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STUDENT DEFENSE

Promoting Student Opportunity Through Enforcement-Based Accountability

Strengthening Postsecondary Enforcement
at the U.S. Department of Education

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INTRODUCTION & SUMMARY

Americans across the political spectrum believe that access to educational opportunity—including higher education—is an important launching point for economic mobility. That's why Congress has long supported the creation and expansion of programs to increase access to higher education.

Aided by the flow of substantial federal funds, higher education—in many cases—has become a big business. As recently reported by the National Center for Education Statistics, between fall 2000 and fall 2018, undergraduate enrollment increased by 83 percent at private for-profit institutions, compared with increases of 27 percent at private nonprofit institutions and 24 percent at public institutions. Over this same period, publicly traded, for-profit institutions of higher education ("IHEs") have received billions of dollars annually in taxpayer funded loans and grants.

Rather than investing in public, non-profit, and community colleges, Congress has allowed the federal student aid program to facilitate an increased corporatization of the higher education sector, benefiting for-profit institutions (and their shareholders), loan servicers, and online program management companies, among others. At the same time, instead of moving up the economic ladder, too many students and families have been saddled with worthless degrees and crushing debt. The most predatory colleges have disproportionately targeted those with the fewest resources to fight back, including families with low incomes, communities of color, veterans, and women (especially single mothers). Rather than empowering students with the education that they need to advance in their careers, some schools are holding them back.

The stakes could not be higher for students.

Within our federal financial aid system, the U.S. Department of Education ("the Department") is the key gatekeeper to determine whether an IHE can access the enormous financial sums that accompany participation in the federal student aid programs. The Department has a legal obligation to ensure that IHEs are meeting statutory and regulatory obligations (not to mention the policy imperatives and moral obligation to put student interests first). Unfortunately, the Department has not always prioritized oversight, accountability, and enforcement of the legal strings that accompany federal tax dollars used for financial aid. Instead, the Department has frequently chosen to facilitate a single-minded focus on "access" to higher education, without considering whether access is worth the investment.

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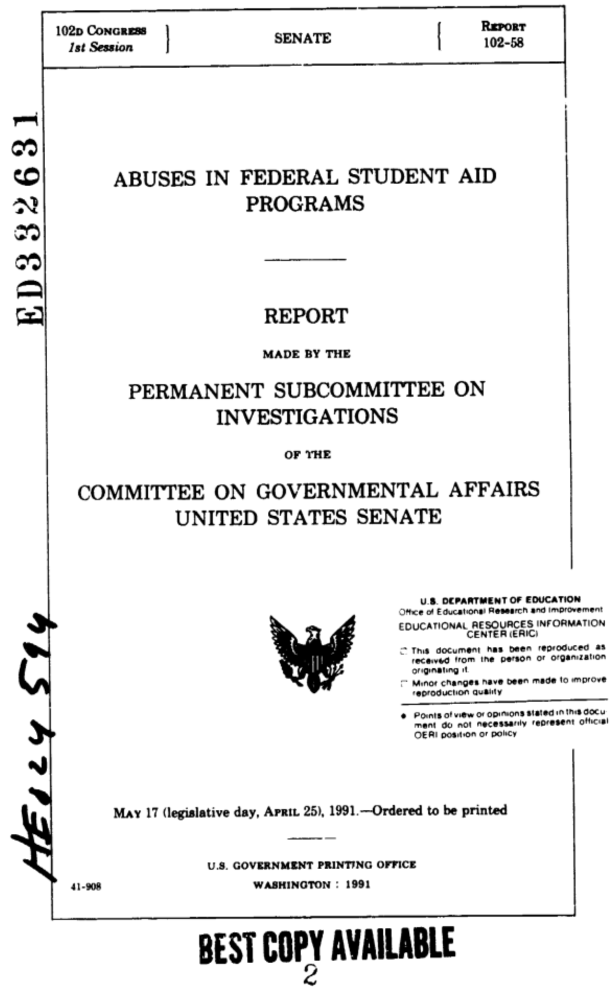
Yet despite having ample statutory enforcement power, the Office of Federal Student Aid ("FSA") lacked, until 2016, a dedicated enforcement office and brought few cases involving consumer-related violations against large institutions. FSA likewise lacked the structure and staffing to systematically investigate institutions that were the subject of private civil rights lawsuits alleging the predatory targeting of students of color. Large publicly-traded for profit college chains that would later unravel—for example, Corinthian Colleges, Inc., ITT Technical Institute and Educational Management Company ("EDMC")—faced years of federal and state investigations, including False Claims Act lawsuits led by the U.S. Department of Justice. Nevertheless, FSA still did not bring any major enforcement actions of its own against these institutions until 2014, and the agency lacked a dedicated consumer-focused office with the capacity to handle such actions.

With no centralized structure to oversee this sort of enforcement and coordinate with other federal and state agencies, FSA left several meaningful authorities under-used. For example, although the Higher Education Act ("HEA") gives the Department subpoena power to investigate potential violations of that law,[1] the Department has almost never used that authority to seek information from IHEs or other actors. Similarly, the Department has long had the power to bring "limitation actions,"[2] which place tailored, appropriate restrictions on institutions that have harmed students or otherwise violated the law. But the Department had only used the authority once in its history before dusting it off in 2016.[3]

Although FSA was staffed with compliance officials—many of whom had substantial expertise in the nuts-and-bolts of the federal student financial aid system—prior to 2016, the agency did not systematically employ consumer fraud investigators, forensic auditors, or financial experts to oversee financial and consumer violations. For example, when an institution fails the Department's annual financial responsibility standards, FSA typically demands that the IHE submits a letter of credit ("LOC") valued at least 10 percent of its prior year's total Title IV federal funding allocation. These LOCs are designed to be used as collateral if the IHE has unpaid liabilities to the Department. But there is no system to determine the amount of the LOC any particular IHE should post, and the Department can be limited in some circumstances from obtaining a LOC at all. Thus, FSA had no financial protection for students or taxpayers as institutions like Corinthian Colleges, Inc., which was receiving approximately $1.4 billion annually,[4] unraveled.

Moreover, the system is woefully under resourced. For example, while FSA has the statutory mandate to "program reviews on a systematic basis designed to include all institutions of higher education" that participate in the Title IV programs, between FY13 and FY19 (inclusive), the Department's own data establishes that it completed only 1,554 program reviews of the nearly 6,000 participating institutions. Alternatively stated, during a seven-year period, a given IHE had a 25 percent chance of having a program review conducted.



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ABUSES IN FEDERAL STUDENT AID PROGRAMS

REPORT

MADE BY THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

U.S. DEPARTMENT OF EDUCATION
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The cover of 1991's Senate Investigation, which uncovered many of the same problems that persist to this day.

Sadly, the structural problems within the Department are not new. In a 1991 bipartisan report of the U.S. Senate Permanent Subcommittee on Investigations, the Committee referred to the Department's "dismal record," concluding that the Department "had failed to efficiently or effectively carry out" its responsibilities to oversee the student aid programs. But the problems didn't begin in the lead-up to the 1991 report. Indeed, as quoted in the Report, Senator Nunn made the following remarks on the last day of hearings:

> It is not an exaggeration to say that we have heard no testimony or seen any documents that suggest that the Department has done even an adequate job in managing and overseeing its student loan program responsibilities. Moreover, criticism of the

> Department's efforts in this area is not unique to this investigation: in 1975 this same Subcommittee heard testimony on student loan program problems that is disturbingly similar . . . to that which we have heard in these hearings. GAO, over a period of many years, has also repeatedly brought many of these problems to the Department's attention. Despite all of that, the program's failures seem only have gotten worse.[5]

The Nunn report highlighted how the Department's program compliance staff "must assume a far greater and more proactive role in detecting and dealing with fraud, waste, and abuse."[6] And—perhaps most strikingly, in light of the current issues surrounding the Department's "Borrower Defense" program (*i.e.*, to provide relief to students who have been victimized by predatory colleges)—the Nunn Report concluded that the Department "must develop ways to assist those students who continue to be victimized by fraud and abuse" in the student aid system *because* "the Department's oversight systems have failed."[7] The Department, the report concluded, "must not only increase efforts to prevent this type of abuse in the future, but also work with students to ease financial burdens imposed as a result of past abuse."[8]

Nineteen years later, the situation had not dramatically improved. In a 2012 report focused exclusively on the for-profit education industry, the Senate Committee on Health Education Labor and Pensions, led by Senator Tom Harkin, made a series of recommendations including the need to "[c]reate an enforcement task force within the Department of Education to focus on targeted enforcement of new and existing regulations."[9] The Harkin Report also recommended requiring the Department to "develop clear risk-based criteria that will trigger audits or program reviews."[10] Nevertheless, the core of the Harkin recommendations focused on new legislation necessary to change the behavior of predatory for-profit colleges.[11]

But within two years of the issuance of the Harkin Report, the extent of harm to students and taxpayers crystalized in dramatic fashion. Spurred by an investigation led by then-California Attorney General Kamala Harris, and joined by the U.S. Department of Education,[12] Corinthian Colleges closed abruptly in 2014. Approximately two years later, another giant of the for-profit industry, ITT Technical Institute, shuttered under the weight of increased oversight by the Department of Education.[13]

These developments reflect the intentional, systematic, and concerted effort to pursue aggressive action against predatory actors in the higher education space during the last few years of the Obama Administration. For example, when the 2015 Gainful Employment regulations were finalized, the Administration announced the creation of an inter-agency task force on for-profit education. The Department subsequently commenced a rulemaking on "Borrower Defense," which included increased oversight of IHEs and restricted the use of mandatory arbitration provisions and class-action waivers in student enrollment agreements.

In addition to establishing these new regulations, the Obama Administration also launched a dedicated new enforcement unit in early 2016 with strong leadership and a mandate to tackle this crisis. The creation of the enforcement unit provided hope for students, not merely by centralizing existing offices within the Department, but also by creating new offices dedicated to investigating misconduct by IHEs and their contractors. And by revisiting never-before-used (or seldom-used) authorities, the Obama Administration took bold enforcement actions against institutions that had left thousands of students with mountains of debt with little else to show. High-profile companies like Corinthian Colleges, ITT Educational Services, Globe University, and Infilaw, among others, quickly learned what would happen when an institution failed to put students first. Seeing these actions, and an agency willing to exercise its authorities, it should come as no surprise that other institutions began to change their practices as well.[14]

In a few short years, the Obama Administration's Department of Education was starting to implement many of the bipartisan recommendations that had been made nearly twenty-five years prior by the Nunn Commission: assuming a "greater and more proactive role in detecting and dealing with fraud, waste, and abuse"; "greatly expand[ing] and improv[ing] its coordination and communication with other federal agencies"; and "develop[ing] ways to assist those students who continue to be victimized by fraud and abuse."[15]

The Trump Administration quickly dismantled these efforts. As has been widely reported, Secretary DeVos stacked her team with veterans of the for-profit college and

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student loan servicing industry, including some with ties to companies with a history of law enforcement problems. When combined with rollbacks of Obama-era and more longstanding regulations, for-profit college chains were immediately positioned for a resurgence. And now, with a recession and public health crisis leaving millions of Americans out of work and forcing students to turn to online education, for-profit colleges are seeing even more opportunity. Meanwhile, student debt continues to grow.

Now more than ever, as a new Administration rebuilds after the COVID-19 pandemic that has disproportionately impacted Black and brown communities yet again,[16] the Department must refocus efforts to promote racial equity and protect students from predatory schools. The next administration must increase accountability over IHEs, loan servicers, accreditors, and other actors in the space. To put student interests first, the Department must ensure that its budget and student aid workforce are structured to reflect these values.

To this end, we have conducted a series of interviews with people familiar with the FSA Enforcement structure and enforcement at other federal and state agencies, including enforcement and supervision over banks. These interviews inform a series of proposals that build on the progress made by the Obama Administration, incorporate the lessons of the Nunn and Harkin reports, and reflect the current challenges of the federal student aid system.

Among our proposals are these efforts that will better reflect a student-first approach to IHE oversight and enhance oversight over other actors in the student loan system.

RESHAPING ENFORCEMENT: Modifying the Structure of Federal Student Aid's Enforcement and Oversight Operations.

The Department must embolden and enhance the Department's enforcement and student protection efforts by making a series of modest, organizational improvements, such as:

- **Creating a Regional Student Protection Group ("RSPG")** within the Enforcement and Student Protections Directorate. This office should be headed by a Chief Regional Student Protection Officer and be staffed by ten officials, each assigned to a regional compliance office. A student protection officer should also be assigned to the Financial Institution Oversight Service Group ("FIOS") to bring a consumer-protection lens to the oversight of institutional participants in the Federal Family Education Loan ("FFEL") program.

  The mission of the RSPG is clear: to bring a student and consumer protection lens to the entirety of FSA's enforcement, compliance, and oversight functions. In this vein, RSPG personnel must work alongside personnel from the compliance office and concur in decisions. Under the current structure, eligibility decisions, changes in ownership determinations, program reviews, and audit resolutions, are all handled within the compliance offices but are structurally siloed (except at the very top of the organizational chart) from consumer-protection investigations, borrower defense, and enforcement actions. This means that an IHE under investigation as part of an enforcement investigation may nonetheless be fully recertified to participate in the Title IV programs for another six years. We propose to structurally integrate student consumer protections into the entire compliance and oversight process.

We believe that there is a value to creating cross-cutting teams for complicated investigations. By bringing together the regional compliance team, the investigations team, and designated student protection officials, the Department can develop unified "case teams" to conduct investigations and take enforcement actions.

- **Creating a dedicated Public Service Group** that will have chief responsibility for coordinating, and working with other offices as appropriate, on issues related to public service. Given well-publicized failures regarding Public Service Loan Forgiveness ("PSLF"), and issues that relate specifically to student assistance for military members and their families, this office can elevate those issues but also work on issues relating to TEACH grants, and other Department programs that particularly impact public servants. The office will work closely with FSA sub-components that generally overseeing student loan servicing issues, stakeholders at the Department of Defense and Department of Veterans' Affairs, and non-governmental stakeholders surrounding programs like PSLF. The Office will be responsible for making recommendations on improvements in the operations of the student loan programs and can refer certain matters to the Office of Investigations.
- **Creating a dedicated liaison to the Office for Civil Rights ("OCR")** and other Departmental offices to aid enforcement efforts with a civil rights focus. In the Program Participation Agreements that institutions sign with the Department in order to receive federal student aid funding, IHEs certify compliance with (i) Title VI of the Civil Rights Act of 1964 and its implementing regulations, (barring discrimination on the basis of race, color, or national origin); (ii) Title IX of the Education Amendments of 1972 and its implementing regulations (barring discrimination on the basis of sex); (iii) Section 504 of the Rehabilitation Act of 1973 and its implementing regulations (barring discrimination on the basis of physical handicap); and (iv) the Age Discrimination Act of 1975 and its implementing regulations. Nevertheless, FSA and OCR have been largely siloed, even at a time when communities of color disproportionately bear the burden of student debt. FSA must work more closely with other Departmental offices to ensure compliance with these standards and to use the Title IV enforcement authorities, as necessary, to address issues of non-compliance.
- **Fully Staff the Investigations Group,** which is responsible for coordinating and conducting the investigation of, and response to, indicators of potential misconduct or high-risk conduct on the part of IHEs, third-party servicers, and other individuals and entities that contract with IHEs (*e.g.*, auditors and Online Program Management ("OPM") companies. The next Secretary must *at least* restore the office to its 2016 staffing levels, as we understand that the office was effectively decimated under Secretary DeVos. We recommend staffing with a combination of professional investigators and investigative attorneys.[17] In addition, the Investigations Group should include *at least* one full-time forensic accountant—or ideally a team of forensic accountants, if budget allows—who could be deployed to investigative teams and compliance review teams in the Office of Oversight and Compliance, and who could begin to train other investigators on key principles of forensic accounting that they can apply in other investigations.[18]
- **Creating a dedicated group responsible for oversight of Third-Party Servicers (and including OPMs and other Contractual Providers).** Historically, the review of third-party servicers was conducted out of FSA's Kansas City region. With the 2020 reorganization of FSA, it appears that the oversight of third-party servicers has been transferred to the FIOS Group, which largely has responsibility over FFEL program participants. We believe that FIOS is not the appropriate home for this oversight. As a result, we propose to add a Third-Party Servicer and Contractual Provider Group to focus exclusively on entities that contract with IHEs (including OPMs, auditing firms, financial aid administration companies, and lead generation firms). This group will work closely with the Investigations Group, but because issues regarding third-party servicers and other contractual providers are typically raised on a school-by-school basis, the Department needs to institutionalize a cross-regional approach to overseeing such entities. Elevating this organization is particularly appropriate given the industry trend of public and non-profit

IHEs contracting out services to for-profit educational providers with a history of law enforcement investigations and activity (*e.g.* Purdue University Global and the newly proposed University of Arizona Global Campus).

Integrating Compliance, Enforcement, and Student Protections

In addition to these changes, the Department can improve its Title IV enforcement by deploying new enforcement strategies and principles. This section outlines several steps key to improving these efforts.

1. Using Referrals and Data Analysis to Target Enforcement Resources

Even with the restructuring and potential increased staffing, FSA will need to make hard decisions about where and when to deploy limited enforcement resources. The Investigations Group should use referrals, augmented by its own data analysis, to triage and prioritize its investigations of IHEs and Third-Party Servicers.

By way of background, the Department has major advantages compared to some government agencies, in that it maintains a broad, ongoing program of oversight for IHEs and Third-Party Servicers. This sort of proactive enforcement is rare among government enforcement agencies, which seldom have the resources to communicate with nearly all regulated entities. But because of FSA's unique status as both the source of substantial revenue and the institutional regulator, it has powers that many regulatory bodies simply do not.

For this reason, the Department must prioritize a risk-based priority plan for assessing these referrals, data, and other information from within and outside the Department. For example, the Office must use data on cohort default rates, gainful employment rates, and other indicators of potential risk to prioritize for investigations, and which to put on the back burner for future consideration. The Department must also consider enrollment changes, litigation analyses, and information from federal and state law enforcement agencies, accreditors, and state authorizing bodies.

2. Deploying Cross-Agency Enforcement Teams

The Department should build coordinated, cross-agency teams to pursue high priority actions. These teams can leverage complementary skills and contribute to an improved culture of enforcement.

Under the current structure—augmented by our proposals—multiple officers have roles in the compliance, oversight, and enforcement process. Such an approach is necessary given the scope and breadth of issues. But no office within this structure can "own" effective enforcement. This is one reason why we support housing this structure under a unitary Deputy COO, who can deploy coordinated teams (drawing on resources from multiple directorates and groups) as appropriate. Groups and units outside of FSA—such as the office of the General Counsel OGC or the Office of the Inspector General—may be involved to leverage their own compliance tools or expertise.

Effective management is also required. Case teams must have leadership, even where the individuals that are working as part of the team may be managed (for purposes of the particular investigation) by managers who are outside of the team.

Other federal agencies have successfully used cross-agency approaches. The Department of Labor's Wage and Hour Division built cross-cutting enforcement teams between their investigators, planning staff, data experts, and lawyers (the latter housed in a separate agency, the Office of the Solicitor), and found that all parties had more buy-in with the resulting investigations. Previously, there was a sense of cases "owned" by the investigators (first) and the lawyers (later), and final responsibility could fall through the cracks. In the new arrangement, both teams had a seat at the table from the beginning, and they all felt responsible for improving enforcement outcomes. More importantly, the new cross-cutting enforcement teams brought important and complementary skillsets to each phase of the investigation.

We acknowledge certain difficulties created by such a "matrixed" approach to management and enforcement. Nevertheless, in light of the enforcement failures at FSA—including the low rate of program reviews and insufficient use of clear enforcement authorities—and the complicated nature of the FSA compliance functions, the Department must have a dedicated workforce for enforcement.

3. Using Enhanced Research Techniques

The Investigations Group can deploy enhanced research techniques to improve its investigations as well. For one thing, this means developing greater expertise in mapping and understanding corporate structures in order to address increased consolidation in higher education (and even more creative restructuring[19]) that can help to identify deeper trends in noncompliance. Identifying connections between entities is equally important to target remedies toward the right entity to affect compliance.[20] If an IHE is able to evade the Department's sanctions simply by transferring its assets or enrollment to another entity, that effort will defeat the purpose of enforcement. And tracing ownership back to private equity firms—and understanding the relationship between institutions and those firms—can be a crucial step for the Department.

As outlined above, the Investigations Group needs investigators skilled in forensic accounting and trained to spot inconsistencies or troubling patterns in financial statements. Some agencies like the FBI hire forensic accountants in dozens of field offices across the country.[21] But even if the Office of Investigations had a small team of them (1-3), they could train other investigators on when to bring them in and even on the basics of forensic accounting.[22]

The Department must also be more willing to use its clear subpoena authority.[23] Although the Department has the ability to obtain information and documents from participating IHEs through other means, subpoenas can be used to target third parties whose work relates to the Title IV programs. In addition, by using subpoenas instead of document requests, the Department will also convey seriousness by which IHEs must respond to enforcement inquiries.

In addition, the Investigations Group must leverage relationships with other federal agencies and their suites of investigatory tools. For example, the FTC has developed an infrastructure for investigating a company's (public) website and social media accounts and capturing key information without leaving digital footprints to alert targets. The Office of Investigations can partner with the FTC to make use of this infrastructure when needed, or even to design its own version if necessary. The Investigations Group must also launch a "secret shopper" program to uncover deceptive and unfair recruiting practices. Indeed, the Government Accountability Office has used that method to investigate the experiences of students enrolled at certain institutions.[24]

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Finally, the Department must develop a robust, shared database that shares information across the Department to identify IHEs, auditors, third-party servicers, and other contracted providers that are involved in multiple investigations and that therefore may be worthy of closer review. The Department must share information—whether through the RSPO process of otherwise—to ensure that certification decisions are made properly. Investigative teams and compliance teams must share information. Although this may require significant technological investment, which are slow and can be inefficient, it is a vital step to ensuring coordination and alignment across the Department and law enforcement more broadly.

Endnotes

1 HEA § 409A, 20 U.S.C. § 1097a.

2 34 C.F.R. § 668.86.

3 Ashley A. Smith, *Feds Act Against DeVry*, Inside Higher Education (Jan. 28, 2016), *available at:* https://www.insidehighered.com/news/2016/01/28/ftc-and-education-department-take-action-against-devry-university; Ltr. from Susan Crim to Robert Paul re: Notice of Intent to Limit (Jan. 27, 2016), *available at:* https://studentaid.gov/sites/default/files/devry-limitation-notice.pdf.

4 Danielle Douglas-Gabriel, *For-Profit Corinthian Colleges Files for Bankruptcy*, Wash. Post (May 4, 2015), *available at:* https://www.washingtonpost.com/news/business/wp/2015/05/04/for-profit-corinthian-colleges-files-for-bankruptcy/; Floyd Norris, *Corinthian Colleges Faltering as Flow of Federal Money Flows*, N.Y. Times (June 26, 2014), *available at:* https://www.nytimes.com/2014/06/27/business/Corinthian-Colleges-Falters-as-Federal-Cash-Wanes.html.

5 S. Rep. No. 102-58, at 24–25 (1991), *available at:* https://files.eric.ed.gov/fulltext/ED332631.pdf (Nunn Report).

6 *Id.* at 36.

7 *Id.* at 37.

8 *Id.*

9 S. Rep. No. 112-37, Vol. 1 at 205 (2012), *available at:* https://www.govinfo.gov/content/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf (Harkin Report).

10 *Id.*

11 *See, e.g.* Harkin Report at 196.

12 *See* Editorial, *Lessons of a For-Profit College Collapse*, N.Y. Times (July 8, 2014) *available at*: https://www.nytimes.com/2014/07/09/opinion/lessons-of-a-for-profit-college-collapse.html; Press Release, U.S. Dep't of Educ., *Department of Education and Attorney General Kamala Harris Announce Findings from Investigation of Wyotech and Everest Programs* (Nov. 17, 2015), *available at*: https://www.ed.gov/news/press-releases/department-education-and-attorney-general-kamala-harris-announce-findings-investigation-wyotech-and-everest-programs.

13 Danielle Douglas-Gabriel, *ITT Technical Institutes shut down after 50 years in operation*, Wash. Post (Sept. 6, 2016), *available at*: https://www.washingtonpost.com/news/grade-point/wp/2016/09/06/itt-technical-institutes-shut-down-after-50-years-in-operations/.

14 A recent study in an analogous context—federal agency enforcement of workers' safety and health laws—suggests that publicizing violations leads to improved compliance. *See* Matthew Johnson, *Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws*, 110 Am. Econ. Review 1866 (2020); *available at:* https://www.aeaweb.org/articles?id=10.1257/aer.20180501.

15 Nunn Report at 36–37.

16 *See, e.g.*, Kendra Bozarth & Angela Hanks, *Structural Racism is Exacerbating the Coronavirus Pandemic for Black People – Especially Black Women*, Ms. Magazine (Apr. 9, 2020), *available at:* https://msmagazine.com/2020/04/09/structural-racism-is-exacerbating-the-coronavirus-pandemic-for-black-people-especially-black-women/.

17 The involvement and direction of investigative attorneys will likely trigger requirements under Rule 4.2 of the Model Rules of Professional Conduct (as incorporated by state bars), that "a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." *See* Model Rules of Prof'l Conduct R. 4.2 (2020), *available at:* https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_4_2_communication_with_person_represented_by_counsel/. Staffing this agency with lawyers means that IHEs and others will need to involve their general counsels' offices in these discussions and could conceivably slow the production of information to the Department.

Upon consideration, the advantages of involving attorneys—potentially for the government and IHEs alike—seems to outweigh the disadvantages. For the government, agencies have substantial discretion in hiring attorneys, and can choose attorneys who have the skills and experiences needed to run a strong enforcement effort. Meanwhile, IHEs generally take these investigations seriously, which means that they involve their counsels' offices regardless. And while their counsels' offices may need time to review documents before they are produced, these offices are also subject to additional ethical constraints on the production of (and forbidding the destruction of) such records.

18 The US Department of Labor's Wage and Hour Division used this approach to leverage the hiring of a single forensic accountant to train a wide range of investigators in these methods.

19 Patrick Nolan, *Consolidating Without Merging: A New Option for Higher Ed,* Sound and Fury (June 4, 2018), *available at:* https://www.future-ed.org/work/consolidating-without-merging-a-new-option-for-higher-ed/.

20 *Cf.* David Weil, *How to Make Employment Fair in an Age of Contracting and Temp Work*, Harvard Bus. Rev. (March 24, 2017), *available at:* https://hbr.org/2017/03/making-employment-a-fair-deal-in-the-age-of-contracting-subcontracting-and-temp-work.

21 Forensic Accounting | FBI, *available at:* https://www.fbijobs.gov/career-paths/forensic-accountant.

22 This is how the Department of Labor's Wage and Hour Division built out its forensic accounting function, by bringing on one forensic accountant who could train others around the agency.

23 HEA § 409A, 20 U.S.C. § 1097a.

24 *See generally* U.S. Gov't Accountability Office, *For-Profit Schools: Experiences of Undercover Students Enrolled in Online Classes at Selected Colleges* (Oct. 2011), *available at*: https://www.gao.gov/new.items/d12150.pdf; U.S. Gov't Accountability Office, *For Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices* (Aug. 2010), *available at*: https://www.gao.gov/assets/130/125197.pdf.

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