

**Testimony of Robert Shireman to the Committee on Appropriations,
Subcommittee on Labor, Health and Human Services, Education, and Related Agencies
U.S. House of Representatives**

March 12, 2019

Thank you for the opportunity to testify today. I am Robert Shireman, the director of higher education excellence and a senior fellow at The Century Foundation (TCF). TCF is a progressive, nonpartisan think tank that seeks to foster opportunity, reduce inequality, and promote security at home and abroad. Our education program addresses issues of school diversity, college affordability, consumer protection, and accountability.

The U.S. experience with federal funding of for-profit colleges is not a pretty one. The industry inevitably seeks to take down the guardrails intended to protect student and taxpayer interests, resulting in mass harms to veterans and low-income students alike. Rampant abuses emerged with the first GI Bill after World War II, in the 1970s, in the 1980s, and in the 2000s (chronicled by David Whitman on TCF’s website).ⁱ Just like their predecessors before them, the for-profit lobbyists today say those bad days are over; the industry has learned from its “mistakes;”ⁱⁱ gainful employment advocates “should declare victory and go home” because it had successfully eliminated the worst programs.ⁱⁱⁱ “We are never going back to where we were.”^{iv}

Scandal, Regulate, Forget, Repeat

The same promises were made before—and oversight was relaxed in ways that led to new scandals. It is as if lawmakers and regulators think that because it’s dry under the umbrella, the umbrella can be ditched. In 1971, with a new GI Bill for Vietnam veterans, the nation’s chief of veterans affairs testified that the “areas of abuse detected in the earlier World War II program were eliminated.”^v Two years later, the manipulative recruiting tactics had returned.^{vi} The Ford

Administration implemented reforms: schools with more than 60 percent borrowers were put on watch,^{vii} programs with fewer than 15 percent non-federal students needed special approval.^{viii} The Secretary of Health, Education, and Welfare later declared these reforms successful.^{ix}

These protections did not survive later lobbying by for-profit schools, however. Abuses returned. In 1988, William Bennett, the education secretary, called the situation “an outrage perpetrated not only on the American taxpayer but, most tragically, upon some of the most disadvantaged, and most vulnerable members of society.”^x He complained that students at for-profit schools “are left without an education and with no job, and the taxpayer ends up holding the bag for a kid who gets cheated.”^{xi} Reforms were adopted by Congress in 1992; more than 1,200 schools closed.

The late 1990s saw naive proclamations that the abuses would never return. In 1997, the head of the for-profit college association, in advocating for relaxing rules that Congress had adopted five years before, said “We’ve seen a fire across the prairie, and that fire has had a purifying effect. . . . As our sector has weathered the storms of recent years, a stronger group of schools is emerging to carry, at a high level of credibility, the mantle of training and career development.”^{xii} The next year, Congress weakened the 85-15 rule that had been adopted in 1992, and made it easier for schools to show lower loan default rates to maintain eligibility for federal aid.

Declaring that abuses in the student aid programs were “no longer possible today,” President Bush’s secretary of education adopted regulations in 2002 creating loopholes in the ban on commission-paid recruiting at schools using federal aid.^{xiii} In June 2004, the for-profit college executive chosen to speak on behalf of the for-profit college industry was David Moore, CEO of Corinthian Colleges. He testified that there was no longer danger from for-profit

colleges because the “fraud and abuse perpetrated by certain for-profit institutions” had been “effectively addressed.”^{xiv} One month later, the president of ITT Tech resigned in the face of a federal probe of predatory recruitment practices.^{xv} Two months later, a probe of the University of Phoenix revealed sales tactics that ranged “from illegal to unethical to aggressive.”^{xvi}

Wanting to believe the industry’s proclamations, Congress in 2006 adopted a budget bill that included a whopper provision opening the door to rapid, unchecked growth in federal funding of online education programs, a favorite vehicle of for-profit schools.^{xvii}

“Bad Actors” Are a Product of Their Incentives and Oversight, Not Their Intentions

This is the part of the testimony where some will expect me to say that these people are all crooks and should go to jail. Because the natural response to these scandals is to assume that evil people simply had wormed their way into a school and implemented devious strategies meant to defraud students and taxpayers. The solution, from this perspective, is to do a better job of scanning for, and ejecting, “bad actors” in the industry.

But that isn’t what happens. Predatory schools usually don’t start out predatory. Instead, they launch with a plan to do good by doing well, following market indicators, like the number of new customers and the stock value, that in many industries lead to a quality product at a fair price. But in education, these simplistic and narrow indicators of business success are not adequate, particularly when the customer is a third party—the government—that is not able to check the value for the money.

Without trustees or public governance, the for-profit navigation systems cause the schools to trample students’ interests. All the while, they remain in denial about bad outcomes because of the self-image associated with their intention to earn a profit by offering a quality education at a market price.

The Ruse of “Equal Treatment” for Unequal Actors Fosters More Abuse

Last week I noticed a Tweet from a perennial defender of for-profit colleges that asserted that “all schools from all sectors” should be held to the “same accountability standards.” The Betsy DeVos version of this particular deception is to dismiss the differences between the sectors as “simply...tax status.”^{xviii}

Equal regulatory treatment sounds like a no-brainer. But actually, it’s brainless: the very definitions of each sector are about their accountability, the way that each is regulated. Public and nonprofit entities must comply with an array of laws meant to protect the public interest. No such restrictions apply to for-profit entities.



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 ²⁹	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

LEARN MORE AT bit.ly/FPstatetoolkit.



The different legal treatment of the sectors is as distinct as night and day. Let’s say the CEO of an institution replaces the full-time faculty with low-paid adjuncts, cutting costs by several million dollars, and then distributes the spoils to his fellow board members. If it is a public institution, the perpetrators go to jail. If it is a for-profit institution, the CEO is a hero to the investors. In writing the Higher Education Act, Congress believed that it mattered, in terms

of how closely the schools needed to be overseen, whether those in control of a school are allowed to siphon off money for themselves.^{xix} That is a no-brainer.

ⁱ The full series is available at <https://tcf.org/topics/education/the-cycle-of-scandal-at-for-profit-colleges/>

ⁱⁱ “We were a sector that grew too much, too fast,” industry lobbyist Steve Gunderson explained. “We didn’t have the infrastructure to serve it.” Josh Mitchell, “For-Profit Colleges Look to Trump for a Pass,” *Wall Street Journal*, December 2, 2016, <http://www.wsj.com/articles/for-profit-colleges-look-to-donald-trump-for-a-pass-1480680001>.

ⁱⁱⁱ Andrew Kreighbaum, “Delay by DeVos means reprieve for poor-performing programs,” *Inside Higher Ed*, July 7, 2017.

^{iv} Gunderson’s description of the attitude of 50 school CEOs he met with a week after the election.

Quoted in Alia Wong, “What a New Trump Administration Hire Could Mean for For-Profit Colleges,” *Atlantic*, Aug. 31, 2017.

^v “Educational Benefits Available for Returning Vietnam Era Veterans, Part I,” Hearings before the Subcommittee on Readjustment, Education, and Employment, Senate Committee on Veterans’ Affairs, 92nd Cong., 2nd Sess., March 23, 1972, 51.

^{vi} “Final Report on Educational Assistance to Veterans: A Comparative Study of Three G.I. Bills,” Committee on Veterans’ Affairs, U.S. Senate, Senate Committee Print No. 18, September 20, 1973, 93rd Cong., 1st sess., 171, 181.

^{vii} David Whitman, “Vietnam Vets and a New Student Loan Program Bring New College Scams,” The Century Foundation, February 15, 2017, <https://tcf.org/content/report/vietnam-vets-new-student-loan-program-bring-new-college-scams/>.

^{viii} *Cleland v. National College of Business* (1978), <https://caselaw.findlaw.com/us-supreme-court/435/213.html>

^{ix} Caspar W. Weinberger, “Reflection on the Seventies,” *Journal of College and University Law* 8, no. 4 (1981–82).

^x Letter from Secretary of Education William Bennett to Senator Edward Kennedy, quoted in “Bennett Asks Congress to Put Curb On ‘Exploitative’ For-Profit Schools,” *Education Week*, February 17, 1988.

^{xi} Ezra Bowen, “Education: Taking Aim at Trade Schools,” *Time*, February 22, 1988.

<http://content.time.com/time/magazine/article/0,9171,966765,00.html>

^{xii} Omer Waddles, then the head of the Career College Association, cited in Stephen Burd, “The Subprime Student Loan Racket,” *Washington Monthly*, Nov/Dec. 2009.

^{xiii} Federal Register, Vol. 67, No. 212, Nov. 1, 2002, p. 67054. In addition to adding exceptions to the ban, the agency declared that in the future, schools violating the incentive compensation ban would merely be fined, rather than having to return all of their Title IV aid from the time when the school began violating the law. Memorandum from William D. Hansen, Deputy Secretary to Terri Shaw, Chief Operating Officer, Federal Student Aid, “Enforcement Policy for violations of incentive compensation prohibition by institutions participating in student aid programs,” U.S. Department of Education, October 30, 2002.

^{xiv} “H.R. 4283, The College Access and Opportunity Act: Are Students at Proprietary Institutions Treated Equitably Under Current Law?” House Committee on Education and the Workforce, June 16, 2004, pp. 37-38.

^{xv} Elizabeth Farrell, “President of ITT Resigns; Company Denies Any Link to Shareholders’ Suit and Federal Inquiry,” *Chronicle of Higher Education*, July 13, 2004.

^{xvi} Dawn Gilbertson, “Student-recruitment tactics at University of Phoenix blasted by feds,” *Arizona Republic*, Sept. 14, 2004.

^{xvii} Chris Kirkham, “John Boehner Backed Deregulation of Online Learning, Leading to Explosive Growth at For-Profit Colleges,” *Huffington Post*, July 29, 2011 (updated January 23, 2012).

^{xviii} In response to questions after her confirmation hearing she said: “What I do not want to do is discriminate against or be intolerant of an institution of higher education simply because of its tax status.” Quoted in Josh Mitchell and Gunjan Banerji, “For-Profit Schools: Trump Delays Enforcing New Rules, Lifting Shares,” *Wall Street Journal*, March 12, 2017. Her explanation for opposing the gainful employment and borrower defense rules was because they “targeted certain kinds of institutions based on their tax status...if there’s going to be regulation around some institutions we believe it needs to be fairly applied across the board.” “Transcript of Education Secretary DeVos’ Interview with AP,” *Associated Press*, Aug. 14, 2017.

^{xix} The HEA offers taxpayer backing to entities that are public, or that are nonprofit corporations “no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.” Career program eligibility (if they lead to “gainful employment in a recognized occupation”) are eligible [by exception](#) from the general rule.