

**WASHINGTON UPDATE**

**SEPTEMBER 2019**

President Signs Memorandum to Automatically Forgive Federal Student Loan Debt for Totally and Permanently Disabled Veterans

On August 21, 2019, President Donald Trump signed a Presidential Memorandum that will significantly streamline the process to discharge federal student loan debt for totally and permanently disabled veterans. Last year, Secretary of Education Betsy DeVos and Acting Veterans Affairs Secretary Robert Wilkie announced that their agencies would begin identifying and reaching out to veterans who may qualify for the benefit. Since that time, more than 22,000 borrowers have received a total of \$650 million in loan forgiveness. In May, attorneys general for 51 states and territories wrote to the Secretary to say that the process remained inadequate since veterans were required to affirmatively seek loan discharge, which created insurmountable obstacles for many veterans.

Under the new process, veterans will receive loan forgiveness automatically unless they choose to opt out within 60 days of notification of their eligibility. Veterans may elect to decline loan relief because of the potential tax liability in their states or because receiving a loan discharge could make it more difficult to take out federal student loans in the future. Congress eliminated federal tax liability for loan forgiveness for veterans last year.

Secretary DeVos said: “Supporting and caring for those who have sacrificed much in service to our country is a priority for President Trump and the entire Administration. I appreciate the President’s strong leadership on this issue and his willingness to provide much-needed student loan relief.”

The President’s Memorandum is found at: <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-discharging-federal-student-loan-debt-totally-permanently-disabled-veterans/>.

The Secretary’s press release is found at: <https://www.ed.gov/news/press-releases/trump-administration-automatically-forgive-federal-student-loan-debt-totally-and-permanently-disabled-veterans>.

A White House fact sheet is found at: <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-working-tirelessly-provide-benefits-services-brave-veterans-deserve/>.

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House Education and Labor Committee Announces that it will Hold a Hearing on the PSLF Program

On September 5, 2019, the House Education and Labor Committee announced that it will be holding a hearing on September 19, 2019, on the Department of Education’s implementation of the Public Service Loan Forgiveness (PSLF) program.

The announcement was made following the release of the U.S. Government Accountability Office (GAO) report titled, “Improving the Temporary Expanded Process Could Help Reduce Borrower Confusion,” which criticized the Department’s implementation of the Temporary Expanded Public Service Loan Forgiveness (TEPSLF) program. The TEPSLF was created by Congress in 2018 as a fix for borrowers who were denied loan forgiveness under PSLF because they were enrolled in repayment plans that were ineligible for PSLF.

The Department established a process for borrowers to initiate their TEPSLF requests via email, but also required TEPSLF applicants to submit a separate PSLF application before it would consider their TEPSLF request. However, the process became confusing for borrowers “who do not understand why they must apply separately for PSLF – a program they are ineligible for – to be eligible for TEPSLF.”

As of May 2019, the Department had processed 54,000 requests for TEPSLF loan forgiveness since May 2018, and approved 1 percent of these requests, totaling about \$26.9 million in loan forgiveness. Most of the denials were due to the borrower not submitting the PSLF application. Others were denied because the borrower had not made 120 qualifying payments or had no qualifying federal loans.

Committee Chairman Bobby Scott (D-VA) released a statement stating that the GAO report showed that the Department was failing to properly implement the program. “The Department’s failure to implement this program is mystifying and unacceptable.”

A copy of the GAO report is found at: <https://www.gao.gov/products/GAO-19-595>.

A copy of the House Education and Labor announcement is found at: <https://edlabor.house.gov/media/press-releases/gao-report-reveals-education-departments-failure-to-implement-temporary-expanded-public-service-loan-forgiveness-program>.

Senator Bennett Releases Education Plan for Pre-School, K-12, and Higher Education

On September 5, 2019, Senator Michael Bennett (D-CO), who is running for the Democratic nomination for President, released his education plan for improving pre-school, K-12, and higher education. The plan includes the following provisions regarding higher education:

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- Enact free community college;
- Make four-year public colleges debt free through increased support through Pell Grants;
- Work with States to reduce the cost of higher education;
- Collect better data on outcomes;
- Hold schools and programs that receive Federal aid accountable;
- Invest in career and technical training;
- Reduce student debt burdens; and
- Expand debt forgiveness and allow for refinancing of student loans.

Senator Bennett said that the reason students have all of this debt is that the cost of higher education has been driven up while public support for higher education has been reduced.

A copy of his education plan is found at: <https://michaelbennet.com/Education/>.

Senate Democrats Oppose Proposal to Create a System of Industry-Recognized Apprenticeships; Republicans Seek Changes to the IRAP

On August 26, 2019, forty-three Senate Democrats as well as Independent Senators Bernie Sanders and Angus King wrote to Acting Secretary of Labor Patrick Pizzella that the proposal to create a system of industry-recognized apprenticeships would undermine current protections involving workplace safety, wages, and quality. The Senators wrote that the proposal released on June 25, 2019, “would create a parallel system that outsources the secretary’s statutory role in overseeing the nation’s registered apprenticeship programs to unaccountable, nongovernmental entities.” The Democrats also stated that the Trump Administration has presented no evidence that industry-recognized apprenticeships would be more effective than the existing registered apprenticeship program. They sought a 60-day extension of the public comment period.

A copy of the letter is found at:

<https://www.help.senate.gov/imo/media/doc/082619%20IRAPs%20Caucus%20Comment%20Letter%20-%20FINAL1.pdf>.

On August 23, 2019, Ranking Member of the House Education and Labor Committee, along with 19 Republican Members of Congress, sent a letter to Acting Secretary Pizzella seeking changes to the proposed industry-recognized apprenticeship program (IRAP). The letter applauded the Department of Labor’s efforts to give apprenticeship programs greater flexibility to better address the nation’s growing skills gap, but it also urges the Department to allow all industries in IRAPs so the labor market demands can be better met. The Republicans expressed disappointment that the construction sector was specifically excluded from participating in IRAPs. The Republicans urged the Department to issue a final rule that is “impartial when considering industries or economic sectors eligible to participate in IRAPs.”

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A copy of the letter is found at: [https://republicans-edlabor.house.gov/uploadedfiles/8.23.2019\\_irap\\_comment\\_letter.pdf](https://republicans-edlabor.house.gov/uploadedfiles/8.23.2019_irap_comment_letter.pdf).

## Takano and Shalala Introduce Bill to Reissue Gainful Employment Rule

On August 23, 2019, House Veterans Affairs Committee Chairman Mark Takano (D-CA) and House Education and Labor Committee Member Donna Shalala (D-FL) introduced H.R.4206, the *Student and Taxpayer Protection Act*, which would require the Department of Education to reissue the gainful employment rule.

Chairman Takano said: “The Department of Education’s primary responsibility is to protect students and taxpayers, but under the Trump Administration, it has abandoned this duty by prioritizing the interests and bottom-lines of predatory for-profit institutions. Failure by the Department to put students first requires Congress to step in and ensure that every student has access to a quality and affordable education and to hold predatory for-profit institutions accountable for taking advantage of students and providing them with low-quality instruction.”

Representative Shalala said that reinstating the regulations “is not just the smart thing to do, it is the right thing to do.” She also wrote: “The Obama Administration put this rule into place to prevent disreputable institutions from taking advantage of students by giving them worthless degrees and loads of student debt. By reinstating the rule, we will be restoring an essential protection for those who may otherwise fall prey to exploitative institutions whose only interest is padding their bottom line – not educating students.”

A copy of the press release is available at: <https://takano.house.gov/newsroom/press-releases/rep-takano-and-rep-shalala-introduce-the-student-and-taxpayer-protection-act-to-reinstate-gainful-employment-rule>.

## Representative Donna Shalala Introduces *Student Loan Disclosure Transparency Act*

On August 7, 2019, Representative Donna Shalala (D-FL) introduced a bipartisan bill, the *Student Loan Disclosure Transparency Act*, H.R.4193, which would increase the frequency with which students are provided federal loan disclosures and add a number of items to the existing list of what servicers must disclose. Co-sponsors include Matt Gaetz (R-FL), Chris Stewart (R-UT), Ben McAdams (D-UT), Jaime Herrera Beutler (R-WA), and Abigail Spanberger (D-VA). Representative Shalala said: “The standards of disclosure that apply to other consumer loans should also apply to the very first consumer loan most people take – the student loan. Americans now owe over \$1.6 trillion in student debt with the average borrower owing more than \$38,000. We ought to encourage responsible practices among young people early as they embark on their lives. Our current student loan disclosures are unnecessarily long, difficult to read, and fail to inform borrowers of their payment obligations upon

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graduation. The goal is to give student borrowers the necessary tools and information they need to manage financial aid and personal finances while in school.”

A copy of the press release is found:

<https://shalala.house.gov/news/documentsingle.aspx?DocumentID=2016>.

### September 17<sup>th</sup> is Constitution Day

September 17, 2019 is Constitution Day commemorating the September 17, 1787, signing of the Constitution. In recognition of the Constitution, Congress has mandated that every educational institution receiving federal funding hold an educational program about this document.

The Department of Education has provided a number of resources, which are found at:

<https://www2.ed.gov/policy/fund/guid/constitutionday.html>.

### Department Publishes Borrower Defense to Repayment Rules

On August 30, 2019, the Department of Education released the unofficial version of the Institutional Accountability regulations that were sent to the *Federal Register* on borrower defense to repayment and closed school discharges. The final rule, which has not been published in the *Federal Register* yet:

- Sets a new federal standard for borrower defense to repayment claims for those federal student loans disbursed on or after July 1, 2020. It provides that a borrower may assert a defense to repayment if his/her institution made a misrepresentation of a material fact upon which the borrower reasonably relied and the borrower was financially harmed. “Misrepresentation” is defined as a “statement, act, or omission by an eligible school to a borrower that is false, misleading or deceptive; that was made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth; and that directly and clearly relates to: (1) enrollment or continuing enrollment in the institution, or (2) the provision of educational services for which the loan was made.”
- Requires borrowers to file individual claims demonstrating by a preponderance of the evidence that they qualify for a borrower defense to repayment claim.
- Specifies that aggrieved borrowers do not have to wait until their student loans are in collection to assert a claim. However, with some exceptions, claims must be brought within three years from the date that the borrower withdraws or graduates from school.
- Creates streamlined procedures that ensure due process.

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- Gives students the ability to allege a specific amount of financial harm.
- Provides that the final determination will be made by the Secretary of Education who may grant partial relief to a borrower.
- Extends the closed-school discharge window from 120 to 180 days.
- Specifies that borrower defense to repayment claims on federal student loans disbursed between July 1, 2017 and July 1, 2020 would be subject to the provisions of the November 1, 2016 rules issued under the Obama Administration.
- Permits institutions to use pre-dispute arbitration and class action waiver agreements with specific disclosures.
- Encourages institutions to complete well-planned teach-outs and allows students to choose between accepting an institution's offer of a teach-out opportunity or submitting a closed-school discharge to the Department.
- Amends the list of conditions and events that must be reported to the Department and that could result in the Department recalculating an institution's financial responsibility composite score and requiring the institution to provide additional financial protection to the Department.
- Updates composite score calculations to reflect changes to the Financial Accounting Standards Board (FASB) accounting standards and makes changes to the treatment of leases and long-term debt in the calculation of the composite score.

The regulations go into effect July 1, 2020, but the regulations relating to financial responsibility may be implemented early, although many believe there is no advantage to implementing the financial responsibility provisions early.

Secretary of Education Betsy DeVos said: "If a school defrauds students, it must be held accountable."

Congressional Democrats and consumer groups immediately criticized the Department's actions. House and Labor Committee Chairman Bobby Scott (D-VA) said: "The Department failed to heed public comment from students, consumers, and Members of Congress in finalizing this rule, and Congress must act to put student borrowers first."

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A copy of the Department's press release is found at: <https://www.ed.gov/news/press-releases/us-department-education-finalizes-regulations-protect-student-borrowers-hold-higher-education-institutions-accountable-and-save-taxpayers-111-billion-over-10-years>.

A copy of a summary provided by the Department is found at: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2017/borrower-defense-institutional-accountability-summary.pdf>.

A copy of Congressman Scott's press release is found at: <https://edlabor.house.gov/media/press-releases/scott-statement-on-department-of-educations-final-borrowers-defense-rule->.

## ED Releases 2020-2021 College Financing Plan

On September 5, 2019, the Department of Education's Office of Postsecondary Education released the 2020-2021 College Financing Plan (formerly known as the Financial Aid Shopping Sheet). The College Financing Plan is a consumer tool that may be used in place of or as a supplemental cover sheet to an institution's existing award notice. As a result of working with NASFAA, financial aid administrators, students, parents, and other stakeholders, ED has modified the template. The 2020-2021 College Financing Plan reflects the following changes:

- Changed the name of the template from Financial Aid Shopping Sheet to College Financing Plan to emphasize to students that they are making a significant investment in enrolling in an institution;
- Added more transparency for students so they know the interest rate they will pay on each loan; have more detail about need-based and merit-based scholarships and grants; can compare on-campus and off-campus living arrangements; and are provided a clear distinction between loans; and
- Simplified the language and format, removing elements that add clutter, are unnecessarily complex, or are not seen as relevant to students or valuable to the decisions they must make.

A copy of the electronic announcement, which contains the template with annotated and non-annotated versions, along with a Technical Reference Guide, is found at: <https://ifap.ed.gov/eannouncements/090519CollegeFinancingPlan2021.html>.

## Department Levies \$4.5 Million Fine – the Largest-Ever Clery Fine – Against Michigan State University

On September 5, 2019, the Department of Education announced that it will fine Michigan State University the largest-ever Clery fine of \$4.5 million and will require the University to make major changes to its Title IX procedures following its systemic failure to protect students from

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sexual abuse. After two investigations, one by Federal Student Aid (FSA) and the other by the Office for Civil Rights (OCR), the Department found that the University had failed to protect women in its handling of the Larry Nassar scandal. Dr. Nassar was a former team doctor who was convicted of sexually abusing hundreds of women during the decades he worked at the University.

Secretary of Education Betsy DeVos said: “What transpired at Michigan State was abhorrent, inexcusable, and a total and complete failure to follow the law and protect students. Michigan State will now pay for its failures and will be required to make meaningful changes to how it handles Title IX cases moving forward. No future student should have to endure what too many did because concerns about Larry Nassar and William Strampel [former dean] were ignored.”

A copy of the Secretary’s press release is found at: <https://www.ed.gov/news/press-releases/secretary-devos-levies-largest-ever-clery-fine-against-michigan-state-university-requires-major-corrective-action-following-systemic-failure-address-sexual-abuse>.

#### CFPB Announces Appointment of Robert Cameron to Serve as Next Ombudsman

The Consumer Financial Protection Bureau (CFPB) announced the appointment of Robert Cameron to serve as the next Private Education Loan Ombudsman. According to the press release, Mr. Cameron previously was responsible for litigation, compliance, and risk mitigation efforts at the Pennsylvania Higher Education Assistance Agency (PHEAA). Under the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, the ombudsman is responsible for receiving, reviewing, and attempting to resolve complaints from private student loan borrowers. Mr. Cameron replaced Seth Frotman, who resigned in protest over certain actions taken by former Acting Director Mick Mulvaney.

The press release is found at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-appoints-private-education-loan-ombudsman/>.

On August 22, 2019, Senator Elizabeth Warren (D-MA) sent a letter to CFPB and Treasury expressing her concerns about the appointment of Robert Cameron. Senator Warren criticized the appointment and stated that Mr. Cameron’s past job as head of compliance for PHEAA presents a conflict of interest that will impede his ability to serve as an advocate to borrowers. Senator Warren said: “PHEAA has a record of failing borrowers. It is mind-boggling that the CFPB’s top official responsible for overseeing this loan servicer’s compliance activities is now tasked with protecting borrowers from mistreatment from PHEAA and other student loan companies and servicers...I implore you to replace Mr. Cameron with someone with a proven track record of consumer advocacy, not an industry insider.”

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A copy of the Senator's letter is found at:

<https://www.warren.senate.gov/imo/media/doc/2019.08.22%20Letter%20to%20CFPB%20re-%20Student%20Loan%20Ombudsman%20Appointment.pdf>.

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