



## WASHINGTON UPDATE

APRIL 2023

### President Biden Signs Bill Ending the COVID-19 National Emergency

On April 10, 2023, President Joe Biden signed a bill that ended the COVID-19 national emergency, about a month before it was set to expire on May 11, 2023, leaving questions regarding what that means for pandemic flexibilities and waivers related to federal student aid programs.

Because many of FSA's listed waivers and flexibilities are to phase out when the national emergency declaration is rescinded, it could mean that the phase out of those provisions began on April 10, when Biden signed the legislation. ED has indicated that it will be issuing an electronic announcement that provides clarification now that President Biden has ended the national emergency.

### Bipartisan Group of Senators Introduce *Student Loan Tax Elimination Act*

On March 28, 2023, a bipartisan group of senators led by Senator Mike Braun (R-IN) introduced the *Student Loan Tax Elimination Act*, which would eliminate origination fees charged on Federal Direct Loans that the sponsors say adds unnecessary debt to student borrowers. Representative Lloyd Smucker (R-PA) introduced the companion legislation in the House.

A copy of Senator Braun's press release is found at: <https://www.braun.senate.gov/senator-braun-leads-bipartisan-bill-remove-student-loan-tax>.

### Senate Republicans Introduce Bill Using CRA to Overturn Department of Education's Federal Student Loan Forgiveness Plan; Secretary Cardona Responds

On March 27, 2023, Senate Health, Education, Labor and Pensions (HELP) Committee Ranking Member Bill Cassidy (R-LA) and Senators John Cornyn (R-TX) and Joni Ernst (R-

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IA) introduced a resolution of disapproval using authority under the *Congressional Review Act (CRA)* to reverse the Department of Education’s federal student loan forgiveness plan and end the suspension of federal student loan payments and interest. (See article below.) The resolution of disapproval has garnered 38 co-sponsors, which is enough to force a vote on the measure under the CRA.

A copy of the Senators’ press release is found at:

<https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-cornyn-ernst-colleagues-introduce-cra-to-overturn-bidens-reckless-student-loan-schemes>.

On March 27, 2023, Secretary of Education Miguel Cardona issued a statement after Republicans introduced a CRA to put a stop to the one-time debt relief plan: “Republicans in Congress represent trillions of borrowers who have applied for student debt relief. It’s a shame for these borrowers – the overwhelming majority of whom make less than \$75,000 a year - and their families that their representatives are working so hard to deny them critical relief.”

The Secretary’s press release is found at:

<https://www2.ed.gov/fund/grants-college.html?src=pn>.

#### Senator Warren Sends Letter to ED Urging Stronger Accountability for Institutions

On March 26, 2023, Senator Elizabeth Warren (D-MA) sent a letter to Secretary of Education Miguel Cardona urging him to increase accountability of institutions of higher education in an effort to protect borrowers. The letter included some of the following recommendations:

- Ensure that institutions that fall below standards are subject to provisional Program Participation Agreements that set out strong corrective conditions with closely supervised and measurable benchmarks for improvement.
- Strengthen enforcement of for-profit colleges’ manipulation of cohort default rates.
- Review college conversions to ensure “covert for-profit” colleges are not redirecting funds to benefit private parties at the expense of students.
- Use its authority to protect students and taxpayers and promote accountability by holding for-profit college owners and executives personally financially liable when the colleges they run fail or lie to students who take on massive student loan debts.

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- Improve oversight of online program management companies and their incentive compensation arrangements with colleges.
- Conduct more stringent oversight of school accreditors, including terminating Department recognition of accreditors to protect students and taxpayers if necessary.
- Reinststitute and strengthen Gainful Employment rules, and ensure that low-quality programs are swiftly held accountable to prevent further financial harm to students.

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

<https://www.warren.senate.gov/oversight/letters/warren-seeks-department-of-education-action-to-hold-institutions-of-higher-education-accountable>.

#### House Education Subcommittee Holds Hearing to Examine President Biden’s Student Loan Policies for Students and Taxpayers

On March 23, 2023, the House Education and the Workforce Subcommittee on Higher Education and Workforce Development held a hearing titled, “Breaking the System: Examining the Implications of Biden’s Student Loan Policies for Students and Taxpayers.” In his opening statement, Subcommittee Chair Burgess Owens (R-UT) said that the purpose of the hearing was to address one of the greatest concerns to American’s livelihood, which is to investigate how the Biden Administration is pushing a “free college” initiative through loan forgiveness. He stated that the federal student loan forgiveness plan has turned the student loan program into targeted grants instead. He added that, instead of working with Congress to fix the current loan system, the administration has taken a “go alone approach,” that will cost the American taxpayers more than \$400 billion dollars.

In her opening statement, Subcommittee Ranking Member Frederica Wilson (D-FL) explained how her own path to economic mobility and home ownership began with her very first job as a teacher. She explained that, as the federal government began the student loan delivery process in the 1970’s, Pell Grants also began to be offered, but these grants have not kept up with the constantly increasing cost of colleges. She stated that it is unfair the Republican majority has complained and disagreed with the President’s proposed student loan cancellation while bailing out other industries, but not directly addressing the student loan debt of American taxpayers.

A copy of Subcommittee Chair Owens’ press release is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=408989>.

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### Biden Administration Delays Revised Third-Party Servicer Guidance

On April 11, 2023, the Biden Administration announced that it will further delay and revise its third-party servicer guidance, a move that backs down from its initial plan that would have expanded federal oversight of colleges' outside contractors. The Department of Education will no longer implement the previously issued Dear Colleague Letter per an announcement from Under Secretary James Kvaal.

Under Secretary Kvaal said in his blog post that the agency would instead issue a "revised final guidance letter" that will take effect "at least six months after its publication" to allow universities and companies time to comply. The Department received over 1,000 comments from the public expressing concern over the new compliance directives. Additionally, the Department will "consider clarifying and narrowing the scope of the guidance in several areas," including eliminating a prohibition on universities hiring companies that are owned by foreign entities, for example. The blog post also identified several activities that would not constitute third-party servicer relationships, such as study abroad programs, clinical or externship experiences, or course sharing via consortia agreements.

While the effective date of the recent guidance is delayed, previous guidance on third-party servicers will remain in effect.

A copy of the blog post is found at: <https://blog.ed.gov/2023/04/update-on-the-department-of-educations-third-party-servicer-guidance/>.

Chairwoman of the House Education and the Workforce Committee Virginia Foxx (R-NC) issued a statement that said:

"There is something seriously wrong with the Department of Education's operations if it must issue a blog post to clarify a guidance letter, said Chairwoman Foxx. "It demonstrates incompetency, poor planning, a failure to think through the serious implications of its proposal, a lack of respect for the concerns of postsecondary institutions, and tone-deafness to private businesses and students. I urge the Department of Education to put an end to this informal policy making charade and stop giving the American people whiplash with changes to this half-baked proposal that does more harm than good."

A copy of Chairwoman Foxx's statement is found at:  
<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409049>.

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FSA Sends Letter to College Presidents, Chancellors, and Chief Executives Officers  
Reminding them about 2024-2025 FAFSA Implementation

On April 12, 2023, Federal Student Aid’s Chief Operating Officer Richard Cordray sent a letter to college presidents, chancellors, and chief executive officers about the significant overhauls set to impact the federal financial aid system in the 2024-2025 academic year and urged leaders to be prepared for potential impacts the changes may bring. The FAFSA changes are a result of the enactment of the *FAFSA Simplification Act* and the *Fostering Undergraduate Talent by Unlocking Resources for Education (Future Act)*. For instance, Mr. Cordray suggested that they conduct a thorough review of current admissions and financial aid deadlines and practices as the 2024-2025 FAFSA form will be available in December 2023.

COO Cordray said: “Over the next several months, our teams will deliver specific outreach and training to institutional student financial aid administrators across the country. These trainings will be key to your success with this transition. We strongly recommend that you encourage and support participation by your financial aid team.”

A copy of the letter is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-04-12/fsa-letter-presidents-chancellors-and-ceos-changes-federal-student-aid-and-2024-25-fafsa-process#>.

ED Releases Fact Sheet Announcing Changes to its Title IX Regulations

On April 6, 2023, the Department of Education announced that it was releasing a Notice of Proposed Rulemaking (NPRM) on athletic eligibility under Title IX to advance Title IX’s longstanding goal of ensuring equal opportunity in athletics. During the two years of outreach to stakeholders to develop the NPRM, ED stated that it heard repeatedly that many schools, parents, and coaches face uncertainty about when and how transgender students can participate in school sports. The announcement said that the NPRM, if adopted, would provide much needed clarity for students, parents, and coaches. The proposed rule would establish that policies violate Title IX when they categorically ban transgender students from participating on sports teams consistent with their gender identity.

The public comment period will be for 30 days from the date of the NPRM’s publication in the *Federal Register*, which occurred on April 13, 2023. Therefore, comments must be received on or before May 15, 2023.

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A copy of the NPRM is found at:

<https://www.federalregister.gov/documents/2023/04/13/2023-07601/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/fact-sheet-us-department-educations-proposed-change-its-title-ix-regulations-students-eligibility-athletic-teams>.

House Education and the Workforce Chairwoman Virginia Foxx (R-NC) and Vice Chairwoman Mary Miller (R-IL) released a statement that “[t]he proposed rule runs counter to the goal of Title IX – to provide equal opportunity for women.”

A copy of the press release is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409044>.

Senator Tommy Tuberville (R-AL), Ranking Member of the Senate Health, Education, Labor and Pensions (HELP) Subcommittee on Children and Families, rebuked the Biden Administration’s new Title IX proposed rule that coerces schools to allow biological males to compete in women’s sports or risk losing federal funds.

A copy of the press release is found at:

<https://www.help.senate.gov/ranking/newsroom/press/subcommittee-ranking-member-tuberville-joins-cassidy-in-opposing-bidens-new-title-ix-rule-undermining-womens-sports>.

House Education and the Workforce Ranking Member Bobby Scott (D-VA) released a statement saying: “School sports offer invaluable life lessons – from leadership to teamwork – that every child in America should be able to access and enjoy. To that end, the proposed rule ensures that school sports are, above all, fair and safe for our nation’s children.”

A copy of the press release is found at:

<https://bobbyscott.house.gov/media-center/press-releases/scott-applauds-biden-administration-prioritizing-safety-and-fairness>.

### ED Releases Memo Urging Institutions to Enroll Eligible Students in SNAP Before Emergency Declaration Expires

On March 30, 2023, the Department of Education released a memo to remind institutions of higher education that the ongoing emergency declarations tied to the coronavirus will end on May 11, 2023, and that institutions should use the winddown period to ensure that eligible

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students can access the expanded Supplemental Nutrition Assistance Program (SNAP) before the benefits sunset.

According to guidance released by the Department of Agriculture (USDA) on February 10, 2023, once the emergency declaration is lifted on May 11, 2023, the temporary student exemptions will remain in effect for initial SNAP applications for an additional 30 days. State SNAP agencies must continue to apply the temporary exemptions to initial applications filed on or before June 9, 2023. State SNAP agencies must also process SNAP recertification applications submitted through June 30, 2023, using the temporary exemptions.

During the pandemic, SNAP was opened to all college students who are enrolled at least half-time and are otherwise eligible for work-study or have an EFC of zero. ED also urged institutions to conduct targeted outreach to students using FAFSA data and ensure that eligible students are provided with the information needed to apply for the program.

A copy of the memo is found at:

<https://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/phe-snap-memo.pdf>.

### FSA Posts Quarterly Portfolio Reports

On March 29, 2023, Federal Student Aid (FSA) posted its quarterly portfolio reports on the FSA Data Center website. The reports provide an overview of the student loan portfolio, including information on loan volume, delinquency rates, and default rates. The report indicated that as of December 31, 2022, the total outstanding principal balance of the federal student loan portfolio was \$1.64 trillion representing 43.8 million unduplicated recipients, which is a 4.6 percent increase from the same period in the previous year. The report also revealed that the overall delinquency rate for the portfolio was 9.5 percent. In addition, as of early February, about 453,000 borrowers have been approved for loan discharge under the Public Service Forgiveness Program (PSFP) limited waiver exceptions.

Almost 27 million Direct Loan recipients, with about \$1.1 trillion in outstanding loans, are in forbearance status, and more than 99 percent of these balances are in the special CARES Act forbearance. Less than 330,000 Direct Loan recipients have opted out of the payment pause and thus were in active repayment status as of December 31, 2022, compared to 18.1 million recipients in March 2020, shortly after the CARES Act became law.

The number of cumulative borrowers in default continues to decrease, which is now 4.7 million borrowers compared to 5.0 million borrowers one year ago.

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A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-03-29/federal-student-aid-posts-quarterly-portfolio-reports-fsa-data-center>.

### Department of Education Announces Public Hearings on Higher Education Rulemaking

On March 23, 2023, the Department of Education announced that it will hold virtual public hearings on April 11, 12, and 13 to receive stakeholder feedback on potential issues for future rulemaking sessions. Secretary of Education Miguel Cardona said: “The Department’s primary responsibility is to serve students and help them succeed...That means we must continue to take a look at a range of regulations to ensure that colleges and programs serve our students well and the Department processes work in their best interest.”

The press release said that the Department suggests the following topics for regulation in the hearing notice, but invites comments on any regulatory issue that can improve outcomes for students:

- The Secretary’s recognition of accrediting agencies and related issues
- Institutional eligibility, including State authorization
- Third-party servicers and related issues
- The definition of distance education as it pertains to clock hour programs and reporting students who enroll primarily online
- Return of Title IV funds
- Cash management to address disbursement of student funds
- Federal TRIO programs

ED also invites public comment on how the Department could, through its Title IV regulations, help improve borrowers’ understanding of repayment options and ensure borrowers select an income-driven repayment plan.

The virtual hearings will be held from April 11-13 from 10:00 am to noon and 1:00 to 3:00 pm eastern.

A copy of the press release is found at:

<https://www.ed.gov/news/press-releases/department-education-announces-public-hearings-higher-education-rulemaking>.

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A copy of the *Federal Register* Notice establishing a negotiated rulemaking committee is found at:

<https://fsapartners.ed.gov/knowledge-center/library/federal-registers/2023-03-27/announcement-intent-establish-negotiated-rulemaking-committee-hold-public-hearings-and-seek-comments-regulatory-topics>.

### FSA Announces Roadmap for the Delivery Dates of the 2024-2025 FAFSA

On March 21, 2023, Federal Student Aid (FSA) released a roadmap outlining the delivery dates for the 2024-2025 FAFSA and confirmed that the new FAFSA will be released sometime in December 2023. The roadmap outlines the series of resources and tools that will be available over the coming months to individuals who engage with and use the FAFSA form to apply for federal student aid leading to the launch of the revamped 2024-2025 FAFSA form.

The *FAFSA Simplification Act and Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE)* requires FSA and its partners to adopt changes to the FAFSA process to support students and families and make their experience smoother. For schools and states, FSA will issue policy guidance about expanded Federal Pell Grant eligibility, FAFSA data use, cybersecurity, school reporting requirements, and the transition from Expected Family Contribution to the Student Aid Index (SAI). For college professionals, FSA will launch a communication campaign and information hub on the Financial Aid Toolkit website to help counselors understand and communicate changes to students and their families.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-03-21/implementing-2024-25-fafsa-process>.

### FSA Announces Use of Secret Shoppers to Protect Students

On March 14, 2023, Federal Student Aid's (FSA) Office of Enforcement released a bulletin (GEN-23-14) announcing that it will use secret shoppers as an additional tool to monitor postsecondary institutions' compliance with the laws and regulations governing their participation in the federal student aid programs. In particular, secret shoppers will evaluate recruitment, enrollment, financial aid, and other practices of postsecondary institutions to help identify potentially deceptive or predatory practices used to recruit and enroll students.

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The bulletin states that secret shoppers may look at misrepresentations related to the transfer of credits into or out of the school, job placement rates, completion rates, withdrawal rates, future earning potential of graduates, the career services offered by the school, the total cost of attendance, the amount of Title IV aid available to students, and the institutional or programmatic accreditation, along with any other violations of the Title IV regulations.

In a press release, Chief Operating Officer for FSA Richard Cordray said: “Secret shopping is another tool in FSA’s toolbox as we expand our oversight work to hold predatory schools accountable...Our focus—as always—is to ensure that students, borrowers, families, and taxpayers are not being preyed upon to make a quick buck.”

Previously, on November 1, 2022, the Office of Enforcement released a bulletin (GEN-22-84) soliciting information from knowledgeable sources about potential violations of the *Higher Education Act (HEA)* and its implementing regulations. The bulletin stated that the Office of Enforcement established a new avenue for knowledgeable sources to provide information about potential violations of the HEA and its implementing regulations. The bulletin indicated that it welcomes and encourages information from current or former employees, vendors, or contractors of institutions of higher education, third-party servicers, third-party lead generators, students, or any other relevant individual about potential violations. Knowledgeable sources with information about potential violations are advised that individuals may submit relevant tips and information by visiting [Ed.gov/FSATips](https://www.ed.gov/FSATips) or sending an email directly to [FSATips@ed.gov](mailto:FSATips@ed.gov).

On March 16, 2022, the Office of Enforcement released a bulletin (GEN-22-14) warning institutions that it will act aggressively when it finds misrepresentations made to servicemembers and veterans. The bulletin stated that the Department will also share information and complaints about military-connected students with the Departments of Defense and Veterans Affairs for potential agency action.

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/education-department-announces-use-secret-shopping-protect-students-crack-down-institutions-lure-students-lies%E2%80%AF%E2%80%AF>.

A copy of the recent Office of Enforcement bulletin is found at: [https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-03-14/fsa-enforcement-bulletin-march-2023-announcing-use-secret-shoppers-evaluate-recruitment-and-enrollment-practices-and-monitor-title-iv-compliance?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-03-14/fsa-enforcement-bulletin-march-2023-announcing-use-secret-shoppers-evaluate-recruitment-and-enrollment-practices-and-monitor-title-iv-compliance?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

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The Office of Enforcement bulletin seeking tips about violations of regulations at institutions of higher education is found at:

[https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-11-10/fsa-enforcement-bulletin-november-2022-department-education-and-federal-student-aid-invite-tips-and-information-knowledgeable-sources-potential-violations-institutions?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-11-10/fsa-enforcement-bulletin-november-2022-department-education-and-federal-student-aid-invite-tips-and-information-knowledgeable-sources-potential-violations-institutions?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

The Office of Enforcement bulletin warning institutions about misrepresentations made to military-connected students is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-16/fsa-enforcement-bulletin-march-2022-substantial-misrepresentations-when-recruiting-servicemembers-and-veterans>.

#### OIG Releases 2023 Title IV Audit Guide

On March 9, 2023, the Department of Education, Office of Inspector General published its 2023 Title IV Audit Guide, *Guide for Financial Statement Audits of Proprietary Schools and For Compliance Attestation Examination Engagements of Proprietary Schools and Third-Party Servicers Administering Title IV Programs* (Guide). The Guide and the related transmittal letter are available on the OIG Non-Federal website at:

<https://www2.ed.gov/about/offices/list/oig/nonfed/proprietary.html>.

This Guide supersedes the previous guide dated September 2016 and the related amendments to that guide and is effective for fiscal years beginning on or after January 1, 2023. Early implementation is allowed and encouraged. However, the 2016 Title IV Audit Guide and associated Dear CPA Letters and FAQs remain in effect for fiscal years beginning prior to January 1, 2023.

The Federal Student Aid (FSA) notice (GEN-23-13) announcing the availability of the 2023 Title IV Audit Guide is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-03-10/availability-2023-title-iv-audit-guide-proprietary-schools-and-third-party-servicers>.

#### 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

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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 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.

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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>.

#### 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."

A copy of the press release is found at:

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

#### 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>.

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GAO Releases Decision Determining Federal Student Loan Forgiveness Program Subject to Congressional Review Act

On March 17, 2023, the Government Accountability Office (GAO) released a decision determining that the *Congressional Review Act (CRA)* applies to the Department of Education’s federal student loan forgiveness program. The CRA provides for the special procedures that Congress may use to overturn federal agency rules, as defined in the *Administrative Procedure Act*, via a joint resolution of disapproval that is “privileged” in the Senate, not subject to a filibuster, and requires a simple majority to pass in both the Senate and House. In the decision, the GAO concluded that the Department’s use of the *HEROES Act* waivers and modification provisions in this instance meet the definition of a rule under the CRA. The CRA concluded that the rule should have been published in the *Federal Register*, and the agency should have submitted a CRA report to Congress.

On March 17, 2023, Senators Bill Cassidy (R-LA), Ranking Member of the Health, Education, Labor and Pensions (HELP) Committee, Senators John Cornyn (R-TX) and Joni Ernst (R-IA) announced they will introduce a *Congressional Review Act (CRA)* resolution to overturn President Biden’s student loan cancellation plan. This announcement came after the Government Accountability Office (GAO) confirmed that the student loan policy is classified as a rule and can be overturned under the CRA.

Dr. Cassidy said: “President Biden’s student loan scheme does not ‘forgive’ debt, it just transfers the burden from those who willingly took out loans to those who never went to college, or sacrificed to pay their loans off...Where is the relief for the man who skipped college but is paying off his work truck, or the woman who paid off her loans and is now struggling to afford her mortgage? This resolution prevents these Americans, whose debts look different from the favored group the Biden administration has selected, from picking up the bill for this irresponsible and unfair policy.”

House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) also issued a statement in which she said: “the Government Accountability Office confirmed today what the American people already knew: the President cannot rule by press release. The *Congressional Review Act* is one of Congress’ key tools to hold the executive branch accountable for not implementing laws with fidelity. I look forward to working with my colleagues in the House and the Senate to hold the Biden Administration accountable for this illegal, unfair, and costly student bailout.”

A copy of the GAO decision is found at: <https://www.gao.gov/products/b-334644>.

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A copy of the Senate Committee press release is found at:

<https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-cornyn-ernst-announce-effort-to-overturn-bidens-reckless-student-loan-scheme-through-congressional-review-act>.

A copy of the House Committee press release is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=408970>.

Secretary of Education Miguel Cardona responded by releasing a press release stating: “Republicans in Congress represent millions of borrowers who have applied for student debt relief. It’s a shame for these borrowers—the overwhelming majority of whom make less than \$75,000 a year—and their families that their representatives are working so hard to deny them critical relief. Instead of working to support hardworking students and borrowers, Republicans in Congress would rather give trillions of dollars in tax breaks to the super wealthy and the biggest corporations. The Biden-Harris Administration will continue to fight to deliver much-needed support to borrowers trying to get back on their feet after the economic crisis caused by the pandemic.”

A copy of the Secretary’s press release is found at: <https://www.ed.gov/news/press-releases/statement-secretary-cardona-response-congressional-review-act-one-time-student-debt-relief>.

### CBO Releases New Estimate on Department of Education’s Proposed Rule on IDR Plan

On March 13, 2023, the Congressional Budget Office (CBO) released a new letter to the House Education and the Workforce Committee and Senate Health, Education, Labor, and Pensions (HELP) Committee responding to questions about the cost of the Department of Education’s proposed regulation for a new income-driven repayment (IDR) plan for federal student loans as published in the January 11, 2023 *Federal Register*. CBO estimated that, if the final rule is unchanged from the proposed rule, the cost of the federal student loan program would increase by \$230 billion, on a net-present-value basis, over the ten-year period 2023-2033. The CBO also stated that the cost of outstanding federal loans would rise to \$76 billion, which would be recorded as an increase in the deficit.

A copy of the CBO letter is found at: <https://www.cbo.gov/publication/58494>.

Chairwoman of the House Education and the Workforce Committee Virginia Foxx (R-NC) responded to the CBO letter by stating that the Biden Administration’s IDR rule will severely exacerbate rising college costs and excessive borrowing. “The administration’s

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Income-Driven Repayment rule is nothing more than a backdoor attempt to provide free college by executive fiat.”

A copy of Chairman Foxx’s press release is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=408967>.

Senator Bill Cassidy, MD, (R-LA), Ranking Member of the Senate Health, Education, Labor, and Pensions Committee, said: “These student loan schemes do not cancel debt, they just transfer it from those who chose to take out loans to those who did not. President Biden’s IDR rule is not only irresponsible but deeply unfair to those who chose not to go to college or sacrificed to pay off their loans and will now have to foot the bill.”

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

<https://www.help.senate.gov/ranking/newsroom/press/cbo-bidens-backup-student-loan-scheme-will-cost-taxpayers->

### Three Institutions Request Supreme Court to Halt ED from Discharging Federal Loans Owed by their Former Borrowers; Supreme Court Denies Request from the Three Institutions

On March 29, 2023, the U.S. Court of Appeals for the Ninth Circuit unanimously denied the request of three institutions, Lincoln Technical Institute, American National University, and Everglades College, seeking to halt the settlement reached in *Sweet v. Cardona*, which would allow the Department of Education to discharge the federal student loans for those borrowers who have borrower defense claims with the Department of Education. The settlement is expected to cover over 200,000 borrowers. The Department has already begun processing relief for the vast majority of borrowers, except for the borrowers’ claims from the three educational institutions, which are on hold. *Sweet v. Cardona* is a class action lawsuit that was filed in 2019 against the Trump Administration.

In a 3-0 decision, the appeals court ruled that the institutions failed to show sufficient probability of irreparable harm and ordered the institutions to submit their opening briefs for the appeal by May 3, 2023.

On April 5, 2023, Lincoln Technical Institute, American National University, and Everglades College asked the Supreme Court to stop the Department of Education from discharging the federal student loans owed by their former borrowers as part of a class action settlement reached in *Sweet v. Cardona* over borrower defense to repayment claims that languished at the Department for years. The three colleges say they are being unfairly

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harmed by the settlement and argue the Biden Administration lacks the authority to wipe out large amounts of student debt.

A group of 20 Republican Attorneys General (AGs) filed an amicus brief with the Supreme Court urging the justices to hear *Everglades College et. al. v. Cardona*.

On April 13, 2023, the Supreme Court rejected the emergency request from the three institutions to halt the class-action settlement that would cancel more than \$6 billion of student loan debt owed by borrowers who had attended their schools. The decision by the Supreme Court sends the case back to the U.S. Court of Appeals for the Ninth Circuit, which as noted above, has already set a briefing schedule to hear the colleges' appeal of the settlement.

#### 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.

#### 2U Sues Department of Education over New Guidance on Third-Party Servicers

On April 4, 2023, 2U sued the U.S. Department of Education in the U.S. District Court for the District of Columbia over its most recent guidance regulating the relationships between colleges and their third-party servicers. The online program manager (OPM) filed a lawsuit asserting that the Department's new guidance radically redefines the definition of a third-party servicer, something 2U said the agency lacks the unilateral authority to do. 2U argued that the Department overstepped its authority by using subregulatory guidance to make substantive changes that should go through the federal negotiated rulemaking process. Under the Department's new definition, OPMs that provide colleges with recruiting and retention services, as well as educational content, will broadly be considered third-party servicers.

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CFPB Announces that it Will Distribute Over \$4.7 Million to Consumers Harmed by a Financial Aid Scam

On March 31, 2023, the Consumer Financial Protection Bureau (CFPB) announced that it will distribute over \$4.7 million to consumers who were impacted by a financial aid scam. In 2015, the CFPB filed a complaint against College Financial Advisory and Student Financial Resource Center for illegally charging millions of dollars for sham financial services. The CFPB states that over 78,000 people paid College Financial Advisory or Student Financial Resource Center for information on how to pay for college or on how to apply for financial aid services.

A copy of the press release is found at:

<https://www.consumerfinance.gov/about-us/blog/cfpb-to-distribute-more-than-4-7-million-to-consumers-impacted-by-nationwide-student-financial-aid-scam/>.

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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