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FOR-PROFIT SCHOOLS: A HISTORY OF ABUSE AND THE NEED FOR REFORM

For-profit schools are educational institutions owned by corporation shareholders. As such, for-profit schools are businesses selling a product, namely, education. The business model of recruiting more students and selling degrees has its problems. Publicly traded companies need to grow consistently, must turn a profit year to year, and must maintain their stock prices to satisfy investors. Because of this, for-profit institutions (“FPIs”) have come under fire in recent years for unethical and sometimes illegal practices.

“The number of publicly traded . . . providers of higher education grew steadily throughout the 1990s, and in 2010, the for-profit sector brought in \$29.2 billion in revenue. As of July 2010, the . . largest publicly traded FPIs were worth more than \$26 billion, with rapid growth a hallmark of their stocks.”¹

For-profit colleges operate on money they receive from students, the vast majority of whom use federal funding to pad the pockets of business owners. Operating on a model of “more students equals more income,” for-profit colleges have turned to illegal and unethical recruiting methods, for which they have come under scrutiny in the last several years. Despite a push for change, for-profit schools are still fraught with problems, leaving CEO’s with fancy cars, and hopeful students with mountains of debt and high unemployment rates.

Part I of this article will define for-profit institutions and explore the differences between for-profit and traditional post-secondary educational institutions. Part II will discuss the benefits of and criticisms against for-profit schools and will include a discussion of legal investigations that have taken place in recent years. Part III will offer potential solutions for increasing the quality of education at for-profit institutions, decreasing fraud and controversial business techniques, and making existing regulations more effective.

I. WHAT IS A FOR-PROFIT EDUCATIONAL INSTITUTION?

For-profit universities and schools typically fall into one of two

¹ Osamudia R. James, *Predatory Ed: The Conflict Between Public Good and For-Profit Higher Education*, 38 J. COLL. & UNIV. LAW 45, 50 (2011).

categories. The first includes schools that mimic traditional colleges, offering Associates, Bachelor's and Master's degrees in fields such as business, politics, criminal justice, medical fields, and education.² Much of the instruction at these schools is completed online.³ The other category includes schools that are usually referred to as "vocational" or "trade schools," which "provide education and training in technical fields, such as nursing, dental assistance, or air conditioning repair."⁴ Vocational and trade schools usually have physical campus locations.⁵ Some examples of for-profit schools include DeVry University, Ashford University, University of Phoenix, ITT Technical Institute, UEI, and Kaplan College.⁶

One of the starkest differences between for-profit education and traditional education is in the way the schools are funded. Traditional colleges are funded primarily through donations while for-profit institutions get the majority of their funding directly from students, usually from students who have taken out loans from the government.⁷ It is estimated that "the 15 publicly traded companies operating 'for-profit' colleges received 86 percent of their revenues from federal taxpayer dollars."⁸ While for-profit colleges only enroll between 10 and 13 percent of all students attending college, they receive 25 percent of all federal financial aid dollars.⁹ In 2009–10, this amounted to 25 percent of the total Department of Education student aid program funds. Tuition at for-profit colleges is typically much higher than at comparable programs at community colleges and public universities.¹⁰ One investigation found that "Associate degree and certificate programs averaged *four times* the cost of degree programs at comparable community colleges. Bachelor's degree programs averaged 20 percent more than the cost of analogous programs at flagship public universities."¹¹

Student demographics differ at for-profit schools as well. For-profit schools draw higher percentages of minority, low-income, and older

² Kiara Ashanti, *What Is a For-Profit School: Pros and Cons of Online Colleges*, MONEY CRASHERS, <http://www.moneycrashers.com/for-profit-online-colleges/> (last visited Feb. 28, 2015).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ David J. Demming et al., *The For-Profit Post Secondary School Sector: Nimble Critters or Agile Predators* 1 (July 2011), available at http://www.frbatlanta.org/documents/news/conferences/11_employment_education_demming.pdf.

⁸ *For-Profit College Investigation*, <http://www.harkin.senate.gov/help/forprofitcolleges.cfm> (last visited Feb. 28, 2015).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

students.¹² One study found:

African Americans account for 13 percent of all students in higher education, they are 22 percent of those in the for-profit sector. Hispanics are 15 percent of those in the for-profit sector yet 11.5 percent of all students. Women are 65 percent of those in the for-profit sector. For profit students are older, about 65 percent are 25 years and older, whereas just 31 percent of those at four-year public colleges are and 40 percent of those at two-year colleges are.¹³

Another difference is in the way in which classes are taught. In traditional schools the vast majority of classes are held at a physical location on a college campus, with professors who have obtained advanced degrees, mainly PhDs., in the field they are teaching.¹⁴ In contrast, for-profit institutions primarily run their classes in an online format, although there are a few on-campus for-profits, the majority of which are trade schools.¹⁵ Furthermore, for-profits generally focus their degree programs on areas where they can hire practitioners to teach, instead of seeking out professors with advanced degrees.¹⁶

Accreditation is another difference. “Historically, for-profit colleges have been accredited mostly by national groups. . .[while] most non-profit, degree-granting public and private institutions are accredited by one of six regional bodies.”¹⁷ Most education specialists agree that regional accreditation is more rigorous and prestigious than national accreditation.¹⁸ This can create problems for students who want to transfer from a for-profit school to a traditional school. While it’s up to individual institutions to determine what credits to accept or not accept, the accreditation of the transferring school is an important factor.¹⁹ Accreditation is “designed to protect consumers and taxpayers from diploma mills. . .[and is] important to students because it can help them transfer credits from one college to another and can signal that a candidate’s academic training has met certain standards.”²⁰ Accreditation is also important to the Department of Education in determining whether

¹² Vasanth Sridharan, *The Debt Crisis in For-Profit Education: How the Industry Has Used Federal Dollars to Send Thousands of Students into Default*, 19 Geo. J. Poverty L. & Pol’y 331, 336 (2012).

¹³ Demming, *supra* note 7, at 6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Mary Beth Marklein, *For-Profit Colleges Under Fire For Value, Accreditation*, USA TODAY (Sept. 29, 2010), http://usatoday30.usatoday.com/news/education/2010-09-29-1Aforprofit29_CV_N.htm.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

or not an institution qualifies for federal funding.²¹

FPIs lag “behind other types of colleges in areas such as employment outcomes, student satisfaction with academic offerings, debt levels and loan default rates.”²² Furthermore, for-profit students are more likely to be unemployed than traditional students 6 years after graduation.²³ For-profit students “also earn less money on average – about \$1,800 to \$2,000 less, or 8 to 9 percent of their predicted annual incomes.”²⁴ It is therefore unsurprising that for-profit students have trouble paying off their student loans and have higher default rates.²⁵ Furthermore, for-profit students “report lower satisfaction with their courses of study and are less likely to consider their education and loans worth the price tag.”²⁶

II. BENEFITS AND CRITICISMS OF FPIs – A LEGAL INVESTIGATION

A. The Benefits of FPIs

For-profit schools do provide benefits. With the majority of the programs being solely online, they provide the opportunity of an education to people who simply cannot attend traditional on-campus programs. For-profit online institutions provide an avenue for education to full-time workers, single parents, elderly individuals who may not physically be able to attend traditional campuses, and people living in rural areas away from brick and mortar institutions. Additionally, admission criteria at for-profit online institutions is usually quite a bit lower than most traditional schools and is comparable to admission criteria for 2-year community colleges, usually only requiring a high school diploma or GED.²⁷ Despite potential benefits, “for-profit education companies are facing public criticism and regulatory scrutiny over high drop-out rates, graduates’ poor job prospects and the high debt levels of its students.”²⁸

²¹ *Id.*

²² Paul Fain, *Questions of Quality*, INSIDE HIGHER ED (Dec. 7, 2011), <http://www.insidehighered.com/news/2011/12/07/profits-lag-behind-other-colleges-student-outcomes>.

²³ *Id.*

²⁴ *Id.*

²⁵ Demming, *supra* note 7, at 2.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *States Investigating ITT, other for-profit education firms*, ASSOCIATED PRESS, (Jan. 27, 2014), <http://www.ibj.com/states-investigating-itt-other-for-profit-education-firms/PARAMS/article/45809>.

B. Investigations and Criticism

Since the late 1980s, the U.S. Department of Education's ("DOE") Office of the Inspector General, Congress, and the General Accountability Office ("GAO") have all conducted investigations on FPIs.²⁹ These organizations have concluded through their investigations that FPIs commit fraud and abuse student financial aid programs.³⁰ Among the problems discovered in the investigations were "deceptive recruitment practices, false claims and representations to prospective students, falsification of admission and financial aid records, disbursement of aid to ineligible students, and non-existent or inadequate teaching infrastructure."³¹ The investigation concluded the fraud and abuse was motivated by the desire to receive federal funds from students, creating "a con artist's perfect dream . . . [by] pressuring vulnerable and low-income consumers into signing documents obligating them to thousands of dollars."³²

A report filed as the result of an investigation in 2012 by Senator Harken shows "overwhelming documentation of exorbitant tuition, aggressive recruiting practices, abysmal student outcomes, taxpayer dollars spent on marketing and pocketed as profit, and regulatory evasion and manipulation."³³ Furthermore, in 2010, the GAO conducted an undercover investigation that "revealed a damaging assessment of the industry."³⁴ Fifteen FPIs were investigated, and the investigation found that nearly one-third of them had "encouraged fraudulent practices, such as the falsification of financial aid forms to qualify for federal aid. Likewise, all fifteen institutions had made deceptive or otherwise questionable statements. . . about such matters as accreditation and statistics regarding graduation, employment, and expected salaries."³⁵

The reason behind unethical practices can be explained by the goal

²⁹ Melanie Hirsch, *What's in a Name? The Definition of an Institution of Higher Education and its Effect for For-Profit Postsecondary Schools*, 9 NYU J. LEGIS. PUB. POL'Y 817, 819 (2006).

³⁰ *Id.*

³¹ *Id.* See also Deanne Loonin & Julia Devanthy, *Making the Numbers Count: Why Proprietary School Performance Data Doesn't Add Up and What Can Be Done About It*, NAT'L CONSUMER L. CR., <http://www.nclc.org/news/ProprietarySchoolsReport.pdf>.

³² *Id.*

³³ Tamar Lewin, *Senate Committee Reports on For-Profit Colleges, Condemns Costs and Practices*, N. Y. TIMES (July 29, 2012), http://www.nytimes.com/2012/07/30/education/harkin-report-condemns-for-profit-colleges.html?_r=0.

³⁴ Gayland O. Heathcoat II, *For-Profit Under Fire: The False Claims Act as a Regulatory Check on the For-Profit Education Sector*, 24 LOY. CONSUMER L. REV. 1, 2 (2011). See also *For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices: Hearing on GAO Investigation Before the S. Comm. on Health, Education, Labor, and Pensions* (August 4, 2010) (statement of Gregory D. Kutz, Managing Director Forensics Audits and Special Investigations), <http://www.gao.gov/new.items/d10948t.pdf>.

³⁵ *Id.*

of FPIs. Because the goal of FPIs is to “sell education,” FPIs need to enroll students to sell their product. They need to enroll students to receive funds from students on government-aid. One way this motivation manifests itself is in the number of “admissions counselors” FPIs hire. The motivation to “sell education” rather than help students in their programs get jobs is evident in FPI’s staffing demographics. One FPI report noted, “[e]nrolling students, and getting their federal financial aid, is the heart of the business, and in 2010, the report found, the colleges studied had a total of 32,496 recruiters, compared with 3,512 career-services staff members.”³⁶

The allocation of money in FPIs is another indicator of the motivation to recruit students taking precedent over providing quality education and helping people be placed in careers. “Among the 30 companies studied in 2012, an average of 22.4 percent of revenue went to marketing and recruiting, 19.4 percent to profits and 17.7 percent to instruction. Their chief executive officers were paid an average of \$7.3 million.”³⁷

The majority of revenue for FPIs comes from government loans, which in turn means taxpayers are paying CEOs of FPIs with their tax dollars.³⁸ The Harken report noted: “The bulk of the for-profit colleges’ revenue, more than 80 percent in most cases, comes from taxpayers. The Apollo Group, which operates the University of Phoenix, the largest for-profit college, got \$1.2 billion in Pell grants in 2010–11, up from \$24 million a decade earlier.”³⁹

FPIs are looking for new, creative ways to comply with reformed law that requires FPIs to produce at least 10 percent of their revenue from sources other than the Department of Education.⁴⁰ Many are turning to aggressive recruiting efforts directed at military personnel and veterans, whose benefits count towards meeting that 10 percent requirement, despite coming from the federal government.⁴¹ “Apollo alone got \$210 million more in benefits under the post-9/11 G.I. Bill. Despite receiving so much revenue from taxpayer supported government aid, two-thirds of Apollo’s associate-degree students leave before earning their degree.”⁴²

Furthermore, in order to increase recruitment numbers FPI admission

³⁶ Lewin, *supra* note 33.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

counselors at FPIs have been found to “admit students who have not graduated from high school or earned a general equivalency diploma, count students who never show up or drop out before the first week, sign up friends, family, or themselves, and mislead students about classes, programs, and the nature of the institution.”⁴³ These admission practices are unethical, as the schools promise to provide quality education to degree-seeking students and yet, admit students who are clearly not ready to complete a college degree. Furthermore, creating phony student profiles, such as signing up friends and family as noted above, in order to receive more benefits is deceptive and fraudulent. Misleading students about the programs in which they are being enrolled to collect their financial aid is equally deceptive and unethical.

Because FPIs rely on students who pay tuition in order to increase revenue, “[t]uition decisions seem to be driven more by profit-seeking than instructional costs.”⁴⁴ For example, an 8 percent increase in fees for the nursing program at Kaplan was recommended because it would allow the school to make with one student, what they would have made with three.⁴⁵ In addition, National American University increased its tuition mid-year because the school had not met its profit expectation for the summer term.⁴⁶ Tuition at almost all FPIs is often set at the exact amount students can qualify for with the maximum federal aid, including federal loans and grants.⁴⁷ According to documents from Alta Colleges, schedules were even restricted in order for the school to “grab more of the students’ Stafford.”⁴⁸

The amount of default students at FPIs face is startling. One report indicates that students at for-profit colleges “make up 13 percent of the nation’s college enrollment, but account for about 47 percent of the defaults on loans. About 96 percent of students at for-profit schools take out loans, compared with about 13 percent at community colleges and 48 percent at four-year public universities.”⁴⁹ Because colleges whose students go into default at high rates can lose their eligibility to receive federal funding, “many of the for-profit colleges try to move students having trouble with repayment into deferral or forbearance until they are past the years the government monitors.”⁵⁰

⁴³ Hirsch, *supra* note 29.

⁴⁴ Lewin, *supra* note 33

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

III. A NEED FOR REFORM

The Higher Education Act (“HEA”) of 1965, specifically Title IV, regulates federal funding for higher education.⁵¹ There are several programs under Title IV that are the major sources for federal financial aid. They include: federal family education loans, direct loans, federal Perkins loans, federal Pell grants, academic competitiveness grants, national SMART grants, federal supplemental educational opportunity grants, and the federal work-study program.⁵² 80 percent of student financial aid is distributed in the form of a loan, 18 percent in the form of grants, and 2 percent from the work-study program.⁵³

There are several regulations controlling which students can receive financial aid and which schools can collect financial aid from students. One requirement is that students must be making “satisfactory academic progress.”⁵⁴ This means that a student must maintain a cumulative GPA of 2.0 by the end of the second academic year and must maintain the 2.0 GPA by the end of each following term.⁵⁵ Furthermore, the student “must be completing credit units at a rate which would enable him or her to complete the requirements for the degree in a maximum time frame” which is calculated based on whether the student is full- or part-time, and the student must complete at least two-thirds of all attempted coursework successfully.⁵⁶ There are reports of FPIs skirting around this requirement by fudging with student GPAs, by not allowing leaves of absence for student emergencies, and by giving passing grades to students who would fail classes at traditional schools with higher academic standards.⁵⁷ The purpose of Title IV funding was to make sure every U.S. Citizen had the opportunity to receive a quality education.⁵⁸ However, practices by FPIs show they are more interested in receiving a student’s financial aid than giving the student a quality education. In order to tighten this rule to make it more difficult to have abusive business practices, FPIs should be

⁵¹ Higher Education Act of 1965, Pub. L. No. 89-329, tit. 4, 79 Stat. 123.

⁵² *What are Title IV Programs*, START HERE GO FURTHER FEDERAL STUDENT AID, http://federalstudentaid.ed.gov/site/front2back/programs/programs/fb_03_01_0030.htm (last visited Feb. 27, 2015).

⁵³ *Id.*

⁵⁴ *Satisfactory Academic Progress Standards for Federal Title IV Aid Program*, PENN STUDENT REGISTRATION & FINANCIAL SERVICES, <https://www.sfs.upenn.edu/special-policies/policies-interim-academic-progress-title4.htm> (last visited Jan. 30, 2015).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Kelly Field, *Faculty at For-Profits Allege Constant Pressure to Keep Students Enrolled*, THE CHRONICLE OF HIGHER EDUCATION (May 8, 2011), <http://chronicle.com/article/Pawns-in-the-For-Profit/127424/>.

⁵⁸ Matthew A. McGuire, *Supreme Education: For-Profit Colleges and the Problem with Title IV Federal Student Aid*, 62 DUKE L. J. 119 (2012).

required to raise their academic standards and those standards should be subject to government oversight. More government oversight is needed in FPIs than traditional colleges because of the history of abuse. In the absence of SAT or ACT scores, students should be required to take basic math and English placement exams to determine their eligibility. This would reduce the number of students enrolling in FPIs that are being enrolled despite the unlikelihood to succeed, which would ultimately reduce the amount of manipulation FPIs engage in to meet the academic progress standard. The quality of education for other students enrolled would also increase. Furthermore, in addition to an academic progress requirement, Title IV should include a matriculation requirement. The number of students who drop out of college after receiving financial aid should be considered when addressing oversight. This would prevent FPIs from signing students up, collecting financial aid, and then not giving them adequate help to succeed. For-profits should be required to offer career services, tutoring, and an efficient and easy process for receiving guidance aside from financial advising.

Another regulation that Title IV requires is called the 90/10 rule.⁵⁹ The 90/10 rule states that at least 10% of revenue received by the school must be from sources other than federal financial aid.⁶⁰ FPIs can skirt around this rule by using aggressive recruiting techniques of U.S. military personnel and veterans because their GI Bill benefits do not classify as federal financial aid for purposes of the 90/10 rule. One way to tighten this restriction is to include all forms of government assistance, including military benefits. If schools were required to count the GI Bill as part of federal financial aid, this would lower the abuse to military or veteran students. Furthermore, requirements could be separated based on the type of financial aid. The 90/10 rule could apply to Federal Stafford Loans and another rule can be implemented that limited the revenue received from GI and other military benefits.

Accreditation is another requirement to receive federal financial aid.⁶¹ FPIs do not exactly skirt around this rule, as all FPIs that receive federal financial aid are nationally accredited.⁶² However, the purpose of accreditation is consumer protection, guaranteeing the quality of the

⁵⁹ *90/10 Rule*, FIN AID, <http://www.finaid.org/loans/90-10-rule.phtml> (last visited Jan. 30, 2015).

⁶⁰ *Id.*

⁶¹ *Accrediting Commission for Schools*, WASC, http://www.acswasc.org/process_postsecondary.ht (last visited Jan. 30, 2015).

⁶² Mary Beth Marklein, *Questions of Quality*, INSIDE HIGHER ED (Dec. 7, 2011), <http://www.insidehighered.com/news/2011/12/07/profits-lag-behind-other-colleges-student-outcomes>.

education they are to receive meets a certain standard.⁶³ However, many FPIs fail to meet the standards for regional accreditation, which matters for the purposes of transferring credit and, often, for employment.⁶⁴ Furthermore, studies and investigations have shown that FPIs frequently mislead or lie about their accreditation to gain more students. FPIs should therefore be required to publish who has accredited them, making the distinction between national and regional accreditation, and should be subject to government oversight. Full disclosure should be required with websites, pamphlets, and phone conversations. Furthermore, a solution to this problem is to change Title IV funding so that only regionally accredited schools qualify to receive funding. This does create the problem that the poorer, minority, and elderly groups who are typically drawn to FPIs would not be able to receive funding for their programs. However, it would ensure that these same groups are not misled into enrolling in a program and later defaulting on their loans. FPIs should be required to meet a higher standard of education, in order to meet the goals of serving a poorer population with education and maintaining ethical and quality standards within that education.

Another regulation affecting a school's eligibility for Title IV funding is the default rates of former students. If an institution has a high default rate, they can be in jeopardy of losing their Title IV funding. As mentioned previously, because colleges whose students go into default at high rates can lose their eligibility to receive federal funding, "many of the for-profit colleges try to move students having trouble with repayment into deferral or forbearance until they are past the years the government monitors."⁶⁵ In order to tighten this rule, Title IV could be amended to include a regulation on the number of students entering forbearance or deferral. Oversight can include watching the number of years a student remains in forbearance or deferral, which speaks to the level of employment they were able to receive from their degree. Furthermore, Title IV regulations should monitor how many students enter default, deferral, and forbearance because they were unable to complete their degree.

IV. CONCLUSION

FPIs have had their problems in the past. They present a positive,

⁶³ Robert C. Dickeson, *The Need for Accreditation Reform*, <http://www2.ed.gov/about/bdscomm/list/hiedfuture/reports/dickeson.pdf> (last visited Jan. 30, 2015).

⁶⁴ Stephanie Chen, *For-Profit College Risk, Huge Debt, Questionable Degree*, CNN (Sept. 2, 2010), <http://www.cnn.com/2010/LIVING/09/02/for.profit.college.debt/>.

⁶⁵ *Id.*

and needed, market for education that opens up opportunities for those whose circumstances do not allow them to attend traditional colleges. However, FPIs have a history of abuse that has left them, and the students who attend them, with a bad reputation. There is no reason a degree from a FPI should be considered less valuable in society. Indeed, the abuses committed by these institutions have undermined the very purpose of having alternative avenues to education.

The regulation on FPIs is not tight enough and calls for greater oversight. In addition, new rules need to be implemented and existing rules enforced with greater weight. The government should close loopholes and encourage for-profit institutions to abide by rules under threat of losing Title IV funding. Accreditation requirements should be strengthened and more weight should be given to student performance within schools. Only then can we stop the abuse and give for-profit schools the reputation they deserve and students the education they need.

Stephanie N. Morse