

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.¹ 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.