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WASHINGTON UPDATE

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President Signs Tax Reform Package into Law

On December 22, 2017, H.R. 1, the *Tax Cuts and Jobs Act*, was signed into law by President Trump (P.L. 115-97). As related to higher education, H.R. 1:

- Maintains the American Opportunity Tax Credit, the Lifetime Learning Tax Credit, and the Hope Scholarship Tax Credit;
- Excludes from taxable income student debt that has been forgiven as a result of death or total and permanent disability;
- Imposes an excise tax of 1.4 percent on the net investment income of private colleges' endowments. The tax would cover those private colleges and universities that have at least 500 students, in which at least 50 percent of those students are located in the United States, and that have assets of at least $500,000 per student;
- Expands the use of 529 plans to allow tax-free withdrawals (up to $10,000 per beneficiary per year) to cover tuition at public or private elementary and secondary schools;
- Maintains the deduction for interest on student loans;
- Retains the deduction for tuition and other related expenses;
- Maintains the exclusion for interest on U.S. savings bonds used for higher education expenses; and
- Maintains the exclusion of employer-provided educational assistance programs.

House Education and the Workforce Committee Reprints a *Wall Street Journal* Article Describing "Today's College Students"

On January 6, 2018, the House Education and the Workforce Committee posted a blog that reprinted a *Wall Street Journal* article titled, "Today's College Students Aren't Who You Think." The article pointed out that today's students are not "18-year-olds living in cramped dorm rooms," but men and women who are often working part-time. The article also indicated that about 40 percent of the 17.5 million undergraduates are enrolled in two-year institutions and the vast majority of college students are not enrolled in Ivy League institutions, but attend institutions that admit nearly anyone who applies. Further, with many students changing majors or programs, most students take longer to complete their four-year program. One main reason why students take longer to finish is that many students change schools and the credits do not transfer.

A copy of the blog with the article is found at:
https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=402385.

Senator Warren Asks IGs at ED and SSA to Review ED's Use of Earnings Data for the Loan Discharge Process

On January 2, 2017, Senator Elizabeth Warren sent a letter to the Department of Education's (ED) and the Social Security Administration's (SSA) Inspectors General asking about the use of the earnings data from the Social Security Administration to determine the amount of debt relief for successful borrower defense claims. The Department obtained these federal earnings data through an information exchange agreement with the Social Security Administration. On December 20, 2017, Secretary of Education Betsy DeVos announced that ED was using the earnings from gainful employment programs to determine the amount of debt relief borrowers would receive from an approved borrower defense to repayment claim. [See article below.]

Senator Warren asked the IGs to review the use of the data, claiming that the use of the data may violate the Department of Education's information exchange agreement with the Social Security Administration since the information exchange agreement explicitly and exclusively allows the data to be used only for the gainful employment rule. Senator Warren said:

> "I am troubled by the Department's potential misuse of federal earnings data acquired from SSA through an information exchange agreement in order to determine the amount of loan relief for defrauded students. There is no evidence of a new data exchange agreement between the Department and SSA for use in borrower defense determinations, nor has there been a revision to the gainful employment exchange agreement."

The text of Senator Warren's letter is included in a press release found at:
https://www.warren.senate.gov/?p=press_release&id=2190.

Five Senate Democrats Ask Education Secretary and FSA COO About ED's Change in Monitoring and Enforcement Tactics for Federal Student Aid Programs

On December 13, 2017, five Senate Democrats, led by Patty Murray (D-WA), sent a letter to Secretary of Education Betsy DeVos and Chief Operating Officer for Federal Student Aid (FSA) Dr. Wayne Johnson asking them more than a dozen questions regarding the Department's plans to change its monitoring and enforcement tactics for federal student aid programs. They noted that their questions take on "a new urgency since the Department has rolled back or refused to properly implement rules that were designed to protect students, borrowers, and taxpayers." The Senators also asked for clarity as to how the roles of compliance and enforcement will be delineated. In addition, the Senators asked that the Department respond to the recommendations made by the Office of Inspector General's "FY 2018 Management Challenges" report, "which identified several areas that FSA needs to address serious flaws in college oversight and accountability," including program reviews, financial responsibility, and noncompliance and fraud among program participants.

A copy of the letter is found at:
https://www.help.senate.gov/imo/media/doc/121317%20ED%20FSA%20Enforcement%20Letter%20Dec%202017.pdf.

Bills Introduced that Amend the *HEA*

In addition to the House proposal to reauthorize the *Higher Education Act* or the *PROSPER Act*, a number of bills have been introduced on the House and Senate sides that would amend the *Higher Education Act.* Some bills of relevance:

- On December 14, 2017, Senators Jeanne Shaheen (D-NH) and Orrin Hatch (R-UT) introduced S. 2231, to amend the Higher Education Act of 1965 to provide for institutional ineligibility based on low cohort repayment rates and to require risk-sharing payments from institutions of higher education. Beginning in FY 2022 and each succeeding year, an institution with a cohort repayment rate that is equal to or less than 15 percent would not be eligible to participate in Title IV programs. Beginning in FY 2022 and each succeeding year, an institution participating in the Direct Loan program would remit a risk-sharing payment based on the cohort non-repayment loan balance of the institution.

- On December 13, 2017, Senator Mike Lee introduced S. 2228, the *Higher Education Reform and Opportunity (HERO Act*, a companion bill to H.R. 4274, which was introduced on November 7, 2017 by Congressman Ron DeSantis (R-FL) and 7 cosponsors. The bill would amend the *Higher Education Act of 1965* to provide for accreditation reform, to require institutions of higher education to publish information regarding student success, to provide for fiscal accountability, and to provide for school accountability for student loans. According to Congressman DeSantis' press release: "Giving states the ability to innovate will make it possible for students to use Title IV funds in pursuit of a wide-range of educational approaches at potentially a fraction of the cost." The bill would:

    - Authorize states to create an alternative, state-run process for accreditation, providing states with the same authority as the Secretary of Education has in selecting institutions eligible to participate in the Title IV programs;
    - Promote transparency by requiring that all institutions that participate in the federal student loan programs publish the percentage of students who receive federal, state, and institutional grant aid or loans by source and the average amount of federal loan debt; and
    - Require institutions to shoulder a portion of student loans that end in default.

  A copy of Congressman DeSantis' press release is found at:
  https://desantis.house.gov/press-releases?ID=E79FA0FE-A9A0-44BD-BAB1-425C796058E6.

- On December 12, 2017, Representatives Jackie Speier (D-CA), Walter Jones (R-NC), and Mark Takano (D-CA) introduced H.R. 4632, the *Military and Veterans' Education Protection Act*, a companion bill to S. 2109, which was released on November 9, 2017 by Senators Tom Carper (D-DE), Richard Durbin (D-IL), Richard Blumenthal (D-CT), Patty Murray (D-WA), and Jon Tester (D-MT) that would close the loophole "that allows for-profit schools to avoid having to secure at least 10 percent of their revenue from non-federal sources." The bill would close the loophole on the 90/10 calculation by counting Veterans benefits and Department of Defense Tuition Assistance funds as federal dollars.

  A copy of Senator Carper's press release is found at:
  https://www.carper.senate.gov/public/index.cfm/pressreleases?ID=16CA61FD-F7BD-4F7A-B414-2F0AFCE268CB.

- On November 30, 2017, Congressmen Duncan Hunter (D-CA), Brian Fitzgerald (R-CA), André Carson (D-IN), and Scott Peters (D-CA) introduced H.R. 4479, the *Student Right to Know Before You Go Act of 2017,* a companion bill to S. 2169, a bill released on November 29, 2017 by Senators Ron Wyden (D-OR), Marco Rubio (R-FL), and Mark Warner (D-VA) that provides for greater transparency in the cost of education. According to the press release, the bill would establish new metrics to be published by the Department of Education to focus on data that provides future students and their families with post-graduation information, such as average annual earnings, amounts of federal loan debt, rates of remedial enrollment, credit accumulation, and graduation rates. Congressman Hunter said in a press release: "It is critical that students and their parents are provided with as much information as possible allowing them to make the best decisions for their family. Students should be able to easily access information from universities regarding earnings data for graduates, graduation rates for nontraditional students, transfer rates, frequency with which graduates go on to pursue higher levels of education, and debt levels."

  A copy of the press release from Congressman Hunter's office is found at:
  https://hunter.house.gov/press-release/bipartisan-education-bill-introduced-provide-increased-information-college-costs.

  A copy of the press release from Senator Wyden's office is found at:
  https://www.wyden.senate.gov/news/press-releases/wyden-rubio-warner-introduce-student-right-to-know-before-you-go-act-to-empower-students-as-consumers-and-showcase-new-privacy-protecting-technology.

- On November 14, 2017, Congressmen Drew Ferguson (R-GA), Paul Mitchell (R-MI), and Thomas Garrett (R-VA) introduced H.R. 4372, the *Help Students Repay Act*, which would consolidate the income-driven student loan repayment plans into one. The plan would:

- Calculate the borrower's monthly payment at 15 percent of discretionary income;
- Maintain the same total loan repayment amount as the standard repayment plan; and
- Not include time-based loan forgiveness, but no additional interest would capitalize after 10 years.

A copy of the press release is found at: https://ferguson.house.gov/media/press-releases/ferguson-introduces-legislation-streamline-student-loan-repayment.

ED Announces Improved Defense Discharge Process

On December 20, 2017, the Department of Education announced an improved discharge process for borrower defense to repayment (BDR) claims. For pending claims, no changes will be made to the existing approval criteria. However, the improved process will provide tiers of relief to compensate former Corinthian students based on damages incurred. Students whose current earnings are less than 50 percent of their peers from a passing gainful employment (GE) program will receive full relief, but those whose earnings are at 50 percent or more of their GE program peers will receive proportionately tiered relief to compensate for the difference and make them whole. Under the previous rules, when borrowers were found to have been defrauded, they were automatically granted full relief. Additionally, to mitigate the inconvenience for how long it has taken to adjudicate claims, the Department will apply a credit to interest that accrues on loans starting one year after the borrower defense application is filed.

To date, the Department has approved for discharge 12,900 pending claims submitted by former Corinthian Colleges, Inc. students, and 8,600 pending claims have been denied. The claims that were settled accounted for more than 20 percent of the claims that had been outstanding and all Corinthian Colleges students' claims have now been processed. Secretary DeVos said that when she announced the Department's regulatory reset on June 14, 2017, the previous regulatory process yielded a "muddled process that's unfair to students and schools and puts taxpayers on the hook for significant costs." Secretary DeVos said that it is the Department's aim to "protect students from predatory practices while also providing clear, fair and balanced rules for colleges and universities to follow."

Currently, the borrower defense to repayment regulations are being reviewed under negotiated rulemaking, which began November 13, 2017. "The negotiators will continue to work toward a new regulation that will treat students, institutions and taxpayers fairly."

A copy of the press release is found at: https://www.ed.gov/news/press-releases/improved-borrower-defense-discharge-process-will-aid-defrauded-borrowers-protect-taxpayers.

ED OIG Releases its "Fiscal Year 2018 Annual Plan"

On December 20, 2017, the Department of Education's Office of Inspector General (OIG) released its "Fiscal Year 2018 Annual Plan," which outlines a number of goals it plans to work on in FY 2018. "The Department continues to face significant challenges in FY 2018 that impact its ability to effectively achieve its mission of promoting student achievement and preparing for global competiveness by fostering educational excellence and ensuring equal access." In response to these challenges, the new work within the "Fiscal Year 2018 Annual Plan" will focus on oversight and monitoring federal student financial assistance, information technology, data quality, and other emerging areas.

Some of the new priority work to address the need to strengthen the delivery of student financial assistance includes the determination as to whether the Department:

- Has implemented procedures to ensure that only eligible borrowers are approved for the Public Service Loan Forgiveness Program;
- Is adequately monitoring schools' compliance with satisfactory academic progress; and
- Ensures that schools perform verification of the FAFSA.

Continuing work includes the assessment as to whether the Department's processes ensure that accrediting agencies meet the criteria for recognition and the extent of the Department's monitoring of accrediting agencies. The OIG concluded its "Fiscal Year 2018 Annual Plan" by stating: "We will also continue to devote significant resources towards the investigation of allegations of fraud in student financial assistance programs, with an ongoing focus on distance education programs."

A copy of the "Fiscal Year 2018 Annual Plan" is found at:
https://www2.ed.gov/about/offices/list/oig/misc/wp2018.pdf.

NCES Releases Data on Completion Rates and Financial Aid

In December, 2017, the National Center for Educational Statistics (NCES) released completion rate data in a report titled "Graduation Rates for Selected Cohorts, 2008-2013; Outcome Measures for Cohort Year 2008; Student Financial Aid, Academic Year 2015-2016; and Admissions in Postsecondary Institutions, Fall 2016." The report found that almost 60 percent of students who enrolled in four-year public institutions and seeking a bachelor's degree in 2010 graduated within six years. For students who were seeking a bachelor's degree at a non-profit institution, the 150 percent completion rate was over 65 percent and for students who were seeking a bachelor's degree at a for-profit institution, the 150 percent completion rate was 26 percent.

For bachelor's degree seeking students, American Indian and Alaska Native students had a 150 percent completion rate of 38.8 percent, the lowest on-time completion rate. African American students had a 150 percent completion rate of 39.7 percent. Hispanic students had a 150 percent completion rate of 54.4 percent. White students had a 150 percent completion rate of 59.5 percent.

In 2015-2016, about 83 percent of the students received some type of financial aid. The percentage of students receiving Pell Grants was substantially higher at four-year for-profit institutions (65 percent) than at public four-year institutions (36.6 percent) and private nonprofit four-year institutions (31.5 percent). Borrowing was also higher at four-year for-profit institutions (72.9 percent) than at public four-year institutions (46.5 percent) and private nonprofit institutions (58.1 percent).

See: https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2017150rev.

State Attorneys General Sue Department Over Borrower Defense to Repayment Claims

On December 14, 2017, Attorneys General (AG) for Massachusetts, New York, Illinois, and California filed two lawsuits against the Department of Education for its failure to process and approve pending borrower defense to repayment claims made by former students of closed for-profit institutions. AG Maura Healey from Massachusetts issued a press release stating that: "Secretary DeVos and her team continue to demonstrate that they would rather give a free pass to predatory schools than give struggling student borrowers the relief they deserve." See: https://www.mass.gov/news/ag-healey-sues-secretary-betsy-devos-for-halting-debt-relief-promised-to-defrauded-students.

California AG Xavier Becerra said in a press release: "After having their American Dreams stolen by a so-called higher education institution, Corinthian students are now being denied critical relief by a Secretary of Education hostile to their plight."
See: https://oag.ca.gov/news/press-releases/attorney-general-becerra-takes-education-secretary-devos-court-withholding.

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