

WASHINGTON UPDATE

MARCH 2022

Congress Passes Consolidated Appropriations for FY 2022

On March 11, 2022, the Senate passed H.R. 2471, the *Consolidated Appropriations Act of FY 2022*, which includes bipartisan agreements reached between Democrats and Republicans on the *Labor, Health and Human Services, Education, and Related Agencies Appropriations Act*. H.R. 2471 was passed by the House on March 9, 2022. The bill provides \$76.4 billion in discretionary funding for the Department of Education, which is \$2.9 billion above the FY 2021 level. The bill provides \$24.6 billion for federal student aid programs, an increase of \$35 million above last year's enacted level.

The legislation establishes the maximum Pell Grant award at \$6,895, an increase of \$400 over the FY 2021 enacted level. The legislation provides \$895 for the Federal Supplemental Educational Opportunity Grant program, an increase of \$15 million above the FY 2021 enacted level, and \$1.21 billion for Federal Work-Study, an increase of \$20 million above the FY 2021 enacted level.

An explanatory statement included with the bill directs the Office of Federal Student Aid to submit a detailed spending plan of anticipated uses of funds and to provide quarterly updates on its progress towards fulfilling the spending plan supporting the implementation of the Next Gen initiative. Another statement includes the agreement to provide \$5,000,000 for a new Postsecondary Student Success Grants program, which would support evidence-based activities to improve postsecondary retention and completion rates.

In order to pass the bill, the House Democrats had to strip out \$15 billion in COVID-19 relief funding. House Speaker Nancy Pelosi (D-CA) said: "...we must continue to fight for urgently needed COVID assistance, but unfortunately that will not be included in this bill." The bill now goes to the Senate for passage.

A press release, including a summary, is found at: <https://appropriations.house.gov/news/press-releases/appropriations-committee-releases-fiscal-year-2022-labor-health-and-human>.

House Democrats Urge President Biden to Extend Federal Student Loan Pause on Repayments and Interest

On March 9, 2022, 29 House Democrats sent a letter to President Joe Biden urging him to extend the current federal student loan repayment pause, including the zero percent interest rate through the end of the public health emergency. The letter stated that the pause on federal student loan repayments has been essential for the financial wellbeing of student loan borrowers. The letter also points out that the federal government cannot continue to rely on short-term solutions to address the student debt crisis and should develop a long-term plan.

A copy of the letter is found at: <https://swalwell.house.gov/media-center/press-releases/swalwell-courtney-lead-colleagues-urging-biden-administration-address>.

President Biden Considers Extending Federal Student Loan Repayment Pause

A number of news organizations reported that White House Chief of Staff Ron Klain said in an interview on March 3, 2022 with the podcast Pod Save America that the Biden Administration is considering extending the freeze on federal student loan repayments once again for about 40 million borrowers before it expires on May 1, 2022. Progressives and other Democrats have expressed political concerns about sending borrowers bills before the midterm elections in the fall. Republicans are concerned about the growing costs to the taxpayers of deferring payments and keeping interest rates at zero.

A week later, news organizations reported that Department of Education officials instructed the student loan servicers to not send the required notices to borrowers that the moratorium on repayments will be ending on May 2, 2022. The reports concluded that the directive to student loan servicers is the clearest indication that the Biden Administration is leaning toward another extension of the repayment relief.

Biden Highlights Pell Grant Increase as Administration Priority

On March 1, 2022, President Joe Biden delivered his first State of the Union address and called on Congress to increase the Pell Grant. A background Fact Sheet specifically calls for a \$2,000 increase in the maximum Pell Grant, although the amount of the increase was not referenced in the President's speech. President Biden also called for an increase in support for Historically Black Colleges and Universities (HBCUs) and community colleges. Nothing was mentioned in the address about discharging student loans.

A copy of the Fact Sheet that provided background for the State of the Union speech is found at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-background-on-president-bidens-remarks-on-the-economy-during-his-first-state-of-the-union-address/>.

A copy of the State of the Union address is found at: <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/01/remarks-of-president-joe-biden-state-of-the-union-address-as-delivered/>.

Warren and Other Senators and Representatives Send Letter to Secretary Cardona Regarding the Restart of Federal Student Loan Repayments

On February 23, 2022, Senators Elizabeth Warren (D-MA), Tammy Duckworth (D-IL), and Maggie Hassan (D-NH) and Representatives Lauren Underwood (D-IL), Dina Titus (D-NV), Bill Foster (D-IL), Lucy McBath (D-GA), and Colin Allred (D-TX) sent a letter to Secretary of Education Miguel Cardona requesting information about actions that the Department of Education plans to take to help student loan borrowers and to ensure they are adequately informed about the restart of federal student loan payments as the scheduled end of the payment pause approaches on May 1, 2022. In their letter, the lawmakers said: “While they appreciate the Biden Administration’s actions to extend the payment pause, they are concerned that with less than 70 days until the scheduled expiration, borrowers may lack clarity about the timeline associated with the resumption of payments. They say that providing additional detail is critical to ensuring that borrowers are adequately informed about the restart and that borrower harm is minimized during the upcoming transition.”

A copy of the letter is found at:

<https://www.warren.senate.gov/newsroom/press-releases/warren-underwood-allred-colleagues-to-education-department-what-steps-are-you-taking-to-help-borrowers-when-student-loan-payments-resume>.

White House Extends COVID-19 National Emergency

On February 18, 2022, the White House extended the national emergency due to the coronavirus that was first declared in March 2020. The national emergency was set to expire on March 1, 2022. President Joe Biden sent a letter to the Speaker of the House and the President of the Senate announcing the extension and said: “There remains a need to continue this national emergency.” The President went on to say: “More than 900,000 people in this nation have perished from the disease, and it is essential to continue to combat and respond to COVID-19 with the full capacity and capability of the federal government.” A notice announcing the extension was published in the *Federal Register* on February 23, 2022. While the extension time frames vary depending on the area of Title IV aid that is impacted, generally they are being extended by one year, unless the national emergency is ended before then.

A copy of the White House announcement is found at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/18/letter-to-the-speaker-of-the-house-of-representatives-and-president-of-the-senate-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/>.

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

www.federalregister.gov/documents/2022/02/23/2022-03972/continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic.

ED Releases Final Round of Discussion Documents for Negotiated Rulemaking Committee's Third and Final Session

On March 8, 2022, the Department of Education released its final round of discussion papers for the negotiated rulemaking last and final session with Committee II – Institutional & Programmatic Eligibility being held on March 14-18, 2022. Committee II is looking to revise a number of regulations related to ability-to-benefit, administrative capability, gainful employment, financial responsibility, changes in ownership, certification procedures, and 90/10. A great deal of discussion occurred in the final days of the second session on the gainful employment and 90/10 proposed rules.

If consensus is not reached on the proposals, the Department is free to publish a Notice of Proposed Rulemaking (NPRM) with rules that the Department would like to see implemented on these various provisions.

Information about all of the sessions, including the white papers and registration for session three, can be found at: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

OPE Clarifies that Income Share Agreements Used to Finance Expenses for Postsecondary Education are Considered Private Education Loans

On March 2, 2022, the Office of Postsecondary Education (OPE) issued an announcement that the Consumer Financial Protection Bureau (CFPB) issued a Consent Order against a student loan originator for misleading borrowers about income share agreements (ISAs), failing to provide required disclosures, and violating the prohibition against prepayment penalties for private education loans. The Consent Order indicated that CFPB has concluded that a student loan originator's ISAs are private education loans under the Truth in Lending Act (TILA) and its implementing Regulation Z.

The announcement clarified that income share agreements used to finance expenses for postsecondary education are considered private education loans under 34 C.F.R. § 601.2(b). ISAs offer students upfront financial support and, in exchange, require students to pay back a portion of their future income for a certain number of years. ISAs are offered in some cases through colleges and in other cases, through companies.

The announcement stated that typically, private education loans have been loans made by lenders to help students pay the costs of higher education. These loans generally have a fixed or variable interest rate and borrowers repay the loans in regular installments over a period of time. OPE has determined that income share agreements have these same features. “The CFPB is responsible for enforcing TILA and its regulations. Since the Department’s authorizing statute and regulations expressly incorporate TILA definitions, it follows that any product, including an ISA, that meets the TILA and Regulation Z definitions of a private education loan also meets the definition of that term under the HEA and the Department’s regulations.” The announcement reminded institutions they must comply with the private education loan requirements in 34 C.F.R. Part 601, which includes providing specific disclosures to borrowers of private education loans, reporting related information to the Department, and complying with critical protections and prohibitions against conflicts of interest.

A copy of the electronic announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-02/income-share-agreements-and-private-education-loan-requirements>.

FSA Announces an Increase in Ransomware Incidents

On March 1, 2022, Federal Student Aid (FSA) announced that a recent Joint Cybersecurity Advisory, authored by cybersecurity professionals in the U.S., U.K., and Australia, identified an increase in sophisticated ransomware incidents against critical infrastructures, including government facilities, education, defense, emergency services, and IT sectors. Immediate actions institutions can take to protect against ransomware include:

- Updating your operating system and software;
- Implementing user training and phishing exercises to raise awareness about the risks of suspicious links and attachments;
- If you use Remote Desktop Protocol (RDP), securing and monitoring it;
- Making an offline backup of your data; and
- Using multiple authentication (MFA).

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-01/joint-cybersecurity-advisory-2021-trends-show-increased-globalized-threat-ransomware#>.

ED Issues FY 2019 Draft Cohort Default Rates Distributed

On February 28, 2022, the Department of Education distributed the FY 2019 draft cohort default rate notification packages to all eligible institutions and foreign schools only. The electronic

announcement provided information about the distribution of the draft rates and announced the time for appealing the FY 2019 draft cohort default rates, which begins on March 8, 2022 for all schools.

A copy of the electronic announcement is found at: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-02-28/fy-2019-draft-cohort-default-rates-distributed-feb-28-2022>.

ED Approves \$415 Million in Borrower Defense Claims Including Former DeVry University Students

On February 16, 2022, the Department of Education announced that almost 16,000 borrowers will receive \$415 million in borrower defense to repayment discharges following the approval of four new findings and the continued review of claims. This includes 1,800 former DeVry University students who will receive about \$71.7 million in full borrower defense discharges. Several other actions were taken by the Department that will provide about \$342.7 million in borrower defense discharges to almost 44,000 borrowers including new findings related to Westwood College and the nursing program at ITT Technical Institute, as well as recent findings about the criminal justice programs at Minnesota School of Business/Globe University. Another \$284.5 million in discharges were made to over 11,900 students who attended Corinthian Colleges and Marinello Schools of Beauty. The Department's actions bring the total amount of approved relief under borrower defense to repayment discharges to approximately \$2 billion for more than 107,000 borrowers.

Secretary of Education Miguel Cardona said: "The Department remains committed to giving borrowers discharges when the evidence shows their college violated the law and standards. Students count on their colleges to be truthful. Unfortunately, today's findings show too many instances in which students were misled into loans at institutions or programs that could not deliver what they'd promised."

A copy of the press release is found at:

<https://www.ed.gov/news/press-releases/education-department-approves-415-million-borrower-defense-claims-including-former-devry-university-students>.

ED Extends Pause on Treasury Offset Collection Tools Through November 2022

The Department of Education announced that it has extended the suspension of the collection of federal student loans under the Treasury Offset Program (TOP) for an additional 6 months beyond the COVID-19 payment pause until November 2022. On December 22, 2021, the Department extended the payment and collections pause for federally held student loans through May 1, 2022. TOP allows the Department to withhold federal government payments while a student or parent borrower is in default. In a Frequently Asked Questions document posted on the student loan

payment pause page, the Department clarified that student loan borrowers will not have money withheld from their child tax credit, Social Security, or tax refund payments through this extended period.

The announcement is found at: <https://studentaid.gov/announcements-events/covid-19/default>.

ED Concludes Second Session of Institutional and Programmatic Eligibility Committee with Focus on Gainful Employment and 90/10

The second session of the Institutional and Programmatic Eligibility Committee took place on February 14-18, 2022, which is looking at revising a number of regulations related to ability-to-benefit, administrative capability, gainful employment, financial responsibility, changes in ownership, certification procedures, and 90/10. A great deal of discussion occurred in the final days of the session on the gainful employment and 90/10 proposed rules.

The non-federal negotiators made their positions known on the proposed language released by the Department of Education on the various rules. The Department will now take into account the responses as it develops its updated regulatory text to be used during the third and final session on March 14-18, 2022. On the last day of the session, the Committee facilitators stressed the importance of the nonfederal negotiators providing the Department with as much information as possible so that ED can work through potential amendatory text.

Information about the sessions, including the white papers and registration, can be found at: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

CFPB Increases Scrutiny of Student Loan Servicers of the PSLF Waiver

On February 28, 2022, the Consumer Financial Protection Bureau (CFPB) issued a press release announcing that it released a bulletin detailing student loan servicers' obligation to halt unlawful conduct regarding borrowers' eligibility and benefits under the Public Service Loan Forgiveness (PSLF) Waiver. The bulletin recommends actions servicers should consider taking to ensure they do not misrepresent borrower eligibility or make deceptive statements to borrowers about the PSLF program and the Waiver. The actions include ensuring that borrowers get complete and accurate information about the PSLF Waiver when discussing the PSLF program or loan consolidation.

In October 2021, the Department of Education announced the availability of the PSLF Waiver, which extended benefits to borrowers who had previously been ineligible to participate in the program. The Waiver ends on October 31, 2022. The CFPB wants to ensure that the Waiver is properly administered before the benefits run out. CFPB Director Robin Chopra said: "Illegal conduct by a student servicer can be ruinous for borrowers who miss out on the opportunity for debt cancellation."

A copy of the press release is found at:

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-steps-up-scrutiny-of-student-loan-servicers-who-deceive-borrowers-about-public-service-loan-forgiveness/>.

FTC Proposes Rules Concerning False, Misleading, and Unsubstantiated Earnings Claims

On February 17, 2022, the Federal Trade Commission (FTC) announced that it would be seeking comment from the public on an Advanced Notice of Proposed Rulemaking (ANPR) about a variety of issues, including whether earnings claims are prevalent among some industries, how a rule addressing earnings claims should be drafted, the benefits to consumers from such a rule and the costs to businesses, and whether the potential rule should address disclaimers, lifestyle claims, or liability for agents' claims. If, after reviewing the public comments in response to the ANPR, the Commission decides to proceed with proposing such a regulation, its next step would be to issue a notice of proposed rulemaking.

FTC Chair Lina M. Khan stated in remarks released with the public announcement: "False earnings claims routinely mislead Americans into investing thousands of dollars into opportunities that turn out to be a sham. Be it misleading claims about multilevel marketing schemes that lure in aspiring entrepreneurs, false marketing from for-profit schools targeted at hopeful students, or deceptive representations from "gig economy" platforms that draw workers, the cost of these false claims can be devastating, losing people money and time and saddling them with debt."

The FTC is interested in developing a rule that would allow it to: (1) move quickly to stop illegal conduct; (2) clarify for businesses what constitutes a deceptive earnings claim and what it means to have substantiation for an earnings claim; and (3) enable the FTC to seek monetary relief for consumers who are harmed by deceptive claims.

The press release states that the Commission has taken aggressive action against marketing schemes, e-commerce, or other business opportunity scams, including suing DeVry University and its parent company, alleging that DeVry falsely claimed its graduates averaged 15 percent higher incomes one year after graduation than graduates of other schools. The FTC lawsuit resulted in \$49.4 million in partial refunds and \$50.6 million in debt relief. Should the proposed rule be adopted by the Commission, the FTC will have another tool to return money to consumers injured by deceptive income claims.

A copy of the press release, which includes the ANPR, is found at: <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-takes-action-combat-bogus-money-making-claims-used-lure-people-dead-end-debt-traps>.

IRS Updates FAQs on Higher Education Emergency Grants

In February 2022, the Internal Revenue Service recently updated its Frequently-Asked-Questions on Higher Education Emergency Grants. The fact sheet added new questions clarifying that, if an institution of higher education uses federal funds under the Coronavirus Aid, Relief, and Economic Security or CARES Act, the Coronavirus Response and Relief Supplemental Appropriations or CRRSAA Act, or the American Rescue Plan to cancel or discharge overdue balances, the student does not have to report this cancellation or discharge in their gross income. The fact sheet noted that the debt is being paid by the federal government and would typically be included in gross income. However, it would not be included in this case because the payment is in response to the COVID-19 pandemic. The fact sheet also clarifies that colleges and universities do not have to report such payments on Form 1099-MISC.

A copy of the fact sheet is found at: <https://www.irs.gov/newsroom/irs-updates-faqs-for-higher-education-emergency-grants>.

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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