

The Federal Update

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Presented by
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Federal Update



CONGRESS

Words of Wisdom on Congress

- ▶ One of the penalties for refusing to participate in politics is that you end up being governed by your inferiors.
- *Plato*
- ▶ Politics has got so expensive that it takes lots of money to even get beat with.
- *Will Rogers*
- ▶ All of the problems we face today can be traced to an unenlightened immigration policy on the part of the American Indians.
- *Pat Paulsen*

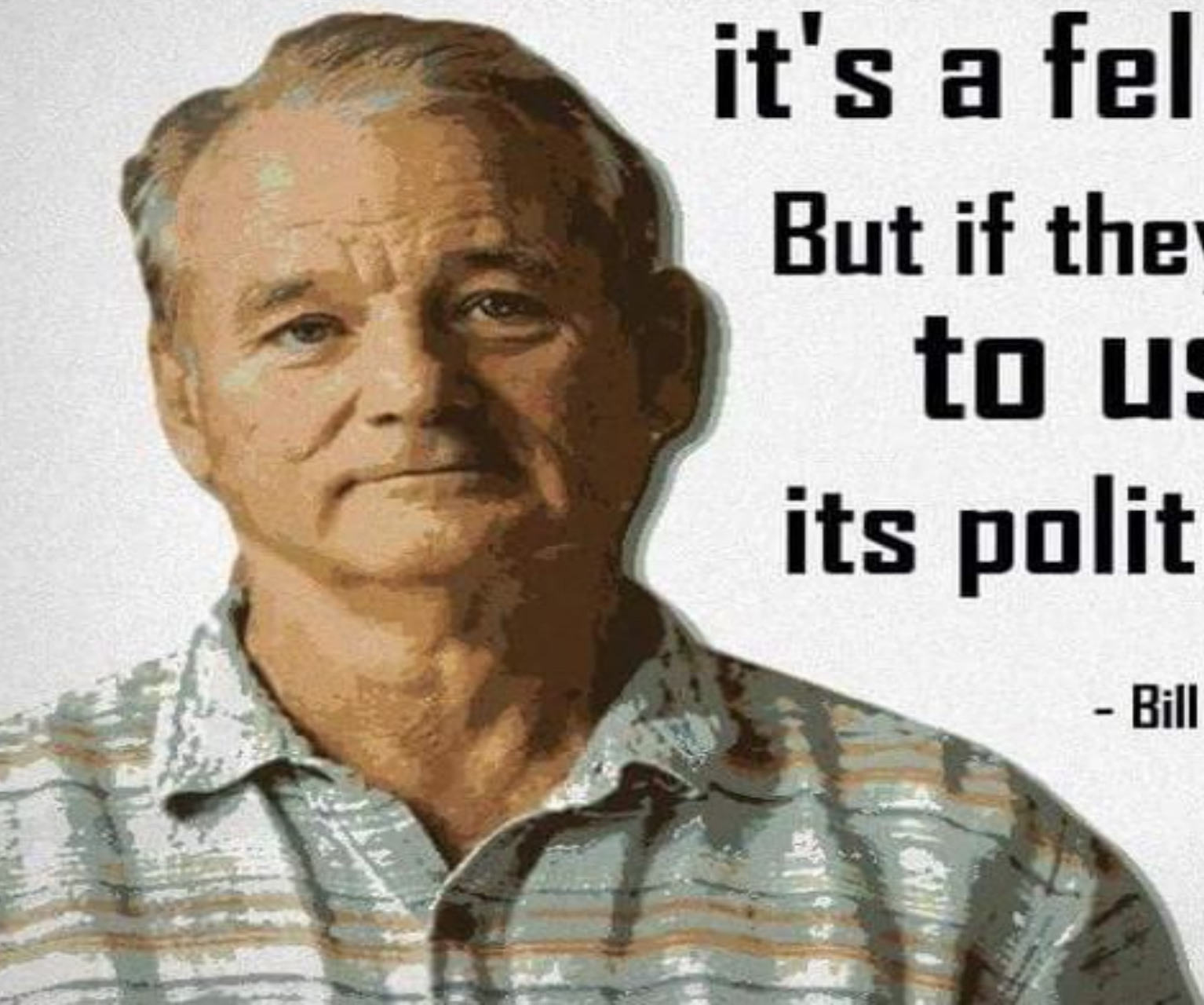
Words of Wisdom on Congress


- ▶ My choice early in life was between whether to be a piano player in a whorehouse or a politician. And to tell the truth, there's hardly any difference. - *Harry S. Truman*
- ▶ Politics is supposed to be the second oldest profession. I have come to realize that it bears a very close resemblance to the first - *Ronald Reagan*
- ▶ Politicians are like diapers. They both need to be changed often. And for the same reason. - *Tom Blair*

**"So, if we lie to the government,
it's a felony.**

**But if they lie
to us
its politics."**

- Bill Murray



A photograph of Timothy Geithner, a man with glasses, wearing a dark suit, white shirt, and a red patterned tie. He is smiling and gesturing with his right hand, palm facing forward, while standing behind a dark podium. The background is a blurred blue stage setting.

“There's an old saying about those who forget history. I don't remember it, but it's good.”

Legislative Landscape:

115th Congress vs. 114th Congress

Senate:

- **2019 – 116th Congress – 53 Repubs/45 Dems/2 I's**
- **2017 – 115th Congress – 52 Repubs/46 Dems/2 I's**

House:

- **2019 – 116th Congress – 199 Repubs/239 Dems**
- **2017 – 115th Congress – 238 Repubs/193 Dems**

Senate HELP Committee:

- **2019 – 116th Congress – 12 Repubs/11 Dems**
- **2017 – 115th Congress – 12 Repubs/ 11 Dems**

House Education & Workforce Committee:

- **2019 – 116th Congress – 21 Repubs/27 Dems**
- **2017 – 115th Congress – 22 Repubs/17 Dems**

Key Legislators in Education

Senate Help Committee

- ▶ Lamar Alexander, Chair (R-TN)
- ▶ Patty Murray, Ranking (D-WA)

House Ed & Labor Committee

- ▶ Bobby Scott, Chair (D, VA)
- ▶ Virginia Foxx, Ranking (R-NC)
- ▶ **Susan Davis (D-CA-53)(San Diego County)**
- ▶ **Mark Takano (D-CA-41) (Western Riverside County)**
- ▶ **Mark DeSaulnier (D-CA-11) (Contra Costa County)**
- ▶ **Josh Harder (D-CA-10) (Modesto)**

House Higher Ed and Workforce Investment Subcommittee

- ▶ **Susan Davis, Chair (D-CA-53)**
- ▶ **Mark Takano (D-CA-41)**
- ▶ **Josh Harder (D-CA-10) (Modesto)**

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California Members of the House Committee on Education & Labor

Higher Education Legislative Landscape

California Member of Congress	Higher Ed Subcomm Member?	District	Party
Susan Davis	Yes – Now Chair!	San Diego	D
Mark Takano	Yes	Riverside	D
Mark DeSaulnier	No	Concord	D
Josh Harder	Yes - New	Modesto	D

California Members of the House Committee on Education & Labor

Susan Davis – New Chair of House Education and Workforce Development Subcommittee

Bio and Areas of Interest:

San Diego resident since 1972; 6 years in California Assembly; 9 years on San Diego Unified School Board of Education; Focus on work-study programs and teach education; Focus on Veterans.

Education-Focused Congressional Caucus Memberships:

Americans Abroad Caucus; Apprenticeship Caucus (Co-Chair); Career and Technical Education Caucus; Caucus on Women in the Military; Labor and Working Families Caucus; STEM Education Caucus (Co-Chair); TRIO Caucus; Financial and Economic Literacy Caucus;

California Members of the House Committee on Education & Labor

Josh Harder – New Member of Congress – Also on House Education and Workforce Development Subcommittee

Bio and Areas of Interest:

32 years of age; Born Turlock, lived Modesto; Stanford/Harvard MBA; Course Instructor at Modesto Junior College; Six years in venture capital and corporate consulting; .

Education Legislative Initiative:

March 14 - College Transparency Act (HR 1766)(Co-Sponsor):

Bill aims to make it easier for consumers to find completion and employment outcome figures across colleges and majors.

Other California House Members Seeking to Play Key Roles

Mark Takano (D-CA) – House Veterans Committee (Chair)

Longtime critic of sector; frequently alleges predatory behavior of for-profits towards veterans. Appeared at GE Neg Reg to chide sector for opposition to GE standards.

Maxine Waters (D-CA) House Financial Service Committee (Chair)

Decades of rancor towards sector; also participated in an unusual appearance before an ED rulemaking panel, with Senator Elizabeth Warren, to seek ban on binding arbitration

California Senators

California Senator	HELP Member?	Comments	Party
Dianne Feinstein	No Appropriations Committee	Retirement Speculation Proved Unfounded Focus on Intel Committee, Judiciary, Appropriations	D
Kamala Harris	No		D

HEA Reauthorization – 116th Congress

- ▶ January 2019: Senator Lamar Alexander (R-TN), Chair of the HELP Committee, announced that he will not seek re-election,
- ▶ Raises the stakes for him to make progress on a major overhaul of the HEA during his final two years.
- ▶ On January 28, his Chief of Staff said Senator Alexander would like to pass a reauthorization of the HEA bill before Christmas.

HEA Reauthorization – 116th Congress

- ▶ February 2019: Senator Alexander announced Reauthorization priorities include:
- ▶ Simplification of FAFSA;
- ▶ Simplification of Direct Loan repayment plans;
- ▶ “Skin in the Game” – Institutional Loan Repayment Accountability;
- ▶ Competency-Based Education, Expansion of Outcomes Data; Pell Grant Flexibility.

HEA Reauthorization – 116th Congress

- ▶ Democratic Reauthorization Priorities (House and Senate) Include-
- ▶ Debt-Free College, Debt Relief, and Loan Servicing Reform;
- ▶ Student-Level Outcomes Data Aimed at ‘Worst-Performing and Predatory’ Schools, Emphasis on Repayment/Default Rates;
- ▶ Triad Strengthening – Strengthen Accreditor Role as Gatekeeper and Enforcer

HEA Reauthorization – 116th Congress

- ▶ Democratic Reauthorization Priorities (House and Senate) Take Aim at For-Profits-
 - ▶ Changing the 90/10 rule to the 85/15 rule;
 - ▶ Closing the 90/10 loophole by including GI bill programs and Tuition Assistance funds from the DoD as federal dollars;
 - ▶ Prohibiting schools that fail to spend a majority of their federal dollars on instruction from spending any federal dollars on lobbying, marketing, and recruitment;

HEA Reauthorization – 116th Congress

- ▶ Democratic Reauthorization Priorities (House and Senate) Take Aim at For-Profits-
- ▶ Adding an “adjusted cohort default rate” that would exclude students in non-mandatory forbearance between 18-36 months for an institution’s number of borrowers who entered repayment. Borrowers in forbearance for longer than 36 months would be considered in default;
- ▶ Strengthening the legal definition of a non-profit institution and establishing a transparent process for approving conversions at the Department for the for-profit schools attempting to convert to non-profit status;

HEA Reauthorization – 116th Congress

- ▶ Democratic Reauthorization Priorities Senate Takes Aim at For-Profits with Newly Introduced S. 867, PROTECTstudents ACT-
- ▶ Codification of the 2014 Gainful Employment Regulations;
- ▶ Codification of the 2016 Borrowers Defense Rule;
- ▶ Codification of Enforcement Unit within FSA;
- ▶ Strengthening the legal definition of a non-profit institution and establishing a transparent process for approving conversions at the Department for the for-profit schools attempting to convert to non-profit status;

HEA Reauthorization – 116th Congress

- ▶ April 3 - House Subcommittee Hearing on “Strengthening Accountability” Reveals Philosophical Rift: Democrats Launch An Orchestrated Attack on the Sector and Republicans Fight Back--
 - ▶ Susan Davis Opening Statement
 - ▶ Rep. Takano calls for borrower defenses and cites Corinthian Colleges, default rate manipulation.
 - ▶ Rep. Lee (D-NV) describes veteran impacted by a for-profit school closure in her district that lost GI Bill benefits and seeks closure of “the 90/10 loophole.”
 - ▶ Rep. Castro (D-TX) asserts students from for-profits are left with a lot of debt and without the ability to find jobs.

Opening Statement - Chairwoman Susan Davis -- Subcommittee on Higher Education and Workforce Investment -- Hearing Strengthening Accountability April 3, 2019

Excerpts: “Predatory behavior has *only* been rampant in the for-profit sector.” ... “Data clearly show that for-profit colleges have wreaked havoc on students and taxpayers”... “Abysmal outcomes” ... “Students are still attending these schools and we must ask ourselves why.” ... “Aggressively marketing to and targeting students, particularly students of color, low-income students, and veterans.”

HEA Reauthorization – 116th Congress

- ▶ April 3 – Eruption at House Subcommittee Hearing on “Strengthening Accountability”:
- ▶ Committee Ranking Member Fox: Attack on sector is “disgraceful” - Dems should look at all sectors but instead used a “bipartisan” higher education hearing to vilify a sector of postsecondary education that serves approximately 10% of America’s students looking for specific career skills
- ▶ Rep. Fox -- Relentless drive to eliminate certain schools begs the question: who’s next? Is this is the “first step down the road to Socialist University?”

HEA Reauthorization – 116th Congress

- ▶ **Same Day - April 3 – In a CECU Letter to Chairwoman Davis and Chairman Bobby Scott, Steve Gunderson advocates for true accountability in all sectors, and writes:**
 - ▶ **“Declaring war on the one sector most engaged in providing underserved students with career skills won’t achieve our common goal.”**
 - ▶ **“At a time when America’s elite colleges are dealing with multiple admissions scandals, and America’s premier colleges are confronting academic fraud for their athletes, it is difficult to accept that a hearing on accountability looks only at us.”**
 - ▶ **The letter cites data proving that career school outcomes compare favorably to other sectors.**
 - ▶ **“Deep frustration with our opponents who have spent years seeking to destroy our sector”**

White House -- 10 “Proposals to Reform Higher Education Act”

- ▶ **On 3/18/2019, the White House released its “Principles to Reform the Higher Education Act”--**
- ▶ **Reorient the Accreditation Process to focus on Student Outcomes: Congress should streamline the 10 standards of accreditation to focus on quality and to eliminate the archaic distinction between regional and national accreditors.**

White House -- 10 “Proposals to Reform Higher Education Act” (Cont’d)

- ▶ **Increase Innovation in the Education Marketplace:** Congress should establish a pilot program to increase access to market-driven workforce development programs.
- ▶ **Better Align Education to the Needs of Today’s Workforce:** Congress should expand Pell Grant eligibility to include high-quality, short-term programs that provide students with a credential, certification, or license in a high-demand field.
- ▶ **Increase Institutional Accountability:** Institutions of higher education that accept taxpayer funds should share in the financial responsibility associated with student loans.

White House -- 10 “Proposals to Reform Higher Education Act” (Cont’d)

- ▶ **Accelerate Program Completion:** Congress should require that financial aid award letters identify policies regarding the acceptance of prior learning assessments and the availability of aid to cover prior learning assessment costs.
- ▶ **Support Historically Black Colleges and Universities:** Congress should make the President’s Board of Advisors on HBCUs and the Interagency Working Group permanent.
- ▶ **Encourage Responsible Borrowing:** Congress should institute Parent and Grad PLUS loan limits and provide financial aid administrators with the information and authority to help students limit their student loan borrowing.

White House -- 10 “Proposals to Reform Higher Education Act” (Cont’d)

- ▶ **Simplify Student Aid:** Congress should consolidate the five income-driven repayment options into one simple plan that caps monthly payments at 12.5 percent of a borrower’s discretionary income and extend loan forgiveness after 180 months of repayment through an income-driven repayment plan.
- ▶ **Support Returning Citizens:** Congress should provide targeted Federal financial aid to prisoners eligible for release to improve employment outcomes and reduce recidivism.
- ▶ **Give Prospective Students More Meaningful and Useful Information About Schools and Programs:** Congress should provide students with program-level earnings and outcome data that they need to make informed decisions.

A copy of the Principles is found at: <https://www.whitehouse.gov/wp-content/uploads/2019/03/HEA-Principles.pdf>.

STATUS OF REGULATORY ACTIVITIES AT THE DEPARTMENT OF EDUCATION



ED Neg Reg Consensus - Reached on New Accreditation and Innovation Rules

- ▶ **Neg Reg has been forum for Administration push on higher education initiatives that don't require Congressional approval.**
- ▶ **In October 2018, ED set up a negotiated rulemaking committee to develop proposed regulations related to accreditation, distance learning and educational innovation.**
- ▶ **On 4/3/2019, the negotiators achieved a rarity – a Neg Reg consensus that includes changes aimed at:**
 - ▶ **Expediting accreditor approvals for outsourced programs;**
 - ▶ **Relaxation of federal oversight of accreditors;**
 - ▶ **Clarify requirements for faculty interaction in distance education;**

Department of Education under Secretary Betsy DeVos

- ▶ **Interagency Task Force (CFPB, FTC, SEC, Treasury, State Attorneys General, etc.), designed to share information about for-profit schools, appears to be disbanded.**
- ▶ **On 6/15/2017, President Trump signed Executive Order 13801 to expand apprenticeships and effective workforce development programs.**

Final Report on expanding apprenticeships found at:

<https://www.dol.gov/apprenticeship/docs/task-force-apprenticeship-expansion-report.pdf>.

Department of Education under Secretary Betsy DeVos (Cont'd)

- ▶ **Delayed enforcement of most of the GE rules (GE disclosures must be made; reporting required), established neg reg, and published NPRM in the *Federal Register* on 8/14/2018 that (1) proposes to rescind GE rules and instead, (2) proposes to update College Scorecard or similar tool to provide program-level outcomes:**
- ▶ **ED has not timely published final rules rescinding the GE rules. Therefore, when published, its new rules will go into effect on 7/1/2020.**

Department of Education under Secretary Betsy DeVos (Cont'd)

- ▶ **Current GE rules are in effect, except on 6/18/2018, ED published a notice in the *Federal Register* further delaying the requirement to distribute the disclosure template directly to students and to include the GE disclosures on all promotional material until 7/1/2019. Institutions must continue posting the GE disclosures on their program website.**
- ▶ **It is not clear whether any debt-to-earnings rates will be issued – A data-sharing agreement between ED and the SSA has been allowed to elapse, and, therefore, ED will not have access to earnings data needed for the calculation.**

Department of Education under Secretary Betsy DeVos (Cont'd)

- ▶ **On 11/7/2018, ED published a notice in the *Federal Register* requesting comments on proposed 2019 GE disclosure template by 1/7/2019. Once comments are reviewed, and the GE disclosures are finalized, ED will announce the deadline by which the new 2019 GE disclosures must be posted.**

Department of Education under Secretary Betsy DeVos (Cont'd)

On 3/15/2019, ED released guidance regarding implementation of the 11/1/2016 borrower defense to repayment regulations in the wake of Court ruling rejecting request from CAPPS to halt the Obama Administration's BDR rules from being implemented.

On 3/19/2019, ED published a final rule in the *Federal Register* advising institutions that the 11/1/2016 BDR rules are in effect. The way forward is anything but clear.

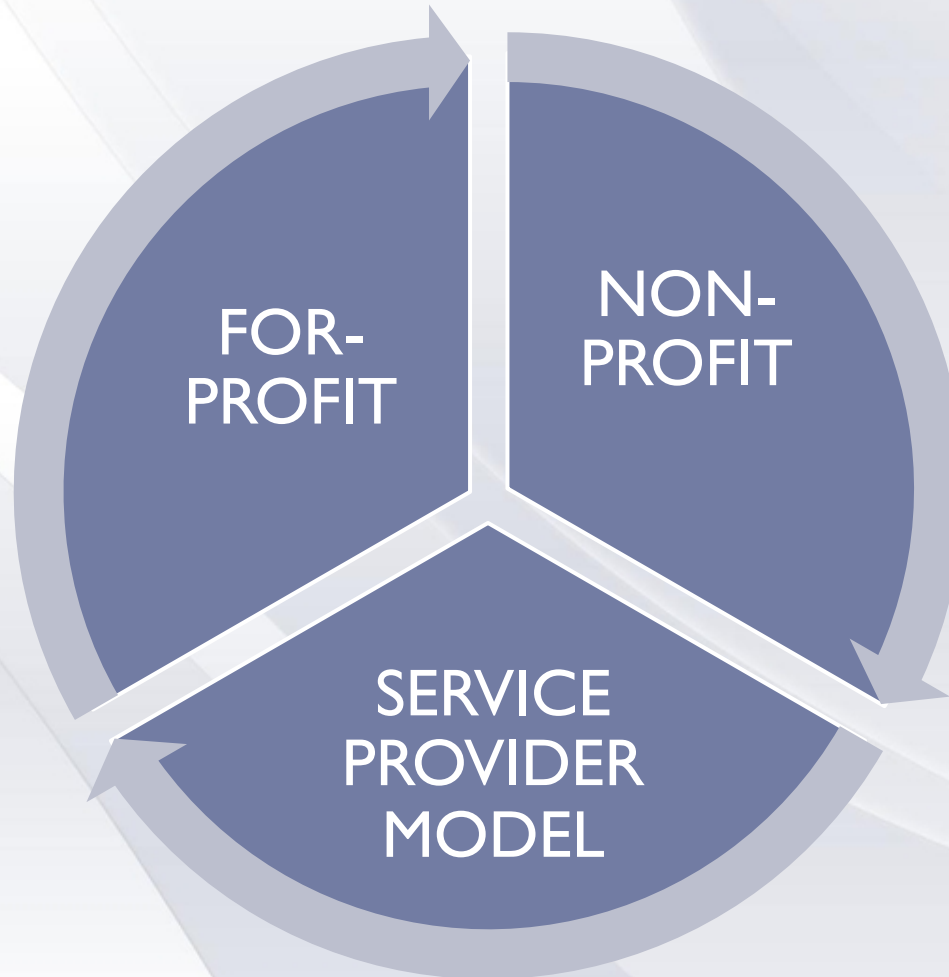
The electronic announcement is found at:

<https://ifap.ed.gov/eannouncements/030719GuidConcernProv2016BorrowerDefensetoRypmtRegs.html>.

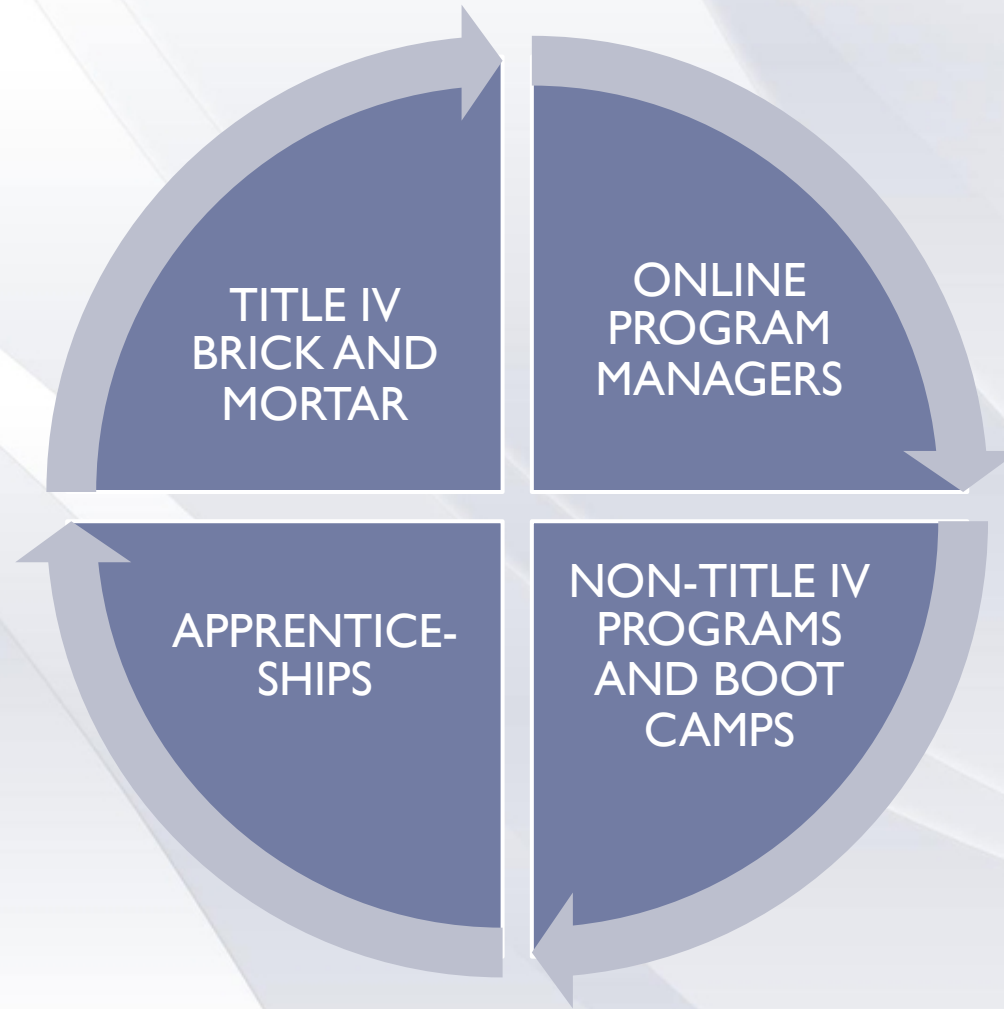
The Final Rule in the *Federal Register* is found at:

<https://www.govinfo.gov/content/pkg/FR-2019-03-19/pdf/2019-04887.pdf>.

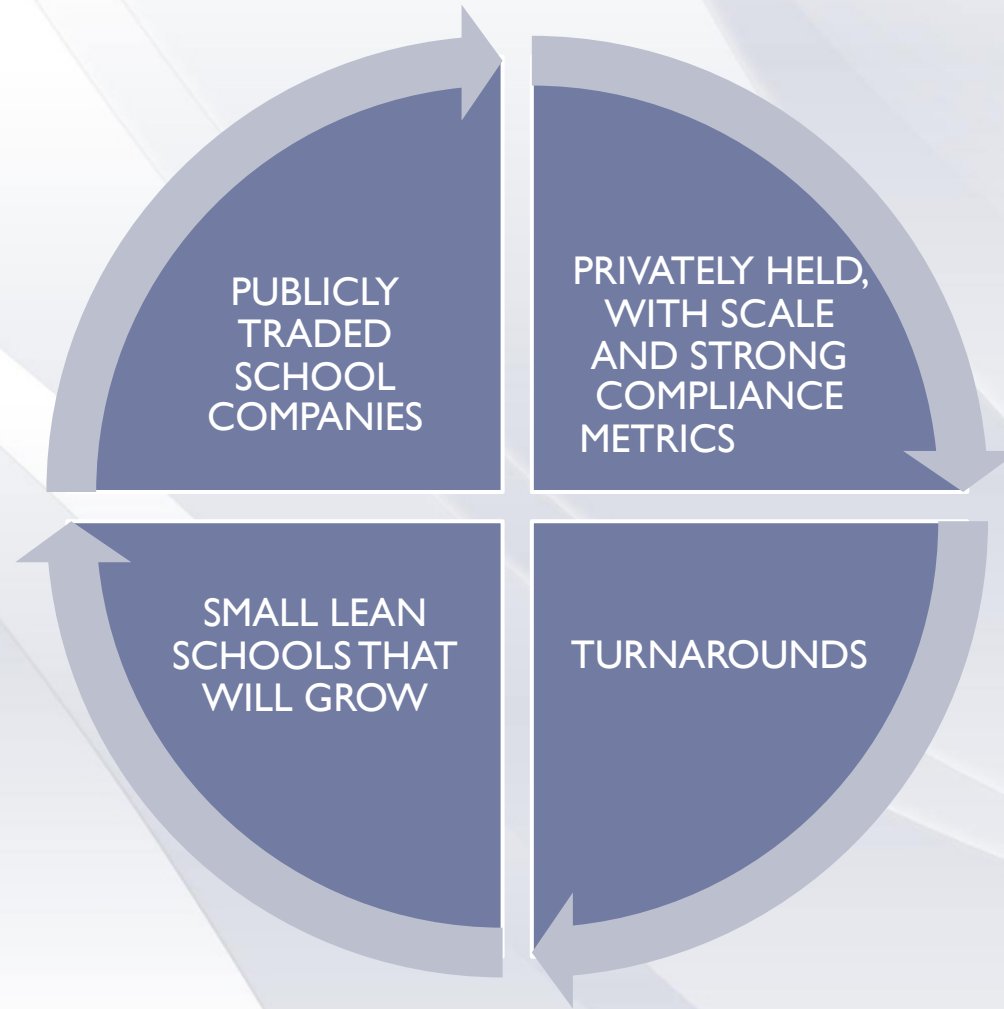
CAREER COLLEGE SECTOR DISRUPTION AND REALIGNMENT



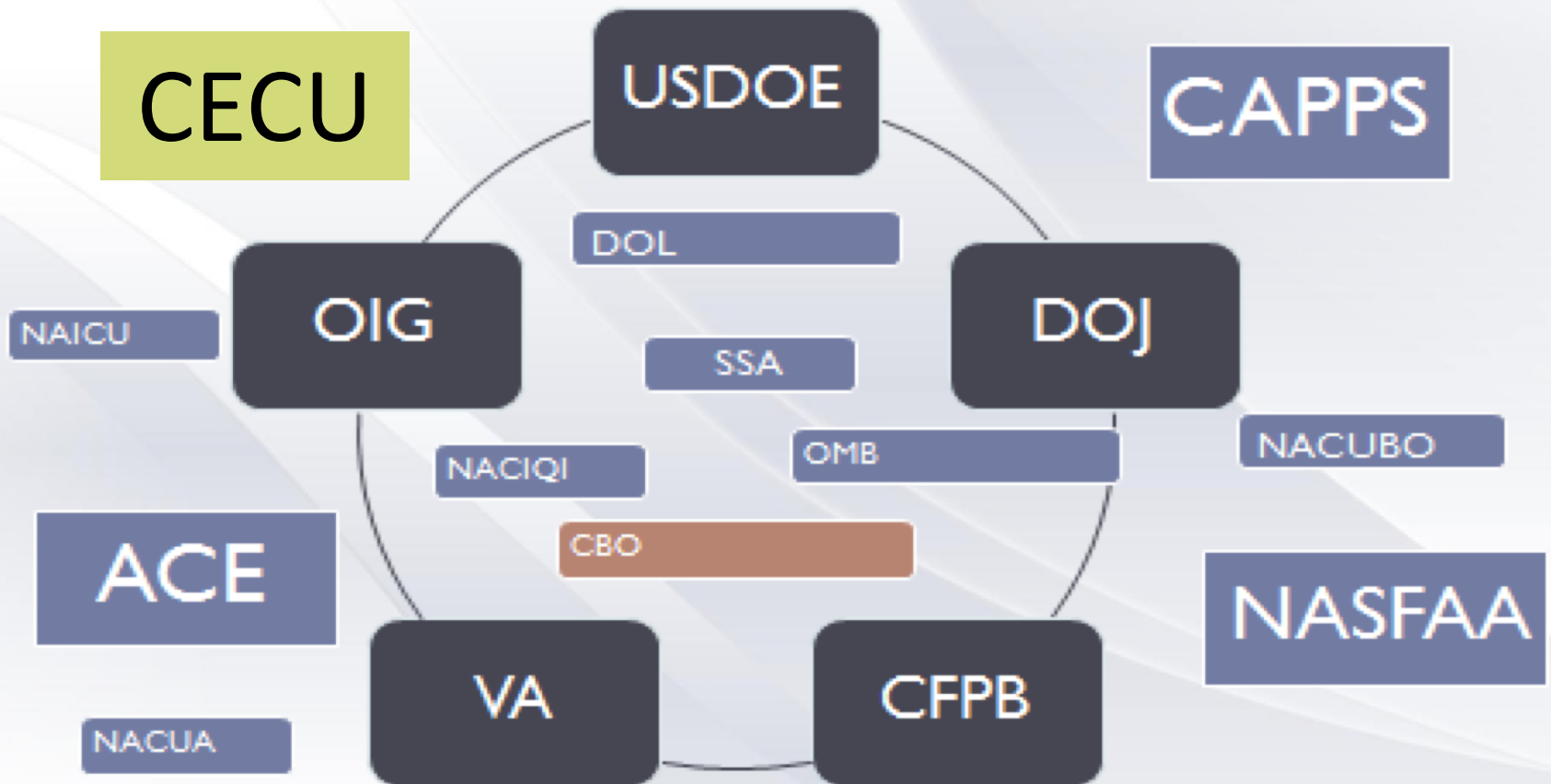
DISRUPTION AND REALIGNMENT- COMPETING TRAINING MODELS



DISRUPTION AND REALIGNMENT – WHERE DO YOU LIVE?



Washington Merry-Go-Round – Alphabet Soup



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Stanley A. Freeman joined Powers Pyles Sutter & Verville in 1994. He is the former president of the firm and founder of the firm's education practice.

Stanley counsels postsecondary educational institutions from all sectors of higher education regarding strategic issues pertaining to participation in the federal student financial assistance programs, accreditation, licensure, and related regulatory concerns. He was selected by his peers for inclusion in the 2009 - 2016 editions of The Best Lawyers in America in the specialty of Education Law.

Stanley has been actively involved in representing educational institutions for more than 20 years. In his practice, he counsels individual educational institutions, corporate investors in higher education, associations of schools and colleges, and allied educational companies on administrative, transactional, regulatory and litigation matters. He has represented numerous schools before the U.S. Department of Education and before other federal agencies, state educational oversight agencies, and accreditors on compliance matters, financial responsibility concerns, legislative issues, and investigative matters. He has also litigated cases in the state and federal courts. He spends much of his time advising clients concerning regulatory and compliance matters arising under the Higher Education Act of 1965, including program reviews, audits, substantive changes, changes in ownership and control, and other oversight matters.

Stanley has authored numerous articles on federal student financial aid issues for higher education publications and frequently speaks to gatherings of college officials and student aid administrators.

Stanley graduated with distinction from the Honors College of the University of Michigan in 1978 and earned his law degree from the Georgetown University Law Center in 1982. He is admitted to practice law in the District of Columbia, Maryland and Virginia. Stanley is a lifelong resident of the Washington area, and he and his wife Cecilia have five children.

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