July 11, 2019

Mr. Jean-Didier Gaina
U.S. Department of Education
400 Maryland Ave. SW, Mail Stop 294-20
Washington, DC 20202

Submitted electronically via: http://regulations.gov

Re: Proposed Regulations on Recognition of Accrediting Agencies and Recognition Procedures for State Agencies, 84 Fed. Reg. 27,404; Docket ID ED-2018-OPE-0076

Dear Mr. Gaina:

On behalf of the low-income clients of the Legal Aid Foundation of Los Angeles (LAFLA), the National Consumer Law Center (NCLC), and New York Legal Assistance Group (NYLAG), we submit the following comments regarding the Department of Education's proposed regulations regarding the state authorization of distance education programs and teach-outs, 84 Fed. Reg. 27,404 (June 12, 2019).

We write specifically to identify and provide factual support for certain provisions regarding state authorization of distance education programs, requirements for teach-outs, and certain other protections for students at closing institutions and institutions at risk, that are important to protecting low-income student borrowers from unnecessary harm. We urge the Department to ensure that these provisions are included in any final rules.

Thank you for consideration of these comments. We welcome any opportunities to work with the Department in preserving and strengthening protections for low-income student loan borrowers. If you have any questions about these comments, please contact Robyn Smith (rsmith@lafla.org) or Abby Shafroth (ashafroth@nclc.org).

Sincerely,

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I. Introduction

On behalf of the low-income clients of the Legal Aid Foundation of Los Angeles (LAFLA), the National Consumer Law Center (NCLC), and New York Legal Assistance Group (NYLAG), we submit these comments in response to the Department of Education's proposed regulations regarding the state authorization of distance education programs and teach-outs, 84 Fed. Reg. 27,404 (June 12, 2019).

Robyn Smith, of LAFLA and NCLC, participated on the negotiated rulemaking committee that worked on the set of proposed regulations on which the Department seeks comment. As such, we submit these comments consistent with the negotiating committee's protocols, which require that "[i]f the committee reaches consensus on regulations . . . committee members and the organizations whom they represent will refrain from commenting negatively on the consensus-based regulatory language . . . ."[1]

These comments are therefore focused on providing further support for certain provisions regarding state authorization of distance education programs, requirements for teach-outs, and certain other protections for students at closing institutions and institutions at risk, that are important to protecting low-income student borrowers from unnecessary harm. The need for such protections is supported by our experience working with low-income student borrowers, by recent, well-documented problems with school closures and losses of accreditation, and by ample research and data. We urge the Department to ensure that these provisions are included in any final rules.

Our comments are informed by our work as legal aid practitioners. We strive to meet the legal needs of individuals and families with limited economic means, who otherwise would be without professional legal assistance. Descriptions of the relevant backgrounds of our organizations follow below.

NCLC is a nonprofit organization specializing in consumer issues on behalf of low-income people. NCLC has nationally recognized expertise in student loan law and publishes a widely-used treatise, Student Loan Law (5th ed. 2015), *updated at* www.nclc.org/library. NCLC's Student Loan Borrower Assistance Project provides information about student borrowers' rights and seeks to increase public understanding of student lending issues and to identify policy solutions to promote access to education and lessen student debt burdens.[2] As relevant here, NCLC has particular expertise on state authorization reciprocity agreements, consumer protections for online students, and options for student borrowers in the event of school closures. NCLC's Student Loan Borrower Assistance Project also provides direct representation to low-income student loan borrowers, and consults with civil legal services organizations across the country that represent borrowers in their local communities.

[1] U.S. Department of Education, Negotiating Committee— Accreditation and Innovation 2019, Organizational Protocols, IV.B, *available at* https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/finalprotocols.pdf.

[2] The Project's website includes more information, *see* www.studentloborrowerassistance.org.

LAFLA seeks to achieve equal justice for low-income people through direct representation, systematic change, and community education. LAFLA is a public interest leader on student loan work in California, having developed student loan and for-profit school expertise over the last 30 years. It provides critical outreach and education, self-help clinics, and quality direct legal assistance to financially distressed student loan borrowers. It also serves as a resource for other organizations carrying out this important work in California. LAFLA's policy and advocacy efforts are grounded in its direct legal assistance work. Every year, LAFLA helps hundreds of low-income students from Southern California who struggle with student loan debt, the vast majority of whom have been harmed by deceptive for-profit schools.

NYLAG provides free civil legal services to New Yorkers who cannot afford a private attorney across a wide variety of issue areas, including consumer protection. NYLAG has extensive expertise representing low-income student loan borrowers in New York City and across the country. NYLAG's attorneys and financial counselors assist student loan borrowers on a variety of issues, including securing affordable repayment plans and statutory discharges, affirmative and defensive student loan litigation, and assistance with problems arising from third-party student loan debt relief companies.

II. Comments in Support of Maintaining Rules Regarding State Authorization of Distance Education

We support the Department's decision, based on a consensus of the negotiating committee, to maintain regulatory provisions regarding state authorization of distance education, including the definition of "state authorization reciprocity agreement," currently in effect pursuant to the 2016 State Authorization of Distance Education Rule (the "2016 Rule").[3] These provisions set out requirements regarding participation in federal student aid programs that require that distance education providers meet state authorization requirements in states where they operate and ensure that states can enforce their own laws to protect students who attend school through online programs.

These provisions, which are supported by findings in the 2016 rulemaking as well as by the current committee consensus, are of critical importance to the individuals we serve. In addition to being of limited economic means, our clients are often the first in their families to pursue higher education. They include people of color, immigrants, non-native English speakers, single mothers, veterans, and the formerly incarcerated. They are increasingly targeted by unscrupulous and predatory out-of-state for-profit schools that offer online distance education programs, attracted by the same types of false promises of stable high-paying careers made by brick-and-mortar schools offering in-person classroom courses. Preserving the 2016 Rule is necessary to ensuring that these low-income students receive the same consumer protections as students attending traditional brick-and-mortar schools in the same state.

[3] 84 Fed. Reg. 27,404, 27,413 (34 C.F.R. § 600.9(b)), hereinafter referred to as the "2016 State Authorization of Distance Education Rule" or "2016 Rule."

Distance education programs should have to meet any state authorization requirements in the states where they enroll students. The proposal to preserve the 2016 Rule continues to allow them to do so through a reciprocity agreement, provided that states are still able to enforce their relevant consumer protection laws. The proposal also requires institutions to notify impacted students whether their educational programs meet the requirements for licensure across states. Many representatives from across constituencies have proposed prohibiting schools from enrolling students for which licensure would not be possible, and the Department should at a minimum retain these notification requirements if it does not go further.

Below, we address several discrete sources of support for the proposal to preserve the 2016 rule on state authorization of distance education: statutory support under the Higher Education Act and the need to ensure that online distance education programs are not left out of the program integrity triad; the record of illegal school conduct demonstrating the need for state oversight and enforcement of consumer protections in online education; data illustrating the special risk to students and taxpayers posed by distance education; data demonstrating the size of the online distance education student population that would lack state law protections if not for the 2016 Rule; and the absence of data supporting diminishing protections.

A. 2016 State Authorization of Distance Education Rule is Required by the HEA

Congress enacted state "legal authorization" requirements in order to place the key responsibility for consumer protection from unscrupulous for-profit school practices on the states.[4] To be eligible to participate in student financial aid programs, the Higher Education Act (HEA) requires an institution to be "legally authorized within [the] State to provide a program of education beyond secondary education."[5] The HEA further specifies that states have a substantial role in licensing or authorizing schools, monitoring them, revoking licenses and reporting to the Department violations of the federal student assistance provisions. 20 U.S.C. § 1099a(a). As can be seen by reviewing the section in depth, the HEA requires that:

- each state's authorization process be part of the "integrity program," suggesting that something more than mere reliance on another state's oversight or licensure is required;
- each state have a process for "licensing or other authorization for institutions of higher education to operate;"
- each state have authority to revoke the license or authority of institutions of higher education to operate; and
- each state is to oversee schools offering higher education such that it can notify the Secretary when there is "credible evidence" of fraud or other violations of the HEA.

[4] Rebecca Skinner, *Institutional Eligibility in Title IV Student Aid Programs Under the Higher Education Act: Background and Reauthorization Issues*, Congressional Research Service Report RL33909 at CRS-11 (Mar. 9, 2007).
[5] 20 U.S.C. § 1001(a)(2); (b)(1); 20 U.S.C. § 1002(a), (b)(1)(B) and (c)(1)(B).

All fifty states therefore have statutes that provide for the approval and oversight of private higher education institutions, and many states have enacted substantive legal protections against predatory and unfair practices in the for-profit sector.[6] These laws and regulations include important disclosure requirements, regulation of the contents of key documents provided to students such as enrollment agreements, prohibited practices, refund rights, cancellation rights, student protection funds or bonds to cover student economic losses in the event of school closures, private causes of action, and student complaint standards and procedures.

But many schools that offer distance education in states where they lack a physical presence are not legally authorized by those states or are not adequately covered by those states' oversight schemes. These schools fall into two categories in terms of state authorization:

1. **Schools covered by state authorization reciprocity agreements**: Regionally accredited degree-granting schools that are based in a state that is a member of a unified state authorization reciprocity agreement ("Unified-SARA") may offer distance education programs in other member states after obtaining authorization from their home states; and

2. **Other schools**: Schools not covered by SARA offering programs in distant states that do not require approval for institutions without a physical presence. Schools not covered by SARA include those that are either (i) are not based in SARA member states, (ii) wish to offer programs in states that are not SARA members, or (iii) do not meet institutional eligibility requirements for SARA.

The vast majority of students who attend out-of-state distance education schools in either of these two categories are currently *not* covered by critical state consumer protections that would be available to them if they attended brick-and-mortar schools or a distance education program based in their own state. For distance education students who attend institutions that are *not* authorized through Unified-SARA, most state higher education statutes explicitly do *not* apply to out-of-state schools that lack a physical presence.[7] For the students in 49 states who attend institutions authorized through Unified-SARA, this agreement has historically explicitly required states to waive higher education-specific consumer protection statutes and oversight of out-of-state distance education schools.[8] The crucial consumer protections and oversight responsibilities that are explicitly preempted by SARA are identified in a 2015 report, which is attached to these Comments as Exhibit A.[9]

[6] *See* National Consumer Law Center, Student Loan Law, § 13.6.3.2 and App'x E (5th Ed. 2015), *updated at* www.nclc.org/library.
[7] *See* National Consumer Law Center, Student Loan Law, § 13.6.3.2 and App'x E (5th Ed. 2015), *updated at* www.nclc.org/library.
[8] This should be changing as a result of the 2016 Rule, though the Rule delay and actions states previously took as a condition of joining SARA—including passing laws exempting SARA members from student protection laws—have complicated the current status.
[9] National Consumer Law Center, "Wake-Up Call to State Governments: Protect Online Education Students from For-Profit School Fraud" at 2 (Dec. 2015), included as Exhibit A.

The Department enacted the 2016 Rule to close this loophole, which left at least "5.5 million distance education student at degree-granting institutions"[10] unprotected by states:

> State authorization is a longstanding requirement in the Higher Education Act that requires institutions to be authorized in the state in which they are located as a condition for eligibility to receive Title IV Federal student aid. While all higher education institutions must have state authorization in the states in which they are physically located, there are no federal regulations for distance education providers in states where the institutions are not located.[11]

Further, the 2016 Rule is necessary to ensure that state authorization reciprocity agreements do *not* allow states to abdicate their oversight and consumer protection roles by passing the buck to other states. Instead, the 2016 Rule makes it clear that reciprocity agreements are valid for state authorization purposes *only* when they do not prohibit states from enforcing consumer protection laws, including laws that apply only to institutions of higher education. In this way, each state's "legal authorization" of out-of-state distance education schools, when provided through a reciprocity agreement, will only be recognized for purposes of participation in federal student aid programs when the state maintains its power to actively supervise institutions operating in that state and protect students located within that state from violations of its laws.

B. Schools that Offer Distance Education Programs Engage in Unlawful and Deceptive Practices that Harm Taxpayers and Students

The record of misconduct by predatory schools demonstrates that online education programs are at least as likely to be involved in the types unlawful practices that state laws are designed to protect against as traditional brick-and-mortar programs, and there is no reason to suspect that online students need fewer consumer protections than their in-person counterparts.

As detailed in NCLC's 2015 report, a majority of the largest online education schools are owned and operated by the same for-profit companies that have been the subject of multiple law enforcement investigations and actions.[12] Here are just a few examples of government actions and investigations involving for-profit companies that offer distance education:

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[10] Press Release, U.S. Dep't of Educ., "Education Department Announces Final Rule on State Authorization of Postsecondary Distance Education, Foreign Locations (Dec. 16, 2016), *available at* https://www.ed.gov/news/press-releases/education-department-announces-final-rule-state-authorization-postsecondary-distance-education-foreign-locations.

[11] *Id*.

[12] *See* National Consumer Law Center, "Wake-Up Call to State Governments: Protect Online Education Students from For-Profit School Fraud" at 2 (December 2015), included as Exhibit A. Notably, a 2012 investigation by the U.S. Senate Health, Education, Labor and Pensions Committee detailed extensive misleading practices at schools owned by all of the corporations identified in NCLC's December 2015 report. *See* U.S. Senate, Health, Educ., Labor and Pensions Comm., "For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success," S. Rpt. 112-37 (July 30, 2012).

- In November 2015, Education Management Corp. agreed to a $100 million settlement with the Department of Education and 39 states for engaging in illegal recruiting and other illegal practices.[13] The Consumer Financial Protection Bureau has sued ITT Educational Services for unfair and deceptive business practices,[14] and the Department of Education has been monitoring the company's financial status since the fall of 2015. Both of these schools offer extensive online education programs that are protected by reciprocity agreements or are exempt from state oversight.[15]

- In September 2016, Ashford University (owned by Bridgepoint Education), which is an exclusively distance education school, entered into a consent order with the Consumer Financial Protection Bureau (CFPB) regarding unlawful acts or practices related to advertising, marketing, and origination of private student loans. The CFPB found that Bridgepoint "engaged in deceptive acts and practices," ordered it to discharge all outstanding institutional private loans, totaling over $23.5 million in loan forgiveness and refunds to students, and ordered the school to pay $8 million in penalties.[16]

- In March 2018, the New England College of Business and Finance settled with the Massachusetts Attorney General based on allegations of failing to make proper disclosures to prospective students and engaging in excessive recruitment calls.[17]

- In August 2018, American Military University, an exclusively online school, settled with the Massachusetts Attorney General, based on allegations of failing to disclose mandated job placement rates, using predatory enrollment tactics, and failing to provide loan repayment information 72 hours before enrollment as required by state law. [18]

- In January 2019, Career Education Corporation settled with 49 state attorneys general and agreed to cancel $493 million in student loans based on allegations of misleading students and predatory enrollment tactics.[19] CEC enrolls online-only education students through American InterContinental University and Colorado Technical University.

- Both Corinthian Colleges and ITT Tech, which were subject to multiple actions by state attorneys general and the Department of Education, operated online education schools.

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[13] Press Release, U.S. Dep't of Educ., "For-Profit College Company to Pay $95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations" (Nov. 16, 2015); Press Release, Office of the Kentucky Attorney General, "Attorney General Conway Announces Agreement with EDMC" (Nov. 16, 2015).
[14] Paul Fein, "Problems Deepen for ITT," InsideHigherEd.com (May 13, 2015).
[15] *See* www.aionline.edu (EDMC Art Institute of Pittsburg Online); www.itt-tech.edu/onlineprograms and www.dwc.edu/onlineprograms (ITT Education Services online programs).
[16] Press Release, Consumer Financial Protection Bureau, Consumer Financial Protection Bureau Takes Action Against Bridgepoint Education, Inc. for Illegal Student Lending Practices (Sep. 12, 2016).
[17] Press Release, Massachusetts Attorney General, "AG Secures $900,000 to Help Students of Online Education Company" (April 12, 2018).
[18] Press Release, Massachusetts Attorney General, "American Military University Pays $270,000 for Alleged Failure to Disclose Job Prospects, High-Pressure Enrollment Tactics" (Aug. 8, 2018).
[19] Press Release, Pennsylvania Attorney General, "Attorney General Shapiro Announces For-Profit College Company Will Provide $493 Million in Debt Relief for Over 179,000 Students Nationwide" (Jan. 3, 2019).

- The California Attorney General is currently prosecuting Ashford University, a distance education school, for alleged widespread illegal and deceptive practices.[20]

The allegations of misconduct in online programs in these enforcement actions are consistent with our experience working with student loan borrowers. LAFLA and many other legal aid offices are increasingly seeing clients who were harmed by out-of-state for-profit distance education schools, and have attached some of their stories as Exhibit B.

Ensuring that online schools are subject to state consumer protection laws, including those specifically applicable to for-profit schools, is critical to deterring and preventing abusive conduct that wastes billions in students' and taxpayers' dollars. The 2016 Regulation is critical to ensuring that state consumer protection and oversight laws are applicable to all distance education providers.

C. Extensive Data Shows that Distance Education Schools Are Greater Risks for Students and Taxpayers

Available studies regarding distance education show that distance education is a risky proposition for taxpayers and students, far riskier than in-person, brick-and-mortar education. In January 2019, Spiros Protopsaltis and Sandy Baum published a paper summarizing all such studies to date.[21] Rather than repeating their findings, we have attached the study as Exhibit C. Overall, their review of all existing data and studies demonstrated the following, among other things:

- Online education is the fastest growing sector of higher education[22] and growth is primarily occurring in the for-profit sector.
- Students in online education experience poor outcomes, especially disadvantaged students. "Gaps in educational attainment across socioeconomic groups are even larger in online than traditional coursework."[23]
- "Online education has failed to improve affordability, frequently costs more, and does not produce a positive return on investment."[24]

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[20] Press Release, California Attorney General, "Attorney General Xavier Becerra Sues For-Profit Ashford University for Defrauding and Deceiving Students" (Nov. 29, 2017).

[21] Spiros Protopsaltis and Sandy Baum, "Does Online Education Live up to Its Promise? A Look at the Evidence and Implications for Federal Policy" (Jan. 2019), *available at* https://mason.gmu.edu/~sprotops/OnlineEd.pdf and attached as Exhibit C.

[22] *Id.*; *see also* Doug Lederman, "New U.S. data show continued growth in college students studying online," Inside Higher Ed (Jan. 5, 2018).

[23] Spiros Protopsaltis and Sandy Baum, "Does Online Education Live up to Its Promise? A Look at the Evidence and Implications for Federal Policy" at 2 (Jan. 2019), *available at* https://mason.gmu.edu/~sprotops/OnlineEd.pdf and attached as Exhibit C. *See also* Eric Bettinger and Susanna Loeb, Economic Studies at Brookings, "Promises and pitfalls of online education" (June 9, 2017), *available at* https://www.brookings.edu/research/promises-and-pitfalls-of-online-education/ (finding that online students enrolled at for-profit colleges did substantially worse than students in same face-to-face course; they earned lower grades, were less likely to succeed in subsequent courses, and more likely to drop out).

A recent survey of approximately 6,000 two-year college students highlighted the many challenges that cause low-income students to drop out of their online programs.[25] Over twenty percent reported problems with their online classes, including difficulty learning on their own, lack of interaction with faculty, difficulty keeping up because they do not have specified class times, difficulty using course technology, and lack of interaction with other students.[26] These types of problems are specific to online courses and cause worse outcomes for students than occur in traditional classroom programs.

One of the reasons that disadvantaged or low-income students have poorer outcomes in distance education is the digital divide. According to a number of recent studies, low-income people have more difficulty accessing and maintaining access to online education. Among other things, they do not always have sufficient internet connections at home or a dependable computer.[27] Legal aid offices often see clients who withdraw from their online programs for these reasons.

D. Data Shows that the Portion of Students Enrolled in Risky Online, Out-of-State Education Programs is Growing and Urgently Needs Protection, and No Data Supports Diminishing Protections

Students of for-profit schools are increasingly enrolled in out-of-state online distance education programs, meaning that leaving such students out of state consumer protection law will cause an increasingly large portion of students at risky schools to go unprotected.

Online education is the fastest growing sector of higher education.[28] In 2016, nearly half (47%) of all for-profit college enrollment was exclusively distance education (compared to only 10% at public schools).[29] Of these for-profit school distance education students, 83% enrolled at schools outside of their home state (compared to less than 2% of distance education students at public schools).[30] In total, 39% of all for-profit college enrollments were students enrolled

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[24] Spiros Protopsaltis and Sandy Baum, "Does Online Education Live up to Its Promise? A Look at the Evidence and Implications for Federal Policy" at 2 (Jan. 2019), *available at* https://mason.gmu.edu/~sprotops/OnlineEd.pdf and attached as Exhibit C.
[25] Stephen R. Porter and Paul D. Umbach, "What challenges to success do community college students face?" (2019), *available at* https://www.risc.college/sites/default/files/2019-01/RISC_2019_report_natl.pdf.
[26] *Id.* at 7.
[27] *See, e.g.,* Monica Andersen, Pew Research Center, "Nearly one-in-five teens can't always finish their homework because of the digital divide" (Oct. 26, 2018), available at https://www.pewresearch.org/fact-tank/2018/10/26/nearly-one-in-five-teens-cant-always-finish-their-homework-because-of-the-digital-divide/.
[28] Spiros Protopsaltis and Sandy Baum, "Does Online Education Live up to Its Promise? A Look at the Evidence and Implications for Federal Policy" (Jan. 2019), *available at* https://mason.gmu.edu/~sprotops/OnlineEd.pdf and attached as Exhibit C. *See also* Doug Lederman, "New U.S. data show continued growth in college students studying online," www.InsideHigherEd.com (Jan. 5, 2018).
[29] The Institute for College Access & Success, "Going the Distance: Consumer Protection for Students Who Attend College Online 9 (Aug. 29, 2018), *available at* https://ticas.org/sites/default/files/pub_files/going_the_distance.pdf.
[30] *Id.*

exclusively in distance education in schools outside their home state.[31] Strong state oversight of out-of-state distance education is particularly necessary for for-profit schools.

This data, along with the data on the risk distance education poses for students and taxpayers, and the evidence of illegal conduct that harms students in the for-profit school industry, including those attending distance education schools, supports the need for more state consumer protection and oversight.

Despite this, during the negotiated rulemaking meetings the Department indicated that it wished to revise the 2016 Regulation, possibly by allowing state authorization reciprocity agreements to prohibit states from enforcing their higher education-specific laws. The legal aid negotiators, and others, submitted extensive data requests to the Department seeking to understand its underlying reasons for possibly repealing the 2016 Regulation. These data requests are attached as Exhibit D.

The Department never produced any responses to these requests. Given lack of data supporting repeal of the 2016 Regulation, and the existence of extensive evidence showing the higher risk that online education poses to students and taxpayers, we support the negotiating committee's consensus that the Department should maintain the 2016 Regulation, as provided for in the proposed rules.

III. Comments in Support of Rules that Help Protect Students at Closing Institutions and Institutions at Risk from Further Harms Related to Misrepresentations, Teach-outs, and Other Risky Conduct

A. Support for Definition of "Teach-out" in § 600.2

We support the proposed addition of language to protect the rights, interests, and choices of students at closing schools in the definition of "teach-out" in 34 CFR § 600.2. Below we discuss the importance and factual support for two sentences within this definition.

1. Eligible borrowers should never be prevented from accessing closed school discharge, as provided in 34 CFR 685.214, instead of a teach-out

First, we support the language in the proposed regulations specifying that "Eligible borrowers should never be prevented from accessing closed school discharge, as provided in 34 CFR 685.214, instead of a teach-out." 34 CFR § 600.2 ("*Teach-out*"). This addition is important in light of recent, unwise and unsupported arguments that students should lose access to a closed school discharge merely because a closing school offers an approved teach-out plan. This argument was at least temporarily entertained by the Department, which proposed to cut off

[31] *Id.*

closed school discharge access in such situations in proposed regulations issued July 31, 2018.[32] The Department is correct to back away from its 2018 proposal, which was inconsistent with the HEA[33] and would unwisely and unfairly limit student choice in the event of closure.[34] The new proposal makes plain that access to a teach-out should not and does not prevent access to a closed school discharge.

A closed school discharge is a Congressional imperative to alleviate some of the harm that students experience when schools close. These students waste months or years of their lives and often give up job opportunities to pursue a credential they cannot obtain. They typically incur not just federal student loan debt, but also significant out-of-pocket expenses, opportunity costs, and non-dischargeable private student loans and other consumer debt to finance and support their education. The closed school discharge regulations, which only offer federal loan relief, do not and cannot make these students whole.

But the closed school discharge regulations are a bright light in a situation over which students have no control. They return some control to students by ensuring that they can choose their path forward. Under correct interpretations of current law, students presently have the right to decide what is best for them and their families after a school closure, based on many individual factors. They can choose to complete their program through a teach-out, if one is offered; to transfer some credits and complete the program at a school of their choice, if it will accept those credits; or obtain a closed school discharge to start fresh at a new school, in a new program, or by foregoing higher education altogether.

Teach-outs are not always the best option for closed school students, and therefore students impacted by closures should never be prevented from accessing a closed school discharge instead of a teach-out. In the past, the Department correctly concluded that although "teach-outs can be beneficial to borrowers . . . , a closed school discharge may be a better option for some students."[35] Our organizations have assisted students impacted by school closures for many years. Students often do not get to choose between teach-out options because they are usually presented to students as a last resort, and we have seen many teach-outs offered by low-quality schools with high cohort default rates, low job placement rates, and low completion rates.

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[32] Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, 83 Fed. Reg. 37,242 (July 31, 2018) (proposed 34 C.F.R. §§ 674.33(g)(4)(i)(B), 682.402(d)(3)(ii)(C) and (iii), and 685.214(c)(1)(i)(C) and (ii)).

[33] 20 U.S.C. § 1087(c) (mandating that the Department grant a closed school discharge whenever "the student borrower, or the student on whose behalf a parent borrowed, is unable to complete the program in which such student **is enrolled** due to the closure of the institution . . . .") (emphasis added); *see also* Comments of the Legal Aid Community to the Department of Education re: Proposed Regulations on Borrower Defenses and Use of Forced Arbitration by Schools in the Direct Loan Program, and Proposed Amendments to Closed School and False Certification Discharge Regulations, Docket ID ED-2018-OPE-0027 at 63-64 (Aug. 30, 2018), *available at* https://www.nclc.org/images/pdf/student_loans/comms-proposed-rule-arb-closed-sch-false-cert.pdf.

[34] *See generally* Comments of the Legal Aid Community to the Department of Education re: Proposed Regulations on Borrower Defenses and Use of Forced Arbitration by Schools in the Direct Loan Program, and Proposed Amendments to Closed School and False Certification Discharge Regulations, Docket ID ED-2018-OPE-0027 at 64-75 (Aug. 30, 2018), *available at* https://www.nclc.org/images/pdf/student_loans/comms-proposed-rule-arb-closed-sch-false-cert.pdf.

[35] 81 Fed. Reg. at 39,369.

Further, many teach-outs differ in key respects from the programs that students originally signed up for at the institution that closed.

When aware of their options, students often decide that it is better to opt for discharge over participating in a teach-out, including for the following reasons:

- The teach-out school has lower job-placement rates than the original institution, has a worse reputation in the industry in which the student wishes to work, or otherwise has a reputation for offering low-quality education or job placement that makes it unlikely the program will provide sufficient financial gains to afford the student's loans or justify the total financial and opportunity costs.

- The teach-out program will not offer the type of education experience students signed up for and want, such as in-person classes, externship programs, or hands-on training. For example, a recent teach-out only offered online programs to students whose closing institution had provided in-person education in physical classrooms.[36]

- The teach-out program is not reasonably accessible to an individual student due to differences in schedule or location and accessibility by public transit.

- The teach-out program may not offer a sufficiently comparable program or programmatic accreditation needed to work in the field the student desires.

- Some students find the same program is less costly or free at community colleges or other institutions that will not accept the transfer of any credits from the closed school. In addition, these institutions may have far better graduate outcomes. These students prefer repeating the classes taken at the closed school in order to reduce their level of student loan debt and increase the likelihood that they will earn a valuable credential that will lead to employment.

- The closing school provided low quality education and, as a result, the students did not obtain the knowledge or skills they needed from classes they took *before* the school closed. Even if the students manage to complete the teach-out program, they are appropriately skeptical that they may not have the skills or knowledge necessary to obtain or keep the job for which they were trained and to pay for the loans.

- Some students prefer not to continue their educations at all. We often hear from students that, because the school experience and closure undermined their faith in the higher education system, they prefer to move on with their lives without a postsecondary education and without student loan debt.

Forcing students to complete teach-outs in any of these circumstances serves neither students nor taxpayers, and therefore the availability of a teach-out should never prevent students from instead accessing a closed school discharge.

[36] See discussion of ICDC teach-out *infra* III.A.2.

For all of these reasons, we support the above-quoted proposed language in § 600.2, which would make students' choices in the event of a school closure clear, and would help guard against any confusion, misrepresentations, or actions on the part of officials, servicers, agencies, institutions or other actors that might seek to unfairly curtail a student borrower's choices and their access to a closed school discharge.

2. Any institution is prohibited from engaging in misrepresentation about the nature of the teach-out plans, teach-out agreements, and transfer of credit

Second, we support the language in the proposed regulations specifying that "Any institution is prohibited from engaging in misrepresentation about the nature of the teach-out plans, teach-out agreements, and transfer of credit." 34 CFR § 600.2 ("*Teach-out*"). While it should be common sense to prohibit institutions from making misrepresentations to students, making this bar explicit here is important in light of the unique vulnerability of students when their school closes, the failure of the education system they have already endured, the financial incentives for institutions to inflate the value of teach-outs or transfers, and facts demonstrating the existence and harm of misinformation during school closures.

When a school closes, students' lives are suddenly upended by the failure of their institution and they are often left scrambling to figure out how to proceed. Students may already be dealing with incomplete or confusing information about their options. Therefore, misrepresentations about their options by their schools compound the harm of the closure by making it more likely that students will make critical decisions about their education and finances based on an inaccurate understanding of their available options.

Further, because closing institutions may be on the hook financially for closed school discharges, there are economic incentives for closing institutions to misrepresent teach-out and transfer options to dissuade students from pursuing closed school discharges. Similarly, while some receiving institutions act as good Samaritans and agree to take on students of closing institutions at a loss or considerable inconvenience to the institution, we have seen other institutions eager to profit from teach-out or transfer students' tuition and federal aid dollars, giving them financial incentives to misrepresent teach-out or transfer options.

These concerns are reinforced by our experience with recent closures, in which schools have emphasized teach-out or transfer options, downplayed or completely omitted mention of students' rights to pursue closed school discharge, or provided inaccurate information about students' rights and options. For example, ICDC College in California closed and arranged for a teach-out with an online distance education provider, including for brick-and-mortar students.[37] In its letter to students, it emphasized the teach-out, did not even mention students' rights to closed school discharges of their federal loans, and provided confusing information to them about the state tuition recovery fund at the end of the letter. Many of the students that the Legal Aid Foundation of Los Angeles assisted were unhappy that they could only complete a teach-out

[37] Letter from Rene C. Nunez, Vice-President Compliance/Student Relations, ICDC College, to ICDC students (May 20, 2016), attached to these comments as Exhibit E.

through an online program and did not know they could instead seek a closed school discharge until they were so informed by legal aid staff. Of course, most students impacted by school closures each year never receive the assistance of legal aid and rely on their schools for information about their educational options.

Similarly, Westwood College provided the attached letter to students when it closed.[38] The letter emphasized students' transfer options without mentioning discharge options until the second page. In addition, it provided inaccurate information by stating, "If you apply for and receive a Federal discharge, you will **forfeit** any Westwood credits earned and these credits **will not** be transferable to a partner school." In fact, students may transfer credits to a different program at a different school and still be eligible for a closed school discharge.[39]

Further, we have seen students of closing schools face aggressive solicitations by other for-profit schools. Closing schools have hosted "school fairs" where all or most of the attendees are other for-profit schools eager to convince students of closed schools to transfer in. Such fairs may be helpful if the schools are honest and fair about the students' options, but misrepresenting transfer options and alternatives would unfairly lead many students to make suboptimal decisions based on misinformation and create further harm. For example, Corinthian's Heald College invited for-profit schools onto its closing California campuses to recruit. These schools aggressively pushed students to transfer credits rather than seek closed school discharges. Many former Heald students transferred to other suspect for-profit schools because of this misinformation, exchanging their discharge eligibility for a valueless degree and unknowingly exposing themselves to still more debt and predatory practices. DeVry College, which our clients have told us was ubiquitous in its on-campus recruiting during Heald's closure, was itself sued by the FTC for predatory practices less than a year later.[40]

We therefore support the inclusion of proposed language in 34 CFR § 600.2 explicitly prohibiting institutions from "engaging in misrepresentation about the nature of the teach-out plans, teach-out agreements, and transfer of credit."

B. Support for Guardrails to Protect Students from Further Harm When their Schools Close

We support the addition of certain proposed language in § 602.24(c)(6), (7), (8), and (10) that would provide necessary guardrails to protect students when their schools close from further

[38] Letter from Lou Pagano, Chief Operating Officer, Alta Colleges, to Westwood students (Jan. 25, 2016), attached to these comments as Exhibit F.

[39] *See* 34 C.F.R. § 685.214(c)(1)(i)(C); www.studentaid.gov/closedschool ("Q. I transferred credits from a closed school and enrolled in a completely different program of study at a new school and completed the new program. Are the previous loans from the closed school dischargeable? A. Yes, because the program of study at the new school is completely different than that of the closed school, for which the loans were intended.").

[40] Press Release, Federal Trade Commission, FTC Brings Enforcement Action Against DeVry University (Jan. 27, 2016) (alleging that DeVry misled prospective students about employment and income Prospects that were central to school's advertising and marketing). The complaint resulted in a $100 million settlement. *See* Press Release, DeVry University Agrees to $100 Million Settlement with FTC (Dec. 15, 2016).

harm by requiring that certain minimal standards be satisfied during the closure and teach-out process.

1. Proposed § 602.24(c)(6) provides basic requirements for teach-out agreements

Proposed § 602.24(c)(6) would set out a series of requirements for teach-out agreements, including that the agreement must include a complete list of enrolled students and the program requirements each has completed, a plan to provide all potentially eligible students with closed school discharge and state-based tuition refund information, a record retention plan to be provided to all students, information on the number and types of credits the teach-out institution will accept prior to the student's enrollment, and a clear statement of tuition and fees.

These are all basic requirements that must be satisfied for the agency to be able to make a baseline assessment of the agreement and for students to begin to make informed choices about whether to pursue a teach-out, other credit transfer, or closed school discharge in the event of a closure. Further, a record retention plan is critical to ensuring that students will be able to access necessary records to pursue credit transfers, verify their academic records for educational, employment, or licensing purposes, verify financial aid records in the event of uncertainty or dispute, and access records if needed to pursue discharge or refund programs.

2. Proposed § 602.24(c)(7) requires teach-outs to offer online students opportunity to complete their program online, and in-person students opportunity to complete in person

Proposed § 602.24(c)(7) would modify approval requirements regarding teach-out agreements by providing that a teach-out by an alternative delivery modality is not sufficient unless an option via the same delivery modality as the original educational program is also provided.

We support requiring that teach-outs provide an option for students to complete their programs using the same delivery modality as used in the original educational program they signed up for. This would, for example, mean that a teach-out agreement should not be approved if it would only allow students who had been taking their classes in-person in traditional classroom settings to complete their program using online courses, or vice versa.

Students have valid and important reasons to strongly prefer or exclusively desire in-person or online education. A student may exclusively want in-person education if they lack computer skills or reliable access to a computer or the internet, if their program is hands-on in nature (e.g., culinary or massage school), or if they know or anticipate that they will be more likely to complete or will learn better in an in-person environment. Indeed, a recent study found that students "from low-income and under-represented backgrounds consistently underperform

in fully-online [education] environments;"[41] this is the population that is disproportionately impacted by school closures. Thus, when ICDC College closed and arranged a teach-out with an online distance education provider, including for brick-and-mortar students,[42] students LAFLA worked with found this to be an inadequate option for them. On the flip side, a student without access to transportation, without access to childcare, or with mobility impairments may need to continue an education she began online through online courses, or not at all.

While it is fine to offer students the option to complete their programs in a different modality, a reasonable opportunity to complete the program students signed up for must ensure they may do so in the modality they chose when they enrolled.

3. Proposed § 602.24(c)(8) helps prevent teach-outs from shuffling students from one failing school to another

Proposed § 602.24(c)(8) would prohibit agencies from allowing an institution to serve as a teach-out institution if it is under investigation or facing an action or prosecution for an issue related to academic quality, misrepresentation, fraud, or other severe matters, or if it is subject to the conditions that would require submission of a teach-out plan under proposed § 602.24(c)(1) or (2). This provision is important to ensure that teach-out arrangements do not merely shuffle students from one sinking ship to another.

As the Department has reportedly found in its efforts to find teach-out partners, finding an institution happy to act as a receiving institution is not always easy.[43] There is an obvious risk that the institutions that will be most eager to sign on as receiving institutions will be institutions that are seeking an enrollment and cash infusion because they are themselves financially unstable or because they are pursuing aggressive growth targets—which have often been led to deceptive recruiting practices to boost their enrollment numbers. Indeed, as discussed above, clients have told us that when Corinthian's Heald College campuses in California were closing amidst significant scandal and government investigations, DeVry College was aggressive in recruiting Heald students to continue their educations. Less than a year later, DeVry was itself sued by the FTC for predatory practices. Guardrails such as this proposal are important to protect against approval of teach-outs that reflect the interests of expediency in finding a receiving institution but not the interests of vulnerable students who, having gone through one school failure, should not be shepherded into another.

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[41] Spiros Protopsaltis and Sandy Baum, Does Online Education Live Up to Its Promise? A Look at the Evidence and Implications for Federal Policy (Jan. 2019), *available at* https://mason.gmu.edu/~sprotops/OnlineEd.pdf and attached as Exhibit C.

[42] Letter from Rene C. Nunez, Vice-President Compliance/Student Relations, ICDC College, to ICDC students (May 20, 2016), attached to these comments as Exhibit E.

[43] *See, e.g.*, Eric Kelderman, "Fallout From For-Profit College Chain's Closure Could Have Been Prevented," (Chron. Of Higher Educ., Dec. 6, 2018), *available at* https://www.chronicle.com/article/Fallout-From-For-Profit/245278.

4. Proposed § 602.24(c)(10) helps address the problem of closing institutions misleading students about their options

Proposed § 602.24(c)(10) would require the agency to obtain from the closing institution all notifications about the closure or teach-out options to ensure that the communications accurately represent students' ability to transfer credits and to make any necessary corrections. As discussed in detail above in III.A.2, this is important because students of closing institutions need accurate information about their options to make informed decisions about what to do when their school closes. Although the schools are often their primary source of information, the schools may intentionally or unintentionally misrepresent the options. Closing schools, on the hook for the cost of closed school discharges, have a financial incentive to make teach-outs or credit transfer options appear more appealing than closed school discharges and so may not represent the options neutrally and accurately. As discussed above, we have seen this problem again and again, with misleading communications from Westwood College and ICDC regarding their closures representing just a couple examples.[44]

C. Students Should Be Promptly Informed Regarding Loss of Accreditation and Other Adverse Actions

We support the inclusion of the proposed language in § 602.26(b) and (e) that would provide for prompt notification and disclosures to current and prospective students regarding accreditor decisions to suspend, withdraw, revoke or terminate accreditation, place on probation, or take other adverse action against an institution. We note, however, that while these disclosures should be required, disclosures cannot take the place of substantive student protections from the harms associated with loss of accreditation or the institutional failures that lead to adverse accreditation decisions, and these provisions do not supplant the need for such protections.

When a school loses its accreditation or is otherwise subject to an adverse accreditation action, there are serious ramifications for students, who may no longer be able to access financial aid, transfer credits to other schools, qualify for licensure in their field, or get value in the employment market for a degree from an unaccredited institution. Further, adverse accreditation decisions are important signs of underlying school problems—such as financial instability, high risk of closure, and quality and value problems—that are of critical importance to students, and such decisions often precede school closures. Current and prospective students thus must be made aware of the action if they are to make informed decisions about whether to enroll or stay enrolled, to take on student loan debt, to pursue transfer opportunities, or to take other actions to protect or salvage their investment in higher education.

Recent history shows the need for these proposed disclosure requirements. For example, in January 2018, the Illinois Institute of Art was informed by its accreditor Higher Learning Commission that it had lost its accreditation.[45] According to news reports, students, and a federal

[44] *See supra* III.A.2 for discussion, and Exhibits E and F for the communications from these schools.
[45] Daniel Moore, "Deal Under Scrutiny as Art Institutes Face Accreditation Setbacks," Pittsburgh PostGazette (June 19, 2018), *available at* https://www.post-gazette.com/business/careerFILED DATE: 12/6/2018 5:58 PM

lawsuit, the institution failed to disclose to students and prospective students that it was no longer accredited until after a news report highlighted the failure in June 2018, and in the interim the institution even posted false and misleading information in its course catalogs and enrollment agreements stating that "We remain accredited as a candidate school seeking accreditation under new ownership and our new non-profit status."[46] During the January to June period, students continued to enroll at the institution, spent time and money on unaccredited classes/credits classes, took on student loan debt. Many graduated from a now-unaccredited institution, not realizing there was a significant and material change to the terms and value of the education offered by the institution.[47] A few weeks after the delayed disclosure, the institution announced that it was ceasing new enrollments and would close in December 2018. The delay in disclosure of the loss of accreditation meant that many students had taken actions they would not have otherwise and did not have the opportunity to take timely preparatory actions to avoid a bad situation or salvage their educational investment while they had a chance.

The Illinois Institute of Art example also provides a clear illustration of how disclosures that are hidden, inaccurate, confusing or misleading fail to provide students with the information they need to make informed decisions about how and whether to continue and to finance their education. In light of this, we further urge the Department to take steps to ensure that disclosures required under these proposed regulations provide actual, effective notice and information that is accurate, meaningful, and actionable to students who may be unfamiliar with the accreditation system and the meaning of accreditation decisions and terminology. We also urge the Department to ensure that the disclosures continue as long as the suspension or other adverse action is in effect so that the disclosures are more likely to reach all relevant students and prospective students.

2018CH15216 14 workplace/2018/06/19/Deal-under-scrutiny-Art-Institutes-accreditation-setbacks-dreamcenter/stories/201806140022.

[46] *See* Dunagan et al. v. Illinois Institute of Art et al., Complaint, (Cir. Court of Cook County, Ill., Dec. 6, 2018), *available at* https://docs.wixstatic.com/ugd/60a689_33057fe59ed443288eaafa766ef67c8c.pdf; David Halperin, "Inside a For-Profit College Conversion: Lucrative Ties, Troubling Actions," Republic Report (May 16, 2018), available at https://www.republicreport.org/2018/inside-a-for-profit-college-conversion-lucrativeties-troubling-actions/.

[47] *See* Dunagan et al. v. Illinois Institute of Art et al., Complaint, (Cir. Court of Cook County, Ill., Dec. 6, 2018), *available at* https://docs.wixstatic.com/ugd/60a689_33057fe59ed443288eaafa766ef67c8c.pdf.

EXHIBIT A

NCLC® NATIONAL CONSUMER LAW CENTER®

Wake-Up Call to State Governments: Protect Online Education Students from For-Profit School Fraud

December 2015

SLBA Student Loan Borrower Assistance

Note: *This brief updates Step 2 of the National Consumer Law Center's* Ensuring Educational Integrity: 10 Steps to Improve State Oversight of For-Profit Schools *(June 2014) available at:* http://tinyurl.com/muslfjb.

Distance online education is now the fastest growing segment of higher education.[1] Most states, however, have abdicated their responsibility to protect the increasing number of online education students from predatory and illegal practices of for-profit education companies. Most allow out-of-state companies to enroll online students *without complying with important state consumer protections for postsecondary students,* as long as the companies have no physical presence in state. These states either exempt these schools from oversight or have signed weak state authorization reciprocity agreements that prevent state enactment or enforcement of postsecondary education consumer protection laws.

ONLINE FOR-PROFIT SCHOOL STUDENTS NEED AND DESERVE STATE PROTECTION

Thousands of online education students are vulnerable to misleading marketing, low-value programs, and fraud. Yet, these students lack the following protections, among others, which many states provide for students who attend brick-and-mortar schools:

- Reimbursements from state protection funds for economic losses due to sudden school or program closures;
- 100% refunds for students who cancel before the first day of class;
- Private student loan refunds in the event they withdraw before completing their educations; and
- The right to file complaints with their states' oversight agencies.

Online education students are equally deserving of protection from unscrupulous for-profit companies. There is no reason to conclude that for-profit online education schools are less likely to engage in the types of deceptive practices used by brick-and-mortar schools.

- As highlighted in the table on page 2, a majority of the largest online education schools are owned and operated by the same for-profit companies that have been the subject of multiple law enforcement investigations and actions.
- A 2012 investigation by the U.S. Senate Health, Education, Labor and Pensions Committee detailed extensive misleading practices at schools owned by all of these corporations.[2]

- Both Bridgepoint Education, Inc. and Career Education Corp. entered multi-million dollar settlements with state attorneys general based on allegations that they engaged in unfair and deceptive practices with respect to their online programs.[3]
- In November 2015, Education Management Corp. agreed to a $100 million settlement with the Department of Education and 39 states for engaging in illegal recruiting and other illegal practices.[4] As of fall 2015, ITT Educational Services' financial status is being closely monitored by the Department of Education and has been sued by the Consumer Financial Protection Bureau for unfair and deceptive business practices.[5] Both of these schools offer extensive online education programs that are protected by reciprocity agreements or are exempt from state oversight.[6]

Largest Online Colleges Involved in Government Investigations (2004-2014)

NATIONWIDE RANK BY HEADCOUNT (OF ALL POSTSECONDARY SCHOOLS OFFERING ONLINE PROGRAMS)	SCHOOL AND OWNER	ONLINE STUDENT HEADCOUNT (2012–2013 SCHOOL YEAR)	NUMBER OF LAWSUITS AND INVESTIGATIONS
1.	University of Phoenix Online, Apollo Group, Inc.	270,000	6
3.	Ashford University, Bridgepoint Education, Inc.	89,000	4
5.	Kaplan University, Kaplan Inc.	48,000	3
11.	DeVry University, DeVry, Inc.	34,000	3
13.	Corinthian Colleges, Inc.	30,000	12
14.	Education Management Corp.	30,000	6
16.	Colorado Technical University Online, Career Educ. Corp.	20,000	5

Source: "Top 20 Online Colleges and Universities by Headcount," www.eduventures.com (Jan. 16, 2013); see Appendix A of NCLC's Ensuring Educational Integrity *report for information about government investigations and lawsuits, available at:* http://www.nclc.org/issues/ensuring-educational-integrity.html.

STATES SHOULD TAKE ACTION TO PROTECT ONLINE STUDENTS

Based on the National Consumer Law Center's review of state physical presence requirements, as of July 2013, only nine states regulate degree-granting and non-degree granting for-profit schools that offer online education but have no in-state physical presence.[7] Twelve other states regulate a subset of schools that offer online education but have no physical presence.[8] In the days when online programs were non-existent or rare, it may have been reasonable for states to conclude that online education oversight was unnecessary. But times have changed.

The U.S. Department of Education has recognized the risk that the lack of state oversight poses to the federal financial aid program. It is currently considering regulations that

would require schools solely offering online education programs to obtain some type of authorization from each state where the programs are offered.[9] To make it easier for schools to obtain state authorizations, the National Council for State Authorization Reciprocity Agreements (NC-SARA) and four higher education regional compacts have drafted a cooperative agreement for the purposes of online education oversight and approval, applicable to accredited degree-granting schools.[10]

The four State Authorization Reciprocity Agreements (the SARAs) essentially provide that if the state oversight agency where the school is physically headquartered (the "home state") approves a school, then the states where the school offers online education programs (the "distant states") must adopt the home state's approval as long as the school lacks an in-state physical presence.

As currently drafted, the SARAs largely ignore consumer protection issues.[11] Chief among the SARAs' deficiencies is the requirement that both home and distant states waive their consumer protections and minimum standards specifically applicable to for-profit schools with respect to out-of-state online students.[12] A school offering online education programs need only comply with the SARAs' minimal standards and disclosure requirements. Even a home state may not apply or export statutory consumer protections to online education emanating from their state and conducted across state lines.

Lack of State Oversight of Online Education Programs Leaves Borrowers to Fend for Themselves

In 2010, Shari B. (name changed to protect her privacy) had been unemployed for more than six years. A single mother of four living in California, she was attracted to an advertisement about a business associate degree program. The program was offered online by Centura College, a for-profit school headquartered in Virginia. Shari called the school and signed an enrollment agreement several days later. After enrolling, Shari discovered that her home Internet connection did not work well enough for participation in the online program. She informed Centura College by phone and in writing of her decision to cancel her enrollment agreement. She had never attended a single class or even logged onto the school's website.

In mid-2014, Shari received a call from a lawyer. The lawyer told Shari that if she didn't agree to start making monthly payments, her wages would be garnished. Shari was surprised and discovered that, although she had not been served with any complaint, a default judgment of $3,000 had been entered against her. The plaintiff was a debt buyer that claimed it was enforcing a debt Shari owed to Centura College.

Because it has no physical presence in California, Centura College is exempt from oversight by the Bureau for Private Postsecondary Education. It is also not required to comply with California's 7-day cancellation law, which allows students to cancel within 7 days and receive a 100% refund. In addition, because Centura College is an accredited school that has existed in Virginia for over 10 years under the same ownership, it is exempt from oversight by the State Council of Higher Education for Virginia. With no oversight agency to which she may address a complaint, Shari sought the assistance of a legal aid attorney.

Numerous other serious problems with the SARAs exist and have largely gone unnoticed by state legislatures. **As of November 29, 2015, 34 states, many through authorizing legislation with little or no debate, have joined SARA.[13] In addition, the leaders of public and private non-profit colleges have led the efforts to pass SARA authorizing**

legislation, without regard to the serious consequences for low-income for-profit school students.

The SARAs' unbalanced and dangerous provisions are not set in stone. Reciprocity agreements may be useful, but only if they include strong consumer protections and provide for robust state oversight. In order to protect online students' and states' interests, member states, and those that are considering participation could demand that the SARAs be revised as recommended (see page 5). States should enter into reciprocity agreements only if they are revised to provide states with sufficient authority to protect their citizens.

ENDNOTES

1. Office of the Inspector General, Dep't of Educ., "Title IV of the Higher Education Act Programs: Additional Safeguards are Needed to Help Mitigate the Risks That are Unique to the Distance Education Environment," ED-OIG/A07L0001 at 4, 6 (Feb. 2014).
2. U.S. Senate, Health, Educ., Labor and Pensions Comm., "For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success," S. Rpt. 112-37 (July 30, 2012).
3. *See* National Consumer Law Center, *Ensuring Education Integrity: 10 Steps to Improve State Oversight of For-Profit Schools* at Appx. A (June 2014). For a more up-to-date list of recent investigations, actions and settlements, *see* David Halperin, "Law Enforcement Actions and Investigations Regarding For-Profit Colleges," www.republicreport.org (updated November 30, 2015).
4. Press Release, U.S. Dep't of Educ., "For-Profit College Company to Pay $95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations" (Nov. 16, 2015); Press Release, Office of the Kentucky Attorney General, "Attorney General Conway Announces Agreement with EDMC" (Nov. 16, 2015).
5. Paul Fein, "Problems Deepen for ITT," InsideHigherEd.com (May 13, 2015).
6. *See* www.aionline.edu (EDMC Art Institute of Pittsburg Online); www.itt-tech.edu/onlineprograms and www.dwc.edu/onlineprograms (ITT Education Services online programs).
7. These states are Alabama, Georgia, Indiana, Kansas, Montana, South Dakota, Utah, Wisconsin, and Wyoming. *See* National Consumer Law Center, Student Loan Law, Appx. M (Supp. 2016).
8. These states are Arkansas, Delaware, Iowa, Kentucky, Minnesota, Nebraska, New Jersey, Oklahoma, Rhode Island, Texas, Virginia, Washington. *See id*.
9. 78 Fed. Reg. 69612 (Nov. 20, 2013).
10. National Council for State Authorization Reciprocity Agreements, "State Authorization Reciprocity Agreements: Policies and Standards" (July 10, 2015).
11. Commission on Regulation of Postsecondary Distance Education, "Draft Findings, Principles, and Recommendations" at 4 (Feb. 2013).
12. National Council for State Authorization Reciprocity Agreements, "State Authorization Reciprocity Agreements: Policies and Standards" (July 10, 2015). All four regional SARAs include these provisions, unless otherwise noted, and are available at each of the following websites: www.wiche.edu, www.mhec.org, www.nebhe.org, www.sreb.org.
13. *See* http://nc-sara.org/sara-states-institutions.

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State Authorization Reciprocity Agreements' Anti-Consumer, Anti-State Provisions and How To Fix Them

SLBA
Student Loan Borrower Assistance

State Authorization Reciprocity Agreement (SARA) provisions are not set in stone. To more equitably address consumer, state, and school interests, states should enact legislation allowing state agencies to sign onto SARAs as long as they are revised as follows. State oversight agencies may also insist on these revisions before applying for membership or after they have become members.

SARA PROVISION	PROBLEM	SOLUTION
Accreditation in Lieu of State Standards[1]	The home state[2] must accept institutional accreditation as sufficient for approving schools' participation in SARA. Distant states must accept the home state's approval. Under SARA, neither the home state nor any distant state may require more than accreditation in most circumstances.	Approval criteria should be expanded to ensure that a school provides quality education and does not engage in deceptive or illegal practices. Criteria should include minimum and audited graduate job placement rates for all programs that a school represents will lead to an occupation.[3]
Waiver of State Consumer Protection Laws	All states, both home and distant, must waive consumer protection laws with respect to covered schools and students.[4] It is not even clear if a state retains authority to enforce its general consumer protection laws against SARA schools.	State consumer protection laws that specifically apply to for-profit schools should cover all online for-profit education schools that market to state residents, regardless of physical presence.
Treatment of All Type of Schools as If They Pose the Same Risk to Students	SARA requires a state to sign onto SARA for all types of schools (public, private non-profit, or for-profit) or none.	States should be able to sign onto SARA for some types of schools, but opt out for types of schools that pose a higher risk to their residents.
Lack of Consumer Protections	SARA only requires that schools provide accurate information to students regarding a number of areas, including refund policies and accreditation. States may not apply more stringent consumer protection provisions to SARA schools.[5]	SARA should require schools to comply with all consumer protections of each state in which they market, including prohibitions targeted to unfair and deceptive business practices, disclosure requirements, private causes of action, language requirements, and requirements for enrollment agreements and other important documents.

1 National Council for State Authorization Reciprocity Agreements, "State Authorization Reciprocity Agreements: Policies and Standards" (July 10, 2015). All four regional SARAs include these provisions and are available at each of the following websites: www.wiche.edu, www.mhec.org, www.nebhe.org, www.sreb.org.

2 The "home" state is defined as the state where the school maintains its legal domicile.

3 For more on minimum job placement rates, see National Consumer Law Center, Ensuring Education Integrity: 10 Steps to Improve State Oversight of For-Profit Schools (June 2014).

4 While a home state may apply stricter consumer protections to in-state online students that enroll in schools domiciled in-state, it may not export those consumer protections to out-of-state online students of that school. The school need only comply with SARA for out-of-state online students.

5 See footnote 3, supra.

SARA PROVISION	PROBLEM	SOLUTION
Inadequate Student Protection Fund Requirements	While SARA states that each state must ensure that closed school students are able to receive the education they contracted for or financial compensation, it is unclear whether states are allowed to impose requirements on SARA schools to pay into state protection funds, provide bonds, or provide other financial assurance in order to fund these financial protections.[6]	SARA should require each member state to maintain a student protection fund sufficient to compensate the financial losses of all students impacted by school closures, at a minimum.
No Refund or Cancellation Provisions	SARA schools do not have to comply with state law refund or cancellation provisions.	SARA should require schools to comply with state refund and cancellation provisions for each state in which they market.
Programs that are Represented Lead to Licensed Occupations but Do Not Qualify Graduates for Licensure	SARA allows schools to offer programs that lead to a licensed occupation in distant states, even when the programs do not qualify students for licensure in those states. SARA only requires that schools disclose that the program does not meet state licensure requirements.	SARA should prohibit schools from enrolling students in programs that lead to a licensed occupation when the programs do not qualify students for licensure in their states.
Inadequate Student Complaint Procedures	SARA requires students to first try to resolve a complaint with the school. Only after this may a student submit a complaint to the home state. Although the distant state may help to resolve the complaint, only the home state may make the final decision.	SARA should provide states with the right to accept, investigate and act on complaints from their residents. Students should not be required to submit a complaint to the school before they may file a complaint with their states. Schools should be required to cooperate with any state's investigation.
No Investigative or Enforcement Powers for Distant States	Distant states may only take action for SARA violations (or regarding student complaints) in two ways: (1) either asking the home state to take action (and, if unhappy with the decision, appealing to regional compact), or (2) withdrawing from SARA for ALL schools.	Each state should maintain the authority to limit or deny approval, or take any other appropriate action, in the event it determines that a school has failed to meet the minimum SARA standards, its own minimum standards, or violated any state law or regulation. In addition, each state should be able to review documents, conduct site visits, issue subpoenas, and use other investigative tools it deems necessary to grant or continue approval through SARA. Other important state powers include: ■ Record retention and reporting requirements. ■ Notification requirements regarding change in ownership, adverse accreditor actions, etc. ■ Fee requirements to fund its work.
Overly Broad Definition of Physical Presence	States must use SARA's overly broad definition of "physical presence" to determine which schools are covered. The definition excludes a number of activities which should lead to state oversight. For example, in-state recruiting does not constitute a physical presence. For-profit SARA schools may pay unlicensed recruiters to target students in distant states, while maintaining their immunity from state consumer protection laws.	SARA's definition should be revised to better delineate when a state has a legitimate interest in regulating activities conducted in its borders, such as recruitment activities.

6 In addition, the laws of some states that have been admitted to SARA do not allow the use of state protection funds to reimburse out-of-state distance education students. See, e.g., Ariz. Rev. Stat. Ann. § 32-3075(b) ("Any person injured by a private postsecondary education institution ceasing operation is eligible to submit a claim against the fund unless the person is not a resident of this state and is enrolled in distance learning instruction.") (emph. added.). Other member states do not have any bond provisions or protection funds to compensate harmed closed school students. See CFED, Assets & Opportunity Scorecard, For-Profit School Regulation, http://scorecard.assetsandopportunity.org/latest/measure/for-profit-school-regulation (accessed on Dec. 2, 2015).

EXHIBIT B

LAFLA has collected the below stories regarding legal aid clients who have suffered harm as a result of misconduct by schools operating online distance education programs. These examples support the need to ensure that state authorization rules and reciprocity agreements do not have the effect of exempting online distance education programs from effective oversight or preventing states from enforcing state laws to protect online distance education students.

False promises regarding job placement and income

A legal aid client reported that she was researching different schools to pursue a career in accounting, and she received a call from an Everest College representative. The representative persuaded the client to enroll in an Everest online program, promising that she would be able to earn $5,000 a month after graduation and that she would have no difficulty finding a job. The client signed up and graduated around 2013. Contrary to the recruiter's promises, despite successfully completing the program, the client has never been able to find an accounting job since graduating from Everest's online program. She had over $50,000 outstanding over in federal student loans that she cannot pay.

False certification of graduation from high school and eligibility for federal student loans:

A legal aid client who attended Colorado Technical University (CTU) online reported that he did not have a high school diploma or GED and informed CTU of this prior to enrolling. The client did not know a diploma or GED was needed to take out federal student aid. On information and belief, legal aid attorneys allege that CTU enrolled the client after electronically forging his signature on a verification form stating that he had a high school diploma, and are seeking a false certification discharge for this client.

False representations regarding accreditation and licensure

In 2012, a legal aid office represented a client who incurred thousands of dollars in debt in reliance on representations by The College Network (TCN) that he would be able to obtain a Bachelor of Science in Nursing through the program and that this would qualify him for licensure in California. The College Network was a corporation that sold "education modules" door-to-door. The client was not aware, and TCN did not inform him, that TCN only had temporary accreditation through the California Board of Registered Nursing, thanks to a memorandum of understanding (MOU) with Sonoma State University. This MOU expired and was not renewed. Thus, any credentials the client might have received through the program would be worthless because he could not work as a nurse in the state where he lives. When he found out, he tried to cancel the program and demand a refund in 2014, but was still receiving collections letters, and the debt connected to the program was continuing to affect his credit, in 2017.

Failure to provide refunds to students who withdrew and did not access any online programming

A legal aid client in California heard about Centura College, headquartered in Virginia, through advertising in the Penny Saver. The client enrolled in the school's online two-year associate's degree program in business and accounting. Shortly after signing the enrollment

agreement in 2010, the client realized that she would not be able to begin her program due to internet connection issues at her home. She immediately contacted Centura College and informed the school that she would be withdrawing from her program and cancelling her enrollment. She also faxed a letter to the school stating that she did not wish to continue her course and that she was withdrawing from her program. She did not hear from the school again.

While the school complied with federal law and cancelled her Pell Grant and federal student loans obtained to enroll at Centura College, it sold the client's unpaid enrollment agreement to a debt buyer. In November 2012, over two years after the client had withdrawn from the online program, the debt buyer sued her for breach of the enrollment agreement seeking payment for the full amount of tuition. Since Centura College, which is headquartered in Virginia, is an out-of-state distance education provider, it is able to avoid California's refund laws, which requires a full refund for students who withdraw within the first two weeks of enrollment.

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Another legal aid client enrolled at The College Network (TCN) when she was 62 years old. TCN promised her that it had an online program that would enable her to obtain a degree from California State University in Los Angeles and qualify her for licensure as a nurse in California. TCN arranged for private student loans from a credit union. But the client was never able to access the online program, nor did she ever attend a class. She contacted TCN multiple times to try to get access to the online program, but she was never able to access the program or attend any classes. Despite this, TCN did not issue a refund of the private student loan it had arranged. Eventually, TCN closed and a debt buyer sued her and obtained a default judgment against her in 2014. When she met with legal aid, her only source of income was $617 per month in Social Security.

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Another legal aid client enrolled in University of Phoenix's (UOP) online Business Administration program in November 2015. Her classes were scheduled to begin in January 2016. However, due to a serious family health issue that arose, the client did not attend a single online class. She received an email from the school notifying her that she had not met her attendance requirement, and she informed the school that she withdrew from the program. UOP demanded that she pay for two weeks of classes, even though the school acknowledged that she did not attend it. Since UOP, which is headquartered in Arizona, is an out-of-state distance education provider, it is not subject to California law, which requires a full refund for students who drop classes within the first two weeks of enrollment.

EXHIBIT C

DOES ONLINE EDUCATION LIVE UP TO ITS PROMISE? A LOOK AT THE EVIDENCE AND IMPLICATIONS FOR FEDERAL POLICY

Spiros Protopsaltis and Sandy Baum[i]

January 2019

Abstract

Technology has the potential to increase access to education, enhance learning experiences, and reduce the cost of providing high-quality postsecondary education. However, despite the explosive growth of online education, which has been disproportionately large in the for-profit sector, our review of the evidence shows that this potential has not been realized. Instead, on average fully online coursework has contributed to increasing gaps in educational success across socioeconomic groups while failing to improve affordability. Even when overall outcomes are similar for classroom and online courses, students with weak academic preparation and those from low-income and under-represented backgrounds consistently underperform in fully-online environments. Success rates are lower and employers—in addition to students, faculty, academic leaders, and the public—attribute lower value to online than to classroom degrees. A strong body of evidence, as well as industry best practices, have consistently emphasized the critical role of frequent and meaningful interaction between students and instructors for increasing the quality of the online educational experience and improving student outcomes and satisfaction. Weakening federal requirements for regular and substantive interaction between students and faculty in online courses would likely decrease educational quality, further erode employer confidence in the value of online credentials, increase barriers to postsecondary success, and expand opportunities for some institutions to exploit vulnerable students and federal student aid programs.

Acknowledgements
The Laura and John Arnold Foundation (LJAF) provided support for this paper. Results, information and opinions represent the analysis, information and opinions of the authors and are not endorsed by or reflect the views or positions of LJAF or any employee thereof.

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Executive Summary

Predictions that technology will revolutionize postsecondary education have generated extreme optimism about the promise of online coursework for solving the problems of rising college prices, as well as unequal access and student outcomes. For the past couple of decades, the hope has been that students whose geographical constraints, financial limitations, and work and family obligations make it difficult for them to participate in brick-and-mortar classrooms will be able to enroll online and earn high-quality, inexpensive degrees.

Today, almost one-third of college students take courses online, with no in-person component. Half of these students are enrolled in exclusively online programs, while the remaining take at least one, but not all of their courses, online. This form of delivery is particularly prevalent in the for-profit sector: for-profit colleges enroll just 6 percent of all students, but 13 percent of students taking courses online and 24 percent of fully-online students.

However, more than a decade after Congress allowed online colleges full access to federal student aid programs, and despite a subsequent explosion in their enrollment, a growing and powerful body of evidence suggests that online learning is far from the hoped-for silver bullet. Online education has failed to reduce costs and improve outcomes for students. Faculty, academic leaders, the public, and employers continue to perceive online degrees less favorably than traditional degrees.

In a range of environments, the gaps in student success across socioeconomic groups are larger in online than in classroom courses. Students without strong academic backgrounds are less likely to persist in fully online courses than in courses that involve personal contact with faculty and other students and when they do persist, they have weaker outcomes. Not surprisingly, students with more extensive exposure to technology and with strong time management and self-directed learning skills are more likely than others to adapt to online learning where students can do the work on their own schedules. There is considerable danger that moving vulnerable students online will widen attainment gaps rather than solving the seemingly intractable problem of unequal educational opportunity.

Technology can add to the learning experience when it supplements, rather than replaces, face-to-face interaction. The outcomes of hybrid models employing this approach do not mirror the problems that emerge in fully online courses. But high quality courses are expensive to produce and maintain. It is inexpensive to post lectures online for large numbers of students to access, but high-quality courses with meaningful interaction among students and between students and faculty are not money savers.

A key theme emerging from the literature is the critical importance of student-faculty interaction in online settings. Researchers, as well as both proponents and skeptics of online education, emphasize the need to design online courses that facilitate robust interactions as an essential component for improving the quality of learning and student outcomes and satisfaction. Lack of sufficient interaction between students and faculty is likely online education's Achilles' heel. Both evidence about the cognitive components of learning and research on differences in outcomes in different types of courses confirm the central role of meaningful personal interaction between the instructor, who is the subject-matter expert, and the student.

As efforts to further expand online opportunities proceed, it is critical to design more interactive educational experiences that integrate regular, direct, and meaningful contact and communication though real-time class sessions and other synchronous interactions with peers and instructors. It is reasonable to believe that many of the problems with online learning— particularly for at-risk students—would be mitigated if these courses and programs consistently incorporated the frequent and substantive personal interaction that is central to the learning process.

In 2006, following several years of intense lobbying by online providers and the for-profit sector, Congress provided online programs with unrestricted access to student aid, but required them "to support regular and substantive interaction between the students and the instructor, synchronously or asynchronously." This key distinction was meant to clearly distinguish online from self-paced correspondence programs, which rely on self-learning, do not provide such interaction, have limited access to federal student aid, and also have a long history of fraud and abuse.

The recent rise of competency-based education, a self-paced educational model the vast majority of which is offered online, along with a high-profile federal government audit of the nation's largest competency-based education provider, has contributed to calls for weakening or eliminating the long-standing requirement for regular and substantive interaction. The House Republican proposal for reauthorizing the Higher Education Act would effectively eliminate this key requirement. This approach would not only be inconsistent with the significant evidence that clearly demonstrates the key role of faculty-student interaction in ensuring a quality online education, but would further erode employer, educator, and public confidence in its value.

Our review of the evidence demonstrates that:

- Online education is the fastest-growing segment of higher education and its growth is overrepresented in the for-profit sector.
- A wide range of audiences and stakeholders—including faculty and academic leaders, employers and the general public—are skeptical about the quality and value of online education, which they view as inferior to face-to-face education.
- Students in online education, and in particular underprepared and disadvantaged students, underperform and on average, experience poor outcomes. Gaps in educational attainment across socioeconomic groups are even larger in online than in traditional coursework.
- Online education has failed to improve affordability, frequently costs more, and does not produce a positive return on investment.
- Regular and substantive student-instructor interactivity is a key determinant of quality in online education; it leads to improved student satisfaction, learning, and outcomes.
- Online students desire greater student-instructor interaction and the online education community is also calling for a stronger focus on such interactivity to address a widely recognized shortcoming of current online offerings.

For some students the choice may be between online coursework or no coursework at all. Even if success rates are relatively low in online courses, the availability of these courses may allow students to enroll in more courses, leading to the accumulation of more credits for some students. Even low pass rates might increase graduation rates. But the greatest risk is that the rush to transform higher education will widen the gulf between the college education available to those who arrive at the door with ample resources and strong academic preparation and those who depend on postsecondary education to create a path to productive lives.

Creating access to programs is a step forward, but only if those programs succeed in providing meaningful educational opportunities to students with minimal levels of academic preparation who need to develop their self-discipline, time management, and learning skills—not just have access to a specific body of information. As we seek to improve the quality of online education and reverse its poor record in an effort to ensure that it not only serves more students, but also serves them well, it is critical to promote regular and substantive student-instructor interaction. Otherwise, we risk blurring the line between education and self-learning and further opening the floodgates for unscrupulous online colleges to prey on vulnerable students and exploit out federal student aid programs.

Predictions of a revolution quite clearly exaggerated the near-term prospects for change. But that does not mean we should give up on technology's potential to enhance college learning opportunities. It does mean we should be cautious about proponents of innovation who over-promise and we should create and maintain a regulatory environment that supports the use of technology to supplement and strengthen the intrinsically interactive nature of teaching and learning.

Introduction

Long-standing challenges facing higher education—runaway prices and inadequate student outcomes, coupled with persistent access and achievement gaps—have fueled widespread hope for transformative solutions that will bend the cost curve and increase educational attainment, especially for students with very limited financial resources and inadequate academic preparation. Predictions that innovations that will revolutionize higher education and increase educational attainment across demographic groups are just around the corner frequently rely on technology as a silver bullet.

The recent rise and fall of the dream that Massive Open Online Courses (MOOCs) would transform higher education has not weakened the hype and hope, born in the 1990s, that online learning will both lower the cost of providing education and ensure access to meaningful postsecondary credentials for broad segments of the population who are not well served by more traditional college and university programs.

The hopes are rooted in reasonable logic. Online education offers students flexibility and personalized learning opportunities. Proponents have long argued that it holds the promise to transform the higher education landscape by expanding access, improving instruction, and decreasing costs for underserved populations. Students who are not geographically mobile and who have work and family obligations that make it difficult for them to manage traditional class schedules can do online coursework on their own schedules. The lack of a physical campus or classroom facilities and the potential for larger class sizes without real-time professors could lower costs and reduce prices for students. If it can make college accessible to students with limited options and busy schedules, customize the learning experience, and reduce costs for both students and institutions, online education has enormous potential to positively "disrupt" the higher education landscape and boost student outcomes.

However, more than a decade after Congress allowed online colleges full access to federal student aid programs, and despite a subsequent explosion in their enrollment, a growing and powerful body of evidence suggests that online learning is far from the hoped-for silver bullet. Not only has online education failed to reduce costs and improve outcomes for students, its return on investment for both students and taxpayers has also failed to materialize. Online students are frequently being charged more, not less, than students in traditional programs. Employers continue to perceive online degrees less favorably than traditional degrees. Academic leaders and faculty remain skeptical about the quality of online learning and its pedagogical value.

High quality courses are expensive to produce and maintain. Students without strong academic backgrounds are less likely to persist in fully online courses than in courses that involve personal contact with faculty and other students and when they do persist, they have weaker outcomes. The students most likely to enroll in online courses—and those the postsecondary system is most challenged to serve well—suffer most from this learning format. In other words, moving vulnerable students online may be more likely to widen attainment gaps than to solve the seemingly intractable problem of unequal educational opportunity.

Researchers have conducted many studies in an attempt to evaluate the success of online courses. Unfortunately, the research is far from conclusive. While some studies suggest that overall, learning outcomes are similar to those in traditional classroom courses, a number of rigorous experimental studies have found lower completion rates for online courses and, of particular concern, even larger gaps in outcomes between at-risk students and those with strong academic preparation than those emerging in classroom courses.

In searching for factors that may explain such disappointing outcomes, a key theme emerging from the literature is the critical importance of student-faculty interaction in online settings. Researchers, as well as both proponents and skeptics of online education, emphasize the need to design online courses that facilitate robust interactions as an essential component for improving the quality of learning and student outcomes. A significant volume of research and recent surveys of students, faculty and employers demonstrate that lack of sufficient interaction between students and faculty is likely online education's Achilles' heel.

The combination of the temptation of developing programs that attract large numbers of at-risk students who have federal financial aid with the mounting evidence that fully online programs have not been productive routes for these students makes structuring a reliable regulatory environment critical. The 2006 lifting of the requirement that schools had to deliver at least half of their programs, or enroll at least half of their students, in physical classes in order to participate in federal student aid programs led to the proliferation of online-only institutions, particularly in the for-profit sector.

As the U.S. Department of Education prepares to revisit and revise the current regulatory environment and Congress prepares to reauthorize the Higher Education Act, it is important to examine the evidence on online education and understand how legislative and/or regulatory changes could have a major impact on educational opportunities and outcomes for students.

In this paper, we assess the evidence about whether online education lives up to the hype. After we examine the growth of online learning, especially in the for-profit sector, we provide an overview of the literature analyzing the strengths and weaknesses of online learning programs, with a focus on disadvantaged students' outcomes, and discuss the policy implications of the available evidence for safeguarding students and taxpayers and promoting quality educational opportunities.

Online Education's Explosive Enrollment Growth and Concentration in the For-Profit Sector

Enrollment in online education has exploded in recent years, consistently outpacing overall enrollment growth. Although the National Center for Education Statistics (NCES) did not begin collecting annual data until 2012, the NCES National Postsecondary Student Aid Study allows us to estimate the historical trend:[1]

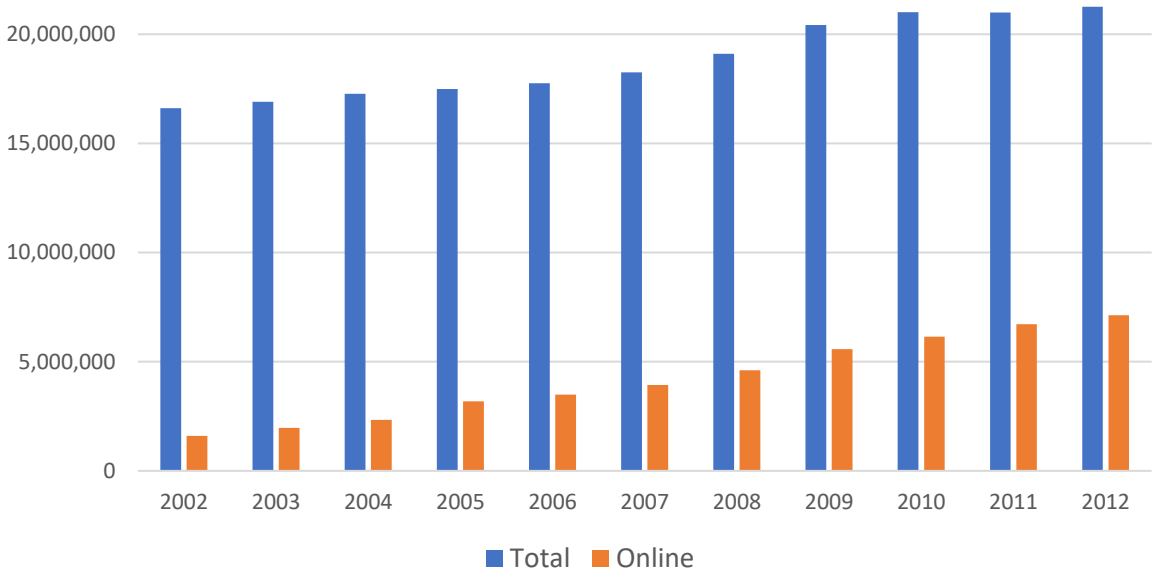
- Between 2000 and 2012, the share of undergraduates enrolled in online courses grew fourfold from 8 to 32 percent, while enrollment in fully online programs tripled from 2 to 6 percent.
- Between 2004 and 2012, the share of graduate students enrolled in online courses more than doubled, from 17 to 36 percent, while enrollment in fully online programs tripled from 6 percent to 18 percent.

This trend is further confirmed by the annual online enrollment data reported by the Babson Survey Research Group, which began collecting data in 2002. Specifically, from 2002 to 2012 (Figure 1):[2]

- Online enrollment (the number of students taking at least one online course) more than quadrupled (increased by 345 percent), from 1.6 to 7.1 million students, while overall higher education enrolment grew by 28 percent.
- The annual online enrollment growth rate ranged from 6 percent to 37 percent, outpacing overall enrollment growth every year.

By 2012, one third of all students took at least one course online, compared to less than 10 percent a decade earlier.

Figure 1: Total and Online Enrollment (2002-2012)

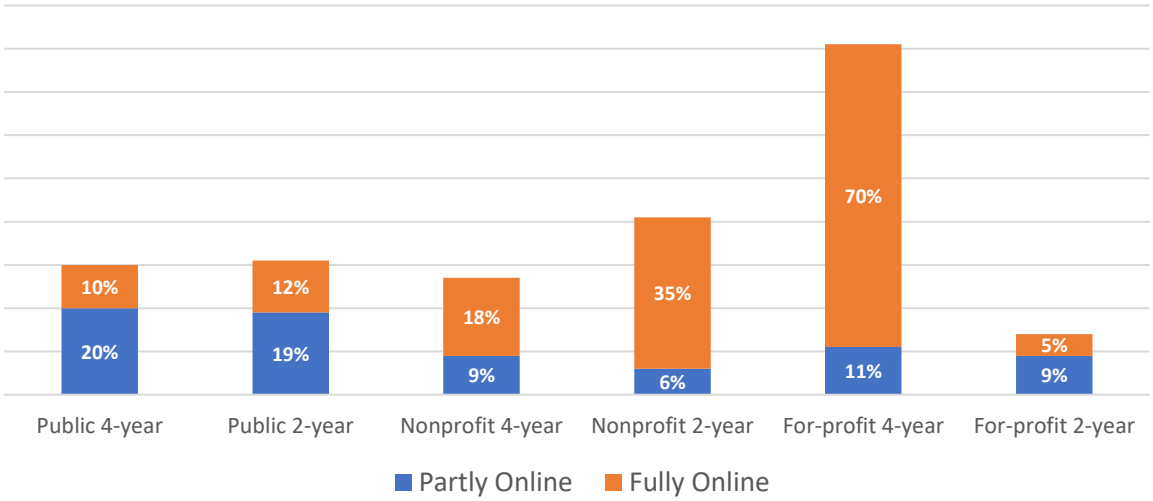


Source: I. Elaine Allen and Jeff Seaman (2014). *Grade Change: Tracking Online Education in the United States*. Babson Park, MA: Babson Survey Research Group and Quahog Research Group, LLC. p. 33.

This growth trend has persisted in recent years, according to the NCES data. Between 2012 and 2016, online enrollment expanded by 16 percent, while total enrollment declined by 4 percent.[3] Every year during this period online enrollment increased, while total enrollment decreased. Today, almost 1 in 3 college students (6.3 million or 32 percent) take courses online, with no in-person component. Half of these students (3 million or 47 percent of those taking any online courses) are enrolled in exclusively online programs (fully online), while the remaining take at least one, but not all of their courses, online (partly online). Online students represent a considerably higher share of enrollment in the for-profit sector (Figure 2):[4]

- For-profit colleges enroll just 6 percent of all students, but 13 percent of students taking courses online and 24 percent of fully online students.
- At four-year for-profit colleges, more than 80 percent are taking courses online, which is more than two-and-a-half times the rate at public (29 percent) and triple the rate at private nonprofit (27 percent) four-year colleges.
- At four-year for-profit colleges, 70 percent are fully online students, which is more than seven times the rate at public (10 percent) and three-and-a-half times the rate at nonprofit (18 percent) four-year colleges.

Figure 2: Online Share of Total Enrollment, by Sector and Type (2016)

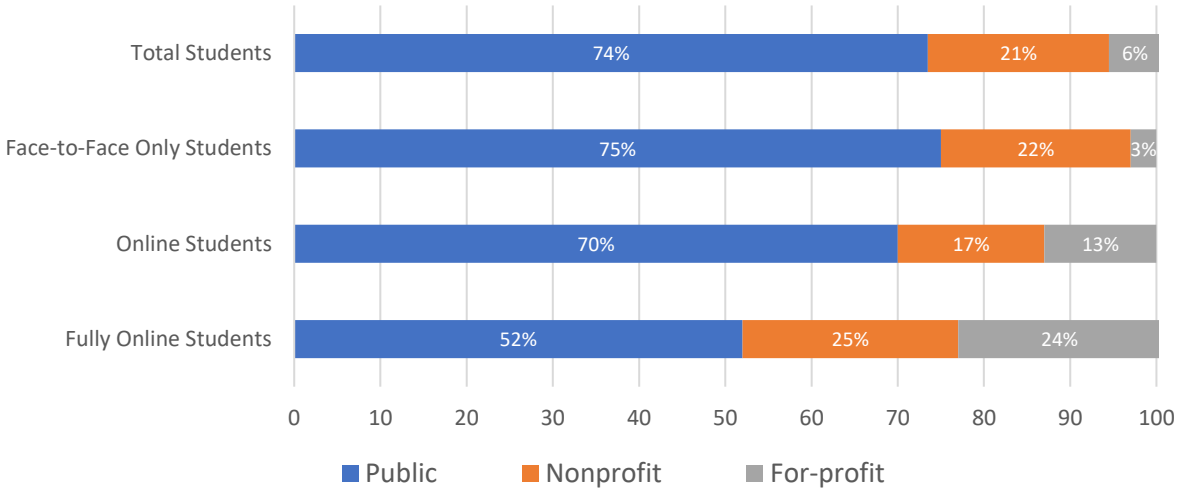


Source: National Center of Education Statistics (2018). *Digest of Education Statistics 2017, Table 311:15*. Washington, DC: National Center of Education Statistics.

Comparing the distribution of face-to-face and online students across sectors shows clearly the concentration of fully online students in the for-profit sector (Figure 3):[5]

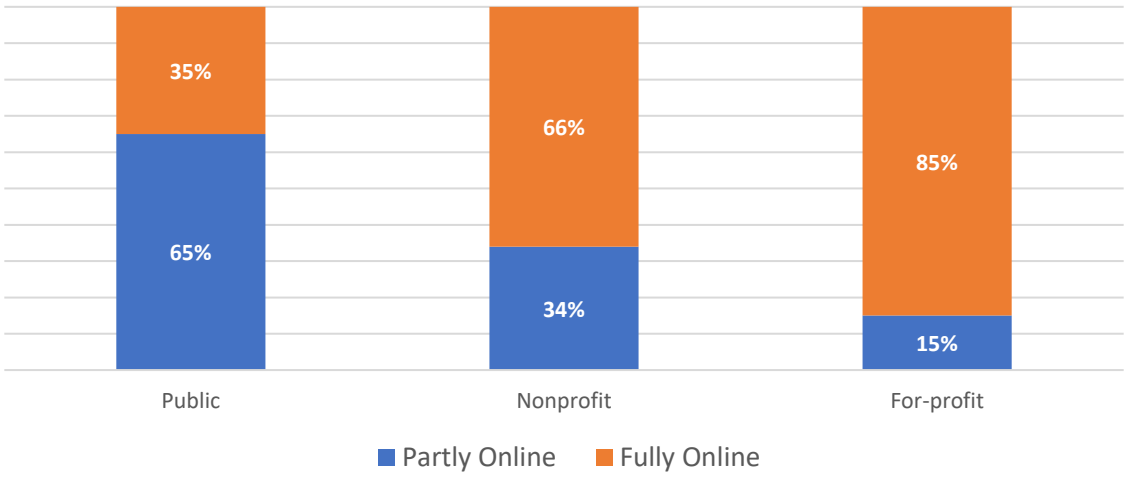
- Among 13.5 million face-to-face students, 75 percent attend public colleges, more than 22 percent attend nonprofits, and less than three percent attend for-profits.
- Among the 3.3 million partly online students, 85 percent attend public colleges, 15 percent attend nonprofits, and less than four percent attend for-profits.
- Among 3 million fully online students, 52 percent attend public colleges, 25 percent attend nonprofits, and 24 percent attend for-profits.
- Among online students the share of fully online students is 35 percent at public colleges, 66 percent at nonprofits and 85 percent at for-profits (Figure 4).
- In 2012, one in three undergraduate students at for-profit four-year colleges were enrolled fully online, a rate six times higher than for students at any other type of institution.[6] By 2016, almost 60 percent of all students in the for-profit sector were enrolled exclusively online, compared with 11 percent in the public sector and 18 percent in the nonprofit sector.

Figure 3: Enrollment Distribution, by Online Participation and Sector (2016)



Source: National Center of Education Statistics (2018). *Digest of Education Statistics 2017, Table 311:15*. Washington, DC: National Center of Education Statistics.

Figure 4: Online Enrollment Distribution, by Sector (2016)



Source: National Center of Education Statistics (2018). *Digest of Education Statistics 2017, Table 311:15*. Washington, DC: National Center of Education Statistics.

Not only are fully online students disproportionately in the for-profit sector, a closer look at enrollment data indicates that a small number of large providers enroll the lion's share. (Similarly, in the nonprofit sector, three institutions—Western Governors University, Liberty University and Southern New

Hampshire University—enroll about a third of the fully-online students, but overall a far smaller share of students in this sector are in such programs.):[7]

- Ten for-profit colleges[8] enroll over 58 percent of the for-profit sector's online students, 40 percent of the sector's students overall, and eight percent of all online students.
- 15 for-profit colleges[9] enroll more than 75 percent of the sector's fully online students, 43 percent of the sector's students overall, and 18 percent of all fully online students.

Others have also described this online concentration in both the for-profit sector and among a handful of colleges within the sector.[10] A major 2012 Senate investigation of the for-profit college industry, which included an in-depth look at 30 of the largest companies, described the rapid expansion of online enrollment and found that the sector engaged in aggressive recruitment and marketing and produced poor student outcomes, including higher dropout rates. In particular, when comparing the outcomes of on-campus and online students at the same institution, in addition to paying higher prices, the latter experienced a 39 percent higher dropout rate (64 vs. 46 percent).[11] That same year, a paper by Deming et al. (2012) concluded that from 2000 to 2009 online for-profit colleges "increased from almost nothing to become the largest part of the sector." [12] More recently, Deming et al. (2016) found that "the 23 largest for-profit institutions, owned by publicly traded companies and offering postsecondary degrees entirely online, enrolled more than 1.1 million students in 2012 and accounted for nearly 20 percent of the growth of US bachelor's degrees (BAs) from 2002 to 2012."[13]

In 2013 more than half of all students enrolled in institutions that are part of a for-profit chain were studying fully online, compared with about 1 percent of those attending selective public and private nonprofit four-year institutions. Non-selective public and private nonprofit colleges and universities and independent for-profits fell between these extremes.[14] Moreover, at-risk students are disproportionately taking advantage of online coursework. Online students are more likely to be older, employed, female, independent, with children, and enrolled part-time,[15] which are student characteristics most prevalent in the for-profit sector.[16]

In 2015-16, when 11 percent of undergraduates were studying entirely online, 15 percent of black students were in fully online programs. Only 1 percent of students with no risk factors for failing to complete a degree and 3 percent of those with one risk factor were enrolled fully online. A quarter of students with four or more risk factors were in these programs.[17] In addition, the share of fully online students is negatively correlated with high school GPA. For example, 14 percent of students with high school GPA between 1.0 and 1.4 were enrolled fully online in 2015-16, compared with 4 percent of those with GPA of 3.5 or higher.[18]

Online student characteristics, which are associated with an increased dropout risk and lower completion rates, combined with the trends discussed above and the for-profit sector's poor record in affordability and student outcomes, represent a significant challenge in ensuring quality educational opportunities for disadvantaged students pursuing online degrees.

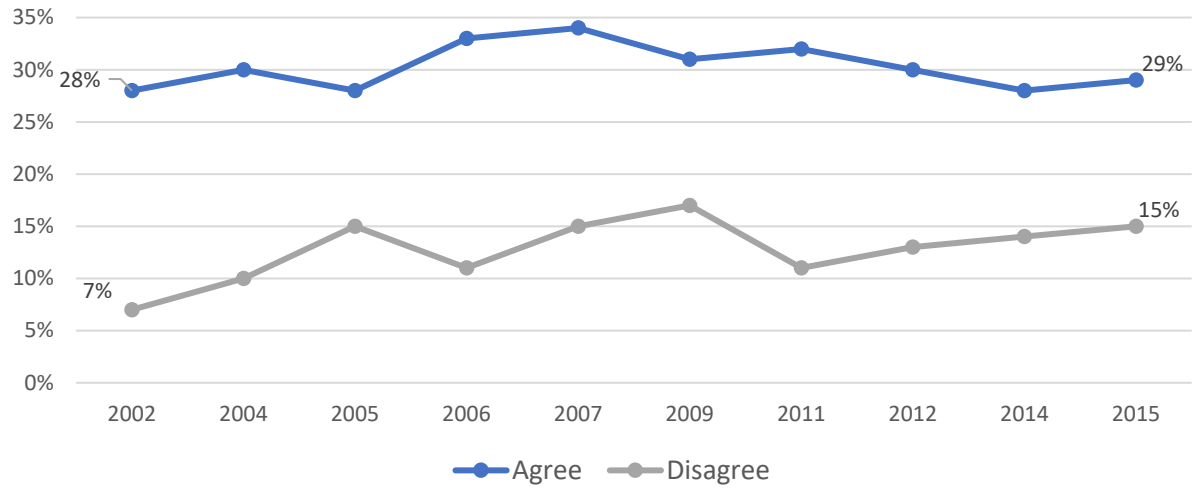
Perceptions of Online Education's Quality and Value

Despite the dramatic growth of online education, there is significant skepticism about the value of online education among faculty, academic leaders, employers, and the public.

Often cited by proponents as "a major barrier" to the adoption of online education, faculty have been and remain apprehensive about its promise and potential.[19] In ten national surveys of chief academic officers by the Babson Survey Research Group during the 2002-2015 period, no more than about a third ever

reported that faculty accept the value and legitimacy of online education, ranging from a low of 28 percent in 2002, 2005 and 2014, to a high of 34 percent in 2007 (Figure 5).[20] Most tellingly, in 2015, which is the latest year of available data, just 29 percent reported faculty acceptance, just one percent higher than in 2002, indicating no change in perception over a 13-year period. As the survey report concluded, "a continuing failure of online education has been the inability to convince its most important audience— higher education faculty members—of its worth."[21]

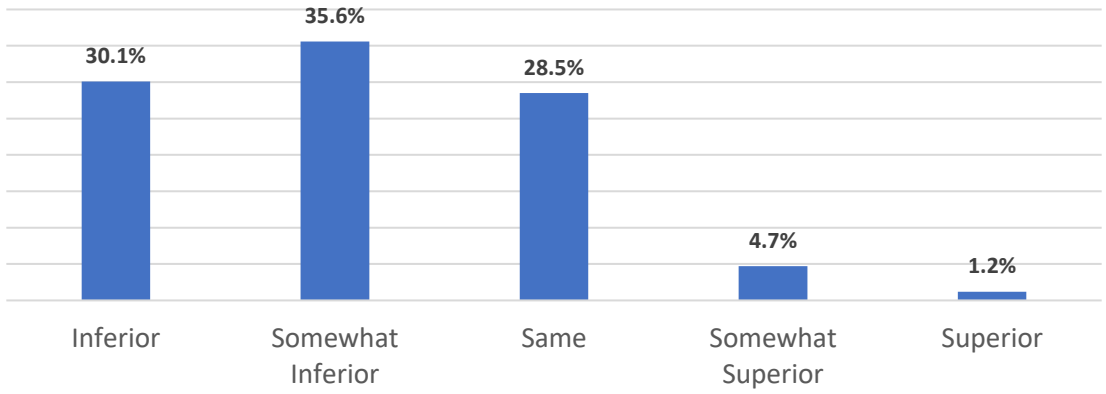
Figure 5: Faculty Acceptance of Online Education's Value and Legitimacy (2002-2015)



Source: I. Elaine Allen, I. Jeff Seaman, Russell Poulin, and Terri Taylor Straut (2016). *Online Report Card: Tracking Online Education in the United States.* Babson Park, MA: Babson Survey Research Group and Quahog Research Group, LLC. p. 47.

In a separate 2012 survey of a nationally representative sample of more than 4,500 faculty, 2 out of 3 (66 percent) reported that online learning outcomes are "inferior or somewhat inferior" to face-to-face courses, compared with just six percent who said they were "superior or somewhat superior" (Figure 6). Also, 6 out of 10 faculty (58 percent) reported "more fear than excitement" about online learning, and fewer than half (47 percent) agreed that "online education can be as effective in helping students learn as in-person instruction."[22]

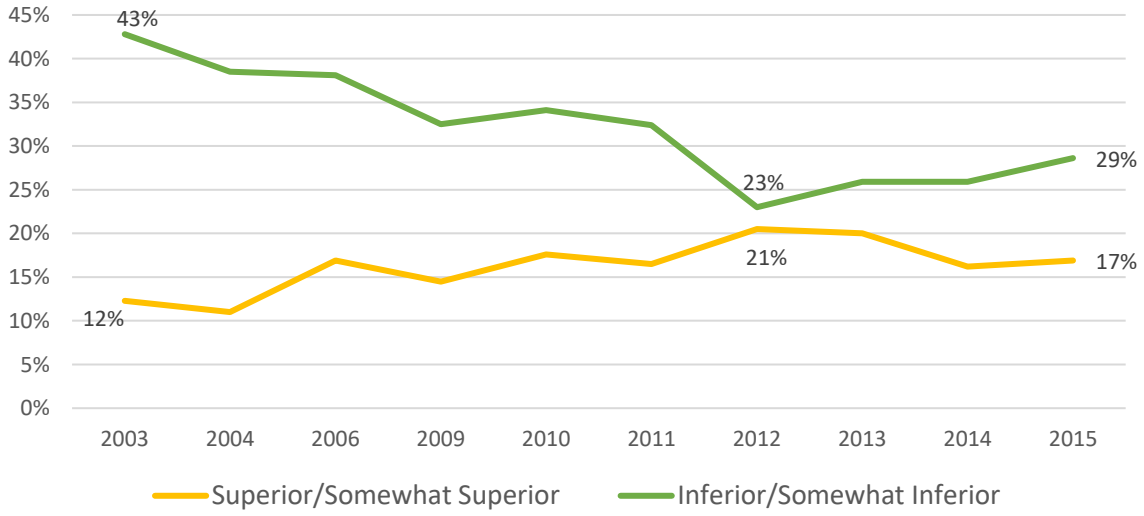
Figure 6: Faculty Opinions on Online vs. Face-to-Face Learning Outcomes (2012)



Source: I. Elaine Allen, Jeff Seaman, Doug Lederman, and Scott Jaschik (2012). *Conflicted: Faculty and Online Education, 2012*. Babson Park, MA: Inside Higher Ed, Babson Survey Research Group and Quahog Research Group, LLC. p. 31.

Such skepticism is not confined to faculty. When asked to rate the relative quality of the learning outcomes for online courses, the share of academic leaders reporting that online courses were "inferior" or "somewhat inferior" to face-to-face courses declined from 43 percent to 23 percent between 2003 and 2012, but increased to 29 percent by 2015, indicating persistent doubt (Figure 7).[23] Moreover, the share of those who believed online education is "inferior" (as opposed to "somewhat inferior") almost doubled in recent years, from five percent in 2012 to nine percent in 2015. In sharp contrast, three-and-a-half times as many respondents believed that blended/hybrid courses hold promise as saw promise in purely online courses (42 vs. 12 percent) in 2015.

Figure 7: Chief Academic Officer Opinions on Online vs. Face-to-Face Learning Outcomes (2003-2015)



Source: I. Elaine Allen, I. Jeff Seaman, Russell Poulin, and Terri Taylor Straut (2016). *Online Report Card: Tracking Online Education in the United States.* Babson Park, MA: Babson Survey Research Group and Quahog Research Group, LLC. p. 47.

This uncertainty about the value and legitimacy of online education may also be fueled by growing concerns about the difficulties with student retention. During the 2004-2014 decade of online enrollment expansion, the share of chief academic officers who reported that student retention was a greater problem in online than in face-to-face courses increased from 27 to 45 percent.[24]

Outside academia, the general public also remains skeptical about online education. A 2013 Gallup poll found that "Americans' overall assessment of Internet-based college programs is tepid at best."[25] While they recognize the broader range of options and value offered compared with a traditional face-to-face education, most reported that it provides lower quality instruction and less rigorous grading and testing, and is less credible to employers. Moreover, "despite lots of media and industry buzz about the personalized nature of online instruction, Americans still view traditional, classroom-based education as better tailored to each individual."

Potentially contributing to negative perceptions of online education are recent government investigations and lawsuits that have raised concerns about the quality of such programs. A 2011 GAO undercover investigation of 15 online for-profit colleges documented significant issues with academic quality, including three out of four colleges admitting students with fake high-school diplomas and half of the colleges who enrolled such students failing to take action for substandard student performance, including failure to attend class, failure to submit assignments, submission of objectively incorrect assignments, submission of unresponsive assignments, and plagiarism.[26] For example, two colleges knew assignments were plagiarized but took no action, another college gave a passing grade to a student who submitted photos of celebrities and political figures in lieu of essay question responses, and another college awarded points for incomplete assignments.

More recently, following a 2016 lawsuit against George Washington University by a group of former online students who argued that they had paid a higher price but received a lower quality education than their on-campus peers,[27] and specifically cited a lack of instruction by and limited interaction with faculty,[28] a Faculty Senate task force investigation of the university's online education programs revealed "lack of oversight, unclear course requirements and large student-faculty ratios."[29]

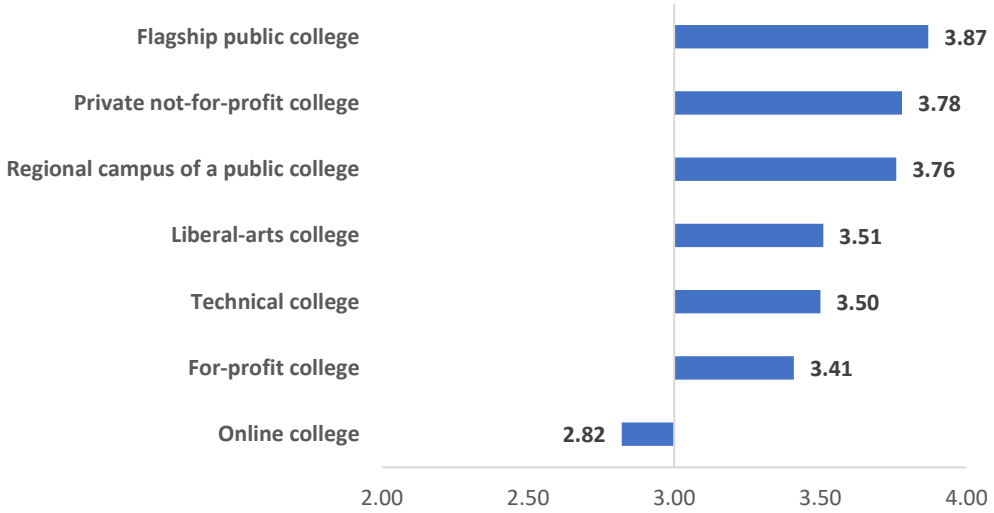
Arguably though, the most important perception is that held on the demand side of the labor market. Employers are the ultimate arbiters of the value of online education since they are best positioned to compare the skills, knowledge, and overall employability of online graduates. Several studies prior to 2010 examined employer perceptions of online degrees and reached the same conclusion: employers view candidates' online degrees as inferior to or less desirable than degrees obtained through traditional, face-to-face instruction.[30] A 2012 comprehensive literature review of representative studies published between 2005 and 2010 in scholarly, peer-reviewed journals that covered a wide range of disciplines that are overrepresented in online education and the for-profit sector and corresponding job markets (including health and business) [31] concluded that "there is a much greater likelihood that a candidate with an online degree would be viewed less favorably for employment purposes compared to the candidate with the face-to-face degree."[32] The primary concern cited by employers about online learning was the lack of interaction, and in particular face-to-face communication between students and faculty.

Similarly, a 2010 survey of 449 randomly selected human resource professionals by the Society for Human Resource Management (SHRM) found that half viewed candidates with online degrees less favorably than those with traditional degrees and that online degrees were far less acceptable for higher positions in an organization.[33]

Given the online enrollment trends, one would expect that more recent evidence would find a shift to more favorable employer perceptions; however, that is not the case. A major *Chronicle of Higher*

Education survey in 2012 found that employers had negative associations with online colleges and this was the only type of college found to be undesirable, including for-profit colleges (Figure 8).[34]

Figure 8: Employer Desirability of College Type (2012)



Mean Rating: 1=Very undesirable; 3=Neutral; 5=Very desirable
Q: How desirable would it be for you to hire a recent graduate with a bachelor's degree from each of the following types of colleges and universities?

Source: Chronicle of Higher Education (2012). *The Role of Higher Education in Career Development: Employer Perceptions.*

A 2013 survey concluded that "employers perceived a traditional or hybrid modality more credible than a purely online modality across multiple industries" and confirmed previous studies documenting the hesitancy among employers to hire candidates with online degrees."[35] Another 2013 survey of 116 health care recruiters from across the nation found that job applicants with traditional degrees were clearly most favored while those with online degrees from for-profit institutions were perceived the least favorably. The study concluded that "the return on education for students earning college degrees online or from for-profit colleges may be inhibited by employer perceptions regarding the quality of credentials earned in these environments."[36] The same year, a survey of 656 human resources professionals found that 42 percent believe students learn less in online-only programs and 39 percent believe online-only degrees are easier to complete than more traditional ones.[37] Unsurprisingly, 56 percent prefer applicants with traditional degrees from an average university over those with an online degree from a top university, while 82 percent believe that a hybrid education model provides the best education.

A 2014 study of hiring managers and employers found that there is still a strong preference among employers for traditional degree holding candidates, with 40 percent of respondents agreeing that an online degree was of lessor quality than a traditional degree.[38] The same year, 38 percent of academic leaders reported that "lack of acceptance by potential employers was a "very important" or "important" barrier for the adoption of online education.[39]

A 2016 study of employer perceptions of online accounting degrees also found that employers are significantly more willing to offer employment to an entry-level job applicant whose baccalaureate degree was obtained in a traditional (on campus) or hybrid (blended learning) environment rather than an online

environment."[40] Employers appear more accepting of online degrees for lower-level than for upper-level positions, consistent with findings in the 2010 SHRM survey.

In the field of education, two recent national surveys of high school principals found that applicants who had taken coursework in a traditional/residential setting were overwhelmingly preferred over applicants holding a degree earned partly or wholly online. Lack of personal interaction was the primary concern, as "online courses were perceived as not presenting sufficient opportunity for students to develop important social skills through interaction with other students and mentors."[41]

Finally, a 2016 experimental study of the value of online degrees in the labor market found that a business bachelor's degree recipient from a for-profit online institution is 22 percent less likely to receive a callback than one from a nonselective public institution.[42]

Regardless of the actual quality of the learning in fully online programs, students who earn these degrees will have limited labor market opportunities as long as these strong views persist among employers.

Online Student Outcomes

Several studies have attempted to aggregate the findings of a wide range of earlier studies on the effectiveness of online learning.[43] These meta-analyses pre-date much of the more recent rigorous experimental work in the field. More than one summative investigation has judged that the research does not yield conclusive evidence of a systematic difference in learning outcomes between online and classroom courses, but that the variation in findings across the body of existing work is so great as to make it impossible to generalize. When hybrid models that blend face-to-face interaction with technology are classified as online course work, results are more likely to favor the online option. The variation in results is due to differences in methodology, the environments studied, and the nature of the courses examined.

Some of the meta-studies include only rigorous peer-reviewed studies. Others explicitly include a wider range of studies, many of which are based on simple comparisons of outcomes across small groups of students. For example, the Tallent-Runnels et al (2016)[44] review of research on online teaching and learning includes primarily descriptive and qualitative studies. The consensus that emerges is that learning outcomes appear to be the same as in traditional courses, but students with prior training in computers are more satisfied than others with online courses. Well-designed experimental design studies may yield insights not emerging from less rigorous methods.

Some studies focus on specific courses in economics or statistics, while others examine courses in a wide range of disciplines. In most cases, it is difficult to know much about the actual pedagogical methods, either in the classroom or online. It is hardly surprising that synchronous online courses with intense faculty involvement and courses consisting entirely of recorded lectures have different outcomes or that students in developmental education courses fare differently from those in master's degree programs.

Measuring course completion rates will not necessarily yield the same conclusion as comparing test scores of course completers. This distinction underlies some of the ambiguity in the research findings on the success of online coursework, with measures of learning tending to yield more positive outcomes than successful course completion rates for online coursework.

Are hybrid classes included in the online category being evaluated? How diverse are the students in the study? These issues are particularly important, since there is broad consensus that classroom outcomes can be strengthened when technology supplements traditional teaching methods and that online learning

is more successful when combined with some amount of face-to-face interaction. In other words, it is not always easy to draw a clear line between online and classroom teaching and placing hybrid models on one side or the other for evaluation purposes can significantly alter the results.

Equalizing Opportunity?

A 2017 *Boston Globe* editorial posited that "Online learning can ease economic inequality." The opinion piece, relying on insights gleaned from a recent conference, argued that colleges should increase affordable, for-credit online offerings in order to create opportunities for at-risk students.[45] Perhaps this vision will eventually be realized, but for now, this suggestion creates a significant potential threat to efforts to make meaningful progress is narrowing gaps in educational opportunities and outcomes across demographic groups.

Much of the research finding comparable outcomes for online and classroom courses, as well as the studies synthesizing that research, is more than a decade old. Despite the ambiguous findings from the large body of research comparing general learning outcomes for online and classroom courses, more recent studies using rigorous experimental techniques and focusing on the role of student characteristics have found that fully online courses have a significant negative impact on outcomes for at-risk students. In some environments, grades and other outcomes measures may be similar overall for purely online and classroom courses, but online courses appear to have significant disadvantages for less-prepared students and for those from under-represented groups. A number of studies at community colleges have found that students who take on-line classes do less well in subsequent courses and are more likely than others not only to fail to complete these courses, but to drop out of school.[46]

Online courses, particularly those where students can do the work on their own schedules, may require more self-discipline and time management skills than traditional classroom courses. Interesting evidence on this issue emerged when two economists announced, but did not enforce, a deadline for registering for a MOOC they offered. Students who applied on time had higher grades and completion rates than those who applied late, differences plausibly related to self-discipline.[47]

Purely online courses are also likely to limit opportunities for networking and interacting with instructors and peers, potentially hampering the educational process.[48] These realities make it unsurprising that students without strong academic skills and preparation struggle without the classroom structure—even if some students thrive.

Gladieux and Swail (1999)[49] raised concerns about online learning increasing socioeconomic gaps in educational outcomes twenty years ago and multiple studies confirm these findings about outcomes for vulnerable populations. Not surprisingly, students with more extensive exposure to technology, and with strong time management and self-directed learning skills are more likely than others to adapt to online learning.

Recent rigorous studies of community college systems have been discouraging. Smith Jaggars and Xu (2010) analyzed data on nearly 24,000 students in 23 institutions in the Virginia Community College system. They concluded that students had a greater likelihood of failing or withdrawing from online courses than from face-to-face courses and that students who took online coursework in early semesters were somewhat less likely to return to school in following semesters. Students who took a higher proportion of credits online were slightly less likely to attain a credential or transfer to a four-year institution.

Similar conclusions emerged from the Washington State Community College System (Xu & Smith Jaggars, 2011).[50] Analyzing data from more than 51,000 students in 34 community and technical colleges, the researchers found that although students with better educational preparation were more likely to enroll in online courses, these students were significantly more likely to fail or withdraw from these courses than students who took traditional face-to-face classes. Students who took more online courses were also slightly less likely to complete a degree or transfer to a four-year college than those who took fewer online courses. All types of students in the study performed worse in online courses, but some groups of students had particular difficulty adjusting to online learning, including males, students with lower prior GPAs, and black students. Performance suffered more in the social sciences and the applied professions such as business and nursing than in other fields, but the performance gaps that existed among these subgroups in face-to-face courses became even more pronounced in online courses in all subject areas.

According to this research from the Community College Research Center, the differences were even greater for developmental courses than for college-level courses. In online developmental English, failure and withdrawal rates were more than twice as high as in face-to-face classes. Students who took developmental courses online were also significantly less likely to enroll in college-level gatekeeper math and English courses. Of students who did enroll in gatekeeper courses, students who had taken developmental education online were far less likely to pass than students who had taken it face-to-face.[51]

Similarly, Kupp (2012)[52] found that in California community colleges, students enrolled in online classes had, in the aggregate, lower completion rates and lower success rates than their peers in face-to-face classes. The authors found that online instruction significantly increased the achievement gap between Latino students, who experienced particularly large differences in success rates, grades, and withdrawal relative to their performance in face-to-face sections of the same classes, and white students. Interviews with Latino students enrolled in online courses provided insight into the importance of relationships to Latino student success. Students identified the absence of a strong student-instructor relationship as the key difference between their face-to-face and online educational experiences.

These findings are not limited to community colleges. A large study of students at a for-profit institution that offered courses with the same syllabus, instructors, requirements, and assessments found consistently worse outcomes for students taking the courses online. They earned lower grades in the courses and had lower grades the following term, particularly in the same subject area or courses for which the course in question was a pre-requisite. Students were about nine percentage points less likely to remain enrolled the semester after taking an online course than after taking a similar course in a classroom. Of particular note, the online classes reduced grades by more for students with below-average GPAs prior to the course.[53]

In a study based on the random assignment of students in a large introductory microeconomics course at a major research university to either live lectures or watching these same lectures in an internet setting, Figlio et al (2010)[54] found no significant difference for students with high GPAs coming into the course. But those with low GPAs had more difficulty adapting to the online context and their performance suffered. Instruction, supplemental materials, and other course elements were the same for both groups. The results were particularly strong for Hispanic students, male students, and lower-achieving students, confirming other research finding at-risk students particularly likely to suffer from fully online courses.

Evidence about gender differences is mixed, despite the fact that overall, women have higher success rates in higher education then men. Several studies have found no differences between males and females in terms of their learning outcomes in online courses,[55] but others have found that women perform significantly better than men.[56]

Johnson and Mejia (2014) [57] found that students at California community colleges were less likely to complete online courses and when they completed them, less likely to pass them. This result was

consistent across all groups of students, many fields of study, and most colleges in the system and persisted over the 10-year period for which data were available. Controlling for student characteristics, including prior academic achievement levels, increased the gap in success rates between the two types of courses. Online course success rates were between 11 and 14 percentage points lower than success rates in classroom courses. Of particular note, gaps across racial/ethnic groups were larger in online courses. The authors found that younger students, African Americans, Latinos, males, students with lower levels of academic skill, and part-time students were all likely to perform markedly worse in online courses than in classroom courses. The success gaps were smaller for students who already had a college degree, those who were following paths to transfer to a four-year institution, and students with GPAs above 3.0.[58]

However, Johnson and Mejia (2014) suggest that, contrary to the findings from the Community College Research Center, the impact of the online format on long-term outcomes may differ from the impact on success in individual courses. A study by Shea and Bidjerano (2014)[59] supports this idea. Using data from the Beginning Postsecondary Student Survey, a nationally representative sample of students who began college in 2003-04, the authors found that in the nation as a whole, controlling for relevant background characteristics, students who enrolled in some online courses during their first year at a community college were more likely than similar students who did not take any of these courses to complete a credential by 2009. Online courses can provide needed flexibility, particularly to students struggling to combine school with family and work responsibilities. Even if success rates are relatively low in online courses, the availability of these courses may allow students to enroll in more courses each term, leading to the accumulation of more credits. Even low pass rates might increase graduation rates.

Online technology and pedagogy have developed considerably since many of the studies of this mode of delivering college courses were conducted. There is every reason to be optimistic that outcomes could improve over time as faculty and institutions have more experience. An interesting recent study examines the experiences of students at small private nonprofit colleges, which developed online courses in advanced humanities fields. The courses served students on multiple campuses and faculty found that, in an environment where personal interaction is central to the academic experience, incorporating students from other colleges was challenging. The difficulty of developing personal relationships with students was the main reservation instructors had. However, attrition rates were low and all measured outcomes improved as instructors gained experience when the courses were offered a second time.[60]

The Critical Role of Student-Instructor Interaction

Since the early days of online education, interaction has been identified as the key element for quality. Almost 30 years ago, in defining distance education, University of Calgary professors Randy Garrison and Doug Shale argued that interaction is "education at its most fundamental form"[61] and that student-instructor interaction in particular was "regarded as essential by many educators and highly desirable by many learners."[62] They emphasized the importance of student-teacher communication as essential to active learning. Even when online education was in its infancy, researchers had identified two-way and interactive communication as a key feature of distance education, and considered interpersonal communication and feedback as well as interaction among the seven critical competencies for online instructors.[63]

This important realization about the centrality of interaction was also shared by the online education industry. In 2006, the U.S. Distance Learning Association stated that "distance education refers specifically to learning activities within a K–12, higher education, or professional continuing education environment *where interaction is an integral component*" [emphasis added].[64] A review of the relevant evidence certainly confirms that interaction is essential for ensuring quality and student success in online education.

Two major theories have been advanced to understand the effectiveness of online learning and both place a premium on instructor interaction and presence.[65] Transactional Distance posits that interaction is critical as it minimizes the pedagogical distance between students and instructors, while Community of Inquiry argues that teaching presence helps to provide structure and direction in the online environment, including "design and organization, facilitating discourse and direct instruction."[66] Both online and face-to-face classroom instructors fulfill three basic roles: (a) educational experience designer, (b) facilitator to guide learning, and (c) subject matter expert.[67]

In essence, the literature argues that learning is an active, dynamic process, and that social isolation is a risk factor associated with higher dropout rates. Instructor presence is integral for achieving interpersonal interaction and activities that emulate those of a "real person."[68] Personal interaction increases student satisfaction, and by extension, motivation to learn and succeed.[69]

Interpersonal interaction is a key feature of contemporary online learning and research over the past 20 years has consistently shown that strong student-instructor interaction increases student achievement.[70] The following section summarizes a number of peer-reviewed studies related to this issue, all of which confirm the importance of personal interaction in strengthening the student experience.

A 1999 survey of 1,406 State University of New York online students found that student–teacher interaction was strongly related to student satisfaction and perceived learning.[71] Students with low levels of interaction had the lowest levels of satisfaction and learning and vice versa. The study concluded that "the results clearly indicate that instructors' activity is an important factor in the success of online learning" and point "to the critical importance of active, authentic, and valued discussion to students' perceptions of satisfaction and learning in online courses."[72] According to the study, frequent and constructive student-instructor interaction, along with clear course structure and vibrant discussion, is consistently associated with the success of online courses.

Another survey of 390 online MBA students between 1999 and 2001 at the University of Wisconsin Oshkosh found that instructor efforts to interact personally with students were positive predictors of student learning and course satisfaction.[73] An extensive review of online learning literature in 2002 similarly concluded that quality online learning largely depends on plentiful student interaction with instructors, as well as with other students, and content.[74] The following year, another literature review reached a similar conclusion about the central role of interaction to online learning and recommended its expansion in order to become as effective as face-to-face interaction. [75]

A 2003 survey of more than 200 online students at a private university also found that, consistent with accepted theories, student-instructor interaction was a significant contributor to student learning and satisfaction, and that students valued additional interaction with instructors and peers.[76] The next year, another published survey of 199 online students, which investigated their views of online instruction, found that they wanted instructors who established trusting relationships and were actively engaged with students and their learning.[77]

A 2005 case study of an online MBA program offered by a top business school, which included interviews and focus groups with faculty and students as well as a survey of more than 100 students, found that both instructors and students viewed such interaction as a key factor in high quality online programs and an effective tool for learning.[78] A 2006 survey of 131 undergraduate online students at Indiana State University concluded that interacting with instructors was most beneficial.[79] Yet another survey of 186 online students from 38 courses on six campuses in the Midwest found that instructor-student communication was strongly correlated with student engagement and urged instructors to provide multiple and meaningful paths for such interactions in order to create presence, which is an integral component of a successful online course."[80]

In examining what specific instructor actions are most important in online student-instructor interactions, a survey of 32 online instructors and 170 students from their classes at a large public university and a private online university found that, among 19 actions identified by research,[81] all but two were considered important or very important by more than 60 percent of the instructors, while all 16 actions were rated as highly by the students.[82] The previously cited 2006 Tallent-Runnels comprehensive review of 76 studies in online education also concluded that student-faculty interaction must be both regular and substantive and reflect a clear understanding of the content, in order to truly promote learning.[83] The review concluded that faculty should promote interaction with students to help them construct knowledge, participate in discussions, and provide scaffolding.

Another meta-analysis of 74 studies on the role of interaction in distance education in 2009 found that the literature unequivocally supports the integral role and importance of interaction and concluded that stronger interaction and the greater engagement it promotes is associated with improved achievement and stronger outcomes.[84]

More recent peer-reviewed studies further confirm the significance of student-instructor interaction as a key component of quality that leads to higher student satisfaction and achievement. A 2011 study of 23 online courses at two community colleges found that such regular and effective interaction encourages online students to commit more and perform better academically.[85] This is unsurprising, according to Jaggars and Xu, given that "nearly every published online quality framework has emphasized the importance of interpersonal communication and collaboration."[86] Specifically, in high-interaction courses, instructors posted more frequently, sought student questions and feedback through various modes, responded to students faster, and incorporated student feedback. Overall, interpersonal interaction was the only design element that predicted student grades (unlike organization, objectives, and technology) and students valued and were concerned more about their interactions with instructors than with their peers.

A 2013 survey of 223 graduate and undergraduate students found that student-instructor interaction was a significant predictor of student satisfaction, and also confirmed previous research[87] about its centrality in the online course experience and its potentially strong impact on student outcomes and satisfaction.[88] Another survey of online students during 2013-14 found that students perceive student-instructor interaction and teaching presence as the most important factors for learning. Specifically, 82 percent rated such interaction to be most/somewhat essential and 88 percent rated teaching presence to be more/somewhat essential to their learning.[89] A 2013 case study that examined the performance of two instructors across six fully online courses also confirmed the instructor's impact on student satisfaction, as well as on teaching and social presence, and by extension, learning quality.[90]

A 2014 survey of 60 graduate online students found that online students believed they learned more in courses with high student-instructor connections, confirming once again that students learn better when both students and instructors actively participate. Students wanted a high degree of interactivity and communication, including feedback and mentoring, and deeper relationships with instructors.[91] The authors warned that limited student-instructor online interaction leads to a disconnection and contributes to a poor learning experience.

In exploring the factors contributing to the low student retention rates in a fully online environment, driven in part by learner demotivation, researchers have suggested that live student-instructor interactions can have a positive effect in creating a better learning environment and recommend designing courses that foster more student-instructor and peer social interaction.[92] Similarly, an earlier study also found that the absence of a live component was very detrimental to online learning.[93]

Finally, student-instructor rapport also seems to be a key factor for student success. A survey of about 140 online undergraduate and graduate students at a medium-sized state university replicated the positive

correlation between student-instructor rapport and positive student outcome measures that has been found in traditional settings, pointing to the need for a greater focus on student-instructor interaction behaviors that build rapport, an important component of teaching.[94]

Beyond peer-reviewed research studies, the online education community has also emphasized recently the importance of student-instructor interaction for ensuring quality. Since 2012, Learning House, a major online education services provider, and Aslanian Market Research have conducted an annual national survey of 1,500 prospective and actual online students to measure their perceptions, attitudes and behaviors on a wide range of topics and issues. In its inaugural report, the authors argued that increased interaction is a key competitive advantage of online education as a delivery method:[95]

> *Online learning not only allows institutions to serve more students at a lower expense, but it also improves teaching methodologies, enhances the learning experience, and increases interaction among students and instructors, sometimes even beyond the interaction possible in a traditional classroom.*

The same year, Learning House published a "Best Practices in Online Faculty Development" white paper, which focuses heavily on the integral role of interaction and lists leadership of the discussion forum, response to student assignments, and other classroom interactions as being among the core online faculty responsibilities, in their effort to engage and motivate online students. [96] The paper describes best practices in student-instructor online interactions:

> *For example, most of the faculty-student interaction occurs in a discussion forum where the faculty member responds to individual student posts. He or she provides feedback, refers the student to other posts and readings, probes for additional insights, draws parallels and helps students connect concepts. Faculty members react and respond to student comments rather than give a lecture or demonstration. The skill of presenting a compelling lecture doesn't apply to the online classroom; there, it is replaced with the skill of stimulating student thinking and learning through multiple, short comments.*

Moreover, the white paper argues that, regardless of the delivery method, "the faculty member is still the key ingredient for an effective class and meaningful student experience,"[97] and urges institutions to require robust interaction with students as a key pedagogical strategy: [98]

> *Institutions should set the most important expectation for faculty members--the tone and type of interaction with students. Faculty member–student interaction occurs in three basic ways: discussion forum participation, feedback on assignments, and e-mail exchanges. Generally, the tone of the interaction should be supportive and encouraging so students feel motivated to apply themselves. The type of interaction should be both penetrating and expansive. Students often need to think more deeply, consider alternative points of view, and gather more knowledge on a topic. Faculty members' comments and questions in grading and discussion forums can stimulate these practices in students.*

Not only is student-faculty interaction a critical component of a quality online education, but the paper argues that such interaction must be both frequent and substantive:[99]

> *Occasionally, people argue that quality is more important than quantity and so it is inappropriate for academic leaders to set minimum expectations for faculty participation in the classroom. They make the point that high-quality feedback once or twice a week is better than minimal feedback four or five times a week. However, this issue should not be a question of frequency or quality. The participation should be both frequent and high*

quality for the optimal student experience. Both are important for a good learning experience.

Similarly, a 2012 discussion paper by the Heritage Foundation promoting online education also describes the important role of student-instructor interactions in all delivery modes: "It would appear, then, that student interactions with professors can be meaningful either in person or online. The medium does not determine the outcome; rather, the quality of interaction depends on how the medium is used." The argument is that interactions with online instructors and classmates, together with ongoing personal relationships in the student's community should be a substitute for an on-campus social life."[100]

More recently, commenting on research that highlights the importance of quality interpersonal interaction, the Online Learning Consortium (formerly the Sloan Consortium), which is "dedicated to integrating online education into the mainstream of higher education," agrees that instructor feedback promotes student engagement and concludes that interaction is a critical area that online education needs to work hard to provide: "Computers can distribute information and technology can make it snazzy, but the crucial element of interpersonal relationships may be harder to perfect without face-to-face contact."[101]

This conclusion is largely supported by an analysis of the seven reports published to date on the annual "Online College Students" surveys, which confirms that students strongly value opportunities for interaction with instructors and lack of such interaction is online education's major shortcoming, despite the above suggested best practices and aspirations.

In 2012, online students cited lack of direct contact and interaction with instructors and students (37 percent) and inconsistent or poor contact and communication with instructors (24 percent) as the top two greatest disadvantages of online education, which, as the report concludes, supports the high level of importance students give to having easy and open access to their instructors. The authors then recommend that online education providers set expectations for the quantity and quality of faculty interaction with students and provide appropriate faculty support and guidance. The surveys have also found that, when selecting a program, offering "real-time" class sessions that facilitate synchronous student-instructor interactions is an important programmatic feature that students look for when selecting an online program.[102]

In 2015, almost one-third of students surveyed (29 percent) preferred the instructor-led model of instruction, "where an instructor takes students through their learning activities," while more than a third (36 percent) would like to meet (virtually) regularly with a faculty member from their field of study to discuss courses and schedule. The authors observe that online students would like more interaction with faculty members. They argue that setting expectations for faculty interaction and using faculty members as advisors would improve student satisfaction and probably retention. In 2016, the survey found that for students, the opportunity to meet with classmates and instructors on campus was an attractive programmatic feature of online programs.[103]

The key finding of the 2017 survey was that students want to be part of a community, with 57 percent of students citing the importance of being able to regularly engage with classmates and instructors during online classes, 27 percent desiring more contact with the instructor, and 22 percent asking for more facilitated engagement among students in the class. In addition, more than three out of four students (76 percent) find optional virtual office hours held by instructors attractive. Once again, the authors recommend a renewed focus on increased interactivity in online settings: "Set expectations and provide training for faculty members who teach online courses to encourage and lead class discussions, as well as engage with students outside of class time, whether via office hours, email, or other means."

In summary, the surveys find that prospective and actual online students clearly demand a more interactive educational experience, which includes regular and direct contact and communication with instructors, easy access to instructors, real-time class sessions, and other synchronous interactions such as virtual office hours and meetings, instructor-led learning, and a sense of community through engagement with peers and instructors. In other words, for online education to reach its potential, a renewed focus on and commitment to regular and substantive student-interactions is essential for student satisfaction, achievement, and success. It is reasonable to believe that many of the problems with online learning—particularly for at-risk students—would be mitigated if these courses and programs consistently incorporated the personal interaction that is central to the learning process.

Return on Investment

Public policy should be based on reliable information about the value of investing in different types of postsecondary education both for individual students and for society as a whole. Much of the motivation for making education available to a wide range of students is that it opens doors to more rewarding lives and to higher earnings for individuals and also increases the productivity of the nation's labor force.

All other things equal, producing education using fewer resources will increase the rate of return to the investment. But if the quality of the education suffers, this will not necessarily be the case. Even if we can produce online education more cheaply than classroom education, if the savings are not passed onto the students and if there are higher failure rates, less learning, and weaker labor market outcomes, it could mean a long-run loss.

It is never easy to measure the value of education produced, but interesting insights come from a study by Caroline Hoxby (2018) based on integrated data from the Internal Revenue Service and the Department of Education. Hoxby examined earnings outcomes for all students who engaged in postsecondary education that was wholly or substantially online between 1999 and 2014.[104]

Like other forms of postsecondary education, fully online learning does appear to increase the rate of growth of income, but not enough to make up for the cost of the education or even, in most cases, the cost to the individual student. The 10-year returns to fully online enrollment do not cover the direct costs to society. The same is true for students enrolled substantially, but not entirely, online. In particular, students who persist for short periods of time see very low returns—making the evidence of reduced persistence rates for fully online students even more of a problem.

Hoxby concludes that the vast majority of online postsecondary enrollment generates earnings benefits that never cover social costs and probably do not even cover students' private costs. Moreover, her data do not support the idea that online education shifts people into higher productivity industries such as more technical fields.

Some of these results may be related to the concentration of online study in for-profit institutions. In 2015-16, when 8 percent of undergraduates at degree-granting institutions were enrolled in the for-profit sector, 30 percent of those studying exclusively online were enrolled in this sector.[105] This enrollment pattern might raise questions about how overall performance in online learning relates to institutional type. However, most of the studies showing poor academic outcomes, particularly for vulnerable students, compare students experiencing different modes of learning within individual institutions. As noted, the concerning findings are consistent across sectors.

Reducing Costs

Theoretically, teaching more students with fewer instructors can make a big dent in the cost of providing higher education. Rather than paying three professors on campus to lecture in halls seating 100 students, a university can pay one professor to give one lecture reaching an infinite number of students at the same time. Beyond the lecture approach, students can access pre-packaged on-line courses with exercises that allow them to progress at their own pace, relieving faculty members of repeated interactions with individuals and small groups. Also theoretically, those savings can then be passed on to students in the form of reduced tuition.

The Hoxby study cited above found that exclusively online schools spend less than others on instruction, but do not have significantly lower overall costs, possibly because of the expense of curriculum development, administrative services, legal and fiscal operations, and other activities. It also found that online colleges charged students more than classroom-based colleges with similar offerings.

Hoxby's findings raise two important questions: whether online courses are really likely to reduce the resources required to produce education and whether any savings will lead to more affordable education, one of the main goals of proponents of the expansion of online education. The focus is usually on reduced labor and facilities costs. But it is possible that additional non-instructional staffing time required will at least partially compensate for savings in this area—not to speak of the technology costs for both institutions and students. Moreover, the importance of integrating personal interaction into online courses may limit the feasible reduction in instructional costs.

Another issue is that the vision of low marginal costs for online courses usually assumes that courses can be developed once and ongoing costs will be low. There are, however, several reasons to question this vision. Bringing new faculty into the process will continue to be time-consuming and resource-demanding and many faculty face steeper learning curves than for classroom instruction. In a survey of faculty asking how much time it took to plan and develop online courses relative to a comparable face-to-face course, 100 percent of respondents answered about the same time or greater, including 80 percent who answered more time or much more time.[106]

Online courses cannot just be created and left alone any more than lecture notes can. In most fields, new developments and new insights arise frequently. Moreover, as technology evolves, the forms of online learning will change. One advantage of technology is the possibility of collecting data about what works best for students and using those data will inevitably lead to course revisions. All of this requires both faculty time and support from others, including assessment experts, course designers, and technical experts. Western Governors University spends between 25 and 35 cents in each of the subsequent three years for every dollar invested to launch an online course.[107] After reviewing the relevant evidence, McPherson and Bacow (2015) concluded that high-quality online courses are expensive to deliver—at least as expensive, if not more, to develop and staff than traditional face-to-face courses.[108] In contrast, a recent case study report estimated cost savings between 3 and 50 percent of average credit hour costs in four of the six institutions examined in depth.[109]

Marketing is arguably a major cost driver and tuition inflator for online education, which may a go a long way in shedding light on the cost question. According to John Katzman, founder and CEO of major education companies (The Princeton Review, 2U, and Noodle): "Tech, spread out, becomes less expensive. But recruiting the 300th student is more expensive than the 299th and every added student is more expensive. And the two work against one another."[110]

A critical issue is how online education has affected costs to students. A 2017 survey of about 200 online education colleges by WICHE Cooperative for Educational Technologies found that more than half (54

percent) charged their online students more in tuition and fees than on-campus students and that nine out of 21 cost components were higher for online education, while the rest were the same, thus challenging the "mythology, unrealistic expectations, and unfulfilled promise regarding the economics of distance education courses."[111] These findings were consistent with earlier surveys.[112]

A 2016 report by major investment advisor firm BMO reached a similar conclusion: "While conventional wisdom holds that an online degree may cost less than one obtained at a bricks and mortar school, that may not necessarily be the case…the average per credit, in-state cost for an online bachelor's program was $277, compared with $243 per credit at brick-and-mortar schools."[113] Similarly, a 2017 survey of 182 chief online officers found that although a 2.5-to-1 majority views online programs as "revenue generators" rather than as "a drain on resources" (45 vs. 18 percent), three out of four (74 percent) charge the same tuition as the on-campus rate and 23 percent of programs charge their online students more.[114] Interestingly, large online programs with more than 7,500 fully and partly online students, are the most likely (59 percent) to call online programs revenue generators and are almost four times as likely to charge higher tuition for these courses (57 percent vs. 15 percent). Among the top reasons cited for charging online students more were online instruction and support services, online course and program development, online program marketing costs, pricing headroom for high-demand programs, and meeting revenue goals.

Overall, the available evidence undermines the argument that online education has significant potential to reduce costs for students. Whether due to the high technological and instructional costs required to provide and maintain a quality educational experience, the need for large marketing budgets, or simply because savings are turned into profits or used to subsidize other programs, online education has yet to bend the cost curve in higher education and offer an affordable option.

Online Education and Federal Policy: The Regular and Substantive Interaction Requirement

The law provides access to federal student aid for two types of programs that involve students being separated from instructors: correspondence and online education. From 1992 through 2006, both types were treated equally for purposes of federal student aid, with significant restrictions placed on them compared with traditional face-to-face programs. In 2006, Congress changed course and began to treat online programs similarly to traditional programs, thus providing unrestricted access to student aid. However, in doing so, the law specifically required online education to provide "regular and substantive interaction" (RSI) between students and instructors, unlike correspondence programs. The history behind the RSI requirement is critical for understanding the current debate about its significance and whether it should be revised.

In "direct response to the costly fraud, waste and abuse that resulted from the participation"[115] of correspondence programs in federal student aid, in 1992 Congress implemented the "50 percent rule," prohibiting higher education institutions from offering more than 50 percent of their programs through, or enrolling more than 50 percent of their students in, correspondence or telecommunications (online) programs."[116] In addition, Congress placed significant restrictions on correspondence education in regards to student aid access and amounts. [117]

After intense lobbying from online education providers and for-profit colleges,[118] in 1998 Congress created the Distance Education Demonstration Program, which provided waivers from the 50 percent rule to about 30 institutions, primarily for-profits such as the University of Phoenix, but also including the newly established Western Governors University (WGU) and University of Maryland University College, both among the largest online universities in the nation today. As the program was set to expire, and following another lobbying blitz,[119] in 2006 Congress exempted all online programs from the 50 percent

rule in a deficit-reduction bill, thus providing them full access to federal student aid, but preserved the rule for correspondence programs.[120] In the next four years, online enrollments more than doubled.[121]

However, the 2006 change created a potential problem: there was no way to clearly distinguish between the correspondence and online delivery modes. For example, a correspondence course could use technology so that a correspondence course using "minor e-mail contact between students and a grader or instructional assistant (who may or may not have subject matter expertise)" could gain full access to federal student aid, and circumvent the 50 percent rule.[122] Therefore, recognizing that "Quality standards for electronically-delivered education emphasize the importance of interaction between the instructor and student," the Department's final regulations implementing the 2006 change added the RSI requirement to clearly distinguish online from correspondence education.[123]

In the 2008 reauthorization of the Higher Education Act, Congress codified into law this key distinction: in order for a program to be classified as "distance education" (online) it must use technology "to support regular and substantive interaction between the students and the instructor, synchronously or asynchronously."[124] In other words, to be eligible for full access to federal student aid and avoid the 50 percent rule, online programs must provide RSI, rather than simply self-learning, which correspondence courses offer. Absent RSI, a program would be classified as a correspondence program, subject to student aid limitations and the 50 percent rule. Accordingly, federal regulations specify that in correspondence education "interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student" and courses are typically "self-paced," while distance education uses technology "to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously."[125]

In 2014, the Department further clarified through non-regulatory guidance that student-faculty interaction cannot be "wholly optional or initiated primarily by the student" or occur solely "upon the request of the student."[126] Moreover, given the lack of a statutory or regulatory definition of instructor or faculty, the Department clarified that students must interact with "institutional staff who meet accrediting agency standards for providing instruction in the subject matter being discussed." Otherwise, an IHE could conceivably label any individual, regardless of their qualifications, as "faculty" for the purposes of meeting this requirement. Given that accrediting agencies are responsible for academic quality assurance in federal student aid programs, they are also responsible for determining or approving instructor qualifications. To summarize, according to the RSI requirement, in online education:

- Interaction between students and instructors occurs regularly as a required part of the program.
    - Interaction that is wholly optional, initiated primarily by the student, or occurring only upon the request of the student (either electronically or otherwise) is insufficient.
- Interaction must be provided by institutional staff who meet accrediting agency standards for providing instruction in the subject matter being discussed.
    - Interactions between students and personnel who don't meet accrediting agency standards for providing instruction in the subject area are not substantive.
    - The amount of faculty resources dedicated to the program must be sufficient in the judgment of the accrediting agency.
- Educational models that involve different instructors performing different roles[127] may be used to ensure regular and substantive interaction between students and instructors, but an institution must still comply with the above requirements.

Overall, federal law, regulations and guidance make it clear that RSI is a key distinction that separates online education from correspondence programs, which are subject to limitations to student aid and the long-standing "50 percent" institutional eligibility rule.

Emergence of Online Competency-Based Education and Calls for Change

As evidenced by the explosive growth of online education, RSI has not hindered the expansion of distance education programs. However, recent developments in higher education, particularly the emergence of competency-based education (CBE) have fueled calls for revising RSI.

Despite its 50-year history in higher education,[128] there is no consensus definition of CBE,[129] not even among CBE institutions,[130] nor is the term defined in federal law or regulations.[131] There also is no uniform CBE model or approach.[132] A major Department of Education study of the field in 2002 defined "competency" as "a combination of skills, abilities, and knowledge needed to perform a specific task" and described CBE as "defining, teaching, and assessing competencies."[133] In 2015, the Council of Regional Accrediting Commissions (C-RAC), comprised of the seven regional accrediting agencies, issued a common CBE framework that included the following definition:[134]

> *In general, competency-based education (CBE) is an outcomes-based approach to earning a college degree or other credential. Competencies are statements of what students can do as a result of their learning at an institution of higher education. While competencies can include knowledge or understanding, they primarily emphasize what students can do with their knowledge. Students progress through degree or credential programs by demonstrating competencies specified at the course and/or program level. The curriculum is structured around these specified competencies, and satisfactory academic progress is expressed as the attainment or mastery of the identified competencies. Because competencies are often anchored to external expectations, such as those of employers, to pass a competency students must generally perform at a level considered to be very good or excellent.*

In recent years, CBE programs have experienced significant growth and attracted considerable attention in the higher education and policymaking communities, in large part due to their potential to provide a more accessible and affordable route to postsecondary education for non-traditional students, such as older and working adults, and to improve student outcomes. In 2014, a total of 52 colleges either offered (34 colleges) or had announced plans to launch (18 colleges) CBE programs. All colleges with active CBE programs offered Prior Learning Assessments (PLA) that grant credits to students for knowledge and skills previously mastered through experiential learning (professional, military or life experience).[135] In 2014, a group of colleges offering CBE programs was formed, which today includes 30 colleges and universities and four public systems with 82 campuses.[136] By 2015, 600 colleges were either offering, actively creating, or designing CBE programs, reflecting remarkable growth.[137]

The RSI requirement has major implications for CBE for three reasons: First, while CBE can be offered either online, on campus, or both, the vast majority of programs are online, including those offered by the largest and most well-known providers. Second, as a self-paced educational model, similar to correspondence education, CBE often involves instructors performing different roles as "no single faculty member is responsible for all aspects of a course or competency," which is often described as the "unbundling" of faculty roles.[138]

Finally, recent compliance findings involving online, mostly CBE, programs have fueled speculation about RSI having a chilling effect on its growth,[139] despite no such evidence to support such concerns.[140] The Department of Education's Office of Inspector General (OIG) has identified several RSI violations:

- In 2012, the OIG found that Saint Mary-of-the-Woods College, a small private liberal arts college in Indiana, had violated the 50 percent rule because its online courses did not provide RSI and thus should have not received more than $42 million in federal funds between 2005 and 2010.[141]

- In 2014, the OIG raised flags about approvals of CBE programs. Citing lack of RSI, the OIG said such programs "are really correspondence programs."[142] For example, in reviewing one of the approved school's applications, the OIG found no evidence of either *regular* or *substantive* interaction, neither was interaction with *faculty*, as required by law, described. Instead, "coaches" replaced faculty.[143] The Department relied on the accrediting agency's approval of the program, but the OIG's review of the accreditor's standards for faculty found that "the accrediting agency's definition of faculty and the definition of a coach in the school's application did not match." In response, the Department issued the 2014 guidance mentioned earlier.

- In 2015, the OIG released a final audit of the Higher Learning Commission (HLC), a regional accrediting agency, related to its reviews of CBE programs that found significant problems with how it applied its standards in determining the delivery methods and measurements of student learning, including whether CBE programs provided RSI. HLC approved applications for "self-paced programs" that "did not clearly indicate that the programs would include regular and substantive interaction between students and school employees who met" its definition of faculty.[144]

- In 2016, the OIG released an audit of another regional accreditor, the Western Association of Schools and Colleges (WASC) and found similar problems, concluding that its "control activities did not provide reasonable assurance that schools properly classified the methods of delivery for competency-based education programs," including that WASC failed to evaluate whether they were designed to ensure "faculty-initiated, regular, and substantive interaction between faculty and students."[145]

In response to the 2015 and 2016 audits, C-RAC urged accreditors to consider compliance with RSI when evaluating CBE programs.[146]

However, the most high-profile OIG audit was released in 2017. After several years of trying to determine whether WGU, the nation's largest and most well-established online CBE provider, complied with various aspects of federal law and regulations, the OIG concluded that about two-thirds of the 102 online courses required for its three largest programs did not meet "the key" RSI requirement.[147] The OIG applied the following RSI test:

- Interaction that was not primarily initiated by the student
- Interaction with someone who instructs or provides knowledge about the subject matter of the course (instructor)
- Interaction relevant to the subject matter (substantive), and
- Interaction occurring with some reasonable frequency considering the school-suggested length of the course (regular)

Specifically, 32 course materials described no substantive interaction with an instructor, 27 courses described a single substantive interaction, while 10 courses described two substantive interactions. In other words, more than 6 out of 10 WGU students were enrolled in one or more of 69 courses that met the definition of a correspondence, not distance education, course, thus causing WGU to violate the 50 percent rule. As a result, the audit recommended the return of $713 million in federal student aid for the two-year period examined, plus funds received thereafter.

Of particular importance, the audit report concentrated on the issue of who qualifies as an instructor in an unbundled faculty model, such as that employed by WGU and many other online CBE providers. The

OIG determined that out of the five groups of faculty (student mentors, course mentors, evaluators, product managers, and council members) only student interaction with course mentors, who provided instruction, and evaluators, who provided detailed course content feedback, qualified for the RSI requirement, as the rest of the faculty were non-teaching faculty. Moreover, the audit found interaction with course mentors was on an "as-needed basis and typically initiated by the student."

The audit report also described some interactions that do not meet the RSI requirement, including computer-generated assessment feedback; recorded webinars, videos, and reading materials; and contact with non-instructional faculty. In contrast, the OIG provided examples of substantive interactions, such as requiring the student to contact an instructor or participate in an online discussion board moderated by an instructor, or an instructor providing feedback to students on their performance tasks. Overall, the audit arguably sets a low bar for meeting the RSI requirement, both in terms of frequency and type of interactions.

Recent Policy Developments

Following the OIG audits, and especially after the release of WGU audit report, online and CBE education proponents have called for eliminating or revising RSI, arguing that it acts as a barrier to innovation[148] by applying "an obsolete, 20th-century definition to a 21st-century" educational model[149] and "has to go."[150]

In both Congress and the Department of Education, RSI is now under threat. The Department of Education not only took no action on its OIG audit recommendations; it also announced a new regulatory effort that will reexamine RSI.[151] The Republican proposal in the House to reauthorize the Higher Education Act would also gut both requirements by:

- Repealing the definition of and, by extent, the RSI requirement for, online education;
- Further weakening the definition of correspondence education; and,
- Adding a new CBE definition that has a severely weakened, and largely unenforceable, requirement for "substantive instructional interaction, including by faculty, and regular support by the institution."

While the repeal of RSI requires statutory change, the upcoming negotiated rulemaking provides an opportunity to either strengthen or weaken it. One route that may be explored will be to adopt the approach embedded in a Department of Education CBE experiment that was announced in 2014 to learn, among other research questions, "how institutions ensure regular and substantive interaction between students and instructors," in which 30 institutions currently participate.[152] The guidance restated the 2014 policy, but also provided additional flexibility, which is a core feature of such experiments. Specifically, it specified a two-part RSI test, one concerning access to faculty and one regarding program design:[153]

- Access to qualified faculty: "must be available to students who are struggling…or for any reason when the student wants to interact with a faculty member." Moreover, "Learning coaches, online tutoring, and other support can be offered and used and may even count for the majority of students' support (and success)," with faculty access required "at least when students need or want it." The letter then notes that when "a faculty member is not the primary monitor of student engagement with learning (as in traditional instructional models), the institution must have some combination of staffing and systems to monitor student engagement, level of performance, and to provide proactive support."

- Program design: The letter defined "regular interaction" as "periodic contact" that "can be event driven," including "through the use of email or other social media," but "should be understood as predictable regularity and built into program design" and "must create the opportunity for substantive interaction." The letter clarifies that "while an automated system for initiating contact with students could be one aspect of program design, such a system in and of itself could not meet the requirement for regular and substantive interaction." However, the letter then states that "contacts with students that create the opportunity for relevant discussion of academic subject matter could qualify as substantive interaction." Moreover, while acknowledging that assessment "takes on particular importance in outcomes-focused programs like CBE," the letter "does not require that faculty administer and/or grade all assignments, though faculty feedback on student assignments may be a very effective form of substantive interaction."

The Watchdog Is Barking, but Who Is Listening?

In the past 15 years, the OIG has repeatedly warned the Department and Congress about the "the unique risks inherent in the distance education environment" and several audits, investigations and special projects have identified numerous instances of fraud and widespread vulnerabilities, including problems with verifying student identity, determining attendance, and determining cost of attendance.[154] Specifically, the OIG has concluded that, as "the fastest growing segment of higher education," distance education "creates unique oversight challenges and increases the risk of school noncompliance with the law and regulations," and has called on the Department, accrediting agencies, and states to adequately monitor schools for compliance. In recent years, each OIG annual management challenges report to the Secretary of Education and each semi-annual report to Congress highlights distance education as an area that poses significant risks to the integrity of federal student aid programs. Moreover, its 2015 audit found major weaknesses in the Department's oversight of online education

In March 2018, the OIG submitted to Congress detailed comments and recommendations for needed changes in the upcoming reauthorization of the Higher Education Act.[155] Unsurprisingly, several of its recommendations were focused on online education, and the OIG raises serious concerns about the elimination of RSI, as well as the definition of "distance education," in the House PROSPER Act. In particular, the OIG argues that their elimination, coupled with the amended definition of correspondence education that includes "interaction between the institution and the student is limited and the academic instruction by the faulty is not regular and substantive," will render meaningless the RSI requirement and thus allow programs without any substantive interaction between subject-matter experts and students to have full access to financial aid:

> *A significant difference from the former definition of distance education is that "instructor" is replaced with "faculty." Faculty could include mentors or counselors that lack subject matter expertise in the courses a student is taking. Removing the definition of distance education and replacing "instructor" with "faculty" in correspondence education would allow a school to qualify for full participation in the Federal student aid programs based on e-mail contact between students and faculty on matters unrelated to the subject matter of a program. There will be no assurance that programs provide the level of interaction Congress previously expected with instructors for full funding of distance education. Distance education funding would only be restricted in the unlikely event the programs qualify as correspondence education.*

The OIG then urges lawmakers to retain the clear distinction between correspondence and distance education by leaving intact the current definition of distance education, including the RSI requirement

between instructors and students, and calls for improved oversight by the Department, accrediting agencies, and the States.

An Evidence-Based and Responsible Path Forward

In many ways, these efforts to loosen the requirements resemble the 2006 change Congress made to exempt distance education from the 50 percent rule, despite warnings by GAO and others about the risks involved,[156] thus opening the floodgates of federal student aid to fully-online schools.[157] Interestingly, WGU was at the center of those efforts as well. As in 2016, the narrative is the same: federal law and regulations are standing in the way of innovation, which could expand access and reduce costs for students.[158] As documented, the greatest beneficiaries of the 2006 change were for-profit colleges,[159] which enroll almost one-third of all fully-online students, but less than ten percent of all students, and distance education has not reduced costs for students.[160] Before we go down this path of "deregulation for innovation" again, it's important to heed the lessons of history and avoid the same consequences, both intended and unintended.

Our review of the evidence clearly demonstrates that, on average:

- Online education is the fastest-growing segment of higher education and its growth is overrepresented in the for-profit sector.
- A wide range of audiences and stakeholders—including faculty and academic leaders, employers and the general public—are skeptical about the quality and value of online education, which they view as inferior to face-to-face education.
- Students in online education, and in particular underprepared and disadvantaged students, underperform and experience poor outcomes. Gaps in educational attainment across socioeconomic groups are even larger in online than in traditional coursework.
- Online education has failed to improve affordability, frequently costs more, and does not produce a positive return on investment.
- Regular and substantive student-instructor interactivity is a key determinant of quality in online education; it leads to improved student satisfaction, learning, and outcomes.
- Online students desire greater student-instructor interaction and the online education community is also calling for a stronger focus on such interactivity to address a widely recognized shortcoming of current online offerings.

The implications of the above for federal policy are significant. First, do no harm. Weakening RSI would not only be inconsistent with the evidence that clearly demonstrates the key role of faculty-student interaction in ensuring a quality online education, but would also further erode employer, student, educator, and public confidence in and perceptions of its comparative value.

For example, adopting in federal law the flexibility provided in the ED experiment, as some recent proposals advocate, would severely undermine the substance and intent of the RSI requirement:

- By requiring "access to qualified faculty," only for students "who need or want it," this new approach would allow students who are not struggling or do not initiate interaction to progress through a program without such access, as is the case in correspondence courses, in which interaction is "limited" and "primarily initiated by the student."
- By allowing institutions to "have some combination of staffing and systems to monitor student engagement, level of performance, and to provide proactive support," when a "faculty member is not the primary monitor of student engagement with learning," as is typical in CBE and other

unbundled programs, this approach would allow an institution to use a combination of 99 percent technology and/or non-qualified staff and 1 percent qualified faculty to perform these key instructional duties.

- By interpreting "regular" interaction as "periodic contact" through email and social media and "event driven" ("completion of certain key competencies, a percentage of competencies, or the submission of assessments"), this approach would allow occasional online chat rooms or virtual office hours that "create the opportunity for substantive interaction" to meet the requirement.
- By defining "substantive" as "interaction, or the opportunity for interaction, with a student that is relevant to the academic subject matter in which the student is engaged," this flexibility would conceivably allow a student who does not take advantage of an interaction "opportunity" to progress through a program without engaging substantively with faculty.
- Finally, assessment is at the heart of CBE. While acknowledging that "assessment takes on particular importance in outcomes-focused programs like CBE" and "faculty feedback on student assignments may be a very effective form of substantive interaction," this new approach would allow non-faculty to "administer and/or grade all assignments." Once again, by exempting qualified faculty from this core component of the CBE educational experience, this approach would further render the RSI requirement meaningless.

The flexibility provided by ED in the experiment should be rigorously evaluated prior to considering embedding it in law or regulations. The purpose of such experiments is to inform potential policy changes through the study of research questions. Adopting such a dramatic change without first studying its impact on a small scale infuses unnecessary risk into our federal student aid programs with potentially wide-ranging implications. Furthermore, deferring to accrediting agencies to define "instructor" and "faculty" is unavoidable, at least under the current triad system in which accrediting agencies are the authorities tasked with quality assurance. This was reaffirmed in the flexibility ED provided, which required accreditors to determine which faculty have "the appropriate academic credentials and experience in the applicable knowledge domain." Finally, we must avoid any possibility of a student progressing through an online program, whether CBE or not, without ever interacting with faculty. Reforms that simply require "the opportunity for interaction" should be off the table, as they would set a bar even lower than correspondence education.

A responsible path forward would reflect the evidence reviewed in this paper. RSI should be preserved, if not strengthened, and vigorously enforced. Unbundled faculty models that have difficulty complying should make changes to match the law instead of changing the law to match the needs of such models. Interaction must be with subject-matter experts, not just anyone labeled "faculty" by an institution. It is in the best interest of online providers to pursue the strategies recommended by the industry to increase interaction and thus improve their quality, student outcomes and satisfaction, and employer confidence in the value of their credentials. Not only is RSI a student and taxpayer safeguard, it is also an essential element of a successful and sustainable business model.

Online education's failure to yield cost savings for students and taxpayers, as well as the high concentration of online students in the for-profit college sector, which has a well-established and long record of predatory behavior and compliance troubles, should raise oversight concerns for policymakers and the Department of Education. The incentives for a quick profit through lower production costs and high tuition prices, subsidized by the federal government through aid, combined with an environment of deregulation, further amplifies the repeated and urgent warnings of the OIG about the significant risks in online education, which call for stronger monitoring and enforcement in this area of higher education.

Finally, it is imperative to keep in mind that RSI applies to all online programs, not just CBE programs. While the impetus for additional "flexibility" is largely driven by the rapid growth of CBE programs and the recent WGU audit, the key distinction should be maintained between correspondence and online

education, regardless of the educational model employed, whether CBE or some other alternative. Online education, including CBE, has thrived while complying with the RSI requirement, so rather than changing the law or regulations to accommodate particular online education models, which already face criticism about their quality, Congress and regulators should instead focus on the evidence, which is clear: student-instructor interaction is a key component of quality and strong student outcomes.

Conclusion

Continuing efforts to strengthen educational opportunities and learning outcomes for under-prepared students and to reduce the cost of offering high-quality experiences are critical. But the evidence is clear that much of the existing online coursework is moving this effort in the wrong direction. Students need access to education, which involves meaningful interaction with faculty and other students—not just exposure to materials that move them through a collection of information and exercises.

The greatest risk is that the rush to transform higher education will widen the gulf between the college education available to those who arrive at the door with ample resources and strong academic preparation and those who depend on postsecondary education to open the doors to productive lives. Creating access to programs is a step forward, but only if those programs succeed in providing meaningful educational opportunities to students with minimal levels of academic preparation who need to develop their self-discipline, time management, and learning skills—not just have access to a specific body of information.

The intuition behind the idea that online learning has the potential to increase educational opportunities and reduce costs for students with limited time, geographical mobility, and money is clear. But the evidence reviewed in this paper raises significant questions about whether the promise of online education has been realized to date. The type and quality of online learning accessible to students—especially those with limited academic preparation and limited resources—is critical. Mounting evidence suggests that although the outcomes of hybrid learning environments that mix online and classroom experiences are similar to those of traditional classrooms, the same is not generally true of purely online courses, particularly for at-risk students attending at-risk institutions.[161]

Undoubtedly technology will continue to progress and strategies for improving learning in classroom, hybrid, and online settings will surely emerge. It is likely to become more feasible, for example, to provide optimal course pacing and content to fit each student's needs. The latest "intelligent" tutoring systems not only assess students' current weaknesses, but also diagnose why students make their specific errors, adjusting instructional materials to meet their needs.[162] But these innovations are likely to be most effective as supplements to—not replacements for—meaningful educator-student interaction.

The negative findings about outcomes in online learning come from fully online courses. Hybrid courses do not create the same burdens for students. Taking an asynchronous class without an engaged instructor requires high levels of self-motivation, self-regulation and organization.[163] Hybrid courses that integrate technology into face-to-face classrooms generally yield similar or improved outcomes relative to standard classrooms.[164]

Both the aggregate data on online learning and most studies of its effectiveness at individual institutions focus primarily on for-profit or broad-access public institutions. But selective universities and liberal arts colleges are also incorporating technology into their curricula. In many cases, these institutions are using technology to enhance, rather than replace, traditional classroom experiences. Some of the better news about online programs comes from efforts targeting students who have already proved their ability to succeed in advanced academic work. Georgia Tech's widely cited computer science master's degree program is getting very positive reviews and appears to be opening opportunities to new students, rather

than diverting them from face-to-face programs.[165] Since this is a graduate program, all of the students have already earned bachelor's degrees, and in the case of Georgia Tech, passed rigorous admission standards. Evidence about success in MOOCs confirms the reality that students from higher-income, more educated backgrounds are most likely to participate and succeed in these courses.[166]

Some students, particularly older students with work and family responsibilities and those in rural areas may be choosing between purely online education or no postsecondary education at all. But there is a real risk that both cost-cutting efforts and well-intentioned moves to expand access to higher education could lead to greater numbers of disadvantaged students being relegated to cheap and ineffective online instruction, with detrimental results, both in terms of outcomes and student loan defaults. The findings discussed in this paper should act as a cautionary note for efforts like California's new wholly online community college, which will be designed for adults seeking new labor market opportunities and will offer only certificates and short-term credentials. It will take careful and innovative planning and design if there is to be a reasonable prospect of delivering meaningful college-level work—as opposed to just the transmission of information—through this route,

As McPherson and Bacow (2015) argue:[167]

> *If technology is used in broad access institutions to drive cost down without regard to quality, and at the same time is used in elite higher education to further increase the cost and restrict the availability of the "best" education, we will wind up with a society both more unequal and less-productive than it could be.*

In 2011, the year Sebastian Thrun began the MOOC revolution with his course on Artificial Intelligence, Clayton Christensen predicted in *The Innovative University* that half of all colleges and universities would go bankrupt within 10–15 years as alternative providers replaced them. Technology would enable an entirely new business model to take hold. Writing with Michael Horn in 2013, Christensen explained that students would soon gravitate toward less expensive options. "Unbundling" of higher education would allow students to customize their own educational experiences. Students could still access face-to-face interaction when they need it, but that would no longer be the norm.[168] These predictions of a revolution quite clearly exaggerated the near-term prospects for change. But that does not mean we should give up on technology's potential to enhance college learning opportunities. It does mean we should be cautious about proponents of innovation who over-promise. We must carefully analyze the results of new strategies that are implemented with the goal of broadening access and/or reducing costs without compromising the quality of education. At a minimum, we must proceed with extreme caution when revising the current statutory and regulatory environment governing online education to ensure that students and taxpayers are protected from poor student outcomes that come at a very high cost.

Arguably everyone wants higher education to be more "innovative," to cut costs and improve quality for students. Technological advancements and new models of education, like online CBE, offer the potential to advance these shared goals. At the same time, when paying for an educational program, both students and taxpayers expect that teaching is involved in the provision of educational services. The RSI requirement is a key safeguard intended to ensure that online education does not become self-learning with full access to federal aid.

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EXHIBIT D

NYLAG
NEW YORK LEGAL ASSISTANCE GROUP

To: United States Department of Education (Scott.Filter@ed.gov, Jessica.Freeman@ed.gov)

From: Jessica Ranucci, New York Legal Assistance Group, Negotiator on Behalf of Legal Assistance Organizations

Date: January 31, 2019

Re: Requests for Briefing and Data in Distance Education and Educational Innovation Subcommittee

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I am submitting the following request for briefing and data requests in order to better understand the Department's proposed regulations.

A. Briefing Request

I am requesting that, at the Subcommittee's next meeting, the Department provide a staff member who can report on lessons learned from the EQUIP program and who will be able to answer questions from the Subcommittee related to the EQUIP program.

B. Data Requests

I am requesting that the Department provide answers to the following eleven data requests for most recent available academic year:

1. Total student enrollment in all Title IV programs.

2. Of this number, total student enrollment by type of institution (less than 2-year proprietary school; 2-year proprietary school; 2-year public school; 2-year private non-profit school; 4-year proprietary school; 4-year public school; and 4-year private non-profit school).

3. Of total student enrollment in all Title IV programs:
   - Number of students with no distance education component to their programs;
   - Number of students with some distance education component to their programs; and
   - Number of students in exclusive distance education programs.

4. Of the total number of students who enrolled in exclusive distance education programs, break down by:
   - In-state enrollment (students enrolled in a school with a physical presence in their own state);

- Out-of-state enrollment (number of students enrolled in a school lacking a physical presence in their own state); and
- Foreign enrollment (students enrolled in a school without any physical presence in the U.S.).

5. Of the total number of students who enrolled in out-of-state exclusive distance education programs, break down by:
    - Type of institution (less than 2-year proprietary school; 2-year proprietary school; 2-year public school; 2-year private non-profit school; 4-year proprietary school; 4-year public school; and 4-year private non-profit school); and
    - Largest 3 institutions in enrollment numbers in each category with numbers of enrollees.

6. For the top three institutions that offer exclusive distance education programs outside of the state where their physical headquarters is located and that can trace ownership to an entity that owns one or more institutions that offer the same programs in a format that is not exclusively distance education:
    - A list of the current programs being offered in both formats;
    - For each program, the cohort default rate for the exclusive distance education program and for the other programs, to the extent it exists;
    - The total tuition for the exclusive distance education program and for the other programs;
    - Completion rates, calculated under state law (if available) and under accreditation standards, if available, and calculated using Education Department data and/or as reported to the Education Department pursuant to 34 CFR 668.8(e)(1)(i);
    - Placement rates, calculated under state law (if available) and under accreditation standards, if available, including as reported to the Education Department pursuant to 34 CFR 668.8(e)(1)(ii);
    - Gainful employment metrics; and
    - For programs leading to occupations that require licensure, graduates' licensure rates.

7. For 3 to 5 institutions at the median in terms of total exclusive distance education enrollments that offer exclusive distance education programs outside of the state where their physical headquarters is located and that can trace ownership to an entity that owns one or more institutions that offer the same programs in a format that is not exclusively distance education, the same data as requested in #6, above.

8. Of the total number of students in California, New York, Massachusetts, Illinois and Florida who enrolled in exclusive distance education programs, all of the metrics from #6, above, disaggregated for students located in the state where their schools' headquarters is located and students located outside the state where the schools' headquarters is located.

9. Of the total number of students who enrolled in exclusive in-state distance education programs, break down by type of institution (less than 2-year proprietary school; 2-year proprietary school; 2-year public school; 2-year private non-profit school; 4-year proprietary school; 4-year public school; and 4-year private non-profit school).

10. By type of institution for the most recent year data is available (less than 2-year proprietary school; 2-year proprietary school; 2-year public school; 2-year private non-profit school; 4-year proprietary school; 4-year public school; and 4-year private non-profit school):
    - Total enrollments;
    - Number of student with no distance education component to their programs;
    - Number of students with some distance education component to their programs; and
    - Number of student in exclusively distance education programs.

11. For all schools offering exclusive distance education programs to students outside of the state where their physical headquarters are located, for the most recent academic year this data is available:
    - Number of schools that are degree-granting and regionally accredited;
    - Number of schools that are not;
    - For 3 to 5 of each of the above types of schools at the median in terms of total exclusive distance education enrollments:
        - Number of programs offered by the school out-of-state;
        - Number of states in which out-of-state students have been enrolled;
        - Number of enrolled students out-of-state; and
        - Number of enrolled students in the school's home state.

EXHIBIT E

ICDC COLLEGE®

Corporate Headquarters – Main Campus – Online Campus

6812 Pacific Blvd., Huntington Park, CA 90255 Ph. (323) 277-0240 Fax (323) 277-9284

May 20, 2016

Dear ICDC College Student:

This letter is meant to update you on the closure of ICDC College that was announced on March 31, 2016.

We at ICDC College are committed to your success and want to help you in any way we can to help you succeed. In that regard, we are proud to have worked very hard to reach an agreement with Trident University International to conduct a "teach-out" of your current program. The teach-out plan has received approval of ICDC's accreditor, Accrediting Commission of Career Schools and Colleges, and Trident's accreditor, WASC Senior College and University Commission, and it has been acknowledged by the U.S. Department of Education and the California Bureau for Private Postsecondary Education.

In order to conduct the teach-out with a seamless transition for students, Trident agreed to employ many of ICDC College's instructors and staff, and to offer ICDC's current programs. There will be no interruption in your education; you will continue to have primarily the same instructors, support staff, and program that you are used to and currently taking at no additional charge beyond the charges agreed to in your enrollment agreement with ICDC. Trident will begin overseeing the teach-out of your courses on May 23, 2016. Should you wish to participate in the teach-out and continue your education, you will login to your account and class in the same manner in which you have always logged into your classes. You are not required to participate in the teach-out with Trident.

In the event that you choose to discontinue your program prior to the closure of ICDC College and not take part in the teach-out, a refund may be requested pursuant to ICDC College's Refund Policy as found in your Enrollment Agreement and Catalog. In the event you funded any part of your education with Federal Title IV funds, a refund of those funds may be requested pursuant to ICDC College's Return of Title IV Funds Refund policy which is also found in your Enrollment Agreement and Catalog.

Also, for California residents only, when you enrolled you paid an assessment to the Student Tuition Recovery Fund (STRF). The State of California created STRF to relieve or mitigate economic losses suffered by California residents who were students while attending certain schools regulated by the Bureau for Private Postsecondary Education.

You may be eligible for STRF if you are a California Resident; prepaid tuition, paid the STRF assessment, and suffered an economic loss as a result of any of the following:

1. The school closed before the course of instruction was completed.
2. The school's failure to pay refunds or charges on behalf of the student to a third party for license fees or any other purpose, or to provide equipment or materials for which a charge was collected within one hundred eighty (180) calendar days before the closure of the school.
3. The school's failure to pay or reimburse loan proceeds under a federally guaranteed student loan program as required by law or to pay or reimburse proceeds received by the school prior to closure in excess of tuition or other cost.
4. There was a decline in the quality of the course of instruction within thirty (30) calendar days before the school closed or, if the decline began earlier than thirty (30) calendar days prior to closure, the period of decline determined by the Bureau.
5. An inability to collect on a judgment against the institution for a violation of the California Private Postsecondary Education Act of 2009.

However, no claim can be paid to any student without a social security number or a taxpayer identification number.

The Bureau's physical address is 2535 Capitol Oaks Drive, Suite 400, Sacramento, California, 95833 and its website address is www.bppe.ca.gov.

For more information on Federal loan discharge, go to: https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/closed-school.

If you choose to participate in the teach-out, you will receive a welcome letter from the President of Trident University International shortly which will provide additional information about the teach-out process.

If you have any questions or need any help with this process please do not hesitate to contact me at (424) 666-5116 or you can e-mail me at rene.nunez@icdccollege.edu.

Yours Very Truly,

Rene C. Nuñez
Vice-President Compliance/Student Relations
ICDC College

Enclosures

EXHIBIT F

January 25, 2016

Dear Student:

We hope all of you had a wonderful holiday season and we are excited to see you back.

As promised when we communicated with you in December, Westwood has worked hard to create a robust transition plan for the continuation and completion of your education. Over the coming weeks, we will introduce you to the partner schools that will assist you in completing your education and you will have full opportunity to explore what benefits each may offer to you. When you meet with them, each partner school will be able to provide you with specific information on your individual academic circumstances and answer your questions. We will ask you to make your transfer choice no later than February 19. The January 2016 term will be the last one taught at Westwood College, and upon completion of this current term, Westwood will close.

Starting on January 27th, partner schools will be on all Westwood campuses to facilitate transfer arrangements. As part of this process, Westwood will work with you and the partner schools to make your transition at the end of this term as seamless as possible. We are impressed with the quality of schools that have offered to assist you in achieving your goal of graduation and the terms they have agreed to offer Westwood students. Our main focus in negotiating with the partner schools was to ensure that you would be in the same academic and financial situation had you continued at Westwood to complete your education. I believe that we more than accomplished this goal for your benefit.

Most programs will have multiple accredited partner schools from which to choose, including several regionally accredited schools. Each of the partner schools has a campus located within a reasonable distance from your current campus. All partner schools have agreed to accept the transfer of Westwood credits. In most cases all credits will transfer into comparable programs offered by the partner school. In addition, these schools have agreed to charge you the same amount for your program as reflected in your Westwood enrollment agreement. But, if a school has a lower tuition cost than Westwood, you will get the benefit of that lower tuition. Unless completion of this term will allow you to graduate from Westwood, you will get your degree from the partner school to which you transfer. That school will provide you with career services and will maintain your academic records. It is important that you continue on track to complete all of your courses for the January Term. This will make for a smoother transition, and lower your future cost of attendance. Everyone at Westwood College remains focused on your goal of graduation. Some of you will be graduating at the end of the current term and we look forward to helping you celebrate this great accomplishment in your life.

We could not be prouder of our current students and future graduates. This has been a tough time on all of us - students, faculty and staff alike - and we have appreciated your patience as we developed the best possible transition plan for your academic future. It has been our greatest privilege to see you grow and develop through your academic experience at Westwood. Thank you for your commitment to Westwood and for allowing us the privilege to know and educate you.

As always, if you have any questions please feel free to contact the campus president or other campus staff.

Sincerely,

Lou Pagano
Chief Operating Officer
Alta Colleges

Additional Important Information:

Important notice if you have a Federal student loan: You have separate rights if you have a Federal loan:

You may be eligible for forgiveness ("discharge") of the federal student loans you received to attend Westwood if one of the following happens:

- Westwood closes before you complete your program, or
- If you withdraw from Westwood less than 120 days before Westwood closes.

This Federal discharge will cancel your Federal loan. If you **complete** your program either at Westwood or at another school, you **will not** qualify for this Federal discharge. Westwood encourages you to explore all options for continuation and completion of your education with partner schools before considering a Federal discharge. If you apply for and receive a Federal discharge, you will **forfeit** any Westwood credits earned and these credits **will not** be transferable to a partner school.

For more information on Federal loan discharge eligibility and the application process, go to: studentaid.gov/closedschool.