

**WASHINGTON UPDATE**

**AUGUST 2019**

Senator Hassan and Nine Other Senators Send Letter to Secretary of Education and Commissioner of IRS Expressing Concern About the Impact of Changes to the 1040 Tax Form on Financial Aid Applicants

On August 2, 2019, Senator Maggie Hassan (D-NH) and nine other Senators sent a letter to Secretary of Education Betsy DeVos and Commissioner of the Internal Revenue Service (IRS) Charles P. Rettig requesting that the Department of Education take specific steps to ensure that financial aid applicants who misreport tax information on the FAFSA due to changes made to the 1040 tax form will not be subject to additional reporting requirements. The Senators noted in their letter that following the passage of the 2017 tax law (P.L. 115-97), the Department of the Treasury shortened the core 1040 tax form in an attempt to create a tax filing “postcard.” In 2018, the Treasury Department truncated the 1040 tax form by moving certain tax information to six separate, equally complicated schedules. “During this process, Treasury did not consider how its changes to the 1040 would impact the IRS Data Retrieval Tool (DRT).” As a result, the DRT will no longer import certain tax information into the FAFSA during the financial aid cycle beginning October 2019 (2020-2021 award year).

The letter stated that the Department of Education’s proposed solution is complex and involves asking students and parents whether they filed a Schedule I with their 2018 tax return. The Department’s solution will “likely result in the submission of incomplete and inaccurate information regarding some applicants’ financial aid eligibility.” The letter pointed out that “this new self-reporting requirement may disrupt federal financial aid for applicants who would otherwise satisfy the FAFSA’s ‘Simplified Needs Test.’” The Senators urged the Department of Education and the IRS to work collaboratively to fix the problems created by the IRS changes to the 1040 tax form and allow all relevant tax information to be transferred through the DRT.

A copy of the letter is found at:

[https://cdn.ymaws.com/www.ncher.us/resource/resmgr/db\\_alt/08-19\\_Letter\\_to\\_DeVos\\_from\\_S.pdf](https://cdn.ymaws.com/www.ncher.us/resource/resmgr/db_alt/08-19_Letter_to_DeVos_from_S.pdf).

Senator Lee and Representative Rooney Introduce the *Higher Education Reform and Opportunity (HERO) Act*

On July 31, 2019, Senator Mike Lee (R-UT) and Representative Francis Rooney (R-FL) introduced S. 2339/H.R. 4098, the *Higher Education Reform and Opportunity (HERO) Act*, which would promote alternatives to four-year college, cap federal student loans, and hold colleges and universities accountable for student success. According to the press release, the bill:

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- Allows states to accredit innovative non-traditional programs like online courses, apprenticeships, or vocational schools;
- Caps undergraduate student loans at \$30,000 with a 15-year repayment rate;
- Caps graduate student loans at \$40,000 with a 25-year repayment rate;
- Introduces reporting measures on whether students graduate on time, how burdened by debt students are after graduating, and the success rate for graduates in a particular major at obtaining jobs that enable them to repay their loans; and
- Requires that institutions repay 10 percent of the student default amount (minus the Federal unemployment rate).

A copy of the press release is found at:

<https://francisrooney.house.gov/news/documentsingle.aspx?DocumentID=2524>.

## Senator Warren Unveils Details of Plan to Cancel Student Loan Debt

On July 23, 2019, Senator Elizabeth Warren (D-MA) and House Majority Whip James E. Clyburn (D-SC) released a bill, called the Student Loan Debt Relief Act, which would cancel a significant amount of student loan debt for the majority of borrowers. The proposal would cancel up to \$50,000 in student debt for borrowers with a household income of \$100,000 or less, cancel some amount of student debt for borrowers with a household income of between \$100,001 and \$250,000 and provide no loan forgiveness for borrowers earning \$250,000 or more.

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

<https://www.warren.senate.gov/newsroom/press-releases/senator-warren-house-majority-whip-clyburn-introduce-legislation-to-cancel-student-loan-debt-for-millions-of-americans>

## Bipartisan Senate Bill Creates Framework for ISAs

On July 15, 2019, Senators Mark Warner (D-VA), Chris Coons (D-DE), Todd Young (R-IN), and Marco Rubio (R-FL) introduced S.2114, the *ISA Student Protection Act of 2019*, which would create a legal and regulatory framework for income-share agreements (ISAs). According to the press release, S.2114 includes the following "safeguards and consumer protections" for students:

- Individuals making less than 200 percent of the Federal Poverty Level (\$24,980 in 2019) are exempt from making payments towards their ISA;
- ISA providers cannot make agreements with students that require payments higher than 20 percent of income for shorter-term contracts, with the cap decreasing to 7.5 percent for the longest contracts allowed (30 years);
- ISAs are dischargeable in bankruptcy;

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- Funders must disclose to students how their monthly payments would compare under the ISA to payments on a private or federal loan for the same amount of money and number of payments;
- Applies federal consumer protection laws;
- Gives the Consumer Financial Protection Bureau oversight authority over ISAs; and
- Clarifies the tax treatment of ISA contributions for both funders and recipients.

A copy of the press release is found at:

<https://www.warner.senate.gov/public/index.cfm/pressreleases?ID=CCDC5D22-872B-4202-8F34-B787145B2221>.

The Congressional Research Service (CRS) released a fact sheet titled, “An Economic Perspective of Income Share Agreements (ISA),” which provides an overview of ISAs and compares ISAs to student loans. Several policy issues and questions are described in the paper.

A copy of the CRS fact sheet is found at: <https://fas.org/sgp/crs/misc/IF11269.pdf>.

### Senate and House Democrats Send Comments to Department of Education on NPRM on Accreditation

On July 12, 2019, House Democrats on the House Committee on Education and Labor sent a letter to the Department of Education commenting on the Notice of Proposed Rulemaking (NPRM) on changes it proposes to make on accreditation standards. All 28 members of the House Committee said that the proposed rule undermines the Department’s ability to conduct adequate oversight of accreditors; opens the door to untested accreditors without demonstrated experience; reduces transparency during the accreditation recognition and re-recognition process; reduces institutional accountability; and exposes students and taxpayers to significant risk.

The Senate Health, Education, Labor and Pensions (HELP) Committee sent a letter commenting on the NPRM saying that “there is inadequate evidence to justify these expansive and expensive changes. We strongly urge the Department to abandon the proposed rule to avoid risk to both taxpayers and students and instead maintain current regulations while Congress works to reauthorize the Higher Education Act.”

A copy of the letter obtained from NCHER’s website is found at:

[https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily\\_briefing/House\\_letter.pdf](https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily_briefing/House_letter.pdf).

A copy of the letter obtained from NCHER’s website is found at:

[https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily\\_briefing/Senate\\_letter.pdf](https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily_briefing/Senate_letter.pdf).

### House Passes the NDAA that Includes Amendment Impacting Proprietary Schools; For-Profit Schools Voice Opposition

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On July 12, 2019, the House passed H.R. 2000, the *National Defense Authorization Act for FY 2020*, to authorize programs under the Department of Defense (DoD). Before passing H.R.2020, the House adopted an amendment offered by Representative Donna Shalala (D-FL), which would require the DoD to audit proprietary colleges that fail the U.S. Department of Education's financial responsibility standards. The amendment would also require DOD to publish an annual list showing how much funding each college receives through the DoD's Tuition Assistance Program. The amendment passed by a vote of 251-178, with 20 Republicans crossing party lines.

On July 18, 2019, the American Association of Cosmetology Schools (AACCS) sent a letter to the leaders of the House and Senate Armed Services Committee opposing the amendment offered by Representative Shalala. "The amendment as written unfairly targets proprietary schools and the active military students that some AACCS member schools serve." AACCS urged the House and Senate Armed Services Committee members to drop the amendment from the final bill.

A copy of the AACCS letter is found at:

[https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily\\_briefing/cosmo\\_letter.pdf](https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily_briefing/cosmo_letter.pdf).

### House Judiciary Subcommittee Holds Hearing Focusing on Student Loan Bankruptcy

On June 25, 2019, the House Judiciary Subcommittee held a hearing titled, "Oversight of Bankruptcy Law and Legislative Proposals," which covered the overall issue of bankruptcy law and issues involving small businesses, farmers, and service members. However, much of the hearing centered on student loans and H.R.2628, the *Student Borrower Bankruptcy Relief Act of 2019*. Subcommittee Chairman David Cicilline (D-RI) stated that the purpose of the bankruptcy system is to give those with overwhelming debt a fresh start, but the current system is not working, specifically for student and parent borrowers. He said that Congress created the "undue hardship" provision as a way for student loan borrowers to obtain bankruptcy relief, but it has proven to be an extremely high bar to meet. In his opening statement, Committee Chairman Jerry Nadler (D-NY) endorsed H.R.2628 and stated: "Some of the student loan debt is the result of predatory lending practices that target young Americans desperate to improve their lives and contribute to society, but who do not fully understand the terms of the loans they take on. And, some of this debt is disparately borne by minorities who, on average, owe more than their white counterparts, and who are more often targets of such predatory lending practices. There is no reason that this one category of debt should be singled out for special treatment that makes relief under the bankruptcy code virtually impossible."

One of the witnesses was Senator Dick Durbin (D-IL), who cited a *Wall Street Journal* article, which reported that in 2017 only four borrowers were able to discharge their student loans by proving undue hardship. He also said that schools should have "skin-in-the-game" in order to

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reduce student loan delinquencies and default. The majority of witnesses supported restoring bankruptcy discharge for both federal and private student loans.

## FSA Releases Quarterly Updates to Application, Disbursement, and Portfolio Reports

On August 7, 2019, Federal Student Aid (FSA) released its quarterly updates to the quarterly application, disbursement and portfolio reports on the FSA Data Center. Some of the key findings include:

- The outstanding federal student loan portfolio is \$1.48 trillion. The Direct Loan portfolio represents 81 percent of the outstanding loan portfolio.
- As of March 31, 2019, 18.2 million FAFSA forms were submitted for the 2018-2019 application year, representing a 2.3 percent decrease compared to the same time period in the prior application cycle. During the first quarter of the 2019-2020 application cycle, about 10 million applications were submitted, a 4.1 percent decrease from the same time period in the prior year.
- Enrollment in income-driven repayment (IDR) plans has continued to increase. As of March 31, 2019, more than 7.5 million borrowers were enrolled in IDR plans, representing a nine-percent increase from March 31, 2018.
- In the second quarter of FY 2019, FSA received about 22,000 new borrower defense applications. To date, almost 48,000 have been approved, resulting in almost \$535 million in discharges. According to the electronic announcement, the total amount discharged and the number of approved and denied applications included in the March 31, 2019 report has not changed as a result of ongoing litigation and the prioritization of the implementation of the 2016 final regulations.

A copy of the electronic announcement of the release of the quarterly update is found at: <https://ifap.ed.gov/eannouncements/080719FSAPostsNewReportsToFSADataCenter.html>.

## Secretary DeVos Calls for Review of Income Verification for Income-Driven Repayment Plans

On July 25, 2019, Secretary of Education Betsy DeVos released the following statement calling for a comprehensive review of income verification of income-driven repayment (IDR) plans following the publication of the Government Accountability Office (GAO) report titled, “Federal Student Loans: Education Needs to Verify Borrowers’ Information for Income-Driven Repayment Plans.” The report states that due to potential fraud or error in income and family size information, the Department of Education needs to verify details supplied by those student loan borrowers with approved income-driven repayment plans. The report found that some borrowers applying for income-based repayment plans “may have misrepresented or erroneously reported their income or family size.”

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The GAO report released today further proves what I've long said: there is significant risk in the federal student loan portfolio. For years there have been deliberate efforts to make the maze of student aid more complex for students and less accountable to the American taxpayers who underwrite it. Today's report is just the latest proof that many of the policy ideas previously pursued were poorly implemented.

Misrepresenting income or family size is wrong, and we must have a system in place to ensure that dishonest people do not get away with it. We didn't create that problem, but rest assured we will fix it.

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-calls-review-income-verification-income-driven-repayment-plans>.

## ED Provides Clarification on Checking High School Validity

On July 23, 2019, the Department of Education issued an electronic announcement providing clarification regarding the role that institutions have in checking the validity of a student's high school completion as required by 34 C.F.R. § 668.16(p). Final regulations issued on October 29, 2010 require institutions to develop and follow procedures to evaluate the validity of a student's high school completion if the institution or the Secretary has reason to believe that the high school diploma is not valid. The Department clarified that a process that meets a two-part process described by the Department would satisfy the requirement. The two-part process includes: "(1) receiving documentation from the secondary school that confirms the validity of the student's diploma, and (2) confirming with documentation received from the relevant department or agency in the state in which the secondary school is located that the secondary school is recognized as a provider of secondary school education." ED also clarified that other approaches used by institutions are still valid if they comply with the language of the rule.

A copy of the electronic announcement is found at:  
<https://ifap.ed.gov/eannouncements/072319CheckValidityofStudentsHighSchCompletion.html>.

## Department Announces Effective Date of State Authorization Rules

On July 22, 2019, the Department of Education issued an electronic announcement announcing the effective date of the 2016 state authorization regulations as being on May 26, 2019. On December 19, 2016, the Department published in the *Federal Register* final regulations concerning state authorization. The original effective date was July 1, 2018, but was delayed until July 1, 2020. However, by order of the U.S. District Court for the Northern District of California in the case *NEA v. DeVos*, the 2016 final regulations took effect on May 26, 2019.

Included in the electronic announcement is a Q&A document addressing documentation requirements for the complaint process. The Q&A explained that the State of California does not

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currently participate in a state authorization reciprocity agreement and does not have a process to review and take appropriate action on complaints from attending out-of-state public or nonprofit institutions. As a result, students residing in California who are enrolled in distance education or correspondence courses at out-of-state public or nonprofit institutions are ineligible for Title IV programs until the State of California enters into a reciprocity agreement or provides institutions with an appropriate complaint process.

A copy of the electronic announcement is found at:

<https://ifap.ed.gov/eannouncements/072219Compliance2016StateAuthRegQandA.html>.

A copy of the *Federal Register* Notice of July 29, 2019 memorializing the effective date of the state authorization rules on May 26, 2019 is found at:

<https://www.nasfaa.org/uploads/documents/2019-15869.pdf>.

California officials announced on July 26, 2019, that the California Department of Consumer Affairs has created a complaint system for out-of-state public and nonprofit institutions serving California residents. California already had a complaint process in place for for-profit institutions.

In response to California's action, the Department of Education's Principal Deputy Under Secretary Diane Jones wrote to the California Department of Consumer Affairs on August 2, 2019, stating that while the Department is "concerned that certain aspects of the plan do not comply" with the state authorization rule, it would grant some leniency. Ms. Jones stated in the letter that it would assume that state officials will amend its current plan to come into full compliance "to avoid the disruption in educational programs for California students" who were affected by the recent court decision. The letter said that California needed to make sure that it refers incoming student complaints about online colleges to an entity that has the authority to enforce California state law. "With those modifications made, the Department will consider California to have had an acceptable plan in place dating back to May 26, 2019" and "no student will experience an interruption in his or her education or federal student aid."

A copy of the ED letter is found at:

[https://cdn.ymaws.com/www.ncher.us/resource/resmgr/db\\_alt/california\\_financial\\_aid\\_let.pdf](https://cdn.ymaws.com/www.ncher.us/resource/resmgr/db_alt/california_financial_aid_let.pdf).

## Department Warns Colleges and Universities of a Security Risk from Cyberattacks

On July 18, 2019, the Department of Education issued a security alert regarding the "active and ongoing exploitation" of a security flaw in the Ellucian Banner (Banner) system. The vulnerability only occurs in Ellucian Banner Web Tailor versions 8.8.3, 8.8.4, and 8.9 and Banner Enterprise Identity Services versions 8.3, 8.3.1, 8.3.2, and 8.4. The Department identified 62 colleges and universities impacted by exploitation of a vulnerability in technology products sold by Ellucian. According to the notice, victimized institutions indicated that at least

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600 fake student accounts were created within a 24-hour period, with the activity continuing over multiple days resulting in the creation of thousands of fake student accounts. “Victimized institutions also have indicated that their implementation of the Banner system affects or influences all aspects of academic administration, including the administration of student financial aid.”

The notice indicated that institutions should contact Ellucian to receive information needed to patch or upgrade affected systems. Another notice advised colleges and universities that it has recently implemented new cybersecurity measures to further protect critical student data and ensure the security of FSA systems and websites.

A copy of the Technology Security Alert is found at:

<https://ifap.ed.gov/eannouncements/071719ITSecurAlertExploitationEllucianBannerSysVulnerability.html>.

A copy of the announcement regarding new cybersecurity measures implemented by ED is found at:

<https://ifap.ed.gov/eannouncements/071719InforReqtoEnsureAccesstoFSASysWebsites.html>.

## OMB Introduces New Information Security Audit Objectives for Higher Education Institutions

On July 1, 2019, the Office of Management and Budget (OMB) published a notice of availability in the *Federal Register* of the 2019 OMB Compliance Supplement. The notice provides an opportunity to comment on the 2019 Supplement. The 2019 Supplement includes, for the first time, audit objectives for colleges and universities concerning compliance with the Safeguards Rule of the Gramm-Leach-Bliley Act (GLBA). The newly added GLBA audit objectives are significant because they are the first time that compliance with information security requirements has been expressly included as part of the Title IV audit process. As explained in the 2019 Supplement, the Federal Trade Commission (FTC) considers higher education institutions that receive Title IV funds to be “financial institutions” subject to the GLBA. Program Participation Agreements signed between higher education institutions and the Department of Education also incorporate the Safeguards Rule and require institutions to protect student financial aid information.

The 2019 Supplement can be found at:

[https://www.whitehouse.gov/wp-content/uploads/2019/07/2-CFR\\_Part-200\\_Appendix-XI\\_Compliance-Supplement\\_2019\\_FINAL\\_07.01.19.pdf](https://www.whitehouse.gov/wp-content/uploads/2019/07/2-CFR_Part-200_Appendix-XI_Compliance-Supplement_2019_FINAL_07.01.19.pdf).

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