

**WASHINGTON UPDATE**

**FEBRUARY 2020**

White House Releases Budget Proposal for FY 2021

On February 10, 2020, the White House Office of Management and Budget (OMB) released the President's budget request for FY 2021, which includes \$4.8 trillion in mandatory and discretionary spending proposals for the federal government. The President's budget includes \$66.6 billion in discretionary funds for elementary, secondary, and higher education programs under the Department of Education, a \$5.6 billion or a 7.8 percent reduction below the FY 2020 level. Items of particular interest include the following:

- Pell Grant Program: The budget request includes \$22.5 billion in discretionary funding for Pell Grants, which combined with mandatory funding, will support the continuation of the current maximum award of \$6,345. The budget proposes to expand Pell Grant eligibility to incarcerated students and for high-quality, short-term programs that provide a student with a credential, certification, or license in an in-demand field.
- Campus-Based Aid Programs: The budget request proposes to eliminate funding for Federal Supplemental Educational Opportunity Grants, calling them duplicative of Pell Grants. It reduces funding for Federal Work-Study to \$500 million and changes the means to allocate funding to institutions based in part on enrollment of Pell Grant recipients to support workforce and career-oriented training opportunities for low-income undergraduate students.
- Federal Loan Programs: The budget request proposes to:
  - Consolidate the five current Income Driven Repayment (IDR) plans into a combined IDR plan that would cap a student's monthly payments at 12.5 percent of discretionary monthly income and eliminate the "standard repayment" cap to ensure that high-income, high-balance borrowers make payments commensurate with their income. The repayment term would be limited to 15 years for borrowers with undergraduate debt only and 30 years for borrowers with any graduate debt. Remaining balances after these periods would be forgiven;
  - Eliminate the Public Service Loan Forgiveness Program;
  - Eliminate Subsidized Stafford Loans;
  - Establish new annual and aggregate loan limits for the Parent PLUS and Grad PLUS Programs. For Parent PLUS borrowers, the aggregate for undergraduate students would be \$26,500 (the difference between what dependent and independent students are eligible for (\$31,000 and \$57,500, respectively)), and

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the annual and aggregate loan limits for Grad PLUS borrowers would be \$50,000 and \$100,000 respectively;

- Allow financial aid administrators the authority to set loan limits for their students; and
  - Allow schools to mandate annual loan counseling as a condition of receiving a loan disbursement.
- New Structure for FSA: The budget request includes a proposal to start an “evaluation of FSA as a separate organization, with reformed governance,” which could improve its ability to serve students and taxpayers.
  - Movement on NextGen: The budget request includes \$1.9 billion, a \$115 million increase, for student aid administration to support FSA’s NextGen initiative. Specifically, the Administration expressed its support for the “multiyear effort” to build the technology for a new loan servicing platform, adding that FSA is also currently working to “consolidate all of its customer-facing websites into a single, user-friendly hub to complement a new mobile platform and give students, parents, and borrowers a seamless experience from application through repayment.”

Following the release of the budget proposal, Secretary of Education Betsy DeVos stated that the budget proposal “is about one thing – putting students and their needs above all else.” Congressman John Yarmuth (D-KY), Chairman of the House Budget Committee, said at the time of the budget proposal’s release that Congress “will stand firm against this President’s broken promises and his disregard for the human cost of his destructive policies.” House Budget Committee Ranking Member Steve Womack (R-AR) stated that “the President’s budget includes deficit reduction measures - \$4.6 trillion between 2021-2030. However, more work remains to be done to put the country on a solid fiscal path. The assumption of 3 percent growth and continued low interest rates are critical to achieving balance in the 15-year window.”

Like all Presidents’ budgets in the last few years, the White House budget proposal for FY 2021 is likely to be dead on arrival.

Secretary of Education Betsy DeVos released a press release, which provides a link to the full budget request, and is found at: <https://www.ed.gov/news/press-releases/president-trump-proposes-transformative-student-first-budget-return-power-states-limit-federal-control-education>.

A copy of Chairman Yarmuth’s press release is found at: <https://budget.house.gov/news/press-releases/initial-statement-chairman-yarmuth-president-s-2021-budget>.

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A copy of Ranking Member Womack's press release is found at: <https://republicans-budget.house.gov/press-release/ranking-member-womack-statement-on-president-trumps-fiscal-year-2021-budget-request/>.

House Oversight and Reform Committee Chairman Maloney Sends Letter to Secretary DeVos Threatening Subpoena Over Testimony

On February 3, 2020, House Oversight and Reform Committee Chairman Carolyn Maloney (D-NY) sent a letter to Secretary of Education Betsy DeVos threatening to subpoena her to appear before the Committee following the Secretary's refusal to testify at a previous hearing and instead attended campaign events in Iowa and Pennsylvania. The Secretary was sent a letter in December from Chairman Maloney inviting her to testify in January regarding "critical issues facing the Department, including oversight of federal student loans, policies on campus sexual harassment and assault, protections for students at for-profit colleges, the independence of the Department's Inspector General, compliance with collective bargaining requirements, and other matters." Chairman Maloney's letter set a new hearing date of March 3, 2020 and gave the Secretary until February 7, 2020, to respond.

A copy of the Chairman's letter is found at:  
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-02-03.CBM%20to%20DeVos-DoED%20re%20Hearing.pdf>.

Senator Warren Urges Education Secretary DeVos to Collect the \$22.3 Million Owed by Navient

On January 29, 2020, Senator Elizabeth Warren (D-MA) sent a letter to Secretary of Education Betsy DeVos, urging her to collect the \$22.3 million that Navient Corporation, a student loan servicer, owes the Department of Education. According to the press release, in August 2009, an audit by the Office of Inspector General (OIG) found that Navient had overcharged the Department by about \$22.3 million after the servicer claimed special allowance payments for ineligible student loans. The press release explained that the OIG found that Navient's billing practices "did not comply" with the requirements for payments and recommended that FSA direct Navient to return the payments to the Department. Since this OIG audit, Navient has been found on multiple occasions, including by an administrative law judge, to be responsible for the repayment of the funds, but has continued to deny responsibility and delays repayment. "Further delays are unacceptable: it is time for you to hold Navient accountable and finally collect the \$22.3 million the company owes to American taxpayers."

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

<https://www.warren.senate.gov/oversight/letters/warren-calls-on-education-secretary-devos-to-recoup-223-million-owed-by-student-loan-giant-navient>.

### Senators Warren and Brown Examine Business Practices of Large Managers of Online Degree Programs

On January 24, 2020, Senators Elizabeth Warren (D-MA) and Sherrod Brown (D-OH) wrote to the five largest Online Program Management (OPM) companies – 2U, Academic Partnerships, Pearson Learning, Wiley, and Bisk – that administer online degree programs for many colleges and universities, describing their concerns about the business practices of the companies that “appear to undermine the best interests of students.” They also inquired about their contracts and use of federal student aid dollars. The letter said that OPM companies often administer colleges’ and universities’ online academic programs as well as perform other non-academic services, such as recruiting and admissions services. The Senators stated that the OPM contracts often require that the college or university pay much of the tuition revenue from students enrolled in their online programs to the OPM companies. The letter suggested that because the contracts often delegate recruitment activities to the OPM companies, the tuition-sharing arrangement may violate federal law, which prohibits colleges and universities from paying commissions for recruiting and admitting new students.

The Senators said: “It is also critical that policy-makers determine if OPM business practices - specifically OPM contracts that require tuition-sharing arrangements - are legal, an appropriate use of federal student aid dollars, and in the best interest of students.”

A copy of the press release, which includes the text of the letters sent to the five OPM companies, are found at:

<https://www.warren.senate.gov/oversight/letters/senators-warren-and-brown-examine-questionable-business-practices-of-largest-managers-of-online-degree-programs>.

### ED and CFPB Announce Agreement on a New MOU to Share Complaint Data on Student Loan Borrowers

On February 3, 2020, the Department of Education and the Consumer Financial Protection Bureau (CFPB) announced that they had reached agreement on a new memorandum of understanding (MOU) to share complaint data on student loan borrowers. The agreement requires both agencies to share complaint information from borrowers and meet quarterly to discuss observations about the nature of complaints received, characteristics of borrowers, and available information about resolution of complaints. The MOU also calls for the sharing of

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complaint data analysis, recommendations, and analytical tools. Secretary of Education Betsy DeVos said: “All student loan borrowers, whether they have a federally-held or private student loan, deserve world-class service and quick resolution when facing issues.”

A copy of Secretary DeVos’ press release announcing the agreement is found at: <https://www.ed.gov/news/press-releases/us-department-education-consumer-financial-protection-bureau-sign-memorandum-understanding-better-serve-student-loan-borrowers>.

#### ED Publishes Federal Register Notice to Create a Single Application for those Borrowers Applying for the PSLF and the TEPSLF Program

On January 30, 2020, the Department of Education published a notice in the *Federal Register* seeking to create a single application for those borrowers applying for the Public Service Loan Forgiveness (PSLF) Program and the Temporary Expanded Public Service Loan Forgiveness (TEPSLF) Program. The Department’s action resulted from criticism from the Government Accountability Office (GAO) and consumer groups that few borrowers had taken advantage of the TEPSLF Program in its first year because they had not first applied for and been denied benefits under the PSLF Program. The Department hopes to reduce confusion for borrowers and to offer another change to simplify the Program.

A copy of the Federal Register Notice is found at: <https://www.govinfo.gov/content/pkg/FR-2020-01-30/pdf/2020-01715.pdf>.

#### ED Considers Ways to Stem Rapid Closures of Colleges and Universities

On January 29, 2020, the Department of Education hosted a meeting for members of the triad to have an open dialogue about how to improve communication and information sharing to better serve and protect students when there are college and university closures. According to a *Politico* article, attending the event were Secretary of Education Betsy DeVos, Diane Auer Jones, and other Department of Education officials along with accreditors and state regulators. The meeting “is the first of its kind in more than a decade,” and to ensure candid conversation among the triad member, it was closed to the press. The goal of the discussion was to mitigate risks and potential harm to students associated with school closures and to work more collaboratively to address other challenges that institutions and students might face in the future. Many concluded that it was unclear as to what the Department’s next steps would be.

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Veterans and Military Organizations Send Letter to Department Thanking ED for Implementing Streamlined Process for Discharging Federal Student Loans for Totally and Permanently Disabled Veterans

On January 27, 2020, 22 veterans and military organizations sent a letter to Secretary of Education Betsy DeVos thanking the Department of Education for moving forward with a process to ensure totally and permanently disabled (“TPD”) veterans’ legal right to loan forgiveness is honored. The streamlined process is in accordance with the Presidential Memorandum signed by President Trump on August 21, 2019, which promises to significantly streamline the process to discharge federal loans for totally and permanently disabled veterans. The letter also requested the Department continue to ensure that the process is running smoothly and alert veterans to the state tax implications following a loan discharge. The letter also asked the Secretary to make whole those veterans who were wrongly put into default on loans that should have been forgiven. According to the letter, in November 2018, ED’s records indicated that over half of the TPD-eligible veterans were wrongly put in default of their federal student loans that were eligible for loan forgiveness. “Being put in default on federal student loans caused these veterans to suffer damaged credit scores, the impact of which makes life far more expensive for many necessities of 21<sup>st</sup>-century life: housing, telecommunications, automobiles, insurance and more. Worse, defaulting on federal student loans can result in the garnishment or offsetting of a veteran’s much-needed VA disability payments and tax returns.”

A copy of the letter is found at: <https://vetsedsuccess.org/22-veterans-military-organizations-letter-to-education-department-re-disabled-veterans-loans/>.

A copy of the Presidential Memorandum is found at: <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-discharging-federal-student-loan-debt-totally-permanently-disabled-veterans/>.

ED Announces New, Proactive Civil Rights Compliance Center

On January 21, 2020, Secretary of Education Betsy DeVos announced that the Office of Civil Rights (OCR) at the Department of Education will launch the *Outreach, Prevention, Education and Non-discrimination (OPEN) Center*, which will focus on proactive compliance with federal civil rights laws. The OPEN Center will provide assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws.

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/secretary-devos-announces-new-proactive-civil-rights-compliance-center-within-office-civil-rights>.

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### ED Publishes Adjustment to Civil Monetary Penalties for Inflation

On January 14, 2020, the Department of Education published final regulations in the *Federal Register* to adjust the Department's civil monetary penalties (CMPs) for inflation. As of January 14, 2020, the CMP, which is a fine for violations of Title IV of the HEA, is \$58,328.

A copy of the final regulations is found at:

<https://ifap.ed.gov/sites/default/files/attachments/2020-01/FR011420.pdf>.

### ED Releases Updated Quarterly Reports on its FSA Data Center

On January 3, 2020, the Department of Education released a series of updates to the quarterly application, disbursement, and portfolio reports on its FSA Data Center to include data through September 30, 2019. Some of the key findings include the following:

- About 16.1 million applications for the FAFSA were submitted for the 2019-2020 cycle;
- The outstanding federal student loan portfolio currently is \$1.51 trillion, and the Direct Loan portfolio represents 82 percent of the total;
- Enrollment in income-driven repayment (IDR) plans continues to increase with about 7.8 million Direct Loan borrowers in IDR plans, an 8 percent increase from the prior year;
- During the last quarter, FSA received approximately 15,000 new borrower defense to repayment applications, bringing the total to 288,000 applications. Almost 48,000 applications have been approved resulting in nearly \$535 million in discharges; and
- About 110,000 borrowers have submitted more than 136,000 applications for discharge under the Public Service Loan Forgiveness (PSLF). Of the 125,000 applications processed, more than 74 percent were ineligible due to not meeting the program requirements and 24 percent were ineligible due to missing or incomplete information. As of September 30, 2019, 1,561 PSLF applications have been approved.

A copy of the electronic announcement is found at: <https://ifap.ed.gov/electronic-announcements/010320FSAPostsNewReportstoFSADataCenter>.

A copy of the press release is found at: <https://www.ed.gov/news/press-releases/department-education-announces-recovery-assistance-students-schools-impacted-natural-disasters>.



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Student Privacy Policy Office Sends Letter to Institutions Regarding the Applicability of FERPA to the Disclosure of Education Records for the 2020 Census

On January 14, 2020, the Acting Director of the Student Privacy Policy Office, Kala Shah Surprenant, sent a letter to all institutions of higher education regarding the applicability of the Family Educational Rights and Privacy Act (FERPA) to the disclosure by postsecondary institutions of certain personally identifiable information (PII) from student education records to representatives of the U.S. Census Bureau (Bureau) in connection with the 2020 Census. The letter explains that FERPA permits a school to disclose properly designated “directory information” on students, without consent, provided that the student has not opted out of directory information disclosures.

“Directory information is defined in 34 C.F.R. § 99.3 as information contained in an education record of a student, and the information would not generally be considered harmful or an invasion of privacy if it were disclosed.” “FERPA provides that a school may disclose directory information if it has given public notice of the types of information which it has designated as directory information, the student’s right to restrict the disclosure of such information, and the period of time within which a student has to notify the school in writing that he or she does not want any or all of those types of information about him or her designated as directory information.”

The letter goes on to explain that the Bureau may ask school officials to disclose, without prior written consent, to the Bureau’s representatives information that the student has not opted out of having disclosed, which may include the student’s name, age, date of birth, and address data. However, if the Bureau’s representatives ask about the student’s sex, Hispanic, Latino, or Spanish origin, and race, the school officials may not disclose this information, without prior consent. In addition, school officials may not disclose Social Security Numbers, without prior consent.

Two updates were made to the January 14, 2020 letter on January 29, 2020. The first update is to note that the Bureau will contact colleges and universities in two not three phases and that the completion timeline is June 5, 2020. The second update is to respond to questions from institutions of higher education and others regarding the ability to report de-identified aggregated enrollment data that is disaggregated by race/ethnicity and gender in addition to directory information under FERPA.

A copy of the updated letter is available at:

[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/ED\\_SPPO%20Letter%20to%20IHEs%20re%202020%20Census\\_v\\_01292020.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/ED_SPPO%20Letter%20to%20IHEs%20re%202020%20Census_v_01292020.pdf).



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### Treasury and IRS Provide Exemption on Some Cancelled Student Loans

On January 15, 2020, the Treasury Department and the Internal Revenue Service (IRS) issued new guidance exempting students from having to pay taxes on loans cancelled as a result of a closed school discharge or approved borrower defense to repayment claim. The tax relief also applies to certain private student loans discharged due to settlements involving “allegations of unlawful business practices, including unfair, deceptive, and abusive acts and practices against a nonprofit or for-profit school or private lenders that made student loans to finance attendance at these schools.” The new guidance covers loans forgiven on or after January 1, 2016 and notes that “taxpayers to whom this revenue procedure applies may claim a credit or refund for an overpayment of tax for taxable years for which the period of limitations under section 6511 of the Code has not expired.”

A copy of the guidance is found at:  
<https://www.irs.gov/pub/irs-drop/rp-20-11.pdf>.

### ACICS Withdraws its Application for Recognition from CHEA

On January 17, 2020, the Accrediting Council for Independent Colleges and Schools (ACICS) announced that it withdrew its application for recognition from the Council for Higher Education Accreditation (CHEA), a nongovernmental group that oversees accreditors on behalf of colleges and universities. ACICS’ decision came after CHEA cited ACICS’ failure to meet nine of its standards. ACICS released a press release and ACICS President Michelle Edwards said that her organization decided to withdraw its application because of significant concerns about CHEA’s process. Ms. Edwards said: “Our decision to withdraw is based instead on our significant concerns related to the CHEA accreditation process and its ongoing implementation of several policies.” CHEA President Judith Eaton said: “ACICS is no longer recognized by CHEA and may apply for recognition not sooner than one year hence.”

While ACICS’ decision does not affect its recognition by the Department of Education, many state laws require accreditors to either have CHEA or Department recognition as a regional accreditor for purposes of programmatic licensure by a state.

A copy of the ACICS press release is found at:  
<https://static1.squarespace.com/static/5ce58a38738b880001909396/t/5e20ee6a977670311f73902e/1579216490629/ACICS+CHEA+Withdrawal++Media+Statement.pdf>.

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U.S. District Court for the District of Columbia Judge Moss Denies a Motion for Summary Judgment in *CAPPS v. Education Secretary*

On January 31, 2020, U.S. District Court for the District of Columbia Judge Randolph Moss denied a motion for summary judgment in *California Association of Private Postsecondary Schools v. Education Secretary Betsy DeVos*, a case that challenged the U.S. Department of Education's 2016 final borrower defense to repayment rule that prohibited colleges from forcing their students to settle complaints against their school through arbitration agreements rather than in court. The rule also prevents institutions of higher education from requiring that their students sign away their legal right to enter into class-action lawsuits. Judge Moss ruled that the restrictions on mandatory arbitration agreements were a condition the Department could legally impose on colleges that want to receive federal student aid. The ruling means that the Obama-era rule published on November 1, 2016, will stay in effect until July 1, 2020 when the September 23, 2019 borrower defense to repayment rule goes into effect.

A copy of the Memorandum of Opinion is found at:

[https://www.courtlistener.com/recap/gov.uscourts.dcd.186760/gov.uscourts.dcd.186760.110.0\\_1.pdf](https://www.courtlistener.com/recap/gov.uscourts.dcd.186760/gov.uscourts.dcd.186760.110.0_1.pdf).

SBPC Sends Letter to CFPB Director Regarding the National Student Clearinghouse

On January 28, 2020, the Student Borrower Protection Center (SBPC) sent a letter to Consumer Financial Protection Bureau (CFPB) Director Kathy Kraninger asking her to take certain actions regarding the National Student Clearinghouse (NSC). The NSC collects and maintains data on about 97 percent of all students enrolled in colleges and universities in America. Because some student loan companies use data from NSC to determine a borrower's enrollment status and how they should be charged interest, SBPC asserted that any inaccurate data could lead to higher costs for student loan borrowers. SBPC urged CFPB to ensure that consumers know they have the right to request reports about themselves held by NSC. In addition, SBPC urged CFPB that the NSC should be subject to supervision under the *Fair Credit Reporting Act* (FCRA) to ensure that any data maintained by the NSC is accurate. The letter describes a \$2 million settlement pertaining to alleged violations of the FCRA and multiple Massachusetts state consumer laws.

Based on the allegations made regarding the NSC, SBPC recommended that the CFPB take immediate actions:

- Update the Bureau's List of Consumer Reporting Companies. These companies are subject to the FCRA; and
- Supervise National Student Clearinghouse as a "Larger Participant" in the Consumer Reporting Market. In 2013, CFPB finalized a rule establishing supervisor authority over

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“larger participants” in the consumer reporting market, defined as companies with more than \$7 million per year in annual receipts. The letter noted that NSC crosses the threshold, disclosing about \$50 million or more in revenue in 2016, 2017, and 2018.

A copy of the letter is found at: <https://protectborrowers.org/how-a-data-company-at-the-center-of-the-student-loan-system-is-costing-borrowers-millions/>.

### AFT Files Lawsuit Against Secretary of Education Over GE Rule Repeal

On January 22, 2020, the American Federation of Teachers (AFT) filed a lawsuit against Secretary of Education Betsy DeVos in the U.S. District Court for the Northern District of California for allegedly violating the Administrative Procedures Act when the Department of Education repealed the gainful employment rule. Secretary DeVos said the gainful employment rule unfairly targeted proprietary schools and plans to expand transparency through revisions to the College Scorecard was a better indicator of institutional quality. The lawsuit contends that the gainful employment rule was working, and the Department provided no legal basis for its repeal and failed to consider alternative methods.

A copy of the lawsuit is found at: <https://apps.npr.org/documents/document.html?id=6668442-2020-01-22-AFT-v-Devos-Complaint>.

### Senator Warren Describes her Plan to Cancel Student Loan Debt on Day One

On January 14, 2020, Senator Elizabeth Warren (D-MA), running for the Democratic nomination for President, released her plan to cancel the student loan debt of 42 million Americans on the first day of her presidency if elected President. The plan calls for the U.S. Department of Education to provide up to \$50,000 in debt relief to federal student loan borrowers earning less than \$100,000. She said: “So I will start to use existing laws on day one of my presidency to implement my student loan debt cancellation plan that offers relief to 42 million Americans – in addition to using all available tools to address racial disparities in higher education, crack down on for-profit institutions, and eliminate predatory lending.” The Senator’s plan also proposes to use federal civil rights laws to combat racial disparities in student lending and promises to open “a wide scale investigation into the roles that colleges, state higher education systems, and the student loan industry play in contributing to racial disparities in student borrowing and student loan outcomes.” Senator Warren’s plan also calls for restoring many of the Obama-era regulations that cracked down on proprietary colleges and strengthening Internal Revenue rules for proprietary colleges seeking to convert to nonprofit entities.

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A copy of Senator Warren's plan is found at:

<https://www.pulse.ng/bi/politics/elizabeth-warren-says-she-will-go-around-congress-to-cancel-dollar16-trillion-of-us/z558g0r>.

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**February 15, 2020**