WASHINGTON UPDATE

JULY 2021

Senate and House Education Committee Leaders Urge President to Extend Student Loan Payment Pause

On June 30, 2021, Senate Health, Education, Labor and Pensions Committee Chairwoman Patty Murray (D-WA) and House Education and Labor Committee Chairman Bobby Scott (D-VA) sent a letter to President Joe Biden urging him to extend the pause on student loan payments "until early 2022.) The members noted that the pause on student loan payments has been a lifeline for struggling borrowers during the health and economic crisis and that borrowers need more time and support in order to navigate resuming repayments. Further, the letter said that the Department should use the additional time to provide borrowers "with an effective re-entry for repayment."

A copy of the letter is found at: https://www.help.senate.gov/imo/media/doc/2021-06-30%20Letter%20to%20Pres.%20Biden%20Payment%20Pause%20Extension.pdf?source=email.

Politico reported that the Department of Education officials are recommending that the White House extend the pause on federal student loan payments, interest, and collections through the end of September. However, the Biden Administration has not yet made a final decision on how and when to restart federal student loan payments, which have been paused since March 2020.

Senators Warren, Schumer, along with 60 House and Senate Democrats, Send Letter to President Urging Him to Extend Federal Student Loan Payment Pause

On June 23, 2021, Senator Elizabeth Warren (D-MA) and Senate Majority Leader Chuck Schumer (D-NY), along with more than 60 House and Senate Democrats, sent a letter to President Joe Biden urging him to extend the pause on payments and interest accrual for federally-held student loans. The pause is currently set to retire on September 30, 2021. The letter urges the President to extend the pause by at least six months through March 31, 2022, or until the economy reaches pre-pandemic employment levels, whichever is longer.

A copy of the letter is found at:
https://www.warren.senate.gov/imo/media/doc/Letter%20to%20Biden%20re%20extension%20of%20payment%20pause%20final%206.23.21%20final.pdf.

Several Media Reports State that Senator Warren is Behind Effort to Stall James Kvaal's Nomination as Next Under Secretary of Education

On June 22, 2021, several media reports indicated that Senator Elizabeth Warren (D-MA) is the unnamed Senator who has placed a hold on the nomination of James Kvaal to serve as the next Under Secretary at the Department of Education. According to the media reports, Senator Warren's hold is the latest escalation of pressure on the Biden Administration from progressives who want to see more aggressive and quicker action on student loan debt. For several months, Senator Warren and Senate Majority Leader Chuck Schumer (D-NY) have been publicly lobbying President Biden to use executive action to cancel $50,000 of student loan debt per borrower. Media reports said that Senator Warren's $50,000 student loan cancellation proposal is not the reason for the hold on the nomination, but instead, she is seeking concessions on how the Department runs the student loan program and is negotiating a range of reforms including the administration of the loan program.

Chairman Scott Asks Secretary of Education to Halt All Approvals of For-Profit to Nonprofit Conversions Until Reforms are in Place

On June 3, 2021, Chairman of the Committee on Education and Labor Bobby Scott (D-VA) sent a letter to Secretary of Education Miguel Cardona regarding the Department of Education's process for reviewing, approving, and monitoring for-profit college conversions to non-profit institutions. He pointed out that the Government Accountability Office (GAO) recently investigated the conversion process and found serious shortcomings in the Department's monitoring of converted institutions, which gives rise to risks of insiders taking advantage of non-profit institutions at student and taxpayer expense. These issues combined with concerns raised at a Committee hearing held on April 20, 2021 that the Department and the Internal Revenue Service (IRS) must take steps to reform their processes, the Department should halt the approval of all conversions until they finalize those reforms. Chairman Scott said that GAO's findings indicate that lapses in Department oversight have allowed billions to flow annually to institutions it treats as non-profits, but which may operate as for-profits.

A copy of the letter is found at: https://www.republicreport.org/2021/rep-scott-demands-halt-to-for-profit-college-conversions-to-non-profit/.

A copy of the GAO report is found at: https://www.gao.gov/products/gao-21-89.

ED Issues Notice Seeking Third-Party Comments For Accrediting Agencies Currently Undergoing Review for Purposes of Recognition

On July 12, 2021, the Department of Education published a Notice in the *Federal Register* seeking written comments for accrediting agencies currently undergoing review for purposes of recognition by the Secretary of Education. The agencies are listed by the type of application each agency has submitted. Written comments from third parties must be received by the Department of Education by August 15, 2021.

A copy of the Notice is found at:
https://www.govinfo.gov/content/pkg/FR-2021-07-12/pdf/2021-14741.pdf.

ED Issues Notice about 2021-2022 Award Year Deadline Dates

On June 24, 2021, the Department of Education issued a notice in the *Federal Register* of the 2021-2022 award year deadlines dates for the receipt of documents and other information from applicants and institutions participating in certain Federal student aid programs.

A copy of the notice is found at:
https://www.govinfo.gov/content/pkg/FR-2021-06-24/pdf/2021-13379.pdf.

ED Holds Public Hearings on Negotiated Rulemaking Sessions

On June 21 and June 23-24, 2021, the Department of Education held public hearings for interested parties to comment on the rulemaking agenda where negotiated rulemaking committees will prepare proposed regulations for programs authorized under Title IV of the *Higher Education Act*. The Department previously proposed an extensive and diverse list of suggested topics including change of ownership and change in control of institutions of higher education, certification procedures for participation in the Title IV programs, standards of administrative capability, ability to benefit, borrower defense to repayment, discharges for borrowers with a total and permanent disability, closed school discharges, discharges for false certification of student eligibility, income contingent repayment plans, the Public Service Loan Forgiveness Program, mandatory pre-dispute arbitration and prohibition on class action lawsuit provisions in institution's enrollment agreements, financial responsibility for participating institutions of higher education, gainful employment, and Pell Grant eligibility for prison education programs. The Department has stated that it was interested in comments on regulations that would address gaps in postsecondary outcomes, such as retention, completion, student loan repayment, and loan default, and they would give specific consideration to disparate impacts by income, race/ethnicity, gender, and other demographic characteristics.

During the course of the three days, many of the commenters addressed the need for one simplified and streamlined Income-Driven Repayment plan including one that is more affordable; support for reinstatement of the gainful employment regulations that are reflective of all types of institutions of higher education; greater transparency in the Public Service Loan Forgiveness program; and issues related to borrower defense to repayment rules.

Public written comments can be submitted to the Department by July 1, 2021. The Department anticipates that the negotiated rulemaking committees will convene in late summer 2021 with formal notices of proposed rulemakings being released April through July 2022.

ED Announces Approval of New Categories of Borrower Defense Claims Totaling $500 Million in Loan Relief

On June 16, 2021, the Department of Education announced the approval of 18,000 borrower defense to repayment claims for individuals who attended ITT Technical Institute (ITT). These borrowers will receive 100 percent loan discharges, resulting in about $500 million in loan relief. The announcement said that this brings total loan cancellation under borrower defense by the Biden administration to $1.5 billion for about 90,000 borrowers.

Secretary of Education Miguel Cardona said: "Our action today will give thousands of borrowers a fresh start and the relief they deserve after ITT repeatedly lied to them." The borrower defense claims that were approved this week cover two categories of claims submitted by borrowers who attended ITT: their likelihood of employment prospects and their ability to transfer credits. "This is the first approval of a new category of borrower defense claims by the Department since January 2017."

A copy of the press release is found at:
https://www.ed.gov/news/press-releases/department-education-announces-approval-new-categories-borrower-defense-claims-totaling-500-million-loan-relief-18000-borrowers?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity

On June 16, 2021, the Department of Education's Office of Civil Rights (OCR) issued a Notice of Interpretation indicating that it will enforce Title IX's prohibition on discrimination on the basis of sex to include discrimination based on sexual orientation and discrimination based on gender identity. The Department's interpretation is based on the U.S. Supreme Court decision in

Bostock v. Clayton County, issued one year ago in which the Supreme Court recognized that it is impossible to discriminate against a person based on their sexual orientation or gender identity without discriminating against that person based on sex.

A copy of the press release is found at: https://www.ed.gov/news/press-releases/us-department-education-confirms-title-ix-protects-students-discrimination-based-sexual-orientation-and-gender-identity.

FSA Announces Updates to the Quarterly Portfolio Reports on its Data Center

On June 14, 2021, Federal Student Aid (FSA) announced the release of two new sets of quarterly portfolio reports on its Data Center website (https://studentaid.gov/data-center/) with key data and other information about federal student aid programs as of December 31, 2020 and March 31, 2021. FSA Chief Richard Cordray said: "We are committed to sharing data and information so that all Americans can better understand the value of federal student aid and how it actually works."

FSA is highlighting the improvements in the Public Service Loan Forgiveness (PSLF) program. The PSLF report is redesigned to reflect the alignment with its reporting structure and the new application process.

The reports also reflect the novel flexibilities applied to student accounts as prescribed by the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* and extended by executive actions through September 30, 2021. As a result, payments are paused, interest is waived, and collections are stopped on all Department of Education-held student loans as well as defaulted loans administered by guaranty agencies.

A copy of the electronic announcement is found at: https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-06-14/federal-student-aid-posts-two-new-quarterly-portfolio-reports-fsa-data-center-and-highlights-recent-changes-public-service-loan-forgiveness-ea-id-general-21-40.

ED Announces Implementation of the Repeal of Subsidized Usage Limit Restriction

On June 14, 2021, the Department of Education announced in a *Federal Register* Notice and an electronic announcement that it will early implement the repeal of the limitation on lifetime subsidized loan eligibility, known as the Subsidized Usage Limit Applies (SULA), which currently limits students from receiving subsidized Direct Loans more than 150 percent of the published length of their program. The *Consolidated Appropriations Act, 2021*, required the

Department to implement the repeal of the rule by July 1, 2023. The guidance also removes references to the lifetime subsidized loan limit in entrance and exit counseling so institutions should update their counseling materials. The Department has updated its online loan counseling to remove references to SULA. However, there are no changes to program level enrollment reporting requirements.

A copy of the electronic announcement is found at: https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-06-11/150-direct-subsidized-loan-limit-electronic-announcement-25-guidance-and-operational-information-repeal-150-subsidized-usage-limit-ea-id-dl-21-04.

A copy of the *Federal Register* Notice is found at: https://fsapartners.ed.gov/knowledge-center/library/federal-registers/2021-06-15/repeal-direct-loan-program-subsidized-usage-limit-restriction-sula.

ED Announces Delay in Making Changes to FAFSA Methodology included in the *Consolidated Appropriations Act, 2021*

On June 11, 2021, the Department of Education announced that it will employ a delayed, phased in implementation of the changes made to the federal methodology and the FAFSA included in the *Consolidated Appropriations Act, 2021.* The statutory deadline for the changes is the 2023-2024 award year, with several provisions having early implementation options.

The Department's phased-in implementation includes early implementation of the removal of the drug conviction and Selective Service eligibility criteria for the upcoming 2021-2022 award year, with the remainder of the changes set to be completed for the 2024-2025 award year, a year late. The Department cited the magnitude of the changes as the reason for the one-year delay. The Central Processing System (CPS) needs upgrading prior to implementation, ED needs to integrate with the IRS, and the states need to have time to adapt to the changes.

In an electronic announcement of June 11, 2021, the Department announced that it will implement the removal of the Selective Service and drug-conviction eligibility criteria in three phases, across three award years: 2021-2022, 2022-2023, and 2023-2024. The changes were also announced in a *Federal Register* Notice. Schools may implement the changes as early as the date the *Federal Register* Notice is published. Schools must implement the changes no later than 60 days after date of the publication of the *Federal Register* Notice, which was June 17, 2021.

A copy of the electronic announcement is found at: https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-06-11/early-implementation-fafsa-simplification-acts-removal-selective-service-and-drug-conviction-requirements-title-iv-eligibility.

A copy of the Federal Register Notice is found at: https://www.govinfo.gov/content/pkg/FR-2021-06-17/pdf/2021-12762.pdf.

FTC Sends Checks to People Who Lost Money to Student Loan Debt Relief Scheme

On June 25, 2021, the Federal Trade Commission (FTC) issued a press release announcing that it was returning checks totaling more than $316,000 to 10,689 people who lost money to a student loan debt relief scheme. In a complaint first announced in March 2020, the FTC alleged SLAC (also called Aspyre), Navloan, and Student Loan Assistance Center, and their owner, Adam Owens, falsely told consumers that, for an upfront fee of $699, and a monthly fee of $39, the defendants would permanently lower or eliminate student loan debt. In reality, the payments could change every year and the loan forgiveness was not guaranteed for any consumer.

As part of a settlement with the FTC, the defendants agreed to pay funds, which are being used to send payments to affected consumers.

A copy of the press release is found at:
https://www.ftc.gov/news-events/press-releases/2021/06/ftc-sends-checks-people-who-lost-money-student-loan-debt-relief.

OIG Releases Resources for Financial Aid Administrators for Identifying Fraud

The Department of Education's Office of Inspector General (OIG) has released a number of resources for student aid administrators with the objective of helping them identify and report student aid fraud. The OIG's informatic states: "Criminals and bad actors are taking advantage of this crisis, preying on students, schools, and other educational entities charged with administering and overseeing these funds. We want to stop them."

A copy of the informatic is found at: https://www2.ed.gov/about/offices/list/oig/misc/student-aid-administrator-fraud-awareness.pdf.

The OIG website reminds institutions that they are responsible for reporting fraud, waste, or abuse to the OIG. The report can be made at the OIG Fraud Hotline at: https://www2.ed.gov/about/offices/list/oig/hotline.html. The governing regulations can be found in the verification regulations under 34 C.F.R. § 668.16.

OIG Releases Report Regarding Sale of Schools to Dream Center Education Holdings

On June 29, 2021, the Department of Education's Office of Inspector General (OIG) released a report titled, "Inspection of the Department's Activities Surrounding the Sale of Postsecondary Schools to Dream Center Education Holdings." (ED-OIG/105T0010) The OIG found that during and after the Federal Student Aid's (FSA) preacquisition review, the Department identified significant financial risks associated with Dream Center's purchase of 13 postsecondary schools, including Dream Center's loss of the financial backing of an investor who was expected to provide at least 50 percent of the capital for the purchase. The OIG also found that the Dream Center lacked experience in operating schools participating in Title IV programs, had potential cash flow issues, and had more than a decade of failing financial health scores for all 13 schools. Since 2006, the Department had required Education Management Corporation to post a letter of credit to mitigate the financial risks posed by its schools' continued noncompliance with financial responsibility regulations.

The report stated that on May 8, 2018, the Department took the "unprecedented action of approving temporary nonprofit status for two schools, retroactive to the date of the change in ownership." The Department took this action, according to the report, without having made a final decision about whether the two schools satisfied the regulatory definition of a nonprofit school. In addition, the report found that the Department made decisions about the approval of the transaction without completing its due diligence. The Department also released $50 million in surety funds to allow the Dream Center to pay the operating expenses of the school locations that Dream Center was closing. The report indicated that normally surety funds held by the Department are used to cover potential student refunds, the additional costs that other postsecondary schools incur to teach out students who are transferring from the closing schools, loan discharges, and liabilities that the closing schools might owe to the Department. Finally, the Department's oversight was not rigorous enough to ensure that Dream Center complied with requirements for drawing down and disbursing Title IV funds.

A copy of the OIG report is found at:
https://www2.ed.gov/about/offices/list/oig/auditreports/fy2021/i05t0010.pdf.

ACICS Files Appeal to ED Regarding its Decision to Terminate Agency's Recognition

On July 2, 2021, the Accrediting Council for Independent Colleges and Schools (ACICS) filed its appeal to the Secretary of Education regarding the Senior Department Officials' decision to terminate ACICS' recognition as an accrediting agency.

In asking the Department to reverse its decision, ACICS said:

> "…since 2016 and through the most recent decision, the agency's recognition review process has been riddled with procedural defects and tainted by prejudicial politicization and that the SDO's decision is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law. ACICS notes the critical findings by the Office of Inspector General in June 2018 and March 2021 reports regarding the pervasive failure by Department staff to review the complete record and apply consistent and equitable recognition standards to ACICS."

A copy of the ACICS notice is found at: https://www.acics.org/news/acics-files-appeal-to-the-secretary-of-education-of-the-senior-department-official-decision-to-terminate-agency-recognition.

PHEAA Announces it Will Not Extend Federal Student Loan Servicing Contract

On July 8, 2021, the Pennsylvania Higher Education Assistance Agency (PHEAA) announced that it had notified the Department of Education's Office of Federal Student Aid (FSA) that it would not accept an extension of its federal student loan servicing contract, which expires on December 14, 2021. PHEAA said that it would continue to expand its commercial servicing, student lending, and software services as it refocused on its core mission.

A copy of the PHEAA announcement is found at:
https://www.pheaa.org/documents/press-releases/ph/070721.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
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