Institutional Design And Regulatory Burden:
Evidence From Student Financial Aid

IHELG Monograph
15-12

Andrew B. Whitford*
Alexander M. Crenshaw Professor of Public Policy
Department of Public Administration and Policy
University of Georgia
204 Baldwin Hall
Athens, GA 30602
706-542-2898
aw@uga.edu

Janet S. Whitford
Managing Partner
Informative Analytics
janetwhitford@gmail.com

* Corresponding author

©, 2015, Andrew B. Whitford and Janet S. Whitford
University of Houston Law Center/Institute for Higher Education Law and Governance (IHELG)

The University of Houston Institute for Higher Education Law and Governance (IHELG) provides a unique service to colleges and universities worldwide. It has as its primary aim providing information and publications to colleges and universities related to the field of higher education law, and also has a broader mission to be a focal point for discussion and thoughtful analysis of higher education legal issues. IHELG provides information, research, and analysis for those involved in managing the higher education enterprise internationally through publications, conferences, and the maintenance of a database of individuals and institutions. IHELG is especially concerned with creating dialogue and cooperation among academic institutions in the United States, and also has interests in higher education in industrialized nations and those in the developing countries of the Third World.

The UHLC/IHELG works in a series of concentric circles. At the core of the enterprise is the analytic study of postsecondary institutions—with special emphasis on the legal issues that affect colleges and universities. The next ring of the circle is made up of affiliated scholars whose research is in law and higher education as a field of study. Many scholars from all over the world have either spent time in residence, or have participated in Institute activities. Finally, many others from governmental agencies and legislative staff concerned with higher education participate in the activities of the Center. All IHELG monographs are available to a wide audience, at low cost.

Programs and Resources

IHELG has as its purpose the stimulation of an international consciousness among higher education institutions concerning issues of higher education law and the provision of documentation and analysis relating to higher education development. The following activities form the core of the Institute’s activities:

Higher Education Law Library

Houston Roundtable on Higher Education Law

Houston Roundtable on Higher Education Finance

Publication series

Study opportunities

Conferences

Bibliographical and document service

Networking and commentary

Research projects funded internally or externally
INSTITUTIONAL DESIGN AND REGULATORY BURDEN:
EVIDENCE FROM STUDENT FINANCIAL AID

Andrew B. Whitford*
Alexander M. Crenshaw Professor of Public Policy
Department of Public Administration and Policy
University of Georgia
204 Baldwin Hall
Athens, GA 30602
aw@uga.edu
706-542-2898

Janet S. Whitford
Managing Partner
Informative Analytics
janetwhitford@gmail.com

* Corresponding author
INSTITUTIONAL DESIGN AND REGULATORY BURDEN: EVIDENCE FROM STUDENT FINANCIAL AID

Abstract

There has been much debate over the past several years about the financial burden of attending college. At the same time, the growth of for-profit institutions has led some to call for more stringent regulation of access to federal financial aid. In this paper, we first review general concerns about the regulatory environment for student financial aid. We then describe a unique data source on the regulatory burden imposed on universities and colleges that administer financial aid programs of the federal government. We argue that both researchers and practitioners should focus on the regulatory environment as a window on the fuel that feeds the institutional design of universities and colleges.
INSTITUTIONAL DESIGN AND REGULATORY BURDEN: EVIDENCE FROM STUDENT FINANCIAL AID

At the beginning of the second decade of the 2000s, growing attention to issues in the financial aid regulatory space caused governments and interest groups to call for enhanced regulation of for-profit, public, and private educational institutions. Three notable reports from the U.S. Government Accountability Office (GAO) pointed to substantial worries about the ability and willingness of providers in higher education markets to convince students to take on substantial debt in the pursuit of degrees (U.S. Government Accountability Office, 2009, 2010a, 2010e).

For instance, in the case of proprietary schools, GAO noted, “Students are required to pass a test of basic math and English skills or have a high school diploma or GED to qualify for federal student aid. Yet, GAO and others have found violations of these requirements. For example, when GAO analysts posing as prospective students took the basic skills test at a local proprietary school, the independent test administrator gave out answers to some of the test questions. In addition, the analysts’ test forms were tampered with – their actual answers were crossed out and changed – to ensure the individuals passed the test” (U.S. Government Accountability Office, 2009).

In the case of an investigation of for-profit colleges, GAO noted that, “Undercover tests at 15 for-profit colleges found that 4 colleges encouraged fraudulent practices and that all 15 made deceptive or otherwise questionable statements to GAO's undercover applicants. Four undercover applicants were encouraged by college personnel to falsify their financial aid forms to qualify for federal aid – for example, one admissions representative told an applicant to fraudulently remove $250,000 in savings. Other
college representatives exaggerated undercover applicants’ potential salary after graduation and failed to provide clear information about the college’s program duration, costs, or graduation rate despite federal regulations requiring them to do so” (U.S. Government Accountability Office, 2010a).

More generally, following an earlier study of the proliferation of incentive compensation for student recruiters, GAO pointed its finger squarely at the U.S. Department of Education (ED) for failures in its oversight of such programs across a wide array of higher education organizations: that while “Education has processes to monitor schools for potential violations … its methods to detect violations and track monitoring activities are limited,” and that substantial changes were needed “to strengthen Education’s monitoring and enforcement of the incentive compensation ban and to help protect students and the federal investment in their education” (U.S. Government Accountability Office, 2010e).

The problems of higher education and financial aid are widely discussed in the popular press, and for good reason: the U.S. federal government holds a roughly $1.1 trillion student-loan debt portfolio, and while some movement has occurred with regard to debt forgiveness and loosening the rules about debt discharge through bankruptcy (Mitchell, 2015), the federal government has substantial issues in simply estimating the size of that portfolio and the potential impact of proposed forgiveness programs (Mitchell & Fuller, 2015).

The purpose of this paper is to consider the general problem of regulation of student financial aid, and its implementation via networks of higher education organizations in concert with public and private lenders, from the lens of “regulatory
“burden”. It has become fashionable to speak of the procedures for joint implementation of this system in terms of burden. For example, a 2013 study from the National Association of Student Financial Aid Administrators, entitled “Getting It Right: Analyzing the Accuracy of Federal Burden Estimates for Title IV Financial Aid Compliance,” described the situation as one-sided. In their view, “greater transparency from the Department of Education would allow for a more detailed understanding of how burden estimates are calculated. It would also form a solid basis for constructive dialogue on how to ensure that estimates reflect, with more representative accuracy, the effort that school financial aid offices must undertake for the purpose of compliance” (National Association of Student Financial Aid Administrators, 2013).

The problem, of course, is that one person’s “regulatory burden” is another person’s “protection against predatory market practices”. Historically, regulation has sought to balance competing goods. On one hand, markets are powerful mechanisms for assembling and using resources to provide goods and services demanded by the public. On the other hand, given market imperfections, citizens often demand that governments protect people from market actors that use those imperfections for their own benefit. In the case of student financial aid, though, this balancing act is complicated by the unique role of the federal government as a large provider of financial assistance to students. Effectively, in many cases, the federal government has become almost a monopsonistic purchaser of education for students, although, in the end, students are ultimately responsible for repaying government loans and other debt incurred in the search for educational attainment.
We begin this paper with a review of the development of regulatory burden as a general problem in the relationship between states and markets. Following that, we offer the financial aid policy space as a special regulatory environment, and consider the general structure of that space given the typical treatment of regulation in our understanding of business-government relations. In that section, we review the types of evidence that exist about the financial aid regulatory environment, and then provide evidence on regulatory burden as a general problem in this area. We also consider the possibility that higher education’s market segments are differentially regulated – that some segments are over-regulated, and others are under-regulated. Finally, in the last section we reflect on the problem of interpreting and managing regulatory burden in higher education markets, with special attention to the question of whether differential regulation changes the incentives of different market actors.

THE CURIOUS CONCEPT OF REGULATORY BURDEN

In this section, we briefly review the theory of regulation to introduce regulatory burden as a core concept in assessing the evidence about the student financial aid regulatory environment in the U.S.

Our starting point is the claim that the higher education system is a compilation of markets of varying shapes, sizes, and constructions. This claim is not immune to critique, for many have argued that this evolution – this “restructuring [of] higher education as a market rather than a regulated public sector” – is a new competitive environment (Newman, Couturier, & Scurry, 2004, xi). Yet, in important ways those who have
focused on this institutional change in our organizational arrangements for providing higher education have missed the point of these changes. One way this change has been characterized is that “The result is an evolution of the higher education sector toward operating far more as a market, with universities and colleges competing to supply the service of education, as opposed to the concept of higher education as a public sector structured principally by government regulation” (Newman et al., 2004, 2). The upshot of this view is that while “in the old world, government would tend to depend on regulations to control costs”, now government relies on competition (Newman et al., 2004, 2).

In important ways this view is naïve about the role of regulation in sustaining markets. A more nuanced view is that regulation is fundamental to the functioning of all markets, that forces outside market actors shape competition both in the short- and long-term, and that all market actors have incentives to shape that competitive environment to benefit their own competitive positions. This view is well-described by David Baron in his *Business and its Environment* (Baron, 2012).

Baron summarizes it in this way: “The causes of these problems are frequently found not in a company’s market environment but instead in forces outside its markets. Indeed, for many companies, market success depends not just on their products and services, the efficiency of their operations, their internal organization, and the organization of their supply chains, distribution channels, and alliance networks. Success also depends on how effectively they deal with governments, interest groups, activists, and the public. The forces these parties generate can foreclose entry into new markets, limit price increases, and raise the costs of competing. They can also unlock markets, reduce regulation, handicap rivals, and generate competitive advantage” (Baron, 1995,
The focus for all managers of organizations in this space, then, is to integrate the organization’s “non-market strategy” with its market strategies. In Baron’s view, though, managers historically have ignored the former and mostly focused on the latter.

Inevitably this focus leads to a consideration of how market actors seek to “write the rules of the game” to benefit their organization in these markets – even to the point in many cases of shaping the creation of new markets. This view fits with perspectives on regulation that developed over the latter half of the twentieth century.

Helm offers a useful (though simplified) discussion of a broad swath of findings about regulation in a political economy – one that centers on regulatory burden as a core measuring stick for the quality of regulation (Helm, 2006). In his view, the first question is whether a broad theoretical case can be made that existing regulations are excessive; the second is whether empirical evidence exists that the level of regulation lowers economic performance. Once those questions have been answered, designers should address when there should be regulation (the “optimal” level) and then, based on that level, the form it should take.

Once regulation has been decided, the attention shifts to addressing the different costs of regulation. Because there are different kinds of regulation, and because regulation is heterogeneous in its effects on different market actors, economists want to measure regulation’s allocative effects (such as how it shapes decisions to allocate resources or invest in new markets) and its administrative burden. For Helm, “while the policy debate tends to focus on the administrative burden, it is the allocative effects that are likely to be the most important for economic performance” (Helm, 2006, 172).
Allocative effects are fundamental because they are shaped by the strategies of market actors. Consider an actor that will benefit from enhanced regulation. How might that occur? Just as consumers can demand regulation, so can producers. Helm elaborates on three ways producers might benefit from regulation: “to protect sunk costs in natural monopoly; to promote R&D and innovation; and to enhance (or limit) competition” (Helm, 2006, 173). Once firms seek regulation for protection’s sake, the polity is required to regulate that concentrated market with regard to competition, monopoly, and other antitrust considerations.

The problem for economists is how the supply of regulation responds to such demand. Polities produce regulation in response, and the argument is often made that such regulation is over-supplied relative to the optimal level for competitive markets. Responsive politicians may become “captured” by regulated entities, so institutional designers shift to the mechanisms that supply regulation to create better incentives for that supply. Such solutions center on delegation of the regulatory function to independent agencies that rely on professionalized expertise to decide the right supply and its administration (Miller & Whitford, 2015). Even though most arrangements are “second-best” (at best), there are worse institutional arrangements for designing the regulatory environment – most often, by politicians with short-term incentives to over- or under-regulate.

The problem with assessing regulatory burden in such systems is that it depends on so many factors. A simple distinction is “burden for whom”. Does the regulator or the regulated entity carry (on average) the greater burden of regulation? Another distinction is whether the burden is “justifiable” – that is, given the purposes of regulation, is
average burden too high to justify seeking those benefits? Put another way, do the costs
of regulation outweigh the expected benefits? Or alternatively, is the burden high for
some market entities and not for others – and is that differential burden justifiable given
the purposes of regulation?

One clearly sees the positive and normative implications of these theoretical
claims. On one hand, these positive claims about regulation suggest that not all regulation
is created for the purpose of benefiting society as a whole, and that regulated entities see
benefits from being involved in shaping, and indeed in pursuing, regulation. At the same
time, as Baron notes above, these views have normative implications: that regulated
entities should become involved in regulation and that some entities should seek (for their
own benefit) increased regulation as a way of constructing market barriers to entry (or at
least in increasing the costs of doing business and shifting the marginal cost curve for
other, less competitive organizations).

Indeed, at a minimum, consumers should use regulation to shape the costs of
production and thus change market prices, although whether they should pursue increases
or decreases in regulation is itself an empirical question (depending on the relative
thickness of supply in markets, whether they individually benefit from reduced access to
education by their own competitors in the labor market, etc.).

The upshot of this discussion is that regulatory burden is a loaded term. We can
speak of regulation’s benefits, though we want to be exact about who receives those
benefits since it might include both consumers and producers. We can speak of
regulation’s costs (though, again, exactness is important because both producers and
consumers – in addition to regulators – pay the costs of regulation). In contrast to more
neutral terms like benefit and cost, burden has a valence. Burden has an intrinsic aversiveness – a negative valence – because it neglects the benefits side of the equation entirely.

One main claim in this paper is that discussions about the regulatory environment for student financial aid have been cast (unfortunately) in terms of the regulatory burden of the suppliers of education. There has been little systematic discussion of the various benefits that are distributed to various groups by the institutional design of that regulatory environment. The emphasis has focused largely on the costs (both compliance costs and obligations due to perceived “red tape”) carried by schools that mediate the relationship between the student requesting financial aid to pay for college, and the lender (mostly backstopped by the federal government) who supplies that financing.

Red tape is a now an elemental concept in our conversations about the rule-bound nature of policymaking and the administration of programs in large, complex bureaus (e.g., Bozeman, 1993). Likewise, studies of regulation have focused on compliance costs – located outside the regulator, and borne largely by regulated entities – as an elemental concern in the role of governments in shaping the incentives of firms (e.g., Daley, Haider-Markel, & Whitford, 2007; Franks, Schaefer, & Staunton, 1997). The devil is in the details for both concepts, though: what is the best measure of “red tape” or “compliance costs” that is reliable and divorced from the interests of the regulated entity?

In the next section, we move this conversation forward by considering the evolution of this discussion to center on the regulatory burden perceived by providers of education and training.
TYPES OF EVIDENCE ABOUT FINANCIAL AID REGULATION

Surprisingly little research attention has been devoted to the regulatory environment of student financial aid. For instance, Cheit noted in 1977 that federal regulatory oversight was increasing and that educational institutions perceived increases in the burden of regulation (Cheit, 1977). By the 1990s, researchers focused largely on the continuing lack of clarity for determining aid eligibility (Flint, 1991), and appreciation of the growing need for regulation but also wariness about the correct form (Huff, 1995). There was also a growing sense of the political fragmentation of post-secondary education (especially with regard to the passage of the Higher Education Act (HEA) of 1992) (Hannah, 1996). After 2000, researchers and commentators focused directly on the role of the HEA and its reauthorization as shaping the balance between the benefits and costs of regulation (e.g., Burke, 2014; Capt, 2013; Skinner, 2007). Notably, in a working paper, Cellini and Goldin provide evidence that institutional designs that allowed access to Title IV funding influenced prices – for-profit schools with access to such funding charge tuition prices that are substantially higher than those without access (Cellini & Goldin, 2012).

In contrast, there has been substantial discussion of the consequences of that environment for borrowers, with much of that attention being placed on the role of for-profit institutions (e.g., Mangan, 2013; Porter, 2014; The Economist, 2010a, 2010c; Zibel, 2014). Indeed, the data in Figure 1 show the count of investigative reports, reported by the ED Office of Inspector General (OIG), which we consider related to the
regulation of access to financial aid.\textsuperscript{1} We recognize some uncertainty in coding such events (with regard to the contribution of financial aid to the case, compared to other considerations and sources of fault, or with regard to the type of organization involved), but the trend in OIG attention to financial aid is fairly clear. From 1999 to 2014, the numbers of events have grown almost every year. Even if we account for volatility in the time series, there is a substantial structural break in the data around 2010, with greater numbers of events after that year. Unfortunately, the nature of the reports makes it impossible to draw any conclusions about the relative incidence of such enforcement actions across institutional types such as public, private, and for-profit colleges.

[Insert Figure 1 about here.]

Our position in this paper is that the enforcement of regulatory violations in the student financial aid space is perhaps less important than the hidden actions taken by educational institutions that are charged with administering the system. Regulation is a process of co-production. Traditionally, agencies would decide the “rules of the game”, but the rules are made real when regulated entities comply with them. If we account for Baron’s views on regulation as a system, regulated entities also have good reason to help shape the rules of the game. In this view, formal enforcement is just the “tip of the iceberg” – most of the interesting actions occur in making the rules and then in the myriad decisions in the compliance process.

It is the compliance process that provides opportunities for regulated entities to complain about “regulatory burden”. Consider the results from the Higher Education

\textsuperscript{1} The underlying data are available from the ED Office of Inspector General at this page: http://www2.ed.gov/about/offices/list/oig/ireports.html. The data were gathered and coded in February 2015.
Regulations Study, carried out by the U.S. Advisory Committee on Student Financial Assistance in 2010 and 2011 (U.S. Advisory Committee on Student Financial Assistance, 2011).\textsuperscript{2} As noted in the media, the results were headline-inducing: “Eighty-six percent of officials found regulations under the Higher Education Act burdensome or overly burdensome. Of the 15 regulations the panel asked about, a majority of respondents said 14 were ‘burdensome’ or ‘very burdensome,’ and cited 13 whose elimination would yield significant savings for colleges” (Nelson, 2011).\textsuperscript{3} As part of the 2008 HEA reauthorization, the Committee completed a review of regulations to search for rules that were “duplicative, no longer necessary, inconsistent with other federal regulations, or overly burdensome” (U.S. Advisory Committee on Student Financial Assistance, 2011, 1). Perhaps the strongest statement made about the results was that “Respondents also criticized the ‘one size fits all’ approach to regulation: 83 percent of executives and 73 percent of office administrators said they supported sector-specific regulations, and 82 percent and 69 percent, respectively, said they supported performance-based regulations.

\begin{itemize}
\item \textsuperscript{2} In full disclosure, one coauthor served as a design consultant on the survey that formed the basis for most of the findings reported in the 2011 Higher Education Regulations Study of the U.S. Advisory Committee on Student Financial Assistance.
\item \textsuperscript{3} The specific regulations for which feedback was requested included: “Conflicting Information; Entrance Counseling for Student Loan Borrowers (Entrance Counseling); FSEOG Priority Awarding Criteria (FSEOG Priority Awarding); Crediting Federal Student Aid to Non-Allowable Institutional Charges (Non-Allowable Charges); Written Authorization to Open a Bank Account on Behalf of a Student (Opening Bank Account); Prior Award Year Charges (Prior Year Charges); Proration of Annual Loan Limits (Proration of Loan Limits); Overlapping and Inconsistent Timeframes for Reporting and Consumer Disclosure Requirements (Reporting Timeframes); Volume and Scope of Reporting and Consumer Disclosure Requirements (Reporting Volume and Scope); Return of Title IV Funds; Return of Uncashed Credit Balance Checks (Return of Uncashed Checks); Self-Certification of Non-Title IV Student Loans (Self-Certification); TEACH Grant Eligibility Rules (TEACH Grant Eligibility); Overaward and Overpayment Tolerances (Tolerances); Determining Student Eligibility for Two Federal Pell Grants in One Award Year (Two Pell Grants)” (U.S. Advisory Committee on Student Financial Assistance, 2011, 6, full details available in Report at Appendix B).
\end{itemize}
Less than 15 percent of each group favored maintaining the current approach” (Nelson, 2011).

Although the nature of the media’s reaction to the study is indicative of the results as represented in the report, the results were only narrowly discussed in policy debates. Perhaps one reason was that this study followed a series of other reports that also conferred the widespread belief that the regulatory environment was broken. Since 1995, there have been four major initiatives to reduce the regulatory burden for institutions administering student financial assistance programs. The 1995 Regulatory Reinvention Initiative was meant to review “rules and procedures to reduce regulatory and paperwork burden” and to change regulations that were “outdated or otherwise in need of reform”. 4 The 1998 HEA reauthorization required ED to again review regulations, which became the 1999-2000 Student Financial Assistance Regulatory Review. The 2001 FED UP Initiative again sought streamlining and simplification of regulation and the paperwork required under the HEA. (See Clinton (1995), U.S. Department of Education (1998), and McKeon (2006) as notable illustrations of these initiatives.)

Each of these initiatives led to changes. For instance, the 1995 changes “resulted in modifications to more than 40 sections of the Title IV regulations”, the 2000 changes also modified around 40 sections, and the FED UP initiative led to special rulemaking sessions and additional legislation that modified over 50 sections (U.S. Advisory Committee on Student Financial Assistance, 2011, 1-2). Clearly, changes in regulation occurred over time in response to such inquiries.

4 60 Federal Register 231, pp. 61796-817.
These three initiatives also provide a lens for observing the role of affected interests in working to change the regulatory environment. “Each of these prior reviews … progressively included more members of the affected community through comments and negotiations” (U.S. Advisory Committee on Student Financial Assistance, 2011, 2). The 2011 report marked a change, though, in study design in that the agency wanted widespread participation of broad classes of institutions with regard to perceptions of the compliance process.

Two points bear further consideration. The first is that designing such a study requires participation when (a) entities are involved in a compliance process (and thus perhaps in adversarial positions with regard to the collection of accurate data), and (b) those same entities have interests that vary in terms of the net benefits they receive from compliance (e.g., in terms of reducing competition for their educational products). A further point could be made that many of the benefits of regulation are only reportable by two other sets of actors whose participation was not solicited in this study – the consumers seeking financial assistance and the government as holder of the broad loan portfolio.

Even if we ignore those secondary interests, the problems of strategic response bias remain. This tendency is only enhanced by the evolution of a strong adversarial relationship between regulators and the regulated. One way in which this played out in the context of this study was that surveys of regulated entities work best when conducted in face-to-face settings where the participation of knowledgeable actors can be verified. (In this study, responses were requested from both organizational leaders and those who manage the compliance process. The first type of respondent should have been able to
speak to the overall organizational cost of compliance, while the other could speak to the
cost of individual compliance requirements.) Response quality depends on the
respondents having direct knowledge of the compliance process.

This possibility was complicated in the case of the HERS study. In 2010, GAO
responded to broad concerns about regulatory compliance among for-profit organizations
by deploying “mystery shoppers” to investigate (U.S. Government Accountability Office,
2010a). The use of these fictional students uncovered a number of practices that drove
further concern about compliance: “At all but two of the [15] colleges visited, college
employees offered deceptive or questionable information about graduation rates,
exaggerated likely earnings, or guaranteed applicants jobs after graduation. An employee
at a small beauty college told an applicant that barbers can earn $150,000 to $250,000
annually. According to Bureau of Labor Statistics data, 90 percent of barbers make under
$43,000 a year. At a college owned by a publicly-traded company, an employee told an
undercover applicant that instead of pursuing an associate degree in criminal justice, she
should go after a medical assisting certificate with which, after nine months of school,
she would be able to earn as much as $68,000 a year” (Epstein, 2010).

The GAO findings are notable, but little recognized is how the GAO research
strategy made it difficult for others to obtain access to respondents working in
compliance. It is easy to see how financial aid officers might confuse an on-campus
inquiry with a sting operation. This issue was amplified by ED OIG’s use of undercover
agents in a 2007 student-aid fraud investigation, and ED’s hiring in 2011 of two outside
research firms to employ mystery shoppers to identify fraud. In sum, “mystery shopping
represents a new form of oversight conducted by the Education Department, which had
conducted program reviews and relied on tips from school employees and whistleblower lawsuits to uncover fraud” (McElhatton, 2012).

The study was administered via an anonymous and confidential web-based survey instrument. Unfortunately, the goals of anonymity and confidentiality precluded the use of a known sampling frame. One of the direct costs of the secret shopper initiatives was the loss of ability to make any statistical statements about the incidence of these views on regulatory burden within the broader community of regulated entities. This is remarkable because unlike many other social scientific enterprises, the population of affected institutions is known ex ante; while the responsible individuals may be unknown, their organizational location is known with certainty. However, “Numerous discussions with campus officials, association representatives, consultants, and review panelists revealed significant concerns in the community over the sensitive nature of questions addressing campus-level perceptions of regulatory burden, especially regarding processes managed by the federal government. A substantial number of individuals refused to participate in a survey on such topics if they or their institutions were identifiable” (U.S. Advisory Committee on Student Financial Assistance, 2011, 6).

Perhaps more troubling is the fact that, for the 2098 respondents (425 executives and 1673 office administrators), primary findings such as 42 percent of respondents perceiving the process as “overly burdensome” and 44 percent perceiving it as “burdensome” cannot be broken down by type of institution (U.S. Advisory Committee on Student Financial Assistance, 2011, 11). For the sample as a whole, only 8 percent of respondents were from private for-profit institutions, while 32 percent were from four-year private non-profits, 28 percent from four-year publics, and 28 percent from two-year
public and private institutions (the remaining were from graduate/professional only institutions) (U.S. Advisory Committee on Student Financial Assistance, 2011, 53). The raw incidence of few for-profits is suggestive itself. More troubling, perhaps, is that the underlying data from the survey are unavailable in any form for ex post analysis of differential patterns across the survey responses. Only simple tabulations remain available.

The consequence of this situation is that although 83 percent of executives and 73 percent of office managers agreed that sector-specific regulatory reforms were desirable, it is not possible to delve into the report’s statement that “support for sector-specific regulations differed by institutional type and control” (U.S. Advisory Committee on Student Financial Assistance, 2011, 27).

The incentives to support regulatory reform (or to report regulatory burden) depend on a firm’s competitive situation in a market. Over time, two trends are evident in the regulatory space for student financial assistance. First, as federal involvement in backstopping the lending process increased, calls came to reform the regulatory compliance process for post-secondary education institutions. Second, with each reform opportunity, the trend was towards greater involvement by those institutions in the process of identifying reform opportunities.

However, two additional trends are also evident. Along with the calls for regulatory reform, there was also pressure to search for and prosecute fraud (often seen as

---

5 Confirmed to the authors in personal communications from William J. Goggin, Executive Director, U.S. Advisory Committee on Student Financial Assistance, January 16, 2015, and Anthony P. Jones, former Director of the Higher Education Regulations Study, U.S. Advisory Committee on Student Financial Assistance, January 16, 2015.
located in the for-profit sector). The second, a counter-trend, is that the search process complicated the gathering of data about the prospects and need for regulatory reform.

Where does this leave the assessment of opportunities for institutional change in the student financial assistance regulatory space? On the one hand, the most significant assessment of the regulatory compliance process indicates (a) strong dissatisfaction with the current system and (b) strong beliefs that reform should be sector-specific. On the other hand, these findings are only indicative: we have little information about the participation of different organizations in this process, we know nothing about how perceptions vary by sector, and the process was damaged by a growing distrust on the part of compliance agents about the motivations of regulators who request feedback about the process. And these concerns are only intensified by a long history on the part of regulated entities to use regulation to strengthen competitive positions, damage competitors, and shape market outcomes.

CONCLUSION

We began this paper by reviewing the development of the concept of regulatory burden within the context of our understanding of the relationship between states and markets. Financial aid policy space is a special regulatory environment; its general structure can be understood only if we consider the special role of regulation in business-government relations. While different types of evidence exist about the financial assistance regulatory environment, given the long-term concern about regulatory burden in this arena, we argue that regulators should consider the possibility that some market segments are over-regulated, and others are under-regulated. Yet, the problem of
interpreting and managing regulatory burden means we must consider whether differential regulation changes the incentives of different market actors.

The three notable GAO reports reviewed at the beginning of this paper show the attention given to the ability and willingness of post-secondary institutions to convince students to take on substantial debt (U.S. Government Accountability Office, 2009, 2010a, 2010e). The U.S. federal government’s student-loan debt portfolio of roughly $1.1 trillion means it cannot ignore the possibility of fraud, but the trend toward regulatory reform also introduces real dilemmas about optimization when there is a rich array of market actors.

The fashion of pointing to “regulatory burden” makes it difficult to assess the procedures for joint implementation of this system. The 2013 call from the National Association of Student Financial Aid Administrators (NASFAA) for “greater transparency”, “a more detailed understanding”, and “constructive dialogue” makes neutral assessment problematic (National Association of Student Financial Aid Administrators, 2013). Balancing regulatory burden with protection against predatory practices is complicated by the federal government’s unique role as a central purchaser of education.

Inevitably, policy improves when information is available that accurately reflects the differential incentives of market actors. It is unfortunate that a conflagration of events has concealed such information from designers tasked with improving the regulatory environment. While it is natural to hope that the next reform initiative will improve our information base for making such important policy decisions, the track record suggests differently.
Yet, the trends present in this domain show exactly why such information is hard to come by. Regulated entities have incentives, one of which is to shape the information regulators have for improving the system. In the end, a neutral third-party would be best positioned for gathering, processing, and interpreting such information. Parties like NASFAA have interests, and parties like the Advisory Commission are limited to a degree by the fraud investigations of GAO and ED. Academics are probably best positioned for such a task.
Figure 1: Event Count by Year
BIBLIOGRAPHY


