

# STATE INACTION

## GAPS IN STATE OVERSIGHT OF FOR-PROFIT HIGHER EDUCATION



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**NCLC**<sup>®</sup>  
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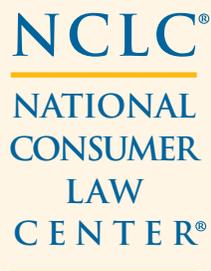
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The National Consumer Law Center®, a nonprofit corporation founded in 1969, assists consumers, advocates, and public policy makers nationwide on consumer law issues. NCLC works toward the goal of consumer justice and fair treatment, particularly for those whose poverty renders them powerless to demand accountability from the economic marketplace. NCLC has provided model language and testimony on numerous consumer law issues before federal and state policy makers. NCLC publishes an 18-volume series of treatises on consumer law, and a number of publications for consumers.

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## EXECUTIVE SUMMARY

### FRAUD IN THE FOR-PROFIT HIGHER EDUCATION SECTOR HARMS STUDENTS AND TAXPAYERS

The astronomical growth in for-profit higher education has exposed increasing numbers of students to the rampant fraud in the sector. Federal and state oversight has generally been lax.

In a positive sign for students, the federal government has begun to act more aggressively, expanding disclosures for students, strengthening rules on incentive compensation and misrepresentations, and setting minimum standards for programs that are eligible for student loans only if they prepare students for gainful employment.

These are important developments, but not nearly enough to rein in abuses and provide relief for students. For example, none of the federal regulatory changes to date expand relief for students harmed by abusive practices. While some states have also started to take action, too many turn away, assuming that the federal government will take care of the problem.

This report examines the state of state oversight of for-profit (proprietary) schools, focusing on state regulatory structures and the levels of resources devoted to enforcement and oversight. The report also evaluates consumer protection laws, relief funds, and other options available to assist students who are harmed.

The report highlights how only a few states have devoted sufficient resources in recent years to challenge for-profit school abuses and provide relief for students. There are promising signs that other states are starting to pay attention, but much more needs to be done. The last section of the report contains

recommendations to improve state oversight and protect students and taxpayers.

### THE CRITICAL STATE ROLE IN ADDRESSING PROBLEMS WITH FOR-PROFIT SCHOOLS

Under the Higher Education Act, for an institution in any state to be eligible to participate in federal student assistance programs, it must be legally authorized by the state to provide postsecondary education. Beyond this critical gate-keeping role for federal aid, state dollars are also on the line. Many states have their own grant programs which are increasingly going to students at for-profit schools. States also have an essential role in protecting consumers in their states from unfair, deceptive and abusive business practices. In addition, many of the relatively new credit products that for-profit schools have created should be regulated at least in part at the state level.

Common problems in the for-profit sector include inflated or misleading job placement rates, manipulation of student grades and attendance records, and deceptive and even illegal recruitment practices. This is classic fraud disguised as education and clearly within the traditional state oversight role.

The good news for consumers is that most states already have substantive legal standards against fraud and abuse in the for-profit sector. Not every state has to reinvent the regulatory wheel in order to get started. The bad news, as discussed in this report, is that public enforcement has been dismal and private enforcement is very difficult if not impossible in many states.

## RELIEF FOR STUDENTS

State relief for students is critical because relief at the federal level is limited. Many states have either a student tuition recovery fund (“Recovery Fund”) or a bond program to reimburse defrauded students.

National Consumer Law Center’s (NCLC) review of Recovery Fund policies found that 22 states maintain a Recovery Fund, 40 states require schools to secure some sort of bond, and 14 states require schools to obtain a separate bond covering the acts of its agents to indemnify students in the event of damages or losses incurred as the result of improper actions by the school’s agents. Six states (Kentucky, Louisiana, Nebraska, Nevada, Tennessee, and Wisconsin) provide all three types of financial protection for students.<sup>1</sup> Two states, New Jersey and Vermont, do not require schools to secure a bond, nor do they maintain a Recovery Fund.

Eligibility for Recovery Funds varies widely, as many are limited only to students who attended for-profit schools that closed in the state. Unfortunately, in some cases, the relief exists only on paper. Many state Recovery Funds are insolvent or facing severe funding shortages, in some cases because the state has raided them for other purposes.

## PUBLIC INFORMATION ABOUT SCHOOLS AND COMPLAINT PROCESSES NEED IMPROVEMENT

Basic information about schools, including information about vocational programs and comparative data about graduation and job placement rates and average starting salaries

is often difficult to find on state agency web sites. In some cases, the information about for-profit schools is hidden in larger web sites that cover all colleges in the state. Some states, however, have created sites that clearly and efficiently provide valuable information to students. The positive efforts in Maryland, Tennessee, and Washington are highlighted in this report.

The 2011 federal “state authorization” regulation requires state agencies to review and appropriately act on complaints. These complaint procedures will only be effective if they are easily accessible to students. As of October 2011, NCLC’s review of all state agency web sites found that 12 states—Alaska, Delaware, Hawaii, Maine, Mississippi, Missouri, Montana, North Dakota, Oklahoma, Rhode Island, South Dakota, and Wyoming—did not have a complaint form available or a description of the complaint process.

## ENFORCEMENT AND OVERSIGHT EFFORTS

As more and more abuses in the for-profit higher education sector have come to light, many states have begun to wake up to the magnitude of the problem. Attorney General offices are leading the charge, but in some cases state oversight agencies are also stepping up. Despite this increased activity, much more needs to be done.

This report highlights a number of state Attorney General offices that have increased oversight and enforcement, including Florida, Illinois, Kentucky, Massachusetts, Nevada, New York, Oregon, and Pennsylvania. The report also focuses on state agencies that have

stepped up oversight, including Alabama, Tennessee, and Wisconsin.

## BARRIERS TO EFFECTIVE STATE OVERSIGHT

### *Lack of Staff and Resources*

States with the most effective oversight have adequate staff for the number of schools operating, no conflicts of interest among regulators, and a supervisory body with a single and clear mandate to regulate the industry. Unfortunately, few states meet these standards.

Funding and staffing cuts have limited the ability of state regulatory agencies to effectively oversee for-profit schools. The report calls out states with particularly high ratios of for-profit schools in the state to agency staff members. These states include: Delaware (87:1), Massachusetts (70:1), Oklahoma (110:1), Washington (187:1), and Wyoming (125:1).

### *Diluted Resources*

Other enforcement problems result from disparate responsibilities. Some supervisory agencies have a broader mission beyond postsecondary education. It is critical that the state agency overseeing schools focus on its mission of ensuring school quality and protecting students in addition to monitoring school solvency.

### *Conflicts of Interest*

An often unspoken barrier to increasing enforcement is the power and money that the for-profit education industry holds. In a few states, members of the industry comprise the majority of the supervisory board. This can seriously undermine state efforts to protect consumers. A handful of other states, by

statute or practice, give industry members undue influence in their oversight.

## RECOMMENDATIONS

The following recommendations can help a state protect its citizens through better oversight of the for-profit higher education industry.

- 1. Provide adequate oversight of schools participating in federal aid programs, including oversight of school complaint procedures.**
- 2. Increase oversight of accredited AND unaccredited schools.**
- 3. Increase enforcement and supervisory resources.**
- 4. Charge adequate fees to help fund oversight agencies.**  
However, states must guard against becoming captured by the schools they regulate if they become too dependent on fees.
- 5. Eliminate conflicts of interest.**
- 6. Set standards on state grant aid or otherwise limit aid to schools that fail accountability standards.**
- 7. Strengthen consumer protection laws.**  
It is consumer fraud, not for-profit education per se, that harms students. *It is critical that consumer protection laws have strong private remedies.*
- 8. Enforce existing laws while also seeking to strengthen legal tools.**  
Nearly every state law could be strengthened, but the lack of new legislation should not be an excuse for paralysis.
- 9. Ensure adequate resources for borrower relief.**

10. **Strengthen refund policies.**
11. **Provide a cooling-off period that gives students a right to cancel contracts with for-profit schools.**
12. **Establish targeted disclosure laws.**  
Disclosure laws are never enough to police the industry, but combined with substantive consumer protection laws and relief sources, disclosure can help prevent harmful practices.
13. **Increase penalties for schools that violate state laws.**
14. **Coordinate with state credit regulators to ensure that private loan products**

**meet state licensing and other legal standards.**

Protecting consumers requires aggressive action by the federal government and states. The stakes are high. If schools get away with fraud and deception, individuals seeking to better their lives are left with nothing but worthless certificates and mountains of debt. States that act quickly to adopt these recommendations will help protect vulnerable students and give them the opportunity to pursue their dreams.

## I. INTRODUCTION

The astronomical growth in for-profit (proprietary) higher education has exposed increasing numbers of students to the rampant fraud in the sector. These companies rely on constant growth to generate profits and satisfy investors. Yet as early as 2005, the Department of Education's Inspector General warned that rapid growth was a risk factor for abuse.<sup>2</sup> A former dean at a Career Education Corp. campus summarized this problem in discussing his former employers, "Everything is a numbers game with them, it's not about education."<sup>3</sup>

The focus on growth at all costs has unfortunately led to fraudulent, deceptive and abusive practices infesting the industry. Students that fall prey to abusive practices face the worst consequences, particularly those that end up buried in student loan debt. Federal and private student loan borrowing rates are disproportionately high in the for-profit sector.<sup>4</sup> Nearly all students borrow and often borrow large amounts, leading to shockingly high default rates. Students at for-profit colleges are more than twice as likely to default on federal student loans as those who attend public institutions.<sup>5</sup>

There are few second chances for the huge numbers of students who do not complete their educations or leave for-profit schools with worthless diplomas. Defaulters with federal student loans face an extraordinary array of collection tactics. The government has unprecedented powers to collect student loans, far beyond those of most unsecured creditors. The government can garnish a borrower's wages without a judgment, seize tax refunds (even earned income tax credits), seize portions of federal benefits such as Social Security, and deny eligibility for new

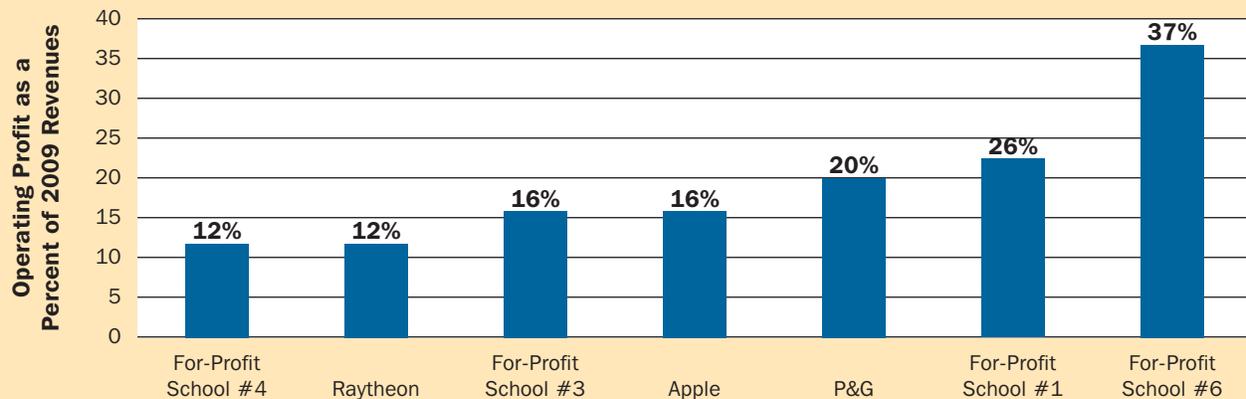
education grants or loans. Even in bankruptcy, most student loans must be paid. Unlike any other type of debt, there is no time limit on collection of student loan debts, so the debt can last the student's lifetime.

Taxpayers feel the pain too, as they provide the funds that fuel the sector's growth. Of the fourteen large school companies studied in a 2010 U.S. Senate Committee report, federal dollars totaled about 87% of revenues in 2009.<sup>6</sup> Much of this revenue goes to profits. The average operating profit in FY 2005 among publicly traded for-profit companies was \$127 million. The same number in FY 2009 was \$229 million, an increase of 81%.<sup>7</sup> Between fiscal years 2009 and 2010, one for-profit school company doubled its profits from \$119 million to \$241 million, while a second had profits increase from \$235 million to \$411 million.<sup>8</sup>

For-profit schools tend to spend much higher amounts on recruiting and advertising than schools in other sectors and less on educating students.<sup>9</sup> Taxpayers deserve greater assurance that their tax dollars are being spent on programs that actually benefit students by providing quality educations.

Despite the consequences for both students and taxpayers, federal and state oversight has generally been lax. In a positive sign for students, the federal government is finally expanding disclosures for students, strengthening rules on incentive compensation and misrepresentations, and setting minimum standards for programs that are eligible for student loans only if they prepare students for gainful employment. These are important developments, but do not do nearly enough to rein in abuses and provide relief for students. For example, none of the federal regulatory changes to date expand relief for students harmed by abusive practices.

## Comparison of 2009 Operating Profits



Source: U.S. Senate Health, Education, Labor and Pensions Committee, "Emerging Risk?: An Overview of Growth, Spending, Student Debt and Unanswered Questions in For-Profit Higher Education" (June 24, 2010). Company financial data: schools labeled by 2009 enrollment numbers; operating profits are equal to revenues minus costs before taxes and depreciation.

While some states are starting to take action, too many are turning away, assuming that the federal government will take care of the problem. Many state regulators fail to acknowledge concerns about for-profit schools even as their states continue to funnel millions of state dollars to the schools through grant aid and other programs.

This report examines the state of state oversight of for-profit schools. The National Consumer Law Center (NCLC) summarizes state regulatory structures and analyzes the levels of resources devoted to enforcement and oversight. We also evaluate consumer protection laws, relief funds, and other options available to assist students who are harmed.

The report highlights how only a few states have devoted sufficient resources in recent years to challenge for-profit school abuses and provide relief for students. There are promising signs that other states are

starting to pay attention, but much more needs to be done. The last section of the report contains recommendations to improve state oversight and protect students and taxpayers.

## II. THE STATE ROLE

Many state regulators view regulation of for-profit schools as a federal responsibility, especially with respect to accredited schools that participate in the federal student aid programs. While it is true that federal dollars fuel these schools, it is not true that states have no oversight interest or responsibility. In fact, under the Higher Education Act, for an institution in any state to be eligible to participate in federal student assistance programs, it must be legally authorized by the state to provide postsecondary education.

State responsibilities go beyond the critical gate-keeping role for federal aid. State dollars are also on the line. Many states fund their own grant programs which increasingly go to students at for-profit schools. States also have an essential role in protecting citizens from unfair, deceptive and abusive business practices.

### *Oversight of Federal Student Aid Programs*

The states are one leg of the regulatory triad that consists of the federal government, the states, and accrediting agencies. The federal Department of Education mainly plays a gate-keeping role, verifying institutions' eligibility, certifying their financial and administrative capacities, and granting recognition to accrediting agencies. The federal government can revoke a school's ability to receive federal student aid. Accrediting agencies may terminate their approval of particular schools or programs while states establish and enforce benchmarks that schools must meet to provide services in their states.

The Department of Education amended these rules in 2011 to help ensure that states play a direct role in authorizing postsecondary institutions participating in the federal student assistance programs. The rule also requires states to have a process to handle student complaints about schools.<sup>10</sup> This rule applies broadly, not just to for-profit schools, and became effective on July 1, 2011.

The chart and examples on page 10 illustrate the basic principles of the amended "state authorization" rule.

The amended "state authorization" rule is critical because previously many states had turned over the authorization role to private accrediting agencies. Deference to accrediting

agencies is particularly troubling because there are numerous reports of accrediting agencies exerting little or no oversight over schools. This is not surprising given that the accrediting agencies earn their revenues from the schools they examine. This is similar to the rating agencies that rated toxic mortgage bonds triple-A (the most credit-worthy rating) while depending for their survival on fees from the lenders originating and selling those products.<sup>11</sup>

During Senate hearings in the early 1990s, the Senate noted the inherent conflict of interest in accreditation: once an agency approves a school for accreditation, the agency thereafter assumes the role of the school's advocate.<sup>12</sup> Despite these conflicts, the basic model persists, allowing for a buffer between schools and direct federal or state oversight.

### *Oversight over Unaccredited Schools*

States also have a critical oversight role over unaccredited schools. These schools are allowed to operate in most states as long as they meet certain requirements, including licensing or registration in most cases. However, they are not allowed to participate in the federal aid programs. Some states even allow unlicensed schools to operate as long as they disclose that status. For example, the New Hampshire legislature was considering legislation in 2011 that would require unlicensed schools to disclose that tuition payments are not guaranteed by the state.<sup>13</sup>

Employers often reject the credentials earned at unaccredited schools. Further, accredited schools will often fail to accept credits that students attempt to transfer from unaccredited schools. Problems arise when schools inflate or misrepresent accreditation

### Meets State Authorization Requirements\*

LEGAL ENTITY	ENTITY DESCRIPTION	APPROVAL OR LICENSURE PROCESS
Educational institution	A public, private nonprofit, or for-profit institution established by name by a State through a charter, statute, or other action issued by an appropriate State agency or State entity as an educational institution authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate	The institution must comply with any applicable State approval or licensure process and be approved or licensed by name, and may be exempted from such requirement based on its accreditation, or being in operation at least 20 years, or use both criteria.
Business	A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services	The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name.
Charitable organization	A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good	An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption

**\*Notes:**

- Federal, tribal, and religious institutions are exempt from these requirements.
- A State must have a process, applicable to all institutions except tribal and Federal institutions, to review and address complaints directly or through referrals.
- The chart does not take into requirements related to State reciprocity.

Source: 75 Fed. Reg. 66832 (Oct. 29, 2010).

### Case Study: Accreditation Misrepresentation

According to *The Chronicle of Higher Education*, Casey Hetherington, an aspiring dietitian, enrolled in Kaplan University after a school employee assured her the school was properly accredited. A year into the program, Casey’s adviser informed her that she could not begin an internship because Kaplan’s program lacked accreditation. Casey owes Kaplan \$15,000.<sup>15</sup>

status or the value of the credentials. The states are the first and generally the only line of consumer protection in these cases.

Students interested in the medical field are particularly vulnerable because programs typically need to be accredited and approved for students to be eligible to take the requisite licensing exams. In recent years, Attorneys General in Florida, Maryland, and New Jersey have shut down schools that misrepresented the accreditation of their medical programs.<sup>14</sup>

## State Grant Aid

The higher education sector depends not only on federal student loans and grants, but also on state grants. In 2010-11, 9% of student grant aid came from state governments.<sup>16</sup> Given the extremely tight budgetary environment, states are starting to take a closer look at the growing levels of state grant aid going to for-profit schools and whether these funds are worth the investment.

A few states have set strong standards for receipt of grants by taking school outcomes into account. For example, California enacted legislation that requires schools participating in the Cal Grants program to meet certain federal student loan default rate standards.<sup>17</sup> Maryland went further and passed a law in 2011 that limits state student financial aid to public or private non-profits.<sup>18</sup> Oregon also limits certain state aid to students at state supported and non-profit institutions.<sup>19</sup> Illinois has considered setting similar standards for its grant program (Monetary Awards or MAP), which distributes about \$390 million annually to students statewide.<sup>20</sup>

## State Consumer Protection Role

Regardless of their views on how best to deliver higher education, all regulators and policymakers should be against ripping off students. This is not a matter of going after a few bad apples. Rather, as recent U.S. Senate hearings showed, there is rot throughout the industry.<sup>21</sup>

Common problems in the for-profit sector include inflated or misleading job placement rates, manipulation of student grades and attendance records, and deceptive and even illegal recruitment practices.<sup>22</sup>

The traditional state role as a key protector of consumers in the states is absolutely

relevant and critical in this context. State attorneys general and other state regulators have even more powers to protect consumers under the federal Dodd-Frank Act, including the ability to enforce the ban on unfair, deceptive or abusive acts or practices.

## State Credit Regulation

Since the credit crisis in 2007 and 2008, many for-profit schools in particular have begun making their own student loans. These internal loan products vary widely. Some schools originate their own closed-end or open-end credit products (revolving lines of credit) and others guarantee loans for national banks or other financial companies.

The default rates on these school loan products are shockingly high.<sup>23</sup> For example, at the beginning of FY 2009, Corinthian Inc. expected a loan default rate on its school loan product of 50 percent—before it even made the loans. Corinthian adjusted this estimate to 55 percent for FY 2009 and predicted a range of 56 to 58 percent in 2010. At nearly one-third of Corinthian campuses, more than half of all first year students took out high-cost private student loans in 2009.<sup>24</sup> Despite the dismal performance of these loans, Corinthian executives told investors in summer 2011 that they planned to double the volume of private loans made through the institutional loan program to \$240 million.<sup>25</sup>

Corinthian is not the only company making school loans with exorbitant default rates. Analysts have estimated that ITT may assume close to a 45 percent loss rate or even higher on institutional loans.<sup>26</sup> Career Education Corp. stated that it expects default rates on institutional loans to approach 48 percent.<sup>27</sup>

Each charge-off represents an individual who cannot repay a debt and who may be

facing aggressive collection tactics. These student borrowers generally face numerous collection calls, lawsuits and negative entries on their credit reports that can last for extended periods of time.

Despite the harm to students, the schools seem to view institutional loans more as “loss leaders” to keep the federal dollars flowing. This is attributable in part to the 90-10 rule, which requires for-profit schools to show that at least 10% of their revenues come from a source other than Department of Education student assistance. Third party loans were critical for schools seeking revenues to fill up the 10% side of the equation. When the third party lending market fell apart, many companies crept much closer to the 90% line. Increased institutional lending is an important strategy for many schools to keep filling this “10%” category.<sup>28</sup>

In some cases, schools that originate loans should be regulated under state lending laws. This was an issue in a 2009 case before an arbitration association against Alta Colleges. The complaint alleges that the school did not obtain a required license from the state Attorney General authorizing the issuance of supervised loans.<sup>29</sup>

State oversight extends beyond internal loan products. States also have responsibility for regulating state chartered banks. This is particularly critical in the private student loan market. For-profit schools have had the largest proportion of students taking out private loans and the largest increase in private loan borrowing.<sup>30</sup>

### III. STATE OF THE STATES

#### *Regulatory Agencies*

Most states delegate responsibility for proprietary school oversight to an agency, commission, or some other state body. Such bodies are typically charged with maintaining a tuition recovery fund in the event of a school closure, ensuring the ongoing fiscal viability of a school, and enforcing basic consumer protections.

The scope of agency responsibility varies considerably. Many state agencies have jurisdiction over all private postsecondary schools, both for-profit and non-profit. Some regulate only private career schools.

Many states use fees collected from schools to help fund oversight agencies. Some states charge a flat licensing fee. Others assess a fee for a variety of services, including the initial license, the license renewal, approval for new programs, agent’s permits, and change-of-ownership. In some cases, the amount of fees is tied to the school’s revenue.

Nearly every state agency has a law extending jurisdiction not only over schools with a physical presence in the state, but more broadly to cover students in the state taking courses from schools located elsewhere. This is particularly important given the outcry by the industry and many state regulators when the U.S. Department of Education issued a rule in 2011 requiring states to authorize schools that offer distance education to students in that state. A federal court in Washington, D.C. rejected the rule on procedural grounds, but many state regulators opposed the rule before then, claiming that they would be unable to comply.<sup>31</sup> In fact, authorization of distance education was already required

in nearly every state. Given the opposition to the Department's codification of this rule, it is hard to imagine that states were doing much to enforce their existing laws.

Largely in response to the Department of Education's 2011 regulation, a number of states have taken steps to ensure that their regulatory agencies meet the minimum "state authorization" requirements. For example, Nebraska lawmakers passed legislation which requires for-profit schools to obtain authorization from the state's Coordinating Commission for Postsecondary Education.<sup>32</sup> The law also grants the Commission authority to investigate schools and revoke licensure or to refer complaints against schools to the attorney general. Massachusetts has several bills pending related to for-profit schools, which, if successful, would overhaul the current regulatory scheme.<sup>33</sup> In addition, North Carolina recently established a State Board of Proprietary Schools within the Community Colleges System Office.<sup>34</sup>

Many states divide oversight responsibilities depending on whether the school is a degree granting school. In some cases, the degree granting school regulator will be in charge of all programs offered by a for-profit company even if only some are degree-granting programs.

An increasing number of for-profit schools now offer degrees as the industry grows far beyond its "vocational school" roots. Unfortunately, many oversight agencies that regulate degree granting schools are accustomed to dealing with traditional schools and are not necessarily prepared to deal with the consumer fraud issues prevalent in the for-profit sector. For example, many of the problems in the for-profit sector arise from deceptive and

fraudulent marketing. For-profit schools tend to spend much higher amounts on recruiting and advertising than schools in other sectors. The U.S. Senate Health, Education, Labor and Pensions Committee found in a 2010 report that of the eight publicly traded for-profit school companies that broke out expenses, on average, these schools spent 50.2% on expenses classified as education, 31% on recruiting and marketing, and 15.7% on undefined administrative expenses.<sup>35</sup> Overall, for-profit colleges spend less than a third of what public universities spend on educating students.<sup>36</sup>

### Consumer Protection Laws

For-profit industry representatives argue accurately that minority and low-income populations are underserved by the traditional education sector. Instead of ensuring that these vulnerable students do better in their schools, too many for-profit schools take advantage of these students, targeting them with predatory products.

*"For-profit colleges provide high cost degree programs that have little chance of leading to high-paying careers, and saddle the most vulnerable students with heavy debt. "*

—The Education Trust, "Subprime Opportunity: The Unfulfilled Promise of For-Profit Colleges and Universities" (Nov. 2010).

Many for-profit schools use deceptive tactics, including false representations about enrollment, completion, job placement, equipment and teachers, and manipulation of fees and other records. This is classic fraud disguised as education, just as when a car dealer deceives consumers about miles on an odometer

or prior damage. These problems are clearly within the traditional state oversight role.

Every state and the District of Columbia have an unfair, deceptive acts and practices (UDAP) law to protect consumers. Most of these state UDAP laws should apply to for-profit schools.

Many states have supplemented the general UDAP laws with separate provisions targeted at for-profit schools. Others have specific provisions regarding for-profit schools contained within the UDAP laws. These laws vary, generally including disclosure provisions, refund policies, and lists of specific prohibited practices.

### Case Studies: Problems with Medical Billing Programs

**Massachusetts:** Carla is a young woman raising two children on her own. She attended school through ninth grade and does not have a G.E.D. She saw ads for a local for-profit school and signed up for the medical billing program. She was unable to finish and looks back on the experience with frustration and anger. In her words: “Mostly, I did not have enough education to keep up with the material. I tried to stay in school, but couldn’t pass all of the classes.” Carla never completed and has since defaulted on her loan. She sought legal assistance because she wants to go back to school, but is not eligible for new loans and grants. Just as she is trying to get back on her feet, she is buried in loan debt that has ballooned due to accrued interest and fees.

**Texas:** A 2011 *Time* report described Christina McNeely, who completed Westwood’s medical billing program in 2010 during a period of homelessness. She borrowed \$15,000 to complete the program and recruiters told her she would be able to find a job. Now, she works three jobs to get by. She has yet to find work doing medical billing.<sup>37</sup>

### Disclosures

Numerous states already have disclosure requirements that apply to for-profit schools, including:

**California:** Schools are required to provide the state agency and prospective students with a School Performance Fact Sheet containing completion rates, placement rates, license examination passage rates, and salary or wage information.<sup>38</sup>

**Georgia:** Requires disclosures of enrollment, graduation and job placement rates.<sup>39</sup>

**Illinois:** All schools offering or advertising placement assistance must disclose information about the number of students in the most recent year admitted in the course of instruction, the number who transferred out, completed a course, withdrew or are still enrolled, the number who were placed in their field of study or a related field, and the number who were not employed. The schools also must disclose the number of students who passed the state licensing exam if relevant.<sup>40</sup>

**Kentucky:** Prior to enrollment, prospective students must be given information about program completion rates and placement rates (based on federal placement and graduation rate guidelines).<sup>41</sup>

**Utah:** Requires disclosure prior to enrollment or the receipt of any tuition information about graduation and employment rates for each of the immediately preceding three years.<sup>42</sup>

**Virginia:** Requires disclosures for each Virginia location of the total number of students that completed/graduated from the school as of the end of the last academic year and the total number and percentage claiming

## Manipulation of Job Placement Rates

In October 2011, Kentucky Attorney General Jack Conway filed a lawsuit against National College, charging the company with manipulating job placement rates. The complaint alleges that the school advertises rates to prospective students that are significantly higher than those it reports to accrediting agencies.<sup>48</sup>

New America's *Higher Ed Watch* reported that in November 2011, Career Education Corp., one of the larger for-profit education companies with schools in 23 states, revealed to the Security and Exchange Commission that it had engaged in improper placement determination practices at many of the company's schools. Career Education officials revised the 2010-11 job placement numbers for the 49 schools involved and discovered that only 13 of them have actual rates high enough to meet the accreditor's minimum standards.<sup>49</sup>

state residency that completed/graduated. Unaccredited institutions must also report the total number of students claiming state residency who report employment in their field of study within six months of graduation/completion and one year of graduation/completion.<sup>43</sup>

*West Virginia:* Passed legislation in 2011 requiring schools to annually report to the public, students, and state agencies information required to be reported by federal or state laws, graduation and retention rates, transfers, post-graduation placements, loan defaults, and numbers and types of student complaints.<sup>44</sup>

Although some of this data is required by federal regulations as well, the state disclosure requirements may provide broader protection by including schools that do not participate in federal aid programs or by setting clearer standards on the formulas for calculating outcome measurements, such as placement and completion rates.

In addition to the states listed above, other states have recently attempted to pass disclosure requirements, usually regarding disclosures of student completion and job placement rates. For example, Kentucky tried, but failed, to pass two bills expanding disclosure requirements for for-profit schools.<sup>45</sup> Texas also tried, but failed, to pass a bill to improve the coordination and dissemination of online information about the operation and performance of for-profit schools.<sup>46</sup> Other states, such as Ohio, have introduced legislation to expand disclosures about accreditation.<sup>47</sup>

There are also new federal provisions requiring schools to disclose certain information. The disclosure requirements apply only to programs that are required to prepare students for gainful employment.

### *The Merits and Weaknesses of Disclosure as a Consumer Protection Measure*

Disclosures can be useful to open up the marketplace and promote comparison shopping. However, disclosures are of little help to

students who have already attended for-profit schools and have been harmed by relying on representations made prior to enrollment. Further, there is little or no evidence that disclosure impacts consumer decision making in meaningful ways.

Most important, much of the data contained in the disclosures is based only on information self-reported by the schools. This is notoriously unreliable.<sup>50</sup>

### *Targeted Consumer Protection Laws*

Many states have supplemented their general UDAP authority with specific lists of prohibited practices in the for-profit sector. These state laws are critical to provide redress for violations of state law. Further, the lack of a private right of enforcement under the federal Higher Education Act means that state UDAP laws are often the only way borrowers can seek relief for violations of federal law.

Nearly all of the states with lists of prohibited practices focus on recruiting practices. Some, such as **Washington**, specifically prohibit attempts to recruit prospective students within 40 feet of welfare or unemployment offices.<sup>51</sup> A number of states prohibit schools from describing sales representatives as counselors or advisors. **Maryland** passed a law in 2011 that addresses concerns with incentivized recruitment practices by prohibiting commissions, bonuses, or other incentive payments to recruiters based on success in enrolling students.<sup>52</sup>

Other states with targeted state laws include **Colorado** which prohibits school representations that the lack of a high school education, prior training or experience is not a handicap or impediment to successful completion or gaining employment. Colorado's law

also prohibits schools from enrolling a student when it is reasonably obvious that the student is unlikely to successfully complete the course or qualify for employment in the field for which the education was obtained. In addition, the state prohibits misrepresentations about current employment opportunities or probable earnings in the industry or occupation for which the services were designed.<sup>53</sup>

**Michigan** prohibits misrepresentations about suitable jobs, probable earnings, school facilities, courses of instruction, quality of instruction and placement activities, among other listed misrepresentations.<sup>54</sup>

Whether consumers themselves have the ability to enforce these laws varies. In most states, consumers have the right to bring suit to obtain damages or other relief under the state UDAP statute, and sometimes under other laws as well. It is often difficult for students to bring these cases, particularly given the dearth of legal assistance for low-income consumers. This is a major reason why student assistance funds and other relief funds are so critical for students, as discussed below.

Weak penalty provisions exacerbate the problem. In addition to private enforcement, schools must face biting penalties for legal violations, particularly if they are serial offenders. In 2011, several states, including Idaho,<sup>55</sup> Massachusetts,<sup>56</sup> and New York<sup>57</sup> have sought or enacted laws to increase the severity or expand the applicability of statutory penalties against schools that violate consumer protection laws.

### *"Cooling Off" Rights*

A few states ensure that students may cancel contracts before incurring liability, including:

*Georgia:* 72-hour cancellation period.<sup>58</sup>

*Illinois:* Right to cancel initial enrollment agreement until midnight of the fifth day after student has been accepted. Time period extended if notice of cancellation right not provided.<sup>59</sup>

*Michigan:* 3-day cancellation right.<sup>60</sup>

*Washington:* Enrollment agreement not binding for at least 5 days.<sup>61</sup>

### *Holding Lenders Liable for School-Related Legal Violations*

Often schools make loans to students to cover the tuition and fees, but then sell or assign those loans to financial institutions. Alternatively, the school may arrange a loan from a financial institution. If the student was defrauded by the school or has some other defense to the loan, it is important that the student be able to assert this defense against the financial institution. Otherwise, the financial institution could force the student to pay the loan even though the fraudulent school could not have.

Virtually all states have statutes that subject creditors in at least some circumstances to claims or defenses that the consumer could assert against the seller. These statutes are most relevant in cases where schools originate loans and then assign them to other holders or where third party lenders have close relationships with schools and should therefore be on the hook if the student is harmed by the school's abusive or illegal practices.

In addition, a few states, including Illinois, require schools to place a statement in every enrollment agreement that assignees are subject to all claims and defenses of the student.<sup>62</sup>

### *Refund Policies*

Most state laws include minimum requirements for school refunds. These are essential complements to the federal law that mandates refunds to student borrowers in certain circumstances. The federal policy limits refunds to students who attend less than 60 percent of the course. Those who fit this category are entitled to a pro rata refund of the loan. This federal law has major gaps. For example, it does not provide refunds for charges not covered by loans or grants. Schools generally attempt to recover these funds even from students who attend for very brief periods. Strong state refund policies are critical in these cases.

In most of the states, the right to a significant refund expires quickly. For example, a recent NCLC client signed an enrollment with a Massachusetts cosmetology school. When she called to get information about the school and at the time she signed up, she informed the school staff that her English language skills were very limited. She was told that this was not a problem because the instruction and text would be in both English and Spanish. She relied on those representations in signing up for the hair design and cosmetology program. After attending for no more than three days, she withdrew because, contrary to the representations, the class was conducted in English only. The school started billing her for 25% of the tuition plus administrative costs, adding up to almost \$4,000. This was completely out of reach for a 40 year old single mother earning just above minimum wage working at a school cafeteria.

Some states have enacted more comprehensive refund policies, including:

*Delaware:* Full refund if enrollment was procured as the result of any misrepresentation in advertising, promotional materials of the school or representations by the owner or representative of the school.<sup>63</sup>

*Minnesota:* Full refund required within a reasonable period of time in the event of dissolution of the school or in the event of any justifiable claims for refund.<sup>64</sup>

*Nevada:* Full refund required if the school has substantially failed to furnish the training program agreed upon in the enrollment agreement.<sup>65</sup>

### *Relief for Students*

State tuition recovery funds (Recovery Funds) can be a valuable source of relief for defrauded students when a for-profit school is insolvent and when the student cannot obtain a federal student loan discharge. Recovery Funds contain deposits of money collected from schools approved to operate in the state. The funds are disbursed to students under specified conditions.

State relief for students is critical because relief at the federal level is limited. The greatest harm to most students is the amounts they owe on federal or private loans. Under federal law, students who are harmed by abusive school practices can obtain a discharge of their federal student loan obligations, but only in very limited circumstances. The federal government has narrowed these discharges through regulations so that few students qualify.<sup>66</sup>

Many states have either a Recovery Fund or a bond program to reimburse defrauded students. States with Recovery Funds may

have two different funds—one for degree-granting institutions and one for schools that offer non-degree-granting vocational programs. The required bonds vary in the level of protection they offer students with some states tying the bond amount to a percent of annual gross tuition while other states define a standard amount of coverage. The surety bonds typically will refund tuition if the school closes or if the school fails to uphold the contract it signed with the student. Some states require schools to maintain a separate bond to cover the acts committed by the school's agents. Schools can either maintain an individual bond for each agent they employ, or they can procure one single bond that covers all of the agents in the amount equal to the aggregate of the requisite individual agent's coverage. Agent's bonds provide an extra form of coverage to students who may not be able to receive any compensation through a school's surety bond. If a student was the victim of deceptive recruiting, for example, but the school and program remain open, the student would not usually be eligible for a refund through the surety bond. However, that student could petition the state to make a claim on the agent's bond, refunding any monetary losses the student incurred as a result of improper agent conduct.

Appendix A summarizes the availability of relief in the states through either a tuition recovery fund or bonds or both.

In summary, 22 states maintain a Recovery Fund, 40 states require schools to secure some sort of bond, and 14 states require schools to obtain a separate bond covering the acts of its agents. Six states (Kentucky, Louisiana, Nebraska, Nevada, Tennessee, and Wisconsin) provide all three types of

financial protection for students. Two states, New Jersey and Vermont, do not offer any of these three types of financial protection to students.

Eligibility for Recovery Funds varies widely. Many of these funds are limited to students who attended for-profit schools that closed in the state (Arizona, Arkansas, Connecticut, Florida, Georgia, Nebraska, North Carolina, Ohio, Tennessee, Texas, Virginia, and Washington). Others have broader criteria. Indiana offers relief not only to students who attended schools that closed, but also in cases of breach of contract, fraud or violations of other laws.

Unfortunately, in certain states, the relief exists only on paper. Many state funds are insolvent or facing severe shortages, in some cases because the state has raided them for other purposes. In New York, for example, the state has taken \$500,000 from the \$2 million fund.<sup>67</sup> Legislation pending in 2011 would protect the financial viability of the state fund.<sup>68</sup>

*“It worries me a lot. This account is for the protection of students, not general fund money.”*

—Carole Yates, head of the New York Bureau of Proprietary School Supervision, commenting on the state taking money from the Recovery Fund, *New York Daily News*, Jan. 18, 2011.

### **Public Information about Schools Needs Improvement**

Basic information about schools, including information about vocational programs and comparative data about graduation and job placement rates and average starting salaries is often difficult to find on state agency web

sites. In some cases, the information about for-profit schools is hidden in larger websites that cover all colleges in the states.

For example, in **North Carolina**, the State Board of Community Colleges site has school information, but the consumer information is difficult to find and limited to a list of closed schools, schools presently licensed, and a complaint form. Others simply contain information for school administrators. **Mississippi’s** site has the rules and regulations schools must comply with but no specific information for students. Students visiting the site cannot verify that a school has a valid certificate of registration, they cannot find a complaint form, and they cannot compare graduation rates or job placement statistics.

Several other states make it difficult to tell whether they even regulate the industry. **New Jersey’s** Department of Education has oversight authority over vocational colleges but the only vocational school information displayed concerns secondary education.

### **States That Are Meeting the Grade with Public Information**

Some states do a better job of providing information. For example, **Washington’s** Workforce Training and Education Coordinating Board maintains a web feature called “Career Bridge,” which allows students to search for vocational programs and compare graduation and job placement rates, and average starting salaries.<sup>69</sup>

**Tennessee’s** Higher Education Commission also provides students with resources to make informed educational decisions, including comprehensive reports about each for-profit school it licenses. Prospective students can access detailed (and audited) information on completion and job placement rates from

the past three years.<sup>70</sup> Not only does the Commission display the information in a prominent place on its website, but state regulations require the schools to link to the reports on their websites as well.<sup>71</sup>

**Maryland's** Higher Education Commission offers an excellent example of a state website that can serve as a valuable student resource. The Commission lists every approved program by school and displays the number of program hours required for completion, the total tuition and fees, and student completion and job placement rates. Alongside the individual school's rates, the Commission reports the average completion and job placement rates for all schools that offer the program in Maryland.<sup>72</sup> In addition to helpfully organizing school data, the Commission published a guide to private institutional loans, urging students to exhaust all federal loans prior to borrowing directly from the school.<sup>73</sup> Another link on the site shows programs with pending approval, with links to objections, if any.<sup>74</sup>

### *Complaint Procedures Must be Clear and Accessible*

The 2011 federal "state authorization" regulation requires state agencies to review and appropriately act on complaints. These procedures will only be effective if they are easily accessible to students.

As of October 2011, NCLC's review of all state agency websites found that 12 states did not have a complaint form available or a description of the complaint process. The following states are in this category:

**Alaska** (the site refers to a mission to investigate complaints, but does not describe the process)

**Delaware**

**Hawaii**

**Maine**

**Mississippi**

**Missouri** (instructs students to go through the school's complaint process)

**Montana**

**North Dakota**

**Oklahoma**

**Rhode Island**

**South Dakota**

**Wyoming**

### *Enforcement Efforts*

As more abuses in the sector come to light, many states are waking up to the magnitude of the problem. A whistleblower lawsuit, for example, against Education Management Corp. was brought on behalf of eleven states and D.C. (California, Florida, Illinois, Indiana, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, New York, Tennessee and D.C.). The suit says that the company violated incentive compensation rules.<sup>75</sup>

The increased state involvement confirms the scope of the fraud as well as the importance of these problems. Some of the states have focused on these problems for years. Others are newly "discovering" the problem. The signs of enforcement life are encouraging, but much more needs to be done.

The Attorney General Offices are leading the charge, but in some cases, the state oversight agencies are also stepping up. This section highlights Attorney General Offices that have begun aggressive enforcement in this area. In some cases, such as Florida and Kentucky, the Attorney General's commitment contrasts with weak state agency enforcement or problems with for-profit industry capture of state agencies.

### *Examples of Stepped Up Attorney General Enforcement*

This section highlights state Attorneys General that have stepped up, but it is not an exhaustive list.

#### *Florida: Active Attorney General, Limited Agency Oversight*

In 2010, Florida's Attorney General began investigating for-profit colleges for unfair and deceptive acts and practices. The colleges under investigation include Kaplan Inc. (GA), University of Phoenix (AZ), Argosy University of Florida Inc. (FL), Everest College (Corinthian, CA) and Medvance Institute Inc. (FL).<sup>76</sup> The Attorney General subsequently added Concorde Career Colleges, Keiser University and the Sanford-Brown Institute to the list of schools under scrutiny.<sup>77</sup>

Increased Attorney General enforcement stands in sharp contrast to the weak state agency oversight. Florida's Auditor General found that the state oversight agency took over a year to resolve some complaints and did not maintain accurate or proper documentation of complaints received.<sup>78</sup>

#### *Illinois*

A spokesperson for the Illinois Attorney General's office said they were in the process of investigating complaints against Kaplan.<sup>79</sup>

#### *Kentucky: Aggressive Leadership by the Attorney General, Conflicts of Interest at the State Agency*

Kentucky's Attorney General subpoenaed seven for-profit colleges, directing them to provide information on a range of topics.<sup>80</sup> To date, the Attorney General has filed suit against National College and Daymar College.<sup>81</sup> The Attorney General has previously

investigated for-profits, including two schools that are now closed (Decker College and the American Justice School of Law).<sup>82</sup>

The leadership role of Kentucky's Attorney General contrasts with its state agency oversight, which is rife with conflicts of interest. Barriers to more effective state oversight, including conflicts of interest, are described in greater detail below.

#### *Massachusetts*

The Attorney General's Office is currently investigating the Kaplan Career Institute and the University of Phoenix. Corinthian Colleges Inc. is also under scrutiny for its Everest Institute campuses in Brighton and Chelsea. The Attorney General's investigation seems to concern recruitment as the Attorney General asked for recruiting documents, enrollment practices, student loan default rates, graduation rates, and analyses of the ability of students to repay their loans from the schools.<sup>83</sup>

#### *Nevada*

Silver State Helicopter school closed in 2008, leaving many students without certifications and training despite large student loan balances. Attorneys General from Nevada and 12 other states negotiated an agreement with Student Loan Express to forgive 75 percent of the total amount borrowed by students who could not earn a certificate.<sup>84</sup>

Nevada's Commission on Postsecondary Education has taken an active role in trying to protect students and ensuring compliance with state laws.

#### *New York*

New York's Attorney General is investigating a number of for-profit schools in the state, including Trump University (now Trump

Entrepreneur Initiative). In addition to Trump U, the AG is also scrutinizing Career Education Corporation, Corinthian Colleges, Lincoln Educational Services, and Bridgepoint Education.

New York's Bureau of Proprietary School Supervision has also taken a variety of actions against different schools in the past five years. However, the agency remains seriously underfunded and according to at least one official is in "chaos."<sup>85</sup>

### *Oregon*

Oregon investigated the Business Computer Training Institute (BCTI) in 2005. More recently, Oregon has taken a lead role in a shareholders' securities-fraud lawsuit against Apollo (owner of University of Phoenix). The state public employee retirement fund suffered major losses—around \$10 million according to the state. The state alleges that Apollo deceived shareholders.<sup>86</sup> The District Court of Arizona dismissed the suit but granted the plaintiffs the right to amend their complaint.<sup>87</sup>

### *Pennsylvania*

The Pennsylvania Attorney General filed suit against ComputerTraining.com, Inc., a Maryland-based for-profit school, after it closed in 2010. The Attorney General said the school should have foreseen its imminent financial decline and cease enrolling and recruiting new students. In the lawsuit, the Attorney General cited violations of the Consumer Protection Law and requested full restitution for the victims and to bar the school from operating in Pennsylvania.<sup>88</sup>

Two years prior to the suit against ComputerTraining.com, the Attorney General also pursued Lehigh Valley College for alleged violations of Pennsylvania's Consumer Protection

Law, reaching a settlement with the company in 2008. Career Education Corporation owns Lehigh Valley College.<sup>89</sup>

From 2009-2010, the Pennsylvania State Board of Private Licensed Schools and its staff addressed 26 complaints regarding 20 different schools. According to the Board, all of the complaints were investigated, and, whenever necessary, the Board and its staff took appropriate actions to resolve the matters. The average time that elapsed between the Board's receipt of a complaint and its resolution was 61 days.<sup>90</sup>

## IV. BARRIERS TO STATE OVERSIGHT

### *Lack of Staff and Resources*

States with the most effective oversight have adequate staff for the number of schools operating, no conflicts of interest among regulators, and a supervisory body with a single and clear mandate to regulate the industry. Unfortunately, few states meet these standards (see chart above).

Funding and staffing cuts have limited the ability of state supervisory agencies to effectively oversee for-profit schools. New York's Bureau of Proprietary School Supervision exemplifies the impact such issues can have on robust oversight. As the number of for-profit schools nearly doubled in New York, the Bureau reduced staff by 50 percent. Reduced staffing has directly impacted the Bureau's ability to exercise its mandate. In past years, the Bureau shut down schools for violations. In the past two years, the Bureau has not closed any schools. Schools located on the western side of the state operate with almost no oversight because the Bureau cannot afford to pay for travel.<sup>91</sup>

### Outnumbered: States with the Highest Ratio of Schools to Staff

STATE	NUMBER OF SCHOOLS	NUMBER OF STAFF	SCHOOL TO STAFF RATIO*
Delaware	104	1.2	87:1
Massachusetts*	210	3	70:1
Oklahoma	165	1.5	110:1
Washington	280	1.5	187:1
Wyoming	125	1	125:1

\*Rounded to the nearest whole number

\*\*The Massachusetts data pertains only to the schools regulated by a unit within the Department of Elementary and Secondary Education. The Division of Professional Licensure and the Massachusetts Department of Higher Education are responsible for regulating a different subset of proprietary schools.

NCLC contacted most agencies directly to ask how many schools they oversaw and how many full-time staff were dedicated to oversight. NCLC did not contact agencies if they listed the number of schools and their staff on their website. All of the above agencies were contacted directly.

According to newspaper reports, Idaho lacks the funding to do meaningful oversight, although the Idaho proprietary schools coordinator has informed unlicensed schools they must register in Idaho to grant degrees in the state. According to media reports, the coordinator does not have the resources to force compliance.<sup>92</sup> The Idaho coordinator has one part-time administrative assistant and oversees 81 schools.<sup>93</sup>

### Better Oversight = Better Protections for Consumers

Not all well-funded oversight agencies regulate for-profit schools effectively, but all of the states with better oversight have staffing at least beyond the bare minimum.

Below are a few examples of state agencies that have taken some effective actions:

**Alabama:** The Department of Postsecondary Education transformed the way for-profit schools functioned in the state simply by refusing to renew licenses for underperforming schools in 2008. The Department inserted a degree of substance into what was formerly a routine exercise. Once this policy was adopted, the Department shuttered 21 for-profit schools, rejected the applications for six new schools, and revoked the licenses of three schools.<sup>94</sup> This approach did not require additional funds, staff, or regulatory authority. **Establishing firm quality benchmarks can provide schools with clear guidance on how to improve programs, but also will weed out programs that offer little or no value to students.**

**Tennessee:** To respond to rising student complaints, the Tennessee Higher Education Commission (HEC) increased its staff members and raised fees when it decided to regularly audit job placement and graduation rates in 2008.<sup>95</sup> The Commission now employs 18 people to oversee the 187 institutions under its purview.<sup>96</sup>

The Tennessee HEC began scrutinizing for-profits operating in the state in 2008. Several members of the state legislature wanted to crack down on schools that were not delivering quality educational outcomes. Some suggested that the HEC require regional accreditation to operate in the state, increased

transparency on costs, graduation rates, and more information on the transferability of credits.<sup>97</sup> In 2009, the HEC conducted audits of graduation and job placement rates of the state's proprietary schools.<sup>98</sup> The Commission has said that it is still evaluating possible next steps following this year's data analysis.

**Wisconsin:** The Educational Approval Board (EAB) has a small staff (5) compared to the number of schools operating in the state (193).<sup>99</sup> However, the EAB has managed to leverage its small staff of five by enlisting other related state agencies to help oversee the 193 schools in operation. When an issue arises that the Board lacks the expertise or funds to handle, it refers the case to other authorities.

In recent years, the EAB has issued several cease and desist orders to companies operating without approval, and found that a handful of schools engaged in deceptive recruiting practices. The Board's handling of a student complaint against Dairyland Diesel Driving School illustrates the value of this collaborative approach. In 2008 a student alleged that Dairyland Diesel Driving School failed to provide the education advertised, furnished students with substandard equipment, and harassed students. The EAB worked with the Department of Workforce Development and the Department of Transportation to investigate and close Dairyland.<sup>100</sup>

In the fall of 2010, the Wisconsin Educational Approval Board (EAB) informed Westwood College that it could not enroll residents in the state of Wisconsin in its online programs. The college is not licensed to operate in Wisconsin. Wisconsin's action prompted an investigation by the Accrediting Council for Independent Colleges and Schools (ACICS), Westwood's accrediting agency.<sup>101</sup>

## The Good, the Bad and the Ugly

### **Bad and Ugly:**

*"It's frankly a paperwork exercise."*

—Agency Director in the West

### **The Good:**

*"We've been very aggressive in trying to govern and protect students by looking out the front windshield as opposed to looking in the rearview mirror."*

—David Dies, Executive Secretary of Wisconsin's Educational Approval Board

## Charging Adequate Fees to Fund Enforcement and Oversight

Many agencies rely on fees collected from schools to fund enforcement and oversight. Some states charge a flat licensing fee. Others assess a fee for a variety of services, including the initial license, the license renewal, and approval for new programs, agent's permits, and change-of-ownership. In some cases, the fee amounts are tied to the school's revenue. In Tennessee, for example, schools pay a fee based on the amount of tuition they collect, ensuring that as they grow and serve more students, the Commission can hire additional staff. Some states charge different fees for accredited and unaccredited schools.

A few states stand out as charging very low fees. Not surprisingly, these states often have very small staff resources compared to the number of schools operating in the state.

Examples include:

#### *Delaware:*

Application Fee: \$100

School Renewal Fee: \$50

The state has an 87:1 school to staff ratio and over 100 schools in the state.

#### *Maine:*

Initial License Fee: \$100

License Renewal Fee: \$50

Maine's Department of Education website shows only one staff member who works on higher education issues. A 2009 document lists 50 proprietary schools licensed to operate in Maine.

#### *Utah:*

Initial Registration Fee: \$100

Registration Renewal Fee: One half of 1% of the gross tuition income during the previous year (minimum \$100 and maximum \$2000).

The Attorney General's office has one employee devoted to licensing and overseeing the 62 schools that operate in the state.

Recognizing the importance of adequate funds, some states considered and in some cases passed legislation in 2011 that would require for-profit schools to pay higher fees to help finance regulatory efforts.<sup>102</sup> However, states must be careful to avoid conflicts of interest if they rely too much on fees from schools for survival. If an agency is aggressive in policing the industry and closes schools, revenues will decrease. There must also be funding sources other than school fees to help ensure unbiased enforcement.

Further, states that charge relatively high fees, such as Florida, Iowa, Minnesota, New Hampshire, Oklahoma, Texas and Vermont, do not necessarily have more efficient and aggressive agencies. Oklahoma, for example, has a 110:1 school to staff ratio and about 165 schools in the state.

While sufficient resources and collaborative enforcement enable agencies to protect students, resources alone are not enough.

The agency itself must be willing to embrace its role as a consumer protection body. For example, compared to other states, Florida's Commission for Independent Education (CIE) employs a large staff. Florida also charges relatively high fees.

As of fall 2011, thirty three staff members work for the Florida Commission, eight of which are specifically dedicated to addressing student complaints.<sup>103</sup> Yet, the state's Auditor General found that the Commission took over a year to resolve some complaints and did not maintain accurate or proper documentation of complaints received.<sup>104</sup> In a year where the Florida's Attorney General's Office opened an investigation into eight schools and the Government Accountability Office (GAO) found serious problems at two Florida schools, the Commission reported taking no disciplinary actions.<sup>105</sup>

#### *Diluted Resources*

Other enforcement problems result from disparate responsibilities. Some supervisory agencies have a broader mission beyond postsecondary education. The Texas Workforce Commission faced harsh criticism this year over its treatment of schools owned by ATI Enterprises, Inc. A local news outlet revealed that the schools owned by ATI routinely lied about job placement rates.<sup>106</sup> Earlier in the year, the Commission was also caught unprepared for a GAO investigation that found deceptive and fraudulent practices at Westwood Colleges.<sup>107</sup>

Among other responsibilities, the Commission has control of unemployment benefits, community colleges, addressing employment-related civil rights claims, and working with the for-profit industry to develop a skilled workforce to respond to emerging industries. According to Byron Harris, a Texas reporter that covers proprietary schools, the

## What's the matter with Texas?

Over the past six years, Texas for-profit schools have been the subject of numerous investigations. Investigators discovered fraud at Westwood College. According to journalistic investigations, Everest College and ATI career schools inflated their job placement rates, falsely reporting hundreds of job placements to their regulators, the Texas Workforce Commission (TWC).

Byron Harris, an investigative reporter for WFAA-TV in Dallas, uncovered wrongdoing at all three schools. Harris describes a regulatory regime that has been completely ineffectual in protecting students. "It's a paperwork-centered regulatory regime where they never really talk to anybody, they just look at paper," he said. "Instead of actually qualitatively analyzing the numbers given to them by for-profit schools, they just accepted what the for-profit schools wanted them to accept."<sup>110</sup> According to state officials, ATI claimed that 300 graduates were employed in their field.<sup>111</sup> The graduates were unemployed. Over 400 other graduates did not work at the businesses ATI reported. Everest College, another proprietary school, falsified 288 job placements, according to WFAA-TV's investigation.<sup>112</sup>

Harris began covering the proprietary school sector in 2005. He chronicled the aggressive recruiting measures at Westwood College and interviewed former students who charged the school with misleading them about their job prospects. According to Harris, the Commission told him they had not received any student complaints about the school. Harris contends that students did not know where to turn. "The reason they didn't get any complaints is because they were invisible as a regulatory body," he said.<sup>113</sup> In 2010, the Commission placed Westwood on probation after a recruiter encouraged an undercover GAO investigator to lie on his financial aid application.<sup>114</sup> Following Harris's exposés, the Commission also attached conditions to the certificates of approval for ATI and Everest.<sup>115</sup>

According to KTXS News, the Texas Workforce Commission recently notified American Commercial College that it intended to revoke its license for false student employment information, among other improprieties.<sup>116</sup>

Commission occasionally awards grants to fund school programs.<sup>108</sup> In this capacity, the Commission acts as a partner and supervisor of the industry and economic development. Protection of consumers is not its primary mission.<sup>109</sup>

In Iowa, the College Student Aid Commission supervises the industry but its main responsibility is to serve as a financial aid resource for Iowa residents. In a number of states, the regulator overseeing for-profit

schools is primarily responsible for elementary and secondary education.

It is critical that the state agency overseeing schools focus on its mission of ensuring school quality and protecting students in addition to monitoring school solvency.

### *Conflicts of Interest*

In a few states, members of the industry comprise the majority of the supervisory board. This can seriously undermine state efforts

to protect consumers, as illustrated in these examples.

*Florida:* State law ensures that industry representatives comprise the majority of members. Four of the seven commissioners must come from the for-profit schools that the Commission regulates.<sup>117</sup> Of the eight for-profit schools under investigation by the Attorney General, two have representatives serving on the Commission.<sup>118</sup>

*Kentucky:* Six of eleven Kentucky State Board of Proprietary Education members are employed by for-profit schools.<sup>119</sup> Kentucky's Board actively lobbied to reduce oversight of the industry. Last September, the Board sent a letter to Education Secretary Arne Duncan requesting that he withdraw a proposed rule designed to protect students from programs with poor outcomes.<sup>120</sup> The letter was signed by Mark Gabis, then-chair of the Board. He is now being sued by Kentucky's Attorney General for violating the state's Consumer Protection Act as president of Daymar College.<sup>121</sup>

Acknowledging this conflict, Kentucky legislators tried, but failed, this year to pass a bill that would change the composition of the Board of Proprietary Education. The bill sought to reduce the number of school member representatives and to increase the number of members representing community-based occupations.<sup>122</sup>

The conflict seems to have affected the effectiveness of Kentucky's agency. The Kentucky Board for Proprietary Education, the current supervisory board of for-profits operating in the state, did not properly track formal complaints filed by students against for-profit colleges. A report found that of 31 formal complaints filed by students, 11

complaints had missing files. The Board does not have documentation on how the cases were resolved.<sup>123</sup> In another case, the Board did not properly document Decker College students who received or should receive compensation from the Student Protection Fund. The level of disorganization of the Board's files prompted the State's Auditor to review their operations.<sup>124</sup>

Arizona's eight-member Board for Private Postsecondary Education has five members from the industry.<sup>125</sup> In some states, the governor must appoint the oversight board but vacancies are not always filled in a timely manner, which can result in unlawful overrepresentation by the industry. **Arkansas** law, for example, mandates that four of the seven members of its Board of Private Career Education come from the general public. However, as of fall 2011, one public position has not been filled, resulting in half the board coming from the proprietary school sector.<sup>126</sup>

### *The Powerful For-Profit School Lobby*

An often unspoken barrier to increasing enforcement is the power and money that the for-profit education industry holds. Policymakers know that aggressive enforcement comes at a cost in terms of potentially lost campaign contributions and angering of powerful constituents. This ignores the impact that for-profit school abuses have on some of the most vulnerable members of society.

Some states are even turning in the other direction. New York, for example, is trying to limit the ability of the state's already stretched oversight agency to revoke or refuse to renew licenses.<sup>127</sup> This is even though loan defaults are disproportionately high and graduation rates low at the state for-profit schools.<sup>128</sup>

## V. RECOMMENDATIONS

The following recommendations can help a state protect its citizens through better oversight of the for-profit higher education industry.

**1. *Provide adequate oversight of schools participating in federal aid programs, including oversight of school complaint procedures.***

At a minimum, states must comply with federal “state authorization” requirements for schools participating in federal aid. Many states need to amend oversight laws to ensure that the state licensing or registration process meets the minimum federal standards. The 2011 amended federal “state authorization” requirement also mandates that states create a process for handling and processing complaints. The complaint process must be accessible, with information clearly provided on websites and other forums.

**2. *Increase oversight of accredited AND unaccredited schools.***

The states have a legal responsibility to approve accredited schools participating in the federal aid programs. This is clearly a federal-state partnership. In contrast, the state is the only regulatory agency in most cases to oversee unaccredited schools. These schools are allowed to operate in most states, but are generally required to meet state licensing or other standards. Consumer fraud and deception in this area often involves schools misrepresenting accreditation status or credit transferability.

**3. *Increase Enforcement and Supervisory Resources.***

Not all well-funded oversight agencies regulate for-profit schools effectively, but all of the

states with better oversight do have staffing at least beyond the bare minimum. *It is also critical that the state agency overseeing schools focus on its mission of ensuring school quality and protecting students in addition to monitoring school solvency.*

Some states do a lot with limited resources, but most simply cannot come even close to doing effective oversight without more resources.

**4. *Charge Adequate Fees to Help Fund Oversight Agencies.***

Increasing resources is possible even in an age of tight budgets. States can fund significant enforcement activity through fees collected from the schools that operate in the states. However, states must guard against becoming captured by the schools they regulate if they become too dependent on fees. If an agency is aggressive in policing the industry and closes schools, revenues will decrease. There must also be funding sources other than school fees to help ensure unbiased enforcement.

**5. *Eliminate conflicts of interest.***

Among other changes, states must eliminate laws that require certain numbers of industry participants to serve on advisory or supervisory boards and laws that require that boards be comprised of majority industry participants.

**6. *Set standards on state grant aid or otherwise limit aid to schools that fail accountability standards.***

States have sole responsibility for deciding how to spend higher education state grant funds. Given the constrained budget environment, states have a strong interest in ensuring that the money is well spent.

**7. *Strengthen consumer protection laws.***

It is consumer fraud, not for-profit education per se, that harms students.

State laws and relief funds are the only source of redress for most students harmed by abusive practices. In strengthening state laws, policymakers should review laws from other states that target common abuses. If the provisions are passed as part of existing unfair and deceptive acts and practices laws (UDAP), states must ensure that these laws include strong private enforcement provisions. States must also remove impediments to effective private enforcement, including clarifying that class actions are allowed and that consumers may recover attorney fees.

**8. *Enforce existing laws while also seeking to strengthen legal tools.***

Every state has legal tools available to crack down on fraud and abuse in the for-profit sector. Nearly every state law could be strengthened, but the lack of new legislation should not be an excuse for paralysis.

**9. *Ensure adequate resources for borrower relief.***

States should create student tuition recovery funds with broad recovery criteria as well as adequate bond requirements. States must ensure that the funds remain solvent and prohibit raiding for other purposes.

**10. *Strengthen refund policies.***

States should adopt comprehensive refund policies so that students harmed by fraudulent practices do not have to pay for worthless services.

**11. *Provide a cooling-off period that gives students a right to cancel contracts with for-profit schools.***

These types of “cooling off” periods ensure that students have a reasonable period of time to terminate the enrollment agreements before incurring liability.

**12. *Establish targeted disclosure laws.***

Disclosure laws are never enough to police the industry, but combined with substantive consumer protection laws and relief sources, disclosure can help prevent harmful practices. Disclosure laws should be targeted at key outcome measures, including job placement and completion. However, states must ensure that outcome data is reliable and objective. Merely relying on the federal disclosure regulations is not sufficient since there are many flaws with this data. Among other problems, the data is generally self-reported and schools have incentives to inflate numbers.

**13. *Increase penalties for schools that violate state laws.***

In addition to private enforcement, schools must face biting penalties for legal violations, particularly if they are serial offenders.

**14. *Coordinate with state credit regulators to ensure that private loan products meet state licensing and other legal standards.***

State credit regulators must examine private loan products in their jurisdiction, particularly those originated by schools, and enforce licensing and other lending laws.

Protecting consumers requires aggressive action by the federal government and states. For too long, the states have either ignored the

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problem or worse become captive to unscrupulous school operators.

The stakes are high. If schools get away with fraud and deception, they leave individuals seeking to better their lives with nothing

but worthless certificates and mountains of debt. States that act quickly to adopt these recommendations will help protect vulnerable students and give them the opportunity to pursue their dreams.

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# APPENDIX A

## State-by-State Student Relief Chart

STATE	RECOVERY FUND	SURETY BOND	AGENT'S BOND	STATE	RECOVERY FUND	SURETY BOND	AGENT'S BOND
Alabama	NA	X	X	Maine	NA	X	NA
Alaska	NA	X	X	Maryland	X	X	NA
Arizona	X	X	NA	Massachusetts	NA	X	X
Arkansas	X	X	NA	Michigan	NA	X	X
California	X	NA	NA	Minnesota	NA	X	X
Colorado	NA	X	NA	Mississippi	NA	X	X
Connecticut	X	X	NA	Missouri	NA	X	NA
Delaware	NA	X	NA	Montana	—	—	—
District of Columbia	NA	X	X	Nebraska*	X	X	X
Florida	X	NA	NA	Nevada	X	X	X
Georgia	X	X	NA	New Hampshire**	X	X	NA
Hawaii	—	—	—	New Jersey	NA	NA	NA
Idaho	NA	X	NA	New Mexico	NA	X	NA
Illinois	NA	X	X	New York	X	NA	NA
Indiana	X	X	NA	North Carolina	X	X	NA
Iowa	NA	X	NA	North Dakota	NA	X	NA
Kansas	NA	X	NA	Ohio	X	X	NA
Kentucky	X	X	X	Oklahoma	NA	X	NA
Louisiana	X	X	X	Oregon	X	NA	NA

## State-by-State Student Relief Chart *(continued)*

STATE	RECOVERY FUND	SURETY BOND	AGENT'S BOND	STATE	RECOVERY FUND	SURETY BOND	AGENT'S BOND
Pennsylvania	NA	X	NA	Vermont	NA	NA	NA
Rhode Island	NA	X	NA	Virginia	X	X	NA
South Carolina	NA	X	NA	Washington	X	NA	NA
South Dakota	—	—	—	West Virginia	NA	X	NA
Tennessee	X	X	X	Wisconsin	X	X	X
Texas	X	NA	NA	Wyoming	NA	X	NA
Utah	NA	X	NA				

**KEY:** X = Available    NA = Not Available    — = Unable to Confirm

\*Two different agencies oversee proprietary schools in Nebraska. The Private Postsecondary Career Schools and Veterans Education unit within Nebraska's Department of Education regulates schools that issue certificates, diplomas, and associate's degrees. These schools must obtain all three types of financial protection. The Coordinating Commission for Postsecondary Education (CCPE) regulates institutions that confer bachelor's degrees and above. Statutes and regulations do not require schools under the CCPE to secure either type of bond or contribute to the Recovery Fund.

\*\*New Hampshire currently has both a Recovery Fund and a surety bond requirement. The state is phasing out the surety bond requirement. The Director of the Postsecondary Education Commission will determine when the Recovery Fund has accumulated an adequate balance before terminating the bond requirement.

Methods: NCLC surveyed state statutes and regulations to determine what financial protection was provided to students. In some instances, NCLC followed up with the state agency if information was unclear or ambiguous. Some states, like Florida, indicate that they do not require a bond unless a school appears financially unstable. NCLC did not consider such states to require a bond because the requirement does not cover all schools. NCLC could not confirm information on financial protection for students in Hawaii, Montana, and South Dakota. However, the three states do not appear to have regulations or statutes mandating bond coverage or establishing Recovery Funds.

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