

The Office of Federal Student Aid as a Performance-Based Organization

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The Office of Federal Student Aid (FSA), within the U.S. Department of Education (ED), is established as a performance-based organization (PBO) pursuant to Section 141 of the Higher Education Act (HEA). FSA is a discrete management unit “responsible for managing the administrative and oversight functions supporting” the HEA Title IV federal student aid programs, including the Pell Grant and the Direct Loan programs. As such, it is the largest provider of postsecondary student financial aid in the nation. In FY2019, FSA oversaw the provision of approximately \$130.4 billion in Title IV aid to approximately 11.0 million students attending approximately 6,000 participating institutions of higher education (IHEs). In addition, in FY2019, FSA managed a student loan portfolio encompassing approximately 45 million borrowers with outstanding federal student loans totaling about \$1.5 trillion.

Among other functions, FSA

- develops and maintains the Free Application for Federal Student Aid (FAFSA);
- obtains funds from the Department of the Treasury to make aid available to students;
- contracts with numerous third parties to provide goods and services related to Title IV administration, such as student loan servicing;
- provides oversight of the numerous third parties (e.g., contracted student loan servicers and IHEs) that play a role in administering the Title IV programs; and
- provides information to third-party stakeholders—such as students, the public, and Congress—regarding Title IV program operations and performance.

Responsibility for developing and promulgating policy and regulations relating to the Title IV programs, however, remains with the Secretary of Education.

Congress established FSA’s PBO structure under the Higher Education Amendments of 1998 (P.L. 105-244) in response to a belief in Congress and ED that the Title IV student aid programs were “severe[ly]” mismanaged and that ED was in need of restructuring to improve federal student aid delivery. In general, PBOs are intended to be business-like, results-driven organizations that have clear objectives and measureable goals designed to improve an agency’s performance and transparency. PBO leaders are to be held professionally accountable for meeting organization goals, with continued tenure and a portion of compensation linked to these measures of success. In exchange, PBOs and their leaders are granted greater discretion to deviate from certain government-wide management processes and to operate more like private-sector companies.

Specific to FSA’s structure as a PBO, the HEA vests management of FSA in a chief operating officer (COO) who is appointed based on demonstrated ability and without regard to political affiliation. Each year, the COO and the Secretary must agree on and publicly make available a five-year performance plan for FSA that establishes measurable goals and objectives addressing a variety of statutory specifications, such as FSA’s responsibilities in improving customer service to stakeholders and reducing costs of administering the Title IV student aid programs. The COO is required to annually submit to Congress a report on FSA’s performance. In addition, each year the COO and the Secretary, and the COO and FSA senior managers, enter into performance agreements that set forth measurable organizational and individual goals. The COO and senior managers are eligible to receive bonus compensation based on an evaluation of work performed relative to the annual goals specified in their annual performance agreements. The HEA provides FSA with some flexibilities with regard to traditional federal rules around hiring, compensation, and procurement.

Since FSA’s creation as a PBO, it has experienced some notable successes, including the Title IV aid programs’ removal from the Government Accountability Office’s High Risk List in 2005, the transition to 100% direct lending under the Direct Loan program, and implementation of the Internal Revenue Service (IRS) Data Retrieval Tool.

Since FSA’s establishment, the programs it administers have grown substantially larger, and the federal student aid programs and benefits have become substantially more complex to administer (e.g., with the addition of numerous loan forgiveness and

income-driven repayment plans). In recent years, particularly over the last decade, several issues have arisen related to FSA's Title IV program administration. In broad terms, they pertain to oversight of entities participating in and helping with administration of Title IV programs, transparency, and accountability to certain stakeholders and consumers (i.e., aid recipients).

Oversight issues relate to FSA's oversight of IHEs participating in the Title IV loan programs. Criticisms have focused on FSA's assessment of the well-being of IHEs and ability to proactively mitigate risk in the Title IV programs. Other concerns relate to FSA's oversight of its contracted student loan services, including its monitoring of such entities and the accountability of servicers to FSA in certain areas of their performance. Concerns have also been raised about the shortage of operational guidance FSA has provided to loan servicers to enable them to ensure they are meeting Title IV statutory and regulatory requirements and to assist borrowers in navigating the aid programs.

Transparency issues relate to the extent to which FSA makes available information about the Title IV programs' performance and operations to relevant parties. Congress, other entities with oversight responsibilities, and other federal agencies sometimes have imperfect information on Title IV program performance and operations, which can make it difficult to make informed, well-honed policy or enforcement decisions. In addition, consumers may be faced with incomplete information on the Title IV programs and the IHEs that participate in such programs, which may make it difficult to make informed college-going and financial decisions.

Stakeholder and borrower accountability issues include the extent to which FSA is fulfilling its statutory mandate to consult with relevant stakeholders in developing performance plans and annual reports and whether FSA is leveraging information garnered from stakeholder interactions to make program administration improvements. They also relate to whether FSA is sufficiently responsive to customer needs, especially given that FSA administers programs for which, arguably, there are no comparable competitors.

As Congress contemplates the reauthorizations of the HEA, it might consider whether any adjustments should be made to address any of these issues and, if so, the extent to which any efforts to address issues might involve or affect FSA's PBO function and structure.

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Introduction

The Office of Federal Student Aid (FSA) within the U.S. Department of Education (ED) is the primary entity responsible for the administration and oversight of the federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA; P.L. 89-329, as amended).¹ As such, FSA is the largest provider of postsecondary student financial aid in the nation,² performing functions that are akin to those of large banks, to which it has sometimes been compared.³ In FY2019, FSA oversaw the provision of \$130.4 billion in Title IV aid to 11.0 million students attending approximately 6,000 participating institutions of higher education (IHEs).⁴ In addition, in FY2019, FSA managed a student loan portfolio encompassing 45 million borrowers with outstanding federal student loans totaling about \$1.5 trillion.⁵

FSA is a performance-based organization (PBO) pursuant to Section 141 of the HEA. Conceptually, PBOs are intended to be results-driven organizations that have clear objectives and measurable goals designed to improve an agency's performance and transparency. PBOs are led by chief executives who are personally accountable for meeting measurable goals within the organization. In exchange, PBOs are granted greater discretion than other government agencies to operate more like private-sector companies, with more control over the budget, personnel decisions, and procurement. FSA was established under the Higher Education Amendments of 1998 (P.L. 105-244) as the federal government's first PBO. This was done in response to the belief that ED needed restructuring to improve federal student aid delivery.⁶

In recent years, FSA has come under scrutiny for its oversight of IHEs participating in the student aid programs⁷ and contracted student loan servicers,⁸ its perceived lack of transparency to stakeholders,⁹ and its accountability to and engagement with stakeholders.¹⁰ This report provides information about the structure and organization of FSA, the nature of the work it performs, and its characteristics as a PBO. Additionally, the report attempts to synthesize some challenges

¹ In addition, responsibility for administration of the Health Education Assistance Loan program, which was previously authorized under Title VII, Part A, subpart I of the Public Health Services Act, was transferred to ED from the Department of Health and Human Services in FY2014. FSA administers this program. No new loans have been made under the program since September 30, 1998.

² FSA, "Who We Are," <https://studentaid.ed.gov/sa/about>.

³ National Association of Student Financial Aid Administrators (NASFAA), *Improving Oversight and Transparency at the U.S. Department of Education's Office of Federal Student Aid: NASFAA Recommendations*, May 2017, p. 1.

⁴ Office of Management and Budget (OMB), *Budget of the United States Government, FY2020*, Appendix for FSA, p. 348.

⁵ FSA, *Fiscal Year 2019 Annual Report*, November 15, 2019, p. 12.

⁶ See, for example, testimony of the chair of the Advisory Committee on Student Financial Assistance, in U.S. Congress, House Committee on Education and the Workforce, Subcommittee on Postsecondary Education, Training and Life-Long Learning, *Field Hearing on H.R. 6: the Higher Education Amendments of 1998*, hearing held in Clemson, SC, 105th Cong., 1st sess., May 2, 1997 (Washington: GPO, 1997), pp. 63-69. See also CRS Report RL32098, *The Office of Federal Student Aid: The Federal Government's First Performance-Based Organization* (archived, available to congressional clients upon request).

⁷ See, for example, ED, Office of Inspector General (IG), *Federal Student Aid's Processes for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students and Taxpayers*, February 24, 2017.

⁸ See, for example, ED IG, *Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans*, February 12, 2019.

⁹ See, for example, ED IG, *The Department's Communication Regarding the Costs of Income-Driven Repayment Plans and Loan Forgiveness Programs*, January 31, 2018.

¹⁰ See, for example, NASFAA, *Improving Oversight and Transparency*.

experienced by FSA that have received considerable attention in recent years. There has been considerable interest in this set of issues from the 116th Congress. As Congress contemplates the reauthorization of the HEA, it might examine some of the issues raised by these critiques and the way FSA's organization as a PBO may affect congressional goals and policies.

This report begins by discussing the HEA provisions that distinguish FSA from other types of federal agencies. This is followed by a discussion of the legislative history of the creation of FSA as a PBO and of HEA Title IV programmatic changes that may affect its operations. Next, the report describes the current operations and structure of FSA. Finally, it discusses several issues related to FSA's operations and how they may relate to its structure as a PBO. The issues presented have received recent congressional and stakeholder attention and have been identified in reviews of FSA's operations.¹¹ There have been numerous recent reports that have examined aspects of FSA's operations. **Appendix A** provides a bibliography of recent Government Accountability Office (GAO) and ED Office of Inspector General (IG) reports relating to FSA's operations. **Appendix B** provides a list of selected acronyms used in this report.

FSA as a PBO: Distinctions from Most Agencies

Federal programs are usually carried out by or through agencies that are established in statute, with structural refinements established through directives issued by the agency head.¹² Over time, Congress has created governmental and quasi-governmental entities with varying characteristics to address diverse needs in different contexts.¹³ Most federal agencies in the executive branch, however, are designed to be directly or indirectly accountable to the President. Furthermore, most federal agencies must comply with general management laws regarding financial management, procurement, information management, personnel, and other administrative practices.

As a PBO, FSA has organizational features that are distinct from most other departmental subunits in the executive branch of the federal government.¹⁴ As the name suggests, PBOs are designed to have a greater focus on results—outcomes rather than outputs. To this end, they are required to have clear objectives and measurable goals. PBO leaders are to be held professionally accountable for meeting measurable goals within the organization, with continued tenure and a portion of compensation linked to these measures of success. In exchange, these organizations and leaders are granted greater discretion to deviate from certain government-wide management processes and to operate more like private-sector companies.

Key statutorily established features of FSA include, among others, the appointment and compensation arrangements for its chief operating officer (COO) and other senior managers, exemptions from certain government-wide personnel and procurement requirements, and greater independence from political pressure in the exercise of its functions.

¹¹ The issues described in this report are not intended to be exhaustive.

¹² For more on statutory and administrative reorganization mechanisms, see CRS Report R44909, *Executive Branch Reorganization*.

¹³ For example, Congress has sometimes established federal agencies that are relatively independent from the President. See CRS Report R43391, *Independence of Federal Financial Regulators: Structure, Funding, and Other Issues*. For more on the taxonomy of federal organizational forms, see GAO, *Federally Created Entities: An Overview of Key Attributes*, GAO-10-97, October 2009.

¹⁴ One other federal entity that is established as a PBO is the Federal Aviation Administration's Air Traffic Organization. The U.S. Patent and Trademark Office (PTO) also has a PBO-like structure, and some observers liken it to such. See, for example, NASFAA, *Improving Oversight and Transparency*, p. 1.

FSA Leadership

Most high-level subunits within departments are led by political appointees who are appointed by the President or the Secretary and serve at their pleasure for an indefinite term.¹⁵ Political appointments are not subject to the same requirements as career appointments to the Senior Executive Service (SES) or appointments to the competitive service.¹⁶ Depending on the authority used to make a political appointment, compensation will usually be determined by the Executive Schedule,¹⁷ the SES pay system,¹⁸ or the General Schedule.¹⁹ Consistent with the PBO framework, the HEA contains provisions aimed to enable FSA to attract leadership with demonstrated ability and expertise, incentivize leadership to meet performance goals, and shield FSA leadership from political pressures.

FSA is led by a COO, whom the Secretary of Education appoints for a term of three to five years.²⁰ The appointment is to be made based on “demonstrated management ability and expertise in information technology (IT), including experience with financial systems, and without regard to political affiliation or activity.”²¹ The COO’s work and priorities are governed by a performance agreement with the Secretary that includes measurable organizational and individual goals.²² The COO may be reappointed to additional terms of three to five years if her or his performance is satisfactory.²³

The HEA also specifies the manner in which a COO may be removed:

REMOVAL.—The Chief Operating Officer may be removed by—

(A) the President; or

¹⁵ In general, political appointees include those who are appointed by the President with the advice and consent of the Senate, those who are appointed by the President alone, those who are given non-career Senior Executive Service appointments, and those who are given Schedule C appointments. Schedule C covers middle- or lower-level positions that are not required to be filled using merit-based hiring requirements, because appointees to such positions carry out confidential or policy-determining duties.

¹⁶ The SES is a government-wide personnel system that includes most of the middle- and top-level positions in federal agencies. It comprises career and non-career (political) appointees. Career SES appointments are made through a competitive, merit staffing process set out in Title 5, Sections 317.501-317.503, of the *Code of Federal Regulations*. The competitive service consists of most civil service positions below the SES level. The system is intended to be merit-based and free from political influence and is governed by the provisions of Title 5 of the *U.S. Code*. Additional information on the SES and the competitive service may be found in CRS Report R41801, *The Senior Executive Service: Background and Options for Reform*; and CRS Report R45635, *Categories of Federal Civil Service Employment: A Snapshot*.

¹⁷ “The Executive Schedule, which is divided into five pay levels, is the basic pay schedule for positions, other than Senior Executive Service positions and positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, to which this subchapter [‘Executive Schedule Pay Rates’] applies” (5 U.S.C. §5311). This schedule covers, for example, Secretaries and most other agency heads, as well as Assistant Secretaries and most other top-level agency leaders.

¹⁸ For more on this system, see U.S. Office of Personnel Management (OPM), “Senior Executive Service: Compensation,” <https://www.opm.gov/policy-data-oversight/senior-executive-service/compensation/>.

¹⁹ The General Schedule is the compensation system for most positions in the competitive service. Schedule C appointees are usually also compensated under this schedule. For more on the General Schedule, see OPM, “Pay & Leave—Pay Systems: General Schedule Overview,” <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/>.

²⁰ HEA §141(d)(1).

²¹ HEA §141(d)(1).

²² HEA §141(d)(4).

²³ HEA §141(d)(2).

(B) the Secretary, for misconduct or failure to meet performance goals set forth in the performance agreement in paragraph (4).

The President or Secretary shall communicate the reasons for any such removal to the authorizing committees.²⁴

The law appears to authorize the President to remove the COO at will.²⁵ In addition, the Secretary may remove the COO “for misconduct or failure to meet performance goals set forth in the performance agreement.”²⁶ Either the President or the Secretary must provide their reasons for removal to the authorizing congressional committees.²⁷

The COO’s compensation includes basic pay, which is tied to the pay levels of the SES, and an annual bonus not to exceed 50% of the basic pay.²⁸

The senior managers of FSA are appointed by the COO without regard for the competitive service appointment provisions of Title 5 of the *U.S. Code*.²⁹ The work and priorities of these senior officials are governed by annual performance agreements with the COO that include measurable organizational and individual goals.³⁰ Senior managers serve at the pleasure of the COO or, in the event that the COO position is vacant, the Secretary.³¹ As is the case for the COO, the compensation of senior managers includes basic pay, which is tied to the pay levels of the SES, and an annual bonus.³² The total annual compensation of a manager may not exceed 125% of the maximum basic pay for the SES pay system.³³

FSA Personnel Flexibilities

Unless otherwise specified in law, executive branch employment is governed by the civil service laws of Title 5 of the *U.S. Code*. Consistent with the PBO framework, HEA includes provisions that give FSA more flexibility in the staffing, classification, and pay of its employees. The statute

²⁴ HEA §141(d)(3).

²⁵ The removal provision could be subject to multiple interpretations. No explanation of the provision could be located in the legislative history of the Higher Education Amendments of 1998. It appears, however, that the provision might have been drawn from Section 2 of the Clinton Administration’s model PBO bill at <https://govinfo.library.unt.edu/npr/initiati/21cent/billlegi.html>. The section-by-section analysis that accompanied this model bill states, “The COO may be removed by the President *at will*, or the Secretary for misconduct or non-satisfactory performance under the performance agreement” (emphasis added). This analysis may be found at <https://govinfo.library.unt.edu/npr/initiati/21cent/billsect.html>. Arguably, the evidence is not definitive, but a reasonable reading of the statute can distinguish these standards for removal by the President and the Secretary. In any event, because the COO is accountable to the Secretary on the basis of measurable organizational and individual performance goals, at-will removal by the President might be more difficult politically than would be the case for most presidential political appointees.

²⁶ HEA §141(d)(3)(B).

²⁷ HEA §141(d)(3).

²⁸ HEA §141(d)(4). For example, in 2016, the COO reportedly received a base pay of \$185,100, the maximum SES pay for that year, and a bonus of \$76,000. (U.S. Federal Government Employee Lookup at <https://www.federalpay.org/employees>; OPM, “Pay and Leave,” <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/16Tables/exec/html/ES.aspx>; ED responses to Sen. Murray’s questions for the record, <https://www.help.senate.gov/imo/media/doc/SenMurrayQFRresponses32819LHHShearing.pdf>. The COO’s aggregate annual compensation may not exceed the President’s salary.)

²⁹ HEA §141(e)(1).

³⁰ HEA §141(e)(2).

³¹ HEA §141(e)(4).

³² HEA §141(e)(3).

³³ HEA §141(e)(3).

stipulates that FSA shall not be subject to any cap on the number or grade of its employees.³⁴ FSA and the Office of Personnel Management (OPM) are directed to jointly develop and implement personnel flexibilities that are consistent with Title 5 of the *U.S. Code*.³⁵ In addition, the COO is authorized to establish technical and professional positions that are not subject to the provisions of Title 5 pertaining to competitive service appointments.³⁶ The HEA provision places covered positions in the excepted service, under which FSA could use alternative hiring procedures that relax the traditional competitive hiring procedures in Title 5 (such as application of veterans' preference, public notice, and/or modified qualification standards). FSA is directed to develop a performance management system consistent with Title 5 that establishes goals or objectives for employees.³⁷

FSA Procurement Flexibilities

When executive branch agencies need to acquire goods or services to carry out their functions, they are required to comply with the Federal Acquisition Regulation (FAR)³⁸ and applicable procurement statutes. The PBO procurement provisions of HEA are consistent with this overarching requirement while also permitting certain flexibilities. They state, "Except as provided in this section, the PBO shall abide by all applicable Federal procurement laws and regulations when procuring property and services."³⁹

The procurement flexibilities provided to the PBO include, for example, those related to the use of experts and consultants. Whereas agencies are generally constrained in obtaining such services by limitations and conditions of Title 5 of the *U.S. Code*⁴⁰—such as requirements for a specific appropriation or other statutory authorization and for reporting to OPM on such actions—the PBO may obtain such services without regard to this provision.⁴¹

In another example of procurement flexibility, HEA provides the PBO with authority to "use a two-phase process for selecting a source for a procurement of property or services."⁴² In such a process, an agency first issues a general solicitation and then issues a second solicitation with more specific requirements to a limited group of vendors from among respondents to the first solicitation. In contrast, the FAR provides for the use of this authority under limited circumstances.⁴³

³⁴ HEA §141(g)(1). Determination of the number and grade of an agency's employees is usually part of the executive branch budget process. The final decisions on the agency's employment levels are made after consultation with and approval of OMB in accordance with the guidance provided in Section 85 of Circular A-11 at <https://www.whitehouse.gov/omb/information-for-agencies/circulars/>. (See subsection on estimating employment levels.) The budget process for ED is described in greater detail at <https://www2.ed.gov/about/overview/budget/process.html>.

³⁵ HEA §141(g)(2). CRS was unable to locate information concerning the implementation of this provision.

³⁶ HEA §141(g)(3). This provision originally capped the number of these excepted service positions at 25. This ceiling was removed as part of amendments to the HEA's PBO provisions that were included in the HEOA. P.L. 110-315, §117(6); 122 Stat. 3078, 3116.

³⁷ HEA §141(h).

³⁸ See the FAR at <https://www.acquisition.gov/browse/index/far>.

³⁹ HEA §142(b).

⁴⁰ 5 U.S.C. §3109.

⁴¹ HEA §142(b)(2).

⁴² HEA §142(d).

⁴³ See, for example, 48 C.F.R. Subpart 36.3.

In a final example, the circumstances and criteria under which the PBO may pursue a procurement with only one company differ from those followed by most agencies. Whereas in most instances the FAR allows “sole-source” procurement only where the needed services or supplies are available from only one responsible source and no other substitute will meet the agency’s needs,⁴⁴ FSA may use “single source” procurement to obtain certain systems where multiple vendors could supply the product but one vendor is “the most advantageous source for purposes of the award.”⁴⁵

FSA Independence

As noted above, most high-level subunits within departments are led by political appointees who serve at the pleasure of, and under the direction of, the Secretary. In some cases, however, subunits are statutorily structured to have some independence from political leadership. A variety of structural mechanisms in different combinations have been used over time to establish such independence. Consequently, agencies vary in their level of structural independence from political leadership. In addition, notwithstanding these structural features, a specific leader of such a departmental subunit might elect to adhere to the Secretary’s agenda for other political or policy reasons.⁴⁶

Although HEA explicitly states that FSA is subject to the direction of the Secretary,⁴⁷ the agency is afforded a greater level of independence from political leadership than most departmental subunits in the executive branch.⁴⁸ This is due to HEA provisions that pertain to the appointment and removal of the FSA COO, as well as those that stipulate FSA’s independence in carrying out certain functions. As noted above, the COO’s appointment is to be made for a three- to five-year term on the basis of specified abilities, expertise, and experience “without regard to political affiliation or activity.”⁴⁹ Although the COO may be removed from office before the end of a term, the statute includes atypical specifications of the circumstances and manner in which this may occur.⁵⁰ The statute also specifies that FSA “shall exercise independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other

⁴⁴ 48 C.F.R. §6.302-1(a)(2).

⁴⁵ HEA §142(l). See also “Procurement” in the appendix of Ben Miller and Jason Delisle, *Ensuring Accountability and Effectiveness at the Office of Federal Student Aid*, Center for American Progress and American Enterprise Institute, May 2019, p. 29, <http://www.aei.org/publication/ensuring-accountability-and-effectiveness-at-the-office-of-federal-student-aid/>.

⁴⁶ For more on this kind of agency independence, see CRS Report R43391, *Independence of Federal Financial Regulators: Structure, Funding, and Other Issues*.

⁴⁷ HEA §141(b)(1).

⁴⁸ The independence features discussed here are those provided for in statute. The actual level of independence exercised by the agency might be influenced by additional factors, including, for example, administrative implementation decisions, organizational culture, and leadership styles. For a discussion of the evolution of FSA’s relationship with ED during the initial implementation of this statute, see GAO, *Federal Student Aid: Additional Management Improvements Would Clarify Strategic Direction and Enhance Accountability*, GAO-02-255, April 2002, pp. 22-24, <https://www.gao.gov/new.items/d02255.pdf>. The independence of FSA and its potential policy and operational effects are also discussed in Miller and Delisle, *Ensuring Accountability and Effectiveness at the Office of Federal Student Aid*.

⁴⁹ HEA §141(d)(1).

⁵⁰ HEA §141(d)(3). As previously noted, this removal provision could be subject to multiple interpretations. (See footnote 26.) Removal of an incumbent COO might be more politically difficult than would be the case for most presidential political appointees.

administrative and management functions.”⁵¹ Although this authority is subject to the direction of the Secretary, it is not a common specification for a departmental subunit.⁵²

Establishment of a PBO to Administer Federal Student Aid

FSA⁵³ was established as the federal government’s first PBO in 1998. When Congress established this structure, it departed from conventional organizational arrangements that were then in use within the federal government. The PBO model was drawn from government innovations in Great Britain in the 1980s and 1990s.⁵⁴ It was then developed and promoted for American governmental use by the National Partnership for Reinventing Government (NPR),⁵⁵ a major Clinton Administration governmental reform initiative. The Administration’s rollout of the PBO touted the model’s potential benefits and portrayed it as a commonsense development in the effort to streamline the federal government and make it more responsive to its “customers.”

The NPR initiative, led by Vice President Al Gore, aimed to improve federal government performance by reorganizing agencies and processes to be guided by market principles and incentives.⁵⁶ NPR’s first report put forth hundreds of recommendations.⁵⁷ These recommendations were intended to lead to better government service delivery and greater “customer” satisfaction.⁵⁸ In general, this would be accomplished through the streamlining of personnel practices, procurement, and other government operations; improvement of management tools and incentives; and promotion of efficiency and economy in administration.

⁵¹ HEA, §141(b)(4).

⁵² The conference report for the Higher Education Act Amendments of 1998, in which this provision was added, stated, “The conferees explicitly clarify that the PBO, while a part of the Department of Education, shall exercise independent control from the principal offices of the Department in carrying out its day-to-day activities, including its budget allocations and expenditures, its personnel decisions, its procurements, and its other administrative and management functions. This level of independence is critical to providing the PBO with greater flexibility in the management of the operational functions assigned to it.” U.S. Congress, *Higher Education Amendments of 1998 Conference Report*, report to accompany H.R. 6, 105th Cong., 2nd sess., September 25, 1998, H.Rept. 105-750 (Washington: GPO, 1998), p. 281.

⁵³ When it was first established, FSA was known as the Office of Student Financial Assistance. In order to prevent confusion, FSA is consistently used to refer to the PBO that was established in 1998, notwithstanding the name change.

⁵⁴ The approach developed in Great Britain, which became known as the Next Steps Initiative, arose out of a 1988 study by a senior adviser to Prime Minister Margaret Thatcher. The study proposed to change the incentives and structures within the British civil service to prioritize performance and results and thereby improve the government’s service delivery. The decision to adapt this approach for American national government was reportedly made after Vice President Al Gore and other Administration officials met with the British officials who had been responsible for the development of that nation’s initiative. Alasdair Roberts, “Command Performance,” *Government Executive*, August 1996, pp. 21-26; and Alasdair Roberts, “Performance-Based Organizations: Assessing the Gore Plan,” *Public Administration Review*, vol. 57 (November/December 1997), p. 465.

⁵⁵ The initiative was initially called the National Performance Review, also with the abbreviation NPR, and was renamed the National Partnership for Reinventing Government for President Clinton’s second term.

⁵⁶ For a critique of the NPR in comparison with other 20th-century management reform initiatives, see Ronald C. Moe, *Administrative Renewal: Reorganization Commissions in the 20th Century* (Lanham, MD: University Press of America, 2003), pp. 117-130.

⁵⁷ Office of the Vice President, *From Red Tape to Results: Creating a Government that Works Better and Costs Less: Report of the National Performance Review* (Washington, GPO: 1993).

⁵⁸ The NPR’s use of *customer* to refer to beneficiaries of specific governmental services exemplifies its intentional adoption of private sector business terminology in line with the initiative’s focus on adoption of market principles and forces for public sector bureaucracies.

Administration-endorsed PBO-related legislation was introduced in late 1995,⁵⁹ but it was not until early 1996 that the Vice President introduced the PBO concept as a major new focus of the ongoing NPR.⁶⁰ The aim was to improve government service delivery by implementing certain functions through the use of business-like practices and incentive structures. Agencies reorganized as PBOs would be freed from adherence to certain procurement and civil service laws and would, at the same time, develop systems of performance incentives and accountability for results. In advocating for the creation of federal PBOs, Vice President Gore stated:

Government agencies need to change their incentives and internal cultures to shift from a focus on process to a focus on customers and achieving results. They need to become more responsive to citizens, yet account for program costs and safeguard broader public interests. This can be done by creating performance-based organizations (PBOs) that set forth clear measures of performance, hold the head of the organization clearly accountable for achieving results, and grant the head of the organization authority to deviate from governmentwide rules if this is needed to achieve agreed-upon results. PBOs involve structural changes as well as changes in incentives affecting federal employees.⁶¹

The NPR identified seven candidates for conversion, but none has been formally converted into a PBO.⁶² However, one of the entities targeted for conversion, the Patent and Trademark Office, was statutorily reorganized and given many PBO-like structural characteristics. Because it has these features, some observers have referred to it as a PBO.⁶³ Though not contemplated as a potential PBO within the scope of the initial NPR list, FSA represented the first organization aligned with the PBO framework outlined in the NPR. In addition to FSA, one other entity—the Air Traffic Organization of the Federal Aviation Administration—has been explicitly established as a PBO in statute.

⁵⁹ See H.R. 2533 (104th Congress), the United States Intellectual Property Organization Act. This legislation would have reestablished the PTO, then a bureau within the Department of Commerce, as an agency with many PBO-like attributes. It did not specifically use the PBO nomenclature, however. Vice President Gore made reference to such legislation in his remarks introducing the PBO model in early 1996, cited below. Other legislation introduced in the 104th Congress (e.g., H.R. 1659, H.R. 3460, and S. 1458) would have reestablished the PTO as a government corporation. In 1999, the office was re-established as the U.S. PTO, an agency within the Department of Commerce with many PBO-like attributes. P.L. 106-113, Div. B, §1000(a)(9) (referencing App. I, Title IV, Subtitle G).

⁶⁰ NPR, *Reinvention's Next Steps: Governing in a Balanced Budget World: A Speech by Vice President Al Gore and Supporting Background Papers* (Washington, NPR: 1996), pp. 6-8, 17-20. The Vice President's remarks were delivered at the National Press Club on March 4, 1996.

⁶¹ NPR, *Reinvention's Next Steps*, p. 17. The excerpted text is drawn from the background papers that accompanied the speech.

⁶² The seven functions and entities that were initially identified included inspections of international shipments of agricultural products of the Animal and Plant Health Inspection Service, Department of Agriculture; dissemination of technical information of the National Technical Information Service, Department of Commerce; intellectual property rights of the PTO, Department of Commerce; commissary services of the Defense Commissary Agency, Department of Defense; mortgage insurance services of the Federal Housing Administration and Government National Mortgage Association, Department of Housing and Urban Development; retirement and benefit management services of the Federal Retirement and Insurance Service, OPM; and St. Lawrence Seaway operations of the St. Lawrence Seaway Development Corporation, Department of Transportation. NPR, *Reinvention's Next Steps*, p. 20.

⁶³ See, for example, Thomas H. Stanton et al., *U.S. Patent and Trademark Office: Transforming to Meet the Challenges of the 21st Century*, National Academy of Public Administration, August 2005, p. 157, <https://www.napawash.org/studies/academy-studies/us-patent-trademark-office-transforming-to-meet-the-challenges-of-the-21st>: "In 1999, Congress passed legislation making USPTO the second federal PBO as 'an agency of the United States within the Department of Commerce.'" Characterizations like these in the public administration literature suggest that, in that discipline, the PBO designation might connote a cluster of characteristics and organizational arrangements based around certain principles rather than a discrete organizational type that must be established in statute as such.

Legislation to Establish a PBO to Administer Federal Student Aid

Prior to the establishment of FSA, federal student loan programs were administered by the Office of Student Financial Assistance Programs (SFAP), a unit within ED's Office of Postsecondary Education (OPE). As discussed below, in the mid-1990s, leadership of these programs had temporarily become divided between SFAP and a unit in the Secretary's office that had been established for the purpose of accelerating the implementation of the Direct Loan program.

Although the Higher Education Amendments of 1998 (P.L. 105-244) established FSA's PBO structure, interest in converting SFAP into a PBO seems to have arisen as early as 1996 amid growing concerns within Congress and ED that the student financial aid programs were "severe[ly]" mismanaged.⁶⁴ The model was attractive to some congressional advocates of SFAP reform, as it appeared that its design features might address some of the agency's perceived problems while maintaining the financial assistance function within ED.⁶⁵ Moreover, it appears that the possibility of establishing a PBO within ED to implement these programs was under consideration by the Secretary prior to Vice President Gore's introduction of the new organizational model in 1996, which, as described earlier, did not include SFAP as a candidate for conversion into a PBO.⁶⁶

As the Clinton Administration was introducing the PBO model, congressional committees were monitoring and expressing concern about difficulties in the management of the student financial aid programs at ED. At a July 1996 hearing, ED's IG reported on a number of difficulties at ED, including program leadership being divided between OPE and the Senior Advisor to the Secretary for Direct Lending, poor coordination and communication between these offices, poor OPE staff morale, and a shortage of employees qualified in IT and financial analysis. Related problems included an interruption in efforts to improve the existing Federal Family Education Loan program, growth in the backlog of institutional cohort default rate appeals, confusion in the student loan community about where to find help for technical questions, concerns about the monitoring of financial statements and the procurement of needed IT, and difficulties with the processing the Free Application for Federal Student Aid (FAFSA).⁶⁷

In a February 12, 1996, memorandum, the Secretary reportedly expressed an interest in establishing SFAP as a PBO.⁶⁸ ED's IG testified in July of that year that such a transition

⁶⁴ As discussed below, for example, in the context of a July 1996 hearing on perceived mismanagement of student financial aid programs at ED, the IG discussed the Secretary's interest in the PBO model as well as the IG's assessment of the potential merits and drawbacks of converting student financial aid administration to it. See U.S. Congress, House Committee on Economic and Educational Opportunities, Subcommittee on Oversight and Investigations, *Hearing on Split Decision: The Inspector General's Report on the Divided Management Structure of Student Financial Aid Programs at the Department of Education*, 104th Cong., 2nd sess., July 10, 1996 (Washington: GPO, 1996), pp. 4, 11-12. Prior to 1996, Congress and the Administration had explored options for improving the servicing and collection of student loans that would have involved organizational changes. See Departments of the Treasury and Education, *A Study of the Feasibility of the IRS Collecting Repayments of Federal Student Loans*, June 1995, which was undertaken pursuant to a congressional directive. In addition, the Administration was considering at least one additional federal student aid delivery organizational change alternative—a mutual benefit corporation—while the PBO model was under consideration. See U.S. Congress, House Education and the Workforce, Postsecondary Education, Training, and Life-Long Learning, *Hearing on H.R. 6—The Higher Education Amendments of 1998*, 105th Cong., 1st sess., June 19, 1997 (Washington: GPO, 1998), p. 35.

⁶⁵ See, for example, testimony of the chair of the Advisory Committee on Student Financial Assistance, Subcommittee on Postsecondary Education, Training and Life-Long Learning, *Field Hearing on H.R. 6*, pp. 63-69.

⁶⁶ Subcommittee on Oversight and Investigations, *Hearing on Split Decision*, p. 11.

⁶⁷ Subcommittee on Oversight and Investigations, *Hearing on Split Decision*.

⁶⁸ Subcommittee on Oversight and Investigations, *Hearing on Split Decision*, p. 11.

appeared to be premature but that certain changes—such as leadership from a highly qualified chief executive officer to provide a stable, long-term leadership and consistency of purpose and a significant, focused reengineering effort—could be made to SFAP to prepare it for such a transition.⁶⁹

In May 1997, the Advisory Committee on Student Financial Assistance (ACSFA)⁷⁰ reported that implementation of financial aid programs was plagued by staff without the necessary experience, outdated computer systems and “a web of large, uncoordinated, uncompetitive contracts which fail to deliver on time and produce unacceptable cost overruns.”⁷¹ ACSFA recommended restructuring the delivery of federal student aid under a PBO and reengineering Title IV systems and contracts, two processes the committee asserted were closely linked.⁷²

During a July 1997 hearing, the Assistant Secretary heading OPE testified that the Administration was reviewing the PBO model among several different organizational modifications that might improve management of federal student assistance programs.⁷³ By March 1998, the Secretary was voicing his support specifically for the PBO approach, stating that such a conversion would enhance ED’s flexibility with regard to potential management and procurement reforms and allow it to more efficiently deliver student aid yet also hold it accountable for results and allow the Secretary to maintain control of policy.⁷⁴

In September 1997, the chair and ranking member of the House Committee on Education and the Workforce subcommittee with jurisdiction over higher education policy introduced a standalone bill to establish a PBO within ED to manage the information systems associated with Title IV programs.⁷⁵ In his introductory remarks, the chair noted problems with federal student aid information systems and financial statements before asserting, “A customer-focused, performance-based organization within the Department, run by an experienced Chief Operating Officer, can take the steps necessary to properly reengineer the current systems and contracts.”⁷⁶

⁶⁹ Subcommittee on Oversight and Investigations, *Hearing on Split Decision*, p. 11.

⁷⁰ ACSFA was established by the Higher Education Amendments of 1986 to “provide advice and counsel to the Congress and to the Secretary on student financial aid matters.” (P.L. 99-498; see also 20 U.S.C. §1098). Authority for ACSFA expired on October 1, 2015 (HEA §491(k)).

⁷¹ See Subcommittee on Postsecondary Education, Training and Life-Long Learning, *Field Hearing on H.R. 6*, pp. 63-69, at 67. A copy of an ACSFA letter to House Committee on Education and the Workforce Chair William F. Goodling transmitting the recommendations may be found as an attachment to the record of a hearing held in July of that year: U.S. Congress, House Committee on Education and the Workforce, Subcommittee on Postsecondary Education, Training and Life-Long Learning, H.R. 6, *The Higher Education Amendments of 1998 Student Loan Programs*, 105th Cong., 1st sess., July 22, 1997 (Washington: GPO, 1998), pp. 110-116.

⁷² U.S. Congress, House Committee on Education and the Workforce, Subcommittee on Postsecondary Education, Training and Life-Long Learning, H.R. 6, *the Higher Education Amendments of 1998: System Modernization Efforts at the Department of Education and Accreditation*, 105th Cong., 1st sess., July 29, 1997 (Washington: GPO, 1998), p. 7.

⁷³ Subcommittee on Postsecondary Education, Training and Life-Long Learning, H.R. 6, *the Higher Education Amendments of 1998*, p. 81. The Assistant Secretary’s testimony echoed that of the Secretary during a hearing held the previous month. U.S. Congress, House Education and the Workforce, Postsecondary Education, Training, and Life-Long Learning, *Hearing on H.R. 6—The Higher Education Amendments of 1998*, 105th Cong., 1st sess., June 19, 1997 (Washington: GPO, 1998), p. 35.

⁷⁴ Letter from Secretary of Education Richard Riley to congressional leaders, March 2, 1998.

⁷⁵ H.R. 2536 (105th Congress). This bill was referred to committee and not further acted upon.

⁷⁶ Representative Howard P. “Buck” McKeon, “Introducing the 21st Century Student Financial Aid System Improvement Act of 1997,” extensions of remarks, *Congressional Record*, daily edition, vol. 143, part 129 (September 24, 1997), p. E1834.

Provisions from this bill were included in the HEA reauthorization bill as reported by the committee in April 1998.⁷⁷

The Senate Committee on Labor and Human Resources reported out its main bill for HEA reauthorization in May 1998.⁷⁸ This bill included provisions that were “developed in cooperation with the administration” to establish a federal student aid-related PBO in ED.⁷⁹ The role of the PBO that would have been established by this legislation was arguably broader than that in the House committee-reported measure. The PBO established in the House bill would have been “a discrete management unit responsible for managing the information systems supporting” Title IV programs,⁸⁰ whereas the Senate bill would have empowered the PBO “to administer various functions relating to student financial assistance programs authorized under” Title IV.⁸¹

Text from the committee reports concerning the PBO sections of the reauthorization legislation provides a snapshot of the committees’ perceptions about the management of financial aid distribution programs by ED at the time. Report language also laid out the committees’ intentions for and expectations of this change in organizational structure and management paradigm.

Both the House and Senate committees of jurisdiction appeared to be concerned with perceived management problems at ED. The House Committee on Education and the Workforce discussed the prevalence and persistence of IT problems and their apparent impact on the ability of ED to deliver student aid economically, effectively, and efficiently. Specifically, the committee noted ED’s limited progress in integrating numerous data systems despite legislative mandates; the tripling over five years of ED’s budget for student aid information systems; and the fact that even with significant expenditures, student aid systems required dozens of paper forms and experienced “needless” process delays and breakdowns.⁸²

The Senate Committee on Labor and Human Resources described a more general and overlapping set of issues related to the need to improve the administration of Title IV aid and problems regarding the Direct Loan Consolidation program, the printing of the FAFSA, and reports that ED was falling significantly behind in its efforts to become Year 2000 compliant.⁸³

⁷⁷ U.S. Congress, House Committee on Education and the Workforce, *Higher Education Amendments of 1998*, report on H.R. 6, 105th Cong., 2nd sess., April 17, 1998, H.Rept. 105-481 (Washington: GPO, 1998), p. 104.

⁷⁸ S. 1882 (105th Congress).

⁷⁹ U.S. Congress, Senate Committee on Labor and Human Resources, *Higher Education Act Amendments of 1998*, report to accompany S. 1882, 105th Cong., 2nd sess., May 4, 1998, S.Rept. 105-181 (Washington: GPO, 1998), p. 28. Further commenting on the process of developing the PBO provisions, the report stated, “In order to address these problems, the committee has worked closely with members of the higher education community and representatives of the Secretary to create a new performance-based organization within the Department of Education. The committee is pleased that the Department has finally become a full partner in this effort and looks forward to working with the Secretary to improve the quality and efficiency of services provided to students and other participants in the student financial aid programs” (p. 75).

⁸⁰ H.R. 2536 (105th Congress).

⁸¹ S. 1882 (105th Congress).

⁸² U.S. Congress, House Committee on Education and the Workforce, *Higher Education Amendments of 1998*, report on H.R. 6, 105th Cong., 2nd sess., April 17, 1998, H.Rept. 105-481 (Washington: GPO, 1998), p. 104.

⁸³ U.S. Congress, Senate Committee on Labor and Human Resources, *Higher Education Act Amendments of 1998*, report to accompany S. 1882, 105th Cong., 2nd sess., May 4, 1998, S.Rept. 105-181 (Washington: GPO, 1998), pp. 75-76. Year 2000 compliance refers to the efforts of the federal government to prevent widespread and severe IT problems that might have arisen at the turn of the new century as a consequence of date formatting in computer programming that did not provide for a distinction between years in the 20th and the 21st centuries.

Both the House and Senate committees intended for the establishment of a PBO organizational structure to address the management problems they had identified. For example, the House Committee on Education and the Workforce noted that the purposes of the proposed change were to increase effectiveness, economy, and efficiency by giving administrators greater management flexibility while requiring greater accountability for results. The committee also expected that a PBO structure would accomplish the following aims that were specifically delineated in the HEA:

- Improve service to program participants,
- Reduce the costs of administering the programs,
- Increase accountability,
- Provide greater flexibility in management and administration of the programs, and
- Integrate the information systems that support the federal student aid programs.⁸⁴

In doing so, the committee stated:

The Committee firmly believes that a customer-based, Performance-Based Organization within the Department, operated by an experienced Chief Operating Officer can take the necessary steps to properly reengineer the current systems and contracts.... The Committee also believes the creation of a PBO will result in a more efficient, effective, less expensive and less bureaucratic financial aid delivery system. The end result should be a system that is easy for students and parents to use and one that ensures that students have the information they need to select the education that is best for them—all while ensuring that taxpayer funds are being used efficiently and effectively.⁸⁵

The Senate Committee on Labor and Human Resources also identified its goal for the change, although it did so more generally. The committee also noted its effort to divide policy functions, which were to be retained by OPE, from operational functions, which were to be carried out by the new PBO:

The goal of the performance-based organization has been, and remains, to improve the delivery of student financial aid to students and their families. In order to accomplish this, the committee has attempted to identify the functions performed by the Office of Postsecondary Education and segregate those that are essentially policy functions that must be retained by OPE from those that are administrative and that may appropriately be handled by the performance-based organization. The PBO will be responsible for administration of the information and financial systems that support student financial assistance programs as well as any additional functions that the Secretary determines are necessary or appropriate to improve the delivery of student aid.⁸⁶

Both the Senate- and House-passed bills would have established a new PBO vested with responsibilities related to federal student aid delivery. Specific differences between the competing versions regarding the new entity's authority, purposes, functions, relationship with ED, and other organizational features were ironed out through a conference process that yielded a consensus measure.⁸⁷ Resolution of the PBO-related differences does not appear to have been a sticking

⁸⁴ HEA §141(a)(1).

⁸⁵ U.S. Congress, House Committee on Education and the Workforce, *Higher Education Amendments of 1998*, report on H.R. 6, 105th Cong., 2nd sess., April 17, 1998, H.Rept. 105-481 (Washington: GPO, 1998), p. 104.

⁸⁶ U.S. Congress, Senate Committee on Labor and Human Resources, *Higher Education Act Amendments of 1998*, report to accompany S. 1882, 105th Cong., 2nd sess., May 4, 1998, S.Rept. 105-181 (Washington: GPO, 1998), pp. 75-76.

⁸⁷ U.S. Congress, *Higher Education Amendments of 1998*, conference report to accompany H.R. 6, 105th Cong., 2nd

point in the conference process.⁸⁸ The conference report was agreed to by the two chambers and President Clinton signed the Higher Education Amendments of 1998 into law on October 7, 1998.

2008 Higher Education Act PBO Amendments

In 2008, the Higher Education Opportunity Act (HEOA; P.L. 110-315)⁸⁹ amended the HEA PBO provisions. The report of the Senate Committee on Health, Education, Labor and Pensions noted its general approval, at that time, of the PBO as implemented:

The committee applauds the efforts since the last reauthorization to implement the PBO. Schools and individuals have benefited from improved efficiency in originating, servicing and processing grant and loan aid. The ombudsman has provided needed guidance to students struggling to navigate the complex system. There is strong support for continuation of these efforts to make further progress in the delivery of student financial aid.⁹⁰

In line with this assessment, the 2008 amendments appear to have clarified and expanded FSA's role in the administration of Title IV programs. They changed the characterization of the PBO's functions from "operational" to "administrative and oversight," seemingly broadening the mandate of the agency.⁹¹ In addition, whereas the previous provisions vested the PBO with responsibility for administration of the information and financial systems supporting Title IV programs, the 2008 amendments enlarged the scope of responsibilities beyond this specified support function to administration of "the Federal student financial assistance programs authorized under title IV."⁹² The HEOA also amended FSA's personnel and procurement flexibility provisions, as discussed below.⁹³

Changes to Title IV Aid Affecting FSA's Operations

Since FSA's inception, both statutory and regulatory changes have been made to the Title IV student aid programs. These changes may have had an effect on FSA's operations.

At the time of FSA's formation in 1998, HEA Title IV authorized and ED administered two primary federal student loan programs: the Federal Family Education Loan (FFEL) program and the Direct Loan program. These two programs provided borrowers with loans for postsecondary education with substantially similar terms and conditions as one another, but each program had significantly different administrative structures. Private lenders originated FFEL program loans, and either they or secondary market loan purchasers (who bought loans from originating lenders) were responsible for completing many loan servicing tasks, including working with postsecondary institutions to track students' enrollment and loan eligibility status, billing

sess., September 25, 1998, H.Rept. 105-750 (Washington: GPO, 1998).

⁸⁸ See, for example, a news report on the conference outcome and related controversies that notes the existence of PBO-related provisions in a single sentence: The agreement "would set up a performance-based organization in the Education Department to improve oversight of federal student aid." Sue Kirchhoff, "Rewrite of Higher Education Act Has a Bipartisan Glow," *CQ Weekly*, September 26, 1998, pp. 2593-2594.

⁸⁹ Amendments to the PBO provisions that had been enacted in 1998 may be found in §117 at 122 Stat. 3114.

⁹⁰ U.S. Congress, Senate Committee on Health, Education, Labor, and Pensions, *Higher Education Amendments of 2007*, report to accompany S. 1642, 110th Cong., 1st sess., November 15, 2007, S.Rept. 110-231 (Washington: GPO, 2007), p. 12.

⁹¹ See, for example, HEA §141(a)(1).

⁹² P.L. 110-315, §117(2)(B)(ii)(I).

⁹³ See report subsections entitled "FSA Personnel Flexibilities" and "FSA Procurement Flexibilities."

borrowers, and conducting initial collection services if a loan became delinquent. Additionally, under the FFEL program, state and nonprofit guaranty agencies received federal funds to administer many aspects of the program, such as providing technical assistance to IHEs and lenders, providing credit and loan rehabilitation counseling to borrowers, and performing collections work.

Under the Direct Loan program, the federal government essentially serves as the “banker” by providing loans to students and their families using federal capital. ED assumes the primary role in administering the Direct Loan program (described below), including providing technical assistance to IHEs, contracting with loan servicers to perform day-to-day administrative tasks, providing loan counseling to borrowers, and initiating collections work.

In May 2008, in response to concerns about the continued availability of FFEL program loans due to several FFEL program lenders curtailing or ceasing their participation in the program, the Ensuring Continued Access to Student Loans Act of 2008 (P.L. 110-227) granted ED the temporary authority to purchase student loans made under the FFEL program. In October 2008, P.L. 110-350 extended this authority through July 1, 2010. After purchasing loans made under the FFEL program, control of loan servicing was transferred to ED. In 2009, the SAFRA Act (P.L. 111-152, Title II) terminated the authority to make new loans under the FFEL program after June 30, 2010. Since July 1, 2010, the Direct Loan program has been the primary federal student loan program,⁹⁴ although many FFEL program loans remain outstanding,⁹⁵ and FFEL program lenders and guaranty agencies remain responsible for administering several aspects of those programs.

These changes have vested FSA with a larger scope of responsibility than Congress might have originally contemplated when it authorized FSA’s PBO structure, as FSA became responsible for administering a larger share of the federal student loan programs (in terms of loan volume and individual borrowers associated with these changes) than for which it had previously been responsible under the FFEL program.

Moreover, the switch to almost 100% direct lending in 2010 had the effect of fundamentally altering the federal student loan marketplace. During the roughly 15-year period that the two programs operated concurrently, IHEs and borrowers were provided the opportunity to “shop around.” That is, IHEs chose whether to apply to participate in the FFEL program or Direct Loan program, and the caliber of administrative and servicing work available within the respective loan programs may have been a factor in those decisions.⁹⁶ Additionally, schools opting to participate in the FFEL program usually compiled *preferred lender lists* that they shared with students. Again, assessments of the caliber of administrative and servicing work provided through differing lenders likely factored into the selection of lenders for such lists.⁹⁷ Borrowers attending FFEL program participating IHEs were free to select among an array of lenders, including but not

⁹⁴ As of the third quarter of 2019, approximately \$1.2 trillion in Direct Loan program loans were outstanding. This accounts for approximately 82% of all outstanding Title IV student loan debt. ED, Office of Federal Student Aid, “Federal Student Aid Portfolio Summary,” <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls>.

⁹⁵ As of the third quarter of 2019, approximately \$266 billion in FFEL program loans were outstanding. This accounts for approximately 18% of all outstanding Title IV student loan debt. ED, Office of Federal Student Aid, “Federal Student Aid Portfolio Summary.”

⁹⁶ In addition, the HEA explicitly permitted FFEL program lenders and guaranty agencies to offer borrowers interest rate and loan fee discounts (see HEA §433(b)(5)(A)). Thus, the variation in discounts offered by FFEL program lenders may have factored into an IHEs’ decisions to participate in either program and into students’ decisions on FFEL program lenders.

⁹⁷ See 34 C.F.R. §601.10(d)(3)(iii).

limited to those on the preferred lender lists.⁹⁸ There were opportunities available for IHEs and for borrowers who were dissatisfied with customer service to pursue other options.⁹⁹ The competition that existed within the FFEL program and across the loan programs provided incentives for those involved in administrative and servicing work to provide enhanced customer service. By transitioning to a single model of federal student lending (the Direct Loan program) under which a single entity (the federal government) both makes and is responsible for administering loans, the federal student loan marketplace transitioned from one with some built-in incentives to provide enhanced customer service to one in which there may be less incentive to do so.¹⁰⁰

Several other changes in the Title IV aid programs since FSA's creation as a PBO may have also had the effect of increasing the scope and complexity of FSA's administrative functions. These include but are not limited to the following:

- increases in the amount and type of aid benefits available to students, including extension of PLUS Loan availability to graduate and professional students under the Deficit Reduction Act of 2005 (P.L. 109-171) and the authorization of the TEACH Grant program under the College Costs Reduction and Access Act of 2007 (P.L. 110-84);
- authorization and implementation of myriad income-driven loan repayment plans that allow borrowers to make monthly payments in amounts indexed to their adjusted gross income¹⁰¹;
- increased complexity of aid benefits, including establishment of a 6% interest rate cap on federal student loans during military service under the Servicemembers Civil Relief Act (P.L. 108-189), the Public Service Loan Forgiveness (PSLF) program¹⁰² under the College Costs Reduction and Access Act, cumulative lifetime maximums on certain students' eligibility to receive Pell Grants established under the HEOA¹⁰³ and amended under the Consolidated

⁹⁸ Borrowers often selected a lender on their IHEs' preferred lender lists. However, there were concerns that some lenders were providing compensation or other benefits to some IHEs to secure placement on their preferred lender lists. Such arrangements, it was argued, created a conflict of interest for IHEs and "undermine[d] students' trust in the process, and magnifie[d] the risk of illegal quid pro quo deals." U.S. Senate, Health, Education, Labor and Pensions Committee, *Report on Marketing Practices in the Federal Family Education Loan Program*, July 14, 2007, p. 11.

⁹⁹ One of the benefits Congress perceived in the dual system of federal student loans was that it allowed for students and IHEs to "benefit from a competitive environment." See U.S. Congress, Senate Committee on Labor and Human Resources, *Higher Education Amendments of 1998*, report to accompany S. 1882, 105th Cong., 2nd sess., May 8, 1998, S.Rept. 105-181 (Washington: GPO, 1998), p. 2.

¹⁰⁰ FSA's practice of contracting with multiple loan services and private collection agencies may have sustained a degree of competition among participants in the federal student loan marketplace. This may be viewed as having been intended to promote enhanced customer service. See, for example, U.S. Congress, House Committee on Appropriations, *Departments of Labor, Health, and Human Services, and Education, and Related Agencies Appropriation Bill 2019*, report to accompany S. 3158, 115th Cong., 2nd sess., June 28, 2018, S.Rept. 115-289, pp. 200-201.

¹⁰¹ For additional information on the income-driven repayment plans, see CRS Report R45931, *Federal Student Loans Made Through the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*.

¹⁰² For additional information on the PSLF program, see CRS Report R45389, *The Public Service Loan Forgiveness Program: Selected Issues*.

¹⁰³ The HEOA amendments introduced lifetime eligibility limited for Pell Grants. For students who received their first Pell Grant on or after July 1, 2008, cumulative Pell Grant lifetime eligibility was limited to 18 full-time semesters (or the equivalent).

- Appropriations Act, 2012 (P.L. 112-74),¹⁰⁴ and limitations placed on certain borrower's eligibility to borrow Direct Subsidized Loans established under the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141);¹⁰⁵ and
- changes made to aid administration, including the process to receive a discharge of federal student loans after a determination that a borrower is totally and permanently disabled as established under the HEOA and implemented via subsequent regulatory changes,¹⁰⁶ the requirement that ED (via FSA) contract with not-for-profit loan servicers under the SAFRA Act,¹⁰⁷ and regulatory changes to borrower defense to repayment discharge procedures.¹⁰⁸

FSA Functions and Structure

Section 141 of the HEA tasks FSA with managing administration and oversight of the Title IV federal student aid programs. Among other functions, FSA develops and maintains the FAFSA; obtains student aid funds from the Treasury and makes them available for disbursement to students; contracts with third parties that perform myriad administrative tasks associated with the Title IV programs (e.g., loan servicing); provides information on the Title IV programs to students, Title IV participants (e.g., IHEs), Congress, and other stakeholders; and provides oversight of Title IV program participants, including IHEs and the third-party loan servicers with which it contracts.

The HEA specifically establishes two roles within FSA—the COO and the Student Loan Ombudsman—to carry out FSA's functions, but much of FSA's organizational structure has been established through administrative action by the COO. In addition, many outside entities may have an interest in or have asserted a role over aspects of the federal student aid programs.¹⁰⁹ Thus, in coordination with ED, FSA maintains relationships with outside stakeholders, executive branch entities, and Congress. FSA also maintains relationships with offices within ED at large.

¹⁰⁴ The Consolidated Appropriations Act, 2012, reduced the cumulative lifetime eligibility for Pell Grant aid from 18 semesters to 12 semesters beginning in award year 2012-2013. Any Pell Grant received prior to award year 2012-2013 is included in the student's lifetime limited.

¹⁰⁵ P.L. 112-141 specified that individuals who are new borrowers on or after July 1, 2013, are eligible to borrow Direct Subsidized Loans for a period not to exceed 150% of the published length of their academic program.

¹⁰⁶ ED, "Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program," 77 *Federal Register* 66088 *et seq.*, November 1, 2012.

¹⁰⁷ In 2009, with the increase in volume of federally held student loans, FSA awarded loan servicing contracts to four new loan servicers, known as Title IV Additional Servicers (TIVAS). In 2010, under the SAFRA Act, Congress amended the HEA to require ED to contract with eligible not-for-profit (NFPs) servicers, many of which were affiliated with or part of not-for-profit state lending operations in the FFEL program. For several years, TIVAS and NFPs operated side by side servicing Direct Loans, but they had different sources of funding and different contract provisions with FSA, including differing borrower account allocation procedures and performance metrics. The Bipartisan Budget Act of 2013 (P.L. 113-67) eliminated the requirement that ED contract with NFPs, but FSA voluntarily decided to retain those NFP contracts. Multiple changes to FSA's contracts with the TIVAS and NFPs have been made over the years, some in response to direction from Congress (see, for example, the Consolidated Appropriations Act of 2016 [P.L. 114-113]). As of March 1, 2016, it appears that TIVAS and NFPs now have the same borrower account allocation procedures and performance metrics.

¹⁰⁸ For additional information, see CRS Report R44737, *The Closure of Institutions of Higher Education: Student Options, Borrower Relief, and Other Implications*.

¹⁰⁹ For example, the Consumer Financial Protection Bureau has asserted supervisory authority over selected federal student loan servicers. Bureau of Consumer Financial Protection, "Defining Larger Participants of the Student Loan Servicing Market," 78 *Federal Register* 73383, December 6, 2013.

Statutorily Specified FSA Functions

HEA Section 141 specifies several high-level aspects of aid administration for which FSA is responsible. These include the following:

- The administrative, accounting, and financial management functions for the Title IV aid programs, including
 - collection, processing, and transmission of data to students, IHEs, and other authorized stakeholders;
 - development of specifications for software and procurement of systems to support Title IV aid administration;
 - acquisitions of all hardware and software and procurement and management of all IT contracts to support Title IV aid administration;
 - contracting for information and financial systems to support Title IV aid administration;
 - providing customer service, training, and user support related to Title IV aid administration; and
 - ensuring the integrity of the Title IV aid programs.
- Development, in consultation with the Secretary, of FSA's annual budget.¹¹⁰

The Secretary may delegate additional functions to FSA as necessary or appropriate to achieve FSA's purposes.¹¹¹ FSA is given control of its budget allocations and expenditures, procurements, personnel decisions and processes, and other administrative and management functions but remains subject to the direction of the Secretary.¹¹²

The HEA specifies that the Secretary "shall maintain responsibility for the development and promulgation of policy and regulations" related to Title IV aid.¹¹³ In doing so, the HEA requires the Secretary to "request the advice of, and work in cooperation with" FSA.¹¹⁴

To fulfill its statutory responsibilities, FSA undertakes many discrete tasks (discussed below).

Awarding, Disbursing, and Servicing Aid

Students wishing to receive Title IV student aid must annually apply for assistance using the FAFSA, which is developed and maintained by FSA in accordance with specifications set forth in the HEA.¹¹⁵ After a student submits the FAFSA, an automated system contracted by FSA processes the FAFSA,¹¹⁶ and then IHEs (or the third-party servicers with which they contract¹¹⁷)

¹¹⁰ HEA §141(b)(2).

¹¹¹ HEA §141(b)(3). For a listing of authorities delegated by the Secretary to FSA and its employees, see ED, Office of Management, "Federal Student Aid (FSA)," <https://www2.ed.gov/about/offices/list/om/delegations/fsa.html>.

¹¹² HEA §141(b)(4).

¹¹³ HEA §141(b)(1).

¹¹⁴ HEA §141(b)(1).

¹¹⁵ HEA Sections 473-480 specify the data that are collected in the FAFSA. HEA Section 483 requires that ED (via FSA) produce and distribute the FAFSA to "determine the need and eligibility of student for financial assistance" under Title IV and requires that the FAFSA be made available free of charge and in paper and electronic formats.

¹¹⁶ The system is known as the Central Processing System.

¹¹⁷ IHEs may contract with third-party servicers for assistance in administering the Title IV aid programs. However, an IHE ultimately remains responsible for the Title IV funds and is held accountable if a third-party servicer mismanages

use information from it to calculate the amount of aid for which a student is eligible. FSA obtains funds from the Treasury and makes them available to IHEs, which in turn disburse those funds to students.

Once a grant is disbursed, in many cases administrative functions are significantly decreased.¹¹⁸ However, FSA may be required to implement and/or oversee administrative functions after a grant has been disbursed. For instance, if an individual receives a Pell Grant in excess of the amount for which he or she is eligible, he or she may be required to return a portion to FSA.

Once a Direct Loan program¹¹⁹ loan is disbursed, FSA assigns it to a contracted loan servicer. Loan servicers perform a variety of administrative functions such as collecting payments and performing delinquency prevention activities.¹²⁰ FSA may, if necessary, assign a defaulted loan to a contracted private collection agency (PCA), which attempts to recover payment on defaulted loans from borrowers. FSA may also use other options to collect on defaulted Direct Loans, including referring a borrower's account to the Treasury Offset Program.¹²¹

Contracting

In FY2018, FSA maintained major contracts¹²² with approximately 20 vendors, totaling about \$1.1 billion. (These contracts constituted approximately 63% of appropriations provided for student aid administration in general in FY2018.¹²³) Services for which FSA maintains contracts include servicing of Direct Loans and ED-held FFEL program loans and Perkins Loans,¹²⁴ collection of defaulted Direct Loans and ED-held FFEL program loans and Perkins Loans, and IT infrastructure to support myriad tasks such as the processing of submitted FAFSAs. FSA also has

the programs or funds. HEA §481(c); 34 C.F.R. §668.25.

¹¹⁸ An exception to this is the TEACH Grant program. Post-disbursement administration of the TEACH Grant program is somewhat similar to administration of the Direct Loan program in that a TEACH Grant recipient's account is assigned to a loan servicer, which tracks the recipient's progress toward fulfilling program service requirements. Individuals who do not fulfill the service requirements have their TEACH Grants converted into Direct Loans, which are then serviced by a contracted loan servicer. For additional information on the TEACH Grant program, see CRS Report R46117, *TEACH Grants: A Primer*.

¹¹⁹ FSA administrative tasks for FFEL and Perkins Loan program loans vary considerably from those of the Direct Loan program. Many of these tasks are not detailed in this report, as they comprise a relatively small portion of FSA's total loan portfolio in FY2019. FSA, *Fiscal Year 2019 Annual Report*, p. 34.

¹²⁰ Delinquency prevention activities are support services offered by servicers to help ensure that borrowers do not become delinquent or default on their loans. Such activities include, for instance, permitting borrowers to select the date on which monthly loan payments will be made, offering electronic account debit for monthly payments, providing delinquency counseling (e.g., providing a series of letters and calls to borrowers who are delinquent), and providing online financial literacy materials for borrowers. ED, Office of Federal Student Aid, "Loan Servicing Information—Delinquency Prevention Activities Offered by FedLoan Servicing (PHEAA), Great Lakes Educational Loan Services, Inc., Nelnet, and Sallie Mae," June 3, 2010, <http://ifap.ed.gov/eannouncements/060310LoanServicingInfoDelinqPreventAct.html>. For a more detailed description of administration of the Direct Loan program, see CRS Report *Administration of the William D. Ford Federal Direct Loan Program*.

¹²¹ The Treasury Offset Program collects delinquent debts owed to federal agencies by withholding certain federal benefits (e.g., Social Security benefits, income tax refunds) and remitting those payments to the relevant federal agency.

¹²² Although ED uses the term *major contracts* in reporting contracts supporting student aid administration, it is unclear what constitutes a "major contract."

¹²³ President's FY2020 Budget Request for the U.S. Department of Education, Congressional Budget Justification, "Student Aid Administration," pp. Y-11; Y-33 through Y-37.

¹²⁴ ED-held FFELs include, for example, those acquired by ED with authority provided to it under the Ensuring Continued Access to Student Loans Act of 2008 (P.L. 110-227). ED-held Perkins Loans include, for example, those assigned to ED by an IHE that elects not to independently service the loans.

a contract for the National Student Loan Data System (NSLDS), which is a central database for student aid. NSLDS maintains detailed administrative data to track Title IV grants and loans throughout their lifecycle and support Title IV administrative functions such as verifying a student's Title IV eligibility.¹²⁵

Information and Assistance to Third-Party Stakeholders

Numerous individuals and entities have a stake in the Title IV federal student aid programs and rely on FSA to provide timely and accurate information regarding the programs. Students, their families, and borrowers rely on FSA to provide information and assistance throughout the entire financial aid process. IHEs and FSA's third-party contractors rely on communications and assistance from FSA to administer various aspects of the aid programs. Members of Congress and the general public rely on FSA for information about the performance of the Title IV aid programs.

FSA operates several websites that enable stakeholders to access relevant information about program operations. FSA maintains the website www.studentaid.gov, which is FSA's "primary online portal for customers"¹²⁶ and the 'Information for Financial Aid Professionals' website, which consolidates guidance and resources related to Title IV administration for use by the entire financial aid community.¹²⁷

FSA also operates several repositories of Title IV program data to enable it and stakeholders to access information about the programs and their performance. HEA Section 485B tasks ED with development of the NSLDS. FSA has primary responsibility for administration of the NSLDS and has contracted with a third party to operate it. FSA also maintains the Data Center—a centralized, publicly available source for selected administrative data and other information related to the Title IV programs.¹²⁸ The Title IV program data on FSA's Data Center are often derived from NSLDS.¹²⁹ In addition, FSA operates the Enterprise Data Warehouse Analytics, which contains data from multiple FSA data sources, such as NSLDS. It provides FSA with analytic tools to provide "quick and accurate access to inform internal and external data requests"¹³⁰ and is often used to provide Title IV program data and analysis to internal stakeholders such as ED's Budget Office and to external stakeholders such as congressional requesters, other federal agencies, and the public.

FSA also makes its statutorily required annual report¹³¹ to Congress publically available.¹³² Finally, the Ombudsman Group¹³³—a subunit within FSA—provides students and aid recipients

¹²⁵ President's FY2020 Budget Request for the U.S. Department of Education, Congressional Budget Justification, "Student Aid Administration," p. Y-23.

¹²⁶ FSA, *Fiscal Year 2019 Annual Report*, p. 67.

¹²⁷ FSA, "Information for Financial Aid Professionals (IFAP)," <https://ifap.ed.gov/ifap/>.

¹²⁸ The Data Center includes, among other information, data on student aid amounts disbursed and number of recipients, IHEs participating in the Title IV programs, and lenders and guaranty agencies participating in the FFEL program and documents related to FSA's management and business processes, such as loan servicer contracts. FSA, "Welcome to the Federal Student Aid Data Center," <https://studentaid.ed.gov/sa/data-center>.

¹²⁹ In addition, individual aid recipients may view their Title IV federal student aid records through the NSLDS Student Access website. FSA, "NSLDS Student Access," https://nsls.ed.gov/nsls/nsls_SA/.

¹³⁰ Homayoon Khalili, *Privacy Impact Assessment for the Enterprise Data Warehouse and Analytics*, FSA, March 30, 2017, p. 2.

¹³¹ HEA §141(c)(2).

¹³² See FSA, *Fiscal Year 2019 Annual Report*.

¹³³ The HEA establishes within FSA the Student Loan Ombudsman, which is tasked with providing assistance to Title

with a single point of entry (the Feedback and Dispute Management System) to provide feedback or to file complaints and disputes about the Title IV programs.¹³⁴

Oversight

FSA has a large oversight role in ensuring that various Title IV program participants comply with Title IV program requirements. Both statute and regulations prescribe many aspects of the Title IV programs, including student aid program terms and conditions and requirements IHEs must meet to participate in the programs. IHEs and third-party contractors play a significant role in ensuring that the Title IV programs are administered properly. In addition, some Title IV programs (e.g., the campus-based aid programs¹³⁵) vest a larger share of administrative functions with IHEs, while others (e.g., the FFEL program) vest additional administrative functions with outside entities such as guaranty agencies.

IHEs and Their Third-Party Servicers

FSA's oversight of IHEs relates largely to ensuring that they meet eligibility requirements to participate in the Title IV programs¹³⁶ and that they (and any third-party servicers with which they may contract) properly administer the Title IV programs. FSA certifies an IHE's eligibility to participate in the Title IV programs and recertifies its eligibility thereafter.¹³⁷ FSA verifies each IHE's accreditation status and whether the IHE is legally authorized to operate within a state. FSA also evaluates an IHE's financial responsibility and administrative capability to administer the Title IV programs.¹³⁸

After an IHE is certified to participate in the Title IV programs, FSA ensures that it is conforming to eligibility and administrative requirements. FSA does this by performing program reviews and by reviewing required IHE compliance audits and financial statement audits conducted by third-party auditors.¹³⁹ FSA reviews the IHE's required third-party compliance and financial statement audits and attempts to resolve issues with them.¹⁴⁰ During a program review, FSA evaluates an IHE's compliance with Title IV requirements. Review priority is given to certain IHEs specified in statute (e.g., those IHEs with high cohort default rates).¹⁴¹

IV loan borrowers (HEA §141(f)). The Ombudsman Group appears to fulfill this statutory requirement and also provides assistance to other types of FSA customers.

¹³⁴ FSA, *Fiscal Year 2019 Annual Report*, p. 86. In FY2019, the Feedback and Dispute Management System received approximately 50,000 cases and closed approximately 48,000 cases. FSA, *Fiscal Year 2019 Annual Report*, pp. 87, 91.

¹³⁵ These include the Federal Supplemental Educational Opportunity Grant program, the Federal Work-Study program, and the Perkins Loans program. For additional information on these programs, see CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*.

¹³⁶ For additional information on the requirements IHEs must meet to participate in the Title IV programs, see CRS Report R43159, *Institutional Eligibility for Participation in Title IV Student Financial Aid Programs*.

¹³⁷ HEA §498; 34 C.F.R. Part 668.

¹³⁸ In FY2019, FSA processed over 6,400 recertifications applications and other eligibility-related actions applications. FSA, *Fiscal Year 2019 Annual Report*, p.82.

¹³⁹ HEA §498A.

¹⁴⁰ In FY2019, FSA resolved over 2,400 deficient audits and flagged financial statements. FSA, *Fiscal Year 2019 Annual Report*, p. 82.

¹⁴¹ HEA §498A(a)(2). In FY2019, FSA issued over 385 program review reports, final program review determinations, and expedited determination letters. FSA, *Fiscal Year 2019 Annual Report*, p. 82.

FSA has the authority to impose sanctions and corrective actions on IHEs and their third-party servicers. Examples include imposing fines, imposing specific conditions or restrictions related to administration of Title IV funds, and terminating Title IV participation.¹⁴²

FSA Contractors

FSA's oversight of its third-party contractors generally consists of ensuring that they fulfill the terms and conditions of their contracts with FSA. In general, federal agencies, including FSA, have a number of tools to help ensure a contractor adequately performs a contract.¹⁴³ Examples include requiring corrective action,¹⁴⁴ using performance-based incentives,¹⁴⁵ and terminating the contract. FSA contracts with numerous third-parties for a variety of goods and services related to administration of the Title IV programs, including student loan servicers and PCAs.

In FY2019, FSA contracted with 12 student loan servicers to perform a variety of tasks largely related to the Direct Loan program.¹⁴⁶ FSA uses performance-based incentives to encourage loan servicers to meet desired results (e.g., ensuring borrowers are in current repayment status¹⁴⁷ and meeting customer service satisfaction goals). It does so by basing the number of borrower loan accounts allocated and compensation levels on servicers' ability to meet stated goals.¹⁴⁸ In addition, FSA issues guidance to loan servicers to assist them in day-to-day operations and conducts monitoring activities, such as completing annual compliance audits and assessing borrower-servicer interactions.¹⁴⁹

¹⁴² 34 C.F.R. Part 668, Subpart G. In FY2019, FSA assessed over \$227 million in liabilities against IHEs and their third-party servicers. Liabilities include, for example, repayment of Title IV funds disbursed when an IHE or third-party servicer did not have authority to disburse those funds (e.g., if the IHE did not receive required ED approval to disburse funds at a branch campus). FSA, *Fiscal Year 2019 Annual Report*, p. 82.

¹⁴³ For additional information on maintaining government contractor accountability, see CRS Report R45322, *Selected Legal Tools for Maintaining Government Contractor Accountability*.

¹⁴⁴ Corrective actions typically require contractors to remove, correct, or replace goods or reperform services for failing to conform to contract specifications.

¹⁴⁵ Performance-based incentives reward contractors with payments for meeting or exceeding goals or standards.

¹⁴⁶ The FY2019 appropriation to support these contracts totaled \$826.0 million. President's FY2020 Budget Request for the U.S. Department of Education, Congressional Budget Justification, "Student Aid Administration," pp. Y-33 to Y-34.

¹⁴⁷ For purposes of student loan servicer contracts, *current repayment status* means the number of borrowers who are no more than five days late on their loans. FSA, "Federal Student Aid Contracts," FSA, "Explanation of Allocation and Performance Measure Methodology," <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/servicer/06302018/ExplanationQuarterEnd063018.pdf>.

¹⁴⁸ See, for example, FSA, contract with Great Lakes Educational Loan Servicer, <https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing>; and FSA, "Explanation of Allocation and Performance Measure Methodology."

¹⁴⁹ For additional information on FSA's loan servicer oversight, see ED IG, *Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans*.

FSA also contracts with numerous PCAs¹⁵⁰ to attempt to collect the \$140.3 billion in defaulted loans of 7.2 million borrowers.¹⁵¹ Similar to its oversight of loan servicers, FSA uses performance-based incentives to meet desired goals. PCA compensation is based on a PCA's overall performance.¹⁵² Previously awarded contracts have based borrower account allocation on PCA performance. However, current PCA contracts with FSA are not readily available for review,¹⁵³ and it is unknown how future PCA contracts might be structured. In addition, FSA issues guidance to PCAs to assist them in day-to-day operations and conducts monitoring activities, such as assessing PCAs' interactions with borrowers.¹⁵⁴

Entities Engaged in Selected Title IV Programs

For FFEL program loans not held by ED, guaranty agencies administer many aspects of the program, such as providing default aversion assistance¹⁵⁵ to FFEL program lenders and services related to the federal loan guarantee. In the campus-based programs, IHEs perform many of the administrative functions described earlier in this section (e.g., award disbursement and loan servicing) and are also afforded some discretion in determining the mix and amount of campus-based aid funds awarded to students. FSA oversees these entities in their fulfillment of these functions.

Selected FSA Statistics

As described above, the scope of FSA's operations covers many activities and responsibilities. Selected statistics and additional information provide insight into the scale of FSA's operations. **Table 1** presents information on funds obligated for student aid administration. **Table 2** presents data on full-time equivalent (FTE) employment for federal student aid administration. **Table 3** presents selected trends relevant to student aid administration.

To provide context and a sense of scale, in relation to ED as a whole, nearly every year since ED's creation as a Cabinet-level department (October 1979), functions currently under FSA have accounted for the majority of ED spending (including both Title IV aid disbursements and aid

¹⁵⁰ Prior to April 21, 2017, 11 PCA contracts were awarded in 2014; seven were awarded on December 9, 2016 (of which six recipients already had contracts with FSA); five were award-term contracts (i.e., two-year extensions, issued in 2015, to contracts initially awarded in 2009), and 13 were in "in-payment retention" (that is, the contracts were awarded in 2009 and expired in 2014, but the PCAs have retained borrower accounts that were in repayment status to avoid disruption to borrowers). However, as of the date of this report's publication, the precise number of current PCA contracts held by FSA is uncertain, as there have been numerous issues regarding FSA's recent efforts to procure the services of and enter into new contracts with PCAs. See Stephanie Edelman, "Chapter 6 Begins in ED Default Collection Saga; PCAs Files Pre-Award Complaint," *insideARM*, March 6, 2019, <https://www.insidearm.com/news/00044808-chapter-6-begins-ed-default-collection-sa/>.

¹⁵¹ FSA, "Portfolio by Loan Status (DL, FFEL, ED-Held FFEL, ED-Owned)," 2018 Q4.

¹⁵² A PCA receives either a commission based on the dollar amount of outstanding defaulted loans collected or a flat fee, depending on the collection method used. For additional information, see CRS Report R44845, *Administration of the William D. Ford Federal Direct Loan Program*.

¹⁵³ ED has indicated that PCA contracts are available if obtained via a Freedom of Information Act request. CRS communication with ED personnel on December 1, 2019.

¹⁵⁴ CRS communication with ED personnel on December 1, 2019.

¹⁵⁵ When undertaking default aversion assistance, guaranty agencies work with borrowers to bring into current repayment status loans that are in danger of going into default. CRS Report RL33674, *The Administration of the Federal Family Education Loan and William D. Ford Direct Loan Programs: Background and Provisions* (archived, available to congressional clients upon request).

administration expenses).¹⁵⁶ Moreover, while the number of FTE staff at ED has declined since FY1981, the number of FTEs at FSA has generally increased over time.¹⁵⁷ In FY2016, FSA accounted for about one-third of ED's FTEs.¹⁵⁸ It is estimated that the largest share of staff being supported through student aid administration funding are staff supported through loan servicing contracts (discussed below).

Funding for Federal Student Aid Administration

There are two broad categories of funding obligations for federal student aid administration: (1) salaries and expenses¹⁵⁹ and (2) student loan servicing.¹⁶⁰ **Table 1** presents annual funding obligated for federal student aid for FY2009-FY2019.¹⁶¹ Over this period of time, obligations for federal student aid administration increased from \$754 million in FY2009 to \$1.7 billion in FY2019. Obligations for student aid administration have increased by 47% since FY2011 (the first full fiscal year in which no new FFEL program loans were made). Beginning with FY2016, obligations for loan servicing have constituted the majority of student aid administration costs.¹⁶²

Table 1. Obligations for Federal Student Aid Administration

FY2009-FY2019 (dollars in millions)

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019 ^a
Student aid administration	754 ^b	662 ^b	829 ^b	904 ^b	988 ^b	837 ^b	824 ^b	735 ^b	724 ^b	784 ^b	699 ^b
Discretionary servicing activities	— ^c	371	311	349	383	565	643	838	862	908	980
Total new obligations	754	1,033	1,140	1,253	1,371	1,402	1,467	1,573	1,586	1,692	1,679

Source: OMB, *Budget of the United States Government, FY2011-FY2020*, Appendix for the Department of Education.

Notes: *Obligation* means a binding agreement that will result in an outlay either immediately or in the future. OMB Circular A-11 (2018), Section 20—Terms and Concepts/.

a. Estimated.

¹⁵⁶ GAO, *U.S. Department of Education: Resource and Achievement Trends*, GAO-18-154, February 7, 2018, pp. 8-9.

¹⁵⁷ GAO, *U.S. Department of Education*, p. 10.

¹⁵⁸ GAO, *U.S. Department of Education*.

¹⁵⁹ Salaries and expenses includes, for example, personnel compensation and benefit costs.

¹⁶⁰ Student loan servicing includes payments made to loan servicers pursuant to their contracts with FSA. Loan servicers perform myriad functions related to student loan administration, including but not limited to processing payments, communicating with borrowers about the status of their loans, and providing information about loan benefits and features.

¹⁶¹ FY2009 was the fiscal year following enactment of the HEOA, the most recent comprehensive reauthorization of the HEA.

¹⁶² Some of the growth in loan servicing costs (evident since FY2011) is likely attributable to the growth in the number of borrowers with loans being serviced and in outstanding loans. Some is also likely due to the termination of authority to make new loans under the FFEL program, under which loan servicing was largely the responsibility of private lenders. Under the FFEL program, different mechanisms were used to provide federal subsidies that helped cover such loan servicing costs. For additional information, see CRS report RL33674, *The Administration of the Federal Family Education Loan and William D. Ford Direct Loan Programs: Background and Provisions* (archived, available to congressional requesters upon request).

- b. Salaries and expenses.
- c. Servicing activities not reported separately from student aid administration.

FTE Employment for Federal Student Aid Administration

Figures on FTE employment for FY2009-FY2019 for federal student aid administration are presented in **Table 2**. The number of FTE employees working on federal student aid administration has risen from 1,058 in FY2009 to 1,480 in FY2019, a 40% increase. Other offices within ED besides FSA also perform student-aid related administrative activities.¹⁶³ In addition, a number of contractor staff (e.g., loan servicing staff) provide outsourced business operations for student aid administration. For example, FSA reported that approximately 12,000 contracted staff augmented its FTE employees in FY2016.¹⁶⁴

**Table 2. Full-Time Equivalent (FTE) Employment
for Federal Student Aid Administration**
FY2009-FY2019

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
FTE employment: FSA	980	1,022	1,211	1,234	1,205	1,235	1,291	1,369	1,382	1,257	1,251
FTE employment: other ED offices	78	91	87	91	91	85	84	84	144	179	229 ^a
FTE employment: Total (ED/FSA) for student aid administration	1,058	1,113	1,298	1,325	1,296	1,320	1,375	1,453	1,526	1,436	1,480 ^a

Source: OMB, *Budget of the United States Government, FY2011-FY2020*, Appendix for the Department of Education; FSA, *Annual Reports*, FY2009-FY2020.

Notes: FTE employment is the basic measure of the levels of employment used in the budget. It is the total number of hours worked (or to be worked) divided by the number of compensable hours applicable to each fiscal year. OMB Circular A-11(2018), Section 20—Terms and Concepts.

a. Estimated

Trends Relevant to Federal Student Aid Administration

Over the past several years, the workload of FSA has increased considerably. **Table 3** provides information related to FSA's workload, including the number of FAFSAs processed, the number of students receiving aid, the total dollar amount of federal student aid provided through the Title IV federal student aid programs, the total number of federal student loan recipients who have outstanding balances, and the total dollar amount of principal and interest outstanding.

As shown in **Table 3**, the number of individuals receiving Title IV aid and the number of FAFSAs processed peaked in FY2011 and FY2012, respectively. However, the total number of federal student loan recipients with outstanding loan balances and the total dollar amount of principal and

¹⁶³ These employees are located in the Office of Finance and Operations; the Office of Chief Information Officer; the Office of General Counsel; the Office of Postsecondary Education; the Office of Planning, Evaluation, and Policy Development; and the Office of the Under Secretary. President's FY2020 Budget Request for the U.S. Department of Education, Congressional Budget Justification, "Student Aid Administration," p. Y-30.

¹⁶⁴ FSA, *Fiscal Year 2016 Annual Report*, "Letter for the Chief Operating Officers of Federal Student Aid," November 14, 2016.

interest outstanding increased substantially over the period examined and increased year-over-year for each complete fiscal year under review.

Table 3. Selected Trends Related to Federal Student Aid Administration

FY2009-FY2019 (in millions)

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Total number of FAFSAs processed (award year) ^a	16.4	19.5	21.1	21.9	21.8	21.2	20.6	19.8	18.7	18.9	n.a.
Unduplicated count of student aid recipients ^b	12.7	13.8	14.7	13.9	13.4	12.8	12.0	11.9	11.2	10.8	11.0
Total amount of federal student aid awarded (dollars) ^c	142,050	162,296	171,620	177,225	164,241	169,614	173,009	170,920	174,529	167,982	175,692
Total amount of federal student aid awarded, excluding Consolidation Loans (dollars) ^d	129,310	145,138	147,815	141,261	136,738	135,045	127,041	125,257	125,767	126,350	130,395
Unduplicated count of recipientse who have federal student loans outstanding	32.1	34.3	36.5	38.3	39.6	40.7	41.6	42.3	42.6	42.9	42.2 ^f
Total principal and interest outstanding on federal student loans (dollars) ^e	657,000	749,800	848,200	948,200	1,040,200	1,129,800	1,212,400	1,292,200	1,366,900	1,439,200	1,481,100 ^f

Source: FSA, Application Volume Reports, FAFSA Volume Reports, by State, Application Cycle 2008-2019 through Application Cycle 2017-2018; OMB, *Budget of the United States Government, FY2011-FY2020*, Appendix for FSA; FSA, Federal Student Loan Portfolio Summary FY2009-FY2019Q3.

Notes: All figures are for fiscal years, with the exception of total number of FAFSAs processed, which are presented based on final year of application cycle.

- Prior to award year 2017-2018, the FAFSA became available for submission 18 months prior the award year ending in the calendar year shown in the header. Beginning in award year 2017-2018, the FAFSA became available for submission 21 months prior to the award year ending in the calendar year shown in the header. For additional information, see ED, "Changes Impacting the 2017-2018 FAFSA: Frequently Asked Questions," <https://financialaidtoolkit.ed.gov/resources/fafsa-changes-17-18-faq.pdf>.
- Unduplicated count of students aided through federal student aid programs authorized under HEA, Title IV.
- Total aid available through federal student aid programs authorized under HEA, Title IV.
- Total aid available through federal student aid programs authorized under HEA, Title IV, other than Consolidation Loans. A Consolidation Loan allows a borrower to combine one or more previously obtained federal student loans into a single, new loan.
- A recipient is the student who benefits from the federal student loan. In most cases, the recipient is the borrower. For Parent PLUS Loans, the parent is the borrower and the child is the recipient.
- Data are through the third quarter of FY2019.

- g. Outstanding balance of principal and interest at the end of the fiscal year for federal student loans made through the Direct Loan, FFEL, and Perkins Loan programs.

FSA Structure

Section 141 of the HEA establishes FSA's PBO structure as a discrete management unit within ED and subject to the direction of the Secretary in the exercise of its functions. FSA operates under the coordination of the Office of the Under Secretary, which is the office within ED that coordinates policies and programs related to postsecondary education, as well as vocational and adult education.¹⁶⁵ Although the HEA specifically establishes two roles within FSA (the COO and the student loan ombudsman), much of FSA's organizational structure and leadership arrangements have been established through administrative action by the COO, subject to the direction of the Secretary.¹⁶⁶ In addition, FSA interacts with various other offices within ED to facilitate the implementation of ED policies in aid administration.

Statutorily Mandated Roles

FSA is composed of numerous offices, each responsible for varying aspects of Title IV student aid administration.¹⁶⁷ Two FSA roles are specifically mandated by the HEA: the chief operating officer and the student loan ombudsman. These offices have been charged with carrying out both statutory and administratively delegated functions, as discussed below.

Chief Operating Officer (COO)

The HEA assigns several responsibilities to FSA's COO. The Secretary has delegated additional responsibilities to the COO. In practice, while responsibilities are assigned or delegated to the COO, individual employees or offices within FSA may perform the day-to-day tasks associated with fulfilling those responsibilities.

HEA Section 141(d) vests management of FSA in a COO and mandates several of the COO's activities and responsibilities. Annually, the COO and the Secretary must publically make available a five-year performance plan for FSA that establishes measurable goals and objectives for FSA.¹⁶⁸ In developing the plan, the Secretary and the COO are to consult with stakeholders such as students, IHEs, and Congress.¹⁶⁹

The COO is required annually to submit to Congress a report on FSA's performance that is to include, among other items, (1) an independent financial audit, (2) the results achieved during the year relative to the performance plan goals, (3) the evaluation of the COO and senior managers, and (4) recommendations for legislative and regulatory changes to improve administration of the Title IV student aid programs.¹⁷⁰ In preparing the report, the COO is to establish appropriate ways

¹⁶⁵ ED, *FY2019 Agency Financial Report*, November 15, 2019, p. 4.

¹⁶⁶ HEA §141(b)(4). See also memorandum from the Secretary of Education to the FSA COO, "Delegations of Human Resource Authorities," January 9, 2006, p. 7, https://www2.ed.gov/about/offices/list/om/docs/delegations/fs_fsa_eaen58.doc.

¹⁶⁷ For an organizational chart depicting each FSA office, see FSA, *Fiscal Year 2019 Annual Report*, p. 10.

¹⁶⁸ FSA's performance plans are available at FSA, "Strategic Planning and Reporting," <https://studentaid.ed.gov/sa/strategic-planning-and-reporting>.

¹⁶⁹ HEA §141(c)(1).

¹⁷⁰ HEA §141(c)(2).

to consult with stakeholders, including students and IHEs. FSA states that the *Annual Report* satisfies these responsibilities.¹⁷¹

HEA Section 142 authorizes the COO, subject to the authority of the Secretary, to procure property and services to perform its functions. In practice, while the Secretary is considered ED's senior procurement official, it appears that FSA typically has significant autonomy in its contracting functions.¹⁷²

The HEA specifies that the Secretary maintains responsibility for the development and promulgation of policy and regulations related to Title IV aid. However, in developing and promulgating Title IV student aid policies and regulations, the Secretary is required to request the advice of and work in cooperation with the COO.¹⁷³ FSA's Policy Liaison and Implementation Staff (PLIS) is the office within FSA that consults with the Secretary on Title IV student aid policies and regulations. Among other functions, PLIS implements policy (and supports FSA staff in implementing policy) developed by ED through the Office of the Secretary, the Office of the Under Secretary, and OPE. PLIS also works with the Office of the Under Secretary to¹⁷⁴

- formulate policy recommendations and identify policy issues affecting the Title IV student aid programs;
- provide advice on regulations, policies, administrative policy guidance, and procedures;
- prepare preliminary drafts of subregulatory guidance for consideration by ED and draft policy electronic announcements for review by FSA staff; and
- design, manage, and monitor the Experimental Sites Initiative.¹⁷⁵

Finally, the HEA specifies that the COO is to disseminate information to stakeholders on the student loan ombudsman (described below).¹⁷⁶

The Secretary may delegate additional functions to the COO (and FSA in general) to achieve FSA's purposes.¹⁷⁷ Authorities that the Secretary has delegated to the COO include, but are not limited to,

- authority to take certain personnel actions, such as carrying out reductions-in-force for FSA in coordination with ED, approving telework agreements, and handling FSA employee grievances;¹⁷⁸

¹⁷¹ FSA, *Fiscal Year 2019 Annual Report*, p. i.

¹⁷² CRS communication with FSA personnel, April 17, 2019.

¹⁷³ HEA §141(b)(1). Additionally, the Secretary shall request cost estimates from FSA for system changes required by specific policy proposals and assist FSA in identifying goals for the administration of systems used to administer the Title IV aid programs and updating such systems to current technology.

¹⁷⁴ CRS communication with ED personnel on December 1, 2019.

¹⁷⁵ HEA Section 487A(b) authorizes ED to waive certain statutory and regulatory requirements related to IHEs' aid award processes to test and provide recommendations to the Secretary on the impact and effectiveness of proposed regulations or new management initiatives. See FSA, "Experimental Sites," <https://experimentalsites.ed.gov/exp/index.html>.

¹⁷⁶ HEA §141(f)(2).

¹⁷⁷ HEA §141(b)(3)). See also ED, Office of Management, "Federal Student Aid (FSA)," <https://www2.ed.gov/about/offices/list/om/delegations/fsa.html>.

¹⁷⁸ Memorandum from the Secretary of Education to the FSA COO, "Delegations of Human Resources Authority."

- programmatic authorities related to Title IV programs, such as awarding certain formula grants (e.g., awarding campus-based funds to IHEs) and entering into agreements with entities outside of ED (e.g., IHEs or other federal agencies);¹⁷⁹
- authority to compromise, waive, and write-off certain claims against individuals under Title IV programs, such as waiving or writing off the collection of current or defaulted federal student loans;¹⁸⁰
- authority to develop, implement, and manage an Employee Personnel Security Program and a Contractor Personnel Security Program in accordance with established ED directives and guidance.¹⁸¹

Student Loan Ombudsman

HEA Section 141(f) specifies that the COO, in consultation with the Secretary, shall appoint an ombudsman “to provide timely assistance to borrowers of loans made, insured, or guaranteed under Title IV.” Specifically, the ombudsman is to (1) review and attempt to informally resolve borrower disputes with Title IV loan program participants and (2) compile and analyze data on borrower complaints and make recommendations. Each year, the ombudsman is to submit to the COO (for inclusion in the COO’s annual report) a report describing the ombudsman’s activities and effectiveness during the preceding year.

FSA’s Ombudsman Group is the specific office tasked with fulfilling the HEA Section 141 requirements for a student loan ombudsman. The Ombudsman Group also administers FSA’s comprehensive informal complaint resolution and customer inquiry/case resolution processes related to all Title IV student aid programs, not just those related to student loans, although the most frequent types of cases received by the Ombudsman Group relate to student loans.¹⁸² Addressing customer cases regarding non-loan Title IV student aid programs is not part of the ombudsman’s specific statutory mandate.¹⁸³

FSA’s Relationship with Other Actors

Many tasks related to student aid are vested (either through statute or secretarial authority) with other ED offices,¹⁸⁴ and other executive branch entities may have an interest in or jurisdiction over aspects of federal student aid. In addition, FSA is subject to congressional direction (e.g., via

¹⁷⁹ Memorandum from the Secretary of Education to the FSA COO, “Delegation of Program Authority,” May 29, 2008, at <https://www2.ed.gov/about/offices/list/om/docs/delegations/eaen59.doc>.

¹⁸⁰ Memorandum from the Secretary of Education to Director, Program Management Services, Business Operations, FSA, through the FSA COO, “Delegation of Authority for Collection and Compromise of Claims Against Individuals under the Federal Student Aid (FSA) Programs,” November 9, 2009, <https://www2.ed.gov/about/offices/list/om/docs/delegations/eaen68.doc>.

¹⁸¹ Memorandum from the Acting Assistant Secretary, Office of Management to the FSA COO, “Delegation of Authority: Employee Personnel Security Program,” September 13, 2018, <https://www2.ed.gov/about/offices/list/om/docs/delegations/emen85.docx>; and memorandum from the Acting Assistant Secretary, Office of Management to the FSA COO, “Delegation of Authority: Contractor Personnel Security Program,” September 13, 2018, <https://www2.ed.gov/about/offices/list/om/docs/delegations/emen86.docx>.

¹⁸² FSA, *Fiscal Year 2019 Annual Report*, pp. 86-90.

¹⁸³ However, HEA Section 141(a)(2) does specify that one of FSA’s broad purposes is to improve customer service to students and other Title IV student aid program participants. The FSA Ombudsman Group’s role of addressing disputes regarding non-loan Title IV aid programs could be viewed as fulfilling this statutory purpose.

¹⁸⁴ For an organizational chart of ED, see ED, “Operating Structure,” <https://www2.ed.gov/about/offices/or/index.html>.

amendments to the HEA or appropriations laws) and oversight. As such, FSA may have occasion to interact and maintain relationships with numerous outside stakeholders.

ED's Office of the Secretary

The Secretary “is responsible for the overall direction, supervision, and coordination of all activities of [ED] and is the principal adviser to the President on Federal policies, programs, and activities related to education in the United States.”¹⁸⁵ The Office of the Secretary directly oversees the Office of the Under Secretary (which, in turn, oversees FSA). In addition, the Office of the Secretary oversees several other entities that interact with FSA on a regular basis:

- The **Office of the Inspector General** is responsible for “identifying waste, fraud, abuse, and criminal activity involving ED funds, programs, and operations.”¹⁸⁶ To this end, it conducts independent audits and reviews of ED programs, including the Title IV student aid programs and FSA’s operations.
- The **Office of General Counsel (OGC)** is responsible for providing “legal assistance to the Secretary concerning the programs and policies of the Department.”¹⁸⁷ OGC also provides legal assistance to other ED offices, including FSA. Among other services, OGC provides legal advice, litigation services, legislative services (e.g., drafts legislative proposals),¹⁸⁸ and assistance in drafting subregulatory guidance.¹⁸⁹
- The **Office of Budget Service**¹⁹⁰ has the lead responsibility for, among other functions, ED’s budget, budget and related legislative policies for ED programs, and the review and analysis of ED program operations, including budget and policy implementation. It develops cost estimates for the Title IV student aid programs and maintains computer models to estimate such costs, coordinates methodology and data with FSA and OPE, and liaises with FSA other ED offices to analyze data sources and assumptions for the student aid cost estimation models.¹⁹¹

ED's Office of the Under Secretary

The Office of the Under Secretary oversees policies, programs, and activities related to vocational and adult education, postsecondary education, college grant aid, and federal student loans. The Under Secretary directs and coordinates policies, programs, and activities related to postsecondary education and federal student aid.¹⁹² The Under Secretary also supervises FSA, which administers federal student aid, and OPE, which provides overall direction, coordination,

¹⁸⁵ ED, “US Department of Education Principal Office Functional Statements: Office of the Secretary,” https://www2.ed.gov/about/offices/list/om/fs_po/osods/intro.html.

¹⁸⁶ ED, “Office of Inspector General,” <https://www2.ed.gov/about/offices/list/oig/index.html?src=ft>.

¹⁸⁷ ED, “Office of the General Counsel,” <https://www2.ed.gov/about/offices/list/ogc/index.html>.

¹⁸⁸ ED, “Office of the General Counsel.”

¹⁸⁹ CRS communication with FSA personnel, April 17, 2019.

¹⁹⁰ The Office of Budget Service is housed within the Office of Finance and Operations, which reports directly to the Office of the Secretary.

¹⁹¹ ED, “Budget Services,” https://www2.ed.gov/about/offices/list/om/fs_po/fo/budget-service.html.

¹⁹² ED, “US Department of Education Principal Office Functional Statements: Office of the Under Secretary,” https://www2.ed.gov/about/offices/list/om/fs_po/ous/intro.html.

and leadership on matters related to postsecondary education. The Under Secretary serves as the principal advisor to the Secretary on postsecondary education.¹⁹³

As previously described, HEA Section 141 specifies that the Secretary maintains responsibility for the development and promulgation of policy and regulations related to Title IV aid but must coordinate with FSA.¹⁹⁴ With Under Secretary oversight, OPE fulfills the policy development and promulgation role for the Secretary. OPE develops both regulations and subregulatory guidance for the Title IV student aid programs (e.g., Dear Colleague letters to financial aid professionals).¹⁹⁵ In doing so, OPE liaises with FSA's PLIS (and other offices such as OGC) in the development, implementation, and dissemination of Title IV student aid policy.¹⁹⁶

Other Executive Branch Entities

Other executive branch entities may have some level of authority over or interest in aspects of federal student aid programs. As such, ED and FSA may maintain relationships with these entities to help ensure proper functioning of the aid programs. Based on its functions, FSA likely, at least in part, has played a role in these partnerships even when ED may be officially responsible.¹⁹⁷

Executive branch entities with which ED and FSA may maintain relationships to help ensure proper functioning of the aid programs include the following:

- **Department of the Treasury.** FSA obtains funds from Treasury to make available to students in the form of federal student aid. FSA may refer a borrower's defaulted loan to the Treasury Offset Program for offset of certain benefits such as federal income tax refunds and Social Security benefits. Moreover, while the Debt Collections Improvement Act generally requires federal agencies to transfer nontax debts that are 180 days or more delinquent to Treasury's Fiscal Service for centralized debt collection (referred to as cross-servicing),¹⁹⁸ since 2001, the Secretary of the Treasury has granted FSA a permanent exemption from this requirement.¹⁹⁹ Thus, FSA is responsible for collecting delinquent and defaulted federal student loan debt assigned to or held by ED. The act also authorizes the Secretary of the Treasury to exempt certain classes of debt from cross-servicing. Since 2005, debts that are being collected

¹⁹³ ED, "US Department of Education Principal Office Functional Statements: Office of Postsecondary Education," https://www2.ed.gov/about/offices/list/om/fs_po/ope/intro.html.

¹⁹⁴ HEA §141(b)(1).

¹⁹⁵ ED, "US Department of Education Principal Office Functional Statements: Office of Postsecondary Education," https://www2.ed.gov/about/offices/list/om/fs_po/ope/intro.html.

¹⁹⁶ ED, "US Department of Education Principal Office Functions Statements: Federal Student Aid," https://www2.ed.gov/about/offices/list/om/fs_po/fsa/office.html.

¹⁹⁷ This section of the report describes some of those entities that may have jurisdiction over or interest in the federal student aid programs. It is not intended to be an exhaustive list. In many instances, publicly available materials relating to these relationships mention ED and not specifically FSA. In this section of the report, ED may be referenced when the precise nature of the relationship among ED, FSA, and other entities is unclear.

¹⁹⁸ 31 U.S.C. §3711(g)(1).

¹⁹⁹ The exemption applies to delinquent and defaulted federal student loan debt assigned to or held by ED (e.g., Direct Loan program loans, and FFEL program loans and Perkins Loans that have been purchased by or assigned to ED). U.S. Department of the Treasury, Under Secretary, Letter from Donald V. Hammond, Acting Under Secretary for Domestic Finance, to James R. Lynch, Chief Financial Officer, Student Financial Assistance, ED, May 11, 2001.

through administrative wage garnishment²⁰⁰ and meet certain conditions have been exempted from cross-servicing.²⁰¹

- **Consumer Financial Protection Bureau (CFPB):** The CFPB²⁰² has asserted a role in ensuring compliance with consumer protection laws that may apply to federal student loans. For example, the CFPB has brought lawsuits against some FSA-contracted federal student loan servicers for consumer compliance violations relating to federal student loan servicing.²⁰³ CFPB also maintains resources for both federal student loan and private education loan borrowers²⁰⁴ and fields complaints from student loan borrowers.²⁰⁵ The CFPB and ED participated in an interagency task force²⁰⁶ to help ensure sufficient oversight of proprietary IHEs.²⁰⁷ However, it appears that the CFPB and ED may no longer be working together as closely as they previously had been.²⁰⁸ For example, in 2017, ED terminated its memoranda of understanding with the CFPB to share data and information relating to the student loan servicing market, stating that the CFPB violated the terms of the memoranda.²⁰⁹
- **Department of Justice (DOJ):** DOJ may play a role in law enforcement related to federal student loans, including, through U.S. Attorneys' offices, prosecuting violations of federal criminal laws and representing the federal government in civil proceedings. For instance, FSA may refer a defaulted federal student loan borrower's account to DOJ for civil litigation against the borrower.²¹⁰ In addition, DOJ may file lawsuits against federal student loan program participants, such as

²⁰⁰ Under administrative wage garnishment, ED is authorized to collect up to 15% of a borrower's disposable pay from her or her employer to pay the borrower's debt. 34 C.F.R. Part 34.

²⁰¹ U.S. Department of the Treasury, Financial Management Service, "Exemption from Mandatory Cross-servicing under the Debt Collection Improvement Act of 1996," August 18, 2005, <https://www.fiscal.treasury.gov/files/dms/AWGExemption.pdf>.

²⁰² For additional information on the CFPB, see CRS In Focus IF10031, *Introduction to Financial Services: The Bureau of Consumer Financial Protection (CFPB)*.

²⁰³ See, for example, CFPB, "CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment," press release, January 18, 2017, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/>.

²⁰⁴ See, for example, CFPB, "Student Loans," <https://www.consumerfinance.gov/ask-cfpb/category-student-loans/>.

²⁰⁵ See, for example, CFPB, "Submit a Complaint," <https://www.consumerfinance.gov/complaint/>.

²⁰⁶ ED, "Obama Administration Announces Final Rules to Protect Students from Poor-Performing Career College Programs," press release, October 30, 2014, <https://www.ed.gov/news/press-releases/obama-administration-announces-final-rules-protect-students-poor-performing-career-college-programs>.

²⁰⁷ For HEA Title IV purposes, a proprietary IHE is, among other requirements, one that is neither public nor private, nonprofit. For additional information, see CRS Report R43159, *Institutional Eligibility for Participation in Title IV Student Financial Aid Programs*. It appears that the task force has since been disbanded. Andrew Kreighbaum, "For-Profit Task Force No More," *Inside Higher Ed*, May 9, 2017, <https://www.insidehighered.com/news/2017/05/09/observers-see-demise-interagency-task-force-used-obama-administration-monitor>.

²⁰⁸ See, for example, Kellie Mejdrieh, "CFPB Student Loan Ombudsman Resigns, Blasts Mulvaney," *Roll Call*, August 27, 2018, <https://www.rollcall.com/news/politics/cfpb-student-loan-ombudsman-resigns-blasts-mulvaney>.

²⁰⁹ Andrew Kreighbaum, "Education Dept. Ends Partnership with CFPB," *Inside Higher Ed*, September 5, 2017. Letter from Kathleen Smith, Acting Assistance Secretary, Office of Postsecondary Education, and Dr. A Wayne Johnson, Chief Operating Officer, FSA, to Richard Cordray, Director, CFPB, August 31, 2017.

²¹⁰ 34 C.F.R. §30.1(a)(3).

contracted student loan servicers, for failure to comply with federal statutes related to student loans²¹¹ and individuals for acts of fraud.²¹²

Other executive branch entities with which ED and FSA may interact include the Federal Trade Commission,²¹³ the Internal Revenue Service (IRS),²¹⁴ the Department of Veterans Affairs,²¹⁵ and the Social Security Administration.²¹⁶

In processing the FAFSA, FSA's Central Processing System matches student provided information against other federal entities' databases to confirm elements of each student's aid eligibility. In total, the Central Processing System performs matches against databases maintained by the Department of Defense, DOJ, the Social Security Administration, the Department of Veterans Affairs, the Department of Homeland Security, and the Selective Service System.²¹⁷ In addition, FSA's systems interface with the IRS Data Retrieval Tool, which links students', students' spouses, and parents' IRS tax information to the FAFSA and/or the income verification component of applying for and recertifying information for the various income-driven repayment plans.²¹⁸

To initiate and/or maintain these relationships, ED and FSA may enter into formal agreements (e.g., memoranda of understanding) with the relevant federal entity or maintain a less formal interagency relationship.²¹⁹

Congress

Congress may guide and affect the way FSA operationalizes and manages the day-to-day functions of the federal student aid programs. First, Congress and the President may enact laws

²¹¹ DOJ, "Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans," press release, May 13, 2014, <https://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging>.

²¹² DOJ, "Danville Man Sentenced on Wire Fraud, Identity Theft, Student Loan Fraud Charges," press release, March 6, 2019, <https://www.justice.gov/usao-wdva/pr/danville-man-sentenced-wire-fraud-identity-theft-student-loan-fraud-charges>.

²¹³ See, for example, ED, "U.S. Department of Education Reaches Settlement with DeVry University Over Job Placement Claims," press release, October 13, 2016, <https://www.ed.gov/news/press-releases/us-department-education-reaches-settlement-devry-university-over-job-placement-claims>.

²¹⁴ See, for example, ED, "Update: Internal Revenue Service (IRS) and Federal Student Aid (FSA) Statement on IRS Data Retrieval Tool (DRT)," press release, March 30, 2017, <https://www.ed.gov/news/press-releases/update-internal-revenue-service-irs-and-federal-student-aid-fsa-statement-irs-data-retrieval-tool-drt>.

²¹⁵ See, for example, ED, "U.S. Department of Education and U.S. Department of Veterans Affairs Team Up to Simplify Student Loan Discharge Process for Disabled Veterans," press release, April 16, 2018, <https://www.ed.gov/news/press-releases/us-department-education-and-us-department-veterans-affairs-team-simplify-student-loan-discharge-process-disabled-veterans>.

²¹⁶ See, for example, Andrew Kreighbaum, "Agencies at Loggerheads Over Gainful-Employment Data," *Inside Higher Ed*, December 6, 2018, <https://www.insidehighered.com/news/2018/12/06/education-department-says-data-dispute-behind-failure-enforce-gainful-employment>.

²¹⁷ FSA, *2018-2019 Federal Student Aid Handbook*, p. AVG-7; and ED, Office of Management, *Department of Education's Computer Matching Agreements (CMA): Federal Student Aid*, <https://www2.ed.gov/about/offices/list/om/pirms/cma.html#fsa>.

²¹⁸ FSA, *2018-2019 Federal Student Aid Handbook*, p. AVG-15; and FSA, "IRS Data Retrieval Tool (DRT) Restored for Electronic IDR Plan Request," June 2, 2017, <https://ifap.ed.gov/eannouncements/060217IRSDRTRestoredIDR.html>.

²¹⁹ The extent to which relationships are formalized depends on the nature of the relationship. CRS communication with FSA personnel, April 17, 2019.

that impact or amend federal student aid programs or FSA itself. For example, Congress could amend the HEA Sections 141-143, which relate specifically to FSA as a PBO, or the Title IV student aid programs in general. In addition, during the appropriations process, Congress determines discretionary funding levels for FSA activities.²²⁰ In some instances, Congress may include stipulations or directives regarding the use of these funds.²²¹

Second, Congress exercises oversight of FSA.²²² This oversight may include requiring FSA or ED representatives to testify before Congress, requiring or requesting FSA to report additional information regarding its operations, and requesting that GAO or the IG conduct an in-depth investigation of FSA. Congress has exercised its oversight authority regarding Title IV aid administration numerous times in recent years.²²³

FSA's Performance under Five-Year Performance Plan

The COO is required to annually report to Congress on FSA's progress in achieving its goals and objectives described in its five-year performance plan (also known as the strategic plan). Among other items, the performance plan is to address FSA's responsibilities in improving service to stakeholders, reducing costs of administering the Title IV student aid programs, improving and integrating the systems that support the student aid programs, and other areas identified by the Secretary. The Secretary and FSA, in consultation with stakeholders, develop the strategic objectives described in FSA's five-year performance plan. As part of the plan, FSA develops the metrics by which its performance under these strategic objectives are measured.²²⁴ FSA also sets its specific annual goals for meeting each metric. In doing so, most of its annual goals are based on FSA's performance under the metric in the prior year.²²⁵

²²⁰ Funds for Title IV aid administration are largely provided via discretionary annual appropriations, pursuant to HEA Section 458.

²²¹ For example, in providing funds for Title IV administration under the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 (P.L. 115-245), Congress stipulated that ED "shall not award funding for any contract solicitation for a new Federal student loan servicing environment ... unless such an environment provides for the participation of multiple student loan servicers that contract directly with the Department of Education to manage a unique portfolio or borrower accounts and the full life-cycle of loans from disbursement to pay-off with certain limited exceptions, and allocates student loan borrower accounts to eligible student loan servicers based on performance."

²²² For additional information on congressional oversight, see CRS In Focus IF10015, *Congressional Oversight and Investigations*.

²²³ See, for example, U.S. Congress, Joint Hearing, House Committee on Oversight and Government Reform, Subcommittee on Government Operations and House Committee on Education and the Workforce, Subcommittee on Higher Education and Workforce Training, *Federal Student Aid: Performance-Based Organization review*, 114th Cong., 1st sess., November 18, 2015, and House Committee on Education and Labor, "Murray, Davis Request Information from U.S. Department of Education on Mismanagement of Federal Student Loan Programs," press release, March 3, 2019, <https://edlabor.house.gov/media/press-releases/murray-davis-request-information-from-us-department-of-education-on-mismanagement-of-federal-student-loan-program>.

²²⁴ In preparing the annual report, FSA is to establish appropriate means to consult with student aid stakeholders regarding their satisfaction with the aid delivery system and seek suggestions on ways in which to improve the system (HEA §141(c)(3)).

²²⁵ FSA, *Strategic Plan Fiscal Years 2015-19*, November 2015 (updated November 2016), p. 34, Exhibit 34, <https://studentaid.ed.gov/sa/strategic-planning-and-reporting>.

Table 4 presents information on FSA’s performance for each metric under its strategic objectives as set forth in its *Strategic Plan: FY2015-19*²²⁶ for FY2016-FY2019.²²⁷ For each metric, FSA’s goal and actual performance are presented. The text for FSA’s actual performance under each measurement indicates whether FSA met its goal in the given year. Bolded text indicates that FSA did not achieve its goal, while regular text indicates that FSA did achieve its goal.

In general, over the four fiscal years examined, FSA met most of its goals. FSA consistently met its goals relating to usership of its online resources (customer visits to studentaid.gov and social media channel subscribership), persistence among first-time filing aid recipients, percentage of contract dollars competed by FSA, and collection rate. In addition, it consistently met both of its goals under Strategic Goal C—improving operational efficiency and flexibility—which included goals on aid delivery cost per application and percentage of outstanding Direct Loans in current repayment status. For many instances in which FSA did not meet its goals, in the following year, FSA downwardly adjusted its goal under the relevant metric. For those instances in which FSA met its goal, whether it subsequently adjusted the goals in the following year varied.

²²⁶ For a full description of FSA’s strategic goals and the objectives encompassed by those goals, see FSA, *Strategic Plan Fiscal Years 2015-19*.

²²⁷ FSA published its *Strategic Plan FY2015-19* in November 2015, about the same time as it published its *Annual Report FY2015* and approximately two months after the end of FY2015. Thus, the strategic goals in the *Annual Report FY2015* do not completely align with the strategic goals presented in FSA’s *Strategic Plan FY2015-19*. As such, CRS only presents FSA performance data for FY2016-FY2018.

Table 4. FSA's Performance Under Its Five-Year Performance Plan

FY2016-FY2019

(Figures in bold text indicate a goal was not met)

Performance Metric	FY2016		FY2017		FY2018		FY2019	
	Actual	Goal ^a	Actual	Goal ^a	Actual	Goal ^a	Actual	Goal ^a
Strategic Goal A: Improve quality of service for customers across the entire student aid life cycle^b								
Percent of First-Time FAFSA Filers Among High School Seniors ^c	57.5%	59.5%-61.5%	60.2%	56.6%-58.5%	67.4%	66.4%-68.4% ^d	65.9%	67.0%-69.0%
Persistence among First-Time Filing Aid Recipients ^e	79.7%	78.5%-80.5%	82.6%	78.7%-80.7%	82.5%	81.6%-83.6%	82.8%	82.0%-84.0%
Customer Visits to studentaid.gov ^f	47.2 million	>=43.4 million	44.3 million	>=43.3 million	44.5 million	>=43.3 million	183.7 million ^g	>=150.0 million
Social Media Channel Subscribership ^h	528,251	>454,000	584,241	>=500,000	607,241	>=590,000	634,556	>=615,000
American Customer Satisfaction Index (ACSI) Aid Life Cycle Surveys ⁱ	70.4	74	69.9	69.4-71.4 ^j	70.6	68.9-70.9	70.0	70.0-72.0
Strategic Goal B: Proactively manage the student aid portfolio to mitigate risk^k								
Improper Payment Rate ^l	4.85% ^m	n/a	4.97% ^m	4.85%	4.95% ^m	4.97%	0.93% ⁿ	4.95%
Percentage of Borrowers >90 Days Delinquent ^o	8.8% ^o	9.9%	8.3% ^o	7.4%	7.4% ^o	8.2%	9.8% ^p	10.1%
Strategic Goal C: Improve operational efficiency and flexibility^q								
Aid Delivery Costs Per Application ^r	\$11.53	\$13.33	\$10.68	\$11.46	\$8.83	\$12.16	\$9.55	\$11.99
Outstanding Direct Loan Portfolio in Current Repayment Status ^s	85.4%	85.3%	85.7%	84.9%-85.9%	86.5%	85.0%-86.0%	86.7%	85.5%-86.6%

Performance Metric	FY2016		FY2017		FY2018		FY2019	
	Actual	Goal ^a	Actual	Goal ^a	Actual	Goal ^a	Actual	Goal ^a
Strategic Goal D: Foster trust and collaboration among stakeholders^t								
Ease of Doing Business with FSA ^u	72.3	74.3-77.3	73.4	71.3-73.3	74.5	71.9-74.9	74.0	73.4-75.4
Percentage of Contract Dollars Completed by FSA ^v	92.9%	89.3%-91.3%	95.2%	89.3%-91.3%	96.8%	89.3%-91.3%	97.6%	95.8%-97.8%
Collection Rate ^w	\$53.07	\$51.79	\$59.69	\$51.68	\$62.15	\$59.24	\$58.56	\$53.30
Strategic Goal E: Invest in expanded workforce capability^x								
Employee Engagement Index ^y	67.4%	66.9%-68.9%	69.7%	65.4%-69.4%	62.0%	68.7%-70.7%	61.0%	61.0%-63.0%

Source: FSA, *Annual Reports*, FY2016-FY2019.

- a. With the exception of “Outstanding Direct Loan Portfolio in Current Repayment Status,” each of FSA’s annual performance goals are based on FSA’s prior year performance under the metric. Outstanding Direct Loan Portfolio in Current Repayment Status is based on a baseline set in FY2016. See FSA, *Strategic Plan Fiscal Years 2015-19*, November 2015 (updated November 2016), p. 34, Exhibit 11, <https://studentaid.ed.gov/sa/strategic-planning-and-reporting>.
- b. This goal focuses on student aid/recipient awareness and providing resources to students and their families “to ensure sound financial decisions while also working to identify patterns and trends to deliver information to customers proactively rather than reactively.”
- c. Represents percentage of graduating high school seniors who successfully file a FAFSA as incoming freshmen (with or without previous college attendance). To determine this measure, FSA divides the number of applications for first-time filers during the first nine months of the application cycle that are, as of September 30 of the first year of application cycle, complete (i.e., not rejected) by the number of graduating high schools seniors according to the most recent National Center for Education Statistics projection.
- d. FSA revised the methodology for calculating this metric in FY2018 to account for the fact that many high school seniors are 19 years old. Previously, FSA was calculating this metric based on high school seniors who were 18 years old. For comparison purposes, FSA simulated its target and actual results under the previous methodology for FY2018. Under the previous methodology, the simulated target was 60.2% and the simulated result was 60.8%.
- e. Represents the percentage of first-time FAFSA filers in the previous FAFSA cycle who are enrolled in educational programs greater than one year in length and who file a second FAFSA in the subsequent cycle.
- f. Represents number of visits, as opposed to unique visitors, to studentaid.gov.
- g. In October 2018, the FAFSA homepage was migrated to studentaid.gov. This contributed to driving a large number of visitors to studentaid.gov and likely accounts for the significant performance increase under this performance metric.
- h. Represents the aggregate sum of likes, followers, and subscribers across Facebook, Twitter, and YouTube.

- i. The ACSI survey is intended to measure customer satisfaction throughout the student aid life cycle. To do so, FSA calculates a weighted score from ACSI surveys completed by aid applicants, students in school, and borrowers in repayment. The ACSI survey is conducted annually for FSA's major programs. The ACSI survey provides a national, cross-industry, cross-sector economic indicator to obtain standardized customer satisfaction information. Survey scores are indexed on a 100-point scale.
- j. FSA adjusted the methodology for this metric to account for surveys that were not conducted due to budgetary constraints in FY2017. In FY2017, FSA discontinued the in-school survey and reduced the frequency of the borrower survey from four times per year to two. The FY2017 target was nonetheless unchanged. It is unclear whether FSA conducted the in-school survey or how often it conducted the borrower survey in FY2018. However, it appears that at least some of the methodological changes made in FY2017 carried over to FY2018.
- k. This goal focuses on increasing "operational effectiveness and strengthen[ing] FSA's role in working to ensure protection of customers and holding stakeholders accountable for their actions."
- l. An improper payment is one that should not have been made or that was made in an incorrect amount. The improper repayment rate metric is a single blended rate for the Pell Grant and Direct Loan programs that divides aggregated estimated improper payments for both program by aggregated estimated program outlays.
- m. The OMB-approved improper payment estimation methodology used for FY2016-FY2018 was a non-statistical estimation methodology. As such, estimates for these years may not be statistically significant and may lack the precision and stability of other estimates developed using random, statistical methodologies.
- n. In FY2019, FSA revised its methodology for calculating the improper payment rate, which is now a blended rate of improper payments from the Pell Grant and Direct Loan programs estimated from a random sample of IHEs participating in the Title IV programs and is considered to be a statistically valid estimation methodology as defined by OMB. As a result, the FY2019 estimate is considered more accurate and precise than previous years' estimates.
- o. Represents the average number of borrowers whose loans are serviced by ED-contracted loan servicers and who are between 91 and 270 days delinquent in the year ending June 30 of each year divided by the average number of borrowers who are in active repayment for the year.
- p. In FY2019, FSA revised its methodology for calculating this metric. In FY2019, this metric represents the percentage of "nationwide Direct Loan recipients who have loans in repayment status that are more than 90 days overdue," including loans that are more than 270 days delinquent that are still with the federal loan servicer. Loan repayment status is defined as no longer in school/grace period and not currently in deferment or forbearance. The new methodology "includes more categories of loans in the numerator than the previous calculation and fewer categories of loans in the denominator than the previous calculation," thus yielding a result that is "less-favorable" but "more precisely-focus[e]d on active repayment delinquency."
- q. This goal focuses on FSA's pursuit of realizing further efficiencies and flexibilities on an enterprise level at FSAs.
- r. Represents the direct cost to process FAFSAs and originate student aid in the 12-month period (July 1-June 30) divided by the number of original FAFSAs processed in the same period.
- s. Represents the percentage of Direct Loan principal and interest that is "current." *Current* is defined as being in an active repayment status. Loans are in active repayment status if they are being serviced by non-default loan servicers; payments have not been temporarily suspended (e.g., in school/grace period or deferment/forbearance); and they have not been identified as being in non-defaulted bankruptcy, at the default loan servicer, or otherwise excluded (e.g., due to a total and permanent disability determination). Direct Loans are further classified as being current if no more than 30 days have passed since the next payment date.
- t. This goal focuses on building trust between FSA and stakeholders "through collaborative efforts and continuous dialogue."
- u. Represents the score for the "Ease of Doing Business" item on FSA's Schools Partners Survey, which reaches out to financial aid administrators throughout the nation who work and interact with FSA. The survey consists of 10-12 questions regarding the ease of doing business with FSA and focuses on the ease of use of FSA's major delivery and information systems.
- v. Represents the total amount of dollars competed over a five-year period ending in the most recently completed fiscal year divided by the total amount of dollars expended on contracts over the same period.

- w. Represents the amount of dollars collected from student loan borrowers per dollar spent to collect those funds. *Collections* is defined as the total amount of principal collected on both current and defaulted loans during the 12-month period ending June 30 of each year. Costs include the total direct costs calculated for loan servicing plus debt collections for the same period.
- x. This goal focuses on maintaining a diverse workforce that is “well-versed in the specialty skill sets necessary to address evolving models of higher education delivery.”
- y. Represents results from the Employee Engagement Index (EEI) component of the Federal Employee Viewpoint Survey, which “measures employees’ perceptions of whether, and to what extent, conditions characteristics of successful organizations are present in their agencies” (OPM, “FEVS: About,” <https://www.opm.gov/fevs/about/>). EEI assesses (1) “employees perceptions of the integrity of leadership, as well as leadership behaviors such as communication and workforce motivation”; (2) “the interpersonal relationship between worker and supervisor, including trust, respect, and support”; and (3) “employees feelings of motivation and competency relating to their role in the workplace.” OPM, *2018 Federal Employee Viewpoint Survey: Governmentwide Management Report*, p. 10, <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-management-report/governmentwide-report/2018/2018-governmentwide-management-report.pdf>.

Assessments of FSA as a PBO

Close observers assessed FSA's progress in addressing the congressionally identified issues that prompted FSA's establishment as a PBO in 1998.

Immediately following the enactment of the HEA provisions establishing a PBO, ACSFA acknowledged the difficulty of simultaneously undertaking a major reorganization and system modernization. ACSFA noted the commitment and energy of the first permanent COO and praised "his willingness to communicate with the higher education community" as well as his early senior personnel choices.²²⁸

ACSFA also criticized the priorities of the new unit as well as its adherence to the congressional intent behind, and the requirements of, the new statute. Among other concerns, it noted that

- ED appeared to be transplanting the organizational arrangements of SFAP (FSA's predecessor), as an office of OPE, into a new PBO that reported directly to the Secretary without making more fundamental changes to its management and organizational structure;
- ED was failing to "adequately separate policy making and regulatory responsibilities of OPE and operations responsibilities of the PBO as intended by Congress;"²²⁹ and
- rather than "directing its attention and scarce resources toward solving its basic systems, data, and contract problems, the PBO appear[ed] to be ... concentrating on the twin objectives of improving day-to-day customer service and providing students web access to their data through 'a single federal point of contact' for all financial aid transactions."²³⁰

In 2002, ACSFA reported, among other findings, that some progress had been made on transferring policymaking functions to OPE but that "functions related to institutional eligibility and guarantor and lender oversight" remained within the purview of FSA.²³¹ ASFCA called for

²²⁸ ACSFA, letter to Senator James M. Jeffords, chair of the Senate Committee on Health, Education, Labor, and Pensions, November 30, 1999, p. 1. A copy of this document can be provided by the authors to congressional clients upon request. This report was made pursuant to Section 490C of the Higher Education Amendments of 1998, which directed ACSFA to conduct specified analyses related to delivery systems for student financial aid. Among other mandated activities, the committee was to "monitor and evaluate the modernization of student financial aid systems and delivery processes, including the implementation of a performance-based organization within the Department, and report to Congress regarding such modernization on not less than an annual basis, including recommendations for improvement."

²²⁹ ACSFA, "Implementing the Higher Education Amendments of 1998: Update on Key Issues," January 1999, p. 4. This committee's evaluation was based on its review of ED transition plans and organizational charts that had been formulated in the summer of 1998 in anticipation of the bill's passage, communications between ACSFA and the department, and communications between Congress and ED. A copy of this document can be provided by the authors to congressional clients upon request.

²³⁰ ACSFA, "The PBO and Modernization: Progress to Date," November 1999, p. 13. A copy of this document can be provided by the authors to congressional clients upon request.

²³¹ ACSFA, letter to Senator Edward M. Kennedy, January 10, 2002. A copy of this document may be provided by the authors to congressional clients upon request. ACSFA had expressed its concerns about these specific functions beginning early in the implementation process. These concerns were apparently shared by the House Committee on Education and the Workforce, which articulated them in a December 16, 1998, letter to the Secretary of Education: "[W]e recently learned that the Guarantor and Lender Oversight Service, the Policy, Training and Analysis Service and the Institutional Participation and Oversight Service are being incorporated into the PBO. These offices have substantial duties in the areas of policy, regulation and oversight.... Our concern is that the clear distinction drawn in

the transfer of these functions to OPE, with OPE consulting with FSA to ensure that proposed federal aid policies supported FSA operations. ACSFA also reported that FSA was strengthening the capacity of its management, systems, and operations staff while reducing its reliance on contractors and recommended FSA continue to do so. In addition, it expressed concern that minimal progress had been made on systems integration. ACSFA called for ED to “incorporate specific integration goals and schedules into its strategic and tactical plans and quicken the overall pace of data and systems integration as a means of reducing cost and increasing efficiency.”²³²

By 2001, FSA had developed an organizational performance plan identifying three strategic goals: increase customer satisfaction, increase employee satisfaction, and reduce unit costs.²³³ However, ED’s IG and GAO noted that it did not clearly address some of the new office’s statutory purposes that had been identified during the HEA reauthorization process. For example, both entities found that the performance plan did not sufficiently address the means by which systems integration would be accomplished, nor did it include any objective measures of forward movement in that area.²³⁴ Both ED’s IG and GAO recommended that FSA establish clear goals, strategies, and performance measures related to systems integration. FSA disagreed with the IG’s recommendation, reasoning that the agency could not achieve its three stated goals without systems integration. In a response to the GAO recommendation, which came later, however, ED’s Deputy Secretary agreed with the recommendation, committing to directing that FSA’s performance plan “be revised to establish measurable goals and milestones for systems integration efforts to provide both direction to FSA and enhance its accountability.”²³⁵

The GAO report also assessed the progress FSA had made in measuring and achieving its three strategic goals. It noted that FSA had made measurable progress in the general improvement of customer and employee satisfaction—two of its three strategic goals.²³⁶ With regard to its third goal (reduce unit costs), GAO found that the indicator FSA used to measure unit cost was deficient.

GAO also noted that the relationship between FSA and ED was still evolving:

Education continues to take steps to clarify FSA’s level of independence and its relationship with other Education offices.... With the arrival of the current administration ... Education established special interim operating procedures for all department units, including FSA, that were intended to ensure that personnel and financial resources are

the legislation between operational and policy/regulatory responsibilities is being blurred.” In 2008, the HEOA amended Section 141 of the HEA to specify that the PBO was responsible for managing the administrative and oversight functions that support Title IV programs. A copy of the ACSFA document can be provided by the authors to congressional clients upon request.

²³² ACSFA, letter to Kennedy.

²³³ FSA, “Performance Plan—Student Financial Assistance: FY 2001.” The plan was developed pursuant to the requirements of the 1998 HEA reauthorization, as discussed above, and the Government Performance and Results Act of 1993. A copy of this document can be provided by the authors to congressional clients upon request.

²³⁴ ED IG, “Inspection Memorandum: Review of Student Financial Assistance’s Performance Plan,” 2001, p. 1; and GAO, *Federal Student Aid: Additional Management Improvements Would Clarify Strategic Direction and Enhance Accountability*, GAO-02-255, April 2002, p. 10. The HEA, as amended, provides that the “PBO shall be subject to the usual and customary Federal audit procedures and to review by the Inspector General of the Department.” The GAO report appears to have been issued pursuant to a congressional request. It was addressed to Senator Edward M. Kennedy, chair of the Senate Committee on Health, Education, Labor, and Pensions, and Senator James M. Jeffords to respond to their “interests concerning FSA’s progress since becoming a PBO” (p. 1).

²³⁵ GAO, *Federal Student Aid*, p. 26.

²³⁶ GAO, *Federal Student Aid*, p. 3.

managed effectively and efficiently throughout the department.... Education now provides greater direction and oversight of FSA than was provided previously. Education is currently reviewing FSA's role and responsibilities as part of the departmentwide management planning effort. The results ... will be used to guide future decisions concerning FSA's level of independence and its relationship to other department offices.²³⁷

In 2005, GAO removed the Title IV federal student aid programs from its High Risk List.²³⁸ The student aid programs had been on GAO's High Risk List since the list's inception in 1990. In removing the Title IV student aid programs from the list, GAO found that while FSA still needed to take additional steps to fully address some of its recommendations, overall, management of the programs had improved enough to warrant removal from the High Risk List. In removing the student aid programs from its High Risk List, GAO cited many factors, including FSA's

- "sustained improvements to address financial mismanagement and internal control weaknesses,"
- receipt of an unqualified or "clean" opinion on its financial statements for FY2002-FY2004,
- actions to ensure that aid was not being awarded to ineligible students,
- actions to "integrat[e] its many disparate information systems,"
- steps to reduce student loan default rates, and
- steps to address its "human capital challenges."²³⁹

In more recent years, FSA has been praised for its handling of the transition to 100% direct lending under the Direct Loan program and for other improvements to the administration of the Title IV aid programs, such as implementation of the IRS Data Retrieval Tool to allow students and their parents to import their federal income tax data directly into their FAFSA.²⁴⁰ Some more recent GAO and IG reports have noted cases in which FSA met its objectives.²⁴¹

Some sizable issues have also been identified in GAO and IG reports, by some Members of Congress, and by other stakeholders. For example, FSA's oversight of its contracted loan servicers has come under scrutiny from Congress,²⁴² ED's IG,²⁴³ GAO,²⁴⁴ and the CFPB.²⁴⁵

²³⁷ GAO, *Federal Student Aid*, p. 4.

²³⁸ GAO maintains the High Risk List, a list of programs and operations that are "'high risk' due to their vulnerabilities to fraud, waste, abuse, and mismanagement, or that need transformation." GAO, "High Risk List," <https://www.gao.gov/highrisk/overview#t=0>.

²³⁹ GAO, *High Risk Series: An Update*, GAO-05-207, January 2005, pp. 8-10.

²⁴⁰ U.S. Congress, Joint Hearing, House Committee on Oversight and Government Reform, Subcommittee on Government Operations and House Committee on Education and the Workforce, Subcommittee on Higher Education and Workforce Training, *Federal Student Aid: Performance-Based Organization review*, 114th Cong., 1st sess., November 18, 2015, p. 60. See also ED IG, *Federal Student Aid's Efforts to Ensure the Effective Processing of Student Loans Under the Direct Loan Program*, September 16, 2010.

²⁴¹ See, for example, ED IG, *Pell Grant Lifetime Eligibility Limit*, March 31, 2015.

²⁴² See, for example, U.S. Congress, House Committee on Financial Services, *A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable*, 116th Cong., 1st sess., September 10, 2019.

²⁴³ ED IG, *Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans*.

²⁴⁴ See, for example, GAO, *Federal Student Loans: Further Actions Needed to Implement Recommendations on Oversight of Loan Servicers*, GAO-18-587R, July 27, 2018.

²⁴⁵ See, for example, CFPB, "CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment," press release, January 18, 2017, <https://www.consumerfinance.gov/about-us/newsroom/>

Seemingly large deficiencies in ED's implementation of and communication with borrowers about of the PSLF program have been identified by GAO²⁴⁶ and have garnered congressional interest as well.²⁴⁷ Concerns have also been raised over FSA's ability to identify and address poorly performing IHEs or those that may be at risk of closure.²⁴⁸ These more recent issues are discussed in more detail below.

Current Issues

ED's federal student aid operations were statutorily reorganized into a PBO with the hope of addressing significant management problems, including limited progress in integrating numerous data systems, student aid delivery delays and breakdowns, and infighting over student aid delivery turf among ED's senior managers. In this context, the then-untried PBO model seemed promising: It was built on the idea that business-like performance incentives and management flexibility would motivate and permit the organization and its leaders to provide economical, efficient, and effective service to student aid recipients. The organization would be given a higher-than-typical level of independence from political leadership and direction on operational processes in return for accountability for results, as measured by performance agreements and assessments. Potential concerns about independent policymaking by a PBO's leaders could be allayed by separating the policymaking functions from the operational functions. The former would remain accountable to Administration leadership, and the latter would be vested in the semi-independent PBO.²⁴⁹ While the establishment of FSA as a PBO seems to have addressed at least some of the congressional concerns prompting its establishment, new issues have arisen in recent years, and some of the previously cited issues that led to the adoption of a PBO approach may yet remain unresolved.

Federal oversight entities and other outside observers have raised issues pertaining to FSA, including those relating to oversight, transparency, and accountability. As these issues receive continued attention, and as Congress contemplates the reauthorization of the HEA, this final section of the report highlights some of the issues relating to FSA's operations that have garnered attention over the past several years. Issues highlighted and options for addressing them have, for the most part, been gathered from reports from GAO, ED's IG, and outside organizations. CRS has identified some of the options available to address these issues.

In some instances, documents referenced here refer to ED and/or the Secretary of Education and not specifically to FSA and/or its COO. However, based on its functions, FSA is likely pertinent to the topics being addressed. Where possible, CRS has indicated in footnotes where a cited

cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/.

²⁴⁶ See, for example, GAO, *Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers*, GAO-18-547, September 27, 2018; and GAO, *Public Service Loan Forgiveness: Improving the Temporary Expanded Process Could Help Reduce Borrower Confusion*, GAO-19-595, September 5, 2019.

²⁴⁷ U.S. Congress, House Committee on Education and Labor, Subcommittee on Higher Education and Workforce Investment, *Broken Promises: Examining the Failed Implementation of the Public Service Loan Forgiveness Program*, 116th Cong., 1st sess., September 2019.

²⁴⁸ See, for example, ED IG, *Federal Student Aid's Process for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students*, February 24, 2017; and GAO, *Higher Education: Education Should Strengthen Oversight of Schools and Accreditors*, GAO-15-59, December 22, 2014 (Reissued January 22, 2015).

²⁴⁹ HEA §141, 20 U.S.C. §1018. See also U.S. Congress, Senate Committee on Labor and Human Resources, *Higher Education Act Amendments of 1998*, report to accompany S. 1882, 105th Cong., 2nd sess., May 4, 1998, S.Rept. 105-181 (Washington: GPO, 1998), pp. 75-76.

source refers to ED more generally and CRS has inferred that FSA has some responsibility for a function or activity being discussed.

Oversight Functions

HEA Section 141 specifies that one of FSA's functions as a PBO is to ensure the integrity of the federal student aid programs. Thus, FSA is tasked with overseeing a variety of entities that play a role in administration of the Title IV student aid programs. FSA's oversight of IHEs and contracted loan servicers has been criticized in recent years. Some criticisms have focused on perceived deficiencies in FSA's assessment of IHEs, its ability to proactively mitigate risk in the Title IV programs, and its ability to resolve issues at IHEs in a timely manner.

Similarly, FSA has experienced difficulties in its monitoring of loan servicers. Some of these difficulties seem to have stemmed from FSA providing incomplete or fragmented guidance to loan servicers, which have impeded their efforts to comply with requirements for servicing federally held loans and to assist borrowers in navigating the aid programs. The oversight issues introduced here are explored in greater depth below.

Should any congressional action be taken to address these issues, Congress might consider whether or how it should specify desired outcomes and actions taken by FSA. There may be tradeoffs between meeting congressional goals and shoring up current perceived oversight deficiencies and enabling FSA to operate independently and with flexibility to address difficult or novel issues. Consideration might also be given to the apparent difficulties in separating operational functions delegated to FSA from policymaking retained by ED.

IHE Oversight

FSA oversees, through enforcement activities, IHE compliance in meeting requirements to participate in the Title IV aid programs. These requirements are intended to ensure that IHEs provide sufficient educational quality, provide a level of consumer protection, and ensure administrative and fiscal integrity of Title IV programs at IHEs.²⁵⁰ Through oversight of the IHEs participating in the Title IV student aid programs, FSA is able to identify instances of noncompliance and take appropriate action, such as sanctioning IHEs or providing assistance to IHEs to come into compliance—both tools that can help mitigate student and taxpayer risk.

Interest in the issue of FSA's oversight of IHEs has arisen, at least in part, due to the prominent closures of several large multi-campus IHEs in recent years,²⁵¹ affecting thousands of students.²⁵² In response to these closures, GAO and ED's IG have launched several investigations and have found that FSA staff do not always follow internal procedures for institutional review and that some internal procedures did not have controls in place to prevent IHEs from manipulating Title IV participation requirements. These frailties could result in failure to identify IHEs that are not complying with Title IV requirements or that are at risk of abruptly closing.

²⁵⁰ For additional information on these requirements, see CRS Report R43159, *Institutional Eligibility for Participation in Title IV Student Financial Aid Programs*.

²⁵¹ See, for example, U.S. Congress, House Committee on Oversight and Reform, Subcommittee on Economic and Consumer Policy, *Examining For-Profit College Oversight and Student Debt*, 116th Cong., 1st sess., May 22, 2019, H.Hrg. 116-29.

²⁵² For example, about 16,000 students were enrolled at institutional campuses owned by Corinthian Colleges at the time of their closures. ED IG, *Federal Student Aid's Processes for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students and Taxpayers*, p. 5.

For example, one IG report found that FSA did not conduct IHE program reviews in accordance with its own internal procedures, which could lead to “limited assurance that program reviews are appropriately identifying and reporting all instance of noncompliance.”²⁵³ The IG noted that FSA staff did not consistently complete and maintain required program review forms, adequately document institutional fiscal testing requirements relating to Title IV aid disbursement at IHEs, or obtain all required information for review of an IHE’s distance education programs. Perhaps relatedly, some FSA staff reported feeling “overwhelmed” with the amount of work they were required to perform in the time allotted, and some of their managers believed that allotted time may be inadequate to complete some more complex program reviews, which could have been contributing factors to FSA not consistently conducting program reviews according to procedures.²⁵⁴

In another report, the IG found that FSA needed to improve internal processes to help it identify IHEs that may be at risk of an abrupt closure.²⁵⁵ Specifically, the IG found that FSA did not act in a timely manner to resolve Corinthian College’s (a large IHE that abruptly closed in 2015) failing composite score appeal,²⁵⁶ nor did it promptly require Corinthian College to post a letter of credit²⁵⁷ upon finding that the school’s composite score was failing. The IG asserted that such weaknesses may enable some IHEs to avoid FSA sanctions or additional oversight, which in turn may result in a greater risk of harm to students (e.g., enrollment in an IHE that may be at risk of a precipitous closure) and loss of taxpayer funds (e.g., the cost of student loan discharges²⁵⁸ due to the IHE’s closure).²⁵⁹ The IG also found that FSA had taken some steps to implement new tools and processes to help identify IHEs at risk of closure, such as participating in OPE efforts to enhance information sharing between ED and an IHE’s accreditor and creating an enforcement office responsible for investigating complaints made against IHEs.²⁶⁰ It appears that the enforcement office has since been largely disbanded. However, it is possible that subsequent steps may have been taken to strengthen monitoring and response practices.

Ensuring IHEs compliance with Title IV requirements arguably addresses one of the HEA-specified functions of FSA as a PBO: ensuring integrity of the Title IV aid programs. It also arguably addresses FSA’s strategic goal to “*proactively manage the student aid portfolio and mitigate risk*,” which FSA describes as aimed to “strengthen FSA’s role in working to ensure

²⁵³ For instance, it was found that FSA employees who completed the reviews did not always adequately document fiscal testing for timely disbursement of funds and for excess cash, two requirements to ensure that IHEs are appropriately handling Title IV funds. ED IG, *Federal Student Aid’s Oversight of Schools Participating in the Title IV Programs*, September 29, 2015, p. 6.

²⁵⁴ ED IG, *Federal Student Aid’s Oversight of Schools Participating in the Title IV Programs*, p. 13.

²⁵⁵ ED IG, *Federal Student Aid’s Processes for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students and Taxpayers*.

²⁵⁶ A passing composite score is a requirement of private, nonprofit and proprietary institutions participating in Title IV programs and is intended to reflect the overall financial health of an IHE. A school may appeal FSA’s determination that it failed the composite score test.

²⁵⁷ A letter of credit is a financial guarantee from a third-party financial institution payable to ED that guarantees that the financial institution will pay to ED debts incurred by the IHE. ED regulations require that IHEs post letters of credit if they have failing composite scores. 34 C.F.R. §668.175(c).

²⁵⁸ For additional information on the circumstances under which a borrower may have their federal student loan discharged upon an IHE’s closure, see CRS Report R44737, *The Closure of Institutions of Higher Education: Student Options, Borrower Relief, and Other Implications*.

²⁵⁹ ED IG, *Federal Student Aid’s Processes for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students and Taxpayers*, p. 9.

²⁶⁰ ED IG, *Federal Student Aid’s Processes for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students and Taxpayers*, p. 8.

protection of customers and holding stakeholders accountable for their actions.”²⁶¹ Under the two metrics FSA has identified as measures of its performance under this goal, FSA has had mixed success (see **Table 4**). However, neither metric seems to directly address IHE oversight and accountability in the Title IV aid programs.²⁶²

Loan Servicer Oversight

FSA-contracted loan servicers are tasked with various day-to-day administrative tasks associated with federal student loans and some other forms of student aid. FSA’s oversight of loan servicers generally consists of ensuring that the loan servicers are meeting federal requirements for student loans (e.g., ensuring that borrowers’ interest rates are correctly calculated) and fulfilling the terms and conditions of their contracts with FSA and providing guidance to loan servicers to enable them to meet such standards. Oversight of contracted loan servicers can help FSA mitigate risks in the Title IV program and enable it to help ensure the provision of effective customer service to students and their families.

In recent years, issues associated with federal student loan servicing have received considerable attention. For instance, some have alleged that some loan servicers have engaged in undesirable conduct, such as steering borrowers away from more beneficial loan repayment options²⁶³ or providing inaccurate or incomplete information to borrowers.²⁶⁴ Still others have detailed borrowers’ experiencing problems when seeking to have loan servicers resolve servicing errors, identified issues with loan payment processing that may cause problems for borrowers seeking to repay their loans, and identified issues with respect to the implementation of specific loan terms and conditions such as the PSLF program.²⁶⁵

Concerns raised about loan servicing have focused in particular on whether FSA is sufficiently reviewing, monitoring, and holding loan servicers accountable. GAO has reported that FSA’s monitoring of loan servicers’ interaction with borrowers may be insufficient to ensure that servicers are providing accurate information and quality customer service to borrowers. For instance, GAO found that FSA primarily monitored inbound calls from borrowers to loan servicers, which constitute a small percentage of the calls loan servicers participate in. Thus, GAO opined that “FSA may not be focusing its call monitoring on the most frequent and critical types of calls.”²⁶⁶ GAO also found that FSA’s call monitoring was poorly documented and its tracking of borrower complaints was disjointed, with complaints being tracked across multiple

²⁶¹ FSA, *Fiscal Year 2019 Annual Report*, p. 24.

²⁶² While improper payments in the Title IV programs made at the institutional level might be a way in which FSA could identify some noncompliant IHEs, FSA describes its use of the improper payment rate in measuring its strategic goal as enabling it to “holistically understand the integrity” of the Title IV programs. FSA, *Strategic Plan FY2015-19*, p. 41.

²⁶³ See, for example, *Nelson v. Great Lakes Educ. Loan Servs., Inc.*, 928 F.3d 639, 642 (7th Cir. 2019); *Pennsylvania v. Navient Corp.*, 354 F. Supp. 3d 529, 536-37 (M.D. Pa. 2018).

²⁶⁴ See, for example, *Pennsylvania v. Navient Corp.*, 354 F. Supp. 3d 529, 537 (M.D. Pa. 2018). For additional information about these allegations, see CRS Report R45917, *Federal and State Regulation of Student Loan Servicers: A Legal Overview*.

²⁶⁵ See CFPB, *Student Loan Servicing: Analysis of Public Input and Recommendations for Reform*, September 2015.

²⁶⁶ GAO, *Federal Student Loans: Key Weaknesses Limit Education’s Management of Contractors*, GAO-16-196T, November 18, 2015, p. 11.

systems.²⁶⁷ While some of these issues have seemingly been resolved,²⁶⁸ it is unclear whether others have been resolved. Without a systematic approach to reviewing loan servicer interactions with borrowers, it may be difficult for FSA to target oversight of its loan servicers and improve its services to student loan borrowers.²⁶⁹

More recently, ED's IG found that while FSA regularly identifies instances of servicer noncompliance with federal servicing requirements, FSA neither tracked instances of noncompliance that were remedied by loan servicers nor analyzed information relating to the noncompliance.²⁷⁰ Moreover, the IG found that FSA rarely used available tools to hold loan servicers accountable, nor did FSA incorporate a performance metric relating to servicer compliance into the otherwise performance-driven terms of its contracts with loan servicers.²⁷¹ Finally, the IG found that FSA employees did not always follow internal policy when evaluating interactions between servicers' representatives and borrowers. These issues may make it difficult for FSA to identify recurring issues in loan servicing, mitigate the risk of potential harm to borrowers for loan servicer noncompliance, and hold loan servicers accountable for poor servicing.²⁷²

A difficulty loan servicers may face in complying with requirements for servicing federally held students loans is the fragmented and incomplete guidance for a complex student loan system provided to them from FSA. GAO has found that FSA may provide insufficient guidance to servicers regarding certain aspects of loan administration, such as how to apply borrower over- or under-payments to an account balance. Moreover, when FSA does provide guidance, it may not consistently share that information with all loan servicers or all relevant individuals.²⁷³ Such gaps in authoritative guidance to loan servicers may create a risk of inconsistent interpretations of law and procedures, which could lead to inefficiencies in federal student loan administration and could negatively affect borrowers' abilities to use the features of their loan terms and conditions. To help address these concerns, Treasury has recommended,²⁷⁴ and Congress has previously

²⁶⁷ GAO, *Federal Student Loans: Key Weaknesses Limit Education's Management of Contractors*, p. 12. See also GAO, *Student Loans: Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened*, GAO-17-4, November, 2016, pp. 26-28. The second report cited refers to ED in its findings. However, FSA is generally responsible for the loan servicer oversight described in it.

²⁶⁸ See, for example, GAO, *Student Loans: Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened*, pp. 26-28.

²⁶⁹ GAO, *Federal Student Loans: Key Weaknesses Limit Education's Management of Contractors*, p. 13; GAO, *Student Loans: Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened*, p. 27.

²⁷⁰ ED IG, *Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans*, p. 2. A 2016 GAO report made similar findings. See GAO, *Federal Student Loans: Education Could Improve Direct Loan Program Customer Service and Oversight*, GAO016-523, May 2016. This GAO report refers to ED in its findings. However, FSA is generally responsible for loan servicer oversight.

²⁷¹ The performance metrics FSA uses for borrower account allocation to loan servicers are (1) results of borrower satisfaction surveys, (2) percentage of borrowers who were not more than five days delinquent, (3) percentage of borrowers who were more than 90 but less than 271 days delinquent, (4) percentage of borrowers who were more than 270 but less than 361 days delinquent, and (5) results of satisfaction surveys of FSA employees who interact with the loan servicers. ED IG, *Federal Student Aid: Additional Actions Needed*, pp. 2, 6.

²⁷² ED IG, *Federal Student Aid: Additional Actions Needed*, pp. 8-9, 17.

²⁷³ GAO, *Federal Student Loans: Key Weaknesses Limited Education's Management of Contractors*, GAO016-196T, November 18, 2015, p. 8; GAO, *Public Service Loan Forgiveness*, p. 16.

²⁷⁴ U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation*, July 2018, p. 124. This report refers to ED. However, FSA is responsible for contracting with and oversight of loan servicers.

directed, FSA to publish a common loan servicing policies and procedures manual.²⁷⁵ However, it appears that FSA has not published such a manual.²⁷⁶

Another difficulty loan servicers face is that federal student loan terms and conditions have become increasingly more complex over the years. This may contribute to some of the problems loan servicers have in administering them. For example, FSA recently stated that it, along with its loan servicers, is working to enhance communications with borrowers regarding the PSLF program's requirements but acknowledged that the program is fundamentally complex and that FSA does not have the authority to change congressionally mandated PSLF eligibility requirements.²⁷⁷ Thus, while there are likely instances in which FSA oversight of loan servicers could be strengthened to ensure that borrowers receive the loan benefits to which they are entitled, there may also be inherent difficulties in administering the loan programs themselves, which might be addressed with policy changes to the programs.²⁷⁸

Ensuring loan servicer compliance with Title IV and contract requirements arguably addresses one of the HEA-specified functions of FSA as a PBO—ensuring integrity of the Title IV aid programs—and FSA's strategic goal to “*proactively manage the student aid portfolio and mitigate risk.*” Under the two metrics FSA has identified as measures of its performance under this goal, FSA has had mixed results (see **Table 4**). While some of the metrics FSA has identified under this performance goal seem intended to address loan servicing practices, the extent to which they may do so is unclear. For instance, it is unclear whether the metrics used to assess the efficacy of FSA directly gauge the accuracy and completeness of information provided by their contracted loan services.

Discussion of Issues in Oversight and the PBO Structure

In determining the desired level of oversight of IHEs and loan servicers, Congress might consider whether to specify desired outcomes and actions to be taken by FSA. While FSA is tasked with the day-to-day functions of administering the Title IV programs, Congress can guide and affect these efforts in a variety of ways, including amending the portions of the HEA that relate to FSA's functions, providing stipulations regarding the use of annual appropriations, exercising oversight of FSA through mechanisms such as congressional hearings, further emphasizing the importance of stakeholder input (discussed below in the section entitled “Stakeholder Accountability”), or statutorily specifying more goals and performance metrics for FSA.

Some of these changes might involve tradeoffs between improving perceived oversight deficiencies and enabling FSA to operate independently and with flexibility to address difficult or novel issues. To the degree that additional statutorily specified direction might stipulate the way in which FSA is to conduct day-to-day operations, there may be potential for it to be in tension

²⁷⁵ See, for example, U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2016: Legislative Text and Explanatory Statement*, committee print, 114th Cong., 2nd sess., 2016, H.Prt. 98-369 (Washington: GPO, 2016), p. 1266.

²⁷⁶ See, for example, Kimberly Hefling, “Education Department Misses Deadline to Create Loan Servicing Manual,” *Politico Pro*, April 6, 2016; and Education Finance Council, “Promote Excellence in Servicing,” https://www.efc.org/page/dl_servicing. Both of these documents refer to ED. However, FSA is generally responsible for contracting with and oversight of loan servicers.

²⁷⁷ U.S. Congress, House Committee on Education and Labor, Subcommittee on Higher Education and Workforce Investment, *Broken Promises: Examining the Failed Implementation of the Public Service Loan Forgiveness Program*, 116th Cong., 1st sess., September 2019, testimony of Jeff Appel, Director of Policy Liaison and Implementation, FSA.

²⁷⁸ For a broad depiction of issues in the PSLF program, see CRS Report R45389, *The Public Service Loan Forgiveness Program: Selected Issues*.

with the goal of accountability for results, as opposed to processes, that is key to the PBO model. Arguably, such action might also impair the agency's ability to make business-like operational decisions based on nonpolitical considerations rather than responsiveness to political leaders.

The choice of the PBO model was predicated on the idea that ED's political leadership would retain policymaking functions and that the PBO's role would be limited to operational functions.²⁷⁹ Seemingly, ED and FSA have made organizational adjustments—such as FSA's Office of Policy Liaison and Implementation Staff, which consults with the Secretary on the development and promulgation of Title IV student aid policies and regulations—that allow for FSA input into the formal policymaking process that is at least nominally under the authority of ED.

A different kind of policymaking—that which occurs as a byproduct of implementation—is a long noted facet of public administration that might prove more difficult to address.²⁸⁰ Issues around loan servicing illustrate how it may be difficult to completely remove policymaking from the operational functions delegated to FSA. For example, Congress sets the terms and conditions of federal student loans in general, and ED may add precision to them, while FSA designs and enforces contracts for loan servicers to administer the loan programs. However, a program's administration may shape how policies work in real life. For instance, some have observed that the payment structure of loan servicing contracts established by FSA may incentivize loan servicers to encourage borrowers to pursue one loan benefit (e.g., forbearance²⁸¹) over another (e.g., income-based repayment), which may contradict ED's policy preferences.²⁸² Although such policymaking through implementation probably can be reduced by limiting the scope of discretion in a delegated authority or by increasing oversight of the agency's activities, these steps might reduce agency efficiency and hinder the effectiveness of the PBO model.

Transparency

Numerous outside parties have a stake in the aid programs and rely on FSA to provide timely and accurate information about them. Criticisms have been raised that FSA may lack sufficient transparency regarding Title IV program operations. Congress and other entities with oversight responsibilities (e.g., the CFPB) sometimes seem to have incomplete or imperfect information on

²⁷⁹ As the Senate authorizing committee put it, "The goal of the [PBO] has been, and remains, to improve the delivery of student financial aid to students and their families. In order to accomplish this, the committee has attempted to identify the functions performed by [OPE] and segregate those that are essentially policy functions that must be retained by OPE from those that are administrative and that may appropriately be handled by the [PBO]. The PBO will be responsible for administration of the information and financial systems that support student financial assistance programs as well as any additional functions that the Secretary determines are necessary or appropriate to improve the delivery of student aid." U.S. Congress, Senate Committee on Labor and Human Resources, *Higher Education Act Amendments of 1998*, report to accompany S. 1882, 105th Cong., 2nd sess., May 4, 1998, S.Rept. 105-181 (Washington: GPO, 1998), pp. 75-76.

²⁸⁰ See for example, Norton E. Long, "Public Policy and Administration," in *The Polity*, ed. Charles Press (Chicago: Rand McNally, 1962): "In practice it must be recognized that the bureaucracy is a part, and a highly important part, of the collective brain that somehow thinks or emotes a government policy" (p. 78). See also Lawrence C. Dodd and Richard L. Schott, *Congress and the Administrative State* (New York: Wiley, 1979): "The implementation of these policies is, among other things, a constant refinement of congressional intent as expressed in legislation. This refinement involves the formulation of rules and regulations, their application to specific programs and cases, and numerous administrative decisions interpreting their application—a translation into tangible programs of broad public policy guidelines laid down by the Congress" (pp. 2-3).

²⁸¹ Forbearance provides borrowers with temporary relief from the obligation to make monthly payments that would otherwise be due on their loans.

²⁸² Miller and Delisle, *Ensuring Accountability and Effectiveness at the Office of Federal Student Aid*, p. 20.

Title IV program performance and operations, which may make it difficult to make informed, well-honed policy or enforcement decisions.

Many consumers are also seemingly have incomplete or imperfect consumer information on the Title IV programs and Title IV participation, which may make it difficult for them to make informed college-going and financial decisions.

Some have called on FSA to publicly release a variety of data²⁸³ and to enhance communications regarding such information.²⁸⁴ It does not appear that FSA's PBO model would necessarily hinder transparency, nor would increasing transparency appear to be directly at odds with the model's design. However, there may be some tradeoffs between increasing transparency and maintaining the effectiveness of the PBO's business-like design, which was specifically intended to shield Title IV aid administration, at least in part, from political pressures and increase efficiency within the aid programs. Additionally, FSA must grapple with privacy requirements when contemplating the potential release of, and how to appropriately make available, many types of data in its possession.

Information for Policymakers and Stakeholders

Congress and other policymakers have an interest in understanding how the Title IV federal student aid programs operate and the outcomes associated with those programs, as the dollar amount of federal student aid awarded and number of aid recipients represents a large federal investment. In FY2019, FSA provided approximately \$130.4 billion in Title IV aid to approximately 11.0 million students,²⁸⁵ and FSA managed a student loan portfolio encompassing approximately 45 million borrowers with outstanding federal student loans totaling about \$1.5 trillion.²⁸⁶

Concerns have been raised that FSA may not provide access to information that may enable stakeholders to make informed policy recommendations and decisions. Some have noted that while FSA possesses large quantities of student-level records that measure grant and loan receipt, postsecondary education completion status, and loan repayment, FSA has “often been less than responsive to requests for data and research that would benefit the rest of the nation.”²⁸⁷ Even when information on Title IV program performance is made available, some have found it to be insufficient. For example, ED's IG recently found that while FSA has provided, through its Data Center, information on the loan portfolio that was formerly unavailable, it does not include other potentially relevant information, such as more detailed information on costs to the federal government associated with the income-driven repayment plans and loan forgiveness programs—two loan features that are increasingly being used by borrowers and garnering attention—that could assist policymakers and the public understand the future impact of those loan terms.²⁸⁸

²⁸³ See, for example, Cliff Adelman, Institute for Higher Education Policy, et al., letter to John King, Secretary of Education, October 25, 2016, <https://cdn.americanprogress.org/content/uploads/2016/10/24141320/FinalDraftFSAletter.pdf>. This letter was addressed to Secretary of Education John King. However, it called on ED in general to publicly release FSA data on loan servicers' operations.

²⁸⁴ See, for example, ED IG, *The Department's Communication Regarding the Costs of Income-Driven Repayment Plans and Loan Forgiveness Programs*, January 30, 2018, pp. 20-22.

²⁸⁵ OMB, *Budget of the United States Government, FY2020*, Appendix for FSA, p. 348.

²⁸⁶ FSA, *Fiscal Year 2019 Annual Report*, p. 12.

²⁸⁷ Mark S. Schneider, “Reforms to Increase Transparency in Higher Education,” in *Unleashing Opportunities: Policy Reforms to Strengthen Higher Education* (Washington: National Affairs, 2017), p. 108.

²⁸⁸ See, for example, ED IG, *The Department's Communication Regarding the Costs of Income-Driven Repayment*

At least one federal entity has seemingly been unable to carry out some of its duties due to a perceived lack of transparency from FSA. The CFPB has indicated that recent FSA guidance²⁸⁹ to its contracted loan servicers regarding the release of certain student loan records may be hampering CFPB's ability to conduct supervisory examinations of them to ensure that they are in compliance with federal consumer protection law.²⁹⁰ The guidance prohibits loan servicers from responding directly to information requests by third parties, including regulators such as the CFPB, and specifies that, pursuant to the Privacy Act of 1974,²⁹¹ third-party requests should be made directly to ED.²⁹²

Providing requested information to stakeholders arguably aligns with at least one of FSA's strategic goals: "*Foster trust and collaboration among stakeholders.*" Based on the three performance metrics FSA has identified as measures of its performance under this goal, FSA has seemingly generally succeeded in fulfilling this goal in recent years (see **Table 4**). However, generally speaking, the performance metrics do not appear to encompass the provision of timely and useful information to stakeholders. Moreover, it is unclear how some of the three performance metrics (e.g., collection rate) address the strategic goal in general.²⁹³ The metric "*Ease of doing business with FSA*" seems most relevant to the quality and timeliness of its efforts to meet the information needs of the stakeholders discussed here. However, it is not clear that this metric is constructed in a manner that would capture the extent to which FSA's efforts are successful in meeting the information needs of policymaking and oversight entities who presumably constitute high-priority stakeholders.

Information for Members of the Public

Members of the general public—particularly those who need or may need student aid—may have an interest in understanding how the Title IV programs operate and the outcomes associated with those programs. Their interests may relate to having access to information that allows them to make informed college-going and financial decisions and understanding potential financial risks associated with those decisions.

Concerns have been raised that FSA may not be releasing some information relating to IHEs' performance in meeting Title IV institutional eligibility requirements that may be indicators of an IHE's educational quality or financial stability and may be of use to consumers when deciding in which IHEs to enroll. In one report, GAO found that while FSA publicly discloses information on some IHEs' financial composite scores (an indicator of an IHE's financial stability),²⁹⁴ it did not publicly disclose all IHEs' composite scores.²⁹⁵ Since the report's publication, FSA has taken

Plans and Loan Forgiveness Programs, pp. 21-22.

²⁸⁹ Patrick A Bradfield, Director, Federal Student Aid Acquisitions, letter to vendors, December 27, 2017, <https://static.politico.com/51/1f/0f805fd04c2eb035bcd79f9200be/december-27-2017-servicer-memo.pdf>.

²⁹⁰ Kathleen L. Kraninger, Director, CFPB, letter to Senator Elizabeth Warren, April 23, 2019, https://www.warren.senate.gov/imo/media/doc/2019.04.23%20KK%20to%20Warren_student%20loan%20industry.pdf.

²⁹¹ The Privacy Act of 1974 governs the collection, use, and dissemination of records about individuals (e.g., loan borrowers) maintained by federal agencies. 5 U.S.C. §552a.

²⁹² Bradfield, letter to vendors.

²⁹³ See FSA, *FY2018 Annual Report*, pp. 73-75.

²⁹⁴ For additional information on institutional composite scores and other institutional Title IV eligibility requirements, see CRS Report R43159, *Institutional Eligibility for Participation in Title IV Student Financial Aid Programs*.

²⁹⁵ Specifically, GAO found that FSA did not publicly disclose composite scores for all IHEs owned by the same company, as it calculated a single composite score for groups of IHEs owned by the same company based on the

some steps to enhance the availability and usefulness of publicly available composite score information.²⁹⁶ However, “without complete and transparent data on schools’ financial conditions,” which may include aspects other than an IHE’s composite scores, “it may be difficult for students to make informed decisions as to whether a school is a safe investment of their time and money.”²⁹⁷

Concerns have also been raised that FSA may not consistently provide information on federal student aid terms and conditions that may enable recipients to make sound financial decisions.

GAO has found that while FSA makes available detailed information about loan terms and conditions, borrowers must often actively seek out the information.²⁹⁸ Moreover, FSA often relies on its loan servicers to communicate loan terms and conditions to borrowers, but there may be inconsistencies among loan servicers in the information they provide to borrowers.²⁹⁹

Communications about program requirements among borrowers, FSA, and loan servicers may also be imperfect.³⁰⁰ Inconsistent and/or imperfect information about program terms may lead to borrowers’ being unaware of or confused about program requirements, which may put them at risk of making suboptimal financial decisions, some of which may lead to financial distress such as loan delinquency or default. FSA has taken steps to increase borrower awareness of some loan terms and conditions. However, all communication issues may not be fully resolved.³⁰¹ In response to some of these concerns, Congress has on occasion directed FSA to perform customer outreach.³⁰²

Providing complete and accurate information to customers arguably addresses some of the HEA-specified purposes of FSA as a PBO: “to improve service to students and other participants in the student financial assistance programs authorized under title IV, including making those programs more understandable to students and their parents.”³⁰³ It also arguably aligns with FSA’s strategic goal of “*improv[ing] quality of service for customers across the entire student aid life cycle.*” Under the five metrics FSA has identified as measures of its performance under this goal, FSA has seemingly generally succeeded in fulfilling this goal in recent years (see **Table 4**). However, concerns over communications with customers remain.³⁰⁴

company’s consolidated financial statements. GAO, *Higher Education: Education Should Address Oversight and Communication Gaps in Its Monitoring of the Financial Conditional of Schools*, GAO-17-555, August 2017, pp. 26-28. This report refers to ED in its findings. However, IHEs’ composite scores are publicly disclosed on FSA’s Data Center.

²⁹⁶ In accordance with GAO’s recommendations, FSA began publishing composite scores for each individual IHE whose composite scores had been finalized and archived. FSA, “Financial Responsibility Composite Scores,” <https://studentaid.ed.gov/sa/about/data-center/school/composite-scores>.

²⁹⁷ GAO, *Higher Education: Education Should Address Oversight and Communication Gaps in Its Monitoring of the Financial Conditional of Schools*, p. 29.

²⁹⁸ GAO, *Federal Student Loans: Education Could Do More to Help Ensure Borrowers Are Aware of Repayment and Forgiveness Options*, GAO-15-663, August 2015, pp. 22-23. This report refers to ED in its findings. However, FSA is generally responsible for the communications activities described in it.

²⁹⁹ GAO, *Federal Student Loans: Education Could Do More to Help Ensure Borrowers Are Aware of Repayment and Forgiveness Options*, p. 24.

³⁰⁰ See, for example, GAO, *Public Service Loan Forgiveness*, p. 13. This report refers to ED in its findings. However, FSA is generally responsible for the administrative aspects of the PSLF programs described in it.

³⁰¹ GAO, *Public Service Loan Forgiveness*, pp. 34-36.

³⁰² Responses from ED to Questions Submitted by Senator Patty Murray, 2019, p. 8, <https://www.help.senate.gov/imo/media/doc/SenMurrayQFRresponses32819LHHShearing.pdf>.

³⁰³ HEA §141(a)(2)(A); 20 U.S.C. §1018(a)(2)(A).

³⁰⁴ GAO, *Priority Recommendations: Education*, GAO-19-396SP, April 3, 2019, pp. 5, 6.

Discussion of Issues in Transparency and the PBO Structure

Some have suggested that FSA's independence and leadership by non-political appointees enable it to be unresponsive to requests for information from Congress, political and career staff within ED, and outside stakeholders. They point out that the COO is accountable to the Secretary on the basis of measurable organizational and individual performance goals, arguably rendering removal by the Secretary or the President more difficult politically.³⁰⁵ With better access to information, it is argued, researchers and policymakers could more readily judge policies and federal investments.³⁰⁶ However, other factors, such as compliance with other federal statutes (e.g., ED's interpretation of its responsibilities under the Privacy Act of 1974), may hinder FSA's responsiveness to information requests.

Increasing access to Title IV program performance and operations information might detract from or improve the effectiveness of the PBO's business-like design features. Sharing such information generally entails the ongoing development of information-sharing policies and procedures. Staff hours would be needed to carry out functions associated with the dissemination process, which could result in reduced economy and efficiency in addressing the PBO's statutory purposes—which do not explicitly include data sharing. Furthermore, it could increase scrutiny and evaluation of the agency's operational *processes* rather than the *results* by which PBO performance is to be measured. On the other hand, the sharing of such information could improve the ability of stakeholders to assess the results of FSA's work, perhaps using different measures of performance, and hence address accountability for results beyond the specific targets identified by FSA.

Stakeholder Accountability

Section 141 of the HEA mandates that FSA develop five-year performance plans and annual reports. In doing so, FSA is to engage with relevant stakeholders, which may enable it to glean new information about program performance, leverage that information to create efficiencies, and provide a level of accountability to stakeholders in its operations. In addition, the COO and senior managers are to enter into annual performance agreements that set forth measurable organizational and individual goals. The awarding of annual performance bonuses is tied to meeting these goals. Each of these provisions is intended to provide a layer of accountability to stakeholders, including students, borrowers, IHEs, FFEL program lenders and guaranty agencies, contracted student loan servicers, Congress, and other parties that may have an interest in federal student aid.

Concerns about accountability relate to whether FSA is fulfilling its statutory mandate to consult with such stakeholders³⁰⁷ in developing performance plans and annual reports and whether FSA is leveraging information garnered from stakeholder interactions to make improvements. They also relate to whether FSA is sufficiently responsive to customer needs. Consideration might be given to whether improvement of performance agreements and measures and more meaningful use of stakeholder feedback may streamline operations at FSA and/or improve customer service to students and other aid participants—two statutorily specified purposes of establishing FSA as a PBO. Criticisms in this area raise questions about the effectiveness of the PBO's statutory performance planning and measurement mechanisms. Consideration might be given to amending these provisions.

³⁰⁵ Miller and Delisle, *Ensuring Accountability*, p. 18.

³⁰⁶ Schneider, "Reforms to Increase Transparency in Higher Education," pp. 97-98.

³⁰⁷ HEA §141(c).

At least one stakeholder organization, representing student aid administrators, has reported that while FSA may reach out to stakeholders for input in developing its performance plans and annual reports, the engagement may be only perfunctory in nature and may not provide stakeholders a meaningful opportunity to provide potentially useful feedback to FSA to enable it to fulfill its functions.³⁰⁸ The same stakeholder organization has also asserted that performance metrics developed by FSA and ED are vague or inappropriate.³⁰⁹ GAO has raised concerns regarding how FSA communicates with aid recipients and whether it leverages information from customer interactions to make program improvements.³¹⁰

Assertions of a lack of engagement with stakeholders and meaningful assessment of FSA's performance raise concerns about whether statutory mandates are being adhered to and whether FSA is sufficiently attuned to outside views to effectively and efficiently administer a program in which many actors are engaged. They also raise concerns about whether FSA is sufficiently accountable to those stakeholders.

The extent to which FSA engages with and leverages information from student aid recipients and organizations who represent them may affect students and their families. They may be limited in their ability to shop around for postsecondary financial assistance, as Title IV student aid makes up approximately half of the financial assistance available to postsecondary students.³¹¹

Moreover, student loan borrowers often have even fewer options regarding choosing loan products to finance their postsecondary education, as private lenders are often unwilling to provide loans to individuals who may have limited creditworthiness, whereas Title IV student loans are generally made without regard to creditworthiness. In those instances where private education loans are made, they often do not contain the same favorable terms and conditions (e.g., availability of loan forgiveness programs) as Title IV student loans.³¹² It might be argued that because FSA has no comparable competitors, it may have less motivation to seek or respond to customer feedback to improve services.

Arguably, the criticisms of FSA discussed above expose a potential flaw in the PBO model as implemented under the HEA. The ED Secretary and the FSA COO have a joint responsibility to set (in consultation with stakeholders) and measure organizational performance.³¹³ They each

³⁰⁸ NASFAA, *Improving Oversight and Transparency*, pp. 3-4.

³⁰⁹ U.S. Congress, Joint Hearing, House Committee on Oversight and Government Reform, Subcommittee on Government Operations and House Committee on Education and the Workforce, Subcommittee on Higher Education and Workforce Training, *Federal Student Aid: Performance-Based Organization Review*, 114th Cong., 1st sess., November 18, 2015, p. 71.

³¹⁰ See, for example, GAO, *Federal Student Loans: Education Could Do More to Help Ensure Borrowers Are Aware of Repayment and Forgiveness Options*, p. 36. This report refers to ED in its findings. However, FSA is generally responsible for the administrative aspects of the loan repayment plans and forgiveness programs described in it.

³¹¹ See College Board, "Total Student Aid and Nonfederal Loans in 2017 Dollars Over Time," <https://trends.collegeboard.org/student-aid/figures-tables/total-student-aid-and-nonfederal-loans-2017-dollars-over-time>.

³¹² See, for example, CFPB, "What Are the Different Ways to Pay for College or Graduate School," <https://www.consumerfinance.gov/ask-cfpb/what-are-the-different-ways-to-pay-for-college-or-graduate-school-en-545/>.

³¹³ According to FSA's annual report, "FSA sets the target level of performance at a challenging, but realistic level that is achievable within the timeframe. Meeting or exceeding the target indicates that FSA succeeded in attaining the established performance metric, while falling short of the target indicates that FSA did not attain the performance metric." FSA, *Fiscal Year 2019 Annual Report*, p. 17. As previously noted, most of FSA's annual goals are adjusted upward or downward based on FSA's performance under the metric in the prior year. FSA, *Strategic Plan Fiscal Years 2015-19*, p. 34, Exhibit 11.

have an incentive (as leaders of ED and FSA, respectively) to show continuous improvement in FSA performance. This incentive might affect the degree to which stakeholder input is incorporated into the process as well as the specificity and nature of the goals and measures adopted. Vague goals and measures with seemingly perfunctory stakeholder feedback processes could mask performance problems that might exist.

Some potential changes in this area could maintain FSA as a PBO but also modify statutory provisions related to accountability and stakeholder input. Improvement of performance agreements and measures would seemingly be in line with the PBO model's results orientation. For example, Congress might more specifically identify in statute the domains and metrics to be used in establishing annual performance plans and evaluating agency performance. Such provisions have been enacted in other contexts, such as the performance accountability system that was established by the Workforce Innovation and Opportunity Act.³¹⁴ Similarly, more meaningful incorporation of certain types of stakeholder feedback into the performance plan and evaluation process would seemingly be consistent with the PBO model. Potential approaches to emphasizing the importance of stakeholder input during this planning and assessment might include specifying in statute a more formal input process. For example, Congress has directed state agencies to solicit written comments from the public and to respond to such comments in writing when establishing career and technical education performance standards.³¹⁵

³¹⁴ 29 U.S.C. §3141.

³¹⁵ 20 U.S.C. §2323(b)(3)(B).

Appendix A. Selected Bibliography

The following appendix provides a bibliography of selected reports authored by ED's OIG and GAO that address FSA and its operations and that have been published since January 1, 2014. Sources listed in the bibliography largely relate to FSA but may also include information and findings relating to other ED offices, such as OPE. In some instances, sources refer to ED and/or the Secretary of Education and not specifically to FSA and/or its COO. CRS is including these documents in this bibliography as, given FSA's functions, some of the information in these reports likely relate to FSA. For each category, reports are presented in reverse chronological order.

U.S. Department of Education, Office of Inspector General

Federal Student Aid's Oversight of Schools' Compliance with Satisfactory Academic Progress Regulations, July 17, 2019.

Federal Student Aid's Process to Select Free Application for Federal Student Aid Data Elements and Students for Verification, April 26, 2019.

Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans, February 12, 2019.

Federal Student Aid: Efforts to Implement Enterprise Risk Management Have Not Included All Elements of Effective Risk Management, July 24, 2018.

Federal Student Aid's Contractor Personnel Security Clearance Process, April 17, 2018.

The Department's Communication Regarding the Costs of Income-Driven Repayment Plans and Loan Forgiveness Programs, January 31, 2018.

Federal Student Aid's Borrower Defense to Repayment Loan Discharge Process, December 8, 2017.

Federal Student Aid's Processes for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students and Taxpayers, February 24, 2017.

Misuse of FSA ID and the Personal Authentication Service, September 26, 2016.

FSA Oversight of the Development and Enhancement of Information Technology Products, June 30, 2016.

Kathleen Tighe, ED Inspector General, "Servicemembers Civil Relief Act," letter to Senators Patty Murray, Elizabeth Warren, and Richard Blumenthal, February 29, 2016.

Functionality of the Debt Management Collection System 2, November 5, 2015.

Federal Student Aid's Oversight of Schools Participating in the Title IV Programs, September 29, 2015.

Review of Debt Management Collection System 2 (DMCS2) Implementation, August 24, 2015.

Audit of the Followup Process for External Audits in Federal Student Aid, June 17, 2015.

Pell Grant Lifetime Eligibility Limit, March 31, 2015.

Federal Student Aid's Oversight of Schools' Compliance with the Incentive Compensation Ban, March 24, 2015.

The U.S. Department of Education's Administration of Student Loan Debt and Repayment, December 11, 2014.

Oversight of Guaranty Agencies During the Phase-Out of the Federal Family Education Loan Program, September 29, 2014.

Review of Federal Student Aid's Oversight and Monitoring of Private Collection Agency and Guaranty Agency Security Controls, September 22, 2014.

Handling of Borrower Complaints Against Private Collection Agencies, July 11, 2014.

Third-Party Servicer Use of Debit Cards to Deliver Title IV Funds, March 10, 2014.

Review of Federal Student Aid's Plans for Schools Closures by a For-Profit Entity, February 28, 2014.

Title IV of the Higher Education Act Programs: Additional Safeguards Are Needed to Help Mitigate the Risks That Are Unique to the Distance Education Environment, February 21, 2014.

U.S. Government Accountability Office

Public Service Loan Forgiveness: Improving the Temporary Expanded Process Could Help Reduce Borrower Confusion, GAO-19-595, September 5, 2019.

Federal Student Loans: Education Needs to Verify Borrowers' Information for Income-Driven Repayment Plans, GAO-19-347, June 25, 2019.

Priority Open Recommendations: Department of Education, April 9, 2019.

Cybersecurity: Office of Federal Student Aid Should Take Additional Steps to Oversee Non-School Partners' Protection of Borrower Information, GAO-18-518, September 17, 2018.

Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers, GAO-18-547, September 5, 2018.

Federal Student Loans: Further Action Needed to Implement Recommendations on Oversight of Loan Servicers, GAO-18-587R, July 27, 2018.

Federal Student Aid: Education's Postsecondary School Certification Process, GAO-18-481, July 17, 2018.

Federal Student Loans: Actions Needed to Improve Oversight of Schools' Default Rates, GAO-18-163, April 26, 2018.

Federal Student Aid: Better Program Management and Oversight of Postsecondary Schools Needed to Protect Student Information, GAO-18-121, November 27, 2017 (reissued December 4, 2017).

Higher Education: Education Should Address Oversight and Communication Gaps in Its Monitoring of the Financial Condition of Schools, GAO-17-555, August 21, 2017.

Student Loans: Oversight of Servicemembers' Interest Rate Cap Could be Strengthened, GAO-17-4, November 15, 2016.

Federal Student Loans: Education could Improve Direct Loan Program Customer Service and Oversight, GAO-16-523, May 16, 2016.

Federal Student Loans: Key Weaknesses Limit Education's Management of Contractors, GAO-16-196T, November 18, 2015.

Federal Student Loans: Education Could Do More to Help Ensure Borrowers Are Aware of Repayment and Forgiveness Options, GAO-15-663, August 25, 2015.

Higher Education: Better Management of Federal Grant and Loan Forgiveness Programs for Teachers Needed to Improve Participant Outcomes, GAO-15-314, February 24, 2015.

Higher Education: Education Should Strengthen Oversight of Schools and Accreditors, GAO-15-59, December 22, 2014 (reissued January 22, 2015).

Federal Student Loans: Better Oversight Could Improve Defaulted Loan Rehabilitation, GAO-14-256, March 6, 2014.

Appendix B. Selected Acronyms Used in This Report

ACSFA	Advisory Committee on Student Financial Assistance
CFPB	Consumer Financial Protection Bureau
COO	Chief Operating Officer
DOJ	Department of Justice
ED	Department of Education
FAFSA	Free Application for Federal Student Aid
FAR	Federal Acquisition Regulation
FFEL	Federal Family Education Loan Program
FSA	Office of Federal Student Aid
GAO	Government Accountability Office
HEA	Higher Education Act
HEOA	Higher Education Opportunity Act
IHE	Institution of Higher Education
IG	Inspector General
NPR	National Partnership for Reinventing Government
NSLDS	National Student Loan Data System
OPE	Office of Postsecondary Education
OPM	Office of Personnel Management
OUS	Office of the Under Secretary
PBO	Performance-Based Organization
PCA	Private Collection Agency
PLIS	Policy Liaison and Implementation Staff
SES	Senior Executive Service
SFAP	Office of Student Financial Assistance Programs

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Acknowledgments

CRS requested that the U.S. Department of Education review portions of this report that describe operations and administrative practices for accuracy. Specifically, subsections on “FSA Leadership,” “FSA Personnel Flexibilities,” “FSA Procurement Flexibilities,” and all subsections in the section of this report titled “FSA Functions and Structure” were reviewed.

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