of our analyses and conclusions. Please refer to the attached report for a discussion and presentation of the analyses performed in connection with this engagement.

SCOPE AND INTENDED USE OF THE APPRAISAL REVIEW

<u>Reporting Format</u>

Our analysis and report is intended to be in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP") promulgated by the Appraisal Foundation,[1] the ethics and standards of the ASA, IBA and NACVA[2] and with IRS business valuation development and reporting guidelines.

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[1] The Appraisal Standards Board (ASB) of the Appraisal Foundation develops, interprets, and amends the *Uniform Standards of Professional Appraisal Practice* (USPAP) on behalf of appraisers and users of appraisal services. The Appraisal Foundation is authorized by Congress as the source of Appraisal Standards and Appraiser Qualifications. USPAP uses the terms appraiser and appraisal report. SSVS uses the terms valuation engagement and detailed report. USPAP also uses the term appraiser while SSVS uses the term valuation analyst. We use these terms interchangeably in this report.

[2] ASA American Society of Appraisers; IBA Institute of Business Appraisers; NACVA National Association of Certified Valuation Analysts.

The scope of our work on this assignment is being performed under Uniform Standards of Professional Appraisal Practice ("USPAP") Standard Rule 3 as an Appraisal Review. Appraisal Review assignment reporting formats are not specifically addressed by USPAP Standard 3, rather the substantive content of the report determines its compliance. In performing an Appraisal Review assignment in accordance with USPAP's Standards and Standard Rules, specifically Standard 3, we must:[3]

- state the identity of the client and any intended users, by name or type;
- state the intended use of the appraisal review;
- state the purpose of the appraisal review;
- state information sufficient to identify:
    - the work under review, including any ownership interest in the property that is the subject of the work under review;
    - the date of the work under review;
    - the effective date of the opinions or conclusions in the work under review; and
    - the appraiser(s) who completed the work under review, unless the identity is withheld by the client.
- state the effective date of the appraisal review;
- clearly and conspicuously:
    - state all extraordinary assumptions and hypothetical conditions; and
    - state that their use might have affected the assignment results.
- state the scope of work used to develop the appraisal review;
- state the reviewer's opinions and conclusions about the work under review, including the reasons for any disagreement;
- when the scope of work includes the reviewer's development of an opinion of value, review opinion, or real property appraisal consulting conclusion related to the work under review, the reviewer must:
    - state which information, analyses, opinions, and conclusions in the work under review that the reviewer accepted as credible and used in developing the reviewer's opinion and conclusions;
    - at a minimum, summarize any additional information relied on and the reasoning for the reviewer's opinion of value, review opinion, or real property appraisal consulting conclusion related to the work under review;
    - clearly and conspicuously:
        - state all extraordinary assumptions and hypothetical conditions connected with the reviewer's opinion of value, review opinion, or real property appraisal consulting conclusion related to the work under review; and
        - state that their use might have affected the assignment results.

Additionally, this Appraisal Review will take into consideration the valuation standards and guidelines set forth within the Statement of Standards for Valuation Services No. 1 (SSVS) of the American Institute of Certified Public Accountants. SSVS defines an appraisal (business valuation) engagement as "an engagement to estimate value in which a valuation analyst determines an estimate of the value of a subject interest by performing appropriate procedures, as outlined in the AICPA Statement on Standards for Valuation Services, and is free to apply the valuation approaches and methods he or she deems appropriate in the circumstances."

[3] USPAP Standard 3, p. U-35.

To gain an understanding of the operations of CollegeAmerica, we analyzed the Presentation, which contained financial information, and/or operational data, and background and industry information. To understand the environment in which CollegeAmerica operates, we researched the status of and trends in the various industries that have an impact on it. We also studied economic conditions as of the Valuation Date and their impact on CollegeAmerica and the industry.

We requested the underlying valuation report summarized in the Presentation from the Purchaser and Barrington, but did not receive such report. Therefore, our review is based solely on information contained in the Presentation. As of the date of the report we do not believe that we will receive any additional information or support for the work contained within the Presentation.

As discussed in this report, we reviewed all valuation approaches and methods considered by Barrington, including the income, asset, and market approaches to derive an opinion of value of the subject. Our conclusion of value reflects these findings, our judgment and knowledge of the marketplace, and our expertise in valuation.

In conducting the Appraisal Review, our investigation and analysis included (but was not limited to) consideration of the following:

- Board presentation regarding the valuation of CollegeAmerica, as provided by Barrington Research Associates
- Federal Reserve statistical releases
- Current and future economic conditions as forecast by various sources
- Miscellaneous other information

The procedures employed in valuing the subject interest in the Company included such steps as we considered necessary, including (but not limited to):

- An analysis of CollegeAmerica's financial information and specific data included in the Presentation
- An analysis of the Company's expectations for future operations and other information as provided within the Presentation
- An analysis of the education industry in general
- An analysis of the general economic environment as of the Valuation Date, including investors' equity and debt-return expectations
- An analysis of other pertinent facts and data resulting in our conclusion of value

DEFINITION AND PREMISE OF VALUE

Terms and Definitions

The standard of value is fair market value, defined as "the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts."[4]

[4] International Glossary of Business Valuation Terms.

Fair market value is also defined in Revenue Ruling 59-60 as "the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts." Revenue Ruling 59-60 also defines the willing buyer and seller as hypothetical as follows: "Court decisions frequently state in addition that the hypothetical buyer and seller are assumed to be able, as well as willing, to trade and to be well informed about the property and concerning the market for such property." Furthermore, fair market value assumes that the price is transacted in cash or cash equivalents. Revenue Ruling 59-60, while used in tax valuations, is also used in many nontax valuations.[5]

Based upon the Presentation, fair market value is defined on slide 70 as "the price at which a willing buyer and a willing seller would enter into a transaction...both parties having full access to all relevant information...and neither party being under duress."

VALUATION REVIEW PROCEDURES

The Valuation Analyst has considered the history, character, and operations of the Company to the extent possible and as provided through the Presentation. In accordance with the requirements of USPAP, the Code of Professional Ethics and Professional Standards of the American Society of Appraisers, the three approaches to value (Cost, Market and Income) were considered.

This valuation review was performed solely to assist in the determination of the reasonability of the concluded value contained within the Presentation, and the resulting opinion should not be used for any other purpose or by any other party for any purpose, without our express written consent.

We have made our best efforts to ensure that our analysis and report are in conformance with the USPAP promulgated by the Appraisal Foundation,[6] the ethics and standards of the ASA, IBA and NACVA[7] and with IRS business valuation development and reporting guidelines.

VALUATION REVIEW CONCLUSION

In arriving at our review opinion, we noted some issues with the Presentation that we believed required further scrutiny. These issues included:

- The Cost Approach was not discussed.
    - Additionally, the Presentation did not include the Company's balance sheet.
- Certain "add-backs" to the income statements had no detailed explanation as to their nature or reasoning for the add backs.

[5] Fair Market Value is further defined by § 1.170A-1(c)(2) Internal Revenue Service Code of Federal Regulations.

[6] The Appraisal Standards Board (ASB) of the Appraisal Foundation develops, interprets, and amends the *Uniform Standards of Professional Appraisal Practice* (USPAP) on behalf of appraisers and users of appraisal services. The Appraisal Foundation is authorized by Congress as the source of Appraisal Standards and Appraiser Qualifications. USPAP uses the terms appraiser and appraisal report. SSVS uses the terms valuation engagement and detailed report. USPAP also uses the term appraiser while SSVS uses the term valuation analyst. We use these terms interchangeably in this report.

[7] ASA American Society of Appraisers; IBA Institute of Business Appraisers; NACVA National Association of Certified Valuation Analysts.

- Given the information provided within the Presentation, the discount rate utilized under the Income Approach was lower than what we might have expected.
    - o Two different betas and a "regulatory premium" were applied with no explanation contained within the Presentation.
    - o It appears that no adjustment was made for Company specific risk.
- A capitalization of benefits method was not discussed or included within the Presentation.
- No industry methods or rules of thumb were discussed or included within the Presentation.
- The conclusion of value contained within the Presentation was expressed as the weighted average of three methods.
    - o Despite the fact that this practice is contrary to Revenue Ruling 59-60, no explanation is provided for the use of weighting of the three methods.

We have also considered certain other areas of interest within our review report; however we believe that the points listed above are of primary concern. That being said and considering the limitations of the nature and amount of information included in a presentation format as opposed to a fully-contained appraisal report as defined by SSVS-1, we cannot draw any conclusions as to the effect of the underlying information that we did not receive. Noting certain factors, assumptions, and differences in theory and based upon the analyses performed, we have recalculated the potential value of the Company under the methods utilized in the Presentation.

	Value (Presentation)	Recalculated Value (Review)		
Comparable Transaction Analysis	$536,000	$540,000		
Comparable Company Analysis	558,000	511,300	-	535,800
Discounted Cash Flow Analysis	753,000	680,000		
Estimated Fair Market Value	**$650,000**			
Overall Potential Range ($ in millions)		**$511,300**	-	**$680,000**

Based upon the table above, it appears that the estimated fair market value for the Company shown on slide 71 of the Presentation is consistent with our overall range of recalculated value. Therefore, excluding those points noted previously, it is our opinion that the conclusion of value of the common equity of CollegeAmerica as of September 30, 2012 on a control, non-marketable basis contained within the Presentation is likely fairly stated and consistent with fair market value. Since we have not received all the information we requested or discussed certain issues with the original appraisal firm, our opinion is limited to the information available and should new information be received, our conclusion could change.

VALUATION REVIEW TERMS AND CONDITIONS

The analyses used in this report are based on estimates, assumptions and other information provided to us by the representatives of the owners of the Company, Barrington and legal counsel.

Neither the Valuation Analyst nor Blue & Co., LLC has any interest or other conflict which could cause a question as to the independence or objectivity of this appraisal review. Our fee in this matter is not contingent on the outcome of our opinion.

The attached Assumptions and Limiting Conditions, Certifications, and Qualifications of the Valuation Analyst(s) are integral parts of this valuation review opinion.

Distribution of this letter and report and its associated results, which is to be distributed only in its entirety, is for internal use only and intended for and restricted to the Purchaser and legal counsel, and is solely for the purpose mentioned previously. This letter and accompanying report are not to be used with, circulated, quoted, or otherwise referred to in whole or in part for any other purpose or by any other party for any purpose without our express written consent.

Sincerely,

AMERICAN SOCIETY OF APPRAISERS BRADLEY H. MINOR ASA ACCREDITED SENIOR APPRAISER

Bradley H. Minor, CPA/ABV/CFF, ASA, CVA, CMEA, Director

Kameron H. McQuay, CPA/ABV, CVA, Director

SUMMARY OF ECONOMIC OVERVIEW & OUTLOOK

In valuing any asset it is important to consider the condition of, and outlook for, the economy or economies of the particular geographic regions in which the asset operates or is located. This analysis of economic conditions and outlook is required because the performance of an asset is affected to varying degrees by the overall trends in the economic environment in which it operates or is located and its value cannot be determined in isolation of these factors.

"In part because of the dampening effect of the higher tax rates and curbs on spending scheduled to occur this year and next, the Congressional Budget Office ("CBO") expects that the economy will continue to recover slowly, with real GDP growing by 2.0% this year and 1.1% next year (as measured by the change from the fourth quarter of the previous calendar year). CBO expects economic activity to quicken after 2013 but to remain below the economy's potential until 2018.

In CBO's forecast, the unemployment rate remains above 8% both this year and next, a consequence of continued weakness in demand for goods and services. As economic growth picks up after 2013, the unemployment rate will gradually decline to around 7% by the end of 2015, before dropping to near 5½% by the end of 2017.

While the economy continues to recover during the next few years, inflation and interest rates will remain low. In CBO's forecast, the price index for personal consumption expenditures increases by just 1.2% in 2012 and 1.3% in 2013, and rates on 10-year Treasury notes average 2.3% in 2012 and 2.5% in 2013. As the economy's output approaches its potential later in the decade, inflation and interest rates will rise to more normal levels."[8]

SUMMARY OF INDUSTRY OVERVIEW & OUTLOOK

Significant Factors Affecting the Industry

We performed research related to the Education and Training Services industry via First Research to verify industry factors considered by Barrington in their valuation of CollegeAmerica.

Based on our research on the education industry, certification classes are driven by employment trends, especially in the medical, high technology, and manufacturing industries, and personal income for more leisure industries (i.e. those that rely on individual desire for self-expression and self-fulfillment, such as yoga, fly fishing, etc.).

Economic recessions can have a mixed impact on this industry. Based on the historical trends noted in First Research, certification class enrollment tends to increase during periods of recessions, as unemployed workers will go back to school to learn new skills. This was noted specifically in a 2008 research report:

[8] Congressional Budget Office *Budget and Economic Outlook: Fiscal Years 2012 to 2022* released on January 31, 2012.

"Swelling Unemployment Could Increase Demand for CTE - Rising US unemployment, which reached 6.7 percent in November 2008 compared to 4.7 percent in November 2007, is likely to boost demand for career and technical education (CTE) programs. The job losses, spread across various sectors, are expected to cause unemployed workers to seek training to learn new skills. Professional associations in hard-hit industries such as real estate have added continuing education courses to reflect changing market conditions."

Meanwhile, leisure studies is a challenge for the education industry, as this type of training is more for outside hobbies, rather than for improvement for potential employment. A recession or high periods of employment leads to a decrease in enrollment, due to the discretionary nature of these courses.

The education industry is heavily regulated at the state and federal level. This includes audits and compliance reviews by the U.S. Department of Education, the Office of Inspector General, and state, guaranty, and accrediting agencies. Accredited schools are able to receive government funding and participate in federal financial aid programs. Increased regulations and compliance requirements and federal funding difficulties increases the risk and uncertainty of the education industry.

Barrington noted that the federal government in the past two years has increased scrutiny and regulatory burdens on the education industry, which was noted in a 2010 research report:

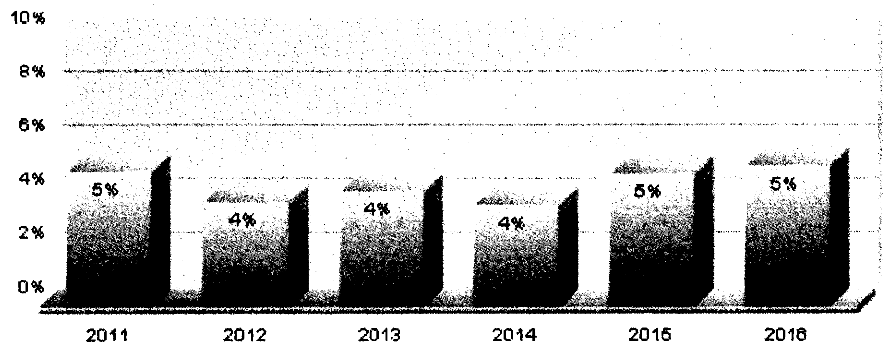
"Financial Aid at For-Profit Schools at Risk - For-profit colleges have come under fire recently from government agencies for leading students to take on heavy debt loads without providing adequate career preparation, according to The Wall Street Journal. The U.S. Government Accountability Office called out 15 such colleges, including two Kaplan campuses, in August 2010 for allegedly giving students misleading loan advice to enroll them. Legislation tying federal aid programs at for-profit colleges to graduates' success in paying off loans could cause some institutions to be ineligible for student aid, resulting in revenue declines."

Finally, due to the continued recession and increased regulations on the education industry, Barrington noted that valuation ratios have decreased in the past few years, which we have noted in our research.

According to First Research, valuation multiples for the education and training services industry have declined between March 2007 (earliest available historical data) and the most recent available data. In data through March 2007, the market value of invested capital ("MVIC") to sales ratio was .9, while the MVIC to EBIT ratio was 3.5. Meanwhile, in data through August 2011, MVIC to sales ratio has fallen to .6, while MVIC to EBIT ratio is now at 3.3. This seems to support the discussion related to valuations and multiples having fallen in the past several years.

However, the industry seems to be recovering and poised for increased growth, based on industry forecasts. The output of U.S. educational services, an indicator for education and training services, is forecast to grow at an annual compounded rate of 4 percent between 2012 and 2016.

Educational Services Growth Recovers



Data Published: September 2012

The following quarterly updates from First Research in 2012 give us additional comfort in the recovery of the education industry, as noted by Barrington in the Presentation:

"Trend: Industry Poised for Moderate Growth - The education and training services industry could grow by 4.3 percent in 2013 compared to 2012, according to the latest industry forecast for First Research from INFORUM. Career technical education (CTE), an important industry segment, will continue to fuel some 29 million middle-class jobs that require a two-year degree or less, according to Georgetown University's Center on Education and the Workforce. Nursing assistants, occupational therapists, paralegals, and refrigeration technicians are among the many opportunities that pay between $35,000 and $75,000 a year."

"For-Profits Exceed Gainful Employment Requirements - For-profit education companies performed better than expected in meeting the US government's new gainful employment guidelines, according to Dow Jones News Service. The Education Department found only 5 percent of programs failed to meet the requirements under the gainful employment regulation. Companies risk losing access to federal student aid if they fail to meet three key measures: loan repayment rates, debt-to-earnings annual ratio, and debt-to-discretionary earnings ratio.

The annual loan repayment rate requires at least 35 percent of a program's former students actively repay their loans, while the debt-to-earnings ratio requires that a student's maximum annual loan payment and student debt not exceed 12 percent of his or her earnings. Some industry observers suggest larger companies like DeVry, Apollo, and Grand Canyon are well-positioned to court new students and stand to benefit the most if smaller programs lose federal aid."

"For-Profits Anticipate Enrollment Boost - For-profit educators anticipate enrollment to taper in 2012 and 2013 before more new students register for classes, according to Dow Jones Newswires. The sector has experienced shrinking enrollment and public scrutiny over educational values, although some institutions have bucked the trend. Strayer Education, which caters chiefly to working adults, saw new-student enrollment grow 12 percent during first quarter 2012, the first quarterly increase since the first half of 2010. The company courted more graduate students and boosted its corporate partnerships. In contrast, ITT – which offers degrees in electronics and industrial design, among other fields – saw new-student enrollment slip 17 percent."

"Online Enrollments Grow - Enrollment in online education continues to outpace the overall higher education student population, according to a recent survey by Babson Survey Research Group and the College Board. More than 6 million students were enrolled in at least one online course in 2011, 10% more than in the previous year. In contrast, overall higher education enrollment grew only 2% during the same period. Nearly two-thirds of higher education institutions cite online education as a critical component to their long-term strategies. Online learning continues to boast vast opportunities for career and technical educators."

REVIEW OF THE BARRINGTON RESEARCH ASSOCIATES VALUATION PRESENTATION

We requested, but were not provided the actual appraisal report prepared by Barrington Research Associates in the valuation of CollegeAmerica. Therefore, we are relying on the information and methodologies outlined in the Presentation, filed at Appendix B, which is summarized as follows:

- Industry Overview
- Historical Financial Statements
- Adjusted Financial Statements
    - Customary Add-backs
    - Marketing Adjustment
- Financial Projections
- Comparable Companies Analysis
- Comparable Transactions Analysis
- Discounted Cash Flow (DCF) Analysis
- Conclusion of Value

Historical Income Statements

We analyzed the summarized historical financial statements shown in the Presentation. We did not perform a review or audit the financial information and are relying on the reported results for the Company as presented.

We reviewed Barrington's adjustments (add-backs) to the historical income statements. The Presentation did not provide any detail related to the reasoning for the add backs noted on slide 14. Typically, these types of adjustments are to remove the effect of non-operating/discretionary and/or non-recurring expense/revenue items.

1. Other revenues – Typically other revenue is a deduction.
2. Bad debt expense, campus start-up costs, good neighbor start-up costs, Esmond & Associates fees, transaction expense, settlements, IT infrastructure expenses, rent for closed campuses – It is unclear why these expenses were added back to the income statements.
3. Legal – other, private office admin, consulting, corporate travel, unallocated call center expenses – These expenses appear to be recurring expenses, as they appear to be incurred every year between 2005 and 2012. There is no explanation as to why these were added back to the operations of CollegeAmerica.

Financial Observations

Barrington summarized several observations regarding CollegeAmerica's historical income statements.

1. Revenues and EBITDA were confirmed to increase approximately 34% and 46% compound annual rate respectively between 2005 and 2010.
2. EBITDA margins were confirmed to be approximately 41% and 39% in 2009 and 2010 respectively.

As noted by Barrington, these growth rates were very high as compared to the industry and would not be sustainable in the long-term.

In our research of margins from benchmark data from IRS Corporate Ratios (Based on 2009 Returns), margins for the Education Services industry for all reporting companies is 13.04% operating profit (EBIT). We then added in depreciation and amortization to arrive at 16.73% EBTIDA margin for IRS benchmarks.

We also looked at data from RMA Annual Statement Studies 2011-2012 for the same industry. RMA only reported EBIT and EBT and did not report individual common size expenses for us to calculate an estimate of EBTIDA. However, RMA operating profit (EBIT) is on average 14.2%, which is comparable to that found in IRS Corporate Ratios.

Finally, commentary in First Research regarding the education industry for "net profit" averages 3%, which would indicate an even lower EBITDA margin. Therefore, the benchmarks above seem to corroborate Barrington's observation that the margins earned in 2009 and 2010 are high and are likely not sustainable in the long-term. By 2012, EBITDA margin had decreased to approximately 21%; while this is below peak margins in 2009 and 2010 it is still above the industry averages noted above.

Barrington noted that CollegeAmerica's cost per lead, cost per interview, and conversion rates in the back half of 2012 are improving and approaching levels in 2009. Longer-term, growth in enrollments, revenues and EBITDA are expected to approach pre-2010 levels. Based on these financial observations and discussions above, we believe this should be reflected in CollegeAmerica's discount rate, which we will discuss later in this report.

Marketing Adjustments

Barrington made a material adjustment related to CollegeAmerica's director of marketing, who assumed sole advertising responsibility from the founder in March 2010. According to the Presentation, the director of marketing "drastically" increased the marketing budget in 2011, which included utilizing funds for ineffective marketing endeavors. Additionally, some funds were spent on services with related parties that might be considered disallowed or otherwise non-operating in nature for valuation purposes.

In March 2012, the director of marketing was terminated and the founder assumed responsibility for marketing again and expenditures and conversion rates appear to have begun to return to historical levels.

This appears to be a relevant adjustment to the historical income statements, due to the unusual and non-recurring nature of the marketing activities and related reduction in revenue. The Presentation discusses the effect of the wayward director of marketing on CollegeAmerica's revenues and expenses.

We believe the concept of the marketing adjustment is valid in terms of valuation methodology and reasonable based on the received facts and circumstances regarding the operations of CollegeAmerica. ***However, without the full valuation report with details on the calculations of the actual numbers related to the marketing adjustment, we cannot comment to the reasonableness of the calculation of the financial implications related to this adjustment shown on slide 14. We have assumed that management and the Purchaser have reviewed the adjustment made by Barrington and it is reasonable and correctly calculated.***

Comparable Company Analysis

Under this method, Barrington has selected a number of publicly traded companies that are similar to the Company in that they provide educational services. The selected companies also appear to be fairly comparable in terms of annual revenue. As a result, we believe that the companies selected are likely appropriate for use under this method.

Through analysis of financial data for these public companies, Barrington has identified certain metrics that have been used to impute a value for the Company. Fourteen companies were specifically identified in the Presentation, with eight being used in application of this method. Additionally, four companies were singled out as being "good comparison companies" based upon qualitative factors (the "Big 4").

The primary bases for comparison of the selected public companies to the Company were the price to earnings ratio, the ratio of equity value to earnings before interest expense, depreciation, and amortization (EBITDA), and the ratio of equity value to sales (net revenue). A summary of this information is presented below (also see slide 30 of the Presentation):

Presenation Public Company Data

	P/E				EV/EBITDA				EV/Sales			
	2010A	**2011A**	**2012E**	**2013E**	**2010A**	**2011A**	**2012E**	**2013E**	**2010A**	**2011A**	**2012E**	**2013E**
APEI	22.9	17.1	16.2	13.7	9.3	7.3	6.8	5.7	2.6	2	1.7	1.4
LOPE	21.7	20.9	16.6	14.7	10.7	10.2	7.9	6.7	2.6	2.4	2.1	1.8
CPLA	9.6	9.8	12.1	11.6	3	3.2	3.8	3.7	0.8	0.8	0.8	0.8
APOL	5.4	5.9	8.2	9.3	1.8	2.1	3.1	3.6	0.6	0.6	0.7	0.7
NAUH	12.8	25.5	15.3	12.1	5	7.4	5.7	5.6	0.9	0.8	0.7	0.7
STRA	6.6	7.2	11	11.4	3.4	4	5.7	5.9	1.3	1.3	1.4	1.4
DV	5.9	4.9	7.1	12.2	2.3	3.3	4.6	4.2	0.6	0.6	0.7	0.6
EDMC	2.1	1.8	2.8	6.8	2.6	3.4	4.4	4.1	0.6	0.6	0.7	0.7
Mean	10.9	11.6	11.2	11.5	4.8	5.1	5.3	4.9	1.3	1.1	1.1	1.0
Median	8.1	8.5	11.6	11.9	3.2	3.7	5.2	4.9	0.9	0.8	0.8	0.8
Mean and median	9.5	10.1	11.4	11.7	4.0	4.4	5.2	4.9	1.1	1.0	0.9	0.9
Big 4	16.0	17.7	14.8	13.0	7.1	7.2	6.5	6.0	1.9	1.6	1.5	1.3

Morningstar Public Company Data

	P/E				EV/EBITDA				EV/Sales			
	2010A	**2011A**	**2012E**	**2013E**	**2010A**	**2011A**	**2012E**	**2013E**	**2010A**	**2011A**	**2012E**	**2013E**
APEI	23.40				1.7				0.5			
LOPE	20.40				1.6				0.4			
CPLA	18.30				1.8				0.5			
APOL	11.70				0.9				0.3			
NAUH	2.80	19.80				3.0			0.2	0.6		
STRA	15.70				0.8				0.3			
DV	13.60	12.60				2.5			0.6	0.6		
EDMC	12.50	14.40				3.2			0.8	0.7		
Mean	14.8	15.6			1.4	2.9			0.4	0.6		
Median	14.7	14.4			1.6	3.0			0.4	0.6		
Mean and median	14.7	15.0			1.5	3.0			0.4	0.6		
Big 4	15.6	19.8			1.4	3.0			0.3	0.6		

Upon review of the public company data presented above, we believe that there may be some discrepancies between the financial ratios presented and data that we retrieved from the Guideline Company database published by Morningstar. Although Morningstar did not provide all data contained within the presentation, we had retrieved those which were available through reasonable effort.

In order to determine the potential effect of the difference between the Presentation comparable data and the metrics that we had retrieved from Morningstar, we applied the same methodology used in the Presentation to our sampled data.

College of America

Financial metrics	P/E				EV/EBITDA				EV/Sales			
$ in millions	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E
Unadjusted metrics	46.7	37.1	21.7	29.5	82.7	66.1	39.0	54.9	240.5	245.3	217.6	246.6
Adjusted metrics	50.5	50.3	35.5	29.5	92.5	91.1	65.0	54.9	248.4	265.0	248.1	246.6

Presenation Public Company Data

	P/E				EV/EBITDA				EV/Sales			
	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E
Mean and median	9.5	10.1	11.4	11.7	4.0	4.4	5.2	4.9	1.1	1.0	0.9	0.9
Big 4	16.0	17.7	14.8	13.0	7.1	7.2	6.5	6.0	1.9	1.6	1.5	1.3

Valuation Indications - M&M

Financial metrics	P/E				EV/EBITDA				EV/Sales				
$ in millions	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	Average
Unadjusted metrics		373.6	246.4	344.0		291.3	202.8	270.0		237.6	201.3	217.3	264.9
Adjusted metrics		506.5	403.1	344.0		401.4	338.0	270.0		256.7	229.5	217.3	329.6

Valuation Indications - Big 4

Financial metrics	P/E				EV/EBITDA				EV/Sales				
$ in millions	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	Average
Unadjusted metrics		655.7	320.6	382.8		477.6	254.5	328.0		398.6	321.0	326.7	385.1
Adjusted metrics		889.1	524.5	382.8		658.2	424.1	328.0		430.6	365.9	326.7	481.1
Average (M&M and Big 4)		606.2	373.7	363.4		457.1	304.9	299.0		330.9	279.4	272.0	365.2

Morningstar Public Company Data

	P/E				EV/EBITDA				EV/Sales			
	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E
Mean and median	14.7	15.0			1.5	3.0			0.4	0.6		
Big 4	15.6	19.8			1.4	3.0			0.3	0.6		

Valuation Indications - M&M

Financial metrics	P/E				EV/EBITDA				EV/Sales				
$ in millions	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	Average
Unadjusted metrics		556.5				196.6				156.4			303.2
Adjusted metrics		754.5				271.0				169.0			398.2

Valuation Indications - Big 4

Financial metrics	P/E				EV/EBITDA				EV/Sales				
$ in millions	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	2010A	2011A	2012E	2013E	Average
Unadjusted metrics		734.6				200.7				135.0			356.8
Adjusted metrics		995.9				276.6				145.8			472.8
Average (M&M and Big 4)		760.4				236.3				151.5			382.7

Based upon our understanding of the application of this methodology, it would appear that either a weighted average was applied to the selected comparable company metrics in the Presentation or there is some disconnect between the calculated average valuation indication of $398M (slide 39). As shown above, we have calculated a value of approximately $365M using the same data. Interestingly, when we used the financial metrics that were calculated using the Morningstar data the indicated value was closer to the amount shown in the Presentation (approximately $383M).

CollegeAmerica

	Presentation	Review	
Comparable company analysis - value before merger premium	**$398.8**	**$382.7**	**$365.2**
Times:			
Merger premium - slide 44	40%	40%	
Indicated value - slide 45	$558.3		
Less:			
Indicated value - reviewed calculation		535.8	511.3
Potential net difference ($ in millions)		**22.5 -**	**47.1**
Divided by:			
Indicated value - slide 45		558.3	
Potential net difference (%)		**4% -**	**8%**

Our analysis above shows that the potential result of applying the metrics derived from our review of the Presentation could result in a difference in value of between approximately $22.5M and $47.1M; however it is important to note that we generally believe that any two independent valuations that fall within a variance in indicated value of less than 10% are in agreement in regard to their opinion. Since we have estimated that the potential net differences between our reviewed calculations and the indicated value presented in slide 45 of the Presentation to be between 4% and 8%, it is our opinion that the discrepancies noted are likely immaterial.

Control Premium

In the comparable company analysis, Barrington applies multiples from publicly traded companies to CollegeAmerica's financial performance to determine a "minority interest" value of $398.8 million.

To arrive at a control value, as is the case with the purchase of interest of CollegeAmerica, Barrington applies a 40% control premium, based on a range of premium from actual transactions that have occurred in the market. This leads to a value after merger premium of $558.3 million.

The methodology utilized by Barrington is generally accepted by many in the valuation community. These valuators believe that since the valuation multiples are from publicly traded companies, where no one owner has any sort of control, they are based on a minority interest. Therefore, to arrive at a control position value, one must apply a control premium, as is the case in the valuation of CollegeAmerica.

However, many others believe that the public company multiples are neutral in respect to a minority versus control position, and that the determination of whether to include a control premium or minority interest discount is based on the cash flows of the subject company.

Both valuation methodologies related to control premiums from guideline company multiples are accepted within the valuation community and therefore, we believe it is reasonable methodology for Barrington to have utilized.

Comparable Transactions Analysis

Barrington states that under this method, actual transactions of comparable companies were used to obtain transaction multiples that were then applied to certain Company metrics in order to determine a "control sale" value (slide 47). The metrics selected, as shown below, were price to EBITDA and price to revenue.

Generally, when calculating a control value under this methodology, the selected multiples are based upon a market value of invested capital (MVIC) for the comparable company transaction. Barrington has in this case used an equity value for the companies sampled, with the difference being that an equity value includes the structured debt of the company. MVIC on the other hand is the equity value of the company with the structured debt added back.

The theory behind using MVIC to express a control value is that under a control scenario, owners of a company have the discretion to manipulate capital structure to include debt as deemed necessary.

In order to determine the possible effect of using equity value as opposed to MVIC under this method, we recalculated the value of the Company using MVIC to EBITDA and MVIC to sales metrics obtained from the Pratt's Stats database for entities that were as similar in nature to the Company as we could determine. We did not have access to the identical company data that Barrington had used, however we believe that the companies selected were similar enough for purposes of this analysis.

It is important to note that there was a slight difference in our calculation of the price to revenue implied value obtained using the equity value data originally selected by Barrington. The value shown on slide 48 using this metric is between $348.8 and $549.3 million, where we have calculated a value of between $352.3 and $548.6 million; however the difference is in our opinion likely immaterial to our analysis and has been noted to make the reader of this report aware that there is a discrepancy in the table below and the Presentation.

In calculating the implied values below, a 40% discount factor has been applied by Barrington to account for the timing of the transactions used under this method. The Presentation states that the industry has not had significant transaction activity in the most recent periods since the date of the valuation, and the market for similar companies is not nearly as strong as reflected in the data presented. Additionally, Barrington states that the application of this method is subjective (slide 47) in nature and as such, we do not have issue with the fact that the Presentation does not include support for the 40% discount factor or that the factor was used in determining the implied value shown on slide 48.

Based upon the MVIC data that we've used under this method, the implied value range is from $308.0 to $624.1 million. The implied value of $348.8 to $549.3 shown in the Presentation using equity value data is within the MVIC range, and as a result we believe that this range is consistent with our findings despite the difference in the theoretical level of control.

CollegeAmerica

Target Company Name	Acquirer Company Name	Announce Date	Equity Value ($ in millions)	Price / EBITDA	Price / Revenue
Renaissance Learning	Permira Advisors	8/16/2011	$455	11.5	3.3
Nobel Learning	Leeds Equity Partners	5/18/2011	125	7.8	0.5
Laureate Education	S.A.C. Capital	1/28/2007	3,226	14.3	2.8
Education Management	Goldman Sachs & Providence	3/6/2006	3,244	12.6	3.0
Educate	Sterling; Citigroup; Educate	9/25/2006	346	9.5	1.0
eCollege.com	Pearson Education	5/14/2007	504	25.5	9.2
Concorde Career Colleges	Liberty Partners	6/21/2006	109	15.3	1.3
		Mean		13.8	3.0
		Median		12.6	2.8
		Laureate, EDMC & Concorde		14.1	2.4
		Less: 40% discount		60%	60%
		Adjusted multiples		8.4	1.4
		Times: College America metrics		65.0	248.1
		Implied valuation		**548.6**	**352.3**

CompanyName	BusinessDescription	Sale Date	Market Value of Invested Capital (MVIC)	MVIC / EBITDA	MVIC / Sales
Hesser, Inc.	Owner and Operator, Post Secondary Schools (College)	3/13/1998	$15,000,000	8.6	0.9
Western State University of Southern California	Law School	3/1/2001	12,600,000	15.9	1.5
American Education Centers, Inc.	Offers Diploma and Associate Degree Programs	9/2/2003	116,000,000	26.0	5.1
Wyo-Tech Acquisition Corporation	Offers Diploma and Degree Programs in Auto - Diesel Tech	7/1/2002	84,400,000	20.7	2.7
Interboro Institute, Inc.	Owns and Operates a Two-Year College	1/14/2000	672,500	0.5	0.1
U.S. Education Corporation	Owns and Operates Private Career Colleges	9/18/2008	298,185,000	47.6	2.1
Penn Foster Education Group, Inc.	Provider of Consumer-Based Distance Education	12/7/2009	176,264,000	12.3	2.0
Heald Capital, LLC	Offers Certificate Programs and Associate Level Degrees	1/4/2010	440,572,000	11.7	2.4
		Mean		17.9	2.1
		Median		14.1	2.0
		Average of mean and median		16.0	2.1
		Less: 40% discount		60%	60%
		Adjusted multiples		9.6	1.2
		Times: College America metrics		65.0	248.1
		Implied valuation		**624.1**	**308.0**

Under this method, Barrington goes on in the Presentation to show additional EBITDA multiples based upon market intelligence, historical trending and prior offers for the Company. Solely based upon the information contained within the Presentation, the sources and in some cases the meaning of this data is unclear. Although the EBITDA multiples shown are consistent with the transaction data from slide 48, we have no opinion to their reliability absent any further detail from Barrington.

Comparable Transaction Analysis - Review

Education industry transactions		$308.0	$624.1
Market intelligence	from Presentation	520.0	585.0
Historical multiples	from Presentation	455.0	650.0
Offers received	from Presentation	507.0	669.9
Implied valuation (average)		**$539.9**	

As shown above, the net difference in implied value due to the potential variance in our application of MVIC to the equity values used in the Presentation is approximately $4.3 million (slide 52).

Cost of Equity

Barrington utilized the Capital Asset Pricing Model ("CAPM") to determine an appropriate discount rate or required rate of return of an asset. The formula for CAPM is as follows:

$E(R_i) = R_f + (\text{Beta} \times RP_m) + RP_s + RP_u$

Where:

$E(R_i)$	=	Expected (market required) rate of return
R_f	=	Rate of return for a risk-free security as of the Valuation Date
Beta	=	Measure of systematic risk
RP_m	=	Equity risk premium for the "market"
RP_s	=	Risk premium for size
RP_u	=	Risk premium for specific company, u stands for unsystematic risk

Barrington CAPM:

Base case: 13.86% = 1.65% + (1.59 x 6.01%) + 2.65%

Low beta case: 13.23% = 1.65% + (0.82 x 6.01%) + 2.65% + 4.00%

The risk free rate (R_f) was based on the 10-year U.S. Treasury yield as of September 30, 2012. Many valuators utilize the 20-year bond rate as a proxy to a risk free security, which as of this date was 2.42%. However, there is debate whether it is more accurate to use a shorter-term Treasury bill or a long-term Treasury bond to represent the risk free rate of return. The Presentation did not outline the reasoning behind the use of a shorter period 10 year yield.

Beta is typically derived from a group of guideline public companies that are similar to the subject company. Beta is representative of industry risk. Barrington utilized betas derived from public companies considered in comparable company analysis, which appears reasonable.

The equity risk premium (RP_m) is often based on Ibbotson *Cost of Capital Handbook* and is currently 6.62%. Barrington on the other hand utilized the equity risk premium from Stern School of Business professor Aswath Damodaran's *Equity Risk Premiums (ERP): Determinants, Estimation and Implications – The 2012 Edition*, which is 6.01%. The source for Barrington's equity risk premium appears to be reputable and reasonable.

The increased risk premium for being a small company versus a large publically traded company is the size premium and is typically derived from Ibbotson, which Barrington has utilized in its discount rate.

Finally, CAPM requires consideration of any risks specific to the subject company. There is little objective data and no quantitative means of establishing the specific risk of a subject company, and it is typically based on judgment and experience. These are any risks in addition to the equity, industry, and size risks outlined above. General factors that should be considered include:

1. Business risk
    a. Size relative to the benchmarks used for earlier risk premiums
    b. Geographical concentration
    c. Management strength and depth
    d. Product line concentration
    e. Customer mixture and reliance
    f. Supplier mixture and reliance
    g. Competitive strengths and weaknesses
    h. Quality and variability of earnings
2. Industry
3. Financial risk
    a. Degree of leverage
    b. Coverage ratios
    c. Liquidity
    d. Access to sources of capital

We noted that Barrington utilized a discount rate based on two scenarios of CAPM with different betas and a Barrington estimate for a "regulatory" premium. No explanation was given for utilizing the two beta scenarios and what the regulatory premium is or how it was calculated.

It appears that Barrington did not include any sort of specific company risk premium that would take into consideration the riskiness of investing in CollegeAmerica specifically. Examples of these risks were discussed above. Given we did not have access to the valuation report underlying the Presentation, we do not know whether Barrington considered any additional specific company risk related to CollegeAmerica that should be incorporated in the discount rate.

Based on the Presentation and our analysis, we believe it is possible that some sort of specific company risk should have been included in the calculation of the discount rate for CollegeAmerica due to factors such as the following:

1. As Barrington noted in the background analysis, CollegeAmerica has experienced high compound growth since 2005, which may not be sustainable.
2. EBITDA margins are very high compared to the industry (30%-40%) versus less than 20% for the industry. These margins are likely not sustainable in the long-term.
3. CollegeAmerica's founder delegated marketing duties to another manager in 2010. As discussed earlier, the marketing manager made several poor decisions in 2010 and 2011, which affected CollegeAmerica's bottom line. Barrington made a marketing adjustment due to the "non-recurring" nature of the reduced revenue and increased expenses. This may indicate issues with management's ability to maintain profitability long-term.

As a measure of how the discount rate used in the Presentation could potentially vary based upon the points raised above, we have recalculated the discount rate using the following assumptions:

- Risk free rate = 20-year US treasury bond rate
- Market risk premium = Ibbotson equity risk premium
- Regulatory risk = no regulatory risk assumed
- Company specific risk = varies by company; a range of 0% to 4% was assumed

As shown in the table below, based upon the assumptions listed above we've selected a discount rate of 16% as opposed to the 14% rate shown on slide 66 of the Presentation.

Cost of Equity - II (Presentation)

	Risk-Free Rate		Beta		Market Risk Premium		Market Discount Rate		Size Premium		Regulatory Premium		Equity Discount Rate
Base case	1.65%	+ (	1.59	x	6.01%	) =	11.21%	+	2.65%	+	0.00%	=	13.86%
Low beta case	1.65%	+ (	0.82	x	6.01%	) =	6.58%	+	2.65%	+	4.00%	=	13.23%
									Selected discount rate			=	14.00%

Cost of Equity - II (Review)

	Risk-Free Rate		Beta		Market Risk Premium		Market Discount Rate		Size Premium		Company Specific Risk		Equity Discount Rate
Base case	2.42%	+ (	1.59	x	6.62%	) =	12.95%	+	2.65%	+	0.00%	=	15.60%
Low beta case	2.42%	+ (	0.82	x	6.62%	) =	7.85%	+	2.65%	+	4.00%	=	14.50%
									Selected discount rate			=	16.00%

Discounted Future Benefits Method

Barrington applied a five year discrete projection period and a terminal year (operations into perpetuity) in arriving at a value of CollegeAmerica under the DCF method. The five year discrete projection period is based on CollegeAmerica's projections for 2013 – 2017 and additional adjustments for working capital and capital expenditures to arrive at free cash flows of the Practice.

To determine the terminal year value, Barrington applied an EBITDA multiple to projected EBITDA in 2017. The EBITDA multiple of 8.0 was used, which appears high. On Slide 37, the comparable company enterprise value to EBITDA multiples "Mean & Median Index" ranges from 4.0 to 5.2, while the "Big Four Index" ranges from 6.0 to 7.1. It appears that Barrington is utilizing an EBITDA multiple greater than that of industry comparable companies.

We were not provided support for how this multiple was determined in the Presentation. Hence, based on the information received, the multiple may be inflating the concluded value under the DCF method. However, the full valuation report may provide additional information on the reasoning for utilizing this multiple.

As a measure of the potential impact of the difference in discount rate that we have selected in the previous table, and using the upper limit of the industry comparable EBITDA multiples for the "Big Four Index" as shown in the Presentation, we have recalculated the discounted cash flow indication of value for the Company.

Terminal Value Analysis - Review

	2013	2014	2015	2016	2017
EBITDA	$56,456	$82,399	$106,943	$128,923	$146,969
Terminal value multiple					7.1
Terminal value					**$1,043,480**

Cash Flows for DCF Analysis - Review

		2013	2014	2015	2016	2017
Free cash flows		$32,535	$27,805	$41,247	$53,937	$62,478
Terminal value						1,043,480
Total cash flows		32,535	27,805	41,247	53,937	1,105,958
Mid-point convention		0.5	1.5	2.5	3.5	4.5
	Discount Rate					
PV factor using:	16%	0.9285	0.8004	0.6900	0.5948	0.5128
Discounted cash flows		30,208	22,255	28,461	32,084	567,124
Net present value						**$680,131**

It is important to note that we have also implemented a mid-point convention in the calculation above, where an end-of-year convention was used in the Presentation. Use of a mid-point convention assumes that cash flows for the company are evenly distributed over the course of the year; the end-of-year convention is typically used when cash is received at the end to the year. Based on a typical school year semester system, we have assumed that cash is probably received in a manner somewhat periodically over the course of the year and have thus decided that the mid-point convention may be more appropriate.

Based upon the table above, we have calculated a value of approximately $680 million, compared to the value of approximately $753 million shown on slide 68.

Valuation Conclusion

After determining the value of CollegeAmerica under the Comparable Transaction Analysis, Comparable Company Analysis, and Discounted Cash Flow Analysis, Barrington utilized a weighted average of the three methods, as shown below, to arrive at a conclusion of value for CollegeAmerica:

	Value (Presentation)	Recalculated Value (Review)		
Comparable Transaction Analysis	$536,000	$540,000		
Comparable Company Analysis	558,000	511,300	-	535,800
Discounted Cash Flow Analysis	753,000	680,000		
Estimated Fair Market Value	**$650,000**			
Overall Potential Range ($ in millions)		**$511,300**	**-**	**$680,000**

However, Revenue Ruling 59-60 states: "Because valuations cannot be made on the basis of a prescribed formula, there is no means whereby the various applicable factors in a particular case can be assigned mathematical weights in deriving the fair market value. For this reason, no useful purpose is served by taking an average of several factors (for example, book value, capitalized earnings and capitalized dividends) and basing the valuation on the result. Such a process excludes active consideration of other pertinent factors, and the end result cannot be supported by a realistic application of the significant facts in the case except by mere chance."

While Revenue Ruling 59-60 discourages the use of weighting multiple methods, weighting is frequently accepted in the valuation community in general practice. However, the Presentation did not give any support for the weightings used in arriving at the conclusion of value and we, therefore, are unable to determine whether this weighting was reasonable.

The Presentation included a summary of the comparable company analysis, comparable transactions analysis, and the discounted future benefits method. Valuation standards also require the valuator to consider the asset approach, capitalized benefits approach, and rules of thumb/industry methods, in addition those methods shown in the Presentation.

CONCLUSION OF VALUATION REVIEW

In arriving at our review opinion, we noted some issues with the Presentation that we believed required further scrutiny. These issues included:

- The Cost Approach was not discussed.
    - Additionally, the Presentation did not include the Company's balance sheet.
- Certain "add-backs" to the income statements had no detailed explanation as to their nature or reasoning for the add backs.

- The discount rate utilized under the Income Approach was lower than what we might have expected.
  - o Two different betas and a "regulatory premium" were applied with no explanation contained within the Presentation.
  - o No adjustment was made for Company specific risk.
- A capitalization of benefits method was not discussed or included within the Presentation.
- No industry methods or rules of thumb were discussed or included within the Presentation.
- The conclusion of value contained within the Presentation was expressed as the weighted average of three methods.
  - o Despite the fact that this practice is contrary to Revenue Ruling 59-60, no explanation is provided for the use of weighting of the three methods.

We have also considered certain other areas of interest within our review report; however we believe that the points listed above are of primary concern. That being said and considering the limitations of the nature and amount of information included in a presentation format as opposed to a fully-contained appraisal report as defined by SSVS-1, we cannot draw any conclusions as to the effect of the underlying information that we did not receive. Noting certain factors, assumptions, and differences in theory and based upon the analyses performed, we have recalculated the potential value of the Company under the methods utilized in the Presentation.

	Value ($ in Millions)	Recalculated Value		
Comparable Transaction Analysis	$536,000	$540,000		
Comparable Company Analysis	558,000	511,300	-	535,800
Discounted Cash Flow Analysis	753,000	680,000		
Estimated Fair Market Value	**$650,000**			
Overall Potential Recalculated Range		**$511,300**	**-**	**$680,000**

Based upon the table above, it appears that the estimated fair market value for the Company shown on slide 71 of the Presentation is consistent with our overall range of recalculated value. Therefore, excluding those points noted previously, it is our opinion that conclusion of value of the common equity of CollegeAmerica as of September 30, 2012 on a control, non-marketable basis contained within the Presentation is likely fairly stated and consistent with fair market value.

However, we requested additional information and have not received that as of the date of this report. The information requested, but not received may have had a significant impact on our conclusion.

- The discount rate utilized under the Income Approach was lower than what we might have expected.
  - Two different betas and a "regulatory premium" were applied with no explanation contained within the Presentation.
  - No adjustment was made for Company specific risk.
- A capitalization of benefits method was not discussed or included within the Presentation.
- No industry methods or rules of thumb were discussed or included within the Presentation.
- The conclusion of value contained within the Presentation was expressed as the weighted average of three methods.
  - Despite the fact that this practice is contrary to Revenue Ruling 59-60, no explanation is provided for the use of weighting of the three methods.

We have also considered certain other areas of interest within our review report; however we believe that the points listed above are of primary concern. That being said and considering the limitations of the nature and amount of information included in a presentation format as opposed to a fully-contained appraisal report as defined by SSVS-1, we cannot draw any conclusions as to the effect of the underlying information that we did not receive. Noting certain factors, assumptions, and differences in theory and based upon the analyses performed, we have recalculated the potential value of the Company under the methods utilized in the Presentation.

	Value ($ in Millions)	**Recalculated Value**		
Comparable Transaction Analysis	$536,000	$540,000		
Comparable Company Analysis	558,000	511,300	-	535,800
Discounted Cash Flow Analysis	753,000	680,000		
Estimated Fair Market Value	**$650,000**			
Overall Potential Recalculated Range		**$511,300**	**-**	**$680,000**

Based upon the table above, it appears that the estimated fair market value for the Company shown on slide 71 of the Presentation is consistent with our overall range of recalculated value. Therefore, excluding those points noted previously, it is our opinion that conclusion of value of the common equity of CollegeAmerica as of September 30, 2012 on a control, non-marketable basis contained within the Presentation is likely fairly stated and consistent with fair market value.

However, we requested additional information and have not received that as of the date of this report. The information requested, but not received may have had a significant impact on our conclusion.

ASSUMPTIONS AND LIMITING CONDITIONS

This valuation review is subject to the following assumptions and limiting conditions:

1) The Appraisal Review analyses arrived at herein are valid only for the stated purpose as of the date of the valuation.

2) Public information and industry and statistical information have been obtained from sources we believe to be reliable. However, we make no representation as to the accuracy or completeness of such information and have performed no procedures to corroborate the information.

3) This report and the analyses arrived at herein are for the exclusive use of our client for the sole and specific purposes as noted herein. They may not be used for any other purpose or by any other party for any purpose. Furthermore the report and analyses are not intended by the author and should not be construed by the reader to be investment advice in any manner whatsoever. The Appraisal Review represents the considered opinion of Blue & Co., LLC, based on information furnished to them by you, Barrington and other sources.

4) Neither all nor any part of the contents of this report (especially the analyses within, the identity of any valuation specialist(s), or the firm with which such valuation specialists are connected or any reference to any of their professional designations) should be disseminated to the public through advertising media, public relations, news media, sales media, mail, direct transmittal, or any other means of communication, including but not limited to the Securities and Exchange Commission or other governmental agency or regulatory body, without the prior written consent and approval of Blue & Co., LLC.

5) Future services regarding the subject matter of this report, including, but not limited to testimony or attendance in court, shall not be required of Blue & Co., LLC unless previous arrangements have been made in writing.

6) We have not visited the premises and we have not made a physical inspection of the property. No investigation of legal fee or title to the property has been made, and the owner's claim to the property has been assumed valid. No land survey has been made. No appraisals of real or personal property have been made by Blue & Co., LLC.

7) No change of any item in this appraisal report shall be made by anyone other than Blue & Co., LLC, and we shall have no responsibility for any such unauthorized change.

8) Unless otherwise stated, no effort has been made to determine the possible effect, if any, on the subject business due to future Federal, state, or local legislation, including any environmental or ecological matters or interpretations thereof.

9) If prospective financial information approved by management has been used in our work, we have not examined or compiled the prospective financial information and therefore, do not express an audit opinion or any other form of assurance on the prospective financial information or the related assumptions. Events and circumstances frequently do not occur as expected, and there will usually be differences between prospective financial information and actual results, and those differences may be material.

10) We have not conducted interviews with the current management of the Entity, or their representatives, concerning the past, present, and prospective operating results of the entity.

11) Except as noted, we have relied on the representations of Barrington and other third parties concerning the value and useful condition of all equipment, real estate, investments used in the business, and any other assets or liabilities, except as specifically stated to the contrary in this report. We have not attempted to confirm whether or not all assets of the business are free and clear of liens and encumbrances or that the entity has good title to all assets.

12) The approaches and methodologies used in our work did not comprise an examination in accordance with generally accepted accounting principles, the objective of which is an expression of an opinion regarding the fair presentation of financial statements or other financial information, whether historical or prospective, presented in accordance with generally accepted accounting principles. We express no opinion and accept no responsibility for the accuracy and completeness of the financial information or other data provided to us by others. We assume that the financial and other information provided to us is accurate and complete, and we have relied upon this information in performing our valuation.

13) The Appraisal Review may not be used in conjunction with any other appraisal or study. The analyses in this report are based on the program of utilization described in the report, and may not be separated into parts. The review was prepared solely for the purpose, function and party so identified in the report. The report may not be reproduced, in whole or in part, and the findings of the report may not be utilized by a third party for any purpose, without the express written consent of Blue & Co., LLC.

14) Unless otherwise stated in the report, the Appraisal Review has not considered or incorporated the potential economic gain or loss resulting from contingent assets, liabilities or events existing as of the valuation date.

15) In all matters that may be potentially challenged by a Court or other party we do not take responsibility for the degree of reasonableness of contrary positions that others may choose to take, nor for the costs or fees that may be incurred in the defense of our recommendations against challenge(s). We will, however, retain our supporting workpapers for your matter(s), and will be available to assist in defending our professional positions taken, at our then current rates, plus direct expenses at actual, and according to our then current Standard Professional Agreement.

16) Any decision to purchase, sell or transfer any interest in the subject entity or its subsidiaries shall be Entity ownership's responsibility, as well as the structure to be utilized and the price to be accepted.

17) The selection of the price to be accepted requires consideration of factors beyond the information we will provide or have provided. An actual transaction involving the subject business might be concluded at a higher value or at a lower value, depending upon the circumstances of the transaction and the business, and the knowledge and motivations of the buyers and sellers at that time. Due to the economic and individual motivational influences which may affect the sale of a business interest, Blue assumes no responsibility for the actual price of any subject business interest if sold or transferred.

18) All facts and data set forth in our letter report are true and accurate to the best of the Blue's knowledge and belief.

19) We have no responsibility or obligation to update this report for events or circumstances occurring subsequent to the date of this report.

20) Our Appraisal Review, shown herein, pertains only to the subject business, the stated value standard (fair market value), as at the stated valuation date, and only for the stated valuation purpose(s).

21) Our report will not be used for financing, or included in a private placement or other public documents and may not be relied upon by any third parties.

22) The report assumes all required licenses, certificates of occupancy, consents, or legislative or administrative authority from any local, state or national government, or private entity or organization have been or can be obtained or reviewed for any use on which the analyses contained in the report are based.

23) Blue & Co., LLC does not consent to be an expert with respect to matters involving the Securities and Exchange Commission. For purposes of this report, the foregoing sentence means that Blue & Co., LLC shall not be referred to by name or anonymously in any filing or document. Should you breach this stipulation and refer to Blue & Co., LLC by name or anonymously, you will amend such filing or document upon written request of Blue & Co., LLC.

24) We express no opinion for matters that require legal or other specialized expertise, investigation, or knowledge beyond that customarily employed by business appraisers.

25) Unless stated otherwise in this report, we express no opinion as to: 1) the tax consequences of any transaction which may result, 2) the effect of the tax consequences of any net value received or to be received as a result of a transaction, and 3) the possible impact on the market value resulting from any need to effect a transaction to pay taxes.

26) All of the assumptions and limiting conditions are in addition to, and not in lieu of, those found in the report body and Certification section of the report

VALUATORS' REPRESENTATION[9]

I certify to the best of my knowledge and belief that:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed and this report has been prepared to my best effort to be in conformity with the American Institute of Certified Public Accountants, Uniform Standards of Professional Appraisal Practice, the Business Valuation Standards of the American Society of Appraisers, the Institute of Business Appraisers and the Standards of the National Association of Certified Valuation Analysts.
- The American Society of Appraisers has a mandatory recertification program for all of its senior members. All senior members (ASA designation) signing this report are in compliance with that program.
- No significant professional assistance was provided to the persons signing this report.

[9] Representation in satisfaction of the USPAP Certification requirement.

Additionally, I certify to the best of my knowledge and belief that:

- I am not a party to the transaction, am not related to any party to the transaction, am not married to any person with a relationship to the transaction, am not regularly used by any of the parties to the transaction and do not perform a majority of appraisals for these persons.
- I hold myself out to the public as a valuation practitioner and perform appraisals of privately-held businesses on a regular basis.
- I am qualified to make appraisals of the type of property being valued including, by background, experience, education, and memberships in professional associations.
- I understand that an intentionally false or fraudulent overstatement of value may subject me to a civil penalty.
- My fee is not based upon a percentage of the appraised value of the property.

Sincerely,

Bradley H. Minor, CPA/ABV/CFF, ASA, CVA, CMEA, Director

Kameron H. McQuay, CPA/ABV, CVA, Director

Appendix A

BRADLEY H. MINOR, CPA/ABV/CFF, ASA, CVA, CMEA

General Data

Indianapolis Business Address:
12800 N. Meridian St., Ste. 400
Carmel, IN 46032-9443

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Evansville, IN 47713

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Website: www.blueandco.com

BIO

Brad started with Blue in 1989 with a degree in business (accounting major) from Indiana University. Brad began performing business valuations in 1990. He is a Certified Valuation Analyst (CVA) and an Accredited Senior Appraiser (ASA) – Business Valuation member of the American Society of Appraisers. Additionally, he is a Certified Public Accountant (CPA) and has earned the AICPA's specialty designations for business valuators (ABV) and forensic accountants (CFF). He is also a Certified Machinery and Equipment Appraiser (CMEA) member of the National Business Brokers Association.

Brad was elected to Director in 2008 and has overseen the firm's Valuation and Financial Forensics Group since 1999. He performs business valuations, assists with real estate and machinery & equipment appraisals, and has supported attorneys and clients in various areas of litigation. Brad has given presentations on various topics such as: family limited partnerships, valuing construction companies, valuing professional practices, valuing ESOPs, valuing healthcare entities, business valuation standards and general business valuation topics.

Brad served on the AICPA Business Valuation Committee (2003 through 2007) and has served as a member of the AICPA's "Ask the Experts" Technical Advisory Panel and the "ABV Mentor Program." He has served as chairman of the Litigation Support Group of AGN International – North America. He served on the Editorial Advisory Board and was a frequent contributor of articles to the national publication "National Litigation Consultant's Review." He is the co-author of the June 1997 book entitled "Valuation of a Closely Held Business" for Research Institute of America, a national business publisher.

EDUCATION

Indiana University, Bloomington, IN (Graduated 1989)
BS Business (Accounting Major)

Appendix A

PROFESSIONAL DESIGNATIONS

- Certified Public Accountant (CPA), Indiana, 1992
- Certified Valuation Analyst (CVA), 1994 (National Association of Certified Valuation Analysts)
- Diplomate of the American Board of Forensic Accounting 1997, (The American College of Forensic Examiners)
- Accredited in Business Valuation (ABV), 1998 (American Institute of Certified Public Accountants)
- Accredited Senior Appraiser (ASA) in Business Valuation, 2000 (American Society of Appraisers)
- Certified in Machinery and Equipment Appraisals (CMEA), 2005 (National Equipment & Business Brokers Institute)
- Certified in Financial Forensics (CFF), 2008 (American Institute of Certified Public Accountants)
- Fellow of the American College of Forensic Examiners (FACFEI), 2008 (The American College of Forensic Examiners)

BUSINESS HISTORY

Blue & Co., LLC, Director of Valuation and Litigation Services Department — *1990 to Present*
Indianapolis, Indiana and Evansville, Indiana

Brad has been working in the valuation and litigation support services department since 1990 and has overseen the department for the firm since 1999. This department provides a full range of services, including business valuation, insurance loss claims, forensic accounting, budgeting, forecasting, business plans, assisting with real estate and machinery and equipment appraisals, and support to attorneys in virtually all areas of litigation, including expert testimony and consultation. The majority of Mr. Minor's time is spent in this area. Mr. Minor also consults regularly with closely held businesses in all areas of their operations and is responsible for tax consulting and planning for several corporate and individual tax clients.

Blue & Co., LLC, Senior in Tax Department — *1989 to 1990*
Indianapolis, Indiana

Experience in the tax department included working directly with clients in planning and compliance with tax laws. Areas of experience include corporate, partnership, and individual taxation, buying and selling of businesses, and divorce taxation issues.

Internal Revenue Service, Internal Revenue Agent — *1987 to 1988*
Evansville, Indiana

Held this position originally as a co-op student while attending I.U. and later on a part-time basis during senior year of college. Exposed to all areas within organization including audit, collection, and criminal investigation. Main responsibilities were those of a normal revenue agent, auditing individual and small business tax returns.

ASSOCIATION AND CIVIC MEMBERSHIPS AND ACTIVITIES

- American Institute of CPA's (Business Valuation Exam Review Course Task Force 1998 – 2002, Fundamentals of Business Valuation (FBV) Task Force 2002, Business Valuation Committee 2003 - 2007). Business Valuation Volunteer of the Year Award recipient 2001
- Indiana CPA Society (Litigation Committee 1996)
- Accountants Global Network ("AGN") (Litigation Support Committee 1995/1996, Committee Chairman 1996/1997 and 1997/1998)
- American Society of Appraisers (Indiana Chapter Secretary 1998/1999, 2000/2001; Vice President 2001/2002)
- Member of the Institute of Business Appraisers
- Member of the American College of Forensic Examiners
- Member of the Estate Planning Council of Indianapolis

LECTURES, WRITINGS, SPEECHES, SEMINARS, COURSES, ETC.

- "Valuations A to Z - Part 2, Specific Methods & Techniques", Columbus Bar Association, with Jeffry Moffatt and Gina Grote, Columbus, OH, June 11, 2012.
- "Business Valuation for the Divorce Attorney", Evansville Bar Association, with Jarit Loughmiller, Evansville, IN, March 23, 2012.
- "Estate and Gift Tax Case Update", Hoosier Hills Estate Planning Council, Bloomington, IN, with Dave Maschino, John Kotlarczyk, and Kristine Bouaichi, February 16, 2012.
- "Benchmarking in Physician Practice Valuations", Webinar for The Healthcare Practice Group (HPG) and the National Association of Certified Valuation Analysts, September 30, 2010 and January 27, 2011.
- "BV Practice Management Toolkit" American Institute of Certified Public Accountants, Contributing Author, aicpa.org/FVS, 2009.
- "New Exposure Draft of Proposed Statement on Standards for Valuation Services (SSVS)" Accountant's Global Network Business Valuation Teleconference, December 14, 2006.
- "The Value of Valuations in Healthcare" Ohio Society of CPA's Health Care Conference, with Kam McQuay and Alex Fritz, November 14, 2006.
- "Tips for Starting a BV Practice" Journal of Accountancy, September 2006.
- "ASC's... If You Don't Know What the Acronym Means You Probably Shouldn't Value Them" National Litigation Consultant's Review, March 2006.

- "Review of "The Expert Witness Handbook, Tips and Techniques for the Litigation Consultant" by Dan Poynter", National Litigation Consultant's Review, December 2005.
- Lead editor and reviewer for "Business Valuation Practice Management Toolkit" American Institute of Certified Public Accountants, November 2005.
- "A "Scrushy" Situation", National Litigation Consultant's Review, October 2005.
- "It's a Rate, Rate, Rate, Rate World", National Litigation Consultant's Review, August 2005.
- "AICPA Business Valuation Standards", Accountant's Global Network, North American Regional Meeting, May 18, 2005, St. Louis, MO.
- "Back to the Basics, Legal Lingo 101", National Litigation Consultant's Review, May 2005.
- "How the BV Professional Can Work Effectively with Non-BV Appraisers (Co-Authored with Dr. Brent C Smith)", National Litigation Consultant's Review, March 2005.
- "Seak, Inc.'s "National Guide to Expert Witness Fees and Billing Procedures (Review of)", National Litigation Consultant's Review, December 2004.
- "Expert Preparation of the Expert Witness (a primer for litigation support team members)", National Litigation Consultant's Review, August 2004.
- "New BV Standards and Other AICPA Matters", Accountant's Global Network, North American Regional Meeting, May 25, 2004, Palm Springs, CA.
- "Using Management Planning, Inc.'s Restricted Stock Study", National Litigation Consultant's Review, March 2004.
- "Be Prepared for New AICPA Standards", National Litigation Consultant's Review, February 2004.
- "Litigation Services and Applicable Standards (Review of)", National Litigation Consultant's Review, December 2003.
- "Down on the Farm Damages", National Litigation Consultant's Review, August 2003.
- "Market Approach Methods", Accountant's Global Network, North American Regional Meeting, May 20, 2003, Cincinnati, OH.
- "Library Organization", National Litigation Consultants' Review, May 2003.
- "Come to the Fight Heavily Armed", National Litigation Consultants' Review, March 2003.
- "OneSource", National Litigation Consultants' Review, December 2002.

- "A Time to Shred", National Litigation Consultants' Review, October 2002.
- Review and assistance on "Be a Bulldog", National Litigation Consultants' Review, August 2002.
- "Sweating the Small Stuff", National Litigation Consultants' Review, May 2002.
- "Do I Need to File a Gift Tax Return", Blue Notes, Spring 2001 and The Business Edition (formerly the Columbus Business Scene), July 2001.
- "To ABV or Not to ABV", The CPA Consultant, Newsletter of the AICPA Consulting Services Section, February/March 2001.
- *"Business Killers"*, Indiana's Midwest Builders Convention, February 11, 2000, Indianapolis, IN.
- *"Valuation Case Analysis"*, National Association of Certified Valuation Analysts (NACVA) Indiana Chapter Meeting, Discussion Leader, August 17, 1999, Indianapolis, IN.
- "Internal Revenue Service Acquiesces in Capital Gains Discount Case", Blue Notes, Spring 1999.
- *"The Business of Litigation Support"*, Accountants Global Network (AGN) International World Congress, October 23, 1998, San Diego, CA.
- *"Valuation of Specific Assets"*, Indiana Continuing Legal Education Forum (ICLEF) Selected Topics in Probate Administration, October 17, 1997, Indianapolis, IN.
- Co-author of *"Valuation of a Closely Held Business"*, Research Institute of America, June, 1997, Copyright 1997.
- *"ESOPs Succession Planning"*, NBD Bank, May 1, 1997, Indianapolis, IN.
- *"Tax & Pension Aspects of ESOPs"*, The Indiana ESOP Association Professionals Meeting, March 13, 1997, Indianapolis, IN.
- *"Business Valuation Potpourri"*, Blue & Co., LLC Firmwide Audit and Accounting Training Seminar, September 20, 1996, Indianapolis, IN.
- *"Valuation of Construction Companies"*, Construction Industry Task Force Reunion, AGN, June 15, 1996, Fort Collins, CO.
- *"Valuation of the Practice"*, Indiana Continuing Legal Education Forum (ICLEF) What Happens When the Professional/Executive Dies? Seminar, December 5, 1995, Indianapolis, IN.
- *"Business Valuations"*, American Society of Women Accountants, November 16, 1995, Indianapolis, IN.

- *"Family Limited Partnerships, Brief Overview of Business Valuations"*, Indianapolis Chapter of CLU and ChFC, September 12, 1995, Indianapolis, IN.

- *"What is Litigation Support? Why a Business Valuation?"* Blue & Co. Firmwide Tax Training Seminar, November 20, 1991, Indianapolis, IN.

SELECTED BUSINESS VALUATION AND LITIGATION SUPPORT COURSES AND TRAINING

- American Society of Appraisers, Employee Stock Ownership Plans (ESOP) Valuation Course (BV206); Anaheim, CA, October 1995.
- American Society of Appraisers, Business Valuation Selected Advanced Topics (BV204); Indianapolis, IN April 1995, Passed BV204 Exam.
- National Association of Certified Valuation Analysts, Business Valuation and Certified Valuation Analysts (CVA) Training Program; Salt Lake City, Utah; November 1994.
- Partnerships and Other Pass-Through Entities; New York University, NY; July 1994.
- American Society of Appraisers, Business Valuation Case Study (BV203); Passed BV203 Exam; Denver, CO; May 1994.
- Tax Consequences of Buying and Selling a Business, sponsored by the IU Graduate School of Business; Indianapolis, IN; December 1993.
- AGN Business Valuation Seminar; Passed Introduction to Business Valuation (BV201) and Business Valuation Methodology (BV202) Exams; St. Louis, MO; May 1993.
- AGN, Litigation Support Training Seminar; Denver, CO; September 1992; San Diego, CA, September 1999.

Appendix A

KAMERON H. MCQUAY, CPA/ABV, CVA

General Data

Indianapolis Business Address:
One American Square, Ste. 2200
Indianapolis, IN 46282

Telephone:
Business: 317.633.4705
Direct and Fax: 317.713.7933
Email: kmcquay@blueandco.com
Website: www.blueandco.com

EDUCATION

University of Evansville – Evansville, Indiana
Bachelor of Science – Finance

ACADEMIC HONORS

Graduated with Honors
Guthrie May Award Winner – Most Outstanding Graduate

BUSINESS HISTORY

Blue & Co., LLC, Director *1992 to Present*

Coordinates services to physicians and their group practices. Responsibilities include development of Firm Marketing and Quality Control System as it relates to physician entities.

Additional responsibilities include corporate compliance activities for both hospital and physicians' organizations, Indiana Medicaid reimbursement issues, operational assessments of healthcare organizations, compliance and HIPAA impact, business valuation for Healthcare facilities, oversight of hospital acquisition programs, as well as a frequent speaker to physician and hospital groups.

Harding Shymanski & Co., Healthcare Professional Division-Manager *1989 to 1992*

Responsible for all aspects of consulting service engagements including office practice set-up, accounting and financial management issues, coding and reimbursement analysis, billing and collection reviews, adoption of retirement plans and personal financial planning for physicians. Directed the activities of employees in the Healthcare Department.

Harding Shymanski & Co., Staff Accountant *1983 to 1989*

Delivered high quality audit and accounting services to various clients. Managed engagements for small and large audit clients requiring concurrent supervision of multiple engagement teams ranging from two to six professionals. Responsibilities also included the review and preparation of corporate and individual income tax returns.

PROFESSIONAL AND CIVIC MEMBERSHIPS

American Institute of Certified Public Accountants
Indiana CPA Society
National Association of Certified Valuation Analysts
Medical Group Management Association
Indiana Medical Group Management Association
Healthcare Financial Management Association
Indiana University – Purdue University Indianapolis
    Adjunct Faculty, School of Public and Environmental Affairs
Child Advocacy Center
    Past President and Director
Young Life of Evansville
Young Life of Carmel
    Committee Member
Accountants Global Network
    Healthcare Professionals Executive Committee
Carmel-Clay School District
    High School Soccer Coach

Appendix A

JEFFRY M. MOFFATT, CPA/ABV/CITP, CVA

General Data

Business Address:
One American Square, Ste. 2200
Indianapolis, IN 46282

Telephone:
Business: 317.633.4705
Direct and Fax: 317.275.7405
Email: jmoffatt@blueandco.com
Website: www.blueandco.com

EDUCATION

Indiana University, Kelley School of Business
Master of Professional Accountancy
Bachelor of Science in Business – Computer Information Systems

BUSINESS HISTORY

Blue & Co., LLC, Manager — *2008 to Present*

A member of the Valuation and Healthcare Strategy Group primarily focused on the analysis and development of methods for aligning hospitals, healthcare systems and other healthcare related entities with physician groups and other care providers. Additional healthcare industry related services provided include physician and practice benchmarking, physician compensation analysis and practice management and assessment.

Also a member of Valuation and Forensic Services, providing business valuations, litigation support and other valuation consulting and appraisal services.

Prestige Group, Inc., Assistant Controller — *2005 to 2008*

Primarily responsible for billing and reimbursement of subcontracted services for a domestic and international logistics services broker with operations in Indianapolis, IN, Dallas, TX and Houston, TX. Created internal billing and payment systems controls through the development of database systems tying together several disparate operations, sales and accounting systems.

PROFESSIONAL AND CIVIC MEMBERSHIPS

- American Institute of Certified Public Accountants – Accredited in Business Valuation (ABV) Champion
- Indiana CPA Society
- National Association of Certified Valuators and Analysts
- Healthcare Financial Management Association

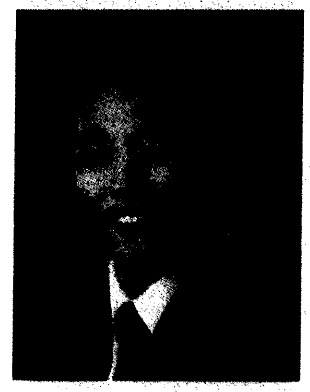
- American Health Lawyers Association
- Indiana University Master of Health Administration Program Mentor
- United Way Emerging Leaders Program
- The Earth House Collective – Executive Board of Directors

LECTURES, WRITINGS, SPEECHES, SEMINARS, COURSES, ETC.

- "Healthcare Reform: The Rx for Physicians", *The Financial Diagnosis*, Kentucky Healthcare Financial Management Association, August 2010.
- "Owners' Compensation in Physician Practice Valuations" National Association of Certified Valuators and Analysts, September 14, 2010, October 14, 2010 and January 20, 2011.
- "Benchmarking Physician Practices" National Association of Certified Valuators and Analysts, September 23, 2010, October 26, 2010 and January 27, 2011.
- "Effects of Healthcare Reform: The 2011 Outlook for Physician Practice Valuations", *The Value Examiner*, November/December 2010.
- "Healthcare Valuation – What you Need to Know!", National Association of Valuators and Analysts State Chapter 2010, Tri-Annual Meeting (Indiana), November 19, 2010.
- "Valuing Medical Practices For a Divorce in the Current Healthcare Environment", *Valuing Professional Practices and Licenses, Third Edition*, Wolters Kluwer Law & Business, 2012.
- "Valuation A to Z (Part One): Fundamentals and Applications", Columbus Bar Association (Ohio), May 30, 2012.
- "Valuation A to Z (Part Two): Specific Methods and Techniques", Columbus Bar Association (Ohio), June 11, 2012.
- "Financial Projections and Financial Statement Adjustments for Valuation", National Association of Valuators and Analysts State Chapter 2010, Tri-Annual Meeting (Indiana), July 20, 2012.
- "Valuating Healthcare Transactions and Agreements", Columbus Bar Association (Ohio), October 5, 2012

Appendix A

MICHAEL L. UENG, CPA/ABV, CVA



General Data

Indianapolis Business Address:
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Indianapolis, IN 46282

Telephone:
Business: 317.633.4705
Direct and Fax: 317.275.7416
Email: mueng@blueandco.com
Website: www.blueandco.com

EDUCATION

University of Michigan, Ross School of Business
 Master of Accounting
 Bachelor of Business Administration with emphases in Accounting and Finance

BUSINESS HISTORY

Blue & Co., LLC, Manager *2009 to Present*

A member of the Valuation and Healthcare Strategy Group and a key contributor in providing healthcare practice management services, specifically focusing on business valuations for physician practices, hospitals and other healthcare related entities.

Clifton Gunderson, LLP, Assurance Senior Associate *2006 to 2008*

Performed reviews of Indiana, Ohio, and Mississippi Cost Reports of long-term care and mental health providers with responsibility for planning engagements, managing fieldwork, reviewing work of staff, and completing final report. Trained entire healthcare group during implementation of paperless audit software.

Worked on performance audits of Medicaid Management Information System (MMIS) of fiscal intermediary for the state of Indiana and State Children's Health Insurance Plan administrator for the state of Mississippi, and assisted in recalculation of Medicaid certified public expenditures by all public hospitals in the state of Alabama for Medicaid and DSH settlement.

PROFESSIONAL AND CIVIC MEMBERSHIPS

American Institute of Certified Public Accountants
National Association of Certified Valuation Analysts
Indiana CPA Society
Healthcare Financial Management Association

APPENDIX 1

Center for Excellence in Higher Education | Independence University Since 1891 | Stevens-Henager College Since 1891 | California College San Diego | CollegeAmerica

Appendix 1

Inaccuracies and Misrepresentations in the Department's August 11, 2016 Decision (the "Decision")

1. The Decision incorrectly states that, *"This application results from a transaction that occurred as of December 27, 2012..."* (page 1, paragraph 1). The transaction actually occurred on December 31, 2012.

2. The Decision incorrectly states that, *"Each of the above named schools ("the Colleges") submitted an electronic application ("eapp") for Change in Ownership by November 7, 2012 (California College of San Diego submitted their eapp on October 22, 2012)"* (page 1, paragraph 1). The Colleges did not submit applications on the dates specified. The Colleges submitted pre-acquisition review applications in the fall of 2012. The actual change of ownership applications were submitted in January 2013.

3. The Decision incorrectly states that, *"Temporary Provisional Program Participation Agreements were effective as of January 1, 2013, and extended for an initial one month period until January 3 1, 2013"* (page 1, paragraph 1). The Temporary Program Participation Agreements were effective as of January 31, 2013 and have been extended on a month-to-month to basis through August 31, 2016.

4. The Decision incorrectly states that CEHE submitted, *"... an [application] for a change of ownership or structure for the above-named schools"* (page 1, paragraph 1). CEHE <u>never</u> submitted an application for change of structure. Additionally, in other correspondences, the Department claims that CEHE submitted an application for a "change of status for its colleges". CEHE has never submitted an application for a change of status.

   The Department is committing a fallacy of ambiguity by using a double meaning or ambiguity of language to mislead or misrepresent the truth. CEHE ***never*** submitted an application for a change of structure or change of status. The Department has no such applications for colleges. The Department recognizes this when it states near the end of its Decision, *"The Department does not take a position with respect to CEHE's non-profit 501(c)(3) status with the Internal Revenue Service"* (page 10, paragraph 5). The IRS is the only federal entity charged with determining a corporation's tax status.

   The only application CEHE submitted was for the Department to decide whether or not it would issue new Program Participation Agreements to CEHE following CEHE becoming the sole owner and operator of the colleges. CEHE's status as a

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non-profit corporation and CEHE's sole ownership of the colleges is undisputed by the Department.

The Department, later in its Decision, acknowledges exactly what authority it has, "*The Department regulations identify certain covered transactions for an institution that constitute a change of ownership that require the institution to apply and obtain approval from the Department to continue participating in the Title IV, HEA program*" (page 2, paragraph 4).

5. The Decision incorrectly states that, "*The Colleges have petitioned the Department to recognize their conversion to nonprofit status for the purposes of administration and oversight of their participation in Title IV student financial assistance programs,*" (page 2, paragraph 1). CEHE sent no such petition and has not petitioned the Department for any such recognition. Again, it is undisputed that CEHE is a qualified nonprofit corporation and CEHE is the sole owner of the Colleges.

6. The Decision incorrectly states that this decision is in response to, "*...CEHE's requested approvals for the change of ownership and change to nonprofit status*" (page 2, paragraph 3). The only application or request that CEHE submitted was for the Department to decide whether or not it would issue new Program Participation Agreements to CEHE following CEHE becoming the sole owner and operator of the colleges. CEHE never requested or submitted an application for the Department to approve a change of status. CEHE's status as a non-profit corporation and CEHE's sole ownership of the colleges is undisputed by the Department.

7. The Decision incorrectly states that, "*... CEHE's requested approvals for the change of ownership and change to nonprofit status.*" (page 2, paragraph 3). CEHE never requested approval for a change to nonprofit.

8. The Decision incorrectly states that, "*Because the colleges have applied to be considered nonprofit institutions...*" (page 3, paragraph 1). This is false, the Colleges did not apply to be considered nonprofit, the Colleges applied to have CEHE as the new owner and operator of the Colleges.

9. The Decision incorrectly states that, "*... the Trust retained the benefit of a continued stream of Title IV revenues....*" (page 3, paragraph 3). The Trust has no claims, title, or retention of any stream of revenues from CEHE.

10. The Decision incorrectly states that, "*... Mr. Barney obtained significant control*

of CEHE and by extension, retained control of the colleges." (page 3, paragraph 3). Mr. Barney did not "obtain" significant control; he was duly and legally appointed as a member of the corporation pursuant with CEHE's bylaws.

11. The Decision incorrectly states that, "*The Barrington evaluation was commissioned by Mr. Barney for use by the company...*" (page 5, paragraph 1). The Barrington valuation was commissioned, and paid for, by the Colleges.

12. The Decision incorrectly implies that restrictions or covenants in loan agreements are improper, "*... Mr. Barney indeed placed restrictions on CEHE: by negative covenants set forth in the NPA and a subsequent Contingent Note Agreement.*" (page 5, paragraph 3). Virtually every business loan or transaction loan contains covenants and restrictions on the borrower. This is common practice and in no way illegal, wrong, or a violation of any regulation.

13. The Decision incorrectly implies that loan terms, restrictions, or covenants in the loan agreement or loan terms are improper, "*Significantly, the notes also require quarterly mandatory prepayments of the greater of 75% of the excess cash flow of CEHE, or 10% of CEHE's total revenues.*" (page 6, paragraph 1). Virtually every business loan or transaction loan contains covenants, restrictions, and specific performance terms for the borrower. This is common practice and in no way illegal, wrong, or a violation of any regulation.

APPENDIX 2

Appendix 2

Miscellaneous Conclusions in the Decision

The Department states:

> *"The Department concludes [from a November 2015 statement] that if CEHE had decided to proceed with the Transaction knowing about the "material" information, there would have been a substantial adjustment to the financial terms of the transaction"*

This event has no relevance whatsoever to the Department's review of a transaction that occurred almost three years before this event. This conclusion relies upon an after-the-fact supposition regarding the purchase price adjustment. The purchase price (and purchase price adjustment) had no bearing upon CEHE's eligibility as a nonprofit institution of higher education. This issue is outside the purview of the three-part test used by the Department in its Decision.

The basis for a purchase price adjustment could not have been known by either party at the time the transaction closed. The Colleges and their management could not have predicted that a qui tam suit existed or would be filed; nor could the Colleges and their management predict that an overly aggressive assistant state Attorney General would bring meritless claims. The Department well knows there is an epidemic of such suits against colleges of any size. CEHE is aggressively defended itself and the organization denies there is any basis for such claims.

There is no proof that the Colleges breached any representations or warranties. These actions and efforts to impugn the reputation of the Colleges and its former owner have damaged CEHE's business operations, and caused a decline in revenue. Out of necessity, due to the Department's heavy-handed demand for an unreasonable letter of credit while threatening to force the Colleges to close, the Colleges had no alternative but to seek from its lender an adjustment to the purchase price and notes to save the institutions.

Contrary to the assertion that the Colleges' former owner acted improperly, these undisputed events confirm the opposite. CEHE certainly acted in its Colleges' best interests - and not to benefit the Colleges' former owner in this regard. Due to the demand for a letter of credit, the parties could not wait for a determination as to whether the Colleges' warranties and representations had been breached through the court system. The settlement allowed the parties to resolve the matter and meet the composite score regulations. Notwithstanding the fact the Colleges now satisfy the financial responsibility composite score, the Department has refused to release CEHE's $43 million dollars of escrow funds being held by the Department.

The Department knows the political environment and economics for career colleges changed dramatically from 2012 to 2015. The problem arose from the coordinated campaign and systemic attacks against private career colleges. For the Department to claim that either CEHE, or the Colleges' former owner, could have foreseen or should have foreseen such hostility two to three years in the future is not credible.

> *"Payments to the Trust under the Notes are essentially based on the excess of revenues over expenses - - the same way as net income in a for-profit entity"*

No, it is not the same! The Department's interpretation runs counter to accounting practices established by GAAP and FASB. Every college in the United States that has debt must use excess revenue over expenses to service their debt. This is true for Columbia University, Stanford University, and CEHE's Colleges. The Department cannot conclude that servicing debt with excess revenues over expenses causes CEHE's Colleges to fail the definition of a nonprofit institution without simultaneously concluding that all existing nonprofit colleges that service debt also fail the definition. Selective interpretation and varying application of existing regulations is arbitrary, capricious, and inappropriate for a federal regulatory agency charged with fair application of its regulations.

> *"CEHE did not notify the Department of this significant debt restructuring with the Trust even though the CEHE's application for the change of ownership for the original transaction was still under review"*

CEHE did notify the Department. CEHE provided a copy of its fiscal year 2015 audited financial statements to the Department (including a copy directly to Mr. Parrott who signed the Decision) on March 31, 2016[1]. Note 7 in CEHE's 2015 audited financial report clearly details and describes the debt restructuring.

> *"In either case, the significant reduction [in CEHE's debt to the Trust] suggests that the initial consideration of $431,000,000 (and the corresponding indebtedness) was*

[1] See Exhibit 20 – Submission of CEHE 2015 Audited Financials to DOE

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highly inflated"

No, it was not. The Department presents no evidence, basis, or support for this proffered conclusion. Two separate valuations of the Colleges were conducted; they established the value as of the date of the transaction. The Department cannot take events that occurred almost three years after the transaction closed and present those events as evidence that an aspect of the transaction was inappropriate. To do so is illogical.

> *"The Department has determined that the payments under the Term, Contingent, and Related Contingent Notes, which are and were contingent on CEHE "making money", are essentially profit distributions to the Trust – substantially the same as it received when it was the sole shareholder of the Companies."*

The Department does not have the authority, the right, or the expertise to make this determination. The Department is not the IRS, they are not the promulgators of Generally Accepted Accounting Principles, and they are not the Financial Accounting Standards Board. The IRS auditors have certainly not made this interpretation. CEHE's debt payments are not, under any definition, profit distributions. Every organization in the United States that services debt must do so with funds available after the organization has satisfied all other operational expenses. If an organization does not generate more money than it needs to cover its operational expenses, it cannot service debt. Given the arms-length transaction and market terms for CEHE's debt, the fact that the debt is to the Colleges' former owner is irrelevant. If CEHE had debt to another entity, it would still have to service that debt with excess revenue over expenses. This position by the Department runs counter to well established laws, rules, GAAP, and FASB decisions. The Department cannot disregard, or ignore the truth that debt service is not distributions of profit.

> *"As an element of further benefit to Mr. Barney in the form of enhanced value to the properties, Mr. Juhlin renegotiated most of the College leases to extend the terms until 2025 or 2026."*

The Department's statement is void of any proof, evidence, or support for this allegation. CEHE's Colleges received substantial benefits by renegotiating its leases. Colleges are not short-term businesses or operations, and stability of location and presence is of extreme importance and value to higher education institutions. The Department has extensive records of college transactions and if were to review those records it would see that institutions that have long-term leases in place actually command a higher valuation in the marketplace.

CEHE provided the Department with copies of all re-negotiated lease amendments. If the Department would review those amendments it will see that in virtually every instance, the Colleges negotiated a significantly lower rental rate (from what the Colleges were currently paying) and received 3-6 months of rental abatements.

EXHIBIT 15

Center for Excellence in Higher Education | Independence University Since 1891 | Stevens-Henager College Since 1891 | California College San Diego | CollegeAmerica

August 12, 2016

Mr. Douglas Parrott
Division Director
U.S. Department of Education
Federal Student Aid, School Participation Team – Chicago
500 West Madison Street
Chicago, IL 60661

Sent via email to Douglas.Parrott@ed.gov

Re: August 11, 2016 Letter concerning:
OPEIDs: 00367400 – Stevens Henager College
02110800 – California College San Diego
02594300 – CollegeAmerica Denver
03120300 – CollegeAmerica – Flagstaff

Dear Mr. Parrott:

This letter refers to your August 11, 2016 letter to Eric Juhlin, CEO of Center for Excellence in Higher Education ("CEHE"). CEHE filed its E-Application following its change in ownership on January 30, 2013. The Department now issues its decision after a prolonged period in which CEHE provided the Department with considerable information, much of it not related to its change in ownership.

Due to the serious nature of the Department's decision, we need to provide a meaningful response. Therefore, we request that the Department grant an extension for thirty (30) days, or until September 12, 2016, to submit a request for reconsideration.

Given the urgency of this matter, CEHE requests that the Department respond to this letter today or at the latest by the close of business Monday, August 15, 2016.

I can be reached at matthew.gerber@collegeamerica.edu or at (206) 352-8200.

Sincerely,

Matthew Gerber
General Counsel

Cc: Earl Flurkey
Eric Juhlin
Dr. Michale McComis, ACCSC
Steve Gombos, Ritzert & Leyton

EXHIBIT 16

August 16, 2016

Certified Mail Return Receipt Requested
Domestic Return Receipt:
7012 1640 0000 0216 1336

Matthew Gerber
General Counsel
Center for Excellence in Higher Education
4021 South 700 East
Suite 400
Salt Lake City UT, 84107-9923

Re: Request for Extension of Time to Respond
OPEID: 00367400 – Stevens Henager College
02110800 – California College San Diego
02594300 – CollegeAmerica Denver
03120300 – CollegeAmerica - Flagstaff

Dear Mr. Gerber:

This letter responds to your letter dated August 12, 2016, requesting an extension to September 12, 2016 for the Center for Excellence in Higher Education (CEHE) to submit a request for reconsideration in response to the Department's August 11, 2016 letter concerning the change of ownership applications for the CEHE schools. Your request for an extension to respond to the Department's August 11 letter has been considered, and the Department is denying the request. The 10 day period should be sufficient for CEHE to provide any additional factual information about the agreements and arrangements described in the August 11 letter that it wants the Department to consider. As noted in the Department's August 11 letter, CEHE should identify the relevant portions of the documents already provided to the Department, and include with the submission any additional documents that have not already been provided to the Department.

Sincerely,

Douglas Parrott
Division Director

cc: Accrediting Commission of Career Schools and Colleges
State of Utah Department of Commerce

EXHIBIT 17

August 16, 2016

Mr. Douglas Parrott
Division Director
U.S. Department of Education
Federal Student Aid, School Participation Team – Chicago
500 West Madison Street
Chicago, IL 60661

Sent via email to Douglas.Parrott@ed.gov

Re: August 16, 2016 Letter concerning:
OPEIDs: 00367400 – Stevens Henager College
02110800 – California College San Diego
02594300 – CollegeAmerica Denver
03120300 – CollegeAmerica – Flagstaff

Dear Mr. Parrott:

This letter refers to your August 16, 2016 letter to Matthew Gerber, General Counsel of Center for Excellence in Higher Education ("CEHE"), denying CEHE's plea for an extension in the deadline imposed upon CEHE to submit a request for reconsideration of the Department's 11-page decision letter issued August 11, 2016.

CEHE notes that while the Department took 43 months to complete its review of CEHE's applications for change of ownership, the Department only gave CEHE 10 calendar days to submit a request for reconsideration. Moreover, the Department set a further deadline of August 31, 2016 for CEHE to accept the Department's decision and execute new Provisional Program Participation Agreements ("PPPAs").

CEHE does not see how the Department will be able to thoughtfully and carefully review CEHE's request for reconsideration (due Sunday, August 21st) and then respond back to CEHE before the current August 31, 2016 deadline the Department has demanded for

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CEHE to execute new PPPAs.

CEHE believes it would be unfair for the Department to require CEHE to sign the PPPAs by August 31st without a thorough review and detailed analysis of CEHE's request for reconsideration.

Accordingly, we request that the Department extend the deadline for CEHE to sign new PPPAs until September 30, 2016 and allow CEHE to continue its participation under the existing Temporary Program Participation Agreements, which the Department has allowed CEHE to participate under for the past 43 months, until September 30, 2016. This will give the Department adequate time to fully review CEHE's request for reconsideration and respond appropriately. CEHE will submit its request for reconsideration by August 21, 2016.

Given the urgency of this matter, CEHE requests that the Department respond to this letter immediately - or at the latest by the close of business tomorrow (Wednesday, August 17, 2016).

I can be reached at eric.juhlin@collegeamerica.edu or at (801) 622-1555.

Sincerely,

Eric Juhlin
CEO

Cc: Earl Flurkey
Matthew Gerber
Dr. Michael McComis, ACCSC
Steve Gombos, Ritzert & Leyton

EXHIBIT 18

August 17, 2016

Mr. Eric Juhlin
Chief Executive Officer
Center for Excellence in Higher Education
4021 South 700 East
Suite 400
Salt Lake City UT, 84107-9923

Certified Mail Return Receipt Requested
Domestic Return Receipt:
7012 1640 0000 0217 1343

Re: Request for Extension of Time to Respond
OPEID: 00367400 – Stevens Henager College
02110800 – California College San Diego
02594300 – CollegeAmerica Denver
03120300 – CollegeAmerica - Flagstaff

Dear Mr. Juhlin:

This letter responds to your letter dated August 16, 2016, requesting an extension until September 30, 2016, for the Center for Excellence in Higher Education (CEHE) to sign and return the Provisional Program Participation Agreements (PPPAs) provided with the U.S. Department of Education's (Department's) August 11, 2016 letter, stating that it would be fairer to leave the current monthly participation agreements in place until the Department could evaluate and respond to a request for reconsideration from CEHE if one is submitted. The Department has considered CEHE's request and denies it. As explained in the August 11 letter, the month-to-month participation for CEHE's four institutions will end on August 31, 2016. In order for those institutions to continue participating in the federal student aid programs without interruption, CEHE must submit the signed PPPAs before the end of August for the Department to review and countersign. In addition, and as noted in the Department's August 11 letter, the gainful employment certifications are past due, and no program will be approved to continue participating beyond August 31 for which the required certification has not been provided.

If CEHE timely submits its request for reconsideration, the Department will review and consider that request. If the Department does not issue a decision by August 31, 2016, and if CEHE has met the submission requirements in the August 11 letter, the Department may countersign the new PPPAs so that the CEHE institutions may continue participating in the federal student aid programs. If the Department resolves the request for reconsideration after August 31, 2016, and if modifications to the PPPAs are required as a result of the Department's reconsideration decision, the Department and CEHE can revise the PPPAs as needed.

If you have any questions on these points, you may contact Earl Flurkey at 312-730-1521.

Sincerely,

Douglas A Parrott

Douglas Parrott
Division Director

cc: Accrediting Commission of Career Schools and Colleges
State of Utah Department of Commerce