

Higher Education Policy and Regulation Under the Biden Administration and Democratic Congress

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117th Congress – House Committee on Education and Labor

Democrats

Robert "Bobby" Scott (VA), Chairman

Raúl Grijalva (AZ)	Andy Levin (MI)
Joe Courtney (CT)	Ilhan Omar (MN)
Gregorio Sablan (NMI)	Haley Stevens (MI)
Frederica Wilson (FL)	Teresa Leger Fernandez (NM)
Suzanne Bonamici (OR)	Mondaire Jones (NY)
Mark Takano (CA)	Kathy Manning (NC)
Alma Adams (NC)	Frank J. Mrvan (IN)
Mark DeSaulnier (CA)	Jamaal Bowman (NY)
Donald Norcross (NJ)	Mark Pocan (WI)
Pramila Jayapal (WA)	Joaquin Castro (TX)
Joseph Morelle (NY)	Mikie Sherrill (NJ)
Susan Wild (PA)	John Yarmuth (KY)
Lucy McBath (GA)	Adriano Espaillat (NY)
Jahana Hayes (CT)	

Republicans

Virginia Foxx (NC), Ranking Member

Joe Wilson (SC)	Lisa McClain (MI)
Glenn Thompson (PA)	Diana Harshbarger (TN)
Tim Walberg (MI)	Mary Miller (IL)
Glenn Grothman (WI)	Victoria Spartz (IN)
Elise Stefanik (NY)	Scott Fitzgerald (WI)
Rick Allen (GA)	Madison Cawthorn (NC)
Jim Banks (IN)	Michelle Steel (CA)
James Comer (KY)	
Russ Fulcher (ID)	
Fred Keller (PA)	
Gregory Murphy (NC)	
Mariannette Miller-Meeks (IA)	
Burgess Owens (UT)	
Bob Good (VA)	



117th Congress – Senate Committee on Health, Education, Labor & Pensions

Democrats

Patty Murray (WA), Chair

Bernie Sanders (VT)

Robert Casey, Jr. (PA)

Tammy Baldwin (WI)

Christopher Murphy (CT)

Tim Kaine (VA)

Maggie Hassan (NH)

Tina Smith (MN)

Jacky Rosen (NV)

Ben Ray Luján (NM)

John Hickenlooper (CO)

Republicans

Richard Burr (NC), Ranking Member

Rand Paul (KY)

Susan Collins (ME)

Bill Cassidy (LA)

Lisa Murkowski (AK)

Mike Braun (IN)

Roger Marshall (KS)

Tim Scott (SC)

Mitt Romney (UT)

Tommy Tuberville (AL)

Jerry Moran (KS)

Status of Executive Branch Transition *

- Approximately 4,000 politically appointed positions in the executive branch and independent agencies.
 - Around 1,250 require Senate confirmation.
 - 791 “key” positions currently tracked by the Partnership for Public Service and the Washington Post.
 - Cabinet secretaries, chief financial officers, general counsels, ambassadors and other critical leadership positions.
- As of March 1, status of the 791 positions being tracked:
 - 12 confirmed by the Senate.
 - 43 currently in process with the Senate.
 - 3 nominees announced and pending Senate consideration.
 - 484 have no named nominee.



* Source: <https://www.washingtonpost.com/politics/interactive/2020/biden-appointee-tracker/>

U.S. Department of Education Senior Appointments

- **Secretary: Miguel Cardona (confirmed March 1st)**
- **Deputy Secretary: Cindy Marten (designee)**
- **Under Secretary: James Kvaal (designee)**
- General Counsel: TBA
- Assistant Secretary for Postsecondary Education: TBA
- Assistant Secretary for Career, Technical, and Adult Education: TBA
- Assistant Secretary for Elementary and Secondary Education: TBA
- Assistant Secretary for Civil Rights: TBA
- Assistant Secretary for Planning, Evaluation, and Policy Development: TBA
- Assistant Secretary for Legislation and Congressional Affairs: TBA
- Assistant Secretary for Communications and Outreach: TBA



Key Biden Administration Higher Education Policy Officials (To Date)

- Jill Biden, First Lady
- Kamala Harris, Vice President
- Carmel Martin, White House Domestic Policy Council
- Miguel Cardona, Secretary of Education
 - Sheila Nix, Chief of Staff to the Secretary
 - Ben Miller, Senior Advisor to the Chief of Staff, Office of the Secretary
- James Kvaal, Under Secretary (designee)
 - Jordan Matsudaira, Deputy Under Secretary (designee)
- Michelle Asha Cooper, Deputy Assistant Secretary for Higher Education Programs (currently serving as acting Assistant Secretary for Postsecondary Education)
 - Rich Williams, Chief of Staff, Office of Postsecondary Education
 - Clarence Powell, Special Assistant, Office of Postsecondary Education



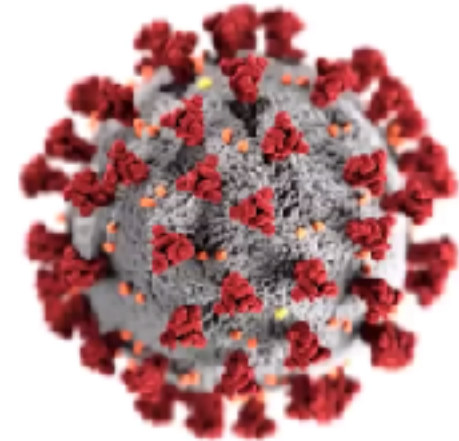
Expected Biden Administration Priorities for Higher Education

- COVID-19
- Implementing FAFSA Simplification Act
- Student debt and the cost of higher education
- Workforce training with community college focus
- Improving equity
- Title IX
- Increased regulation of for-profit institutions
- Likely continuation of prior administration initiatives on:
 - Privacy and cybersecurity
 - Foreign gifts and contracts
- *And don't forget...* pre-election Final Rules that are effective July 1, 2021



COVID-19

- **Coronavirus Aid, Relief, and Economic Security (CARES) Act**
 - Signed into law March 27, 2020
 - \$14 billion Higher Education Emergency Relief Fund (HEERF)
- **Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA)**
 - Signed into law December 27, 2020
 - \$21 billion in supplemental HEERF allocations
 - Also contained “FAFSA Simplification Act”
- **American Rescue Plan Act of 2021**
 - Passed House of Representatives on February 27, 2021
 - \$40 billion in supplemental HEERF allocations



- Higher Education Emergency Relief Fund (HEERF)
 - **Emergency Student Grants**
 - CARES Act: “Student expenses related to disruption of campus operations due to coronavirus.”
 - CRRSAA: “Any component of the student’s cost of attendance, or for emergency costs that arise due to coronavirus.”
 - In changes from the CARES Act, the CRRSAA:
 - Requires prioritization of students with “exceptional need.”
 - Permits grants to students exclusively enrolled in distance education.
 - Permits students to authorize direct application of grant to their institutional balance (subject to present ambiguities around pre-December 27 balances).
 - Does not require student to be Title IV eligible under Section 484 of the Higher Education Act (but still requires general eligibility to receive federal benefits).



- Higher Education Emergency Relief Fund (HEERF)
 - **Institutional Expenses**
 - CARES Act: “Costs that have a clear nexus to significant changes to the delivery of instruction due to the coronavirus.” Importantly, lost revenue generally was not an allowable expense.
 - CRRSAA: “Defray expenses associated with coronavirus, and to carry out student support services authorized by the HEA that address needs related to coronavirus.” Allowable “expenses” include lost revenue (but with potential caveats).
 - Permits unspent CARES Act institutional allocations to be used for any allowable purpose under the CRRSAA.
 - Significant questions and unknowns about “lost revenue” as an allowable expense
 - Do expenses have to be post-December 27?
 - Additional guidance expected from the Department of Education
 - *Critical question for eligible uses: “If not for coronavirus, we would not have this expense?”*

COVID-19

- U.S. Department of Education Title IV Regulatory Flexibilities and Waivers

<https://ifap.ed.gov/sites/default/files/attachments/2021-01/011521COVIDReliefTitleIVFlexibilitiesWaivers.pdf>

COVID-19 Title IV Flexibilities and Waivers as of January 15, 2021.

COVID-19 Relief/Flexibility	Timeframe Applicable	Citation
<p>Student Withdrawals:</p> <ul style="list-style-type: none"> Waiver of returns under R2T4 requirements Reversal of Pell Grant lifetime eligibility/subsidized loan usage for aid received for the period Cancellation of TEACH Grant and Direct Loan funds received for the period Requires institutions to report amounts eligible for CARES Act relief for withdrawn students 	<p>Applicable for any student who begins attendance in a payment period that includes March 13, 2020, or begins between March 13 and the last date that the national emergency is in effect, and subsequently withdraws from the period as a result of COVID-19-related circumstances.</p> <p>For institutions basing R2T4 calculations on a period of enrollment, the waiver may apply to a student who begins attendance in a payment period that includes the last date that the national emergency is in effect and withdraws after the conclusion of that payment period but within the applicable period of enrollment.</p> <p>Institutions must add the Coronavirus</p>	<p>CARES Act, enacted March 27, 2020</p> <ul style="list-style-type: none"> Sec. 3506 Sec. 3507 Sec. 3508 <p>May 15, 2020, Electronic Announcement August 21, 2020, Electronic Announcement</p> <p>Operational Announcements: July 30, 2020, Electronic Announcement September 23, 2020, Electronic Announcement November 6, 2020, Electronic Announcement</p> <p>The Department first provided guidance on these provisions in the May 15 electronic announcement. We subsequently extended the period of applicability for this relief by amending the May 15 electronic announcement on June 16, 2020. We further clarified the period of</p>



FAFSA Simplification Act (included in the CRRSAA)

- Effective July 1, 2023
 - Significant simplification of the FAFSA.
 - Numerous changes to the needs analysis, such as replacing EFC calculation with a “Student Aid Index.”
 - Expands Pell Grant eligibility and revises calculation methodologies.
 - Restores Pell Grant eligibility for incarcerated students.
 - Restores semesters of Pell Grant eligibility to students who have successfully asserted a borrower defense to repayment.
 - Repeals the limitation on lifetime subsidized loan eligibility.
 - Provides for the cancellation of existing HBCU Capital Financing Loans.



Student Debt and the Cost of Higher Education

- Support announced during transition for \$10,000 in loan cancellation for all federal student loan borrowers.
- “Biden Plan for Education Beyond High School” (campaign plan):
 - Make public colleges and universities tuition-free for all families with incomes below \$125,000.
 - Double the maximum value of Pell Grants.
 - Simplify and increase scope of income-based loan repayment program.
 - Simplify the Public Service Loan Forgiveness Program.
 - Create a “Title I for postsecondary education” to help students at under-resourced four-year schools complete their degrees.
 - Prioritize use of work-study funds for job-related and public service roles.
 - Create seamless pathways between high school, job training, community college, and four-year programs to help students get their degrees and credentials faster.

Workforce Training with Community College Focus

- “Biden Plan for Education Beyond High School” (campaign plan):
 - Provide two years of community college or other high-quality training program without student loan debt.
 - Proposed federal-state partnership, with the federal government covering 75% of the cost and states contributing the remaining obligation.
 - \$50 billion investment in workforce training, including community-college business partnerships and apprenticeships.
 - \$8 billion investment in community college facilities and technology.
 - Create new grant program to assist community colleges in improving students’ success.
 - Address barriers to community college program completion through incentivizing States to create wrap-around student support services.



Improving Equity

- “Biden Plan for Education Beyond High School” (campaign plan):
 - \$18 billion in grants to HBCUs, TCUs and MSIs to improve affordability.
 - \$10 billion to create at least 200 “centers of excellence” to connect students underrepresented in critical fields to learning and career opportunities.
 - \$20 billion in infrastructure for HBCUs, TCUs, and MSIs to build high tech labs and facilities and digital infrastructure.
 - \$10 billion in programs for HBCUs, TCUs and MSIs to increase enrollment, retention, completion, and employment rates.
 - \$5 billion in HBCU, TCU and MSI graduate programs in teaching, health care, and STEM.
 - Triple and make permanent the capacity-building and student support for HBCUs, TCUs, and MSIs in Title III and Title V of the HEA.

Title IX

- New Title IX regulations took effect August 14, 2020
 - Replaced 2011 Dear Colleague Letter.
 - Biden campaign website: The Department under Secretary DeVos “rolled back the clock and [gave] colleges a green light to ignore sexual violence and strip survivors of their civil rights under Title IX, guaranteeing that college campuses will be less safe for our nation’s young people.”
 - Any changes will require a notice-and-comment rulemaking process.
- “Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation”
 - Among the executive orders signed on January 20, 2021 following inauguration.
 - Expands Title IX to prohibit LGBTQ discrimination.



Increased Regulation of For-Profit Institutions

- Biden Plan for Education Beyond High School” (campaign plan):
 - Require for-profit institutions to first prove their value to the U.S. Department of Education before gaining eligibility for Title IV, HEA programs.
 - Return to the Obama-Biden version of the Borrower Defense to Repayment regulation.
 - Enact legislation to include additional federal aid sources in the 90/10 rule.
 - Crack down on private lenders and allow individuals holding private loans to discharge them in bankruptcy.
- Anticipated new negotiated rulemakings on Gainful Employment (or a successor rule) and Borrower Defense to Repayment.
- As passed by the House, the American Rescue Plan Act of 2021 amends the 90/10 rule to include all "federal education assistance funds" on the 90 side of the ratio (which currently only includes Title IV, HEA program funds).
 - March 1, 2021: Senate parliamentarian ruled that including this provision does not violate the “Byrd Rule” for legislation passed under budget “reconciliation” procedures (which require only a simple majority).
- Additional regulatory focus expected on Online Program Management (OPM) entities.
- Increased scrutiny on for-profit conversions to nonprofit institutions.

Privacy and Cybersecurity

- Title IV Program Participation Agreement and SAIG Enrollment Agreement require postsecondary institutions to comply with Gramm-Leach-Bliley Act (GLBA) data security requirements
 - Dear Colleague Letters GEN-15-18 (July 29, 2015) and GEN-16-12 (July 1, 2016)
- OMB 2019 Compliance Supplement for Single Audits (nonprofit educational institutions) and Dear CPA Letter CPA-19-01 (proprietary educational institutions) require independent auditor review of GLBA compliance.
- December 18, 2020 Electronic Announcement:
 - Institutions and third-party servicers will be expected to generally comply with NIST 800-171 cybersecurity standards (as currently applicable to all Controlled Unclassified Information).
 - Institutional cybersecurity self-assessments during 2021.
 - More detailed requirements TBD as soon as 2022.



Foreign Gifts and Contracts

- **Section 117 of the Higher Education Act (20 U.S.C. § 1011f)**
 - Requires all domestic higher education institutions that receive any Federal financial assistance (directly or indirectly) and that offer a bachelor's degree or higher, or that offer a transfer program of not less than two years that is acceptable for credit toward a bachelor's degree, are required to report to the Department information about:
 - Contracts with and gifts received from any foreign source, in either case exceeding \$250,000 in any calendar year; and
 - Any ownership interests in or control over the institution by a foreign entity.
 - Reporting required each Jan. 31 and July 31 for prior six-month period.
 - New reporting portal unveiled in June 2020.
 - Continued enforcement of the reporting requirement is expected.

Final Regulations Effective July 1, 2021

- **Final Rule on TEACH Grants & Faith-Based Entities (promulgated August 14, 2020)**
 - Expands fields in which TEACH Grant recipients can work to fulfill their service obligation.
 - Simplifies the TEACH Grant employment certification requirements.
 - Requires more information to be provided to recipients as part of entrance and exit counseling for TEACH Grants.
 - Creates conversion counseling to education borrowers if and when their TEACH Grants convert to loans.
 - Provides processes to correct improper conversions of TEACH Grants to loans.
 - In accordance with *Trinity Lutheran Church of Columbia, Inc. v. Comer* (137 S. Ct. 2012), revises regulations for Perkins Loan, Federal Work Study, FSEOG, GEAR UP, LEAP, FFEL and Direct Loan programs regarding the eligibility of faith-based entities to participate.

Final Regulations Effective July 1, 2021

- **Final Rule on Distance Education and Innovation (promulgated September 2, 2020)**
 - Provides more flexibility to distance education, competency-based education (CBE), and other types of educational programs that emphasize demonstration of learning rather than seat time when measuring student outcomes.
 - Defines the requirements of “regular and substantive interaction” for purposes of distance education eligibility.
 - Clarifying the requirements for direct assessment programs, including generally limiting approval requirement for only the first direct assessment program offered at a given credential level.
 - Simplifies rules regarding Title IV disbursements for “subscription-based programs.”
 - Requires prompt action by the Department on applications seeking certification or recertification to participate in Title IV, HEA programs.
 - Allow students enrolled in Title IV, HEA-eligible foreign institutions to complete up to 25 percent of their programs at an eligible institution in the United States.
 - Simplifies clock-to-credit hour conversions.
 - Clarifies “reasonable relationship” test for program length of clock hour programs.
 - Permits sanctions on individuals or institutions affiliated with closing institutions that do not execute a viable teach-out plan or agreement.

Thank you!



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