

## WASHINGTON UPDATE

JANUARY 2022

### Speaker Pelosi Invites President to Give State of the Union Address on March 1, 2022

On January 7, 2022, Speaker of the House Nancy Pelosi (D-CA) sent a [letter](#) to President Joe Biden inviting him to give the State of the Union address on March 1, 2022. The President has accepted the invitation. Typically, the President gives his State of the Union address in late January or early February. However, the delayed speech provides the President and Congress with additional time to work out disagreements amongst Senate Democrats on the *Build Back Better Act*, for the spread of the omicron variant to subside, and to potentially reach an agreement between Democrats and Republicans on the federal budget (as the short-term Continuing Resolution expires on February 18, 2022).

Typically, the Office of Management and Budget (OMB) releases the President's budget the first week in February; however, the White House seems to prefer to wait to see if Democrats and Republicans agree to increase federal funding and agree to the priorities that will be funded through the annual appropriations process for this year.

### House and Senate Education Committee Republicans Send Second Letter to Department of Education on Changes to PSLF

On January 6, 2022, 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 asking the Department a series of questions regarding the Department's changes to the Public Service Loan Forgiveness (PSLF) program. The January 6, 2022 letter is a follow-up request to the initial letter sent on October 29, 2021, which asked for documentation and a briefing regarding the Department's position that it had the statutory authority to reform the PSLF program.

A copy of the press release, which includes the text of the letter, is found at: <https://www.burr.senate.gov/2022/1/burr-foxx-press-biden-admin-for-clarification-on-unilateral-changes-to-public-service-loan-forgiveness-program>.

### Biden Administration Announces Another Extension of the Federal Student Loan Repayment Pause

On December 22, 2021, President Joe Biden issued a statement extending the pause on student loan repayments for an additional 90 days, through May 1, 2022. "When I came into office, we were facing a number of unprecedented crises. Our economy was creating only 50,000 new jobs per month, less than 1 percent of Americans were fully vaccinated, many schools were closed, and Americans across the country were struggling to pay their bills and stay afloat. That is why, on my

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very first day as President, I directed the Department of Education to pause federal student loan repayments through September. In August, my Administration once again extended the pause, though January 31, 2022.” President Biden went on to say that “we know that millions of student loan borrowers are still coping with the impacts of the pandemic and need some more time before resuming payments.” The White House said that the Department of Education will continue to work with borrowers to transition smoothly back into repayment and urged borrowers to prepare for payments to resume, including looking at options to lower their monthly payments through income-based repayment plans.

In a press release, Secretary of Education Miguel Cardona said that borrowers should use the additional time to ensure their contact information is up to date and to consider enrolling in electronic debit and income-driven repayment plans.

After the announcement, House Education and Labor Committee Chairman Bobby Scott (D-VA) released a statement commending the administration for its decision to extend student loan relief. He said “[t]his is the right thing to do for student loan borrowers and families across the country.” However, Ranking Member Virginia Foxx (R-NC) issued a statement criticizing the action and said that the President was continuing to use the pandemic to push his policies. “Rather than adequately preparing and working with stakeholders to ensure a smooth transition into repayment, the Department has delayed information to borrowers, failed to communicate with servicers, and stonewalled Congress in order to provide back door loan forgiveness through administrative fiat.”

A copy of the White House announcement is found at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/22/statement-by-president-joe-biden-extending-the-pause-on-student-loan-repayment-an-additional-90-days/>.

A copy of the Secretary’s announcement is found at: <https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-may-1-2022>.

A copy of Chairman Scott’s statement is found at: <https://bobbyscott.house.gov/media-center/press-releases/scott-statement-on-extension-of-student-loan-pause>.

A copy of Ranking Member Foxx’s statement is found at: <https://mailchi.mp/c4d975f93de9/foxx-democrats-are-up-to-their-radical-student-loan-forgiveness-schemes-again?e=1f5f7d0ec8>.

House Education and Labor Committee Republicans Ask IG to Investigate ED’s Cancellation of PCA Contracts

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On December 16, 2021, House Education and Labor Ranking Member Virginia Foxx (R-NC) and Representative Julia Letlow (R-LA) sent a letter to the Department of Education’s Inspector General (IG) Sandra Bruce asking her to investigate Federal Student Aid’s (FSA) decision to terminate its contracts with all private collection agencies (PCAs). The letter points out that the action could have significant consequences for about 7 million defaulted borrowers that rely on PCAs to bring them into good standing, and questions whether FSA will have the necessary expertise, security clearances, and licensing required to complete collections work as it oversees returning over 40 million federal student loan borrowers back into repayment on February 1, 2022. The letter said: “it is particularly troubling that the Department has taken this extraordinary action without providing the necessary information and assurance that it is prepared to address the array of unintended consequences resulting from the contract termination.”

A copy of the press release including the text of the letter is found at: <https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=407976>.

### President Biden Signs into Law the *REMOTE Act* to Protect Education Benefits for Military-Connected Students

On December 21, 2021, President Biden signed into law the *Responsible Education Mitigating Options and Technical Extensions Act (REMOTE Act)* (H.R. 5545). Previously, the U.S. Senate passed the bill on December 15, 2021. On December 8, 2021, the U.S. House of Representatives passed the *REMOTE Act* to protect education benefits for military-connected students. The bill passed by voice vote in both the House and Senate. The bill would extend COVID-19 remote learning waivers for military-connected students through June 1, 2022. The bill would amend current law to:

- Allow students enrolled in certain online and hybrid education programs to receive full housing benefits;
- Enable students to use Post-9/11 GI Bill benefits to enroll in an extra course during their final academic term; and
- Extend benefits for individuals participating in apprenticeships or on-the-job training while unemployed or underemployed.

In March 2020, Congress passed legislation that provided temporary relief to military-connected students and institutions because of COVID-19. These benefits were extended several times, but were expected to expire on December 21, 2021.

### President Biden Issues Executive Order on Improving Customer Service and Government Services

On December 13, 2021, President Biden signed an Executive Order titled, “Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.” The Executive

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Order directs Federal agencies to consider the experiences of the American people when assessing the performance of government services. The Executive Order includes 36 customer experience improvement commitments across 17 federal agencies, all of which aim to improve people's lives and the delivery of government services. Under financing of postsecondary education, the following provisions were included:

- Direct Loan borrowers will need to navigate only a single repayment portal on StudentAid.gov, so they can apply for, manage, and repay their loans without having to visit multiple websites and manage multiple credentials.
- Public Service Loan Forgiveness candidates will be able to apply for the program with less paperwork than currently required and without having to fill out forms with information they have already provided to the federal government previously.
- Students and borrowers can receive relevant recommendations for other benefits and services they may qualify for, like health care subsidies, broadband support, and food assistance, in order to help them reduce other economic barriers to postsecondary education completion.

Secretary of Education Miguel Cardona issued a statement: “The President’s Executive Order reinforces and advances one of our core, founding principles as a nation, that we have a government of the people, by the people, and for the people. This is an American ideal that resonates at the U.S. Department of Education, which I believe, is a service agency.”

A copy of the Executive Order is found at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/13/fact-sheet-putting-the-public-first-improving-customer-experience-and-service-delivery-for-the-american-people/>.

A copy of the Secretary’s statement is found at: <https://www.ed.gov/news/press-releases/statement-secretary-cardona-president-bidens-executive-order-improving-customer-experience-and-government-services-american-people>.

### Department Makes Available New Materials Related to the Institutional and Programmatic Eligibility Rulemaking Sessions Beginning January 18<sup>th</sup>

On January 11, 2022, the Department of Education made available new materials related to the Institutional and Programmatic Eligibility rulemaking committee, which includes the following topics: 90/10, ability-to-benefit, certification procedures for participation in Title IV, HEA

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programs, change of ownership and change in control of institutions of higher education, financial responsibility for participating institutions of higher education, gainful employment, and standards of administrative capability.

The negotiated rulemaking committee will meet virtually on the following dates:

- Session 1: January 18-21, 2022;
- Session 2: February 14-18, 2022; and
- Session 3: March 14-18, 2022.

The public may observe the committee meetings and register to watch the first session by going to the following link: <https://www.eventbrite.com/e/negotiated-rulemaking-institutional-and-programmatic-eligibility-118-21-tickets-230903166587>.

Information on the Institutional and Programmatic Eligibility negotiated rulemaking, including the Members List and the Protocols, can be found at: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

#### FSA Announces Website to Defend Against the Rise in Ransomware Cases

On January 11, 2022, Federal Student Aid (FSA) announced that the U.S. Government has launched a website to help public and private organizations defend against the rise in ransomware cases. It is a whole-of-government approach that gives one central location for ransomware resources and alerts.

A copy of the announcement is found at: <https://fsapartners.ed.gov/fsa-print/publication/1003648>.

#### Department Announces MOHELA to Perform Servicing of Student Loans for Borrowers in the PSLF Program and TEACH Program

On December 22, 2021, the Department of Education announced that the Missouri Higher Education Loan Authority (MOHELA) will take over the portfolio of federal student loans for borrowers participating in the Public Service Loan Forgiveness (PSLF) program and the Teacher Education Assistance for College and Higher Education (TEACH) program. Those borrowers are currently assigned to FedLoan Servicing (Pennsylvania Higher Education Assistance Agency (PHEAA)). All borrowers will remain with FedLoan Servicing until they are transferred to MOHELA. More details will be provided as the Department completes the transfer of federal student loans.

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A copy of the notice is found at: <https://studentaid.gov/announcements-events/fedloan-stop-servicing-loans>.

### Assistant Secretary for Civil Rights Provides Update on Title IX Rules

On December 10, 2021, Assistant Secretary for Civil Rights Catherine E. Lhamon issued a statement after the Fall 2021 Unified Agenda and Regulatory Plan was published on December 10, 2021, which indicated that the Title IX Notice of Proposed Rulemaking (NPRM) would be published by April 2022. April 2022 is a month earlier than the May 2022 date listed in the Spring 2021 Unified Agenda. Assistant Secretary Lhamon said:

“The Department is deeply committed to ensuring that schools are providing students with educational environments free from discrimination in the form of sexual harassment; to ensuring that schools have grievance procedures that provide for the fair, prompt, and equitable resolution of reports of sexual harassment and other sex discrimination; and to addressing discrimination based on sex, including sexual orientation and gender identity, in educational environments....Today’s step reflects the Department’s commitment to work as speedily as possible toward appropriate and effective regulation in recognition of the importance of ensuring equal access to education for all students and addressing the threat to equal access posed by all forms of sex discrimination, including sexual harassment.”

A copy of the statement is found at: [https://www.ed.gov/news/press-releases/statement-us-department-education-assistant-secretary-office-civil-rights-catherine-lhamon-title-ix-update-fall-2021-unified-agenda-and-regulatory-plan?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www.ed.gov/news/press-releases/statement-us-department-education-assistant-secretary-office-civil-rights-catherine-lhamon-title-ix-update-fall-2021-unified-agenda-and-regulatory-plan?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

### FSA Releases Quarterly Reports on its FSA Data Center

On December 22, 2021, Federal Student Aid (FSA) released new quarterly portfolio reports on its FSA Data Center. These reports reflect the novel flexibilities applied to borrower accounts under the *CARES Act* and extended by executive actions through May 1, 2022. As a result, payments are paused, collections are stopped, and interest is waived on all Department of Education-held student loans. In addition to the quarterly application, disbursement, portfolio, and forgiveness reports, FSA is releasing the end of year Federal Pell Grant and Campus-Based Program Books for award years 2018-2019 and 2019-2020. Some of the findings are:

- As of September 30, 2021, the outstanding federal student loan portfolio is \$1.61 trillion, representing 43.4 million unduplicated student aid recipients.

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- Because of the pandemic, the number of recipients in repayment has fallen over the last 18 months to less than 500,000 Direct Loan recipients who were in repayment as of September 30, 2021 compared to 18.1 million in March 2020.
- FAFSAs filed for the 2021-2022 award year so far are down about 2 percent from this time last year.
- As of September 2021, about 116,000 applications had received an approval for borrower defense claims, up from about 95,000 applications in June 2021. Discharge amounts are now more than \$1.2 billion.

A copy of the announcement is found at: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-12-22/federal-student-aid-posts-quarterly-portfolio-reports-fsa-data-center>.

## OIG Releases Report Highlighting Management Challenges to ED

In December 2021, the Department of Education's Office of Inspector General (OIG) released a report titled, "[FY 2022 Management Challenges Facing the U.S. Department of Education](#)." For FY 2022, the OIG identified five management challenges by examining past audit, inspection, and investigative work; reviewing corrective actions that the Department did not complete; assessing ongoing audit, inspection, and investigative work to identify significant vulnerabilities; and analyzing new programs and activities that could pose significant challenges. The management challenges faced by the Department are:

- Implementing pandemic relief laws;
- Oversight and monitoring;
- Data quality and reporting;
- Making improper payments; and
- Addressing information technology security.

These five challenges were included in the FY 2021 report and while ED has made progress in addressing these challenges, the OIG continued to find vulnerabilities within each area.

## ED Publishes Notice Seeking Third-Party Comments on Accrediting Agencies Undergoing Review for Recognition Purposes

On December 15, 2021, the Department of Education published a Notice in the *Federal Register* seeking written comments for accrediting agencies currently undergoing review for the purposes of recognition by the Department of Education. The accrediting agencies will be reviewed at the

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winter 2023 National Advisory Committee on Institutional Quality and Integrity (NACIQI). Comments must be received by January 20, 2022.

A copy of the Notice is found at: <https://www.govinfo.gov/content/pkg/FR-2021-12-15/html/2021-27095.htm>.

### ED Provides Guidance About the Use of Protected Brands and the Use of U.S. Government Agencies' Names

On December 15, 2021, the Department of Education issued an electronic announcement about the use of protected brands and official government names, logos, or insignia. The General Guidance states: “The name, logo, or insignia, of a U.S. government agency cannot be used in a manner that suggests association with or endorsement by the agency or implies endorsement by a government agency, official, or employee.” The General Guidance goes on to say that while most U.S. government creative works are copyright free, not all government works can be used without permission. Institutions of higher education should refer to the agency or program that manages the source of the works to seek permission if needed.

A copy of the electronic announcement is found at: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-12-15/guidance-about-use-protected-brands-and-official-government-names-logos-or-insignia>.

### IRS Releases Notice Directing Lenders and Servicers to Not File Information Returns or Provide Payee Statements for Student Loan Discharges Which are Excluded From Gross Income

The Internal Revenue Service (IRS) issued an IRS Notice, which directs lenders and servicers of student loans that they should not file information returns or furnish payee statements to report the discharge of student loans when the discharge is excluded from gross income under the new provisions of the *American Rescue Plan Act*. In March 2021, Congress enacted the *American Rescue Plan Act*, which amended the Internal Revenue Code’s requirements for tax treatment of student loan forgiveness. Though such discharges are ordinarily included in gross income for tax purposes, under the new law, any amount which would otherwise be includible in income by reason of the discharge of certain loans is excluded from gross income for the 2021-2025 tax years. Student loans covered by this provision include:

- Any loan provided exclusively for postsecondary educational expenses that was made, insured, or guaranteed by the United States, a state, or an educational institution;
- A private educational loan; and
- Certain loans made by educational organizations.



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Guidance was required to be issued by IRS. Despite the statutory change, Form 1099-C was not updated, and IRS guidance generally requires the issuance of 1099-C statements covering the amount of the discharge.

A copy of the Notice is found at: <https://www.irs.gov/pub/irs-drop/n-22-01.pdf>.

### Lawsuit Alleges 16 Colleges and Universities Illegally Collaborated to Limit Financial Aid Offers

Sixteen colleges and universities, including Yale, Georgetown, Brown University, Massachusetts Institute of Technology, are being sued by five former students who allege the institutions colluded to determine financial aid offers for students, unfairly limiting financial aid awards by utilizing a shared methodology to calculate financial need. According to a number of publications that reported on the lawsuit, which was filed in Illinois federal court on January 9, 2022, the plaintiffs are alleging that institutions are violating federal law because they are not entirely need-blind and at least some of the institutions maintain admissions systems that favor the children of wealthy past or potential future donors. Additionally, the lawsuit alleges that some institutions take applicants' finances into account when admitting them off the waiting list and/or look at finances in admission decisions for specific programs. The lawsuit seeks damages and a permanent end to the institutions' collaboration in calculating financial need and awarding aid.

In 1994, Congress passed legislation, which included an antitrust exemption provision authorizing efforts by need-blind institutions to develop and maintain common principles of how need should be determined when awarding non-federal institutional student aid. However, institutions are still prohibited from discussing aid offers for individual applicants with other institutions. Congress has extended this provision, Section 568, several times, and it is currently set to expire at the end of September 2022 unless there is another extension.

**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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