

WASHINGTON UPDATE

JULY 2019

Bob King Confirmed as Assistant Secretary for the Office of Postsecondary Education

On July 11, 2019, the Senate confirmed Robert King to serve as Assistant Secretary for Postsecondary Education. The Senate Committee on Health, Education, Labor and Pensions (HELP) first approved Mr. King's nomination on November 29, 2018. Secretary of Education Betsy DeVos congratulated Mr. King on his confirmation.

A copy of Secretary DeVos' press release is found at: <https://www.ed.gov/news/press-releases/secretary-devos-congratulates-bob-king-senate-confirmation-assistant-secretary-postsecondary-education>.

House Democrats Send Letter to Education Secretary DeVos Expressing Concern over FWS Experimental Site Initiative

On July 2, 2019, House Education and Labor Committee Members Suzanne Bonamici (D-OR) and Joe Morelle (D-NY) sent a letter to Secretary of Education Betsy DeVos stating their concern over the Department of Education's experimental site initiative on the Federal Work-Study (FWS) Program. In May 2019, Secretary DeVos announced that a new pilot program would allow a limited number of institutions of higher education to more easily subsidize the wages of students employed by private businesses by waiving some rules on how FWS funds are used. The Department said at the time that more students could have an opportunity to use FWS funds while working in internships, apprenticeships, and other "work-and-learn" arrangements. The Representatives said that while they agree that the FWS program is in need of significant reform, the Department's proposal will "remove statutory guardrails from the program and will allow federal financial aid to flow to private employers without needed transparency." They felt further scrutiny was required and asked the Secretary to respond to a series of questions by July 16, 2019.

A copy of the letter is found at:

https://bonamici.house.gov/sites/bonamici.house.gov/files/documents/2019_07_02_Letter_to_E_D_re_FWS.pdf.

Bipartisan Group of House Members Introduce Legislation to Expand Pell Grant Eligibility to Short-Term Programs

On June 26, 2019, a bipartisan group of House members introduced H.R. 3497, the *Jumpstart Our Businesses by Supporting Students (JOBS) Act*, which would allow otherwise eligible Pell Grant recipients to be eligible for Pell Grants for programs that are as short as eight weeks of instruction. The Senate version of the legislation, S. 839, was introduced on March 14, 2019 by Senators Tim Kaine (D-VA) and Rob Portman (R-OH).

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A copy of a press release from Congressmen Cedric Richmond (D-LA) and Anthony Gonzalez (R-OH) is found at: <https://richmond.house.gov/media-center/press-releases/rep-richmond-and-gonzalez-join-colleagues-introducing-jobs-act>.

A copy of the press release from Senator Kaine is found at: <https://www.kaine.senate.gov/press-releases/03/14/2019/kaine-portman-introduce-bipartisan-jobs-act-to-help-workers-access-training-for-in-demand-career-fields>.

Congressman Takano Introduces Bill to Modify 90/10 Rule

On June 26, 2019, Congressman Mark Takano (D-CA) introduced H.R. 3487, the *Protections and Regulations for Our Students (PRO Students) Act*, which would increase federal regulations on the proprietary school sector. Congressman Takano originally introduced the bill in 2015. The bill would:

- Require proprietary institutions to derive at least 15 percent of their revenue from non-federal student aid and ensure that military and veterans' education benefits are included in the federal student aid calculation;
- Prohibit schools from using revenues derived from federal student aid for recruiting and marketing;
- Launch a complaint tracking system for students to report grievances;
- Establish a Proprietary Education Oversight Coordination Committee and create a framework for targeting and prioritizing program reviews by the U.S. Department of Education;
- Strengthen sanctions for violations, establish a Student Relief Fund, and bolster consumer protections for students;
- Improve the quality of and access to key information, such as student default rates, loan repayment rates, degree completion rates, and accreditation documents;
- Prohibit pre-dispute arbitration clauses in loan contracts that waive the rights available to borrowers against loans servicers; and
- Strengthen whistleblower protections for faculty and staff.

Congressman Mark Takano said in a press release: “The future of too many students across the country has been jeopardized by the reckless practices of predatory for-profit institutions.”

Representatives Susie Lee (D-NV) and Rosa DeLauro (D-CT) introduced H.R. 3512, the *Preventing Risky Operations from Threatening the Education and Career Trajectories of Students Act or the PROTECT Students Act*, which aims to crack down on certain proprietary schools. It is a companion bill to a bill introduced by Senators Maggie Hassan (D-NH) and Senator Dick Durbin (D-IL) in March.

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A copy of Congressman Takano's press release is found at:

<https://takano.house.gov/newsroom/press-releases/rep-takano-reintroduces-higher-education-regulations-to-protect-students-and-hold-for-profit-colleges-accountable>.

A copy of Representative Lee's press release is found at: <https://susielee.house.gov/media/press-releases/rep-susie-lee-and-rosa-delauro-introduce-bill-protect-students-predatory>.

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

Sanders, Jayapal and Omar Introduce *College for All Act*

On June 24, 2019, Senator Bernie Sanders, Representative Pramila Jayapal (D-WA), and Representative Ilhan Omar (D-MN) announced that they will introduce the *College for All Act*, which would forgive all federal and private student loan debt for 45 million Americans totaling \$1.6 trillion and eliminate tuition and fees at public four-year colleges and universities, community colleges, trade schools, and apprenticeship programs. The proposal would be paid for by imposing a new tax on Wall Street transactions, including stock trades, bonds, and derivatives.

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The proposal is the latest from several Democrats who are running for President and follows a plan released by Senator Elizabeth Warren (D-MA) earlier this year that would forgive \$50,000 of debt for borrowers earning less than \$100,000 with proportionately less debt relief for those earning up to \$250,000. The student loan forgiveness program would help 42 million borrowers. Senator Warren's plan for student loan forgiveness would be paid for by imposing a 2 percent wealth tax on those who earn over \$50 million a year with an additional 1 percent wealth tax for those who earn above \$1 billion a year.

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

<https://www.sanders.senate.gov/newsroom/press-releases/sanders-jayapal-and-omar-introduce-groundbreaking-bills-to-ensure-college-for-all-and-eliminate-all-student-debt>.

An article summarizes Senator Warren's plan to forgive loans is found at:

<https://www.vox.com/2019/4/22/18509196/elizabeth-warren-debt-free-college>.

Other candidates have argued for targeted college affordability measures and limited fixes for student borrowers. Mayor Pete Buttigieg said he supports giving borrowers the ability to refinance their student loan debt and he would like to double the size of the Pell Grant. Amy Klobuchar said she supports free community college and a maximum Pell Grant of \$12,000 a year, although she rejects calls for free four-year public colleges. Joe Biden said he supports free community college and debt relief for borrowers making less than \$25,000 a year.

House Passes Labor, HHS, ED Appropriations Act for FY 2020

On June 19, 2019, the House of Representatives passed H.R.2740, the *Labor, Health and Human Services, Education, and Related Agencies Appropriations Act for FY 2020*, by a party-line vote of 226-203. The bill provides increases for Pell Grants, FSEOG, and FWS. The Senate is expected to take up the bill after the July 4th recess.

The committee's press release is found at: <https://appropriations.house.gov/news/press-releases/appropriations-committee-approves-fiscal-year-2020-labor-hhs-education-funding>.

Representative Donna Shalala Introduces Bill to Revise 90/10 Rule

On June 19, 2019, Representative Donna Shalala (D-FL) introduced the *Defending All Veterans in Education (DAVIE) Act*, which would revise the 90/10 rule. The bill was co-sponsored by Representatives Seth Moulton (D-MA), Chrissy Houlahan (D-PA), and Gil Cisneros (D-CA). The bill would define Veterans benefits and Department of Defense Tuition Assistance benefits as federal student aid in the percent of revenue from federal student aid. It would also revise the 90/10 rule to an 80/20 rule, requiring proprietary schools to earn 20 percent of their revenue from sources other than the federal government.

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Representative Shalala said: “Current federal laws permit bad actors in the for-profit education industry to take advantage of our veterans. It is unacceptable and un-American that some for-profit institutions continue to use our veterans’ hard-earned benefits to line their own pockets. We need to ensure that veterans and GI Bill recipients do not fall victim to the predatory recruitment tactics of low-quality institutions that see them as little more than the profits they provide. My bill protects our veterans from these dishonest schemes.”

A copy of the press release is found at:

<https://shalala.house.gov/news/documentsingle.aspx?DocumentID=1722>.

House Education Committee Holds Hearing on Exploring Pathways to a College Degree

On June 19, 2019, the House Education and Labor Committee held a hearing titled, “Innovation to Improve Equity: Exploring High-Quality Pathways to a College Degree,” which was the House Education Committee’s fifth and possibly final hearing on the reauthorization of the *Higher Education Act*. Chairman Bobby Scott (D-VA) opened the hearing by stating that because of the rising cost of college and the weakening power of Pell Grants, too many low-income students either cannot afford to enroll in postsecondary institutions or cannot afford to complete their programs. He said: “Congress has a responsibility to explore innovative strategies that provide more students the support they need to complete college and reach their full potential.” Ranking Member Virginia Foxx (R-NC) said that the traditional image of a college student and of postsecondary education is no longer accurate but the federal government and the higher education sector too often continue to cater to an outdated vision. “This stubbornness in policy has resulted in mountains of debt, low student completion rates, dissatisfied employers, and a lack of accountability of poorly performing institutions.” Ranking Member Foxx went on to say: “Bold reforms are necessary to put the postsecondary system on track to meet the needs of students.”

Witnesses focused on best practice models that address early college credit in the form of dual enrollment, AP credit, or credit by examination, improving the student-advisor experience, and implementing competency-based education pathways.

Senate Democrats Send Letter to Department Requesting Status Update on Borrower Defense to Repayment Claims

On June 18, 2019, 22 Senate Democrats sent a letter to Secretary of Education Betsy DeVos requesting that the Department of Education provide an update on group discharge applications filed by 21 State Attorneys General (AGs) on behalf of students who filed claims under the borrower defense to repayment rule. The applications cover students who attended American Career Institute, Anthem University, Corinthian Colleges, Inc., Globe University and Minnesota School of Business, Kaplan University, Lincoln Technical Institute, Westwood College, Illinois Institute of Art, and Art Institute of Colorado. The letter stated that both the Department and

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AGs have found that the group of student borrowers is eligible for loan discharge, but the Department has failed to respond to the applications. The letter also said that the recent federal district court ruling stated that ED must review the group applications and cease collection activities covered by the group. “It is time for your cruel delays to end and for you to provide federal student loan discharges to which defrauded borrowers are entitled under the law; the courts have ordered it, students are begging for it, Congress expects it, and justice demands it.”

A copy of the press release with the letter is found at:

<https://www.durbin.senate.gov/newsroom/press-releases/durbin-murray-dem-senators-seek-status-of-group-discharge-applications-submitted-by-state-ags>.

ED Publishes Rescission of GE Rule in the *Federal Register* and Announces its Early Implementation

On June 28, 2019, the Department of Education issued Electronic Announcement #122 announcing the publication of the final rule rescinding the Department of Education’s gainful employment rule. On July 1, 2019, the Department published the final rule in the *Federal Register*. The Electronic Announcement provides guidance on what the rescission means and what institutions can do should they choose early implementation. For instance, an institution that early implements will no longer be required to post the GE Disclosure Template.

A copy of the Electronic Announcement is found at:

<https://ifap.ed.gov/eannouncements/062819GEAnnounce122EarlyImplofRescissionGERule.html>.

A copy of the final regulation published on July 1, 2019 is found at:

<https://ifap.ed.gov/fregisters/attachments/FR070119GERegulation.pdf>.

Chairman of the House Education Committee Bobby Scott (D-VA) issued a statement following the release of the final gainful employment rule. Chairman Scott said: “Today’s announcement underscores the need for Congress to pass a comprehensive reauthorization of the Higher Education Act that protects students and taxpayers from low-quality for-profit schools.”

A copy of Congressman Scott’s press release is found at: <https://bobbyscott.house.gov/media-center/press-releases/scott-statement-on-final-gainful-employment-rule>.

Department Releases Revised Accreditation Handbook

On June 20, 2019, the Department of Education released its revised *Accreditation Handbook*, which was developed by the Office of Postsecondary Education’s Accreditation Group. The *Accreditation Handbook* includes voluntary guidelines on what college accreditors must do to obtain and retain their federal accreditation in 2019 and 2010. The Department said in a press release that the new 28-page *Handbook* “provides clearer, more concise requirements for

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accrediting agencies so they know what kind of evidence they should submit to meet compliance requirements.” The previous version released in 2012 was 88 pages.

Secretary of Education Betsy DeVos said: “Too much of the accreditation process has become about paperwork and not people.” She went on to say: “The current process for recognizing accreditors generates applications that are tens of thousands of pages long, but it does little to improve the quality of education for students.”

The press release stated that the changes made to the *Accreditation Handbook* respond to the President’s Executive Order 13777, Enforcing the Regulatory Reform Agenda as well as the bipartisan Task Force on Federal Regulation Reform Agenda.

A copy of the press release, which includes a link to the *Accreditation Handbook*, is found at: <https://www.ed.gov/news/press-releases/secretary-devos-rethinks-departments-recognition-accreditors>.

Department of Justice Files Notice in U.S. District Court Appealing Ruling Regarding Delay in State Authorization Rules

On June 25, 2019, the U.S. Department of Justice filed a notice in the U.S. District Court for the Northern District of California that it was appealing the April 2019 ruling that Secretary of Education Betsy DeVos had illegally delayed the state authorization rules for distance education issued by the Obama Administration in December 2016 for implementation on July 1, 2018. The Secretary had delayed the state authorization rules until July 1, 2020 to allow ED the opportunity to conduct negotiated rulemaking. In the District Court decision, Judge Laurel Beeler struck down the two-year delay of the state authorization rules on April 26, 2019. To minimize the risk of confusion or disruption, Judge Beeler postponed the effective date for 30 days.

IRS Issues Tax Transcript Tips for Students Filing a FAFSA for the 2019-2020 Award Year

On June 25, 2019, the Internal Revenue Service (IRS) issued a notice offering tax transcript tips for those filing a FAFSA for the 2019-2020 award year. Such tips include the need for applicants to use data from their 2017 returns. Taxpayers are also advised to always keep a copy of their tax return.

A copy of the IRS notice is found at:
<https://content.govdelivery.com/accounts/USIRS/bulletins/24d8085>.

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Consumer Groups Sue ED Regarding Borrower Defense to Repayment Claims

On June 25, 2019, the Project on Predatory Student Lending, Legal Services Center of Harvard Law School, and Housing and Economic Rights Advocates, on behalf of seven student loan borrowers, filed a class action lawsuit against Secretary of Education Betsy DeVos and the U.S. Department of Education accusing them of illegally delaying action on at least 158,000 borrower defense to repayment claims. The lawsuit said that the data provided to Congress indicates that the Department has yet to approve or deny a single claim in more than one year and some claims have been pending for as long as four years.

The article from CNN that describes the new legal case is found at:
<https://www.cnn.com/2019/06/25/politics/betsy-devos-borrower-defense-lawsuit/index.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
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