



April 1, 2019

The Honorable Lamar Alexander  
United States Senate  
Washington, DC 20510

The Honorable Bobby Scott  
United States House of Representatives  
Washington, DC 20515

The Honorable Patty Murray  
United States Senate  
Washington, DC 20510

The Honorable Virginia Foxx  
United States House of Representatives  
Washington, DC 20515

Dear Chairmen and Ranking Members,

We write today to urge you to use the upcoming reauthorization of the Higher Education Act (HEA) to protect student borrowers of color and students from underserved communities. The National Student Legal Defense Network is a nonpartisan, nonprofit organization with a mission of advancing students' rights to educational opportunity and ensuring that higher education provides a launching point for economic mobility. The Education Trust is a nonprofit organization dedicated to closing long-standing gaps in opportunity and achievement that separate low-income students and students of color from their peers. Together, we ask members of Congress to pursue equitable policy change that serves the best interests of students who encounter systemic barriers in access, completion, and repayment of loans as part of their pursuit of higher education.

The challenges facing students are great and the opportunity to significantly reform the Higher Education Act comes along rarely. Therefore, it is vital that any HEA reauthorization is bold and well-conceived. There is an abundance of promising policy ideas being discussed in Congress to make college more affordable and accessible and to better tailor the higher education sector to America's changing student body — a group that is increasingly made up of low-income students, students of color, working adults, and other new entrants to the higher education system. We support many of those ideas. However, given the high stakes of this process and the increasingly diverse population of students pursuing postsecondary opportunities, Congress must approach any reauthorization with a commitment to first do no harm. For this reason, any reauthorization must include, at a minimum, the three priorities laid out in this letter. The failure to include these priorities will undeniably harm the most vulnerable students, and members of Congress should not support such a bill.

Any reauthorization of the Higher Education Act must, at minimum, include the following provisions: 1) closing the "90/10" loophole regarding veterans and military tuition benefits, and reinstating the 15 percent non-federal funds minimum for for-profit colleges; 2) codify the debt-to-earnings metrics of the gainful employment regulations; and 3) allowing students to enforce their rights under HEA by holding schools and servicers accountable when the Department of Education fails to act.

These measures would protect all students, but would have a pronounced impact on students of color and students from low-income families.

## **1. Reinstating the 85/15 Rule and Closing the Loophole to Protect Veterans**

Veterans and servicemembers receive tuition benefits under the GI Bill and other programs as part of our nation's effort to repay the sacrifice and bravery of our armed forces. Many veterans on the GI Bill are the first in their family to attend college, and all of them are seeking a better life through higher education. It is particularly disturbing that bad actors in the for-profit education industry are incentivized to target veterans because of a loophole that Congress can, and must, close.

In 1992, Congress prohibited for-profit schools from deriving more than 85 percent of their revenue from federal student aid, in an effort to exclude low-quality schools that could not attract revenue from other sources. Unfortunately, Congress raised the cap in 1998 to 90 percent. Unwilling to settle for nine out of every 10 dollars from taxpayers, the industry successfully argued that the 90/10 language does not apply to GI Bill benefits or Department of Defense Tuition Assistance funds. As a result, many of the worst for-profit colleges have a perverse incentive to aggressively recruit servicemembers and veterans, who then frequently end up with incomplete degrees, unaffordable debts, and squandered opportunities. But the HEA should not make American heroes a target for bad actors. Closing this loophole is a simple step to safeguard the men and women who protect our nation.

## **2. Codify the Debt-to-Earnings Metrics of the Gainful Employment Regulations**

Career and for-profit colleges that take federal funds must prepare students for career success. In fact, many students take out federal loans and enroll in career college programs to prepare for jobs that will improve their economic circumstances. Rightly or wrongly, the participation of the federal government often serves as a seal of approval that leads students to assume a level of quality in a given program. But in far too many for-profit programs, that promise is empty; the debt is real but career and economic advancement remains out of reach with a degree that is low in quality and value. In fact, a recent Department of Education study found that "nearly a third of all for-profit certificate students graduated from programs where the typical graduate earned less than what a full-time minimum wage worker earns in a year."

To prevent precisely that kind of outcome, the Higher Education Act says career-oriented programs must lead to "gainful employment" in order to be eligible for federal student aid funds. Congress has never defined that term. The Obama administration clarified the statute with regulations, but those rules were held up for years in court, and the current administration is attempting to dismantle them through rulemaking and is refusing to implement them. Although the administration's current efforts have thus far been unsuccessful, any HEA reauthorization must codify the gainful employment regulations promulgated under the Obama administration for students and taxpayers by withholding federal funds from career programs whose graduates, writ large, do not earn enough to repay their student loans.

## **3. Allowing Students to Enforce Their Rights Under the HEA, Holding Schools and Servicers Accountable when the Department of Education Fails to Act**

The Higher Education Act contains important consumer protection standards for colleges, universities, loan servicers, and other institutions; but laws are only as effective as their enforcement. When students and borrowers are harmed, they often find the courtroom doors closed or virtually impenetrable. Only the Department of Education has the power to take action against schools and loan servicers under the HEA, and countless student borrowers are denied justice every year.

Students pay the price when they are sold an education that does not match up to a recruiter's promises. But many students harmed by a college's lies or misconduct have no recourse beyond hoping the Department of Education takes action on their behalf.

There are countless provisions in the Higher Education Act and its implementing regulations that currently depend on enforcement by the Department of Education and that may not be clearly covered by state laws. For example, institutions are required to disclose certain information regarding completion rates, graduation rates, retention rates, and job placement rates. Although state consumer protection laws may be available to assist borrowers who were affirmatively misled by an institution, those laws are not as freely available to remedy harms caused when schools simply hide information that would be helpful to students. Moreover, providing a private right of action under the HEA would permit students to bring claims against predatory schools without having to show actual reliance, a mandatory element of many state UDAAP (Unfair, Deceptive, or Abusive Acts or Practices) statutes, but not the Department's regulations.

Giving states and individuals a right of action under federal financial regulations is not a new idea. Under section 1042(a) of the Dodd-Frank Act, 12 U.S.C § 5552, for example, a state attorney general or state regulator has the power to bring a civil action to enforce the Act and its implementing regulations, in addition to the Consumer Financial Protection Bureau. The Higher Education Act can give student borrowers the same assurance.

Thank you for your efforts to improve the nation's higher education system. We implore you to treat any reauthorization as a chance to make a real difference in the future of low-income students and students of color. We therefore hope that you seize this opportunity to reach a bipartisan agreement that addresses these challenges head-on. At National Student Legal Defense Network and The Education Trust, we stand ready and eager to assist you as you work through the reauthorization process that will set the foundation for higher education policy for years to come.

Sincerely,



John B. King, Jr.  
President & CEO  
The Education Trust



Aaron Ament  
President  
National Student Legal Defense Network