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Protecting Students and Taxpayers

Why the Trump Administration Should Heed History of Bipartisan Efforts

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Traditionally, federal support for students to attend college was bipartisan. While providing federal student aid through landmark programs like the GI Bill of Rights, the Pell Grant, and student loans, both Republican and Democratic Administrations and Congresses enacted laws and crafted regulations (or rules) to protect taxpayer investments in higher education from predatory postsecondary schools (colleges and universities). That included curbing abuses and fraud, and holding poor performing career education programs at schools accountable — including by barring such schools from participating in student aid programs. Policymakers have pursued accountability efforts because: (1) federal student aid should benefit students, and thus, not be available to institutions that engage in abusive practices, and (2) the federal government has a responsibility to ensure that taxpayer funds are not wasted.

The bipartisanship related to accountability, however, has largely eroded over the past 20 years. The George W. Bush administration and a Republican-controlled Congress rolled back important accountability measures that President George H.W. Bush and Congress enacted in the early 1990s to crack down on low-quality schools whose students defaulted on their loans at an exorbitant rate. More recently, many Republican lawmakers vehemently opposed Obama Administration regulations to restore and strengthen that accountability, particularly as for-profit colleges — which, as a group, have a very poor track record on student outcomes and business practices — grew rapidly during the Great Recession. The Trump Administration has now set a course to dismantle the most critical accountability regulations.

The weakening bipartisan commitment to accountability has coincided with, and contributed to, the rise of for-profit colleges, despite the sector's well-documented risks. Numerous reports, studies, and investigations of abuse and misdeeds — from federal and state government agencies and non-governmental organizations and researchers — and an alarming number of lawsuits, fines, and penalties, have shown the impact of unscrupulous schools on students and taxpayers. In several high-profile cases that highlight the dangers of reckless deregulation and lax oversight, for-profit schools abruptly closed after evidence of shady practices came to light, often leaving students with

meaningless degrees or no degrees at all and leaving taxpayers holding the bag for loans students will have difficulty repaying.

As for-profit colleges grew rapidly after the weakening of 1990s-era safeguards, and particularly during the Great Recession, and with clear evidence of the sector's poor quality and questionable business practices, the Obama Administration took important steps to hold accountable schools that failed to deliver basic educational value and misled or even defrauded students. Specifically, the Administration crafted two major regulations — the "Borrower Defense" and "Gainful Employment" rules — to prevent all schools from misleading and taking advantage of students and to hold career colleges accountable for failing to prepare students for careers that would enable them to pay back their loans.

- **Borrower Defense Rule:** A 1993 amendment to the Higher Education Act lets the Secretary of Education discharge the loans of borrowers who were misled or mistreated by their schools. The original regulation to implement this provision, however, provided scant detail about how borrowers could submit claims and no mechanism to ensure that taxpayers would be protected against schools engaging in risky financial behavior or misconduct. Consequently, few borrowers took advantage of it. Following an unprecedented influx of claims after the 2015 collapse and closure of Corinthian Colleges, a large chain of for-profit schools, the following year the Obama Administration revised the rule to ensure that the Education Department has a borrower-friendly and fair process to deter schools from, and hold them accountable for, misbehavior. Its implementation was scheduled to begin this past summer.
- **Gainful Employment (GE) Rule:** This rule was designed to ensure that career college programs that prepare students for "gainful employment in a recognized occupation" — which the Higher Education Act defines to include, with few exceptions, all programs at for-profit colleges as well as non-degree programs at public and nonprofit colleges — did not leave students with debt that they couldn't afford. Under the rule, if students have debt payments that, relative to their incomes, are above certain thresholds for multiple years, then federal student aid such as Pell Grants and student loans can no longer be used at these programs (though that prohibition doesn't extend to the entire college). The rule also requires colleges with career college programs to provide their students and the public with important consumer information, such as warnings about failing programs, debt and earnings information, and other disclosures, to help families and prospective students make informed decisions about what college to attend. This rule's implementation began in 2015 and, early evidence shows, many institutions took steps to close or improve underperforming programs.

The Trump Administration announced plans this summer to delay and potentially gut these two key regulations. That would threaten to derail meaningful reforms and refuel the growth of a sector that has little incentive to provide students with a quality education and clean up its business practices — both of which would prove costly and thus reduce owner or shareholder profit, particularly in the short run. It also would mark another period of deregulation, which in the past has led to widespread abuses. Meanwhile, tens of thousands of borrowers, including thousands of Corinthian borrowers, wait for the Education Department to adjudicate their borrower defense claims.

This paper provides historical context to better understand the implications of weakening such critical accountability measures.

Past Efforts to Curb Abuse Were Bipartisan

From the 1862 Morrill Land-Grant Act, to the post-World War II GI Bill and to the 1965 Higher Education Act, expanding access to postsecondary education has been a national priority. Today, the federal government invests more than $150 billion[2] each year in financial aid to students and families — mainly through the Pell Grant, federal student loans, the GI Bill, and tax benefits — to make college more affordable and more accessible for tens of millions of Americans. Through these programs, the federal government pursues two, somewhat competing, goals: On the one hand, to let students choose what college or university they want to attend, student aid is portable, following the student to any eligible school and program. On the other hand, the federal government has a strong interest in preventing poor student outcomes and waste, and thus, puts certain limits on where students can use their federal student aid.

Recognizing these dual objectives, federal investment in higher education has always been coupled with oversight efforts and, as student aid has grown over the years, with steps for more effective oversight, especially after congressional investigative bodies and other entities entrusted with monitoring compliance with the law have documented high-profile cases of waste, fraud, and abuse.[3] As early as its investigation of the first GI Bill program after World War II, however, Congress has often worked on a bipartisan basis to develop solutions in the aftermath of documented abuses.

Accountability Measures Date Back to the 1940s

After the GI Bill was enacted in 1944, several government reports and congressional investigations revealed that for-profit schools were significantly abusing the program. In response, Congress worked with both the Truman and Eisenhower Administrations to make important reforms, such as by enacting legislation in 1948 and 1950 that restricted the sector's access to GI Bill funds.[4] The biggest reforms, however, came with the 1952 Korean War GI Bill. Informed by a special House investigation committee report and a General Accounting Office audit of the program, President Truman and Congress enacted two major changes.

First, it created the "85-15" rule, prohibiting for-profit schools from receiving GI Bill funds if more than 85 percent of their students were veterans.[5] This measure, which remains in effect, immediately helped curb sham schools that solely targeted veterans because of their access to federal student assistance.[6] By requiring that at least 15 percent of students be non-veterans, the legislation sought to "weed out those institutions [which] could survive only by the heavy influx of Federal payments," as the Supreme Court later observed.[7] As discussed below, Congress used the 85-15 rule as a model 40 years later when similar fraud arose within the Department of Education's federal aid programs. Congress sought to ensure that sham schools that operate solely to receive federal student aid were barred from those programs.

Second, the 1952 law stopped direct tuition payments to schools, providing GI Bill funds instead to students on a monthly basis. That curbed the extensive growth of for-profit schools by stopping the easy flow of direct funding to them and forcing schools to pay more attention to veterans who, with their GI Bill funds, could attend college elsewhere.[8] These bipartisan legislative efforts were

soon followed by the Eisenhower Administration's commission on veterans' benefits, which concluded that "much of the training in profit schools was of poor quality."[9]

The lessons from this period influenced the next major piece of federal higher education legislation — the 1965 Higher Education Act (HEA). It excluded for-profit schools from the new federal loan guarantee program, creating a separate and much smaller vocational school loan program for them, but for-profits gained access to the larger program in 1968 through the merger of the two programs. Soon, stories of fraud and abuse arose again, attracting the attention of lawmakers from both parties.

The Nixon and Ford Administrations launched a major enforcement and regulatory effort to rein in predatory schools,[10] fueling two significant changes:

- Regulations from 1975 required the Education commissioner within the Department of Health, Education, and Welfare to conduct an eligibility review of any school in which more than 60 percent of students took federal student loans to ensure the overall soundness of those schools. The regulations also mandated that vocational schools make certain consumer disclosures, including information "about a student's employment prospects in their field of training."[11]
- The 85-15 rule was updated to require that for-profit schools have at least 15 percent of their students with no federal student aid whatsoever, not just with no veteran benefits, closing a loophole that the industry exploited after the 1968 entrance of for-profits in federal student aid programs.[12]

Unfortunately, both changes were removed in later years through subsequent legislation.[13]

1990s Brought Bipartisan Reform

By the mid-1980s, government agencies were again raising concerns about the for-profit sector. A 1984 GAO report found widespread compliance violations by for-profits in administering Pell Grants and estimated that "766 schools, or 66 percent, had misrepresented themselves to varying degrees, primarily during the recruitment process," including inflated job placement rates and misrepresentations in advertising.[14] Citing an Education Department report and other documents' "clear evidence of a pattern of 'exploitative and deceitful practices'" by for-profit schools, President Reagan's Education Secretary, William Bennett, urged Congress in 1988 to crack down on "shameful and tragic" financial aid abuse.[15]

With student loan defaults at for-profit schools reaching a record 41 percent in 1990,[16] media coverage of predatory school practices growing, and both the Office of Management and Budget and General Accounting Office warning Congress that federal student loan programs were "high risk" programs vulnerable to waste, fraud, and abuse, Congress took bipartisan action.[17]

In 1990, Senator Sam Nunn, Chairman of the Senate Government Affairs Permanent Subcommittee on Investigations, held hearings that documented a series of problems within federal student aid programs, including the loan program's high default rates.[18] In 1991, the subcommittee released unanimous bipartisan recommendations calling for stronger oversight by federal and state governments as well as accrediting agencies.[19]

In response, the 1990 Omnibus Budget Reconciliation Act, which President George H.W. Bush and a Democratic Congress enacted, included a provision prohibiting colleges from continuing to receive federal aid if their cohort default rate (the share of students in a particular cohort who default on their loans) exceeded 35 percent in fiscal years 1991 and 1992, and 30 percent for any fiscal year thereafter.[20] This provision, which policymakers updated in 1992 legislation to reauthorize the Higher Education Act, significantly lowered the student loan default rate through the 1990s.[21]

The cohort default rate standard was the first outcome-oriented accountability metric used to measure all sectors of higher education, and it enabled the Department of Education to discontinue Department student aid funds from poorly performing institutions. In addition, the 1992 reauthorization revamped the Department's oversight methods for student aid programs, such as by streamlining and standardizing how it measured schools' financial soundness and creating new mechanisms to curb conflicts of interest in the accreditation process.

The reauthorization also established four major safeguards to address "sham schools that have defrauded students and the American taxpayer in the past," as President Bush said when he signed the bill.[22] Specifically, the President and Congress:

- Required states to create State Postsecondary Review Entities (SPREs) to improve consumer protection through stronger oversight and to investigate poorly performing schools, including those with high default rates and debt-to-income ratios;
- Prohibited for-profit schools from receiving more than 85 percent of their revenues from Education Department aid programs (a provision that was inspired by the veterans rule for GI Bill students);
- Banned schools from making incentive payments to their employees based directly or indirectly on their success in securing enrollments or financial aid (known as the "incentive compensation ban"), a practice that encouraged school employees to misrepresent the benefits of attending a school; and,
- Barred schools that offered more than half of their courses by correspondence or enrolled more than half of their students in correspondence courses from federal student aid programs (known as the "50 percent rule"), a provision designed to prevent unmonitored growth, fraud, and ineffective educational programs at these schools.

Together, these bipartisan reforms represented a critical step in federal efforts to protect students and taxpayers from sham schools and fraudulent practices. Unfortunately, bipartisan momentum was subsequently undermined by deregulatory actions that, in turn, fueled the rapid growth of the sector's size and risk.

The Rise of For-Profit Schools and the Reasons Behind It

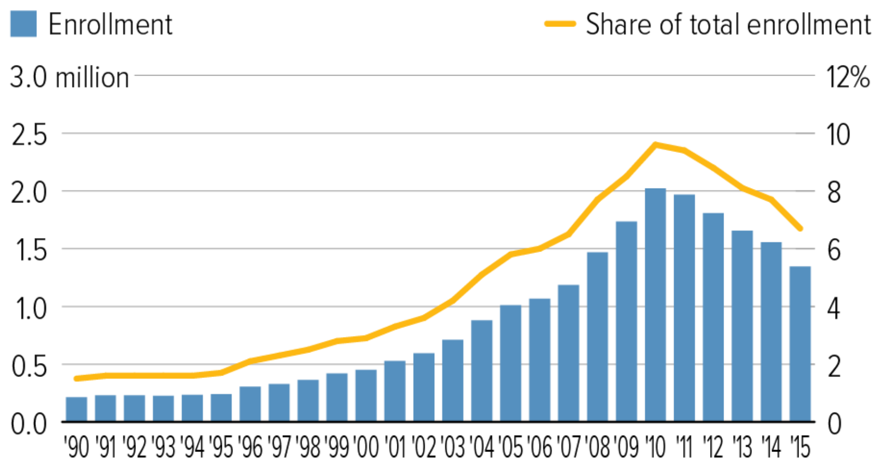
The for-profit sector has tended to enjoy significant growth after federal student aid expansions. The number of for-profits, for instance, tripled within five years after the 1944 GI Bill,[23] as their numbers grew after the 1968 loan changes and 1972 HEA reauthorization, which made for-profits

fully eligible for federal student aid.[24] While enrollment in for-profits fell briefly after the reforms of the early 1990s, for-profit schools then expanded again — slowly from the mid-1990s through the early 2000s and rapidly from 2005 to 2010. Between 1990 and 2010, enrollment at for-profit colleges rose by 847 percent, compared to 40 percent in the public and nonprofit sectors, and their share of the total student population increased from 1.5 to 9.6 percent during the same period.[25] (See Figure 1.)

FIGURE 1

For-Profit Enrollment Peaked During Great Recession

For-profit enrollment and share of total enrollment



Source: National Center for Education Statistics, "Digest of Education Statistics," Table 303.10

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As the sector grew, so did its share of Department of Education student aid dollars. Between 1998-99 and the enrollment peak that followed the Great Recession in 2009-10, the share of federal student loans that went to for-profits almost tripled — from 9 to 26 percent for subsidized loans, and from 11 to 28 percent for unsubsidized loans — while the share of Pell Grants almost doubled, from 13 to 25 percent.[26] (See Figure 2.) Between 2000 and 2011, the sector's student aid revenues grew from $4.6 billion to $32.7 billion, or by 611 percent.[27]

Five interrelated factors fueled this growth:

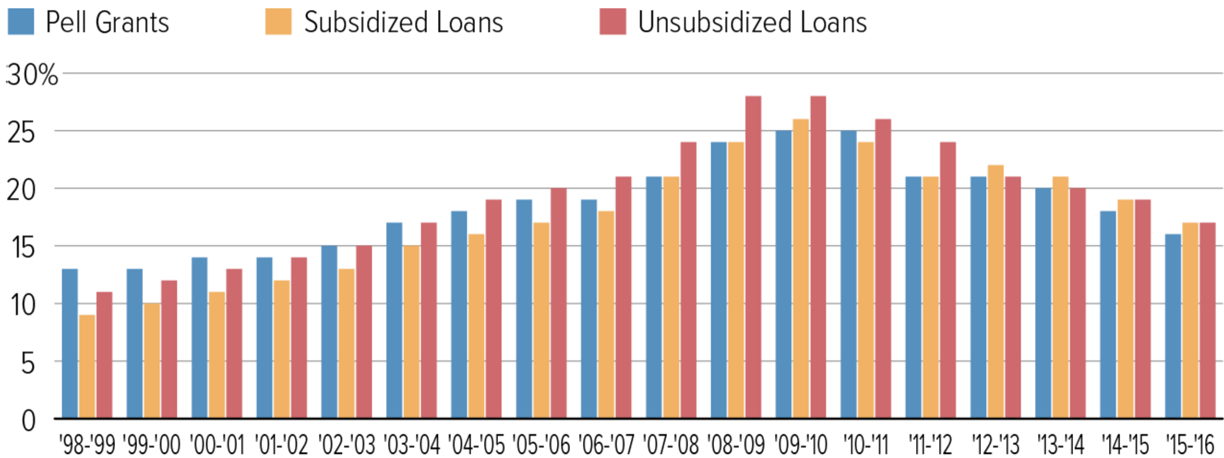
- Wall Street's interest;
- The sector's shift away from certificate programs to two-year and mostly four-year degree-granting programs;
- Deregulation;
- The Post-9/11 GI bill, which created new opportunities to recruit veterans with access to sizable new student aid; and

- The Great Recession, which prompted many to pursue higher education to improve their job prospects.

FIGURE 2

Federal Student Aid at For-Profit Colleges Grew Rapidly from the Late 1990s Until the Late 2000s

For-profits' share of student aid dollars



Source: The College Board, "Trends in College Pricing 2017," Table 7

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The Wall Street Factor

In the mid-1990s, for-profit colleges became "the darlings of Wall Street," starting with the 1994 initial public offering of the Apollo Group (parent company of the largest and best-known for-profit college, the University of Phoenix).[28] Several big for-profit schools went public soon after as investment firms and banks bought major stakes in the sector.[29] This large infusion of investment funds, and the associated pressure from analysts and shareholders for profit growth, transformed the sector — from one dominated by smaller, privately-held, mostly local businesses with a single campus into massive national chains with multiple locations and enormous advertising budgets. Wall Street's investment dollars and its pressure for profits also prompted for-profits to use aggressive marketing strategies and recruitment practices that fueled continuous expansion and revenue increases. By 2010, at least three out of four for-profit college students were "enrolled in a college owned by either a company traded on a major stock exchange or a college owned by a private equity firm," and the largest for-profits spent about a quarter of their revenues on marketing.[30]

Shift in Offered Programs

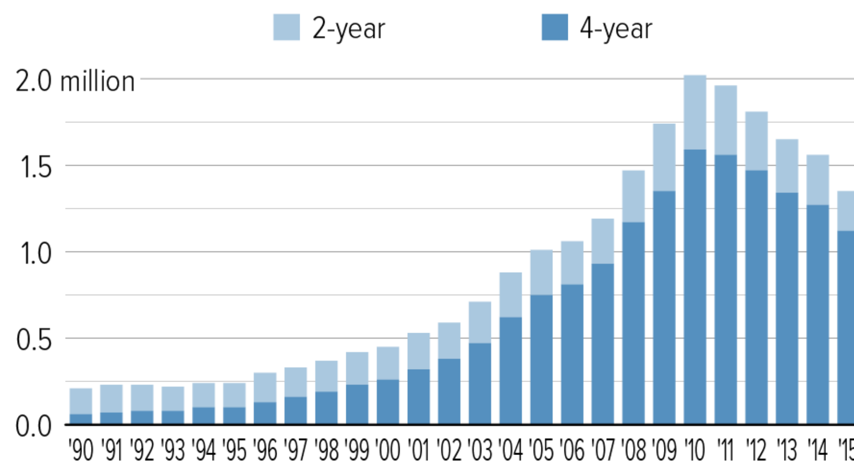
Enrollment growth was also driven by the "dramatic shift from certificate programs to two-year and four-year" degree-granting programs that "began around 2000," according to a report by two individuals who were current or former executives with large for-profit colleges.[31] As the labor market increasingly demanded higher academic credentials, the biggest growth opportunities were

found in associate and bachelor's degree programs. While enrollment in non-degree-granting for-profits rose by just 33 percent between 1995 and the recession-related peak in 2010,[32] enrollment in four-year for-profits increased more than 15-fold and enrollment in two-year four-profits more than threefold over that period.[33] (See Figure 3.)

FIGURE 3

Enrollment Growth in For-Profit Colleges Through 2010 Concentrated in 2- and 4-Year Programs

Enrollment in 2-year and 4-year for-profit schools



Source: National Center for Education Statistics, "Digest of Education Statistics," Table 303.25

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Deregulation

Investors were bullish on for-profits in part due to the loosening oversight environment, most notably deregulatory actions in 1996, 1998, 2002 and 2006. The four major safeguards created in 1992 were either weakened or eliminated within 15 years:

- **State oversight weakened:** The "Contract with America," on which House Republican candidates ran in 1994, promised to end the requirement that states establish State Postsecondary Review Entities (SPREs), which were designed to strengthen consumer protection and oversight. In 1995, President Clinton and Congress withdrew funding for SPREs and agreed to stop implementing that section of the law, undermining the effort for a more effective state role in accountability.[34]
- **85/15 funding limitation rule weakened.** Despite 1997 Government Accountability Office reports detailing that reform was still needed to curb aid program abuses,[35] the 1998 HEA reauthorization weakened the 85-15 rule by turning it into a 90-10 rule after the for-profit industry's intensive lobbying efforts.

- **Incentive compensation schemes allowed to reemerge.** In 2002, the George W. Bush Administration issued regulations creating 12 exceptions ("safe harbors") that significantly gutted the statutory incentive compensation ban.
- **Doors opened for large online for-profit schools.** In 2006, the President and Congress ended the "50 percent rule" for distance education programs, opening the floodgates of federal financial aid to online schools. By 2014, 54 percent of all students in for-profit colleges took courses exclusively online, compared to 9 percent of students at public and 15 percent at non-profit colleges.[36]

Post-9/11 GI Bill

The 2008 Veterans Educational Assistance Act, which fueled the largest expansion of education benefits since the 1984 Montgomery GI Bill, provides up to $22,805 per academic year in tuition and fees along with a monthly housing allowance and a book and fees stipend. Because the 90/10 rule does not count GI Bill funds toward the 90 percent limit on the share of school revenues that can come from federal student aid, for-profits have targeted veterans as both a revenue opportunity and a way to enable them to meet the 90/10 rule without needing significant private tuition contributions from paying customers.

Despite costing more than twice as much as public colleges, for-profits achieved a remarkable market share of this new educational benefit: by fiscal year 2011, for-profits received 37 percent of GI Bill payments, almost the same as public schools (38 percent).[37] Even as total for-profit enrollment shrunk in recent years, the sector still enjoyed robust growth in GI Bill enrollment and revenues. In 2014, for-profits enrolled almost one-third of all GI Bill recipients, and eight of the top 10 schools with the largest GI Bill revenue were publicly traded for-profits[38] — including the ITT Technical Institute and Corinthian Colleges, which have since closed due to poor student outcomes; mismanagement; numerous allegations of fraud, deceptive practices, and predatory loans; and federal and state investigations.

Great Recession

Higher education enrollment tends to rise when the economy is poor. That's because when job opportunities are scarce and unemployment rises, more individuals seek to upgrade their skills and obtain additional credentials. As a result, enrollment has risen in each recession since the 1960s.[39] It surged during the Great Recession,[40] with for-profits and community colleges enjoying the largest enrollment gains.[41] In just one year, enrollment in four-year for-profits jumped 35 percent, as the sector aggressively recruited those affected by the recession.[42]

Growth Accompanied by Improper Behavior

The sector's rapid growth was accompanied by mounting signs of improper behavior and poor student outcomes, prompting serious questions about the sector's return on this large investment by students and taxpayers. First, several research studies showed the sector severely and consistently underperformed other schools. Specifically, its schools had high drop-out rates and students who received certificates and degrees nevertheless earned little. (See Appendix I for a sample list of this research.) Moreover, other research has shown that many students who do not receive value at for-

profit institutions use Pell grants to help pay their tuition, which means that taxpayers also did not get good value for their investment.[43]

At the same time, federal and state agencies and other watchdogs found evidence that the schools were not operating in an honest and transparent manner, and numerous investigations remain open.[44] (See Appendix II for numerous examples of government findings over the past 15 years.) The recent high-profile closure of several for-profit colleges, most of which faced several lawsuits and fines and were the subject of numerous federal and state investigations and actions, disrupted the education of hundreds of thousands of students and highlighted the sector's problems once again.[45]

- In 2015, Corinthian Colleges, one of the country's largest for-profit chains, with over 100 locations nationwide at its peak, closed after the Education Department put financial restrictions on the sale of its 28 remaining locations and fined it $30 million for widespread misrepresentation.[46]
- That same year, Education Management Corp., which enrolled 100,000 students at the time, agreed to return nearly $100 million in student aid and change its recruiting practices as part of settlements, with the U.S. Justice Department and attorneys general from 12 states, of lawsuits alleging illegal recruiting, consumer fraud, and other violations.[47]
- Also that year, ITT Technical Institute, another major national chain of for-profits, closed all its locations in the 38 states in which it operated shortly after the Education Department barred it from enrolling new students receiving student aid — all of which affected roughly 35,000 students and 8,000 employees.[48]
- In 2016, the federal Consumer Financial Protection Bureau fined Bridgepoint Education, another large for-profit chain, $8 million for allegedly deceiving students into taking out private loans that were costlier than advertised and ordered it to provide $23.5 million in student loan relief.[49]
- Other large for-profit companies came under scrutiny, including DeVry University and the University of Phoenix, which are facing a Federal Trade Commission lawsuit and investigation, respectively, for deceptive marketing.[50]

Obama Administration Seeks to Improve Accountability Measures

The Obama Administration took steps to strengthen accountability efforts, including reinstating the ban on incentive compensation schemes, strengthening the Education Department's ability to take action against institutions misrepresenting facts to students and prospective students, and clarifying the long-standing legal requirement that, to be eligible for federal student aid, institutions of higher education must be authorized (that is, approved for operation) by the states in which they provide educational services.[51]

Ensuring Sound Business Practices and Strengthening State Oversight

The Obama Administration imposed regulations to curb the aggressive and predatory recruitment and advertising practices that occurred throughout the 2000s:

- *Incentive Compensation:* The Obama Administration removed the George W. Bush Administration's "safe harbor" regulatory provisions that undermined the statutory prohibition on making incentive payments to school employees based on their success in recruiting students or securing financial aid.[52]
- *Misrepresentation:* The HEA bars institutions receiving federal student aid from engaging in "substantial misrepresentation about the nature of its educational program, its financial charges, or the employability of its graduates."[53] To strengthen the enforcement of this provision, the Education Department revised the definitions and descriptions of what constitutes misrepresentation.[54] That came in response to substantial evidence that many schools were lying to students about things as basic as whether a course of study would meet the prerequisite for taking a certification exam for a job and how much the program would cost. Demonstrating the need for heightened regulation, the Government Accountability Office released the findings from its undercover investigation of enrollment practices while the Department was crafting its regulations.[55]
- *State Authorization:* Since 1965, the HEA has required that states provide oversight of higher education institutions that operate within their borders. For a college or university to qualify for federal student aid, states would have to authorize their operation. States, however, increasingly left the job of oversight to accrediting agencies — private entities that are supposed to determine whether a school had an acceptable level of quality — by essentially authorizing any school that secured accreditation.[56] Accreditors, meanwhile, often required schools to be authorized. Thus, neither states nor accreditors were doing their jobs as the law envisioned. To strengthen states' accountability efforts and ensure at least a minimum level of oversight, the Obama Administration clarified basic requirements for a state to authorize an institution of higher education, including that states must have a system in place so that students can submit complaints about colleges and universities operating in the state.

The for-profit sector vehemently opposed these three regulations, which the Administration published in 2010. In 2011, the industry trade group filed a complaint in District Court[57] arguing that the rules "are unlawful and arbitrary and capricious" and "particularly harmful to students, school employees, and schools," and are "causing schools to divert significant time and money from student education."[58] In addition, the group claimed that due to the misrepresentation rule, "student recruitment and outreach efforts will suffer," while the incentive compensation rule would make it "increasingly difficult for [for-profits] to attract and retain the best possible employment and educational talent."[59] After both a federal district and a federal appellate court rejected the industry group's arguments, the group filed another lawsuit in 2014, but that was unsuccessful as well.[60]

Not only did the courts largely uphold all three rules,[61] but their implementation has not produced any of the industry's dire predictions (except that it negatively affected schools that were lying to the public). No schools have closed due to the incentive compensation or state authorization regulations. The misrepresentation rule spurred the Education Department to investigate misrepresentation claims and find cases in which schools lied to current and prospective students. Misrepresentation violations[62] helped fuel the demise of Corinthian Colleges. After Corinthian Colleges closed, the United States Court of Appeals for the Ninth Circuit released documents that also revealed violations of the incentive compensation ban.[63]

The Corinthian collapse led many students to file claims with the Education Department to discharge their student loans based on a statutory provision, which was rarely used previously, that allows the Department to take such action if an institution engaged in fraud or misconduct. The provision was used in just five instances before the Corinthian collapse, which spurred tens of thousands of claims.

As it received these claims, the Education Department recognized that it needed a formal adjudication process to resolve them. It developed a process to handle the Corinthian claims and then crafted regulations, known as the "Borrower Defense rule," to formalize the process for considering future claims.

- *Borrower Defense Rule:* This rule clarified the standard for determining whether to allow a loan discharge, and it provided an opportunity for schools to dispute misconduct claims. The rule also included mechanisms to consider — through a group process rather than individually — claims that were alleging the same misconduct.

  The Corinthian collapse also highlighted the fiscal risk that the federal government faced when large institutions engaged in fraud or abuse and then closed. Recognizing that risk, the rule re-emphasized the Department's longstanding authority to put schools on the hook for loans that are discharged as a result of defense claims and included a new series of indicators to determine if a school in operation was in fiscal danger because of a large number of borrower defense claims or other factors that could lead to closure. (When a school closes, current students can seek loan discharges under certain circumstances, even if there is no misconduct.) The rule requires schools that reached certain levels of fiscal risk to inform the public and to secure letters of credit that could be called upon if large numbers of students qualify for loan discharges as a way to minimize taxpayer costs.

Ensuring Students Receive Value and Protecting Taxpayers

While protecting students from abusive practices is important, that by itself won't protect students and taxpayers from schools that provide a very poor quality education that wastes student time and money.

Education Department data[64] show that many for-profit graduates leave school with high debt and low earnings. In response, the Obama Administration issued the Gainful Employment Rule to make individual career college programs ineligible for federal student aid if they repeatedly produce poor outcomes for students.

Since 1972, the President and Congress have given career education programs, including all programs at for-profit colleges, access to federal financial aid on the condition that they "prepare students for gainful employment in a recognized occupation." Because "gainful employment" was never defined, the Department could not measure institutions' compliance with the requirement. After significant public debate that included two full rounds of negotiated rulemaking, each of which included opportunities for public comment and discussions with stakeholders, the Department finalized the gainful employment rule in 2014. (Negotiated rulemaking is a regulatory process that the Department of Education uses that allows for a formal stakeholder input role before the Department publishes a proposed rule. [65])

- *Gainful Employment Rule:* The rule included a series of debt-to-earnings measures by which to gauge graduates' success after attending career education programs — for instance, that graduates have annual loan payments that were less than a specified percentage of their earnings and of their discretionary income.[66] If programs did not meet these standards over several years, they would lose access to federal student aid. Like cohort default rates and the 90/10 ratio, gainful employment gave the Department an accountability measure by which to determine performance.

Despite the sector's prediction that, with the rule, low-income students would have significantly less access to higher education,[67] initial evidence does not support such claims and suggests that the rule prompted the industry to make needed reforms. As industry executives acknowledged,[68] the rule gave schools ample time to make the necessary changes to reduce student debt levels and improve loan-repayment rates to meet the new performance thresholds.[69] Several for-profit schools established debt-free trial periods for new students,[70] reduced their prices,[71] increased their spending on scholarships,[72] focused on student outcomes or implemented new approaches and partnerships to improve educational or employment outcomes,[73] or shut down poorly performing programs.[74] Industry executives and analysts have even stated that the rule doesn't pose the existential threat to the industry that its public statements and lobbying campaigns portrayed.[75]

In January of 2017, the Education Department released the first debt-to-earnings rates under the rule, which showed 3 out of 4 rated programs passed the standards and 9 out of 10 colleges with rated programs had no failing programs,[76] while fewer than 10 percent of assessed programs failed.[77] Out of 8,637 total programs, about 800 failed to reach the thresholds because they had an annual loan payment of more than 30 percent of discretionary income and more than 12 percent of earnings, and over 1,200 achieved a "zone" rate (which indicates the need for improvement) of 20 to 30 percent of discretionary income or 8 to 12 percent of earnings.[78] For-profits accounted for 98 percent of the failing programs and two-thirds of "zone" programs. Programs that fail in two out of any three consecutive years or are in the zone for four consecutive years become ineligible for participation in the federal student aid programs.

That's a far cry, however, from the industry's gloom and doom predictions that 13 to 22 percent of for-profit programs subject to this rule would fail.[79] Moreover, even the failing and "zone" programs had time to improve before the rule's accountability provisions kick in. And schools had been closing programs that did not meet the rule's requirements, so fewer students were entering very poor quality programs. Of the more than 500 programs that didn't appeal their failing status with the Department, the New America Foundation recently found that 300 either shut down or changed their programs.[80]

Trump Administration Embarks on New Round of Deregulation

The Trump Administration is sending troubling signals that it may significantly reverse the Obama Administration's important accountability measures. Though the Borrower Defense and Gainful Employment rules were in full effect, the Administration delayed their implementation (a move that state attorneys general and consumer advocates are challenging in court) and launched a new regulatory process to rewrite them.

In the past, lawmakers from both parties championed legislative and regulatory provisions to boost accountability, driven by the goal of safeguarding students and taxpayer investments. Such efforts served as effective deterrents against bad institutional behavior and curbed predatory practices. When those provisions have been weakened or removed, however, students' time has been wasted and taxpayer dollars have been misspent. As our higher education system continues to change and expand, it's now more important than ever that the federal government have oversight and accountability mechanisms in place to protect students and taxpayers against waste, fraud, and abuse.

Left unchecked, unscrupulous schools prey on students and the federal student aid system. In contrast, opponents' doom and gloom claims about reforms have not materialized, and the Obama Administration's regulations have shown promise not only in curbing institutional misconduct but in improving program quality. Before embarking on yet another round of harmful deregulation, the Trump Administration should heed this history of bipartisan efforts to strengthen higher education oversight and proceed with extreme caution to avoid repeating costly mistakes of the past.

APPENDIX I

Several research studies show that the for-profit college sector severely and consistently underperforms other schools, fails to deliver value to students and taxpayers by leaving students with a high debt burden, and has wasted billions in Pell Grant funding. A sample of this research is listed here:

- A 2011 National Bureau of Economic Research study found that for-profit college students "end up with higher unemployment and 'idleness' rates and lower earnings six years after entering programs than do comparable students from other schools, and that they have far greater student debt burdens and default rates on their student loans."[81]
- Another 2012 National Bureau of Economic Research study found that for-profit associate's degree students "experience earnings gains of about 10 percent relative to high school graduates with no college degree," which "translates to a 4 percent return per year of education in a for-profit college," significantly below the 9.8 percent return needed to offset the sector's private and social costs. The authors conclude that "from a student's perspective, it would seem that a lower-cost community college would likely be a better choice than a for-profit associate's degree program," because "the returns appear to be too low to justify the private cost and much too low to justify the additional cost to taxpayers."[82]
- A 2012 National Bureau of Economic Research study of students' earnings after graduation found "no evidence that students gain from obtaining any certificate or degree from a for-profit institution," in contrast to significant benefits from an associate's degree at public and nonprofit schools, and concluded that "students at for-profit institutions do not benefit more and often benefit less from their education than apparently similar students at not-for-profit and public institutions."[83]
- A 2013 Harvard University study found that "for-profit completion rates, default rates, and labor market outcomes for students seeking associate or higher degrees compare unfavorably with those of public postsecondary institutions."[84]
- A 2014 Columbia University study found "adverse levels of borrowing and some evidence of wage penalties for students who attended a for-profit college" and concluded that "the net returns to attending a for-profit college are considerably lower than those to attending an alternative college type." Importantly, the study found that "the rate of return to for-profit college was negative: within 15 years of first enrollment, the net present value of earnings minus any college borrowing was lower for for-profit students than for high school graduates."[85]
- A 2015 Brookings Institution Paper on Economic Activity detailed the dramatic increase in the number of borrowers attending for-profit colleges from 2000 to 2014 and their subsequent rates of default. It highlighted that borrowers from just 13 for-profit institutions in 2014 owed about $109 billion, representing 10 percent of all federal student loans.[86]
- A 2015 National Bureau of Economic Research study found that employers "value bachelor's degrees and certificates from public institutions more highly than they do those from for-profit institutions," despite the fact that "net tuition and fees at for-profit colleges are about 80 percent higher than at public four-year institutions." For example, "for business job vacancies that require a bachelor's degree, employers strongly prefer applicants with

degrees from public institutions as opposed to applicants with degrees from for-profits," with more than 20 percent lower call-back rates for for-profit credentials.[87]

- In 2016, the Federal Reserve Bank of New York reported that for-profits accounted for 39 percent of students who defaulted on their federal loans in the 2012 repayment cohort, while only enrolling 11.5 percent of students in the 2010-11 academic year, which "suggests that recent cohorts of students at for-profit institutions have emerged from school less likely to repay the loans they used to finance their educations."[88]
- A 2016 National Bureau of Economic Research study of the impact of a for-profit college education on the employment and earnings of over 1.4 million students found that "associate's and bachelor's degree students experience a decline in earnings after attendance, relative to their own earnings in years prior to attendance," while for certificate students, "despite the much higher costs of attendance, earnings effects are smaller in the for-profit sector relative to the effects for comparable students in public community colleges."[89]

APPENDIX II

Below is a list of official government findings of violations and abuses within the for-profit college sector in the past 15 years alone:

- In 2003, the Education Department found that the University of Phoenix "systematically engages in actions designed to mislead the Department of Education and to evade detection of its improper incentive compensation system for those involved in recruiting activities" — which led to a $9.8 million fine against the university, the largest fine ever imposed for such a violation.[90]
- In 2005, the Education Department's Inspector General testified to Congress that "[w]hile fraud and abuse does occur at non-profit and public sector institutions, historically, fraud and abuse predominantly involves proprietary schools. In fact, over the last six completed fiscal years the majority – approximately 74 percent – of our institutional fraud cases involved proprietary schools."[91]
- In 2009, the Government Accountability Office reported on for-profit schools that were found committing fraud by helping prospective students qualify for financial aid, including by giving out answers to test questions and helping them "obtain invalid high school diplomas from diploma mills," consistent "with similar findings by Education's OIG and New York state investigators."[92]
- A 2010 Government Accountability Office undercover investigation of 15 for-profit colleges found that they "encouraged fraud and engaged in deceptive and questionable marketing practices," as "all 15 made deceptive or otherwise questionable statements,"[93] while another undercover investigation at online for-profit schools in 2011 revealed numerous violations of school policy and federal regulations, including numerous instances of academic impropriety.[94]
- In 2010, the Government Accountability Office reported that 32 schools were found to have violated the incentive compensation ban during 1998-2009, with the for-profit sector representing the lion's share (59 percent).[95]
- A 2011 Government Accountability Office report found that for-profit schools had lower student outcomes, compared to public and nonprofit schools, including the sobering fact that only 3 percent of low-income students who started at for-profit schools completed a bachelor's degree, compared to 49 percent at four-year public schools and 13 percent at two-year public schools.[96]
- In 2012, following an investigation and hearings by the Chairman of the Senate Health, Education, Labor, and Pensions Committee, the committee's majority office staff released a scathing report that described and documented very expensive programs, alarming student debt levels, dropout rates exceeding 50 percent, shockingly low instructional expenses and inadequate student support services, massive marketing and advertising budgets, and aggressive and predatory recruitment practices and strategies, concluding that absent major reform, "the sector will continue to turn out hundreds of thousands of students with debt but no degree, and taxpayers will see little return on their investment."[97]

ENDNOTES

[1] Spiros Protopsaltis is a Visiting Associate Professor of Education Policy in the College of Education and Human Development at George Mason University and served as the Deputy Assistant Secretary for Higher Education and Student Financial Aid at the U.S. Department of Education from March 2015 to January 2017. Libby Masiuk served as a Senior Policy Advisor at the U.S. Department of Education from May 2015 to January 2017.

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