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Durbin: Higher Education Act reauthorization must protect students and taxpayers

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WASHINGTON – As the Senate Committee on Health, Education, Labor, and Pensions (HELP) continues to hold hearings on the reauthorization of the Higher Education Act (HEA), U.S. Senator Dick Durbin (D-IL) today urged HELP Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) to focus the Senate's debate on two very important topics – accountability and taxpayer risk, especially as it relates to for-profit colleges. While for-profit colleges enroll only nine percent of all post-secondary students, they account for 35 percent of all federal student loan defaults. HEA is the law that authorizes federal financial aid programs and was last rewritten by Congress in 2008.

In testimony submitted to the HELP Committee, Durbin wrote, “A Higher Education Act reauthorization must address the risk for-profit colleges pose to students and taxpayers. For too long, weak accountability and poor oversight of schools and accreditors has made Congress and the federal government complicit in for-profit colleges’ exploitation of students and bilking of taxpayers. That must change.”

In his written testimony, Durbin pressed that a Higher Education Act reauthorization must:

- Reform the accreditation process;
- Allow students to seek redress directly from schools by prohibiting Title IV schools from using mandatory arbitration clauses;
- Ensure that schools can operate without federal taxpayer support, including changing the definition of what counts as federal revenue so that it includes all federal funds like GI Bill and TA funds and reduces the amount of federal revenue from 90 percent to 85 percent;
- Give colleges financial “skin in the game” when it comes to the success of their students; and,
- Codify important protections for students and taxpayers found in the Gainful Employment and Borrower Defense rules finalized under the Obama Administration, which are now under assault by Secretary DeVos.

Durbin’s full written testimony is below:

I would like to thank Chairman Alexander and Ranking Member Murray for holding this hearing to focus on two very important topics that must be part of the Senate’s debate on reauthorizing the Higher Education Act – accountability and taxpayer risk.

A college education today is an important stepping stone for many on the path to the American Dream. We know that those with a college degree earn significantly more on average over the course of their lifetime than those without a college education.

At the same time, students are spending more than ever before to obtain a degree. Cumulatively, Americans today hold more than $1.4 trillion in student loan debt while the average student graduates with more than $30,000 in debt. It also means the federal government’s investment in higher education continues to grow. The Department of Education distributes almost $130 billion per year in federal aid to students.

Unfortunately, for too many students these days, the payoff of a college education isn’t being realized. They have to take on more debt than they can reasonably repay. They

struggle to make their high monthly student loan payments, forcing them to put off buying a house, starting a family, and saving for retirement. They get no help from Department of Education-contracted student loan servicers who often do not provide them with information about alternative repayment options like income based repayment programs. They are unable to refinance their federal student loans at lower interest rates or discharge their loans in bankruptcy. They find themselves in default with their credit scores ruined and debt that follows them to the grave.

While this scenario is repeated over and over across our higher education system, nowhere is the problem more pronounced than with students who attend for-profit colleges. For-profit colleges only enroll nine percent of all post-secondary students, but receive 17 percent of all federal student aid and account for 35 percent of all federal student loan defaults. These companies lure students with flashy advertising, often making false claims about their students' job and salary prospects. They tend to charge much higher tuition than their public and not-for-profit counterparts, leading students to take on more debt. Students who graduate from a for-profit college program often find that employers don't recognize their degrees. They're left with worthless degrees and more debt than they can ever repay.

Over the last several years, nearly every major for-profit college has been the subject of multiple state and federal investigations and lawsuits related to consumer fraud. Companies like Corinthian Colleges, Inc., ITT Tech, and Westwood Colleges closed – collapsing under the weight of their own wrongdoing – and left tens of thousands of students across the country in the lurch. The companies lured students to attend with false promises, pocketed billions in federal student aid, and then closed – leaving students and taxpayers to pay for the mess they left behind.

A Higher Education Act reauthorization must address the risk for-profit colleges pose to students and taxpayers. For too long, weak accountability and poor oversight of schools and accreditors has made Congress and the federal government complicit in for-profit colleges' exploitation of students and bilking of taxpayers. That must change.

We can start by reforming the accreditation process. Accrediting agencies, along with states and the federal government, form what is known as the Triad, which is tasked with oversight of schools. Accrediting agencies serve two key roles in this Triad – ensuring schools meet a basic level of academic quality and being the gate keepers of federal financial aid.

In practice, accrediting agencies have struggled to fulfill both of these roles. Too often they have failed to identify bad actors like Corinthian Colleges and ITT Tech, which were still accredited up to the moment they declared bankruptcy, and to take strong action when misconduct was brought to light. At the same time, the Federal

government, which recognizes accrediting agencies, doesn't have the tools it needs to ensure that these agencies are holding the schools they accredit accountable for their students' outcomes.

A recent Government Accountability Office (GAO) report commissioned by Senator Schatz, Representative DeLauro and myself entitled "Higher Education: Expert Views of U.S. Accreditation" compiled feedback from accreditation experts to develop recommendations. The report highlights a number failings in the current accreditation system, including poor oversight of academic quality and lack of information sharing with the rest of the Triad and the public. The report also identifies a number of strategies to improve each of these areas. I urge the members of this committee to review this study to inform your decisions as you work through this reauthorization.

Senators Elizabeth Warren, Brian Schatz, and I will soon reintroduce the Accreditation Reform and Enhanced Accountability Act (AREAA). Among other reforms, the bill eliminates the provision in current law which forbids the Department of Education from setting and enforcing student outcomes standards, makes it easier for accreditors to take action against schools for not meeting standards, improves conflict of interest protections, increases public transparency around the accreditation process, and gives the Department additional tools to ensure accreditors are aggressively overseeing schools.

The best way to prevent students and taxpayers from another Corinthian or ITT Tech, is to improve oversight of schools on the front end by accreditors – making it less likely that predatory and poor performing schools are allowed to participate in federal student aid program. But, no matter when misconduct occurs, schools must be accountable to their students.

But a practice, used almost exclusively in higher education by for-profit colleges, currently prevents students from holding their schools accountable for fraud and deception. As part of the enrollment agreements for-profit college students must sign, companies often bury mandatory arbitration clauses in the fine print. By agreeing to these clauses, students forfeit their right to sue the schools either as individuals or as part of a class. Instead, students are forced to resolve disputes between themselves and their school in an arbitration proceeding where the deck is stacked against students. Because, the outcome of arbitration proceedings are often secret, the practice also serves to hide misconduct from accreditors and regulators.

It also means that instead of seeking financial relief directly from their school when misconduct occurs, students are forced to seek relief from taxpayers. The Higher Education Act allows students who have been defrauded by their schools to assert a Borrower Defense to Repayment, which allows them to have their federal student loans

discharged – ultimately putting taxpayers on the hook for the misconduct of schools. By allowing students to seek redress directly from schools, taxpayers could be saved millions of dollars.

I, along with Senators Whitehouse, Warren, Reed, Brown, Blumenthal, Hirono, Markey, introduced the Court Legal Access and Student Support (CLASS) Act (S. 553) to end this unfair practice. This legislation prohibits schools that receive Title IV dollars from interfering with a student's ability to seek redress through the courts either as individuals or as part of a group. If it had been illegal for Corinthian Colleges to use mandatory arbitration, the government may not be facing the tens of thousands of Borrower Defense claims, worth tens of millions of dollars, that it is today as a result of Corinthian's predatory practices.

In order to prevent another Corinthian disaster, we must ensure that schools can operate without federal taxpayer support. Too many for-profit colleges rely too heavily on federal dollars to keep their doors open. When the Department of Education delayed Title IV disbursements to Corinthian by a couple of weeks because of the company's misconduct, it created a cash flow crisis for the company that led to its collapse. No company should be dependent on one source for its revenue. But current law allows for-profit colleges to receive up to 90 percent of their revenue from federal taxpayers. The other 10 percent must come from non-federal sources like tuition payments, private donors, etc.

However, a loophole in the law treats federal education investments through the Department of Veterans Affairs GI Bill and Department of Defense Tuition Assistance (TA) program as non-federal revenue. As a result, the law incentivizes for-profit educational institutions to aggressively recruit and target veterans, service members and their families. By enrolling large numbers of these students, many predatory for-profit colleges obtain more than 90 percent of their revenue from federal taxpayers while still complying with the law.

To better protect students and our taxpayer dollars, I introduced the Protecting Our Students and Taxpayers (POST) Act, which would change the definition of what counts as federal revenue so that it includes all federal funds like GI Bill and TA funds and reduces the amount of federal revenue from 90 percent to 85 percent.

If we are going to ensure that the investments students and taxpayers make in higher education pay off, we also need to give schools a financial stake in the success of their students. Unfortunately, our existing system requires schools to assume little to no responsibility for what happens to students after they graduate. Earlier this year Senators Reed, Murphy, Warren and I reintroduced the Protect Student Borrower's Act (S. 2028), which would create a graduated system of penalties for schools with high default rates

or “risk sharing.” By giving schools “skin in the game” when it comes to their students’ success, we give them a financial incentive to do everything they can to ensure their students are well prepared for good paying jobs and the future.

I also want to say, that if we are truly interested in accountability and risk to taxpayers, the Higher Education Act reauthorization should embrace the Gainful Employment and Borrower Defense rules finalized under the Obama Administration. The Gainful Employment rule holds career education programs accountable for meeting their statutory requirement to prepare students for “gainful employment.” Under the rule now in effect, programs that consistently load students with more debt than they can reasonably repay will lose federal student aid dollars. It protects students from incurring high debt levels for worthless degrees and protects taxpayers from wasting funds on poor performing programs.

The Borrower Defense rule, finalized by the Obama Administration, set up a more borrower-friendly process for students to submit claims for relief. But it also included important accountability and taxpayer protection mechanisms. It established triggers around which schools would be required to post Letters of Credit to the Department to guard against taxpayer losses associated with Borrower Defense claims by the school’s students. It also, wisely, cracked down on schools’ use of mandatory arbitration clauses in enrollment agreements – ensuring that schools could be held directly accountable by students.

Unfortunately, Secretary DeVos has refused to enforce either rule – for which she is being sued by state attorneys general and others. In our consideration of a Higher Education Act rewrite, Congress should reject the DeVos Department of Education’s stance on these two important rules. Instead, we should do our job to legislate important protections for students and taxpayers included in the Obama rules.

I thank the Ranking Member, Senator Patty Murray, for submitting this testimony on my behalf and I urge the Committee to take seriously the need to improve accountability in our higher education system to better protect students and taxpayers.