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TYPES NOT MAPPED YET March 26, 2020 | TTR not mapped yet | Aaron D. Lacey

COVID-19: Is there a silver lining for higher education?

Here at REGucation, we typically stick to legal and policy analysis, exploring the latest machinations from the U.S. Department of Education, the Hill, and the like. And these bodies certainly have been busy over the last two weeks. Indeed, the updates, alerts, and guidance have emanated in staggering volume, and at a rapid pace. We've covered some of this activity, and expect to cover much more before all is said and done. But for this post, we've decided to veer a little out of our lane, and to offer some observations, encouragement, and a little hope.

To be sure, it's difficult to imagine any silver lining associated with the spread of COVID-19 across the United States. This disease is serious business, and it brings with it the direst of consequences. What's more, a positive outcome is particularly difficult to conceive for higher education, which has been hit very hard. Campuses have closed. Students have gone home (or find themselves confined to empty dorms and dining halls). Administrators are struggling to digest the latest government orders and regulatory guidance, and faculty and staff are struggling to adjust to online platforms. All this having been acknowledged, we believe there may be some room for optimism.

Hard times

The difficult truth is that much of higher education has been dealing with declining enrollments, increasing debt, and other forms of financial distress for several years now. This distress, and its consequences, has been covered extensively by Inside Higher Ed, the Chronicle of Higher Education, and other postsecondary periodicals, as well as by the mainstream media.

In fact, this period of financial challenge has been so significant and unprecedented, resources have been dedicated exclusively to tracking closures and other institutional events across the country. Education Dive, for example, has been engaged in such tracking for nearly four years. In January, prior to the emergence of COVID-19, the website reported that since 2016, 34 private, nonprofit institutions had closed, and another 27 public or private, nonprofit institutions had merged, consolidated, or been acquired. The website also predicted – again, prior to the novel coronavirus – that another 28 institutions would close, merge, consolidate, or be acquired by 2023.

This contraction has been even more pronounced among proprietary institutions. Per the National Center for Educational Statistics (NCES), between 2000-01 and 2012-13, the number of private, proprietary 4-year institutions more than tripled, from 207 to 710, then declined by an extraordinary 40%, to 395 in 2017-18. Similarly, between 2000-01 and 2012-13, the number of private, proprietary, 2-year institutions increased 37% from 480 to 658, then declined 23% to 505 in 2017-18.

Indeed, the rate of contraction has been so significant, and the projections so grim, postsecondary regulators are scrambling to develop a methodology for identifying distressed institutions, and taking the steps necessary to protect students, taxpayers, and other stakeholders. Others have sought to develop predictive methodologies, using data analytics to project those institutions that will be next to close.

The reasons for this financial distress are many and complex, and differ from one institution to the next. While declining enrollments is almost always at the heart of the narrative, it rarely is the entire story. Additional culprits include excessive debt, tuition discounting, inconsistent and burdensome regulations, poor management, culture shift, changing regional demographics, and international student decline, to name a few. Whatever the combination of factors may be, the consequence for many institutions has been running in the red, or close to it.

Institutional responses to distress also have varied, but typically fall into one of three categories. Some institutions have sought to address financial challenges through internal restructuring. This can take many forms, from the most basic review of costs and expenses to a full blown balance sheet and operational overhaul. Others have sought to address their challenges through a legal merger or acquisition, which typically results in their becoming a division of a larger, financially stronger college or university. And finally, some institutions have simply closed their doors, at times in an orderly fashion, and at times, precipitously.

This period of financial distress certainly has impacted our higher education practice. Over the last five years, our workload has shifted significantly to incorporate time working with institutions experiencing financial challenges. We've been involved in multiple institution, location, and program closures, and worked through state receiverships, federal receiverships, bankruptcies, and assignments. In fact, we actually have a presentation titled "The Role of Receiverships, Bankruptcies, and other Restructuring Options in Higher Education" that we keep current because we make it so often. We've also done more merger and acquisition work than we ever thought possible, and across all sectors. We were involved in three transactions that consummated just this month, with the most recent being Roosevelt University's acquisition of Robert Morris University of Illinois.

Hard decisions

All of this is to say, COVID-19 did not descend upon a higher education community that was in a place of strength and prosperity. Rather, it has further disrupted an industry that already was experiencing a period of considerable disruption. As a consequence, institutions that were in mild distress may find their challenges amplified, and those whose position was precarious before may find themselves on the precipice.

For these institutions, it is time to gather leadership, to convene boards, to engage professionals, and to make hard decisions to preserve institutional viability. This may seem like a throwaway remark. Given the current state of the world, one would think that every institution is now engaged in a deliberate process of introspection, evaluation, and planning. Our experience in recent years, however, leads us to believe that this may not be the case.

In fact, colleges and universities are often painfully slow to acknowledge distress, to formulate adequate and informed plans, and to act. The reasons are myriad. For decades, there has been a stigma in higher education associated with treating institutions as "businesses," and a related reluctance to acknowledge the types of issues, and embrace the types of solutions, that enterprises outside of higher education have been acknowledging and embracing for years. This is changing, but the transformation has been slow.

A lack of experience and perspective also is an obstacle. Many institutional leaders, including those with decades at the helm, have never guided an institution through a period of significant financial challenge. Many boards lack a single director or trustee who has significant expertise dealing with distressed organizations, institutional mergers, or the wind-down of a campus. And institutional leadership may struggle to keep personal feelings from impacting professional judgment. Colleges and universities love to pack their boards and administrations with alumni. While tremendous advocates for their schools, alumni are often deeply conflicted when asked to support the shutdown of programs or locations, a reduction in force, or the sale of the institution.

And of course, as every postsecondary administrator knows, higher education's governance structure can be a factor. Nimble it is not. Even where executives and their boards are informed and experienced, and engage in thoughtful and responsible decision-making, it can be extraordinarily difficult to ensure that action plans get buy-in, and are effectively carried out.

Unfortunately, for these and other reasons, institutions often lose precious time when attempting to address financial challenges. And if there is any single lesson we have learned from working with distressed colleges and universities, it is that time, or "sufficient runway," is the key to success. It takes time to sell buildings, to develop new programs, to roll out platforms or campaigns, to identify investors or partners, to negotiate legal documents, and to obtain the regulatory approvals needed to move forward. Even a school that plans to close will need time to develop teach-out and transfer plans, to craft communications strategies, and to determine the best way to move forward for the campus community.

For most institutions, the last two weeks have been dedicated to crisis management. Now, as campuses quiet, and remote infrastructures spring into place, institutions must plan for the next six months. As some institutions parse through enrollment, cash flow, debt, and other various projections, they may come to realize that their institutional viability is in serious doubt. These schools must face these challenges head on, make the hard decisions, and put action plans into place before their "runway" runs out.

The silver lining

And now for the promised dose of optimism. For those institutions that can make it through the next six to 12 months, there is reason to believe that the hard times that have plagued higher education in recent years might finally abate.

All current indications are that the coronavirus pandemic will drive up unemployment nationwide. Data released today indicates that the "number of Americans filing initial applications for unemployment benefits jumped nearly twelvefold to a record 3.28 million last week." As statewide shutdowns continue and revenues drop, small and large businesses alike are taking steps to reduce expenses, with payroll being a major target.

For higher education, a significant rise in unemployment could finally reverse the enrollment slide of the last five years. It is well established, and easily demonstrated, that a strong correlation exists between the national unemployment rate and undergraduate enrollments. And the connection is not hard to make. When times are good and unemployment is low, people are less inclined to invest in furthering their education. The return on investment is not as evident. In contrast, when restaurants are shuttered and factories close, it becomes clear that new and enhanced skills may be the key to employment in a highly competitive market.

In the chart below, we've contrasted the national unemployment rate from 2000 to 2017 against undergraduate enrollments over the same period. The former data set is from the U.S. Bureau of Labor Statistics, and the latter is from NCES.

As the chart demonstrates, the last time enrollments in the United States surged was immediately following the 2007 financial crisis. The unemployment rate went from 4.7% in October 2007 to 10% in October 2009, and would stay above 9% until October 2011. According to NCES, total undergraduate enrollments went from 13.7 million in 2007 to 15.3 million in 2009, and peaked at 15.9 million the following year. Not only does this data indicate a correlation between unemployment and enrollment, it also suggests that the impact is immediate and significant. In the very first year following the 2007 market collapse, enrollments climbed from 13.7 million (fall 2007) to 14.3 million (fall 2008). Meanwhile, the increase from 13.7 million (fall 2007) to the peak of 15.9 million (fall 2010), constituted a meaningful 16% jump.

There also is every reason to believe that at the time this enrollment increase occurs, there will be fewer institutions remaining to answer the call. We will not rehash the discussion from the prior sections. But suffice to say, for all the reasons outlined above, we believe there will be institutions that close their doors before the end of the year. Thus, an increase in demand may be accompanied by a reduction in supply.

We also anticipate that when the time comes, these prospective students will be well funded. Throughout the HEA reauthorization discussions of recent years, lawmakers on both sides of the aisle have continued to fully support the federal student aid programs. Moreover, in the past, federal policy makers have routinely taken steps to ensure that students are able to finance their education following a crisis (e.g., World War II, the September 11 attacks, the 2007 financial crisis). A commitment to institutions and students also is evident in the legislation presently percolating on the Hill. Though it has yet to be signed into law as of this writing, the $2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act, includes billions of dollars in direct assistance for institutions, loan relief for borrowers, and the relaxation of various technical requirements concerning the administration of the federal financial aid programs.

Future investment in medical and allied health education and medical research also would seem likely. In recent years, various publications and trade associations have highlighted the imminent physician and nursing shortages in the United States. As the current pandemic strains our health care system, the need for more doctors, nurses, medical equipment, and medical facilities is being discussed at great length. We think it is reasonable to speculate that in the months to come, there will be an increase in both public and private investment in health care education and research.

We also think it possible, if not probable, that the current pandemic may push many institutions to permanently alter how they deliver instruction, and ultimately, to improve their use of online technology. The percentage of programming being delivered via distance education today exceeds anything that has been attempted to date. With the relaxation of regulatory requirements, online classes are being offered to nonimmigrants students and to students in technical and career programs, as well as to tens of thousands of students in traditional higher education who have never attempted online learning before. It seems unlikely that following the COVID-19 threat, institutions will return to business as usual. We think there will be many that will investigate whether online learning can be used more extensively across their programming. This increased use of distance education could, in turn, lead to a reduction in the cost of education, as institutions learn to offer programming more efficiently by leveraging online learning across more programs and platforms.

Beyond the increased use of online learning, the difficult decisions of the next few months, and the lessons of recent years, may further transform higher education in ways that could prove positive. As previously mentioned, higher education has long resisted characterization as a business, and only grudgingly introduced management, marketing, and operational practices that have been standard in other industries for years. To be sure, colleges and universities enjoy a culture that is unique and worthy of protection. We sincerely hope never to see the day that the Ivory Tower is replaced with a Costco. This having been said, a leaner, more efficient institution can offer quality education at a lower price point. This is certainly better for students who are utilizing loans to pay for their education. And it may help to ensure that following the projected period of increased enrollment, institutions do not fall into the same traps that led to the hard times of the past five years.

Final thoughts

We wish health and safety for our readers, and for their families, friends, and campus communities. It is our sincerest hope that the great majority of institutions will navigate their way through the next six to 12 months, and that the silver lining suggested above will indeed come to pass, to the benefit of schools and students alike.

For institutions looking for more information on managing distress, we will be offering a special webinar soon during which we will discuss restructuring, transactions, closures, and a host of other options and considerations in the wake of COVID-19. We expect the webinar will be held the week of April 6, 2020, and will circulate registration information shortly. And of course, institutions are always welcome to reach out using the contact information below.

About REGucation

Welcome to REGucation, the higher education blog that strives, through practical advice and insight, to help the higher education community manage a fast-changing and increasingly complex regulatory environment.

Our goal is to serve as a practical, concise, and accessible resource for institutions confronting regulatory and policy issues. The blog focuses on the extraordinarily broad and sophisticated set of legal challenges faced by contemporary post-secondary institutions, including those involving real estate, construction, joint ventures, litigation, intellectual property, immigration, taxation, financing, employees and benefits, and government relations, to name a few. We also cover the staggering collection of federal, state, and accrediting agency laws and standards specific to higher education.

If there are topics you would like us to cover, or questions you may have regarding a topic that already has been addressed, please do not hesitate to reach out. Finally, if you would like to contribute a guest article, we would love to hear from you.

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