Income Share Agreements as Alternative Education Financing

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Executive Summary

This paper explores the features of Income Share Agreements (ISAs) as an alternative method of financing higher education. After reviewing a pilot project at Eastern Kentucky University and complaints that have been filed toward their provider, the insights gained lead to recommendations for a state-wide government-sponsored income share agreement program with specific guardrails regarding transparency, program goals and outcomes, legal requirements, compliance and auditing, and lending and servicing.

Introduction

The underlying problems in providing equitable and affordable access to higher education are numerous and nuanced, and the solutions to address these problems are as different as the individual socioeconomic statuses of the students they are tailored to serve. Nothing captures public and political attention more than everyone’s favorite necessary evil, student loans, but there is an emerging debt alternative that captivates both the imagination and consternation of financial aid experts: income share agreements or ISAs.

Comparing the outcomes of student loans to those of income share agreements is like comparing apples to tomatoes but insisting only one of them is a fruit. Absent any quantitative research, much of the policy discussion rests in the opinion editorials and legal space. This paper will attempt to place all of the fruit in the same basket as a qualitative study by examining the ISA model that has been recently adopted as a pilot project at a public university in Kentucky through review of publicly available documents, staff and industry expert interviews, and legal scrutiny. This investigation should lead to next steps as to the future of ISAs in Kentucky and whether they are an appropriate strategy to fill any
known gaps in higher education financing. Additionally, the question of what role government should play in the administration or oversight of ISAs is one that requires immediate attention as these constructs currently fall outside of any federal or state lending laws or consumer protections.

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**Educational Debt Overview**

**Student Loans**

In order to be a consumer of higher education in the United States, our policies require students and their families contribute whatever disposable income the federal government determines they can pay for a sticker price that is as different as the wide range of postsecondary educational options available to them. The completion of the Free Application for Federal Student Aid or FAFSA, heavily encouraged for completion by high school and postsecondary education policymakers, determines if the family has sufficient funds immediately at hand to pay in cash for the cost of attendance, which is determined by the school. Low- to moderate-income families may be subsidized with federal and state grants, scholarships, and work-study to fulfill the required funding amount. If the family income is too high for grant eligibility or if the institution determines they still have unmet need, students and parents are encouraged to fill in the remaining gap with federal student loans, which the FAFSA also serves as the application for. Students and families who still have unmet need must engage with the private student loan market.

Media interviews with struggling borrowers often highlight large balances and minimal earnings, lifetimes of struggling to make payments, delayed decision-making for homeownership and establishing a family, and bureaucratic roadblocks to loan forgiveness programs.
Recent reports regarding the student loan landscape in the United States paint a picture of who engages with debt for financing higher education and what some of the financing outcomes are at this time:

- 70% of college graduates rely on student loans for their education
- $37,000 average debt per loan recipient as of June 2020
- $1.677 trillion indebtedness as of October 2020
  - Private loans make up $132 billion, or roughly 8%
- Delinquency is more prevalent in low- and moderate-income communities, which are disproportionately vulnerable populations and households of color
- Those who do not graduate are twice as likely to be delinquent; three times more likely to default
- Borrowers who owe less than $5,000 are the most likely to default within four years\(^1\)

Student loans are an interesting financing construct because the borrowing of funds is for immediate consumption and repayment is expected regardless of the outcome for the student. The difference between federal student loans and traditional debt, however, is that there are no assets to use as collateral. Private student loans are underwritten, and the terms of an agreement are subject to a lender’s determination of the ability to repay. But much of the discontent about student loans is arguably not a loan issue but a repayment issue. Neither private nor federal student loans may be discharged in bankruptcy without proving an undue hardship, and mechanisms are in place to garnish wages, tax returns, and even lottery winnings in the event of default.

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Congress has created and the U.S. Department of Education has implemented a number of income-contingent repayment plans, although bureaucratic hurdles and lack of awareness prevents many borrowers from participating. If eligible, depending on the date of origination, a borrower may not pay more than 10% to 15% of their discretionary income for more than 20 or 25 years. In times of low or no income, a “payment” of $0 may be received while the federal government defers interest for a maximum of three years. If any remaining balance exists after the repayment time allotted, the debt will be forgiven.

**Income Share Agreements (ISAs)**

Income Share Agreements offer an opportunity for an “obligor,” carefully not labeled a “borrower,” to receive funds for school with the promise of repaying a certain percentage of future income for a fixed amount of time. While not a new concept, one statistic states that participation has increased in the United States from one active program in 2016 to 76 by 2019\(^2\). They are typically issued to undergraduate students as well as to individuals enrolled in vocational education programs and unaccredited coding bootcamps. Their appeal comes from the fact that they are not marketed as debt – there is no principal amount or interest rate to compare to other loans, and the risk of unaffordable monthly payments is mitigated by income thresholds. Economically savvy students may view ISAs as an institution’s confidence in the value proposition of their degree program because of their risk-sharing nature, similar to insurance. Advocates say that this model shifts the risk of borrowing away from students and on to education providers and investors.

The general terminology is the same for each ISA: the **funding amount** is the sum provided as if a principal amount on a loan; the **income share** is the percentage of the borrower’s monthly disposable income that must be repaid. An **income threshold** is an amount of monthly or annual income under

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which no payment is required, and a payment cap represents the total amount a student must repay over the payment term or window. If a students’ income falls below the income threshold and no payments are due, it typically extends the ISA term for the equivalent amount of time. In lieu of interest rates, the repayment amounts are set by multiplier rates, however advocates of ISAs insist that they are not loans and therefore do not fall under the intense regulatory environment of student loans, lenders, credit or debt at either the state or federal level.

Broadly, ISAs can be categorized into two different models, one with a benevolent structure usually backed by a nonprofit or charitable foundation, and the other organized as a venture capitalist investment. In a benevolent model, private donations are pooled into a fund. Students receive the ISA to fulfill a charitable or social goal of the donor and their payments are recycled back into the fund. Students are either pursuing specific majors or they meet a policy need-criteria, such as workforce development. Colorado Mountain College, for example, has implemented the Fund Sueños targeted specifically to Deferred Action for Childhood Arrival (DACA) students who are ineligible for other types of federal financial aid. The San Diego Workforce Partnership has received grants from Strada Education Network, the James Irvine Foundation and Google to provide seed funding for ISAs for short-term business and web development training. Other programs are designed to assist students who have exhausted federal borrowing limits or target a lagging degree completion rate where financing is identified as a barrier.

A venture capitalist model is profit driven with funders seeking a return on investment, sometimes structured into municipal securities like private activity bonds or collateralized debt obligations. If a school needs operating capital, platforms like Edly offer accredited investors various offerings. Investors can retrieve information such as the school’s graduation rate and average salary

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4 Hess, Abigail, San Diego’s new income-share program wants to help students go back to school now, pay later.
while institutions can pool their ISAs by program or major. An investor then purchases a note for fractional ownership\(^5\). Other ISAs have been structured to refinance borrowers’ existing student loan debt, while others are crafted to relieve students’ unpaid institutional balances.

Regardless of the model type, if the student does not meet the minimum income threshold (usually a percentage of the poverty level) after graduation and no payment is received, the fund will experience a loss. If the student is successfully employed, total repayment amounts may be in excess of the funding amount, theoretically making up the difference for the shortfall from other participants. As some education industry experts have pointed out\(^6\), there is a growing interest in transitioning successful benevolent ISA programs into a venture capitalist model once adequate volume and repayment history have been established. Experienced investors typically want to see 10 years of repayment history before making commitments. The main question for any donor or investor will be whether or not a program is sustainable, and if regulations are imposed, it may have the effect of attracting those that are currently skeptical\(^7\).

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**Literature Review**

Academic studies regarding ISAs as a college accessibility and completion tool are limited because of the scarcity of sample subjects, the customized terms for each contract, and the long-term nature of these experiments. Scholarly work regarding the underlying concepts of financing higher education, government subsidies, debt aversion, and labeling and framing of educational finance products, however, provide a rich context to understand the educational debt landscape.

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\(^5\) Johnson, Sydney, *Wall Street Wants in on Income-Share Agreements*

\(^6\) Will Shaffner in discussion with the author, October 2020.

\(^7\) Johnson, Sydney, *Wall Street Wants in*
Human Capital Contracts

While he did not conduct any practical experiments, Milton Friedman proposed a version of ISAs or human capital contracts for professional and vocational training in his 1955 essay “The Role of Government in Education”. He explains that an imperfect capital market exists because there is no asset that can be used as collateral against the risk of educational investment other than an individual’s time and opportunity cost. Friedman discourages the use of fixed money loans, direct cash subsidies, or taxpayer redistribution of income as methods of government subsidy for education. Instead, he suggests that the government “buy” shares of an individual’s earning prospects by fronting the funds to complete workforce training in return for a commitment to repay a percentage share of that individual’s future earnings.8

A governmental body could offer to finance or help finance the training of any individual who could meet minimum quality standards by making available not more than a limited sum per year for not more than a specified number of years, provided it was spent on securing training at a recognized institution. The individual would agree in return to pay to the government in each future year x per cent of his earnings in excess of y dollars for each $1,000 that he gets in this way.9

Friedman proposes that this should be a self-financing fund, without for-profit motives, as varying circumstances and individual choices may make some investments successful and some fail. He suggests that, “Investment should be carried to the point at which the extra return repays the investment and yields the market rate of interest on it.”10 To avoid overinvestment, he suggests there should be limits – only those institutions or programs approved by the government should be eligible.

Friedman does seem to have some foresight into the “irrational public condemnation of such contracts,” as some financial aid experts today liken ISAs to indentured servitude. The same argument

9 Ibid.
10 Ibid.
could be made for existing student loan repayment terms and conditions lasting 10, 20, or even 25 years following a borrower’s exit from school, or conversion scholarships that turn into interest-bearing loans if a service requirement is not be met. It is more likely that the current student loan environment has created a rational aversion to educational debt.

**Debt Aversion**

Some research has been conducted as to the psychological responses to debt on career choices (Field, 2009), finding that career-fields with low income potential, usually in the public service arena, may benefit from financial aid packaging that is not framed as debt. Delany et. al. completed a public opinion survey and found that those who support the federal Pell grant, tuition-free college, and deferred tuition were more likely to support ISAs, and those with a bachelor’s degree or higher were significantly more likely to do so. Those with children currently in school were also likely to be receptive to ISAs and that racial and ethnic identity also correlate to support. Addo et al. expand on existing research finding that student loan debt is a mechanism that is increasing social and economic inequalities by race and across generations.

Caetano et al. found people were unwilling to enter into a financial contract labeled a “loan” and fixed interest rates were unappealing, but people were open to paying a 4% premium for a product that was not described as debt. A similar study by Boatman et al. found that those exhibiting loan or debt aversion tendencies are more likely to underinvest in higher education, which may be expressed by working more hours while attending school, enrolling in 2-year as opposed to 4-year institutions, enrolling part-time instead of full-time, delaying college participation directly after high school, or passing on college opportunities completely.
Inquiries with the Kentucky Commission on Proprietary Education and the Association of Kentucky Independent Colleges and Universities resulted in no known ISA programs at proprietary or private nonprofit institutions in the Commonwealth. Eastern Kentucky University, however, has launched the first known ISA program at a public university through a pilot program called “Invest in Success.”

Launched in the Fall of 2020, the website states that this program targets undergraduate juniors and seniors in nursing and aviation to align “the cost of college with student outcomes” with the goal of “improving educational access, affordability and outcomes.” The website continues to describe goals of retention, “keeping the door of opportunity open that they wouldn’t have without it” and keeping students from “having to take out loans with less favorable terms or face having to drop out of college altogether.” The program description reads like a benevolent ISA model.

The request for proposal (RFP) says that the university was seeking a partner to “explore a possible collaboration to establish, as a pilot project, an income share agreement fund to support students of Eastern Kentucky University” and:

1. To provide an ISA education financing alternative for Eastern Kentucky University students, thereby providing them with more choices in funding college costs;
2. To create an attractive opportunity for those seeking to contribute to student affordability and accessibility in a direct way, whether they be:
   a. Investors seeking a return on investment for their own account;
   b. Investors desiring to donate their ISA returns back into the fund; or
   c. Donors desiring to make a charitable contribution to the fund;
3. To create clear, comprehensive, and helpful ISA explanation and disclosure materials for students and investors alike, that comply with existing legal and regulatory requirements

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11 Income Share Agreement Funding, Eastern Kentucky University, https://advantage.eku.edu/income-share-agreement-isa-funding.
12 Appendix A - EKU RFP for Income Share Agreement
and that anticipate (to the greatest extent practicable) future regulations, laws, and public scrutiny; and

(4) To launch the Fund as an Eastern Kentucky University pilot project in mid-March 2019

No other details are provided in the RFP that indicate this pilot project was desired for improving specific affordability problems with the aviation or nursing majors, but instead indicate a way to experiment with donor and investor funds, blurring the lines of intention somewhere between a benevolent and venture capitalist ISA model. This funding alternative may instead be the solution to cash flow problems with institutional funds. Sample ISA student contracts, inquiries on participation rates and questions of financial education to investors and students remain unreturned.

It is unknown how many vendors responded to the RFP, but Vemo Education is named as the ISA provider for EKU. In examining the contract between EKU and Vemo\(^\text{13}\) it states that under the duties of the Master Servicer, both the Master Servicer (Vemo) and Originator (EKU) should be compliant with all state and federal lending laws. This language alone may place the school under the jurisdiction and possible violation of a litany of federal and state financial laws: The Truth in Lending Act (“TILA”), the Equal Credit Opportunity Act (“ECOA”), the Fair Credit Reporting Act (“FCRA”), the Consumer Financial Protection Act (“CFPA”), and Kentucky usury laws. Additionally, schools that receive federal student financial aid are required to abide by the U.S. Department of Education’s “Preferred Lender” regulations as directed in the Student Loan Sunshine Act under the Higher Education Opportunity Act of 2008, and promotion of fewer than two private lenders to students would be in violation of these requirements, subject to penalties.

The contract also states that the Master Servicer shall prepare and deliver all state and federal information reports, such as required by the Internal Revenue Service and state and federal tax laws, but questions on tax treatment are currently a large questionable cloud hanging over ISAs. Payments of

\(^\text{13}\) Appendix B - Vemo Education, Inc. Contract with EKU
federal and private student loan interest are an itemizable deduction, but when a debt is forgiven, the amount discharged must be reported as income. In contrast, if an ISA recipient does not repay the full amount financed, it is unclear whether or not they would have to report the difference as income. Muddying the waters even further, ISA servicers require tax returns as verification of income, but there are no guidelines as to what constitutes the discernable amount. To find adjusted gross income, the IRS requires input of aggregate income wages, salaries and tips with income from rental real estate, royalties, partnerships, S Corporations, trusts and unemployment compensation, the latter of which seems to directly conflict with the promise that no payment is due if there is no employment\textsuperscript{14}.

Under the Duties of the Originator section, there is an exclusivity clause that prohibits the Originator from engaging with any other ISA provider during the term of the contract, an action that, if these financial constructs were considered a student loan, would again be in violation of the preferred lender list. If the institution’s true goal was in providing students the most favorable education financing options, exclusivity with a single entity and lack of competition would be in direct opposition to those claims.

\begin{center}
\textbf{Complaints}
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On June 1, 2020, advocates with the National Consumer Law Center and the Student Borrower Protection Center filed a complaint against Vemo Education, Inc. with the Federal Trade Commission (FTC)\textsuperscript{15}. In it, they urge the FTC to investigate the company for unfair and deceptive marketing practices protected in the Federal Trade Commission Act, itemizing inflated and inaccurate assumptions in a cost

\textsuperscript{14} Student Borrower Protection Center, \textit{Applying State Consumer Finance and Protection Laws to Income Share Agreements}, Benjamin Roesch, August 2020: 33.

\textsuperscript{15} Appendix C - Complaint, Request for Investigation, Injunction, and Other Relief
Comparison Tool. The Comparison Tool is not located on the EKU website, but detailed analysis of the assumptions and calculations for Vemo’s two largest clients, Purdue University and the University of Utah, reveal several inaccuracies.

By comparing Vemo’s ISA to products like the federal Parent PLUS Loan and other nebulous private education loans, it appears that their ISA would be cheaper. However, the assumptions are false regarding the commencement of repayment for PLUS loans and inaccurately capitalizes interest, which inflate the cost of borrowing for the federal option and makes them seem less desirable. The tool also uses outdated, generalized, and inaccurate information about the starting income of graduates rather than institutional specific information. By using these faulty income assumptions, the complaint states that Vemo systematically and deceptively understates the repayment costs of their ISAs to make them more appealing. The complaint also exemplifies how the Comparison Tool misrepresents the income growth calculations over the ISA repayment term, again obscuring the true cost to the consumer. The advocates ask for the FTC to prohibit future violations and order relief for the affected students.

The complaint against Vemo’s calculations is not new as similar criticisms have been made of their ISA marketing versus the income-contingent repayment plan for federal Direct Loans. A blog post from the New America Foundation in 2017 captured the repayment assumptions:

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Other complaints of selection bias and moral hazards exist against ISA generally because of the targeted focus on particular majors and the multiplier rates that may be attached: an engineering student at a participating university is more likely to be a successful white male and have a lower multiplier rate based on expected high earnings; an elementary education teacher at the same university may be more likely to be female, have lower earnings that her engineering counterpart, and therefore receive a higher multiplier rate on her ISA, even though they are charged the same undergraduate tuition amount.
As ISAs continue to appear in the educational finance landscape, political scrutiny follows. James Bergeron, president of the National Council of Higher Education Resources, indicated\(^{17}\) that those in the ISA marketplace are desperate for clarity on several issues, including tax treatment and credit reporting. If an ISA obligor applied for a mortgage, the lender would be in the dark about the borrower’s true debt to income ratio because ISAs are not currently required to be disclosed to the major credit reporting agencies, which some consider deliberate loan stacking. But how to accurately report a future debt with only a fixed term and rate and no real principal balance is unknown. In addition to the question of tax treatment for deferred payments or accounts that reach the payment cap less than the amount received, employers are increasingly assisting employees in repaying student loan debt on their behalf. If an employer assists an ISA obligor with repayment, there is no clear guidance that the employer should receive a tax deduction or credit.

U.S. Senators Todd Young (R-Ind.), Mark Warner (D-Va.), Marco Rubio (R-Fla.), and Chris Coons (D-Del.) introduced the ISA Student Protection Act to improve the innovative financing tool for students pursuing postsecondary education in July of 2019. The press release states that “This bipartisan bill would help safeguard ISAs with consumer protections to improve their effectiveness – protecting students and ensuring their success in the workforce.”\(^{18}\) The consumer protections outlined in the legislation include:

- Individuals making less than 200 percent of the Federal Poverty Level ($24,980 in 2019) are exempt from making payments towards their ISA.

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\(^{17}\) James Bergeron in discussion with the author, October 2020.

• ISA providers cannot make agreements with students that require payments higher than 20 percent of income for shorter-term contracts, with the cap decreasing to 7.5 percent for the longest contracts allowed (30 years).
• ISAs are dischargeable in bankruptcy.
• Funders must disclose to students how their monthly payments would compare under the ISA to payments on a private or federal loan for the same amount of money and number of payments.
• Applies federal consumer protection laws (i.e. Fair Credit Reporting Act, Fair Debt Collection Practices Act, Military Lending Act, Servicemembers Civil Relief Act, Equal Credit Opportunity Act) to ISAs.
• Gives the Consumer Financial Protection Bureau oversight authority over ISAs.
• Clarifies the tax treatment of ISA contributions for both funders and recipients.

According to industry experts though, Republicans have not been able to get much traction on the legislation because they still cannot agree amongst themselves on whether or not these are a financial product and if so, what exactly should the federal role be. Democrats, on the other hand, tend to be more in favor of expanding nondebt financial aid such as the Pell grant. What they all seem to be waiting for are outcomes, and until these experiments have demonstratable effectiveness or burden, there will probably continue to be a lack of federal guardrails for ISAs.

Absent any federal legislation, case law may be the determining factor for how these financial arrangements are ultimately treated, specifically regarding the questions of whether ISAs can be restructured or discharged in bankruptcy and subject to early payoff and refinancing without penalty.
What the educational finance community really needs are quantitative studies of ISA repayment history to evaluate their outcomes. But since many of these arrangements are offered by for-profit, private companies, and government auditing and oversight of these contracts is nonexistent, access to such data and analysis are difficult to come by. Furthermore, student loans are easier to study because each borrower is essentially locked into the same terms and conditions at a particular moment in time. ISAs vary per model per provider per individual and no two repayment situations will be exactly alike. This gap in research and the difficulty in observing repayment behavior helps build the case to initiate an ISA pilot program through a non-profit, governmental entity with publicly accessible outcomes, data and results, but with specific guardrails in mind.

**Recommendation 1 – Transparency:** First and foremost, ISAs need to be clearly labeled as “debt” or “loans” to students and their families because there is a future financial obligation that must be paid. When financial aid offices offer these products in lieu of traditional federal or private student loans, they are doing a disservice to the students and families who are desperately seeking assistance and honest advice in how to attain their higher education goals. ISAs should be offered as a last resort after all other federal and state options have been exhausted, like to those that have maxed out their federal loan limits and are not likely to qualify for private loans to cover unmet costs. Financial aid offices need to stop allowing providers to inaccurately market the costs of ISAs with inaccurate cost comparison calculators and use expected salary information from their own institutions.

**Recommendation 2 – Program Goals and Expectations:** Risk-averse attitudes may be changed with greater communication efforts regarding income-based repayment or ISAs, thereby solving the problem of underinvestment of higher education. If one were truly interested in avoiding the downside risk of student loans, there needs to be more of a commitment to prospects of employment upon
graduation. Support services such as mentoring and career coaching should be provided to ISA recipients to further eliminate the risk of underemployment. If an individual or business wants to help build the pipeline for their own future employees, they could assist students in financing their education by donating to a charitable ISA fund, receiving a tax incentive, and then continue the sponsoring relationship through the promise of a paid internship or entry-level job upon degree completion. The debt would subsequently be “forgiven” through years of employment, but the goals of successful educational financing need to involve the entire lifecycle of the debt.

The scope, however, needs to avoid selection bias and moral hazard, and it is not advised to have different terms for varying educational paths. A minimum salary threshold and defined terms when payments would stop are also necessary. A state-wide program should fill existing gaps or student needs, not substitute or supplanting the existing financial aid structures already in existence.

Kentucky does not have any state educational finance assistance for non-Title IV academic programs, which are typically workforce development career training programs. ISAs would also work well for students who are not Title IV eligible, such as international students or DACA students. Additionally, ISAs could be offered to justice-involved individuals, incarcerated or with felony convictions.

**Recommendation 3 – Legal Requirements:** If treated as private loans, ISAs need to behave as such, and all of the Truth in Lending requirements, disclosures, credit reporting, tax treatment and regulations should apply. If financial aid offices are going to recommend ISAs, they should adhere to the requirements of Preferred Lender List regulations. To preserve the best interests of the borrowers, a state-wide ISA should not require mandatory arbitration for students in financial distress. They should also be dischargeable in bankruptcy and there should not be penalties imposed for prepayment.
**Recommendation 4 – Compliance and Audit:** As Friedman states, “In such a free private enterprise exchange economy, government’s primary role is to preserve the rules of the game by enforcing contracts, preventing coercion, and keeping the market free.” While he proposes the federal government rather than smaller units serve as the vehicle to make human capital contract funds available, the subsequent development of “assistance authorities” in the 1965 Higher Education Act and the establishment of the Kentucky Higher Education Assistance Authority (KHEAA) and its sister agency, the Kentucky Higher Education Student Loan Corporation (KHESLC), fit the criteria for who may be the watchdog of ISA programs at the state level. KHEAA performs auditing and compliance reviews of institutions that disburse state aid on behalf of students. Ensuring compliance and oversight at the state level may be necessary absent any federal regulations, CFPB or U.S. Department of Education auditing. The Vemo contract examined does state that in addition to providing the Originator access to ISA files, the Master Servicer shall also provide “governmental authorities and regulators access,” opening the door for state inspection and ensuring consumer protections. Furthermore, state legislation may be necessary to require Kentucky postsecondary institutions and their affiliates offering income-share agreements to become licensed as lenders.

**Recommendation 5 – Lending and Servicing:** KHESLC may be a natural fit if the state were interested in originating and/or servicing ISAs. KHESLC is uniquely positioned in the student loan marketplace to provide customized loan servicing because they own the rights to the software utilized for administration the existing FFELP and private loan portfolio. In-house technical staff can make programming modifications for these debt packages to fit onto the existing servicing platform and trained and knowledgeable staff are equipped to handle the back-office administration, income verification and call center support. Furthermore, KHEAA and KHESLC maintain compliance with federal

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19 Milton Friedman, “The Role of Government in Education”
20 Appendix B - Vemo Education, Inc. Contract with EKU
and state laws for student lending, collections, and meet all due diligence, disclosure, and reporting requirements.

Additionally, if the state were interesting in organizing the charitable and fundraising aspect of a beneficent ISA program, there is a third organization under the KHEAA purview, the Kentucky Higher Education Student Foundation. This is a 501 (c)(3) that would be an appropriate legal entity to house the funds. All of these entities are nonprofit in their mission and have a public obligation to be consumer friendly.

Conclusion

Building upon the intentions of federal income-contingent repayment plans, a carefully constructed ISA has the potential to remedy problems with debt aversion and underinvestment of higher education. Income share agreements, while not identified as loans, fit within the activities, mission, and technological infrastructure of public financial aid providers, but to date the only entities that have engaged in the administration of ISAs have been for-profit businesses. The capacity for a state-based, nonprofit financial administration exists in Kentucky, although public awareness may be a significant challenge.

The administration of ISAs to a targeted group, specifically the vocational and professional training programs would fill a needed gap in government support for non-Title IV approved programs in Kentucky. These workforce development credentials, diplomas, and certificate programs would become less risky to those who may be debt averse. What needs to be solidified is the terms of the agreement, the sources of capital, and consumer protections equivalent or better to what are offered with private student loans.


Buchannon, Scott, President of the Student Loan Servicing Alliance, phone interview with the author, October 29, 2020.


Chromy, Debra, President of Education Finance Council, phone interview with the author, July 2020.


Flake, Rebecca, Senior Manager of Higher Education Services at Cooley, LLP, phone interview with the author July 16, 2020.


Shaffner, Will, Director of Business Development & Government Relations, Missouri Higher Education Loan Authority, phone interview with the author, October 22, 2020.

Appendix A - EKU RFP for Income Share Agreement

Request for Proposal
Eastern Kentucky University
RFP 46-19 Income Share Agreement (ISA)

Issued: September 26, 2018
Due: October 31, 2018
521 Lancaster Avenue
Richmond, Kentucky 40475
Appendix B - Vemo Education, Inc. Contract with EKU

This PROGRAM SUPPORT AGREEMENT dated as of the date of the last signature by a party hereto (this "Agreement") among Eastern Kentucky University, a Kentucky Public Institution ("EKU") as originating institution, [in such capacity, the "Originator"], and Vemo Education, Inc., a Delaware corporation ("Vemo"), as servicer (in such capacity, the "Master Servicer").

WHEREAS, the Originator desires to create a program pursuant to which it will, from time to time hereafter, originate income share agreements;

WHEREAS, the Originator issued a Request for Proposals (Number 46-19) (the RFP) in which originators solicited proposals to originate and service income share agreements, and Master Servicer submitted a written response to such RFP;

WHEREAS, Originator issued a Notice of Intent to Award in connection with the RFP, dated February 12, 2019, in which the Originator notified Master Servicer of Originator's intent to enter into negotiations with Master Servicer for the services described in the RFP, and

WHEREAS, Vemo, as Master Servicer, is willing to originate and service income share agreements on behalf of the Originator;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

1. DEFINITIONS AND USAGE. Whenever used in this agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

   "Farm" means the farm set forth in Attachment A.

   "ISA" means an income share agreement originated by an Originator.

   "Material Adverse Effect" means (a) a material impairment of any of the following, to the extent such impairment cannot be timely cured (where such cure period is applicable): (i) the ability of a party to perform under this Agreement, (ii) the rights of a party under this Agreement, or (iii) the value of any underlying ISA contract or the enforceability of this Agreement against a party.

   "Originator" on an ISA means the person receiving funding or a credit towards a tuition obligation under such ISA.

   "Subcontractor" means any vendor, subcontractor or other Person that is not responsible for the overall servicing of ISAs but performs one or more of the services
Appendix C - Complaint, Request for Investigation, Injunction, and Other Relief

BEFORE THE FEDERAL TRADE COMMISSION
WASHINGTON, D.C.

IN RE VEMO EDUCATION, INC. Complaint, Request for Investigation, Injunction, and Other Relief

I. INTRODUCTION

1. This complaint concerns the marketing and promotion of Income Share Agreements ("ISAs") by Vemo Education, Inc. ("Vemo") and its institutional clients. Vemo is a for-profit company that provides ISA-related services to a wide array of postsecondary educational institutions, from universities to short-term, unaccredited vocational programs based across the country.

2. Grappling with the rising cost of college, students often cobble together funding from various sources, including monies available from their families, jobs, scholarships, grants, and student loans. Some students’ parents may also take out student loans, whether Parent PLUS Loans from the federal government or private student loans.

3. ISAs have been presented to some students, either directly or through their schools, as a new financial product for financing higher education expenses. ISAs are often pitched as an alternative to traditional loans. ISAs are agreements in which a fund, sometimes associated with a for-profit investor, finances a portion of a student’s education. In exchange, the student agrees to pay a specified percentage of their income after graduation for a period of time — often nearly ten years.


PAGE 1 – COMPLAINT