

WASHINGTON UPDATE

FEBRUARY 2019

Trump's State of the Union Speech Does Not Mention Higher Education

On February 5, 2019, President Trump delivered his State of the Union address, which focused on immigration and border security. While he called on Congress to enact new school choice legislation and fund paid family leave for new parents, the President made no mention of higher education. He also advocated the need for unity across the aisle.

Secretary of Education Betsy DeVos issued a statement after the address stating: "I look forward to continuing to work with Congress on ways to give students opportunities to pursue the education that engages their curiosity, unlocks their creativity, and empowers them to reach their fullest potential. It's time to do what's best for kids and get to work."

A copy of the Secretary's statement is found at: <https://www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-president-right-call-expanded-education-freedom>.

Democratic Senators and Congressman Introduce Bill to Help Students Without Access to Parental Information

On February 7, 2019, Senators Ben Cardin (D-MD) and Chris Van Hollen (D-MD) introduced S. 416, the *FAFSA Fairness Act of 2019*. On the same day, Congressman Elijah Cummings (D-MD) introduced a companion bill, H.R. 1075, in the House. The bill would allow students who are unable to obtain parental information because of mitigating circumstances, such as abuse or neglect, to submit their FAFSA after answering a single screening question, to be devised by the Secretary. The applicant would be considered a "provisionally independent" student and would receive an estimated Expected Family Contribution and an estimated Pell Grant award based on the provisional independent status. The status would be identified on the ISIR, and the school would have to reach out to these students to discuss the next steps for applying for a dependency override. Currently, a dependent student who submits a FAFSA without parent information would have his/her FAFSA rejected.

A copy of the Senate version of the bill is found at: <https://www.congress.gov/bill/116th-congress/senate-bill/416/text>.

Alexander Offers Three Proposals for Reauthorization of the HEA

On February 4, 2019, Chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee Lamar Alexander (R-TN) offered three proposals to update the *Higher Education Act* at an event hosted by the American Enterprise Institute (AEI). Senator Alexander offered three

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proposals “to help students afford college and make their degrees worth the time and money they pay for them.” The three proposals laid out by the Senator are:

1. Simplify the FAFSA, which now has 108 questions, by reducing the number of questions to no more than 25 questions;
2. Scrap the current system of 9 different ways to repay federal student loans and replace the system with two options, a standard 10-year repayment plan and an income-based repayment plan that would limit payments to no more than 10 percent of the borrower’s discretionary income. Both repayment plans would automatically deduct payments from the borrower’s paycheck; and
3. Establish a new accountability system, a student loan repayment rate, based upon the number of borrowers that actually repay their student loans by program, which should lower tuition for some programs or even discourage schools from offering programs that are not worth it to students. This would replace the gainful employment rule and apply to all programs at all institutions.

Senator Alexander also discussed other proposals drawn from bills from other HELP Committee members over the last few years. The proposals include expanding competency-based education programs; requiring institutions to use uniform language in financial aid award notices; offering flexibility for loan counseling including a discussion of how much money students should borrow; expanding data on student outcomes; and allowing Pell Grants to be used in new ways, such as for incarcerated individuals and for students enrolled in short-term programs. Senator Alexander asserted his commitment to work with Ranking Member Patty Murray (D-WA) on campus security measures.

During the last four years, the Senate HELP Committee has held 27 hearings on the HEA and Senator Alexander’s goal is to report a reauthorization bill out of the committee by spring so that the full Senate can consider it this summer.

A copy of the Senator’s prepared remarks is found at:

https://www.alexander.senate.gov/public/_cache/files/7a083d10-0937-475f-bce4-1e6fe874dd5c/aei---chairman-alexander-prepared-remarks.pdf.

Senator Alexander described his three proposals in an Op-ed in *The New York Times* of February 7, 2019, titled “Going to College Should Not Be a Financial Albatross,” which is found at: <https://www.nytimes.com/2019/02/07/opinion/college-student-loans.html>.

Scott Hopes to Pass a Reauthorization of the HEA by the End of 2019

On January 30, 2019, *Politico* reported that Congressman Bobby Scott (D-VA), Chairman of the House Committee on Education and Labor, outlined his plans for the Committee this year and

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said it was possible to pass a reauthorization of the *Higher Education Act* before the end of 2019, although he said that the Democrats and Republicans seem to be going in different directions. On February 7, 2019, Congressman Scott spoke at an event sponsored by *Inside Higher ED* and described his priorities for the reauthorization of the HEA and said that he did not want to strike a “narrow compromise” but instead wanted a “comprehensive approach” that addresses college costs and expands protections for students. Chairman Scott called for structural reforms to the federal student aid programs and a reverse to the disinvestment at the state level of funding to public universities.

Chairman Scott also said that he would be asking the Department a number of questions by letters rather than by holding immediate hearings. Inquiries will relate to Secretary of Education Betsy DeVos’ restoration of the accreditor, Accrediting Council for Independent Colleges and Schools (ACICS), as well as the Administration’s rollback and rewrite of Obama-era regulations, like the borrower defense to repayment rules.

First Session of Neg Reg on Accreditation and Innovation Takes Place

Despite losing a day to snow, the first session of negotiated rulemaking on accreditation and innovation took place on January 15-16, 2019. Much of the initial discussion related to the protocols that will govern the work of the negotiating committee and consideration of additional membership on the negotiating committee. A subject of much debate was whether a representative from the State Attorneys General (AGs) should be a negotiator. While the group of negotiators agreed to include David Tandberg, representing the states from the State Higher Education Executive Officers (SHEEO), as a negotiator, the group rejected the representative from the AGs. As a compromise, Carolyn Fast, Special Counsel at the Office of the Attorney General of the State of New York, was asked to join the distance education and innovation subcommittee.

The negotiators began to address the substance of its work by considering the Department’s proposed changes to the Secretary’s recognition criteria of accrediting agencies. The proposed changes are intended to give accreditors more flexibility to allow more innovation for their members. Many of the negotiators did not agree with some of the proposed changes, such as:

- Allowing new accreditors to apply for recognition if an institution could designate the agency as its link to the Title IV programs but chooses not to because it has designated another accreditor as its link to Title IV;
- Limiting the geographic scope of regional accreditors; and
- Allowing accreditors to develop and implement a waiver process whereby institutions would be able to innovate with fewer restrictions.

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During the public comment period, Congressman Mark Takano (D-CA) warned that “the changes proposed by the department directly conflict with the safeguards in the Higher Education Act.”

The Department will now be re-writing its draft regulations in preparation for the next session that will begin on February 19, 2019.

Politico Reports that Schmoke No Longer Serves as the Department’s Chief Enforcement Officer

An article in the January 24, 2019 *Politico* reported that Dr. Julian Schmoke is no longer the Department of Education’s Chief Enforcement Officer. Dr. Schmoke was a former Dean at DeVry University and was named the Chief Enforcement Officer of the Student Aid Enforcement Unit in August 2017. He now serves as a Senior Advisor and is the overseer of the team that investigates colleges for violations of the Clery Act. The article reported that his reassignment is due to the criticism from the Democrats about his previous work with a for-profit institution.

Jeff Appel, the Director of Policy Liaison and Implementation in Federal Student Aid (FSA), has been assigned the duties of the Chief Enforcement Officer until a replacement is named.

ED Extends Deadline for Public Comment on its NPRM under Title IX

The Department of Education is extending the deadline for public comment on its proposed regulations under Title IX, published on November 29, 2018, from January 28, 2019 to January 30, 2019. The extension is in response to technical issues with the Regulations.gov site, which resulted in the Federal eRulemaking Portal being temporarily unavailable for a portion of January 16, 2019 and January 17, 2019. To ensure that the public will have had 60 days in total to submit comments on the NPRM using the Federal eRulemaking Portal, the Department is extending the public comment period for an additional two days.

A copy of the NPRM is available at: <https://www.govinfo.gov/content/pkg/FR-2018-11-29/pdf/2018-25314.pdf>.

A copy of the Notice of extension of comment period published on January 28, 2019 is found at: <https://www.govinfo.gov/content/pkg/FR-2019-01-28/pdf/2019-00256.pdf>.

ED Releases College Financing Plan

On January 16, 2019, the Department of Education released the College Financing Plan (formerly the Financial Aid Shopping Sheet) and asked institutions to voluntarily commit to

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supplying financial aid information in a way that could be better understood and compared by students. The electronic announcement stated that the Department has heard a number of concerns about the elements of the Financial Aid Shopping Sheet template that could be improved to make it more user-friendly. ED stated that it has also reviewed the NASFAA report titled, *No Clear Winner: Consumer Testing of Financial Aid Award Letters*, as well as comments that have been submitted to ShoppingSheet@ed.gov.

As a result, ED developed a revised format that includes the following changes:

1. ED is changing the name of the template from Financial Aid Shopping Sheet to College Financing Plan that emphasizes that students are making a financial transaction when enrolling in an institution; and
2. ED is introducing the College Financing Plan template this year as part of a beta testing protocol, which is not required to be used for the 2019-2020 award year. However, if used, ED is requesting that comments be submitted to ED no later than April 1, 2019.

The College Financing Plan will be finalized and will fully replace the Financial Aid Shopping Sheet for the 2020-2021 award year. The format of the College Financing Plan for 2020-2021 will include additional data elements as well as a new design and will include the ability to customize the colors of the College Financing Plan to match those of an institution.

Institutions are expected to use the College Financing Plan (Financial Aid Shopping Sheet) for students who are eligible to receive Federal military and veterans' educational benefits in accordance with Executive Order 13607, the Principles of Excellence. The College Financing Plan may be used in place of or as a supplement cover sheet to an institution's existing financial aid award letter. By using either approach, institutions can ensure that students can compare institutions in terms of grant and scholarship amounts, net costs, graduation rates, loan repayment rates, median borrowing, and estimated monthly loan payments after graduation. Institutions may not modify the College Financing Plan. The Department attached the HTML specifications for 2019-2020 and the institutional metric data file, as well as the technical guide and a set of Frequently Asked Questions, to the electronic announcement.

A copy of the electronic announcement is found at:

<https://ifap.ed.gov/eannouncements/011619CollegeFinancingPlanShoppingSheet1920.html>.

FSA Determines WGU is Eligible to Participate in the FSA Programs

On January 11, 2019, Federal Student Aid (FSA) released the Final Audit Determination letter (FAD) for Western Governors University (WGU), which concluded that "particularly in light of a lack of clear guidance from the Department at the time of the audit period, WGU's efforts to

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comply with the governing law and regulations were reasonable and undertaken in good faith.” FSA’s final determination was made after the Office of Inspector General (OIG) performed an audit on WGU and concluded WGU should return \$712 million in federal student aid funds that it had received after “purportedly being ineligible.” The audit, which covered the period from July 1, 2013 through June 30, 2014, concerned WGU’s online competency-based academic model and the amount of interaction that occurred between students and faculty. WGU’s academic model relies on the use of student mentors to engage with students on a regular basis, and students only earn credit when they demonstrate mastery of the competencies in the program. The Department’s press release noted that the Department has since clarified the eligibility issues in Dear Colleague letter GEN-14-23, which was released on December 29, 2014. The topic of distance education and regular and substantive interaction is being addressed as part of the Department’s current negotiated rulemaking.

A copy of DCL GEN-14-23 is found at: <https://ifap.ed.gov/dpclletters/GEN1423.html>.

A copy of the Department’s press release regarding the Final Audit Determination, which includes the link to the letter, is found at: <https://www.ed.gov/news/press-releases/us-department-education-issues-final-audit-determination-wgu>.

CAPPS Files Motion to Narrow Legal Challenge on Borrower Defense to Repayment Rule

On December 28, 2018, the California Association of Private Postsecondary Schools (CAPPS) filed a motion in the U.S. District Court for the District of Columbia to amend its lawsuit against Secretary of Education Betsy DeVos regarding the borrower defense to repayment rules. CAPPS is now focusing its legal challenge on the rule’s ban on colleges using mandatory arbitration agreements. CAPPS is arguing that the Department does not have the legal authority to prohibit the use of mandatory arbitration.

A copy of the motion is found at:

<https://www.courtlistener.com/recap/gov.uscourts.dcd.186760/gov.uscourts.dcd.186760.82.0.pdf>.

Consumer Advocacy Group Urges Increased Oversight of For-Profit Colleges and their Lead Generators

Seth Frotman, who resigned from the Consumer Financial Protection Bureau (CFPB), formed a nonprofit organization, called the Student Borrower Protection Center (SBPC), to encourage more oversight of the student loan industry. On February 1, 2019, the SBPC released a report that examined the current oversight of lead generators. The report identified state and Federal Trade Commission (FTC) enforcement actions taken against lead generators and concluded that these entities qualify as third-party servicers. The report said that the schools should disclose

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contracts with lead generators and the Department should require lead generators to conduct annual compliance audits.

A copy of the report is found at: <https://protectborrowers.org/the-predatory-underworld-of-companies-that-target-veterans-for-a-buck/>.

Business Leaders Encourage the Trump Administration and Members of Congress to Reauthorize the *Higher Education Act*

On February 5, 2019, the Business Roundtable, made up of all major employers in all 50 states, sent a letter to President Trump and all members of the 116th Congress urging them to reauthorize the *Higher Education Act* and incorporate “key improvements to increase access to high-quality, affordable education and on-the-job training for America’s students and workers.” The letter concluded that increasing education and career opportunities for America’s workforce is one of six areas where business and government can work together to advance economic priorities.

A copy of the Business Roundtable’s letter is found at: <https://s3.amazonaws.com/brt.org/BRT-OpenLettertoPresidentTrumpandCongress2.5.19.pdf>.

NCES Releases Report on Dual Enrollment Students

On February 5, 2019, the National Center for Education Statistics (NCES) released a report titled, “Dual Enrollment: Participation and Characteristics” [NCES 2019-176, February 2019], where students were asked about college courses taken concurrently while enrolled in high school. This arrangement is commonly known as “dual” enrollment and is promoted as a means to help students prepare and demonstrate their readiness for the “rigors of college coursework” as well as serving as an avenue to potentially save on the costs of college. Dual enrollment courses are based on collaborations between high schools and colleges and do not include Advanced Placement or international Baccalaureate courses.

The findings demonstrate the following:

- About a third of students (34 percent) took college coursework while in high school;
- Students whose parents had higher levels of education more commonly took college courses while in high school;
- A lower percentage of Hispanic students (30 percent) and Black students (27 percent) took college courses while in high school than did White or Asian students (both 38 percent);
- Students who took college courses while in high school generally took those college courses at their own high school by teachers the partner colleges approved, or by college professors beamed in by video (80 percent); and

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- Students who took college courses while in high school were more likely to be enrolled in city schools (26 percent) than students in rural or suburban high schools (11 percent).

A copy of the NCES report is found at: <https://nces.ed.gov/pubs2019/2019176.pdf>.

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