

**Written Testimony of Deanne Loonin, Director of National Consumer
Law Center's Student Loan Borrower Assistance Project
To the Massachusetts Joint Committee on Higher Education in Support
of An Act to Form a Commission on For-Profit Schools
H. 1066/S. 134**

June 8, 2011

The following testimony is submitted on behalf of the National Consumer Law Center's low-income clients. The Boston-based National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues.

NCLC's Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens and make loan repayment more manageable.¹

Our policy and advocacy efforts are grounded in our direct legal assistance work with low-income clients in Massachusetts. These clients seek our assistance because they are struggling with student loan debt. In addition to our work in Massachusetts, we consult with advocates across the country representing borrowers, many with complaints against for-profit schools. Further, a large percentage of the complaints we get through our Student Loan Borrower Assistance web site involve for-profit schools.

On behalf of our low-income clients, NCLC supports H. 1066/S. 134 as a first step in improving state oversight over for-profit schools. The bill would create a commission to study and make recommendations concerning the regulation and oversight of Massachusetts for-profit schools with a particular focus on the protection of students who receive state and federal financial aid. We also support other legislative efforts to address problems with for-profit schools, including H38 which consolidates authority over most for-profit schools into the Division of Professional Licensing (DPL). The bill also grants DPL the authority to pass rules and regulations regarding licensure and operations and authority to investigate complaints and violations.

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¹ See the Project's web site at www.studentloanborrowerassistance.org. NCLC also publishes and annually supplements practice treatises which describe the law currently applicable to all types of consumer transactions, including *Student Loan Law* (4th ed. 2010).

Problems in the For-Profit School Sector

Unfair and deceptive for-profit school practices are a tremendous source of frustration, financial loss, and loss of opportunity for consumers, particularly low-income consumers hoping to break out of poverty. Attracted by the financing provided by government student loan and grant programs, many for-profit school scams and ill-conceived schools have exploited federally funded student assistance programs.

This problem, for the most part, grew out of good intentions. In 1979, Congress amended the Higher Education Act (HEA) to encourage lenders to market loans to for-profit vocational school students.² Congress hoped to open up the student financial assistance market, particularly to non-high-school graduates and others wishing to pursue job training. Unfortunately, these changes not only opened the door to eager students but also to unscrupulous for-profit school operators and lenders.

For-profit school fraud is by no means only a legacy of the past. New abuses have emerged, many tied to the aggressive push for growth in the sector. The booming for-profit educational market is increasingly dominated by regional and national franchises, many with stock shares traded on Wall Street.

There is no question that the schools are focused on growth. Annual reports are filled with detailed graphs and tables showing growth in enrollment, growth in campuses, and growth in profits. Some say that this market orientation allows for-profit schools to be more innovative and flexible. There is certainly potential for this to occur. However, this same profit motive can, unless constrained by reasonable protections for consumers and taxpayers, induce schools to engage in practices that harm students and taxpayers. The Department of Education's Inspector General has warned that rapid growth is a risk factor for abuse in the federal financial aid programs.³

Serious problems arise when schools pursue their bottom lines at the expense of providing worthwhile educations. A former dean at a campus of Career Education Corporation summarized the problem in discussing his former employers: "Everything is a numbers game with them, it's not about education."⁴

² Higher Education Technical Amendments of 1979, Pub. L. No. 96-49, 93 Stat. 351 (1979). The 1979 amendments removed a ceiling on the federal interest subsidy paid to participating guaranteed student loan program lenders. Later amendments removed other limitations on student borrowers attending for-profit schools. *See* Education Amendments of 1980, Pub. L. No. 96-374, 94 Stat. 1367 (1980); Higher Education Amendments of 1986, Pub. L. No. 99-498, §§ 425, 1075(a), 100 Stat. 1268, 1359 (1986).

³ Statement of John P. Higgins, Jr., Inspector General, Department of Education, Before the U.S. House Committee on Government Reform (May 26, 2005).

⁴ Sam Kennedy, "School's Pursuit of Profit Leaves Students Behind," *The Morning Call*, April 24, 2005.

Between 1998 and 2008, enrollment in higher education generally increased 31%. Among for-profit schools, enrollment increased by 225% over that same period.⁵ This growth has paid off for the schools and their investors. The average operating profit in FY 2005 among publicly traded for-profit higher education companies was \$127 million. The same number in FY 2009 was \$229 million, an increase of 81%.⁶

This rapid growth is fueled by government dollars. In 2009, for-profit schools received almost one-quarter of all Pell grants, up from just 13% in 1999.⁷ Many also receive state funds that bring the dependence on government funds closer to 95% of revenues.⁸

This may seem on the surface like a typical business success story, but there are very serious down sides for students and taxpayers. Students at for-profit schools default on their federal student loans at disproportionately high rates. In FY 2008, nearly half of all federal student loan defaulters (43%) attended for-profit schools, even though these schools enrolled only about 10% of all students during that time period.⁹ And these rates are almost assuredly under-reported.¹⁰ Further, there are many serious concerns about poor quality and consumer fraud at these schools.¹¹

Although public enforcement has generally been lax, some state and federal regulators have recently taken steps to address abuses. The federal government has increased oversight in a number of ways, including the recent intervention by the U.S. Justice Department and a number of state attorneys general, including Massachusetts, in a whistle-blower lawsuit against Education Management Corp. The suit alleges that the company illegally paid recruiters bonuses for signing up students.¹² In addition, Senator Harkin, Chairman of the U.S. Senate Health,

⁵ U.S. Senate, Health, Education, Labor and Pensions Committee, “Emerging Risk?: An Overview of Growth, Spending, Student Debt and Unanswered Questions in For-Profit Higher Education” at 2 (June 24, 2010).

⁶ Id. at 5.

⁷ Id. at 3.

⁸ U.S. Senate Committee on Health, Education, Labor and Pensions “The Return on the Federal Investment in For-Profit Education: Debt Without a Diploma” at 10 (Sept. 30, 2010).

⁹ The Project on Student Debt, “Federal Student Loan Default Rates on the Rise” (Sept. 13, 2010).

¹⁰ For a discussion of why the federal student loan default formula distorts the full scope of the default problem, see U.S. Department of Education, Office of Inspector General, “Final Audit Report: Audit to Determine if Cohort Default Rates Provide Sufficient Information on Defaults in the Title IV Loan Program”, ED-OIG/A03-C0017 (December 2003); General Accounting Office, “Student Loans: Default Rates Need to be Computed More Appropriately”, GAO/HEHS-99-135 (July 1999).

¹¹ These problems have been documented in numerous investigations and media reports, including U.S. Health, Education, Labor and Pensions Committee reports: “Emerging Risk?: An Overview of Growth, Spending, Student Debt and Unanswered Questions in For-Profit Higher Education” (June 24, 2010), and “The Return on the Federal Investment in For-Profit Education: Debt Without a Diploma” (Sept. 30, 2010). See also National Consumer Law Center, Public Advocates and U.S. PIRG, “Comments to the FTC on Vocational School Guides” (Oct. 16, 2009), available at: http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/policy_briefs/FTCguides1009.pdf. A summary of media reports on these issues can be found at: <http://protectstudentsandtaxpayers.org>.

¹² See Tamar Lewin, “U.S. to Join Suit Against For-Profit School Chain”, New York Times (May 2, 2011).

Education, Labor and Pensions Committee launched an investigation in 2010 focusing on problems in the for-profit school sector and the costs to students and taxpayers.¹³

Many states, including Massachusetts, have begun increased enforcement efforts. In May 2011, Massachusetts Attorney General Martha Coakley announced an investigation into the recruitment and student loan practices at several for-profit schools in the state. Other states, including Florida, Illinois, Iowa, Kentucky, Oregon, Texas and Wisconsin have begun investigations or penalized schools in their states. An even larger group of states are considering significant state legislation to improve oversight.¹⁴

Borrower Experiences

We regularly see the harm caused by abusive for-profit school practices through our direct client representation work. Currently, we represent about 40-50 clients annually. All of these clients live in Massachusetts and all are eligible for free legal aid.

Of the clients we have seen in the past few years, almost 75% attended for-profit schools. Of those that attended for-profit schools, about 56% completed their courses and about 59% were in default on their federal loans. Of our clients who completed their programs, not a single person has found work in the field s/he was supposedly trained in. In fact, few of these clients are employed in any type of job.

Our clients are a diverse group, including a young man in his early 20's who was led to believe that he could study a particular program at a for-profit vocational school only to find out after he enrolled that the program was no longer offered. We also represented a monolingual Spanish speaking single mom in her early 40's. She signed up for a for-profit beauty school after informing the school representatives that she spoke only Spanish. She signed up because school officials told her that courses were offered in both Spanish and English. She found out right away that this was a lie and that the courses were offered in English only. Although she dropped out and her federal loan was cancelled, the school continued to pursue her for about \$5,000 in fees. This was very stressful for a single mom trying to get by working at a school cafeteria, earning just above minimum wage with no health insurance.

Another of our clients attended a local for-profit school in 2008. She had only a ninth grade education when she signed up. She did not have a G.E.D. or high school diploma. She never completed the course, citing numerous problems with the school. In her words, "Mostly, I did not have enough education to keep up with the material. I tried to stay in school, but couldn't pass all of the classes. I left at one point. I came back and was told I had to repeat classes. At one point, I left to get my G.E.D because I needed a G.E.D or high school diploma in order to do

¹³ See Press Release, "Chairman Harkin Announces HELP Oversight Hearings of Federal Education Dollars at For-Profit Colleges", (June 10, 2010), available at: <http://help.senate.gov/newsroom/press/release/?id=e49a510f-f74e-4478-89cc-ecad039e8922&groups=Chair>.

¹⁴ The Maryland legislature, for example, recently passed a law adding for-profit school related problems to the list of prohibited unfair and deceptive acts and practices in the state. See MD SB 695 (Approved by the Governor May 10, 2011).

the internship. The G.E.D class was too hard for me. I went back to the school and told them I was having trouble in the G.E.D class. They said fine and let me back in, but said I had to repeat classes... I did try to find work after leaving the school. I joined a job search program, but I have not found work. I don't have a certificate from the school. I have also been told by career counselors that I will not be able to get work without a high school diploma or G.E.D. and because of my CORI. I am now trying to get my G.E.D. I then want to go to school to learn a career. I have a number of student loans from my bad experience with the school that I cannot repay."

Consequences for Borrowers in Massachusetts

Higher education is expensive and increasingly out of reach of many lower-income and even middle-income Americans. Because of the expense of higher education, most students take on some level of debt to pay for college. Misrepresentations and false claims have severe consequences for these student borrowers. In cases where the schools do not deliver as promised, loans for education can become an insurmountable burden rather than a benefit.

As discussed above, default rates are particularly high among for-profit school students. This is devastating for borrowers because the consequences of federal loan defaults are so severe. The government has extraordinary powers to collect student loans, far beyond those of most unsecured creditors. The government can garnish a borrower's wages without a judgment, seize his tax refund, even an earned income tax credit, seize portions of federal benefits such as Social Security, and deny him eligibility for new education grants or loans. Even in bankruptcy, most student loans must be paid. Unlike any other type of debt, there is no statute of limitations.

The stakes are even higher in the current environment given that many of these students have not only federal student loans, but subprime private loans as well. Private student loans are made by lenders to students and families outside of the federal student loan program. They are almost always more expensive than federal student loans.¹⁵

The percentage of all undergraduates with private student loans rose from 5% in 2003-04 to 14% in 2007-08.¹⁶ For-profit colleges had the largest proportion of students taking out private loans and the largest increase in private loan borrowing. Forty two percent of all for-profit school students had private loans in 2007-08, up from 12% in 2003-04.¹⁷

Unlike the federal student loan programs, there is no comprehensive federal law requiring private student lenders to offer particular types of relief or flexible repayment. Private student loan borrowers are generally at the mercy of their creditors. Private loan creditors have only the special protection against bankruptcy discharge, not the other special student loan

¹⁵ See generally National Consumer Law Center, "Paying the Price: The High Cost of Private Student Loans and the Dangers for Student Borrowers" (March 2008), available at:

http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/Report_PrivateLoans.pdf.

¹⁶ The Project on Student Debt, "Private Loans: Facts and Trends" (August 2009).

¹⁷ Id.

collection powers, but to date they have been unwilling in most cases to assist financially distressed borrowers.¹⁸

The private loans are in some cases originated through the schools (“institutional loans.”). As documented in a January 2011 NCLC report, the default rates on these institutional loans are shockingly high.¹⁹ For example, Corinthian estimated a write-off rate for institutional loans of 55% for FY 2009 and predicted a range of 56 to 58% in 2010. Analysts have estimated that ITT may assume close to a 45% loss rate on institutional loans. Career Education Corp. stated that it expects default rates on institutional loans to approach 48%.²⁰

Each charge-off represents an individual who cannot repay a debt and who may be facing aggressive collection tactics. These student borrowers generally face numerous collection calls, lawsuits and negative entries on their credit reports that can last for extended periods of time.

The Importance of State Enforcement and Oversight

The states have a critical role to play in protecting consumers from abusive practices and ensuring that quality standards are met in the higher education sector. Key state roles include:

1. States are a key part of the “regulatory triad” for federal student assistance

The three components of the federal student financial assistance regulatory triad include the federal government, states, and accrediting agencies. The federal government relies heavily on the others to ensure program quality.

Despite the importance of the state role, most states have historically deferred oversight to accrediting agencies or otherwise failed to exercise proper oversight. In recognition of this problem, the U.S. Department of Education recently amended the federal regulations to clarify the “state authorization” role for purposes of determining whether an institution in a particular state participating in federal aid programs is legally authorized by a state to offer postsecondary education.²¹ The new regulations affirm that each entity (state and accreditation agency) has a distinct role in the triad. The Department also affirmed that the states retain the primary role and responsibility for student consumer protection against fraudulent or abusive practices.

2. States have oversight over unaccredited schools and other schools that do not participate in federal assistance programs

¹⁸ See generally National Consumer Law Center, “Too Small to Help: The Plight of Financially Distressed Private Student Loan Borrowers” (April 2009), available at:

<http://www.studentloanborrowerassistance.org/uploads/File/TooSmalltoHelp.pdf>.

¹⁹ National Consumer Law Center, “Piling it On: The Growth of Proprietary School Loans and the Consequences for Students” (January 2011), available at: <http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/proprietary-schools-loans.pdf>.

²⁰ Id.

²¹ See 75 Fed. Reg. 66832 (Oct. 29, 2010) (final regulations).

Many of the abusive practices in Massachusetts and student complaints involve unaccredited schools. Regulation of these schools is clearly a state responsibility. Instead of relying on government funds, these schools may pressure students to take out private loans or they may require direct payment.

3. States must fill in gaps in federal enforcement and protect consumers

The states play an essential role in protecting consumers from for-profit school fraud. This role is especially important because of the failure of federal oversight. Despite recent efforts to step up federal enforcement, the federal government has historically allowed the abuses in the for-profit sector to flourish. The failure at the federal level is not just by the U.S. Department of Education, but also by the Federal Trade Commission and other federal agencies, such as the Department of Labor, which oversees the Workforce Investment Act. Federal financial regulators have also failed to fill in the void, allowing unregulated, predatory lending to flourish in the educational loan sector.

Public and private enforcement of state unfair and deceptive acts and practices statutes constitute the main lines of defense protecting consumers from predatory, deceptive, and unscrupulous business practices.

4. Private enforcement is limited

Private litigation can be an important tool in combating abuses in the for-profit school sector. It is especially useful in exposing broad-based practices through class action litigation and waste of government funds through false claims act litigation. However, it is difficult for individual borrowers to get relief, particularly from burdensome student loan debt, through litigation.

A major problem is that courts have consistently held that there is no private right of enforcement under the Higher Education Act (HEA). Largely by default, most private enforcement of student loan violations, to the extent it occurs at all, is through the federal and state debt collection laws. This type of enforcement is most appropriate and useful when abusive and harassing debt collection agency conduct is involved. However, there are severe limitations to using this law to enforce borrower rights.

Federal student loan administrative cancellations provide relief to some borrowers, but these too are incomplete remedies. The three types of cancellations intended mainly to address fraud are closed school, false certification, and unpaid refunds. It is important to emphasize that not one of these programs provides general remedies for borrowers who attended a fraudulent school. For example, a school may routinely pay admissions officers by commission in violation of incentive compensation rules, fail to provide educational materials or qualified teachers, and admit unqualified students on a regular basis. None of these violations is a ground for cancellation. Instead, each cancellation

offers relief for a narrow set of circumstances. The bottom line for many borrowers is the lack of relief.²²

State laws, including state unfair and deceptive acts and practices statutes, are often the only way victims of for-profit school fraud can get some relief. Most states, including Massachusetts, also have at least some laws specifically targeted at for-profit school practices. However, Massachusetts has work to do in this area as there are few laws in this state that both target abuses and provide relief for victims. This should be an area of focus if this legislation passes and the Commission is created.

Lack of Assistance Resources for Student Borrowers

There are few neutral, comprehensive, full-service assistance services for borrowers. This gap will be closed only by creating such resources, not by referring borrowers to inadequate resources. For example, many call centers or counseling centers have only superficial knowledge of student loan issues. They may be able to help borrowers with general questions. However, most borrowers can be served only by attorneys or counselors who are familiar with student loan law and who will review borrowers' paperwork and other documents and will follow up with them. Counselors should be under the supervision of a lawyer or other professional who is knowledgeable about student loan law and keeps up with new developments. This is because even well-intentioned counselors may give erroneous advice about the often complex student loan programs. In addition, the difference between agencies that act as mediators and agencies that act as borrower advocates must be clearly delineated. These are different types of services that overlap and complement each other, but also come into conflict at times.

Improving assistance resources should be a key focus of the new Commission. The Commission should be charged with making recommendations not only about the adequacy of current consumer protection laws, but also about assistance resources for borrowers struggling with student loan debts.

Conclusion

We urge support of H 1066/S134 as a first step in studying the for-profit school problem in Massachusetts and improving state oversight and assistance resources for borrowers. We also urge support of H38 and other pending legislation to consolidate and improve state oversight over for-profit schools.

Thank you for your consideration of this testimony. Please feel free to contact Deanne Loonin if you have any questions or comments. (Ph: 617-542-8010; E-mail: dloonin@nclc.org).

²² See generally National Consumer Law Center, Student Loan Law ch. 9 (4th ed. 2010).