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Restoring Equal Treatment for For-Profit Colleges: The Center for Excellence in Higher Education as a Case Study

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KEY TAKEAWAYS

Too often, the government has not attempted to resolve the many problems at public and nonprofit colleges, targeting the for-profit ("proprietary") sector instead.

It should not be possible to shut down a college over a technical violation—but, under antagonistic actors, that is how regulations on for-profit colleges operate.

Congress should put an end to this unequal treatment, as well as ending federal overregulation of higher education.

A long-standing tension exists in American higher education between "access" and "outcomes." The 20th century saw huge gains in the proportion of Americans attending college. In 1940, only 4.6 percent of Americans aged at least 25 had completed four years of college; in the 2020s the figure has neared 38 percent.[1]

But access came with high costs. Specifically, while federal and state governments spent more and more to subsidize tuition, of great financial pleasure to America's colleges and America's parents, the average IQ of college students over the same period declined from 119 to 102.[2] College became normal instead of elite, a bachelor's degree became a requirement for increasing numbers of jobs,[3] and low graduation rates became an embarrassment at many colleges. The American Council of Trustees and Alumni reports that 197 colleges have a four-year graduation rate of

25 percent or worse. More than 600 colleges cannot even graduate half of their students within four years.[4]

Return on investment, meanwhile, varies widely and is often extremely negative, putting to shame the idea that college is an automatic ticket to prosperity. Consider, for example, Cornell University. The worst-performing degree is in plant sciences, for which students can expect a lifetime *negative* return of -$34,549 (or, factoring in the risk of dropping out before completing the degree, -$47,213). The return for a Cornell degree in animal sciences is a meager $19,841. Yet, a bachelor's degree in computer science from Cornell offers an expected lifetime return of more than $4.6 million, and an "operations research" degree offers more than $3.7 million.[5]

The outcomes of public and nonprofit colleges, however, are not regulated or scrutinized like those of for-profit colleges despite similar patterns. The lifetime return on investment for bachelor's degrees at the for-profit University of Phoenix ranges from more than $2 million (nursing) and more than $1 million (computer science) to $48,084 (behavioral science). For-profit Grand Canyon University's outcomes range from about $1.5 million (nursing) and $1 million (homeland security) to a negative return of -$328,815 (theater). While the University of Phoenix has zero bachelor's programs with a negative return on investment, for-profit DeVry University has one, and Grand Canyon University has 11 for those who graduate, mainly private nonprofit Cornell has one, and the public University of West Florida has eight.[6] (Average return on investment is different for those who graduate from a program than for those who do not, so the return can switch between negative and positive for some programs.)

Easy money for student loans provides colleges with a positive narrative of "access" while offering a perverse incentive to get large numbers of people through the front door, regardless of whether they are ready for higher education. The tuition keeps flowing, even if students do not graduate. Appropriators, subsidizers, regulators, and accreditors generally look the other way, except for a few states, such as Florida and Ohio, that use performance-based funding.

Nonprofits Get a Pass, For-Profits Do Not

Too often, the government has not attempted to resolve the many problems at public and nonprofit colleges, targeting the for-profit ("proprietary") sector instead. This targeting goes back decades and was most clearly demonstrated during the Obama and Biden Administrations, as described in a Heritage Foundation *Backgrounder*[7] and exemplified in the case study below.

Higher-education policy professionals might not realize how far back the antagonism to for-profit education goes. A key element of the regulatory scene dates to 1992, when Congress amended the requirements for program participation agreements (PPAs) to handle the moral hazard associated with easy money for federal financial aid.[8] PPAs are the contracts that colleges must sign to participate in Department of Education programs, especially federal student aid programs. The 1992 reauthorization of the Higher Education Act of 1965 required that all participating colleges, public or private, no longer "provide any...incentive payment based directly or indirectly on success in securing enrollments or financial aid."[9]

This provision was deemed necessary due to the moral hazard of highly subsidized student aid leading colleges to pay incentives to enroll students even if the students are not prepared for postsecondary work. This circumstance reflects the common story of legislators, having created a program with unintended negative consequences, adding more and more spit and duct tape to hold its program together rather than going back to the root of the problem. The PPA legislation interfered with a free market in enrollment. Instead of merely enabling the executive branch to catch illegal activity on the back end of a transaction, Congress treated every college as a potential fraudster and restricted the front end.

Violating a PPA can spell the end of that contract, the end of publicly provided financial aid, and the end of the college. This potential for school closure has given colleges a substantial incentive to comply. But it has also given the Department of Education a tool with which to target colleges with an operating structure it does not like—proprietary, profit-seeking colleges most of all.

Colleges began asking federal officials what counted or did not count as a violation of the prohibition on enrollment incentives. In 2002, during the first George W. Bush Administration, the department issued regulations identifying 12 "safe harbors," such as incentives for enrolling students in programs that were not eligible for federal student aid in the first place.[10] But by 2011, under the Obama Administration, the department had abandoned all safe harbors, arguing that the moral hazard of fraudulently inducing enrollment remained too great.[11]

The Obama Administration also resisted the idea that for-profit colleges could be converted to nonprofit status, assuming that their owners did not truly intend to run them like nonprofits and would instead extract profits from them. Ever against the values of a market economy, Obama's Department of Education began heavy-handed tactics to destroy college-owning organizations, such as the Center for Excellence in Higher Education.

Case Study: Center for Excellence in Higher Education

The Center for Excellence in Higher Education (CEHE) was founded as a nonprofit in late 2006 and announced its formation in 2007 as an organization focusing on effective philanthropy in higher education, meaning accountability for results.[12] By 2012, the CEHE was ready to buy several corporations that owned a number of for-profit colleges, including Stevens–Henager College, and bring them into the nonprofit fold. Stevens–Henager College had existed since 1891.[13]

As stated, the Obama Administration's Department of Education did not believe that the owners were sincere about the conversion. The department gave only provisional approval to the purchase. This meant that eligibility for federal student aid programs was in doubt. The department took 44 months to decide whether to count the colleges as for-profit or nonprofit, and then decided they were not nonprofits, after all.[14] Among other implications, this decision meant that the colleges were subject to the burdensome, punitive rules that the Obama Administration was advancing against for-profits, including the notorious "gainful employment" regulations that punished for-profits, but not nonprofits, for the financial outcomes of their alumni.

Anti-market forces descended on the CEHE. Much of the story through 2016 is related by the CEHE in a 186-page media packet[15] and 397-page lawsuit.[16] In sum, as the CEHE documented, its treatment by the Department of Education was "based upon advancing a political agenda and not on an unbiased application of law and regulation."[17]

For example, the Department of Education required the CEHE to post more than $70 million in a "letter of credit." The idea of such a letter is that if the Department of Education will someday force a college to return federal student aid money, the college can demonstrate now that the funds will be available. That requirement became another massive tool for the Obama Administration to force for-profit colleges into bankruptcy. Letter-of-credit amounts kept getting higher and higher until colleges could not post the required millions. From the CEHE lawsuit, it appears that the Department of Education manipulated the CEHE inputs and calculations to make it look like the CEHE failed a key financial test called the "composite score," so that the department could demand such a humongous letter of credit from the CEHE.[18]

Much litigation has followed—continuing into 2025 with a conclusive win for the CEHE in Utah. Utah is where the streams come together. In 2014, the U.S. Department of Justice partly joined a False Claims Act lawsuit alleging that Stevens–Henager College was out of compliance with the ban on enrollment incentives described above.[19] When the case finally went before a jury in April 2025, the jury had to decide whether the college knew it was out of compliance when it signed its PPAs, and if so, whether such noncompliance was material to the PPAs so as to trigger liability.[20]

The jury decided in favor of the college and the CEHE. The government lost. But it was too late for the CEHE.

The Department of Education had already taken advantage of a separate court case in Colorado, led by Assistant Attorney General Libby DeBlasio Webster,[21] to cut off the CEHE's access to federal student loans. The CEHE also owned a Colorado college named CollegeAmerica. At first, a judge incorrectly ruled against CollegeAmerica's marketing practices, but an appellate court decided in favor of the college. Once again, the plaintiffs had failed to show that the CEHE knew it was technically out of compliance and that such a breach had a substantial detrimental impact on consumers.[22]

But by the time an appeals court corrected the errors in 2021, President Biden's Department of Education had acted to cut off the CEHE's access to federal student aid, and it was too late. CollegeAmerica was closing along with all CEHE colleges. The department had even rejected CollegeAmerica's teach-out plan, which is the required process for helping students of closing colleges to continue their studies elsewhere.

Anti-market forces cheered again. These included non-governmental actors. Arnold Ventures had been funding activism against for-profit colleges since 2018, and the Institute for College Access and Success had been working against the for-profit sector for well over a decade.[23] The CEHE was closed due to minor violations that antagonists had spun into enterprise-level "consumer protection" scandals. Although the legal process demonstrated that the infractions were indeed minor, the CEHE had already been fatally punished.

Today, what is left for the CEHE is to win its 2022 lawsuit for at least $500 million against the federal government for the bullying and ill-dealing that shut down an education provider and left its students in the lurch.[24]

Policy Implications

Laws and regulations should not make it possible to shut down a college over a technical violation. But the case of the Center for Excellence in Higher Education shows that, under antagonistic actors, that is how laws and regulations affecting for-profit colleges operate. In many cases there is a single sanction for an infraction, no matter how small, and government actors use such a tool to shut down a college. In many other cases, the processes and remedies available to an agency are so substantial and disproportionate to a single episode of noncompliance that the agency can close any college it wants. Letters of credit, delaying decisions, and cutting off federal student aid entirely have proven to be such severe tools.

Following are seven ways to restore equal justice for proprietary colleges. As appropriate, Congress or the Department of Education should:

1. **Dismantle the Department of Education and phase out federal involvement in student loan programs.** The federal government, which originates about 90 percent of all student loans, has crowded out private lenders and induced overconsumption of education services. To the extent feasible, privatizing student loans includes ending the subsidies that have led to accountability Band-Aids and abuses of power.

2. **Limit the Department of Education's power while it exists.** Enterprise-level and other major penalties against universities, including decisions such as refusal to recognize a nonprofit conversion, which can cause a school to close, should be left to the courts—not to the whims of an executive agency. Colleges should be presumed to be acting in good faith until proven otherwise through a formal court process. The Department of Education also should not be allowed to cause a university to close while cases and appeals are pending—it should not be permitted to cut off federal student aid prematurely.

3. **Individualize harms.** If the Department of Education continues to have an enforcement role, it should not be permitted to shutter a college by treating all students as a class, then issue major institution-wide penalties and forgive hundreds of millions of dollars of student loans at a time. Instead, as the department proposed in regard to "acts or omissions" violations under Secretary of Education Betsy DeVos, each student should have to demonstrate his own damages.[25]

4. **Make fines proportionate to harms.** Publishing an incorrect claim on a college website, such as total future earnings a student might expect from a degree, may count as an infraction, but it should not spell the end of the college. If the Department of Education wants to continue to monitor minor, inadvertent, or technical violations, it should constrain itself to minor penalties.

5. **Standardize certain penalties.** Making individualized and proportionate decisions will naturally resolve most letter-of-credit abuses. But when a large letter of credit is justified, the department should use clear, objective standards to determine the proper amount. The department has abused its discretion in the case of the CEHE, for instance, and policymakers should require that the agency develop clear standards for future actions.

6. **Give colleges equal treatment.** Regardless of whether colleges are public, nonprofit, or proprietary, statutes, regulations, and enforcement should be neutral in regard to this status, except for provisions that all nonprofit or for-profit organizations follow, such as eligibility for nonprofit taxation status or distinct accounting rules.

7. **Make provisional approvals carry the same status and prerogatives as approvals.** When the Department of Education delays a decision for years, a college's students should not have to pay the price of delayed or denied financial aid. Where allowed by law, the department's regulations should guarantee fast approval with automatic full approval if the department takes too long to issue a decision. The department should also follow a clear process enabling petitioners to respond to agency concerns rather than issuing abusive restrictions and demands unilaterally. This policy should apply to a wide variety of pre-approvals including prior review of acquisitions, nonprofit conversions, and other major decisions.

Conclusion

Anti-market advocates have proved themselves allergic to "profit," especially when it comes to education. They have harmed millions of students by forcing successful colleges to close. They have also forced extreme compliance measures onto thousands of fully innocent colleges, costing huge sums and forcing tuition to spiral upward. Meanwhile, the American taxpayer continues to subsidize tens or hundreds of thousands of students obtaining worthless degrees at colleges that are left unscrutinized simply because they are technically nonprofit or public. The saga of the Center for Excellence in Higher Education is a case study in government animus and abuse that must never be repeated.

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Endnotes

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