

WASHINGTON UPDATE

JUNE 2021

House and Senate Republican Education Committee Leaders Urge Secretary of Education to Resume Collecting Federal Student Loan Payments

On June 2, 2021, Senate Health, Education, Labor and Pensions Committee Ranking Member Richard Burr (R-NC) and House Education and Labor Committee Ranking Member Virginia Foxx (R-NC) sent a letter to Secretary of Education Miguel Cardona to resume collecting monthly federal student loan payments when the COVID-19 pandemic relief for borrowers expires at the end of September 2021. The letter stated that the pause has caused taxpayers \$40 billion last year alone, not counting the \$63 billion in loan re-estimates added to the program costs in 2020 due to previously unanticipated levels of forgiveness. The letter asks the Department to give clear directions on how borrowers can reenroll in the Income-Driven Repayment Plan and asked the Department if it will communicate how borrowers enrolled in auto-debit payments prior to the loan pause will be treated reentering repayment.

A copy of the letter is found at:

<https://www.help.senate.gov/imo/media/doc/2021.06.02%20Letter%20-%20Burr%20and%20Foxx%20to%20Cardona%20on%20Return%20to%20Repayment.pdf>.

Senate Passes *U.S. Innovation and Competition Act*; Senator Paul Blocks Bipartisan Amendment to Expand Pell Grant Program to Short-Term Programs

On June 8, 2021, the Senate passed the *United States Innovation and Competition Act of 2021* (S. 1260) by a vote of 68 to 32. The bill, known as the “China Bill,” would boost support for science and technology in an effort to enhance the United States’ competitiveness with China. Before the passage of S. 1260, Senator Rand Paul (R-KY) objected to a unanimous consent request to add a manager’s package of amendments to the bill. Senator Rand objected to the increased federal spending in the bill as a whole. Among the amendments in the manager’s package that was left out was a bipartisan deal reached earlier in June, the Kaine-Portman Amendment, that would have expanded the Pell Grant program to short-term programs and would have ended the Direct Loan program for short-term programs. The Kaine-Portman Amendment would have prohibited proprietary institutions from participating in the new short-term Pell Grant program. The Senate will now send S. 1260 to the House for its consideration.

OMB Releases Biden’s Budget Request for FY 2022

On May 28, 2021, the Office of Management and Budget (OMB) released President Biden’s budget request for FY 2022. The budget request for the Department of Education is \$102.8 billion, a 41 percent increase over FY 2021 levels, and includes the following:

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- **Pell Grants:** The budget request includes \$25.5 billion in discretionary funding for the Pell Grant program, which would increase the maximum annual award by \$400. The budget request states that this increase along with the \$1,475 increase included in the American Families Plan, represent a significant first step to deliver on the President’s goal to double the Pell Grant.
- **Campus-Based Programs:** The budget requests \$880 million for Supplemental Educational Opportunity Grants (FSEOG) and \$1.19 billion for Federal Work-Study, the same amount as provided last year.
- **Expand Federal Student Aid Eligibility for DREAMers:** The budget proposes to expand eligibility for Pell Grants and campus-based aid to Deferred Action for Childhood Arrival (DACA) recipients. The proposal states that the Administration would also work with Congress to ensure that these students are eligible for federal student loans.
- **Free Community College and Tuition Free HBCUs:** The budget requests \$14.3 billion for a partnership between the federal government and states, tribes, and territories to ensure that first-time students and workers wanting to reskill can enroll in a community college to earn a degree for free. The budget would also provide \$4.6 billion for grants to eligible four-year Historically Black Colleges and Universities, Tribal Colleges and Universities, and minority-serving institutions.
- **Completion Grants:** The budget requests \$6.2 billion for a new Completion Grant program to support a comprehensive set of completion and retention activities at colleges and universities that serve high numbers of low-income students.
- **Other Federal Student Loan Proposals:** The budget proposal states that “the Administration also looks forward to working with the Congress on changes to the Higher Education Act of 1965 that ease the burden of student debt, including improvements to the Income-Driven Repayment and Public Service Loan Forgiveness programs.”
- **Student Aid Administration:** The budget proposes \$2.1 billion for the Student Aid Administration account to administer federal student aid programs. Included in the budget proposal is the following statement: “The Department anticipates using the authority provided in the *Consolidated Appropriations Act, 2021*, to extend legacy loan servicing to ensure stable operations while also working to develop a long-term servicing solution. Extending the legacy loan servicing contracts will give the Department the ability to focus on major challenges including ensuring a smooth transition out of the payment pause and implementing the *FAFSA Simplification Act* and *FUTURE Act* as quickly as possible.”

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Secretary of Education Miguel Cardona released a statement and said: “This [budget] proposal reflects the Biden-Harris Administration’s commitment to ensuring that student success remains at the heart of the Department of Education’s work.”

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

<https://www.ed.gov/news/press-releases/statement-secretary-education-miguel-cardona-presidents-fiscal-year-2022-budget>.

Congressional Democrats praised the Administration’s investments but the Republicans largely panned the budget request and considered the spending a nonstarter for budget talks.

Senators Warren, Smith, Van Hollen, and Blumenthal Seek Updates on How ED is Improving its Oversight of For-Profit Institutions

On May 21, 2021, Senators Elizabeth Warren (D-MA), Tina Smith (D-MN), Chris Van Hollen (D-MD), and Richard Blumenthal (D-CT) sent a letter to Secretary of Education Miguel Cardona seeking updates on how the Department of Education is improving its oversight of for-profit colleges and institutions that pose risks to students during the recovery from COVID-19. The letter points that Black and Latino students are over-represented at these institutions, “which contributes to the racial disparities in student loan debt.” The letter goes on to say that during the COVID-19 pandemic, enrollment at public institutions and community colleges dropped while the enrollment at for-profit institutions increased, which may lead to greater student loan debt for Black and Latino students attending for-profit institutions.

The letter noted that under Secretary of Education Betsy DeVos, many of the Obama Administration guardrails that were put in place “to rein in predatory schools” were weakened or rescinded. The letter asked whether there are any plans to hold accreditors more accountable, to expand the College Scorecard consumer tool, and to more closely monitor postsecondary recruitment activities.

A copy of the letter is found at:

<https://www.warren.senate.gov/imo/media/doc/2021.05.21%20Letter%20to%20ED%20re%20accountability%20for%20predatory%20colleges.pdf>.

Senators Warren, Smith, Van Hollen, and Blumenthal Seek Information on Restarting Student Loan Repayments and Loan Servicing

On May 21, 2021, Senators Elizabeth Warren (D-MA), Tina Smith (D-MN), Chris Van Hollen (D-MD), and Richard Blumenthal (D-CT) sent a letter to Secretary of Education Miguel Cardona

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requesting information on how the Department of Education plans to restart the monthly payments of millions of federal student loan borrowers when COVID-19 relief expires this fall. The Senators also asked Secretary Cardona to explain whether the Department plans to extend the existing contracts with its federal student loan servicers that are set to expire at the end of the year, and whether he will commit to a new loan servicing system that includes “specific, outcome-based incentives for effective loan management and customer service” with penalties for companies that do not meet the standards.

A copy of the letter is found at:

<https://www.warren.senate.gov/imo/media/doc/2021.05.21%20Letter%20to%20ED%20re%20student%20debt%20issues%20and%20pandemic.pdf>.

ED Terminates Recognition of ACICS as a Federal Accreditor

On June 2, 2021, the Department of Education issued an opinion withdrawing the recognition of the Accrediting Council for Independent Colleges and Schools (ACICS) as a federal accreditor. The Department stated that ACICS had failed to properly oversee its institutions of higher education and had inadequate administrative capability in order to be recognized as an accreditor. In a letter to ACICS, Deputy Under Secretary of Education Jordan Matsudaira said, “Following years of review involving four different compliance inquiries and reports, and after considering the entire lengthy and complex record before me, ACICS’s significant and systemic noncompliance with multiple regulatory recognition criteria leaves me no reasonable option but to terminate its recognition, effective immediately.” ACICS has 30 days to appeal the decision to Education Secretary Miguel Cardona, which the accreditor said that it plans to do.

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

<https://www.ed.gov/news/press-releases/statement-us-department-education-status-recognition-nine-accrediting-agencies-and-withdrawal-recognition-accrediting-council-independent-colleges-and-schools>.

FSA Announces New Guidance on State Access to Student Loan Data

On May 28, 2021, Federal Student Aid’s (FSA) Chief Operating Officer Richard Cordray announced new guidance to its vendors that would now permit state and federal regulators to access student loan borrowers’ data and information held by servicers in an effort to provide better oversight to the servicers and debt collectors contracted by the Department of Education. In a memo sent to vendors, Mr. Cordray said that ED will create a “streamlined and expedited process” for any federal, state, or local authorities to request access to borrowers’ information that is needed to investigate or oversee student loan companies.

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The announcement rescinds a previous Trump Administration policy that made it more difficult for state and federal regulators to access pertinent records of borrowers, effectively forwarding all requests for data to FSA, which generally rejected them. In a blog post, Mr. Cordray said “Instead of finding reasons to deny these requests, we should be spending our time partnering with state agencies to effectively oversee our loan servicers and debt collectors.”

The memo is found at: <https://www2.ed.gov/policy/fund/guid/revise-vendor-guidance-fsa.pdf>.

A copy of the blog post is found at: <https://blog.ed.gov/2021/05/stronger-partnerships-with-state-allies-to-protect-student-borrowers/>.

OPE Announces Public Hearings on Protections for Students, Loan Repayment, Gainful Employment, Closed School Discharges and Other Higher Education Regulations

On May 24, 2021, the Department of Education’s Office of Postsecondary Education (OPE) announced public hearings on various higher education regulations, including loan repayment, borrower defense to repayment, gainful employment, closed school discharges, and mandatory pre-dispute arbitration and prohibition of class action lawsuit provisions in the institutions’ enrollment agreements. The virtual hearings will be held on June 21, 23, and 24, 2021 to receive stakeholder feedback on potential issues for future rulemaking sessions.

Secretary of Education Miguel Cardona said: “The Department of Education’s primary responsibility is to serve students and borrowers. That means taking a fresh look at a range of regulations to make sure they are not creating unnecessary barriers, but instead can ensure that institutions and programs serve students well.”

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/department-educations-office-postsecondary-education-announces-public-hearings-protections-students-loan-repayment-targeted-loan-cancellation-programs-and-other-higher-education-regulations>.

A copy of the *Federal Register* Notice is found at: <https://www.govinfo.gov/content/pkg/FR-2021-05-26/pdf/2021-11120.pdf>.

OCR Announces a Virtual Public Hearing for Improving Enforcement of Title IX

On May 17, 2021, the Department of Education’s Office of Civil Rights (OCR) announced that it will be holding a virtual public hearing on June 7-11, 2021 to gather information for the purpose of improving enforcement of Title IX of the Education Amendments of 1972. OCR will be seeking

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comments from the public on steps the Department can take to ensure that schools are providing students with educational environments free from discrimination in the form of sexual harassment.

The notice for the hearing includes:

- The agenda for the virtual public hearing;
- The format of the hearing;
- Information about how members of the public can participate in the hearing, including how to register to provide a live comment during the hearing and how to submit a written comment; and
- Information about how to attend the hearing virtually.

A copy of the announcement is found at:

https://www.ed.gov/news/press-releases/department-educations-office-civil-rights-announces-virtual-public-hearing-gather-information-purpose-improving-enforcement-title-ix?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

A copy of the notice is found at:

<https://www.govinfo.gov/content/pkg/FR-2021-05-20/pdf/2021-10629.pdf>.

FSA Denies Reinstatement Application for For-Profit Law School

On May 13, 2021, Federal Student Aid (FSA) informed Florida Coastal School of Law that its application for reinstatement to participate in federal student aid programs has been denied. Secretary of Education Miguel Cardona said: “Too often, we see for-profit schools that try to take advantage of students, misuse taxpayer dollars, and skirt the rules to participate in federal student aid programs. Today we want to be heard and understood by for-profit schools around the country: we will be vigilant in ensuring they meet their commitments to students, families, and taxpayers.”

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/department-educations-federal-student-aid-denies-reinstatement-application-profit-law-school>.

FSA Announces Additional Designations of Entities that May Use the FAFSA Data

On May 12, 2021, Federal Student Aid (FSA) announced that it has designated the Federal Communication Commission (FCC), the Department of Labor (DOL) and the Department of Health and Human Services (HHS) under section 483(a)(3)(E) of the *Higher Education Act, as amended* (HEA), as entities that may use the Free Application for Federal Student Aid (FAFSA) data.

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The FCC may use the FAFSA data to aid in the administration of its Emergency Broadband Benefit Program (EBB), which connects low-income households, particularly those with school-aged children, to broadband networks at affordable rates. Additional funding became available under the *Consolidated Appropriations Act of 2021*. The DOL may use the FAFSA data to aid in the administration of the Pandemic Unemployment Assistance (PUA), which may provide unemployment benefits to students under the *American Rescue Plan*. Under Executive Order 14009 on Strengthening Medicaid and the *Affordable Care Act*, HHS was directed to establish a Special Enrollment Period for uninsured and under-insured Americans to seek coverage through the Federally Facilitated Marketplace. As a result, HHS has established a Special Enrollment Period that runs through August 15, 2021. Additionally, the *American Rescue Plan* also temporarily expanded the financial assistance available for low- and moderate-income families to purchase insurance. As a result of the new designation, ED may provide students with information about financial assistance available and new options to enroll in health insurance coverage.

A copy of the announcement is available at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-05-12/additional-designations-entities-under-section-483a3e-higher-education-act-and-institution-higher-education-ihe-guidance-ea-id-general-21-30>.

FSA Confirms Direct Loan Interest Rates Beginning July 1, 2021

On May 20, 2021, Federal Student Aid (FSA) announced the official interest rates for new Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans. The interest rates will rise on July 1, 2021 as follows:

- Subsidized and Unsubsidized Stafford Loans to undergraduates: 3.73 percent
- Unsubsidized Stafford Loans to graduate/professional students: 5.28 percent
- PLUS Loans to parents and graduate/professional students: 6.28 percent.

The announcement said that “In response to the COVID-19 emergency relief period, the interest rates on all Direct Loans has been temporarily set at 0 percent until at least September 30, 2021. Once the COVID10 emergency relief period ends, the rates as described in this announcement will be in effect for loans first disbursed on or after July 1, 2021.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-05-19/interest-rates-direct-loans-first-disbursed-between-july-1-2021-and-june-30-2022-ea-id-loans-21-06>.

Department of Education Rejects Request to Reverse Gainful Employment Rule

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According to a recent article in POLITICO, on May 18, 2021, the Department of Education sent a letter in response to an administrative complaint by Student Defense, a consumer advocacy group, rejecting the request to reverse former Secretary of Education Betsy DeVos' repeal of the gainful employment rules and would instead go through the negotiated rulemaking process to restore the Obama-era regulations. According to the letter, the article stated that the Department could not reverse the gainful employment rules because "the Department is legally obligated to conduct negotiated rulemaking and notice and comment requirements prior to proposing any changes to the Code of Federal Regulations with respect to Federal student financial aid programs, including with respect to regulations on the subject of gainful employment."

OIG Issues Report on Closed Institutions that Receive HEERF Grants

On May 13, 2021, the Department of Education's Office of Inspector General (OIG) released a report titled, "Risk of Closed Institutions of Higher Education Receiving Higher Education Emergency Relief Fund Grants." (ED-OIG/I21SIU00841). The report reflects OIG's observations concerning institutions of higher education that ceased to provide educational instruction in all programs of study and received or had access to coronavirus response and relief aid through the Higher Education Emergency Relief Fund (HEERF).

The OIG found that at least \$1,261,329 in HEERF grants were awarded to and drawn down by closed institutions of higher education. The OIG also found that 17 institutions of higher education that closed on or before December 31, 2020, applied for and were awarded a total of \$4,912,675 of HEERF grants by the Office of Postsecondary Education (OPE). Of these 17 institutions, 14 drew down HEERF funds and 3 did not draw down any of their awards. Of the 14 institutions that drew down their HEERF awards, 8 made drawdowns after the institution closed according to the Postsecondary Education Participants Systems (PEPS) totaling \$1,261,329. In addition, 1 of the 14 closed institutions that drew down HEERF funds made a draw of \$364,715 one day before closing.

OPE agreed with the OIG recommendations to verify that institutions that were allocated, awarded, or drew down funds were not closed.

A copy of the OIG report is found at:

<https://www2.ed.gov/about/offices/list/oig/auditreports/fy2021/i21siu00841.pdf>.

[Progressive Groups Send Letter to ED Expressing Dissatisfaction with Lack of Actions to Undo DeVos Actions](#)

Various publications reported that twenty-five progressive groups sent a letter to Secretary of Education Miguel Cardona stating their dissatisfaction with the Department of Education's Office of General Counsel (OGC) under the Biden Administration, citing the failure "to take the necessary steps towards reversing the harm done by DeVos." The letter also said that the groups are

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dissatisfied that the Biden Administration has not yet revoked several legal memos put in place by former Secretary of Education Betsy DeVos that precluded federal student loan servicers from communicating with state enforcement agencies and found the Department did not have the authority to forgive large numbers of student loan debt. The letter said that “it is urgent that steps be taken to reinvigorate the OGC so as to reverse the damage that occurred during DeVos’ tenure. To do so, the Administration should either accelerate the appointment of a permanent General Counsel or institute a more effective process management strategy within the Secretary of Education’s office.”

ACCET Announces Christopher Lambert as New Executive Director

On May 4, 2021, the Commission of the Accrediting Council for Continuing Education and Training (ACCET) announced that Christopher Lambert has been appointed as the agency’s new Executive Director starting on May 17, 2021. Interim Director Judy Hendrickson recently announced her retirement taking effect on June 4, 2021. Mr. Lambert previously served as the Associate Executive Director of ACCSC and has extensive knowledge of the accreditation process and the regulatory environment for proprietary schools.

A copy of the ACCET announcement is found at:

https://www.career.org/uploads/7/8/1/1/78110552/5-04-21_member_notice_-_accet_executive_director.pdf.

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