Strange Bedfellows: How to Think about Innovation in a World of Regulation

Disruptive innovation has become one of the most overused phrases in the discourse of change and upheaval in higher education. Taken from Harvard Professor Clayton M. Christensen's hugely influential 1997 book, The Innovator's Dilemma: When New Technologies Cause Great Firms to Fail (disclosure #1: Christensen is an old friend of mine and a former trustee of Southern New Hampshire University), the phrase describes innovation that takes place on the margins of an industry and that eventually comes to reinvent the industry, displacing longtime and ostensibly unassailable incumbents. Think about what happened to the world of books with the appearance of Amazon and what happened to Kodak now that we have cameras in phones.

Disruptive innovation is an appealing notion for those frustrated by higher education's glacial pace of change, high price, resistance to new technology, frequent solipsism, and poor customer service (the fact that the last phrase can't be used on most campuses is itself telling). Add a growing conviction that traditional, incumbent higher education (IHE) does not do its job that well, and this seems an industry ripe for disruption. The flood of venture money into the ed-tech sector is perhaps the best indicator of that conviction.

However, even though there is ample money to be made (disclosure #2: my university has launched its own for-profit subsidiary to create a next generation learning management system), traditional higher education is not going off the cliff any time soon. The most successful ed-tech companies will help traditional higher education do its work better; they'll become a “sustaining innovation”—to use the correct phrase from the Christensen research—but they will not soon displace the incumbent players. In that, the higher education industry resembles health care more than retail, photography, music, or journalism.

Like health care, higher education is a highly regulated industry with billions of dollars of federal aid (and a shrinking flow of state support). Higher education has the “triatl” of state regulation, accreditation, and the federal government determining the rules of the game—or at least many of them. Indeed, I've been told that higher education is the only industry touched by every major federal agency. At the time of this writing, I am working for one of those agencies. I have taken a three-month leave (through the end of May 2015) from SNHU to work as Senior Policy Advisor to Under Secretary Ted Mitchell at the U.S. Department of Education, focusing on innovation and competency-based education (CBE) and finding new accreditation pathways for non-IHE players in the higher education ecosystem. In this role, I've had the opportunity to look at the innovation challenge from the inside of the regulatory world. I offer here three observations for innovators, using my own work on CBE initiatives to illustrate each.

1. Be sure that all the right people are at the table from the outset. Some of the most exciting initiatives come from smart, creative people who have a great idea, get institutional support from the top, and run with it. The regulatory world in which that idea must eventually be operationalized is the least interesting of the questions that they must sort through on the way to success. So the financial aid experts, the compliance staff, and the IT system pros are often brought in late or after an eleventh-hour discovery that the thing they want to do cannot be done because of a pesky but non-negotiable Title I or Title IV rule or a limitation of their student information system (disclosure #3: we made this mistake at SNHU when creating our CBE program).

With the CBE experimental sites currently under way at the Department of Education, some of the proposed programs are trying to lower the price and increase the quality through the use of amazing new student-support technologies and approaches such as adaptive learning, robust advising that is super-charged with powerful CRM tools, and game-inspired immersive learning environments. They often “unbundle” traditional faculty roles and sometimes have little that resembles a traditional instructional interaction between student and faculty member.

2. Make sure there's a good understanding of federal regulation. When translating the educational model to the financial aid realities, some institutions run into trouble. For example, written into law in Title I is the “regular and substantive interaction” rule: however inventive and effective the new approaches, students must have access to a qualified faculty member (interpreted as one who has the right level of academic credentials for the subject matter in question) on a periodic basis. Two possible questions to ask:

- How can students who are struggling with the subject matter—after exhausting the adaptive learning system, talking to their coaches, and getting stuck in the immersive learning environment—have direct interaction with the qualified faculty member?
- Does the qualified faculty member initiate contact on a periodic basis? (Hint: “Yes” would be the right answer.)

The Office of the Inspector General has stepped into the CBE world to raise the issue of “regular and substantive interaction,” taking to task regional accreditors for not paying enough
attention to this requirement. Unless the law changes, CBE innovators need to know, during program design, that this demand must be accounted for. They are more likely to know this if the institutional compliance person is consulted or is part of the team from the start.

Similarly, the complexities around the dispersal of federal financial aid are head-spinning and don’t lend themselves to non-credit-hour-based CBE programs, the so-called direct assessment programs (a poor name, considering that all CBE is ostensibly direct assessment). Although Title IV allows the direct assessment of student learning as an alternative to the credit hour, all of the rules for the associated disbursement of federal financial aid use time-based rules such as term length, definition of an academic year, and satisfactory academic progress. Since it is hard to reconcile some of the exciting new CBE delivery models with these rules, the current experimental sites allow waivers of many of them. Yet most student information and financial aid systems are not able to support the waivers, and any program designers hoping to sort through this challenge will need their financial aid and IT staffs heavily involved. Too many realize that fact very late in the effort.

3. Don’t race to the bottom. Disruptive innovations almost always serve populations that are not well served by the incumbent industry, and these innovations are never as good at the start as they will be later. Fifteen years ago, those in online education asked: “How can we deliver courses that are better than traditionally delivered courses?” For quite a while, they couldn’t. Now the question is being reversed, and the best-designed online courses are arguably better than most traditionally delivered courses. Likewise, CBE programs are not as good today as they will be five to ten years from now, but that should simply impel program designers to try to outperform the existing offerings, rather than shrug and settle for meeting minimum standards.

Alas, some proposals take a minimalist, if not cynical, view of what is needed for students to demonstrate competence. In some CBE proposals, “success” is a 60 percent or better on an assessment. Do you want your nurse to be 60 percent competent? Some proposals use “CBE veneering,” in which a grid of competencies is simply overlaid on existing courses to allow for acceleration and to use the term “CBE” in marketing. In contrast, high-quality CBE programs require so much more in terms of how competencies are created and assessed, how students progress, and what students can actually do with the knowledge and skills they acquire.

As all of us in higher education look at new accreditation pathways and think about allowing non-IHE providers into the higher education ecosystem, we must focus on demonstrated outcomes, clear claims for learning, transparency of data, and performance-based assessments. Traditional, incumbent higher education generally does none of these well, and CBE should show the way. An outcomes-based pathway to approval says: “We’ll give you a lot of room to innovate in program design, but we will not compromise on how you serve students, and we’ll expect a higher minimum for student achievement.” If cost is the only reason to innovate and if outcomes remain poor, or worse than outcomes in incumbent offerings, let’s spend our time on something more meaningful.

The uncomfortable and not-much-discussed reality is that if we are to make learning measurable and non-negotiable (while time becomes variable), we may see completion rates go down, even as quality of learning goes up. Our challenge will be to harness new technologies, learning science, data analytics, unbundling, and the best use of our people to get more students across the finish line without compromise. Then the real innovators will emerge—not those who simply offer lower costs.

Higher education badly needs genuine innovation and breakthrough models, but if innovators want to gain access to Title IV funds and to be accepted into a larger higher education ecosystem, they need to consider the constraints of the regulatory system from the start, innovate around those constraints where they can (some significant opportunity lies there), and push the design of delivery in all sorts of new ways while reaching for outcomes better than those in the incumbent system.