

For-Profit Postsecondary Education: Encouraging Innovation While Preventing Abuses

A 2018 TOOLKIT FOR STATE POLICY MAKERS



the institute for
college
access & success

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An independent, nonprofit organization, the Institute for College Access & Success (TICAS) works to make higher education more available and affordable for people of all backgrounds. By conducting and supporting nonpartisan research, analysis, and advocacy, TICAS aims to improve the processes and public policies that can pave the way to successful educational outcomes for students and for society.



Public, nonprofit, and for-profit colleges all struggle with inconsistent quality. On average fewer than three in five students graduate within six years.¹ More than a million students default on their federal loans every year.² However, these challenges are greatest among for-profit colleges, whose students are less likely to see earnings gains, more likely to have unaffordable debt, and more likely to default on their student loans.

Not coincidentally, state oversight is weakest at for-profit colleges. Public colleges and universities are run by elected or appointed officials, answer to state legislatures every year when setting their budgets, and are subject to a variety of state laws regarding how they teach their students and treat their employees. Nonprofit colleges are required to be led by trustees without a financial conflict. But many states do relatively little to oversee for-profit colleges, which enroll 2.5 million students nationally.³

State policy makers must evolve their long-standing role in higher education, and build on their historical role in consumer protection, to respond to today's higher education landscape. State attorneys general have already begun to do so, leading some of the worst colleges to shut their doors. But better than remedying these harms after the fact would be preventing them in the first place.

State policy makers may have assumed that, because for-profit colleges receive up to 90 percent of their funds through the U.S. Department of Education and additional funds for serving military and veteran students, overseeing them is primarily a federal responsibility. But in fact, federal oversight has been demonstrated to be inadequate, and the Trump administration is in the process of rolling back the protections that do exist.

The sections that follow describe seven approaches for states to consider to protect students against low-quality colleges and deceptive and unfair practices. While most of these policies can be applied to all types of colleges, it is at for-profit colleges heavily reliant on federal student loans where both the problems, as well as the benefits of additional oversight, are greatest. The suggested policies are intended to steer the colleges toward positive outcomes for students and for the state.

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If you are a state official and have questions about or would like technical assistance with regard to any of these ideas, contact statepolicy@ticas.org.

Seven State Policy Ideas

Implement Accountability Standards for State Financial Aid or Other Government Support

THE PROBLEM

Many states with state financial aid programs have effectively adopted federal outcome standards by deferring to them in lieu of developing their own. By doing so, states pass up an opportunity to promote college improvement, protect students, and use state resources more effectively.

Defaulting on a student loan has severe and long-lasting consequences for borrowers. It can devastate a borrower's credit, making it difficult to rent an apartment or buy a car and, increasingly, to get a job. Borrowers may be hounded by collectors, and debt can balloon because of default and collection fees. Borrowers who default on federal student loans cannot get federal grants or loans to return to school, and the government can garnish wages, seize tax refunds, and eventually dock Social Security payments.

Rates of borrowing and default are particularly high at for-profit colleges. Among students who started college in 2003–04, about nine out of ten students who attended for-profit colleges borrowed for their education, and *more than half* of them had defaulted on their loans by 2015—more than twice the default rate of borrowers from any other college type.⁴

For each college that offers federal student loans, the U.S. Department of Education measures the share of borrowers who default on their loans within three years of entering repayment.⁵ With some exceptions for schools where relatively few students borrow, schools with three consecutive default rates of 30 percent or higher lose eligibility for all federal financial aid. Schools with a single-year default rate above 40 percent lose eligibility for federal loans only.

These standards are designed to ensure that taxpayer funding does not continuously flow to colleges where student outcomes are unacceptably poor. However, the standards are widely considered insufficient to either hold colleges accountable or protect students. For example, colleges can help students avoid default by encouraging them to defer payment on their loans, a tactic that postpones the worst consequences of unaffordable loans but can lead to accrued interest and larger loan balances in the future.⁶ These low standards also fail to encourage colleges to improve beyond a minimally low bar.

Student loan defaults translate into costs to the public as well, and not just the write-off of uncollected loans. Borrowers who default may not be able to participate in the workforce in ways that meet a state's needs, even if they completed a degree or certificate. As noted above, defaulting on a student loan destroys the borrower's credit rating, making it difficult to rent an apartment, buy a car—which may be necessary to get to work—or even get a job. Those who trained for specific jobs may be prevented from securing or renewing the license needed to practice their trade or profession.⁷ They also cannot get additional student aid for the kind of quality training and education that would enable them to help meet workforce demands.⁸ Finally, with employment options limited, defaulted borrowers and their families who are unable to meet their basic needs may also have to rely on taxpayer-funded benefits, such as health care or food stamps.

WHAT STATES CAN DO

States can set their own minimum standards for colleges and/or programs that protect taxpayers and students against unaffordable student loans and the wasting of time and money on low-quality educational pursuits.

California is one of twenty-eight states that provide state grant aid to students attending for-profit colleges.⁹ With growing concerns about student outcomes, the California Legislature opted in 2011 to better target limited state grant dollars by imposing institutional eligibility criteria that were stronger than federal standards. Legislators

strengthened these criteria in 2012, and have since required that colleges keep their default rate below 15.5 percent in order to receive state Cal Grants—a much tougher standard than the 30 percent needed for federal aid eligibility.¹⁰ To protect colleges where few students borrow, at which default rates provide a less reliable assessment of institutional quality, the new standards applied only to colleges where 40 percent or more of students borrow. According to the California Legislative Analyst’s Office, the standards have “generally worked as intended,” and “saved money in the short term and focused state financial aid resources on schools with better student outcomes.”¹¹

The Milwaukee City Council took a different but related approach to targeting investments and protecting students. In 2017, the council passed an ordinance requiring that for-profit colleges be in compliance with rules that require career training programs to meet student debt standards in order to seek direct financial assistance from the city, and that developers seeking assistance for projects related to selling or leasing real estate to for-profit colleges ensure the same.¹²

Use a Market-Value Test to Protect Students and Taxpayers

THE PROBLEM

State policy makers seeking to subsidize postsecondary education can use market forces to ensure that colleges are offering an education that is worth its cost.

When every student at a school is funded by a government voucher such as a federal student loan, and no one is independently paying the full price themselves, there is a third-payer problem: no market indicator verifies that the school is charging a reasonable price for the education being provided. Without appropriate oversight and regulation, colleges may base tuition charges on the amount of aid available, rather than on a market consideration of the value of the education or degree. In a study of certificate programs comparing for-profit colleges that do and do not take federal aid, those

The State Role

States have long had a primary role in making quality opportunities for higher education available to their citizens. They built the public universities and community colleges that serve most students, and chartered many of the early nonprofit colleges. At both public and nonprofit colleges, states relied on elected or appointed trustees, without an ownership interest, to guide the colleges responsibly and in the public interest. Before the latter half of the twentieth century, there were no major for-profit higher education institutions.¹³

It was not until public money became available that for-profit colleges burst onto the scene in a big way, because colleges can bring in billions of dollars of revenue even if the students are not able to graduate, find jobs, and repay their student loans. Nixon appointee Caspar Weinberger observed that schools too reliant on federal loans had a strong incentive to dilute their academic standards and use exaggerated claims to enroll students. He realized that the government needed to conduct more regulatory oversight when federal aid was made available than when it wasn’t.¹⁴

Easy availability of federal grants and student loans to for-profit colleges have fueled three major explosions of fraud and abuse over the past fifty years, each time caused by a relaxation of oversight at the federal level.¹⁵ Following the most recent scandals in the 2000s, the federal government established minimum standards for the state role. However, compared to the strict controls placed on public and nonprofit colleges, state oversight of for-profit colleges—which frequently are more reliant on taxpayer funds than are public and nonprofit institutions—is still quite minimal. In fact, some state boards that oversee for-profit colleges are themselves made up of for-profit college owners and administrators. Some offices do not have the resources to conduct site visits or do more than refer student complaints to another state bureau or accrediting agency. Compliance with the minimal federal expectation for state oversight should be seen as the beginning—not the end—of the story.

institutions with access to federal aid charged on average 78 percent more than colleges offering the same type of training but without federal tuition aid.¹⁶

When a variation of this problem occurred in housing voucher programs, the solution was to require that a proportion of the apartments in a development be rented without vouchers, so that there was an indicator of the fair market value of the rental, protecting the government from wasteful spending on overpriced apartments. Whether for an apartment or an education, full-pay customers validate what the market price is; an asking price signifies nothing without paying customers.

Federal policies, both for the GI Bill and the federal financial aid programs, embrace the idea that customers not subsidized by the government should validate any taxpayer-funded price. These private customers can include full-pay students, private scholarship programs, or employer-provided tuition coverage. The for-profit University of Phoenix was able to grow without major scandal in the 1990s because it focused on employers who were paying the bulk of the tuition for the school's working adult students.¹⁷

The federal policies, however, have loopholes that allow colleges to escape market accountability by increasing tuition and/or by enrolling students financed by multiple federal agencies. Currently for veterans, no more than 85 percent of the students in a program at a school can be on the GI Bill, unless the school has asked for and received a waiver of the requirement. This policy was first established before other widely available federal aid programs, including federal student loans and Pell Grants, were created to support civilian students. As a result, while it remains in effect today, its reach is far more limited because students who do not receive financial aid from the GI Bill typically receive it from the U.S. Department of Education.

The Department of Education has a similar provision that applies to whole schools rather than to particular programs, limiting the amount of aid that a school can receive from federal financial aid funding to 90 percent.¹⁸

Like the GI Bill rule, the “90–10” rule only considers aid provided by the Department of Education and not from other agencies or state aid programs. As a result, for-profit colleges often target veterans for their GI Bill dollars to help cover the remaining 10 percent needed to fulfill this requirement.¹⁹ Further, the rule applies to *revenue* that comes from outside the department, rather than to *students* who are validating the price, an important distinction—and problematic loophole—that was not appreciated when the provision was first adopted in 1992.

WHAT STATES CAN DO

To protect consumers and taxpayers from overpriced, low-quality programs, states can improve on federal rules to require a market value check while closing the loopholes in the federal rules.²⁰ States could apply this requirement to colleges in several ways. This new requirement could be attached to state financial aid. It could be added as a requirement for schools or programs to be approved by the Veterans State Approving Agency. A state could also consider a condition for state licensure that a school, if it chooses to participate in the federal student loan program, agree to a market-price-validation goal.²¹

To improve on the federal approach, a state measure could include all taxpayer-funded aid, including federal grants and loans and GI Bill funds, and even any state financial aid provided, instead of just funds from a single federal agency. It could raise the threshold for what constitutes a minimum level of private support, from 10 or 15 percent (as in the Departments of Education and Veterans Affairs rules, respectively) to something higher.

Finally, states could ensure a certain share of students, not revenue, is paying out of pocket, so that there is a market validation of the tuition price being charged to taxpayers. Under the Department of Education's 90-percent-of-revenue cap, a school could still have 100 percent of its students receiving federal aid, with *no one* providing the validation of the tuition price. With a 10-percent-of-*students* approach, a tenth of the students would serve as the evidence that the tuition charge is appropriate.

Publish Employment Outcomes for All Colleges' Programs

THE PROBLEM

Students need accurate information about college outcomes to make informed choices about whether and where to enroll, and how much to pay or borrow in order to do so. For many students, attending college is the largest and most important investment of their lifetimes, and they often make it with expectations about their future careers or salaries. In most cases, the investment pays off, but expected employment outcomes vary widely from college to college, and especially from program to program. These differences should be available to prospective students, but generally aren't.

Job placement rates are commonly calculated by colleges for individual programs, as required by either their accrediting agencies or their states, and used for both accountability and disclosure purposes. Yet the rates are calculated so differently across entities so as to render comparisons useless. Consider the hair design certificate program at the Lloyd Campus of Phagans School of Hair Design. According to disclosures required under the federal gainful employment rule, 46 percent of program graduates got jobs under a calculation defined by the state, compared to a job placement rate of 64 percent as defined by the accrediting agency.²²

In recent years, the U.S. Department of Education has begun publishing earnings information for colleges on the College Scorecard, a tool designed to provide information on colleges' costs, outcomes, and other details in a consumer-friendly way, but it does not include data by program. The federal government also calculates earnings information for certain college programs under the gainful employment rule, for the purpose of student disclosures, though it has apparently halted the calculations of these data as it reconsiders this rule.

WHAT STATES CAN DO

States should create links between colleges' student records and states' wage data and calculate apples-to-apples information on employment outcomes.

States are increasingly using unemployment insurance records to publish reliable earnings information for employed graduates of particular college and universities programs. States that have created user-friendly websites that publish employment outcomes for different majors at public colleges and universities include California, Florida, Tennessee, Texas, and Virginia.

However, only one state—Minnesota—includes for-profit college programs in the data it publishes at www.mnedtrends.org. This enables students to compare earnings levels across programs or schools, to determine whether there are employment outcome differences that warrant consideration. While calculating the ideal job placement rate and/or earnings information would require federal intervention rather than states, there is more for states to do in creating the data linkages needed to explore college and program-level outcomes.

Protect Students with Tuition Recovery Funds

THE PROBLEM

When businesses fail, they often can't pay all their bills. Creditors can end up waiting months or years as the corporation's finances are worked out through bankruptcy proceedings. In the case of a school, the creditors may also include students who paid tuition for an education and related services, like job search help, that they did not receive. In some recent cases, it has even included students with valid legal claims because they were misled by recruiters about the school or about their loans.

Every year some schools—both for-profit and nonprofit—shut down.²³ It is usually the for-profit schools, though, that close with little or no warning, leaving students or taxpayers with a hole to fill.²⁴ The case of ITT Tech demonstrates why for-profit schools are more at risk for sudden closure. In the 2000s, ITT Tech more than tripled in size, from 28,639 to over 88,000 students.²⁵ The company's tuition was among the highest of any for-profit college, forcing students to borrow the maximum in federal loans and even more in private student loans.²⁶ Meanwhile, ITT's spending on instruction was low,²⁷ leading to an increase in

For-Profit Colleges, for Better or Worse

For-profit companies have played pioneering roles in the higher education market, providing rapid-response training to address changing industry needs, reaching out to underserved populations, and testing ways to use technology to reduce costs. Compared to traditional colleges and universities, they can change strategies quickly and rapidly raise capital to expand. For instance, the University of Phoenix in the 1990s proved that there were hundreds of thousands of incumbent workers eager to earn their bachelor’s degrees. Traditional colleges followed that example, creating programs that better served working adults.

At the same time, for-profit executives can feel enormous pressure to prioritize making as much money as possible as quickly as possible. They can, as Andrew Rosen, the CEO of Kaplan Higher Education, wrote, “exploit the short-term opportunity for profits that’s inherent in this [for-profit] model in a way that hurts students, taxpayers and the entire industry.” While according to Rosen the majority of for-profit leaders resist the temptation, they have both the means and the incentive to “rev up the recruitment engine, reduce investment in educational outcomes,” and deliver “a dramatic return on investment.”²⁸

Dismissing nonprofit institutions as merely having a different “tax status,” as some defenders of the industry do, misses the point: strict regulation of public and nonprofit institutions is what defines them as public or nonprofit. The accountability structures, as shown below, are fundamentally different.

Regulatory Differences Define Whether an Entity Is Public, Nonprofit, or For-Profit

	PUBLIC	NONPROFIT	FOR-PROFIT
Who is responsible for governing the institutions, including setting tuition rates and budgets?	Elected and appointed state officials	Trustees	Owners
What are they allowed to spend money on?	Education or another public purpose	Education or a charitable purpose ²⁹	Anything, including distributions of profit for owners
Can top-level decision-makers personally profit from the operations of the institution?	Generally no	Generally no ³⁰	Yes
Do colleges have access to equity markets to invest and expand?	No	No	Yes
Is there a financial backstop if something goes wrong and the college is bankrupt?	Taxpayers	No	No

At public and nonprofit institutions, the public accountability and purposeful separation of control from financial gain helps to explain why those institutions frequently adopt decentralized, consultative decision-making processes, weighing multiple objectives and constituencies. There are benefits to these inclusive processes, though they can also leave colleges more plodding and overly tradition-bound.

For-profit institutions, meanwhile, tend to adopt more centralized decision-making processes and focus more squarely on growing enrollment and cutting costs. This profit-focused governance structure explains why, at their best, for-profit colleges are seen as more innovative and responsive to what attracts customers, but at worst they cross the line into excessive tuition, poor quality, and even predatory recruiting.

cash reserves but inadequate support for students. When the market started faltering, ITT Tech spent these reserves bulking up executive compensation and pumping up the stock price through stock buybacks,³¹ a use of funds that is not available to leaders of nonprofit and public colleges. When the U.S. Department of Education insisted that the company put up some collateral for federal student loans, the company's bank account had insufficient funds, and the executives and investors who had benefited from the stock buybacks were under no obligation to return the money. The company ultimately collapsed, leaving tens of thousands of students in the lurch³² and many more former students with student loans they are unable to repay.³³

Students whose schools close before they finish their program are eligible under federal law to get their federal student loans discharged, but this is only limited relief—it doesn't help students and families who paid out of pocket, with private loans, or with alternative means. States can create additional avenues for relief to help in these situations.

WHAT STATES CAN DO

Fewer than half of all states already have a state student tuition recovery fund (STRF) or "student guaranty" fund to reimburse tuition to students whose college closes or who are defrauded by their college.³⁴ STRFs are designed by the state and are collectively funded by schools operating within the state. Through the fees paid by schools, students are provided protection without taxpayer expense. Importantly, these funds can help offset students' financial losses beyond federal loans, providing protection to students who paid all or some of their tuition and other costs out of pocket or with private loans.

In many cases, there are limits to the support STRFs can provide. Depending on the state, they may not reimburse costs to all students who have attended colleges that closed. In other states, STRFs are limited to only certain types of schools, or to only nondegree programs.³⁵ STRFs can also have burdensome applications for reimbursement, further limiting the number of students who will actually receive relief. In the cases where compensation to victims

is provided, there may be caps on the amount reimbursed, so tuition and other expenses may not be completely covered. And in some cases the processes do not allow enough time to apply for reimbursement.

To improve STRF policies, state policy makers could:

- + Create tuition recovery funds in states that do not yet have them;³⁶
- + Ensure that they are adequately funded where STRFs already exist and expand eligibility to cover all college students;
- + Consider information-sharing policies between schools and state agencies managing STRFs to make it easier to give students the relief to which they are entitled, without needing students to apply for it when possible;
- + In the case of automatically notifying students about their eligibility for relief, ensure that students have ample time to respond; and
- + Base the amount that each school must pay into the account on risk factors that would serve to steer institutional behavior in positive directions. Such a system could reduce the levy on schools based on factors such as:
 - Low reliance on student loans;
 - Enrollment that is stable or changing modestly;
 - The institution's assets are under trusteeship control (disposition of the school's assets are under the control of a board without a financial interest);³⁷ and
 - Low default rates and high loan repayment rates.

Student Outcomes at For-Profit Colleges

Concerns over poor graduation rates and inconsistent quality are not unique to for-profit colleges, but for-profit college students are most at risk of being left without marketable skills yet saddled with debt.

Federally funded for-profit colleges tend to enroll vulnerable, financially insecure students at high rates: low-income students, students of color, women, single parents, and older adults are all disproportionately enrolled in for-profit colleges.³⁸ For too many of these students, rather than providing the education and financial stability sought, for-profit colleges have had a devastating impact on the students, their families, and their communities. Here are just some of the causes for concern:

- + **Decreased earnings:** On average, students attending for-profit programs have a negative return to attending college, according to one study. In other words, they earned less after leaving college than they did prior to enrolling.³⁹
- + **Growing debt balances:** Nearly three-quarters of students who borrowed federal loans to attend for-profit colleges owe more on their loans two years after leaving school than they did when they left, due to accrued interest and fees.⁴⁰ Even among graduates, only 36 percent of federal student loan borrowers from for-profit colleges have made a dent in their debt three years after leaving college—half the rate of graduates from public or nonprofit colleges (71 and 74 percent, respectively).⁴¹
- + **Unmanageable debt loads:** Federal standards measure whether the debt loads of career education program graduates are reasonable given their post-college earnings. Because they typically have higher costs and lead to lower graduate earnings, virtually all (98 percent) of the programs that fail this test are at for-profit colleges.⁴² (More than a third of the rated programs were offered by nonprofit or public institutions).
- + **Loan default:** For-profit colleges account for one-third of federal student loan defaults, despite enrolling just 9 percent of students.⁴³ Of students who borrowed at for-profit colleges in 2003–04, *more than half* had defaulted during the twelve years that followed.⁴⁴
- + **Student deception:** Borrowers who have been misled, defrauded, or otherwise wronged by their college can petition to have their federal loans discharged. Former for-profit college students accounted for 99 percent of all such discharge applications.⁴⁵

Concerns about for-profit college student outcomes and practices have attracted attention from state attorneys general over the past decade. Widespread concerns led state attorneys general to form a bipartisan working group to review for-profit college practices, a group that included thirty-seven states in 2015. Investigations and enforcement actions stemming from these efforts have focused on troubling practices on a wide set of issues, including colleges' marketing and advertising, recruitment and admissions, federal and nonfederal financial aid practices, student employment outcomes, and student disclosures. The evidence unearthed by state attorneys general has in turn been used by federal agencies in their own suits and enforcement actions, and as the basis for making tens of thousands of defrauded student loan borrowers eligible for discharges.

Enforce the Rules that Make Colleges Public or Nonprofit

THE PROBLEM

By law, nonprofit organizations must reinvest in the organization any funds that remain after paying expenses, and the trustees (who take the place of owners at a for-profit business) are *prohibited* from taking funds themselves. Public entities generally operate under similar restrictions. Laws are not effective if they are not enforced, however, and in recent years some for-profit colleges have attempted to claim the “nonprofit” or even “public” label without adopting the accountability requirements and financial restrictions that go along with the labels.⁴⁶

At “covert” for-profit schools, former owners maintain control and shift their profit taking to roles as creditors, landlords, and contractors, undermining true nonprofit trusteeship. For example, Remington Colleges, Inc. was able to convert to nonprofit status in 2011 despite clear indications of owners’ continuing financial self-interest,⁴⁷ and statements by school officials who described regulatory avoidance as a primary goal.⁴⁸ By maintaining a profit-focused orientation while representing themselves as nominal nonprofit or public institutions, covert for-profits are having their cake and eating it too.

Similar problems are created by the for-profit Kaplan University, which is seeking approval for a joint operating agreement with Purdue University, an Indiana public institution. The Kaplan-Purdue school is seeking to be labeled a “public” institution by the U.S. Department of Education, even though the still for-profit Kaplan Higher Education will have significant control,⁴⁹ and the school will not be backed by the full faith and credit of the state as other public institutions are.⁵⁰ The new Purdue subsidiary will largely seek to enroll students from other states online.

Most states directly control or regulate institutions that are located in their states. But nationally more than 2.5 million students attend college exclusively online, and of those students more than 40 percent are attending a college based in another state.⁵¹ To adequately protect their state’s consumers from covert for-profit colleges,

state lawmakers need to check the veracity of nonprofit and public labels not only at schools in their states but also at schools operating from outside the state.

WHAT STATES CAN DO

States generally take full responsibility for their own public institutions, and oversee the appropriate use of funds at nonprofit organizations registered in their states.⁵² For all schools seeking to enroll residents of the state, whether the institution is physically located in the state or operating online, the state can require:

For colleges claiming to be “public”:

- + The school must be subject to oversight and control by legislators and/or other public officials who are ultimately democratically accountable.
- + The school must be backed by the full faith and credit of the state to the full extent of potential liabilities in the case of institutional closure or violations of state or federal laws of general application, including consumer protection laws.

For colleges claiming to be “nonprofit”:

- + The home state must have a system to assure that the college’s assets are fully committed to educational and charitable purposes.
- + The home state must have a system to assure that the college’s finances (pricing, aid, and spending decisions) are under the full control of a financially disinterested board.

Don’t Let Schools Deny Students Access to Justice

THE PROBLEM

While public and nonprofit colleges often do not ask students to sign enrollment contracts, most for-profit colleges do.⁵³ Some states require certain non-public schools to use enrollment contracts, based on the idea

that doing so protects the student. Too often, however, schools load up the contract with provisions that are contrary to students' interests, limiting their rights should something go wrong.

The most common restriction requires students to agree, before a dispute ever arises, to use private arbitration rather than filing a lawsuit. Arbitration can work well between businesses. But in consumer cases, the business usually wins, because the arbitrator wants the company as a repeat customer.⁵⁴

Other provisions prohibit students and former students from joining with peers who may have similar complaints against the school (such as through a group or class action); require students to use internal complaint processes; and prohibit students from disclosing their complaints or any resolution publicly.

These restrictive clauses all serve to undermine accountability to consumers and to taxpayers. Indeed, maximizing public dollars seems to be the goal of the restrictions: colleges that do not use federal aid do not generally use these restrictive clauses,⁵⁵ suggesting that they are used in part to prevent information from reaching agencies responsible for oversight of government funds.

WHAT STATES CAN DO

States can deter schools from engaging in unlawful behavior and protect students who were wronged by requiring schools that seek state funding to affirmatively protect students' access to justice. This can include requiring such schools to certify in state funding agreements and in individual enrollment agreements that the school will not:

- + Impose internal process requirements on student complaints;
- + Impose forced arbitration on students;
- + Require students to “go-it-alone” with class-action bans; and
- + Impose gag clauses on students.

Because the Federal Arbitration Act limits the restrictions that states can place upon private businesses' use of arbitration, it is important for the state to make clear that it is objecting to the arbitration clause as a party to the transaction when the state is helping to finance the tuition.

When the state is not financing the tuition, it still can take some steps to protect students. States can:

- + Prohibit internal process requirements; and
- + Require schools to bring formal disputes to the attention of regulators, submitting to the state oversight agency any claim filed by a student or former student against the school, any counterclaim, any agreements regarding the process for disposition of the claim, and notice of any judgments, decisions, or appeals made regarding the claims.

Warn Consumers about Predatory Recruiting

THE PROBLEM

Prospective students looking for a way up in the economy need reliable guidance. Consumers are inclined to trust school representatives, especially if the schools carry the imprimatur of the government by offering federal or state grants and loans. While most schools seek to enroll students whose educational objectives align with the school's offerings, some engage in aggressive, predatory behavior that serves to exploit the hopes—and aid eligibility—of disadvantaged students.

The most important step a state can take is to bolster its oversight of colleges, steering them toward consumer-friendly behavior and moving swiftly to remove predatory schools from the marketplace. But there is also room for consumer education so that prospective students are better positioned to fend off predatory school behavior and make informed choices about where to enroll.

WHAT STATES CAN DO

The best example of an information campaign warning consumers about predatory recruiting was launched by New York City in 2011. The *Know Before You Enroll* campaign gave New Yorkers advice about selecting a school or training program, warned residents about scam schools, and encouraged anyone who had a negative experience to file a complaint.⁵⁶

Local citizens' stories were told on posters, warning their fellow New Yorkers about particular school scams. A two-sided sheet listing ten pieces of advice was used as a poster, wrapped around newspapers, and distributed in key locations. The campaign was relatively inexpensive, and leveraged the city's existing advertising contracts to place posters on subway trains, bus shelters, and phone booths, as well as in housing authority buildings and welfare offices. Campaign materials were designed by the city's Department of Consumer Affairs as part of a pre-existing *Protect Your Money* initiative.⁵⁷

Tara Colton, who led the campaign as the Executive Director of the Mayor's Office of Adult Education, advises others who might want to emulate New York's effort to think through how consumers complaints will be handled efficiently and effectively, and where citizens can get advising about their education options.⁵⁸

The campaign did stir up opposition from some school owners. It survived because the campaign did not name specific schools, while using real stories of real victims, making it more difficult to criticize.

Information campaigns cannot replace strong oversight and effective gatekeeping in financial aid and loan programs. But making consumers aware of the dangers of the postsecondary education marketplace will prevent some abuses, and it increases the likelihood that consumers will file complaints if they do feel wronged. The data and insights from those complaints can help speed enforcement of consumer protection laws.

Officials in Maryland recently launched a campaign adapted from New York City's.⁵⁹

Other Ideas

The seven ideas outlined above are hardly a complete list. One important step many states should take is to examine their agencies that oversee non-public colleges to ensure that they have the expertise, independence, authority, and funding they need to do their job well.

Some other steps that states should consider include:

+ **Ensure Career-Ready Education Programs.**

Some predatory colleges train students for jobs that require a state license (such as nurses, electricians, plumbers, health care workers, lawyers), yet the schools' programs lack the approval needed for their students to sit for licensing exams. Furthermore, students who obtain a state license can lose their work eligibility if they are unable to keep current on student loan payments—a problem that disproportionately impacts students at high-priced for-profit schools.⁶⁰ Policy makers can consider requiring college programs in their state, or financed by state aid, to meet the minimum accreditation required by state licensing boards.

+ **Ban Commission-Paid Sales in College Advising.**

When college advising jobs are really commission-paid sales positions, prospective students are pursued aggressively rather than being provided with useful guidance about college options. The use of commission-paid recruiters is prohibited at schools using federal aid, but state law could strengthen these rules and expand their reach.

+ **Set Minimum Standards for Online-Only For-Profit Schools.**

Many states fail to extend consumer protection standards to online schools. While online programs can choose to join a voluntary compact which sets some limited standards, the worst of the worst do not join this compact but recruit students anyway.⁶¹ This loophole can allow the worst actors to escape accountability and oversight while gaining an

unfair competitive advantage over schools with a physical presence.

+ No Taxpayer Funds for Advertising, Marketing, and Recruiting. Some colleges spend more on advertising, marketing, and recruiting than they spend educating students.⁶² Taxpayers are funding these marketing expenses, since for-profit colleges get the bulk of their funds—frequently more than 90 percent—from government grants and loans. Federal legislation has been introduced, but not enacted, that would prohibit the use of Pell Grants, federal student loans, and military and veterans educational benefits for advertising, marketing, and recruiting.⁶³ States could institute such a policy by requiring that colleges limit spending on advertising, marketing, and recruitment in order to be eligible for state funds or GI Bill funds.⁶⁴

If you are a policy maker and would like to explore these ideas, or have other questions, contact us at statepolicy@ticas.org.

Notes

- 1 The six-year graduation rate for first-time, full-time undergraduate students who began seeking a bachelor's degree at a four-year degree-granting institution in fall 2009 was 59 percent. That is, 59 percent had completed a bachelor's degree by 2015 at the same institution where they started in 2009. The six-year graduation rate was 59 percent at public institutions, 66 percent at private nonprofit institutions, and 23 percent at private for-profit institutions. "The Condition of Education 2017," NCES 2017-144, U.S. Department of Education, National Center for Education Statistics, 2017.
- 2 "Direct Loans Entering Default," U.S. Department of Education, National Student Loan Data System, Federal Student Aid, last modified August 3, 2017, <https://studentaid.ed.gov/sites/default/files/fsawg/datacenter/library/DLEnteringDefaults.xls>.
- 3 Represents twelve-month enrollment in 2015-16. Author's analysis of federal data compiled by the Institute for College Access & Success, College InSight, <http://college-insight.org>.
- 4 Jennie Woo et al., "Repayment of Student Loans as of 2015," Table 4.
- 5 See generally 34 CFR 668.200-217.
- 6 "Cohort Default Rate Manipulation," The Institute for College Access and Success, September 26, 2016, updated March 20, 2017, <https://ticas.org/tags/cohort-default-rate-manipulation>.

7 Jessica Silver-Greenberg, Stacy Cowley, and Natalie Kitroeff, "When Unpaid Student Loan Bills Mean You Can No Longer Work," *New York Times*, November 18, 2017, <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>.

8 34 CFR § 668.32(g)(1).

9 "47th Annual Survey Report on State-Sponsored Student Financial Aid, 2015-16 Academic Year," National Association of State Student Grant and Aid Programs, table 9, available at <https://www.nassgap.org/viewrepository.aspx?categoryID=3#>.

10 California Education Code 69432.7(l)(3). Colleges must meet graduation rate standards in addition to default rate standards. http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC§ionNum=69432.7.

11 "An Analysis of New Cal Grant Eligibility Rules," Legislative Analyst's Office, January 7, 2013, <http://www.lao.ca.gov/reports/2013/edu/new-cal-grant/new-cal-grant-010713.aspx>.

12 Ashley A. Smith, "A Step Ahead of For-Profits," *Inside Higher Ed*, April 3, 2017, <https://www.insidehighered.com/news/2017/04/03/milwaukee-passes-ordinance-aimed-blocking-low-quality-profit-colleges>; text of ordinance available here: <https://milwaukee.legistar.com/LegislationDetail.aspx?ID=2973375&GUID=C6282D78-BE03-4F35-A93D-924EB632632B&FullText=1>.

13 The GI Bill after World War II, and expanded federal aid in the 1970s, fueled growth of the sector. A 1910 report exposing inadequacies in medical education pointed to problems at for-profit schools in particular, but the schools tended to be small. Abraham Flexner, "Medical Education in the United States and Canada: A Report to the Carnegie Foundation for the Advancement of Teaching," The Carnegie Foundation for the Advancement of Teaching, 1910, http://archive.carnegiefoundation.org/pdfs/elibrary/Carnegie_Flexner_Report.pdf.

14 After serving as secretary of health, education, and welfare (HEW) in the Nixon-Ford administrations (he served as secretary of defense for President Reagan), Weinberger wrote that "the potential for abuse resulting from the rapid increase in the level of federal funds flowing to institutions of higher education . . . required HEW to assume responsibility for administering their operation at a level of detail that in other circumstances would have been entirely inappropriate." Caspar W. Weinberger, "Reflections on the Seventies," *Journal of College and University Law* 8, no. 4, 1981-82, 452-56, <https://drive.google.com/file/d/0B7aql03eYEUtV0phX2c5bFbYtM/view?usp=sharing>.

15 See the Century Foundation series, "The Cycle of Scandal at For-Profit Colleges," at <https://tcf.org/topics/education/the-cycle-of-scandal-at-for-profit-colleges/>.

16 Stephanie Riegg Cellini and Claudia Goldin, "Does Federal Student Aid Raise Tuition? New Evidence on For-Profit Colleges," *American Economic Journal: Economic Policy* 6, no. 4, November 2014, 174-206, <http://dx.doi.org/10.1257/pol.6.4.174>.

17 According to a cofounder of the University of Phoenix, in 1994 "80 percent of University of Phoenix's working adult students . . . received employer tuition reimbursement," with 42 percent receiving full reimbursement and 84 percent receiving at least half. John D. Murphy, *Mission Forsaken: The University of Phoenix Affair with Wall Street* (Proving Ground Education, 2013), citing Apollo Group, Apollo Group Prospectus, Smith Barney Inc., Alex. Brown & Sons, December 5, 1994, p. 3.

18 34 CFR § 668.28.

- 19 For more information, see “What is the 90/10 Loophole?” Veterans Education Success, <http://veteranseducationsuccess.org/90-10-loophole/>. See also, “New Analysis Finds Many For-Profits Skirt Federal Funding Limits,” U.S. Department of Education, December 21, 2016, <https://www.ed.gov/news/press-releases/new-analysis-finds-many-profits-skirt-federal-funding-limits>.
- 20 For example, California’s scholarship agency adopted as a priority ensuring that for-profit schools “meet the 90-10 rule without using state grant aid or Title 38 aid as a means for satisfying the non-Title IV revenue requirement.” “Update on state and federal legislation and issues affecting Commission programs,” California Student Aid Commission, June 1-2, 2017, <http://www.csac.ca.gov/comm/lab/20170601/item5.pdf>.
- 21 At for-profit schools eligible for Department of Education funds, financial statements already include an analysis of 90–10 compliance. The state policy could require schools to also include program-level data in these same financial statements.
- 22 See the Phagans School disclosure at <http://www.phagans.com/Gedt/lloyd/hair/Gedt.html>.
- 23 Between 1985 and 2016, 12,666 schools or campus locations closed, according to the U.S. Department of Education. Federal Register, Vol. 81, No. 211, Tuesday, November 1, 2016, p. 76059 (Borrower Defense final rule).
- 24 “[W]e know of no nonprofit college or university which has closed precipitously” since 1992. Letter to the U.S. Department of Education from David L. Warren, president of the National Association of Independent Colleges and Universities, July 10, 2017, <https://www.naicu.edu/getmedia/0f9b1dae-a116-4972-b4a5-63859b911990/NAICU-GE-BDR-Hearing.pdf>. Failing nonprofit institutions also tend to be small.
- 25 “ITT Educational Services,” in “For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success,” Part II, United States Senate, Health, Education, Labor, and Pension Committee, July 30, 2012, https://www.help.senate.gov/imo/media/for_profit_report/PartII/ITT.pdf.
- 26 According to the Senate HELP investigation in 2011, ITT Tech charged some of the highest prices per credit and to obtain a degree could cost over \$93,000.
- 27 “Senate Health, Education, Labor, and Pension Committee, For-Profit Report, Part II, ITT Educational Services, 2012, https://www.help.senate.gov/imo/media/for_profit_report/PartII/ITT.pdf
- 28 Andrew S. Rosen, *Change.edu: Rebooting for the New Talent Economy* (New York: Kaplan Publishing, 2011).
- 29 Unrelated business operations are taxed, and if excessive, can jeopardize the tax-exempt status of the organization.
- 30 Private inurement is prohibited, trustees are generally not paid, and employee compensation must be reasonable.
- 31 “The dent in earnings per share would’ve been deeper had [ITT] not plowed cash flow into share repurchases, \$720 million worth in 2010 and 2011.” Bill Alpert, “Clever Is as Clever Does,” Barron’s, April 14, 2012, <http://www.barrons.com/articles/SB50001424053111904857404577333971078578982>.
- 32 Danielle Douglas-Gabriel, “ITT Technical Institutes Shut Down After 50 Years in Operation,” the *Washington Post*, September 6, 2016, https://www.washingtonpost.com/news/grade-point/wp/2016/09/06/itt-technical-institutes-shut-down-after-50-years-in-operations/?utm_term=.cc9ebe8ff9a2.
- 33 Over 7,300 former students have already filed claims with the federal government seeking to have their loans cancelled, claiming they were defrauded by ITT Tech. Yan Cao and Tariq Habash, “College Complaints Unmasked,” The Century Foundation, November 9, 2017, <https://tcf.org/content/report/college-complaints-unmasked/>.
- 34 “State Programs,” Student Loan Borrower Assistance, National Consumer Law Center, Loan Cancellation, State Programs, <http://www.studentloanborrowerassistance.org/loan-cancellation/state-programs/>.
- 35 “State Tuition Recovery Funds and Other State Programs,” Veterans Education Success, December 17, 2016, <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5856876ed2b857abafed05fe/1482065775221/State+Tuition+Recovery+Programs.FINAL.pdf>.
- 36 Kevin Fudge, “Tuition recovery fund would give vulnerable students extra level of security,” the *Boston Globe*, June 12, 2017, <https://www.bostonglobe.com/opinion/letters/2017/06/11/tuition-recovery-fund-would-give-vulnerable-students-extra-level-security/MmjzaKJMY2voWnG1hBSz1N/story.html>.
- 37 Public and nonprofit institutions generally operate on a trusteeship model, though states vary in their enforcement of nonprofit governance requirements.
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- 39 Stephanie Riegg Cellini, and Nicholas Turner, “Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data,” National Bureau of Economic Research, October, 2016, available at <http://www.nber.org/papers/w22287>.
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- 41 “Student Loan Repayment Rates Vary by Where Students Go and Where They Complete,” The Institute for College Access and Success, September 23, 2016, updated March 20, 2017, <https://ticas.org/blog/student-loan-repayment-rates-vary-where-students-go-and-whether-they-complete>.
- 42 “Education Department Releases Final Debt-to-Earnings Rates for Gainful Employment Programs,” U.S. Department of Education, January 9, 2017, <https://www.ed.gov/news/press-releases/education-department-releases-final-debt-earnings-rates-gainful-employment-programs>.
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- 44 52 percent of for-profit borrowers defaulted, compared to 17 and 18 percent of public and nonprofit four-year colleges, respectively. At community colleges, where far fewer students borrow, 26 percent of the borrowers defaulted during the twelve years. Jennie Woo, Alexander Bentz, Stephen Lew, Erin Dunlop Velez, and Nichole Smith, “Repayment of Student Loans as of 2015 Among 1995–96 and 2003–04 First-Time Beginning Students: First Look,” (NCES 2018-410), U.S. Department of Education, Washington, DC: National Center for Education Statistics, October, 2017, <https://nces.ed.gov/pubs2018/2018410.pdf>.
- 45 Yan Cao and Tariq Habash, “College Complaints Unmasked: 99 Percent of Student Fraud Claims Concern For-Profit Colleges,” The Century Foundation, November 8, 2017, <https://tcf.org/content/report/college-complaints-unmasked>.
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Escape Oversight through a Regulatory Blind Spot,” The Century Foundation, Sept. 22, 2015, <https://tcf.org/content/report/covert-for-profit/>.

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60 Jessica Silver-Greenberg, Stacy Cowley, and Natalie Kitroeff, “When Unpaid Student Loan Bills Mean You Can No Longer Work,” *New York Times*, November 18, 2017, <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>.

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