



## Washington Potpourri: A Whirlwind Tour of the Legislative Landscape and the Department of Education Activities

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### LEGISLATIVE ACTIVITIES



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### Higher Education Act Reauthorization Efforts Continue in 2019

- HEA created in 1965 and has been rewritten 8 separate times;
- Current HEA was reauthorized in 2008 and was set to expire on 9/30/2013; but
- HEA continues to be extended.
- HEA took a back seat in the 115<sup>th</sup> Congress due to a crowded legislative agenda and tumultuous politics in Congress.

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**Democrats Take Control of the House in Midterm Elections; Republicans Remain in Control in the Senate**

- While not the “blue wave” the Democrats had hoped for, the Democrats regained control of the House.
- Result: Increased scrutiny and oversight of ED. With the control of the House comes subpoena power, and it is likely that Secretary of Education Betsy DeVos will be asked to address a number of concerns by as many as five House Committees:
  - Education and Labor Committee under Chair Bobby Scott (D-VA) is concerned over Secretary DeVos’ rollback of for-profit college regulations, stalled student loan forgiveness processing, and a rewrite of campus sexual assault policies. In addition, Chairman Scott expressed concern over the Secretary’s treatment of the union that represents her agency’s employees;

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**Democrats Take Control of the House in Midterm Elections; Republicans Remain in Control in the Senate (Cont’d)**

- Veterans Affairs Committee under Chair Mark Takano (D-CA) is concerned over Secretary DeVos’ rollback of for-profit college regulations that impact tens of thousands of veterans each year;
- Appropriations Subcommittee under Chair Rosa DeLauro (D-CT) is concerned over Secretary DeVos’ record on student debt issues;
- Financial Services Committee under Chair Maxine Waters (D-CA) is concerned over Secretary DeVos’ “full-frontal attack on civil rights protections for students - particularly students of color, students with disabilities, transgender, and survivors of sexual assault.” Chair Waters is also concerned over the Trump Administration’s moves to ease regulations of for-profit colleges; and

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**Democrats Take Control of the House in Midterm Elections; Republicans Remain in Control in the Senate (Cont’d)**

- Oversight and Government Reform Committee under Elijah Cummings (D-MD) is concerned over the precipitous closing of some for-profit chains, including Education Corporation of America (ECA), Argosy, and the Art Institutes, and concerned over the rollback of for-profit regulations.
- Congressman Bobby Scott (D-VA) is Chair of the House Education and Labor Committee and Congresswoman Virginia Foxx (R-NC) is now Ranking Member.
- Senator Lamar Alexander (R-TN) remains as Chair of the Senate Health, Education, Labor and Pensions (HELP) Committee and Senator Patty Murray (D-WA) remains as Ranking Member.

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**Will Congress or Won't Congress  
Reauthorize the HEA in the 116<sup>th</sup> Congress?**

- The reauthorization of the HEA did not occur in 2018. H.R. 4508, the *Promoting Real Opportunity, Success, and Prosperity through Education Reform Act (PROSPER Act)*, which passed the House Committee on Education on 12/12/18, was never brought to the floor in the 115<sup>th</sup> Congress because then-Chairman Virginia Foxx (R-NC) could not secure the votes.
- In the 115<sup>th</sup> Congress, Senate negotiations fell apart after a number of hearings and it never produced a bill. Both Senators Lamar Alexander (R-TN) and Patty Murphy (D-WA) claimed that the other side walked away from the table. But both sides share the goal of student aid simplification, transparency, and risk-sharing, but differ in how to improve accountability.

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**Senator Alexander Announces the Republican  
Priorities for the Reauthorization of the HEA**

- On 1/2/2019, Senator Lamar Alexander (R-TN), Chair of the HELP Committee, announced that he will not seek re-election in 2020 so the stakes have been raised for him to make progress on a major overhaul of the HEA during his final two years. On 1/28/2019, his Chief of Staff said Senator Alexander would like to pass a reauthorization of the HEA bill before Christmas.
- On 2/4/2019, Senator Alexander announced at an American Enterprise Institute event that he wants to ensure that the expense of a college education is worth it for students by:
  - Simplifying FAFSA from 108 to 2 dozen items;

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**Senator Alexander Announces the Republican  
Priorities for the Reauthorization of the HEA**

**(Cont'd)**

- Simplifying Repayment Plans to 2;
  - Standard repayment plan; and
  - Single income-driven repayment plan, which would have borrowers pay 10% of their income and have their balance forgiven after 20 years; and
- Creating a loan repayment accountability system to determine if borrowers repay their loans for every program across all sectors so that institutions would share in the risk.

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**Senator Alexander Announces the Republican  
Priorities for the Reauthorization of the HEA**

(Cont'd)

- Other proposals discussed include expanding competency-based education; requiring uniform financial aid notices; offering flexibility for loan counseling; expanding student outcomes data; and allowing Pell Grants to be used in new ways.

A copy of his remarks are found at:

<https://www.alexander.senate.gov/public/cache/files/7a083d10-0937-475f-bce4-1e6fe874dd5c/aei---chairman-alexander-prepared-remarks.pdf>.



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**Senator Alexander Announces the Republican  
Priorities for the Reauthorization of the HEA**

(Cont'd)

- On 2/1/2018, Senator Alexander released a white paper on "Higher Education Accountability," which provided an overview of the federal accountability requirements under current law.
- Goal: Update the federal accountability measures for institutions to ensure that students are receiving an education worth their time and money.
  - Cohort Default Rates: CDRs do not provide meaningful incentives for colleges to improve their default rates. Almost half of all borrowers are not making any payments on their student loans.



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**Senator Alexander Announces the Republican  
Priorities for the Reauthorization of the HEA**

(Cont'd)

- 90/10 Rule: Proponents argue that it is a market-based accountability test because it requires someone other than the federal government to be willing to pay for the program. But if the institution produces valuable outcomes for its students, including that students are able to graduate, get a job, and repay their loans, then concerns about the volume of taxpayer dollars as a percentage of revenue become less meaningful.
- Gainful Employment Rule: One of its shortcomings is that it does not apply to all programs. The GE rule was supposed to get rid of bad actors but Harvard's graduate program in theater failed the GE test in 2017. [Harvard voluntarily ended the program.] Much of the discussion is what standard to use as a manageable debt level for individuals.



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**Senator Alexander Announces the Republican Priorities for the Reauthorization of the HEA**

**(Cont'd)**

- The white paper concludes that “the nation needs an educated workforce to advance in a global economy, but taxpayers cannot be expected to lend billions of dollars a year to students at programs that charge too much and do not provide the skills, education, or economic prospects necessary for borrowers to repay their loans.”

The white paper is available at:  
<https://www.alexander.senate.gov/public/cache/files/cfd3c3de-39b9-43dd-9075-2839970d3622/alexander-staff-accountability-white-paper.pdf>.



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**Senate Democratic Caucus Releases its HEA Reauthorization Principles**

- On 2/28/2019, Ranking Member of the HELP Committee Patty Murray (D-WA) gave a speech to the Center for American Progress where she spoke about her vision and principles for the reauthorization of the HEA. She addressed four priorities, which mirror the Higher Education Reauthorization Principles released 2/1/2018 by the Senate Democratic Caucus. Senator Murray stated that college affordability is a top priority for reauthorization of the HEA, but for her, free-college might be a step too far. The Principles are:

- Affordability and Student Debt:
  - Reducing College Costs: The HEA reauthorization must focus on providing a path for students to graduate from college debt-free. Tuition-free community colleges or two years of postsecondary education are important for lowering the costs.



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**Senate Democratic Caucus Releases its HEA Reauthorization Principles (Cont'd)**

- Debt Relief: The HEA must reduce the burden for borrowers on their private and federal loans. Borrowers should be able to refinance their student loans. Seniors, veterans, and others with disabilities should be afforded debt relief.
- Student Loan Repayment and Servicing: The process of repaying student loans is too complicated and poorly managed. Borrowers should have access to better information and a simpler process for enrolling in income-driven repayment plans.



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**Senate Democratic Caucus Releases its HEA Reauthorization Principles (Cont'd)**

- Accountability and Transparency:
  - Outcomes and Data: The HEA reauthorization should include provisions that require more transparency in school performance, overturn outdated restrictions on student-level outcome data, and crack down on worst-performing and predatory schools.
  - Continuous Quality Improvement:
    - ✓ Colleges with low student repayment rates and high default rates should be held accountable; and

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**Senate Democratic Caucus Releases its HEA Reauthorization Principles (Cont'd)**

- ✓ The triad must be strengthened. In particular, accreditation must be improved to serve as an effective gatekeeper of federal dollars by holding low-performing institutions to high standards. "Accreditors must identify, collect, and analyze key data indicators on student achievement, avoid conflicts of interests and rigorously hold low-performing institutions to high standards."

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**Senate Democratic Caucus Releases its HEA Reauthorization Principles (Cont'd)**

- Access and Success:
  - Serving Low-Income Students: Colleges should be encouraged to enroll and graduate more low-income students. Colleges should be incentivized to improve student success, including persistence, completion, earnings, and placement.
- Protecting Student Safety and Rights:

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**Senate Democratic Caucus Releases its HEA Reauthorization Principles (Cont'd)**

- Campus Sexual Assault: Every student deserves to be safe on campus and the HEA must include guidelines to prevent sexual violence. [Senator Murray and other Democrats have been vocal opponents of the Department’s proposed Title IX rules, which strengthen the rights of the accused because it will “sweep campus sexual assault under the rug.”]

The Principles are available at:  
<https://www.help.senate.gov/imo/media/doc/Senate%20Dem%20HEA%20Principles.pdf>.



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**Senate HELP Committee Holds Reauthorization Hearings**

- On 3/12/2019, the Senate Health Education Labor and Pensions Committee held a hearing titled, “Reauthorizing the HEA: Simplifying the FAFSA and Reducing the Burden of Verification.”
  - Senator Lamar Alexander (R-TN) began the hearing with the statement:

“After five years of bipartisan work, the FAFSA is simpler and on mobile devices, and Congress is now ready to take the final step to make it easier for 20 million American families to apply for federal financial aid and to eliminate \$6 billion annually of mistakes that are unfair to taxpayers.”



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**Senate HELP Committee Holds Reauthorization Hearings (Cont'd)**

- On 4/2/2019, the Senate HELP Committee held a hearing titled, “Addressing Campus Sexual Assault and Ensuring Student Safety and Rights.”
- Senator Alexander focused on 3 issues raised by ED’s proposed Title IX rule:
  - The requirements of due process, including cross examination;
  - The effect of the location of the alleged assault; and
  - The definition of sexual harassment.
- On 4/10/2019, the Senate HELP Committee held a hearing titled, “Reauthorizing the Higher Education Act: Strengthening Accountability to Protect Students and Taxpayers.”



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**Congressman Scott Announces the Democratic Priorities for the Reauthorization of the HEA**

- Congressman Bobby Scott (D-VA) announced that reauthorizing the HEA is a top priority and expressed his willingness to work across the aisle to get it done. "If it's got no Republican support, you can't believe it would have much chance in the Republican Senate." [The Democrats may not want Secretary DeVos to be in charge of writing any new regulations that would be required under a reauthorized HEA.] On 1/30/2019, he said it will not be easy since Democrats and Republicans seem to be going in different directions.
- Congressman Scott wants to take a comprehensive approach by making long overdue comprehensive changes.

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**Congressman Scott Announces the Democratic Priorities for the Reauthorization of the HEA**

**(Cont'd)**

- Chair of the House Education and Labor Committee Bobby Scott (D-VA) has indicated that he will start the reauthorization of the HEA process with the H.R. 6543, the *Aim Higher Act*, the Democratic version of the reauthorization of the HEA, introduced on 7/24/2018. In addition to ensuring "every student has a path to a debt-free degree or credential that leads to a rewarding career" and requiring states to offer students a tuition-free community college education, H.R. 6543 includes some provisions related to for-profit schools:
  - Changing the 90/10 rule to the 85/15 rule;
  - Closing the 90/10 loophole by including GI bill programs and Tuition Assistance funds from the DoD as federal dollars;

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**Congressman Scott Announces the Democratic Priorities for the Reauthorization of the HEA**

**(Cont'd)**

- Prohibiting schools that fail to spend a majority of their federal dollars on instruction from spending any federal dollars on lobbying, marketing, and recruitment;
- Adding an "adjusted cohort default rate" that would exclude students in non-mandatory forbearance between 18-36 months for an institution's number of borrowers who entered repayment. Borrowers in forbearance for longer than 36 months would be considered in default;
- Strengthening the legal definition of a non-profit institution and establishing a transparent process for approving conversions at the Department for the for-profit schools attempting to convert to non-profit status;

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**Congressman Scott Announces the Democratic Priorities for the Reauthorization of the HEA**

**(Cont'd)**

- On 3/8/2019, Chairman Bobby Scott (D-VA) released a report describing the Democrats' vision for the reauthorization of the *Higher Education Act (HEA)*. In releasing the report titled, "Don't Stop Believin' (in the Value of a College Degree)," Chairman Scott said: "More than 50 years after the initial passage of the HEA, America still falls short of the law's original promise to open the door to and extend the benefit of higher education to all students. The next reauthorization of the HEA should aim to finally close those gaps in access, affordability and completion that continue to prevent so many students from fulfilling their greatest potential."

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**Congressman Scott Announces the Democratic Priorities for the Reauthorization of the HEA**

**(Cont'd)**

The proposals align with the broad vision Senator Patty Murray (D-WA), Ranking Member of the Senate Health, Education, Labor and Pensions (HELP) Committee, recently outlined on 2/28/2019. Some of the House Democratic proposals also overlap with a few of Senator Lamar Alexander's (R-TN), Chairman of the HELP Committee proposals, released on 2/4/2019, which include simplifying the FAFSA and improving the data available to students and families.

- Chairman Scott said: "This report lays out the overwhelming evidence that a college degree is still well worth the cost." The report outlined the following principles:
  - Expanding Access

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**Congressman Scott Announces the Democratic Priorities for the Reauthorization of the HEA**

**(Cont'd)**

- Supporting high school students that earn college credit early;
- Strengthening college access programs that provide services for vulnerable student populations;
- Simplifying the FAFSA; and
- Expanding access to high-quality short-term stackable certificates that create an entryway to further education.
- Improving Affordability
  - Increasing grant aid to help students cover the costs of college;
  - Creating federal-state partnerships that encourage states to reinvest in higher education;

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**Congressman Scott Announces the Democratic Priorities for the Reauthorization of the HEA**

**(Cont'd)**

- Improving the federal student loan system so that students understand their loan terms and are better able to manage repayment; and
- Strengthening institutional quality and accountability to ensure return on investment for students and taxpayers.
- Promoting Completion
  - Improving postsecondary data infrastructure to help students, families, policymakers, and institutions answer critical questions about college outcomes;
  - Expanding access to multiple pathways, including dual enrollment and short-term certificates, so that students can complete college credits in quality programs that fit their needs and goals;



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**Congressman Scott Announces the Democratic Priorities for the Reauthorization of the HEA**

**(Cont'd)**

- Improving remediation so that more students can earn college credits;
- Investing in student supports like child care, mental health services, and tutoring to ensure students can focus on learning and skill-building;
- Investing in community colleges, HBCU's, and Minority Serving institutions so that traditionally underserved students have access to the same quality experience as others; and
- Supporting campus diversity and ensuring a safe learning environment for all students.

A copy of the press release, which includes the link to the report, is found at: <https://edlabor.house.gov/media/press-releases/dont-stop-believin-committee-report-confirms-college-is-still-well-worth-the-cost>.



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**House Education Committee Plans Hearings on Reauthorization of the HEA**

- On 2/22/2019, Chairman Bobby Scott (D-VA) and Ranking Member Virginia Foxx (R-NC) announced plans for 5 bipartisan hearings on higher education:
  - "The Cost of College: Student Centered Reforms to Bring Higher Education Within Reach" [3/13/2019: Topics ran the gamut of topics on college cost and affordability, from income-share agreements and student debt, to risk-sharing proposals and investing more in need-based aid programs.];
  - "Strengthening Accountability in Higher Education to Better Serve Students and Taxpayers" [4/3/2019: Chair of the House Subcommittee on Education Susan Davis (D-CA) said the "accountability triad" was not effective in light of the recent wave of for-profit college closures. Each entity must be examined.];



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**House Education Committee Plans Hearings  
on Reauthorization of the HEA (Cont'd)**

- The Cost of Non-Completion: Improving Student Outcomes in Higher Education;
- Engines of Economic Mobility: The Critical Role of Community Colleges, Historically Black Colleges and Universities, and Minority-Serving Institutions in Preparing Students for Success; and
- Innovation to Improve Equity: Exploring High-Quality Pathways to a College Degree.

A copy of the press release is found at: <https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=403221>

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**ED Releases the Administration's Budget  
Request for the FY 2020**

- On 3/11/2019, the Department of Education released the Administration's budget request for FY 2020. The budget proposal reflects the following provisions for postsecondary education:
  - Fully funding the maximum Pell Grant award of \$6,195 and expanding of Pell Grant eligibility for students enrolled in high quality short-term programs that lead to a credential, certification, or license in a high demand field;
  - Simplifying the student loan program and loan repayment by consolidating multiple income-driven repayment (IDR) plans into a single plan, which would cap a borrower's monthly payment at 12.5 percent of discretionary income with any debt forgiven after 15 years of repayment for undergraduate students and after 30 years of repayment for graduate students;

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**ED Releases the Administration's Budget  
Request for the FY 2020 (Cont'd)**

- Eliminating FSEOG program;
- Reducing FWS from \$1.13 billion to \$500 million;
- Eliminating the Public Service Loan Forgiveness program;
- Eliminating Subsidized Direct Loans; and
- Providing \$1.8 billion to support the improved administration of the student aid programs.

The budget proposal also stated the Trump Administration hoped to work with Congress on advancing a shared-accountability system since some institutions of higher education consistently fail to deliver a quality education that enables students to successfully repay their Federal student loans. "A better system would require postsecondary institutions accepting taxpayer funds to share a portion of the financial responsibility associated with student loans. The Administration plans to work with the Congress to address these issues."

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**ED Releases the Administration’s Budget Request for the FY 2020 (Cont’d)**

- A copy of the press release, which includes the FY 2020 Budget Request, is found at: [https://www.ed.gov/news/press-releases/presidents-budget-expands-education-freedom-supports-teachers-protects-vulnerable-students?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www.ed.gov/news/press-releases/presidents-budget-expands-education-freedom-supports-teachers-protects-vulnerable-students?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

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**White House Releases 10 “Proposals to Reform Higher Education Act”**

- On 3/18/2019, the White House released its “Principles to Reform the Higher Education Act,” which include 10 proposed reforms for higher education from the Trump Administration that would provide more Americans access to a quality education, hold institutions accountable, and help students and families make informed decisions regarding their educational options.

The White House proposals for reform are as follows:

- Reorient the Accreditation Process to focus on Student Outcomes: Congress should streamline the 10 standards of accreditation to focus on quality and to eliminate the archaic distinction between regional and national accreditors.

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**White House Releases 10 “Proposals to Reform Higher Education Act” (Cont’d)**

- Increase Innovation in the Education Marketplace: Congress should establish a pilot program to increase access to market-driven workforce development programs.
- Better Align Education to the Needs of Today’s Workforce: Congress should expand Pell Grant eligibility to include high-quality, short-term programs that provide students with a credential, certification, or license in a high-demand field.
- Increase Institutional Accountability: Institutions of higher education that accept taxpayer funds should share in the financial responsibility associated with student loans.

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**White House Releases 10 “Proposals to Reform Higher Education Act” (Cont’d)**

- Accelerate Program Completion: Congress should require that financial aid award letters identify policies regarding the acceptance of prior learning assessments and the availability of aid to cover prior learning assessment costs.
- Support Historically Black Colleges and Universities: Congress should make the President’s Board of Advisors on HBCUs and the Interagency Working Group permanent.
- Encourage Responsible Borrowing: Congress should institute Parent and Grad PLUS loan limits and provide financial aid administrators with the information and authority to help students limit their student loan borrowing.

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**White House Releases 10 “Proposals to Reform Higher Education Act” (Cont’d)**

- Simplify Student Aid: Congress should consolidate the five income-driven repayment options into one simple plan that caps monthly payments at 12.5 percent of a borrower’s discretionary income and extend loan forgiveness after 180 months of repayment through an income-driven repayment plan.
- Support Returning Citizens: Congress should provide targeted Federal financial aid to prisoners eligible for release to improve employment outcomes and reduce recidivism.
- Give Prospective Students More Meaningful and Useful Information About Schools and Programs: Congress should provide students with program-level earnings and outcome data that they need to make informed decisions.

A copy of the Principles is found at: <https://www.whitehouse.gov/wp-content/uploads/2019/03/HEA-Principles.pdf>.

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**President Signs Executive Order on Higher Education**

- On 3/21/2019, President Trump signed an Executive Order to improve free inquiry, transparency, and accountability at colleges and universities:
  - Federal agencies will take appropriate steps to ensure that college and university campuses are places of free thought and debate;
  - ED will make improvements to its mobile app so borrowers are better informed about loan balances, payments, and repayment options;
  - ED will expand data available on the College Scorecard, including program level earnings, debt, and loan default and repayment rates;

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**President Signs Executive Order on Higher Education (Cont'd)**

- ED, in consultation with Treasury, will make recommendations on the Federal student loan collection process; and
- ED shall publish a compilation of research that addresses:
  - How to facilitate successful transfer of credits and degree completion by transfer students;
  - How to increase dual enrollment programs; and
  - Other strategies for increasing student success.

A copy of the Fact Sheet released by the White House is found at: <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-is-improving-transparency-and-promoting-free-speech-in-higher-education/>.

A copy of the President's Executive Order is found at: <https://www.whitehouse.gov/presidential-actions/executive-order-improving-free-inquiry-transparency-accountability-colleges-universities/>.

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**Will the HEA be Reauthorized?**

- The pieces could be falling into place for reauthorizing the HEA:
  - The House and Senate have both set up hearings with their respective education committees;
  - Each chamber put forth bipartisan bills in support of student-level outcomes data collection;
  - Reauthorization was encouraged in the President's FY 2020 budget proposal;
  - The White House said that it would like to see a reauthorization bill as soon as possible, but supports the timeline set by Senator Lamar Alexander (R-TN), who said he hopes to pass bipartisan legislation by year-end; and

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**Will the HEA be Reauthorized? (Cont'd)**

- The White House's HEA proposals align with elements of its proposed FY 2020 budget.
- The flurry of activity may be an indication that the reauthorization of the HEA may occur, but a failure to reach a deal will likely be due to fundamental disagreements rather than for the lack of trying.

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### Higher Education Issues

Free or Debt Free College	Democrats
Simplify FAFSA	Bipartisan
Accreditation Revision	Bipartisan but different perspectives
Loan Repayment Plan Simplification	Bipartisan
More Oversight For-Profit Colleges	Democrats
Regulations and Legislation re Campus Sexual Assault	Bipartisan but different perspectives
Transparency	Bipartisan
Student Unit Record	Bipartisan except some Republicans like Rep. Foxx support ban
Accountability	Bipartisan but different perspectives

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### STATUS OF REGULATORY ACTIVITIES AT THE DEPARTMENT OF EDUCATION



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### Department of Education under Secretary Betsy DeVos

- Regulatory Review Task Force charged with eliminating out-of-date guidance to implement Executive Order 13777 of 2/24/2017.

Status Report of 10/2017 found at:  
<https://www2.ed.gov/documents/press-releases/regulatory-reform-task-force-progress-report-2.pdf>.

- FSA Student Aid Enforcement Unit, designed to enhance oversight against bad actors, was wound down. (3 members left) Chief Enforcement Officer of SAEU, Julian Schmoke, a former DeVry dean, was removed in 1/2019 as Democrats gear up to scrutinize the roll-back of rules. He will now oversee the team that reviews colleges for Clery Act violations.

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- The SAEU, which has the power to issue subpoenas, will conduct the investigation into the 8 colleges tied to the admissions and bribery scandal.
- Interagency Task Force (CFPB, FTC, SEC, Treasury, State Attorneys General, etc.), designed to share information about for-profit schools, appears to be disbanded.
- On 6/15/2017, President Trump signed Executive Order 13801 to expand apprenticeships and effective workforce development programs.

Final Report on expanding apprenticeships found at: <https://www.dol.gov/apprenticeship/docs/task-force-apprenticeship-expansion-report.pdf>.

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- State Authorization rules for distance education published in the *Federal Register* on 12/19/2016 were delayed in a final rule published in the *Federal Register* on 7/3/2018 until 7/1/2020 because:
  - There was widespread concern and confusion regarding the rules particularly with respect to distance education and related disclosures; and
  - Final rules are costly and burdensome for most colleges and universities that offer distance education and some States have not implemented the student complaint policies and procedures required by the rules.

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- Changes will be proposed as a result of neg reg, which reached consensus on 4/3/2019.
- See: <https://ifap.ed.gov/fregisters/FR070318.html>.

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- Delayed enforcement of most of the GE rules (GE disclosures must be made; reporting required), established neg reg, and published NPRM in the *Federal Register* on 8/14/2018 that (1) proposes to rescind GE rules and instead, (2) proposes to update College Scorecard or similar tool to provide program-level outcomes:
  - ED has not published final rules rescinding the GE rules and indicated that it would not meet the 11/1/2018 regulatory deadline. Therefore, when published, its new rules will go into effect on 7/1/2020.
  - The new GE rules could be eligible for “early implementation” at the designation of the Secretary under Section 482(c) of the HEA.

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- Current GE rules are in effect, except on 6/18/2018, ED published a notice in the *Federal Register* further delaying the requirement to distribute the disclosure template directly to students and to include the GE disclosures on all promotional material until 7/1/2019. Institutions must continue posting the GE disclosures on their program website.
- On 11/7/2018, ED published a notice in the *Federal Register* requesting comments on proposed 2019 GE disclosure template by 1/7/2019. Once comments are reviewed, and the GE disclosures are finalized, ED will announce the deadline by which the new 2019 GE disclosures must be posted.

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- 2019 GE disclosure template will not be a customized HTML output file, but institutions would be required to disclose:
  - Institutional program name;
  - Length of program (weeks, months, years as published in catalog);
  - Total cost of tuition and fees and books and supplies;
  - Statement related to state licensure requirements;
  - URL for the College Scorecard (<https://collegescorecard.ed.gov/>); and
  - Warning language only if program’s final D/E rate failed standards.

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- On 4/5/2019, ED issued EA #118 regarding the distribution of GE Completers Lists. ED also announced MOU under which the SSA shared earnings data expired and ED is unable to calculate D/E rates in 2019.

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- Delayed enforcement of borrower defense to repayment (BDR) rules published in the *Federal Register* on 11/1/2016, established neg reg, and published NPRM in *Federal Register* on 7/31/2018:
  - On 10/24/2017, ED published an interim final rule that delayed until July 1, 2018 the effective date of the majority of the borrower defense to repayment rules.
  - On 2/14/2018, ED published a final rule in the *Federal Register* delaying the implementation of the borrower defense to repayment rules until 7/1/2019 because it intended to convene neg reg to propose modifications to the 11/1/2016 rules.

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- On 10/16/2018, U.S. District Court Judge for DC Randolph Moss rejected request from CAPPS to halt the Obama Administration's BDR rules from being implemented:
  - CAPPS "failed to carry its burden of demonstrating that any one of its members is likely to suffer an irreparable injury" if the rules were to take effect.
  - While Secretary DeVos has described the current policies as unfair and too costly for schools, after the ruling, ED announced that it would not seek any further postponement of the final BDR rules. Instead, ED is committed to finalizing the proposed revisions to the rules that would create a stricter standard for fraud claims and eliminate the ban on mandatory arbitration agreements.

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- ED did not meet 11/1/2018 regulatory deadline to publish final BDR rules.
- ED officials announced during the 1/2019 neg reg session on accreditation that ED plans to issue a new NPRM on the BDR rules.
- On 3/15/2019, ED released guidance regarding implementation of the 11/1/2016 borrower defense to repayment regulations.
- On 3/19/2019, ED published a final rule in the *Federal Register* advising institutions that the 11/1/2016 BDR rules are in effect.

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

The electronic announcement is found at:  
<https://ifap.ed.gov/eannouncements/030719GuidConcernProv2016BorrowerDefensetoRypmtRegs.html>.

The Final Rule in the *Federal Register* is found at:  
<https://www.govinfo.gov/content/pkg/FR-2019-03-19/pdf/2019-04887.pdf>.

- The way forward is anything but clear.

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- myStudentAid Mobile App
  - On 8/16/2018, ED announced availability of myStudentAid mobile app, which allows students and parents to download myStudentAid app from both the Apple App Store (iOS) and Google Play (Android) and to safely and securely complete the FAFSA on myFAFSA for the 2018-2019 FAFSA.
  - On 10/1/2018, ED launched the myStudentAid mobile app that allows students and parents to easily and securely complete the 2019-2020 FAFSA on myFAFSA. Students and parents will be able to also:
    - Manage their username and password (FSA ID) through the Profile feature;

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- View federal student aid history using the myFederalLoans option;
- Get in touch with FSA contact centers; and
- Access StudentAid.gov, FSA's primary source of information about FSA programs, application processes, and loan repayment options;
- Use myCollegeScorecard;
- Connect with IRS Data Retrieval Tool (DRT); and
- Transfer their FAFSA information into state aid applications in certain states (IA, MN, MS, NJ, NY, PA, and VT).

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- Cohort Default Rates (CDR) Fall for FY 2015
  - Released on 9/24/2018.
  - National - CDR decreased from 11.5% in FY 2014 to 10.8%.
  - Public Institutions – CDR decreased from 11.3% in FY 2014 to 10.3%.
  - Private Institutions – CDR decreased from 7.4% in FY 2014 to 7.1% in FY 2015.

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**Department of Education under Secretary Betsy DeVos (Cont'd)**

- Proprietary Institutions – CDR increased from 15.5% in FY 2014 to 15.6%.

Briefings for FY 2015 CDR available at:  
<https://ifap.ed.gov/eannouncements/092618CDRNationalBriefingsFY15.html>.

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**ED Plans to Develop Regulations Related to Accreditation and Innovation**

- Congress' inability to pass an HEA reauthorization will not prevent the Administration from moving forward on several higher education initiatives that don't require Congressional approval. **[States are also advancing legislation to fill in perceived gaps in enforcement.]**
- On 10/15/2018, ED published a notice in the *Federal Register* of its intent to establish a negotiated rulemaking committee to develop proposed regulations related to accreditation, distance learning and educational innovation, TEACH grants, and participation by faith-based educational entities. The committee will be divided into 3 subcommittees (Distance Learning and Educational Innovation Subcommittee, the Faith-Based Entities Subcommittee, and the TEACH Grants Subcommittee) with 4 sessions beginning on 1/14/2019 and ending on 4/3/2019.

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**ED Plans to Develop Regulations Related to Accreditation and Innovation (Cont'd)**

- Critics said that ED's goal to promote innovation in higher education runs the risk of reducing integrity of the federal financial aid system and harming students and taxpayers in the process.
- **Consensus reached on 4/3/2019.**
- The topics and issues are as follows:
  - Requirements for accrediting agencies in their oversight of member institutions and programs;
  - **Criteria used by the Secretary to recognize accrediting agencies that focus on educational quality and deemphasize those that are anti-competitive;**

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**ED Plans to Develop Regulations Related to Accreditation and Innovation (Cont'd)**

- Simplification of the Department's recognition and review of accrediting agencies;
- Clarification of the core oversight responsibilities amongst each entity in the regulatory triad to hold institutions accountable;
- **Clarification of the permissible arrangements between an institution and another unaccredited organization to provide a portion of the educational program;**
- The roles and responsibilities of institutions and accrediting agencies in the teach-out process;

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**ED Plans to Develop Regulations Related to Accreditation and Innovation (Cont'd)**

- Regulatory changes required to ensure equitable treatment of brick-and-mortar and distance education programs; enable expansion of direct assessment programs, distance education, and competency-based education; and to clarify disclosure and other requirements of state authorization;
- Protections to ensure that accreditors recognize and respect institutional mission, and evaluate an institution's policies and educational programs based on that mission;
- **Simplification of State authorization requirements related to programs offered through distance education or correspondence courses, including disclosures about programs and other State authorization issues;**

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**ED Plans to Develop Regulations Related to Accreditation and Innovation (Cont'd)**

- Definition of "regular and substantive" interaction for distance education;
- Definition of "credit hour;"
- The requirement that an institution demonstrates a reasonable relation between the length of the program and the entry-level requirements for the recognized occupation for which the program prepares the student;
- The barriers to innovation in postsecondary education and to student completion, graduation, employment, including regulatory barriers; and

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**ED Plans to Develop Regulations Related to Accreditation and Innovation (Cont'd)**

- Direct assessment programs and competency-based education, focusing on the ability of institutions to develop, and students to progress through, innovative programs responsive to student, employer, and societal needs.

The ED website that tracks the neg reg activities is found at:  
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/indx.html>.

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**ED Initiates Plans for Student Payment Card Pilot Program**

- On 10/17/2018, ED published a notice in the *Federal Register* that it is seeking proposals from companies to develop a new, federally-branded financial services product to allow students to receive their Title IV credit balances without any fees via a mobile app.
  - The notice indicates that the Department plans to enter into an agreement with one or more financial services providers to carry out a pilot program called the "FSA Payment Vehicle Account Program" that will provide students with a fee-free option to receive their federal student aid credit balances.

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**ED Initiates Plans for Student Payment Card Pilot Program (Cont'd)**

- Companies will not receive any compensation from the Department to participate in the pilot program and will be prohibited from charging schools or students any fees to use the product.
- Companies will receive "authority to use the FSA brand" and will be allowed to include Department logos and other branding on their products. The companies will also have access to student information for marketing purposes, although students will have to first opt-in to receive any promotions.
- The Department has not announced its decisions.

A copy of the notice is available at:  
<https://ifap.ed.gov/fregisters/attachments/FR101718.pdf>.

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**ED Retracts Title IX Guidance and Plans to Engage in New Rulemaking**

- ED retracted the 4/4/2011 Title IX guidance released during the Obama Administration and announced that the "era of 'rule by letter' is over."
- ED is engaging in rulemaking on Title IX responsibilities arising from complaints of sexual misconduct.
- On 9/22/2017, Secretary DeVos issued new interim Q&As for schools on how to investigate and adjudicate allegations of campus sexual misconduct under federal law.

A copy of the Q&As is found at:  
<https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>.

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**ED Retracts Title IX Guidance and Plans to Engage in New Rulemaking (Cont'd)**

- On 11/29/2018, ED published an NPRM in the *Federal Register*, which:
  - Clearly defines “sexual harassment;”
  - Details when an institution is deemed to have notice of possible sexual harassment to which it has an obligation to respond;
  - States that an institution is obligated to respond to conduct that occurs within its “education program or activity;”
  - States that an institution would be liable under Title IX when the institution knows of sexual harassment allegations and responds in a way that is “deliberately indifferent;”

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**ED Retracts Title IX Guidance and Plans to Engage in New Rulemaking (Cont'd)**

- For reports that are not formal complaints, institutions must respond with “supportive measures;”
- Details due process requirements that result from formal complaints; and
- Allows schools to set a more stringent standard of evidence, which is a “clear and convincing” standard, rather than the “preponderance of the evidence” standard.

More than 96,000 comments were made in response to the NPRM found at: <https://www.govinfo.gov/content/pkg/FR-2018-11-29/pdf/2018-25314.pdf>.

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**ED Retracts Title IX Guidance and Plans to Engage in New Rulemaking (Cont'd)**

- In 10/2018, ED imposed a fine of \$966,614 against the University of Montana because of its failure to report at least every forcible sexual offenses from 2012 to 2015 in accordance with the Clery Act. UM does not deny charges but is appealing the fine. [NOTE: Between 2010 and 2017, ED imposed 40 fines for violations of the Clery Act. Altogether ED assessed just over \$5 million against colleges with the largest being levied against Penn State after the child-abuse scandal. The median fine over the 7 fiscal years was \$47,250.]
- As of 2/1/2019, the fine per violation could be up to \$57,317.

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**ED Establishes an FSA Cybersecurity Compliance Website**

- ED established an FSA Cybersecurity Compliance website to ensure data security and compliance with the GLBA, the PPA, and SAIG agreements. A trainer at the 2017 FSA Conference announced that the assessment of compliance with the GLBA will be incorporated into the Annual Audit Guide.
- DCL GEN-16-12 highlights institutional responsibilities.
- EA of 8/31/2018 announces the identification of malicious phishing campaign that may lead to fraud associated with student refunds and aid distributions.
- FSA released an infographic for posting that defines what constitutes a data breach and where to report breaches when they occur.

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**ED Establishes an FSA Cybersecurity Compliance Website (Cont'd)**

See:  
<https://ifap.ed.gov/eannouncements/032619ReportEachDataBreach.html>.

- Example: DRT was taken off-line in late 3/2017 because of hackers who compromised the IRS's DRT, which is used to populate students' and parents' tax information on the FAFSA.
  - IRS said that as many as 100,000 taxpayers' information may have been stolen and around 8,000 refunds were issued for a total of \$30 million to fake filers.
  - DRT was back online for 2018-2019 award year with encrypted tax information. Students and parents cannot make changes to FAFSA – school must make corrections.

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**ED Establishes an FSA Cybersecurity Compliance Website (Cont'd)**

- Jordan Hamlett, a Louisiana private investigator, pleaded guilty to misusing President Trump's SSN. Hamlett was put in prison for 18 months for attempting to get President Trump's tax return by using Mr. Trump's name, SSN, date of birth to complete a FAFSA.

The website is available at:  
<https://ifap.ed.gov/eannouncements/Cyber.html> and

Updated FAQs:  
<https://ifap.ed.gov/eannouncements/attachments/CyberFAQ.pdf>.

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**ED Establishes an FSA Cybersecurity Compliance Website (Cont'd)**

A copy of DCL GEN-16-12 is found at:  
<https://ifap.ed.gov/dpctletters/GEN1612.html>.

A copy of the EA of 8/31/2018 is found at:  
<https://ifap.ed.gov/eannouncements/083118ActivePhishingCampaignTargetStudentEmailAccount.html>.

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**ED Issues Revised College Scorecard**

- ED issued NPRM rescinding gainful employment rules and proposes the use of the College Scorecard or other similar tool to expand consumer information so that students and families can make informed decisions about their college enrollment decisions.
- ED issued updated College Scorecard, but removed the data showing how individual colleges compared to the national median on measures like net price, graduation rate, typical earnings, and loan repayment rates.

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**ED Issues Revised College Scorecard (Cont'd)**

- ED dropped the national median outcomes data and measure showing what share of a college's students earned more than high school graduates because ED officials believe that the benchmarks are misleading to students.
- College Scorecard data includes:
  - Metrics on percentage of degrees awarded and programs offered by degrees;
  - Metrics on admissions, such as average test score;

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**ED Issues Revised College Scorecard (Cont'd)**

- Demographics and other details about the student body;
- Cost of attendance;
- Percentage of students receiving Federal loans, average debt after graduation, and average monthly loan repayment;
- Graduation and retention rates; and
- Average and median earnings of former students who received Federal financial aid at 10 years after entering school.

The link to the College Scorecard is found at:  
<https://collegescorecard.ed.gov/>.



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**ED Issues Revised College Scorecard (Cont'd)**

- According to the 3/21/2019 Executive Order, ED will expand the College Scorecard to include program level earnings, debt, and loan default and repayment rates.



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**FSA Makes Data Available to Public**

- Quarterly, FSA updates its FSA Data Center for the public. Most recently, 9/27/2018.
- Data includes:
  - Student Aid Data: Application volume; Title IV volume;
  - School Data: Closed School Reports; Clery Act Reports; Default Rates; Program Review Determinations; Composite Scores; 90/10 Ratios; School Fine Reports;
  - FFEL and Guaranty Agency Reports; and
  - Business Information: FSA Management and Processes, including Contracts.

A link to the FSA Data Center is found at:  
<https://studentaid.ed.gov/sa/data-center>.



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**\*The End\***

Any questions?



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  - Accreditation
  - Mergers & Acquisitions
  - Public Policy & Government Relations
  - State Licensing
  - Education Policy
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Sharon H. Bob, Ph.D., Higher Education Specialist on Policy and Regulation, is a member of the Education Group at the Washington, D.C. law firm of Powers Pyles Sutter & Verville, P.C. Dr. Bob advises all sectors of higher education regarding strategic issues pertaining to their participation in the federal student financial assistance programs, accreditation, licensure, education tax benefits, and related regulatory matters.

Dr. Bob advises public and private colleges and universities, as well as private and publicly-traded companies. In this role, she provides clients with detailed technical guidance related to compliance with applicable statute and regulations. She regularly assists postsecondary educational institutions on issues relating to institutional eligibility, program eligibility, student eligibility, financial responsibility and administrative capability standards, changes of ownership, adding locations and programs, program reviews and compliance audits, and institutional responsibilities for the education tax benefits. Through training seminars and on-site reviews, she assists clients in complying with the federal requirements for administering federal student financial assistance. Dr. Bob has authored numerous articles on federal financial aid issues for *The Greentree Gazette*, *NASFAA's Journal of Student Financial Aid*, *NASFAA's Student Aid Transcript*, the *Career College Link*, and other higher education publications and frequently speaks at meetings of college officials and student aid administrators.

Dr. Bob received her undergraduate degree *summa cum laude* from the State University of New York at Buffalo and was elected to Phi Beta Kappa. She received her doctorate from the University of Maryland.

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