

WASHINGTON UPDATE

APRIL 2021

OMB Releases “Skinny Budget” for FY 2022

On April 9, 2022, the White House Office of Management and Budget (OMB) released its “skinny budget,” which is the President’s budget request for FY 2022. The FY 2022 budget proposal includes \$102.8 billion for the Department of Education, which is a 41 percent increase over last year’s FY 2021 funding. Details are limited for higher education, but the request includes additional funds for the Pell Grant Program and for Historically Black Colleges and Schools (HBCUs), Tribally controlled Colleges and Universities (TCCUs) and Minority Serving Institutions (MSIs) as well as community colleges.

To lower barriers for low- and middle-income students pursuing higher education, the discretionary request increases the maximum Pell Grant by \$400, the largest one-time increase since 2009. For award year 2021-2022, the Pell Grant maximum award was increased \$150 to \$6,495. The discretionary request of an additional \$3 billion in Pell Grants would ensure “DREAMers,” students who came to the United States as children and are Deferred Action for Childhood Arrivals recipients, are eligible for Pell Grants if they meet the standard requirements for Pell Grants.

The proposal also increases funding for HBCUs, TCCUs, MSIs, and community colleges. The discretionary request provides an increase of more than \$600 million over the FY 2021 enacted levels for these programs. These funds would support programs that provide additional assistance for disadvantaged students, including those at community colleges, to ensure they succeed in and graduate from college.

House of Representatives Votes in Favor of the *American Dream and Promise Act of 2021*

On March 18, 2021, the House voted in favor of the *American Dream and Promise Act of 2021*, by a vote of 229-197. The bill provides a path to permanent residency for young undocumented immigrants known as DREAMers, who were brought to the United States as children and were enrolled in the Deferred Action for Childhood Arrivals (DACA) program. Nine Republicans joined Democrats in supporting the bill, which has a slim chance of passing in the Senate.

Burr and King Renew Bipartisan Effort to Reform Student Loan Repayment Programs

On March 18, 2021, Senators Richard Burr (R-NC) and Angus King (I-ME) reintroduced the *Repay Act*, which would reform federal student loan repayment programs. The bill would simplify and streamline the current repayment programs by establishing two, easy-to-navigate repayment plans: a fixed, 10-year repayment plan and a single, simplified income-driven repayment option.

Washington Update

April 15, 2021

Page 2

Senator Burr said: “The rise in federal student loan debt has been a cause for concern for years, but the issue has taken on a new urgency given the economic challenges of the coronavirus pandemic.”

A copy of the press release is found at: <https://www.burr.senate.gov/press/releases/burr-king-renew-bipartisan-effort-to-reform-student-loan-repayment-programs>.

ED Announces Comprehensive Review of the Title IX Rules

On April 6, 2021, the Department of Education’s Office for Civil Rights (OCR) announced a comprehensive review of the Title IX rules. In a letter to students, educators, and other stakeholders, OCR outlined plans to solicit the public’s input on the regulations, ultimately leading to possible revisions through a notice of proposed rulemaking. A public hearing will be held in the coming weeks, but has not been announced. OCR will also be releasing new guidance in the form of Q&As that will advise colleges and universities how the agency plans to enforce the current Title IX rules while the review is in progress. Secretary of Education Miguel Cardona said:

“Building educational environments free from discrimination where our nation’s students can grow and thrive is a top priority of the Biden-Harris Administration. Today’s action is the first step in making sure that the IX regulations are effective and are fostering safe learning environments for our students while implementing fair processes. Sexual harassment and other forms of sex discrimination, including in extracurricular activities and other educational settings, threaten access to education for students of all ages.”

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/department-educations-office-civil-rights-launches-comprehensive-review-title-ix-regulations-fulfill-president-bidens-executive-order-guaranteeing-educational-environment-free-sex-discrimination>.

A copy of the letter sent to the higher education community is found at:

<https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/20210406-titleix-eo-14021.pdf>.

ED Discharges Over \$1.6 Billion in HBCU Capital Finance Debt

On April 2, 2021, the Department of Education announced that it recently discharged about \$1.6 billion of debt provided to Historically Black Colleges and Universities (HBCUs) that participate in the HBCU Capital Financing Program. Since 1994, the HBCU Capital Financing Program has provided low-cost loans to finance and refinance infrastructure improvements at the nation’s HBCUs. With this action, 45 HBCUs will receive debt relief.

Washington Update

April 15, 2021

Page 3

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/department-education-discharges-over-16-billion-hbcu-capital-finance-debt>.

Secretary Cardona Joins Roundtable Discussion on Student Loan Debt

On April 2, 2021, Secretary of Education Miguel Cardona joined a roundtable discussion to listen as student loan borrowers and advocates shared their stories about the impact student loan debt has had on their lives. Senate Majority Leader Chuck Schumer (D-NY) and Senator Elizabeth Warren (D-MA) also joined the roundtable discussion. Secretary Cardona said:

“What I am hearing from you all is not only that there is this cloud hanging over your heads, but also that there is this great emotional impact which has severely interrupted your lives. This burden has created a generational impact of distress.”

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/secretary-education-joins-senator-elizabeth-warren-and-senator-chuck-schumer-roundtable-discussion-student-loan-borrowers-and-advocates>.

Department’s OIG Announces the Availability of HEERF Compliance Guide for Proprietary Schools

On March 31, 2021, the Department of Education’s Office of Inspector General (OIG) announced the availability of the “Guide for Compliance Attestation Engagements of Proprietary Schools Expending Higher Education Emergency Relief Fund Grants (Guide),” which provides guidance for compliance attestation engagements of proprietary schools that received Higher Education Emergency Relief Fund (HEERF) grants. As a condition of the HEERF grant program awards, a proprietary school must have a compliance audit conducted of its administration of the HEERF grant programs for any fiscal year, during which eligible schools expend \$500,000 or more in total HEERF grant program funds or are on Heightened Cash Monitoring 1 or 2 in a fiscal year in which it expended any HEERF grant funds.

A copy of the announcement, which includes the link to the Guide, is found at: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-03-31/availability-guide-compliance-attestation-engagements-proprietary-schools-expending-higher-education-emergency-relief-fund-grants-ea-id-general-21-21>.

Washington Update

April 15, 2021

Page 4

Department Announces Expansion of COVID-19 Emergency Flexibilities for FFEL Loans

On March 30, 2021, the Department of Education announced an expansion of the pause on federal student loan interest and collections to all defaulted loans in the Federal Family Education Loan (FFEL) Program. This action will help 1.14 million borrowers who defaulted on their FFEL loans that are privately held. This action will protect the borrowers who were at risk of having their federal tax refunds seized to repay a defaulted loan. The relief will be made retroactive to March 13, 2020, the start of the COVID-19 national emergency. The Department will work to return any tax refunds seized or wages garnished over the past year.

Secretary of Education Miguel Cardona said: “Our goal is to enable those borrowers who are struggling in default to get the same protections previously made available to tens of millions of other borrowers to help weather the uncertainty of the pandemic.”

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/department-education-announces-expansion-covid-19-emergency-flexibilities-additional-federal-student-loans-default>.

Department Announces Relief for Borrowers with Total and Permanent Disabilities During the COVID-19 Emergency

On March 29, 2021, the Department of Education announced relief for certain borrowers who have received student loan discharges due to total and permanent disability. These changes will ensure no borrowers are at risk of having their loans reinstated, which would mean they would have to repay their debt, for failure to provide earnings information during the COVID-19 emergency.

Current regulations require borrowers who receive this discharge to be subject to a three-year monitoring period. During the monitoring period, borrowers must provide the Department with information about their earnings from employment. As of March 29, 2021, the Department will not require borrowers who receive a total and permanent disability discharge to submit earnings documentation for the duration of the COVID-19 emergency. This change will be retroactive to March 13, 2020, the start of the COVID19 national emergency.

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/education-department-announces-relief-student-loan-borrowers-total-and-permanent-disabilities-during-covid-19-emergency>.

Washington Update
April 15, 2021
Page 5

FSA Announces Launch of the FSA Partner Connect Website

On March 28, 2021, Federal Student Aid (FSA) announced the launch of the FSA Partner Connect website at: <https://fsapartners.ed.gov/home/>. The Information for Financial Aid Professionals (IFAP) website has been retired. Users visiting the IFAP website home page will be redirected to <https://fsapartners.ed.gov/knowledge-center>.

A copy of the electronic announcement is found at: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-03-28/next-gen-fsa-fsa-partner-connect-and-knowledge-center-now-available-ea-id-general-21-20>.

OPE Clarifies R2T4 Guidance Related to COVID-19 National Emergency

On March 19, 2021, the Office of Postsecondary Education (OPE) provided guidance clarifying the R2T4 guidance related to the COVID-19 national emergency. The announcement indicated that on May 15, 2020, OPE published an electronic announcement announcing waivers of Return of Title IV funds requirements for students affected by the COVID-19 emergency. The announcement reminded institutions that where students were moved from ground-based instruction to distance learning, campus housing or other campus facilities were closed, or other interruptions in instruction occurred during a payment period within the covered period, all students who withdrew during that payment period may be considered withdrawn as a result of the COVID-19 emergency. Otherwise, the institution must obtain a written attestation from the student explaining why the withdrawal was a result of the COVID-19 emergency. The announcement includes examples as illustrations.

A copy of the OPE announcement is found at:
<https://ifap.ed.gov/electronic-announcements/031921ClarifiR2T4GuidRelated2COVID19NationalEmergency>.

Department Official Says ED is Looking at Borrower Defense to Repayment Rules and Gainful Employment Rules

On March 16, 2021, Melanie Muenzer, the new Chief of Staff to the Office of the Under Secretary at the Department of Education, participated in an event at the Brookings Institution where she discussed future higher education-related activities. According to an article in *Politico*, Ms. Muenzer said that the Department is “very acutely aware” of “disproportionate negative impacts” that for-profit institutions have on low-income students and students of color and that the Department is looking at various areas for regulatory action including new and revised borrower defense to repayment and gainful employment rules.

Washington Update
April 15, 2021
Page 6

Department Announces Action to Streamline Defense Relief Process

On March 15, 2021, the Department of Education announced it will streamline debt relief determinations for borrowers with claims approved to date that their institution engaged in certain misconduct. ED will be rescinding the formula for calculating partial relief and adopting a streamlined approach for granting full relief under the regulations to borrower defense claims approved to date. The Department anticipates this change will help about 72,000 borrowers receive \$1 billion in loan cancellation.

Under former Secretary of Education Betsy DeVos, the Department determined debt relief based on a formula. If a borrower's earnings after graduation were two standard deviations below the median for similar programs, the Department granted the borrower full relief. However, if the borrower's earnings were below the median, but not by two standard deviations, the Department granted 25, 50, or 75 percent relief.

The Secretary of Education said: "Borrowers deserve a simplified and fair path to relief when they have been harmed by their institution's misconduct."

Chairman of the House Education and Labor Committee Bobby Scott (D-VA) applauded the Department's announcement by saying: "I applaud the Biden Administration for doing the right thing by making these borrowers whole and I can only imagine the mixture of joy and relief they are feeling today."

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/department-education-announces-action-streamline-borrower-defense-relief-process>.

A copy of Congressman Scott's statement is found at: <https://edlabor.house.gov/media/press-releases/>.

FSA Sends Alert Regarding Malicious Cyber Actors to Gain Access to Microsoft Exchange Servicers

On March 15, 2021, Federal Student Aid (FSA) sent an alert that the Federal Bureau of Investigation (FBI) and the Cybersecurity and Infrastructure Security Agency (CISA) have reports of malicious cyber actors using zero-day exploits to gain access to on-premises Microsoft Exchange servers of U.S. entities as early as January 2021. The alert said threat actors could steal credentials and mailbox data that store and transmit sensitive data such as financial aid and personally identifiable information (PII). To protect the institution, FSA is encouraging each school to strengthen its cybersecurity posture and described various actions that schools could take.

Washington Update

April 15, 2021

Page 7

A copy of the alert is found at:

<https://ifap.ed.gov/electronic-announcements/031521TechSecurityAlertThreatActorsExploitMSExchangeVulnerabilities>.

Department officials at the time had illegally failed to consider a large tranche of evidence submitted by ACICS.

A copy of the OIG report is found at:

<https://www2.ed.gov/about/offices/list/oig/auditreports/fy2021/s19t0003.pdf>.

IRS Announces that Emergency Financial Aid Grants Are Not Taxable

On March 30, 2021, the Internal Revenue Service (IRS) issued guidance on how students and institutions should report the emergency financial aid grants under HEERF funding. The announcement said students should not include the emergency financial aid grants in their gross income. Also, students should not reduce an amount of qualified tuition and related expenses by the amount of an emergency financial aid grant. Because students should not include the emergency financial aid grants in their gross income, institutions of higher education area not required to file or furnish Forms 1099-MISC reporting the grants made available by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) or the COVID-related Tax Relief Act (COVID Relief Act) and do not need to report the grants in Box 5 of Form 1098-T.

A copy of the IRS announcement is found at: <https://www.irs.gov/newsroom/emergency-aid-granted-to-students-due-to-covid-are-not-taxable>.

Federal Judge Upholds Most of DeVos' Borrower Defense Rules

According to an article in *Politico*, U.S. District Judge Lorna Schofield generally ruled in favor of former Secretary of Education Betsy DeVos' rewrite of the borrower defense to repayment rules, although she rejected the three-year statute of limitations on borrower claims included in the policy. She ruled that the Trump Administration had illegally added the three-year deadline for when borrowers must apply for loan forgiveness in some cases. Judge Schofield determined that it was "not a logical outgrowth" of the initial proposal. The article reported that Judge Schofield, an Obama appointee, sent the rules back to the Department of Education "for further proceedings consistent with" her ruling.

Washington Update
April 15, 2021
Page 8

HLC Begins to Explore Ways to Assess Institutions Based on Type of Institution

On March 18, 2021, the Higher Learning Commission (HLC) announced that it will begin to explore ways to assess colleges and universities based on the type of institution. The standards used to accredit a particular college or university would become more “attentive to the interests, needs, aspirations, and constraints of the sector in which the institution operates.” HLC’s President Barbara Gellman-Danley said: “At its core, differential accreditation will not simply recognize conceptually the diversity and differences among sectors, it will foreground the interests and needs of the various sectors when applying HLC’s requirements of accreditation.”

A copy of HLC’s press release is found at:

https://download.hlcommission.org/HLCDifferentialAccreditationPressRelease_2021-03-17.pdf.

Sharon H. Bob, Ph.D.
Higher Education Specialist
Powers Pyles Sutter and Verville, PC
1501 M Street, NW, Suite 700
Washington, DC 20005
T: 202-872-6772
F: 202-785-1756
April 15, 2021