

Does the Messenger Matter?

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WASHINGTON – Sen. Tom Harkin (D-Iowa) began what many foes of for-profit higher education consider long-overdue Congressional scrutiny of the sector here late last month with a hearing questioning the business model, student value proposition and role of federal funding at for-profit colleges.

But some of the loudest shouting surrounding Harkin's inquiry as chairman of the Senate Health, Education, Labor and Pensions Committee is not about any of those substantive issues. Rather, it's about Harkin's decision to include Steven Eisman -- an investor who has bet that higher education stocks will tumble in the coming months -- on the panel of witnesses at the hearing and in the senator's attempts to line up support for a stringent examination of for-profit higher education.

In a statement, Harkin said he has relied on Eisman because "he is a well respected analyst with a track record of making unpopular, but correct, observations about American industries."

Either directly or indirectly, Eisman and other short sellers -- people who make investments betting that a certain stock price will fall -- have been lobbying Congress and U.S. Department of Education officials for months, seeking out greater regulation while not necessarily being transparent about their financial interests. Some are also said to be behind news stories and whistleblower lawsuits against the sector with the idea that bad publicity -- and tougher federal regulation -- will drive down higher education stock prices and help short sellers rake in profits.



In at least one instance, reported last week by ProPublica, a woman working for an investment firm sought out signatures of homeless shelter workers for a letter to Education Secretary Arne Duncan that decried for-profit colleges' alleged recruiting of homeless students. The signatories said they didn't know that the woman worked for an investment firm and most said they had no firsthand knowledge of recruiting in homeless shelters. The woman has not revealed who she was working for, though Eisman denies she worked for him.

In response to an inquiry from *Inside Higher Ed* about short sellers' involvement in getting policy makers to scrutinize the sector, Harkin said in a statement Wednesday that "[g]iven the tremendous profit margins of for-profit schools, financed largely with taxpayer dollars, many investors are interested in for profit colleges." He did not address allegations that short sellers have been lobbying Congress and the Education Department without disclosing their financial interests in greater regulation.

Some supporters of greater scrutiny of for-profit higher education see questions about who delivers critiques of the sector as a distraction. If the information short sellers are providing is verifiable and supports the thesis that the sector is taking advantage of students and taxpayers, that is what that matters.

The Role of Short Sellers

In late May, Eisman told a group of investors that for-profit higher education was "as socially destructive and morally bankrupt as the subprime mortgage industry," making it an ideal candidate to short.

Investors were listening -- stock prices fell and shorts of the industry rose -- and so were Harkin and his staff. Two weeks later, Harkin announced the June hearing and plans for several more in the coming months. When the witness list was released a few days before the hearing, Eisman was on it, along with the Education Department's inspector general; a former prosecutor; a student who believed she was wronged by the for-profit college she attended; and an executive from one of the largest publicly traded higher education companies.

Eisman is profiled by Michael Lewis in *The Big Short*, a book about short sellers' success in betting against the mortgage market just as it began to implode. The book was released last year and has been reported to have reached the desks of many members of Congress and staffers. Prominent Senate Democrats including Majority Leader Harry Reid, of Nevada; Dick Durbin, of Illinois; and Christopher Dodd, of Connecticut, have talked up the book.



So, too, has Harkin, in explaining why he's willing to listen closely to what Eisman says he sees happening in for-profit higher education. Though Eisman stands to make financial gains because of the HELP committee's attention to the sector, "the test for any committee ought to be whether hearing testimony might advance the public interest regardless of whether it might also be consistent with or even advance a witness's private interest," Harkin said. "By that test, we are comfortable with Mr. Eisman's testimony."

Harkin's first question to Eisman at the hearing was, "Do you have a financial stake in the success or failure of for-profit education companies?" Eisman's answer was yes, but neither Harkin nor anyone else on the committee followed up to ask which companies he was shorting at the time or had shorted in the past. In an op-ed first published Tuesday in the *Los Angeles Times*, Harkin identified Eisman simply as a "Wall Street money manager." Though published after ProPublica's story critical of short sellers' role in the for-profit debate, the op-ed did not mention the increasingly questioned role of short sellers in the debate.

Tom Matzzie, leader of Accountable America, a group that says it "works to stop the outrageous policies of right-wing and special interests in Washington," argued, in a column published soon after the hearing ended, that the "hearing plays into Eisman's strategy of creating a giant circus about higher education companies." He added: "The bigger the circus, the lower the stock price and the more money Eisman makes. The U.S. Senate shouldn't have a leading role in a Wall Street investor's 'gambling' -- especially a short-seller."

In a column published before the hearing in *The Hill*, Lanny Davis, who served as White House counsel during the Clinton administration, called for "full disclosure and transparency by short-seller critics" of for-profit higher education.

Citizens for Responsibility and Ethics in Washington, a nonpartisan government watchdog group founded and led by former Democratic staffers, has also voiced alarm. "So many of those advocating for regulation seem to have a financial interest," said Melanie Sloan, the group's executive director. "It shakes your faith that the problems they're identifying are real."

The critiques coming from Matzzie, Davis and CREW have not dug into the substantive claims that Eisman and other short sellers -- along with many others, from nonprofit higher education groups and the U.S. Department of Education -- have made against the sector. Instead, they create a distraction that advocates for for-profit colleges are happy to fuel. (Barmak Nassirian, associate executive director of the American Association of Collegiate Registrars and Admissions Officer, called it a "red herring.")

Harris Miller, president of the Career College Association, has attacked Eisman and other short sellers early and often. Eisman, he said in a statement just after Harkin's office released the list of panelists for the hearing, was "a Wall Street short seller born with a silver spoon in his mouth, who got his first big paycheck the old-fashioned way, through his parents."

The day before the hearing, Miller held an hour-long press conference at the National Press Club. "When among the stakeholders are a population of working adults and lower-income students, many pursuing higher education for the first time in order to achieve better lives for themselves and their families and benefiting our country's economy, particular care should be given to the line between vigilance and vitriol," he said. "For whatever reason, Mr. Eisman not only crossed it, he ignored it altogether."

In a conversation with *Inside Higher Ed* just after the hearing and again in a conference call for reporters that afternoon, Miller continued to focus the lion's share of his response to the hearing on short sellers and their assault on institutions that largely serve low-income adult students.

Since then, Miller has continued to rail against short sellers. "They have a strange role in that there's no downside to them just making stuff up," he said this week. "They have no concern about whether they have credibility in Washington. I have a reputation to defend, someone from the Department of Education, they have a reputation to defend. But someone who's a short seller is only thinking about the profit from what Washington does and is intentionally misleading."

Support for Harkin

Manuel P. Asensio is New York-based short seller. He is also president of a nonprofit group called Alliance for Economic Stability – formed in December 2009 – that has chosen as one of its few advocacy issues the regulation of for-profit higher education. Since April, the group has sent five letters to members of Congress and Education Department officials, calling for greater regulation of the sector. Its positions are undoubtedly influenced by Asensio's investment research.

In an interview this week, he defended Harkin's reliance on Eisman's research and testimony. "Who else is Harkin supposed to have on the panel? Unfortunately, no one has the resources other than those people who have the profit incentive to expose the fraud. Those are the short sellers."

Asensio said that while financial interests lay behind Eisman's testimony, so too did they for another panelist at the hearing, Sharon Thomas Parrott, senior vice president of government and regulatory affairs and chief compliance officer at DeVry, Inc. "Here's someone who is profiting from the fraud and the regulatory deficiency," he said. Meanwhile, short sellers are hoping to profit by identifying that deficiency and betting that policy makers will ultimately enact regulations that eliminate the deficiency.

Pauline Abernathy, vice president of the Institute for College Access and Success, made the same argument about the financial interests of Eisman and Thomas Parrott in an interview the day before the hearing. "Eisman's being transparent in his financial interests," she said. "People can evaluate what he has to say and at least take in the facts."

A longtime critic of for-profit higher education, Nassirian said the involvement of short sellers is only problematic if they are not transparent about their financial interests. "So long as the producers of any research or any policy recommendations clearly indicate what they are and what their interests might be," he said, short sellers have a place in the debate.

What's significant, then, is not who discovers and draws attention to instances of waste, fraud and abuse, but that those issues have been identified and are getting attention, Nassirian said. The whistleblower's financial interests don't change the fact that the whistle has been blown. "I couldn't care less what their motivations may be," he said. "I judge them on the basis of what they say, the veracity of the case they make."

— Jennifer Epstein