WASHINGTON PERSPECTIVE

END OF MARCH 2023

Bipartisan Group of Senators Introduce *Student Loan Tax Elimination Act*

On March 28, 2023, a bipartisan group of senators led by Senator Mike Braun (R-IN) introduced the *Student Loan Tax Elimination Act,* which would eliminate origination fees charged on Federal Direct Loans that the sponsors say adds unnecessary debt to student borrowers. Representative Lloyd Smucker (R-PA) introduced the companion legislation in the House.

A copy of Senator Braun’s press release is found at: https://www.braun.senate.gov/senator-braun-leads-bipartisan-bill-remove-student-loan-tax.

FSA Posts Quarterly Portfolio Reports

On March 29, 2023, Federal Student Aid (FSA) posted its quarterly portfolio reports on the FSA Data Center website. The reports provide an overview of the student loan portfolio, including information on loan volume, delinquency rates, and default rates. The report indicated that as of December 31, 2022, the total outstanding principal balance of the federal student loan portfolio was $1.64 trillion representing 43.8 million unduplicated recipients, which is a 4.6 percent increase from the same period in the previous year. The report also revealed that the overall delinquency rate for the portfolio was 9.5 percent. In addition, as of early February, about 453,000 borrowers have been approved for loan discharge under the Public Service Forgiveness Program (PSFP) limited waiver exceptions.

Almost 27 million Direct Loan recipients, with about $1.1 trillion in outstanding loans, are in forbearance status, and more than 99 percent of these balances are in the special CARES Act forbearance. Less than 330,000 Direct Loan recipients have opted out of the payment pause and thus were in active repayment status as of December 31, 2022, compared to 18.1 million recipients in March 2020, shortly after the CARES Act became law.

The number of cumulative borrowers in default continues to decrease, which is now 4.7 million borrowers compared to 5.0 million borrowers one year ago.

A copy of the announcement is found at: https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-03-29/federal-student-aid-posts-quarterly-portfolio-reports-fsa-data-center.

Three Institutions Request Supreme Court to Halt ED from Discharging Federal Loans Owed by their Former Borrowers; Supreme Court Denies Request from the Three Institutions

On March 29, 2023, the U.S. Court of Appeals for the Ninth Circuit unanimously denied the request of three institutions, Lincoln Technical Institute, American National University, and Everglades College, seeking to halt the settlement reached in *Sweet v. Cardona*, which would allow the Department of Education to discharge the federal student loans for those borrowers who have borrower defense claims with the Department of Education. The settlement is expected to cover over 200,000 borrowers. The Department has already begun processing relief for the vast majority of borrowers, except for the borrowers' claims from the three educational institutions, which are on hold. *Sweet v. Cardona* is a class action lawsuit that was filed in 2019 against the Trump Administration.

In a 3-0 decision, the appeals court ruled that the institutions failed to show sufficient probability of irreparable harm and ordered the institutions to submit their opening briefs for the appeal by May 3, 2023.

On April 5, 2023, Lincoln Technical Institute, American National University, and Everglades College asked the Supreme Court to stop the Department of Education from discharging the federal student loans owed by their former borrowers as part of a class action settlement reached in *Sweet v. Cardona* over borrower defense to repayment claims that languished at the Department for years. The three colleges say they are being unfairly harmed by the settlement and argue the Biden Administration lacks the authority to wipe out large amounts of student debt.

A group of 20 Republican Attorneys General (AGs) filed an amicus brief with the Supreme Court urging the justices to hear *Everglades College et. al. v. Cardona.*

On April 13, 2023, the Supreme Court rejected the emergency request from the three institutions to halt the class-action settlement that would cancel more than $6 billion of student loan debt owed by borrowers who had attended their schools. The decision by the Supreme Court sends the case back to the U.S. Court of Appeals for the Ninth Circuit, which as noted above, has already set a briefing schedule to hear the colleges' appeal of the settlement.

ED Releases Memo Urging Institutions to Enroll Eligible Students in SNAP Before Emergency Declaration Expires

On March 30, 2023, the Department of Education released a memo to remind institutions of higher education that the ongoing emergency declarations tied to the coronavirus will end on May 11, 2023, and that institutions should use the winddown period to ensure that eligible students can access the expanded Supplemental Nutrition Assistance Program (SNAP) before the benefits sunset.

According to guidance released by the Department of Agriculture (USDA) on February 10, 2023, once the emergency declaration is lifted on May 11, 2023, the temporary student exemptions will remain in effect for initial SNAP applications for an additional 30 days. State SNAP agencies must continue to apply the temporary exemptions to initial applications filed on or before June 9, 2023. State SNAP agencies must also process SNAP recertification applications submitted through June 30, 2023, using the temporary exemptions.

During the pandemic, SNAP was opened to all college students who are enrolled at least half-time and are otherwise eligible for work-study or have an EFC of zero. ED also urged institutions to conduct targeted outreach to students using FAFSA data and ensure that eligible students are provided with the information needed to apply for the program.

A copy of the memo is found at:
https://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/phe-snap-memo.pdf.

CFPB Announces that it Will Distribute Over $4.7 Million to Consumers Harmed by a Financial Aid Scam

On March 31, 2023, the Consumer Financial Protection Bureau (CFPB) announced that it will distribute over $4.7 million to consumers who were impacted by a financial aid scam. In 2015, the CFPB filed a complaint against College Financial Advisory and Student Financial Resource Center for illegally charging millions of dollars for sham financial services. The CFPB states that over 78,000 people paid College Financial Advisory or Student Financial Resource Center for information on how to pay for college or on how to apply for financial aid services.

A copy of the press release is found at:
https://www.consumerfinance.gov/about-us/blog/cfpb-to-distribute-more-than-4-7-million-to-consumers-impacted-by-nationwide-student-financial-aid-scam/.

SoFi Sues Department of Education Challenging the Federal Student Loan Repayment and Interest Pause

SoFi filed a lawsuit in the U.S. District Court for the District of Columbia challenging the Department of Education's federal student loan repayment and interest pause issued in November 2022. The lawsuit asserted that unlike the other extensions, the Department did not claim that continuing the current moratorium was necessary to address harm caused to borrowers affected by the COVID-19 pandemic, but said that the further extension was intended to alleviate uncertainty for borrowers during the pendency of ongoing litigation regarding the federal student loan forgiveness program, including borrowers not eligible for debt relief. SoFi urged the Court to invalidate the eighth extension and, at a minimum, require repayment by borrowers who are not eligible for student debt cancellation.

APRIL 2023

2U Sues Department of Education over New Guidance on Third-Party Servicers

On April 4, 2023, 2U sued the U.S. Department of Education in the U.S. District Court for the District of Columbia over its most recent guidance regulating the relationships between colleges and their third-party servicers. The online program manager (OPM) filed a lawsuit asserting that the Department's new guidance radically redefines the definition of a third-party servicer, something 2U said the agency lacks the unilateral authority to do. 2U argued that the Department overstepped its authority by using subregulatory guidance to make substantive changes that should go through the federal negotiated rulemaking process. Under the Department's new definition, OPMs that provide colleges with recruiting and retention services, as well as educational content, will broadly be considered third-party servicers.

ED Releases Fact Sheet Announcing Changes to its Title IX Regulations

On April 6, 2023, the Department of Education announced that it was releasing a Notice of Proposed Rulemaking (NPRM) on athletic eligibility under Title IX to advance Title IX's longstanding goal of ensuring equal opportunity in athletics. During the two years of outreach to stakeholders to develop the NPRM, ED stated that it heard repeatedly that many schools, parents, and coaches face uncertainty about when and how transgender students can participate in school sports. The announcement said that the NPRM, if adopted, would provide much needed clarity for students, parents, and coaches. The proposed rule would establish that policies violate Title IX when they categorically ban transgender students from participating on sports teams consistent with their gender identity.

The public comment period will be for 30 days from the date of the NPRM's publication in the *Federal Register*, which occurred on April 13, 2023. Therefore, comments must be received on or before May 15, 2023.

A copy of the NPRM is found at:
https://www.federalregister.gov/documents/2023/04/13/2023-07601/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal.

A copy of the press release is found at: https://www.ed.gov/news/press-releases/fact-sheet-us-department-educations-proposed-change-its-title-ix-regulations-students-eligibility-athletic-teams.

House Education and the Workforce Chairwoman Virginia Foxx (R-NC) and Vice Chairwoman Mary Miller (R-IL) released a statement that "[t]he proposed rule runs counter to the goal of Title IX – to provide equal opportunity for women."

A copy of the press release is found at:
https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409044.

Senator Tommy Tuberville (R-AL), Ranking Member of the Senate Health, Education, Labor and Pensions (HELP) Subcommittee on Children and Families, rebuked the Biden Administration's new Title IX proposed rule that coerces schools to allow biological males to compete in women's sports or risk losing federal funds.

A copy of the press release is found at: https://www.help.senate.gov/ranking/newsroom/press/subcommittee-ranking-member-tuberville-joins-cassidy-in-opposing-bidens-new-title-ix-rule-undermining-womens-sports.

House Education and the Workforce Ranking Member Bobby Scott (D-VA) released a statement saying: "School sports offer invaluable life lessons – from leadership to teamwork – that every child in America should be able to access and enjoy. To that end, the proposed rule ensures that school sports are, above all, fair and safe for our nation's children."

A copy of the press release is found at: https://bobbyscott.house.gov/media-center/press-releases/scott-applauds-biden-administration-prioritizing-safety-and-fairness.

President Biden Signs Bill Ending the COVID-19 National Emergency

On April 10, 2023, President Joe Biden signed a bill that ended the COVID-19 national emergency, about a month before it was set to expire on May 11, 2023, leaving questions regarding what that means for pandemic flexibilities and waivers related to federal student aid programs.

Because many of FSA's listed waivers and flexibilities are to phase out when the national emergency declaration is rescinded, it could mean that the phase out of those provisions began on April 10, when Biden signed the legislation. ED has indicated that it will be issuing an electronic announcement that provides clarification now that President Biden has ended the national emergency.

Biden Administration Delays Revised Third-Party Servicer Guidance

On April 11, 2023, the Biden Administration announced that it will further delay and revise its third-party servicer guidance, a move that backs down from its initial plan that would have expanded federal oversight of colleges' outside contractors. The Department of Education will no longer implement the previously issued Dear Colleague Letter per an announcement from Under Secretary James Kvaal.

Under Secretary Kvaal said in his blog post that the agency would instead issue a "revised final guidance letter" that will take effect "at least six months after its publication" to allow universities and companies time to comply. The Department received over 1,000 comments from the public expressing concern over the new compliance directives. Additionally, the Department will "consider clarifying and narrowing the scope of the guidance in several areas," including eliminating a prohibition on universities hiring companies that are owned by foreign entities, for example. The blog post also identified several activities that would not constitute third-party servicer relationships, such as study abroad programs, clinical or externship experiences, or course sharing via consortia agreements.

While the effective date of the recent guidance is delayed, previous guidance on third-party servicers will remain in effect.

A copy of the blog post is found at: https://blog.ed.gov/2023/04/update-on-the-department-of-educations-third-party-servicer-guidance/.

Chairwoman of the House Education and the Workforce Committee Virginia Foxx (R-NC) issued a statement that said:

> "There is something seriously wrong with the Department of Education's operations if it must issue a blog post to clarify a guidance letter, said Chairwoman Foxx. "It demonstrates incompetency, poor planning, a failure to think through the serious implications of its proposal, a lack of respect for the concerns of postsecondary institutions, and tone-deafness to private businesses and students. I urge the Department of Education to put an end to this informal policy making charade and stop giving the American people whiplash with changes to this half-baked proposal that does more harm than good."

A copy of Chairwoman Foxx's statement is found at: https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409049.

FSA Sends Letter to College Presidents, Chancellors, and Chief Executive Officers Reminding them about 2024-2025 FAFSA Implementation

On April 12, 2023, Federal Student Aid's Chief Operating Officer Richard Cordray sent a letter to college presidents, chancellors, and chief executive officers about the significant overhauls set to impact the federal financial aid system in the 2024-2025 academic year and urged leaders to be prepared for potential impacts the changes may bring. The FAFSA changes are a result of the enactment of the *FAFSA Simplification Act* and the *Fostering Undergraduate Talent by Unlocking Resources for Education (Future Act)*. For instance, Mr. Cordray suggested that they conduct a thorough review of current admissions and financial aid deadlines and practices as the 2024-2025 FAFSA form will be available in December 2023.

COO Cordray said: "Over the next several months, our teams will deliver specific outreach and training to institutional student financial aid administrators across the country. These trainings will be key to your success with this transition. We strongly recommend that you encourage and support participation by your financial aid team."

A copy of the letter is found at: https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-04-12/fsa-letter-presidents-chancellors-and-ceos-changes-federal-student-aid-and-2024-25-fafsa-process#.

House Democrats Send Letter to House Leaders Urging Short-Term Pell Grants to be Available to Students at For-Profit Institutions

On April 17, 2023, sixteen House Democrats sent a letter to House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) and Ranking Member Bobby Scott (D-VA) urging them to expand Pell Grant eligibility to students enrolled at for-profit colleges. The letter was also sent to House Speaker Kevin McCarthy (R-CA) and House Minority Leader Hakeem Jeffries (D-NY). The *Jumpstart Our Business Startups (JOBS) Act*, which was introduced earlier this year, would expand Pell Grants to cover short-term programs offered by community colleges and technical colleges, but would exclude for-profit institutions. The letter stated that with the inclusion of eligibility for for-profit institutions, safeguards should be put in place to ensure that Pell Grants are used to help students attending high quality, short-term programs.

A copy of the letter is included in Congressman Troy Carter's (D-LA) press release and is found at: https://troycarter.house.gov/media/press-releases/congressman-carter-calls-expanded-pell-grant-access.

House Republicans Unveil Debt Limit Legislation that Includes Spending Cuts to the Federal Student Loan Forgiveness Plan

On April 19, 2023, House Republicans, led by Speaker Kevin McCarthy (R-CA), released the *Limit, Save, and Grow Act,* which would raise the nation's debt ceiling by $1.5 trillion through March 2024, in exchange for significant spending cuts. The plan calls for imposing caps on federal spending over the next 10 years that would, for the coming fiscal year, reduce spending by $130 billion. Included in the numerous policy provisions, the legislation would block the Department of Education's federal student loan forgiveness program, end the federal student loan repayment and collections pause, prohibit the Biden Administration from carrying out the new Income-Driven Repayment (IDR) plan proposed in August 2022, and prevent the Department from issuing significant regulations or executive actions that would increase the long-term cost of operating the federal student loan programs. It would also rescind unobligated COVID-19 relief funds.

Following the bill's release, the White House said it will not support negotiations and urged the House to pass a simple extension. Secretary of Education Cardona released a statement that stated:

> "Today, Speaker McCarthy declared that he will force a catastrophic default and plunge America into recession unless he can claw back school relief dollars and prevent millions of hardworking Americans – including over 83,000 borrowers in his own district – from getting the student debt relief they need coming out of the pandemic. It's a shame for students and working families across the country that Republican lawmakers, many of whom benefitted from hundreds of thousands of dollars in small business loan forgiveness, continue to fight hypocritically to deny critical student debt relief to millions of their own constituents. While President Biden, Vice President Harris, and I continue working to deliver much-needed relief to borrowers working to get back on their feet after the pandemic, Speaker McCarthy's proposal tells us everything we need to know about what he and his allies value—tax cuts for the super rich, special interests, and big corporations over support for hardworking Americans."

A copy of Secretary Cardona's statement is found at: https://www.ed.gov/news/press-releases/statement-secretary-cardona-speaker-mccarthys-debt-ceiling-proposal.

FSA Awards New Contracts to Five Companies to Serve Borrowers, Reduce Delinquency, and Improve Accountability

On April 24, 2023, Federal Student Aid (FSA) announced it has signed contracts with five companies to modernize and enhance loan servicing for more than 37 million borrowers with federally managed loans. Central Research, Inc.; EdFinancial Services; Maximus Education, LLC; Missouri Higher Education Loan Authority (MOHELA); and Nelnet Diversified Solutions received contracts through the Unified Servicing and Data Solution (USDS) solicitation and will implement much-needed improvements to better serve borrowers. According to the press release, this new loan servicing environment is part of the Biden-Harris Administration's sweeping efforts to improve the student loan repayment system and help all borrowers successfully manage their debt.

These awards are the first step toward implementing the Department's new servicing environment next year, which will be FSA's long-term loan servicing solution. The new environment is designed to provide federal student loan borrowers with a high-quality customer experience and to deliver support for at-risk borrowers so that all borrowers can take advantage of the most affordable ways to repay their loans, avoid default, and claim loan forgiveness, if they are eligible for it. Vendor accountability is a central goal of the new servicing contracts, which provide rewards for better customer outcomes and impose consequences for failing to meet expectations.

A copy of the announcement is found at: https://www.ed.gov/news/press-releases/us-department-educations-office-federal-student-aid-awards-new-contracts-five-companies-serve-borrowers-reduce-delinquency-and-improve-accountability.

ED Publishes Fact Sheet Estimating Impact of Effects of Republican Legislation to Raise the Debt Ceiling and Cut Federal Spending

On April 25, 2023, the Department of Education published a Fact Sheet arguing that H.R. 2811, the *Limit, Save, Grow Act of 2023,* which would raise the nation's debt ceiling and, in exchange, cap federal discretionary spending at Fiscal Year 2022 levels, would have devastating effects on the education system. H.R. 2811, passed on April 26, 2023, by a party-line vote of 217-215; four Republicans opposed the bill. "Congressional Republicans are holding the nation's full faith and credit hostage in an effort to impose devastating cutbacks that would hurt children and undermine education, raise costs for hardworking families, and set back economic growth," according to the Fact Sheet. Further, the Fact Sheet goes on to state: "And they are demanding these slashes while separately advancing proposals to add over $3 trillion to the deficit through tax giveaways skewed to the wealthy and big corporations." The Fact Sheet said that the bill would result in the following:

- Make College More Expensive: A 22 percent budget cut would likely eliminate Pell Grants altogether for 80,000 students while reducing the maximum award by nearly $1,000 for the remaining 6.6 million recipients, making it harder to attend and afford college.

- Eliminate Student Debt Relief and Borrower Supports: The proposal would cancel the President's student debt relief plan, keeping much needed emergency student loan relief of up to $20,000 for more than forty million Americans recovering from the effects of the pandemic. It would also block the creation of new, more affordable student loan payment plans.

The Fact Sheet also included state-by-state breakdowns of these potential reductions.

A copy of the Fact Sheet is found at: https://www.ed.gov/news/press-releases/fact-sheet-house-republican-proposals-hurt-children-students-and-borrowers-and-undermine-education.
OPE Releases Additional 90/10 Questions and Answers

On April 25, 2023, the Office of Postsecondary Education (OPE) released more Questions and Answers to the 90/10 portion of this website:
https://www2.ed.gov/about/offices/list/ope/policy.html.

The direct link to the Qs&As is found at:
https://www2.ed.gov/policy/highered/reg/hearulemaking/2009/90-10-q-and-a.html.

ED Releases New College Scorecard Tool to Help Students Make College Decisions

On April 25, 2023, the Department of Education announced several updates to the College Scorecard to help students, families, educators, counselors, and other college access professionals make decisions when choosing a college or university to attend. Currently, the College Scorecard provides information on college costs, student debt, graduation rates, admissions test scores, and acceptance rates, student body diversity, and post-college earnings. The recent update includes data on the median earnings of former graduates four years after completion of their requisite requirements from their field of study. In addition, new demographic data, including race/ethnicity data for full-time college staff and student-to-faculty ratios and greater information for graduate students, are provided.

According to the announcement, the updates reflect the Department’s commitment to continuously improve the College Scorecard so that it works for prospective students and families; to maintaining open and accessible postsecondary education data; and to promoting greater engagement in and awareness of postsecondary outcomes.

A copy of the announcement is found at:

https://blog.ed.gov/2023/04/updated-college-scorecard-will-help-students-find-high-value-postsecondary-programs/?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

Bipartisan Senators Reintroduce *College Transparency Act*

On April 27, 2023, Senate Health, Education, Labor, and Pensions Committee Ranking Member Bill Cassidy (R-LA), Senator Elizabeth Warren (D-MA); Senator Roger Marshall (R-KS); Senator Sheldon Whitehouse (D-RI); Senator Chuck Grassley (R-IA); and Senator John Hickenlooper (D-CO) reintroduced the *College Transparency Act*, which ensures that students and families have better information as they consider higher education opportunities. The proposed bill aims to modernize the college reporting system for postsecondary education data by providing accurate reporting on student outcomes such as enrollment, completion, and post-college earnings across colleges and majors, while ensuring the privacy of individual students is securely protected. Under the updated system, institutions of higher education would report privacy-protected, student-level data to the National Center for Education Statistics (NCES), which would be responsible for securely storing student information, working with relevant federal agencies to generate post-college outcomes' reports, and presenting the summary information on a user-friendly website for students and families.
Companion legislation was introduced in the House by Congressmen Raja Krishnamoorthi (D-IL) and Joe Wilson (R-SC).

A copy of Senator Cassidy's press release, which includes the text of the bill, is found at: https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-warren-colleagues-reintroduce-college-transparency-act.

Bipartisan Group of House Members Introduce *Tax Free Pell Grants Act*

On April 28, 2023, House Ways and Means Subcommittee on Tax Chairman Mike Kelly (R-PA), Subcommittee on Health Ranking Member Lloyd Doggett (D-TX), Subcommittee on Trade Chairman Adrian Smith (R-NE), and Subcommittee on Worker and Family Support Ranking Member Danny Davis (D-IL) introduced the *Tax Free Pell Grants Act*, which aims to remove financial and logistical barriers impairing students from securing higher education opportunities. The bill expands the use of Pell Grants on a tax-free basis, improves coordination with the American Opportunity Tax Credit (AOTC), and ensures students do not lose out on any AOTC benefits. "Simplifying our tax code means more in-pocket financial assistance for students seeking higher education," said Rep. Doggett. "And this legislation would also expand eligible expenses under the existing tax credit to include computers and childcare, which have become essential in helping many students get the education they need to achieve their dreams."

A copy of Congressman Doggett's press release is found at: https://doggett.house.gov/media/press-releases/rep-lloyd-doggett-introduces-bipartisan-tax-free-pell-grants-act-strengthen.

MAY 2023

ED Announces One-Year Extension of HEERF Spending on a Case-By-Case Basis

On May 1, 2023, the Department of Education published a Notice in the *Federal Register* that it will offer a one-year extension to institutions of higher education who need additional time to spend COVID relief funds, on a case-by-case basis. More than 700 colleges and universities across the country have unspent funds from the Higher Education Emergency Relief Fund or HEERF, according to a filing by the U.S. Department of Education with the White House Office of Management and Budget. However, the number of colleges with unspent funds is decreasing every week, as institutions continue to spend the emergency funds ahead of the June 30, 2023 deadline. Most of the remaining money can be used by colleges for institutional purposes such as purchasing technology or replacing revenue lost due to the pandemic. Colleges will be required to submit a request for a one-year extension by June 20th, explaining why they need the extension and how they plan to use their remaining COVID relief funds. The Department said that it plans to "assiduously determine" that colleges seeking an extension have a plan to address the lingering effects and impacts related to COVID-19.

A copy of the Notice is found at:
https://www.federalregister.gov/documents/2023/05/01/2023-09185/agency-information-collection-activities-comment-request-heerf-no-cost-extension-nce-request-form.

OMB Approves Gainful Employment Rule

On May 2, 2023, the White House Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) completed its review of the federal regulatory package that includes the proposed gainful employment regulations, as well as proposed changes to the regulations on financial responsibility, standards of administrative capability, certification procedures, and ability to benefit. With the completion of this procedural step, the Department of Education will publish the proposed rules in the *Federal Register* for public comment. Once the public comment period is closed, ED will review the comments and determine if any changes are necessary before publishing the final regulations prior to November 1, 2023, which will be effective on July 1, 2024.

A copy of the Notice is found at:
https://www.reginfo.gov/public/do/eoDetails?rrid=299311.

ED Announces $42 Billion in Public Service Loan Forgiveness

On May 8, 2023, the Department of Education announced that over 615,000 borrowers have received Public Service Loan Forgiveness (PSLF) totaling $42 billion since 2021. This is the result of the PSLF changes made by the Biden Administration that streamlined the process for borrowers making it easier for them to reach forgiveness. At the end of the previous administration, only about 7,000 borrowers had been approved for the PSLF program.

The Department also announced the implementation of improvements to the PSLF Help Tool, which borrowers use to apply for the program. These updates will allow borrowers to complete the entire PSLF application process online, and they will not need to fax or mail in their application with a wet signature.

A copy of the announcement is found at: https://www.ed.gov/news/press-releases/us-department-education-announces-42-billion-approved-public-service-loan-forgiveness-more-615000-borrowers-october-2021.

On May 8, 2023, ED released an announcement titled, "StudentAid.gov Enhancements and Modifications Starting April 2023," which featured additions and updates on the PSLF program. It is found at: https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-05-08/studentaidgov-enhancements-and-modifications-starting-april-2023.

FTC Stops Student Loan Debt Relief Schemes

On May 8, 2023, the Federal Trade Commission (FTC) announced that it has stopped a pair of student loan debt relief schemes that bilked students of about $12 million by using deceptive claims about repayment programs and loan forgiveness that did not exist. The FTC also said the companies falsely claimed to be affiliated with the Department of Education and told students that the illegal payments the companies collected would count toward their loans. The two companies are SL Finance LLC and its owners and BCO Consulting and SLA Consulting and their owners.

A copy of the press release is found at:
https://consumer.ftc.gov/consumer-alerts/2023/05/ftc-halts-two-student-loan-debt-relief-schemes.

House Republicans Send Letter to Secretary of Education Questioning Change in Self-Certification for IDR Plans

On May 12, 2023, House Education and the Workforce Chairwoman Virginia Foxx (R-NC), House Oversight and Accountability Committee Chairman James Comer (R-KY), and House Government Operations and the Federal Workforce Subcommittee Chairman Pete Sessions (R-TX) sent a letter to Secretary of Education Miguel Cardona questioning the Department's decision to waive income verification requirements for borrowers who enroll in income-driven repayment plans. Instead, ED will rely on self-certification. The letter expressed their concern that "individuals may fraudulently misrepresent their income to reduce their loan payments and ultimately have their student loans transferred to taxpayers."

The letter requests a staff-level briefing no later than May 19, 2023, covering the following topics: (1) the Department's specific legal authority to waive income verification requirements; (2) a detailed explanation of when and why the decision to relax income verification was made; and (3) the Department's internal controls and procedures used to prevent fraud in student loan repayments.

A copy of the letter is found at:
https://oversight.house.gov/wp-content/uploads/2023/05/Comer-Foxx-Sessions-letter-to-Cardona-IDR.pdf.

House Hearing Covers ED's Budget Request for FY 2024 and Committee Oversight Efforts

On May 16, 2023, Secretary of Education Miguel Cardona testified at the House Committee on Education and the Workforce to justify the Department of Education's budget request for FY 2024 as well as the Department's track record. Concerns were raised regarding the transition of borrowers back into repayment following the repayment and interest pause. Chairwoman Foxx called on the Department to be more prompt in responding to the Committee's no less than 11 oversight letters since ED seems to be minimally responsive to the Committee.

Chairwoman Foxx said: "Mr. Secretary, I wish this hearing was an endorsement of your department's cooperation with our requests, so we could then proceed in good faith to the FY 2024 budget request. Instead, your department has engaged in disingenuous and misleading actions while being minimally responsive to congressional oversight."

Ranking Member Bobby Scott (D-VA) and other Democrats used their time to show support for student loan forgiveness and other policies as well as to detail how the budget cuts proposed in the House debt-ceiling bill would affect the department and students.

The Committee released a summary of the hearing on May 17, 2023. See:
https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409173.

ED Updates Third-Party Servicer Guidance

On May 16, 2023, the Department of Education issued Dear Colleague Letter (DCL) GEN-23-08 removing the effective date of third-party servicer guidance included in Dear Colleague Letter GEN-23-03, and stating that the guidance will not go into effect until six months after a revised final DCL is issued. DCL GEN-23-03 was intended to ensure oversight of additional entities that have been performing aspects of institutions' participation in the Title IV programs, including recruiting, retention, and the provision of educational content and instruction, but after receiving more than 1,000 comments, ED realized institutions needed additional time to be in compliance. The DCL also removed the prohibition on contracts between institutions and foreign-owned or operated third-party servicers.

A copy of the DCL is found at: https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-16/update-third-party-servicer-guidance-gen-23-03#.

University of Phoenix intends to Affiliate with University of Idaho

On May 17, 2023, the University of Idaho announced that "the University of Idaho and the University of Phoenix intend, with the appropriate approvals, to affiliate with the goal of increasing access to all learners, improving capacity for supporting all learners and helping all learners achieve their higher education goals." According to several newsletters, the University of Idaho would create a new nonprofit corporation that would issue bonds to pay $550 million to buy Phoenix's assets, which include about 85,000 students, significant technology, and about 3,000 full-time and adjunct faculty. The arrangement will require approvals from the Higher Learning Commission, the University of Phoenix's accreditor, and the Northwest Commission on Colleges and Universities, the University of Idaho's accreditor.

ED Releases Proposed Rules on Gainful Employment, Financial Responsibility, Administrative Capability, Certification Procedures and Ability to Benefit Provisions

On May 17, 2023, the Department of Education released proposed regulations, which were published in the *Federal Register* on May 19, 2023, to "establish the strongest set of safeguards ever to protect students from unaffordable debt or insufficient earnings from career training programs." In addition, the Department stated that the proposed rules would provide increased transparency to the true costs and financial outcomes of almost all programs. According to the press release, Secretary of Education Miguel Cardona said: "The rules proposed today are about helping ensure that when students invest in a postsecondary education, they get a solid return on investment and a greater shot at the American dream."

The rules also propose changes to other regulatory areas that would "strengthen the Department's ability to engage in targeted and proactive accountability to protect students, borrowers, and taxpayers."

The NPRM includes the following provisions:

- Gainful Employment (GE): The proposed rules would implement both a debt-to-earnings ratio test and a high school earnings test on all certificate and degree programs offered at for-profit colleges and certificate programs at all other institutions of higher education. The debt-to-earnings test would require institutions to demonstrate that their graduates' student loan debt is less than 8 percent of their annual income or no more than 20 percent of their discretionary income defined as income above 150 percent of the poverty line. The high school earnings test would require institutions to demonstrate that at least half of their graduates have higher earnings than a typical high school graduate in their state's labor force who never pursued a postsecondary education. Institutions whose programs fail to meet either of these metrics would be required to notify students and would lose their Title IV eligibility after failing two out of three consecutive years. For a period of several years, institutions would be prohibited from introducing new GE programs that resemble failed programs.

- Transparency on Financial Value: The proposed rules would require all institutions of higher education to provide overall and programmatic information on their costs (including tuition and fees, books, and supplies), non-federal grant aid, typical borrowing amounts (both federal and private loans), earnings, any applicable occupational and licensing requirements, and licensure exam passage rates. This information should be made publicly available on a Department of Education website, and students would need to acknowledge viewing these disclosures before receiving loans to attend programs that fail the provisions of the gainful employment rules. In addition, ED said that it will create a separate watch list of the least financially valuable postsecondary education programs through separate agency actions.

Financial Responsibility: The Department says the proposed rules would simplify the system that the Department uses to secure upfront financial protection when colleges exhibit signs of financial struggle, such as significant debts or liabilities from a lawsuit or is at risk of losing access to Title IV programs.

- Administrative Capability: The proposed rules would increase requirements for colleges to establish initial and ongoing administrative capability. These requirements would involve enhanced disclosure or certification obligations, including additional student disclosures relating to cost of attendance, available financial assistance, and award deadlines. The proposed rules would add a new requirement that institutions must have "adequate career services" in order to be administratively capable.

- Certification Procedures: The proposed rules would grant the Department more discretion to deny initial certification or recertification, to place institutions on provisional approval, or to impose requirements on institutions as a condition of participation (i.e., growth restrictions).

- Ability to Benefit: The proposed rule mirrors the Department's negotiated rulemaking proposal, which outlines the requirements for demonstrating that programs are "eligible career pathway programs."

A copy of the Secretary's announcement, which includes a fact sheet on the GE and transparency parts of the rules and a fact sheet on the other provisions in the regulatory package, along with the unofficial copy of the proposed rules, is found at:
https://www.ed.gov/news/press-releases/department-education-releases-proposed-rules-accountability-certificate-and-profit-programs-and-transparency-unaffordable-student-debt.

A copy of the NPRM from the *Federal Register* is found at:
https://fsapartners.ed.gov/knowledge-center/library/federal-registers/2023-05-19/nprm-financial-value-transparency-and-gainful-employment-ge-financial-responsibility-administrative-capability-certification-procedures-and-ability-benefit-atb. Comments are due on or before June 20, 2023. The Department expects to finalize the rules by November 1, 2023, which will go into effect on July 1, 2024.

ED Releases DCL on Accreditation and Eligibility Requirements for Distance Education

On May 18, 2023, the Department of Education released a Dear Colleague Letter (DCL) (GEN-23-09) to clarify the Department's guidance on accreditation and Title IV eligibility requirements for distance education. In an electronic announcement of January 19, 2021, the Department provided guidance with respect to institutional eligibility for distance education and expectations of nationally recognized institutional accrediting agencies where certain requirements were waived until October 7, 2023.

Since the national pandemic has expired, an institutional accrediting agency must have distance education included in its scope of recognition if it accredits an institution that offers any portion of a program via distance education and must have a process in place to review institutions offering any distance education for effective delivery of distance education. The Department also reminds institutional accrediting agencies that their policies must require approval of a substantive change whenever an accredited institution increases distance education to meet or exceed the 50 percent threshold.

The DCL outlines the requirements for institutions that offer any portion of a Title IV program via distance education and the requirements for institutional accrediting agencies that accredit an institution that offers any portion of a Title IV program via distance education.

A copy of the DCL is found at: https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-18/accreditation-and-eligibility-requirements-distance-education.

House Votes to Repeal President Biden's Student Debt Relief Plan

On May 24, 2023, the House passed H.R. Res. 45, a *Congressional Review Act* resolution, by a vote of 218-203, to bar President Biden and the Department of Education from moving forward with their student loan cancellation plan and prevent any further extension of the student loan repayment pause.

During floor debate, Chairwoman of the House Education and the Workforce Committee Virginia Foxx (R-NC) said: "Coupled with the permanent repayment pause, expansive new regulations, and a radical new income-driven repayment plan, the Biden Administration's student loan scam could end up costing taxpayers $1 trillion."

Ranking Member of the House Education and the Workplace Committee Bobby Scott (D-VA) said during floor debate: "The reality is that H.R. Res. 45 would trigger a wave of delinquencies and defaults for our most vulnerable borrowers. Intentionally or not, this resolution would create chaos for borrowers and their families as well as the loan servicers. And the Congressional Research Service has confirmed that "this chaos would be triggered by the retroactive application of this rule."

Separately, the Supreme Court is weighing whether to allow the Biden Administration's plan for student loan debt cancellation to move forward. The justices are expected to issue a ruling by the end of June or early July.

Now that the resolution has passed the House, it will be sent to the Senate for consideration where there is already an identical Resolution, S. J. Res. 22, which was introduced by Senator Bill Cassidy, Ranking Member of the Senate Health, Education, Labor, and Pensions Committee.

House Subcommittee on Higher Education and Workforce Development Holds Hearing on Biden Administration's Higher Education Initiatives

On May 25, 2023, House Subcommittee on Higher Education and Workforce Development Chairman Burgess Owens (R-UT) held a hearing titled, "Breaking the System Part II: Examining the Implications of Biden's Student Loan Policies for Students and Taxpayers" with Under Secretary of Education James Kvaal and Federal Student Aid (FSA) Chief Operating Officer (COO) Richard Cordray testifying before the Subcommittee. In his opening statement, Chairman Owens focused on the extension of the student loan repayment moratorium occurring six times; blanket student loan cancellation; and proposed revisions to the Income-Driven Repayment regulations.

Under Secretary Kvaal said that the Biden/Harris Administration is tackling student debt by offering relief from the continuing effects of the pandemic and making loans more affordable to repay than they have ever been before. They hope to make college more affordable "by investing in Pell Grants, free community college, and scholarships at inclusive institutions – and by holding colleges accountable for college costs."

COO Cordray provided testimony highlighting the efforts of the Department of Education in making a number of changes to the student loan system, detailing the major changes required under the *FAFSA Simplification Act*, and describing the efforts to enhance and improve the FSA system.

Some of the exchanges were heated. For instance, Chairman Owens asked about the Department's laser focus on for-profit institutions to which COO Cordray said FSA was building an enforcement office to address issues by schools that harm students. Representative Pramila Jayapal (D-WA) added that while states have direct governance authority over public institutions and private, nonprofit institutions are operated by trustees, who are legally committed to the public interest, only in the for-profit sector can leaders benefit personally from the operations of their institutions. In response to a question from Chairman Owens about the proposed rule on gainful employment, Under Secretary Kvaal said the statutory authority for ED to issue the gainful employment rule is grounded in Section 102 of the *Higher Education Act*, and Congress has distinguished between for-profit career programs and traditional higher education programs. Under Secretary Kvaal agreed that gainful employment programs are offered by public and nonprofit institutions, but no program should routinely be leaving students with debts they cannot afford. Mr. Kvaal agreed that career programs at all types of colleges and universities should be addressed but "different tools are appropriate in different contexts."

Ranking Member of the House Education and the Workforce Committee Bobby Scott (D-VA) said that the gainful employment rule is a concern because it measures the socioeconomic demographics of the student body as much as it does the quality of the program. Under Secretary Kvaal responded that the goal of the gainful employment rule is to create better choices for students, especially for low-income students, first-generation students, and students of color who are disproportionately likely to be left with debts they cannot afford. He concluded that the gainful employment rule will improve the value of programs.

In response to Representative Jayapal's question as to whether the gainful employment rule will prevent the abuse of taxpayer dollars, Under Secretary Kvaal said the rule sets standards for earnings and for debt affordability at career programs and for-profit colleges. Ranking Member Scott asked what the Department was doing to make sure that for-profit executives and owners who are personally responsible for fraud and who personally profited from fraud are personally responsible for the borrower defense claims that the government has to end up paying. COO Cordray responded that ED has imposed clarity around entity liability and for personal liability.

Other areas of discussion included student choice, student loan debt cancellation and income verification, and student loan defaults. Chairman Owens ended the hearing by saying that the discussion was a "step in the right direction."

Debt Ceiling Deal Would Require Biden Administration to Begin Collecting Student Loans and Charging Interest in 60 Days

Late evening May 27, 2023, President Joe Biden and Speaker of the House Kevin McCarthy reached a compromise deal to raise the nation's debt limit. The deal codifies into law the Biden Administration's plan to end the ongoing pause on monthly student loan payments and interest at the end of the summer. The Department of Education had previously been preparing to restart payments 60 days following either a court decision or June 30, 2023, whichever came first.

The Republicans had been trying to use the debt ceiling plan to force the White House to repeal the Biden Administration's student debt cancellation plan, but the agreement does not affect the plan. However, the debt cancellation plan remains in limbo while the Supreme Court is expected to rule on whether it can proceed in the coming weeks.

The House is expected to vote on the deal as early as Wednesday, May 31, 2023. The Senate has told Senators to prepare for possible votes next weekend.

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