# WASHINGTON UPDATE

## AUGUST 2022

### Senate Confirms Dr. Nasser Paydar as Assistant Secretary of Postsecondary Education

On August 4, 2022, the Senate confirmed Dr. Nasser Paydar as Assistant Secretary of Postsecondary Education at the Department of Education. Secretary of Education Miguel Cardona said in a press release: "It is with great excitement that I congratulate Dr. Nasser Paydar on his confirmation as Assistant Secretary for Postsecondary Education." Secretary Cardona went on to say: "Dr. Paydar brings to the U.S. Department of Education more than three-and-a-half decades of experience as a university leader and educator, during which time he has demonstrated an unwavering commitment to creating accessible pathways to college and careers for students of all ages, abilities, and backgrounds."

A copy of the press release is found at: https://www.ed.gov/news/press-releases/statement-secretary-miguel-cardona-confirmation-nasser-paydar-assistant-secretary-postsecondary-education.

### Senate Passes Bill Clarifying VA's 85-15 Rule's "35 Percent Exemption"

On August 4, 2022, the Senate passed by voice vote S. 4458, the *Ensuring the Best Schools for Veterans Act of 2022*, sponsored by Jon Tester (D-MT) and Jerry Moran (R-KS), which addresses the "35 percent exemption" policy stemming from the Department of Veterans Affairs' (VA) 85-15 rule. The VA's 85-15 rule prohibits students from using VA benefits to pay for programs in which more than 85 percent of students enrolled receive GI benefits or other VA aid. The law seeks to ensure that at least 15 percent of the students in any education program are not using GI bill benefits to pay for the program.

Under the current law, the 85-15 rule exempts institutions with a total population of veterans of less than 35 percent from having to compute or submit 85/15 ratios on a program-by-program basis. However, the VA recently released guidance requiring colleges to submit proof of their exemption and submit calculations for each of their programs as part of their application for the 35 percent exemption. The American Council on Education (ACE) wrote to the House and Senate Veterans' Affairs Committees on June 23, 2022, stating that "'[a]s a result of this change, and changes to VA's guidance about when a student is considered "supported," numerous programs at colleges and universities across the country will be prohibited from enrolling veterans next term. We note that in many cases, programs have lost eligibility **even though there was not a single veteran enrolled in the program** – a result that turns the purported rational of the 85-15 rule on its head." ACE concluded that S. 4458 would make the 35 percent exemption explicit in the law and clarify the statute's requirements.

The bill was presented to the House on August 9, 2022, for its consideration. The companion bill introduced in the House is H.R. 8198.

A copy of the Tester and Moran press release is found at: https://www.veterans.senate.gov/2022/8/tester-moran-s-bill-to-cut-administrative-red-tape-at-schools-nationwide-unanimously-clears-senate.

A copy of the ACE letter is found at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjh44uasbz5AhW9FmIAHeKYDGYQFnoECAcQAQ&url=https%3A%2F%2Fwww.acenet.edu%2FDocuments%2FLetter-VA-Committees-85-15-Bill-062322.pdf&usg=AOvVaw0Nz6xfeQ3lL6VRERmOKv7R.

House Education and Labor Committee Republicans Introduce the *Responsible Education Assistance Through Loan (REAL) Reform Act*

On August 3, 2022, led by Ranking Member Virginia Foxx (R-NC), the House Education and Labor Committee Republicans introduced the *Responsible Education Assistance Through Loan (REAL) Reform Act,* which would streamline and improve the federal student loan program to protect borrowers and taxpayers. Some of the provisions include the following:

- Prohibits the Secretary of Education from issuing any new regulations or executive actions related to the federal student loan program that would increase costs to the federal government.
- Allows borrowers to rehabilitate their federal student loans twice, rather than just once.
- Eliminates the Grad PLUS program for new borrowers.
- Imposes limits on graduate borrowing for students enrolling on or after July 1, 2023. Graduate students would be permitted to borrow $25,000 annually and have an aggregate limit of $100,000 for their program.
- Allows financial aid administrators to further limit undergraduate and graduate borrowing for certain categories of borrowers, including those attending less than full-time, in order to prevent borrowers from incurring additional unnecessary debt.
- Limits repayment options to one standard, 10-year repayment plan and one income-based repayment (IBR) plan. Under the IBR plan, existing and new borrowers would be

required to pay 15 percent of their discretionary income with a minimum monthly payment of $25.

- Under the IBR plan, borrowers would be required to repay the principal and interest that they would have paid under a standard 10-year plan, as calculated when they enter repayment. The "excessive interest cap benefit" would protect against negative amortization.

- The bill would prohibit the Secretary from creating any new repayment plans and from modifying existing repayment plans in a manner that increases costs to the federal government.

- The bill would make Federal Family Education Loan borrowers eligible for the new IBR plan and would require the Secretary to assume the repayment obligations of those borrowers that qualify for the excessive interest cap benefit.

- Eliminates the Public Service Loan Forgiveness (PSLF) program for new borrowers.

- Eliminates interest capitalization.

- Expands eligibility for Pell Grants to cover short-term programs. The bill would allow students enrolled in short-term programs to qualify for Workforce Pell Grants. Eligibility would be limited to students enrolled in programs between 150 to 600 clock hours offered over a period of eight to 15 weeks, which provide education aligned with in-demand industry sectors or occupations.

Ranking Member Foxx said in a press release: "The Biden Administration has been engaging in mass student loan forgiveness behind Americans' backs without the authorization of Congress. In total, to date, the President has already forgiven, waived, or cancelled at least $217 billion in student loans through the unlawful abuse of his executive pen. Instead of placing the burden of this broken student loan system on the shoulders of American taxpayers, we are introducing this bill to fix the system."

A copy of the press release, which includes the text of the bill, a bill summary, and a fact sheet, is found at:
https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=408476.

<u>Senate Appropriations Committee Releases its Version of the *FY 2023 Labor, HHS, Education, and Related Agencies Appropriations Act*</u>

On July 28, 2022, the Senate Appropriations Committee released its version of the *FY 2023 Labor, Health and Human Services, Education, and Related Agencies Appropriations Act,* which is strongly opposed by the Republicans who believe that the funding levels are unrealistic. Unlike the House version, which proposed changing the 90/10 rule to the 85/15 rule, the Senate makes no changes to the 90/10 rule. Some of the bill's provisions for education include:

- Increasing the maximum annual Pell Grant award by $500 for a total maximum annual award of $7,395 for the 2023-2024 award year.

- Increasing by $580 million funding to $2.6 billion for Student Aid Administration to modernize and simplify student loan servicing.

- Establishing a new general provision making DACA students and students with temporary protected status or grant of deferred enforced departure eligible for Pell Grants and federal student loans.

The explanatory language included in the Committee Report includes the following recommendations:

- Accountability for Misconduct and Abrupt School Closures: The Committee remains 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 strongly supports efforts to forgive loans for students who attended these institutions and directs the Department to develop procedures for holding executives, owners, and board members liable for such misconduct and closures. This would help alleviate negative consequences for students and taxpayers and to help deter predatory or illegal behavior.

- Office of Enforcement: The Committee strongly supports efforts to expand the capabilities of the Office of Enforcement 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 information in FY 2024 on activities undertaken and planned to be taken to preemptively address fraud and other related issues.

- Return of Title IV Funds: 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.

- State-Based and Non-Profit Servicing Organizations: The Committee continues to note that many State-based and non-profit servicing organizations have demonstrated specialized experience in helping struggling borrowers, and continues to encourage the Department to ensure such organizations have a role in any new Federal student loan servicing requirement.

- Student Loan Servicing: The Committee continues to recommend many of the requirements from the *Consolidated Appropriations Act, 2022*, with modifications focused on ensuring USDE provides high-quality service to all students and borrowers, holds student loan servicers and contractors accountable, and prioritizes those with the greatest needs.

House and Senate Democrats Send Letter to President Biden and Secretary of Education Cardona to Extend Current Federal Student Loan Payment Pause

On July 28, 2022, more than 100 House and Senate Democrats sent a letter to President Biden and Secretary of Education Miguel Cardona urging them to extent the current pause on federal student loan repayments, interest, and collections that is scheduled to expire on August 31, 2022. In the letter, led by Senate Majority Leader Chuck Schumer (D-NY), the lawmakers request an extension of the pause because of the numerous economic issues facing borrowers as well as administrative actions in process by the Department of Education.

A copy of the press release, which includes the text of the letter, is found at:
https://www.menendez.senate.gov/newsroom/press/menendez-booker-warren-schumer-underwood-cardenas-pressley-lead-100-colleagues-in-urging-biden-administration-to-extend-student-loan-payment-pause.

Representative Foxx Sends Open Letter to the American Public Regarding the Biden Administration's Recent Actions on Federal Student Loan Policy

On July 22, 2022, House Education and Labor Committee Ranking Member Virginia Foxx (R-NC) sent a letter to the American public discussing some of the Biden Administration's recent actions on federal student loan policy. In the letter, Representative Foxx stated that the President has forgiven millions of dollars in federal student loans, ignored the will of Congress, and overlooked the best interest of taxpayers. She identified a number of actions taken to overhaul the student loan program that overstepped the President's authority, including the extension of the repayment pause costing taxpayers about $4.3 billion per month; temporary waivers for repayment programs, like the temporary waivers available in the Public Service Loan Forgiveness (PSLF) program; and new regulations for student loans, such as creating a new income-driven repayment plan.

Representative Foxx concluded by stating: "Reform is not accomplished when the executive branch enacts sweeping policies that will upend our college financing system with the 'stroke of a pen.'"

A copy of the letter is found at: https://ncher.org/?mailpoet_router&endpoint=track&action=click&data=WyIxMTciLCJ3NHpybm5mYXdzZzB3d29zdzgwNGNna2djbzBnOHdrcyIsIjE3OCIsIjcwM2E0OTJkOWRjMyIsZmFsc2Vd.

House Ways and Means Committee Republicans Hold Virtual Meeting to Discuss Federal Student Loan Forgiveness

On July 20, 2022, House Ways and Means Committee Republicans hosted a virtual meeting to discuss federal student loan forgiveness. Dr. Beth Akers, Senior Fellow at the American Enterprise Institute, was the featured speaker. Ranking Member Kevin Brady (R-TX) said that the Biden Administration's plan to provide $10,000 in federal student loan forgiveness ignores the very problems that most Americans are facing, which is high inflation, and the plan is a giveaway to highly educated college graduates that will make rising costs worse rather than addressing the high cost of attending colleges and universities. He said that the Administration needs to sit down with Republicans to work together on policies that will focus on bringing down inflation.

Dr. Akers said there is no economic justification for federal student loan forgiveness. She said it is strictly politically motivated. She described four serious problems with the student loan forgiveness plan. First, it will lead to further inflation within higher education. Second, it sends a message to future borrowers that they need not repay their loans. Third, future borrowers will pay more and borrow more for postsecondary education, knowing they will be bailed out. Fourth, loan forgiveness does not help low-income students and their families. Instead, student loan forgiveness will provide large benefits to borrowers with the largest student loan balances who happen to be high earners.

Dr. Akers discussed instituting underwriting standards for federal student loans and utilizing income-driven repayment plans as an alternative to student loan forgiveness. She also highlighted the moral hazard of allowing borrowers to "walk-away" from their financial obligations. Finally, Dr. Akers concluded that middle-income workers are going to end up paying the student loans for wealthy Americans.

Senators Reintroduce Bipartisan Bill to Add Protections to Income Share Agreements

On July 19, 2022, Senators Todd Young (R-IN), Mark Warner (D-VA), Marco Rubio (R-FL), and Chris Coons (D-DE) reintroduced S. 4551, the *ISA Protection Act,* which supports and applies consumer protections to Income Share Agreements (ISA) that provide alternative financing for students planning to enroll in a postsecondary education. The proposed bill would prohibit ISA providers from entering into agreements with students that require payments higher than 20 percent of their income, exempt individuals from making ISA payments when their income falls below a threshold, set a maximum number of payments, and require detailed disclosures to students considering entering into an ISA.

Senator Young said: "With the appropriate safeguards, ISAs can be an innovative, debt-free financing option for students of all backgrounds." Senator Coons said: "ISAs are also proving to be uniquely responsive to the needs of students who are ineligible for existing federal student aid programs."

A copy of the press release, which includes the text of the bill, is found at: https://www.young.senate.gov/newsroom/press-releases/07/19/2022/young-colleagues-reintroduce-bill-to-strengthen-innovative-higher-ed-financing-tool-for-students.

NPRM Released Proposing Regulatory Revisions to a Number of Topics, Including the 90/10 rule, Changes of Ownership, and the Pell Grants for Prisoner Education Program

On July 28, 2022, the Notice of Proposed Rulemaking (NPRM), resulting from the Committee II – Institutional & Programmatic Eligibility, 2021-2022 Federal Negotiated Rulemaking deliberations, was posted. The NPRM proposes modifying the Pell Grants for Prison Education Programs; expanding restrictions on for-profit colleges through the 90/10 rule; and formulating new rules pertaining to changes in ownership of institutions. There is a 30-day comment period and comments are due on or before August 26, 2022.

The Department of Education opted to separate out the income-driven repayment plan draft regulation, with the objective of finalizing the three proposals by November 1, 2022, which would allow them to be in effect on July 1, 2023. The income-driven repayment plan allows borrowers to pay back their loans over a longer period of time (usually 20 or 25 years) based upon their earnings. After the lengthened payment period, the balance on the loans is discharged. However, to date, only 157 loans have been approved for forgiveness. The income-driven repayment plan has been plagued with administrative problems, with borrowers being pushed into forbearance by loan servicers, as well as the Department's failure to communicate the complexities of the plan to borrowers. It is not clear when the income-driven repayment plan regulation will be released.

The Department of Education released a press release announcing the release of the proposed regulations that the Department said would implement critical changes to the regulations that better protect veterans and servicemembers from being subject to aggressive practices "by requiring private for-profit institutions to obtain at least 10 percent of their revenue from non-federal sources." The press release went on to state that the proposed regulations represent the latest step in the Biden Administration's "continued commitment to ensure that institutions are held accountable and that all students have access to a valuable postsecondary education."

A copy of the NPRM is found at: https://www.federalregister.gov/documents/2022/07/28/2022-15890/institutional-eligibility-student-assistance-general-provisions-and-federal-pell-grant-program.

A copy of the press release, which includes an unofficial copy of the proposed regulations, is found at: https://www.ed.gov/news/press-releases/education-department-releases-proposed-regulations-protect-veterans-and-service-members-increase-college-oversight-and-increase-college-access-incarcerated-individuals.

A copy of a fact sheet with more information is found at:
https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/factsheetproposedregs.pdf.

ED Issues Guidance to Prevent Institutions from Switching Accrediting Agencies to Avoid Accountability Measures

Recent changes to the accreditation landscape, such as the expansion of former regional accreditors to now accredit institutions outside their geographic boundaries and a new law in Florida that mandates public institutions to switch accrediting agencies before their next accreditation cycle, have produced much confusion. The Department of Education says the new guidance is intended to clarify the process for institutions seeking to change accrediting agencies.

As a result, on July 19, 2022, the Department of Education issued new guidance that it said will prevent institutions from evading accountability measures by switching accrediting agencies. The guidance describes the process that institutions must follow to change accrediting agencies, including the requirement to obtain Department of Education approval prior to applying to a new accrediting agency. A second announcement made on July 19, 2022, provided guidance that lists the factors the Department may consider in evaluating institutions that would like to change accrediting agencies, including assessing whether the change is motivated by a desire to improve institutional quality or to evade oversight. On July 19, 2022, the Department also sent a letter to all institutional accrediting agencies describing how they can demonstrate that they meet the statutory and regulatory requirements to have voluntary members of institutions.

In a blog post of July 19, 2022, Antoinette Flores, Senior Advisor in the Office of Postsecondary Education, wrote: "The goal is to prevent a race to the bottom in quality standards among accrediting agencies and ensure that institutions cannot switch to an accrediting agency with less rigorous standards simply to evade accountability from an accrediting agency that investigates practices or takes corrective action against an institution." Ms. Flores stated that these clarifications are intended to ensure that institutions are held to high standards, and that an institution subject to oversight by its current accrediting agency cannot simply seek to evade accountability by jumping to a different accrediting agency. She concluded that the changes also help maintain the integrity of the Federal triad and preserve the accrediting agencies' role in oversight as intended in the HEA.

A copy of the guidance for institutions that would like to change accrediting agencies is found at: https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-07-19/guidance-institutions-seeking-change-or-add-accrediting-agencies.

A copy of the guidance that lists the factors used by ED to determine whether it will approve a change of accrediting agencies is found at: https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-07-19/guidance-institutions-seeking-change-or-add-accrediting-agencies.

A copy of the letter to institutional accrediting agencies describing how they can demonstrate that they meet the HEA requirements is found at: https://www2.ed.gov/admins/finaid/accred/letter-to-institutional-accreditors.pdf.

A copy of the blog post is found at: https://blog.ed.gov/2022/07/postsecondary-accreditation-cannot-become-a-race-to-the-bottom/.

## Judge Gives Preliminary Approval to Proposed Settlement in *Sweet v. Cardona*

On June 22, 2022, the Department of Education released an announcement that it had reached a settlement in *Sweet v. Cardona,* a class action lawsuit that challenged the Department's handling of borrower defense to repayment claims. Under the settlement, the Department agreed to discharge over $6 billion in federal student loan debt for around 200,000 borrowers involved in the lawsuit who claimed that they had been defrauded by institutions of higher education. The settlement still needs to be approved by a judge in order for affected students to receive debt cancellation.

A copy of the press release is found at: https://www.ed.gov/news/press-releases/statement-us-secretary-education-miguel-cardona-sweet-settlement.

On August 4, 2022, U.S. District Court for the Northern District of California Judge William Alsup held a hearing to discuss the settlement agreement reached in *Sweet v. Cardona.* In preparation for the hearing, the Department of Justice and plaintiffs filed a joint status report in response to questions posed by Judge Alsup as to whether the proposed settlement made clear that the Biden Administration was approving borrower defense claims. The joint status report stated that settlement does not constitute an approved or successful borrower defense claim, and the settlement agreement proposes that borrowers will instead receive "Full Settlement Relief,…in compromise of their borrower defense claims."

At the hearing, the Court addressed motions to intervene filed by both for-profit and nonprofit higher education institutions. The schools sought to intervene after the parties announced a proposed settlement that would automatically forgive the loans of students who attended over 150 schools without adjudicating their borrower defense applications under the Department of Education's own regulations. As reported by Career Education Colleges and Universities (CECU), the Judge did not definitely rule on the pending motions to intervene, but announced toward the end of the hearing that he would grant preliminary approval for the proposed settlement agreement. He also set a 21-day deadline for any additional parties that might want to intervene. A hearing on the final approval of the proposed settlement agreement is currently scheduled for November 3, 2022.

Please find the link to the joint status report.

## GAO Releases Report that ED is Slow to Identify When a College Closes

In July 2022, the Government Accountability Office (GAO) released a report titled, "College Closures: Education Should Improve Outreach to Borrowers About Loan Discharges," which found that the Department of Education was slow to identify when a college closes and does not always provide students with information they will need to obtain a closed-school discharge of their federal loans.

Because of the Department of Education delays in identifying college closures, it can take several months after a college closure for federal student loan servicers to notify borrowers of their potential eligibility for a discharge. For example, the Department did not identify a third of school closures from 2010-2020 until 2 months or more after the colleges actually closed. The GAO concluded that borrowers who attended these colleges were not informed by their loan servicers about the discharge option until months after their college closed.

The GAO also found that the template letters used by five loan servicers sent to inform borrowers of their potential eligibility for a discharge included information that was incomplete and potentially confusing. The GAO also concluded that after loan servicers notify borrowers about their potential eligibility for a discharge, limited additional outreach is provided to them.

The GAO recommended that ED implement strategies to identify college closures in a timely manner, develop guidance for the information loan servicers include in the closed school discharge notifications, and ensure additional outreach is provided to borrowers who are potentially eligible for a discharge.

A copy of the report is found at: https://www.gao.gov/assets/gao-22-104403.pdf.

GAO Releases Finding ED Underestimated Cost of Federal Direct Loan Program

On July 29, 2022, the Government Accountability Office (GAO) released a report titled, "Education has Increased Federal Costs of Direct Loans by Billions due to Programmatic and Other Changes," which analyzed federal student loan data between 1994 and 2021. The analysis found that the Department of Education had underestimated the costs for the Federal Direct Loan program by $311 billion. The report was requested by Senators Richard Burr (R-NC) and Greg Murphy (R-NC). The report found that initially the Department had estimated that the federal Direct Loan program would generate $114 billion in income over 25 years, but recent data indicates that these programs have cost the federal government $197 billion.

Every year, the Department estimates the lifetime costs of the federal student loan program for inclusion in the President's budget, and the estimate includes costs for new loans and changes in economic factors and actual loan performance. According to the GAO, the largest estimated cost increases, about $102 billion in total, came from emergency relief under the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* and administrative actions, such as the pause on federal student loan repayment, interest, and involuntary collections for loans in default. The largest increase, about $189 billion, is due to re-estimates based on actual data on how loans performed.

The House and Senate Committee Republicans said: "For decades, the Department of Education has significantly underestimated the true cost of the Direct Loan program." Chairman of the Education and Labor Committee Bobby Scott (D-VA) said: "Every American deserves access to an affordable, high-quality degree…The solution to this problem is not to eliminate the student loan program, but – rather – we should work together to address the rising cost of college, restore the value of the Pell Grant, and make meaningful reforms to the student loan program."

A copy of the GAO Report is found at:
https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjto9Dlm6n5AhW8GVkFHapdAoAQFnoECAwQAw&url=https%3A%2F%2Fwww.gao.gov%2Fassets%2Fgao-22-105365.pdf&usg=AOvVaw3I1uBB0Z99lQlvDqCWrZyB.

A copy of the press release from the House Republicans is found at: https://republicans-budget.house.gov/press-release/gao-report-reveals-federal-student-loan-program-costs-taxpayers-311-billion-as-biden-prepares-to-spend-hundreds-of-billions-in-loan-cancellations-for-the-wealthy/.

A copy of the press release from Bobby Scott is found at: https://edlabor.house.gov/media/press-releases/chairman-scott-statement-on-cost-of-student-loan-program.

CFPB Publishes Blog on the Limited Waiver for Public Service Loan Forgiveness and Urges Loan Servicers to Reach Out to Military Borrowers

On July 25, 2022, the Consumer Financial Protection Bureau (CFPB) published a blog titled, "Time is running out for student loan servicers to help servicemembers with student loans get debt relief," which urged loan servicers to ensure that servicemembers have access to information on the limited waiver for the Public Service Loan Forgiveness (PSLF) program in order for borrowers to take advantage of the program. The CFPB cited a report from the U.S. Government Accountability Office (GAO) that said that 176,906 active duty servicemembers held federal student loans that could be eligible for the PSLF program, but only 124 servicemembers had received forgiveness by 2020. The CFPB went on to point out that servicemembers with Perkins Loans or Federal Family Education Loans must consolidate their loans into the Direct Loan Program before submitting their PSLF application in order to benefit, but the loans must be consolidated by October 31, 2022. The blog encourages student loan servicers to reach out to military borrowers to share this information with them and encourage them to consolidate their student loans.

A copy of the blog is found at: https://www.consumerfinance.gov/about-us/blog/time-is-running-out-for-student-loan-servicers-to-help-servicemembers-with-student-loans-get-debt-relief/.

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