

## WASHINGTON UPDATE

NOVEMBER 2021

### Thirteen Democratic House Members Send Letter to House Leadership Asking to Extend Pell Grant Award Increase to Students at For-Profit Institutions in Build Back Better Bill

On November 5, 2021, 13 Democratic members sent a letter to the House leadership asking them to revise a part of the Build Back Better Act that extends a \$550 increase only to students who attend public and nonprofit private institutions and excludes students who attend for-profit institutions. The 10 representatives include Al Lawson (D-FL), Anthony Brown (D-CA), Ted Deutch (D-FL), Troy Carter (D-LA), Sanford Bishop (D-GA), Jim Costa (D-CA), Madeleine Dean (D-PA), Veronica Escobar (D-TX), Adriano Espaillat (D-NY), Elaine Luria (D-VA), Tom O'Halloran (D-AZ), Darren Soto (D-PA), and Thomas Suozzi (D-NY). The letter said: "Congress has never passed legislation creating this type of distinction in the Pell Grant program. We urge you not to break from that bipartisan tradition and hope you will ensure that all low-income students are eligible for the expanded Pell Grant."

A copy of the letter is found at:

[http://www.career.org/uploads/7/8/1/1/78110552/pell\\_grant\\_award\\_bbb\\_letter-nov\\_5.pdf](http://www.career.org/uploads/7/8/1/1/78110552/pell_grant_award_bbb_letter-nov_5.pdf).

### Biden and Democrats Release Updated Framework for Build Back Better Initiative

On November 3, 2021, President Joe Biden and congressional Democrats released their updated framework for the Build Back Better initiative. President Biden said that the initiative "will make investments in higher education by increasing Pell Grants to help students from lower-income families attend community colleges and four-year schools. And we will invest in Historically Black Colleges and Universities (HBCUs), minority-serving institutions, and tribal colleges to make sure every young student has a shot at a good-paying job of the future."

The framework states that it will increase the maximum Pell Grant by \$550 for more than 5 million students enrolled in public and private, nonprofit colleges. It will also expand access to Deferred Action for Childhood Arrivals (DACA) program Title IV eligible students. Here are some of the proposals included in the framework:

- Pell Grants will be increased for students enrolled at public and non-profit institutions by \$550 from 2022-2023 through 2025-2026. Students attending for-profit institutions are not eligible for the increased amount.
- Individuals enrolled in DACA would be eligible for Title IV grants, loans, and work assistance.

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- Pell Grants would be excluded from gross income in the Internal Revenue Code and would no longer be taxable.
- When the FAFSA simplification changes included in the *Consolidated Appropriations Act of 2021* are fully implemented in 2024-2025 through the 2029-2030, means-tested benefits recipients will automatically receive a -\$1,500 Student Aid Index (SAI), which would qualify them for the maximum Pell Grant.
- The amount of excise tax on investment income would be reduced for private institutions by a percentage that accounts for the amount of qualified financial aid awarded by the institutions compared to tuition and fee charges.
- Investments in HBCUs, TCUs, and MSIs increase.
- Due to disagreements, free community college funding has been eliminated.

While the House of Representatives passed H.R. 3684, the *Infrastructure Investment and Jobs Act*, the *Build Back Better Act* continues to be held up since a small number of moderate Democrats refuse to vote for it until the bill is scored by the Congressional Budget Office, which is not expected to be completed until after Thanksgiving.

A copy of the framework is found at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/28/president-biden-announces-the-build-back-better-framework/>.

### Senate Democrats Send Letter to Loan Servicers Asking for Transition Plans

Senate Democrats, led by Senators Elizabeth Warren (D-MA), Edward Markey (D-MA), Chris Van Hollen (D-MD), Richard Blumenthal (D-CT), Sherrod Brown (D-OH), Robert Menendez (D-NJ), and Tina Smith (D-MN), sent letters to three federal student loan servicers asking them to share their transition plans as they prepare to exit the student loan program. The letters to the Pennsylvania Higher Education Assistance Agency, Granite State Management & Resources, and Navient Corporation, also called on the student loan servicers to correct any past errors with borrowers' accounts before transferring their portfolios.

The letters raised concerns about transferring tens of millions of borrowers' accounts to new servicers as federal student loan payments are scheduled to resume in February 2022. The Senators said that they are seeking information about plans to ensure borrowers' accounts are accurate, so borrowers are not further harmed as payments resume after January 31, 2022.

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A copy of the press release is found at: <https://www.warren.senate.gov/oversight/letters/with-less-than-100-days-until-student-loan-payments-resume-warren-and-colleagues-call-for-exiting-servicers-plans-to-correct-errors-and-smoothly-transition-the-accounts-of-nearly-16-million-borrowers>.

## House Education and Labor Subcommittee Holds Hearing on Policies and Priorities of FSA

On October 27, 2021, the House Education and Labor Subcommittee held a hearing on “Examining the Policies and Priorities of the Office of Federal Student Aid (FSA).” Chairwoman Frederica Wilson (D-FL) said that FSA manages federal financial aid programs. She noted that under former Secretary of Education Betsy DeVos, the Department of Education abandoned its responsibility to America’s students and taxpayers. She concluded her opening statement by acknowledging recent efforts by the Department to discharge loans for those who have a total and permanent disability (TPD) and automate relief for eligible borrowers in the future. She also discussed the recent changes made to the Public Service Loan Forgiveness (PSLF) program.

Ranking Member Greg Murphy (R-NC) said that returning nearly 45 million borrowers into repayment after a near two-year pause in response to COVID-19 should be the sole purpose of FSA, but the office has bowed to partisan politics and put the Democratic party’s progressive base over the immediate needs of student borrowers. He also said that FSA has been “harping on for-profit colleges through the revival of an Obama-era enforcement unit while turning a blind eye to the misdeeds of institutions that serve the vast majority of students.”

FSA Chief Operating Officer Richard Cordray stated that FSA faces great challenges as it seeks to provide the quality services that students, borrowers, and their families deserve from the federal government. He concluded his testimony by commenting on ongoing efforts to strengthen accountability and servicing, and he cited the creation of a new Office of Enforcement to strengthen oversight of schools and take enforcement actions to reduce risks for students and taxpayers. He pledged to work with the Federal Trade Commission (FTC), the Consumer Financial Protection Bureau (CFPB), the Department of Justice, the Department of Treasury, and states.

Congresswoman Virginia Foxx (R-NC) and Congressman James Comer (R-KY) asked Mr. Cordray to release an unredacted report that was prepared during the Trump Administration on the health of the federal student loan portfolio. Chairman of the Committee Bobby Scott (D-VA) suggested institutional executives be personally liable for fraud. Mr. Cordray responded that he saw “eye-to-eye” with the Chairman on the issue.

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This was Mr. Cordray's first congressional hearing since assuming his role as the COO for FSA. Members of both sides of the aisle have an acute interest in how the Department addresses its student loan operations.

Senate Appropriations Committee Releases Text of the FY 2022 Labor, HHS, Education Appropriations Act

On October 17, 2021, the Senate Appropriations Committee released a draft text of the Senate's FY 2022 Labor, Health and Human Services, Education, and Related Agencies Appropriations Act. The Senate is far behind the House in beginning the appropriations process. It is not expected that it will be formally marked up, but its spending levels will be used as a starting point for negotiating between the Senate and House. The bill includes the following:

- Sets the maximum Pell Grant award at \$6,895, an increase of \$400 over the FY 2021 enacted level. The funding is the same as provided in the House-passed bill and the President's request.
- Establishes \$905 million for the FSEOG program.
- Establishes \$1.23 billion for the FWS program.

A number of statements were made in the committee report:

- The Committee is concerned by the significant number of institutions of higher education that in recent years have committed fraud, abuse, substantial misrepresentation, or other misconduct, or have abruptly closed. The Committee directs the Department of Education to develop procedures for holding executives, owners, and board members liable for such misconduct and closures.
- The Committee notes the *Consolidated Appropriations Act, 2018*, modified in FY 2019, provides institutions of higher education with clear authority to provide information from a student's FAFSA to certain scholarship organizations, with the consent of the applicant, to help students apply for and receive student aid and State and Federal means-tested benefits. These provisions have not been widely utilized because of lack of guidance from the Department. The Committee directs the Department to publish guidance on this provision within 90 days of enactment of this act.
- The Committee has been concerned about the low level of staffing in, and the utilization of, the Student Aid Enforcement Unit, which is critical to fighting fraud and abuse. The Committee supports the Department's recent announcement to establish an Office of

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Enforcement within FSA to identify and address major problems across institutions of higher education that pose widespread risk to students and taxpayers. The Committee expects FSA to robustly staff this office and requests a briefing within 60 days.

- The Committee recognizes the significance of restoring Pell Grant access for incarcerated individuals and the positive impact that will result in reestablishing prison education programs across the country. The Committee encourages the Department to use the expertise and best practices from the Second Chance Pilot in its efforts to develop regulations for full Pell Grant reinstatement in the current negotiated rulemaking process.
- The Committee is concerned about the low rate of approval of Department of Defense (DoD) employees for PSLF. Accordingly, the Committee strongly supports the Department's recent announcement to enter into data-matching agreements with other federal agencies, including DoD, to automatically give credit towards loan forgiveness and to identify borrowers who may also be eligible.
- The Committee continues to encourage the Department to pursue efforts to simplify and streamline the Return of Title IV Funds process for institutions of higher education and students.
- The Committee continues to require the Department to retain multiple contractors in the current and future student loan servicing environment, evaluate such contractors based on their performance, and hold such contractors accountable for noncompliance.

A copy of the press release with the text of the Senate bill is found at:

<https://www.appropriations.senate.gov/news/majority/chairman-leahy-releases-remaining-nine-senate-appropriations-bills>.

#### Foxx and Keller Request Information from ED on Prolonged Application Delays for For-Profit Institutions Converting to Nonprofit Status

On October 15, 2021, Ranking Member of the House Education and Labor Committee Virginia Foxx (R-NC) and Congressman Fred Keller (R-PA) sent a letter to Secretary of Education Miguel Cardona raising concerns about delays in applications submitted by institutions of higher education to convert from proprietary institutions to nonprofit status or to undergo a change of ownership. The Members wrote in their letter: "While we appreciate the Department working to improve the thoroughness of its review, there still appears to be a significant delay in that review. Further, this Spring, an institution saw its post-transaction conversion request denied five years after its initial request was submitted to the Department." The Members sought information

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from the Department so that the Members could assess the Department's current capacity to process change of control applications in a timely manner.

A copy of the press release which includes the text of the letter is found at: <https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=407781>.

### Department Holds Public Hearings on For-Profit 90/10 Rule

On October 26-27, 2021, the Department of Education held two public hearings on regulatory changes to the 90/10 rule in preparation for negotiated rulemaking on the rule. The *American Rescue Plan Act of 2021*, signed into law in March 2021, broadened the 90 percent component to include all federal education benefit programs, such as Department of Defense Tuition Assistance and VA benefits, which will go into effect in 2023. Currently, the 90 percent cap includes only Title IV funds. Under the new law, if a for-profit institution fails to collect at least 10 percent of its revenue from nonfederal sources for two consecutive years, it loses its eligibility to participate in Title IV programs for at least two years.

Advocates of the change allege that bad-acting for-profit institutions have used deceptive practices to recruit military service members and veterans to their colleges and are applauding the change in the law. Both supporters and opponents of the new law have urged the Department to carefully define the statutory text in developing regulations.

### FSA COO Cordray Advises Public Service Workers Regarding the Temporary Waiver to Expand PSLF Eligibility

On November 8, 2021, FSA Chief Operating Officer Richard Cordray released a letter addressed to public service workers advising them about the temporary waiver to expand the Public Service Loan Forgiveness (PSLF) program to ineligible loan types and payments. This will add months or years of service credit for huge numbers of borrowers by counting certain payments that had been ineligible.

A copy of the letter is found at:

[https://ncher.org/?mailpoet\\_router&endpoint=track&action=click&data=WzExNywidzR6cm5uZmF3c2c3dvc3c4MDRjZ2tnY28wZzh3a3MiLCI2MSIsImE4MGVhYzNIMDc5YiIsZmFsc2Vd](https://ncher.org/?mailpoet_router&endpoint=track&action=click&data=WzExNywidzR6cm5uZmF3c2c3dvc3c4MDRjZ2tnY28wZzh3a3MiLCI2MSIsImE4MGVhYzNIMDc5YiIsZmFsc2Vd).

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### FSA Conducts its Second of Three Negotiated Rulemaking Sessions for its Affordability and Student Loans Committee

The Department of Education's Office of Federal Student Aid (FSA) conducted its second of three negotiated rulemaking sessions on November 1-5, 2021, for its Affordability and Student Loans Committee, which has been formed to modify certain federal regulations. The federal regulations include total and permanent disability discharge, closed school discharge, interest capitalization, Public Service Loan Forgiveness program, the borrower defense to repayment process, Pell Grants for Prison Education programs, and income-driven repayment plans.

The third session will be held December 6-10, 2021.

More information about the negotiated rulemaking sessions, including papers provided by the Department of Education and transcripts from the sessions, is found at:  
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

### Department of Education Announces Recognition Status of Nine Accrediting Agencies

On October 28, 2021, the Department of Education's Senior Department Official (SDO) Jordan Matsudaira announced the renewal of accreditation for five years for five agencies, including the Accrediting Bureau of Health Education Schools (ABHES). The SDO also announced that three accrediting agencies, including the Council on Occupational Education (COE), had to submit a compliance report with regard to specific criteria outlined in the SDO's letter to the Department within 12 months.

Finally, the SDO notified the Accrediting Commission on Career Schools and Colleges (ACCSC) that a decision on its recognition was deferred pending the submission of additional information about the agency's monitoring, evaluation, and actions related to high-risk institutions, including the Center for Excellence in Higher Education (CEHE), which closed following the accrediting agency's review by the Department's staff and NACIQI. Mr. Matsudaira is deferring his decision on ACCSC's recognition based on information relevant to ACCSC's recognition that was received after the Department's and NACIQI's analysis. ACCSC must provide a written response to ED within 75 calendar days or by January 10, 2022. ED staff must provide a written response within 75 calendar days of receipt of ACCSC's written response.

A copy of the announcement is found at:  
<https://www.ed.gov/news/press-releases/us-department-education-announces-recognition-status-nine-accrediting-agencies>.

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A copy of the ACCSC message to all ACCSC-accredited institutions about its continued recognition by the Department of Education is found at:

<https://www.accsc.org/UploadedDocuments/Press%20Room/A-Message-to-ACCSC-Accredited-Schools-110321.pdf>

## FSA Issues Updated Guidance on Financial Aid Offers

On October 28, 2021, Federal Student Aid (FSA) provided updated guidance on what institutions should include in their financial aid offers and what they should avoid. The announcement updates 2019 guidance previously issued. The new recommendations include the following:

- Avoid calling your financial aid offer an “award” and avoid calling it a “letter.”
- Always include cost of attendance in a financial aid offer.
- Break down cost of attendance in ways to help students understand costs.
- List grants and scholarship aid, loans, and Federal Work-Study separately.
- Explain and calculate the estimated net cost for students in the financial aid offer (Difference between cost of attendance and all grant/scholarship aid received.)
- Separate out other options for repaying the net cost.
- Describe critical next steps in the financial aid offer.

The Department stated that performing these steps will “improve the clarity, transparency, and basic understandability of financial aid offers for students and families.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-10-28/issuing-financial-aid-offers-what-institutions-should-include-and-avoid#>.

## FSA Posts Quarterly Portfolio Reports to FSA Data Center

On October 26, 2021, Federal Student Aid (FSA) announced that it posted new quarterly portfolio reports on its FSA Data Center. The reports continue to reflect the pandemic flexibilities applied during the pandemic to borrower accounts. Some of the key findings are:



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- As of June 30, 2021, the outstanding federal student loan portfolio is \$1.59 trillion, representing 42.8 million student aid recipients. Direct Loans now represent 85 percent of the portfolio.
- As a result of the pandemic flexibilities for student loans, the number of recipients in repayment status has fallen sharply over the last 15 months. Less than 500,000 Direct Loan recipients were in repayment as of June 30, 2021, compared to 18.1 million recipients as of March 2020.
- With almost all federal student loan borrowers in forbearance, no Direct Loan borrowers entered default during this period.
- Borrowers are allowed to seek cancellation of their loans if their school misled them or engaged in illegal misconduct. In March 2021, the Department announced adoption of a streamlined approach to granting full relief rather than partial relief for approved borrower defense claims. The June report shows the impact, with processed discharges now totaling almost \$1.1 billion, compared to \$575 million in March 2021.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-10-26/federal-student-aid-posts-quarterly-portfolio-reports-fsa-data-center>.

#### FSA Notifies Institutions that Federal Share of Perkins Funds Must be Returned to ED

On October 22, 2021, Federal Student Aid (FSA) issued an announcement that after the FISAP is filed by October 1, 2021, the Department will notify all institutions that have cash in the institution's Perkins Fund regarding the distribution of assets processed. The notification will communicate the amount of funds, both the federal and institutional shares, that must be removed and returned to the Department and to the institution, respectively. Only the federal share the Department requests to be returned should be remitted through G5 by the deadline communicated in the notification.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-10-22/perkins-loan-program-federal-perkins-loan-revolving-fund-distribution-assets-timeline-2021-22-and-reimbursement-perkins-loan-service-cancellations>.

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### FSA Chief Makes Statement Regarding Loan Servicer Contracts

On October 20, 2021, Federal Student Aid (FSA) Chief announced that FSA has approved the request for Maximus to assume the Navient loan servicing contract. FSA is confident that this decision is in the best interest of the 5.6 federal student loan borrowers who will be serviced by Maximus. FSA, Navient, and Maximus will communicate directly with borrowers about how this change affects them.

A copy of the announcement is found at: <https://www.ed.gov/news/press-releases/statement-federal-student-aid-chief-operating-officer-rich-cordray-regarding-loan-servicer-contracts>.

### FSA Announces that Registration is Open for the 2021 Virtual Federal Student Aid Training Conference

On October 18, 2021, Federal Student Aid (FSA) announced that registration is open for the 2021 Virtual Federal Student Aid Training Conference. The 2021 Virtual Federal Student Aid Training Conference will be held November 30, 2021 to December 2, 2021, and will be delivered virtually.

A copy of the announcement is found at:  
<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-10-18/2021-virtual-federal-student-aid-training-conference-registration-now-open#>.

### ED Increases Servicer Performance, Transparency, and Accountability Before Loan Payments Restart

On October 15, 2021, the Department of Education announced stronger standards for performance, transparency, and accountability for its student loan servicers aimed at protecting borrowers. Six loan servicing companies, Great Lakes, HESC/EDFinancial, MOHELA, Navient, Nelnet, and OSLA Servicing, will be held to these higher standards starting early next year. The new contract terms give Federal Student Aid (FSA) greater ability to monitor and address servicing issues as they arise.

Great Lakes, HESC/EdFinancial, MOHELA, Nelnet, and OSLA signed agreements to extend their services to December 2023. Navient also signed a contract extension, although the Department recently agreed to transfer the Navient portfolio to Maximus.

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A copy of the announcement is found at:

<https://www.ed.gov/news/press-releases/us-department-education-increases-servicer-performance-transparency-and-accountability-loan-payments-restart>.

## VA Issues Updated School Certifying Official Handbook with Updated Guidance on the 85/15 Rule

On November 1, 2021, the Veterans Benefits Administration issued a new version of the School Certifying Official Handbook. The Handbook includes updated guidance on the 85/15 rule, updated contact guidance, and adds guidelines for reporting graduate training for non-standard terms. The 85/15 Ratio Requirement prohibits paying Department of Veterans Affairs (VA) benefits to students enrolling in a program when more than 85 percent of the students enrolled in that program are having any portion of their tuition, fees, or other charges paid for them by the school or VA. If the ratio of Supported Students to Non-Supported Students exceeds 85 percent at the time a new VA beneficiary student enters or reenters, the student cannot be certified to receive benefits in the program.

Supported students include any student receiving any amount of VA Education benefits under Title 38 or Title 10 or by the school. One clarification included in the update is that an institutionally-funded payment plan to pay the full amount of tuition, fees, and other mandatory charges is not considered support from the institution if all of the following apply:

- The availability and requirements of the payment plan is published on the institution's website and in the approved catalog;
- The payment plan is available to any enrolled student;
- The payment plan explicitly requires the student to pay the outstanding balance by the end of the 85/15 reporting period (academic term or calendar quarter) or by the end of the enrollment period, whichever is later; and
- The payment plan policy prevents the student from training beyond the reporting period unless the outstanding balance is paid in full.

A copy of the School Certifying Official Handbook is found at:

[https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va\\_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000149088/School-Certifying-Official-Handbook-On-line](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000149088/School-Certifying-Official-Handbook-On-line).

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### Director Selects Leader of Enforcement Division

Director of the Consumer Financial Protection Bureau (CFPB) Rohit Chopra selected Eric Halperin, a former U.S. Department of Justice official during the Obama Administration, to lead CFPB's Division of Enforcement. Mr. Halperin worked in the Department's Civil Rights Division from 2010 to 2014. He also worked at the Center for Responsible Lending.

### 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 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>.

### NC-SARA Data Show Enrollment Surge in Distance Education

According to an Annual Report from the National Council for State Authorization Reciprocity Agreements (NC-SARA), student enrollment in exclusively distance education saw a significant increase in 2020 due to institutions offering courses virtually that would have normally been offered on-campus. Around 5.8 million college students were enrolled only in distance education in SARA-participating institutions in fall 2020, nearly double the number of students who were exclusively enrolled the previous year.

Among the findings, 66.5 percent of the total number of students who were exclusively enrolled in distance education were at public institutions; 23.4 percent of the total number of students who were exclusively enrolled in distance education were at private, nonprofit institutions; and 10.1 percent of the total number of students who were exclusively enrolled in distance education were at for-profit institutions.

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A copy of NC-SARA's press release is found at: <https://nc-sara.org/news-events/latest-nc-sara-report-shows-dramatic-rise-exclusively-distance-education-enrollment>.

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