



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

March 1, 2018

The Honorable Lamar Alexander  
Chairman, Committee on Health,  
Education, Labor, and Pensions  
U.S. Senate  
Washington, DC 20510

The Honorable Virginia Foxx  
Chair, Committee on Education and  
the Workforce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Patty Murray  
Ranking Member, Committee on  
Health, Education, Labor, and Pensions  
U.S. Senate  
Washington, DC 20510

The Honorable Bobby Scott  
Ranking Member, Committee on  
Education and the Workforce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Alexander, Chairwoman Foxx, Ranking Member Murray, and Ranking Member Scott:

The purpose of this letter is to transmit the Office of Inspector General's recommendations for consideration to assist Congress as it proceeds with the critical task of reauthorizing the Higher Education Act (HEA). This is in accordance with our mission to promote the efficient and effective use of taxpayer dollars in support of education and to provide independent and objective assistance to assure continuous improvement in program operations and prevent fraud, waste, and abuse.

As we have reported in previous testimonies and continue to report through the results of our audits, other reviews, and investigations, there are persistent and emerging problems in the Federal student aid programs authorized by the HEA. The programs are large, complex, and rely on numerous entities to provide critical aid to millions of students to pursue quality postsecondary education and to secure successful and manageable repayment of student loan debt. The programs continue to be vulnerable to fraud, waste, and abuse. The Direct Loan program and the Pell Grant program are designated by the Office of Management and Budget as two of the Federal Government's high-priority programs susceptible to significant improper payments. In addition, as we recently reported, the cost to provide credit through the loan programs has been increasing and nearing a point where more dollars borrowed from Treasury are loaned than collected (positive subsidy). This would add to the Federal debt.

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*Promoting the efficiency, effectiveness, and integrity of the Department's programs and operations.*

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Ranking Member Murray, and Ranking Member Scott

Innovations to modes of delivery of education through distance education, direct assessment, and competency-based education that may improve access to and more-timely completion of postsecondary education each present a new challenge to comply with statutory requirements while ensuring a cost-effective quality education to justify the Federal investment. Oversight of the programs by the Department continues to be a significant management challenge reported by my office, and reliance on accrediting agencies and states for oversight in their roles defined by the HEA has not always been effective to protect students and taxpayers.

It is imperative for Congress to address long-standing and emerging challenges, amend outdated HEA provisions to address awarding and disbursing aid in distance education and other alternative educational environments, and continue to provide for accountability, all while not stifling innovation. We appreciate the opportunity to share our recommendations with you. We share your dedication to protect students, assure accountability by postsecondary schools, and ensure the long-term stability of the programs. We welcome the opportunity to discuss our concerns with risks to the programs and our recommendations.

Sincerely,

A handwritten signature in black ink that reads "Kathleen S. Tighe". The signature is written in a cursive style with a long horizontal stroke at the end.

Kathleen S. Tighe  
Inspector General

Enclosure

cc: The Honorable Betsy DeVos, Secretary, U.S. Department of Education

**U.S. Department of Education Office of Inspector General**  
**Recommendations for the**  
**Reauthorization of the Higher Education Act**  
***March 1, 2018***

The Federal student aid programs have long been a major focus of the U.S. Department of Education (Department) Office of Inspector General (OIG). These programs are inherently risky because of their complexity, the amount of funding involved, the number of program participants, and the characteristics of student populations. The Federal student aid programs are staples in our annual list of top management challenges facing the Department. Since our inception in 1980, the OIG has produced volumes of significant work involving the Federal student aid programs, leading to statutory changes to the Higher Education Act of 1968, as amended (HEA), including the dramatic overhaul of the HEA in 1992, as well as regulatory and Department operational changes. In fact, many of the existing program integrity provisions are the result of the OIG identifying fraud, waste, and abuse. Although statutory improvements have been accomplished over the years, deficiencies continue, and risks constantly emerge as the educational environment and workforce educational needs evolve. The HEA has not kept pace with these changes. The HEA, regulations, and Departmental operations must promote innovation, access, outcomes, and affordability. These are goals that the Congress, the Department, and the OIG support. The key is to achieve these goals, while maintaining enforceable accountability provisions designed primarily to protect America’s taxpayers and students.

The OIG has compiled the following recommendations for the Congress to consider when reauthorizing the HEA. These recommendations are based on OIG audits, reviews, and investigations related to the Federal student aid programs and program participants. In compiling these recommendations, the OIG also reviewed and considered the “Promoting Real Opportunity, Success, and Prosperity through Education Reform Act” (PROSPER Act) as passed by the U.S. House of Representatives Committee on Education and the Workforce; the recent Higher Education Accountability white paper (HEA White Paper) issued by the Chairman of the U.S. Senate Committee on Health, Education, Labor, and Pensions; and the recent “Senate Democratic Caucus Higher Education Act Reauthorization Principles (HEA Principles Paper).” The OIG recommendations for the HEA reauthorization are presented by topic below.

**School Accountability**

The OIG’s first area of focus relates to the effort, as evidenced by both the PROSPER Act and the HEA White Paper, to move away from a separate definition for proprietary schools. The HEA has provided a separate definition for proprietary schools since they were first authorized to participate in the HEA programs beginning in 1972 in order to offer programs that must lead to gainful employment. As the OIG has [testified](#) before Congress on issues involving proprietary schools over the years, the sector continues to present itself as a high-risk area for the Department. This sector, unlike public and nonprofit schools, must produce profit for owners

and stockholders, which can create an incentive to evade compliance with obligations to students and taxpayers. OIG resources devoted to postsecondary school investigations continue to be disproportionately devoted to fraud and abuse in this sector. Since fiscal year (FY) 2016, we have reported investigative results in 24 cases that involved a school or its employees committing postsecondary education fraud. Proprietary schools were responsible for 19 investigations, or 79 percent of these cases. For the same period, our cases resulted in \$126.8 million in recoveries from proprietary schools; this amount represented 83 percent of investigative recoveries for all postsecondary schools. According to the FY 2014 cohort default rates, the proprietary school default rate was 15.5 percent, compared to the national rate of 11.5 percent.<sup>1</sup> Students who cannot afford to repay their loans face very serious challenges. Based on our work, we believe proprietary schools need additional scrutiny.

We are also concerned with the PROSPER Act's proposed elimination of other accountability provisions that impact all postsecondary schools. Under the PROSPER Act:

- All schools would no longer be subject to a loss of Title IV eligibility due to excessive loan cohort default rates (Section 426), and proprietary schools would no longer be required to obtain at least 10 percent of their revenue from sources other than Title IV (Section 491(l)).
- Proprietary schools and postsecondary vocational schools would no longer be required to prepare students for gainful employment in a recognized occupation. (Section 101).
- All loan repayment measures would be replaced with a programmatic loan repayment measure for all schools, and current accountability requirements would be replaced with a single metric (Section 482).
- All schools would no longer be expected to provide regular and substantive interaction with an instructor in distance education programs. (Section 103(b)).

We address our concerns with each of these provisions below.

### *Cohort Default Rates and 90/10*

We share the position presented in the PROSPER Act and in the HEA White Paper that cohort default rates and 90/10 revenue limits generally have not been effective. Schools over time are able to evade the consequences of accountability measures that involve multiple years. For example, as we reported in our December 2003 audit on cohort default rates<sup>2</sup> we found that borrowers in deferment or forbearance status lowered schools' cohort default rates even though these borrowers were not making payments and could not default during the cohort default rate period. In addition, based on FY 2014 cohort default rates, the most recent rates

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<sup>1</sup> We note the HEA Principles Paper states that proprietary schools enroll 9 percent of all students but receive 17 percent of student aid dollars and account for 35 percent of all loan defaults.

<sup>2</sup> ["Audit to Determine if Cohort Default Rates Provide Sufficient Information on Defaults in the Title IV Loan Programs"](#)

available, out of more than 6,100 schools participating in the programs, only 10 schools were subject to the loss of eligibility because of high default rates.

Regarding 90/10, few schools fail. Our investigations have shown that schools may manipulate both cohort default rates and the 90/10 limitation in order to evade the requirements and maintain eligibility. However, despite reduced efficacy over time, the OIG does not recommend eliminating the cohort default rates or the 90/10 rule. Rather, Congress should retain the accountability measures, and we recommend that it consider strengthening the definition of cohort default rates and 90/10. For example, default rates could be adjusted to account for nonperforming loans (no payment amounts due under forbearances or Income Driven Repayment (IDR)), and 90/10 could be simplified and adjusted to eliminate veterans' benefits from the schools' calculation of the 10 percent of revenue derived from non-Title IV funds.

### *Gainful Employment*

The HEA has long required eligible proprietary institutions and postsecondary vocational institutions to prepare students for gainful employment. However, before the Department published the final regulations in June 2011, there was no statutory or regulatory definition of what constituted gainful employment. As a result, the Department did not have eligible institution and eligible program rules that it could use to hold institutions accountable.

We continue to believe that a school receiving funding for programs designed to provide training for a specific occupation need to be held accountable for the success in securing employment for its students in that occupation. Otherwise, students can be harmed by not being able to pay loan debt which results in default, leaving taxpayers to bear the financial burden associated with increasing default rates.

### *Loan Repayment*

The PROSPER Act looks to replace all loan repayment measures with a programmatic loan repayment measure for all schools. The PROSPER Act would replace the various accountability requirements (which address different accountability goals) with a single metric that places extreme pressure to ensure that the metric is well designed to achieve desired accountability goals. The metric would make ineligible any program at an institution that for three consecutive years has a loan repayment rate below 45 percent.<sup>3</sup> Since a program would lose eligibility only after three consecutive failures, a school need only ensure compliance once in a three year period to avoid loss of eligibility. Further, "positive repayment status" has a very limited definition. For example, "positive repayment status" includes borrowers who are in repayment status but not actually making payments on their loans. This can include some borrowers who are in a deferment or forbearance status where no payments are due and some borrowers who are enrolled in an IDR (Pay as You Earn, Revised Pay as You Earn) where the calculated monthly payment amount is \$0.

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<sup>3</sup> Further, this provision would not track success of Pell-only students at lower cost institutions.

Implementation of a programmatic loan repayment measure would require a massive data collection and reporting effort by schools and would require the Department to track millions of student borrowers enrolling in all programs at over 6,100 schools. Although the measure is well-intended, the OIG is concerned that the proposed massive data collection necessary for the Department to track and administer a single accountability measure could result in a metric nearly impossible to successfully implement and it would be rendered ineffective. We are also concerned the measure could be subject to manipulation in much the same manner as cohort default rates. In addition, data quality would be the linchpin of such an endeavor, and the OIG has identified data quality assurance as a significant [management challenge](#) for the Department for many years.

### *Regular and Substantive Interaction*

Under the HEA, the distinction between correspondence and distance education is an important one. To address fraudulent and abusive actions by schools offering correspondence courses, Congress placed limitations on schools offering correspondence education and students enrolled in such courses. Prior to these limitations, our investigations and audits had focused on fraud and abuse that included awarding aid to students not in attendance and schools not making refunds. There are no similar limitations placed on distance education. According to Section 102(a)(3) of the HEA, if a school offers more than 50 percent of its courses by correspondence or 50 percent or more of its students are enrolled in correspondence courses, the school loses eligibility to participate in the Title IV programs. Under Section 484(k) of the HEA, students enrolled in correspondence courses that lead to a certificate (not an associate degree or higher) are not eligible for Title IV funds. In addition, for a student enrolled in a correspondence program, Section 472 of the HEA generally limits the student's cost of attendance to tuition and fees. "Distance education" as defined by section 103(7) of the HEA, qualifies for full funding and maximum borrowing by students, provided the programs "support regular and substantive interaction between the students and the instructor." In contrast, correspondence education does not require regular and substantive interaction between the students and the instructor.

The PROSPER Act amends Section 103(7) to remove the definition of "distance education" and replace it with "correspondence education." The former "distance education" requirement of regular and substantive interaction between students and instructors is eliminated. The definition of "correspondence education" is further amended to add "interaction between the institution and the student is limited and the academic instruction by the faculty is not regular and substantive." A significant difference from the former definition of distance education is that "instructor" is replaced with "faculty." Faculty could include mentors or counselors that lack subject matter expertise in the courses a student is taking. Removing the definition of distance education and replacing "instructor" with "faculty" in correspondence education would allow a school to qualify for full participation in the Federal student aid programs based on e-mail contact between students and faculty on matters unrelated to the subject matter of a program. There will be no assurance that programs provide the level of interaction Congress

previously expected with instructors for full funding of distance education. Distance education funding would only be restricted in the unlikely event the programs qualify as correspondence education.

In our September 2017 audit at Western Governors University<sup>4</sup> we identified that the school offered distance education not designed to provide regular and substantive interaction between the students and instructors. For example, little or no contact with a subject matter expert was required; instead, students generally had some type of regular contact with a faculty member such as a student mentor who was not a subject matter expert in the courses a student was taking. As a result, we found the school was offering correspondence programs and not eligible to participate in the Federal student aid programs because it failed to comply with the 50 percent limits placed on correspondence education. In a March 2012 audit of Saint Mary of the Woods College,<sup>5</sup> we also found it offered correspondence education exceeding the 50 percent limit.

The amendment in the PROSPER Act as proposed would allow schools that provide routine e-mail contact with any member of the “faculty” without subject matter expertise to avoid the limits placed on correspondence schools. We believe Congress should retain the definition of distance education and not replace instructor with faculty. The requirement should remain that a school that offers education programs, which will not qualify as correspondence education, should provide education by an instructor with subject-matter expertise.

In addition, eliminating the definition of distance education may also present difficulties for schools in the awarding, disbursing and refunding Federal student aid funds. In 2014, we issued a summary audit report on issues unique to this distance education environment (2014 Distance Education audit).<sup>6</sup> We recommended additional safeguards to mitigate the risks of fraud, waste and abuse. The absence of a separate definition of distance education may create difficulties in putting in place through regulations much needed additional safeguards.

### **Definition of a Credit Hour**

A credit hour is the unit of measure that gives value to the level of instruction, academic rigor, and time requirements for a course taken at an educational institution. Since July 1, 2011, a credit hour has been defined in 34 CFR 600.2 as:

. . . an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than . . . [o]ne hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for

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<sup>4</sup> [“Western Governors University Was Not Eligible to Participate in the Title IV Programs”](#)

<sup>5</sup> [“Saint Mary-of-the-Woods College’s Administration of the Title IV Programs”](#)

<sup>6</sup> [“Title IV of the Higher Education Act Programs: Additional Safeguards Are Needed to Help Mitigate the Risks That Are Unique to the Distance Education Environment”](#)

approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or . . . [a]t least an equivalent amount of work . . . for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.

As such, schools have had the flexibility to determine the “amount of work represented in intended learning outcomes,” whether measured by classroom instruction and out of class work or by other “equivalent amount of work . . . as established by the institution.” The rule does not mandate “seat time” or time in classroom instruction required for Title IV eligible programs.

Credit hours (and their equivalent) form the foundation for proper administration of awarding, disbursing, and equitably distributing the funds under the Federal student aid programs. In 2011, Inspector General Kathleen S. Tighe [testified](#) before Congress on the need for a credit hour definition, and in 2013, the OIG provided comments to Congress on a proposal to repeal and prohibit enforcement of the credit hour definition. Our comments, captured in an OIG document titled, [“Office of Inspector General Review of H.R. 2637, “Supporting Academic Freedom through Regulatory Relief Act,”](#) noted:

Defining a credit hour protects students and taxpayers from inflated credit hours, improper designation of full time student status, the over-awarding of Title IV funds and excessive borrowing by students. Having a definition of a credit hour . . . provides increased assurance that a credit hour has the necessary educational content to support the amounts of Federal funds that are awarded . . . and that students at different institutions are treated equitably in the awarding of those funds.

Section 104(a)(1)(A) of the PROSPER Act would repeal the current regulatory definition of a credit hour, and Section 104(b)(2) would prohibit promulgating any replacement rule or enforcing any rule related to the definition of a credit hour. Eliminating a credit hour definition would create difficulties for the Department in overseeing the Federal student aid programs, including difficulties in awarding, disbursing, and returning student aid. Schools would no longer be held to any standard for the quantity and quality of education to justify the debt incurred by students and the Federal investment. We recommend that Congress not eliminate the credit hour or prohibit the Secretary from retaining the regulatory definition established through negotiated rulemaking.

### **Cost of Attendance**

The OIG has long recommended that Congress and the Department reconsider the appropriate cost of attendance for distance education programs. Distance education students and students attending classes on campus often have different costs of attendance. For example, students enrolled in distance education programs, like students enrolled in correspondence programs,



do not need to change residences, do not incur transportation costs, and are not physically present in traditional classrooms. Yet, distance education students have been allowed to borrow more than is necessary to cover educational expenses, creating loan debt on costs not necessarily academically related.

In conducting our 2014 Distance Education audit, we reviewed a sample of schools from all sectors (2- and 4-year public, nonprofit, and proprietary schools) offering distance education programs. We learned that on average, tuition, fees, and books at the eight schools that we reviewed accounted for 42 percent of each full-time student's total cost of attendance. The remaining 58 percent of the students' cost of attendance consisted of allowances for transportation, room and board, and miscellaneous personal expenses.

Cost of attendance budgets should reflect the costs associated with each student's actual educational needs and not include costs that are unnecessary to complete his or her program of study. Including unnecessary costs can lead to excessive borrowing. We recommend that Congress review components of cost of attendance budgets and ensure that the components included fit the student's educational needs. Further, the OIG supports changes proposed in the PROSPER Act that would eliminate the prohibition on schools differentiating the cost of attendance for distance education programs (Section 471(1)) and would authorize schools to adjust aid eligibility if the school determines the mode or method of delivery results in substantially reduced costs (Section 473).

### **Multiple Disbursements**

In 2011, the OIG issued an [investigative program advisory report](#) alerting the Department to a significant fraud vulnerability in distance education programs: distance education "fraud rings." Our work revealed that large, loosely affiliated groups of criminals seek to exploit distance education programs in order to fraudulently obtain Federal student aid. These groups typically have one or more ring leaders and associates who work to recruit friends, relatives, and other acquaintances to participate in the fraud, or steal the identities of unwitting victims that they use to enroll them into distance education programs for the sole purpose of improperly obtaining Federal student aid funds. By targeting distance education programs, the participants avoid setting foot on campus and can exploit institutions outside their geographic area.

Fraud rings mainly target lower-cost institutions because the Federal student aid awards will satisfy institutional charges (such as tuition) and then result in a large disbursement of the balance of Pell grants and loan awards to the student for other educational expenses (such as books, room and board, and commuting expenses). Our investigative program advisory report recommended changes to the disbursement rules to combat fraud by individuals and fraud rings to eliminate upfront disbursements to students for living and other educational expenses. In addition, our 2014 Distance Education audit demonstrated how schools offering distance education programs struggled with awarding and disbursing Federal student aid. The schools did not consistently apply the Department's regulations and guidance regarding academic attendance when determining student eligibility and disbursing aid.

We recommend that Congress require schools to better verify academic attendance, make more frequent, smaller disbursements, and align disbursements with timing of institutional charges. This would eliminate unnecessary large credit balances paid to students at the start of a payment period and would reduce the risk of fraud and abuse. Section 401(a) and Section 462's addition of Section 465(a)(1) of the PROSPER Act appear to mandate weekly or monthly disbursement of Pell grants and Direct loans. However, the PROSPER Act also contains language that permits schools to make unequal installments to adjust for unequal costs (including tuition and fees) that could obviate any benefit from multiple disbursements.

### **Refunds/Return of Title IV**

OIG audits and investigations have found refund violations to be a longstanding problem. Refunds, which are referred to as "Return of Title IV Funds" under the HEA, are triggered when a student ceases to attend school. The school must determine whether a refund is owed, calculate the amount of the unearned Federal student aid, and then return those funds to the Department or to another applicable participant in Federal student aid programs within a specified number of days. Violations of this requirement occur when refunds are not timely paid, when incorrect calculations result in returning insufficient funds, and when schools fail to pay refunds. In our 2014 Distance Education audit, we found that none of the eight schools offering distance education programs retained adequate evidence of a student's academic attendance to support the student's withdrawal date. As a result, each school experienced problems with calculating and returning correct refund amounts.

Currently, schools earn 100 percent of Title IV funds if a student withdraws after 60 percent of a payment period, creating a significant incentive for schools to avoid withdrawing a student before the 60 percent point. The PROSPER Act would require a 100 percent refund up to 24 percent of a payment period, limit a refund to 75 percent from 25 percent to 49 percent of a payment period, limit a refund to 50 percent from 50 percent to 74 percent of a payment period, and require a 25 percent refund after 75 percent of a payment period. We support these provisions of the PROSPER Act. We also recommend that schools be held accountable for tracking academic attendance in a manner that addresses the concerns we raise in our 2014 Distance Education audit for these changes to be effective.

### **Financial Responsibility**

The Department annually evaluates the financial responsibility of schools by reviewing audited financial statements. The Department uses information in the audited financial statements of private nonprofit and proprietary schools to calculate a composite score for each school based on three financial ratios. A school with a failing composite score is deemed not financially responsible and must provide the Department with either a letter of credit or an equal amount of funds to continue participating in the Title IV programs.

In the Borrower Defense regulations published on November 1, 2016, the Department included provisions that would allow the Department to act and obtain financial protection based on adverse financial events that occur outside the annual audit submission cycle. In our February 2017 audit (At-Risk Title IV Schools),<sup>7</sup> which reviewed the collapse of Corinthian Colleges, we highlighted the benefits these regulations could provide for the Department’s ability to identify and mitigate the risk of unexpected or abrupt school closure. If the regulations were enforced, the Department would receive broader and more current information than the information schools provide in their audited financial statements. This would help the Department to more timely identify schools that may not be financially responsible and at risk of closure. The Department would also be able to obtain financial protection from schools based on that information, which would provide assurance that funds would be available to make required refunds to students, provide teach-out facilities, or meet institutional obligations to the Department if schools closed.

We also highlighted the benefits of more transparent school financial data in our July 2013 audit (Proprietary Schools Financial Data).<sup>8</sup> We concluded that the financial information reported by schools is generally not useful to the Department for purposes of identifying how schools spent their funds or making meaningful comparisons of financial information across schools participating in the Title IV programs. We recommended that the Department work with Congress to obtain statutory authority to establish uniform account classification rules and procedures for all postsecondary schools, including proprietary schools. Specifically, we recommended that, after obtaining statutory authority, the Department create a standard chart of accounts for use by schools that includes expense classifications that clearly define the types of costs to be recorded under each expense account.

Earlier this year, when the Department proposed the delay of the Borrower Defense regulations, we recommended that the Department leave in place the financial responsibility improvements that were not related to borrower defense. The Department delayed the entire borrower defense regulations and we [reported](#) our disagreement with that decision. The Department is now in the process of negotiated rulemaking to revise the borrower defense regulations. Although it has identified the issue for negotiation, it has yet to propose any alternative regulations to address schools at the risk of precipitous closure. We have recommended that the Department do so.

The PROSPER Act would by statute prescribe and restrict the procedures by which the Department determines financial responsibility—procedures that have previously been determined by regulation or the Department’s internal operating processes. The PROSPER Act includes provisions that would appear to permit the Department to obtain a letter of credit when it determines a school is at risk of precipitous closure or of not meeting all of its financial

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<sup>7</sup> [“Federal Student Aid’s Processes for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students and Taxpayers”](#)

<sup>8</sup> [“Transparency of Proprietary Schools’ Financial Statement Data for Federal Student Aid Programmatic Decisionmaking”](#)

obligations. However, the PROSPER Act would significantly restrict the ability of the Department to require the posting of letters of credit as part of annual determinations of financial responsibility based on reviews of audited financial statements and application of financial ratios. We recommend Congress tighten financial responsibility and give the Department authority to obtain letters of credit and other sanctions during and outside of the annual determinations of financial responsibility to protect students and taxpayers.

### **Information Security**

As we have noted in our annual [Management Challenges](#) reports, information security, including the security of the personal information of the millions of students participating in the Federal student aid programs, remains a challenge for the Department. Investigations conducted by our Technology Crimes Division have revealed that Title IV schools we have investigated do not protect the Department's data at the same level of security that the Department itself employs. For example, one school failed to segregate its financial aid data from other parts of its network and a student was able to compromise the financial aid and academic information of 650,000 people. In another case, the school left its public-facing web page unsecured, and intruders were able to compromise and download the financial aid information for every current, past, and past prospective student for which the school had records. In a third case, the school was not using appropriate background checks for financial aid employees and hired an individual who had previously been fired for stealing personal information from another school's financial aid department.

To address the security of student and Department information, the Department has taken steps to require schools to comply with the customer information safeguarding requirements of the Financial Services Modernization Act of 1999 (commonly referred to as the Gramm-Leach-Bliley Act) and with the requirements of user agreements providing access to FSA systems ([Dear Colleague Letter GEN-16-12](#), July 1, 2016, and [Dear Colleague Letter GEN-15-18](#), July 29, 2015). The Department has also encouraged schools to consider information security standards issued by the National Institute of Standards and Technology and has stepped up efforts to ensure schools report data breaches involving Title IV and student information to the Department. So far for FY 2018, the Department has received more reports (of varying degrees of severity) than for all of FY 2017.

The Gramm-Leach-Bliley Act—administered by the Federal Trade Commission—requires entities to design, implement, and maintain a program of information security. Specific safeguards, however, are not mandated. To ensure that student data are adequately protected, we recommend that the HEA be amended to require institutions to comply with information security requirements that the Secretary determines necessary for the unique circumstances of the Title IV programs. The Secretary should be authorized to establish by notice in the Federal Register the security requirements necessary to access and obtain information from Department systems. As part of the program participation agreement required by Section 487(a) of the HEA, institutions should be required to agree that to access and

receive information from information systems maintained by the Secretary, the institution will comply with information security requirements determined by the Secretary.

### **Debt Relief Companies**

Our work has identified third-party debt relief companies that have or are currently engaged in fraudulent activities directed at borrowers and the Department. These companies misrepresent possible debt relief available to borrowers, charge exorbitant fees for services or relief that is already available for free from the Department, and improperly access Department systems to carry out their fraudulent activities. To perform these acts, these companies obtain access to online accounts created by the Department for borrowers to manage their own loans, or they cause the Department to issue online accounts for borrowers and the companies then obtain control of the accounts. In many instances, these companies change passwords, addresses, and other contact information in Department systems, so that the integrity of the data in those systems is impaired and the Department can no longer contact the actual borrowers. Effective prosecution of these companies and persons working for them under existing Federal criminal statutes (e.g., 18 U.S.C. 1030) has been challenging because the monetary value of the damages sustained by Department systems is not always readily apparent as required by 18 U.S.C. 1030. We recommend expanding the criminal penalties in Section 490 of the HEA to explicitly make unauthorized access to Department information technology systems and the misuse of identification devices issued by the Department a criminal act. This statute would be used to pursue prosecution of individuals and entities who use illegally obtained credentials to access Department systems that contain sensitive personally identifiable information. The proposed language will assist in obtaining the support and assistance of the U.S. Department of Justice in prosecuting these cases. As such, we recommend that Section 490 be amended by inserting at the end the following:

“(e) Access to Department of Education Information Technology Systems for fraud, commercial advantage, or private financial gain. – Any person who –

(1)(A) knowingly and willfully obtains an access device as defined in 18 USC 1029(e)(1) that was issued by the Department of Education to another person for the purpose of applying for any funds provided under this subchapter or accessing financial aid or student loan information maintained by the Department; or

(B) by fraud or false statement causes the Department of Education to issue and assign such an access device and subsequently obtains that issued access device; and

(2) uses the access device to access Department of Education information technology systems for purposes of obtaining commercial advantage or private financial gain or, in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or of any State, shall be fined not more than \$20,000 or imprisoned for not more than 5 years, or both.”

## **Accrediting Agencies**

Under the HEA, the Department is dependent on the accrediting agencies recognized by the Secretary to ensure that institutions provide quality, content, and academic rigor at the postsecondary level. The Higher Education Opportunity Act of 2008 included a provision that prohibits the Department from developing minimum regulatory criteria for an accrediting agency's standards for accreditation. The Department of Education Organization Act of 1980 prohibits the Department from making determinations on curriculum and educational quality. Thus, the Department is prohibited from determining the quality of education funded by Federal education dollars. All it can do with regard to evaluating the quality of postsecondary education is recognize accrediting agencies as reliable authorities for the quality of education funded by Federal dollars.

We have reported extensively on some accrediting agencies' deficient oversight of critical issues such as credit hours, program length, and competency-based education. The results of our reviews showed that accrediting agencies do not always have standards or procedures to effectively oversee areas that are critical to effective Title IV oversight or administration and to hold member schools accountable. For examples see our September 2015 audit on the Higher Learning Commission<sup>9</sup> and our December 2009 audit on the Middle States Commission.<sup>10</sup>

The PROSPER Act would eliminate most standards requirements for accrediting agencies, instead requiring them only to have standards related to student achievement. Under Section 496(2)(D), accrediting agencies would no longer be required to have standards for such areas as curricula, faculty, program length, or consideration of compliance with Federal student aid requirements. Given the statutory prohibitions on the Department from assessing curriculum and quality and from regulating standards for accrediting agencies, eliminating requirements for accrediting agencies to have standards for curriculum and quality of education would mean that oversight in this area would be almost nonexistent. Oversight of quality would be left to the States. Our experience has shown that some States limit their oversight to providing business licenses to operate. This could create unnecessary and unacceptable risks to students and taxpayers. The result could be Federal student aid funding programs inequitably across schools and programs. The investment of taxpayers' funds needs to have assurances that student loan debt is not incurred for poor quality education.

As noted, our audits have found that accrediting agencies are not always reliable. However, rather than eliminating requirements, we recommend retaining and strengthening expectations for accrediting agencies to ensure the quality of education member schools provide. Accrediting agencies should also ensure schools comply with Federal student aid rules and requirements; they should also establish and enforce meaningful standards for student achievement.

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<sup>9</sup> ["The Higher Learning Commission Could Improve Its Evaluation of Competency-Based Education Programs to Help the Department Ensure the Programs Are Properly Classified for Title IV Purposes"](#)

<sup>10</sup> ["Review of the Middle States Commission on Higher Education's Standards for Program Length"](#)

## **Direct Loan Program**

The PROSPER Act proposes to sunset the current Direct Loan program and establish a new Federal ONE Loan program. It does not, however, provide sufficient information on the operation of a new direct loan program for the OIG to evaluate its impact. We note that the recent [financial statement audits](#) for the Department (and the Federal Student Aid office) have identified significant internal control deficiencies over the credit reform modeling for the costs of the Direct Loan program. The Department has developed a set of complex financial and economic models that apply mathematical techniques and statistical methods to historical loan level data to develop student loan program performance assumptions and estimate the value and cost of its student loan programs. The financial statement audits determined that the Department did not have a comprehensive framework for risk management or fully developed critical modeling activities. The Department maintained limited documentation supporting the initial design, evaluation, justification, and testing of the model for selecting a sample of borrowers used for calculating program performance assumptions, estimating future incomes for borrowers under income-driven plans, projecting future cash flows for borrowers under IDR plans, and projecting overall program level cash flows. In our 2018 audit (Costs of Income-Driven Repayment Plans),<sup>11</sup> we reported that the Department needs to be more transparent to decision-makers in its reporting on costs to provide IDR and loan forgiveness programs. Costs to provide credit are approaching positive subsidy and can add to the Federal debt. Any changes to the loan programs need to consider the cost impact not only to students, but also to annual appropriations and long-term stability of the loan programs.

## **Performance-Based Organization (PBO)**

In a 1996 report, the OIG questioned the readiness of the Department to administer the Federal Family Education Loan and Direct Loan programs. We noted that aspects of the PBO model could help serve the Federal student aid programs, such as hiring a chief executive officer who was not a political appointee and who had experience in managing large, computer-based financial services operations. At the time, we reported that there would need to be a significant amount of reengineering work done before establishing a PBO.

The 1998 amendments to the HEA mandated that the Department establish a PBO as a discrete unit responsible for managing the operational functions supporting the Federal student aid programs. The office of Federal Student Aid (FSA) was designated as the PBO. In 2008, we conducted an audit to determine whether FSA was meeting its responsibilities as a PBO in three key areas: planning and reporting, systems integration, and cost reduction. The [audit](#) found that FSA was not completely fulfilling its responsibilities in those areas. First, FSA's planning and reporting processes were not always effective or efficient, as it did not issue its first 5-year performance plan until 2004—6 years after it became a PBO, and none of the strategic objectives included in the plan were measurable or quantifiable. Second, in reviewing FSA's

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<sup>11</sup> [“The Department’s Communication Regarding the Costs of Income-Driven Repayment Plans and Loan Forgiveness Programs”](#)

systems integration efforts, our audit revealed that FSA had not made significant progress in completing activities designed to integrate its student financial assistance systems and therefore was unable to realize the expected benefits of systems integration. Third, we found that FSA's progress towards the reduction of program administration costs was uncertain as it had not yet established measurable strategic goals in the area of cost reduction and its anticipated cost savings from three of four major system initiatives it had identified were not expected to be realized until after FY 2008 and beyond.

Much has changed since our 2008 audit. For example, in 2010, there was a significant shift in FSA's operations with passage of legislation eliminating the origination of new Federal Family Education Loans and requiring that all new Federal student loans be originated under the Direct Loan program. Although we have not conducted an audit of FSA as a PBO post 2008, we have since that time issued more than 90 audits, inspections, and other reports involving Federal student aid programs and operations.

In November 2015, Inspector General Tighe [testified](#) before Congress on the operations of FSA as a PBO. In that testimony, the Inspector General stated that OIG work since the 2008 audit continues to identify problems in oversight of participants in the Federal student aid programs, its efforts to identify and reduce improper payments, and its contract management to ensure program integrity and better safeguard taxpayers' interests. As such, we recommend that Congress consider adding specific requirements to the HEA for oversight and contract management to the purposes and functions of the PBO and require the PBO performance plan to establish measurable goals and objectives in these areas. The PBO annual report should also contain an evaluation of those goals and objectives.

## **Conclusion**

The OIG supports the efforts of both the Senate and the House of Representatives to amend the outdated HEA and to address long-standing and emerging challenges in the Federal student aid programs. The OIG believes that changes are needed to address awarding and disbursing aid in distance education and other alternative educational environments, while not stifling innovation, and that improved oversight is needed by the Department, accrediting agencies, and the States. The OIG is concerned, however, that eliminating various accountability provisions without a proven substitute would increase the risks to students and taxpayers, could result in higher costs to offer credit through loans due to excessive borrowing, could increase defaults, and increase the use of IDR and loan discharges that could negatively impact the long-term viability of the programs.