



Changing Dynamics in State Oversight of For-Profit Colleges

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Context

Growing student enrollment, rapid increases in federal and state financial aid, and alarming amounts of student borrowing over the last decade at for-profit colleges have led to a new round of scrutiny over these institutions' practices, policies and products. Investigations by state and federal authorities and lawsuits filed over the last two years have highlighted numerous troubling instances of fraud, abuse and unsatisfactory student outcomes at some for-profit colleges. While many for-profit colleges make important contributions to students and communities, some "education businesses" have left students deep in debt without meaningful employment opportunities. As a result, members of Congress, the Obama Administration, state-level officials and higher education leaders continue to weigh policy measures seeking to improve student outcomes and crack down on unethical and illegal conduct in the for-profit college industry.

While many policy proposals are being considered, more fundamental concerns remain over the efficacy of the shared regulatory arrangement between states, accrediting bodies and the federal government as it pertains to for-profit college oversight. Critics of the

current system believe the regulatory "triad" lacks an appropriate distribution of responsibilities and sufficient capacity to adequately protect students from illicit practices, ensure institutional integrity and sufficiently advance students' educational and economic well-being. With an estimated 2.4 million students enrolled at for-profit colleges¹ and billions invested in federal and state student financial aid, regulatory lapses can have significant, long-term repercussions not only for students attending these colleges, but for employers seeking skilled workers, taxpayers financing student financial aid programs, and ethical for-profit colleges competing in the postsecondary education marketplace as well.

The states' role within the regulatory triumvirate is being revisited. State governments arguably have the strongest position of the three entities, with broad legal authority, public accountability and close proximity to many campuses. Historically, state governments have had central oversight responsibilities, including authorizing institutions to legally operate and providing consumer protection. Further, states are charged with overseeing *all* postsecondary institutions operating within their borders, including a notable number of unaccredited colleges.

This paper focuses on the *state* role in regulatory oversight of for-profit colleges. It describes the rapid rise of the for-profit college industry, outlines troubling allegations of consumer fraud and abuse, highlights a pattern of disconcerting student outcomes, revisits the state's oversight function and discusses national and state efforts to strengthen state oversight of for-profit colleges.

Observations

For-profit colleges have long been part of U.S. postsecondary education, but have rapidly grown and transformed to include a critical mass of college students.

For-profit colleges are not new to American postsecondary education. For over two centuries, mostly small- and medium-sized education businesses have offered a range of job training, occupational certification and place-based, career-oriented education programs. Many for-profit colleges have a history of reaching out to students that may not have been well-served by traditional postsecondary education, including older, minority and low-income students.² For-profit colleges' often nimble organizational structure has allowed quick adjustments to changing labor market conditions and programs aligned to individual and employer needs.³

The advent of online instructional delivery has allowed the for-profit college industry to transform to include a number of large, primarily online, corporate entities spanning multiple states. Online learning provided by large for-profit colleges fueled the industry's growth in the last decade. Nearly 90 percent of the for-profit industry's growth from 2000-2009 can be attributed to for-profit chains and primarily online establishments.⁴ By 2008-09, the 15 largest for-profit college companies enrolled nearly 60 percent of the sector's students.⁵

Online learning, as well as growing demand for postsecondary education, are two factors that have fueled rapid student enrollment increases at for-

profit colleges. Total enrollment at Title IV-eligible institutions jumped from 1.48 million in fall 2007⁶ to 2.42 million in fall 2010,⁷ an increase of nearly 64 percent. Since fall 2000, enrollment at for-profit colleges has increased 260 percent.⁸ For-profit college enrollment now comprises 11.2 percent of total postsecondary education enrollment at Title IV-eligible institutions.⁹ The industry also enrolls an estimated 670,000 students at unaccredited institutions that are not eligible for federal Title IV funding and are not included in the U.S. Department of Education's enrollment count.¹⁰

Higher enrollment counts have led to a greater share of degrees being conferred by for-profit colleges. In 2008-09, for-profit colleges issued five percent of all bachelor's degrees, 18 percent of all associate degrees, 42 percent of all certificates and 10 percent of all master's degrees.¹¹ These degrees and certificates include a wide variety of programs, but for-profit colleges generally focus on training students for careers in high-growth labor market sectors. According to Harvard professors David Deming, Claudia Goldin and Lawrence Katz, for-profit colleges now confer one in three associate degrees in business, management and marketing; over 50 percent in computer and information science; and nearly a quarter of all associate degrees in the health professions. For-profit colleges often focus on communications, business, and personal and culinary service programs at the bachelor's degree level.¹²

Despite the industry's consolidation, online growth and program focus, it remains diverse in its size, range of program offerings and methods of instructional delivery. Smaller for-profit colleges can enroll as little as a few dozen students, while the University of Phoenix's Online Campus enrolled an estimated 321,000 full-time students in their undergraduate and graduate programs in Fall 2010.¹³ Some for-profit colleges offer week-long, non-degree programs, while others enroll students for multi-year, terminal degree programs. For-profit colleges may offer exclusively online courses, classroom delivery or blended course formats.

Federal and state investigations, as well as media scrutiny, has revealed fraud and abuse in the for-profit college industry.

Student and employee allegations of impropriety at some for-profit college companies, coupled with the industry's phenomenal growth over the last two decades, have resulted in renewed scrutiny of their business practices and sustained longstanding fears of systemic consumer fraud and abuse. Some have accused for-profit college companies, given their huge influx of revenues from federal student aid programs, of enriching themselves rather than providing enriching academic experiences to students. Critics have argued that the profit-seeking motive has, in many instances, taken precedent over academic and student success priorities, as well as admissions practices that may involve misrepresentation, false information and high-pressure sales tactics.¹⁴

Student recruitment practices have been at the forefront of this criticism. Some for-profit college companies have been accused of committing consumer *fraud* and *abuse*. *Fraud* is considered purposeful consumer deception, while *abuse* includes deception, injustice and unscrupulous behavior but is not necessarily deliberate. This includes false expectations, not offering promised or implied educational opportunities and failing to provide appropriate systems for hearing and redressing valid student grievances.¹⁵ Recent federal and state investigations and lawsuits, as well as media inquiries, have revealed numerous instances of fraud and abuse at for-profit college companies. It is unclear whether these investigations uncovered isolated incidents of impropriety or widespread unethical and illegal activity.

Federal Investigations and Lawsuits. Senator Tom Harkin (D-IA), chair of the Senate Committee on Health, Education, Labor and Pensions (HELP), has led a series of high-profile hearings and discussions highlighting unethical practices in the for-profit college industry. Testimony from Harkin's hearings uncovered a wide array of industry abuses, including [misleading claims](#) over their programs' credentials

being accepted by employers, providing [false job placement numbers](#) to prospective students, and [deceptive and fraudulent sales tactics](#), including misinformation on private student loans.

Senators Harkin and Dick Durbin (D-IL) have also given attention to for-profit colleges' participation in veterans' tuition assistance programs. Hearings on the industry's participation in veterans' tuition assistance funds have focused on accusations of predatory recruiting practices because veterans' tuition benefits do not count toward the "90/10" rule, which requires institutions to receive at least 10 percent of their funding from non-Title IV financial aid sources. As for-profit colleges enroll more students participating in veterans' tuition assistance programs, they are able to enroll a greater number of students using federal financial aid. This has created an incentive for some for-profit college companies to aggressively recruit veterans and those eligible for veterans' tuition assistance.¹⁶

A large share of students who have participated in the Post 9/11 G.I. Bill veterans' tuition assistance program chose to attend a for-profit college, according to a December 2010 [report](#) from the U.S. Senate HELP Committee. The committee reported that in the first year of Post 9/11 G.I. Bill implementation, public colleges (two- and four-year) and for-profit colleges received similar amounts of Post 9/11 G.I. Bill funds (\$697 million and \$640 million, respectively); however, higher cost of attendance at for-profit colleges meant the program funded 203,790 students at public colleges and 76,746 at for-profit colleges. The report claims that the top for-profit providers of veterans' education have poor student outcomes; four of the top five for-profit colleges receiving the most Post 9/11 G.I. Bill funding have student loan repayment rates between 31 and 37 percent.¹⁷

The U.S. Government Accountability Office (GAO) has also looked into the industry's practices. GAO released a [report](#) in August 2010 citing troubling instances of fraud and abuse at a sample of 15 for-profit colleges. According to the report, four of the 15 colleges encouraged undercover applicants to falsify their Free Application for Federal Student Financial

Aid (FAFSA) form, including urging applicants to not report assets and instructing them to falsify the number of dependents. GAO reported 13 of the 15 colleges supplied undercover applicants with deceptive or otherwise questionable information pertaining to graduation rates, employment prospects upon graduation or projected earnings. Nine of the colleges provided deceptive or questionable information related to program cost and duration, while 11 denied the undercover applicants access to their financial aid eligibility or provided questionable financial advice.¹⁸ For-profit industry officials have called the [integrity of this investigation](#) into question.¹⁹ GAO amended their report to clarify their findings.

The new federal Consumer Financial Protection Bureau (CFPB) has expressed concern over the for-profit college market, including a lack of information about college choices and some students' ability to repay their student loans.²⁰ The new federal agency has jurisdiction over financial matters and is currently taking complaints pertaining to private student loans. CFPB officials have also expressed unease over for-profit college companies' recruiting practices of returning veterans.²¹

The federal government has taken legal action against some for-profit college companies. In August 2011, the U.S. Department of Justice (DOJ), along with four states, filed a multi-billion dollar lawsuit against Education Management Corporation (EDMC), the nation's second-largest for-profit college company.²² The [complaint](#) claims EDMC paid student recruiters based solely on the number of students enrolled, a violation of federal law. DOJ has asked EDMC to pay back billions in federal student aid funds. EDMC, however, has defended its recruitment compensation system and asked for the case to be dismissed.²³ The case remains in federal court.

The federal government has also filed lawsuits against smaller for-profit colleges. DOJ [took action](#) in February 2012 against American Commercial College (ACC), a for-profit college chain based in Lubbock, Texas. DOJ claims the college sought to circumvent the 90/10 rule by aligning with a Texas bank to have students apply for private loans from the bank and

then repay the bank at the end of the fiscal year.²⁴ The case remains open.

State Investigations and Lawsuits. State leaders have also examined the industry's practices. Kentucky Attorney General Jack Conway (D) is currently leading a multi-state, bipartisan investigation into for-profit college practices. Thus far, the investigation has involved student consumer protection concerns and 22 state attorneys general have joined Conway's effort.²⁵ Outside of the multi-state investigation, California Watch, a non-partisan investigative reporting website, counted 31 for-profit college investigations across 11 states in February 2012.²⁶

States have also filed lawsuits against for-profit colleges. In July 2011, Attorney General Conway filed a state lawsuit against Daymar College, a for-profit college based in Owensboro, Kentucky. In the [complaint](#), Conway claimed Daymar deceived and misled students about textbooks and financial aid, steering them into purchasing items from Daymar at higher prices. The complaint also alleges that the college enrolled and retained students with false assurances that their course credits would be transferable to other institutions; offered programs that did not fit the standards of its accrediting organization; and recruited and enrolled students who did not meet the college's own admissions standards.²⁷

Conway has also filed a separate lawsuit against National College of Kentucky, a for-profit college chain based in Lexington. In the [complaint](#), Conway claims National provided false, misleading or deceptive information to consumers about its job placement rates. The Kentucky attorney general's office alleges that the college advertised significant higher job placement rates to students than it gave to its accrediting body.²⁸

In Illinois, Attorney General Lisa Madigan (D) filed a lawsuit against for-profit Westwood College in January 2012, claiming the college made a number of misrepresentations and false promises about its criminal justice program. The [complaint](#) alleges Westwood burdened individual students with more

than \$50,000 in debt with little chance of obtaining law enforcement employment in Illinois. Westwood's criminal justice program is nationally-accredited, but major law enforcement employers in the Chicago area, including the Chicago Police Department, require regionally-accredited degrees. The lawsuit also alleges Westwood misled students about the cost of the three-year degree program, which totals \$71,610. By comparison, the College of DuPage, a local community college, offers a comparable, regionally-accredited criminal justice degree for \$12,672.²⁹ Westwood College is owned by Alta Colleges, Inc., a Denver-based for-profit college company.

Media Investigations. Media investigations have also revealed instances of student consumer fraud and abuse at for-profit colleges. These include:

- A July 2010 *PBS Frontline* special highlighting common industry criticisms, including misleading recruitment tactics, poor educational programming, high student loan debts, and programs that do not lead to meaningful career opportunities.³⁰
- An April 2010 investigation by *Bloomberg Businessweek* uncovering for-profit colleges aggressively recruiting at homeless shelters and among destitute populations with little or no regard to their preparation for postsecondary education or ability to benefit from the program.³¹
- An October 2010 investigation by WFAA-TV, an ABC-affiliated television station in Dallas, finding 288 falsified student employment records over four years at Everest College in Arlington, Texas.³² Everest College is owned by Corinthian Colleges, a publicly-traded, for-profit college corporation based in Santa Ana, California.
- A separate WFAA investigation in 2010 alleging that ATI, Inc., a for-profit college chain with campuses in North Texas, specifically sought out the homeless and felons for their degree programs, with little regard to whether they would benefit from the college's offerings. The investigation also accused ATI of inflated job placement numbers.³³ In August 2011, Texas regulators closed 22 of ATI's programs.³⁴

Concerns are growing over students' return on investment, student debt levels and default rates at some for-profit colleges.

For-profit colleges enroll a large proportion of at-risk students, including disproportionate numbers of students from low-income and minority populations. Yet regardless of the at-risk indicators associated with any given student population, all educational entities (public, not-for-profit and for-profit) should be held accountable for demonstrating that their students will benefit in the employment marketplace from the education and training they receive. Further, they should avoid burdening students with substantial debt after leaving school without a reasonable ability to pay it off.

Critics continue to question low graduation, professional licensure and job placement rates at some for-profit colleges, arguing that students are making considerable investments of time and resources but not receiving economic returns to match their investment. Taxpayers are also making substantial investments in postsecondary American education and deserve programs that help students acquire skills that lead to gainful employment.

Return on Investment. Recent studies have explored student outcomes at for-profit colleges, with mixed results. Deming, Goldin and Katz (2011) concluded that first-time postsecondary students attending for-profit colleges, after adjusting for observable differences with other sectors, had success in retaining students and helping them complete certificate and associate degree programs, compared with community colleges. However, for-profit college students did not fare as well for longer degree programs, compared with their public and nonprofit counterparts. For-profit college students also graduated with considerably more debt, and experienced greater unemployment and lower earnings, according to the authors' research.³⁵

A study by economist Nicholas Turner (2011) examined the differential earnings of attending a for-profit college relative to not-for-profit institutions

using federal tax data, after adjusting for selectivity status. The report concluded that the net private benefit from attending a for-profit college is less than what is associated with attending a public or private, not-for-profit college, due to higher education costs and lower earnings.³⁶

Economists Stephanie Riegg Cellini and Latika Chaudhary (2011) compared labor market returns of students attending private (mostly for-profit) and public two-year colleges. The authors found students in both sectors to have similar earnings after graduation. They concluded that students would usually be better served to choose a lower-cost community college over a higher-cost private college when the two entities offer comparable programs.³⁷

Debt and Loan Default. Student debt and loan default remains a concern across American postsecondary education, yet research reveals the problem to be particularly acute for students at for-profit colleges. For-profit college companies generally charge much higher tuition than their subsidized public counterparts. According to the College Board’s *Trends in College Pricing 2011*, the average published

tuition and fees at for-profit colleges in 2011-12 was \$14,487, compared with the in-state, public two-year rate of \$2,963 and the in-state public four-year rate of \$8,244. The private, not-for-profit tuition and fee rate was \$28,500.³⁸ This is only an average “sticker price” of tuition charges and does not include other educational costs and discounts, such as institutional financial aid.

In comparisons of “net cost of attendance,” which include tuition, grants and other college-related costs, for-profit colleges remain more expensive for low-income students. College Board data indicate that the net cost of attendance for low-income students at public two-year institutions was \$6,480 in 2007-08, while the net cost of attendance at in-state public four-year institutions was \$9,030. At for-profit colleges, the net cost of attendance was \$16,510 in 2007-08, comparable to some private, not-for-profit institutions.³⁹

For-profit colleges’ higher tuition prices has led to large student debt accumulations and growing concerns that students will not be able to repay these debts. According to June 2011 Senate testimony by

Table 1: Distribution of Total Undergraduate Debt by Sector and Type of Degree or Certificate, 2007-08.

	No Debt	Less than \$10,000	\$10,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 or more
Bachelor’s Degree						
Public Four-Year	38%	16%	19%	14%	6%	6%
Private Nonprofit Four-Year	28%	10%	19%	17%	10%	15%
For-Profit	4%	4%	12%	23%	33%	24%
Associate Degree						
Public Two-Year	62%	23%	9%	3%	1%	1%
For-Profit	2%	22%	34%	23%	13%	6%
Certificate						
Public Two-Year	70%	21%	7%	1%	1%	0%
For-Profit	10%	46%	34%	8%	2%	1%

Source: National Postsecondary Student Aid Survey 2008, Baum 2011.

economist Sandy Baum, a leading scholar of higher education finance, there are a number of troubling student debt trends at for-profit colleges. The following statistics were included in her testimony:

- Among students who received their degrees from for-profit colleges in 2007-08, 96 percent had debt with a median amount of \$32,700. Two-thirds of graduates from for-profit colleges had nonfederal loans, which often carry higher interest rates and do not have the protection of federal student loans.

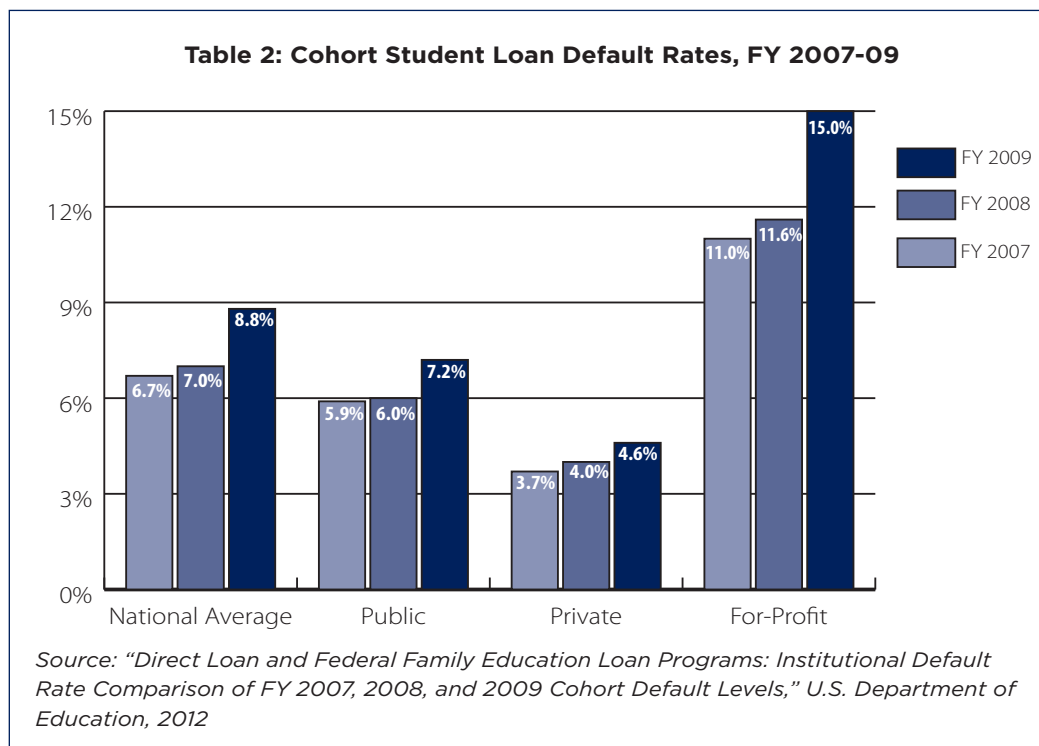
- Of those graduating from for-profit colleges in 2007-08, 57 percent of bachelor's degree recipients had over \$30,000 in debt. In contrast, 25 percent of private, not-for-profit and 12 percent of public bachelor's degree recipients had borrowed at this level.

- At the associate degree level, 42 percent of for-profit degree recipients had debt over \$20,000. At public colleges, 5 percent had debt at this threshold. Over 60 percent of associate degree recipients at public colleges were debt-free.

- Among independent bachelor's degree recipients, the median debt at for-profit colleges was \$32,700, compared with \$20,000 at public colleges and \$24,600 at private non-profit colleges.⁴⁰

It should be noted that this data does not include vast numbers of students who do not finish their degree programs. In her testimony, Baum concluded, "Institutions that leave students worse off than when they arrived are the exception at the public and private, not-for-profit sector. Unfortunately, they appear to be the norm at for-profit colleges."⁴¹

Heavy reliance on student loans, coupled with occupations that often do not generate earnings sufficient to allow for student loan debt reduction, have led to high and growing loan default rates among for-profit college students and graduates. The latest two-year student loan cohort default rate at for-profit colleges was over 15 percent at four-year for-profit colleges, compared with 5.2 percent at public colleges and 4.5 percent at private, not-for-profit colleges.⁴²



At the two-three year institutional category, the two-year default rate was 14.8 percent at for-profit colleges, while public and private, not-for-profit colleges stood near 12 and 10 percent, respectively. The U.S. Department of Education's budgeted lifetime default rate of two-year for-profit colleges was 49 percent, compared with 31 percent at public and private, not-for-profit two-year colleges.⁴³ Concerns remain about the viability of a postsecondary education sector that leaves a substantial share of its students without ample opportunities to repay their student loans; in addition, there are concerns about the associated consequences for students, as well as the general public.

Within the regulatory triad, state governments have key responsibilities for overseeing for-profit colleges.

An intertwined, three-part regulatory system, consisting of states, private accrediting bodies and the federal government exists to close down fraudulent institutions; identify underperforming institutions; oversee institutional improvement; assist in the distribution of student aid funds; and provide public information.⁴⁴ The unique three-way power-sharing structure aims to respect the autonomous traditions of American postsecondary education, recognize the state's preeminent authority and facilitate college access and success.

Within the triad, the federal government is charged with ensuring appropriate administration of federal student aid funds and evaluating institutional eligibility to participate in those programs. Accrediting bodies assume responsibility for reviewing educational quality. States provide all institutions with the legal authority to operate, provide consumer protection and may also set standards for institutional participation in state student financial aid programs.⁴⁵ Outside of their responsibilities within the regulatory triad, states must also oversee unaccredited colleges and universities.⁴⁶ Some states, however, do not allow unaccredited institutions to operate.

State governments remain in a strong, if underutilized, position within the regulatory framework. The federal government's power is restrained by the U.S. Constitution. Accreditation is a voluntary peer-review process with no legal enforcement authority and only one powerful tool—de-accreditation.⁴⁷ States, however, have broad legal authority to oversee for-profit colleges, including key responsibilities, such as providing institutions a legal right to operate and student consumer protection. These responsibilities are approached differently in each state.

Institutional Authorization. For-profit colleges must be authorized (or licensed) to operate by their respective states. While some public and non-profit institutions (particularly older ones) may have

acquired this authority through a state charter, for-profit colleges go through an authorization process. Authorization is different than accreditation and institutions can be authorized but not accredited. Some states may defer some responsibilities in the authorization process to accrediting bodies, but accrediting bodies do not have the power to authorize institutions.⁴⁸

Authorization standards vary around the country. Some states have a simple process that relies in significant part on accrediting bodies, while others send state review teams to examine applicants. Institutions must be authorized in every state in which they operate in order to participate in federal student aid programs, as well as have accreditation from a body recognized by the U.S. Department of Education.

The state authorization process is complicated by cross-border distance education programs. Distance education programs are designed to de-emphasize the role of place in learning, which conflicts with place-based state government authorization powers. Like authorization requirements, [states have different standards](#) to define whether an institution is actually “operating” within the state. For example, some states require authorization based on “physical presence” in the state, while others require authorization for enrolling students in the state. Further, the definition of “physical presence” may vary according to state. Therefore, distance education providers which enroll students in multiple states may have to go through many authorization processes.

While some believe state authorization requirements are antiquated in an era of distance education, others are concerned about weak state oversight and lax enforcement of consumer protection laws. In order to bolster state oversight, the U.S. Department of Education issued a “state authorization” rule in 2010 requiring institutions to seek authorization in every state in which they operate. While federal officials believe this simply reinforces and clarifies current law, others have concluded the requirement places an unnecessary regulatory burden on distance education providers.

It should be noted, however, that the challenges of state authorization and distance learning apply to all of American postsecondary education, including public, private, not-for-profit institutions and the for-profit college industry. Many larger for-profit college networks have systems in place to navigate the contours of state authorization laws and regulatory requirements. Many of the institutions that have not been in accordance with the Title IV state authorization requirements are public institutions and established private, not-for-profit institutions. A large majority of new applications for state authorization are not from for-profit colleges, but rather from public and private, not-for-profit colleges and universities.⁴⁹

Consumer Protection. Consumer protection is a shared responsibility within the regulatory triad, with states generally viewed as having the primary role in protecting students from fraud and abuse. States' consumer protection regulations pertaining to for-profit colleges range from basic safety considerations to specific educational concerns.⁵⁰ The range of consumer protection activities and enforcement vary from state to state. According to the State Higher Education Executive Officers (SHEEO), the state-level consumer protection function may include examining and/or regulating the following:

- **Advertising:** Ensuring institutions do not make promises that are not supported by evidence.
- **School Catalog and Enrollment Agreements:** Evaluating program information given to students, including course and program information, tuition and fee charges and graduation and job placement data.
- **Personnel Credentials:** Examining faculty qualifications in order to protect students from untrained personnel or those with fraudulent credentials.
- **Institutional Finances:** Monitoring institutional financial stability, including reviewing tuition refund policies, audited institutional financial statements, surety bonds and tuition protection funds.

- **Teach Outs:** Ascertaining whether campuses have a plan to allow students to finish their program in the event of a campus closure.
- **Site Visits:** Inspecting facilities, curricula, teaching aids and school records.
- **Licensing Exemptions and Exceptions:** Reviewing institutional exemptions from authorization, such as those allowed through having valid accreditation.
- **Consumer Complaints:** Investigating student complaints.⁵¹

Establishing and enforcing *minimal education standards* are also part of the state's consumer protection responsibilities. State regulators are charged with evaluating whether subject material is appropriate and students benefit from the program.⁵² SHEEO has stated that minimal education standards may include:

- **Pre-enrollment Standards:** Students must demonstrate an ability to benefit from the training, and programs must be appropriate for their level of preparation and skills.
- **Curriculum and Course Content:** Examining program objectives, methods to reach those objectives and expected student outcomes. This may include specific information, such as academic policies and grading methods.
- **Outcomes:** Reviewing and verifying outcomes data, including retention, completion and job placement data.
- **Informing Choice:** Ensuring students have information to make informed decisions about schools, including correct data on program costs, retention and job placement.⁵³

State education standards and accreditation. There are common characteristics to the state's oversight function and accreditation, such as ensuring an environment that can provide quality education programming. Therefore, some states defer to

private accrediting agencies in making qualitative judgments about programs operating in the state.⁵⁴ However, outside of their authorizing power, states have two exclusive responsibilities: protecting the rights of students throughout the education process and overseeing state investment in postsecondary education.⁵⁵

In a 2004 report, the California Postsecondary Education Commission (CPEC) compared the functions and roles of California's state oversight and accreditation pertaining to for-profit colleges. CPEC concluded that state oversight and accreditation serve fundamentally different purposes, even though substantial overlap exists between the two processes. CPEC recommended that states should not view accreditation as an alternative or substitution for the adoption and enforcement of state standards, but did suggest streamlining state policies and coordinating the state's efforts with those of accrediting bodies.⁵⁶

According to CPEC, there are specific differences between California's state oversight function and the role of accrediting bodies. State oversight (in California) is an external review of required minimal education standards with a particular focus on protecting consumers. The state function maintains legal authority to permit institutions to operate in the state and those that do not meet the required standards can be denied permission to operate. Accreditation, meanwhile, remains focused on institutional quality but not on consumer issues. It is a self-review process within the context of a college's mission and goals, and each institution and accrediting body may have different standards. Accrediting institutions have no legal authority for authorizing institutions.

Finally, another reason to maintain the state's oversight presence involves concerns over "accreditation shopping." This involves for-profit college companies purchasing accredited private, not-for-profit colleges and transforming the institutions to reflect the investor's goals. In a matter of a few years, small, regionally-accredited nonprofit colleges with a few thousand students can convert into for-profit enterprises with tens of thousands of students.

There are concerns over the efficacy of the state's oversight role of for-profit colleges.

Recent scandals at for-profit colleges have led some to question the effectiveness of state regulatory systems. While diploma mills (institutions acting without authorization to grant degrees) and outright consumer fraud remain worrisome, there are more fundamental concerns over subpar, sometimes predatory, for-profit colleges that have made it through the regulatory system. Critics have stated that the regulatory triad is procedurally difficult to navigate but has structural flaws that allow questionable institutions to get through and be eligible for federal student aid.⁵⁷ The state oversight function has been accused of lax oversight, few incentives, inadequate resources and possible conflicts of interests. Taken together, these forces can hinder the state's oversight function.

Lax Oversight. Two recent state audits have found shortcomings in state agencies responsible for for-profit college oversight. A 2011 [audit](#) of the Kentucky Proprietary Education Board, which oversees two-year and non-degree state proprietary institutions, found the board provided inadequate oversight, lacked a clear understanding of its role and did not keep proper records.⁵⁸ A state [audit](#) in Florida during the same period found that its regulatory body, the Florida Commission for Independent Education, was slow to respond to consumer complaints and lax about its finances.⁵⁹

California has also had state oversight challenges. In July 2008, a state law providing for-profit college oversight expired as lawmakers debated the best regulatory approach. This essentially left the state without a regulatory agency and led to a number of degree mills.⁶⁰ Oversight was restored in October 2009, but this episode has been the impetus for national reform efforts.

Few Incentives. State policymakers often have little incentive to invest in for-profit college oversight because little of their own resources are at stake. For-profit colleges are generally financed through federal student financial aid, with state student

aid only comprising a small fraction of a state's total commitment to postsecondary education. For example, in 2009-10, 31 states extended need-based financial aid to students attending for-profit colleges. But the total amount constituted less than five percent of all state need-based grant monies nationwide.⁶¹ With many priorities needing attention during difficult budget cycles, state investment in student aid directed at students attending for-profit colleges is not typically a top policy and funding priority.

Inadequate Resources. The state regulatory agencies that oversee this industry are usually funded by a mix of fees imposed on for-profit colleges and state appropriations. However, these agencies are often underfunded, understaffed and do not have enough personnel in key areas, such as auditing and law. This can lead to regulatory gaps and subsequent fraud and abuse at for-profit colleges.

Unfortunately, this situation is not improving. A 1991 SHEEO study concluded that most states it reviewed had inadequate staff for enforcing laws and regulations involving for-profit colleges.⁶² Twenty years later, the National Consumer Law Center concluded that only a few states have devoted sufficient resources to match the challenges posed by the industry's growth.⁶³ For example, the Wisconsin Educational Approval Board, which oversees the state's degree-granting for-profit colleges, has the same staffing levels as 10 years ago, although the number of institutions under its jurisdiction has increased from 100 to over 200 today.⁶⁴ In New York, the Bureau of Proprietary School Supervision—which oversees non-degree granting for-profit colleges—has cut its staff from 40 in the 1990s to 20 today. The bureau oversees 500 schools and has an additional 100 to 150 applications pending.⁶⁵

Finally, state agencies charged with for-profit college oversight may have multiple responsibilities across state government, which could lead to neglect or dilution of the state's oversight function.⁶⁶ Some agencies oversee for-profit colleges as well as other educational entities, such as out-of-state institutions. Other agencies have responsibilities spanning across

state government. For example, the Texas Workforce Commission oversees state for-profit colleges but is also instrumental in workforce development, providing support services for people in workforce transitions and administering unemployment and tax benefits.⁶⁷

Conflicts of Interest. There are concerns over possible conflicts of interest with industry officials who sit on state boards charged with overseeing for-profit colleges. Some states allow the industry to dominate the board. In Florida, the state's seven-person Commission for Independent Education has four for-profit college industry representatives.⁶⁸ Kentucky's 11-member Proprietary Education Board currently has six industry representatives, with industry representatives allowed to chair the board.⁶⁹

There are ongoing reform efforts aimed at bolstering the state's oversight function.

The perception of weak or inadequate state oversight has prompted reform proposals from the U.S. Department of Education, Council of State Governments and National Advisory Committee on Institutional Quality and Integrity (NACIQI). These rules and regulations will affect all sectors within U.S. postsecondary education.

State Authorization. The U.S. Department of Education (ED) issued a three-part "program integrity" rule in October 2010 seeking to enhance state regulation of for-profit colleges. Under this rule, state licensure and approval agencies must maintain a third-party process to review and address student complaints. Additionally, they must also provide a list to ED, upon request, of institutions approved to operate in the state. Finally, agencies will need to approve institutions to operate in their state according to their own regulations.⁷⁰ This provision reinforces existing state laws and clarifies state authorization for Title IV eligibility.⁷¹

The provision also requires institutions to provide enrolled students—and prospective students—with information about how to file a complaint with the appropriate accrediting body and state agency.

Institutions will also need to comply with state approval and authorization requirements in every state in which they operate and be approved in the state. However, this provision has been [vacated](#) by federal courts and is currently in the appeals process. A ruling is expected to be released in summer 2012.⁷² State laws will not be altered by the court's ruling, but rather only the federal government's enforcement capability.⁷³

Reciprocity Agreements. There is an effort to build reciprocal agreements between states in order to ease regulatory compliance costs. The Presidents' Forum, with assistance from the Council of State Governments and support from the Lumina Foundation for Education, are currently building a [framework](#) for creating reciprocal agreements between states. A draft of the interstate compact is expected in spring 2012, with a goal of states taking up the compact in their 2013 legislative sessions.⁷⁴

Federal Regulatory Advisory Board

Recommendations. The National Advisory Committee for Institutional Quality and Integrity, which advises the U.S. Department of Education on accreditation and regulatory matters, has [outlined a series of recommendations](#) aimed at improving oversight to be included in the reauthorization of the Higher Education Act (HEA).⁷⁵ NACIQI outlined the following general recommendations for the regulatory triad:

- Clarify responsibilities of each of the three regulatory entities;
- Increase communication among the three regulatory bodies; and
- Support state engagement in consumer protection, whether within or outside of accreditation.

Specifically for states, NACIQI has called for improvement of the state's consumer protection function without hindering cross-border distance learning. NACIQI recommendations include:

- Determining the mechanisms that will best ensure that quality assurance and eligibility expectations are met across institutions and agencies;
- Using the federal government's convening capability to develop models of triad articulation and greater engagement and consistency across states;
- Assessing whether the assortment of regulation can be shaped to incorporate cross-border educational activity; and
- Supporting state efforts to ensure the adequacy of consumer information and the accountability of institutions and programs providing education within the state. States could develop "best practices," as well as a common understanding of a minimum level of consumer protection.⁷⁶

Lawmakers in some states are proposing changes to state oversight of for-profit colleges.

Some states have responded to calls to bolster state oversight. According to the National Conference of State Legislatures, at least 17 states have introduced 37 bills related to for-profit colleges in the 2011-2012 legislative session.

Kentucky. Kentucky lawmakers have passed [House Bill 308](#), which would discontinue the state's Board on Proprietary Education and create a new agency, the Kentucky Commission on Proprietary Education. The new commission would not be majority-controlled by for-profit industry officials; would not have authority over the student complaints process; and would include a student compensation fund to reimburse students if their school closes. The bill has passed both houses of the Kentucky Legislature and is currently on the desk of Gov. Steve Beshear (D).

Georgia. Georgia lawmakers have approved [House Bill 792](#), a proposal that would allow institutions to apply for authorization by means of accreditation. To be

eligible, institutions would have to have operated in the state for the last ten years, hold accreditation and have no unresolved complaints or actions against it in the last 12 months. The bill passed both houses of the Georgia Legislature and is awaiting further action.

In the last year, a number of notable pieces of legislation in this policy area were signed into law.

California. California Gov. Jerry Brown (D) signed [Senate Bill 70](#) into law in March 2011, which uses student loan default rates to determine eligibility for the state's Cal Grants financial aid program. The legislation also requires annual reporting on enrollment, persistence and graduation data for all students. Since the bill was signed, nearly half of the for-profit colleges in the state have been barred from offering students a Cal Grant.⁷⁷

Maryland. Maryland Gov. Martin O'Malley (D) signed [Senate Bill 695](#) into law in May 2011, which revamped the state's for-profit college regulations. The law prohibits deceptive recruiting practices, bans incentives or bonuses for recruiters and requires greater data disclosure. The bill also establishes a for-profit college-funded student protection fund.

Mississippi. Former Mississippi Gov. Haley Barbour (R) signed [House Bill 838](#) in March 2011, which allows private business and vocational schools to submit evidence of national accreditation in lieu of other state application requests.

North Carolina. North Carolina Gov. Beverly Perdue (D) signed [Senate Bill 685](#) into law in June 2011, which created a new State Board of Proprietary Schools to oversee for-profit institutions that offer associate degree and certificate programs. Previously, this duty was performed by the state's community college board. The new law will award four of the board's seven seats to for-profit industry officials.

Utah. Utah Gov. Gary Herbert (R) signed [Senate Bill 210](#) into law in March 2011, which brought the state into compliance with federal rules and regulations. The new law empowers the state's Division of

Consumer Protection to act against complaints directed toward for-profit colleges. The legislation requires that new school operators obtain commercial and consumer credit reports, and schools operating for more than a year must submit audited financial statements. Schools may seek exemptions from state rules if they are accredited. For-profit industry officials applauded the measure.⁷⁸

West Virginia. West Virginia Gov. Earl Ray Tromblin (D) signed [Senate Bill 375](#) in April 2011, which mandates that degree-granting schools in the state disclose specified consumer information. This includes all required state and federal information; performance measures deemed necessary (such as graduation and retention rates); a detailed explanation of financial operations; an assessment of the institution's curriculum, facilities, materials and equipment; and on-site reviews of academic standards.

Conclusion

For-profit college growth over the last decade has led to increased scrutiny of the industry's practices, policies and performance. While many for-profit colleges make constructive contributions to the health and well-being of students and communities, several high-profile investigations and lawsuits have revealed troubling instances of fraud and abuse that could taint the entire industry and devalue for-profit college credentials. Further, student debt and default levels are spiraling to new, often unsustainable levels. In response to these issues, state policymakers, in coordination with accrediting bodies and the federal government, must work together to find new approaches that guard students and taxpayers from fraud and abuse while not hindering entrepreneurial activity in postsecondary education. Policies in statehouses and in Washington, D.C. will be crucial in determining whether this industry is ultimately an engine of innovation and opportunity or another sad chapter of taxpayer-funded waste, unrealized expectations and false promises.

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