



WASHINGTON PERSPECTIVE JUNE 2023

Governor DeSantis Sues Biden Administration Over Accreditation

On June 22, 2023, Governor Ron DeSantis and Attorney General Ashley Moody sued the Biden Administration over its attempts to undercut Florida's higher education reforms. Florida is suing the Department of Education to block it from enforcing federal accreditation requirements against the state's higher education institutions. Governor DeSantis said: "We reject the idea that a totally unaccountable, unappointed, unelected accrediting agency can trump what the state of Florida is doing."

In 2022, Florida passed a law mandating its public colleges change accreditors every cycle. In response, the Department of Education released guidance that requires colleges to demonstrate "reasonable cause for changing their accrediting agency or for having multiple accrediting agencies." Governor DeSantis said that he "will not allow Florida's public colleges and universities to be held hostage by accreditors that are unaccountable to the people of Florida."

A copy of the Governor's press release is found at:

<https://www.flgov.com/2023/06/22/governor-desantis-sues-biden-administration-to-ensure-freedom-in-higher-education/>.

Fox and Cassidy Write to Secretary Cardona Demanding Plan of Action for Returning Borrowers to Repayment

On June 27, 2023, House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) and Senate Health, Education, Labor and Pensions (HELP) Committee Ranking Member Bill Cassidy (R-LA) sent a letter to Secretary of Education Miguel Cardona demanding a briefing and documents from the Secretary regarding the Administration's plan to transition borrowers back to repayment.

Chairwoman Foxx said: "The Department has been on notice for nearly two and a half years that it would need to develop a plan for a smooth transition to repayment...You have failed to provide us any evidence of any communication between the Department and loan servicers as of the date of this letter." The letter continues with: "Mr. Secretary, the success or failure of the return to repayment sits squarely on your shoulders."

A copy of the press release, which contains the letter, is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409356>.

Supreme Court Overturns Biden Student Debt Cancellation Plan

On June 30, 2023, in a vote of 6-3, the Supreme Court overturned the Biden Administration’s student debt relief plan, which would cancel up to \$20,000 in student debt for eligible borrowers. In *Department of Education v. Brown*, Chief Justice John Roberts, writing for all his Republican-appointed colleagues, rejected the Biden administration’s argument that it could enact mass debt forgiveness by using emergency “waiver” powers tied to the Covid-19 pandemic. Justice Roberts wrote that the HEROES Act “allows the Secretary to ‘waive or modify’ existing statutory or regulatory provisions” but not to “rewrite” the federal law on student loans “from the ground up.” Justice Roberts also wrote that Biden’s plan amounts to “the Executive seizing of the power of the Legislature.”

Justice Elena Kagan’s dissent described the court’s move as a troubling act of judicial overreach and said it fit a pattern of the court’s conservative majority intruding into actions that should be left to the political branches. “The Court refuses to acknowledge the plain words of the HEROES Act. It declines to respect Congress’s decision to give broad emergency powers to the ‘secretary of education.’”

In response to the Supreme Court’s ruling, Secretary of Education Miguel Cardona issued a statement saying: “Today, the Supreme Court ruled against students and families across the country. It’s an outrage that lawsuits brought on by Republican elected officials have blocked critical student debt relief that would have been a lifeline for more than 40 million Americans – nearly 90 percent of whom make less than \$75,000.”

Following the decision, the White House announced that the Department of Education would take several new steps to provide student loan relief and released a Fact Sheet announcing that the Department would establish a negotiated rulemaking committee to develop regulations to implement the student loan forgiveness plan. The Department plans on developing regulations related to the authorities granted under Section 432(a) of the Higher Education Act, which relate to the modification, waiver, or compromise of federal student loans. On July 6, 2023, the Department of Education published a Notice in the *Federal Register*, announcing its intent to establish a negotiated rulemaking committee to prepare proposed regulations to modify, waiver, or compromise Federal student loans. A virtual public hearing will be held on July 18, 2023.

A copy of the Notice is found at: <https://fsapartners.ed.gov/knowledge-center/library/federal-registers/2023-07-06/public-hearing-negotiated-rulemaking-committee>.

In addition, Secretary Cardona announced that the Department finalized its most affordable repayment plan ever created, ensuring that borrowers will be able to take advantage of this plan this summer – before loan payments are due. The Department released the unofficial

version of its final regulations on the new income-driven repayment (IDR) plan, called the “Saving on a Valuable Education (SAVE)” plan. The SAVE plan will replace the current Revised Pay-As-You-Earn (REPAYE) plan and will be more generous than the existing plan. The SAVE plan will go into effect on July 1, 2024, but ED intends to early implement certain benefits this summer before the repayment pause ends:

- The protected income would be raised from 150 percent to 225 percent of the federal poverty guidelines;
- Monthly interest not covered by the SAVE plan will no longer be charged; and
- A spouse’s income will no longer be required for a payment calculation if married borrowers file their taxes separately.

With monthly payments scheduled to start in October 2023, the White House also announced that the Department will institute a 12-month period, from October 1, 2023 to September 30, 2024, to create a temporary “on-ramp” to repayment for one year for those struggling to make payments. If borrowers fail to repay during this 12-month on-ramp, borrowers will not be considered delinquent, reported to credit bureaus, placed in default, or referred to debt collection agencies.

The Secretary of Education indicated that “while they disagree with the Supreme Court’s ruling, the Administration will not stop fighting to provide relief to borrowers who need it most, and we will use every tool at our disposal.”

A copy of the Secretary’s press release is found at:

<https://www.ed.gov/news/press-releases/secretary-cardona-statement-supreme-court-ruling-biden-administrations-one-time-student-debt-relief-plan>.

A copy of the Fact Sheet is found at: <https://www.ed.gov/news/press-releases/fact-sheet-president-biden-announces-new-actions-provide-debt-relief-and-support-student-loan-borrowers>.

House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) issued a press release stating: “Mr. President, good riddance to your illegal, economically disastrous taxpayer-funded bailout for the wealthy. I had hoped you would have greater respect for taxpayers and the Constitution, but I am pleased the Court stepped in to hold you accountable.”

A copy of the Chairwoman’s statement is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409349>.

Ranking Member of the Senate Committee on Health, Education, Labor and Pensions (HELP) Bill Cassidy (R-LA) released a statement supporting the decision of the Supreme Court to overturn Biden’s student loan cancellation scheme. Dr. Cassidy’s statement is found at:

<https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-applauds-supreme-court-decision-overturning-bidens-student-loan-cancelation-scheme>.

Ranking Member of the House Education and the Workforce Committee Bobby Scott (D-VA) released a statement: “A college education should not depend on how much money a student’s parents make...Yet the rising cost of tuition, decades of disinvestment in higher education, and the declining relative value of the Pell Grant have left many student loan borrowers with burdensome debt.”

A copy of Ranking Member Scott’s statement is found at:

<https://democrats-edworkforce.house.gov/media/press-releases/scott-statement-on-scotus-striking-down-bidens-student-loan-program>.

Federal Appeals Court Pauses Borrower Defense Rules for Texas Schools

It has been reported that on June 30, 2023, the Fifth Circuit Court of Appeals issued an order pausing the July 1, 2023, effective date of the borrower defense to repayment (BDR) rule. However, the pause only applies to educational institutions that are members of the Career Colleges & Schools of Texas (CCST) and is only in effect until July 21, 2023. The stay provides CCST an opportunity to argue that the District Court’s preliminary injunction was improper.

Supreme Court Strikes Down Race-Conscious Admissions Policies

On June 29, 2023, the Supreme Court ruled that race cannot be considered in college and university admissions, which strikes down more than 40 years of precedent. The two cases that led to the decision were brought by Students for Fair Admissions (SFFA) against Harvard University and the University of North Carolina (UNC). The case against Harvard University argued that universities should not be allowed to use race as a factor in the college admissions process, and that Harvard unlawfully discriminated against Asian American applicants. In the case against UNC, SFFA argued that UNC’s admissions process violates the equal protection clause of the 14th Amendment by using race as a factor in admissions.

The majority opinion, written by Chief Justice John Roberts, states that the court “has permitted race-based admissions only within the confines of narrow restrictions. University programs must comply with strict scrutiny, they may never use race as a stereotype or negative, and – at some point – they must end.” The ruling went on to state that the programs created by Harvard University and the University of North Carolina “however well intentioned and implemented in good faith – fail each of these criteria.” “Eliminating racial discrimination means eliminating all of it.” However, Justice Roberts said that his decision does not bar institutions from considering how an applicant’s race has impacted their life should such a disclosure be made in the process of applying.

In her dissent, Justice Sonia Sotomayor wrote that the decision “rolls back decades of precedent and momentous progress.” She went on to say that institutions could still find ways to encourage diversity through the admissions process.

President Biden said in a press briefing that he strongly disagreed with the court’s decision. Secretary of Education Miguel Cardona said the ruling served as a setback in promoting equal opportunity and urged higher education leaders to bolster their efforts to improve student diversity. On June 29, 2023, the Department of Education distributed a Fact Sheet that said it will take a number of steps to help ensure colleges and universities can promote diverse student bodies.

Ranking Member of the House Education and the Workforce Committee Bobby Scott (D-VA) released a statement that said: “Regrettably, the Supreme Court’s decision to end the consideration of race as a factor in college admissions is a significant setback in our effort to eliminate disparities in access to higher education and ensure diverse learning environments for all students.”

House Education and the Workplace Committee Chairwoman Virginia Foxx (R-NC) issued a statement stating that: “Today’s decision by the Supreme Court is a welcome victory for countless students across the country – academia’s ivory towers should not divide and promote preferences based on the color of one’s skin. In America, fairness is the key to educational opportunity, where one’s success is judged by merit rather than arbitrary quotas.”

A copy of the Fact Sheet is found at:

<https://content.govdelivery.com/accounts/USED/bulletins/362aed0>.

A copy of Secretary Cardona’s statement is found at:

<https://www.ed.gov/news/press-releases/secretary-cardona-statement-supreme-court-ruling-college-affirmative-action-programs>.

A copy of Ranking Member Scott’s statement is found at:

<https://bobbyscott.house.gov/media-center/press-releases/ranking-member-scott-statement-scotus-ruling-affirmative-action>.

A copy of Chairwoman Foxx’s press release is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409348>.

ED Plans to Discharge \$130 Million in Student Loan Debt for Borrowers who Attended CollegeAmerica

On July 25, 2023, the Biden-Harris Administration announced it will discharge \$130 million in student loan debt from 7,400 borrowers who enrolled at CollegeAmerica in Colorado between January 1, 2006 and July 1, 2020. The Department of Education found that CollegeAmerica’s

parent company, the Center for Excellence in Higher Education (CEHE), made widespread misrepresentations about the salaries and employment rates of its graduates, the programs it offered, and the terms of a private loan product it offered. The announcement said that the Department used evidence provided by Colorado Attorney General Phil Weiser, who led a multi-year investigation and lawsuit against CEHE and its leadership. Borrowers will receive this debt relief regardless of whether they have filed a borrower defense to repayment application.

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/biden-harris-administration-approves-130-million-group-discharge-7400-borrowers-colorado-locations-collegeamerica-0>.

JULY 2023

Senate Democrats Send Letter to Federal Student Loan Servicers Seeking Answers on Returning Borrowers to Repayment

On July 19, 2023, Senate Democrats, led by Elizabeth Warren (D-MA), sent a letter to the four federal student loan servicers asking a series of questions on their plans to assist borrowers return to repayment. The Senators voiced their concern in the letter that most loan servicers have had little engagement with borrowers over the last three years during the COVID-19 pandemic and were not prepared to support borrowers once payments resumed because of staffing challenges and funding challenges by Federal Student Aid (FSA).

A copy of the letter is found at: <https://www.warren.senate.gov/oversight/letters/senators-warren-blumenthal-brown-markey-menendez-van-hollen-seek-answers-from-federal-loan-servicers-on-plans-to-support-borrowers-ahead-of-student-loan-payment-restart>.

House Republicans' FY 2024 Budget Proposal Reduces Education Spending

On July 14, 2023, the House Labor, Health and Human Services, Education, and Related Agencies Appropriations Subcommittee forwarded its FY 2024 appropriations bill to the full Committee after passing the bill by voice vote. The bill provides \$147 billion for programs under the jurisdiction of the Department of Education, Department of Labor, and the Department of Health and Human Services. The funding level is \$60.3 billion (or 29 percent) below the FY 2023 enacted level and \$73 billion below the President's budget request.

The bill would maintain funding for Pell Grants at the maximum of \$7,395, the same as provided in FY 2023. It would also eliminate Federal Supplemental Educational Opportunity Grants and Federal Work-Study funding.

Ranking Member Rosa DeLauro (D-CT) called the proposal a Republican attempt to “end public education.”

A copy of Congresswoman DeLauro statement is found at: <https://democrats-appropriations.house.gov/news/statements/ranking-member-delauro-statement-at-the-subcommittee-markup-of-the-2024-labor-health>.

ED Holds Public Hearing on the Federal Student Loan Forgiveness Plan

On July 18, 2023, the Department of Education held a public hearing on its federal student loan forgiveness plan as the Biden Administration attempts to move its proposed federal student loan forgiveness plan through the negotiated rulemaking process. Advocates, experts, and other stakeholders were able to voice their support and concerns. The Biden Administration announced its intent to use the *Higher Education Act, as amended*, to implement its federal student loan relief plan after the Supreme Court struck down its initial plan to use the *HEROES Act* to discharge federal student loans.

Under Secretary of Education James Kvaal provided opening remarks by stating that the Biden Administration will not stop fighting for student loan borrowers and they will use every tool available to them to provide borrowers with relief. Mr. Kvaal said that the Department’s goal is to provide debt relief to middle- and working-class borrowers who have been left with debts that are unreasonable and unacceptable. He said that the Department will work as quickly as possible to create a new federal student loan forgiveness plan.

Most of the commenters were organizations and individuals who favor broad student loan forgiveness. Once the Department considers the feedback from the public hearing and any written comments, which were due July 20, 2023, the Department will publish a notice in the *Federal Register* that announces the topics that it intends to discuss during negotiated rulemaking. A request will also be made for nominations for non-federal negotiators.

ED Releases State-By-State Data on Impact of Income-Driven Repayment Plan Adjustments

On July 18, 2023, the Department of Education released state-by-state data on the number of borrowers who are eligible for automatic loan relief under adjustments made to payments that qualify under income-driven repayment (IDR) plans. On July 14, 2023, the Department announced that it started to notify 804,000 borrowers who have a total of \$39 billion in federal student loans that their debt will be automatically discharged in the coming weeks. (See article below.) The data shows how many borrowers and the total amount of relief in each state and territory as a result of the action.

A copy of the announcement is found at: <https://www.ed.gov/news/press-releases/biden-harris-administration-releases-state-state-data-39-billion-loan-forgiveness-804000-borrowers-result-fixes-income-driven-repayment-plans>.

ED Announces \$39 Billion in Student Loan Forgiveness to Over 80,000 Borrowers

On July 14, 2023, the Department of Education announced that it will be notifying more than 804,000 borrowers that they have a total of \$39 billion in Federal student loans that will be automatically discharged soon. The forthcoming discharges result from a number of fixes implemented by the Biden-Harris Administration to ensure borrowers have an accurate count of the number of monthly payments that qualify toward student loan forgiveness under income-driven repayment (IDR) plans. Borrowers are eligible for forgiveness if they have accumulated the equivalent of either 20 or 25 years of qualifying months.

Secretary of Education Miguel Cardona said: “For far too long, borrowers fell through the cracks of a broken system that failed to keep accurate track of their progress toward forgiveness.”

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/biden-harris-administration-provide-804000-borrowers-39-billion-automatic-loan-forgiveness-result-fixes-income-driven-repayment-plans>.

On July 14, 2023, Chairman of the House Education and the Workforce Committee Virginia Foxx (R-NC) said that today’s announcement from ED is “trampling the rule of law, hurting borrowers, and abusing taxpayers to chase headlines.” Chairman Foxx went on to say: “Biden’s student loan scam is far from over. From day one, this administration has encouraged borrowers not to repay their loans and has expected taxpayers to foot the bill. Today’s celebration of counting no payments is just the latest example of the ongoing delusion at the White House.”

A copy of Chairman Foxx’s press release is found at: <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409391>.

According to a University of Pennsylvania Budget Model released on July 17, 2023, the cost of the new income-driven repayment plan will cost \$475 billion over the next decade. A copy of the brief is found at: <https://budgetmodel.wharton.upenn.edu/issues/2023/7/17/biden-income-driven-repayment-budget-update>.

FSA Issues FSA Enforcement Bulletin Addressing Nondisclosure Agreements Prohibiting Employees from Communicating with FSA

On July 13, 2023, the Office of Enforcement issued an FSA Enforcement Bulletin notifying institutions that despite any nondisclosure agreements that may have been signed by employees, former employees and other personnel, they are legally able to communicate with the Department of Education about any matter associated with their institutions’ administration of the Title IV programs. FSA said that “any prohibition or limitation on personnel’s ability to do so would violate 34 C.F.R. § 668.24(f).”

The FSA Enforcement Bulletin states that by signing a Program Participation Agreement (PPA), institutions agree to comply with the Title IV regulations. 34 C.F.R. § 668.24(f) requires institutions and their third-party servicers to cooperate with the Department regarding audits, investigations, program reviews, or other reviews authorized by law. The rule states that such cooperation includes “providing reasonable access to personnel associated with the institution’s or servicer’s administration of the Title IV, HEA programs for the purpose of obtaining relevant information.” The FSA Enforcement Bulletin states that using nondisclosure agreements that prevent personnel from communicating with the Department about the administration of Title IV programs violate the requirement to cooperate with the Department.

A copy of the FSA Enforcement Bulletin is found at: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-07-13/fsa-enforcement-bulletin-july-2023-nondisclosure-agreements-prohibit-or-limit-employee-communication-us-department-education-violate-title-iv-regulations>.

FSA Announces Availability of a Private Education Loan Information Topics Page

On July 6, 2023, Federal Student Aid (FSA) announced the availability of a Private Education Loan Information Topics page in FSA’s Knowledge Center to assist institutions by providing a repository for regulations, guidance, and other information. The Topics page includes an updated version of the Private Education Loan Applicant Self-Certification form with an expiration date of 8/31/2025. This form must be provided by institutions and private educational lenders to enrolled students and parents seeking a private educational loan as of the date of this announcement.

A copy of the announcement is found at: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-07-06/private-education-loans-form-and-topics-page#>.

ED Publishes Final Income-Driven Repayment Rule

On July 10, 2023, the Department of Education published the final regulations creating a new income-driven repayment plan in the *Federal Register*. The final regulations state that the regulations will “create a stronger safety net for federal student loan borrowers, helping more borrowers avert delinquency and default and the significant negative consequences associated with those events.” The final rules replace the current Revised Pay-As-You-Earn (REPAYE) Repayment Plan as the Saving on a Valuable Education (SAVE) Repayment Plan. The following provisions are included:

- Align the definition of “family size” in the Federal Family Education Loan Program with the definition of “family size” in the Federal Direct Loan Program.

- Increase the amount of income exempted from the calculation of the borrower's payment amount from 150 percent of the federal poverty guideline or level (FPL) to 225 percent of FPL for borrowers in the REPAYE/SAVE plan. This means anyone with income below 225 percent of FPL would have a zero-dollar payment under REPAYE/SAVE plan.
- Lower the share of discretionary income used to calculate the borrower's monthly payment for outstanding loans under REPAYE/SAVE to 5 percent of discretionary income for loans for the borrower's undergraduates study and 10 percent of discretionary income for other outstanding loans; and an amount between 5 and 10 percent of discretionary income based upon the weighted average of the original principal balances for those with outstanding loans in both categories.
- Provide a shorter maximum repayment period for borrowers with low original loan principal balances (i.e., 10 years for balances of \$12,000 and lower).
- Provide that a borrower will not be charged any remaining accrued interest each month after the borrower's payment is applied under the REPAYE/SAVE plan.
- Credit certain periods of deferment or forbearance toward time needed to receive loan forgiveness.
- Permit borrowers to receive credit toward forgiveness for payments made prior to consolidating their loans.
- Prohibit or restrict new enrollment in certain existing Income Driven Repayment plans starting on July 1, 2024, to the extent that the law allows.

A copy of the final regulations is found at:

<https://fsapartners.ed.gov/knowledge-center/library/federal-registers/2023-07-10/improving-income-driven-repayment-william-d-ford-federal-direct-loan-program-and-federal-family-education-loan-ffel-program>.

FSA Issues Guidance on Implementation of the Pre-Dispute Arbitration Agreement Provisions

On July 3, 2023, Federal Student Aid (FSA) announced guidance on the implementation and policy guidance on the pre-dispute arbitration agreement provisions imposed by some institutions participating in the Direct Loan programs. The announcement said that FSA recognizes that some institutions may have entered into mandatory pre-dispute arbitration agreements or other pre-dispute agreements addressing arbitration and class action prohibitions between July 1, 2020, and June 30, 2023. Under the new regulations published on November 1, 2022, effective July 1, 2023, an institution cannot enforce such agreements in relation to any borrower defense claim made by a Direct Loan recipient. Institutions are not required to issue new enrollment agreements or contracts to students who signed a contract

with a pre-dispute arbitration agreement or class action prohibition prior to the effective date of the regulations. However, the Department is directing any institution where a loan was obtained and included a pre-dispute arbitration requirement or any provisions addressing class actions to amend their agreements and/or notify borrowers that those provisions will not be enforced.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-07-03/implementation-and-policy-guidance-pre-dispute-arbitration-agreement-provisions#>.

Federal Appeals Court Extends Pause on Borrower Defense Rule for Texas Institutions

On July 20, 2023, a three-judge panel for the Fifth Circuit Court of Appeals extended the June 30, 2023, administrative stay to institutions who are members of the Career Colleges & Schools of Texas (CCST) from complying with the borrower defense to repayment rule. The pause was extended to July 28, 2023.

NSC Updates MOVEit Transfer Security Issue

On July 6, 2023, the National Student Clearinghouse (NSC) announced that it is investigating a recent cybersecurity issue involving the vulnerability of one of its third-party software tools, MOVEit Transfer, which affected potentially thousands of other organizations worldwide that use the tool to transfer files. Based on its ongoing investigation, NSC has determined that an unauthorized party obtained certain files transferred through the Clearinghouse's MOVEit environment. NSC has notified the organizations whose data have been identified. NSC has taken actions to protect customer data and its systems by applying relevant security patches and following guidance from the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) and the Federal Bureau of Investigation (FBI).

A copy of the NSC press release is found at: <https://alert.studentclearinghouse.org/>.

AUGUST 2023

ED Publishes Notice Inviting Nominations for Federal Student Loan Forgiveness Rulemaking

On August 31, 2023, the Department of Education published a Notice in the *Federal Register* announcing the establishment of a negotiated rulemaking committee to develop regulations related to federal student loan forgiveness under section 432(a) of the *Higher Education Act, as amended*, which relates to the modification, waiver, release, or compromise of federal student loans. The Notice included the dates the committee will meet: October 10-11, 2023; November 6-7, 2023; and December 11-12, 2023.

The Department invited nominations for both primary and secondary negotiators to serve on the committee from 14 different key constituencies. Nominations were accepted until September 14, 2023.

A copy of the Notice is found at:

<https://fsapartners.ed.gov/knowledge-center/library/federal-registers/2023-08-31/negotiated-rulemaking-committee-negotiator-nominations-and-schedule-committee-meetings>.

Secretary of Education Miguel Cardona said in a press release issued by the Department of Education: “When the Supreme Court ruled against the Biden-Harris Administration’s student debt relief plan, we did not waste a moment opening up a new pathway to debt relief.”

A copy of the Department of Education’s announcement is found at:

<https://www.ed.gov/news/press-releases/biden-harris-administration-seeks-nominations-non-federal-negotiators-continue-rulemaking-process-student-debt-relief>.

Biden-Harris Administration Approves \$72 Million in Borrower Defense Discharges for Over 2,300 Borrowers who Attended Ashford University

On August 30, 2023, the Biden-Harris Administration announced the approval of \$72 million in borrower defense to repayment discharges for more than 2,300 students who applied for relief from loans they took out to attend Ashford University. The approval resulted from a review by the Department of Education of evidence presented by the California Department of Justice during a successful lawsuit brought against Ashford University and its parent company, Zovio, Inc., which resulted in a judgment against both entities in March 2022. Based on the evidence, the Department concluded that Ashford University and Zovio made numerous misrepresentations during the period March 1, 2009, through April 30, 2020.

The press release also said that “[t]he Department will also review the evidence to examine whether members of Ashford’s management and leadership took actions that violated Federal laws or regulations and threatened the integrity of the federal student financial aid programs. If the evidence shows that they did, the Department may pursue appropriate remedies to enforce those rules.”

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/biden-harris-administration-approves-72-million-borrower-defense-discharges-over-2300-borrowers-who-attended-ashford-university>.

FSA Releases New Quarterly Reports on the Federal Student Loan Program to the FSA Data Center

On August 30, 2023, Federal Student Aid (FSA) released new quarterly reports on the federal student loan program to the FSA Data Center. The reports included key data about federal student aid programs as of June 30, 2023. As of June 30, 2023, about 43.4 million recipients had \$1.63 trillion in outstanding federal student loans. This is an increase of almost \$17 billion in the outstanding loan balance and almost 600,000 in the number of student loan recipients since last year.

As a result of COVID-19 flexibilities that continued through the end of August, the reports stated that the number of recipients in repayment status has fallen sharply since March 2020. More than 27 million Direct Loan recipients, with about \$1.1 trillion in outstanding loans, were in forbearance status as of June 30, 2023. Only 300,000 Direct Loan recipients had opted out of the payment pause, and were in repayment status as of June 20, 2023, compared to 18.1 million recipients in repayment in March 2020.

The reports also noted that, in September 2022, Income-Driven Repayment (IDR) enrollment among Direct Loan borrowers decreased for the first time since public reporting began 9 years ago. The decrease is expected to be temporary.

Finally, the reports included updated data on Direct Loan defaults finding that the number of cumulative borrowers in default continues to decrease, with 4.5 million borrowers currently being in default compared to about 4.8 million borrowers one year ago.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-08-30/federal-student-aid-posts-new-quarterly-reports-fsa-data-center>.

SEPTEMBER 2023

Senate and House Republicans Send Letter to GAO Requesting Review of ED's Work to Return Borrowers to Repayment

On September 20, 2023, Senate Health, Education, Labor, and Pensions Committee Ranking Member Bill Cassidy (R-LA) and House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) sent a letter to the Government Accountability Office (GAO) requesting a review of the Department of Education's work to return federal student loan borrowers to repayment. "The *Fiscal Responsibility Act of 2023* mandated that the student loan payment pause end on August 30, 2023, and that borrowers return to repaying their federal student loans." The letter goes on to say: "Yet we have received no indication that the Department is prepared for this historic effort."

The letter also says that the Department announced a 12-month on-ramp period to allow borrowers to forego payments without any statutory and regulatory consequences for

delinquency and default, but that the Department’s “repeated mixed messages raise questions about the incentives borrowers have to avoid repayment of their loans and about the costs of these actions to taxpayers.”

A copy of the press release, including the text of the letter, is found at:

<https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-chairwoman-foxx-see-information-on-return-to-student-loan-repayment>.

House Education and the Workforce Committee Passes CRA Resolution to Overturn SAVE Plan

On September 14, 2023, the House Education and the Workforce Committee met in executive session to consider House Joint Resolution 88, along with 8 other pieces of legislation. H.J. Res. 88 uses the *Congressional Review Act (CRA)* to overturn the Department of Education’s new Saving on A Valuable Education (SAVE) income-driven repayment (IDR) plan. The CRA allows the House of Representatives and Senate to nullify federal rules by a simple majority vote.

It was reported that during the debate Committee Republicans blasted the new repayment plan as a backdoor loan forgiveness program that provides wasteful subsidies to millions of borrowers at the expense of taxpayers. However, Committee Democrats said that the SAVE plan is the most affordable student loan repayment plan in our nation’s history and the resolution would undermine the economic security of student borrowers.

The Committee reported H.J. Res. 88 favorably to the House by a 23 to 19 vote. The bill now goes to the House of Representatives for its consideration.

House and Senate Republicans Send Letter to Secretary of Education Asking Questions on Methodology Used in Determining IDR Forgiveness

On September 7, 2023, House Education and the Workforce Committee Chairman Virginia Foxx (R-NC) and Senate Health, Education, Labor, and Pensions Committee Ranking Member Bill Cassidy (R-LA) sent a letter to Secretary of Education Miguel Cardona requesting details on the Department of Education’s methodology in determining which student loan borrowers qualify for forgiveness under the new Income-Driven Repayment (IDR) program. The letter referenced the Department’s recent announcement that 804,000 borrowers would receive a total of \$39 billion in loan cancellations following adjustments to the IDR program’s qualification standards.

The lawmakers are seeking information as to what legal authority the Department used to justify changing the qualification standards that allowed these borrowers to become eligible for the IDR program. They also asked questions on what type of status counted as a qualifying month for the purposes of the discharge, what status did not count as a qualifying month, and other questions. They are seeking answers by September 31, 2023.

A copy of the press release that includes the text of the letter is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409506>.

ED Announces Release of Final Regulations on Gainful Employment

On September 27, 2023, the Department of Education announced that it released final regulations that strengthen the Gainful Employment (GE) rule and establish a new Financial Value Transparency (FVT) framework giving students in all programs detailed information about the net costs of postsecondary education programs and the financial outcomes they can expect. “It will also help prospective students understand the potential risks involved in their program choices by requiring them to acknowledge viewing this information before enrolling in certificate or graduate programs whose graduates have been determined to face unaffordable debt levels.”

Secretary of Education Miguel Cardona said: “Today’s final rules answer President Biden’s call to hold colleges accountable for rising costs and protect students from unaffordable college debt.” The Department estimates that the final rules will protect nearly 700,000 students annually who would otherwise enroll in one of almost 1,700 low-performing programs.

A copy of the press release, which includes an unofficial copy of the final regulations, is found at: https://www.ed.gov/news/press-releases/biden-harris-administration-announces-landmark-final-rules-protect-consumers-unaffordable-student-debt-and-increase-transparency?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

FSA Distributes FY 2020 Official Cohort Default Rates

On September 25, 2023, Federal Student Aid (FSA) distributed the FY 2020 official cohort default rate (CDR) notification packages to all eligible domestic and foreign schools. The period for appealing the FY 2020 official CDR begins on October 5, 2023, for all schools.

A copy of the announcement is found at: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-09-25/fy-2020-official-cohort-default-rates-distributed-sept-25-2023#>.

FSA Releases Guidance on the Temporary Process Schools Must Follow to Notify the Department of a Proposed Change in Ownership

On September 21, 2023, Federal Student Aid (FSA) released guidance to notify FSA of a proposed change in ownership (CIO). Effective July 1, 2023, schools are required to notify the Department of Education at least 90 days in advance of a proposed CIO and are required to notify enrolled and prospective students of the proposed CIO at least 90 days in advance of the proposed CIO.

The electronic announcement (GEN-23-77) provides guidance on the temporary process schools must follow to provide the 90-day notification. The process includes notifying the Department of the CIO via the Electronic Application for Approval to Participate in the Federal Student Aid Programs (E-App), the submission of state authorization and accrediting documents, copies of audited financial statements, and a copy of the student notification that was provided to the students.

The regulation became effective July 1, 2023, however, only schools with transactions closing on or after January 1, 2024, are subject to this 90-day notification requirement. Transactions that close on or after July 1, 2023, but before January 1, 2024, are relieved of the 90-day notice requirement.

A copy of the electronic announcement is found at: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-09-21/compliance-change-ownership-90-day-advance-notification>.

FSA Releases Updated Federal Student Aid Estimator

On September 21, 2023, Federal Student Aid (FSA) announced the release of a newly revised Federal Student Aid Estimator that provides an estimate of the new Student Aid Index and revised federal Pell Grant eligibility calculation. The Federal Student Aid Estimator is a free online tool that provides students with early estimates of their eligibility for federal student aid. The actual and final federal aid amount will only be made available after a FAFSA is submitted and processed.

A copy of the announcement is found at:
<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-09-21/release-revised-federal-student-aid-estimator>.

ED Approves \$37 Million in Borrower Defense Discharges for Over 1,200 Students who Attended the University of Phoenix

On September 20, 2023, the Department of Education announced the approval of almost \$37 million in borrower defense to repayment discharges for more than 1,200 students who enrolled at the University of Phoenix between September 21, 2012, and December 31, 2014, and applied for relief. The announcement indicated that a national ad campaign from the University of Phoenix misled prospective students by “falsely representing that its partnerships with thousands of corporations, including Fortune 500 companies, would benefit students by, for example, giving them hiring preferences at those companies.” The announcement stated that the Department found that no such hiring benefits existed for the University of Phoenix’s students.

The Department reviewed evidence obtained from the Federal Trade Commission (FTC) in its investigation into the University of Phoenix that was resolved through a \$191 million action in 2019 as well as evidence obtained from the institution during the Department's fact-finding process. The Department intends to initiate a recoupment proceeding against the University of Phoenix to seek repayment of the liabilities associated with these approved claims at a later date.

A copy of the announcement is found at: <https://www.ed.gov/news/press-releases/biden-harris-administration-approves-37-million-borrower-defense-discharges-over-1200-students-who-attended-university-phoenix>.

ED Kicks Off the "SAVE on Student Debt" Week of Action

On September 12, 2023, the Department of Education announced that it was kicking off its "SAVE on Student Debt" Week of Action with events across the country and 100 participating organizations joining in. These events support borrowers who are returning to repayment by providing information about available resources from the Department, including encouraging them to take advantage of the new Saving on A Valuable Education (SAVE) income-driven repayment (IDR) plan and other debt relief programs.

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/100-groups-join-%E2%80%9Csave-student-debt%E2%80%9D-outreach-campaign-reaching-more-18-million-americans>.

ED Announces More than 4 Million Student Loan Borrowers are Enrolled in the New SAVE Plan

On September 5, 2023, the Department of Education announced more than 4 million student loan borrowers are enrolled in the Biden-Harris Administration's new Saving on A Valuable Education (SAVE) income-driven repayment (IDR) plan. Additionally, the Department has received more than 1.6 million IDR applications through StudentAid.gov since July 30, 2023, and nearly one million of those applications are for the SAVE plan.

Under the SAVE plan, a single borrower who makes less than \$15 an hour will not have to make any payments, and borrowers earning above that amount will save more than \$1,000 a year on their payments compared to other IDR plans. Borrowers will also never see their balance grow due to unpaid interest as long as they keep up with their required payments.

Secretary of Education Miguel Cardona said: "Millions of borrowers are already benefitting from enrollment in the SAVE plan, and I'm thrilled to see so many Americans submitting applications every day so they, too, can take advantage of the most affordable student loan plan in history."

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/biden-harris-administration-announces-more-4-million-student-loan-borrowers-are-enrolled-new-save-plan>.

CFPB Announces Investigation of PHEAA Over Student Loan Bankruptcy Discharges

On September 19, 2023, the Consumer Financial Protection Bureau (CFPB) announced that it is investigating whether the Pennsylvania Higher Education Assistance Agency (PHEAA) illegally tried to collect on private education loans that were already discharged by bankruptcy courts. CFPB's press release indicated that PHEAA argued that the CFPB lacks the authority to enforce federal bankruptcy law and that its guidance to servicers was based on "dubious" and "novel interpretations" of the law.

A copy of the CFPB press release is found at: <https://protectborrowers.org/cfpb-rejects-effort-by-disgraced-student-loan-company-to-rob-borrowers-of-bankruptcy-rights/>.

CFPB Report Finds College Tuition Payment Plans Can Put Borrowers at Risk

On September 14, 2023, the Consumer Financial Protection Bureau (CFPB) issued a report entitled, "Tuition Payment Plans in Higher Education," which found that students face risk when they enter into agreements with colleges and universities to spread the upfront cost of tuition into several, interest-free loan payments. The report stated that many payment-plans have inconsistent disclosures and confusing repayment terms, which puts students at risk of missing payments, incurring late fees, and accumulating debt. The report also indicated that many institutions withheld transcripts from students as a debt collection tool, which can have severe consequences for students trying to begin their careers or finish their education.

A copy of the press release with a link to the report is found at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-college-tuition-payment-plans-can-put-student-borrowers-at-risk/>.



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