The Torch

November 7, 2014

A bi-weekly report from the Coalition of Higher Education Assistance Organizations

COHEAO

- **Sign Up Today for the November 13 COHEAO Webinar: A Student Aid Regulatory Update from the Department of Education**
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Congress

- **Some Perspectives on Congressional Changes and What They Might Mean**
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White House & Administration

- **Treasury Update: As Raskin Highlights Servicing and Collection Problems, TBAC Looks at Structural Issues with Federal Loan Programs**
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- **CFPB Points to Student Loan Servicing Issues in Its Supervisory Highlights Report**
  The CFPB issued its latest "Supervisory Highlights" report, highlight student loan servicing issues.
- **Initial FSA Review of Servicers Finds No Wrongdoing on SCRA, "Alarmed" Senior ED Officials Seek Further Investigation**
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- **Gainful Employment Final Rule Published, For-Profit Colleges Challenge It in Court**
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- **ED Reminder: FISAP Changes, Perkins Cash on Hand Figures Due by December 15**
  The Department of Education recently issued an electronic announcement to remind schools FISAP changes and reports of Perkins cash-on-hand are due December 15.

Industry

- **Cato "Challenging the Ivory Tower" Event Looks at Contemporary Higher Education, Impact of Elections**
  On Wednesday, the Cato Institute hosted an event, "Federal Policy, the Election, and the Changing Ivory Tower."
- **CAP Urges States to Stop Higher Ed Funding Retreat**
  The Center for American Progress (CAP) hosted a webinar titled "Incentivizing State Reinvestment in Postsecondary Education."

Attachments

- **COHEAO Commercial Members**
- **COHEAO Board of Directors**

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Sign Up Today for the November 13 COHEAO Webinar: A Student Aid Regulatory Update from the Department of Education

COHEAO is pleased to announce its latest webinar, "A Student Aid Regulatory Update from the Department of Education," which is scheduled for Thursday, November 13 from 2:00 PM-3:30 PM ET. This is a webinar you will not want to miss, as it will involve an update from two of the most knowledgeable senior officials from the Office of Postsecondary Education at the Department of Education, Gail McLarnon and Brian Smith.

With the Department publishing several new regulations in the weeks leading up to November 1, this event will provide an update on those latest rules and other recent activity at ED. McLarnon and Smith will also discuss recent regulations and guidance relating to the Perkins Loan Program.

Please do not pass up this opportunity to learn more about regulations and guidance impacting your campus. Sign up today!

Congress

Some Perspectives on Congressional Changes and What They Might Mean

COHEAO distributed an initial report on the Congressional elections on Wednesday. More information has come in since then, so we have updated some of that report. If you didn't get the full analysis, please email Wes Huffman at whuffman@wpllc.net .

The change in control of the Senate from Democrats to Republicans means every Committee will have a new chairman in January 2015. There will be some changes in the House due to retirements or seeking other office, but not nearly as many as in the Senate.

Congress is returning to Washington on Nov. 12 for a lame duck session scheduled to last until December 12th, although it could end sooner if key legislation is addressed. Must pass bills for the lame duck include a measure funding the government – the current temporary measure, a continuing resolution, expires on Dec. 12th – dealing with several expiring tax breaks including some affecting education, and a Department of Defense authorization bill.

Both Republicans and Democrats say they are determined to pass an Omnibus Appropriations bill during the lame duck session, funding the federal government through the rest of FY 2015, which began Oct. 1, 2014 and ends Sept. 30, 2015. Democrats realize the spending deal they get this year is the best they will get while Republicans want to clear the decks so they can start fresh on the FY2016 budget process in the new Congress. Republican leaders and appropriators want to return to "regular order" for the budget/appropriations process, meaning they pass a Budget Resolution in the spring and pass all 12 appropriations bills individually before the start of the fiscal year Oct. 1st.

Appropriators on both sides of the aisle say they want to eliminate automatic across the board spending cuts know as sequestration, but it will be difficult to do so since in general Republicans are focused on more funding for defense while Democrats want more funding for non-defense discretionary programs. Education is likely to be frozen at current levels or even cut, and the overall amount of money available for student aid is not likely to grow. Pell Grants enjoy bipartisan support and seem unlikely to face additional cuts, although proposals to restore previous cuts probably won't pass. Stafford and PLUS loan interest rates are probably not going to be changed as they were set in a bipartisan agreement two years ago that Republicans and many or most Democrats are inclined to stick with.

For those interested in the committees in charge of changing policy, Sen. Lamar Alexander (R-TN) is expected to assume the chairmanship of the Health, Education, Labor and Pensions Committee in January 2015. Chairman John Kline (R-MN) defeated his opponent handily despite being targeted by comedian Bill Maher and is expected to remain head of the Education and Workforce Committee. Rep. Virginia Foxx (R-NC) is expected to continue leading the Subcommittee on Higher Education and Workforce Training. Kline technically will need a waiver from the House Republican Steering Committee, which is dominated by the House leadership, because he is up against an intra-party term limit on leading a committee. He is expected to seek the waiver and get it, with the result known by the week of Nov. 17th. If for some reason that doesn't work out, Foxx is likely next in line.

Sen. Patty Murray (D-WA) will most likely become the ranking Democrat on the HELP Committee. Some of the staff of retiring HELP Chairman Tom Harkin (D-IA) may stay on but Murray is also expected to bring her own staff on board. Murray, like retiring Sen. Tom Harkin (D-IA), also may chair the Appropriations Subcommittee on Labor, HHS and Education, making her all powerful from the Democratic side on education issues. Rep. Bobby Scott (D-VA) is expected to become the ranking Democrat on the House Education and Workforce Committee, replacing Rep. George Miller (CA), who is retiring.

Rep. Harold Rogers (R-KY) will remain chairman of the House Appropriations Committee and Rep. Nita Lowey (D-NY) will remain ranking Democrat. Rep. Rosa DeLauro (D-CT) is likely to remain ranking Democrat on the Labor, HHS, Education Subcommittee, but there will be a new chairman as Jack Kingston (R-GA) retired to pursue an unsuccessful Senate campaign. Republicans have not yet decided who will succeed him as one of the 12 "cardinals" of the Appropriations Committee.

Sen. Richard Shelby (R-AL) is expected to return as Banking Committee chairman, a post he held in the 109th Congress. It is quite likely he will step up the scrutiny of the CFPB from his new spot. A spokesman for Rep. Jeb Hensarling (R-TX) confirmed he will retain the gavel at the House Financial Services Committee.

Sen. Jeff Sessions, another Alabama Republican, is expected to assume the chairmanship of the Budget Committee. Bernie Sanders (I-VT) appears likely to take the role of ranking member. Though Sanders is a Democratic Socialist, he caucuses with the Democrats, and he is given leadership roles on Committees. Rep. Tom Price (R-GA), a leader in the conservative Republican Study Committee, is expected to head up the House Budget Committee, and current Chairman Paul Ryan (R-WI) is expected to lead the Ways and Means Committee.

The Senate Judiciary Committee is expected to simply flip positions, with Sen. Charles Grassley (R-IA) taking over as Chairman and Sen. Patrick Leahy (D-VT) serving as its ranking Democrat. The status quo appears likely in the House—Rep. Bob Goodlatte (R-VA) as Chairman and Rep. John Conyers (D-MI) as ranking member.

On the Senate Commerce, Science, and Transportation Committee, which has jurisdiction over the Telephone Consumer Protection Act (TCPA), Sen. Jon Thune (R-SD) is expected to take the gavel. Sen.

Barbara Boxer is next in line in terms of Democratic seniority, but she is expected to take the top Democratic post on the Environment and Public Works Committee and Sen. Bill Nelson (D-FL) is expected to become ranking Democrat. In the House, Rep. Fred Upton (R-MI) will retain the post while Rep. Frank Pallone (D-NJ) and Rep. Anna Eshoo (D-CA) have both indicated interest taking over as top Democrat for the retiring Rep. Henry Waxman. Eshoo has the backing of Minority Leader Nancy Pelosi.

White House & Administration

Treasury Update: As Raskin Highlights Servicing and Collection Problems, TBAC Looks at Structural Issues with Federal Loan Programs

Deputy Secretary Sarah Bloom Raskin delivered another speech on student loans, her third since April on the topic. Speaking to a conference of the National Consumer Law Center (NCLC), Raskin said that she saw many problems in student loan servicing, but indicated Treasury was hopeful that the Department of Education's recent restructuring of servicing contracts may take care of the issue.

The Deputy Secretary also suggested that a restructuring of private collection agency (PCA) contracts may be in order. An excerpt from her speech is below:

> *In the case of federal student loans, the Department of Education assigns defaulted loans to debt collectors based on their relative performance. This is measured on a quarterly basis across five metrics, with the largest emphasis for performance placed on the amount of money that an agency is able to recover and the value of loans rehabilitated from its assigned borrower accounts [4].*
>
> *However, as I previously discussed, incentives may be misaligned here as well. Unlike most forms of consumer debt, defaulted federal student loans can be rehabilitated and returned to good standing, and debt collectors currently receive significant compensation for this service. Yet many close observers and practitioners, like you, have suggested that private collection agencies are not doing enough to help borrowers accomplish this goal and are otherwise thwarting good borrower outcomes.*
>
> *This is a troubling sign and may suggest that the incentives should be refined, just as the Department of Education has recently refined its contracts with servicers. Federal student loan debt collectors need to be encouraged to remove loan accounts from default when possible, as well as deal fairly with borrowers, and the incentive structures in debt collector contracts should convey these priorities.*
>
> *After the Department of Education refers the defaulted loans to a private debt collector to engage in collection efforts, the loans are also referred to the Treasury Offset Program, as required under the Debt Collection Improvement Act. This mandatory, last-resort program for federal debts will withhold certain federal benefits due to borrowers until a loan is repaid or satisfactory payment arrangements are made.*
>
> *In the case of federal student loans, this typically does not occur until after at least 420 days from when a borrower first became delinquent. Prior to being placed in the Treasury Offset Program, borrowers receive a written notice indicating the balance of the defaulted debt, the plan to move the debt into the Offset Program, and a notice of borrower rights. If the borrower does not repay, the debt is placed in the Offset Program and the borrower is informed when a payment is withheld.*

Servicers' actions themselves are critically determinative of whether the loan moves into the Treasury Offset Program, and whether accordingly, the federal government's strong tools of collection are triggered.

Withholding payments — Social Security, Earned Income Tax Credits, a tax refund—are a last resort in recouping federal debt precisely because they can have severe effects on borrowers. For this reason alone, the objective in demanding effective servicing is to prevent borrowers from ever reaching this point.

This is why Department of Education Under Secretary Ted Mitchell is in the process of identifying additional actions that the Department can take to strengthen the outcomes for federal student loan borrowers. This work is focused on ensuring that all students have access to high-quality servicing and effective collections to prevent and remediate defaults.

While Raskin's remarks focused on perceived problems in federal and private student loan servicing and collections, a presentation for the Treasury Borrowing Advisory Committee (TBAC) offered a much more comprehensive analysis. The TBAC presentation is worth a review, as it has very unique data and offers an excellent overview of the government's exposure via the federal loan programs.

Raskin's full speech is available online: http://goo.gl/HZQgqd
The TBAC presentation is available online: http://goo.gl/vBhaL2 (The student loan presentation runs from pp. 48-86)

CFPB Points to Student Loan Servicing Issues in Its Supervisory Highlights Report

The CFPB issued its latest "Supervisory Highlights" report last week. The CFPB has issued regular reports based on its supervisory examinations, largely with relatively little fanfare.

The report was remarkable in one aspect, however, as the CFPB specifically highlighted student loan servicing issues in publicizing the report to the press. The Bureau highlighted the following examination findings on student loan servicing:

- ***Allocating payments to maximize late fees:*** *Typically, servicers handle multiple student loans for each borrower in one combined account. Servicers allow borrowers to make a single payment for all of the loans, and then the servicer allocates the payment among the borrower's loans to satisfy the monthly payment for each loan. Where the borrower made a payment that was less than the total amount due, CFPB examiners found that one or more servicers allocated the amount proportionally to each loan. That resulted in borrowers getting charged a minimum late fee on all of their loans and all of their loans becoming delinquent. Supervision cited these fee-maximizing practices as unfair under the Dodd-Frank Act.*
- ***Misrepresenting minimum payments:*** *CFPB examiners found that one or more servicers inflated the minimum payment that was due on periodic statements and online account statements. These inflated numbers included amounts that were in deferment and not actually due, which CFPB examiners found to be deceptive.*
- ***Charging illegal late fees:*** *CFPB examiners found one or more servicers were unfairly charging late fees when payments were received during the grace period. Like many other types of loans, many student loan contracts have grace periods after the due date. If a payment is received after*

the due date, but during the grace period, the promissory note stated that late fees would not be charged. Supervision identified charging late fees during the grace period as unfair and deceptive under the Dodd-Frank Act.

- ***Failing to provide accurate tax information:*** *CFPB examiners found cases where student loan servicers failed to provide consumers with information essential for deducting student loan interest payments on their tax filings. The servicers impeded borrowers from accessing this information and misrepresented information on the consumers' online account statements. This practice may have caused some consumers to lose up to $2,500 in tax deductions. Examiners found this failure to provide accurate information to be unfair and deceptive under the Dodd-Frank Act.*
- ***Misleading consumers about bankruptcy protections:*** *CFPB examiners found that some servicers told consumers student loans are not dischargeable in bankruptcy. While student loans are more difficult to discharge in bankruptcy than most other types of loan, it is possible if the borrower affirmatively asserts and proves "undue hardship" in a court. Servicer communications with borrowers asserted or implied that student loans were never dischargeable. Examiners identified communications of this nature as deceptive under the Dodd-Frank Act.*
- ***Making illegal debt collection calls to consumers, at inconvenient times:*** *Examiners found that one or more student loan servicers routinely made debt collection calls to delinquent borrowers early in the morning or late at night. For example, examiners identified more than 5,000 calls made at inconvenient times during a 45-day period, which included 48 calls made to one consumer. Supervision found these phone calls to be unfair under the Dodd-Frank Act.*

The full report is available online. Though student loans were given top billing in press activities, the findings relating to student loan servicing appear on page 14 of the report.

Initial FSA Review of Servicers Finds No Wrongdoing on SCRA, "Alarmed" Senior ED Officials Seek Further Investigation

The *Huffington Post* recently reported on the Department of Education's investigation of its servicers on potential violations of the Servicemembers Civil Relief Act (SCRA) by organizations other than Navient/Sallie Mae, which entered into a settlement with the government over alleged violations. Very little was found in the initial review, but top officials at the Department plan to bring on new investigators from a separate division of FSA and an outside auditing firm, according to the *Huffington Post*. From the *Huffington Post:*

> *"We all thought that this was going to be low-hanging fruit," one FSA employee, who requested anonymity because he was not authorized to discuss the investigation, told The Huffington Post. "It appears not to be the case."*
>
> *The conclusion has apparently startled senior officials in Washington and raised concerns about how the FSA office has conducted its investigation. As a result, the Education Department has asked investigators from the FSA's Financial Institution Oversight Service Group to conduct a broader review of student loan borrowers' files, according to federal officials with knowledge of the investigation. The department is also considering hiring a private-sector auditor to conduct a separate probe.*

The full article is **available online**.

Gainful Employment Final Rule Published, For-Profit Colleges Challenge It in Court

Last week, the U.S. Department of Education (ED) announced a final rule on defining "gainful employment in a recognized occupation" via regulation. ED's first attempt at gainful employment regulations was struck down by in court in 2012 due to an arbitrary metric of calculating the amount of loan payments from former students.

In drafting the new rule, ED replaced the provision and ultimately decided not to include student loan default rates by program in the new metrics either. Under the final rule, "a program would be considered to lead to gainful employment if the estimated annual loan payment of a typical graduate does not exceed 20 percent of his or her discretionary income or eight percent of his or her total earnings. Programs that exceed these levels would be at risk of losing their ability to participate in taxpayer-funded federal student aid programs."

The toughened measurements of debt to income ratios of those completing a program subject to the rules remained pretty much intact and will eliminate about 10 percent of programs at for profit schools, according to ED. The Department estimates that the new rule will shut off Title IV eligibility for about 1,400 for-profit programs.

The new rules also impact non-degree programs at 2-yr and 4-yr public and private colleges, mostly community colleges. The removal of the Cohort Default Rate by program (pCDR) spared nearly all community colleges from the negative consequences associated with the new regulation. They are not affected by debt to income ratio tests since their costs are so low, but they many times have high default rates due to having relatively few student loan borrowers. Rather than try to come up with an exemption for programs with few borrowers, the Department simply dropped the metric altogether.
For-Profits Fight Gainful Employment a Second Time

On Thursday, the Association of Private Sector Colleges and Universities (APSCU) filed a complaint against the rule. The lawsuit, filed in the U.S. District Court, uses much of the same arguments outlined in the 2011 lawsuit over the previous version of this rule, once again claiming the Department of Education is overstepping its boundaries and is unfairly targeting for-profit colleges and universities enforcing this "arbitrary and capricious" regulation. While the judge from the previous case repealed the regulation on the basis of inadequate metrics used, the department's authority to issue the rule remained intact.

Dorie Nolt, a spokesperson for the department, feels confident in the department's authority to issue the gainful-employment rule and believes this new version is a legally sound effort that will "protect students and taxpayers' investments by bringing more accountability and transparency to career-training programs."

However, a lawyer for the APSCU is optimistic that this new case will re-examine the metrics, which now face steeper thresholds than they did in 2011. Furthermore, a Republican majority Congress may succeed in blocking this rule, as some have tried already, although that is unlikely to get through. Even if the court case is lost, for-profit colleges will be looking to garner support from lawmakers. Such legislation, however, could still face a veto from President Obama, who has listed gainful-employment an important aspect of his college-accountability agenda.

The Department's announcement is available online: http://www.ed.gov/news/press-releases/obama-administration-announces-final-rules-protect-students-poor-performing-care
A statement from Senate HELP Committee Chairman Tom Harkin and several colleagues is available online: http://www.help.senate.gov/newsroom/press/release/?id=a8917143-6732-4677-9c1b-35a08a713120&groups=Chair
A statement from Senate HELP Committee Ranking Member Lamar Alexander is available online: http://www.help.senate.gov/newsroom/press/release/?id=ad88b838-1bb0-420d-9bbe-3502de363bee&groups=Ranking

ED Reminder: FISAP Changes, Perkins Cash on Hand Figures Due by December 15

The Department of Education recently issued an electronic announcement to remind schools that "any changes to the Fiscal Operations Report for 2013-2014 and the Application to Participate for 2015-2016 (FISAP) and correction of any edit errors must be submitted to the Department of Education (the Department) by ***Monday, December 15, 2014.*** Also by this deadline, all schools that participate in the Federal Perkins Loan (Perkins Loan) Program must update their Perkins cash on hand as of October 31, 2014."

The full announcement, which includes directions for reporting Perkins cash on hand and making FISAP changes, is available online:
http://www.ifap.ed.gov/eannouncements/102914FISAPEditCorrectPerkinsCashOnHandDue121514.html

Industry

Cato "Challenging the Ivory Tower" Event Looks at Contemporary Higher Education, Impact of Elections

On Wednesday, the Cato Institute hosted an event, "Federal Policy, the Election, and the Changing Ivory Tower." The discussion was centered on the significance of the midterm elections and the reality of the changing landscape of higher education.

Amy Laitinen, deputy director of the New America Foundation education policy program, outlined the current climate and profile of today's university students, stressing that the new majority are "non-traditional students" who are older, part-time students seeking degrees while working and raising a family. John Ebersole, president of Excelsior College, said it is vital to help the policy makers understand that their target audience is no longer the 18 to 22 year olds at four-year institutions and changes from this thinking must be made.

The biggest challenge to policy makers, Laitinen continued, will be striking a balance between innovative education and protecting students' interests while they attempt to address affordability, cost, and completion of higher education. Congressman Kline will remain chairman of the Education and Workforce Committee while Senator Alexander will chair the HELP Committee with assistance from ranking member Patty Murray. Laitinen also expressed that while the Republican congress "clearly does not like regulation," it is currently unclear what they will like.

According to Peter Smith, senior vice president of Kaplan Higher Education Group, the Republican majority in the Senate and House is "good news for innovation" when it comes to for-profit education, distance learning, and competency-based learning. Smith expressed his hopefulness that policy makers would shift their unit of college success from students' early earnings to learning outcomes, as well as adopt policies to assist accreditors as they adapt to MOOCs and other distance learning.

Barmak Nassirian, director of federal relations and policy analysis at the American Association of State Colleges and Universities, stated that there is no debate about whether distance learning and competency-based learning is tenable, but about public funding playing a role in their development. While he stressed that learning outside traditional pathways is credible, he advocates for a more cautious approach to publicly funding these pathways after allowing private funding to evaluate them first. Nassirian also predicted the election results will spell the end to college ratings in the political spotlight. He also predicted the end to Gainful Employment, but stated the defunding of this regulation "may not be a bad thing," arguing the regulations have become too watered down anyway.

Neal McCluskey, associate director of the Center for Educational Freedom at the Cato Institute, claimed the biggest issues policy makers need to address in higher education are massive subsidies that drive up tuition and cost and the high non-completion rate of students. While he expressed the problem of inflation of college degrees and the need to reform student federal aid practices, he predicted the Republican Congress will not make any substantial changes, but may "tinker around the margins" to address some of the negative, unintended consequences of inflated subsidies and student aid practices.

For more information, including an archived webcast, visit: http://www.cato.org/events/federal-policy-election-changing-ivory-tower

CAP Urges States to Stop Higher Ed Funding Retreat

The Center for American Progress (CAP) hosted a webinar titled "Incentivizing State Reinvestment in Postsecondary Education." David Bergeron, Vice President for Postsecondary Education Policy at CAP introduced the report completed by the Postsecondary Education division titled "A Great Recession, A Great Retreat" that researched the withdrawal of state funding for higher education that has continued since the Great Recession.

Despite increased funding from the federal government, specifically increases in Pell Grants, there are insufficient funds available for low income students pursuing higher education. This shortfall is due to the lack of state funding in the last six years; 38 states decreased direct funding of public education institutions, eight states made neutral changes, and only four states increased direct funding-North Dakota, Wyoming, Illinois and West Virginia. Furthermore, 47 states have increased their reliance on tuition to cover the costs of higher education, shifting the financial burden to students and families.

The report also revealed that the states that cut funding most significantly also charge the highest tuition. To combat this "systematic disinvestment" by states, Bergeron and his colleagues propose the "Public College Quality Compact." This proposal of a new federal/state partnership would require four main elements that state institutions would have to meet to qualify: reliable funding sources, college affordability, improved student performance, and lowered barriers to access for low income students. The attainment of these elements would be combined with the number of veteran students and Pell grantees who enroll and graduate without debt to create a formula for federal funding.

David Baime, Senior Vice President for Government Relations and Research at the American Association of Community Colleges, suggested states pursue these requirements by focusing on dual enrollment of high school students in community college remedial courses and greater cooperation between four-year institutions and community colleges so that transferring credits is more attainable. Ted Mitchell, Under Secretary of Education, called for a federal database that would show the progress of students in postsecondary education and their gainful employment after graduating as a way to measure the success of institutions and allow potential students to make more informed decisions regarding their own education.

More information on the event is available online: http://ampr.gs/1sG9Dyq

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