

WASHINGTON UPDATE

JULY 2023

Supreme Court Overturns Biden Student Debt Cancellation Plan

On June 30, 2023, in a vote of 6-3, the Supreme Court overturned the Biden Administration’s student debt relief plan, which would cancel up to \$20,000 in student debt for eligible borrowers. In *Department of Education v. Brown*, Chief Justice John Roberts, writing for all his Republican-appointed colleagues, rejected the Biden administration’s argument that it could enact mass debt forgiveness by using emergency “waiver” powers tied to the Covid-19 pandemic. Justice Roberts wrote that the HEROES Act “allows the Secretary to ‘waive or modify’ existing statutory or regulatory provisions” but not to “rewrite” the federal law on student loans “from the ground up.” Justice Roberts also wrote that Biden’s plan amounts to “the Executive seizing of the power of the Legislature.”

Justice Elena Kagan’s dissent described the court’s move as a troubling act of judicial overreach and said it fit a pattern of the court’s conservative majority intruding into actions that should be left to the political branches. “The Court refuses to acknowledge the plain words of the HEROES Act. It declines to respect Congress’s decision to give broad emergency powers to the ‘secretary of education.’”

In response to the Supreme Court’s ruling, Secretary of Education Miguel Cardona issued a statement saying: “Today, the Supreme Court ruled against students and families across the country. It’s an outrage that lawsuits brought on by Republican elected officials have blocked critical student debt relief that would have been a lifeline for more than 40 million Americans – nearly 90 percent of whom make less than \$75,000.”

Following the decision, the White House announced that the Department of Education would take several new steps to provide student loan relief and released a Fact Sheet announcing that the Department would establish a negotiated rulemaking committee to develop regulations to implement the student loan forgiveness plan. The Department plans on developing regulations related to the authorities granted under Section 432(a) of the Higher Education Act, which relate to the modification, waiver, or compromise of federal student loans. On July 6, 2023, the Department of Education published a Notice in the *Federal Register*, announcing its intent to establish a negotiated rulemaking committee to prepare proposed regulations to modify, waive, or compromise Federal student loans. A virtual public hearing will be held on July 18, 2023.

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A copy of the Notice is found at:
<https://fsapartners.ed.gov/knowledge-center/library/federal-registers/2023-07-06/public-hearing-negotiated-rulemaking-committee>.

In addition, Secretary Cardona announced that the Department finalized its most affordable repayment plan ever created, ensuring that borrowers will be able to take advantage of this plan this summer – before loan payments are due. The Department released the unofficial version of its final regulations on the new income-driven repayment (IDR) plan, called the “Saving on a Valuable Education (SAVE)” plan. The SAVE plan will replace the current Revised Pay-As-You-Earn (REPAYE) plan and will be more generous than the existing plan. The SAVE plan will go into effect on July 1, 2024, but ED intends to early implement certain benefits this summer before the repayment pause ends:

- The protected income would be raised from 150 percent to 225 percent of the federal poverty guidelines;
- Monthly interest not covered by the SAVE plan will no longer be charged; and
- A spouse’s income will no longer be required for a payment calculation if married borrowers file their taxes separately.

With monthly payments scheduled to start in October 2023, the White House also announced that the Department will institute a 12-month period, from October 1, 2023 to September 30, 2024, to create a temporary “on-ramp” to repayment for one year for those struggling to make payments. If borrowers fail to repay during this 12-month on-ramp, borrowers will not be considered delinquent, reported to credit bureaus, placed in default, or referred to debt collection agencies.

The Secretary of Education indicated that “while they disagree with the Supreme Court’s ruling, the Administration will not stop fighting to provide relief to borrowers who need it most, and we will use every tool at our disposal.”

A copy of the Secretary’s press release is found at:
<https://www.ed.gov/news/press-releases/secretary-cardona-statement-supreme-court-ruling-biden-administrations-one-time-student-debt-relief-plan>.

A copy of the Fact Sheet is found at:
<https://www.ed.gov/news/press-releases/fact-sheet-president-biden-announces-new-actions-provide-debt-relief-and-support-student-loan-borrowers>.

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House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) issued a press release stating: “Mr. President, good riddance to your illegal, economically disastrous taxpayer-funded bailout for the wealthy. I had hoped you would have greater respect for taxpayers and the Constitution, but I am pleased the Court stepped in to hold you accountable.”

A copy of the Chairwoman’s statement is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409349>.

Ranking Member of the Senate Committee on Health, Education, Labor and Pensions (HELP) Bill Cassidy (R-LA) released a statement supporting the decision of the Supreme Court to overturn Biden’s student loan cancellation scheme. Dr. Cassidy’s statement is found at: <https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-applauds-supreme-court-decision-overturning-bidens-student-loan-cancelation-scheme>.

Ranking Member of the House Education and the Workforce Committee Bobby Scott (D-VA) released a statement: “A college education should not depend on how much money a student’s parents make... Yet the rising cost of tuition, decades of disinvestment in higher education, and the declining relative value of the Pell Grant have left many student loan borrowers with burdensome debt.”

A copy of Ranking Member Scott’s statement is found at:

<https://democrats-edworkforce.house.gov/media/press-releases/scott-statement-on-scotus-striking-down-bidens-student-loan-program>.

Federal Appeals Court Pauses Borrower Defense Rules for Texas Schools

It has been reported that on June 30, 2023, the Fifth Circuit Court of Appeals issued an order pausing the July 1, 2023, effective date of the borrower defense to repayment (BDR) rule. However, the pause only applies to educational institutions that are members of the Career Colleges & Schools of Texas (CCST) and is only in effect until July 21, 2023. The stay provides CCST an opportunity to argue that the District Court’s preliminary injunction was improper.

Supreme Court Strikes Down Race-Conscious Admissions Policies

On June 29, 2023, the Supreme Court ruled that race cannot be considered in college and university admissions, which strikes down more than 40 years of precedent. The two cases that led to the decision were brought by Students for Fair Admissions (SFFA) against Harvard University and the University of North Carolina (UNC). The case against Harvard University

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argued that universities should not be allowed to use race as a factor in the college admissions process, and that Harvard unlawfully discriminated against Asian American applicants. In the case against UNC, SFFA argued that UNC's admissions process violates the equal protection clause of the 14th Amendment by using race as a factor in admissions.

The majority opinion, written by Chief Justice John Roberts, states that the court "has permitted race-based admissions only within the confines of narrow restrictions. University programs must comply with strict scrutiny, they may never use race as a stereotype or negative, and – at some point – they must end." The ruling went on to state that the programs created by Harvard University and the University of North Carolina "however well intentioned and implemented in good faith – fail each of these criteria." "Eliminating racial discrimination means eliminating all of it." However, Justice Roberts said that his decision does not bar institutions from considering how an applicant's race has impacted their life should such a disclosure be made in the process of applying.

In her dissent, Justice Sonia Sotomayor wrote that the decision "rolls back decades of precedent and momentous progress." She went on to say that institutions could still find ways to encourage diversity through the admissions process.

President Biden said in a press briefing that he strongly disagreed with the court's decision. Secretary of Education Miguel Cardona said the ruling served as a setback in promoting equal opportunity and urged higher education leaders to bolster their efforts to improve student diversity. On June 29, 2023, the Department of Education distributed a Fact Sheet that said it will take a number of steps to help ensure colleges and universities can promote diverse student bodies.

Ranking Member of the House Education and the Workforce Committee Bobby Scott (D-VA) released a statement that said: "Regrettably, the Supreme Court's decision to end the consideration of race as a factor in college admissions is a significant setback in our effort to eliminate disparities in access to higher education and ensure diverse learning environments for all students."

House Education and the Workplace Committee Chairwoman Virginia Foxx (R-NC) issued a statement stating that: "Today's decision by the Supreme Court is a welcome victory for countless students across the country – academia's ivory towers should not divide and promote preferences based on the color of one's skin. In America, fairness is the key to educational opportunity, where one's success is judged by merit rather than arbitrary quotas."

A copy of the Fact Sheet is found at:

<https://content.govdelivery.com/accounts/USED/bulletins/362aed0>.

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A copy of Secretary Cardona's statement is found at:

<https://www.ed.gov/news/press-releases/secretary-cardona-statement-supreme-court-ruling-college-affirmative-action-programs>.

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

<https://bobbyscott.house.gov/media-center/press-releases/ranking-member-scott-statement-scotus-ruling-affirmative-action>.

A copy of Chairwoman Foxx's press release is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409348>.

Fox and Cassidy Write to Secretary Cardona Demanding Plan of Action for Returning Borrowers to Repayment

On June 27, 2023, House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) and Senate Health, Education, Labor and Pensions (HELP) Committee Ranking Member Bill Cassidy (R-LA) sent a letter to Secretary of Education Miguel Cardona demanding a briefing and documents from the Secretary regarding the Administration's plan to transition borrowers back to repayment.

Chairwoman Foxx said: "The Department has been on notice for nearly two and a half years that it would need to develop a plan for a smooth transition to repayment... You have failed to provide us any evidence of any communication between the Department and loan servicers as of the date of this letter." The letter continues with: "Mr. Secretary, the success or failure of the return to repayment sits squarely on your shoulders."

A copy of the press release, which contains the letter, is found at:

<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409356>.

House Republicans Introduce *FAIR Act* Providing for Restart of Loan Payments

On June 15, 2021, House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC), House Higher Education and Workforce Development Subcommittee Chairman Burgess Owens (R-UT), and Congresswoman Lisa McClain (R-MI) introduced the *Federal Assistance to Initiative Repayment (FAIR) Act*. The sponsors of the bill state that the legislation will take a critical step towards fixing the federal student loan system and will provide a path back to repayment for 40 million borrowers.

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Some of the provisions of the bill include the following:

- **Borrower Notifications:** Requires the Secretary of Education to send notifications to federal student loan borrowers prior to the resumption of federal student loan repayment using multiple forms of communication, including information on when repayments resume; borrowers' repayment options; and personalized information for borrowers identified at-risk, such as those borrowers who are in default, reassigned to a new loan servicer, and other borrower populations specified at-risk.
- **Federal Preemption of State Servicing Laws:** Clarifies federal preemption of state laws that conflict with federal requirements for, and the operations of, federal student loan servicers.
- **FSA Employee Bonuses:** Prohibits the Chief Operating Officer of FSA and other FSA employees from receiving bonuses if they fail to implement the return to repayment requirements included in the bill.
- **Repayment Options for Loans in Repayment on or After July 1, 2023:** Provides borrowers access to the standard 10-year repayment plan and a new income-driven repayment (IDR) plan.
- **Secretarial Prohibition on New Repayment Plans:** Prohibits the Secretary from creating new repayment plans and from modifying an existing repayment plan in a manner that increases costs to the government.
- **Deferment Options: Simplifies the Repayment Process:** New borrowers will have the following deferment and forbearance options: (1) in-school; (2) grace period; (3) periods when the borrower is pursuing graduate fellowship or rehabilitation education program; (4) active duty; (5) National Guard duty; (6) medical or dental internship or residency program; (7) 120-day deferment for defaulted borrowers who sign new agreements to repay their outstanding balance; (8) administrative deferment; (9) cancer deferment; and (10) military spouse deferment.
- **Parent Borrowers:** Maintains current loan deferment options for parent borrowers and parent borrowers' ineligibility for IDR as in current law.
- **Additional Rehabilitation for Borrowers in Default:** Permits loans to go through the established rehabilitation process twice rather than just once.
- **Requirements for New Regulations and Executive Actions:** Requires the Secretary to confirm that any new regulations or executive actions issued related to the student loan

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program will not increase costs to the federal government. Prohibits any regulations from being issued that cannot meet that threshold.

- Prohibition on Certain Final Rule: Prohibits the U.S. Department of Education from implementing its proposed IDR plan.

A section-by-section analysis is found at:

https://edworkforce.house.gov/uploadedfiles/the_federal_assistance_to_initiate_repayment_act_section_by_section_summary.pdf.

A fact sheet is found at:

https://edworkforce.house.gov/uploadedfiles/fair_act_fact_sheet_final.pdf.

Senate Republicans Introduce Higher Education Reform Package Focusing on Transparency, Repayment Plans, and Grad PLUS

On June 14, 2023, Senate Health, Education, Labor, and Pensions (HELP) Committee Ranking Member Bill Cassidy (R-LA), Senator Chuck Grassley (R-IA), Senator John Cornyn (R-TX), Senator Tommy Tuberville (R-AL), and Senator Tim Scott (R-SC) introduced the *Lowering Education Costs and Debt Act*, a package of five bills related to college affordability and federal student loan debt. The bills included are as follows:

- The *College Transparency Act (CTA)*: Introduced by Ranking Member Cassidy, the legislation reforms the college data reporting system to ensure students and families have better information on student success and outcomes as they consider higher education.
- The *Understanding the True Cost of College Act*: Introduced by Senator Grassley, the bill requires institutions of higher education to use a uniform financial aid letter with clear indications of the types and breakdown of aid included (scholarships, loans, work study, etc.).
- The *Informed Student Borrower Act*: Introduced by Senator Steve Daines (R-MT), the legislation seeks to offer information to borrowers about the duration of their federal student loan, their expected monthly payment, how much money they will likely make in the future after attending their school and program of choice, and other information. It requires borrowers to annually receive this information through loan counseling to understand the value of their student loan.

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- The *Streamlining Accountability and Value in Education (SAVE) for Students Act*: Introduced by Senator Cornyn, the legislation streamlines repayment plan options for borrowers.
- The *Graduate Opportunity and Affordable Loans (GOAL) Act*: Introduced by Senator Tuberville, the legislation repeals Grad PLUS and allows institutions to set lower loan limits for undergraduate and graduate programs.

A summary of the bill is found at:

https://www.help.senate.gov/imo/media/doc/higher_ed_one_pager.pdf.

Senate HELP Committee Chair Sanders and Congresswoman Jayapal Introduce Bill to Eliminate Tuition and Fees for Eligible Students

On June 14, 2023, Health, Education, Labor, and Pensions (HELP) Committee Chairman Bernie Sanders (I-VT) and Congresswoman Pramila Jayapal (D-WA) reintroduced the *College for All Act*, which would establish a federal-state partnership to provide for the elimination of tuition and required fees for eligible students. Under the bill, students in single households earning \$125,000 or less and married households earning \$250,000 or less annually would be able to attend public four-year colleges and universities tuition-free. The legislation would also double the maximum award for the Pell Grant program.

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

<https://www.sanders.senate.gov/press-releases/news-sanders-jayapal-and-colleagues-introduce-legislation-to-make-college-tuition-and-debt-free-for-working-families/>.

ED Publishes Final Income-Driven Repayment Rule

On July 10, 2023, the Department of Education published the final regulations creating a new income-driven repayment plan in the *Federal Register*. The final regulations state that the regulations will “create a stronger safety net for federal student loan borrowers, helping more borrowers avert delinquency and default and the significant negative consequences associated with those events.” The final rules replace the current Revised Pay-As-You-Earn (REPAYE) Repayment Plan as the Saving on a Valuable Education (SAVE) Repayment Plan. The following provisions are included:

- Align the definition of “family size” in the Federal Family Education Loan Program with the definition of “family size” in the Federal Direct Loan Program.

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- Increase the amount of income exempted from the calculation of the borrower's payment amount from 150 percent of the federal poverty guideline or level (FPL) to 225 percent of FPL for borrowers in the REPAYE/SAVE plan. This means anyone with income below 225 percent of FPL would have a zero dollar payment under REPAYE/SAVE plan.
- Lower the share of discretionary income used to calculate the borrower's monthly payment for outstanding loans under REPAYE/SAVE to 5 percent of discretionary income for loans for the borrower's undergraduates study and 10 percent of discretionary income for other outstanding loans; and an amount between 5 and 10 percent of discretionary income based upon the weighted average of the original principal balances for those with outstanding loans in both categories.
- Provide a shorter maximum repayment period for borrowers with low original loan principal balances (i.e., 10 years for balances of \$12,000 and lower).
- Provide that a borrower will not be charged any remaining accrued interest each month after the borrower's payment is applied under the REPAYE/SAVE plan.
- Credit certain periods of deferment or forbearance toward time needed to receive loan forgiveness.
- Permit borrowers to receive credit toward forgiveness for payments made prior to consolidating their loans.
- Prohibit or restrict new enrollment in certain existing Income Driven Repayment plans starting on July 1, 2024, to the extent that the law allows.

A copy of the final regulations is found at:

<https://fsapartners.ed.gov/knowledge-center/library/federal-registers/2023-07-10/improving-income-driven-repayment-william-d-ford-federal-direct-loan-program-and-federal-family-education-on-loan-ffel-program>.

FSA Issues Guidance on Implementation of the Pre-Dispute Arbitration Agreement Provisions

On July 3, 2023, Federal Student Aid (FSA) announced guidance on the implementation and policy guidance on the pre-dispute arbitration agreement provisions imposed by some institutions participating in the Direct Loan programs. The announcement said that FSA recognizes that some institutions may have entered into mandatory pre-dispute arbitration agreements or other pre-dispute agreements addressing arbitration and class action prohibitions

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between July 1, 2020, and June 30, 2023. Under the new regulations published on November 1, 2022, effective July 1, 2023, an institution cannot enforce such agreements in relation to any borrower defense claim made by a Direct Loan recipient. Institutions are not required to issue new enrollment agreements or contracts to students who signed a contract with a pre-dispute arbitration agreement or class action prohibition prior to the effective date of the regulations. However, the Department is directing any institution where a loan was obtained and included a pre-dispute arbitration requirement or any provisions addressing class actions to amend their agreements and/or notify borrowers that those provisions will not be enforced.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-07-03/implementation-and-policy-guidance-pre-dispute-arbitration-agreement-provisions#>.

FSA Reminds Institutions that Updates to the GLBA Went into Effect on June 9, 2023

On June 21, 2023, Federal Student Aid (FSA) sent an email reminding institutions that updates to the Gramm-Leach-Bliley Act (GLBA) went into effect on June 9, 2023. A February 9, 2023, electronic announcement provides more information on updated GLBA cybersecurity requirements.

A copy of the email is found at:

<https://mirror.mail.studentaid.gov/nl/jsp/m.jsp?c=%40HV2KxuasfKu5CrBqzMztTmEw4UfyHr6Hg6XhbsFCQ0%3D>.

A copy of the February 9th announcement is found at:

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

FSA Releases New Quarterly Portfolio Reports with Information about the FSA Programs

On June 20, 2023, Federal Student Aid (FSA) released new quarterly portfolio reports on its FSA Data Center website about the student aid programs. As of March 31, 2023, about 43.6 million student loan recipients have about \$1.64 trillion in outstanding loans. As a result of special COVID-19 flexibilities for federal student loans, the number of recipients in repayment status has fallen significantly since March 2020. Almost 27 million Direct Loan recipients, with approximately \$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. About 305,000 Direct Loan recipients have opted out of the payment pause and are in repayment status as of March 31, 2023, compared with 18.1 million recipients in March 2020. With almost all non-defaulted

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federal student loan borrowers now in forbearance, no new Direct Loan borrowers have entered default since March 2020.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-06-20/federal-student-aid-posts-quarterly-portfolio-reports-fsa-data-center>.

ED Officially Announces Federal Student Loan Payments Will Restart in October

The Department of Education recently added a banner to the top of the <https://studentaid.gov/> website discussing the restarting of federal student loan repayments.

The banner states: “Congress recently passed a law preventing further extensions of the payment pause. Student loan interest will resume starting on Sept. 1, 2023, and payments will be due starting in October. We will notify borrowers well before payments restart.”

FSA Announces Timeframes for Sunset of the COVID-19 Waivers and Flexibilities

On June 14, 2023, Federal Student Aid (FSA) released an announcement explaining the timeframes for the sunset of the COVID-19 waivers and flexibilities applicable to institutions. The announcement also provides general guidance regarding the return to normal compliance with Title IV, *Higher Education Act (HEA)* requirements. The waivers and flexibilities generally end at the end of the payment period in which COVID-19 national emergency of the COVID-19 public health emergency ends, whichever is later. Accordingly, most of the waivers and flexibilities will end at the end of the payment period in which the COVID-19 public health emergency ended on May 11, 2023. If May 11, 2023 occurred between payment periods, CARES Act waivers and flexibilities will not apply in the following payment period and thereafter.

The announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-06-14/sunset-covid-19-waivers-and-flexibilities>.

A copy of the *Federal Register* Notice is found at:

<https://fsapartners.ed.gov/knowledge-center/library/federal-registers/2023-06-16/updated-waivers-federal-student-aid-programs>.

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FTC Sends Payments to Consumers Harmed by Student Loan Debt Relief Scam

The Federal Trade Commission (FTC) recently sent payments totaling more than \$3.3 million to over 37,800 consumers who were harmed by Arete Financial Group, a third-party student loan debt relief company that induced consumers into making illegal upfront payments by pretending to be affiliated with the U.S. Department of Education and falsely promising to assist consumers in obtaining student loan debt relief. The Defendants promised consumers that in exchange for the payment of upfront fees and subsequently monthly fees, they would reduce or eliminate consumers' student loan balances. In reality, the scammers pocketed customers' payments and never provided the promised relief.

A copy of the FTC press release is found at: <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-sends-more-33-million-consumers-harmed-student-loan-debt-relief-scam>.

Governor DeSantis Sues Biden Administration Over Accreditation

On June 22, 2023, Governor Ron DeSantis and Attorney General Ashley Moody sued the Biden Administration over its attempts to undercut Florida's higher education reforms. Florida is suing the Department of Education to block it from enforcing federal accreditation requirements against the state's higher education institutions. Governor DeSantis said: "We reject the idea that a totally unaccountable, unappointed, unelected accrediting agency can trump what the state of Florida is doing."

In 2022, Florida passed a law mandating its public colleges change accreditors every cycle. In response, the Department of Education released guidance that requires colleges to demonstrate "reasonable cause for changing their accrediting agency or for having multiple accrediting agencies." Governor DeSantis said that he "will not allow Florida's public colleges and universities to be held hostage by accreditors that are unaccountable to the people of Florida."

A copy of the Governor's press release is found at: <https://www.flgov.com/2023/06/22/governor-desantis-sues-biden-administration-to-ensure-free-dom-in-higher-education/>.

NSC Updates MOVEit Transfer Security Issue

On July 6, 2023, the National Student Clearinghouse (NSC) announced that it is investigating a recent cybersecurity issue involving the vulnerability of one of its third-party software tools, MOVEit Transfer, which affected potentially thousands of other organizations worldwide that

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use the tool to transfer files. Based on its ongoing investigation, NSC has determined that an unauthorized party obtained certain files transferred through the Clearinghouse's MOVEit environment. NSC has notified the organizations whose data have been identified. NSC has taken actions to protect customer data and its systems by applying relevant security patches and following guidance from the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) and the Federal Bureau of Investigation (FBI).

A copy of the NSC press release is found at: <https://alert.studentclearinghouse.org/>.

Sharon H. Bob, Ph.D.
Higher Education Specialist
Powers Pyles Sutter and Verville, PC
1501 M Street, NW, Suite 700
Washington, DC 20005
T: 202-872-6772
F: 202-792-6540
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