

WASHINGTON UPDATE

MARCH 2023

White House Releases President's Budget Request for FY 2024

On March 9, 2023, the White House Office of Management and Budget (OMB) released the President's budget request for FY 2024. The budget request for the Department of Education includes:

- **Pell Grants:** The budget request would increase the maximum Pell Grant award by \$820 to \$8,215 for the 2024-2025 school year, helping about 6.7 million students from low- and middle-income backgrounds overcome financial barriers. The budget also states that the Administration intends to work with Congress to ensure student financial aid is available for Deferred Action for Childhood Arrivals recipients (DREAMers).
- **Campus-Based Aid Programs:** The budget requests \$910 million for Supplemental Educational Opportunity Grants (FSEOG) and \$1.23 billion for Federal Work Study, which would be level funding for both programs compared to FY 2023 funding levels.
- **Free Community Colleges:** The budget request includes \$90 billion in mandatory funding for a partnership between the federal government and states, tribes, and territories to ensure that first-time students and workers wanting to reskill can enroll in a community college to earn a degree or credential for free. The budget also includes \$500 million in discretionary funding for a free community college program that offers preparation in in-demand industries that meet benchmarks for wages and employment.
- **Postsecondary Student Success Program:** The budget requests \$165 million for the Postsecondary Student Success Grant program, which would provide grants to states, institutions of higher education, and systems of institutions to implement or expand evidence-based, institutional-level retention and completion reforms that improve student outcomes.

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- **High School to Postsecondary Education Transition:** The budget includes \$200 million for a new Career-Connected High School program to support competitive grants to partnerships of local educational agencies, institutions of higher education, and employers to increase the integration and alignment of the last two years of high school and the first two years of postsecondary education, in order to improve postsecondary and career outcomes for all students, including students of color and students from low-income backgrounds.
- **Student Aid Administration:** The budget requests \$2.7 billion for the Student Aid Administration account to administer federal student aid programs, an increase of approximately \$620 million above the FY 2023 enacted level. The budget states that the increase would allow Federal Student Aid to continue to operate the student aid programs, implement critical improvements to student loan servicing, continue to modernize its digital infrastructure, and ensure successful administration of the financial aid programs through a simplified and streamlined application process for students and borrowers.

The budget request also includes language to permanently extend the provision in the *American Rescue Plan Act* that would eliminate the tax consequences associated with borrowers who have their student loans forgiven, including debt that is discharged under income-driven repayment programs. The original provision included in the *American Rescue Plan Act* expires at the end of 2025.

House Education and the Workforce Committee Republicans Reintroduce *College Cost Transparency and Student Protection Act*

On March 2, 2023, House Education and the Workforce Committee Chairwoman Virginia Fox (R-NC) and Congresswoman Lisa McClain (R-MI) reintroduced the *College Cost Transparency and Student Protection Act*. The bill is designed to make the college-decision making process easier and clearer for students and families. The legislation proposes standardized terms and definitions for key information on costs and grant aid in order to make financial aid offer letters clearer.

A copy of the press release, which includes the text of the bill and the GAO report, that found that the majority of colleges and universities misled students and families about the true cost of attendance, is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=408882>.

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Supreme Court Hears Oral Arguments on the Federal Student Loan Forgiveness Plan

On February 28, 2023, the Supreme Court heard oral arguments in *Biden v. Nebraska*, a case that was brought by six states challenging the constitutionality of the Department of Education’s federal student loan forgiveness plan. The six states, Arkansas, Iowa, Kansas, Missouri, Nebraska, and South Carolina, alleged in their lawsuit that the debt relief plan harms state revenues and agencies that hold student loans. In addition, two Texas residents challenged the debt relief plan because they would not benefit from all the provisions and did not have a chance to comment on the proposal. The Supreme Court is hearing both cases.

The Biden Administration has argued in court filings that neither of the parties suing have standing or the right to sue. If the Justices agree, they could toss out the lawsuits without considering the merits of the arguments against the federal student loan forgiveness plan. If the Justices agree that the plaintiffs have standing, the plaintiffs argued in their lawsuits that the *Higher Education Relief Opportunities for Students Act (HEROES) of 2003* does not authorize the federal student loan forgiveness plan. The Biden Administration has said that the *HEROES Act* clearly authorizes the debt relief plan, and that debt relief is necessary to ensure those affected by the pandemic are not in a worse position financially once student payments resume.

Several conservative justices, Chief Justice John Roberts, Justice Samuel Alito, Justice Clarence Thomas, and Justice Neil Gorsuch, expressed skepticism about the Biden Administration’s authority to cancel federal student loans because of the pandemic, but other conservative justices, Justice Brett Kavanaugh and Justice Amy Coney Barrett, expressed doubt that the parties had standing to bring the case. The Supreme Court’s liberal justices, Justice Sonia Sotomayer, Justice Elena Kagan, and Justice Ketanji Brown Jackson, appeared to reject the challenges to the debt relief plan.

The outcome of the case is not expected to be known until sometime in June.

Secretary Cardona Issues Statement Following Oral Arguments Before the Supreme Court on the Debt Relief Challenge

On February 28, 2023, Secretary of Education Miguel Cardona issued a statement after the conclusion of oral arguments before the Supreme Court on the Department of Education’s debt relief program: “President Biden, Vice President Harris, and I recognize how essential this relief is for tens of millions of Americans, and we are fighting to deliver much-needed help to borrowers trying to get back on their feet after the economic crisis caused by the pandemic.”

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A copy of the press release is found at:

<https://www.ed.gov/news/press-releases/secretary-cardona-statement-following-supreme-court-oral-arguments>.

A Bipartisan Group of Senators and Representatives Introduce Three Bills Related to College Affordability

On February 28, 2023, Senate and House members introduced three pieces of legislation related to college affordability. In the Senate, all three bills were introduced by Senators Chuck Grassley (R-IA) and Tina Smith (D-MN) and companion pieces were introduced in the House by various members.

Senators Grassley and Smith introduced the *Net Price Calculator Improvement Act*, which seeks to improve the accuracy and usability of net price calculators that are tools used by students and families to estimate the cost of attending college. The legislation would authorize the Department of Education to develop a universal calculator so that students can compare prices across colleges. The bill would also require colleges and universities to make their net price calculators more accessible to students and families. Representatives Brett Guthrie (R-KY) and Lori Trahan (D-MA) introduced a companion bill in the House.

Senators Grassley and Smith introduced the *Understanding the True Cost of College Act*, which would create a universal financial aid offer form and would standardize terms used to describe financial aid to allow students to more easily compare financial aid packages between schools. Representatives Young Kim (R-CA), Raja Krishnamoorthi (D-IL), and Josh Gottheimer (D-NJ) introduced the companion bill in the House.

Finally, Senators Grassley and Smith introduced the *Know Before You Owe Federal Student Loan Act*, which would strengthen the *Higher Education Act* to enhance the current loan counseling requirements for institutions of higher education. The bill would make loan counseling an annual requirement before new loans are disbursed, rather than the one-time requirement for first-time borrowers, and would allow students to decide exactly how much they would like to borrow, rather than offering the maximum possible loan amount as the default option. Representative Mariannette Miller-Meeks (R-IA) introduced the companion bill in the House.

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ED Establishes Personal Liability Requirements for Financial Losses Related to the Title IV Programs

A year ago, on March 23, 2022, the Department of Education published an electronic announcement (GEN-22-16) notifying institutions of higher education that, in certain circumstances, it would require additional signatures on an institution's Program Participation Agreement (PPA) from individuals representing corporations or other legal entities that have, or could have, direct or indirect effects on the institution's administrative capability or financial responsibility. The Department took this action to increase the accountability of corporations and other entities with substantial control over institutions.

On March 1, 2023, Federal Student Aid (FSA) released guidance (GEN-23-11) notifying institutions that it would begin requiring in some cases additional signatures on an institution's Program Participation Agreement (PPA) from individuals representing corporations or other legal entities that have or could have direct or indirect effects on the institution's administrative capability or financial responsibility.

The electronic announcement was issued to describe the process the Department will use when it considers whether to impose signature requirements for PPAs that will apply to individuals in their personal capacity rather than corporations and other entities. The Department contends that the process will provide it with additional tools for ensuring compliance with the legal requirements of the Title IV programs and recouping funds to cover financial losses incurred by the federal government.

The guidance provided a long non-exhaustive list of factors the Department may consider when determining whether to request an individual to assume personal liability by signing a Program Participation Agreement as a condition of allowing an institution of higher education to participate in the Title IV programs. Examples of factors from this long list include, for example:

- Civil or criminal lawsuits, settlements, or disciplinary or legal actions by the Department or other state or federal agencies involving federal student aid or claims of dishonesty, fraud, misrepresentation, consumer harm, or financial malfeasance.
- Significant compliance issues, such as findings stemming from program reviews or audits.
- An executive compensation package that could significantly affect the financial health of the institution.

On March 2, 2023, the Department of Education issued a press release where Under Secretary James Kvaal said: "Congress gave the Department the authority to make college owners and operators personally responsible for those losses in certain circumstances and

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we are going to use that authority to hold them accountable, defend vulnerable students, protect taxpayer dollars, and deter future risky business.” The press release said that the guidance clarifies how the Department will implement Section 498(e) of the Higher Education Act (HEA), which specifies that the Department may require individuals who exert significant control at private institutions to assume personal liability.

A copy of the March 23, 2022 announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-23/updated-program-participation-agreement-signature-requirements-entities-exercising-substantial-control-over-non-public-institutions-higher-education>.

A copy of the March 1, 2023 announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-03-01/establishing-personal-liability-requirements-financial-losses-related-title-iv-programs>.

A copy of the Department’s press release is found at:

<https://www.ed.gov/news/press-releases/education-department-takes-steps-hold-leaders-risky-colleges-personally-liable>.

FSA Distributes FY 2020 Draft Cohort Default Rates

On February 27, 2023, the Department of Education distributed the FY 2020 draft cohort default rate (CDR) notification packages to all eligible domestic and foreign institutions. The CDR and accompanying documentation were distributed via the Student Aid Internet Gateway (SAIG) to the SAIG mailbox of the destination point administrator designated by the school. The time for appealing the FY 2020 draft cohort default rates begins Tuesday, March 7, 2023.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-02-27/fy-2020-draft-cohort-default-rates-distributed-feb-27-2023>.

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

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instruction in the new guidance. Colleges and universities will have until September 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-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 September 1, 2023.

[NOTE: ED updated the comment period and reporting date to September 1, 2023, on February 28, 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-updated-feb-28-2023>.

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>.

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Career Colleges & Schools of Texas Initiates Lawsuit Against Department of Education’s Borrower Defense to Repayment Rule

On February 28, 2023, the Career Colleges & Schools of Texas (CCST), a trade group representing for-profit institutions, initiated a lawsuit against the Department of Education’s borrower defense to repayment rule asserting that it violates the U.S. Constitution and the Administrative Procedures Act. The lawsuit asks a judge in the U.S. District Court for the Northern District of Texas to stop the borrower defense to repayment rule from going into effect on July 1, 2023. The lawsuit claims that the rule fails to provide due process and threatens to cripple schools with liabilities across the country. Specifically, the borrower defense to repayment rule drastically expands the potential acts and omissions of schools that give rise to borrower defense to loan repayment and eliminates procedural protections that would protect schools against erroneous loan discharges and liabilities.

ACE and 47 Other Organizations Send Letter Urging Secretary of Education to Extend Comment Period on TPS DCL Guidance

The American Council on Education (ACE), representing 47 other organizations, sent a letter to Secretary of Education Miguel Cardona urging him to extend both the period for institutions to submit comments and the May 1 institutional reporting deadline contained in the Dear Colleague Letter titled “Requirements and Responsibilities for Third-Party Servicers (TPS) and Institutions” (GEN-23-03) by a minimum of 30 days. The ACE letter stated that they understood the Department of Education’s desire to gain a better understanding of institutional relationships with outside entities and to ensure proper oversight of taxpayer investments in Title IV financial aid programs. However, the ACS letter said that more time was needed to meaningfully comment on the guidance and its implications. To provide more meaningful comments, colleges and universities will need time to conduct an in-depth and individualized review of each and every contract or relationship with an outside entity, which could number in the hundreds for some institutions.

[NOTE: ED updated the comment period and reporting date to September 1, 2023 on February 28, 2023.]

A copy of the letter is found at:

<http://nasfaa.informz.net/z/cjUucD9taT0xMDk2NjQ5MyZwPTEmdT0xMDA2OTk2NTEyJmXpPTEwMDMzMTI3MA/index.html>.

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SoFi Sues Department of Education Challenging the Federal Student Loan Repayment and Interest Pause

SoFi filed a lawsuit in the U.S. District Court for the District of Columbia challenging the Department of Education's federal student loan repayment and interest pause issued in November 2022. The lawsuit asserted that unlike the other extensions, the Department did not claim that continuing the current moratorium was necessary to address harm caused to borrowers affected by the COVID-19 pandemic, but said that the further extension was intended to alleviate uncertainty for borrowers during the pendency of ongoing litigation regarding the federal student loan forgiveness program, including borrowers not eligible for debt relief. SoFi urged the Court to invalidate the eighth extension and, at a minimum, require repayment by borrowers who are not eligible for student debt cancellation.

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