

Written Testimony of
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Before the
New York State Joint Legislative Budget Hearing
Higher Education

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Thank you for this opportunity to submit testimony to the New York State Joint Legislative Budget Hearing on Higher Education concerning Governor Cuomo's proposal on for-profit colleges.

The New York Attorney General's Office strongly supports Governor Cuomo's proposal to impose accountability and transparency standards on for-profit colleges in New York. Unscrupulous for-profit colleges cause extensive and lasting harm to vulnerable populations of New Yorkers and waste taxpayer funds. In the absence of federal regulation of the sector, state-level action is critically needed to protect New York students and to safeguard taxpayers' investment in higher education.

A. Predatory For-Profit Colleges Harm Students and Taxpayers

In 2016, more than 40,000 New Yorkers attended for-profit college degree programs.¹ Unfortunately, many for-profit colleges lure students with false promises of employment or salary outcomes while offering high-cost, low-quality programs. These for-profit schools leave students with few employment opportunities and insurmountable debt. Although for-profit schools enroll only 4 percent of students in New York, for-profit schools account for 41 percent of student loan defaults five years after students leave school.² Despite these poor outcomes for students, for-profit colleges receive tens of millions annually in state funding from New York's Tuition Assistance Program. For-profit colleges also target vulnerable populations, including low-income communities; first-generation college students; and communities of color.

In the past several years, our office's investigations of for-profit colleges have revealed widespread abuses by for-profit schools, including: misrepresentations of employment and salary outcomes; misrepresentations of graduates' eligibility for professional licensure; misrepresentations about students' ability to transfer credits earned; and placement of students in

¹ Hilliard, Tom. *Keeping New York's For-Profit Colleges on Track*. Center for an Urban Future, <https://nycfuture.org/research/keeping-new-yorks-for-profit-colleges-on-track>.

² Cao, Yan. *Governor Cuomo Demands Quality from For-Profit Colleges – Or Else*. The Century Foundation; <https://tcf.org/content/commentary/governor-cuomo-demands-quality-profit-colleges-else/>.

loans that the schools knew their graduates would not be able to pay back. Our office's investigations have led to millions of dollars in restitution and debt relief to New York students.

Our office regularly hears from for-profit college students who were left with enormous debt and few job prospects. Many default on their loans, damaging their credit and making it difficult or impossible to pursue further education, obtain a car loan or a mortgage, or even rent an apartment. Student loan debt, unlike many other types of debt, is non-dischargeable in bankruptcy except where the borrower is able to meet the high standard of demonstrating that repayment would impose an "undue hardship." As a result, many for-profit college students are burdened with insurmountable student loan debt over the course of their entire life.

Taxpayers are also harmed by for-profit colleges' abuses. New York State provides tens of millions of dollars in financial aid, including Tuition Assistance Program funds, to for-profit schools. When these funds go to low-quality programs that fail to prepare students for employment, taxpayer dollars are wasted. Stronger regulation of for-profit colleges would help protect against this waste of resources. Furthermore, restrictions on for-profits that require a percentage of revenues be used for instruction will ensure that more taxpayer dollars are used to provide quality instruction, rather than marketing, for for-profit schools.

B. In the Absence of Federal Oversight of For-Profit Colleges, State Oversight Is Critical to Protect New Yorkers.

In the last two years, Secretary of Education Betsy DeVos has dismantled federal regulation of for-profit colleges and eviscerated federal protections for victims of for-profit college misconduct. Secretary DeVos delayed the implementation of several key federal rules that protect students and is working to rescind or replace these and other federal protections. Secretary DeVos's actions open the door to more fraud and abuses by for-profit colleges and intensify the need for state measures to protect students. Although our office has joined with other state Attorneys General to successfully challenge the Department's rollback of some of these federal protections, our efforts have not succeeded in restoring all of the protections.

One example of Secretary DeVos's efforts to dismantle federal regulation of for-profit colleges is the effort to undermine and rescind a regulation known as the Gainful Employment Rule. The Gainful Employment Rule was enacted in 2015 to address concerns that for-profit colleges frequently offer high-cost, low-quality programs that leave students with poor earnings prospects and high amounts of debt. The Rule required programs to meet benchmarks demonstrating that the programs led to jobs that provided sufficient pay to enable students to pay back student loans. Programs that failed to meet the benchmarks over several years would lose access to federal Title IV funds. This protected students and taxpayers by ensuring that federal aid was not spent to fund programs that fail to prepare students for employment. The Rule also required schools to disclose key information to prospective students about student outcomes, such as graduation rate, average student debt, and student earnings. Secretary DeVos delayed the implementation of the Rule and then announced an intention to rescind the Rule in its entirety, without replacing it with any other accountability standards. Our office has joined other states in a lawsuit challenging DeVos's delay of the Rule.

The Secretary DeVos also delayed implementation of the Borrower Defense Rule, a federal rule aimed at protecting students who have been harmed by misconduct by for-profit colleges. The Rule established a process for students to apply for a discharge of their federal loans when their schools commit misconduct. The Borrower Defense Rule also protects taxpayers by ensuring that schools engaging in misconduct take financial responsibility when their unlawful actions result in discharges of student loans, and by prohibiting schools from using arbitration agreements and class action waivers to stop students from bringing claims against their schools in court. Our office, along with 18 other state attorneys general, brought a legal action to challenge the Department's delay in implementing the Borrower Defense Rule. In September 2018, the federal court hearing the state attorneys' general lawsuit ruled that the Department's delay was unlawful.³ As a result, the Borrower Defense Rule is now in effect. However, the Department has begun the process of drafting a new rule that will replace the Borrower Defense Rule with a much weaker rule.

In the wake of these rollbacks of federal protections, state-level action is critically needed to protect students in our state.

C. The Proposed Measures Offer Useful Protections for Students and Taxpayers.

The proposed legislation would impose a number of valuable requirements on for-profit colleges in New York. First, the legislation would require that schools that receive state aid spend at least 50 percent of total annual expenditures on student instruction. Many for-profit colleges devote most of their expenditures to marketing and recruiting and spend only a small fraction on student instruction. The requirement to spend at least 50 percent of total annual expenditures on instruction would ensure that for-profit schools prioritize teaching over advertising and would ensure that more state aid is used for instruction, rather than to fund advertising.

In addition, the proposed legislation would require that for-profit schools that receive state funding obtain no more than 20 percent of their total funding from federal loans, federal grants, or New York's Tuition Assistance Program (TAP). This measure would improve on a similar rule imposed under federal law that conditions federal aid eligibility on a for-profit college's ability to raise 10 percent of funding from sources besides federal aid. It is designed to ensure that schools offer quality programs that attract investments from employers and students, not just federal and state aid.

Importantly, the proposed legislation would also address conflicts of interest that occur when for-profit college board members serve on the boards of the accrediting agencies that their institution. The legislation would prohibit school officials from serving on the board of a regional or national accrediting agency that which is an accreditor of the school. Accrediting agencies serve as gatekeepers for state and federal aid. In order to be eligible for state and federal aid, a school must meet standards set by the accrediting agency. Prohibiting school

³ *Bauer v. DeVos*, 325 F. Supp. 3d 74 (D.D.C. 2018).

officials from serving on the board of agencies that accredit their school would prevent conflicts of interest and help ensure the integrity of the accrediting system.

As detailed above, the New York Attorney General's Office has extensive experience investigating and bringing enforcement actions against predatory for-profit colleges. We are currently participating in the development of federal rules governing accreditation of for-profit and other colleges. We have also participated in multiple lawsuits challenging the federal government's efforts to dismantle regulations protecting for-profit college students. These experiences have provided our office with considerable expertise and unique insight into the need for strong state regulation of for-profit colleges.

The New York Attorney General's Office strongly supports the proposed legislation imposing accountability and transparency standards on for-profit schools in New York. This legislation is an important step forward in protecting New York students from abuses by for-profit colleges.