



Compromise or Contention: Postsecondary Education in a Divided Congress

Nicholas Kent, Chief Policy Officer | Career Education Colleges and Universities

Speaker



Nicholas Kent is Chief Policy Officer at Career Education Colleges and Universities. In this role, he serves as senior advisor to association leadership by providing statutory, regulatory, and policy guidance on matters relating to higher education. Additionally, Nicholas is President of the CECU Research Foundation, a 501(c)(3) non-profit organization that supports and promotes evidence-based research to improve higher education, particularly career and technical education.

Prior to his current role, Nicholas was Managing Director at Dulles Advisory Group, a higher education and strategic management consulting firm. In this position, he worked with postsecondary institutions to assist and guide them on the vastly regulated field of higher education, including advising nonprofit and proprietary organizations regarding strategic and technical issues pertaining to accreditation and the federal student financial assistance programs.

Nicholas previously held a government appointment as Director of Policy, Planning and Research at the District of Columbia Office of the State Superintendent of Education. In this position, he was primarily responsible for working with internal and external stakeholders to develop and support the final issuance of regulations, policies, and guidance materials that supported the agency's efforts to ensure compliance with federal and local laws.

Before time in public service, Nicholas served as Vice President of Legislative and Regulatory Affairs for a private equity sponsored company. For approximately eight years, he was responsible for leading and managing regulatory operations, including accreditation and state authorization activities, for a system of 53 postsecondary institutions.

Nicholas began his career in education as a professional staff member for an accreditation agency recognized by the U.S. Secretary of Education.

Nicholas earned his bachelor's degree in political science from West Virginia Wesleyan College and his master's degree in higher education administration with a concentration in policy from The George Washington University. He is a current member of the Association for Education Finance and Policy and a frequent writer and speaker on topics related to higher education.

Conditions of Use and Disclaimer

Please note the purpose of this presentation is for informational purposes only and should not be considered legal advice.

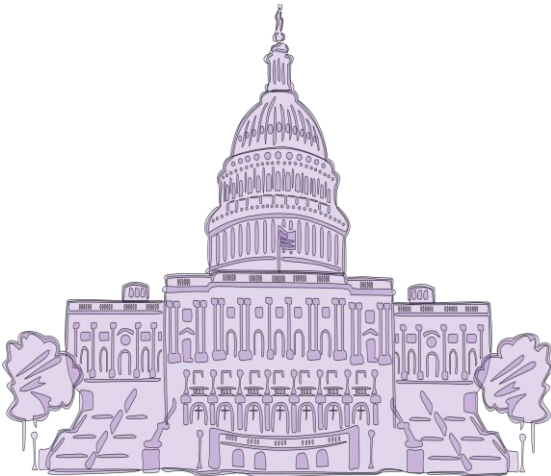
The transmission of information from this presentation does not establish an attorney-client relationship with the participant. The participant should not act on the information contained in this presentation or any accompanying materials without first consulting retained legal counsel.

If you desire legal advice for a particular situation, you should consult an attorney.

Constitutional Framework

Three Co-Equal Branches of Government

**Article I.
Legislative Branch**



**Article II.
Executive Branch**



**Article III.
Judicial Branch**

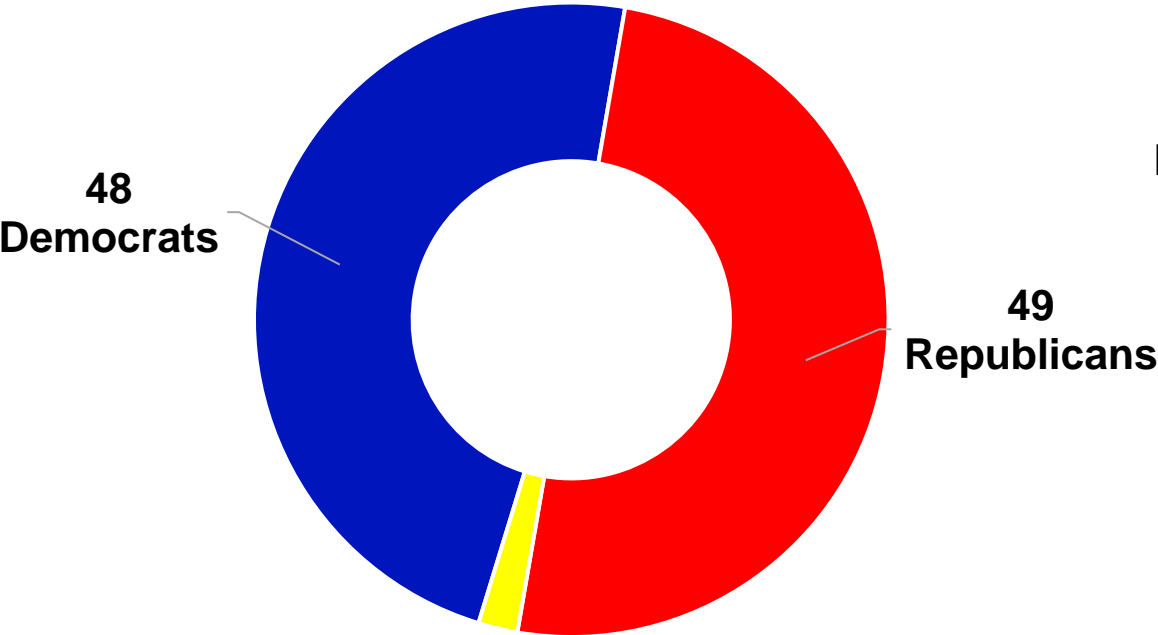


A detailed line drawing of the Arizona State Capitol building, rendered in a light purple color. The drawing shows the central dome with a statue on top, the main body of the building with many windows, and two trees on either side. The text "Legislative Branch" is overlaid on the drawing in a large, blue, sans-serif font.

Legislative Branch

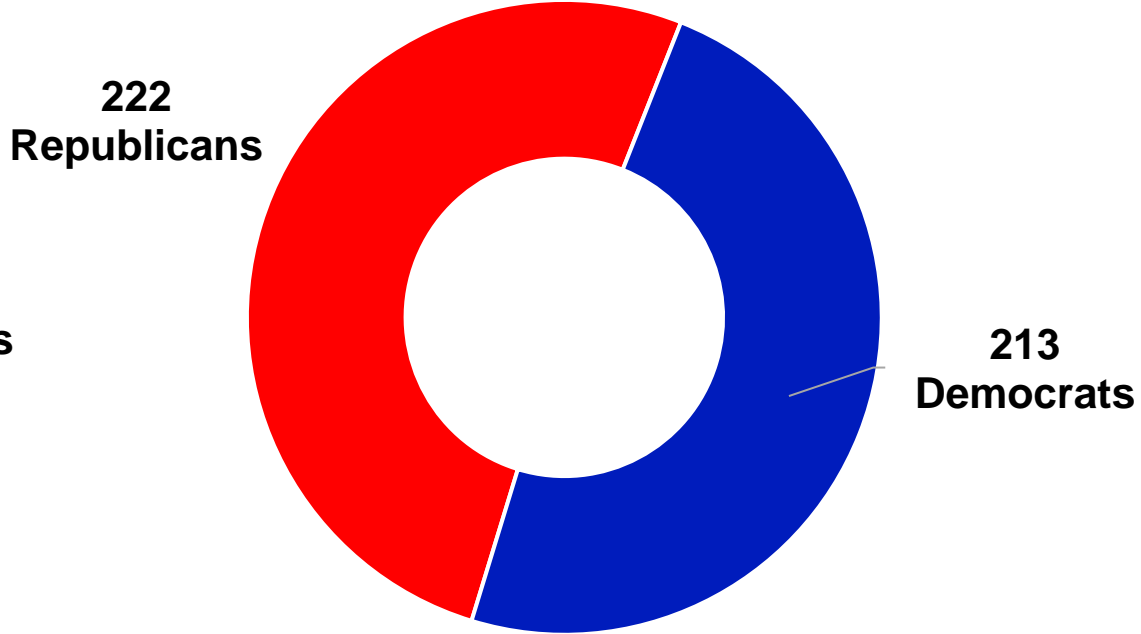
118th Congress Party Breakdown

U.S. Senate



3 Independents (caucus with Democrats)

U.S. House of Representatives



As of April 20, 2023

Senate Education Leadership



Bernie Sanders (I-VT)

Chair, Senate Committee on Health, Education, Labor & Pensions
16 Years in Senate (2007-Present)



Bill Cassidy (R-LA)

Ranking Member, Senate Committee on Health, Education, Labor & Pensions
8 Years in Senate (2015-Present)

House Education Leadership



Virginia Foxx (R-NC)

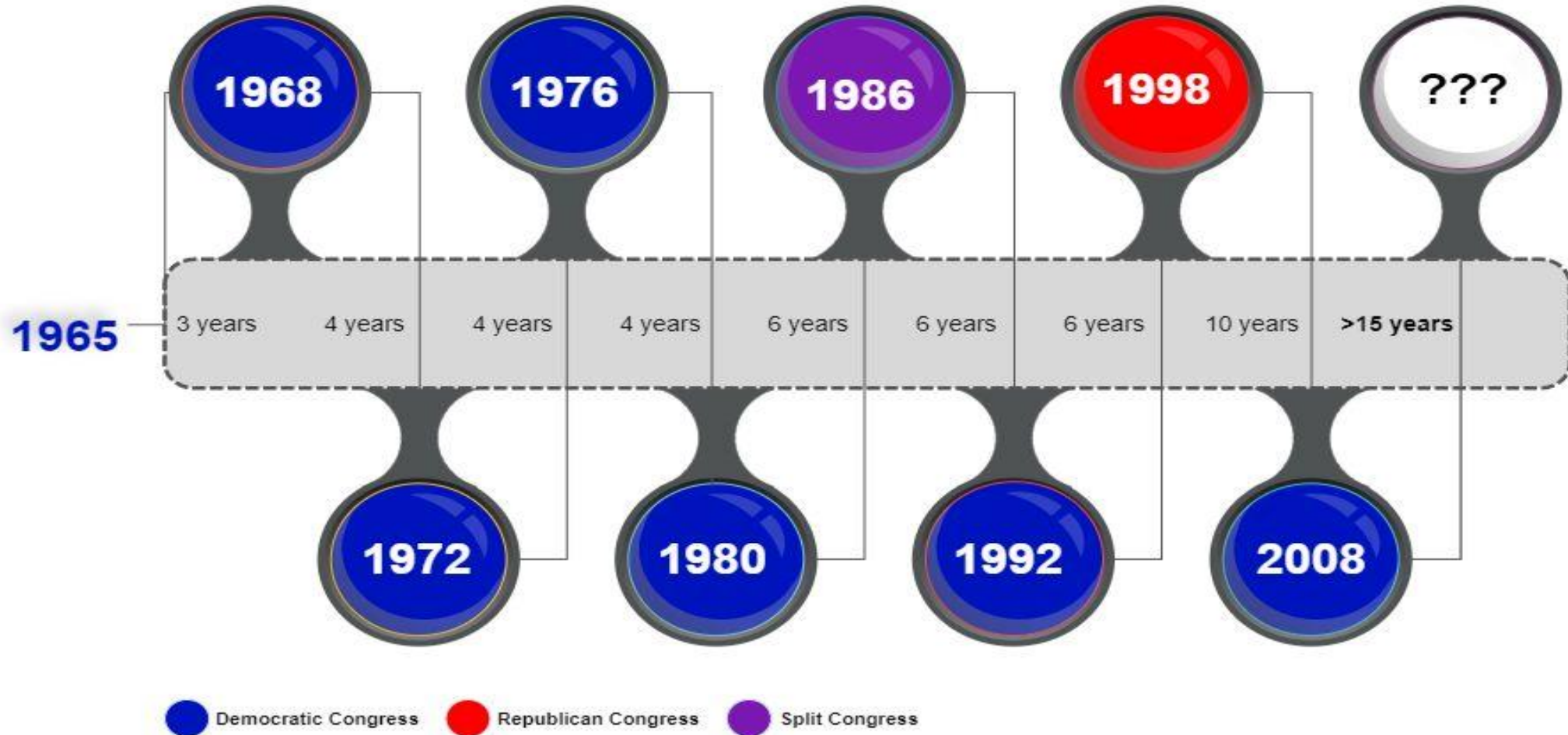
Chair, House Committee on Education & the Workforce
18 Years in House (2005-Present)



Bobby Scott (D-VA)

Ranking Member, House Committee on Education & the Workforce
30 Years in House (1993-Present)

Higher Education Act Reauthorization



Appropriations FY2023*

- On December 29, 2022, President Biden signed into law the *FY2023 Consolidated Appropriations Act*, which funds federal agencies through September 30, 2023, and for other purposes.
 - \$79.2 billion in discretionary appropriations to ED and its programs, a \$2.7 billion increase from FY2022.
 - \$24.6 billion for federal student financial assistance programs.
 - \$500 increase to maximum Pell Grant award (\$7,395) for AY 2023-24.
 - \$1.23 billion for FWS and \$910 million for FSEOG.
 - \$2.03 billion for student aid administration (flat funded).
 - \$1.02 billion for HBCUs and MSIs.
 - \$140 million for the Office of Civil Rights.
 - Extended authorization of NACIQI.
 - No 85/15 policy rider for proprietary institutions.
- Work on the FY2024 appropriations bills will begin later this year.

*Passed by 117th Congress

Short-Term Pell Grant

- Congress is (again) considering proposals that would extend Pell Grants for certain programs shorter than 15 weeks.
- Bills diverge mostly on accountability “guardrails,” including which institutions can participate.

JOBS Act of 2023 S.161

- Introduced by Sen. Tim Kaine (D-VA) on January 31, 2023
- 36 cosponsors, including 14 Republicans
- House companion bill introduced by Rep. Bill Johnson (R-OH)
- **Excludes proprietary institutions**, but some Democrats disagree
- Must align with State or local workforce needs (high-skill, high-wage, or in-demand)

PELL Act H.R.496

- Introduced by Rep. Elise Stefanik (R-NY) on January 25, 2023
- 26 cosponsors, all Republicans
- **Includes all sectors**
- Must align with the requirements of in-demand industry sectors or occupations
- Completion and placement benchmarks
- Earnings boost measure

Jobs to Compete Act H.R.1655

- Introduced by Rep. Bobby Scott (D-VA) on March 17, 2023
- 4 cosponsors, all Democrats
- **Includes all sectors**
- Must align with State or local workforce needs (high-skill, high-wage, or in-demand)
- High school earnings benchmark
- Earnings boost measure
- Instructional spend minimum

Other Higher Education Priorities



Require ED reach out to borrowers about the COVID-19 payment pause; allow for written/verbal enrollment for IDR



Modernize the college reporting system for postsecondary data by providing accurate reporting on student outcomes



Require a standard financial aid form; revise loan counseling requirements; and improve the Net Price Calculator System



Protect free speech and prevent recession of religious protections on college campuses



Lower cost and increase return on investment; accountability for all



Provide increased funding for the Office of Federal Student Aid



Strengthen oversight of proprietary institutions to curb predatory behavior



Ban transgender women from participating in athletic programs designated for biological women or girls



Double the Pell Grant; shorten the PSLF timeline; limit interest capitalization; lower interest rates

Executive Branch Oversight

- Rep. Virginia Foxx (R-NC) said that conducting “rigorous and sustained oversight” of ED is one of her top priorities,” including on regulatory overreach.

Student loan debt relief/cancellation

Student loan pause extension

Income-driven repayment

Student loan portfolio cost

Title IX interpretation

Third-party servicer guidance

FAFSA Simplification Act implementation

90/10 online education guidance

Foreign gift and contract reporting

A faint, light blue illustration of a classical building with a pediment and a flag on top, serving as a background for the title.

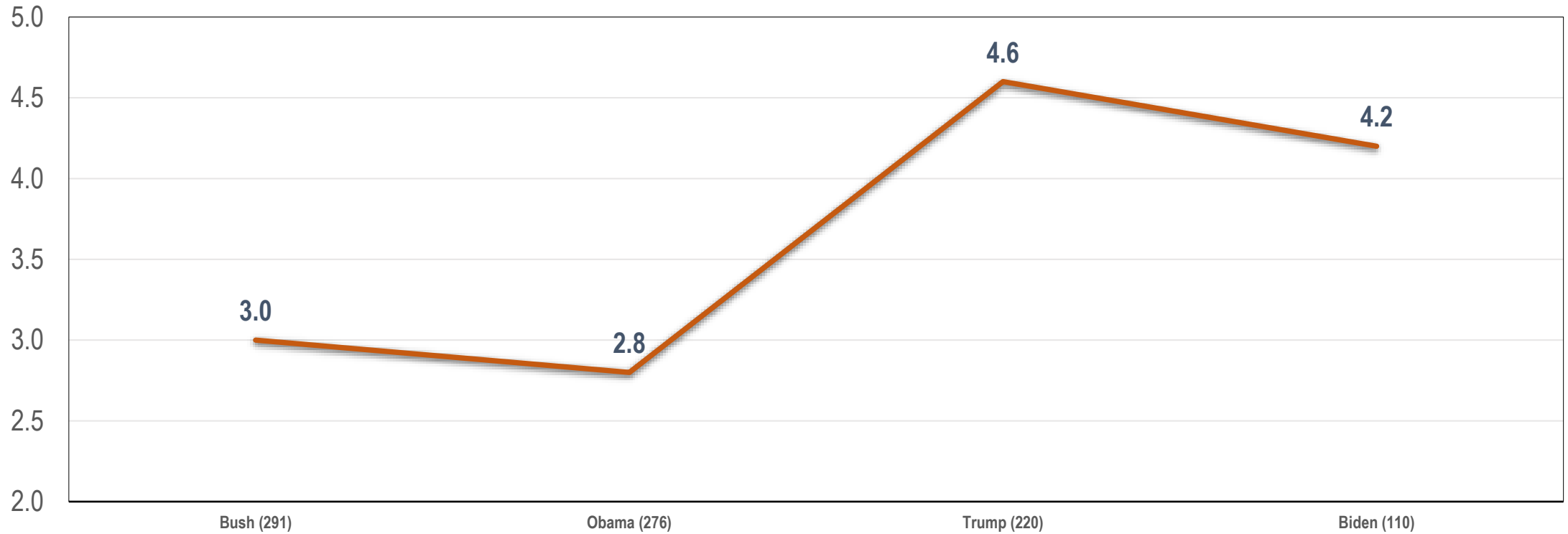
Executive Branch

President's Budget FY2024

- On March 9, 2023, President Biden released his administration's budget for FY2024.
 - \$90 billion in discretionary appropriations to ED and its programs, a \$10.8 billion increase from FY2023.
 - \$26.4 billion (\$1.8 billion increase) for federal student financial assistance programs.
 - \$820 increase to maximum Pell Grant award (\$8,215) for AY 2024-25.
 - \$1.23 billion for FWS and \$910 million for FSEOG (flat funded).
 - \$2.65 billion (\$620 million increase) for student aid administration, including \$26.5 million (\$7.1 million increase) for the Office of Enforcement.
 - \$500 million for making two years of community college free for first-time students and workers, including DREAMers.
 - \$429 million increase for HBCUs and MSIs.
 - \$30 billion (over 10 years) to subsidize tuition up to \$4,500 per year for students at four-year HBCUs, TCUs, and MSIs.
 - \$177,600 million (\$37.6 million increase) for the Office of Civil Rights.
 - No budget request for short-term Pell Grant.

Executive Orders

Average Executive Orders Per Month



As of April 20, 2023

Executive Orders Impacting Higher Education

White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans (EO 14050)

White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics (EO 14045)

Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce (EO 14035)

Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (EO 13988)

Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (EO 14091)

White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities (EO 14049)

White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Historically Black Colleges and Universities (EO 14041)

Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity (EO 14021)

Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals (EO 14075)

Rulemakings

Published	Pending	Planned
<p>Borrower Defense to Repayment NFR</p> <ol style="list-style-type: none"> 1. Borrower Defense to Repayment 2. Mandatory Pre-dispute Arbitration and Prohibition of Class Action Lawsuits 3. Closed School Discharges 4. False Certification Discharges 5. Total and Permanent Disability Discharges 6. Interest Capitalization 7. Public Service Loan Forgiveness <p>90/10 NFR</p> <ol style="list-style-type: none"> 1. 90/10 Rule 2. Change of Ownership/Control 3. Pell Grant Eligibility for Prison Education Programs 	<ol style="list-style-type: none"> 1. Gainful Employment 2. Factors of Financial Responsibility 3. Standards of Administrative Capability 4. Certification Procedures 5. Ability to Benefit 6. Public Service Loan Forgiveness – Employer Eligibility 7. Title IX (NPRM published on July 12, 2022) 8. Improving Income-Driven Repayment (NPRM published on January 11, 2023) 9. Title IX-Athletics (NPRM published on April 13, 2023) 	<ol style="list-style-type: none"> 1. Accreditation and Related Issues 2. State Authorization 3. Distance Education 4. Return to Title IV 5. Cash Management 6. Third-Party Servicers and Related Issues 7. Improving Use of Deferments and Forbearances 8. Federal TRIO Programs

Sub-Regulatory Guidance/Notices

- 90/10 rule implementation.
- Personal liability requirements for individuals with “substantial control.”
- Requirements and responsibilities for third-party servicers and institutions (effective date indefinitely delayed).
- Fresh Start Initiative.
- FAFSA Simplification Act implementation timeline.
- Cash management arrangements.
- Procedures for institutions seeking to change accreditors.
- Cybersecurity requirements.
- Invitation to submit tips and information on potential violations.
- HEERF reporting, and end of public health emergency waivers.

Other Notable Actions

- Termination of recognition of Accrediting Council for Independent Colleges and Schools.
- Low-financial-value postsecondary programs watch list.
- College Scorecard update.
- Secret shoppers.
- Incentive compensation (buddled servicers) review.
- Oversight of loan servicers.
- Academic transcript withholding (CFPB).
- Deceptive or unfair marketing using earnings claims (FTC).
- Student loan pause extension.
- Student loan debt relief/cancellation.



Judicial Branch

Student Loan Debt Relief/Cancellation



There are several ongoing legal challenges to the Biden administration's student loan forgiveness plan, including two that have reached the U.S. Supreme Court.



Both SCOTUS cases – *Biden v. Nebraska* and *Dept. of Education v. Brown* – were argued on February 28, 2023.

Decisions are expected before the Justices rise for summer recess (typically late June or early July).



Affirmative Action

- After years of lower court proceedings, SCOTUS is considering (once again) whether higher education institutions can use race as a factor in college admissions.
 - The Justices heard oral arguments on October 31, 2022, in *Students for Fair Admissions v. University of NC* and *Students for Fair Admissions v. President and Fellows of Harvard*.
 - Decisions are expected this summer.

Other Notable Ongoing Litigation

- Borrower Defense to Repayment: *Career Colleges & Schools of Texas v. United States Department of Education et al.*
- Borrower Defense to Repayment: *Sweet et al v. Cardona et al.*
- Third-Party Servicer Guidance: *2U, Inc. et al v. Cardona et al.*
- Erroneous Rankings Data: *Iola Favell et al v. University of Southern California et al.*
- Gainful Employment: *American Federation of Teachers et al v. DeVos et al.*
- Reverse Redlining: *Carroll et al v. Walden University, LLC et al.*



Questions?

2023 NASASPS Annual Conference

April 30 – May 3 | Phoenix, Arizona



NATIONAL ASSOCIATION OF STATE ADMINISTRATORS
AND SUPERVISORS OF PRIVATE SCHOOLS

Thank you!

Nicholas Kent

Chief Policy Officer

Career Education Colleges and Universities

Nicholas.Kent@career.org

571-800-6524

[@NicholasKentEd](https://www.instagram.com/NicholasKentEd)