

## WASHINGTON UPDATE

JANUARY 2023

### Foxx Named Chair of the House Education and Labor Committee Chair

On January 9, 2023, the House Republican Steering Committee finalized committee chairs for the 118<sup>th</sup> Congress, including the Chair for the House Education and Labor Committee. The hotly contested race involved two senior members of the Committee, Congresswoman Virginia Foxx (R-NC) and Congressman Tim Walberg (R-MI). Congresswoman Foxx was once again named chair of the Committee.

A copy of the press release is found at:

<https://foxx.house.gov/news/documentsingle.aspx?DocumentID=398966>.

### President Signs *Omnibus Appropriations Act* into Law

On December 29, 2022, President Joe Biden signed into law H.R. 2617, the *Omnibus Appropriations Act for FY 2023*. On December 22, 2022, the Senate passed H.R. 2617, which includes funding for all federal agencies and completes the appropriations process for Fiscal Year 2023. The House passed H.R. 2617 on December 23, 2022. The *Labor, Health and Human Services, Education and Related Agencies Appropriations Act* portion of the bill provides a total of \$79.6 billion in discretionary appropriations for the U.S. Department of Education, an increase of \$3.2 billion above the Fiscal Year 2022 level.

The legislation sets the maximum Pell Grant award at \$7,395, an increase of \$500 over the FY 2022 level. The bill provides \$910 million for the Federal Supplemental Educational Opportunity Grant (FSEOG) program, an increase of \$15 million above the FY 2022 level, and \$1.2 billion for Federal Work-Study (FWS), an increase of \$20 million above the FY 2022 level.

Secretary of Education Miguel Cardona released a statement on December 23, 2022 stating: “The bipartisan funding package reflects the Biden-Harris Administration’s commitment to increasing equity in educational opportunities and outcomes for our students.”

The statement from Secretary Cardona is found at:

<https://www.ed.gov/news/press-releases/us-secretary-education-miguel-cardona-statement-fiscal-year-2023-omnibus-appropriations>.

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## House Democrats Select Scott as Ranking Member on the House Education and Labor Committee

On December 22, 2022, House Democrats selected Congressman Bobby Scott (D-VA) to serve as the Ranking Member on the House Education and Labor Committee for the 118<sup>th</sup> Congress. This will be Congressman Scott's fifth term as the top Democrat on the Committee where he is expected to be a key player in carrying the President's education agenda.

Congressman Scott said: "Governing should be guided by the values and aspirations we share – improving the lives of people from all walks of life. Regardless of the political challenges that lay ahead in the 118<sup>th</sup> Congress, the American people are still counting on us to find common ground, when possible, and to protect workplace rights, ensure all students have access to a quality education, expand access to affordable health care, and prepare workers for success in the modern economy."

A copy of the Congressman's statement is found at: <https://bobbyscott.house.gov/media-center/press-releases/scott-statement-after-elected-colleagues-serve-ranking-member-education>.

## FSA Announces Summary of the Issues Related to the Implementation of the Modernized NSLDS Professional Access Website and to Communicate FSA's Expectations of Auditors

On January 12, 2023, Federal Student Aid (FSA) issued an electronic announcement to summarize the issues that arose following the July 2022 implementation of the modernized NSLDS Professional Access website and to communicate FSA's expectations of auditors evaluating institutional compliance with enrollment reporting requirements. The announcement stated that data reporting was paused as FSA prepared for the retirement of the current NSLDS website and the launch of the enhanced website.

Therefore, institutions were not able to comply with enrollment reporting requirements for the period July 19, 2022, through the date of this electronic announcement, January 12, 2023. As a result, auditors would not be expected to include any enrollment reporting data due from July 19, 2022, through February 28, 2023. FSA included in the electronic announcement a revised Audit Objective and Suggested Audit Procedures for impacted single audits of public and private non-profit institutions. For impacted proprietary school compliance audits performed in accordance with the 2016 OIG Audit Guide, Guide For Audits of Proprietary Schools and For Compliance Attestation Engagements of Third-Party Servicers Administering Title IV Programs, OIG will be issuing a Dear CPA Letter to provide a revised objective and revised procedures for Enrollment Reporting testing.

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A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-01-12/suggested-single-audit-procedures-related-nslds-enrollment-reporting>.

Department of Education Announces Release of a Proposed Regulation to Reduce Cost of Federal Student Loan Payments

On January 10, 2023, the Department of Education announced the release of a proposed regulation to reduce the cost of federal student loan payments, which was published in the *Federal Register* on January 11, 2022. The proposed rules would amend the terms of the Revised Pay As You Earn (REPAYE) plan to offer \$0 monthly payments for any individual borrower who makes less than \$30,600 annually, about the annual earnings of someone working for \$15 per hour, and any family of four who makes less than \$62,400. The regulations would also cut in half monthly payments on undergraduate loans for borrowers who do not otherwise have a \$0 payment in this plan. The proposed regulations would also ensure that borrowers stop seeing their balances grow due to the accumulation of unpaid interest after making their monthly payments. Finally, any remaining balance will be forgiven after 20 years of payments.

The press release also stated that the Biden-Harris Administration is also committed to ensuring postsecondary institutions and programs are held accountable if they leave borrowers with unaffordable debt. The press release went on to state that the Department is currently working on a proposed gainful employment regulation that will be published later this year and would cut off financial aid to career training programs that fail to provide sufficient financial value and require warnings for borrowers who attend any program that leaves graduates with excessive debts.

The press release also announced that the Department was taking steps to carry out President Biden's announcement from August 2022 that it would publish a list of the programs at all types of colleges and universities that provide the least financial value to students. The Department is seeking feedback on the best ways to identify and publicize these programs and promote greater transparency and accountability in higher education.

In conjunction with the NPRM, the Department published a Request for Information (RFI) seeking comment on how the federal government should identify "programs that provide the least financial value in the country." The RFI states that the Department will collect information and comments for thirty days on how it should create a list of these programs. Once a list of programs has been published, institutions of higher education with programs on the list will be required to submit an improvement plan to the agency on how to improve their financial value.

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In the press release, Secretary of Education Miguel Cardona stated: “Today the Biden-Harris Administration is proposing historic changes that would make student loan repayment more affordable and manageable than ever before. We cannot return to the same broken system we had before the pandemic, when a million borrowers defaulted on their loans a year and snowballing interest left millions owing more than they initially borrowed.”

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/new-proposed-regulations-would-transform-income-driven-repayment-cutting-undergraduate-loan-payments-half-and-preventing-unpaid-interest-accumulation>.

A copy of the announcement, which includes the draft proposed rule and a fact sheet summarizing the rule, is found at:

[https://content.govdelivery.com/accounts/USED/bulletins/3415955?utm\\_source=Iterable&utm\\_medium=email&utm\\_campaign=campaign\\_5901722\\_nl\\_Afternoon-Update\\_date\\_20230110&cid=pm&source=&sourceid=](https://content.govdelivery.com/accounts/USED/bulletins/3415955?utm_source=Iterable&utm_medium=email&utm_campaign=campaign_5901722_nl_Afternoon-Update_date_20230110&cid=pm&source=&sourceid=).

A copy of the NPRM is found at:

<https://www.federalregister.gov/documents/2023/01/11/2022-28605/improving-income-driven-repayment-for-the-william-d-ford-federal-direct-loan-program>.

A copy of the RFI requesting information about identifying programs of the least value is found at:

<https://www.federalregister.gov/documents/2023/01/11/2022-28606/request-for-information-regarding-public-transparency-for-low-financial-value-postsecondary-programs>.

## Biden Administration Files Brief on Federal Student Loan Forgiveness Program with Supreme Court

On January 4, 2023, the Biden Administration filed its brief in *Biden et al. v. State of Nebraska et al.* with the Supreme Court where it defended the U.S. Department of Education’s federal student loan forgiveness program announced in August 2022. The Supreme Court will hear two cases on February 28, 2023. The Department of Justice’s (DOJ) brief is aligned with arguments that the agency has been making in lower courts for months that the Supreme Court should throw out the case as the six states and Texas borrowers do not have legal standing to bring the case and that the administration has the authority to cancel large amounts of debt under the “plain text” of the *HEROES Act*, which gives the Department the power to waive laws that would normally govern federal student loans during a national emergency.

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The states must file their responses to the Biden Administration’s brief on or before Friday, January 27, 2023, and DOJ must file its reply brief on or before Wednesday, February 15, 2023.

On January 4, 2023, Secretary of Education Miguel Cardon issued a statement following the filing of the legal brief by the Department of Education and the Department of Justice where he said: “The Biden-Harris Administration remains committed to fighting to deliver essential student debt relief to tens of millions of Americans.”

A copy of the Secretary’s full statement is found at:

<https://www.ed.gov/news/press-releases/statement-secretary-cardona-legal-brief-filed-supreme-court-student-debt-relief-program>.

## Biden Administration Announces New Round of Rulemaking in Higher Education

On January 4, 2023, the Office of Information and Regulatory Affairs announced its Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions, which indicated that the Department of Education plans to announce in April 2023 a new negotiated rulemaking process that will address eight areas:

- **Third-party Servicers:** The Department plans to change the regulations regarding third-party servicers under the *Higher Education Act (HEA)*, related to current guidance, reporting requirements, financial or other compliance requirements, and past performance requirements. This is likely to include program management companies hired by institutions to manage their online courses. Discussion will likely address the “bundled services exception,” which has been criticized by Democrats in recent years.
- **Distance Education:** The Department plans to amend the definition of distance education.
- **Accreditation:** The Department plans to amend the standards relating to the recognition of by the Secretary of Education. ED also plans to review the accreditation procedures as a component of institutional eligibility for participation in the Title IV, HEA programs.
- **State Authorization:** The Department plans to amend regulations on state authorization as a component of institutional eligibility for participation in the Title IV, HEA programs.

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- Return of Title IV: The Department plans to amend the regulations regarding the determination of unearned Title IV funds to consider easing the administrative burden on higher education institutions.
- Cash Management: The Department plans to amend the cash management regulations to ensure that students have and maintain timely access to student aid disbursed by their higher education institutions.
- Student Loan Deferments and Forbearance: The Department plans to amend regulations on deferments and forbearance, particularly in relation to income-driven repayment.
- TRIO Programs: The Department plans to amend current regulations, which may include technical improvements to programmatic eligibility and operations.

The agenda confirms that the Department expects to issue proposed regulations on previously negotiated regulations that include:

- Improving Income-Driven Repayment Plans
- Ability to Benefit
- Gainful Employment
- Factors of Financial Responsibility
- Standards of Administrative Capability
- Certification Procedures

The Department plans on issuing a final rule responding to comments received related to the definition of a qualifying employer for purposes of the Public Service Loan Forgiveness program.

A copy of the Administration's plan is found at:

[https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=1800&csrf\\_token=65AF35D29899565068C90C6ABA429D8C0E7AE02DC081CAC4C7B6B1BD044FB6A81E25948B98B1280C8BDFF7ACFA2250F8663F](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=1800&csrf_token=65AF35D29899565068C90C6ABA429D8C0E7AE02DC081CAC4C7B6B1BD044FB6A81E25948B98B1280C8BDFF7ACFA2250F8663F).

## Department of Education Releases Additional Guidance for 90/10 Rule

On December 21, 2022, the Department of Education published the official *Federal Register* Notice listing the federal education assistance funds, including Title IV funds, to be included

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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: <https://www.federalregister.gov/documents/2022/12/21/2022-27732/list-of-federal-education-assistance-for-proprietary-institutions-of-higher-education-to-include-as>.

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

#### Department Updates National Default Rate Briefing

On December 15, 2022, the Department of Education replaced the briefing on FY 2019 Official National Default Rates PDF attachment to correct some of the data on page 2. Specifically, for FY 2019, the number of schools (Proprietary, 2-3 years) changed from 692 to 592, the number of borrowers in default (Private, 4+ years) changed from 8432 to 8423, and the number of borrowers in repayment (Public, less than 2 years) changed from 16526 to 16572.

A copy of the updated Briefing is found at:  
<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-10-03/national-default-rate-briefing-fy-2019-official-cohort-default-rates-updated-dec-15-2022>.

#### Department of Education IG Releases Report on Oversight Plans for 2023

On December 14, 2022, the Department of Education's Office of Inspector General (OIG) released a report detailing the oversight issues it plans to focus on in 2023. The report outlines multiple oversight priorities, including pandemic relief funds, K-12 and special education programs, and the agency's management and operations, including federal student aid programs and operations.

The OIG has placed a new priority on examining Federal Student Aid's (FSA) borrower defense to repayment loan discharge process, stating that it will evaluate the process' effectiveness, ensure that FSA maintains appropriate documentation and supports for borrowers, and FSA's information system supports the effective management of the federal student loan borrower defense loan discharge process. The OIG will also increase oversight to determine whether FSA has effective plans for transitioning assigned activities to its

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Business Process Operations vendors and to determine whether FSA effectively implements the *Future Act* and *FAFSA Simplification Act*.

Finally, the report includes oversight priorities that were highlighted in 2022 and will continue into 2023. Some of these priorities include FSA's outreach to individuals who belong to underserved communities, FSA's oversight of Career Pathway Programs, school compliance with Career Pathway programs and Ability-to-Benefit provisions, proprietary school compliance with 90/10 revenue requirements, and FSA's transition to the Next Generation Financial Services Environment.

A copy of the OIG report is found at:

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjP7u-dqpj8AhVzFlkFHfNTBWAQFnoECA4QAQ&url=https%3A%2F%2Fwww2.ed.gov%2Fabout%2Foffices%2Flist%2Foig%2Fmisc%2Foigannualplan20.pdf&usg=AOvVaw295VtawH-JPWhXSVK4Loe>.

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