Assembly Higher Education Committee
Senate Business, Professions and Economic Development Committee

Joint Oversight Hearing
California Oversight of Private Postsecondary Education
Tuesday, February 14, 2012

Background Information

The Assembly Higher Education Committee and the Senate Business, Professions and Economic Development Committees have historically taken the lead in their respective houses on policy issues surrounding regulation of the private higher education sector. Together, the committees have worked to support high-quality programs and institutions, to ensure fair business practices and to protect students from fraud and abuse within the sector.

Over the course of this legislative session, the Assembly Higher Education Committee has conducted numerous oversight hearings aimed at examining the extent to which California's higher education system meets the needs of our students and our economy. Prior hearings have focused on the need to increase access, ensure affordability, and improve outcomes for students at our public institutions. The increasing number of students choosing private postsecondary education and training options raises important questions about how this sector fits into the higher education overall goals of access, affordability, and student success.

The Senate Business, Professions and Economic Development Committee is responsible for protecting California consumers from unethical and harmful professional and business practices and has played a lead role in developing and defining standards for the relationship between private postsecondary education and training programs and the students these institutions serve. The private sector provides education and training to numerous students, many seeking to become employed as licensed professionals under the various Department of Consumer Affairs licensing boards and bureaus. As such, the Committee is focused on ensuring that the state's workforce development needs are met through the timely approval of quality programs and that students in these programs have all of the tools and resources necessary to maintain awareness about their rights and protections, while also receiving valid and realistic information about programs before entering into contracts with the schools.

This hearing is designed to evaluate those California entities that maintain responsibility for oversight of the private postsecondary education sector and, through information provided by regulators, students, institutions and national policy experts, will seek to identify areas for improving inter-agency coordination, reducing regulatory duplication, and increasing oversight where it may be lacking.

<u>Recognizing the Need for Oversight</u>

At a time when California's public institutions have reduced enrollments due to major budget cuts, for-profit higher education institutions are in a position to play a role in providing access and education for otherwise underserved students. The challenge for the Legislature is to establish an oversight structure that supports innovative programs but prevents predatory practices.

As the number of students served by private postsecondary institutions has increased, so has the focus on fraudulent practices and low academic standards. There have been numerous high-profile federal investigations into the practices of for-profit institutions in recent years. Among the most notable are the

United States Government Accountability Office (GAO) series of investigations raising concerns regarding the amount of federal student aid dollars directed to for-profit institutions, the misleading and deceptive recruitment practices at certain institutions, and substandard academic performance expectations in some for-profit programs. A list of relevant GAO reports and the industry responses can be found at the end of this background document.

Federal data also raises important questions about program cost and student outcomes within the sector. Students from for-profit institutions have higher default rates on federal student loans than in other sectors, accounting for nearly half of all defaults. According to data from the National Bureau of Economic Research (NBER), which attempts to adjust for student population differences, for-profit student defaults are 8.7% higher than four-year publics and nonprofits and 5.7% higher than for community colleges. Student satisfaction information shows for-profit students are less likely to believe their education was worth the price paid. While NEBR data indicates for-profit students have higher probability of staying with a program through the first year and are somewhat more likely than community college students to obtain an AA degree, they are less likely to continue to higher-level college courses and to gain a BA degree. Further NEBR indicates that for-profit students are more likely to be idle (not working and no longer enrolled in school) six years after starting college, and are more likely to have experienced substantial unemployment since leaving school.

While evidence of dishonesty in marketing, high student debt and low completion rates, and general questions surrounding quality have focused the vast majority of state and federal conversations regarding the sector on regulatory oversight, the industry argues against painting all schools with the same brush and that there are high-quality programs offered at many for-profit institutions.

<u>Defining Private Postsecondary Education</u>

State law broadly defines private postsecondary education to include private entities with a physical presence in California that are offering formal postsecondary academic, vocational, or continuing professional education programs to the public for a charge. Among the thousands of institutions falling under this definition, however, there are significant differences in institutional missions and corporate organization, the types of students served and the programs offered, and the quality of education and opportunities provided for graduates. While there are numerous options for categorizing private institutions, California has generally looked to for-profit/nonprofit distinctions and accreditation status as means for evaluating institutions.

Accreditation is a voluntary, non-governmental peer review process used to determine academic quality. Under federal law, the United States Department of Education (USDE) establishes the general standards for accreditation agencies and is required to publish a list of recognized accrediting agencies that are deemed reliable authorities on the quality of education provided by their accredited institutions. While accredited and unaccredited education and training programs are allowed to operate in California, only accredited institutions are authorized to participate in federal and state financial aid programs.

<u>Unaccredited Institutions</u>: There are likely thousands of unaccredited for-profit and nonprofit private postsecondary institutions operating throughout the country. These institutions are not eligible to participate in state or federal student financial aid programs and are, therefore, not regulated by the federal government. Oversight of unaccredited institutions is solely the responsibility of states. As further discussed below, the California Bureau for Private Postsecondary Education (Bureau), housed within the

Department of Consumer Affairs (DCA), maintains responsibility for oversight of unaccredited institutions in California. It is unclear exactly how many unaccredited institutions are operating in California, as the Bureau does not currently track accreditation status of approved institutions. Estimates based on the limited available information would put the number of unaccredited school locations in California near 1000. It is also unclear as to the number of institutions offering unaccredited degrees and the number that are providing career technical training or vocational certificate programs.

Accredited institutions: Accredited institutions are somewhat easier to track as many of these institutions participate in federal and/or state financial aid programs. Accredited institutions include both nonprofit and for-profit education and training programs.

Accredited nonprofit institutions are commonly referred to as independent institutions and are recognized in California law as a segment of California higher education, alongside public institutions. Independent institutions are defined in the Education Code as private institutions "that grant undergraduate degrees, graduate degrees, or both, and that are formed as nonprofit corporations in this state and are accredited by an agency recognized by the United States Department of Education." Historically, many independent institutions have been exempt from state-level consumer protection regulations. Nonprofit institutions that are unaccredited do not fall within the definition of "independent institutions" and have generally been regulated by the state.

Accredited for-profit institutions, also commonly referred to as proprietary colleges or for-profit colleges, include academic and vocational institutions of postsecondary education that are privately owned or owned by a publicly traded company and whose net earnings can benefit a shareholder or individual. Prior to the declines seen this year in new student enrollments at many for-profit colleges, largely due to new federal regulations and a slowing economy, there had been tremendous growth in the number of students attending, and the amount of public financial aid funds directed to for-profit education and training programs. Between 2004 and 2009, according to the USDE, the number of students attending accredited for-profit institutions increased by over 88% nationwide; with the sector serving approximately 2.2 million students in 2009. According to the US Government Accountability Office, during the 2009-2010 academic year, for-profit colleges received almost $32 billion in grants and loans provided to students under federal student aid programs. Additionally, of the $4.4 billion awarded between 2009 and 2011 in federal veteran students' benefits, 37% went to for-profit colleges, which enrolled about 25% of students. In California, an estimated $93.3 million was paid to Cal Grant recipients attending for-profit institutions in 2009-10.

There are two different types of accreditation:

Regional Accreditation: There are six USDE-recognized regional accrediting agencies. Each regional accreditor encompasses public and the vast majority of non-profit private (independent) postsecondary educational institutions in the region it serves. California's regional accrediting agency is the Western Association of Schools and Colleges (WASC). There are a handful of WASC-accredited for-profit private institutions operating in California. Many regionally accredited for-profit institutions have main campuses in other parts of the country and are, therefore, accredited by one of the other five regional accreditors.

National Accreditation: National accreditation is not based on geography, but more focused to evaluate specific types of schools and colleges. For example, the Accrediting Commission of Career

Schools and Colleges of Technology examines career schools and technology programs. The Distance Education and Training Council accredits colleges that offer distance education. The idea behind national accreditation is to allow nontraditional colleges (trade schools, religious schools, certain online schools) to be compared against similarly designed institutions. Different standards and categories are measured, depending on the type of school in question.

While accreditation remains a primary method for evaluating and assuring educational quality, concerns regarding the disparate quality and reliability of USDE-approved accrediting agencies have led the USDE advisory committee on accreditation to look at changes to the role of accreditation. Potential changes include structuring accreditation based on institution type or mission rather than geography so that accreditors can more easily distinguish between colleges of varying quality, and defining a common set of data such as licensure, job placement, and completion rates that the federal government would collect and share with accreditors to minimize institutional reporting and ensure consistency. Further, while accreditation can be used as a measure of program quality, consumer protections fall outside of the scope of accreditation. States are responsible for enacting laws that protect students against fraud and abuse.

Understanding California's Regulatory Structure

California has a long and arduous history of attempted oversight of the private postsecondary sector. During the late 1980s regulation of the industry was carried out by a division within the State Department of Education. During that time the state developed a reputation as the "diploma mill capital of the world." As a result of concerns over the integrity and value of the degrees issued by private institutions, the state's regulatory program was overhauled and oversight responsibility for private colleges was transferred to a 20-member Council. Concurrently, the Maxine Waters School Reform and Student Protection Act was adopted, and provided somewhat different requirements and standards for private institutions. The law governing the Council was merged with the Waters Act, but doing so created a fragmented structural framework with numerous duplicative and conflicting statutory provisions. On January 1, 2007, the law authorizing the regulation of the private postsecondary education sector in California was allowed to sunset, leaving the state without any regulatory body overseeing private institutions.

Bureau for Private Postsecondary Education: Between 2007 and 2009 there were several failed attempts to establish a new regulatory structure. In 2009, the Legislature and the Governor reached agreement on AB 48 (Portantino, Chapter 310, Statutes of 2009). AB 48 established a new Private Postsecondary Education Act and created a new oversight Bureau within DCA for the purpose of regulating private postsecondary educational institutions that provide educational services in California. Today's Bureau is generally responsible for protecting consumers and students against fraud, misrepresentation, or other business practices at private postsecondary institutions that may lead to loss of students' tuition and related educational funds; establishing and enforcing minimum standards for ethical business practices and the health and safety and fiscal integrity of postsecondary education institutions; and establish and enforcing minimum standards for instructional quality and institutional stability for all students in all types of private postsecondary educational and vocational institutions.

However, not all private postsecondary educational institutions are regulated by the Bureau. AB 48 contained numerous exemptions to state-level oversight. The most notable exemption is the one granted to for-profit and nonprofit regionally accredited institutions. WASC-accredited institutions are provided a complete exemption from Bureau oversight. Students attending institutions that are accredited by a regional accrediting agency other than WASC are eligible for very limited tuition recovery assistance, but are not eligible for any other consumer protections provided under the Act. While, as outlined above, California exempts numerous institutions from specific aspects of oversight based on accreditation, several reports previously prepared on the issue of whether or not accrediting agencies provide a sufficient level of protection in the state's interest in ensuring that students are treated fairly have not definitively answered this question. Under the provisions of AB 48 (Portantino, 2009), the LAO is required to report on this topic by 2014.

Consumer advocates and institutional representatives alike have been critical of the Bureau's seemingly slow implementation in the two years since the passage of AB 48. Many of the concerns and delays can be linked to understaffing at the Bureau. In October of 2010, after the adoption of AB 48 implementing regulations, the Bureau was approved to hire 63 staff to carry out various licensing and enforcement duties. Unfortunately, however, the ongoing administrative hiring freeze significantly impacted the Bureau's ability to hire staff. Between January 2010 and January 2011 the Bureau staffing levels ranged from 5 - 13 individuals. In 2011 staffing slowly increased, and by December 2011 the Bureau staffing level was at 49. With this increased staff the Bureau has been able to review over 1200 applications for approval from schools, respond to over 1000 complaints against schools, and begin implementation of an inspection and enforcement program to ensure institutional compliance with the provisions of AB 48.

Department of Consumer Affairs: In addition to the oversight provided by the Bureau, there are nine professional licensing boards within the Department of Consumer Affairs that have a direct oversight connection to the Bureau. While some are required to independently review the curriculum and facilities of institutions offering programs, others only require Bureau approval in order to meet educational requirements for licensure, certification or registration. The board of Barbering and Cosmetology for example, approves curriculum, facilities, equipment and textbooks for schools offering training programs for license seekers. The Board of Vocational Nursing and Psychiatric Technicians staff grants approval of Vocational Nursing and Psychiatric Technician programs but does not have oversight of institutions offering these programs. The Board of Registered Nursing approves all nursing programs in the state.

The California Student Aid Commission (CSAC) provides some oversight of public and private institutions that participate in the Cal Grant program. CSAC reviews all institutions seeking to participate in the program to ensure institutions meet eligibility standards. Accredited institutions with eligible programmatic offerings are potentially authorized for Cal Grant participation if they meet other outlined requirements. Legislation enacted in 2011 (SB 70, Budget and Fiscal Review Committee) further requires the following of eligible institutions:

Student Loan Default: Participating institutions with more than 40% of their undergraduate students borrowing federal loans must have a three-year 2008 Cohort Default Rate (CDR) of less than 24.6% to be eligible for new and renewal Cal Grant awards in the 2011-12 academic year, and less than 30% for each subsequent year. A limited exception allows renewal Cal Grant A and B recipients to continue to use their Cal Grant awards at a newly ineligible institution, but their Cal Grant maximum award amounts are reduced by 20%. The Cal Grant B access awards of up to $1,551 for these renewal Cal Grant B recipients, however, is not reduced.

Data Reporting: As a condition for participation in the Cal Grant program, institutions are required, beginning in 2012, to annually report to CSAC enrollment, persistence and graduation data for all undergraduate students, including aggregate information on Cal Grant recipients, and the job placement rate and salary and wage information for programs that are designed or advertised to lead to a particular type of job or are advertised with any claim regarding placement.

The California Department of Veterans Affairs provides limited oversight of postsecondary education programs through its role as the State Approving Agency for veterans' education benefits (CSAAVE). The education benefits authority and approval process was established by an act of Congress in 1947 to insure that veterans and eligible dependents can use the GI Bill educational entitlement in an approved educational program. The CSAAVE is federally funded and operates under an annual reimbursement contract with the federal Department of Veterans Affairs. The primary function of CSAAVE is to review, evaluate and approve quality educational and training programs for veteran's benefits. CSAAVE approves colleges and universities, vocational schools, business schools, professional schools, and licensing and certification training and tests. All courses and training must lead to an educational, professional or vocational objective.

Federal Regulations Regarding State Oversight

Over the last several years the federal government has looked into the private postsecondary sector with the intent to determine if stronger laws are necessary to ensure adequate quality of schools that are eligible to receive Title IV financial aid funding. In October 2010, this debate culminated with the issuance of a set of revised Title IV regulations. There are numerous regulatory changes including recalculating the loan default rate, redefining a credit hour, requiring assurances that students can be gainfully employed upon graduation, etc. There are, additionally, several specific regulations aimed at changing the way California and other states regulate institutions.

Of primary importance to California institutions are the requirements that institutions obtain "state authorization" and have an independent complaint process:

> Section 600.9(a)(1)(i)(a) indicates that institutions must be named by state law, charter or be recognized through an "action issued by an appropriate state agency or entity" in order to be excluded from a state oversight/approval process.
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> Section 600.9(a)(1) requires all schools, even those public schools recognized by the state as higher education institutions, to have an independent student complaint process through a state agency. The USDOE has indicated that the systemwide governing board for public colleges and/or the Attorney General's office for public and private colleges could act as the complaint/enforcement officer.

Schools were allowed to apply for up to 2-year implementation extensions for a variety of reasons, including if the state could not provide the necessary state authorization or complaint process by July 1, 2011. In June 2011, the Department of Consumer Affairs provided a letter to schools indicating that compliance was being reviewed by the Administration. This letter appears intended to assist institutions in obtaining a compliance extension.

Additional Resources

Related Research Papers

The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators, National Bureau of Economic Research, Working Paper 17710, December 2011
http://www.nber.org/papers/w17710

Making It Happen: Increasing College access and Participation in California Higher Education, The Role of Private Postsecondary Providers, Tierney and Hentschke, National University System Institute for Policy Research, 2011
http://chepa.usc.edu/pdf/Making_It_Happen.pdf

The Role of For-Profit Colleges in Increasing Postsecondary Completions, Su Jin Jez, Department of Public Policy & Administration, California State University, Sacramento
http://webpages.csus.edu/~jezs/AEFP_110323.pdf

U.S. Government Accountability Office

For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices, U.S. Government Accountability Office, GAO-10-948T, August 2010
Full Report: http://www.gao.gov/new.items/d10948t.pdf

For-Profit Schools: Large Schools and Schools the Specialize in Healthcare Are More Likely to Rely Heavily on Federal Student Aid, United States Government Accountability Office, GAO-11-4, October 2010
Full Report: http://www.gao.gov/assets/320/310897.pdf

Higher Education: Stronger Federal Oversight Needed to Enforce Ban on Incentive Payments to School Recruiters, U.S. Government Accountability Office, GAO-11-10, October 2010
Full Report: http://www.gao.gov/assets/320/311169.pdf

For Profit Schools: Experiences of Undercover Students Enrolled in Online Classes at Selected Colleges, U.S. Government Accountability Office, GAO-12-150, October 2011
Full Report: http://www.gao.gov/assets/590/586456.pdf

Postsecondary Education: Student Outcomes Vary at For-Profit, Nonprofit, and Public Schools, U.S. Government Accountability Office, GAO-12-143, December 2011
Full Report: http://www.gao.gov/new.items/d12143.pdf

Industry Response to GAO Reports

The Coalition for Educational Success
http://www.ed-success.org/gao-report.php

U.S. Senate Hearings

Senator Tom Harkin, For-Profit College Investigation
http://harkin.senate.gov/help/forprofitcolleges.cfm

Improving For-Profit Higher Education: A Roundtable Discussion of Policy Solutions, July 2011
http://www.help.senate.gov/hearings/hearing/?id=28fa4b62-5056-9502-5d71-198cd2223f7a

Drowning in Debt: Financial Outcomes of Students at For-Profit Colleges, June 2011
http://www.help.senate.gov/hearings/hearing/?id=2c199df0-5056-9502-5df0-feb236792b52

Bridgepoint Education, Inc.: A Case study in For-Profit Education and Oversight, March 2011
http://www.help.senate.gov/hearings/hearing/?id=7c3b8c00-5056-9502-5d7a-54d0c8286a98

The Federal Investment in For-Profit Education: Are Students Succeeding? September 2010
http://www.help.senate.gov/hearings/hearing/?id=3e235bb6-5056-9502-5df5-5d5b0f000e01