

## WASHINGTON UPDATE

MAY 2019

### House Education and Labor Subcommittee Holds Hearing on Improving Student Outcomes

On May 9, 2019, the House Education and Labor Subcommittee on Higher Education held a hearing titled, “The Cost of Non-Completion: Improving Student Outcomes in Higher Education.” Chairwoman Susan Davis (D-CA) stated that the need to complete college is “a matter of national importance, but only 60 percent of students finish college with a degree or certificate.” Ranking Member Lloyd Smucker (R-PA) said that there are millions of students who are unable to complete their education in six years. He pointed out that when students do not graduate, they are left with significant student loan debt without the value of a degree.

One of the witnesses, Dr. Susan Dynarski, Professor at the University of Michigan, said that rising student loan debt has shifted financial risk onto students. She also noted that the completion rates vary dramatically by student demographics and, within every sector, there are stark differences by sex, race, ethnicity, and socioeconomic status in completion rates. The witnesses focused on possible solutions to support students who are likely to drop out.

### House Appropriations Committee Approves FY 2020 Labor-HHS-Education Funding Bill

On May 8, 2019, the House Appropriations Committee considered and approved the FY 2020 Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, which would provide a 6 percent funding increase to the Department of Education. Subcommittee Chairman Rosa DeLauro (D-CT) said that the allocation of \$189.9 billion demonstrated the Committee’s strong commitment to social programs. Subcommittee Chairwoman DeLauro said: “For too long, working people and middle-class families of this country have been shortchanged. So this Committee is moving ambitiously to make up for lost ground and to make sure we provide every individual with a better chance at a better life.” Subcommittee Ranking Member Tom Cole (R-OK) said that while he supported a number of items in the bill, “funding levels are unsustainable over the long run.”

Some of the education provisions include the following:

- The bill sets the maximum Pell Grant at \$6,345, an increase of \$150 over the FY 2019 enacted level;
- The bill provides \$1 billion for FSEOG, an increase of \$188 million above the FY 2019 enacted level;
- The bill provides \$1.4 billion for Federal Work-Study, an increase of \$304 million above the FY 2019 enacted level.

The House Subcommittee Report accompanying the funding bill includes a number of directives to the Secretary of Education specifically targeted at for-profit institutions of higher education:

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- The Committee directs the Secretary to provide within 90 days of enactment of the Act to the Committees on Appropriations a report that identifies all for-profit institutions that would exceed the 90/10 federal funding limits if revenue from the VA and DoD were to be included in the 90/10 calculation.
- The Committee directs the Secretary to update within 60 days of enactment of the Act the Borrower Defense to Repayment Report on FSA's Data Center on a monthly basis and to submit to the Committees on Appropriations the number of claims and the total amount of loans covered by those claims according to institutional type.
- The Committee directs the Secretary to submit a report to the Committees on Appropriations within 90 days of enactment of the Act outlining its plans to prevent precipitous closures in the for-profit sector.
- The Committee directs the Secretary to publish on FSA's Data Center the list of schools with a letter of credit in fiscal years 2017 through 2019.
- The Committee directs the Secretary to issue a report to the Committees on Appropriations within 90 days of enactment of the Act outlining the process through which it approves or disapproves of a for-profit institution's conversion to not-for-profit status and a list of any staff involved in such decisions. The report must also identify all institutions that have changed their for-profit status in the past three fiscal years and any action the Department has made with respect to the institutions.

Pages 197 to 198 of the report describes the Subcommittee's recommendations for the for-profit sector. The report is found at:

[https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FY2020%20LH HS\\_Report.pdf](https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FY2020%20LH%20HS_Report.pdf).

### Senators Durbin, Warren, and Reed Re-Introduce Student Loan Borrower Bill of Rights

On May 8, 2019, Senators Dick Durbin (D-IL), Elizabeth Warren (D-MA), and Jack Reed (D-RI) re-introduced the *Student Loan Borrower Bill of Rights Act of 2019*, which would amend the *Truth-in-Lending Act*, to create consistent disclosure and servicing standards across federal and private student loan programs. The bill would:

- Require various disclosures to borrowers when a loan is sold or transferred;
- Standardize the application of payments and the allocation of payments among multiple loans in a manner that is most beneficial to a borrower;
- Limit when borrowers are subject to late fees and other consequences;
- Prohibit servicers from using mandatory arbitration clauses or class action restrictions;
- Require servicers to establish Repayment Specialists to keep at-risk borrowers from defaulting;
- Require private loans to be discharged upon death or disability of the borrower;

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- Require institutions of higher education to certify private education loans prior to the borrower taking out a private loan; and
- Codify the authority of the CFPB's Student Loan Ombudsman.

A copy of Senator Durbin's press release is found at:

<https://www.durbin.senate.gov/newsroom/press-releases/durbin-warren-reed-reintroduce-bill-creating-student-loan-borrower-bill-of-rights>.

### Senator Warren Sends Letter to FSA COO Requesting his Plans for Managing FSA

On May 7, 2019, Senator Elizabeth Warren (D-MA) sent a 23-page letter to the newly appointed Chief Operating Officer (COO) of Federal Student Aid (FSA), Mark Brown, requesting his vision for administering the financial aid programs. Senator Warren asked for details about FSA's plans for holding student loan servicers and contractors accountable, for improving customer service for its 43 million student borrowers, for ensuring borrower-focused implementation of the existing repayment, discharge, and forgiveness programs, and for reducing delinquencies and defaults. She concluded by stating that Mr. Brown had a "great deal of work to do to improve FSA."

A copy of the letter is found at:

<https://www.warren.senate.gov/imo/media/doc/2019.05.07.%20Letter%20to%20FSA%20Chief%20Mark%20Brown%20re%20Student%20Loan%20Program2.pdf>.

### Senator Warren Releases Proposal to Forgive Federal and Private Student Loans

On April 22, 2019, Senator Elizabeth Warren (D-MA) released a proposal to cancel about \$640 billion in outstanding federal and private student loan debt. The plan is part of Senator Warren's campaign and would forgive \$50,000 in student loans for student and parent borrowers in households earning less than \$100,000 a year and give "substantial debt cancellation" to every person in households earning between \$100,000 and \$250,000. The proposal would immediately provide relief to more than 95 percent of the 45 million Americans with student debt.

Senator Warren also called for a drastic increase in federal funding on higher education that would make tuition and fees free for all students at two- and four-year public colleges and expand grants for lower-income and minority students to cover costs, such as housing, food, books, and child care. The campaign estimates that the cost of the plan would be \$1.25 trillion over 10 years paid for by an ultra-millionaire tax that Senator Warren introduced in January, which would tax the 75,000 wealthiest families in America.

A copy of the press release is found at: <https://www.warren.senate.gov/newsroom/press-releases/as-a-long-time-champion-of-students-senator-warren-leads-the-fight-to-end-the-student-debt-crisis-and-truly-invest-in-opportunities-for-young-people>.

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### Senators Introduce Three Bills to Provide Students and Families with Better Information About College Costs

On March 27, 2019, Senators Charles Grassley (R-IA), Tina Smith (D-MN), and Joni Ernst (R-IA) introduced three bills to provide students and their families with better information about college costs:

- The *Net Price Calculator Improvement Act* would improve the effectiveness of and access to net price calculators, which provide students with early, individualized estimates of higher education costs and financial aid information before they decide where to apply;
- The *Understanding the True Cost of College Act* would create a universal financial aid award letter so students could compare financial aid packages; and
- The *Know Before You Owe Federal Student Loan Act* would strengthen the current loan counseling requirements for institutions of higher education under the Higher Education Act by making the counseling an annual requirement before new loans are disbursed rather than just for first-time borrowers and lets students decide how much to borrow rather than having the maximum amount serve as the default option.

A copy of the press release, which allows you to obtain a summary of each of the bills, is found at: <https://www.grassley.senate.gov/news/news-releases/grassley-smith-ernst-introduce-bipartisan-bills-help-students-understand-cost>.

### ED Releases GE Disclosure Template

On May 9, 2019, the Department of Education released the 2019 GE Disclosure Template in Electronic Announcement #119. Institutions have until July 1, 2019 to update disclosures for each of their Gainful Employment (GE) programs, using the 2019 GE Disclosure Template, and to post the disclosures to their program webpages.

The 2019 GE Disclosure Template has been simplified and streamlined. It now includes:

- Normal time to complete the program;
- Total program costs if completing the program within normal time (including tuition and fees plus books, supplies, and equipment; excluding room, board, or other expenses);
- Median cumulative debt for Title IV students completing the program within the normal time (including Federal, private, and institutional debt);
- Licensure information for the program's target occupation;
- URL for the College Scorecard;
- Warning language if required under 34 C.F.R. § 668.410.

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Unlike previous templates, the 2019 GE Disclosure Template is not a web-based application. It will not generate a completed template for institutions. Instead, institutions may copy the text and fill in the information for their GE program(s), fill in the relevant data elements, and post the completed disclosure template to each relevant program webpage.

A copy of the electronic announcement is found at:

<https://ifap.ed.gov/eannouncements/050919GEAnnounce119Release2019GEDisclosureTemplate.html>.

Deputy Under Secretary Diane Auer Jones Discusses BDR Rule at Bipartisan Policy Center Meeting

On April 23, 2019, Department of Education Principal Deputy Under Secretary Diane Auer Jones addressed the Bipartisan Policy Center attendees and discussed the Department's higher education policies and priorities for 2019. Ms. Jones discussed the Department's approach to dealing with the growing backlog of applications for borrower defense to repayment claims (more than 158,000) from students who claim they were defrauded by their colleges. She said that the Department did not approve or deny any claims for the last six months of 2018. Ms. Jones said that the Department is waiting for a court ruling. She stated that a federal judge blocked the Trump administration's partial loan forgiveness policy on the grounds it violated privacy law, and the Department appealed the ruling to the 9<sup>th</sup> Circuit Court of Appeals, where it is pending. Ms. Jones indicated that the Department is continuing to process claims in cases where it believes a borrower should receive either 100 percent loan forgiveness or no loan forgiveness at all, but they are stuck if the students are likely to be eligible for partial relief. She concluded that while waiting for the decision of the court, they are trying to develop another methodology for partial loan forgiveness that would not be vulnerable to legal challenges.

Ms. Jones also announced that the Department recently reversed its plan announced last fall to publish a new borrower defense to repayment notice of proposed rulemaking (NPRM). Instead, the Department is likely to move directly to a final rule later this year.

Ms. Jones said that the Department is planning on launching a new pilot program aimed at permitting Federal Work-Study (FWS) funds to go toward apprenticeships. She also said that the pilot program would assist students by allowing some of the FWS funds to pay students' wages for apprenticeships.

According to Ms. Jones, the Department is also exploring how it can play a role in income-share agreements (ISAs). ISAs allow colleges to share risk with students over tuition costs, with the student paying back the "award" as a percentage of their earnings over time.

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### ED Releases Quarterly Report on Student Aid Programs

On April 19, 2019, the Department of Education released its quarterly report on student aid, which showed that in the fourth quarter of 2018, FAFSA applications declined, enrollment in income-driven repayment plans continued to increase, approval in Public Service Loan Forgiveness (PSLF) applications increased, and decisions on borrower defense to repayment claims stalled. The data show that overall, the total outstanding federal student loan portfolio increased from \$1.44 trillion in the third quarter of 2018 to \$1.45 trillion in the fourth quarter of 2018.

A copy of the announcement is found at:

<https://ifap.ed.gov/eannouncements/041919PostsNewReportstoFSADataCenter.html>.

### ED Releases Recommendations on Making Financial Aid Offers

On April 15, 2019, the Department of Education released an electronic announcement making recommendations on what schools should avoid when issuing financial aid offers. The recommendations include:

- Avoid calling your financial aid offer an “award” or calling it a “letter;”
- Avoid issuing a financial aid offer that does not include cost of attendance;
- Avoid listing the cost of attendance without breaking it down into clear components;
- Avoid listing grant/scholarship aid, loans and work-study together;
- Avoid listing student loans without clarifying the source;
- Avoid listing Parent PLUS loans with student loans;
- Avoid issuing a financial aid offer without CRITICAL next steps; and
- Avoid issuing a financial aid offer without net cost calculations.

A copy of the electronic announcement at:

<https://ifap.ed.gov/eannouncements/041519RecWhatPostInstShouldWork2Avoid.html>.

### ED Sends Draft Final GE Rule to OMB

On April 12, 2019, the Department of Education sent its final revisions to the gainful employment rule to the White House Office of Management and Budget (OMB) for review, the final step in the process before the rule goes to the *Federal Register*. According to the notice, it will be a final rule and will go into effect on July 1, 2020 if published before November 1, 2019.

Under the proposed GE rule, the Department would repeal the GE rule. The Department also stated at the time that it published the proposed GE rule that it planned to update the College

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Scorecard or a similar web-based tool to provide program-level outcomes for all higher education programs at all institutions that participate in the Title IV programs.

#### Neg Reg Sessions Conclude with Consensus on Accreditation and Innovation Rules

On April 3, 2019, the negotiated rulemaking committee reached consensus on a package of regulations covering a variety of issues, including accreditation, state approval of online programs, religious institutions, competency-based education, and TEACH grants. Consensus was reached after the Department of Education pulled back some of its controversial proposals. The next step is the release of proposed regulations based on the consensus reached by the negotiators. The Department will solicit public comments on the proposed regulations before issuing a final set of regulations.

Secretary of Education Betsy DeVos welcomed the news that the negotiators had reached consensus and said: “Rethinking higher education required each person at the negotiating table to challenge assumptions and examine past practice in order to better serve students.”

A copy of Secretary DeVos’ response to the welcomed news is found at:

<https://www.ed.gov/news/press-releases/secretary-devos-applauds-consensus-higher-education-reforms>.

#### Federal Judge Issues Order Finding ED’s Delay in Implementing the 2016 State Authorization Rule Unlawful

On April 26, 2019, U.S. District Court Magistrate Judge Laurel Beeler issued an order in favor of two unions, the National Education Association and the California Teachers Association, finding that the U.S. Department of Education unlawfully delayed the implementation of the 2016 State authorization rule on distance education because the Department failed to offer negotiated rulemaking with regard to the delay and that the 15-day public comment period was not sufficient. The two unions sued the Department last August 2018 in the U.S. District Court of the Northern District of California, alleging that the Department failed to follow the correct process. However, instead of requiring the rule to go into effect immediately, Judge Beeler postponed the effective date for 30 days, from April 26, 2019, to minimize the risk of confusion or disruption. The short period will provide an opportunity for the Department to notify affected stakeholders of the Court’s decision.

#### Consumer Groups Release List of Priorities for Reauthorization of the HEA

On April 2, 2019, Education Trust President and Chief Executive Officer John King and National Student Legal Defense Network President Aaron Ament jointly released their priorities for reauthorization of the Higher Education Act (HEA). John King and Aaron Ament sent a letter to the House Education and Labor Committee and the Senate Health, Education, Labor and

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Pensions Committee asking “to pursue equitable policy change that serves the best interests of students who encounter systemic barriers in access, completion, and repayment of loans as part of their pursuit of higher education.” Three priorities identified to protect students include:

- Revising the 90/10 rule regarding veterans and military tuition benefits and reinstating the 85/15 rule;
- Codifying the debt-to-earnings metrics of the gainful employment rule; and
- Including a private right of action allowing students to sue their institutions of higher education and federal loan servicers.

A copy of the letter is found at: <https://edtrust.org/press-release/letter-to-congress-from-the-education-trust-and-the-national-student-legal-defense-network-regarding-the-reauthorization-of-the-higher-education-act/>.

Higher Education Committee of 50 Issues Policy Recommendations on College Access, Affordability, and Transparency

On March 13, 2019, the Higher Education Committee of 50, a group facilitated by the National Association of Student Financial Aid Administrators (NASFAA) and funded through a Bill & Melinda Gates Foundation grant, released 36 comprehensive and practical policy recommendations for the reauthorization of the *Higher Education Act (HEA)*. The Committee of 50, comprised of college presidents, members of governing boards, enrollment managers, admissions staff, financial aid and bursar leaders, students, and other leaders from all sectors of postsecondary education, spent the last 18 months examining policy areas related to college access, affordability, accountability, and transparency. Some of the recommendations from the report include:

- Requiring the Department of Education to provide more transparency on the verification-selection process through the FAFSA;
- Requiring ED to develop and add a dynamic, user-tested truth-in-lending calculator and annual debt letter to entrance counseling and the federal web-portal for borrowers;
- Permitting students to file a FAFSA that would allow financial aid consideration for multiple years (e.g., a one-time FAFSA);
- Eliminating higher education tax credits and putting those funds into the Pell Grant program;
- Lifting the ban on collecting student unit-record level data and develop a Student Unit Record Data System (SURDS);
- Simplifying and improving the current financial aid application process by implementing a three-level application process, expanding the functionality of the Internal Revenue Service Data Retrieval Tool (DRT), considering multi-year FAFSA, and/or considering the use of the federal tax return as the aid application;



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- Returning the 90/10 rule ratio to 85/15 and including the Department of Defense tuition assistance benefits and veteran's benefits;
- Retaining gainful employment requirements; and
- Requiring Title IV gatekeeper accreditors to develop and adopt common elements for the function of institutional reflection.

A copy of the report, the executive summary, and the press release is found at:  
<http://www.highereducationcommitteeof50.org/final-report>.

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