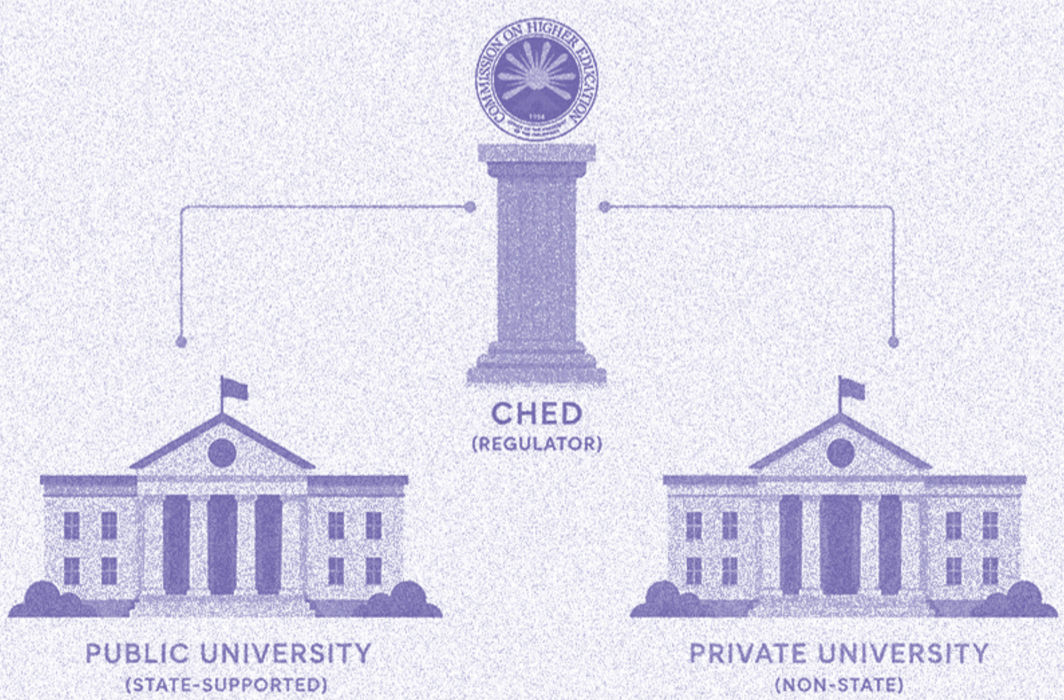
UNIVERSITY OF THE PHILIPPINES
CENTER FOR INTEGRATIVE AND DEVELOPMENT STUDIES

DISCUSSION PAPER SERIES 2026-46

The Compromised Regulatory Independence of the Commission on Higher Education and the Lack of Competitive Neutrality between Public and Private Higher Education Institutions

Michael M. Alba



Program on Higher Education Research and Policy Reform

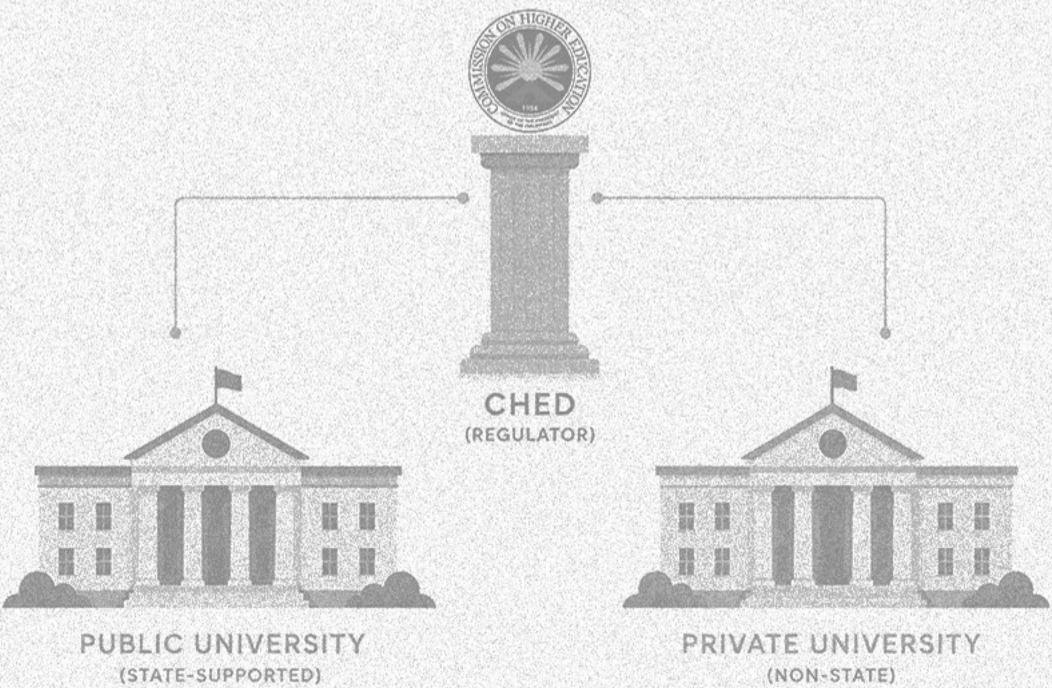
ISSN 2619-7448 (PRINT)
ISSN 2619-7456 (ONLINE)

DISCUSSION PAPER SERIES 2026-46

Program on Higher Education Research and Policy Reform

The Compromised Regulatory Independence of the Commission on Higher Education and the Lack of Competitive Neutrality between Public and Private Higher Education Institutions

Michael M. Alba



UP CIDS DISCUSSION PAPER SERIES

2026-46

UP CIDS Discussion Paper Series is published by the

University of the Philippines
Center for Integrative and Development Studies

Lower Ground Floor, Ang Bahay ng Alumni
Magsaysay Avenue, University of the Philippines
Diliman, Quezon City 1101

Telephone: (02) 8981-8500 loc. 4266 to 4268 / (02) 8426-0955
Email: cidspublications@up.edu.ph
Website: cids.up.edu.ph

cids.up.edu.ph

ISSN 2619-7448 (Print)
ISSN 2619-7456 (Online)

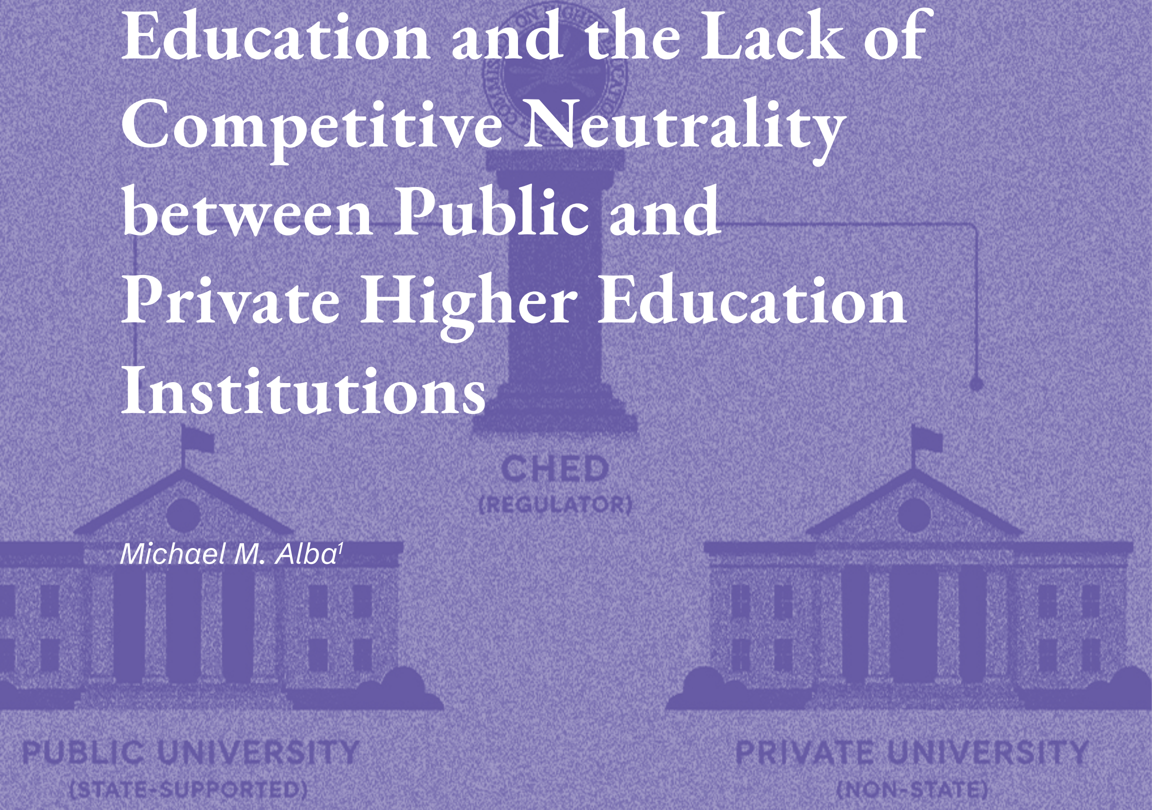
Cover Image Credit

"A minimalist composition of a stylized public university (bottom left) and a stylized private university (bottom right); Between them is a slightly elevated, single vertical pillar or podium representing CHED, occupying the geometric center. Perfectly symmetrical lines extend from CHED (as regulator) to both institutions."

Photo by the Far Eastern University Marketing Coordination Office (FEU MCO)

Table of Contents

The Compromised Regulatory Independence of the Commission on Higher Education and the Lack of Competitive Neutrality between Public and Private Higher Education Institutions



Michael M. Alba[1]

---

1 President, Far Eastern University Public Policy Center (FEU PPC). This essay is part of an ongoing research project on the economic regulation of Philippine higher education for which the author received a UP President Edgardo J. Angara Fellowship grant with supplementary funding from FEU. I thank Joseph Noel Estrada and Maria Cristina Padolina for their insightful comments as discussants, and seminar participants for their helpful feedback. Research assistance on this essay from Justin Muyot and Neil Joseph Iyog is gratefully acknowledged. The views expressed here, including errors and omissions, are the author's and do not represent those of his institutional affiliation.

Key Highlights

- **Main argument:** The regulatory framework of Philippine higher education, as established by Republic Acts 7722 and 8292, does not structure incentives such that they would motivate stakeholders to collectively pursue the country's higher-education-related goals and aspirations. It leaves the Commission on Higher Education (CHED) unable to function as a truly independent regulator.

- **Policy landscape:** CHED was created in line with the international trend toward the establishment of independent or quasi-independent sectoral regulators, which are legally distinct and functionally detached from the executive department (or line ministries). In this framework, CHED operates under Constitutional mandates and the fundamental education statute, and is armed with two regulation laws to oversee a Philippine higher education sector long marked by coexisting public and private institutions and persistent quality, access, and outcome problems.

- **Approach:** The paper combines the economics of regulation with institutional and legal analysis, linking established principles of regulatory design — regulatory independence, institutional endowment, and competitive neutrality — to the actual text of the 1987 Philippine Constitution, Batas Pambansa 232, RAs 7722 and 8292, and CHED's governance practice.

- **Findings:** The regulatory framework leaves CHED vulnerable to political interference, lacks accountability and monitoring requirements, provides no clear norms of transparency and professionalism, violates competitive neutrality between public and private institutions, overlooks both market and government failures, and fails to equip the Commission with the technical expertise and information systems needed for effective regulation.

- **Policy recommendations:** Among other reforms, the paper calls for security-of-tenure protections for CHED Commissioners, explicit ethical standards and norms of behavior, an annual public reporting requirement tied to CHED's regulatory objectives, a Higher Education Information System to support that reporting, amending the provisions of RA 8292 embedding CHED Commissioners as chairs of the governing boards of state universities and colleges, and new legislation that would uphold competitive neutrality between public and private higher education institutions.

- **Conclusion:** These reforms are an urgent matter of national importance rather than mere institutional fine-tuning; only by undertaking them can Philippine higher education correct its current course and make meaningful progress on its Constitutional and legal mandates, national goals and sectoral objectives, and societal purposes and aspirations.

Introduction

How well designed is the regulatory framework for higher education crafted by Republic Acts 7722 (The Higher Education Act of 1994) and 8292 (The Higher Education Modernization Act of 1997), if assessed against the principles of the economics of regulation? Does the framework empower the Commission on Higher Education (CHED) to organize the sector so that its various stakeholders are incentivized to collectively pursue the nation's higher-education-related goals? Arguably, this question is the most pressing challenge that Philippine higher education must confront if it is to reverse sectoral outcomes (such as high attrition rates, low completion rates, graduates inadequately prepared for the world of work or insufficiently equipped with life skills, and the lack of support for the research and public-brain-trust roles of higher education institutions) that have contributed to the country's long-running education crisis.

To address this question, this paper combines theory and institutional analysis, linking regulatory principles to Philippine legal provisions and governance practice, and organizes its argument in four parts. First, drawing on the economics of regulation literature, it gives an overview of relevant regulatory concerns, highlighting in particular the importance of regulatory independence, the institutional setting of regulation, and competitive neutrality. Along with Alba (2026), which makes the economic case for regulating Philippine higher education, the discussion in this section establishes the conceptual benchmarks against which the Philippine case is assessed. Second, the paper turns to the institutional – in the sense of North (1990, 3) – and legal foundations of CHED, summarizing pertinent provisions in the 1987 Constitution, Batas Pambansa 232 (the Education Act of 1982), and RAs 7722 and 8292. It situates CHED's mandates within the broader governance framework and shows how the law structures the Commission's authority and responsibilities. The third section then provides an analysis of how the regulatory framework measures up against the principles of the economics of regulation, identifying gaps and design flaws that compromise CHED's independence, accountability, transparency, and effectiveness. Offering concluding remarks, the last section enumerates recommended reforms that would strengthen CHED's regulatory design that in turn would empower Philippine higher education to better serve its national goals.

Overview of Regulation Concerns

Regulatory Independence and the Institutional Setting

In the last forty years, the trend in regulation – except in the United States and at the prompting elsewhere (i.e., in developing and transition economies) of international multilateral agencies like the World Bank and the International Monetary Fund – has favored the establishment of independent or quasi-independent regulatory agencies – government entities that are legally distinct and functionally detached from line ministries or executive departments, specialized in their missions, and charged to pursue goals specific to their sector or industry, progress on which is deemed to enhance social welfare. These regulatory bodies are thought to have at least two advantages over line-function bureaucracies, on the one hand, and multi-industry regulation authorities (such as, in the Philippine context, the Securities and Exchange Commission and the Philippine Competition Commission), on the other. First, intended to project the government's commitment to regulatory independence, and thereby to a stable regulatory regime, by design they are insulated from the day-to-day operational concerns of governing and their concomitant opportunities for exploitative behavior as well as from temporal changes in the preferences of government administrations. In particular, because entrusted to protect the public interest, they are (supposed to be) keenly wary of regulatory capture[2] and meticulously maintain arm's-length relationships with all stakeholders (including the firms they regulate, consumers and other private parties, and politicians and government officials – even the president or head of government himself/herself). Moreover, they are bound by their regulatory mandates to conform to strict norms of behavior and uphold ethical standards. Second, conceived to be staffed by experts in the specific fields of regulation pertinent to the sector or industry, they are better able to carry out their regulatory missions and achieve their regulatory goals (Decker 2023, 233–235). In consequence, these agencies foster trust among stakeholders, which serves to anchor market expectations, make well-reasoned and more predictable decisions, protect the public interest, and enhance social welfare.

2 Regulatory capture is the phenomenon in which the regulator falls under the influence or control of some stakeholders and so acts in ways that benefit them rather than social welfare.

Nonetheless, these independent bodies are not without problems. Indeed, they only cover a subset of the time-inconsistency problems[3] in public policymaking[4] – with examples of the unaddressed ones including, among others: new quality standards being imposed after the regulated firm has undertaken irrevocable investments; new types of inputs or employment practices being suddenly required; or a new policy framework for the industry being introduced without much lead time for stakeholders to prepare.

Moreover, corollary to these unaccounted-for time-inconsistency problems is the hold-up catch. This occurs when, as a consequence of a time-inconsistent policy, stakeholders are left with stranded costs. In regulation, there are two ways in particular that a hold-up situation can arise: the sunk-asset expropriation and the ratchet effect. The "future expropriation of a sunk asset" hold-up transpires when, after a regulated firm makes large, irreversible investments – i.e., it has incurred locked-in costs – the government then changes the rules making the firm unable to recover its sunk costs.

In Philippine education, an example (though one outside the purview of regulation) is, arguably, House Bill 7893 of the first regular session of the 19th Congress, which proposes to be called the "K + 10 + 2 Act" and may yet be re-filed in the 20th Congress. Reflecting a change in preferences across government administrations, the bill seeks to amend Republic Act 10533 or the "Enhanced Basic Education Act of 2013" by (a) reverting the country's basic education program to one year of kindergarten, six years of elementary education, and four years of secondary education and (b) converting the two years of senior high school to post-secondary, pre-university education that would be required only of students who wish to pursue college studies. In other words, the bill proposes to shorten the Philippine basic education cycle back to 11 years – after only eight or so cohorts of K–12 completers. Prospectively going to waste will be the massive investments in infrastructure that both private and public schools have undertaken in answer to the call of the Department of Education (DepEd) in 2014 to 2015 to deliver the senior high school program.

---

3 Time inconsistency in public policymaking arises when policymakers announce and implement a policy, but after stakeholders take action based on it, the policymakers change the policy.

4 An example of time-inconsistency problems that an independent regulator solves is of government ministries suddenly changing policies to achieve short-term political gains. A hypothetical case: The government commits to allocating public infrastructure expenditures in line with, say, the five-year national development plan. But as elections approach, it instead shifts spending to politically important districts to secure votes.

Prospectively to be displaced from employment will be significant numbers of teaching and non-teaching staff of senior high school programs in view of the much lower numbers of students who are likely to pursue further studies after earning the high school diploma on completing Grade 10.

In the case of the ratchet effect, the hold-up trap happens in a multi-period, information-asymmetry context: At the start of the regulatory relationship, the regulator knows neither the type of the firm (i.e., whether it is a low- or high-cost operation – the adverse selection problem in regulation) nor the extent of its cost-reducing effort (the moral hazard problem). But over time the regulator, having gained the information from its history of interactions with the firm, uses what it has learned to "tighten the screws," for example by setting a high value for the offset factor in price-cap regulation. When triggered, the ratchet effect may have disincentivizing effects on the regulated firm, causing it to neither innovate nor exert effort to be cost efficient.

But an even more intractable, usually glossed-over problem is the institutional setting of regulation. The economics of regulation has largely focused on the implications of the monopoly market failure (such as how the capital investments of the regulated firm may be paid for and how many firms may be viable given the size of the market) and regulatory incentives involving rules on pricing, transfers and subsidies, taxation, and service interconnectivity. But Levy and Spiller (1994) argue that these incentives matter only if high quality governance is in place, which in turn depends on a country's institutional endowment.

Drawing on North (1990, 3), which defines institutions as "the rules of the game in a society, or... the humanly devised constraints that shape human interaction," and predating Acemoglu et al. (2005), Levy and Spiller (1994, 206) posit that a country's institutional endowment consists of five elements:

- its executive and legislative institutions, which span the rules and procedures for (a) choosing legislators and choosing/appointing executive officials, (b) enacting laws and regulations, (c) implementing the same, and (d) how the legislature and the executive branches of government interact (in particular, whether there is separation of powers as in presidential systems or none as in parliamentary systems);

- its judicial institutions, which are the rules and procedures for (a) appointing judges and the inner workings of the judiciary and (b) legally resolving conflicts between private parties or between private parties and the government;

- the character of its social conflicts and how these conflicts are resolved (Acemoglu et al. 2005);

- its customs and norms, which are the informal rules of behavior; and

- the administrative capabilities of its professional workforce to effectively deal with complex regulatory problems without setting off inordinate, long-running litigation battles.

Levy and Spiller (1994, 202) maintains that reasonable regulatory outcomes may be obtained only when the components of a country's institutional endowment work in concert such that three conditions are satisfied, the effect of which is to restrain arbitrariness in regulatory decision-making: (a) regulators are weighted with substantive constraints when exercising discretion; (b) formal rules and/or informal norms prevent easily changing the regulatory system; and (c) institutions exist that enforce the constraints imposed in (a) and (b).

Unfortunately for the Philippines, Levy and Spiller (1994, 218–215) classifies the country under rent-seeking presidential systems (with Argentina), with the following assessment on the five elements of its institutional endowment:

- legislative and executive institutions: "separation of powers with weak parties and strong presidency; until the 1960s, partial United States supervision; military regime [under the] Marcos [dictatorship]"
- judicial institutions: "weak and corrupt"
- social conflict: "regional competition among members of the elite"
- informal norms: "rent-seeking; not outright expropriation of elite ownership"
- administrative capabilities: "weak and corrupt bureaucracy."

Given the country's poor institutional endowment, the implication from the Levy-Spiller thesis is for regulation in the Philippines to be explicitly and strictly rule-based (with substantial penalties for transgressions), in both administrative procedures and policy enforcement, such that regulatory policy is inflexible and regulators do not have discretionary powers.

Competitive Neutrality

In the context of Philippine higher education, an issue related to regulatory independence is competitive neutrality. The concern arises from the fact that state-owned schools coexist with private education institutions. In such situations in other industries (e.g., in European rail networks, water and sewerage systems in many countries, electricity transmission and distribution in Australia and New Zealand) (Decker 2023, 53), a regulator is constituted to provide independent oversight over the sector and to signal the government's commitment that state-owned providers would enjoy neither competitive advantages nor preferential treatment over private firms – in other words, that the principle of competitive neutrality would be upheld.

Competitive neutrality requires a clear separation of powers and missions between the government as service provider and as regulator. Examples of policies that an independent regulator upholds in this context include:

- equal and fair treatment of regulated firms regardless of ownership;
- setting government transfers or subsidies to state-owned enterprises at the cost of inputs or capital, so that they are not conferred undue competitive advantages;
- in industries with natural monopoly features, adopting firm entry restrictions that take account of market size in order to maintain the viability and sustainability of firms, thereby ensuring the stability of service provision; and
- ensuring at all times that social welfare is protected, if not enhanced.

In deliberating the "regulatory independence-competitive neutrality" nexus, one may find it worthwhile to consider the case of Philippine basic education, where DepEd is both regulator and the biggest service provider. Under such a governance framework, the economics of regulation suggests that the regulation of schools can be neither independent from the day-to-day operational concerns of governing (and therefore not insulated from short-term opportunistic, exploitative behavior) nor neutral and fair. Stated differently, DepEd officials would necessarily be vested with wide discretionary powers, contravening the Levy-Spiller policy prescriptions, and schools would be incentivized to compete in rent-seeking due to the absence of competitive neutrality. The consequence is a basic education sector that cannot operate efficiently and whose outcomes are suboptimal, so that the country's high aspirations for basic education would remain a distant dream.

The Case of the Commission on Higher Education (CHED)

The Philippine Constitution of 1987 and BP 232 are the country's basic laws on education: the Constitution, as the supreme law of the land, sets forth the constitutional framework for education, while BP 232 serves as the statutory charter of the Philippine education system. For higher education, two additional statutes have particular significance: RAs 7722 and 8292, which together establish the regulatory and governance framework for the sector.

In terms of principles, the Constitution frames education as a right of all Filipino citizens (Art. XIV, Sec. 1), a duty of the State (Art. XIV, Sec. 2.1, and Sec. 2.5), and a shared responsibility between the State and the private sector (Art. XIV, Sec. 4.1). Moreover, for higher education, the right includes being able to select a (professional) course of study subject to fair, reasonable, and equitable admission and academic requirements. On policies relevant to higher education, the Constitution mandates the promotion of accessible quality education, in part through scholarship grants, student loans, subsidies, and other incentives (Art. XIV, Sec. 1 and Sec. 2.3); safeguards the rights and welfare of teachers (Art. XIV, Sec. 5.4) including their remuneration and other benefits (Art. XIV, Sec. 5.5); upholds academic freedom in higher education (Art. XIV, Sec. 5.2); restricts school ownership and control to Filipino citizens or entities with at least 60 percent Filipino ownership (Art. XIV, Sec. 4.2); limits the enrollment of non-citizens in a school to no more than one-third of the student population (Art. XIV, Sec. 4.2); authorizes reasonable supervision and regulation of schools by the State (Art. XIV, Sec. 4.1); exempts non-stock, non-profit education institutions from taxes and duties; and accords education the highest budgetary priority (Art. XIV, Sec. 5.5). Additionally, it advocates that regional and sectoral needs are considered in the development of education policies.

On the higher education curriculum, it requires the study of the Constitution itself (Art. XIV, Sec. 3.1) and the rights and duties of citizenship (Art. XIV, Sec. 3.2); the inculcation of patriotism and nationalism (in part through an appreciation of national history and national heroes) (Art. XIV, Sec. 3.2); the strengthening of moral character and ethical and spiritual values (Art. XIV, Sec. 3.2); the fostering of creative and critical thinking (Art. XIV, Sec. 3.2); and the acquisition of scientific and technological knowledge (Art. XIV, Sec. 3.2).

In addition, the Constitution promulgates a language and culture policy that (a) declares Filipino as the national language (Art. XIV, Sec. 6), Filipino and English as the official languages of instruction and communication (Art. XIV, Sec. 7), and regional languages as auxiliary media of instruction (Art. XIV, Sec. 7) and (b) bids the education system to promote science and technology (Art. XIV Sec. 10 and Sec. 11), arts and culture (Art. XIV, Sec. 18), and sports (Art. XIV, Sec. 19.2).

Although enacted before the Constitution was ratified, BP 232 operationalizes the Constitution's education mandates. Much of the statute, however, has been superseded by a presidential directive and legislative enactments.[5] The provisions that remain in force and are relevant to higher education are the following declarations:

- the basic State policy on education (Sec. 3) – that the State is to:
    - "establish and maintain a complete, adequate, and integrated system of education relevant to the goals of national development"; and
    - maximize the contribution of the education system in the attainment of the following national development goals:
        1. the "rate of economic development and social progress" is accelerated;
        2. maximum participation by all citizens in bringing about (1) and in enjoying its benefits is effectuated; and
        3. "national unity and consciousness" are strengthened and "cultural, moral, and spiritual values" are preserved, developed, and promoted;

5 Executive Order 117 reorganized the Ministry of Education, Culture, and Sports by restructuring it organizationally and functionally to improve efficiency and clarify responsibilities; it also provided for changing nomenclatures should a new Constitution establish a presidential form of government, substituting Department for Ministry and Secretary for Minister (and Undersecretary and Assistant Secretary for Deputy Minister and Assistant Minister, respectively) (Section 27). RAs 7722 and 7796 created CHED and the Technical Education and Skills Authority (TESDA), respectively, in effect establishing separate regulators for higher education and technical-vocational education. RA 9155 renamed the Department of Education, Culture, and Sports the Department of Education (DepEd) and confined its mission to and instituted a governance framework for basic education. RA 7798 amended Section 25 of BP 232, allowing schools to be organized as [for profit] stock corporations. RA 7160 (the Local Government Code of 1991) took jurisdiction of the special education fund.

- the policy on the education community (Sec. 5) – that "a spirit of shared purposes and cooperation" is fostered in the education community as well as between the education community and other sectors of society;

- the policy on formal education (Sec. 19) – that the school system is the country's "primary learning system" and its main instrument for achieving the national goals and objectives of education;

- the policies on State financial support of education programs (Sec. 33) – by:

  - adopting "measures to broaden access to education through financial assistance and other forms of incentives to schools, teachers, and pupils and students"; and

  - incentivizing private support for education through fiscal and other assistance initiatives;

- the policy on education incentives (Sec. 45) – that incentives are to be provided to encourage community participation to develop the education sector; and

- the objectives of the education system (Sec. 4), which are to:

  1. "provide for a broad general education that will assist each individual ... to";

     a. "attain his potentials as a human being";

     b. "enhance the range and quality of individual and group participation in the basic functions of society"; and

     c. "acquire the essential educational foundation" for becoming a "productive and versatile citizen";

  2. "train the nation's manpower in the middle-level skills for national development";

  3. develop professions that advance "knowledge for improving the quality of human life"; and

4. effectively respond to the "changing needs and conditions of the nation through a system of educational planning and evaluation."

Moreover, the following are to be inculcated in the educational curriculum: love of country; the duties of citizenship; moral character; personal discipline; and scientific, technological, and vocational efficiency.

- the objectives of the education community (Sec. 5) – which are to:

1. "aid and support the natural right and duty of parents" in bringing up their children through the education system;

2. "promote and safeguard the welfare and interest of students by defining their rights and obligations, according them privileges, and encouraging the establishment of sound relationships between them and other members of the school community";

3. "promote the socio-economic status of all school personnel, uphold their rights, define their obligations, and improve their living and working conditions and career prospects"; and

4. "promote the viability of ... institutions through which parents, students, and school personnel seek to attain their educational goals";

- the objectives of tertiary education (Sec. 23) – which are to:

1. "provide a general education program that will promote national identity, cultural consciousness, moral integrity, and spiritual vigor";

2. "train the nation's manpower in the skills required for national development";

3. "develop the professions that will provide leadership for the nation"; and

4. "advance knowledge through research work and apply new knowledge for improving the quality of human life and responding effectively to changing societal needs and conditions."

In addition, BP 232 codifies the rights, duties, and obligations of parents, students, school personnel (including the special rights and privileges of teaching and academic staff), school administration, and schools.

While the Constitution and BP 232 articulate the nation's overarching vision for education, RA 7722 and RA 8292 lay out the governance architecture of higher education. RA 7722 constitutes CHED as a government agency "independent [of] and separate from the Department of Education, Culture, and Sports (DECS)" but "attached to the Office of the President for administrative purposes only" (Sec. 3). It stipulates that the Commission be composed of a chairperson and four commissioners, all of whom are appointed by the President of the Philippines to four-year terms (serving in a full-time capacity) and possibly reappointed to a second term (Sec. 5), with the chairperson having the rank of a department secretary and the other commissioners, of a department undersecretary (Sec. 6). Each (a) must have an earned doctorate degree – and, even more, must be an academic distinguished for his or her high degree of professionalism and integrity and as an authority in his or her discipline; (b) must have been active in higher education for at least 10 years; and (c) did not stand as a candidate in the elections immediately preceding his or her appointment. Moreover, the commissioners must come from different academic specializations (Sec. 4). Entrusted with jurisdiction over all higher education institutions (HEIs) and degree-granting programs of post-secondary education institutions in the country (Sec. 3),[6] the Commission is mandated to oversee the pursuit of the following national policies (Sec. 2):

- "protect, foster, and promote the right of all citizens to affordable quality education";
- "ensure that education is accessible to all";
- "ensure and protect academic freedom and promote its exercise and observance for the continuing [of] intellectual growth, advancement of learning and research, development of effective leadership, education

6 Commission Order (CO) 03 series of 1994, the implementing rules and regulations of RA 7722, draws a distinction between CHED's regulatory scope and regulatory jurisdiction. It stipulates that CHED's scope of regulatory authority covers all public and private HEIs, degree-granting programs of post-secondary public and private education institutions, and the establishment of a new HEI or the elevation or conversion of an existing basic or post-secondary education institution to an HEI, whereas the Commission's regulatory jurisdiction is limited to public and private HEIs, i.e., education institutions that offer "tertiary-education degree programs." This means that CHED cannot rule on but only refer cases of post-secondary education institutions violating CHED policies, standards, and guidelines to either DepEd or TESDA.

of high-level and middle-level professionals, and the enrichment of [the Philippines'] historical and cultural heritage";

- see to it that state-supported HEIs align their programs with national, regional, and local development plans; and
- exhort all HEIs to showcase in their campuses the "dignity and beauty of [and] their pride in ... the intellectual and scholarly life."

It is vested with the following powers and functions (Sec. 8):

(a) "formulate and recommend development plans, policies, priorities, and programs on higher education and research" as well as (b) research per se;

(c) "recommend to the executive and legislative branches priorities and grants on higher education and research";

(d) "set minimum standards for programs and institutions of higher learning recommended by panels of experts[7] in the field, subject to public hearing, and enforce the same";

(e) "monitor and evaluate the performance of programs and institutions of higher learning for appropriate incentives as well as the imposition of sanctions such as, but not limited to, diminution or withdrawal of subsidy, recommendation on the downgrading or withdrawal of accreditation, program termination, or school closure";[8] [9]

(f) "identify, support, and develop potential centers of excellence in program areas needed for the development of world-class scholarship, nation building, and national development";

---

7 CO 03 series of 1994 clarifies that these (technical) panels of experts are ad hoc recommendatory bodies.

8 CO 03 series of 1994 overreaches by deleting "recommendation on" in this power and function. In effect, it does away with CHED's limited recommendatory power on downgrading or withdrawing accreditation, terminating programs, or closing down schools and empowers CHED to outright do so as sanctions.

9 CO 03 series of 1994 declares the intent that incentive grants would consider factors such as "institutional and program performance" and licensure exam passing rates, and would be provided as well to HEIs that voluntarily undergo program and institutional accreditations, including HEIs that adopt initiatives to become accredited.

(g) "recommend … the budgets of public institutions of higher learning [to the Department of Budget and Management, as specified in CO 03 series of 1994] as well as general guidelines for the use of their income";

(h) "rationalize programs and institutions of higher learning and set standards, policies, and guidelines for the creation of new ones as well as the conversion or elevation of schools to institutions of higher learning, subject to budgetary limitations and the number of institutions of higher learning in the province or region where creation, conversion, or elevation is sought to be made";

(i) "develop criteria for allocating additional resources [that may be enjoyed by college and universities] such as research and program development grants, scholarships, and other similar programs, provided that [they do] not detract from the fiscal autonomy";

(j) "direct or redirect purposive research by institutions of higher learning to meet the needs of agro-industrialization and development";

(k) "devise and implement resource development schemes";

(l) "administer the Higher Education Fund … [to] promote the purposes of higher education;"

(m) "review the charters of institutions of higher learning and state universities and colleges, including the chairmanship and membership of their governing bodies, and recommend appropriate measures as basis for necessary action";

(n) "promulgate such rules and regulations and exercise such other powers and functions as may be necessary to carry out effectively the purpose and objectives" of RA 7722; and

(o) "perform such other functions as may be necessary for its effective operations and for the continued enhancement, growth, or development of higher education."

To support the Commission in carrying out its policy pursuits and executing its powers and functions, CHED is instructed to organize a secretariat headed by an executive officer (Sec. 9); and to assist it in setting disciplinal standards and in monitoring and evaluating programs and institutions, it is ordered to form technical panels of experts (Sec. 12) [in conformity with its function d (Sec. 8)].

To ensure its continuing relevance, at least once a year CHED is required to convene a meeting of its board of advisers who would help to "[align] its policies and plans with the cultural, political, and socioeconomic development needs of the nation and ... the demands of world-class scholarship." This board would be composed of the secretary of education as chairperson; the director-general of the National Economic and Development Authority as co-chairperson; the department secretaries of science and technology, trade and industry, and labor and employment; the president of the Federation of Accrediting Associations of the Philippines; the executive director of the Private Education Assistance Committee [which is the administrator of the Fund for Assistance to Private Education]; plus two additional members who may be appointed by the President of the Philippines on the recommendation of the Commission (Sec. 7).

The Act also judiciously guarantees the academic freedom of HEIs, as exercised particularly in their curriculums of study, with the limits being the (a) "minimum unit requirements [of] ... academic programs"; (b) "general education distribution requirements"; and (c) professional subjects required to be taken by licensing authorities [read: the Professional Regulation Commission]. Moreover, the law demands the fair and equal treatment of private HEIs and state universities and/or colleges (SUCs) in the imposition of academic or curricular restrictions (Sec. 13).

Finally, RA 7722 provides for the establishment of a Higher Education Development Fund (HEDF), the object of which is to strengthen higher education in the country (Sec. 10). Its sources of funding are listed as follows:

- Government: ₱500,000,000 as seed capital; ₱50,000,000 for initial operations; 40 percent of the annual gross travel tax revenues; 30 percent of the annual collections from Professional Registration Fees; and 1 percent of the gross lotto sales of the Philippine Charity Sweepstakes Office (PCSO);

- Government financial institutions identified and requested by the Commission, starting from Fiscal Year 1995: between 3 percent and 5 percent of the unimpaired surplus from the immediately preceding fiscal year; and
- Private sector: gifts and donations.

As administrator of the fund, CHED is directed to appoint a government financial institution as portfolio manager, organize staff that is administratively and budgetarily independent of the CHED Secretariat, and set forth the guidelines for its utilization, subject to the following conditions (Sec. 10):

- The fund may not be used to pay for administrative expenses.
- Unless allowed by the private donor, only earnings from the donation may be used to pay for administrative expenses.
- Fund utilization would be equitably distributed across regions and programs.

Enacted just three years after RA 7722, RA 8292 (despite its short title purporting to modernize Philippine higher education) focuses exclusively on SUCs, its intent being to standardize the composition and powers and duties of their governing boards as well as the appointment protocol and length of tenure of the SUC president in order to:

(a) "achieve a more coordinated and integrated system of higher education";
(b) "render [SUCs] more effective in the formulation and implementation of policies on higher education";
(c) "provide for more relevant direction in [the] governance [of SUCs]"; and
(d) "ensure … academic freedom as guaranteed by the Constitution."

The statute stipulates that the governing bodies of SUCs – called the board of regents in the former and board of trustees in the latter – are to be uniformly composed of the following (Sec. 3a):

i. as chair, the CHED chairperson or a CHED commissioner designated by the CHED chairperson as the regular chair of the governing board (Sec. 3c), until the appointment is revoked or modified;[10]

ii. the university or college president as vice chair;

iii. the chairs of the Congressional Committees on Education and Culture;

iv. the regional director of the National Economic and Development Authority in the region where the main campus of the SUC is located;

v. the regional director of the Department of Science and Technology in science and technology colleges, of the Department of Agriculture in agricultural colleges, the secretary of the Department of Education in SUCs in autonomous regions, or the commanding generals of the Philippine Air Force and the Philippine Navy in the Philippine State College of Aeronautics and the Philippine Merchant Marine Academy, respectively;

vi. the president of the faculty association;

vii. the president of the SUC student council or a student representative elected by the council;

viii. the president of the SUC's alumni association; and

ix. two prominent private citizens who are appointed to two-year terms by the governing board on the recommendation of a search committee constituted by the SUC president in consultation with the CHED chairperson.

The Act also prescribes that the members of the governing boards are to serve without compensation, but would be reimbursed for expenses incurred to attend meetings or conduct official business authorized by the board (Sec. 3c).

Furthermore, it mandates that the boards are to meet at least once a quarter, although the chair may call special meetings on three days' notice (Sec. 3c). These meetings may proceed on two conditions: that there is a quorum,

10 This last proviso is added in CMO 07 series of 2022 (Sec. 14).

defined as a simple majority of the members, and either (*i*) the SUC chair or (*ii*) a CHED Commissioner whom the chair has designated to represent him/her is present. Moreover, under (*ii*), the university president as vice chair of the board acts as the presiding officer, but the substitute Commissioner is accorded the rights and responsibilities of a regular board member. In other words, as further clarified by CMO 07 series of 2022, the revised implementing rules and regulations of RA 8292, no governing board meeting can take place without a CHED commissioner being present – unless this requirement is waived in writing by the SUC chair.

The Act hands the following powers and duties to the SUC governing boards (in addition to those granted to corporate boards of directors by the Corporation Code of the Philippines) (Sec. 4):

a. "enact rules and regulations ... to carry out the purposes and functions of the university or college";

b. "receive and appropriate all sums ... for the support of the university or college ... to carry out [its] purposes and functions";

c. "receive in trust legacies, gifts, and donations ... , [and] administer and dispose the same ... for the benefit of the university or college, subject to limitations, directions, and instructions of the donors" – with such donations to be exempted from taxes and treated as deductible sums from the donor's income tax, and with the privilege to be also enjoyed by non-stock, non-profit private HEIs as well as local universities and colleges on the approval of their local government units and in coordination with CHED;

d. set the tuition and other school fees (TOSFs), after due consultations with stakeholders – a power rendered moot by RA 10931;[11]

11 The following details of this power and duty continue to be in force, however: All monies received by the governing board are to be treated as special trust funds and required to be deposited in a government bank, with the interest income accruing to the SUC. Moreover, *all fund inflows in excess of costs would be retained by the SUCs and*, except for fiduciary funds (such as scholarship funds held on behalf of external organizations) and their associated fees, *may be disbursed by the governing board for instruction, research, extension, or other projects*. The governing board also has the discretion to authorize the repurposing of the funds of discontinued projects.

Since this proviso was not rescinded by RA 10931, SUCs ought not to be returning their unspent budgets to the national treasury at the end of each fiscal year.

e. adopt and implement a socialized [TOSF] scheme to enhance the access to higher education of poor but deserving students – again, a duty rendered moot by RA 10931;

f. "authorize the construction or repair of ... buildings, machineries, equipment, and other facilities and the purchase and acquisition of real and personal properties including necessary supplies, materials and equipment" with all associated purchases and transactions exempt from all taxes and duties;

g. appoint, on the recommendation of the SUC president, vice presidents, deans, directors, department heads, faculty members, and other personnel;

h. "fix and adjust salaries of faculty members and administrative officials and employees" subject to government rules and regulations; grant leaves of absence under rules adopted by the governing board; and remove personnel for cause after according them due process;

i. "approve the curricula, institutional programs, and rules of discipline drawn by the administrative and academic councils";

j. "set polices on admission and graduation of students";

k. "award honorary degrees [to] persons for their outstanding contributions ... in any field of specialization within the academic competence of the university or college and ... authorize the award of certificates of completion of non-degree and non-traditional courses";[12]

l. "absorb non-chartered tertiary institutions within their respective provinces in coordination with ... CHED and in consultation with

12 The proviso "in any field of specialization within the academic competence of the university or college" is problematic. First, it does not conform with the global practice that honorary degrees need not be restricted to mirroring an HEI's degree offerings. Second, it misinterprets the intent of an honoris causa degree – that it is largely symbolic, its intent being to honor the awardee and publicly recognize his/her achievements, and that the degree's legitimacy derives from the authority and institutional prestige of the HEI, not from conformity to its program listings. In connection with these observations, it may be noted that, in implementing CMO 19 series of 2014 (Enhanced Policies and Guidelines on the Conferment of Honorary Doctorate Degrees by Higher Education Institutions), CHED Regional Directors adopt the aforementioned proviso, although the CMO itself makes no mention of it.

the Department of Budget and Management, and offer therein needed programs or courses to promote and carry out equal access to educational opportunities mandated by the Constitution";[13]

m. "establish research and extension centers of the SUC";

n. "establish chairs in the university or college and provide fellowships for qualified faculty members and scholarships to deserving students";

o. "delegate … its powers and duties … to the president and/or other officials of the university or college … to expedite the administration of the affairs of the university or college";

p. "authorize an external management audit of the institution, to be financed by the CHED, and … institute reforms, including academic and structural changes, on the basis of the audit results and recommendations";

q. "collaborate with other governing boards of SUCs within the province or the region, under the supervision of the CHED and in consultation with the Department of Budget and Management, [for] the restructuring of said colleges and universities to become more efficient, relevant, productive, and competitive";

r. "enter into joint ventures with business and industry for the profitable development and management of the economic assets of the college or institution, the proceeds from which [are] to be used for the development and strengthening of the college or university";

s. "develop consortia and other forms of linkages with local government units, institutions, and agencies, both public and private, local and foreign";

t. "develop academic arrangements for institution capability building with appropriate institutions and agencies, public or private, local or foreign, and … appoint experts/specialists as consultants, or visiting or exchange professors, scholars, researchers";

---

13 This power and duty along with the list's item (q) ought to have been exercised in conjunction with CHED's power and function to rationalize SUCs (see RA 7722, Sec. 8m).

u. "set up the adoption of modern and innovative modes of transmitting knowledge, such as the use of information technology, the dual system, open learning, community laboratory, etc., for the promotion of greater access to higher education";

v. "establish policy guidelines and procedures for participative decision-making and transparency within the institution";

w. "privatize … [the] management … [of] non-academic services such as health, food, building, or grounds or property maintenance"; and

x. "extend the term of the president of the college or university beyond the age of retirement but not later than the age of 70, whose performance has been unanimously rated as outstanding and upon unanimous recommendation by the search committee for the president of the institution concerned."

In addition to the just enumerated powers and duties, the governing boards are enjoined to "promulgate and implement policies in accordance with … the policies, standards, and thrusts of the CHED under RA 7722" (Sec. 5).

Aside from the composition of the SUC governing boards, RA 8292 provides for the following positions:

- a secretary who serves both the board and the HEI and is charged with keeping all records and proceedings of the board as well as giving notice of meetings to board members (Sec. 7);
- a treasurer who is the national treasurer, serving ex officio (Sec. 8); and
- administrative officials composed of (Sec. 6):
    - the SUC president who is appointed by the board on the recommendation of an officially constituted search committee and serves a four-year term in a full-time capacity with the possibility of being reappointed for a second term;
    - a vice president for academic affairs who is appointed by the board on the recommendation of the SUC president; and
    - additional vice presidents when warranted.

The Act also constitutes an administrative council and an academic council. The former is chaired by the SUC president and composed of the SUC's vice president(s), deans, and directors and other officials with an equivalent rank. It is tasked with reviewing administrative, management, and development planning policies and making recommendations on the same to the governing board (Sec. 9). Also chaired by the SUC president, the latter includes all instructional staff with the rank of assistant professor or higher. Its charges are to (a) "review [and make recommendations on] the [institution's] curricular offerings and rules of discipline" and (b) set the admission requirements as well as those for graduation and the conferment of degrees – both of which are submitted to the governing board for appropriate action (Sec. 10).

Significantly, RA 8292 takes care to promulgate that academic freedom and institutional autonomy would be enjoyed by *all* HEIs, both public and private (Sec. 11) and include a nondiscriminatory clause on student admission (Sec. 12). It also leaves intact the charters of the University of the Philippines System and Mindanao State University, except for the chairmanship of the board of regents in the case of the former and the chairmanship of the board and the membership of the chairs of the Congressional Committees on Education and Culture in the case of the latter (Sec. 13).

Finally, it mandates (a) the SUC president to file "on or before the fifteenth day of the second month after the opening of regular classes each year" a "detailed report on the progress, conditions, and needs" of the institution to the Office of the President of the Philippines through the CHED chairperson and to both houses of Congress (Sec. 14) and (b) the CHED chairperson to ensure that the Act's provisions are implemented (Sec. 15).

Analysis

How does the regulatory framework established by RAs 7722 and 8292 measure up against the principles of the economics of regulation? Notably, the establishment of CHED as an independent agency organizationally separate and distinct from the then Department of Education, Culture, and Sports was in line with the international trend in the 1980s and 1990s. Unfortunately, the regulatory framework itself, as designed by the two statutes, does not structure the incentives of the various stakeholders in the sector so that they would be aligned with the societal ends intended for higher education. Specifically, it does not: (a) mandate CHED to monitor the country's progress in, much less connect the Commission's initiatives and activities to, those goals and aspirations; (b) insulate CHED from government interference; (c) prescribe norms of behavior that would project the Commission's integrity, impartiality, and professionalism and thereby build stakeholder trust; (d) uphold competitive neutrality between public and private HEIs; (e) direct CHED to address market and government failures in higher education, and (f) provide for staffing the Commission with technical experts in regulation and higher education administration and governance.

No accountability and monitoring requirements on progress in higher education aspirations

While RA 7722 explicitly mandates CHED to oversee the pursuit of specific policies in its jurisdiction (Secs. 2 and 3) and vests it with powers and functions (Sec. 8) to do so, the Act does not hold the Commission accountable for developments in higher education with respect to those policies and the exercise of its assigned authorities.[14] Moreover, the objectives promulgated by RAs 7722 and 8292 are at best an incomplete list of the higher-educated-related pronouncements in the Constitution and BP 232: there is no mention, for instance, of public-private complementarity (Constitution, Art. XIV, Sec. 4.1; BP 232, Sec. 41). The policies are also not aligned with the regulatory goals for higher education, which as discussed in Alba (2026) consist of the national goals and sectoral objectives of higher education and the societal roles of HEIs.[15]

---

14 An example is the protection and guarantee of academic freedom (Secs. 2 and 13). Arguably, there isn't any evidence that CHED has been safeguarding this principle (except perhaps in the form of anecdotes from technical panel reviews of proposed curriculums submitted by HEIs). It is not even clear that CHED has a whistleblower policy on violations against this or other concerns, whether by CHED itself or by other parties. Were the Commission more serious about upholding this principle, it would be regularly conducting surveys of the higher education community to monitor that academic freedom is indeed fostered and upheld, with the only restrictions being the curricular requirements for general education and professional subjects and that curricular requirements between public and private HEIs are identical. Findings from such surveys could drive discussions that foster an enhanced understanding of academic freedom in the higher education community and the adoption of agreed upon definitions, guidelines, and safeguards.

15 RA 7722 also contains a head-scratching directive: it eccentrically mandates all HEIs to "exemplify through their physical and natural surroundings the dignity and beauty of, as well as their pride in, the intellectual and scholarly life." Which raises the question: aren't the dignity and beauty of and pride in the intellectual and scholarly life best exemplified in the transformation of students to their mature selves, the HEI research publications in international peer-reviewed journals, and the HEIs' public-brain-trust initiatives that solve the most challenging problems of their geographic areas of influence?

Missing then from the regulatory framework is an express mandate – with penalties for noncompliance[16] – for CHED to hold an annual meeting of higher education stakeholders at which the Commission presents an annual report on (a) developments in higher education relative to pertinent provisions in the Constitution and BP 232 and the considerations raised in Alba (2026) and (b) the Commission's initiatives and activities vis-à-vis its powers and functions as set forth in RA 7722 and its additional obligations under RA 8292 – with the written report being made publicly available and stakeholder feedback proactively sought.

Moreover, to enable CHED to comply with this requirement, it should have been directed to set up and maintain a higher education information system (with the appropriate staff and the facilities complement) that would systematically collect data from stakeholders on statistical indicators needed by the report. (For transparency, an online PowerBI- or Tableau-powered dashboard could even be developed that allows the public to extract data (aggregated or masked to protect privacy) for further analysis or to produce data visualizations.)

Additionally, CHED should have been required to make information publicly available (e.g., in its website) on the status of each of its powers and functions (as set forth in Sec. 8 of RA 7722), which can be in the forms of the latest updates on plans and policies, ongoing initiatives and activities, or statements of their having become obsolete or inactive. With no such responsibility, the Commission has been selective in the exercise of its functions: for instance, the majority of its memorandum orders have been on minimum standards for programs and institutions (RA 7722, Sec. 8d), but the Philippine higher education community has not been kept abreast of CHED's development plans, policies, priorities, and programs for higher education and research (RA 7722, Sec. 8a and 8b)[17] as well as of its initiatives to rationalize programs and HEIs (RA 7722, Sec. 8h), particularly as they relate to the absorption

16 This proviso follows from the Levy-Spiller thesis that Philippine regulators should not have discretionary powers and that regulations in the Philippines must be explicitly and strictly rule-based, with penalties for transgressions.

17 Reportedly, CHED did not even submit these to the Department of Economy, Planning, and Development in the latest iteration of the national government's five-year development plan.

of non-chartered tertiary institutions by SUCs (RA 8292, Sec. 4l), external management audits of SUCs (RA 8292, Sec. 4p), and the restructuring of SUCs (RA 8292, Sec. 4q), which are all meant to boost efficiency in the higher education sector.

The same critique may be applied to CHED's administration of the HEDF (RA 7722, Sec. 8l).[18] In the same annual meeting suggested above, CHED should be required to report on the sources and amounts of fund inflows[19] and the fund allocations that were made. Due to the absence of this requirement, CHED operations with respect to the HEDF have not been transparent and subject to public scrutiny. Thirty years after CHED's establishment, whether and how the Fund has strengthened higher education remain open questions.

No provisions to insulate CHED from government interference

RA 7722 does not contain security of tenure provisions – that Commissioners can only be removed for cause. This is a major flaw in regulation design. The absence of such protections compromises CHED's regulatory independence: being dismissible at will by the President, the Commissioners are vulnerable to short-term political pressure, undermining their ability to enforce rules consistently, without fear or favor. It impairs CHED's ability to make credible commitments to higher education stakeholders, unmooring their expectations, fostering instability in the sector, and inducing non-compliance and incentivizing rent seeking among HEIs. The problem is compounded by the fact that higher education operates on long time horizons, which requires the Commissioners to be focused on long-term outcomes rather than be distracted by having to appease political actors time and time again.

---

18 In focus group discussions of private HEIs conducted by the FEU PPC (Santos 2025), participants were not even aware of the existence of the HEDF.

19 An important item to check is whether 40 percent of the annual gross travel tax revenues, 30 percent of the annual collections from Professional Registration Fees, 1 percent from the gross lotto sales of the Philippine Charity Sweepstakes Office, and between 3 percent and 5 percent of the unimpaired surplus of government financial institutions identified by CHED to contribute to the Fund were really remitted to the HEDF.

No prescriptions for norms of behavior, transparency, fairness, and professionalism

RAs 7722 and 8292 do not prescribe norms of behavior that would affirm the Commission's integrity, fairness, transparency, and professionalism, and thereby build stakeholder trust. On the contrary, some of their provisions undermine these very principles.

For instance, a fundamental principle of regulation is that regulators must maintain arm's-length relationships with stakeholders to avoid being unduly influenced or "captured" by vested interests and to ensure that regulatory decisions promote the public good. RA 7722 violates this principle by mandating CHED to organize technical panels of experts that would set minimum standards for academic programs and for institution monitoring and evaluation (Secs. 8d and 12) without providing standards for ethical behavior, safeguards against conflicts of interest, and mechanisms to check self-dealing. As a result, some CHED Memorandum Orders (CMOs) on policies, standards, and guidelines (PSGs) for academic programs are tainted by the technical panels' self-interested conduct.

Consider CMO 15 series of 2017, which gives the PSGs for the Bachelor of Science in Nursing (BSN) Program. Although otherwise exemplary, it stipulates that the program must be headed by a full-time dean (Sec. 12.1) who must be "an active member [in] good standing of the Association of Deans of Philippine Colleges of Nursing (ADPCN)" (Section 12.1i). The value of this requirement to the public good is questionable. First, it unnecessarily raises the operational costs of HEIs, since the nursing program, no matter how small, must be headed by a dean rather than a department chair. Second, it limits institutional flexibility by discouraging the integration of the nursing department into, say, the College of Health Sciences (with medical technology, pharmacy, medical biology, dentistry, and optometry, say) or, if nursing is made part of such a college, the appointment of a dean from another discipline. The former constrains the adoption of interdisciplinary approaches that could enrich nursing education with more holistic perspectives; the latter restricts HEIs from selecting the most qualified candidate. Third, it infringes on the academic freedom of HEIs by restricting their choice of dean to members of the ADPCN, which implicitly means that an otherwise qualified candidate who is not acceptable to the association cannot be appointed dean.

Or consider CMO 25 series of 2021, which prescribes the PSGs for the Bachelor of Science in Pharmacy Program. It requires that professional pharmacy courses must be taught by licensed pharmacists with at least a master's degree in pharmacy (Sec. 14.2a), and then classifies courses such as biological sciences, pharmaceutical microbiology and parasitology, and pharmacology and pharmaceutical chemistry under pharmacy science (Sec. 8.3). This effectively disqualifies biologists, microbiologists, and chemists who have the expertise in those subjects – and may even have PhDs in these allied disciplines – from teaching them. A more appropriate policy would have been for the CMO to provide detailed descriptions of the content coverage of these courses as well as the skills and competencies that students would need to demonstrate, and allow recognized experts in the relevant fields to teach them.

To be sure, CHED requires public forums to be held to vet the outputs of the technical panels, which should have caught these problematic provisions. Unfortunately, whether and how feedback from these forums find their way into the final versions of the CMOs is unclear since the technical panels are not explicitly enjoined to record the proceedings and formally respond item by item to points raised. Moreover, those motivated to attend these consultation sessions may be the very people who stand to benefit from the self-serving provisions. Also, the higher education community may not be versed in regulation-economics considerations to understand the welfare implications of proposed changes.

For its part, RA 8292 violates the arm's-length norm by charging the CHED commissioners to serve as chairs of the SUC governing boards (Secs. 3a.i and 3c) – which embeds the Commissioners in the governance structure of the very institutions they are tasked to regulate. This is a fundamental flaw in the governance and regulation framework of Philippine higher education. Not only does the assignment compromise CHED's regulatory independence, it sets the stage for standard regulatory capture (of CHED by SUCs) and reverse regulatory capture (of SUCs by CHED).[20] In the former, during en banc meetings the Commissioners are likely to act as advocates for the SUCs

20 Reverse regulatory capture is the phenomenon of the regulator having excessive influence over regulated entities, so that the latter lose autonomy, with their behavior having to conform to the regulator's agenda and interpretation of the institutional mission.

whose governing boards they chair;[21] in the latter, the Commissioners are likely to dominate the agenda of SUCs, adversely impacting their institutional autonomy as chartered public higher education institutions.[22] In consequence, the Commission cannot uphold competitive neutrality between SUCs and private HEIs in its regulation practice.

A related violation of the arm's-length norm concerns the general composition of the governing boards of SUCs, as provided for in RA 8292. Assigning legislators, regional directors of executive departments, and commanding generals of the Philippine Air Force and the Philippine Navy as ex officio trustees of SUCs raises conflicts-of-interest problems and obscures the lines between regulatory and governance functions, thus eroding the institutional autonomy of SUCs. Legislators who set rules for HEIs because they legislate funding become implementers of SUC policies as well. Regional directors whose primary role is to implement national policies extend the influence of the executive branch into university governance, a bureaucratic overreach. Commanding generals entrusted with national defense imperatives subordinate SUC interests to military priorities.

RAs 7722 and 8292 also do not include provisions for transparency, fairness, integrity, and professionalism in CHED's behavior and decisions. Hence, CHED proceedings tend to be shrouded in confidentiality. CHED records of meetings, for one, are not made publicly available.[23] Worse because it is official policy, proceedings of SUC governance board meetings are also declared confidential by CMO 07 series of 2022 (Sec. 12.5), RA 8292's implementing rules and regulations. This sharply contrasts with the mandatory disclosure requirements imposed on publicly listed private universities (i.e., private stock corporations that operate schools) by RA 11232 (the Revised Corporation Code) and RA 8799 (the Securities Regulation Code) and violates the regulatory principle of competitive neutrality.

---

21 The evidence here is anecdotal, because CHED simply ignored the FEU PPC's repeated freedom-of-information requests for copies of the minutes of the Commission En Banc meetings.

22 The FEU PPC was likewise unable to obtain copies of minutes of meetings of SUC governing boards because CMO 07 series of 2022, the implementing rules and regulations of RA 8292, declares them to be "confidential in character" and "open to inspection/reproduction" [only] by governing board members upon demand in writing" (Sec. 12.5).

23 In fact, the Commission denied or simply ignored requests filed by the FEU PPC under the Freedom of Information Act for a copy of Commission En Banc meeting minutes (which this research would have used to verify whether Commissioners are captured).

Arguably, CHED would be more deliberately mindful of exercising transparency, fairness, integrity, and professionalism – norms that inspire trust among stakeholders – if regulatory mandates explicitly enjoined the Commission to do so.

No recognition of competitive neutrality

RAs 7722 and 8292 make no mention of competitive neutrality. Indeed, RA 8292 violates the principle as just noted above.

What may need to be done is to legislate a new set of laws (which may include adopting or amending relevant provisions from RAs 8799 and 11232 as well as RAs 7722 and 8292) that would apply exclusively to HEIs, whether public or private, to allow them to compete on an even playing field, while recognizing their differences in sizes, missions, specializations, and corporate structure.

One specific example is the adoption of a common disclosure regime for all HEIs (and CHED) that mirrors that for publicly listed companies (with sensitive matters redacted rather than blanketly withheld as they are now by CHED and SUCs). If provisions in the Corporation Code of the Philippines are meant to protect corporate shareholders, they should also be used to safeguard the interests of all Filipino citizens whose taxes fund both CHED and the SUCs.[24]

No recognition of market and government failures

RA 7722 overlooks a central rationale for regulating higher education: addressing market failures. Without such failures, the ideal arrangement would simply be *laissez-faire* – leaving the higher education sector to market forces. However, market failures abound in higher education, including that: (a) (higher) education is a club good; (b) it has external or spillover benefits and costs; (c) in small markets schools may have a natural monopoly cost

24 With investigations into anomalous flood control projects implicating members of Congress and personnel of the Department of Public Works and Highways – and with public trust in the legislative and executive branches consequently eroded – this perspective is arguably well justified.

structure,[25] while in large markets schools may hold-up students by subjecting them to price gouging;[26] (d) education is burdened by information asymmetry – in education financing and in education being both an experience good and a credence good (Alba 2026). As the regulatory authority, CHED has a duty to devise solutions to these failures.

Additionally, in the Philippines, government interventions themselves often cause failures. In higher education, these include, among others: a politicized Congressional budgeting process for SUCs; delayed or partial reimbursements of SUC expenditures; and holding SUC per-unit rates constant, which means that the amounts of the tuition subsidies SUCs receive from the government under RA 10931 (the Universal Access to Quality Tertiary Education Act) do not keep up with cost increases. Compounding these is the country's high marginal cost of public funds, measured by Jones et al. (1990) to be 2.5, which means that each peso that the government spends implies a ₱3.50 (1 + 2.5) loss to the economy. Like the market failures, these shortcomings distort outcomes in the higher education sector, thus making them part of CHED's regulatory concerns.

No provisions to staff CHED with technical experts in regulation and higher education

RA 7722 does not recognize the importance of staffing CHED with specialized technical staff, particularly statisticians and data science personnel (to man the higher education information system) as well regulation economists and higher education policy experts who could flag violations (such as self-serving rules

25 The technical explanation for this market failure is: In markets where demand is small so that only one school is sustainable – in other words, the school is a natural monopoly, so that demand is below the minimum efficient scale (MES), which is the output at which the school's long-run average cost curve attains its minimum level – if the school sets price equal to marginal cost (as in perfectly competitive markets) it incurs a loss, but if it sets price equal to average cost (to break even) there is a deadweight loss to society. Moreover, if there is a free entry-and-exit policy in small markets (where demand may be higher than the MES but unable to support two institutions), students may be inconvenienced by stranded costs (such as nontransferable credits) and new search, application, and admission costs if their school is forced to closed by the entry of a competitor.

26 In the case of demand being several multiples of the MES, even if there is a free entry-and-exit policy, as noted in Alba and Goquinco (2026), schools retain market power over students beyond the freshman year because of sunk costs, such as paid school fees, credits earned that may not be transferable, and school networks (including their school friends as well as the faculty and alumni). The demand of these students is therefore inelastic, which puts them at risk for a hold-up, where the school engages in price gouging (at price equal to marginal cost rather than average cost).

proposed by technical panels or even of the Commissioners themselves). This hinders the Commission's capabilities in carrying out its regulatory duties, including developing innovative solutions to market and government failures in higher education.

Concluding Remarks

This paper examines the regulatory framework of Philippine higher education as established by RAs 7722 and 8292 using the principles of the economics of regulation as its lens of analysis and drawing insights from Alba (2026). It finds that although the creation of CHED aligned with the international trend toward independent regulation, the design of the framework falls short of structuring incentives in ways that would promote the societal goals and aspirations for higher education. In particular, the framework leaves CHED vulnerable to political interference, does not impose transparency or professional norms of conduct, neglects the principle of competitive neutrality between public and private HEIs, overlooks the need to address market and government failures, and fails to provide the Commission with the technical expertise and information systems it requires to perform its regulatory missions. Addressing these design flaws calls for reforms in the regulatory framework, including the following:

1. Amend RAs 7722 and 8292 by aligning the regulatory objectives of CHED as well as its powers and duties with *all* of the higher-education-related provisions in the Philippine Constitution of 1987 and BP 232 as well as with the societal aspirations for and sectoral goals of higher education and the societal roles of HEIs discussed in Alba (2026).

2. Expressly mandate CHED (with penalties for noncompliance) to hold an annual meeting of higher education stakeholders where the Commission is required to present a report on (a) developments in higher education as they relate to CHED's amended regulatory objectives (assuming (1) is implemented) and (b) on the Commission's achievements in each of its amended powers, duties, and functions. Moreover, the written version of the report must be made publicly available and CHED must proactively seek feedback from stakeholders, which would be recorded as part of the proceedings of the annual meeting.

3. Provide for the establishment of a Higher Education Information System (HEIS) with all the necessary staffing and resource requirements, and mandate CHED to systematically collect data from stakeholders, especially from all HEIs operating in the country. The variables collected and then stored in the HEIS should enable CHED to generate statistical indicators needed by its annual report. (Require all HEIs to comply with CHED's data collection initiatives, again with attached penalties for noncompliance.)

4. Mandate CHED to provide on its website information on the status of each of its powers, functions, and duties, which would be updated on at least a quarterly basis. This is to ensure that CHED exercises all of its powers, functions, and duties, rather than selectively focus on only a few.

5. Amend the objectives of the HEDF by aligning them with CHED's amended regulatory objectives. In other words, CHED would use the HEDF to support regulatory interventions that would facilitate achieving its regulatory mandates. In addition, require transparency in CHED's administration of the HEDF. In particular, the sources of inflows into the fund and their amounts as well as the recipients of outflows and their amounts must be reported annually and explained to higher education stakeholders.

6. Include security of tenure provisions for CHED Commissioners as well as declarations that strengthen the Commission's regulatory independence.

7. Prescribe norms of behavior and ethical standards that would affirm the Commission's integrity, fairness, transparency, and professionalism, and underscore the importance of cultivating the trust of stakeholders in CHED. These should cover not only the Commissioners and staff of CHED, but the members of technical panels as well.

8. Amend the provision of RA 8292 that charges the CHED Commissioners to chair the governing boards of SUCs, because it results in standard and reverse regulatory capture. Better yet review the composition of the governing boards of SUCs. Having legislators, regional directors of executive departments, and commanding generals of the Philippine Air Force and the Philippine Navy in the SUC governing boards creates conflicts-of-interest problems and blurs regulatory boundaries: the presence of legislators means they have dual roles – as rule-makers through

HEI-budget legislation and as implementers of SUC policies; that of the regional directors is bureaucratic overreach, extending the influence of the executive branch into university governance; that of commanding generals makes university governance subservient to national defense imperatives.

9. Uphold the principle of competitive neutrality. Legislate a new set of laws that would exclusively apply to HEIs, which may include adopting or amending all applicable provisions in RAs 11232 and 8799, and exclude private HEIs from the coverage of both statutes. The new rules should include common disclosure requirements between SUCs and private HEIs, as well as CHED.

10. Mandate CHED to regard addressing market and government failures as one of its core functions.

11. Provide for staffing CHED with technical experts in statistics and data science as well as regulation and higher education policy.

The pursuit of these reforms is an urgent matter of national importance, not merely of institutional fine-tuning. Only by undertaking them will it be possible for Philippine higher education to reverse its adverse contributions to the country's long-running education crisis: not only will it correct long-standing weaknesses in governance, it will also unlock the potential of the sector to deliver tangible and sustained progress toward excellence in higher education.

Laws

Batas Pambansa 232. 1982. *An Act Providing for the Establishment and Maintenance of an Integrated System of Education (Education Act of 1982)*. 11 September 1982. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/2/13524.

Office of the President. 1987. "Executive Order 117: Reorganizing the Ministry of Education, Culture, and Sports." 30 January 1987. https://www.officialgazette.gov.ph/1987/01/30/executive-order-no-117-s-1987/.

Philippines. 1987. *The 1987 Constitution of the Republic of the Philippines*. https://www.officialgazette.gov.ph/constitutions/1987-constitution/.

Republic Act 7160. 1991. *An Act Providing for a Local Government Code of 1991*. 10 October 1991. https://www.officialgazette.gov.ph/1991/10/10/republic-act-no-7160/.

Republic Act 7722. 1994. *An Act Creating the Commission on Higher Education, Appropriating Funds Therefor and for Other Purposes (Higher Education Act of 1994)*. 18 May 1994. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/2/2333.

Republic Act 7796. 1994. *An Act Creating the Technical Education and Skills Development Authority, Providing for its Powers, Structure, and for Other Purposes (Technical Education and Skills Development Act of 1994)*. 25 August 1994. https://www.officialgazette.gov.ph/1994/08/25/republic-act-no-7796/.

Republic Act 7798. 1994. *An Act Amending Section 25 of* Batas Pambansa Blg. *232, Otherwise Known as the Education Act of 1982*. 24 August 1994. https://ldr.senate.gov.ph/legislative%2Bissuances/Republic%20Act%20No.%207798.

Republic Act 8292. 1997. *An Act Providing for the Uniform Composition and Powers of the Governing Boards, the Manner of Appointment and Term of Office of the President of Chartered State Universities and Colleges, and for Other Purposes (Higher Education Modernization Act of 1997)*. 6 June 1997. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/2/4471.

Republic Act 8799. 2000. *The Securities Regulation Code*. 19 July 2000. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/2/3988.

Republic Act 9155. 2001. *An Act Instituting a Framework of Governance for Basic Education, Establishing Authority and Accountability, Renaming the Department of Education, Culture, and Sports as the Department of Education, and for Other Purposes (Governance of Basic Education Act of 2001)*. 11 August 2001. https://www.officialgazette.gov.ph/2001/08/11/republic-act-no-9155/.

Republic Act 10533. 2013. *An Act Enhancing the Philippine Basic Education System by Strengthening its Curriculum and Increasing the Number of Years for Basic Education, Appropriating Funds Therefor, and for Other Purposes (Enhanced Basic Education Act of 2013)*. 15 May 2013. https://www.officialgazette.gov.ph/2013/05/15/republic-act-no-10533/.

Republic Act 10931. 2017. *An Act Promoting Universal Access to Quality Tertiary Education by Providing Free Tuition and Other School Fees in State Universities and Colleges, Local Universities and Colleges, and State-Run Technical-Vocational Institutions, Establishing the Tertiary Education Subsidy and Student Loan Program, Strengthening the Unified Student Financial Assistance System for Tertiary Education, and Appropriating Funds Therefor (Universal Access to Quality Tertiary Education Act)*. 3 August 2017. https://www.officialgazette.gov.ph/2017/08/03/republic-act-no-10931/.

Republic Act 11232. 2019. *An Act Providing for the Revised Corporation Code of the Philippines (Revised Corporation Code of the Philippines)*. 20 February 2019. https://www.officialgazette.gov.ph/2019/02/20/republic-act-no-11232/.

CHED Memorandum Orders

Commission on Higher Education. 1994. "Order 03, Series of 1994: Rules and Regulations Implementing Republic Act 7722 as Amended." 13 September 1994. https://cms-cdn.e.gov.ph/CHED/pdf/1994-CMO-NO3S.pdf.

———. 2001. "Memorandum Order 03, Series of 2001: Revised Implementing Rules and Regulations (IRR) for Republic Act 8292, Otherwise Known as an Act Providing for the Uniform Composition and Powers of the Governing Boards, the Manner of Appointment and Term of Office of the President of Chartered State Universities and Colleges, and for Other Purposes." 17 January 2001. https://ched.gov.ph/wp-https://cms-cdn.e.gov.ph/CHED/pdf/2001-CMO-NO3.pdf.

———. 2014. “Memorandum Order 19, Series of 2014: Enhanced Policies and Guidelines on the Conferment of Honorary Doctorate Degrees by Higher Education Institutions (HEIs).” 24 September 2014. https://cms-cdn.e.gov.ph/CHED/pdf/2014-CMO-NO19.pdf.

———. 2017. “Memorandum Order 15, Series of 2017: Policies, Standards, and Guidelines for the Bachelor of Science in Nursing (BSN) Program.” 8 May 2017. https://legacy.ched.gov.ph/2017-ched-memorandum-orders/.

———. 2021. “Memorandum Order 25, Series of 2021: Policies, Standards, and Guidelines for the Bachelor of Science in Pharmacy Program.” 5 November 2021. https://legacy.ched.gov.ph/2021-ched-memorandum-orders/.

———. 2022. “Memorandum Order 07, Series of 2022: The 2022 Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 8292, Amending CHED Memorandum Order (CMO) No. 03, Series of 2001: The Revised Implementing Rules and Regulations of RA No. 8292, the “Higher Education Modernization Act of 1997 (Revised Implementing Rules and Regulations of the Higher Modernization Act of 1997 or IRR 2022).” 20 June 2022. https://cms-cdn.e.gov.ph/CHED/pdf/2022-CMO-NO7.pdf.

References

Acemoglu, Daron, Simon Johnson, and James A. Robinson. 2005. “Institutions as a Fundamental Cause of Long-Run Growth.” In *Handbook of Economic Growth*, edited by Philippe Aghion and Steven N. Durlauf, 382-472. Amsterdam: North-Holland.

Alba, Michael M. 2026. “The Economic Bases for Regulating Philippine Higher Education.” UP CIDS Discussion Paper 2026-45. University of the Philippines Center for Integrative and Development Studies, Quezon City, Philippines.

Alba, Michael M. and Anthony Raymond A. Goquinco. 2026. “The Commission on Higher Education’s De Facto Price Cap Regulation of Private Higher Education Institutions.” UP CIDS Discussion Paper 2026-47. University of the Philippines Center for Integrative and Development Studies, Quezon City, Philippines.

Decker, Christopher. 2023. *Modern Economic Regulation: An Introduction to Theory and Practice*. Cambridge: Cambridge University Press.

House Bill 7893. 2022. "An Act Enhancing the Philippine Basic Education System by Strengthening its Curriculum and Increasing the Number of Years for Basic Education, Appropriating Funds Therefor, and for Other Purposes." 19th Congress, First Regular Session. https://issuances-library.senate.gov.ph/bills/house-bill-no-7893-19th-congress.

Jones, Leroy P., Pankaj Tandon, Ingo Vogelsang. 1990. *Selling Public Enterprises: A Cost-Benefit Methodology*. Cambridge, Massachusetts: MIT Press.

Levy, Brian, and Pablo T. Spiller. 1994. "The Institutional Foundations of Regulatory Commitment: A Comparative Analysis of Telecommunications Regulation." *Journal of Law, Economics, and Organization* **10** (2): 201–246. https://doi.org/10.1093/oxfordjournals.jleo.a036849.

North, Douglass C. 1990. *Institutions, Institutional Change, and Economic Performance.* Cambridge, United Kingdom: Cambridge University Press.

Santos, Marilyn M. 2025. *Results of the Primary Data Gathering on the Topic 'Economic Regulation of Philippine Higher Education': Focus Group Discussions and Key Informant Interviews*. Makati City, Philippines: FEU Public Policy Center.

THE UP CIDS DISCUSSION PAPER SERIES

The UP CIDS Discussion Paper Series features preliminary researches that may be subject to further revisions and is circulated to elicit comments and suggestions for enrichment and refinement. They contain findings on issues that are aligned with the core agenda of the research programs under the University of the Philippines Center for Integrative and Development Studies (UP CIDS).

Center for Integrative and Development Studies

Established in 1985 by University of the Philippines (UP) President Edgardo J. Angara, the UP Center for Integrative and Development Studies (UP CIDS) is the policy research unit of the University that connects disciplines and scholars across the several units of the UP System. It is mandated to encourage collaborative and rigorous research addressing issues of national significance by supporting scholars and securing funding, enabling them to produce outputs and recommendations for public policy.

The UP CIDS currently has twelve research programs that are clustered under the areas of education and capacity building, development, and social, political, and cultural studies. It publishes policy briefs, monographs, webinar/conference/forum proceedings, and the Philippine Journal for Public Policy, all of which can be downloaded free from the UP CIDS website.

The Program

The Program on Higher Education Research and Policy Reform (HERPRP) aims to chart a research agenda, systematically build an evidence base for policy analysis, and create a network of experts and researchers doing work in this sector. HERPRP also serves as a convening body seeking to build partnerships and working collaborative networks among stakeholders.

Get your policy papers published. Download open-access articles.

The Philippine Journal of Public Policy: Interdisciplinary Development Perspectives (PJPP), the annual peer-reviewed journal of the UP Center for Integrative and Development Studies (UP CIDS), welcomes submissions in the form of full-length policy-oriented manuscripts, book reviews, essays, and commentaries. The PJPP provides a multidisciplinary forum for examining contemporary social, cultural, economic, and political issues in the Philippines and elsewhere. Submissions are welcome year-round.

For more information, visit cids.up.edu.ph.
All issues/articles of the PJPP can be downloaded for free.

Get news and the latest publications.

Join our mailing list to get our publications delivered straight to your inbox! Also, you'll receive news of upcoming webinars and other updates.

bit.ly/signup_cids

We need your feedback.

Have our publications been useful? Tell us what you think.

bit.ly/dearcids

UNIVERSITY OF THE PHILIPPINES
CENTER FOR INTEGRATIVE AND DEVELOPMENT STUDIES

Lower Ground Floor, Ang Bahay ng Alumni, Magsaysay Avenue
University of the Philippines Diliman, Quezon City 1101

Telephone (02) 8981-8500 loc. 4266 to 4268
(02) 8426-0955

Email cids@up.edu.ph
cidspublications@up.edu.ph

Website cids.up.edu.ph