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NEW YORK STATE LEGISLATURE

SENATE STANDING COMMITTEE ON HIGHER EDUCATION

Hearing on For-Profit Proprietary Institutions

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10:00 a.m.

Legislative Office Building

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Thank you for this opportunity to testify at today's hearing on for-profit proprietary institutions in New York State. We applaud the Senate Committee on Higher Education for examining the issues and challenges for-profit schools present, and examining ways in which New York State might be able to protect students who are putting their trust in these schools, paying for services and usually taking on debt in order to attend with the hope of advancing their careers.

Empire Justice Center is statewide not-for-profit law firm providing consultation, expert advice, and co-counseling on issues that impact legal services clients throughout the state, including student loan debt. Empire Justice has historically represented low-income persons in consumer protection matters including mortgage foreclosure, debt collection, rent-to-own scams, and student loan discharge cases, among other issues.

Empire Justice started providing assistance to students regarding their education loans when the degree granting for-profit college, Everest Institute (part of Corinthian College), located in Rochester, NY, closed on April 27, 2015. At the time of closing, the school had about 300 students including about 70 students who were heavily solicited by and transferred to the for-profit school of Bryant and Stratton. Following the closing of Everest, our office received dozens of requests for assistance from former Everest students who were adversely impacted by the closure. Two lawyers in the Rochester office worked with these students.

Last year, I participated as an alternate negotiator in the United States Department of Education's negotiated rulemaking process for their gainful employment rule representing legal services clients (Johnson Tyler from Brooklyn Legal Services was the lead negotiator for legal services clients during that process.) The negotiations consisted of three sets of meetings, four days each, with representatives of all significant stakeholders including large and small proprietary schools, accreditors, public colleges, private non-profit colleges, consumers, veterans, and financial aid offices. While the group was unable to reach consensus on a total rule, there was agreement among all parties that there should be a base level rule to evaluate for-profit proprietary colleges with sanctions. Regardless, Secretary Betsy DeVos of the U.S. Department of Education announced this past summer that it is her intention to do away with the gainful employment rule. This position was not unsurprising given her general tenure to take away protections for students and promote the monetization of our educational system. For that reason, however, and many others, it is imperative that New York State step in to ensure that underperforming for-profit proprietary schools do not exist in New York State at the mercy of unwitting students.

Transparency and Information

Governor Andrew Cuomo proposed very strong and common sense protections in his Executive Budget this year, name The For-Profit College Accountability Act. We supported that proposal and believe it is a good start to evaluate degree granting and non-degree granting institutions of higher education. First, the proposal provided transparency in calling on schools to submit the New York State Education Department (SED), to be published on its website, their financial statement of all revenue and expenditures for each prior academic year. This requirement seems a very basic place to start, to enable the SED to be able to evaluate a schools intention and ability to provide a quality education, and can also reveal other factors to the SED such as looking at whether a school is growing perhaps too rapidly, or shrinking at an unhealthy rate.

In addition to its fiscal report, there are surely a number of other items that would be helpful for the SED to have in hand as they are evaluating schools. I don't know all that is already collected or all

that the SED may find helpful but other items I would suggest to consider include detailed accounting for tuition and costs charged to students, the cost to the school of different aspects of instruction, enrollment, drop-out, and completion records and certainly anything else the SED deems would be helpful. Public disclosure of this information would not only be informative, but it would serve the schools as well by mandating them to evaluate their own profits in relation to the quality of the education they are providing.

Metrics

The first two questions posed to student advocates ask what metrics should be used for evaluating for-profit proprietary school programs, and for a performance scorecard for for-profit proprietary schools. We support the metric the Governor proposed through his “80:20” rule which aligns with but strengthens the federal “90:10” rule. The critical importance of this metric is that it evidences the market worth of the institution – Is the school good enough that students are willing to spend money they’ve already earned and pay out of pocket to attend, and/or is the school able to receive other private, foundation or alternative funding because it is seen as valuable?

The 90:10 federal rule, or an 80:20 rule that was proposed in New York State Executive Budget, or something in-between is easy to determine and standard measure across schools to assess the market value of institutions. The provision also protects tax payer dollars by preventing schools from being funded one hundred percent by the government; it is not common sense that for-profit schools should be solely funded through with government dollars. The question aptly highlights a fault with and loophole in the federal 90:10 rule that currently does not count funds available from the Department of Veteran’s Affairs as part of the ninety percent. There is no logic to this loophole and without question, New York State should count any funding from the Department of Veteran’s Affairs, and from any source of state, federal or local level government dollars, whether it be grants, loans or otherwise, as part of the greater percentage. Otherwise, it is not the market test, nor the protector of taxpayer dollars which the rule is intended to be.

Metrics could include various other measures, some of which I will list below. It is impossible to prioritize some metrics over others without a more comprehensive discussion. Metrics do not need to be, and ideally should not be stand alone evaluators of programs as well as schools. A scheme could be devised whereby programs within a school are evaluated preliminarily using a metric, and a school could be judged through another metric. Then, depending on the results, a second tier of evaluation could follow. The gainful employment metric has been criticized by institutions because of its inability to take into account factors specific to one set of schools or another. While metrics such as those used through the gainful employment rule do provide a good baseline, setting up a tiered approach could help address concerns.

Above all, however, New York State cannot tie itself up in either developing metrics that are so complicated that they are not clear, understandable, or lead to common sense evaluation of schools. Nor should New York State fail to act in fear that the perfect metrics cannot be achieved. The bottom line is that metrics do need to be set in order for the state to ensure bad schools do not exist to take advantage of students, and for students to be able to fairly evaluate the measure of the school they hope to attend.

Potential other metrics to consider, in no order of priority or otherwise, include: (1) comparison of tuition and fees to students versus instructional expenditure, (2) looking at loan status and repayment rates including whether students are paying down on their loan principal and not just whether they are

“current” on their loan payments, (3) analyzing earnings data and particularly comparing it to earnings potential prior to attending the school, (4) ownership of the school, (5) a school’s growth rate.

Specifically regarding the federal gainful employment rule, a state-level version should be instituted particularly if the Secretary DeVos carries out her promise to get rid of the rule permanently. Gainful employment, however, is a base level measurement and could be coupled with additional measurements.

Sanctions for Noncompliance

Enforceable laws and regulations are critical. One of the biggest take-aways from the subprime mortgage lending experience is that we cannot rely on industry behavior to change voluntarily, or through market competition alone. Schools will not voluntarily comply with standards, regulations or even laws if there is no stick at the end. Metrics will only work if there is meaningful enforcement. Sanctions can include the inability for students to use taxpayer dollars to attend a failing program within a school as the gainful employment rule set forth, to full closure of the school. There need not be a single sanction available, and sanctions may depend on the evaluation metrics.

Sanctions and enforcement should also include relief to students who attended institutions which did not properly prepare them, which defrauded them, and/or made promises that were not carried through. A private right of action (including a fee shifting provision) needs to be imbedded in any law to enable harmed students to get out from the debt that folks are too often today stuck in for the rest of their lives because they made a bad decision to attend the wrong school. Ferreting out bad actors in higher education in New York State will take time and even the worst of schools likely won’t be shut down overnight. The students whom we failed to protect entering those schools while open should be ruined for life with debt they will never repay. The burden should fall on the schools and the state, not the students, for a failure to provide protections.

Marketing and Advertising

Another question asks about what limits should be placed on marketing and advertising. I do not have enough information or knowledge to fully provide a response, however, the Governor’s proposal which required at least fifty percent of a school’s revenue to be spent on student instruction provides a practical starting point. I could see a base number – no more than ten or twenty percent, for example – can be spent on marketing and advertising as providing clear guidance to schools and setting a reasonable bar for a level playing field. It has to be recognized foremost that marketing and advertising is the primary way for-profit proprietary schools to attract students and that alone presents a number of problems. First, to the extent that these schools are competing with public institutions or with reputable for-profits that dedicate a higher percentage of resources to instruction for the same students, not having some check on marketing dollars disadvantages more reputable schools. Second, deception in advertising and solicitations can be difficult to detect and ferret out. That, coupled with the fact that advertising works results in vulnerable people being taken advantage of by unscrupulous advertisers.

In addition to a dollar limit, I recommend that further consumer protections be put in place by the State around marketing and advertising. Unfair and deceptive practice should be specifically prohibited. Parameters should be instilled for print advertisements including requiring a notice on ads that it is a for-profit institution, and a verbal notice on radio or television ads. Websites should include a similar notice and schools should be prohibited from having aggressive pop-ups that mandate a visitor to the site provide their contact information before they can access the basic website of the school. A school’s advertising could be factored in as another measure in the SED’s evaluation of whether a school

is truly trying to provide a valuable education to students, or acting more as a profit-generating engine.

Conclusion

Thank you again for the opportunity to testify at this hearing in support of strong metrics and laws to prevent disreputable for-profit schools and colleges from existing in New York State and taking advantage of student loan borrower. The number of student borrowers in distress today, the changing US economy, and the financial realities of young Americans at the beginning of their careers makes this a matter of the highest urgency.