

# THE CENTURY FOUNDATION

## Issue Brief

### THE FEDS MOVE TO PROTECT STUDENTS AGAINST THE FOR-PROFIT EDUCATIONAL INDUSTRY

GORDON A. MACINNES

For most of the past thirty years, Congress and federal regulators have jiggered the rules to favor aggressive proprietary schools at the expense of poor, vulnerable students. The federal government's seeming role was to assure the Education Industry (not to be confused with the nonprofit education "sector") that its revenues and profits would swell using taxpayer grants and guaranteed loans. It worked.

Student loans and Pell Grants were intended to give poor and middle-class students the means to expand their educational and economic opportunities. Instead, hundreds of thousands of poor persons who have sought this financial aid to pursue higher education have been deceived, pressured, overcharged, exploited, and then dropped into bankruptcy—all with the connivance of Congress and federal officials.

The Obama administration has signaled a reversal of policy with [proposed rules](#) it filed on June 16. If adopted substantially as proposed, the new rules would give important new protection both to students enrolled in for-profit schools and colleges and to taxpayers.

The Department of Education's proposal reflects well-earned skepticism about the public benefits derived from for-profit education. In 502 pages of proposed regulations, a lot of technical and definitional issues are exposed and clarified—some of them very important to cleaning up the acts of the more predatory proprietary schools. For example, for-profits are assigned clearer responsibilities for ensuring that prospective students have graduated from an approved high school and are prepared to benefit from the training offered. But the two areas that will have the greatest impact are incentive compensation and misrepresentation.

One egregious practice at for-profit schools is basing the compensation for the position of "enrollment counselor" largely on how many students enroll who secure the federal loans and grants needed to pay the tuition. Such incentives were outlawed by amendments to the Higher Education Act in 2000. Then, the Bush administration effectively nullified the amendments by offering twelve "safe harbors" that gave for-profits the means to ignore the statute. The Obama administration proposes to erase all twelve "safe harbors."

---

The Century Foundation conducts public policy research and analyses of economic, social, and foreign policy issues, including inequality, retirement security, election reform, media studies, homeland security, and international affairs. The foundation produces books, reports, and other publications, convenes task forces and working groups, and operates eight informational Web sites. With offices in New York City and Washington, D.C., The Century Foundation is nonprofit and nonpartisan and was founded in 1919 by Edward A. Filene.

HEADQUARTERS: 41 EAST 70TH STREET – NEW YORK, NY 10021 – 212.535.4441 – 212.535.7534 (FAX) – INFO@TCF.ORG – WWW.TCF.ORG  
D.C. OFFICE: 1333 H STREET, NW – 10<sup>TH</sup> FLOOR – WASHINGTON, D.C. 20005 – 202.387.0400 – 202.483.9430 (FAX) – INFO@TCF.ORG – WWW.TCF.ORG

The for-profit industry is warning its shareholders that adoption of such a regulation will materially harm their revenues and increase their costs. The for-profits are now big businesses, typically investing about 25 percent of their revenues in advertising, marketing, and admissions. If recruiters are salaried, with no commission or bonus opportunities, the for-profits foresee a “material” decline in enrollments, and an end to double-digit annual increases.

The proposed elimination of “safe harbors” is accompanied by an expansion in what constitutes misrepresentation by a for-profit school. First, the Department of Education is proposing that the definition of misrepresentation not be limited to misleading statements found in written materials, but also should include statements by school representatives or third parties employed by the school. Second, the new rules say that the definition of misrepresentation includes any misleading statement to a public body, such as a state education department or accrediting body. Third, the new rules specify that misrepresentation covers all aspects of the sales pitch, including discussions of the ease of credits transfer, costs, credit hours, placement rates, and endorsements by students (sometimes mandated by the school) or the Department of Education.

While the Obama administration deserves credit for its plain and direct attack against predatory practices by the industry, the big battle is yet to be fought. “Gainful employment” is the term that terrifies the for-profits. The Department of Education proposed, but then relented, that each school be on the hook for demonstrating concretely that a successful graduate of any of its job-preparation programs will be employed with compensation adequate to repay all student loans in a reasonable period. A complex process was proposed that would tie future funding to Department of Labor job titles and market surveys of wages and salaries. Any program that cost its graduates more than 8 percent of their income would no longer be eligible for Title IV funding.

The for-profit industry refused even to participate in the negotiations on gainful employment that the Department of Education is required to hold with stakeholders. The Security and Exchange Commission filings of every for-profit alerted their shareholders to the danger of having to prepare students for jobs that would permit them to repay their loans. Corinthian Colleges whined that “we may have to substantially increase our efforts to promote student loan repayments, course completion and job placement in order to ensure continued Title IV eligibility.” Imagine—having to spend money serving students!

While deferring final action on gainful employment, the Department of Education will require schools to maintain websites to inform prospective students of the specific occupations for which training is provided (as defined by the labor department), the cost of each program, the graduation rate, the median loan debt incurred by Title IV and private loans, and—beginning in June 2013—the job placement rates for each program. On top of that, detailed information on individual students must be filed with the Department of Education on completion (or withdrawal) dates, student loan debt levels, and placement.

Amazing as it seems, the for-profit industry had not been required routinely to publicize the costs, debt levels, completion rates, and job placement rates. Most school websites provide information on tuition and fees, but no trustworthy data about the success of former students or the price of that success. The new rules, if they pass, will correct this oversight, giving prospective students a more accurate picture of the benefits of pursuing an education at a for-profit institution.

In combination with the Obama administration's victory in eliminating subsidies to banks for writing guaranteed loans, which was part of the health care reconciliation act, the proposed regulations represent a refreshing change—advocacy for students, not for the profiteers of the education industry. It may be telling that the price of Apollo Group, the largest for-profit education corporation, has gone from \$80 to \$48 per share during Obama's eighteen months.

---

WRITTEN BY GORDON A. MACINNES , A FELLOW AT THE CENTURY FOUNDATION

JUNE 23, 2010

---

THE CENTURY FOUNDATION IS PUBLISHING THE ISSUE BRIEF SERIES TO HELP EXPLAIN AND CALL ATTENTION TO PUBLIC POLICY IDEAS THAT ARE WORTHY OF DISCUSSION AND DEBATE. THE VIEWS EXPRESSED IN THIS SERIES ARE SOLELY THOSE OF THE AUTHORS OF EACH ARTICLE.

THIS AND OTHER PUBLICATIONS CAN BE FOUND ON THE CENTURY FOUNDATION WEB SITE: [www.tcf.org](http://www.tcf.org)