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WASHINGTON UPDATE

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Senator Alexander Blames Democrats for Slowing Progress on HEA Reauthorization

A June 1, 2018 article in *The Washington Post* reported that on May 31, 2018, Senator Lamar Alexander (R-TN), Chairman of the Health, Education, Labor and Pensions (HELP) Committee, told a *New York Times* education conference of higher education leaders that the HELP Committee will not produce a bill to reauthorize the *Higher Education Act* this year. "The Democrats won't do it. We had given to the Democrats four months ago – after four years of hearings, our complete proposal about what to do and haven't gotten a response. They want to wait until next year to see if they're in better shape politically." *The Washington Post* reported that Mairead Lynn, a spokeswoman for Ranking Member Senator Patty Murray (D-WA), said that Senator Murray is "at the table and ready to keep working" and it is Senator Alexander who "has walked away from the table." Ms. Lynn also said that Senator Murray "wants to address the cost of college, increase access to underrepresented students, hold schools accountable for student success and ensure that every student is safe and free from discrimination on campus."

The stalemate in the Senate makes the reauthorization of the HEA dead until 2019. The article concluded that the impasse in the Senate signals the difficulties House Republicans will face in advancing their reauthorization bill. While Chairman Virginia Foxx (R-NC), Chairman of the House Education and the Workforce Committee, is working diligently to bring the *Promoting Real Opportunity, Success and Prosperity through Education Reform (PROSPER) Act* to the floor in mid-June, with Republicans holding a one-seat majority in the Senate, the *PROSPER Act* may be dead on arrival in the Senate. The *PROSPER Act* is unpopular with the Democrats in Congress, college leaders and many student groups.

Democratic Senators Send Letter to Secretary DeVos Regarding the Reinstatement of ACICS

On May 24, 2018, six Senate Democrats wrote to Secretary of Education Betsy DeVos asking her to explain why she reinstated the accrediting authority of the Accrediting Council for Independent Colleges and Schools (ACICS), which was terminated under the Obama Administration. The Senators expressed concern that ED's decision to restore ACICS's status as a federally-recognized accreditor while it conducts a further review of its decision will put students and taxpayers in harm's way. They noted that while the court remanded the ACICS determination to the Department because it had not properly considered pertinent evidence before terminating ACICS, the court had not made any suggestion that ACICS should be reinstated as a federally-recognized accreditor. The Senators pointed out that by restoring ACICS's status, the Department appears to be using the court ruling as a "pretext to ignore the significant and damning record" of evidence against ACICS. The Senators requested that the Secretary explain how she plans to proceed on the issue.

A copy of the Senators' letter is found at:
https://www.warren.senate.gov/oversight/letters/senators-press-devos-for-answers-following-decision-to-restore-recognition-of-for-profit-accreditor-acics.

Democratic Senators Send Letter to Secretary DeVos Regarding the Scaling Back of the Enforcement of Federal Laws Designed to Protect Financial Aid Programs

On May 23, 2018, Senator Patty Murray (D-WA) and 28 other Senate Democrats wrote to Secretary of Education Betsy DeVos expressing their concern that the Department "may be scaling back the enforcement of federal laws that are designed to protect against fraud and abuse in taxpayer-funded financial aid programs." The Senators said that based on a May 13, 2018 article in *The New York Times*, it appears that the Department's Student Aid Enforcement Unit has effectively ended investigations into a number of for-profit college chains. They noted that the article said that there are only three individuals dedicated to the office responsible for conducting investigations. "Halting or abandoning reviews of potentially predatory institutions and providing insufficient staffing to the Investigations Group eliminates the deterrent effect of appropriate and badly-needed oversight in higher education."

The letter also stated that "the Department has hired a number of former college executives to senior positions, some of whom worked for the companies that had been under investigation. And the Department has rolled back rules that were designed to protect students, borrowers, and taxpayers despite recommendations from the Department's independent watchdog to maintain student protections."

The 29 Senators urged the Secretary to reverse course "by adequately staffing the Investigations Group and taking steps to identify colleges that evidence suggests have made misrepresentations to students, falsified job placement data, and improperly enriched corporate owners and executives with taxpayer dollars."

A copy of the Senators' letter is found at:
http://cecu.informz.net/cecu/data/images/GR%20Uploads/Senate%20Dems%20ED%20FSA%20Enforcement%20Response.pdf.

Secretary DeVos Appears Before Senate Appropriations Subcommittee

On June 5, 2018, Secretary of Education Betsy DeVos appeared before the Senate Appropriations Subcommittee on Labor, Health and Human Services, and Education to address the FY 2019 budget request. Subcommittee Chairman Roy Blunt (R-MO) welcomed the Secretary and applauded her fresh approach to education. Senator Blunt noted that there were places of disagreement. Specifically, Senator Blunt believes that the Department's proposal on student loan servicing is misguided because it does not include certain safeguards to promote accountability and transparency. Senator Lamar Alexander (R-TN) said that applying for federal aid should be as simple as buying a plane ticket or a book with "one click," and asked how the

$50 million request to modernize the system that students use to apply for and pay back student loans would be spent. Secretary DeVos expressed her excitement about the upcoming new system because she believed that students should have a "world-class experience" in applying for and paying back their student loans. She said that the Department's approach is to restructure the experience so that it will be seamless for students to complete their federal aid applications.

Senator Jack Reed (D-RI) said that the Department of Defense is worried about the elimination of the Public Service Loan Forgiveness Program (PSLF), which could have a negative effect on recruiting efforts. The Secretary responded that she has been in touch with the Department of Defense to support veterans and students of military families. In response to a question on Federal Work-Study from Senator Jeanne Shaheen (D-NH), Secretary DeVos said that the Department is continuing to propose funding for undergraduates, but that graduate funding is being cut as a result of a series of difficult decisions.

Senator Dick Durbin (D-IL) asked the Secretary to explain how proprietary institutions, which enroll 9 percent of high school graduates, can account for 33 percent of federal student loan defaults. She responded that the Federal Student Aid Enforcement Unit is robust and functioning well and she is focused on the outcomes of students. Senator Alexander stated that the Chancellor of Vanderbilt and the Chancellor of Maryland provided 59 recommendations to cut through the "jungle of red tape" that is currently interfering with their institutions of higher education. He noted that 12 of the recommendations were items that the Department could address without any legislative action. Secretary DeVos said that these recommendations were on her priority list.

Secretary DeVos Appears Before House Education Committee

On May 22, 2018, the House Education and the Workforce Committee, chaired by Virginia Foxx (R-NC), held a hearing titled, "Policies and Priorities of the U.S. Department of Education." Secretary of Education Betsy DeVos was the only person who testified at the hearing. The tense hearing focused on the policies and priorities under the Secretary's leadership and covered an array of issues including school violence, elementary and secondary education, school vouchers, Pell Grants, Direct Loans, oversight of for-profit colleges, and the rollback and re-writing of several sets of regulations. In her opening remarks, Chairman Foxx applauded Secretary DeVos for her "willingness to take on this work in the face of the unprecedented vitriol you face." Ranking Member Bobby Scott (D-VA) stated in his opening remarks that the Trump Administration had rescinded protections for transgender students and eliminated protections that "helped borrowers better manage their loans and suspended protections for student loan borrowers that enabled them to discharge when a school closes abruptly or defrauds its students."

Secretary DeVos commended Chairwoman Foxx for her leadership on "moving to reauthorize and reform the outdated Higher Education Act through the PROSPER Act." She also addressed reforms being undertaken at FSA to "modernize FSA's approach, technology, and customer service to provide a world class experience and improve borrower outcomes." Secretary DeVos also said that the federal government must put to rest the idea that a four-year degree is the only pathway to success, stating that the *PROSPER Act* would expand options for all students. She also stated that the Department has "developed an organization plan to more efficiently serve students and the taxpayer."

During the question and answer portion of the hearing, Secretary DeVos said that students need many options to pursue great careers and high paying jobs. "Your proposal in the *PROSPER Act* to allow for high quality shorter term certification and credential programs I think is a very important step in the right direction. The Administration is pleased the bill aligns with many of its goals for HEA reauthorization."

Chairman Foxx said that there were reports that the Department's existing private college contractors are so overwhelmed with accounts, they cannot respond in real time to all borrowers who are reaching out for help with their loans. Secretary DeVos said that the Department is concerned about making sure students are well-serviced when they take on student loans. "We are confident that the current servicing agreements and arrangements have the capacity to take care of these students and as we continue to move into the reforms of Federal Student Aid, this pathway will allow us that kind of focus on doing what's right and what's best for students. We have every confidence that we can continue to service them well and will be able to do so even better in the future."

Congresswoman Susan Davis (D-CA) asked the Secretary about fraud in the proprietary sector, and the Secretary responded that fraud "is not to be tolerated and I think we have to be very clear about that. We need to ensure that students who have been defrauded, that is taken into consideration in regards to their student debt and dealt with appropriately." Congresswoman Suzanne Bonamici (D-OR) asked the Secretary about the "predatory role of student loan servicers, noting that the Department's notice of interpretation would preempt state student loan servicing licensing laws." Secretary DeVos responded that "If we have 50 different states and 50 different approaches to oversight it would be a very confusing and convoluted process. As long as federal student aid is a federal program, we believe the federal level has the appropriate oversight responsibility."

Chairman Virginia Foxx's opening statement is found at:
https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=402771.

Secretary of Education Betsy DeVos's opening remarks are found at:
https://www.ed.gov/news/speeches/prepared-remarks-us-secretary-education-betsy-devos-house-education-and-workforce-committee.

Department Proposes to Further Delay the State Authorization Rules

On May 25, 2018, the Department of Education published an announcement in the *Federal Register* that proposes a two-year delay, until July 1, 2020, of the effective date of the final state authorization of distance education regulations published on December 19, 2016. The final rule is scheduled to go into effect on July 1, 2018. According to the Notice, the regulatory delay was prompted by the receipt of letters from the American Council on Education, the Western Interstate Commission for Higher Education, the Cooperative for Educational Technologies, the National Council for State Authorization Reciprocity, and the Distance Education Accrediting Commission. The organizations stated that they needed information as to how to comply with the regulations, including how the term "residence" as described in the preamble of the 2016 regulations may conflict with state laws and how to disclose to students the appropriate state complaint process when a number of states, including California, do not currently have complaint processes. The organizations also pointed out that there is widespread confusion with respect to the public and individualized disclosures of State licensure eligibility for every discipline that requires a license to enter a profession.

The Department said that because of the "complexity of these issues, we are not confident that we could develop a workable solution through guidance and without the input of negotiators who have been engaged in meeting these requirements." The Notice said that since guidance is nonbinding, negotiated rulemaking is the most appropriate vehicle to provide substantive clarification necessary to stakeholders. The Department also pointed out that DCL GEN-12-13 provides guidance regarding student complaints and student consumer disclosures as related to distance education, which would ensure that during the delay, institutions will be aware of their existing obligations and that students will receive these protections.

Based on the complexities of the regulations, the Department is proposing to delay the rules until July 1, 2020 and sought comments on or before June 11, 2018.

A copy of the Notice is found at: https://ifap.ed.gov/fregisters/attachments/FR052518.pdf.

A copy of DCL GEN-12-13 is found at: https://ifap.ed.gov/dpcletters/GEN1213.html.

NACIQI Members are Advised of ED's Plans for Regulatory Reform of Accreditation and Establishes Subcommittee to Examine Issues Related to For-Profit to Nonprofit Conversions

On May 23-25, 2018, the National Advisory Committee on Institutional Quality and Integrity (NACIQI) held its biannual meeting to review the applications for recognition of specific accrediting agencies or associations. In addition, on May 23, 2018, the NACIQI members heard an update from Diane Auer Jones, a senior advisor to the Department of Education, about the Department's plans to renegotiate the regulations related to the recognition of accreditors. Ms. Jones asked the NACIQI members to focus on the specifics of what accreditors must do to receive approval. She also called for the restoration of the separation of duties among the triad to eliminate duplicate oversight responsibilities and to ensure that the appropriate entity is held accountable when an institution is not in compliance. She asserted: "Secretary DeVos has challenged all of us to rethink education. We must challenge our current assumptions, we must evaluate our current practices, and we must question everything to be sure we do not limit the ability of any student to reach his or her full potential. In that spirit, we are examining the accreditation process."

On May 25, 2018, NACIQI heard several hours of input from various organizations that were generally critical of for-profit institutions, particularly those for-profit institutions that sought non-profit status as a way to avoid scrutiny and regulation without really changing their governance structures. When the presentations drew to a close, John Etchemendy, a NACIQI member who was formerly a provost from Stanford University, recommended that NACIQI address the situation since no one else was attempting to fix it. The NACIQI members agreed to establish a subcommittee to offer recommendations on the for-profit to non-profit conversion process.

Department Announces Reconsideration of Public Service Loan Forgiveness Program

On May 23, 2018, the Department of Education announced a plan to reconsider some borrowers for student loan forgiveness under a limited-one-time-only expansion of the Public Service Loan Forgiveness (PSLF) Program. The Temporary Expanded PSLF (TEPSLF) was made possible by a $350 million appropriation included in the *Consolidated Appropriations Act, 2018* (P.L. 115-141). The law provides additional conditions under which borrowers may become eligible for loan forgiveness if some or all of their payments made on the Direct Loan Program were made on a non-qualifying repayment plan for the PSLF Program, such as the Graduated Repayment Plan or the Extended Repayment Plan. The TEPSLF will be available on a first-come, first served basis until the $350 million has been allocated.

A copy of the press release is available at: https://www.ed.gov/news/press-releases/us-department-education-announces-opportunity-federal-student-loan-borrowers-be-reconsidered-public-service-loan-forgiveness.

A copy of the Electronic Announcement is found at:
https://ifap.ed.gov/eannouncements/052318TemporyExpandedPublicServiceLoanForgivenessOpporAvail.html.

Federal Judge Blocks the Department of Education from Using a Tiered Relief System for Borrower Defense Claims

On May 25, 2018, U.S. Magistrate Judge Sallie Kim of the Northern District of California blocked the Department of Education from using a tiered relief system to award partial debt relief to some borrowers who attended the now-closed Corinthian Colleges, claiming that the method by which data was collected to determine the amount of relief violated the *Privacy Act.* Judge Kim ruled that the tiered relief system for those student fraud claims violates the *Privacy Act* that was meant to protect how government agencies collect and use individuals' personal information. On December 20, 2017, the Department began to institute a new tiered relief system for borrower defense to repayment claims. Under the new system, students receive full relief as a result of their claims if their earnings are currently less than 50 percent of their counterparts' earnings from passing GE programs. Students earning at least 50 percent of what their peers earn from passing GE programs are compensated proportionately for the difference.

The court ruled that the Department violated the *Privacy Act* by improperly using borrowers' federal earnings data from the Social Security Administration to calculate the amount of loan forgiveness for each student. While Judge Kim issued a preliminary injunction blocking the Department from using the current tiered relief system, the ruling stated that the Department could use a different process to provide partial loan forgiveness. Judge Kim wrote that the Secretary had the authority to determine the amount of relief a borrower could obtain. Judge Kim set a hearing for June 4, 2018 to determine if the Department should provide full loan forgiveness to the former Corinthian students.

A copy of the decision is found at:
https://predatorystudentlending.org/wp-content/uploads/2018/05/show_temp.pl-2.pdf.

On June 6, 2018, an article in *The New York Times* reported that Secretary of Education Betsy DeVos has temporarily halted relieving the debt of some student borrowers who had attended Corinthian Colleges in response to Judge Kim's decision. The Department said that it would grant a temporary postponement of loan payments for Corinthian students in lieu of debt relief. In addition, the article reported that the Department would stop collection payments for four students who sued the Department over its new formula for determining how much debt they would have to repay.

A copy of the article is found at: https://www.nytimes.com/2018/06/06/us/politics/betsy-devos-student-debt-relief.html?rref=collection%2Fsectioncollection%2Fpolitics.

ACICS Withdraws Request to Intervene in FOIA Lawsuit to Block Release of ACICS Report; ED Releases Staff Report

On June 5, 2018, the Accrediting Council for Independent Colleges and Schools (ACICS) withdrew its request to intervene in a Freedom of Information Act (FOIA) lawsuit to block the release of the staff report as to whether ACICS met federal standards established by the Department of Education. As a result, the Department of Education released the staff report on June 8, 2018, which stated that they found that ACICS failed to meet several federal standards impacting its ability to conduct proper oversight over the colleges and universities it accredits for federal financial aid. The March 2018 report demonstrates that the staff had serious concerns about restoring the federal recognition of ACICS.

Michelle Edwards, ACICS President, issued the following statement regarding the draft staff report:

> "To characterize the Draft Staff Report as the final word on the Department's recognition of ACICS or to argue that ACICS's current recognition status is somehow invalid based on the information in that Draft Staff Report is to misunderstand the nature of the Department's deliberative process and to mislead the public about its significance."

NCES Releases its Annual Report on Postsecondary Institutions

In May 2018, the National Center for Education Statistics (NCES) released its Annual Report titled, "Postsecondary Institutions and Cost of Attendance in 2017-18; Degrees and Other Awards Conferred, 2016-17; and 12-Month Enrollment 2016-17." Some of the findings include the following:

- During the 2017-2018 academic year, there were 6,642 Title IV institutions in the United States. Of this total, 2,902 were 4-year institutions, 1,932 were 2-year institutions, and the remaining 1,808 were less-than-2-year institutions.
- Of the approximately 3.3 million students receiving degrees and certificates at 4-year Title IV degree-granting institutions, more than 58 percent received a bachelor's degree, with about 64 percent of the 2.0 million students at public institutions receiving a bachelor's degree, about 53 percent of the 1.1 million students at private, nonprofit institutions receiving a bachelor's degree, and about 41 percent of the 277,000 students at private for-profit institutions receiving a bachelor's degree.
- While the number of public and private nonprofit colleges remained largely the same compared to the year before, the number of for-profit colleges dropped to 2,791 in 2017-18 from 2,899 in 2016-17.

A copy of the NCES Annual Report is found at: https://nces.ed.gov/pubs2018/2018060.pdf.

NASFAA Releases Issue Brief on Institutional Risk-Sharing

In May 2018, the National Association of Student Financial Aid Administrators (NASFAA) released an issue brief on institutional risk-sharing that discusses the implications of the proposals that have sought to tie institutions more closely to the loan repayment success of their former students. Both Democrats and Republicans have shown an interest in requiring institutions to have additional "skin-in-the-game," but NASFAA concludes that many policy-makers fail to recognize that institutions already take on significant risk when dedicating scarce resources to students who have been deemed at-risk. "Lower completion/graduation rates, higher need for preparatory coursework, more personal attention, more need for all forms of aid (including loans that may increase the school's default rates), and loss of revenue if a student drops out are all existing risk factors that schools assume.

A copy of the NASFAA Issue Brief is found at:
https://www.nasfaa.org/uploads/documents/NASFAA_Issue_Brief_Institutional_Risk_Sharing.pdf

New America Issues Report Calling for Standardization of Financial Aid Award Letters

On June 5, 2018, New America released a report titled, "Decoding the Cost of College: The Case for Transparent Financial Aid Award Letters," which recommends that financial aid award letters be standardized to make them more transparent to students and families. Researchers examined 515 award letters and found them to be inconsistent and often did not offer sufficient amounts of financial aid to cover the cost of education. There were seven key findings:

- Confusing jargon and terminology;
- Omission of the complete cost of attendance;
- Failure to differentiate types of aid;
- Misleading packaging of Parent PLUS Loans;
- Vague definitions and poor placement of work-study;
- Inconsistent bottom line calculations; and
- No clear next steps (What to do to accept or decline awards).

The report recommended that federal policymakers should establish and require award letter standards.

A copy of the report is found at:
https://www.newamerica.org/education-policy/policy-papers/decoding-cost-college/.

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