

HOW TRI-VALLEY UNIVERSITY FELL OFF THE DIPLOMA MILL: STUDENT IMMIGRATION AND FAÇADE EDUCATION

CHRISTOPHER S. COLLINS * AND T. RICHMOND MCPHERSON, III **

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* Christopher S. Collins, Assistant Professor of Education (University of Hawai'i at Mānoa); B.A., Pepperdine University; M.A., Oklahoma Christian University; M.A. University of California Los Angeles; Ph.D., University of California Los Angeles.

** T. Richmond McPherson, III, McGuireWoods, LLP (Charlotte, North Carolina office); B.A., Pepperdine University; M.Ed., California Lutheran University; M.A., Lipscomb University; M.D.R., Pepperdine University School of Law; J.D., Wake Forest University School of Law. Any views expressed herein are the author's own.

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INTRODUCTION

In 2008, Tri-Valley University (“TVU”) obtained Department of Homeland Security (“DHS”) approval to enroll foreign students, which led to the university’s first two active F-1 students in February 2009.¹ By October of 2009, Tri-Valley University enrolled eighty-seven active F-1 students, and by September 2010, 1,555 active F-1 students.² The growth in enrollment continued at an astounding pace until December 2010, at which time TVU had an estimated enrollment of 2,500 students.³ Tuition was \$2,700 per semester, providing the school with an estimated revenue of \$4.2 million for the Fall 2010 semester.⁴ Over a twenty-month period, TVU experienced a 77,650% increase in revenue from F-1 students.⁵ On January 19, 2011, federal agents raided TVU and a multi-million dollar home in Pleasanton, California in connection with a federal customs and immigration criminal investigation.⁶ Roughly three months later, Susan Xiao-Ping Su was indicted by a federal grand jury and charged with significant federal crimes, including conspiracy to commit visa fraud, visa fraud, and mail fraud.⁷ The raid, civil forfeiture complaint, notice of intent, and indictment represented the first public steps in civil and criminal proceedings against TVU and Susan Su.

This article is a legal examination of current issues regarding international students studying at diploma mills, and for-profit institutions that take advantage of students in a variety of ways in the United States. The study contains four sections, beginning with a general overview of the regulatory framework governing for-profit institutions. This initial section

1. United States v. Real Property Located at 405 Boulder Court, Suite 800, Pleasanton, California, (APN 946-4547-297), 3:11-cv-00258-EMC (N.D. Cal. 2011).

2. *Id.* at 13.

3. *Id.*

4. *Id.*

5. *Id.*

6. Susan C. Schena, *New Details Emerge in Pleasanton University Scandal*, LIVERMORE PATCH, Feb. 11, 2011, <http://livermore.patch.com/articles/new-details-emerge-in-pleasanton-university-scandal>.

7. United States v. Real Property Located at 405 Boulder Court, Suite 800, Pleasanton, California, (APN 946-4547-297), 3:11-cv-00258-EMC (N.D. Cal. 2011).

focuses on legal and regulatory efforts to combat fraud at for-profit colleges and universities and distinguishes between legitimate and illegitimate examples of other for-profit institutions. The second section provides an overview of the student immigration system in the United States, paying particular attention to SEVIS and a practice known as Curricular Practical Training (“CPT”). The third section includes a discussion of the case of TVU. In an effort to highlight current abuses in the student visa system, this section details pending allegations of visa fraud against TVU and its President, Susan Xiao-Ping Su. Additionally, we discuss some of the political fallout from TVU and other instances of student visa fraud. In section four, we explore the implications of the current student visa scheme as applied to for-profit colleges and universities. Finally, we conclude by offering three proposals to improve the current system of admitting foreign students to study at for-profit institutions.

To evaluate current issues regarding international students studying at for-profit colleges and universities, we utilized a research method known as a legal case study. A legal case study is a research design that operates under the assumption that the case is a useful example of some specific phenomenon. Dimensional-sampling is a method that uses a small number of cases that contain the variables of interest to the study.⁸ Although difficult to generalize, case studies can advance knowledge of the legal process by providing an intensive and detailed investigation into the processes used to manage litigation.⁹ This case study utilizes content analysis for the documents in the litigation (including the civil forfeiture complaint, notice of intent, and indictment). Case studies are often the only research design available for examining a phenomenon that occurs infrequently. Although the TVU case shares a number of similarities with other diploma mill-related cases, the drastic negative effects on TVU’s international students who were approved to study in the United States represents a unique dimension.

I. REGULATION OF FOR-PROFIT INSTITUTIONS

The definition of for-profit higher education should be understood as a “complex and contentious subject.”¹⁰ From a global perspective, there are a

8. David O. Arnold, *Dimensional sampling: An Approach for Studying a Small Number of Cases*, 5 AM. SOCIOLOGIST 147 (1970).

9. Thomas E. Willging, *Past and Potential Uses of Empirical Research in Civil Rulemaking*, 77 NOTRE DAME L. REV. 1121, 1127–32 (2002).

10. KEVIN KINSER, *A Global Perspective on For-Profit Higher Education*, in FOR-PROFIT COLLEGES AND UNIVERSITIES: THEIR MARKETS, REGULATION,

variety of legal concerns associated with for-profit higher education. These concerns are amplified by the numerous categories that constitute for-profit higher education, including: traditional exchange programs and study abroad programs, international branch campuses, distance delivery of academic programs, and foreign investment in educational institutions. The varied formats of for-profit education (in addition to a profit-oriented motivation) makes quality assurance a significant challenge. There is no global framework for recognizing legitimate higher education institutions and there are numerous state-sponsored and non-government accreditation models.¹¹ The debate over the inclusion of education as a tradable service under the General Agreement on Trade in Services (“GATS”) highlights the contentious and challenging nature of the issues of accountability and profit-seeking education.¹²

Regulation of for-profit institutions has generally existed at the state level. Independent accrediting bodies did not emerge until the 1950s, and direct federal involvement did not occur in the United States until the 1970s.¹³ Most states took a laissez-faire approach toward educational oversight during the first half of the twentieth century, which caused substantial difficulties during the influx of students studying under the GI bill, after World War II. To establish and standardize rules for the for-profit sector, the National Education Association (“NEA”) attempted to draft legislation that states could adopt, but no consensus was ever reached.¹⁴ The federal Office of Education’s statutory power to list recognized accrediting agencies began in the Korean War G.I. Bill in 1952, which marked the beginning of the regional accrediting system currently in place.¹⁵

In 1972, a federal reauthorization of the Higher Education act required states to consider for-profit schools as an educational entity and to regulate

PERFORMANCE, AND PLACE IN HIGHER EDUCATION 145, 147 (Guilbert C. Hentschke, Vincente M. Lechuga, & William G. Tierney eds., 2010).

11. *See generally* ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, CROSS-BORDER TERTIARY EDUCATION: A WAY TOWARDS CAPACITY DEVELOPMENT (2007).

12. Christopher S. Collins, A general agreement on higher education: GATS, globalization, and imperialism, 2 RESEARCH IN COMPARATIVE & INT’L EDUC. 283, 283–96 (2007); Jason E. Lane, M. Christopher Brown & Matt Allen Pearcey, *Transnational campuses: Obstacles and opportunities for institutional research in the global education market*, in EXAMINING UNIQUE CAMPUS SETTINGS: INSIGHTS FOR RESEARCH AND ASSESSMENT 49, 49–62 (Jason E. Lane & M. Christopher Brown eds., 2004).

13. KEVIN KINSER, FROM MAIN STREET TO WALL STREET: THE TRANSFORMATION OF FOR-PROFIT HIGHER EDUCATION (2006).

14. *Id.*

15. *Id.* at 100.

illegitimate institutions.¹⁶ To police behavior and prevent fraud, state commissions were established with representatives from the for-profit sector. When these state laws were originally implemented, they “generally covered only minimal standards for educational quality while maintaining strict rules over ethics, fiscal responsibility, and advertising.”¹⁷ Prior to the 1972 reauthorization, participation of for-profit institutions of higher education in federal aid programs was relatively modest and placed with an equal status with not-for-profit private and public sector institutions.¹⁸ Although regulatory in nature, this policy also gave for-profit institutions the legal and financial stature to gain momentum.¹⁹

Widespread accreditation of for-profit institutions and state and federal regulations have helped to create a more equal playing field on which profit-making institutions compete with other models of higher education. There is continued integration of the for-profit sector into the same regulatory framework that applies to traditional not-for-profit private and public higher education institutions.²⁰ However, at the state level, for-profit institutions are often considered a special case of postsecondary education and regulated separately from more traditional institutions. At the federal level, some regulations promulgated pursuant to the reauthorization of the Higher Education Act in 1992 specifically target for-profit institutions, but these regulations are increasingly applied to all institutions.²¹ There are some institutions in the for-profit sector that exist outside of the regulatory structure that governs most legitimate postsecondary institutions.²² Many of these institutions are fraudulent diploma mills, making consumer protection legislation an appropriate remedy.

Despite the progress of many for-profit institutions, fraudulent practices still persist throughout the industry. Diploma mills have captured the attention of the public through a steady stream of media exposure. Congress formally recognized the problem of diploma mills in 2002, when hearings on these institutions began in the U.S. Senate.²³ In a strategy designed to highlight the lack of educational standards at diploma mills, Senator Susan Collins of Maine paid a fee to obtain several degrees from a nonexistent Lexington University.²⁴ In addition, more than 1,000

16. *Id.* at 21.

17. *Id.* at 113.

18. *Id.* at 21.

19. DAVID A. TRIVETT, PROPRIETARY SCHOOLS AND POSTSECONDARY EDUCATION 38 (1974).

20. See KINSER, *supra* note 13, at 22.

21. *Id.*

22. *Id.*

23. *Id.* at 20.

24. Letter from Robert J. Cramer, Managing Director of the Office of Special Investigations in the United States General Accounting Office to Senator Susan M.

individuals on the federal payroll, including twenty-eight senior employees, were listed with degrees from institutions identified as diploma mills.²⁵

A. Federal Funding

The ability of for-profits to benefit from federal student aid is determined largely by regional accreditation status. Through regional accreditation, most for-profit institutions participate in Title IV federal student aid programs (e.g., Pell grants, SEOG grants, Stafford loans).²⁶ Students attending degree-granting, for-profit schools are more likely than students at traditional schools to apply for federal aid, and 72% of students at for-profits receive Pell grants and 91% receive Stafford loans.²⁷ As a result, a very large proportion of for-profit revenue is generated from students' federal grants and loans.

In 1992, while the number of for-profit institutions was on the rise, "a watershed reauthorization took place driven by widely reported instances of misuse of federal student aid funds and soaring default rates on federally guaranteed student loans."²⁸ One result of this reauthorization was the 85-15 rule, which required a for-profit institution to obtain at least 15% of revenues from sources other than federal student aid programs.²⁹ The rule was designed to force a minimal level of non-subsidized support. In 1998, this rule was modified to a ratio of 90-10, allowing for-profit institutions to receive up to 90% of its revenue from federal student aid programs.³⁰ It is somewhat ironic for institutions that proclaim market sensibility and independence to have substantial reliance on federal aid money, leaving them exposed to a regulatory authority they had avoided for so many years.³¹

The federal student aid programs created by the Higher Education Act of 1965 (HEA) provided more than \$146 billion in 2009-2010 to higher

Collins regarding the purchases of degrees from diploma mills (Nov. 21, 2002), available at <http://www.gao.gov/new.items/d03269r.pdf>.

25. KINSER, *supra* note 13, at 122.

26. *Id.* at 102-06.

27. SARAH KRICHOLS GOAN AND ALISA F. CUNNINGHAM, DEP'T OF EDUC., DIFFERENTIAL CHARACTERISTICS OF 2-YEAR POSTSECONDARY INSTITUTIONS (2007).

28. Mark L. Pelesh, *Markets, Regulation, and Performance in Higher Education*, in FOR-PROFIT COLLEGES AND UNIVERSITIES 91-108 (Guilbert C. Hentschke, Vincente M. Lechuga, & William G. Tierney eds., 2010).

29. The Higher Education Amendments of 1992, Pub. L. No. 102-325, 106 Stat. 448 (subsequently amended and now at 20 U.S.C. § 1094(a)(24) (Supp. IV 2011)).

30. The Higher Education Amendments of 1998, Pub. L. No. 105-244, 112 Stat. 1581 (subsequently amended and now at 20 U.S.C. § 1094(a)(24) (Supp. IV 2011)).

31. KINSER, *supra* note 13, at 117.

education institutions.³² This federal aid represents 75% of all student aid and 25% of all higher education expenditures.³³ 25% of all federal aid is directed to students at for-profit institutions, which enroll only 12% of all postsecondary students.³⁴ The regulatory environment emerging from federal funding shapes higher education in substantial ways.

B. Congressional Pressure on Regional Accreditation I

The federal government, individual states, and private, non-profit accrediting agencies represent the triad of higher education regulators. Each of these regulatory bodies has evolved through subsequent reauthorizations of the HEA. Although accrediting agencies are organized by peer review and voluntary association, they serve as federally recognized gatekeepers to the HEA funding programs.³⁵ Institutions criticize regional accreditors for wielding too much influence, and the government criticizes the same entities for lax oversight of the student aid system. Leading up to the 1992 reauthorization, accreditation agencies were criticized for inadequate standards and procedures, conflicts of interests, and an inability to serve as the gatekeeper for the Title IV programs that Congress and regulators expected.³⁶ Most of the criticism was related to the treatment of for-profit institutions. Consequently, Congress mandated changes to the HEA that would strengthen the triad regulatory system and prohibit “the eligibility and participation of the institutions that failed to meet tests for institutional integrity and quality.”³⁷ Accrediting agencies continue to evolve and strengthen the rigor of their standards to push institutions to better serve students. Because participation is “voluntary” (institutions can choose to forgo accreditation and federal funding), accrediting bodies work diligently to inform institutions that it is in their interest to be held to high standards.³⁸ Without regional accreditation, a federal system of accreditation would be imminent.

Several HEA measures were directed toward for-profit institutions. For example, proprietary institutions must now function for two years prior to gaining eligibility to participate in federal student aid programs.³⁹ A

32. COLLEGE BOARD, TRENDS IN STUDENT AID 2010 (2010), *available at* http://trends.collegeboard.org/downloads/student_aid/highlights.pdf.

33. *Id.*

34. *Id.*

35. See Clark C. Havighurst, *Foreword: The Place of Private Accreditation in the Regulatory State*, 57 LAW & CONTEMP. PROBS., no. 4, 1994, at 1.

36. See S. Rep. No. 102–58 (1991).

37. Pelesh, *supra* note 28, at 95.

38. See, e.g., MILTON GREENBERG, HIGHER EDUCATION, ACCREDITATION AND REGULATION 1 (2008).

39. 34 C.F.R. § 668.15(b)(7) (2011).

subcommittee found overwhelming evidence that the Guaranteed Student Loan Program (GSLP) as it relates to for-profit schools is

riddled with fraud, waste, and abuse, and is plagued by substantial mismanagement and incompetence. Despite the acknowledged contributions of the well-intended, competent, and honest individuals and institutions comprising the large majority of GSLP participants, unscrupulous, inept, and dishonest elements among them have flourished throughout the 1980s. The latter have done so by exploiting both the ready availability of billions of dollars of Guaranteed Student Loans and the weak and inattentive system responsible for them [e.g., accreditation] leaving hundreds of thousands of students with little or no training, no jobs, and significant debt that they cannot possibly repay. While those responsible have reaped huge profits, the American taxpayer has been left to pick up the tab for billions of dollars in attendant losses.⁴⁰

This finding was tied to criticism of accreditation agencies' inattention to quality assurance. This inattention included: the branching of institutions without regulation, inappropriate course length (i.e., expanding the course hours but not the content to secure greater amount of federal aid dollars), and unethical practices in student recruitment and admission.⁴¹ Overall, the subcommittee reported that the accreditation process had "failed to assure that proprietary schools provide the quality of education required for GSL participation" and that accrediting agencies, particularly in the for-profit sector, had not taken seriously their role as gatekeepers to federal dollars.⁴²

C. Gainful Employment and HEA

In addition to federal student aid, a student's ability to secure employment post-graduation is another component of the regulatory framework. A gainful employment rule was the subject of intense lobbying when it was released (in draft form) in the middle of 2010.⁴³ The Department of Education received around 90,000 comments on the draft and held more the 100 meetings about the rule.⁴⁴ In general, the rule was designed to protect taxpayers and students from programs that lack truth in advertising and in turn do harm to students who end up with debt and are unable to find a job. Although 12% of all students are educated at for-profit

40. *Abuses in Federal Student Aid Programs: Hearing Before the Subcomm. On Investigations of the S. Comm. on Governmental Affairs*, 102nd Cong. (1991).

41. *Id.*

42. *Id.*

43. Kelly Field, *For-Profit Colleges Win Major Concessions in Final "Gainful Employment" Rule*, CHRON. HIGHER EDUC. (Wash., D.C.), June 2, 2011, <http://chronicle.com/article/for-profit-colleges-win-major/127744/>.

44. *Id.*

institutions, the institutions receive about 25% of all federal aid and account for almost 50% of students defaulting on loans.⁴⁵

The original version of the gainful employment rule would have discontinued aid to hundreds of programs and limited enrollment growth at many others. The final version of the rule reflects a number of revisions. For example, the initial version contained guidelines that required a threshold of less than 20% of discretionary income or 8% of total income in a debt-to-earnings ratio.⁴⁶ If this ratio was not met, programs were required to have at least 45% of former students (whether or not they had graduated) paying principle on their loans.⁴⁷ If programs satisfied these requirements, students would be eligible for federal aid. Programs with ratios above 30% of discretionary income and 12% of total income and fewer than 35% of former students not paying principle would be ineligible for aid.⁴⁸ Programs that fell between the thresholds would have restrictions on enrollment growth.⁴⁹ In the final version of the rule, the restrictions for the in-between zone were eliminated. The final version also includes a timeline of four years to implement and the ability to fail the repayment rates three times before being penalized for not meeting the standard.⁵⁰ For-profit institutions were also able to secure the inclusion of interest-only loans into the repayment calculation and the choice of which data to include in calculating the debt-to-income ratios.⁵¹ These regulations are effective as of July 1, 2012,⁵² but the ultimate fate of the rule may be with Congress or the courts, as an intense battle continues.⁵³

D. For-Profit Legitimacy

There are several legitimate examples of for-profit colleges and universities. For example, Strayer University is an established institution that has been educating students for over a hundred years.⁵⁴ It is accredited

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. Federal Register, Program Integrity: Gainful Employment-Debt Measures, <http://www.federalregister.gov/articles/2011/06/13/2011-13905/program-integrity-gainful-employment-debt-measures> (last visited Apr. 30, 2012).

51. *Id.*

52. *Id.*

53. Indeed, as this Article was being edited, Judge Rudolph Contreras of the District Court for the District of Columbia struck down major portions of the gainful employment rule. *Ass'n of Private Colls. and Univs. v. Arne Duncan*, 1:11-CR-01314-RL (D.D.C. June 3, 2012).

54. Gilbert C. Hentschke, *For-Profit Sector Innovations in Business Models and Organizational Cultures*, in *REINVENTING HIGHER EDUCATION: THE PROMISE*

by the Middle States Commission on Higher Education and has several state licenses to operate in multiple locations.⁵⁵ The University of Phoenix is often upheld as an example of legitimate and productive for-profit postsecondary education. Hentschke highlighted several components of the University of Phoenix as exemplary, including their academic services for a wide array of student ability levels.⁵⁶ The University of Phoenix utilizes a client-focused approach that is designed to give students the best opportunity to succeed.⁵⁷ However, even Phoenix suffers from some negative media attention related to legal disputes. In one lawsuit, a jury found that the University of Phoenix fraudulently misled investors about its student recruitment policies and awarded a \$280 million verdict. The district court judge overturned the verdict, granting the for-profit institution's motion for judgment as matter of law based on evidentiary issues.⁵⁸ Other examples of legitimate for-profits include DeVry University, American Public University, and Kaplan.⁵⁹

E. For-Profit Illegitimacy

On the other end of the for-profit spectrum are diploma mills—fraudulent institutions that exist on the sidelines of the legal and regulatory framework in the U.S. These institutions are not accredited and do not participate in federal aid programs. However, the Federal Trade Commission has partnered with the U.S. Department of Education in a campaign to inform consumers of the telltale signs of a diploma mill.⁶⁰ The shallow business PhonyDiploma.com, which is not an educational industry of any sort, represents the far end of illegitimacy. One very large and public scandal occurred in 2004, when the General Accounting Office (GAO) launched an investigation into federal employees who purchased fake degrees with federal dollars. A report concluded that these degrees were used to obtain higher levels of pay in a credential based salary system:

In summary, 3 of the 4 unaccredited schools responded to our requests for information and provided records that identified 463 students employed by the federal government.... Data provided by 8 agencies indicated that 28 senior-level employees have

OF INNOVATION 159-96 (Ben Wildavsky, Andrew P. Kelly, and Kevin Cary eds., 2011).

55. *Id.*

56. *Id.*

57. *Id.*

58. Amanda Harmon Cooley & Aaron Cooley, *From Diploma Mills to For-Profit Colleges and Universities: Business Opportunities, Regulatory Challenges, and Consumer Responsibility in Higher Education*, 18 S. CAL. INTERDISC. L.J. 505, 519 (2009).

59. Hentshke, *supra* note 54, at 159–96.

60. KINSER, *supra* note 13, at 100–24.

degrees from diploma mills and other unaccredited schools....

This number is believed to be an understatement of the actual number of employees at these 8 agencies who have degrees from diploma mills and other unaccredited schools.⁶¹

The report also explained how widespread the scandal was, as it had reached senior executive levels at the Department of Homeland Security and the Department of Labor.⁶²

Another controversy stems from a recent set of criminal and civil proceedings involving St. Regis University.⁶³ The leaders of St. Regis University unsuccessfully attempted to move their many businesses to Liberia, Russia, India, or Italy to prevent prosecution in the United States. After a Secret Service agent was able to spend \$1,277 for three undergraduate and advanced degrees in chemistry and environmental engineering based on his life experience, the federal government eventually shut down the fraudulent institution.⁶⁴ The owners, Dixie and Steven Randock, ultimately entered into individual plea agreements with the U.S. Attorney's Office, which included a guilty plea to conspiracy to commit mail and wire fraud. In July of 2008, both Randocks were sentenced to thirty-six months of imprisonment, followed by three years of supervised release.⁶⁵ With one minor variation, the United States Court of Appeals for the Ninth Circuit subsequently affirmed the Randocks' sentences.⁶⁶

There are a variety of ways in which proprietary institutions can misrepresent the nature of what they have to offer: in *Phillips Colleges of Alabama, Inc. v. Lester*, the school misrepresented that it would provide a specified number of hours of practical training;⁶⁷ in *Motel Managers Training School, Inc. v. Merryfield*, the school implicitly misrepresented itself by failing to acknowledge its unlicensed status to its students;⁶⁸ and in *Malone v. Academy of Court Reporting*, the school misrepresented through mail, telephone, advertising presentations, and door-to-door canvassing that completion of the school's program would lead to an associate's degree and

61. *Diploma Mills: Federal Employees Have Obtained Degrees from Diploma Mills and Other Unaccredited Schools, Some at Government Expense: Testimony Before the S. Comm. on Governmental Affairs*, 108th Cong. (2004) (statement of Robert J. Cramer, Managing Director, Office of Special Investigations, United States General Accounting Office).

62. *Id.*

63. Cooley, *supra* note 58, at 510–11.

64. *Id.*

65. *United States v. Randock*, 330 Fed. App'x 628 (9th Cir. 2009).

66. *Id.*

67. *Phillips Colleges of Alabama v. Lester*, 622 So.2d 308 (Ala. 1993).

68. *Motel Managers Training School, Inc. v. Merryfield*, 347 F.2d 27 (9th Cir. 1965).

that course credit would be transferable to a local university.⁶⁹ Finally, and perhaps most significantly, schools misrepresent students' prospects for employment upon graduation (e.g., in *Delta School of Commerce, Inc. v. Wood*, the court found that the school intentionally misrepresented itself when it told prospective students that they would receive a salary comparable to that of a nurse upon graduation from the school's program).⁷⁰

II. THE CURRENT STUDENT VISA SYSTEM

Although there is complexity around the regulatory framework of for-profit higher education, the landscape becomes much more complex as it relates to citizens from other countries who are students studying in the United States. Higher Education in the United States, Canada, and Australia attract many students from other countries and earn significant amounts of revenue for the institutions, as financial assistance is typically unavailable for these students. In the United States, there is a system to regulate how colleges and universities enroll international students.

The Student and Exchange Visitor Program ("SEVP") assists the Department of Homeland Security and the Department of State to monitor international students and the schools that enroll international students.⁷¹ SEVP administers the F and M visa categories. SEVP uses the Student and Exchange Visitor Information System ("SEVIS"), a web-based solution, to track and monitor schools and programs, students, exchange visitors and their dependents while approved to participate in the U.S. education system.⁷² SEVP collects, maintains and provides the information to allow only legitimate foreign students or exchange visitors to gain entry to the United States.⁷³ The result is an information system that provides information to the Department of State, U.S. Customs and Border Protection ("CBP"), U.S. Citizenship and Immigration Services ("USCIS"), and U. S. Immigration and Customs Enforcement ("ICE").⁷⁴

69. *Malone v. Academy of Court Reporting*, 64 Ohio App. 3d 588 (Ohio Ct. App., 1990); See also Matthew W. Finkin, *Private Accreditation in the Regulatory State*, 57 LAW & CONTEMP. PROBS. 89 (1994).

70. *Delta Sch. of Commerce, Inc. v. Wood*, 766 S.W.2d 424, 425 *opinion supplemented on denial of reh'g*, 769 S.W.2d 738 (1989).

71. U.S. Immigration and Customs Enforcement, Student and Exchange Visitor Program, available at <http://www.ice.gov/sevis/> (last visited May 13, 2012).

72. *Id.*

73. *Id.*

74. *Id.*

There are 10,000 approved schools and around one million students in the system.⁷⁵ The top schools enrolling students with an F-1 visa are the City University of New York, the University of Southern California, and Purdue University, and 36% of students in the system are enrolled in California, New York, Florida, Texas, or Pennsylvania.⁷⁶ China, South Korea, and India are the top three countries of origin for visiting students, and business is the most popular major.⁷⁷ To study in the United States, international students and the schools they attend must comply with a rigorous regulatory framework.

A. Student Responsibilities

The Immigration and Nationality Act identifies several categories of foreign nationals who may be admitted to the United States for non-immigrant purposes.⁷⁸ One such category, designated “F-1,” is comprised of “bona fide student[s]” who plan to study at an approved school.⁷⁹ Students entering the United States on an F-1 student visa are admitted for a temporary period known as “duration of status,” meaning “the time during which an F-1 student is pursuing a full course of study” at an approved school.⁸⁰ Once a student ceases to pursue a full course of study, the duration of status automatically ends and the temporary period for which the student was admitted to the United States expires.

A student must apply to an SEVP-approved school in the United States and upon acceptance, a school will provide the student with a document called a Form I-20.⁸¹ A Form I-20 is a paper record of student information in the SEVIS database. Each school that admits a student sends a Form I-20, and students must select only one school.⁸² Once the student has the Form I-20, the student must pay the SEVIS I-901 fee, which is approximately \$200.⁸³ Without this fee, students will not be eligible to apply for a visa. After paying the I-901 fee and receiving a receipt, a student can apply for a visa at any American embassy or consulate prior to

75. U.S. Immigration and Customs Enforcement, SEVIS by the Numbers, available at <http://www.ice.gov/sevis/outreach.htm> (last visited May 13, 2012).

76. *Id.*

77. *Id.*

78. *See* 8 U.S.C. § 1101 (2006).

79. *Id.* at § 1101(a)(15)(F)(I); 8 C.F.R. § 214.1(a)(2) (2011).

80. 8 C.F.R. § 214.2(f)(5)(I).

81. *Id.* at § 214.2(f)(2); *see also* U.S. Immigration and Customs Enforcement, *Becoming a Nonimmigrant Student in the United States, May 2007*, available at http://www.ice.gov/sevis/becoming_nonimmigrant_student_52007.htm.

82. 8 C.F.R. § 214.2(f)(1); *see also* *Becoming a Nonimmigrant Student in the United States*, *supra* note 80.

83. 8 C.F.R. § 214.13(a)(1).

departure from his home country.⁸⁴ Ultimately, failure to follow the guidelines could jeopardize the student's immigration status.

If a student fails to follow the guidelines, he may be refused entry into the United States. A passport, valid for at least six months beyond the date of the expected stay, and SEVIS Form I-20 must be presented upon entry.⁸⁵

It is recommended that a student hand-carry the following documentation:

- Evidence of financial resources;
- Evidence of student status, such as recent tuition receipts and transcripts;
- Paper receipt for the SEVIS fee, Form I-797; and
- Name and contact information for "Designated School Official," including a 24-hour emergency contact number at the school.⁸⁶

Students must also present the following documents: a passport, SEVIS Form (I-20), Arrival-Departure Record Form (I-94), and a Customs Declaration Form (CF-6059).⁸⁷ The students must also inform the customs officer of their student status. If the customs officer at the port of entry cannot initially verify the information or all of the required documentation is not presented, the student may be directed to an interview area known as "secondary inspection."⁸⁸ Secondary inspection allows inspectors to conduct additional research in order to verify information without causing delays for other arriving passengers. The inspector will first attempt to verify the status by using SEVIS.⁸⁹ In the event that the customs officer needs to verify information with a school or program, it is recommended that the student have the name and telephone number of the foreign student advisor at the school.

B. University Responsibilities

An institution seeking initial or continued authorization for attendance by nonimmigrant students must file a petition for certification or recertification with SEVP, using the SEVIS.⁹⁰ The petition must identify (by name and address) each location of the school that is included in the request for certification or recertification, specifically including any physical location in which a nonimmigrant can attend classes through the school (i.e., campus, extension campuses, satellite campuses, etc.).⁹¹ In

84. *Id.* at § 214.13(d).

85. U.S. Immigration and Customs Enforcement, Fact Sheet: Arriving at a U.S. Port of Entry...What a Student Can Expect, October 1, 2004, *available at* http://www.ice.gov/sevis/factsheet/100104ent_stdnt_fs.htm.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. 8 C.F.R. § 214.3(a)(1).

91. *Id.* at § 214.3 (a)(1)(ii).

submitting the Form I-17, a school certifies that the designated school officials (DSOs) signing the form have read and understand DHS regulations relating to: nonimmigrant students, change of nonimmigrant classification for students, school certification and recertification, and withdrawal of school certification.⁹² Both the school and DSO must also verify that they intend to comply with these regulations at all times; and that, to the best of its knowledge, the school is eligible for SEVP certification.⁹³ Willful misstatements may constitute perjury. The following types of schools may be approved for attendance:

- (A) a college or university (i.e., an institution of higher learning that awards recognized bachelor's, master's doctor's or professional degrees);
- (B) a community college or junior college that provides instruction in the liberal arts or in the professions and that awards recognized associate degrees;
- (C) a seminary;
- (D) a conservatory;
- (E) or an institution that provides language training, instruction in the liberal arts or fine arts, instruction in the professions, or instruction or training in more than one of these disciplines.⁹⁴

To be eligible for certification, at the time of filing, the petitioning school must establish that it:

- (A) is a bona fide school;
- (B) is an established institution of learning or other recognized place of study;
- (C) possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses;
- (D) and is, in fact, engaged in instruction in those courses.⁹⁵

For higher education institutions that are not accredited by a regional accrediting agency and that do not confer recognized degrees, the institutions must submit evidence that its credits are accepted unconditionally by at least three accredited or public institutions of higher learning.⁹⁶ The evidence can take the form of letters or articulation agreements, but there must be a total of three.⁹⁷ This information clarifies

92. *Id.*

93. *Id.*

94. *Id.* at § 214.3(a)(2)(i).

95. *Id.* at § 214.3(a)(3).

96. *Id.* at § 214.3(c).

97. *Id.*

the evidentiary requirements in Title 8, Code of Federal regulations, Section 214.3(c) for adjudication of Form I-17.⁹⁸

SEVP will notify the petitioner by updating SEVIS to reflect approval of the petition and by e-mail upon approval of a certification or recertification petition.⁹⁹ The certification or recertification is valid only for the type of program and non-immigrant classification specified in the certification or recertification approval notice. The certification must be recertified every two years and may be subject to out-of-cycle review at any time.¹⁰⁰

There are also recordkeeping and reporting requirements. A SEVP-certified school must keep records containing certain specific information and documents relating to each F-1 student to whom it has issued a Form I-20 until the school notifies SEVP that the student is no longer pursuing a full course of study.¹⁰¹ Student information not required for entry in SEVIS may be kept in the school's student system of records, but must be accessible to DSOs.¹⁰² The school must keep a record of compliance with the reporting requirements for at least three years after the student is no longer pursuing a full course of study.¹⁰³

C. Curricular Practical Training (CPT)

Although students on an F-1 visa are not able to receive financial aid or work a regular job, a special provision allows students to work if it is essential to the academic experience. Curricular Practical Training ("CPT") is a type of employment authorization that allows an F-1 student to participate in employment off-campus.¹⁰⁴ Any required internship that is an integral part of the established curriculum for a program of study would qualify as CPT. According to the 8 C.F.R. § 214.2(f)(10)(i):

Curricular Practical Training. An F-1 student may be authorized by the DSO to participate in a curricular practical training program that is an integral part of an established curriculum. Curricular practical training is defined to be alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school. Students who have received one year or more of full time

98. *Id.*

99. *Id.* at § 214.3(e)(2).

100. *Id.*

101. *Id.*

102. *Id.* at § 214.3(g)(1).

103. *Id.*

104. *Id.* at § 214.2(f)(10)(i); *see also* U.S. Immigration and Customs Enforcement, Practical Training, *available at* <http://www.ice.gov/sevis/practical-training/> (last visited May 13, 2012).

curricular practical training are ineligible for post-completion academic training. Exceptions to the one academic year requirement are provided for students enrolled in graduate studies that require immediate participation in curricular practical training. A request for authorization for curricular practical training must be made to the DSO. A student may begin curricular practical training only after receiving his or her Form I-20 with the DSO endorsement.

(A) *Non-SEVIS process. (no longer applies)*

(B) *SEVIS process.* To grant authorization for a student to engage in curricular practical training, a DSO at a SEVIS school will update the student's record in SEVIS as being authorized for curricular practical training that is directly related to the student's major area of study. The DSO will indicate whether the training is full-time or part-time, the employer and location, and the employment start and end date. The DSO will then print a copy of the employment page of the SEVIS Form I-20 indicating that curricular practical training has been approved. The DSO must sign, date, and return the SEVIS Form I-20 to the student prior to the student's commencement of employment.¹⁰⁵

As institutions have wide margins for interpreting the CPT rule, this is an area that lacks clarity. For example, institutions can take a more conservative or liberal view of the rule in regulating how and when students can work. In most legitimate cases, student must have been lawfully enrolled on a full-time basis for one academic year before being eligible for CPT. It is available only while the student is in valid F-1 status and before the completion of his or her program. Students in English language programs are not eligible for CPT. If the student had a gap in study or a status violation, the one academic year waiting period may need to be recalculated once the student has again obtained valid F-1 status. Immigration regulations do not allow colleges or universities to approve CPT for employment that is: highly recommended, a great opportunity, or for financial purposes. Because CPT is subject to widely varying interpretations and potential abuse, institutions taking a conservative view will only authorize CPT for a specific job with a particular employer for a specific length of time. This typically involves the approval and participation of a faculty member, who agrees to monitor the student's progress. With a more liberal interpretation of the rule, institutions have a greater ability to attract international students.

¹⁰⁵ 8 C.F.R. § 214.2(f)(10)(i); U.S. Immigration and Customs Enforcement, Curricular Practical Training, *available at* <http://www.ice.gov/sevis/students/cpt.htm> (last visited May 13, 2012).

III. THE CASE OF TRI-VALLEY UNIVERSITY

The case of Tri-Valley University (“TVU”) demonstrates the brokenness of the current student visa system and the abuses that occur when a proprietary institution with acute economic motives is left to police itself. On January 19, 2011, federal agents raided TVU and a multi-million dollar home in Pleasanton, California in connection with a federal customs and immigration criminal investigation.¹⁰⁶ That same day, the United States Attorney’s Office for the Northern District of California filed a civil forfeiture complaint alleging that TVU and its President Susan Xiao-Ping Su, engaged in an elaborate scheme to defraud students and the Department of Homeland Security.¹⁰⁷ Also on that day, United States Immigration and Customs Enforcement (“ICE”) delivered a Notice of Intent to Withdraw (“Notice of Intent”) to President Su and TVU, alleging multiple violations of federal regulations and terminating TVU’s active students nonimmigrant status.¹⁰⁸ Roughly three months later, Susan Xiao-Ping Su was indicted by a federal grand jury and charged with significant federal crimes, including conspiracy to commit visa and mail fraud.¹⁰⁹ The raid, civil forfeiture complaint, Notice of Intent, and indictment were the first public steps in civil and criminal proceedings against TVU and Susan Su. In the months that followed, the political impact of cases like TVU and other instances of student visa fraud was felt around the globe.

A. Background on Tri-Valley University

The story of TVU is one of rapid and expansive growth. TVU was, according to the institution’s website, a “Christian Higher Education Institution aiming to offer rigorous and excellent quality academic programs in the context of the Christian faith and world view.”¹¹⁰ TVU offered students a host of degrees, ranging from bachelors to doctorates in engineering, law, business, and health sciences.¹¹¹ The President of TVU, Susan Xiao-Ping Su, is a “native of China, with a master’s degree in

106. Susan C. Schena, *Homeland Security Raid of Ruby Hill House, Tri-Valley University Linked to Immigration, Customs Probe*, LIVERMORE PATCH, Jan. 19, 2011, <http://livermore.patch.com/articles/homeland-security-raids-ruby-hill-house>.

107. Complaint, *supra* note 1.

108. Notice of Intent to Withdraw, *available at* <http://www.globallawcenter.com> (last visited Aug. 18, 2011).

109. Complaint, *supra* note 1.

110. Susan C. Schena, *Federal Complaint Calls Private College in Pleasanton a Sham*, PLEASANTON PATCH, Jan. 20, 2011, <http://pleasanton.patch.com/articles/update-federal-complaint-calls-private-college-in-pleasanton-a-sham>.

111. *Id.*

engineering from the University of California, Davis and a Ph.D. in mechanical engineering from the University of California, Berkeley.”¹¹²

Following its modest beginnings in 2008, TVU obtained DHS approval to enroll foreign students in February 2009. Soon after receiving DHS approval to enroll foreign students, TVU enrolled 2 active F-1 students.¹¹³ Eight months later, however, in October of 2009, TVU enrolled 87 active F-1 students.¹¹⁴ Enrollment continued to grow at a rapid pace and by September 2010, TVU had an enrollment of 1,555 active F-1 students.¹¹⁵ The growth in enrollment continued at an astounding pace until December 2010, at which time TVU had an estimated enrollment of 2,500 students.¹¹⁶

The rapid and exponential growth in enrollment at TVU may, in part, be attributed to TVU’s business model. ICE’s investigation revealed that TVU employed a “referral/profit-sharing scheme, which resembles a pyramid scheme.”¹¹⁷ Students on F-1 visas at TVU, once enrolled, were given a striking incentive to recruit other foreign nationals. Under the business model, each F-1 student could collect up to 20% of the tuition of any new student that he or she referred in addition to collecting up to 5% of the tuition that any new student that his or her referred student refers.¹¹⁸ The profit-sharing scheme employed at TVU produced a significant amount of revenue in a short time. Tuition at TVU was \$2,700 per semester, providing an estimated revenue of \$4.2 million for the Fall 2010 semester.¹¹⁹

B. The Raid

On January 19, 2011, federal agents raided TVU and a home in the gated Ruby Hill community in Pleasanton, California.¹²⁰ The raid on the Ruby Hill home commenced at about 6 a.m. and federal agents were still at TVU headquarters at 3 p.m. that same day.¹²¹ According to a spokesperson for U.S. Immigration and Customs Enforcement, the raid was part of a federal criminal probe.¹²² The properties subject to the raid included offices at TVU, one home on Victoria Ridge Court in Pleasanton and the home in

112. Susan C. Schena, ‘Sham’ University Case One of Biggest, Official Says, PLEASANTON PATCH, May 3, 2011, <http://pleasanton.patch.com/articles/sham-university-case-one-of-biggest-official-says>.

113. Complaint, *supra* note 1, at 13.

114. *Id.*

115. *Id.*

116. Schena, *supra* note 111.

117. Complaint, *supra* note 1, at 11.

118. *Id.*

119. Susan C. Schena, *New Details Emerge in Pleasanton University Scandal*, LIVERMORE PATCH, Feb. 11, 2011, <http://livermore.patch.com/articles/new-details-emerge-in-pleasanton-university-scandal>.

120. Schena, *supra* note 105.

121. *Id.*

122. *Id.*

the gated Ruby Hill community of Pleasanton.¹²³ In addition to investigating those who operated TVU, agents also questioned available TVU students. After the raid, reports surfaced that Department of Homeland Security used radio-tracking devices to monitor roughly 1,500 Indian students who were detained and released following an investigation.¹²⁴

C. The Forfeiture Complaint

While the raid was underway, the United States Attorney for the Northern District of California filed a civil forfeiture complaint seeking the return of five parcels of real estate Susan Su had allegedly purchased with the proceeds in a scheme to defraud the Department of Homeland Security (“DHS”).¹²⁵ The forfeiture complaint The Government sought to seize \$3.2 million worth of property that the complaint alleges was paid for with illegal proceeds from TVU’s fraudulent scheme.¹²⁶ The forfeiture complaint further alleged that TVU has been a “sham university” since its inception and that Su and others used TVU to facilitate foreign nationals in illegally acquiring student immigration status that authorized them to remain in the United States.¹²⁷ As a result of this fraudulent scheme, in the brief time since 2009 when TVU obtained DHS approval, Su and TVU have “made millions of dollars in tuition fees for issuing these visa related documents which enable foreign nationals to obtain illegal student immigration status.”¹²⁸

Significant factual detail about the alleged fraudulent scheme perpetrated by Su and TVU is contained in the forfeiture complaint. One of the more notable allegations of fraud pertained to TVU’s attempt to secure initial approval to admit foreign students on F-1 visas. For instance, because TVU is an unaccredited school, it must provide evidence to DHS that at least three accredited colleges or universities will accept transfer credits from TVU. The forfeiture complaint alleged that Su sent the

123. Marnette Federis, *Update: Federal Complaint Calls Private College in Pleasanton a Sham*, PLEASANTON PATCH, Jan. 20, 2011, <http://pleasanton.patch.com/articles/update-federal-complaint-calls-private-college-in-pleasanton-a-sham>.

124. Karin Fischer, *U.S. Inquiry Into ‘Sham University’ Creates Friction With India*, CHRON. HIGHER EDUC., Feb. 2, 2011, <http://chronicle.com/article/US-Inquiry-Into-Sham/126198/>.

125. Complaint, *supra* note 1, at 2.

126. *Id.* at 14–18. The specific property identified includes: (1) A condominium valued at \$80,000; (2) two office suites worth a combined value of \$550,000; (3) a 2,600-square-foot residence purchased in 2010 for \$825,000; and (4) a \$1.8 million, 6,400-square-foot home.

127. Notice of Intent, *supra* note 108, at 2.

128. Complaint, *supra* note 1, at 2.

authorities three articulation agreements from accredited colleges, each of which stated that a particular school would accept academic credits earned at TVU. Reports indicate that Su claimed the agreements were with San Francisco State University, Central Florida University and University of East Western Medicine.¹²⁹ A subsequent ICE investigation revealed that at least two of those accredited colleges never agreed to accept TVU credits in the past and did not agree to accept TVU's credits in the future.¹³⁰ Without such approval from three accredited colleges or universities, DHS would not have approved TVU's I-17 application and TVU would not have been permitted to admit students on F-1 visas. Accordingly, the forfeiture complaint seeks return of the tuition proceeds of TVU's scheme to defraud.

The forfeiture complaint also revealed additional details about the ICE investigation into TVU's practices. For instance, in reviewing TVU's SEVIS records, it became apparent that TVU was grossly over capacity in the number of foreign students it was approved to educate. The DHS site visit as part of the approval process placed F-1 student capacity at 30 students.¹³¹ Despite this limit on international student capacity, SEVIS records showed that TVU had 11 active F-1 students by May 2009, 75 by September 2009, 447 by January 2010, and 939 by May 2010.¹³² In 2010, more than 95% of the students in active F-1 status were citizens of India.¹³³

Finally, the forfeiture complaint contained allegations that Su impermissibly issued Forms I-20 to students that had been terminated in SEVIS.¹³⁴ As part of an undercover operation in June of 2010, ICE provided a witness with written information for two foreign nationals whose status had been terminated in SEVIS.¹³⁵ The witness subsequently told President Su that he had two friends who were seeking admission to TVU and had Forms I-20 reflecting their admission.¹³⁶ Su allegedly agreed and signed two Forms I-20 in the name of another DSO at TVU.¹³⁷ The following month, the witness met with Su again, and paid Su \$2,000 to activate the status of the two students for whom Su signed the Forms I-20.¹³⁸ TVU then subsequently activated the status of both students in

129. Erica Perez, 'Sham University' Board Chair Faced Allegations Before, CAL. WATCH, Feb. 2, 2011, <http://californiawatch.org/dailyreport/sham-university-board-chair-faced-allegations-8437>.

130. *Id.*

131. Complaint, *supra* note 1, at 9.

132. *Id.* at 13.

133. *Id.* at 9.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. Complaint, *supra* note 1, at 10.

SEVIS on July 27, 2010.¹³⁹ The information entered in SEVIS reflected that both students were enrolled in Ph.D. programs.¹⁴⁰

D. SEVP and The Notice of Intent to Withdraw

The Notice of Intent to Withdraw is the culmination of an investigation by DHS into the educational practices of TVU.¹⁴¹ In September of 2009, SEVP was made aware of a suspicion that TVU exclusively offered online courses, prompting further investigation into TVU and its educational practices. After an extensive investigation into the school in November of 2010, the Homeland Security Investigations (HSI) Office of the Special Agent in Charge, San Francisco, provided SEVP information regarding the school's alleged violations of SEVP regulations.¹⁴² On January 19, 2011, U.S. Immigrations and Customs Enforcement delivered to TVU and President Su a "Student and Exchange Visitor Program Notice of Intent to Withdraw" alleging numerous violations of federal regulations.¹⁴³ TVU immediately lost its ability to enroll foreign students.¹⁴⁴

The Notice of Intent raised eight issues regarding alleged violations of federal regulations. Based on these alleged violations, and pursuant to 8 C.F.R. § 214.4(a)(2) which authorizes SEVP to withdraw its certification of a school for the attendance of nonimmigrant students "if the school or school system is determined no longer be entitled to certification for any valid and substantive reason," TVU's Active student status was terminated. The eight issues can be summarized as follows: First, the school failed to maintain hundreds of student records by providing the same address at which none of the students live. Second, TVU failed to terminate students who had fallen out of Active status and notify SEVIS of changes in student records. Third, TVU authorized Curricular Practical Training ("CPT") for students outside of their major area of study, effectively issuing false certifications for work authorization. Fourth, TVU permitted students to serve as school instructors at non-educationally affiliated sites. Fifth, TVU failed to submit the school's Form I-17. Sixth, TVU did not submit statements of Designated School Officials ("DSOs"). Seventh, TVU impermissibly issued Forms I-20 to students not enrolled in full courses of study. Eighth, and finally, TVU failed to notify SEVIS of material changes to its curriculum, school location, degrees available, and research requirements. Although some of these violations might seem like minor compliance issues at first glance, a closer look at the details alleged in the Notice of Intent, if proven, reveal an outrageous picture of an entity that

139. *Id.*

140. *Id.*

141. Notice of Intent, *supra* note 108, at 2.

142. *Id.*

143. *Id.* at 2–14.

144. Schena, *supra* note 119.

looks more like a fraudulent business and less like an institution of higher learning.

TVU allegedly failed to keep accurate student records in SEVIS. As stated above, each university that admits F-1 students is required to keep data on where F-1 students reside and report that data to SEVIS. In June of 2010, HSI agents gathered and examined TVU student data from SEVIS. At the time of the data examination, there were 968 TVU students listed as active in SEVIS. Remarkably, 553 of those students (57%) were listed in SEVIS as residing at 555 East El Camino Real,¹⁴⁵ Apartment 415, which HSI agents discovered is a single-unit, two-bedroom residence in Sunnyvale, California.¹⁴⁶ HSI agents interviewed the tenants of the apartment and confirmed that the four tenants residing in the apartment were not TVU students. A subsequent interview with a former TVU employee revealed that he was instructed by school officials to use the 555 East El Camino Real address when processing students in SEVIS in an attempt to conceal the fact that most of the students lived outside of California and did not attend their classes.¹⁴⁷

TVU allegedly failed to terminate students who had fallen out of active status and notify SEVIS of such a termination.¹⁴⁸ The Notice of Intent identified two students listed as active students who made statements that they never physically attended classes at TVU, even though TVU required full time students to take three courses a semester and federal regulations provide that no more than one of those classes per semester could be conducted online.¹⁴⁹ Related to this violation, TVU also failed to notify SEVP of a change in the physical location of the school within 21 days of the move.¹⁵⁰

Perhaps chief among the accusations against TVU is the third issue raised in the Notice of Intent: Designated School Officials (“DSOs”) approved students for Curricular Practical Training (“CPT”) that was not directly related to students’ major areas of study.¹⁵¹ The Notice of Intent is rife with factual details of alleged abuses of what constitutes CPT. For instance, one student, working toward a master’s degree in Health/Health Care Administration/Management was authorized for full-time CPT with a computer science company.¹⁵² Another student whose major area of study was computer science was authorized for CPT with a discount retail store

145. Notice of Intent, *supra* note 108, at 1.

146. *Id.* at 2–14.

147. For a discussion on how such an abuse could occur under a seemingly comprehensive system of government regulation, *see supra* Section II and *infra* Section III.H.

148. Notice of Intent, *supra* note 108, at 2.

149. *Id.*

150. 8 C.F.R. § 214.3(h)(3) (2011).

151. *Id.* at § 214.2(f)(10); *see also* Notice of Intent, *supra* note 108, at 6.

152. Notice of Intent, *supra* note 108, at 6.

located in a mall in Alexandria, Virginia.¹⁵³ One student earning a Master's degree in Business Administration and Management was authorized for full-time CPT at "High Life," a tobacco shop in Houston, Texas.¹⁵⁴ In another instance, a student's CPT was approved by TVU's Department of Computer Science and Engineering, even though the student's major area of study was Business Administration, Management and Operations.¹⁵⁵ Another student whose major area of study was Health/Health Care Administration/Management was authorized for full-time CPT at a 7-Eleven in North Plainfield, New Jersey.¹⁵⁶ A student enrolled in a doctorate degree level program and majoring in Health/Health Care Administration/Management was authorized for full-time CPT with an IT consulting business in Iselin, New Jersey.¹⁵⁷ Finally, another student enrolled at the school as a doctoral candidate studying Health/Health Care Administration/Management was authorized for full-time CPT at Dillard's Inc., a retail store in Murray, Utah.¹⁵⁸ The Notice of Intent continued to allege that because TVU authorized students for practical training that was not directly related to the students' major area of study, the school was subject to withdrawal.

TVU also allegedly employed F-1 students as faculty members in violation of 8 CFR 214.2(f)(9)(i). One student admitted on an F-1 visa was authorized for full-time CPT training with a company in Michigan; the student was also listed on the school's website as the teacher for "EE350 Nanotechnology" and "ME311A Computer-Aided-Design with AutoCAD I." As such, the Notice of Intent concluded that "the teaching employment is not being performed on the school's premises or at an off-campus location which is educationally affiliated with the school in violation of 8 CFR 214.2(f)(9)(i)." Similarly, students participating in full-time CPT in Delaware, Iowa, Utah, Massachusetts, Michigan, and Illinois were also listed as instructors in the TVU catalog.¹⁵⁹ The Notice of Intent also alleged that the DSOs at TVU provided uncertified school employees with access to SEVIS and impermissibly delegated the issuance of Forms I-20 in violation of 8 CFR 214.3(l)(1).¹⁶⁰

TVU similarly failed to provide SEVP paper copies of Form I-17 bearing the names, titles and signatures of TVU's DSOs as required by 214.3(l)(2).¹⁶¹ More specifically, the Notice of Intent alleged that a former

153. *Id.*

154. *Id.* at 6–7.

155. *Id.* at 7.

156. *Id.*

157. *Id.* at 7–8.

158. *Id.* at 8.

159. *Id.* at 9–10. Such a violation would also subject TVU to withdrawal. *See* 8 C.F.R. § 214.4(a)(2)(vi) (2011).

160. Notice of Intent, *supra* note 108, at 10.

161. *Id.* at 10–11.

employee not designated as a DSO stated that his responsibilities included processing applications for prospective students and creating Forms I-20 in SEVIS for these individuals.¹⁶² The sixth issue raised in the Notice of Intent, closely related to the fifth issue, alleged that TVU failed to provide statements from any school official not designated as a DSO that they are familiar with and will abide by the regulations governing nonimmigrant students.¹⁶³

The other major allegation in the Notice of Intent is articulated in the seventh issue, wherein the Government alleged that “SEVP believes a vast majority of nonimmigrant students enrolled at TVU are not enrolled for full courses of study.”¹⁶⁴ Several former students gave statements that they never physically attended classes at the school and that while the school offers online instruction, the students were not required to participate in the online instruction.¹⁶⁵ Of the 1,555 Active students, only 53 (3.4%) lived within commuting distance of TVU.¹⁶⁶ Several students made statements that the school issued a Form I-20 to a student who would not be enrolled in a full course of study in violation of 8 CFR 214.4(a)(2)(xi).¹⁶⁷ The significance of this alleged violation cannot be understated. If the allegations are later proven true, the very purpose for which TVU claimed these students were in the United States, namely education, was indeed false.

Finally, TVU also allegedly failed to notify SEVP of material changes to the school’s curriculum and the scope of the institution’s offerings.¹⁶⁸ As previously discussed, one such alleged violation was the failure to notify SEVP of a change in the physical address of the school.¹⁶⁹ Another significant alleged violation involved TVU’s issuance of Forms I-20 to nonimmigrant students to enroll in programs under TVU’s School of Medicine.¹⁷⁰ At the time of SEVP certification, the school’s catalog and the school’s Form I-17 did not indicate that programs were offered in the Health Sciences field.¹⁷¹ Despite this inadequacy, 178 students were enrolled in master and doctoral level programs through the School of

162. *Id.* at 11.

163. *Id.* at 11–12; *see also* 8 C.F.R. § 214(l)(3) (prohibiting an individual from processing applications for prospective students and creating Forms I-20 in SEVIS without training, knowledge of SEVIS regulations, or SEVP approval).

164. Notice of Intent, *supra* note 108, at 12–13.

165. *Id.* at 13.

166. *Id.*

167. *Id.*

168. *Id.* at 14.

169. *Id.* at 15. The school has 21 days from the date of the change to report the change as required by 8 C.F.R. § 214.3(h)(3) to update SEVIS accordingly. *See also* 8 C.F.R. § 214(g)(2)(i) (2011).

170. Notice of Intent, *supra* note 108, at 15.

171. *Id.*

Medicine at TVU.¹⁷² Accordingly, because TVU failed to immediately notify SEVP of the addition of the programs, the school failed to notify SEVP of material changes under 8 CFR 214.3(f)(1) and 214.3(h)(3)(iii).¹⁷³ The school also made significant changes to its curriculum that permitted students to participate in substantial amounts of CPT, without notifying SEVP of material changes to its curriculum regarding its research requirements, degree completion requirements, and CPT program.¹⁷⁴ There are also additional allegations that numerous students participated in CPT for up to six trimesters.¹⁷⁵

The Notice of Intent concluded by noting that pursuant to its power under 8 CFR 214.4(i)(4), SEVP was notifying TVU that, “[TVU’s] Active status nonimmigrant students have been terminated in SEVIS and [TVU’s] Initial status nonimmigrant students have been canceled in SEVIS.”¹⁷⁶ SEVP also terminated TVU’s PDSO and DSOs’ access to SEVIS.¹⁷⁷

E. Su’s Response

President Su issued a written response to the Notice of Intent that generally denied the allegations of misconduct and pointing toward the success TVU experienced since its inception in 2008. Su’s response contained numerous spelling and grammatical mistakes, as is evidenced by her statement on the final page of the letter that, “TVU’s academic program, class content, degree curriculum are [sic] keep improving and updating almost in daily, weekly bases [sic]”¹⁷⁸ In response to the eight issues raised by SEVP, Su responded that “[s]ome are misunderstandings; some are our administrative system ignorance and part of the growing pain and have been working on to resolve.”¹⁷⁹ Su also pointed toward TVU’s rapid growth as the source of the alleged administrative errors.¹⁸⁰ In an apparent attempt to contest some of the allegations about noncompliance with several federal regulations regarding

172. *Id.* at 16.

173. *Id.*

174. Notice of Intent, *supra* note 108, at 16–17.

175. Notice of Intent, *supra* note 108, at 16–18. “Permitting such curricular changes represents a material change in Tri-Valley University’s curriculum. To date, Tri-Valley University has not notified SEVP of these changes and is therefore in violation of 8 C.F.R. § 214.3(f)(1) and subject to withdrawal per 8 C.F.R. § 214.4(a)(2)(xix).” *Id.*

176. *Id.* at 19.

177. *Id.*

178 Letter from President Su responding to SEVP’s decision to withdraw TVU’s SEVIS approval, *available at* <http://www.globallawcenters.com/pdfs/34479.pdf> (last visited May 13, 2012).

179. *Id.*

180. *Id.*

class attendance and instructor eligibility, Su pointed toward the technology and method of instruction implemented by TVU.¹⁸¹

F. Criminal Indictment Against Susan Xiao-Ping Su

Over three months after the initial raid on TVU and related properties, criminal proceedings commenced against Susan Su. On April 28, 2011, a federal grand jury in Oakland, California indicted Susan Xiao-Ping Su in a 33-count indictment alleging, *inter alia*, conspiracy to commit visa fraud, visa fraud, wire fraud, money laundering, alien harboring, and making false statements.¹⁸² Soon thereafter, on Monday May 2, 2011, Susan Xiao-Ping Su was arrested on federal charges of fraud, money laundering, and harboring undocumented immigrants.¹⁸³ Su made her initial appearance in a federal court in Oakland on May 2, 2011 and was released that same day on \$300,000 bond.¹⁸⁴ On November 18, 2011, Su entered a plea of not guilty.¹⁸⁵

The gravamen of the indictment alleges that Susan Su engaged in a two-year scheme to defraud the Department of Homeland Security (DHS) by submitting fraudulent documents in support of TVU's application for approval to admit foreign students and, upon obtaining approval, fraudulently issued visa-related documents to student aliens in exchange for tuition and fees.¹⁸⁶ Susan Su purportedly carried out this scheme by creating multiple false representations to DHS through TVU's use of SEVIS.¹⁸⁷ Because of her false representations, Su was able to issue student visas without regard to students' academic qualifications or true intent to pursue a course of study at an American university. In exchange for these student visas, Su received substantial tuition and fees.¹⁸⁸ The indictment further alleged that as part of the F-1 visa scheme, Susan Su harbored multiple TVU student-employees to assist her in making the false representations to SEVIS.¹⁸⁹ Also contained in the indictment are allegations that Susan Su participated in multiple money laundering

181. *Id.*

182. Press Release, Dep't of Justice, *Pleasanton University President Charged in 33-Count Indictment for Student Visa Fraud Scheme* (May 2, 2011), available at http://www.justice.gov/usao/can/press/2011/2011_05_02_su.charged.press.html.

183. *President of Alleged Sham University to be Arraigned in Federal Court Today*, PLEASANTON PATCH, May 2, 2011, <http://pleasanton.patch.com/articles/president-of-alleged-sham-university-arrested>.

184. Schena, *supra* note 112.

185. *United States v. Su*, Docket No. 4:11-cr-00288 (N.D. Cal, filed Nov. 18, 2011).

186. Press Release, *supra* note 181, at 1.

187. *See Id.*

188. *Id.*

189. *Id.*

transactions totaling over \$3.2 million using the proceeds she derived from the visa fraud scheme.¹⁹⁰ If ultimately convicted, Su could face significant penalties, as Su is charged with federal criminal carrying penalties ranging from one to up to 20 years in prison.¹⁹¹

G. Other Instances of Visa Fraud

TVU is just one example in what seems to be a growing trend of sham colleges and universities exploiting international students and attempting to take advantage of America's student visa system. In July 2011, federal agents raided University of Northern Virginia (UNV).¹⁹² The school was notified about a temporary blockage from accepting new international students and that it was in jeopardy of losing its ability to accept foreign students.¹⁹³ Indeed, even a brief review of news stories within the last ten years reveals various instances of student visa fraud, some committed by institutions, others committed by individuals. In 2004, a former employee of Morris Brown College in Atlanta was sentenced to 37 months in prison for his role in a scheme that resulted in the issuance of more than 50 visas, under the guise that these immigrants would attend college.¹⁹⁴ In 2011, the owner and operator of California Union University was sentenced to a year in prison after pleading guilty to visa fraud and money laundering.¹⁹⁵

190. *Id.*

191. Schena, *supra* note 112. The charges against Su include: Wire Fraud, in violation of 18 U.S.C. § 1343, carrying up to 20 years' imprisonment and a \$250,000 fine; Mail Fraud, in violation of 18 U.S.C. § 1341 carrying up to 20 years' imprisonment and a \$250,000 fine; Conspiracy to Commit Visa Fraud, in violation of 18 U.S.C. § 371 carrying up to 5 years' imprisonment and a \$250,000 fine; Visa Fraud, in violation of 18 U.S.C. § 1546(a), carrying up to 10 years' imprisonment and a \$250,000 fine; Use of False Document, in violation of 18 U.S.C. § 1001(a)(3), carrying up to 5 years' imprisonment and a \$250,000 fine; False Statements to a Government Agency, in violation of 18 U.S.C. § 1001(a)(2), carrying up to 5 years' imprisonment and a \$250,000 fine; Alien Harboring, in violation of 18 U.S.C. § 1324(a)(1)(A)(iii), § 1324 (A)(1)(A)(v)(II), and § 1324 (a)(1)(B)(i) carrying up to 10 years' imprisonment and a \$250,000 fine; Unauthorized Access of a Government Computer, in violation of 18 U.S.C. § 1030(a)(3), carrying up to 1 year imprisonment and a \$250,000 fine; and Money Laundering, in violation of 18 U.S.C. § 1957(a), carrying up to 10 years' imprisonment and a \$250,000 fine. Press Release, *supra* note 182.

192. Tom Bartlett, Karin Fischer, and Josh Keller, *Federal Agents Raid Virginia Institution that Draws Many Students from India*, CHRON. HIGHER EDUC., Jan 29, 2011, <http://chronicle.com/article/Agents-Raid-Virginia/128433/>.

193. *Id.*

194. *Morris Brown Employee Sentenced in Visa Scheme Involving Illegal Immigrants*, BLACK ISSUES IN HIGHER EDUC., Sept. 23, 2004, available at http://findarticles.com/p/articles/mi_m0DXK/is_16_21/ai_n6355363/.

195. *Owner of Institution Called a Fake University is Sentenced for Visa Fraud*, CHRON. HIGHER EDUC., June 13, 2011, available at <http://chronicle.com/>

Student visa fraud also occurs in the testing phase, as F-1 students are required to pass certain tests prior to obtaining an F-1 visa.¹⁹⁶ Prior to the TVU case, one of the largest instances of institutional student visa fraud occurred at the Florida Language Institute.¹⁹⁷

H. The Inadequacies of the SEVIS System

As noted above, SEVIS is the computerized system that collects and monitors information on the current status of non-immigrant students during their course of study in the United States. Despite its goal of restoring integrity to the immigration system and effectively managing status information on international students,¹⁹⁸ the failures of SEVIS also played a significant role in the injustices that occurred at TVU. Under the current system, each school plays a role in entering information into the SEVIS system and much of the regulation that takes place only occurs after fraudulent practices are reported to ICE or data collected in the system is analyzed and abuses are discovered. This back-end approach to regulation

[blogs/ticker/owner-of-institution-called-a-fake-university-is-sentenced-for-visa-fraud/33879](http://blogs.ticker/owner-of-institution-called-a-fake-university-is-sentenced-for-visa-fraud/33879).

196. In 2010, Eamonn Daniel Higgins allegedly collected thousands of dollars from foreign nationals in exchange for taking exams on behalf of the foreign nationals at 10 southern California community colleges and universities. Higgins and his accomplices, over a seven year period, allegedly collected as much as \$1,500 per student per exam for passing grades on English proficiency exams, writing assessments, English and Math college placement tests, final exams and other college coursework the students needed to obtain their F-1 student visas or to stay current on their visas. In April of 2010, Higgins pleaded guilty to a charge of conspiracy to commit visa fraud. Later that year, in November 2010, Higgins was sentenced to five months in federal custody and five months of home confinement. *See, e.g.,* Anna Gorman and My-Thuan Tran, *Man Charged With Leading Student Visa Fraud Operation*, LOS ANGELES TIMES, Mar. 8, 2010, available at <http://articles.latimes.com/print/2010/mar/08/local/la-me-fake-student9-2010mar09>; *see also* Salvador Hernandez, *Man Sentenced in Student-Visas Scheme*, THE ORANGE COUNTY REG., Nov. 2, 2010, available at <http://www.ocregister.com/articles/higgins-273942-students-scheme.html#>.

197. *Florida Student Visa Fraud: Florida School Owner Gets Prison Time for Visa Fraud*, ASSOCIATED PRESS, Aug. 31, 2010, available at <http://www.wctv.tv/home/headlines/101866343.html>. Before the case of Tri-Valley University, one of the largest cases of student visa fraud in higher education involved The Florida Language Institute. In August 2010, the owner of Florida Language Institute, Lydia Menocal, was sentenced to 15 months in prison after he pleaded guilty to conspiring to make false statements on immigration documents. *Id.* Additionally, Menocal's sentence requires her to serve two years of supervised release and pay the United States \$600,000 in profits she made from the conspiracy. *Id.*

198. U.S. Immigration and Customs Enforcement, Fact Sheet: Maintaining Your Immigration Status While a Student or Exchange Visitor, available at <http://www.ice.gov/sevis/SEVISFactSheet.htm> (last visited May 13, 2012).

allows institutions like TVU to engage in fraudulent practices to flourish in the short-term, causing significant harm to international students. A system that recognizes, before students enter the United States, the limitations of a school's capacity to host international students will better serve international students and the United States system of higher education.

I. The Political Impact of Student Visa Fraud

The global political impact of cases like TVU and the other instances of student visa fraud discussed in the preceding section cannot be understated. Soon after the raid, news accounts of Indian students being detained and outfitted with ankle-monitoring devices led to protests in the streets of India.¹⁹⁹ The Official Spokesperson for the Indian Ministry of External Affairs issued a press briefing on January 29, 2011, addressing "questions on the issue, including the tagging of some of the students."²⁰⁰ The press briefings called on the United States to treat the former TVU students fairly—allowing those who wished to return to India to do so and those who wished to adjust their immigration status also be permitted to do so.²⁰¹ In an effort to clean up the political fallout of the TVU case and to discuss the fate of former students, Secretary of State Clinton met with Indian delegates, including External Affairs Minister S.M. Krishna in February 2011.²⁰² After the meeting, it was reported that Clinton gave Krishna her assurances that she would help the Indian students from TVU who had lost their visa status.²⁰³

Highlighting the pressing need to address the issue of sham institutions, four Senators wrote to the Director of United States Citizenship and Immigration Services ("USCIS") and the Assistant Secretary of Homeland Security.²⁰⁴ The letter identified the problem as "the illegal use of student visas by foreign nationals to attend 'sham universities'" and pointed toward

199. Schena, *supra* note 112.

200. Press Briefing, Indian Ministry of External Affairs (Jan. 29, 2011), available at <http://mea.gov.in/mystart.php?id=530317121>.

201. *Id.*

202. Schena, *supra* note 112.

203. *Hillary Clinton Assures Help to Duped Tri-Valley Students*, THE ECON. TIMES, Feb. 13, 2011 (Delhi), available at http://articles.economictimes.indiatimes.com/2011-02-13/news/28540103_1_tri-valley-university-tvu-students-indian-students.

204. See Letter from Senators Dianne Feinstein, Claire McCaskill, Jon Tester, and Charles Schumer to Alejandro Mayorkas, Director of U.S. Citizenship and Immigration Services, and The Hon. John T. Morton, Assistant Sec. of Homeland Security (March 6, 2011), available at http://feinstein.senate.gov/public/index.cfm?FuseAction=NewsRoom.PressReleases&ContentRecord_id=90f4b32c-5056-8059-76e2-3ba1c01a09e8&Region_id=&Issue_id=.

TVU as the latest example.²⁰⁵ The letter identified three interests America has in operating a legitimate student visa program. First, framing the issue in economic terms, the Senators noted that the student visa program provides American colleges and universities with “much needed capital from international students paying full tuition.”²⁰⁶ Second, a legitimate student visa program gives America the opportunity to “educate the world’s future leaders about American values such as freedom, democracy, and free-enterprise economy.”²⁰⁷ Third, the Senators pointed out that the presence of fraud among some colleges and universities damages the credibility of legitimate colleges and universities admitting international students.²⁰⁸ Taking a proactive approach to the problem, the Senators called on USCIS and Homeland Security to formulate high-risk factors for student visa fraud and conduct site visits to every Student Exchange Visitor Program (“SEVP”) in the nation.²⁰⁹ Additionally, the letter called for harsher penalties for those operating for-profit sham universities.²¹⁰

Senator Diane Feinstein and Senator Clair McCaskill also wrote a letter to Gene Dorado, Comptroller General of the United States, asking the Government Accountability Office (“GAO”) to undertake a review of the Student Exchange Visitor Program (“SEVP”).²¹¹ The letter pointed out that there are over 10,000 schools currently approved to accept nonimmigrant students and exchange visitors to study at their institution and noted an increasing concern about the number of these schools that operate “not for educational purposes but instead solely to manipulate immigration law to admit foreign nationals into the country.”²¹² The letter asked the GAO study to address whether ICE has appropriate procedures in place to detect fraud during the certification process and whether measures exist to detect fraud once approved schools begin accepting foreign students.²¹³ Finally, the letter asked what mechanisms are currently in place so that ICE can communicate with the Department of State and United States Citizenship and Immigration Services regarding the number of students a certified school can reasonably admit to ensure that only an appropriate number of visas are issued for each certified school.²¹⁴ The subject continues to garner

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. Letter from Senators Dianne Feinstein and Claire McCaskill to The Hon. Gene L. Dorado, Comptroller General of the U.S. (Mar. 4, 2011), *available at* http://www.feinstein.senate.gov/public/index.cfm?a=Files.Serve&File_id=1bf2e7fb-6bca-48c2-abee-beeb92719987.

212. *Id.*

213. *Id.*

214. *Id.*

congressional attention, as Senator Charles Grassley of Iowa, recently called for reform of student visa regulations during a subcommittee hearing on immigration.²¹⁵

The TVU case continues to appear in news outlets in India. On October 22, 2011 it was announced in that 435 students were approved to transfer to another institution and 145 had been denied.²¹⁶ At the same time, Secretary Clinton stated that they are expanding education about diploma mills to help protect students and families.²¹⁷ On November 8, 2011 it was reported that the remaining 1200 students would have to return to India.²¹⁸

IV. IMPLICATIONS AND PROPOSALS

A careful review of the F-1 student visa system, especially in light of the TVU case, reveals three major problems with the current system. First, the ability of the United States to be a high-quality educational provider is damaged by low-quality and fraudulent institutions. Second, significant government resources are spent investigating and prosecuting fraudulent institutions, instead of preventing the fraud before it occurs. Third, international students are not protected from predatory and fraudulent institutions. Instead, these students are often treated more like criminals and less like victims. To strengthen America's standing in the international community, prevent fraud before it happens, and afford better protection to international students studying in the United States, reform is necessary. With these problems in mind, we offer three proposals for reform.

Simply, the presence of fraudulent institutions in the American system of higher education damages the legitimacy of the system as a whole. The financial impact of international students studying in the United States is estimated to be an \$18.8 billion dollar industry.²¹⁹ In addition to the positive financial impact international students have on the American economy, a system of higher education devoid of fraudulent institutions

215. *U.S. Senator Calls for Tougher Student-Visa Regulations*, CHRON. HIGHER EDUC., July 29, 2011, available at http://chronicle.com/blogs/ticker/u-s-senator-calls-for-tougher-visa-regulations/34946?sid=at&utm_source=at&utm_medium=en.

216. *Tri-Valley Case: U.S. Approves Transfer of 435 Indian Students*, BUS. STANDARD (Delhi), Oct. 22, 2011, available at <http://www.businessstandard.com/commodities/news/tri-valley-case-us-approves-transfer435-indian-students/149535/on>.

217. *Id.*

218. *Doors Shut For Tri Valley Varsity Students, Likely To Return Home*, THE TIMES OF INDIA (Delhi), Nov. 8, 2011, available at http://articles.timesofindia.indiatimes.com/2011-11-08/hyderabad/30372865_1_tri-valley-university-visa-fraud-admissions-in-other-universities.

219. *International Students Contribute \$18.8 Billion to U.S. Economy*, NAFSA, <http://www.nafsa.org/publicpolicy/default.aspx?id=23158> (last visited on May 11, 2012).

improves America's reputation in the global society. Moreover, the reliability of legitimate institutions increases when members of the international community are assured that fraudulent institutions are prosecuted and deterred.

When regulations are poorly drafted and certification mechanisms are inadequate, significant government resources must be spent to uncover and prosecute fraudulent practices. To be sure, enhancing the regulatory environment is difficult for a large and complicated system of proprietary education. Many institutions do not keep good records related to faculty qualifications or student learning, which makes transparency impossible. Since 2007, there have been several attempts at creating stronger regulations, primarily directed toward for-profit institutions.²²⁰ Each time, however, these stronger regulations have been removed before the bills were signed into law.²²¹ In light of continued fraudulent activity related to diploma mills, legislation can enhance the distinguishing characteristics of legitimate and illegitimate for-profit institutions.

There are several ways that regulatory law can address the problems highlighted by the TVU case. For instance, some have suggested that state attorneys general can identify and address diploma mills by filing suits against vendors under deceptive trade practice laws, resulting in revocation of the fraudulent institution's tax-exempt status.²²² Accrediting agencies can also exclude institutions that engage in questionable practices.²²³ Although accrediting and licensing agencies, states, and the federal government all play a role in regulating education, there are inadequacies that relegate some students to a disadvantaged position (e.g., poor or international). Indeed, it has been noted that:

The states' ability to address the problem through private or public law is severely hampered by the inadequacies of the legal doctrines under which such suits are brought, and nonfederal entities—state licensing agencies and accrediting agencies—are unable to effectively deal with the problem. Although the U.S. Department of Education has some weaknesses, it is best positioned to address the problem of proprietary schools' predatory practices if it can compensate for its weakness in detecting, deterring, and remedying fraudulent proprietary school misrepresentations.²²⁴

Students are often the victims of low quality education providers. In some cases, lawsuits have been filed against these illegitimate

220. See Cooley, *supra* note 58, at 522.

221. *Id.* at 522–23.

222. See, e.g., *id.* at 524.

223. See *id.* at 516–24.

224. Patrick F. Linehan, *Dreams Protected: A New Approach to Policing Proprietary Schools' Misrepresentations*, 89 GEO. L.J. 753, 789 (2001).

institutions.²²⁵ In other cases, as in the case with TVU, international students' rights are more limited and they often face the risk of deportation. Recognizing the unique harm caused to individuals and society by diploma mills, one author advocated that Congress should grant injured students a private right of action.²²⁶ This sort of legal action would need to navigate around the evidentiary pitfalls of state law rights of action and instead give the DOE a right of action to sue proprietary school for frauds against students.²²⁷ This would enhance the ability of private action to be an enforcement tool.²²⁸ Lack of regulation becomes not only an issue of America's global positioning as a high quality provider of education, but also an issue of justice for the students. Given the number of legitimate and highly functioning institutions already in operation, there are two ways to enact tighter regulations without creating unnecessary burdens on the regulators or legitimate institutions: 1) Direct greater attention to for-profit institutions, and 2) Create tighter restrictions on approval to offer a degree, as there are few diploma mills with a long degree-granting history. Ultimately, a more effective framework would (A) regulate the certification of schools that enroll international students, (B) monitor the school's compliance with federal regulations, and (C) redefine the definition of curricular practical training. With these considerations in mind, we offer a three-prong approach to improving the current regulatory system.

A. Improve the Certification Process

Improving the initial certification process is an apparent first step in improving the SEVIS system. As noted in the review of literature on the student visa system, there are a variety of requirements (some of which are more stringent than others) necessary for higher education institutions to gain approval to admit students with an F-1 visa.²²⁹ Institutions that lack regional accreditation and do not confer recognized degrees must submit evidence that course credits are accepted unconditionally by at least three accredited or public institutions of higher learning.²³⁰ The evidence can take the form of letters or articulation agreements.²³¹ This information clarifies the evidentiary requirements in Title 8, Code of Federal regulations, Section 214.3(c) for adjudication of Form I-17.²³² This particular requirement is of interest in the TVU case because, according to

225. Tamar Lewin, *For-Profit College Group Sued as U.S. Lays Out Wide Fraud*, N.Y. TIMES, Aug. 8, 2011, at A1.

226. Linehan, *supra* note 224, at 789.

227. *Id.* at 789–793.

228. *Id.*

229. *See generally* Part II, *supra*.

230. 8 C.F.R. § 214.3(c) (2011).

231. *Id.*

232. *Id.*

allegations in the forfeiture complaint, two of the three articulation agreements submitted to DHS were allegedly forged, although Su countered that ICE did not contact the right personnel at the institutions.²³³

The subsequent ICE investigation began due to the rapid increase of students at TVU (11 to 939 in one year, and half of whom were listed as residing in a single apartment).²³⁴ The ICE investigation was extensive, as it included: witnesses with covert audio recording devices, sting operations to record President Su verifying visa status with airport officers over the phone, and in-depth evaluations of bank records.²³⁵ In addition, ICE found that at least two of three articulation agreements included with TVU's I-17 petitions were false, and officials at those universities verified that they have not accepted any credits from TVU and have no agreement to do so in the future.²³⁶ According to the Forfeiture, "Without such evidence from three accredited colleges or universities, DHS would not have approved TVU's I-17 application, and TVU would not have been authorized to issue the visa related documents to any enrolled foreign students."²³⁷ Furthermore, the Forfeiture indicates that DHS relied on the evidence TVU submitted and was "unaware" that two of the agreements were false, which led to their approval.²³⁸ Although ICE and DHS are two separate departments, it is clear that a simple verification of the articulation agreements could have prevented TVU from operating as a diploma mill. If TVU were prevented from engaging in fraudulent operations, illegal student visas would not have been issued, international students would not have been deported, and the extensive investigation by ICE would have been unnecessary.

There are two approaches to solving the problems associated with the articulation agreement rule. First, when reviewing I-17 forms from unaccredited institutions, DHS or SEVIS should verify that the schools purporting to accept transfer credits from the unaccredited institution did in fact agree to an articulation agreement. As approval forms can be easily fabricated and do not actually indicate rigor or legitimacy, verification seems to be an important component. International students also rely upon the SEVIS-approved list when choosing schools. As a result, SEVIS approval is in some way an indicator of quality to potential visiting students. In addition, this would not put any additional burden on institutions with a long history of high quality education. Allocating resources for verification of acceptance of credits or articulation would be miniscule compared to the resources required for an investigation. These

233. Complaint, *supra* note 1, at 8.

234. *Id.* at 9.

235. *Id.* at 9–11.

236. *Id.* at 8.

237. *Id.*

238. *Id.*

concerns are also addressed in the next proposal about ongoing evaluation of institutions approved to admit students with F-1 visas.

A second, and perhaps more radical, approach would be to eliminate the articulation agreement rule altogether. The TVU case elicits a larger question about the appropriateness of even considering three letters as evidence of legitimacy. It seems that accrediting bodies (e.g. WASC, SACS) would be better equipped to evaluate a school's legitimacy than three schools strategically selected by the proprietary institution. Although accrediting bodies have their own set of challenges, they are better equipped to evaluate whether a particular institution meets a certain set of goals and standards. Continuing to permit certification through the "three articulation agreement" rule could at least hypothetically permit a diploma mill to find three institutions that perform little, if any, due diligence before agreeing to accept transfer credits. Indeed, schools that agree to accept transfer credits seem to have an institutional and financial incentive to do so, as partnership could eventually lead to an increase in transfer students. Accrediting bodies, on the other hand, are more detached and have little incentive to approve a school that does not meet educational benchmarks. Accordingly, a first step in improving the student and exchange visitor program is for the government to strictly monitor compliance with the articulation agreement rule or get rid of the articulation agreement rule altogether and turn over that aspect of the process to regional accrediting bodies.

B. Improve the Monitoring Process

Although an improved certification process would prevent some fraudulent practices, it is also clear that there must be improvements to the monitoring system once institutions are certified to host F-1 students. In general, for institutions that desire federal aid, regional accrediting agencies have the greatest amount of leverage in regulating higher education. These agencies operate in different regions of the country to continually evaluate institutions that are working to maintain or affirm their accredited status. Due to the ongoing nature of the evaluation process, an accredited institution that implements questionable or fraudulent practices can lose its accreditation through an ad-hoc visit.²³⁹ An institution's status can also fail accreditation reaffirmation due to declining quality or stability. When institutions do not obtain federal aid, they can circumvent these processes. In sum, the creation of an agency-like entity to monitor unaccredited

239. *Cf.* 8 C.F.R. § 214.3(h)(1)(ii) (2011). Currently, when SEVP will conduct a site visit for a school petitioning to receive F-1 students, "SEVP will contact the school to arrange the site visit. The school must comply with and complete the visit within 30 days after the date SEVP contacts the school to arrange the visit." *Id.*

institutions that enroll foreign students beyond the certification process would be beneficial.

Regulation, however, is often seen as a barrier to innovation.²⁴⁰ Yet, there are several postsecondary sectors that operate under more rigorous standards that are still able to innovate. Community and technical colleges and other flexible and innovative institutions offer legitimate opportunities for learning. With this sector in place, it calls into question the need for small proprietary institutions that do not seek to deliver a level of quality that could be covered by regional accreditation. With this in mind, there may be good reason to increase capacity for ongoing monitoring of institutions that are able offer F-1 visa, but also to increase the rigor required to achieve the privilege of offering an education to visiting students.

Furthermore, compliance with SEVIS rules is often a lengthy, time-consuming and costly endeavor. SEVIS continues to frustrate college employees responsible for complying with the countless rules and regulations.²⁴¹ Near continuous change spates the system and challenges the staff required to make the system work. The expectations and requirements to remain in good SEVIS status can confuse students and administrators alike. SEVIS accomplished centralization of the control and monitoring of international students and scholars. However, many hold the opinion that security concerns have eroded the status and leadership of U.S. higher education.²⁴²

Improving the monitoring process should be accompanied by a set of standards that balance national security (the primary objective of SEVIS), the burden of compliance, and the overall health of the higher education system. Fraudulent practices thrive by attracting international students who are unaware of the legitimacy of an institution. Although the primary purpose of SEVIS is national security, SEVIS can also play an important role in fraud prevention. For instance, SEVIS could use the centralized data system to flag new and unaccredited institutions and to watch for large influxes of students or other types of conspicuous patterns. This adjustment

240. See, e.g., REINVENTING HIGHER EDUCATION: THE PROMISE OF INNOVATION (Ben Wildavsky, Andrew P. Kelly, and Kevin Cary eds., 2011).

241. Janet V. Danley *SEVIS: The Impact of Homeland Security on American Colleges and Universities*, NEW DIRECTIONS FOR INSTITUTIONAL RESEARCH, 63 (2010); Kam C. Wong, *Implementing the USA PATRIOT Act: A Case Study of the Student and Exchange Visitor Information System (SEVIS)*, 2006 BYU EDUC. & L.J. 379, 382 (2006); Kristin Bagnato, *Obtaining Student Visas Remains an Endurance Test*, DIVERSE ISSUES IN HIGHER EDUC., <http://diverseeducation.com/article/4485/> (last visited May 13, 2012).

242. The problems and critiques of the SEVIS system and its impact on the ability to recruit the best scholars have been dealt with in other publications. See, e.g., MARK SIDEL, MORE SECURE, LESS FREE? ANTITERRORISM POLICY AND CIVIL LIBERTIES AFTER SEPTEMBER 11 (2004); see also Wong, *supra* note 241.

could be done at no additional regulatory expense on existing and legitimate institutions. Additional monitoring with existing data would only require steps by SEVP to implement thresholds and categories that would trigger investigation. These thresholds could be established with the input of various stakeholders, including university representatives who work with the system on a regular basis. If implemented effectively, such a system could do a great deal to prevent the kind of practices that allegedly occurred at Tri-Valley University. An entity that monitors compliance with federal regulations would ultimately be a benefit to students, the institutions hosting F-1 students, and the United States' standing as a leader in higher education.

C. Refine the definition of what constitutes Curricular Practical Training

A third step in improving the current system is to redefine what qualifies as CPT and provide some uniformity to CPT across institutions. CPT has been identified as another area within the student visa system and higher education that creates opportunity for fraudulent use. Under the F-1 visa, students are prohibited from working, unless there is a curricular/educational component.²⁴³ If this educational component cannot be verified, students are not supposed to be granted the opportunity to work. As presently stated, this rule leaves much room for interpretation. Legitimate colleges and universities typically interpret the ambiguous rule rather conservatively or self-regulate through extensive approval processes. With increased specificity and clarity, fraud and misunderstanding of the rule might be prevented. For example, CPT could be more stringently defined as a job or internship that is required for class credit or graduation.

As discussed in I.L.C., *supra*, CPT can currently be authorized when it is an "integral part of an established curriculum."²⁴⁴ One potential revision to CPT would be further define "integral part of an established curriculum" through examples such as limiting CPT to classes where all students in the class are required to complete an internship. To be sure, this might be a harsh solution to combat the current abuses in the system. There is indeed a legitimate argument that the need for work experience can vary from student to student: an MBA student from Peru might benefit from an internship with an American start-up company, while an American MBA student in the same class is better served by a more traditional course of study. By limiting CPT to classes where all students are required to intern with a company, the ability to meet the unique educational needs of each student is hampered. Any detriment of such a proposal, however, is certainly outweighed by the benefit of establishing a uniform and

243. 8 C.F.R. § 214.2(f)(10)(i) (2011).

244. *Id.*

legitimate CPT system. The purpose of such a revision would be to ensure that institutions implementing CPT knew what was required of them and to protect students with F-1 visas seeking to participate in a learning environment outside the traditional classroom setting. As with all attempts to make learning uniform, regulators must balance meeting the individual educational needs of students against maintaining academic standards that have some degree of uniformity across institutions. There is an especially strong need for uniform standards when instances of fraud have plagued systems with vague standards and weak enforcement mechanisms.

Although increased clarity might reduce the need for conservative interpretations of the CPT rules, greater specificity from the federal government is not typically welcomed.²⁴⁵ This is the case with respect to the recent gainful employment law.²⁴⁶ The law specifies that, in order to receive federal aid, most for-profit programs and certificate programs at nonprofit and public institutions must adequately prepare students for gainful employment in a recognized occupation.²⁴⁷ To meet the gainful employment requirement, institutions must satisfy at least one of the following three metrics: (1) at least 35% of former students are repaying their loans (defined as reducing the loan balance by at least \$1); (2) the estimated annual loan payment of a typical graduate does not exceed 30% of his or her discretionary income; or (3) the estimated annual loan payment of a typical graduate does not exceed 12% of his or her total earnings.²⁴⁸ Although the regulations apply to certain types of training programs at all institutions, for-profit programs most frequently have students with unaffordable debts and poor employment prospects.²⁴⁹ Although this level of specificity can be difficult to track, it provides clarity for institutions. Additionally, loopholes that are difficult to regulate or enforce can be eliminated, making it more difficult for institutions to exploit students. Similar to the accreditation process, CPT could also integrate a peer-review component to ensure that applied definitions are consistent with the rule.

V. CONCLUSION

This study highlighted the connections between regulatory inadequacies and the harm caused to stakeholders—primarily students. Results from the

245. See Cooley, *supra* note 58, at 523.

246. See Press Release, *Obama Administration Announces New Steps to Protect Students from Ineffective Career College Programs* (June 2, 2011), available at <http://www.ed.gov/news/press-releases/gainful-employment-regulations>.

247. *Id.*

248. *Id.*

249. *Id.*

study indicate that the legal framework utilized to approve institutions to educate international students has several areas of weakness. This study also reiterated that, “for every harm that can be done by the use of or attempt to buy or sell a fraudulent degree, there are individuals who can prevent the realization of that harm.”²⁵⁰ A more effective framework would improve regulation for the certification of schools that enroll international students, continually monitor institutional compliance with federal regulations, and redefine the definition of curricular practical training. Given that some for-profit institutions have trouble garnering 10% of their revenue from sources other than the federal government, international students become a primary target as a means to meet the threshold and maintain 90% funding from the government. Although non-profit institutions also seek out international students as a source of revenue, the issues around quality are more pronounced with for-profit institutions and diploma mills. The details around the rise and fall of TVU and, more recently, UNV continue to draw attention from other world governments and the United States Congress.

Although TVU and UNV represent extreme scenarios associated with for-profit education, accredited for-profit operations still receive a disproportionate amount of federal aid and have an overrepresentation of students who default on their loans. In spite of these realities, legal attempts to regulate disservice to students, no matter how egregious, are continuously met with resistance.²⁵¹ The proposals in this study are designed to better protect visiting students, decrease time and expenses related to investigation and prosecution, and perhaps create a better climate for increasing regulations on for-profits that are considered more legitimate, yet have poor results in learning and employment for their students.

250. Cooley, *supra* note 58, at 527.

251. Kelly Field, *Judge Sides with For-Profit Colleges in Challenge to ‘State Authorization’ Rule*, CHRON. HIGHER EDUC. (Wash., D.C.), July 12, 2011, available at http://chronicle.com/article/Judge-Sides-With-For-Profit/128206/?sid=at&utm_source=at&utm_medium=en.