

Legislative & Regulatory Update

Forum for Excellence in Career and Technical Education

Middle States Association Commission on
Elementary and Secondary Schools

March 3, 2020

Speaker Introduction

- Nicholas Kent
 - Senior Vice President of Policy and Research, CECU
- Prior Experience
 - Director of Policy, Planning and Research at Government of District of Columbia Office of the State Superintendent of Education
 - Vice President of Legislative and Regulatory Affairs for system of 53 postsecondary institutions in 17 states, as well as online
 - Professional staff member for accreditation agency recognized by ED

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116th Congress

Congressional Profile*

Partisan Balance

Senate Partisan Balance	
Party	116th Congress
Democrat	45
Republican	53
Independent	2
Total	100

House Partisan Balance	
Party	116th Congress
Democrat	232
Republican	197
Independent	1
Vacancies	5
Total	435

*As of March 3, 2020

House Hearings in 2019

March 12

**“Oversight of For-Profit Colleges: Protecting Students and Taxpayer Dollars
from Predatory Practices”**

House Appropriations Subcommittee on Labor/HHS/Education

March 13

**“The Cost of College:
Student Centered Reforms to Bring Higher Education Within Reach”**

Full Committee on Education and Labor

April 3

**“Strengthening Accountability in Higher Education to
Better Serve Students and Taxpayers”**

House Education Subcommittee on Higher Education and Workforce Investment

April 10

“Examining the Policies and Priorities of the U.S. Department of Education”

Full Committee on Education and Labor

House Hearings in 2019 Cont'd

April 24

“Protecting those who Protect Us: Ensuring the Success of our Student Veterans”

Joint Field Hearing of the House Education Subcommittee on Higher Education and the House Committee on Veterans Affairs

May 9

“The Cost of Non-Completion: Improving Student Outcomes in Higher Education”

House Education Subcommittee on Higher Education and Workforce Investment

May 22

“Examining For-profit College Oversight and Student Debt”

Committee on Oversight and Reform Subcommittee on Economic and Consumer Policy

June 19

“Examining Mid-Semester School Closures Impact on Student Veterans Mission Readiness”

House Veterans Affairs Committee

July 17

“Legislative Hearing on Pending Legislation”

Committee on Veterans' Affairs, Subcommittee on Economic Opportunity

Introduced Legislation in 2019

Feb. 28 - *Sponsor: Sen. Richard Durbin (D-IL)*
“The Court Legal Access and Student Support Act of 2019”
(CLASS Act of 2019—Senate Bill [S. 608](#) and House Bill [H.R. 1430](#))

March 14 - *Sponsor: Sen. Tim Kaine (D-VA)*
“The Jumpstart Our Businesses by Supporting Students Act of 2019”
(JOBS Act of 2019—Senate Bill [S. 839](#) and House Bill [H.R. 3497](#))

March 26 - *Sponsor: Sen. Margaret Wood Hassan (D-NH)*
“Preventing Risky Operations from Threatening the Education and Career Trajectories of Students Act of 2019”
(PROTECT Students Act—Senate Bill [S. 867](#) and House Bill [H.R. 3512](#))

May 17 - *Sponsor: Rep. Katie Porter (D-CA)*
“CFPB Student Loan Integrity and Transparency Act of 2019”
(House Bill [H.R. 2833](#) and Senate Bill [S. 720](#))

June 5 - *Sponsor: Rep. Maxine Waters (D-CA)*
“The For-Profit Fraud Act”
(House Bill [H.R. 3112](#))

Introduced Legislation in 2019 Cont'd

June 11 - *Sponsor: Sen. Richard Durbin (D-IL)*
"The Protecting Our Students and Taxpayers Act of 2019"
(POST Act—Senate Bill [S. 1775](#) and House Bill [H.R. 3179](#))

June 19 - *Sponsor: Rep. Donna Shalala (D-FL)*
"The Defending All Veterans In Education Act"
(DAVIE Act—House Bill [H.R. 3369](#))

June 25 - *Sponsor: Rep. Mark Takano (D-CA)*
"The Protections and Regulation for Our Students Act"
(PRO Students Act—House Bill [H.R. 3487](#))

Aug. 23 - *Sponsor: Rep. Mark Takano (D-CA)*
"The Student and Taxpayer Protection Act"
(House Bill [H.R. 4206](#))

Sept. 25 - *Sponsor: Rep. Donna Shalala (D-FL)*
"The Protecting Student Aid Act of 2019"
(PSA Act of 2019—House Bill H.R. [4497](#))

Introduced Legislation in 2019 Cont'd

Oct. 15 - *Sponsor: Rep. Robert "Bobby" Scott (D-VA)*
"The College Affordability Act"
(House Bill [H.R. 4674](#))

Oct. 17 - *Sponsor: Rep. Pramila Jayapal (D-WA)*
"The Students Not Profits Act of 2019"
(House Bill [H.R. 4724](#))

Nov. 14 - *Sponsor: Sen. Thomas Carper (D-DE)*
"The Protect Veteran's Education and Taxpayer Spending Act of 2019"
(Protect VETS Act—Senate Bill [S. 2857](#))

Nov. 21 - *Sponsor: Sen. Jeff Merkley (D-OR)*
"The Protecting Students from Worthless Degrees Act"
(Senate Bill [S. 2925](#))

Dec. 19 - *Sponsor: Sen. Michael Enzi (R-WY)*
"90/10 Accountability for All Act"
(Senate Bill S. [3114](#))

Introduced Legislation in 2020

Feb. 6 - *Sponsor: Rep. Lori Trahan (D-MA)*
"Accreditation Reform Act of 2020"
(House Bill [H.R. 5768](#))

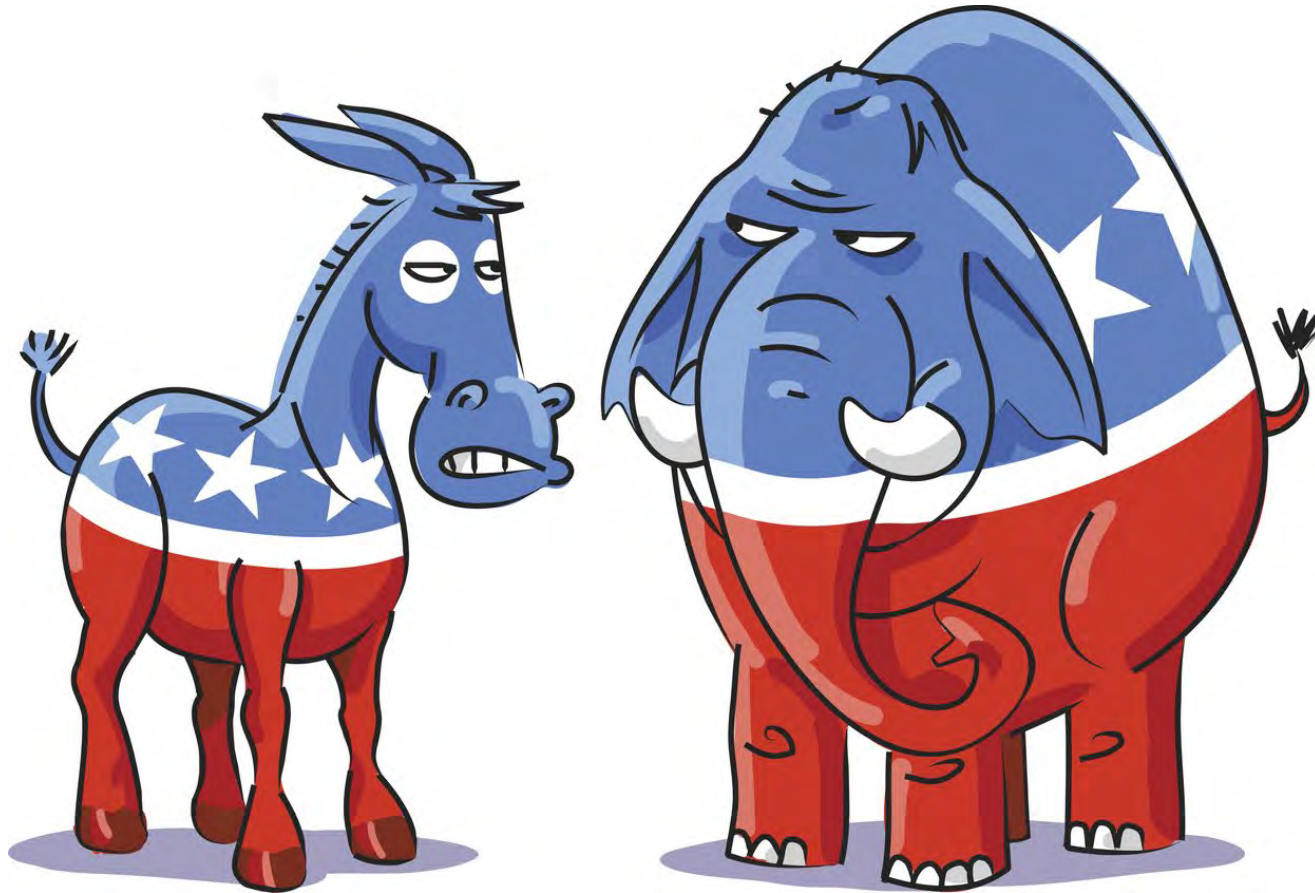
HEA

- The Higher Education Act is the **legal framework** of much of America's higher education system
- Purpose is to “strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education”
- Reauthorized eight times since its inception in 1965
- **Last reauthorized in 2008**
 - Only reauthorized twice in the last two decades

President Trump's Proposals

- Reorient the accreditation process to focus on student outcomes
- Increase innovation in the education marketplace
- Better align education to the needs of today's workforce
- Increase institutional accountability
- Accelerate program completion
- Encourage responsible borrowing
- Simplify student aid
- Give prospective students more meaningful and useful information about schools and programs

HEA Reauthorization Stumbling Blocks



A map of the United States with red pushpins indicating the locations of the 15 states that have enacted or plan to enact laws restricting the use of artificial intelligence in employment decisions. The pushpins are located in the following states: California, Arizona, Nevada, New Mexico, Texas, Oklahoma, Kansas, Nebraska, Minnesota, Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.

Democrat Proposals



Mini-HEA

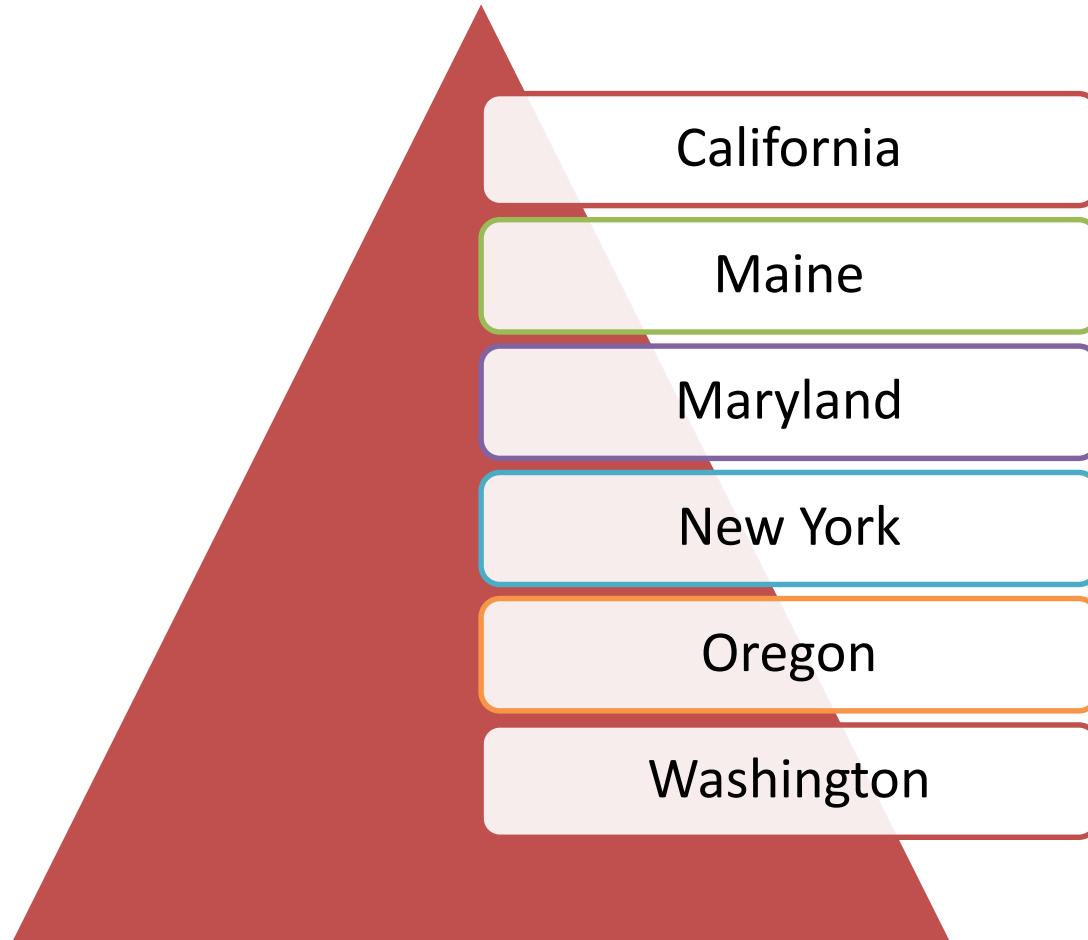
- Sen. Alexander (R-TN) introduced the Student Aid Improvement Act of 2019 ([S. 2557](#)) on Sept. 26, 2019
- Bill would **narrowly** update the HEA:
 - FAFSA simplification
 - Pell Grants for prisoners
 - Short-term Pell
 - Simplify aid letters (title, terminology, and format)
 - Increases the maximum Pell Grant award

FUTURE Act

- The Fostering Undergraduate Talent by Unlocking Resources for Education Act ([H.R. 5363](#)) was signed into law by President Trump on Dec. 19, 2019
- Allows direct data sharing between ED and IRS
 - Helps students and families apply for FSA
 - Helps borrowers using IDR plans
- Simplifies the FAFSA
- Reduces verification burden
- Provides some modest funding to the Pell Grant program
- Provides permanent funding for MSIs

State Actions

Select States Seeking Tighter Rules



Proposed State Legislation & Rules

Gainful Employment

90/10 Changes

Nonprofit
Conversions

Out-of-State
Registration

Incentive
Compensation

Student Tuition
Recovery Funds

Instructional
Spending

Federal Rules

Gainful Employment Rule

Final Gainful Employment Rule

- On June 28, 2019, ED released an unofficial NFR for the GE regulations
- The official NFR was published in the Federal Register on July 1, 2019
- Final regulations are effective on **July 1, 2020**
 - Secretary DeVos is allowing **early implementation** beginning on **July 1, 2019** at the discretion of each affected institution
 - CECU met with Trump administration officials months ago to advocate for this early implementation provision

GE Rescission

The July 1, 2019 NFR **rescinds** the 2014
GE regulations and adopts no new ones

Early Implementation

An institution that early implements the rescission of the 2014 GE regulations will **not be required to:**

Include the disclosure template, or a link thereto, in GE program promotional materials, and directly distribute the disclosure template to prospective students

(required starting July 1, 2019)

Post the GE Disclosure Template
(update must be posted by July 1, 2019)

Report GE Data for the 2018-19 award year to NSLDS
(due Oct. 1, 2019)

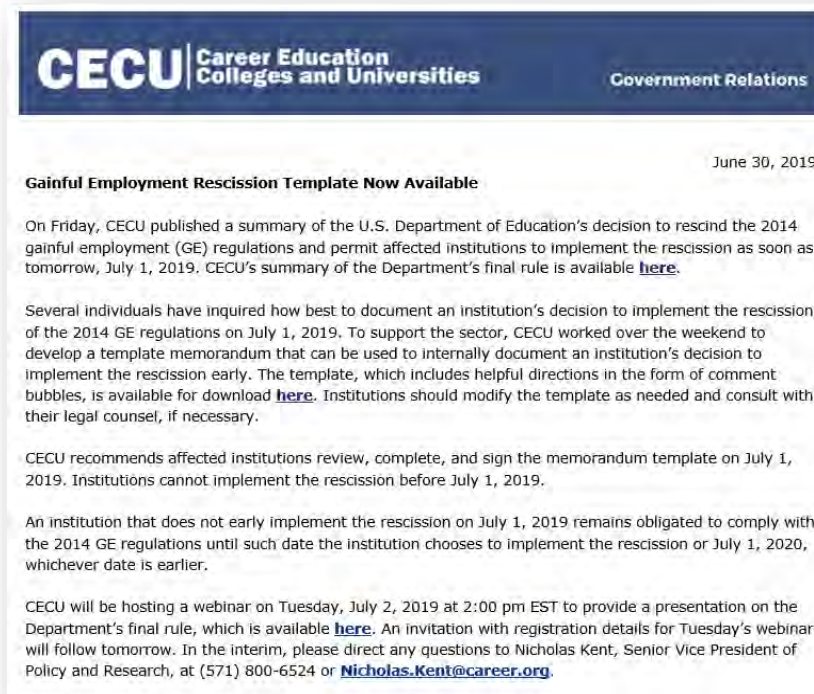
Comply with the certification requirements for GE programs

Electronic Announcement #122

- An institution that early implements the rescission of the 2014 GE regulations **must document** its early implementation internally
 - Not required to publish its documented decision or send documentation to ED unless requested
- Institutions that **do not early implement** the final rule are expected to comply with the 2014 GE regulations until the rescission becomes effective on **July 1, 2020**

Early Implementation Template

- On June 30, 2019, CECU published a **GE rescission template** institutions may use to document their early implementation internally



College Scorecard

- In the NFR, ED also explains best way to improve transparency and inform students is through a **market-based accountability system** using College Scorecard
- Preliminary plans for expanding the College Scorecard include adding **program-level** outcomes data for GE and non-GE programs at **all credential levels** so students can make more informed decisions
- Beginning with annual updates but more frequent updates a possibility

Institutional Accountability Rule (Borrower Defense to Repayment)

Final Institutional Accountability Rule

- ED published the [official NFR](#) on Institutional Accountability (Borrower Defense) on [September 23, 2019](#)
- Except for certain designated provisions related to financial responsibility, the new BDR-3 regulations are effective on [July 1, 2020](#)
- The Secretary is allowing early implementation, at the discretion of each institution, of Section 668.172(d) and Appendix A and Appendix B to Subpart L of Part 668

BDR Three Ways

BDR-1

- Applies to loans first disbursed prior to July 1, 2017

BDR-2

- Applies to loans first disbursed on or after July 1, 2017 and before July 1, 2020

BDR-3

- Applies to loans disbursed on or after July 1, 2020

Scope of BDR-3

The Borrower Defense Framework

Arbitration
Agreements
& Class
Action
Waivers

Financial
Responsibility
Triggers

Composite
Score
Calculations

Closed School
Discharge

False
Certification
Discharge

BDR-3 Resolution of Disapproval


- Congressional Review Act gives Congress the authority to **overturn rules** promulgated by federal agencies
- Must be passed by both the House and Senate and signed by the President
- House version ([H.J.Res.76](#)) passed on Jan. 16, 2020
- Senate version ([S.J. Res.56](#)) pending final vote
- White House [Statement of Administration Policy](#) indicates the President would likely veto

Accreditation and Innovation Rulemaking

Rulemaking Objectives

- Protect students and taxpayers
- Reduce and **simplify regulations** without creating intolerable risk
- Help stop credential inflation and ensure career mobility
- Better engage employers as pivotal players in workforce preparation
- Develop mechanisms to **adjust for risk** (e.g., expedited approvals)
- Honor institutional mission

Timeline

Accreditation and Innovation Rulemaking Chronology	
Date(s)	Description
5/9/2018	ED publishes Spring 2018 Agency Rule List
07/31/2018	ED announces intent to establish negotiated rulemaking committee and schedules three public hearings
09/13/2018	CECU provides public comments to ED in Sturtevant, WI advocating for regulatory changes
10/15/2018	ED announces committee topics and requests nominations for individual negotiators
12/19/2018	Secretary DeVos outlines Rethinking Higher Education principles at American Council on Education
12/26/2018	ED announces location of negotiations and subcommittee meetings
1/14-16/2019	Accreditation and Innovation Committee meets for Session 1 (1/14 cancelled due to inclement weather)
1/17-18/2019	Distance Learning & Educational Innovation, TEACH Grants, and Faith-Based Entities Subcommittees meet for Session 1
2/12-13/2019	Distance Learning & Educational Innovation, TEACH Grants, and Faith-Based Entities Subcommittees meet for Session 2
2/19-22/2019	Accreditation and Innovation Committee meets for Session 2 (2/20 cancelled due to inclement weather)
3/11-12/2019	Distance Learning & Educational Innovation, TEACH Grants, and Faith-Based Entities Subcommittees meet for Session 3
3/25-28/2019	Accreditation and Innovation Committee meets for Session 3
4/1-3/2019	Accreditation and Innovation Committee meets for Session 4 (added at the request of committee members)
5/4/2019	ED sends White House Office of Management and Budget draft proposed rule on accreditation and related matters
11/1/2019 	ED publishes final rule on accreditation and state authorization of distance and correspondence education

CECU Seeks Regulatory Reform

ILLUSTRATED WEEKLY NEWSPAPER

Est. 2019

Thursday, September 13, 2018

Price 2¢

Public Hearing Comments

Regulatory Triad

“Under this checks-and-balances system, **each of three important actors should play a distinct role** in protecting students and taxpayers... Unfortunately, in recent years, the lines of responsibility between these three actors have become **increasingly blurred** beyond the notion of shared responsibility... We advocate for a framework where there are **discrete roles and responsibilities for each actor of the triad.**”

Accreditation

“We cannot sustain the delivery of high-quality, and often highly-capitalized, programs providing the current occupational skills demanded of our career-focused students until we **break down the bureaucracy that currently prevents quick review and approval of new cutting-edge programs**... We must find ways for accreditors and the Department to provide **low-risk institutions approvals more expeditiously.**”

State

Authorization

“The concept that institutions offering online programs be required for FSA eligibility purposes to obtain authorization from each State in which the institution enrolls students is unnecessarily confusing and a waste of institutional resources better directed toward student learning... We believe **reciprocity agreements are just one appropriate mechanism for states to address a simplified and uniform commitment** to balancing quality and consumer protection.”



Bucket List

✓ Bucket 1 – Final rule published on November 1, 2019

- Accreditation
- State Authorization of Distance Education and Correspondence Education
- Byrd Scholarship

Bucket 2 – ED reviewing public comments on proposed rule

- TEACH Grants
- Eligibility of Faith-Based Entities (Religious Freedom)

Bucket 3 – Draft proposed rule currently at OMB

- Distance Education
- Competency-based Education

Parts Affected

- 34 Part 600 – Institutional eligibility under the Higher Education Act of 1965, as amended
- 34 Part 602 – The Secretary's recognition of accrediting agencies
- 34 Part 603 – Secretary's recognition procedures for State agencies
- 34 Part 654 – Robert C. Byrd honors scholarship program (Removed)
- 34 Part 668 – Student assistance general provisions
- 34 Part 674 – Federal Perkins loan program

Final Accreditation & State Auth. Rule

Provides accreditors greater autonomy and flexibility to facilitate responsiveness and promote innovation

Revises accreditor recognition criteria to focus on education quality and promote competition

Revises process for ED to recognize and review accreditors

Clarifies core oversight responsibilities by each entity in the regulatory triad

Establishes roles and responsibilities of institutions and accreditors in the teach-out process

Revises State authorization requirements for institutions offering distance education and correspondence courses

Recognizes an institution's legal authorization when exempt from State authorization based on its religious mission

Removes regulations for the Robert C. Byrd honors scholarship program

Effective Date

- Except for **certain** designated provisions, the new regulations are effective **July 1, 2020**
- The Secretary is allowing early implementation, at the **discretion** of each institution, or each agency, as appropriate:
 - 600.2 – Definitions
 - 600.9 – State authorization
 - 668.43 – Institutional Information
 - 668.50 – Institutional Disclosures for Distance or Correspondence Programs (**Removed**)

Title IX Rule

Title IX

- Part of the Education Amendments of 1972
- Secretary DeVos rescinded Obama-era guidance documents and engaged stakeholders
- ED published its proposed rule on Nov. 29, 2019
 - Clarifies and modifies Title IX regulatory requirements
 - Received over **124,000 public comments**
 - Sen. Murray (D-WA) is a vocal opponent
- Final rule currently at OMB for clearance

CECU Advocacy Efforts

Our Response

The Campaign to Protect Veterans Access



Veterans for Career Education



Membership Goal

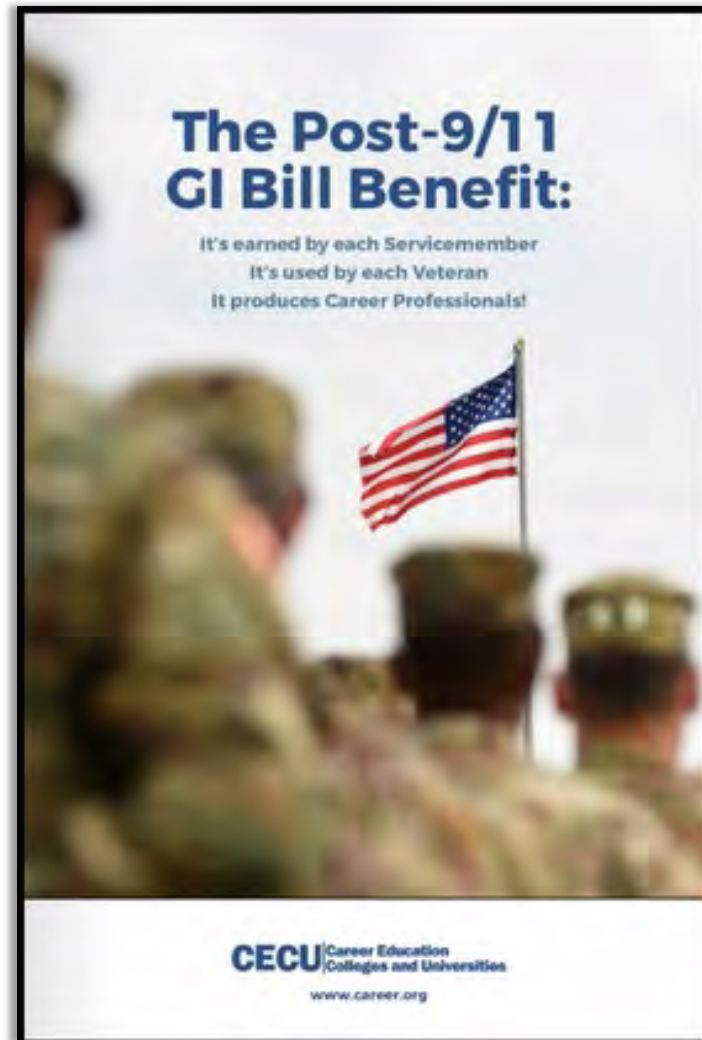
**2,500 members of VCE
by November 2020**



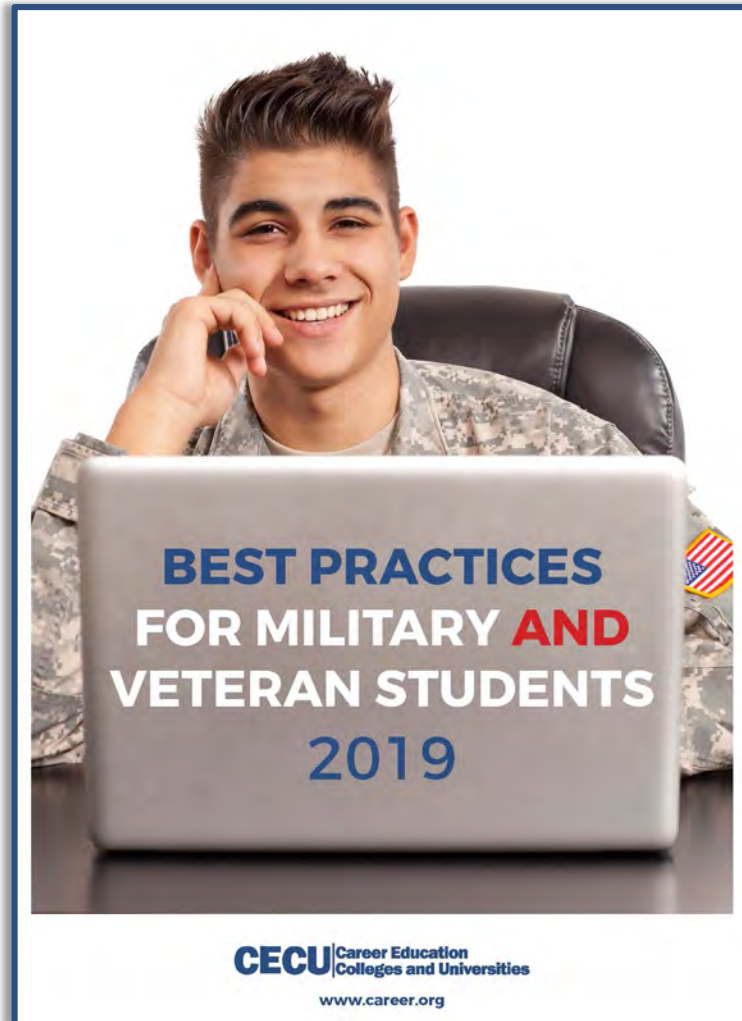


Over 42 rallies already held!

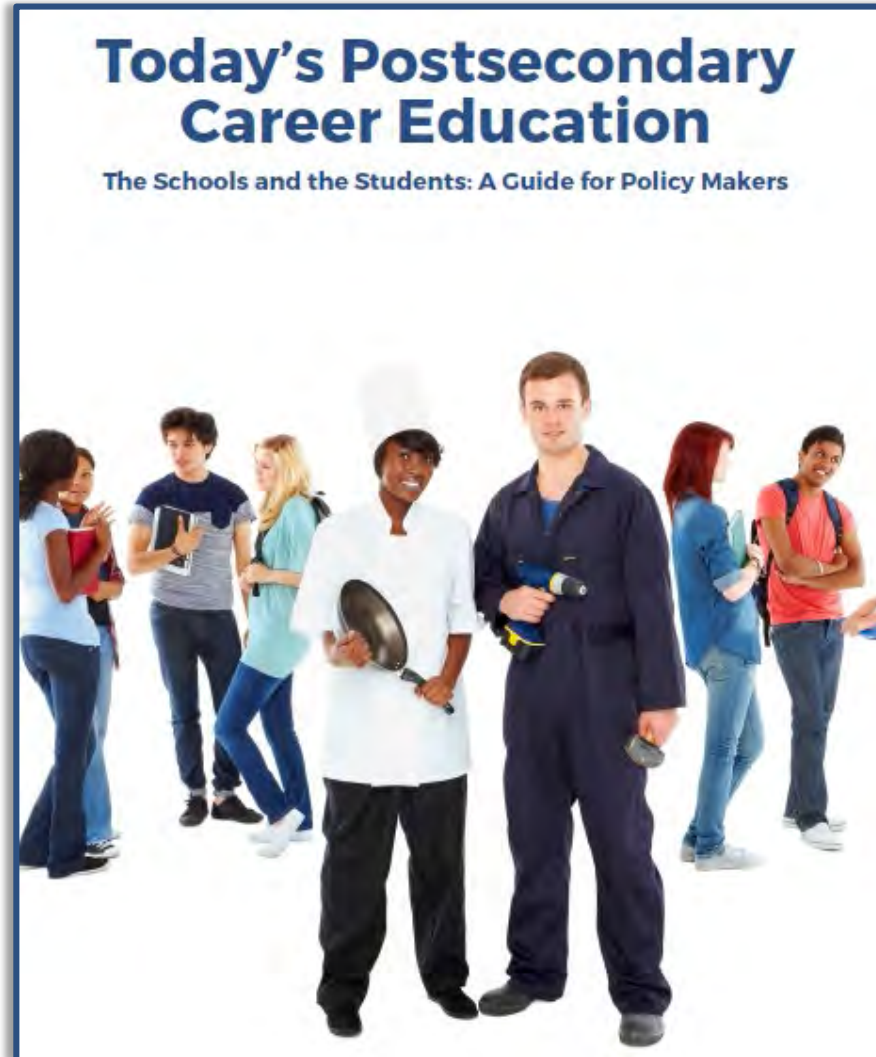
“The Post 9/11 GI Bill Benefit”



“Best Practices for Military and Veteran Students: 2019”



Release of “A Guide for Policy Makers”



Gallup Research

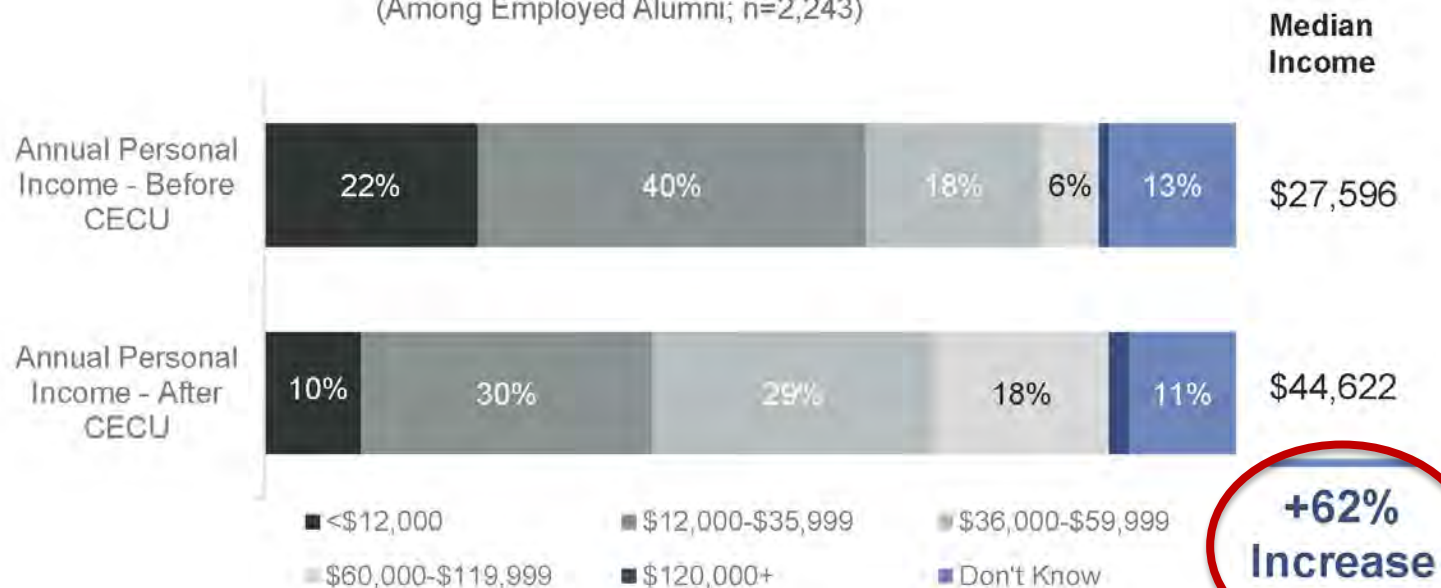


Gallup Research, page 5

Value of CECU Education in Alumni's Jobs

On average, CECU alumni are earning about **60% more in personal income** than before they attended a CECU institution. Alumni are also more likely to have a job related to their certificate or degree program than their peers.

Personal Income Before and After Obtaining CECU Education
(Among Employed Alumni; n=2,243)



Gallup Research, page 6

73%

of CECU alumni visited the career services or placement office at least once.

2.7x

CECU alumni who found their career services or placement office very helpful are 2.7x more satisfied with their CECU education than those who did not find the office very helpful.

Gallup Research, page 16

“I had at least one instructor who made me **excited** about learning.”



“CECU alumni who had a good instructor were **3.9 times** more convinced their education was worth the cost.”

Military Service Members and Veterans



Seven in 10 Military
Members and Veterans:

71%

Satisfied[†] with their
education at CECU

76%

Say their
degree/certificate is
related to their work

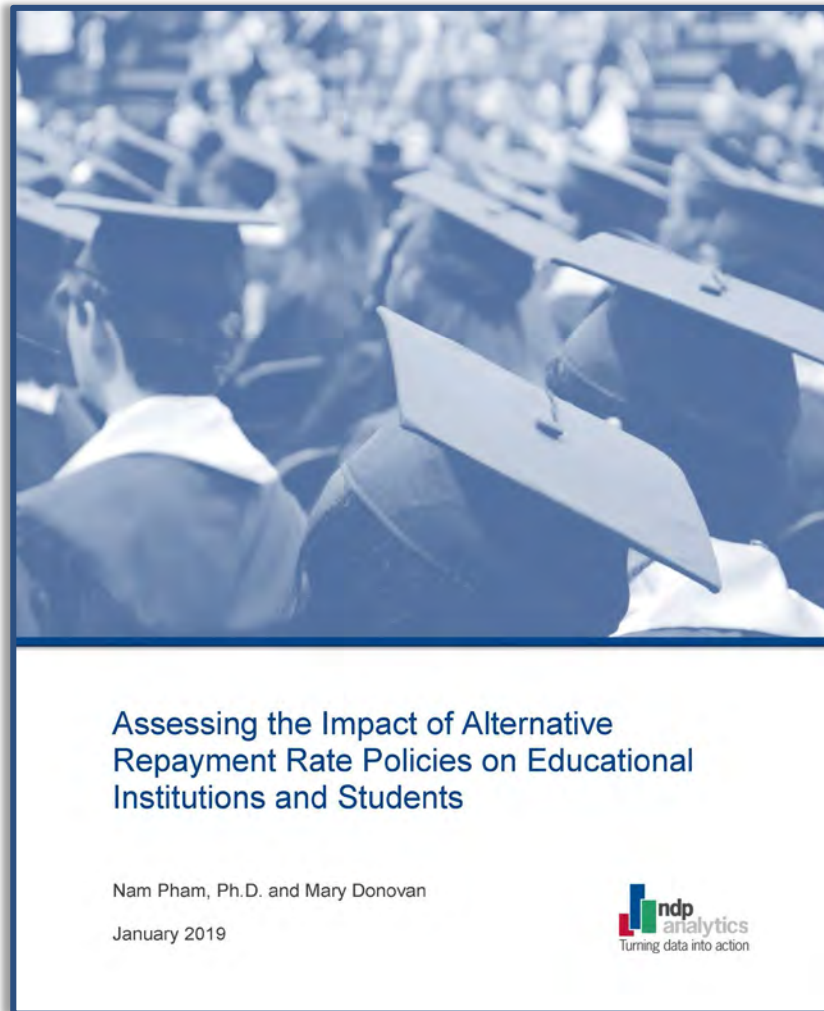


63%

Would recommend[†] their
institution to a friend, family
member or colleague

[†]7-10 on 0-10 scale

NDP Analytics Report



NDP Analytics Report Cont'd

A **three-threshold adjustment** for schools with large low-income enrollments:

- 16% repayment rate with most low-income recipients (1/4 of schools)
- 25% repayment rate with 2nd most low-income recipients (1/4 of schools)
- 35% repayment rate for those serving fewest low-income recipients (1/2 of schools)

NDP Analytics Report Cont'd

Impact of three-threshold adjustment on our sector:

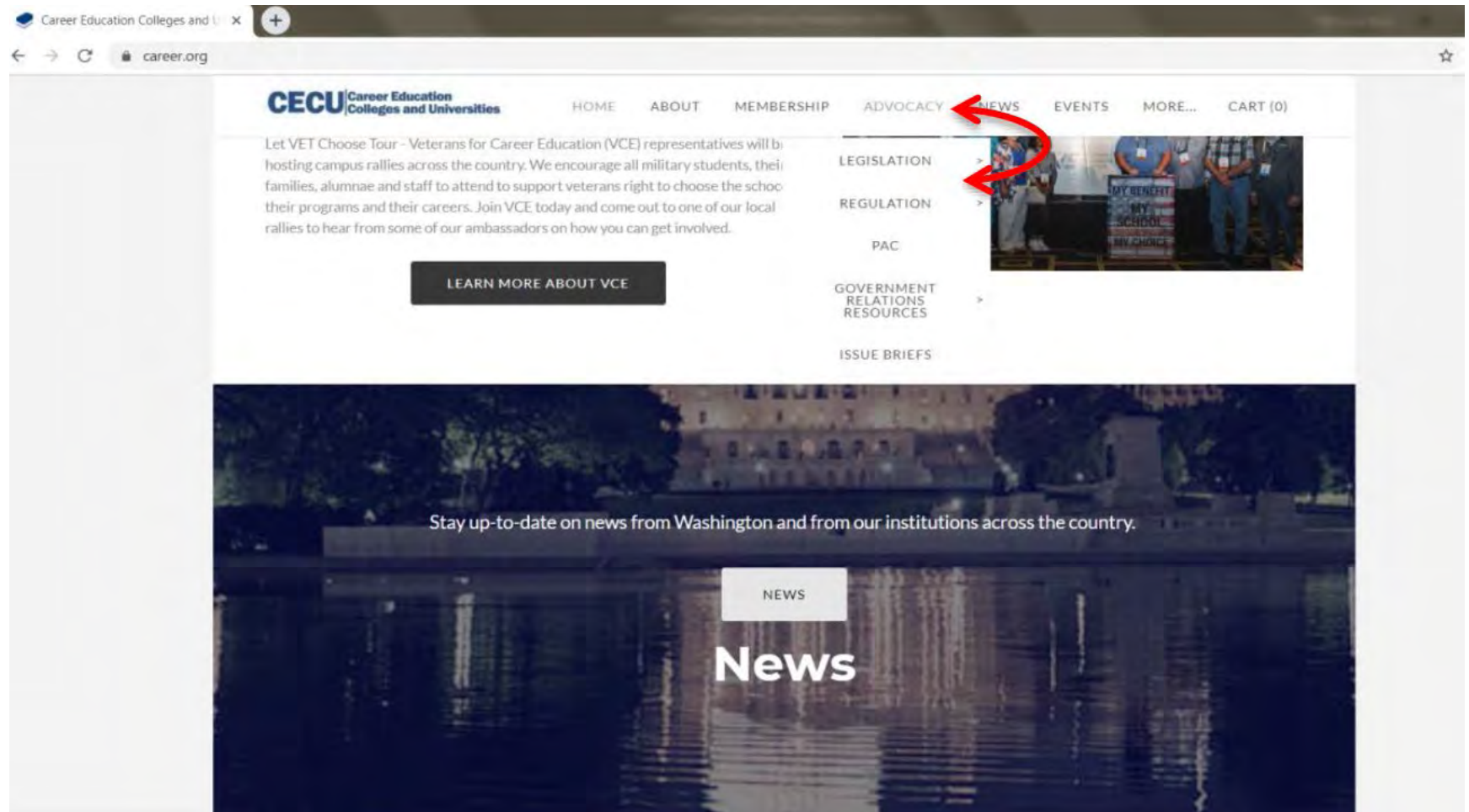
- 31 of 523 4-year for-profits would fail
- 30 of 703 2-year for-profits would fail
- 47 of 1,067 less-than-2-year for-profits would fail
- **108 of 2,293 for-profit schools would fail**

NDP Analytics Report Cont'd

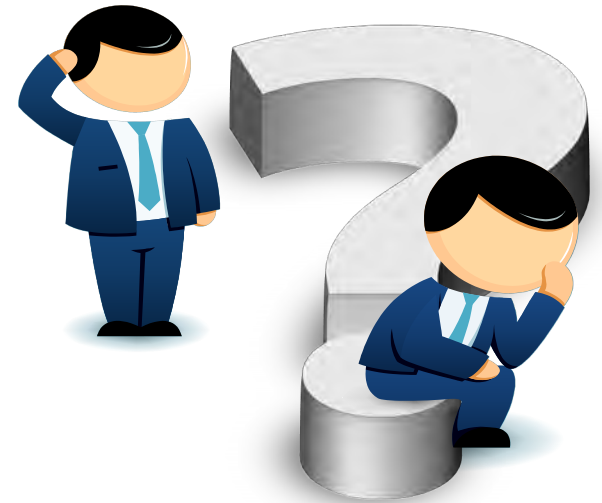
Impact across all of higher education:

- 5.6% of all public institutions would fail
- 4.7% of all private non-profit institutions would fail
- **4.7% of all private for-profit institutions would fail**

Resources



Questions & Answers



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