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For-Profit Colleges and the Myth of Institutional Equity

David Whitman

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About the Author(s)

David Whitman, from 2009 through 2014, was Education Secretary Arne Duncan's chief speechwriter, although he did not draft any of Secretary Duncan's remarks on for-profit colleges. For the better part of two decades, Whitman reported and wrote for *U.S. News & World Report*. He is the author of *Sweating the Small Stuff: Inner-City Schools and the New Paternalism*, a 2008 book that examined the models of six high-performing inner-city schools. Whitman attended a selective private liberal arts college and a for-profit massage therapy school and received an excellent education at both institutions.

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Introduction

When the Biden administration's proposal to make community college tuition-free was jettisoned by congressional negotiators last fall, higher education was left with little more than a proposed increase in the maximum Pell Grant, from $6,495 to $7,045. Ordinarily, a $550 Pell increase would stir scant controversy. But that's not the case, thanks to a plausible sounding yet ultimately phony "equity" campaign mounted by lobbyists for for-profit colleges, their Republican allies, and a smattering of Democratic lawmakers.

The *New York Times, Washington Post, Reuters,* and *Politico* all covered the Pell Grant increase for one reason: the House-passed Build Back Better bill barred students from using the added funds at for-profit colleges. Industry lobbying against this exclusion offers a sneak preview of the gaslight anthems for-profit advocates are sure to sound throughout the upcoming year when the U.S. Department of Education seeks to regulate the sector's career training programs in new gainful employment (GE) and borrower defense (BD) regulations.

A September 2021 analysis by the Institute for College Access & Success found that in the initial public comment period for the Biden administration's upcoming rulemaking, the list of the most common comments submitted by for-profit college companies and their lobbyists was topped by the statement that any future GE rule "should be applied to all institutions, not just proprietary [i.e., for-profit] schools."

The truth is that industry lobbyists and GOP legislators now object to every federal policy that attempts to draw any distinction between for-profit colleges and other institutions of higher education as acts of institutional "discrimination," whether the policy has to do with certifying eligibility for COVID-relief funds or expanding eligibility for Pell Grant funding to very short-term postsecondary career training programs.

This equity language has been misleading from the start. Republican lawmakers, as the *Times* reported, asserted that the exclusion of for-profit colleges from the Pell Grant increase was "discriminatory," stemming from Democrats' desire to settle "an ideological score" against for-profit schools. "This blatantly discriminatory policy" will only "punish hundreds of thousands of low-income students," said Jason Altmire, the new president and CEO of Career Education Colleges and Universities (CECU), the industry's chief trade association. Altmire, a centrist Democrat and former U.S. congressman who succeeded Steve Gunderson, former GOP congressman and longtime CECU head, told *Inside Higher Ed*: "Congress has never done anything like this."

Most reporters have largely accepted industry and conservatives' claims that barring for-profit colleges from receiving a Pell Grant increase is unprecedented and amounts to institutional discrimination, with low-income students as the ultimate victims. *Higher Ed Dive* reported that the exclusion of for-profit schools from the Pell Grant boost was a "radical departure in policy, as the federal government has never parceled financial aid by institution type." Veteran higher ed lawyer John Przypyszny told *Inside Higher Ed* that the federal government had "never distinguished access to Title IV programs [federal student aid] based on the tax status of the institution a student chooses to attend."

Yet go to the videotape—or in this case, the history of federal regulation of for-profit colleges—and it shows that differential regulation of the for-profit sector has in fact happened repeatedly. If differential regulation isn't quite the norm, it's far from being the exception.

The two most long-standing federal student loan programs (guaranteed federal student loans, aka Stafford Loans, and the Perkins Loan program, which ended in 2017) initially barred for-profit schools from participation altogether. Those prohibitions stemmed from widespread abuses by for-profit schools of the World War II GI bill—abuses eerily similar to the well-publicized misrepresentations about job placement, predatory marketing, and fraud perpetuated by many for-profit schools over the last decade.

Today, for-profit colleges still face special requirements to retain eligibility for the federal student aid program, including the "90-10 rule," which requires for-profit schools and for-profit schools alone to demonstrate that they get at least 10 percent of their revenues from non-federal sources. Congress explicitly strengthened the 90-10 rule in 2020 by closing a notorious loophole that allowed for-profit colleges to count veterans' GI Bill benefits as "non-federal" monies.

For-profit schools are also ineligible, and always have been, for an array of other, smaller federal aid programs. In fact, GOP lawmakers are currently promoting legislation to eliminate the government's long-standing differential regulation of the sector, even as they claim that differential regulation is unprecedented.

The for-profit industry's objections to regulations targeting itself are part heartfelt and part tactical. For-profit schools and their primarily adult, job-focused students are often looked down upon, unfairly, by elite traditional colleges that do not primarily serve mid-career working class and low-income adults. For-profit educators want to be treated like their peers, and not, as former House Speaker John Boehner (R-OH) once put it, as the "second-class citizens" of higher ed. At the same time, the sector's insistence that all institutions must be regulated "equally," however heartfelt, is also politically beneficial—it sends out the Bat-Signal to traditional colleges and their lobbyists that if they don't watch out, their institutions too could also face the heavy hand of government regulation.

The Faux Equity Campaign on Pell Grants—Myth vs. Reality

The for-profit lobby's "equity" campaign to restore the Pell Grant boost for their schools has advanced on two fronts. First, advocates claimed that excluding for-profit schools from the Pell increase would disproportionately harm low-income, minority students who chose to attend for-profit colleges, a view amplified by an **op-ed** placed in a series of Black newspapers. Second, they claimed that the exclusion unfairly singles out and punishes for-profit institutions, reflecting Democrats' purported "ideological" opposition to colleges profiting from educating students.

Those equity claims are not merely canards—they constitute a complete departure from traditional conservative positions about strengthening accountability in higher education and preventing the waste of taxpayer dollars at career preparation programs with lousy outcomes.

Start with the notion that a Pell boost at for-profit schools would be a boon for low-income students. That claim can be tested empirically in several ways. One threshold test for assessing if this is true is to examine whether for-profit schools effectively reduce tuition for students after receiving increases in federal aid, or instead raise their tuition to "capture" or pocket the additional government aid.

The history of the aid-capture debate dates to 1987, when conservative icon and Secretary of Education William Bennett proposed, in a *New York Times* op-ed, the so-called Bennett Hypothesis: Increases in federal student aid, Bennett argued, "enable colleges and universities blithely to raise their tuitions."

Ever since, conservatives and libertarians have cited the Bennett Hypothesis to assail the federal aid program as a government boondoggle that undermines private loan markets, diverts government funding intended for students to institutions, and propels student debt. The more student aid the government provides, the more institutions raise their tuition, conservatives contend—until for-profit colleges have an opportunity to get more Pell Grant dollars.

A series of empirical studies has has found mixed or weak evidence for the Bennett Hypothesis at public universities and private non-profits. But in one sector—the for-profit sector—Bennett was prescient. Studies there show that for-profit schools do raise their tuition to capture additional federal student aid.

As George Washington University economist Stephanie Cellini recently **summarized** in *The Hill,* "in the for-profit sector, the research is clear: tuition rises when federal student aid increases." Instead of passing along Pell Grant increases to "the low-income students who so critically need it," Cellini notes, "for-profit institutions are likely to raise their tuition to capture any aid increases without benefiting the students they serve."

Moreover, if—and it's a big if—excluding for-profit schools from a $550 bump in the maximum Pell Grant award actually deterred a sizeable number of the 900,000 students on Pell Grants at for-profit schools from sticking with their career education programs, history suggests that all but a small number of those students would enroll instead in much cheaper community college programs and public universities that don't leave so many of them saddled with unaffordable debts.

A rigorous study of much stiffer federal sanctions—which led to cutting off federal student aid altogether to over a thousand for-profit schools with high student loan default rates during the 1990s—found that nearly all enrollment declines at for-profit schools from the sanctions were offset by enrollment increases at nearby community colleges. As professor Cellini wrote in *The Hill,* "students can and do find other educational options when aid is withheld from for-profit colleges and these alternate options tend to have better student outcomes."

For-Profit Colleges and Minority Students: Champions or Exploiters?

Apart from the debate over the likely tuition and enrollment impacts of excluding for-profit programs from a Pell Grant increase, the empirical question of whether for-profit schools advance educational equity for their students also can be tested against the record. Do these schools typically do a good job of educating and training low-income minority students? Or would the Pell Grant boost do more to improve student welfare at, say, the community colleges that compete with for-profit schools for low-income students pursuing career education and occupational credentials?

To be sure, there are good for-profit schools that have a solid record of preparing low-income students for jobs in their field of training and there are community college certificate programs that have poor job training records. But on average, many, if not most, students at for-profits end up worse off than if they had enrolled in a community college or even not attended college at all. For-profit students are simply much more likely than their peers at other institutions to be deep in debt and hold worthless degrees. Twelve years after students first enrolled in a for-profit college in 2003–04, more than half of the students—a staggering **52.5 percent**—had defaulted on their federal student loan, according to the National Center for Education Statistics. Default rates are even worse for Black students, with a jaw-dropping **75 percent of Black students** defaulting within 12 years.

Many for-profit schools not only leave students saddled with unmanageable debts but also with no realistic prospect of paying off their federal loans from the jobs for which they were trained. The only comprehensive national **study** of earnings returns for all students at for-profit colleges found that federally supported students who earned a certificate, associate degree, or bachelor's degree at for-profit schools between 2006 and 2008 actually saw their earnings *decline* after attending a for-profit school.

Those dismal results aren't caused by a few bad apple institutions. Most students at for-profits would appear to be better off not attending college at all. **Only a third** of students who enroll in for-profit colleges earn as much as young adults who never went to college.

For low-income borrowers—i.e., for the students who might qualify for Pell Grants—outcomes are even worse. Most students receiving federal student aid at for-profit schools have low earnings, before or after their program of training. But it is deeply troubling that the median earnings of federal loan borrowers at for-profit schools also declined from 2002 to 2013, from $24,800 to $23,200, **according to comprehensive government data**. As Senate Majority Whip Sen. Dick Durbin (D-IL) put it recently on the Senate floor, withholding the Pell

Grant increase would not be "about Congress punishing students—the for-profit college industry is doing that quite well themselves. This is about protecting traditionally underserved, marginalized students and preventing taxpayer dollars from being wasted."

History and the Myth of the Level Playing Field

Equal regulatory treatment, or having all higher ed institutions compete on "a level playing field," may sound fair at first. But it makes little sense in practice to regulate all colleges and sectors of higher education identically, any more than it makes sense to regulate trucks and cars identically because both are motor vehicles. Trucks and passenger cars are regulated differently because they pose different safety risks, and because trucks are more likely to be gas guzzlers and bigger sources of pollution than lighter, more efficient cars.

The same types of distinctions apply in higher education, where for-profit schools pose heightened consumer safety risks. For-profit schools are far more likely than nonprofit colleges and universities to engage in boiler-room recruiting tactics, fraud, deceptive advertising, and job placement misrepresentations, and are much more likely to implement disastrous mid-semester closures.

It is essential that the government treat all groups of *students*, whatever their race, sex, religion, disability, and income, equitably. But institutions are not students, any more than corporations are people (no matter what the Supreme Court says). Just last month, CECU President Altmire told *U.S. News* that the Department of Education has "a moral obligation to develop policies that hold public, private nonprofit, and for-profit institutions equally accountable for their outcomes." But it is not a lofty principle of equity that all higher ed institutions be treated identically. In fact, equal treatment of very different types of postsecondary institutions would result in significant inequities.

To take one example, Trump Education Secretary Betsy DeVos was a staunch proponent of "institutional equity" in assessing the job placement performance of all postsecondary programs. Yet it makes no sense to assess and *only* assess the ministry leadership program at Calvin University, her Christian alma mater in Grand Rapids, Michigan, with the same government job placement standards used to evaluate the performance of the nail technician program at the Michigan College of Beauty, a for-profit career school in Troy, Michigan.

In the past, GOP lawmakers, secretaries of education, and U.S. presidents were among the first to recognize that postsecondary institutions with very different missions should not always be regulated identically, and that consumers in particular needed added protection from the predatory marketing and recruiting tactics of for-profit colleges.

The first major federal scholarship program, and the direct predecessor of Pell Grants, provided grants to veterans through the original World War II GI Bill. Like Pell Grants, the GI Bill's education benefits operated like a no-strings voucher that allowed veterans admitted to schools to enroll in the schools of their choice, including for-profit schools. Before long, however, Congress amended the GI Bill, repeatedly, to attach a host of strings to its benefits, all due to abuses by for-profit schools.

The popular lore isn't entirely wrong—the GI Bill did send a generation of veterans to college who transformed and democratized higher education for the better. My father went to NYU School of Law on the GI Bill. But lost in the Greatest Generation's educational ascent is the fact that more World War II vets actually used their educational benefits to go to for-profit trade and technical and business schools (2.4 million) and for-profit correspondence courses by mail (637,000) than used their benefits to go to four-year colleges and universities (2.2 million).[1]

GI Bill benefits were paid directly to the institution, and, not surprisingly, entrepreneurs of all stripes jumped at the opportunity to tap into the new and unprecedented pile of government cash. The total number of for-profit or proprietary schools in the U.S. tripled in the five years that followed FDR's signing of the GI Bill, from 1,878 to 5,635.

Thousands of new for-profit schools, many of them fly-by-night operations, opened and closed after turning a profit thanks to the new government largesse, and for-profit schools lured veterans into signing over their educational dollars with wildly misleading claims about quality training and well-paid jobs that awaited them upon their graduation. Tens of thousands of veterans were trained for jobs in overcrowded fields in which there were no job openings.

Learning to Samba—at Government Expense

Just like today, the for-profit industry was rocked by journalistic exposés and scandals. In 1948, *Collier's* magazine ran an investigative report that found the VA was paying "for the training of ballroom dancers, bartenders, amateur photographers, amateur piccolo players, horseback riders and chicken sexers." It concluded, the nation "has squandered *at least half a billion dollars* supporting what in many instances is the greatest boondoggle of all time: the questionable Veterans' Education programs."[2]

A sample scam: For-profit schools sprang up to provide dance lessons for tens of thousands of GIs and got the government to pay for the lessons by pretending the schools were training the veterans to be "dance instructors." Congressman Homer Ramey, a Republican from Ohio, complained that "so many veterans have been induced, often by high-pressure methods, to squander their educational benefits on such instruction that if all of them actually were to become [dance] teachers there would be enough to make the entire population of the United States completely familiar with both the rumba and the samba within a year."[3]

By 1950, the VA itself had issued a biting report on for-profit abuses of the GI Bill. In a Special Message to Congress transmitting the report, President Truman warned that in "many instances, veterans have been trained for occupations in which they will be unable to find jobs when they finish their training.... Each time a course of trade and vocational training does not contribute in a substantial way to the occupational adjustment of a veteran, it constitutes a failure."

Later that year, Congress passed a joint resolution establishing a House select committee to investigate education and training programs under the GI Bill. For 13 months, the committee conducted the first of many deep-dive congressional investigations of for-profit schools. Its 1952 report found that "exploitation by private schools has been widespread." There was "no doubt," the committee concluded, "that hundreds of millions of dollars have been frittered away on worthless training." A committee-commissioned GAO examination of 641 for-profit trade schools determined that newer proprietary schools were engaged in "extensive advertising campaigns, which were often misleading and laden with extravagant, unjustifiable claims." Just 20 percent of the 1.67 million veterans who attended for-profit schools on the GI Bill completed their courses, according to the GAO.

Targeting For-Profit Schools: The First Federal Crackdown

The 1952 Korean War GI Bill cracked down on for-profit schools. The new law ended the practice of paying GI educational grants directly to colleges, eliminating overnight the incentive to jack up tuition at for-profit schools to collar more federal aid. (Congress did not restore direct tuition payments of GI Bill benefits to colleges for 56 years, but the reintroduction of the direct payment provision promptly triggered a new round of for-profit abuses after the enactment of the 2008 post-9/11 GI Bill).

A host of other provisions in the Korean War GI Bill explicitly targeted for-profit schools. For the first time, for-profit schools had to demonstrate that at least 15 percent of their students paid their own way (the so-called 85-15 rule), creating a market value test that a program could attract students even without federal dollars. Similarly, for-profit schools had to have operated for at least two years before they were eligible for GI bill benefits, ending the proliferation of fly-by-night schools dependent on government aid for their existence.

For-profit abuses of the World War II GI bill had a long afterlife in Congress and in subsequent administrations. The Eisenhower-era National Defense Student Loan Program (NDSL), a progenitor of the Perkins Loan Program, provided loans to campuses to distribute to students with financial need, with an emphasis on improving science, mathematics, engineering, and foreign-language preparation. It was the first federal loan program to provide direct loans capitalized with funds from the U.S. Treasury, with one notable restriction: for-profit schools were ineligible for the loans.

The current era of a massive federal student loan program begins with the landmark Higher Education Act of 1965, which created the Federal Insured Student Loan (FISL) program. Today, the FISL program is sometimes referred to as the Stafford Loan program, which includes both federal Direct Subsidized and Unsubsidized Loans. Two decades after the World War II GI Bill, lawmakers' antipathy toward for-profit colleges was so entrenched that proprietary schools were not only barred from participating in FISL loans but also were not counted as an "institution of higher education" in section 101 of the Higher Education Act (HEA), which defined institutions of higher education as public or private nonprofit institutions.

Congress enacted a separate piece of legislation, the 1965 National Vocational Student Loan Insurance Act, with a much smaller federal loan program for students at for-profit schools. In 1968, Congress merged the two federal student loan programs, but continued to exclude proprietary schools from being recognized as institutions of higher education in section 101.

A separate section of the 1968 amended law, section 102, allowed a for-profit school to receive federal student aid *only* if it provided an eligible "program of training to prepare students for gainful employment in a recognized occupation." That differentiation of for-profit colleges from other postsecondary institutions remains in effect today. Section 102 provided the statutory basis for the Obama administration's gainful employment rule, which required only career training programs to demonstrate that most graduates earned enough in the jobs they had been trained for to pay off their federal student loans.

By law, in other words, the GE rule could *not* apply to traditional four-year or two-year degree programs and had to be limited to career preparation programs at for-profit colleges, along with credential/non-degree career prep programs at community colleges and a few private nonprofit schools—a legal requirement that Secretary DeVos understood. When she rescinded the Obama administration's GE rule in 2019, she wrote that the Department "could not simply expand the GE regulations" to cover all institutions because the term "'gainful employment' is found only in section 102 of HEA." "Without a statutory change," DeVos wrote, "there was no way to expand the GE regulations to apply to all institutions."[4]

It is true that the 1972 HEA amendments, which created the Pell Grant program, explicitly included for-profit schools for the first time as part of the universe of "postsecondary" educational institutions eligible for the new federal grants and federal student loans. Even so, the newfound congressional support for "institutional equity" marked a dramatic departure from existing law and regulation. Dick Fulton, head of a for-profit accreditor, the Association of Independent Colleges and Schools, observed that if he had predicted when he was hired in 1961 that "in 10 to 12 years, proprietary schools will be built into all federal student aid programs, I would have been a candidate for commitment to a mental institution."[5]

And while the new Pell Grant program included for-profit schools on the same basis as other schools, it initially sharply limited the use of Pell Grants at proprietary schools. From 1972 to 1976, Pell Grants could only be used by full-time first-year undergraduates, and for-profit schools, which catered to part-time mid-career students, had few full-time students.

Congress also initially barred "ability to benefit" students from the Pell Grant program—older students without high school diplomas or GEDs who could demonstrate by passing a test that they could benefit from taking college courses. Some for-profit schools had large numbers of ability-to-benefit students, who Congress did not clear for Pell Grants until 1978.

Lingering Regulatory Differences

After 1972, for-profit schools were eligible in theory for all the major components of federal student aid in Title IV of the HEA—Pell Grants, Stafford Loans, and later Federal PLUS loans and Supplemental Equal Opportunity Grants. However, while Title IV eligibility was determined by section 102 of HEA and its subsequent iterations, for-profit schools remained ineligible for all other non-Title IV institutional aid programs, which were regulated by subsequent iterations of section 101 of HEA—which, again, did not include for-profits as institutions of higher education.

To this day, for-profit colleges are ineligible for Title III and Title V institutional aid programs for developing institutions, which go primarily to historically Black colleges and universities (HBCUs), Native-American serving, and Hispanic-serving institutions—even though many for-profit colleges have predominantly Black or Hispanic student bodies.

Similarly, for-profit colleges, no matter how educationally innovative they may be, are ineligible for the Title VII Fund for the Improvement of Postsecondary Education (FIPSE), intended to encourage the reform, innovation, and improvement of postsecondary education. Nor can for-profit colleges compete for Title VIII grants to support the academic, financial, and social needs of veterans, though veterans disproportionately attend for-profit schools.

Industry and conservative resentment about the disparate regulatory treatment of for-profit schools first peaked in 2004 when Representative John Boehner—then chairman of the House Education and Workforce committee—held a hearing with the rhetorical title, *Are Students at Proprietary Institutions Treated Equitably Under Current Law?* Boehner, a champion of for-profits, opened the hearing by stating, "Today, we ask: Are students at proprietary colleges or proprietary institutions treated equitably under current law? And I think the answer is no."

Boehner introduced legislation to eliminate both HEA's statutory distinctions between for-profit and nonprofit postsecondary institutions and the 90-10 rule requiring for-profits to get at least 10 percent of their revenues from programs other than the Title IV federal student aid programs.

Those provisions never made it into law. But ever since, Republican lawmakers have continued to introduce similar legislation. In November, Rep. Virginia Foxx (R-NC) submitted an amendment to the Build Back Better Act to the House Rules Committee to ensure that "all institutions of higher education are treated equally." Her amendment, which would have effectively eliminated HEA's restrictive definition of a for-profit college, was rejected too.

Differential regulation is not a dusty or obscure relic of the pre-1972 era of GI Bill abuses. As Elizabeth Warren and three other Democratic U.S. senators **pointed out** in April 2020, a strict reading of the HEA would have precluded for-profit schools from receiving pandemic stimulus funding, since the Higher Education Emergency Relief Fund (HEERF) in the CARES Act provided non-Title IV emergency funding, which for-profit schools technically were ineligible for.

The Trump administration rejected the senators' appeal and provided up to $1 billion in HEERF relief to for-profit schools. But that wasn't the end of the story.

In December 2020, Congress enacted a second COVID relief bill, with 50 percent more HEERF funding. This time, Congress explicitly limited for-profit schools to 3 percent of the $21.2 billion in HEERF dollars. The third COVID stimulus bill, passed in March 2021, limited for-profit schools to just 1 percent of the $39.5 billion HEERF funding, all of which for-profit schools were required to pay to students in the form of emergency financial aid grants. Due to the "heightened risk" from precipitous closures and improper grant payments associated with for-profit schools, the Biden administration announced in May 2021 that presidents, CEOs, and all owners with at least a 25 percent interest in a for-profit school would have to sign a novel certification form to receive funding and to aid in program oversight.

The Law is the Law

Why has Congress so frequently regulated for-profit colleges differently than other colleges and universities? In part, because of the for-profit sector's long history of abusing federal student aid programs. But it is also because for-profit colleges and nonprofit colleges are, by virtue of their economic models, fundamentally different from each other, and these differences go far deeper than their mere "tax status."

Laws regulating for-profit colleges are not confined to the U.S. Department of Education. The Federal Trade Commission, the Securities and Exchange Commission, the U.S. Department of Justice, the Internal Revenue Service, and now the Consumer Financial Protection Bureau all have laws and regulatory authority applicable to for-profit educational enterprises that for the most part do not apply to nonprofit institutions of higher education (e.g., statutes outlawing false advertising, requirements to protect competition in interstate markets, anti-fraud provisions of federal securities laws, consumer protection statutes, etc.).

These laws exist because for-profit educational institutions differ sharply from nonprofit educational institutions in their use of revenues, expenditures, and operating incentives. In fact, in several critical respects, federal and state laws allow for-profit colleges to operate under *less* restrictive investment and accountability requirements than nonprofit colleges.

Unlike for-profit schools, nonprofit colleges, after paying institutional expenses, can only spend their revenues for educational or charitable purposes—i.e., for a public good. The key legal distinction in the Internal Revenue Code between nonprofits and for-profits is that nonprofits operate under a "non-distribution constraint" that prohibits private inurement. As Williams College economist Gordon Winston pointed out more than 20 years ago, at nonprofit colleges there is no "outsider to whom the institution can legally distribute profits **as the normal firm distributes profits** to its owners."[6]

By contrast, the owner or CEO and the governing boards of for-profit colleges are not only expected to earn and maximize profits, but also, in the case of publicly traded colleges, have a fiduciary duty to do so. Trustees at nonprofit colleges are typically just reimbursed for their expenses but the median board member at a publicly traded for-profit college was paid over $100,000 for their service in 2009.[7]

For decades, for-profit executives have themselves proudly differentiated their utilitarian job preparation mission from that of traditional liberal arts colleges and research universities. At for-profit schools, tenured faculty are rare, as are externally funded federal research grants for scientific, medical, technological, and social sciences research. Research universities and liberal arts colleges, unlike for-profit colleges, do not provide undergraduates direct vocational training with "real world" applications.

Nonprofit colleges and universities have a very different and broader mission—to teach students to think critically, to write clearly, to develop a capacity for civic participation, and to pursue knowledge and truth, all with the expectation that these analytic and civic skills will help prepare students for successful lives and careers.

In short, the mission and regulatory controls on the use of profits and revenues at for-profit and nonprofit institutions fundamentally diverge—which suggests that the sectors *should* sometimes be regulated differently. "To say that education for profit is just about 'tax status,'" writes Robert Shireman of the Century Foundation in the *Huffington Post*, "is like saying the distinguishing difference between **vodka and water** is the calories. The effect on self-control is more important, in both cases."

Rethinking Equal—and Effective—Regulatory Treatment

The fact that for-profit schools should sometimes be regulated differently than other schools is not at odds with the idea that all sectors of higher education should also face universal and uniform regulations. All postsecondary institutions, for example, should be evaluated and accountable for their student loan outcomes with federal dollars and all postsecondary institutions need financial monitoring.

But the reality is that any uniform federal law or universal regulation that sets effective minimum performance standards for repayment of student debt or establishes market-value tests for federal loans and debt (like the Obama administration's 2014 gainful employment rule) will overwhelmingly affect for-profit schools. In the 1992 HEA Amendments, for example, Congress created a system of cohort default rates for sanctioning and eliminating schools with high student loan default rates from the federal student aid program. Over 80 percent of the more than 1,000 schools that lost access to federal student aid under the 1992 law were for-profit schools.

Once the curtain is pulled away from the false idol of "institutional equity" it opens the opportunity to explore universal regulations that would better protect taxpayers and students. Two universal approaches are particularly promising for assessing and shutting down very low-performing programs.

The first is establishing minimum loan repayment rates, such as evaluating if students have paid down at least one dollar of the principal on their federal student loans three years after entering repayment. A second approach would be to establish a threshold earnings-rate benchmark for all programs to demonstrate a minimum return on federal investment.

Michael Itzkowitz and his colleagues at Third Way have **proposed** (among other measures) that no higher education program should be funded through federal grants and loans if most of its graduates end up in poverty. Itzkowitz has also explored a more demanding threshold earnings-rate standard that would bar programs from federal student aid if most of the program's graduates fail to make more than a high school graduate.

Equal institutional treatment is the wrong litmus test for future legislation and regulation. *Effective* regulatory treatment that protects students and taxpayers is the better measuring stick. Yet for far too long, the for-profit industry has wielded faux equity claims about "leveling the playing field" to draw attention away from the sector's uniquely bad student debt record and uniquely troubling history of misleading and fraudulent marketing.

Here is hoping that this year, the Biden administration and Congress will judge new regulations and laws by their effectiveness in protecting taxpayers and students from having federal dollars used at debt-trap programs, at career schools with lousy job placement records, and at predatory institutions that use fraudulent marketing and advertising to attract students. Regulation and law must be first and foremost about protecting students, not institutions. It is time to retire the industry's equity ruse.

Notes

1 *House Select Committee to Investigate Educational, Training, and Loan Guaranty Programs Under the GI Bill,* 82nd Cong., 2nd sess., February 1952, 92.

2 Albert Q. Maisel, "What's Wrong with Veterans' Schools?" *Collier's,* May 1, 1948, 24. Emphasis in original.

3 Homer A. Ramey, "Let's Stop Abuses in Veterans' Schools," *Collier's,* May 8, 1948, 26–27.

4 "Department of Education, Program Integrity: Gainful Employment," *Federal Register* 84, no. 126 (July 1, 2019), 31, 394.

5 Dick Fulton, "The Future is Now," *The Compass,* Journal of the Association of Independent Colleges and Schools, 37, no. 6 (June 1973): 6.

6 Gordon C. Winston, "Subsidies, Hierarchy and Peers: The Awkward Economics of Higher Education," *Journal of Economic Perspectives,* 13, no. 1, (Winter 1999): 15.

7 Robert Kelchen, *Higher Education Accountability* (Baltimore: John Hopkins University Press, 2018), 141.