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**WAR OF THE WORDS: A DISCUSSION OF
STRATEGIES TO EMPOWER ACTIVE AND RETIRED
SERVICE-MEMBERS ON MAKING INFORMED
CHOICES ABOUT HIGHER EDUCATION PROVIDERS**

by

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Abstract

This paper analyzes the effectiveness of the recent executive order issued on April 27th of 2012 regarding providing support for serving service members, veterans, spouses, and other family members to make informed choices about choosing their higher education provider – especially those that are for-profit colleges or universities. In recent times, there has been much public interest into this industry among claims of rampant misrepresentation and fraud. I first analyze a few sample financial statements to determine what have been identified as the major regulatory hurdles that these companies believe they face. Next in cross-applying those vulnerabilities to principles of excellence found within the executive order, I shortlist and analyze the highest value to effort principles to analyze. In doing so, I find that i) from a transparency perspective that while costs are emphasized, there is little emphasis on the truly important metrics that measure education outcomes, and ii) that executive order's reliance on underlying Department of Education rule-making has made the executive order subject to the same loopholes of the status quo. In remedying each of these situations, I recommend tailored approaches to closing the gap in each of these areas.

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INTRODUCTION

Over the last two years there has been much media attention devoted to the recruitment of service members by for-profit universities (FPUs); specifically, much of the coverage has been negative as popular opinion seems to be that these universities are using unfair tactics in their recruitment through misrepresenting key factors of the decision making process to potential applicants. Due to this media scrutiny there has been greater push to induce political pressure on these institutions through legislation, executive orders, and Department of Education rulemaking. Specifically, one major gain in the fight against misrepresentation to veterans was an executive order, dated April 27th 2012, titled “Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members”. This document required any educational institution “receiving funding pursuant to Federal military and veterans educational benefits” to comply with the establishment of the principles of excellence listed within the order. (Obama) However, while the action was groundbreaking step in the right direction through addressing of many critical issues plaguing service members, veterans, and their families (hereinafter referred to as “the stakeholders” unless a specific reference is made to a sub-group), the executive order itself still has significant room for improvement. This thesis will both analyze the high priority gaps that need to be filled and discuss possible policy strategies of deployable by *various actors* to mitigate each of these gaps. In doing so however, one possible counterpoint to such an approach is in that the strategies themselves will be disparate and not present an elegant one size fits all solution; in response, though the recommendations outlined will require the *actions* of multiple actors, it will not necessitate their *coordination*, as that would likely relegate any institutional change to be unattainable. Additionally, while the analysis component of this paper is meant as a discussion of

the policy measures for the government, it is important to note that the paper can also serve as an effective means for change as a guide for the stakeholders to critically analyze and make an informed choice on their higher education providers. Therefore, while the background and initial part of the analysis may seem lengthy, it is necessary to both set the stage for a thorough analysis and a means to affect grassroots change.

BACKGROUND: INVESTIGATING THE TRAVAILS OF OUR HOMETOWN HEROES

This part explains in further detail the recent controversy over how higher-education institutions have misrepresented themselves to ex-service members.

The executive summary of the Senator Tom Harkin's investigative report highlights three such examples of how service members have been aggressively targeted for recruiting.

First, lead generation web sites have utilized misleading logos similar to official military websites to collect contact information of military members and veterans. Subsequently, upon acquiring this information they have resold the data to for-profit college/university clients for the purpose of recruiting. (Harkin, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success 4-5) One prominent example of a website propagating this transgression is GIBill.com - one of several websites owned and operated by QuinStreet, Inc. Investigators alleged that the website used the moniker GIBill.com and military symbols to pose as an official website and convinced students to disclose personal information which then QuinStreet sold to for-profit schools for recruiting purposes. The suit eventually resulted in a consumer protection settlement of \$2.5 million with 20 state Attorney Generals. (Standifer)

Second, internal documents uncovered through the investigation showcase how these schools aggressively recruited from even the most vulnerable populations among the military; such individuals include active or ex-service members at wounded warrior centers and veterans' hospitals. (Harkin, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success 4-5) For example, as described in a 2010 article in Bloomberg BusinessWeek, certain for-profits such as Kaplan University have even gone as far to establish military specific recruitment teams; a training manual supplied to the team outlined how "to recruit veterans by sowing 'fear, uncertainty, doubt' about competing colleges (Golden)

Golden, further describes how Keith Melvin, a veteran classified as 80% disabled by the Department of Veterans Affairs (VA), was one such victim who had been led to believe that his benefits would sufficient to finance his education and realized the truth only after he had been saddled with a semester of loans. Furthermore in the same article, Golden goes on the describe a point value system that recruiters are measured against for performance; while veterans and service members are awarded 7 and 5 points respectively, the spouses of service members came in at a hefty 10 points.

This point system is especially important to note as now we see the impact of these actions extend beyond just the immediate community of service members to their families as well. One noteworthy trend within the point system above is how the further one goes away from being designated under an active service member status, service member to veteran to spouse, we see the point value increase. In inferences from concurrent trends I have seen in my overall research, one possible explanation for this discrepancy could be as follows. As the financial benefit a person has to the educational institution increases, the higher their point value; where the differing financial benefit comes into play for the university is to degree the applicant hopes to engage in the educational services Kaplan has to offer: just supplemental classes, a trade certification, or something greater. Subsequently, my hypothesis is that the applicants need for education is highly correlated with their service member status insofar that the further they are removed from a situation where they are likely to be concurrently learning a skill or trade, the more likely they are to engage in something greater than just a trade certification. For example, an active duty service personnel might choose to enhance their skill set through engaging in *few* online classes to supplement his/her field learning, i.e. a military radio operator might find it necessary to learn additional information about networking hardware and signal processes

through an online course, if those skills are not already in their skillset. Veterans on the other hand, if they choose to engage in higher education post military service, are much more likely to choose education for the purpose of gaining some sort of accreditation or transferrable skill set as they are looking to enter the workforce. Finally, when looking at the spouse, one might wonder as to why they are included in the list, especially if in the context of discussing service member benefits. The answer lies within one of the main reasons why GI bill benefits are very appealing as a revenue source to FPU's. One significant change within this bill vs. those of the past is the extent of its flexibility in both who can use them and for what purpose. (Tidwell) Subsequently, family members often use them in place of the service member themselves to fill their educational needs. Therefore, in tying this information back to the point system, since the spouses are less likely than service members to be proficient in a trade skill, they would likely use the bill's financial assistance to a greater ability proving to be a more profitable venture for FPU's.

Third, in certain cases, the investigation uncovered how recruiters intentionally lied or misled these service members as to the portion of tuition coverage by their military benefits. (Harkin, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success 4-5) As we saw in the earlier example, Melvin had been assured by Kaplan advisors over the phone that the government would cover his tuition through either federal student aid or veterans' benefits. (Golden) Unbeknownst to Melvin however, his stint abroad did not mean that he actually qualified for any benefits; at his time of enrollment Kaplan had notified VA, which had concurrently determined that he was not eligible for benefits. (Golden) However, Melvin had not been notified by VA of his lack of eligibility and only learned through Kaplan at the end of his first semester that he couldn't sign up for new classes

until he paid for his prior course load. (Golden) Furthermore, when contacting his academic advisor for help, her response only came after the second semester classes drop/add deadline had passed. Refusing to hear Melvin's plea, Kaplan chose to refer his bill to a collection agency Minneapolis-based Pinnacle Financial Group Inc. (Golden) In speaking to his experience Melvin stated, "I have a very sour taste in my mouth about Kaplan,' [...] 'They told me that a lot of veterans [at Kaplan] end up making money because of all the funding we qualify you for.'" (Golden)

METHODOLOGY

This section will describe the methodology in answering my hypothesis

In order to present strategies to protect the stakeholders from misrepresentation by FPUs we must first understand all of the players involved within the situation. To begin the analysis section, I will first go over the emergence and current state of FPU's. In doing so, I will also partially analyze their operating model to determine their model for success which I argue has been the impetus behind these recent misrepresentation allegations. Next, we will turn to understanding the stakeholder population. However, rather than a complete top down analysis of all their attributes, I will only discuss what makes them appear to be such attractive targets to FPUs.

Then, before finally analyzing the executive order itself, I devote section to understanding the greatest policy concerns of for profit universities as outlined in the management discussions of both Apollo Group, Inc. and The Education Management Corporation, two major players in the field. In finally understanding the greatest policy vulnerabilities of the firms, I will then cross-apply major common concerns between the firms to identify specific principles within the executive order that have the greatest potential in empowering the stakeholders to make informed choices regarding their higher education provider. I would also like to clarify the context in which I use the term empowerment. Within the introduction I discuss how that this document can used for the sake of both policy and grassroots change; I term both of these goals to fall under the greater umbrella of empowering the stakeholders. Given two players in a zero-sum game, one can either empower one of the players through indirectly disenfranchising the other player or directly backing the player in question. My analysis will consist of both sets of recommendations where the indirect

empowerment will come primarily through policy recommendations and the direct empowerment will come through a mix of both policy and grassroots change.

The analysis itself will comprise of utilizing fact-based reasoning as well cross-application of rules in other contexts and case law, whenever applicable, to determine whether the principles of excellence are sufficient in achieving their intended goal. Furthermore, this paper will also analyze the intended goal of the legislation and determine whether it was the appropriate paradigm to adopt; if my findings conclude otherwise, my analysis will not only highlight the gap between the proposed goal but define what is the should-be goal.

Additionally, this paper will intentionally not pursue the analysis of the enforcement and compliance mechanisms; the primary reasoning behind this is because these additional questions would substantially expand the scope of this thesis. Subsequently, my criticism will stem around the situations in which there may compliance to the letter of the law, but is still insufficient in preventing exploitation.

Finally, before going any further, I would like to acknowledge that as this topic is quite current, it is likely that some recommendations discussed within this paper, will be outdated by the time you, as the reader, are reading it. However, because this paper will be discussing one-off strategies that are defined quite independently, the resolution of one of more of them does not significantly mitigate the value of this document as a policy paper.

ANALYSIS: FPU 101 - FROM THEIR HUMBLE ORIGINS TO THEIR STATE TODAY

This section explains both the history and current industry of for-profit universities

While their reputation in media today has been less than noteworthy, many for-profit colleges/universities that we know came into fruition around three to four decades ago for the purpose of providing access to education to those previously underserved by traditional institutions – arguably a noble cause. (Hentschke, Lechuga and Tierney 23) The authors contend that this gap resulted from both supply and demand constraints as “these students did not have backgrounds or aptitudes that historically aligned with pursuit of a college degree, and traditional institutions did not actively seek them out due to a combination of capacity constraints and a ready pool of students.” (Hentschke, Lechuga and Tierney 23) While the early for-profits were primarily independently operated vocational schools, certain FPUs soon morphed in the 1990s into the publicly traded companies as we see today. (McGuire 129) McGuire states and I agree as well, that this was the era when these FPUs finally began to realize their economies of scale and the benefits of aggressive cost control. Furthermore, as we will see later, this change in stakeholders is one main factors in the new model that we will use to explain the motivations behind the actions of FPUs.

Today however, unlike what is popularly portrayed in commercials for FPUs such as the University of Phoenix or Kaplan University, most FPUs are still on average quite small; while they make up 39% of higher education institutions within the United States, they only make up 9% of the total enrollments. (Hentschke, Lechuga and Tierney 2) Furthermore, most FPUs are more likely to offer career centric programs such as criminal justice or accounting vs. offering a liberal arts education as found within their counterpart traditional institutions. Additionally, in order to accommodate the needs of the unconventional students that they target, these days,

FPU's "enroll more students online than at physical campuses." (McGuire 130) These attributes are then important to consider as they all provide FPU's significant cost-side advantages which conventional higher education providers do not enjoy. Furthermore, this will be a very important point to consider as we will seek to explain how FPU's with the resources that they have at their disposal produce significantly worse outcomes.

Although close to only 10% of all students attend a for-profit higher educational institution, in 2010 they comprised of around 25% of all federal aid under the Higher Education Act, primarily in the form of Pell Grants and Student Loans although there are other classes of aid. (Carey) For example Carey cites how certain institutions such as the University of Phoenix *alone*, owned and operated by Apollo Group, Inc., received over \$1 billion from Pell Grants and \$4 billion from federal loans in 2009-10. From a GI bill benefits perspective alone, during the first two years of availability, aid dispersed to FPU's made up 37% of the total \$4.3B in benefits, \$1.6B nominally. Conversely, in evaluating the aid dispersed from a 'bang for your buck' perspective, FPU's only trained 25% of veterans. Public institutions on the other hand, trained 59% of veterans but collected only 39% of funds. (Harkin, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success 27-28)

However, when comparing the level of federal aid to the tuition that these FPU's charge, we see yet again a huge disconnect. Harkin's report showcases how "on average, for all degree types and institutions analyzed by committee staff, for-profit colleges charge more than three and a half times as much for the same degree at public institutions in the same State." (Harkin, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success 35) One prevalent theory as to why higher education costs have skyrocketed over the last half century is a belief that customers are becoming less price-sensitive to the cost of

education due to the easy access of federal loans. While, in our case, one cannot prove causality between the cost of FPUs and the proportion of federal aid that makes up their source of revenue, one could hypothesize that we functionally have another scenario of moral hazard. Let us hypothesize a scenario in which person A chooses to attend college X, a FPU. Unfortunately, due to lack of funds, in order to pay for their own education, person A chooses to take out a federally guaranteed loan. After attending classes for some time, person A chooses to discontinue his/her education for one of a variety of reasons. Saddled with massive debt and no accreditation for the skills that they possess, person A is left to default on the loan. Although, an enormously simplified example, it showcases the problem effectively. In the end, the FPU is significantly better off while the government and attendee are significantly worse off financially.

Summarily, we can see from both a cost and revenue perspective that the FPU is quite well off. On the cost side, with their operational efficiencies, such as a narrow selection of majors and a diversified online capability, they are able to minimize the costs of instruction by perhaps hiring a lower amount of overall faculty. On the revenue side, we see that many FPUs are guaranteed significant portions of their revenue from federal funding. According to report by a Department of Health, Education, Labor, and Pensions (HELP) committee, among a set of 14 for-profit schools that were investigated, on average 87.4% of their revenue came from federal taxpayer dollars, ranging from 85.2% to 93.1%. (Harkin, *The Return on the Federal Investment in For-Profit Education: Debt Without a Diploma* 2-3) Thus, their guaranteed revenue coupled with exorbitant tuitions make for the revenue side of the equation to be quite successful. Subsequently, it becomes very surprising that these FPUs are able to demand these prices and get a major portion covered by federal aid – although the aid component is possibly due to the demographic these universities serve.

One explanation for this discrepancy lies within examining how the sticker price for these colleges is spent on university operations. Senator Harkin's report found that among the education companies analyzed by the committee, 22.7% of all revenue went to marketing, advertising, recruiting, and admissions; comparatively, only 17.2% went instruction costs, which one might hypothesize to be the greatest investment for companies within the higher education business. (Harkin, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success 6) Summarily, what one can see by reading in between the lines is that the nature of FPUs is very much based around a high volume recruitment model. As we will also later see, this practice is further reinforced into the admissions culture within these firms through formal and informal means. From the firm's point of view however, this practice of course makes for sound business as the industry has converged upon this operating model. With respect to the fiduciary duty that the firm holds to its stockholders, one might argue that the board might be doing them an injustice if they were to act any differently. However, the most important takeaway that we will cross-apply in later sections is the importance of volume based recruitment to the FPU business model.

ANALYSIS: THE UNFORTUNATE FEW - UNDERSTANDING THE UNIQUE APPEAL OF SERVICE MEMBERS

This section seeks to understand why military members are intentionally targeted perhaps even so to a disproportionate measure.

In beginning my analysis within this section, I would first like to state that it relies heavily on the work of Senator Tom Harkin, specifically his congressional report “Benefitting Whom? For-Profit Education Companies and the Growth of Military Educational Benefits”. While at first it may seem difficult to believe that our stakeholders are the ones being targeted as they have/are sacrificed/sacrificing so much for this country. However, upon analyzing the financial incentives and key characteristics of the population, we can see the connection become much clearer.

The first component of why our stakeholders prove to be such an attractive population, as we discussed in the background, is due to the transferrable rights of the benefits to families of veterans and active service members. While military service members have always been a target audience to recruit, this legislation within the past decade has greatly increased the flexibility regarding tuition assistance and its extension to not only to service members but their spouses and immediate family. For example, the 2009 Defense Authorization Bill was one such piece of legislation that specifically authorized tuition assistance to be extended to eligible spouses. (Harkin, Benefitting Whom? For-Profit Education Companies and the Growth of Military Educational Benefits 6) As we have already spent a substantial amount of time discussing this fact, I will not elaborate more on this point.

Second, unlike many other forms of federal aid for higher education, tuition assistance and GI bill benefits to military service members and their family come with much less strings

attached. (Harkin, *Benefitting Whom? For-Profit Education Companies and the Growth of Military Educational Benefits* 7)

For example, current regulation, regarding measures of “gainful employment”, limits schools from receiving federal financial aid that falls within the Higher Education Act, if greater than 30% of students within the first 3 years of graduation default on their loans on a consistent basis. However, benefits that fall under the purview of the Department of Defense (DoD) or VA, such as GI bill, do not have any such limitation. (Harkin, *Benefitting Whom? For-Profit Education Companies and the Growth of Military Educational Benefits* 7) Furthermore, regulation first enacted in 1992 prohibited for-profit schools from receiving no more than 85 percent of revenues federal financial aid dollars that fell under Title IV of the Higher Education Act (HEA); this percentage was later modified in 1998 to 90%/10% split. Since, funding from the DoD and VA are not classified as funds that are part of the Higher Education Act, they are allowed as part of the 10 percent of funding from non-Title IV sources. (Harkin, *Benefitting Whom? For-Profit Education Companies and the Growth of Military Educational Benefits* 7) Consequently, while not all schools hit this target level, the ones in Harkin’s report ranged from 85.2% to 93.1% as we saw earlier, this 90/10 rule is still a major factor for some. Moreover, this regulation is bound to grow more important as private funding sources become more difficult to obtain due to the high risk of default among the for-profit student population.

Third, military code of conduct emphasizes that personal finances should be in order. (Tripoli and Mix 10) Therefore, at least in the case of active duty service members pursuing online education opportunities, FPU’s have an easier time collecting payment using threats of reporting the incidents to the offender’s commanders/superiors. (Tripoli and Mix 13) In fact the Tripoli and Mix article speaks to this strategy as if it was a commonplace occurrence as a scare

tactic. The greater implication for this is that the military is less likely to default and/or question any discrepancy in their obligations to pay. Furthermore, such a policy also encourages them to be silent on their perceived transgression which makes it all the more difficult to actually track if fraud is occurring in these cases.

Finally, the last reason is that many service members that enroll into these universities are likely to be among those that have *recently* come back from service and are looking to develop more translatable skills for the workplace. This last point can be broken up into two sub-groups being i) just the unfamiliarity component of not having been exposed to similar forms of consumerism within the recent past, and ii) although more a conjecture on my part, the military ethos of trust unintentionally causing some stakeholders to place greater trust in FPU recruiters than they necessarily should. I was introduced to the idea of the first sub-group in a conversation with Gary Tidwell, Vice President of Investor Education at FINRA, a military financial education program. FINRA's existence is based on the premise that since veterans and service members had not necessarily been exposed to financial markets in the same way as most other consumers, their unfamiliarity to the situation might make them vulnerable to fraud. (Tidwell) I was able to then apply this principle to the arena of higher education drawing a conclusion that this might be yet another area where they are vulnerable. The second sub-group was more of my own conjecture expanding upon the notion of what specific factors might one consider especially in introduced to an unfamiliar situation. Subsequently, one possible explanation which I conceived was that having come directly from a military environment where the ethos bred has been to trust one another, psychologically one might likely keep to that paradigm not expecting people to be dishonest - especially about harmless education opportunities. While critics might say that their attention may also be heightened to distrust, as most recent vets fought in

environments where the “enemy” was not easily discernible, their *caution* in matters of life and death would not necessarily translate because matters such as choosing an education may seem trivial to their prior experiences.

While this previous section introduces many incentives from a recruiters perspective in targeting the stakeholders, the key takeaway that we will consider moving forward are primarily the financial considerations, specifically the differences in the restrictions between using conventional federal funds that have been designated under the Higher Education Act, vs. through either VA or DoD.

ANALYSIS: SETTING THE STAGE - IDENTIFYING COMMON POLICY CONCERNS OF FPUS

In order to effectively segment and analyze the highest priority principles, this section will analyze the financial statements of two chief FPUs, identify their major common concerns, and seek to identify the principles which affect their greatest vulnerabilities.

The two companies that I chose to examine were the Apollo Group, Inc. (Apollo) the Education Management Corporation (EDMC). Apollo was chosen partially due to its namesake as a major player within the FPU space so the thought was that their comments would echo those within the for-profit higher education space. EDMC on the other hand has been at the center of quite its fair share of lawsuits pertaining issues either directly or indirectly facilitating misrepresentation of its subsidiaries on its behalf. Furthermore, as these management discussions are often quite lengthy tending to include either just completely vague in nature or also concerns of strictly an enforcement nature, I will parse out the relevant information necessary for our analysis and provide only the information pertaining the policy making side of the process.

In Apollo's 2011 financial statement, the three most pertinent public policy issues that they face are the following:

- i) "Modification of the standards relating to the payment of incentive compensation to employees involved in student recruitment and enrollment" (Apollo Group, Inc. 59)
- ii) "Adoption of a definition of "gainful employment" for purposes of the requirement of Title IV student financial aid that a program of study offered by a proprietary institution prepare students for gainful employment in a recognized occupation" (Apollo Group, Inc. 59)
- iii) "if the institution engages in substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of graduates, and expansion of the sanctions

that the Department may impose for engaging in a substantial misrepresentation” (Apollo Group, Inc. 59)

Similarly, in the case of EDMC, in their most recent annual statement they listed the following regulatory hurdles to be of significant importance:

- i) “The U.S. Department of Education's new substantial misrepresentation regulation [...] could materially and adversely affect our operations, business, results of operations, financial condition and cash flows.” (Education Management Corporation 36)
- ii) “Any of our programs fail to qualify as programs leading to ‘gainful employment’ in a recognized occupation under U.S. Department of Education regulations” (Education Management Corporation 37)
- iii) “If we fail to obtain periodic recertifications for our schools to participate in Title IV programs [...] students at the affected schools would no longer be able to receive Title IV program funds” (Education Management Corporation 37)
- iv) “If we do not meet specific financial responsibility ratios and other compliance tests [...] our institutions may lose eligibility to participate in federal student financial aid programs” (Education Management Corporation 37)
- v) Though not stated outright, EDMC implies that future failure to comply with Department of Education incentive compensation rules could also prove to be a major hurdle. (Education Management Corporation 42)

Between these two firms we find three concerns that seem to be in common. The first concern, perhaps the least applicable to our case, but important to note, is the inclusion of the “gainful employment” provisions and predicted difficulty of compliance with said standards. Since, these provisions are not explicitly mentioned within the executive order we will not

consider them outright in our gap analysis. Second, both firms also express concerns about newly expansive standards regarding substantial misrepresentation. When comparing this concern against the principles of excellence, the principles that would fall within this category include points a, b, and c, as found in appendix one. However, when prioritizing which principles are truly important vs. those of moderate importance, the second principle, point b, is less of a concern than the other two points; on a whole, it seems the greater share of misrepresentation is perpetuated by comments about the total cost of education, the ease of transition into the workforce, job placement opportunities, and so forth. Furthermore, from what we have seen regarding the flexibility of Federal military and veterans aid, the cases in which one would require additional financial aid to cover the cost of tuition are likely few and far in between. Finally, when addressing concern three regarding incentive compensation, the pertinent principle is fairly clear point c. Therefore, to set the stage for our final analysis component we are left with examining both the first principle regarding the creation of a financial aid shopping sheet and specific portions of the third principle subjecting schools that receive funding from Federal military and veterans' educational benefits to now comply with Department of Education rules that would have been required if these universities had funds allocated to them under the Higher Education Act. Furthermore, to tie this analysis back into the greater picture, the school shopping sheet would be an example of direct empowerment as it enhances the choice making ability of the stakeholders. Conversely, comments that pertain to the misrepresentation component and rulemaking of the Department of Education would fall within the indirect empowerment piece.

ANALYSIS: SCHOOL SHOPPING SHEET - ENSURING TRANSPARENCY TO STAKEHOLDERS

The first principle highlights the need for the costs and benefits of higher education to be transparent to the applicant; it requires all institutions to provide information regarding i) cost of program, ii) portion covered by Federal educational benefits, iii) the financial aid for which the applicant qualifies, iv) student outcomes, and v) method of comparison between colleges regarding the aforementioned areas. (Obama 2)

By any account, this “shopping sheet” is quite impressive, which can be found on the DoE website; with the help of a design team that has taken equal care in pursuing aesthetic as well as content concerns the report sets out to do *much* of what it seeks to achieve. Furthermore, as of September 25th, 2012, over 300 institutions voluntarily adopted the Shopping Sheet, where “about 43 percent are public institutions, 43 percent are for-profit institutions and 14 percent are private schools.” (Duncan) However, the key gap in this document is the absence of a proper analysis of educational outcomes. In considering any cost/benefit analysis, one must give as much thought to the benefit as they do the cost. Although a university’s cost may be exorbitantly high, if the benefits it provides, i.e. career placement opportunities, justify the price premium, that fact must also be made clear in the document. Therefore, while the text of the order specifies inclusion of “information about student outcomes”, the only measure of student outcomes we see is the 6-year graduation rate – a flawed metric in itself. It is for this key reason that the

First, the 6-year graduation rate is similar to how in CPG packaging a 20oz bottle of soda may report all its nutritional content at a serving size of 8oz; while the firm may realize that no consumer effectively stops consuming soda after they have reached the serving size, they still report it at that level because it makes the figures look better. Similarly, in reporting a 6-year college graduation rate, a consumer hoping to finish college in a shorter amount of time, perhaps

in the span of four years, can be misled into believing that said institution is of a higher caliber than the numbers might truly say. However, this shortfall is justifiable as discussing the difficulty in capturing the data and suggesting recommendations itself is a monumental task worthy of a thesis in itself.

Second, incorporating career placement is an important way in determining the pros and cons of an institution, especially for this unique subset of the population; unlike conventional students, this population is far more likely to be career-minded instead of investigating the various other post grad opportunities. However, the career outcomes by themselves are insufficient for stakeholders to make an informed choice about their higher education provider. One such case for example, was when the Boston Consulting Group was able to achieve an effective transformation of how K-12 schooling outcomes were reported in the State of Illinois through the development of a state-wide report card. In an informal conversation with Marin Gjaja, Senior Partner and Managing Director of the BCG Chicago office, the most important correlation that they saw with respect to student outcomes was the quality of previous institution that they attended. Subsequently, in order to truly understand the causality of student outcomes, they had made sure to specifically include variables that measured the value add of each institution. (Gjaja) In applying this principle to our case, that means including both the attributes of people accepted into the university as well as their career outcomes after they exit, this way a potential applicant can determine whether the career results provided are a result of the institution's educational prowess or just entering student body.

Third, just because we set a goal in pursuing career placement shouldn't be the final word on this discussion, we must also make sure that we are looking at jobs that really matter for these graduates; this would comprise of cases in where the job would be sufficient fulfill the terms of

“gainful employment”, an approximate measure that was suggested by the Department of Education to determine whether a career training program has provided the student enough benefits through an education to financially offset a significant portion of the costs they face due to indebtedness. In order to meet the definition, a program can still qualify for federal student aid if it consistently meets one of the following metrics in at least three out of four concurrent years: i) at least a 35% loan-repayment rate for its student body, ii) an average annual debt-to-earnings ratio, for a typical graduate, of no more than 12%, and iii) a debt-to-discretionary-earnings ratio of no more than 30%. (U.S. Department of Education) However, the “gainful employment” rule had a fairly short life as it was struck down by a judge when the DoE could not substantiate how the percentages given would specifically improve student outcome. However, both sides had something to gain because now FPUs have something to consider as the DoE is still free to come back with modified rules, as long as they had a reasoned basis, pertaining “gainful employment.” (Blumenstyk and Huckabee) However while the rule on face was not able to succeed, its spirit is something that could provide significant insight for stakeholders when applying to these universities. Therefore some broader application of the “gainful employment” rule or showcasing these metrics on the report card might be a great method in not only reporting the cost of the education but in comparing its worth to the value adding components of your college education, i.e. salary and disposable income. In such scenarios, we then might not find students like Scott Reynolds who having earned a management degree from an FPU being subject to working as a telemarketer making \$8 an hour plus commission, at a wage less than another company paid him before he graduated. (Golden)

In highlighting these improvement areas, I fully acknowledge the difficulty of creating such a succinct yet powerful method of displaying school performance vs. cost. However, I

contend that either i) too much emphasis was placed upon the aesthetic as there are numerous areas where it seems that further metrics of student outcomes could still be displayed without compromising the style or ii) too much emphasis was placed on breaking out the cost factors when really what needs to be known is what is out-of-pocket vs. what is not. Although, this may seem like a fairly simplistic notion, in the end I would contend that the value of displaying outcomes as described above significantly outweighs the marginal benefit of adding the cost breakdowns.

ANALYSIS: VOLUME BASED RECRUITMENT- REALIGNING RECRUITER INCENTIVE COMPENSATION

The second major component of my analysis comes in identifying what is necessary to realign incentive compensation for the purpose of minimizing the cases of misrepresentation and fraud. In broadly defining the types of fraud that have the possibility to occur during the recruitment and enrollment process, there exists a) intentional misrepresentation, where the organization is itself the perpetrator and is instructing its employees to deliberately misrepresent facts for the purpose of enrolling said student, as well as b) unintentional/negligent misrepresentation, where the structure of the scope of employment inherently coerces the employee to engage in deceit for there being no other alternative. In this section, I will not argue nor hope to prove that FPU's engage in intentional misrepresentation. In such cases, hypothetically speaking, the prosecution will no doubt have a plethora of evidence in which to convict the defendant in question. What I will discuss however, i) what does the executive order address about this situation, ii) what are the organizational limitations which likely reinforce this unintentional misrepresentation, and then iii) address recommendations to remedy this malady using a multi-tiered approach. Finally, it will be important to note that in discussing this principle, I will not only seek to address the concerns of our stakeholders but all persons that have been subject to misrepresentation. The main reason why is because, any solution devised to this case will affect all parties involved.

First, in wanting to understand the state of the status quo from pre-executive to post-executive order, this question becomes relatively easy to understand. The only change that the executive order has made in modifying the situation from before is which entities are responsible to following Department of Education restrictions on misrepresentation. Pre-executive order, it only consisted of institutions who acquired some portion of their revenue from federal aid

allocated under the Higher Education Act of 1965 and its subsequent reauthorizations. Post-executive order, the group of universities that fell under this purview now also included universities that wished to receive funding as a result of Federal military and veterans' educational benefits. However, this segment is miniscule, if it does even exist – I myself could not find any FPU institutions that received funding through military and veterans' benefits but did not receive any other sources of Federal financial aid. The main reason why these types of institutions don't exist is because of the difference in sheer scale of the number of individuals with either military or veterans' benefits vs. those that are eligible for some measure of federal aid.

Furthermore, since the rules and regulations functionally did not change, even from an enforcement perspective, any policy action we suggest could just be circumvented; although, I had stated that we wouldn't explicitly be discussing the enforcement component, this does not preclude discussing how to create laws that are easily enforceable. In studying the case literature on misrepresentation by FPUs, in many cases the plaintiff, who is usually filing against the FPU for misuse of Federal funds on behalf of the Federal false claims act because they had violated rules set in forth the Higher Education Act, actually succeeds. My initial reaction was that of surprise because I had believed that most cases in this vein went in favor of the defendants. However, the only cases which I have seen argued for the plaintiff are those where there no evidence of a blatant violation and the court rules in favor of the defendant using the safe harbor provision. Such was the case in "In United States v. Corinthian Colleges, where the plaintiffs could not provide how the defendant's use of incentive compensation was in violation of the rules of compliance outlined in the Higher Education Act (In United States v. Corinthian Colleges) However, these allegations when examined in conjunction with organizational

limitations in the following paragraphs, compliance to the letter of the law as in the case of Corinthian does not cut it anymore.

However, before moving onto the organizational limitations, we must still give credit to the executive order because one major benefit that it did provide was the signal that it sent in terms of what was important on the policy agenda. Through the inclusion of such an additional principle to the list, the president was able to mobilize the Secretaries of Defense, Veterans Affairs, and Education along with Director of the Consumer Financial Protection Bureau and the Attorney General to brainstorm means to handle these matters. If for nothing else, the president's stance on preventing misrepresentation through this executive order and establishment of these principles of excellence provided national platform for which the plight of the stakeholders could be brought to light. Now that we understand what the executive order was able to change/accomplish, let us understand the informal organizational pressures that drive recruiters to misrepresent their respective employers.

Senator Harkin's report gives us great insight into how day-to-day tasks encountered by admissions representatives might reinforce the ideology that misrepresentation is acceptable behavior. In fact, the chapter starts off with a seemingly harmless quote from The Kaplan director of admissions training manual stating "In order to make a profit, the product [an education] must first be sold to as many appropriate people as possible. This can happen only when a good sales team is performing well." (qtd. in Harkin, *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* 46) The key phrase in that statement is the stated goal of maximizing the number of appropriate people to whom the product is sold. While possibly a reasonable cause in itself, it sets up the following question for interpretation: who is defined to be an appropriate person? Such an answer to the that question

might range from: applicants that are appropriate in the firm's view to provide the highest profit, applicants that are best suited to succeed in such an institution, and/or even anyone who is remotely interested. From the employee's perspective regardless of whom an appropriate person might be, they are likely to be more concerned with the maximization component as that quote is not the only instance of showcasing the organizational priorities. Other activities that reinforce this volume base approach include:

- Recruiters are divided into small teams that work closely under a manager who supervises the number of leads they make.
- Whether or not they keep their job is due to whether they meet quotas.
- Furthermore, in connecting what we learned about the organization structure of these organizations becoming corporations in recent history, investors are demanding revenue growth which has added pressure of getting as many starts as possible.
- Recruiters that routinely fail, not only to bring in starts, but other aspects of performance such as calls made and appointments set up could be subject to termination. (Harkin, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success 49-51)

From these cases, we can see how that although on face incentive compensation may not exist, the threat of losing one's job is incentive enough in most, if not all, cases. Furthermore, in tying what we learned about i) FPU emphasis on volume based recruiting and ii) the BCG conclusion of how applicant qualifications are a high indicators of school outcome, we can draw yet another inference that makes compensating based on volume a high priority need. Given, our two findings above, it would be a fair assumption to say that some of the less than stellar matriculation outcomes result from the unqualified applicant base vs. the educational quality. Furthermore, if volumes go up at these universities, it is very likely that quality of applicant will

likely not be significantly better than the people that attend today. In the best case scenario, we will likely have more people facing similar types educational outcomes at the same rates as those who matriculate today. At worst, the rate of sub-optimal educational outcomes increase as quality of the applicant pool decreases. Subsequently, since educational quality is highly dependent on a variety of factors including: quality of the teacher, type of curriculum, accessibility to educational resources and so forth, devoting policy attention to the admission process vs. the educational process, might be a much more realizable goal and a better ‘bang for your buck’ strategy.

In devising a strategy to approach this problem, I took what we learned from the Corinthian example and applied it to a two-pronged approach. First, the flexibility of the compliance measures within the Higher Education Act rests within the safe harbor provisions of the act. The key to checking the power of FPUs with respect to incentive based compensation is not to give them the benefit of the doubt but make regulation stringent enough that they will police themselves. Subsequently, the first component of the strategy is in removing the safe harbor provisions specific to the program participation requirements that allow for universities to receive Federal aid for their attendees.

Second, we need to continue counter incentivizing these recruiters to whistle blow in situations where they feel that their workplace environment is implicitly pressuring them to pursue and get recruits by any means necessary. Under the status quo, as we saw earlier, it has been the Federal false claims act that has allowed the government in many cases to gather the initial information to bring these FPUs to court. I propose that the government either increase the percentage of reward from the false claim or actively decrease the barriers for potential whistleblowers to come forth.

CONCLUSION: REVISITING HIGH IMPACT STRATEGIES

In concluding, I would like to leave the reader with a few remarks. First, the executive order has provided the stakeholders a great amount of intangible benefits. Though there has been much discussion in the legislatures as a result of Senator Harkin's reports, they still haven't put pen to paper in outlining an effective strategy to mitigate this problem. Conversely, through the President's actions there has been a revived impetus regarding the push for protecting the stakeholders from exploitation. This being said, the strategies that I will reiterate today are only meant to supplement the existing structure put in place for protecting our stakeholders.

In analyzing the "shopping sheet", we first discovered that although the executive order had made a note of reporting student outcomes, the only one reported was insufficient and a flawed metric. Subsequently we looked a few possible strategies that would better showcase student outcomes. Second, we discussed the need for how any additional indicators needed to make sure that the confounding variable the students incoming strengths must be disentangled as not doing so would bias any outcome indicators. Finally, we concluded that a reintroduction of perhaps the variables surrounding gainful employment, although not an enforceable metric, could provide an applicant valuable insight into the value-add that the institution provides.

In analyzing the incentive compensation rules, we primarily discovered that while in the past they were explicitly tying recruitment numbers into compensation, due to a recent string of lawsuits that FPU's have had to face, these institutions, for either intentional or unintentional purposes, have resorted to alternative methods of incentivizing without violating the letter of the law. In recommendation strategies of overcome these hurdles, we first looked at how eliminating the safe harbor provision of the Higher Education Act would effectively change the debate from whether FPU's need to comply with the letter or the spirit of the law. We also saw, how we could

provide another deterrent by perhaps counter incentivizing recruiters to become whistle blowers for a great percentage return of the claim.

Summarily, although these strategies span a vast spectrum of actors and multiple policy angles, they all provide low-cost high impact wins in the struggle in preventing misrepresentation by FPU's and empowering our stakeholders on making informed decisions about their respective higher education providers.

Appendix One: Principles of Excellence

“To the extent permitted by law, the Principles, implemented pursuant to section 3 of this order, should require educational institutions receiving funding pursuant to Federal military and veterans educational benefits to:

- (a) prior to enrollment, provide prospective students who are eligible to receive Federal military and veterans educational benefits with a personalized and standardized form, as developed in a manner set forth by the Secretary of Education, working with the Secretaries of Defense and Veterans Affairs, to help those prospective students understand the total cost of the educational program, including tuition and fees; the amount of that cost that will be covered by Federal educational benefits; the type and amount of financial aid they may qualify for; their estimated student loan debt upon graduation; information about student outcomes; and other information to facilitate comparison of aid packages offered by different educational institutions;
- (b) inform students who are eligible to receive Federal military and veterans educational benefits of the availability of Federal financial aid and have in place policies to alert those students of their potential eligibility for that aid before packaging or arranging private student loans or alternative financing programs;
- (c) end fraudulent and unduly aggressive recruiting techniques on and off military installations, as well as misrepresentation, payment of incentive compensation, and failure to meet State authorization requirements, consistent with the regulations issued by the Department of Education (34 C.F.R. 668.71–668.75, 668.14, and 600.9);
- (d) obtain the approval of the institution’s accrediting agency for new course or program offerings before enrolling students in such courses or programs, provided that such approval is appropriate under the substantive change requirements of the accrediting agency;
- (e) allow service members and reservists to be readmitted to a program if they are temporarily unable to attend class or have to suspend their studies due to service requirements, and take additional steps to accommodate short absences due to service obligations, provided that satisfactory academic progress is being made by the service members and reservists prior to suspending their studies;
- (f) agree to an institutional refund policy that is aligned with the refund of unearned student aid rules applicable to Federal student aid provided through the Department of Education under Title IV of the Higher Education Act of 1965, as required under section 484B of that Act when students withdraw prior to course completion;
- (g) provide educational plans for all individuals using Federal military and veterans educational benefits that detail how they will fulfill all the requirements necessary to graduate and the expected timeline of completion; and
- (h) designate a point of contact for academic and financial advising (including access to disability counseling) to assist service member and veteran students and their families with the successful completion of their studies and with their job searches.”

Source: Executive order 13607 – *Establishing Principles of Excellence for Educational Institutions*

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