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# WASHINGTON UPDATE

## APRIL 2022

House Education and Labor Committee Approves the *Workforce Innovation and Opportunity Act of 2022*

On April 5, 2022, the House Education and Labor Committee approved by a vote of 29-21 H.R. 7309, *Workforce Innovation and Opportunity Act of 2022 (WIOA)*. The bill would reauthorize the current statute governing the nation's workforce development programs. During the markup of H.R. 7309, the bill was amended by a substitute amendment sponsored by Representative Mondaire Jones (D-NY), which replaced the original bill. The amendment removed Sec. 101(h) of the bill that would have prevented for-profit institutions from participating in WIOA programs. Under the amendment, for-profit institutions remain eligible for workforce development programs.

The legislation now moves for consideration to the House floor.

OMB Releases Budget Request for FY 2023

On March 28, 2022, the Office of Management and Budget (OMB) released the President's budget request for FY 2023, which calls for increasing non-defense spending by 5 percent and increasing military spending by 4 percent while forcing the wealthiest households to pay more taxes. The press release said that "Federal budgets are an expression of values. This proposal reflects the Biden-Harris administration's deep belief in the importance of education and the success and wellbeing of our nation's students."

The budget request for the Department of Education includes $88.3 billion in discretionary funding, an almost $12 billion increase or 15 percent. The budget request would increase the maximum Pell Grant award by $1,775 to $8,670 for the 2023-2024 school year, helping an estimated 6.7 million students from low- and middle-income backgrounds overcome barriers. The budget also calls for expanding federal student aid, including Pell Grant eligibility, for Deferred Action for Childhood Arrivals (DACA) recipients or the DREAMers.

The budget requests $880 billion for Federal Supplemental Educational Opportunity Grants (FSEOG) and $1.19 billion for Federal Work-Study, which represent slight decreases in funding for both programs as compared to funding levels included in the recently passed *Consolidated Appropriations Act, 2022.*

The budget requests $110 million for the new Retention and Completion Grant program, which would provide competitive grants to States, Tribally Controlled Colleges and Universities, and institutions of higher education to implement or expand evidence-based, institutional-level retention and completion reforms that improved student outcomes.

The budget states that "the Administration looks forward to working with the Congress on changes to the *Higher Education Act* that ease the burden of student debt, including through improvements to the Income Driven Repayment and Public Service Loan Forgiveness programs."

In conjunction with the budget, the Department of Treasury released a list of tax proposals that calls on Congress to permanently exclude discharged federal and private student loan debt from counting toward an individual's taxable income. The *American Rescue Plan* called for the temporary elimination of federal income taxes on forgiven student loans. However, the program expires at the end of 2025. The budget plan is designed to make the exclusion from taxable income permanent.

A copy of the Department of Education's press release, which includes the FY 2023 Education Budget Summary, is found at: https://www2.ed.gov/about/overview/budget/budget23/index.html.

Senate Democrats Send Letter to Secretary of Education and Attorney General Asking How the Agencies are Handling Undue Hardship Claims by Students in Bankruptcy Proceedings

On March 31, 2022, Senators Dick Durbin (D-IL), Patty Murray (D-WA), Chuck Schumer (D-NY), and 24 other Senate Democrats sent a letter to Secretary of Education Miguel Cardona and Attorney General Merrick Garland requesting an update on how their agencies are handling undue hardship claims by student borrowers in bankruptcy proceedings. The letter states that the term "undue hardship" has been "interpreted by courts to establish high hurdles for borrowers to meet – a challenge made even more difficult by federal agency policies that encourage aggressive challenges in bankruptcy courts when student borrowers bring undue hardship claims." The letter says that "the undue hardship exception serves as the only option in the bankruptcy code for the discharge of student loans" and that "exception has been narrowly construed by most courts."

The letter asks Secretary Cardona to follow through on his public statement that the Department of Education would change its approach to "undue hardship" claims to make it a more attainable option. The Senators also asked for an update to guidance issued in 2015 on handling undue hardship claims. The Senators also questioned the Department of Justice as to what steps have been taken to inform student loan borrowers currently in the midst of bankruptcy proceedings that they could pause their litigation so as to benefit from policy changes the Department of Education implements around "undue hardship" claims.

A copy of the press release with the text of the letter is found at:
https://www.durbin.senate.gov/newsroom/press-releases/durbin-schumer-murray-senators-call-on-department-of-education-doj-to-follow-through-on-pledge-to-improve-handling-of-student-debt-bankruptcy-claims.

House and Senate Education Committee Chairs Urge President Biden to Extend Federal Student Loan Payment Pause until End of 2022

On March 16, 2022, House Education and Labor Committee Chairman Bobby Scott (D-VA) and Senate Health, Education, Labor, and Pensions Committee Chairwoman Patty Murray (D-WA) issued statements urging President Biden to extend the federal student loan payment, interest, and collections pause until 2023. Chairwoman Murray said that "[i]t is ruining lives and holding people back. Borrowers are struggling with rising costs, struggling to get their feet back under them after public health and economic crises, and struggling with a broken student loan system – and all this is felt especially hard by borrowers of color." Chairman Scott echoed Chairwoman Murray's statement by stating: "By extending relief for student loan borrowers, the Biden-Harris Administration would strengthen our economic recovery and provide student loan borrowers more time to prepare for loan repayment."

On April 6, 2022, the White House announced that it would extend the federal student loan repayment pause, which is set to expire on May 1, 2022, until August 31, 2022. (See article below.)

Chairwoman Murray's statement is found at: https://www.murray.senate.gov/senator-murray-pushes-biden-admin-to-extend-student-loan-payment-pause-until-2023-take-action-to-fix-broken-student-loan-programs-lower-cost-of-higher-education-2/.

Chairman Scott's statement is found at: https://edlabor.house.gov/media/press-releases/chairman-scott-statement-on-extension-of-student-loan-payment-pause.

President Signs *Consolidated Appropriations for FY 2022 into Law*

On March 15, 2022, President Biden signed into law 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*. On March 11, 2022, the Senate passed H.R. 2471, and on March 9, 2022, the House passed H.R. 2471. 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."

Secretary of Education Miguel Cardona said: "This bipartisan move also helps make college more affordable by increasing the maximum Pell Grant by $400, which is a down payment on the President's call to double Pell, and will help more students pursue a college education…"

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](https://appropriations.house.gov/news/press-releases/appropriations-committee-releases-fiscal-year-2022-labor-health-and-human).

Republicans Introduce Legislation to Force Resumption of Student Loan Payments

On March 11, 2022, Congressmen Jim Banks (R-IN) and Bob Good (R-VA) introduced H.R. 7058, the *Federal Student Loan Integrity Act*, which would prohibit the Department of Education from extending the pause on federal student loan payments, interest, and collections when the pause expires on May 1, 2022. The bill would permanently reduce the power of the Department to provide relief to student borrowers during national emergencies under the *HEROES Act of 2003.*

The legislation has virtually no chance of passing in the Democratic-controlled House. However, it underscores Republicans' desire to move on from the pandemic and to reduce the executive authority being utilized as it related to coronavirus.

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.

Biden Administration Extends Federal Student Loan Payment and Collections Pause

On April 6, 2022, the Biden Administration announced that it would extend the pause on federal student loan payments, interest, and collections through August 31, 2022. The current pause expires on May 1, 2022. President Biden said that the additional four months "will assist borrowers in achieving greater financial security and support the Department of Education's efforts to continue improving student loan programs."

In conjunction with the White House's announcement, the Department of Education announced that it will allow defaulted borrowers with federally-held student loans to receive a "fresh start" on repayment, which would eliminate the impact of delinquency and default so that borrowers can enter repayment in good standing. No further details were provided on the "fresh start" plan.

As expected, Congressional Democrats and Republicans reacted differently to the announcements. House Education and Labor Committee Chairman Bobby Scott (D-VA) said: "Across the country, borrowers are continuing to face the economic fallout of COVID-19. By extending the pause on student loan repayments, collections, and interest accrual, the Biden-Harris Administration has demonstrated that it remains committed to helping borrowers get back on their feet." Ranking Member of the House Education and Labor Committee Virginia Foxx (R-NC) released a statement that says that such action sends the wrong message to borrowers. "President Biden is ruling by executive fiat. Clearly, he will do whatever progressives want when they want it. Respect for hardworking taxpayers and responsible borrowers be damned."

A copy of the press release from the Department of Education is found at:
https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-august-31.

A copy of the press release from Chairman Scott is found at: https://bobbyscott.house.gov/media-center/press-releases/scott-applauds-biden-harris-administration-for-extending-student-loan.

A copy of the press release from Ranking Member Foxx is found at:
https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=408201.

FSA Announces Virtual Financial Aid Training Conference for November 2022

On March 30, 2022, Federal Student Aid (FSA) announced that it will hold its annual Student Aid Training Conference for Financial Aid Professionals virtually on November 29, 2022 – December 1, 2022. According to the announcement, there are many factors that support a virtual event, with the most important reason being the virtual event is accessible to the widest audience possible.

A copy of the announcement is found at: https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-30/2022-federal-student-aid-training-conference-coming-you-virtually-nov-29-dec-1-2022.

FSA Releases Quarterly Reports on Federal Student Aid

On March 30, 2022, Federal Student Aid (FSA) released its quarterly portfolio reports on the federal student loan program and application processing to the FSA Data Center. Some of the current data shows:

- As of December 31, 2021, the outstanding federal student loan portfolio is $1.61 trillion, representing 43.4 million unduplicated student loan recipients.

- As a result of the pandemic flexibilities for student loans, the number of recipients in repayment status has fallen sharply over the last 21 months. Fewer than 500,000 Direct Loan recipients were in an active repayment status as of December 31, 2021, compared to 18.1 million recipients in March 2020, just a few days after the CARES Act was passed.

- Despite the repayment pause for most borrowers, enrollment in income-driven repayment (IDR) plans has slightly increased during the pandemic. As of December 31, 2021, almost 8.4 million Direct Loan recipients were enrolled in IDR plans, up about 2 percent from December 31, 2020.

- Free Application for Federal Student Aid (FAFSA) applications decreased 1 percent for the 2020-2021 award year, whereas disbursements for loans and grants were down about 7 percent compared to the 2019-2020 award year. Applications for the 2021-2022 award year so far are down about 2 percent compared to this time last year.

A copy of the announcement is found at: https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-30/federal-student-aid-posts-quarterly-portfolio-reports-fsa-data-center.

ED Announces New Requirements for Entities or Organizations that have at Least a 50 percent Ownership Interest in a Non-Public College

On March 23, 2022, the Department of Education announced new requirements to hold entities or organizations that have at least a 50 percent ownership interest in a non-public institution accountable for taxpayer losses. In the Department's announcement, it stated that it was taking steps to ensure that companies that own institutions are held responsible for funds owed to the federal government. Under Secretary of Education James Kvaal said: "If a company owns, controls, or profits from a college, it should also be on the hook if the institution fails students." He went on to say: "Today's steps will ensure taxpayers aren't held liable for colleges that fail students or close their doors, especially without the opportunity for students to finish their courses of study." The press release explained that under the new policy, "any organization or entity with at least a 50 percent interest in a non-public college that meets certain other circumstances will generally join that institution's leadership in signing the school's Program Participation Agreement (PPA)."

On March 23, 2022, Federal Student Aid (FSA) issued an electronic announcement outlining the general circumstances in which entity owners of eligible institutions will be required to sign the PPA. Currently, the PPA must be signed by the official at the institution who has the authority to sign on behalf of the institution. To protect taxpayers in the event of a school closure, approved borrower defense claims, or when other liabilities are owed to the Department of Education and to provide more accountability consistent with 34 C.F.R. § 668.14, the Department may require additional signatures on an institution's PPA when an institution seeks initial certification, recertification, or when it undergoes a change of ownership.

The Department provided the following examples of conditions that demonstrate a rebuttable presumption that the Department will require an additional signature(s):

- If the institution has a composite score below 1.5;
- If the institution is on provisional certification;
- If the institution is on HCM2;
- If the institution has a change of ownership;
- If the Department has approved a significant number of borrower defense or false certification claims;
- If the Department has recently identified systemic or significant audit or program review findings; or
- If the institution or any of its principals or interest holders has consented to or has a judgment of fraud or misrepresentation entered against it by a federal or state court related to the institution's administration of the Title IV programs.

There is nothing included in the electronic announcement that suggests that the Department intends to use the new PPA signature policy as a method to impose a personal liability on owners. The

Department will use a rebuttable presumption that the following entities have a direct or indirect impact on financial responsibility:

- Sole members of, or hold a 100 percent direct or indirect equity or voting interest in the institution;
- Hold less than a 100 percent interest but otherwise exercise, either directly or indirectly, substantial control over the institution; or
- Provide the audited financial statements or other financial submissions on behalf of the institution.

A copy of the Department's press release is found at: https://www.ed.gov/news/press-releases/us-department-education-announces-steps-hold-institutions-accountable-taxpayer-losses-0.

A copy of the FSA electronic announcement is found at: https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-23/updated-program-participation-agreement-signature-requirements-entities-exercising-substantial-control-over-non-public-institutions-higher-education#.

## President Biden Nominates Assistant Secretary for Postsecondary Education

On March 18, 2022, President Joe Biden nominated Dr. Nasser Paydar as Assistant Secretary for Postsecondary Education. Secretary of Education Miguel Cardona issued a statement supporting the nomination. Secretary Cardona said: "I could not be more pleased with President Biden's decision to nominate Dr. Nasser Paydar as Assistant Secretary for Postsecondary Education. Throughout the 35 years of experience in higher education, Dr. Paydar has championed equitable and affordable access to postsecondary education."

A copy of the press release, which includes Dr. Paydar's biography, is found at:
https://www.ed.gov/news/press-releases/statement-us-secretary-education-miguel-cardona-president-bidens-nomination-nasser-paydar.

## ED Concludes Negotiated Rulemaking Committee on Institutional and Programmatic Eligibility

On March 18, 2022, the Department of Education concluded the final round of the negotiated rulemaking committee meetings on Institutional and Programmatic Eligibility. The committee looked 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. The committee reached consensus on two of the seven topics: the 90/10 rule and the ability to benefit rule.

The 90/10 rule was one of the most contentious proposals. The rule was changed by Congress as part of the *American Rescue Plan Act of 2021* to close the 90/10 loophole, which limited the federal funds to be included in the 90 percent. Congress changed the 90/10 provision to require the inclusion of all federal educational assistance funds in the 90 percent.

Under current law, students can establish eligibility to enroll in eligible programs as an ability to benefit (ATB) student by enrolling in a Department of Education approved state process that enables a state to select institutions offering a career pathway program; by passing a Department approved ATB test; or by completing at least six credit hours toward a degree or certificate offered by a postsecondary institution. The ability to benefit the proposal reached consensus when the Department agreed to include in the state process alternative the requirement that an institution would need to have a success rate that is within 85 percent, instead of 95 percent, which was initially proposed by ED, of the success rate of students with high school diplomas who are enrolled in the same programs as students who are participating in the state process alternative.

On the topics where a consensus was reached, the Department must use the language agreed to for its regulatory text in a Notice of Proposed Rulemaking (NPRM). On the topics where consensus was not achieved, the Department can develop its regulatory text as it would like and is not bound by its proposals or concessions made during the negotiations of the proposed draft regulations. When the NPRM is published, the public will have 30-60 days to submit comments. Final regulations will be published in the *Federal Register*. If the final regulations are published by November 1, 2022, the regulations will go into effect on July 1, 2023, although ED could permit some or all of the final regulations to have an earlier effective date.

Information about all of the sessions, including the white papers and the proposed rules, can be found at: https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.

## ED Releases New Updates to the College Scorecard

According to the March 18, 2022 "ED Review", the Department of Education released new updates to the College Scorecard. It now provides prospective students with three-year earnings information per field of student.

A link to the current College Scorecard is found at:
https://collegescorecard.ed.gov/?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

ED Warns Colleges Against Misleading Veterans

On March 16, 2022, Federal Student Aid (FSA) issued an electronic announcement warning colleges and universities against the use of deceptive recruitment and enrollment practices. The Department may engage in enforcement action if it determines that an eligible institution has engaged in substantial misrepresentation. Enforcement measures may include limitation or termination of an institution's participation in the Title IV programs.

The electronic announcement described the following allegations regarding some institutions:

- Military-connected students were led to believe that their GI Bill benefits would cover the entire cost of their education only to find out that they would have to take out student loans to complete their courses and graduate.

- Military-connected students were pressured to start classes before their GI Bill benefits were determined or verified, often applying for Title IV grants and loans without a clear understanding of the transaction or that they would end up with a loan balance.

- Military-connected students were encouraged to enroll in programs that they were incorrectly told were approved for GI Bill benefits and encouraged to take out loans to cover their education costs until their GI Bill benefits were processed.

- Military-connected students were promised a "military discount" on their tuition, which did not exist or was not applied.

- Some Military-connected students reported receiving bills for loans they never applied for or did not realize they applied for.

A copy of the electronic announcement is found at:
https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-16/fsa-enforcement-bulletin-march-2022-substantial-misrepresentations-when-recruiting-servicemembers-and-veterans.

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