

## Minority Committee Staff Views

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Over the past 2 years, a significant amount of the Health, Education, Labor, and Pensions Committee’s activity has been focused on an investigation of for-profit institutions of higher education. This investigation has raised a number of questions about the for-profit sector that deserve the attention of this committee. However, the majority’s refusal to work in the committee’s bipartisan tradition and the biased conduct throughout this process have raised substantial doubt about the accuracy of the information contained in the report titled, “For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success” (Majority Staff Report).

The HELP Committee has a long history of bipartisanship and collaboration, which has allowed for the input of all committee members and ensured the legitimacy of its work. This practice has been integral to making this committee one of the most productive in Congress, and has produced a body of legislation that regularly earns the overwhelming support of the Senate. As such, there is little doubt that the committee could have conducted a robust and objective investigation had the majority pursued these proceedings in a bipartisan manner.

It is indisputable that significant problems exist at some for-profit institutions of higher education. Students must have accurate and unbiased information, and should not be pressured into making decisions they are not prepared to make. In fact, the aggressive recruiting practices, possible violations of statutory restrictions on incentive compensation, and the misrepresentation of student outcomes by some for-profit institutions that have been identified are real problems that deserve to be investigated in an objective process. With a fair, reasonable and competent process there is little question that the committee could have addressed these issues and enacted meaningful changes to the law where necessary that would benefit all students.

However, from the outset, the majority did not seek bipartisan input or support in this investigation. It ignored repeated requests by the Ranking Member to expand the scope of the investigation to include all institutions of higher education that serve the other 90 percent of postsecondary students who do not attend for-profit schools but face similar challenges. Furthermore, the majority ignored a request from Senators Enzi and Alexander asking that the committee hold bipartisan hearings on the Department of Education’s program integrity regulations, which would have addressed many of the concerns raised during the investigation. While the minority recognizes the majority’s right to set the committee’s agenda, the failure to seek bipartisan collaboration and gain broad support has undermined the credibility of findings contained in the

Majority Staff Report. The following are examples of the investigative actions that suggest a pattern of abuse that has led a number of observers to question the majority's motives and objectivity.

**I. This investigation was developed, in part, by relying on the input of an investor with a financial interest in the demise of the for-profit sector.**

On June 24, 2010, the committee heard the testimony of Steve Eisman, a hedge-fund manager most notable for betting against subprime mortgages during the U.S. housing crisis. Mr. Eisman is not a higher education expert, and stated in his testimony that he had a financial interest in the for-profit sector. However, he refused to explain the extent of his investments when asked in questions for the record by Senator Coburn. In a July 1, 2010 letter to the committee, Citizens for Responsibility and Ethics in Washington (CREW) explained, "To our knowledge, Mr. Eisman has no expertise in education policy; he holds no degrees, has no experience, and no background on the education policies at issue. Mr. Eisman's only experience is that he works for a hedge fund that is betting millions of dollars on stock prices falling in the for-profit education industry. His financial conflicts of interest could not be more blatant, yet they were not disclosed in advance of his testimony. Even more troubling is Mr. Eisman's use of the congressional hearing and the committee as a vehicle to advance his own economic interests by dragging down stock prices of publicly traded companies." Notwithstanding Mr. Eisman's lack of qualifications to comment on education policy, it is troubling that the majority would allow any witness to testify without requiring a full disclosure of such clear conflicts of interest.

**II. The findings of this investigation include discredited Government Accountability Office (GAO) testimony.**

On August 4, 2010, Gregory Kutz, former-Managing Director of the GAO's Forensics Audits and Special Investigations Division, testified to the committee about the findings of an undercover investigation of recruiting practices at 15 for-profit institutions of higher education. Mr. Kutz's testimony disclosed troubling practices, which are described in part in the Majority Staff Report. However, the GAO substantially revised and reissued Mr. Kutz's testimony on November 30, 2010, making over 50 changes to 12 pages of the original testimony. Many of the changes revealed that the GAO investigators omitted or misrepresented material facts, which undermined the severity of the allegations made in Mr. Kutz's original written testimony. In fact, concerns about the process that resulted in these errors led the GAO to reorganize its Forensics Audits and Special Investigations Division and reassign Mr. Kutz.

The individual examples cited in the Majority Staff Report were not among those included in the revisions. However, the extent of the revisions elsewhere in Mr. Kutz's testimony has cast significant doubt on the overall accuracy and objectivity of the investigation. Moreover, dismissing the severity of these concerns, while only highlighting select portions that were not revised, ignores the high standards Congress places on the GAO to provide objective and factually accurate reports to inform its work. Therefore, any reliance on Mr. Kutz's testimony not only weakens the findings of the Majority Staff Report, it raises questions about the legitimacy of any legislative activity the committee develops as a result of the report.

**III. Majority committee staff directly participated in the drafting of witness testimony before the committee.**

On August 4, 2010, the committee heard the testimony of Joshua Pruyn, a former employee of

Westwood College. Mr. Pruyn testified to the committee about alleged aggressive recruiting practices he participated in while employed by Westwood College. However, the veracity of Mr. Pruyn's testimony is undermined by documents showing that he received assistance from members of the majority committee staff and staff from The Institute for College Access and Success (TICAS), a public interest group that testified in two other HELP hearings on this subject. On July 21, 2011, the *Daily Caller* produced e-mails in which majority staff drafted answers for Mr. Pruyn to provide to the committee if asked about his ties to a law firm suing Westwood College. On July 26, 2011, the *Daily Caller* produced excerpts of additional e-mails that showed Mr. Pruyn's written testimony had been edited by members of the majority staff, as well as by staff from TICAS. Furthermore, Westwood subsequently submitted documentation to the committee contradicting parts of Mr. Pruyn's testimony. In order for the committee's work to be viewed as valid, committee members must be assured that witnesses provide testimony to the committee that is truthful and in their own words.

#### **IV. The majority has mischaracterized facts and may have harmed the committee's ability to conduct future investigations.**

Andrew Clark, CEO of Bridgepoint Education declined an invitation to testify at the committee's March 10, 2011 hearing titled, "Bridgepoint Education, Inc.: A Case Study in For-Profit Education and Oversight." In correspondence to the majority staff, Mr. Clark expressed concerns about testifying before the completion of an ongoing audit process by the Department of Education. However, in a March 1, 2011 response on committee letterhead, the then-majority staff director stated that "you should be aware that it will be made clear at the hearing that your failure to appear is based on nothing other than your own apparent unwillingness to testify regarding how a company that receives over 86 percent of its revenues from the Federal Government saw a 1-year increase in profit from \$81 to \$216 million, but also has student withdrawal rates of at least 65 to 75 percent." As has been previously stated, witness testimony must be truthful to ensure the soundness of the committee's work. The majority staff's hostile letter indicating that the Chairman would mischaracterize Mr. Clark's stated reasons for not appearing is not only a demonstration of a willingness to prejudice a potential witness' testimony, it also raises questions about the majority's desire to provide committee members with all of the facts.

Additionally, the investigation has cited documents out of context to suggest improper motivations or embarrass institutions and their management. On two separate occasions, the majority cited an unsolicited proposal prepared by a third-party consultant who was seeking to be hired by one for-profit school. The proposal, which discussed the recruitment of veterans and military service members, had been voluntarily provided to the committee by the school, but was never implemented by the school. Nevertheless, the majority staff relied on the document twice to inaccurately suggest that the school had implemented aspects of the proposal, despite being cautioned by the minority staff to confirm the accuracy and context of the document.

Finally, some schools have indicated that their proprietary and sensitive business information was not treated with the expectation of confidentiality under which it was voluntarily provided to the committee. Many schools in their cover letters providing documents to the committee said they understood or requested that certain information not be disclosed to the public or third parties. Although the majority asserts that no assurances were given regarding the confidentiality of documents, a number of law firms representing these institutions have indicated in writing to the majority that such assurances were indeed made. And, while the majority did offer consultations with the schools for this report, a significant amount

of information was released previously without any such consultations, and many concerns about confidential information were ignored for this report as well. Accordingly, the majority's selective mischaracterization of information and disclosure of confidential and proprietary information has the potential to do lasting harm to the committee's ability to conduct effective investigations in the future.

**V. The majority has refused repeated requests to provide context by examining similar problems at public and private non-profit institutions of higher education.**

Many of the issues identified by the investigation are a part of a much larger problem that is not limited to for-profit institutions of higher education. Across all sectors of higher education, average student debt has increased to \$25,250, fewer than half of all graduates have found work within 12 months of graduating, and nearly 40 percent of recent graduates are working in jobs that do not require a college degree. The urgency of these problems has been discussed at length in the press as well as in a number of academic studies, including a May 12, 2012 *New York Times* article titled, "A Generation Hobbled by the Soaring Cost of College." Much of that article focuses on the debt students have incurred as a result of soaring tuition at public and non-profit institutions, including students who recently graduated with debts of \$65,000, \$80,000 and \$120,000. Indeed, the article points out that, "With more than \$1 trillion in student loans outstanding in this country, crippling debt is no longer confined to dropouts from for-profit colleges or graduate students who owe on many years of education, some of the overextended debtors in years past." Moreover, the article indicates that many public and non-profit institutions, like some of the for-profit institutions the investigation has highlighted, are aggressively recruiting students, irrespective of their financial situations.

By failing to examine similar problems at public and non-profit institutions, which serve 90 percent of all postsecondary students, committee members have been given no perspective to judge which problems are limited to the for-profit sector and which exist throughout all institutions of higher education. Without that perspective, the committee simply does not have a meaningful record upon which it can legislate constructive solutions that benefit all students.

In conclusion, it is clear that significant problems exist within the for-profit sector. The majority rightfully decided to examine questions of student indebtedness, the role of accreditation and recruiting practices in institutions of higher education. However, the decision to limit this examination to the for-profit sector alone has resulted in an incomplete record upon which to judge the challenges faced by today's students. Moreover, the partisan nature with which the majority has chosen to carry out this investigation has resulted in numerous examples of malpractice that have plagued this inquiry. These examples are troubling under any circumstance, but when viewed cumulatively, they demonstrate a disturbing pattern of abuse that has damaged the credibility of the committee. For these reasons, the overall accuracy and validity of the information contained in the Majority Staff Report is in doubt and should not be used as the basis for any legislative action by the committee.

The minority members of the committee remain willing to work with the majority to develop an objective process to meaningfully reform the Federal Government's commitment to higher education. But if that process is to be successful, the committee must be willing to act in a way that leaves no doubt about the legitimacy of the process.