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# **The Federal Update for February 16, 2024**

From: Michael Brustein, Julia Martin, Steven Spillan, Kelly Christiansen

Re: Federal Update

Date: February 16, 2024

[Legislation and Guidance 1](#_Toc158979795)

[ED Expands on Davis-Bacon Guidance for ESSER Projects 1](#_Toc158979796)

[New Student Loan Forgiveness Proposal Announced 2](#_Toc158979797)

[News 3](#_Toc158979798)

[ED Scaling Back FAFSA Verification Due to Processing Delays 3](#_Toc158979799)

[Foxx Will Not Seek Another Term as Chair 4](#_Toc158979800)

## Legislation and Guidance

### ED Expands on Davis-Bacon Guidance for ESSER Projects

In a “dear grantee” letter issued last week, the U.S. Department of Education (ED) offered additional information on ensuring compliance with Davis-Bacon for projects funded under the Elementary and Secondary School Education Relief (ESSER) fund.

The letter provides links to a recording and transcript of a December webinar on the new Davis-Bacon prevailing wage rule, as well as direct contact information for Davis-Bacon staff at the U.S. Department of Labor, who offer to provide answers to general questions or coordinate in-person or virtual training on Davis-Bacon.

In addition, the letter provides further detail on grantees’ responsibility for ensuring compliance with Davis-Bacon, noting that local educational agencies (LEAs) are responsible for “spot monitoring” to ensure that contractors are doing what they promised, and that State educational agencies (SEAs) must monitor LEAs to ensure they are fulfilling their responsibilities. DOL and ED will then spot monitor both SEAs and LEAs. Where State resources are limited, the letter suggests that SEAs should “first focus on open projects or contracts that are not yet finalized prior to the ARP ESSER September 30, 2024, obligation deadline” before turning to other concerns later in the process.

If States determine that LEAs are not in compliance with Davis-Bacon, the letter instructs them to inform the ED. States should work with the LEAs to incorporate Davis-Bacon clauses and wages into open contracts. If Davis-Bacon was not incorporated into contracts but prevailing wages were paid, the letter recommends that the State contact its program officer at ED for guidance, noting that there is the possibility of a waiver of Davis-Bacon requirements.

This waiver authority will allow DOL to grant waivers of Davis-Bacon requirements in “some limited circumstances.” For example, ED explains a waiver would be warranted in “a circumstance where an LEA did not include contract clauses and/or applicable wage determinations when the contract was awarded because at that time the [f]ederal education funds had not yet been approved for that project.” Waiver applications should note any injustice or hardship that would result from a lack of waiver, as well as factors that could mitigate harm, like a State law which resulted in workers being paid at least the prevailing wage amount. Letters would go from the State to ED, and then on to DOL for review.

If the LEA cannot obtain a waiver or amend the contract, the letter suggests that “the LEA might consider an accounting adjustment and substitute non-federal funds.” Where there is noncompliance, the letter lists potential remedies as “ensuring that a contractor corrects its practices; ensuring that an LEA improves its contract practices; audit findings; the Secretary of Education imposing special conditions; and other enforcement action such as partly suspending or terminating the award.”

[The full Davis-Bacon letter is available here](https://oese.ed.gov/files/2024/02/Davis-Bacon-December-7-2023-Webinar-Questions-and-Responses.pdf).

Author: JCM

### New Student Loan Forgiveness Proposal Announced

The U.S. Department of Education (ED) proposed a new expansion of its student loan forgiveness plan on Thursday.  The proposal would allow ED to discharge student loan debt owed by borrowers that are at least 80 percent likely to default on their debt within the next two years, as well as those experiencing a financial hardship.  Financial hardship will be calculated based on factors including household income and size, age, disability, total consumer and student loan debt balance, history of loan repayment, completion status, and typical student outcomes at the program attendance, as well as whether the borrower received a Pell grant or other means-tested benefit.

The proposal will be discussed during negotiated rulemaking sessions next week, and the agency has said it will release the plan for public comment in May of this year.

An ED official who spoke to reporters about the plan said that it would impact a “meaningful” number of borrowers.  “We are trying to figure out how to be as expansive as possible within the limits of the law and the court decision,” the official said Thursday.

The new [student loan forgiveness proposal is available here.](https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/student-loan-debt-relief-proposed-regulatory-text-section-30-91-hardship-session-4-v-1.pdf)

In a statement issued late Thursday, House Committee on Education and the Workforce chair Virginia Foxx criticized the plan. “Student debt is skyrocketing, college completion rates are abysmal, and schools have zero accountability for the overpriced degrees they offer,” she wrote. “Yet, the Biden administration continues to ignore all those problems and instead implement its illegal student loan transfer scheme, hoping that this ploy sways voters at the polls. Voters don’t want to be bought, but desire real solutions like the College Cost Reduction Act to lower the cost of tuition and hold institutions accountable for student completion rates and loan repayment.”

Author: JCM

## News

### ED Scaling Back FAFSA Verification Due to Processing Delays

The U.S. Department of Education (ED) announced this week that it would scale back Free Application for Federal Student Aid (FAFSA) verification and audits this year due to recent delays in processing applications. An updated form released in December has faced significant technical and other challenges, leading to a delay for colleges to receive data to make financial aid determinations.

ED typically selects about a third of FAFSA applicants per year to provide more information for “verification” purposes, which may include submitting additional documentation. In most cases, the updated FAFSA process uses financial information directly from the Internal Revenue Service – a more reliable source than the previous process – and was designed to reduce the number of students selected for verification each year. ED announced this week that it will temporarily make that verification number even lower due to the FAFSA complications and delays for this financial aid year given that when students are selected for verification, they may receive financial aid offers later than other students.

In addition, ED conducts audits of colleges and universities each year to ensure their compliance with financial aid regulations and statutes, but those audits will be halted until after June this year. However, ED may still investigate some colleges and universities if there are significant compliance issues reported or suspected with the administration of financial aid programs, such as fraudulent activity. Institutions that are due to renew their eligibility for federal financial aid programs this year will also have more time to submit the renewal request – until the expiration of their current eligibility as opposed to 90 days prior.

ED has taken other action in recent days to ease the burden on colleges and universities caused by the delayed FAFSA processing, including providing on-site staff to assist financial aid offices at institutions that have few resources. ED will also use $50 million to provide additional technical assistance through non-profit organizations that specialize in financial aid. In addition, after ED announced earlier this month that FAFSA data would not be transmitted to institutions until the first half of March, many colleges and universities pushed back their enrollment deadlines to allow students ample time to receive all financial aid offers and make enrollment decisions.

Congressional pressure on ED to address the FAFSA challenges and provide more information heightened this week, with a number of Democratic lawmakers requesting a clear plan to address the issues from Secretary Cardona. The lawmakers asked the Secretary to provide the exact date in March on which FAFSA data will be transmitted to colleges and a plan for how ED will communicate further delays to students and families. The Democratic pressure follows criticism over the past few weeks from Republican Members of Congress, which led to the Government Accountability Office to open an investigation into the FAFSA challenges and delays.

Resources:

Bianca Quilantan, “Democrats press Cardona for answers on FAFSA delay,” *Politico*, February 12, 2024.

Laura Spitalniak, “Education Department to ease FAFSA verification requirements this year,” *Higher Ed Dive,* February 13, 2024.

Michael Stratford, “Education Department eases audits of students, colleges amid FAFSA woes,” *Politico*.

Author: KSC

### Foxx Will Not Seek Another Term as Chair

During her speech at the Community College National Legislative Summit last week, Representative Virginia Foxx (R-NC) indicated that she would not seek another term as Chair of the House Committee on Education and the Workforce. Foxx has served as the leader of the Republicans on the Committee since 2017. From 2017 to 2019, while Republicans controlled the House, Foxx was the Chair of the Committee, and from 2019 through 2022, while Democrats controlled the House, she served as the Ranking Member of the Committee. Since Republicans regained control in 2023, she has served as Chair of the Committee again.

Before entering politics, Foxx worked as an educator and an administrator. She worked in multiple institutions of higher education and spent most of her career in the community college sector, including serving as President of Mayland Community College in North Carolina.

In Congress, Foxx has been a proponent of community college education and workforce development. In her speech, she said that “community colleges were the best place to make a difference in this country in terms of education” and encouraged support for the Bipartisan Workforce Pell Act, which would allow students to use Pell grants for short-term programs, like workforce training. Foxx has also been at the forefront of advocating against certain measures during the COVID-19 pandemic, including pandemic relief funding for K-12 schools in the American Rescue Plan. She also voted against the Bipartisan Safer Communities Act, which implemented school safety and mental health programs and gun control laws.

Foxx has also led inquiries into actions by the current administration. Foxx has made inquiries on the U.S. Department of Education’s (ED’s) oversight of pandemic relief spending and particularly its expenses related to equity. She also criticized ED’s Title IX proposed changes and called for Secretary of Education Miguel Cardona’s resignation.

Both Representative Tim Walberg (R-MI) and Representative Burgess Owens (R-UT) have expressed interest in taking over the Committee. While Foxx is not planning to extend her leadership role on the Committee, she is still running for reelection for her seat in the House. Foxx has been the Representative from North Carolina’s fifth district since 2005.

Resources:

Naaz Nodan, “Foxx will not seek another term as House education committee chair,” *K-12 Dive*, February 12, 2024.

Matthew Dembicki “Foxx stumps for House bills — and bids adieu,” *Community College Daily*, February 7, 2024.

Author: BNT

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Posted by the California Department of Education, February 2024