



# Legislative and Regulatory Issues From Washington PacWest SFS Conference

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- The views and opinions expressed by the Presenter are those of the Presenter and not necessarily representative of the Coalition of Higher Education Assistance Organizations or Bose Public Affairs Group.
- This information is not intended as legal advice and may not be used as legal advice. Please rely on the advice of your own legal counsel.
- Every effort has been made to assure this information is up-to-date but circumstances constantly change.



Congress

# The 116<sup>th</sup> Congress



## House

- 234 Democrats
- 198 Republicans
- 3 Vacancies
  - Majority always rules
  - Controls agenda including hearings

## Senate

- 53 Republicans
- 47 Democrats
- Majority controls agenda, hearings, BUT
  - 60 votes needed to move most legislation
  - Judges, appointments need just 50
  - New rules limits debate

# House: Impact Election

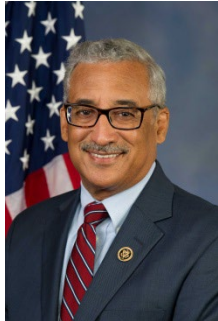


- Some highlights:
  - Democrats won big in suburban areas and flipped seats in unlikely places like Iowa, Kansas, Oklahoma, South Carolina, & Utah
  - 103 women elected to Congress – 90 are Ds & 13 are Rs
  - First return of a Speaker (Pelosi) since Sam Rayburn in 1950s

# House Remakes Committee



## • Education & ~~Workforce~~ Labor Committee:



Bobby Scott (D-VA)  
Chairman



Virginia Foxx (R-NC)  
Ranking Member

## Subcommittee on Higher Education and Workforce Training:

- Susan Davis (D-CA) is Chair
- Brett Guthrie (R-KY) is Ranking Member
- AIM Higher Act instead of the PROSPER Act
- Oversight, Oversight, Oversight

28 Ds and 22 Rs  
16 new Democrats  
10 new Republicans

## Lots of Exiting Members:

- Luke Messer (R-IN)
- Todd Rokita (R-IN)
- Lou Barletta (R-PA)
- Tom Garrett (R-VA)
- Jason Lewis (R-MN)
- Karen Handel (R-GA)
- Jared Polis (D-CO)
- Carole Shea Porter (D-NH)
- Chrissy Houlahan (D-PA)

# New Ds on Ed & L

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**The new Democratic Members of the Committee on Education and Labor are:**

- Congressman Joaquin Castro (TX-20)
- Congressman Josh Harder (CA-10)
- Congresswoman Jahana Hayes (CT-05)
- Congresswoman Pramila Jayapal (WA-07)
- Congresswoman Susie Lee (NV-03)
- Congressman Andy Levin (MI-09)
- Congresswoman Lucy McBath (GA-06)
- Congressman Joe Morelle (NY-25)
- Congresswoman Ilhan Omar (MN-05)
- Congresswoman Kim Schrier (WA-08)
- Congresswoman Donna Shalala (FL-27)
- Congresswoman Haley Stevens (MI-11)
- Congressman David Trone (MD-06)
- Congresswoman Lauren Underwood (IL-14)
- Congresswoman Susan Wild (PA-07)

# Rs Ed & Labor Members



## **New Republican Members:**

- Rep. Mark Walker, North Carolina
- Rep. James Comer, Kentucky
- Rep. Ben Cline, Virginia
- Rep. Russ Fulcher, Idaho
- Rep. Van Taylor, Texas
- Rep. Steve Watkins, Kansas
- Rep. Ron Wright, Texas
- Rep. Dan Meuser, Pennsylvania
- Rep. William Timmons, South Carolina
- Rep. Dusty Johnson, South Dakota



# Senate: Pretty Much the Same

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- Republicans gained seats but Democrats were defending many more
- 53 Republicans – Lost 2 Seats, Flipped 4 Seats
- 47 Democrats – Lost 4 Seats, Flipped 2 Seats
  - States that flipped: Florida, Missouri, Indiana, North Dakota, Nevada, & Arizona
- Democrats lost in places where President Trump was popular but managed to blunt their losses by winning in West Virginia, Wisconsin
- More breathing room for nominations

# Key People In Senate

Senate HELP Committee, 12 Republicans, 11 Democrats

(Health, Education, Labor and Pensions) Controls Higher Education Act



**Lamar Alexander (R-TN)**  
Chairman



**Patty Murray (D-WA)**  
Ranking Democrat



## Key HELPerS:

- Sanders (I-VT)
- Collins (R-ME)
- Baldwin (D-WI)
- Burr (R-NC)
- Casey (D-PA)
- Isakson (R-GA)
- Enzi (R-WY)
- Kaine (D-VA)

## New:

- Doug Jones (D-AL)
- Tina Smith (D-MN)
- Mike Braun (R-IN)
- Mitt Romney (R-UT)
- Jackie Rosen (D-NV)
- Maggie Hassan (D-NH)

# Budget and Appropriations



- There are 12 separate appropriations bills
  - Budget year Oct 1<sup>st</sup> – Sept 30th
  
- Process starts in spring with President's budget request.
  - Issued March 11, 2019
- House Appropriations Committee moving quickly
- Senate moving slowly
- End game: September, hopefully before start of 2020 fiscal year Oct. 1, 2019

# President's FY 2020 Requests



- Maximum Pell Grant award of \$6,195
- Eliminate SEOG program
- Cut Work Study from \$1.1 billion to \$500 million
- Proposes a consolidation of the 5 income-driven loan repayment plans into one plan that would set monthly payments at 12.5% of discretionary spending and eliminate standard repayment cap.

# HEA Reauthorization

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- HEA last authorized in 2008
- In 115<sup>th</sup> Congress both parties introduced a bill in the House. Senate did not.
  - PROSPER Act H.R. 4508 – House Rep. bill
  - Aim Higher Act H.R. 6543 – House Dem. Bill
- Senate: FAST Act by Chairman Alexander introduced in 2015: basis for his current plans
- Negotiations underway in Senate, hearings in House. Reauthorization in 2019????



# House R's: PROSPER Act

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- *Promoting Real Opportunity, Success, and Prosperity through Education Reform Act*
  - No Perkins or SEOG
  - Major changes to loans
    - No Grad Plus
    - Parent Plus capped
    - Unsubsidized Direct increased loan limits
    - Eliminate subsidized Direct
    - Eliminate PSLF

# House D's: Aim Higher Act

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- SEOG remains – base guarantee phased out.
- Repeal loan origination fees and reduce repayment options to two
- Expand PSFL job definition
- Keep subsidized Direct
- Create Federal Direct Perkins Loans
  - Same provisions as Direct
  - 6 billion in funding

# Perkins Access, Retention and Completion (ARC) Loan



- Revised Perkins-style plan extended to more schools with better funding mechanism
- Terms like legacy Perkins: 5%, no in-school interest, public service forgiveness
- Include Grad students
- Include more schools
- Campus-based awards, servicing
- Funding limited nationally and per institution





# COHEAO Survey

## Campus-based Funding - Impact on Retention & Completion

Help COHEAO collect pertinent information to share with Congress about the impact of the expiration of the Perkins Program and to gauge support for a new/modified Perkins Program.

Please contribute to this process by completing a very brief survey! Click the link below or scan the QR Code to participate. Responses are confidential.

<https://www.surveymonkey.com/r/BNBMF6F>



# Administrative Cost Allowance



- June 30, 2018 was last date for charging ACA to the Perkins fund
- ACA is the key to sustaining quality campus-based servicing and institutions should be compensated.
- COHEAO advocated for a change in the law and Congress passed a spending bill that provides ED with the authority to pay schools that service their Perkins loans; House bill for FY2020 has same wording.
- *“...funds appropriated under this heading **may be available** for payments for student loan servicing to an institution of higher education that services outstanding Federal Perkins Loans under part E of title IV of the Higher Education Act of 1965...”*

# Cancellation Reimbursement Efforts



- COHEAO, NASFAA, & ACE are advocating on behalf of schools for ED to pay back the institutional share of unreimbursed cancellations - mandated in the Perkins statute.
- ED acknowledged its obligation to reimburse schools – but claim they have been unable to do so because of the lack of Congressional appropriations.
- NASFAA & ACE wrote to ED urging them to reimburse institutions for cancelled Perkins Loans
  - The failure of Congress to appropriate funds does not absolve ED from meeting its statutory obligation .
  - Suggested that ED delay the notification to schools regarding the return of FCC until this issue is resolved
  - ED has delayed collection of federal share of Perkins which considering reimbursing schools for cancellations

# ACA and Cancellation Reimbursement



- What you can do to help advocate for the ACA and cancellation reimbursement actions:
  - Calculate what is owed to your school using the FISAP
  - Educate your government relations and upper administration personnel
  - In campus outreach to Congressional Members – state your support and appreciation
  - Share this information with colleagues

# 7 Reasons to Continue Servicing



1. Recover your institution's investment (ICC).
2. Utilize the ICC to fund an institutional loan program or provide additional aid to students.
3. Foster the borrower/alumni relationship.
4. Convert as many loans to paid-in-full as possible (fewer loans to assign in the future = less work and less liability).
5. Clean up and/or reconcile your Perkins portfolio first
6. Rejected loans in liquidation result in a cost to the campus – must buy the loan if you can't resolve but rejected loans in an assignment do not result in a cost – you can continue to service the loan.
7. Jobs retained.



## Perkins Notices From ED



# Perkins Related Guidance on IFAP



- **Electronic Announcements**

- 10/06/17: DCL GEN-17-10: Wind-Down Instructions
- 07/11/18 Distribution of Assets
- 10/04/18 Administrative Responsibilities and Reporting Requirements
- 10/06/18 Perkins Cash on Hand due 12-04-18
- 12/20/18 Perkins Awarded or Disbursed After Expiration of the Program
- 01/11/19 Revised Perkins Assignment Form Available
- 03/05/19 FSA Perkins Assessments: Cancellation, Due Diligence, Forbearance & Deferment
- 04/29/2019 Updated DRAFT FISAP Guide released
- 05/03/2019 FSA Releases updated Perkins Loan Assignment and Liquidation Guide

# FISAP Guide Update



- Part III, Section B, Fields 1–8
  - Fields 1–8 have been updated to no longer allow for data entry on new loans due to the expiration of the authority to award new Federal Perkins Loans (Perkins Loans).
- Part III, Section B, Fields 12 & 13
  - Fields 12 and 13 have been added to collect data on permissible servicing costs and cancellation reimbursement, if applicable, respectively.
- Part VI, Section A, Fields 1a–26a & 1b–26b
  - Federal Perkins Loan Recipients (column a) and amount of funds (column b) fields have been updated to no longer allow for data entry due to the expiration of the authority to award new Perkins Loans.



## DCL GEN-17-10: Perkins Wind-Down Instructions



- Institutions are not required to assign their Perkins loans or liquidate their portfolio.
- Institutions may continue servicing their Perkins Loans until all loans have been paid-in-full, retired or assigned
- Institutions may liquidate at any time and may assign defaulted or non-defaulted Perkins loans at any time.
- The institution loses all rights to assigned loans and will not receive any share of future funds collected.
- Institutions that continue servicing their Perkins Loan portfolios must continue to service in accordance with the regulations and report the portfolio on the FISAP.
- No ACA can be charged to Perkins after June 30, 2018.

# July 11, 2018: Distribution of Assets



- The Distribution of Assets process replaces the previous excess cash process
- ED will require a capital distribution from institutions' Perkins funds **annually**
- Institutions will receive a notification with the amount of federal and institutional share that must be returned/removed and the deadline for doing so
- Notification to schools was expected in December 2018 – delayed due to request for reimbursement of institutional share of cancellation monies owed



# July 11, 2018: Distribution of Assets



- Institutions must return the federal share through G5 (likely within 30 days)
- Institutional share may be used for any purpose (note that your ICC cannot be withdrawn prior to the notification from ED)
- Schools may ask for an adjustment if the return of the federal share creates a shortfall (related to costs charged to the fund)
- Proportional share calculation comes from most recent Fisap filed

# Distribution of Assets Proportional Share Calculation



1. **Cash on Hand** in the Perkins Fund (FISAP, Part III, Sec A, Line 1.1)
2. **Proportional Share Percentage:**

a. **Total Net FCC** (Federal Capital Contribution)  
Total FCC minus Repayments of FCC to the Department

b. **Total Net ICC** (Institutional Capital Contribution)  
Total ICC minus Repayments of ICC to the institution

c. **Federal Share Percentage** =  $\frac{\text{Net FCC}}{\text{Net FCC} + \text{Net ICC}}$

d. **Institutional Share Percentage** =  $\frac{\text{Net ICC}}{\text{Net FCC} + \text{Net ICC}}$

**= 100%**

3. **Federal Share to be Returned to the Department** is the total Cash on Hand multiplied by the Federal Share Percentage
4. **Institutional Share to Be Returned to the Institution** is the total Cash on Hand multiplied by the Institutional Share Percentage

# October 4, 2018: Perkins Administrative Responsibilities & Reporting Requirements



- Schools who service their Perkins portfolio **must** service the loans according to the program rules:
  - **Due Diligence** (34 CFR 674.41(b))
  - Use of contractors for billing and collection (34 CFR 674.48)
  - Collection procedures (34 CFR 674.45)
  - Ceasing Collections (34 CFR 674.47)
  - **NSLDS** (34 CFR 674.16(j))
    - Report timely and accurately
    - Include enrollment data for each loan
    - **Ensure borrower loan information is accurate and current**; especially for Perkins assignment purposes
    - Request a reconciliation report from NSLDS - reconcile any discrepancies



# January 11, 2019: Revised Perkins Assignment Form Now Available



- Revised form replaces the previous version that expired 12/31/18
- New expiration date 12/31/21
- Date of First Disbursement was moved from the Institutional Certification page to the Borrower and Loan Information Page resulting in the renumbering of data fields
- Schools and servicers should begin using the new form immediately; however, the Department will continue to accept the previous form through 6/30/2019



## More Updates

# Department of ED -- FSA



- Gen. Mark Brown is New Chief Operating Officer – key player for student aid programs.
  - Retired Air Force Major General
- Dr. Wayne Johnson leads FSA Office of Strategy and Transformation
- Next Gen: Next Generation Processing and Servicing Environment under construction
  - Will transform direct loan systems
  - Servicers taking steps to delay it or force major changes
  - RFP for pilot re-released
  - FAFSA app released, a step



# Higher Education Policy People



- Diane Auer Jones: Acting Under Secretary
- Lynn Mahaffie: Deputy assistant secretary (career staff)
- Brian Smith: Lead career staff on campus based issues
- John Huston: Special Assistant to Jones – former Messer LD
- Jeff Appel: FSA liaison with OPE – key person now handling the admissions scandal
- Cynthia Hammond – working on Perkins servicing issue
- Daniel J. Miller: Deputy Assistant Secretary for Management and Planning

# Defense to Repayment Rules



- Defense to Repayment – New Regs to come, but 2016 Obama rules now taking effect on defenses, “financial responsibility.”
  - Defenses honored for loans first disbursed on or after 7/1/19
    - Based on judgements against institutions, breaches of contract, substantial misrepresentation.
  - Campuses must have disclosed by May 14, 2019 all Direct loan or “educational services” related lawsuits filed against them since July 1, 2017 that are still active.
  - Another issue: reporting of low composite scores required – schools must disclose “low” scores even though score formulas are outdated.
- No pre-dispute arbitration clauses; class action bans; internal dispute process requirements.
- ED Guidance issued March 15, 2019:  
<https://ifap.ed.gov/eannouncements/030719GuidConcernProv2016BorrowerDefensetoRypmtRegs.html>

# CFPB Collection Rule Revisions



- 553-page Proposed Regs Revising FDCPA Issued May 7, Comments due May 2020.
- Many Complex issues covered...
  - Flow chart shows ow to make electronic disclosures
  - Safe harbors for collectors who unintentionally communicate with unauthorized third party
  - Can't use emails collector should know are employer's
  - Can't call more than 7 times in a week about a debt, with one conversation (safe harbor also)
  - Time barred debt: can't threaten to sue over it
- <https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/debt-collection-practices-regulation-f/>

# TCPA: FCC Debates What to Do



- Considering revisions to FCC order that set very strict limits on calls to cell phones using predictive dialers.
- New majority, but no changes so far
  - One call allowed to re-assigned number, then lawsuits
  - Political pressure over “robocalls” from spammers
- New bill, Stopping Bad Robocalls Act, in Congress goes after fraud, illegal spoofing, but others would be caught in the net making calls to consumers
- Conflicting court decisions leave great uncertainty – Appeals Court decision struck exemption from TCPA consent requirement for collection of federal debt
- Definition of Autodialer system unclear

# TCPA Regulatory Issues



- ACA International Decision on autodialers now in doubt
- Pending FCC Proceedings Focus on Three Key Issues
- What constitutes an Autodialer: How to more narrowly interpret “capacity”? What basic functions are required to be considered an Autodialer?
- Reassigned Numbers: How to define “called party”?
- How can consumers revoke consent?

# Cyber Security

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- Entire section devoted to Cyber Security on IFAP – found under information pages.
  - Now part of the single audit
  - “Legal obligation to protect student information”
  - Refer to Dear Colleague Letter GEN-16-12
- GLBA to become part of annual audit

# HEA, TCPA, FDCPA, DTR, GLBA



- So many initials, so little time
- Several new regulatory initiatives coming:
  - NPRM from ED on negotiated rulemaking on accreditation, state licensing of distance education, Teach Grants, faith-based institutions
- Final revised Title IX rule changes
- Keep a Scorecard!

# Become a Member of COHEAO



- Membership Benefits:
  - 3 FREE Webinars per year
  - Regulatory & Legislative Updates – Torch & Sparks
  - Lead organization on Perkins advocacy
  - A LOT More than just Perkins:
    - Advocacy and training on legal and compliance issues that impact you and your institution directly
    - TCPA & CFPB Compliance
    - Student Tuition and Accounts Receivable (STAR),
    - **Institutional Loan Task Force**
    - Financial Wellness – Newsletters, Training, Whitepapers
    - A Voice on Capitol Hill – Advocacy and Relationships
  - Institutional membership rates are very affordable: \$210 - \$595 based on FTE (**10% discount when you join within 30 days of this presentation**).





# **COHEAO Fall Workshop**

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## **Affordability, Payment Options & Funding Trends**

This one-day workshop will dive into key topics that impact campus funding such as Trends in Accounts Receivable, Prior Term Loans, Developing and Managing Institutional Loans, Innovations in Tuition Payment Plans and Best Practices in Third-Party Collections.

**Tuesday, Sept 17<sup>th</sup> 2019**

8:30 am – 4:00 pm

**Wellesley College**

Wellesley, MA



For more information go to **COHEAO.Org** and select Events & Webinars

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# Any Questions???

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