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Washington News Brief – April 2022 to August 2022
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ED Discharges $238 Million in Student Loans for Borrowers who had Attended Marinello Schools of Beauty

On April 28, 2022, the Department of Education announced it will discharge $238 million in student loans for 28,000 borrowers who had attended Marinello Schools of Beauty based on borrower defense findings. According to Secretary of Education Miguel Cardona, "Marinello preyed on students who dreamed of careers in the beauty industry, misled them about the quality of their programs, and left them buried in unaffordable debt they could not repay." He went on to say: "Today's announcement will streamline access to debt relief for thousands of borrowers caught up in Marinello's lies. At the Department of Education, we will continue to strengthen oversight and enforcement for colleges and career schools that engaged in misconduct and uphold the Biden-Harris Administration's commitment to helping students who have been harmed." The Marinello group discharge reflects the Department's findings that the school engaged in "pervasive and widespread misconduct" that negatively affected all borrowers who enrolled at Marinello during the period 2009 through the closure in February 2016.

The press release pointed out that the Department has now approved more than $18.5 billion in loan discharges for more than 750,000 borrowers. The loan discharges that have been made include:

- Cancelling $6.8 billion for more than 113,000 borrowers through Public Service Loan Forgiveness (PSLF);
- Discharging more than $8.5 billion based on total and permanent disability for more than 400,000 borrowers; and
- Correcting problems in the income-driven repayment plan that will help thousands of borrowers receive student loan forgiveness.

The press release also stated that while the Department continues its work to review borrower defense claims, it also brought on four key hires for the Federal Student Aid (FSA) Office of Enforcement. The four new hires have "significant federal, congressional, and state oversight experience."

A copy of the press release is found at: https://www.ed.gov/news/press-releases/education-department-approves-238-million-group-discharge-28000-marinello-schools-beauty-borrowers-based-borrower-defense-findings.

FSA Announces Update of Use of "Professional Judgment" by Financial Aid Administrators

On April 29, 2022, Federal Student Aid (FSA) updated a January 29, 2021 announcement, which reminds financial aid administrators of their ability to exercise documented professional judgment when determining student eligibility for federal student aid. Because many of the difficult economic conditions persist, FSA is extending the guidance in this original announcement through the 2022-2023 award year. The guidance from FSA states that it will not negatively view the increased use of professional judgment or use it as a selection criterion for program reviews for the 2022-2023 award year.

A copy of the announcement is found at: https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-01-29/update-use-professional-judgment-financial-aid-administrators-updated-april-29-2022.

News Reports Confirm that White House is Weighing Income Limits for Federal Student Loan Forgiveness

A number of news publications confirmed on May 3, 2022, that the White House is looking at limiting any federal student loan forgiveness to borrowers making less than $125,000 per year. White House Press Secretary Jen Psaki was reported to have said that "The President talked back on the campaign about taking steps, or looking at steps, to help people making less than $125,000 a year. So that is the frame through which he's considering making considerations at this point."

FSA Extends Deadline for Mandatory Assignment of Perkins Loans

On May 4, 2022, Federal Student Aid (FSA) released an announcement stating that an August 27, 2021 announcement had required all institutions to assign to the Department of Education all Perkins Loans that have been in default for more than two years by June 30, 2022. However, as a result of delays brought about by the COVID-19 pandemic, the May 4th announcement delays the deadline until June 30, 2023.

A copy of the announcement is found at: https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-05-04/extended-deadline-mandatory-assignment-federal-perkins-loan-default-more-two-years.

Senator Cotton Sends Letter to Secretary of Education Asking for Legal Justification for Student Loan Forgiveness

On May 4, 2022, Senator Tom Cotton (R-AR) sent a letter to Secretary of Education Miguel Cardona demanding transparency over the Department of Education's deliberations around federal student loan forgiveness. "I'm firmly opposed to student debt cancellation. It is an insult to the majority of Americans who chose not to attend college, a hand-out to the wealthy and well connected, and a get out of jail free card for universities that charge unjustifiably high tuition and fees." Senator Cotton also said that student debt cancellation would also exacerbate rising inflation. Senator Cotton asked for a copy of an unredacted legal memorandum prepared by the General Counsel's Office on the legality of cancelling debt via executive action so he can understand the legal justification for the action no later than May 20, 2022.

A copy of the press release, which includes the text of the letter, is found at: https://www.cotton.senate.gov/news/press-releases/cotton-demands-transparency-about-biden-plan-to-transfer-student-loan-debt-to-taxpayers.

NY Governor Hochul Signs Bill Banning Colleges from Withholding Transcripts

On May 4, 2022, New York Governor Kathy Hochul signed S. 5924-C/A.6938-B, which prohibits institutions of higher education from withholding a student's academic transcript because of unpaid debts or charging individuals who owe debts a higher fee to obtain their academic transcript. Governor Hochul said that the legislation ensures that students can access their academic transcript when necessary so that they may continue their education or find a job. The new law comes after she ordered both the State University of New York (SUNY) and the City University of New York (CUNY) to end the practice of withholding academic transcripts. Governor Hochul said: "Transcripts are critical for students to continue pursuing their educational and career goals. To hold transcripts hostage until outstanding debts are paid is an unfair, predatory practice that prevents our students from reaching their full potential."

A copy of the press release for Governor Hochul is found at: https://www.governor.ny.gov/news/governor-hochul-signs-legislation-preventing-colleges-withholding-student-transcripts-because.

GAO Releases Report About the Legality of Online Program Providers

On May 5, 2022, the Government Accountability Office (GAO) released a report titled, "Education Needs to Strengthen its Approach to Monitoring Colleges' Arrangements with Online Program Managers," which highlights the need to ensure companies managing colleges' online programs are not violating the ban on paying recruiters based on their success in recruiting students.

The GAO was asked to review the Department of Education's role in overseeing colleges' use of Online Program Management (OPM) companies. The report concluded that the Department of Education needs to collect more data to ensure OPMs, third-party servicers that help colleges and universities run and recruit students for online academic programs, are not violating the *Higher Education Act*'s ban on compensating student recruiters based on their success. The Department is urged to require more and clearer information from institutions about the extent and nature of these outsourcing agreements to better help the Department of Education and auditors understand whether OPMs are being compensated for the number of students they recruit. The

GAO report said: “To protect students from predatory recruiting practices, it is important for [the Department of Education] to ensure that OPMs that provide recruiting services for colleges, as well as OPM recruiting staff, do not receive incentives based on their success in enrolling students.”

The GAO report was released by Chairman of the House Education and Labor Committee Bobby Scott (D-VA) and Chair of the Senate Health, Education, Labor and Pensions (HELP) Committee Patty Murray (D-WA), and Senators Tina Smith (D-MN), Sherrod Brown (D-OH), and Elizabeth Warren (D-MA). The press release said: “Students should have complete and unbiased information when making key decisions about their higher education. Unfortunately, the GAO report confirms that our higher education system lacks adequate oversight of online program managers, which are hired by institutions to help with student recruitment and marketing, among other services, in exchange for substantial portions of a student’s tuition payments. Without this oversight and transparency, our guardrails to prevent abusive recruiting practices – and to ensure students know the entities involved in and profiting from their education – are insufficient.”
The GAO report generally affirms the view that revenue-sharing arrangements are legal as long as a company or other provider bundles recruiting with other services, such as instructional design or student support.

A copy of the GAO press release, which includes the report, is found at: https://www.gao.gov/products/gao-22-104463.

A copy of the press release from Chairman Scott is found at: https://edlabor.house.gov/media/press-releases/chairs-scott-murray-colleagues-release-report-highlighting-need-to-ensure-companies-managing-colleges-online-programs-arent-violating-ban-on-abusive-recruiting-practices.

House and Senate Republicans Send Letters to Secretary of Education on FSA’s Inadvertent Leak of Personal Information of Students on Facebook

On May 10, 2022, House Education and Labor Committee Ranking Member Virginia Foxx (R-NC) and Senate Health, Education, Labor, and Pensions (HELP) Committee Ranking Member Richard Burr (R-NC) sent a letter to Secretary of Education Miguel Cardona requesting information regarding recent reports that the Department of Education used Facebook’s “Meta Pixel” analytical code to collect data from individuals, including names, phone numbers, email addresses, and zip codes, from individuals applying for the Free Application for Student Aid (FAFSA). The information was later shared with Facebook.

Ranking Members Foxx and Burr stated that the action violated the privacy of prospective college students across the country and criticized the Biden Administration for its unwillingness to be transparent. “The importance of protecting student’s information cannot be understated.” The letter goes on to state that their offices had requested a briefing with the Department to better understand the extent of the information given to Facebook and what was being done to remedy the situation, but their request was denied. "The Department's continued failure to be transparent harms FAFSA applicants and their trust in our institutions. It also harms Congress' ability to trust you and your agency."

A follow-up letter was sent to Secretary of Education Cardona on May 20, 2022 from Senator Burr and Representative Foxx after the Department failed to respond to their initial request demanding accountability. In their follow-up letter to the Secretary, Senator Burr and Representative Foxx criticized ED for being "obstructive and unwilling to share pertinent information with Committee staff." The letter pointed out that "[Federal Student Aid] Chief Operating Officer Richard Cordray has had no problem telling the press what happened and the extent of the inadvertent leak of student information. Yet your staff continues to delay providing a detailed response to our specific questions." They concluded that the Department is trying to hide something and is hoping this issue will go away.

A copy of the press release, which includes the text of the letter, is found at: https://www.burr.senate.gov/2022/5/burr-foxx-demand-accountability-from-department-of-education-on-facebook-student-data-privacy-leak.

A copy of the press release, which includes the text of the follow-up letter, is found at: https://www.burr.senate.gov/2022/5/burr-foxx-again-call-out-department-of-education-for-its-lack-of-cooperation-on-facebook-student-data-privacy-leak.

Republican Senators Introduce Bill to Prohibit President from Cancelling Student Loan Debt

On May 18, 2022, Senators Richard Burr (R-NC), Mitt Romney (R-UT), Tim Scott (R-SC), Bill Cassidy (R-LA), and Thom Tillis (R-NC) introduced a bill, the *Student Loan Accountability Act*, that would prohibit President Joe Biden from cancelling student loan debt. The Senators claim that cancelling student loan debt would increase inflation, incentivize institutions to increase tuition, add to the national debt, and worsen inequity by primarily benefiting wealthier individuals.

Senator Burr said: "Taxpayers who did not attend higher education or paid off their education loans responsibly should not be footing the bill for those who didn't. Not only is that patently unfair, it doesn't solve the root problem."

A copy of Senator Burr's press release is found at: https://www.burr.senate.gov/2022/5/burr-colleagues-introduce-bill-to-stop-president-biden-from-canceling-student-loan-debt.

FSA Releases DCL Waiving Most of the Verification Requirements for the 2022-2023 Award Year

On May 18, 2022, Federal Student Aid (FSA) released a Dear Colleague Letter (GEN-22-06) describing the verification requirements for the 2022-2023 award year. FSA states that it recognizes the need to continue to provide relief to millions of students and colleges facing challenges and barriers resulting from the ongoing national emergency. Therefore, FSA is maintaining those verification requirements that focus on identity and fraud for the remainder of the 2022-2023 award year, while waiving the remaining verification requirements. FSA reminds institutions that the waiver applies no matter where institutions of higher education are in the verification process.

FSA is not waiving requirements to resolve conflicting information concerning a student's eligibility. FSA states that it is confident that institutions will be able to quickly implement these verification changes for students since they are the same changes made for the 2021-2022 award year.

A copy of the Dear Colleague Letter is found at: https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-05-18/changes-2022-2023-verification-requirements.

<u>Education Department Encourages Colleges to Use *American Rescue Plan* Funds to Provide Mental Health Supports for Students</u>

On May 19, 2022, the Department of Education published new guidance to assist institutions in using federal funds, including support from the *American Rescue Plan*, to provide mental health supports for students, faculty, and staff. The guidance will help colleges support students as they navigate mental health challenges exacerbated by the pandemic. The FAQs are intended to provide answers and examples of allowable uses of how colleges can use the Institutional Portion grant funds of the Higher Education Emergency Relief Funds (HEERF) for supporting students' mental health and substance use disorder needs. The guidance also highlights leading colleges already using HEERF funds for these efforts.

A copy of the Department's press release, which includes the mental health guidance, is found at: https://www.ed.gov/news/press-releases/building-president-bidens-unity-agenda-education-department-urges-colleges-use-american-rescue-plan-funds-provide-mental-health-supports-students.

<u>OIG Announces Availability of 2022 Guide for Compliance Attestation Engagements of Proprietary Schools Expending HEERF Grants</u>

On May 20, 2022, the Department of Education's Office of Inspector General (OIG) announced the availability of the 2022 version of the "Guide for Compliance Attestation Engagements of Proprietary Schools Expending Higher Education Emergency Relief Fund Grant (Guide)." The Guide applies to and provides requirements and guidance for compliance attestation engagements of proprietary schools receiving HEERF grants through the *Coronavirus Aid, Relief, and Economic Security Act*, the *Coronavirus Response and Relief Supplemental Appropriations Act, 2021*, the *American Rescue Plan*, or any future acts passed by Congress.

As a condition of the HEERF grants, a proprietary school must have a compliance audit conducted of its administration of the HEERF grant for any fiscal year during which the eligible school expends $500,000 or more in total HEERF grant program funds, is on Heightened Cash Monitoring 1 or 2 in a fiscal year in which it expended any HEERF grant program funds, or has closed or is in the process of closing.

A copy of the announcement is found at: https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-05-20/availability-2022-guide-compliance-attestation-engagements-proprietary-schools-expending-higher-education-emergency-relief-fund-grants.

FSA Announces Interest Rates for Direct Loans First Disbursed Between July 1, 2022 and June 30, 2023

On May 24, 2022, Federal Student Aid (FSA) announced the interest rates for Direct Loans first disbursed between July 1, 2022 and June 30, 2023.

The fixed interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans for undergraduate students will be 4.99 percent. The fixed interest rate for Direct Unsubsidized Loans for graduate and professional students will be 6.54 percent. The fixed interest rate for Direct PLUS Loans for Parents of dependent undergraduate students and for graduate and professional students will be 7.54 percent.

A copy of the announcement is found at: https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-05-24/interest-rates-direct-loans-first-disbursed-between-july-1-2022-and-june-30-2023#.

NASFAA Reports that More than Three-Quarters of Financial Aid Administrators Voiced Concern About Ability to Remain Administratively Capable

On May 24, 2022, the National Association of Student Financial Aid Administrators (NASFAA) released a report titled, "Financial Aid Offices Face Intensifying Staffing Challenges Amid Pandemic," which found that what was once a challenge with employee retention and staffing is now a crisis for many financial aid offices that are struggling to remain administratively capable and adequately serve students. The results of the NASFAA survey found:

- Reduced capacity: Half of the respondents to the survey reported operating at 75 percent staffing capacity for the 2019-2020 and 2020-2021 award years. Another 56 percent of respondents to a follow-up survey reported they were operating at a reduced staffing level.
- Significant turnover rates: Most offices reported having difficulty filling up to 5-6 positions for the 2019-2020 and 2020-2021 award years.

- Administrative capability concerns: Forty percent indicated they do not feel they have the resources to maintain administrative capability standards.
- Difficulty hiring: Eight-six percent reported not receiving enough qualified applications, and 67 percent of those felt it was an issue of salary restrictions that made the job uncompetitive.

NASFAA concluded that the implications for financial aid offices are many. Inadequate training and staffing in the financial aid office increases the likelihood of being out of compliance with federal and state program requirements. The staffing shortages are coming at a time when there is increased scrutiny from the Department of Education (ED), the Consumer Financial Protection Bureau (CFPB), and state attorneys general. Further, adverse findings from audits, federal program reviews, or investigations into student complaints often result in financial penalties (ED may fine institutions up to $57,317 for each statutory or regulatory violation) and restrictions on how institutions administer student financial aid funds.

A copy of the report is found at:
https://www.nasfaa.org/uploads/documents/Financial_Aid_Offices_Face_Intensifying_Staffing_Challenges_Amid_Pandemic.pdf

House Appropriations Committee Approves the *FY 2023 Labor, HHS, Education and Related Agencies Appropriations Act*

On June 30, 2022, the House Appropriations Committee approved by a vote of 32-24 the *FY 2023 Labor, Health and Human Resources (HHS), Education, and Related Agencies Appropriations Act*. The bill now moves to the House of Representatives for additional consideration. It is doubtful that Congress will approve a final version before the beginning of the federal fiscal year on October 1, 2022. Key education provisions of interest include:

- $86.7 billion in discretionary funding for the Department of Education, which is $10.3 billion above the FY 2022 enacted level.
- $24.6 billion for federal student aid programs, which is an increase of $59 million above the FY 2022 enacted level.
- Setting the maximum Pell Grant award at $7,395, which is an increase of $500 above the FY enacted level.
- $920 million for the Federal Supplemental Educational Opportunity Grant program, which is an increase of $25 million above the FY 2022 enacted level.
- $1.2 billion for Federal Work Study, which is an increase of $34 million above the FY 2022 enacted level.
- Modifying the 90/10 rule to increase the percentage of non-federal funds that proprietary colleges must receive to 15 percent (making it the 85/15 rule).

- Expanding eligibility for federal student aid to include Deferred Action for Childhood Arrivals (DACA) participants and those who have received temporary protected status under the *Immigration and Nationality Act*.

ED Delays 5 Regulatory Rules Until Spring 2023

According to the regulatory updates that were posted on June 22, 2022, by the Office of Management and Budget (OMB) as "The 2022 Spring Agenda", specific Notices of Proposed Rulemaking (NPRMs) will be delayed until April of 2023, which means that the earliest the regulations could go into effect would be on or after July 1, 2024. The rules that are to be delayed include:

- Ability-to-Benefit
- Gainful Employment
- Financial Responsibility
- Administrative Capability
- Certification Procedures

The negotiated rulemaking committee reached consensus on the ATB rule, but did not reach consensus on the other four rules. While ED is free to draft language as it sees fit when the topics do not reach consensus, ED typically does not make substantive changes to areas where the committee was largely in agreement even if consensus was not ultimately reached.

ED Releases a Settlement in *Sweet v. Cardona*

On June 22, 2022, the Department of Education released an announcement that it had reached a settlement in *Sweet v. Cardona,* a class action lawsuit that challenged the Department's handling of borrower defense to repayment claims. Under the settlement, the Department agreed to discharge over $6 billion in federal student loan debt for around 200,000 borrowers involved in the lawsuit who claimed that they had been defrauded by institutions of higher education. The settlement still needs to be approved by a judge in order for affected students to receive debt cancellation.

A copy of the press release is found at: https://www.ed.gov/news/press-releases/statement-us-secretary-education-miguel-cardona-sweet-settlement.

A hearing to consider the proposed borrower defense settlement has been delayed so the court can consider a pair of motions that seek to contest the settlement agreement. The judge overseeing the case will hear those arguments on August 4, 2022 and could also consider whether to grant preliminary approval of the settlement.

Judge Gives Preliminary Approval to Proposed Settlement in *Sweet v. Cardona*

On June 22, 2022, the Department of Education released an announcement that it had reached a settlement in *Sweet v. Cardona,* a class action lawsuit that challenged the Department's handling of borrower defense to repayment claims. Under the settlement, the Department agreed to discharge over $6 billion in federal student loan debt for around 200,000 borrowers involved in the lawsuit who claimed that they had been defrauded by institutions of higher education. The settlement still needs to be approved by a judge in order for affected students to receive debt cancellation.

A copy of the press release is found at: https://www.ed.gov/news/press-releases/statement-us-secretary-education-miguel-cardona-sweet-settlement.

On August 4, 2022, U.S. District Court for the Northern District of California Judge William Alsup held a hearing to discuss the settlement agreement reached in *Sweet v. Cardona.* In preparation for the hearing, the Department of Justice and plaintiffs filed a joint status report in response to questions posed by Judge Alsup as to whether the proposed settlement made clear that the Biden Administration was approving borrower defense claims. The joint status report stated that settlement does not constitute an approved or successful borrower defense claim, and the settlement agreement proposes that borrowers will instead receive "Full Settlement Relief,…in compromise of their borrower defense claims."

At the hearing, the Court addressed motions to intervene filed by both for-profit and nonprofit higher education institutions. The schools sought to intervene after the parties announced a proposed settlement that would automatically forgive the loans of students who attended over 150 schools without adjudicating their borrower defense applications under the Department of Education's own regulations. As reported by Career Education Colleges and Universities (CECU), the Judge did not definitely rule on the pending motions to intervene, but announced toward the end of the hearing that he would grant preliminary approval for the proposed settlement agreement. He also set a 21-day deadline for any additional parties that might want to intervene. A hearing on the final approval of the proposed settlement agreement is currently scheduled for November 3, 2022.

Please find the link to the joint status report.

House Appropriations Committee Releases House Report on *Labor, HHS, Education, and Related Agencies Appropriations Act*

On June 30, 2022, the House Appropriations Committee released the House Report accompanying the *Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 2023*. The following report language may be of interest:

- Transparency in College Costs: The Committee looks forward to the briefing it requested in House Report 117-96 on the Department's efforts to work with institutions of higher education to improve college cost transparency.
- Online Program Management (OPM) Companies: The Committee is deeply concerned by the proliferation of for-profit OPMs in higher education. "Specifically, the Committee is troubled by how tuition-sharing agreements between universities and for-profit OPM companies can create perverse incentives that drive up costs, waste taxpayer dollars, and rip off students. In addition, the Committee is concerned by the role OPMs play in saddling graduate students with unsustainable student debt by taking advantage of the Grad PLUS program, which lets students borrow as much as colleges charge."

  "The Committee is disappointed by the inappropriately loose regulatory environment and sparse enforcement that has allowed OPMs to gain their foothold across the higher education landscape." The Committee recommends:

  - The Department immediately rescind the 2011 bundled services guidance and to establish a process to wind down institutions' inappropriate reliance on wasteful, abusive OPM tactics.
  - In the meantime, the Department should immediately enforce commonsense aspects of the otherwise flawed guidance. ED should ensure any contractors are independent entities, unaffiliated with the institution, and uninvolved in decision making.
  - The Department should employ meaningful consequences and penalties to deter predatory behavior.
  - The Department should develop adequate guidance to institutions that indicates when marketing could be considered a covered activity.
  - The Department should revise audit and program review guides to meet the oversight goals of the incentive compensation ban.

- Graduate Student Debt: Graduate student loans are expected to make up over 47 percent of new Federal student loan originations in FY 2023. The Committee recommends:

  - The Department should analyze the disproportionate share of new student loan originations represented by graduate student programs and to determine whether graduate student programs leave students with reasonable debt levels.
  - The Department should take actions to ensure that graduate program outcomes are commensurate with the debt levels of their students.

- Borrower Defense Recoupment and OPMs: The Committee is supportive of the Department's most recent proposal for an automatic, formalized process for recouping funds from institutions that commit wrongdoings against student borrowers. Under the proposal, institutions that commit wrongdoings are fully liable for any amounts discharged through the new Borrower Defense process, except under certain reasonable circumstances. Further, institutions that are in partnerships with predatory for-profit OPMs will incur liabilities for discharges resulting from their predatory behavior. The Committee recommends:

  - The Department should clarify that OPMs are third party servicers.
  - The Department should develop methods for determining when Borrower Defense liabilities should be shared jointly between the institution and the OPM.

- Appropriate Conditions for High-Risk Schools: To ensure that institutions are responsible stewards of Federal student aid, the Committee encourages the Department to place appropriate conditions on high-risk schools and to clarify procedures for when a high-risk institution may be eligible for a provisional program participation agreement.
- Spousal Consolidation Loans: Hundreds of borrowers remain in the spousal consolidation loan program, which stopped originating loans in 2006. The Committee's concern is that theses loans cannot be separated and leave both borrowers liable for the entire debt, even after a divorce. The Department should assist struggling spousal consolidation loan borrowers.

A copy of the report on the bill is found at: https://ncher.org/?mailpoet_router&endpoint=track&action=click&data=WyIxMTciLCJ3NHpybm5mYXdzZzB3d29zdzgwNGNna2djbzBnOHdrcyIsIjE2NyIsImQ0MTgzZDNmMDRiOCIsZmFsc2Vd

GAO Releases Report that ED is Slow to Identify When a College Closes

In July 2022, the Government Accountability Office (GAO) released a report titled, "College Closures: Education Should Improve Outreach to Borrowers About Loan Discharges," which found that the Department of Education was slow to identify when a college closes and does not always provide students with information they will need to obtain a closed-school discharge of their federal loans.

Because of the Department of Education delays in identifying college closures, it can take several months after a college closure for federal student loan servicers to notify borrowers of their potential eligibility for a discharge. For example, the Department did not identify a third of school closures from 2010-2020 until 2 months or more after the colleges actually closed. The GAO concluded that borrowers who attended these colleges were not informed by their loan servicers about the discharge option until months after their college closed.

The GAO also found that the template letters used by five loan servicers sent to inform borrowers of their potential eligibility for a discharge included information that was incomplete and potentially confusing. The GAO also concluded that after loan servicers notify borrowers about their potential eligibility for a discharge, limited additional outreach is provided to them.

The GAO recommended that ED implement strategies to identify college closures in a timely manner, develop guidance for the information loan servicers include in the closed school discharge notifications, and ensure additional outreach is provided to borrowers who are potentially eligible for a discharge.

A copy of the report is found at: https://www.gao.gov/assets/gao-22-104403.pdf.

ED Announces Enhancements and Modifications as of July 2022

On July 11, 2022, Federal Student Aid (FSA) announced the availability of updated features to StudentAid.gov. The new features include the following:

- Two-Step Verification – This process requires customers to provide two or more pieces of information to verify their identity when logging into StudentAid.gov. Customers will use their username and password (FSA ID) and will also need to provide a secure code that is provided to the user by text, email, or through an authenticator app.

- Public Service Loan Forgiveness (PSLF) Employer Search - This feature allows customers to search for qualifying PSLF employers without logging into the PSLF Help Tool.

- Other Website Updates include improvements and modifications to Aidan* virtual assistant, Borrower defense application experience, income-driven repayment (IDR) plan landing page, Master Promissory Note (MPN), PLUS Application, Status Center, StudentAid.gov home page and search functionality, Submit a Complaint, and Total and Permanent Disability Forms.

A copy of the announcement is found at: https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-07-11/studentaidgov-enhancements-and-modifications-starting-july-2022.

ED Publishes NPRM Proposing Amendments to the Title IX Regulations

On July 12, 2022, the Department of Education published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register*, which proposed amendments to the Title IX regulations of the *Education Amendments of 1972.* According to Secretary of Education Miguel Cardona in a press release of June 23, 2022, “Over the last 50 years, Title IX has paved the way for millions of women and girls to access equal opportunity to our nation’s schools and had been instrumental in combating sexual assault and sexual violence in educational settings.” Secretary Cardona went onto say: "As we celebrate the 50th Anniversary of this landmark law, our proposed changes will allow us to continue that progress and ensure all our nation's students – no matter where they live, who they are, or whom they love – can learn, grow, and thrive in school.”

The proposed amendments aim to ensure that:

- No person experiences sex discrimination in education;
- All students receive appropriate support as needed to access educational opportunities; and
- School procedures for investigating and resolving complaints of sex-based discrimination, including sexual violence, are fair to all involved.

Public comments must be received on or before September 12, 2022.

A copy of the NPRM is found at: https://www.govinfo.gov/content/pkg/FR-2022-07-12/pdf/2022-13734.pdf.

A fact sheet is found at: https://www2.ed.gov/about/offices/list/ocr/docs/t9nprm-factsheet.pdf.

A summary of the major provisions is found at: https://www2.ed.gov/about/offices/list/ocr/docs/t9nprm-chart.pdf.

A copy of the press release is found at: https://www.ed.gov/news/press-releases/us-department-education-releases-proposed-changes-title-ix-regulations-invites-public-comment.

Chairman of the House Education and Labor Committee Bobby Scott (D-VA) said on June 23, 2022: "The Education Department's new proposed Title IX regulations mark a monumental step in our fight to address sexual harassment, assault, and discrimination in K-12 and higher education – all while preserving the rights of the accused."

A copy of Chairman Scott's press release is found at: https://edlabor.house.gov/media/press-releases/chairman-scott-applauds-new-proposed-changes-to-title-ix-rules.

Ranking Member of the House Education and Labor Committee Virginia Foxx (R-NC) said on June 23, 2022, when the draft proposal was released: "Today's proposed Title IX regulations are nothing more than a conduit for the Left's woke agenda that will demolish due process rights and the safety of young women and girls across the country, with promised regulations still to come to undermine women's access to athletic opportunities. For an administration that claims to carry the torch for 'equality', these proposed regulations are steeped in hypocrisy."

A copy of Ranking Member Foxx's press release is found at: https://mailchi.mp/ca5f9f236375/foxx-statement-on-bidens-proposed-title-ix-regulations?e=8d0301ac66.

ED Publishes Proposed Regulations to Expand and Improve Student Loan Discharge Programs

On July 13, 2022, the Department of Education published a Notice of Proposed Rulemaking (NPRM), which proposes regulations that are designed to expand and improve the major student loan discharge programs authorized by the *Higher Education Act.* The proposed regulations are designed to alleviate student loan debt burdens for borrowers whose schools closed or whose schools falsely certified a borrower's eligibility, for borrowers who are totally and permanently disabled, and for public service workers who have met their commitments under the Public Service Loan Forgiveness (PSLF) program. The proposed regulations would also stop many instances of interest capitalization, which occur when unpaid interest is added to a borrower's principal balance, which increases the total amount owed by the borrower. Finally, the proposed rules would provide borrowers with their day in court if they have disputes with their colleges and universities. The NPRM calls for a 30-day comment period or August 12, 2022. The Department is aiming to finalize the rules by November 1, 2022, so they will take effect no later than July 1, 2023.

A copy of the NPRM is found at: https://lnks.gd/l/eyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbl9saW5rX2lkIjoxMjgsInVyaSI6ImJwMjpjbGljayIsImJ1bGxldGluX2lkIjoiMjAyMjA3MTMuNjA2Nzc0MTEiLCJ1cmwiOiJodHRwczovL3d3dy5nb3ZpbmZvLmdvdi9jb250ZW50L3BrZy9GUi0yMDIyLTA3LTEzL3BkZi8yMDIyLTE0NjMxLnBkZiJ9.eUAN80XR3TJsZU6BuM5u7oullrISSD3lRx3DE8rbjC8/s/1843708029/br/139275411964-l.

A copy of the Department's press release is found at: https://www.ed.gov/news/press-releases/education-department-releases-proposed-regulations-expand-and-improve-targeted-relief-programs.

A copy of the Fact Sheet is found at: https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/nprmfactsheet07042022.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

On July 12, 2022, Senator Richard Burr (R-NC), Ranking Member of the Senate Committee on Health, Education, Labor and Pensions, and Representative Virginia Foxx (R-NC), Ranking Member of the House Education and Labor Committee, sent a letter to Secretary of Education Miguel Cardona, requesting an extension of the public comment period from 30 days to 60 days. The letter stated that while the proposed regulations are designed to "make critical improvements to student loan discharge program and make student loans more affordable for borrowers," the Department is "trying to regulate its way out of following duly enacted laws and to further usurp the power of the purse assigned to Congress by the U.S. Constitution." The letter asserted that "[i]t is evident this proposal is part of a frenzied effort to meet a campaign promise to forgive as much student debt as possible before November midterm elections" and override the legislative process."

A copy of the press release, which includes the letter from Senator Burr and Representative Foxx, is found at: https://www.burr.senate.gov/2022/7/burr-criticizes-department-of-education-for-subverting-congress-on-proposed-changes-to-student-loan-relief-programs.

Senators Reintroduce Bipartisan Bill to Add Protections to Income Share Agreements

On July 19, 2022, Senators Todd Young (R-IN), Mark Warner (D-VA), Marco Rubio (R-FL), and Chris Coons (D-DE) reintroduced S. 4551, the *ISA Protection Act,* which supports and applies consumer protections to Income Share Agreements (ISA) that provide alternative financing for students planning to enroll in a postsecondary education. The proposed bill would prohibit ISA providers from entering into agreements with students that require payments higher than 20 percent of their income, exempt individuals from making ISA payments when their income falls below a threshold, set a maximum number of payments, and require detailed disclosures to students considering entering into an ISA.

Senator Young said: "With the appropriate safeguards, ISAs can be an innovative, debt-free financing option for students of all backgrounds." Senator Coons said: "ISAs are also proving to be uniquely responsive to the needs of students who are ineligible for existing federal student aid programs."

A copy of the press release, which includes the text of the bill, is found at: https://www.young.senate.gov/newsroom/press-releases/07/19/2022/young-colleagues-reintroduce-bill-to-strengthen-innovative-higher-ed-financing-tool-for-students.

House Ways and Means Committee Republicans Hold Virtual Meeting to Discuss Federal Student Loan Forgiveness

On July 20, 2022, House Ways and Means Committee Republicans hosted a virtual meeting to discuss federal student loan forgiveness. Dr. Beth Akers, Senior Fellow at the American Enterprise Institute, was the featured speaker. Ranking Member Kevin Brady (R-TX) said that the Biden Administration's plan to provide $10,000 in federal student loan forgiveness ignores the very problems that most Americans are facing, which is high inflation, and the plan is a giveaway to highly educated college graduates that will make rising costs worse rather than addressing the high cost of attending colleges and universities. He said that the Administration needs to sit down with Republicans to work together on policies that will focus on bringing down inflation.

Dr. Akers said there is no economic justification for federal student loan forgiveness. She said it is strictly politically motivated. She described four serious problems with the student loan forgiveness plan. First, it will lead to further inflation within higher education. Second, it sends a message to future borrowers that they need not repay their loans. Third, future borrowers will pay more and borrow more for postsecondary education, knowing they will be bailed out. Fourth, loan forgiveness does not help low-income students and their families. Instead, student loan forgiveness will provide large benefits to borrowers with the largest student loan balances who happen to be high earners.

Dr. Akers discussed instituting underwriting standards for federal student loans and utilizing income-driven repayment plans as an alternative to student loan forgiveness. She also highlighted the moral hazard of allowing borrowers to "walk-away" from their financial obligations. Finally, Dr. Akers concluded that middle-income workers are going to end up paying the student loans for wealthy Americans.

Representative Foxx Sends Open Letter to the American Public Regarding the Biden Administration's Recent Actions on Federal Student Loan Policy

On July 22, 2022, House Education and Labor Committee Ranking Member Virginia Foxx (R-NC) sent a letter to the American public discussing some of the Biden Administration's recent actions on federal student loan policy. In the letter, Representative Foxx stated that the President has forgiven millions of dollars in federal student loans, ignored the will of Congress, and overlooked the best interest of taxpayers. She identified a number of actions taken to overhaul the student loan program that overstepped the President's authority, including the extension of the repayment pause costing taxpayers about $4.3 billion per month; temporary waivers for repayment programs, like the temporary waivers available in the Public Service Loan Forgiveness (PSLF) program; and new regulations for student loans, such as creating a new income-driven repayment plan.

Representative Foxx concluded by stating: "Reform is not accomplished when the executive branch enacts sweeping policies that will upend our college financing system with the 'stroke of a pen.'"

A copy of the letter is found at: https://ncher.org/?mailpoet_router&endpoint=track&action=click&data=WyIxMTciLCJ3NHpybm5mYXdzZzB3d29zdzgwNGNna2djbzBnOHdrcyIsIjE3OCIsIjcwM2E0OTJkOWRjMyIsZmFsc2Vd.

CFPB Publishes Blog on the Limited Waiver for Public Service Loan Forgiveness and Urges Loan Servicers to Reach Out to Military Borrowers

On July 25, 2022, the Consumer Financial Protection Bureau (CFPB) published a blog titled, "Time is running out for student loan servicers to help servicemembers with student loans get debt relief," which urged loan servicers to ensure that servicemembers have access to information on the limited waiver for the Public Service Loan Forgiveness (PSLF) program in order for borrowers to take advantage of the program. The CFPB cited a report from the U.S. Government Accountability Office (GAO) that said that 176,906 active duty servicemembers held federal student loans that could be eligible for the PSLF program, but only 124 servicemembers had received forgiveness by 2020. The CFPB went on to point out that servicemembers with Perkins Loans or Federal Family Education Loans must consolidate their loans into the Direct Loan Program before submitting their PSLF application in order to benefit, but the loans must be consolidated by October 31, 2022. The blog encourages student loan servicers to reach out to military borrowers to share this information with them and encourage them to consolidate their student loans.

A copy of the blog is found at: https://www.consumerfinance.gov/about-us/blog/time-is-running-out-for-student-loan-servicers-to-help-servicemembers-with-student-loans-get-debt-relief/.

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NPRM Released Proposing Regulatory Revisions to a Number of Topics, Including the 90/10 rule, Changes of Ownership, and the Pell Grants for Prisoner Education Program

On July 28, 2022, the Notice of Proposed Rulemaking (NPRM), resulting from the Committee II – Institutional & Programmatic Eligibility, 2021-2022 Federal Negotiated Rulemaking deliberations, was posted. The NPRM proposes modifying the Pell Grants for Prisoner Education Program; expanding restrictions on for-profit colleges through the 90/10 rule; and formulating new rules pertaining to changes in ownership of institutions. There is a 30-day comment period and comments are due on or before August 26, 2022.

The Department of Education opted to separate out the income-driven repayment plan draft regulation, with the objective of finalizing the three proposals by November 1, 2022, which would allow them to be in effect on July 1, 2023. The income-driven repayment plan allows borrowers to pay back their loans over a longer period of time (usually 20 or 25 years) based upon their earnings. After the lengthened payment period, the balance of the loans are discharged. However, to date, only 157 loans have been approved for forgiveness. The income-driven repayment plan has been plagued with administrative problems, with borrowers being pushed into forbearance by loan servicers, as well as the Department's failure to communicate the complexities of the plan to borrowers. It is not clear when the income-driven repayment plan regulation will be released.

The Department of Education released a press release announcing the release of the proposed regulations that the Department said would implement critical changes to the regulations that better protect veterans and servicemembers from being subject to aggressive practices "by requiring private for-profit institutions to obtain at least 10 percent of their revenue from non-federal sources." The press release went on to state that the proposed regulations represent the latest step in the Biden Administration's "continued commitment to ensure that institutions are held accountable and that all students have access to a valuable postsecondary education."

A copy of the NPRM is found at: https://www.federalregister.gov/documents/2022/07/28/2022-15890/institutional-eligibility-student-assistance-general-provisions-and-federal-pell-grant-program.

A copy of the press release, which includes an unofficial copy of the proposed regulations, is found at: https://www.ed.gov/news/press-releases/education-department-releases-proposed-regulations-protect-veterans-and-service-members-increase-college-oversight-and-increase-college-access-incarcerated-individuals.

A copy of a fact sheet with more information is found at: https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/factsheetproposedregs.pdf.

ED Issues Guidance to Prevent Institutions from Switching Accrediting Agencies to Avoid Accountability Measures

Recent changes to the accreditation landscape, such as the expansion of former regional accreditors to now accredit institutions outside their geographic boundaries and a new law in Florida that mandates public institutions to switch accrediting agencies before their next accreditation cycle, have produced much confusion. The Department of Education says the new guidance is intended to clarify the process for institutions seeking to change accrediting agencies.

As a result, on July 19, 2022, the Department of Education issued new guidance that it said will prevent institutions from evading accountability measures by switching accrediting agencies. The guidance describes the process that institutions must follow to change accrediting agencies, including the requirement to obtain Department of Education approval prior to applying to a new accrediting agency. A second announcement made on July 19, 2022, provided guidance that lists the factors the Department may consider in evaluating institutions that would like to change accrediting agencies, including assessing whether the change is motivated by a desire to improve institutional quality or to evade oversight. On July 19, 2022, the Department also sent a letter to all institutional accrediting agencies describing how they can demonstrate that they meet the statutory and regulatory requirements to have voluntary members of institutions.

In a blog post of July 19, 2022, Antoinette Flores, Senior Advisor in the Office of Postsecondary Education, wrote: "The goal is to prevent a race to the bottom in quality standards among accrediting agencies and ensure that institutions cannot switch to an accrediting agency with less rigorous standards simply to evade accountability from an accrediting agency that investigates practices or takes corrective action against an institution." Ms. Flores stated that these clarifications are intended to ensure that institutions are held to high standards, and that an institution subject to oversight by its current accrediting agency cannot simply seek to evade accountability by jumping to a different accrediting agency. She concluded that the changes also help maintain the integrity of the Federal triad and preserve the accrediting agencies' role in oversight as intended in the HEA.

A copy of the guidance for institutions that would like to change accrediting agencies is found at: https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-07-19/guidance-institutions-seeking-change-or-add-accrediting-agencies.

A copy of the guidance that lists the factors used by ED to determine whether it will approve a change of accrediting agencies is found at: https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-07-19/guidance-institutions-seeking-change-or-add-accrediting-agencies.

A copy of the letter to institutional accrediting agencies describing how they can demonstrate that they meet the HEA requirements is found at: https://www2.ed.gov/admins/finaid/accred/letter-to-institutional-accreditors.pdf.

A copy of the blog post is found at: https://blog.ed.gov/2022/07/postsecondary-accreditation-cannot-become-a-race-to-the-bottom/

Senate Appropriations Committee Releases its Version of the *FY 2023 Labor, HHS, Education, and Related Agencies Appropriations Act*

On July 28, 2022, the Senate Appropriations Committee released its version of the *FY 2023 Labor, Health and Human Services, Education, and Related Agencies Appropriations Act,* which is strongly opposed by the Republicans who believe that the funding levels are unrealistic. Unlike the House version, which proposed changing the 90/10 rule to the 85/15 rule, the Senate makes no changes to the 90/10 rule. Some of the bill's provisions for education include:

- Increasing the maximum annual Pell Grant award by $500 for a total maximum annual award of $7,395 for the 2023-2024 award year.
- Increasing by $580 million funding to $2.6 billion for Student Aid Administration to modernize and simplify student loan servicing.

- Establishing a new general provision making DACA students and students with temporary protected status or grant of deferred enforced departure eligible for Pell Grants and federal student loans.

The explanatory language included in the Committee Report includes the following recommendations:

- Accountability for Misconduct and Abrupt School Closures: The Committee remains concerned by the significant number of institutions of higher education that in recent years have committed fraud, abuse, substantial misrepresentation, or other misconduct, or have abruptly closed. The Committee strongly supports efforts to forgive loans for students who attended these institutions and directs the Department to develop procedures for holding executives, owners, and board members liable for such misconduct and closures. This would help alleviate negative consequences for students and taxpayers and to help deter predatory or illegal behavior.
- Office of Enforcement: The Committee strongly supports efforts to expand the capabilities of the Office of Enforcement to identify and address major problems across institutions of higher education that pose widespread risk to students and taxpayers. The Committee expects FSA to "robustly" staff this office and requests information in FY 2024 on activities undertaken and planned to be taken to preemptively address fraud and other related issues.
- Return of Title IV Funds: The Committee continues to encourage the Department to pursue efforts to simplify and streamline the Return of Title IV funds process for institutions of higher education and students.
- State-Based and Non-Profit Servicing Organizations: The Committee continues to note that many State-based and non-profit servicing organizations have demonstrated specialized experience in helping struggling borrowers, and continues to encourage the Department to ensure such organizations have a role in any new Federal student loan servicing requirement.
- Student Loan Servicing: The Committee continues to recommend many of the requirements from the *Consolidated Appropriations Act, 2022*, with modifications focused on ensuring USDE provides high-quality service to all students and borrowers, holds student loan servicers and contractors accountable, and prioritizes those with the greatest needs.

House and Senate Democrats Send Letter to President Biden and Secretary of Education Cardona to Extend Current Federal Student Loan Payment Pause

On July 28, 2022, more than 100 House and Senate Democrats sent a letter to President Biden and Secretary of Education Miguel Cardona urging them to extent the current pause on federal student loan repayments, interest, and collections that is scheduled to expire on August 31, 2022. In the letter, led by Senate Majority Leader Chuck Schumer (D-NY), the lawmakers request an extension of the pause because of the numerous economic issues facing borrowers as well as administrative actions in process by the Department of Education.

A copy of the press release, which includes the text of the letter, is found at: https://www.menendez.senate.gov/newsroom/press/menendez-booker-warren-schumer-underwood-cardenas-pressley-lead-100-colleagues-in-urging-biden-administration-to-extend-student-loan-payment-pause.

GAO Releases Finding ED Underestimated Cost of Federal Direct Loan Program

On July 29, 2022, the Government Accountability Office (GAO) released a report titled, "Education has Increased Federal Costs of Direct Loans by Billions due to Programmatic and Other Changes," which analyzed federal student loan data between 1994 and 2021. The analysis found that the Department of Education had underestimated the costs for the Federal Direct Loan program by $311 billion. The report was requested by Senators Richard Burr (R-NC) and Greg Murphy (R-NC). The report found that initially the Department had estimated that the federal Direct Loan program would generate $114 billion in income over 25 years, but recent data indicates that these programs have cost the federal government $197 billion.

Every year, the Department estimates the lifetime costs of the federal student loan program for inclusion in the President's budget, and the estimate includes costs for new loans and changes in economic factors and actual loan performance. According to the GAO, the largest estimated cost increases, about $102 billion in total, came from emergency relief under the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* and administrative actions, such as the pause on federal student loan repayment, interest, and involuntary collections for loans in default. The largest increase, about $189 billion, is due to re-estimates based on actual data on how loans performed.

The House and Senate Committee Republicans said: "For decades, the Department of Education has significantly underestimated the true cost of the Direct Loan program." Chairman of the Education and Labor Committee Bobby Scott (D-VA) said: "Every American deserves access to an affordable, high-quality degree…The solution to this problem is not to eliminate the student loan program, but – rather – we should work together to address the rising cost of college, restore the value of the Pell Grant, and make meaningful reforms to the student loan program."

A copy of the GAO Report is found at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjto9Dlm6n5AhW8GVkFHapdAoAQFnoECAwQAw&url=https%3A%2F%2Fwww.gao.gov%2Fassets%2Fgao-22-105365.pdf&usg=AOvVaw3I1uBB0Z99lQlvDqCWrZyB.

A copy of the press release from the House Republicans is found at: https://republicans-budget.house.gov/press-release/gao-report-reveals-federal-student-loan-program-costs-taxpayers-311-billion-as-biden-prepares-to-spend-hundreds-of-billions-in-loan-cancellations-for-the-wealthy/.

A copy of the press release from Bobby Scott is found at: https://edlabor.house.gov/media/press-releases/chairman-scott-statement-on-cost-of-student-loan-program.

House Education and Labor Committee Republicans Introduce the *Responsible Education Assistance Through Loan (REAL) Reform Act*

On August 3, 2022, led by Ranking Member Virginia Foxx (R-NC), the House Education and Labor Committee Republicans introduced the *Responsible Education Assistance Through Loan (REAL) Reform Act,* which would streamline and improve the federal student loan program to protect borrowers and taxpayers. Some of the provisions include the following:

- Prohibits the Secretary of Education from issuing any new regulations or executive actions related to the federal student loan program that would increase costs to the federal government.
- Allows borrowers to rehabilitate their federal student loans twice, rather than just once.
- Eliminates the Grad PLUS program for new borrowers.
- Imposes limits on graduate borrowing for students enrolling on or after July 1, 2023. Graduate students would be permitted to borrow $25,000 annually and have an aggregate limit of $100,000 for their program.
- Allows financial aid administrators to further limit undergraduate and graduate borrowing for certain categories of borrowers, including those attending less than full-time, in order to prevent borrowers from incurring additional unnecessary debt.
- Limits repayment options to one standard, 10-year repayment plan and one income-based repayment (IBR) plan. Under the IBR plan, existing and new borrowers would be required to pay 15 percent of their discretionary income with a minimum monthly payment of $25.

    - Under the IBR plan, borrowers would be required to repay the principal and interest that they would have paid under a standard 10-year plan, as calculated when they enter repayment. The "excessive interest cap benefit" would protect against negative amortization.
    - The bill would prohibit the Secretary from creating any new repayment plans and from modifying existing repayment plans in a manner that increases costs to the federal government.
    - The bill would make Federal Family Education Loan borrowers eligible for the new IBR plan and would require the Secretary to assume the repayment obligations of those borrowers that qualify for the excessive interest cap benefit.

- Eliminates the Public Service Loan Forgiveness (PSLF) program for new borrowers.

- Eliminates interest capitalization.
- Expands eligibility for Pell Grants to cover short-term programs. The bill would allow students enrolled in short-term programs to qualify for Workforce Pell Grants. Eligibility would be limited to students enrolled in programs between 150 to 600 clock hours offered over a period of eight to 15 weeks, which provide education aligned with in-demand industry sectors or occupations.

Ranking Member Foxx said in a press release: "The Biden Administration has been engaging in mass student loan forgiveness behind Americans' backs without the authorization of Congress. In total, to date, the President has already forgiven, waived, or cancelled at least $217 billion in student loans through the unlawful abuse of his executive pen. Instead of placing the burden of this broken student loan system on the shoulders of American taxpayers, we are introducing this bill to fix the system."

A copy of the press release, which includes the text of the bill, a bill summary, and a fact sheet, is found at:
https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=408476.

Senate Confirms Dr. Nasser Paydar as Assistant Secretary of Postsecondary Education

On August 4, 2022, the Senate confirmed Dr. Nasser Paydar as Assistant Secretary of Postsecondary Education at the Department of Education. Secretary of Education Miguel Cardona said in a press release: "It is with great excitement that I congratulate Dr. Nasser Paydar on his confirmation as Assistant Secretary for Postsecondary Education." Secretary Cardona went on to say: "Dr. Paydar brings to the U.S. Department of Education more than three-and-a-half decades of experience as a university leader and educator, during which time he has demonstrated an unwavering commitment to creating accessible pathways to college and careers for students of all ages, abilities, and backgrounds."

A copy of the press release is found at: https://www.ed.gov/news/press-releases/statement-secretary-miguel-cardona-confirmation-nasser-paydar-assistant-secretary-postsecondary-education.

Education Department Announces it will Discharge All Remaining Federal Student Loans that Borrowers Received to Attend ITT Technical Institute

On August 13, 2022, the Department of Education announced that it will discharge all remaining federal student loans that borrowers received to attend ITT Technical Institute from January 1, 2005, through its closure in September 2016. The Department reached its decision based on extensive internal records, testimony received from ITT managers and recruiters, and first-hand accounts from borrowers. As a result, 208,000 borrowers will receive $3.9 billion in full loan discharges. This includes borrowers who have not yet applied for a borrower defense to repayment discharge.

Secretary of Education Miguel Cardona said: “It is time for student borrowers to stop shouldering the burden from ITT’s years of lies and false promises. The evidence shows that for years, ITT’s leaders intentionally misled students about the quality of their programs in order to profit off federal student loan programs, with no regard to the hardship this would cause.”

The Department also announced that it formally notified DeVry University that it is required to pay millions of dollars for approved borrower defense applications. DeVry can submit information and arguments for why it should not be required to pay these liabilities or request a hearing from the Department’s Office of Hearings and Appeals.

Finally, the Department also announced the approval of discharges for just under 100 borrowers who enrolled in the Medical Assistant or Medical Billing and Coding Program at Kaplan Career Institute’s Kenmore Square location in Massachusetts from July 1, 2011 to February 16, 2012 when the institution stopped enrolling new students. These are borrowers identified by Massachusetts Attorney General Maura Healey after an investigation found that the institution repeatedly lied about its job placement rates to borrowers. The location closed in February 2013.

The Department’s latest action brings the total amount of loan relief by the Biden-Harris Administration to almost $32 billion for 1.6 million borrowers.

A copy of the press release is found at: https://www.ed.gov/news/press-releases/education-department-approves-39-billion-group-discharge-208000-borrowers-who-attended-itt-technical-institute.

<u>ED Announces Implementation Efforts Surrounding “Fresh Start” Initiative</u>

On August 17, 2022, the Department of Education released a Dear Colleague letter (GEN-22-23) and a Fact Sheet announcing updates to the “Fresh Start” initiative, which would enable defaulted borrowers to reenter repayment in good standing. Among other features, “Fresh Start” will enable 7.5 million borrowers with defaulted federal student loans as of May 31, 2022 to regain Title IV, HEA federal student aid eligibility, including Pell Grants and campus-based aid, to help them complete their credential or degree. The DCL noted that the guidance applies only when awarding aid to borrowers who are currently ineligible based solely on a prior Title IV loan default and who can qualify to have their eligibility restored. Eligible loans are those that entered default status prior to the start of the repayment pause on March 13, 2020.

FSA stated in the Dear Colleague letter that the following loan categories are eligible for Fresh Start: Direct Loans, FFEL loans, and Federal Perkins Loans. The Fresh Start initiative will remain available to previously defaulted borrowers for one year after the end of the federal student loan payment pause.

The guidance outlines the steps that institutions are required to follow if they receive an Institutional Student Information Record (ISIR) for a student who is eligible to take advantage of the Fresh Start initiative and defaulted before March 13, 2020. The DCL also addresses the restoration of Title IV eligibility for defaulted borrowers.

The Dear Colleague Letter also stated that for borrowers who defaulted on their federal student loans after March 2020 – mainly FFELP loans – borrowers are subject to different guidance. In that case, these defaulted borrowers are eligible for federal student aid effective March 12, 2021 with publication of Dear College Letter GEN-21-03.

A copy of the DCL is found at: https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-08-17/federal-student-aid-eligibility-borrowers-defaulted-loans.

Information about restored eligibility is found at: https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-08-17/information-about-restored-aid-eligibility-under-fresh-start-initiative#.

Ranking Member of the House Education and Labor Committee Virginia Foxx (R-NC) issued a statement about Operation Fresh Start: "The Department's so-called Operation Fresh Start plan gives delinquent student loan borrowers the keys to borrow even more without any assurance they can afford to do so. It's literally the definition of insanity. It's also wrong!"

A copy of the press release is found at:
https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=408485.

White House Launches New PSLF Resources and Urges Borrowers to Apply under Temporary Waiver

On August 18, 2022, the White House launched a new website to highlight the benefits of the Public Service Loan Forgiveness (PSLF) program's temporary waiver and is reminding borrowers that the window to participate is winding down. The website provides borrowers with testimonials and scenarios in which individuals would qualify for the program's expansion. The temporary waiver is set to expire on October 31, 2022.

The website can be found at:
https://www.whitehouse.gov/publicserviceloanforgiveness/?utm_source=www.pslf.gov.

FTC Sends More than $822,000 to Borrowers Deceived by Debt Relief Scam

On August 18, 2022, the Federal Trade Commission (FTC) announced it is sending 14,521 check totaling more than $822,000 to borrowers who lost money to a student debt-relief scheme that operated under the name Student Advocates. The FTC alleged in a complaint filed in September 2018 that the operators of Student Advocates charged illegal upfront fees that they falsely claimed went toward consumers' student loans. The defendants steered customers into high-interest loans to pay these fees. The FTC also alleged that the defendants made false promises that their services would permanently lower or ever eliminate consumers' student loan payments and debt balances.

A copy of the FTC press release is found at: https://www.ftc.gov/news-events/news/press-releases/2022/08/federal-trade-commission-sends-more-822000-students-deceived-student-advocates-debt-relief-scam.

ED Terminates Federal Recognition of ACICS

On August 19, 2022, the Department of Education announced that colleges currently accredited by the Accrediting Council for Independent Colleges and Schools (ACICS) will now be required to fulfill additional operating conditions for continued participation in the federal student aid programs because of the Department of Education Deputy Secretary Cindy Marten's final decision to deny an appeal filed by ACICS to remain a federally recognized for federal student aid purposes.

Although ACICS is no long a nationally recognized accrediting agency, the Department will provisionally certify ACICS-accredited institutions for continued participation in the federal student aid programs for up to 18 months from August 19, 2022. The 18-month provisional certification period allows institutions time to seek accreditation from another nationally recognized accrediting agency. During the 18-month provisional certification period, the Department will require the ACICS-accredited institutions to comply with additional conditions that are designed to protect students and safeguard taxpayer dollars. These conditions include additional monitoring, transparency, oversight, and accountability measures. Within 30 days of the notice, all ACICS-accredited institutions will be required to submit teach-out plans for helping students complete their academic programs elsewhere and submit information about recent and ongoing investigations to ensure that the Department is aware of key risks. All ACICS-accredited institutions will be required to provide disclosures to students on the loss of federal aid eligibility and to post a Letter of Credit.

Deputy Secretary Martin said: "Recognition by the Department must be reserved for agencies that adhere to high standards, just as accreditation by agencies must be reserved for institutions and programs that adhere to high standards."

On its website, ACICS responded to the Department's decision by indicating it was evaluating all of its options.

A copy of the press release is found at: https://www.ed.gov/news/press-releases/us-department-education-terminates-federal-recognition-acics-enhances-federal-aid-program-participation-requirements-acics-accredited-colleges.

ED Announces Over $10 Billion in Forgiveness Under PSLF

On August 23, 2022, the Department of Education announced that it has approved more than $10 billion in federal student loan debt relief for over 175,000 borrowers in 10 months through the Public Service Loan Forgiveness (PSLF) program. The announcement follows changes that the Department made to the PSLF program in October 2021, which modified certain rules to make it easier for public servants with federal student loans to have their debts cancelled. "For far too long, teachers, nurses, veterans, government employees, and countless others dedicated to serving our country found PSLF to be nothing more than an empty promise, and before President Bident took office, only 7,000 borrowers ever managed to qualify. Today's announcement that we've surpassed $10 billion in forgiveness for more than 175,000 public servants shows that the Biden-Harris administration's efforts to cut red tape are turning the Public Service Loan Forgiveness program from a promise broken to a promise kept."

A copy of the press release is found at: https://www.ed.gov/news/press-releases/thanks-temporary-changes-us-department-education-announces-public-service-loan-forgiveness-surpasses-10-billion-debt-relief.

White House Announces Student Loan Pause Extension Through December 31 and Targeted Debt Cancellation

On August 24, 2022, the Biden-Harris Administration announced a final extension of the pause on student loan repayment, interest, and collections through December 31, 2022. Borrowers should plan on resuming payments in January 2023. The press release noted that "[w]hile the economy continues to improve, COVID cases remain at an elevated level, and the President has made clear that pandemic-related relief should be phased out responsibly so that people do not suffer unnecessary financial harm." Also released were two legal memoranda offering legal opinions from the Department of Education and the Department of Justice supporting the authority of the President to discharge federal student loans.

The White House also announced that it plans to address the financial harms of the pandemic by smoothing the transition back to repayment and helping borrowers at highest risk of delinquencies or default once payments resume. This will be accomplished by providing targeted student debt cancellation to borrowers with loans held by the Department. Borrowers with an annual income during the pandemic of under $125,000 (for individuals) or under $250,000 (for married couples or heads of households) who received a Pell Grant in college will be eligible for up to $20,000 in debt cancellation. Borrowers who met those income standards during the pandemic but did not receive a Pell Grant will be eligible for up to $10,000 in relief. The Department will be announcing further details on how borrowers can claim this relief in the weeks ahead. ED expects that almost 8 million borrowers may be eligible to receive relief automatically because relevant income data is already available to the Department.

According to a Fact Sheet released by the White House, the Biden Administration estimates that its new plan will eliminate all federal student loan debt for 20 million borrowers, while 90 percent of the relief will be going to borrowers earning less than $75,000 annually. The Biden Administration expects 43 million borrowers to receive some level of forgiveness under the plan. In terms of eligibility, the Biden Administration notes that current students are eligible for forgiveness as long as their loans originated before July 1, 2022.

The announcement indicated that the Department is also proposing a rule to create a new income-driven repayment plan that will substantially reduce future monthly payments for lower- and middle-income borrowers. The proposal would protect more income from loan payments. It will cut in half, from 10 percent to 5 percent of discretionary income, the amount that borrowers have to pay each month on their undergraduate loans, while borrowers with both undergraduate and graduate loans will pay a weighted average rate. It would also raise the amount of income that is considered nondiscretionary income and therefore protected from repayment. The proposed rule would also forgive loan balances after 10 years of payments instead of 20 years under many current income-repayment plans for borrowers with original loan balances of $12,000 or less. The proposed income-driven repayment plan will be published as a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* in the next few days, and the public will have 30 days to comment.

Secretary of Education Miguel Cardona said: “Earning a college degree or certificate should give every person in America a leg up in securing a bright future. But for too many people, student loan debt has hindered their ability to achieve their dreams – including buying a home, starting a business, or providing for their family. Getting an education should set us free; not strap us down!”

A copy of the press release from the Department of Education is found at: https://www.ed.gov/news/press-releases/biden-harris-administration-announces-final-student-loan-pause-extension-through-december-31-and-targeted-debt-cancellation-smooth-transition-repayment.

A copy of the legal memorandum released by the Department of Education supporting the Department’s authority for the student loan discharges is found at: https://www2.ed.gov/policy/gen/leg/foia/secretarys-legal-authority-for-debt-cancellation.pdf.

A copy of the legal memorandum released by the Department of Justice supporting the Department of Education’s authority for the student loan discharges is found at: https://www.justice.gov/olc/file/1528451/download.

A copy of the Fact Sheet released by the White House is found at: https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/.

Chairman of the House Education and Labor Committee Bobby Scott (D-VA) said: "President Biden is providing unprecedented relief for American's student loan borrowers." He went on to say: "We must also remember that, that while debt cancellation is good news for those who currently hold student loans, it does not solve the underlying problems that caused the student debt crisis in the first place: the exorbitant cost of college, the declining purchasing power of the Federal Pell Grant, and our flawed student loan system."

Ranking Member of the House Education and Labor Committee Virginia Foxx (R-NC) said after the announcement that the Department of Education is extending the student loan repayment moratorium for a fifth time and forcing taxpayers to pay for certain borrowers to receive $10,000 in loan "forgiveness": "Confusion reigns in the Biden administration – borrowers have no clear guidance and taxpayers are forced to pay for a bill they shouldn't owe. This is wrong, unfair, and irresponsible." She went on to say: "This is a slap in the face to those who never went to college, as well as borrowers who upheld their responsibility to taxpayers and paid back their loans. It's a signal to every freshman stepping foot on campus to borrow as much as they can because taxpayers are picking up the tab."

A number of press reports noted that not all Congressional Democrats were as enthused by the loan forgiveness plan. Several Democrats said that a more targeted relief program addressing the root problems of college affordability should have been prioritized over one-time cancellation while others worried about the messaging of taking an executive action rather than working through the legislative process to provide relief to student borrowers.

A copy of Chairman Scott's press release is found at: https://bobbyscott.house.gov/media-center/press-releases/scott-statement-on-biden-student-loan-announcement.

A copy of Ranking Member Foxx's press release is found at: https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=408490.

President Signs into Law Changes Made to the VA 85/15 Rule

On August 26, 2022, President Joe Biden signed into law S. 4458, *Ensuring the Best Schools for Veterans Act of 2022,* which made changes to certain 85/15 Rule requirements. Specifically, the new law contains certain provisions which:

- Exempt accredited schools from 85/15 requirements if their GI Bill student enrollment is lower than 35 percent of the total student population;
- Exempt programs with less than 10 supported students enrolled;

- Classify students on a repayment plan completed no later than 180 days from the end of the term, quarter, or semester as non-supported; and
- Allows schools found to be non-compliant with the 85/15 Rule to apply for a review of that determination by the Under Secretary for Benefits and the Secretary of Veterans Affairs.

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