

WASHINGTON UPDATE

AUGUST 2018

President Establishes National Council for the American Worker

On July 19, 2018, the President signed an Executive Order to establish the President's National Council for the American Worker, which will encourage the executive branch to work with private employers, educational institutions, labor unions, other non-profit organizations, and State, territorial, tribal, and local governments to update and reshape our education and job training landscape to better meet the needs of American students, workers, and businesses. The goal of the National Council is to establish a national strategy for training and retraining the workers needed across high-demand industries. "Growing America's workforce is an important goal. To help achieve it, the Council will develop a national strategy to raise awareness of workforce issues...It will also create a plan for recognizing companies that demonstrate excellence in workplace education, retraining, and workforce investment."

A copy of the Executive Order is found at: <https://www.whitehouse.gov/presidential-actions/executive-order-establishing-presidents-national-council-american-worker/>.

At the signing event of the Executive Order, the President also urged companies and trade groups to sign a "Pledge to America's Workers" -- a commitment to expand apprenticeships, increase on-the-job training, and provide Americans from high school to near-retirement with opportunities to obtain skills to secure stable jobs and careers in the modern economy.

Twenty-three companies and associations were the first to sign the pledge at the White House. "By signing the Pledge to America's Workers, these great companies...are affirming their commitment to train American workers for American jobs," the President emphasized. "Because America's strength, America's heart, and America's soul is found in our people."

On the same day, the White House Council of Economic Advisors released a report titled, "CEA Report: Addressing America's Reskilling Challenge," which outlined the importance of re-skilling America's workers for the jobs of the future. The report concluded that restrictions on the use of Federal funds, which were designed to address labor market challenges of another era, "may not be optimal for the future reskilling challenges, especially those linked to trade and technological change." The report suggested that to "more effectively facilitate the re-entry of workers into employment quickly and with less household budget disruption, Pell Grants should be made available to high-quality, short-term retraining programs," or programs shorter than 600 hours.

There is a great deal of support for expanding Pell Grant eligibility for short-term programs from both the Republicans and Democrats. Both the *PROSPER Act*, the reauthorization of the *Higher Education Act* passed by the House Committee on Education and the Workforce in December 2017, and the *Aim Higher Act*, the bill to reauthorize the *Higher Education Act* that will be

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introduced by the House Democrats in the near future include proposals for funding short-term programs with Pell Grants.

A copy of the White House Council of Economic Advisors' report is found at: <https://www.whitehouse.gov/briefings-statements/cea-report-addressing-americas-reskilling-challenge/>.

Secretary of Education Betsy DeVos released this statement following the White House announcement:

“With today’s announcement, President Trump continues to make good on his promise to put America’s students and workers first. This Administration understands that a dynamic and changing economy requires dynamic and changing approaches to education and workforce development. The partnerships announced today involve those who are best-positioned to identify ideas and drive solutions. The President’s new initiative helps engage leaders across diverse sectors in an effort to open new pathways and opportunities for America’s students who should be free to pursue successful careers and meaningful lives.”

A copy of Secretary DeVos’ press release is found at: https://www.ed.gov/news/press-releases/secretary-devos-national-council-american-worker-will-put-americas-students-first?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

On July 24, 2018, the official order was published in the *Federal Register*, which is to ensure that students and workers can access affordable education and training that will “equip them to compete and win in the global economy.” The order is found at: <https://www.gpo.gov/fdsys/pkg/FR-2018-07-24/pdf/2018-15955.pdf>.

Democratic Senators Urge Secretary of Education to Assist Students Harmed by Closure of Colleges Owned by DCEH

On August 3, 2018, Senators Dick Durbin (D-IL), Patty Murray (D-WA), Ron Blumenthal (D-CT), Sherrod Brown (D-OH), and Tammy Duckworth (D-IL) sent a letter to Secretary of Education Betsy DeVos urging her to assist the students harmed by the closing of colleges owned by Dream Center Education Holdings (DCEH). Specifically, the Senators asked the Secretary to immediately inform the students of their right to a closed school discharge. The letter said:

“The evidence is mounting that long-held doubts about DCEH’s commitment to students, and its ability to properly manage institutions of higher education, were well founded. Another troubled for-profit conversion prepares to leave thousands of students holding millions of dollars in useless debt, it is the obligation of the Department to do

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everything in its power to make sure that students are fully informed of available options and to protect against additional students and taxpayer dollars being put at risk.”

A copy of Senator Durbin’s press release, which includes the text of the letter to the Secretary: <https://www.durbin.senate.gov/newsroom/press-releases/durbin-murray-warren-blumenthal-brown-duckworth-press-secretary-devos-to-assist-students-in-the-wake-of-national-college-closures->.

10 House Representatives Seek Clarification on the FSA Plans for a Payment Card Program Pilot

On July 30, 2018, a bipartisan group of representatives from the House Subcommittee on Higher Education and Workforce Development, including Chairman Brett Guthrie (R-KY) and Ranking Member Susan Davis (D-CA), sent a letter to Secretary of Education Betsy DeVos seeking “clarification and information” on the proposed Payment Card Program Pilot that would disburse student financial aid for non-tuition expenses through a prepaid card product. In November 2017, Dr. A. Wayne Johnson, FSA’s former Chief Operating Officer, first announced the idea of the prepaid debit card at the 2017 FSA Training Conference. The representatives expressed concern about how the pilot program would affect the millions of students who take out federal student loans each year and whether the pilot program “is a solution to a nonexistent problem.” The representatives also expressed concern about student data privacy and the Department’s authority to use that data to market other financial services and products to students. In light of their concerns, they provided the Secretary with over a dozen questions.

A copy of the letter is found at:

https://www.nasfaa.org/uploads/documents/ED_Pilot_Program_Letter.pdf.

House Democrats Introduce *Aim Higher Act* to Reauthorize the *Higher Education Act*

On July 24, 2018, all 17 House Democrats on the House Education and the Workforce Committee announced and released a copy of their proposal to reauthorize the Higher Education Act. The bill is entitled the *Aim Higher Act* and aims to make college more affordable by reducing student debt and simplifying federal student aid. The bill also invests in program and services, such as career counseling and campus-based child care, that will help students graduate and put them on the path of success. Ranking Member of the House Education and the Workforce Committee Bobby Scott said:

“The Aim Higher Education Act is a serious and comprehensive proposal to give every student the opportunity to earn a debt-free degree or credential. It provides immediate and long-term relief to students and parents struggling with the cost of college, it puts a greater focus on helping students graduate on time with a quality degree that leads to a rewarding career, and it cracks down on predatory for-profit colleges that peddle expensive, low-quality degrees at the expense of students and taxpayers.”

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As long as Republicans are in control of the House, the Senate, and the White House, there is no chance that the *Aim Higher Act* will pass. However, the bill suggests what the Democrats would like to see in higher education policy should they regain control of the House this fall. The Democrats' bill largely rejects the provisions included in the *PROSPER Act*, the House Republican bill to reauthorize the *Higher Education Act*.

Based on the bill's summary, the following provisions are included in the *Aim Higher Act*:

Improving Access to a Quality Degree:

- Empowers students to earn postsecondary credit while still in high school through dual enrollment and early college high school programs;
- Improves access to vulnerable student populations:
 - Helps states, tribes, and territories establish or expand initiatives to help foster children and homeless youth;
 - Allows DREAMERS access to Federal aid;
 - Enables incarcerated individuals access to Pell Grants so that they can earn a college degree;
 - Improves access to higher education for Native American students;
 - Provides tuition assistance for students in U.S. territories;
 - Strengthens TRIO and GEAR UP programs;
 - Simplifies the FAFSA by reducing the number of questions;
 - Improves available postsecondary data by repealing the student unit record ban;
 - Strengthens institutional accountability and quality:
 - Strengthens effective collaboration within the accountability triad and tasks the Department with conducting Title IV compliance checks; heightens state authorizers' role by making them keep track of complaints and ensure that facilities are safe and adequate; and frees accreditors to focus on academic quality and transparency;
 - Supports institutions to improve student outcomes and improves the cohort default rate metric by adjusting the number of borrowers in long-term forbearance; and
 - Includes robust safeguards for taxpayers and students:
 - ❖ Changes 90/10 rule to 85/15 and closes loopholes;
 - ❖ Prohibits all institutions that spend less than half of their tuition revenue on instruction from using Federal funds for marketing, advertising, recruiting, or lobbying;
 - ❖ Prohibits institutions from forcing students to sign pre-dispute/class action ban agreements;

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- ❖ Strengthens the legal definition of a non-profit institution and establishes a transparent process for approving conversions at the Department; and
- ❖ Maintains the requirement that career programs lead to gainful employment and codifies the requirement that students who are defrauded by their colleges are provided full relief.

Making College More Affordable

- Increases grant aid for low-income students by improving Pell Grants and strengthening FSEOG;
- Empowers students to earn while in college by doubling the Federal allocation for the FWS program;
- Improves the student loan program by reviving the Perkins Loan Program; requiring better up-front counseling and annual counseling; making borrowing less expensive; simplifying the repayment process; helping borrowers avoid default; improving servicing of Federal student loans; and maintaining State authority to protect consumers;
- Creates a Federal-State partnership to incentivize States to reinvest in higher education; and
- Invests in open educational resources.

Increasing College Completion

- Supports multiple pathways to completion by expanding Pell Grant eligibility to quality short-term programs and supporting community colleges career and technical education programs;
- Improves remediation;
- Invests in student supports:
 - Improves completion at community colleges;
 - Supports students with disabilities;
 - Provides supports for foster and homeless youth;
 - Improves campus child care access;
 - Promotes evidence-based prevention and intervention strategies to combat substance use disorder; and
 - Supports students who are veterans.
- Supports innovation with transparency and accountability by establishing a demonstration project for competency-based education programs;
- Creates a strong national security workforce;
- Strengthens teacher education;
- Invests in historically black colleges and universities and minority-serving institutions;

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- Improves campus safety by requiring the Secretary to develop a standardized online survey tool regarding student experiences with domestic violence, dating violence, sexual assault, and stalking, where the results will be published;
- Supports campus diversity and strengthening civil rights enforcement; and
- Awards completion with a degree by amending FERPA to allow for reverse transfer of student data, permitting a student's current institution to send enrollment and completion data to an institution where the student was previously enrolled, with the consent of the student.

A copy of the bill's summary is found at: <http://democrats-edworkforce.house.gov/imo/media/doc/Aim%20Higher%20Act%20--%20Bill%20Summary.pdf>.

A copy of a document comparing the Democrat and Republican versions is found at: <http://democrats-edworkforce.house.gov/imo/media/doc/Aim%20Higher%20Act%20--%20Side%20by%20Side1.pdf>.

A copy of the press release issued from Ranking Member Scott's office is found at: <https://bobbyscott.house.gov/media-center/press-releases/all-17-committee-democrats-unveil-debt-free-college-plan>.

Five Democratic Senators Urge NACIQI to Move Forward with the Study on For-Profit Conversions

On July 20, 2018, five Democratic Senators sent a letter to the National Advisory Committee on Institutional Quality and Integrity (NACIQI) urging its subcommittee to work expeditiously on the problem of how college accreditors approve for-profit to nonprofit college conversions. The Senators requested that NACIQI release the findings and report within three months so that its recommendations can inform the Department's intended rulemaking on accreditation.

A copy of the letter is found at: <https://www.warren.senate.gov/imo/media/doc/2018.07.20%20Letter%20to%20NACIQI%20re%20subcommittee%20on%20sectoral%20conversions.pdf>.

Senator McCaskill Introduces Bill to Protect Social Security Benefits from Wage Garnishment

On August 2, 2018, Senator Claire McCaskill (D-MO) introduced S. 3320, the *Protecting Seniors with Student Loans Act*, which would prevent seniors from being pushed into poverty due to garnishments on Social Security benefits from student loan debts. According to a press release, Senator McCaskill said: "Tens of thousands of seniors are being pushed into poverty due to decades old student loan debt – and many thousands more will suffer the same fate if we don't act. This undermines the promise of Social Security that seniors should be able to retire with dignity – it's not right and I won't stand for it."

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

<https://www.mccaskill.senate.gov/media-center/news-releases/mccaskill-bill-prevents-seniors-from-being-forced-into-poverty-in-an-attempt-to-recoup-student-loan-debt>.

Democratic Senators Want IRS to Ensure that Student Debt Relief Will Not Be Taxed; IRS Publishes Guidance Stating that Private Education Loans that are Discharged Will Not Be Taxed

On July 17, 2018, Senators Patty Murray (D-WA), Ranking Member of the Senate Committee on Health, Education, Labor and Pensions, and Ron Wyden (D-OR), Ranking Member of the Senate Committee on Finance, sent a letter to Steven Mnuchin, Secretary of the Treasury, and David Kautter, Acting Commissioner and Assistant Secretary of the Treasury for Tax Policy, urging IRS to clarify that student loan debt relief issued to former Corinthian College students should not be taxed. In 2015, the IRS issued guidance regarding the taxability of federal student loan discharges for Corinthian students participating in borrower defense to repayment and closed school discharges, but the guidance did not address a similar process for private education loans.

The letter noted that the Department of Education has issued loan forgiveness to thousands of borrowers who attended Corinthian. In addition, the letter said that an additional settlement between the Consumer Financial Protection Bureau and Aequitas Capital Management cleared the private student loan debt of former Corinthian students. The letter pointed out that 47,000 Corinthian students in tax year 2017 received 1099-C forms, which are required to report cancelled debt as taxable income. The Senators wrote that “[s]tudents should not be stuck with a tax bill when predatory for-profit colleges and corporations provide false and misleading information that leaves their borrowers with high levels of debt, poor job prospects, useless degrees and credentials, and in many cases, no degree at all.”

A copy of the Senators' letter is found at:

<https://www.help.senate.gov/imo/media/doc/071818%20Murray-Wyden%20IRS%20Aequitas%20Loans.pdf>.

On July 31, 2018, the Internal Revenue Service (IRS) issued a revenue procedure, which states that private education loans that are discharged under settlements with Corinthian Colleges, Inc. and American Career Institute Inc. will not be counted as income for tax purposes. In other words, the discharge amount of a private education loan, in addition to federal student loans, taken to finance attendance at any school owned by these companies can be excluded from gross income.

A copy of the IRS Revised Procedure 2018-39 can be found at:

https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily_briefing/IRS_income.pdf.

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DoJ, CFPB, SEC, and FTC Form Task Force on Market Integrity and Consumer Fraud

On July 11, 2018, Deputy Attorney General Rod Rosenstein announced the establishment of a new Task Force on Market Integrity and Consumer Fraud that results from an Executive Order issued by President Trump. The Task Force is made up of representatives from the Department of Justice, the Bureau of Consumer Financial Protection, the Securities and Exchange Commission, and the Federal Trade Commission to provide guidance for the investigation and prosecution of cases involving fraud on the government, the financial markets, and consumers, including cyber-fraud and other fraud targeting the elderly, service members and veterans, and other members of the public.

Mr. Rosenstein said: “Our goal is not to prosecute fraud, our goal is to deter fraud.” He went on to say: “By working together, we can achieve more effective and efficient outcomes. Drawing on our pooled resources, including subject-matter expertise, data repositories, and analysts and investigators, we can identify and stop fraud on a wider scale than any one agency acting alone.” Led by the Deputy Attorney General, the Task Force is directed to invite participation from other Departments, including the Departments of Education and Veterans Affairs.

A copy of the announcement is found at: <https://www.justice.gov/opa/pr/departments-justice-bureau-consumer-financial-protection-us-securities-and-exchange-commission>.

Senate and House Democrats Introduce *Know Before You Owe* Bill

On July 12, 2018, Senators Dick Durbin (D-IL), Tina Smith (D-MN), Jack Reed (D-RI), Sherrod Brown (D-OH), Tammy Baldwin (D-WI), and Ben Cardin (D-MD) introduced S. 3205, the *Know Before You Owe Private Education Loan Act of 2018*, which would amend the *Truth in Lending Act* and the *Higher Education Act* to require institutions of higher education to certify the student’s enrollment status, cost of attendance, and estimated federal financial assistance before the student could take out a private education loan. The goal of the bill is to prevent unnecessary private student loan debt and improve transparency. H.R. 6352, the *Know Before You Owe Act* was introduced as a companion bill by Congressman Jared Polis (D-CO) on July 12, 2018.

A copy of the Senators’ press release is found at: <https://www.durbin.senate.gov/newsroom/press-releases/durbin-smith-reed-and-senators-introduce-bill-to-prevent-unnecessary-private-student-loan-debt-and-improve-transparency->.

ED Issues Unofficial Version of NPRM to Rescind Gainful Employment Rules

On August 14, 2018, the Department of Education published its Notice of Proposed Rulemaking (NPRM) in the *Federal Register* to rescind the gainful employment (GE) regulations. The public may provide comments until September 13, 2018. According to a Fact Sheet on the proposed withdrawal of the GE rules, the proposal is the result of “concerns raised by institutions and

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researchers regarding the validity and usefulness of the D/E metric.” Instead, the Department says it plans to ensure all students across all sectors will have access to transparent and meaningful information. The Department plans to update the College 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. The goal of the proposed rule is to improve transparency and inform student enrollment decisions through a market-based accountability system.

The Department argued that research did not support the validity of the debt-to-earnings metrics and the disclosure requirements were overly burdensome. Further, shifts in the interest rates or shifts in the economy could move programs from passing to failing the standards.

The Department further justified the proposal by stating:

“We further believe the GE regulations reinforce an inaccurate and outdated belief that career and vocational programs are less valuable to students and less valued by society, and that these programs should be held to a higher degree of accountability than traditional two- and four-year degree programs that may have less market value.” (Pg. 40171)

A copy of the August 14, 2018 NPRM is found at: <https://www.gpo.gov/fdsys/pkg/FR-2018-08-14/pdf/2018-17531.pdf>.

A copy of the Fact Sheet is found on the Department’s Gainful Employment website at: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2017/gainfulemployment.html>.

The Department released a press statement stating:

“Students deserve useful and relevant data when making important decisions about their education post-high school,” said U.S. Secretary of Education Betsy DeVos. “That’s why instead of targeting schools simply by their tax status, this administration is working to ensure students have transparent, meaningful information about all colleges and all programs. Our new approach will aid students across all sectors of higher education and improve accountability.”

The Department continues to believe that data such as debt levels, expected earnings after graduation, completion rates, program cost, accreditation, and consistency with licensure requirements are important to consumers, but not just those students who are considering enrolling in a gainful employment program. Therefore, in the NPRM the Department invites public comment concerning whether or not the Department should require institutions to disclose, on the program webpage, information about the program size, its completion rate, its cost, whether or not it is accredited, and whether the program meets the requirements for licensure in the State in which the institution is located.”

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The press statement can be found at:

<https://content.govdelivery.com/accounts/USED/bulletins/205013a>.

Reception to the Department's decision to rescind the gainful employment rules was split along party lines. Chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee Lamar Alexander (R-TN) issued the following statement on August 10, 2018:

“Secretary DeVos’s regulation proposes to end a clumsy rule that consumed 945 pages to define two words in the higher education law and targeted just one segment of our 6,000 colleges and universities. This reset gives Congress an opportunity to create a more effective measure of accountability for student debt and quality of institutions. My own view is that Congress should focus on repayment rates—whether borrowers are actually paying back loans—rather than the current “default rate” which measures only whether students have not paid back their loans for 270 days or more.”

A copy of Senator Alexander’s press release is found at:

<https://www.alexander.senate.gov/public/index.cfm/pressreleases?ID=53AC4E65-A21E-446A-8AA5-DE3CAB608664>.

Ranking Member of the HELP Committee Patty Murray (D-WA) issued the following statement on August 10, 2018:

“The gainful employment rule empowers students to make meaningful choices about their education and employment opportunities—and yet Secretary DeVos is proposing to completely abandon this common-sense and effective consumer protection that helps students decide whether a career training program is worth the investment, and would hold predatory for-profit colleges and career training programs accountable for leaving students with extensive debt they cannot repay. Her extreme proposal to rescind this rule is further proof that there is no line Secretary DeVos won’t cross to pad the pockets of for-profit colleges—even leaving students and taxpayers to foot the bill.”

A copy of Senator Murray’s press release is found at:

<https://www.murray.senate.gov/public/index.cfm/newsreleases?ID=069B6CC3-F08F-45C2-B601-BBA34B19A894>.

ED Announces Intent to Establish A Negotiated Rulemaking Committee to Revise Rules on Recognition of Accrediting Agencies and Other Issues

On July 31, 2018, the Department of Education published a Notice of intent to establish a negotiated rulemaking committee in the *Federal Register* to revise the regulations related to the following topics:

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- Recognition of accrediting agencies;
- State authorization requirements related to programs offered through distance education or correspondence courses, including disclosures;
- The definition of “regular and substantive interaction” as the term is used in distance education and correspondence courses;
- The definition of “credit hour;”
- The requirement that an institution demonstrate a reasonable relationship between the length of a program and entry-level requirements for the recognized occupation for which the program prepares the student;
- The arrangements between an institution and another institution or organization to provide a portion of an educational program;
- The roles and responsibilities of institutions and accrediting agencies in the teach-out process;
- The barriers to innovation and competition in postsecondary education or to student completion, graduation, or employment;
- The simplification and clarification of program requirements to minimize inadvertent grant-to-loan conversions and to improve outcomes for TEACH recipients;
- Direct assessment programs and competency-based education; and
- Revisions to the various provisions of the regulations regarding faith-based entities to participate in the Title IV programs.

Public hearings will be held on September 6, 2018 in Washington, DC; September 11, 2018 at Xavier University, New Orleans, LA; and September 13, 2018 at Gateway Technical College, Sturtevant, WI.

This new round of rulemaking represents the Department’s latest attempt to undo policies and procedures promulgated under the Obama Administration. Both accreditors and many colleges will welcome these discussions because many believe that the current regulations are burdensome and discourage innovation. However, consumer advocates will likely be frustrated over any plans to loosen consumer protections.

A copy of the *Federal Register* Notice is found at:

<https://ifap.ed.gov/fregisters/attachments/FR073118NegotiatRuleCommitPublicHearings.pdf>.

ED Issues NPRM for Borrower Defense to Repayment Rules with 30-Day Comment Period

On July 26, 2018, the Department of Education announced that it was proposing a new package of regulations aimed at protecting student borrowers, holding higher education accountable for misrepresentation and fraud, and providing financial protections to taxpayers by at-risk institutions. On July 31, 2018, the borrower defense to repayment Notice of Proposed Rulemaking (NPRM) was published in the *Federal Register* on July 31, 2018, and the public can provide comments no later than August 30, 2018.

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In the July 26, 2018 press release, Secretary of Education Betsy DeVos said: “Our commitment and our focus has been and remains on protecting students from fraud. The regulations proposed today accomplish that by laying out clear rules of the road for higher education institutions to follow and holding institutions, rather than hardworking taxpayers, accountable for making whole those students who were harmed by an institution’s deceptive practices.”

The borrower defense to repayment proposed rule would, among other things:

- Replace the current “State standard” for adjudicating claims with a “Federal standard” that defines misrepresentation and enables a more expeditious review of student claims for loans first disbursed on or after July 1, 2019;
- Amend the prior definition of misrepresentation to only include a statement, act or omission by the school that is false, misleading, or deceptive; made with knowledge of its false, misleading, or deceptive nature or with reckless disregard for the truth; and directly and clearly related to the making of a Direct Loan, or a loan repaid by a Direct Consolidation Loan, for enrollment at the school or to the provision of educational services for which the loan was made. The proposed rule also provides a non-exhaustive list of circumstances that ED may deem to be indications of misrepresentation (i.e., employment or licensure passage rates that differ from those included in the marketing materials; assertions of general transferability of credits which are in fact materially limited, etc.);
- Put into place a borrower defense to repayment adjudication process that is clear, consistent, and fair to borrowers who were harmed by institutional misconduct, and which would not permit group claims;
- Facilitate collection and review of evidence for deciding claims and ensure that the Secretary of Education can recoup from institutions the financial losses associated with successful borrower defense claims within a five-year window following the decision to discharge the loan;
- Expand from 120 days to 180 days the period of time during which students who left an institution prior to its closure are eligible for a closed school loan discharge while at the same time incentivizing closing institutions to engage in orderly teach-outs, which enable more students to complete their program (students would not be eligible for a closed school discharge if the school offers an approved “teach-out” or a wind-down of the program);
- Ensure that institutions requiring students to engage in mandatory arbitration or prohibiting them from participating in class action lawsuits provide plain language explanations of these provisions to enable students to make an informed enrollment decision;

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- Amend the financial responsibility provisions to establish the conditions or events that may have an adverse material effect on an institution's financial condition and which warrant financial protection for the Department, and protect taxpayers by requiring institutions to post a letter of credit or other types of surety when events occur that put the institution's continuing operations or financial stability at risk;
- Amend the false certification discharge provisions by proposing that students who provided an attestation of his/her high school graduation status for purposes of admissions may not subsequently qualify for a false certification discharge based on not having a high school diploma; and
- Specify that a loan discharge based on school closure, false certification, an unpaid refund, or defense to repayment will lead to the elimination of or recalculation of the subsidized usage period that is associated with the loan(s) discharged.

The proposed rules would require borrowers to prove that their college or university acted intentionally in misleading or deceiving them or at least had the "preponderance of the evidence" of misrepresentation and evidence of financial harm standard for the claims. However, the Department said it is considering raising the evidentiary standard to "clear and convincing" evidence of misrepresentation and evidence of financial harm in the event it continues to consider affirmative claims. The Department stated that it is undecided on whether to allow borrowers to file a fraud claim without first having defaulted on their federal student loans, and welcomed public comments on whether to continue to accept such "affirmative" claims, as is currently allowed, or to accept only "defensive" claims made by borrowers who have defaulted and are challenging the Department's effort to collect on their loan. If only defensive claims are permitted, defaulted borrowers would be required to file a borrower defense claim within the deadline associated with the relevant collections. These deadlines are 30-65 days from notification of the collections action; however, if affirmative claims are allowed, non-defaulted borrowers would be required to file a defense claim within three years of leaving the institution.

A copy of the press release is found at: https://www.ed.gov/news/press-releases/us-department-education-takes-action-protect-student-borrowers-hold-higher-education-institutions-accountable-deceptive-practices?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

A copy of the July 31, 2018 NPRM is found at:
<https://ifap.ed.gov/fregisters/attachments/FR073118NPRM.pdf>.

On July 25, 2018, Chairman of the Senate Committee on Health, Education, Labor and Pensions (HELP) Lamar Alexander (R-TN) released a statement that said: "Secretary DeVos is right to propose new regulations that set important safeguards and clear standards for when a student can file a claim, so taxpayers aren't paying for unreasonable or unsubstantiated claims of fraud."

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A copy of the press release from Senator Alexander is found at:

<https://www.alexander.senate.gov/public/index.cfm/pressreleases?ID=ED0E1B5B-7B05-44A2-8D0A-A07E592B28B0>.

On July 25, 2018, Ranking Member of the HELP Committee Senator Patty Murray (D-WA) released a statement that said that the proposed rule would “cut billions in debt relief to students who were simply trying to better themselves and instead were cheated out of their education and savings.”

A copy of Senator Murray’s press release is found at:

<https://www.help.senate.gov/ranking/newsroom/press/murray-statement-on-devos-rule-to-cut-billions-of-debt-relief-from-cheated-students-a-clear-sign-that-students-cannot-rely-on-secretary-devos>

On July 25, 2018, Ranking Member of the House Education and the Workforce Committee Bobby Scott (D-VA) issued a press release that said: “The Trump Administration’s proposed Borrowers Defense rule is yet another assault on consumer protections for student borrowers. Rather than supporting students who are cheated out of the education and the future they signed up for, the administration is proposing a new, burdensome process for evaluating claims that will shield schools from accountability and prevent a majority of students from getting desperately needed relief.”

A copy of the press release from Congressman Scott is found at:

<https://bobbyscott.house.gov/media-center/press-releases/scott-statement-on-final-proposed-borrowers-defense-rule>.

ED to Debut a Redesigned Website for the FAFSA

On July 24, 2018, the Department of Education issued an Electronic Announcement announcing that beginning this summer, students and parents will have two ways to complete the FAFSA form, a redesigned fafsa.gov website and a mobile app. The Department launched a redesigned website on July 22, 2018. The page design of fafsa.gov now has a more modern and user-friendly look and, to ease the navigation through the site, some questions on fafsa.gov are now grouped in a different order. Next month, the Department plans to roll out the beta version of a student aid mobile app that would permit students to complete the FAFSA application as well as make loan payments and complete other financial aid tasks. A complete version of the mobile app is set to launch on October 1, 2018, just in time for the beginning of the 2019-2020 award year processing.

A copy of the Electronic Announcement is found at:

<https://ifap.ed.gov/eannouncements/072418TheFAFSAFormisGoingMobile.html>.

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Education Secretary Issues an Extension in ACICS Matter

By order dated April 3, 2018, Secretary of Education Betsy DeVos extended the deadline for the Senior Department Official to file a response to the submission of the Accrediting Council for Independent Colleges and Schools (“ACICS”) to September 4, 2018. The original deadline was July 30, 2018.

A copy of the Order is found at:

<http://acics.org/uploadedFiles/Temporary/Secretarial%20Order%20Granting%20Extension%207.30.18.pdf>.

VA Implements *Forever GI Bill* Provisions

On August 1, 2018, the Department of Veterans Affairs (VA) began implementing 15 more provisions of the *Harry W. Colmery Educational Assistance Act of 2017*, which is also referred to as the *Forever GI Bill*. Thirteen other provisions were implemented less than a year ago. The Yellow Ribbon Program now covers more students and Post-9/11 GI Bill students may now receive a monthly housing allowance for any days they are not on active duty.

A copy of the VA announcement is found at:

<https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5089>.

VA Secretary Nominee Expresses Support for Revising 90/10 Rule

According to a recent report in *Politico*, Veterans Affairs Secretary nominee Robert Wilkie responded to a series of questions posed by the Ranking Member of the Senate Health, Education, Labor and Pensions Committee Patty Murray (D-WA) following his nomination hearing before the Senate Veteran Affairs Committee. His responses indicated his support for revising the 90/10 calculation to include the Post-9/11 GI Bill benefits in the 90 percent when he said: “While VA defers to the Department of Education (ED) on the 90/10 calculation, there is an argument for including the Post-9/11 GI Bill in the 90 percent cap. Under the present structure, some institutions may be marketing to Veterans because the Federal education benefits they receive are treated the same way as private funds in the 90/10 calculation. I believe institutions should not aggressively recruit Veterans principally because of financial motives.”

A copy of VA Secretary-nominee Wilkie’s responses is found at:

https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily_briefing/Wilkie.pdf.

GAO Releases Report on Department’s Postsecondary School Certification Process

On July 18, 2018, the Government Accountability Office (GAO) released its report titled, “Education’s Postsecondary School Certification Process,” (GAO-18-481) which examined (1) how the Department of Education certifies schools to administer federal student aid and how

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frequently schools are approved or denied certification; and (2) the role of compliance audits in the certification process. GAO analyzed data on school certification outcomes for calendar years 2006-2017 and found that the Department fully or provisionally approved almost 90 percent of the schools applying for initial certification or recertification to receive federal student aid. Of the 14,910 applications for recertification, 76 percent were fully recertified and 21 percent were provisionally certified. Only 11 percent of the schools applying for initial certification were denied and only 3 percent of the schools applying for recertification were denied.

GAO also reviewed Federal Student Aid's (FSA) process for evaluating a school's capability to administer federal student aid. While FSA looks at multiple sources of information during the review process, the Department relies on compliance audits for direct information about how well schools administer federal student aid. GAO noted that the Inspector General annually selects a sample of compliance audits for quality reviews based on risk factors, such as previously cited for errors. In fiscal years 2006-2017, 59 percent of the 739 selected audits received failing scores. Because the higher risk audits were selected for review, the Inspector General said they cannot assess the overall prevalence of quality problems in compliance audits. In the end, GAO did not make any recommendations.

A copy of the GAO report is found at: <https://www.gao.gov/assets/700/693151.pdf>.

20 State Attorneys General Urge the Department of Education to Restore Student Loan Information Sharing Policy

On July 13, 2018, 20 State Attorneys General (AGs) sent a letter to Secretary of Education Betsy DeVos urging the Department to reverse its decision to limit the Department's disclosure of certain student loan information to law enforcement agencies, including AGs, "for use in protecting their constituents from illegal, unfair, abusive, or deceptive practices by actors in the higher education industry."

Since at least 2000, the Department's policy was to permit routine disclosures of student loan information to State Attorneys General responsible for investigating and prosecuting crimes and civil frauds when that information is relevant to their enforcement responsibilities. In 2016, ED amended its policy to expand law enforcement agencies' access to relevant student loan information by removing the limitation that disclosures could only be made for possible violations of criminal laws and civil fraud. The letter noted that in a *Federal Register* Notice of June 13, 2018, the Department "quietly eliminated its policy on disclosures of consumer complaints and related information for use by law enforcement agencies..." The Department also eliminated its policy on disclosures of records related to borrowers' requests for relief under the borrower defense regulations. The AGs asked Secretary DeVos to "recommit to its historic law enforcement partnerships by restoring its policy on routine disclosures of student loan information for use by State Attorneys General and other law enforcement agencies." The AGs asserted that the Department "risks further hampering the ability of State Attorneys General and

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other law enforcement officials to protect students from predatory practices and to secure relief for students victimized by fraud and other unlawful activities.”

A copy of the State Attorneys General letter is found at: <https://nj.gov/oag/newsreleases18/NJ-WA-Privacy-Act-Letter.pdf>.

A copy of the *Federal Register* Notice is found at: <https://www.gpo.gov/fdsys/pkg/FR-2018-06-13/pdf/2018-12700.pdf>.

Pennsylvania Business Owner Admits to Fraudulently Obtaining Veterans' GI Bill Benefits

On February 1, 2018, the U.S. Attorney's Office for the District of New Jersey announced that a Harrisburg, PA man, David Alvey, admitted his role in a conspiracy that fraudulently obtained more than \$24 million from the Post 9/11 GI Bill, affecting more than 2,500 students. U.S. Attorney Craig Carpenito announced that “Alvey and his codefendants stole money that was intended to provide educational opportunities to the armed services members who served following the attacks on 9/11.” Lisa DiBisceglie, then an Associate Dean at Caldwell University, helped Alvey get approval from Caldwell's administration to develop and administer a series of non-credit online courses for veterans in Caldwell's name. However, Caldwell did not participate in developing or teaching the online courses that were in fact created and administered by Ed4Mil, founded by Alvey, that created unaccredited, correspondence courses. The Veterans Administration (VA) approved the courses based on an application that was submitted to the VA stating that the courses were developed, taught, and administered by Caldwell faculty and met Caldwell's educational standards.

David Alvey pleaded guilty to conspiracy to commit wire fraud and was sentenced last month to five years in prison. One of his employees also pleaded guilty and was sentenced to probation. Lisa DiBisceglie pleaded guilty and was sentenced last month to six years of probation.

A copy of the press release is found at: <https://www.justice.gov/usao-nj/pr/pennsylvania-business-owner-admits-defrauding-veterans-gi-bill>.

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