

Update on Higher Education Issues in Washington – Challenges and Opportunities

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2015 Facts About US Education

- In fall 2015, about 50 million students will attend public elementary and secondary schools in the US. Of these, 35.2 million will be in prekindergarten through grade 8 and 14.9 million will be in grades 9 through 12. An additional 4.9 million students are expected to attend private schools. The fall 2015 public school enrollment is expected to be slightly higher than the 50 million enrolled in fall 2014
- In fall 2015, some 20 million students are expected to attend American colleges and universities, constituting an increase of about 5 million since fall 2000
- During the 2015–16 school year, colleges and universities are expected to award 952,000 associate's degrees; 1.8 million bachelor's degrees; 802,000 master's degrees; and 179,000 doctoral degrees, with approximately another million certificates below the associate's degree level.
- For the 2013–14 academic year, the average annual price for undergraduate tuition, fees, room, and board was \$15,640 at public institutions, \$40,614 at private nonprofit institutions, and \$23,135 at private for-profit institutions. Charges for tuition and required fees averaged \$6,122 at public institutions, \$29,648 at private nonprofit institutions, and \$13,787 at private for-profit institutions.
- An additional \$70 billion is spent on corporate training, with a 15% year-over-year rate of growth.

Sources: National Center for Education Statistics, Forbes 2014 Corporate Learning Factbook

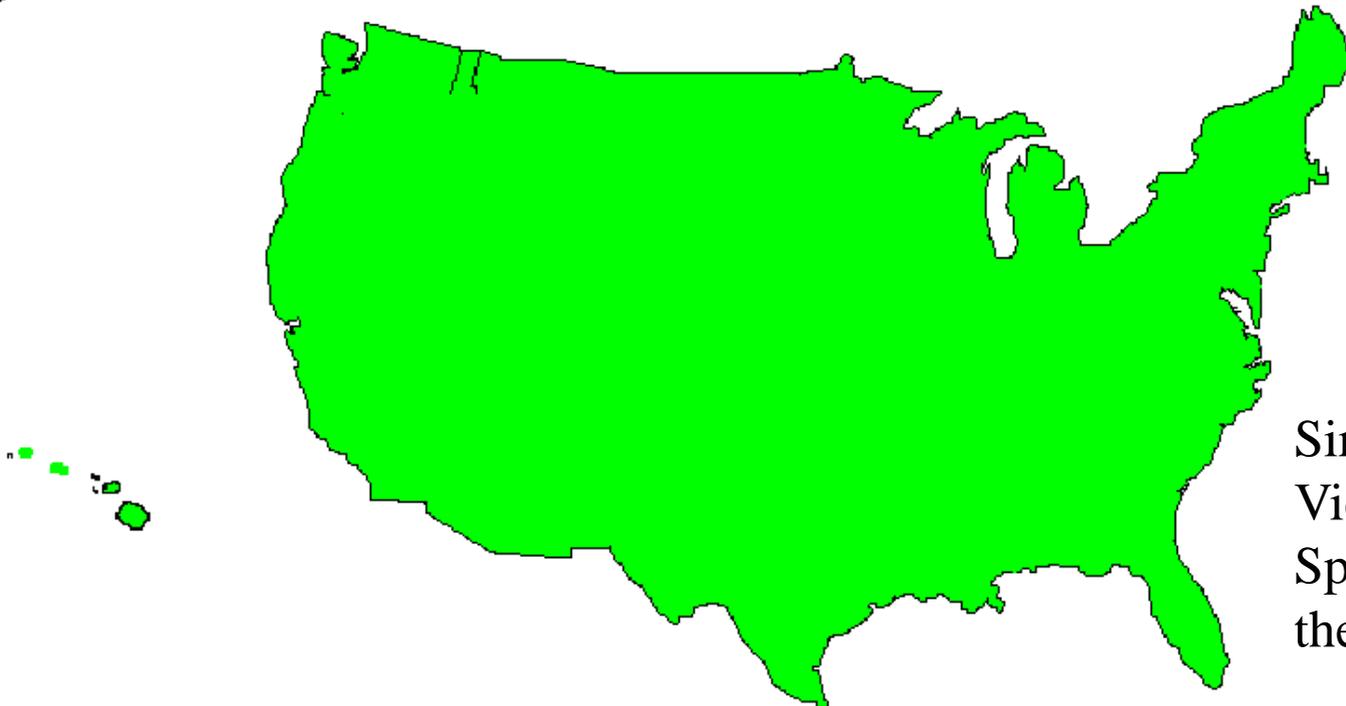
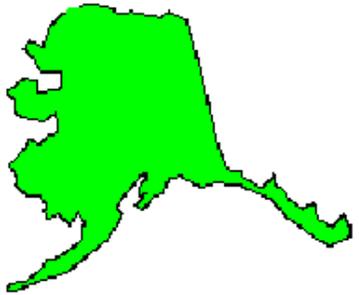
Financing of U.S. Higher Education Overview

- Eligible U.S. college students annually receive over \$150 billion of financial aid in the form of loans and grants awarded annually by the federal government. State and local support for higher education adds another \$80 billion, most of which goes to public institutions.
- Today, the Federal government maintains a student loan portfolio of nearly \$1.2 trillion, which has been steadily increasing at a double-digit rate. Since 2003, the percentage of 25-year-olds with student debt has gone from 25% to 43%, and the average amount of debt has doubled, \$10,649 in 2003 to \$20,326 in 2012.
- There are nearly 3 million Direct Loan borrowers more than 30 days delinquent on their loans, and 3.2 million borrowers are in default on more than \$44 billion in Federal loans.
- Over the last decade college tuition has increased at an average annual rate of 5%.
- Rising prices and costs, increasing student loan debt and perceived inefficiencies in delivering quality higher education have become major national political issues.

Key Factors Driving Higher Education

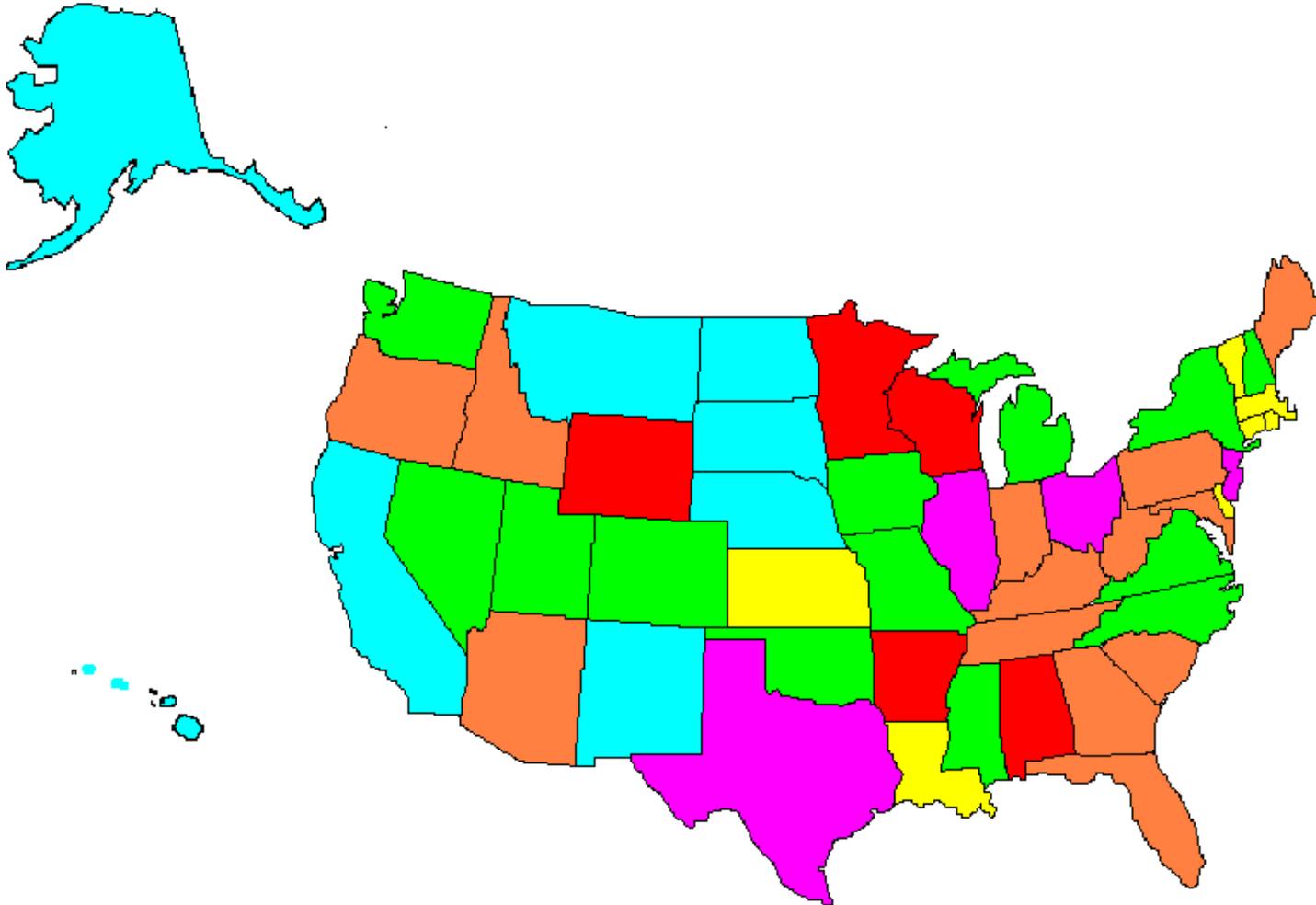
- Higher education is transforming from a bricks-and-mortar industry to a technology-based industry.
- Students, legislators and the public are demanding that higher education be faster, better and cheaper.
- Alternatives to traditional institutions – providers and enablers – are disrupting what it means to offer higher education and the very meaning and identity of a postsecondary credential.

When I came to America to establish the U.S. version of the Open University I thought I was dealing with one country.



Sir John Daniel
Vice-Chancellor, British Open University
Speaking at the 2003 Annual Meeting of
the National Governors Association

Differing Levels of Oversight



I was mistaken...

- **Federal Agencies**
 - Department of Education
 - Department of Veterans' Affairs
 - Department of Defense
 - Department of Homeland Security (ICE/SEVIS)
 - Consumer Financial Protection Bureau
 - Federal Trade Commission

- **State Agencies**
 - Institutional Authorizing Agency
 - Professional Licensure Boards (i.e. nursing, teaching, cosmetology, law, medicine)
 - State Consumer Protection Agency
 - Attorney General
 - State Approving Agency for Veterans' Benefits
 - State Grant Boards
 - Others...
- **Accrediting Agencies**
 - Eight national and seven regional *institutional* accrediting agencies
 - 37 *specialized or programmatic* accrediting agencies

Recent issues have blurred the lines between federal, accreditor and state regulatory oversight include:

- 1) State authorization – A federal regulation that sets requirements for state authorizing agencies and requires accreditors to verify whether an institution holds the proper approval from state agencies that meet federal requirements.
- 2) School/Student Performance Outcomes – Accreditors, states and the US Department of Education each require the collection, disclosure and verification of graduation, employment and debt that use different measurement methodologies.
- 3) Advertising, Marketing and Misrepresentation – Accreditors and states have different definitions of fraudulent or false statements as do different federal agencies.
- 5) Monitoring/Format of collaborative agreements – Federal and accreditor requirements and limitations on outsourcing of certain functions and methods of compensation for certain activities.

Overlapping Oversight Trends (con't)

- 6) Gainful Employment – Exceedingly complex federal regulation of vocational education at nonprofit institutions and virtually all programs at proprietary institutions. Determination of program eligibility affected by state and accreditor approvals.
- 7) Prohibition Against Incentive Compensation – Federal law prohibits any persons engaged in student recruitment and certain other activities from receiving any compensation based on their success in securing enrollments. Marketing and recruiting activities are subject to strict scrutiny.
- 8) Student Data Privacy – Federal law and increasingly individual states impose strict – and not necessarily consistent – rules regarding the protection of student personally identifiable information. The rescinding of the EU-US “safe harbor” for the transmission of such information poses a further complication.
- 9) Competition for the Spotlight – State and federal regulators compete for attention and look for scapegoats among each other and the accreditors.



- Areas of focus for misrepresentation and deceptive practices:
 - Accreditation and Licensing
 - Employability/Placement of Graduates/Transfer of Credit
 - Recruiting Practices
 - Institutional Loans and Financial Products

- Higher Education Act
 - Comprehensive reauthorization unlikely
 - One or more smaller bills possible if bipartisan and non-controversial
 - Possible elements
 - FASFA
 - Year-round Pell
 - One loan/one grant/fewer repayment options
 - Some deregulation + consumer protections
 - State authorization?
 - Not much time: Supreme Court + appropriations + elections

- ACE report—Task Force on Federal (Over) Regulation
- Issue Papers by Chairman Alexander: Accreditation, Risk-Sharing (aka “Skin in the Game”), Better Data/Transparency in Higher Ed
- Department of Education—Pursues for-profits with a vengeance: wins “gainful employment” case, pursues “defense to repayment” rulemaking.
- Hodgepodge of legislative proposals; virtually no progress.

UPCEA/OLC Position Paper—Update the HEA for 21st Century



- Law and regulation not well-suited to 21st century learner
- Provides factoids on new face of higher education
 - Majority of students non-traditional
 - ¼ students taking at least one course online
 - Nearly 70% of online education is with non-profit sector
- Three principles for future changes — don't discriminate in HEA or T4 rules based on mode of delivery; promote innovation; require accountability without excess regulation (e.g. SARA)

- Current HEA and Title IV rules assume a time-based (clock hour) approach.
- Proposed legislation last session: Would have permitted degrees based on competencies, not seat time. Passed House; died in Senate.
- Department of Education—initiated pilot project; issued related DCL's; little actual impact on field
- Sticking point -- “Regular and Substantive Interaction”
- ED concerned with potential for fraud and abuse

- Expect ongoing political pressure on accreditors to do a better job
- Momentum to create pathway to Title IV for alternate providers (MOOC's, "boot camps," StraighterLine etc.)
- Tension: federal "gatekeeper" v. independent quality assurance roles

Top Issues 2016—“Skin in the Game”

- Chairman Alexander floated concept in 2015 to:
 - Deter risky over-borrowing by students through market mechanisms
 - Make institutions responsible in part for high defaults
- Senators Hatch and Shaheen introduced legislation to tie Title IV eligibility to percent of students paying back their loans
- Bill would also have required institutions to make “risk sharing” payments back to Department with respect to defaulted loans.

Top issues 2016—“Defense to Repayment”

- In absence of congressional action, another approach to student debt via Department rulemaking
- Issue: State AG’s and advocates want students to be able get out of federal loans incurred in going to “bad actor” for-profit institutions
- Advocates and leading Democrats criticized Department of Education on Corinthian debacle
- In response to political pressure, Department initiates rulemaking to determine clear basis for a loan discharge
- Winter 2016 “Negotiated Rulemaking” process.

Top 2016 issues—“Defense to Repayment”

- Failure to achieve consensus means Department is free to write its own rules.
- Proposed rules would apply to any institution.
- May provide that virtually any alleged misconduct or misrepresentation by institutions, including under state law, may entitle students to tuition refunds, and to possible ED recourse against schools
- May also prohibit arbitration in enrollment agreements.

- Formal Department “defense to repayment” regulations—to follow in 2016.
- Department hopes for final rules effective 2017.
- Raises big policy issues traditionally addressed by Congress:
 - What will this cost the taxpayer?
 - Are the rules fair to institutions?
 - Would “skin in the game” proposals better protect the taxpayer interest?
 - Are there better ways to protect students? (Better data? FTC?)



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Jay Vaughan is a partner in Cooley's Education practice group and leads the Accreditation Practice. Mr. Vaughan previously was associated with Dow Lohnes Higher Education, which merged with Cooley on January 1, 2014. Prior to joining Dow Lohnes, Jay worked as a manager with a national accrediting agency, with primary responsibility for the financial review of accredited member institutions, change of ownership and non-main campus applications, and administrative appeals. During his seven-year tenure as an accreditor, he completed more than 300 on-site evaluations of accredited and applicant institutions

In addition to assisting institutions to respond to inquiries from regulatory authorities and representing clients in hearings before accrediting bodies, Jay works proactively with institutions to prevent adverse actions, assist with strategic planning, and provides advice regarding day-to-day operations. Mr. Vaughan also assists institutions to understand state and federal laws regulating the field of postsecondary education, specifically focusing on mergers and acquisitions (including corporate conversions), the definition of a credit hour, and what is commonly referred to as the "90/10 rule."

He received his B.S. from James Madison University and received his law degree from the George Washington University Law School. He is admitted to practice in Virginia and the District of Columbia.

The Cooley logo, consisting of the word "Cooley" in a white, sans-serif font, positioned in the bottom right corner of the page against a dark red background.