

WASHINGTON UPDATE

OCTOBER 2019

Senator Alexander Introduces Scaled-Back Version of Reauthorization of the HEA Bill

On September 26, 2019, Chairman of the Senate Health, Education, Labor and Pensions Committee Lamar Alexander (R-TN) introduced a long-term solution to fund Historically Black Colleges and Universities (HBCUs) and other Minority Serving Institutions (MSIs) as part of a legislative package of eight bipartisan higher education bills drafted by 35 Senators (20 Democrat and 15 Republican). “This package of bills will make it easier for millions of students to get a college education by simplifying the Federal Application for Student Financial Aid (FAFSA), providing Pell grants to parole-eligible prisoners, allowing Pell grants to be used for short-term programs, and increasing the maximum Pell Grant award.”

On September 19, 2019, on the Senate floor, Senator Doug Jones (D-AL) sought unanimous consent to take up and pass H.R.2486, *the Fostering Undergraduate Talent by Unlocking Resources for Education Act (Future Act)*. The *Future Act* had passed the House on September 17, 2019, which would extend three Historically Black Colleges and Universities (HBCU) and Minority-Serving Institutions (MSI) programs, paid for by eliminating Account Maintenance Fees (AMF) paid to guaranty agencies. Senator Lamar Alexander (R-TN), Chairman of the Health, Education, Labor and Pensions (HELP) Committee, objected to the request because it was a temporary fix.

Senator Alexander said on the Senate floor that Congress should pass a permanent solution to fund HBCUs and MSIs. While he and Senator Patty Murray (D-WA) are working on a larger Higher Education Act reauthorization bill, a number of bipartisan proposals to make college affordable could be enacted now if the scaled-back bill were adopted and enacted.

The *Student Aid Improvement Act (S.2557)*, which calls for permanent mandatory funding for HBCUs and MSIs, includes the following bipartisan proposals:

- Reducing the number of questions on the FAFSA from 108 to 17-30 questions;
- Incorporating the text of the *FAFSA Act* from last year, which allows students to prepopulate up to 22 questions on the current FAFSA with data from the Internal Revenue Service (IRS);
- Allowing incarcerated individuals who are eligible for parole to use a Pell Grant for prison-education programs;
- Allowing students to use their Pell Grants at high-quality short-term skills and job training programs that lead to credentialing and employment in high-demand fields like health care or cybersecurity;

Washington Update
October 15, 2019
Page 2

- Expanding Pell Grant eligibility to 250,000 new students and qualify an additional 1.3 million students for the maximum Pell Grant award; and
- Increasing the maximum Pell Grant award.

A copy of the press release released from the HELP Committee is found at:
<https://www.alexander.senate.gov/public/index.cfm/pressreleases?ID=958E80DD-EC01-4473-B029-207BC395A513>.

A copy of the text of the bill is found at:
<https://www.help.senate.gov/imo/media/doc/ROM19662.pdf>.

Durbin and Lee Lead Effort to Eliminate Rewritten Borrower Defense Rule

On September 26, 2019, Senator Dick Durbin (D-IL) and Representative Susie Lee (D-NV) led the introduction of a Congressional Review Act (CRA) resolution of disapproval on the Department of Education's revised borrower defense to repayment rule. CRA resolutions allow Congress to overturn regulatory actions of federal agencies.

Senator Durbin said: "This rule is another Trump-DeVos giveaway to the notorious for-profit colleges at the expense of defrauded student borrowers." Representative Lee said: "Student loan borrowers deserve financial protection when they are defrauded or cheated by their schools - it's as simple as that. The original 2016 Borrower Defense Rule was a commonsense policy meant to level the playing field between students and the predatory colleges taking advantage of them. But Secretary DeVos' new rule makes the process of applying for and granting borrower defense forgiveness unnecessarily difficult and burdensome for the students who we are supposed to be protecting."

A copy of the press release is found at: <https://www.durbin.senate.gov/newsroom/press-releases/durbin-lee-lead-congressional-effort-to-overturn-devos-borrower-defense-rule>.

Alexander Signs on to *College Transparency Act*

Senator Lamar Alexander (R-TN), Chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee, signed on as a co-sponsor of the *College Transparency Act*, a bill that would remove the federal ban on a student-level data system. The bill was introduced as S.800 by Senator Bill Cassidy (R-LA) on March 14, 2019. A companion bill was introduced as H.R.1766 by Congressman Paul Mitchell (R-MI) on March 14, 2019. Proponents of the bill support tracking student outcomes of all students and not just for those who are Title IV recipients.

Washington Update
October 15, 2019
Page 3

Representatives Shalala, Pressley, and Tlaib Introduce the *Protecting Student Aid Act of 2019*

On September 20, 2019, Representatives Donna Shalala (D-FL), Ayanna Pressley (D-MA), and Rashida Tlaib (D-MI) introduced the *Protecting Student Aid Act of 2019 (PSA Act)*, a bill designed to reinvigorate the Student Aid Enforcement Unit within the Department of Education. The press release says that the result of this action would allow the Department to better respond to fraud and abuse within the federal student aid programs.

A copy of the press release is found at:

<https://shalala.house.gov/news/documentsingle.aspx?DocumentID=2043>.

Senate Appropriations Committee Releases its FY 2020 Education Spending Bill

On September 18, 2019, the Senate Appropriations Committee released its FY 2020 Labor, Health and Human Services, Education, and Related Agencies funding bill. The House has already marked up all of its appropriations bills for FY 2020 and passed 10 on the floor. The House proposed raising the annual Pell Grant award from \$6,195 to \$6,345, and the Senate bill includes an increase to \$6,330. The Senate bill also proposed to fund education programs at lower levels than the House did. Specifically, the Senate included level funding for the SEOG program at \$840 million and FWS at \$1.1 billion while the House proposed increases for both programs. The bill also included an additional \$1 million to aid borrowers who were otherwise eligible for Public Service Loan Forgiveness (PSLF) yet were enrolled in an eligible repayment plan. The House and Senate will need to work out any differences in their respective bills.

In a press release announcing the bill's release, Senate Labor, HHS, Education, and Related Agencies Subcommittee Chairman Roy Blunt (R-MO) said: "The bill focuses on giving every American the opportunity to be successful in whatever educational or career path they choose." Report language included with the text of the bill calls for FAFSA data sharing with student aid organizations and supporting efforts to further simplify the FAFSA application and verification process.

A copy of the press release is found at: <https://www.appropriations.senate.gov/news/fy2020-labor-hhs-and-education-appropriations-bill-released>.

Warren and Pocan Investigate How Private Equity Buyouts Exacerbate Problems at For-Profit Colleges

On September 17, 2019, Senator Elizabeth Warren (D-MA) and Congressman Mark Pocan (D-WI) wrote to six private equity firms with current holdings in for-profit colleges (i.e., KKR, Sterling Partners, Atlas Partners, Vistra, Leeds Equity Partners, and Apollo Global Management)

Washington Update
October 15, 2019
Page 4

and requested information about the firms' management of colleges and universities. In July, Senator Warren and Congressman Pocan had introduced the *Stop Wall Street Looting Act* (S.2155 and H.R.3848), a bill that would bring greater responsibility to the private equity industry by holding private equity firms jointly liable for the debts of companies under their control and by requiring greater transparency in private equity firms' practices. The letters highlighted the destructive role of private equity firms in for-profit colleges and asked for information about their fees, returns, marketing, and other financial practices. They also asked the firms to explain their role in the tuition hikes, education quality declines, and the many other failures that plague the for-profit sector. "The continued spread of private equity in the for-profit higher education sector, and thus the maximizing of short-term profits at the detriment of students, presents a serious concern for both students and taxpayers."

Copies of the press release and the letters are found at:

<https://www.warren.senate.gov/oversight/letters/warren-pocan-investigate-how-private-equity-buyouts-exacerbate-problems-plaguing-for-profit-colleges>.

Warren and Her Colleagues Call for Restoring Pell Grant Eligibility for Defrauded Students

On September 16, 2019, Senator Elizabeth Warren (D-MA) and Representative Jahana Hayes (D-CT), along with Senators Sherrod Brown (D-OH), Mazie Hirona (D-HI), and Chris Murphy (D-CT), as well as Representatives Mary Gay Scanlon (D-PA) and Lucy McBath (D-GA), reintroduced the *Pell Grant Restoration Act* (H.R.4298) in both the House and the Senate. The bill would restore students' Pell Grant eligibility for any period of time during which they would have qualified for loan forgiveness due to school closure or institutional fraud or misconduct.

Copies of the press release and a text of the bill are found at:

<https://www.warren.senate.gov/newsroom/press-releases/-senators-warren-brown-hirono-and-murphy-representatives-hayes-scanlon-and-mcbath-introduce-bicameral-legislation-restoring-pell-grant-eligibility-to-victims-of-predatory-for-profit-colleges>.

Senator Rick Scott Outlines Five Higher Education Priorities

On September 10, 2019, Senator Rick Scott (R-FL) described his priorities for higher education at an event sponsored by the Heritage Foundation titled, "What's Next for U.S. Higher Education?" He said that not all students should attend four-year colleges and colleges and universities have sufficient resources to educate students. Senator Scott outlined five steps to lower the cost of education for students:

1. If a student defaults on his/her federal student loan, the institution where he/she took classes should be responsible for a portion of that default.

Washington Update
October 15, 2019
Page 5

2. Congress needs to apply the same rules to not-for-profit institutions as those applied to for-profit institutions. All institutions should be accountable for their performance.
3. If an institution raises tuition or fees, it will automatically be cut off from all federal funding.
4. Pell Grants should be eligible for use at technical colleges.
5. All onerous Obama-era regulations that hinder private lenders from giving loans should be eliminated. If a private bank wants to lend to students, it can.

A copy of the Senator's remarks is found at: <https://www.rickscott.senate.gov/sen-rick-scott-announces-proposals-lower-cost-higher-education>.

House Financial Services Committee Holds Hearing on Protecting Student Borrowers and Holding Student Loan Servicers Accountable

On September 10, 2019, the House Financial Services Committee held a hearing titled, "A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable." In her opening statement, Committee Chairman Maxine Waters (D-CA) said that this was the first-ever hearing on student lending and the impact that it has on borrowers. She said that Americans collectively have over \$1.6 trillion in student loan debt, more than credit card and auto loan debt, and that more than 44 million people carry student debt averaging almost \$33,000. Chairman Waters said: "This crisis is affecting people across the country, and ultimately it negatively affects the entire economy." She criticized the Department of Education and the Consumer Financial Protection Bureau (CFPB) for their actions regarding the student loan program. Ranking Member Patrick McHenry (R-NC) criticized House and Senate Democrats in his opening statement because they had nationalized the federal student loan program during passage of the *Affordable Care Act of 2010*.

Democrats on the Committee and the panelists they brought in to testify argued that students need more consumer protections to shield themselves from the federal student loan servicers. Ranking Member McHenry and those panelists brought in by the Republicans argued that Congress was at fault for "saddling a generation with unaffordable debt and an education that does not outmatch the cost of that education."

FSA Releases Updates to the FSA Data Center

On October 3, 2019, in an Electronic Announcement, Federal Student Aid (FSA) released a series of updates to the quarterly application, disbursement, and portfolio reports on its FSA Data Center to include data through June 30, 2019. The report disclosed the following:

Washington Update
October 15, 2019
Page 6

- The outstanding federal student loan portfolio of \$1.48 trillion. The Direct Loan portfolio now represents 82 percent of the outstanding loan portfolio.
- As of June 30, 2019, 18.5 million FAFSAs were submitted for the 2018-2019 application year, which is a 2.3 percent decrease compared to the same time period in the prior application cycle. Through June 30, 2019, about 13.2 million applications were submitted for the 2019-2020 application cycle, a 4.3 percent decrease from the same time period in the prior year.
- Since March 31, 2019, FSA has received about 33,000 new borrower defense applications. Almost 48,000 applications have been approved resulting in almost \$535 million in discharges. The total amount discharged and the number of approved and denied applications included in the prior report has not changed as a result of ongoing litigation and the prioritization of the implementation of the 2016 final regulations on borrower defense to repayment.

A copy of the Electronic Announcement is found at:

<https://ifap.ed.gov/eannouncements/100319FSAPostsNewReportstoFSADataCenter.html>.

Department of Education is One of Least Favorite Federal Agencies

On October 3, 2019, the Pew Research Center released the results of a survey on the opinions of Americans of various Federal agencies. When asked about the opinions on 16 government agencies, including the Postal Service, the Veterans Affairs Department and the FBI, Americans ranked the Department of Education as one of their least favorite agencies coming in second to Immigration and Customs Enforcement (ICE).

A copy of the survey is found at: <https://www.people-press.org/2019/10/01/public-expresses-favorable-views-of-a-number-of-federal-agencies/>.

Department Releases FY 2016 Official Cohort Default Rates

On September 23, 2019, the Department of Education distributed the FY 2016 Official Cohort Default Rates to all eligible domestic and foreign schools. On September 25, 2019, the Department released the national default rate briefing for FY 2016. Finally, on September 25, 2019, the Department released a press release announcing that the national FY 2016 Official Cohort Default Rate decreased from 10.8% for FY 2015 to 10.1% for FY 2016. CDRs decreased across all sectors:

- For public institutions, the rate fell from 10.3% for FY 2015 to 9.6% for FY 2016;
- For private institutions, the rate fell from 7.1% for FY 2015 to 6.6% for FY 2016; and
- For proprietary institutions, the rate fell from 15.6% for FY 2015 to 15.2% for FY 2016.

Washington Update
October 15, 2019
Page 7

A copy of the Electronic Announcement of September 23, 2019 is found at:
<https://ifap.ed.gov/eannouncements/092319FY2016OfficialCDRDistributed092319.html>.

A copy of the Electronic Announcement of September 25, 2019 is found at:
<https://ifap.ed.gov/eannouncements/attachments/FY16OfficialNationalRates.pdf>.

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/national-federal-student-loan-cohort-default-rate-continues-decline>.

Department Publishes Borrower Defense to Repayment Rules

On September 23, 2019, the Department of Education published the final regulations for the Institutional Accountability regulations in the *Federal Register* on borrower defense to repayment and closed school discharges.

- 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.
- 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.

Washington Update
October 15, 2019
Page 8

- 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."

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>.

Washington Update
October 15, 2019
Page 9

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->.

A copy of the final regulations is found at: <https://www.govinfo.gov/content/pkg/FR-2019-09-23/pdf/2019-19309.pdf>.

GE Reporting for 2018-2019

On September 13, 2019, the Department of Education released Electronic Announcement #123 advising institutions that if they did not early implement the Gainful Employment rules that were published in the *Federal Register* on July 1, 2019, they are still expected to comply with the 2014 GE rule until the rescission becomes effective on July 1, 2020. This would include complying with the GE reporting requirement for the 2018-2019 Award Year to NSLDS by October 1, 2019. On July 1, 2019, institutions were given the option to early implement the rescission of the GE rule and, if they early implement the GE rule, they will not be required to report GE data for the 2018-2019 Award Year.

A copy of the Electronic Announcement is found at:

<https://ifap.ed.gov/eannouncements/091319GEEA123GERptingfor1819.html>.

Sharon H. Bob, Ph.D.
Higher Education Specialist
Powers Pyles Sutter and Verville PC
1501 M Street, NW, Suite 700
Washington, DC 20005
T: 202-872-6772
F: 202-785-1756
October 15, 2019