CAPFAA State and Federal Relations Committee – News Update

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Committee Chair:

- Ryan Jones, Campus Supervisor, Gateway Community College

Deep Dive: Final Rules on Administrative Capability, Certification Procedures, Financial Responsibility, and Ability to Benefit

The Department of Education (ED) released final rules on the four remaining topics from its 2020-21 Institutional and Programmatic Eligibility negotiated rulemaking session. The rules become effective July 1, 2024.

Administrative Capability and Certification Procedures

Final rules are largely similar to what ED proposed in May, with a few notable exceptions.

ED had initially proposed to prohibit the practice of transcript withholding for past-due balances only in limited circumstances, which included instances where the balance due was the result of institutional errors in administering Title IV aid, institutional fraud or misconduct, or a return to Title IV funds (R2T4) calculation. In the final rule, ED retained the transcript withholding prohibition for balances arising from institutional errors and fraud or misconduct but removed the R2T4 provision.

Comments submitted in June noted that it is inconsistent for ED to prevent students from receiving Title IV aid when they owe an overpayment from an R2T4 calculation, but that if the institution assumes the student's overpayment liability arising from an R2T4 calculation they cannot employ equally strict practices to ensure the balance is paid.

ED added a new prohibition on transcript withholding from what was proposed earlier this year. Institutions must now release transcripts for any payment period in which the student received Title IV aid and had paid, or made arrangements to pay, all institutional charges (whether with Title IV aid or through any other payment source). Institutions could continue to withhold transcripts for payment periods in which the student did not receive Title IV funds at all, as well as for payment periods in which students did receive Title IV funds but owed the institution a balance for that payment period.

ED noted in the preamble that they had considered prohibiting withholding transcripts for all courses covered by Title IV aid, but ultimately decided this would be too difficult for institutions to administer given the fungible nature of funding that would make it impossible to determine which specific courses were paid for with Title IV aid.

In the certification procedures rules, ED also removed a provision it had proposed in its draft rule that would have permitted the department to use the debt-to-earnings (D/E) and earnings premium (EP) metrics from the gainful employment regulations as supplementary performance measures it could use in certifying or recertifying an institution's eligibility to participate in the Title IV programs. Comments on the proposed rules noted that, because the D/E and EP metrics will be calculated for all programs at all institutions under the Financial Value Transparency Framework, using those metrics to certify or

recertify institutional eligibility would effectively condition institutional eligibility on GE metrics for both GE and non-GE programs, which ED has consistently stated is not within their authority.

Several changes are made in the final rules with respect to programs that prepare students for licensure in a recognized occupation. ED added clarity from rules that initially proposed to limit a program's length to the required minimum established by the state. In the final rule, ED adds that this program length limitation will not apply for occupations where state entry level requirements include completion of an associate degree or higher, or where the program is delivered entirely through distance education or correspondence courses.

ED also added a provision that allows an institution to offer a program to students who live in a state even if the program does not meet their state's requirements for licensure or certification. If an institution chose to offer a program to such students, each student would have to attest that they intend to move to a state where the program does satisfy the educational requirements for licensure. ED notes in the preamble to the rules that if student loan borrowers who provide this attestation later file borrower defense to repayment applications, the presence of such an attestation alone would not necessarily be proof the claim cannot be approved.

New requirements related to financial aid counseling and communications are added as well, although with no changes from the proposed rule. ED adds to its existing list of elements required to be considered adequate financial aid counseling: cost of attendance based on enrollment status, broken down by individual elements and direct and indirect costs; an indication of whether aid must be earned or repaid; net price; and deadlines for accepting, declining, or adjusting aid offered. While these regulations do not apply exclusively to financial aid offers, it is worth noting institutions are already in compliance with the updated regulations if their aid offers align with NASFAA's code of conduct or College Cost Transparency Initiative.

ED retained language from the proposed rule requiring institutions to advise students and families to accept the most beneficial types of financial assistance available to them. It was noted in the comments that this advice is difficult to give broadly since the most beneficial type of aid may depend on individual circumstances. ED addresses this concern in its preamble language, noting its intent is to identify patterns and practices where institutions repeatedly advise students to accept one type of aid over another, better choice, such as encouraging students to accept loans instead of grants.

Financial Responsibility

The final rule is largely the same as the proposed financial responsibility regulations with the exception of several changes to mandatory and discretionary triggering events and deadlines for institutions to report to ED when such events take place. ED uses triggering events, first introduced in 2016, as a supplement to the composite score to monitor an institution's financial well-being to account for the fact that the composite score represents only a snapshot of circumstances at the end of the institution's fiscal year. ED requires institutions to report certain mid-year actions or events as they occur so the department can assess their immediate impact on the institution's financial health.

In the final rule, ED has shifted several triggering events from one category to the other, added or eliminated some triggering events altogether, and fine-tuned language for clarity. Changes to triggering events from the proposed rule are detailed below.

Mandatory triggers

Mandatory triggers result in an automatic determination that an institution is not financially responsible and requires institutions experiencing these triggering events to post financial protection. In the final rule, ED adds an exemption to the financial protection requirement for institutions experiencing a mandatory triggering event, excluding situations where the triggering event has been resolved or where losses associated with the event are covered by insurance.

The final rule splits teach-out plans into different categories, one of which is considered a mandatory trigger and the other discretionary. When a state, ED, another federal agency, accreditor, or other oversight body requires an institution to submit a teach-out plan for reasons related to financial concerns, it is classified as a mandatory trigger. Teach-outs for other reasons are now classified as discretionary.

State licensing or authorizing agency citations for failure to meet agency requirements are reclassified from mandatory to discretionary. ED cited in its rationale its agreement with commenters who noted that different states issue such citations for different reasons. As such, not only could relatively minor infractions result in a mandatory trigger, but institutions operating in different states would be held to different standards.

Also moved from mandatory to discretionary is an institution's loss of eligibility to participate in another Federal educational assistance program due to an administrative action against the school. ED chose to reclassify this trigger as discretionary in acknowledgment of the fact that some losses of eligibility for other Federal programs could be from programs that represent a small amount of revenue or that only persist for a short time.

Discretionary triggers

As a reminder, discretionary triggers differ from mandatory triggers in that they do not result in an immediate requirement for institutions to post financial protection. Rather, they represent a set of circumstances under which ED may determine an institution is not able to meet its financial or administrative obligations due to the event having a potential significant adverse effect on the institution's financial health.

ED narrowed its discretionary trigger related to program discontinuation or closure where those programs enroll more than 25%of enrolled students, making these two distinct triggers apply only when the discontinued or closed programs enrolled more than 25% of Title IV aid recipients.

Reporting requirements

The department also extends — from 10 days in the proposed rule to 21 days in the final — most deadlines for institutions to report mandatory triggering actions or events. The reporting deadline for failure to comply with the 90/10 rule, however, remains at 45 days from the end of the institution's fiscal year.

Ability to Benefit

ED made only one significant change from the proposed ability to benefit regulations, with the addition of section 668.157(c), which establishes an approval process for eligible career pathways programs

(ECPPs). ED notes in the preamble to the regulations that they felt it necessary to create an approval process to ensure program quality. Department approval would be limited to the first ECPP offered by the institution for students enrolling under the ability to benefit rules. This would also apply to institutions already offering ECPPs, in which case institutions would apply to seek affirmative verification that their program(s) meet the new rules.

All rules from ED's 2020-21 negotiated rulemaking agenda are now final with the publication of this last set of regulations. ED is already underway with its 2023-24 rulemaking, with the second week of negotiations on student loan debt relief scheduled for next week and plans underway to hold a separate session on Institutional Quality and Accountability.

College Board Trends Report Paints Changing Picture of College Cost

What the average student pays to attend college — after accounting for grants, loans, and other financial aid — has stagnated in recent years. But how students pay the remaining cost, known as the net price, has changed over time, according to a new report from the College Board published this week.

The Trends in College Pricing and Student Aid report, released annually by the College Board, found that the average grant aid per student has increased over the last two decades, federal student loan borrowing continues to decline, and non-federal sources of grant aid are making up a larger portion of total grant aid to students.

Notably, the College Board found that tuition increases have slowed across all sectors, with inflation-adjusted average published tuition and fees peaking in 2019-20 and declining between 2019-20 and 2023-24. The College Board notes this is likely due to the pandemic.

Meanwhile, higher grant aid per student is helping to temper the total that students pay for college. The average undergraduate student in 2022-23 received $10,680 in grant aid, an 81% increase from two decades ago, and took out $3,860 in federal student loans, the report found.

The College Board noted that since 2009-10, first-time full-time in-district students at public two-year colleges have been receiving enough grant aid on average to cover their tuition and fees.

Net tuition and fees for the average first-time student attending a public four-year institution came in at $2,730, with a net cost of attendance of $20,310, which accounts for housing and food, books and supplies, transportation, and other costs. Meanwhile, the average first-time student attending a private non-profit four-year institution saw a net tuition and fees cost of $15,910, with a net cost of attendance of $34,790.

Across the board, the net cost of attendance in 2022-23 was slightly lower than 10 years ago.

Overall, undergraduate and graduate students in 2022-23 received a total of $240.7 billion in student aid in the form of grants, Federal Work-Study (FWS), federal loans, and federal tax benefits. Additionally, undergraduate and graduate students together borrowed about $14.7 billion from non-federal loans, though borrowing for undergraduate students declined for the 12th consecutive year.

Specifically, undergraduate students in 2022-23 received a total of $177 billion in grant aid and graduate students received $63.7 billion. Keeping with a trend of recent years, institutional aid in 2022-23

continued to make up the largest portion of total undergraduate grant aid, at 53%. Just 10 years ago, in 2012-13, institutional grant aid made up 40% of all undergraduate grant aid.

Notably, institutional grant aid is up for all higher education sectors. In 2020-21, the average institutional grant from a private nonprofit four-year was $19,870, a $9,000 increase (in 2020 dollars) from 2006-07. For public four-year institutions, the average institutional grant was $3,800 — up from $1,700 (in 2020 dollars) in 2006-07 — and for public two-year institutions, the average was $460 — up from $210 (in 2020 dollars) in 2006-07.

And in the last 10 years, non-federal sources of grant aid have increasingly made up a larger percentage of all student aid given to undergraduate students, rising from 30% in 2012-13 to 49% in 2022-23.

However, the College Board notes total grant aid — meaning the total of state, private and employer, institutional, and federal grants given to students — has been decreasing since 2019-20, from $160.1 billion to $145.3 billion in 2022-23. The overall decrease can largely be attributed to recent declines in enrollment — fewer students attending college means less grant aid will be doled out.

Between fall 2019 and fall 2021, total enrollment declined by 947,900, or 5%, from 19.5 million to 18.6 million. However, the National Student Clearinghouse Research Center released preliminary findings in October that undergraduate enrollment is 2.1% higher and graduate enrollment is 0.7% higher this fall than last year.

Overall Pell Grant funding peaked in 2010-11 at $47.9 billion (in 2022 dollars) and declined to $27.2 billion in 2022-23 — a 43% decline. But during that same time, the number of Pell Grant recipients dropped, from 9.3 million to 6 million. The average Pell Grant in 2022-23 was $4,510, compared with $3,960 in 2002-03.

When looking at student borrowing, graduate students in 2022-23 took out $39.4 billion in federal loans, while undergraduates took out $44.1 billion in federal loans. Loans made up most of the graduate student funding, at 63%. For comparison, federal student loans made up 30% of all aid for undergraduate students.

The numbers in graduate student funding aren't much different than a decade ago, in 2012-13, when loans made up 68% of graduate student funding. This is notable due to a recent report from the Department of Education, which found that graduate loans could soon comprise the majority of the federal student loan portfolio.

The College Board wrote in its report that the increase in graduate student borrowing is likely a result of borrowing limits, as well as the increase in the number of graduate PLUS loan borrowers.

ED Releases 2024-25 College Financing Plan

The ED released the newest version of the College Financing Plan this week, which included expected updates stemming from the implementation of the FAFSA Simplification Act.

The College Financing Plan (CFP) is a consumer tool, formerly referred to as the "Financial Aid Shopping Sheet," that was first voluntarily implemented in July of 2012. Participating institutions of higher

education use the CFP to notify students of their financial aid packages in a standardized form, enabling prospective students to compare costs across different schools.

The main change for the new CFP is the change from Expected Family Contribution (EFC) to the new Student Aid Index (SAI) for determining student financial need as will now be used for FAFSAs starting with the 2024-25 award year.

The new form also contains changes to the naming mechanisms of items in the Cost of Attendance, also mandated by the FAFSA Simplification Act. Notably, housing and meals are now referred to as housing and food. The glossary attached to the CFP has also been updated to reflect these wording changes, and a definition has been added for SAI.

Institutions can find all the components needed to complete their school's College Financing Plans along with documents outlining Frequently Asked Questions (FAQ) on ED's designated website.

NASFAA Creates FAFSA Simplification Presentation for Campus Partners

NASFAA has created a PowerPoint presentation for members to use in preparing campus partners for implementation of the FAFSA Simplification Act. The presentation provides a high-level summary of how FAFSA simplification will impact others on your campus and is intended to be downloaded and customized to fit your institution's needs.

Legislation Seeking to Restore Subsidized Federal Student Loans for Graduate Borrower Reintroduced

Last month Rep. Judy Chu (D-Calif.) formally reintroduced the Protecting Our Students by Terminating Graduate Rates that Add to Debt (POST GRAD) Act, which would restore subsidized loan eligibility for individuals seeking a graduate degree.

Specifically, the bill would once again make graduate students eligible to receive federal Direct Subsidized Loans, which was ended in 2011 by the Budget Control Act.

"A lifetime of debt shouldn't be the cost for obtaining a graduate degree," Chu said in a press release. "So I'm reintroducing the POST GRAD Act to restore the availability of Federal Direct Subsidized Loans for graduate students and make higher education more attainable to everyone in America."

ED Kicks Off Second Negotiated Rulemaking Session for Student Debt Relief

The ED resumed its negotiated rulemaking — or "neg reg" — sessions on student loan debt relief. During Monday's session stakeholders began to weigh in on the department's first draft of regulatory text that seeks to administer new initiatives to carry out student loan cancellation for certain borrower populations it seeks to identify through the rulemaking process.

As a reminder, the draft regulatory text specifies several 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; have loans that first entered repayment 25 or more years ago;

took out loans to attend career-training programs that created “unreasonable debt loads” or “provided insufficient earnings” for graduates; or who attended institutions with “unacceptably high student loan default rates.”

Additionally, the text stated that the secretary of education may be able to provide forgiveness to borrowers who would otherwise be eligible for forgiveness under existing programs but hadn’t applied. This would include borrowers who would have qualified for an income-driven repayment (IDR) plan and had reached the maximum number of payments to have their balance forgiven, targeted relief programs like Public Service Loan Forgiveness (PSLF), or closed school loan discharges.

To kick off Monday’s session, ED informed negotiators that the department had complied with several data requests made during the October sessions and that some requests concerning data on defaulted borrowers were still being compiled for negotiators.

ED also underscored that the latest round of issue papers sought to provide more specificity around the department’s waiver authority being used to carry out the new cancellation program.

Before digging into the regulatory text, Josh Divine from the Missouri Attorney General’s Office, the alternate negotiator for state attorneys general, expressed concern over the “tenor” of the previous negotiated rulemaking sessions. He argued that ED had not put enough focus on how their efforts to the negotiated rulemaking process to carry out student loan debt cancellation could survive legal challenges.

Divine also argued that the “fairness” concerns, previously raised by Chief Justice John Roberts with respect to individuals who did not attend college or who had already paid off college debt, would need to be addressed, or else the new program would likely meet the same fate as the administration’s last debt cancellation effort, which was blocked by the U.S. Supreme Court. ED later provided assurances that it was considering Divine’s concern that the voices of such individuals weren’t represented in negotiations and was working with the Federal Mediation and Conciliation Service (FMCS) to address it.

The committee then turned to the first section of the regulatory text, which included a brand new section to 34 CFR 30 titled “Waiver of Federal Student Loan Debts” that would enable the department to address specific instances where it could exercise its authority to waive debts.

First up was a discussion on borrowers with a current balance that exceeds their original principal balance. The goal, per ED, is to deliver targeted relief that would benefit borrowers who would have benefited from the Saving on A Valuable Education (SAVE) plan, had it been made available to them when they entered repayment.

In kicking off the discussion, ED requested negotiators to focus on language concerning the amount to be canceled and the borrower’s time in repayment necessary to qualify for cancellation, noting that it is common for a period of time post-completion for the outstanding balance to exceed the amount borrowed due to accrued interest during school, but that they are seeking to establish a reasonable time frame by which the borrower should have repaid that interest.

Some negotiators expressed concern that the language did not go far enough and wanted ED to focus on ways it could apply past interest payments to a borrower’s original principal.

The committee then moved on to proposed language concerning borrowers who have loans that first entered repayment 25 or more years ago.

For this section negotiators urged ED to consider applying the SAVE plan repayment time frame for smaller original loan balances. Negotiators also emphasized the need for precise language, pointing out, for instance, that tying qualification for cancellation on the date the borrower entered repayment could exclude borrowers who have defaulted, since default is not considered a repayment status.

Negotiators also pointed out the recordkeeping challenges associated with such older loans, and their desire to see language that is broad enough to capture borrowers whose loan data is incomplete or missing and, as such, would not be automatically identified by querying the National Student Loan Data System (NSLDS).

Scott Buchanan, of the Student Loan Servicing Alliance, also stressed that as the discussion over language continues during the session that for the package to work it has to actually reach borrowers and that ED must ensure the regulations survive judicial scrutiny. Otherwise, the program will once again be blocked by the courts.

ED then turned to the regulatory text on borrowers who are eligible for relief under existing programs, but who did not apply to one of those programs, such as income driven repayment or PSLF. The department underscored that there are many instances where borrowers would get loan discharges under specific forgiveness programs but haven't applied. According to the department, this section of the regulatory text outlines that if ED can identify borrowers who are eligible for relief that it would administer the discharge after providing borrowers with an opportunity to opt-out.

During the discussion negotiators expressed concern on language stating eligible borrowers would include those who “otherwise meet eligibility requirements,” as it could open the door wider to other groups of borrowers, such as those who have been turned away for forgiveness. ED suggested negotiators provide the department with regulatory language to help address those concerns.

The department then turned to the final section for the day’s discussion, which touched on waiver authority for FFEL Program debt. ED told the committee that while the department is looking to provide more clarity on this section during the committee’s third session, the intent is to address the fact that there are many debt forgiveness programs that exist for Direct Loan (DL) borrowers that do not exist for FFEL borrowers, such as PSLF and SAVE, and that other student and borrower protections like the gainful employment regulations did not exist when loans were being made under the FFEL program.

The negotiators then turned to public comments, which took place over the course of an hour and primarily focused on borrower experiences with the student loan repayment system and touched on specific repayment plans like SAVE and PSLF. Comments also touched on concern that the committee did not include taxpayers who did not attend postsecondary education.

The committee is expected to wrap up its discussion of the issue papers on November 7, with the morning session focused on cancelation for borrowers who attended programs that did not provide “financial value,” and the afternoon portion of the session diving into the discussion of the issue of other financial hardships that may impact a borrower’s ability to repay their loans, for which ED did yet not offer draft regulatory text.

ED urged negotiators to submit suggestions for changes to regulatory language by November 14 so the department could update the issue papers for the December sessions.

If necessary, ED will also unveil a communication plan detailing how a potential lapse in government funding, slated to expire on November 17, might impact the upcoming session.

NASFAA Joins Letter to House Education Committee on the DETERRENT Act

NASFAA, along with several higher education organizations, joined onto a letter sent to the House Committee on Education and the Workforce with comments regarding the Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions (DETERRENT) Act. The legislation would make several amendments to foreign gift and contract reporting requirements for institutions. While the organizations state they appreciate the effort of this legislation, they warn lawmakers that there could be "detrimental impacts" to institutions.

Student Debt Relief Negotiators Dive into 'Hardship' Discussion in Second Day of Neg Reg

The ED wrapped up its second session of the student loan debt relief committee, as negotiators discussed drafted text and provided their insight on parameters for a "hardship" category of borrowers to be eligible for some sort of relief.

In kicking off the session, the committee immediately resumed its discussion of the regulatory text and picked up with a discussion on using the secretary's waiver authority to administer debt relief for 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."

The primary focus of this section concerned using gainful employment (GE) metrics and cohort default rates (CDR) to determine student eligibility for debt relief, with the department proposing to use failure of the GE or CDR metrics as cause for loan cancellation for borrowers who were included in the failing cohorts for either of those measures.

Negotiators expressed concern with specific language related to GE failure that would preclude borrowers who had signed an acknowledgment that their program failed the debt-to-earnings (D/E) rate from qualifying for such relief. Some noted that this provision would force students to decide between continuing in their program of study or qualifying for potential future relief. ED promised to take that concern into consideration before the next session in December.

Negotiators urged ED to also consider an institution's loss of Title IV eligibility for reasons other than GE or CDR failure to be a sufficient instance that would enable borrowers to access the waiver ED is proposing.

ED then turned to the issue paper concerning "hardship," in which the department offered eight questions for discussion. ED urged the committee to provide concrete examples and, where available, research supporting their proposals. ED also stressed the need for negotiators to take into consideration the feasibility of implementing their proposals.

Under the first question, ED asked negotiators how bankruptcy standards could serve as a guide for defining instances of hardship, and urged the committee in its feedback to think about hardship that is not addressed by other areas of the issue papers.

Negotiators expressed concern that bankruptcy standards are not necessarily appropriate in the context of student loan cancellation, but that ED should perhaps rely on a few principles of the bankruptcy standards. Negotiators suggested using borrowers' inability to make payments under the standard repayment plan, past inability to make scheduled payments, and evidence of good faith efforts to repay as examples of hardship that align with or borrow from the bankruptcy standards.

Additionally, negotiators detailed how the process for claiming hardship under bankruptcy guidelines can require an extensive documentation process, which can discourage borrowers and leave them unable to access relief because they abandon the process. Negotiators also implored ED to allow for self-certification and to not require a burdensome process.

Other examples offered by negotiators as hardships to consider for debt cancellation included borrowers who have been in default, low Expected Family Contribution, students eligible for Supplemental Nutrition Assistance Program (SNAP) benefits, former foster youth, and Pell Grant eligibility (for students as well as for Parent PLUS borrowers if the student they borrowed for received a Pell Grant). Other possibilities included consideration for economic conditions in place when the borrower gradated, with examples of the Great Recession and the Covid-19 pandemic as years when borrowers may have experienced hardship if they were just entering the workforce and beginning to repay their loans.

The committee then turned to the third question in the issue paper related to how ED should consider the Department's operational limitations in administering a hardship process, particularly related to Federal Student Aid's (FSA) flat funding and lack of certainty over the department's future funding levels.

Negotiators questioned whether resources were still available from the previous debt cancellation application and planned implementation, but ED indicated that, because they are subject to annual appropriations, they are unsure what resources they will have to devote to this effort.

In returning to the conversation on hardship and whether some upfront criteria should be put into place, negotiators expressed the opinion that ED should not automatically limit borrowers from applying for relief, noting there are many hardships borrowers may be experiencing that will not be covered by these regulations, making it necessary to keep the application process available to all borrowers.

While working through the remaining outstanding questions in the issue paper, one negotiator brought up a public comment from the prior session when a borrower, after receiving a notice that they would be approved for student loan cancellation under Biden's debt cancellation plan, left their job that was eligible for the Public Service Loan Forgiveness (PSLF) to start their own business. Now with that program blocked, the borrower is on the hook for the entirety of the loan and no longer covered by PSLF. The negotiator urged the department to consider this instance and others like this scenario as an example of hardship.

Negotiators also expressed concern over how these new debt cancellation programs would be implemented and that they could become operationally a very manual process and encourage ED to look at how existing processes could be used to reduce complexity around implementation.

The issue paper also touched on using federal poverty guidelines to establish eligibility requirements for debt relief. During that conversation negotiators argued that federal poverty guidelines were not adequate to capture borrowers experiencing hardship since poverty guidelines do not account for regional cost of living variation.

During public comments, which took place over the course of an hour, the committee heard from student loan borrowers detailing their experiences, policy experts highlighting student loan reporting and trends, and experiences with spousal joint consolidation loans.

The department is expected to release updated regulatory text in the coming weeks and will reconvene on December 11 to begin its third and final session.

As a reminder, the committee's time frame could be impacted by a potential lapse in government funding, which is slated to expire on November 17, if Congress does not come to another agreement on the annual appropriations process.

ED Releases Guidance on Borrower Defense School Notification Process

The ED released guidance to institutions on the borrower defense process after the Sweet v. Cardona settlement, as aid offices this fall reported concerns over an increase of borrower defense notifications.

Sweet v. Cardona, originally dubbed Sweet v. DeVos, is a class action lawsuit filed in 2019 by seven plaintiffs on behalf of themselves and federal student loan borrowers with pending borrower defense claims. The lawsuit sought for the Trump administration to issue decisions on a backlog of pending borrower defense claims.

In an electronic announcement posted last week, ED clarified that as part of the Sweet v. Cardona settlement, ED is sending institutions notices of borrower defense applications received from June 23, 2022, to Nov. 15, 2022. The Sweet v. Cardona settlement requires ED to adjudicate these applications under the 2016 borrower defense regulation, which requires ED to notify institutions of all borrower defense applications before they are reviewed.

ED noted that the reason institutions are notified of all applications before any substantive review is because the 2016 regulation requires fact-finding prior to adjudicating applications. The notification process to institutions is a part of that fact-finding, according to ED.

An institution has the option to respond to these borrower defense notices 60 days from the date the institution receives the notification. However, there is no "negative inference" against an institution if it doesn't respond.

Additionally, ED said it is attempting to batch applications, so institutions receive all claims from the June 23 to Nov. 15, 2022 period in a single notification. According to ED, over 90% of institutions receiving borrower defense notices from this period have fewer than 100 applications.

And for the institutions that have over 500 applications filed by former or current students during this period, ED said it will reach out and explain "how it will pace the number of notifications sent each week." ED anticipates completing these initial notifications to all institutions by April 2024.

Once ED completes its notification process, it will adjudicate applications on merits. The 2016 borrower defense regulation provides approvals on applications based on "substantial misrepresentation; a nondefault, favorable contested judgment; or breach of contract. Substantial misrepresentations are the most common type of alleged misconduct."

The electronic announcement also details information about the recoupment process. If a borrower defense discharge is approved, ED will determine whether to proceed with recouping borrower defense costs from the institution at a separate time.

Additionally, ED clarified that institutions would have an opportunity to contest any recoupment action with a hearing officer. ED will also send institutions a second notification with the application form for all loans where recoupment is requested, all attachments submitted by the borrower, and the rationale for the department's decision.

The electronic announcement also has a section with frequently asked questions with answers. ED wrote that institutions with questions about the Common Origination and Disbursement (COD) system can email CODSupport@ed.gov or call 1-800-848-0978.

Biden administration says colleges must fight 'alarming rise' in antisemitism and Islamophobia

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The Biden administration is warning U.S. schools and colleges that they must take immediate action to stop antisemitism and Islamophobia on their campuses, citing an "alarming rise" in threats and harassment.

In a recent letter, the Education Department said there's "renewed urgency" to fight discrimination against students during the Israel-Hamas war. The letter reminds schools of their legal duty to protect students and intervene to stop harassment that disrupts their education.

"Hate-based discrimination, including based on antisemitism and Islamophobia among other bases, have no place in our nation's schools," wrote Catherine E. Lhamon, assistant secretary for civil rights at the department.

Universities have faced mounting criticism over their response to the war and its reverberations at U.S. schools. Jewish and Muslim students on many campuses say too little is being done to keep them safe. Protests have sometimes turned violent, including at a recent demonstration at Tulane University, while threats of violence have upended campuses, including Cornell University.

The Education Department offered few specifics on how colleges should respond, and it did little to answer questions about where to draw the line between political speech and harassment. Instead, it outlined schools' broad duties under the Civil Rights Act.

It says schools must intervene to stop conduct that is “objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.” It urged schools to “be vigilant in protecting your students’ rights.”

The Education Department investigates reports of civil rights violations at schools and universities. Institutions can face penalties up to a loss of federal money.

Meeting with a group of Jewish students from Baltimore-area colleges last week, Education Secretary Miguel Cardona said he was “appalled and horrified” by incidents of antisemitism on U.S. campuses. He vowed to support universities as they work to protect students from all backgrounds.

In other actions, federal law enforcement officials have partnered with campus police to assess threats and improve security. Last week the Education Department added language to a federal complaint form clarifying that certain forms of antisemitism and Islamophobia are prohibited by federal civil rights law.

ED Announces New Framework to Hold Loan Servicers Accountable

The ED announced its oversight strategy to hold federal student loan servicers accountable for their customer service, as thousands of borrowers reported issues after returning to student loan repayment this fall.

ED said that its strategy is meant to support borrowers as they “navigate return to repayment” and will hold student loan servicers “accountable for meeting their obligations to students, borrowers, and taxpayers when managing student loans.” Specifically, ED’s oversight strategy focuses on monitoring student loan servicers, tracking complaints, and examining results-based outcomes.

Education Secretary Miguel Cardona said in a statement that the Biden administration “will not allow borrowers to pay the price for unacceptable servicing failures.”

“Today’s announcement should send a clear message to all our contracted student loan servicers that the Department will use the full scope of our oversight and accountability tools to ensure borrowers get the level of service they deserve,” Cardona said in a statement last week. “As the Biden-Harris team works to fix our country’s broken student loan system, we will continue to put the needs of borrowers first and do whatever it takes to support Americans’ success as they return to repayment.”

Part of ED’s oversight strategy includes directly monitoring servicers, partnering with federal and state regulators, and leveraging borrower complaints. The department noted that several of these strategies were used leading up the return to student loan repayment, including secret shopper campaigns and data monitoring.

Specifically, the Office of Federal Student Aid (FSA) is monitoring the quality of customer service provided by loan servicers by listening and scoring calls with borrowers. FSA also reviews borrowers calls and chats and conducts secret shopper calls to test servicers’ responses. The secret shopper campaigns are directed to issues on borrowers returning to repayment and questions about Public Service Loan Forgiveness (PSLF).

As for partnering with federal and state regulators, ED said it cooperates with the Consumer Financial Protection Bureau (CFPB) and state attorneys general. Additionally, ED highlighted that earlier this year

it updated its interpretation of federal preemption in order clarify states' authority to enforce state consumer protection laws.

ED is also leveraging borrower complaints, including complaints filed through FSA's Office of the Ombudsman, which works closely with ED's loan servicer oversight team. Beyond those complaints, ED monitors news articles and social media posts to track issues that borrowers are reporting.

In the announcement, the department also outlined actions it will take against servicers if they provide poor customer service to borrowers. ED said it will withhold payment when servicers don't meet their "contractual obligations or are not meeting acceptable standards" based on the number of borrowers who are not being served. In October, ED announced that it was withholding $7.2 million from MOHELA over issues with billing statements to 2.5 million borrowers.

Borrowers could also be reallocated to a new servicer if they receive poor customer service, or loan servicers could be suspended from receiving new borrowers. ED said it has the authority to allocate new loans to "high-performing servicers." "Withholding accounts has direct financial impacts on servicers, because their compensation is largely driven by monthly fees for each borrower they service," ED wrote.

Other action items include ED's Contractor Performance Reports (CPARS), a summary report that grades servicer's work on various issues. ED said the CPARS report could result in a loss of revenue for servicers with poor scores. Servicers can also be put on remediation plans to fix borrower issues, ED noted.

Beyond these actions, ED said that it will also help protect borrowers from servicer mistakes by directing servicers to put affected borrowers into administrative forbearance until the issue is resolved. Under certain circumstances, ED said borrowers who are put under administrative forbearance will not face issues with their progress for loan forgiveness — such as through PSLF or income-driven repayment — and will have that time accounted for, along with no accrued interest.

ED also highlighted its process of creating the Unified Servicing and Data Solution (USDS), which is part of ED's NextGen initiative and scheduled to go live in spring 2024. According to ED, USDS will create several benefits to loan servicer accountability and provide increased cost transparency.

ED stressed that it takes very seriously its responsibility to hold servicers accountable and ensure borrowers have a "smooth and successful" repayment experience.

FSA Announces 2024-25 FAFSA Will Go Live By December 31, ISIR Delivery Delayed

Federal Student Aid (FSA) announced that the 2024-25 FAFSA will go live by December 31, 2023, meeting the statutory requirement that the form must be available by January 1.

Along with the release date, FSA announced in its FAFSA road map that, while the application itself will be live, it will not begin processing FAFSA forms submitted online until January 2024. Institutions will begin receiving Institutional Student Information Records (ISIRs) by the end of January 2024. In a stakeholder call on Wednesday, FSA clarified that verification selection and database matches won't start until ISIRs begin to be delivered.

FSA clarified in the call that once a student completes the online FAFSA, they will get a confirmation page that includes their estimated Student Aid Index (SAI) and Federal Pell Grant eligibility, along with a follow-up email. It will also include messaging about what to expect next, for which ED is still crafting language.

FSA will begin processing paper FAFSAs in February 2024. Students will be able to make corrections once ISIRs are processed, while institutions will not be able to submit corrections until February, FSA states.

NASFAA President and CEO Justin Draeger said in a statement that while the financial aid community is pleased to see ED fulfill its commitment to deliver a FAFSA by January 1, there are still concerns ahead.

In the electronic announcement, FSA said that its Application Programming Interface (API) service will not be available for the entirety of the 2024-25 award year. It plans to resume the service in the 2025-26 cycle. Seven states — New York, Pennsylvania, Vermont, Mississippi, Iowa, Minnesota, and New Jersey — currently participate in the API, which allows students who have submitted a FAFSA online to electronically transfer data they provided on their application to their state financial aid agencies. ED committed in Wednesday's call to working with those states.

FSA also announced that with the new 2024-25 FAFSA, about 610,000 more students from low-income backgrounds will receive federal Pell Grants and 1.5 million more students will have access to the maximum Pell Grant award. ED released a state-by-state breakdown of those numbers.

The Department of Education also shared that some students may be able to answer as few as 18 questions on the new, streamlined FAFSA, down from more than 100 currently. And the department will also be implementing a new "Who's My FAFSA Parent?" wizard that will help students navigate the process.

While typically the FAFSA has been released on October 1, this year's delay is due to a significant overhaul of the FAFSA form and processing system. FAFSA simplification brings a number of changes to the FAFSA process, including implementation of the new SAI calculation, direct taxpayer data sharing with the IRS, and a shortened form for students and their families to submit.

This March, Federal Student Aid (FSA) released a road map outlining delivery dates for FAFSA resources and confirmed that the 2024-25 FAFSA will be released sometime in December this year.

Since then, aid offices across the country have expressed concerns about the launch date of the new FAFSA, along with concerns about staff burnout, staffing shortages, and confusion about the intricacies of the FAFSA process, such as the changes to who is considered the parent of record, the new consent process for the IRS direct data exchange, and what happens in cases where IRS data can't be used. In its updated 2024-25 FAFSA road map, FSA states that it will host monthly Q&A webinars to answer questions for state and institutional partners between January and March 2024.

Draeger states that the announcement means that aid offices cannot begin reviewing financial aid applications, modeling student eligibility, and packaging and communicating financial aid offers until applicant data is provided to them. He urged ED to partner with the financial aid community to ensure a smooth implementation.

Organizations have asked ED to support students, financial aid offices, and other stakeholders in several ways, including:

- Communicating directly with applicants immediately upon FAFSA submission with next steps and a realistic expected timeline
- Increasing availability of customer support to students and financial aid offices through existing and adequately staffed help centers
- Ensuring a low verification selection rate for student applicants, relieving burden and saving time for students, families, and institutions
- Permitting schools to accept electronic copies of verification materials, including electronic signatures
- Pausing standard program reviews and other non-urgent oversight activities through peak processing season, except in instances of suspected fraud or known abuse
- Without delaying any of the actual implementation, giving schools more time to prepare and provide gainful employment and financial value transparency data

Senate Considers Resolution to Rescind the SAVE Student Loan Repayment Plan

The Senate rejected a Congressional Review Act (CRA) resolution to overturn the Biden administration's new income-driven repayment plan, the Saving on a Valuable Education (SAVE) plan.

Sen. Bill Cassidy (R-La.), ranking member of the Senate Committee on Health, Education, Labor, and Pensions (HELP), along with 14 other Senate Republicans, introduced the CRA resolution back in September.

"Just like Biden's original student debt cancellation scheme, this IDR rule does not 'forgive' debt," Cassidy said on the Senate floor Wednesday. "It transfers the burden of $559 billion in federal student loans to the 87 percent of Americans who don't have student loans, who chose not to go to college, or already responsibly paid off their debts."

The measure was rejected by a vote of 49-50. Since the measure was considered as a Congressional Review Act (CRA) resolution, the Senate only needed a simple majority to clear it, but the chamber was unable to clear that threshold. Even if it had passed, the White House earlier this week issued a statement saying it would veto the measure. In that case, Congress would need to pass the resolution with a two-thirds majority to override the presidential veto.

Sen. Bernie Sanders (I-Vt.), chairman of the Senate HELP Committee, urged his colleagues to reject the resolution and said that more needs to be done to address student loan debt.

During floor remarks before the vote, Sanders detailed the benefits of the SAVE plan and how it has benefited working-class and lower-income young people. He went on to urge the Biden administration to pursue programs that would make all public colleges and universities tuition-free and to cancel all student loan debt.

The SAVE plan, which was unveiled earlier this summer, is a rebranding and overhaul of the existing REPAYE plan. While the plan goes fully into effect on July 1, 2024, parts of it have been implemented early, including higher income protection, elimination of negative amortization, and exclusion of spousal

income, among other things. According to ED more than 5.5 million borrowers are now enrolled in the program, with 2.9 million qualifying for $0 monthly payments.

GAO: ED Did Not Apply Practices to Prevent Fraud in Student Debt Cancellation Proposal

When the ED announced its student debt relief plan in 2022, it quickly approved borrowers for relief without implementing practices that would have prevented fraud, a new report from the Government Accountability Office (GAO) found.

The report assessed ED's policies and procedures of preventing fraud in the Biden administration's initial student debt relief plan, which would have canceled up to $20,000 in student loan debt for eligible borrowers. However, the administration's plan was ultimately struck down by the U.S. Supreme Court in June, after it was initially paused due to pending litigation last November. And now, the administration is working on a new debt relief plan through the negotiated rulemaking process of the Higher Education Act.

A main finding of the report was that while ED developed two processes to assess borrower incomes and account for fraud risks, it did not implement "key procedures" to further identify and prevent potential fraud. One example GAO pointed out is that ED approved millions of applicants for debt relief before fully implementing processes to review and evaluate fraud risk. Examples of that could be collecting income information from the other borrowers it had selected for verification or assessing the borrowers it had approved, GAO wrote.

"In addition, the department automatically approved some borrowers based on self-reported data, without conducting any additional assessment of borrower risk," GAO wrote in the report. "Education approved certain borrowers without implementing key procedures for mitigating fraud, which heightened the risk that the program could provide relief to ineligible borrowers."

GAO noted that ED did implement some fraud prevention components through its application process, which used attestation from borrowers about their eligibility, income verification for some applicants, and a review process. Additionally, another fraud prevention strategy was ED's use of income information from borrowers who recently filed a FAFSA or applied for an income-driven repayment (IDR) plan, which ED used to automatically provide relief.

In future student debt relief plans, GAO recommended that ED conduct "robust evaluations" of fraud risk before borrowers apply, such as partnering with the IRS to check incomes of approved borrowers. Additionally, GAO recommended that ED fully implement all stages of its fraud risk management plans, and implement controls so it doesn't rely on self-reported data in future debt relief efforts.

Concluding the report, GAO noted that the size of Biden's student debt relief plan — an estimated $430 billion of relief for over 31 million borrowers — "rendered it inherently at risk for fraud and necessitated effective fraud risk management." GAO urged ED to take more fraud prevention measures in its next iteration of student debt relief.

"Since Education is in the earliest stages of the process that will develop a new debt relief program, it is crucial that the department commit to fraud risk management in any future program it pursues," GAO

wrote. “The department should broadly apply lessons learned from the original program, and implement robust risk-based controls before providing relief to any borrowers.”

Federal Student Aid Chief Operating Officer Richard Cordray responded to the report, writing that the student loan debt relief program “inherently had an extremely low risk of fraud.” He added that the department couldn’t build on its fraud prevention measures because of the legal challenges to the plan.

“This process has been ongoing and, like much of the student loan debt relief program, was still evolving and being implemented when activity on this program was suspended due to the court orders,” Cordray wrote. “Faulting the Department’s implementation of its fraud risk management strategy as incomplete, when federal court orders prevented the Department from continuing to work on any aspect of the program, mischaracterizes those efforts.”

Sen. Bill Cassidy (R-La.), ranking member of the Senate Committee on Health, Education, Labor, and Pensions (HELP), responded to Thursday’s report, writing that the Biden administration “was prepared to transfer $430 billion in student loan debt onto taxpayers.”

NASFAA Publishes 2023 Benchmarking Report

According to NASFAA's newly released 2023 Benchmarking Report, the average number of full-time equivalent (FTE) financial aid staff per 1,000 aid applications continued to decline, with respondents reporting an average of 2.3 FTE for the 2021-22 award year, down from 2.5 in the 2016 NASFAA Benchmarking Report. The report also found that institutions reported concerns about their ability to be administratively capable and serve students. Institutions that reported needing more staff and resources indicated they needed an average of 3.5 more FTE positions to feel adequately staffed. NASFAA members may access the full report online.

Biden Signs Short-Term Spending Plan to Avert Government Shutdown

President Joe Biden signed another continuing resolution into law for fiscal year 2024, averting a government shutdown that was slated to go into effect on November 17. Congressional appropriators now have a few more weeks to wrap up negotiations on the fiscal year 2024 spending levels.

The House advanced the two-tiered continuing resolution, by a vote of 336-95, that extends funding for one batch of the 12 spending bills through January 19, while a second batch, which includes the Labor-HHS-Education bill that funds the Department of Education (ED), is extended through February 2.

The Senate then took up the bill late Wednesday evening and overwhelmingly cleared it by a vote of 87-11.

The appropriations process has been plagued by stalled negotiations this cycle which resulted in former Speaker of the House Kevin McCarthy (R-Calif.) losing his speakership. McCarthy’s successor Speaker Mike Johnson (R-Ga.) now has to contend with how to address a longer-term spending agreement and has been trying to move stand-alone bills through the House during the month of November.

Johnson tried to bring the House Republicans' Labor-HHS-Education bill to the floor on Wednesday, which was still in the process of being amended and proposes deep cuts to funding for ED, but that effort was blocked by hardline Republicans who were protesting the Speaker's decision to rely on Democrats to advance the continuing resolution.

Congress is now on recess through Thanksgiving and will resume spending talks in December.

NASFAA's 2022-23 Annual Impact Report Highlights Advocacy, Research, and Community

In the last year, NASFAA has seen the financial aid community serve as mentors, share deep knowledge, troubleshoot, develop community, and work together toward the shared goal of increasing student access to and success in postsecondary education. Several of NASFAA's task forces began, continued, or completed work, a fifth Diversity Leadership Program class was successfully selected, and the NASFAA Board of Directors developed and rolled out a new three-year Strategic Long-Range Plan, provided critical fiscal and strategic oversight, bolstered NASFAA's mission through key programmatic offerings, and remained agile to best serve the membership. NASFAA's legislative advocacy in 2022-23 focused on funding for the federal student aid programs and reforms to higher education policy. With a divided Congress, NASFAA continues to work closely with members across the political spectrum to deliver much-needed improvements to the student aid system. The annual impact report can be viewed here.

FSA Finalizes ISIR Record Layout and Portion the 2024-25 FAFSA Specifications Guide

FSA shared in a notice that it has finalized updates for the "Volume 5 – Edits and Rejects" portion of its multi-volume resource that consolidates FAFSA-related processing information and guidance. FSA also noted that the current 2024-25 ISIR record layout is the final version and is ready for development and testing purposes but noted that "minor" edits to the 2024-25 ISIR record layout field values may occur in the future.

FSA Officials Focus on FAFSA Simplification, Regulatory Updates at 2023 Training Conference

FSA kicked off its 2023 virtual training conference, a four-day event highlighting initiatives and updates from FSA, including FAFSA simplification and the December launch of the 2024-25 FAFSA, federal regulations, changes to FSA's website, and more.

Over 17,600 participants registered to attend this year's conference, which led to technical issues for registrants accessing the conference's platform. Online, FSA warned that the conference platform may take longer than usual to load. Additionally, FSA announced that due to technical issues, it will show the StudentAid.gov Walkthrough, Updates, and Upcoming Attractions (BO16) session again on Wednesday, November 29, from 3:20-4 p.m. ET with a Q&A.

FSA Chief Operating Officer Richard Cordray gave opening remarks on Tuesday morning, outlining FSA's current initiatives. He touched on several changes happening with FAFSA simplification this year, including the implementation of the Student Aid Index (SAI), the 2024-25 FAFSA form, which will go live by December 31, and the direct transfer of IRS tax information in the new FAFSA, among other changes.

He added that FAFSA simplification is a "huge undertaking" involving massive technological changes, which includes an overhaul of FSA's 47-year-old legacy computer processing system.

Cordray also touched on the return of student loan repayment, which resumed this fall after a three-year pause due to the COVID-19 pandemic. Initiatives the department has implemented include a new income-driven repayment (IDR) plan, the Saving on Valuable Education (SAVE) plan, and the Fresh Start initiative, which would enable defaulted borrowers to reenter repayment in good standing. Already, over 5.5 million student loan borrowers have been enrolled in the SAVE repayment plan, Cordray said.

There have also been improvements to federal student loan servicing, Cordray said, noting the department's new framework to hold student loan servicers accountable, as well as new contracts with five loan servicers.

Cordray added that FSA will be adding "enhancements" to the FSA Partner Connect website next month, including a redesigned application for approval to participate in FSA's financial assistance programs. Additionally, he said FSA will expand the school profile section with new case management tools, an electronic third-party service or inquiry form, and a new school third-party service or profile section.

During a breakout session on the StudentAid.gov website, FSA presenters went over updates from the past year, such as the release of the Public Service Loan Forgiveness (PSLF) Help Tool — which lets borrowers use eSignature and eSubmission — the SAVE repayment plan, the updated FSA Estimator, and more.

The session also included a walkthrough of the PSLF Help Tool and how to apply for an IDR plan, along with upcoming changes to the StudentAid.gov website. Josie Nixon, program analyst for FSA's Student Experience and Aid Delivery, said that along with the launch of the 2024-25 FAFSA in December, FSA is implementing an update to allow users that don't have Social Security numbers to create an FSA ID. That way, users will be able to access the StudentAid.gov website and complete or contribute to a FAFSA form.

Nixon added that FSA will be implementing additional IDR regulatory changes next summer related to the SAVE repayment plan and implementing the first phase of specialty loan servicing program, which handles PSLF, TEPSLF, TPD, and TEACH programs. The FSA ID account recovery process will also be automated, Nixon said.

She noted that currently, if a user can't remember their FSA ID or login information for the StudentAid.gov website, they must contact FSA's helpdesk and follow a manual process to regain access to their account. With the new automation, users will be able to recover their login on their own, which Nixon says will shorten the process from one to three days down to 15 minutes.

During the federal update session, officials covered the latest news and updates on FAFSA simplification, new guidance, and the negotiated rulemaking process.

To kick things off, officials dug into the implementation planning process for the 2024-25 FAFSA, which ED said due to the complex nature of the FUTURE Act would have a three-step phase deployment.

First, per ED's most recent guidance, the form will be available for students and families to complete and submit by December 31. Second, by the end of January 2024 schools and state higher education agencies will begin to receive Institutional Student Information Records (ISIRs) and students will be able

to make corrections. In the following weeks, institutions will be able to make corrections. The third portion of the deployment concerns the 2025-26 FAFSA form, which will contain links to export FAFSA information directly to certain state financial aid applications and the ability for unpaid preparers to complete a FAFSA form on behalf of students.

In detailing the roadmap ahead, officials underscored the importance of collaboration and that they'd work across the higher education community to help with the FAFSA rollout. Specifically, ED said they would provide opportunities for Q&As and will work to reduce administrative burden. According to the presentation, this could include verification waiver flexibility.

During the presentation ED also urged listeners to utilize its FAFSA Simplification web page for the updated guidance and new resources including webinars, guides, and fact sheets. ED also said that an upcoming electronic announcement would provide details on another webinar series that will take place from January through March of 2024.

The next portion of the presentation dug into new guidance issued throughout the year, including the following Dear Colleague Letters:

- DCL GEN 23-12: 2024–2025 Award Year: FAFSA Information to be Verified and Acceptable Documentation: summarizing changes to verification process for 2024-25 FAFSA simplification and FUTURE Act.
- DCL GEN 23-11: FAFSA Simplification Act Changes for Implementation in 2024-25: summarizing changes to Title IV and HEA requirements resulting from the FAFSA Simplification Act.
- DCL GEN 23-10: Implementation and Policy Guidance of the Pre-Dispute Arbitration Agreement Provisions: highlighting guidance on the implementation of the pre-dispute arbitration, class action waiver requirements, and submission of arbitral and judicial records concerning borrower defense claims.
- DCL GEN-23-09: Accreditation and Eligibility Requirements for Distance Education: clarifying guidance on accreditation and Title IV requirements for distance education programs and the impact of the COVID-19 emergency declaration.

ED then went through its ongoing negotiated rulemaking process with their committee work that began back in 2021 and has continued through 2023.

That committee work included the Affordability and Student Loans Committee, which began work in 2021 with final regulations taking effect July 1, 2023. Topics during this session included: total and permanent disability discharge; eliminating interest capitalization for nonstatutory capitalization events; false certification discharge; Pell Grant eligibility for Prison Education Programs; income-driven repayment; Public Service Loan Forgiveness; borrower defense; closed school discharge; and predispute arbitration.

Another committee, the Institutional Eligibility and Accountability Committee, also published all of its final rules with an effective date of July 1, 2023 for 90/10, and change in ownership. The remaining topics, gainful employment, financial value transparency, ability to benefit, financial responsibility, and administrative capability and certification procedures take effect July 1, 2024.

FSA Debriefs Updates to 2024-25 FAFSA Form, Processing System, and Partner Portal

During its 2023 virtual training conference, FSA outlined key changes to the 2024-25 FAFSA, including with the processing system and partner portal, due to this year's FAFSA simplification overhaul.

The session focused on two key changes of the 2024-25 FAFSA. The first topic was the FAFSA contributor – a new term being introduced on the 2024-25 form, which means anyone that is required to provide a signature on the FAFSA form and provide consent and approval to have their federal tax information transferred from the IRS. The term contributor includes the student, and may include the student's spouse, a biological or adoptive parent, or the parent's spouse (stepparent).

FSA outlined steps contributors will take in completing their portion of the FAFSA, first by receiving an email from FSA informing them that they've been identified as a contributor. From there, the contributor creates a StudentAid.gov account with an FSA ID if they don't already have one, and then reviews and submits the required information and signs the student's FAFSA form.

Students or parents invite contributors to complete their portion of the FAFSA form by entering the contributor's name, date of birth, Social Security number, and email address, FSA noted. A concern many aid offices have voiced about this process is how parents without Social Security numbers can complete their portion of the FAFSA.

In these cases, FSA clarified that when a student is on the "Invite Parent(s) to This FAFSA Form®" webpage, the student will check the "My parent doesn't have an SSN" box. The student then can enter the parent's mailing address instead. FSA added that when these parents log in with their FSA ID, they will experience the same FAFSA application process that parents with Social Security numbers experience.

Aid offices have also expressed concern with issues that could occur if students and contributors don't provide consent and approval for their federal tax information to be transferred from the IRS directly. According to FSA, if a student or required contributor doesn't provide consent and approval, the student will not be eligible for federal student aid — even if they manually enter tax information.

FSA said that contributors will have two opportunities when completing the FAFSA to provide their consent and approval for the Financial Aid Direct Data Exchange. Misty Parkinson, director of FSA's Product Management Group, said when completing the FAFSA, contributors will be warned "every step of the way" that if they do not provide consent, the student will not be eligible for federal student aid.

"It will be very hard for them not to [provide consent], because we are telling them constantly how important it is to provide their consent and approval," Parkinson said.

Other key changes to the FAFSA include the creation of the parent wizard, which offers a series of filtering questions that determine which parent(s) must be included on a dependent student's FAFSA form as contributors. Additionally, FSA noted that the save key has been eliminated from the FAFSA process and the Student Aid Report (SAR) has been renamed to the FAFSA Submission Summary.

FSA went through other scenarios throughout the presentation, including issues with provisionally independent students, divorced or separated parents who are not living with former spouses, and married students or parents who did not file a joint tax return.

The session also touched on updates to the new FAFSA Processing System (FPS), which will start with the 2024-2025 award year. The Central Processing System (CPS) is the current system processing FAFSA applications and will be retired in September 2024.

Along with updates to the new FPS, FSA outlined changes happening to the FAFSA Partner Portal (FPP). FAA Access to CPS Online is the current website that financial aid professionals use to view and make corrections to FAFSAs. FSA said that site will remain active until the end of the 2023-24 award year, September 2024. The sole use of the FPP will start with the 2024-2025 award year and have a new website and URL. FSA explained that both FAA Access to CPS Online and FPP will both be in production for the 2023-24 year, and each website will link to the other until the end of the 2023-24 year, when FAA Access to CPS Online officially ends.

The most recent committee is still in the process of working through drafted regulatory text seeking to address how the administration can implement student loan debt cancellation. Their next meeting is slated for December.

ED Announces Creation of Neg Reg Program Integrity and Institutional Quality Committee

The ED announced the creation of a new negotiated rulemaking committee, the Program Integrity and Institutional Quality Committee, focused on revising federal regulations for several issues under Title IV of the Higher Education Act. Those issues include accreditation, institutional eligibility, including state authorization, distance education, Return of Title IV funds, cash management, and eligibility requirements for TRIO programs. The notice specifies that the committee will meet starting in January through March and all meetings will be virtual. There will also be a subcommittee for issues with TRIO programs that will meet separately in January and February. ED is seeking nominations for 15 constituency groups, such as state officials, financial aid officers, and more. The deadline for nominations is two weeks away, on Wednesday, December 13.

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NASFAA Creates FAFSA Simplification Brief for Campus Partners

Struggling to get the FAFSA simplification message out to campus partners? NASFAA has created a brief highlighting the major provisions of the FAFSA Simplification Act to communicate how this effort will impact your campus. Share it with your key campus partners to ensure a smooth implementation of FAFSA simplification.