

WASHINGTON UPDATE

SEPTEMBER 2017

Senate Democrats Urge DeVos to Name Head of Student Enforcement Unit

On August 7, 2017, Senators Sherrod Brown (D-OH), Patty Murray (D-WA), Elizabeth Warren (D-MA), and Richard Durbin (D-IL) sent a letter to Secretary of Education Betsy DeVos and Chief Operating Officer of Federal Student Aid Dr. A. Wayne Johnson urging them to name a “credible, well qualified, independent, and permanent Chief Enforcement Officer for the Department’s Student Aid Enforcement Unit. The Student Aid Enforcement Unit was originally established in early 2016 under the Obama Administration to investigate unfair, deceptive, and fraudulent practices of some colleges and universities. In order to ensure a fair and transparent process for hiring a Chief Enforcement Officer, the Senators sought answers to a number of questions, including the minimum qualifications required of an individual seeking the position, to which political appointee does the Student Aid Enforcement Unit report to, and how many referrals for investigation are currently pending.

A copy of the letter is found at:

<https://www.help.senate.gov/imo/media/doc/Chief%20Enforcement%20Officer%20Letter%208.7.17%20.pdf>.

President Trump Signs GI Bill Expansion into Law

On August 16, 2017, President Trump signed into law H.R. 3218, the *Harry W. Colmery Veterans Educational Assistance Act* (also known as the *Forever GI Bill*). (P.L. 115-48) On August 2, 2017, the Senate, by unanimous vote, passed S. 1598, the companion bill to H.R. 3218, which passed the House on July 24, 2017, by a vote of 405 to 0. H.R. 3218 would modernize and strengthen veterans’ education benefits. The bill includes a range of benefits that veterans groups have long sought, such as eliminating the 15-year time limit to use the GI Bill benefits and restoring the GI bill educational benefits of student veterans who were affected by the closures of Corinthian Colleges and ITT Tech.

On August 16, 2017, Secretary of Education Betsy DeVos and Secretary of Veterans Affairs David Shulkin issued a joint statement that said: “This important legislation will give countless veterans and their families greater access to the education and workforce training they deserve. It will provide them the opportunity to invest in their futures with fewer restrictions and time limitations.”

A copy of the Senate summary is found at: <https://www.veterans.senate.gov/imo/media/doc/07-17-17%20Final%20SVAC%20GI%20Bill%20One%20Pager.pdf>.

A copy of the text of H.R. 3218 is found at: <https://www.congress.gov/bill/115th-congress/house-bill/3218/text?q=%7B%22search%22%3A%5B%22H.R.+3218%22%5D%7D&r=1>.

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A copy of the statement is found at: <https://www.ed.gov/news/press-releases/secretaries-devos-and-shulkin-statement-harry-w-colmery-veterans-educational-assistance-act-2017>.

Senators Blumenthal and Murphy Re-Introduce Students Before Profits Act

On September 8, 2017, Senators Richard Blumenthal (D-CT) and Chris Murphy (D-CT), along with five other Democratic Senators introduced the *Students Before Profits Act*, a bill designed to protect students who attended for-profit colleges from predatory lending and deceptive marketing practices. The bill would authorize enhanced civil penalties on institutions and their executive officers if they engaged in fraudulent marketing to prospective students while giving the Department broader discretion on whether the owners or executives of these colleges should assume personal liability for losses associated with Title IV federal financial aid funds, as well as determining if these schools should lose eligibility to participate in the Title IV federal financial aid programs. Senator Murphy authored this bill when it was first introduced in 2015.

A copy of the press release is available at: <https://www.murphy.senate.gov/newsroom/press-releases/murphy-durbin-brown-franken-blumenthal-warren-and-harris-introduce-students-before-profits-act>.

Senate Appropriations Committee Passes Labor/HHS/ED Appropriations Bill

On September 7, 2017, the Senate Appropriations Committee passed a bipartisan bill, S. 1771, the *FY 2018 Labor, Health and Human Services, Education, and Related Agencies Appropriations Act*, by a vote of 29-2. The bill includes the following funding levels:

- Pell Grants: The bill includes \$22.5 billion in discretionary funding for Pell Grants which will increase the maximum award by \$100 to a new level of \$6,020, and will continue Year-Round Pell Grants.
- FSEOGs: The bill includes \$733 million for the FSEOG program.
- FWS: The bill proposes \$990 million for the FWS program.
- Federal Student Loan Servicing: The bill includes language ensuring competition in student loan servicing, to promote accountability and high quality service for student borrowers.
- Pell Grant Eligibility: The bill includes language restoring Pell Grant eligibility for students impacted by the closing of an institution or false certification or students who have a successful assertion of a defense to repayment of a loan claim.
- ACICS: The bill includes language extending the period of time by an additional 18 months that institutions of higher education impacted by the Department's revocation of the recognition ACICS have to find an alternative accreditor to remain eligible for federal financial aid.

In addition, the report accompanying the bill directs the Secretary of Education to:

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- Enter into a Memorandum of Understanding with the Secretaries of Defense and Veterans Affairs to automate the application of loan benefits to eligible service members and veterans using information in existing federal databases in a timely manner so that service members and veterans can receive the benefits under law.
- Fully implement the Memorandum of Understanding establishing a framework regarding the requirements for electronically sharing tax data over multiple years for federal student loan borrowers participating in Income-Driven Repayment plans on January 17, 2017.
- To issue guidance, within 180 days from enactment, clarifying how colleges and universities can allow state-based organizations to participate in advising students on campus without violating the Preferred Lender List rules.
- Update guidance, information, and processes regarding borrower eligibility for the Public Service Loan Forgiveness Program in coordination with its federal loan servicer.
- Issue a common policies and procedures manual to help improve the consistency of servicing for student loan borrowers and to encourage the Department to pursue the development of a simple, consistent, and unified experience for all student borrowers through a universal web portal.

A copy of the report is found at:

<https://www.appropriations.senate.gov/imo/media/doc/FY2018%20Labor%20HHS%20Education%20Appropriations%20-%20Report%20115-150.pdf>.

House Democrats Introduce the *America's College Promise Act of 2017*

On September 7, 2017, Congressman Bobby Scott (D-VA), ranking member of the House Committee on Education and the Workforce; Congresswoman Susan Davis (D-VA), ranking member of the House Subcommittee on Higher Education and Workforce Development; Congressman Donald Norcross (D-NJ); Congressman Seth Moulton (D-MA); and Congressman Anthony Brown (D-MD) introduced H.R. 3709, the *America's College Promise Act of 2017*, which would make two years of community college free and provide an affordable pathway to a four-year college degree for low-income students. The bill provides a federal match of \$3 for every \$1 invested by the state to waive community college tuition and fees for eligible students before other financial aid is applied. H.R. 3709 would either cover a significant portion of tuition and fees for either the first two years or last two years of college for low-income students who choose to attend Historically Black Colleges and Universities (HBCUs), Hispanic-Serving Institutions (HSIs), Asian American and Native American Pacific Islander-Servicing Institutions (AANAPISIs), and Minority-Serving Institutions (MSIs).

A copy of the press release is found at: <https://democrats-edworkforce.house.gov/media/press-releases/democrats-introduce-bold-legislation-to-broadly-expand-access-to-higher-education>.

Senator Warren Requests Information on Senior Counselor at ED

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On August 15, 2017, Senator Elizabeth Warren (D-MA) sent a letter to Secretary of Education Betsy DeVos requesting information on the ethics rules that apply to Robert Eitel, a Senior Counselor to the Secretary. Mr. Eitel is a former executive of Bridgepoint Education. Senator Warren said in the letter: “I have repeatedly sought information from the Department on the nature of Mr. Eitel’s involvement with borrower defense regulations and the timeline of his involvement, but you have so far failed to provide me with this information.”

A copy of Senator Warren’s letter is found at:

https://www.warren.senate.gov/files/documents/2017_08_15_DeVos_letter_Eitel_conflicts.pdf.

Secretary Discusses Better Way Forward on Title IX Enforcement

On September 7, 2017, Secretary of Education Betsy DeVos discussed a better way to address Title IX enforcement with students and faculty at George Mason University. In her remarks, Secretary DeVos described the problems with the current failed system and the need to establish a regulatory framework that serves all students. She also asserted that “the era of ‘rule by letter’ is over.”

A copy of Secretary DeVos’ speech is found at: <https://www.ed.gov/news/speeches>.

A copy of the press release is found at: https://www.ed.gov/news/press-releases/highlights-secretary-devos-remarks-title-ix-enforcement?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

Department Announces Scheduled Release of FY 2014 Official CDRs

On September 5, 2017, the Department of Education announced that it plans to release the FY 2014 Official Cohort Default Rates on September 25, 2017. After the release to the institutions, the Official Cohort Default Rates will be publicly posted on the Department’s Default Management website.

A copy of the Electronic Announcement is found at:

<https://ifap.ed.gov/eannouncements/090517FY2014OfficialCDRReleaseScheduledforSept252017.html>.

Department Reminds Institutions to Protect the Security and Privacy of Sensitive Personal Tax and Income Information on the FAFSA

On September 5, 2017, the Department of Education issued an Electronic Announcement reminding institutions of higher education and state agencies of their obligation to guard the security and privacy of sensitive personal tax and income information collected on the FAFSA.

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This reminder comes in light of the changes made to the IRS Data Retrieval Tool (DRT) beginning with the 2018-2019 FAFSA award cycle. To provide for maximum access to the IRS DRT among all applicants, the information that is displayed to the applicant is limited to enhance the security and privacy of sensitive personal tax and income information. Institutions of higher education and state agencies must not disclose income and tax information from the FAFSA with the applicant (and spouse or parents) unless the FAFSA applicant (and spouse or parents) can authenticate his/her identity with an unexpired photo identification card.

A copy of the Electronic Announcement is found at:

<https://ifap.ed.gov/eannouncements/090517RemindertoinsthigheredstagesregardprivsectydataFAFSA.html>.

Department Provides Notice to CFPB Regarding Intent to Terminate MOU; Director Cordray Responds

On August 31, 2017, Kathleen Smith, Acting Assistant Secretary, Office of Postsecondary Education, and Dr. A. Wayne Johnson, Chief Operating Officer, Federal Student Aid, sent a letter to Richard Cordray, Director of the Consumer Financial Protection Bureau (CFPB), notifying him of the Department's intent to terminate the Memoranda of Understanding (MOUs) between the U.S. Department of Education and the CFPB regarding the sharing of information in connection with oversight of federal student loans. The letter states that the Department's mission is to serve students and borrowers, but the CFPB's actions have undermined that mission by violating the intent of the MOUs. The CFPB was to direct to the Department all complaints related to Title IV federal student loans within 10 days of receipt by the CFPB; however, the CFPB has failed to direct complaints to the Department and has instead handled such complaints itself. ED noted that "Our goals are to ease the burden for borrowers and to enhance the efficiencies of our servicers – not to complicate the federal student loan process with potentially inaccurate and inconsistent directives."

A copy of the letter is found at: https://edworkforce.house.gov/uploadedfiles/2017-09-01_signed_letter_to_cfpb.pdf.

Congresswoman Virginia Foxx (R-NC), Chairwoman of the House Education and the Workforce Committee, issued a statement praising the Department's actions to end the MOUs with the CFPB.

"Specifically, the department has shown that partnership with the CFPB was complicating and undermining its efforts to act in the best interest of borrowers and students."

A copy of Congresswoman Foxx's statement is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=401966>.

On September 7, 2017, Director of the CFPB Cordray wrote to the Secretary requesting a meeting with her and her staff to have a "constructive conversation" on sharing federal student loan data,

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suggesting that “there is plenty of work for each of us to do, but I believe we can generally do it better together.” Director Cordray’s letter outlines how he believes the Bureau has complied with the MOUs.

A copy of the letter to Secretary DeVos is found at:

<https://consumermediallc.files.wordpress.com/2017/09/director-cordray-letter-to-department-of-education-9-7-17.pdf>.

Department Announces Stronger Approach to FSA Enforcement

On August 31, 2017, the Department of Education announced a stronger approach to how Federal Student Aid (FSA) will enforce compliance of institutions participating in Federal student aid. According to Secretary of Education Betsy DeVos:

“This new approach will enhance our efforts on our oversight responsibilities, including enforcement against bad actors, such as illegitimate debt relief organizations, schools defrauding students and institutions willfully ignoring their Clery Act responsibilities.”

Secretary DeVos said that under Dr. A. Wayne Johnson, the new Chief Operating Officer at FSA, “FSA has established an integrated system of complementary oversight functions to ensure compliance by all participating parties.” Secretary DeVos added that to support FSA’s efforts, several new individuals have been added in the areas of enforcement, outreach, communications, and risk management, which include:

- Julian Schmoke, Jr., Chief Enforcement Officer, formerly Executive Director of Campus Operations at West Georgia Technical College (see article below);
- Michael Dean, Chief Enterprise Risk Officer, formerly Chief Financial Officer at First Performance Global;
- Chris Greene, Chief Customer Experience Officer, formerly Communications Director of FSA;
- Charles Patterson, Senior Advisor for Executive-Level Outreach, formerly Vice President for Research and Economic Development at Georgia Southern University; and
- Laura Shuler, Senior Advisor for Business Processes, formerly Marketing Director of Reunion Financial Services.

FSA Chief Operating Officer A. Wayne Johnson said: "We will not allow bad actors to harm students, parents, borrowers and taxpayers. We will enforce what is right for students at every turn of their student aid life cycle, regardless of whether they are applying for, receiving or repaying aid."

A copy of the announcement with the names of those individuals just hired is found at: <https://www.ed.gov/news/press-releases/us-department-education-expands-focus-enforcement->

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[and-consumer-protections-students-parents-and-borrowers?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.](#)

Department Hires Student Aid Enforcement Officer; Senate Democrats Respond

The Department of Education hired Julian Schmoke as the Student Aid Enforcement Officer. Dr. Schmoke was recently the Executive Director of Campus Relations for West Georgia Technical College and previously served as the Associate Dean for DeVry University's College of Engineering and Information Sciences. The Student Aid Enforcement Unit was created under the Obama Administration in February 2016 to respond more quickly to potentially illegal or fraudulent actions by colleges, specifically for-profit colleges. The Student Aid Enforcement Unit had been headed by Robert Kaye, an enforcement attorney from the Federal Trade Commission (FTC), who had left in March 2017.

On September 6, 2017, Senators Elizabeth Warren (D-MA), Sherrod Brown (D-OH), Dick Durbin (D-IL), Richard Blumenthal (D-CT), and Sheldon Whitehouse (D-RI) sent a letter to Julian Schmoke Jr. requesting a meeting to discuss the direction of the Unit and expressing concern about his “[l]ack of experience in consumer protection, litigation, and the management of investigations and attorneys.”

A copy of the Senate Democrat's letter is found at:

https://www.warren.senate.gov/files/documents/2017_09_05_Schmoke%20letter.pdf.

Department Announces Plans to Convene Negotiated Rulemaking Committees

On August 30, 2017, the Department of Education announced its formal plans to convene two separate committees to engage in negotiated rulemaking regarding borrower defense to repayment and gainful employment. The Notice requested the nominations for negotiators with a deadline of September 29, 2017. Dates of the sessions and topics for each committee are listed in the Notice. As part of the negotiations, the Department plans to convene a subcommittee to hold preliminary discussions about changes in the financial responsibility standards. It appears that the Department is considering possible changes in how it evaluates colleges' financial assets, income, and expenses in determining whether an institution is financially responsible.

A copy of the Notice is found at: <https://www.gpo.gov/fdsys/pkg/FR-2017-08-30/pdf/2017-18510.pdf>.

ED Announces Public Hearings to Solicit Input on Which Regulations Should be Rolled Back

On August 25, 2017, the Department of Education published a Notice in the *Federal Register*, announcing that it will hold two public hearings to solicit input on Department regulations and guidance specific to postsecondary education programs that may be appropriate for repeal,

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replacement, or modification. The Department has been accepting comments as part of its agency-wide Task Force aimed at identifying regulations that may be modified or repealed. The hearings will be held on September 26, 2017 at Salt Lake Community College and on October 4, 2017 at the Department of Education in Washington, DC.

A copy of the Notice is found at: <https://www.gpo.gov/fdsys/pkg/FR-2017-08-25/pdf/2017-18104.pdf>.

Department Adjusts Deadlines for Alternate Earnings Appeals Under Gainful Employment

On August 18, 2017, the Department of Education issued a Notice in the *Federal Register* announcing new deadlines for submitting notices of intent to file alternate earnings appeals and for submitting alternate earnings appeals. The Department also announced additional information that will be considered when evaluating alternate earnings appeals. The deadline to file a notice of intent to file an alternate earnings appeal is October 6, 2017 and the deadline to file the alternate earnings appeal is February 1, 2018. Electronic Announcement #108 was also released on August 18, 2017 advising the higher education community of the *Federal Register* Notice regarding the appeals deadlines.

A copy of the Notice is found at: <https://www.gpo.gov/fdsys/pkg/FR-2017-08-18/pdf/2017-17423.pdf>.

A copy of the Electronic Announcement is found at:
<https://ifap.ed.gov/eannouncements/081817GEEA108AnnouncementofAppealsDeadlines.html>.

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