



ISSUE BRIEF

Senate HEA Discussion  
Draft Directly Targets PCAs

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In reading his HEA reauthorization discussion draft, it is obvious Senate HELP Committee Chairman Tom Harkin (D-IA) is highly concerned multiple industries associated with higher education finance. However, between the collection industry and proprietary institutions, it is difficult to discern which industry most displeases the HELP Committee Chairman.

As evidenced in the draft HEA proposal, it appears Harkin and his Democratic colleagues on the HELP Committee question the need for collection agencies involvement *at all* in the federal student loan programs. At least in the case of the for-profit sector, it appears Harkin views these institutions as a necessary evil.

**The Path to Eliminating PCAs—A Study with Teeth**

Relying on a similar playbook that has been used to discredit private collection agencies (PCAs) in the collection of tax debts, the legislation calls for the Secretary of Education to undertake a study of “whether it is efficient and effective to contract with private entities under this section for the collection of loans made or purchased that are in default.”

A report is often a way for Congress to continue reviewing an issue and a sign it may be addressed at a later time. In many cases, the issue is long forgotten by the time of the next HEA reauthorization. However, the draft HEA proposal gives this study more teeth than a traditional report ordered by Congress. The Secretary is required to certify its results to Congress within one-year of enactment. Short of this certification, the Department is then prohibited from entering into new collection contracts.

The primary contents of the study are as follows:

- The cost incurred by the Federal Government for the collections of defaulted loans, including a comparison with the costs of other methods by which debt owed to the Federal Government are collected or recovered;
- The consumer protections provided to the borrower who has defaulted through the collections process;
- The impact of the collections process for defaulted loans on the integrity of the loan programs; and

- The borrower experience, as determined through borrower surveys.

The report would also provide information on the recovery costs for collecting from disabled veterans, disability recipients, Earned Income Tax Credit filers, and those receiving benefits from the nutrition assistance programs. The language specifically mentions “unpaid taxes” as a reference point for determining the efficacy and efficiency of student loan collections by PCAs. Further, the study also allows the Department to *directly collect* a subset of defaulted loans for the purposes of the study.

In addition to the study designed to eliminate the program, the proposal would also make existing operations very difficult for collectors working with Direct Loan and FFELP accounts. The Department is required to terminate contracts of PCAs if they are found to have a UDAAP or FDCPA violation. Notably, the language states “the Secretary *shall*” terminate these contracts, as opposed to “*may*,” meaning there would likely be very little flexibility for the Department in such situations. Those terminated from the PCA contract would not be allowed to bid in the following award cycle and would be ineligible for any Direct Loan work for a period of two years.

The proposal also calls for the calculation of “bona fide collection costs associated with such loan” in determining what PCAs may charge borrowers. The limit remains 16 percent of outstanding principal interest, but the “bona fide” provisions suggest collectors will need to figure out the collection costs associated with individual accounts, which is currently a requirement in few states.

## Conclusion

Between the specific references to tax collection, the allowing of direct collections for the purposes of the study, the calculation of collection costs for specific federal benefit recipients, and the reliance on surveys of defaulted borrowers, it is easy to read between the lines—Senate Democrats are looking to embarrass PCAs en route to eliminating private sector collections from the federal student loan programs. All of the PCA provisions of the Senate HEA discussion draft are alarming and an obvious cause for concern, but it is important to remember that the process is still in its early stages.

It will be a long time before the Republican controlled House of Representatives would consider this kind of massive expansion of Direct Loan operations. The Department of Education has not evidenced it is capable of managing the loan programs in their current capacity and citing the IRS is a model is always highly unlikely to sway Republicans in any way, particularly in the current environment.

Nevertheless, the proposed study must be treated as a serious threat, as it is clear evidence that several Democrats on the HELP Committee seriously question the need for PCAs and have decided a call for an obviously stacked report is the first step toward eliminating the private sector. As reauthorization continues, the higher education collection industry is likely to be targeted to even greater scrutiny and attacks from the consumers bar and student advocates, often working with their allies on the Hill, at the Department, and at the CFPB.

The higher education collection industry has a strong narrative to counter these claims—the facts. In terms of the study, similar tactics have been tried in the past and failed at the Education Department. The FDCPA and UDAAP claims leading to contract termination and the calculation of “bona fide collection costs” on individual accounts are highly problematic. However, this industry is already highly regulated with a focus on compliance unlike any other market segment.

Chairman Harkin has been a longtime critic of PCAs for federal student loans, often suggesting the 16 percent fee was often the result of just one call, and this criticism resonates with many Democrats on the HELP Committee, including Sen. Elizabeth Warren (D-MA), so it is not going away upon his retirement at the end of the year. In order to prevent these troubling provisions from gathering steam as HEA moves forward, PCAs will need to inform Senators, Members of Congress, and their staff exactly how their business works and why additional regulations are unnecessary (or how the prescribed regulations are unworkable and can be improved). In order to maintain the student loan market for PCAs, it will be essential for individual companies, as well as student loan and collection industry trade associations, to become highly engaged with policymakers throughout the reauthorization process.

#### **Additional Information**

In addition to the provisions outlined above specifically referencing student loan collections, there are several others involving loan servicing and other aspects of higher education finance that will have a direct and indirect impact on PCAs. WPLLC will be reviewing these issues in later analyses of the HEA discussion draft.

The full text of the Senate HELP Committee HEA reauthorization discussion draft is available online:

[http://www.help.senate.gov/imo/media/doc/HEAA% 20Discussion% 20Draft% 20Language % 206.25.14.pdf](http://www.help.senate.gov/imo/media/doc/HEAA%20Discussion%20Draft%20Language%206.25.14.pdf)