

WASHINGTON UPDATE

FEBRUARY 2023

House Education and the Workforce Committee Examines Access, Affordability, and Accountability in Postsecondary Education

On February 8, 2023, the House Education and the Workforce Committee held a hearing titled, “American Education in Crisis,” which discussed ways to improve access, affordability, and accountability in postsecondary education. The Republican lawmakers pointed out the importance of addressing the skills gap because there were more than six million Americans unemployed yet there are more than 11 million unfilled jobs in the United States. President of the Louisiana Community and Technical College System and President of Rebuilding America’s Middle-Class Monty Sullivan said: “With so many Americans out of the workforce, with relatively low labor force participation rates, we have a significant pool of untapped talent stranded in this economy.” He went on to suggest that the best way to address the nation’s skills shortage was to expand Pell Grants.

President of the Western Governors University Scott Pulsipher stated: “Underlying the student loan crisis are sky-rocketing costs” and he reminded the Members that “tuition increased 180% since 1980 (adjusted for inflation).” He went on to state that “too many college programs leave students with debt they cannot repay or a degree they cannot use in the labor market.”

Democratic witness Governor Jared Polis (CO) emphasized “the importance of assessing value in decisions to use taxpayer funding support for postsecondary opportunities, using cost, completion, and outcomes to evaluate programs.”

Foxx and Duncan Led House Republicans in Filing an Amicus Brief Against Biden’s Student Loan Forgiveness Program; Cassidy Led Senate Republicans in Filing an Amicus Brief Rebuking Biden’s Student Loan Forgiveness Program

On February 3, 2023, House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) and Congressman Jeff Duncan (R-SC) led 126 House Republicans in filing an

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amicus brief to the Supreme Court of the United States in the upcoming case considering Biden's student loan forgiveness program.

Chairwoman Foxx said: "The Biden administration's student loan bailout is a political gambit engineered by special interest groups, and abusing the HEROES Act for such a ploy is shameful."

On February 7, 2023, Senator Bill Cassidy (R-LA), Ranking Member of the Senate Committee on Health, Education, Labor and Pensions (HELP) joined Senator Marsha Blackburn (R-TN) and 41 Senate colleagues in filing an amicus brief in *Biden v. Nebraska and Department of Education v. Brown* challenging the Biden administration's student loan forgiveness program.

Senator Cassidy said: "President Biden's student loan schemes do not 'forgive' student debt, but transfers it onto Americans who chose not to go to college or worked hard to pay off their loans. These policies are a clear overreach of President Biden's authority and unconstitutional."

A copy of Chairwoman Foxx's press release is found at:
<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=408812>.

A copy of Senator Cassidy's press release is found at:
<https://www.cassidy.senate.gov/newsroom/press-releases/cassidy-colleagues-file-amicus-brief-rebuking-bidens-student-loan-forgiveness>.

Foxx and Cassidy Criticize Biden Administration on IDR Proposal; Scott Applauds Efforts to Reform IDR Program; Scott Applauds Secretary Cardona's Efforts

On February 3, 2023, in a letter to Secretary of Education Miguel Cardona, House Education and the Workforce Chairwoman Virginia Foxx (R-NC) and Senate Health, Education, Labor and Pensions (HELP) Committee Ranking Member Bill Cassidy (R-LA) expressed their opposition to the Department of Education's proposed income-driven repayment (IDR) regulations, which were published in the *Federal Register* on January 11, 2023. They took issue with the Department's process and costs associated with the proposed regulations. The proposed rules seek to remedy several issues identified by the Biden administration, including the recognition that even reduced monthly payments under current IDR plans remain unaffordable for many borrowers and that 20 years is too long for borrowers with low incomes and low loan balances to wait for forgiveness under current plans. The two top Republicans expressed concern over the costs associated with the proposed IDR program,

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which ED projects would cost about \$138 billion. However, other estimates found that the IDR program could cost up to \$1 trillion.

According to the Notice, the comment period closes February 10, 2023. The letter asks Secretary Cardona to extend the public comment period another 30 days.

A copy of the press release, which includes a copy of the letter, is found at:
<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=408809>.

Ranking Member Bobby Scott (D-VA) applauded Secretary of Education Miguel Cardona for the Department's proposed rule to reform the Income-Driven Repayment (IDR) system. Ranking Member Scott said: "I am encouraged by the Department's proposed rule, which makes significant changes that greatly benefit current and future borrowers. The Department's efforts to streamline the IDR program by making it easier for borrowers to enroll in the REPAYE plan, phasing out older IDR plans, and simplifying the recertification process are smart reforms to the program."

A copy of the press release is found at:
<https://bobbyscott.house.gov/media-center/press-releases/scott-praises-ed-proposal-reduce-student-loan-debt>.

House Democrats Introduce Bill to Assist Student Loan Borrowers Once Payment Pause Ends

On January 31, 2023, House Education and the Workforce Committee Members Suzanne Bonamici (D-OR), Lucy McBath (D-GA), and Susan Wild (D-PA) introduced the *Student Loan Borrower Safety Net Act*, which seeks to assist student loan borrowers once the three-year long federal student loan pause ends. Congresswoman Bonamici said: "The student loan repayment pause is providing needed relief for borrowers in Oregon and across the country at a time of unprecedented financial instability." She went on to state: "Returning to repayment may still be difficult for some, especially borrowers who are at risk of delinquency and default. I'm pleased to be leading the Student Loan Borrower Safety Net Act with Reps. McBath and Wild to give borrowers the support and protections they need during the transition to repayment."

The bill would:

- Provide earlier and more frequent outreach to borrowers that their payments are to resume;
- Prioritize notification to vulnerable borrowers;

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- Simplify borrowers' enrollment in the most generous and affordable income-driven repayment (IDR) plans;
- Clarify borrowers access to economic hardship support; and
- Codify protections for borrowers who miss a payment or payments upon the end of the payment pause.

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

<https://bonamici.house.gov/media/press-releases/bonamici-mcbath-wild-introduce-legislation-provide-safety-net-student-loan>.

Kaine and Braun Introduce *JOBS Act* to Expand Pell Grant Eligibility to Students in Job Training Programs

On January 31, 2023, Senate Health, Education, Labor and Pensions (HELP) Committee Members Tim Kaine (D-VA) and Mike Braun (D-IN) introduced the *Jumpstarting Our Businesses by Supporting Students (JOBS) Act*, which would expand Pell Grant eligibility to students who are attending high-quality, short-term job training programs. The goal is to help close the skills gap and provide workers with job training and credentials they need for careers in high-demand fields. Under the bill, Pell Grants could be used for training programs that are at between 150 and 600 clock hours and at least eight weeks in length and lead to industry-recognized credentials or certificates.

The Senate version is identical to the House version. *Both versions exclude proprietary schools from eligibility.*

Senator Kaine said: "Wherever I go in Virginia, I hear from businesses struggling to fill jobs and from Virginians facing barriers to the job training programs they need to enter or reenter the workforce. With these Virginians top of mind, I wrote the JOBS Act to help provide more workers with the skills to get good-paying jobs and provide for their families. This bill is good for workers, employers, and our economy as a whole."

A copy of the press release, which includes the text from the bill, is found at:

<https://www.kaine.senate.gov/press-releases/kaine-and-braun-introduce-bipartisan-bill-to-help-more-americans-access-high-quality-job-training-get-good-paying-jobs>.

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House Education and the Workforce Committee Holds Organizational Meeting, Releases Subcommittee Assignments

On January 31, 2023, the House Education and the Workforce Committee held an organizing meeting to approve the committee's rules, plan, and subcommittee assignments for the 118th session. Chairwoman Virginia Foxx (R-NC) thanked the members for attending the organizational session and said that she hopes to work with all committee members, but Republicans were committed to addressing the "broken student loan system." On the rules package, Chairwoman Foxx said that it reflects the change in the committee's name from the Committee on Education and Labor to the Committee on Education and the Workforce. She also said that the committee will return to regular order with no remote hearings. "The executive branch has gotten too comfortable bypassing the legislative process set up by the Constitution. As elected officials we should be focused on ensuring that government agencies are run as efficiently as possible and in accord with Congressional intent. During the organizational meeting, both Chairwoman Foxx and Ranking Member Bobby Scott (D-VA) released the subcommittee leaders and members.

A copy of Chairwoman Foxx's opening remarks is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=408796>.

Biden to End Pandemic's Emergency Declaration on May 11th

On January 30, 2023, President Joe Biden announced that he plans to end the national declaration for COVID-19 on May 11, 2023. The national emergency status has been in effect since it was first declared by former President Donald Trump. Included in the announcement was a statement that the end of the pandemic declaration would not affect the ongoing federal student loan policies that are currently tied to the national emergency status. The White House confirmed in an article in *Politico* that debt relief and pausing loan payments can continue after the formal end of the national emergency. The emergency declaration has been the legal basis for a number of U.S. Department of Education policies and programs, including the authority cited by the administration to implement the federal student loan forgiveness program, which will be the subject of oral arguments at the U.S. Supreme Court.

A copy of the announcement is found at:

<https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>.

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House and Senate Education Committees Announce Democratic Members

On January 27, 2023, House Education and the Workforce Committee Ranking Member Bobby Scott (D-VA) named 20 Democratic members who will serve on the committee for the 118th Congress. Additionally, Senate Majority Leader Chuck Schumer (D-NY) named the Senate Health, Education, Labor and Pensions (HELP) Committee membership. The Committee will be chaired by Senator Bernie Sanders (I-VT).

A copy of Ranking Member Scott's press release is found at:

<https://democrats-edworkforce.house.gov/media/press-releases/ranking-member-scott-welcomes-democratic-committee-members-for-the-118th-congress>.

A copy of Majority Leader Schumer's press release is found at:

<https://www.democrats.senate.gov/newsroom/press-releases/majority-leader-schumer-announces-senate-democratic-committee-memberships-for-the-118th-congress>.

Republicans Introduce *Pell Act* to Provide Pell Grants to Students Enrolled in In-Demand Short-Term Programs

On January 25, 2023, House Republican Conference Chairwoman Elise Stefanik (R-NY) along with House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC), Representatives Congressmen Jim Banks (R-IN), Ashley Hinson (R-IA), and Agriculture Committee Chair "GT" Thompson (R-PA), introduced H.R. 496, the *Promoting Employment and Lifelong Learning (PELL) Act*, which expands educational and credentialing opportunities for workers looking to gain skills in high-demand fields.

Specifically, H.R. 496, the *Pell Act*:

- Creates a Workforce Pell Grant to expand Pell Grant eligibility to high-quality, short-term programs [at least 150 clock hours but not more than 600 clock hours or an equivalent number of credit hours and a minimum of 8 weeks but no more than 15 weeks] so students can move into a job quickly.
- Avoids a complex system of red tape and instead provides clear requirements for programs focused on delivering skills education.
- Allows all education providers to participate as long as they meet certain requirements, including that students will be qualified to work following program completion.
- Ensures program prices are aligned with economic value so students and taxpayers receive a positive return on investment within three years or less.

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- Requires the Department of Education to publish program costs and outcomes on the College Scorecard so students and families are aware of the high-quality education opportunities available to them.

A copy of the press release, which includes a section-by-section analysis, is found at: <https://hinson.house.gov/media/press-releases/republican-pell-act-will-revolutionize-workforce>.

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 118th 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 118th 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-/scott-statement-after-elected-colleagues-serve-ranking-member-education>.

ED Issues New Guidance on Third-Party Servicers; ED Announces Listening Sessions on Existing Guidance Permitting Bundled Services Arrangements with OPMs

On February 15, 2023, the Department of Education released an announcement to clarify when organizations that contract with institutions of higher education are considered third-party servicers. The Department added recruitment and retention services, software services used to administer Title IV programs, and the provision of educational content and instruction in the new guidance. Colleges and universities will have until May 1, 2023, to report any arrangements with third-party servicers that have not been reported to the Department, detail the services the entity performs on behalf of the institution and disclose the timeframe of the agreement. Entities or individuals that meet the definition of a third-

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party servicer as a result of the new guidance are required to submit the Third-Party Servicer Data Form to the Department or update their existing Form by May 1, 2023.

As of the date of the letter (GEN-23-03), all previous guidance is rescinded. The Department is taking comments on the guidance for 30 days from the publication of the letter.

On the same day, February 15, 2023, the Department announced that it is opening a public comment period on guidance and rules that impact how colleges and universities work with online program management (OPM) companies. Specifically, the Department is seeking public comment on existing guidance that permits these bundled services arrangements, which can include recruiting. Under Secretary James Kvaal said: “Online education has the potential to meet the needs of many students and lower costs. But we are concerned about the growth in loan debt and want to ensure students get value for their money.”

The Department is taking public comments until March 16, 2023, and plans to hold two virtual listening sessions on March 8 and 9, 2023.

A copy of the Department’s announcement on Third-Party Servicers is found at:
<https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-02-15/requirements-and-responsibilities-third-party-servicers-and-institutions>.

A copy of the press release is found at:
<https://www.ed.gov/news/press-releases/us-department-education-launches-review-prohibition-incentive-compensation-college-recruiters>.

A copy of the *Federal Register* Notice on the listening sessions is found at:
<https://www.federalregister.gov/documents/2023/02/16/2023-03261/announcement-of-listening-sessions>.

FSA Issues Updates to the *Gramm-Leach-Bliley Act* Requirements

On February 9, 2023, Federal Student Aid (FSA) issued an electronic announcement providing updates to the *Gramm-Leach-Bliley Act* (GLBA). On February 9, 2023, the Federal Trade Commission (FTC) issued final regulations to amend the Standards for Safeguarding Customer Information (Safeguards Rule), a component of the GLBA requirements for protecting the privacy and personal information of customers. The effective date for most of the changes is June 9, 2023. The FSA’s announcement summarizes the changes in the GLBA requirements resulting from the final regulations.

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With regard to enforcement, the electronic announcement states that any *GLBA*-related findings will have the same effect on an institution's participation in the Title IV programs as any other determination of non-compliance. Repeated non-compliance by an institution may result in an administrative action taken by the Department, which could impact the institution's participation in the Title IV programs.

A copy of the electronic announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-02-09/updates-gramm-leach-bliley-act-cybersecurity-requirements>.

Department of Education Releases Report Showing How COVID-19 Relief Funds Were Spent by Universities

On February 1, 2023, the Department of Education released a new report that showed how colleges and universities spent \$39 billion in COVID-19 relief funds in 2021. In a statement, the Department said that an estimated 18 million students had received direct financial aid since the start of 2021 from the Higher Education Relief Fund (HEERF), including 6 million community college students, 450,000 students at Historically Black Colleges and Universities, 8 million students at Minority Serving Institutions, and 24,000 students at Tribal Colleges and Universities. The report said that about 75 percent of schools stated the funding allowed them to keep the cost of college at pre-pandemic levels, and 90 percent of institutions overall reported that HEERF funds assisted them in keeping students enrolled who were at risk of dropping out by providing financial support. The report also found that colleges and universities spent more than \$21.5 billion for institutional needs, \$13 billion of which was used by colleges to reimburse themselves for lost revenue from the pandemic. Most of the lost revenue was due to enrollment declines and lost room and board revenue.

A copy of the statement from the Department, which includes a link to the report, is found at: <https://www.ed.gov/news/press-releases/department-education-releases-new-data-showing-american-rescue-plan-and-other-pandemic-relief-funds-kept-millions-college-students-enrolled-school>.

FSA Annual Report Highlights Student Loan Repayment Pause and Cancellation

On January 23, 2023, Federal Student Aid (FSA) released its "2022 Annual Report," which included details on a wide range of topics, such as the student loan portfolio, employee engagement, data protection and cybersecurity, as well as the Biden Administration's major initiative to cancel student loans.

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In the introduction, FSA Chief Operating Officer Richard Cordray stated that in FY 2022, FSA provided about \$111.6 billion in federal grants, loans, and work-study funds to more than 9.8 million students at about 5,500 participating postsecondary schools. Additionally, the federal student loan portfolio rose to \$1.635 trillion. In the introduction to the report, COO Cordray highlighted President Biden's student loan cancellation plan, which would cancel up to \$20,000 of federal student loans for eligible borrowers. He said: "Targeted student debt relief addresses the financial harms of the pandemic, helps smooth borrowers' transition back to repayment, and helps borrowers at highest risk of delinquencies or default once payments resume."

Regarding FSA's annual performance, the report states that 21 of FSA's 38 metrics were met or exceeded, nine metrics performed below the target, and one metric was baselined or did not have an established target. One of the metrics that was not met by FSA includes improving the Employee Engagement Index of the Federal Employee Viewpoint Survey score. FSA's target score was between 75%-76%, but only reached 73%. FSA also struggled to meet consumer satisfaction targets in 2022.

The report has several discussion topics for FSA, including college-sponsored accounts, bankruptcy, and Parent PLUS loans. The borrower complaints demonstrate that the student loan "safety net" that is providing a financial bridge so that borrowers can complete their education, and eventually receive loan forgiveness in some cases, may not be meeting the needs of communities of color. The FSA report noted that "[w]ithout additional robust interventions, the cycle of inequity in higher education finance is doomed to repeat itself generation after generation."

In the section on FSA's FY 2022 Organizational Highlights, the FSA report states that its focus for this coming year will be to "raise the standard for excellent customer service by modernizing the loan servicing infrastructure, enhancing borrower repayment outcomes, implementing incentives to reduce loan defaults, and keeping the promise to improve opportunities for students and families to make informed decisions on financial aid for college and student loan repayment." The report says that loan payments will still resume this year, and that "return to repayment will be a huge undertaking for FSA."

A copy of the FSA report is found at:

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwilyc--mj8AhVnFVkJFWa8Cb8QFnoECBUQAQ&url=https%3A%2F%2Fwww2.ed.gov%2Fabout%2Freports%2Fannual%2F2022report%2Ffsa-report.pdf&usg=AOvVaw0mddR3m-RoiLF8pJiQ6LZD>.

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Hearing Held on DeVry's Appeal of Cost of Discharging Federal Student Loans

On January 23, 2023, Administrative Law Judge for the Department of Education Robert Layton held a first hearing on DeVry University's appeal of a \$23 million penalty from federal student loan discharges for DeVry's former students. The Biden Administration is seeking to force DeVry to reimburse the Department for the cost of approved borrower defense claims. The Department of Education discharged almost \$72 million of federal student loan debt held by about 1,800 borrowers who attended DeVry. The Department is attempting to recoup \$23.6 million from DeVry. This accounts for the borrower defense discharges provided to 649 borrowers. DeVry denies any wrongdoing.

It was reported that one issue in the appeal is whether the Department of Education is trying to hold DeVry responsible for the cost of the loan discharges to whom DeVry already paid restitution as part of other settlements, including a settlement with the Federal Trade Commission (FTC). DeVry has also complained that it does not have access to the borrower records it needs to determine if the borrowers received any payment from other settlements.

Administrative Judge Layton said he plans to issue a written order that creates a 60-day period in which the Department of Education and DeVry University can exchange records about borrowers, an arrangement proposed by both parties. It is not clear whether the administrative appeals process will be paused while DeVry pursues a separate lawsuit against the Department of Education in federal court. The Biden Administration wants to move forward with the proceeding regardless of the lawsuit, while DeVry argued for a pause in the proceeding.

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

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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.

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, 2023. 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.

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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.

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=.

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

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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.

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.

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- **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.
- **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.

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

https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1800&csrf_token=65AF35D29899565068C90C6ABA429D8C0E7AE02DC081CAC4C7B6B1BD044FB6A81E25948B98B1280C8BDFF7ACFA2250F8663F.

ED's OIG Report Finds FSA Mismanaged Transition to Next Generation Financial Services Enforcement

On January 12, 2023, the Department of Education's Office of Inspector General (OIG) released an audit titled, "Federal Student Aid's Transition to the Next Generation Loan Servicing Environment" (ED-OIG/A20GA0035), which found that FSA is not performing key steps or following best practices in implementing the modernization of its federal student loan system, the Next Generation Loan Servicing environment. The audit reviewed the planning and implementation process from October 2016 to July 2021. According to the audit report, FSA staff did not complete budget requests for many components of the modernization until after the bid solicitations were issued, and FSA staff did not follow other required procedures that would have allowed "appropriate officials to agree on the project's objectives, requirements, and funding." The lack of documentation for an initiative of the scale of Next Gen is also cited as a contributing factor of continued budget shortfalls that Next Gen has faced.

The OIG recommended that FSA's Chief Operating Officer puts controls in place to ensure there is documentation of completed steps in documented projects and to "develop and implement a policy that requires an investment request or budget initiative request for a project to be completed and approved prior to the issuance of bid solicitations for the project." The OIG audit requires FSA to develop and submit a corrective action plan within 30 days of the audit.

A copy of the OIG audit is found at:

<https://www2.ed.gov/about/offices/list/oig/audit/rpts/fsanextgen-finalaudit.pdf>.

GAO Report Recommends Department of Education to Improve Enforcement of Substantial Misrepresentation by Colleges

On January 12, 2023, the Government Accountability Office (GAO) released a report titled, "Department of Education Should Improve Enforcement Procedures Regarding Substantial Misrepresentation by Colleges." The GAO was asked by Congressman Bobby Scott (D-VA), former Chairman of the House Education and Labor Committee, to review the

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Department of Education's oversight and enforcement of the prohibition against a college providing inaccurate or misleading information to its students when it determines the college's statements meet the definition of "substantial misrepresentation," which are statements that students or others could rely on to their detriment.

In 2016, the Department of Education created its Student Aid Enforcement Unit, which included a new Investigations Group. Since then, the Department has made several changes to the way it enforces the prohibition against colleges engaging in substantial misrepresentation. The report found that ED's efforts to crack down on colleges making false or misleading statements has been stymied in recent years. According to the report, in 2017, the Department placed open investigations "on hold at one point, and diverted the Investigation Group's staff to other offices," which led to fewer investigations being opened from 2018 through 2020. In terms of staffing, the Investigations Group had nine different directors over a period of six years and the number of staff dropped from nine to two between 2017 and 2019. Since the start of 2021, the Department has hired five new staff for the Investigations Group, as well as a new director, and has opened six new investigations.

In terms of penalties, the report indicated that ED imposed penalties, ranging from fines to ending an institution's participation in the federal student aid programs, for substantial misrepresentation on 13 colleges from fiscal years 2016 through 2021. The GAO report stated that the Department's written procedures for identifying and investigating colleges were incomplete, and its procedures for imposing penalties were out of date.

The GAO recommended that the Department (1) complete written procedures for substantial misrepresentation investigations, including for selecting colleges and conducting investigations; and (2) update written procedures for imposing penalties on colleges that engaged in substantial misrepresentation.

A copy of the GAO is found at: <https://www.gao.gov/products/gao-23-104832>.

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February 15, 2023