



Discriminatory Regulations in Higher Education: The Role of Proprietary Colleges

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Proprietary colleges serve a real purpose in the modern American education system by providing a choice that serves older and more diverse students seeking educational opportunities not available to them at traditional higher education institutions. Yet, a series of regulatory proposals seek to discriminately target proprietary colleges' operations and the students who choose these institutions for their education. This ConsumerGram examines the role proprietary colleges play in the modern education system and the effects of the proposed regulatory changes on the students that seek education at these institutions. Our findings show that the proposed regulations would effectively harm the very people critics of for-profit schools claim to be protecting.

Introduction

Proprietary colleges have a long history of teaching and providing students with business and other skills training.¹ In the Fall of 2020, nearly 800,000 Students were enrolled at four-year, proprietary educational institutions, accounting for less than 5% of college enrollment.²

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¹ Ken Dowell, "Blame Ben Franklin: The History of For-Profit colleges," *Off the Leash*, March 3, 2020, <https://offtheleash.net/2020/03/03/blame-ben-franklin-the-history-of-for-profit-colleges/>.

² National Student Clearinghouse Research Center, "Term Enrollment Estimates: Fall 2020," https://nscresearchcenter.org/wp-content/uploads/CTEE_Report_Fall_2020.pdf.

Citing the need to close loopholes that put current and future students attending these higher institutions at risk, several politicians have voiced opposition to these institutions and sought further federal oversight. In March 2021, for example, Representative Bobby Scott (D-VA03) stated, "for-profit colleges frequently charge their students too much in tuition while delivering too little in education and opportunity."³ However, critics of proprietary colleges like Rep. Scott ignore that these institutions serve an essential alternative in the modern American education system, providing educational opportunities for those often neglected by traditional educational institutions and serving low-income and minority Americans. More specifically, the critics ignore the wide range of demographic and socio-economic backgrounds of students who choose these institutions, which factors into the outcome of their education. These institutions provide significant educational opportunities for those who may otherwise be denied access to higher education or minority students who enroll. Thus, further legislative or regulatory action should be highly scrutinized for any potential to be discriminatory and disadvantageous to specific groups of students, eliminating consumer choice and, in some cases, forcing them out of higher education entirely.

In what follows, this paper discusses how cracking down on proprietary institutions may have the unintended consequence of denying critical educational opportunities and the opportunity to select modes of education that best suit their unique life situations.

The Threat of Asymmetric Regulations

As of October 4, 2021, the Department of Education (DoE) has signaled its intent to strengthen the 90/10 rule further. More specifically, the DoE stated it intended to create a "negotiated rulemaking committee to prepare proposed regulations" pertaining to the 90/10 rule.⁴ The rule stipulates that proprietary colleges must "get at least 10 percent of their

³ Press Release, "Chairman Scott Opening Statement at Hearing to Examine For-Profit College Conversions to Non-Profit Institutions," House Committee on Education and Labor, April 20, 2021, <https://edlabor.house.gov/media/press-releases/chairman-scott-opening-statement-at-hearing-to-examine-for-profit-college-conversions-to-non-profit-institutions>.

⁴ "Negotiated Rulemaking Committee," Federal Register, Public Hearing," October 4, 2021, <https://www.federalregister.gov/documents/2021/10/04/2021-21505/negotiated-rulemaking-committee-public-hearings>.

revenue from sources other than the federal government."⁵ Currently, funding provided through the GI Bill⁶ is counted as extraneous to federal funding, however, proposed regulatory and legislative changes will reclassify this funding as federal funding.⁷ A study from the American Enterprise Institute has warned that proposed changes to the 90/10 rule will "reduce the supply of seats for veterans and military students," forcing them to attend traditional institutions even though for-profit schools offer comparable and sometimes better outcomes for them.⁸ In 2019, it was estimated that "one in three veterans using GI bill benefits attends a for-profit institution" to obtain either a bachelor's or associate's degree.⁹ The proposed changes to the 90/10 rule would specifically cause 333 institutions currently in compliance to violate the rule and affect at least 100,000 students receiving GI Bill benefits or benefits under the Department of Defense Tuition Assistance Program.¹⁰

By further regulating for-profit schools and strengthening the 90/10 rule, the federal government is deliberately discriminating against veterans by making it harder to attend these institutions. Additionally, the changes proposed to the 90/10 rule could force for-profit schools to adjust their course offerings away from those demanded by veterans and onto other groups of students. The net result will be eliminating school choice for veterans and forcing them into the traditional institutions that do not cater to veterans' specific needs or demands.¹¹ Such an outcome would be completely at odds with the purported goal of including military benefits in

⁵ Kerry Murakami, "Tightening the 90-10 Rule," *Inside Higher Ed*, March 2, 2021, <https://www.insidehighered.com/news/2021/03/02/provision-covid-19-relief-bill-would-ease-incentives-profits-target-veterans>.

⁶ The Post-9/11 GI Bill is a generous education benefit for the latest generation of service members and veterans. It includes payment of tuition and fees, a monthly housing allowance and a stipend for textbooks and supplies for up to 36 months. Portions of the GI Bill were updated again in 2017 under the Harry W. Colmery Veterans Educational Assistance Act, better known as the "Forever GI Bill."

⁷ Ibid.

⁸ Jason D. Delisle and Cody Christensen, "Collateral damage: Why an expanded 90/10 rule is a misguided policy for protecting military students," American Enterprise Institute, February 9, 2021, <https://www.aei.org/research-products/report/collateral-damage/>.

⁹ Catharine Bond Hill, Martin Kurzweil, Elizabeth Davidson Pisacreta, Emily Schwartz, "Enrolling More Veterans at High-Graduation-Rate Colleges and Universities," *ITHAKASR*, January 10, 2019, <https://sr.ithaka.org/publications/enrolling-more-veterans-at-high-graduation-rate-colleges-and-universities/>.

¹⁰ Delisle and Christensen.

¹¹ Jon Marcus, "Community Colleges Rarely Graduate the Veterans They Recruit," *The Atlantic*, April 21, 2017. Available Online: <https://www.theatlantic.com/education/archive/2017/04/why-is-the-student-veteran-graduation-rate-so-low/523779/>.

the 90/10 rule. Many of the military students and veterans signed up for service because of the specific benefits they are promised (e.g., education, housing, and health insurance). As such, they should have the right to choose how they use the benefits they have earned.

At the same time, traditional educational institutions such as community colleges and four-year public and private schools are exempt from complying with the 90/10 rule, an exemption that has created an uneven regulatory playing field that prefers specific methods of education over others.¹²

The other piece of government regulation pertaining to proprietary colleges is the gainful employment rule (GE), issued by the DoE in 2014, and requires proprietary educational institutions to demonstrate they are preparing students for careers. Failure to do so would result in the institution being denied access to Federal Student Aid.¹³ DoE stated this rule was needed to ensure that institutions "provide quality education and training to their students that lead to earnings that will allow students to pay back their student loan debts."¹⁴

Under the GE rule, the DoE established a debt-to-earnings ratio that evaluated "the amount of debt (tuition and fees and books, equipment, and supplies) students who completed a GE program incurred to attend that program in comparison to those same students' discretionary and annual earnings after completing the program."¹⁵ Any institution that had "discretionary income rate over 30 percent and an annual earnings rate over 12 percent" would become ineligible to Federal Student Aid programs.¹⁶ Without further reasoning, the GE rule was only applied to proprietary institutions and not imposed upon traditional providers.

¹² Congressional Research Service, "The 90/10 Rule Under HEA Title IV: Background and Issues," April 26, 2021, https://www.everycrsreport.com/files/2021-04-26_R46773_ec4183000b224becae3d99e1b47610d95725cfbc.pdf.

¹³ *Federal Register*, "Program Integrity: Gainful Employment, A Rule by the Education Department," October 31, 2014, <https://www.federalregister.gov/documents/2014/10/31/2014-25594/program-integrity-gainful-employment>.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

In 2019, the DoE under Secretary Betsy DeVos announced it was rescinding the GE rule, arguing its debt-to-earnings ratio was:

"...fundamentally flawed and inconsistent with the requirements of currently available student loan repayment programs, fails to properly account for factors other than institutional or program quality that directly influence student earnings and other outcomes, fails to provide transparency regarding program-level debt and earnings outcomes for all academic programs, and wrongfully targets some academic programs and institutions while ignoring other programs that may result in lesser outcomes and higher student debt."¹⁷

More recently, however, there has been some speculation that the DoE may re-instate the GE rule.¹⁸ During his presidential campaign, then-candidate Biden pledged his administration would "require for-profits to first prove their value to the U.S. Department of Education before gaining eligibility for federal aid."¹⁹ Reinstatement of these rules would once again create a hostile regulatory environment for for-profit educational institutions.

The asymmetrical regulations that favor one type of educational institution over others without rigorously weighing the cost and benefits across veteran student demographics are particularly concerning. According to the National Student Clearing House, the "three-year community-college graduation rates for full-time and part-time [veteran] students are 23 percent and 12 percent, respectively."²⁰ By ignoring the costs and benefits for veteran students, lawmakers could inadvertently push them into educational institutions with poor outcomes but fail to meet their specific needs.

¹⁷ "Program Integrity: Gainful Employment, A Rule by the Education Department," *Federal Register*, July 1, 2019, <https://www.federalregister.gov/documents/2019/07/01/2019-13703/program-integrity-gainful-employment>.

¹⁸ Hugh T. Ferguson, "As Biden Administration Takes Hold, Some Speculate on the Return of Gainful Employment," *National Association of Student Financial Aid Administrators*, February 8, 2021, https://www.nasfaa.org/news-item/24674/As_Biden_Administration_Takes_Hold_Some_Speculate_on_the_Return_of_Gainful_Employment.

¹⁹ "The Biden Plan for Education Beyond High School," downloaded October 20, 2021, <https://joebiden.com/beyondhs/>.

²⁰ Jon Marcus, "Community Colleges Rarely Graduate the Veterans They Recruit," *The Atlantic*, April 21, 2017.

These regulations had a devastating impact on proprietary colleges. During the 2012-2013 academic year, an estimated 1,451 proprietary colleges were operating in the United States. As depicted in Figure 1 (below), during the 2019-2020 academic year, that number had fallen to 697, a decline of almost 52% in less than a decade.²¹ However, despite the decline in the number of for-profit schools, the number of traditional institutions has remained at about the same level, in part because they operate in a friendlier regulatory environment.

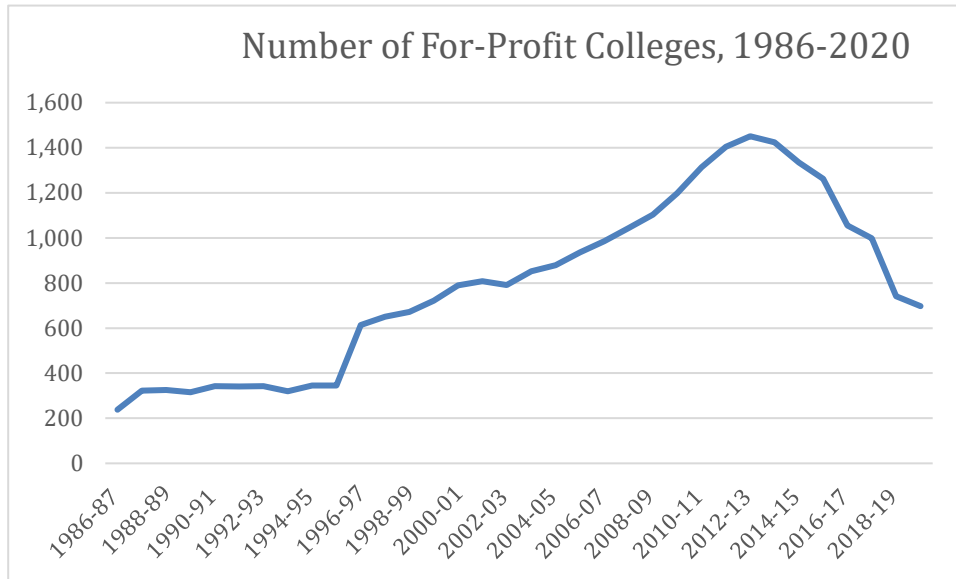


Figure 1: Number of For-Profit Schools in the United States, National Center for Education Statistics.

Demographics of Students at Proprietary Schools

Unlike those attending traditional four- or two-year institutions, proprietary colleges have a vastly different demographic. Firstly, studies have suggested students at for-profit institutions are "more likely to be lower-income, older, women, students of color, veterans, and single-parents relative to students in other sectors."²² Data from the *National Student Clearing House* (and as shown in Figure 2 below), reveals the average age of students attending

²¹ "Digest of Education Statistics," National Center for Education Statistics, https://nces.ed.gov/programs/digest/d20/tables/dt20_317.10.asp?current=yes.

²² Stephanie Riegg Cellini, "For-Profit Colleges in the United States: Insights from Two Decades of Research," EdWorkingPaper No. 21-398, May 2021, <https://www.edworkingpapers.com/sites/default/files/ai21-398.pdf>.

proprietary colleges is 32 years old, well above the average age of those attending other nonprofit and public institutions.²³

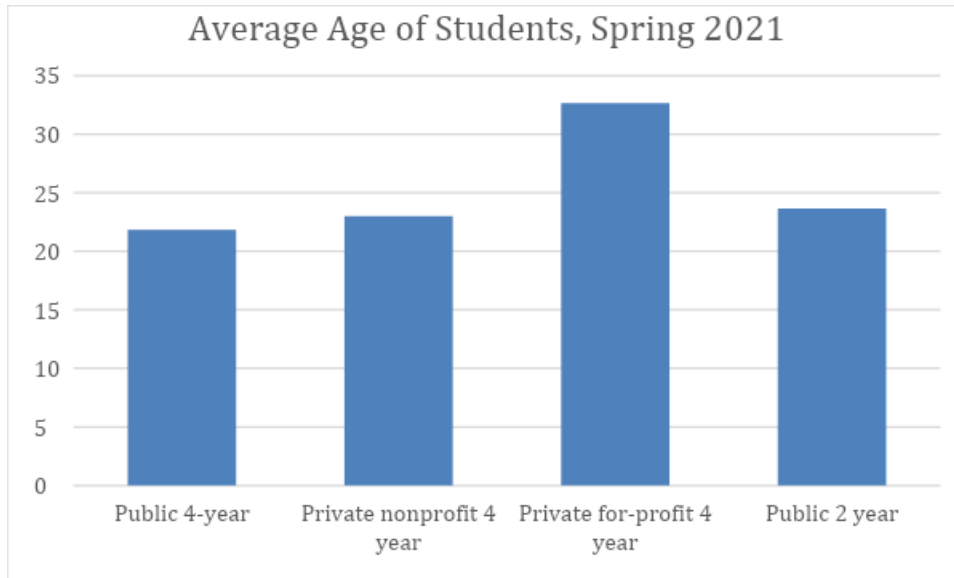


Figure 2: “Term Enrollment Estimates: Spring 2021,” National Student Clearinghouse Research Center.

In addition to the average for-profit career college student being older than students attending public and private colleges, these schools also have a greater percentage of female students than public and private colleges. As Figure 3 (below) shows, females make up approximately 67% of students at proprietary colleges, well above public and private nonprofit equivalents. These statistics mean that further regulations on for-profit institutions would likely discriminate against older and female students seeking a flexible education around family or work commitments.

²³ “Term Enrollment Estimates: Spring 2021,” National Student Clearinghouse Research Center, June 2021, https://nscresearchcenter.org/wp-content/uploads/CTEE_Report_Spring_2021.pdf.

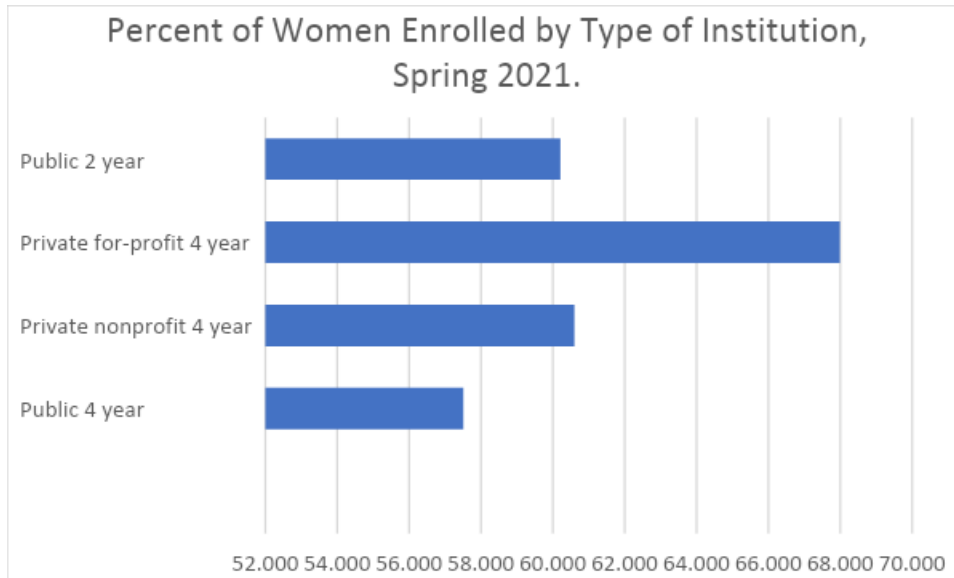


Figure 3: Term Enrollment Estimates: Spring 2021, "National Student Clearinghouse Research Center.

Data from the *Digest of Education Statistics* shows that proprietary colleges are far more diverse than their nonprofit and private counterparts.²⁴ In Fall 2019, for example, Black and Hispanic students made up 11% and 21% of enrolled students, respectively, and 50% were white. In addition, Black and Hispanic students each made up approximately 11% of enrolled students at nonprofit institutions, while White students represented 57% of the enrolled students. However, Black students made up 28% of enrolled students at for-profit schools, Hispanics made up 18% of enrolled students, and White students only made up 41% of enrolled students. This data shows that when compared to public and nonprofit counterparts, for-profits have a more diverse student body and that further regulations of for-profit schools would disproportionality harm minority students.

²⁴ "Table 306.50. Total fall enrollment in degree-granting postsecondary institutions, by control and classification of institution, level of enrollment, and race/ethnicity of student: 2019," *Digest of Education Statistics*, January 2021, https://nces.ed.gov/programs/digest/d20/tables/dt20_306.50.asp. For the purposes of Figure 5, "Other" includes non-resident aliens, Native Americans, Pacific Islanders, and those who identified as being two or more races.

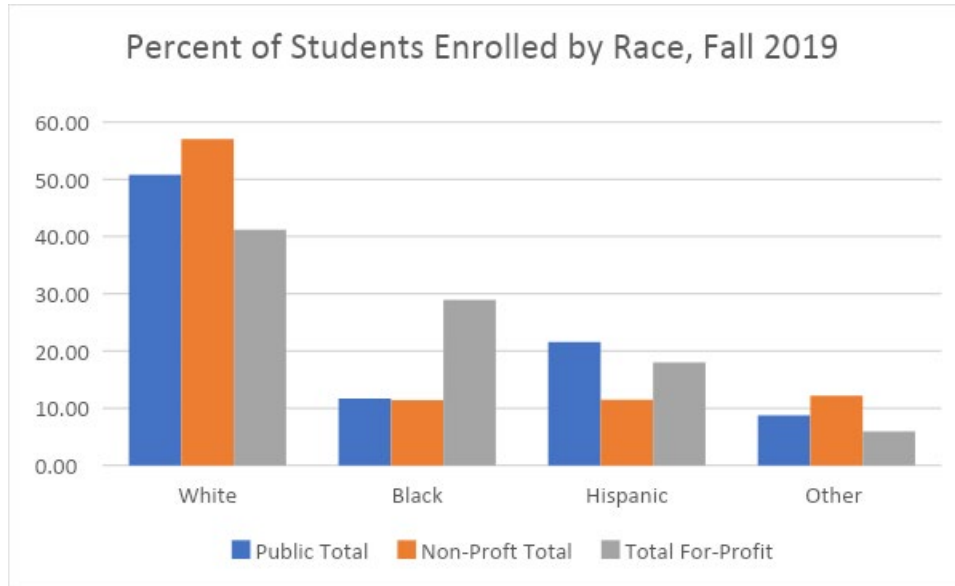


Figure 4: Level of enrollment and race/ethnicity or nonresident alien status of student, Digest of Education Statistics

These statistics show that proprietary schools serve communities underserved by their nonprofit and private counterparts. These statistics also reveal one of the most critical purposes of for-profit schools, allowing minority, older, and female students the opportunity to obtain an education for the first time or gain new skills.

Not only are proprietary colleges more diverse than traditional colleges, but they also cater to those with fewer academic credentials. For example, the Center for Analysis of Post-Secondary Education and Employment found that only 76% of for-profit college students had a high school diploma, compared to 96% of those who attend public four-year colleges. These demographic differences explain why for-profit institutions tend to focus their offerings on trade and vocational courses instead of liberal arts or Science, Technology Engineering, or Mathematics (STEM) based subjects. As Senator Mike Enzi (R-WY) stated in 2011, for-profit schools "provide important training for those who choose to become mechanics, plumbers and electricians" instead of pursuing traditional academic training.²⁵

²⁵ "Enzi Says DOE Rule is One More Example of Heavy-Handed Regulation Harming America's Economy," U.S. Senate Committee on Health Education, Labor, and Pensions. June 3, 2011, <https://www.help.senate.gov/chair/newsroom/press/enzi-says-doe-rule-is-one-more-example-of-heavy-handed-regulation-harming-americas-economy>.

It is readily apparent that the demographics of those attending for-profit institutions differ significantly from those attending traditional higher education institutions. From these statistics, it is clear that for-profit schools provide significant educational opportunities for those who may otherwise be denied access to higher education or minority students who enroll. Thus, further legislative or regulatory action would be discriminatory -- disadvantaging these students, eliminating consumer choice, and, in some cases, forcing them out of higher education entirely.

Student Outcomes

Metrics of student outcomes have been widely used as a parameter to guide reforms in higher education. Whereas in the 1990s, the 90/10 rule was used as a financial proxy for perceived institutional quality given the lack of available data, today available data shows that relative to traditional public institutions,²⁶ proprietary institutions demonstrate strong student outcomes, including but not limited to graduation rates, post-enrollment earnings, loan repayment, and student loan defaults. Combined, these indicators provide better proxies for student outcomes than the source of revenue alone.

For those attending proprietary institutions, research shows that the financial return on the investment can be significant. The Brookings Institute, for example, a vocal critic of for-profit institutions, found that those who complete an associate degree at for-profit institutions experience "a bump in earnings around four percent per year of education-or 10% total" and a substantial bump for minorities and low-income Americans. The findings speak to the essential function that these institutions play in the modern American education system, allowing vulnerable citizens the opportunity to enhance their economic situations.²⁷

Northwestern University scholar Dr. Jonathan Guryan has researched extensively the financial benefits for-profit institutions provide their students post-graduation. In his research,

²⁶ See Delisle and Christensen, p. 8.

²⁷ Stephanie Riegg Cellini, "Does a for-profit education pay off?" The Brookings Institute, July 16, 2015, <https://www.brookings.edu/blog/brown-center-chalkboard/2015/07/16/does-a-for-profit-college-education-pay-off/>.

Dr. Guryan emphasizes that the earnings gains for CFE's graduates ranged from 19-43% for those who earned an associate's degree and between 27 and 48% for those who earned a bachelor's degree.²⁸ Excluding costs, these statistics pointed to additional income between \$11,900 and \$125,000 for associate degree graduates and between \$40,000 and \$153,000 for bachelor's graduates.²⁹ These earnings ultimately mean that "the earnings gains" from obtaining a degree from a for-profit school substantially outweigh "the cost of attending."³⁰

Comparatively, for graduates of community colleges, earnings increase by only an estimated \$7,900.³¹ This stark difference in earning outcomes suggests that proprietary schools can result in significantly better earning potential for students, which shows that forcing students to pursue higher education at Community Colleges will only limit their post-graduation earning potential.

The benefits of a degree from a for-profit school also extend beyond additional earnings and into broader society. For example, Guryan finds that graduates of proprietary colleges were more likely to find employment, more likely to be promoted, more likely to have a healthier life, and less likely to be incarcerated than those who did not obtain an education after high school.³² While similar trends have also been identified of Community College graduates, Guryan's research emphasizes explicitly that without the option of for-profit institutions, more low-income or minority students could be stuck in low-income jobs and more likely to fall into the criminal justice system.

Additionally, studies have indicated that proprietary institutions provide comparable graduation rates when compared to their nonprofit counterparts. For example, in a May 2021

²⁸ Jonathan Guryan, "Report in the Matter of State of Colorado, ex rel. John Suthers, Attorney General and Julie Mead, Administrator, Uniform Consumer Credit Code v. the Center for Excellence in Higher Education Inc., et al." June 6, 2017, p. 1.

²⁹ Ibid, p. 2.

³⁰ Ibid.

³¹ Diana Furchtgott-Roth, Louis Jacobson, and Christine Mokhe, "Strengthening Community Colleges' Influence on Economic Mobility," Pew Trusts, Economic Mobility Project, October 2009, https://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/economic_mobility/empcollegesv10pdf.pdf.

³² Guryan, p. 2.

op-ed, Gerard Scimeca pointed out that some public, nonprofit colleges have "appallingly low graduation rates," some as low as 9% but do not face legislative or regulatory scrutiny.³³ In testimony to the House of Representatives in May 2019, Lindsey Burke took the analysis further and suggested "when apples-to-apples comparisons are made between program types, for profit colleges even graduate students at higher rates than their traditional college counterparts."³⁴

For students, cracking down on proprietary educational institutions could present a two-fold problem. Firstly, it will deny them the considerable economic opportunity that an education at a proprietary institution can provide. Secondly, further regulating proprietary institutions might force students to attend other modes of education that have comparable or worse educational outcomes.

Consumer Choice in Programs

One of the principal benefits of proprietary colleges is that they offer students the opportunity to enroll in programs that are not offered elsewhere as well as those that are "relevant to today's job market."³⁵ While public and private nonprofit schools focus on a traditional liberal arts education or STEM course, for-profit schools focus on vocational courses with some liberal arts courses. As education policy expert, Diane Auer Jones, noted in her testimony in *Colorado v Center for Excellence in Higher Education et.al.*, over the past twenty years, community colleges "have focused on providing lower-cost general education courses in order for some to transfer to four-year colleges," and have "reduced the number and size of

³³ Gerard Scimeca, "For-Profit colleges don't deserve lawmakers' criticism," *The Virginia Pilot*, May 3, 2021, <https://www.pilotonline.com/opinion/columns/vp-ed-column-scimeca-0504-20210503-oufhpxjekvbrdngbiqjggmhuaq-story.html>.

³⁴ Lindsey Burke, "Examining For-Profit College Oversight and Student Debt," The Heritage Foundation, June 27, 2019, <https://www.heritage.org/testimony/examining-profit-college-oversight-and-student-debt>.

³⁵ Judah Bellin "A Gateway to the Working World: For-Profit colleges Have Their Critics, but in New York, the Best Schools Offer Real Opportunity," *City Journal*, Spring 2015, <https://www.city-journal.org/html/gateway-working-world-13724.html>.

vocational programs.³⁶ This shift has left proprietary schools as the only provider of vocational courses for those who do not want a liberal arts education.

For example, a 2015 study found that across New York, a city that "is home to about 500 for-profit schools," 200,000 students were enrolled in "niche fields such as cosmetology, culinary arts, and personal fitness training," all programs that traditional providers did not offer.³⁷ In addition, attendees routinely cite better-focused training as one reason they elect to attend a proprietary college over traditional higher education institutions.³⁸

Imposing further regulations on proprietary colleges will harm students by denying them the opportunity to pursue vocational and trade courses that are not offered at traditional higher education institutions. Additionally, by denying individuals the opportunity to pursue vocational training at public or private not-for-profit institutions, regulators presume that students will thrive in an academic environment when many worthy and needed occupations do not require a bachelor's degree or associate's degree.

Conclusion

While proprietary educational institutions face increased public and political scrutiny, those at the center of the debate ignore important empirical evidence that points to a broader function of these institutions in the American education system. For example, examination of enrollment data shows that proprietary institutions are serving an older and more diverse student body, many of whom do not have a high-school education and seek educational opportunities not available to them at traditional higher education providers. Further evidence shows that graduating from a proprietary institution can enhance earning potential, allowing those with few academic credentials the opportunity to improve their economic security.

³⁶ Diane Auer Jones, "State of Colorado, ex rel. Cynthia H. Cofman, Attorney General, and Julie Mead, Administrator, Uniform Consumer Credit Code v. Center for Excellence in Higher Education Inc.," June 6, 2017.

³⁷ Ibid.

³⁸ Neal McCluskey, "Even for-profit universities are Better Than America's Terrible Community Colleges," *Washington Post*, January 13, 2015, <https://www.washingtonpost.com/posteverything/wp/2015/01/13/even-for-profit-universities-are-better-than-americas-terrible-community-colleges/>.

Exclusively targeting these institutions could see ramifications that would be completely at odds with the goal of the proposed regulatory changes.

Lawmakers should be especially wary of further changes to the 90/10 rule. As this research shows, imposing asymmetrical regulations on proprietary colleges and traditional educational institutions could inflict harm on the very students' regulators are seeking to protect. Specifically, further changing the 90/10 rule would deny veterans access to educational institutions that meet their needs and would force them into the worst-performing public institutions.

Policymakers are right to want to safeguard the quality of educational options available to students, especially military students and veterans. But to do so efficiently, a number of factors, which are currently ignored, need to be included in any regulatory approach that seeks to enhance educational quality and opportunity for all students: a) quality assurance policies meant to protect veterans, military students, and minority students should be based on student outcome metrics, and not on sources of revenue metrics; b) the student outcome metrics should reflect the wide range of demographic and socio-economic background of these students; and c) regulations should apply equally to all types of institutions of higher education, whether public or private.

This is all to say that efforts by lawmakers to target proprietary institutions with onerous regulations would hurt the very people they are claiming to protect.