CAPFAA State and Federal Relations Committee – News Update

10/31/23

Committee Chair:

- Ryan Jones, Campus Supervisor, Gateway Community College

ED Details Upcoming Negotiated Rulemaking Session for its Student Debt Relief Committee

The Department of Education (ED) on Friday provided updates on the negotiated rulemaking process that is seeking an "alternative path to debt relief" in response to President Joe Biden's student debt relief plan being struck down by the United States Supreme Court (SCOTUS) earlier this summer.

During a press call Friday morning, Education Under Secretary James Kvaal announced that the department released an issue paper outlining ED's policy consideration to implement debt relief for student loan borrowers in need. ED also announced its non-federal negotiators and facilitators for the negotiated rulemaking student loan debt relief committee, which is scheduled to have its first public hearings on October 10-11. In its announcement, ED did not list the federal negotiator that would represent the department.

In June, SCOTUS struck down Biden's student debt relief plan, which would have forgiven up to $20,000 in student loans to eligible borrowers. In response to that decision, the Biden administration shortly announced it would seek to implement a debt relief program through the negotiated rulemaking process through the Higher Education Act (HEA).

On Friday's press call, Kvaal said the announcement of the committee's issue paper and non-federal negotiators served as a "critical step" in the negotiated rulemaking process. He added that the administration will not "rest until we fix our broken student loan system."

The issue paper ED released on Friday asks the negotiated rulemaking committee for feedback on how it may provide loan relief to five categories of borrowers.

Those five categories include; borrowers whose balances are greater than what they originally borrowed; borrowers whose loans first entered repayment decades ago; borrowers who attended programs that did not provide "sufficient financial value;" borrowers who are eligible for relief under programs like income-driven repayment but have not applied; and borrowers who have experienced financial hardship and need support "but for whom the current student loan system does not adequately address."

The issue paper will be discussed at the first committee hearings in October, ED said. The committee is also slated to meet in November and December. The hearings will be virtual and the public can watch the livestream by registering. Updates on this negotiated rulemaking process will be posted on ED's website.

The upcoming negotiated rulemaking committee is composed of 14 affected constituency groups and includes some NASFAA members. Representing private non-profit institutions is Angelika Williams, FAAC®, of the University of San Francisco, and Susan Teerink of Marquette University. Representing public institutions is Melissa Kunes of the Pennsylvania State University.

In its press release, ED noted that it is still looking for individuals who can serve as alternate negotiators for two constituencies; state officials, including state higher education executive officers; and historically Black colleges and universities, tribal colleges and universities, and minority-serving institutions. Those interested should email negregnominations@ed.gov before October 6.

The press call also touched on concerns following the threat of a government shut down due to issues with Congress passing a short-term spending deal, and how that could impact the committee's planned meeting, as well as the timeline of the rulemaking process.

Zayn Siddique, deputy assistant to the president and deputy director of the White House Domestic Policy Council, said that if a government shutdown does happen, "key activities" at Federal Student Aid (FSA) will continue for a "couple of weeks." He added that FSA plans to continue to engage borrowers and help them return to repayment, with student loan payments due in October. However, he stressed that if the shutdown goes longer than that, there could be issues.

Over the weekend, congressional leaders averted a government shutdown by passing a 45-day continuing resolution which will keep the government funded through mid-November.

Biden Signs Short-Term Spending Bill for Fiscal Year 2024

President Joe Biden signed a continuing resolution that will keep the government funded through November 17, offering Congress additional time to work through spending levels for fiscal year 2024.

Congressional negotiators still need to work through significant differences between their Labor-HHS-Education bills which funds ED, and need to contend with a potential House leadership fight that could further complicate spending talks. Following the House's passage of the continuing resolution GOP hardliners have threatened to oust Speaker Kevin McCarthy (R-Calif) for relying on votes from Democrats to advance the short-term spending measure.

Back in July the House advanced its Labor-HHS-Education bill out of a subcommittee, but the bill was never taken up by the full committee. That proposal would slash funding for education-related programs with an overall request of $67.4 billion to ED, a reduction of $12.1 billion from the fiscal year 2023 enacted level and $22.6 billion less than the president's budget request.

The Senate's proposal, which advanced out of the full appropriations committee by a bipartisan vote of 26-2, contained $79.6 billion in discretionary funding for ED. This total was below the President's budget request for education spending, but spared several higher education programs from steep cuts that were proposed in the package put forth by House Republicans.

Now Available: 2024–25 FAFSA Prototype

Federal Student Aid (FSA) announced that the prototype for the 2024–25 FAFSA is now available. The prototype, per FSA, offers the financial aid community an advanced opportunity to gain a deeper understanding of the FAFSA user experience ahead of its official release, which is slated for this December. **The password to use the prototype is prototype2425**. This is not a complete replica of the 2024–25 FAFSA form and FSA warned that the prototype contains “limited functionality and may not represent the final FAFSA experience.”

ED Outlines Updated Strategies to Increase Diversity in Higher Education

The ED released a report outlining strategies states and higher education leaders can take to promote college diversity, with the intention of providing institutions up to date resources to comply with the U.S. Supreme Court’s (SCOTUS) recent decision to strike down race-conscious admission policies.

The 66-page report outlines several strategies and practices in the areas of outreach, admissions, financial aid, and college completion that state and higher education leaders can use to consider how they can increase socioeconomic and racial diversity in colleges.

ED stated that this report “answers President [Joe] Biden’s charge” to ED to share practices that build inclusive and diverse student bodies after SCOTUS ruled that race cannot be considered in college and university admissions, and builds on the department’s resources that were made available earlier this summer.

In the report Education Secretary Miguel Cardona wrote that following the court’s decision, colleges and universities lost a “vital tool for creating vibrant, diverse campus communities.” However, Cardona said ED’s report “makes clear” that institutions must not lose their “commitment to equal opportunity and student body diversity.”

Some of the strategies ED highlighted to increase diversity include; targeted recruitment and outreach to K-12 schools, community colleges, historically Black colleges and universities (HBCUs), and other minority-serving institutions; “meaningful” consideration in admissions to adversity students have faced; and providing “comprehensive” support programs for students that increase retention and completion rates.

In terms of financial aid, ED listed several strategies that include increasing college affordability and creating transparency in the FAFSA application process.

For example, ED urged state leaders to consider ways states can support institutions’ enrollment of underserved students by; providing “sufficient and direct” funding to higher education institutions; reviewing state financial aid and benefits eligibility requirements and enrollment processes; and strengthening relationships across K–12 schools, community colleges, and four-year institutions to create stronger statewide postsecondary pathways.

“Direct appropriations to institutions can reduce or eliminate tuition, or they can enable institutions to invest in their need-based aid programs,” ED wrote in the report. “Reducing college costs is also critical to ensure that students enroll and persist in higher education.”

ED noted that HBCUs and tribal colleges and universities (TCUs) have historically been underfunded by states, with a majority of states providing no funding to TCUs at all.

“Despite being underfunded and under-resourced, HBCUs have been essential to providing higher education opportunity to Black students and other students of color,” ED wrote. “They have also had a significant economic impact for their alumni and the economy.”

The report also touched on using need-based aid as a strategy to increase diversity. Institutions could consider creating need-based aid programs that “encompass the full spectrum of student need,” such as evaluating both parental income and wealth and accounting for gaps in federal and state eligibility. ED stressed that need-based aid increases enrollment, persistence, and completion in higher education.

However, according to ED, research suggests that almost half of financial aid provided today at public universities goes to students who do not need financial support and universities are increasing non-need-based aid faster than they do need-based aid.

Another strategy to increase diversity and opportunity in higher education is through free-tuition programs, which are also known as “college promise” programs and typically offer a tuition-free guarantee to students within a specified state or locale.

ED also recommends institutions and state leaders consider how to improve the financial aid application processes for students. ED noted that with FAFSA simplification, the new 2024-25 FAFSA will include a more streamlined application process, expanded eligibility for federal student aid, and a new user experience for the FAFSA form. States and institutions could also consider how to simplify forms that college applicants are required to submit, ED wrote.

Another strategy is for institutions to work with students and families to ensure they are able to review their financial aid offers and understand what they are offered. Just last week, The College Cost Transparency Initiative (CCT) announced that over 300 institutions have voluntarily committed to follow its set of principles and standards for the financial aid offers they communicate to undergraduate students.

“Financial aid offers should be clear, easily understandable, and adequately reflect all costs, including non-tuition costs, associated with attending the institution,” ED wrote.

The report from ED comes as the House Higher Education and Workforce Development Subcommittee recently held a hearing about how the SCOTUS decision on race-conscious admissions is impacting institutions’ admissions policies.

While the hearing focused mainly on admission policies, David Hinojosa, director of the Educational Opportunities Project of the Lawyers' Committee for Civil Rights Under Law, noted that increasing funding for the federal Pell Grant can serve to increase equity in higher education.

ED Begins FAFSA Communication Campaign for 2023-24 Filers

The ED began its direct outreach campaign to 2023-24 FAFSA filers about the delayed rollout of the 2024-25 FAFSA, reminding students via email that the new form will be released in December of 2023. The email encourages students to prepare for the FAFSA rollout by using resources from ED, and to consider registering for an October 25 webinar that will detail how to prepare for the updated form. ED also encouraged filers to opt into SMS message alerts to stay up to date on notifications and to learn more about the changes coming to the 2024-25 FAFSA experience.

NASFAA Members Increasingly Concerned About Rise in Borrower Defense Claims

Since this Summer, NASFAA has heard from an increasing number of members that their institutions have received a growing number of borrower defense claim notifications, leading to significant confusion as to how schools should handle these filings due to the rollout of regulatory updates, ongoing legal challenges, and a lack of communication from the ED.

As a reminder, borrower defense is a long-existing, but previously rarely-used, provision of law [Higher Education Act, Sec. 455(h)] that enables students who have been the victims of certain types of institutional misconduct to have their federal student loans forgiven.

Below are some of the most common questions NASFAA has been hearing from member institutions.

Many of the borrower defense claims we've received notice of seem frivolous or baseless or don't meet the definition of a borrower defense claim. Is the department doing any sort of filtering on these claims before sending them to schools?

Recently NASFAA received several examples of borrower claims that, upon first glance, fail to meet the standards for a borrower defense claim or lack merit, leading some aid professionals to wonder whether ED is conducting any sort of filtering of these claims before sending them to schools.

Borrowers can apply for a borrower defense discharge through Federal Student Aid and should provide supporting documentation about how they were harmed by the institution. However, it is NASFAA's understanding that ED is not necessarily reviewing these claims for "material completeness" before sending them to institutions.

The reasons that ED is not reviewing them for material completeness may vary, including:

1. Material completeness is a concept only included in the most recent 2023 borrower defense rules, which are currently blocked under a national injunction.
2. ED is working through back-logged claims in an expedited timetable in accordance with a court settlement (Sweet v Cardona)
3. Borrower defense claims filed before November 15, 2022, and therefore under previous regulations, stipulate that *all* pending borrower defense claims must be sent to institutions regardless of their status.

Is the school required to respond?

No, institutions are not required to respond. It is always the school's choice to respond to a borrower defense claim notification. It is NASFAA's understanding that a nonresponse from an institution will not be viewed as automatically favorable for a borrower's claim. However, institutions should work with their legal counsel when determining whether a response is warranted.

Borrower defense claims filed but not yet adjudicated by ED prior to July 1, 2023 fall under the new 2023 borrower defense regulations, which are currently blocked under a national injunction. Under the 2023 rule, institutions have 90 days to respond following ED notification of a borrower defense claim. A lack of response is presumed by ED to mean the institution does not contest the claim. If the department rules in favor of the applicant, however, and seeks recoupment from the institution, the institution is provided a second opportunity to respond as part of a separate recoupment proceeding.

Will institutions be liable for loans that are forgiven under borrower defense claims?

The claim review and recoupment processes are separate and distinct processes. It is NASFAA's understanding that a lack of a response from an institution is not an admission of wrongdoing and that if an approved claim did move to the recoupment stage, there would be another opportunity for the school to respond. NASFAA has asked ED to clarify this point publicly.

Do we know how many borrower defense claims have been filed, or how many more claims are coming?

We have heard that schools from all sectors and institution types are receiving a wide range of borrower defense claims, ranging from zero to over 100.

Why are we receiving so many notifications of claims now? Are there advocacy groups encouraging borrowers to file borrower defense claims?

NASFAA has heard rumors that there are advocacy groups encouraging borrowers to file borrower defense claims indiscriminately but has not seen any evidence that this is actually happening. Borrower defense claims may be increasing because borrowers are becoming increasingly aware of their student loan debt as the resumption of loan repayment ramps up. Other reasons may be because of back-logged claims being handled by the department in accordance with a court settlement (Sweet v Cardona).

When will we hear from the Department of Education about this?

NASFAA has urged ED to publish information for institutions about these claims, including their communication process with schools and answers to many of these questions.

It is our understanding that Federal Student Aid is preparing a communication to go to all schools addressing its borrower defense processes in the coming weeks.

As things currently stand, if a school decides to respond, it should follow the institutional response requirements in [34 CFR 685.405] and as outlined in the notification the institution receives from ED. The content of the institutional response is entirely up to the institution. Any questions must be directed to Borrower Defense Customer Support at 1.855.279.6207 (as indicated in the ED notification).

ED Announces an Additional $9 Billion in Student Debt Forgiveness for 125,000 Borrowers

The ED announced additional $9 billion in federal student loan debt forgiveness for 125,000 borrowers through fixes to the income-driven repayment (IDR) and Public Service Loan Forgiveness (PSLF) programs, and automatic forgiveness for borrowers with total and permanent disabilities.

Specifically, ED announced that it would grant an additional $5.2 billion in forgiveness for 53,000 borrowers under PSLF, about $2.8 billion in forgiveness for nearly 51,000 borrowers under IDR, and $1.2 billion for about 22,000 borrowers who have a total or permanent disability and have been approved for discharge with the Social Security Administration. According to ED, Wednesday's announcement brings the total of approved student loan debt forgiveness by the Biden administration to $127 billion for almost 3.6 million borrowers.

Education Secretary Miguel Cardona said the announcement "builds on everything our administration has already done to protect students from unaffordable debt."

Wednesday's news adds on to ED's announcement in July, when ED said it would forgive $39 billion in federal student loan debt to 804,000 eligible borrowers enrolled in income-driven repayment plans. The forgiveness is a result of "fixes" to "historical failures" of the IDR program, in which qualifying payments made under IDR plans were not accounted for. ED first announced in April 2022 that it would perform a one-time adjustment to count some borrowers' accounts in long-term forbearances toward IDR forgiveness and PSLF.

However, ED's fixes to the IDR program received scrutiny, with conservative groups filing a lawsuit that aimed to block ED from forgiving the $39 billion in student loan debt. But a federal judge dismissed the lawsuit, though the conservative groups later filed an appeal.

Rep. Virginia Foxx (R-N.C.), chairwoman of the House Committee on Education and the Workforce, wrote a letter with Sen. Bill Cassidy (R-La.), ranking member of the Senate Committee on Health, Education, Labor, and Pensions (HELP), questioning ED's fixes to the IDR program and its student loan discharges. Foxx said Wednesday's announcement is the Biden administration's "latest attempt to saddle taxpayers with $9 billion in unpaid student debt."

However, during a press briefing on Wednesday, President Joe Biden said that the additional student loan forgiveness announcement is "life changing" for borrowers and their families, as well as the U.S. economy.

Deep Dive: ED Releases Unofficial Final Rule on Gainful Employment and Financial Value Transparency Framework

The ED released its unofficial final rule on Gainful Employment (GE) and its new Financial Value Transparency framework, which it plans to officially release in the Federal Register on October 10, 2023. The rule represents ED's fourth effort, over more than a decade, to establish gainful employment standards, and ED's first attempt at applying gainful employment metrics to non-GE programs, albeit without the associated penalties applicable to GE programs.

While the proposed rule released in May included draft regulations on financial responsibility, administrative capability, certification procedures, and ability to benefit, those regulations are currently under review at the Office of Management and Budget (OMB) and will be published separately at a later date.

Gainful Employment

The GE final rule largely mirrors what ED proposed in May. The department has retained the new earnings premium (EP) metric from the proposed rule, which will be calculated along with the debt-to-earnings (D/E) rate to determine GE program eligibility to participate in the Title IV student aid programs. Those metrics will also be used to provide information only to non-GE programs as part of the financial value transparency regulations, detailed later in this article.

The final GE rule does include several significant changes from the draft rule. First, the accountability provisions of the GE rules will not apply to institutions in U.S. territories or the freely associated states. ED's rationale for the change included the fact that the U.S. territories lack the high school earnings data ED would need to calculate the earnings premium. These institutions will still be required to comply with the GE data reporting requirements, and ED will publish data on earnings, median debt, and price, but not the GE metrics (debt-to-income rate earnings premium).

The GE accountability framework will also not apply to institutions that do not have any group of programs that share the same four-digit CIP code with 30 or more completers in total over the most recent four award years.

ED adds to the final rule that they will disregard any D/E rates that were calculated more than five calculation years prior in determining a program's eligibility.

ED also modifies from the draft rule the definition of "cohort period" for programs that require postgraduate training to obtain licensure. While the proposed rule accounted for medical and dental programs where graduates must complete a residency, allowing for a six-year lag before ED measures earnings to account for lower incomes during such training, the final rule permits this longer measurement period to apply also to completers of other "qualifying graduate programs."

Qualifying graduate programs will include not only medical and dental programs, but also several mental health fields like clinical psychology, and marriage and family counseling that also require additional training, after which graduates generally experience a significant earnings boost. ED will also continue to update the fields of study that qualify for this extended cohort period as it gathers more data about such programs.

Institutions would be required to attest that at least half of a program's graduates obtain licensure in a state with post-graduation requirements for those programs to qualify for the extended cohort period.

ED also changed transitional reporting requirements to give all programs the option to report transitional rates for the first six years after the rule is in effect.

ED has also changed the institutional deadline to respond to the GE completers list from 60 days after end of the award year to 60 days after ED provides the institution with the completers list, in acknowledgment of the fact that institutions cannot respond to the completers list until they have it and that the timing of their receipt of the list may not coincide with the end of the award year.

Institutions are required to begin issuing GE warnings effective July 1, 2026.

Financial Value Transparency

The proposed financial value transparency regulations and the final rule are similar in that they include a framework for non-GE programs to require institutional reporting of student-level data that the department will disclose on a website it develops by July 1, 2026. ED still plans to calculate D/E rates and an EP for non-GE programs, and to require programs that fail the debt-to-earnings measure to collect an acknowledgment from students that they understand the program has a high debt burden.

The financial value transparency regulations apply to all programs that participate in the Title IV federal student aid programs. A significant change from the proposed rule, however, is that the acknowledgment for failure of the D/E metric will be required only of non-GE programs that do not lead to an undergraduate degree. Undergraduate degree programs would continue to be subject to the financial value transparency reporting requirements and continue to have debt-to-earnings rates and earnings premiums calculated. They would only be exempt from collecting acknowledgments.

For those programs still required to collect acknowledgments, that requirement is effective July 1, 2026. While the proposed rule indicated the acknowledgment must be provided by the student prior to the institution disbursing aid, the final rule changes that timeframe to require the acknowledgment to be made prior to the institution entering into an enrollment agreement with the student.

Another significant change is that, as with the GE rules, the financial value transparency rules will not apply to institutions located in U.S. territories or the freely associated states. The reporting requirements associated with the financial value transparency rules will apply to these institutions, and ED will continue to calculate median debt and to obtain earnings data, but no D/E rate or EP will be calculated, and no student acknowledgments would be required.

Again, in line with the GE rules, the financial value transparency regulations, including associated reporting requirements, will not apply to institutions that do not have any group of programs that share the same four-digit CIP code with 30 or more completers in total over the most recent four award years.

Important Dates and Deadlines

The regulations are effective July 1, 2024. Relevant dates and deadlines include:

- July 31, 2024: First annual institutional data reporting due
- December 31, 2024: GE program certification deadline
- July 1, 2026: Deadline for ED to create program information website
- July 1, 2026: Financial value transparency acknowledgments for high debt burden programs begin to be issued by institutions
- July 1, 2026: GE warnings begin to be issued by institutions

Higher Ed Groups Urge Biden Administration to Support Federal Student Aid in Upcoming Budget

NASFAA joined a group of higher education advocacy groups urging the White House to put forth a “robust” request for federal student aid programs for the upcoming fiscal year 2025 budget.

While Congress is still trying to wrap up spending negotiations over the current budget cycle — which currently faces significant hurdles due to the ongoing House Speaker fight — the budgeting process for fiscal year 2025 is just around the corner, and the coalition, known as the Student Aid Alliance, is seeking to underscore that a strong budget request from the White House will be needed to overcome likely pushback from the House. Throughout the fiscal year 2024 budgeting process, House bills have proposed steep cuts for education-related programs — a trend that could well continue in the upcoming fiscal year.

“Now, more than ever, the programs that help low- and middle-income students access and succeed in postsecondary education need additional funding to ensure that students with disrupted educations during the pandemic can pursue their higher education goals,” the letter reads.

Specifically, the letter calls for the administration to push toward doubling the maximum Pell Grant to at least $13,000 to restore much of the purchasing power of the program and increase college affordability for students.

The letter also calls on the White House to provide significant funding to campus-based aid programs, along with increases for TRIO, GEAR UP, and Graduate Assistance in Areas of National Need (GAANN).

ED Kicks Off First Negotiated Rulemaking Session for Student Debt Relief

The ED began its latest attempt to forge a path toward student loan cancellation through negotiated rulemaking, or “neg reg”— a regulatory process that brings together stakeholders from the higher education community with the goal of reaching consensus on regulatory language.

After President Joe Biden’s student debt relief plan was struck down by the U.S. Supreme Court in June, the administration announced its intent to seek debt relief through the negotiated rulemaking process, and in September, ED released its list of non-federal negotiators and facilitators and an issue paper with questions for negotiators to consider on how the department may provide loan relief to five categories of borrowers.

The notoriously tedious process will continue and pick up again for additional sessions in November and December.

Education Under Secretary James Kvaal spoke at the beginning of Tuesday’s session, noting that higher education “benefits all Americans” in the form a stronger economy. However, he said, student debt in the U.S. has “grown so large that it siphons off the benefits of college for many students.”

Kvaal clarified that while the Higher Education Act (HEA) gives the education secretary “authority to enforce, pay, compromise, waive, or release” any federal student loans, current regulations lack specificity to how that authority is applied. Kvaal said ED is “particularly focused on the waiver authority.”

The committee then moved to fill positions for two alternate negotiators for two constituencies. The committee approved Amber Gallup of New Mexico’s Higher Education Department to serve as an alternate for the state officials constituency group, and Carol Peterson, manager of enrollment and financial aid processes for Langston University's Prison Education Program, to serve as the alternate for the historically Black colleges and universities (HBCUs), tribal colleges and universities, and minority-serving institutions constituency group.

Negotiators also introduced two additional constituency groups, one group for consumer advocates and another for individuals with disabilities or groups representing them. Representing consumer advocates are Jessica Ranucci, attorney at New York Legal Assistance Group, and Ed Boltz, director of the National Association of Consumer Bankruptcy Attorneys. Representing individuals with disabilities is John Whitelaw, advocacy director at Community Legal Aid Society.

During the session, negotiators discussed the first two questions of ED's issue paper. The first question deals with ways to help borrowers who owe more in loans than originally borrowed that could put them on a better path for successful repayment.

A key issue brought up by several negotiators is compounding interest making it difficult for borrowers to repay the loan. Melissa Kunes, of the Pennsylvania State University and representing the public institutions group, said a possible solution could be looking at a borrower's accumulation of debt over time and their initial principal balance, and forgiving the added interest. That way, the borrower would be only responsible for the principal loan, and not their interest.

"I believe the key issue here is the inappropriate application of interest to borrowers over the years who have looked for ways and guidance from the government in order to alleviate or help mitigate their loan payments, while they were going through tough economic times," Kunes said.

However, throughout the discussion, ED reminded non-federal negotiators that the interest rate charged on student loans is set by Congress that is not controlled by the department.

Negotiators also raised concerns over how student debt impacts Black borrowers, other marginalized borrowers, and low-income borrowers. Wisdom Cole, the national director of the NAACP Youth & College Division, noted that nearly 75% of Black borrowers and 60% of Latino borrowers see their student loan balance grow over time, compared to 51% of white borrowers. The average Black graduate owes $53,000 in student debt, Cole said. That's about $25,000 more than the average white student loan borrower, according to a study from the Brookings Institution.

"Something that I would like to just hone in on is that the elimination of all this debt presents an opportunity for America to reduce the racial wealth gap," Cole said. "When we think about folks' opportunity to become homeowners, business owners, and build discretionary wealth, the total cancellation of student debt for all borrowers impacts all communities."

Some negotiators also raised concerns about how borrowers with Parent PLUS and Federal Family Education Loan (FFEL) loans are excluded from different ED initiatives, including Biden's initial student debt relief plan to cancel up to $20,000 in federal student loans, and ED's new income-driven repayment (IDR) plan, the Saving on Valuable Education (SAVE) plan.

The second question of ED's issue paper asked how the department could better assist borrowers who are eligible for forgiveness under programs such as IDR, but who do not apply for those programs.

A key point multiple negotiators raised is that ED should increase and better its communication with borrowers and loan servicers. Beyond that, ED should improve its ability to automatically apply eligible borrowers into certain forgiveness programs, such as through IDR or Public Service Loan Forgiveness (PSLF). Angelika Williams, FAAC®, representing private nonprofit institutions, suggested that ED can eliminate the need for future borrowers to apply for repayment programs since the department will have these borrowers' IRS tax information due to changes made through FAFSA simplification and the FUTURE Act.

The session concluded with a public comment portion, which included several individual borrowers sharing their own struggles and concerns with student loan debt, as well as possible solutions ED could take to provide relief.

NASFAA Shares Draft of 2024-25 FAFSA Comments

NASFAA has drafted comments on the ED's proposed 2024-25 FAFSA, providing feedback on the format and content of the form, including recommendations for improving questions and instructions. These draft comments are subject to change before submission.

Student Debt Relief Negotiators Discuss Parameters for Cancellation in Second Day of Neg Reg

The ED hosted its second day of negotiated rulemaking – known as neg reg – to provide a path to student loan cancellation and gave an update on what the process will look like in the coming months.

ED kicked off the neg reg process on Tuesday, gathering a committee of stakeholders from the higher education community representing 16 constituency groups. On Wednesday, the committee began the session by approving Waukecha Wilkerson, director of coaching for Cell-Ed, to represent the individuals with disabilities group.

Ben Miller, deputy undersecretary for ED's Office of the Under Secretary, also gave some opening remarks for the negotiators to consider as they discuss the three remaining questions of ED's issue paper. In September, ED released an issue paper with questions for the negotiators to consider on how the department may provide loan relief to five categories of borrowers.

Miller said ED hopes negotiators can approach the remaining questions through different lenses, including if ED were to provide for partial cancellation for a borrower who falls into a category, how the negotiators would structure that regulatory provision. Additionally, negotiators were asked to consider what types of borrowers should be eligible for student loan cancellation and what the eligibility criteria should be.

The committee began with the fourth question of the issue paper, which asked how ED should treat loans that first entered repayment many years ago. The question also asked how ED should apply the Federal Claims Collection Standards (FCCS) compromise principle to loans where the borrower is unable to repay in a reasonable amount of time.

Several negotiators asked ED to define what a "reasonable" amount of time is for the department to collect student loans. Melissa Kunes, a negotiator representing public institutions, noted that collecting student debt is an expense for the department.

Kyra Taylor, a negotiator representing legal assistance organizations, said that borrowers with older loans should be entitled to cancellation. Taylor pointed to 2021 research that found that out of 4.4

million borrowers who had been in repayment for 20 years or more, less than a quarter had received relief under the income-driven repayment (IDR) account adjustment.

Lane Thompson, representing state officials, added that borrowers who have had non-Direct Loans for a long time, such as Federal Family Education Loans (FFEL) or Perkins Loans, may face issues understanding how much they owe due to loan servicer transfers. Another negotiator suggested ED consider July 1, 2010, as a marker for debt cancellation since that is when the FFEL program was eliminated.

The committee then moved back to the third question of the issue paper, which asked how ED should consider debts taken out by borrowers who attend programs with a low level of financial value. Multiple negotiators brought up ED's new gainful employment rules as a possible resource for ED to provide relief to borrowers who attended programs with low financial value.

Taylor suggested ED consider non-completion as a basis to discharge borrower's debt, in addition to schools where the income premium is not proportional to the amount of debt that the borrower has taken.

Kathleen Dwyer, representing proprietary institutions, noted that there are some programs that borrowers may be interested in regardless of whether the program will "pay off financially." She added that it may be hard for institutions to assure students which programs are going to pay off with any certainty.

The committee then moved to the fifth and final question, which asked about the potential types of hardship that borrowers may continue to face and how ED might address those cases of hardship.

Negotiators brought up several examples, including paying their own loans along with Parent PLUS loans, losing employment, medical debt, childcare costs, and more. Multiple negotiators noted that incarcerated individuals and their families may also face challenges paying off student loan debt.

Tamy Abernathy, the federal negotiator for ED, provided updates to the rest of the committee, noting that ED will give the negotiators proposed regulatory text one week before the next rulemaking session in November. She asked the negotiators to read the text before the next session and to come with ideas and rationale of what is and isn't working with the proposed rules.

The session ended with public comments from multiple individuals. The committee is scheduled to meet again on November 6 and 7, and in December.

2024-25 Financial Aid Night Toolkit Now Available

The updated NASFAA Financial Aid Night presentation, "What You Need to Know About Financial Aid," is now available along with the accompanying slideshow, guide, and participant handouts. NASFAA designed this presentation to provide students and families with a basic understanding of financial aid concepts, sources of financial aid, and the application process for federal student aid.

NASFAA Signs on to Letter Requesting FAFSA Release Date

Several higher education organizations signed on to a letter calling on the ED to finalize and announce the 2024-25 FAFSA release date. The organizations wrote that while stakeholders are busy preparing for the new FAFSA, there is a limit to how much they can do without knowing exactly when the form will become available. “Because the timeline for completing the FAFSA will be much shorter than it has been in recent years, every day counts when it comes to supporting students and families through the new process,” the letter read.

Panels Discuss Strategies and Challenges to Measuring the Value of Higher Education

As American’s confidence in higher education declines and the ED implements its new gainful employment and financial value transparency rules, an event on Tuesday, hosted by the American Enterprise Institute, gathered several panels of experts to discuss how to measure the value of higher education. Doing so has been debated for several years because the term “value” can come with different meanings — ranging from a monetary return on investment to a societal good.

Beth Akers, senior fellow at AEI and moderator of the event’s three panels, said the event was meant to discuss the constraints of measuring value in higher education, what methods are used today, and what measuring value in higher education looks like in the context of policymaking.

The first panel touched on a number of issues, including what measuring the value of higher education means. Sarah Turner, a professor of economics, education, and public policy at the University of Virginia, said that value should be seen as a set of measures, since it has different meanings for different audiences — including the student and their family, the government, and the institution itself.

For example, a student may want to know the predictive value of what they would earn by completing a certain program, while the government may want a portfolio of the value of all institutions’ programs, including those that don’t receive federal student aid, and an institution may want to see students finish degrees or credentials that are known to have value — meaning have jobs that have higher earnings in the labor market.

Preston Cooper, senior fellow of the Foundation for Research on Equal Opportunity, noted that measuring value in higher education can be complicated even from a financial standpoint since it’s tough to determine what a student would be able to make if they had not gone to college. And because students borrow and pay different amounts for different programs, that can be difficult to measure as well, Cooper said.

However, Cooper stressed that return on investment (ROI) needs to be at the center when measuring the value of higher education.

David Troutman, deputy commissioner for academic affairs and innovation at the Texas Higher Education Coordinating Board, added that measuring the value of higher education should also be examined through different demographic lenses.

In a separate panel, Scott Pulsipher, president of the Western Governors University (WGU), spoke about WGU’s competency-based educational model, where students earn competency units — the equivalent of credit hours — when they demonstrate their skills through completing assessments. That means students can advance as they progress through a course and don't need to wait until the end of the semester.

He also noted that WGU's different programs have different costs. For example, at WGU the cost of a six-month undergraduate term under the College of Information Technology would cost a student $4,265 in tuition, not including fees, while a six-month undergraduate term at WGU's School of Education would cost them $3,825, not including fees. The pricing model "is relevant to the opportunity" of the program, Pulsipher noted.

The final panel of the AEI event touched on how measuring value in higher education relates to policymaking and the opportunity for bipartisan reform and accountability.

Chance Russell, economist and policy adviser for Rep. Virginia Foxx (R-N.C.), chair of the House Committee on Education and the Workforce, noted that one way to tackle accountability in higher education is through short-term Pell Grant programs. He added that several lawmakers are in support of the Promoting Employment and Lifelong Learning (PELL) Act, which would extend federal Pell Grant eligibility to students enrolled in programs of 150 to 600 clock hours.

Russell said institutional risk-sharing and legislation on college price transparency could improve accountability in higher education.

In September, the College Cost Transparency Initiative that over 360 institutions across the country have voluntarily committed to following a common set of principles and standards for the financial aid offers they communicate to undergraduate students. Since then, nearly 100 more institutions have signed on to the initiative.

Panelists also discussed the data available to ED to measure value. Rajeev Darolia, senior adviser of ED's Office of the Chief Economist, noted that while there have been some advancements, like the College Scorecard, ED does not have as much data on students who don't receive federal student aid and those that don't complete their programs.

Darolia encouraged the audience to advocate to ED for more data access for the research community.

FSA Begins to Deliver Email Notifications for Updated SAIG Enrollment Agreement

During the week of October 23, FSA will send an email to all Destination Point Administrators (DPAs) who currently manage their institution's ISIR service. The email will provide instructions on how to access and sign the updated SAIG enrollment agreement on the SAIG Enrollment website. The email will come from CPSSAIG@ed.gov. FSA strongly encourages all eligible organizations to submit the signed SAIG enrollment agreement as soon as possible to ensure the signature pages are processed prior to the launch of the 2024–25 FAFSA form and the organization's new FTI-SAIG mailbox is ready to receive 2024-25 ISIRs.

ED Releases Final Rule Package on Ability to Benefit, Administrative Capability & Certification Procedures and Financial Responsibility

The ED released final rules on a number of topics that the department says will "raise the bar" on institutional accountability and better protect students and taxpayers.

The rules released are the remaining accountability topics considered during the Institutional and Programmatic Eligibility Committee: Ability to Benefit, Administrative Capability, Certification Procedures, and Financial Responsibility. The final rules will be published in the Federal Register, though ED has published an unofficial copy.

In a press call, Education Secretary Miguel Cardona stressed that the department's actions underscore the Biden administration's commitment to be equally as aggressive on student loan debt relief and accountability in higher education programs.

ED negotiated these regulations in a rulemaking session held in early 2022, where it also discussed institutional and programmatic eligibility topics including the 90/10 rule and the recently released gainful employment regulations.

According to ED, the rules package will specifically help the department "better protect taxpayers from the negative effects of sudden college closures, will restrict colleges from withholding course credits paid for with federal money from students' transcripts, and require colleges to clearly communicate to students how much financial aid they will receive."

The first rule included standards of financial responsibility for postsecondary institutions, which outline certain mandatory triggering events that will result in requests for a letter of credit or other forms of financial protection.

Examples of those triggers would include when an institution is showing financial risk due to failure to meet debt obligations, certain lawsuits by federal or state actors, being in danger of losing access to federal student aid due to having a high cohort default rate, failing the 90/10 revenue requirement, or receiving at least 50% of the institution's Title IV aid for failing gainful employment programs.

The rule also includes discretionary triggers that could result in a requirement to provide financial protection based upon a case-by-case determination. Those triggers include institutions: subject to adverse accreditor actions; experiencing significant fluctuations in federal student aid volume; closing programs or locations that enroll significant shares of students; subject to adverse actions by states and other federal agencies.

The package also concerned establishing Title IV student aid eligibility for individuals who lack a high school diploma or equivalent, commonly referred to as the ability to benefit (ATB) regulations.

According to ED, the final rule generally follows the proposed rule unveiled in May of this year. The final rule defines an eligible career pathway program (ECPP) and sets clear standards for institutions to demonstrate compliance. One significant change in the final rule is that ED "simplified" the process for approving ECPPs by focusing on approving at least one ECPP per institution.

The announcement also included administrative capability and certification procedures, which add several requirements for colleges, including more detailed information to be included in financial aid communications; prohibition of transcript withholding for courses paid for using federal funds; and adequate career services.

The rules would also enable ED to lay out additional conditions the department can place on institutions exhibiting financial warning signs by requiring a teach-out plan or agreement or limit the addition of new programs and locations. Additionally, the rule would ensure that student aid is only made available for career-training programs that are no longer than state requirements for certification or licensure. The rule also touches on institutions operating through distance education and requires those schools to abide by state laws related to postsecondary closures including rules for teach-outs, record retention, and tuition recovery or surety bonds.

Since these final rules will be published in the Federal Register on October 31, 2023, they will go into effect July 1, 2024.

Updated FAFSA Simplification Implementation Checklist Now Available

NASFAA is pleased to release an updated version of the FAFSA Simplification Implementation Checklist to assist institutions in planning for full implementation of the FAFSA Simplification Act in the 2024-25 award year. The latest version includes recent updates from the Department of Education.

NASFAA Publishes 2024-25 to 2023-24 Comment Code Crosswalk

NASFAA is pleased to announce the release of its comment code crosswalk to assist financial aid administrators in preparing for the 2024-25 aid year in light of the significant renumbering of comment codes between the 2023-24 and 2024-25 award years by the Department of Education (ED). There appear to be several errors in the ED's FAFSA® Specifications Guide, Volume 7 – Comment Codes which are highlighted in the crosswalk and which we have shared with the Department. The crosswalk will be updated as we receive updates from ED.

Brief Outlines How FAFSA Simplification Will Impact National and State Financial Aid

A new brief from the State Higher Education Executive Officers Association (SHEEO) found that while FAFSA simplification will be beneficial to most students and expand access to federal financial aid, state aid and grant programs may face challenges.

With the new FAFSA for 2024-25 coming in December, SHEEO analyzed national and state data to explore the "unintended consequences" of the FAFSA Simplification Act, comparing changes with the new Student Aid Index (SAI) and Expected Family Contribution (EFC), and with federal Pell Grant eligibility.

The main goals of the study, according to SHEEO, were to assist state higher education agencies in predicting how federal and state financial aid eligibility will change nationally and in their state, and to identify challenges or negative impacts associated with FAFSA simplification.

SHEEO noted that while there have been some analyses of the impact of FAFSA simplification, "little predictive modeling has been done to anticipate how FAFSA simplification will affect specific states, sectors, and subpopulations of students, both in regard to Pell Grant eligibility/awards and state grant eligibility/awards."

For this brief, SHEEO used data from the 2017-18 National Postsecondary Student Aid Study and Institution Student Record Information (ISIR) data provided from Kentucky, Missouri, Nebraska, New Jersey, and North Carolina.

Overall, looking at changes in SAI to EFC at the national level for dependent students, 17.7% of students are expected to experience an increase from EFC to SAI, 74.1% are expected to experience a decrease, and 8.2% are expected to have an SAI equal to EFC.

Specifically, SHEEO found that 31.4% of dependent students have an EFC of $0 compared to 50.8% of students who are estimated to have an SAI less than or equal to $0. And 23.5% of dependent students have an EFC greater than $15,000, while 24.1% are estimated to have an SAI greater than $15,000.

Additionally, SHEEO noted that a large percentage of low-EFC students are anticipated with FAFSA simplification to have a decrease in SAI relative to EFC to a value below $0, including 73.2% of students with $0 EFC, 55.6% of students with $1-$1,000 EFC, and 48.3% of students with $1,001-$3,000 EFC.

Looking at independent students, the majority (77.4%) are anticipated to have a decrease in SAI relative to EFC, with just 2.9% expected to have an increase. Specifically, 61.1% of independent students have a $0 EFC, while 53.8% of students are estimated to have an SAI less than $0. And 22.6% of independent students are anticipated to have an SAI of $0, given that the federal methodology does not have an automatic-zero SAI flag for independent students without dependents, SHEEO noted.

As for how FAFSA simplification will impact federal Pell Grant eligibility, SHEEO found that most dependent students, 62.8%, are expected to experience no change in their Pell Grant award and 35.2% are anticipated to see an increase in their Pell Grant award.

However, 1.1% of dependent students, or 49,700 students, who were eligible for the Pell Grant under the current formula are anticipated to lose Pell eligibility. And 6.8%, or 154,470 dependent students, are expected to gain Pell eligibility. Overall, SHEEO estimates that nearly 220,000 students would gain Pell eligibility in 2023-24, with total Pell Grant awards expected to increase by approximately $7.85 billion in 2023-24.

SHEEO noted that independent students have high rates of receipt of Pell Grants under the current formula. Under FAFSA simplification, 69.2% of independent students are expected to experience no change in their Pell Grant award, meanwhile 30.2% are anticipated to experience an increase.

With changes to how federal financial aid is calculated, SHEEO cautioned that state grant programs will need to adjust how they calculate and distribute aid. State grant programs that could be affected include first-dollar programs, last-dollar programs, programs that use EFC or SAI in the aid formula, and programs that award grants based on Pell eligibility.

For example, many state grant programs use a student's calculated EFC to estimate the amount of state grant dollars a student is eligible to receive. SHEEO noted that state grant programs will need to recalculate how to distribute aid, especially for students with negative SAI values.

Additionally, with more students eligible for the federal Pell Grant, SHEEO noted that state grant programs that use Pell eligibility could become crowded. SHEEO wrote state grant programs should consider "how closely state grant eligibility is tied to Pell and make adjustments to the level of grant award for each level of Pell award."

"The results of this research at the national level suggest that many students will have lower expected out-of-pocket costs for postsecondary education as indicated by the lower SAI values relative to EFC," SHEEO wrote. "While the ultimate balance of financial assistance is uncertain and unique to each state's circumstances and the grant programs available to students, this research quantifies the estimated impact for students at the national and state level.

And while most students will see expanded financial aid access, some won't. There are concerns that students with more than one family member in college may experience increases in SAI compared to EFC and may have decreases in Pell eligibility and award amounts. Students in this situation make up some of the 56,600 students that are anticipated to lose Pell eligibility.

SHEEO highlighted that removing the consideration of the number of family members in college will "yield a more equitable process," despite the fact that some families will lose federal Pell Grant eligibility after this change.

Additionally, students with family farms and small businesses may have higher SAI values after the family farm exclusion is eliminated. SHEEO cautioned that it may have underestimated the potential negative impacts of simplification since it can't model this change.

ED Releases Draft Regulatory Text to Provide Student Debt Relief Through Neg Reg

The ED outlined options for student debt relief in draft regulatory text that detailed proposals for four different subsets of borrowers.

The text was released ahead of November's negotiated rulemaking session, the process by which the Biden administration is hoping to move forward with its debt relief plans after the U.S. Supreme Court struck down its initial proposal for widespread student debt relief.

ED kicked off its first committee session of negotiators in October, gathering a committee of stakeholders from the higher education community representing 16 constituency groups. The committee discussed several ideas and solutions to providing debt relief to borrowers.

During the October session, ED made it clear that the department is not looking to implement a broad-scale student loan cancellation policy. Under Secretary James Kvaal told negotiators that ED is "particularly focused on the waiver authority," meaning ways that the secretary can exercise his authority to grant waivers for student loan debt relief.

The draft regulatory text specifies four groups of borrowers who could be provided debt relief. That includes borrowers who: currently have outstanding federal student loan balances that exceed what they originally borrowed; borrowers who have loans that first entered repayment 25 or more years ago; and borrowers who took out loans to attend career-training programs that created "unreasonable debt loads" or "provided insufficient earnings for graduates, as well as borrowers who attended institutions with "unacceptably high student loan default rates."

Additionally, the text states that the secretary may be able to provide forgiveness to borrowers who are be eligible for forgiveness under repayment plans have not yet applied, such as income-driven repayment (IDR), or targeted relief programs like Public Service Loan Forgiveness (PSLF) or closed school loan discharges.

Along with the regulatory text, ED released an issue paper outlining questions for the committee to consider a fifth group of borrowers – those "experiencing financial hardship that the current student loan system does not currently adequately address." Questions in the paper include which types of borrowers may be experiencing hardship; if the hardship process was based on an application, what criteria should be put in place; what types of administrative data might be available to ED to identify borrowers going through hardships; and more.

ED said that the forgiveness delivered to borrowers through negotiated rulemaking will "build on the historic actions the Biden-Harris Administration has already taken to provide student debt relief to millions of Americans."

ED also said that negotiators will spend the afternoon of the second day of the next session discussing the issue of hardship. The next negotiated rulemaking session is slated for November 6 and 7.