

September 25, 2013

MEMORANDUM

To:

From: Robert Shireman

Re: Monday's meeting with James Runcie, Chief Operating Officer of Federal Student Aid (FSA),
U.S. Department of Education

FSA is the operating arm of ED's college financial aid responsibilities. We want to meet with FSA to push them to be more proactive at rooting out fraud and protecting students' interests. While the Office of Postsecondary Education (OPE) is responsible for policy development, FSA is responsible for the day-to-day interactions with students, parents, and colleges. While OPE is led by a political appointee (the Assistant Secretary), FSA's chief is on a five year contract that spans presidential administrations. (A corollary is the IRS, which does tax-related operations for the Treasury Department; like the COO of Federal Student Aid, the IRS commissioner is a nonpolitical five-year term hire). FSA's operations can be divided into two general categories (I'm ignoring the oversight of the legacy guaranteed student loan operation):

Transactions: FSA's employees and contractors run the systems behind the FAFSA, the call center 1-800-4FED-AID, and the financial portals through which colleges draw down millions of dollars of aid, and the collection of payments on student loans and on defaults. Much of this work is done through contracts with private companies (e.g. Sallie Mae is one of the loan servicing contractors).

School eligibility: FSA does have responsibility to find and prevent fraud and deceptions, through its "Compliance" unit (aka "School Eligibility"). This unit is responsible for ensuring that aid flows only to colleges and programs that meet federal eligibility requirements. Colleges

complete applications (such as the Program Participation Agreement, or PPA), submit financial and compliance audits, and undergo occasional desk reviews and on-site visits by FSA staff. Colleges must show (in some cases affirmatively, and in other cases when they're reviewed) that on an ongoing basis they:

- Are authorized by a state
- Are **accredited** (by an approved agency)
- Keep appropriate records and responsibly manage their federal funds, including providing refunds to students and to taxpayers as appropriate.
- Submit data about their enrollment, completions, etc.
- Provide **disclosures** to students, arrange for loan counseling, etc.
- Provide aid only to eligible students (high school graduates, citizens, making satisfactory progress, etc.)
- Do not pay bounties for enrollment.
- Do not **misrepresent** their programs, costs, or aid.
- For vocational programs, prepare students for **gainful employment** in a recognized occupation.
- Do not **violate the 90/10 rule** (receive more than 90% of their funds from Title IV funds (for-profit institutions only)).
- And more.

Some of these requirements and prohibitions are obviously easier to detect and enforce than others.

What keeps FSA up at night?

As much as we would like to think that FSA is obsessing about whether there are students who are being confused or deceived by colleges, FSA's biggest concern is the potential for a major system crash or error in the electronic FAFSA or loan servicing, or the mass compromise of personal data on millions of Americans. Everything else seems small compared to those dangers.

And when it comes to school eligibility, FSA is much more likely to be pummeled by a Member of Congress for "harassing" a school in his district than to be criticized for approving a college's new program training students in a questionable occupation. Colleges pull out all the stops to get approvals, while consumers don't know what's happening to them (or whose fault it is) so they rarely complain (more often they blame themselves). FSA is not insensitive to the problems faced by consumers, but those problems are rarely front and center in the day-to-day work.

Furthermore, FSA (and any government agency) is most comfortable taking enforcement action when decisions are made based on concrete, independent data. Clear lines like default rates are much more effective than questions like "is this ad misleading?" Anything that involves judgment will end up in court, almost guaranteed. So even when FSA is interested in pursuing it, the lawyers may push back that

it is too risky in terms of potential litigation. (And because there is no private right of action, there is no counterweight from the pro-consumer side to this unfortunate dynamic).

Given the challenges that FSA faces, it would not be productive for us to ask them to take on massive new responsibilities. Therefore, some suggestions for requests for Mr. Runcie:

A. Bring a consumer protection mentality to the “compliance” operation.

FSA is necessarily a bureaucracy, and it needs to check all the administrative boxes. But the leaders need to demonstrate in their actions that the bureaucracy is not an end in itself, it serves a purpose: protecting consumers and taxpayers. FSA needs to do a better job thinking and acting strategically to carry out the *enforcement* responsibility that underlies its work. Some examples:

1. Financial data. The impetus for this meeting came from seeing the official FSA response to this [OIG report](#), which found that the financial statements submitted by colleges needs improvement. We were alarmed that FSA responded by asserting that it has "no authority" to use colleges' financial expense information for oversight purposes. FSA is on the front line making decisions about colleges that need additional scrutiny within FSA or by the OIG. Financial data should be a significant part of those analyses, yet the response to the report indicates that the thought did not even cross FSA's mind. This needs to change.

2. Loan repayment data. The Department could identify potential gaming of loan default rates by looking for certain trends in its data. For example, are there colleges that have high rates of borrowers who have had three 12-month forbearances in a row? Which are the colleges that show a large spike in defaults after the two-year or now three-year window? These are not per se illegal, but they point to potentially problematic situations that should be flagged for further review.

3. Strategic plans. The Department needs to stop pussyfooting around and instead embrace its enforcement responsibilities. The Education Department's [draft strategic plan](#) (comments due next Friday) acknowledges the role of financial aid and consumer information in improving college access and success, but completely ignores the Department's own role in holding colleges accountable for the quality of their information and of their programs. It is not simply an accreditor responsibility; it is part of FSA's charge. FSA's "compliance" unit is supposed to be making sure that schools studiously *comply* with the rules that protect consumers and taxpayers.

[FSA's own strategic plan](#) already includes important elements that should be included in the ED plan. More importantly, these concepts should be implemented, vigorously:

“FSA has an opportunity to continuously improve the ways it can collaborate with institutions to ensure compliance; for example, FSA needs to develop compliance metrics that would differentiate the level of monitoring and oversight based on the institutions' performance.

“FSA will continue working to identify and eliminate elements of federal aid delivery processes that may lead to incidence of fraud and abuse. This includes identifying and more carefully reviewing federal aid process points that have shown incidents of abuse in the past and actively examining areas where mismanagement presents a large risk to the organization.

“FSA also plans to focus on quickly identifying and monitoring institutions that have a higher risk of noncompliance to ensure that resources are best directed at areas of greatest risk and importance.

“Abuse and mismanagement may not be strictly out of compliance with loans or regulations. In such instances, FSA will seek to eradicate the undesired behavior by invoking the help of other participants in the system, publicizing undesired behavior, and informing Congress.”

We need an FSA that takes to heart, and to its mind, these elements already in its own current strategic plan, in order to protect students and taxpayers more effectively. **We would like this meeting to be the beginning of ongoing communications with the consumer groups about how to help make that happen.**

4. Misrepresentation. One of the rules that needs greater monitoring and enforcement is the prohibition on misrepresentation.¹ FSA need not limit itself to the most outrageous and clearly illegal. Simply by monitoring and alerting colleges, accreditors, and the public to questionable assertions – whether pursued formally or not – FSA would be creating a strong incentive for schools to act responsibly.

B. Tap other agencies -- and the public -- for help.

FSA does not have the workforce to adequately review all of the documents that colleges submit. Even when the documents are reviewed, the cursory check review results in applications being approved that are inadequate or in error. The only way this is ever fixed is if there is a later review, and often that is too late.

1. Post schools’ compliance documents publicly. FSA makes its own job much more difficult by hoarding these documents which, with today’s technology, would do more good if they were public from the start. For example, some of the most important documents submitted by colleges could be posted publicly automatically when they are submitted by the colleges, including:

- Program Participation Agreement applications
- Amendments to the PPA
- Audited Financial Statements
- Annual Compliance Audits

Posting the documents publicly would not imply any approval or judgment about their adequacy – in effect the schools would be the ones posting the documents when they submit them. This would provide other enforcement agencies, consumer groups and the public the opportunity to do spot checks

¹ According to an investigation by the Kansas City Star, "Federal U.S. Department of Education regulations state that schools which engage in ‘substantial misrepresentation’ about a program, its financial charges or the employability of its graduates could be denied access to Title IV money. But critics of the industry say the department rarely follows through with investigations and sanctions. The actions which Kerr alleged against Vatterott could be interpreted as substantial misrepresentation. My inquiries to the Department of Education as to whether any action is being contemplated were not answered."

<http://www.kansascity.com/2013/07/18/4352491/risky-for-profit-colleges-need.html#storylink=cpy>"

and provide input that could help guide FSA's review and prioritization. Currently, these documents are available only through a FOIA. This is one way to achieve FSA's strategic plan goal to "increase the aggregate effectiveness of compliance reviews for the entire population of higher education institutions."

2. Share data with other agencies. State attorneys general have no way of knowing if residents of their state are enrolling in an out-of-state online institutions. FSA could make that information available to them based on financial aid applicant data. The Department of Veterans Affairs does not know if veterans are tapping student loans in addition to (or instead of) the GI Bill. These data, captured on an ongoing basis, could be invaluable in guiding monitoring and oversight activities. Who at FSA is responsible for seeking out those opportunities and implementing them?

C. Gather information about the customer experience.

FSA likes to talk about its efforts to analyze the "customer experience." It is the right instinct, but FSA has blinders on. The Americans with whom FSA is communicating are not just customers of FSA, they are customers of higher education, funded by the taxpayer funds provided through FSA. FSA should be analyzing their experiences *as customers of higher education*, not just as customers of FSA. Technology can be used for extremely inexpensive ongoing information from students and parents about their search, application and entry processes, and their engagement and experiences in college. The system could include a portal for taking in praise or complaints (see for example the [CFPB's portal](#) for student loan complaints).

These data can serve as **both consumer information tools and as early warning signals for fraud or other problems**. Maintaining occasional contact with financial aid applicants could have some important side benefits. It would alert the students that someone is paying attention to whether they are staying enrolled in college and are making progress. Second, it may help FSA maintain up-to-date contact information, critical to preventing defaults.

We would like to work with FSA to further develop and implement this concept.