

WASHINGTON UPDATE

DECEMBER 2022

Congressman Walberg Announces Campaign to Challenge Congresswoman Foxx to Serve as the Next Chair of the House Education and Labor Committee

On December 7, 2022, Congressman Tim Walberg (R-MI) announced his intention to challenge Congresswoman Virginia Foxx (R-NC) to serve as the next Chair of the House Education and Labor Committee. The challenge comes as Congresswoman Foxx received a waiver from the House Republican Steering Committee to serve as the Chairman on the Committee for another term, despite the six-year limit imposed by House Republicans. The Steering Committee is expected to make its chair and committee decisions in the coming weeks.

House and Senate Democrats Urge ED to Better Protect Students Against Abusive College Recruiting Practices

On December 5, 2022, House and Senate Democrats, including Senators Elizabeth Warren (D-MA) and Patty Murray (D-WA), wrote a letter to the Department of Education urging it to increase its oversight of online program managers (OPMs), which are third-party companies that assist colleges operate and recruit students for online academic programs, to ensure they are not engaging in abusive recruiting practices. The members wrote: “The GAO report confirmed the current higher education accountability system, the triad of the Department, state authorizers, and private nonprofit accreditors, lacks adequate oversight of OPM arrangements, especially the significant amount of federal funding flowing to OPMs.” The letter called for a review of the Department’s “bundled services” guidance that allows colleges and universities to pay OPMs based on the amount of revenue they help generate. The lawmakers argued that tuition-share agreements may incentivize OPMs to steer students to more expensive programs. They asked the Department to detail within two weeks how it is reviewing colleges’ contracts with OPMs to determine whether colleges are complying with the incentive compensation ban and the bundled services exception.

On May 5, 2022, a GAO report titled, “Higher Education: Education Needs to Strengthen Its Approach to Monitoring Colleges' Arrangements with Online Program Managers,” was released. The GAO report found that the Department of Education does not have the information it needs about colleges’ arrangements with OPMs to conduct oversight.

A copy of the press release, which includes a text of the letter, is found at:

<https://www.justtherealnews.com/congress/education-leaders-urge-education-department-to-better-protect-students-against-abusive-college-recruiting-practices/>.

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A copy of the GAO report is found at: <https://www.gao.gov/products/gao-22-104463>.

Foxx and McClain React to GAO Report on Financial Aid Offers

On December 5, 2022, Ranking Member of the House Education and Labor Committee Virginia Foxx (R-NC) and Congresswoman Lisa McClain (R-MI) introduced the *College Cost Transparency and Student Protection Act*, which would allow students to make better informed decisions about their education. The legislation would direct the Secretary of Education to publish requirements for financial aid offers to be provided by institutions of higher education to enrolled and prospective students. The Congresswomen introduced this legislation in response to a new Government Accountability Office (GAO) report (see GAO article below), which found that almost two-thirds of colleges are not following best practice recommendations regarding financial aid offer letters.

The legislation would require standardized terms and definitions, content, and formatting, but does not go so far as to establish an aid offer template. In fact, the proposed legislation would prohibit the establishment of a template.

A copy of the press release, which includes the text of the bill, is found at: <https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=408710>.

Supreme Court Grants Certiorari and Refuses to Vacate Injunction on President's Student Loan Forgiveness Program

On December 2, 2022, the U.S. Supreme Court issued an order deferring the application to vacate the injunction issued by the U.S. Court of Appeals for the Eighth Circuit preventing the U.S. Department of Education from implementing the federal student loan forgiveness program. The U.S. Supreme Court agreed to review the legality of the Biden Administration's plan to forgive federal student loan debt and expects to hold oral arguments in February. The application was referred to Justice Brett Kavanaugh who referred it to the court for consideration. The order says that the application to vacate the injunction will be treated as a petition for a writ of certiorari, an alternative suggested by the U.S. Department of Justice (DOJ), and that the petition to hear the case submitted by DOJ and supported by the six states suing the Biden Administration is granted on the questions presented in the application.

A three-judge panel of the U.S. Court of Appeals for the Fifth Circuit issued an order denying a motion by DOJ to issue a stay of an order issued by U.S. District Court for the Northern District of Texas Judge Mark Pittman that ruled the U.S. Department of Education's federal student loan forgiveness program was an unconstitutional exercise of

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Congress' legislative power. In that order, filed on November 10, 2022, Judge Pittman ruled that the HEROES Act does not provide clear congressional authorization for the program.

On December 2, 2022, the Department of Justice requested that the Supreme Court either stay a decision by the U.S. Court of Appeals for the Fifth Circuit or consider the case on the merits along with the case from the U.S. Court of Appeals for the Eighth Circuit for which it granted certiorari. It is likely that the Supreme Court would hear both cases.

White House Extends Student Loan Repayment Pause

On November 22, 2022, the Department of Education announced an extension of the pause on student loan repayment, interest accrual, and collections. A press release said that the extension of the pause will “alleviate uncertainty for borrowers as the Biden-Harris Administration asks the Supreme Court to review the lower-court orders that are preventing the Department from providing debt relief for tens of millions of Americans.” The announcement said that payments will resume 60 days after the Department is permitted to implement the program or the litigation is resolved. If the program has not been implemented and the litigation has not been resolved by June 30, 2023, payments will resume 60 days after that date.

According to the press release, Secretary of Education Miguel Cardona said: “Callous efforts to block student debt relief in the courts have caused tremendous financial uncertainty for millions of borrowers who cannot set their family budgets or even plan for the holidays without a clear picture of their student debt obligations, and it’s just plain wrong.” He went on to say: “I want borrowers to know that the Biden-Harris Administration has their backs...”

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/biden-harris-administration-continues-fight-student-debt-relief-millions-borrowers-extends-student-loan-repayment-pause>.

The Department of Education began sending emails to applicants seeking student loan forgiveness to update them about the status of the program as it makes its way through the courts.

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Education and Labor Committee Republicans Describe Seven Reasons Not to Extend the Student Loan Repayment Pause

On November 21, 2022, the Republicans on the House Committee on Education and Labor released a press release identifying seven reasons not to extend the student loan repayment pause:

1. We are no longer in a national emergency.
2. It adds to inflation.
3. It costs taxpayers an arm and a leg.
4. It helps high income borrowers the most.
5. It does not solve the real problem – the rising cost of college.
6. It creates a constant state of confusion.
7. It encourages overborrowing.

A copy of the press release is found at:

<https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=408691>.

DOJ Issues New Guidance on Discharging Federal Student Loans in Bankruptcy

On November 17, 2022, the Department of Justice (DOJ) released guidance to its attorneys that will limit the circumstances in which the federal government argues against student and parent borrowers to have their federal student loans discharged in bankruptcy. The new policy weakens how the DOJ will interpret the “undue hardship” standard and creates a new process for borrowers to show that they are unable to repay their federal student loans. The DOJ said it would recommend that bankruptcy judges approve loan discharges in cases where a borrower has sought in good faith to repay their loans but “presently lacks an ability to repay the loan” and that situation is “likely to persist in the future.”

The policy change brought praise from Senator Elizabeth Warren (D-MA). “The Biden administration has taken an important step forward to reform a deeply broken bankruptcy system that has made it nearly impossible for Americans to deal with student debt, even when they’re in severe financial stress. For many years, the treatment of people who borrowed money to go to school has been much harsher than for those who ran up other kinds of debts.

A copy of Senator’s press release is found at:

<https://www.warren.senate.gov/newsroom/press-releases/warren-statement-on-biden-administrations-student-debt-bankruptcy-reforms>.

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A copy of the DOJ guidance on discharging federal student loans in bankruptcy is found at: <https://content.govdelivery.com/accounts/USED/bulletins/33882d7>.

Federal District Judge Approves Settlement that Will Automatically Cancel Billions of Dollars of Student Loans

On November 16, 2022, Federal District Judge for the Northern District of California William Alsup ruled in *Theresa Sweet v. Miguel Cardona* that the Biden Administration has the power to discharge about six billion dollars of federal student loans under the settlement, rejecting arguments by several colleges that the deal is illegal and unfair to them. Under the settlement agreement, about 200,000 borrowers, who had pending borrower defense claims against one of 151 colleges, mostly for-profit colleges, will receive full discharge of their federal student loans. Another group of about 64,000 borrowers will have their claims fast-tracked. A third group of about 179,000 borrowers, who filed new claims since June 22, 2022, will go through a new, streamlined process. If the Department does not decide their claim within the next three years, the borrowers will receive a full discharge of their student loans.

Judge Alsup rejected the argument from four listed institutions that the settlement agreement is unfair and harmful to the colleges. Judge Alsup said that the Department made clear that the settlement does not constitute adjudication of the borrowers' defense to repayment applications and the Department of Education will not pursue any adverse action against any colleges included in the settlement based on the granting of relief under the settlement agreement.

Secretary of Education Miguel Cardona said: "We are pleased with yesterday's borrower defense court decision approving the settlement which will provide billions of dollars of relief to over 200,000 borrowers. It will also resolve plaintiffs' claims in a fair and equitable manner. Going forward, the Department of Education will continue to strengthen oversight and enforcement."

A copy of Secretary Cardona's press release is found at: <https://www.ed.gov/news/press-releases/statement-us-secretary-education-miguel-cardona-federal-court-decision-sweet-settlement>.

DOJ Requests Supreme Court to Reverse Injunction on Implementing Federal Student Loan Forgiveness Plan [See article below]

On November 17, 2022, a number of news reports wrote that the Department of Justice (DOJ) filed a request with the Supreme Court asking it to allow the Department of

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Education to move forward with implementing its federal student loan forgiveness plan. The DOJ said in its court filing that it would seek to reverse an emergency injunction issued by the U.S. Court of Appeals for the Eighth Circuit preventing the Department of Education from forgiving federal student loans. Separately, the DOJ filed a motion requesting the U.S. Court of Appeals for the Fifth Circuit to put a hold on the ruling made by U.S. District Judge for the Northern District of Texas Mark Pittman that found the Department of Education's loan forgiveness plan unconstitutional. The DOJ asked for a ruling from the Appeals Court by December 1, 2022, to allow the government to seek relief from the Supreme Court if needed.

Department of Education Releases Additional Guidance for 90/10 Rule

On December 21, 2022, the Department of Education published a Notice in the *Federal Register* listing the federal education assistance funds, including Title IV funds, to be included in the federal revenue calculation of 90/10 for fiscal years beginning on or after January 1, 2023. The funds include the GI Bill and Military Tuition Assistance.

On December 20, 2002, the Department also published Questions and Answers regarding the new 90/10 regulations.

A copy of the notice listing the federal education assistance funds to be included as revenue is found at: [9010fedregnoticerev.pdf](#).

A copy of the Qs&As is found at:
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2009/90-10-q-and-a.html>.

FSA Releases Quarterly Portfolio Reports on its FSA Data Center

On December 7, 2022, Federal Student Aid (FSA) posted quarterly portfolio reports about the federal student loan program to FSA Data Center. Similar to the past, the reports reflect the flexibilities applying to borrower accounts as prescribed in the *CARES Act* and extended by executive actions. Key findings include the following: As of September 30, 2022, approximately 43.5 million unduplicated student loan recipients have about \$1.63 trillion in outstanding loans. This represents an increase of \$24 billion in the outstanding loan balance since last year, a slight increase in the number of student loan recipients.

As a result of special COVID-19 flexibilities for federal student loans, the number of recipients in repayment status has fallen sharply over the last two-and-a-half years. Almost 26 million Direct Loan recipients, with over \$1 trillion in outstanding loans, are in

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forbearance status, and over 99 percent of these balances are in the special *CARES Act* forbearance.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-12-07/federal-student-aid-posts-quarterly-portfolio-reports-fsa-data-center>.

FSA Releases 2023-27 Strategic Plan

On December 2, 2022, Federal Student Aid (FSA) posted its “Five-Year Strategic Plan for Fiscal Years 2023-27” on the Federal Student Aid Data Center. The strategic plan outlines FSA’s efforts in the next five years to enhance customer service, expand its compliance and oversight capabilities, invest in its internal operations, and bolster operational efficiencies. The plan was built with five strategic goals in mind:

- Goal 1: Improve Customer Service and Outcomes for Students and Borrowers.
- Goal 2: Advance Equity and Access to Student Financial Assistance.
- Goal 3: Strengthen Engagement and Accountability for Educational and Financial Institution.
- Goal 4: Increase Workforce and Workplace Capabilities.
- Goal 5: Boost Operational Efficiency.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-12-02/federal-student-aid-fy-2023-27-strategic-plan>.

A copy of the Strategic Plan is found at: <https://studentaid.gov/data-center/business-info/strategic-planning-and-reporting#strategic-plans>.

FSA Holds FSA Conference

On November 30 through December 3, 2022, the U.S. Department of Education Office of Federal Student Aid (FSA) held its 2022 Virtual Training Conference. The conference opened with remarks from FSA Chief Operating Officer Richard Cordray that focused on recent changes made to the Public Service Loan Forgiveness (PSLF) program, the Department’s federal student loan forgiveness plan, and the newly revealed FAFSA [Free Application for Federal Student Aid] for the 2023-2024 award year. In a separate keynote address, Secretary of Education Miguel Cardona touted the Department’s efforts to simplify federal student aid programs, help identify students who qualify for borrower defense to

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repayment from being defrauded by schools, and provide eligible borrowers with PSLF and Total and Permanent Disability (TPD). He also voiced support for the Biden Administration's actions to implement the federal student loan forgiveness plan, saying, "Make no mistake, we will continue to fight for relief in the courts and put working families first." The conference concluded with remarks from Under Secretary of Education James Kvaal who discussed the current numbers of borrowers who have defaulted on their federal student loans, recent changes to loan forgiveness programs, increases to the maximum Pell Grant award, and the Department's efforts to increase oversight and accountability.

ED Releases Recommendations Colleges Could Take to Use Unspent COVID-19 Funds

On November 14, 2022, the Department of Education released a Dear Colleague Letter (DCL) giving recommendations to colleges and universities on how they can use unspent COVID-19 funds. The DCL said: "The COVID-19 pandemic has taken a heavy toll on college and career preparation opportunities and the ability of students to successfully transition into postsecondary education. At the same time, the pandemic and the economic instability it brought have made postsecondary education and credential attainment crucial for economic security."

The DCL describes some examples, which include expanding access to dual enrollment opportunities so every person can earn college credit in high school. ED also recommends that states and local educational agencies could hire additional school counseling staff to lower the student-to-staff ratios in order to help advise students, and could also support college access and intensive college admission programs. Funds could also be used by high schools to give students the option to earn industry-sought credentials giving young people a leg up in the labor market when they graduate from high school. In addition, HEERF funds could be used to fund tuition-free credentials in high-demand fields.

A copy of the DCL is found at:

https://s3.amazonaws.com/PCRN/docs/ARP_Pathways_Dear_Colleague_11-14-22.508dh.pdf.

GAO Releases Report that Most Colleges are Not Following Best Practices for Providing Clear and Standard Information in the Financial Aid Offers

On December 5, 2022, the Government Accountability Office (GAO) released a report titled "Financial Aid Offers: Action Needed to Improve Information on College Costs and Student Aid," on its review of college financial aid offers. The GAO found that colleges are not following best practices for providing clear and standard information in their financial aid offers. It found that "nearly two-thirds of colleges follow half or fewer of the 10 best

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practices. No college in GAO’s sample followed all 10.” For instance, an estimated 91 percent of colleges do not include or understate the net price in their offers. This may leave students and their families guessing how much they will need to pay.

The GAO report said that colleges present cost and financial aid information differently, making it difficult for students and parents to compare offers and college affordability. The GAO concluded that federal law does not require colleges to include clear, standard information in all of their financial aid offers. The GAO is recommending that Congress should consider legislation that would require colleges to provide student financial aid offers that follow best practices in order for all students to receive the same information.

A copy of the GAO report is found at: <https://www.gao.gov/products/gao-23-104708>.

FTC Announces Six Month Extension of Some of the Regulatory Requirements that Financial Institutions were Required to Implement Under the Safeguard Rules

On November 15, 2022, the Federal Trade Commission (FTC) announced their intention to extend for six months some of the new regulatory requirements that financial institutions were required to implement under the Safeguards Rules by December 9, 2022. The announcement indicated that “[t]he deadline for complying with some of the updated requirements of the Safeguards Rule is now June 9, 2023.”

The FTC approved changes to the Safeguards Rule on December 9, 2021, that include more specific criteria for what safeguards financial institutions, which include educational institutions, must implement as part of their information security program. While many of the provisions went into effect 30 days after publication of the rule in the *Federal Register* or January 10, 2022, other provisions were set to go into effect on December 9, 2022. The provisions that are affected by the six-month extension include:

- Designating a qualified individual to oversee their information security program;
- Developing a written risk assessment;
- Limiting and monitoring who can access sensitive customer information;
- Encrypting all sensitive information;
- Training security personnel;
- Developing an incident response plan;
- Periodically assessing the security practices of service providers; and
- Implementing multi-factor authentication or another method with equivalent protection for any individual accessing customer information.

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A copy of the FTC announcement is found at: https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-extends-deadline-six-months-compliance-some-changes-financial-data-security-rule?utm_source=govdelivery.

A copy of the *Federal Register* is found at: <https://www.federalregister.gov/documents/2021/12/09/2021-25736/standards-for-safeguarding-customer-information>.

CEHE Sues ED for Breach of Contract

On December 6, 2022, the Center for Excellence in Higher Education (CEHE), a former nonprofit organization that includes several colleges, filed a lawsuit in the U.S. Court of Federal Claims against the Department of Education seeking \$500 million in damages for a breach of good faith and illegally taking funds. Prior to closing, CEHE operated College America, Independence University, Stevens-Henager College, and California College San Diego, which the company sought to convert from for-profit institutions to nonprofit ones. CEHE alleges that the Department forced CEHE's institutions to collapse by withholding millions of dollars amid a campaign against private career colleges. CEHE is seeking the \$500 million in damages related to the closures, including lost revenue and money that the organization had to front because regulators placed it on a list of colleges that cannot receive federal financial aid for students in advance. The organization alleges that the Department forced the college to close suddenly so students would qualify for loan discharges, which would allow the agency to recoup those costs from CEHE's colleges.

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