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CECU | Career Education
Colleges and Universities

Speaker



Nicholas Kent is Senior Vice President of Policy and Regulatory Affairs 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.

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.

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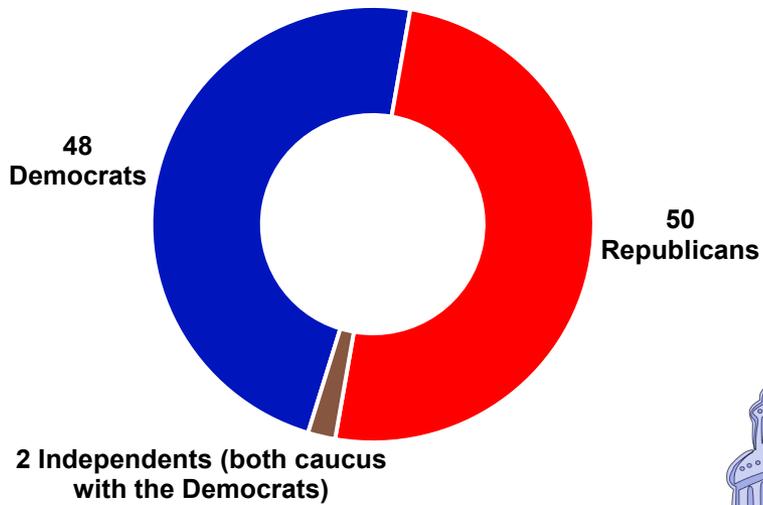
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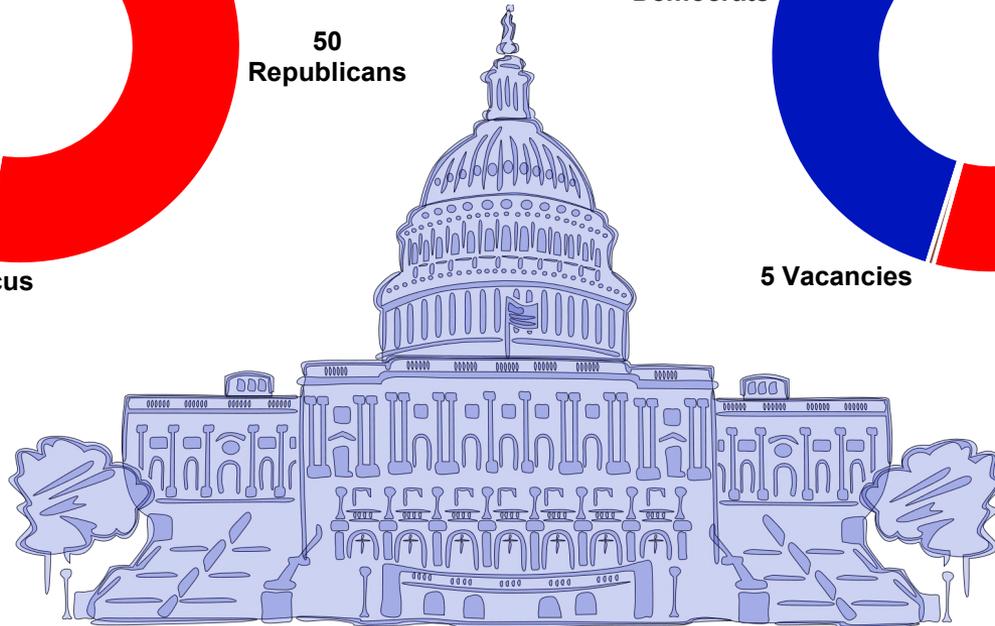
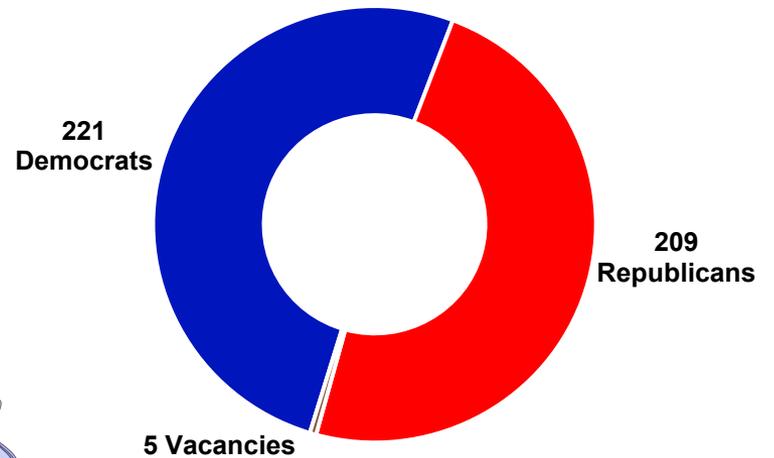
Congress

Party Division

U.S. Senate

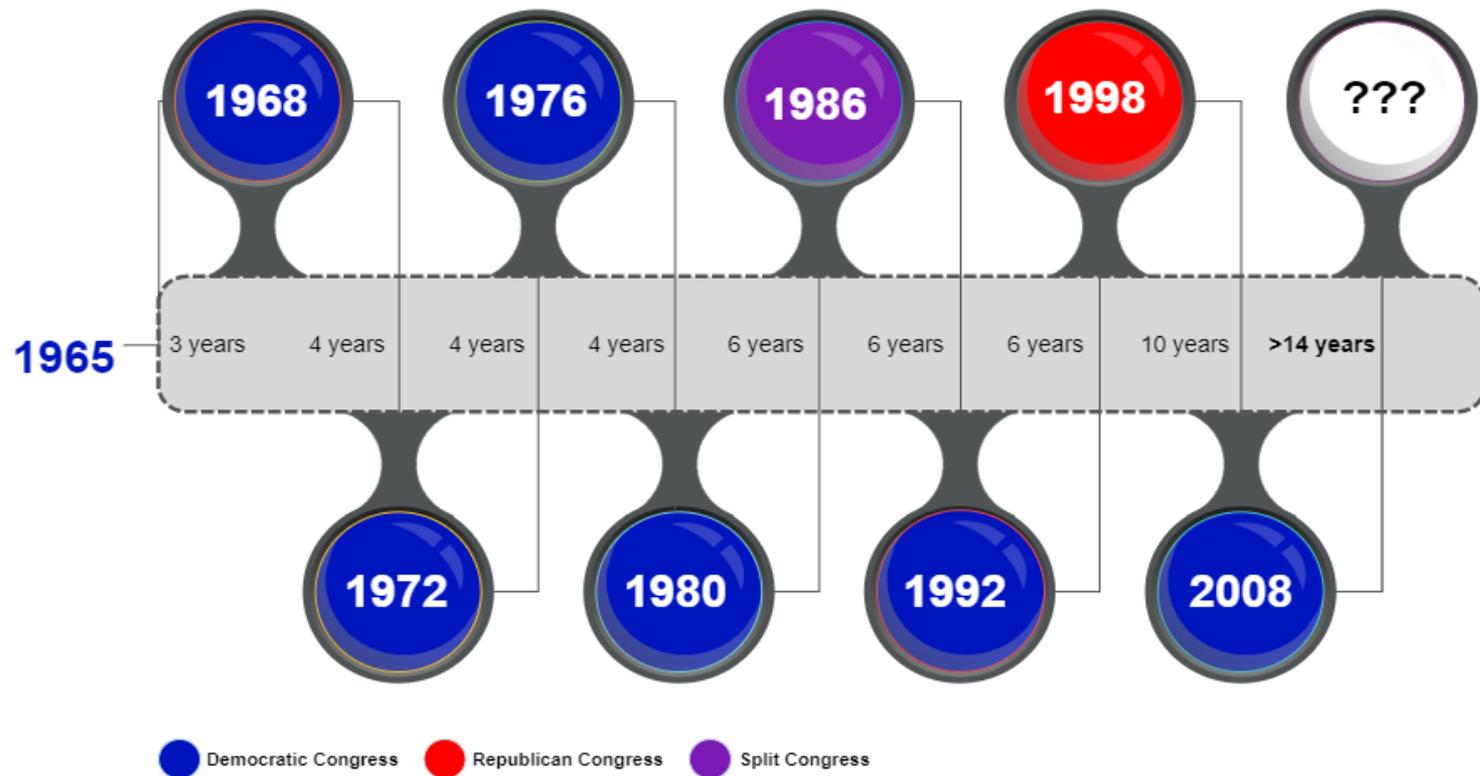


U.S. House of Representatives



As of April 23, 2022

Higher Education Act Reauthorization



Appropriations

- After several continuing resolutions, Congress passed H.R. 2471, [Consolidated Appropriations Act, 2022](#). President Biden signed the FY2022 funding bill into law on March 15, 2022.
 - \$76.4 billion in discretionary appropriations for ED.
 - Includes \$24.6 billion for federal student aid programs.
 - \$400 Pell Grant increase to \$6,895 for AY 2022-23.
 - \$885 million for HBCUs and MSIs.
 - Extends implementation of the FAFSA Simplification Act 1 year.
 - No 85/15 policy rider for proprietary institutions.
- President Biden released his FY2023 budget on March 28, 2022.
- Work on the FY2023 appropriations bills will begin later this year.

Pell Grant Maximum Award

- President Biden campaigned on doubling the maximum value of Pell Grants.
 - FY2022 budget proposed a \$1,875 increase to \$8,370.
 - FY2023 budget proposes a \$1,775 increase to \$8,670.
- The Build Back Better Act raised the maximum award \$550 to \$7,045, which would have been the largest single-year increase in a decade.
 - Increase applied only to public and private nonprofit institutions. 17 Democrats [opposed](#) excluding proprietary institutions.
 - Passed the House on November 19, 2021, but stalled in the Senate.

Pell Grant Expansion

- There has been bipartisan support for the Second-Chance Pell experiment, an initiative launched by the Obama administration in 2015 and expanded by the Trump administration in 2020.
- President Biden campaigned on restoring formerly incarcerated individuals' eligibility for Pell Grants and expanding the grant program to DREAMers.
- In December 2020, Congress made permanent a change to allow incarcerated individuals to access Pell Grant funds for qualifying prison education programs ([Public Law No. 116-260](#)).
 - Only public, private nonprofit, and vocational postsecondary institutions may offer a PEP program.

Pell Grant Expansion Cont'd

- On February 4, 2022, the House passed H.R. 4521, the [America COMPETES Act of 2022](#), that included a bipartisan amendment from Rep. Andy Levin (D-MI).
 - Creates a “Job Training Federal Pell Grant Program” that would expand Pell Grant eligibility to short-term career and technical programs of no less than 150 hours over no less than 8 weeks.
 - Proprietary institutions are not eligible to participate.
 - Eliminates Direct Loans for short-term programs of at least 300 clock hours but less than 600 clock hours over at least 10 weeks.
- The House bill still needs to reconcile with the Senate version, which did not include language to expand the Pell Grant program or eliminate Direct Loans for short-term programs.

College Transparency Act

- The *America COMPETES Act of 2022* would create a postsecondary student-level data system.
 - Repeals the current prohibition on a student data system.
 - Directs the Commissioner of the National Center for Education Statistics to develop the data system within 4 years.
 - Student-level data elements would include enrollment, persistence, retention, transfer, and completion measures disaggregated by categories such as race, veteran status, and Pell Grant status.
 - ED would be required to make publicly available summary aggregate information, including postcollegiate outcomes, including employment rates, earnings, and loan repayment and default rates.

90/10 Rule

- On February 24, 2021, H.R. 1319, the [American Rescue Plan Act of 2021](#), was signed into law.
- The ARP modified the revenue requirements for proprietary institutions at Section 487(a)(24) of the Higher Education Act (HEA).
 - ED must engage in negotiated rulemaking to carry out the statutory changes.
 - The changes apply to fiscal years beginning on or after January 1, 2023.

Pre-ARP Passage	Post-ARP Passage
(24) In the case of a proprietary institution of higher education (as defined in section 102(b)), such institution will derive not less than ten percent of such institution's revenues from sources other than funds provided under this title, as calculated in accordance with subsection (d)(1), or will be subject to the sanctions described in subsection (d)(2).	(24) In the case of a proprietary institution of higher education (as defined in section 102(b)), such institution will derive not less than ten percent of such institution's revenues from sources other than funds provided under this title Federal funds that are disbursed or delivered to or on behalf of a student to be used to attend such institution (referred to in this paragraph and subsection (d) as 'Federal education assistance funds'), as calculated in accordance with subsection (d)(1), or will be subject to the sanctions described in subsection (d)(2).

Executive Branch

Title IV Rulemakings

- On May 24, 2021, ED announced public hearings on protections for students, loan repayment, targeted loan cancellation programs, and other higher education regulations.
- On May 26, 2021, ED published a [Federal Register notice](#) announcing its intent to establish negotiated rulemaking committees (plural) to prepare proposed regulations for programs under Title IV of the HEA.
 - ED suggested 14 topics for regulation but invited comments on any regulatory issue that could improve outcomes for students.
- Virtual public hearings were held on June 21, 23, and 24, 2021 to receive stakeholder feedback on potential issues for future rulemaking sessions. Written comments were due no later than July 1, 2021.

Affordability and Student Loans

- On August 6, 2021, ED announced it would establish a negotiated rulemaking committee to focus on nine topics related to student loans, targeted discharge, and forgiveness authorities.
- On August 10, 2021, ED published a [Federal Register notice](#) establishing the Affordability and Student Loans (ASL) Committee.
- The ASL Committee convened virtually for three one-week sessions in October, November, and December 2021.
 - ED's first virtual negotiated rulemaking.
- Materials, including issue papers, transcripts, and recordings, from the three sessions are available on ED's [website](#).

ASL Committee Topics

Borrower defense to
repayment

Closed school
discharges

Mandatory pre-
dispute arbitration
and prohibition of
class action lawsuits

False certification
discharges

Total and permanent
disability discharges

Loan repayment
plans

Public Service Loan
Forgiveness

Interest capitalization

Pell Grant eligibility
for prison education
programs

Borrower Defense to Repayment

- President Biden committed a “return to the Obama-Biden [BDR rule], forgiving the debt held by individuals who were deceived by the worst for-profit college or career profiteers.”
- ED proposes to create a new federal standard that governs borrower defenses to repayment that would differ substantively from the Trump administration's 2019 rule.
 - Would be the third set of BDR regulations since 2016.
- The new rule would apply to BDR applications received by ED on or after July 1, 2023 and to applications pending on July 1, 2023.
- The new rule would bifurcate the institutional recoupment from the borrower approval process.
- ED proposes new acts that could lead to a borrower defense claim, such as aggressive recruitment.

Borrower Defense to Repayment Cont'd

- ED proposes to expand the definition of misrepresentation to include institutional selectivity rates or rankings, job placement rates, program costs, and the tax status of the institution.
- The new rule would reinstitute a group process option for adjudicating BDR claims.
- The new rule would create a process to consider existing ED findings as the basis of borrower defense claims, such as a Final Program Review Determination or Final Audit Determination.
 - No option to respond to these findings during the BDR process.
- The new rule would eliminate limitations periods for borrowers to submit a borrower defense claim if they still have an outstanding Direct Loan.

Borrower Defense to Repayment Cont'd

- ED proposes to include timelines that require the Secretary to adjudicate group or individual borrower defense claims.
 - If the Secretary does not issue a written decision by the deadline, the loans would be deemed “unenforceable.”
- The new rule would adopt a presumption of full relief for an approved claim that may be rebutted by clear and countervailing evidence from ED, the institution, or a third party.
- The new rule would require ED to collect from the school, or in the case of a closed school, a person affiliated with the school, any discharged or reimbursed amounts.
- The new rule would include a limitations period to recover from the school that is no later than six years after the borrower’s last date of attendance.

Closed School Discharges

- ED proposes a more generous loan discharge process for borrowers whose schools close.
 - A school is the main campus or any additional location.
- The new closed school discharge (CSD) rule would consider a school closed when the school ceases to provide educational instruction in *most* programs or to *most* of its students.
- The new rule would reinstate automatic closed school discharges and reduce the period before discharges occur from three years to one year following a closure.
- Under the new rule, a borrower would be eligible for a closed school discharge if the borrower did not complete an institutional teach-out plan performed by the school or a teach-out agreement with another school that is approved by the school's accreditor and, if applicable, state authorizing agency.

Arbitration and Class Action Lawsuits

- ED proposes to restore the 2016 regulations that prohibit institutions from obtaining:
 - A pre-dispute agreement for arbitration to resolve claims that could form the basis of a borrower defense claim; and
 - An agreement that a borrower waive his or her right to initiate or participate in a class action lawsuit regarding such claims.
- The new rule would require institutions to amend agreements entered into before July 1, 2023 or provide notice that such provisions will not be enforced using language specified by ED.
- The new rule would allow a student to enter into a voluntary post-dispute arbitration agreement.
- The new rule would require institutions to submit arbitral and judicial records concerning a borrower defense claim, which will be shared with the public.

False Certification Discharges

- ED proposes to rescind the 2019 regulations, resulting in one set of standards to cover all false certification discharge claims.
- The new rule would rescind the provision that any borrower who attested to having a high school diploma or equivalent does not qualify for a false certification discharge.
- The new rule would make clear a state attorney general or non-profit legal services representative could submit to the Secretary an application for a group discharge.
- The new rule would clarify that the Secretary could grant a false certification discharge without an application due to falsification of Satisfactory Academic Progress.

TPD, IDR, and PSLF

- ED proposes regulations that would make it easier and simpler for borrowers who are **totally and permanently disabled (TPD)** to have their federal student loans discharged, including eliminating the three-year post discharge income monitoring period and expanding the number of SSA categories that would allow a borrower to qualify for a TPD discharge.
- ED wants to create a new **income-driven repayment (IDR) plan** for undergraduate loans that uses an income exemption equal to 200% of the federal poverty level and then a marginal rate to calculate payments with forgiveness after 20 years.
- ED intends to improve and streamline the **Public Service Loan Forgiveness (PSLF) program** including by adding several new deferments or forbearances that would count toward a borrower's monthly payments, and creating a formal reconsideration process.

Interest Capitalization and PEPs

- ED proposes to eliminate **interest capitalization** for non-statutory capitalizing events such as when a borrower's loans enter repayment for the first time or when a borrower exits forbearance.
- The *Consolidated Appropriations Act, 2021*, made permanent a change to allow incarcerated individuals to access Pell Grant funds for qualifying **prison education programs (PEPs)**.
 - New regulations would establish a framework that an institution must follow to initiate and maintain a PEP, including a determination that the program is operating in the best interest of students through the use of a comprehensive assessment of several indicators (e.g., transferability of credits, placement rates, earnings).

ASL Committee Consensus Votes

Committee Topics	Consensus Reached	Votes Against Consensus
Borrower defense to repayment		
Adjudication process	No	1
Post-adjudication	No	1
Recovery from institutions	No	1
Closed school discharges	No	1
Discharges for borrowers with a total and permanent disability	Yes	0
Discharges for false certification of student eligibility	Yes	0
Creating a new income-driven repayment plan	No	11
Eliminating interest capitalization for non-statutory capitalization events	Yes	0
Mandatory pre-dispute arbitration and prohibition of class action lawsuits	No	1
Pell Grant eligibility for prison education programs	Yes	0
Improving the Public Service Loan Forgiveness (PSLF) program		
Application process	No	4
Employer eligibility and full-time employment	No	5

Institutional and Programmatic Eligibility

- On October 4, 2021, ED published a [Federal Register notice](#) establishing the Institutional and Programmatic Eligibility (IPE) Committee.
- The IPE Committee convened for three one-week sessions in January, February, and March 2022.
 - The final session was scheduled for March 14-18, 2022.
- Materials, including issue papers, transcripts, and recordings, from the three sessions are available on ED's [website](#).

IPE Committee Topics

Gainful employment

90/10 rule

Certification procedures

Administrative capability

Financial responsibility

Change of ownership/control

Ability to benefit

Gainful Employment

- President Biden campaigned on requiring for-profit institutions to “first provide their value to the [ED] before gaining eligibility for federal aid.”
- ED’s proposal is based on the 2014 gainful employment (GE) rule but with significant differences.
- A GE program would be identified by the 4-digit CIP code, not 6-digit.
- The new rule would eliminate the “zone” and considers a GE program failing if the discretionary rate is greater than 20% (previously 30%) and the annual earnings rate is greater than 8% (previously 12%).
- The new rule would use only median annual earnings (no mean).
- The new rule may not include transitional or draft rates and would not include an alternate earnings appeals process.

Gainful Employment Cont'd

- ED's proposal includes adding an "earnings threshold" measure as an additional accountability metric for GE programs.
- A GE program passes the earnings threshold measure if the median annual earnings of the students who completed the program exceed the earnings threshold.
 - Median earnings for a working adult aged 25-34 with only a high school diploma in the state in which the institution is located or nationally, if fewer than 50% of the students at the institution are located in the state where the institution is located.
- Like D/E rates, a program will become ineligible if it fails two out of any three consecutive award years.

Gainful Employment Cont'd

- ED would calculate “small program rates,” which will capture more GE programs at public and private nonprofit institutions.
 - D/E and E/T outcomes could impact Title IV recertification.
- ED’s proposal includes adding new disclosure requirements for all institutions.
 - ED would establish and maintain a new consumer website.
 - Website would include elements such as completion rates and withdrawal rates, loan repayment rates, median loan debt, and median earnings.
 - Institutions would be required to link to ED’s website on any webpage containing academic, cost, financial aid, or admissions information about the program or institution.

90/10 Rule

- President Biden committed to “enact legislation eliminating the so-called 90/10 loophole that gives for-profit schools an incentive to enroll veterans and servicemembers in programs that aren’t delivering results.” The ARP modified the revenue requirements for proprietary institutions.
- ED proposes to include on the ‘90’ side Title IV funds and any other educational assistance funds provided by a federal agency directly to the institution or student.
 - Would include the federal portion of grant funds, except for non-Title IV federal funds provided directly to a student to cover expenses other than tuition, fees, and other institutional charges.
 - ED would publish a Federal Register notice identifying the federal agency and the educational assistance funds.

Certification Procedures

- For a GE program, ED proposes to limit Title IV eligibility for a program to the lesser of:
 - The minimum number of hours required for training as established by the state in which the institution is located, or
 - If at least half the states license the occupation, the national median of the minimum number of hours.
- The new rule would require a Program Participation Agreement be signed by an authorized representative of an entity with direct or indirect ownership of the institution if that entity has the power to exercise control over the institution (e.g., 100% direct or indirect interest holder). In addition to ED's March 23, 2022, [Electronic Announcement](#).
- The new rule would eliminate the automatic 12-month recertification provision.

Administrative Capability and Financial Responsibility

- ED proposes that an institution would not be deemed **administratively capable** if it does not provide “adequate career services,” which ED would consider the number and distribution of career services staff.
- The new rule would require institutions to provide students with accessible clinical or externship opportunities, if applicable, within 45 days of completion of required coursework.
- The new rule would add several new events or actions that if one or more occurred would or could mean the institution is not able to meet its **financial or administrative obligation**. For example:
 - Mandatory trigger: failing GE programs that constitute at least 10% of an institution’s total Title IV funds.
 - Discretionary trigger: state citations.

Changes of Ownership/Control and Ability to Benefit

- ED proposes that for an institution that offers on-campus and distance education programs that the distance education programs are associated with the main campus.
- The new rule would expand the definition of a “**non-profit institution.**”
 - Clarifies that no part of the net earnings can benefit any private for-profit entity or individual, as determined by ED. This generally includes the institution being an obligor on a debt owed to the former owner.
- The new rule would create a new process for states to seek ED approval to offer an **eligible career pathway program** for students without a high school diploma (or recognize equivalent).

IPE Committee Consensus Votes

Committee Topics	Consensus Reached	Votes Against Consensus
Ability to Benefit	Yes	0
Administrative Capability	No	1
Gainful Employment	No	6
Financial Responsibility	No	1
Changes of Ownership and Change in Control	No	9
Certification Procedures	No	6
90/10 Rule	Yes	0

Title IX Rulemaking

- On May 19, 2020, the Trump administration published [Title IX regulations](#) that were effective on August 14, 2020.
 - ED previously addressed sexual harassment only through guidance documents, which are not legally binding.
- On March 11, 2021, President Biden issued Executive Order 14021, [Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity](#).
- On May 20, 2021, ED [announced](#) it would hold public hearings in June 2021, to seek comment on changes to the regulations.
- ED indicated it is planning to unveil its proposed rewrite of the Title IX regulations in April 2022.

Federal Trade Commission

- On October 6, 2021, the FTC [announced](#) it was “resurrecting its Penalty Offense Authority, found in Section 5 of the FTC Act, to ensure that [for-profit institutions that are] bad actors pay a price when they break the law.”
 - FTC sent a Notice of Penalty Offenses to the 70 largest for-profit institutions based on enrollment and revenue.
 - Notice outlines a number of practices that the FTC has previously found to be unfair or deceptive, and notes that these practices could lead to civil penalties of up to \$43,792 per violation.
- On February 17, 2022, the FTC [announced](#) an Advanced Notice of Proposed Rulemaking (ANPR) notifying the public that it is considering proposing a rule to address deceptive or unfair marketing using earnings claims.
 - Notice highlights specific industries that such a rule is intended to deter including multilevel marketers, for-profit colleges, and “gig economy” platforms.
 - ANPR cites several examples where the FTC has alleged that for-profit colleges used misleading earnings claims to deceive students. In one such case, the FTC and the institution agreed to a \$100 million settlement.

Consumer Financial Protection Bureau

- A former FTC Commissioner, Rohit Chopra is Director of the CFPB. Mr. Chopra previously served as the CFPB's student loan ombudsman under Richard Cordray, currently the COO of FSA.
- CFPB has been focused on ensuring student loan servicers are implementing the payment pause and the temporary PSLF expansion effectively.
- In September 2021, CFPB brought its first major federal action against the income-share agreement industry, finding that ISAs are private education loans under the Truth in Lending Act.
- On January 20, 2022, CFPB announced it would be examining college's in-house lending practices, including placing enrollment restrictions, withholding transcripts, improperly accelerating payments, failing to issue refunds, and maintaining improper lending relationships.
 - Announcement called out for-profit colleges' past abuses.

Accreditation

- On June 2, 2021, Deputy Under Secretary Jordan Matsudaria accepted the recommendation of ED career staff and a federal advisory committee to [terminate recognition](#) of the Accrediting Council for Independent Colleges and Schools.
 - ACICS's appeal is pending before Deputy Secretary Cindy Martin, and the final decision is expected any day.
- On October 27, 2021, Mr. Matsudaria postponed making a decision on the re-recognition of the Accrediting Commission of Career Schools and Colleges, citing “the emergence of information not previously considered in the record...”
- In July 2021, ED reestablished the Accreditor Dashboards, and issued a revised *Accreditation Handbook* in February 2022.

Federal Loan Forgiveness/Pause

- On the campaign trail, President Biden pledged to forgive \$10,000 in federal student loan debt per person.
 - Thus far, loan forgiveness (~12.7B) has focused on preexisting forgiveness programs such as BDR, CSD, PSLF, and TPD.
- President Biden has extended the federal student loan pause four times since taking office. The current pause is through August 31, 2022.
 - The pause includes a suspension of loan payments, a 0% interest rate, and stopped collections on defaulted loans.

Higher Education Emergency Relief Fund

- Through the Higher Education Emergency Relief Fund (“HEERF”), Congress allocated approximately \$76.2 billion to help higher education institutions, including \$2.2 billion to proprietary institutions (\$1.6 billion earmarked for student financial aid grants).
- HEERF recipients are required to comply with grant program auditing requirements and quarterly (public posting on institutions’ websites) and annual (submission to ED) reporting obligations.
 - Quarterly reports were due on April 10, 2022.
 - Annual report is due between April 11 and May 6, 2022.
- ED’s Office of Inspector General is auditing institutions’ HEERF management and spending, and investigating misuse, theft, and other criminal activity involving the stabilization funds.

COVID-19 Flexibilities

- Any national emergency declared automatically terminates on the anniversary unless the President provides notice that such emergency is to continue.
- On February 18, 2022, President Biden [continued](#) the national emergency declared on March 23, 2020, concerning the COVID-19 pandemic.
- Many of ED's Title IV [flexibilities and waivers](#) are connected to the COVID-19 national emergency termination date.
 - For example, broad approval for institutions to use distance education and flexibilities with verification (V4/V5) apply through the end of the payment period that begins after the date on which the national emergency is rescinded. Accreditation agency virtual evaluation visits are permitted for the duration of the national emergency and 180 days following the date on which the COVID-19 national emergency is rescinded.

Questions



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