

## WASHINGTON UPDATE

AUGUST 2021

### Senate Agrees to Consider Kvaal's Nomination in September

An article in *Politico* of August 11, 2021 indicated that Senate Majority Leader Chuck Schumer agreed to take up the nomination of James Kvaal as Under Secretary of the U.S. Department of Education in September when the Senate returns from its recess. Senator Elizabeth Warren (D-MA) placed a hold on Kvaal's nomination as she negotiated changes she wanted to see as to how the Department of Education managed its \$1.6 trillion portfolio of federal student loans. Senator Warren released her hold on the nomination after she saw "substantial reforms" to the federal student loan programs that the Department of Education vowed to make.

### Senate Passes \$3.5 Trillion Budget Reconciliation Resolution

On August 10, 2021, after more than 14 hours of continuous amendment votes offered by Democrats and Republicans, the Senate passed by a vote of 50 to 49, along party lines, a \$3.5 trillion reconciliation bill that sets tax and spending priorities over the next year. The 92-page Senate Concurrent Resolution 14 provides each authorizing committee with a topline spending target. The bill includes instructions to allow the House Education and Labor Committee and Senate Health, Education, Labor and Pensions Committee to create a new tuition free community college program, to increase Pell Grant funding, and to provide funding to states and institutions for new student success grants.

Once each authorizing committee marks up their legislation, the bills will be combined into one large budget reconciliation package. The reconciliation process is a mechanism for bypassing the filibuster rule in the Senate and permitting the Senate to pass bills with a simple majority.

The House is set to return from recess the week of August 23<sup>rd</sup> to pass the budget resolution. Under current plans, the House would clear the Senate's budget resolution, which would allow all committees to begin working on a reconciliation package, a process that will go into the fall.

### Senate Passes \$1.2 Trillion *INVEST in America Act*

On August 10, 2021, the Senate passed, by a vote of 69 to 30, a scaled back version of President Biden's proposed *American Jobs Plan*. The \$1.2 trillion *INVEST in America Act* (H.R. 3684) passed without the amendment offered by Senators Tim Kaine (D-VA) and Robert Portman (R-OH) that proposed eliminating Federal student loans for students enrolled in short-term programs. The loan program would have been replaced with a Pell Grant program titled the Federal Pell Grant Job Training program, which would exclude students enrolled in for-profit

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institutions. H.R. 3684 includes \$550 billion in new spending for initiatives related to roads, bridges, transit, climate resilience, and broadband. The bill also includes \$550 million to support the creation and expansion of industrial research and assessment centers at institutions of higher education and at trade schools, community colleges, and union training programs, and to expand private activity bonds to include broadband and carbon capture projects.

The bill now goes to the House for consideration. Speaker Nancy Pelosi continues to say that she will not bring the infrastructure bill to a vote on the House floor until the Senate passes a “human infrastructure” bill, much like the budget reconciliation bill that just passed.

#### Senate HELP Committee Deadlocks on Nomination of Catherine Lhamon as the Next Assistant Secretary for Civil Rights at the U.S. Department of Education

On August 3, 2021, the Senate Health, Education, Labor and Pensions (HELP) Committee met in executive session to vote on the nomination of Catherine Lhamon to serve as the next Assistant Secretary for Civil Rights at the U.S. Department of Education. The HELP Committee voted to advance the nomination by a tie vote of 11 to 11. Because the vote ended in a tie, Senate Majority Leader Chuck Schumer (D-NY) can move, under the Senate rules, to discharge the nomination from Committee for consideration by the full Senate. This action is likely to take place after the August recess.

The Republicans on the HELP Committee grilled her during the hearing held in July about her role as Assistant Secretary for Civil Rights during the Obama Administration when she was charged with enforcing the Obama Administration’s approach to campus sexual violence. The Republicans accused her of overreaching and acting beyond the Department of Education’s authority during the Obama Administration.

#### House and Senate Education Committee Leaders Send Letter to Secretary Cardona on Loan Repayment

On July 29, 2021, Ranking Member of the House Education and Labor Committee Virginia Foxx (R-NC) and Ranking Member of the Senate Health, Education, Labor and Pensions Committee Richard Burr (R-NC) sent a letter to Secretary of Education Miguel Cardona requesting that he restart monthly student loan payments on October 1, 2021 when the current pause is expected to retire. In the letter, the House and Senate leaders asked Secretary Cardona to clarify whether the Department of Education planned to resume collection student loan payments this fall and to address the uncertainty over whether it will again extend the pandemic relief.

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A copy of the letter is found at:

[https://republicans-edlabor.house.gov/uploadedfiles/7.29.21\\_r2r\\_ii.final.pdf](https://republicans-edlabor.house.gov/uploadedfiles/7.29.21_r2r_ii.final.pdf).

## Ranking Member Foxx Sends Letter to Secretary Cardona Regarding Transition Plan for Student Loan Borrowers Impacted by the Loss of Two Student Loan Servicers

On July 23, 2021, Ranking Member Virginia Foxx (R-NC) sent a letter to Secretary Miguel Cardona regarding the recent announcements by two federal student loan servicers, Pennsylvania Higher Education Assistance Agency (PHEAA) and New Hampshire Assistance Foundation Network (NHHEAF), that they will not solicit a renewal of their servicing contracts with the Department of Education. The letter asks several questions including what borrowers are being told about the transition to new loan servicers. Congresswoman Foxx said the Secretary of Education owed the borrowers currently being serviced by PHEAA or NHHEAF “a transparent plan to ensure a smooth transition.”

A copy of the Congresswoman’s letter is found at:

[https://republicans-edlabor.house.gov/uploadedfiles/7.21.21\\_sec\\_cardona\\_ltr\\_re\\_nhheaf\\_final.pdf](https://republicans-edlabor.house.gov/uploadedfiles/7.21.21_sec_cardona_ltr_re_nhheaf_final.pdf).

## House Approves *FY 2022 Labor, Health and Human Services, Education, and Related Agencies Appropriations Act*

On July 29, 2021, the House of Representatives approved the *FY 2022 Labor, Health and Human Services, Education, and Related Agencies Appropriations Act* (H.R. 4502) by a party-line vote of 219-208. The seven-bill appropriations bill was combined to expedite the appropriations process in the House. Previously, on July 15, 2021, the House Appropriations Committee approved the H.R. 4502 by a vote of 33-25, on party lines. The legislation includes the following:

- Authorizes \$102.8 billion in discretionary funding for the Department of Education, including \$27.2 billion for the federal student aid programs, an increase of \$2.64 billion above the FY 2021 level.
- Sets the maximum Pell Grant at \$6,895, an increase of \$400 over the 2021 level.
- Authorizes \$1.03 billion for FSEOG, an increase of \$148 million above the 2021 level and \$1.43 billion for Federal Work-Study, an increase of \$244 million above the 2021 level.

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- Authorizes \$2.05 billion for federal student aid administrative expenses including funds for student loan servicing.
- Modifies the 90/10 rule to increase the percentage of non-federal funds that for-profit institutions must receive to 15 percent.
- Amends the Higher Education Act to expand eligibility for federal student aid to include Deferred Action for Childhood Arrivals (DACA) participants and those who have received temporary protected status under the *Immigration and Nationality Act*.

A copy of the press release including a copy of the summary is found at:

<https://appropriations.house.gov/news/press-releases/appropriations-committee-approves-fiscal-year-2022-labor-health-and-human>.

The Senate Appropriations Committee has not begun work on any of the appropriations bills meaning that a Continuing Resolution will be required to keep the federal government open past the start of the federal fiscal year on October 1, 2021.

#### House and Senate Democrats Send Letter to Secretary Cardona Requesting Information on its Collection Practices

On July 14, 2021, a group of House and Senate Democrats, led by Senator Elizabeth Warren (D-MA) and Congresswoman Ayanna Pressley (D-MA) sent a letter to Secretary of Education Miguel Cardona requesting information on the Department of Education's collection practices and how the Department plans to begin the collections process when the COVID-19 pause ends. The letter states that even prior to the pandemic, "collections on defaulted student loans were catastrophic for borrowers in default, who saw their wages, tax refunds, and even Social Security checks confiscated, in addition to being forced to pay exorbitant fees." The letter also expressed concern over how the Department will manage the debt collections on defaulted loans when payments are resumed.

A copy of the letter is found at:

<https://www.warren.senate.gov/imo/media/doc/Letter%20to%20ED%20about%20Wage%20Garnishment%20and%20Treasury%20Offset.pdf>.

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## 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.

## FSA Takes Action on Two Institutions

On August 10, 2021, the Department of Education’s office of Federal Student Aid (FSA) issued Final Program Determination letters to two institutions: RWM Fiber Optics, Inc. and Harrison College. In each instance, FSA identified more than \$2.5 million in liabilities resulting from multiple violations by RWM and from the closing of Harrison College. FSA Chief Operating Officer Richard Cordray stated: “All institutions are expected to serve the best interests of their students, not serve themselves.”

A copy of the announcement is found at: <https://www.ed.gov/news/press-releases/us-department-education-takes-action-student-aid-violations-and-school-closure>.

## ED Releases New Interpretation on the Legality of State Laws and Regulations Governing Servicing of Student Loans

On August 9, 2021, the Department of Education released a new legal interpretation that revises and clarifies its position on the legality of state laws and regulations that govern various aspects of the servicing of student loans. The action will help states enforce borrower bill of rights or other similar laws to address issues with the servicing of federal student loans. “The proposed

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notice clarifies that while federal law does preempt state regulation in certain narrow areas, states can regulate student loan servicing in many other ways without being preempted by the federal *Higher Education Act (HEA)*.”

ED’s action replaces a prior notice of interpretation posted in the *Federal Register* of March 12, 2018. The prior notice stated that the *HEA* preempted state efforts to regulate student loan servicers, a position uniformly rejected by the courts. The Notice of Interpretation included in the August 12, 2021 *Federal Register* will help facilitate the close coordination between the Department and its State partners to further enhance both servicer accountability and borrower protections.

A copy of the announcement is found at: [https://www.ed.gov/news/press-releases/new-interpretation-encourage-state-collaboration-student-loan-servicing?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www.ed.gov/news/press-releases/new-interpretation-encourage-state-collaboration-student-loan-servicing?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

The Notice in the August 12, 2021 *Federal Register* is found at: <https://www.govinfo.gov/content/pkg/FR-2021-08-12/pdf/2021-17021.pdf>.

### Biden to Extend Freeze on Student Loan Payments Until January 31<sup>st</sup>

On August 6, 2021, the Biden Administration extended the final pause on federal student loan payments for borrowers until January 31, 2022. The pandemic relief, which suspends monthly loan repayments and interest for 40 million students, had been set to expire on September 30, 2021. The decision comes after top congressional Democrats have pressured the Biden Administration for months to continue pandemic relief until next year. The announcement said that the Department’s extension will allow borrowers to plan for the resumption of payments and reduce the risk of delinquency and defaults after the restart, and that the Department will continue its works to transition borrowers smoothly back into repayment, including by improving student loan servicing.

A copy of the announcement is found at: <https://www.ed.gov/news/press-releases/biden-administration-extends-student-loan-pause-until-january-31-2022>.

### ED Announces Establishment of a Negotiated Rulemaking Committee that will Begin in October

On August 6, 2021, the Department of Education announced that it will be establishing a negotiated rulemaking committee that will meet virtually beginning in October 2021 to rewrite regulations for Public Service Loan Forgiveness, income-contingent repayment plans, and

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borrower defense to repayment. Other issues subject to negotiation include closed school discharges, interest capitalization on federal student loans, mandatory pre-dispute arbitration and prohibition of class action lawsuits, Pell Grant eligibility for prison education programs, and total and permanent disability discharges.

The announcement indicated that ED was interested in receiving nominations from individuals or organizations that represent the perspective of historically underserved and/or low-income communities. The Department is also interested in two advisors to the committee, one to represent employers whose employees are eligible for Public Service Loan Forgiveness, and the other with expertise in research and analysis of higher education data. These are non-voting roles, which will provide technical assistance. The announcement also identified other individuals it sought as negotiators.

The deadline for the submission of nominees for the committee is by August 31, 2021.

A copy of the announcement is found at: <https://www.ed.gov/news/press-releases/new-negotiated-rulemaking-committee-focus-student-loans-targeted-discharge-and-forgiveness-authorities>.

A copy of the notice in the August 10, 2021 *Federal Register* is found at: <https://www.govinfo.gov/content/pkg/FR-2021-08-10/pdf/2021-16953.pdf>.

#### ED Announces Expansion of Second Chance Pell Grant

On July 30, 2021, the Department of Education announced that it would expand its Second Chance Pell experiment by inviting new institutions of higher education to participate in the program, which allows approved institutions to provide Pell Grants to incarcerated students. There are currently 131 institutions participating in the Second Chance Pell experiment, but based on the announcement, the Department will permit up to 200 two- and four-year colleges and universities to participate in the program. Applications will be open from July 30, 2021 to be accepted for the 2022-2023 award year and should be submitted no later than October 28, 2021.

A copy of the announcement is found at: <https://www.ed.gov/news/press-releases/us-department-education-announces-it-will-expand-second-chance-pell-experiment-2022-2023-award-year>.

#### ED Announces Funding for Under-Resourced Institutions

On July 28, 2021, the Department of Education announced that it will distribute \$3.2 billion in additional emergency grants under the Higher Education Emergency Relief Funds (HEERF)

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included in the COVID-19 relief package passed earlier this year. The funds will be used to support students who attend over 1,800 institutions of higher education and provide resources to help these institutions including the Historically Black Colleges and Universities (HBCUs), the Tribally Controlled Colleges and Universities (TCCUs), and the Minority-Serving Institutions (MSIs).

A copy of the announcement is found at: <https://www.ed.gov/news/press-releases/us-department-education-announces-32-billion-additional-higher-education-emergency-relief-funds-support-students-historic-and-under-resourced-institutions>.

#### ED Announces Temporary Waiver of Verification Process

On July 13, 2021, the Department of Education announced that it was making temporary changes to the verification process for the remainder of the 2021-2022 FAFSA processing and verification cycle, including summer periods attached to the 2021-2022 award year. The Department indicated that the temporary changes will provide relief to millions of students and colleges facing challenges as a result of the COVID-19 pandemic. The Department will focus its verification efforts on identity theft and fraud, which will reduce some of the barriers that have prevented students most in need from accessing critical financial aid funds. For the remainder of the 2021-2022 award year, institutions will no longer be required to verify any of the income data elements, taxes paid, household size, and number in college in any tracking group (V1 or V5) if the student has been assigned V1 or V5. The Dear Colleague letter reminds institutions that they must continue to resolve conflicting information that impacts the student's Title IV aid. The Dear Colleague letter also describes the reporting requirements for students selected for verification.

A copy of the Department's press release is found at: <https://www.ed.gov/news/press-releases/us-department-education-announces-temporary-changes-federal-aid-verification-process-2021-22-award-year>.

A copy of the Dear Colleague letter is found at: <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-07-13/changes-2021-2022-verification-requirements>.

#### Department Announces New FSA Key Leaders

On July 13, 2021, the Department of Education announced that it had appointed several key leaders to the Office of Federal Student Aid (FSA) that will focus on improving operations and accountability in the areas of loan servicing and postsecondary institution compliance.



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A copy of the announcement is found at: <https://www.ed.gov/news/press-releases/education-departments-student-aid-office-adds-experienced-leaders>.

### ED Approves Borrower Defense Claims for Students at Three Institutions

On July 9, 2021, the Department of Education announced the approval of over 1,800 borrower defense to repayment claims for borrowers who attended Westwood College, Marinello Schools of Beauty, and the Court Reporting Institute. This is the first time the Department has announced payment of borrower defense claims for students who attended institutions other than Corinthian Colleges, ITT Technical Institute, and American Career Institute since 2017. These borrowers will receive 100 percent loan discharges, resulting in about \$55.6 million in relief.

A copy of the announcement is found at: <https://www.ed.gov/news/press-releases/department-education-approves-borrower-defense-claims-related-three-additional-institutions>.

### OCR Releases Q&A on Title IX Guidance

On July 20, 2021, the Office of Civil Rights (OCR) released a Question & Answer document to provide institutions with guidance as to how colleges and universities should investigate sexual misconduct under Title IX. The Q&A provides guidance indicating how federal officials will enforce Title IX while the Department goes through the process of reviewing and revising the regulations.

A copy of the OCR document is found at:  
<https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>.

### 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>.

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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.

## GAO Report Finds that ED did not Create and Follow Proper Guidelines to Ensure COVID-19 Relief Funds Were Properly Distributed

In July 2021, the Government Accountability Office (GAO) released a report titled, “COVID-19: Continued Attention Needed to Enhance Federal Preparedness, Response, Service Delivery, and Program Integrity,” that found the Department of Education did not create and follow proper guidelines to ensure COVID-19 relief funds were distributed properly to institutions of higher education. The GAO found that for 5.5 percent of schools receiving HEERF grants, the Department awarded grants that exceeded the amounts allocated, including three instances in which the Department obligated \$20 million more than was allocated. The GAO report concluded that the miscalculations were largely due to the large number of grants and the speed at which they needed to be distributed to address the pandemic.

A copy of the GAO report is found at: <https://www.gao.gov/assets/gao-21-551.pdf>.

## PHEAA Announces It Will Not Extend Federal Student Loan Servicing Contract; NHEAF Follows Suit

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>.

On July 19, 2021, the New Hampshire Higher Education Assistance Foundation (NHHEAF) announced that it will not seek renewal of its federal student loan servicing contract, which expires December 31, 2021.

A copy of the NHHEAF’s announcement is found at: [https://www.nhheaf.org/pdfs/press/2021/NHHEAF\\_Network\\_Public\\_Announcement\\_07-19-21.pdf](https://www.nhheaf.org/pdfs/press/2021/NHHEAF_Network_Public_Announcement_07-19-21.pdf).

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ACE Urges Changes to Veterans' Law Affecting Institutions

On July 19, 2021, the American Council on Education (ACE), along with several other higher education associations, sent a letter to Chairman Mark Takano (D-CA) and Ranking Member Mike Bost (R-IL), both of the House Committee on Veterans' Affairs, alerting Congress to serious concerns about the new veterans' law, *Johnny Isakson and David P. Roe, MD Veterans Health Care and Benefits Improvement Act of 2020*. The letter pointed out that there are new consumer information requirements in Section 108 that could confuse students. The law requires institutions to provide, prior to enrollment, a personalized estimate of students' tuition and fees, as well as books, supplies, and living expenses, for the entire duration of the student's program. It also requires institutions to provide an estimate of the student's total debt upon graduation, which would presumably require schools to estimate future eligibility for federal and institutional financial aid. The letter stresses that it is not feasible for institutions to reliably estimate cost of attendance beyond the current year, and that a student's eligibility for aid in the future years is dependent on many variables that could change over time. The law provides for two one-year waivers for these disclosure requirements. Institutions must either comply with the disclosure requirements or apply for a waiver by August 1, 2021.

A copy of the letter is found at:

[https://www.nasfaa.org/uploads/documents/Letter\\_to\\_HVAC\\_Isakson\\_Roe\\_implementation.pdf](https://www.nasfaa.org/uploads/documents/Letter_to_HVAC_Isakson_Roe_implementation.pdf).

American Public Education to Acquire Graduate School USA

On August 11, 2021, American Public Education, Inc. (APEI), which owns the for-profit American Public University System, announced that it has signed an agreement to acquire substantially all of the assets of Graduate School USA, one of the leading providers of training to the federal government. Graduate School USA is a non-profit entity based in Washington, DC.

A copy of APEI's press release is found at: <https://www.prnewswire.com/news-releases/american-public-education-inc-apei-signs-agreement-to-acquire-graduate-school-usa-301353631.html>.

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**August 15, 2021**