

Disrupting College – Higher Education at a Crossroads

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I. Introduction

Higher education in the United States is at a crossroads. All evidence is that the US will continue to lose global standing and the middle class will continue to shrink unless the US dramatically increases its higher education attainment rate. However, the current market for higher education is plagued by regulatory inefficiencies and anticompetitive tendencies, chief among them the skyrocketing cost of a college education. These market inefficiencies create significant barriers to entry for innovators seeking to offer high quality, low cost options in higher education. There is an urgent need for action, be it regulatory or voluntary, to level the playing field and allow students to benefit from recent innovations in technology.

II. Higher Education: More Important Than Ever In Today's Global Economy, But The US Is Falling Behind.

a. *Higher Education is Necessary to Achieve Financial Stability in Today's Global Economy*

In today's knowledge-based economy, education is a prerequisite to attaining a middle class lifestyle. The income gap between college graduates and those who have only a high school education or GED is significant and is increasing at an accelerated pace.¹ The Bureau of Labor Statistics projects that over the next decade, the number of jobs requiring higher educational attainment will grow much faster than those with lower education requirements, with the fastest growth among occupations that require an associate's degree.² In contrast, the number of manufacturing jobs will continue to decrease, in part because globalization allows companies to produce goods in countries with dramatically lower costs of labor.³ Thus, American workers must obtain an increasingly higher level of education and skills in order to break out of the low wage stagnation that continues to plague unskilled workers.

b. *Once a Global Leader in Higher Education Attainment, The US is Failing to Keep Up*

College completion rates accelerated dramatically after World War II, increasing from only 5.4% in 1947 to 26% by the year 2000,⁴ in large part due to increased access as a result of the GI Bill and the Higher Education Act of 1965.⁵ But since the late 1990s, college completion rates have stagnated.⁶ While the US once led industrialized nations in the percentage of adults ages 25 to 34 who had obtained at least an associate's degree, we are now a disappointing 10th among OECD member nations.⁷ Though multiple factors have contributed to this negative trend, the most significant is cost. The average cost of tuition and fees at a public four-year college has increased 359% percent in constant dollars since 1980. Likewise, community colleges have seen enormous tuition increases – a 263% percent increase over the same time period.⁸ In this time,

median family income has stagnated,⁹ making the cost of college an increasing strain on family finances. While it was once possible to obtain a college degree without assuming near mortgage-like levels of debt, that is no longer the case. Sixty-six percent of bachelor's degree recipients graduate with debt, and 25 percent of those individuals borrow more than \$30,500.¹⁰ Twenty-five percent of all bachelor's degree recipients graduate with more than \$24,000 in debt.¹¹ These debt burdens are all the more onerous in today's economy, where even college graduates have significantly higher unemployment rates than in previous years.¹² Even worse, the cost of a college degree in the US is higher than in all other OECD member nations,¹³ which creates yet another obstacle to the US regaining its leadership position in education.

c. Dramatic Change is Necessary for the US to Meet Its Higher Education Attainment Goal

Clearly, small changes to a stagnant and struggling system, in which students pay ever higher tuition in return for little incremental benefit, are insufficient to allow the US to maintain its leadership in the global economy. This is the time for dramatic innovation, similar to the revolutionary changes that have occurred in recent years in other information and communication industries. For example, in music, movies, and telephone service, dramatic and disruptive new technologies have disaggregated what had previously been bundled services and forever changed the way consumers obtain and use content and services. In each, the change frightened traditional stakeholders, but in each case, consumers benefited from the enormous increase in accessibility, options, features, and efficiency of delivery. And contrary to the dire predictions of the "old guard" at the inception of these technology-driven transformations, these industries have not withered, though the players may have changed. Rather, they have been strengthened through innovation, finding increasingly more precise ways to target consumers and customize their products to consumers' preferences while driving down prices to consumers.

III. Today's Higher Education Incumbents Hurt Students By Stifling Innovation

The normal market process, in which sellers compete for buyers' dollars by offering quality products at reasonable prices, has not occurred in higher education. Instead, traditional institutions operating under an antiquated regulatory regime have banded together to exclude innovators from the market. Unsurprisingly, prices remain high and continue to increase, quality measures have stagnated, students suffer, and the US loses its competitive standing.

a. The Current System Dates to World War II and Has Not Adapted to New Technology

The current higher education regulatory system was created just after World War II and has remained essentially unchanged since that time, enabling what is effectively an oligopoly to flourish. Under the current system, higher education tuition is subsidized in a number of ways: direct grants to students from the federal government, federally subsidized loans to students, direct grants to colleges from state governments, and the non-profit tax status of many institutions. When enrolling in college, prospective students rationally prefer to rely on some

combination of these subsidies in order to reduce their out of pocket costs. But in almost all instances, students can use those education subsidies only at providers who undergo the lengthy and expensive accreditation process – that is, at accredited institutions. And, the accreditors are funded and staffed by the colleges that are already accredited. Entrenched incumbents with access to taxpayer largesse have little motivation to see the hallmarks of industry disruption – price reduction, product disaggregation and new competition – in their industry. Perhaps this explains why accreditation remains only open to education providers that resemble a centuries-old model of a traditional institution. Indeed, it is not possible for a radically different provider (one that resembles an iTunes rather than a Tower Records) to receive accreditation, regardless of quality or value to students.¹⁴

b. *Technological Advances are Changing Higher Education, Highlighting Significant Deficiencies in the Current Regulatory System*

For more than forty years, the inherent conflicts of interest and above referenced limitations of the accreditation process have been present, but of little consequence. Because almost all students had to attend a traditional college – that is, a college with a physical campus and residential faculty – students had limited opportunities to disaggregate the college experience by taking classes from multiple providers. Transfer policies were opaque, but more importantly, it was inconvenient and costly to take courses at multiple physical locations. With advances in technology, this has begun to change. A good example is that online courses are now ubiquitous, both at traditional campus-based colleges and at newer online education providers. A recent survey of 2,500 colleges found that 5.6 million students were enrolled in at least one online course in 2009, an increase of more than one million students from the prior year.¹⁵ Freshman level courses, which are largely standardized and which represent nearly one-third of all college credits delivered,¹⁶ are particularly well-suited to online delivery, and many traditional universities are offering these courses online and in some instances, forcing students to take them online rather than in the classroom.¹⁷ However, even though online courses cost substantially less to deliver to students,¹⁸ many universities still charge as much or more for online courses as they do for traditional classroom-based courses.

If the market were operating efficiently, innovative providers would compete to offer courses for a price that more closely reflects the actual cost of delivery, and students could rationally choose courses from providers offering the best combination of price and quality and apply the credits toward an eventual degree. However, as noted above, students are unable to apply their education subsidy dollars toward individual courses. Rather, students can only apply those dollars at the institutional level, and only at institutions that are accredited. And because accreditation has created an effective barrier to entry, the “club” of accredited institutions has no incentive to reduce the prices it charges to students, and students are left with a “Morton’s fork”: pay what accredited institutions say they can afford (after examining students’ personal and family finances in detail) or pay out of pocket for courses from a different type of education provider.

IV. Innovators Are Trying To Break The Oligarchy, But Entrenched Traditionalists Are Resisting

a. Students Need Not Continue to Suffer Under Increasing Tuition Hikes – Innovators Exist

The Morton's fork is not without possible solutions, and some innovators are determined to offer affordable college level courses. StraighterLine, Inc. is just such an example. StraighterLine offers online freshman level courses at \$99 per month + \$39 per course or a freshman year's worth of courses for \$999, prices that are half of those at most community colleges and less than a quarter of the typical cost of a 4-year public college.¹⁹ Further, unlike accredited colleges, these prices include no state or federal subsidies. StraighterLine's courses have been reviewed by a variety of respected and established organizations, among them the American Council on Education (ACE)'s Credit Recommendation Service,²⁰ the Distance Education and Training Council²¹ and the College Board.²² However, because StraighterLine doesn't look enough like a traditional, degree-granting institution (and therefore cannot seek accreditation), students have no ability to use their education subsidies toward StraighterLine courses and thus must pay entirely out of pocket. Even worse, notwithstanding the recommendations of the independent reviewing agencies referenced above, colleges frequently refuse to award credit for StraighterLine's courses (without so much as a moment's review of those courses) simply because StraighterLine is not accredited. Never mind that the accreditation system does not allow any way for it to become accredited or that this protects from any real price competition an industry whose prices have increased at a greater rate than health care over the past 25 years.²³ Even with these meaningful "innovation taxes" students are still electing to take StraighterLine courses because of the enormous cost savings StraighterLine provides.²⁴

b. Members of the Higher Education Oligarchy Hurt Students by Resisting Innovators Like StraighterLine

StraighterLine has found a small breach in the fortified walls of traditional higher education. StraighterLine has partnered with more than 25 accredited institutions, each of which have reviewed its courses and agreed in advance to accept StraighterLine courses for credit (much like a community college might have an articulation agreement with a four-year institution to ensure that its students understand how credits transfer). While StraighterLine's partner colleges have demonstrated a commitment to innovation and affordability, the current accreditation system permits traditionalist higher education providers to decline to award transfer credit for StraighterLine courses without ever reviewing the courses themselves. This is so even though even though all StraighterLine college-level courses are ACE-recommended and a huge number of institutions profess to award credit for such courses.²⁵ How is this market inefficiency possible? The same antiquated accreditation system that keeps innovators out also gives every institution of higher learning the ability to create confusing, burdensome, and inefficient transfer

credit policies that operate to the detriment of students. While some states have laws in place mandating that certain credits transfer among in-state institutions,²⁶ such statutes are necessarily of limited applicability and do not address the myriad issues presented by new technology, innovations and innovators.

V. A Level Playing Field Is Necessary To Allow Students To Benefit From Innovative Higher Education Providers.

The inefficiency of the higher education market would be bad enough if the US were the global leader in higher education. But, as discussed above, the US continues to pay increasingly higher prices for increasingly worse results. The US cannot expect to produce an additional 5 million college graduates by 2020 by continuing to operate under a dated and inefficient regulatory system. Action is necessary to create a level playing field in which the market functions efficiently. If the US is serious about increasing college completion rates, it must create a market in which students can take college courses from the provider best suited to their needs and be assured that the credits will transfer to the degree-granting institution to which a student eventually matriculates. Students should not be forced to guess whether a college will eventually award credit for courses taken elsewhere, nor should students be made to navigate a maze of paperwork and opaque standards for transferability. It is entirely feasible – and indeed, eminently sensible – to create a system by which standard, general education undergraduate credits receive an independent certification of transferability to any college.

The existence of the American Council on Education’s Credit Recommendation Service is an indicator of the need for a uniform, independent review system. Though an enormous number of colleges participate in the ACE CREDIT College and University Network,²⁷ participation is voluntary and colleges retain ultimate discretion whether to award credit for any particular course. Colleges may also say they award credit for a course, but then enact policies to remove its value. For instance, a college may award credit but then say the transferred credit will not be counted against the requirements to complete the student’s major. Thus, students have no assurance that a college will actually accept an ACE-recommended course, and no redress if colleges decline to award credit.

There are many possible means of correcting the market inefficiency. Options include creating a path for accreditation at the course level, requiring colleges that receive federal or state financing (including through student loans) accept for credit ACE-recommended courses (or courses receiving a similar independent agency approval), establishing a voluntary system to the same effect (though this has not worked to date), allowing students to use their financial aid for any courses that have received ACE or similar recommendation, or some combination of the above.

Competition among providers will result in price competition, which will in turn result in a more productive educational delivery system. Students must be allowed to benefit from the

economic efficiencies brought about by technological advances in higher education, and only by allowing students to do so and thereby dramatically increasing access to higher education, will the US regain its global leadership position in higher education.

VI. Conclusion

There can be no debate about the importance of higher education attainment in maintaining the US position as the global economic and innovation leader. However, the current market is plagued by inefficiencies, the most problematic being dramatically increasing costs and only marginal increases in benefit, that result from the anticompetitive nature of higher education. Students continue to suffer under the entrenched relic that is today's regulatory system for higher education, forced to assume ever more debt to obtain a college education. The presence of innovators is proof that efficiencies exist and can be leveraged for the benefit of students, but there must be a level playing field before the full benefits of innovation can be realized. A uniform general education course-level accreditation system and a transparent credit transfer process are two urgently necessary reforms. The current higher education will not survive in today's global economy. The only question is how much global standing the US is willing to lose before taking action.

¹ Data from the National Center for Education Statistics indicates that in 2008, the average male high school graduate earned \$39,010, while the average male who had attained a bachelor's degree earned \$65,800, a 68% increase. This is a significant increase from the income gap in 1990, which was only a 48% difference (\$26,650 for high school graduates compared to \$39,240 for those with bachelor's degrees). The data are similar for women (a 65% differential in 2008 versus a 52% difference in 1990). See T.D. Snyder and S.A. Dillow, *Digest of Education Statistics 2009*, NCES 2010-013 (2010) at p. 560; National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC (2009). Available at http://nces.ed.gov/programs/digest/d09/tables/dt09_384.asp

² <http://www.bls.gov/opub/mlr/2009/11/art5full.pdf> at p. 88. Jobs requiring an associate's degree are projected to have the highest overall rate of growth, at 19.1% from 2008-2018. In addition, jobs requiring a bachelor's degree or other form of post-secondary education, including masters and professional degrees, are also projected to have a significantly higher rate of growth (13.2% - 18.3%) than those without such educational requirements (7.5% - 8.1%). *Id.*

³ <http://www.bls.gov/opub/mlr/2009/11/art5full.pdf> at 87-88. The BLS projects that "production occupations" (primarily manufacturing jobs, see <http://www.bls.gov/oco/oco1010.htm>) will decline by 3.5% from 2008-2018. This is unsurprising, given the extremely low labor costs of nations such as China and India, which have hourly labor costs of only 4% and 3% respectively of US labor. See <http://www.bls.gov/news.release/pdf/ichcc.pdf> at 4. Closer to home, Mexico has labor costs of only 13% of the average US hourly labor cost. *Id.* at 6.

⁴ *Educational Attainment in the United States: March 2000* (Current Population Reports, P20-536), available at <http://www.census.gov/hhes/socdemo/education/data/cps/2000/p20-536.pdf> and *Educational Attainment of the Population: April, 1947* (Population Reports, Series P-20, No. 6), available at <http://www.census.gov/hhes/socdemo/education/data/cps/1947/p20-06.pdf>

⁵ <http://chronicle.com/article/America-Falling-Longtime/48683/>

<http://www.higheredinfo.org/dbrowser/?year=2008&level=nation&mode=graph&state=0&submeasure=24> (US average three-year graduation rate for associate degree students fell from 28.6% in 1997 to 27.5% in 2008)

⁷ *Education at a Glance: 2010*, Organization for Economic Co-operation and Development (2010) at Table A1.3a.

⁸ The College Board, *Trends in College Pricing 2009*, (2010) at 13. Available at http://trends.collegeboard.org/downloads/College_Pricing_2010.pdf

⁹ The median family income in 1980 was of \$21,020 in 1980 and \$49,777 in 2009 (\$19,121 in inflation adjusted dollars). U.S. Census Bureau, *Money Income and Poverty Status of Families and Persons in the United States: 1980*, Current Population Reports, Series P-60 (1980) (available at <http://www2.census.gov/prod2/popscan/p60-127.pdf>); DeNavas-Walt, Carmen, Bernadette D. Proctor, and Jessica C. Smith, U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2009*, Current Population Reports (2010) at P60-238. Available at <http://www.census.gov/prod/2010pubs/p60-238.pdf>

¹⁰ <http://advocacy.collegeboard.org/sites/default/files/Trends-Who-Borrows-Most-Brief.pdf>

¹¹ <http://advocacy.collegeboard.org/sites/default/files/Trends-Who-Borrows-Most-Brief.pdf>

¹² The unemployment rate for individuals who held at least a bachelor's degree was 4.6% in 2009, nearly double the 2.6% rate in 2008. <http://www.bls.gov/cps/cpsaat7.pdf>

¹³ *Education at a Glance: 2010*, Organization for Economic Co-operation and Development (2010), available at

http://www.oecd.org/document/52/0,3343,en_2649_39263238_45897844_1_1_1_1,00.html#d

¹⁴ Many commentators have argued that an institution's accreditation status is not a meaningful reflection of quality, and there is ample evidence to suggest they are correct. See, e.g., Andrew Gillen, Daniel L. Bennett, and Richard Vedder, *The Inmates Running the Asylum? An Analysis of Higher Education Accreditation*, Center for College Affordability and Productivity (October 2010) at 10-13, available at <http://www.centerforcollegeaffordability.org/uploads/Accreditation.pdf> (observing, *inter alia*, that accreditation has largely failed as a means of certifying a minimum quality of an institution, noting that in 2003-2008, the percentage of community colleges either sanctioned or warned that they were in danger of losing accreditation ranged from 0 to 6 percent, and that only one community college lost accreditation in that time period); Anne D. Neal, *Asking Too Much (And Too Little) Of Accreditors*, Inside Higher Ed (November 12, 2010), available at <http://www.insidehighereducation.com/views/2010/11/12/neal> (arguing that “[t]he existing accreditation system has neither ensured quality nor ferreted out fraud . . . [b]ecause Congress didn’t want it to. If Congress truly wants to protect the public interest, it needs to create a system that ensures real accountability.”). Even the Council for Higher Education Accreditation (CHEA) has provided a statement to its members calling for institutions and accreditors to assure that transfer decisions are not made solely on the source of accreditation of a sending program or institution, and while acknowledging that accreditation is an important factor, stating that there should be reasonable explanations about how work offered for credit is or is not of sufficient quality when compared with the receiving institution and how work is or is not comparable with curricula and standards to meet degree requirements of the receiving institution. See Council for Higher Education Accreditation, *A Statement to the Community: Transfer and the Public Interest* (November 2000) (also stating goal that transfer be “as efficient and effective as possible for those students who have had courses or educational experiences comparable to those offered for credit by receiving institution”). CHEA is an association of 3,000 degree-granting colleges and universities and recognizes 60 institutional and programmatic accrediting organizations. The US Government Accountability Office (GAO) reiterated this call and criticism of the still prevalent use of source of accreditation as the sole basis for credit transfer decisions. See US Government Accountability Office, *Transfer Students: Postsecondary Institutions Could Promote More Consistent Consideration of Coursework by Not Basing Determinations on Accreditation*, GAO-06-22 (October 2005).

However, and of far more relevance in today's disaggregated technology environment, the accreditation process is entirely ill-suited to measure individual course quality. First, accreditors do not evaluate individual courses. They review institutions as a whole, which is a second order review borne of a time when most courses were delivered via the "sage on the stage" and accreditors had to make do with institutional review because there was no practical way to conduct course-level reviews (such as now exists with online courses). Moreover, it is axiomatic that there is a wide range of quality among institutions, and among individual courses at an institution – the wildly lucrative rankings industry is a strong indicator that consumers do not rely on accreditation status to provide nuanced evidence of quality. Indeed, there is a huge variance among accredited institutions – including some with graduation rates in the single digits and teens. See Frederick M. Hess, Mark Schneider, Kevin Carey, and Andrew P. Kelly, *Diplomas and Dropouts: Which Colleges Actually Graduate Their Students (and Which Don't)*, Table 2, American Enterprise Institute (June 2009) (available at <http://www.aei.org/docLib/Diplomas%20and%20Dropouts%20final.pdf>). Second, and of critical importance here, there are no objective standards about what constitutes course quality or satisfactory student performance within the accreditation review. Thus, to the extent accreditation serves a useful proxy to distinguish among the quality of various institutions (which is doubtful), it is essentially useless at determining the quality of individual courses. The result is that students suffer under the current accreditation rules, paying ever increasing prices for the same courses and the product can't be easily disaggregated.

¹⁵ I. Elaine Allen and Jeff Seaman, *Class Differences: Online Education in the United States, 2010*, Babson Survey Research Group (November 2010). Available at http://sloanconsortium.org/publications/survey/pdf/class_differences.pdf

¹⁶ See Carol A. Twigg, *Course Readiness Criteria: Identifying Targets of Opportunity for Large-Scale Redesign*, Educause Review (May/June 2000) at p. 42.

¹⁷ For example, the University of North Carolina at Chapel Hill, the state's flagship university, now forces all first-year Spanish students to take their courses online. See Trip Gabriel, *Learning in Dorm, Because Class Is on the Web*, The New York Times (November 4, 2010) at A1, available at <http://www.nytimes.com/2010/11/05/us/05college.html?pagewanted=all>

¹⁸ For example, the University of Texas has found the cost of online course delivery to be substantially less than that of classroom learning. See Darcy W. Hardy, Rob Robinson, *Comparing Delivery Costs: Online vs. Face-to-Face Courses* (ID: EDU04103), EDUCAUSE Annual Conferences (October 21, 2004).

¹⁹ The average tuition and fees for US community colleges in 2009-2010 was \$2,558. However, community colleges in California, which enroll 16% of all community college students, are substantially less expensive than those in the rest of the country. The average 2009-2010 tuition and fees for community colleges outside California was \$3,076. The College Board, *Trends in College Pricing 2009* (2010) at 13. Available at http://trends.collegeboard.org/downloads/College_Pricing_2010.pdf. The average 2009-2010 tuition and fees at a public four-year college (in-state) was \$7,605 (out-of-state average tuition and fees at public four-year colleges was \$19,595 while the average tuition and fees at proprietary colleges was \$13,935). *Id.*

²⁰ The American Council on Education (ACE)'s College Credit Recommendation Service (ACE CREDIT) helps students gain access to academic credit for formal courses and examinations taken outside traditional degree programs. For decades, colleges and universities have trusted ACE to provide reliable course equivalency information to facilitate credit award decisions. Participating organizations besides StraighterLine include corporations, professional and volunteer associations, schools, training suppliers, labor unions and government agencies. ACE has reviewed and recommended all 30+ of StraighterLine's college-level courses (these college-level courses are at the "100" level and higher and are typical of the general education courses offered at nearly every college), see

<http://www2.acenet.edu/credit/index.cfm?fuseaction=browse.getOrganizationDetail&FICE=1006628>.

Although this means the 1200+ member colleges and universities of the ACE CREDIT network should

accept these StraighterLine courses for transfer credit, every college and university retains unfettered discretion to accept credit or not for ACE CREDIT recommendations.

²¹ The Distance Education and Training Council (DETC) is a federally recognized accrediting association for distance education and training institutions worldwide. At StraighterLine’s request, DETC agreed to review its courses (something no other accrediting body has been willing to do) and determined that they “meet DETC’s standards for online learning.” Because StraighterLine provides courses rather than degrees or programs, it is not eligible to be reviewed for DETC accreditation.

²² Four of StraighterLine courses have been reviewed and authorized by the College Board as AP Program courses. More than 90 percent of four-year colleges in the United States and colleges in more than 60 other countries give students credit, advanced placement or both on the basis of AP Exam scores. The College Board has an audit process it created at the request of both secondary schools and college members of the College Board who sought a means for the College Board to (1) provide AP teachers and administrators with clear guidelines on curricular and resource requirements that must be in place for AP courses and (2) give colleges and universities confidence that AP courses are designed to meet the same clearly articulated college-level criteria across high schools.

²³ The National Center for Public Policy and Higher Education, *Measuring Up 2008* (2008).

²⁴ In its second full year as an independent company, StraighterLine is on pace to enroll more than 4500 students.

²⁵ StraighterLine also offers 2 remedial courses (Introductory Algebra, MAT 099; and Developmental Writing, ENG099), which are intended for college preparatory work, and therefore have not been submitted for ACE to consider for college credit recommendation. Students nonetheless find these offerings valuable, because they are a cost effective way for students to ready themselves for college coursework: nearly all community colleges charge exactly the same tuition for remedial courses (for which they do not award college credit) as for college-level courses.

²⁶ See, e.g., Ky. Rev. Stat. Ann. § 164.583 (mandating transferability of “lower division” undergraduate credits between community colleges and four-year universities); see generally http://www.aacrao.org/pro_development/transfer.cfm (compiled list of state transfer and articulation websites).

²⁷ See <http://www2.acenet.edu/credit/?fuseaction=content.getCollegesUniversities>