

WASHINGTON UPDATE

OCTOBER 2021

Congress Clears CR to Avert a Government Shutdown

Congress averted a government shutdown by passing a Continuing Resolution (CR) that will keep the federal government open until December 3, 2021.

Senate Confirms Chopra to Serve as Director of the CFPB

On September 30, 2021, the Senate voted to confirm the nomination of Rohit Chopra to serve as the next Director of the Consumer Financial Protection Bureau (CFPB). The vote, along party lines, was 50 to 48. Mr. Chopra previously served as CFPB's Student Loan Ombudsman from 2010 to 2015 before being confirmed as a commissioner on the Federal Trade Commission (FTC), a position held since May 2018.

House Education and Labor Subcommittee Holds Hearing on Closed School Discharges

On September 30, 2021, the House Education and Labor Subcommittee on Higher Education and Workforce Investment held a hearing titled, "Protecting Students and Taxpayers: Improving the Closed School Discharge Process." In her opening statement, Subcommittee Chair Frederica Wilson (D-FL) said that in the last decade, at least five large for-profit college chains have collapsed, leaving tens of thousands of students with significant loan debt, often without degrees. Chair Wilson said that in 2017, the U.S. Government Accountability Office (GAO) found that students who transferred their credits from for-profit schools to public schools lost 94 percent of their credits. For many students, applying for a full discharge of their federal student loans is often the best option because it reduces their financial burden and restores their eligibility for federal student aid. Chair Wilson said that the closed school discharge process should be simple to understand and easy to navigate for students, but GAO's findings show that this is not the case.

In his opening statement, Subcommittee Ranking Member Gregory Murphy (R-NC) said that when a college closes, thousands of students are thrown out of their academic path, and are often left with thousands of dollars in debt. Congressman Murphy said that students deserve protection and should not face the financial burden of their debt when their school closes. He concluded that the best case scenario is when a school closes, students should have the option to continue their program at another college.

A copy of the GAO report titled "College Closures: Many Impacted Borrowers Struggled Financially Despite Being Eligible for Loan Discharges," is found at:

<https://www.gao.gov/products/gao-21-105373>.

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Foxx and Burr Urge Secretary Cardona to Detail Transition of Borrowers from Repayment Freeze to Active Repayment Status

On September 28, 2021, House Education and Labor Committee Ranking Member Virginia Foxx (R-NC) and Senate Health, Education, Labor, and Pensions Committee Ranking Member Richard Burr (R-NC) sent a letter to Secretary of Education Miguel Cardona requesting an update on the Department of Education's plan to transition student loan borrowers from the repayment freeze in effect during COVID-19 into active repayment. They remain concerned about the Department's "ability to ensure a smooth transition to repayment in four months," especially with two servicers declining to extend their servicing contract with the Department.

A copy of the letter is found at: https://republicans-edlabor.house.gov/uploadedfiles/9.28_foxx_-_burr_return_to_repayment_briefing_letter.pdf.

Four House Republicans Send Letter to Secretary Cardona Opposing Mass Cancellation of Student Loan Debt

On September 8, 2021, four House Republicans wrote a letter to Secretary of Education Miguel Cardona opposing mass cancellation of federal student loans. In the letter, Congressmen Ted Budd (R-NC), Warren Davidson (R-OH), Scott Perry (R-PA), and Barry Loudermilk (R-GA) wrote that they were concerned with the recent hiring of Toby Merrill, the Department of Education's new Deputy General Counsel, and her assertion made when working for the Harvard Law School's Project on Predatory Student Lending that the Department possesses the legal authority required to grant broad student loan debt forgiveness.

The congressmen argued that the Secretary has limited authority to provide mass cancellation of student debt. They concluded that mass cancellation of student loan debt would not only be a clear violation of the separation of powers but would be an "affront to the millions of borrowers who responsibly repaid their loan balances."

A copy of the letter is found at:

https://budd.house.gov/uploadedfiles/budd-merrill_doe_loan_cancelation_letter.pdf.

ED Holds Five Meetings of its Affordability and Student Loans Neg Reg Committee

During the week of October 4-8, 2021, the Department of Education held five meetings of its Affordability and Student Loans Negotiated Rulemaking Committee, which has been formed to revise certain federal regulations. The Committee considered improvements for granting total

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and permanent disability discharges, improving borrower access to closed school discharges, eliminating interest capitalization for certain capitalizing events, improving the Public Service Loan Forgiveness Program application process, determining employer eligibility and defining full-time employment for the Public Service Loan Forgiveness Program, improving the adjudication process for borrower defense to repayment claims, pre-dispute arbitration and class action waivers, creating a new income-driven repayment plan, and improving borrower access to false certification discharges.

Information on the Department's neg reg process for 2021-2022 is found at:

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

ED Establishes Enforcement Office

On October 8, 2021, the Department of Education announced that it was establishing an Office of Enforcement within the Federal Student Aid. "The Office of Enforcement will strengthen oversight of and enforcement actions against postsecondary schools that participate in the federal student loan, grant, and work-study programs. The Department's action restores an office that was first established in 2016 but was deprioritized in the Trump Administration.

The Office of Enforcement will be led by Kristen Donoghue, who will report to FSA Chief Operating Officer Richard Cordray. Ms. Donoghue previously worked as the enforcement director of the Consumer Financial Protection Bureau (CFPB), where she led a 140-person office responsible for enforcement of federal consumer financial laws governing financial services companies including the largest banks in the country.

The Office of Enforcement will proactively identify and address major problems across institutions that pose widespread risks to students and taxpayers. The Office will work closely with the Partner Participation and Oversight Office.

A copy of the announcement is found at:

<https://www.ed.gov/news/press-releases/us-department-education-establish-enforcement-office-within-federal-student-aid>.

A copy of the FSA announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-10-08/federal-student-aid-establish-enforcement-office-and-enhance-federal-and-state-oversight-partnerships>.

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ED Announces Overhaul of Public Service Loan Forgiveness Program

On October 6, 2021, the Department of Education announced that it will overhaul the Public Service Loan Forgiveness (PSLF) program using its authority granted under the *Higher Education Relief Opportunities for Students Act of 2003* to temporarily suspend some of the current program requirements in order to help public service workers who have been impacted by the COVID-19 pandemic. According to the Department's announcement, the Department will provide a time-limited waiver so that student borrowers can count payments from all federal loan programs or repayment plans toward forgiveness, including payments made on loans under the Federal Family Education Loan Program (FFELP) and the Perkins Loan Program.

According to the Fact Sheet released by the Department, the Department will:

- Implement a limited PSLF waiver to count all prior payments made by student borrowers toward PSLF, regardless of loan program.
- Simplify what it means for a payment to qualify for PSLF.
- Eliminate barriers for military service members to receive PSLF.
- Automatically help service members and other federal employees access PSLF.
- Review denied PSLF applications and identify and correct errors in PSLF processing.
- Improve outreach and communication with PSLF-eligible borrowers.
- Simplify the PSLF application process.
- Make long-term improvements to PSLF through rulemaking.
- Better communicate with borrowers as to what they need to know.

A copy of the announcement is found at: <https://www.ed.gov/news/press-releases/fact-sheet-public-service-loan-forgiveness-pslf-program-overhaul>.

Congresswoman Virginia Foxx (R-NC), Ranking Member of the House Education and Labor Committee, and Congressman Greg Murphy (R-NC) sent a letter to Secretary of Education Miguel Cardona on October 5, 2021, indicating they agree that there are problems with the PSLF program, but questioned the legality of the Biden Administration's unilateral changes to it. Congresswoman Foxx sent a letter to Chairman of the House Education and Labor Committee Bobby Scott (D-VA) requesting a public hearing by the Committee to examine the Education Department's unilateral action regarding the Public Service Loan Forgiveness program.

A copy of the letter to Secretary Cardona is found at: <https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=407764>.

A copy of Congresswoman Foxx's letter to Chairman Scott is found at: https://republicans-edlabor.house.gov/uploadedfiles/pslf_fix_letter_to_rcs.pdf.

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ED Publishes an Intent to Establish Neg Reg on 90/10

On October 4, 2021, the Department of Education published a notice in the *Federal Register* announcing its intention to establish a negotiated rulemaking committee to regulate 90/10. Section 2013 of the American Rescue Act of 2021 (ARP) amended Section 487(a)(24) of the *Higher Education Act (HEA)* to require that a proprietary institution derive at least 10 percent of its revenues from sources that are not Federal education assistance funds. Section 2013(c)(2) of the *ARP* provides that regulations developed and published on 90/10 by the Department will not be effective until on or after January 1, 2023.

ED will be holding virtual public hearings in October 2021 and would like to receive comments on or before November 3, 2021.

A copy of the *Federal Register* notice is found at:

<https://www.govinfo.gov/content/pkg/FR-2021-10-04/pdf/2021-21505.pdf>.

FSA Asks Financial Aid Administrators to Look for AGI Errors in 2022-2023 FAFSA

On September 30, 2021, Federal Student Aid (FSA) announced that if FAFSA filers use the Internal Revenue Service (IRS) Non-Filer Portal (NFP), then subsequently file a 2020 tax return, then use the IRS Data Retrieval Tool (DRT) to transfer their tax information into the 2022-2023 FAFSA form, the system will incorrectly report an Adjusted Gross Income (AGI) of \$1. The error could result in a lower Expected Family Contribution (EFC) and a higher Pell Grant award for students who would not otherwise be eligible. The announcement advises Financial Aid Administrators (FAAs) to identify all instances of \$1 AGIs for 2022-2023 FAFSA files and follow-up with applicants to resolve the issue.

On September 30, 2021, FSA also advised FAAs about potential issues for the 2022-2023 FAFSA filers deriving income from unemployment benefits, which were made non-taxable by the *American Rescue Plan (ARP)*. Tax filers who received unemployment benefits in 2020 and filed taxes prior to the March 11, 2021 enactment of the *ARP* will have a higher AGI on their original tax record compared to those who filed after the enactment of the *ARP*.

FSA said that it expects to see an issue with aid eligibility for some 2022-2023 filers as well as Income-Driven Repayment (IDR) applicants for whom loan payment amounts are based on 2020 tax information. FAAs are urged to work with applicants affected by the *ARP* who filed their taxes before March 11, 2021.

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Copies of the two announcements are found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-09-30/irs-data-retrieval-tool-and-potential-inaccurate-1-adjusted-gross-income-2022-23-fafsa-form>.

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-09-30/impact-american-rescue-plan-change-tax-treatment-unemployment-benefits-student-aid-eligibility-cycle-2022-23>.

ED Releases Members of the Negotiated Rulemaking on Affordability and Student Loans Committee Meetings

On September 28, 2021, the Department of Education's Office of Postsecondary Education released the list of the members for the upcoming negotiated rulemaking on Accountability and Student Loan Committee. The Department will be reviewing and updating regulations on closed school discharge, interest capitalization, Public Service Loan Forgiveness, borrower defense to repayment, pre-dispute arbitration, and income-driven repayment plans.

Information on negotiated rulemaking can be found at:

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

FSA Distributes FY2018 Official Cohort Default Rates

On September 27, 2021, Federal Student Aid (FSA) distributed the FY 2018 official cohort default rate (CDR) notification packages. On September 29, 2021, the Department of Education released the FY 2018 cohort default rates. The FY 2018 cohort default rate is 7.3 percent with public institutions having a cohort default rate of 7 percent, private nonprofit institutions having a cohort default rate of 5.2 percent, and proprietary institutions having a cohort default rate of 11.2 percent. The cohort default rates are down from last year's FY 2017 cohort default rate with percentages in that cohort being 9.3 percent for public institutions, 6.7 percent for private nonprofit institutions, and 14.7 percent for proprietary institutions.

A copy of the September 27, 2021 announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-09-27/fy-2018-official-cohort-default-rates-distributed-sept-27-2021>.

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A copy of the September 29, 2021 announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-09-29/national-default-rate-briefing-fy-2018-official-cohort-default-rates>.

FSA Provides Update on ED's Implementation of the *STOP Act*

On September 23, 2021, Federal Student Aid (FSA) provided a brief update on the Department of Education's implementation of the *Stop Student Debt Relief Scams Act (STOP Act) of 2020*. On September 10, 2021, ED published a notice in the *Federal Register* discussing policies for third-party access to students' financial aid records. ED issued a reminder that the criminal penalties associated with the *STOP Act* only apply to those who access systems for the purposes of "obtaining criminal advantage or private financial gain, or in furtherance of any criminal or tortious act."

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-09-23/update-stop-student-debt-relief-scams-act-stop-act-implementation#>.

A copy of the *Federal Register* notice is found at:

<https://www.govinfo.gov/content/pkg/FR-2021-09-10/pdf/2021-19536.pdf>.

Consumer Groups Urge Education Secretary to Forgive the Student Loan Debt of Public Servants

On September 22, 2021, more than 200 consumer and public interest groups sent a letter to Secretary of Education Miguel Cardona urging him to forgive the student loan debt of public servants. The letter also says that the Department of Education must also guaranty that any and all charges to the Public Service Loan Forgiveness Program (PSLF) are both retroactive and prospective.

A copy of the letter is found at:

<https://protectborrowers.org/wp-content/uploads/2021/09/FINAL-SIGNERS-Coalition-PSLF-RFI-Letter.pdf>.

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FSA COO Cordray Outlines Student Aid Priorities

A number of publications reported that on September 16, 2021, Chief Operating Officer (COO) of Federal Student Aid (FSA) Richard Cordray addressed the participants at the 2021 Education Finance Conference where he described his priorities. Mr. Cordray talked about four issues where the challenge of helping to finance higher education has been altered by the COVID-19 pandemic. First, FSA is implementing two new laws about accessing federal student aid that will be a “sea change in the process for approximately 19 million students and families who fill out this essential form each year.” Mr. Cordray also pointed out that they are seeing the negative effects of the pandemic on enrollment and there is much concern because the downward trend seems to be continuing this year.

Second, FSA is beginning to prepare for what may be a significant new phase for the Federal Family Education Loan (FFEL) program. Because of the pause in collections, times are challenging for guaranty agencies who hold FFEL portfolios and many are exiting the program leaving fewer guaranty agencies to bear a larger share of the remaining FFEL loans. He noted that this is not sustainable and FSA is looking for a resolution.

Third, Mr. Cordray said that the federal student loan payment pause has been challenging for the Federal Direct Loan program, especially when it comes to communicating mixed messages to borrowers as a result of many “false starts.” Mr. Cordray also said that FSA is working to increase federal student loan servicing performance and accountability. “Some servicers have decided to exit the program rather than contend with these new realities,” he said.

Fourth, he said that restarting monthly student loan payments next February for tens of millions of borrowers, after almost a two-year pause, will be a “unique and unprecedented” task for the Department. He noted that many borrowers will not be eager to return to repayment when they have been led to believe or hope that there will be student loan forgiveness.

FSA Announces Designation of the U.S. Treasury as an Entity that May Use FAFSA Data

On September 16, 2021, Federal Student Aid (FSA) announced the designation of the U.S. Treasury under section 483(a)(3)(E) of the Higher Education Act of 1965, as an entity that may use Free Application for Federal Student Aid (FAFSA) data. Under section 483(a)(3)(E) of the HEA, data collected through the FAFSA may only be used for the application, award, and administration of HEA, Title IV program aid, State aid, or aid awarded by eligible institutions or entities designated by ED.

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This designation permits institutions of higher education (IHEs) to use FAFSA data to aid in the administration of the Child Tax Credit and Economic Impact Payments. However, institutions should limit FAFSA data use to only the necessary data and method required to inform their student population and, if needed, verify eligibility for the Child Tax Credit or Economic Impact Payment.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-09-16/designation-us-department-treasury-under-section-483a3e-higher-education-act>.

Department of Education Chief Data Officer Blogs on Results from HEERF Reporting

On September 13, 2021, the Department of Education's Office of the Chief Data Officer Brent Madoo and Chris Bennett released a blog post titled "Drawing Insights from the Higher Education Emergency Relief Fund (HEERF) for 2020," which provided information covering *Coronavirus Aid, Relief, and Economic Security (CARES) Act* spending from between March 13, 2020 and December 31, 2020.

Some of the insights as to how HEERF supported students directly include the following:

- Institutions reported that 8.1 million students or 54 percent of all eligible students at the institutions that received HEERF grants received emergency financial aid grant support through HEERF.
- From the student portion of HEERF in 2020, institutions awarded \$6.1 billion in emergency financial aid grants, or more than \$750 per student recipient.
- About 65 percent of HEERF emergency financial aid grant student recipients attended public institutions.
- Of the HEERF financial aid grant recipients, 94 percent were undergraduates and 6 percent were graduate students.
- Among the undergraduate students, 61 percent were Pell Grant recipients.

Some of the insights as to how HEERF supported institutions include the following:

- The greatest portion of the institutional funds, at least \$1.7 billion, was used to cover reimbursements of tuition, housing, room and board, and other fee refunds.

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- From the institutional portion of the HEERF funds, institutions awarded at least \$287 million in additional emergency financial aid grants directly to students.
- \$802 million were used for online technology and training, including software and training for distance learning and laptops and tablets for students.
- \$85 million were used for additional student supports, including food service and off-campus housing.
- \$30 million were used for tuition discounts.
- \$397 million were used for other purposes.

A copy of the blog post is found at:

<https://content.govdelivery.com/accounts/USED/bulletins/2f109ee>.

GAO Concludes that FSA is Understaffed

On September 20, 2021, the Government Accountability Office (GAO) released a publication titled, “Higher Education: Office of Federal Student Aid is Beginning to Identify and Address Its Workforce Needs,” concluding that FSA is understaffed. From FY 2010-2019, the Direct Loan volume increased 450 percent and the number of borrowers increased 150 percent, but the number of staff increased only 6 percent. As a result, a workforce assessment showed that FSA did not complete about 20 percent of its workload in FY 2020.

FSA began addressing the staffing shortage during the last fiscal year by increasing its hiring and prioritizing hiring for certain critical positions. It also reorganized 15 offices that reported to the chief operating officer into five new offices that report to a deputy chief operating officer, as well as a temporary office focused on building Next Gen, the new student loan servicing system.

A copy of the GAO report is found at: <https://www.gao.gov/products/gao-21-542r>.

FTC Holds a Press Conference Announcing that Bad Actors at For-Profit Colleges will Pay a Price for Breaking the Law

On October 6, 2021, the Federal Trade Commission (FTC) held a press conference and issued a press release announcing that it is “resurrecting its Penalty Offense Authority, found in Section 5 of the FTC Act to ensure that [for-profit institutions that are] bad actors pay a price when they break the law.” The FTC announced that it sent a Notice of Penalty Offenses to the 70 largest

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for-profit institutions based on enrollment and revenue. The FTC stated that it is working with the Department of Education and Department of Veterans Affairs on enforcement. During the press conference, the FTC stated that for-profit institutions that did not receive the notice are still subject to FTC oversight. The FTC also said it only had jurisdiction over for-profit entities but may bring enforcement action against nonprofit institutions that conduct business with for-profit entities.

A copy of the press release is found at:

<https://www.ftc.gov/news-events/press-releases/2021/10/ftc-targets-false-claims-profit-colleges>.

CFPB Announces a Consent Order with Better Future Forward, Inc. Regarding Income Share Agreements

The Consumer Financial Protection Bureau (CFPB) announced a Consent Order with Better Future Forward, Inc. (BFF), which provides funding to students to finance their higher education through Income Share Agreements (ISA). The ISA requires students to pay a percentage of their income for a set period of time or until they reach a payment cap. CFPB found that BFF engaged in deceptive acts and practices by claiming ISAs were not loans. According to CFPB, BFF was misleading students because ISAs are credit products subject to federal consumer protection laws. CFPB said that the company was denying students important information required of loans such as disclosure statements required under Regulation Z. In addition, CFPB found that the BFF's payment cap mechanism imposed a prepayment penalty in violation of the Truth in Lending Act.

A copy of the Consent Order is found at:

https://files.consumerfinance.gov/f/documents/cfpb_better-future-forward-inc_consent-order_2021-09.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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